

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VALASSIS COMMUNICATIONS, INC.,

Plaintiff,

Case No. 2:06-cv-10240

v.

Hon. Arthur J. Tarnow

NEWS AMERICA INCORPORATED, a/k/a NEWS
AMERICA MARKETING GROUP, NEWS AMERICA
MARKETING FSI, INC. a/k/a NEWS AMERICA
MARKETING FSI, LLC and NEWS AMERICA
MARKETING IN-STORE SERVICES, INC.
a/k/a NEWS AMERICA MARKETING
IN-STORE SERVICES, LLC,

Defendants.

**VALASSIS' SUPPLEMENTAL STATEMENT OF MATERIAL FACTS IN SUPPORT
OF ITS MOTIONS FOR SUMMARY JUDGMENT**

**VALASSIS' SUPPLEMENTAL STATEMENT OF MATERIAL FACTS IN SUPPORT OF ITS
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1. News repeatedly told CPGs that they could obtain “volume discounts” on in-store promotions if they gave their FSI business to News.

P-1663, admitted 5-29-09 Trial Tr. at 146:6-7, News America Marketing, 21 February 2006, Novartis News America Partnership Options, NAM07-00626630-NAM07-00626645 (The offer to Novartis included a set of in-store media rates contingent on a 100% ROFR FSI agreement with News; the proposal also contains a set of higher in-store pricing if Novartis only commits 50% of its FSI business.).

P-566, admitted 5-29-09 Trial Tr. at 99:15-16, News Proposal to ConAgra dated September 15, 2005 (“News has carefully reviewed clients that are similarly situated and are not placing their FSI business with News. On average, these clients (not taking into account category ownerships etc) are paying rates that are 54% higher. However, News will alter the RFP structure and will raise the ‘In Store only’ space price structure by 27%.”).

5-29-09 Trial Tr. at 100:21-25, Testimony of Thomas Leprine, News’ Vice President, Business Operations interpreted **P-566** (“So it’s saying currently with an FSI deal, ConAgra is paying 54 percent less than what the average customer is, even based on the same volume. Without the FSI volume, they should go up 54 percent and be where the average customer is.”).

P-1846 (Perkins Dep. Exh. 5), admitted 6-2-09 Trial Tr. at 12, News proposal to Reckitt Benckiser (News’ proposal to Reckitt Benckiser showed that in-store rates would not increase 40% if Reckitt Benckiser awarded News 100% of its FSI business to News.).

P-2013, admitted 5-29-09 Trial Tr. at 34:23-24, Dittrich, Thomas, 21 November 2001, News America Offer, SCJ00002199 - SCJ00002206 (News offered S.C. Johnson a 3.75% in-store media discount in exchange for an 80% FSI share agreement for fiscal year 2003, and a 5% in-store media discount in exchange for an FSI ROFR in fiscal year 2004. In addition, News offered a signing bonus equal to 2.5% of S.C. Johnson’s fiscal year 2002 in-store media expenditures, offered to hold 2003 and 2004 in-store media rates flat at the 2002 level, and other in-store promotions discounts.).

5-29-09 Trial Tr. at 37:17-20, Testimony of Thomas Leprine, News’ Vice President, Business Operations about **P-2013** (News “used the volume of their FSI business and the volume of their in-store business, since it was greater volume we would supervise [sic] these greater discounts.”).

P-1988, admitted 6-22-09 Trial Tr. at 249:6-7, News America Marketing and S.C. Johnson, NAM07-00348973 – NAM07-00348977 at 973 (News’ proposal to S.C. Johnson offered a net effective CPM of \$1.99 if S.C. Johnson awarded News 100% of its FSI business to News. The net effective CPM reflected discounts on in-store.).

P-1923, admitted 6-22-09 Trial Tr. at 254:14-15, News America Marketing and Sara Lee, NAM07-00751215 – NAM07-0751228 at 222 (News’ proposal to Sara Lee offered a net effective CPM of \$2.17 if Sara Lee awarded News 100% of its FSI business to News. The net effective CPM reflected discounts on in-store.).

P-229, admitted by parties’ stipulation on 7-21-09, News America Marketing and Cadbury, NAM07-00244335 – NAM07-00244344 at 337 (News’ proposal to Cadbury offered a net effective CPM of \$2.97

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if Cadbury awarded News 100% of its FSI business to News. The net effective CPM reflected discounts on in-store.).

P-0421, admitted 6-2-09 Trial Tr. at 62:4-13, News America Marketing and DelMonte, NAM07-00267539 – NAM07-00292773 at 547 (News' proposal to DelMonte offered a net effective CPM of \$2.47 if DelMonte awarded News 100% of its FSI business to News. The net effective CPM reflected discounts on in-store.).

6-2-09 Trial Tr. at 62:15-63:1, Testimony of Thomas Leprine, News' Vice President, Business Operations about **P-0421** ("Q. Let's look at page 547 [of P-0421]. This shows a net effective to Del Monte historically, it says: Net effective CPM with signing bonus and in-store savings \$2.47 full page...This is saying what your currently doing with us is at a net effective with in-store savings and signing bonus 2.47 a page? A. In-store savings, that's correct.").

P-1672, admitted 6-2-09 Trial Tr. at 73:16-17, News America Marketing and Ocean Spray, NAM07-00324319 – NAM07-00324339 at 323 (News' proposal to Ocean Spray offered a net effective CPM of \$2.02 if Ocean Spray awarded News 100% of its FSI business to News. The net effective CPM reflected discounts on in-store.).

P-0799, admitted 5-29-09 Trial Tr. at 139:25-140:1, News America Marketing, May 2006, Single-Source Partnership Proposal, NAM07-01107929 – NAM07-01107960 at 953 (If Kraft extended their 100% ROFR agreement with News, News offered to hold in-store media rates constant and gradually step up in-store production rates over the following four years. News detailed the savings from these provisions and presented these savings to Kraft.)

P-312, admitted 6-2-09 Trial Tr. at 56:18-19, News America Marketing RFP response to Coca-Cola (News' proposal to Coca-Cola offered a net effective CPM of negative \$0.85 for in-store category ownership or a Net Effective CPM of \$3.86 without in-store category ownership if Coca-Cola awarded News 100% of its FSI business to News. The net effective CPM reflected discounts on in-store.).

P-2145, admitted 6-2-09 Trial Tr. at 63:25-64:1, News e-mail about its FSI proposal to Clorox (News' proposal to Clorox offered a net effective CPM of \$2.95 if Clorox awarded News 100% of its FSI business to News. The net effective CPM reflected discounts on in-store.).

P-630, admitted 6-2-09 Trial Tr. at 68:20-21, News proposal to Georgia Pacific (News' proposal to Georgia Pacific offered a net effective CPM of \$2.51 if Georgia Pacific awarded News 100% of its FSI business to News. The net effective CPM reflected discounts on in-store.).

P-654, admitted 6-2-09 Trial Tr. at 69:17-18, News proposal to Heinz (News' proposal to Heinz offered a net effective CPM of \$2.80 if Heinz awarded News 100% of its FSI business to News. The net effective CPM reflected discounts on in-store.).

P-778, admitted 6-2-09 Trial Tr. at 71:16-17, News proposal to Kimberly-Clark (News' proposal to Kimberly-Clark offered a net effective CPM of \$2.76 if Kimberly-Clark awarded News 100% of its FSI business to News. The net effective CPM reflected discounts on in-store.).

