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Ministry of the Attorney General  
Court Services Division  
161 Elgin Street, 2<sup>nd</sup> Floor  
Ottawa ON K2P 2K1

Ministère du Procureur Général  
Bureau du services aux tribunaux  
161, rue Elgin, 2<sup>e</sup> étage  
Ottawa ON K2P 2K1

I, Jocelyn Gouthro, hereby certify this document to be a complete and true copy of the original document which I have personally reproduced.

Dated this 18th day of December 2017 at the City of Ottawa, in the Province of Ontario.



Jocelyn Gouthro  
Clerk/Registrar Ontario Court/Superior Court of Justice  
(East Region at Ottawa, Ontario)



ONTARIO  
SUPERIOR COURT OF JUSTICE  
(EAST REGION)

**IN THE MATTER OF** the *Competition Act*, RSC 1985, c C-34;

**AND IN THE MATTER OF** an inquiry under section 10 of the *Competition Act*, concerning alleged activities of Canada Bread Company, Limited; Weston Foods (Canada), Incorporated; Loblaw Companies Limited; Wal-Mart Canada Corporation; Sobeys Incorporated; Metro Incorporated; Giant Tiger Stores Limited and other persons known and unknown, contrary to paragraphs 45(1)(b) and (c) of the *Competition Act* (as it existed in the period 2001-2010) and paragraph 45(1)(a) of the *Competition Act* (as amended in 2010);

**AND IN THE MATTER OF** an *ex parte* application by the Commissioner of Competition for the issuance of warrants to enter, search and copy or seize for examination or copying certain records or other things pursuant to sections 15 and 16 of the *Competition Act*.

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**INFORMATION OF SIMON BESSETTE**

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**INFORMATION TO OBTAIN WARRANTS TO ENTER, SEARCH AND COPY OR SEIZE FOR EXAMINATION OR COPYING CERTAIN RECORDS OR OTHER THINGS PURSUANT TO SECTIONS 15 AND 16 OF THE *COMPETITION ACT*.**

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## **PREFACE**

**This is a companion Information to Obtain search warrants ("ITO") to the ITOs I filed on 24 October 2017, 26 October 2017, 30 October 2017 and 31 October 2017.**

**My first application was sworn and filed on 24 October 2017 (the "Initial ITO") with the Ontario Superior Court of Justice (East Region). In my Initial ITO I was seeking search warrants for eight premises, seven belonging to targets and one premises belonging to a third party who is – at this time – not a target.**

**On 25 October 2017, I received an email from a Court Registry staff member forwarding comments from Justice Kevin B. Phillips. Justice Phillips communicated that the duration for the execution of the search warrants sought was excessive and requested additional grounds.**

**On 26 October 2017, I submitted a revised version of Initial ITO (the "Revised ITO") and Justice Phillips issued the search warrants on 27 October 2017. The application materials are now under seal, pursuant to a Sealing Order signed by Justice Phillips.**

**On 30 October 2017, I filed an ITO seeking three additional search warrants for premises belonging to the Immunity Applicant. Since the time of the filing of the Revised ITO, on 26 October 2017, a material change had occurred. Specifically, on 27 October 2017, an immunity agreement was signed between the Immunity Applicant and the Director of Public Prosecutions.**

**On 31 October 2017, Bureau officers began executing the search warrants issued by Phillips J. pursuant to my application of 26 October 2017. Upon entry onto the sites, Bureau officers discovered that additional warrants would be required for additional sites housing relevant records. Consequently, on 31 October 2017, I filed an ITO for four (4) additional search warrants occupied by targets of the investigation.**

**On 31 October 2017, I was advised by Bureau officers, executing the search warrants issued by Phillips J. pursuant to my application of 26 October 2017, that they had identified one (1) additional site (over and above those subject of the ITO discussed in the paragraph above). The site is discussed in Part 5, below.**

## INTRODUCTION

1. This is the Information of Simon Bessette (the "Affiant") of the City of Ottawa, in the Province of Ontario, an authorized representative of the Commissioner of Competition (the "Commissioner") for the purposes of obtaining warrants to enter, search and copy or seize for examination or copying certain records or things pursuant to sections 15 and 16 of the *Competition Act* (the "Act").

La présente constitue la dénonciation de Simon Bessette (le « dénonciateur ») de la ville d'Ottawa dans la province d'Ontario, un représentant autorisé du Commissaire de la concurrence (le « commissaire »), visant à obtenir des mandats pour pénétrer dans des locaux, y perquisitionner, y obtenir des documents ou autres choses, en et prendre copie, ou les emporter pour examen ou pour en prendre copies conformément aux articles 15 et 16 de la *Loi sur la concurrence* (ci-après la « Loi »).

### (A) The Affiant

I, SIMON BESSETTE, MAKE OATH AND SAY AS FOLLOWS:

- 1.1 I am a Senior Competition Law Officer with the Cartels and Deceptive Marketing Practices Branch of the Competition Bureau (the "Bureau"). I am an authorized representative of the Commissioner, appointed and designated to administer and enforce the Act. I have been employed by the Bureau since 2008, first as a student and, since 2010, in the position of Competition Law Officer (a Senior Competition Law Officer since October 2016).
- 1.2 As a Competition Law Officer, I have participated in examinations and inquiries in a responsible position, including: assessing complaints, analyzing evidence, conducting interviews and recommending initiation of court proceedings. I have also executed numerous search warrants, including in the role of search leader.

- 1.3 I hold a Bachelor of Arts (Honours) and a Master of Arts from McGill University and a Bachelor of Laws from the University of New Brunswick. I was called to the Bar of Ontario in June 2013.
- 1.4 On account of my position as a Senior Competition Law Officer, I am responsible for the investigation of allegations that Canada Bread Company, Limited ("**Canada Bread**"); Weston Foods (Canada), Incorporated ("**Weston Bakeries**"); Loblaw Companies Limited ("**LCL**"); Wal-Mart Canada Corporation ("**Walmart**"); Sobeys Incorporated ("**Sobeys**"); Metro Incorporated ("**Metro**"); Giant Tiger Stores Limited ("**Giant Tiger**") and other persons known and unknown have engaged in conduct contrary to paragraphs 45(1)(b) and (c) of the Act (as it existed from 2001-2010) and paragraph 45(1)(a) of the Act, as amended in 2010.
- 1.5 On 11 August 2017, the Commissioner commenced an inquiry pursuant to subparagraph 10(1)(b)(iii) of the Act to investigate allegations that Canada Bread, Weston Bakeries, LCL, Walmart, Sobeys, Metro, Giant Tiger, and other persons known and unknown, participated in a conspiracy to fix the wholesale and retail price of fresh commercial bread in Canada. The Commissioner expanded the inquiry on 23 October 2017 to cover the time period from November 2001 to the present, the exact dates being unknown.
- 1.6 Canada Bread, Walmart, Sobeys, Metro and Giant Tiger are the targets of the investigation.
- 1.7 LCL, George Weston Limited and Weston Foods (Canada), Incorporated are, collectively, the **Immunity Applicant**.
- 1.8 Overwaitea Food Group Limited ("**Overwaitea**"), discussed in greater detail at paragraph 1.20, below, is not – at this time - a target of the present inquiry. Overwaitea is a third party who, I have reasonable grounds to believe, has relevant records with respect to the inquiry. I outline my reasonable grounds to believe in paragraphs 1.21, 5.3, 5.4(f), 5.5(e) and 5.6(c) and (e), below.

- 1.9 As defined in greater detail at paragraphs 4.114 to 4.116, below, **fresh commercial bread** is defined as packaged bread products and bread alternatives (including bagged bread, buns, rolls, bagels, naan bread, English muffins, wraps, pita and tortillas) for sale at retail.
- 1.10 I have personal knowledge of the matters hereinafter set out except where such knowledge is specifically stated to be based on belief or on the information of others.
- 1.11 In addition to my own actions, observations and personal knowledge, I have relied on a number of sources for the information set out below. I have carefully considered the reliability of all my other sources of information and I am satisfied that they are trustworthy. I have reasonable grounds to believe and do believe the information provided by each of these sources.

**(B) Overview of the Conduct**

- 1.12 As described in greater detail in paragraphs 3.1 to 3.3 and Part 4, below, it is alleged that Canada Bread, Weston Bakeries, LCL, Walmart, Sobeys, Metro, Giant Tiger and other persons known and unknown sought to fix, maintain, increase or control both the wholesale and retail price for the sale or supply of fresh commercial bread in Canada during the “**relevant time period**”, defined as in or around November 2001 to the present, the exact dates being unknown. The alleged conduct is comprised of two distinct but interrelated elements:

1.12.1 It is alleged that Canada Bread and Weston Bakeries (collectively the “**Suppliers**”) agreed to increase their respective wholesale prices for the sale or supply of fresh commercial bread via direct communications between senior officers in their respective organizations; and,

1.12.2 Each of the Suppliers then met individually with their respective retail customers to obtain their acceptance of the fixed price, thereby fixing the retail price for the sale or supply of fresh commercial bread. This process was referred to in the industry as “socialization” of a price increase. It is



alleged that during those supplier-retailer meetings, LCL, Walmart, Sobeys, Metro and Giant Tiger (collectively the “Retailers”) accepted the price increase on condition that their retail competitors would also accept the price increase, maintaining the fixed price across the Retailers. Further, the Retailers demanded that the Suppliers actively manage retail competition by coordinating retail prices for their respective fresh commercial bread products and ensuring pricing alignment amongst the Retailers.

1.12.3 It is alleged that the wholesale and retail price increases described in paragraphs 1.12.1 and 1.12.2, above, transpired on at least fifteen (15) separate occasions during the relevant time period.

## **(C) The Parties**

### *The Suppliers*

1.13 **Canada Bread** is, according to AC Nielsen data, the largest supplier of fresh commercial bread in Canada with approximately a 40 percent share of the Canadian fresh commercial bread market, as of February 2016. Corporate records show that Canada Bread is currently owned by Grupo Bimbo SAB de CV (“**Bimbo**”), a Mexico-based supplier of baked goods with operations across the Americas and parts of Europe and Asia. Prior to its acquisition by Bimbo in 2014, Canada Bread was a division of Maple Leaf Foods Incorporated (“**Maple Leaf**”), one of Canada’s largest distributors of packaged meat products. Canada Bread’s website states that it supplies fresh commercial bread in Canada under various brand names, including: Dempster’s, Villaggio, POM, Bon Matin and Ben’s.

1.14 **Weston Bakeries** is the second largest supplier of fresh commercial bread in Canada, according to AC Nielsen data, with approximately a 38 percent share of the Canadian fresh commercial bread market, as of February 2016. Corporate records state that Weston Bakeries, as an operating unit of Weston Foods (Canada), Incorporated, is a subsidiary of George Weston Limited (“**GWL**”). Weston Bakeries supplies fresh commercial bread in Canada under various brand names, including: Wonder, D’Italiano, Country Harvest and Gadoua.

### *The Retailers*

- 1.15 **LCL** is Canada's largest grocer according to AC Nielsen data. LCL sells fresh commercial bread in Canada under various store banners, including: Loblaws, Superstore, Dominion Stores (in Newfoundland and Labrador), Maxi & Cie., Provigo, Zehrs, Fortinos, Your Independent Grocer and No Frills. LCL sells both branded fresh commercial bread as well as its own private label products (*e.g.*, No Name brand).
- 1.16 **Walmart** is the Canadian division of Wal-Mart Stores Incorporated, an American multinational retailer based in Bentonville, Arkansas, USA. According to corporate records, Walmart is registered as an unlimited liability company in Nova Scotia. Walmart sells both branded fresh commercial bread as well as its own private label "Great Value" products.
- 1.17 **Sobeys** is Canada's second largest grocer according to AC Nielsen data. Sobeys' website states that its banners include: Sobeys, Safeway, Thrifty Foods, IGA, Foodland and FreshCo. Sobeys sells both branded fresh commercial bread as well as its own private label "Compliments" products.
- 1.18 **Metro** is Canada's third largest grocer according to AC Nielsen data. Metro's website states that its banners include: Metro, Super C and Food Basics. Metro sells both branded fresh commercial bread as well as its own private label "Selection" products.
- 1.19 **Giant Tiger** is a Canadian discount retailer with, according to its website, more than 200 stores in eight provinces across Canada. Giant Tiger sells fresh commercial bread in Canada under various store banners, including: Giant Tiger / Tigre Géant, GTXpress, Scott's Discount and Chez Tante Marie. Giant Tiger sells both branded fresh commercial bread as well as its own private label "Giant Value" products.

