PUBLIC VERSION

Supplementary submission to ACCC regarding applications for authorisation by Property Media Group Pty Ltd

REA Group Limited

10 August 2016

Contents

1 Introduction and executive summary

This is a supplementary submission on behalf of REA Group Limited (**REA**) regarding the applications for authorisation (together, the **Application**) lodged by Property Media Group Pty Ltd (**PMG**) on 18 April 2016.

The purposes of this supplementary submission are to:

- respond to a number of new and important issues raised by: (i) PMG's response to an Australian Competition and Consumer Commission (**ACCC**) request for information dated 26 May 2016 (**PMG's RFI Response**); (ii) PMG's supplementary submission dated 23 June 2016 (**PMG's Supplementary Submission**); (iii) a letter from certain agents attached to PMG's Supplementary Submission (**Agents' Statement**); and (iv) the commentary prepared by Rhonda Smith on behalf of PMG (**Smith Report**) – although this supplementary submission does not seek to address every aspect of those documents; and
- answer the various questions posed by the ACCC's request for information to REA of 22 July 2016 (**ACCC RFI to REA**).

A brief paper prepared by RBB Economics in response to the Smith Report (**RBB Response**) is attached at Annexure B.

Generally, this supplementary submission does not repeat the material already provided to the ACCC in REA's original submission dated 25 May 2016 (**REA's Original Submission**). However, cross-references to REA's Original Submission are provided where appropriate for ease of reference.

In summary, there are four fundamental issues of dispute:

- the level of competition in digital property advertising markets;
- whether REA's current prices reflect competitive constraints or are inflated;
- the degree of flexibility and choice in REA's existing offer to agents; and
- in view of each of the above, the extent of likely public benefits and detriments.

In relation to these issues, PMG's further submissions are unsupported, inconsistent with the factual evidence provided by REA and/or fail to address REA's key contentions.

More broadly, PMG's further submissions provide new details that confirm its intention to effectively force fundamental changes to the core of REA's business model. Authorisation of such conduct would constitute an extraordinary regulatory intervention into a dynamic and well-functioning market.

REA remains strongly opposed to the Application and submits that, in view of the detailed information contained in REA's Original Submission and this supplementary submission, the ACCC cannot be satisfied that the proposed conduct is likely to result in public benefits that outweigh the likely public detriments – as required by sections 90(5A) and (6) of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

2 Confidentiality

Portions of this document that have been highlighted in red and are preceded by the word "**CONFIDENTIAL:**" contain confidential and commercially sensitive information. This information must not be disclosed to any third party without the express written consent of REA. REA consents to the disclosure of confidential information to: (i) the ACCC's external advisors and consultants on a confidential basis; (ii) if the ACCC is compelled to do so by law; or (iii) otherwise in accordance with section 155AAA of the CCA.

REA notes that certain of the information over which confidentiality has been claimed is data provided to REA by third parties on a confidential basis.

3 Competition

PMG continues to claim that the supply of digital property advertising services is dominated by two suppliers, REA and Domain, and is not truly competitive – see, in particular, PMG's Supplementary Submission, pages 2 and 3. PMG has not responded to most of the factual material included in REA's Original Submission that clearly contradicts its position but it has sought to bolster its claims with various new assertions.

3.1 Overview of REA's position and evidence

REA has provided detailed evidence demonstrating that property advertising markets are in fact highly competitive – see sections 5 and 6 of REA's Original Submission, pages 23-43. To summarise REA's position:

- (**REA and Domain**) There is close and aggressive competition between REA and Domain, as demonstrated by factors including the evidence of pricing constraint, the innovation observed in the market and the substantial investments that REA has made in updating its platform, and the aggressive comparative advertising of both parties.
- (**Mid-tiers and smaller players**) There is also competition between REA and a range of mid-tier and smaller competitors such as REIWA and RealestateVIEW, which are seeking to grow by identifying and exploiting niches or providing highly differentiated services. Contrary to the suggestion in PMG's submissions, these mid-tier and smaller players have been able to attract significant property-seeker audiences, agent participation and listings volumes – for example, RealestateVIEW has an average monthly audience of over 1 million unique visitors and 4,200 agents advertise on its website, REIWA attracts over 400,000 unique visitors per month, Homesales achieves approximately 870,000 visits per month, Homely achieves approximately 360,000 visits per month and it claims that over 8,000 agents list on its platform and Homehound has arrangements with over 4,000 agency offices. We also note that emerging competitors such as buyMyplace, OpenAgent and Local Agent Finder are currently conducting national television advertising campaigns.
- (**Low barriers to entry**) Barriers to entry are low, as demonstrated by frequent new entries, such as Homely (300% increase in monthly traffic over the last two years) and iBuyNew, FollowIt and B4 Real Estate.
- (**Global threats**) Global players in adjacent markets – such as Facebook, Airbnb, Google and eBay – have large audiences and are an ever-present competitive threat. For example, many agents now post their listings to their Facebook business pages and Facebook appears to be in the early stages of rolling out a new 'Local Market' feature on its website and mobile apps, which has a property and rentals section.

PMG does not directly dispute that REA competes aggressively with Domain (and vice versa). However, PMG claims that, even if there is fierce competition between REA and Domain, "*this is not generating a marketplace where agents, and therefore vendors, are benefiting from this level of competition*" – see PMG's Supplementary Submission, page 3. That assertion is plainly at odds with REA's further evidence demonstrating the continual improvements made to its platform and the competitive constraints on its pricing – see especially sections 6.8 and 7.3 of REA's Original Submission, pages 40-42 and 53-58, as well.

3.2 Claimed indicators of dominance

PMG claims that various past REA statements are indicative of its dominance and cannot be reconciled with aggressive competition – see PMG's Supplementary Submission, page 3.

Insofar as those past statements relate to the REA's platform's audience share, page views and app sessions, REA considers that they merely reflect the significant investments REA has undertaken over many years to increase and maintain the attractiveness of its platform to property seekers – see further sections 4.2 and 4.3 of REA's Original Submission, pages 14 and 15.

Insofar as REA's past statements relate to the proportion of agents who advertise with REA (92%) or the proportion of properties for sale listed on REA's platform (95%), they do not constitute good evidence of REA's alleged dominance. A high penetration of agents and listings is to be expected when:

- the vast majority of agents list their properties on multiple platforms, aided by the fact that agents' CRM software systems typically allow property details to be entered once on an office computer system and then "pushed" automatically to each of those platforms; and
- agents' "costs of entry" to REA's platform, which is particularly popular with property seekers, is low: REA's current average monthly fee across all Standard and Flexi subscriptions is only [redacted] and the marginal cost of a listing for agents on a Standard subscription (which has a currently average monthly fee of only [redacted]) is zero.

Further, mid-tier and smaller players often also enjoy a high penetration of agents and listings – for example, in addition to the agent figures given in section 3.1 above, REA understands that REIWA represents 90% of agents in Western Australia and a very high proportion of those agents list their properties on REIWA's website.

3.3 "Must-have" status as source of dominance

PMG emphasises its contention that REA operates a "*must-have*" platform (see, for example, PMG's Supplementary Submission, pages 3 and 4), other platforms are not "*viable*" (see, for example, the Agents' Statement, page 2) and in these circumstances REA occupies a dominant position. These claims are made with little factual support. REA's response is as follows.

- (**Bypass options**) As set out in REA's Original Submission (see section 6.2, page 34), agents can and do bypass REA, including by listing properties exclusively on other platforms, print publications or their own websites.
- (**Viability**) PMG effectively argues that competing platforms (other than perhaps Domain) are not viable because they are less effective in exposing vendors' properties to property seekers. However, competing platforms

are perfectly viable for agents and vendors who are willing to expose their properties to fewer property seekers as a trade-off for lower prices.

- (**Competition for marginal spend on depth listings**) Importantly, most agents list their vendors' properties on multiple platforms and REA derives most of its listings revenue from the sale of depth listings. As a result, REA is not only constrained by the threat of an agent withdrawing completely from the REA platform, but also by the threat of an agent substituting away from REA's depth listings to REA's standard listings, or from a particular level of REA depth listing to a lower level of REA depth listing – while at the same time maintaining or increasing its spend on competing platforms. In other words, REA competes with other platforms not only for the supply of listings, but also for the marginal spend available for REA depth listings and other similar services offered by REA's competitors, including but not limited to Domain. [redacted].

3.4 Cross promotion through News Corporation

Finally, PMG implies that REA has a competitive advantage over mid-tier players because it has "*close links*" to broader media platforms and "*[is] in a position to promote and cross-promote [its] offering*" – see PMG's Supplementary Submission, page 5. REA does not accept that its relationship with News Corporation (which is a ~62% shareholder in REA) provides it with any material competitive advantage over any of its competitors, for reasons including the following.

- (**Arm's length media purchasing**) While REA's platform is promoted through News Corporation outlets, predominantly through print advertising under News Corporation mastheads, REA pays News Corporation commercial rates which are negotiated on an arm's length basis. The reason that REA advertises through News Corporation outlets and not Fairfax outlets is that Fairfax is the parent company of its closest competitor.
- (**Low proportion of overall promotional spend**) Promotions through News Corporation outlets account for a small proportion (in FY 2016, approximately [redacted]) of REA's overall promotional spend.
- (**Importance of other media**) Clearly, promotions through News Corporation outlets have value to REA. However, the vast majority of REA's audience is "organic", in the sense that it arises from searches

performed by consumers on search engines such as Google and Bing. Only 4% of REA's audience is driven by paid marketing, and the majority of that paid marketing occurs on social media platforms (such as Facebook). REA also uses television and outdoor advertising extensively.

