

Competition Tribunal  
Tribunal de la concurrence

FILED / PRODUIT  
February 8, 2010  
CT- 2010-002

Chantal Fortin for / pour  
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

# 1

CT- 2010-002

**THE COMPETITION TRIBUNAL**

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

**AND 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, regulations and policies of the Canadian Real Estate Association.

**B E T W E E N:**

**THE COMMISSIONER OF COMPETITION**

Applicant

- and -

**THE CANADIAN REAL ESTATE ASSOCIATION**

Respondent

---

**NOTICE OF APPLICATION**

---

**TAKE NOTICE** that the Applicant will make an application to the Competition Tribunal (the "Tribunal") pursuant to section 79 of the *Competition Act* (the "Act") for orders pursuant to subsections 79(1) and 79(2) of the Act, in that the Respondent and its members have used their control of the MLS and related trademarks to impose exclusionary restrictions on their use and

thereby maintain substantial or complete control of the market for the supply of residential real estate brokerage services, as more particularly described herein. The particulars of the order sought by the Applicant are set out in paragraph 54.

**AND TAKE NOTICE** that the timing and place of hearing of this matter shall be fixed in accordance with the practice of the Tribunal.

**AND TAKE NOTICE** that the Applicant is providing a concise statement of the economic theory of the case in support of this Application, attached hereto as Schedule "A".

**AND FURTHER TAKE NOTICE** that the Applicant will rely on the following Statement of Grounds and Material Facts in support of this Application.

## STATEMENT OF GROUNDS AND MATERIAL FACTS

### PART I: GROUNDS

1. The Commissioner of Competition (the “Commissioner”) alleges that the Canadian Real Estate Association (“CREA”), through its members, has substantial or complete control over the supply of residential real estate brokerage services throughout Canada; that CREA and its members have used CREA’s control of the MLS and related trademarks to impose exclusionary restrictions on their use; that CREA enacted these restrictions with the intent of having a negative exclusionary effect on real estate brokers and agents (collectively referred to as “brokers”) seeking to provide less than a full package of brokerage services; and that these restrictions lessen or prevent competition substantially in the market for residential real estate services in Canada.

2. CREA is the registered owner of the MLS, Multiple Listing Service and MLS & Design trademarks (“MLS and related trademarks”), which it licenses to member real estate boards and associations (“real estate boards”) throughout Canada for use in connection with the multiple listing services system (the “MLS system”). The MLS system is widely used by real estate brokers and is a key element in the supply of residential real estate brokerage services across Canada. The MLS system provides CREA’s members with the only comprehensive listing of homes for sale in Canada. CREA also provides sellers and purchasers of real estate with access to a subset of the listing information through a public website, [realtor.ca](http://realtor.ca) (formerly [mls.ca](http://mls.ca)). No listing source provides as much exposure or information to sellers and purchasers as does the MLS system. While other options exist for marketing a home for sale, such as newspaper advertising, they are not adequate substitutes for an MLS listing.

3. In licensing the MLS and related trademarks to its member real estate boards, CREA has imposed a number of exclusionary restrictions on their use (“MLS Restrictions”, further described below under the heading “The MLS Restrictions”). The MLS Restrictions impose minimum service requirements on all brokers, which lessen or prevent competition substantially.

4. As a consequence of CREA’s actions, consumers have been denied the benefits of competition in the supply of residential real estate brokerage services. The MLS Restrictions prevent entry and impede expansion by competitive business models that provide unbundled residential real estate brokerage services to home sellers. They also reduce the variety of service packages available in the relevant market, leaving consumers with only one option if they want to sell their home using the MLS system – they must hire a real estate broker who will and must, because of the MLS Restrictions, provide a bundle of services that includes services the consumer may not want to receive or pay for.

5. The Commissioner therefore seeks an Order (i) prohibiting CREA from directly or indirectly imposing the MLS Restrictions (as described below) on the use of the MLS and related trademarks when licensing those trademarks to member real estate boards; (ii) directing CREA to pay the costs of the within application; and (iii) such other relief as the Tribunal may consider appropriate.

## **PART II: MATERIAL FACTS**

### **A: The Parties**

6. The Applicant, the Commissioner, is appointed under section 7 of the Act and is charged with the administration and enforcement of the Act.

7. The Respondent, CREA, is a trade association that was incorporated in 1954 under Part II of the *Canada Corporations Act*. CREA's members include more than 100 Canadian real estate boards, as well as approximately 90 per cent of licensed real estate brokers in Canada. Once a real estate board becomes a member of CREA, the real estate brokers who are members of that real estate board automatically become members of CREA.

