

PUBLIC

Tribunal File No. CT-2002-004

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF an inquiry pursuant to subparagraph 10(1)(b)(ii) of the *Competition Act* into certain marketing practices of Sears Canada Inc.;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an order pursuant to section 74.1 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

-and-

SEARS CANADA INC.

	<p>Respondent OTTAWA, ONT # 0071a</p>
	<p>REGISTRAR / REGISTRAIRE des Labels for / pour</p>
<p>AFFIDAVIT OF DONALD GAUTHIER</p>	<p>FILED / PRODUIT January 16, 2004 CT-2002-004</p>
	<p>COMPTITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE</p>

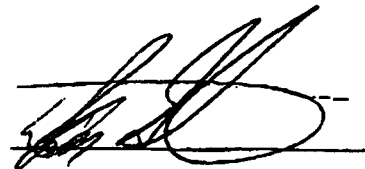
I, Donald Gauthier, of the City of Waterloo, in the Province of Ontario, MAKE OATH AND SAY:

- I have been working in the Tire Industry in Canada since 1984. I occupied various senior positions in sales and Marketing with Bridgestone/Firestone Canada Inc. and Michelin North America (Canada) Inc. Currently, I am the Sales and Marketing Manager of Town and Country Tire Centres, and Vice President of Town and Country Tire and Wheel Reconditioning.

- 2. Attached hereto and marked as Exhibit "A" is a true copy of my evidence. The contents of Exhibit "A" and the opinions expressed therein are to the best of my knowledge, information and belief.
- 3. Attached hereto and marked as Exhibit "B" is a true copy of my Curriculum Vitae.
- 4. I make this affidavit pursuant to Rule 47(1) of the *Competition Tribunal Rules*.

SWORN BEFORE ME, at the City of)
 Woodstock , in the Province of Ontario,)
 this 22 day of September 2003.)
)


 COMMISSIONER OF OATHS


 DONALD GAUTHIER

Marketing Tires In The Canadian Market Place

Introduction

1. I have been retained by the Commissioner of Competition to provide my opinion with respect to certain aspects of the Canadian tire market.

This is Exhibit A To The Affidavit Of DANALD CAMERON Sworn Before Me This, 22 Day Of SEPTEMBER, 2003

Marketing Tires In The Canadian Market Place

2. My opinion outlines the difference between the various tire brand categories, the composition of the tire retail structure in Canada and lastly, how the various retailers used the manufacturer's list price when selling tires to the public in 1999, and explains the circumstances in which one tire may be replaced on a vehicle.

Tire Brands

3. In 1999 there were basically three different categories of tires marketed in Canada, including flag brands, associate brands and private brands.

Flag Brands

4. "Flag brand" tires are tires that carry the manufacturer's name and are marketed under their label. Examples include the Michelin Xone and the Firestone Firehawk. Typically, retail marketing support for these tires, is provided by the manufacturers in the form of:

- Extensive field sales representation.
- Mileage and performance warranties.
- Field engineering support to handle customer warranty issues.
- National distribution with fast pick up and delivery service.
- National and regional advertising and promotions.
- Dealer co-op advertising.
- Dealer business development support (equipment, computers, etc.)
- Store signs and showroom point of sale material.
- Product brochures and price lists.
- Staff product and sales training.

5. The key point with "flag brands" is that the tire manufacturer owns them and that the manufacturer has a very tight control on the brand's marketing support. Their intent is to build brand awareness to the point that the consumer seeks out their product when in need of tire replacement. The better the job they do in this regard - the greater the consumer demand - the higher the price the consumer is willing to pay. The best example of this today is Michelin who have their brand price positioned at the top end of the market.

Associate Brands

6. "Associate brand" tires are tires manufactured by the same manufacturers as flag brand tires, but marketed under a different name. Examples include the Cavalier line, which is made by Michelin

and the Dayton line which is made by Bridgestone-Firestone. Manufacturers also own "Associate brand" tires, but the big difference is that they are not supported to the same level as flag brands. In fact, retailers have to buy the product in trailer loads and don't receive any "pull through" brand awareness support.

