

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*.

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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 L.L.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

closure of the Acquired Properties in possession of Postmedia that were prepared by Torstar or Metroland.

- 5.18 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 in possession of Torstar that were prepared by Postmedia.
- 5.19 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 in possession of Metroland that were prepared by Postmedia.
- 5.20 All records or other things relating to the methodologies applied to determine the value of the Acquired Properties of Postmedia relative to those of Torstar, as well as the final valuations arrived at for each of the Acquired Properties.
- 5.21 All records or other things relating to the evaluation, analysis or assessment of any impact of the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the closure of the Acquired Properties as they relate to Advertising Services and/or Flyer Distribution Services.
- 5.22 All records or other things relating to the evaluation, analysis or assessment of any alternatives to the closure of the Acquired Properties.
- 5.23 I believe the records or other things, described in paragraphs 5.9 through 5.22 above, will afford evidence to establish the anti-competitive intent, conduct and any impact of the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement and/or the closure of the Acquired Properties on the marketplace as it relates to Advertising Services and/or Flyer Distribution Services.

Records or Other Things Relating to Customers of the Acquired Properties

- 5.24 For each of the two (2) calendar years immediately preceding the date of this Information, all records or other things that identify customers of Advertising Services, their contact information, the terms and conditions of their contracts, contract negotiations, and annual Advertising Services revenues from each customer, for each of the Acquired Properties.
- 5.25 For each of the two (2) calendar years immediately preceding the date of this Information, all records or other things that identify customers of Flyer Distribution Services, their contact information, the terms and conditions of their contracts, contract negotiations, and annual Flyer Distribution Services revenues from each customer, for each of the Acquired Properties.
- 5.26 I believe that the records or other things, described in paragraphs 5.24 and 5.25 above, will afford evidence to assess any potential impact of the Asset Purchase Agreement and/or the Transitional Services Agreement and/or the Non-Compete Agreement, and/or the subsequent closure of the Acquired Properties on customers of Advertising Services and/or Flyer Distribution Services offered by the Acquired Properties.

Records or Other Things Available to Any Computer System

- 5.27 All records or other things described in paragraphs 5.2 through 5.25 above contained in, or available to, any computer system on the premises to be searched.

Other Things to be Searched For

- 5.28 Computer passwords, computer programs, computer services, computer systems, data storage devices and associated documentation, including operating instructions, manuals and service records, that may assist in retrieving, copying,

reading, printing, deciphering or acquiring the substance or meaning of any data seized, together with all passwords, log-on codes, encryption keys or other security devices relating to these things.

6. **AUTHORIZED PERSONS – PERSONNES AUTORISÉES**

The Affiant therefore asks that warrants be issued authorizing the Commissioner and the following named persons to enter and search the premises described in Part 4 and seize the records or other things described in Part 5 in accordance with the warrants herein requested:

Le dénonciateur demande donc que des mandats soient décernés pour autoriser le commissaire et les personnes ci-après nommés à pénétrer dans les locaux décrits en partie 4, à y perquisitionner en vue d'obtenir des documents ou autres choses décrits en partie 5 et à en prendre copie ou à les emporter pour en faire l'examen ou en prendre des copies conformément aux mandats de perquisition demandés dans la présente dénonciation :

- 6.1 Authorized representatives of the Commissioner: Andrée Laflamme, Andrew Smyth, Dana Taylor, Daniel Campeau, Daniel Ikonomov, David Wolinsky, Emily Earnshaw, Eric Buist, François Goulet, Frédérick LaBonté, Janna Hamilton, Jessica Novini, Jillian Bureau, Josiane Charbonneau, Katherine Raby, Kelan Ton, Lynne Charpentier, Manon RivetMario Thibault, Mark Aylward, Melanie Crossman, Nadejda Roy, Oleg Shpetrik, Paula Lajeunesse, Robert Guilbeault, Simon Bessette, Valerie Parkinson, and any other authorized representative of the Commissioner.
- 6.2 Authorized representatives of the Commissioner trained in electronic search procedures (referred to as "**Electronic Evidence Officers**"): Clifford Smith, Éric D'Amours, Eric Daoust, Jeff Chamberlain, Matthew Kyrytow, Nicholas Saumure, and in order to assist the aforementioned officers, any person who, under the supervision of the aforementioned electronic evidence officers, can facilitate the electronic search of computer systems, data storage devices and media.

6.3 Any peace officer of the City of Toronto or the Province of Ontario or member of the Royal Canadian Mounted Police, in order to assist the authorized representatives of the Commissioner.

7. DURATION OF THE WARRANT – DURÉE DU MANDAT

The Affiant requests that:

Le dénonciateur demande que:

7.1 The warrants be valid from March 12, 2018, up to and including March 21, 2018. This period of validity is necessary to ensure that the authorized representatives of the Commissioner have a sufficient amount of time to search, copy, examine and seize a potentially large volume of records or other materials.

7.2 The execution of the warrants at the business premises listed in Part 4, taking place over a maximum of ten (10) days, will allow for:

7.2.1 Minimal disruption of Postmedia, Torstar and Metroland's business activities;

7.2.2 The premises to be searched are occupied by large sophisticated corporations and, in my experience, companies of this type hold vast quantities of both paper and electronic records; and, I remain unaware of how paper and electronic records are organized and stored on-site;

7.2.3 Coding of the seized records on-site, thereby allowing for an accurate inventory of records seized pursuant to the warrants and facilitating an accurate and thorough report to the judge; and

7.2.4 Subsection 15(3) of the Act typically authorizes the search and seizure of records or other things only between the hours of 06:00 and 21:00. I ask that, where the discontinuance of the search at or before 21:00 may result in the loss of records, data or other things to be seized, the search

be allowed to continue after 21:00 in the evening on any day, to the extent necessary to avoid the loss of records, data or other things to be seized provided the particular search process commenced prior to 21:00. I also ask that the search may also continue after 21:00 to allow for the completion of a search process involving a computer system or the capture of data, which based on the length of the process, will extend after 21:00 in order to be successfully completed.

8. SEARCH AND ASSISTANCE – PERQUISITION ET ASSISTANCE

The Affiant further requests:

**Le dénonciateur demande
l'autorisation supplémentaire :**

- 8.1 That the persons authorized to execute the warrants may enter the premises, leave them and return to them from time to time during the period of validity of the warrants for the purpose of executing them.
- 8.2 That the persons authorized to execute the warrants may be accompanied by one or more Peace Officers and/or locksmith for the purposes of facilitating access to the premises; and, of using such force as necessary to provide any assistance to facilitate access to the premises, if the premises are locked.
- 8.3 That the persons authorized to execute the warrants may be accompanied by one or more Peace Officers for the purposes of ensuring the safety of the authorized representatives of the Commissioner and for ensuring that no breaches of the peace occur. Peace Officers accompanying the persons authorized to execute this warrant may use such reasonable force as is necessary to ensure the peace is maintained.
- 8.4 That one or more of the authorized representatives of the Commissioner shall be allowed to videotape the events of the various searches in order to create a visual record of the manner in which the search was conducted, and to photograph or videotape records or other things to be seized. Such visual recordings can assist in

the resolution of any allegation respecting the conduct of the search, should such an allegation arise, and can provide a means of capturing records or other relevant information from the premises that cannot readily be physically seized (e.g., writings on a large white board or the layout of space).

8.5 That the warrants authorize the persons mentioned in Part 6 above to search anything found on the premises, including personal belongings for which they have reason to believe may contain records or other things to be searched for. Personal belongings include, but are not limited to, briefcases, bags, purses, backpacks, wallets, electronic devices such as: portable computers, mobile phones, removable storage media and other devices containing electronic data.

8.6 The persons authorized to execute the warrants be authorized to temporarily remove from the search premises any pre-selected records or other things identified to be searched at the end of any day of searching for the purposes of preserving its integrity or to prevent the loss or destruction of the said records or other things. These records or other things will remain sealed and will be kept in the custody of the authorized persons executing the warrants during this period of temporary removal. These records or other things will be returned to the premises on the day when the authorized persons next return to the search premises.

9. SOLICITOR-CLIENT PRIVILEGE - PRIVILÈGE AVOCAT-CLIENT

The following information constitutes the reasonable grounds to believe that a law office, or a part thereof, will be on the premises:

Les renseignements suivants contiennent les motifs raisonnables de croire qu'un bureau d'avocat se trouvera ou non, ou en partie, sur les lieux :

9.1 I am not seeking records or other things that may be subject to a claim of solicitor-client privilege. Prior to the final removal of any seized records from the premises, a reasonable opportunity will be afforded to the occupants of the premises and/or their counsel to claim solicitor-client privilege on any records.

- 9.2 On March 6, 2018, Nadejda Roy used “Canada Law List” to determine whether a law office, or part thereof, may be located on any of the premises to be searched.
- 9.3 Her search for “Postmedia” returned two (2) results. Both lawyers listed in the results are based at Postmedia’s office located at 365 Bloor Street East, 12th Floor, Toronto, Ontario M4W 3L4.
- 9.4 Her search for “Torstar” returned three (3) results. All of the lawyers listed in the results are based at Torstar’s office located at 1 Yonge Street, Toronto, Ontario M5E 1E6.
- 9.5 Her search for “Metroland” returned no results.
- 9.6 I am not seeking authorization to search records or other things contained in law offices on the premises listed in Part 4 of this Information. Should the need to search a law office arise, I will seek a separate judicial authorization to do so.

Treatment of Solicitor-Client Privilege, Generally

- 9.7 If an authorized representative of the Commissioner has reason to believe that a record located at the premises specified in Part 4 of this Information may be subject to solicitor-client privilege, the record will be sealed whether or not a claim of solicitor-client privilege is made, unless the representative of the client determines at that time, after examining the record in question, that no privilege applies or waives any privilege over the record; or, unless the authorized representative of the Commissioner desists from examining or copying the record. In making this determination, the authorized representative of the Commissioner makes a preliminary assessment only. He or she neither examines the record extensively nor decides whether the privilege applies.

9.8 Should a claim of solicitor-client privilege be made on any of the records seized by authorized representatives of the Commissioner, the records subject to that claim will be sealed and treated in the manner outlined in paragraph 9.9 below.

9.9 Records which are sealed will be placed in the custody of one of the following parties, as authorized by subsection 19(3) of the Act:

9.9.1 The registrar, prothonotary or other like officer of the Superior Court of Ontario or of the Federal Court;

9.9.2 A sheriff of the district or county in which the record was ordered to be produced or in which it was found; or,

9.9.3 Some person agreed on between the Commissioner's representative and the person who makes the claim of privilege.

10. JOURNALISTIC SOURCE PRIVILEGE – PRIVILÈGE SOURCE JOURNALISTIQUE

The following information constitutes the reasonable grounds to believe that records or other things that could be subject to a claim of journalistic source privilege will be on the premises:

Les renseignements suivants contiennent les motifs raisonnables de croire que les documents ou autres choses qui pourraient faire l'objet d'une revendication de privilège source journalistique seront sur les lieux :

10.1 I believe that Postmedia and Torstar employ journalists, who may have offices on the premises, referenced in Part 4 above. I am not seeking records or other things that may be subject to a claim of journalistic source privilege. Prior to the final removal of any seized records from the premises, a reasonable opportunity will be afforded to the occupants of the premises and/or their counsel to claim journalistic source privilege on any records.

Treatment of Journalistic Source Privilege

- 10.2 If an authorized representative of the Commissioner has reason to believe that a record located at the premises specified in Part 4 of this Information may be subject to journalistic source privilege, the record will be sealed whether or not a claim of journalistic source privilege is made, unless the representative of Postmedia or Torstar determines at that time, after examining the record in question, that no privilege applies or waives any privilege over the record; or, unless the authorized representative of the Commissioner desists from examining or copying the record. In making this determination, the authorized representative of the Commissioner makes a preliminary assessment only. He or she neither examines the record extensively nor decides whether the privilege applies.
- 10.3 Should a claim of journalistic source privilege be made on any of the records seized by authorized representatives of the Commissioner, the records subject to that claim will be sealed and treated in the manner that mirrors the process applicable to claims of solicitor-client privilege, described in Part 9 above.

11. CONCLUSION

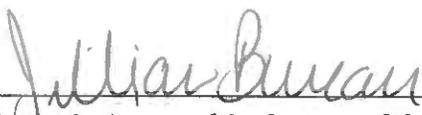
The Affiant requests that warrants be granted to search the premises, described in Part 4, for the records or other things described in Part 5, and to copy them or seize them for examination and copying.

Le dénonciateur demande que des mandats soient décernés afin de perquisitionner les lieux mentionnés en partie 4 en vue d'obtenir les documents ou autres choses décrits en partie 5, et d'en prendre copie, ou de les emporter pour en faire l'examen ou en prendre des copies.

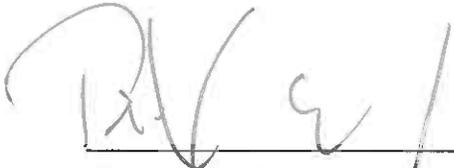
- 11.1 As revealed in this Information, I have reasonable grounds to believe, and do believe, that:

- 11.1.1 Offences have been committed by Postmedia and Torstar during the Relevant Time Period, contrary to paragraphs 45(1)(b) and/or (c) of the Act;
- 11.1.2 The records or other things to be searched for are at the premises to be searched and will afford evidence respecting the commission of the offences; and
- 11.1.3 Searching computer systems will be necessary.

AFFIRMED BEFORE ME at the City of
Gatineau, in the Province of Quebec,
this 6 day of March 2018



Commissioner of Oaths in and for the
Province of Quebec and Canada



Pierre-Yves Guay (the Affiant)



EXHIBIT A

THE ACQUIRED PROPERTIES

vs papers acquired by Postmedia

- (1) *Belleville News* (free weekly)
- (2) *Brant News* (free weekly)
- (3) *Central Hastings News* (free weekly)
- (4) *Frontenac Gazette* (free weekly)
- (5) *Kanata Courier-Standard* (free weekly)
- (6) *Kingston Heritage* (free weekly)
- (7) *Meaford Express* (paid weekly)
- (8) *Metro Ottawa* (free daily commuter)
- (9) *Metro Winnipeg* (free daily commuter)
- (10) *Nepean/Barrhaven News* (free weekly)
- (11) *Norfolk News* (free weekly)
- (12) *Orleans News* (free weekly)
- (13) *Ottawa East News* (free weekly)
- (14) *Ottawa South News* (free weekly)
- (15) *Ottawa West News* (free weekly)
- (16) *Our London* (free weekly)
- (17) *Quinte West News* (free weekly)
- (18) *St. Lawrence News* (free weekly)
- (19) *St. Mary's Journal-Argus* (and *The St. Mary's Weekender*) (paid weekly)
- (20) *St. Thomas/Elgin Weekly News* (free weekly)
- (21) *Stittsville News* (free weekly)
- (22) *Stratford City Gazette* (free weekly)
- (23) *West Carleton Review* (free weekly)
- (24) *Exeter Times-Advocate* (and the *Exeter Weekender*)* (paid weekly)

Newspapers acquired by Torstar

- (1) *24 Hours Toronto* (free daily commuter)
- (2) *24 Hours Vancouver* (free daily commuter)
- (3) *Barrie Examiner* (paid daily)
- (4) *Bradford West Gwillimbury Times* (free weekly)
- (5) *Collingwood Enterprise Bulletin* (free and paid weekly)
- (6) *Fort Erie Times* (free weekly)
- (7) *Innisfil Examiner* (free weekly)
- (8) *InPort News (Port Colborne)* (free weekly)
- (9) *Niagara Advance* (free weekly)
- (10) *Niagara Falls Review** (paid daily)
- (11) *Northumberland Today* (paid daily)
- (12) *Orillia Packet and Times* (paid daily)
- (13) *Pelham News* (free weekly)
- (14) *Peterborough Examiner** (paid daily)
- (15) *St. Catharines Standard** (paid daily)
- (16) *Thorold Niagara News* (free weekly)
- (17) *Welland Tribune** (paid daily)