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P-1721, admitted 6-2-09 Trial Tr. at 74:6-7, News proposal to Pepsi (News' proposal to Pepsi offered a net effective CPM of \$2.32 if Pepsi awarded News 100% of its FSI business to News. The net effective CPM reflected discounts on in-store.).

D-2273, admitted 6-2-09 Trial Tr. at 76:25-77:1, News proposal to Sara Lee (News' proposal to Sara Lee offered a net effective CPM of \$2.02 if Sara Lee awarded News 100% of its FSI business to News. The net effective CPM reflected discounts on in-store.).

P-361 (Mixon Dep. Exh. 44), admitted 6-22-09 Trial Tr. at 183.23, News proposal to ConAgra (News' proposal to ConAgra offered a net effective CPM of \$2.92 if ConAgra awarded News 100% of its FSI business to News. The net effective CPM reflected discounts on in-store.).

P-840 (Perkins Dep. Exh. 2), admitted 6-22-09 Trial Tr. at 230.13, proposal to GlaxoSmithKline (News' proposal to GlaxoSmithKline offered a net effective CPM of \$4.69 if GlaxoSmithKline awarded News 100% of its FSI business to News. The net effective CPM reflected discounts on in-store.).

2. There are no cost justifications to News for selling more or less FSIs with in-store promotions.

5-29-09 Trial Tr. at 78:10-79:13, Testimony of Thomas Leprine, News Vice President Business Operations ("Q. Now the production of in-store products is completely independent of the productions of FSI products, isn't that right? A. That's correct. Q. There is [sic] different plans, different means, right? A. Right. *Q. So if you get more or less volume on the FSI side, it has no effect on your costs or your efficiencies on the in-store side, isn't that right? A. That is correct. Q. And likewise, if you get more or less volume on the in-store side, it has no effect on your costs or your efficiencies on the FSI side? A. That's correct. Q. So these linkage [sic] of the two products, if [sic] in-store and the FSI is not based on costs, isn't that right? A. Based on additional revenue, correct. *** Q. So you are not charging more for the in-store for people who do business with Valassis because it costs you more, but because you can, isn't that right? A. No, it's what I just said. It's because we are getting less revenue. We are getting less revenue, we have to charge a higher rate."*). (Emphasis added).

6-17-09 Trial Tr. at 95:1-4, Testimony of Alan Verdun, Executive Vice President, Sales, Eastern Division ("Q. Can you tell me of any that more Free-standing Insert, how that saves you money on in-store or more in-store saves you money on Free-standing Insert? A. I can't no.").

6-17-09 Trial Tr. at 89:22-25, Testimony of Alan Verdun, Executive Vice President, Sales, Eastern Division ("Q. So, is there some financial relationship, though, between the volume on the one product and the discount on the other product? A. Not that I'm aware of.").

6-17-09 Trial Tr. at 89:1-10, Testimony of Alan Verdun Alan Verdun, Executive Vice President, Sales, Eastern Division ("Q. Okay, so in your business, is there some effort made to determine a relationship between the extra volume from the ROFR and the discount, or lack thereof, on the other tactic? A. No. Q. So, in other words, do you get an extra \$500,000 in profit on the FSI business if you get the ROFR that justifies the difference in the category ownership price? A. No.").

6-4-09 Trial Tr. at 153:23-154:19, Testimony of Gerald Gersovitz, owner of Theme Co-op Promotions ("Q. You were asked some questions about programs that included FSI and some other kinds of

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promotional techniques. And you said sometimes there is an advantage to the manufacturer from running these integrated types of programs and that there are some complimentary aspects to it, do you recall that? A. Yes. Q. Does that mean, sir, you need to buy the FSIs from the same company that is providing the in-store services? A. No. Q. Do you buy, when you do these kinds of integrated programs the in-store services from one place and FSIs from a different place? A. Yes. But most of our programs the in-store activity happens through the company who are partners in our programs. They are ones execute it. Q. But this advantage of integration, does it require that it be all from one company? A. No, in fact we have had programs where we have actually used Catalina coupons and we just buy them from Catalina.”).

6-18-09 Trial Tr. at 117:2-21, Testimony of Thomas Murray, Valassis Vice President and General Manager of FSI (“Q. [] are there any cross efficiencies or business efficiencies if you sell more FSI does it make it cheaper on the in-store production, or if you sell more in-store does it make it more efficient to produce your FSI? A. There is really no relation between them at all. In-store products are manufactured and prepared and distributed completely different, separately, completely separate production process, if you will. And an FSI again has a completely separate printing facility, different functionality, there is absolutely no connection or efficiencies from one to another, they are completely separate. *Q. So if you sell more of one, do you gain advantage in the other or vice versa? A. No, they are completely unrelated economically to each other.*”). (Emphasis added).

3. News’ makes its proposals for less than 100% of the FSI business “disadvantageous.” CPGs awarding less than 100% of the FSI business to News are penalized with higher in-store rates, even if News receives 50% - or, in some cases, 80% - of the FSI business.

P-2074 (Naze Dep. Exh. 95), 06.22.2009 Trial Tr. at 85:15-86 (“we worked out the FSI numbers for the ROFR option but still need to *finalize a 50% option (will make disadvantageous)*”). (emphasis added).

6-22-09 Trial Tr. at 144:11-145:15, Testimony of Robert Spitz, News Executive Vice President of Sales Central Division about **P-2074** (“Q. The first paragraph – the last line in the first paragraph says that said, we worked out the FSI numbers for the ROFR option. Does that mean for 100 percent of the business? A. Ideally. It depends if we can definitely clear all the business. But ROFR means that we get the first right to all their business. Q. That’s what you meant there? A. Yes. Q. But still need to finalized a 50 percent option. Do you see that? A. Yes. Q. Then you put in parenthesis (will make disadvantageous). Why would you make getting 50 percent of the client’s business disadvantageous? A. *** *it’s going to be disadvantageous compared to the right of first refusal when you compare the two.*”). (Emphasis added).

6-22-09 Trial Tr. at 154:14-22, 155:25-156:2, Testimony of News’ Robert Spitz, News Executive Vice President of Sales, Central Division (News’ Robert Spitz testified that News’ proposal to Hormel increased Hormel’s in-store rates if Hormel gave News only a 50% share of its FSI business but Hormel would receive a 20% discount if Hormel awarded News with 100% of its FSI business: “Q. For 50 percent of the free-standing insert you are only going to increase in-store rates by ten percent, is that fair? A. That looks accurate. Q. Again they give a full – if they give you the free-standing insert or 100 percent of the free-standing insert, they are going to get a 20 percent discount, correct? A. That’s what we put in the proposal. *** If Hormel does a 50 percent deal with News America, their tactical rates, the proposal here is their tactical rates will go up by ten percent.”).

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P-0447, admitted 6-2-09 Trial Tr. at 18:21-22, Dittrich, Tom, 09 December 2005, Request for 50% Share Agreement at SCJ fiscal 06/07 and 07/08, SCJ00000056 (A News proposal to S.C. Johnson threatened to raise ISP rates if S.C. Johnson awarded only 50% of its FSI business to News. News offered no volume discount if S.C. Johnson awarded News 50% of its FSI business. "For a 50% share agreement News America would offer the following: [Bullet] \$5.25 FSP \$3.41 Half Page [Bullet] No Signing Bonus [Bullet] No price hold on Instore rates over the term. The instore prices would be raised 5% per year from the 00/01 fiscal year when we last had a share agreement. *This equates to roughly a 35% and 40% increase.* "). (Emphasis added).

