



Fairfax Media Limited Submission in Response to Applications for Authorisation A91537 and A91538

1 Introduction

The submission is made on behalf of Fairfax Media Limited (**Fairfax**) in response to applications for authorisation A91537 and A91538 (the **Application**) made to the Australian Competition and Consumer Commission (the **Commission**) by Property Media Group Pty Ltd (**PMG**) on 18 April 2016.

PMG, on behalf of a number of real estate agents within Australia who engage in advertising services, has applied for authorisation to collectively bargain and collectively boycott against suppliers within the media and advertising market who operate on-line residential property listing websites (with related mobile apps).

Fairfax opposes the grant of authorisation.

2 Summary

The Application raises a number of concerns and complaints which are unsubstantiated, without foundation or misconceived.

Fairfax opposes the grant of authorisation.

In summary:

- the real estate sales advertising market (the **Market**) is highly competitive and innovative, with fierce competition not only between large players but also with, and in response to, a diverse range of smaller players and new entrants;
- the scope of the Application is unprecedented, with authorisation sought more widely (online, print and other platforms) than provided for in the details of the application (which addresses only the online platform);
- the Application has failed to substantiate any form of market failure that may warrant the authorisation sought. In fact, the Market is highly competitive and dynamic. Pricing structures, product offerings and negotiations with agents provide evidence of a highly competitive and investment driven market;
- the Application fails to demonstrate how collective bargaining or boycotting will bring about the claimed benefits. Further, the Application does not address any proposed commercial arrangements between PMG and the agents. The claimed benefits are therefore illusory and amount to unsubstantiated claims of costs savings without any reference of how these savings will be passed on to vendors or agents (if at all); and
- authorisation of the conduct sought will be detrimental to competition and reduce the ability of Market participants to respond flexibly and appropriately in a competitive way to the emergence of new technologies.



3 Domain Group

The Domain Group (**Domain**) is the real estate media and services business division of Fairfax Media Limited. Domain primarily provides residential, commercial and rural property marketing, research and data services and information to buyers, sellers, renters, agents, developers, government organisations and financial markets.

Domain provides digital and print media services across different brands on a range of platforms (Domain, allhomes, reviewproperty and CommercialRealEstate). Domain provides real estate advertising both online through its website (www.domain.com.au) and in major newspapers (The Sydney Morning Herald, The Age, the Canberra Times and The Financial Review) as well as in a number of local community publications.

Domain also provides property data (APM Pricer) and listing management services (MyDesktop) which are complementary to Domain's digital and print media service businesses.

4 Market overview

The Market is highly competitive.

PMG's claim that "the market structure within the media advertising space has a tendency towards monopolistic behaviour"¹ is unsubstantiated. Domain competes in the Market against the dominant incumbent, REA Group Limited (**REA**) (which operates www.realestate.com.au), as well as a growing number of smaller players. The industry is dynamic and driven by innovation, with participants competing across a number of platforms through continual price and product differentiation.

Competition with REA is intense. Domain and REA compete strongly on price and product offering, and through a number of unique engagement opportunities for agents. Product and price differentiation, backed by significant investment, has seen Domain slowly erode REA's dominance in the Market, and grow faster than REA across key measures (including agents, listings, audience, revenue and profit). Domain now has close to equal listings as REA.

Competition more broadly in the Market is similarly strong.

Domain faces competition in the online space from a range of comparison and referral websites (such as OpenAgent, Local Agent Finder and RateMyAgent), price aggregator websites (such as OnTheHouse.com.au), State-based real estate institutes (Realestateview.com.au and REIWA.com), and agents' own websites and marketing. In recent years, significant investment and innovation has taken place with the development of mobile apps and data services. Market participants are constantly seeking to 'leapfrog' each other through the provision of additional data in their services (including price, suburbs, images, amenities and school zones).

Additionally, new entrants with different and innovative models are continually entering the Market, creating a competitive environment to the benefit of agents and consumers. Increasingly, diversified avenues such as sign boards, search engines and social media applications with video and photo content capability represent an enormous array of choice for agents marketing real estate. This choice is not limited to the products offered by Domain and REA – agents have the freedom to choose from a range of media platforms in order to advertise.

¹ Property Media Group Pty Ltd, Applications for authorisation A91537 and A91538 made to the Australian Competition and Consumer Commission (18 April 2016), page 22.

5 PMG's application

5.1 Scope of Application

The Application seeks authorisation to both collectively bargain and collectively boycott suppliers of property sales advertising "including, but not limited, to online and print advertisers forms." The scope of this application is unprecedented.

