



Statement of Issues

15 February 2024

Realestate.com.au – proposed acquisition of Dynamic Methods

Purpose

1. Realestate.com.au Pty Ltd (**REA**), proposes to acquire Dynamic Methods Pty Ltd.
2. This Statement of Issues:
 - gives the Australian Competition and Consumer Commission's (**ACCC**) preliminary views on competition issues arising from the proposed acquisition
 - identifies areas of further inquiry, and
 - invites interested parties to submit comments and information to assist our assessment of the issues.
3. Statements of Issues do not refer to confidential information provided by the parties or other market participants and therefore may not fully articulate the ACCC's preliminary position.

Overview of ACCC's preliminary views

4. In considering the proposed acquisition, the ACCC applies the legal test set out in section 50 of the *Competition and Consumer Act 2010* (the **CCA**). In general terms, section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
5. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'. In this Statement of Issues there are three issues identified that may raise concerns:
 - **Foreclosure of competitors in the supply of one or more services in the digital real estate workflow.** The proposed acquisition combines the largest supplier of digital real estate advertising services with the largest supplier of digital real estate forms. The ACCC's preliminary view is that post-acquisition, REA may have the ability and incentive to foreclose rivals to its agent solutions products and forms product, reducing competition, by engaging in either vertical foreclosure or bundling or tying

strategies. This would result in higher prices, lower quality, and/or lower innovation to agents that use those services.

- **Increasing data-related foreclosure risks and entrenchment in the supply of digital real estate advertising.** The ACCC's preliminary view is that the proposed acquisition potentially results in REA gaining access to unique and exclusive data, which could be used to foreclose actual and potential competitors to its ecosystem of digital real estate advertising products and services. This could either occur directly, by REA refusing or degrading the supply, or raising the cost of data to competitors that use or plan to use the data for their services. It could also occur indirectly, by REA improving products across its ecosystem to the point that REA's competitors lose scale and/or network benefits and become a weaker constraint on REA. The ACCC is concerned that this could increase barriers to entry and/or expansion across these services, and further entrench REA's already strong position in digital real estate advertising.
 - **Increased likelihood of co-ordinated effects resulting from access to commercially sensitive information.** The ACCC's preliminary view is that, if REA did obtain access to commercially sensitive information, this could distort and/or lessen competition in the supply of digital real estate advertising services through coordinated effects, by facilitating consensus between suppliers and the detection of cheating.
6. The ACCC recognises that there may be efficiency or pro-competitive drivers behind the proposed acquisition. However, REA is the largest supplier of digital real estate advertising (through realestate.com.au and realcommercial.com.au), and Dynamic Methods is the largest supplier of digital real estate forms, with the vast majority of real estate agents (except in Victoria) using its forms products. In these circumstances, the ACCC's concern about the merger removing or reducing constraints will be increased compared to where a market participant lacks market power.
 7. As such, the ACCC is considering the extent to which the merger may affect REA's existing position in real estate advertising services, and how this acquisition may serve to reinforce and/or protect its strong position.

Making a submission

8. The ACCC invites submissions from interested parties, particularly on the following key issues:
 - REA's ability and incentive post-acquisition to foreclose competitors in the supply of one or more services in the digital real estate workflow through vertical foreclosure or bundling or tying.
 - Whether the proposed transaction could increase data-related foreclosure risks, or raise barriers to entry/and or expansion, in the supply of one or more digital real estate services.
 - Whether the merger would provide REA access to commercially sensitive information, which could distort the dynamics of competition between digital real estate advertising platforms.
9. Interested parties should provide submissions by 5pm on **1 March 2024**. Responses may be emailed to mergers@acc.gov.au with the title: Submission re:

realestate.com.au/Dynamic Methods - attention Lynette Lymbers/Louisa Wilson. If you would like to discuss the matter with ACCC staff or have any questions about this Statement of Issues, please contact Lynette Lymbers on 02 9230 9132 or Louisa Wilson on 03 9290 1474.

10. The ACCC anticipates making a final decision on 9 May 2024, however, this timeline can change. To keep up with possible timing changes and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at www.accc.gov.au/publicregisters/mergers-registers/public-informal-merger-reviews.

