

16 December 2015

14633 / 2303240

Ken Watson  
Principal  
Watson Real Estate Limited  
267 Broadway Avenue  
Palmerston North 4440

Email: Ken@watsonproperty.co.nz

Dear Mr Watson

### Commerce Act 1986: warning

1. I refer to our letter of 21 September 2015 concerning the conclusion of investigation into allegations that real estate agencies in Manawatu agreed to pass on the cost of standard Trade Me listings to vendors in the Manawatu region.

### Commission's view

2. For the reasons I explain in this letter, the Commission has reached the view that Watson Real Estate Limited (**Watson**) is likely to have breached the price fixing prohibitions in the Commerce Act 1986 (the **Act**). The Commission considers that Watson and its competitors agreed to pass on the cost of standard Trade Me listings to vendors in the Manawatu region (the **Agreement**). The Agreement fixed, controlled or maintained prices in breach of section 27 via section 30 of the Act.
3. The Commission regards price fixing as a serious departure from acceptable commercial behaviour, warranting sanction. When competitors agree to fix, control, or maintain prices this prevents competition occurring and can be detrimental to consumers.
4. The Commission has today filed proceedings against Property Brokers Limited, Unique Realty Limited, Manawatu 1994 Limited (trading as LJ Hooker Palmerston North) and one individual.
5. The Commission also considers it has sufficient evidence to commence proceedings against Watson and the other agencies involved. However, the Commission has exercised its discretion to issue this warning to Watson rather than to commence proceedings. The Commission has reached this decision having regard to Watson's conduct, market size, and the number of residential sale listings it had on Trade Me together.

6. This warning will be published on the Commission's website. We also intend to issue a media release which will name Watson and refer to this warning.

#### **Price fixing conduct prohibited by the Commerce Act**

7. Section 30 of the Act prohibits contracts, arrangements or understandings between competitors containing provisions that have the purpose, effect or likely effect of fixing, controlling or maintaining the prices charged for goods or services they compete to sell.
8. A contract, arrangement, or understanding need not be formal, written, or signed. All that is required is for the parties to reach a consensus and a mutual expectation as to how at least one of them will act, or not act.

#### **Basis for the Commission's view that Watson has breached the Commerce Act**

9. The genesis of the Agreement was Trade Me's change to its pricing model for residential property advertising. Trade Me removed its existing monthly subscription and introduced a per-listing pricing model where each standard listing would cost \$159. This change was expected to have a significant impact on the costs of the real estate agencies involved in the Agreement.
10. In early October 2013 [ ] of Property Brokers contacted Property Brokers' competitors including Watson suggesting that real estate business owners in the Manawatu should meet to agree a common approach in response to Trade Me's price increases.
11. This meeting occurred on 17 October 2013. At this meeting, various Manawatu real estate agencies – including Watson – met and discussed the Trade Me price increases. They agreed that the \$159 cost of the Trade Me listing fees would be passed on to vendors from 1 February 2014.
12. Between 17 October 2013 and 1 February 2014, the agencies exchanged emails about the Agreement, including an email on 20 December from Property Brokers that confirmed the Agreement.
13. The Commission's view is that Watson and the other agencies entered into the Agreement on 17 October 2013. The Agreement fixed, controlled or maintained the prices the participating real estate agencies charged in competition with each other. The Agreement therefore breached section 27 via 30.

#### **Guidance for the future**

14. Competition between firms occurs through rivalry on price, quality, service, choice and other offerings. Conduct which fixes, controls, or maintains prices substantially lessens competition and can be detrimental to consumers. Conduct which restricts consumer choice by limiting the services offered may also substantially lessen competition.

15. To avoid breaching the Act in future, we recommend that employees of Watson are mindful of the Act when attending meetings and/or otherwise interacting with its competitors, particularly in any circumstances where the conduct involved may interfere with any party's independent decision about a price, component of price, or the services they will offer. This same care is required when attending industry or professional association meetings where competitors or potential competitors are involved.
16. If in doubt, you should seek advice from a lawyer experienced in dealing with the Commerce Act.

**Further action by the Commission and other parties**

17. Only the courts can decide whether the Act has been breached or not. This warning letter does not represent a ruling of law.
18. The court can impose penalties where it finds the law has been broken. An individual can be fined a maximum of \$500,000 and/or be prohibited from being a company director or a manager of a company. A body corporate can be fined the greater of \$10 million, or three times the commercial gain from the breach (if this cannot be easily established, 10% of turnover). Every separate breach of the Act may incur a penalty.
19. While the Commission does not intend to take any further action against Watson for this conduct, you should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking a private action for damages under section 82 of the Act.
20. We may draw this warning to the attention of a court in any future proceedings brought by the Commission against Watson for other conduct in breach of the Act. Previous warnings may be considered an aggravating factor in sentencing by the court for any future conduct.
21. As I indicated at the start of this letter, this warning letter will be published on our website, and we also intend to issue a media release.

Regards,



Ritchie Hutton  
Head of Investigations  
Commerce Commission