4 Pricing

PMG continues to claim that, as a result of a lack of competition, REA's prices are high. PMG also says that agents have indicated that recent price increases do not reflect actual costs to serve – see, for example, PMG's Supplementary Submission, page 4.

4.1 Overview of REA's position and evidence

REA's Original Submission provided detailed information regarding the operation and rationale for REA's pricing model, which PMG appears to have ignored. As set out in REA's Original Submission:

- (**Value-based pricing generally**) In common with other advertising businesses, REA's pricing is primarily value-based and REA's platform now attracts a relatively large and therefore valuable audience. The limited price increases experienced by agents in recent years are therefore primarily related to the increasing quality of the service offered by REA – see further section 7.3 of REA's Original Submission, pages 54 to 56. Further information concerning recent price increases is also given below in response to question 10 of the ACCC RFI to REA.
- (**Costs**) Contrary to PMG's suggestion that prices should be "*more commensurate with the cost of the service being provided*" (see PMG's RFI response, page 5), there is no economic or other policy reason why REA's prices should be closely correlated to costs. In any event, REA's contract/pricing model, in particular REA's approach to discounts under depth contracts, is reflective of REA's cost structure in that it is partly designed to ensure a high committed volume of listings such that REA's high fixed costs are recovered.
- (**Depth listing prices**) Per-listing upgrade fees for depth listings reflect the additional value that those depth listings deliver to agents and the scarcity of screen "real estate", and also provide opportunities for differentiation – see further sections 4.4 and 7.3 of REA's Original Submission, pages 15, 16, 55 and 56.
- (**Previous invalid price comparisons**) The various pricing comparisons previously relied upon by PMG to suggest that REA's prices are inflated, including in relation to previously offered subscription discounts and "top tier" packages, are invalid – see further section 7.3 of REA's Original submission, pages 56 and 57.
- (**Less differentiation under lower prices**) Lower prices for REA's depth listings would be likely simply to stimulate greater demand for those depth listings, thereby creating greater homogeneity (i.e. less differentiation) and, ultimately, renewed demand for higher levels of listing with higher prices. For that reason, the lower prices sought by PMG are unlikely to be a sustainable equilibrium in the long run – see further section 7.3 of REA's Original Submission, pages 57 and 58.

Further, as the report prepared by RBB Economics dated 17 June 2016 notes, REA's prices are no higher than is to be expected in a competitive market, notwithstanding that they may be above the marginal cost of supplying additional listings to agents.

PMG has failed to grapple with these points to any material degree and, as set out below, the additional points raised in PMG's further submissions do not provide the ACCC with any compelling additional evidence establishing that REA's prices are inflated or that the pricing objectives to be pursued by PMG in collective negotiations would offer genuine public benefits.

4.2 Preferential rates for franchise groups would raise barriers to entry

PMG would, if instructed by a large franchise group, seek group-wide volume discounts for members of that franchise group (see PMG's RFI Response, page 5).

At the outset, REA notes that franchise network-based discounts would undermine one of the foundational objectives of REA's current contract/pricing model, namely to provide agents with a level playing field regarding advertising on REA's platform – see section 4.7 of REA's Original Submission, page 21. As previously discussed with the ACCC, agents value – indeed they demand – equal treatment at the hands of REA and, on the past occasions on which REA has experimented with giving particular agents favourable treatment, including on the basis of their membership of a large franchise group, REA has found that its relationship with its broader customer base has suffered. Of course, REA's concerns in this respect are not confined to special deals for large franchise networks – the same unfair situation would arise in circumstances where PMG was able to obtain favourable pricing only for those agents participating in its collective negotiation.

Importantly, REA considers that its current approach is a significant factor underpinning new market entry by agents, which promotes competition between agents, for the following reasons.

- (**Entry dynamics**) It is common for new agencies to be founded by agents who have previously operated within a larger agency (under a revenue-sharing model with that agency's principal) and who wish to "branch-out" on their own. Generally, a new agency will need to establish a separate office, and new contractual relationships with REA and other suppliers of advertising services, which are not linked to the contracts held by the office with which they were previously associated. This "branching-out" continually rejuvenates competition among agents.
- (**Current equal treatment**) When a new agent enters the market, they are able to access the same rates that are available to other agents (including long-established incumbents within large franchise networks), assuming they are willing to make the same commitment in respect of their listings and notwithstanding that the absolute volume of listings they require may initially be low.
- (**Current high rate of entry**) New account data collated by REA suggests that the rate of new entry in agent markets is currently high. Of REA's [redacted] existing agent customers, [redacted]

[redacted] REA expects that the vast majority of these new accounts will have been opened by genuinely new agency businesses. In REA's view, this frequent new entry can be expected to have a material effect on the intensity of competition for the supply of agency services to vendors.

- (**Likely impact of special deals**) If REA were to offer special deals to large agents or members of large franchise networks, then that would create an additional, and likely significant, barrier to entry: any new entrant would be at an immediate competitive disadvantage to incumbent agencies when pitching for vendor mandates "in the living room". REA also expects that, in addition to imposing that competitive disadvantage on new entrants, a modified pricing model involving special deals for large agents or members of large franchise networks would actually deter new entry in many cases.

For completeness, REA acknowledges that it has an ongoing commercial interest in providing a level playing field for new entrants: [redacted] of listings on the REA platform (accounting for [redacted] of revenue) in June 2016 were purchased by agents that have opened their accounts with REA within the past three years. If REA had not presented an attractive (i.e. an equal) offer to those new entrants, enabling them to compete effectively with longer-established agencies, REA expects that they would have had a strong incentive to promote, and direct a greater proportion of their vendors' marketing spends to, competing platforms.

4.3 Alternative pricing models offer no real advantages

PMG foreshadows that it would seek "*different pricing models based on the benefits received rather than a notional geographic 'property value' model". For example, calculated on a cost-per-click basis*" (see PMG's RFI Response, page 5). PMG's submissions in this respect are misconceived, for reasons including the following.

- (**Existing reflection of value**) As set out in sections 4.6 and 4.7 of REA's Original Submission and above, REA's pricing model is already heavily based on the benefits received by agents and vendors. At the broadest level, REA's listing prices (including recent price changes) are consistent with the substantial and increasing value that REA's platform provides to agents and vendors. More specifically, REA's per-listing upgrade fees reflect the substantial additional value delivered by REA's premium listings – see Table 13 of REA's Original Submission, page 55.
- (**Existing factors beyond geography**) The implication that REA's pricing model is only a "*notional "property value" model*" is incorrect. The applicable upgrade fee for any given listing is calculated by reference to a much broader set of factors, including but not limited to its type (e.g. Highlight, Premiere or Feature), the duration of the upgrade (e.g. 30 or 45 days), and geographic zone (where rates for a given zone are based on demand for a particular listing type in that zone, audience size, REA and competitor shares of listings and audience, and median property prices).

- (**Cost-per-click approach**) If REA understands PMG correctly, its "*cost-per-click*" model would involve an agent paying REA a fee every time a property seeker clicks on a listing to review it in more detail (some cost-per-click models also include an auction mechanism under which advertisers nominate in advance a maximum amount they are willing to pay for a click, although it is not clear whether PMG envisages such a mechanism in this case). A cost-per-click model may well have financial advantages for REA. For example, depending on the precise model used, it may enable REA to extract significantly greater revenue from agents that typically use premium listings in areas where those listings are in particularly high demand. However, REA considers that such a model would be very unlikely to be acceptable to most agents as it would significantly increase the complexity of REA's pricing, would likely create uncertainties about the overall cost of a campaign for a particular property and would limit agents' ability to agree a fixed up-front cost with prospective vendors. Agents would also perceive that such a model would change REA's incentives in the prioritisation of listings – for example, REA may have an incentive to more prominently display listings that experience relatively high "click-rates" simply because they have particularly attractive photos.
- (**Development and other costs**) A re-architecting of REA's pricing model would require very significant investment in development and other costs over an extended period (likely running into the tens of millions of dollars), which would inevitably need to be recovered from agents and, indirectly, vendors.

4.4 Concessional re-advertising rates would be superfluous

PMG would seek an ability for agents to "*re-advertise when a property fails to sell*" (see PMG's RFI Response, page 5). Although it is not clear, REA assumes this means that agents would be permitted to re-advertise their unsold properties beyond the initial upgrade period at no additional charge. Again, this is misconceived, for reasons including the following.

- (**Existing reversions to standard listing**) When the upgrade period for a listing expires, the listing is not removed from the REA platform. Instead, it simply reverts to a Standard listing (which has no ongoing additional cost). In this way, REA's existing pricing model effectively allows an unsold property to be re-advertised at no additional cost until it is sold.
- (**Existing concessions for re-advertised depth listings**) Each of REA's "Contract All" depth contracts offers concessional re-advertising rates for depth listings. [redacted]

- (**Existing balance of agent/vendor and property seeker interests**) REA's existing offers strike the right balance between, on the one hand, providing agents with unsold properties some additional flexibility to continue to list their properties on REA's platform and, on the other hand, ensuring that per-listing upgrade fees remain low overall. If REA were to be required to re-publish depth listings for unsold properties at no additional charge, that balance would be upset and REA would be likely to seek counter-acting increases in its initial per-listing upgrade fees – to the detriment of agents who experience relatively few unsold properties.