### *Overwaitea*

- 1.20 **The Overwaitea Food Group Limited ("Overwaitea")** is a British Columbia-based retailer owned by the Jim Pattison Group. According to its website, Overwaitea operates over 100 stores in Western Canada, principally in British Columbia and

Alberta. Overwaitea sells fresh commercial bread under various store banners including Overwaitea Foods, Save-On-Foods and PriceSmart Foods. Overwaitea sells both branded fresh commercial bread as well as its own private label products. Overwaitea is not, at this time, a target of the investigation.

**(D) Relevant Section of the *Competition Act***

1.21 The aforementioned allegations are being investigated under paragraphs 45(1)(b) and (c) of the Act, as it existed between 2001-2010. For the court's ease of reference, I have included the relevant excerpts below:

*45. (1) Every one who conspires, combines, agrees or arranges with another person*

*(b) to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,*

*(c) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property...*

1.22 An amendment to the conspiracy provision of the Act came into force on 12 March 2010. The allegations are being investigated under paragraph 45(1)(a) of the Act, as amended. For the court's ease of reference, I have included the relevant excerpts below:

*45. (1) Every person commits an offence who, with a competitor of that person with respect to a product, conspires, agrees or arranges*

*(a) to fix, maintain, increase or control the price for the supply of the product;*

...

1.23 The Act also sets out the means to seek an *ex parte* application for a search warrant. For the court's ease of reference, I have included the relevant excerpts below:

15(1) If, on the *ex parte* application of the Commissioner or his or her authorized representative, a judge of a superior or county court is satisfied by information on oath or solemn affirmation

(a) that there are reasonable grounds to believe that

...

(iii) an offence under Part VI or VII has been or is about to be committed, and  
(b) that there are reasonable grounds to believe that there is, on any premises, any record or other thing that will afford evidence with respect to the circumstances referred to in subparagraph (a)(i), (ii) or (iii), as the case may be,

The judge may issue a warrant under his hand authorizing the Commissioner or any other person named in the warrant to

(c) enter the premises, subject to such conditions as may be specified in the warrant, and  
(d) search the premises for any such record or other thing and copy it or seize it for examination or copying.

[emphasis added]

#### (E) Reasonable Grounds

1.24 I have reasonable grounds to believe and do believe that offences under Part VI of the Act, specifically under section 45 both as it existed between 2001-2010 and as amended in 2010, have been committed.

1.25 I have reasonable grounds to believe and do believe that records or other things to be searched for, as described in Part 6 of this Information, below, are at the premises to be searched, as described in Part 5 of this Information, below, and will afford evidence with respect to the offences as described in paragraphs 3.1, 3.2 and 3.3, below.

#### DEFINITIONS - DÉFINITIONS

2. In this Information, the terms:

2. Dans la présente dénonciation, les termes:

"affiliate" has the same meaning as set out in subsection 2(2) of the Act and means:

- a. *One corporation is affiliated with another corporation if one of them is the subsidiary of the other or both are subsidiaries of the same corporation or each of them is controlled by the same person;*
- b. *If two corporations are affiliated with the same corporation at the same time, they are deemed to be affiliated with each other...*

*"announcement date"* refers to the date on which a price increase was publicly announced by a Supplier to the trade. The announcement date corresponds to the date of the issuance of the price increase letter;

*"blackout"* refers to a time period where a retailer will refuse to accept price alterations from a supplier. Blackout periods typically happen over the winter holiday period and cover the three months from the start of November to the end of January;

*"Canada Bread"* means Canada Bread Company, Limited and its predecessors, successors, affiliates, divisions and other related entities in Canada;

*"computer password"* has the same meaning as in subsection 342.1(2) of the *Criminal Code*;

*"computer program"* has the same meaning as in subsection 342.1(2) of the *Criminal Code*;

*"computer service"* has the same meaning as in subsection 342.1(2) of the *Criminal Code*;

*"computer system"* has the same meaning as in subsection 342.1(2) of the *Criminal Code*;

*"conventional"* refers to a grocery store banner that sells products at a regular everyday price and competes less on price and more on quality of service provided to customers. Some examples include: Loblaws, Metro and Sobeys;

*"data"* has the same meaning as set out in section 2 of the Act and means representations, including signs, signals or symbols, that are capable of being understood by an individual or processed by a computer system or other device;

*"discount"* refers to a grocery store banner that sells products at everyday low prices with a particular focus on competing on low or discounted prices. Some examples include: No Frills, FreshCo and Food Basics;

*"effective date"* refers to the date on which a price increase will become effective. Typically the effective date follows the announcement date by roughly 8-12 weeks;

*"fresh commercial bread"* means packaged bread products and bread alternatives (including bagged bread, buns, rolls, bagels, naan bread, English muffins, wraps, pita and tortillas) for sale at retail.

*"GWL"* refers to George Weston Limited and its predecessors, successors, affiliates, divisions and other related entities in Canada;

*"Giant Tiger"* means Giant Tiger Stores Limited and its predecessors, successors, affiliates, divisions and other related entities in Canada;

*"information"* has the meaning provided in the amended section 2 of the Act and is defined as including data;

*"LCL"* refers to Loblaw Companies Limited and its predecessors, successors, affiliates, divisions and other related entities in Canada;

*"Metro"* refers to Metro Incorporated and its affiliates, including Metro Richelieu Incorporated and Metro Ontario Incorporated and their predecessors, successors, affiliates, divisions and other related entities in Canada;

*"Overwaitea"* refers to Overwaitea Food Group Limited and its affiliates, including: Save-On-Foods Limited and Overwaitea Foods Limited and their predecessors, successors, affiliates, divisions and other related entities in Canada;

*"private label"*, also referred to as "store brand" or "control label", are products which are manufactured for sale under the branding of a specific retailer. For example, "No Name" is one of LCL's private labels and "Great Value" is a private label for Walmart;

*"record"* has the meaning provided in section 2 of the Act and means a medium on which information is registered or marked;

*"relevant time period"* means in or around November 2001 to the Present, the exact dates being unknown;

*"Retailers"* includes LCL, Walmart, Sobeys, Metro and Giant Tiger;

*"Sobeys"* includes Sobeys Incorporated, Sobeys Canada Incorporated and any other predecessors, successors, affiliates, divisions and other related entities in Canada;

*"Stock Keeping Unit ("SKU")"* refers to a product identification code used by a retailer to keep track of inventory levels;

*"Suppliers"* refers to Canada Bread and Weston Bakeries;

*"Walmart"* refers to Wal-Mart Canada Corporation and its predecessors, successors, affiliates, divisions and other related entities in Canada; and,

*"Weston Bakeries"* refers to Weston Foods (Canada), Incorporated and its predecessors, successors, affiliates, divisions and other related entities in Canada.

## OFFENCES

3. The Affiant says that he has reasonable grounds to believe and does believe that the following offences under the *Competition Act* have been committed by the following named persons or entities:

Le dénonciateur affirme qu'il a des motifs raisonnables de croire que les infractions suivantes à la Loi ont été commises par personnes ou les entités suivantes, à savoir :

- 3.1 That Canada Bread, Weston Bakeries, LCL, Walmart, Sobeys, Metro, Giant Tiger and other persons known and unknown, during the period commencing in or around November 2001, the exact date being unknown, and continuing until 11 March 2010, did conspire, combine, agree or arrange with each other and with others known and unknown, to enhance unreasonably the price of fresh commercial bread in Canada, and did thereby commit an indictable offence contrary to paragraph 45(1)(b) of the *Competition Act*, RSC 1985, c C-34 as it then existed;
- 3.2 That Canada Bread, Weston Bakeries, LCL, Walmart, Sobeys, Metro, Giant Tiger and other persons known and unknown, during the period commencing in or around November 2001, the exact date being unknown, and continuing until 11 March 2010, did conspire, combine, agree or arrange with each other and with others known and unknown, to prevent or lessen, unduly, competition in the sale or supply of fresh commercial bread in Canada, and did thereby commit an indictable offence contrary to paragraph 45(1)(c) of the *Competition Act*, RSC 1985, c C-34 as it then existed; and,
- 3.3 That Canada Bread, Weston Bakeries, LCL, Walmart, Sobeys, Metro, Giant Tiger and other persons known and unknown, during the period dating from 12 March 2010 and continuing to the present, the exact dates being unknown, did conspire, agree or arrange with each other and with others known and unknown, to fix, maintain, increase or control the price for the supply of fresh commercial bread in Canada, and did thereby commit an indictable offence contrary to paragraph 45(1)(a) of the *Competition Act*, RSC 1985, c C-34 (as amended).

**REASONABLE GROUNDS – MOTIFS RAISONNABLES**

4. The following information constitutes the reasonable grounds for the Affiant's belief supporting his information to obtain search warrants:

Les renseignements suivants contiennent les motifs raisonnables qui fondent ma croyance, afin que soit décerné les mandats de perquisition demandé dans cette dénonciation:

**(A) OVERVIEW OF THE INVESTIGATION**

- 4.1 The Bureau's investigation into the alleged conspiracy arises from two sources. First, on 3 March 2015, the Bureau granted an "immunity marker" to Loblaw Companies Limited. Proffers were provided by counsel to the Immunity Applicant pursuant to the Bureau's Immunity Program under the Act (the "Immunity Program").
- 4.2 Second, on 4 January 2016, the Canadian Federation of Independent Grocers (the "CFIG") emailed the Bureau alleging collusion between Canada Bread and Weston Bakeries with respect to a price increase for fresh commercial bread announced in January 2016.
- 4.3 Bureau officers reviewed materials provided by the Immunity Applicant pursuant to their application for immunity and the Bureau officers identified two Immunity Applicant witnesses to interview.
- 4.4 I interviewed [REDACTED] under oath on 20-21 December 2016. Further, the Immunity Applicant produced relevant records for the purpose of [REDACTED] interview.
- 4.5 I conducted the interview of [REDACTED] and I found [REDACTED] to be forthcoming and honest. I base my assessment on the fact that [REDACTED] was interviewed under oath and that [REDACTED] recollection was corroborated by documentary evidence provided as exhibits to [REDACTED] statement.



4.6 I interviewed [REDACTED] under oath on 2 March 2017. Further, the Immunity Applicant produced relevant records for the purpose of [REDACTED] interview.

4.7 [REDACTED] worked at both a Retailer [REDACTED] and a Supplier [REDACTED]. For ease of reference, I use the short-form [REDACTED] (R) when referring to [REDACTED] statements as they relate to [REDACTED] time with the Retailer and [REDACTED] (S) when referring to [REDACTED] statements as they relate to [REDACTED] time with the Supplier. The term [REDACTED] is used only in instances where the witness made general pronouncements about the industry or in instances where [REDACTED] made statements based upon [REDACTED] experience at both a Supplier and a Retailer.

4.8 I conducted the interview of [REDACTED] and I found [REDACTED] to be truthful. I base my assessment on the fact that [REDACTED] statement was corroborated by documentary evidence, that [REDACTED] was interviewed under oath and that [REDACTED] had a clear recollection of events.