8. CREA owns the trademarks MLS, Multiple Listing Service and MLS & Design. CREA licenses the use of these marks to its member real estate boards who operate listing systems under the name MLS, subject to terms and conditions established by CREA. Only licensed members of CREA can use MLS in relation to a listing system, and display the MLS and related trademarks in their marketing efforts. All CREA member real estate boards in Canada operating a local listing system do so under the MLS mark.

### **B: Background**

#### ***The MLS System***

9. The MLS system is the collective series of electronic databases and information sharing networks operated by member real estate boards of CREA. Each local real estate board operates its own listing system under the terms of the certification mark license agreement with CREA

and its own rules (*e.g.*, the Ottawa Real Estate Board operates the MLS for listings in the Ottawa region). Only real estate brokers who are members of CREA can access the MLS system.

10. CREA also owns the *realtor.ca* (formerly *mls.ca*) website, which provides the public with limited access to relevant information contained in the MLS system, such as listing price. However, only CREA members can access and share key data, such as the identity of the home owner, arrangements between brokers to share compensation and historical sales data (which market participants use to price bids and evaluate offers).

11. CREA requires local real estate boards to periodically certify in writing that they have complied with CREA's rules and regulations, including the MLS Restrictions. Member real estate boards operating an MLS listing system must agree to follow CREA's rules and regulations as a condition of their license agreement with CREA.

12. The MLS system is a critical mechanism for ensuring that homes for sale are given broad exposure. Home sellers who do not engage a broker to list their homes for sale on the MLS system may advertise their homes by, among other things, placing signs on their lawn and advertising in local newspapers. However, these options provide significantly less advertising exposure. The overwhelming majority of brokers believe they must list a property on the MLS system in order to adequately service their customers and effectively compete with other brokers for the listing. The MLS system has become a key input to the provision of residential real estate brokerage services.

## ***The Residential Real Estate Industry***

### ***(i) Brokers and Agents***

13. A real estate broker is licensed to act as a representative for home buyers and/or home sellers, and authorized to engage in the sale of real estate and to provide services in connection with such sales. A broker can own and operate a real estate firm, referred to as a 'brokerage'.

14. A real estate agent is a licensed real estate salesperson who works for, or under the supervision of, a real estate broker.

### ***(ii) Listing Brokers***

15. A broker hired by the seller is referred to as a "listing broker". Listing brokers typically enter into contracts with sellers ("MLS Agreements") setting out the commission rate to be paid by the seller upon the sale of the home. MLS Agreements specify the share of the commission to be offered by the listing broker to the cooperating broker (discussed below).

16. The MLS Agreements also outline the services to be provided. These typically include the following services (a full service offering):

- advertising the property on the MLS;
- determining an appropriate listing price for the home in consultation with the home seller;
- preparing a written description of the home for use in promotional materials;
- arranging for photographs of the home for use in promotional material;

- showing the home to cooperating brokers for prospective purchasers; and
- conducting open houses.

17. When a buyer makes an offer on a home, the listing broker typically assists the seller in evaluating the offer and formulating counter-offers, and may negotiate directly with the buyer or the buyer's broker. The listing broker may also assist the seller in ensuring that any conditions associated with the sale of the home (*e.g.*, home inspections) are satisfied.

18. In accordance with the MLS Agreement, the listing broker uploads the listing data for the home into the MLS system so that information regarding the home is available to potential cooperating brokers, as well as to potential buyers through realtor.ca.

***(iii) Cooperating Brokers***

19. The buyer of the home may elect to be represented by a broker, referred to as a "cooperating broker". Cooperating brokers typically attempt to find homes for sale that match the buyer's preferences, show prospective buyers homes for sale, provide information about comparable home sales that have occurred in the area, advise buyers on offers and assist in the presentation of offers and closing of a transaction.

20. Buyers do not typically pay cooperating brokers directly. Rather, listing brokers compensate cooperating brokers according to terms specified in the listing in the MLS system.

***(iv) Traditional Full-Service Brokerage Model of Business***

21. The traditional full-service real estate brokerage model includes all of the services described above in paragraphs 16 and 17 (*e.g.*, determining listing price, taking photographs,



advertising the home, conducting open houses, etc). The traditional full-service real estate broker model also includes the cooperative compensation system outlined above, meaning that the cooperating broker is compensated by the listing broker out of the commission paid by the seller. The listing broker makes an offer via the MLS system to compensate any cooperating broker who procures a buyer. The seller pays the commission to the listing broker regardless of whether a cooperating broker is involved in the transaction. For example, the listing broker may charge the seller a 5% commission and offer the cooperating broker 2.5%. If no cooperating broker is involved, the listing broker will usually retain the full 5%.

