macpherson kelley

M&K Lawyers Group Pty Ltd
ACN 122 450 337

Melbourne
Level 22
114 William Street
Melbourne VIC 3000

GPO Box 1666
Melbourne VIC 3000
DX 174 Melbourne

Tel + 61 3 8615 9900
Fax + 61 3 8615 9999

Dandenong
Tel + 61 3 9794 2600

info@mk.com.au

mk.com.au

Our Ref: PKK:JRG:250037

23 June 2016

Mr David Hatfield
Director
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Hatfield,

PROPERTY MEDIA GROUP PTY LTD

We refer to the subsequent submissions made, in response to the Applications for Authorisation A91537 and A91538 (**Applications**) lodged by Property Media Group (**PMG**), by:

1. REA Group Limited (**REA**);
2. Fairfax Media Limited (**Domain**); and
3. Carsales.com.au (**Carsales**)

(together the **Submissions**).

We now provide the following further information to assist the ACCC in their assessment of the Application in response to the Submissions.

We note that in the submissions made by REA and Domain, there are predominately seven counter positions put in response to the Application, these are:

1. level of competition within the market;
2. amount of platform and media choice within the market;
3. amount of choice within the packaging options provided for by REA and Domain;
4. the setting and basis of pricing for the listings;
5. lack of perceived public benefits should the application be successful;
6. the breadth of the Applications and role of PMG; and

7. miscellaneous comments.

Some of these positions are also present in the submission from Carsales.

Rather than respond to each point by reference, PMG provides the following further consolidated information in relation to these key areas.

This response addresses those key positions, based upon PMG's understanding of the industry, information provided to it from supporting agents and the terms of the contracts provided by REA and Domain. Further, PMG has made additional enquiries of its supporting agents. These additional enquiries have focused on aspects of the factual information previously provided that the providers of the Submissions consider are contrary to their view of the market and their conduct.

The information from these additional enquiries is relayed in this response. Many agents have endorsed a further statement to the ACCC confirming their position on these key aspects, under the heading "ISSUES IN REAL ESTATE ADVERTISING MARKET" (**Agent's Response**).

A copy of the Agent's Response is provided with this letter and a list of the supporting agents will be provided under separate cover.

PMG places weight on this direct experience of the agents. PMG also encourages the ACCC to speak to any of the agents directly.

1. COMPETITION WITHIN THE MARKET

PMG's Applications contended that the market is dominated by one supplier (REA), and in some regions, a second dominant supplier (Domain). Neither of their Submissions has been able to substantiate their blanket claims that the mid-tier competitors or smaller players are a viable competitor to REA and/or Domain. Further, they have not provided any evidence that these competitors are having any impact on their prices, package terms or market share.

In the submissions by REA and Domain, they state that the market is "highly competitive" and that in regard to competition in the market:

- the real estate advertising industry…is dynamic and highly competitive;
- it is characterised by fierce, close competition between REA and Domain, aggressive competition from a range of established mid-tier competitors;
- the real estate sales advertising 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; and
- new entrants with different and innovative models are continually entering the Market, creating a competitive environment to the benefit of agents and consumers.

PMG considers these claims, especially in regard to mid-tier competitors and smaller players, significantly overstated.

Even if there is aggressive competition between REA and Domain, this is not generating a marketplace where agents, and therefore vendors, are benefiting from this level of competition. Similarly, new entrants and different models are not providing a countervailing competitive offer that is a genuine alternative to REA and Domain.

The critical point made in the Application is that the current level of competition may be impacting prices and packages in this secondary tier of platforms, but it does not impact the fact that REA (and Domain in certain areas) are the "must have" or primary listing. The level of competition (if any) at a secondary tier of platforms has little countervailing impact on the behavior of the key players given that home vendors have little (effective) choice but to use the "must have" players. Looked at in terms of substitutability, the products of the secondary tier of platforms on the one hand are not effective substitutes for the products of REA (and Domain in increasing regions) on the other hand.

PMG and its agents' consider there to be a lack of a balanced competitive relationship between REA and Domain on one hand and the agents and vendors on the other. In support of this view, we point to the published information previously stated.