4.5 Further comparison to Carsales' prices is invalid

PMG contrasts REA's prices with those charged by Carsales, which PMG describes as a "*not dissimilar platform*" with "*not dissimilar operation and advertising costs*" (see PMG's Supplementary Submission, page 4). PMG compares the $135/$300 cost of the "*most premium*" advertisement for a $250,000 car on the Carsales platform with the $2,650 cost of a Premiere listing for a $500,000 property in Toorak on REA's platform. REA is not in a position to verify advertising costs on the Carsales platform. However, assuming PMG's claims are accurate, REA submits that the comparison is likely to be misleading in a number of respects, and does not provide a sound basis for concluding that REA's prices are inflated.

- (**Logic**) PMG describes Carsales as the "*market-dominant car sales portal*" (see PMG's Supplementary Submission, page 9) and suggests that its prices are low. PMG also describes REA as dominant. If PMG's description is accurate then that necessarily implies that market dominance (in the sense meant by PMG) alone does not facilitate relatively high prices and that other factors, such as audience and value, are more relevant.

- (**Relative audience sizes**) The audience delivered by REA's platform is much larger than the audience delivered by Carsales' platform. According to publicly available information, there were approximately 13 million visits to the Carsales website in March 2015. By contrast, REA's average monthly website visits in the year ending 30 June 2016 were approximately 43.8 million. As such, given that advertising costs generally reflect the audience to which an advertisement is exposed, the comparison of REA's and Carsales' prices is invalid.

- (**Typical asset values**) As noted in REA's Original Submission (see section 7.3, page 57), differences in pricing between REA's platform and non-property related platforms are likely to reflect *typical* transaction values. This does not mean, and REA has not claimed, that in every single case there must be a linear relationship between the value of an asset and the cost of advertising that asset for sale. In the case of Carsales, the typical transaction value may be in the order of $15,000-30,000. In the case of REA, the typical transaction value will reflect the average property price, which is currently approximately $600,000 Australia-wide (in Toorak, the average price is in the order of $3 million).

- (**Likely approaches to pricing**) REA expects that Carsales' pricing model is largely aimed at vehicles within a common price range, and for simplicity's sake Carsales' pricing model does not attempt to capture all of the revenue that could possibly be derived from advertisements for outliers such as a $250,000 cars. Similarly, REA's per-listing upgrade fees for Premiere listings (which PMG uses as the point of comparison) do not separately cater for low-priced outliers such as $500,000 properties in Toorak and do not attempt to capture all of the revenue that could possibly be derived from high-priced outliers such as $50 million trophy homes. Of course, more broadly REA's contract/pricing model provides various flexibilities that allow agents operating in affluent areas such as Toorak to advertise relatively low-priced properties at relatively low prices, for example through the exceptions mechanism in REA's Premiere All contracts.

- (**Listing performance**) Finally, whereas REA's depth listings clearly outperform Standard listings (see section 7.3, page 55 of REA's Original Submission), it may be that Carsales premium listings do not result in a significantly greater number of views or buyer enquiries. If so, then that would be a further reason why Carsales is not able to charge higher prices for its premium list types.

Comparison with RealestateVIEW is invalid

PMG compares REA's prices to those of RealestateVIEW (see PMG's Supplementary Submission, page 9). However, notwithstanding RealestateVIEW's success in establishing its platform and gaining property seekers and agents (see section 3.1 above), its audience remains significantly smaller than REA's. Further, while REA does not know what RealestateVIEW's overall strategy is, REA suspects that RealestateVIEW's current pricing reflects a decision to offer low prices to aggressively grow its user base and/or differentiate itself on the basis of price over the longer term.

4.6 Comparisons with other media are invalid

PMG also contrasts recent price increases for listings on REA and Domain with price increases for other media, including television, newspaper, magazine and radio (see PMG's Supplementary Submission, page 9). PMG then appears to suggest that its comparison illustrates a lack of competition in property advertising markets. Again, the comparison is misconceived, for the following reasons.

- (**Growing REA audience**) As noted above, REA's audience has grown considerably in recent years and price increases efficiently reflect the additional value delivered to agents through REA's platform.

- (**Static or declining audiences in other media**) REA does not have access to detailed analysis of audiences for other media, however the material available to REA suggests that those audiences have been static or declining over recent years. For example, according to the [redacted]

[redacted]
Notwithstanding that apparent decline, according to PMG's data, prices have consistently risen for each of these media. Whereas REA's price increases are highly correlated with an actual increase in audience and value, recent prices increases in other media appear less correlated with audience and value.

4.7 PMG misrepresents REA's depth listing strategy

Finally, PMG suggests that an overall strategy of REA is to continually create a new premium tier of listing "*every couple of years...with a higher price*", with "*no regard for the underlying costs*" (see PMG's Supplementary Submission, page 4). REA rejects this suggestion.

REA introduced its highest level of depth listing – Premiere – in 2010, and there are no current plans to introduce a higher level.

Further, the last major change to REA's listing scheme was the introduction of the Highlight listing. In terms of features such as property/agent photo sizes and priority in search results, Highlight listings sit in between Premiere and Feature listings. REA introduced the Highlight listing for agents who were unable or unwilling to offer their vendors relatively high-priced Premiere listings but who also wanted to differentiate their properties from other Feature listings. In other words, REA created a listing at a *lower* level and price to its premium Premiere listing, in response to feedback from a segment of agents who did not wish to purchase REA's premium product.

5 Flexibility and choice

PMG claims that, as a result of REA's contract/pricing model, agents are effectively "*forced*" to enter into a depth contract with REA which commits them to purchasing a particular level of depth listing for all of their properties. Specifically, PMG claims that a difference between the per-listing upgrade fees payable under a Standard subscription and those payable under a depth contract, or between the per-listing upgrade fees payable under different depth contracts – in other words, the very fact of discounts – forces agents to choose higher levels of depth contract (see, for example, pages 6 and 7 of PMG's Supplementary Submission and page 10 of PMG's RFI Response). The Smith Report also asserts that, as a result of the discounts offered by REA under its depth contracts, agents have no choice (see page 1).

5.1 Overview of REA's position and evidence

REA's Original Submission provided the ACCC with a wealth of information and data that clearly establishes that agents have a range of choices and, importantly, are exercising those choices in varying ways. In summary:

- (**Existing choices in REA contracts**) REA offers a wide variety (currently, 17 permutations) of subscription and depth contract options – see further sections 4.4 to 4.7 of REA's Original Submission.
- (**Existing diversity in contract decisions**) Agents using REA's platform choose a broad mix of contract types, both generally and in particular geographic areas – see further section 7.2 of REA's Original Submission, pages 48 and 49.
- (**Multiple contracts**) Some agents are able to purchase multiple subscriptions and depth contracts to give themselves greater flexibility. Further information concerning multiple subscriptions is given below in response to question 6 of the ACCC's RFI to REA.
- (**Contract upgrades and downgrades**) Agents may upgrade their contracts at any time without penalty, and REA often grants requests to downgrade contracts – see further section 7.2 of REA's Original Submission, pages 49 and 50.
- (**Listing choices available within a given depth contract**) REA's "Elect" depth contracts, contracted exceptions under Premiere All depth contracts, exceptions negotiated ad hoc under all depth contracts and ad hoc listing upgrades help to ensure that, in particular cases, agents have the flexibility to purchase a listing that is above or below the level that is directly targeted by their depth contract. This means that, even if two closely competing agents in a local area both choose the same REA depth contract, those agents would likely have the opportunity, in a particular case, to differentiate their offerings to a prospective vendor – see further section 7.2 of REA's Original Submission, pages 50 and 51. Further information specifically concerning the use of contracted exceptions is given below in response to question 7 of the ACCC's RFI to REA.

- (**Existing diversity in listing decisions**) Reflecting the choices available to agents, REA observes a wide variety of listing choices, both generally and in particular geographic areas – see section 7.2 of REA's Original Submission, pages 51 and 52.

By contrast, PMG has not provided the ACCC with any real evidence demonstrating that, in theory or practice, agents are "*forced*" to choose the same package or offer their vendors the same depth listing types.

5.2 REA's discounts are not a form of commercial coercion

Steep discounts, offered in return for volume or similar commitments, are commonplace across the economy. Indeed, discounting on that basis is a conventional strategy available to most firms in most industries, and will often be particularly attractive for firms which, like REA, have high fixed costs that are most efficiently recovered through volume commitments. It cannot reasonably be suggested that, as a result of a firm adopting this strategy, its customers are denied choice. To take a simple example, it is routine for hotels to offer steeply discounted nightly rates for week-long stays; however, it would be wrong to conclude that prospective hotel customers are effectively forced to stay for a week rather than one night. Further submissions regarding this issue are provided in the RBB Response attached at Annexure B.

It is also suggested that agents have no choice but to acquire a "Contract All" depth contract because, if they do not, they will be at a competitive disadvantage to competitors who have taken that option. For example, in the Agents' Statement it is said that: "*...the agencies supporting the application, realistically, have no choice but to purchase the most premium product on the market. Were they not to do so, they would be left commercially vulnerable to their competitors...*" (see page 2). PMG's Supplementary Submission also states that: "*a flexible option* [i.e., a Standard subscription or depth contract that is not a "Contract All" depth contract] *would be prohibitively expensive for an agent competing with others who have committed to Contract All options*" (see page 7). This is not evidence of inflexibility on REA's part. Rather, it is evidence that particularly close competitors whose downstream customers have similar demands will tend to acquire similar inputs, which ought to be unremarkable (and it is also worth remembering that agents retain the option of differentiating themselves by selecting a lower-priced contract and offering savings to prospective vendors). Incidentally, the contention in the Agents' Statement that all of the agents supporting the Application are compelled to purchase REA's "*most premium product*" is plainly inconsistent with PMG's claim that agents contacted for the purposes of preparing PMG's Supplementary Submission "*utilise either the Premiere All or Highlight All option[s]*" (see page 7).

