

File No.: .....

Registry Document No.: .....

**COMPETITION TRIBUNAL****IN THE MATTER OF** the Competition Act, R.S.C. 1985, c. C-34, as amended;**AND IN THE MATTER OF** an Application by Audatex Canada, ULC for an Order pursuant to section 103.1 granting leave to make application under section 75 of the *Competition Act*.**BETWEEN:**

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT CT-2015-010	
October 1, 2015	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 3

**AUDATEX CANADA, ULC**

Applicant

- and -

**CARPROOF CORPORATION, TRADER CORPORATION, AND eBAY CANADA LIMITED**

Respondents

**AFFIDAVIT OF GABOR TOTH**  
(Sworn October 1, 2015)

I, **GABOR TOTH**, of the Town of Ajax in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Financial and Operating Officer (“CFOO”) of Audatex Canada, ULC (“Audatex”), the Applicant in this Application. I have been with Audatex since May 2012 and have been in the role of CFOO since June 2013. In this role, I have the responsibility of approving all customer and vendor contracts and overseeing all customer support activities. As such, I have personal knowledge of the matters herein deposed to unless otherwise stated. Where information has been obtained from a third party, I state the source of that information, and confirm that I believe it to be true.

### The Parties

2. The Applicant, Audatex, is a corporation incorporated under the laws of the Province of Alberta. Audatex provides data and software solutions to Canadian auto insurance companies and automobile repair shops to streamline the accident claims process, both for estimating the cost of repairs and calculating market values of automobiles. Audatex's customers include six of the 10 largest Canadian auto insurers and approximately 2,500 automobile repair shops in Canada. Audatex is a wholly-owned indirect subsidiary of Solera Holdings, Inc., which, among other things, provides software and services with respect to the processing of automobile insurance claims and is publicly traded on the New York Stock Exchange.

3. The Respondent, CarProof Corporation ("**CarProof**"), is a corporation incorporated under the laws of Canada. CarProof produces and sells automobile history reports, which include information about, *inter alia*, accidents and liens.

4. The Respondent, TRADER Corporation ("**Trader**"), is a corporation incorporated under the laws of Canada. Trader owns the Canadian websites, [www.autotrader.ca](http://www.autotrader.ca) and [www.autohebdo.net](http://www.autohebdo.net) (collectively, "**Auto Trader**"), which are online automobile classified advertisements services that, for a fee, allow anyone to list an automobile for sale.

5. The Respondent, eBay Canada Limited ("**eBay**"), is a corporation incorporated under the laws of the Province of New Brunswick. eBay owns the Canadian website, [www.kijiji.ca](http://www.kijiji.ca) ("**Kijiji**"), which is an online classified advertisements service that, for free, allows anyone to list an automobile for sale.

### Automobile Listings Data

6. Automobile listings data is the information about an automobile that is contained in an advertisement listing an automobile for sale. Such advertisements almost always include the year, make and model of the automobile, as well as the asking price. Mileage, features, transmission type and colour of the automobile, amongst other details, are typically also included.

7. Naturally, businesses that provide a platform for automobile listings, such as Auto Trader and Kijiji, hold automobile listings data.

### Importance of Canadian Automobile Listings Data to Audatex's Business

8. Audatex relies on Canadian automobile listings data in order to determine the market values of damaged automobiles, referred to in the industry as the "total loss" valuation service, for its insurance company customers. When an automobile is damaged in an accident, Audatex reviews automobile listings data for advertisements of automobiles that have similar characteristics as the damaged automobile and are within a close geographic proximity. Using proprietary algorithms, which generally require [REDACTED], Audatex generates a total loss valuation for the damaged automobile. Audatex then prepares a report for the insurance company that can also be shared with the policyholder of the damaged automobile, and which includes information from the listings that underpin the total loss valuation (the "**Valuation Report**"). Where the insurance company elects to provide a policyholder with the cash total loss value of the automobile, rather than repairing it, the Valuation Report serves as justification for the amount paid. Further, the Valuation Report gives credibility to the market value offered by the insurer, allowing it to settle the claim quickly.

9. The automobile listings data is a critical aspect of the Valuation Report, serving as the due diligence supporting the determination of fair market total loss value. Further, as prices attributable to specific second-hand vehicles change over time, the currency of the listings is key to the value assessment. With very limited exceptions, Audatex's insurance company customers will not accept Valuation Reports that are based on automobile listings data that are more than [REDACTED] old. The older the listings used, the more difficulties that arise with policyholders and, in turn, with Audatex's insurance company customers.

10. The total loss valuation generated by Audatex is also the criterion by which insurers determine whether it is preferable to make repairs to an automobile or, if the repair cost is greater than the market value of the automobile, to provide the policyholder with the total loss cash value.

11. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Attached hereto as

Exhibit "1" are true copies of two samples of executed Audatex services contracts, which are representative of Audatex's agreements with insurer customers.

- 5 -

12. Automobile repair shop customers only procure the partial loss estimating service as their services are limited to offering vehicle repairs. Frequently repair shops become Audatex customers because they were mandated to do so by Audatex's insurance company customers in order to facilitate the efficient coordination of automobile repairs. [REDACTED]

[REDACTED] Audatex's agreements with automobile repair shops typically have [REDACTED] terms that [REDACTED] unless the customer provides notice of termination at least [REDACTED] or [REDACTED] before the end of the current term. Audatex's agreements with the approximately 2,500 automobile repair shops that are its customers [REDACTED]

[REDACTED] Attached hereto as Exhibit "2" is a true copy of a template of Audatex's standard form contract for automobile repair shops.

13. [REDACTED]% of Audatex's revenues from its automobile accident claims business are from insurance company customers, including independent appraisers, with revenues from the automobile repair shops making up the balance. [REDACTED]% of Audatex's insurance company revenues are generated from its total loss valuation services. In other words, with respect to total revenues from Audatex's primary business, approximately [REDACTED] is made up of insurance company customers with respect to total loss valuation services, [REDACTED] is made up of insurance company customers with respect to partial loss estimating services, and [REDACTED]% is made up of automobile repair shops with respect to partial loss estimating services. However, since insurance companies [REDACTED]

[REDACTED]

14. Attached hereto as Exhibit "3" is a list of Audatex's insurance company customers, except independent appraisers, including the 2015 fiscal year revenues from each such customer, broken down by total loss valuation services and partial loss estimating services; the total revenues from Audatex's independent appraiser customers are also listed, and are broken down by total loss valuation services and partial loss estimating services.

15. Also contained in Exhibit "3" is a true copy of Audatex's 2015 fiscal year profit and loss statement, audited by external auditors, with the revenues broken down by insurer total loss valuation services, insurer partial loss estimating services and automobile repair shop loss estimating services. Audatex's costs are not allocated between its three services, but I estimate that the proportion of profits generated from each service closely corresponds with its proportion of revenues, [REDACTED]

[REDACTED]

[REDACTED]

#### Importance of Auto Trader and Kijiji Canadian Automobile Listings Data to Audatex

16. Audatex generated over [REDACTED] Valuation Reports in the 2015 fiscal year. As Audatex's algorithm requires [REDACTED] in order to generate each Valuation Report, Audatex requires access to approximately [REDACTED] Canadian automobile listings per month (of which approximately [REDACTED] would be new). I estimate that Auto Trader posts approximately 1.1 million listings per month (of which are approximately 75,000 are new) and Kijiji posts approximately 760,000 listings per month (of which approximately 90,000 are new). [REDACTED]

- 7 -

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. Further, Auto Trader and Kijiji also have the most brand recognition among Canadians. Accordingly, being able to include automobile listings from at least one of the two in Audatex's Valuation Reports increases their value to both insurers and policyholders. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Attached hereto as Exhibit "4" [REDACTED]

[REDACTED]

[REDACTED]

**Audatex's Attempts to Access Canadian Automobile Listings Data**

18. Until recently, Audatex [REDACTED] Canadian automobile listings data, which is no longer available to it. In short, CarProof has entered into exclusive contracts with Trader, eBay and other companies, which have, despite Audatex's efforts, prevented it from negotiating access to such data going forward. Audatex has been able to negotiate agreements for access to Canadian automobile listings data from a few smaller suppliers, but those arrangements [REDACTED], especially given that CarProof has also entered into exclusive agreements with many of the smaller suppliers. The particulars of Audatex's attempts to retain and gain access to Canadian automobile listings data are as follows.

- 8 -

*(a) Trader Automobile Listing Data*

19. On September 1, 2009, an American affiliate of Audatex, Audatex North America, Inc. (“Audatex North America”) entered into an agreement with Trader pursuant to which Audatex received Canadian automobile listings data from Trader (“Trader Agreement”). The Trader Agreement had a [REDACTED] term, which automatically renewed for additional [REDACTED] terms unless either party gave at least [REDACTED] notice of termination prior to the end of the current term. Pursuant to the Trader Agreement, Audatex paid \$ [REDACTED] per month for a minimum of [REDACTED] automobile listings per month (with no commitment for new listings). Since Auto Trader posts 1.1 million listings per month on average, the price per listing was just under [REDACTED]¢. Attached hereto as **Exhibit “5”** is a true copy of the Trader Agreement.

20. On March 24, 2015, Trader sent Audatex North America a letter advising of its termination of the Trader Agreement, which became effective on August 31, 2015. Attached hereto as **Exhibit “6”** is a true copy of the termination letter Trader sent to Audatex North America.

21. I am advised by Edwin Ulak, Vice President, Product of Trader, and believe, that the reason for terminating the Trader Agreement, was because Trader had entered into a long-term, exclusive agreement to provide Canadian automobile listings data to CarProof, which prevented it from further dealing with Audatex in regards to such data. Attached hereto **Exhibit “7”** is a true copy of e-mail correspondence from Mr. Ulak expressing Trader’s concerns about entering into an agreement with Audatex due to Trader’s agreement with CarProof.

*(b) Kijiji Automobile Listings Data*

22. Given its volume of Canadian automobile listings specifically from private individuals, Kijiji is an important source of Canadian automobile listings data. In November 2014, Audatex



unsuccessfully attempted to enter into an agreement with eBay for Kijiji's Canadian automobile listings data. Attached hereto as **Exhibit "8"** is a true copy of the e-mail correspondence between Audatex and Kijiji.

