

ONTARIO
SUPERIOR COURT OF JUSTICE
(EAST REGION)

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

AND IN THE MATTER OF an inquiry under subparagraph 10(1)(b)(iii) of the *Competition Act*, concerning alleged activities between Postmedia Network Inc., a wholly owned subsidiary of Postmedia Network Canada Corp. (collectively, "**Postmedia**"), and Metroland Media Group Ltd. ("**Metroland**") and Free Daily News Groups Inc., affiliates of Torstar Corporation (collectively, "**Torstar**"), and other persons known and unknown, contrary to paragraphs 45(1)(b) and (c); and under subparagraph 10(1)(b)(ii) of the Act relating to a transaction between Postmedia and Torstar, pursuant to section 92 of the *Competition Act*;

AND IN THE MATTER OF an *ex parte* application by an authorized representative of 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*.

INFORMATION OF PIERRE-YVES GUAY

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*.

Pièce justificative no A mentionnée dans l'affidavit ou
la déclaration officielle de Pierre-Yves Guay
qui a prêté serment ou fait une déclaration officielle,
ce 13 jour de mars 20 18

(s) [Signature]
Commissaire à l'assermentation no. 67,847

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1. INTRODUCTION

This is the Information of Pierre-Yves Guay (the "Affiant") of the municipality of Cantley, in the Province of Quebec, 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 other things pursuant to sections 15 and 16 of the *Competition Act* (the "Act").

La présente constitue la dénonciation de Pierre-Yves Guay (le « dénonciateur ») de la municipalité de Cantley dans la province de Québec, 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, 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, PIERRE-YVES GUAY, MAKE OATH AND SAY AS FOLLOWS:

- 1.1 I am Acting Associate Deputy Commissioner of Competition in the Cartels Directorate of the Cartels and Deceptive Marketing Practices Branch (the "Cartels Directorate") 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 December 1999.
- 1.2 As an Acting Associate Deputy Commissioner of Competition and previously as an Assistant Deputy Commissioner and a Senior Competition Law Officer, I have participated in and have been responsible for examinations and inquiries including: assessing complaints, analyzing evidence, conducting interviews and recommending the initiation of court proceedings. I have also executed numerous search warrants, including in the role of search leader.

- 1.3 I hold an LL.L degree from the University of Ottawa (1996) and a Master of European Affairs/Law degree (LL. M) from the University of Lund in Sweden (1998). I was called to the Quebec Bar in 1999.
- 1.4 I have extensive experience investigating domestic and international conspiracies under the Act. On the international front, I have been the lead investigator and case manager on files involving major companies in various industries ranging from pharmaceuticals to textile products. On the domestic front, I have been the lead investigator and case manager on a retail gasoline cartel case involving several local Quebec markets, a case that included the extensive use of wiretaps and the execution of search warrants at more than 80 premises, the largest search undertaken by the Bureau to date. I have participated in more than 20 searches throughout my career at the Bureau.
- 1.5 On November 27, 2017, Postmedia and Torstar publicly announced a transaction in which Postmedia transferred ownership of seventeen (17) various newspapers, including free and paid community newspapers, free daily commuter newspapers, paid daily newspapers and each of their respective digital platforms to Torstar in exchange for twenty-four (24) various newspapers, including free and paid community newspapers, free daily commuter newspapers, paid daily newspapers and each of their respective digital platforms, with the exception of the *Metro Ottawa* and *Metro Winnipeg*, for which only print publications were transferred (the "**Transaction**"). The newspapers and their respective digital platforms that are subject to the Transaction are collectively referred to as the "**Acquired Properties**", listed in Exhibit A.
- 1.6 On the same day, Postmedia announced that except for the *Exeter Times-Advocate* (with the *Exeter Weekender*), it will close all of its Acquired Properties; Torstar announced that it will continue to operate the *St. Catharines Standard*, the *Niagara Falls Review*, the *Peterborough Examiner*, and the *Welland Tribune* only. Based on my review of the Transaction documents, corporate news releases and the respective

websites of the Acquired Properties, I believe that all of the planned closures have been undertaken.

- 1.7 As part of the Transaction, Postmedia and Torstar executed an Asset Purchase Agreement (the "**Asset Purchase Agreement**"), a Transitional Services Agreement (the "**Transitional Services Agreement**") and a Confidentiality and Non-Competition Agreement (the "**Non-Compete Agreement**"), all dated November 27, 2017. The Asset Purchase Agreement and the Transitional Services Agreement set out, among other things, the purchase and sale of the Acquired Properties, what assets are excluded, which employees were to be terminated on the date of closing of the Transaction on November 27, 2017 (the "**Closing Date**") and how these terminations were to be handled, as well as provisions relating to various transitional services for the Acquired Properties that remained operational past the Closing Date. Pursuant to the Non-Compete Agreement, Postmedia and Torstar agreed, among other things, not to operate directly or indirectly English language printed and digital news publications targeted at particular audiences, and/or offer packaging and/or distribution of insert/flyers in specific geographic areas identified in maps contained in schedules attached thereto (included in Exhibit B attached hereto).
- 1.8 Based on my review of the evidence collected to date, described in detail in Part 3 of this Information, it is my belief that both Postmedia and Torstar produce or supply print advertising, digital advertising and related services (collectively, "**Advertising Services**"), and/or insert/flyer packaging and/or distribution and related services (collectively, "**Flyer Distribution Services**"), available to businesses and individuals through various newspapers, including free and paid community newspapers, free daily commuter newspapers, paid daily newspapers (collectively, "**Print Newspapers**") and each of their respective digital platforms. Postmedia and Torstar offer these services in the same geographic areas, as illustrated in Exhibit B attached hereto. Therefore, I have reason to believe, and do believe, that Postmedia and Torstar are competitors.

- 1.9 I believe by agreeing on which specific Print Newspapers were to be transferred as part of the Asset Purchase Agreement; by agreeing and arranging to terminate most of the employees of the Acquired Properties (thereby effectively closing most of the Acquired Properties) as set out in the Asset Purchase Agreement and the Transitional Services Agreement; and by concurrently entering into an agreement not to operate competing businesses that offer Advertising Services and/or Flyer Distribution Services in specific geographic areas for a set period of time as set out in the Non-Compete Agreement, Postmedia and Torstar, and other persons known and unknown, entered into a conspiracy, agreement or arrangement to (i) allocate sales, territories, customers or markets for the production or supply of Advertising Services and/or Flyer Distribution Services in specific geographic areas, contrary to paragraph 45(1)(b), and/or (ii) fix, maintain, control, prevent, lessen or eliminate the production or supply of Advertising Services and/or Flyer Distribution Services in specific geographic areas, contrary to paragraph 45(1)(c) of the Act.
- 1.10 As described in paragraphs 1.36 and 1.37 below, on November 27, 2017, the Mergers Directorate, Mergers and Monopolistic Practices Branch (the "**Mergers Directorate**") commenced a preliminary review of the Transaction under the merger provisions of the Act.
- 1.11 On November 29, 2017, the Cartels Directorate commenced a separate criminal investigation of allegations that Postmedia and Torstar engaged in criminal conduct contrary to paragraphs 45(1)(b) and/or (c) of the Act. In my current position as Acting Associate Deputy Commissioner of Competition, Cartels Directorate, I am responsible for this criminal investigation.
- 1.12 On March 6, 2018, the Commissioner initiated an inquiry pursuant to subparagraphs 10(1)(b)(ii) and (iii) of the Act to determine the facts relating to the Transaction pursuant to section 92 of the Act, and to investigate the alleged offences, contrary to section 45 of the Act (the "**Inquiry**").

- 1.13 The records or other things described in Part 5 of this Information are relevant to determining whether the alleged offences have been committed contrary to section 45 of the Act. These records and other things may also be relevant to the Mergers Directorate for the purposes of conducting its review of the Transaction under Part VIII of the Act. I understand that the Mergers Directorate intends to make an *ex parte* application for the production orders pursuant to section 11 of the Act ("**Section 11 Orders**") requiring Postmedia and Torstar to produce certain records and information relating to the Transaction that are broader in scope than the records or other things to be searched for pursuant to the warrants sought herein.
- 1.14 To the extent there may be any duplication between the records or other things seized pursuant to the warrants sought herein and the records and information responsive to the Section 11 Orders, for the purpose of complying with such productions orders, Postmedia and Torstar will be provided with the option to either produce the records and information responsive to the Section 11 Orders directly to the Mergers Directorate, or to identify to the Mergers Directorate which responsive records and information are already in the Bureau's possession. Notwithstanding the concurrent criminal investigation by the Cartels Directorate and the review of the Transaction by the Mergers Directorate, the Cartels Directorate will not have access, will not be granted access to, nor will seek to have access to any records and information produced by Postmedia and Torstar pursuant to the Section 11 Orders.
- 1.15 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.
- 1.16 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) DEFINITIONS

In this Information, the terms:

"Acquired Properties" means the paid daily, free and paid community, and free daily commuter newspapers listed in Exhibit A;

"Act" means the *Competition Act*, R.S.C., 1985, c. C-34, as amended;

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

"and" and **"or"** have both conjunctive and disjunctive meanings;

"Asset Purchase Agreement" means the agreement of purchase and sale and related schedules to transfer ownership of the Acquired Properties between Postmedia and Torstar dated November 27, 2017;

"Advertising Services" means the production or supply of print advertising, digital advertising and related services available to businesses and individuals through Print Newspapers and their respective digital platforms;

"Bureau" means the Competition Bureau;

"Closing Date" means November 27, 2017, as per the Asset Purchase Agreement;

"Commissioner" means the Commissioner of Competition;

"communication" means any discussion, conversation, inquiry, disclosure or exchange of information, however made, whether in person, by telephone, in writing, electronically, by facsimile or by any other means;

"competitor" has the meaning as set out in subsection 45(8) of the Act;