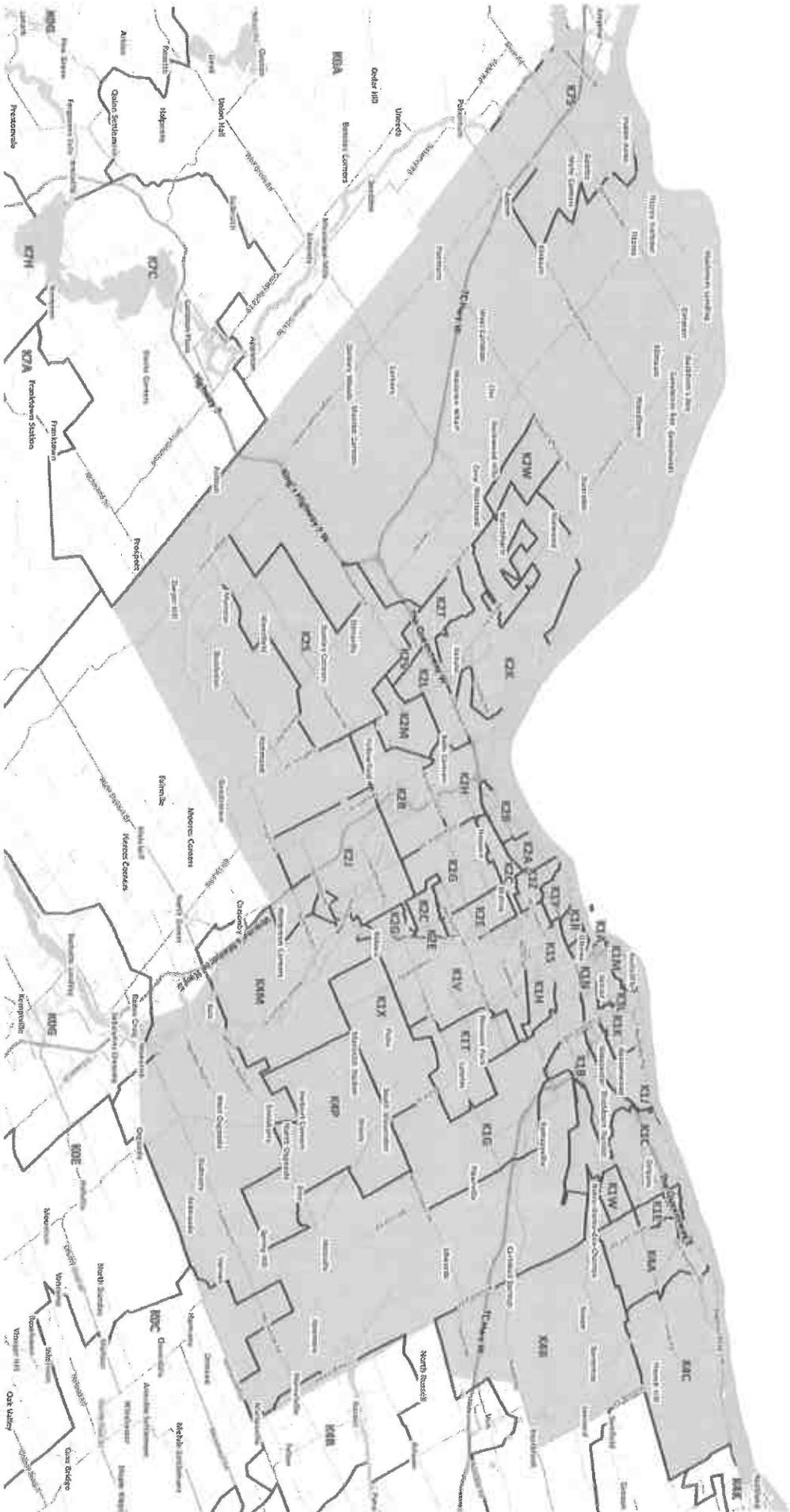
*remain open

EXHIBIT B

LISTS AND MAPS OF THE AFFECTED GEOGRAPHIC MARKETS
(based on maps attached to the Non-Compete Agreement)

OTTAWA REGION

MAP OF THE OTTAWA, ON AREA



PRINT NEWSPAPERS OF POSTMEDIA AND TORSTAR IN THE OTTAWA, ON AREA

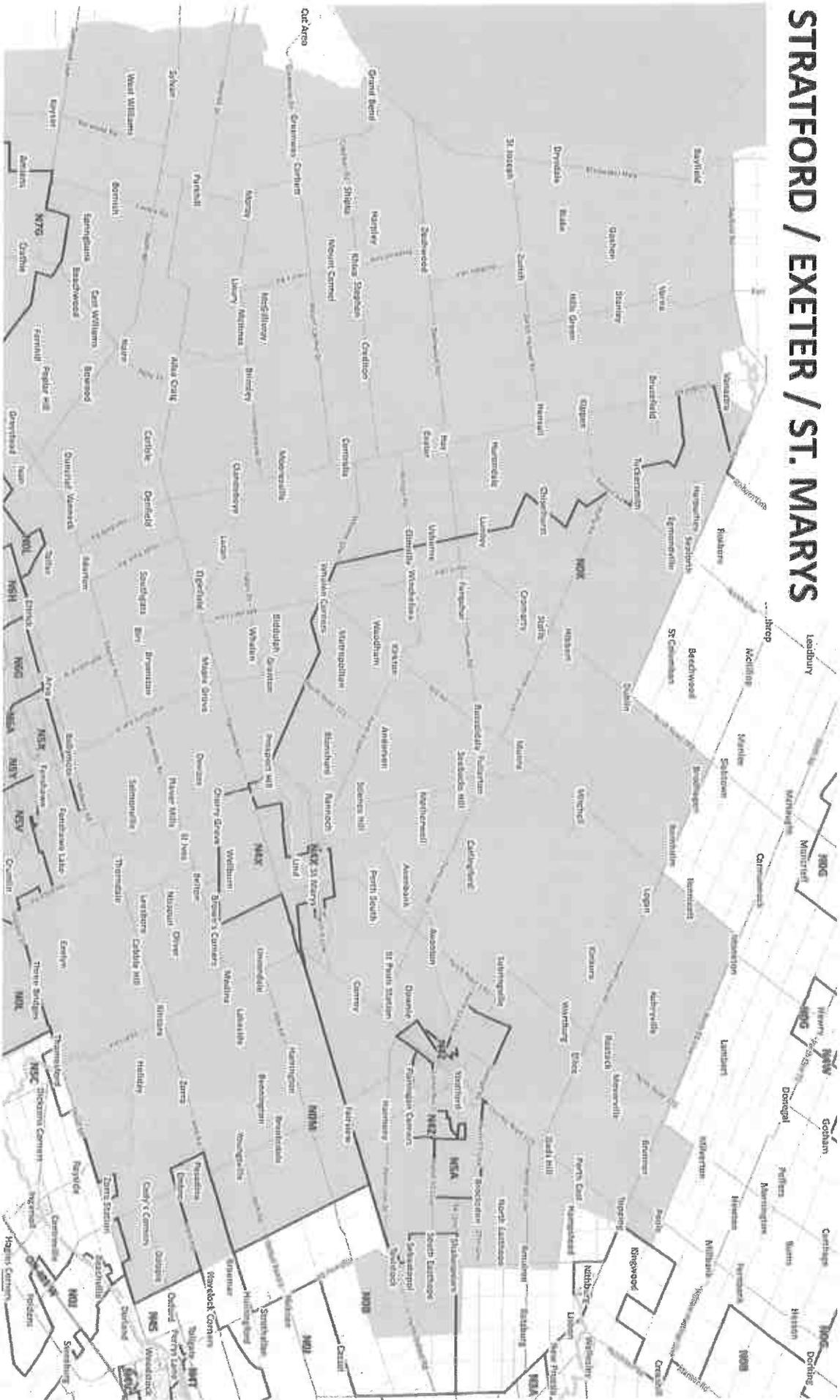
PRINT NEWSPAPER OWNERSHIP PRE-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-CLOSURES
<u>POSTMEDIA</u> - Ottawa Citizen (paid daily) - Ottawa Sun (paid daily)	<u>POSTMEDIA</u> - Ottawa Citizen - Ottawa Sun - Kanata Kourier-Standard - Nepean/Barrhaven News - Orleans News - Ottawa East News - Ottawa South News - Ottawa West News - Stittsville News - West Carleton Review - Metro Ottawa	<u>POSTMEDIA</u> - Ottawa Citizen - Ottawa Sun
<u>TORSTAR</u> - Kanata Kourier-Standard (free weekly) - Nepean/Barrhaven News (free weekly) - Orleans News (free weekly) - Ottawa East News (free weekly) - Ottawa South News (free weekly) - Ottawa West News (free weekly) - Stittsville News (free weekly) - West Carleton Review (free weekly) - Carleton Place/Almonte Canadian Gazette (free weekly) - Metro Ottawa (free daily commuter)	<u>TORSTAR</u> - Carleton Place/Almonte Canadian Gazette	<u>TORSTAR</u> - Carleton Place/Almonte Canadian Gazette

PRINT NEWSPAPERS OF POSTMEDIA AND TORSTAR IN THE LONDON/ST. THOMAS, ON AREA

PRINT NEWSPAPER OWNERSHIP PRE-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-CLOSURES
<p><u>POSTMEDIA</u></p> <ul style="list-style-type: none"> - The Londoner (free weekly) - The London Free Press (paid daily) - West Lorne West Elgin Chronicle (paid and free weekly) - St. Thomas Times Journal (paid daily) 	<p><u>POSTMEDIA</u></p> <ul style="list-style-type: none"> - The Londoner - The London Free Press - West Lorne West Elgin Chronicle - St. Thomas Times Journal - Our London - St. Thomas/Elgin Weekly News 	<p><u>POSTMEDIA</u></p> <ul style="list-style-type: none"> - The Londoner - The London Free Press - West Lorne West Elgin Chronicle - St. Thomas Times Journal
<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - Our London (free weekly) - St. Thomas/Elgin Weekly News (free weekly) 	<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - none 	<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - none

MAP OF THE STRATFORD/EXETER/ST. MARYS, ON AREA

STRATFORD / EXETER / ST. MARYS

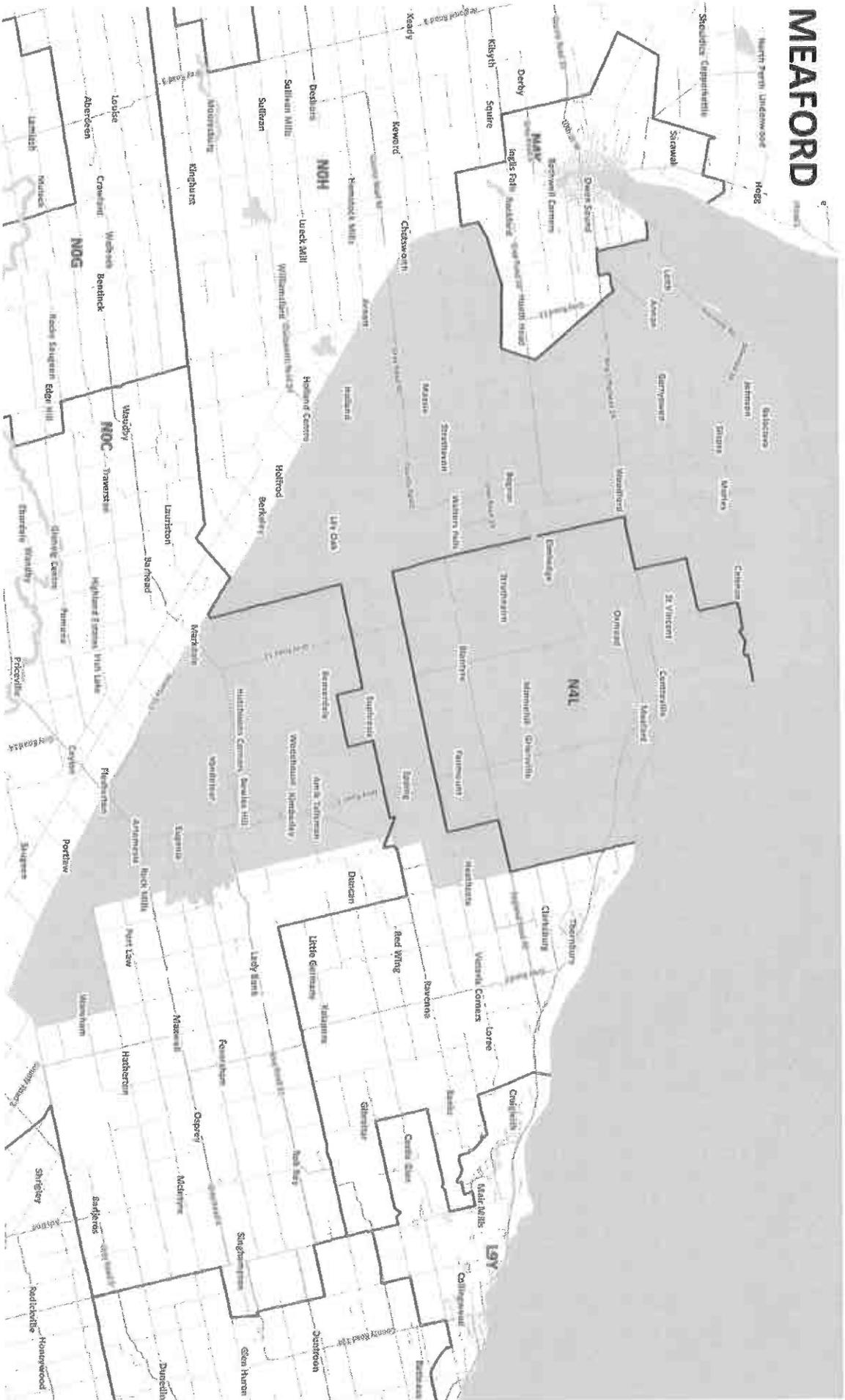


**PRINT NEWSPAPERS OF POSTMEDIA AND TORSTAR
IN THE STRATFORD/EXETER/ST. MARYS, ON AREA**

PRINT NEWSPAPER OWNERSHIP PRE-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-CLOSURES
<p><u>POSTMEDIA</u></p> <ul style="list-style-type: none"> - Marketplace (Stratford) (free weekly) - The Stratford Beacon Herald (paid daily) - Mitchell Advocate (paid weekly) - Lakeshore Advance (paid weekly) 	<p><u>POSTMEDIA</u></p> <ul style="list-style-type: none"> - Marketplace (Stratford) - The Stratford Beacon Herald - Mitchell Advocate - Lakeshore Advance - Exeter Times-Advocate (and Exeter Weekender) - Stratford City Gazette - St. Mary's Journal-Argus (and The St. Mary's Weekender) 	<p><u>POSTMEDIA</u></p> <ul style="list-style-type: none"> - Marketplace (Stratford) - The Stratford Beacon Herald - Mitchell Advocate - Lakeshore Advance - Exeter Times-Advocate (and Exeter Weekender)
<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - Exeter Times-Advocate (and Exeter Weekender) (paid and free weekly) - Stratford City Gazette (free weekly) - St. Mary's Journal-Argus (and The St. Mary's Weekender) (paid and free weekly) 	<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - none 	<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - none