REA has made numerous public statements and comments, either in investment statements and reports or advertising promotions as to the share of the market they have and/or control. Examples of this include:

- REA is utilised by more than 92% of Agents who advertise within the online market;
- 95% of all properties for sale are listed on REA's site;
- REA has a significant audience share, with over 62% of the market solely using REA when they are searching for properties online;
- REA has more than twice the visits of the #2 site (Domain);
- REA has 880.8 million page views, compared to 164.4 million for Domain; and
- REA claims to have the most popular property app.

The above examples indicate the clear market power and dominance that REA has and is continuing to maintain or grow in the market. We suggest that such market characteristics do not and cannot be reconciled with the statements made by REA and Domain as to the competitive nature of the industry.

In relation to Domain, it states in its Submission that "Domain…grow faster than REA across key measures (including agents, listings, audience, revenue and profit)". While REA has enjoyed the significant market share, it is Domain that is growing, notwithstanding these second tier or alternative models.

Domain also states that its audience has doubled and, in some areas, it is the market leader. This is not disputed by PMG. However, Domain equates this growth to be evidence that competition is working which is disputed. As described in the Applications, and as further supported in the following sections, Domain's growth is not making it a countervailing competitive force that is being seen by the Agents or their vendors.

In addition to this, PMG has surveyed agents about the spend of their home vendors on online site providers. On average, the agents have advised that the total on-line spend is split as follows:

- REA – 73% of total spend;
- Domain – 23% of total spend; and
- Other ('mid-tier competitors and smaller players') – 4%.

REA and Domain have stated that the scope of packages have increased, through wider content and priority listings. The lack of flexibility in package choice means that all agents (within a similar demographic region) are pushed to the same level of listing, without receiving any real inter-agent differentiation or listing priority.

Agents have stated that their experiences and concerns include:

- The on-line marketing is ever increasing with a newer "premium" spot every couple of years (given a different name) with a higher price. There appears to be no regard for the underlying cost. Agents fear, as have been born out by experience, an ever increasing cost. This increased cost is not balanced by increasing enquiry rate or valuable package content;
- REA and Domain, whichever are the "must have" listing, can exploit agents by setting their pricing models to effectively mandate higher tier offerings. In this marketplace, which has little viable alternatives, other agents are compelled to match the platforms and packages taken by their competitors. REA and Domain pricing is therefore based on what they can yield from the market, not the value of the product;
- The Agents act as agents for the home vendors. In most circumstances, advertising costs are passed through to the home vendors. When passed though, there is no mark up. So, it is the vendors who are being impacted, as the advertising listing costs simply increase the cost of the sale and the net return to the vendor.

Further, as stated in the Applications and supported by the agents, agents do not consider there to be effective competition in the market. Even if there is "fierce competition", the agents and the home vendors are not obtaining benefits of that fierce competition that a competitive market should bring.

In simple terms, and nothing in the Submissions has countered the following facts:

- fees have increased year on year, well above CPI or at a commensurate level to other advertising media (see also tables in point 3 below);
- the fees charged are substantially more than fees charged by similarly structured on-line platform providers. For example, Carsales provides a not dissimilar platform, and, we would assume, has not dissimilar operation and advertising costs. The mid and lower tier operators of property platforms sites charge significantly less than REA and Domain;

- the needs and complaints levelled by the agents for flexibility and choice are not being offered or obtained (see further below);
- notwithstanding that some of the agents belong to larger franchise or similar groups, this does not equate to having countervailing power.

2. CHOICE OF SUPPLIERS WITHIN THE MARKET

The Submissions contend that the agents and their vendors have a true choice between the platforms and media on which to advertise, and that the smaller and newer entrants (eg. as listed in the Submissions) provide that choice.

This is not accepted. The real estate advertising market is unusual, as products or services are not always substitutable. Just because a competitor has an alternate platform or media, does not mean that it is a viable option for a vendor.

As outlined in the Applications and the further information provided in response to the ACCC's questions, agents consider that the actual choices for their vendors on where and how to advertise are predominately as follows:

- Advertise on REA solely;
- Advertise on REA <u>and</u> Domain; or
- Advertise on REA and/or Domain, and then <u>additionally</u> advertise on mid-tier competitors, smaller player and other media (eg. print).

