

**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 subsection 10(1)(b)(ii) of the *Competition Act* relating to 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 74.10 of the *Competition Act*;

**AND IN THE MATTER OF** Sears Canada Inc.'s opposition to the Application and Sears Canada Inc.'s request for certain relief from the Competition Tribunal;

**BETWEEN:**

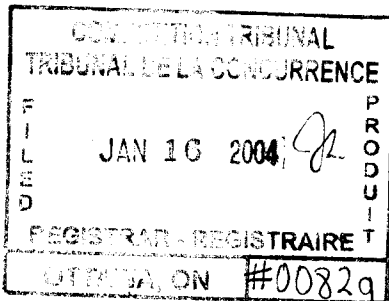
**THE COMMISSIONER OF COMPETITION**

Applicant

- and -

**SEARS CANADA INC.**

Respondent



**SUPPLEMENTAL AFFIDAVIT OF MICHAEL J. TREBILCOCK**

**(sworn October 10, 2003)**

**I, MICHAEL J. TREBILCOCK, of the City of Toronto, in the Province of Ontario, SWEAR THAT:**

1. I have been asked by counsel to Sears Canada Inc. ("Sears") to supplement my affidavit sworn September 22, 2003 ("original affidavit") to incorporate the information contained in the requested exhibits of Jim King<sup>1</sup> and William

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<sup>1</sup> Exhibit "C" referred to in the Affidavit of Jim King, sworn April 24, 2001 (x-ref. to the Commissioner of Competition's Disclosure Statement # 89).

Merkley,<sup>2</sup> which I received on October 8, 2003 further to an Order for their production made by the Honourable Madam Justice Eleanor Dawson.

2. The information contained in these exhibits provides additional evidence of Sears' limited competitive position in the tire retailing business in Canada and it also supports locally defined relevant geographic markets.
3. Bridgestone's response to the Commissioner's section 11 Order indicates that independent tire retailers accounted for the majority of the top 20 Bridgestone tire dealers in each of the West, Ontario, Quebec and Atlantic regions in 1999. In the case of Ontario where Sears is ranked highly, independent tire retailers accounted for 11 of the top 20 dealers. Sears was not a large purchaser of Bridgestone's tires except in Ontario. Sears' high ranking in Ontario is likely the result of its centralized purchasing, which I am informed by Mr. William McMahon, and verily believe, was how it purchased tires from Bridgestone.<sup>3</sup>
4. Michelin's response to the Commissioner's section 11 Order provides the top 20 dealers by region in 1999 without reference to their individual rank within each region.<sup>4</sup> Sears does not appear as one of Michelin's top 20 dealers in any region in 1999. In each region, independent tire retailers made up the majority of the list.
5. As I noted in my original affidavit, in addition to competing against independent tire retailers in 1999, Sears also competed against auto dealers. Thus, automotive

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<sup>2</sup> Schedule B4 of the Affidavit of William Merkley providing Production of Records and Responses by Michelin pursuant to section 11 dated November 30, 2000 (x-ref. to the Commissioner of Competition's Disclosure Statement # 85).

<sup>3</sup> This appears to differ from Canadian Tire, which is listed in the regions of Ontario, Quebec (under CTR Administration) and Atlantic (CTR Tire (N B) Ltd.). Canadian Tire is listed separately in each of British Columbia, Western Canada, Ontario, Quebec and Atlantic Canada in the Michelin response.


<sup>4</sup> Schedule B4 of the Affidavit of William Merkley. Five regions are referenced: British Columbia, Western Canada, Ontario, Quebec and Atlantic Canada.

dealers are listed in the top 20 dealers for both Bridgestone and Michelin in each of their respective regions in 1999.<sup>5</sup>

6. Other important retailers of tires in 1999 included mass merchandisers and service stations. Costco, Wal-Mart and Zellers were part of Bridgestone's top 20 dealers in Ontario in 1999.<sup>6</sup> In the West and British Columbia, Costco was also one of the top 20 Michelin dealers in 1999.<sup>7</sup> Service stations, like Petro-Canada, were part of the top 20 Michelin dealers in British Columbia, Western Canada, Quebec and Atlantic Canada in 1999.<sup>8</sup>
7. In respect of geographic market definition, Bridgestone's and Michelin's top 20 dealers in 1999 provide different tire retailers by region. Certain retailers that are prominent in one region are not among the top 20 dealers in another region. As well, even where retailers have a presence in several regions, they are not necessarily ranked similarly across regions.
8. I swear this affidavit in support of Sears' Response to the Commissioners' Application in this matter and for no other or improper purpose.

SWORN BEFORE ME in the City of Toronto  
in the Province of Ontario, this 10th day of  
October, 2003.

  
Michael J. Trebilcock

  
**GWEN LOUISE MILLER, a**  
**Commissioner, etc., Province of Ontario,**  
**while a student-at-law.**  
**Expires May 8, 2008.**

- <sup>5</sup> Exhibit "C" referred to in the Affidavit of Jim King and Schedule B4 of the Affidavit of William Merkley.
- <sup>6</sup> Exhibit "C" referred to in the Affidavit of Jim King. I do not know if these retailers purchase centrally like Sears, which may explain their high ranking for Bridgestone tires in Ontario. I note however that Costco is listed in British Columbia and Western Canada for Michelin.
- <sup>7</sup> Schedule B4 of the Affidavit of William Merkley.
- <sup>8</sup> Schedule B4 of the Affidavit of William Merkley.