

CT-2011-003

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

**IN THE MATTER OF** an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

**AND IN THE MATTER OF** certain rules, policies and agreements relating to the multiple listing service of the Toronto Real Estate Board.

**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

Applicant

- and -

**THE TORONTO REAL ESTATE BOARD**

Respondent

- and -

**THE CANADIAN REAL ESTATE ASSOCIATION and  
REALTYSELLERS REAL ESTATE INC.**

Intervenors

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**REPLY WITNESS STATEMENT OF MARK ENCHIN**

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I, Mark Enchin, of the City of Guelph, in the Province of Ontario, state as follows:

1. My witness statement signed June 19, 2012 sets out my background.

**VOW Security and User Tracking**

2. As I described in my first witness statement, VOWs permit Realtors to provide services to clients and customers over the Internet efficiently and professionally. As I explain in this

statement, VOWs also permit Realtors to track usage by registered users and to construct barriers to limit improper use or copying of data from the VOW. These features help Realtors ensure that users are complying with the terms of use and help safeguard the information made available on the VOW from improper use.

3. Like my 2001 VOW, my 2012 VOW will track usage. The system will automatically record what time a user logged on, what properties the user viewed during each session, and what time the user logged off. The VOW administrator can review the logs by property (i.e., to see how many users have viewed "Property A") or by user (i.e., to see how many properties or what kinds of properties a particular user has viewed over time).

4. Knowing a user's viewing history helps the VOW operator know whether the user is complying with the VOW's Terms of Use and using the VOW to research a real estate transaction. For example, a user that views 2,000 different properties in an hour is probably not looking for a home. That is simply too many listings for an ordinary user to view in that time period. Instead, that user is probably trying to gather listing data for other purposes. Knowing that the user is probably using the VOW improperly and violating its Terms of Use, the VOW operator can revoke that user's access to the VOW.

5. VOW operators can also construct barriers to keep users from copying data without authorization. Such barriers include:

- (a) **CAPTCHA Challenge-Response Tests:** CAPTCHA tests appear on many websites. They require the user to correctly input distorted numbers and letters. They are easy for a computer to generate, but hard for a computer to complete

correctly. They try to ensure that the user is a real person and not a computer accessing the website automatically to copy data from it.

- (b) **Encrypting Underlying Data:** A VOW operator can encrypt or hide sensitive data. For example, my 2001 VOW used software to hide the email addresses of registered users. This kept hackers from getting the email addresses and using them to spam my clients.
- (c) **Limiting the Number of Properties Viewed:** A VOW operator can limit registered users to viewing a maximum number of properties during a certain period. Once the user reached the maximum, the VOW would no longer display listings to that user. Ordinary users searching for a home would be unlikely to reach the maximum. But it would limit improper use by automatically denying access to a user accessing hundreds of properties in a short period to copy the data. Teranet imposes this kind of maximum on Realtors who use its GeoWarehouse service (6,000 property views per year).

6. In addition to technological safeguards, a VOW operator can control who accesses what information on the VOW in the first place. For example on my 2001 VOW, only clients of a Realtor could access the appraisal feature and listings of other Realtors. Likewise as long as the user agrees to TREB's required Terms of Use, a VOW operator could choose to grant access to a VOW or certain information in it after meeting with a person face-to-face, speaking with them over the phone, or corresponding by email. That would be the VOW operator's choice. Realtors make this same choice all the time. They decide who they provide sold information to, when they provide it and how they provide it (email, hand, fax etc.).

### **Data from Teranet and MPAC**

7. In my experience, Teranet and MPAC provide sale prices of residential properties which are not as up to date and therefore not as useful to Realtors and their customers as data in a board's MLS database. I understand that Teranet and MPAC have the sale price of closed transactions. In contrast, TREB's MLS database has the price of firm "sales", where agreements of purchase and sale have been entered into but sales have not yet closed. The difference is significant because an agreement of purchase and sale may be signed many weeks or months before the transaction closes.

8. The timeliness of information matters to Realtors and their customers. Real estate markets can change almost overnight. Realtors need up-to-date information to advise their clients about what the market is like at that moment. Even a 5% price drop is a \$40,000 swing on an \$800,000 home. Because of the money on the line, sellers and buyers want to know what the market is like *today*, not several months ago (when prices might have been higher or lower). But sales several months ago reported by Teranet or MPAC may not reflect current market conditions. Knowing that a comparable house down the street sold last week for \$500,000 is more useful to sellers and buyers than knowing that another comparable nearby house sold for \$500,000 six months ago.

9. I use Teranet's GeoWarehouse primarily to confirm a client's ownership of a property and to find out information about mortgages and liens. I rarely get sold information from it.

### **Obtaining Data Directly from Teranet**


10. Around March 2012, I met with Teranet sales people to discuss buying data on the square footage of GTA properties (not sold prices). I wanted to use the square footage data for my 2012

VOW's appraisal feature (assuming TREB included sold and pending sold data in its VOW feed in the future). I explained the appraisal feature to Teranet.

11. Teranet's representatives told me that one or two data fields could cost as much as \$5 per property. They said they had to discuss my request with their superiors and get back to me, but they left me with the clear impression that they were very reluctant to sell me this information. They told me that Teranet had its own appraisal software which it sells. They said it might be a conflict of interest to sell data fields to me since I planned to use the fields to offer a competing appraisal feature.

12. Teranet's representatives have yet to get back to me.

SIGNED THIS 17<sup>th</sup> DAY OF AUGUST, 2012.

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MARK ENCHIN

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MARK ENCHIN**

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