MEAFORD

MAP OF THE MEAFORD, ON AREA



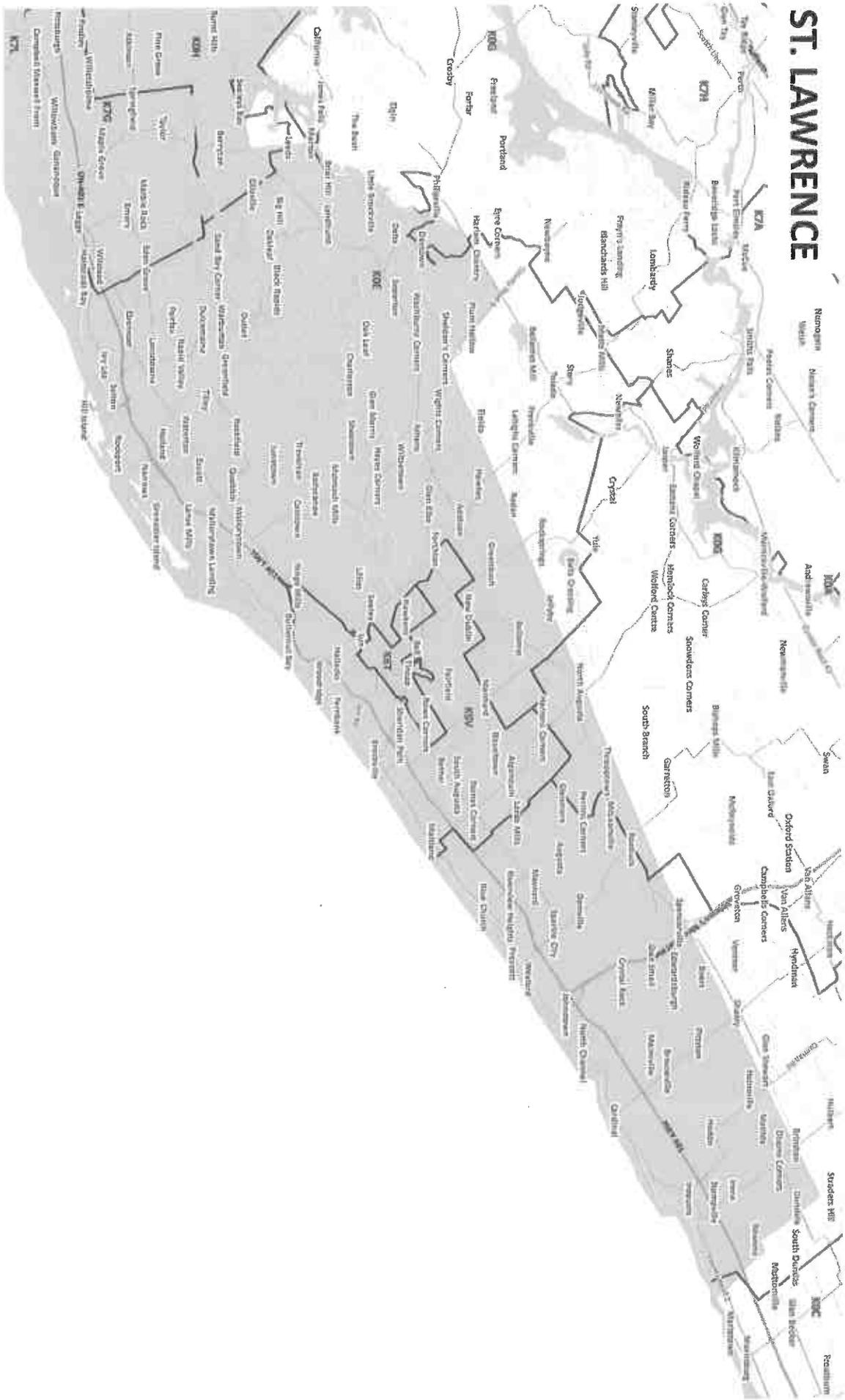
PRINT NEWSPAPERS OF POSTMEDIA AND TORSTAR IN THE MEAFORD, ON AREA

PRINT NEWSPAPER OWNERSHIP PRE-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-CLOSURES
<u>POSTMEDIA</u> - Grey Bruce This Week (free weekly)	<u>POSTMEDIA</u> - Grey Bruce This Week - Meaford Express	<u>POSTMEDIA</u> - Grey Bruce This Week
<u>TORSTAR</u> - Meaford Express (paid and free weekly)	<u>TORSTAR</u> - none	<u>TORSTAR</u> - none

PRINT NEWSPAPERS OF POSTMEDIA AND TORSTAR IN THE BELLEVILLE, ON AREA

PRINT NEWSPAPER OWNERSHIP PRE-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-CLOSURES
<p><u>POSTMEDIA</u></p> <ul style="list-style-type: none"> - The Belleville Intelligencer (paid daily) - Belleville/Quinte Region Community Press (free weekly) - Trenton Trentonian (free weekly) 	<p><u>POSTMEDIA</u></p> <ul style="list-style-type: none"> - The Belleville Intelligencer - Belleville/Quinte Region Community Press - Trenton Trentonian - Belleville News - Central Hastings News - Quinte West News 	<p><u>POSTMEDIA</u></p> <ul style="list-style-type: none"> - The Belleville Intelligencer - Belleville/Quinte Region Community Press - Trenton Trentonian
<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - Belleville News (free weekly) - Central Hastings/Trent Hills News (free weekly) - Stirling/Central Hastings News (free weekly) - Quinte West News (free weekly) 	<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - none 	<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - none

MAP OF THE ST. LAWRENCE, ON AREA



ST. LAWRENCE

PRINT NEWSPAPERS OF POSTMEDIA AND TORSTAR IN THE ST. LAWRENCE, ON AREA

PRINT NEWSPAPER OWNERSHIP PRE-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-CLOSURES
<u>POSTMEDIA</u> - The Brockville Recorder (paid daily) - The Gananoque Reporter (free weekly)	<u>POSTMEDIA</u> - The Brockville Recorder - The Gananoque Reporter - St. Lawrence News	<u>POSTMEDIA</u> - The Brockville Recorder - The Gananoque Reporter
<u>TORSTAR</u> - St. Lawrence News (free weekly)	<u>TORSTAR</u> - none	<u>TORSTAR</u> - none

MAP OF THE BRANTFORD/NORFOLK, ON AREA

BRANTFORD / NORFOLK

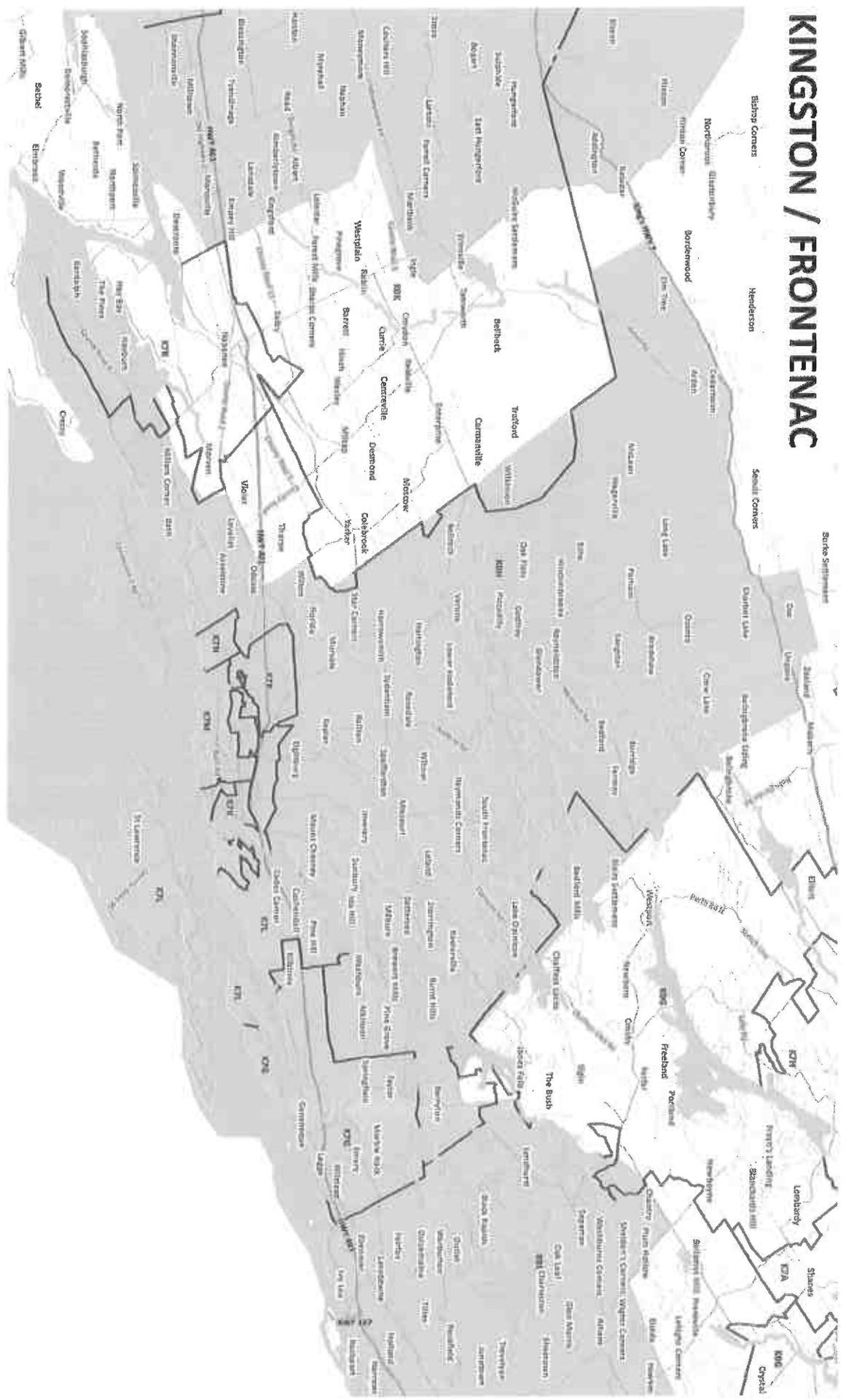


PRINT NEWSPAPERS OF POSTMEDIA AND TORSTAR IN THE BRANTFORD/NORFOLK, ON AREA

PRINT NEWSPAPER OWNERSHIP PRE-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-CLOSURES
<u>POSTMEDIA</u> - Brantford Expositor (free weekly) - Paris Star (free weekly) - Simcoe Reformer (paid and free weekly) - Delhi News Record (paid weekly) - Tillsonburg Independent News (paid and free weekly) - Tillsonburg News (paid and free weekly)	<u>POSTMEDIA</u> - Brantford Expositor - Paris Star - Simcoe Reformer - Delhi News Record - Tillsonburg Independent News - Tillsonburg News - Brant News - Norfolk News	<u>POSTMEDIA</u> - Brantford Expositor - Paris Star - Simcoe Reformer - Delhi News Record - Tillsonburg Independent News - Tillsonburg News
<u>TORSTAR</u> - Brant News (free weekly) - Norfolk News (free weekly)	<u>TORSTAR</u> - none	<u>TORSTAR</u> - none

MAP OF THE KINGSTON / FRONTENAC, ON AREA

KINGSTON / FRONTENAC



PRINT NEWSPAPERS OF POSTMEDIA AND TORSTAR IN THE KINGSTON/FRONTENAC, ON AREA

PRINT NEWSPAPER OWNERSHIP PRE-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-CLOSURES
<u>POSTMEDIA</u> - Kingston Whig-Standard (paid daily) - Kingston/Frontenac This Week (free weekly)	<u>POSTMEDIA</u> - Kingston Whig-Standard - Kingston/Frontenac This Week - Kingston Heritage - Frontenac Gazette	<u>POSTMEDIA</u> - Kingston Whig-Standard - Kingston/Frontenac This Week
<u>TORSTAR</u> - Kingston Heritage (free weekly) - Frontenac Gazette (free weekly)	<u>TORSTAR</u> - none	<u>TORSTAR</u> - none

MAP OF THE WINNIPEG, MB AREA

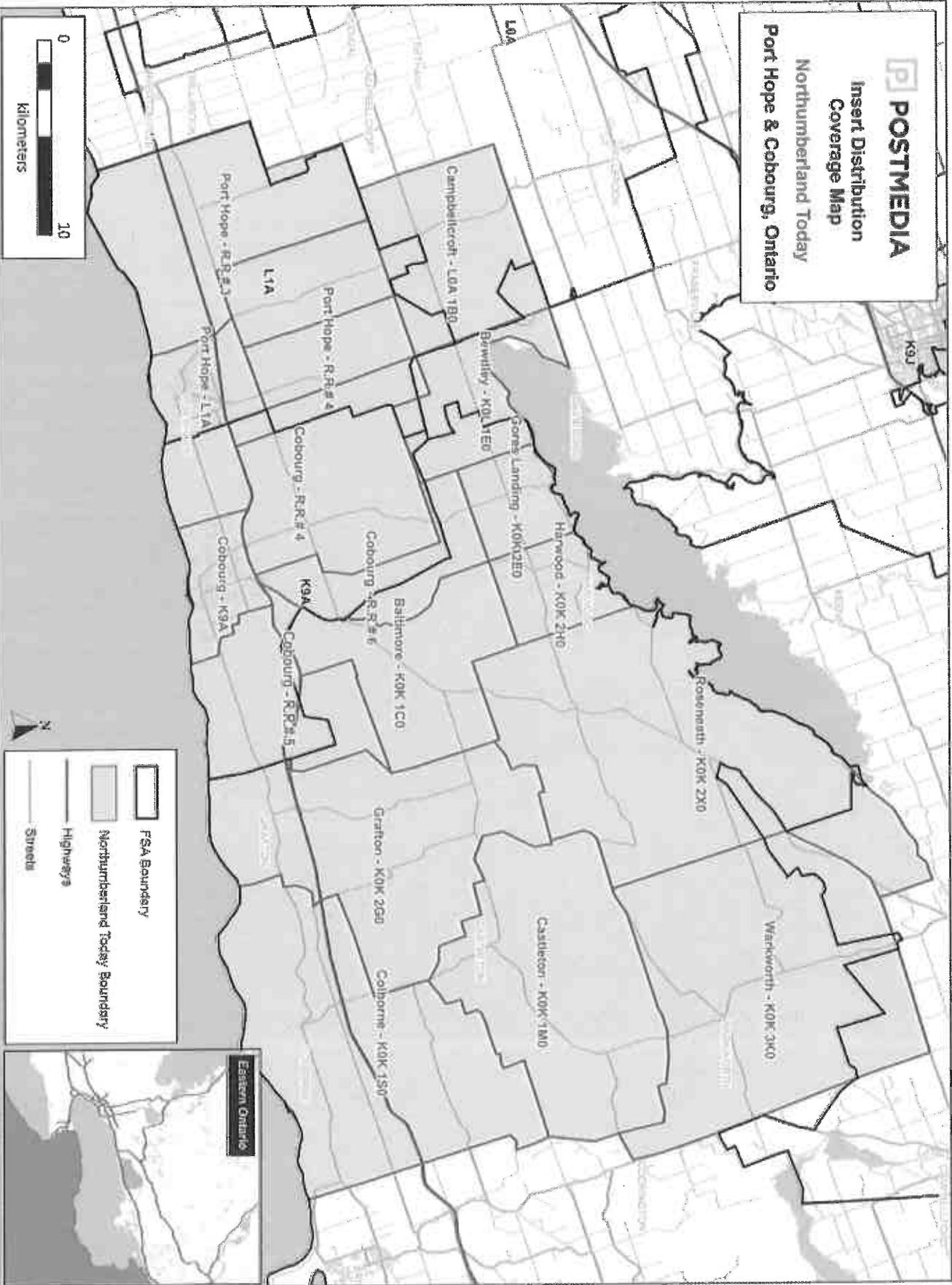
** NO MAP PROVIDED WITH THE TRANSACTION DOCUMENTS*

PRINT NEWSPAPERS OF POSTMEDIA AND TORSTAR WINNIPEG, MB AND SURROUNDING AREAS

PRINT NEWSPAPER OWNERSHIP PRE-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-CLOSURES
<u>POSTMEDIA</u> - Winnipeg Sun (paid daily)	<u>POSTMEDIA</u> - Winnipeg Sun - Metro Winnipeg	<u>POSTMEDIA</u> - Winnipeg Sun
<u>TORSTAR</u> - Metro Winnipeg (free daily commuter)	<u>TORSTAR</u> - none	<u>TORSTAR</u> - none

MAP OF THE PORT HOPE/COBOURG, ON AREA

POSTMEDIA
 Insert Distribution
 Coverage Map
 Northumberland Today
 Port Hope & Cobourg, Ontario