In order to be a viable alternative in the market, a platform or other media requires a mass consumer audience. REA and Domain have this. Between them, almost all of the properties for sale are listed on them, and their marketing spend and content positions them as <u>the</u> place for potential purchasers to find a home. From the vendor's perspective, they must be listed where the purchasers are looking.

Were a vendor to only list on a competing mid-tier platform, it would be pointless if potential buyers were not accessing that platform. In order for a smaller competitor to become competitive, it would require, *inter alia*, a very large marketing spend. This would be far beyond what can be afforded by the 'mid-tier competitors and smaller players'.

These players also need a critical mass of potential purchasers, which would, in the minds of vendors, deliver a sale at the price otherwise expected. It is a "catch 22" for these players. As REA and Domain dominate and are the "must have" platform, they cannot get the critical mass to become a viable alternative and they cannot become a viable alternative without critical mass.

Additionally, REA and Domain have very close links to the two largest media companies in Australia and are in a position to promote and cross-promote their offering.

As to other traditional media options, the agents surveyed by PMG advised that the total advertising spend on marketing a residential property is split as follows:

- Online Portals (REA, Domain) – 75%;

- Print Media (Newspapers – local and metropolitan) – 11%; and
- Other (brochures, signage boards, etc) – 14%.

This counters the assertions that digital advertising forms a small proportion of property advertising costs and overall transaction costs. The majority of the advertising budget is spent on online platforms which are predominately controlled by REA and Domain.

3. CONTRACT CHOICE AND PACKAGING OPTIONS

REA states that its account managers regularly offer and discuss options and concerns with agents. PMG and the agents which it represents reject these assertions. At best, when meetings do occur, there is nothing resulting from them that allays the agent's concerns nor addresses their and their vendor's needs.

By reference to the Agent's Response, they reject REA's claims that:

- REA account managers provided meaningful contract options available to agents;
- REA account managers regularly meet with agents to discuss and understand concerns agents may have; and
- These discussions have indicated that agents regard REA's pricing model as relatively transparent.

In relation to the options offered by REA and Domain, the agents represented by PMG deny that the standard or causal (Flexi) options are priced at a level that provides a viable option. As such they feel forced into accepting the "contract all" offering.

This is illustrated by the following comparison table, for a listing of a property in Toorak, Victoria:

	REA Premiere ALL from 20/6/16	**REA** Premiere CASUAL from 20/6/16	**Domain** Premium Plus ALL	**Domain** Premium Plus CASUAL
Cost	$ 2,649	$ 5,298	$ 1,650	$2,475

<u>REA's offerings</u>

REA also states that two subscription types are offered – Standard and Flexi.

As outlined in the Applications, REA provides agents with a significant incentive to commit to using one package for all properties listed by that agency. REA states that agents are then able to either enter into two additional depth contracts for a number of properties or pay per-listing fees to have individual properties upgraded. There is no ability to downgrade within the contact period (other than a potential allowance of up to 10% of properties, which is determined entirely at the discretion of REA).

As a result of this, agents are still required to pre-commit to packages prior to engaging with vendors. This results in inflexibility for the agents to pick and choose the level of listings for properties depending on their value and/or cost.

Agents have confirmed their inability to utilise the Flexi Option due to the variance in rates offered. An example of this is illustrated as by the following:

Sample suburb	2015 REA Highlight ALL package	June 2016 REA Highlight ALL package	**Year-on-year increase: 2015 – Jun 2016**	June 2016 REA Highlight Elect package (flexi)	**Variance: 'Highlight Flexi' rate to 'Highlight Contract ALL' rate**
Bentleigh	$987	$1,299	**31.6%**	$1,899	**46.2%**
Oakleigh	$590	$924	**56.6%**	$1,899	**105.5%**

Further, all agents contacted by PMG in preparing this response currently utilise either the Premiere ALL or Highlight ALL option, and none have chosen the Flexi Option. This is despite their desire to be able to adopt a more flexible approach to purchasing advertising packages appropriate to the property and their vendor's needs.

