

**ONTARIO
SUPERIOR COURT OF JUSTICE
(EAST REGION)**

Court file no

12560

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

AND IN THE MATTER OF an inquiry under section 10 of the *Competition Act*, concerning alleged activities of Hershey Canada Inc, Mars Canada Inc and Nestlé Canada Inc and other persons known and unknown, contrary to paragraphs 45(1)(b) and (c) of the *Competition Act*;

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

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

-and-

**HERSHEY CANADA INC, MARS CANADA INC,
NESTLÉ CANADA INC and ITWAL LIMITED**

Respondents

**INFORMATION OF DANIEL WILCOCK
SWORN NOVEMBER 19, 2007**

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

DÉNONCIATION VISANT À OBTENIR DES MANDATS POUR ENTRER, PERQUISITIONNER, ET PRENDRE COPIE, OU EMPORTER POUR EXAMEN OU POUR PRENDRE COPIE DE CERTAINS DOCUMENTS OU CHOSSES CONFORMÉMENT AUX ARTICLES 15 ET 16 DE LA *LOI SUR LA CONCURRENCE*.*

* This information has been sworn in English. The French version is provided as a translation only.

* Cette dénonciation a été assermentée en anglais. La version française n'est fournie qu'à titre de traduction.

This is the information of Daniel Wilcock [the "affiant"] of the City of Ottawa, in the Province of Ontario, an authorized representative of the Commissioner of Competition [the "Commissioner"] for the purposes of obtaining warrants to enter, search and copy or seize records or things pursuant to sections 15 and 16 of the *Competition Act* [the "Act"].

La présente constitue la dénonciation de Daniel Wilcock ["le dénonciateur"] de la ville d'Ottawa dans la province d'Ontario, un représentant autorisé par la commissaire de la concurrence ["la commissaire"] visant à obtenir des mandats pour entrer, perquisitionner, et prendre copie, ou emporter certains documents ou choses aux articles 15 et 16 de la *loi sur la concurrence* ["la Loi"].

1. I, **Daniel Wilcock**, make oath and say as follows:

1.1 I hold a Bachelor of Commerce and a Bachelor of Laws from the Australian National University (2000). I am working at the Competition Bureau ("the Bureau") under a governmental interchange agreement with the Australian Competition and Consumer Commission ("ACCC"). I have been employed by the ACCC as a lawyer since 2000. In 2004/2005 I participated in an interchange to the Bureau where I worked as a competition law officer with the Criminal Matters Branch of the Bureau. In 2007, I returned to the Criminal Matters Branch for a second interchange, during which time I have worked as a

Special Advisor to the Senior Deputy Commissioner of Competition, Criminal Matters and a Senior Competition Law Officer. While at the Bureau and the ACCC, I have participated in competition law inquiries in a responsible position, involving conduct such as price-fixing, market allocation and bid-rigging. My roles in competition law enforcement have included assessing complaints, analysing evidence, conducting interviews, providing advice and recommending the initiation of court proceedings.

- 1.2 I have personal knowledge of the matters set out here except where such knowledge is specifically stated to be based on information and belief. I am responsible for the investigation of allegations that: Hershey Canada Inc ("Hershey"); Mars Canada Inc previously know as Effem ("Mars"); Nestlé Canada Inc ("Nestlé"); the Cooperating Party; and other persons known and unknown have engaged in conduct contrary to paragraphs 45(1)(b) and 45(1)(c) of the *Competition Act*. An inquiry was commenced on November 2, 2007 pursuant to subparagraph 10(1)(b)(iii) of the *Competition Act*, to investigate allegations that: Hershey; Mars; Nestlé; the Cooperating Party; and other persons known and unknown, participated in a conspiracy to fix prices and control discounts for the supply of chocolate confectionery products in Canada for the period from at least February 2004 to the present.
- 1.3 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 sources of information and I am satisfied that they are trustworthy.
- 1.4 I have reasonable grounds to believe and do believe the information provided by each of these sources on which I rely for the purposes of this Information, except where otherwise stated.
- 1.5 In this Information, the terms:

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

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

“*computer service*” has the meaning set out in subsection 342.1(2) of the *Criminal Code*;
“*computer system*” has the meaning provided by section 16 of the *Competition Act*, as set out in subsection 342.1(2) of the *Criminal Code*;

“*Cooperating Party*” is a corporate person that has applied for immunity from prosecution under the *Competition Act*, pursuant to the Competition Bureau’s Immunity Program. A copy of the Immunity Program is attached as Annex A to this Information. A number of current and former employees of the Cooperating Party (“Cooperating Individuals”) have engaged in relevant conduct and/or provided information in furtherance of this inquiry. Information with respect to the identity of the Cooperating Party and Cooperating Individuals is contained in Confidential Appendix “1”, attached to this Information, for which a sealing order is requested.