"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*;

"coverage" means the percentage of individuals in a specific target group/geographic area reached by a publication/combination of publications, as per the terminology used by the Flyer Distribution Standards Association;

"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;

"extended market coverage" or **"EMC"** means distribution of inserts/flyers or other materials to non-subscriber households;

"FDSA" means the Flyer Distribution Standards Association;

"Flyer Distribution Services" refers to insert/flyer packaging and/or distribution and related services;

"flyers" mean unaddressed, targeted advertising vehicles, as per the terminology used by the FDSA;

"free community newspaper" means a free publication that is published one (1) to three (3) times per week, generally delivered to all deliverable households in its coverage area;

"free daily commuter newspaper" means a free publication that is published five (5) to seven (7) days per week, traditionally in tabloid format, generally available to commuters in various locations in its coverage area;

"Free Daily News" means Free Daily News Group Inc., an affiliate of Torstar;

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

"Metroland" means Metroland Media Group Ltd., an affiliate of Torstar;

"Non-Compete Agreement" means the Confidentiality and Non-Competition Agreement and related schedules between Postmedia and Torstar (1) to maintain the confidentiality of trade secrets, know-how and other non-public, confidential or proprietary information, and (2) to establish non-competition terms and conditions in specific geographic areas, dated November 27, 2017;

"paid community newspaper" means a paid publication that is published one (1) to three (3) times per week and distributed to subscribers or through single copy sales in the coverage area of that publication;

"paid daily newspaper" means a paid publication that is published five (5) to seven (7) days per week, traditionally in broadsheet format; it is distributed to subscribers or through single copy sales, and some may have extended market coverage available to non-subscribers;

"person" means any individual, partnership, limited partnership, firm, corporation, association, trust, unincorporated organization, or other entity;

"Print Newspapers" refers to print publications that include free and paid community newspapers, free daily commuter newspapers, and paid daily newspapers, but excludes nationally distributed newspapers;

"Postmedia" means Postmedia Network Canada Corp. and Postmedia Network Inc., their domestic and foreign parents, predecessors, successors, affiliates, divisions and other related entities in Canada;

"reach" means a measurement of the cumulative unduplicated target audience potentially exposed one or more times to a particular publication in a given time frame, as per the terminology used by the FDSA;

"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" includes the calendar year 2017 and January 2018, the exact dates being unknown;

"Senior Officer" means the chairperson, president, chief executive officer, vice-president, secretary, treasurer, chief financial officer, chief operating officer, general manager, managing director, or any individual who performs their functions;

"Star Media" refers to an operating division of Torstar;

"target audience/market" means a population segment toward whom advertising is specifically directed and measured against; may be defined by demographics, lifestyle, media usage and product usage, as per the terminology used by the FDSA;

"Termination Letter" refers to a termination letter from Postmedia to a former Postmedia employee, dated November 27, 2017;

"Torstar" means Torstar Corporation, its domestic and foreign parents, predecessors, successors, affiliates, divisions and other related entities in Canada;

"transition period" means a period of up to eight (8) weeks following the Closing Date, which could be extended by either Postmedia or Torstar for up to an additional eight (8) weeks, as per the Transaction documents; and,

"Transitional Services Agreement" means Exhibit 8.10(c) attached to the Asset Purchase Agreement, dated November 27, 2017, which sets out which services relating to the Acquired Properties are to be provided by Postmedia and Torstar during the transition period.

(C) THE PARTIES UNDER INVESTIGATION

Parties under investigation are set out below:

- 1.17 Postmedia is a Canadian newsmedia company representing more than two hundred (200) brands across multiple print, online, and mobile platforms. Its registered and head office is located at 365 Bloor Street East, 12th Floor, Toronto, Ontario.
- 1.18 As reported in Postmedia's *2017 Annual Report* dated October 19, 2017, Postmedia has one operating segment, the Newsmedia segment, which publishes various Print Newspapers and operates each Print Newspaper's online website, and other digital media and online assets including the *canada.com*, *canoe.com* and other classified advertising websites.
- 1.19 As per Postmedia's *Annual Information Form* dated November 22, 2017, prior to the Transaction, Postmedia owned and operated the *National Post*, one (1) of Canada's

two (2) paid daily nationally distributed newspapers, two (2) free daily commuter newspapers in Toronto and Vancouver, forty-one (41) paid daily newspapers (available in large metropolitan centres and in smaller communities), one hundred sixteen (116) free and paid community newspapers and non-daily shopping guides, and various specialty publications and newspaper-related publications.

1.20 Postmedia also offers three categories of Flyer Distribution Services, which it describes as:

1.20.1 Paid subscriber base – distribution of flyers or other materials to its existing Print Newspaper subscribers;

1.20.2 Extended market coverage – distribution of flyers or other materials to non-subscriber households; and

1.20.3 Total market coverage – distribution of flyers or other materials to both subscriber and non-subscriber households for full coverage to specific areas.

1.21 These distribution options allow broader penetration of Postmedia's markets, allowing advertisers to target specific demographic and geographic segments across all of Postmedia's publications. In addition, Flyer Force, a division of Postmedia, distributes insert packages and flyers to non-subscribers in Calgary, Edmonton, Ottawa and London and provides extended market coverage for their associated Postmedia print publications.

1.22 Postmedia also has an extensive portfolio of digital media and online assets, owns and operates one hundred forty-six (146) destination websites, has developed its mobile network, which includes mobile optimized websites and mobile applications across various tablet and smartphone platforms.

- 1.23 According to the Postmedia's *Management's Discussion and Analysis* released on October 19, 2017, advertising revenue, which has been in decline since 2009, is the largest component of its revenues and is influenced by prevailing economic conditions and the prospects of its advertising customers.
- 1.24 Postmedia divides print advertising into three major categories: local, national, and inserts. Its total print advertising revenue was \$373.5 million for the year ended August 31, 2017, which represented 49.5% of the total revenue for that period. Local print advertising comprised 51.8% of total print advertising revenue, with national advertising and inserts accounting for 21.5% and 25.2%, respectively. As compared to the same period in prior year, Postmedia's total print advertising revenue decreased \$93.1 million, or 19.9%, and declines were experienced across all of the major print advertising categories including decreases from local advertising of 20.8%, national advertising of 29.1%, and insert advertising of 7.1%.
- 1.25 **Torstar** is a broadly based Canadian media and publishing company with a strong presence in Ontario. It is primarily a publisher of various Print Newspapers, including its flagship and namesake, the *Toronto Star*.
- 1.26 As reported in Torstar's *Annual Information Form* dated March 21, 2017, Torstar has three reportable operating divisions: Metroland, Star Media and Digital Ventures. Torstar Corporation's registered and principal head office is located at 1 Yonge Street, Toronto, Ontario.
- 1.27 **Metroland**, an affiliate of Torstar Corporation, publishes *The Hamilton Spectator* and the *Waterloo Region Record* daily newspapers and, prior to the Transaction, it published more than one hundred (100) free and paid community newspapers, operated their respective digital properties and regional online sites, and offered Flyer Distribution Services. Metroland also has a number of specialty publications, magazines, directories and consumer shows.

- 1.28 Star Media publishes the *Toronto Star* daily newspaper, and operates the *Toronto Star Touch* and thestar.com website. Star Media also includes Free Daily News, which publishes the English-language *Metro* newspapers in several of Canada's largest cities.
- 1.29 Torstar's Digital Ventures segment includes a 56% majority stake in VerticalScope, a Toronto-based operator of online communities, which it acquired for \$200 million to bolster Torstar's presence in digital media. The company operates websites and message boards that focus on niche categories, particularly within the automotive industry.
- 1.30 In addition, Torstar owns a 19% stake in Black Press Group Ltd., a privately held company based in Victoria, British Columbia that publishes more than 150 titles in print and online in Canada and the U.S. and has operations in British Columbia, Alberta, Washington, California, Hawaii and Ohio.
- 1.31 According to Torstar's *Management's Discussion and Analysis* released on March 1, 2017, Metroland's print advertising revenue was \$174 million for the year ended December 31, 2016, which represents 43% of the total revenue of \$407.6 million for the Metroland division. Its digital advertising revenue was \$36.4 million for the same time period representing 9% of the total revenue of the Metroland division.
- 1.32 As per Torstar's *2016 Annual Report*, Metroland's revenues were down \$39.5 million or 8.8% in 2016, as compared to 2015, while local advertising revenues, on a combined print and digital basis, which represented the largest portion of Metroland advertising revenues, were down 9.1%. National advertising revenues, on a combined print and digital basis, which represented a less significant portion of Metroland's overall revenue, were down 20% in 2016, as compared to 2015.
- 1.33 As reported in Torstar's *Annual Information Form* dated on March 21, 2017, Metroland also owns five (5) printing plants, each of which is engaged in

commercial printing in addition to supporting internal printing needs. In addition to the distribution of its own publications, Metroland distributes flyers, advertising materials and product samples to various target markets. In 2016, Metroland distributed almost 3.7 billion advertising pieces.

1.34 Postmedia is represented by Calvin Goldman and Richard Annan from Goodmans LLP.

1.35 Torstar is represented by Peter Glossop from Osler, Hoskin & Harcourt LLP, and Guy Pinsonnault from McMillan LLP.

(D) OVERVIEW OF COMMUNICATIONS BETWEEN THE BUREAU AND POSTMEDIA AND TORSTAR

1.36 On November 27, 2017, prior to financial markets opening, counsel for Postmedia and Torstar spoke via telephone with Melissa Fisher, Associate Deputy Commissioner, Mergers Directorate. During that telephone call, Calvin Goldman and Peter Glossop advised Ms. Fisher of the Transaction; that it was not subject to the pre-merger notification provisions of the Act, and that the Transaction would be announced shortly thereafter. Mr. Goldman also offered to schedule a telephone call between the Commissioner and Postmedia CEO Paul Godfrey. Ms. Fisher relayed that information to the Commissioner's office. The public announcement of the Transaction was made approximately half an hour after this telephone call.