23. [REDACTED]

24. On July 15, 2015, Audatex contacted Mr. Neil to continue the discussion around the possibility of an agreement to acquire Kijiji's automobile listings data on commercial terms. Having heard no response, Audatex again followed up on the possibility of such an agreement on July 29, 2015. On August 12, 2015, Mr. Neil replied that Kijiji was "unable to consider that possibility at this time." Subsequently, through correspondence from CarProof (detailed below), Audatex learned that the reason Kijiji repeatedly rebuffed a commercial arrangement with it, was because it entered into an exclusive agreement with CarProof. Attached hereto as **Exhibit "9"** is a true copy of the e-mail correspondence between Audatex and Kijiji.

*(c) Boost Motor Group Automobile Listings*

25. In August of 2015, Audatex entered into negotiations with Boost Motor Group ("Boost"), which owns [www.boostmotorgroup.com](http://www.boostmotorgroup.com), regarding the provision of Canadian automobile listings data to Audatex. I am advised by Rodney Hardman, Senior Product Manager of Audatex, and believe, that Boost personnel advised Mr. Hardman that Boost had entered into a long-term, exclusive agreement to provide automobile listings data to CarProof. I understand that CarProof told Boost that their exclusive agreement precluded Boost from entering into an agreement with Audatex.

- 10 -

Attached hereto as **Exhibit "10"** is a true copy of an e-mail sent by Rodney Hardman to Boost personnel confirming their conversation.

*(d) Other Automobile Listings Data*

26. On March 1, 2015, Audatex entered into a [REDACTED] agreement with [REDACTED], which owns [REDACTED], pursuant to which Audatex receives all of its Canadian automobile listings data for a fee of \$ [REDACTED] per month (with no commitment for new listings) ("**[REDACTED] Agreement**"). The [REDACTED] Agreement automatically renews for successive [REDACTED] terms. In the first nine weeks of the [REDACTED] Agreement, Audatex has received [REDACTED] automobile listings, for an average of less than [REDACTED]¢ per listing. Attached hereto as **Exhibit "11"** is a true copy of the [REDACTED] Agreement.

27. On August 18, 2015, Audatex entered into a [REDACTED] agreement with [REDACTED], which owns [REDACTED], pursuant to which Audatex receives Canadian automobile listings data ("**[REDACTED] Agreement**"). The [REDACTED] Agreement automatically renews for successive [REDACTED] terms. Pursuant to the [REDACTED] Agreement, Audatex pays \$ [REDACTED] per month for a minimum of [REDACTED] automobile listings per month with an additional \$ [REDACTED] per month at each increment of [REDACTED] listings above [REDACTED] (with no commitment for new listings). Under this formula, there is a price ceiling of [REDACTED]¢ per listing. Attached hereto as **Exhibit "12"** is a true copy of the [REDACTED] Agreement.

28. On August 24, 2015, Audatex entered into a [REDACTED] agreement with [REDACTED], which owns [REDACTED], ("**[REDACTED] Agreement**"). The [REDACTED] Agreement automatically renews for successive [REDACTED] terms. Pursuant to the [REDACTED] Agreement, Audatex receives Canadian automobile listings data in exchange for a one-time fee of \$ [REDACTED] and \$ [REDACTED] per month for a minimum of



- 12 -

31. Through its actions, CarProof has eliminated competition among owners of Canadian automobile listings data, which will ultimately eliminate competition among the automobile estimating solutions providers.

32. In a letter from CarProof to Audatex North America, dated July 13, 2015, CarProof explained that it had “already secured the rights to automobile listings data from the vast majority of sources in Canada,” including exclusive rights to Auto Trader and Kijiji data, which CarProof stated it “understand[s] is important to Audatex's on-going insurance products business”. CarProof further advised that “we are looking to monetize our investment in acquiring the rights to the listings data and not to compete.” I understand this to imply that CarProof acquired access to this important data to leverage its position vis-à-vis Audatex. Attached hereto as **Exhibit “14”** is a true copy of the July 13, 2015 letter from CarProof to Audatex.

33. In its letter, CarProof also threatened Audatex, making clear that it was seeking unrelated concessions in exchange for providing Audatex Canadian automobile listings data. In particular, Holden Rhodes, CarProof’s General Counsel wrote that “we have not heard back from you with respect to the Term Sheet we forwarded in April of this year... *If Audatex is to continue its insurance loss valuation business using comparable listings or listings based algorithms, we will need to finalize our definitive agreement paperwork.*”

34. The term sheet that CarProof sent to Audatex North America in April 2015 (“**Term Sheet**”) and which is referred to in its letter, was in respect of a proposed agreement, whereby CarProof would provide Audatex with Canadian automobile listings data on the condition, among other concessions, that (1) Audatex and Audatex North America extend an agreement for a [REDACTED] term whereby they provide Canadian and American [REDACTED] data, respectively, to

CarProof [REDACTED] at a fixed price [REDACTED]; and (2) HyperQuest, Inc., an American affiliate of Audatex, begin to provide its data to CarProof for [REDACTED] (CarProof takes the position that there is an existing agreement for HyperQuest, Inc. to provide its data to CarProof; Audatex and its affiliates dispute that contention. The issue is now the subject of legal proceedings in the United States.). The conditions that CarProof has demanded in exchange for the provision of Canadian automobile listings data are in respect of wholly unrelated matters. It is clear that CarProof is using its exclusive access to automobile listings data, with the express understanding that this data is integral to Audatex's business, in order to leverage its bargaining position in these unrelated matters. Attached hereto as **Exhibit "15"** is a true copy of the Term Sheet.

35. The Term Sheet stipulates that CarProof will provide its Canadian automobile listings data to Audatex on a non-exclusive basis for [REDACTED] until September 1, [REDACTED], but at a cost of \$ [REDACTED] annually thereafter until September 1, [REDACTED]. The Term Sheet actually states a \$ [REDACTED] annual fee, which was negotiated to \$ [REDACTED] verbally. Audatex estimates that CarProof would provide approximately 2,000,000 Canadian automobile listings per month, meaning that it would be paying [REDACTED]¢ per listing (\$ [REDACTED] dollars paid over [REDACTED] divided by [REDACTED] listings provided over [REDACTED] years), over [REDACTED]% more than the price per listing under the Trader Agreement, Audatex's only prior agreement that provided a relatively comparable volume of data. These expensive fees are in addition to the favourable terms on unrelated matters that CarProof is seeking to extract from Audatex and its affiliates in the United States.

36. Despite CarProof's costly compensation demands for its Canadian automobile listings data, given the critical importance of the data to Audatex's business, on August 3, 2015 Audatex North America wrote to CarProof offering to pay [REDACTED], namely \$ [REDACTED] annually for the entire [REDACTED] period, as opposed to only the final [REDACTED]. The condition of this

- 14 -

offer was that the provision of data to Audatex was standalone, that is, uncoupled from the provision of unrelated data to CarProof. On August 4, 2015, CarProof responded declining the offer, and stating that it was only willing to provide the Canadian automobile listings data as “part of a broader package deal” in conjunction with the provision of unrelated data to CarProof. Attached hereto as Exhibit “16” and Exhibit “17” are true copies of the August 3 and 4, 2015 letters between Audatex North America and CarProof, respectively.

37. Incongruously with CarProof’s communications with Audatex, CarProof issued a press release on October 14, 2014, stating that it “plans to launch a vehicle valuation tool”. The press release is vague, but it appears to insinuate that CarProof plans to market this service to car dealerships for vehicle sales rather than insurance companies for insurance claims. Attached hereto as Exhibit “18” is a true copy of CarProof’s October 14, 2014 press release.

38. Additionally, CarProof has contacted Audatex’s customers, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] CarProof’s conduct is damaging Audatex’s customer relationships [REDACTED]

[REDACTED] Attached hereto as Exhibit “19” are true copies of e-mail correspondence received from Audatex customers about being approached by CarProof [REDACTED]  
[REDACTED]

39. [REDACTED]  
[REDACTED]  
[REDACTED]

Attached hereto as **Exhibit “20”** is a true copy of e-mail correspondence received from an Audatex customer [REDACTED].

40. I believe this conduct is part of a pattern of aggressive and anticompetitive behaviour by CarProof. Prior history of similar behaviour is evidenced by its litigation and settlement with the Used Car Dealers Association of Ontario (“UCDA”), the subject of which was CarProof’s alleged misrepresentations regarding UCDA’s services. Attached hereto as **Exhibit “21”** is a true copy of a Competition Tribunal judgment that refers to the CarProof/UCDA litigation and settlement at paragraphs 10, 54-55 and 60.

**Audatex’s Willingness to Obtain Data on Usual Trade Terms**

41. I confirm that Audatex is willing and able to obtain Canadian automobile listings data from Trader and eBay on usual trade terms, in accordance with the range of market values attributed to such data. Alternatively, Audatex is willing and able to obtain such data from CarProof on the same terms.

**Direct and Substantial Effect on Audatex of CarProof’s Refusal to Deal**

42. [REDACTED]  
[REDACTED]  
[REDACTED]

43. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

44. [REDACTED]

45. [REDACTED]

46. In addition, Audatex's reputation with customers is very important to its continued success. CarProof's practice of contacting Audatex's customers [REDACTED] [REDACTED] has damaged Audatex's reputation. This is evidenced by [REDACTED] Audatex's customers after being contacted by CarProof in Exhibits "18" and "19". [REDACTED] [REDACTED] I believe the reputational harm CarProof created by telling Audatex's clients [REDACTED]





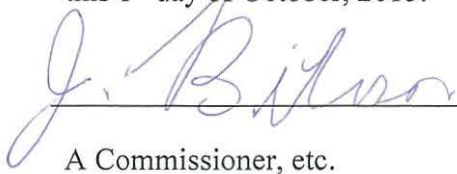
“Confidential Information”) included in this affidavit is highly confidential to Audatex. Such information is kept in strict confidence, and is not in the normal course disclosed by Audatex to third parties.