4.9 On 11 August 2017, the Commissioner commenced an inquiry pursuant to paragraph 10(1)(b) of the Act (the "Inquiry") regarding the alleged commission of offences contrary to section 45 of the Act, as detailed at paragraphs 3.1 to 3.3, above. As detailed at paragraph 1.5, above, the Inquiry was expanded on 23 October 2017.

4.10 The Bureau has a civil inquiry into allegations of abuse of dominance by LCL in its dealings with its suppliers. As part of a due diligence exercise to ascertain whether or not the Bureau was already in possession of records being sought in the present application, I asked Vincent Millette, a Senior Competition Law Officer on the aforementioned abuse of dominance investigation, whether or not bakery products were included in the scope of the civil investigation. Mr. Millette indicated to me that bakery products were not part of the civil investigation. Consequently, there is no overlap with respect to the products that are the subject of the present Inquiry and the Bureau's abuse of dominance investigation. I have reasonable grounds to

believe and do believe that the information provided to me by Mr. Millette is accurate because as an officer he is aware of his ethical and professional obligation to be honest and truthful in fulfilling his duties.

**(B) INVESTIGATIVE SOURCES**

**(i) Competition Bureau**

- 4.11 I have relied on information provided by my Bureau colleagues. I believe the information provided to me to be reliable and accurate.
- 4.12 **Chris Cook** is a Senior Competition Law Officer in the Cartels Directorate and has been employed at the Bureau since August 2002. Ms. Cook has a Bachelor of Commerce from Queen's University and a Bachelor of Arts from the University of Ottawa. Ms. Cook has participated in preliminary examinations and inquiries in a responsible position. Her experience includes analyzing evidence, conducting witness interviews, executing search warrants and other duties related to the enforcement of the Act. Ms. Cook is duty-bound to be truthful and I have reasonable grounds to believe her information is reliable.
- 4.13 **Kara Meek** is a Competition Law Officer in the Cartels Directorate and has been employed at the Bureau since January 2015. Ms. Meek has a Bachelor of Commerce from the University of British Columbia, a Bachelor of Laws from Western University, and a Master of Laws from Bristol University (UK). Ms. Meek has participated in preliminary examinations and inquiries in a responsible position. Her experience includes analyzing evidence, conducting witness interviews, executing search warrants and other duties related to the enforcement of the Act. Ms. Meek is duty-bound to be truthful and I have reasonable grounds to believe her information is reliable.
- 4.14 **Sylvie Grégoire** is a Paralegal Enforcement Officer at the Competition Bureau's office in Montréal. She has been employed by the Cartels and Deceptive Marketing Practices Branch of the Bureau since September 2015. As part of her duties, she has gained experience in seized evidence management, research and analysis of

information in support of investigations. She holds a degree in Law from Université du Québec à Montréal and a notary designation from Université de Montréal. Ms. Grégoire is duty-bound to be truthful and I have reasonable grounds to believe her information is reliable.

- 4.15 **Kevin McCollum** is a Competition Law Officer in the Deceptive Marketing Practices Directorate and has been employed by the Bureau since 2001. Mr. McCollum has significant experience conducting criminal and civil investigations, including analyzing evidence, executing search warrants and other duties related to the enforcement of the Act. Mr. McCollum is duty-bound to be truthful and I have reasonable grounds to believe his information is reliable.
- 4.16 **Clifford Smith** is an Electronic Evidence Officer with the Electronic Evidence Unit ("EEU") of the Bureau. Mr. Smith has provided technical guidance as part of this investigation. He has been with the Bureau since 2007. Mr. Smith has participated in numerous cartels and deceptive marketing practices investigations to various degrees, including analyzing evidence and executing search warrants. I have considered the accuracy of the information provided by Mr. Smith and I believe the information provided to be accurate because he, as an officer, has an ethical and professional duty to be honest and truthful in carrying out his duties.
- 4.17 **Elizabeth Eves** is a Competition Law Officer in the Cartels Directorate and has been employed by the Bureau since 2006. Ms. Eves has significant experience conducting criminal investigations, including analyzing evidence, executing search warrants and other duties related to the enforcement of the Act. Ms. Eves is duty-bound to be truthful and I have reasonable grounds to believe her information is reliable.
- 4.18 **Mark Aylward** is a Competition Law Officer in the Cartels Directorate and has been employed by the Bureau since July 2016. In his time at the Bureau, Mr. Aylward has worked on multiple cases involving allegations under sections 45 and 47 of the Act. Prior to joining the Bureau, Mr. Aylward was a practicing lawyer in Newfoundland and Labrador. Mr. Aylward is duty-bound to be truthful and I have reasonable grounds to believe her information is reliable.

(ii) **Databases / Registries**

- 4.19 **Ontario Ministry of Government Services ("Ministry of Government Services"):** is the corporate registry for the Province of Ontario. Information collected by the Ministry of Government Services includes: corporation name, registered office address and mailing address and a listing of current directors. I have considered the accuracy of the information provided by the Ministry of Government Services and I believe the information provided to be accurate because the records maintained in it are created and maintained in the ordinary course of its business.
- 4.20 **BC Registries and Online Services ("BC Registry"):** is a registry for corporate filings maintained by the Province of British Columbia. Information available through the BC Registry includes corporate status, incorporation dates, annual reports, previous company names, the registered office address and names of directors and officers of the corporation. I have considered the accuracy of the information provided by the BC Registry and I believe the information provided to be accurate because the records maintained by it are created and maintained in the ordinary course of its business.
- 4.21 **Nova Scotia Registry of Joint Stock Companies ("NS Registry"):** is a registry maintained by the Province of Nova Scotia. Information available through the NS Registry includes business names and addresses, company officers, activity history and other related registrations. I have considered the accuracy of the information provided by the NS Registry and I believe the information provided to be accurate because the records maintained by it are created and maintained in the ordinary course of its business.
- 4.22 **Corporations Canada Federal Corporations Database ("Corporations Canada"):** is a database of federally incorporated entities which includes business names and addresses, dates of incorporation (registration), dates of dissolution, registration numbers as generated by the system, business officials' names and addresses, business ownership and status. I believe this system to be reliable as it is maintained by the Federal Government of Canada and contains registered

corporation information created and maintained in the ordinary course of its business.

4.23 **Canada Law List:** is a resource to find legal professionals. The resource is available as both a website and as a print publication and is operated by Thomson Reuters. I have considered the accuracy of the information obtained from Canada Law List and I believe the information obtained to be accurate because the resource is maintained in the ordinary course of business.

**(C) REASONABLE GROUNDS TO BELIEVE THAT OFFENCES HAVE BEEN COMMITTED**

**(i) Agreement**

*Genesis of the Alleged Conspiracy, Agreement or Arrangement – Direct Communications*

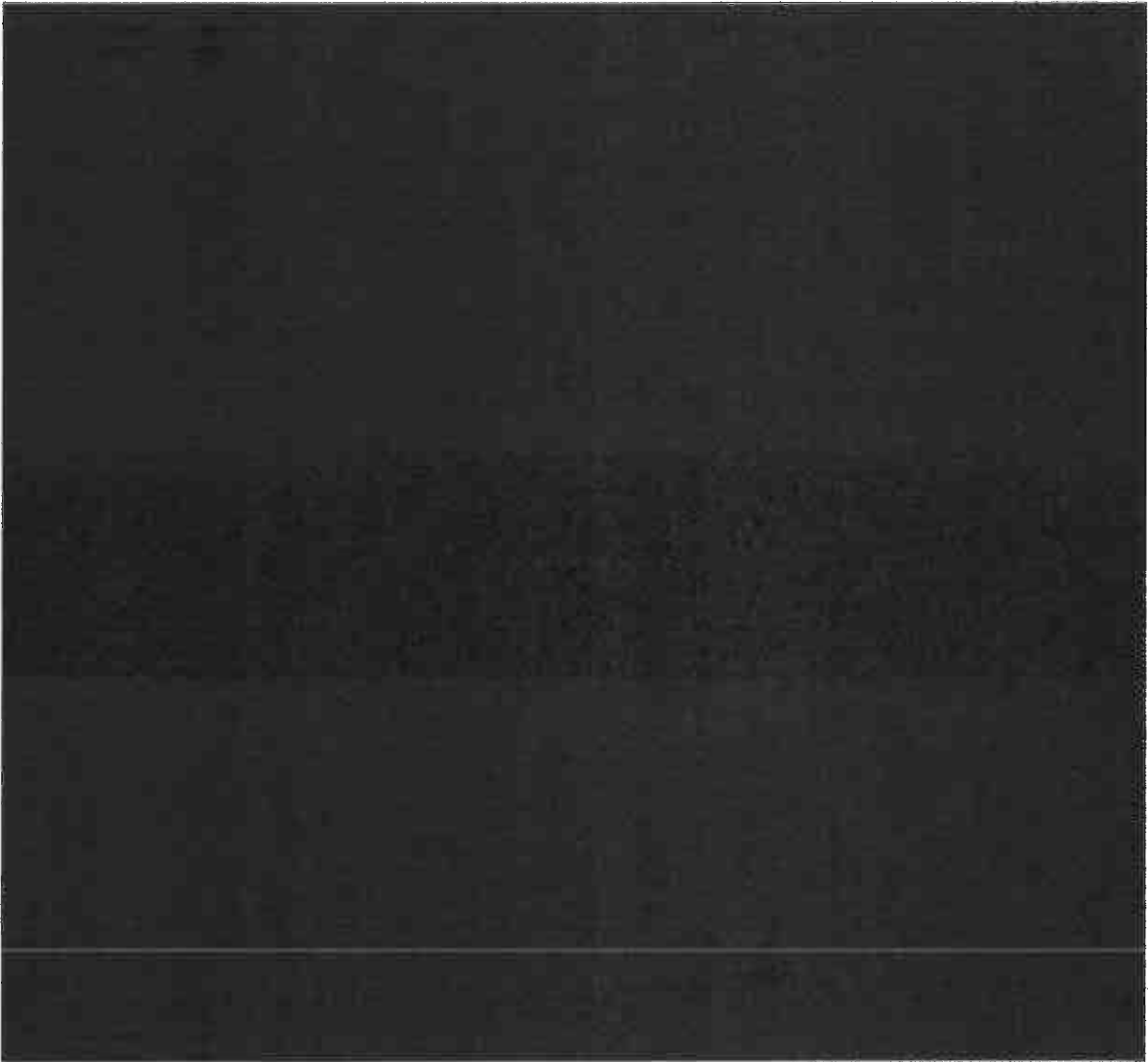
4.24

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4.31 A table outlining the price increases for fresh commercial bread, of which I am aware, is outlined below, followed by a brief description of each, in chronological order.