1.37 On the same day, the Mergers Directorate commenced a preliminary review of the Transaction. Later that day, Ms. Fisher replied via email to Messrs. Goldman and Glossop advising them that a telephone call with Mr. Godfrey was not required at that time and informed them that the Mergers Directorate had assigned a team to "look into the transactions and that they will be in touch with any follow up requests." Mr. Goldman then replied that they "will stand by for additional information that the team may find helpful."

- 1.38 On November 30, 2017, the Mergers Directorate reached out via email to Messrs. Goldman, Annan and Glossop requesting a copy of the transaction agreement(s), which Mr. Annan emailed to the Mergers Directorate on December 4, 2017.
- 1.39 Postmedia and Torstar subsequently became aware of the Cartels Directorate preliminary criminal investigation because several employees received telephone calls from the Cartels Directorate team, including at least one voicemail message from Nadejda Roy. On December 13, 2017, Mr. Glossop reached out via email to Steve Sansom, counsel with the Competition Bureau Legal Services ("CBLs"), and requested a telephone call. The following day, Mr. Sansom replied to him via email providing my contact information should they want to speak with the Cartels Directorate.
- 1.40 On December 14, 2017, I received an email from Mr. Glossop with a copy to Messrs. Goldman and Annan, in which he requested a telephone call with all of them present. I responded to that email advising Mr. Glossop that it would be highly inappropriate to have a call with all counsel present, and that separate calls with counsel from the different targets would be the appropriate way to handle the matter. I further stated that the Bureau's immunity and leniency programs were available to their clients.
- 1.41 On December 15, 2017, Messrs. Goldman and Annan, and then Mr. Glossop had separate telephone calls with me and other representatives of the Cartels Directorate, seeking information about the nature and scope of any ongoing criminal investigation. During those calls, all counsel expressed a general sense of surprise and disappointment that the Bureau was investigating the Transaction as a possible violation of section 45 of the Act and commented that the Bureau had reviewed similar transactions in the past under the merger provisions of the Act.
- 1.42 Also during those calls, Messrs. Goldman and Annan, and then Mr. Glossop, were informed by me and other representatives of the Cartels Directorate that we do not disclose details of any criminal investigation and advised them that if their

respective clients wished to provide information or evidence to the Bureau, there are formal mechanisms in place through which this could be accomplished. They were further informed that all information or evidence would be "on the record" and that the Cartels Directorate was not prepared to proceed informally. Finally, they were advised that the Cartels Directorate was conducting its investigation independent of the Mergers Directorate.

- 1.43 During the telephone call with Mr. Glossop, referred to in paragraphs 1.41 and 1.42 above, he asserted that the Transaction did not give rise to a substantial lessening or prevention of competition; that the Transaction was overt, and that according to the *Competitor Collaboration Guidelines* (the "**Guidelines**") (attached as Exhibit C for the court's ease of reference), the Transaction should be considered as a merger and reviewed under section 92 rather than under section 45 of the Act.
- 1.44 It should be noted that the Guidelines state that they are not intended to restate the law or to constitute a binding statement of how the Commissioner or the Director of Public Prosecutions will exercise discretion in a particular situation. Further, the Guidelines specifically reserve discretion on the part of the Commissioner to review agreements between competitors as potential criminal offences where such agreements may constitute "naked restraints" on competition (restraints that are not implemented in furtherance of a legitimate collaboration, strategic alliance or joint venture). The Guidelines also provide that "all forms of agreements between competitors, regardless of the degree of formality or enforceability and regardless of whether it has been implemented" can be reviewed under section 45 of the Act. In addition, "the simple fact that an agreement is overt, rather than covert, does not shield it from the application of section 45" of the Act. Further, section 45.1 of the Act expressly envisages the possibility that an agreement and related facts can be considered under, among others, sections 45 and 92 of the Act.
- 1.45 On December 22, 2017, Mr. Annan, counsel for Postmedia, emailed Mr. Sansom requesting a meeting for January 17-18, 2018 with representatives of the Mergers

Directorate to discuss the Transaction. Mr. Annan advised that the meeting would be attended by him, Postmedia CEO Mr. Godfrey, Postmedia President and COO Andrew MacLeod, Mr. Goldman as well as Mr. Glossop, counsel for Torstar. He further stated that representatives of the Cartels Directorate could attend this meeting.

- 1.46 On January 2, 2018, Mr. Annan sent another email to Mr. Sansom enquiring about the Bureau's response and availability regarding the proposed meeting. Ian Clarke, counsel with the CBLs, advised him via email that the Bureau would respond by the end of the week.
- 1.47 On January 8, 2018, Mr. Annan once again emailed Mr. Sansom requesting a response with respect to the proposed meeting. Mr. Sansom then replied via email that his "instructions are to not accept your meeting request at this time."
- 1.48 Later that day, Messrs. Sansom and Annan had a telephone call to discuss why the Mergers Directorate was not prepared to meet with Postmedia and Torstar. Mr. Sansom summarized the discussion in an email to representatives of the Mergers Directorate noting that he told Mr. Annan that Bureau management was trying to address the fact that there was also a criminal investigation, to which Mr. Annan replied that last year in another matter involving concurrent merger and criminal investigations, there were lots of interactions with the Mergers Directorate. Mr. Annan further added that Postmedia and Torstar had information they would like to share with the Bureau, including information about potential efficiencies.
- 1.49 On January 9, 2018, Mr. Glossop, counsel for Torstar, emailed me requesting a telephone call with the Cartels Directorate, which I declined.
- 1.50 On January 10, 2018, Mr. Annan, counsel for Postmedia, emailed Mr. Sansom thanking him for "confirming that the Bureau's review of the transaction under the merger provisions is ongoing [...] in the interim we will be sending you and the

Bureau a short submission which will outline some key points for the Bureau's consideration".

- 1.51 On January 11, 2018, Mr. Glossop, counsel for Torstar, sent an email to me stating that Torstar engaged Mr. Pinsonnault and that Torstar was conducting an internal investigation. He further wrote that it is not necessary for his client to engage in the immunity or leniency process at that time, but that Torstar wished to cooperate with the Bureau's investigation and to provide assistance. Finally, Mr. Glossop indicated to me that in his view, a search and seizure application was not warranted in this case and requested that the Bureau not proceed down this path because Torstar was prepared to cooperate with the Bureau's criminal investigation, and that Torstar would suffer significant reputational damage if search and seizure warrants were executed.
- 1.52 I did not respond to the email from Mr. Glossop, described in paragraph 1.51 above.
- 1.53 On January 15, 2018, Mr. Sansom separately emailed counsel for Postmedia and Torstar that "the Bureau has determined that it is not necessary to maintain a separation between information collected for the Mergers and Cartels investigations in this matter." He further advised them that any information provided to the Mergers Directorate on a voluntary basis could be shared with any other part of the Bureau and that such information may be used for any purpose related to the administration or enforcement of the Act.
- 1.54 On January 17, 2018, Mr. Sansom corresponded via email with counsel for Postmedia and Torstar to confirm that there were no objections to sharing with the Cartels Directorate the Transaction documents that were originally provided to the Mergers Directorate. Such confirmation was provided via email.
- 1.55 On February 15, 2018, the Bureau received a submission from Mr. Annan on behalf of Postmedia addressed to the Commissioner. In summary, the submission

reiterated Postmedia's previous arguments that the Transaction should be reviewed as a merger under section 92 of the Act and not under section 45 of the Act, and that the Guidelines should apply. It was also stated that,

- 1.55.1 Postmedia's rationale for the Transaction was to generate positive cash flows from a group of failing community newspapers by consolidating the Flyer Distribution Services business associated with these papers with Postmedia's pre-existing Flyer Distribution Services business in certain areas;
 - 1.55.2 Postmedia was encountering competition from digital competitors, and most of the Acquired Properties were facing declining revenues from advertising with some of them failing;
 - 1.55.3 Given that print advertising revenues have not gone to other Print Newspaper competitors, but instead have gone to digital media competitors, Postmedia is of the view that print and digital advertising are close economic substitutes and belong in the same relevant product market; and,
 - 1.55.4 Postmedia would realize significant efficiencies through the Transaction that will be greater than and offset any anti-competitive effects in accordance with sections 92 and 96 of the Act.
- 1.56 Along with the submission, described in paragraph 1.55 above, Mr. Annan also requested a meeting between the Commissioner, Bureau senior management and Paul Godfrey, Postmedia CEO.
- 1.57 On February 20, 2018, Mr. Annan was advised by Randall Hofley, counsel with the CBLS, that such meeting would not be scheduled at this time.

1.58 Following further email and telephone communications between February 20 and February 25, 2018, between Messrs. Annan and Goldman and Messrs. Hofley and Clark, in which Messrs. Annan and Goldman pressed that a meeting occur between, at minimum, the case team and senior managers of the Mergers Directorate, such a meeting has been scheduled for March 16, 2018. The meeting is to be on a with prejudice basis, and counsel for Postmedia have been advised that representatives from the Cartels Directorate will not be attending.

(E) RELEVANT SECTIONS OF THE ACT

1.59 On March 6, 2018, the Commissioner commenced the Inquiry pursuant to subparagraphs 10(1)(b)(ii) and (iii) of the Act. For the court's ease of reference, I have included the relevant excerpts below:

10 (1) The Commissioner shall

...

(b) whenever the Commissioner has reason to believe that

...

(ii) grounds exist for the making of an order under Part VII.1 or Part VIII, or

(iii) an offence under Part VI or VII has been or is about to be committed, or

...

cause an inquiry to be made into all such matters as the Commissioner considers necessary to inquire into with the view of determining the facts.