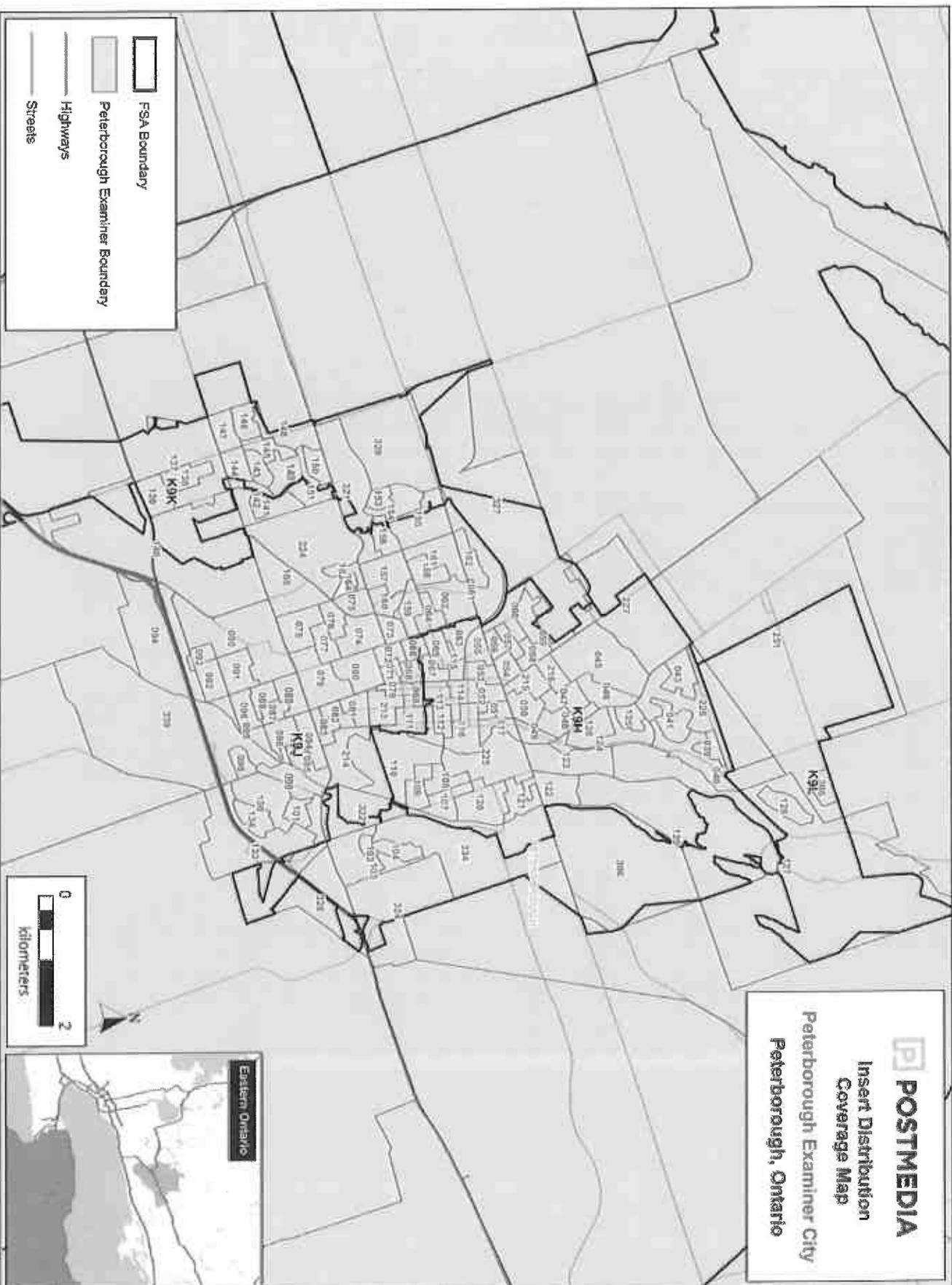
Map Data provided by © RSI Solutions Inc. © Environics Analytics

Prepared by Postmedia Network 2016

PRINT NEWSPAPERS OF POSTMEDIA AND TORSTAR IN THE PORT HOPE/COBOURG, ON AREA

PRINT NEWSPAPER OWNERSHIP PRE-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-CLOSURES
<u>POSTMEDIA</u> - Belleville/Quinte Region Community Press (free weekly) - Northumberland Today (paid daily)	<u>POSTMEDIA</u> - Belleville/Quinte Region Community Press	<u>POSTMEDIA</u> - Belleville/Quinte Region Community Press
<u>TORSTAR</u> - Brighton Independent (free weekly) - Northumberland News (free weekly)	<u>TORSTAR</u> - Brighton Independent - Northumberland News - Northumberland Today	<u>TORSTAR</u> - Brighton Independent - Northumberland News

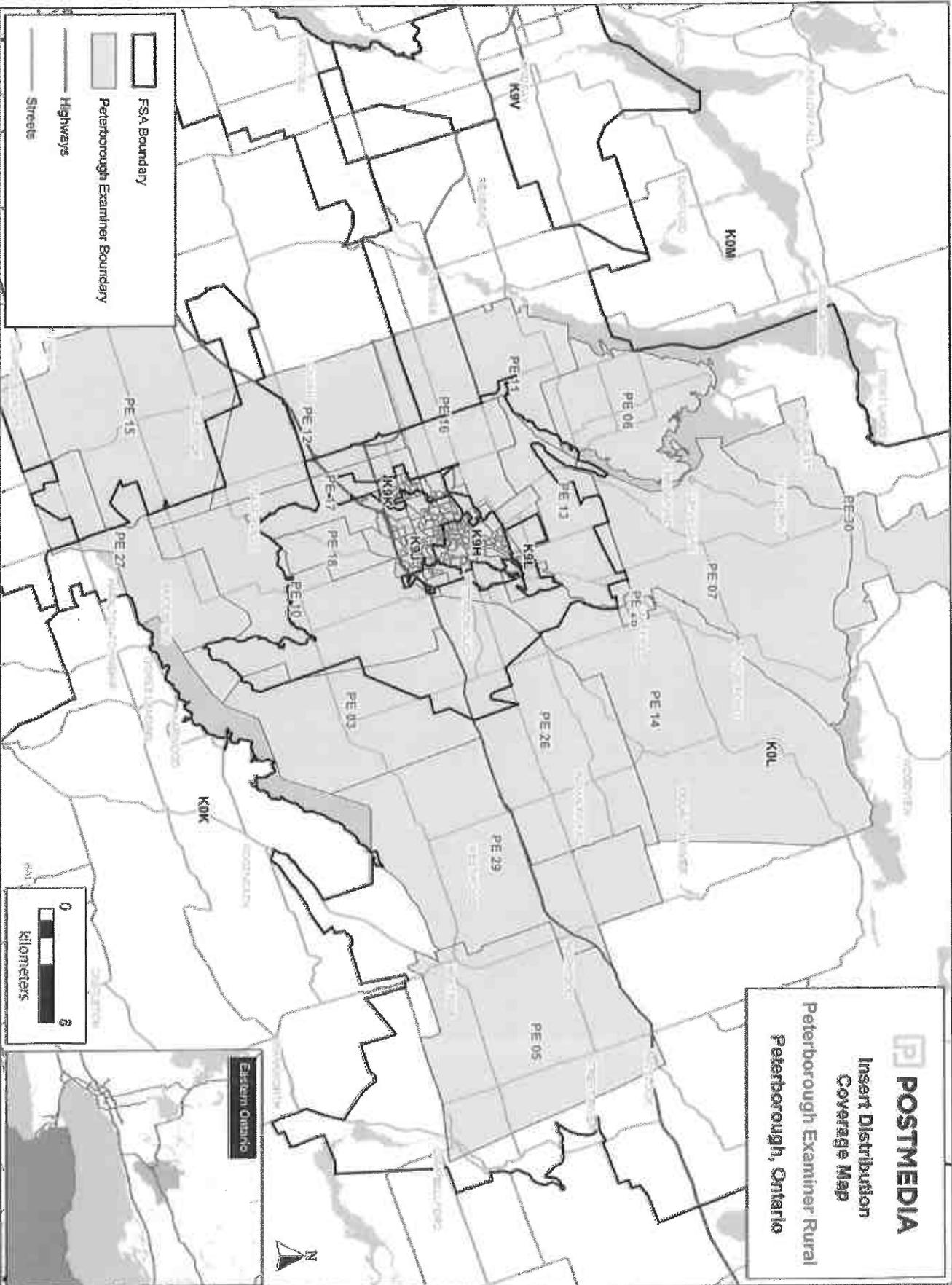
MAP OF THE PETERBOROUGH, ON AREA (1)



Map Data provided by © RSI Solutions Inc. © Environics Analytics

Prepared by Postmedia Network 2016

MAP OF THE PETERBOROUGH, ON AREA (2)



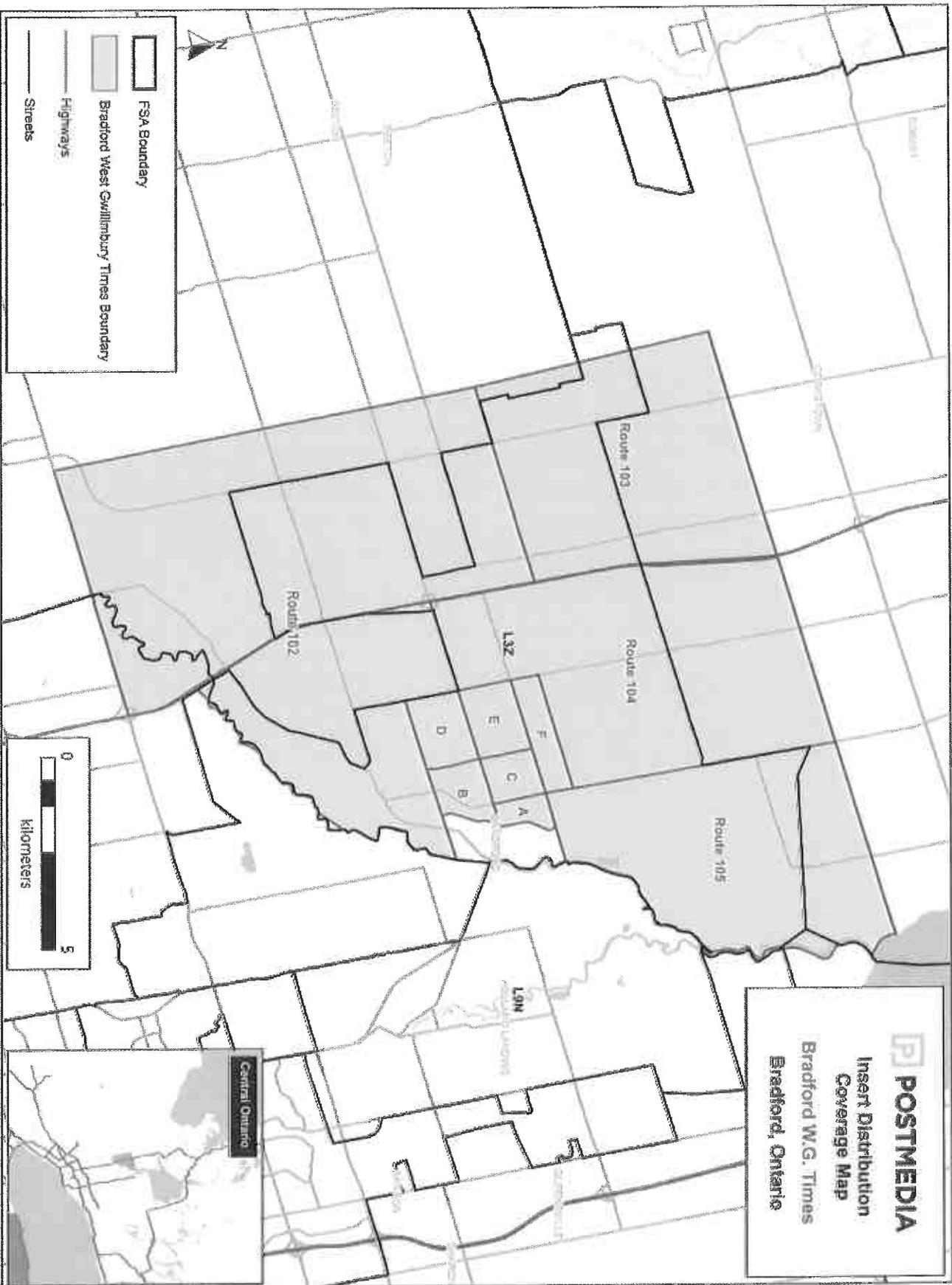
Map Data provided by © RSI Solutions Inc. © Envirotica Analytics

Prepared by Postmedia Network 2018

PRINT NEWSPAPERS OF POSTMEDIA AND TORSTAR IN THE PETERBOROUGH, ON AREA

PRINT NEWSPAPER OWNERSHIP PRE-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-CLOSURES
<u>POSTMEDIA</u> - Belleville/Quinte Region Community Press (free weekly) - Peterborough Examiner (paid daily)	<u>POSTMEDIA</u> - Belleville/Quinte Region Community Press	<u>POSTMEDIA</u> - Belleville/Quinte Region Community Press
<u>TORSTAR</u> - Peterborough This Week (free twice per week)	<u>TORSTAR</u> - Peterborough This Week - Peterborough Examiner	<u>TORSTAR</u> - Peterborough This Week - Peterborough Examiner

MAP OF THE BRADFORD/WEST GWILLIMBURY, ON AREA



POSTMEDIA
Insert Distribution
Coverage Map
Bradford W.G. Times
Bradford, Ontario

Map Data provided by © RSI Solutions Inc. © Environics Analytics

Prepared by Postmedia Network 2015

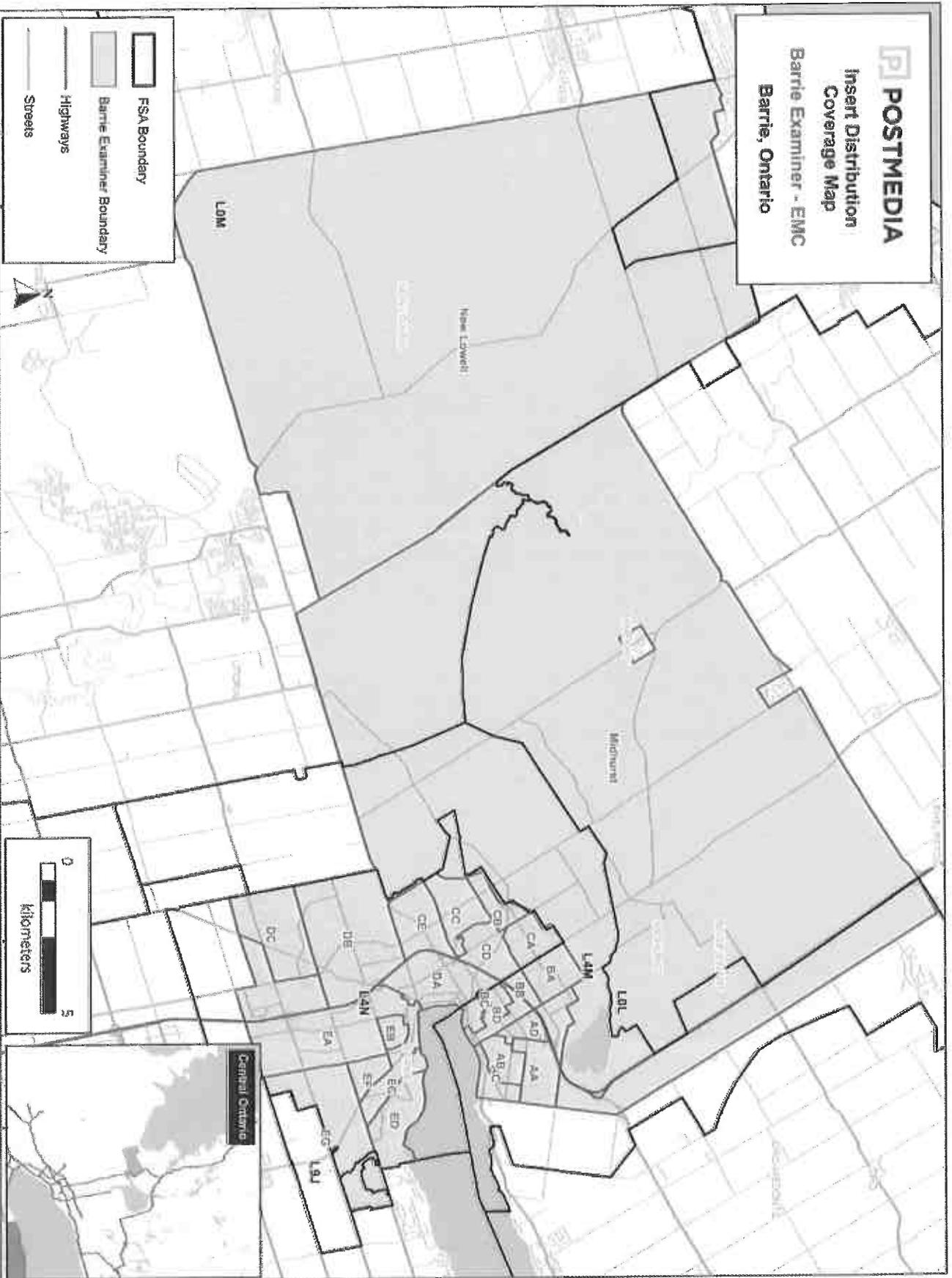
**PRINT NEWSPAPERS OF POSTMEDIA AND TORSTAR
IN THE BRADFORD/WEST GWILLIMBURY, ON AREA**