Confidentiality of submissions

11. The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the CCA. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, please identify any confidential information that is provided to the ACCC. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

About ACCC 'Statements of Issues'

12. A Statement of Issues is not a final decision about a proposed acquisition. A Statement of Issues outlines the ACCC's preliminary views and identifies further lines of inquiry.
13. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

The parties

The acquirer: Realestate.com.au Pty Ltd

14. Realestate.com.au Pty Ltd (**REA**)¹ owns and operates residential and commercial property websites and apps, including realestate.com.au, realcommercial.com.au and flatmates.com.au. REA also offer targeted display advertising on these platforms, for example for banks, insurance companies and furniture retailers.
15. REA supplies digital real estate advertising services to real estate agents for the sale and leasing of established residential properties, new developments, retirement properties, and the sale and leasing of commercial properties.
16. REA also offers a range of businesses adjacent to its listing platform, which are used by both agents and consumers:
 - Mortgage Choice Pty Ltd, an online mortgage broking franchise
 - PropTrack Pty Ltd, a property data and valuation services provider and property.com.au, an online property research website

¹ a wholly owned subsidiary of REA Group Ltd.

- Campaign Agent Pty Ltd, provider of vendor paid advertising and home preparation finance solutions
 - Realtair Pty Ltd, a digital platform which enables real estate agents to manage real property transactions online. Dynamic Methods is integrated, meaning agents can access forms via Realtair.
 - Managed Platforms Pty Ltd, a property management software solution for the collection and payment of property management related fees
 - Arealytics, a provider of commercial real estate information and technology, and
 - Simpology Pty Ltd, a mortgage applications and e-lodgement service provider.
17. REA provides agents with a self-service platform, Ignite, which facilitates agents' access to and management of REA products via the realestate.com.au website and app (such as their realestate.com.au advertising campaigns, customer enquiries, rental applications, agency and personal performance and market insights). This includes access to online forms, via Realtair.
18. REA has minority investments in Realtair, Simpology, and Managed Platforms.

The target: Dynamic Methods Pty Ltd

19. Dynamic Methods provides a platform that enables real estate agents to create and manage forms related to real estate transactions, such as residential tenancy agreements, agent authorities, contracts for sale and commercial leases. Dynamic Methods is the only forms provider operating nationally.
20. In all states and territories except Victoria, Dynamic Methods provides forms developed by the real estate institutes. In Victoria, a competitor, Hutly distributes the Real Institute of Victoria's forms, and instead, Dynamic Methods has its own forms product.
21. Agents currently can access forms from Dynamic Methods via two channels:
- directly from Dynamic Methods
 - via agent solutions providers, which integrate with Dynamic Methods. Integration is achieved via an open API provided by Dynamic Methods. REA's agent solutions provider, Realtair, is integrated with Dynamic Methods.

Industry Background

Digital real estate advertising platforms

22. Digital real estate advertising platforms (or listing platforms) refer to digital platforms used by agents to advertise, and consumers to find, residential and commercial properties for sale and lease. Following REA, Domain is the second largest provider of digital real estate advertising services in Australia, except in Canberra where the ACCC understands Domain is the largest provider. Domain also operates nationally, and provides a range of products and services to real estate agents, customers and other stakeholders operating in the Australian commercial and residential property markets, including property data and valuations and agent solutions.
23. Other smaller providers of real estate advertising services include Homely, On the House, View Media Group and Zango.

Digital real estate forms providers

24. Digital real estate forms providers refer to platforms that enable the real estate industry to transact digitally. As noted above, Dynamic Methods is the largest digital real estate forms provider nationally. Digital real estate forms providers either distribute forms they have created themselves, or forms developed by real estate institutes or other real estate industry bodies.
25. Hutly is the largest real estate forms provider in Victoria and distributes the Real Estate Institute of Victoria's forms. Hutly also owns and operates ADL Software which is a forms provider (distributing its own digital real estate forms) operating mainly in NSW and QLD.
26. reaforms provides digital real estate forms nationally however has a much larger presence in South Australia than in any other state or territory (and is Dynamic Methods' main competitor in SA). reaforms supplies its own forms via its platform, which are endorsed by the Society of Auctioneers and Appraisers SA Inc.
27. Other smaller providers of digital real estate forms include National Property Group and Flkitover.