1.60 The aforementioned conduct is being investigated under paragraphs 45(1)(b) and 45(1)(c) of the Act. Paragraph 45(8) sets out the definition for a competitor for the purposes of section 45 of the Act. 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

...

(b) to allocate sales, territories, customers or markets for the production or supply of the product; or

(c) to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.

...

45 (8) The following definitions apply in this section.

***competitor** includes a person who it is reasonable to believe would be likely to compete with respect to a product in the absence of a conspiracy, agreement or arrangement to do anything referred to in paragraphs (1)(a) to (c).*

...

1.61 The Act also sets out the means to seek an *ex parte* application for a 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]

15 (3) A warrant issued under this section shall be executed between six o'clock in the forenoon and nine o'clock in the afternoon, unless the judge issuing it, by the warrant, authorizes execution of it at another time.

15 (4) A warrant issued under this section may be executed anywhere in Canada.

1.62 The Act also sets out the means to seek an *ex parte* application for a warrant for any data contained in or available to any computer system. For the court's ease of reference, I have included the relevant excerpts below:

16 (1) A person who is authorized pursuant to subsection 15(1) to search premises for a record may use or cause to be used any computer system on the premises to search any data contained in or available to the computer system, may reproduce the record or cause it to be reproduced from the data in the form of a printout or other intelligible output and may seize the printout or other output for examination or copying.

(2) Every person who is in possession or control of any premises in respect of which a warrant is issued under subsection 15(1) shall, on presentation of the warrant, permit any person named in the warrant to use or cause to be used any computer system or part thereof on the premises to search any data contained in or available to the computer system for data from which a record that that person is authorized to search for may be produced, to obtain a physical copy thereof and to seize it.

(3) A judge who issued a warrant under subsection 15(1) or a judge of the same court may, on application by the Commissioner or any person who is in possession or control of a computer system or a part thereof on any premises in respect of which the warrant was issued, make an order

(a) specifying the individuals who may operate the computer system and fixing the times when they may do so; and

(b) setting out any other terms and conditions on which the computer system may be operated.

...

- 1.63 The Act also sets out the procedure regarding the handling of the claims to solicitor-client privilege on records or other things copied or seized pursuant to sections 15 or 16 of the Act. For the court's ease of reference, I have included the relevant excerpts below:

...

19 (2) Where, pursuant to section 15 or 16, any person is about to examine, copy or seize or is in the course of examining, copying or seizing any record and a person appearing to be in authority claims that there exists a solicitor-client privilege in respect thereof, the first-mentioned person, unless the person claiming the privilege withdraws the claim or the first-mentioned person desists from examining and copying the record and from seizing it or a copy thereof, shall, without examining or further examining it or making a copy or further copy thereof, place it and any copies of it made by him, and any notes taken in respect of it, in a package, and seal and identify the package and place it in the custody of a person referred to in subsection (3).

(3) A record in respect of which a solicitor-client privilege is claimed under subsection (1) or (2) shall be placed in the custody of

(a) the registrar, prothonotary or other like officer of a superior or county court in the province in which the record was ordered to be produced or in which it was found, or of the Federal Court;

(b) a sheriff of the district or county in which the record was ordered to be produced or in which it was found; or

(c) some person agreed on between the Commissioner or the authorized representative of the Commissioner and the person who makes the claim of privilege.

(4) A judge of a superior or county court in the province in which a record placed in custody under this section was ordered to be produced or in which it was found, or of the Federal Court, sitting in camera, may decide the question of solicitor-client privilege in relation to the record on application made in accordance with the rules of the court by the Commissioner or the owner of the record or the person in whose possession it was found within thirty days after the day on which the record was placed in custody if notice of the application has been given by the applicant to all other persons entitled to make application.

(5) Where no application is made in accordance with subsection (4) within thirty days after the day on which a record is placed in custody under this section, any judge referred to in subsection (4) shall, on ex parte application by or on behalf of the Commissioner, order the record to be delivered to the Commissioner.

(6) A judge referred to in subsection (4) may give any directions that the judge deems necessary to give effect to this section, may order delivery up to the judge out of custody of any record in respect of which he is asked to decide a question of solicitor-client privilege and may inspect any such record.

(7) Any person who is about to examine, copy or seize any record pursuant to section 15 or 16 shall not do so without affording a reasonable opportunity for a claim of solicitor-client privilege to be made under this section.

(8) At any time while a record is in custody under this section, a judge of a superior or county court in the province in which the record is in custody, or of the Federal Court, may, on an ex parte application of a person claiming solicitor-client privilege under this section, authorize that person to examine the record or make a copy of it in the presence of the person who has custody of it or the judge, but any such authorization shall contain provisions to ensure that the record is repackaged and that the package is resealed without alteration or damage.

(F) REASONABLE GROUNDS

1.64 I have reasonable grounds to believe, and do believe, that offences under Part VI of the Act, specifically under section 45, have been committed.

1.65 I have reasonable grounds to believe and do believe, that records or other things to be searched for, as described in Part 5 of this Information, are at the premises to be searched, as described in Part 4 of this Information, and will afford evidence with respect to the alleged offences, set out in Part 2 of this Information.

2. OFFENCES – INFRACTIONS

The Affiant says that he has reasonable grounds to believe and does believe that the following offences under the 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 les personnes ou les entités suivantes, à savoir :

2.1 That Postmedia, Torstar and other persons known and unknown, during the Relevant Time Period, did conspire, agree or arrange with each other and with others known and unknown, (i) to allocate sales, territories, customers or markets for the production or supply of Advertising Services and/or Flyer Distribution Services in specific geographic areas, and did thereby commit an indictable offence

contrary to paragraph 45(1)(b) of the Act, and/or (ii) to fix, maintain, control, prevent, lessen or eliminate the production or supply of Advertising Services and/or Flyer Distribution Services in specific geographic areas, and did thereby commit an indictable offence contrary to paragraph 45(1)(c) of the Act.

3. REASONABLE GROUNDS – MOTIFS RAISONNABLES

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

Les renseignements suivants contiennent les motifs raisonnables qui fondent ma croyance, afin que soient décernés les mandats de perquisition demandés dans cette dénonciation:

(A) INVESTIGATIVE SOURCES

Representatives of the Commissioner

3.1 Where information is stated in this Information to have been received by me or other officers of the Bureau, I truly believe such information in each and every case, because the officers giving or relaying the information were acting in the execution of their duties as officers at the relevant time and as such were under a legal and moral obligation to relay only the truth in relation to the events perceived or transmitted by them, insofar as it was possible for them to do so. I have relied on information provided by my Bureau colleagues. I believe the information provided to me to be reliable and accurate.

3.2 **David Wolinsky** is a Senior Competition Law Officer in the Cartels Directorate and has been employed at the Bureau since November 2008 (and previously between 1981 and 1995). Mr. Wolinsky holds a LLB from the University of Ottawa in Ottawa, Ontario, and is a member in good standing of the Law Society of Upper Canada. Mr. Wolinsky has participated in investigations pursuant to the Act, including, but not limited to, assessing complaints, conducting interviews, analyzing evidence and

recommending the initiation of court proceedings, executing search warrants and other duties related to the enforcement of the Act. Mr. Wolinsky is the lead officer in this matter and is duty-bound to be truthful, and I have reasonable grounds to believe his information is reliable.

- 3.3 **Nadejda Roy** is a Competition Law Officer in the Cartels Directorate and has been employed at the Bureau since July 2007. Ms. Roy has worked in the Cartels Directorate since July 2012. Ms. Roy holds a Bachelor of Social Sciences degree from the University of Ottawa in Ottawa, Ontario, and a Master's degree in Economics from Carleton University in Ottawa, Ontario. Ms. Roy has participated in investigations pursuant to the Act, including, but not limited to, assessing complaints, conducting interviews, analyzing evidence, participated in execution of search warrants, and other duties related to the enforcement of the Act. Ms. Roy is duty-bound to be truthful, and I have reasonable grounds to believe her information is reliable.
- 3.4 **Oleg Shpetrik** is a Competition Law Officer in the Cartels Directorate and has been employed in this role at the Bureau since November 2008. Mr. Shpetrik holds a Bachelor of Business Administration degree in Management and Economics from the University of Toronto in Toronto, Ontario. Mr. Shpetrik has participated in investigations pursuant to the Act. His experience includes assessing complaints, conducting interviews, analyzing evidence, participated in execution of search warrants, and other duties related to the enforcement of the Act. Mr. Shpetrik is duty-bound to be truthful, and I have reasonable grounds to believe that his information is reliable.
- 3.5 **Nicholas Saumure** is an Electronic Evidence Officer with the Electronic Evidence Unit ("EEU") of the Bureau and has been employed at the Bureau since October 2016. Mr. Saumure provided technical guidance as part of this investigation. Mr. Saumure has participated in numerous criminal investigations to various degrees, including analyzing evidence and executing search warrants. Mr. Saumure is duty-

bound to be truthful, and I have reasonable grounds to believe his information is reliable.

- 3.6 **Edward King** is an Information Specialist with the Bureau's Resource Centre. Mr. King conducted searches in databases, described in paragraphs 3.8 through 3.10 below, to confirm ownership and other corporate information of Postmedia, Torstar and Metroland. Mr. King is duty-bound to be truthful, and I have reasonable grounds to believe his information is reliable.

Online Sources

- 3.7 **System for Electronic Document Analysis and Retrieval ("SEDAR")** is an online filing system that facilitates the electronic filing of securities information as required by the Canadian Securities Administrator ("CSA"); allows for the public dissemination of Canadian securities information collected in the securities filing process; and provides electronic communication between electronic filers, agents and the CSA. Information obtained from SEDAR includes Annual Reports, Annual Information Forms, and Management's Discussion and Analyses for both Postmedia and Torstar. I have considered the accuracy of the information filed with SEDAR and I believe the information to be accurate because the information contained therein is created and maintained in the ordinary course of Postmedia and Torstar's respective businesses, and is subject to audit and regulatory oversight.
- 3.8 **Dun & Bradstreet ("D&B")** is a company that provides commercial data, analytics and insights for business. Information obtained from D&B includes corporate description and addresses, corporate structure, executive reports, a list and description of key executives, financial summaries and stock snapshots. I have considered the accuracy of the information provided by D&B and I believe the information to be accurate because the information contained therein is created and maintained in the ordinary course of its business.