***(v) Fee-For-Service Brokerage Model of Business***

22. In contrast to the traditional full service brokerage model, fee-for-service real estate brokerage models allow home sellers to pick and choose the services they wish to purchase and pay a flat fee for each service rather than paying a commission equal to a percentage of the home's sale price. Fees in the fee-for-service model are significantly lower than what traditional brokers charge. In the United States, where fee-for-service models are prevalent, one common option is known as an "MLS-only listing" service, whereby the broker, in exchange for a fee, lists a home on a multiple listing service while allowing the seller to handle all other aspects of the transaction. In Canada, CREA refers to this service as a "mere posting", and it is expressly prohibited by the MLS Restrictions.

***The MLS Restrictions***

23. CREA has imposed a number of exclusionary restrictions (the "MLS Restrictions") on the use of the MLS and related trademarks, described in detail below in paragraphs 24 and 25.

CREA's By-Laws Rules and Regulations provide, among other things, that the MLS and related trademarks "must only be used in accordance with the rules for use and certification mark policies as established by CREA from time to time" and that CREA's member real estate boards "must abide by the By-Laws, Rules and Policies of CREA, and must, through its By-Laws and membership agreements, establish the same requirement of its own members".

24. The terms of use of the MLS and related trademarks imposed by CREA include the following three conditions, referred to by CREA as the "Three Pillars":

- I. **Membership:** Only REALTORS® may place a listing on a Board/ Association's MLS® System;
- II. **Agency:** A listing REALTOR® must act as agent for the seller to sell the property and to assist the seller throughout the entire time of the listing contract; and
- III. **Compensation to Co-operating Broker:** The listing REALTOR® agrees to pay to the co-operating (i.e. selling) REALTOR® compensation for the co-operative selling of the property. An offer of compensation of zero is not acceptable.

25. In March 2007, CREA imposed additional conditions in the form of interpretations of the Three Pillars, referred to by CREA as the "Interpretations of the Three Pillars of the MLS Mark". These additional conditions are as follows:

1. The listing REALTOR® shall receive and present all offers and counteroffers to the seller.

2. The listing REALTOR® shall be available to provide professional advice and counsel to the seller on all offers and counteroffers unless otherwise directed by the seller in writing.
3. The mere posting of property information in an MLS® system is contrary to CREA's Rules. A "mere posting" occurs when the listing agreement relieves the listing member of any obligations under the Rules, including the obligation that the listing REALTOR® remain the agent of the seller throughout the term of the listing contract.
4. The listing REALTOR® is responsible and accountable for the accuracy of information submitted to a Board/Association for inclusion in the Board's MLS® system, and the Board/Association is responsible for ensuring that the data submitted to it meets reasonable standards of quality.
5. Only REALTORS® are permitted to display the MLS® trademarks in signage, advertising, etc.
6. Only the listing REALTOR® name(s) and contact information may appear on REALTOR.ca. The seller's name or contact information shall not appear on REALTOR.ca or in the public remarks section of the MLS® system.

7. In cases where a Board permits listings in which the seller has reserved the right to sell the property himself/herself, that fact shall be specified in the Board's MLS® database.

26. By virtue of the Three Pillars and Interpretations described above, (with particular attention paid to the Agency Pillar and Interpretations 1, 3 and 6), alternatives to the full-service brokerage model are either completely prohibited, or severely impeded in their ability to compete.

### **C: The Product Market**

27. The relevant product market is the market for residential real estate brokerage services to home sellers.

28. This product market includes a range of service packages provided by listing brokers to home sellers. Home sellers differ in the level of demand for these services: some prefer the services of a traditional full-service broker, while others would, if given the option, prefer a subset of the full package of services at a lower price (“fee-for-service brokerage model”).

29. The fee-for-service brokerage model is a segment of the broader product market of residential real estate brokerage services.

30. For the majority of home sellers, there are no reasonable substitutes to real estate brokerage services.

**D: The Geographic Market**

31. While markets for residential real estate brokerage services are local in nature, the MLS system is the only multiple listing service containing all of the listing information provided by local boards. The MLS Restrictions apply equally across Canada to all local boards operating a MLS. As such, CREA, through its members, has control or influence over the supply of residential real estate brokerage services with each and every local board in Canada regardless of individual characteristics of each local market.

