PUBLIC VERSION

CT-2013-009

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/2008-141;

AND IN THE MATTER OF the proposed acquisition by Sobeys Inc. of all of the businesses carried on in Canada by any or all of Safeway Inc., Canada Safeway Limited and Safeway Liquor Stores ULC and their affiliates, other than any business of Blackhawk Network Holdings, Inc. and its subsidiaries;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to section 105 of the *Competition Act*.

B E T W E E N :

THE COMMISSIONER OF COMPETITION

Applicant

- and -

SOBEYS INC.

Respondent

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE
REGISTERED / ENREGISTRÉ
FILED / PRODUIT
October 22, 2013
CT-2013-009
Jos LaRose for / pour
REGISTRAR / REGISTRAIRE
OTTAWA, ONT
2

CONSENT AGREEMENT

RECITALS:

A. Sobeys Inc., through certain of its subsidiaries (collectively, "Sobeys"), proposes to acquire all of the businesses carried on in Canada by any or all of Safeway Inc., Canada Safeway Limited and Safeway Liquor Stores ULC and their affiliates (collectively, "Safeway") consisting of the grocery retail, wholesale, distribution, manufacturing and food preparation, retail liquor, retail and wholesale tobacco, pharmacy, retail fuel distribution and related ancillary businesses carried on by Safeway under the names "Safeway", "Lucerne", "Macdonalds Consolidated" or "Storcare", other than any business of Blackhawk Network Holdings, Inc. and its subsidiaries, from Safeway (the "Transaction");

B. The Commissioner has concluded that the Transaction is likely to result in a substantial lessening and/or prevention of competition in the retail sale of a full line of grocery products in certain areas in Western Canada, and that the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the

C. Sobeys does not admit but will not for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions that (i) the Transaction is likely to result in a substantial lessening and/or prevention of competition in the retail sale of a full line of grocery products in certain areas in Western Canada; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction.

THEREFORE Sobeys and the Commissioner agree as follows:

I. DEFINITIONS

[1] Whenever used in this Agreement, the following words and terms have the meanings set out below:

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

(b) **"Affiliate"** means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;

(c) **"Agreement"** means this Consent Agreement, including the schedules hereto, and references to a "Part", "Section", "Paragraph" or "Schedule" are, unless otherwise indicated, references to a part, section, paragraph or schedule of or to this Agreement;

(d) **"Business Day"** means a day on which the Competition Bureau's Gatineau, Quebec office is open for business;

(e) **"Closing"** means the completion of the Transaction;

(f) **"Closing Date"** means the date on which Closing occurs;

(g) **"Commissioner"** means the Commissioner of Competition appointed under the Act;

(h) **"Confidential Information"** means competitively sensitive, proprietary and all other information that is not in the public domain, and that is owned by or pertains to a Person or a Person's business, and includes, but is not limited to, manufacturing, operations and financial information, customer lists, price lists, contracts, cost and revenue information, marketing methods, patents, technologies, processes, or other trade secrets;

(i) **"Divested Business"** means the businesses identified in Schedule A to this Agreement, subject to the provisions of Confidential Schedule H to this Agreement;

(j) **"Divestiture"** means the sale, conveyance, transfer, assignment or other disposal of the Divestiture Assets to a Purchaser or Purchasers pursuant to this Agreement and with the prior approval of the Commissioner, such that Sobeys will have no direct or indirect interest in the Divestiture Assets;

(l) **"Divestiture Agreement"** means a binding and definitive agreement between Sobeys and a Purchaser to effect a Divestiture pursuant to this Agreement and subject to the prior approval of the Commissioner;

(m) **"Divestiture Assets"** means all of the right, title and interest in, to and under, or relating to, the assets, property and undertaking owned by Sobeys and used or held by Sobeys for use in, or relating to, the Divested Business;

(n) **"Divestiture Process Agreement"** means the agreement described in Section 15 of this Agreement;

(o) **"Divestiture Trustee"** means the Person appointed pursuant to Part V of this Agreement (or any substitute appointed thereto) and any employees, agents or other Persons acting for or on behalf of the Divestiture Trustee;

(p) **"Divestiture Trustee Sale"** means the Divestiture to be conducted by the Divestiture Trustee pursuant to Part V of this Agreement;

(q) **"Divestiture Trustee Sale Period"** means the period that commences upon expiry of the Initial Sales Period and ends at the time provided for in Confidential Schedule D to this Agreement;

(r) **"First Reference Date"** shall have the meaning set out in Paragraph 3(c) of this Agreement;

(s) **"Interpretation Act"** means the *Interpretation Act,* R.S.C., 1985, c. I-21, as amended;

(t) **"Initial Sale Period"** means the period that commences at Closing and ends at the time set out in Confidential Schedule C to this Agreement;

(u) **"Material Contracts, Approvals and Authorizations"** means the contracts, licences, approvals, permits and authorizations which are necessary to continue the competitive viability of the Divestiture Assets;

(v) **"Monitor"** means the Person appointed pursuant to Part X of this Agreement (or any substitute appointed thereto) and any employees, agents or other Persons acting for or on behalf of the Monitor;

(w) **"Monitor Agreement"** means the agreement described in Section 38 of this Agreement;

(x) **"Parties"** means the Commissioner and Sobeys collectively, and "**Party"** means

(y) **"Person"** means any individual, sole proprietorship, partnership, joint venture, firm, corporation, unincorporated organization, trust, or other business or government entity, and any subsidiaries, divisions, groups or affiliates thereof;

(z) **"Preservation Assets"** means the assets identified in Schedule A to this Agreement;