- 3.9 **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, names and addresses of directors, 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.
- 3.10 **The Ontario Business Information System ("ONBIS")** is an online database that contains information on and provides corporation profile reports for Ontario corporations or Extra-Provincial corporations carrying on business in Ontario. For Ontario corporations, all active directors and officers of the subject corporation are listed. I believe this database to be reliable as it is maintained by the Province of Ontario, and contains registered corporation information created and maintained in the ordinary course of its business.
- 3.11 **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.
- 3.12 **News Media Canada** is an association that represents the print and digital media industry in Canada and acts as a public policy advocate for over 800 publication titles in every province and territory. News Media Canada monitors, analyzes and lobbies against legislation that may impact newspapers and freedom of the press. In addition, News Media Canada conducts ongoing industry research and provides industry data to members, advertisers and the public on a variety of topics. Information obtained from News Media Canada includes various reports relating to, among other things, circulation, revenue, readership, ownership, publishing frequency, as well as geographic locations of Print Newspapers and each of their

respective digital platforms. I believe the information obtained from News Media Canada to be reliable as it is created and maintained in the ordinary course of its business.

3.13 **Ontario Community Newspaper Association ("OCNA")** is an industry association that represents approximately 300 member newspapers located throughout Ontario. The OCNA acts as an advocate for government policies that are favourable to their members, provides various industry support and information services to its members. I believe the information obtained from OCNA to be reliable as it is created and maintained in the ordinary course of its business.

3.14 **Flyer Distribution Standards Association ("FDSA")** is an association that represents the interests of retailers/advertisers, distributors, printers, binderies, transport companies and media agencies. Information gathered from the FDSA relates to industry-accepted terminology. I believe the information obtained from The FDSA to be reliable as it is created and maintained in the ordinary course of its business.

Media Outlets

3.15 **CBC News** is a division of the Canadian Broadcasting Corporation ("CBC") responsible for news gathering and the production of news programs on CBC's English-language operations. Information gathered from CBC News includes several articles relating to the Transaction as well as an audio interview of Mr. Godfrey. I believe the information contained in the articles to be accurate as it is created and maintained in the ordinary course of its business. I listened to the audio interview of Mr. Godfrey and believe it to be accurate.

3.16 The **National Post** is a Canadian English-language newspaper that is the flagship publication of Postmedia. The *Financial Post* is the *National Post's* business section specializing in reporting on various business and financial news and issues in

Canada and around the world. I believe the information reported in the *National Post/Financial Post* articles relating to the Transaction to be accurate as they were created and maintained in the ordinary course of the *National Post's* business.

- 3.17 *The Globe & Mail* is a Canadian English-language national newspaper owned by The Woodbridge Company based in Toronto, Ontario. I believe the information reported in *The Globe & Mail* articles relating to the Transaction to be accurate as they were created and maintained in the ordinary course of *The Globe & Mail's* business.

(B) OVERVIEW OF THE CONDUCT

- 3.18 Postmedia and Torstar were competitors or potential competitors prior to the Transaction as they both produced or supplied Advertising Services and/or Flyer Distribution Services in the same geographic areas, enclosed in Exhibit B attached hereto.
- 3.19 It is alleged that by agreeing on which specific Print Newspapers were to be transferred as part of the Asset Purchase agreement; by agreeing and arranging to terminate most of the employees of the Acquired Properties (thereby effectively closing most of the Acquired Properties) as set out in the Asset Purchase Agreement and the Transitional Services Agreement; and by concurrently entering into an agreement not to operate competing businesses that offer Advertising Services and/or Flyer Distribution Services in specific geographic areas for a set period of time as set out in the Non-Compete Agreement, Postmedia and Torstar, and other persons known and unknown, entered into a conspiracy, agreement or arrangement to (i) allocate sales, territories, customers or markets for the production or supply of Advertising Services and/or Flyer Distribution Services in specific geographic areas, contrary to paragraph 45(1)(b), and/or (ii) fix, maintain, control, prevent, lessen or eliminate the production or supply of Advertising Services and/or Flyer Distribution Services in specific geographic areas, contrary to paragraph 45(1)(c) of the Act.

3.20 It is alleged that the conduct, described in paragraph 3.19 above, took place in the Relevant Time Period (calendar year 2017 to January 2018, the exact dates being unknown). While the Transaction was announced publicly on November 27, 2017, based on my experience conducting investigations pursuant to the Act and given the facts of this investigation known to date, it is my belief that the process leading up to the closing of the Transaction would have required at least several months to draft, negotiate, exchange information and finalize the terms and conditions of the Transaction. I also believe that the Relevant Time Period should not end at the Closing Date, but should include the period of the Closing Date and the end of January 2018, because not all of the Acquired Properties were closed immediately: there was a transition period, during which some of the Acquired Properties remained operational.

3.21 To date, I am aware of the following actions of Postmedia and Torstar in relation to the Transaction:

3.21.1 I have read the Asset Purchase Agreement (with attached schedules), dated November 27, 2017, which was provided to me by the Mergers Directorate. The Asset Purchase Agreement was executed by Andrew MacLeod, President and COO of Postmedia; Gillian Akai, Executive VP, General Counsel of Postmedia; Ian Oliver, President of Metroland, and Lorenzo DeMarchi, Assistant Secretary of Free Daily News (Mr. DeMarchi also signed on behalf of Torstar in his capacity as EVP and CFO of Torstar). The Asset Purchase Agreement sets out the terms and conditions of the Transaction, including the list of the Acquired Properties and lists of employees to be terminated. More specifically,

3.21.1.1 The recital to the Asset Purchase Agreement identifies the parties thereto as Postmedia Network Inc., Metroland Media Group Ltd. and Free Daily News Group Inc.

- 3.21.1.2 Article 1 of the Asset Purchase Agreement contains, among other things, defined terms and a list of schedules and exhibits attached to and form part of the Asset Purchase Agreement, including the Transitional Services Agreement, contained in Exhibit 8.10(c), and the Non-Compete Agreement, contained in Exhibit 8.10(d).
- 3.21.1.3 Article 2 of the Asset Purchase Agreement sets out, among other things, the terms and conditions of the purchase and sale of the Acquired Properties set out in Schedule 2 attached thereto, and what specific assets were excluded.
- 3.21.1.4 Article 3 of the Asset Purchase Agreement sets out, among other things, the purchase price for the Acquired Properties; no cash was exchanged between Postmedia and Torstar, and that the assets of the seventeen (17) Acquired Properties from Postmedia were equal in value to the value of the assets of the twenty-four (24) Acquired Properties from Torstar.
- 3.21.1.5 Article 8 of the Asset Purchase Agreement and the attached Schedules 8.1 through 8.3 identify the Postmedia and Torstar employees from the Acquired Properties that will continue to be employed, as well as the employees from the Acquired Properties that will be terminated. It is my understanding that the only employees that will continue to be employed are from those Acquired Properties that were announced to remain open.
- 3.21.1.6 Also in Article 8 of the Asset Purchase Agreement, paragraph 8.2(a) sets out that each vendor will prepare

the notice of termination, and severance agreement and release to be delivered to the terminated employees on the Closing Date.

3.21.1.7 In addition to these lists, Schedule 8.2(b) identifies the mass termination of all employees of Torstar's operations in Ottawa, which appear to continue to be operational during the transition period, as described in paragraph 3.21.1.8 below.

3.21.1.8 Further, Schedule 8.3 identifies employees that will continue to be employed during the transition period only: (i) none of Postmedia's employees from the Acquired Properties are included; and (ii) some of Torstar's employees from the Acquired Properties are included and appear to be mainly from the Ottawa and London areas.

3.21.2 I have also read the Transitional Services Agreement (attached as Exhibit 8.10(c) to the Asset Purchase Agreement), dated November 27, 2017, which was provided to me by the Mergers Directorate together with the Asset Purchase Agreement. The Transitional Services Agreement sets out which services relating to the Acquired Properties are to be provided by Postmedia and Torstar. More specifically,

3.21.2.1 Article 2 of the Transitional Services Agreement sets out, among other things, that the vendor is to provide transitional services such as Advertising Services, Flyer Distribution Services and other services that enable the continued operation of the Acquired Properties for the benefit of the purchaser during the transition period.

3.21.2.2 Article 6 of the Transitional Services Agreement sets out, among other things, the transition period being eight (8) weeks from the Closing Date, and could be extended by either party for an additional eight (8) weeks.

3.21.2.3 Schedule 1 of the Transitional Services Agreement identifies, among other things, the transitional services to be provided by Postmedia for the *St. Catharines Standard*, *Welland Tribune*, *Niagara Falls Review* and *Peterborough Examiner*. It is my understanding that these Acquired Properties were announced to remain open.

3.21.2.4 Schedule 3 of the Transitional Services Agreement identifies, among other things, the transitional services to be provided by Torstar for the Acquired Properties that remained open during the transitional period and the *Exeter Times-Advocate* and the *Exeter Weekender*, which I understand were announced to remain open.

3.21.3 I have also read the Non-Compete Agreement, dated November 27, 2017, with attached schedules containing maps of the geographic areas identified by Postmedia and Torstar, in which they would not operate competing businesses, as described in more detail below. The Non-Compete Agreement was executed by Andrew MacLeod, President and COO of Postmedia; Gillian Akai, Executive VP, General Counsel of Postmedia, and Lorenzo DeMarchi, EVP and CFO of Torstar. These records were provided to me by the Mergers Directorate together with the Asset Purchase Agreement and the Transitional Services Agreement.

