

**FILED / PRODUIT**

Date: January 16, 2012

CT- 2011-008

Chantal Fortin for / pour  
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

# 20

File No. CT-2011-008

**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*.

BETWEEN:

USED CAR DEALERS ASSOCIATION OF ONTARIO

Applicant (Responding Party)

- and -

INSURANCE BUREAU OF CANADA

Respondent (Moving Party)

**NOTICE OF MOTION**

**TAKE NOTICE THAT** the Respondent, Insurance Bureau of Canada (“IBC”), will make a motion to a judicial member of the Tribunal at a date and time and in a manner directed by the Tribunal.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order rescinding or setting aside the Interim Supply Order of the Tribunal dated October 20, 2011 (the “Interim Supply Order”).
2. IBC’s costs of this motion.
3. Such further and other relief as counsel for IBC may request and the Tribunal may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. In connection with its Application under section 75 of the *Competition Act* for an order that IBC resume supplying UCDA with IBC's Web Claims Search application on usual trade terms, UCDA brought an Application under section 104 of the *Competition Act* for an interim supply order in relation to Web Claims Search.

2. IBC consented to the Interim Supply Order. The Interim Supply Order requires IBC to supply UCDA with access to 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 IBC and the UCDA, until the disposition of the UCDA's application under section 75 of the *Competition Act* by the Tribunal, or the withdrawal, cessation, settlement or termination of that application by other means.

3. IBC initially determined that it would not be possible to consent to an interim supply order under section 104 of the *Competition Act* because eight insurers had previously directed IBC not to supply UCDA with access to the Web Claims Search application.

4. However, after communications with each of these eight insurers, IBC successfully obtained directions from them to allow IBC to supply these insurers' data to UCDA through Web Claims Search, on an interim basis.

5. On October 7, 2011, IBC's counsel advised counsel for UCDA that IBC would consent to the an interim supply order. However, IBC's counsel advised counsel for UCDA that IBC's consent to an interim supply order was contingent on the continued consent of all insurers to the provision of their data to UCDA through Web Claims Search. IBC's counsel also advised

counsel for UCDA that IBC would apply to the Tribunal for directions in the event that an insurer directed IBC to cease supply of its data to UCDA through Web Claims Search.

6. By letter dated October 11, 2011, counsel for UCDA advised counsel to IBC that this arrangement was acceptable.

7. On November 2, 2011, shortly after the Tribunal issued the Interim Supply Order on consent, State Farm Mutual Automobile Insurance Company (“State Farm”), which is a member of IBC, directed IBC to cease supply of State Farm’s data to UCDA. State Farm was not one of the original eight insurers who had directed IBC not to supply data to UCDA.

8. Insurers retain the right to direct IBC as to how their data is used and to whom it is disseminated. Accordingly, IBC is bound to follow the direction of State Farm.

9. IBC would not have consented to the Interim Supply Order if, at the time IBC so consented, State Farm or any other insurer had directed IBC not to provide its data to UCDA.

10. In the circumstances that exist at the time of this motion, the Interim Supply Order would not have been made.

11. In light of State Farm’s direction, UCDA cannot satisfy the test for an interim supply order under section 104 of the *Competition Act*.

12. UCDA will not suffer irreparable harm if the Interim Supply Order is set aside or rescinded.

13. The balance of convenience weighs in favour of IBC.

14. Sections 104(1) and 106(1) of the *Competition Act*, and such further and other legislation as counsel may advise and the Tribunal may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** is filed in support of the motion:

1. The Affidavit of Randall Bundus sworn December 7, 2011.
2. Such further and other material as counsel may advise and the Tribunal may permit.

Dated this 16<sup>th</sup> day of January, 2012.

*OSLER, HOSKIN & HARCOURT LLP*

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