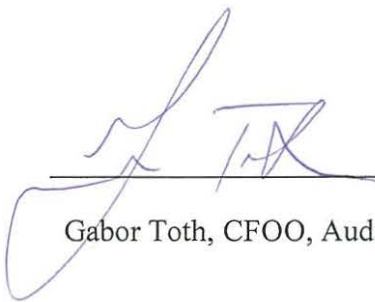
51. Disclosure of the Confidential Information would result in specific, direct harm to Audatex because this information is commercially and competitively sensitive. Access to Audatex’s Confidential Information would allow its competitors to obtain competitive advantages in the marketplace and allow the Respondents to provide Confidential Information to other parties who could obtain competitive advantages in the marketplace, resulting in harm to Audatex’s competitive position.

52. [Redacted]

53. I confirm that all redactions in the public versions of this Affidavit and all other materials relating to Audatex’s Applications are Confidential Information, the disclosure of which would be likely to cause substantial harm to Audatex.

SWORN BEFORE ME at the City of )  
Toronto, in the Province of Ontario, )  
this 1<sup>st</sup> day of October, 2015. )

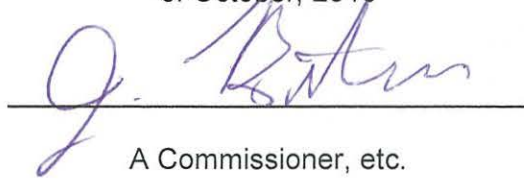
  
A Commissioner, etc.

  
Gabor Toth, CFOO, Audatex

JONATHAN ABRAHAM BITRAN

# Exhibit “1”

This is **Exhibit "1"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015

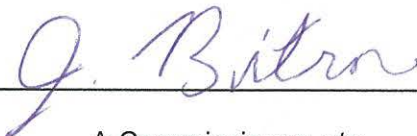


A Commissioner, etc.

**REDACTED**

# Exhibit “2”

This is **Exhibit "2"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015

A handwritten signature in blue ink, appearing to read "J. Bilron", is written above a solid horizontal line.

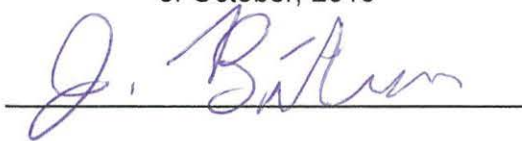
A Commissioner, etc.

**REDACTED**



# Exhibit “3”

This is **Exhibit "3"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015



A Commissioner, etc.

**REDACTED**

# Exhibit “4”

This is **Exhibit "4"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015

A handwritten signature in blue ink, appearing to read "J. Britton", is written over a solid horizontal line.

A Commissioner, etc.

**Bitran, Jonathan**

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**Subject:** Fwd: Autosource Data

**From:** [REDACTED]  
**Sent:** September-28-15 9:37 AM  
**To:** Gorchynski, Darcy [Audatex - Americas]  
**Cc:** [REDACTED]  
**Subject:** Fwd: Autosource Data

Darcy please see [REDACTED]'s observations. Are we starting to see an issue with a lack of Autosource and Kijiji ads in the tool. As [REDACTED] points out that will have a huge impact on our market. Look forward to chatting

>>> [REDACTED] 28/09/2015 10:13 AM >>>

I've been advertised vehicles on the Autosource valuations. It looks like the ad issue they are facing is effecting the Autosource valuations. No Kijiji ads since about the beginning of Sept 2015. Also seems to be a lack of Auto-trader ads as well. This will have a huge impact on [REDACTED] market values.

[REDACTED]  
Manager Vehicle Arbitration  
[REDACTED]  
[REDACTED]

This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the named addressee, please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that using, disclosing, copying or distributing the contents of this information is strictly prohibited.

# Exhibit “5”

This is **Exhibit "5"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015

A handwritten signature in blue ink, appearing to read "J. Butcher", is written over a solid horizontal line.

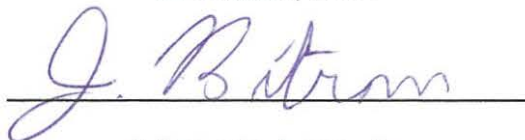
A Commissioner, etc.



**REDACTED**

# Exhibit “6”

This is **Exhibit "6"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015

A handwritten signature in blue ink, reading "J. Bitron", is written over a solid horizontal line.

A Commissioner, etc.

**TRADER**

Trader Corporation  
405 The West Mall  
Executive Offices  
Etobicoke, ON M9C 5J1  
Tel: 416-784-5200

March 24, 2015

Audatex North America, Inc.  
15030 Avenue of Science, Suite 100  
San Diego, California  
92128

**RE: Notice of Termination of Data Licensing Agreement between Trader and Audatex**

As you are aware, Audatex North America, Inc. ("**Audatex**") and Trader Corporation ("**Trader**") are parties to a Data Licensing Agreement entered into as of September 1, 2009 (the "**Agreement**").

Section ■ of the Agreement provides that the term of the Agreement automatically renews for successive ■ periods unless either party provides notice to the other party at least ■ prior to the end of the then current term (each ending on August 31 of the applicable year) that it wishes to terminate at the end of such term.

In accordance with Section ■ of the Agreement, Trader hereby provides written notice of its intent not to renew the Agreement at the end of the current term and, as such, the Agreement shall terminate on August 31, 2015.

Thank you and all the best in your future business endeavours.

Regards,



James Selzer, Chief Financial Officer  
Trader Corporation

# Exhibit “7”

This is **Exhibit "7"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015

A handwritten signature in blue ink, appearing to read "J. B. Baker", is written over a horizontal line.

A Commissioner, etc.

**Bitran, Jonathan**

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**Subject:** Re: Audatex and AutoTrader Canada

**From:** Edwin Ulak [<mailto:Edwin.Ulak@trader.ca>]  
**Sent:** June-10-15 11:45 AM  
**To:** Robert Rath; Toth, Gabor [Audatex - Americas]  
**Subject:** Re: Audatex and AutoTrader Canada

Hello Gabor,

My colleague Robert forwarded your correspondence to me. With regards to the resale of our listings data we are in a long term partnership with Carproof and there are some exclusivity provisions around that. We would need to understand in more detail what your intended use of the data would be in order to understand whether there is any opportunity to provide you the data. If you can send us your intended use and we can resolve that very quickly.

We are always looking for ways to partner with our peers in the industry where there is a material opportunity. If you could give Robert and me an idea of what opportunities you see for collaboration we can arrange appropriate next steps.

Regards,

**Edwin Ulak** | Vice President, Product  
**TRADER Corporation**

Phone: 416.784.5200 ext. 3504  
Mobile: 416.578.1754  
Email: [edwin.ulak@trader.ca](mailto:edwin.ulak@trader.ca)  
Web: [www.tradercorporation.com](http://www.tradercorporation.com)

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**From:** <Toth>, "Gabor [Audatex - Americas]" <[Gabor.Toth@audatex.ca](mailto:Gabor.Toth@audatex.ca)>  
**Date:** Monday, June 8, 2015 at 10:01 PM  
**To:** Robert Rath <[robert.rath@trader.ca](mailto:robert.rath@trader.ca)>  
**Subject:** Audatex and AutoTrader Canada

Robert,

Your name was provided to me as someone I could connect with and discuss the possibilities of sharing or purchasing AutoTrader price/listing data.

You may have previously spoken with Anthony Giagnacovo from our Company, Audatex Canada. He is no longer with Audatex Canada and I am reaching out to determine the best approach for continuing discussions. Although we are a current customer in both Canada and US., I understand that a data contract for Canada was recently signed with CarProof. I would appreciate a quick chat to better understand purchase options, renewal timing, syndication, etc. In addition, there may be other ways we could collaborate together.

Please let me know if you are the correct contact and when we could discuss our path forward.

Hope all is well.

**Gabor Toth**

Chief Financial and Operating Officer

T: 416.498.3906

C: 416.302.1787

[Gabor.Toth@audatex.ca](mailto:Gabor.Toth@audatex.ca)

[Audatex Canada](#), a Solera company  
1210 Sheppard Avenue East, Suite 204  
Toronto, Ontario M2K 1E3





# Exhibit “8”

This is **Exhibit "8"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015



A horizontal line is drawn across the signature.

A Commissioner, etc.

**Bitran, Jonathan**

---

**Subject:** Audatex Canada and Kijiji

**From:** [sneil@kijiji.ca](mailto:sneil@kijiji.ca)

**Sent:** Wednesday, November 26, 2014 1:17 PM

**To:** [Anthony Giagnacovo](mailto:Anthony.Giagnacovo)

Sorry Anthony – this was stuck in my drafts folder from Monday..... See below.

Hi Anthony,

It was great meeting with you last week, I really enjoyed our conversation.

I sat down with legal on Friday afternoon and ran through the agreement. Unfortunately, there is a specific call out to total loss calculations and vehicle valuation for insurance purposes which will prohibit us from doing something on that data.

I believe there are other opportunities for us to explore. Would love to continue the discussion.

Cheers,  
Scott

Scott Neil | Managing Director, Verticals | Kijiji.ca  
O: 416.969.2257  
M: 416.804.5876  
Skype: scott\_neil  
[sneil@ebay.com](mailto:sneil@ebay.com)

---

**From:** <Giagnacovo>, "Anthony [Audatex - Americas]" <[Anthony.Giagnacovo@audatex.ca](mailto:Anthony.Giagnacovo@audatex.ca)>  
**Date:** Monday, November 24, 2014 at 10:25 AM  
**To:** Scott Neil <[sneil@kijiji.ca](mailto:sneil@kijiji.ca)>  
**Subject:** Audatex Canada and Kijiji

Hello Neil,

Thank you again for meeting with me on Tuesday and I look forward to continuing our dialogue as to how our two companies can collaborate together. Do you have any updates from your legal team in reference to us to getting data from Kijiji.

Thank you and have a great date

Best regards  
Anthony Giagnacovo  
647-533-1046

# Exhibit “9”

This is **Exhibit "9"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015

A handwritten signature in blue ink, appearing to read "J. Blum", is written over a solid horizontal line.

A Commissioner, etc.

**Navarro, Mavel (Solera, Inc.)**

---

**From:** Cairo, Alberto (Solera, Inc.)  
**Sent:** Wednesday, August 12, 2015 2:49 PM  
**To:** Navarro, Mavel (Solera, Inc.)  
**Subject:** FW: Data

**From:** Neil, Scott [mailto:sneil@kijiji.ca]  
**Sent:** Wednesday, August 12, 2015 2:47 PM  
**To:** Cairo, Alberto (Solera, Inc.) <Alberto.Cairo@solera.com>  
**Subject:** RE: Data

Hello Alberto,

Thanks for getting in touch.