5.3 Inaccurate statements regarding exceptions

Through PMG, certain agents have suggested that in all cases the use of exceptions is "*at the sole discretion of REA and can be withheld at any time*" (see the Agents' Statement, page 2). That suggestion is incorrect.

In the case of REA's "Premiere All" contracts, an agent has a contractual right to downgrade [redacted] of their Premiere listings to a Highlight listing at a similarly discounted price (and the data provided by REA suggests that agents generally do not exhaust those exceptions). Further information concerning the use of exceptions is also given below in response to question 7 of the ACCC RFI to REA.

For REA's other "Contract All" depth contracts, similar exceptions can be negotiated with REA on an ad hoc basis and in those cases REA is able to exercise a discretion. REA's "Elect" contracts are inherently flexible and do not require an "exceptions" mechanism, for the reasons given in section 7.2 of REA's Original Submission, page 50.

5.4 Misleading price comparisons

PMG also relies on price comparisons that overstate the price differentials between various contract options.

First, PMG asserts that "*casual*" (i.e. Standard subscription) rates for REA's depth listings are "*generally 3-4 times*" the contracted rate (see PMG's RFI Response, page 10). This is incorrect. The differential between the price for a depth listing under a Standard subscription and under a depth contract is, at its highest, [redacted]. Further, that level of differential occurs only in respect of 2 out of the 17 permutations of depth contract offered by; most depth contracts have significantly lower discounts and therefore significantly lower differentials between Standard and contracted pricing. REA considers that differentials of these magnitudes are appropriate to recognise (and incentivise) the substantial commitment being made by contracted agents, and it would be unreasonable to effectively require that REA's most favourable prices are offered to agents making no similar commitment.

Second, PMG misleadingly compares pricing under REA's Highlight All and Highlight Elect packages in respect of listings for properties in Oakleigh, Victoria (see PMG's Supplementary Submission, page 7). PMG effectively claims that the "*casual*" rate for a Highlight listing in Oakleigh under REA's Highlight Elect 3 contract is $1,899. PMG then states that the same listing is only $924 under the Highlight All 90 contract (for a differential of 2.05 times). However, that comparison fails to recognise the following fundamental differences in the commitment given, and value obtained, by the agent under the compared contracts.

- Under the Highlight Elect 3 contract, the agent agrees to purchase a *single* 30- or 45-day upgrade for a minimum of three listings per month. For each 45-day upgrade, the agent pays [redacted] (REA believes this is the figure to which PMG intended to refer, not $1,899).
- Under the Highlight All 90 contract, the agent agrees to purchase *three* 30-day upgrades, for a total of 90 days, for each of their listings. For each 30-day upgrade, the agent pays [redacted], for a total of [redacted].

In other words, PMG's comparison incorrectly compares REA's prices for different advertisement periods (45 days vs 30 days) and ignores the fact that under the Highlight All 90 contract the agent has effectively committed to 90-day campaigns. In monthly terms, the Highlight listing costs [redacted] per month under the Highlight Elect 3 contract and [redacted] per month under the Highlight All 90 contract (for a relatively limited differential of [redacted]).

5.5 Other foreshadowed flexibilities offer no real benefits

Finally, PMG points to a range of additional "*non-price related objectives*" that it intends to negotiate with REA (see PMG's RFI Response, pages 4-6). REA submits that the benefits implied by these objective are illusory, impractical or unwarranted, and would not contribute to any public benefit claimed by PMG.

- (**Alignment of contract end dates**) PMG would seek the "*alignment of contract end dates for all PMG clients*" and suggests that REA may "*waive aspects of the existing contracts*" to assist PMG to achieve that objective. In some cases, this would require REA to agree to the premature termination of existing contracts (in circumstances where those agents have already obtained the benefits of, for example, discounted rates). In other cases, it would presumably require REA to agree to relatively short-term extensions of existing contracts. That would represent a further unwarranted and inappropriate intervention into existing contractual arrangements between REA and agents, and unduly affect how REA's runs its business.
- (**Discretion over the supply of data**) PMG would seek "*[agent] discretion over whether or not to supply the portals with proprietary data, such as, sales details or agent profiles*". However, agents already have that discretion. The only data required to be supplied to REA by an agent is the minimum data required for a listing to be processed by REA's platform and presented to property seekers (e.g. property type, suburb, listing agent, etc.), and it is obviously voluntary for an agent to list a property on REA's platform. REA does not require agents to provide sales details (although REA provides limited incentives for agents to provide prices for sold properties on a voluntary basis). REA also does not require agents to supply additional information for agent profiles; while REA uses some listings data (such as a listing agent's details, their currently for-sale or -rent properties and recently sold property data) to automatically create agent profiles, the supply of further information is voluntary. It is also not clear how any additional discretion over the supply or presentation of data would promote any of the public benefits claimed by PMG – REA uses the data to provide property seekers with additional information about agents (e.g. their selling history) that tends to increase the transparency of property markets. In that context, further limitations imposed on the data provided by agents, or on REA's use of that data, are likely to reduce the usefulness of REA's platform for property seekers, decrease the transparency of property markets and dampen competition between agents. These outcomes would therefore involve significant public detriments.

- (**Flexibilities regarding property developments**) PMG would seek "*flexible grouping options with marketing a property development (i.e. in a multi-abode development) as currently each apartment requires a separate advertisement to be purchased at full cost*". However, REA already offers agents a flexible approach in this respect and it is not true that each apartment (or other dwelling) in a property development requires a separate listing on REA's platform: a single listing may contain up to three dwellings. Further, if an agent requires a listing for a development of four or more dwellings, they may purchase a "Project Profile" from REA's Developer line of business, which is a form of listing under which a series of apartments or floor plans can appear.

6 Public benefits and detriments

6.1 No compelling new evidence supporting public benefits claims

In view of the conclusions set out in sections 3 to 5 above, REA submits that PMG has not provided the ACCC with any additional evidence that supports its key public benefit claims. In particular, PMG has not provided any compelling new evidence that collective bargaining or boycotts will have a beneficial or meaningful impact on either REA's prices or the choices it offers to agents. PMG has also not provided any compelling new evidence regarding the extent of likely efficiencies, the benefits arising from its role as a media buyer, transparency or the likelihood that REA's smaller competitors would become "*more active*".

REA's detailed submissions regarding the absence of any material public benefits are set out in section 7 of REA's Original Submission, pages 43-62.

6.2 No real engagement regarding public detriments generally

REA's Original Submission identifies a wide variety of significant public detriments that would arise from the proposed conduct, including the following.

- (**Distortions of competition in digital property advertising markets**) The aggregation of buyer power in the hands of PMG would serve to distort normal competitive outcomes and price signals in circumstances where, as noted above, the relevant market is already highly competitive and efficient – see further section 8.1 of REA's Original Submission, pages 63 and 64.
- (**Reduced incentives to innovate**) Reductions in revenue, a de-coupling of prices from audience size and PMG input into the development of REA's platform would reduce REA's incentives to innovate – see further section 8.2 of REA's Original Submission, pages 64 and 65.
- (**Reduced opportunities for differentiation**) A flattening of REA's contract/pricing model, as a result of greater access to lower-priced depth listings on an uncommitted basis, would reduce opportunities for agents to differentiate their properties on REA's platform – see further section 8.3 of REA's Original Submission, page 66.
- (**Reductions in transparency**) The mediation by PMG of REA's relationships with agents, and the (likely) existence of special (and presumably undisclosed) deals between PMG and large agents or franchise networks, would reduce transparency – see further section 8.4 of REA's Original Submission, page 66.
- (**Inefficiencies**) There would inevitably be additional transaction costs placed on REA and a duplication of costs across REA and PMG, and there may also be additional search costs for property seekers and vendors – see further section 8.5 of REA's Original Submission, pages 66 and 67.
- (**Distortions of competition in agent services markets**) A breakdown of REA's existing contract/pricing model would entrench large agents and franchise networks' existing scale for no efficiency benefit, may reduce the extent to which agents compete on the basis of their commissions and non-

price factors, and would (as noted above) increase barriers to entry – see further section 8.6 of REA's Original Submission, pages 67 and 68.

With the exception of REA's submissions regarding opportunities for differentiation (addressed in section 5 above), PMG's further submissions simply do not address these detriments and they remain uncontested.

6.3 No real engagement regarding detriments arising from boycotts

In REA's Original Submission, REA identified that a boycott would result in affected vendors being denied full exposure of their properties.

PMG's further submissions continue to fail to adequately address this significant detriment. PMG's proposed solution, which is for boycotting agents to refrain from purchasing REA's depth listings but keep their listings on REA's platform as standard listings, is not credible. Affected vendors' properties would still be given significantly less exposure than they would receive in the absence of a boycott, since REA's depth listings significantly outperform standard listings in terms of view and buyer enquiries (see Table 13 of REA's Original Submission, page 55).