P-1663, admitted 5-29-09 Trial Tr. at 146:6-7, News America Marketing, 21 February 2006, Novartis News America Partnership Options, NAM07-00626630-NAM07-00626645 at 642, 645 (During negotiations for the 2007-2009 contract, News proposal to Novartis offered in-store rates that were higher if Novartis only gave News 50% of Novartis' FSI business than if Novartis gave News 100% of its FSI business. These 50% FSI in-store rates are also quoted if Novartis grants News 0% of its FSI business.). (Emphasis added).

5-29-09 Trial Tr. at 149:3-10. Thomas Leprine testified about **P-1663** ("Q. But we can agree that at least between these two, 50/50 or zero [share of the FSI business], that the increase is the same, right? A. Correct. **Q. And that does not reflect anything having to do with FSI volume, otherwise zero would be different than 50/50? A. That's correct.**"). (Emphasis added).

P-2328, admitted 6-26-09 Trial Tr. at 101:19, News America Marketing, Undated, Heinz Single Source Proposal, NAM07-00619367 – NAM07-00619367 (News presented an offer in which Heinz continued to grant News only 20% of its FSI business, and none of the in-store benefits, or performance rebates were included.).

6-2-09 Trial Tr. at 77:3-78:7, Testimony of Thomas Leprine News Vice President, Business Operations (Sara Lee's in-store volume increased from \$500,000 to \$4 million but News increased Sara Lee's in-store rates by 45%: "Q. This is relating to talking points prepared internally at News for negotiation with Sara Lee and it says at the top that Elise Kramer is relatively new to the S L organizations, about six weeks. Our initial discussions started with Debra Lucidi, Elise's boss. Do you see that? A. Yes, I do. Q. And Debra was very aggressive from the start and continued to express her displeasure over the fact that, without awarding us the FSI business, that our in-store rates would be sizeable [sic] higher. Do you see that? A. I do. Q. So you were aware that Sara Lee was unhappy with the increase in the in-store rates because they did not give you the FSI business, right? A. That's correct. Q. And, in fact, you did raise their rates 40 percent when you didn't get the FSI business, right? A. That's correct. Q. And they were only using about 500,000 of in-store prior to that but their in-store billings went from 500,000 to 4 million, right? A. That's correct. Q. Of which about 1.2 million in additional revenue to News came from the rate increase? A. That would be true based on that, correct. Q. And the rest was because they started using in-store tactics more frequently? A. It seems to say that, yeah.").

6-22-09 Trial Tr. at 80:9-17 and 82:5-20, Testimony of West Naze, News Executive Vice President, Central Division, ("A. I will give you a little -- I will step back a little bit on Sara Lee. Their in-store business had billed from zero million to 4 million -- from half a million dollars to 4 million. And their rates had gone up in that time, their in-store rates. And in essence there was 4 million of in-store, 6

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million of FSI. We are simply communicating that the \$10 million would bring their in-store rates all the way back.”); (“Q. So, why wouldn't you just give them a competitive rate based on the fact that their in-store volume had gone up from zero million -- zero to \$4 million? A. We did give them in-store pricing. Q. We are not interested in giving you an in-store proposal only. Do you see that. A. I see that. But we did give them one. Q. That was 45 percent higher. A. That's correct Q. Okay. They didn't get any credit for the fact that their volume had gone up from zero to 4 million, did they? A. Their rate card went up by 45 percent.”).

6-8-09 Trial Tr. at 27:9-22, Testimony of Debra Lucidi, of Wrigley and former director of business services procurement at Sara Lee from January of 2005 until March of 2006 (Debra Lucidi was the Director of Business Services Procurement at Sara Lee at the time of the FSI negotiation for this period.) (“Q. So Sara Lee's volume of in-store from 2003 to 2006 jumped from half a million dollars to over \$4 million? A. Correct. Q. News America didn't decrease the rate that Sara Lee was paying in that time, did they? A. I don't believe so. Q. News America ever offer Sara Lee a discount for increasing its volume by, what is that, 800 percent? A. I don't believe so... I don't believe so because it's actually something that we asked for.”).

4. West Naze testified that a proposal for less than 100% of the FSI business in which higher in-store rates were offered would appear inconsistent with a discount based on volume.

6-22-09 Trial Tr. at 85:2-14, Testimony of News' West Naze, Executive Vice President and National Sales Manager (“Q. Are you aware of proposals where the higher in-store prices stay at that high level regardless of whether News America gets zero percent of the FSI business, 25 percent of the FSI business, 50 percent or 80 percent, and the only way you could get those lower rates is if you give News America 100 percent of the FSI business? A. I'm not aware of that. Q. Would that type of arrangement be contradictory to this volume discount or volume strategy that you were talking about? A. It sounds like that would be contradictory.”).

5. News artificially raised ISP rates, and later advised CPGs that they would reduce those rates if the CPG awarded its FSI business to News, which led the CPG to believe that it was receiving a “discount” on ISPs.

P-1642, admitted 5-29-09 Trial Tr. at 80:21-22, In Store Executive Committee and Tom Leprine, 10 June 2003, News America Marketing In-Store Pricing Presentation with Handwritten Notes from Tom Leprine, NAM07-00355813 - NAM07-00355818 at 815 (A News document reads “For V ROFR clients: We don't always but I think we always should increase these client's rates. These are the limited opportunities we have to increase rates and it provides some leverage for future negotiations.”).

5-29-09 Trial Tr. at 77:20-789, Testimony of Thomas Leprine, News' Vice President Business Operations (Mr. Leprine testified about News' FSI proposal to Pactiv: “We had their FSI business and we were giving them low in-store rates. Then they chose to give their FSI business to Valassis, so we know [sic] longer had the volume of their FSI business, so we couldn't give them continue to give them the same discount, heavily discounted in-store rates. We need to bring, since the FSI volume was gone, we needed to increase the rates that they were paying for in-store and as part of that same memo, I was making Mark Schulman, who works for me, as well as Chris [Mixson] who was the head of sales, aware that anybody in this situation where they take a volume away from us on the FSI side, we need to increase

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their rates on in-store, because they were heavily discounted.”).

P-1509, admitted 5-29-09 Trial Tr. at 127:8-9, Zuccala, Kathryn, 23 March 2006, News Internal Email, Subject: Cadbury In-Store Rates, NAM07-00950801 - NAM07-00950802 at 801 (With respect to Cadbury, Kathryn Zuccala of News said, “we are going to try to ramp up our presence up here, however, Alan would like to keep InStore rates ‘healthy’ so that we have some leverage when it does come time to discuss the ROFR and Deborah will likely try to negotiate InStore rates at that time as well.”).

P-1956, admitted 6-17-09 Trial Tr. at 134:1-7, Grasing, Laura, 27 July 2004, In-Store Corporate Rate Authorization, NAM07-01893562 - NAM07-01893567 at 564 (In an internal News e-mail seeking authorization to increase Georgia-Pacific’s in-store rates for the coming year, “Nancy, I am in agreement with GP taking a 4% space increase on their tactical buys. We obviously want to keep their rates high to set us up for future negotiations. Steven [Sage, Georgia Pacific?] knows he would have lower rates if we had the FSI business. GP will pay rate card production.”).

5-29-09 Trial Tr. at 109:5-12, Testimony of Thomas Leprine, News’ Vice President Business Operations (In explaining P-696 which were internal discussions about Hormel’s FSI contract negotiations, Mr. Leprine testified that “Hormel was a News America client and with that FSI business, we gave them discounted in-store rates so they were well below what the marketplace was. Once again all he is saying is that if Hormel chooses not to give News America their FSI business, it’s a lower volume, we have to increase the in-store rates. The discounts we would be giving as part of the high volume now go away.”).