	CANADA BREAD			WESTON BAKERIES		
	Date of Letter	Effective Date	Amount of Increase	Date of Letter	Effective Date	Amount of Increase
1	February	April 2002	\$0.07	20 February	29 April	\$0.07

	2002			2002	2002	
2	Unknown	3 November 2002	\$0.07	13 September 2002	3 November 2002	Unknown
3	Unknown	Unknown	Unknown	14 January 2004	21 March 2004	"approx. \$0.08"
4	Unknown	Unknown	Unknown	3 February 2005	17 April 2005	Unknown
5	Unknown	Unknown	Unknown	8 November 2005	5 February 2006	Unknown
6	27 July 2006	15 October 2006	\$0.07 (branded)	8 August 2006	22 October 2006	Unknown
			\$0.06 (private label)			
7	Unknown	Unknown	Unknown	Unknown	21 October 2007	\$0.08
8	Unknown	Unknown	Unknown	10 September 2007	21 October 2007	\$0.16
9	23 March	13 June	\$0.07	9 April 2010	20 June	Approx. 4%

	2010	2010		2010		
10	December 2010	1 February 2011	4%	10 January 2011	27 March 2011	Approx. 4%
11	Unknown	Unknown	Unknown	3 February 2011	27 March 2011	Approx. 8%
12	February 2012	29 April 2012	\$0.07*	1 March 2012	6 May 2012	Unknown*
13	24 October 2012	27 January 2013	Approx. \$0.07	16 October 2012	27 January 2013	Approx. \$0.07
14	15 January 2015	19 April 2015	Approx. \$0.07	21 January 2015	12 April 2015	Approx. \$0.07
15	2 December 2015	28 February 2016	\$0.07	30 November 2015	6 March 2016	\$0.07

*\* Price increase was rescinded by both Canada Bread and Weston Bakeries.*

*The First Price Increase*

4.32





[REDACTED]

4.33 I have reviewed a price increase letter issued by Weston Bakeries which announced a price increase on 20 February 2002 with an effective date of 29 April 2002. Weston Bakeries announced an increase of 7 cents per unit (all price increases applied on a "per unit" basis, referring to - for example - "per loaf of bread"). I understand from my interview of [REDACTED] that the 7 cents at wholesale was passed on to the end consumer with a corresponding 10 cent increase at retail.

4.34 [REDACTED] described how this first increase was the point in time during which 7 cents at wholesale and 10 cents at retail became the pattern for increases. This pattern became colloquially known as "the 7/10 Convention".

#### *Subsequent Price Increases following the 7/10 Convention*

##### *The Second Price Increase (September 2002)*

4.35 I have reviewed a product price increase chart issued by Canada Bread. The price increase chart identifies that Canada Bread had announced a price increase (the date of the announcement is not specified) with an effective date of 3 November 2002. The chart features numerous product names with their corresponding UPCs (universal product codes) along with the former price per unit and a post-price increase price per unit. The chart specifies an increase of 7 cents per unit.

4.36 I have reviewed a price increase letter issued by Weston Bakeries. The price increase letter was issued on 13 September 2002 with an effective date of 3 November 2002. The price increase letter does not mention a particular value for the increase; however, I understand from my interview of [REDACTED] that all price increases after "the First Price Increase" followed the 7/10 Convention (or multiples thereof) and that Weston Bakeries' price increase was also of 7 cents.

##### *The Third Price Increase (January 2004)*

4.37 I have reviewed the price increase letter issued by Weston Bakeries on 14 January 2004. The price increase letter announced a price increase of "approximately 8 cents" with an effective date of 21 March 2004.

4.38 Based upon my interview of [REDACTED], during which [REDACTED] confirmed that, during [REDACTED] tenure as [REDACTED] in the fresh commercial bread market, Canada Bread was the pricing leader and Weston Bakeries was a follower, I have reason to believe that Canada Bread announced a price increase at roughly the same time and for roughly the same quantum of increase as Weston Bakeries.

*The Fourth Price Increase (February 2005)*

4.39 I reviewed a price increase letter which indicated that on 3 February 2005, Weston Bakeries announced a price increase due to become effective on 17 April 2005. The quantum of the increase was not noted in the letter.

4.40 Based upon my interview of [REDACTED], during which [REDACTED] confirmed that, in the fresh commercial bread market, Canada Bread was the pricing leader and Weston Bakeries was a follower, I have reason to believe that Canada Bread announced a price increase at roughly the same time and for roughly the same quantum of increase as Weston Bakeries.

*The Fifth Price Increase (November 2005)*

4.41 I reviewed a price increase letter which indicated that on 8 November 2005, Weston Bakeries announced a price increase with an effective date of 5 February 2006. The quantum of the price increase was not noted in the letter.

4.42 Based upon my interview of [REDACTED], during which [REDACTED] confirmed that, during [REDACTED] tenure as [REDACTED] in the fresh commercial bread market, Canada Bread was the pricing leader and Weston Bakeries was a follower, I have reason to believe that Canada Bread announced a price increase at roughly the same time and for roughly the same quantum of increase as Weston Bakeries.

*The Sixth Price Increase (July - August 2006)*

4.43 I reviewed a price increase letter issued on 27 July 2006 by Canada Bread for a 7 cent price increase across its branded products with a 6 cent increase on private label. The Canada Bread price increase had an effective date of 15 October 2006. I reviewed a price increase letter issued by Weston Bakeries which indicated that Weston Bakeries announced a price increase on 8 August 2006 which had an effective date of 22 October 2006.

4.44 The Weston Bakeries price increase letter did not specify the quantum of the increase; however, [REDACTED] stated that every price increase during the allegedly cartelized period, and during [REDACTED] tenure as [REDACTED] was consistent with the 7/10 Convention.

#### *The Seventh Price Increase (July 2007)*

4.45 I reviewed a price increase letter from Weston Bakeries in which Weston Bakeries announced a price increase of 8 cents with an effective date of 21 October 2007. The Weston Bakeries price increase letter did not include an announcement date; however, based upon the letter issued by Weston Bakeries (and discussed at paragraph 4.47, below), Weston Bakeries announced the increase in July 2007.

4.46 Based upon my interview of [REDACTED] during which [REDACTED] confirmed that, during [REDACTED] tenure as [REDACTED] in the fresh commercial bread market, Canada Bread was the pricing leader and Weston Bakeries was a follower, I have reason to believe that Canada Bread announced a price increase at roughly the same time and for roughly the same quantum of increase as Weston Bakeries.

#### *The Eighth Price Increase (September 2007)*

4.47 On 10 September 2007 Weston Bakeries announced amendments to the price increase they announced in July 2007. I have reviewed the pricing announcement. Weston Bakeries revised its 8 cent price increase to a 16 cent price increase. Weston Bakeries did not amend its previously announced effective date of 21 October 2007.

4.48 ██████████ stated that given the deviation from the 7/10 Convention; namely, that this price increase was – in fact – a “double”, likely meant that the suppliers had coordinated this deviation from the norm to make sure that the price increase letters reflected the “double” rather than the usual “single”.

*The Ninth Price Increase (March – April 2010)*

4.49 I reviewed a Canada Bread price increase letter provided to me by the Immunity Applicant. The letter indicated that on 23 March 2010 Canada Bread announced a 7 cent price increase to take effect on 13 June 2010.

4.50 I reviewed a Weston Bakeries price increase letter provided to me by the Immunity Applicant. The letter indicated that Weston Bakeries announced an “approximately 4%” price increase on 9 April 2010 with an effective date of 20 June 2010.

4.51 ██████████ informed me that the percentage corresponded to 7 cents.

*The Tenth Price Increase (December 2010 – January 2011)*

4.52 I reviewed a price increase letter provided to me by the Immunity Applicant. The letter was dated December 2010. The letter indicated that Canada Bread announced a 4% price increase that would take effect on 1 February 2011.

4.53 I reviewed a price increase letter from Weston Bakeries in which Weston Bakeries announced its own price increase of “approximately 4%” on 10 January 2011 with an effective date of 27 March 2011.

4.54 ██████████ informed me that “...sometimes [the letter] said 7 cents, sometimes it said 4 percent...it sort of change[d] back and forth, but it was always 7 cents.”

4.55 In the lead-up to Canada Bread’s announcement, ██████████ met with Richard Lan on 4 November 2010. ██████████ believes that ██████████ and Lan discussed pricing at this meeting due to the proximity of the meeting to the time at which Canada Bread announced its price increase.

4.56 [REDACTED] recalls that [REDACTED] was concerned about bread prices by this point in time as prices were, in [REDACTED] opinion, getting too high. [REDACTED] cannot specifically place the conversation to the specific meeting on 4 November 2010; however, [REDACTED] recalls communicating [REDACTED] concern about prices to Lan at some point. When [REDACTED] did communicate [REDACTED] views, Lan responded to this "resistance" by pressing the point and seeking confirmation that Weston Bakeries would follow Canada Bread's price increase.

#### *The Eleventh Price Increase (February 2011)*

4.57 Weston Bakeries announced an "approximately 8%" price increase on 3 February 2011 with an effective date of 27 March 2011. I reviewed the price increase letter. As noted at paragraphs 4.51 and 4.54, above, [REDACTED] indicated that 4 percent corresponded to 7 cents; consequently, "approximately 8%" corresponds to roughly 14 cents.

4.58 Based upon my interview of [REDACTED] during which [REDACTED] confirmed that, in the fresh commercial bread market, Canada Bread was the pricing leader and Weston Bakeries was a follower, I have reason to believe that Canada Bread announced a price increase at roughly the same time and for roughly the same quantum of increase as Weston Bakeries.

4.59 I reviewed an entry from [REDACTED] Outlook calendar dated 21 January 2011. [REDACTED] informed me that [REDACTED] believes this was a reminder to [REDACTED] that [REDACTED] was to make contact with Richard Lan of Canada Bread that day. [REDACTED] stated that the proximity of this calendar entry to the time of the announcement of the price increase suggested to [REDACTED] that [REDACTED] and Lan had a conversation to discuss their respective pricing plans.

#### *The Twelfth Price Increase / Rescinded Price Increase (February - March 2012)*

4.60 I reviewed a price increase retraction letter issued by Canada Bread on 19 March 2012. The retraction letter made reference to a price increase announced by Canada

Bread in February 2012. The announced price increase was for an increase of 7 cents and was scheduled to become effective on 29 April 2012.

4.61 I also reviewed a Weston Bakeries price increase letter which announced an increase on 1 March 2012 with a 6 May 2012 effective date. The quantum of the price increase was not noted in the letter.

4.62 Notably, Weston Bakeries did not announce a price increase on plain white bread (including Weston's Wonder and Gadoua brands) or private label bread. [REDACTED] informed me that Canada Bread responded by rescinding its price increase which, in turn, led to Weston Bakeries not implementing its price increase.

4.63 [REDACTED] informed me that [REDACTED] bumped into Richard Lan of Canada Bread in the aftermath of the rescinded price increase and Lan made it very clear to [REDACTED] that he was unhappy with Weston Bakeries.

#### *The Thirteenth Price Increase (October 2012)*

4.64 [REDACTED] informed me that the failure of the previous price increase was not good for the overall bakery industry and that it caused a "sense of urgency" in the industry around the next price increase which was announced in October 2012.

4.65 On 16 October 2012 Weston Bakeries announced a price increase of "approximately 7 cents". I reviewed a copy of the letter. The Weston Bakeries' price increase had an effective date of 27 January 2013.

4.66 I reviewed a Canada Bread price increase letter dated 24 October 2012 in which Canada Bread also announced a price increase of "approximately 7 cents" and also with an effective date of 27 January 2013.

4.67 [REDACTED] (S) stated that discussions about the October 2012 price increase began months in advance. In an email dated 30 August 2012, [REDACTED] (S) is asked by [REDACTED] "how are we doing on the price increase?" [REDACTED] (S) responded that [REDACTED] contact at LCL [REDACTED] was

meeting with Maple Leaf Foods (the parent company of Canada Bread at that time) later that week and that [REDACTED] would "...talk to them after the meeting". [REDACTED] (S) explained the email as "it's clearly talking about whether or not, or asking whether or not [REDACTED] has confirmation that Maple Leaf [Foods] is also going". Further [REDACTED] stated that "...the significance is getting feedback from [REDACTED], essentially from Canada Bread, letting us know whether they are open to the increase and dates and sort of timing."

4.68 [REDACTED] (S) explained the contents of an email thread, in which [REDACTED] was a participant, entitled "Sobeys / Metro WOW [Week Over Week] Changes on Commercial Breads - Wk 2 Data" dated 9 January 2013. Within the email thread, there is a portion sent from [REDACTED] to [REDACTED] and [REDACTED] where [REDACTED] provided specific dates when LCL would implement the price increase across its various banners. According to [REDACTED] (S), this information was provided to [REDACTED] so that [REDACTED] could then "socialize" the information with the other Retailers. After receiving the information about LCL's roll-out dates for the price increase, [REDACTED] (S) replied: "Walmart will not go until the cost increase happens, or unless [No] Frills goes early."