---

As for the direct relationship with Kijiji data we are unable to consider that possibility at this time.

Thanks,  
 Scott

Scott Neil | Managing Director, Verticals | Kijiji.ca  
 M: 416.804.5876  
 Skype: scott\_neil  
[sneil@ebay.com](mailto:sneil@ebay.com)

---

**From:** Cairo, Alberto (Solera, Inc.) [mailto:Alberto.Cairo@solerainc.com]  
**Sent:** Wednesday, July 29, 2015 4:09 PM  
**To:** Neil, Scott  
**Subject:** FW: Data

Dear Mr. Neil,

Pursuant to our note of July 15, 2015, I am reaching out to you because we remain interested in pursuing a formal license agreement with Kijiji. Unfortunately, we have not heard from anyone in response to our inquiry, and I would appreciate it if you would let me know who to contact on this matter.

Kind regards,

**Alberto Cairo**  
 Head of North American Insurance  
 Solera Holdings, Inc. | T:817-961-2054 | M:817-247-5751

**From:** Antypas, Evangelos [AudaExplore]  
**Sent:** Wednesday, July 15, 2015 8:48 PM  
**To:** Neil, Scott <[sneil@kijiji.ca](mailto:sneil@kijiji.ca)>  
**Cc:** Cairo, Alberto (Solera, Inc.) <[Alberto.Cairo@solerainc.com](mailto:Alberto.Cairo@solerainc.com)>  
**Subject:** Data

Dear Mr. Neil,

I am in receipt of your email dated July 6, 2015. The Managing Director of Audatex Canada, who had been in discussions with Kijiji in order to license certain data from Kijiji, has now departed the organization. Audatex remains very interested in pursuing a formal data license agreement with Kijiji. It would be appreciated if you would have the appropriate person within your organization contact the acting Managing Director, Alberto Cairo (copied in this email), so we may engage in further discussion regarding a data license agreement.

Best,

**Evangelos Antypas**

AudaExplore  
858-946-1481 (office)  
817-565-3129 (mobile)  
[evangelos.antypas@audaexplore.com](mailto:evangelos.antypas@audaexplore.com)

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Scott Neil | Managing Director, Verticals | [Kijiji.ca](http://Kijiji.ca)  
M: 416.804.5876  
Skype: scott\_neil  
[sneil@ebay.com](mailto:sneil@ebay.com)

# Exhibit “10”

This is **Exhibit "10"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015



A Commissioner, etc.

**Bitran, Jonathan**

---

**Subject:** Data Agreement Follow up

**From:** Hardman, Rodney [Audatex - Americas]

**Sent:** August-27-15 4:31 PM

**To:** Greg Connor

**Cc:** Toth, Gabor [Audatex - Americas]

**Subject:** Data Agreement Follow up

Greg

Thanks for our conversations over the last couple of weeks in which we discussed data sharing opportunities beneficial to both our organizations and which culminated in the negotiation of a license agreement.

Clearly we are disappointed that so close to the execution of that agreement CarProof has interpreted your contract with them to mean that you are prohibited from entering into a data license agreement with Audatex. However, we understand your hesitation to contract with us given their aggressive nature and current stance.

I've enjoyed our conversation and remain convinced that there is a path forward that is in both Boost and Audatex's interest. Let's keep the lines of communication open!

Best,  
Rod

**Rod Hardman**

Senior Product Manager

**Direct:** 416.498.2970

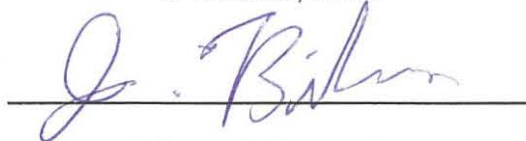
**Mobile:** 416.276.9167

**Email:** [rod.hardman@audatex.ca](mailto:rod.hardman@audatex.ca)

[Audatex Canada](#), a Solera company  
1210 Sheppard Avenue East, Suite 204  
Toronto, Ontario M2K 1E3  
**Intelligence. Built In.**

# Exhibit “11”

This is **Exhibit "11"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015

A handwritten signature in blue ink, appearing to read "J. Bilson", is written over a solid horizontal line.


A Commissioner, etc.

**REDACTED**

# Exhibit “12”



This is **Exhibit "12"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015

A handwritten signature in blue ink, appearing to read "J. Bilal", is written over a solid horizontal black line.

A Commissioner, etc.

**REDACTED**

# Exhibit “13”

This is **Exhibit "13"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015

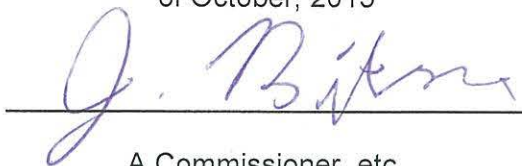
  
\_\_\_\_\_

A Commissioner, etc.

**REDACTED**

# Exhibit “14”

This is **Exhibit "14"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015



A Commissioner, etc.

# CarProof®

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July 13, 2015

TO: Mr. Evangelos Antypas  
Managing Director

AND TO: Mr. Ray Suberlak  
General Counsel, Americas

AudaExplore/Audatex, a Solera Company  
15030 Avenue of Science, Suite 100  
San Diego, California 92128

Dear Mr. Antypas and Mr. Suberlak:

**Re: Term Sheet and Definitive Agreement Amendments**

As a valued strategic partner, I am writing to raise several issues of interest and concern to Audatex.

First, I want to remind you that we have not heard back from you with respect to the Term Sheet we forwarded in April of this year. As you know, this document memorializes an agreement to expand our strategic relationship, including providing you with access to our unique listings data. Unless Audatex acts to bring this Term Sheet to final documentation, Audatex faces a variety of challenges. CarProof has already secured the rights to automobile listings data from the vast majority of sources in Canada. As of September 1, 2015 we are entitled to the listings data from Trader that we understand is important to Audatex's on-going insurance products business. If Audatex is to continue its insurance loss valuation business using comparable listings or listings based algorithms, we will need to finalize our definitive agreement paperwork with greater timeliness and urgency. Once the definitive agreement is finalized, it will still take us at least 30 days to operationalize the data pipe for Audatex. Not to cloud the issues beyond those discussed with you in April and May, there may also be the potential for Audatex to acquire access from CarProof to even better sources of data. Under either scenario – reaching final documentation on our existing Term Sheet or expanding it further -- we obviously need to get moving.



# CarProof®

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Second, we hope and assume that Audatex appreciates the potential consequences of not bringing our agreement to final documentation promptly. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] As previously discussed, we are looking to monetize our investment in acquiring the rights to the listings data and not to compete with your total loss valuation business.

Third, we need to address CarProof's contract with HyperQuest, Audatex's affiliate. We have been trying to get Audatex to focus on this issue for some time, without success. As you know, we executed that contract on July 1, 2014, but Hyperquest has refused to take any steps to perform pursuant to it. We understand that Audatex is taking the position that the contract was executed by Hyperquest without the requisite authority. We disagree. We have avoided escalating this issue (as you had suggested) in hopes of finding an amicable resolution and we discussed this matter as part of our negotiations in April and May. We do not intend to simply walk away from the HyperQuest contract.

We look forward to your prompt response no later than Monday July 20.

Regards,

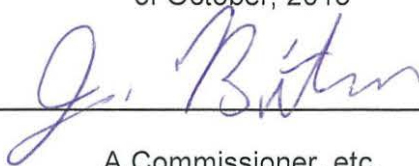


Holden Rhodes  
General Counsel  
CarProof Corporation

cc: Paul Antony - Chairman  
Ed Woiteshek - CEO

# Exhibit “15”

This is **Exhibit "15"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015



---

A Commissioner, etc.

**REDACTED**

# Exhibit “16”

This is **Exhibit "16"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015

  
\_\_\_\_\_

A Commissioner, etc.



7 Village Circle, Ste. 100  
 Westlake, TX 76262  
 +1 817.961.2100

August 3, 2015

**Via FedEx: 7741 9858 3242**

Holden J. Rhodes  
 130 Dufferin Ave, Suite 1101  
 London ON N6A 5R2

Dear Mr. Rhodes,

Over the course of the last week, I tried several times to reach you via phone and email but, unfortunately, I have not received a response.

Ray Suberlak shared with me your letter dated July 13, 2015. I discussed the letter and related matters with the CEO of the Solera Group, Mr. Tony Aquila. The purpose of this letter is to address the proposed terms of a data license agreement between CarProof and Audatex Canada pursuant to which CarProof licenses its Canadian data (including but not limited to the Kijiji and AutoTrader vehicle listing data) to Audatex for use in its Total Loss valuation solution.

I have also reviewed the Term Sheet you proposed in April, and I am pleased to not only accept your economic offer but to better it. Audatex is willing to license the Canadian data for \$ [REDACTED] Canadian dollars per year with payment starting the [REDACTED] of the license rather than in the [REDACTED] as proposed in your Term Sheet. Additionally, we will accept the license of the US listing data for \$ [REDACTED] US dollars per year. The license would be for a [REDACTED] term.

We hope and expect that agreement on these terms will eliminate any distraction in advance of the upcoming discussions between our CEO, Paul Anthony and other CarProof stakeholders (the "Upcoming Discussions"). I am aware of your request to expand the current [REDACTED] Agreement between Audatex and CarProof to, among other things, include data from other Solera Group affiliates. This will be addressed during the Upcoming Discussions.

Please confirm CarProof's acceptance of the above enhanced economic terms by close of business on August 6, 2015, and we will immediately work toward finalizing a definitive agreement. If we do not receive CarProof's acceptance by August 6, we will pursue all available options.

Regards,

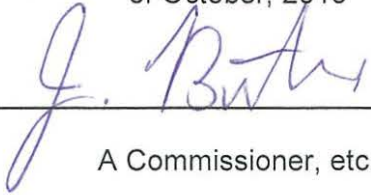
A handwritten signature in black ink, appearing to read "Jason Brady", written in a cursive style.

