

Our Ref: PKK:JRG:250037

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Dear Dr Hatfield,

PROPERTY MEDIA GROUP PTY LTD

We refer to your request for further information dated 11 May 2016.

We now provide the following further information to assist the ACCC in their assessment of the application by Property Media Group (**PMG**).

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

We have used the same numbering format as used in your request.

1. PMG is seeking authorisation in relation to both print and online advertising. Given the preferences and popularity of online real estate advertising, the application has been drafted with a particular focus on online media, however the packaging of print and online products by some media companies means it is inevitable that negotiations will cover both channels. Given that the print market remains more competitive, it is more likely that the authorised conduct will be employed in the negotiations relating to on-line advertising.
2. Given the current market features, we do not believe that the authorisation will substantially lessen competition under the Act. However, for the purposes of the application, we do wish to seek authorisation of conduct that might SLC under s.45 if the ACCC deems this to be the case.
3.
 - a. The principal targets of the application are the owners of the realestate.com.au and domain.com.au portals (referred to as REA Group and Domain) given their substantial market share. However, as indicated, the potential targets of the proposed arrangement extends to all suppliers of online and print media advertising, including, but not limited to, those parties listed within the application (Suppliers). Given the market share of other Suppliers, a collective boycott is not being sought for parties other than REA Group and Domain.
 - b. The Suppliers are those listed within the application. Should any new company offer a similar service within the market, PMG would envisage

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these could be included too in the collective bargaining process. However, at the moment the application lists the Suppliers in full.

- c. Initially, PMG will seek to engage in the proposed conduct within regions within Victoria and then within regions in other States. In relation to the geographic scope of the boycott, we refer you to paragraph 9, below. As demonstrated in the application, given the market dominance of REA Group and Domain, PMG expects that the proposed conduct would also be limited to these two companies.
4. The application aims to also broadly capture any new or current real estate agents within the market. As such, we have drafted (www), (xxx) and (yyy) to ensure that all agents operating within the below structures can become a party.

(www) refers to businesses and agencies that comply with the legislative requirements of being a Real Estate Agency under the Victorian Act;

(xxx) refers to business and agencies that comply with the requirements of being a Real Estate Agency under the equivalent interstate Acts; and

(yyy) refers to head franchisor companies (or similar grouped structures) who have a number of franchisee agencies that comply with the *Estate Agents Act 1980 (Vic)* or equivalent interstate Acts.
5. Future parties, who fall within the definitions referred to in paragraph 4, could seek to become part of the collective bargaining group by submitting their request as the current members have done. PMG expects that further eligible agents will make such requests during and after the application process, but PMG is unable to estimate the amount of these requests. The ability to add further parties who meet the criteria is important to enable PMG to have sufficient strength the effectively bargain and, if required, enact a boycott.
6. (a) PMG has provided for agencies to support the application in three manners, as follows:
 1. On-line form on the PMG website completed by agents and an automated response generated and emailed to PMG (see actual below).

Statement of Support Form From Property Media Group
From:
Subject: Enquiry from Property Media Group Website
Agency Name:
Post code:
This e-mail was sent from a contact form on Property Media Group (<http://propertymediagroup.net.au>)

There were 129 responses generated this way. Copies of each email can be supplied, however they are identical in content other than the agents' details.
 2. Direct emails – Some real estate head offices sent correspondence direct to their members and requested they send back to them by return

email a Statement of Support. While the correspondence differed, the consistent paragraphs in each was as follows:

ACCC Authorisation Application – Statement of Support

Property Media Group Pty Ltd (PMG) has been established to act as a fully independent negotiator and buyer of advertising services for residential real estate.

Subject to obtaining ACCC Authorisation, PMG's intention is to collectively bargain with these organisations on behalf of client agents and agency groups.

