

Competition Tribunal



Tribunal de la Concurrence

Reference: *Used Car Dealers Association of Ontario v. Insurance Bureau of Canada*, 2011
Comp. Trib. 6
File No.: CT-2011-006
Registry Document No.: 20

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 an 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 Order: August 2, 2011
Order signed by: Madam Justice Sandra J. Simpson

CONFIDENTIALITY ORDER

[1] FURTHER TO the application filed by the Used Car Dealers Association of Ontario for an Order pursuant to section 103.1 granting leave to make an application under sections 75 and 76 of the *Competition Act*;

[2] AND FURTHER TO the Used Car Dealers Association of Ontario's motion requesting a confidentiality order;

[3] AND FURTHER TO the draft confidentiality order filed by the Used Car Dealers Association of Ontario on June 29, 2011;

[4] AND FURTHER TO the revised draft confidentiality order filed on consent by the Used Car Dealers Association of Ontario on August 2, 2011;

THE TRIBUNAL ORDERS THAT:

[5] For the purpose of this order

- (a) "Document" means any document whether in physical or electronic form, including things defined as "records" in subsection 2(1) of the Act;
- (b) "Protected Document" means any documents produced in the Proceeding, including documents listed in affidavits of documents, expert reports, pleadings, affidavits, submissions, or lay witness statements and information contained in those documents that a Party claims is confidential and that the Tribunal has determined is confidential;
- (c) "Parties" means the Applicant and the Respondent, and "Party" means the Applicant or the Respondent;
- (d) "Proceeding" means the section 103.1 application brought by the Applicant and any proceeding under section 75, section 76 or section 104 related thereto.

[6] Disclosure of Documents containing any of the following types of information could cause specific and direct harm:

- (a) Financial data and reports;
- (b) Confidential financial information relating to the Used Car Dealers Association of Ontario; and
- (c) Other competitively or commercially sensitive and/or proprietary information of the Parties or of third parties.

[7] The confidential version of the affidavit of Robert G. Beattie sworn June 29, 2011 in support of the Proceeding shall be a Protected Document.

[8] If information from a Protected Document is incorporated into any other document, that document shall be a Protected Document.

[9] Protected Documents will be identified in the following manner for the purpose of the Proceeding:

- (a) At the time of production of a document, or as soon thereafter as possible, a Party that claims confidentiality over a document shall provide counsel for the other Party with written notice identifying that document as a Protected Document;
- (b) All documents designated as Protected Documents shall, on a preliminary basis, be treated as a Protected Document, pending further determination;
- (c) Following the exchange of documents, counsel for the Parties shall use their best efforts to agree as to whether the documents (or portions thereof) are to be treated as Protected Documents;
- (d) If agreement cannot be reached, the Parties may apply to the Tribunal to determine whether the document, or a portion thereof, is a Protected Document;

[10] Subject to a further order of the Tribunal, the consent of the Parties or as required by law, Protected Documents may only be disclosed to the following people, except as required by law: (i) counsel for the Parties and their staff; and (ii) the Commissioner of Competition and the Commissioner's staff.

[11] If a Party is required by law to disclose a Protected Document, that Party shall give prompt written notice to the Party that claimed confidentiality over the Protected Document so that the Party that claimed confidentiality may seek a protective order or other appropriate remedy.

[12] Counsel for a Party and his or her staff, and the Commissioner and her staff may make copies as they require in connection with the Proceeding.

[13] Nothing in this order prevents a Party from having full access to Protected Documents that originated from that Party.

[14] Parties shall provide the Tribunal with redacted versions of all Protected Documents at the time of filing the Protected Document.

[15] At the hearing of the Proceeding

- (a) Protected documents tendered as evidence at the hearing of the Proceeding shall be identified as such and clearly marked as such;

- (b) Protected Documents shall not form part of the public record unless the Party claiming confidentiality waives the claim, or the Tribunal determines that the document is not a Protected Document.

[16] The termination of the Proceeding shall not relieve any person to whom Protected Documents were disclosed pursuant to this order from the obligation of maintaining the confidentiality of such Protected Documents in accordance with the provisions of this order and any confidentiality agreement.

[17] Upon completion or final disposition of the Proceeding and any appeals, all Protected Documents and any copies of Protected Documents, with the exception of Protected Documents in the possession of the Commissioner and her staff, shall be destroyed or returned to the Party that produced them unless the Party that produced the Documents states, in writing, that they may be disposed of in some other manner, provided that counsel may keep one set of Protected Documents in their file.

[18] This order supersedes and replaces any existing confidentiality agreements between the Parties with respect to material produced in the Proceeding.

[19] This order shall be subject to further direction of the Tribunal and may be varied by order of the Tribunal.

DATED at Ottawa, this 2nd day of August, 2011.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

COUNSEL:

For the applicant:

Used Car Dealers Association of Ontario

A. Neil Campbell
Casey W. Halladay

For the respondent:

Insurance Bureau of Canada

Peter Glossop
Graham Reynolds
Geoffrey Grove