Jason Brady  
 Senior Vice President, General Counsel  
 and Secretary

# Exhibit “17”



This is **Exhibit "17"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015



---

A Commissioner, etc.

# CarProof®

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August 4, 2015

Mr. Jason Brady  
Senior Vice President, General Counsel and Secretary  
Solera Holdings, Inc.  
7 Village Circle, Suite 100  
Westlake, Texas 76262

VIA EMAIL: [jason.brady@solerainc.com](mailto:jason.brady@solerainc.com)

Dear Mr. Brady,

Thank you for your correspondence yesterday.

While I was away on vacation last week, I was checking voicemail and email regularly. I cannot seem to locate any voice or email messages from you. Regardless, we are delighted that you are interested in proceeding.

I want to be absolutely clear, however, that we have repeatedly indicated that the listing data component is part of a broader package deal that was outlined in numerous discussions, correspondence and the April 23 term sheet. The broader package included the immediate provision of the HyperQuest data and an extension of the current [REDACTED] agreement to December 31, [REDACTED]. There were other elements as outlined in the term sheet that we also expect to be included in the definitive agreement.

If the suggestion is to increase the economics of the entire term sheet by providing an accelerated payment for the Canadian listing data with all other terms remaining the same, we are certainly prepared to accept. However, if the proposal in your letter is that we only deal with the listing data at this point, we are not interested. We maintain our position that the term sheet was negotiated and agreed to in totality rather than as parts to be separately addressed at different times.

We have already engaged counsel to start working on a new definitive agreement and will be able to share that with you shortly. In that regard, please advise as to who we should be dealing with internally at Audatex/Solera and/or your professional advisors.

I suggest we organize a call, or preferably a meeting, in the next day or two to discuss.

Regards,



Holden Rhodes  
General Counsel  
CarProof Corporation

# Exhibit “18”

This is **Exhibit "18"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015

  
\_\_\_\_\_

A Commissioner, etc.



## CarProof Reveals Next Generation Vehicle Valuation Tool at Client Advisory Board Meeting

LONDON, ON, Oct. 14, 2014 – Last week, CarProof, Canada’s most trusted vehicle history provider, hosted its second annual Client Advisory Board Meeting in Muskoka, Ont. with great success. The event generated excitement and anticipation around innovative new product offerings coming from CarProof in the near future.

The Client Advisory Board Meeting was held over three days and attendees included key dealer, auction, corporate, lender and insurance partners. The event gave these industry leaders insight into the company’s vision and strategy for 2015, in particular CarProof’s commitment to adding more value to customers by becoming a multi-product, multi-vertical force in the automotive sector – the result of more than two years of strategic planning and investment.

CarProof is focused on creating next generation solutions to address automotive industry pain points across all market constituents. As an example, the company revealed plans to launch a vehicle valuation tool that is anchored in using actual retail and wholesale transaction data to provide VIN-specific analysis. This critical data is information that until now hasn’t been available and will completely change the way vehicles are valued and ultimately bought and sold in Canada. In addition, CarProof officially announced the acquisition of Canadian Red Book, the leading valuation brand in the government and insurance verticals. CarProof plans to materially expand the Canadian Red Book solution over the next year.

“What really matters in vehicle valuation is what cars are selling for and we have that data,” said Paul Antony, President and CEO of CarProof. “We’re entering into valuation because of the significant gaps in accuracy that exist right now. It’s a natural extension for CarProof and we’re approaching it from the same angle as we do our vehicle history reports – we want to use real transactional data to produce the most accurate and comprehensive valuation tool available in Canada.”

This announcement generated a strong buzz at the event as attendees could already see the impact that this type of offering will have. “CarProof is once again going to significantly improve the way we do business,” said Jeff Polo, General Manager of Destination Toyota in Burnaby, B.C. “They are further empowering me to make informed buying and selling decisions.”

### About CarProof Vehicle History Reports

CarProof, a London, Ont.-based company founded in 2000, is the leading provider of the most comprehensive used vehicle history report available in Canada. CarProof’s fully bilingual vehicle history reports rely on accurate and live real-time data to provide consumers with a complete history of their vehicle including accident information, cross-Canada lien search information and full U.S. history. In addition to being named one of Canada’s 50 Best Managed Companies, CarProof was honoured with Deloitte’s 2013 Technology Fast 50™ and Fast 500™ awards. For more information about CarProof, visit [www.carproof.com](http://www.carproof.com).



Connect with CarProof on [Facebook](#), [Twitter](#), [YouTube](#), [Google+](#) and [LinkedIn](#).

**For further information:**

Joe Varkey  
Vice President of Marketing and Communications  
CarProof Vehicle History Reports  
1.866.835.8612 ext. 4142  
[jvarkey@carproof.com](mailto:jvarkey@carproof.com)

# Exhibit “19”

This is **Exhibit "19"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015

A handwritten signature in blue ink, appearing to read "J. B. Toth", is written over a solid horizontal line.

A Commissioner, etc.



**Bitran, Jonathan**

---

**From:** Merchant, Kelly [Audatex - Americas] <Kelly.Merchant@audatex.ca>  
**Sent:** Monday, August 24, 2015 2:27 PM  
**To:** AXCA\_AS\_Client\_Escalation  
**Cc:** Toth, Gabor [Audatex - Americas]; Ryckewaert, Roger [Audatex - Americas]; Gorchynski, Darcy [Audatex - Americas]  
**Subject:** RE: Claim [REDACTED] - Database Issue?  
**Importance:** High

This is interesting, I expected this to happen a couple months from now since we still have data from these providers in our DB.

Gabor, this is what I was saying that we need a talk track as I would not know how to reply to this question if [REDACTED] asked it of me.

I can only surmise that the connection between IAutoConnect being in the Carproof offices and the Mitchell connection has allowed this to escape early. I know I haven't shared anything with [REDACTED] nor has Grant as we have been waiting for a talk track on how to broach the subject.

Next steps?

Kelly Merchant  
Professional Services

T: 1.877.693.1299 ext 4187  
Help Desk: 1.866.420.2048  
[kelly.merchant@audatex.ca](mailto:kelly.merchant@audatex.ca)

Audatex Canada, a Solera company  
1210 Sheppard Avenue East, Suite 204  
Toronto, Ontario M2K 1E3

-----Original Message-----

**From:** [REDACTED]  
**Sent:** August-24-15 11:05 AM  
**To:** AXUS [REDACTED] Autosource Task Team  
**Subject:** Claim [REDACTED] - Database Issue?

Please research...

We received notice on Aug 14th this would be exception...

Insured in rental...

We called on Aug 20th looking for valuation/update.

Was told no success on comps and yet Auto Trader and Kijiji have a few to choose from Got a value later on Aug 20th...

Database issue...how come database is not capturing data from Kijiji - Auto trader.

[REDACTED]  
Manager Vehicle Arbitration  
[REDACTED]

This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the named addressee, please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that using, disclosing, copying or distributing the contents of this information is strictly prohibited.



**Bitran, Jonathan**

---

**Subject:** Audatex/Carproof

**From:** [REDACTED]

**Sent:** August-25-15 9:30 PM

**To:** Gorchynski, Darcy [Audatex - Americas]

**Subject:** Audatex/Carproof

Darcy, spoke with Fabi and Ed from CarProof earlier this evening. I now have a better understanding of their issue.

If I have their position right, this could have significant impacts to Autosource evaluations. We will need to discuss this and get your thoughts.

Looking forward to discussing this with you.

[REDACTED]



**Bitran, Jonathan**

---

**Subject:** Audatex/Car Proof Issue

**From:** [REDACTED]

**Sent:** August-26-15 7:38 AM

**To:** Gorchynski, Darcy [Audatex - Americas]

**Subject:** Audatex/Car Proof Issue

Darcy I am having a meeting with Car Proof chaps tomorrow afternoon. Were you able to gather any further insight into the issue that I raised with you? My limited understanding ( and it is not based on any evidence, it is what has been reported to me second hand) is that CarProof is suggesting that effective Sept 1 Audatex access to Kijiji and Auto Trader will be limited as Car Proof has some type of exclusive arrangement with those entities. If you have anything you might be able to share give me a call. Today is bad but I am available tomorrow morning. Regards

This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you are not the named addressee, please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that using, disclosing, copying or distributing the contents of this information is strictly prohibited.

# Exhibit “20”

This is **Exhibit "20"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015



---

A Commissioner, etc.



**Bitran, Jonathan**

---

**Subject:** FW: Listing data / next steps

**Importance:** High

**From:** [REDACTED]

**Sent:** September-03-15 8:59 AM

**To:** Gorchynski, Darcy [Audatex - Americas]

**Subject:** FW: Listing data / next steps

**Importance:** High

Darcy, further to our conversations on vehicle listing data provided by our Autosource agreement we received the following email (I have redacted some of it for obvious reasons):

*As discussed during our meeting of May 6th, 2015, XXXX has spent the last few years acquiring access to vehicle listing data. Over the last few months, we have continued to explain the relevance of this data to [REDACTED] on a number of occasions since then, mostly recently on a conference call with [REDACTED] last week. As you are aware, your current access to this listing data terminated on September 1<sup>st</sup>, 2015, and the only way to legally obtain this data on a going forward basis is to enter a license agreement with XXXX.*

*We are prepared to work with you to create a gap solution by providing the listing data on a short term basis while working on a license agreement.*

*If this data is important to you, we are prepared to proceed on the following basis:*

1. *XXXXX would require a licensing agreement signed with your total loss estimating agent prior to providing longer term access to the listing data to [REDACTED].*
2. *XXXXX will provide a licensing agreement for [REDACTED] to sign with regard to listing data this or next week. A few key terms would be as follows:*
  - i. *Term – [REDACTED]*
  - ii. *Use of the listing data - to provide total loss valuation calculations*
  - iii. *Fee - \$[REDACTED] per valuation*
  - iv. *Data flow – direct or through your total loss estimating agent*
3. *XXXXX would extend continued access to the listing data to [REDACTED] and its total loss estimating agent to September 15th to permit time for the licensing agreement to be reviewed and signed.*

Needless to say we are reticent in accepting XXXX's most magnanimous offer since we already have an agreement with Audatex to provide this information and the additional costs are prohibitive. You indicated that your team is working on a solution to this imbroglio and look forward to receiving your solution forthwith.