6.4 No appropriate safeguards re boycotts

REA's Original Submission notes (see section 8.7, pages 68 and 69) that if the ACCC were to authorise collective boycott conduct then by threatening such a boycott PMG would be in a position to establish itself as a monopsony purchaser of REA's services, dictate terms to REA and wield negotiating power that would go well beyond that merely sufficient for it to "*obtain...a more equal bargaining position*". PMG does not dispute that contention. Indeed, PMG appears to acknowledge that fact when it accepts that a boycott would "*provide [PMG] with a significant level of power*" and when it indicates that REA could simply avoid a boycott by "*agree[ing] to provide packages and pricing that address the current concerns expressed by agents*" (i.e. acceding to all of PMG's demands) – see PMG's Supplementary Submission, page 13).

In these circumstances, the authorisation of collective boycott is clearly unwarranted and would give rise to detriments well in excess of any public benefit. However, if collective boycott conduct were authorised, it would need to be accompanied by a robust series of safeguards to protect REA and any other target of a boycott or threatened boycott – see further section 8.7, pages 70 and 71 of REA's Original Submission. PMG's proposals contain no such safeguards. In particular:

- (**Unilateral PMG decision making**) PMG's overall position is that a boycott would be triggered "*if [REA] does not engage in meaningful negotiation*" with PMG and/or if negotiations have not been "*successful*" (see PMG's RFI Response, pages 4 and 6). Clearly, those triggers are wide open to interpretation and there is nothing in PMG's further submissions to suggest that PMG intends for it to be anything other than the sole arbiter of whether or not any trigger has occurred.
- (**No mandated mediation**) Whereas REA considers mediation to be a critical step in any process leading to a boycott (or the threat of one), PMG

appears to consider mediation to be a discretionary element which it may or may not choose to include (see PMG's RFI Response, page 6).

- (**No limit on boycott group**) PMG's RFI Response confirms (see pages 1 and 2) that there is to be no limit on the number of agents that may participate in a collective negotiation and boycott.

Finally, REA notes that material appearing to describe key parts of the proposed collective bargaining process and the circumstances in which a boycott could be implemented has been redacted from PMG's RFI Response (see page 7). REA has written to the ACCC separately on that issue, however for the purposes of this supplementary submission REA simply reiterates that it is deeply concerned that it still does not have access to that material and, as a result, is still not in a position to fully assess the likely benefits and detriments of PMG's proposed conduct.

7 Response to Smith Report

It appears from the Smith Report that Dr Smith was not given access to the factual material presented in REA's Original Submission and was also asked to make several assumptions that are not supported by the evidence. As a result, Dr Smith misunderstands REA's contract/pricing model and the competitive dynamics of digital property listings in a number of important respects.

This supplementary submission does not seek to respond to each point made in the Smith Report. However, set out below are REA's responses to those points in relation to which the Smith Report is either particularly misconceived and/or likely to mislead the ACCC if left unchallenged (to the extent not already addressed in sections 3 to 6 above). The RBB Response attached at Annexure B also responds to certain economic issues arising from the Smith Report.

- (**Misunderstanding regarding nature of REA's contracts**) Dr Smith appears to think that it is a condition of REA's contracts that an agent must use REA's platform, and the relevant contracted depth listing, for all of their properties (i.e. she appears to think that an agent/vendor cannot simply choose not to list their property on REA's platform): "*In order for a real estate agent to be able to offer the premium package to a vendor, it must agree to pay at least the premium price for all of its clients*" (page 1) and "*the effective requirement that all of the agents' [vendors] will pay for the premium package locks those clients into REA and REA's rivals will only gain business where the client is prepared to advertise on more than one site*" (page 2). No such condition exists in REA's contracts. An agent with an REA depth contract is perfectly free not to list a particular property on REA's platform – indeed, they are free to list a particular property on all available platforms *except* REA's platform. We also reiterate that, even if Dr Smith intended only to refer to a condition that an agent use REA's depth listings for those properties that the agent/vendor elects to list on REA's platform, that condition would only apply to REA's "All" depth contracts and not REA's "Elect" depth contracts or Standard subscriptions.
- (**Selection of "standard package"**) Dr Smith suggests that, if a vendor "*select[s] the standard package*", the "*agent is left to fund the difference*" (page 1). However, that suggests that an agent will generally give the vendor a menu of options from which to choose – in practice, the agent will make a decision as to the best listing type for the vendor's property and then communicate that as his or her proposal. Further, agents are able to differentiate their offering to vendors by taking advantage of a flexibility in an REA depth contract (e.g. an exception), entering into a relatively low-cost Standard subscription or selecting a lower level of REA depth contract and presenting the vendor with a lower-cost listing option.
- (**Impact of REA's model on bargaining power**) Dr Smith asserts that "*the effect of REA's product offer is to reduce the bargaining power of franchisees because the loss of any individual franchisee by REA is insignificant*" (page 2). However, in and of itself REA's contract/pricing model has no impact whatsoever on any party's bargaining power.

Further, this claim suggests that in formulating its contract/pricing model REA had the purpose of reducing agents' bargaining power; in fact, it reflects the various considerations previously discussed at length in REA's Original Submission and this supplementary submission (for example, the need to maintain equity and fairness as between agents).

- (**"Packages that REA chooses to offer"**) Dr Smith states that agents "*can only negotiate in relation to the package that REA chooses to offer*" and so agents are not "*free to negotiate for the supply of advertising*" (page 3). First, this statement suggests that REA has a monolithic offer to agents whereas REA offers 17 contract permutations and various flexibilities within each of those contracts. Second, the statement wrongly suggests that a choice by a supplier not to offer a particular good or service (or some narrow variation of a particular good or service) infringes the freedom of purchasers to make purchasing decisions. It is axiomatic that, in every market, a purchaser's choices are always practically limited to the goods and services that suppliers are willing to offer.
- (**Refusals to deal**) Dr Smith says "*it has long been accepted that offering a non-commercial price for supply is in effect a refusal to deal*" and "*offering the premium advertising package on a stand-alone basis at a significantly higher price when agents agree to purchase at least the premium package is an effective refusal to deal*". REA agrees that the offer of goods or services at very high prices can, in some circumstances, be regarded as a constructive refusal to deal. However, that has never been alleged in relation to REA. Some agents do in fact choose to advertise properties with depth listings purchased at REA's standard, undiscounted rates (although it is less common – agents who anticipate they will need to use depth listings will generally select an appropriate depth listing contract). It is plainly unreasonable to characterise as a refusal to deal the making of an offer which is selected by some agents.
- (**Necessity of using REA's platform**) Dr Smith says that it appears that, in the view of vendors, they "*must have their property advertised on REA's site – this is not merely a preference, it is a necessity*" (page 4). This submission is simply untenable. There is no compulsion on any agent or vendor to list a property on REA's platform. Indeed, many properties are sold without ever being advertised through REA (let alone listed via one of REA's depth listing products), for example properties that are sold exclusively through agents' websites, private listing websites or "off-the-market" platforms – see further section 6.5 of REA's Original Submission, pages 37 and 38. To the extent that agents or vendors list on REA's platform, that clearly reflects a preference to do so (albeit one backed by a compelling rationale, which is that advertising on REA's platform is cost-effective having regard to factors such as the size of REA's audience).

8 General comments concerning agent support for the Application

REA would like to make a number of brief additional observations concerning the level of agent support for the Application.

In common with most other businesses, REA is not always able to meet the exact preferences of all its customers and some level of discontent is inevitable. REA is not surprised that some agents have been willing to assist PMG in the preparation of the Application and its supporting documents. REA naturally expects that some agents would prefer to:

- spend less in acquiring REA's services, including so that a greater proportion of a vendor's overall spend can be directed to either other forms of advertising (which may be supplied directly by the agent) or agents' commissions and other sources of agent income; and
- exercise complete discretion to acquire any type of REA listing product they wish at any time and at consistently low prices.

However, for the following reasons, REA does not accept that a large proportion of agents wish to see an unwinding of REA's current contract/pricing model or the implementation of boycotts against REA.

- (**REA engagement with agents**) As the ACCC will expect, REA's account managers and senior management have been engaging closely with customers to ascertain the level of support for PMG's proposed approach. In those conversations, the large majority of REA's customers have not expressed support for the Application. Indeed, several REA customers named as supporters in the Application have indicated to REA that they are not closely involved in, or particularly supportive of, the approach being proposed by PMG.
- (**Ambiguous statements of support**) It appears that PMG has received statements of support from only 170 agencies (out of approximately [redacted]) and, on the basis of the extract provided in PMG's RFI Response (see page 3), the statement of support appears only to foreshadow collective negotiations at a generic level and does not mention boycotts. It is possible that some agents, when presented with a simple promise of lower prices and greater flexibility, have readily given their support without appreciating the full implications of the proposed conduct as detailed in PMG's submissions. For instance, the statement of support does not appear to foreshadow that PMG may seek special deals for members of large franchise networks or alternative pricing models such as cost-per-click pricing, which could be expected to result in some agents paying more for REA's services. REA anticipates that, if it had, the level of support able to be obtained by PMG would have been considerably lower.
- (**Potentially misleading Agents' Statement**) Although it is not clear, the Agents' Statement appears to overstate the extent of agent support: supporting agents are described as "*members or franchisees*" within undisclosed franchise networks, and those networks are then described as

incorporating an undisclosed number of "*separate agencies*" (see page 1). However, it can be safely assumed that not all of the separate agencies operating within those networks are particularly supportive of the Application.