“*data*” has the meaning provided by section 16 of the *Competition Act*, as set out in subsection 342.1(2) of the *Criminal Code*;

“*Effem*” refers to Effem Inc, which changed its corporate name to Mars Canada Inc, effective May 8, 2007.

“*Hershey*” refers to Hershey Canada Inc and includes its predecessors, successors, subsidiaries, divisions, and affiliates engaged in business in Canada;

“*ITWAL*” refers to ITWAL Limited (Ontario corporation number 146066), and includes its predecessors, successors, subsidiaries, divisions, and affiliates engaged in business in Canada;

“*Mars*” refers to Mars Canada Inc and includes its predecessors, successors, subsidiaries, divisions, and affiliates engaged in business in Canada, specifically including its predecessor in corporate name, Effem Inc;

“*Nestlé*” refers to Nestlé Canada Inc and includes its predecessors, successors, subsidiaries, divisions, and affiliates engaged in business in Canada;

“*trade spend*” means the industry practice of providing discounts, rebates and allowances to customers, often linked to promotions; and

“record” has the meaning provided by section 2 of the *Competition Act* and includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record (including computer data and electro-magnetic recordings in tape or disc form for use in computer systems or other devices for storing information), and any other documentary material, regardless of physical form or characteristics, and any copy or portion thereof.

OFFENCE

2. 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:

L'INFRACTION

2. Le dénonciateur affirme qu'il a des motifs raisonnables de croire et croit que l'infraction suivante à la Loi a été commise par les personnes ou les entités suivantes, à savoir:

- 2.1 That Hershey, Mars, Nestlé and other persons known and unknown, during the period commencing at least as early as February 2004, and continuing until the present, the exact dates being unknown, did conspire, combine, agree or arrange with each other and with the Cooperating Party to enhance unreasonably the price of chocolate confectionery products in Canada, and did thereby commit an indictable offence contrary to paragraph 45(1)(b) of the *Competition Act*, RSC 1985, c C-34; and
- 2.2 That Hershey, Mars, Nestlé and other persons known and unknown, during the period commencing at least as early as February 2004, and continuing until the present, the exact dates being unknown, did conspire, combine, agree or arrange with each other and with the Cooperating Party to prevent or lessen, unduly, competition in the supply of chocolate confectionery products in Canada, and did thereby commit an indictable offence contrary to paragraph 45(1)(c) of the *Competition Act*, RSC 1985, c C-34.

RECORDS OR OTHER THINGS TO BE SEARCHED FOR:

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

DOCUMENTS OU AUTRES CHOSES QUI FONT L'OBJET DE LA PERQUISITION:

3. Le 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 décrit au paragraphe 4 et qu'ils fourniront la preuve de la commission de l'infraction décrite au paragraphe 2, ou contribueront à la copie, la lecture, le décodage ou la compréhensions de toute information ou donnée contenues dans ces documents:

RECORDS AND OTHER THINGS TO BE SEARCHED FOR

- 3.1 Based on my experience in dealing with business records at the Bureau and at the ACCC, and based on the information disclosed here, I believe that the records or other things to be searched for are the sorts of records that would be created in the course of conduct such as that alleged in paragraph 2, and would likely be in the possession of the persons mentioned in paragraph 5. I have reasonable grounds to believe, and do believe, that the following records or other things, whenever created, are linked directly or indirectly to the commercial activities of the respondents, their employees, representatives or agents and will afford evidence with respect to the offences described in paragraphs 2.1 and 2.2.
- 3.2 The records or other things to be searched for are all records, whenever created, relating to the period February 2004 to the present, that directly or indirectly relate to the supply of chocolate confectionery products in Canada and that will afford evidence with respect to the commission of the offences described in paragraph 2, specifically these are:
- (a) records or other things relating to the corporate structure of the respondents and

the ownership or control of the entities named in the alleged offences and any other records relating to the ownership and management, roles, duties, tasks, remuneration and responsibilities of the directors and administrators, employees or agents of those entities;

