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File No.: CT-2015-010

Registry Document No.:

COMPETITION TRIBUNAL**IN THE MATTER OF** the Competition Act, R.S.C. 1985, c. C-34, as amended;**AND IN THE MATTER OF** an Application by Audatex Canada, ULC for an Order pursuant to section 103.1 granting leave to make application under section 75 of the *Competition Act*.**BETWEEN:**

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT November 17, 2015 CT-2015-010 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 56

AUDATEX CANADA, ULC

Applicant

- and -

CARPROOF CORPORATION, TRADER CORPORATION, AND eBAY CANADA LIMITED

Respondents

AFFIDAVIT OF JASON BRADY
(Sworn November 17, 2015)

I, JASON BRADY, of the City of Westlake in the State of Texas, United States **MAKE**
OATH AND SAY:

1. I am the Senior Vice President, General Counsel and Secretary (“**GC**”) of Solera Holdings, Inc. (“**Solera**”), which indirectly wholly owns Audatex Canada, ULC (“**Audatex**”), the Applicant in this Application. I have been with Solera in the role of GC since 2007 and have also been in the role of Head of Corporate Development since January 2014. I was directly involved with the negotiations with CarProof Corporation (“**CarProof**”) described in this affidavit. As such, I have personal knowledge of the matters herein deposed to unless otherwise stated. Where information has been

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obtained from a third party, I state the source of that information, and confirm that I believe it to be true.

CarProof Represented to Audatex that It Could [REDACTED]

2. I was directly involved in the negotiations between Audatex and the respondent CarProof, with respect to CarProof supplying Canadian listings data to Audatex. In the negotiations with CarProof, a key term that was repeatedly discussed was what Canadian listings data CarProof was offering to supply to Audatex. [REDACTED]

[REDACTED]

3. At the outset of negotiations, in an e-mail to CarProof on January 6, 2015 (attached as Exhibit 11 to the Affidavit of Paul Antony, sworn November 5, 2015 (the “**Antony Affidavit**”)), Audatex reiterated its understanding from its December 17, 2014 meeting with CarProof:

[REDACTED]
[REDACTED] [emphasis added]

4. In its response e-mail to Audatex on January 9, 2015 (also attached as Exhibit 11 to the Antony Affidavit), CarProof confirmed Audatex’s understanding:

[REDACTED]
[REDACTED] [emphasis added]

5. My role in the negotiations began with a letter I wrote on August 3, 2015 to Holden Rhodes, Executive Vice President and General Counsel of CarProof, which letter is attached as Exhibit 16 to the Affidavit of Gabor Toth, sworn October 1, 2015 (the “**Toth Affidavit**”).

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6. I wrote the August 3, 2015 letter in response to a term sheet sent by CarProof to Audatex in April 2015 (attached as Exhibit 15 to the Toth Affidavit), which sets out the general terms pursuant to which CarProof would supply Canadian listings data to Audatex. The term sheet prepared by CarProof states:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [emphasis added]

7. My August 3rd letter was also in response to a July 13, 2015 letter from Mr. Rhodes (attached as Exhibit 14 to the Toth Affidavit). CarProof's July 13th letter likewise confirms its representation to Audatex that [REDACTED]. The July 13th CarProof letter states:

[REDACTED]
[REDACTED]
[REDACTED] [emphasis added]

8. Given CarProof's explicit representations that it could supply [REDACTED]
[REDACTED] Canadian listings data, in my letter of August 3, 2015, I made a counter-proposal for Audatex to acquire Canadian listings data, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [emphasis added]

9. [REDACTED]
[REDACTED]

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[REDACTED]

Mr. Antony's assertion to the contrary at paragraph 26 of his affidavit is false.

10. [REDACTED]

[REDACTED]

[REDACTED]

11. [REDACTED]

[REDACTED]

Audatex Used Commercially Reasonable Efforts to Reach Agreement with CarProof

12. At paragraphs 37 and 49-50 of the Antony Affidavit, CarProof has now tendered into evidence information regarding negotiations covered by settlement privilege. So as to respect the settlement privilege applicable to the negotiations between CarProof and Audatex, Audatex did not disclose certain privileged information in the Toth Affidavit. However, disclosure by Audatex of some of this information and documents is now necessary in order to respond to CarProof's accusations and to demonstrate that the representations CarProof made to Audatex [REDACTED] are false.