Further, while the Application is sought in relation to online, print and other advertising media, the Application only provides information and (limited) analysis in relation to online advertising. No information is provided in relation to print or other forms of property sales advertising.

The Application is therefore deceptive in its scope and seeks authorisation for conduct broader than could be justified given the information provided. It is important to distinguish accurately and appropriately between the market for print advertising, the market for online advertising and the developing market for alternative forms of real estate marketing. It is also important to acknowledge the relationship between these different forms of media, and the breadth of alternatives that are available in the property sales advertising space.

The sphere of competition for print advertising can be very geographically specific, with Domain focussing its print distribution through newspapers in Sydney and Canberra and newspapers, magazines and community publications in Melbourne. Print advertising is negotiated separately from online advertising, and while there are occasional promotions which offer benefits across both print and online advertising, print advertising is typically purchased without contract and on an *ad hoc* basis as determined by the needs of a particular agency. Further, the pricing structure for real estate print advertising is dictated by the relative size of advertising space purchased (eg a half-page advertisement in a local newspaper). All agents or vendors therefore face the same prices for advertising in a particular publication regardless of their size, location or the purchase price of the property.

5.2 The Application is not substantiated

The Application makes a number of complaints which lack substantiation and which Fairfax considers to be misconceived and without foundation.

(a) Price offerings

Zero price entry point

The Application suggests that agents face a lack of advertising choice in meeting vendors circumstances and financial capacity. This claim is not substantiated.

Domain and REA adopt competitive pricing strategies to offer a range of distinct subscription products for agents and listings. Domain competes aggressively on price, offering a free subscription product available to all agents. Domain also offers a range of paid 'elite' subscription alternatives. REA does not offer any free product, however provides heavily discounted paid subscription service offerings. Paid subscription offerings (of both REA and Domain) offer additional value by way of additional branding, larger photos and prioritisation in search results.

There is therefore a zero price entry point into the Market and various levels of incremental subscription services available for agents seeking further value. These different price points highlight the innovative pricing strategies adopted in the industry and evidence that there is strong competition.

Prices reflect investment



The Application suggests that the Market has been experiencing “substantial price increases, and prices that are not reflective of the cost of the service.”² There is no evidence to suggest that prices are disproportionate to costs, or that prices have increased as a result of market power.

Increases in prices seen in the Market in recent years has been driven by significant capital investment.

Domain's cost base has grown significantly as product and marketing investment has increased against a background of relatively low inflation. Domain has increased its year-on-year investment steadily for the past fifteen years as a reflection of the imperative to keep abreast of competitors and the accelerating technology opportunities (and associated costs and risks) facing the Market. This trend has been most significant in the past two to three years. [REDACTED]

These investments have yielded substantial development, generating new products and technology, to the material advantage of agents and consumers. Domain's investments reflect the innovation ‘arms race’ taking place within the Market. Increases in prices in certain product ranges therefore reflect the innovative and competitive pressures of the Market, which now offers increased value and more options to agents.

Prices are low compared to the value of assets

The Application suggests that “prices are substantial and have increased significantly”.³ As noted above, increases in price have been the result of significant investment. Importantly, from a procurement perspective, the cost of obtaining real estate sales advertising in the digital space is very low in comparison to the value of the assets being advertised (houses and apartments) and real estate agents' fees (typically calculated as a proportion referable to the proceeds of sale or rent received) and revenues.

This remains the case following investment driven price increases.

Pricing structures are efficient

Further, the Application raises concerns that the pricing structure for subscription services results in different prices for the same level of listing for agents in different suburbs.

With the exception of Domain's free product offering (which is available to all agents regardless of location), the pricing structure for Domain's fee-based, value-adding, subscription products is based on a combination of two factors:

- the size of the agency purchasing services (to reflect the higher levels of resources required to service the larger number of listings from larger offices); and
- the geographical location of the agency (to reflect the median value of properties by region).

This pricing structure reflects an economically efficient means of discretionary pricing and reflects elasticities of demand. As platform costs are largely fixed, the value of properties to be sold represents a reasonable and fair measure of willingness and capacity to pay, and contribute to the platform's fixed costs.

(b) Product offerings

² Property Media Group Pty Ltd, Applications for authorisation A91537 and A91538 made to the Australian Competition and Consumer Commission (18 April 2016), page 4.

³ Property Media Group Pty Ltd, Applications for authorisation A91537 and A91538 made to the Australian Competition and Consumer Commission (18 April 2016), page 4.



The Application suggests that there is a lack of product choice and flexibility available to agents, and that this has in turn resulted in a lack of innovation and competition between agents and vendors. This claim is not substantiated.

Online real estate marketing services offer a range of competing products. These products typically include ongoing subscription products and value-add "depth" products.