3.21.4 The Non-Compete Agreement sets out reciprocal restrictions on Postmedia and Torstar with respect to each company's ability to operate, among other things, Print Newspapers and other digital news publications in certain specific geographic areas and includes maps of those areas serviced by each of the Acquired Properties. More specifically, Articles 1 and 2 of the Non-Compete Agreement provide that,

3.21.4.1 Postmedia shall not operate directly or indirectly an English language printed news and/or entertainment publication, printed shopping guide or printed wrap insert, whether daily or non-daily, targeted to a particular local community audience in specifically defined geographic areas for a period of five (5) years. A reciprocal clause applies to Torstar.

3.21.4.2 Postmedia shall not operate directly or indirectly a free daily printed news publication designed for and distributed to urban readers in the City of Toronto and the City of Vancouver for a period of five (5) years. A reciprocal clause applies to Torstar, except in the City of Ottawa and the City of Winnipeg.

3.21.4.3 Postmedia shall not operate directly or indirectly a packaging and/or a distribution service for printed flyers, packages, magazines, inserts, product samples, publications or similar materials for third parties within specifically defined geographic areas for a period of five (5) years. A reciprocal clause applies to Torstar.

3.21.4.4 Postmedia shall not operate directly or indirectly an English language digital news publication targeted at

residents within specifically defined geographic areas for a period of two (2) years. A reciprocal clause applies to Torstar.

3.21.4.5 Postmedia shall not operate directly or indirectly a free daily English language digital news publication targeted at residents in the City of Toronto and the City of Vancouver for a period of two (2) years. A reciprocal clause applies to Torstar, except in the City of Ottawa and the City of Winnipeg.

3.21.5 On and following November 27, 2017, Postmedia and Torstar publicly announced, through separate corporate press releases and various media interviews, the Transaction and planned closures of the Acquired Properties. I have reviewed these corporate press releases and media interviews. More specifically, some of the following statements were made publicly:

3.21.5.1 Postmedia stated that it intended “to continue operating the *Exeter Times-Advocate* and the *Exeter Weekender* and will close the remainder of the acquired properties – which are located in areas serviced by multiple publications – by mid-January. These actions will deliver cost synergies while maintaining those operations that are sustainable and support Postmedia’s strategy. In addition, the transaction allows Postmedia to serve additional flyer and insert customers in certain markets using its existing distribution system.”

3.21.5.2 Torstar stated that the Transaction “will allow us to operate more efficiently through increased geographic

synergies in a number of our primary regions. By acquiring publications within or adjacent to our primary areas and selling publications outside our primary areas we will be able to put a greater focus on regions where we believe we can be more effective in serving both customers and clients."

3.21.6 I have read a *Financial Post* article, published online on November 27, 2017 (updated on November 28, 2017), in which

3.21.6.1 Torstar President and CEO John Boynton reiterated that the Acquired Properties transferred to Torstar were located within or adjacent to its "primary regions", and the Acquired Properties transferred to Postmedia were in Postmedia's primary areas.

3.21.6.2 The same article contained comments from Postmedia President and COO Andrew MacLeod that "Postmedia engaged in the swap instead of simply shutting down its papers because it wanted to refocus on a few key areas in Ontario as it retrenched from others".

3.21.6.3 In the same article, there was reference to Mr. MacLeod stating that "the companies were "extraordinarily careful" not to share any knowledge about their plans for the properties after the transaction".

3.21.7 On November 29, 2017, Postmedia CEO Paul Godfrey was interviewed by *CBC London Morning*, available online, which I have listened to. During this interview, Mr. Godfrey made the following statements:

- 3.21.7.1 "Smaller papers can't compete anymore if there's more than one paper in that community."
- 3.21.7.2 "We have no other choice than to consolidate our efforts so we asked Torstar whether we [they] were interested in us giving or selling us some of those newspapers so that we could pick up the synergies, pick up the efficiencies, and also pick up whatever insert or flyer revenue that was available. This is a survival."
- 3.21.7.3 In response to a question about giving advertisers only one option "if they are going the newspaper route", Mr. Godfrey stated that "well, that is probably true, but we have no other choice cause some of the newspapers cannot compete in a competitive market."
- 3.21.8 Two articles were published online by *The Globe and Mail*, both of which I have also read:
- 3.21.8.1 On November 27, 2017, Mr. Godfrey (CEO of Postmedia) said that they had "no choice, but to concentrate our focus". Mr. Boynton (President and CEO of Torstar) was quoted to have said that the closing of the papers was "the only realistic option" in light of falling advertising revenue.
- 3.21.8.2 On November 29, 2017 (article updated on November 30, 2017), Mr. MacLeod (Postmedia President and COO) stated that "we didn't know what their plans were, and they didn't know the same for us".

- 3.21.9 On December 5, 2017, Mr. Godfrey was quoted in an article published online in the *National Post*, which I have read, in which Mr. Godfrey stated that "the companies were very careful not to discuss what each was planning to do with the assets it was buying". He also added "the fact is collusion is just not legal so what we were very, very careful to do was not to speak to each other about what the end result was going to be."
- 3.21.10 I have read an *Ottawa Citizen* article, published online on January 12, 2018, in which Mr. Godfrey commented on the Transaction stating that "the properties we [Postmedia] acquired were in markets where we already had strong local voices in our existing Postmedia publications and flyer distribution infrastructure in place."
- 3.22 In my view, statements made by Mr. MacLeod and Mr. Godfrey, described in subparagraphs 3.21.6.3, 3.21.8.2 and 3.21.9 above, relating to their claims that Postmedia and Torstar were not aware of their respective plans for the Acquired Properties prior to the Transaction, are inconsistent with actions taken by Postmedia and Torstar and with the terms and conditions set out in the Transaction documents, as described in subparagraphs 3.21.1 through 3.21.4 above.
- 3.23 In addition, I have reviewed information provided by a complainant, John Hammill, who is a former Postmedia Regional Director, Sales at the now-closed *Orillia Packet & Times*. From this information, I understand that:
- 3.23.1 Mr. Hammill is based in Orillia, Ontario, and was employed by Postmedia for approximately fourteen (14) years. In his last position with the company, he was responsible for various Acquired Properties.
- 3.23.2 Mr. Hammill contacted the Bureau on December 20, 2017, via the Bureau's Information Centre through an online submission. His complaint was received by the Cartels Directorate on January 9, 2018.

3.23.3 On January 10, 2018, Nadejda Roy interviewed Mr. Hammill by telephone, during which he shared the following information:

3.23.3.1 During his employment at Postmedia, Mr. Hammill had become very familiar with the business operations and financials of the Acquired Properties for which he was responsible. He commented that the *Collingwood Enterprise Bulletin* was doing "really good" and the *Barrie Examiner* was also "doing okay". He expressed surprise that the newspapers that were "making money" were being closed down.

3.23.3.2 Mr. Hammill indicated that he was supposed to travel for business to Elliot Lake, Ontario, on November 27, 2017, but received an email on November 24, 2017, that notified him to be in the Orillia office that Monday (November 27, 2017) instead.

3.23.3.3 According to Mr. Hammill, a company-wide email was circulated shortly after the public announcement of the Transaction notifying employees of the *Orillia Packet & Times* that it had been sold to Torstar.

3.23.3.4 Everyone at the *Orillia Packet & Times*, including Mr. Hammill, was terminated approximately ten (10) minutes following the public announcement of the Transaction.

3.23.3.5 Mr. Hammill was terminated by a Postmedia human resources staff person who told him that Postmedia was doing the terminations as a favour to Torstar, which at

that point in time was the new owner of the *Orillia Packet & Times*.

- 3.23.3.6 Mr. Hammill described his termination letter from Postmedia dated November 27, 2017 ("**Termination Letter**"), referenced in subparagraphs 3.23.4 through 3.23.6 below, and commented that in his view, given the timing of terminations at the *Orillia Packet & Times*, public statements by Postmedia and Torstar about independently deciding to close their respective Acquired Properties were not accurate. Mr. Hammill's assumption was that Postmedia and Torstar were "trying to sell the story that the papers aren't profitable".
- 3.23.4 The Termination Letter was provided to Nadejda Roy on January 10, 2018, which I have reviewed. It contains the following statement: "We have been advised by Metroland [Torstar] that it will not require your services as a Metroland employee therefore this letter confirms the details of the termination of your employment with Postmedia Network Inc."
- 3.23.5 The Termination Letter also contains a clause regarding non-solicitation: "You agree that for a six (6) month period following the termination of your employment, you shall not, either on your own behalf or on behalf of any other person or business entity, induce or attempt to persuade any employee of Metroland Media Group Ltd. (the "Company") to leave the employ of the Company."
- 3.23.6 In addition, the Termination Letter indicates that the termination allowance was paid by Postmedia, the former owner of the *Orillia Packet*

& *Times*, rather than Torstar, the new owner of the now-closed newspaper.

(C) AFFECTED PRODUCTS AND GEOGRAPHIC AREAS

Affected Products

3.24 Based on my review of Postmedia and Torstar's publicly available corporate documents (referenced in Part 1, section (C) above), the Transaction documents (described in subparagraphs 3.21.1 through 3.21.4 above), the public statements made by Postmedia CEO Mr. Godfrey during his interview with *CBC London Morning* on November 29, 2017 (described in subparagraph 3.21.7 above), the written submission by counsel for Postmedia dated February 15, 2018 (described in paragraph 1.55 above), as well as information gathered from News Media Canada and OCNA, I have reasonable grounds to believe, and do believe, that the products affected by the alleged illegal conduct being investigated under section 45 of the Act are (i) **Advertising Services** and/or (ii) **Flyer Distribution Services**, in geographic areas described below.