13. Given the importance of the Canadian listings data, [REDACTED], I met with Mr. Antony in Chicago, Illinois on August 29, 2015 to continue negotiations. At that time, there were a number of unrelated issues being discussed with CarProof, including CarProof seeking enhancement to the US data CarProof presently receives from Audatex North America, Inc. ("**Audatex NA**") (an Audatex affiliate) and to obtain data from certain other Audatex affiliates, and I was prepared to use the meeting to discuss all of these matters.

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14. On August 25, 2015, in anticipation of our August 29, 2015 meeting, Mr. Antony sent me a draft agreement that, in addition to including terms relating to data supply in favour of CarProof from Audatex affiliates, introduced for the first time additional new obligations, including to provide to CarProof [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. [REDACTED]

[REDACTED]

[REDACTED] Audatex's total loss valuation reports ("**Valuation Reports**"):

[REDACTED]

16. Attached hereto as **Exhibit "1"** is the draft agreement sent to me by Mr. Antony of CarProof on August 25, 2015.

17. This was and is a critical point of contention for Audatex. [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] Nonetheless, I still attended the August 29, 2015 meeting and continued to negotiate with CarProof in the hope that we could arrive at a reasonable business resolution. Although this particular term was not discussed during that meeting (it was discussed in detail in subsequent conversations), I did make it clear that the rights to the listings data would have to allow Audatex to continue its business, including the provision of Valuation Reports, in the same manner that it had previously been doing, especially given the contractual arrangements Audatex has in place and the product quality Audatex customers have come to know and expect.

18. At the August 29th meeting, in exchange for Canadian listings data to be supplied by CarProof to Audatex, Audatex indicated that, as part of a global agreement, it was prepared to (i) amend its agreement (the US “[REDACTED]”) to provide [REDACTED] data to CarProof, (ii) provide HyperQuest, Inc. (an Audatex affiliate) data to CarProof (both (i) and (ii) are referred to in paragraph 34 of the Toth Affidavit), and (iii) consider providing data to CarProof from another affiliate of Audatex, LYNX Services, LLC (collectively, the “**Unrelated Concessions**”). However, no final terms were reached on the Unrelated Concessions, and I made clear that further discussions would be necessary.

19. In follow up to the meeting, on September 2, 2015, Mavel Navarro, General Counsel, Americas, of Solera, sent an e-mail to Mr. Rhodes attaching a new draft listings agreement. This version of the agreement did not include CarProof’s [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]. Attached hereto as **Exhibit “2”** is the draft listings agreement that Ms. Navarro sent to CarProof on September 2, 2015.

20. In accordance with CarProof’s stated intent [REDACTED], on September 17, 2015, Mr. Antony texted me asking me to call him, which I did. Mr. Antony told me that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] On September 21, 2015, I e-mailed Mr. Antony to advise that Audatex was not engaging in such activity. Attached hereto as **Exhibit “3”** is my September 21, 2015 e-mail to Mr. Antony.

21. Mr. Antony called me in response to my email to thank me for my reply, and to advise that he [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22. The negotiations with CarProof continued.

23. On September 20, 2015, Mr. Rhodes e-mailed me a revised draft listings agreement. Despite Audatex’s objection to any provisions which [REDACTED]s, CarProof’s revised version of the agreement not only re-inserted but expanded the [REDACTED] provision, adding the definition of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Attached hereto as **Exhibit “4”** is the revised draft listings agreement Mr. Rhodes sent on September 20, 2015.

24. This new term was the culmination of a sequence of events that began with CarProof approaching [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

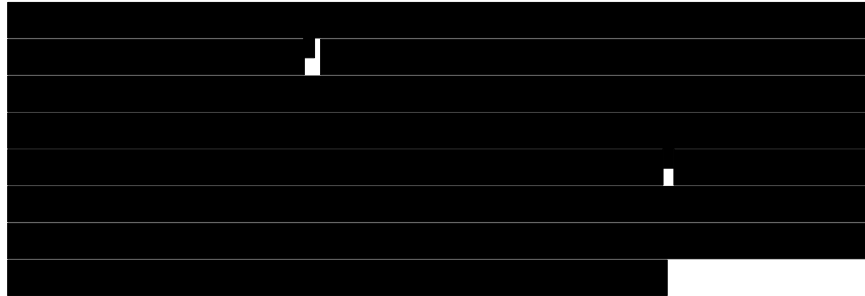
[REDACTED]

[REDACTED] This is the kind of wholly unacceptable terms that CarProof continued to insist on and expand upon in the negotiations.