4.69 [REDACTED] further explained that "conventional" grocery store banners tended to be the first banners to implement the price increase followed later by banners in the discount section of the market. The movement in retail prices amongst the conventional banners was an indication that the market was moving. Further, if this movement happened before the effective date of the price increase, which was often the case according to [REDACTED] it provided everybody [all of the Suppliers and Retailers] with a sense that "it feels like what we all talked about is going to happen."

4.70 In an email thread dated 24 January 2013, [REDACTED] asked [REDACTED] direct reports, including [REDACTED] (S), "Are we coordinated, WMT [Walmart], GT [Giant Tiger], LCL, etc." One of the [REDACTED] responded that "Walmart will



not lead. They will check No Frills prices on Monday and if their retails have changed then their new price will be in the market on Tuesday." The [REDACTED] responded "GT is scheduled to move Feb 4<sup>th</sup> due to blackout restriction. GT will not lead but will move once the other discounters have. (nf/wm) [No Frills / Walmart]. [REDACTED] (S) explained that although Walmart "...won't lead, they'll be fast followers."

4.71 During [REDACTED] interview, I presented [REDACTED] (S) with an email thread from 26 August 2013 to 4 September 2013 in which Weight Watchers products were discussed internally by Weston Bakeries employees in the sales department. [REDACTED] (S) was a participant in the email thread. [REDACTED] (S) explained that what [REDACTED] understood from the email thread is that a Walmart buyer had approached Weston Bakeries asking Weston Bakeries to coordinate an increase in retail prices on its Weight Watchers products, across the No Frills (an LCL banner), Walmart, Giant Tiger, Food Basics (a Metro banner) and FreshCo (a Sobeys banner).

4.72 [REDACTED] (S) explained that there was significantly more retail coordination effort dedicated to "core SKUs" (stock keeping units) rather than SKUs like Weight Watchers. Consequently, situations like the one outlined in the email thread outlined in paragraph 4.71, above, arose where "three or four months after a price increase somebody would say 'Well, I'd try to take a little more but nobody else did. Let's figure this out together'".

4.73 In the email thread described in paragraph 4.71, above, [REDACTED] (S) explained that [REDACTED] at Weston Bakeries had secured the consent of Giant Tiger to move up retails provided that No Frills would agree to do the same. In the final email on the thread, [REDACTED] simply wrote "LCL is moving". [REDACTED] (S) explained that this meant that the attempts to coordinate an increase of retail pricing on the Weight Watchers SKUs was successful.



4.74 I reviewed a price increase letter dated 15 January 2015 in which Canada Bread announced a price increase of "approximately 7 cents", effective 19 April 2015. I also reviewed a Weston Bakeries price increase letter in which Weston Bakeries announced a price increase of "approximately 7 cents" on 21 January 2015 with an effective date of 12 April 2015.

4.75 During my interview of ██████████ (S), I presented ██████████ with an email thread from 26 January 2015, in which ██████████ was a participant. In the email thread, Sonya Cain of Sobeys asked ██████████ of Weston Bakeries: "Do you know when No Frills **will be increasing** the retails on the bread?" [emphasis added] ██████████ (S) explained that this request from Cain was fairly typical of what ██████████ would see from the Retailers and ██████████ was sure that the requested information was provided to Cain. As ██████████ (S) explained, the Retailers were "trying to understand when people were moving, when people – if they hadn't moved – when they were going to move."

#### *The Fifteenth Price Increase (November – December 2015)*

4.76 I reviewed a price increase letter dated 30 November 2015 in which Weston Bakeries announced a price increase of 7 cents with an effective date of 6 March 2016. I also reviewed a price increase letter issued by Canada Bread in which Canada Bread announced a 7 cent price increase on 2 December 2015 with an effective date of 28 February 2016.

#### *Reason to Believe Conduct is Ongoing*

4.77 I have reason to believe that the conduct is ongoing because, in my experience as a Competition Law Officer, when a cartel participant seeks immunity under the Bureau's Immunity Program, that cartel participant is obliged to keep their application for immunity confidential. Consequently, other participants in the alleged cartel continue to operate as if the cartel were still functioning.

#### *Evidence of the Suppliers Coordinating Retailers*

- 4.78 ██████████ stated that Weston Bakeries had a very active network of salespeople communicating with the Retailers and looking to ensure that there was alignment in pricing. Further, retail customers would call threatening to reject a price increase if another Retailer was offside in terms of pricing alignment.
- 4.79 ██████████ stated that the timing of the Suppliers' price increase letters had to be close together to provide certainty to the retailers that everyone was going to take a price increase at the same time.
- 4.80 Similarly, ██████████ (R) explained that important considerations in whether or not to accept a wholesale price increase from Weston Bakeries was whether Canada Bread was also increasing its price for the supply of bread to retailers and whether other retailers would increase their retail prices. ██████████ (R) stated that it was not possible for only one retailer to increase its retail price and the only way the price increase would happen is if there was a retail price increase among the other Retailers (i.e., not including smaller retailers who were less likely to compete with the Retailers on price).
- 4.81 ██████████ described how price increases for fresh commercial bread were highly coordinated. ██████████ stated that, in general terms, the implementation of a price increase would be discussed at least 3-4 months in advance. I understand from ██████████ interview that the Retailers would engage in back-and-forth communications involving Canada Bread and Weston Bakeries where the Retailer would discuss specific dates and price points with respect to the increase.
- 4.82 ██████████ (R) described that these discussions would also touch upon other, competing, Retailers and what their prices would look like post-price increase. For example, when Canada Bread and Weston Bakeries approached ██████████ with a price increase, the Suppliers would be rather definitive in saying that they had spoken with competing Retailers (naming specific Retailers) and the Suppliers were fairly certain that the suggested retail prices would be reflected on store shelves, market-wide, post-price increase.

4.83 Similarly, ██████████ (R) stated that when ██████████ agreed to accept the price increase on behalf of ██████████ knew or expected that the Suppliers would communicate ██████████ (R)'s acceptance of the price increase to competing Retailers.

4.84 ██████████ (R) stated that it was ██████████ understanding that the Suppliers would coordinate retail price points across the Retailers such that the Retailers would commit to set their retail prices no lower than the price floors established by the Supplier. Further, ██████████ (R) stated that ██████████ looked to the Suppliers for confirmation about the coordination of retail prices.

4.85 ██████████ (S) stated that retail coordination was particularly difficult to manage in the discount end of the market, featuring retailers such as Walmart, Giant Tiger, LCL's No Frills banner, Sobeys' FreshCo banner and Metro's Food Basics banner.

4.86 ██████████ (S) stated that there was quite a bit of negotiation when ██████████ dealt with the aforementioned Retailers because none of them wanted to be the first to implement the price increase. Consequently, it was incumbent upon the Suppliers to provide assurances that a Retailer's competitors would follow quickly. As ██████████ (S) stated, there was always a negotiation process going back and forth between the four parties [Retailers] where [the Supplier] was trying to coordinate it because somebody had to be the first to move.

4.87 The negotiations referred to in paragraph 4.86, above, resulted in precise future pricing intentions being communicated from Retailer to Retailer via the Supplier.

#### *Complaints by Retailers*

4.88 ██████████ stated that Retailers expected the Suppliers to deal with market disturbances with respect to pricing. When discrepancies arose, the Retailers would inform the Suppliers and dictate to the Supplier that the Supplier needed to fix the problem or the price increase would be rejected.

4.89 If a Retailer breached price points agreed upon between a Supplier and a Retailer, ██████████ (R) stated that ██████████ had discussions with the relevant Supplier (*i.e.*, the

Supplier whose products were being sold below the Supplier-managed price points) to determine why the competing Retailer was deviating from the coordinated retail price increase and thereby disrupting the market.

4.90 [REDACTED] (R) stated that, during discussions with Suppliers, [REDACTED] would look for confirmation from the Suppliers regarding competing Retailers. For instance, [REDACTED] (R) would inquire as to whether specific Retailers would continue to aggressively price a Supplier's product. Further, [REDACTED] (R) would ask for the Supplier to go back to the Retailer who was pricing aggressively and explain to them that such prices were not in their best interest. [REDACTED] (R) confirmed that the Suppliers would come back to [REDACTED] and tell [REDACTED] exactly what the competing Retailer had said.

4.91 [REDACTED] (S) stated that the Retailers frequently complained to Weston Bakeries about prices, at their retail competitors, that they did not like. In reviewing an example of one such complaint memorialized in an email dated 24 April 2015, [REDACTED] (S) explained that "[Ken Kunkel (Metro)] is essentially asking 'why the hell are they [Giant Tiger] at \$1.88? The price increase just happened. Why would they go this cheap? You're upsetting the market. One crazy retail will cause other [Retailers] to [decrease their retail prices] and it'll get aggressive and therefore drive the overall retails down."

4.92 In another email dated 9 July 2015, Diana Pulla of Sobeys sent a message, with an image of a LCL flyer featuring a 2/\$4 advertisement for Wonder Bread, to [REDACTED] Weston Bakeries, asking "What's going on with the retails at conventional?? I thought we were all accepting inflation due to the increase." [REDACTED] (S), a participant on the email thread, explained that Pulla was saying that it was her understanding that all major retailers would be increasing their retail prices as a result of the wholesale price increase and that the Retailers would not aggressively undercut this retail price increase in their flyers. [REDACTED] (S) further explained that "inflation" in this context refers to a retail price increase.

4.93 In an email dated 5 August 2015, Ken Kunkel of Metro sent an email to Weston Bakeries complaining of the price of Wonder bread at T&T (an LCL banner). [REDACTED] (S) explained that [REDACTED] interpreted Kunkel's email as a call to action for Weston Bakeries to talk to LCL and get them to control T&T's pricing.

*Role of the Retailers - Conduits of Information between Suppliers*

4.94 According to [REDACTED] Canada Bread and Weston Bakeries each used the Retailers as conduits of information during the "socialization" process of a price increase.

4.95 [REDACTED] (R) recalled that during the first price increase in which [REDACTED] was involved, Weston Bakeries had approached [REDACTED], indicating that they wanted to take a price increase. [REDACTED] (R) then recalls being instructed by [REDACTED] to have pricing conversations with Canada Bread to determine whether Canada Bread was also interested in taking a price increase.

4.96 [REDACTED] (R) recalls being informed by [REDACTED] about how price increases in the fresh commercial bread industry work. Further, [REDACTED] (R)'s [REDACTED] provided [REDACTED] with specifics about what to discuss with Canada Bread.

4.97 [REDACTED] (R) then recalls acting upon instructions from [REDACTED] and calling Rory Lesperance of Canada Bread [REDACTED]. As part of that conversation, [REDACTED] (R) stated that [REDACTED] would communicate Weston Bakeries' pricing intentions to Canada Bread along with the date of the proposed price increase.

4.98 As part of [REDACTED] (R)'s conversation with Canada Bread, [REDACTED] (R) asked if Canada Bread was also open to taking an increase. [REDACTED] (R) stated that Lesperance would not respond right away but would provide a response a couple of days later.

4.99 [REDACTED] (R) believes the delay in a response was a result of Lesperance's need to consult his superiors within Canada Bread.

