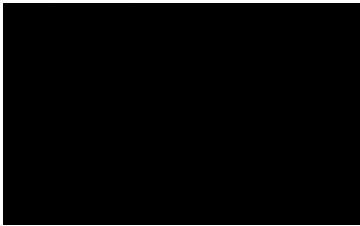


19 November 2018



Official Information Act #18.089 - Property IQ

1. We refer to your request of 8 October 2018 for a Commerce Commission (Commission) decision in relation to Valocity and CoreLogic. You advised that the decision was in relation to two entities setting up ordering systems (referred to as panels) for the main trading banks to obtain registered valuations on residential properties that they were lending mortgage funds on.
2. We have treated this as a request for information under the Official Information Act 1982 (OIA).

Our response

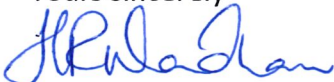
3. We have decided to grant your request.
4. In 2012, the Commission investigated allegations of price-fixing and other anti-competitive behaviour by PropertyIQ NZ Limited (PropertyIQ)¹ in relation to the introduction of its Valuation Ordering Service (known as panels).
5. This Commission concluded that PropertyIQ's conduct and the Valuation Ordering Service were unlikely to breach sections 30 or 27 of the Commerce Act 1986, based on the information we had at that time.
6. **Attachment A** to this letter contains a copy of the Commission's PropertyIQ Enforcement Report dated 26 June 2012.
7. We have redacted information from the report for the following reasons:
 - 7.1 in order to protect the privacy of natural persons (section 9(2)(a) of the OIA);
 - 7.2 in order to prevent prejudice the commercial position of the person who supplied or who is the subject of the information (9(2)(b)(ii) of the OIA); and
 - 7.3 in order to protect information which is subject to an obligation of confidence, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same

¹ Now CoreLogic.

source, and it is in the public interest that such information should continue to be supplied to the Commission (section 9(2)(ba)(i) of the OIA).

8. We consider that good reason exists for withholding the information, and that the withholding of the information is not outweighed by other considerations which would make it desirable, in the public interest, to make the information available (section 9(1) of the OIA).
9. If you are not satisfied with the Commission's response to your OIA request, section 28(3) of the OIA provides you with the right to ask an Ombudsman to investigate and review this response. However, we would welcome the opportunity to discuss any concerns with you first.
10. Please note the Commission may publish this response to your request on its website. Personal details will be redacted from the published response.
11. If you have any questions in regards to this request, please do not hesitate to contact us at uia@comcom.govt.nz

Yours sincerely



Hilda Wadham

Acting OIA Coordinator

Memorandum

To: Ritchie Hutton 11.02/12840
From: [REDACTED]
Date: 26 June 2012
Classification: Confidential - Internal use only
Subject: Enforcement report PropertyIQ NZ Limited

Overview

1. This report summarises a Competition Branch investigation into allegations of price-fixing and other anti-competitive behaviour by PropertyIQ NZ Limited (PropertyIQ) in the physical (residential and lifestyle) property valuation market. The allegations relate to the introduction of a Valuation Ordering Service by PropertyIQ in early 2011.
2. This report concludes that PropertyIQ's conduct and its Valuation Ordering Service are unlikely to breach sections 30 or 27 of the Commerce Act based on the information we currently have. We recommend that:
 - 2.1 the investigation be closed
 - 2.2 no further action be taken
 - 2.3 the parties be notified.

The parties

PropertyIQ NZ Limited

3. PropertyIQ is a New Zealand registered company established on 1 April 2008 that provides property information to a range of clients in the New Zealand market. PropertyIQ provides a number of online property information websites, with each website providing a range of services tailored to a specific area of the property market.
4. In or around April 2011, PropertyIQ launched the Valuation Ordering Service, aimed specifically at providing valuations in the residential and lifestyle property market. This report deals primarily with issues arising from that service.
5. PropertyIQ is jointly (50%/50%) owned by Quotable Value Limited (QV) and RP Data New Zealand Limited. PropertyIQ states that both parties are governed by a shareholder's agreement and both have 50% of the directors and voting rights on the board. PropertyIQ noted that neither party has a controlling interest (sole) in the company.

6. PropertyIQ stated that the QV directors deal with governance and strategy matters and do not have access to Valuation Ordering Service information beyond the board level governance papers. PropertyIQ also stated that the agreement it has with QV is an arm's length transaction, and QV does not have greater access to the system in providing valuation services under the Valuation Ordering Service than any other panel valuer.

RP Data New Zealand Limited

7. RP Data New Zealand Limited (RP Data NZ) provides online property information to the New Zealand real estate market. RP Data is a wholly owned subsidiary of the Australian company, RP Data Limited, which in turn is a wholly owned subsidiary of American company, CoreLogic.

Quotable Value Limited

8. Quotable Value Limited (QV) is a state owned enterprise owned by the New Zealand Government. QV was established in 1998, and describes itself as New Zealand's largest valuation and property information company, operating 22 offices throughout New Zealand. QV provides current market valuations for residential properties throughout New Zealand and is the leading supplier of valuations for ratings purposes in New Zealand.
9. QV is also the 100% owner of Darroch Limited (Darroch), which provides a range of property management, property information, and property valuation services. Darroch's property valuation services appear focused upon valuations for commercial, industrial, and rural properties.