25. Notably, the draft listing agreement prepared by CarProof (at Exhibit 4), confirmed that CarProof would supply to Audatex [REDACTED]

[REDACTED] The draft agreement provides as follows:

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26. Section 3.4 in turn provides that CarProof will provide to Audatex [REDACTED]

[REDACTED]



27. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ Appendix A provides that the following data and information would be provided by CarProof:

1. Year, make and model
2. Location where the Motor Vehicle is offered for sale (postal code or city or province)
3. Telephone number and email address of the seller
4. Trim level and body code
5. Price
6. Odometer
7. Full content of the seller's advertisement, including free-form text

² "Source Data Providers" means collectively, all Persons that supply CarProof with Canadian Listing Data.

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28. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

29. Nowhere in any of the draft agreements proposed by CarProof was there ever any mention of [REDACTED], nor was there any mention in any of the communications or documents from CarProof [REDACTED]
[REDACTED]

30. Curiously, in section 3.2(f) of its revised draft listings agreement, CarProof would have prohibited Audatex from [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

31. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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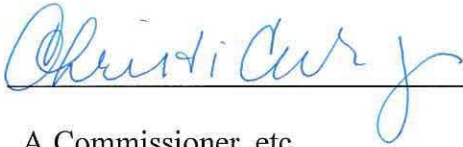
32. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

33. [REDACTED], Audatex was willing to engage in contemporaneous negotiations of the Unrelated Concessions, as well as other key demands, but it could not allow itself to be a conduit for CarProof to [REDACTED] – an unusual and indeed inappropriate trade term for listings data or any other product. Furthermore, it became clear that the more Audatex was willing to negotiate, the more new “demands” that CarProof tried to impose, culminating in CarProof proposing to Audatex NA an entirely new [REDACTED] with completely new terms and conditions instead of the simple amendment that was originally discussed and considered as a precondition to CarProof providing Audatex with the Canadian listings data. Accordingly, given Audatex’s urgent need for listings data, on October 1, 2015, Audatex filed this Application with the Tribunal.

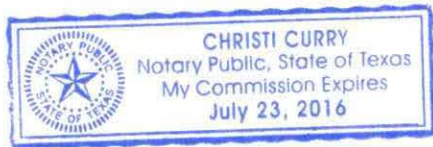
Confidential Information

34. I confirm that this Affidavit contains Confidential Information, as described in the Toth Affidavit, the disclosure of which would be likely to cause substantial harm to Audatex.

SWORN BEFORE ME at the City of)
Westlake, in the State of Texas, United)
States, this 17th day of November,)
2015.)



A Commissioner, etc.





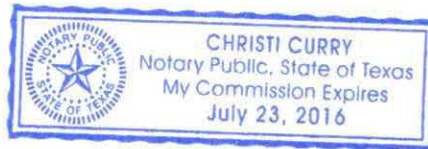
Jason Brady
Senior Vice President, General Counsel
and Secretary, Solera

EXHIBIT “1”

This is **Exhibit "1"** referred to in the Affidavit
of Jason Brady sworn before me this 17th day
of November, 2015.



A Commissioner, etc.



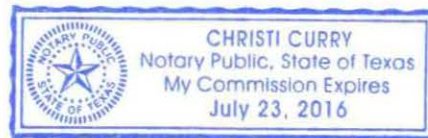
REDACTED

EXHIBIT “2”

This is **Exhibit "2"** referred to in the Affidavit
of Jason Brady sworn before me this 17th day
of November, 2015.

Christi Curry

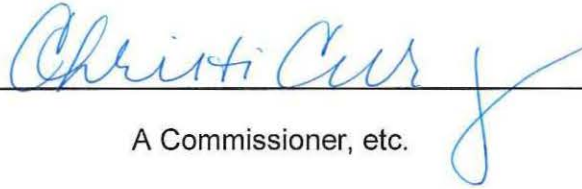
A Commissioner, etc.



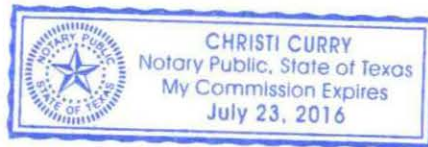
REDACTED

EXHIBIT “3”

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of Jason Brady sworn before me this 17th day
of November, 2015.



A Commissioner, etc.



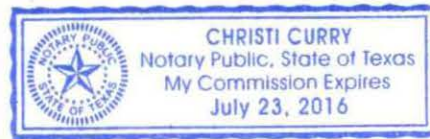
REDACTED

EXHIBIT “4”

This is **Exhibit "4"** referred to in the Affidavit
of Jason Brady sworn before me this 17th day
of November, 2015.



A Commissioner, etc.



REDACTED

Tab C