[REDACTED]  
 [REDACTED]  
**Senior Director – Material Damage Services**  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

---

-----  
*This email and any attachments are intended only for the named recipient and may contain confidential and/or privileged material. Any unauthorized copying, dissemination or other use by a person other than the named recipient of this communication is prohibited. If you received this in error or are not named as a recipient, please notify the sender and destroy all copies of this email immediately.*

[Contact Us](#)

# Exhibit “21”

This is **Exhibit "21"** referred to in the Affidavit  
of Gabor Toth sworn before me this 1<sup>st</sup> day  
of October, 2015



A Commissioner, etc.

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Used Car Dealers Association of Ontario v. Insurance Bureau of Canada*,  
2011 Comp. Trib. 10  
File No.: CT-2011-06  
Registry Document No.: 29

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an Application by the Used Car Dealers Association of Ontario for an Order pursuant to section 103.1 granting leave to make application under sections 75 and 76 of the *Competition Act*.

B E T W E E N:

**Used Car Dealers Association of Ontario**  
(applicant)

and

**Insurance Bureau of Canada**  
(respondent)



Decided on the basis of the written record  
Before Judicial Member: Simpson J. (Chairperson)  
Date of Reasons and Order: September 9, 2011  
Reasons and Order signed by: Madam Justice Sandra J. Simpson

**REASONS FOR ORDER AND ORDER GRANTING THE APPLICANT LEAVE TO  
FILE AN APPLICATION PURSUANT TO SECTION 75 OF THE COMPETITION ACT**

## THE APPLICATION

[1] The Used Car Dealers Association of Ontario (the “UCDA”) seeks leave from the Competition Tribunal (the “Tribunal”) to commence an application pursuant to section 75 and subparagraph 76(1)(a)(ii) of the *Competition Act*, R.S.C. 1985, c. C-34 (the “Act”). The proposed application names the Insurance Bureau of Canada as the respondent.

## THE DECISION

[2] For the following reasons leave has been granted to commence an application under section 75 of the Act. However, leave to proceed under section 76 has been denied.

## THE APPLICANT

[3] The UCDA was founded in 1984. It is a not-for-profit trade association which represents more than 4500 motor vehicle dealers in Ontario. The UCDA provides a variety of services to its members including one called Auto Check™ (“Auto Check”). It provides dealers who are selling used cars with information about the accident history of the vehicles they intend to sell. Using a vehicle’s VIN number, a dealer who is a member of the UCDA pays a fee of \$7.00 (before taxes) to conduct an Auto Check vehicle accident history search.

[4] The UCDA’s evidence for this application is found in an affidavit sworn by Robert G. Beattie on June 29, 2011 (the “Beattie Affidavit”). Mr. Beattie is the UCDA’s Executive Director.

## THE RESPONDENT AND ITS DATABASES

[5] The Insurance Bureau of Canada (the “IBC”) is a national not-for-profit industry association which represents home, vehicle and business insurers. The IBC is, according to the UCDA, the only source of integrated industry wide data collected from all insurers who sell auto insurance as well as from independent adjusters and investigators. The data are located on a database which IBC describes as its Web Claims Search Application. However, that database does not include information about the dollar value of claims made when vehicles are in accidents. Those values are found in information provided to IBC by its members and collected in a second IBC database called the Automotive Statistical Plan (“ASP Database”).

## THE BACKGROUND

[6] In 1998, the UCDA became an Associate Member of the IBC primarily to gain access to the information in IBC’s Web Claims Search Application. That information is a critical input into UCDA’s Auto Check business.

## OTHER PROVIDERS OF VEHICLE ACCIDENT SEARCHES

[7] 3823202 Canada Inc., carrying on business as CarProof ("CarProof"), began to provide vehicle accident searches in 2005. It is now the market leader and its searches cost \$34.95 (Cdn) before taxes.

[8] In 2008, CARFAX, Inc. ("Carfax"), an American based provider of vehicle accident histories, began to sell them in Ontario. It charges \$34.99 (U.S.) before taxes.

[9] Both CarProof and Carfax purchase IBC's data for their accident history searches and, according to the Beattie Affidavit, they are both able to provide the dollar value of claims as part of their search results.

[10] The relationship between Auto Check and CarProof has, from the UCDA's perspective, been troubled. The UCDA took CarProof to court to prevent it from misrepresenting the services offered by Auto Check. In the end, a settlement achieved Auto Check's objective. CarProof has also twice (in 2009 & 2010) tried to persuade the UCDA to enter into a partnership in which the Auto Check service would be terminated and CarProof would supply vehicle accident histories to UCDA's members. The UCDA refused to entertain these proposals because it believes that its members place a high value on their ability to purchase inexpensive vehicle accident histories through Auto Check.

## REGULATORY CHANGES

[11] On January 1, 2010, changes to the regulations under the Ontario *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Schedule B, required motor vehicle dealers to disclose to potential purchasers whether a used vehicle had ever suffered damage which cost more than \$3000.00 to repair.

[12] To assist its members to meet this new obligation, the UCDA decided to try to obtain additional information from IBC about the dollar value of insurance claims. IBC has that information on its ASP Database. The Beattie Affidavit describes the UCDA's early efforts to secure this information in paragraphs 21 and 25-28:

In early June 2009, in anticipation of these [Regulatory] changes, Robert Pierce, the UCDA's Director of Member Services, contacted Marti Pehar, Manager, Business Partnerships, of IBC by telephone and requested that IBC expand the scope of the information it provided to Auto Check™ to include dollar value claims information.

I understand from Mr. Pierce that he met with Ms. Pehar on June 16, 2009 to discuss Auto Check™'s request for dollar value claims information. Although UCDA had indicated its willingness to compensate IBC for the provision of this additional information, on June 24, 2009, Ms. Pehar informed Mr. Pierce that IBC had refused UCDA's request. I understand and believe that at that time IBC

provided, and presently continues to provide, similar information directly or indirectly to CarProof.

On May 17, 2010 Warren Barnard, UCDA's Legal Services Director, and I met with Ralph Palumbo, IBC Vice-President - Ontario, and Randall Bundus, IBC Vice-President -Operations and General Counsel, and renewed Auto Check™'s request for dollar value claims information. Mr. Palumbo stated that he did not see any reason why IBC would not provide this information to UCDA. Mr. Bundus indicated that IBC would need to obtain authorization from its member insurers in order to provide the ASP information to UCDA.

The requirement to obtain insurer consents in respect of dollar claims data came as a surprise to UCDA because this has never been an issue with the Web Claims Search application. Nevertheless, on May 20, 2010, I wrote to Mr. Palumbo and formally requested that IBC seek the requisite authorization from its member insurers to provide the ASP dollar value claims information to Auto Check™.

In a letter dated May 26, 2010, Mr. Bundus wrote to me to state that IBC would not seek the authorization UCDA had requested to supply dollar claims data from its insurer members. Instead, Mr. Bundus indicated that UCDA should contact each insurer member of IBC in order to obtain individual consents for provision of dollar claims information.

[The emphasis is mine]

## **THE TERMINATION OF THE UCDA'S ACCESS TO IBC'S WEB CLAIMS SEARCH APPLICATION**

[13] The Beattie Affidavit deals with this subject and the UDCA's ongoing efforts to secure consents in paragraphs 28-37. There he says:

[In a letter dated May 26, 2010] ... without any prior warning, Mr. Bundus informed me that IBC was terminating UCDA's Associate Membership, thereby ending the 12-year relationship between the parties and Auto Check™'s ability to continue to obtain the claims data from the Web Claims Search application.

On June 2, 2010, my colleague Warren Barnard wrote to Mr. Bundus expressing the UCDA's shock over the unexplained and unforeseen termination of its Associate Membership, and requesting that the IBC reconsider its decision. In the alternative, Mr. Barnard requested an extension of the termination notice period to six months (i.e., to November 26, 2010) in order to (i) allow the UCDA a reasonable opportunity to contact the individual insurers whose authorization would be required for UCDA to obtain ASP information from IBC, and (ii) continue using the Web Claims Search application.



In the absence of a reply to Mr. Barnard's letter, on June 9, 2010, McMillan LLP, external counsel to UCDA, wrote to Mr. Bundus expressing UCDA's concerns that IBC's conduct raised issues under the *Competition Act* and reiterating UCDA's request that IBC reconsider the termination of UCDA's membership and its ability to source vehicle claims data (or, alternatively, extend the notice period to six months).

On June 23, 2010, McMillan LLP again wrote to Mr. Bundus, requesting that IBC grant the six-month extension and, in the meantime, provide UCDA with further particulars as to the form and content of the insurer authorizations required by IBC in order to supply the ASP information to Auto Check™. Mr. Bundus replied on June 28, 2010 providing information about the form of authorization required, but refusing to reconsider IBC's termination of UCDA's membership and provision of the Web Claims Search application, or UCDA's request for an extension of the notice period.

After further discussions and emails, IBC reinstated UCDA's Associate Membership and ability to use the Web Claims Search application until November 26, 2010. UCDA also began a process of contacting numerous insurers to obtain consent for IBC to provide ASP information to UCDA, something that has never been required to use the Web Claims Search application.

Between July 2010 and May 2011, UCDA obtained consents from insurers in respect of ASP information, and was also dealing with IBC on a range of contractual, technical and logistical issues related to ASP information. UCDA's Associate Membership has continued on a month to month basis as did its ability to use the Web Claims Search application.

On April 18, 2011, UCDA signed a Service Provider Agreement with IBC for the provision of ASP information from consenting insurers. UCDA was then in a position to seek consent from three insurers who had apparently withdrawn their earlier consents. However, UCDA was not made aware until May 30, in an email from James Fordham, Director of Customer Service at IBC, to Neil Elgar, UCDA's Manager of Administrative Services, that several other insurers had withdrawn their consents in the period from January to March, 2011. Mr. Fordham did not explain how the withdrawals occurred or why UCDA was not informed about them many months earlier when the withdrawals took place.

On June 7, 2011, Mr. Fordham informed Mr. Elgar by email that IBC would be terminating use of the Web Claims Search application. IBC gave notice that termination would take place on June 10, 2011, although after subsequent correspondence between Messrs. Elgar and Fordham, the date was extended to June 17, 2011. Mr. Fordham did not give a reason for the termination or for the briefness of the notice period.

