

COMPETITION TRIBUNAL

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

AND IN THE MATTER OF practices of the Northwest Territories Association of Realtors and others reviewable under part VIII of the *Competition Act*;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to sections 79 and 105 of the *Competition Act*.

B E T W E E N :

COMMISSIONER OF COMPETITION

Applicant

– and –

NORTHWEST TERRITORIES ASSOCIATION OF REALTORS

Respondent

CONSENT AGREEMENT

RECITALS:

A. The Commissioner has concluded that the Northwest Territories Association of Realtors (“NWTAR”) substantially or completely controls the supply of MLS-based residential real estate brokerage services in the Northwest Territories. The Commissioner has also concluded that NWTAR has engaged in exclusionary conduct by denying membership in NWTAR to Agents and Salespersons who do not reside in the Northwest Territories and seek to compete with NWTAR’s existing members. Finally, the Commissioner concluded that the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in the supply of MLS-based residential real estate brokerage services in the Northwest Territories (the “**Conduct**”). This Agreement is necessary in the circumstances to address the Conduct and its effects.

B. NWTAR does not admit but will not contest for purposes of this Agreement, including execution, registration, enforcement, variation or rescission the Commissioner's conclusions with respect to the Conduct.

C. The Commissioner acknowledges the steps NWTAR has taken to date to address the Commissioner's concerns regarding the Conduct.

D. Nothing in this Agreement affects any investigation, inquiry or proceeding other than under section 79 of the Act in respect of the Conduct.

THEREFORE NWTAR and the Commissioner agree as follows:

I. DEFINITIONS

[1] Whenever used in this Agreement, the following words and terms have the meanings set out below:

- (a) **"Act"** means the *Competition Act*, R.S.C. 1985, c. C-34;
- (b) **"Affiliate"** has the meaning given to it in subsection 2(2) of the Act;
- (c) **"Agent"** has the meaning given to it in section 1 of the *Licensing Act*;
- (d) **"Agreement"** means this Consent Agreement, including the schedules hereto, and references to a "Part", "Section", "Paragraph" or "Schedule" are, unless otherwise indicated, references to a part, section, paragraph or schedule of or to this Agreement;
- (e) **"Business Day"** means a day on which the Competition Bureau's Gatineau, Quebec office is open for business;
- (f) **"Commissioner"** means the Commissioner of Competition appointed under the Act and includes the Commissioner's authorized representatives;
- (g) **"Effective Date"** means the date on which this Agreement is recorded by the Tribunal as having been registered, pursuant to section 105 of the Act;
- (h) **"Licensing Act"** means the *Real Estate Agent's Licensing Act*, R.S.N.W.T. 1988, c. 48 (Supp.);
- (i) **"NWTAR"** means the Northwest Territories Association of Realtors, and its Affiliates and their directors, officers, employees, agents, representatives, successors and assigns;
- (j) **"REALTOR Code of Ethics"** means the Realtor Code of Ethics promulgated by the Canadian Real Estate Association;

- (k) **“Records”** means records within the meaning of subsection 2(1) of the Act;
- (l) **“Salesperson”** has the meaning given to it in section 1 of the Licensing Act;
- (m) **“Term or Condition”** means any term or condition of any rule, regulation, bylaw, code, policy, standard, practice, agreement, or similar instrument, including NWTAR’s bylaws or the REALTOR Code of Ethics, or any other instrument referred to therein, or any interpretation thereof;
- (n) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.).

II. DURATION

- [2] This Agreement shall become effective on the date when it is registered, and shall remain in effect for 10 years;

III. OBLIGATIONS OF NWTAR

- [3] NWTAR shall not deny membership in NWTAR to any Agent or a Salesperson who agrees to adhere to NWTAR’s bylaws and the REALTOR Code of Ethics. For greater certainty, the Commissioner in no way endorses either NWTAR’s bylaws or the REALTOR Code of Ethics, and nothing in this Agreement shall be interpreted as limiting the Commissioner’s ability to investigate or bring any application with respect to NWTAR’s bylaws or the REALTOR Code of Ethics or any part thereof.
- [4] NWTAR shall not impose or enforce any Term or Condition on any Agent or Salesperson that is more onerous or restrictive in any respect than those that apply to any other member, including without limiting the generality of the foregoing, any Term or Condition requiring an Agent or a Salesperson to be physically present in or have a representative physically present in the Northwest Territories.

IV. COMPLIANCE

- [5] Within fourteen (14) days of the Effective Date, NWTAR shall provide a copy of this Agreement to each of its directors, officers, employees, and in doing so NWTAR shall indicate that compliance with this Agreement is the policy of NWTAR.
- [6] Within thirty (30) days of the Effective Date, NWTAR shall establish, and thereafter maintain, a corporate compliance program (the “Compliance Program”), the goal of which is to promote the compliance of NWTAR, its directors and management, with the Act. The Compliance Program shall be consistent with the Commissioner’s Information Bulletin on “Corporate Compliance Programs” published on 3 June 2015, as revised from time to time.