PRINT NEWSPAPER OWNERSHIP PRE-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-CLOSURES
<u>POSTMEDIA</u> - Bradford West Gwillimbury Times (free weekly)	<u>POSTMEDIA</u> - none	<u>POSTMEDIA</u> - none
<u>TORSTAR</u> - Alliston Herald (free weekly) - Bradford West Gwillimbury Topic (free weekly) - King Connection (free weekly)	<u>TORSTAR</u> - Alliston Herald - Bradford West Gwillimbury Topic - King Connection - Bradford West Gwillimbury Times	<u>TORSTAR</u> - Alliston Herald - Bradford West Gwillimbury Topic - King Connection

PRINT NEWSPAPERS OF POSTMEDIA AND TORSTAR IN THE COLLINGWOOD, ON AREA

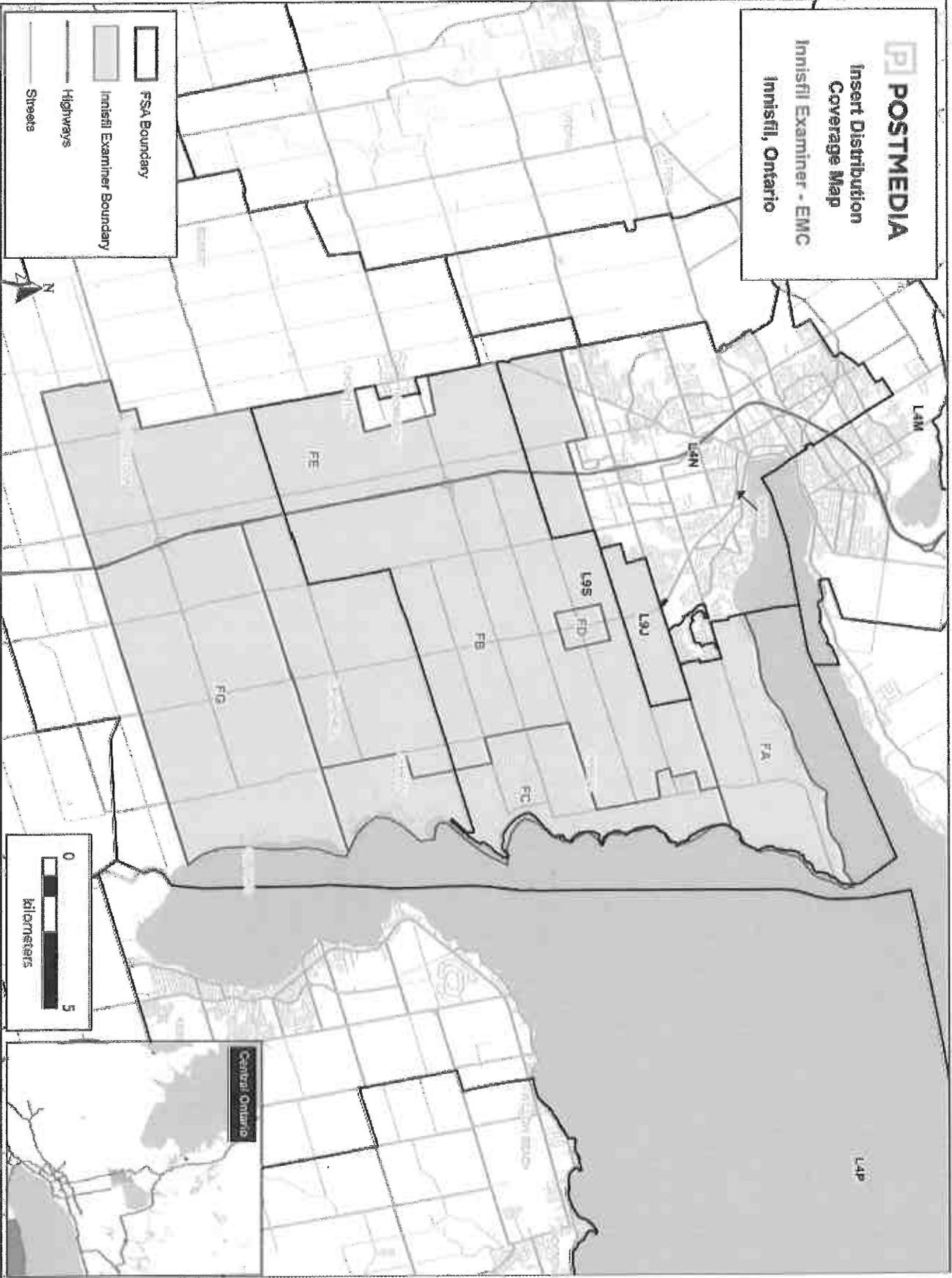
PRINT NEWSPAPER OWNERSHIP PRE-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-TRANSACTION	PRINT NEWSPAPER OWNERSHIP POST-CLOSURES
<u>POSTMEDIA</u> - Collingwood Enterprise Bulletin (paid and free weekly)	<u>POSTMEDIA</u> - none	<u>POSTMEDIA</u> - none
<u>TORSTAR</u> - The Collingwood Connection (free weekly) - Wasaga/Stayner Sun (free weekly)	<u>TORSTAR</u> - The Collingwood Connection - Wasaga/Stayner Sun - Collingwood Enterprise Bulletin	<u>TORSTAR</u> - The Collingwood Connection - Wasaga/Stayner Sun

MAP OF THE BARRIE/INNISFILL, ON AREA (1)



MAP OF THE BARRIE/INNISFIL, ON AREA (3)

POSTMEDIA
Insert Distribution
Coverage Map
Innisfil Examiner - EMC
Innisfil, Ontario



Legend

- FSA Boundary
- Innisfil Examiner Boundary
- Highways
- Streets



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<u>TORSTAR</u> - Alliston Herald (free weekly) - Barrie Advance (free weekly) - Innisfil Journal (free weekly)	<u>TORSTAR</u> - Alliston Herald - Barrie Advance - Innisfil Journal - Barrie Examiner - Innisfil Examiner	<u>TORSTAR</u> - Alliston Herald - Barrie Advance - Innisfil Journal

MAP OF THE ORILLIA, ON AREA (1)

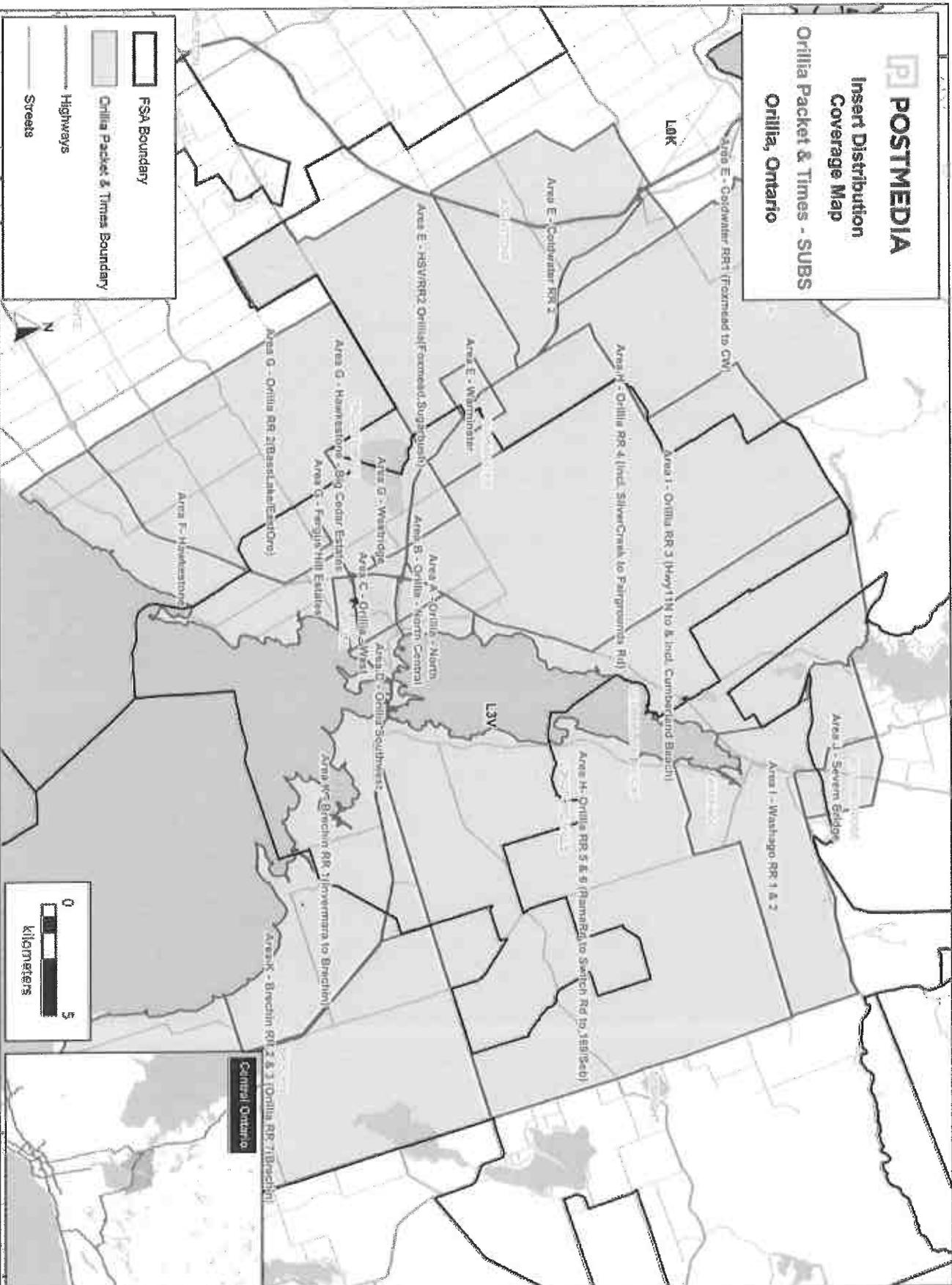
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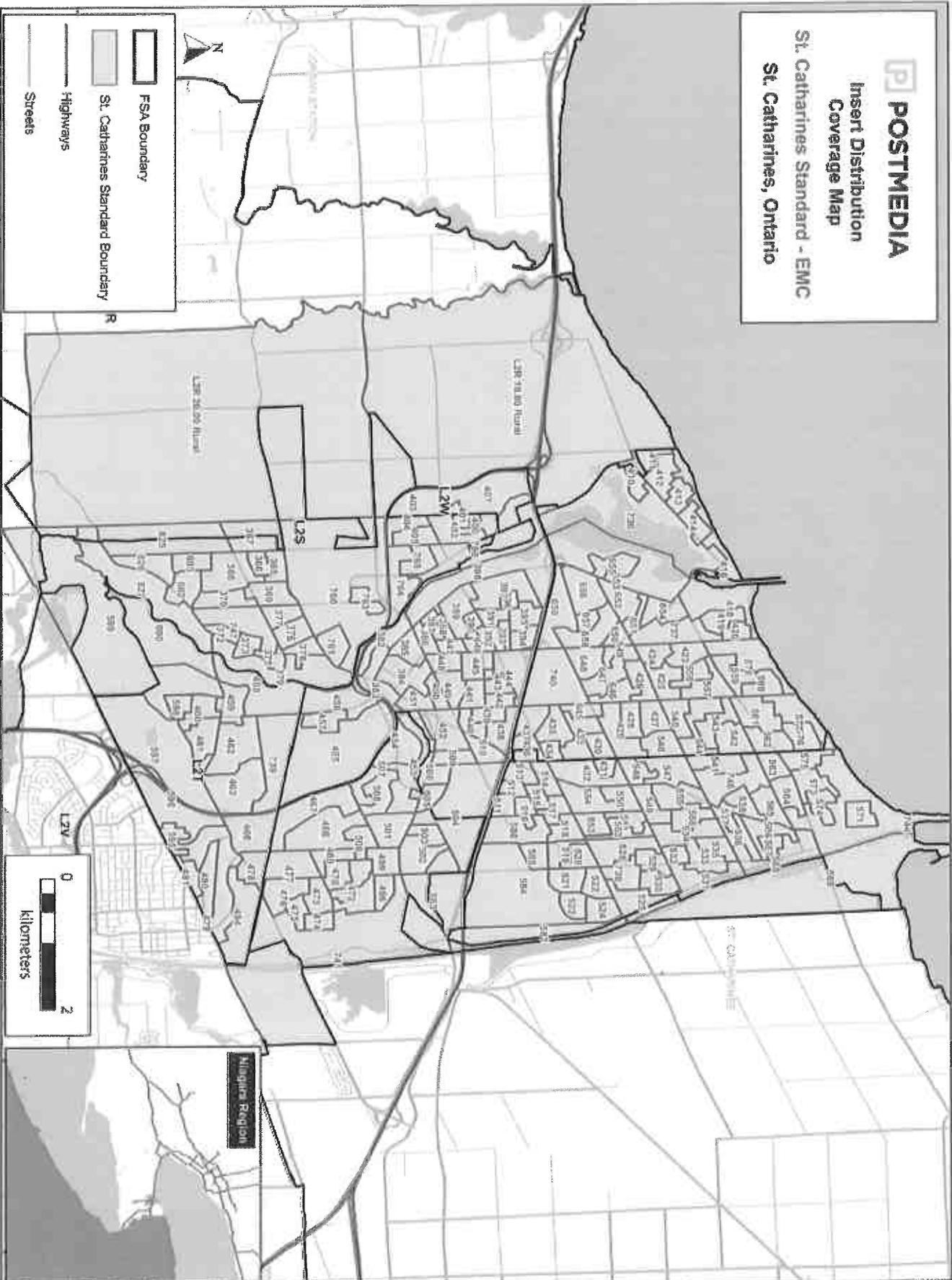
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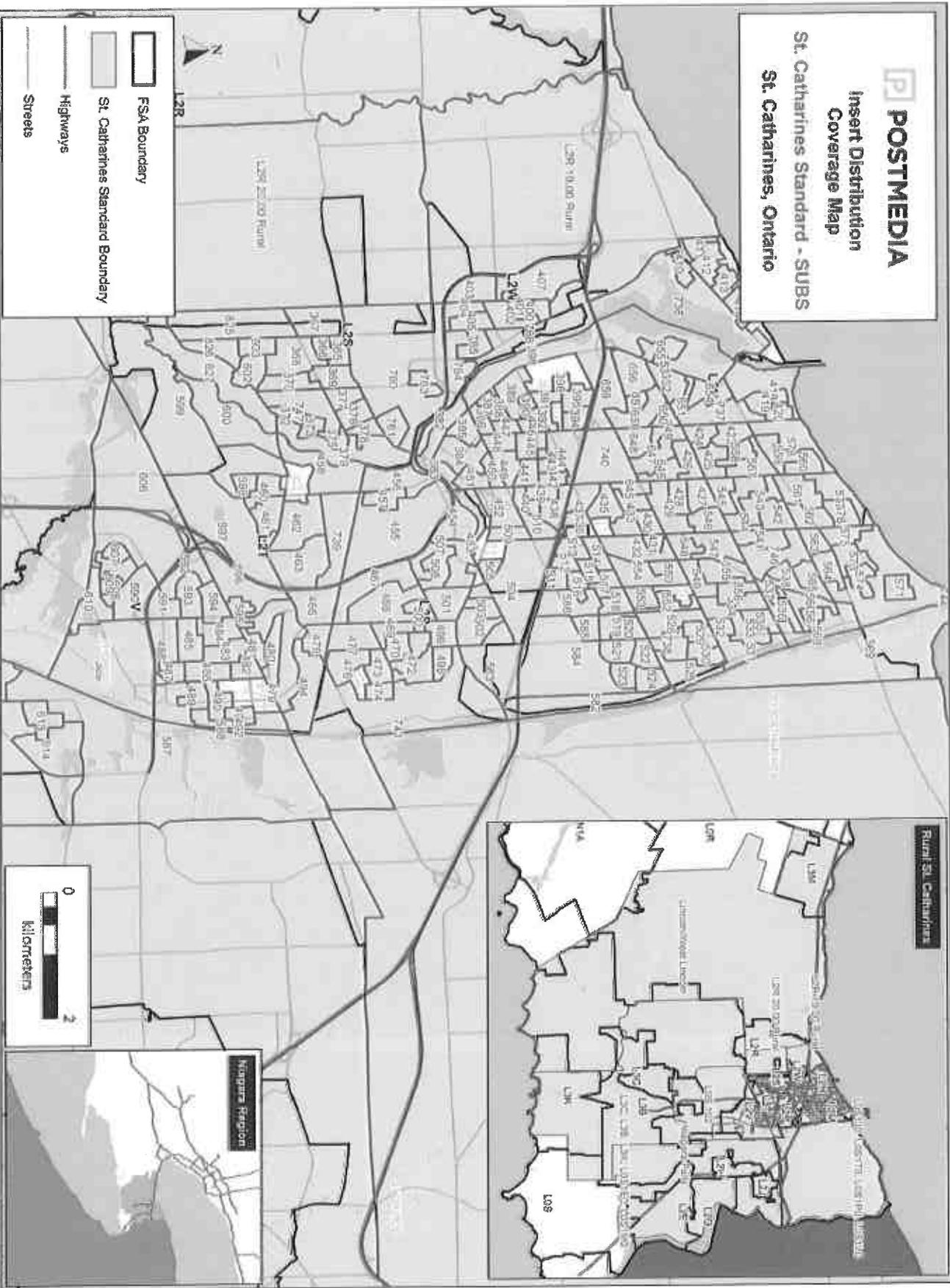
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St. Catharines Standard - EMC
St. Catharines, Ontario