6-2-09 Trial Tr. at 17:17, Testimony of Thomas Leprine, News’ Vice President Business Operations (Mr. Leprine testified about P-1991, a News proposal to SC Johnson for the 2006-2008 contract period: “Q. -- and this is what your saying to the customer, right? A. This appears to be a proposal that went to the customer. A. And then it says: In-store rates will be held to fiscal 00/01 rates avoiding a cumulative 35 and 40 percent rate increase or five percent rate hike per year, per fiscal years, correct. I read it right, correct? A. That’s correct. Q. And so what they are saying is if you give us the FSI pursuant to single source, we are going to hold the in-store rates at where they were back in 2000-2001? A. That’s correct. Q. Avoiding these increases, right? A. Correct.”).

P-0696, 5-29-09 Trial Tr. at 106, Leprine, Tom, 08 July 2004, RE: Leprine & Hormel, NAM07-01055813 - NAM07-01055815 at 814. (News’ president Chris Mixson discussed a strategy in which News would make up lower “single source” customer margins (customers who use News for both FSIs and in-store promotions) with higher non-single source customer margins (customers who use News for in-store promotions and buy FSIs elsewhere): “Although Hormel may not be the biggest in-store player, it may be time to host a ‘State of The Industry’ presentation there to more dramatically convey the growing importance of our network, e.g., adding Safeway, Winn Dixie (floors), A&P and... more to come if recent history is an effective barometer. Hormel needs to understand a couple of things: [Bullet] The significant advantages that we’re providing in today’s marketplace, e.g., preferred in-store packages, etc., are going to our ‘single source’ advertisers in response to the scale afforded us by those advertisers. [Bullet] Conversely, News will make up margin shortfall from ‘all other’, i.e., non-single source customers. Hormel will undoubtedly [sic] fall into this category if they award their FSI business elsewhere.”).

6. News does not have a standard pricing policy that provides for X volume of FSI business, the

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CPG receives Y as an in-store discount.

5-29-09 Trial Tr. at 118:5-119:5, Testimony of Thomas Leprine, News Vice President, Business Operations (“Q. And there is no place you could go at News America and say for this much volume you get this price. For this much volume you get this price. If you give us two times as much, you get this rate. That doesn't exist, does it? A. That does not exist. Q. Everyone was a one off. You made it up as you went along? A. We made decisions on each one individually, on a case by case basis, correct. Q. And it didn't have anything to do with your costs of producing these products, did it? A. Cost plays a factor, certainly. Q. You tried to stay above costs of course and make a profit but you didn't have your discount structure did not relate to your volume structure? A. It wasn't a direct correlation, that's correct. Q. No correlation. It was whatever it took to get the business, isn't that right? A. The highest rate to get the business, correct. Q. You tried to make as much as you could but still get all the business, isn't that right? A. To get as much business as we could, that's correct.”).

6-22-09 Trial Tr. at 157:11-158:7, Testimony of Robert Spitz, News Executive Vice President of Sales, Central Division (“Q. You talked about this volume discount. Is there any card or a formula that says for \$5 million worth of business you can get X percent discount on your in-store rates, for \$10 million worth of business, you can get X plus something discount on your in-store rates, for \$30 million worth of business, you can get even a higher in-store discount, is there any schedule like that? A. All rates are client specific. I wish there was a card that would make life so easy for everybody. But the reality is there is a multitude of factors that go into computing what rate structure is appropriate based on volume of business. Q. So the answer to my question is, is there is no volume -- there is no standardized volume discount at News America? A. Again, every volume discount that we provide to a customer is completely specific to that customer. The category that they partake in, the time periods that they run, the product mix that they have. The cost equation of each of those products.”).

6-22-09 Trial Tr. at 205:23-206:17, Testimony of News' Nancy Perkins, News Vice President, Trade (“Q. Are you aware of anything that says for this volume rates will go up X amount; for a different volume rates will go up Y amount?” A. No. Q. Have you ever seen any sort of volume metrics or matrix which relates price to volume on a standardized basis? A. No. Q. Well, how would you know, as a salesperson, how much to increase in-store pricing based upon a decrease in volume? A. Salespeople have individual strategies based on their own goals and volume of business they want to attain with individual customers, and it varies greatly. Q. So there is no guidelines for a salesperson? A. The guidelines are that our finance team needs to approve any proposal they want to set forth.”).

6-16-09 Trial Tr. at 205:8-14, Trial Testimony of Tom Dittrich, Senior Vice President and Regional Manager of Central Trade Division (“Q. Is there any standard for 10 million worth of business will decrease your in-store rates by X percent and for \$20 million of in-store business we will decrease your in-store rates by Y percent -- or FSI business, excuse me, will decrease your -- is there any form or formula or -- A. No.”).

7. CPGs who purchase smaller volumes of in-store promotions or FSIs often receive from News lower rates compared to CPGs who purchase larger volumes of in-store promotions or FSIs.

6-2-09 Trial Tr. 118:3-25, Testimony of Thomas Leprine, News Vice President, Business Operations (“A. Unilever, Johnson and Johnson and Procter & Gamble. Q. And with respect to the three you just

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mentioned, how would you describe the in-store rates for these clients who buy all their FSI from Valassis, are their in-store rates, how do they compare to the average in-store rates? A. They are at average or below average... Q. Now some of the ones you mentioned are very large customers. Are there smaller customers who also get average or below average in-store rates even though they've taken their FSI to Valassis? A. Yes. Q. Can you name a few? A. T Marzetti. Clorox. McIlhenny.”).

6-4-09 Trial Tr. 51:19-52:6, Testimony of Paul Carlucci, News Chairman and CEO (“Q. It certainly is accurate, is it not, that when you had a customer who was a significant user of in-store products or a purchaser of them, that you attempted to use that as leverage to get them to also give you a right of first refusal, or ROFR, agreement on FSI products? A. I don't know if I would use the term 'leverage'. We certainly would present the two and try to get there. It's very interesting, in the FSI area. There are many clients who advertise very little who enjoy the same rates as the largest advertisers. And it's also puzzled me to some extent because that doesn't exist in most businesses.”).

6-18-09 Trial Tr. at 142:20-144:19, Testimony of Thomas Murray, Valassis Vice President and General Manager of FSI (Q. “Counsel also made the claim that the evidence here would show that in the FSI business what News has done is simply drive down the cost of producing FSIs and has passed that savings onto the packaged goods companies in the form of lower FSI prices. Do you remember hearing that? A. I do. Q. Is that accurate? A. I don't think that is completely accurate statement about what is going on in the industry right now, no. Q. Why not? A. Well, he gave this logical example of paper towels, the 12 rolls and the person that buys one roll couldn't expect to get as good a price as the person that bought the 12 rolls. And we can all relate to that. We have all bought the big thing of paper towels at Costco. Unfortunately that is not how the FSI business works at all. The Defendant gives extraordinarily low at cost price to small customers. Small customers pay less than big customers. I would say that very logical example of buying more and paying less, the big guys pay less, the small guys pay more does not related to our business. Every competitive negotiation we have with competitor, whether it's our competitor, whether it's a one page customer or a 50-page customer, the prices are as competitive as can be. And very small customers one page or less can pay less than a very large customer. Q. As in fact News passed along reduced prices to customers across the board? A. I would say no. I can give you a perfect example of it. They had an enormous customer a very large customer Glaxosmithkline today and that customer buys 35 pages from them so in our business that's a very large customer, and they also spend I believe in the neighborhood of \$10 million for in-store products and that customer is paying \$6 a page for their FSIs and if you put that in context to give a comparison in 2006 as a point of reference, the Defendant won the Kodak account which is about a five-page customer at \$3.35, almost half. So here is five-page customer paying dramatically less than a 35-page customer who also buys in-store, so they are buying everything they have to sell, and they were still paying what Kodak was for five pages. So this logical notion of one roll of paper costs more than 12 roll I wish it was the case in our business, it should be, it is not.”).