(aa) **"Purchaser"** means a Person that acquires Divestiture Assets pursuant to this Agreement and a Divestiture Agreement;

(bb) **"Records"** means records within the meaning of subsection 2(1) of the Act;

(cc) **"Relevant Local Area"** means the area that is within 5 kilometres of the Divested Businesses;

(dd) **"Second Reference Date"** shall have the meaning set out in Paragraph 3(d) of this Agreement;

(ee) **"Sobeys"** means Sobeys and its directors, officers, employees, agents, representatives, successors and assigns; and all joint ventures, subsidiaries, divisions, groups and Affiliates controlled by Sobeys, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;

(ff) **"Third Party"** means any Person other than the Commissioner, Sobeys or a Purchaser;

(gg) **"Transaction"** means the transaction described in the first recital to this Agreement; and

(hh) **"Tribunal"** means the Competition Tribunal established by the *Competition Tribunal Act,* R.S.C. 1985, c.19 (2nd Supp.).

II. COMMISSIONER APPROVAL OF DIVESTITURE

[2] The Divestiture may proceed only with the prior approval of the Commissioner in accordance with this Part.

[3] Sobeys (during the Initial Sale Period) or the Divestiture Trustee (during the Divestiture Trustee Sale Period), as the case may be, shall comply with the following process for seeking and obtaining a decision of the Commissioner regarding his approval of a proposed Divestiture:

(a) Sobeys or the Divestiture Trustee, as the case may be, shall promptly:

(i) inform the Commissioner of any negotiations with a prospective Purchaser that may lead to a Divestiture; and

(ii) forward to the Commissioner copies of any agreement that is signed with a prospective Purchaser, including non-binding expressions of interest.

(b) Sobeys or the Divestiture Trustee, as the case may be, shall immediately notify the Commissioner that it intends to enter into a Divestiture Agreement with a prospective Purchaser, or has entered into an agreement that, if approved by the Commissioner, will be a Divestiture Agreement within the meaning of this Agreement. Such notice shall be in writing and shall include: the identity of the proposed Purchaser; the details of the proposed Divestiture Agreement and any related agreements; and information concerning whether and how the proposed Purchaser would, in the view of Sobeys or the Divestiture Trustee, likely satisfy the terms of this Agreement.

(c) Within 7 days following receipt of the notice described in Paragraph 3(b), the Commissioner may request additional information concerning the proposed Divestiture from any or all of Sobeys, the Divestiture Trustee, the Monitor and the prospective Purchaser. These Persons shall each provide any additional information requested from them. When they have provided a complete response to the Commissioner's request, these Persons shall comply with the following procedures:

(i) an officer or other duly authorized representative of Sobeys shall certify that he or she has examined any additional information provided by Sobeys to the Commissioner and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects;

(ii) the Divestiture Trustee shall provide written confirmation to the Commissioner that the Divestiture Trustee has provided to the Commissioner all additional information requested from the Divestiture Trustee;

(iii) the Monitor shall provide written confirmation to the Commissioner that the Monitor has provided to the Commissioner all additional information requested from the Monitor; and

(iv) an officer or other duly authorized representative of the prospective Purchaser shall certify that he or she has examined any additional information provided by the prospective Purchaser to the Commissioner and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

The date on which the last of the Divestiture Trustee, Sobeys, Monitor and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the **"First Reference Date"**.

(d) Within 7 days after the First Reference Date, the Commissioner may request further additional information concerning the proposed Divestiture from any or all of Sobeys, the Divestiture Trustee, the Monitor and the prospective Purchaser.

(e) The Commissioner shall notify Sobeys or the Divestiture Trustee, as the case may be, of the approval of, or the objection to, the proposed Divestiture as soon as possible, and in any event within 7 days after the date on which the Commissioner receives the notice described in Paragraph 3(b) or, if he requests any additional information under Paragraph 3(c) or further additional information under Paragraph 3(d), within 14 days after the later of:

(i) the First Reference Date; and

(ii) the Second Reference Date, if any.

(f) The Commissioner's determination as to whether to approve a proposed Divestiture shall be in writing.

[4] The Commissioner has sole discretion to determine whether to approve a proposed Divestiture. In exercising such discretion, the Commissioner shall take into account the likely impact of the Divestiture on competition, and may consider any other factor he considers relevant. Prior to granting his approval, the Commissioner must also be satisfied that:

(a) subject to Confidential Schedule G, the prospective Purchaser is fully independent of and operates at arm's length from Sobeys;

(b) Sobeys will have no direct or indirect interest in the Divestiture Assets following the Divestiture, subject to Section 54 below;

(c) any entity in which Sobeys or an Affiliate of Sobeys has a significant interest, including Crombie REIT, will have no direct or indirect interest in the Divestiture Assets following the Divestiture, subject to Section 54 below;

(d) the prospective Purchaser is committed to carrying on the Divested Business;

(e) the prospective Purchaser has the managerial, operational and financial capability to compete effectively in the retail sale of a full line of grocery products; and

(f) the condition set out in Confidential Schedule B is satisfied, as applicable.

[5] The prospective Purchaser will, subject to Section 32: (i) if the Commissioner grants his approval during the Initial Sale Period, complete the Divestiture prior to the expiry of the Initial Sale Period; or (ii) if the Commissioner grants his approval during the Divestiture

III. PRESERVATION OBLIGATION

[6] In order to preserve the Preservation Assets prior to any Divestiture, Sobeys shall, subject to the oversight of the Monitor, manage and maintain the operation of the Preservation Assets in the regular and ordinary course of business and in accordance with past practice, and shall use commercially reasonable efforts to ensure the ongoing economic viability, marketability and competitiveness of the Preservation Assets.