Background

Complaints

10. In early 2011, the Commission received complaints from four property valuers alleging anti-competitive behaviour by PropertyIQ in relation to a residential and lifestyle property valuation ordering initiative Property IQ had recently announced (the Valuation Ordering Service). Additional complaints were received from property valuers in July 2011 and March, April, and May 2012.
11. The complainants were:
 - 11.1 [REDACTED]
12. The key competition concerns raised by the complainants can be summarised as follows:
 - 12.1 Price fixing – whether the pricing discussions and agreements entered into by PropertyIQ and valuers, in the context of their agreeing the amount PropertyIQ would pay a valuer for a valuation, amounted to price fixing?
 - 12.2 Lessening of competition – whether the introduction of the PropertyIQ system would lessen competition between valuers in the market?

13. A number of other issues were raised by the complainants. These issues did not raise Commerce Act concerns and have not been addressed in the analysis below.

The investigation

Investigative steps

14. The Commission contacted the seven complainants to seek further information about the issues they raised in their initial contacts with the Commission. A majority of the information subsequently received by the Commission has come from [REDACTED].
15. The Commission also sought information from the following parties:
- 15.1 PropertyIQ
- 15.2 [REDACTED]

Initial facts

What is the Valuation Ordering Service?

16. The Valuation Ordering Service is described by PropertyIQ as a service to assist with the mortgage lending process for residential and lifestyle property valuations for finance (ie, mortgage) purposes. PropertyIQ has stated that the service does not cover residential and lifestyle property valuations for other purposes, such as for tax, insurance, trust, matrimonial, pre-purchase, and asset valuation.
17. PropertyIQ stated that it already supports banks' residential lending decisions through its provision of rating valuations and automated valuation models (E-Valuer) through the QV.co.nz website. PropertyIQ's Valuation Ordering Service now enables further reports to be ordered through the QV website, with the valuations being sourced from a range of approved panel valuers.
18. The two products offered under the Valuation Ordering Service are a Val-IQ Desktop Valuation, and a Full Market Valuation. PropertyIQ describes the key features of the products as follows:

	Val-IQ Desktop Valuation	Full Market Valuation
Price	\$270 (incl GST)	From \$450 (incl GST)
Turn-around time	1 business day	4 business days
Completed by a local valuer	Yes	Yes
Valuer inspection	No internal inspection – property may be viewed from the street	Full internal and external inspection of the property

19. A Val-IQ Desktop Valuation is a report completed by a valuer providing an estimated market value for a particular property. It is designed to support mortgage applications which are considered medium risk (approximately 80-90% of the loan-to-value ratio). It is completed without a physical inspection of the property. The valuer uses his or her knowledge of the area to address any risks associated with the property, and arrives at an estimated property value using other like properties (comparable sales).
20. A Full Market Valuation is often required by banks when a customer wants to borrow more than 80% of the property value. A Full Market Valuation is a more comprehensive report and includes an internal and external inspection of the property.
21. A bank will typically choose a particular valuation method based upon the loan to value ratio and/or the perceived risk associated with the loan. Full Market Valuation reports completed by a registered valuer are those most often sold under the Valuation Ordering Service.

Why was the Valuation Ordering Service introduced?

22. It appears that there has been some concern within the banking industry about the valuation processes being used within banks and about the quality of some of the valuations customers were presenting to banks. There were also concerns about the potential for valuation fraud and associated risks for the banks.
23. In October 2010, [REDACTED]
24. In or around November 2010, the Australian Prudential Regulation Authority (APRA) conducted a review involving the Australian owned banks in New Zealand. APRA was concerned about the risks associated with valuations and concluded that the valuation processes in New Zealand were not compliant with a regulation which requires that banks be in control of the valuation process. The Reserve Bank of New Zealand (RBNZ) sat in on the APRA meeting and was aware of the concerns.
25. After the APRA meeting, [REDACTED] met with PropertyIQ and asked them to work on the proposed system and to have a solution ready to trial by March 2011. In February 2011, [REDACTED] and PropertyIQ informed the RBNZ of the approach they were taking to address the valuation concerns. On the same day, PropertyIQ informed the New Zealand Institute of Valuers (NZIV), the Property Institute of New Zealand (PINZ) and the Valuation Review Board of the work they were doing on the Valuation Ordering Service.
26. PropertyIQ launched the service in or around April 2011. PropertyIQ stated that its intention was to introduce a consistent and competitive price for the valuations ordered through its proposed service so as to meet the needs of the banks and to ensure that the bank customer was paying a competitive price for the valuation.
27. PropertyIQ set a single standard price that it would pay valuation firms for valuations in each post code and for each price band (eg \$0-\$250,000; \$250,000-\$500,000 etc).

PropertyIQ would in turn charge the bank customer the same prices for the valuation. PropertyIQ acknowledged that some properties or valuations could involve non-standard elements and has put in place a system that allows valuation firms to submit quotes for non-standard work.

28. Some of the objectives and benefits of the Valuation Ordering Service identified by PropertyIQ are:
- 28.1 a reduction in the risk to the lender that a valuer has been influenced by a third party
 - 28.2 it ensures valuations are only prepared by approved valuation firms and valuers
 - 28.3 quick access to a nationwide panel of approved valuers
 - 28.4 reduction in exposure to inflated property values.

How does the Valuation Ordering Service work?