Annexure A – Response to ACCC RFI to REA

Set out below are REA's responses to the specific questions posed by the ACCC in its letter to REA dated 22 July 2016.

REA would be pleased to further assist the ACCC should it have any additional queries concerning the issues raised by the Application, any of PMG's or REA's various submissions, or in the below response.

1. At page 13 of its submission of 25 May 2016, REA advises that around 34 per cent of its total revenue is obtained from third party advertisers, such as banks, insurance companies and furniture retailers.

Approximately 19% of REA's total revenue is derived from display (e.g. banner) advertising purchased by developers and other advertisers such as banks, insurance companies and furniture retailers (in this response, referred to as **display advertisers**). REA's Original Submission noted that most of REA's revenue in Australia is derived from property listings purchased by agents and developers (66%) and display advertising, but it did not intend to imply that the remaining 34% was accounted for only by display advertising.

a) Have any of these advertisers raised concerns with REA about the proposed collective bargaining and boycott arrangements?

Display advertisers have not raised any concerns with REA about the proposed collective bargaining and boycotts. However, this is to be expected. Display advertising is an ancillary part of REA's business, which functions separately from the publication of property listings. Display advertisers are therefore unlikely to be concerned about the terms upon which agents purchase listings for properties on REA's platform. Further, any impact on REA's audience as a result of the proposed conduct would have a proportional impact on display advertisers' costs to advertise on REA's platform; accordingly, they are likely to be indifferent as to the absolute size of REA's audience.

b) What effect does REA think the conduct, if authorised, would have on these [display] advertisers?

The proposed conduct, if authorised, would be unlikely to have any direct effect on display advertisers. However, if the size of REA's audience were to decrease as an indirect result of the proposed conduct, then display advertisers would naturally find REA's platform a relatively unattractive outlet for their advertising and would substitute away from REA's platform in favour of other advertising outlets and/or be prepared to pay less to REA.

c) How will it impact REA's ability to earn revenue from them?

The prices that REA charges for display advertising are not directly linked to the prices paid by agents for listings and, as noted above, REA does not otherwise expect there to be any direct effect on display advertisers. In that context, REA does not anticipate that the proposed conduct would have any direct impact on its ability to earn revenue from display advertisers. However, for the reasons given above, if there were a reduction in the size of REA's audience then that would reduce demand for display advertising on REA's platform.

2. ***REA's submission of 25 May 2016 states that its prices are currently transparent to all agents. However, the ACCC has received submissions disagreeing with this claim.***

   a) ***Can you please explain how REA makes its prices available to agents, including whether listing prices are available to all agents across all locations? In your response, please provide examples/screen shots of what agents see when they search for REA's listing prices for properties in an inner city suburb, an outer suburb in the city, and a regional location.***

   REA's prices are transparent to agents in the sense that each agent is offered the same services at the same prices as each other agent in the geographic area in which it competes, and each agent therefore has access to the prices for subscriptions and per-listing upgrade fees that are applicable to agents and properties in their area. As a result, each agent will know the prices available to its competitors.

   REA makes its contract/pricing model transparent to agents in a range of ways, including the following.

   - (**New customer materials**) REA's business development managers (**BDMs**) will typically send a prospective agent customer materials explaining, among other things, REA's platform, the various subscription and contract options, and each listing type. BDMs can also use Microsoft Excel-based pricing tools to clearly show prospective agent customers per-listing prices – on a "casual" or "contracted" basis, under various depth contacts and suburb-by-suburb. These tools also show price ranges in surrounding suburbs for comparison.
   - (**Account manager discussions**) Discussions between agents and their REA account managers generally revolve around issues such as the performance of an agent's listings, training, education of vendors, contract options close to renewal periods and any other concerns that agents may raise. These discussions typically occur every 5-7 weeks, although they may be more or less frequent in a particular case. In the context of those discussions, an agent may seek to understand pricing in both the geographic area in which they are active and other areas, and in relation to various contract options (although generally an agent will not be interested in the price of listings for areas in which they are not active). In this respect, REA notes that PMG misrepresents REA's submissions regarding the role played by its account managers. Contrary to PMG's claim (see PMG Supplementary Submission, page 11), REA has never asserted, or even implied, that its accounts managers "*have the*

best interests of agents at heart". Clearly, the primary purpose of an REA account manager is to assist in the marketing of REA's services. However, REA recognises that account managers are more likely to be successful in achieving that objective if they are of genuine assistance to agents.

- (**Web tool with personalised rate card**) The price for any given listing is based on a range of factors, including the applicable subscription, the applicable depth contract, the location of the listed property and the duration of any upgrade. For ease of reference, agents are given access to the prices applicable to the contract level of their office, which they access through an online agent portal which has all of these factors pre-loaded and which is capable of generating listing prices available to the agent. The requested screenshots showing what agents see when they use the agent portal, along with a screenshot of the "Tableau" data management tool that account managers can use to work through a new or renewing agent's options, are provided in **Confidential Annexure C**.

As such, it is correct that REA does not make all prices, across all areas and contract types, available to all agents. However, this is only because the thousands of pricing permutations this would contain is information that is mostly irrelevant to any given agent – it will mostly consist of prices that are offered for listings of properties for which an agent will never compete, or for contract types which the agent's office has chosen not to select. Through all of the methods outlined above, REA makes all relevant pricing information freely available to all agents who wish to access it.

3. ***At page 21 of its submission of 25 May 2016, REA submits that its various depth listing discounts under depth contracts are 'offered equally to all agents.'***

   a) ***Please describe any depth contracts that are only offered in certain locations.***

   As suggested by Table 4 of REA's Original Submission (see page 19), REA sometimes makes specially prepared offers in particular geographic areas, usually where REA is subject to particular competitive pressures and/or agents have specific demands. These offers may also be available only for a limited time. Importantly, in all cases, all agents in a geography are given the same opportunity to take up the offer – the offers are not made to particular agents, agent types or members of particular franchise networks.

   In recent years, REA has offered the following geographically/time limited offers (some of which are also set out in Table 4 of REA's Original Submission):

   - NSW Premiere All 30 VIP Bundle [redacted].

- NSW Premiere All 30 [redacted].
- Premiere 45 All Spring Offer VIP Bundle [redacted].
- WA Premiere All [redacted].
- Regional Premiere All and other regional offers [redacted]
- Regional re-upgrade offer [redacted].
- Gold Coast Premiere All [redacted].

b) ***How often does this occur?***

There is no fixed schedule or frequency with which REA makes geographically/time limited offers. However, in a typical year REA would introduce two or three. One of the reasons why REA does not do so more frequently is that each offer requires significant fixed cost investments in backend systems and processes.

4. ***We understand that REA does not provide volume discounts to franchise networks. Please outline if there are any other payments, rebates or effective discounts that REA offers franchise networks?***

REA does not negotiate volume discounts for listings at the franchise network level. The main reason for that approach is that it meets agent demands for equity and fairness.

However, REA has some bespoke arrangements in place with franchise networks and multi-office agencies that are distinct from the supply of listing services.

Those arrangements include:

- [redacted]
- [redacted]

- [redacted]
- [redacted]

REA is willing to enter into these arrangements because it is confident they maintain equity and fairness as between agents. That is, they do not affect the prices paid by agents for their listings and do not give any agent (such as in a large franchise network) a material advantage over any other agent (including small independent or start-up agencies) when they are competing to supply agent services to vendors.

5. ***At page 34 of its submission of 25 May 2016, REA advises that agents have threatened not to list properties on REA's platform or not to recommend the ongoing use of REA's platform.***

   a) ***Can REA provide examples of these situations and whether or not these threats were actually carried out?***

   Specific examples of threats of this kind are set out below.

   - [redacted]
   - [redacted]
   - [redacted]

   [redacted]

   b) ***Did REA change its offering to these agents?***

   In circumstances where an agent or group of agents threatens to withdraw its listings from REA, REA does not then negotiate a special or "one-off" deal. REA may consider changing its listing prices for a market zone in which relevant properties are located, but that will depend on the extent to which other agents in the same area have raised similar concerns. Any resulting change would be would offered equally to all relevant agents, whether or not they had individually raised any concerns with REA.

[redacted]

[redacted]

6. ***At page 49 of its submission of 25 May 2016, REA describes it as 'routine' for agents to purchase multiple subscriptions to give themselves maximum flexibility. However, during our consultation process, the ACCC has been advised that agents do not do this.***

   a) ***Please provide an estimate of the proportion of REA's customers that have multiple subscriptions with it?***

   To clarify, REA's policy is that an agency can enter into only one subscription per licensed real estate office.

   However, some agencies own and operate multiple offices; thus these agencies can purchase multiple subscriptions from REA.

   REA does not advertise the ability to have multiple subscriptions because it is only a possibility for (and is really a bi-product of) an agency owning multiple offices.

   REA is not surprised that many agents aren't aware of the above situation, as most agencies are owned and operated on a single office basis.

   [redacted]

7. ***At page 50 of its submission of 25 May 2016, REA submits that a relatively small proportion of its customers actively use the allotted exceptions under 'Premiere All' depth contracts. However, it has been suggested to the ACCC that agents almost always exhaust the permitted exceptions and often part way through the month.***

   The feedback received by the ACCC is simply inconsistent with REA's data on the use of exceptions.

   a) ***The ACCC understands that 'permitted exceptions' only relate to 'Contract All' depth contracts. To the extent possible, can REA***

please provide an estimate of the proportion of 'Contract All' contracts it currently has?