[7] Without limiting the generality of Section 6 above, Sobeys shall:

(a) provide such resources as may be necessary to respond to competition to the Preservation Assets prior to any Divestiture, in accordance with Sobeys' normal course practice;

(b) maintain and hold the Preservation Assets in good condition and repair, normal wear and tear excepted, and to standards at least equal to those that existed prior to the date of this Agreement;

(c) maintain quality and service standards for customers of, and the range of products offered by, the Preservation Assets that are, in the view of the Monitor, at least equal to those that existed prior to the date of this Agreement;

(d) not knowingly take or allow to be taken any action that, in the view of the Monitor, materially and adversely affects the competitiveness, operations, financial status or value of the Preservation Assets;

(e) not alter or cause to be altered, to any material extent, the management of the Preservation Assets as it existed prior to the date of this Agreement, except with the prior approval of the Monitor;

(f) not terminate or alter any employment, salary or benefit agreements, as they existed at the date of this Agreement, for material Persons employed in the Preservation Assets, except with the prior approval of the Monitor;

(g) ensure that the Preservation Assets are staffed with sufficient employees to ensure their viability and competitiveness, including by replacing any departing employees with other qualified employees, subject to the prior approval of the Monitor;

(g) maintain inventory levels and payment terms materially consistent with the practices that existed, with respect to the Preservation Assets, prior to the date of this Agreement; and

(h) not enter into, withdraw from, amend or otherwise take steps to alter any obligations in material Sobeys contracts relating exclusively to the Preservation Assets, except as necessary to comply with this Agreement, and to the extent that

[8] Sobeys shall provide sufficient financial resources, including general funds, capital funds, working capital and reimbursement for any operating, capital or other losses, to comply with its obligations under this Part. If the Monitor believes that Sobeys has not provided, is not providing or will not provide sufficient financial and other resources under this Section, the Monitor shall forthwith refer the matter to the Commissioner, who shall make a final determination respecting the financial and other resources that Sobeys must provide. Sobeys shall comply with any determination made by the Commissioner on this issue.

[9] Until the Divestiture closing date, Sobeys shall provide all in-store management level employees that are associated with each of the Preservation Assets with reasonable financial incentives to continue in their positions and to manage, market and promote each of the Preservation Assets as may be necessary to preserve the marketability, viability and competitiveness of each Preservation Asset pending the Divestiture. Such incentives shall include a continuation of all employee benefits offered by Sobeys or Safeway until the Divestiture closing date, including regularly scheduled raises, bonuses, and additional incentives as may be necessary to prevent the diminution of each of the Preservation Assets' competitiveness.

[10] In addition to those Persons employed in connection with the Preservation Assets on the Closing Date, Sobeys shall employ such other Persons as the Monitor determines are necessary to manage and operate the Preservation Assets.

[11] For the purpose of this Part, if there is no Monitor, Sobeys shall report to and be subject to the oversight of the Commissioner, who shall have the rights, powers and authorities of the Monitor under this Part. Where the prior approval of the Monitor is required and there is no Monitor, such prior approval may be obtained from the Commissioner and the Commissioner may make any determination that could have otherwise been made by the Monitor under this Part.

IV. INITIAL SALE PERIOD

[12] Sobeys shall use commercially reasonable efforts to complete the Divestiture during the Initial Sale Period in accordance with the provisions of this Part and Confidential Schedule C to this Agreement.

[13] Sobeys shall provide to the Commissioner and to the Monitor every 21 days a written report describing the progress of its efforts to effect the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. Sobeys shall, within 3 Business Days,

V. DIVESTITURE TRUSTEE SALE PROCESS

[14] In the event that Sobeys fails to complete the Divestiture during the Initial Sale Period, the Commissioner shall appoint a Divestiture Trustee to complete the Divestiture in accordance with this Agreement. Such appointment may be made at any time prior to the expiry of the Initial Sale Period or on such later date as the Commissioner determines.

[15] Within 5 Business Days after the appointment of the Divestiture Trustee, Sobeys shall submit to the Commissioner for approval the terms of a proposed Divestiture Process Agreement with the Divestiture Trustee and the Commissioner that transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the Divestiture.

[16] Within 5 Business Days after receipt of the proposed Divestiture Process Agreement referred to in Section 15, the Commissioner shall advise Sobeys whether or not he approves the terms of the proposed Divestiture Process Agreement. If the Commissioner does not approve the terms of the proposed Divestiture Process Agreement, he shall prescribe alternative terms that Sobeys shall incorporate into a final Divestiture Process Agreement with the Divestiture Trustee and the Commissioner.

[17] Without limiting the Commissioner's discretion to require additional terms, Sobeys consents to the following terms and conditions regarding the Divestiture Trustee's rights, powers, duties, authority and responsibilities, and shall include such terms in the Divestiture Process Agreement:

(a) The Divestiture Trustee shall complete the Divestiture as expeditiously as possible, and in any event prior to expiry of the Divestiture Trustee Sale Period.

(b) The Divestiture Trustee shall use reasonable efforts to negotiate terms and conditions for the Divestiture that are as favourable to Sobeys as are reasonably available at that time; however, the Divestiture shall not be subject to any minimum price. The Divestiture Trustee's opinion of what constitutes favourable terms and conditions and what constitutes reasonably available terms and conditions is subject to review and approval by the Commissioner.

