



Bureau de la concurrence
Canada

Competition Bureau
Canada

Commissaire de la
concurrence

Commissioner of
Competition

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March 18, 2010

Mr. Dale Ripplinger, President
Canadian Real Estate Association
200 Catherine Street
Ottawa, Ontario K2P 2K9

RECEIVED
MAR 23 2010
CREA / ACI

Re: CREA Proposed Amendments

Dear Mr. Ripplinger:

As previously communicated to you, the proposed amendments to the CREA rules, as set out in your Dispatch 2010-03, do not resolve our concerns concerning CREA's anti-competitive rules. As you know, the amendments fully preserve CREA's and its members' ability to pass any rules whatsoever, including rules that deny consumer choice and agent flexibility. This would, in effect, be a blank cheque for CREA and its members to stifle competition. As such, the amendments do nothing to cure the anti-competitive nature of CREA's current rules that are preventing entry and expansion of alternative business models into the Canadian marketplace.

In the circumstances, without further changes to the rules, as you and I discussed in early February, I remain of the firm view that an order from the Competition Tribunal is required to ensure that CREA does not enact or enforce anti-competitive rules moving forward.

Yours truly,

Melanie L. Aitken
Commissioner of Competition

cc: John Rook, Bennett Jones LLP
Katherine Kay, Stikeman Elliott LLP

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March 25, 2010

Melanie L. Aitken
Commissioner of Competition
Place du Portage I
50 Victoria Street
Gatineau, Québec
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Dear Commissioner Aitken:

The Canadian Real Estate Association is extremely disappointed by the position taken in your letter of March 18, 2010, your recent media release, and repeated public statements that the amendments to CREA's Rules adopted at CREA's AGM of March 22, 2010 do not resolve your concerns.

As the Competition Bureau will know as a result of your lengthy inquiry, CREA's members offer a wide range of business models, including listing a property through a REALTOR® on a Board's MLS® system for \$199 or less. As long as REALTORS® comply with minimal and legitimate requirements such as those requiring ethical behaviour, the accuracy of information submitted to a Board's MLS® system and the reporting of sales, they are free to do as they choose. Neither CREA nor Boards tell REALTORS® how to run their businesses or what fees or commissions to charge.

The unfounded allegations made by you tarnish the reputation not only of CREA and its member Boards, but of all REALTORS®. CREA's 98,000 REALTOR® members compete vigorously every day to help Canadians buy and sell their homes.

CREA has a long history of engaging in dialogue with the Competition Bureau and working hard to understand and address the Bureau's concerns. (Indeed, we had been engaged in such a dialogue throughout the period following the commencement of your inquiry in March 2007.) Having been advised in October 2009 that you had completed your inquiry, CREA immediately indicated its willingness to discuss the Bureau's conclusions.

As you know, CREA disagrees with the conclusions reached by the Bureau. Nevertheless, as we told you we would do, the CREA Board of Directors made the pro-active business decision to put forward amendments to CREA's Rules that make it absolutely clear that the nature of services to be provided are a matter of agreement between a REALTOR® and his or her client.

By approving the amendments, CREA and its member Boards not only clarified how CREA's Rules actually operate, they have taken a very strong pro-competitive stance. The amendments passed with an overwhelming 87% majority.

In CREA's view, it is extraordinary that you would suggest that amendments that directly respond to the stated concerns of the Competition Bureau are a "step in the wrong direction" and amount to giving CREA and its members "an absolutely open-ended blank cheque opportunity to pass any rules that they wanted including highly anti-competitive rules". This statement is particularly disingenuous given that you and your officials had previously reacted favourably to the thrust of these amendments in our numerous meetings over the past several months.

Your public statements about the ability of CREA or its member Boards to pass anti-competitive rules in the future are also disingenuous. CREA has consistently and repeatedly expressed its commitment to adherence to competition law, reflected (among other places) in CREA's Principles of Competition adopted by CREA in 1999 (a copy of which is enclosed). Failure by a member Board to comply with the Principles of Competition can result in termination of its right to use the MLS® marks. CREA has no intention of making anti-competitive rule changes. CREA's Boards overwhelmingly voted in favour of the rule amendments. CREA has made it very clear to its member Boards that they are not only required to amend their rules as soon as practically possible to reflect the amendments, they also cannot have any rules or pass new rules that violate the principles in the amended Interpretations and Pillars. This is clearly set out in the Dispatch (copy enclosed) that went out to Boards and Associations immediately following the CREA AGM.

CREA has always indicated a willingness to meet with the Competition Bureau to discuss its concerns, and we remain willing to do so. If necessary, CREA is fully prepared to and would welcome the opportunity to deal with this case before the Competition Tribunal, where the allegations in your application will be adjudicated.

What CREA is not prepared to do, however, is to litigate the case in the media. CREA asks that you refrain from doing so.