- (b) records or other things relating to the names, positions, duties, responsibilities, compensation and authority of owners, officers, directors, employees or other representatives of the entities named in the alleged offences engaged in the formulation, implementation, interpretation or dissemination of policies, procedures, rules, practices or directives concerning the prices, trade spend or other associated promotional or marketing policies for the supply of chocolate confectionery products;
- (c) records or other things relating to meetings, communications, agreements or arrangements, direct or indirect, between or among any of the entities named in the alleged offences or competitors, customers or others in the supply of chocolate confectionery products, or between or among their owners, managers, directors, agents, representatives, employees or other persons unknown, concerning prices or trade spend for those products;
- (d) records or other things relating to the preparation, formulation, adoption, revision, adjustment, rescission, continuation, implementation, observance, application or determination of prices, trade spend levels or other associated promotional or marketing policies for the supply of chocolate confectionery products in Canada by the entities named in the alleged offences; and
- (e) studies, surveys, evaluations, reports, data, statistics or other sources of information concerning barriers to entry, sales, revenues, expenses, geographic markets, product markets or customer markets, market shares and profits, including historical, actual and forecast of the entities named in the alleged offences or other persons, that show or that would assist in showing the market positions of suppliers in the chocolate confectionery market.

OTHER THINGS TO BE SEARCHED FOR

- 3.3 any records or other things that contain examples of the handwriting of directors, managers, agents, representatives or employees of the entities or individuals named in the alleged offences, that could be used for the purpose of identifying the author of any unidentified handwriting appearing on records being seized or produced under the authority of the warrants;
- 3.4 any records sent or received by means of facsimile (fax) transmission including records of fax transmissions sent and received that could be used for the purpose of identifying the source or recipient of communications between or among the persons named in the alleged offences;
- 3.5 computer passwords, computer programs, computer services, computer systems, data storage devices, and associated documentation including operating instructions, manuals, and service records that will assist in retrieving, copying, reading, printing, deciphering, or acquiring the substance and meaning of any data seized, together with all passwords, log-on codes, encryption keys or other security devices relating to these things; and
- 3.6 all records or other things described in paragraph 3, contained in, or available to any computer system on the premises to be searched.

PREMISES TO BE SEARCHED

4. The premises to be searched are described as:

4.1 I have reasonable grounds to believe, and do believe, that the records or other things to be searched for are located on the following premises:

(a) Hershey Canada Inc
2350 Matheson Blvd. East

LOCAUX À ÊTRE PERQUISITIONNÉS

4. Les endroits visés par la perquisition sont les suivants:

Mississauga, Ontario L4W 5E9

(b) Hershey Canada Inc
500 - 5750 Explorer Drive
Mississauga, Ontario L4W 0B1

(c) Mars Canada Inc
37 Holland Drive
Bolton, Ontario L7E 5S4

(d) Nestlé Canada Inc
25 Sheppard Avenue West
Floors 18, 19, 20, 21 and 22
North York, Ontario M2N 6S8

(e) Nestlé Canada Inc
9050 Airport Road
Suite 101
Brampton, Ontario L6S 6G9

(f) ITWAL Limited
440 Rainside Drive
Brampton, Ontario L7A 1L1

including all storage and record-keeping areas, computer systems and data-storage devices, located in and about these premises, accessible from these premises, or available to computer systems or data-storage devices from these premises.