(c) Subject to oversight and approval by the Commissioner, the Divestiture Trustee shall have full and exclusive authority during the Divestiture Trustee Sale Period:

(i) to complete the Divestiture in accordance with the provisions of this Part and Confidential Schedule D;

(ii) to solicit interest in a possible Divestiture by whatever process or

(iii) to enter into a Divestiture Agreement with a Purchaser that will be legally binding on Sobeys;

(iv) to negotiate reasonable commercial covenants, representations, warranties and indemnities to be included in a Divestiture Agreement; and

(v) to employ, at the expense of Sobeys, such consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants as the Divestiture Trustee believes are necessary to carry out the Divestiture Trustee's duties and responsibilities.

(d) Where any Person makes a good faith inquiry respecting a possible purchase of Divestiture Assets, the Divestiture Trustee shall notify such Person that the Divestiture is being made and shall provide to such Person a copy of this Agreement, with the exception of the provisions hereof that are confidential pursuant to Sections 66 and 67 of this Agreement.

(e) Where, in the opinion of the Divestiture Trustee, a Person has a good faith interest in purchasing Divestiture Assets and has executed a confidentiality agreement, in a form satisfactory to the Commissioner only, with the Divestiture Trustee protecting any Confidential Information that such Person may receive in the course of its due diligence review of the Divestiture Assets, the Divestiture Trustee shall:

(i) promptly provide to such Person all information respecting the Divestiture Assets that is determined by the Divestiture Trustee to be relevant and appropriate;

(ii) permit such Person to make reasonable inspection of the Divestiture Assets and of all financial, operational or other nonprivileged Records and information, including Confidential Information, that may be relevant to the Divestiture; and

(iii) give such Person as full and complete access as is reasonable in the circumstances to the personnel involved in managing the Divestiture Assets.

(f) The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets.

(g) The Divestiture Trustee shall provide to the Commissioner and to the Monitor, within 14 days after the Divestiture Trustee’s appointment and thereafter every 21 days, a written report describing the progress of the Divestiture Trustee's efforts to complete the Divestiture. The report shall include a description of contacts,

(h) The Divestiture Trustee shall notify Sobeys and the Commissioner immediately upon the signing of any letter of intent or agreement in principle relating to the Divestiture Assets, and shall provide to Sobeys a copy of any executed Divestiture Agreement upon receipt of the Commissioner's approval of the Divestiture contemplated in such Divestiture Agreement.

[18] Sobeys shall not be involved in the Divestiture process during the Divestiture Trustee Sale Period or in any negotiations with prospective Purchasers undertaken by the Divestiture Trustee, nor will Sobeys have contact with prospective Purchasers during the Divestiture Trustee Sale Period.

[19] Subject to any legally recognized privilege, Sobeys and the Monitor shall provide to the Divestiture Trustee full and complete access to all personnel, Records, information (including Confidential Information) and facilities relating to the Divestiture Assets to enable the Divestiture Trustee to conduct its own investigation of the Divestiture Assets and to provide access and information to prospective Purchasers.

[20] Sobeys shall take no action that interferes with or impedes, directly or indirectly, the Divestiture Trustee's efforts to complete the Divestiture.

[21] Sobeys and the Monitor shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request. Sobeys shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Divestiture Trustee on behalf of Sobeys.

[22] Sobeys will do all such acts and execute all such documents, and will cause the doing of all such acts and the execution of all such documents as are within its power to cause the doing or execution of, as may be reasonably necessary to ensure that the Divestiture Assets are divested in the Divestiture Trustee Sale Period and that agreements entered into by the Divestiture Trustee are binding upon and enforceable against Sobeys.

[23] Sobeys shall be responsible for all reasonable fees and expenses properly charged or incurred by the Divestiture Trustee in the course of carrying out the Divestiture Trustee's duties and responsibilities under this Agreement. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the timely completion of the Divestiture contemplated by this Agreement. The Divestiture Trustee shall serve without bond or security, and shall account for all fees and expenses incurred. In the event of any dispute: (i) such account shall be subject to the approval of the Commissioner only; and (ii) Sobeys shall promptly pay any account approved by the Commissioner.

[24] Sobeys shall pay all reasonable invoices submitted by the Divestiture Trustee within 30

[25] Sobeys shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities or expenses result from malfeasance, gross negligence or bad faith by the Divestiture Trustee.

[26] Sobeys shall indemnify the Commissioner and hold the Commissioner harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability.

[27] If the Commissioner determines that the Divestiture Trustee has ceased to act or has failed to act diligently, the Commissioner may remove the Divestiture Trustee and appoint a substitute Divestiture Trustee. The provisions of this Agreement respecting the Divestiture Trustee shall apply in the same manner to any substitute Divestiture Trustee.

[28] Sobeys may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner only; provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commissioner.

[29] The Commissioner may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Divestiture Trustee may receive from the Commissioner in connection with the performance of the Divestiture Trustee's duties.

[30] Notwithstanding any term of this Agreement, the obligations and powers of the Divestiture Trustee under this Agreement shall not expire until the Divestiture is completed.

VI. THIRD PARTY CONSENTS

[31] It shall be a condition in any Divestiture Agreement (whether negotiated by Sobeys or by the Divestiture Trustee) that Sobeys shall, as a condition of closing, obtain any consents and waivers from Third Parties that are necessary to permit the assignment to, and assumption by, a Purchaser of all Material Contracts, Approvals and Authorizations relating to the Divestiture Assets; provided, however, that Sobeys may satisfy this requirement by certifying that the Purchaser has executed agreements directly with or obtained authorizations from one or more Third Parties which make such assignment and

VII. TRANSITIONAL SUPPORT ARRANGEMENTS

[32] At the option of a Purchaser, and subject to the oversight of the Monitor, for up to 6 months following the Divestiture, Sobeys shall supply to the Purchaser all products necessary to carry on the Divested Business in the regular and ordinary course of business and in accordance with past practice, at a price based on Sobeys' normal-course pricing practices, and that is, in any event, not to exceed the price that is charged to Sobeys' retail outlets in Manitoba, Saskatchewan, Alberta and British Columbia for similar sales on similar terms at equivalent locations on equivalent order dates and delivery dates.