7. In 1999, manufacturers typically awarded associate brands to large retail groups or wholesalers on a territory exclusive basis. Their support was limited to product warranty, limited sales representation, minimal point of sale & promotional material and price lists (containing product specifications and the manufacturers' list price). As a result, these products were usually price positioned well below the flags and sold primarily on price.

8. Associate brand tires were used by manufacturers to prop up and protect their flag brand price positioning. They allowed manufacturers to gain market share in the price sensitive commodity segment without eroding the equity they've built up in their flag brands.

Private Brands

9. In 1999, the same companies who manufactured the flag brands (i.e. Michelin, Goodyear and Bridgestone) also manufactured private brand tires. However, the big difference is that the brand was owned and controlled by the retailer in question and that typically, the retailer was responsible for all marketing support.

10. As a rule, private brand retailers provided the manufacturer with a unit forecast and build schedule. The tires are then built and picked up by the retailer (or shipped collect) to correspond with anticipated sales activity and volumes. The retailer then takes full responsibility for the product from this point on including product warranty, price lists, advertising, promotion, training, etc. In essence, the manufacturer's only responsibility is to build the product per the retailer's specifications and supply schedule.

11. Private brand products were sold to the retailers at a price point well below the flag and associate brand levels. As a result, these products tended to be positioned at the lower end of the market. The big difference in the product price positioning, was that the manufacturer did not provide price lists to the private brand retailer. The retailer might have used the manufacturers price lists for other products as a guide, but typically prepared their own retail price list.

Tire Retailers

12. In 1999, Tires were marketed through five major tire retail groups in Canada including, the price clubs, the mass merchandisers, car dealers, service stations & garages and tire dealers.

Price Club / Costco

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13. These retailers back in 1999 positioned themselves primarily as retailers of flag brand product at wholesale prices. They did sell some associate brand product, but it represented a small part of their business. Initially they offered tires on a cash and carry basis but have since added service bays where the tires can be installed. Generally speaking, their tire sales associates are not well trained and offer very little expertise when it comes to qualifying the customer's tire needs and selling tire features and benefits. They pretty much sell on price alone.

14. Tire dealers tended to get upset when manufacturers sold their flag brands to this group, because they typically sell well below dealer established pricing levels. Wholesale clubs typically charge members an annual fee and work on a margin of just 10% to 12%. All the other retail groups tend to work on much higher margins ranging from 25% to 40%.

Mass Merchandisers

15. In 1999 (and to this day), the two big tire retailers in this category were Canadian Tire and Sears. They have strong distribution across Canada; strong tire product offerings complete with national warranty programs and consistent national advertising and promotional programs. Their sales and technical staff on the other hand, have a reputation in the industry of lagging behind the tire dealers as far as tire knowledge and expertise is concerned.

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16. Canadian Tire and Sears have made their mark and gained significant market share primarily with private brand tires. With these products typically priced well below the flag brands in the marketplace, coupled with the fact that their staff lack tire knowledge and expertise, they've earned the reputation in the industry of being "price sellers". Generally and in 1999, Sears' tire ads typically featured deep discounts off and Canadian Tire's advertisements typically featured low net prices.

17. In 1999, both retailers carried flag brands. In addition, Sears also had (and has) co-branded products that carry their private brand name and the name of the manufacturer. The benefit of co-branded product is that Sears marketed the products exclusively through their stores with the benefit of a flag brand label.

Car Dealers

18. In 1999 (and to this day) car dealers sold new and used vehicles and provide their clients with full mechanical service. In the past, their focus was primarily on mechanical service and not tires. If they needed tires, they were sourced locally from a tire dealer or distributor. Today, they have negotiated programs with the major manufacturers allowing them to source flag brand products directly from the manufacturer.

