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COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

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Date: August 16, 2024

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Badih Abboud for / pour
REGISTRAR / REGISTRAIRE

August 16, 2024

VIA E-MAIL

OTTAWA, ONT.

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Competition Tribunal

Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, ON K1P 5B4

Dear Registrar:

RE: JAMP Pharma Corporation v. Janssen Inc. – File No. CT-2024-006

This letter contains Janssen's reply to the submissions made by JAMP dated August 15, 2024 in respect of Janssen's motion for an extension of time and leave to file affidavit evidence. We ask that this letter be put before the judicial member who is considering this motion. (Capitalized terms in this letter have the same meaning as in Janssen's submissions dated August 13, 2024.)

The requested extension is not "unprecedented"

JAMP hyperbolically suggests that the extension of time sought by Janssen constitutes an "eternity" and is unprecedented in Tribunal practice. That is demonstrably untrue. Comparable extensions of time were granted in both the *Audatex* and *CarGurus* cases.

In the *CarGurus* case, responding representations were filed 69 days after the initial application was filed (April 15 – June 23, 2016). Trader (the respondent) moved on May 4, 2016 for leave to file evidence, and an extension of the deadline for responding until 10 business days following the Tribunal's decision on the motion. The Tribunal granted an initial extension request (on consent) on May 5, 2016. CarGurus then filed a written submission opposing the motion to file evidence on May 13, 2016, and Trader replied on May 17, 2016. The Tribunal's decision granting leave to file certain affidavit evidence within 10 business days was released on June 9, 2016.¹ Trader's evidence was filed on June 23, 2016.

In the *Audatex* case, responding representations were filed 39 days after the initial application (October 1 – November 9, 2015). CarProof (the respondent) moved for leave to file affidavit evidence on October 20, 2015. Audatex filed opposing submissions on October 23, 2016, and CarProof replied on October

¹ See [2016 Comp Trib 12](https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/462972/index.do) for the Tribunal's reasons and order granting leave to file affidavit evidence, and Trader's evidence dated June 23, 2016: <https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/462972/index.do>.

26, 2016. The Tribunal issued its decision granting CarProof leave to file affidavit evidence on October 29, 2015. CarProof's evidence was filed on November 9, 2015.²

Considering the volume and nature of evidence JAMP has filed on the leave application, the extension sought is neither unprecedented nor unreasonable. For the Tribunal to properly exercise its screening function on the Leave Application, it is important that it have a reliable record before it. The evidence led by JAMP, which speaks to several matters in the exclusive knowledge of Janssen, is in material respects factually inaccurate or misleading. The interests of justice require that Janssen have a meaningful opportunity to address those issues by leading contradictory affidavit evidence on the central issues.

The Tribunal has previously given leave to adduce evidence on the issue of "direct and substantial effect"

Contrary to JAMP's submissions, the Tribunal has previously given leave to a respondent to a s. 103.1 application to lead evidence on the issue of whether the applicant has been "directly and substantially affected" by an allegedly anticompetitive practice.

In both *Audatex* and *CarGurus*, the respondent evidence permitted by the Tribunal included that alternative sources of data were available to the applicant. Such evidence was directly relevant to the issue of whether the applicant was directly and substantially affected in its business by the respondent's alleged conduct.³

In any event, given the paucity of decisions considering motions to adduce responding evidence on leave applications, the Tribunal should not give undue weight to the fact-specific application of the legal test in those cases.

JAMP has broadened its claim beyond NDAs

In its submissions, JAMP has expanded its claim regarding medical advisory boards beyond allegations relating to NDAs. For clarity, Janssen is prepared to and proposes to address this broadened claim in its proposed affidavit evidence. Janssen will provide direct evidence that its advisory board agreements do not prohibit or disincentivize prescribers from meeting with sales representatives of competitors.

Janssen's proposed evidence goes directly to the credibility and sufficiency of JAMP's evidence

The affidavit evidence Janssen seeks leave to adduce goes directly to the credibility and sufficiency of JAMP's evidence to meet the leave test, for the reasons set out in Janssen's initial representations dated August 13, 2024. JAMP's application is in several material respects dependent on facts that lie on the exclusive knowledge of Janssen, and on which JAMP has led speculative and/or inaccurate hearsay evidence. Fairness dictates that Janssen should be able to challenge the credibility and sufficiency of this evidence through affidavit(s) from one or more individuals with firsthand knowledge of the relevant facts. The Tribunal is entitled to a reliable record on these essential factual issues before it considers the

² See [2015 Comp Trib 13](#), for the Tribunal's reasons and order granting leave to file affidavit evidence, and CarProof's affidavit dated November 9, 2015: <https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/463074/index.do>.

³ See [CarGurus](#) at paras 23, 30 and [Audatex](#) at paras 20, 23.

Leave Application, as it is not in the interests of justice that an application under s. 79 proceed on the basis of factual allegations that can easily be dismissed as false.

The Tribunal has broad jurisdiction to consider [REDACTED]

With respect to [REDACTED], the Tribunal has broad discretion under s. 8 of the Act “to hear and dispose of all applications made under Part VII.1 or VIII of the Competition Act and any related matters” (emphasis added).⁴ Further, the Tribunal has “with respect to the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record” (emphasis added).⁵

Here, the Tribunal can and should consider [REDACTED] to determine whether it has jurisdiction to hear significant parts of JAMP’s proposed application under s. 79 of the Act. This proposed evidence is not “wide-ranging evidence from other litigation” as JAMP suggests, but rather discrete evidence that goes to the heart of whether the conduct JAMP alleges can possibly be the subject of an order under s. 79. [REDACTED]

We thank the Tribunal for its consideration of the above and would be pleased to address any questions it may have in writing or at a case conference.

Yours respectfully,



Nicole Henderson

c: Andrew Brodtkin, Jordan Scopa, David Rosner, Jon Wall, Arash Rouhi, *Goodmans LLP*
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⁴ *Competition Act*, s. 8(1).

⁵ *Competition Act*, s. 8(2).