P-566, admitted 5-29-09 Trial Tr. at 99:15-16, News Proposal to ConAgra dated September 15, 2005 (“News has carefully reviewed clients that are similarly situated and are not placing their FSI business with News. On average, these clients (not taking into account category ownerships etc) are paying rates that are 54% higher. However, News will alter the RFP structure and will raise the ‘In Store only’ space price structure by 27%.”).

5-29-09 Trial Tr. at 100:21-25, Testimony of Thomas Leprine, News Vice President, Business

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Operations interpreting P-566 (“So it’s saying currently with an FSI deal, *ConAgra is paying 54 percent less than what the average customer is, even based on the same volume.*”). (emphasis added).

8. News’ purported volume discounts are not premised on the CPGs purchasing a guaranteed volume of FSIs or in-store promotions.

5-29-09 Trial Tr. at 153:14-18, Testimony of Thomas Leprine, News Vice President, Business Operations (“There is no requirement, like I said before, there is no requirement that we, on the client’s part, to spend any minimum.”).

05-29-09 Trial Tr. at 149:18-151:9, Testimony of Thomas Leprine, News Vice President, Business Operations (“Well, there is no guarantee on in-store business and they could run other in-store vehicles”).

6-2-09 Trial Tr. at 70:11-12, Testimony of Thomas Leprine, News Vice President, Business Operations (“There is no spend requirement on the part of the client for in-store.”).

9. News has no “standard” or “typical” ISP price increases; rather, News’ ISP price increases are “arbitrary.”

6-16-09 Trial Tr. at 199:9-17, Testimony of News’ Thomas Dittrich, News’ Senior Vice President and Regional Manager of Central Trade Division (In discussing proposed ISP rate increases for Smuckers, Mr. Dittrich testified: “Q. The last sentence of Megan Hunt’s e-mail to you says I’m proposing that in a non-agreement period we increase their rates by five percent for every year since the beginning of their FSI contract. Why five percent? Are you saying the five percent is arbitrary? A. The five percent when you’re quoting rates outside of an agreement, it’s a cost of living. *It’s arbitrary.*”). (Emphasis added).

6-22-09 Trial Tr. at 41:20-24, Testimony of News’ West Naze, Executive Vice President and National Sales Manager (In discussing News’s 2005 proposal to PepsiCo which included a 3% increase in ISP rates if PepsiCo awarded its business to Valassis, Mr. Naze testified: “Q. And why do we assume that rates would increase 3 percent per year? Is this the typical increase? A. Not necessarily. The rates can range in terms of increase.”).

6-22-09 Trial Tr. at 99:7-17, Testimony of News’ West Naze, Executive Vice President and National Sales Manager (“Q. Mr. Spitz writes to you that, typically, they’ve increased by 5 percent per-year. Do you know where he got that-information? A. I do not know where he got that information. Q. Does looking at this refresh your memory that there is a typical 5 percent increase that’s per year on in-store rates that’s talked about at News America? A. There is not a typical five percent increase that is talked about at News America.”).

P-1764 (Perkins Dep. Exh. 8), admitted 6-22-09 Trial Tr. at 230:13-14, 11 November 2005 News Proposal to Pfizer, NAM07-00251377-NAM07-00251378 at NAM07-00251378 (“Guaranteed In-store pricing through 2008 locks-in aggressive rates and *protects Pfizer from standard 10% annual increases*”). (Emphasis added).

6-22-09 Trial Tr. at 226:15-227:8, Testimony of News’ of Nancy Perkins, News Vice President, Trade (“Q. I would ask if you can turn to the second page. The second bullet point under ‘In-store efficiencies’

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says, 'Guaranteed in-store pricing through 2008 locks in aggressive rates and protects Pfizer from standard 10 percent annual increases.' Are you aware of a standard 10 percent annual increase? A. No. Q. Have you ever heard of a standard 10 percent annual increase? A. We raise our prices on an annual basis. Q. I appreciate that. Have you ever heard of a standard 10 percent annual increase? A. I don't recall. Q. Would you agree with me that if there is no such thing as a standard 10 percent annual increase, then it would be improper to tell Pfizer that there is? A. Yes.").

P-693 (Spitz Dep. Exh. 506), admitted 6-22-09 Trial Tr. at 175:22-23, Hubbart, Carolyn, 03 June 2004, RE: An Update on Hormel, NAM07-00335118 – NAM07-00335121 ("In addition, if Hormel elects to end our FSI relationship on 11/1/05, then it is reasonable to assume our *InStore rates at that time will increase by roughly 30%. We typically increase InStore by 5% per year* and Hormel's agreement has protected them from any increases for the last six years."). (Emphasis added).

P-1846, admitted 6-2-09 Trial Tr. at 12:24-25, 17 June 2004 News FSI Proposal to Reckitt Benckiser, NAM07-00360857-NAM07-00360869 at NAM07-00360864 ("*In Store increases 40%* vs. current rates"). (Emphasis added).

P-0803, admitted 6-18-09 Trial Tr. at 301:14-18, Gensler, Dave, [Senior Vice President, region Manager at News America Marketing] 25 October 2005, Sara Lee Follow Up Information, SARALEE00000403 – SARALEE00000404 (The value of avoided in-store rate increases of 10% per year).

10. News explicitly communicates to customers that it will receive more favorable ISP rates if they sign a FSI ROFR with News. News also tells CPGs that it will raise their ISP rates if they do not sign a FSI ROFR with News.

Dial

P-2319, admitted 6-26-09 Trial Tr. at 101:19, Schulman, Mark, 25 July 2006, News Internal Email, Subject: Dial Agreement, NAM07-01070451 - NAM07-01070457 at 455. (During the negotiation period News offered to hold Dial's in-store rates constant over the FSI extension period, whereas the in-store rates would have increased without the accompanying FSI purchases.).

Heinz

6-10-09 Trial Tr. at 207:11-20, Testimony of Sue Scott, Buyer for Indirect Procurement at H.J. Heinz Company ("Q. Did you understand that in order to get the prices that were reflected in Exhibit 1, it was contingent upon Heinz giving News America one hundred percent of the free-standing insert business? A. Yes, sir. Q. *Did you understand that if you awarded some portion of the free-standing inserts to Valassis, that the price for their in-store promotions would increase?* A. Yes, sir."). (Emphasis added).

Sara Lee

P-1054, admitted 6-2-09 Trial Tr. at 20:5-6, Mixson, Chris, 03 December 2003, RE: FSI- InStore, NAM07-00456118 – NAM07-00456120 at 119 (Brian Bancroft at Sara Lee writes an e-mail stating his understanding of News's intended price increases if Sara Lee does not renew an FSI ROFR with News: "I

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have also been informed that News intends to take a **30% increase on Instore** once our current Agreement expires.”). (Emphasis added).