To proceed with the process of obtaining ACCC Authorisation, PMG is garnering broad-based industry support. PMG requests that, by return email, you confirm your agency / agencies:

- *supports the application; and*
- *agrees to allow PMG to list your agency's name on the ACCC Authorisation application in support of the collective bargaining application.*

To indicate your support, please press REPLY ALL to this email with the following message: "Confirming (insert agency name)'s support as per the statement below"

Responses via this method were received from:

[REDACTED]

PMG retains copies of these emails and are available, if required.

3. Franchise Head Offices – Some group head offices directly requested PMG to represent their entire network. These included:

[REDACTED]

The head office of several others groups also indicated their support for the Application. However, PMG considered it to be unclear whether or they not this support was providing authorisation on behalf of their entire network, so this was not claimed in the Application.

It should be noted that some of the 129 forms captured as part of #1 (above) were duplicated in #2 and #3, so each category cannot simply be added up to reach the total of 170.

6. (b) PMG is a private company unrelated to any agent or agent group. As also mentioned in paragraph 7(b), [REDACTED] groups have contributed funds to help PMG make the application without any commitment or obligation. Currently, there is no other relationship between PMG and the agents who have indicated support for and consent for PMG to negotiate on their behalf with Suppliers. Simply, the agents have sought to appoint PMG as the party to bring the Application and then, if granted, negotiate and, if necessary, call for them to boycott. If negotiations are productive and better pricing, trading terms or flexibility are available, this will be

made available to the agents. There is no contractual or other obligation or commitment for the agents to take any negotiated offering.

7. The process in respect of the collective bargaining and the composition of the bargaining group is as follows.

- a. At a broad level, PMG would seek to negotiate contract conditions, such as those outlined in 7c, that would apply to its entire client base.

However, there may be conditions that are more relevant to some agents (eg: the mix of products required; or advertising costs associated with property developments) than others, and so PMG seeks to retain the right to negotiate on an individual, or agency-group, basis.

Further, when negotiating rates, it may be that the most efficient means of conducting negotiations is to group clients according to how the Suppliers themselves categorise them, which is identified through the price they charge, generally based on location.

The effect of this is that PMG clients may be grouped by their geographic location, as this is the primary determinant of how the Suppliers charge for their products.

As an example, it may be that all agents who are currently charged \$1,890 to purchase a Premiere package from REA Group are grouped together, as are those who are classified as 'Zone 1' by Domain.

- b. This will be in 2 stages:

Stage 1 (now): PMG is currently providing updates to ■ agent groups who have made a financial contribution to support the bid. At the point interim and final determinations are made by the ACCC, PMG would seek to inform all supporting agents through articles in industry publications and/or direct email to them or their representative head offices

Stage 2: Should the application be successful, communications during this phase would reflect a more traditional agency/client nature, and would most likely include written and verbal (through calls and meetings) communications focused on:

- Desired outcomes of negotiations;
- Progress reports on negotiations;
- Proposed action stemming from negotiation process.

- c. Non-price related objectives of the negotiation process would likely include:

- A move away from 'contract all' arrangements to allow agents greater flexibility for agents to offer a range of products and product levels to their vendor clients;

- Opportunities for value-adds (eg: additional advertisings; other promotional opportunities) as reward for loyalty;
 - Concessions or additional services, for example, the ability to re-advertise when a property fails to sell;
 - Flexible grouping options with marketing a property development (ie. in a multi-abode development) as currently each apartment requires a separate advertisement to be purchased at full cost;
 - Flexible contract terms and alignment of contract end-dates for all PMG clients;
 - Discretion over whether or not to supply the portals with proprietary data, such as, sales details or agent profiles.
- d. As there are different prices charged for the same product, depending largely on geographic location, it is unlikely there would be a single, collectively bargained price arrangement. That said, PMG would seek to negotiate on several key points:
- Price in relation to existing contracts;
 - Pricing options that allow a flexible 'mix' of advertising products from the one supplier;
 - Pricing that corrects any perceived anomalies with regards to how an agency is categorised by the portal;
 - Price that is more commensurate with the cost of service provided and other on-line providers;
 - Different pricing models based on benefits received rather than a notional geographic "property value" model. For example, calculated on a cost-per-click basis -.