**E: CREA has Market Power**

32. CREA controls the market for residential real estate brokerage services in Canada through its ability to adopt and impose rules, including the MLS Restrictions, regarding the conditions of access to and use of the MLS system. CREA has this ability as owner and licensor of the MLS and related trademarks. As already described, in order to be granted use of the MLS mark, member real estate boards must abide by CREA's rules and regulations. CREA's ability to change its rules and regulations consequently impacts every broker that uses the MLS system to list residential real estate.

33. CREA's market power is demonstrated by its ability to force brokers to either restrict their business model such that it complies with the MLS Restrictions, or forgo listing in the MLS system. As explained below, there are no reasonable substitutes for the MLS system because of network effects; accordingly, brokers without access to the MLS are severely impeded in their ability to compete in the relevant market.

34. The MLS Restrictions directly influence the service offerings available in the relevant market. These MLS Restrictions prevent CREA members from competing with one another on the range and variety of services offered to sellers, as CREA's rules dictate the minimum services that each and every competitor must provide. The absence of low-cost competition from fee-for-service real estate brokerage businesses restricts CREA members from fully competing on the basis of price. While commission rates are theoretically negotiable, the required list of services offered constrains this competition. CREA's ability to limit the boundaries of competition is an indicator of its market power and influence in the residential real estate brokerage market.

### *Network Effects*

35. It is the presence of "network effects" that gives the MLS its distinct value and results in the MLS system being a key input in the provision of residential real estate brokerage services. As well, the presence of network effects is a significant barrier to entry to creating a rival listing service.

36. Network effects exist where the value of a service to a given user increases with the number of other users. In this case, the value of the MLS system to listing brokers (and thus their clients) increases as the number of potential homebuyers and cooperating brokers using the MLS system increases. Likewise, the value of the MLS system to home buyers and cooperating brokers increases as the number of listings increases.

37. The MLS system is a highly attractive venue for listing brokers to advertise houses for sale owing to the high number of cooperating brokers who search the MLS system for homes

and the growing number of purchasers who search for homes using realtor.ca. In fact, the greater the number of cooperating brokers and potential purchasers using the MLS system and realtor.ca to search for homes, the shorter the expected time required to sell a home and the higher the expected offer price for the home. Each of these factors serves to increase the value of the MLS system to listing brokers.

38. A similar logic applies to cooperating brokers. The greater the number of listing brokers who list homes on the MLS system, the greater number and variety of homes from which cooperating brokers may choose. This makes it more likely that cooperating brokers will find a closer match between home characteristics and home buyer preferences, and also reduces the time period required to achieve a given match, thereby increasing the value of the MLS system to cooperating brokers.

***The MLS System is a Key Input to the Provision of Residential Real Estate Brokerage Services***

39. The presence of network effects results in the MLS system being a key input in the provision of residential real estate brokerage services. Because efficiencies grow with the number of users, any new database would have to compete with the MLS system on the basis of the number of users it attracts and the inventory of homes for sale it has. The MLS system is effective because it represents such a high buyer/seller participation rate, and such a large percentage of the overall inventory of homes for sale in Canada. Comparable efficiencies could only be achieved if the vast majority of brokers switched collectively; however, there would be considerable costs associated with coordinating collective switching by brokers. As well, the MLS system holds significant historical data on properties in Canada, an asset that a new rival

listing service could never offer to users. It is highly unlikely that a rival listing service will emerge.

40. CREA's own internal documents recognize that other listing sources are not substitutes for a listing on the MLS system.

**E: The MLS Restrictions are a Practice of Anti-Competitive Acts**

41. CREA's MLS Restrictions amount to a practice of anti-competitive acts. CREA and its members have used CREA's control of the MLS and related trademarks to impose the MLS Restrictions, so as to (i) maintain CREA and its members' substantial or complete control of the market for the supply of residential real estate brokerage services, (ii) lessen or prevent competition substantially between traditional full-service real estate brokers and those seeking to provide less than a full package of residential brokerage services, such as "MLS-only listing" services, and (iii) lessen or prevent competition substantially among traditional full-service real estate brokers.

42. CREA implemented the MLS Restrictions for the purpose of preventing or excluding competitors in the relevant markets. CREA's own documents establish that the MLS Restrictions were implemented for the purpose of excluding or preventing suppliers of fee-for-service real estate brokerage services from competing in the market for residential real estate brokerage services to home sellers. Numerous CREA documents explicitly state that the purpose of the MLS Restrictions is to exclude or prevent a certain type of competitor; namely, those allowing for a greater role of the homeowner in the sale of his or her home.