P-1054, admitted 6-2-09 Trial Tr. at 20:5-6, Mixson, Chris, 03 December 2003, RE: FSI- InStore, NAM07-00456118 – NAM07-00456120 at 118 (Chris Mixson writes an e-mail to other News executives discussing the above Sara Lee e-mail that states, “On the in-store front, I’m not privy to the specifics of the in-store rate discussion; however, we had a single source pricing arrangement with Sara Lee. **At a minimum Sara Lee’s rates should move back-up to their pre-single source agreement schedule...** adjusted upward for any price increases that have gone into effect since that time. **We don’t want to be perceived as being punitive**; however, Sara Lee certainly cannot expect to reap the benefits of single source pricing when it was their decision to give the lion’s share of the business away to a competitor, hence voiding the single source opportunity.”). (Emphasis added).

6-4-09 Trial Tr. at 175:12-176:1, Testimony of Debra Lucidi, of Wrigley and former director of business services procurement at Sara Lee from January of 2005 until March of 2006 (Debra Lucidi was the Director of Business Services Procurement at Sara Lee at the time of the FSI negotiation for this period.) (“Q. In your negotiations with News America in 2005 for the freestanding insert contract, did the concept of in-store promotions come up? A. Yes. Q. Who raised that issue? A. News America. Q. And can you tell me in what fashion that issue was raised? A. There was a correlation between the pricing on FSI and in-store, whereas Sara Lee was currently working with News America for our in-store business, and the pricing on in-store was going to be tied to the award of the FSI business, **whereas the pricing on our in-store could potentially increase if we didn’t award them the FSI business.**”). (Emphasis added).

6-4-09 Trial Tr. at 201:16-21, Testimony of Debra Lucidi of Wrigley and Formerly of Sara Lee (Debra Lucidi, the director of business services procurement at Sara Lee from January of 2005 until March of 2006 testified that “[w]hen we requested a proposal, we requested a proposal for... FSIs only. News America would not give us a proposal for FSIs only. They included a proposal for in store with FSIs **and if we didn’t give them the FSI business, the in store rates were going to increase.**”). (Emphasis added).

P-1553, 6-22-09 Trial Tr. at 183:22-184:1, Naze, West 19 September 2005, FW: Sara Lee update, NAM07-01137432 – NAM07-01137437 at 436 (“What Debra [Lucidi, Procurement at Sara Lee] is probably trying to do is tell us that not much is planned going forward and that either a) the extra expense of giving V the FSI and doing In Store with us wouldn’t be that much of an added expense (big, big mistake) for them or b) try to leverage a lower In Store rate with use (than what they are currently paying) due to an increase in In Store volume. We are not interested in giving an In Store proposal only. We will stay the course with current pricing.”).

Quaker / PepsiCo

P-2066, admitted June 26, 2009 Trial Tr. at 101:17, Sossei, Mia, 09 August 2002, News America Marketing Opportunity for FSI and In-store, NAM07-00235829 (“Please allow me to show you a glimpse of what type of rates News America would be willing to propose in the future for Quaker Oats fsi [sic] business (ROFR or share agreement) - see attached. For example, a full page fsi [sic] with News America would be \$5.50 (fixed or flexible position). **Also included are in-store rates which News America would waive the 5% increase (effective 2003).** Thus, meaning that the fsi [sic] ‘effective rate’ is \$5.00 or

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\$150,000 of in-store savings.”). (Emphasis added).

6-11-09 Trial Tr. at 187:17-188:4, Testimony of Christine Hall, Former Pepsi Employee (“Q. Can you describe how the proposals were linked? Did the in-store price increase? Was it related to whether they got the FSI contract? Can you give a little more details as to how the proposals might have been linked? A. They would outline FSI costs and in-store costs as separate entities and then they'd give you your FSI and in-store costs if you were to combine them together. In the combined section FSI rates stayed the same, but in-store rates dropped drastically like I want to say it was almost in half. It was huge, huge savings.”).

6-11-09 Trial Tr. at 197:22-199:21, Testimony of Christine Hall, Former Pepsi Employee (“Q. What is option three if you can identify that for the jury on Page 26 of this exhibit? A. It's in-store rates when they don't have the FSI right of first refusal. Q. If News America didn't have the FSI right of first refusal, who would? A. Valassis. Q. So it's in-store rates if Valassis gets the FSI? A. Right. That's right. Q. Let's look at that -- just to be consistent, if we can look at that SmartSource coupon machine. A. Yeah. Q. What would be the price again if the FSI is awarded to News America? A. For tier one it's -- if the FSI is awarded to News America along with in-store, it's \$22.50 a store. Q. What would be the price of the SmartSource coupon machine if the FSI is awarded to Valassis? A. \$42.45 per store. Q. Is this what you were referring to earlier when you said that it was in many instances double? A. Yes. Q. Or increased? A. Yes. Q. Almost double? A. Almost double, yep. Q. In fact, just looking at that example, the price of the carts for tier one is with the FSI being awarded to News America is how much? A. \$18 per store. Q. How much would it be if the FSI was awarded to Valassis? A. \$30.90 per store. Q. Let's do one more. At-shelf sampling. How much was News America going to charge your company if they were awarded the FSI? A. \$17 per store. Q. How much would they have charged your company for at-shelf sampling if the free-standing insert business was awarded to Valassis? A. \$33 per store. Q. Again, is that that type of example you were talking about? A. Yep. This is it.”).

Campbell Soup Company

P-0262, admitted 6-26-09 Trial Tr. at 101:13, Campbell Soup Company and News America Marketing, 30 April 2004, Free Standing Insert Agreement between Campbell Soup Company and News America Marketing August 1, 2003 through July 31, 2006 [Signed], NAM07-00920388 - NAM07-00920422 at 388 (“CSC guarantees NA a ROFR in exchange for a) FSI rates as stated in Exhibit A, b) In-Store rates as stated in Exhibit B, c.) a \$2,000,000 ‘Renewal Bonus’ ...”).

ConAgra

P-0359, admitted 6-26-09 at 101:13, News America Marketing, 28 October 2005, News America Marketing Revised Single Source Proposal to ConAgra Foods, CONA00000411 - CONA00000411 at 411 ([Bullet] In Store Space Rates to remain flat at current levels (Consistent with current proposal). [Bullet] *Should ConAgra award FSI business to alternate suppliers, In Store Production Rates would rise 27% for Fiscal 07 and would be subject to change thereafter (Consistent with Current Proposal)*”). (Emphasis added).

P-0359, admitted 6-26-09 at 101:13, News America Marketing, 28 October 2005, News America Marketing, 28 October 2005, News America Marketing Revised Single Source Proposal to ConAgra

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Foods, CONA00000411 - CONA00000411 at 411 (“[Bullet] In Store Production Rates to remain flat at current levels (Including SSCM)... [Bullet] Should ConAgra award FSI business to alternate supplier, In Store Production Rates would rise to News America Marketing 05 Rate Card levels for all products except SSCM, which would be priced at a variable rate of \$2.24 per store. These rates would be effective for Fiscal 07 and subject to change thereafter (Consistent with Current Proposal).”).

Church & Dwight

P-0292, admitted 6-22-09 at 230:13; Church & Dwight Slides, NAM07-00196738 - NAM07-00196750 at 750 (“[Bullet] *Without a Right of First Refusal Agreement, Church & Dwight could see increases on in-store space rates of 25%*. [Sub-Bullet] When the 25% increase is equated to a CPM increase, it would equate to adding \$1.04 onto C&D’s CPM of \$4.97, or \$6.01/mm.”). (Emphasis added).