<u>Domain's offering</u>

Domain also imposes a significant price impediment to force agents to agree to a "contract all" approach. By way of example, for the suburb of Brighton, Victoria, the historical comparison is the table below:

Sample suburb	1/1/2015 Domain *'Premium Plus ALL'* package	Mid 2015 Domain *'Premium Plus ALL'* package	June 2016 Domain *'Premium Plus ALL'* package	**Price increase: Jan 2015 – Jun 2016**	June 2016 Domain *Premium Plus casual* rate	**Variance: *'Contract ALL'* rate to Casual rate**
Brighton	$1,000	$1,200	$1,650	**65%**	$2,250	**36.6%**

Domain also have referred to its free listing option. PMG has sought feedback from agents about this option. The common view was that this free listing was of no value given its "last ranking" position for free listings.

In relation to the flexibility of the packages and listings on offer, the agents do not receive this in practice. The incentive for agents to enter 'contract all' arrangements is compelling, to the point where a flexible option would be prohibitively expensive for an agent competing with others who have committed to Contract All options.

4. SETTING AND BASIS OF PRICING FOR THE LISTINGS

The Submissions, in particular those by REA and Domain, submit that the prices and increases in prices are reflective of the investment made in technology, advertising and the underlying value of the transaction being listed (ie. the house price).

PMG accepts that there is substantial investment that needs to be and is being made. However, it maintains that the lack of competition in the market still enables REA and Domain to set prices well above the level that a competitive market would deliver.

PMG cannot comment on the amounts of investment and the margins enjoyed by REA and Domain, as this information is not available. PMG has provided, in the Applications, a range of information and examples that support its position that the prices charged are inflated, because there is no real competitive pressure.

In further support of this position, further examples and information are provided in the tables in section 3, above and in this section. In addition, and using Brighton, Victoria as an example, the historical trend for listing by Domain are as follows:

Premium Plus Package	Cost as at: start 2015	Cost as at: mid 2015	Cost as at: Current	% Change Jan 2015 to Current
Contract ALL	$ 1,000	$ 1,200	$ 1,650	**+65%**
Casual	$ 1,000	$ 1,350	$2,250	**+125%**

It is clear that, notwithstanding REA's and Domain's views on how competitive the market is, they have both been able to increase their prices considerably.

Agents on the Mornington Peninsula, Victoria have reported to PMG that Domain have in the past few months imposed further cost increases, under existing contracts without notice and without any change to the service delivered or package benefits. These changes have been in relation to:

- 'Elite' subscription costs that have risen from $228.80 per month to $1,100;
- 'Priority Placement' costs that have risen from $11 per property to $240 per property.

Conduct such as this is particularly concerning to agents. If, as Domain states, it is gaining market share from REA and increasing its listings and viewing audience, then it is becoming more able to operate and set its models and pricing independently of the greater market. It may be constrained to an extent by REA's price models, but those models are considered to be excessive.

The price increases of REA and Domain are particularly stark when compared to the price variations for other forms of digital and traditional media pricing, as shown in the following table:

	2011	2012	2013	2014f	2015f	2016f	2017f
Television	n.a	-3.0%	2.0%	3.0%	3.0%	2.0%	2.5%
Newspaper	n.a	-2.5%	3.0%	3.0%	3.0%	2.0%	2.0%
Magazine	n.a	-3.0%	2.0%	3.0%	2.0%	1.5%	2.0%
Radio	n.a	1.0%	1.0%	1.0%	0.5%	1.0%	1.0%
Outdoor	n.a	0.0%	1.0%	1.0%	1.0%	0.5%	0.5%
Digital	**n.a**	**4.5%**	**1.8%**	**0.0%**	**1.0%**	**0.5%**	**1.1%**
Total	n.a	0.5%	2.1%	1.7%	1.9%	1.2%	1.6%

** Source: Dentsu Aegis Network*

Further, in a competitive market, PMG considers that the underlying value of the asset being sold is a small factor in the price that should be paid. The costs or running the business and to deliver the service are much more relevant.

Even if this view is incorrect, then PMG submits that there is still price distortion in the market. We can draw a comparison between two very expensive purchases of different assets (a car and a house), both being sold on-line. We can give the example of the same resident living in Toorak, Victoria, who wants to sell:

1. an Audi Quattro car worth $250,000; and

2. a 1 bedroom flat worth $500,000.