***Actual Negative Effect of the MLS Restrictions on Competitors***

43. The MLS Restrictions have virtually eliminated suppliers of fee-for-service real estate brokerage services in Canada and have foreclosed entry by potential suppliers of these services. In addition, the MLS Restrictions have prevented existing suppliers of traditional real estate brokerage services from offering innovative fee-for-service brokerage services. The exclusion of fee-for-service brokerage services from the marketplace has thereby reduced competition among traditional full-service brokerages in the provision of residential real estate brokerage services.

44. The MLS Restrictions have caused at least one broker to exit the relevant market. In November 2006, Realtysellers of Toronto suspended its operations in anticipation of the introduction of the MLS Restrictions. Prior to that time, Realtysellers offered differentiated service packages to consumers, including an “MLS-only listing” service.

45. Other real estate brokers discontinued offering certain fee-for-service options following the enactment of the MLS Restrictions or compromised their service packages to satisfy the MLS Restrictions.

46. To cover the cost associated with offering the full suite of services required by the MLS Restrictions, fee-for-service brokers necessarily had to increase the price of their services, thereby lessening or preventing this form of competition.

47. The MLS Restrictions have prevented at least one fee-for-service broker from entering the Canadian market.

48. The MLS Restrictions have foreclosed entry or expansion into Canada of competitors using fee-for-service brokerage models and, in at least one case, caused a broker pursuing such a

business model to exit the relevant market. Given the exclusionary effects of the MLS Restrictions, it was reasonably foreseeable that they would have a negative exclusionary effect on competitors offering disintermediated services, and they did.

**G: The MLS Restrictions Substantially Lessen or Prevent Competition**

49. The MLS Restrictions entrench the traditional full-service real estate business model by foreclosing the entry into the marketplace of alternative business models, such as business models that offer disintermediated fee-for-service options to consumers, such as “MLS-only listing” services. Disintermediation denotes the process of removing or reducing the role of an intermediary or “middleman” in consumer transactions. Impeding this process of disintermediation substantially prevents competition from an entire segment of the relevant market. The absence of this competition from the market reduces the variety of service packages available, and leaves consumers with only one option if they want to sell their home using the MLS system - they must hire a real estate broker who will, because of the MLS Restrictions, provide a bundle of services including services the consumer may not want to receive or pay for.

50. The absence of fee-for-service competitors in the relevant market also diminishes the competition among traditional full-service real estate brokers in the provision of residential real estate brokerage services. The absence of fee-for-service competitors in the relevant market removes low-cost competition from the marketplace (which removes pressure that would otherwise exist for real estate brokers to negotiate their commission rates and the services they will provide).

**PART III: CONCLUSION**

51. CREA, through its members, has substantial or complete control over the supply of residential real estate brokerage services throughout Canada.

52. CREA enacted the MLS Restrictions with the intent of having a negative exclusionary effect on competitors using new fee-for-service brokerage models.

53. The presence of fee-for-service brokerage models would provide consumers with the option of purchasing real estate services according to their needs at significantly lower prices. In the absence of the MLS Restrictions, home sellers would benefit from substantially greater choice and substantially greater competition for residential real estate brokerage services.

**PART IV: RELIEF SOUGHT**

54. The Commissioner requests that the Tribunal make an order:

- (a) prohibiting CREA from directly or indirectly imposing the MLS Restrictions on the use of the MLS and related trademarks when licensing those trademarks to member real estate boards;
- (b) directing CREA to pay the costs of the within application; and
- (c) such other relief as the Tribunal may consider appropriate.

**PART V: PROCEDURAL MATTERS**

55. The Applicant requests that this application be heard in English.
56. The Applicant requests that this application be heard in the City of Ottawa.
57. The Applicant proposes that documents be filed electronically.