Reckitt Benckiser

P-1846, admitted 6-2-09 Trial Tr. at 12:24-25, Spitz, Melissa, 22 June 2004, Reckitt Contract, NAM07-00360856 – NAM07-00360869 at 863 (“Requested Rates without an FSI Agreement... [Bullet] *In Store space rates will increase 40%* reflecting an approximate increase of \$10,000,000 per year based on 2003 space spending of \$25,000,000.”). (Emphasis added).

P-2362, admitted 6-25-09 Trial Tr. at 119:17, Spitz, Melissa, 16 June 2004, RE: Update on Reckitt - Need to Revise Proposal, NAM07-01056130 - NAM07-01056131 at 130 (“Alan, Melissa and I presented our revised proposal to Patty Mandel and her Purchasing counterpart yesterday. As you know, our strategy was to show them that it doesn’t make sense to de-bundle InStore, and to get them to value the efficiencies that they’ve had with the Single Source agreement. We did that by offering \$4.25 for 07/08 with no roll-back on our current deal, and increased InStore prices from that same period. The meeting didn’t go very well. They were clearly angry that we weren’t offering the \$4.25 effective immediately, *and that we were indicating that their InStore prices would go up if we didn’t renegotiate the deal as a whole*... However, they are clearly annoyed with us and claim they will give us once less chance to propose a deal that shows that they feel competes more closely with V (they disclosed that V is at \$4.00 for 50% and shows that we value them as one of our premier InStore clients.”). (Emphasis added).

Unilever

P-2182 (Carlucci Dep. Exh. 334), admitted 6-18-09 Trial Tr. at 292:11, News letter to Unilever dated January 19, 2001 (“News America is pleased to offer Unilever a rollback on our existing contracted rates (\$6.20) combined with in-store savings associated with extending the contract for business in 2002-2004.”)

P-2187, admitted 6-26-09 at 101:18, News America Marketing, 04 March 2004, Integrated Proposal to Unilever, NAM07-00325835 – NAM07-00325836 (“News America will offer a 5% annual rebate on all In-Store space spending upon the signing of the FSI agreement...News America will offer Category Buyout Opportunities to Unilever across key categories. With a CY07/08 FSI agreement News America will offer these opportunities at reduced rates. A category buyout gives Unilever exclusive access to News America’s shelf-based portfolio. These programs include: [Bullet] Shelftalk [Bullet] Take-One [Bullet] Sampling [Bullet] Shelftalk Banner [Bullet] Showcase [Bullet] Shelfvision [Bullet] Coupon

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Machine.”).

Nestle

P-1702, admitted 6-26-09 at 101:16, Pawlik, Matthew, 20 March 2006, Internal News email and Email Between News and Nestlé, Subject: Master Agreement-Response, NAM07-00268014 – NAM07-00268016 at 016 (“Presented In Store rates to Glenn, Tim and Jason [Contacts at Nestlé]. ROFR = flat, Share – 3% and Spill = case by case.”).

Hormel

P-0705, admitted 3-9-09 hearing at 123, Hubbartt, Carolyn, 21 May 2004, An Update on Hormel, NAM07-00335123 – NAM07-00335123 (An internal News e-mail regarding a request made by Carolyn Hubbartt at Hormel states: “Hormel has asked News to provide an estimate of the increase for in-store costs should Valassis receive a 100% ROFR contract for their business.”).

P-693, admitted 6-22-09 Trial Tr. at 183:22-184:1, Hubbartt, Carolyn, 03 June 2004, RE: An Update on Hormel, NAM07-00335118 – NAM07-00335121 (“In addition, if Hormel elects to end our FSI relationship on 11/1/05, then it is reasonable to assume our *InStore rates at that time will increase by roughly 30%*. We typically increase InStore by 5% per year and Hormel’s agreement has protected them from any increases for the last six years.”). (Emphasis added).

Kraft

P-799, admitted 5-29-09 Trial Tr. at 139:25-140:1, News America Marketing, May 2006, Single-Source Partnership Proposal, NAM07-01107929 – NAM07-01107960 at 948 (In May of 2006, News presented Kraft with a renewal option that would increase their in-store media rates by 20% if Kraft ended the 100% ROFR relationship with News and News proposed to immediately raise in-store production rates to the 2005 rate card, which would have been a 40% increase: “What a Non-Single Source In-Store Agreement Would Look Like. Our in-store agreement expires in December 2006 at which point: [Bullet] Media rates will increase by 20%* [Bullet] Production rates will follow News America Marketing’s published rate card (average 40% increase)... [Footnote] *5% increase per year if Kraft commits to at least \$20 million of in-store spending.”).

11. In 2001, News offered ConAgra a 25% reduction in in-store rates “upon awarding the ROFR agreement to News.” Further, “[t]he potential impact on ConAgra’s FY’02 could be as high as \$1MM in savings if this deal is completed soon.” This proposal was for ConAgra’s FSI business beginning June 1, 2002 through May 31, 2005. Valassis was granted the business for the first half year of this period, June 2002 - December 2002, but News received ConAgra’s business for 2003-2006. The agreement for this period contains in-store rates that were referred to in an earlier offer as “Right of First Refusal Corporate Rates.”

P-0374, admitted 6-26-09 Trial Tr. at 139:7, Porco, Dominic, 16 May 2001, Letter from Dominick Porco, NAM07-00331628 – NAM07-00331633 at 628-629.

P-0366, admitted 6-26-09 Trial Tr. at 101:14, Valassis, 20 February 2002, Second Amendment to

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Performance Agreement [Signed], VLS00014790.

12. Sara Lee switched to a News 100% FSI ROFR customer in for the July 2002-June 2004 period in an agreement that included a 25% reduction on in-store pricing.

P-1914, admitted 6-18-09 Trial Tr. at 301:16, Sara Lee Corporation and News America Marketing, 10 July 2002, ROFR Letter Agreement [Signed], NAM07-00927905 - NAM07-00927910 at 908 (“[Heading] In-Store Rates [Text] In return for this FSI ROFR agreement, News agrees to charge Client the rates stated on Attachment A for the term (7/1/02-6/30/04). These rates represent a decrease of approximately 25% from Client's current In-Store rates (FY'02).”).

13. News offered Sara Lee for the contract covering fiscal years 2007 through 2009 the following discounts which are contingent on Sara Lee signing an FSI ROFR agreement with News: (1) a \$2,000,000 signing bonus; and (2) the value (\$3,675,000) of in-store discounts.

P-1857, admitted 6-26-09 at 101:17, News America Marketing, 01 November 2005, News America Marketing Revised Single Source Proposal to Sara Lee Corp., NAM07-LF-01539144 – NAM07-LF-01539144 (The offer states, “This represents News America Marketing’s final offer with respect to Sara Lee’s Fiscal 2007-2009 FSI and In Store business.”)

P-2736, admitted 6-26-09 at 101:22, Gensler, Dave, 03 November 2005, FW: Sara Lee Final offer from News America Marketing, NAM07-LF-01539142 – NAM07-LF-01539143 (The offer is attached to and email titled “Sara Lee Final offer from News America Marketing”).

14. News dominates the in-store promotions market, and CPGs have no alternative but to use News for in-store promotions.

6-8-09 Trial Tr. at 21:21-22:13, Testimony of Debra Lucidi, of Wrigley and former director of business services procurement at Sara Lee from January of 2005 until March of 2006 (“Q. Your response to Elise says... ‘I suggest that you do some hard research on in-store and see what else is available in the marketplace. I know that nobody else does exactly what News America does, but we have got to have other options. They are strong arming us and in my opinion what they are doing is unacceptable.’ Did I read that correctly? A. Yes, you did. Q. Do you know if Ms. Kramer did the hard research that you asked her to do? A. She did the research and there was no comparable options out there. There were a couple of other things that could be done with receipts and such at the grocery stores, but nothing that would compare to the service that News America provided.”).