19. Car dealers have a reputation for lacking tire knowledge and-5-expertise, as well. They also have a reputation for charging higher

prices for their products and/or services, compared to other tire retail groups.

Service Stations / Garages

20. In 1999 (and to this day), retailers in this group are focused on mechanical service sales and not tires. Tires tend to be secondary in their mix of sale.

21. In 1999 (and to this day), the national chains offered a private brand and/or associate brands. The independents tended to source their tires from local tire dealers or distributors. In both cases their pricing tended to be towards the upper end of the market. They typically relied on their strong relationships and good service reputation to sell products and services.

Tire Dealers

22. In 1999 (and to this day), this group was made up of tire manufacturer company owned and/or co-owned stores (i.e. Goodyear, Fountain Tire, Beverly Tire), independent tire distributors (Remington, President), buying groups (OK Tire / Unimax), franchises (Firestone TAC), associate store groups (Kal, TireCraft) and independent dealers. This group accounts for the largest share of market in Canada - in excess of 50%, in 1999.

23. These retailers market themselves primarily under the tire sales and service umbrella, even though the majority of them now offer mechanical services. The key however is their primary focus was on tire sales and service. They typically sell flag brands and/or associate brands.

24. In 1999, Tire Dealers had (and to this day have) a reputation of having well trained, experienced and knowledgeable sales & service staff. They also tend to price their products towards the upper end of the market. They tend to have a loyal customer base because of their reputation of having the expertise and because of their personalized service. In short, they tend to have a strong relationship with their customer and as a result, price is less of a factor in the selling process.

Manufacturers' Suggested Retail Selling Price

25. Manufacturers' list prices are basically a starting point from which all pricing, whether it be wholesale or retail, is based. Back in 1999, list prices did not reflect the level at which tires were generally being sold to consumers in Canada.

26. In 1999 (and to this day), when tire manufacturers produced flag brand and associate brand tire product lines, they marketed them with the help of a price list that also doubled as a product catalogue. In addition to a list price point, the catalogue included the various product specifications including, tire size, sidewall cosmetics, load

ranges, speed rating, circumference measurement, tread depth measurement, etc. Typically, it also included the features and benefits for each of the products. For example all of Michelin brand passenger and light truck tires available to the open market are contained in one price catalogue. This holds true for other manufacturers, as well.

27. In 1999 (and to this day), when determining the list price, manufacturers tended to look at comparable competitive tire price positioning and establish a price point up or down depending on their strategy. They also took into account the relative price positioning against their other in house flag and/or associate brand products to insure that they were not out of sync with their overall pricing strategy (ie;good, better, best price positioning within a brand line up and/or across different brands).

28. To determine wholesale prices, the manufacturer then established a base discount off of list for their various wholesale channel members. This discount usually varied depending on business type (distributor vs. retailer), sales volumes and/or in house share committed to the manufacturer. They then had separate programs / discounts to recognize annual volumes, special promotions, annual bookings, freight allowances etc.

29. The tire retailers then set their own pricing in the marketplace

and, based on my experience, they tended to establish this price as a percentage off of list, as well. A small number of dealers will establish their selling price by simply marking up their cost a set amount (ie;\$25 per 13"tire, \$30 per 14"tire, \$35 15" tire etc, etc).

30. For example, in 1999 if a dealer was buying Firestone brand tires at list less 50%, he would retail them in the neighborhood of list less 25% - 35%, depending on the established price level (the level other retailers were selling at) in the market. Tire dealers tended to investigate competitive selling prices before establishing their own retail price level. This scenario holds true for other manufacturers tire brands. If the dealer was buying Michelin Xone's at list less 50%, he would also retail the product at list less 25%-35%.

31. Tire retail selling prices in 1999, were not at the list price level. However, today with manufacturers such as Michelin lowering their list prices closer to the actual retail price levels in the marketplace, more and more product is being sold at list. For example, some of their associate brands (Cavalier) and flag brands (Uniroyal) are now being sold at their list price level. This was not the case in 1999.