Permitted (meaning contracted) exceptions relate to REA's Premiere All depth contracts.

As noted in REA's Original Submission (see section 7.2, page 50), REA's Premiere All depth contracts allow an agent to downgrade [redacted] of its listings, at a similarly discounted price. Agents are then able to cost-effectively deliver Premiere listings to the majority of their vendors while also allowing for the possibility that a minority of vendors will be unwilling to pay for a Premiere listing.

Approximately [redacted] of REA's subscriptions involve a Premiere All depth contract. These subscriptions represent approximately [redacted] of all customer offices that have subscriptions with REA.

b) ***Of these, please provide a further breakdown of the rate of use of the permitted exceptions.***

Of the [redacted] agents with Premiere All depth contracts, only [redacted] have *ever* claimed one or more exceptions, for a total of [redacted] claims (to end June 2016).

Of the [redacted] agents that have claimed one or more exceptions:

- very few (possibly fewer than [redacted] agents) have used 100% of their exceptions entitlement;
- [redacted] agents have used at least 80% of their exceptions entitlement;
- [redacted] agents have used at least 50% of their exceptions entitlement;
- [redacted] agents have used less than 50% (but more than 15%) of their exceptions entitlement; and
- [redacted] agents have used less than 15% of their exceptions entitlement.

c) ***To the extent that exceptions are being fully exhausted, have agents raised these concerns with REA Account Managers and if so, what was REA's response?***

While detailed records of conversations between REA's account manager and agents are not kept, REA has previously been made aware that some agents in particular areas and situations would prefer a greater number of exceptions. As a result, REA has explored alternative structures to meet the needs of customers in markets where there is a higher take-up of exceptions. This typically happens in markets where there is a very high level of heterogeneity in the market (e.g. the Gold Coast where very low price apartments are sold by agents who also sell very high priced mansions), or where the local property market is depressed and many vendors are unable or unwilling to pay for marketing of their properties (e.g. WA after the mining boom). In those markets, REA has reacted to this customer feedback by exploring alternative product and offer constructs for impacted customers.

d) ***To the extent that the permitted downgrade exceptions are not being fully exhausted, does REA have a view as to why this might be occurring?***

REA does not know precisely why agents are not fully exhausting their entitlements to exceptions under REA's Premiere All depth contracts, however the following factors are likely to be relevant.

- (**Lack of need**) For most relevant agents, there is no pressing need for them to use exceptions because their vendors are generally happy to use and pay for Premiere listings for their properties. The inherent larger advertising value of a Premiere listing is evident to both vendors and agents, and so the desire for downgrades is minimal.
- (**Lack of incentives**) A principal of an agency will have an awareness of the exceptions available in their Premiere All depth contract but they might not necessarily want those exceptions to be used by any of his or her agents: Premiere All listings provide valuable exposure for the agents themselves (e.g. in terms of branding), and if the vendor is paying for that listing then the principal will generally want the maximum exposure. It is also likely that the principals of some agencies (who will generally manage the contract with REA) may not encourage individual agents within his or her agency to use the exceptions, in order to avoid a situation where some agents in the office might seek to win listings "cheaply" by offering vendors a lower cost (and lower value) online advertising solution.
- (**Manual process**) The process for claiming an exception is "manual" in the sense that it must be initiated by an agent and processed via their REA account manager. Although it is a straightforward process that agents initiate without any difficulty, some agents may not be willing to take the limited time required to do so.

8. ***At page 53 of its submission of 25 May 2016, REA submits that if PMG were authorised to collectively bargain, it would be in a position to negotiate prices that are lower than REA's current prices (even without the ability to boycott).***

a) ***Please explain why REA considers this will occur if collective bargaining were voluntary.***

It is difficult for REA to anticipate the precise means by which PMG will negotiate (even with the benefit of PMG's RFI Response) or how it would interact with participating agents before, during and after negotiating with REA. Those would be important factors in determining REA's likely response.

However, REA believes that, if PMG were to come to REA representing a large group of agents and make demands for lower pricing and/or changes to REA's contract/pricing model, REA would naturally consider how those particular demands could be accommodated. REA's enhanced willingness to consider and accede to the group's demands would be driven partly by the inherent threat that agents could unilaterally but simultaneously decide to withdraw their listings from REA's platform (or begin only to use Standard listings on REA's platform), resulting in a substantial loss of revenue, unless the demands were met. Indeed, that course of action is likely to be positively recommended by PMG, even in the absence of authorisation for boycott conduct.

9. ***At page 57 of its submission of 25 May 2016, REA submits that should collective bargaining result in a reduction in price at a particular level of depth listing on REA's platform relative to other types of depth listing, it would result in a 'flattening' of REA's pricing model. This would result in homogeneity of listings, and therefore, any material reduction in prices for premium listings is likely to simply result in renewed demand for a higher level of listing by agents seeking to differentiate their properties.***

   a) ***Please explain why REA considers this is likely to occur – that is, wouldn't PMG be likely to seek to negotiate price reductions and greater contract flexibility across REA's entire range of listing types?***

   One of PMG's overall complaints is that particular depth listings (most obviously Premiere listings) are priced at relatively high levels. Accordingly, REA's expectation is that those listings would be subject to demands for relatively large price decreases, thus "flattening" REA's pricing model. The marginal cost of REA's standard listings is also currently set at zero, so any reduction across the board would constitute a flattening. REA does not consider this to be inconsistent with PMG seeking price reductions, or greater flexibility, across the board. A key point is also that there would be a compression in the range of prices, and more agents would be more likely to purchase the higher levels of listing.

10. ***At page 5 of its submission of 25 May 2016, REA advises that its base subscriptions have declined in price over the last three years. However, the ACCC has heard reports of REA recently announcing significant increases across its listing prices.***

   a) ***Can REA please confirm whether this is correct? In your response, please outline the nature of any increase and what has driven this increase.***

REA's subscription prices have not recently changed but upgrade fees for depth listings increased on 20 June 2016 for customers not on Premiere All, and on 1 July 2016 for customers on Premiere All contracts. Although the price increases vary by geographic area, the average price increase across Australia was approximately [redacted]. The average price increase for agents on Premiere All contracts was approximately [redacted].

These price increases are the first in approximately two years for the majority of REA's customers. They have been implemented to reflect the continued growth in the value of REA's platform (for example, the number of users of REA's mobile application increased from [redacted] per month from September 2015 to May 2016). REA considers that, since the time of the last price increase, agents have enjoyed significantly greater increases in return on investment. Average house prices (and therefore agents' commissions) have also increased over that period.

11. Can REA please provide examples of when it has adjusted its pricing to compete or grow market share? If so, would REA expect demand to drop off if it subsequently increased its prices?

In REA's Original Submission (see section 6.8, page 41), REA highlighted that it had reduced rates in Western Australia (to address overall market conditions and strong competition from REIWA) and in the ACT (to address particularly acute competitive pressures from Domain's Allhomes business and the relative weakness of the REA platform).

Further examples include the following.

- (**Premiere listing prices in rural areas**) In rural areas, REA's prices for Premiere listings have generally been trending down for the past two years in an effort to stimulate demand in those markets.
- [redacted]

REA would obviously expect demand to drop off if it subsequently raised its prices without an accompanying improvement in audience, innovation or other factors influencing demand. However, REA would not generally raise its prices without confidence that agent and vendor demand, and market fundamentals, were sufficiently strong to support the price increase.

12. At page 66 of its submission of 25 May 2016, REA submits that if PMG could negotiate a 'special deal' for a group of agents, the transparency of REA's listing prices on its platform would be immediately reduced.

a) ***Can you please provide further information about what impact the proposed collective bargaining arrangements would have on REA's listing prices and contracting processes for agents outside PMG's collective bargaining group?***

If there were to be a separate set of prices for members of the PMG collective bargaining group, this would require duplication of REA's entire pricing infrastructure, and many of its contract setup, management and support processes. In addition to imposing significant costs on REA to develop this additional infrastructure, it would divert REA's resources away from generating real innovation and value in its products, which benefits vendors, agents and property seekers. It is also likely that under such a scenario the "level playing field" approach that REA has taken to working with agents would be disrupted, which would put at risk the ability of new agencies to enter the market and create innovative business models in the real estate market in general.

Annexure B – RBB Response

RBB | Economics

Response to comments by Rhonda Smith

RBB Economics, 10 August 2016

This short note responds to certain comments made by Dr Rhonda L. Smith (**RS**) on the submission by RBB Economics on behalf of REA (**Original RBB Report**). The note addresses the following points:

- the alleged restriction of choice to agents;
- the comments by RS on price discrimination;
- whether REA has substantial market power; and
- the views of RS on transaction cost savings.

1. The alleged restriction of choice

RS begins her note by setting out two asserted facts which she believes the authorisation is intended to address. These are that:

- REA will only negotiate with individual franchisees and not with franchisors; and
- REA's pricing locks real estate agents into at least its premium advertising option.

These two asserted facts, and particularly the second of these, are effectively presented as "evidence" that REA's pricing model is leading to competitive detriment or consumer harm in relation to which it is suggested that the ACCC should intervene. Indeed, RS's comments contain a number of pejorative references such as REA's pricing model "*removes choice*" (page 1 of RS comments), "*a la carte access to the premium package is commercially unrealistic*" (page 2 of RS comments), and "*offering the premium advertising package on a stand-alone basis at a significantly higher price when agents agree to purchase at least the premium package is an effective refusal to deal*" (page 3 of RS comments).