Agent solutions providers

28. Agent solutions providers refer to the platforms that agents use to manage real estate transactions, such as contract and workflow management. As noted above, REA's agent solutions platform is Realtair. Domain offers a number of agent solution services, including RealTime Agent, Realbase and Homepass.
29. There are numerous independent suppliers of agent solutions, including CRMs and campaign management providers - including Avnu, Ailo, Client Vault, Console Cloud, Eagle Software, iProperty, Manly Management, Agentbox, REI Master and Resly.
30. There are also several property data providers (who provide products such as valuations and comparative market assessments) including CoreLogic, Domain's Pricerfinder, National Property Group and IDS.

The proposed transaction

31. REA proposes to acquire all the shares in Dynamic Methods.
32. There is no current horizontal overlap between REA and Dynamic Methods.

Related acquisitions

33. In recent years, digital property advertising platforms have been completing acquisitions to expand their presence in property beyond property advertising to services used by agents and consumers to lease and sell property. REA has completed the following acquisitions of products complementary to its core listing platforms:
 - In 2021, Mortgage Choice, a supplier of mortgage broking, financial planning and other credit services.
 - Hometrack (which REA has rebranded as PropTrack), a supplier of property data services.
 - In 2016, flatmates.com.au.
34. Domain has similarly acquired complementary products in recent years including: :

- Realbase (2022), an agent solutions product.
- Insight data solutions (2021), a provider of statutory valuations to government clients.
- Real Time Agent (2019), which provides agents digital forms and the ability to track and record auction bids and results digitally.

Issue that may raise concerns – foreclosure of competitors in the supply of one or more services in the digital real estate workflow

35. The proposed acquisition combines the largest supplier of digital real estate advertising services with the largest supplier of digital real estate forms. The ACCC's preliminary view is that post-acquisition REA may have the ability and incentive to foreclose rivals in the digital real estate workflow, including rivals to its:
- agent solutions provider (Realtair), by engaging in vertical foreclosure strategies, lessening competition in the supply of agent solutions.
 - forms provider (Dynamic Methods), by engaging in either vertical foreclosure or bundling or tying strategies, lessening competition in the supply of digital real estate forms.
36. The ACCC is concerned that a lessening of competition in the supply of these services could result in higher prices or lower quality or innovation, or could discourage new entry.

Foreclosure of rival agent solutions providers

37. As noted above, one way that agents can access Dynamic Methods' forms is via agent solutions products, such as Resly, MRI Software, REI Master, Eagle Software, InspectRealEstate, Tenant Options, and Domain's Real Time Agent. This is enabled by, among other things, Dynamic Methods supporting integration with these products.
38. REA offers, through its Ignite platform, the agent solutions provider Realtair, which REA has a minority investment in. Realestate.com.au customers are able to access Realtair via their realestate.com.au account, or on realestate.com.au in 'Ignite'.
39. As such, the ACCC is considering whether the proposed acquisition may give REA the ability and incentive to foreclose competitors to Realtair, by restricting those competitors' access to Dynamic Methods' forms.
40. The ACCC's preliminary view is, post-acquisition REA may have the ability and incentive to foreclose rivals to Realtair, reducing competition in the supply of those services. This would result in higher prices for agents for use of those services, and a lower quality of offering overall.
41. Based on the ACCC's initial review, Dynamic Methods is the leading provider of digital real estate forms in all states and territories except Victoria. Various factors appear to contribute to this market leading position, including:
- its distribution of real estate institute-endorsed forms, which agents trust and prefer. In contrast, in Victoria, where Hutly distributes forms created by the Real Estate Institute of Victoria, and Dynamic Methods distributes its own forms products, Hutly has the largest market share, and Dynamic Methods has gained limited market share since entering in 2019.