- [7] Within thirty (30) days of the Effective Date, the President of NWTAR shall provide an affidavit to the Commissioner that describes in reasonable detail all actions NWTAR has taken, and all steps NWTAR has implemented on an ongoing basis, to comply with the provisions of this Agreement.
- [8] NWTAR shall notify the Commissioner at least 30 days prior to:
- (a) any proposed dissolution of NWTAR;
 - (b) any change to the bylaws of NWTAR; or
 - (c) any other change in NWTAR if such change may affect compliance obligations arising out of this Agreement including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of NWTAR's incorporating statute.
- [9] For purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, NWTAR shall, upon written request given at least five (5) Business Days in advance to NWTAR, permit any authorized representative(s) of the Commissioner, without restraint or interference:
- (a) to access, during regular office hours of NWTAR on any Business Day(s), all facilities and to inspect and copy all Records in the possession or control of NWTAR related to compliance with this Agreement, which copying services shall be provided by NWTAR at its expense; and,
 - (b) to interview such officers, directors or employees of NWTAR as the Commissioner requests regarding such matters.

V. NOTICES

- [10] A notice or other communication required or permitted to be given under this Agreement is valid if it is:
- (a) in writing and delivered by personal delivery, registered mail, courier service, facsimile or electronic mail; and,
 - (b) addressed to the receiving party at the address(es) listed below, or to any other address designated by the receiving party in accordance with this Section.

if to the Commissioner:

Commissioner of Competition
 Competition Bureau Canada
 Place du Portage, 21st Floor
 50 Victoria Street, Phase I
 Gatineau, Quebec K1A 0C9

Attention: Commissioner of Competition
Fax: (819) 953-5013
Email address: MPDCA-CADPM@cb-bc.gc.ca

with a copy to:

Executive Director and Senior General Counsel
Competition Bureau Legal Services
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9
Fax: (819) 953-9267
Email address: ic.cb_lsu_senior_general_counsel-
avocat_general_principal_usj_bc.ic@canada.ca and
cb_lsu_senior_general_counsel-avocat_general_principal_usj_bc@ised-
isde.gc.ca

if to NWTAR:

Northwest Territories Association of Realtors
341A Old Airport Road
Yellowknife, NT X1A 3T4
Tel: 867.446.6898
Email: pmoore@offcomp.ca

- [11] A notice or other communication under this Agreement is effective on the day that it is received by the receiving party and is deemed to have been received as follows:
- (a) if it is delivered in person, by registered mail or by courier, upon receipt as indicated by the date on the signed receipt;
 - (b) if it is delivered by facsimile, upon receipt as indicated by the time and date on the facsimile confirmation slip; or
 - (c) if it is delivered by electronic mail, when the recipient, by an email sent to the email address for the sender stated in this Section or by a notice delivered by another method in accordance with this Section, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section.

If a notice or other communication is received after 5:00 p.m. local time, or on a day that is not a Business Day, it shall be deemed to have been received on the next Business Day.

- [12] Notwithstanding Sections 10 and 11, a notice or other communication that is not communicated in accordance with Sections 10 and 11 is valid if a representative of the party to this Agreement that is the recipient of such communication confirms the receipt of such communication and does not, at the time of such confirmation, request that it be delivered differently.

VI. GENERAL

- [13] In this Agreement:
- (a) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
 - (b) **Time Periods** – Computation of time periods shall be in accordance with section 108 of the Act.
- [14] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. NWTAR hereby consents to such registration.
- [15] Nothing in this Agreement precludes NWTAR or the Commissioner from bringing an application under section 106 of the Act provided that NWTAR will not, for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions respecting the Conduct and that this Agreement is necessary in the circumstances to address the Conduct and its effects.
- [16] NWTAR attorns to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.
- [17] This Agreement constitutes the entire agreement between the Commissioner and NWTAR, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.
- [18] This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.
- [19] In the event of a dispute regarding compliance with or the interpretation, implementation or application of this Agreement, the Commissioner or NWTAR may apply to the Tribunal for directions or an order. In the event of any discrepancy between the English language version of this Agreement and the French language version of this Agreement, the English language version of this Agreement shall prevail.

[20] 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.

The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

DATED this 24th day of November, 2023

COMMISSIONER OF COMPETITION

[Original signed by Matthew Boswell]

Name: Matthew Boswell
Title: Commissioner of Competition

THE NORTHWEST TERRITORIES ASSOCIATION OF REALTORS

[Original signed by Kim Knutson]

I/We have authority to bind the corporation

Name: Kim Knutson
Title: President