29. The Valuation Ordering Service sits in between the key parties to a valuation transaction: a bank; a mortgage customer; and a panel valuer. PropertyIQ described the main steps in the process as follows:
- 29.1 A borrower approaches a bank seeking a mortgage.
 - 29.2 The bank assesses the credit worthiness of a borrower. Based on the risk of the lending the bank chooses a valuation product to assess the value of the security. The bank chooses from a range of valuation products from nothing, sale and purchase agreement, rating value, automated valuation, desktop valuation, driveby valuation, or full valuation.
 - 29.3 The bank discusses its lending requirements with the borrower and informs the borrower of what type of valuation is required to support the lending decision (eg a full valuation). The borrower advises the bank that they wish to proceed and purchases the full valuation via the Valuation Ordering Service.
 - 29.4 The Valuation Order Service randomly selects an approved panel valuer in the applicable post code area and assigns the job to the valuer.
 - 29.5 The panel valuer is assigned the job and has several options: accept the job; reject the job; seek to quote a higher price if the job has special/non-standard characteristics.
 - 29.6 The panel valuer completes the valuation and loads the report into the system which runs a number of compliance and quality checks after which the report is made available to the bank and the borrower.
30. PropertyIQ enters into formal written contracts with the participating banks and approved panel valuers.

██████████

How is the pricing set by PropertyIQ?

31. Valuation firms wishing to participate in the Valuation Ordering Service were asked by PropertyIQ to independently complete a spreadsheet with their standard pricing for residential and lifestyle property valuations in each postcode they wanted to undertake work in. The firms also had to estimate their expected turn-around times.
32. PropertyIQ consolidated the responses and analysed the prices for each postcode, looking at factors such as ██████████. PropertyIQ then independently set the prices for each postcode and price band based on an analysis of ██████████. PropertyIQ individually provided each valuation firm with the proposed market pricing for each postcode the firm wished to work in. PropertyIQ stated that it did not share or disclose the pricing information submitted by one valuation firm with any other valuation firm.
33. PropertyIQ stated that valuation firms were able to individually discuss the proposed pricing with PropertyIQ and were able to decline to provide services in postcodes where they were not happy with PropertyIQ's proposed pricing. PropertyIQ stated that it took a number of steps to try and avoid the possibility of firms engaging in price-fixing behaviour, including:
 - 33.1 Firms wanting to participate in the panel had to sign a letter of intent and a confidentiality provision.
 - 33.2 PropertyIQ advised all firms providing pricing information that they were strictly forbidden to share competitive information with their competitors.
 - 33.3 PropertyIQ has an express covenant in the panel valuer contract stating that panel valuers must not disclose to, or engage in any communications with, other panel valuers information concerning price, discounts, rebates, or credits in relation to services under the contract.
34. PropertyIQ stated that it obtained external legal advice on a number of matters, including the setting of market prices for the valuations. PropertyIQ stated that it was very careful to ensure that pricing information would not be shared between competitors and believed that its system complied with the Commerce Act.

Valuation Ordering Service pricing and charging for services

35. PropertyIQ indicated that the prices it charges for standard valuations range from \$ ██████████ to \$ ██████████. PropertyIQ also charges the banks for the Valuation Ordering Services it provides to them, and charges the valuation firm a service and access fee per valuation to cover administrative costs.
36. The charging process works as follows:
 - 36.1 PropertyIQ charges the mortgage customer via credit card for the valuation, ranging from \$ ██████████ to \$ ██████████.

- 36.2 The panel valuer charges PropertyIQ for each valuation completed.
- 36.3 PropertyIQ charges the bank for Valuation Ordering Services – based on a fixed annual charge and a per valuation charge.
- 36.4 PropertyIQ charges the panel valuer a service and access fee per valuation. This is set at \$ [REDACTED] plus GST and covers system use, training, data, credit card charges and other services provided.
37. The PropertyIQ pricing for full valuations appears to be above some valuers' pricing, and below other valuers' pricing. A valuer also suggested that the PropertyIQ pricing was reasonable for lower value houses, but was too low for higher value houses.
38. Some valuers have also raised as a concern the service and access fee that a panel valuer must pay to PropertyIQ for every valuation they complete under the Valuation Ordering Service. Valuers do not currently pay any fees for the non-PropertyIQ valuation work they complete. However, it appears that all valuers who sign up to the service must pay the same fee per valuation.

How many banks have agreed to use the Valuation Ordering Service?

39. PropertyIQ stated that [REDACTED]

Approval process for panel valuers

40. PropertyIQ described a two-stage process governing the approval of valuers to participate in the Valuation Ordering Services panels. The first stage is a registration process overseen by PropertyIQ. The second stage involves PropertyIQ submitting the details of registered valuers to the participating banks for bank approval.
41. PropertyIQ stated that in order to complete the initial registration process a valuer will need to:
- 41.1 hold the appropriate Professional Indemnity Insurance
 - 41.2 hold the appropriate Public Liability Insurance
 - 41.3 hold an Annual Practising Certificate
 - 41.4 identify which post codes they intend to service
 - 41.5 declare any past claim related issues.
42. PropertyIQ provides the participating banks with a weekly Valuation Firm Summary, which gives the banks information about valuers seeking approval, and where they are in the process. These summaries, and the banks' responses concerning the listed valuers, form the basis of the bank approval stage.
43. Each participating bank reviews the list of valuers in the Valuation Firm Summary and assigns them a classification using the PropertyIQ classification system (ranging from 0 to 3).