REASONABLE GROUNDS

5. The following information constitutes the reasonable grounds for my belief supporting my information to obtain search warrants:

MOTIFS RAISONNABLES

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

A) OVERVIEW OF THE INVESTIGATION

5.1 The alleged conspiracy arises from communications between employees of the Cooperating Party, Hershey, Mars, Nestlé and others known and unknown, who exchanged confidential pricing information. The information reveals a pattern of communications via email, telephone, private meetings and meetings on the margins of industry association conferences, from at least February 2004 to the present. The relevant industry associations are the Confectionery Manufacturers Association of Canada ("CMAC") and the Food and Consumer Products of Canada ("FCPC"). Information obtained by the Commissioner provides reason to believe that the above mentioned parties entered an agreement or arrangement to fix prices and control discounts relating to the supply of chocolate confectionery products in Canada contrary to paragraphs 45(1)(b) and 45(1)(c) of the Act. The Commissioner became aware of the matter after a participant in these alleged offences (the "Cooperating Party") approached the Bureau under its Immunity Program. Additional information with respect to the Cooperating Party is contained in Appendix "1", attached to this Information, for which a sealing order is requested.

B) INVESTIGATIVE SOURCES

(i) Colleagues

- 5.2 Where information is stated in this Information to have been received by me or other competition law officers or other peace officers, unless the contrary is specified I (and any other officers receiving the information, as the case may be) 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 were under a legal and moral obligation to relate only the truth in relation to the events perceived or transmitted by them.
- 5.3 The Competition Bureau colleagues upon whom I have relied are: legal research officer, Julie-Anne Pesce; senior electronic evidence investigator, Dianne Rathwell; and competition law officers, Robert Jackson, Frédéric LaBonté, Andrea Burke, Elizabeth Eves and Marisa Ferraiuolo.

(ii) Databases

- 5.4 Where information is stated in this Information to have been received by me or peace officers or competition law officers from the records of police forces, public bodies, communications carriers, corporations, or private businesses, unless the contrary is specified, I (and the other officers receiving the information, as the case may be) truly believe such information in each and every case because of the manner in which the information is generated and the purposes for which it is retained -- in the sense that it is created by people paid for accuracy and it is intended to be used by the same bodies that created it. This includes police surveillance information and data from computerized police information networks such as, but not limited to, CPIC (Canadian Police Information Centre). The same also applies to information from records ordinarily maintained by foreign or domestic government agencies such as, but not limited to, provincial or state motor vehicle registries and municipal tax assessment rolls. I and other competition law officers have found these to be credible sources for business information. I have consulted the records of the following sources:

- (i) Ontario Business Information System ["ONBIS"]: ONBIS is an electronic

database of all companies registered within the province of Ontario as controlled by the Ministry of Consumer and Business Services. Information provided by this system includes, but is not limited to, the following: business names and addresses, dates of incorporations (registration), dates of dissolution, registration numbers as generated by the system, business officials' names and addresses, business ownership and status. I believe this system to be reliable as it is maintained by the Government of Ontario and contains registered corporate information.

(ii) Dun & Bradstreet (D&B) administers one of the world's leading commercial databases containing information on over 84 million businesses. The most commonly used D&B report by competition law officers is the Business Information Report (BIR), which provides information about a company, including: marketing information (legal name, address, phone/fax and business name/tradestyle), history (the structure, ownership, antecedents and corporate linkages), operations (line of business, number of employees and location/facilities), financial data (financial statements, starting capital, sales projections and trends) and public records (law suits, liens, judgments, business failure and media items). Information is collected by D&B by conducting phone interviews with key business executives in a company, mail-outs to targeted companies, contacting business references, examining court house records, monitoring the media, and obtaining data from Industry Canada, for such things as bankruptcy information.

(iii) Canada 411 Directory: the Canada 411 website is the web site situated at the following address: <http://www.canada411.ca/>.

C) THE PARTIES

5.5 Based on a review of information obtained from: records filed with ONBIS; corporate

Internet pages and Dun & Bradstreet, I believe on reasonable grounds that the following corporate information is true and accurate:

The Cooperating Party

- 5.6 Information with respect to the identity of the Cooperating Party and the Cooperating Individuals is contained in Confidential Appendix "1", attached to this Information, for which a sealing order is requested.

Hershey

- 5.7 Hershey Canada Inc is a corporation registered in the province of Ontario since May 25, 1997 (Ontario corporation number 1239549), upon amalgamation with Hershey Canada Candy Inc. Hershey is a wholly owned subsidiary of the Hershey Company that manufactures, distributes and sells confectionery, snack, refreshment and grocery products in Canada.
- 5.8 Mr Eric Lent ("Lent") holds the position of General Manager of Hershey Canada Inc. Lent was appointed to this position in approximately December 2006. The primary business office of Mr. Lent is located at the premises of Hershey in Mississauga, Ontario.

