



"A decision was issued on April 27, 2016 by the Competition Tribunal in Commissioner of Competition v. Toronto Real Estate Board (CT-2011-003). The Tribunal panel was composed of the Honourable Chief Justice Paul Crampton, the Honourable Justice Denis Gascon (Chairperson of the Tribunal) and Dr. Wiktor Askanas.

## Summary:

The Tribunal has partially granted the Application brought by the Commissioner of Competition (the "**Commissioner**") pursuant to section 79 of the *Competition Act*, RSC 1985, c C-34, as amended (the "**Act**"). In the Application, the Commissioner was seeking an order prohibiting the Toronto Real Estate Board ("**TREB**") from engaging in certain anti-competitive acts in connection with the supply of residential real estate brokerage services in the Greater Toronto Area ("**GTA**"). In brief, the Commissioner contended that, by restricting access to certain Multiple Listing Service ("**MLS**") information on the password-protected virtual office websites ("**VOW**") of its real estate brokers and salesperson members (the "**Members**"), and by restricting the manner in which its Members may display and use that information, TREB's conduct constituted an abuse of dominant position under section 79.

In the course of reaching its decision, the Tribunal determined that the Commissioner has established, on a balance of probabilities, that the three elements of section 79 have been satisfied. The Tribunal first concluded that TREB substantially or completely controls the supply of MLS-based residential real estate brokerage services in the GTA, within the meaning of paragraph 79(1)(a) of the Act. The Tribunal then found that TREB has engaged in, and continues to engage in, a practice of anti-competitive acts, as contemplated by paragraph 79(1)(b). In essence, that practice is comprised of the enactment and maintenance of certain restrictive aspects of the rules and policy that TREB has adopted with respect to VOWs, which are defined in the decision as the VOW Restrictions. In addition, the Tribunal concluded that the VOW Restrictions have had, are having and are likely to have the effect of preventing competition substantially in a market, as contemplated by paragraph 79(1)(c). The Tribunal reached that conclusion after finding, among other things, that the VOW Restrictions have substantially reduced the degree of non-price competition in the supply of MLS-based residential real estate brokerage services in the GTA, relative to the degree that would likely exist in the absence of those restrictions. Most importantly, this includes a considerable adverse impact on innovation, quality and the range of residential real estate brokerage services that likely would be offered in the GTA, in the absence of the VOW Restrictions.

The specific terms of the Tribunal's order will be determined after the parties have provided written submissions addressing this issue of remedy and have had an opportunity to make oral submissions on that issue.

The Tribunal's reasons are confidential at this time in order to protect properly confidential evidence. A public version of the decision will issue as soon as possible after a determination as to what information must remain confidential has been made."