VIII. EMPLOYEES

[33] Sobeys (during the Initial Sale Period) or the Divestiture Trustee (during the Divestiture Trustee Sale Period) shall provide to any prospective Purchaser and to the Commissioner information relating to the employees whose responsibilities involve the in-store management of the Divestiture Assets, to enable such Purchaser to make decisions regarding offers of employment to such employees. The Monitor shall review the information provided to ensure that it is sufficient to enable the Purchaser to make such decisions. Sobeys shall:

(a) not interfere, directly or indirectly, with any negotiations by the Purchaser to employ any such employees;

(b) not offer any incentive to such employees to decline employment with the Purchaser or to accept other employment with Sobeys;

(c) remove any impediment that may deter such employees from accepting employment with the Purchaser;

(d) waive any non-compete or confidentiality provisions of employment or other contracts that could impair the ability of such employees to be employed by the Purchaser; and

(e) pay or transfer to the employees subsequently employed by the Purchaser all accrued bonuses, pensions and other accrued benefits to which such employees are entitled at the date of the completion of the Divestiture.

[34] For a period of 1 year following completion of the Divestiture, Sobeys shall not, without the prior written consent of the Commissioner, directly or indirectly solicit or employ any Persons employed in connection with the in-store management of the Divestiture Assets who has accepted an offer of employment with the Purchaser, unless such Person's employment has been terminated by the Purchaser.

[35] Notwithstanding the provisions of this Part VIII, in the event that Sobeys' compliance with this Part VIII would otherwise constitute a breach of its obligations under a

(a) notify the Commissioner within 3 Business Days of the exercise of the collective bargaining right leading to the conflict between compliance with this Part VIII and the collective bargaining agreement; and

(b) within 10 Business Days of giving notice under Paragraph (a) above, take such action as is reasonably necessary and practicable to address the impact that compliance with its obligations under the relevant collective bargaining agreement has on the viability, marketability and competitiveness of one or more of the Divestiture Assets up to the time of the completion of the associated Divestiture(s).

IX. FAILURE OF DIVESTITURE TRUSTEE SALE

[36] If, by the end of the Divestiture Trustee Sale Period, as described in Confidential Schedule D, the Divestiture has not been completed, or if the Commissioner is of the opinion that the Divestiture likely will not be completed prior to the end of the Divestiture Trustee Sale Period, the Commissioner may apply to the Tribunal, at his election, for either: (i) such order as is necessary to complete the Divestiture; or (ii) such order as is necessary to ensure that the Transaction is not likely to prevent and/or lessen competition substantially.

X. MONITOR

[37] The Commissioner may appoint a Monitor, responsible for monitoring compliance by Sobeys with this Agreement. Such appointment may occur at any time following registration of this Agreement. A reference in this Agreement to specific monitoring functions or tasks that are to be undertaken by the Monitor shall in no way detract from the Monitor's general power and duty to monitor all aspects of Sobeys' compliance with this Agreement.

[38] Within 5 Business Days after the appointment of the Monitor, Sobeys shall submit to the Commissioner for approval the terms of a proposed Monitor Agreement with the Monitor and the Commissioner that transfers to the Monitor all rights and powers necessary to permit the Monitor to monitor compliance by Sobeys with this Agreement.

[39] Within 5 Business Days after receipt of the proposed Monitor Agreement referred to in Section 38, the Commissioner shall advise Sobeys whether or not he approves the terms of the proposed Monitor Agreement. If the Commissioner does not approve the terms of the proposed Monitor Agreement, he shall prescribe alternative terms for the Monitor Agreement that Sobeys shall incorporate into a final Monitor Agreement with the Monitor and the Commissioner.

[40] Sobeys consents to the following terms and conditions regarding the Monitor's rights, powers, duties, authority and responsibilities, and shall include such terms in the Monitor

(a) The Monitor shall have the power and authority to monitor Sobeys' compliance with this Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Agreement and in consultation with the Commissioner;

(b) The Monitor shall have the authority to employ, at the expense of Sobeys, such consultants, accountants, legal counsel and other representatives and assistants as the Monitor believes are necessary to carry out the Monitor's duties and responsibilities;

(c) The Monitor shall have no obligation or authority to operate or maintain the Divestiture Assets;

(d) The Monitor shall act for the sole benefit of the Commissioner, maintain all confidences and avoid any conflict of interest;

(e) The Monitor shall have no duties of good faith, of a fiduciary nature, or otherwise, to Sobeys; and

(f) The Monitor shall provide to the Commissioner, every 30 days after the date of the Monitor's appointment, a written report concerning performance by Sobeys of its obligations under this Agreement. The Monitor shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding Sobeys' compliance.

[41] Subject to any legally recognized privilege, Sobeys shall provide to the Monitor full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring Sobeys' compliance with this Agreement.

[42] Sobeys shall take no action that interferes with or impedes, directly or indirectly, the Monitor's efforts to monitor Sobeys' compliance with this Agreement.

[43] Sobeys shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request. Sobeys shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Monitor on behalf of Sobeys.