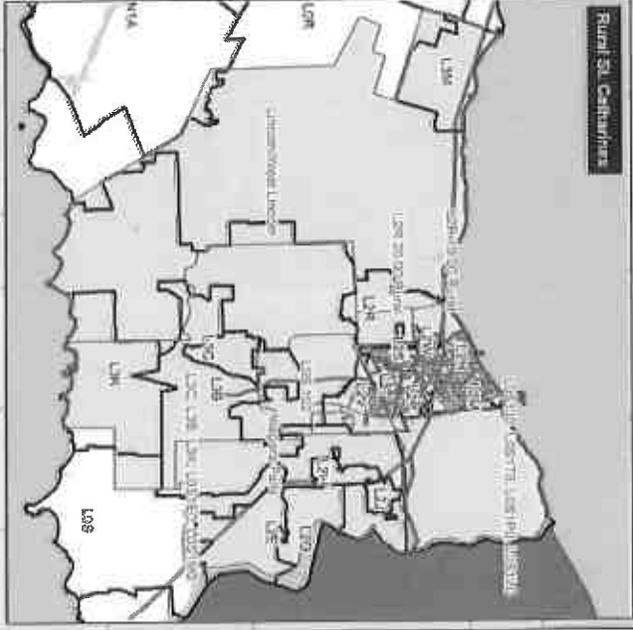
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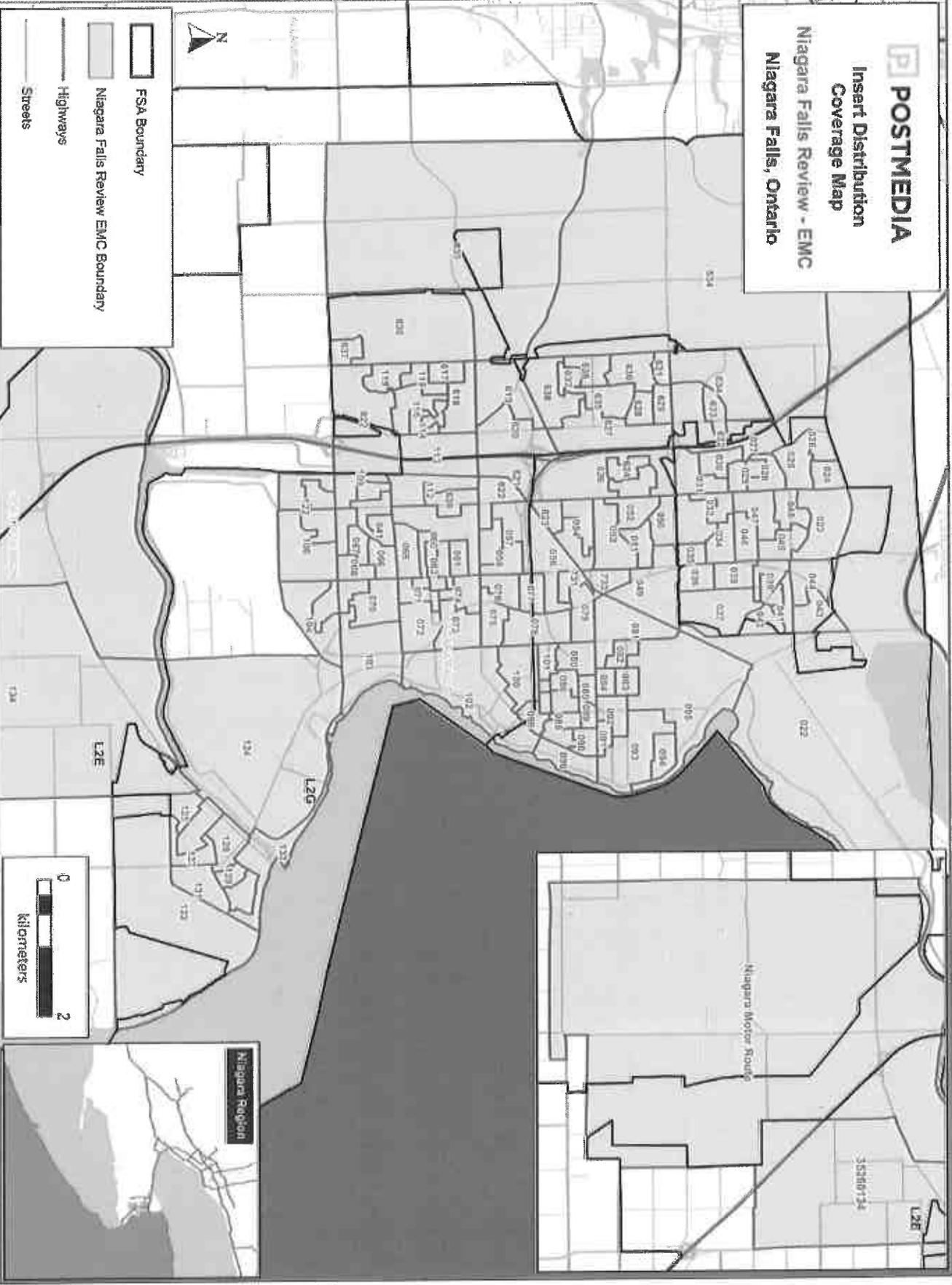


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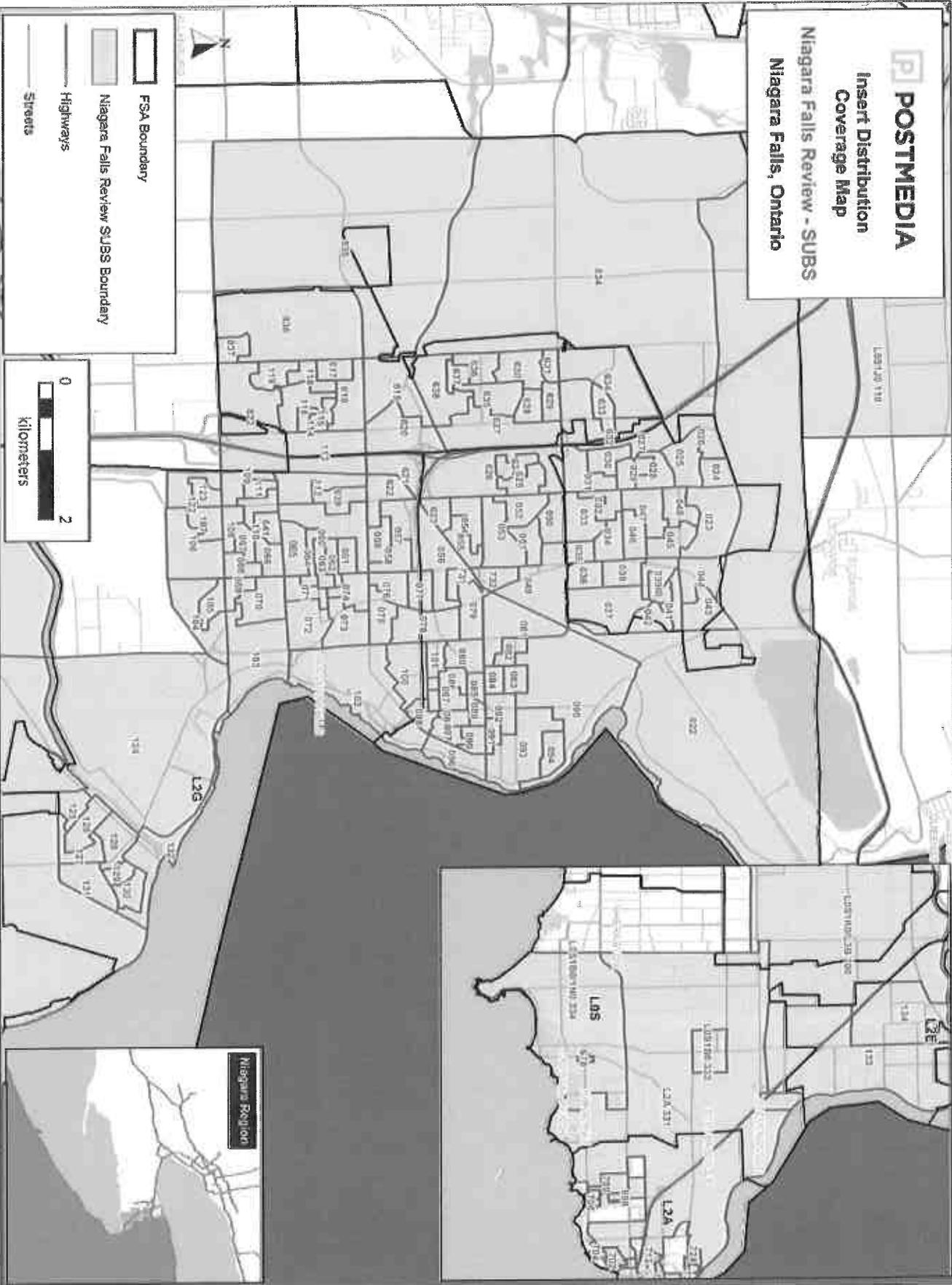
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Niagara Falls, Ontario



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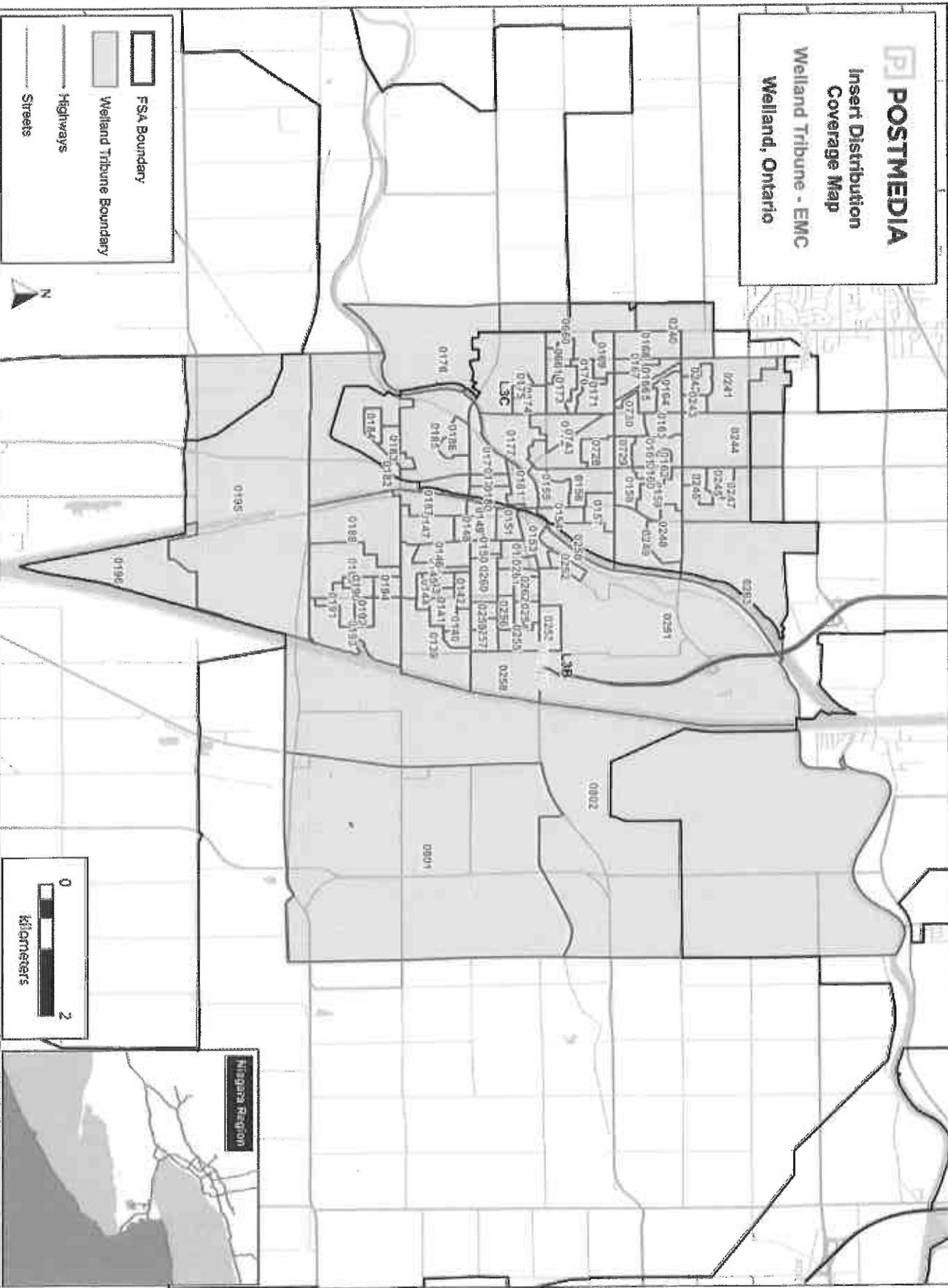
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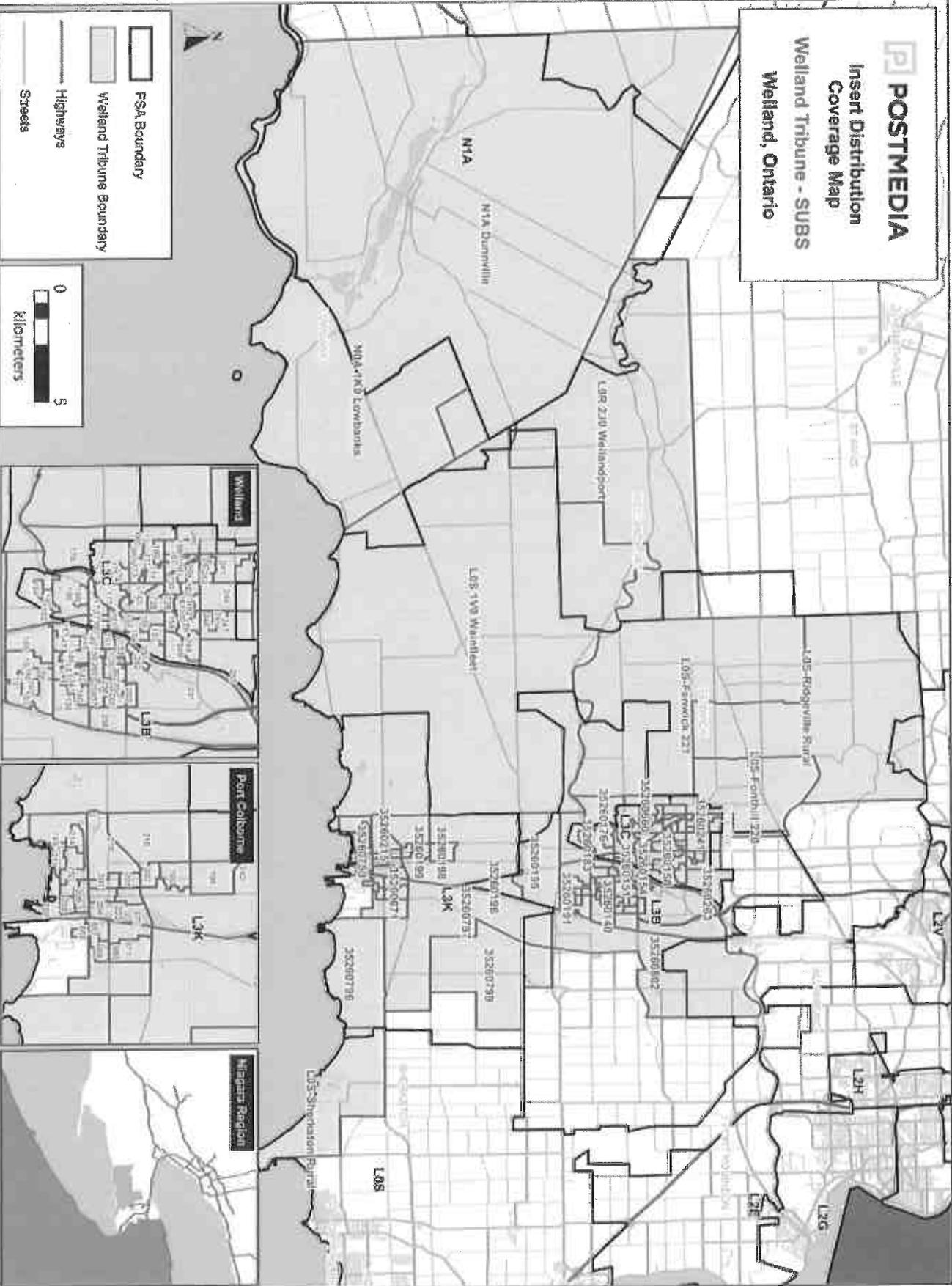