Affected Geographic Areas

3.25 Based on my review of the Transaction documents (described in subparagraphs 3.21.1 through 3.21.4 above), I have reason to believe, and do believe, that the geographic areas potentially affected by the alleged illegal conduct are those set out in the schedules attached to the Non-Compete Agreement. The maps for these geographic areas are attached in Exhibit B hereto.

3.26 The affected geographic areas could also vary depending on the type of advertiser and its intended target audience. For example,

- 3.26.1 A local pizzeria located in Kanata, Ontario advertising (either with print ad and/or flyer/insert) in a free weekly community newspaper (for example, *Kanata Courier-Standard*) would likely be targeting potential customers within its delivery area (usually a limited geographic area) and is not likely to consider switching its Advertising Services or Flyer Distribution Services to a paid daily newspaper (such as the *Ottawa Sun*), which often has a much broader geographic coverage and might not effectively represent the neighbourhoods in Kanata, Ontario.
- 3.26.2 On the other hand, there are other advertisers, such as car manufacturers and larger retailers, who are more likely to consider all Print Newspapers (free and paid; daily and weekly) as possible options for their advertising needs. For such advertisers, these options can be viewed as both complementary and substitutable.
- 3.27 I have reason to believe, and do believe, that there is direct geographic overlap for Advertising Services and/or Flyer Distribution Services that were offered by the Acquired Properties. I base this belief on my review of the titles and locations of each of the Acquired Properties (attached hereto in Exhibit A); comparison of these titles to the titles and locations of other Print Newspapers owned and operated by Postmedia and Torstar (included in Exhibit B); maps attached as a schedule to the Non-Compete Agreement (also included in Exhibit B); as well as circulation information and maps available through the OCNA and News Media Canada.

(D) REASONABLE GROUNDS TO BELIEVE THAT OFFENCES HAVE BEEN COMMITTED

- 3.28 I have reason to believe, and do believe, that offences have been committed contrary to paragraphs 45(1)(b) and/or 45(1)(c) of the Act. Specifically, I believe that Postmedia and Torstar during the Relevant Time Period were competitors and did conspire, agree or arrange with each other and with other persons known and unknown (i) to allocate sales, territories, customers or markets for the production

or supply of Advertising Services and/or Flyer Distribution Services in specific geographic areas; and/or (ii) to fix, maintain, control, prevent, lessen or eliminate the production or supply of Advertising Services and/or Flyer Distribution Services in specific geographic areas.

- 3.29 I have relied on a number of sources for the information set out below. I have carefully considered the reliability of all my 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.

Evidence that Postmedia and Torstar are Competitors

- 3.30 I have reasonable grounds to believe, and do believe, Postmedia and Torstar were and are competitors based on the following:

- 3.30.1 As described in Part 1 (C) of this Information, corporate records of Postmedia and Torstar indicate that both companies offer Advertising Services and Flyer Distribution Services in broad overlapping geographic areas throughout Canada.
- 3.30.2 Public statements referenced in subparagraphs 3.21.6 through 3.21.10 above, made by senior officers of Postmedia and Torstar in various media interviews asserting that their respective Acquired Properties were located within or adjacent to each other's "primary regions"; that the Transaction allowed them to focus on their own key areas instead of simply closing their own publications; and that the Transaction allowed them to pick up "whatever insert or flyer revenue that was available".
- 3.30.3 Torstar's corporate website stating that Metroland has "almost total coverage of households throughout central and eastern Ontario" in respect of flyers, circulars, and product samples, and that Metroland

community newspapers "act as leading distributors of flyers to households on behalf of advertisers."

- 3.30.4 Postmedia's corporate website claims that Postmedia's inserts and flyers reach "over 3.6 million households weekly in 115 markets across Canada".
- 3.30.5 Exhibit B attached hereto further demonstrates that there is direct product and geographic overlap between each Acquired Property acquired by Postmedia and one or more Print Newspapers already owned by Postmedia. Similarly, there is direct product and geographic overlap between each Acquired Property acquired by Torstar and one or more Print Newspapers already owned by Torstar.
- 3.30.6 The terms set out in the Non-Compete Agreement indicate that Postmedia and Torstar were existing or potential competitors.

Evidence of Alleged Conspiracy, Agreement or Arrangement

3.31 I have reasonable grounds to believe, and do believe, that the evidence of an alleged conspiracy, agreement or arrangement between Postmedia and Torstar is found in the following:

- 3.31.1 All communication by counsel for Postmedia and for Torstar with Bureau staff between November 27, 2017, and February 25, 2018, referenced in Part 1 section (D) above, during which counsel confirmed the existence of an agreement or arrangement between Postmedia and Torstar.
- 3.31.2 Public announcements by Postmedia and Torstar of the Transaction and closure of thirty-six (36) of the forty-one (41) of the Acquired Properties on November 27, 2017, described in paragraph 3.21.5 above.

3.31.3 The terms and conditions of the Asset Purchase Agreement, the Transitional Services Agreement, and the Non-Compete Agreement, dated November 27, 2017, described in subparagraphs 3.21.1 through 3.21.4 above, that Postmedia and Torstar agreed on which specific Print Newspapers were to be transferred; agreed and arranged to terminate most of the employees of the Acquired Properties (thereby effectively closing most of the Acquired Properties); and concurrently entered into an agreement not to operate competing businesses that offer Advertising Services and/or Flyer Distribution Services in specific geographic areas for a set period of time.

Alleged Illegal Conduct contrary to paragraphs 45(1)(b) and/or (c) of the Act

3.32 I have reasonable grounds to believe, and do believe, that the alleged conspiracy, agreement or arrangement between Postmedia and Torstar, and other persons known and unknown, was for the purpose of (i) allocating sales, territories, customers or markets for the production or supply of Advertising Services and/or Flyer Distribution Services in specific geographic areas, and/or (ii) fixing, maintaining, controlling, preventing, lessening or eliminating the production or supply of Advertising Services and/or Flyer Distribution Services in specific geographic areas. I base this belief on the following:

3.32.1 The Asset Purchase Agreement and the Transitional Services Agreement, which set out, among other things, the termination of most of the employees of the Acquired Properties effective either immediately following the public announcement of the Transaction or shortly thereafter, described in subparagraphs 3.21.1 and 3.21.2 above. These terminations of employees could not have been achieved without prior negotiation, agreement or arrangement between Postmedia and Torstar.

- 3.32.2 Information provided by John Hammill, a complainant referenced in paragraph 3.23 above, contradicts public statements made by the senior officers of Postmedia and Torstar regarding their assertions of being unaware of their respective plans for the Acquired Properties. Further, the Termination Letter indicates that the termination allowance was paid by Postmedia, the former owner of the Acquired Property, rather than Torstar. The termination allowances being paid by the former employer rather than Torstar, the new owners of the Acquired Property, could not have been achieved without prior negotiation, agreement or arrangement between Postmedia and Torstar.
- 3.32.3 Public statements, referenced in subparagraphs 3.21.6 through 3.21.10 above, made by senior officers of Postmedia and Torstar in various media interviews asserting that their respective Acquired Properties were located within or adjacent to each other's "primary regions"; that the Transaction allowed them to focus on their own key areas instead of simply closing their own publications; and that the Transaction allowed them to pick up "whatever insert or flyer revenue that was available".
- 3.32.4 The Non-Compete Agreement, which sets out very broad reciprocal provisions restricting Postmedia and Torstar's operations of any print and digital publications in geographic areas specifically mapped out in Schedules A and B of the Non-Compete Agreement, described in subparagraphs 3.21.3 and 3.21.4 above. These restrictions go well beyond simply preventing the vendor from re-entering the same geographic areas of the Acquired Properties with the same or similar type of Print Newspaper, but rather:
- 3.32.4.1 Foreclose the vendor from operating, directly or indirectly, any English language printed news and/or entertainment publication, printed shopping guide or

printed wrap insert, whether daily or non-daily, targeted to a particular local community audience in specifically defined geographic areas for a period of five (5) years;

3.32.4.2 Foreclose the vendor, directly or indirectly, from operating a free daily printed news publication designed and distributed to urban readers in specific cities, namely Ottawa, Toronto Winnipeg and Vancouver, for a period of five (5) years;

3.32.4.3 Foreclose the vendor, directly or indirectly, from operating a packaging or a distribution service for printed flyers, packages, magazines, inserts, product samples, publications or similar materials for third parties within specifically defined geographic areas for a period of five (5) years;

3.32.4.4 Foreclose the vendor, directly or indirectly, from operating an English language digital news publication targeted at residents within specifically defined geographic areas for a period of two (2) years; and,

3.32.4.5 Foreclose the vendor, directly or indirectly, from operating a free daily English language digital news publication targeted at residents in specific cities, namely Ottawa, Toronto, Winnipeg and Vancouver, for a period of two (2) years.

(E) REASONABLE GROUNDS TO BELIEVE IN THE NECESSITY OF SEARCHING COMPUTER SYSTEMS

- 3.33 Based on my experience in the Bureau, I believe that large volumes of a company's records are stored electronically; and, after consultation with Nicholas Saumure, an Electronic Evidence Officer described in paragraph 3.5 above, I believe that some of the records or other things to be searched for, described in this Information below, will be found in the form of data.
- 3.34 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.
- 3.35 On February 6, 2018, Mr. Saumure, an Electronic Evidence Officer trained to examine and seize electronic evidence, informed me that:
- 3.35.1 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;
- 3.35.2 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;
- 3.35.3 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, et cetera;
- 3.35.4 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;

3.35.5 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,

3.35.6 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.

3.36 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.