If both assets are advertised using the most premium package available on Domain and Carsales (the market-dominant car sales portal), then the resident would be charged:

1. $135* to advertise the car on Carsales. At most, there is a further option (for $300) available through Carsales, by the addition photography; and

2. approximately $2,650 to advertise the flat on REA. This price is based on the agent having a "contract all" agreement. If the advertisement were placed casually, it would cost in excess of $5,000.

By way of further comparison, using the table in section 3, above, that relates to the suburb of Toorak, Victoria, the equivalent advertisement placed on REA and Domain is shown below, and contrasts sharply with the cost of advertising on one of the 'mid-tier' sites, realestateview.com.au referred to by the Submissions.

	REA Premiere ALL from 20/6/16	**REA** Premiere CASUAL from 20/6/16	**Domain** Premium Plus ALL	**Domain** Premium Plus CASUAL	**Realestateview** Premium
Cost	$ 2,649	$ 5,298	$ 1,650	$2,475	$250

5. PUBLIC BENEFITS AND DETRIMENTS

The providers of the Submissions have each disputed the public benefits claimed in the Applications and raised points of detriment. They challenged the need for the authorisations, largely on the basis that the market was competitive and provided agents and the vendors with appropriate pricing and options.

PMG's response to the need for the authorisations are detailed in the Applications and further supported in the sections above.

PMG provides the following further information in relation to public benefits and detriments as follows:

1. The Submissions questioned that if there were savings obtained then agents would not pass through savings to home vendors. PMG responds as follows:

   1.1 As explained above, irrespective of whether REA and Domain are, or consider they are, involved in aggressive competition, this is not providing any real benefit to agents or their home vendors. Prices significantly increase, there is no flexibility and the manner of negotiation is inefficient.

   1.2 It is important to note that, in the vast majority of sales, agents pass through the advertising costs. They do not mark up advertising costs. In lower value transactions, it may be paid by the agent from its fee. There is no reason to suspect that this practice will change as a result of collective negotiations. As such, any savings obtained are likely to flow directly to vendors.

   1.3 Similarly, if a more flexible approach to the packages and options was to be negotiated, vendors would have greater options to select the level of package better suited to their budget and property type, rather than being forced into a "premium all" or similar package. Again, there is no reason to suspect that this practice will change.

2. The Submissions question the need for a party such as PMG or media buyers and also consider that the imposition of another player in the supply chain would increase costs and could simply take any savings obtained. PMG responds as follows:

   2.1 As can be seen from the description of price models and pricing levels in the Applications and the sections above, there appears to be significant scope to obtain better and more flexible pricing. This is what the agents want for their vendors and why they have asked PMG to represent them in the Applications. If the intention or outcome of collective negotiations (with or without boycott) were not significantly better than currently on offer then the agents would not continue with PMG.

   2.2 When compared to the low increases in other media sectors (see table in section 4, above), where media buyers do play a part, the argument to have some other forms of purchasing becomes compelling. Of course, that low growth cannot be solely attributed to media buyers, but they do play a valuable part in the overall competitiveness of the market.

   2.3 REA and Domain assert that collective negotiations would not assist agents to reduce material advertising costs, but may increase overall advertising costs. As REA asserts 'the terms upon which agents purchase listings on the REA are not negotiated between REA and individuals agents, instead the same package are offered to all agents'. As outlined above, such packages are fundamentally inflexible and lack competitive forces. In a competitive negotiation, a media buyer should be able to deliver savings, by negotiating both in bulk and with some real bargaining strength.

2.4 As in most other advertising media, media buyers do provide a valuable service, one that is respected by the publishers and by the advertisers they represent. If the media buyers did not deliver a more competitive offering then they would not exist. There is nothing to suggest that this would not be the case here.

2.5 Media buyers provide a specialised service which real estate agents currently cannot acquire to assist their business. Their size and inability to negotiate is detrimental to their business and therefore their vendors. The REA Submission claims that account managers provide detailed advice and information about the contract options available. The agents represented by REA dispute this claim. Further, for REA to assert that account managers have the best interests of the agents at heart, and not REA, is nonsense. Specialised media buyers are able to provide tailored strategies and advice in regard to what packages and options will suit their vendors' needs and current property portfolio.