- the number of agent solutions providers that integrate with Dynamic Methods, and relatedly, agents that use its products.
 - the software used, which is more advanced than other forms providers.
42. Consequently, the ACCC's preliminary view is that currently, aside from in Victoria and South Australia (where real estate institute endorsed forms has a significant presence and integrates with agent solutions providers), there are no effective substitutes to Dynamic Methods that agent solutions providers could switch to in response to REA engaging in foreclosure strategies.
43. The ACCC notes that, since Dynamic Methods entered sixteen years ago, few competitors have entered or expanded to its size.
44. Market inquiries indicate that key barriers to entry/expansion in supplying digital real estate forms are:
- **Real estate institute-endorsed forms.** In all states and territories except Victoria, Dynamic Methods supplies forms created by real estate institutes endorsed forms. Victoria is the only state where Dynamic Methods has a lower market share, indicating the importance of real estate institute endorsement to competing in the supply of forms. However, market feedback has suggested that if real estate forms are compliant with relevant legislation and are competitively priced, agents' preference for real estate institute-endorsed forms may be overcome.
 - **Integrations with software agents use (i.e., agent solutions providers).** Stakeholders have told us that forms providers need to integrate with a minimum number of agent solutions providers to be competitive with Dynamic Methods, in order to access the agents that use these platforms, and that these integrations are difficult to achieve at scale.
45. The ACCC is also considering whether the following factors could limit REA's ability to engage in any foreclosure strategies:
- Dynamic Methods operates an Open API, meaning that agent solutions providers may have more control over the steps involved in integration. This could limit REA's ability, for example, to delay integrations.
 - The extent of control REA would have over the Dynamic Methods API post-acquisition, and determining what functionality may be offered to agent solutions providers.
 - REA's ability to influence decisions made in Realtair, giving its minority investment.
 - Commercial terms between REA and the real estate institutes for form distribution.
 - Agents accessing the forms directly, rather than via agent solutions providers.
46. The ACCC is also considering the extent to which REA would have an incentive to engage in vertical foreclosure strategies given that:
- REA relies on revenue from agents advertising on its platforms; attempts by REA to restrict agents' ability to use forms on their preferred software could result in agents not listing on realestate.com.au and risk this revenue stream.
 - REA's product, Realtair, does not offer the same products and level of functionality as other agent solutions providers.

- Realtair appears to have a small presence in the supply of agent solutions.
47. The ACCC considers that in a future with the proposed acquisition where real estate institutes distributed their forms via other competitors, REA would likely have less of an ability to engage in vertical foreclosure strategies.

Questions for market participants

The ACCC invites comments from market participants on its concerns in relation to REA's ability to foreclose competing agent solutions providers, including on the following:

- how important integration is between the various steps in the real estate transaction workflow, including:
 - whether agent solutions providers require integration with real estate institute endorsed forms and/or Dynamic Methods to compete effectively.
 - whether REA relies on integration with other services to supply its products.
- alternative digital forms platforms and whether they are a viable alternative to Dynamic Methods, including in terms of number of integrations offered and functionality.
- the extent to which agents access forms directly from the forms providers or via agent solutions providers.
- whether legally compliant forms offered at a price competitive to real estate institute forms would be a substitute.
- functionality of Realtair and services it offers and whether it is a close substitute for other agent solutions providers.
- REA's likely control over the Dynamic Methods API post-acquisition.
- the level of control Dynamic Methods has over integrations, and whether post-acquisition REA could use this control to engage in vertical foreclosure strategies.

Foreclosure of rival forms providers

48. The ACCC's preliminary view is that REA may have the ability and incentive to engage in – or threaten to engage in – vertical foreclosure and anticompetitive bundling or tying strategies affecting the supply of digital real estate forms.
49. Such strategies could involve:
- not permitting agents to purchase or use advertising services and forms separately, such as only offering the forms as part of a subscription bundle, and potentially at no additional cost ('free forms').
 - refusing to supply advertising services to agents who acquire forms from competing forms suppliers.
 - charging higher prices for advertising services to agents who use competitor's form products.
 - degrading other forms' ability to work with REA's own products.
50. In particular, market participants have raised concerns that post acquisition, REA could price its forms below cost or offer forms for free to agents as a bundle with its other more established products and services to drive out competing forms providers, discouraging new entry and retaining customers within REA's overall ecosystem.

