

Real Estate Institute of New South Wales

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The General Manager
Adjudication
ACCC
GPO Box 3131
CANBERRA ACT 2601

by post and email

gina.dettorre@acc.gov.au

26 November 2007

www.reinsw.com.au

Dear Sir

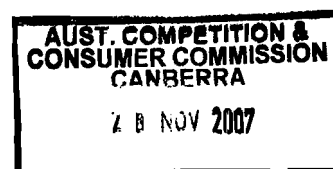
Re: Exclusive dealing notification N90330 lodged by Eastern Suburbs Newspapers

Further to your letter of 12 October 2007 I would advise that the Institute's Executive Committee has now resolved that the Institute's submission of 3 October 2007 may be placed on the public register.

Thank you for your consideration of this issue. Please feel free to contact the writer on (02) 8267 0513 should you have any queries.

Yours faithfully


Timothy McKibbin
Acting CEO





The General Manager
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3 October 2007

Real Estate Institute of New South Wales
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Dear Sir

Re: Exclusive dealing notification N90330 lodged by Eastern Suburbs Newspapers

We refer to your recent letter regarding the above notification to a number of real estate agents in Sydney's Eastern Suburbs, the majority of which are members of this Institute.

We refer also to recent discussions with your office concerning a response by the Institute and thank you for your patience in this regard.

The Institute endeavored to collect information from our members with a view to preparing an aggregated response which was specific to the 10 questions set out. Unfortunately agents, whilst more than prepared to discuss the matters raised, were not prepared to provide us with written responses expressing real concerns at market place reprisals which may eventuate. In so far as the majority of questions seek individual opinion and "practice" response we are not able to respond to those specifically.

We have no knowledge as to how many of our members intend to write to you directly.

The Institute would however seek to express the following: -

- a. The exclusive dealing notification certainly does not deliver any benefit to the public.
- b. The fact that agents are restricted as to choice by the 75% rule is only the superficial problem. It is far greater than that. Most advertising in the Eastern Suburbs and the great majority in the Wentworth Courier is Vendor (the Property Owner) funded. That is, the advertising is prepared by the agent, approved by the owner of the property then lodged by the agent for publication. The agent in the majority of cases would have an expenditure approval contained in their agency agreement (required under the *NSW Property Stock and Business Agents Act 2002*). The agent may receive funds in advance or seek reimbursement during the programme by installment or claim the full amount at settlement. The terms of payment are also contained in the agency agreement. The agent is also required to declare any rebates payable to the agent by advertising providers (publications such as the Wentworth Courier). It is the

understanding of the Institute that substantial rebates are paid depending on volume of advertising lodged, i.e "total spend". Accordingly the amount of the rebate varies from agent to agent and is difficult to calculate in total until the time period used to assess has passed.

Some agents may pass the rebate on to their client or have regard to the amount of the rebate in establishing their fee. The reality is the cost of the advertising, which is paid for by the Vendor (agents' client), is inflated by the amount of the rebate and the agent is required to submit 75% of advertising in that particular publication.

In essence the 75% rule is between the Wentworth Courier and the agent; but it is the client's money that pays for the advertisements and who has no choice and is not a party to the supply contract in any event.

- c. There are other publications available and who are struggling for content because the agents cannot support them because of the "75% rule". Therefore true competition is now extinct, a monopoly created, the playing field is certainly not level and the consumer suffers.
- d. The choice for the agent's client is limited by the arrangement. Most clients, who are the ones paying for the advertising are not made aware of the "75% rule" and as a consequence are not offered a choice in any event.
- e. Instead of the public benefit it is clear there is in fact a public detriment and worse, the consuming public (agents' clients) are not even aware of this limitation.

The Institute notes your advice that correspondence will be placed on the public register. We believe that if this occurs potentially our members may be disadvantaged and accordingly we seek exemption from this requirement. Our submission is lodged on the basis it will not be made public. We are more than happy to discuss this further with you should you require additional market evidence.

Please feel free to contact the writer on (02) 8267 0513.

Yours faithfully



Timothy McKibbin
Acting CEO