Advertising List Price

32. Since manufacturers' list prices in 1999, really didn't reflect the true everyday selling price of a product, manufacturers, such as Michelin and Bridgestone-Firestone, encouraged dealers not to advertise product prices as a "% savings" off of list. In fact, they had a

policy of not participating in any co-op advertising that showed a % savings of any kind. They didn't want to get caught in that gray area between everyday selling price and the sale price. If ever challenged on the everyday selling price versus the % off sale price, the dealer would have to prove his everyday price level. To this day, this policy is clearly outlined in their co-op advertising rules and regulations.

33. The foregoing position by manufacturers is not new and has been in place in the industry for as long as I can remember. However, given the dynamics of the marketplace, it has always been a contentious issue. In 1999 and even today, with large retailers such as Sears running ads with big % off savings, tire dealers feel they need to run similar campaigns to be competitive. Many feel just net pricing at a competitive level doesn't suggest similar savings nor does it create the same reaction as 25% off.

34. Tire dealers continually complained to the manufacturers about the foregoing sale practices. In some instances, I can recall dealers threatening to drop the product lines because they felt they couldn't compete.

Can Mass Merchandisers Command A Premium For Private Or Flag Brand Products?

35. Simply put, if a private label product offered more value (such as better mileage warranty) to the consumer than a comparable competitive product and the mass merchandisers could convey that

value to consumers, then a small price premium (relative to the value added) could be commanded over the other product. However, taking into account the value each of the industry groups bring to the table, it would be very difficult for the mass merchandisers such as Canadian Tire or Sears to obtain a price premium for a similar product, especially one sold through the dealer group.

36. Tire dealers have a difficult time asking for a premium of 5% over their nearest dealer competitor who has similar strengths and similar added value. With this in mind, I really don't believe mass merchandisers could have in 1999 commanded a premium over tire dealers.

37. When it comes to flag brands, and the product involved is comparable, mass merchandisers in my estimation, could not ask for a price premium over tire dealers, without eroding their business volume.

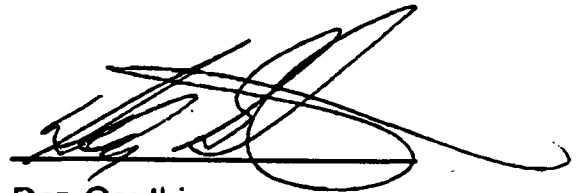
Single Tire Purchases

38. Based on my experience in the tire industry, the majority of tires are purchased in sets of either two or four, with a maximum of from 5% to 10% of tires sold singly. This was true in 1999 and would be true today. In the majority of cases, when a single tire is purchased, it's because the tire failed due to road hazard (i.e. puncture from a nail or other sharp object). It is also my experience that when considering replacing a single tire, retailers will generally check the

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wear on the tire on the opposite side of the same axle. If this tire is worn down a significant amount, the retailer will then suggest to the consumer that he/she buy two tires. This recommendation is made because from a safe handling perspective, it's important to maintain the same traction capabilities on the same axle. Ideally, the car handles best with the same traction capabilities on all four wheels. Therefore, if the customer comes in for one tire and the other three tires are worn down a significant amount, the retailer will recommend putting on four new tires. Furthermore, when replacing just two tires, the tire manufacturers recommend the new tires be placed on the rear of the car. Basically, this is done to prevent fish tailing.

