



The Real Estate Institute of Western Australia (Inc) – application for authorisation A91586 Interim authorisation decision 24 May 2017

Decision

The Australian Competition and Consumer Commission (the **ACCC**) has granted interim conditional authorisation in respect of the application for authorisation lodged by The Real Estate Institute of Western Australia (Inc) (**REIWA**) on 22 May 2017.

Interim conditional authorisation is granted to REIWA for arrangements contained in the REIWA Membership Framework, namely its Articles of Association, including its proposed CPD scheme, Members' Codes of Practice, Auction Code of Conduct, website (reiwa.com) terms and conditions, agreements between REIWA and its members that give rise to REIWA's Standard Exclusive Agency Forms and REIWA's proposed voluntary accreditation scheme.

The ACCC grants interim authorisation subject to the same conditions imposed in 2012 that relate to access to standard forms¹. The conditions are set out below.

Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

REIWA seeks authorisation on behalf of itself and its current and future members for arrangements contained in REIWA's Membership Framework, namely its:

- Articles of Association, including its proposed CPD scheme
- Members' Codes of Practice
- Auction Code of Conduct
- website (reiwa.com) terms and conditions
- agreements between REIWA and its members that give rise to REIWA's Standard Exclusive Agency Forms
- proposed voluntary accreditation scheme.

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the Act). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC

¹ REIWA's Standard Exclusive Agency Forms are set out at Schedule E of its application dated 22 May 2017.

conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Background

2012 Authorisation (A91280)

On 19 April 2012, the ACCC granted conditional authorisation A91280 in relation to arrangements encapsulated by REIWA's Membership Framework, namely its Articles of Association, Members' Codes of Practice, Multiple Listing Service By-Laws, Auction Code of Conduct, and the agreement to make available its Standard Forms (including its Standard Exclusive Agency Forms).

Authorisation A91280 was granted on 19 April 2012, subject to a number of conditions relating to access to standard forms. The authorisation expired on 11 May 2017.

2017 Application for revocation and substitution (A91569)

On 10 January 2017, REIWA lodged application A91569 for revocation and substitution of authorisation A91280 pursuant to section 91C of the Act. Authorisation was sought for a period of five years.

On 13 April 2017 the ACCC issued a draft determination proposing to grant conditional authorisation to REIWA for arrangements contained in the REIWA Membership Framework, namely its Articles of Association, including its proposed CPD scheme, Members' Codes of Practice, Auction Code of Conduct, website (reiwa.com) terms and conditions, agreements between REIWA and its members that give rise to REIWA's Standard Exclusive Agency Forms and REIWA's proposed voluntary accreditation scheme.

The ACCC proposed to authorise the arrangements for ten years subject to a number of conditions relating to access to standard forms.

No submissions were received prior to or following the draft determination.

Section 91 of the Act allows the ACCC to grant interim authorisation where the ACCC considers it appropriate to do so for the purposes of enabling the ACCC to give due consideration to the substantive application for authorisation. In the case of an application for re-authorisation the ACCC may suspend the operation of the authorisation sought to be revoked and grant an authorisation that is expressed to be an interim authorisation in substitution for the authorisation suspended.

The applicant did not seek, and the ACCC did not grant, interim authorisation prior to the expiry of authorisation A91280 on 11 May 2017.

With the expiration of authorisation A91280, there is no authorisation to revoke and substitute under s91C of the Act. Therefore REIWA has sought authorisation (including interim authorisation) under subsections 88(1) and 88(1A) of the Act.

The new application for authorisation (A91586)

On 22 May 2017 REIWA lodged a new application for authorisation with respect to its Membership Framework. The substance of application A91586 is identical to application A91569 for revocation and substitution. The only difference is that REIWA has sought authorisation for a period of 10 years.

Interim authorisation

Section 91 of the Act allows the ACCC to grant interim authorisation where the ACCC considers it appropriate to allow the parties to engage in the conduct while the ACCC is considering the substantive application for authorisation.

When considering any request for interim authorisation, the ACCC considers a range of factors, including harm to the applicant and other parties if interim authorisation is not granted, possible benefit and detriment to the public, the urgency of the matter and whether the market would be able to return to substantially its pre-interim state if the ACCC should later deny authorisation.