If instructed by a large franchise group, PMG may also seek to negotiate a group-wide advertising rate (eg: a discount off "rack-rate") in return for a commitment to a certain volume of participation or level of expenditure.

- e. Assuming authorisation was granted by 1 November 2016:

Stage 1: Once authorisation has been granted, PMG would, over the following 2 to 4 months, seek to recruit and settle the members of the bargaining group and have these members commit to the process and appointment of PMG to negotiate on their behalf by entering a contractual arrangement with each.

Stage 2: PMG would seek to enter meaningful discussions with the Suppliers. PMG would seek to have any existing contracts with members to be end or be extended (as applicable) to a common end date, say 30 June 2017, while negotiations are undertaken.

Stage 3a: If negotiations have been successful, PMG would seek to offer the new advertising arrangement to its client base from 1 July 2017. Depending on status of existing contracts and the position of the

advertisers, there may be residual contracts in place until end-October 2017.

Stage 3b: If negotiations are not successful, PMG would seek to establish a targeted boycott of one or both of REA Group and Domain. This may occur any time from 1 July 2017, depending on the mix and status of clients PMG is representing and the approach taken to negotiations by these Suppliers.

f. Ideally, contracts negotiated on behalf of PMG would include the following features:

- Maximum flexibility for agents to tailor advertising packages to suit their clients' needs, budgets, property type and property price;
- Advertising rates that are highly competitive;
- Contracts that fall due simultaneously (eg: 30 June each year) to enable effective bargaining to occur; and
- An absence of conditions such as the mandatory provision of sales data or agent profile data by the agent to the Supplier.

Contracts would be between PMG and the Suppliers, with PMG then holding individual contracts with each of its clients who choose to take the new packages or products offered.

g. This is somewhat of a hypothetical question and will be somewhat dependent on the outcome of negotiations with Suppliers. In practice, media buying agencies tend to pre-commit to purchasing either a certain number of ad placements or spending a pre-defined amount, in order to secure the most competitive prices. PMG expects that such an arrangement would most probably form part of the negotiation process with the on-line portals, as it is a well established model in other media markets.

h. PMG believes it would be a necessary part of the negotiation process to disclose to targets who it is representing.

i. PMG has not reviewed the detail of contracts currently in place between real estate agents and the on-line portals. However, PMG would be advising its clients to operate within the bounds of these contracts, until expiry. As mentioned above, one aspect of the negotiation will be to seek to align the end of these contracts. It may be that the Suppliers will agree to waive aspects of the existing contracts to enable productive and mutually beneficial negotiations.

8.

- a. By providing a 6 month period to negotiation, this period is sufficient to include a mediation stage, if PMG considers it likely to aid the process.
- b. Please refer to paragraph 9 for further details of any boycott, depending on the type of boycott.

9.

a. **Package Boycott**

A package boycott is the most likely form of boycott that PMG envisages may be taken. It could be combined with a Regional or Group boycott.

Such an action would be triggered where the target does not engage in meaningful negotiation with PMG. Rather than boycott the target completely, the approach would be to refuse to purchase a particular product type (commonly referred to as 'depth' products within the industry). That is, the property would still be advertised on the target's portal, but simply not as prominently.

A possible course of action would be:

[REDACTED]

It is for this reason a Package Boycott would almost certainly be enacted in conjunction with a regional boycott.

Regional Boycott:

Most likely, PMG would seek to identify several 'zones' within municipalities in each of the main cities its clients represent, most probably Melbourne; Sydney & Brisbane.

[REDACTED]

The exact locations would be determined by the makeup of the PMG client base and the appetite and need to enact a boycott.

The steps preceding the boycott would be as set out under 'package' boycott.

Price Boycott:

One of the concerns with the current market is that in many instances agents are effectively required to purchase a depth product from the target(s) regardless of the value of property they are selling.