51. As a result, rival forms providers could lose significant scale efficiencies, which could raise their unit costs. This may, in turn, force rival form providers to raise their prices to remain viable or exit the market. The result could be that agents and consumers are left with less choice in acquiring digital real estate forms, and that they receive less benefit from price competition and face higher prices or lower quality or innovation in the supply of forms in the longer term.
52. Based on the ACCC's initial review, REA is the largest supplier of digital real estate advertising services in all states and territories except the ACT. Network effects in REA's digital listing platforms appear to be the key source of this dominance. Market feedback indicates that the greater number of consumers using REA's listing platforms compared to competing listing platforms means advertising on realestate.com.au is a 'must have' for most vendors. As such, the ACCC considers REA may have the ability to engage in exclusionary bundling or tying strategies.
53. REA estimates that in FY23, realestate.com.au had 120.6 million visits on average each month on all its platforms, which is 3.3 times more visits than its nearest competitor (Domain).² Similarly, it estimates that in FY23, 1.32 million people visit realcommercial.com.au, which is 1.67 times more than its nearest competitor.³
54. The ACCC's preliminary view is that agents are unlikely to cease using realestate.com.au's platforms in response to REA engaging in any bundling or tying strategies, due to the importance of those platforms as a gateway to consumers. Market feedback has been consistent that many agents already consider they have no choice but to list on realestate.com.au to reach the largest audience possible, because competing listing platforms do not have the same reach, except for Domain in the ACT.
55. Some market feedback has indicated that agents may have countervailing power, meaning if REA continued to raise prices for its advertising products or engaged in foreclosure strategies, agents could make more off-market transactions (i.e., where agents sell without listing on any platform).
56. The ACCC's preliminary view is that agents' ability to make more off-market transactions is a limited competitive constraint as:
 - Off-market listings are likely to reach a far more limited audience.
 - Homeowners likely prefer to advertise their properties to the greatest audience possible.
57. The ACCC is considering whether there are factors that limit REA's ability and incentive to engage in any foreclosure and anticompetitive bundling or tying strategies, such as:
 - REA's reliance on advertising revenue from agents, and an unwillingness to risk this revenue stream by requiring agents to use its forms.
 - the extent to which rival form suppliers (who would be foreclosed) currently provide a competitive constraint to Dynamic Methods (and what, if any benefit REA is likely to gain through foreclosing them).
 - the extent of control real estate institutes have over pricing of forms and whether this would limit any potential benefit REA would gain from foreclosing rival forms providers.

² [REA Group 2023 Annual Report](#), 12 September 2022, p 19.

³ [REA Group 2023 Annual Report](#), 12 September 2022, p 20.

- whether REA may be unwilling to risk Dynamic Methods' partnerships with real estate institutes and the revenue stream from agents' use of REI forms via Dynamic Methods' platform.

Questions for market participants

The ACCC invites comments from market participants regarding its concerns in relation to REA's ability and incentive to foreclose competing digital real estate forms providers, including on the following:

- Whether REA will have the ability to bundle or tie, between real estate forms and its advertising services post-acquisition, and the likely impact these actions would have on competition, price, quality or innovation in the supply of forms
- What benefits REA would stand to gain through bundling or tying real estate forms to its advertising services.
- Any barriers to new real estate advertising platforms seeking to enter or expand, and any recent examples of successful entry.
- What (if any) actions agents are able to take if REA bundles or ties its forms to its real estate advertising services, for example not using realestate.com.au, and instead either listing off-market or on alternate platforms such as Domain, Homely, View or On The House.
- How (if at all) the proposed acquisition changes REA's ability and incentive to develop its own (non-REI) digital real estate forms offering without the proposed acquisition.
- Any previous examples of occasions when REA has bundled or tied its products, and whether it does or does not allow products to be purchased separately.
- Whether rival real estate advertising platforms (such as, but not limited to, Domain, Homely, View and On the House) are effective substitutes for REA's listing platforms.
- Whether agents prefer to acquire real estate services covering all the stages of a transaction from end to end from a single supplier or bundled, and the strength of agent preferences for particular products or services.