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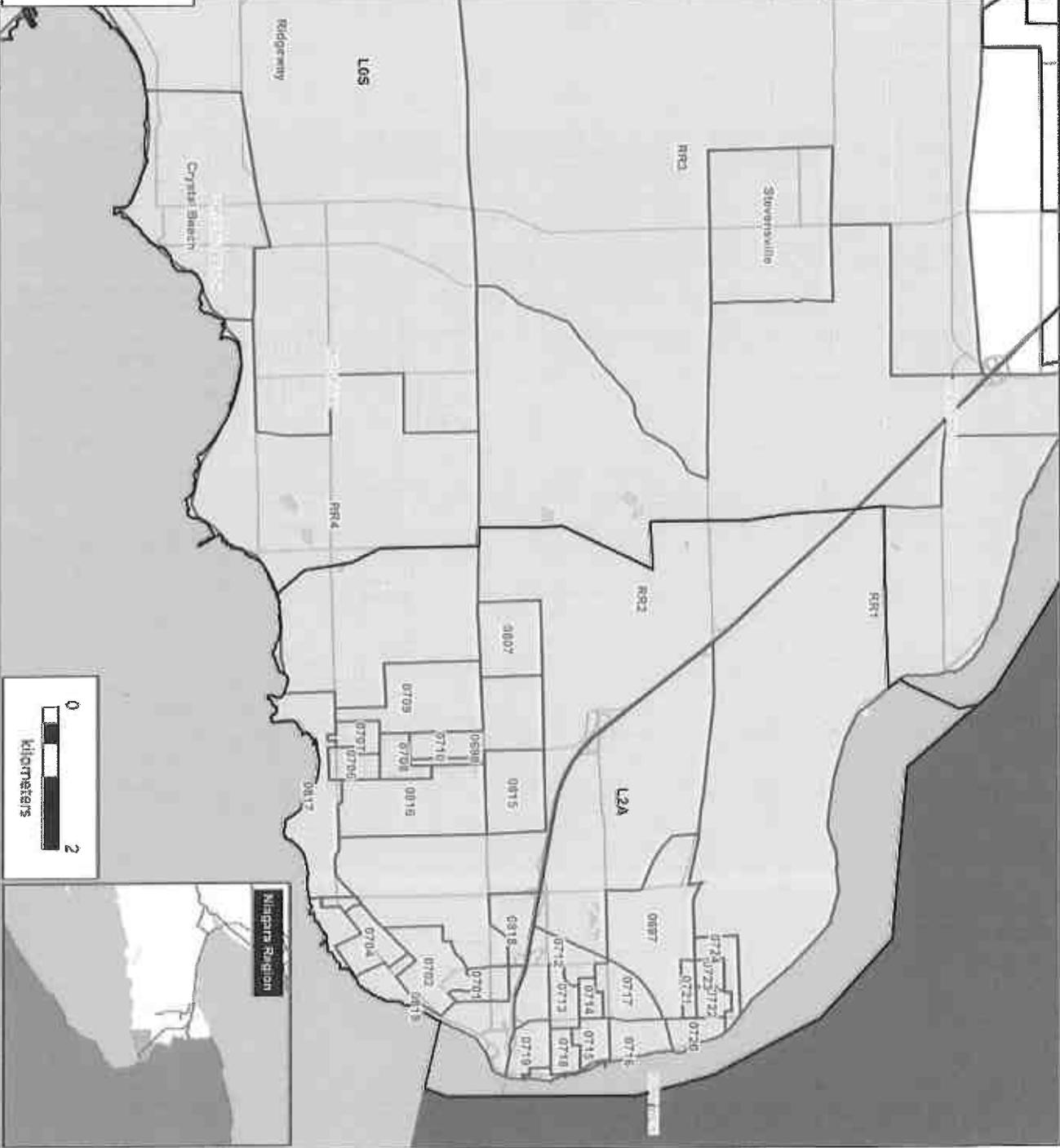
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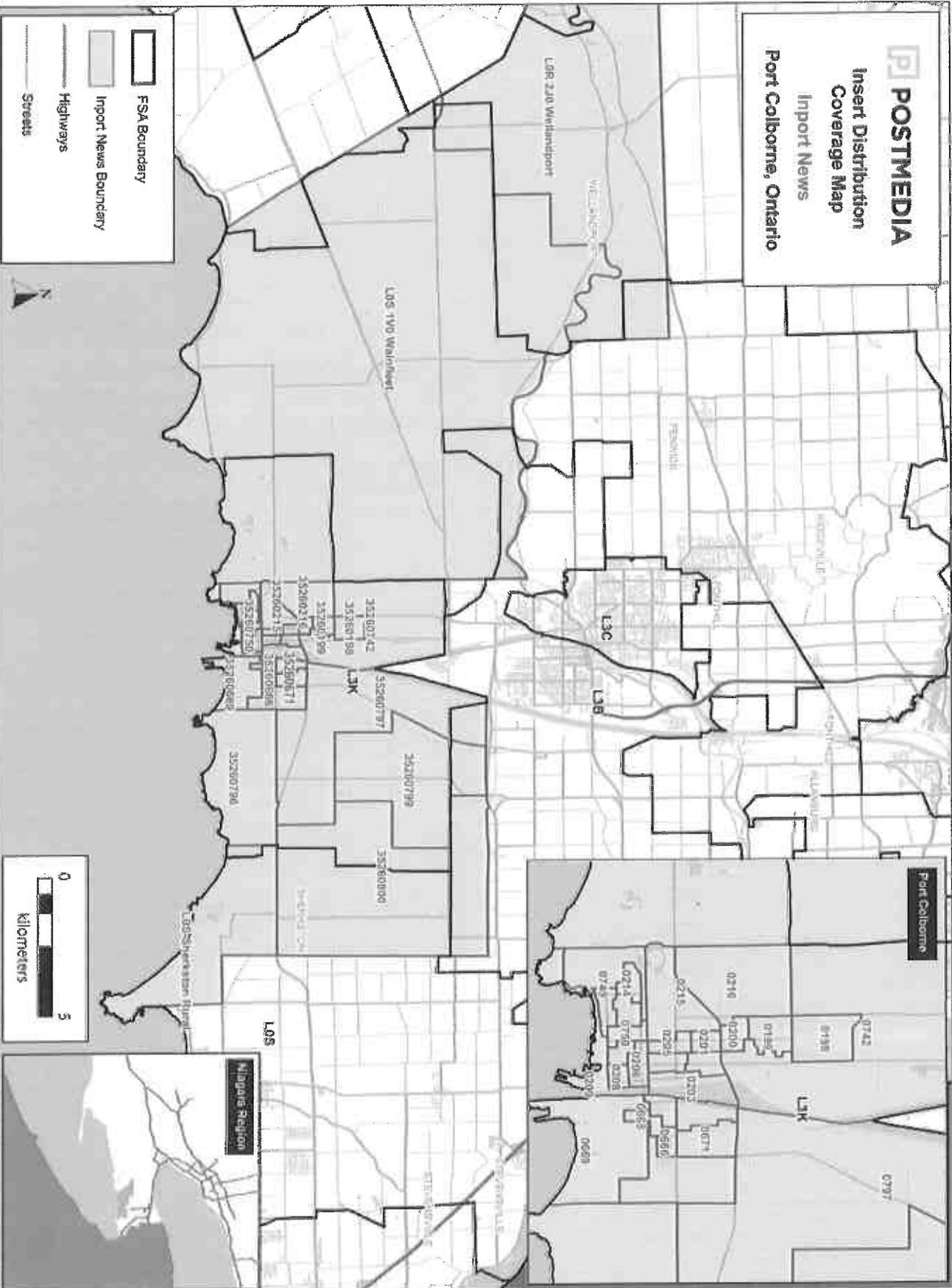
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-  Streets



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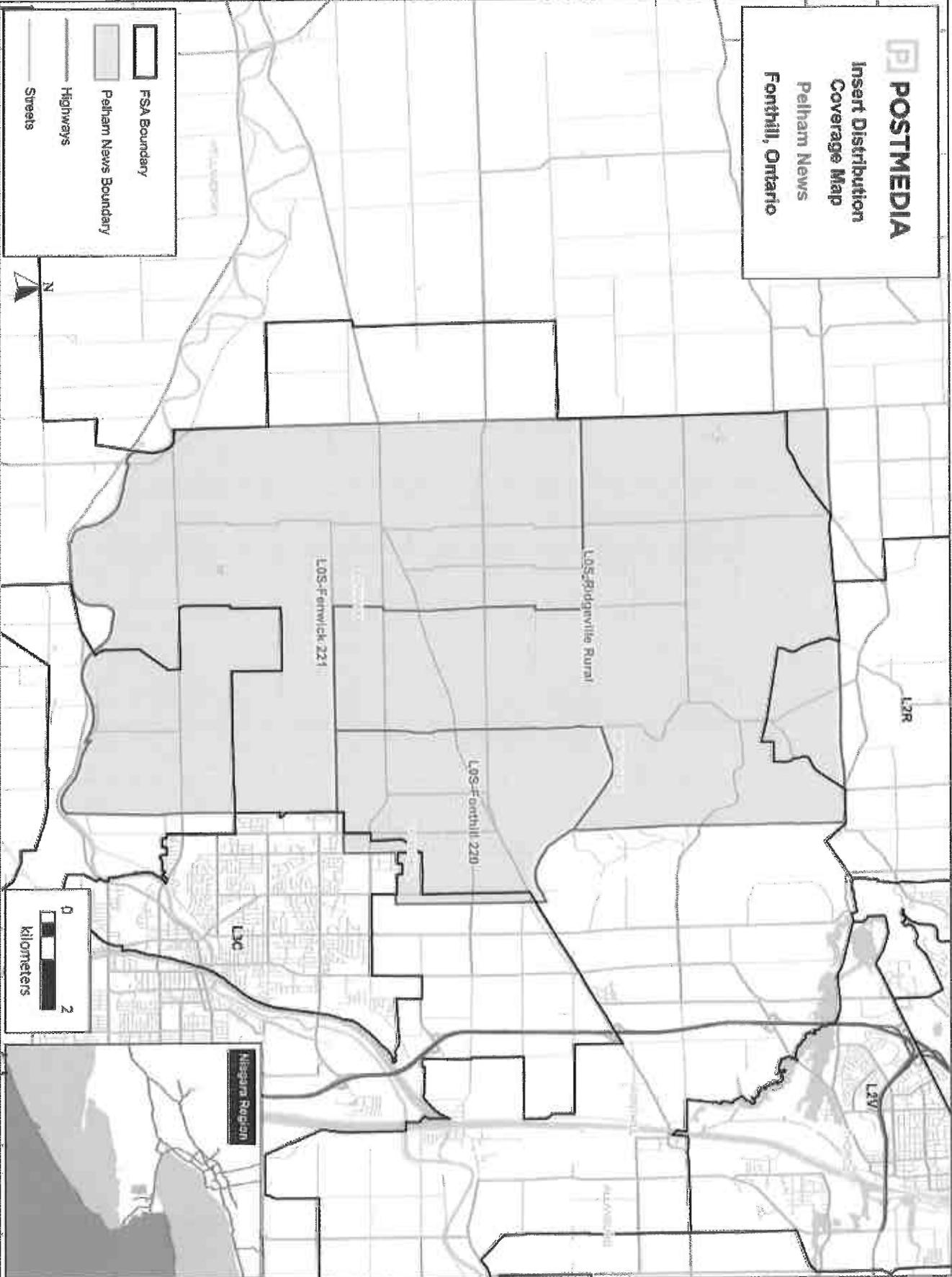