[44] Sobeys may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner only; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commissioner.

[45] The Commissioner may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate

[46] Sobeys shall be responsible for all reasonable fees and expenses properly charged or incurred by the Monitor in the course of carrying out the Monitor's duties under this Agreement. The Monitor shall serve without bond or security, and shall account for all fees and expenses incurred. In the event of any dispute: (i) such account shall be subject to the approval of the Commissioner only; and (ii) Sobeys shall promptly pay any account approved by the Commissioner.

[47] Sobeys shall pay all reasonable invoices submitted by the Monitor within 30 days after receipt. Any outstanding monies owed to the Monitor by Sobeys shall be paid out of the proceeds of the Divestiture.

[48] Sobeys shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities or expenses result from malfeasance, gross negligence or bad faith by the Monitor.

[49] Sobeys shall indemnify the Commissioner and hold the Commissioner harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability.

[50] If the Commissioner determines that the Monitor has ceased to act or has failed to act diligently, the Commissioner may remove the Monitor and appoint a substitute Monitor. The provisions of this Agreement respecting the Monitor shall apply in the same manner to any substitute Monitor.

[51] The Monitor shall serve for such time as is necessary to monitor Sobeys' compliance with this Agreement.

XI. COMPLIANCE

[52] Within 5 Business Days after the Closing Date, Sobeys shall provide written confirmation to the Commissioner of the date on which the Transaction was completed.

[53] Sobeys shall provide a copy of this Agreement to each of its own and its Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under this Agreement within 3 Business Days after the date of registration of this Agreement. Sobeys shall ensure that its directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting Sobeys' responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.

[54] Sobeys shall not, for a period of 10 years after the date when the Divestiture is completed, directly or indirectly acquire any interest in the Divestiture Assets, without the prior written approval of the Commissioner.

[55] For a period of 3 years after the date when the Divestiture is completed, Sobeys shall not, without providing advance written notification to the Commissioner in the manner described in this Section, directly or indirectly:

(a) acquire any assets or shares of, or any other interest in, any business engaged in the retail sale of a full line of grocery products, apart from a franchisee of Sobeys, in a Relevant Local Area; or

(b) consummate any merger or other combination relating to the retail sale of a full line of grocery products in a Relevant Local Area.

If a transaction described in (a) or (b) is one for which notice is not required under section 114 of the Act, Sobeys shall supply to the Commissioner the information described in section 16 of the *Notifiable Transactions Regulations*, or such other information as the Commissioner may deem satisfactory in lieu of the information described in section 16 of the *Notifiable Transactions Regulations*, at least 30 days before completing such transaction. Sobeys shall certify such information in the same manner as would be required if section 118 of the Act applied. The Commissioner may, within 30 days after receiving such information, request that Sobeys supply additional information that is relevant to the Commissioner's assessment of the transaction. In the event that the Commissioner issues such a request for additional information, Sobeys shall supply information to the Commissioner in the form specified by the Commissioner and shall not complete such transaction until at least 30 days after Sobeys has supplied all such requested information in the form specified by the Commissioner.

[56] One month after the date of registration of this Agreement, and at such other later times as the Commissioner may require, Sobeys shall file an affidavit or certificate, substantially in the form of Schedule E to this Agreement, certifying its compliance with Parts III, VII, VIII and XI of this Agreement and setting out the following information in detail:

(a) the steps taken to ensure compliance;

(b) the controls in place to verify compliance; and

(c) the names and titles of employees who have oversight of compliance.

[57] If any of Sobeys, the Divestiture Trustee or the Monitor becomes aware that there has been a breach or possible breach of any of the terms of this Agreement, such Person shall, within 2 Business Days after becoming aware of the breach or possible breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach. Sobeys shall provide confirmation of its compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner pursuant to section 56 of this Agreement.

[58] Sobeys shall notify the Commissioner at least 30 days prior to:

(a) any proposed dissolution of Sobeys; or

(b) any other change in Sobeys, including, but not limited to, a reorganization, a material acquisition, disposition or transfer of assets, or any fundamental change for purposes of Sobeys's incorporating statute, if such change may affect compliance obligations arising out of this Agreement.

[59] For the period commencing when this Agreement is registered and ending when the Divesture is completed, for purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, Sobeys shall, upon written request given at least 2 Business Days in advance to Sobeys, permit any authorized representative(s) of the Commissioner, without restraint or interference:

(a) to access, during regular office hours of Sobeys on any Business Day(s), all facilities and to inspect and copy all Records in the possession or control of Sobeys related to compliance with this Agreement, which copying services shall be provided by Sobeys at its expense; and

(b) to interview such officers, directors or employees of Sobeys as the Commissioner requests regarding such matters.

XII. DURATION

[60] This Agreement shall become effective on the date when it is registered, and shall remain in effect for 10 years following the Divestiture, except that Parts II, III, IV, V, and VI of this Agreement shall be effective only until the Divesture is completed.

XIII. NOTICES

[61] For a notice, report, consent, approval, written confirmation or other communication required or permitted to be given under this Agreement to be valid,

(a) it must be in writing and the sending party must use one of the following methods of delivery: (1) personal delivery; (2) registered mail; (3) courier service; (4) facsimile; or (5) electronic mail; and

(b) it must be addressed to the receiving party at the address(es) listed below, or to any other address designated by the receiving party in accordance with this Section.