Issue that may raise concerns – data-related foreclosure and entrenchment

58. REA has a portfolio of businesses that offer complementary services relating to the sale and leasing of property, including its listing, mortgage broking, and agent solutions services. REA offers these products in a complementary manner and has a stated growth strategy to create 'next generation marketplaces through adjacencies.'⁴
59. The proposed acquisition potentially results in REA gaining access to a unique and exclusive set of data that could be used to foreclose its actual or potential competitors in any of the markets encompassing its portfolio or 'ecosystem' of products either:
 - a. directly, by refusing or degrading the supply, or raising the cost of data to competitors that use or plan to use the data for their services, or
 - b. indirectly, by improving products across its ecosystem to the point that REA's competitors lose scale and/or network benefits and become a weaker constraint on REA.

⁴ [REA Group 2022 Annual Report](#), 16 September 2022, p 19.

60. The ACCC understands that digital real estate forms contain the following types of data:
- Metadata, which is data generated when agents and consumers use the Dynamic Methods platform, such as form type signed, number of forms created, number of different forms created, and time taken to sign.
 - Forms data, which is information agents and consumers input, including vendor/lessor and purchaser/lessee details (including agent and legal practitioner details) and transaction information, e.g property purchaser price or rental price, agent's price guide, settlement date, and land information.
61. Market inquiries indicate that the data is valuable, and could be used for the following purposes:
- Improved accuracy of REA's data-related products, e.g., improved propensity to list modelling, comparative market assessments, and automated valuation models due to early access to rental and sales values.
 - Inform pricing for real estate advertising - using rivals' utilisation rates across listings and listing pricings to undercut competitors.
 - lead generation– e.g., using agency authorities for leads for REA's own products, and to sell leads to mortgage brokers, other lenders and financial institutions, conveyancers, removalists, inspection services, and cleaners.
62. The ACCC is currently considering whether the proposed acquisition could foreclose competitors in either:
- markets for the supply of services that currently use or plan to use the data as an input, or
 - markets where REA could use the data to broaden or enhance its services
- by refusing or degrading the supply, or raising the cost of data to actual or potential rivals, for example, in the supply of real estate advertising services.
63. However, the ACCC notes that negotiations with real estate institutes may limit REA's ability to use the data. In addition, this concern would only apply to those market participants who currently have access to the data, or could have accessed the data in future, and the ACCC understands that since the data has been available, it has not been used widely.
64. Given the value of the data and its apparent ability to be used across REA's ecosystem of products (including for future products) the ACCC is also concerned that the proposed acquisition could harm competition in the supply of a range of related and adjacent real estate services by raising barriers to entry or expansion.
65. The ACCC is particularly concerned about any data advantages further entrenching REA's already strong position in the supply of real estate advertising services. This could occur if the data REA obtains through the proposed acquisition increases the attractiveness of its products to the point where its competitors lose significant scale efficiencies and/or network benefits. This could force rivals to offer their services at higher prices or lower quality than in the counterfactual. The result could be a lessening of competitive constraints on REA's offerings, leading to higher prices or lower quality services to customers of real estate advertising and related services.

66. With respect to both vertical foreclosure and raised barriers, the ACCC understands that similar data as held within real estate institute forms is available from other platforms. For example, information about property sale prices could be obtained from auction results or state revenue offices. However, market feedback indicates that as form metadata and data can be provided in 'real time' it provides an enhanced ability to provide these functions. Further, the number of agents and agent solutions providers using/integrated with Dynamic Methods' platform means that the data is unique in its scale and scope.
67. The ACCC notes that as the forms are created by the real estate institutes, it is possible that post acquisition, the real estate institutes would control access to the data. This may mean, for example, that REA is unable to gain access to it, or would be unable to gain access to it on an exclusive basis. However, as the owner of the Dynamic Methods platform, REA may be able to influence the real estate institutes.
68. Further, the ACCC is also considering other means by which REA could obtain ownership of the data itself, for example, via integration into one of its own products.
69. The ACCC considers that, if REA were to restrict current and future competitors' current access to the data, for example by exclusive access, this could limit or foreclose the ability of other firms to compete in the supply of real estate advertising and related services. To the extent that the data was of a nature or timeliness that it could significantly enhance REA's own real estate advertising and property data services, in particular, it could raise barriers to entry or expansion in such markets by depriving rivals of significant scale efficiencies or network benefits.

