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CT- 2011-008

Chantal Fortin for / pour
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OTTAWA, ONT.

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Court File No. CT-2011-008
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 the Used Car Dealers Association of Ontario under section 75 of the *Competition Act*.

AND IN THE MATTER of an Application by the Used Car Dealers Association of Ontario for interim relief pursuant to section 104 of the *Competition Act*.

AND IN THE MATTER of an interim order on consent issued by the Competition Tribunal on October 20, 2011.

AND IN THE MATTER of a motion brought by the Insurance Bureau of Canada as a matter related to the application for interim relief of the Used Car Dealers Association of Ontario under section 104 of the *Competition Act*.

B E T W E E N :

USED CAR DEALERS ASSOCIATION OF ONTARIO

Applicant (Responding Party)

- and -

INSURANCE BUREAU OF CANADA

Respondent (Moving Party)

<p>RESPONSE TO THE NOTICE OF MOTION OF INSURANCE BUREAU OF CANADA, DATED JANUARY 16, 2012</p>
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TAKE NOTICE that the Used Car Dealers Association of Ontario (“UCDA”) opposes the motion brought by the Insurance Bureau of Canada (“IBC”).

USED CAR DEALERS ASSOCIATION OF ONTARIO SEEKS THE FOLLOWING RELIEF:

1. an order dismissing IBC’s motion;

2. costs of this motion payable to UCDA; and
3. such further or other relief as counsel may advise and the Tribunal may permit.

THE FOLLOWING ARE THE GROUNDS relied upon by Used Car Dealers Association of Ontario:

1. Since 1998, UCDA has purchased a vehicle accident claims data service called the Web Claims Search application from IBC, which service is a critical input into UCDA's Auto Check™ business. Auto Check™ provides used vehicle accident history searches to UCDA's more than 4,600 car dealer members. On June 17, 2011, IBC terminated its longstanding supply of the Web Claims Search application to UCDA. Deprived of an essential input required to offer the Auto Check™ service, UCDA was forced to suspend the operations of that business.
2. On June 29, 2011, UCDA filed an application for leave under section 103.1 of the *Competition Act* (the "*Act*") seeking leave to bring an application under sections 75 and 76 of the *Act* in respect of IBC's refusal to continue supplying UCDA with the Web Claims Search application. UCDA's application materials clearly stated that it was seeking an order that IBC resume supplying the Web Claims Search application on the same terms on which it had been supplied since 1998, and that UCDA would be seeking an interim supply order under section 104 of the *Act* if granted leave.
3. On August 10, 2011, UCDA filed an application for interim relief under section 104 of the *Act*.
4. On September 8, 2011, the Tribunal granted UCDA leave to bring an application under section 75 of the *Act*. In its decision granting leave, the Tribunal also directed the parties "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." UCDA immediately contacted IBC to discuss interim supply arrangements.

5. Further to the Tribunal's Direction, UCDA and IBC submitted a draft interim supply order on consent to the Tribunal on October 11, 2011. On October 20, 2011, the Tribunal issued the Interim Supply Order, which provided that:

[u]ntil the disposition of the UCDA's application under section 75 of the Act by the Tribunal, or the withdrawal, cessation, settlement or termination of that application by other means, the IBC is to supply the UCDA forthwith with access to the IBC's Web Claims Search Application on the basis previously supplied prior to June 17, 2011, and in accordance with the Access Agreement made as of March 17, 2006, between the IBC and the UCDA.

6. Shortly thereafter, IBC resumed supplying the Web Claims Search application to UCDA which, in turn, re-started the Auto Check™ business.
7. However, IBC subsequently filed an application under section 106 of the *Act*, which was later replaced by the present motion, seeking rescission of the Interim Supply Order. The basis for this motion appears to be that one of IBC's 139 members, State Farm Mutual Automobile Insurance Company ("**State Farm**"), objects to IBC's supply of the Web Claims Search application to UCDA as this service contains data in respect of vehicles insured by State Farm (and has contained such data since at least 1998). State Farm claims to have a "corporate policy" that does not permit data compiled by State Farm to be provided to "third-party commercial operations".
8. IBC has not asserted any harm to itself other than its desire to comply with the expressed wishes of one of its members.
9. State Farm has not acted on a timely basis and has chosen not to intervene in the section 75 or section 104 proceedings. Serious questions exist as to both the content and selective application of State Farm's purported "corporate policy", no formal policy has been tendered as evidence in this case, and State Farm has not provided any affidavit evidence or made itself available for cross-examination in support of the motion brought by IBC on its behalf.
10. There has not been a change in circumstances between October 20, 2011 and the date of this motion which would justify rescission of the Interim Supply Order. In the

circumstances existing both on October 20, 2011, when the Tribunal issued the Interim Supply Order, and at present, UCDA has clearly satisfied the relevant legal test under section 104 of the *Act* and the applicable jurisprudence, in that:

- (a) there is a serious issue to be tried;
- (b) rescinding the Tribunal's interim supply order will cause irreparable harm to UCDA; and
- (c) that the balance of convenience clearly favours the UCDA.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The affidavit of Robert G. Beattie, sworn January 23, 2012.
2. Such further and other material as counsel may advise and the Tribunal may permit.

January 23, 2012

McMILLAN LLP
Brookfield Place
181 Bay Street, Suite 4400
Toronto, ON, M5J 2T3

A. Neil Campbell, LSUC# 31774T
Tel: 416-865-7025
Fax: 416-865-7048
neil.campbell@mcmillan.ca

Casey W. Halladay, LSUC# 45965G
Tel: 416-865-7052
Fax: 416-865-7048
casey.halladay@mcmillan.ca

Richard McCluskey, LSUC# 58368C
Tel: 416-865-7146
Fax: 416-865-7048
richard.mccluskey@mcmillan.ca

Lawyers for the Applicant (Responding Party)

TO: **The Registrar**
Competition Tribunal
The Thomas D'Arcy McGee Building
#600-90 Sparks Street
Ottawa, Ontario K1P 5B4
Tel: 613-957-7851
Fax: 613-952-1123

AND TO: **Melanie Aitken**
Commissioner of Competition
Competition Bureau
50 Victoria Street
Gatineau, Québec K1A 0C9
Tel: 819-997-3301
Fax: 819-997-0324

AND TO: **Osler, Hoskin & Harcourt LLP**
P.O. Box 50, 1 First Canadian Place
Toronto, ON M65X 1B8

Peter Glossop, LSUC# 26194A
Tel: 416-862-6554
Fax: 416-862-6666
pglossop@osler.com

Graham Reynolds, LSUC# 16313C
Tel: 416-862-4864
Fax: 416-865-6666
greynolds@osler.com

Geoffrey Grove, LSUC# 56787B
Tel: 416-862-4264
Fax: 416-864-6666
ggrove@osler.com

Lawyers for the Respondent (Moving Party)