

Enquiries Unit
Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London, EC4Y 8JX

20th August 2007

Re: Estate Agency Competition

Dear Sirs:

We are contacting you to request that the Office of Fair Trading looks again at the issue of competition in estate agency in England and Wales in the light of the rapid growth in the number of consumers using online estate agents.

We are aware that you looked into this issue in your 2004 report *Estate Agency Market in England and Wales* (OFT 693). We support many of the recommendations made in that report, specifically your call for greater clarity on fees (1.13), a better audit trail of communication between seller and agent (1.25) and more price competition between agencies (1.10). Online estate agencies – whether they are ‘sell it yourself’ listing websites or ‘full service’ online agents like BrightSale (which comply with all relevant estate agency legislation and are members of the NAEA and the Ombudsman scheme) have the capacity to improve estate agency services in all these areas, and are currently doing so.

But it is your recommendation that the law should be changed to “require contract terms to be presented more clearly” (1.31) that is of greatest concern to us today. The law has not been changed, as you know, and our contention is: 1) that contract terms are actually now even *less* clear to consumers than they were in 2004 and 2) that this confusion is being used by traditional agents to suppress competition from lower fee online agents.

We believe that traditional estate agents are actively using the provisions of ‘sole agency’ or ‘sole selling rights’ contracts against online competitors; and we have uncovered a number of such instances in the last few months. Home sellers listing their properties on BrightSale have been threatened with punitive and arbitrary commission fee increases from traditional estate agents unless the listing with us is removed.

The point is illustrated by the case of our customer Mrs Marguerite Hunt from Tenby, Pembrokeshire who listed her four bedroom property with BrightSale in August 2007. Mrs Hunt’s traditional high street agent contacted her and threatened to increase her commission charge from 1.75% to 2.25% unless she removed her property from BrightSale. Mrs Hunt informed us that she was not made aware of such a clause at the time she signed the contract. And nowhere in her original contract did it state what the new rate of commission would be in such a situation.

We need to be clear that we are not suggesting that what the traditional agent did was illegal. But we believe it was anti-competitive. In the light of Mrs Hunt’s case, and many others like it, we were particularly dismayed to read the comments reported in *Estate Agency News* (August 2007) by Mr Paul Smith, the Chief Executive of SpicerHaart. With reference to competition from online agencies, Mr Smith said:

"Estate agents with sole agency contracts need to be careful. There's nothing to stop their vendors from also selling privately. You [traditional agents] need to consider reverting to sole selling rights and include a clause which prevents the seller from using an Internet Property Retailer at the same time. We estate agents need to stick together.. "

We leave it you at the Office of Fair Trading to determine what Mr Smith meant when he exhorted his fellow traditional agents to "stick together". But surely for such a senior figure in the estate agency profession to call for the insertion of clauses to prevent the use of online providers must be regressive to the development of competition and to the evolution of estate agency services in this country. 'Sole selling rights' contracts are (in our view) iniquitous and clearly not in the interests of consumers. We cannot see how any contract which allows an estate agent to claim a fee even when a home owners sells his property to his neighbour following a private chat over a garden fence can possibly be defended as fair to consumers.

Again, we need to be very clear. We have no quarrel whatsoever with traditional estate agents *per se*. There can be no doubt that in many cases they provide a good service which consumers often judge to be worthy of the extra fees they charge. What we are demanding is the right for online agents to compete on a level playing field on which some market participants are not using clauses in contracts that are not flagged up to consumers to stifle competition.

When provided with a fair choice consumers are increasingly keen to try online estate agency services. In fact, the online sector of the market has grown substantially in the last couple years. Our research has found that there were more than 35 significant online agents as of 30th June 2007, with more starting up each month. Of these, 29 were pure 'sell it yourself' listing services with 6 'full service' online agents like BrightSale.

There are (as of 30th June 2007) 25,275 properties listed with these online agents. This is around 3.6% of the total 695,000 properties the leading portal Rightmove.co.uk lists in the UK currently. So the online agents' market share is already significant and is growing every day.

Our conclusion is a call on the OFT to revisit the position of competition in estate agency with specific reference to the suppression of competition through poorly understood or malicious contracts.

Specifically, we call on you to do the following in the interests of promoting competition:

- 1. To acknowledge the role that online estate agents can play in delivering at least three of the main recommendations of the 2004 report: greater clarity on fees (1.13), better audit trails (1.25) and more price competition (1.10);**
- 2. To state more clearly and forcefully that consumers have a right to understand and be made aware of the significant clauses in their contracts before they sign them. This should be done verbally as is now required in many financial services contracts;**

- 3. To recommend a 'cooling off' period during which time consumers are free to cancel or alter their contract if they find a better service elsewhere; and**
- 4. To state that you believe that 'sole selling rights' contract with 'prohibition' clauses against online agents are anti-competitive.**

We are aware that as members of the National Association of Estate Agents, we could have pursued our complaints with that body. But given that our complaint is essentially that of a 'new entrant' firm against incumbents, and given that the NAEA overwhelmingly represents the latter group, we felt it was appropriate to refer the matter directly to yourselves.

Yours etc.

Mr Andy Etches
Managing Director

BrightSale

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