



**Australian  
Competition &  
Consumer  
Commission**

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11 May 2016

Paul Kirton  
Macpherson Kelley

**Via email:** [paul.kirton@mk.com.au](mailto:paul.kirton@mk.com.au); [james.garrett.@mk.com.au](mailto:james.garrett.@mk.com.au)

Dear Mr Kirton

**Re: Property Media Group applications for authorisation (A91537-8)  
– information request**

As foreshadowed, the ACCC seeks further information to assist its consideration of the proposed collective bargaining and boycott arrangements. In particular, we would appreciate clarification of the scope of the conduct for which authorisation is sought and how the proposed arrangements will work in practice.

Please refer to Attachment A for a list of issues. The ACCC would appreciate receiving PMG's response to these issues as soon as possible, and ideally by **20 May 2016**.

Subject to any exclusion requests, the ACCC will place PMG's response on the public register for this matter.

This letter will also be placed on the ACCC's public register. If you would like to discuss any of the issues raised, please contact Jaime Martin on (03) 9290 1477 (or at [jaime.martin@accc.gov.au](mailto:jaime.martin@accc.gov.au)) or myself on (02) 6243 1266 (or at [david.hatfield@accc.gov.au](mailto:david.hatfield@accc.gov.au)).

Yours sincerely

David Hatfield  
Director  
Adjudication Branch

## **Attachment A – Property Media Group applications for authorisation (A91537-8)**

### **Request for information**

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#### **Scope of the proposed arrangements for which PMG seeks authorisation**

1. The authorisation application Forms describe the goods and services relevant to the applications as advertising ‘including, but not limited, to online and print advertisers forms.’ However, the supporting submission primarily discusses proposed collective bargaining and boycott arrangements in relation to online real estate advertising.
  - a) Please confirm whether PMG seeks authorisation in relation to online real estate advertising only or whether you seek authorisation to extend to print advertising.
2. There currently appears to be an inconsistency between Form B of PMG’s application and Annexure A of PMG’s supporting submission.
  - a) Please confirm whether PMG seeks authorisation for contracts, arrangements or understandings that might substantially lessen competition within the meaning of section 45 of the Competition and Consumer Act?
3. Page 22 of the supporting submission states that PMG seeks to collectively negotiate with ‘online advertising media suppliers (including but not limited to the dominant suppliers).’ However, the supporting submission focuses on proposed collective bargaining and possible boycott activities in relation to the dominant players, REA Group and Domain.
  - a) Can you please confirm who the potential targets of the proposed arrangements are?
  - b) To the extent these details are not already provided in the supporting submission, please provide a full list of potential real estate advertising targets.
  - c) If authorisation were granted, PMG proposes that the conduct would initially occur in Victoria, and then potentially expand ‘to cover all of Australia.’ Please explain whether PMG would initially seek to engage in the proposed conduct with all or a subset of targets in Victoria?

#### **Application on behalf of current and future real estate agents**

4. Annexure L of the supporting submission lists current real estate agents on whose behalf the authorisation applications have been made. In addition, items (www), (xxx) and (yyy) of Annexure L appear to seek authorisation for any real estate agency in Australia that joins the collective bargaining group in the future.
  - a) For (www), (xxx) and (yyy), please clarify what kind of businesses these definitions are seeking to capture?
5. Page 22 of the supporting submission states that although PMG is making this application on behalf of the parties (listed at Annexure L), any party may, ‘upon written request to PMG, become a party to the Application and the authorised conduct.’
  - a) Please explain how PMG expects future parties will be added to the proposed collective bargaining group? Do you expect any parties will be added prior to the ACCC making a final determination?

6. PMG advises in its supporting submission that 170 agencies have registered a 'Statement of Support' for the authorisation application.
  - a) Can the ACCC obtain copies of these statements?
  - b) Please outline the nature of the current relationship between PMG and the real estate agents listed at Annexure L.

**Composition of the proposed collective bargaining group and the proposed collective bargaining process**

7. Please describe how the collective bargaining process will work in practice, including:
  - a) Will PMG negotiate on behalf of the entire group, or subgroups within the current agents listed at Annexure L (for example, a single franchise group) – to the extent possible, please provide examples of the different collective bargaining group/s.
  - b) What information will be exchanged between PMG and the bargaining group? How will the information be exchanged?
  - c) Please outline the types of contract terms and conditions, other than pricing, that PMG seeks to negotiate on behalf of the collective bargaining group.
  - d) Please outline how PMG seeks to negotiate advertising prices on behalf of the entire collective bargaining group, compared with how negotiations would occur on behalf of particular subsets of the entire group?
  - e) Please outline the stages of proposed collective negotiations, including the expected timeframes involved.
  - f) At the conclusion of proposed collective negotiations, please explain what kind of contracts you envisage will be signed and by which parties.
  - g) Is PMG intending to acquire significant volumes of online advertising space and then on-sell it to the real estate agents listed at Annexure L?
  - h) How would targets know who PMG is representing in any particular negotiation?
  - i) What will happen to current contracts real estate agents have with the targets?

**Collective boycotts**

8. The ACCC understands that PMG intends to provide 21 days' notice of any intended boycott, provided that negotiations with the target advertiser have been in good faith for at least 6 months prior.
  - a) Is mediation intended prior to boycott?
  - b) If triggered, how long do you envisage a boycott might last?

9. Page 25 of the supporting submission outlines four types of potential collective boycott activity – namely, ‘packaged’, ‘regional’, ‘price’ and ‘group’ based boycotts. Please provide further detail about how each type of collective boycott is intended to operate in practice, including:
  - a) For each type of boycott listed at page 25, please provide specific examples of what a typical boycott might look like, any practical limits that might apply in each case, and any relevant timeframes which may impact when each of the different boycotts might be a viable option.
  - b) How will PMG decide which type of boycott to initiate?
  - c) In relation to proposed regional boycotts, PMG envisages that it would not enact a boycott of more than 30 municipal councils at any one time. Please explain whether it would be practically possible for PMG to initiate a collective boycott involving 30 municipal councils, and what proportion of the total number of dwellings would 30 municipalities represent for each capital city.
10. If a boycott is triggered that involved most agents in a region moving online advertising to an agreed alternative website, how would consumers know about it and know which alternative website to search for houses on (assuming many consumers currently only use a single app of one of the large portals)?
11. Page 33 of the supporting submission states that ‘participation in this Application and the services offered by PMG ... is voluntary.’ Please explain whether participation in any collective boycott would be voluntary, including how relevant real estate agents would receive information about any intended boycott?

#### **Public benefits**

12. PMG submits that one of the public benefits generated by the proposed arrangements will be lower advertising prices for vendors. To assist the ACCC’s consideration of this public benefit claim, can you please describe:
  - a) how real estate agents currently compete to attract vendors, including the extent to which agents compete on commissions and other charges; and
  - b) why you consider any cost savings gained from collective bargaining will be passed through to vendors.
13. Please describe the nature of current negotiations for advertising between real estate agents and REA Group and Domain respectively.