

THE COMPETITION TRIBUNAL

In the Matter of an Application by Barcode Systems Inc.  
for an Order pursuant to section 103.1  
of the Competition Act, RSC 1985 c. C-35, as amended  
granting leave to bring an application pursuant to  
section 75 of the Competition Act

BETWEEN:

Barcode Systems Inc.

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT September 2, 2003 CT-2003-008	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 0004d

Applicant,

AND:

Symbol Technologies Canada ULC

Respondent

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AFFIDAVIT of JIM ESTILL  
Sworn the 1<sup>st</sup> day of December, 2003

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File No. (0302215)

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AND:

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Respondent.

**AFFIDAVIT OF JIM ESTILL**

I, JIM ESTILL, of the City of Guelph, in the Province of Ontario, Executive,

**MAKE OATH AND SAY THAT:**

1. I am the President and Chief Executive Officer of EMJ Data Systems Ltd. ("EMJ") and, as such, have personal knowledge of the facts and matters herein deposed to by me, except where stated to be based on information and belief, in which case I verily believe it to be true.
2. EMJ is headquartered in Guelph, Ontario and is a Canadian, publicly owned distributor of computer products and peripherals. EMJ has been in business

since 1979 and is a distributor of computer hardware and software specializing in market products for Apple, Bar Coding/Auto-ID/Point-of-Sale, Build-To-Order, Digital Video, Networking and Security applications.

3. EMJ has Canadian branch offices in Vancouver, Calgary, Winnipeg, Montreal, and Halifax, as well as one office in the United States.
4. EMJ carries products made by over one hundred sixty (160) different manufacturers, including: Acer, Apple, Brother, Cisco Systems, EPSON, Fujitsu, Intermec, Microsoft, Samsung, Symbol and Zebra. EMJ currently had annual sales of 190,000,000.00 CDN for the year ending July 31/2003.
5. EMJ currently sells to over 3,000 resellers located throughout North America. Each of these resellers are in competition with one another. The competition in this market is intense.
6. EMJ has been a distributor of bar code equipment manufactured by Symbol Technologies Inc. ("Symbol") since the early 1990's.
7. EMJ also distributes bar code equipment manufactured by: Intermec, Metrologic, Unitech, Zebra and Tec. Each of these manufacturers are in direct competition with Symbol in the bar code market. EMJ distributes wireless products from Alvarion, Assante, Cisco Systems, Dlink, Intermec and Netgear. Each of these

manufacturers are in direct competition with Symbol in the wireless market.

8. Of the approximately 3,000 resellers that EMJ currently has a business relationship with, approximately 1000 sell bar code equipment. Of this number, approximately 500 are resellers of Symbol product.
9. It is not uncommon for resellers to switch among competitors. Most resellers routinely sell more than one brand of product. As an example, it would not be uncommon for a reseller to sell product from Symbol and Intermec. There is a high degree of mobility among resellers in this regard.
10. As a distributor of Symbol product, EMJ is required to verify that a reseller is entitled to receive product. All resellers of Symbol product have an authorization number which is required for them to obtain Symbol product. This is a common requirement in the hardware and software market, including the bar code market.
11. In order for EMJ to be a supplier of Symbol product, it must meet the usual trade terms required by Symbol including payment within 45 days.
12. EMJ, as a distributor of product, also has usual trade terms in place that all of its resellers must meet in order to receive product from EMJ. These usual trade terms include, among other things:

- a) payments are due in accordance with invoice terms from the date of EMJ's invoice;
- b) should payments not be made when due, then interest on such overdue payments shall be paid by the purchaser at the rate of 2% per month; and
- c) EMJ reserves the right to reject any orders placed by a purchaser and refuse to ship any accepted orders on hand or requested if at any time the purchaser's credit standing becomes impaired or unsatisfactory to EMJ.

13. In or about 2001, I had several discussions with Mike Reid of Symbol. I was advised by Reid, and verily believed, that Symbol was undergoing a reorganization and that this reorganization would result in some Master Value Added Resellers ("Master VARs" or "Integrators") becoming only resellers of Symbol product. Master VARs or Integrators had, prior to this reorganization, both distributed product to resellers and to end users. The effect of the reorganization would result in these Master VARs concentrating on either distribution or reselling, not both. I was further advised by Reid, and verily believed, that one of the businesses who would become only a reseller of Symbol product to end users was Barcode Systems Inc. ("BSI").

14. At the same time that I was having these discussions with Reid, I entered into discussions on behalf of EMJ with David Sokolow, president of BSI. These discussions occurred in anticipation of BSI becoming solely a reseller of Symbol product.
15. In or about 2001, EMJ purchased product from Symbol that had been returned to it by BSI as part of its transformation to a reseller. Shortly thereafter, in furtherance of my discussions with Sokolow, EMJ sold Symbol product to BSI.
16. The terms under which EMJ sold Symbol product to BSI were the usual trade terms listed in paragraph 12 above.
17. BSI fell behind in making payment to EMJ and was therefore in breach of the usual trade terms. EMJ stopped selling to BSI. EMJ instituted a legal action naming BSI as a defendant. This legal action is currently before the Courts.
18. I am aware that Symbol has a patent on some technology relating to bar code equipment. However, I am also aware that this patented equipment is sold or licenced to its competitors, including Intermec. There is fierce competition in the bar code marketplace.

19. I am knowledgeable about the products marketed by Symbol and other bar code manufacturers in the Canadian market due to my almost 25 years in the distribution business. There are at least ten (10) manufacturers of bar code equipment that are in direct competition with Symbol. My experience has been that if a business, such as EMJ, meets the usual trade terms of these manufacturers and does not fall into arrears it will continue to receive product from those manufacturers. Although I am not intimately familiar with the usual trade terms in place for all manufacturers in Canada, I am not aware of any obstacles that would prevent creditworthy resellers from getting supply of bar code equipment.
  
20. The vast majority of customers in the Canadian market who have purchased bar code equipment are sophisticated. These purchasers are often in the retail industry. If these consumers were purchasing Symbol product from a reseller and that particular reseller was no longer able to supply them with product, the consumer would easily be able to contact another reseller of Symbol product in Canada. I would estimate that there are approximately 1,000 resellers of Symbol product in Canada. Moreover, if the said consumer no longer wished to use Symbol product and wanted to switch to another product, competitors such as Intermec would be more than willing to accept them as a customer. In addition, the bar code readers that are in the market - although made by many different manufacturers - are generally compatible with one another.

21. I make this affidavit bona fide.

*JE*  
(30) Town )  
SWORN before me at the City )  
of Markham, in the Province of )  
Ontario, this 1<sup>st</sup> day of )  
December, 2003. )

*JE*  
JIM ESTILL

*Ben McMeekin*

A Commissioner Of Oaths In And  
For The Province of Ontario

(30) ~~My Commission Expires On:~~

*JE*  
and a Barrister within  
the Law Society of Upper  
Canada LSec No. 29993D.