Yours truly,

A handwritten signature in black ink, appearing to read 'G. Pahud', written in a cursive style.

Georges Pahud

cc. The Honourable Tony Clement P.C., M.P.
Katherine Kay, Stikeman Elliott LLP
John Rook, Bennett Jones LLP

PRINCIPLES OF COMPETITION

The purpose of a listing service operated under the MLS® trade mark is the orderly correlation and dissemination of listing information to its members so that through cooperation in the marketing of property REALTORS may better serve the buying and selling public. Member real estate boards and associations shall not undertake any activity or enact or enforce any rules which run contrary to these guidelines subject to any applicable laws, government statute, ordinance or regulation, and to any final decree of any court or administrative agency. **THEREFORE, MEMBER REAL ESTATE BOARDS AND ASSOCIATIONS MUST NOT:**

1. Fix, establish, suggest, maintain or control the commission rates or fees for MLS® or other listing services or any services to be rendered by members.

Interpretation I

References to "fees" exclude charges by boards or associations to members for board or association services.

2. Fix, establish, suggest, maintain or control the division of commission or fees between cooperating members or members and non-members.

Interpretation I

Boards and associations may require that listing brokers indicate the commission available to a selling broker with respect to a particular transaction and require that such compensation be paid by the listing broker unless the listing broker and selling broker have mutually agreed to alter said commission.

Interpretation II

In those cases where the listing Broker is also the selling Broker and the listing Broker is reducing the commission rate or fee, require that the listing Broker disclose he or she is reducing his or her commission to all Brokers with competing offers to purchase, in order that such competing selling Brokers shall not be at a disadvantage and that the vendor shall receive the full benefit of competition from such selling Brokers.

Interpretation III

Member boards and associations may arbitrate or mediate disputes regarding fees or commissions between brokers, persons acting on their behalf, or offices in connection with a specific transaction.

3. Require financial support of the Multiple Listing Service® operation by any formula based on commissions charged for the provision of real estate services.
4. Finance a Multiple Listing Service® by any formula based on sales price, unless that fee does not exceed \$400.00 as increased in accordance with any increases in the Consumer Price Index as published by Statistics Canada and experienced since January 2000.

5. Require or agree with a publisher or publication in which the board or association has no financial interest to refuse any type of advertising from members or non-members including refusals based on the commission rate or fees contained therein or recommend the type of advertising to be accepted by such publishers/publications.

Interpretation I

Member boards and associations may restrict advertising in board/association publications to advertising concerning real property and certain size limitations and minimum periods as necessary for the efficient operation of the publication provided such restrictions are applied uniformly to all potential advertisers.

Interpretation II

Member boards and associations may require advertising of a listing contain certain basic information relating to price and description of the subject property.

6. Prevent or restrict advertising by members of commission rates or fees, or advertising of for sale by owner or other consultative services, or offering or advertising of inducements, incentives, gifts, prizes, refunds or rebates.

Interpretation I

Advertising means advertising of any description including the posting and use of signs but board compilations of MLS® listings whether in an MLS® book or other MLS® data base are not included in the term "advertising" for the purpose of these Principles of Competition.

Interpretation II

Boards and associations may enforce advertising restrictions which relate to the use of trade marks owned by The Canadian Real Estate Association, provided that such restrictions shall not contravene any section of the Competition Act.

7. Generally restrict advertising by members or non-members unless the advertising is:
- (i) False or misleading,
 - (ii) Prohibited by law, or
 - (iii) Restricted at the request of the vendor.

Interpretation I

Interpretation I of Section 6 above applies.

Interpretation II

Interpretation II of Section 6 above applies.

8. Prohibit or discourages cooperation with non-members.

Interpretation I

Boards and associations may restrict non-members from offering MLS® listings. Likewise, the board may restrict non-members from having access to MLS® services except through members cooperating on specific listings for which boards may charge fees for such MLS® services.

9. Limit or interfere with the terms of the relationship between members.
10. Require brokers or salespersons work full time in real estate sales, brokerage or related industries as a condition of membership although membership may be terminated based on complaints that member(s) are proven not available to serve the public on a regular and consistent basis and/or in accordance with standards of competence and integrity necessary to serve the public.
11. Refuse membership in a board or association to any broker or salesperson unless they fail to meet uniform and reasonable financial and educational criteria or standards of competence, integrity and character that are reasonably necessary for the protection of the public.

Interpretation I

A board or association may require that all sales personnel in an office or related office become members of that board in those cases where one person in an office is a member of such board so as to avoid use of such board's services by non-members without payment.

Interpretation II

Interpretation I of Section 8 above applies.

Interpretation III

A board or association may refuse membership to applicants or expel members who have been convicted of a criminal offence that reflects on the integrity and character of the applicant or member.