Mars

- 5.9 Mars Canada Inc is a corporation registered in the province of Ontario since May 8, 2007 (Ontario corporation number 875391), after changing its corporate name from Effem Inc. Mars is the Canadian division of Mars, Incorporated a privately held multi-national company and world leader in food, pet care products and confectionery products.
- 5.10 Mr Martin Lebel ("Lebel") is an employee of Mars Canada Inc. I am informed by my colleague, Frédérick LaBonté, and do believe, that he telephoned Mars on October 24, 2007 and was informed by the receptionist that Lebel works out of a home office at an unspecified address in Montreal, Quebec.

Nestlé

- 5.11 Nestlé Canada Inc is a corporation registered in the province of Ontario since January 1, 2003 (Ontario corporation number 1555685) upon amalgamation with Ralston Purina Canada Inc. Nestlé is a wholly-owned subsidiary of Nestlé SA. Nestlé is grouped into key divisions including: chocolate and confectionery, coffee and beverages, food services, ice cream meals, nutrition, Nestlé waters and Nestlé Purina Petcare.
- 5.12 Mr Robert (Bob) Leonidas (“Leonidas”) holds the position of President and Chief Executive Officer of Nestlé Canada Inc. Leonidas was appointed to this position on March 1, 2006. Prior to this during the relevant time period, Leonidas was president of Nestlé Canada’s confectionery business.
- 5.13 Ms Sandra Martinez de Arevalo (“Martinez”) holds the position of president of Nestlé Canada’s confectionery business since approximately March, 2006. The primary business office of Martinez is located at the premises of Nestlé in North York, Ontario.
- 5.14 Ms Lynn Hashinsky (“Hashinsky”) was an employee of Nestlé during the relevant time period specified. The primary business office of Hashinsky is located at the premises of Nestlé in Brampton, Ontario.
- 5.15 Mr Steve Morris (“Morris”) was an employee of Nestlé during the relevant time period specified. The primary business office of Morris was located at the premises of Nestlé in North York, Ontario.

D) GROUNDS TO BELIEVE THAT AN OFFENCE WAS COMMITTED

- 5.16 My reasonable grounds for belief in this matter are based on information provided to me by counsel for the Cooperating Party, on interviews with employees of the Cooperating Party and on records received from the Cooperating Party, as part of its cooperation pursuant to its application for immunity under the Bureau's Immunity Program. My grounds for belief are also based on records made available to me by

corporate-information services and on other public records, including industry publications, newspaper articles and Internet web sites. Copies of documents provided to the Bureau by the Cooperating Party and referred to in this Information, are attached to this Information as Confidential Exhibits 1 to 23, for which a sealing order is requested.

- 5.17 I personally interviewed Cooperating Individual 1 at the offices of his legal counsel on September 10, 2007. Some of the witness recollections in that interview are inconsistent either with information Cooperating Individual 1 previously provided to counsel for the Cooperating Party or with information provided by other Cooperating Individuals. I have not yet put the inconsistencies back to Cooperating Individual 1 to assess whether they prompt further or different recollections on his part. However, the Cooperating Party has provided the Bureau with written documentation that is consistent with, and that helps to corroborate, most of the information that Cooperating Individual 1 has provided to the Bureau. I believe that the information provided by Cooperating Individual 1 is generally reliable, but that at this point, he may not have disclosed the full extent of his knowledge of, or involvement in, the alleged offences. I believe the information provided by Cooperating Individual 1 on which I rely for the purposes of this Information.
- 5.18 I personally interviewed Cooperating Individual 2 at the Competition Bureau's offices in Gatineau, Quebec on October 4, 2007. The Cooperating Party has provided the Bureau with written documentation, that is consistent with, and that helps to corroborate, the allegations that Cooperating Individual 2 has made. For these reasons, I regard Cooperating Individual 2 as a reliable and credible source of information. I believe the information that Cooperating Individual 2 has provided to the Bureau, and I have relied upon this information.
- 5.19 I interviewed Cooperating Individual 9 by telephone on October 30, 2007. I also personally interviewed Cooperating Individual 9 in Toronto on November 6, 2007. I regard Cooperating Individual 9 as a reliable and credible source of information. I believe the information that Cooperating Individual 9 has provided to the Bureau, and I have relied upon this information.