REIWA has sought interim authorisation on the basis that:

- as far as REIWA is aware, there have been no submissions made to the ACCC opposing the application for authorisation, including following the publishing of the draft determination in relation to application A91569 on 13 April 2017
- the conduct the subject of the application, save for the website (reiwa.com) terms and conditions, REIWA's proposed voluntary accreditation scheme and the proposed CPD scheme, has been the subject of authorisations granted by the ACCC since 2002 and the draft determination in relation to application A91569 proposed to grant authorisation for a period of 10 years
- the relevant markets will not change if interim authorisation is granted and interim authorisation will maintain the market status quo
- given that REIWA's previous authorisation has expired, there is an urgent need for interim authorisation
- if interim authorisation is not granted there would be a risk that the activities and services performed by REIWA that are the subject of the authorisation application would not be able to be continued and, for the reasons detailed in the written submissions in support of the application, this would be likely to have a deleterious effect upon REIWA, its members and the public
- REIWA relies upon the written submissions lodged with the formal authorisation application in support of its application for interim authorisation.

Consultation

The ACCC invited submissions from a wide range of potentially interested parties seeking comment on application A91569 (which was identical in substance to the new application for authorisation). No submissions were received.

Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

In granting interim authorisation, the ACCC considers that:

- the applicant has an urgent need for interim authorisation given that the previous authorisation A91280 expired on 11 May 2017
- interim authorisation will provide the applicant with sufficient certainty with respect to its Membership Framework
- the relevant areas of competition are unlikely to be permanently altered if interim authorisation is granted. Given that the terms of interim authorisation are substantially in line with the terms of the previous authorisation, granting interim authorisation is more likely to maintain the status quo than not granting.
- there is limited likelihood of anti-competitive detriment during the period of interim authorisation.

Conditions of interim authorisation

The ACCC has decided to grant interim authorisation subject to the same conditions imposed in 2012 that relate to access to standard forms:

- C1** REIWA must make available any of its Standard Exclusive Agency Forms to any person who seeks access. This access must be provided within seven calendar days and at the same price that REIWA members are charged for the Standard Exclusive Agency Forms.
- C2** REIWA must make available to any Training Provider, upon request, any form produced or otherwise supplied by REIWA for use by an Agency Business (the Standard Forms). This access must be provided within seven calendar days and free of charge.
- C3** REIWA must publish on the homepage of its website a notice stating the means by which it will make available the:
 - a. Standard Exclusive Agency Forms in compliance with C1; and
 - b. Standard Forms available in compliance with C2.
- C4** REIWA must record contact details of any Training Provider who seeks access from REIWA to any Standard Form. Following any material change to any of the Standard Forms, REIWA must undertake its best endeavours to provide the revised version of the relevant Standard Form to all Training Providers who sought access from REIWA to the previous version of the Standard Form in the preceding 12 months.

Where:

Agent means a person who is a Real Estate Agent or a Business Agent, or both a Real Estate Agent and a Business Agent.

Agency Business means the business of an Agent.

Business Agent means a person whose Agency Business either alone or as part of or in connection with any other business, is to act as Agent for consideration in money or money's worth, as commission, reward, or remuneration, in respect of a business transaction.

Business Sales Representative means a person who on behalf of an Agent negotiates a business transaction.

Real Estate Agent means a person whose business either alone or as part of or in connection with any other Agency Business, is to act as Agent for consideration in money or money's worth, as commission, reward or remuneration, in respect of a real estate transaction.

Real Estate Sales Representative means a person who on behalf of an Agent or a developer negotiates a real estate transaction.

Training Provider means a person that:

- i. provides training relating to Business Agents, Business Sales Representatives, Real Estate Agents or Real Estate Sales Representatives;
- ii. is registered as a registered training organisation with the Western Australian Training Accreditation Council (TAC) established under the *Vocational Education and Training Act (WA) 1996*, or with the Australian Government Australian Skills Quality Authority (ASQA) pursuant to the *National Vocational Education and Training Regulator Act 2011 (Cth)* or their successors; and
- iii. is authorised by TAC or ASQA (or their successors) to conduct Diploma of Property Services (Real Estate) courses in Western Australia or, alternatively, authorised to deliver specific units of competency within those courses.

Reconsideration of interim authorisation

The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.