



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

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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', with a stylized flourish at the end.

Georges Pahud

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