- 4.100 [REDACTED] (R) informed me that, on at least one occasion, Canada Bread approached [REDACTED] to confirm that Weston Bakeries was amenable to a price increase.
- 4.101 [REDACTED] (S) explained that LCL was amenable to price increases because price increases drove inflation which, in turn, drove LCL's profit, provided that all Retailers were coordinated. LCL sought assurances of such retail coordination from [REDACTED] (S). As [REDACTED] (S) explained, if retail prices increased 10 cents but the wholesale cost to the Retailer only increased 7 cents, it was a positive for the Retailer. In such a situation, at a minimum, LCL was making 3 cents more on every loaf of bread sold and "that was a good thing."
- 4.102 [REDACTED] (S) explained that Sobeys' reaction to a wholesale price increase was the same as LCL's. Sobeys was "absolutely...onside with price increases for the same reasons as Loblaws [LCL] was." [REDACTED] (S) confirmed that, provided Sobeys obtained assurances that their competitors were also accepting the price increase, Sobeys was amenable to also taking a price increase.
- 4.103 [REDACTED] (S) stated that Metro was, like LCL and Sobeys, very much in favour of inflation. Also as with LCL and Sobeys, Metro wanted assurances from Weston Bakeries that their Retailer competitors were going to increase their retail prices.
- 4.104 [REDACTED] (S) informed me that based upon [REDACTED] attendance at sales meetings, [REDACTED] was aware that Walmart was also onside with price increases. [REDACTED] (S) indicated that Walmart certainly moved their retail prices just like the other Retailers.
- 4.105 [REDACTED] (S) informed me that, based upon [REDACTED] attendance at sales meetings, [REDACTED] was aware that Giant Tiger was also onside with price increases. Giant Tiger increased their retail prices and promotional pricing in lock-step with the rest of the Retailers.
- 4.106 [REDACTED] (S) informed me that Giant Tiger was often very wary about Weston Bakeries' relationship with LCL and feared that if they shared their promotional

activities with Weston Bakeries before they happened, Weston Bakeries would share that information with LCL, a Giant Tiger competitor.

4.107 ██████████ stated that the final confirmation that Weston Bakeries would look for was a copy of the Canada Bread price increase letter. Weston Bakeries would usually obtain the letter from a customer (e.g., a Retailer) or, occasionally, from someone at Canada Bread.

**(ii) Reasonable Grounds to Believe: Enhance Unreasonably the price of the product (Subsection 45(1)(b) of the *Competition Act*, pre-amendment):**

4.108 I understand that the issue of unreasonable price enhancement has not been authoritatively determined in Canadian courts. One interpretation is to give unreasonably enhance a qualitative meaning.<sup>1</sup>

4.109 The evidence collected by the Bureau to date indicates that the price of fresh commercial bread was increased via secretive agreements made by senior executives at the Suppliers. Further, the price increases were facilitated by key decision-makers at both Suppliers and Retailers which enabled the alleged cartel to raise wholesale and retail prices. These are both qualitative factors that speak to the unreasonableness of the methods employed to raise the price of fresh commercial bread.

4.110 As ██████████ informed me, ██████████ was uneasy about meeting with Richard Lan. Further, ██████████ informed me that ██████████ intentionally obscured the source of ██████████ information when reporting on price increases within Weston Bakeries or when reporting to Weston Bakeries' corporate office. The secretive nature of the dealings between the participants in the alleged conspiracy gives me reasonable grounds to believe that the wholesale and retail prices for fresh commercial bread were enhanced unreasonably.

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<sup>1</sup> See, for example, *R v Atlantic Sugar Refineries Co. Ltd.* (1975), 26 CPR (2d) 14.



**(iii) Reasonable Grounds to Believe: Undue Lessening of Competition (Subsection 45(1)(c) of the *Competition Act*, pre-amendment):**

*Legal Framework*

4.111 According to the Supreme Court of Canada in *R v Nova Scotia Pharmaceutical Society* ("PANS"), an inquiry into whether an agreement would prevent or lessen competition unduly involves three steps: (i) defining the relevant market, (ii) determining its structure, and (iii) analyzing the behaviour to the parties to the agreement.

4.112 The analytical framework set out in PANS is a partial rule-of-reason analysis that examines the structure of the market, and the behaviour of the firms in that market, in order to determine the effects on competition that would likely result from such a structural-behavioural combination. The first stage in an assessment of "unduly lessening competition" involves defining the relevant market. The relevant market is defined so that a determination can then be made about how much market power a firm (or group of firms acting collectively) has in that market. A relevant market is assessed from two perspectives: the product market, consisting of those products that purchasers consider to be reasonable substitutes for the product in question, and the geographic market, consisting of those suppliers who are located close enough to the purchasers to constitute viable substitute sources of supply of the product. The second stage in an assessment as to undueness involves determining the market structure and assessing the market power of the conspirators. The market structure analysis looks at issues such as market share, barriers to entry, product differentiation, countervailing power and cross-elasticities of demand to assess whether the structure of the market would facilitate successful conspiracy conduct. According to the Supreme Court of Canada in PANS, market power is the ability to behave relatively independently of the market. The third stage involves an analysis of the behaviour of the parties to the agreement. A section 45 offence requires, in addition to some market power, some behaviour likely to injure competition. It is the combination of the two that makes a lessening of competition



undue. According to the PANS decision, particularly injurious behaviour may also trigger liability even if market power is not so considerable.

### *Product Market*

- 4.113 A product market is a single market that is comprised of products that are reasonable substitutes for one another. Based upon the information available to me, a product market does exist for the purposes of the analytical framework set out in PANS. I am not aware of any authoritative judicial consideration in Canada of bread and bakery product markets; consequently, in forming my belief about the product market, I am informed by [REDACTED] and [REDACTED].
- 4.114 [REDACTED] informed me that fresh commercial bread was made up of three segments: bread, rolls and buns and "alternatives". [REDACTED] stated that when [REDACTED], it was actually called "bread and rolls" and included a variety of breads (e.g., white, grains, rye) and bread products such as hamburger buns, hot dog buns, dinner rolls and other such items. [REDACTED] further stated that "alternatives", such as bagels and tortillas, represented a new segment of fresh commercial bread that emerged in the late 1990s and through the 2000s.
- 4.115 [REDACTED] informed me that fresh commercial bread is baked daily and shipped daily. It can be distinguished from the "frozen" business which is manufactured and frozen at the manufacturing facility and shipped as frozen dough and baked on-site at the customer's facility (e.g., a retailer's bakery section).
- 4.116 [REDACTED] informed me that fresh commercial bread has three key segments: white, grains and Italian but that when Weston Bakeries announced a price increase, it would cover tortillas, naan, pita, English muffins, bagels and "...pretty much all of what you see in that commercial section."
- 4.117 [REDACTED] informed me that while there may be substitutes for bread, bread is a grocery staple. [REDACTED] further stated that price elasticity for fresh commercial bread is low, suggesting that it is a product market.

4.118 ██████ stated that while in-store bakery bread is a substitute for fresh commercial bread, it has a shorter shelf life and typically only lasts three or four days. Further, ██████ informed me that the balance of sales between fresh commercial bread and in-store bakery bread remained stable over time.

### *Geographic Market*

4.119 A geographic market is a single market that is composed of alternative geographic sources of supply that are reasonable substitutes for one another. I have reason to believe, and do believe, that a geographic market can be defined for the purposes of the analytical framework set out in *PANS*. In this regard, I am informed by evidence provided to me by ██████

4.120 ██████ informed me that fresh commercial bread has a short shelf life and fresh product must be delivered daily. Canada Bread and Weston Bakeries each have an extensive network of delivery routes that make daily deliveries. Therefore, fresh commercial bread is generally considered a local or regional market.

4.121 ██████ also informed me that Canada Bread and Weston Bakeries are the two largest suppliers of fresh commercial bread in each local market in Canada and that while wholesale prices did vary by region (*i.e.*, Ontario, Québec, Western Canada and the Atlantic Provinces), wholesale price increases were issued on a national basis.

4.122 ██████ stated that, with a few small exceptions, fresh commercial bread was not imported into Canada. ██████ believes that the logistical challenges and costs associated with distributing bread are prohibitive.

4.123 Based upon the reasons outlined in paragraphs 4.120 to 4.122, above, I have reason to believe, and do believe, that the relevant geographic market is national and subdivided into four distinct regions specifically, Ontario, Québec, Western Canada and the Atlantic Provinces.

### *Market Share*

4.124 The fresh commercial bread market in Canada is a duopoly between Canada Bread and Weston Bakeries. █████ informed me that the Suppliers controlled 75-80% of the fresh commercial bread market in Canada with the balance spread across a number of independents.

4.125 According to AC Nielsen Market Track data, throughout the allegedly cartelized period, Canada Bread and Weston Bakeries had a combined market share ranging from a low of 59.9% in fourth quarter (Q4) of 2001 to 83.8% in Q2 of 2010.

4.126 The retail grocery market in Canada is highly concentrated. According to AC Nielsen data, in 2016, LCL (excluding Shoppers Drug Mart) had a 33.5% market share of the grocery market in Canada, Sobeys (including Safeway) held an 18.9% market share, Metro had a 15.5% market share, Walmart held an 8.8% share of the grocery market and Giant Tiger had a 1.4% market share. Overwaitea held a 2.2% market share.

#### *Barriers to Entry*

4.127 A barrier to entry is any obstacle that impedes or prevents a firm from entering a market and thereby limits the amount of competition faced by existing firms. Barriers to entry can be structural, behavioural or regulatory.

4.128 Fresh commercial bread requires local bakeries supplying a local market with fresh product. The product is delivered to distribution centres or delivered using a "direct store delivery" model that requires the servicing of many local stores. A new entrant would need to establish a commercial bakery with the associated land and equipment costs and a delivery and servicing network.

4.129 █████ described a complex system of direct store delivery involving hundreds of drivers servicing customers. █████ believed that it would be possible to establish a new bakery in about 12 months; however, that would not include obtaining customers or setting-up a distribution network.

- 4.130 As noted at paragraph 4.122 above, ██████ believes that the logistical challenges and costs associated with distributing bread constitute a barrier to entry for new players in the Canadian fresh commercial bread market.
- 4.131 ██████ did believe in the threat posed by a new entrant, particularly in relation to the private label business.
- 4.132 Based upon the information outlined in paragraphs 4.128 to 4.130, above, I have reasonable grounds to believe, and do believe, that barriers to entry in the fresh commercial bread industry in Canada are high.
- 4.133 Based on their combined market shares and high barriers to entry, I have reasonable grounds to believe, and do believe, that Canada Bread and Weston Bakeries jointly have market power in the sale or supply of fresh commercial bread in Canada.

#### *Behaviour*

- 4.134 According to *PANS*, particularly injurious behaviour may also trigger liability even if market power is not so considerable. An agreement that lessens competition in respect of prices should be taken to be particularly injurious as "prices" is one of the "impermissible" fields found in the former section 45(4) of the Act.
- 4.135 The object of the alleged conspiracy was an increase in both wholesale and retail prices of fresh commercial bread.
- 4.136 ██████ informed me that the wholesale list price was the starting point for any negotiation with a customer and a series of deductions were made off of that wholesale list price. Further, all customers within a particular region (e.g., Ontario) started with the same wholesale price.
- 4.137 ██████ informed me that when negotiating the price increase, "the suggested retail price would go up by 10 cents, and then wholesale price...would go up by 7 cents. And then, each retailer would do their own deals for O&A [Over and Above] and discounts against that 7 cent increase." ██████ informed me that "Over and

Above" monies are either provided by Weston Bakeries to a retailer for the retailer's benefit only, or "...typically, we [Weston Bakeries] would try and ensure that money got used for promotional activity for featuring and different promotions."

4.138 ██████████ confirmed that when Weston Bakeries started with a 7 cent wholesale price increase, even for Weston Bakeries' biggest customer "...that seven may have become four [cents] at some point in time" as a result of the negotiations of the type described in paragraphs 4.136 and 4.137, above.