September 22, 2003



Don Gauthier

DONALD ROBERT GAUTHIER



EMPLOYMENT HISTORY

**Al's Tire Service
Sales & Marketing Manager / Vice President Of Retread Division
2001 - Present**

Responsibilities

- ♦ [Redacted]
- ♦ [Redacted]
- ♦ [Redacted]

Accomplishments

- ♦ [Redacted]
- ♦ [Redacted]
- ♦ [Redacted]
- ♦ [Redacted]
- ♦ [Redacted]
- ♦ [Redacted]
- ♦ [Redacted]
- ♦ [Redacted]

**Bridgestone Firestone Canada Inc
Senior Vice President Sales
1998 - 2000**

RESPONSIBILITIES

- ♦ [Redacted]
- ♦ [Redacted]
- ♦ [Redacted]

ACCOMPLISHMENTS

- ♦ [Redacted]
- ♦ [Redacted]
- ♦ [Redacted]

This is Exhibit B To The
 Affidavit Of DONALD GAUTHIER
 Sworn Before Me This,
22 Day Of SEPTEMBER, 2003

 A Commissioner Etc.

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**Bridgestone Firestone Canada Inc
Senior Vice President Sales
1998 - 2000**

ACCOMPLISHMENTS Cont'd

- ◆ [REDACTED]
- ◆ [REDACTED]
- ◆ [REDACTED]
- ◆ [REDACTED]
- ◆ [REDACTED]

**Bridgestone Firestone Canada Inc
Vice President Sales & Marketing
1997 - 1998**

RESPONSIBILITIES

- ◆ [REDACTED]

ACCOMPLISHMENTS

- ◆ [REDACTED]
- ◆ [REDACTED]
- ◆ [REDACTED]
- ◆ [REDACTED]

**Bridgestone Firestone Canada Inc
Director Sales & Marketing
1995-1996**

RESPONSIBILITIES

- ◆ [REDACTED]
- ◆ [REDACTED]

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**Bridgestone Firestone Canada Inc
Director Sales & Marketing
1995-1996**

ACCOMPLISHMENTS

- ◆ [REDACTED]
- ◆ [REDACTED]
- ◆ [REDACTED]
- ◆ [REDACTED]
- ◆ [REDACTED]
- ◆ [REDACTED]
- ◆ [REDACTED]
- ◆ [REDACTED]

**Michelin Tires Canada Inc.
Region Sales Manager
1994 - 1995**

RESPONSIBILITIES

- ◆ [REDACTED]

ACCOMPLISHMENTS

- ◆ [REDACTED]
- ◆ [REDACTED]
- ◆ [REDACTED]
- ◆ [REDACTED]
- ◆ [REDACTED]

**Michelin Tires Canada Inc.
Region Sales Manager
1990-1994**

RESPONSIBILITIES

- ◆ [REDACTED]
- ◆ [REDACTED]

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Michelin Tires Canada Inc.
Region Sales Manager
1990-1994

ACCOMPLISHMENTS

◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]

Uniroyal Goodrich Canada Inc
National Advertising Manager
1984-1990

RESPONSIBILITIES

◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]

ACCOMPLISHMENTS

◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]

Teneco Automotive
Succeeded in Various Positions
1977-1984

POSITIONS HELD

- Marketing Manager, Monroe Shocks.
- National Advertising Manager, Walker Exhaust & Monroe Shocks.
- National Advertising Manager, Walker Exhaust.
- Territory Manager, Walker Exhaust. Sales Trainee, Walker Exhaust.

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**Teneco Automotive
Succeeded in Various Positions
1977-1984**

ACCOMPLISHMENTS

◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]

**AWL Staego
Succeeded in Various Positions
1971-1977**

POSITIONS HELD

- ◆ Advertising Co-ordinator
- ◆ Warehouse Manager
- ◆ Assistant Warehouse Manager
- ◆ Inventory Control Coordinator
- ◆ Warehouse stock person

ACCOMPLISHMENTS

◆ [REDACTED]
◆ [REDACTED]
◆ [REDACTED]

EDUCATION

- University Of Chicago
 - Strategic Sales Management (5 day certificate course)
 - Effective Negotiations (5 day certificate course)
- York University
 - Effective Advertising
 - Accounting From A Manager's Viewpoint
- Conestoga College
 - Effective Advertising
 - Marketing 182
- GHSS
 - Architectural drafting