12. Reject a listing submitted to the MLS® system by a member on the basis of price, commission rate or fees contained in the listing.
13. Prohibit or discourage a member from accepting a listing from a vendor preferring to give "office exclusive".

It shall be the duty and obligation of member boards of The Canadian Real Estate Association to examine their Rules and Regulations to assure that they conform to this policy. The right of real estate boards and associations, to use the certification and design marks of CREA, may be terminated in the event of a failure to adhere to the Principles of Competition.

PLEDGE OF COMPETITION

Member Boards and Associations of The Canadian Real Estate Association support free and open competition. We believe in the principles embodied in the Competition Act of Canada. Therefore, we adhere to Principles of Competition which include the following:

- Commission rates or fees members charge for services offered to the public, and the division of those fees among cooperating members, are solely this choice of those providing the services.
- A brokerage may offer any variety of services eg. exclusive, open, MLS® listings, etc. Boards and Real Estate Associations accept MLS® listings regardless of the price, commission rates or fees, or the division thereof.
- Advertising by members and non-members is subject to the discretion of the individual, as long as it is honest and lawful. We encourage creative, competitive choice in the services advertised to the public.
- The business relationship between broker members, their salespersons and non-members is theirs to determine. With regard to Board and Association membership, members may choose for themselves to work full or part time, as long as they remain available to serve the public on a regular basis and provided provincial enabling legislation does not otherwise authorize a limitation of such choice.
- All members are required to meet uniform and reasonable financial and educational standards. They are required to demonstrated integrity and character necessary to protect the public.

By using the MLS® and REALTOR trademarks, all member Boards and Associations of The Canadian Real Estate Association proclaim our adherence to these principles, designed to preserve free and open competition.

Dispatch 2010-04

This document contains information of interest to your members.
We thank you in advance for your collaboration in passing this information along to your membership.

RE: CREA BY-LAWS RULES AND REGULATION AMENDMENTS

Date: March 22, 2010
To: Executive Directors of all
Real Estate Boards and Provincial/Territorial Associations
From: The Canadian Real Estate Association (CREA)
RE: Rule Revisions

This Dispatch addresses amendments to the Rules of CREA, which were approved at the Annual General Meeting of CREA on March 22, 2010.

Through proactive clarifications of existing CREA rules, CREA believes that the issues raised by the Competition Bureau have been addressed, while ensuring the accuracy and quality of information on Boards' MLS® Systems that Canadians have come to trust.

The approval of these amendments will impact Board and Association rules. Boards and Associations are required to amend their rules as soon as practically possible to reflect the amendments to the CREA Rules passed today.

Boards and Associations should be aware that they cannot have any rules or pass new rules that violate the principles in the amended Interpretations and Pillars. Rule 17.7.1.1 states that "All Boards and Associations that operate MLS® Systems must include in their rules and regulations provisions that give general effect to the provisions of this Rule" (i.e., Rule 17 includes the Three Pillars and Interpretations of the MLS® Mark).

The attached schedule shows the Rule amendments as approved.

Yours truly,

A handwritten signature in black ink, appearing to be 'R. M. M.' followed by a period.

Georges Pahud, President

SCHEDULE A

RULE AMENDMENTS

RULE 17: OPERATION OF A BOARD'S MLS® SYSTEM

17.1: Acceptance of Listings

17.1.1: The Three (3) Pillars of the MLS® Mark

Only listings that comply with the following three (3) pillars of the MLS® Mark can be placed on a Board/Association's MLS® System.

17.1.1.1: Membership

Only REALTORS® may place a listing on a Board/ Association's MLS® System.

17.1.1.2: Agency

A listing REALTOR® must act as agent for the seller in order 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® is determined by agreement between the listing REALTOR® and the seller, subject to applicable regulatory requirements and the Rules of CREA and Boards/Associations.

17.1.1.3: 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.

17.2: Interpretations of the Three Pillars of the MLS® Mark

17.2.1: The listing REALTOR® shall be available to provide professional advice and counsel to the seller on all offers and counter offers unless otherwise directed by the seller in writing.

17.2.2: 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.

17.2.3: Only REALTORS® are permitted to display the MLS® trademarks in signage, advertising, etc.

17.2.4: Where the seller directs the listing REALTOR® in writing to do so, the seller's contact information may appear in the REALTOR® only remarks (non-public) section of a listing on a Board/Association's MLS® System. The seller's contact information shall not appear on REALTOR.ca or in the general (public) remarks section of a listing on a Board/Association's MLS® System. The listing REALTOR® may include a direction in the General Description section on REALTOR.ca or on websites operated by CREA or a Board/Association to visit the REALTOR® website to obtain additional information about the listing (but the nature of such additional information shall not be specified).

17.2.5: Where the seller has reserved the right to sell the property himself/herself, that fact shall be specified in the Board/Association's MLS® System