The evidence that RS uses to support the broad claim that agents are "locked in" to REA's premium advertising contracts and have no choice is that the cost of a premium listing on a contracted basis is $2,649 (contract all) whereas the cost of a premium listing on a standard (i.e. "one-off" or "casual") basis is $5,298. RS argues that the fact that the standard option costs 200 per cent of the contracted offer is evidence that choice is restricted and that this removal of choice represents harm to agents.

The difference between the price of a single item and its effective price when purchased as part of a package or in bulk cannot be used to indicate that a firm has market power or is acting in an anti-competitive manner. Such differences are used by firms in competitive markets where no one would credibly allege that consumers were being harmed. For instance, an Original Glazed Doughnut from Krispy Kreme costs $2.95 if purchased on its own. Yet if you purchase a carton of 24 Original Glazed Doughnuts, the effective price of the doughnut falls to $1.25.[1] The standalone price is 236 per cent of the effective price when bought in a 24 pack – higher than the relativity between the stand-alone price and the "contract all" price that RS uses in her comments to argue that agents are being denied choice.

This very simple example suggests that such a differential neither suggests that Krispy Kreme has substantial market power nor that consumers are getting harmed. Consumers are not being denied the ability to choose one doughnut and are not facing "commercially unrealistic" prices when looking to purchase a single doughnut. Such a pricing model is, instead, a commonly used strategy by firms to entice consumers to buy more rather than less of their products and services and it would be unreasonable if the price of a single Original Glazed Doughnut was characterised as an effective refusal to deal.

Similarly, firms in high fixed cost industries will often use rebates or volume discounts in order to make additional sales to ensure the efficient recovery of those fixed costs. Such an outcome would be pro-competitive and efficient. Such an outcome also means that some consumers will pay more on a per unit basis when purchasing smaller volumes if they do not qualify for the rebate or volume discount. That does not mean that the market has failed or that those "one-off" prices are above the competitive level and it would be unreasonable in this case to characterise the standard or ad hoc prices for listings as "commercially unrealistic" or as an effective refusal to deal simply on the basis that they are more expensive than if the consumer pre-commits to a certain level of volume.

[1] Prices as at 14 July 2016, Swanston Street store, Melbourne.

2. RS comments on price discrimination

RS mischaracterises RBB's discussion on price discrimination arguing that the "*reason for the authorisation application is not price discrimination but rather the restrictions on entities bargaining and indeed on the accepted role of a franchisor*". RBB never claimed that price discrimination was the reason for the application. Our point was that one reason why prices may depart from costs (including non-marginal costs) was because firms – including both those with and without substantial market power – can engage in price discrimination and that this should not be seen as evidence that prices should be characterised as excessive.

RS criticises third degree price discrimination if it reduces supply (output) and because it might harm the competitive process (because it may foreclose rivals from developing competing platforms). Insofar as they are intended to apply to REA, these criticisms are unfounded.

- First, third degree price discrimination in this case is likely to increase supply. If REA charged a uniform price for its services this is likely to be set at a price that is higher than the low end or standard offering and would mean that some agents would not advertise on REA. More importantly, REA's business model is to make itself as attractive as possible to both sides of the market by having more listings. It has no incentive to reduce supply. RS also alleges on page 2 that "'*the loss of any individual franchisee by REA is insignificant and each agent recognises the insignificance of its own business to REA*". This is simply not correct. REA's clear business model – which is understood by each agent – is to have as many listings on REA's website as it can to make itself as attractive as it can to property seekers.

- Second, the allegation that third degree price discrimination might harm competition by foreclosing rivals is theoretical and has not been made by PMG.

RS also disputes that the third degree price discrimination engaged in by REA is aimed at identifying the willingness to pay of agents yet the footnote on page 1 of her report notes that "*prices may vary from locality to locality*". Given that the costs to REA of publishing a listing for a property do not vary from locality to locality, variations in pricing that are based on locality are clearly one way for REA to identify the willingness of agents to pay for online advertising.

3. Whether REA has substantial market power

On page 3 of her comments, RS states the percentage of vendors who advertise on REA's website (95 per cent) is evidence that the constraint imposed by REA's competitors is not very great.

RS refers to the significant percentage (i.e. 95%) of vendors who advertise on REA's platform as a factor that indicates that the constraints imposed on REA by Domain, and other suppliers of online platforms, are weak. RS suggests that customers using rival platforms as well as REA's does not impose a constraint, and claims that the relevant information is the proportion of vendors who would chose to use platforms other than REA's. RS then concludes that other platforms are not a close substitute for advertising on the REA platform.

These arguments are either unclear or flawed, for the reasons set out below.

First, it is unclear how the 95% estimate referred to by RS relates to any of the analysis presented in the Original RBB Report.

Second, RS fails to present any factual evidence to support the presumption that other platforms are not close substitutes to REA's platform and instead claims that multi-homing in relation to real estate advertising indicates complementarity of products, not substitutability.

Multi-homing indicates that REA's platform is often used in conjunction with rivals' platforms. However, this does not mean that these platforms are *not* substitutes. The fact that vendors or property seekers use multiple platforms does not prevent some of them from leaving REA, or some vendors reducing their listing options on REA, in the event that REA increases its prices or reduces its service quality relative to its rivals.

More importantly, as explained in the Original RBB Report, multi-homing by vendors or property seekers creates increased opportunities for rival platforms to compete. Rival platforms can easily enter or expand in the event that REA were to increase its price or lower its quality. This, in turn, provides a strong competitive constraint on REA's behaviour.

RS also suggests that REA is likely to have a substantial degree of market power because there are likely to be barriers to entry in this market (because entry is unlikely to be effective). However, there are two points to make in response to this:

- The firms that we identify in the relevant market have already entered the market and are effective at providing services to vendors. The number of vendors that use REA's website is not determinative of the strength of the constraint provided by competitor firms. That is, while vendors are likely to prefer REA's website, REA does not operate free from constraints and indeed it recognises that its continued success relies on it offering a service that is valuable to both sides of the market. Other firms including those in the market will be hoping to replicate REA's success and ultimately displace it in the market and it is that process of competition that ensures that those firms continue to provide a strong constraint to REA. It is simply not correct to imply, as RS seems to do, that the process of competition has reached an end point in this market and that REA's market leading position will never be challenged.

- The fact that more vendors use REA's website than other websites should not be seen as a barrier to entry (or expansion). REA has been successful because it provides services that agents and property seekers value and these benefits can be replicated by other firms. RS's view that first and sometimes second mover advantages mean that other firms are unlikely to ever offer a significant competitive constraint in the relevant market is unsubstantiated and not supported by observed market evidence (such as the success of Google in providing search services despite Yahoo's first mover advantage in that market).

RS also claims that as "*a general statement it is incorrect to say that in a competition law context only one firm can be dominant – in the EU, for example, there has been acceptance of a concept of joint dominance for many years*". RS also provides an opinion – with no obvious supporting evidence – that REA is dominant overall and that Domain may be also dominant in some market segments.

However, the EU concept of joint dominance refers to undertakings which are able to engage in a parallel manner in a market by coordinating their behaviour (above the normal recognition of interdependence by oligopolies in concentrated markets). Although it is not clear, RS therefore appears to be suggesting that Domain and REA are colluding. This is not a claim that has been made by PMG and no evidence exists or has been presented that could support such an allegation.

Finally, while it is correct to say that under EU law two firms can be jointly dominant (and of course under Australian law more than one firm can have market power for the purposes of section 46 of the *Competition and Consumer Act 2010*), our point was that, as a matter of economics rather than law, it is not possible to have two dominant suppliers in online property advertisement markets because REA and Domain competitively constrain each other (as demonstrated by the material set out in our report from page 15 onwards).

4. The views of RS on transaction cost savings

RS claims that REA's conduct has the effect "*that agents are unable to reduce transactions costs by having their franchisor negotiate with REA on their behalf*" (page 4 of RS comments).

In our view, this claim is overstated. Our understanding is that neither REA nor agents are subject to material transaction costs and that REA's contract and pricing model is easy to understand and to compare to other digital advertising options.[2] We also understand that, even with collective bargaining by PMG, there would be a continuing need for REA to bilaterally negotiate some aspects of its arrangements with agents.[3]

This suggests that the cost savings from collective bargaining are likely to be small and therefore also less likely to have an effect in the "downstream" market if passed on in full or in part in the form of lower commissions negotiated by vendors.

5. Conclusion

Many, if not all, of RS' comments rely on the presumption that the differential between the standard (uncontracted) price and the contracted price restricts choice and indicates that REA has a substantial degree of market power. Yet the source of this market power is never really identified and these differentials – rather than indicating that consumers are being denied choice – are common in many markets including markets that are extremely competitive and where consumers are able to exercise choice.

Moreover, many of the allegations made by RS are theoretical, unsubstantiated, and go well beyond the scope of PMG's application. For example, RS claims that the third degree price

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[2] REA Group Limited, "*Submission to ACCC regarding application for authorisation by Property Media Group Pty Ltd*" 25 May 2016 page 58.

[3] ibid, p.59.

discrimination undertaken by REA forecloses rivals and harms the competitive process and also seems to suggest that – on the basis of little or no analysis – REA and Domain are colluding. None of these allegations have actually been made by PMG and no actual evidence has been presented to substantiate these.

Confidential Annexure C – Screenshots