Attachment A

- 43.1 Classification 0 (approved) is used where the panel valuer is approved and the bank has no concerns regarding the valuer.
- 43.2 Classification 1 (past 'minor' issue) is used where there the bank has had previous concerns about the valuer, but is accepting of them joining the panel. The bank does not inform PropertyIQ of the reason for the classification.
- 43.3 Classification 2 (past 'serious' issue) is used when the quality of a previous valuation was considered inadequate by the bank and it lead to a loss (or potential loss) for the bank – although the issue was not considered to be a question of fraud or integrity. The bank does not inform PropertyIQ of the reason for the classification and the valuer will have to complete a rehabilitation process and re-apply for the panel.
- 43.4 Classification 3 (not approved – past 'major' issue) is used when a bank has concerns about collusion, fraud, integrity, or gross incompetence resulting in loss. The bank does not inform PropertyIQ of the reason for the classification, there is no rehabilitation process, and the valuer is permanently excluded from the panel.
44. PropertyIQ collates the banks' lists and assigns a single classification for each valuer on the panel. PropertyIQ then contacts each valuation firm and valuer and informs them of the outcome of the application process.
45. PropertyIQ has stated its intention to have at least three valuers on the panel in each postcode to ensure that a mortgage customer cannot guarantee they will get a particular valuer. PropertyIQ has advised that it does not currently have a limit on the number of valuers that can join the panel or work in a particular postcode. However, PropertyIQ has noted several points concerning the number of valuers likely to be accepted onto the panel:
 - 45.1 There will be an ideal number of valuers per postcode driven by the number of jobs within a postcode. Factors likely to affect the ideal number of valuers in a postcode include:
 - 45.1.1 The proportion of non-standard, complex or high value properties within a postcode as the productivity of an individual valuer is expected to be less.
 - 45.1.2 The need to deliver enough job volume to enable valuers to develop and maintain specialist local knowledge, be highly proficient at using the system and process, and be familiar with each bank's requirements.
 - 45.1.3 The number of new and existing mortgages a bank has, and the option a bank chooses to assess property values for mortgage purposes will vary between postcodes and will influence the ideal number of valuers

required to meet the demand going through the Valuation Ordering Service.

46. PropertyIQ advised that it will engage with the banks about their views on how many valuers should be accepted onto the panel or any individual postcode. [REDACTED] recently advised the Commission that it has informed PropertyIQ that it doesn't believe there should be a limit on the number of valuers that can join a particular postcode panel, and it is pushing for further valuers to be accepted in any postcodes where valuer approvals may be on hold.

How many valuers have been approved to work on the panel?

47. PropertyIQ stated that during its first year of operation, its focus was on working with larger valuation firms who had valuers in multiple regions in order to try and ensure the Valuation Ordering Service covered as much of New Zealand as possible. In PropertyIQ's view, larger valuation firms were also more likely to have better systems and infrastructures in place, and to have better overall compliance with industry requirements.
48. PropertyIQ stated that as at June 2012, [REDACTED] valuers from [REDACTED] valuation firms had joined the service. PropertyIQ is also involved in the registration and contract process with an additional [REDACTED] valuers from [REDACTED] valuation firms. PropertyIQ stated that smaller valuation firms and sole traders can contract directly with PropertyIQ to be on the panel, or they can join the panel by sub-contracting to a larger valuation firm.
49. Out of the [REDACTED] valuers either already approved, or at the registration and contract phase, [REDACTED] (approximately [REDACTED]) are valuers employed by QV.
50. Information obtained by the Commission indicates that there are approximately 200 valuation firms in New Zealand covering residential and lifestyle property, commercial property, and industrial property valuations. There are an estimated 900 valuers in all the valuation segments, with approximately 600 valuers undertaking residential and lifestyle property valuations.

How is work allocated to panel valuers?

51. PropertyIQ stated that valuation jobs loaded into its Valuation Ordering Service are "randomly" assigned to an active valuation firm or valuer within the relevant postcode. The random allocation of jobs is governed by a set of postcode specific allocation ratios within the PropertyIQ system. This system allocates jobs within a postcode based on the proportion of valuers each valuation firm has within the particular postcode.
52. PropertyIQ expects that over time as the volume of allocated jobs increases to statistically valid levels, the number of jobs allocated to each firm should mirror its proportion of valuers in the postcode. PropertyIQ stated that participating banks will be provided with regular summaries of how jobs have been allocated and will be able to raise concerns with PropertyIQ if the allocation of jobs is not meeting their expectations. Valuation firms will also be provided with individual summaries for

postcodes they operate within. These summaries will detail the number of jobs a particular valuation firm has completed and the total number of jobs completed in the postcode.

Competition analysis: Market definition

53. The Commission has not considered a property valuation market in any of its previous investigations or merger decisions. However, in July 2010, the Australian Competition and Consumer Commission (ACCC) completed an informal review of a business acquisition within the valuation management industry. The acquirer was RP Data Limited, the Australian parent of RP Data NZ.
54. The information obtained during this investigation indicates that the relevant markets in New Zealand are likely to be similar to, if not the same as, those defined by the ACCC in Australia. In line with the ACCC, for the purposes of this report we have defined the relevant markets to be:
 - 54.1 A national market for the supply of valuation management software platforms.
 - 54.2 Regional markets for the supply of physical property valuations (including driveby/kerbside valuations and full valuations).
 - 54.3 A national market for the supply of electronic property valuations (including automated valuation models and electronic valuation reports/desktop valuations).
55. It is arguable that the regional markets for the supply of physical property valuations could be further segmented into the following sub-markets: residential and lifestyle; rural; commercial; and industrial.
56. Some valuers and valuation firms focus solely on residential and lifestyle property valuations, while others may undertake a mix of residential and commercial property valuations, or a mix of commercial and industrial property valuations. The actual valuation work undertaken by individual valuers can vary from firm to firm, and is likely to be greatly influenced by the size of the firm and where in New Zealand the firm is located.
57. There also appears to be a degree of overlap and substitutability between some types of physical property valuations and some types of electronic property valuations. However, our current view is that they are best viewed as two separate, but closely related markets.
58. The competition analysis below focuses upon the impact upon competition in the narrower market for the supply of physical (residential and lifestyle) property valuations.