5.20 The following is a summary of the information obtained by the Commissioner in the course of the investigation. I have attended the interviews and been involved in the investigation from July 2007, as explained below. While the information is summary in nature, I am confident that the information properly and adequately reflects the substance and tenor of the matters referred to.

a) ***Grounds to Believe that the Offence described in Paragraph 2.1 of the Information was Committed***

(i) Communications between Nestlé and the Cooperating Party

5.21 On September 10, 2007, I received information from Cooperating Individual 1 indicating that he participated in a breakfast meeting with the President of Nestlé, Bob Leonidas ("Leonidas") on February 23, 2004. During the meeting, one topic of discussion was trade spend. Cooperating Individual 1 indicated that it was known in the industry that he disagreed with the industry's prevailing approach to trade spend and that the Cooperating Party was going to reduce trade spend on chocolate. Cooperating Individual 1 indicated that he left the meeting with the impression that Leonidas "sees the world the way" that he did. Cooperating Individual 1 also understood that he had an open line to call Leonidas if there were any issues in the market, including trade spend practices. The Cooperating Party has also provided the Bureau with a copy of a calendar entry dated February 23, 2004 and a receipt from the breakfast restaurant, corroborating that the meeting took place, copies of which are attached as Confidential Exhibit 1 to this Information.

5.22 Counsel for the Cooperating Party provided the Bureau with a copy of an internal email exchange starting on June 1, 2005 and relating to a discussion with their customer, ITWAL Limited, a distributor. A copy of these emails are attached as Confidential Exhibit 2 to this Information. Cooperating Individual 11 sent an email with the subject heading "Chocolate pricing" to Cooperating Individual 12 and Cooperating Individual 13 stating:

At ITWAL I was informed by a reliable source that both Nestlé and Effem have been to customers hinting at 2005 price increases. No details or confirmation. I suggested that we would seriously consider appropriate

actions once firm details known, and that I would be concerned about the other leading player not following. Which [sic] my contact said they would inquire about. This is similar to info we had picked up a couple of months ago. Martin I would send out a note to ADM's to start digging.

- 5.23 On September 10, 2007 Cooperating Individual 1 informed me that he met Leonidas at Manoir Richelieu - during a Confectionery Manufacturers Association of Canada (CMAC) annual meeting held June 2-5, 2005. Leonidas sought out Cooperating Individual 1 and they had a short meeting. Cooperating Individual 1 stated that Leonidas said words to him to the effect of "I want you to hear it from the top - I take my pricing seriously" or "We are going to take a price increase and I want you to hear it from the top." Leonidas handed Cooperating Individual 1 an envelope. Cooperating Individual 1 accepted the envelope without objection. Cooperating Individual 1 said "I may have said 'we like to take pricing too, we take it seriously.' I don't think [Leonidas] took a negative impression. I just don't know if he thought it was favorable." Cooperating Individual 1 agreed that Leonidas would have left the meeting with the idea that the Cooperating Party would follow a price increase led by Nestlé.
- 5.24 During separate interviews with counsel for the Cooperating Party and with the Bureau, there has been some inconsistency in Cooperating Individual 1's recollection of exactly when he opened the envelope. On September 10, 2007 I received information from Cooperating Individual 1 that he opened the envelope given to him by Leonidas some time after the meeting, but before he went to Europe on vacation in late June or early July, 2005. Cooperating Individual 1 explained the delay in opening the letter, "Because you shouldn't talk about pricing. I didn't want to be rude to Bob so I said OK, was neutral, but I didn't want him to think, in any way, that I was coordinating with him." Cooperating Individual 1 says that when he opened the envelope, it contained a document with information about Nestlé's planned price increase on chocolate in 2005. Cooperating Individual 1 states that he put it in his drawer and later compared it to another Nestlé price increase letter he received and observed that they were similar. Cooperating Individual 1 says it is likely he put the letter in his outbox with a slash through it, indicating it was to be shredded. On August 29, 2007 counsel for the Cooperating Party