

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/94-290;

AND IN THE MATTER OF an application pursuant to section 79 of the *Competition Act*, relating to certain practices of the Canadian Real Estate Association in the residential real estate industry in Canada;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to section 105 of the *Competition Act*.

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE Registered / Enregistré FILED / PRODUIT October 25, 2010 CT-2010-02 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 75

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

AND

THE CANADIAN REAL ESTATE ASSOCIATION

Respondent

CONSENT AGREEMENT

WHEREAS the Commissioner filed an Application with the Competition Tribunal on February 8, 2010, pursuant to section 79 of the Act, challenging Rules imposed by CREA that the Commissioner alleges limit consumer choice and prevent innovation in the market for residential real estate brokerage services to home sellers in Canada;

AND WHEREAS the Commissioner and CREA (together, the "Parties") have reached an agreement to resolve the Commissioner's concerns regarding certain of CREA's practices pursuant to section 79 of the Act;

AND WHEREAS IT IS AGREED AND UNDERSTOOD THAT CREA does not accept the allegations of the Commissioner and nothing in this Agreement will be taken as an admission or acceptance by the Commissioner or CREA of any facts, liability, wrongdoing, submissions, legal argument or conclusions for any other purposes,

NOW THEREFORE the Parties agree as follows:

I. Definitions

1. For the purposes of this Agreement, the following capitalized terms have the following meanings:
 - (a) "**Act**" means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
 - (b) "**Agreement**" means this Consent Agreement entered into by CREA and the Commissioner pursuant to section 105 of the Act;
 - (c) "**Approved Website**" means REALTOR.ca (formerly mls.ca) or any other website operated by CREA or a Member Board originating from a service operated under an MLS® System;
 - (d) "**CREA**" or the "**Respondent**" means The Canadian Real Estate Association, a trade association incorporated under Part II of the *Canada Corporations Act*, R.S.C. 1970, c. C-32;
 - (e) "**Commissioner**" means the Commissioner of Competition appointed pursuant to section 7 of the Act or any person designated by the Commissioner to act on her behalf;
 - (f) "**Member**" refers to a licensed real estate practitioner who is a member of a Member Board and CREA;
 - (g) "**Member Board**" means a local real estate board or association, or a provincial or territorial real estate association, located in Canada that is a member of CREA;
 - (h) "**Mere Posting**" means a listing on a Member Board's MLS® System in respect of which the Member has chosen or agreed not to provide services to the Seller other than submitting the listing for posting on a Member Board's MLS® System;
 - (i) "**MLS® Marks**" means the following trademarks and certification marks owned and licensed by CREA with the following registration numbers: TMA155124, TMA221815, TMA221816, TMA118344;
 - (j) "**MLS® System**" means a cooperative selling system for residential real estate operated by or on behalf of a Member Board(s) in association with the MLS® Marks;
 - (k) "**Parties**" means CREA and the Commissioner;

- (l) **"Rule"** means any rule, regulation, bylaw, code, policy, standard, practice, agreement or similar instrument, or any other instrument referred to therein, including any interpretations thereof;
- (m) **"Seller"** means a person who has an interest in selling residential real estate; and
- (n) **"Tribunal"** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.), as amended.

II. Application

- 2. The provisions of this agreement apply to:
 - (a) CREA; and
 - (b) the Commissioner.

III. Obligations of CREA

- 3. CREA shall not adopt, maintain, or enforce any Rules that deny the ability of Members to provide Mere Postings for Sellers, or that discriminate against Members because they offer, or wish to offer, to provide Mere Postings for Sellers, including, but not limited to, any Rule that:
 - (a) prevents Members from offering a Mere Posting;
 - (b) prevents Mere Postings from being listed in a Member Board's MLS® System;
 - (c) discriminates against Mere Postings, provided that the bare identification of a Mere Posting in a Member Board's MLS® System is not discriminatory;
 - (d) prevents Members from cooperating with Members that offer Mere Postings;
 - (e) prevents Members from:
 - (i) listing a Seller's contact information in the REALTOR®-only remarks section of the MLS® System, with instructions directing interested Members to contact the Seller directly,
 - (ii) including, in the General Description section on an Approved Website, a direction to visit either the REALTOR®'s or his or her brokerage's website (whichever site is included as the contact link in the REALTOR®'s contact information on the Approved Website) for additional information about the listing (without specifying the nature of such additional information), or
 - (iii) displaying the Seller's contact information on a website other than an Approved Website;

- (f) prevents Members from negotiating and contracting, with a Seller, in respect of the terms of payment for compensation to the co-operating Members for the co-operative selling of the property, as long as the offered compensation is not zero; or
 - (g) conditions use of, or access to, the MLS® Marks or a Member Board's MLS® System on a Member, or a prospective Member, not offering Mere Postings.
4. Effective upon registration of this Agreement, CREA shall amend its Rules to remove the Agency Pillar, Rule 17.1.1.2, and replace it with the following:

A listing REALTOR®/brokerage must act as agent for the seller to post, amend or remove a property listing in a Board's MLS® System. The nature of any additional services to be provided by the listing REALTOR®/brokerage to the seller is determined by agreement between the listing REALTOR®/brokerage and the seller.