Competition analysis: Section 30 – price fixing

59. Section 30 (read with s27) prohibits contracts, arrangements or understandings containing provisions that have the purpose, effect or likely effect of fixing, controlling, or maintaining the price for goods that are supplied or acquired by the parties to the contract, arrangement, or understanding, in competition with each other.
60. The complainants were concerned that the setting of valuation prices via the Valuation Ordering Service may have amounted to a form of price-fixing.

Is PropertyIQ “in competition” with the valuation firms?

61. Section 30(1)(a) requires that the parties to the contract, arrangement or understanding be “in competition” with each other. This means that the parties must supply goods or services in competition with each other, or that they would likely have done so without the provision(s) of the contract, arrangement or understandings.
62. This typically means that the parties to the contract, arrangement or understanding must supply or be potential suppliers of similar or the same goods or services to the same or similar customers.
63. The Valuation Ordering Service covers the provision by approved valuation firms of two valuation products.
 - 63.1 Val-IQ Desktop Valuation.
 - 63.2 Full Market Valuation.
64. The Valuation Ordering Service and the Val-IQ system are software products that are licensed and supplied by PropertyIQ to valuation firms, banks and lending institutions. PropertyIQ does not itself undertake Val-IQ Desktop Valuations or Full Market Valuations. Instead it acquires the valuations from the panel valuers and then sells the same valuations to participating banks’ mortgage customers. PropertyIQ acts on its own behalf in procuring the valuations and not as an agent of the banks’ mortgage customers or the valuation firms. If PropertyIQ only acted as an agent it would not be in competition with the valuation firms. However, since PropertyIQ acts on its own behalf in selling the same or similar valuation products to participating banks’ mortgage customers as the valuation firms, it is in competition with those firms for the supply of the valuation products to mortgage borrowers. The fact that PropertyIQ does not undertake the valuations itself does not change this horizontal element.

Was there a contract, arrangement, or understanding between competitors?

65. PropertyIQ’s stated intention was to ensure that the valuations undertaken through the Valuation Ordering Service were at competitive market pricing levels and turnaround times. To this end, PropertyIQ sought initial valuation pricing and turnaround time information from individual valuation firms on a postcode basis.

PropertyIQ then entered into separate supply contracts with individual valuation firms who wished to participate in the Valuation Ordering Service. PropertyIQ also entered into contracts with [REDACTED] and [REDACTED] to provide those banks with Valuation Ordering Services.

66. The conduct is best considered as two separate, but related situations.
 - 66.1 The preliminary discussions about prices and turnaround times.
 - 66.2 The contracts PropertyIQ subsequently entered into with the valuers, valuation firms, and banks.

The preliminary discussions about prices and turnaround times

67. As PropertyIQ was not in competition with the valuation firms before it commenced providing the valuation services, the vertical discussions PropertyIQ had with individual valuation firms wishing to participate in the Valuation Ordering Service did not constitute arrangements or understandings which could be captured by section 30 of the Act.
68. The information assessed also does not suggest that valuation firms entered into horizontal agreements with each other concerning the price quotes they submitted to PropertyIQ as part of the price setting process.
69. We therefore conclude that there was no horizontal arrangement between Property IQ and the valuation firms, or between the different valuation firms that could be caught by section 30 of the Act.

The contracts PropertyIQ subsequently entered into with the valuers, valuation firms and banks

70. PropertyIQ entered into individual contracts with valuers and valuation firms who accepted the terms and conditions proposed by PropertyIQ and met the necessary insurance and qualification requirements. The individual contracts with valuation firms are vertical as they are between the valuers and valuation firms as suppliers of the valuation products and Property IQ as the customer. However, as discussed above, PropertyIQ was in competition with the valuation firms when it started selling the valuation products to participating banks' mortgage customers. PropertyIQ is therefore both a competitor and customer of the valuers and valuation firms. The provisions of the contracts must therefore be assessed under section 30 of the Act notwithstanding the vertical nature of the contracts between PropertyIQ and the valuation firms.
71. It is, however, important to note that while the prices of the valuations supplied by valuation firms to PropertyIQ were necessarily agreed between the parties, the fixing of the price of that supply is not caught by section 30 as PropertyIQ and the valuation firms were not in competition with each other in relation to that supply.
72. PropertyIQ also entered into contracts with [REDACTED] and [REDACTED]. PropertyIQ is not in competition with the banks and the provisions of those contracts are

therefore not subject to scrutiny under section 30 of the Act. There is also nothing to suggest that there are any horizontal agreements between the banks concerning the Valuation Ordering Service.

Did the provisions of the contracts have the purpose, effect or likely effect of fixing, controlling or maintaining prices?

73. Section 30 requires parties to the CAU to have the 'purpose, effect or likely effect of fixing controlling or maintaining a price'.
74. The purpose that must be proved under section 30 is a purpose to fix, maintain or control prices. The assessment of "purpose" requires a consideration of the object or aim of the conduct.
75. Effect is concerned with the actual or potential consequences of the provision in question. When considering whether a provision of a CAU has the "effect" of fixing, controlling or maintaining a price, it is the actual results of the provision that are relevant. This is a question of fact. In contrast, "likely effect" involves considering results that may eventuate.