Questions for market participants

The ACCC invites comments from market participants on its concerns in relation to the potential for REA to restrict current and future competitors' access to data post-acquisition, limiting or foreclosing the ability of other firms to compete in the supply of real estate advertising and related services, including:

- whether you currently use, or have planned to use, the data generated from use of Dynamic Methods' forms, and for what purposes. If you have not previously used the data, why not?
- Which types of businesses could benefit from access to the data.
- alternative sources for rivals to obtain the data, their quality and whether there are any additional costs or disadvantages to those alternatives.
- whether, post-acquisition, if REA seeks agreement from real estate institutes to access the data, REA is likely to be able to access the data on a non-exclusive or exclusive basis.
- The extent to which arrangements, legal or otherwise, between REA and real estate institutes could prevent any foreclosure strategies, for example, real estate institutes owning the data.

Issue that may raise concerns – increased likelihood of co-ordinated effects resulting from access to commercially sensitive information

70. The ACCC is considering whether the proposed acquisition will provide REA with access to rival digital real estate advertising providers' commercially sensitive information. The ACCC's preliminary view is that, if REA did obtain access to commercially sensitive information, this could distort competition in the supply of real estate advertising services, where such information appears to be valuable.
71. Market feedback suggests that digital real estate forms contain the following commercially sensitive information:
 - personal data (of real estate agents' customers)
 - details of the planned property transaction and the proposed marketing schedule (including platform utilisation and pricing information)
 - other important information relating to these workflows
 - agent details (including their listing preferences and commissions)
 - insights on potential future transactions.
72. If the proposed acquisition gives REA commercially sensitive insights into rival real estate advertising services (which rivals cannot replicate vis a vis REA) the ACCC is concerned that REA could use these insights to:
 - target marketing or make unsolicited offers to rivals' clients before rival listing platforms have the opportunity to compete. For example, REA could use intelligence about an upcoming sale to target marketing of its vendor services to the prospective vendor
 - price responsively to its rivals' listing prices
73. The ACCC is concerned that such strategies could distort the dynamics of competition between digital real estate advertising service providers by disincentivising competition, leading to coordination. For example, rival platforms may respond by not competing on price, quality or innovation knowing that REA will be aware of their offerings and be able to undercut their prices or product offerings.
74. Such strategies could soften competition and entrench REA's strong position in the supply of real estate advertising services, enabling it to charge higher prices or reduce service levels in the longer term. Conversely, greater visibility over competitors' pricing could also enable stronger price competition between digital real estate advertising services.
75. The ACCC understands that in many cases, there are several alternate sources of information regarding real estate advertising services' price points and pricing strategies, vendor/landlord/purchaser details and property transaction details. As such, forms distributed via Dynamic Methods are not the sole source of information about property transactions and digital real estate service providers.
76. In its further assessment, the ACCC will consider whether, as a result of the proposed acquisition:
 - REA will gain access to information about rivals that is commercially sensitive,

- how this could distort competition, and
 - whether rivals can access similar information via alternative sources.
77. Whether harm is likely depends in part on available substitutable digital form services. If rival real estate advertising services are able to use alternative forms to REA's forms, REA would not gain access to their information. As noted at paragraph 42, the ACCC's preliminary view is that currently, aside from in Victoria and South Australia, there are no effective substitutes to Dynamic Methods.

Questions for market participants

The ACCC invites comments from market participants on:

- Whether (and if so, which) REI forms contain information that is commercially sensitive to rival listing platforms, including details of the type of commercially sensitive information.
- How the commercially sensitive information could be used by REA.
- Whether there are any restrictions (such as contractual constraints and privacy laws/policies or otherwise) which would prevent REA from accessing and/or using the information in digital real estate forms, and whether those restrictions are sufficient.

ACCC's future steps

As noted above, the ACCC invites submissions from market participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter. Submissions should be emailed to mergers@acc.gov.au by no later than **1 March 2024**.

The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.

The ACCC intends to publicly announce its final view by 9 May 2024. However, the anticipated timeline may change in line with the *Informal Merger Review Process Guidelines*. A Public Competition Assessment explaining the ACCC's final view may be published following the ACCC's public announcement.