For the purposes of this application, service of all documents on the Applicant can be effected on:

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

Copies to:

**Roger Nassrallah**  
Department of Justice Canada  
Competition Bureau Legal Services  
Place du Portage, Phase 1  
50 Victoria Street, 22<sup>nd</sup> Floor  
Gatineau, Quebec  
K1A 0C9

Counsel for the Applicant

Copies to:

**Canadian Real Estate Association**  
200 Catherine Street, 6<sup>th</sup> Floor  
Ottawa, Ontario  
K2P 2K9

Copies to:

**Katherine Kay**  
Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario  
M5L 1B9

Counsel for the Respondent

**DATED** at Gatineau, Quebec, this 8<sup>th</sup> day of February, 2010.

[Original Signed by "Melanie L. Aitken"]  
Melanie L. Aitken  
Commissioner of Competition

**Schedule “A”**  
**Concise Statement of the Economic Theory**  
**The Commissioner of Competition**  
**And**  
**The Canadian Real Estate Association**

**Introduction**

1. The Canadian Real Estate Association (CREA) represents more than 96,000 real estate professionals in Canada through numerous local real estate boards and provincial and territorial associations. CREA controls the access and use of the Multiple Listing Service (MLS), which is an electronic database and information sharing network that aggregates the listings for all available properties for sale by participating brokers. The MLS system allows a cooperating broker to search the aggregated database of active listings and to see detailed information on each listed property. The majority of residential properties in Canada are sold through MLS.
2. CREA’s actions with respect to the restrictions on the use of and access to the MLS databases meet the economic elements of Subsection 79(1) of the Competition Act necessary for a finding of abuse of dominance. CREA and its members “substantially...control, throughout Canada or any area thereof, a class or species of business,” namely, residential real estate brokerage services. CREA has “engaged...in a practice of anticompetitive acts” by setting the terms of competition among its members, who supply the vast majority of brokerage services across Canada. Because CREA’s practice effectively limits the degree to which the individual real estate brokers compete with one another, it “has had...the effect of preventing or lessening competition substantially.”

**(a) Market Power**

3. The relevant product market in which to evaluate the competitive impact of CREA’s actions is the market for residential real estate brokerage services. The relevant market for residential real estate brokerage services is local.

4. CREA exerts control over the relevant product market in Canada through its ability to enact rules that govern the access to and use of the MLS system, a key input in the provision of residential real estate brokerage services.
5. There are significant entry barriers that prevent the creation of a competing MLS system. The value of the MLS system is governed by network effects: the more users there are for any particular multiple listing service, the greater the value of that service. Because CREA, through its members, represents the vast majority of home sales across Canada, the collective value of the MLS system is superior to any other multiple listing services for residential properties in Canada and cannot easily be duplicated by competitors. Ownership and control of the MLS system acts as a barrier to entry to competition outside of CREA , and prevents individual CREA members and others from meeting outside consumer demand for “MLS-only listing” services.

**(b) Practice of Anti-Competitive Acts**

6. CREA controls access to the MLS system in Canada. CREA sets the terms of competition among brokers and establishes rules involving minimum service requirements. CREA’s rules restricting the access to and use of the MLS system prevent or lessen competition in the market for residential real estate brokerage services by excluding competition from brokers and others wishing to offer a reduced set of services to their customers including “mere posting” or “MLS-only listing” services; raising the cost of providing real estate brokerage services; and reducing consumer choice. CREA is able to discipline individual brokers who wish to circumvent the rules by threatening to or revoking the non-compliant member’s access to and use of the MLS system.

**(c) Substantial Lessening or Prevention of Competition**

7. The prevention or lessening of competition from the low end of the service scale keeps service prices higher and choice lower than would otherwise be expected to occur if CREA members and others were not restricted in the packages of services they were able to offer home owners. The threat of losing access to and use of the MLS system prevents

individual members from offering a reduced set of services even in the face of evident consumer demand for such a reduced-service package.

8. CREA's conduct in enforcing its rules has been successful in preventing or lessening competition. Individual member brokers wish to supply a reduced set of brokerage services to meet consumer demand, but are prevented from doing so.
9. CREA's conduct has prevented disintermediation of the real estate brokerage industry in Canada and has prevented the emergence of a wider diversity of business arrangements between brokers and consumers.



File No. CT-

**THE COMPETITION TRIBUNAL**

**THE COMMISSIONER OF COMPETITION**

**Applicant**

- and -

**CANADIAN REAL ESTATE ASSOCIATION**

**Respondent**

**NOTICE OF APPLICATION**

**BENNETT JONES LLP**  
Suite 3400, P.O. Box 130  
One First Canadian Place  
Toronto, Ontario  
M5X 1A4

**John F. Rook, Q.C.** (LSUC #13786N)  
Tel: (416) 777-4885  
Fax: (416) 863-1716

**Albert A. Pelletier** (LSUC #46965R)  
Tel. (416) 777-4664  
Fax (416) 863-1716

**Counsel for the Applicant**