Purpose of fixing, controlling or maintaining prices

76. PropertyIQ's object in contracting with valuers and valuation firms was to enable it to set up the Valuation Ordering Service to provide valuation products and services in the residential and lifestyle property market to banks and mortgage borrowers.
77. As discussed above, PropertyIQ pays valuation firms a standard price for valuations in each post code and for each price band (eg \$0-\$250,000; \$250,000-\$500,000 etc). PropertyIQ in turn charges the bank customer the same prices for the valuation. While the contracts include an agreement on the price PropertyIQ will pay the valuation firms this is a necessary element to enable PropertyIQ to obtain and provide the valuation products to mortgage borrowers. Further, as noted in paragraph 71 above, the fixing of the price of that supply is not caught by section 30 as PropertyIQ and the valuation firms were not in competition with each other in relation to that supply.
78. There is nothing in the provisions of the contracts which suggest that the parties had the purpose of fixing, maintaining or controlling the prices of the valuation products sold by the parties in the downstream market where they compete as there is no evidence of an agreement on the price(s) that the parties will charge mortgage borrowers. Importantly, the price that PropertyIQ charges mortgage borrowers is set unilaterally by PropertyIQ and not by agreement with the valuation firms.
79. The terms of the contracts which allow panel valuers to compete with PropertyIQ (including on price) by providing the valuation products to mortgage borrowers directly themselves also suggest that this was not the purpose of the contracts.

Effect or likely effect of fixing, controlling or maintaining prices

80. Whether or not a provision of a contract has the effect or likely effect of “*maintaining*” or “*controlling*” a price under section 30 depends on the extent to which the determination of the price to be charged by one or more of parties is affected or interfered with, or is likely to be affected or interfered with by the provision.
81. The issue, therefore, is whether the setting of the standard prices in the contracts between PropertyIQ and the valuation firms influenced or is likely to influence Property IQ and the panel valuers to charge mortgage borrowers the same prices for the valuation products.
82. There is no evidence of an actual price-fixing effect on the prices charged by Property IQ and panel valuers to mortgage borrowers.
83. The provisions of the contract are further unlikely to have such an effect as there are no price-fixing provisions directed at setting the prices charged to mortgage borrowers for valuations and PropertyIQ and the panel valuers are free to compete with each other on price in relation to the supply of such valuations. The additional competitive constraints on PropertyIQ and valuations firms discussed below in paragraphs 112 and 113 also make a price-fixing effect unlikely.

Conclusion

84. Our conclusion is that PropertyIQ and the valuation firms who participated in price discussions and signed Panel Valuer Agreements are unlikely to have breached section 27 via section 30 of the Act.

Competition analysis: Section 27 – substantial lessening of competition

85. Section 27 of the Act prohibits anyone from entering into or implementing contracts, arrangements, or understandings with the purpose, effect or likely effect, of substantially lessening competition. Section 27 requires concerted action involving two or more persons and can cover both horizontal and vertical arrangements.
86. As discussed above, we think the conduct is best considered as two separate, but related situations:
 - 86.1 The preliminary discussions about prices and turnaround times.
 - 86.2 The contracts PropertyIQ entered into with valuers, the valuation firms, and the banks.
87. There are three key elements that need to be considered under section 27 for each situation.
 - 87.1 Identify and define the relevant market within which the conduct is to be considered.
 - 87.2 Identify the relevant provision of a contract, arrangement or understanding.

87.3 Assess whether the provision had the purpose, effect or likely effect of substantially lessening competition in the market.

88. It is also important to bear in mind that section 3(5) of the Act allows provisions of different contracts involving the same party (or any interconnected body corporate) to be aggregated when assessing their competitive effects. This allows us to aggregate all the contracts PropertyIQ entered into with the valuation firms and the banks [REDACTED] and [REDACTED]. However, this aggregation provision only applies to assessing whether a contract, arrangement or understanding had the effect, or likely effect, of substantially lessening competition. It does not apply to consideration of the purpose limb of section 27.

The preliminary discussions about prices and turnaround times

What are the relevant markets?

89. The relevant market is for the supply of physical (residential and lifestyle) property valuations.

What is the relevant arrangement or understanding?

90. PropertyIQ sought initial valuation pricing and turnaround time information from individual valuation firms on a postcode basis. PropertyIQ then consolidated the responses from valuation firms and independently set the prices and turnaround times for valuations in each postcode.

91. It is our view that an arrangement or understanding did not exist between PropertyIQ and individual valuation firms during this price setting process.

92. PropertyIQ was clearly mindful of the potential competition risks associated with such pricing discussions, and took active steps to try and mitigate the risk that a breach of the Commerce Act might arise.

93. We therefore conclude that there is no arrangement or understanding between PropertyIQ and the valuation firms that is caught by section 27 of the Act.

Did the provision have the purpose, effect or likely effect of substantially lessening competition in the market?

94. It is not necessary to consider this question given our view that there was no arrangement or understanding between PropertyIQ and the valuation firms, or between the valuation firms themselves.

Conclusion

95. In our view, the preliminary discussions about pricing and turnaround times between PropertyIQ and the valuation firms are unlikely to breach section 27 of the Act.

The contracts PropertyIQ subsequently entered into with the valuation firms and banks

96. As described in paragraph 65, PropertyIQ entered into separate contracts with individual valuation firms who wished to participate in the Valuation Ordering

Service. PropertyIQ also entered into contracts with [REDACTED] and [REDACTED] to provide those banks with Valuation Ordering Services.

What are the relevant markets?