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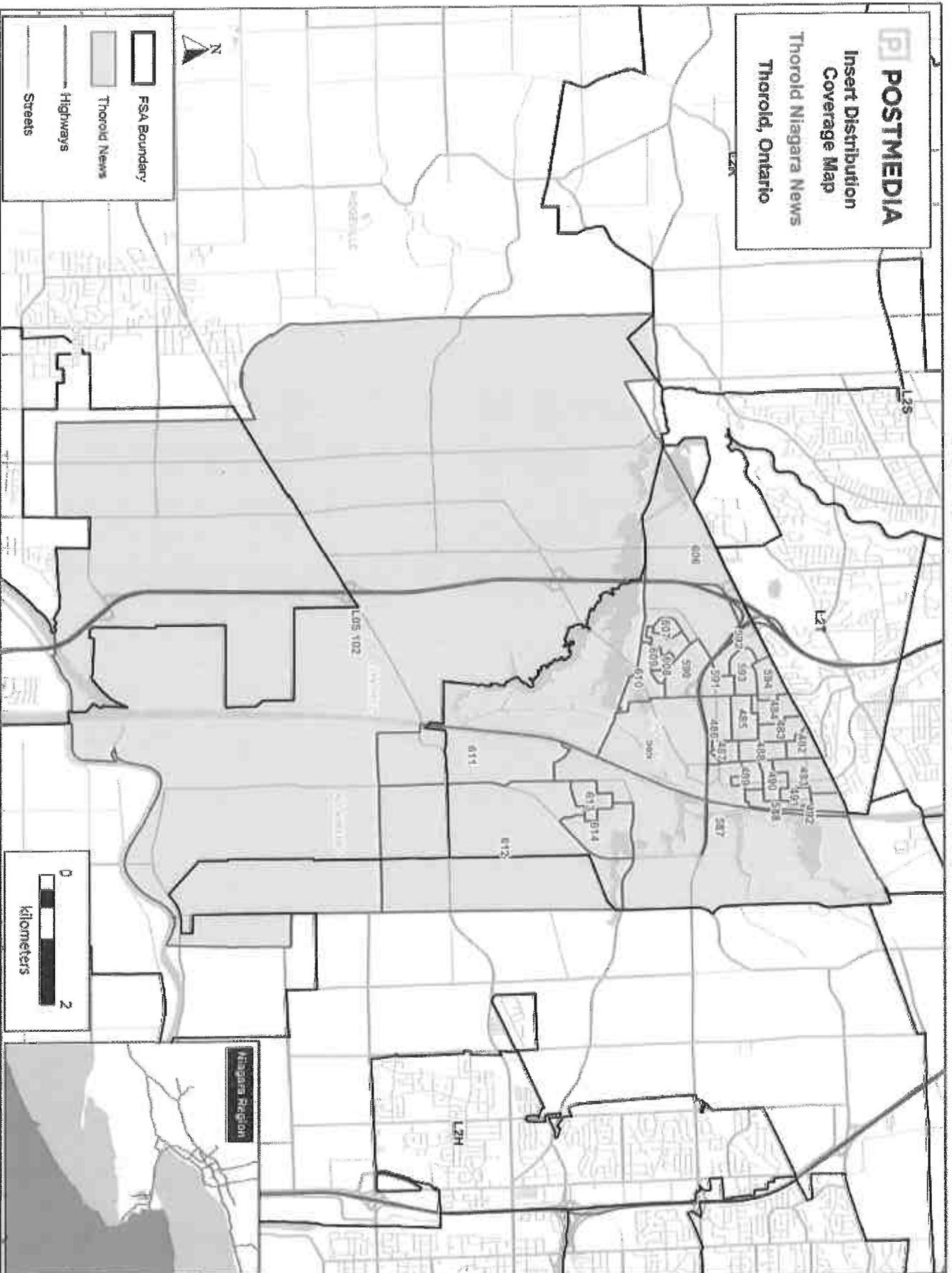
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<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - Grimsby Lincoln News (free 3x week) - Niagara This Week, Fort Erie Post (free weekly) - Niagara This Week, The Leader (in Port Colborne, free weekly) - Niagara This Week (free weekly) - Niagara This Week Town Crier (free weekly) 	<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - Grimsby Lincoln News - Niagara This Week, Fort Erie Post - Niagara This Week, The Leader - Niagara This Week - Niagara This Week Town Crier - Fort Erie Times - InPort News (Port Colborne) - Niagara Advance - Pelham News - Thorold Niagara News - Niagara Falls Review - St. Catharines Standard - Welland Tribune 	<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - Grimsby Lincoln News - Niagara This Week, Fort Erie Post - Niagara This Week, The Leader - Niagara This Week - Niagara This Week Town Crier - Niagara Falls Review - St. Catharines Standard - Welland Tribune

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<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - Toronto Star (paid daily) - Metro Toronto (free daily commuter) - Bloor West-Parkdale Villager (free weekly) - City Centre Mirror/Annex Guardian (free weekly) - Beach-Riverdale Mirror (free weekly) - East York Mirror (free weekly) - North York Mirror (free weekly) - Parkdale-Liberty Villager (free weekly) - Scarborough Mirror (free weekly) - York Guardian (free weekly) <p><i>In the GTA:</i></p> <ul style="list-style-type: none"> - Ajax/Pickering News Advertiser (free weekly) - Etobicoke Guardian (free weekly) - Mississauga News (free weekly) - Oakville Beaver (free weekly) - Richmond Hill/Thornhill Liberal (free weekly) - Vaughan Citizen (free weekly) 	<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - Toronto Star - Metro Toronto - Bloor West-Parkdale Villager - City Centre Mirror/Annex Guardian - Beach-Riverdale Mirror - East York Mirror - North York Mirror - Parkdale-Liberty Villager - Scarborough Mirror - York Guardian - 24 Hours Toronto <p><i>In the GTA:</i></p> <ul style="list-style-type: none"> - Ajax/Pickering News Advertiser - Etobicoke Guardian - Mississauga News - Oakville Beaver - Richmond Hill/Thornhill Liberal - Vaughan Citizen 	<p><u>TORSTAR</u></p> <ul style="list-style-type: none"> - Toronto Star - Metro Toronto - Bloor West-Parkdale Villager - City Centre Mirror/Annex Guardian - Beach-Riverdale Mirror - North York Mirror - Parkdale-Liberty Villager - Scarborough Mirror - Vaughan Citizen - York Guardian <p><i>In the GTA:</i></p> <ul style="list-style-type: none"> - Ajax/Pickering News Advertiser - Etobicoke Guardian - Mississauga News - Oakville Beaver - Richmond Hill/Thornhill Liberal - Vaughan Citizen

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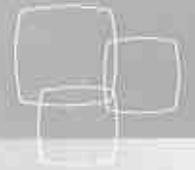
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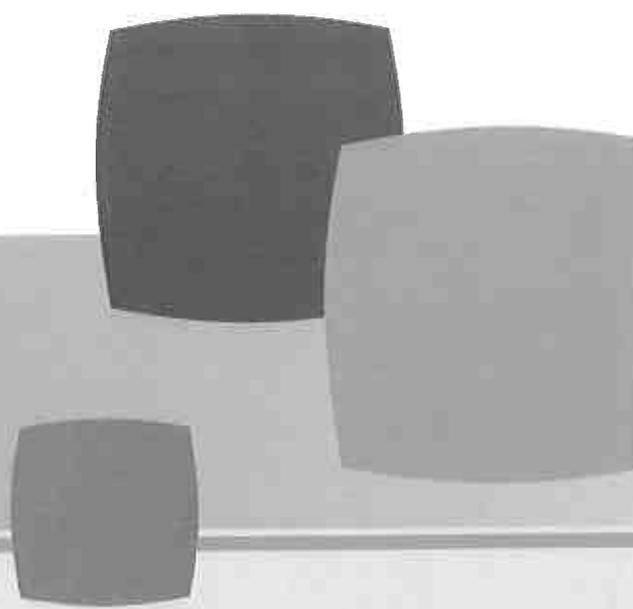
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Enforcement Guidelines



Competitor Collaboration Guidelines



Canada

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This publication replaces the following Competition Bureau publication:

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May 8, 2009

For information on the Competition Bureau's activities, please contact:

Information Centre
Competition Bureau
50 Victoria Street
Gatineau QC K1A 0C9

Tel.: 819-997-4282
Toll free: 1-800-348-5358
TTY (for hearing impaired): 1-800-642-3844
Fax: 819-997-0324
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PREFACE

The Competition Bureau (the "Bureau") is an independent law enforcement agency responsible for, among other things, the administration and enforcement of the *Competition Act* (the "Act"). The Bureau contributes to the prosperity of Canadians by protecting and promoting competitive markets and enabling informed consumer choice. These Guidelines describe the Bureau's approach to assessing collaborations between competitors.

Canadian firms face increasing pressure to adopt flexible business strategies to remain competitive in an economy that is continually changing due to globalization, technological innovation and advancements in production processes. Strategic alliances can permit Canadian firms to capture the benefits of rapid technological changes and dynamic competitive conditions. They can permit firms to combine capabilities and resources so as to lower the costs of production, enhance product quality, and reduce the time required to bring new products to market. Such pro-competitive collaborations, even when they involve competitors, can often benefit Canadians by allowing firms to make more efficient use of resources and accelerate the pace of innovation. At the same time, certain competitor collaborations may result in significant harm to competition.

The 2009 amendments to the Act create a more effective criminal enforcement regime for the most egregious forms of cartel agreements, while at the same time removing the threat of criminal sanctions for legitimate collaborations to avoid discouraging firms from engaging in potentially beneficial alliances. As explained in greater detail in these Guidelines, the amended criminal prohibition is reserved for agreements between competitors to fix prices, allocate markets or restrict output¹ that constitute "naked restraints" on competition (restraints that are not implemented in furtherance of a legitimate collaboration, strategic alliance or joint venture). Other forms of competitor collaborations, such as joint ventures and strategic alliances, may be subject to review under a civil agreements provision that prohibits agreements only where they are likely to substantially lessen or prevent competition.

The Bureau recognizes the need for transparency and predictability regarding its assessment of competitor collaborations. Accordingly, these Guidelines are intended to assist firms in assessing the likelihood that a competitor collaboration will raise concerns under the criminal or civil provisions of the Act and, if so, whether the Commissioner would commence an inquiry in respect of the collaboration.

Commissioner of Competition

¹ These agreements are commonly recognized as the most egregious forms of anti-competitive conduct. See, for example, the OECD's *Recommendation of the Council concerning Effective Action against Hard Core Cartels* (1998), which condemned hard core cartels as the "most egregious violations of competition law." Available online at: www.oecd.org.

INTERPRETATION

These Guidelines describe the general approach of the Bureau in applying sections 45 and 90.1 of the Act to collaborations between competitors. They supersede all previous statements of the Commissioner of Competition (the "Commissioner") or other officials of the Bureau regarding the administration and enforcement of sections 45 and 90.1 of the Act.

The nature and scope of competitor collaborations vary greatly. As a result, these Guidelines cannot provide a comprehensive review of all competition issues that may arise from a given collaboration, nor do they replace the advice of legal counsel. Firms contemplating collaborations with competitors are encouraged to seek advice regarding specific issues that may arise. Guidance regarding future business conduct can be obtained by requesting a binding written opinion from the Commissioner under section 124.1 of the Act.

These Guidelines are not intended to restate the law or to constitute a binding statement of how the Commissioner or the Director of Public Prosecutions² (the "DPP") will exercise discretion in a particular situation. The respective enforcement and prosecutorial decisions of the Commissioner and the DPP, and the ultimate resolution of issues, will depend on the particular circumstances of the matter in question. Final interpretation of the law is the responsibility of the Competition Tribunal (the "Tribunal") and the courts.

The Bureau may revisit certain aspects of these Guidelines in the future in light of experience, changing circumstances and decisions of the Tribunal and the courts.

² On December 12, 2006, the Office of the Director of Public Prosecutions was created as part of the *Federal Accountability Act*. This statute gives the Director of Public Prosecutions jurisdiction to conduct prosecutions for offences under federal jurisdiction. This office is independent of the Commissioner and the Department of Justice and assumed the duties of the former Federal Prosecution Service.

ORGANIZATION OF THESE GUIDELINES

These Guidelines are organized into five sections:

- SECTION 1 provides an overview of the analytical framework applied by the Bureau in assessing existing and proposed collaborations between competitors, including how the Bureau will determine whether the collaboration should be assessed under the conspiracy provision in section 45, the civil agreements provision in section 90.1 or other provisions of the Act.
- SECTION 2 explains how the Bureau will assess competitor collaborations under the criminal conspiracy provision in section 45 of the Act.
- SECTION 3 explains how the Bureau will assess competitor collaborations under the civil agreements provision in section 90.1 of the Act.
- SECTION 4 provides a number of hypothetical examples illustrating the Bureau's approach to the application of sections 45 and 90.1 of the Act.
- SECTION 5 contains the text of the relevant provisions of the Act.

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I. ANALYTICAL FRAMEWORK

I.1 Overview

This Section of the Guidelines outlines the Bureau's approach to determining whether to assess an agreement or collaboration between competitors under the criminal conspiracy provision, civil agreements provision or other provisions of the Act. As described below, the amended criminal prohibition is reserved for agreements between competitors to fix prices, allocate markets or restrict output that constitute "naked restraints" on competition (restraints that are not implemented in furtherance of a legitimate collaboration, strategic alliance or joint venture). Other forms of competitor collaborations, such as joint ventures and strategic alliances, may be subject to review under the civil agreements provision in section 90.1 that prohibits agreements only where they are likely to substantially lessen or prevent competition.

I.2 Distinguishing Between Civil Agreements / Conspiracy Provisions or Other Provisions of the Act

As an initial step, the Bureau will determine whether to assess the collaboration between competitors under the conspiracy and civil agreements provisions found in sections 45 and 90.1 of the Act, respectively, or whether the collaboration should be assessed under other provisions of the Act, such as the merger provision in section 92. The Bureau applies the following principles in making this determination:

(a) **Mergers:** A proposed or completed acquisition of control over, or significant interest in, the whole or part of a business through the purchase or lease of shares or assets, by amalgamation or combination, will be assessed under the merger provisions in section 92 and following of the Act, and not the civil agreements provision in section 90.1 or the conspiracy provision in section 45 of the Act. Parties who are uncertain as to whether an agreement will be assessed as a merger or a competitor collaboration are encouraged to contact the Bureau at the earliest opportunity to discuss how the Bureau will assess such an agreement.

(b) **Agreements Between Federal Financial Institutions:** Where the agreement is between federal financial institutions and is described in subsection 49(1) of the Act, the agreement will be assessed under section 49 and not section 45.³ Agreements that fall within the ambit of subsection 49(1), but are exempted by subsection 49(2), will not be assessed under section 45, but may be subject to review under the civil provisions where such agreements are likely to substantially lessen competition. Agreements between federal financial institutions that are not described in subsection 49(1) may be assessed under section 45; similarly, such agreements between federal financial institutions that are likely to substantially lessen competition may be subject to review under the civil

³ See paragraph 45(6)(b) of the Act.

agreements provision in section 90.1 of the Act, subject to applicable exceptions, such as subsection 90.1(9), which creates an exception for agreements in respect of which the Minister of Finance has issued a certification for reasons of financial policy.

(c) **Vertical Agreements Between Suppliers and Customers:** Vertical agreements between suppliers and customers will be assessed under the reviewable matters provisions found in Part VIII of the Act, such as section 76 (price maintenance) and 79 (abuse of dominance), and not under the conspiracy provision in section 45. The Bureau recognizes that, in some circumstances, a supplier may compete with a customer in respect of the product that is being supplied. As more particularly described at section 2.3.3 of these Guidelines, the Bureau will generally assess agreements between suppliers and distributors in such dual-distribution arrangements under the civil provisions found in Part VIII of the Act, and not under the criminal conspiracy provision in section 45 of the Act.

(d) **Bid-rigging:** Where the agreement between competitors is limited to "bid-rigging", as defined in section 47 of the Act, the agreement will be assessed under section 47 or section 90.1, and not section 45. In particular, the Bureau will not assess under section 45 agreements among bidders to submit or withdraw a bid that are made known to the person who called or requested the bids or tenders, at or before the time of submission or withdrawal. The Bureau recognizes that bidders may need to form bid consortia to effectively bid for certain projects. However, where such agreements substantially lessen competition among bidders, they may be assessed under section 90.1 of the Act. Also, where an agreement includes other restraints on competition apart from bid-rigging that may contravene the conspiracy provision in section 45 (such as where competitors agree to rig bids *and* allocate markets) or if the bid-rigging is part of a broader conspiracy to lessen competition, the agreement may be assessed under either or both of sections 45 and 47.

(e) **Abuse of Dominance:** While agreements between competitors that are not conspiracies under section 45 or mergers within the meaning of section 91 will generally be examined by the Bureau under section 90.1, such agreements may also be examined pursuant to the abuse of dominance provision found in section 79 of the Act in certain circumstances. For example, the Bureau may seek a remedy under section 79 with respect to an agreement between competitors where the competitors are jointly dominant and the agreement has or facilitates conduct that has a negative effect on a competitor that is exclusionary, predatory or disciplinary such that it has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market.⁴

4 Further details on the Bureau's enforcement policy in respect of abuse of dominance can be found in the Bureau's draft *Updated Enforcement Guidelines on the Abuse of Dominance Provisions – Sections 78 and 79 of the Competition Act (2009)*, available online at: www.competitionbureau.gc.ca.