

FILED / PRODUIT

Date: September 14, 2011

CT- 2011-003

Chantal Fortin for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

33

CT-2011-003

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 residential multiple listing service of the Toronto Real Estate Board.

B E T W E E N :

COMMISSIONER OF COMPETITION

Applicant

AND

THE TORONTO REAL ESTATE BOARD

Respondent

**RESPONSE OF THE TORONTO REAL ESTATE BOARD
TO THE REQUEST OF THE CANADIAN REAL ESTATE ASSOCIATION
FOR LEAVE TO INTERVENE**

1. The Toronto Real Estate Board (“**TREB**”) supports the request of The Canadian Real Estate Association (“**CREA**”) for leave to intervene.
2. Each of the matters on which CREA proposes to intervene are within the scope of the Tribunal’s consideration and are relevant to issues specifically raised by the Commissioner of Competition (“**Commissioner**”) in this proceeding.
3. CREA is directly affected by the issues raised in the Commissioner’s Amended Notice of Application, including by virtue of its status as the owner of the Multiple Listing

Service® trademark and the MLS® trademark, each of which is licenced from it by TREB and used in relation to the operation of the TREB MLS®. Any relief granted that affects the value of the Multiple Listing Service® and MLS® marks, therefore directly affects the rights and interests of CREA.

Affidavit of Gary Simonsen, paras. 19, 23 & 33

4. TREB submits that CREA's long-standing involvement in the real estate industry throughout Canada and its extensive expertise in relation to the use of the internet in that industry places it in a position to offer a unique and distinct perspective to the Tribunal on the matters in issue and the efficacy and applicability of the relief proposed by the Commissioner.

CREA Request to Intervene, paras. 2 & 8

Affidavit of Gary Simonsen, paras. 19, 23 & 33

5. TREB submits that CREA is uniquely placed to assist the Tribunal on a matter critical to the Commissioner's application: whether the operation of virtual office websites would be likely to increase competition substantially in the supply of residential real estate brokerage services.
6. The Commissioner directly raises the experiences of brokers and brokerages in jurisdictions outside of Ontario as supporting the thesis that virtual office websites "would impose competitive discipline on brokerages that currently operate in the relevant market", "allow home searches to be conducted in a more efficient manner", "encourage innovation and increased quality of service", "allow brokerages to reduce their costs" and "pass these cost savings on to their customers".

Amended Notice of Application, paras. 6, 8, 9, 58, 62, 63 & 64

7. As the only national association of REALTORS®, TREB submits that CREA is the most efficient source to address the experience of brokers and brokerages across Canada with virtual office websites and similar data-sharing initiatives.

CREA's Request to Intervene, paras. 35 to 38, 43, 44 & 45

8. TREB takes no position on the terms of intervention sought by CREA.
9. Unless opposed by the Commissioner, TREB does not consider a hearing needs to be held to determine CREA's Request for Leave to Intervene.

DATED AT Toronto, this 14th day of September, 2011.


Donald S. Affleck

Affleck Greene McMurtry LLP
365 Bay Street
Suite 200
Toronto, Ontario
M5H 2V2

Donald S. Affleck Q.C.
Phone: (416) 360 1488
Fax: (416) 360 5960
Email: dsaffleck@agmlawyers.com

Renai E. Williams
Phone: (416) 360 2668
Email: rwilliams@agmlawyers.com

Michael Binetti
Phone: (416) 360 0777
Email: mbinetti@agmlawyers.com

Counsel for The Toronto Real Estate Board

To: **Sandra A. Forbes**
George Addy
James Dinning
Davies Ward Phillips & Vineberg LLP
1 First Canadian Place
Suite 4400, Box 63
Toronto, Ontario
M5X 1B1

Counsel for The Canadian Real Estate Association

And To: **John F. Rook**
Andrew D. Little
Bennett Jones LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Counsel for the Applicant

And To: **Roger Nassrallah**
Competition Bureau Legal Services
Department of Justice
50 Victoria Street
Gatineau, Quebec
K1A 0C9

Counsel for the Applicant

And To: **Mark Nicholson**
Gowling Lafleur Henderson LLP
1 First Canadian Place
100 King Street West
Toronto, Ontario
M5X 1G5

Counsel for Realtysellers Real Estate Inc.

And To: **The Registrar**
Competition Tribunal
Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, Ontario
K1P 5B4

CT-2011-003

COMPETITION TRIBUNAL

THE COMMISSIONER OF COMPETITION

Applicant

- and -

THE TORONTO REAL ESTATE BOARD

Respondent

**RESPONSE OF THE TORONTO REAL ESTATE BOARD
TO REQUEST OF THE CANADIAN REAL ESTATE
ASSOCIATION FOR LEAVE TO INTERVENE**

AFFLECK GREENE McMURTRY LLP

365 Bay Street, Suite 200

Toronto, Ontario M5H 2V1

Donald S. Affleck, Q.C.

Tel: (416) 360-1488

Email: dsaffleck@agmlawyers.com

Renai E. Williams

Tel: (416) 360-0668

Email: rwilliams@agmlawyers.com

Michael I. Binetti

Tel: (416) 360-0777

Email: mbinetti@agmlawyers.com

Counsel for The Toronto Real Estate Board