A price-based boycott would see the agents boycotting the purchase of 'depth' products for properties with an expected sale price under a nominated value. In this form of boycott, advertising may continue 'as-is' for all higher value properties, but only be purchased at the lower levels for all others, maintaining a proportionate marketing investment relative to the sale price.

In this way, PMG would seek to force a change to the current restrictive contracts which are enforced by the targets.

Group Boycott:

Depending on the purchasing power of its client base and the appetite for action by agent-groups, PMG may contemplate a partial boycott of a target by one or more agency groups.

More than likely, such a boycott would take the form of a package boycott, where the agency group/s elected en masse not to purchase depth products from the target/s.

- b. PMG will decide on which type of boycott depending on the width of the negotiating stance taken by the Supplier. Should clients of PMG be regional based, it would be likely that this is the preferred option taken by PMG.

However, should the breadth of negotiations require and consume multiple regions it is anticipated that a price based boycott, such as, of the top tier premium package, might be required and enacted by the parties.

- c. Ideally, the need to bargain with ■ municipalities within one State will not be necessary. For example, within Victoria, it is envisaged that a maximum of four municipal councils within a greater metropolitan region would be utilised in a collective boycott by PMG at one time. If, by way of example, PMG initiated a boycott of geographic zones within ■ LGA's across Melbourne, each zone comprising up to ■ postcodes, that would total ■ postcodes, or ■% of the of the ■ postcodes in greater metropolitan area of Melbourne.

10. This concern is addressed in two ways:

1. PMG would be seeking undertakings from any competing portals that they would be investing significantly in marketing activities to ensure target markets are aware of their options when searching for properties; and
2. At this stage, PMG envisages that any boycott would include the 'package-based' option, which would ensure that properties were still listed on the major portals, albeit on a much lower package.

11. By this, PMG means that the decision by an agent to join the group is voluntary. If an agent then commits to PMG, the agent retains the right to direct PMG to acquire on its behalf the advertising packages it requires, from those PMG has been able to negotiate.

In relation to a collective boycott, an agent who is a member would be required to boycott if that is what PMG considers necessary to obtain a proper negotiation.

12. When vying for the business of a prospective vendor, agents compete in the following ways:

1. Commission – the fee charged by the agent will be a significant determinant of many decisions made by vendors. Typical commissions will range from 3% (lower priced properties) to 1%;
2. Lead generation – agents will often claim to have a detailed database of prospective buyers which they will draw upon to identify potential buyers. This may influence a vendor to choose that agent;
3. Sale process – agents may differ in their proposed approach to a sale, ie: public auction; tender; private sale. Vendors may make their selection based on their preferred sales method;
4. Valuation – agents may differ on their opinion on the achievable price for the property, and vendors may choose and agent who provides a higher valuation;
5. Marketing program and cost – there is now very little (if any) difference offered by agents in relation to their approach to advertising a property – certainly in the on-line environment. As mentioned in the Application, the package type and price are pre-set through the agreements with the

Suppliers. That said, there may be differences in relation to the additional portals and media recommended (in addition to the REA Group or Domain "must have").

Generally, all advertising costs are passed through at cost to the vendors. So, a vendor would have the ability to select a package that suits their budget and property type, and with a competitive price negotiated by PMG.

However, in some areas (generally lower socio-economic), advertising is not vendor-paid but rather is a direct cost borne by the selling agent. In these areas, the overall inclusive cost will be more competitive as agents can propose a variety of costs structures, for their own services and the advertising they recommend.

13. In the words of agents, there is no negotiation process. Agents are informed of the advertising rates for the following period (ie: rates that will apply to all contracts falling due after a certain date) and agents are required to either:

- Sign the contract agreeing to the terms and conditions delivering them access to 'discounted' advertising rates; or
- Refuse to sign the contract and be charged the 'casual' advertising rates, generally 3-to-4 times the contracted rate.

This process occurs on an Agent-by-Agent basis, where sales reps from the main portals deal directly with the managers / owners of each individual agency.

We trust the above clarifications assist the Commission.

Should you have any further queries, please don't hesitate to contact our office.

Yours faithfully



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