4.139 ██████████ stated that although some of the price increase was "dealt back" (a portion of the increase was returned to the retailer in the form of extra promotional funding, for example) to the retailers, there was always a net increase in wholesale prices.

4.140 ██████████ also confirmed that price increases always resulted in net wholesale price increases.

4.141 According to ██████████, a price increase would fail unless it was supported by both Suppliers and all of the major Retailers.

4.142 ██████████ informed me that it was not possible for a single Supplier to take a price increase alone and for a price increase to be successful it required compliance right through the chain from Supplier to Retailer.

4.143 ██████████ indicated that in the late 1990s Weston Bakeries had attempted to take a price increase on several occasions. The price increases failed on each occasion.

4.144 Based on the foregoing, I have reason to believe, and do believe, that the alleged conspiracy was a deliberate attempt by management of Canada Bread and Weston Bakeries, along with the Retailers, to suppress competition at both the wholesale and retail level and thereby increase the wholesale and retail prices of fresh commercial bread in Canada.

**(E) Reasonable Grounds to Believe in the Necessity of Searching Computer Systems**

4.145 Based on my experience as a Competition Law Officer, large volumes of a company's records are stored electronically; and, after consultation with Clifford Smith, an Electronic Evidence Officer, I believe that some of the records to be searched for, described above in this Information, will be found in the form of data.

4.146 Forensic practices and procedures are used when conducting searches for data. The Bureau has Electronic Evidence Officers trained to conduct searches of computer systems, data storage devices and media pursuant to sections 15 and 16 of the Act.

4.147 On 13 October 2017 Clifford Smith, an Electronic Evidence Officer trained to examine and seize electronic evidence, informed me that:

- (a) Data are stored in a variety of different formats, some of which are not readily accessible without the specific software and/or hardware on which they were created;
- (b) Data may be recovered months or even years after it has been created, deleted, copied to a data storage device or media or viewed via the Internet;
- (c) Data storage devices may contain large volumes of data and are used in office environments as removable storage for data such as digital cameras, USB (universal serial bus) devices, (these could be disguised as, for example, watches or pens), mobile phones, mobile computers, flash drives, smart cards, etc...;
- (d) Many operating systems and computer programs create temporary files containing records such as a history of websites visited, files printed or fax transmissions, in order to facilitate efficient operation of these operating systems and computer programs. This may result in the creation of data without user knowledge or intervention;
- (e) Traces of transient, erased or deleted data persist on computer systems, data storage devices or some media until the space that was allocated to them is overwritten with new data; and,

- (f) The use of hardware security devices, passwords, log-on codes and encryption keys is commonplace and can substantially impede or, in some cases, prevent the search of data or the copying of records.

4.148 In this case, authorization is being sought to use or cause to be used any computer system on the premises to search any data contained in or available to the computer system; to reproduce the record or cause it to be reproduced from the data in the form of a printout or other intelligible output; and, to seize the printout or other output for examination or copying.

4.149 Clifford Smith has conducted searches of computer systems, data storage devices and media; and, in order to assist with accessing, searching, examining, copying and seizing records, authorization is therefore being sought to:

- (a) use forensic practices and procedures for acquiring records, while attempting to minimize the impact on business functions;
- (b) use or cause to be used, and/or seize for examination or copying, any computer system, data storage device, media, computer programs or associated documentation, including operating instructions, manuals and service records present on the premises;
- (c) use or cause to be used, any computer system, data storage device, media or computer program brought onto the premises by the persons authorized to execute the search warrants;
- (d) require any person who is in possession or control of the premises including, where applicable, a computer system administrator or other custodian of information of a computer system on the premises, to permit any person named in the warrant to use or cause to be used any computer system or part of it on the premises by making accessible all data contained in any computer system, computer program, data storage device or media for the purposes of searching or seizing such data;

- (e) seize or produce an electronic copy of records which they are unable to acquire the substance or meaning at the premises, for further off-site examination; and,
- (f) employ, retain, direct or engage other persons to assist in the search of the named premises including the services of computer consultants or diagnosticians, which persons would, in the presence of persons authorized in the search warrant, attend at the premises and perform such tasks as may assist the persons authorized in the search warrant to carry out their functions authorized by the search warrant.

4.150 Clifford Smith has informed me that the following practices and procedures may be used as circumstances dictate:

- (a) search any data contained in or available to the computer system, data storage device or medium and print or cause to be printed a copy of the records;
- (b) search any data contained in or available to the computer system, data storage device or medium and produce an electronic copy of the records on-site; and/or,
- (c) seize the records such as the computer system, data storage device or medium for examination or copying.

4.151 Some of these forensic practices and procedures, specifically the steps described above in subparagraphs 4.150(b) and (c) may result in the seizure of records that contain data that are not described in Part 6 of this Information. Electronic Evidence Officers and anyone under their direction will take steps to ensure that such data, with the exception of data that falls within the provisions of section 489 of the *Criminal Code*, will not be accessible to anyone else. The following procedures will be followed in order to identify, search and reproduce records described in Part 6 of this Information, while minimizing access to data that contain records that are not described in Part 6 of this Information:



- (a) Where a copy is produced as provided for in subparagraph 4.150(b), above:
- i) two copies of the seized copy will be made;
  - ii) the seized copy and one of the copies mentioned in subparagraph 4.151(a)(i) will be sealed to protect the integrity of the records;
  - iii) the remaining copy from subparagraph 4.151(a)(i) will be examined by Electronic Evidence Officers and anyone under their direction to identify records described in Part 6 of this Information;
  - iv) access to the copy mentioned in subparagraph 4.151(a)(iii) will thereafter remain under the control of Electronic Evidence Officers;
  - v) in order to minimize the examination of data contained in records that are not described in Part 6 of this Information, the persons examining the copy mentioned in subparagraph 4.151(a)(iii) will use electronic discovery practices and procedures to identify records described in Part 6 of this Information; and,
  - vi) Electronic Evidence Officers and anyone under their direction will keep confidential all data found within the copy mentioned in subparagraph 4.151(a)(iii) containing records that are not described in Part 6 of this Information, with the exception of things that fall within the provisions of section 489 of the *Criminal Code*.
- (b) A similar process will be followed where a person authorized to execute the warrant, other than an electronic evidence officer, considers it necessary to seize records such as a computer system, data storage device or medium from the premises (as described in subparagraph 4.150(c), above). In such a case:
- i) the records such as: computer system, data storage device or medium will be transferred to an Electronic Evidence Officer for examination or copying; and,

ii) further handling will be as described above in subparagraph 4.151(a).

#### **PREMISES TO BE SEARCHED – LOCAUX VISÉS PAR LA PERQUISITION**

5.1 I have reasonable grounds to believe, and do believe, that the records referred to in Part 6, below, are located at the following premises, including all storage and record keeping areas located in and about the premises that form part of the premises identified below:

**(a) Wal-Mart Canada Corporation**  
6600 Kitimat Road  
Mississauga, Ontario  
L5N 1L9

On 31 October 2017, Russell Jutlah (a Senior Competition Law Officer in the Cartels and Deceptive Marketing Practices Branch of the Bureau), while executing the search warrant issued by Phillips J. on 26 October 2017, at 1940 Argentia Road in Mississauga, Ontario, informed me that Caroline Mostyn (Walmart's Assistant General Counsel), advised him that several of Walmart's senior executives work at offices located at 6600 Kitimat Road (address noted above). I have considered the accuracy of Mr. Jutlah's information and believe it to be true as Mr. Jutlah is duty-bound to be truthful and I have reasonable grounds to believe his information is reliable.

**RECORDS OR OTHER THINGS TO BE SEARCHED FOR – DOCUMENTS ET AUTRES  
CHOSSES QUI FONT L'OBJET DE LA PERQUISITION**

6. The Affiant says that he has reasonable grounds to believe and does believe that the following records or other things exist at the premises described in Part 5 and will afford evidence with respect to the offences described in Part 3 above, or will assist in retrieving, copying, reading, deciphering, or acquitting the substance or meaning of any data contained therein.

**Le dénonciateur affirme de plus qu'il a des motifs raisonnables de croire et croit que les documents et autres choses suivants se trouvent dans les locaux décrits au Partie 5 et qu'ils fourniront la preuve de la commission des infractions décrits au Partie 3, ou contribueront à l'extraction, la copie, la lecture, le décodage ou la compréhension de toute information ou donnée contenue dans ces documents :**

6.1 Based upon my experience in dealing with business records as a Competition Law Officer and based on the information disclosed hereafter, I believe that the records or other things to be searched for are the sorts of records that would be located at the premises mentioned in Part 5 of this Information, above. I have reasonable grounds to believe, and do believe, that the following records or other things, whenever created, are linked directly or indirectly to the commercial activities of the Suppliers or the Retailers, their employees, representatives or agents and will afford evidence in respect of the offences described in paragraphs 3.1 to 3.3 of this Information, above.

*Corporate Records*

(a) all records or other things relating to the corporate structure of parties to the alleged conspiracy and any other records relating to their ownership and management, including the roles, duties, tasks, remuneration and responsibilities of the directors and administrators, employees or agents, both past and present. These records will afford evidence of the corporate entities, the identity of, and the role exerted by, their officers and managers relating to the marketing, sales and

operations of the Suppliers or Retailers as it relates to pricing for fresh commercial bread.

*Communications between Suppliers and Retailers*

- (b) all records or other things relating to meetings, communications, agreements or arrangements, direct or indirect, between a Supplier and a Retailer with respect to pricing for the sale or supply of fresh commercial bread. These records will afford evidence of the communications regarding pricing and how retail and promotional pricing were determined.

*Pricing - Suppliers*

- (c) all records or other things relating to the preparation, formulation, adoption, justification, revision, adjustment, rescission, continuation, implementation, observance, application or determination of prices, including wholesale, retail and promotional, for the sale or supply of fresh commercial bread by the Suppliers. These records will afford evidence of the analysis and factors that were considered by the Suppliers when making a determination with respect to a price increase or the implementation of promotional price points;

*Pricing - Retailers*

- (d) all records or other things relating to the preparation, formulation, adoption, justification, revision, adjustment, rescission, continuation, implementation, observance, application or determination of prices, both retail and promotional, for the sale or supply of fresh commercial bread, by the Retailers. These records will afford evidence of the analysis and factors that were considered by the Retailers when making a determination with respect to a price increase or the implementation of promotional price points;

*Price Increase Announcements and Related Documentation*

- (e) all records or other things relating to the preparation and/or announcement of price increases for fresh commercial bread by the Suppliers to any customer. These

records will afford evidence of the analysis and factors that were considered by the Suppliers or Retailers when making a determination with respect to a price increase;

*Policing the Price Increase*

- (f) all records or other things related to complaints, concerns, questions or commentary from a Supplier to a Retailer; or, from a Retailer to a Supplier with respect to pricing offered by their retail competition in the sale or supply of fresh commercial bread. These records will afford evidence that the Retailers believed they, and their retail competition, were operating pursuant to an agreement or arrangement whereby neither they nor their retail competition were to breach certain pricing thresholds;

*Undueness*

- (g) studies, surveys, evaluations, reports, data, statistics or other sources of information concerning barriers to entry, substitutes, sales, revenues, expenses, geographic markets, product markets or customer markets, market shares and profits, including historical, actual and forecasts of the Suppliers or Retailers. These records will afford evidence of the structural characteristics of the fresh commercial bread market;

*Records available to any computer system*

- (h) all records or other things described in subparagraphs 6.1(a) through (g), above, contained in, or available to, any computer system on the premises to be searched.