3.37 Mr. Saumure 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:

3.37.1 Use forensic practices and procedures for acquiring records, while attempting to minimize the impact on business functions;

3.37.2 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;

- 3.37.3 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 warrants;
 - 3.37.4 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;
 - 3.37.5 Seize or produce an electronic copy of records or other things which they are unable to acquire the substance or meaning at the premises, for further off-site examination; and,
 - 3.37.6 Employ, retain, direct or engage other persons to assist in the search of the named premises including the services of consultants, which persons would, in the presence of persons authorized in the warrant, attend at the premises identified in Part 4 of this Information and may perform such tasks as authorized by the warrant.
- 3.38 Mr. Saumure has informed me that the following practices and procedures may be used as circumstances dictate:
- 3.38.1 Search any data contained in or available to the computer system, data storage device or media and print or cause to be printed a copy of the records or other things on-site;

3.38.2 Search any data contained in or available to the computer system, data storage device or media and produce an electronic copy of the records or other things on-site; and/or,

3.38.3 Seize the records or other things such as the computer system, data storage device or media for examination or copying.

3.39 Some of these forensic practices and procedures described above may result in the seizure of records or other things that contain data that are not described in Part 5 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 or other things described in Part 5 of this Information, while minimizing access to data that contain records or other things that are not described in Part 5 of this Information:

3.39.1 Where a copy is produced as provided for in subparagraph 3.38.2, above:

3.39.1.1 Two copies of the seized copy will be made;

3.39.1.2 The seized copy and one of the copies mentioned in subparagraph 3.39.1.1 above will be sealed to protect the integrity of the records;

3.39.1.3 The remaining copy from subparagraph 3.39.1.1 above will be examined by Electronic Evidence Officers and anyone under their direction to identify records or other things described in Part 5 of this Information;

- 3.39.1.4 Access to the copy mentioned in subparagraph 3.39.1.3 above will thereafter remain under the control of Electronic Evidence Officers;
- 3.39.1.5 In order to minimize the examination of data contained in records or other things that are not described in Part 5 of this Information, the persons examining the copy mentioned in subparagraph 3.39.1.3 above will use electronic discovery practices and procedures to identify records or other things described in Part 5 of this Information; and,
- 3.39.1.6 Electronic Evidence Officers and anyone under their direction will keep confidential all data found within the copy mentioned in subparagraph 3.39.1.3 above containing records or other things that are not described in Part 5 of this Information, with the exception of things that fall within the provisions of section 489 of the *Criminal Code*.
- 3.39.2 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 or other things such as a computer system, data storage device or media from the premises (as described in subparagraph 3.38.3, above). In such a case:
- 3.39.2.1 The records or other things such as: computer system, data storage device or media will be transferred to an Electronic Evidence Officer for examination or copying; and,

3.39.2.2 Further handling will be as described above in subparagraph 3.39.1 above.

4. PREMISES TO BE SEARCHED – LOCAUX VISÉS PAR LA PERQUISITION

The Affiant says that he has reasonable grounds to believe, and does believe, that the records or other things to be searched for, referred to in Part 5 below, are located at the following premises:

Le dénonciateur affirme qu'il a des motifs raisonnables de croire que les documents ou autres choses décrits en partie 5, se trouvent dans les locaux suivants:

- 4.1 The corporate head office of **Postmedia** located at
365 Bloor Street East, 12th Floor
Toronto, Ontario
M4W 3L4
- 4.2 The corporate head office of **Torstar** located at
1 Yonge Street,
Toronto, Ontario
M5E 1E5
- 4.3 The corporate head office of **Metroland** located at
3715 Laird Road, Unit 6
Mississauga, Ontario
L5L 0A3

including all storage, record keeping areas and any other additional office space located in or about the premises that form part of each of the premises (collectively, the "**premises to be searched**").

- 4.4 Section 15(4) of the Act provides that a warrant issued under the Act may be executed anywhere in Canada.

My experience as a Competition Law Officer

- 4.5 Based on my experience in dealing with business records or other things in my various positions at the Bureau, I believe that records or other things to be searched for, described in Part 5 below, are the kinds of records or other things that would have been created by Postmedia, Torstar and Metroland in the ordinary course of their businesses. I believe that these kinds of records or other things to be searched for would exist and would be found on the premises to be searched. I also base my belief upon the information outlined in paragraphs 4.6 through 4.11 below.

Corporate Records

- 4.6 Bureau officers obtained corporate records for Postmedia from Corporations Canada and D&B:

4.6.1 The registered corporate office for Postmedia is listed as 365 Bloor Street East, 12th Floor, Toronto, Ontario M4W 3L4.

- 4.7 Bureau officers obtained corporate records for Torstar from D&B:

4.7.1 The registered corporate office for Torstar Corporation is listed as 1 Yonge Street, Toronto, Ontario M5E 1E5.

- 4.8 Bureau officers obtained corporate records for Metroland from ONBIS, which list Mr. Oliver as the President of Metroland and located at the following address:

4.8.1 The registered corporate office for Metroland is listed as 3715 Laird Road, Mississauga, Ontario L5L 0A3.

- 4.9 Postmedia and Torstar's corporate financial records filed on SEDAR list registered corporate offices as the addresses referenced in paragraphs 4.1 and 4.2 above, respectively.

Visual Surveillance

- 4.10 On February 2, 2018, Mr. Shpetrik conducted visual surveillance of Postmedia's corporate head office. He confirmed the address as 365 Bloor Street East, Toronto, Ontario. Postmedia's name and logo appear on the front of the building, with the name and logo for the *National Post* appearing on the top of the building.
- 4.11 On February 2 and 9, 2018, Mr. Shpetrik conducted visual surveillance of Torstar's corporate head office. He confirmed the address as One Yonge Street, Toronto, Ontario. Torstar's name and logo appear on the top of the building.

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

The Affiant says that he has reasonable grounds to believe and does believe that the following records or other things exist at the premises as described Part 4 above and will afford evidence with respect to the offences in Part 2 above, or will assist in retrieving, copying, reading, deciphering or acquiring the substance or meaning or any data contained therein:

La dénonciateur affirme de plus qu'il a des motifs raisonnables de croire et croit que les documents ou autres choses suivants se trouvent dans les locaux décrits en partie 4 et qu'ils fourniront la preuve de la commission des infractions décrites en partie 2, ou contribueront à la copie, la lecture, le décodage ou la compréhension de toute information ou donnée contenues dans ces documents:

- 5.1 Based on my experience in dealing with business records or other things in my various positions at the Bureau and based on the information disclosed hereafter, I believe that the records or other things to be searched for are the sorts of records or other things that would be located at the premises, referenced in Part 4 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 Postmedia, Torstar and Metroland, their employees, representatives or agents and will afford evidence with respect to the offences described in Part 2 of this Information.

Corporate Records or Other Things

- 5.2 All records or other things relating to the corporate structure of Postmedia, Torstar and Metroland and the ownership control or management of Postmedia, Torstar and Metroland by their owners, officers, directors, managers, employees, representatives and agents.
- 5.3 All records or other things relating to the ownership control or management of each of the Acquired Properties.
- 5.4 I believe the records or other things, referenced in paragraphs 5.2 and 5.3 above, will afford evidence of the corporate structure of Postmedia, Torstar and Metroland, as well as evidence of the ownership, control or management of Postmedia, Torstar, Metroland, and the Acquired Properties.

Records or Other Things Relating to Identities

- 5.5 All records or other things relating to the names, positions, duties, responsibilities, authority and compensation of the owners, officers, directors, managers, employees, representatives and agents of Postmedia, Torstar and Metroland.
- 5.6 All records or other things relating to the names, positions, duties, responsibilities, authority and compensation of the owners, officers, directors, managers, employees, representatives and agents of each of the Acquired Properties.

5.7 I believe these records or other things, referenced in paragraphs 5.5 and 5.6 above, will afford evidence of the identities and roles played by Postmedia, Torstar and Metroland's owners, officers, directors, managers, employees, representatives and agents with respect to their respective business operations including the production and supply of Advertising Services and/or Flyer Distribution Services.

5.8 All records or other things relating to business, entertainment, travel, and similar expenses incurred by Postmedia, Torstar and Metroland, including invoices for cellular phone communications and statements used for the purpose of reimbursement. I believe these records or other things will afford evidence to establish when and where Postmedia, Torstar and Metroland entered into an agreement or arrangement between themselves, and which persons from Postmedia, Torstar and Metroland had knowledge of the terms of the agreement or arrangement.

Records or Other Things Relating to the Transaction Documents

5.9 All records or other things relating to communications, meetings, telephone calls, agreements or arrangements, direct or indirect, between or among Postmedia, Torstar and Metroland and/or any other persons (including their respective owners, officers, directors, agents, representatives, members, employees or other persons) relating to the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the closure of the Acquired Properties.

5.10 All records or other things relating to the concept, idea, plan, preparation, formulation, adoption, justification, revision, adjustment, rescission, continuation, implementation, or assessment of undertaking the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the closure of the Acquired Properties.

- 5.11 All records or other things relating to the evaluation, analysis or assessment of the business rationale for the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the closure of the Acquired Properties.
- 5.12 All records or other things relating to sales, revenues, expenses, market shares, profits, prices, discounts, rebates, pricing policies and strategies, price forecasts, and price zones, for the production, sale or supply of Advertising Services offered by the Acquired Properties.
- 5.13 All records or other things relating to sales, revenues, expenses, market shares, profits, prices, discounts, rebates, pricing policies and strategies, price forecasts, and price zones, for the production, sale or supply of Flyer Distribution Services offered by the Acquired Properties.
- 5.14 All records or other things relating to the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the closure of the Acquired Properties prepared for review by Senior Officers of Postmedia, Torstar and Metroland.
- 5.15 All records or other things relating to which Print Newspapers and which geographic areas, distribution and/or circulation areas were contemplated for inclusion in and/or exclusion from the Asset Purchase Agreement and/or the Transitional Services Agreement.
- 5.16 All records or other things relating to which product categories and which geographic areas, distribution and/or circulation areas were contemplated for inclusion in and/or exclusion from the Non-Compete Agreement.
- 5.17 All records or other things relating to the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the