IV. Implementation and Compliance

5. Effective upon registration of this Agreement, CREA shall amend its Rules to comply with the provisions of this Agreement.
6. CREA shall send a written notice to its Member Boards stipulating that they amend, in accordance with the Rules of those Member Boards, their Rules to comply with the provisions of this Agreement. In particular, within ten (10) days of registration of this Agreement, CREA shall provide a copy of this Agreement to each of its Member Boards and specifically advise them of the consequences, as set out in this Agreement, of a failure by a Member Board to amend its Rules in accordance with this Agreement.
7. CREA shall not adopt any Rules that would have the effect of breaching the terms of this Agreement.
8. CREA shall not license or continue to license the MLS® Marks to any Member Board that has failed to amend its MLS® Rules to comply with the amendment by CREA of its Rules in accordance with this Agreement.
9. CREA shall not license or continue to license the MLS® Marks to any Member Board that adopts and/or enforces any Rules that are inconsistent with the terms of this Agreement.
10. CREA shall provide template language to Member Boards for the implementation of the Rule changes arising from this Agreement. CREA shall provide such template language to the Commissioner for her review prior to providing such template language to Member Boards.

V. Term

11. Unless otherwise agreed by the Parties, the term of this Agreement shall commence upon the date of registration of this Agreement and end ten (10) years from the date of registration of this Agreement.

VI. General

12. This Agreement shall be registered with the Tribunal immediately after ratification by the members of CREA.
13. This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.
14. The Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein.
15. Computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. I-21. For the purpose of this Agreement, the definition of "holiday" in the Interpretation Act shall be deemed to include Saturday.
16. Nothing in this Agreement precludes CREA or the Commissioner from bringing an application under section 106 of the Act (or a successor or equivalent provision under the Act) to rescind or vary this Agreement.
17. For greater certainty, the Tribunal shall retain jurisdiction for the purpose of any application by the Commissioner or CREA to rescind or vary any of the provisions of this Agreement pursuant to section 106 of the Act.
18. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.
19. The headings in this Agreement are for convenience of reference only and shall not affect the construction or interpretation thereof.
20. In the event of a dispute as to the interpretation or application of this Agreement, either the Commissioner or CREA shall be at liberty to apply to the Tribunal for an order interpreting any of the provisions of the Agreement. In the event of a dispute in relation to the English and French versions of the Agreement, the English version shall govern.

VII. Notices

21. Notices pursuant to the Agreement shall be given to the Parties at the following addresses or facsimile numbers:

(a) **The Commissioner**

Melanie L. Aitken
Commissioner of Competition
Competition Bureau
Place du Portage, Phase 1, 50 Victoria Street
Gatineau (QC) K1A 0C9

Telephone: (819) 997-3301
Facsimile: (819) 953-5013

With copies to:

John F. Rook, Q.C.
Bennett Jones LLP.
3400 One First Canadian Place
P.O. Box 130, 100 King Street W.
Toronto (ON) M5X 1A4

Telephone: (416) 777-4885
Facsimile: (416) 863-1716

(b) **Canadian Real Estate Association**

Pierre Beauchamp
Chief Executive Officer
Canadian Real Estate Association
200 Catherine Street, 6th Floor
Ottawa (ON) K2P 2K9

Telephone: (613) 237-7111
Facsimile: (613) 234-2567

With copies to:

Katherine L. Kay
Stikeman Elliot LLP
5300 Commerce Court W.
199 Bay Street
Toronto (ON) M5L 1B9

Telephone: (416) 869-5507
Facsimile: (416) 947-0866

Any party hereto may from time to time change its address or facsimile number for notice by giving notice to the other party hereto in accordance with the provisions of this section 21.

DATED this [30th] day of [September], 2010

[original signed by Melanie L. Aitken]

Melanie L. Aitken
Commissioner of Competition

The Canadian Real Estate Association

[original signed by Pierre Beauchamp]

Per: Pierre Beauchamp
Title: Chief Executive Officer