**Other things to be searched for**

- 6.2 up to twenty-five (25) original records or other things that contain examples of the handwriting for each owner, director, administrator, manager, district supervisor, agent, representative or employee of any of the Suppliers or Retailers responsible for fresh commercial bread. This will provide the Bureau with a sufficiently large sample with which to match handwriting to a particular individual;

- 6.3 any records sent or received by means of facsimile (fax) transmission including records of fax transmissions sent and received that could be used for the purpose of identifying the source or recipient of communications between or among the Suppliers and/or Retailers;
- 6.4 computer passwords, computer programs, computer services, computers systems, data storage devices, and associated documentation including operating instructions, manuals and service records that may assist in retrieving, copying, reading, printing, deciphering, or acquiring the substance or meaning of any data seized, together with all passwords, log-on codes, encryption keys or other security devices relating to these things.

#### **AUTHORIZED PERSONS**

7. **The Affiant therefore asks that search warrants be issued authorizing the Commissioner and the following named persons to enter and search the premises described in Part 5 and seize the records or other things described in Part 6 in accordance with the search warrants herein requested:**

**Le dénonciateur demande donc que des mandats soient décernés pour autoriser le commissaire et les personnes ci-après nommés à pénétrer dans les locaux décrits en Partie 5, à y perquisitionner en vue d'obtenir des documents ou autres choses décrits en Partie 6 et à en prendre copie ou à les emporter pour en faire l'examen ou en prendre des copies conformément au mandat de perquisition demandé dans la présente dénonciation :**

7.1 Authorized representatives of the Commissioner:

Simon Bessette, Chris Cook, Valery Parkinson, Michael Pemberton, Mark Aylward, Rick Harrison, Chrystal Morin, Lina Nikolova, Russell Jutlah, Michael Selvadurai, Nadejda Roy, Craig-Paul Bawden, Tom Steen, Dana Taylor, Jillian Bureau, Jessica Novini, Michael Knight, Jean-Sébastien Rivard, Jean-François Arseneault, Frédérick LaBonté, Danielle Dubois, Eric Buist, François Rioux-Beaupré, Josiane Charbonneau, Colette Morin-Wade, Mario Thibault, Daniel Ikonomov, Kathleen Phillipowsky, Dana Phillips, Halldor Palsson, Lynne Charpentier, Elizabeth Eves, Lise Landry-Morson,

Kiran Khan, Dalia Boulos, Tammy Polomeno, Kelan Ton, Raymond Snow, Stéphane Thibaudeau, Alwyn Martins, Lalita Jeethan, Isabelle Sauvé, Dawn-Marie Jamieson, Andrea McAuley, Kevin McCollum, Janna Hamilton, Melanie Crossman, Daniel Campeau, Robert Guilbeault, Steven Boudreau, Clotilde Caupin, Patricia Rousseau, Yannick Pouret, Sylvie Grégoire, Manon Rivet, Antonio Perluzzo, Pearl Desbiens, Samuel Blais-Bergeron, Michelle Poirier, Stephanie Grassi, Collin Moran, Danielle McKenzie, Yves Chartrand, Andrew Smyth, Gordon Fraser, David Jones, Kara Meek, Adam Crowley, Katherine Raby, Celia Cheng, Joshua Vandenharn, Natasha Gulamhussein, Nicola Pfeifer and any other authorized representative of the Commissioner.

- 7.2 Authorized representatives of the Commissioner trained in electronic search procedures (referred to as "Electronic Evidence Officers"): Clifford Smith, Jeff Chamberlain, Matthew Kyrytow, Eric Daoust, Eric D'Amours, Duncan Monkhouse, Daniel Robitaille, Nicholas Saumure and, in order to provide assistance, any person who, under the supervision of the aforementioned Electronic Evidence Officers, can facilitate the electronic search of computer systems, data storage devices and media.

#### **DURATION OF THE WARRANT – DURÉE DU MANDAT**

**8. The Affiant requests that:**

**Le dénonciateur demande que:**

- 8.1 The search warrants be valid from the 2<sup>nd</sup> day of November 2017, up to and including the 10<sup>th</sup> day of November 2017 (nine days, inclusive), or, if issued after the 2<sup>nd</sup> day of November 2017, for such an identical period of time, commencing from the date of the issuance of the within sought search warrants. I have reasonable grounds to believe, and do believe, that the execution of the search warrants taking place over a maximum of ten (9) days is necessary because:

- (a) This will allow for minimal disruption of the parties' business activities. In my experience as a Competition Law Officer, Bureau searches typically do not result in the seizure of computer systems, data storage devices or media; rather, Bureau Electronic Evidence Officers examine and copy computer systems, data

storage devices or media, leaving the originals on-site so that the parties can continue to use them for their business operations;

- (b) The time period of the alleged offences dates from in or around November 2001 – Present (exact dates unknown), consequently, based upon my experience as a Competition Law Officer, records of such an age are likely to be in paper format, possibly stored in archives, which will take additional time to search through. In addition, given the extensive period of the alleged offences, I have reasonable grounds to believe that there will be a significant volume of records that must be examined;
- (c) The search sites are occupied by large sophisticated corporations and, in my experience as a Competition Law Officer, companies of this type hold vast quantities of both paper and electronic records; and, I remain unaware of how paper and electronic records are organized and stored on-site;
- (d) On 25 October 2017, Clifford Smith informed me that the time required to complete the processes outlined in paragraphs 4.145 to 4.151 of this Information is difficult to predict. However, Clifford Smith informed me that the vast quantities of electronic records found at large, sophisticated corporations take a significant amount of time to examine or copy. The relevant variables in determining the length of time required include: volume of records, network infrastructure and accessibility (*e.g.*, possible cloud storage, off- or on-site servers, off- or on-site back-up storage, email infrastructure, network work shares, individual network storage, and hardware capabilities) and accessibility to archived records. Further, I have reasonable grounds to believe, and do believe, that there will be significant volumes of electronic records at the premises identified in Part 5 owing to the size and sophistication of the parties; and,
- (e) It will allow for coding of the seized paper records to be done on-site thereby allowing for an accurate inventory of records seized pursuant to the warrants and facilitating an accurate and thorough report to the judge. Specifically, Bureau procedures for seizing records call for each page to be individually coded and serialized by-hand. Given the anticipated large volume of paper records, I



have reasonable grounds to believe that properly creating an inventory of records seized will take a significant amount of time.

- 8.2 The Act (subsection 15(3)) typically authorizes the search and seizure of records or other things only between the hours of 06:00 and 21:00. I ask that, where the discontinuance of the search at or before 21:00 may result in loss of records, data or other things to be seized, the search be allowed to continue after 21:00 in the evening on any day, to the extent necessary to avoid loss of records, data or other things to be seized provided the particular search process commenced prior to 21:00. I also ask that the search may also continue after 21:00 to allow for the completion of a search process involving a computer system or the capture of data, which based on the length of the process, will extend after 21:00 in order to be successfully completed.

#### **SEARCH AND ASSISTANCE – PERQUISITION ET ASSISTANCE**

9. **The Affiant further requests:** **Le dénonciateur demande l'autorisation supplémentaire :**
- 9.1 The persons authorized to execute the search warrants may enter the premises, leave them and return to them from time to time during the period of validity of the search warrants for the purpose of executing them.
- 9.2 The persons authorized to execute the search warrants may be accompanied by peace officers and/or a locksmith for the purposes of ensuring the safety of the authorized representatives of the Commissioner; and, of using such force as necessary or to provide any assistance to facilitate access to the premises, if the premises is locked.
- 9.3 That one or more of the authorized representatives of the Commissioner shall be allowed to videotape the events of the various searches in order to create a visual record of the manner in which the search was conducted, and to photograph or videotape records or other things to be seized. Such visual recordings can assist in the resolution of any allegation respecting the conduct of the search, should such an allegation arise, and can provide a means of capturing records or other relevant

information from the premises that cannot readily be physically seized (e.g., writing on a large white board or layout of space).

- 9.4 That the search warrants authorize the persons mentioned in Part 7 to search anything found on the premises, including personal belongings for which they have reason to believe may contain records or other things to be searched for. Personal belongings include, but are not limited to, briefcases, bags, purses, backpacks, wallets, electronic devices such as: portable computers, mobile phones, removable storage media and other devices containing electronic data.
- 9.5 I request that the persons authorized to execute the search warrants be authorized to temporarily remove from the search premises any pre-selected records or other things identified to be searched for at the end of any day of searching for the purposes of preserving their integrity or to prevent the loss or destruction of the said records or other thing. These records or other things will remain sealed and will be kept in the custody of the authorized persons executing the search warrants during this period of temporary removal. These records or other things will be returned to the premises on the day when the authorized persons next return to the search premises.

## SOLICITOR-CLIENT PRIVILEGE – PRIVILÈGE AVOCAT-CLIENT

10. The following information constitutes the reasonable grounds to believe that a law office, or a part thereof, will be on the premises: Les renseignements suivants contiennent les motifs raisonnables de croire qu'un bureau d'avocat se trouvera ou non, ou en partie, sur les lieux :
- 10.1 I am not seeking records that are subject to a claim of solicitor-client privilege. Prior to the final removal of any seized records from the premises, a reasonable opportunity will be afforded to the occupants of the premises and/or their counsel to claim solicitor-client privilege on any records.
- 10.2 My search for "Wal-Mart" returned eleven (11) results. All of the lawyers and law clerks listed in the results are based at Walmart's office located at 1940 Argentia Road, Mississauga, Ontario L5N 1P9.
- 10.3 I am not seeking authorization to search records or other things contained in law offices on the premises outlined in Part 5 of this Information. Should the need to search a law office arise, I will seek a separate judicial authorization to do so.

### *Treatment of Solicitor-Client Privilege, Generally*

- 10.4 If an authorized representative of the Commissioner has reason to believe that a record located at the premises specified in Part 5 of this Information may be subject to solicitor-client privilege, the record will be sealed whether or not a claim of solicitor-client privilege is made, unless the representative of the client determines at that time, after examining the record in question, that no privilege applies or waives any privilege over the record; or, unless the authorized representative of the Commissioner desists from examining or copying the record. In making this determination, the authorized representative of the Commissioner makes a preliminary assessment only. He or she neither examines the record extensively nor decides whether the privilege applies.
- 10.5 Should a claim of privilege be made on any of the records seized by authorized representatives of the Commissioner, the records, subject to the claim of privilege, will be sealed and treated in the manner outlined in paragraph 10.6, below.

- 10.6 The sealed records will be placed in the custody of one of the following parties, as authorized by subsection 19(3) of the *Competition Act*:
- (a) the registrar, prothonotary or other like officer of the Superior Court of Ontario or of the Federal Court;
  - (b) a sheriff of the district or county in which the record...was found; or,
  - (c) some person agreed on between the Commissioner's representative and the person who makes the claim of privilege.

#### CONCLUSION

11. The Affiant requests that search warrants be granted to search the premises, described in Part 5, for the records or other things described in Part 6, and to copy them or seize them for examination and copying.

Le dénonciateur demande que des mandats soient décernés afin de perquisitionner les lieux mentionnés en Partie 5 en vue d'obtenir les documents ou autres choses décrits en Partie 6, et d'en prendre copie, ou de les emporter pour en faire l'examen ou en prendre des copies.

- 11.1 As revealed in this Information, I have reasonable grounds to believe and do believe that:
- (a) Offences have been committed contrary to paragraphs 45(1)(b) and (c) of the Act as it existed between 2001-2010 and contrary to paragraph 45(1)(a) as the Act currently exists;
  - (b) The records or other things to be searched for are at the premises to be searched and will afford evidence with respect to the commission of the offences; and,
  - (c) Searching computer systems will be necessary.

SWORN BEFORE ME at the City of Gatineau,

In the Province of Québec,

This 1<sup>st</sup> day of November 2017.

X [Signature]  
Commissioner of Oaths LSUC# 00093F

X [Signature: Simon N. Bessette]  
Simon Bessette (the Affiant)