<u>if to the Commissioner:</u>

Commissioner of Competition
Competition Bureau Canada
Place du Portage, 21st Floor 50
Victoria Street, Phase I Gatineau,

Quebec K1A 0C9

Attention: Commissioner of Competition
Fax: (819) 953-5013
Email address: MergerNotification@cb-bc.gc.ca

with a copy to:

Roger Nassrallah
Competition Bureau Legal Services
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9
Fax: (819) 953-9267
Email address: Roger.Nassrallah@cb-bc.gc.ca

if to Sobeys:

Karin McCaskill
Senior Vice President, General Counsel & Secretary
1680 Tech Ave., Unit 1
Mississauga, ON L4W 5S9
Fax: (905) 212-9511
Email address: Karin.McCaskill@sobeys.com

with a copy to:

Paul Collins
Stikeman Elliott LLP
5300 Commerce Court West, 199 Bay Street
Toronto, ON M5L 1B9
Fax: (416) 947-0866
Email address: pcollins@stikeman.com

and to:

Deanne MacLeod
Stewart McKelvey
Suite 900, Purdy's Wharf Tower One
1959 Upper Water St.
Halifax, NS B3J 3N2
Fax: (902) 420-1417
Email address: dmacleod@stewartmckelvey.com

[62] A notice, consent or approval under this Agreement is effective on the day that it is received by the receiving Party. A notice, consent or approval is deemed to have been

(a) if it is delivered in person, by registered mail or by courier, upon receipt as indicated by the date on the signed receipt;

(b) if it is delivered by facsimile, upon receipt as indicated by the time and date on the facsimile confirmation slip; or

(c) if it is delivered by electronic mail, when the recipient, by an email sent to the email address for the sender stated in this Section or by a notice delivered by another method in accordance with this Section, acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this Section.

If a notice is received after 5:00 p.m. local time, or on a day that is not a Business Day, then the notice shall be deemed to have been received on the next Business Day.

[63] Notwithstanding Sections 61 and 62, a notice, report, consent, approval, written confirmation or other communication that is not communicated in accordance with Sections 61 and 62 is valid if a representative of the Party to this Agreement that is the recipient of such communication confirms the receipt and sufficiency of such communication.

XIV. GENERAL

[64] In this Agreement:

(a) **Number and Gender –** Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

(b) **Time Periods –** Computation of time periods shall be in accordance with the *Interpretation Act,* R.S.C. 1985, c. I-21, and the definition of "holiday" in the *Interpretation Act* shall include Saturday.

[65] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. Sobeys hereby consents to such registration.

[66] Information in Confidential Schedule C shall be made public upon the expiry of the Initial Sale Period.

[67] Information in Confidential Schedule D shall be made public upon the completion of the Divestiture.

[68] The Commissioner may extend any of the time periods contemplated by this Agreement. If any time period is extended, the Commissioner shall promptly notify Sobeys of the revised time period.

[69] Sobeys shall notify the Commissioner in accordance with Sections 61 and 62 if Sobeys

[70] Nothing in this Agreement precludes Sobeys or the Commissioner from bringing an application under section 106 of the Act. Sobeys will not, for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions that: (i) the Transaction is likely to result in a substantial lessening and/or prevention of competition in the retail sale of a full line of grocery products; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction.

[71] Sobeys attorns to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.

[72] This Agreement constitutes the entire agreement between the Commissioner and Sobeys, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.

[73] This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.

[74] In the event of a dispute regarding the interpretation, implementation or application of this Agreement, the Commissioner or Sobeys may apply to the Tribunal for directions or an order. In the event of any discrepancy between the English language version of this Agreement and the French language version of this Agreement, the English language version of this Agreement shall prevail. In no event shall any dispute suspend the Initial Sale Period or the Divestiture Trustee Sale Period.

[75] This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.

The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

DATED this 21st day of October, 2013

COMMISSIONER OF COMPETITION

__[Original signed by John Pecman]__

Name: John Pecman
Title: Commissioner of Competition

SOBEYS INC.

__[Original signed by Marc Poulin]__

Name: Marc Poulin
Title: President & Chief Executive Officer

__[Original signed by Paul Jewer]__

Name: Paul Jewer
Title: Chief Financial Officer

We have authority to bind the corporation.

SCHEDULE A

LIST OF DIVESTITURE ASSETS

The following are the divested Safeway assets:

Divested Store(s)	Address
Safeway 66 (Sidney)	2345 Beacon Ave. Sidney, BC V8L 1W9
Safeway 80 (Fort and Foul)	1950 Foul Bay Rd. Victoria, BC V8R 5A7
Safeway 98 (Tsawwassen)	1143-56 St. Tsawwassen, BC V4L 2A2
Safeway 185 (University Heights)	3958 Shelbourne St. Victoria, BC V8N 3E2
Safeway 315 (8th / Circle)	3310-8 St. E. Saskatoon, SK S7H 0W4
Safeway 389 (Regina)	3801 Albert St. Regina, SK S4S 3R4
Safeway 598 (Main Street)	1441 Main St. Winnipeg, MB R2W 3V6
Safeway 719 (Southdale Centre)	77 Vermillion Rd. Winnipeg, MB R2J 3W7
Safeway 724 (Grant Park)	1120 Grant Ave. Winnipeg, MB R3M 2A6
Safeway 730 (St. Vital)	850 Dakota St. Winnipeg, MB R2M 5R9
Safeway 805 (Millwoods)	2331-66 St. NW Edmonton, AB T6K 4B4
Safeway 833 (Thickwood)	131 Signal Rd. Fort McMurray, AB T9H 4N6
Safeway 2346 (Taber)	4926-46 Ave. Taber, AB T1G 2A4

The following are the divested Sobeys assets:

Divested Store(s)	Address
Thrifty Foods 28 (Sapperton)	270 East Columbia St. New Westminster, BC V3L 0E3