2.6 PMG rejects the assertion by REA that its pricing model is utterly transparent to agents. The agents represented by PMG were substantially unaware of its options when they entered a 'contract all' agreement (certainly in relation to REA's contention that one agency could enter multiple contracts). This is where the role of specialised media buyers would simplify complex and less understood options and provide a clear choice to agents which allow them to offer choice and value to their vendors.

2.7 Where the Submissions raise questions about the mechanics of the negotiation and how the "alleged" benefits would flow through, those details are not disclosed. In respect to this point, PMG cannot disclose the ongoing arrangements it has with agents, as these are none. It is up to PMG to negotiate and provide a compelling arrangement that satisfies the agents and their vendors. This provides a significant protection to agents and vendors.

3. The Submissions raise concerns with the effect on home vendors if a boycott is implemented. They fear that if houses are not listed then vendors will suffer detriment. PMG responds as follows:

3.1 Initially, we refer to the content of the Application and the additional information provided to the ACCC that outlines the limited scope of a boycott, and the steps that need to be taken prior to enacting one. On that basis, vendors should not suffer any detriment.

3.2 The scope and limitations of the boycott requested has been carefully considered, balancing the impact on vendors and REA and Domain.

3.3 If, as both REA and Domain state, the mid-tier competitors do provide a viable and valuable service, then they should have no concerns that vendors' properties are not, for a period, listed on their sites (at the premium or higher tiered level).

4. REA claims that if PMG mediate interactions between REA and agents, REA is likely to lose significant visibility of agents' issues or the agent's understanding of REA's products relevant to them. This will not occur. PMG's role is to seek what the agents have been telling it that they need, and to offer the products and options that are able to be negotiated. REA will have this from PMG and also remains free to talk to and contract with agents, if their offer is sufficiently compelling. In any event, at present, and as stated by REA, the same product is offered to all agents so any assertion that REA does tailor its products and services in response to agents' need is overstated, at best.

5. REA and Domain have both questioned whether a simple lower price amounts, in itself, to a public benefit. PMG responds as follows:

   5.1 PMG will not be simply seeking a lower price. As clearly stated in the Applications and further materials, flexibility of listings will also be sought.

   5.2 In addition, the efficiencies gained by agents and agent networks, in having a sophisticated negotiator focussing on this aspect of their business, will free them up to focus on their core business.

   5.3 REA asserts that if 'REA's premium listings are made cheaper, every agent will purchase them and listings will become undifferentiated' is a nonsense. At present, through the pricing models adopted, all agents are already forced to commit to and purchase one of the highest product offerings, as their competitors all do so, and the price penalty to retain options is prohibitive.

   5.4 Ultimately, flexibility in pricing, better pricing and advertising experience will enable them to provide options to their vendors, and help them better differentiate their vendor proposals from other agents. In this way, agents will also become more competitive and innovative when pitching for work.

6. REA has asserted that the aggregation of buying power would significantly distort normal competitive outcomes and price signals. PMG responds as follows:

   6.1 As stated above, currently, there is no competitive relationship that favours or even provides some benefit to agents. REA does not negotiate between individuals agents nor with agent networks, instead the same package is offered to all agents. Having a collective negotiation will be a step to redressing this imbalance.

   6.2 Without the Applications being granted, there is no indication that the market will correct itself. The history and all current indications indicate that REA and Domain will continue to gain market power and operate largely in isolation from competitive forces (in particular as against agents and home vendors). Current mid-tier platforms will not grow and new entrants will either avoid the market or try and fail.

7. REA have asserted that a boycott would result in an unnecessary increase in bargaining power. PMG responds as follows:

   7.1 A boycott is a last option and safeguards form part of the Application.

   7.2 PMG acknowledges that a boycott would provide it with a significant level of power. However, the marketplace is distorted and is not operating competitively, so some correction is warranted.

   7.3 As the Application is framed, REA or Domain would not be compelled to collectively bargain or negotiate with PMG. They could deal with other agent's directly with a compelling offer. They could avoid a boycott by negotiating in good faith and agree to provide packages and pricing that address the current concerns expressed by agents.