97. The relevant market for consideration under section 27 of the Act is the market for the supply of physical (residential and lifestyle) property valuations. It is in this market that any impact on competition is most likely to be observed, as it is in this market that the two valuation products offered by PropertyIQ through its Valuation Ordering Service operate.
98. In regard to the market for the supply of valuation management software platforms, PropertyIQ appears to have been the first company to have offered a comprehensive valuation management product to the New Zealand market. However, there appear to be actual and potential competitors operating in similar markets, both internationally and in New Zealand, who could enter the market and compete with PropertyIQ.
99. PropertyIQ has identified a number of large international firms and a number of smaller niche firms that service banks' valuation requirements at an Australasian and/or global level who could provide similar services to those provided by PropertyIQ. PropertyIQ stated that it also faces potential competition from New Zealand entities, including [REDACTED].
100. [REDACTED] stated that [REDACTED] had previously supplied the bank with its valuation information, but because [REDACTED] the bank switched to using PropertyIQ. [REDACTED] believed [REDACTED] was also looking at how they could win back the work by developing a system to compete with the PropertyIQ system. [REDACTED] also thought Terralink was looking at how they could improve their valuation systems.
101. In Australia, the ACCC concluded that the horizontal aggregation of three suppliers of valuation management software platforms was unlikely to result in a substantial lessening of competition in the relevant markets. The ACCC noted:
 - 101.1 the relatively low barriers to entry in the market for the supply of valuation management software platforms and the potential for software developers or valuation firms to enter the market
 - 101.2 the ability of lending institutions to bypass the merged firm by sponsoring new entry or shifting the valuation management software function in-house.
102. The analysis below focuses on competition in the market for the supply of physical (residential and lifestyle) property valuations.

What is the relevant contract, arrangement or understanding?

103. PropertyIQ entered into individual Panel Valuer Agreements with valuation firms and valuers who accepted the terms and conditions proposed by PropertyIQ and met the necessary insurance and qualification requirements. The key provisions of the

agreements were those that set the valuation fees payable by PropertyIQ to the valuers. These provisions are contained in clause 8 and Schedule 2 of the agreement.

104. PropertyIQ also entered into agreements with [REDACTED] and [REDACTED] to provide them with the Valuation Ordering Service.

Did the provision have the purpose of substantially lessening competition in the market?

105. PropertyIQ has indicated that it introduced the Valuation Ordering Service in response to the changing needs of New Zealand banks and their Australian parents, and as part of a general move to improve risk management practices within the broader finance industry following the global financial crisis. PropertyIQ also noted that its 50% owner, RP Data, is a major provider of valuation management systems in Australia and PropertyIQ has leveraged off the expertise, systems and people from within the broader company group to develop the Valuation Ordering Service in New Zealand.
106. PropertyIQ is also 50% owned by QV, a major player in the New Zealand markets for electronic and physical property valuations. However, PropertyIQ have opened the Valuation Ordering Service up to other valuation firms and valuers in direct competition with QV and their stated intention is to continue to add valuers to ensure they have at least three competing valuers in each postcode.
107. We have not seen any information indicating that the contracts PropertyIQ entered into with the valuation firms, valuers, and banks, had the purpose of substantially lessening competition in the markets for the supply of physical (residential and lifestyle) property valuations. We further consider this to be objectively unlikely for the reasons stated in paragraph 83 above.
108. As noted above, section 3(5) of the Act cannot be used to aggregate similar contracts when considering the purpose limb of section 27 of the Act.

Did the provision have the effect or likely effect of substantially lessening competition in the market?

109. We now turn to consider whether the contracts PropertyIQ entered into with valuation firms and valuers, and banks, have the effect, or likely effect of substantially lessening competition in the relevant markets.
110. The phrase substantial lessening of competition should be interpreted with the aim of the Act in mind – the long term benefit of consumers. Consistent with that aim, a substantial lessening of competition can be viewed as a lessening of competition which creates, enhances or maintains market power.
111. Market power is the ability of parties to behave to some degree independently of competition. According to the courts, the critical test for market power is the ability of a firm to price above competitive levels without rivals taking away customers in

due time.¹ The greater the reduction in competition resulting from the agreement in question, the greater the degree of market power that is being obtained. A lessening of competition which does not create, enhance, or maintain market power, and does not harm consumers, should not be of concern and accordingly could not be described as “real or of substance.”

112. A key concern in this matter is whether PropertyIQ could increase prices for the supply of physical (residential and lifestyle) property valuations free from any competitive constraint. Our view is that PropertyIQ is unlikely to be able to increase those prices above competitive levels for the following reasons:
- 112.1 The Valuation Ordering Service only relates to one segment of the physical (residential and lifestyle) property valuation market, albeit a significant segment. Namely, valuations for finance and lending purposes. There will continue to be demand for valuations for other purposes and the prices of those valuations will be determined independently of the PropertyIQ system.
- 112.2 Only [REDACTED] have actually begun using the Valuation Ordering Service. [REDACTED], [REDACTED] and [REDACTED] have had discussions with PropertyIQ, but have not yet agreed to start using the service. There are a number of other banks and lending institutions, including [REDACTED], [REDACTED] and [REDACTED], which have not joined the service and will continue to require physical property valuations for various reasons. It is expected that the prices for these valuations will continue to be set in a competitive way and will be a useful reference point for pricing under the Valuation Ordering Service.
- 112.3 PropertyIQ’s current prices under the system are based upon independent pricing information obtained from valuers and were intended to be competitive, and reflective of prices for valuations available elsewhere in the market. PropertyIQ has stated that any future price changes will be based upon a review of its prices against general market prices and feedback will be sought from valuers and banks signed up to the system.
- 112.4 PropertyIQ does not appear to have an obvious incentive to increase (or decrease for that matter) prices for valuations under the Valuation Ordering Service. The cost of the valuations is passed directly through to the bank customers. PropertyIQ’s revenue from the service is understood to come from the service fees that it charges valuers and banks. It is acknowledged that PropertyIQ’s part owner, QV, would potentially benefit from an increase in prices, but so too would any other valuers competing with QV in the same postcode.
- 112.5 Mortgage customers are likely to object to paying increased prices for property valuations under the Valuation Ordering Service compared to prices

¹ *Queensland Wire Industries v Broken Hill Pty Co Ltd* [1989] 167 CLR 177, 188-190, *Boral Besser Masonry Ltd v ACCC* [2003] HCA 5, 195 ALR 609 at para 136.

in the broader market, and are likely to express their concern to the relevant lending institution.