On June 9, 2011, Mr. Barnard communicated with Mr. Bundus and requested continuing provision of the Web Claims Search application, for which insurer consents had never been required, while UCDA pursued consents from insurers for supply of the ASP information. On June 16, 2011, McMillan LLP reiterated Mr. Barnard's request in voicemail and email messages to Mr. Bundus.

On June 16, 2011, UCDA advised its members that the Auto Check™ searches would be suspended effective June 17, 2011 until further notice due to the inability to obtain supply of sufficient data to provide vehicle accident history searches. On June 17, 2011 at 5:00 pm IBC terminated supply of the Web Claims Search application to UCDA.

[The emphasis is mine]

### **THE EFFECT OF THE TERMINATION**

[14] The termination on June 17, 2011 (the “Termination”) ended a 13 year arrangement which had cost the UCDA \$65,000.00 in annual dues plus \$16,000.00 which the UCDA provided to IBC in June of 2007 to help finance upgrades to IBC’s database. As well, in 2010, IBC added a fee for the information supplied to the UCDA from the Web Claims Search Application. The UCDA has always paid IBC as required.

[15] The Termination also caused the UCDA to suspend its Auto Check business.

### **THE FUTURE OF AUTO CHECK**

[16] The UCDA takes the position that its Auto Check service would again be viable if it had the data from the Web Claims Search Application. In other words, although it would have been helpful, the UCDA’s members do not need the dollar value claims information from the ASP Database because, according to the Beattie Affidavit, approximately 2/3 of the searches show that vehicles have not been in accidents. Further, where accidents have occurred, the UCDA’s member dealers are free to exercise judgment about whether the damage would have cost below or above \$3000.00 to repair. In other words, dealers don’t usually need the dollar value of the claims. However, the Beattie Affidavit concedes that, in the small number of situations in which a precise dollar value is needed, dealers can purchase the more costly searches from CarProof or Carfax which include the dollar amounts.

### **PART I – SECTION 75 – REFUSAL TO SUPPLY**

[17] Subsection 103.1(7) sets out the test for granting leave under section 75 of the Act. It reads:

103.1 (7) The Tribunal may grant leave to make an application under section 75 or 77 if it has reason to believe that the applicant is directly and substantially affected in the

103.1 (7) Le Tribunal peut faire droit à une demande de permission de présenter une demande en vertu des articles 75 ou 77 s’il a des raisons de croire que l’auteur de la

applicants' business by any practice referred to in one of those sections that could be subject to an order under that section.

demande est directement et sensiblement gêné dans son entreprise en raison de l'existence de l'une ou l'autre des pratiques qui pourraient faire l'objet d'une ordonnance en vertu de ces articles.

[18] The law is clear that there must be sufficient credible evidence to give rise to a *bona fide* belief (i) that an applicant is directly and substantially affected by the refusal to supply and (ii) that an order could be made under subsection 75(1)(a-e) of the Act (*Symbol Technologies Canada ULC v. Barcode Systems Inc.*, 2004 FCA 339, at paragraph 16, and *National Capital News Canada v. Milliken*, 2002 Comp. Trib. 41, at paragraphs 14-15).

## THE PRODUCT

[19] The UCDA says that the product is IBC's Web Claims Search Application and notes that it has the following distinguishing features:

- The data are available to the UCDA without the need to secure consents from the parties who provide the data.
- It includes integrated industry wide claims data.
- It is offered through IBC's web portal.
- It does not include information about the dollar value of claims.

[20] The UCDA says that the Web Claims Search Application is the product that has been refused, and that, for the reasons described above in paragraph 16, it is a viable product which meets the needs of the UCDA's members in almost all situations.

[21] The IBC takes a different view and says that the product at issue is the right to access IBC's Web Claims Search Application and that the product is therefore properly characterized as a license. IBC says that, because the Tribunal held in *Canada (Director of Investigation and Research) v. Warner Music Canada Ltd.*, 78 C.P.R. (3d) 321, that licenses are not products for the purpose of section 75 of the Act, an order could not be made.

[22] However, I have not been persuaded by this submission. There is no evidence to suggest that IBC ever characterized its arrangements with the UCDA as a license. The evidence is that access to the Web Claims Search Application data was incidental to the UCDA's Associate Membership in IBC.

[23] In the alternative, IBC submits that the proper product market is "vehicle insurance claims data" and that data of that kind is available in both IBC's Web Claims Search Application and in its ASP Database.

[24] Evidence about the contents and attributes of the ASP Database is sparse but it does appear that the UCDA could use the ASP data to operate Auto Check if it were available. In this regard, the Beattie Affidavit says at paragraph 40:

The Web Claims Search application will remain critical to the Auto Check™ business unless and until UCDA is able to obtain consents from individual insurers to access sufficient ASP information to offer a viable vehicle accident history search service.

[25] As noted above, the Beattie Affidavit shows that the UCDA initially approached IBC asking only for the dollar values of claims on the ASP Database and IBC refused. However, UCDA's request appears to have changed over time into one for access to all the ASP data. This change may have been motivated by IBC's first decision to terminate UCDA's access to the Web Claims Search Application in May 2010. In any event, IBC subsequently agreed to give the UCDA access to the ASP Database but said that consents were required from the insurance companies whose data are found therein (the "Consent(s)"). IBC initially offered to secure the Consents from its members.

[26] However, IBC changed its mind and, instead of providing the Consents itself, required the UCDA to approach each insurance company for its Consent. The UCDA undertook this exercise and, over a period of almost one year, from July 2010 to May 2011 it secured many Consents. On April 18, 2011, the UCDA signed a Service Provider Agreement with IBC for the provision of ASP information from consenting insurers. When the agreement was signed, the UCDA knew that three insurers who had consented had withdrawn their earlier Consents. However, it was not until the end of May 2011 that IBC told the UCDA that several other Consents had also been withdrawn earlier in the year. No reasons were provided. Without those Consents, the UCDA does not have access to sufficient ASP data to make the ASP Database a viable alternative for the data on IBC's Web Claims Search Application.

[27] Given these facts, I find that the Tribunal could conclude that the fact that access to the ASP Database requires Consents, which are not readily available, means that it is not in the same product market as the Web Claims Search Application data for which no Consents are required.

[28] For this reason, I have decided that the Tribunal could conclude that the vehicle insurance claims data from IBC's Web Claims Search Application is the product at issue in this application.

[29] IBC also says that, even if the data on the Web Claims Search Application is the product, leave should be denied because the UCDA fails to consistently describe the product it says is at issue. IBC notes that the data the UCDA received before the Termination is variously described as:

- Web Search claims data.
- Vehicle Insurance claims data
- Supply from the IBC Web Claims Search Application
- Vehicle Insurance Claims data

[30] In my view, there is no lack of clarity. In spite of the various descriptions provided, it is clear that the UCDA is speaking of the data it has received since 1998 using IBC's Web Claims Search Application.

#### **DIRECTLY AND SUBSTANTIALLY AFFECTED – SUBSECTION 103.1(7)**

[31] The Beattie Affidavit shows that Auto Check's business accounted for more than 50% of the UCDA's net income in the year ended December 31, 2010. As well, Mr. Beattie says that Auto Check is a service which the UCDA's members consider to be "critical" and that it has been suspended as a consequence of the Termination. In my view, this evidence is sufficient to show that, as a result of the Termination, the UCDA is directly and substantially affected in its business. While it may be useful to consider earnings over time as the Tribunal suggested in *Nadeau Poultry Farm Ltd v. Groupe Westco Inc.*, 2009 Comp. Trib. 6, aff'd 2011 FCA 188, I do not accept IBC's submission that such data is required. Further, it is noteworthy that subsection 103.1(7) reads in the present tense and that the UCDA has provided current information.

#### **THE MEANING OF "COULD"**

[32] I now turn to the question of whether an order could be made under section 75 and I think it useful at this juncture to reflect on the meaning of the word "could". The context is important. The question of whether an order "could" be made is being considered in an application for leave which is not supported by a full evidentiary record. Parliament decreed that an applicant would file an affidavit and a respondent would file representations. This means that there will inevitably be incomplete information on some topics. As well, the process is to be expeditious and the burden of proof is lower than the ordinary civil burden which is "a balance of probabilities".

[33] In my view, the lower threshold means that the question is whether an order is "possible" and "could" is used in that sense.

[34] In deciding whether an order is possible the Tribunal must assess whether there is sufficient credible evidence to give rise to a *bona fide* belief that an order is possible. However, given the context described above, it is not reasonable to conclude that hard and fast evidence is required on every point. In my view, reasonable inferences may be drawn where the supporting grounds are given and circumstantial evidence may be considered.

#### **THE UCDA'S INABILITY TO OBTAIN ADEQUATE SUPPLIES OF A PRODUCT ANYWHERE IN A MARKET ON USUAL TRADE TERMS 75(1)(a)**

[35] The UCDA says that IBC is the only supplier of integrated insurance claims data. IBC disputes this saying that the UCDA could acquire the information it needs for its Auto Check business from CarProof and Carfax. However, in my view, the Tribunal could not conclude that the phrase "anywhere in a market" is intended to require the UCDA to purchase the data it needs from Auto Check's competitors.

[36] IBC also says that the UCDA has failed to define the geographic market. However, since the UCDA's members are in Ontario and, since the used vehicle accident histories are sought for

their use, it is reasonable to conclude Ontario is the geographic market and that an order could therefore be made.

[37] Finally, with respect to usual trade terms, the evidence shows that the UCDA is willing to continue to pay IBC and since the Web Claims Search Application data is only available from IBC, this aspect of the test is met and an order could be made.

**INSUFFICIENT COMPETITION AMONG SUPPLIERS – 75(1)(b)**

[38] In my view, because IBC is the sole supplier, the Tribunal could conclude that the UCDA's inability to secure the data on IBC's Web Claims Search Application is due to insufficient competition.

**THE PERSON REFERRED TO IN PARAGRAPH (A) IS WILLING AND ABLE TO MEET THE USUAL TRADE TERMS OF THE SUPPLIER OR SUPPLIERS OF THE PRODUCT – 75(1)(c)**

[39] There is no question that the UCDA is prepared to continue to pay for the Web Claims Search Application data. In these circumstances, I find that the Tribunal could conclude that this test has been met.