6. BREADTH OF THE APPLICATION AND ROLE OF PMG

Concerns have been expressed about the role of PMG and the breadth of the application. Further to what has been explained above, PMG provides the following further comment. We also refer to the further information provided to the ACCC about the scope of the Applications.

As outlined in the Applications by PMG, the Applications predominantly relate to the market for on-line advertising of sales of domestic real estate throughout Australia.

However, some on-line media companies package print and online products. Accordingly, it is inevitable that negotiations may cover both channels in such circumstances. Given that the print market remains more competitive, the authorised conduct will be employed in the negotiations relating to on-line advertising, but print may be an adjunct to that. Hence, the need for the Applications to cover this possibility.

The providers of the Submissions have also each challenged the position of PMG were it to be granted the Applications. They raise concerns that PMG and the Agents would share the benefits obtained or that the benefits would be retained by PMG. As mentioned above, advertising is usually a cost passed directly through to vendors.

To the extent not covered in section 5, above, PMG provides the following further information.

PMG does not have any commercial agreement with any parties at the time of making this Application. Further, PMG has not placed any restrictions on who may subsequently utilise its services. Agents who are not a party to this Application will be free and able to utilise the services subsequently offered by PMG. PMG can be engaged by individual agents on commercial terms (which are yet to be negotiated) as a media buyer to negotiate and purchase advertising on their behalf which will be redistributed to the agents.

As noted in the Submissions, PMG is a newly formed company to first negotiate on behalf of the agents it represents. With the Authorisations, it will be able to better negotiate to obtain pricing and flexibility for agents, in an efficient manner. It will also provide tailored advice to clients regarding what packages offered by media advertising companies will provide the most efficient and effective coverage for vendors.

If PMG subsequently offers pricing and options that are not commercially attractive to agents and that do not redress their concerns with the current offerings from REA and Domain, then the agents will not acquire advertising from PMG.

With PMG involved, the competitive forces will be much more balanced than those currently in place between REA/Domain and the agents, who ultimately act for their vendors.

7. MISCELLANEOUS COMMENTS

Other than those addressed above or previously in the Applications, there are a few other points raised in the Submissions. While not exhaustive of every point raised, PMG provides the following comments on some of these.

1. The Submissions are a little inconsistent in relation to how or whether they deal with franchised or network groups. To be clear, none of the agents who are part of networks have experienced or been given the opportunity for their head office to negotiate a tailored, group-wide arrangement with Domain or REA.

2. Domain has attempted to compare the price paid by vendors to their agents to the price paid for the on-line advertising, and that advertising is a small part of the overall cost. There is no basis to make such comparison as the nature of the agent's services are completely dissimilar to the placement of an on-line advertisement. For example, in selling a property he or she will commit substantial time, effort and resources in the sale process, including (but not limited to) through:

   - procuring the listing
   - meeting regularly with the vendor
   - co-ordinating presentation of the property, including furnishing; decorating; landscaping etc
   - devising and executing a marketing strategy
   - drafting advertising copy
   - co-ordinating photography
   - co-ordinating open-house inspections
   - identifying, and liaising with, prospective buyers
   - overseeing the sale process (eg: public auction; private sale etc)
   - co-ordinating settlement

   If there is any comparison to be made, it is that over the past years, the commission or fixed fee charged by agents has been steadily decreasing, as it is, at that level, a very competitive market.

3. It has been stated that the market has low barriers to entry. This may be true, from an information technology perspective. However, as explained, simply having a web platform does not mean that the business is viable alternative for vendors. Market share would be next to impossible to obtain given the current market share and advertising spend of REA and Domain.

   This point does beg the question, if barriers to entry are stated to be low, then why is it that a key reason given by Domain and REA to support their high and increasing prices is the investment in technology? From a lay position, IT costs have been decreasing and those businesses such as ebay, Airbnb, facebook, gumtree (that are cited) all are very low cost to advertise models. Once the infrastructure is established, the growth in increasing user generated income should cause prices to reduce.

We trust this further response assists the Commission.

PMG remains available to discuss any of the responses or any questions that the ACCC may still have following our response.

Yours faithfully

MACPHERSON KELLEY
PAUL KIRTON
Principal

TEL: +61 3 9794 2621 | FAX: +61 3 9794 2540
EMAIL: paul.kirton@mk.com.au