- 112.6 Banks are likely to have significant countervailing power and are likely to exercise that power for their own interest and on behalf of their customers that are required to obtain property valuations. There is significant competition between the banks for mortgage customers and they have indicated that the pricing of the Valuation Ordering Service valuations must be competitive with non-PropertyIQ valuations.
113. Another important concern is the extent to which competition in the market for the supply of physical residential and lifestyle property valuations could be foreclosed by the contracts PropertyIQ has entered into with valuers, valuation firms, and banks. Our view is that the contracts PropertyIQ has entered into do not sufficiently prevent or hinder competition in the market and do not allow PropertyIQ to act independently of competition, for the following reasons:
- 113.1 As noted in paragraph 112.2, a number of banks and lending institutions have not joined the Valuation Ordering Service and will continue to require physical property valuations for various reasons. Valuation firms will continue to be able to compete for this, and other valuation work. It is however, acknowledged, that this portion of the market will shrink if more banks and lending institutions join the service.
- 113.2 Further, the Valuation Ordering Service only relates to physical (residential and lifestyle) property valuations for finance and lending purposes. Valuation firms, both large and small, will continue to be able to compete with each other for other valuation work, such as for tax, insurance, matrimonial, asset, and trust purposes.
- 113.3 The banks have indicated that they would not lock themselves into a system that prevented them from pursuing other valuation options in order to meet their own needs or the needs of their customers.
- 113.4 The banks appear to have a number of alternative options open to them, including: greater use of internal tools and processes to aid lending decisions; greater use of electronic/automated valuation tools; development of their own valuation software or system; joining a valuation system offered by a new entrant; and/or entering into contracts with specific valuation firms for them to undertake all of the bank's valuation work.
- 113.5 The Valuation Ordering Service is a voluntary system, and valuers and valuation firms are free to not participate in the system. If a valuer or valuation firm does join the system, they are still able to reject a specific valuation request or quote the job at a different price to reflect special circumstances. Valuers and valuation firms who have joined the system also remain free to undertake non-PropertyIQ valuation work in the broader market.

- 113.6 [REDACTED] As noted above, the Valuation Ordering Service “randomly” assigns jobs to an active valuation firm or valuer within the relevant postcode. The allocation of jobs is governed by a set of postcode specific allocation ratios which are based on the proportion of valuers each valuation firm has within the particular postcode. This system is designed to ensure that the jobs are distributed fairly between the competing valuers on the panels. PropertyIQ provides participating banks with regular reports setting out the number of valuations done by each firm, enabling the banks to ensure the allocation is being done fairly.
- 113.7 The valuation firms that join the PropertyIQ system, particularly the medium to large size firms, are likely to be able to exercise a degree of countervailing power if PropertyIQ attempts to distort competition in favour of its part owner, QV. This could be achieved through valuation firms raising their concerns with PropertyIQ and/or the participating banks, or by terminating their agreement with PropertyIQ altogether (which requires only 30 days notice).
114. A number of parties have noted that the valuation industry has remained largely unchanged over a long period of time. Issues for the valuation industry have recently been highlighted by the global financial crisis and issues within New Zealand concerning finance companies and property developers. These developments appear to have been a catalyst for change within the industry, particularly from the banking sector.
115. The New Zealand valuation industry also appears to have been historically characterised by a large number of smaller firms. However, there now appears to be a degree of movement within the industry towards greater concentration in the number of valuation firms, and a number of medium and large firms are actively expanding the number of valuers they have on board and the services that they provide. It seems likely that these changes and developments within the industry are likely to continue both with and without the Valuation Ordering Service.

Conclusion

116. In our view, the contracts PropertyIQ entered into with valuation firms, valuers, and banks are unlikely to have had the purpose, effect, or likely effect of substantially lessening competition in the market for the supply of physical (residential and lifestyle) property valuations. Valuers and valuation firms are able to compete with each other via the Valuation Ordering Service and compete for valuation work not covered by that service. Further, a number of the banks stated their intention to continue to give customers the choice to obtain their own valuations outside of the Valuation Ordering Service.

Conclusion on section 27 via section 30

117. In our view:

117.1 The preliminary discussions about pricing and turnaround times for the Valuation Ordering Service between PropertyIQ, valuers and valuation firms did not result in a contract, arrangement or understanding, and are unlikely to breach section 27 via section 30 of the Act.

117.2 The provisions of the contracts PropertyIQ entered into with valuers valuation firms, and banks are unlikely to have had the purpose, effect, or likely effect, of fixing, maintaining or controlling prices in the market for the supply of physical (residential and lifestyle) property valuations in breach of section 27 via section 30 of the Act.

Conclusion on section 27

118. In our view:

118.1 The preliminary discussions about pricing and turnaround times for the Valuation Ordering Service between PropertyIQ, valuers and valuation firms did not result in a contract, arrangement or understanding, and are unlikely to breach section 27 of the Act.

118.2 The contracts PropertyIQ entered into with valuers, valuation firms, and banks are unlikely to have had the purpose, effect, or likely effect, of substantially lessening competition in the market for the supply of physical (residential and lifestyle) property valuations in breach of section 27.

Recommendation

119. We recommend that:

119.1 the investigation be closed

119.2 no further action be taken

119.3 the parties be notified.

Agree / Disagree

_____ **June 2012**

Ritchie Hutton
Investigations Manager
Competition Branch