**THE PRODUCT IS IN AMPLE SUPPLY – 75(1)(d)**

[40] The Beattie Affidavit shows that IBC was able to reinstate the UCDA's associate membership and its access to the Web Claims Search Application after the initial termination of the UCDA's membership on May 26, 2010. Thereafter, it continued supplying the data on a month to month basis until the Termination. Based on this evidence, the Tribunal could conclude that the product is in ample supply.

**THE REFUSAL TO DEAL IS HAVING OR IS LIKE TO HAVE AN ADVERSE EFFECT ON COMPETITION IN A MARKET – 75(1)(e)**

[41] In my view, the Tribunal could find that IBC's refusal to supply the Web Claims Search Application has caused Auto Check's exit from the market. Since Auto Check was the low cost provider of accident claims searches to approximately 4500 used car dealers and, since it is reasonable to conclude that these dealers will now be forced to purchase more expensive searches from CarProof or Carfax, the Tribunal could find that the test is met.

**PART II – PRICE MAINTENANCE – 76(1)(a)(ii)**

[42] The test for leave to bring applications under section 76 of the Act is found in subsection 103.1(7.1). It says that the Tribunal must have reason to believe that an applicant is directly affected by any conduct that could be the subject of an order.

[43] For the reasons given in paragraph 31 above, I have concluded that the UCDA is directly affected by the closure of its Auto Check business.

[44] The more difficult question is whether I can conclude that an order “could” be made under subparagraph 76(1)(a)(ii) in the absence of any direct evidence in the Beattie Affidavit showing that IBC’s refusal to supply its Web Claims Search Application data to the UCDA is a result of Auto Check’s low pricing. The only evidence before the Tribunal is circumstantial.

[45] Some of the circumstantial evidence described below relates to the actions and affiliations of two companies called CGI Group Inc. (“CGI”) and i2iQ Inc. (“i2iQ”)

[46] In its submissions the UCDA says at paragraph 25:

UCDA is unable to establish definitively, without discovery pursuant to the Tribunal’s rules, whether IBC’s refusal to supply occurred because of concerns about Auto Check™’s low pricing policy. However, there is significant circumstantial evidence related to the large difference between Auto Check™ and CarProof prices, the actions of CarProof, connections between CarProof and i2iQ and communications between i2iQ and IBC, that provides reason to believe that IBC’s refusal to supply occurred because of Auto Check™’s low pricing policy.

[47] Further in its reply submissions the UCDA said at paragraph 39:

In this situation, the circumstantial evidence that IBC was acting to benefit CGI, with whom it has a preferred business relationship, and which in turn has a close business relationship with i2iQ and CarProof, is the only evidence on the record related to the reasons for IBC’s refusal to supply. It is noteworthy that, as Mr. Beattie indicated in his affidavit, IBC did not provide reasons when it terminated supply to UCDA, and again in its Representations IBC has remained silent about any other reasons for the termination. UCDA submits that in such a situation an adverse inference should be drawn from IBC’s silence and/or the “sufficient credible evidence” test should be applied in a manner which allows potentially viable claims to proceed and be tested on the merits rather than be frustrated by the Applicant’s inability to access relevant evidence in the possession of the Respondent during the leave stage.

[48] While I accept that circumstantial evidence and reasonable inferences may be relied on, the question is whether the circumstantial evidence in this case meets the requirement that there be sufficient credible evidence to give rise to a *bona fide* belief that the conduct could be subject to an order.

[49] The UCDA relies on four pieces of circumstantial evidence to show that the Termination was because of UCDA’s \$7.00 price contrasted with CarProof’s price of \$34.95. I will deal with each in turn.

(i) **The Price Difference**

[50] The evidence shows that CarProof has twice approached the UCDA with a view to acquiring its dealers as its customers. These approaches failed because the UCDA believes that

its members prefer Auto Check's low priced searches. Accordingly, CarProof's searches will only be attractive to the UCDA's members if Auto Check's low cost searches are no longer available.

[51] The evidence, which is said to suggest that the Termination was due to Auto Check's low price, is as follows:

- CarProof doesn't deal directly with IBC to obtain its ASP data. It deals through an intermediate company. Mr. Beattie speculates that that company is either i2iQ or CGI or perhaps both. CGI is contractually linked to IBC because CGI operates the ASP Database for IBC and provides other data services to IBC members. One service is called Auto Plus and it provides information to assist insurers when making decisions about coverages and premiums. Another service is Enhanced Auto Plus. It includes vehicle claim histories from CarProof.
- I2iQ's website also offers CarProof's vehicle claim history searches and says that i2iQ has a partnership or strategic alliances with CarProof and with a division of CGI called CGI Insurance Information Services. However, there is no evidence about whether i2iQ has a contractual relationship with IBC.

[52] If CGI is the intermediary between CarProof and IBC, the Tribunal is asked to speculate that, because CGI provides important data services to IBC, IBC will be inclined to do a favour for CGI by helping its customer, CarProof. This would be accomplished by refusing to supply data to its low cost competitor Auto Check.

[53] Regarding i2iQ, the evidence shows (i) that i2iQ's CEO is able to say to IBC that UCDA's dealers could purchase data from CarProof, (ii) that i2iQ and IBC were in prompt telephone contact about the UCDA's request for dollar claims information and (iii) that i2iQ has a partnership or strategic alliance with a division of CGI. This information suggests to me that i2iQ has a degree of control over CarProof and that i2iQ has a close relationship with IBC and may be the intermediary selling IBC's data to CarProof. If those facts were true, I must infer that IBC would be inclined to do a favour for i2iQ by, in turn, helping its customer CarProof. Again, this would involve refusing to supply the Web Claims Application Search data to Auto Check.

**(ii) CarProof's Actions**

[54] These are described in the following paragraphs taken from paragraphs 13-15 of the Beattie Affidavit:

CarProof has grown substantially and is the market leader in the supply of vehicle accident history searches in Ontario. In 2004, CarProof began distributing false and misleading promotional materials to motor vehicle dealers in Canada, which misrepresented the nature and scope of UCDA's lien search and other services. Following written warnings from UCDA's legal counsel, CarProof abandoned this negative campaign. It again began distributing false and misleading promotional material in 2007 in connection with UCDA's services including its Auto Check™ service. I believe that this may have been motivated in whole or in



part by UCDA's position as the low-price supplier in the market. UCDA's efforts to resolve the situation out of court were unsuccessful, leading it to commence litigation against CarProof. That litigation was ultimately settled in 2009, with CarProof and UCDA issuing a joint statement in which CarProof acknowledged that UCDA provides accident claim information through its Auto Check™ service and undertook not to make misleading statements in the future.

In early 2009, representatives of CarProof approached UCDA and proposed that UCDA partner with CarProof to provide CarProof vehicle accident histories to UCDA members rather than doing so directly through the Auto Check™ business. Such a proposal, if adopted, would have meant the end of the Auto Check™ business. Bearing in mind CarProof's aggressive business tactics and the significantly higher prices at which it provides vehicle accident history searches, UCDA concluded that a relationship with CarProof was not in the best interests of its members and declined the CarProof proposal.

In early 2010, representatives of CarProof again approached UCDA and requested that UCDA partner with CarProof to provide CarProof vehicle accident histories to UCDA members, rather than doing so directly through the Auto Check™ business. UCDA's views on such a relationship had not changed, and we again rejected CarProof's overtures.

[55] In sum, the evidence indicates that CarProof appears to have misrepresented Auto Check's business and has suggested closing it down. However, these efforts have failed because of Auto Check's low price.

**(iii) Connections Between CarProof and i2iQ**

[56] This topic is dealt with above in paragraphs 51 and 53.

**(iv) Communications Between i2iQ and IBC**

[57] In June 2009, the UCDA contacted Ms. Pehar of IBC to ask for access to the dollar value claims information in the ASP Database. Shortly thereafter, the CEO of i2iQ spoke to Ms. Pehar and advised her that UCDA could purchase CarProof vehicle history reports and confirmed that he could be contacted if the UCDA wanted to pursue the idea. In the alternative, he suggested that the UCDA could speak directly to CarProof.

[58] The Beattie Affidavit speculates that IBC must have told i2iQ or CarProof of UCDA's request and that the only reason IBC, CarProof and i2iQ were in contact, after the UCDA asked for access to the dollar value claims information, was because they were concerned that, with this information, Auto Check would be a more effective low cost competitor.

## CONCLUSIONS

[59] Against this background, it is clear that IBC has a close direct relationship with CGI (through its provision of services and maintenance of the ASP Database) and with i2iQ (it spoke to it about the UCDA's request for dollar value claims data). It is also clear that CGI and i2iQ have close ties to CarProof. Its searches are provided to IBC's members through CGI, and i2iQ appears to have some control over CarProof's operations and sells its searches through its website.

[60] Finally, it is reasonable to conclude based on its past conduct, that CarProof would like to see Auto Check's low cost business closed so that the UCDA's dealers could become potential customers for CarProof's searches.

[61] However, while I can conclude that it is possible that the Termination occurred as a result of IBC's wish to support CarProof's business objectives as a favour to either CGI or i2iQ, I cannot conclude that there is sufficient credible evidence to show the possibility that the Termination by IBC was due to Auto Check's low pricing policy. In these circumstances, an order could not be made.

## ORDER

[62] The UCDA is hereby granted leave, pursuant to subsection 103.1(7) of the Act, to commence an application under section 75 of the Act. However, leave to apply under section 76 of the Act is denied.

[63] The UCDA is to have its costs fixed as a lump sum amount payable forthwith based on Column III of Tariff B of the *Federal Courts Rules*, SOR/98-106. The UCDA is to prepare a bill of costs for review by IBC and, if an amount cannot be agreed, the Registry may be contacted and I will fix the amount once a procedure has been agreed.

## DIRECTION

[64] The parties are to consult to see if they can agree about whether an interim supply order can be made and, if so, on what terms. Failing agreement, the Registry may be contacted to discuss arrangements for the hearing of the UCDA's application for interim relief.

DATED at Ottawa, this 9<sup>th</sup> day of September, 2011

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

**COUNSEL:**

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