Competition on the basis of product between Domain and REA is intense. In addition to competing through their subscription services on price and value add (as noted above), Domain and REA compete intensely through their 'depth' product offerings. These products attempt to capture a greater number of listings on Domain's and REA's respective platforms by offering greater value to agents through improved listing visibility and prioritisation at a premium price, reflective of that value.

Domain and REA also compete through the provision of ancillary content and services. Domain has in recent years increased its investment and focus on the provision of additional media content. Dedicated marketing and independent property journalists prepare articles and market analysis for distribution under the Domain brand through print, online and social media news resources. Domain provides print advertising services which have significant penetration in a number of geographic areas. Domain also engages with a number of industry advisory boards in each state to gain industry feedback on pricing proposals for service offerings. This ensures that offerings are not only competitive on price, but provide the value expected by industry participants. REA does not provide similar engagement opportunities.

In recent years, the Market more broadly has seen significant investment in the development of mobile apps, and innovation driven by new entrants has seen an increase in the number of media platforms and service offerings. Platforms such as comparison sites, referral sites, price aggregator sites and agent listing portals remain strong alternatives and participants are competing heavily in the mobile platform space. In this innovative environment, a range of marketing avenues are now available, including sign boards, search engines, social media applications, online services and traditional print media. The options are therefore not limited to the online products offered by Domain and REA. Agents have opportunities to pursue the media and advertising options across a range of platforms that will provide the best response for vendors in a market saturated with new entrants and diverse options.

5.3 Competitive impacts

The differences in price, product and ancillary service offerings provided by Domain and REA highlight the competitive tensions present in the Market and the willingness of players to behave aggressively and disruptively to win agents and listings.

The differentiation strategies employed by Domain on the basis of both price and product have been successful, as evidenced by the growth of its business. Aggressive competitive strategies have seen Domain slowly erode REA's dominance in the Market, and grow faster than REA across key measures (including agents, listings, audience, revenue and profit). Domain now has close to equal listings as REA, and is the Market leader in some regions. Further, Domain's growth in audience is substantial, doubling its audience figures in the last twelve months. The degree of product differentiation and price competition in the market indicates that competition is working. Domain submits that if the application was granted there is a real risk that collective bargaining and collective boycotts would diminish competition, not enhance it.

5.4 Public benefits

Section 90 of the *Competition and Consumer Act 2010* (Cth) (**CCA**) provides that the Commission must not grant authorisation for a proposed contract, arrangement or



understanding that may result in a substantial lessening of competition (whether they may be a cartel provision or otherwise) unless satisfied that the contract, arrangement or understanding would be likely to result in a public benefit and that benefit would outweigh the detriment to the public constituted by the lessening of competition that would result or be likely to result if the proposed contract, arrangement or understanding were made.

PMG claims that the conduct for which it seeks authorisation will result in a number of public benefits. The public benefits claimed at Annexure J of the Application are:

- cost savings by vendors;
- savings in total marketing spend by agents and vendors;
- lowering the costs of buying and selling property;
- economies of scale;
- cost and volume benefit efficiencies;
- small business efficiency benefits; and
- true and fair pricing for service packages.

These benefits do no more than claim that, with authorisation, there will be price reductions for the benefit of vendors and agents. Lower prices do not, in themselves, amount to a public benefit.

This claim is made without any evidence that the current market derived prices are inefficient. As outlined above, prices are largely driven by the cost of investment, and represent an economically efficient pricing structure.

The Application does not disclose the mechanics of how the alleged benefits will flow through to agents and vendors. Further, the Application does not disclose what the commercial arrangements between PMG and relevant real estate agents are or will be. It is reasonable to assume that PMG will be charging a fee for their services, whether by way of commission or otherwise. Any alleged cost savings derived from the collective arrangements may therefore amount to a transfer of costs rather than cost savings to agents or vendors.

6 Other considerations

Both collective bargaining and collective boycotts involve conduct which is otherwise *per se* illegal as cartel conduct and absent a compelling case should be seen as being presumptively against the public interest because they restrict competition. The anti-competitive effects are even stronger in the case of collective boycotts, and the ACCC has noted that “strong justification” would be needed to support an application for collective boycott activity.⁴

As noted above Domain has a strategy of seeking to differentiate itself from REA and other players across a range of platforms both in terms of price and package offering. The creation of a single purchaser such as PMG through the granting of the Application would be likely to have the effect of reducing Domain’s ability to respond flexibly to competitive conditions in an innovative and technology driven market with many new entrants.

⁴ ACCC, Guide to collective bargaining notifications, dated 2 May 2011, at 32.