Sobeys (Hawkstone)	18370 Lessard Rd. Edmonton, AB T6M 2W8
Sobeys (Goldbar)	5036-106 Ave. NW Edmonton, AB T6A 1E9
IGA (Ottewell)	6204-90 Ave. NW Edmonton, AB T6B 0P2
Sobeys (Canmore)	950 Railway Ave. Canmore, AB T1W 1P4
Sobeys (Cochrane)	65 Bow St. Cochrane, AB T4C 2B9
Sobeys (Leduc)	5421-50 St. Leduc, AB T9E 6Z7
Sobeys (Station Square)	10004-99 Ave. Fort Saskatchewan, AB T8L 3Y1
Sobeys (Wetaskiwin)	4703-50 St. Wetaskiwin, AB T9A 1J6
Price Chopper	677 Stafford St. Winnipeg, MB R3M 2L9

CONFIDENTIAL SCHEDULE B

[CONFIDENTIAL]

CONFIDENTIAL SCHEDULE C

[CONFIDENTIAL]

CONFIDENTIAL SCHEDULE D

[CONFIDENTIAL]

SCHEDULE E

FORM OF COMPLIANCE CERTIFICATION/AFFIDAVIT

I, [name], of [place], hereby certify[1] in accordance with the terms of the Registered Consent Agreement dated ● (the "Consent Agreement") between Sobeys Inc. ("Sobeys") and the Commissioner of Competition (the"Commissioner"), that:

1. I am the **[title]** of Sobeys, and have personal knowledge of the matters deposed to herein, unless they are stated to be on information and belief, in which cases I state the source of such information and believe it to be true.

2. On **[date],** Sobeys entered into a Consent Agreement with the Commissioner of Competition in connection with the acquisition by Sobeys Inc. of all of the businesses carried on in Canada by any or all of Safeway Inc., Canada Safeway Limited and Safeway Liquor Stores ULC and their affiliates **(**the "Transaction").

3. The Transaction closed on **[date]** (the "Closing Date").

4. The Divestiture (as defined in the Consent Agreement) to **[Purchaser]** was completed on **[date].**

5. Pursuant to Section **[XX]** of the Consent Agreement, Sobeys is required to file **[annual reports/reports when requested by the Commissioner]** certifying its compliance with Parts VII, VIII and XI of the Consent Agreement.

Oversight of Compliance

6. **[Names/titles]** have primary responsibility for overseeing compliance with this Agreement.

Closing Date

7. Pursuant to Section **[XX]** of the Consent Agreement, Sobeys is required to provide written confirmation to the Commissioner of the date on which the Transaction was completed. Such notice was provided on **[date].**

Circulation of Consent Agreement

8. Pursuant to Section **[XX]** of the Consent Agreement, Sobeys is required to provide a copy of the Consent Agreement to each of its own and its Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under the Consent Agreement, within **3 Business Days** after the date of registration of the Consent

[1] If this is drafted as an affidavit, the words "hereby certify" should be removed and should be replaced with "make oath and say". An affidavit should be sworn under oath. A certificate should be certified by a Commissioner for taking affidavits.

Agreement. The Consent Agreement was circulated by **[whom]** to **[provide list]** on **[dates].**

9. Pursuant to Section **[XX]** of the Consent Agreement, Sobeys is required to ensure that its directors, officers, employees and agents with responsibility for any obligations under the Consent Agreement receive sufficient training respecting Sobeys's responsibilities and duties under the Consent Agreement. The following training has been provided: **[provide list of who was trained and by whom as well as a general statement of the content of the training]**

Preservation Obligation

10. Pursuant to Section [XX] of the Consent Agreement, Sobeys shall, subject to the oversight of the Monitor, take various steps to maintain the full economic viability, marketability and competitiveness of the Divestiture Assets. Sobeys has fully complied with the terms of this Section and, more particularly:

[Note: Describe steps taken to maintain the full economic viability, marketability and competitiveness of the Divestiture Assets, having regard to the terms of Section XX.]

Transitional Support Arrangements

11. Pursuant to Section [**XX]** of the Consent Agreement, at the option of the Purchaser(s), for up to six months following the Divestiture, Sobeys shall supply to the Purchaser all retail products necessary to carry on the Divested Business in the regular and ordinary course of business and in accordance with past practice, at a price based on Sobeys published price list and that is, in any event, not to exceed the price that is charged to Sobeys' retail outlets in Manitoba, Saskatchewan, Alberta and British Columbia for similar sales on similar terms at equivalent locations on equivalent order dates and delivery dates. Sobeys has provided the following transitional support arrangements.

Employees

12. Section **[XX]** of the Consent Agreement requires Sobeys to take various steps in regard to its employees whose responsibilities involved the operation of the Divestiture Assets. Sobeys has fully complied with the terms of this Section and, more particularly:

[Note: Describe steps taken to facilitate employee transfer to Purchaser, having regard to the terms of Section XX; provide data on the # of employees who have transferred to the Purchaser.]

Notification of Breach

13. Based on my personal knowledge and my inquiries of **[provide names],** I am not aware of any breach or possible breach of any of the terms of the Consent Agreement within the meaning of paragraph **[XX]** of the Consent Agreement.

DATED ●.

Commissioner of Oaths	**Name and Title of Certifying Officer**

CONFIDENTIAL SCHEDULE F

[CONFIDENTIAL]

CONFIDENTIAL SCHEDULE G

[CONFIDENTIAL]

CONFIDENTIAL SCHEDULE H

[CONFIDENTIAL]