6-4-09 Trial Tr. at 177:19-178:4, Testimony of Debra Lucidi, of Wrigley and former director of business services procurement at Sara Lee from January of 2005 until March of 2006 (“Q. Did anyone at News America ever say to you directly -- I’ll ask first directly and then I’m going to ask indirectly. A. Okay. Q. - you really have no choice because you can’t get your in-store anywhere else?... Q. Was that ever suggested to you? A. That was never stated to me as a direct quote, but, obviously, as procurement, we were very clear that we had no choice. I mean, News America very much has the market covered on in-store business, so it was our job to know that.”).

6-4-09 Trial Tr. at 203:24-204:4, Testimony of Debra Lucidi, of Wrigley and former director of business

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services procurement at Sara Lee from January of 2005 until March of 2006 (“Basically, News America, as I mentioned before, had the market captured on in-store activity so they were basically holding it over us saying if you don’t give us your FSI business, we will keep your prices high and potentially raise them on the in-store business. It’s not a tactic I appreciate.”).

6-4-09 Trial Tr. at 201:16-21, Testimony of Debra Lucidi, of Wrigley and former director of business services procurement at Sara Lee from January of 2005 until March of 2006 (“When we requested a proposal, we requested a proposal for in-store or for FSIs only. News America would not give us a proposal for FSIs only. They included a proposal for in-store with FSIs. And if we didn’t give them the FSI business, the in-store rates were going to increase.”).

6-4-09 Trial Tr. at 192:9-24, Testimony of Debra Lucidi, of Wrigley and former director of business services procurement at Sara Lee from January of 2005 until March of 2006 (“Q. Now I know from your prior testimony that in-store promotions found their way into these negotiations. Do you recall that? A. Yes. **It was unsolicited**, but it made its way in. Q. By unsolicited you mean – explain what you mean. A. We didn’t ask for a proposal for in-store services. We asked for a proposal for FSIs. Q. Did Valassis give you a proposal on FSIs? A. Yes. Q. Did News America give you a proposal on FSIs? A. Yes, but it was a joint proposal with in-store services.”). (Emphasis added).

P-2261, admitted 5-29-09 Trial Tr. at 137:6-7, ConAgra, 09 January 2006, Winning Together: News America FY07-FY09 FSI/In-store Update, News America In-store FY07 Buyouts, Coupon Efficiencies, CONA00000326 - ConA00000333 at 327 (“[Heading Competitive Situation] News has virtual monopoly over syndicated in-store options”).

6-10-09 Trial Tr. at 206:12-17, Testimony of Sue Scott, Buyer for Indirect Procurement, Heinz (“Q. Do you recall telling anyone at Valassis that because of what News America is able to do on the in-store side of their pricing, that Valassis' proposal can't compete with it or doesn't compete with it? A. That's a true enough statement.”)

6-10-09 Trial Tr. at 207:11-20, Testimony of Sue Scott, Buyer for Indirect Procurement, Heinz (“Q. Did you understand that in order to get the prices that were reflected in Exhibit 1, it was contingent upon Heinz giving News America 100 percent of the free-standing insert business? A. Yes, sir. Q. Did you understand that if you awarded some portion of the free-standing inserts to Valassis, that the price for your in-store promotions would increase? A. Yes, sir.”).

6-10-09 Trial Tr. at 191:14-16, Testimony of Elaine Mozzetti, Manager of Consumer Promotions, Heinz (“Q. And as far as in-store promotions was concerned, News America was the only supplier? A. Yes.”).

6-10-09 Trial Tr. at 190:20-191:7, Testimony of Elaine Mozzetti, Manager of Consumer Promotions, Heinz (“Q. Was there ever any other provider of in-store services that could have met Heinz’s needs? A. No. Q. Did News America ever tell you or represent to you that they were principally -- they principally controlled the in-store market? A. No. Q. They didn’t need to? A. No. Q. That’s something that you as part of your job would have to know who the appropriate suppliers were? A. Yes.”).

15. In 2001, a News marketing plan cited as the sole evidence that News “continues to dominate at-shelf advertising” the fact that it possessed “rights to advertise at shelf in 11,200 Food stores,

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15,600 Drug stores and 2,600 Mass stores,” whereas “[t]he only major competitor in at-shelf advertising is Floorgraphics ShelfPlus program, which can be installed in about 2,000 stores.”

P-2044, admitted 6-25-09 Trial Tr. at 48:7, News America Marketing, April 2001, SmartSource Showcase Marketing Plan April 2001, NAM07-LF2-000649960 - NAM07-LF2-000649969 at 961 (“News continues to dominate at-shelf advertising inside grocery, drug and mass stores with rights to advertise at shelf in 11,200 Food stores, 15,600 Drug stores and 2,600 Mass stores. The only major competitor in at-shelf advertising is Floorgraphics ShelfPlus program, which can be installed in about 2,000 stores. Other types of at shelf signage exist, but they are more promotion oriented, such as Pops Insignia Price Point Signage and Outta the Box/ Off the Shelf Coupon Dispensers.”).

16. Other participants in the FSI and ISP industries testified that News is the dominant player in the ISP industry.

6-4-09 Trial Tr. at 132:16-21, Testimony of Gerald Gersovitz, owner of Theme Co-op Promotions (“Q. And is there any provider of these types over in-store tactics including yourself that is a competitive threat to News America's in-store business? A. In my opinion, the way their in-store programs are structured, no. I don't see any real competitor to it.”).

6-4-09 Trial Tr. at 142:1-7, Testimony of Gerald Gersovitz, owner of Theme Co-op Promotions (“Q. I want to make sure it is right. Did you say there is no one else at the shelf with a coupon dispenser other than News America? A. I think what I was saying there was nobody else that has a network of retailers running 4, 13-week cycles a year with coupon machines on the shelf to the best of my knowledge.”).

6-18-09 Trial Tr. at 117:22-120:3, Testimony of Thomas Murray, Vice President and General Manager of FSI (“Q. Who is the dominant player in the in-store promotions business today? A. News America. Q. How long has that been true? A. Since the day after they bought ActMedia.”).

6-16-2009 Trial Tr. at 146:3-14, Testimony of John Thompson, Executive Vice President, Unicous (“Q. Who is the biggest player in the in-store promotions market in your experience? A. News America. Third party. Q. Say again. A. Third party player would be News America. Q. Do you have an idea as to what their market share of the in-store promotions market is? A. No, we have tried to gather that information. It's very difficult to get to. Q. Is it significant market share? A. Yes.”).

6-15-09 Trial Tr. at 88:15-21, Testimony of Michael Klabunde, Vice President, Account Services, Connect Communications (“Q. Is News America in your experience the dominant force in in-store promotions? A. Yes. Q. Who is the close second or is there a close second? A. I am going to say I don't know who a close second would be to tell you the truth.”).

6-15-09 Trial Tr. at 125:7-126:7, Testimony of Rebekah Goldberg, Marketing Services Consultant, Valassis (“Q. Why not in these negotiation don't you just say to a CPG don't, don't worry about their tying, don't worry about their penalty pricing that they are going to charge higher rates for in-store if you go with them, go with us and use someone else for in-store? A. I wish I could but there is really no viable alternative. There is no one else out there that a company that can put in-store up in as many stores as News America does or has many options. There has been some smaller companies that have tried, and we have tried to talk about those in meetings, they are never a good substitute. They are never accepted

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by customers and then a lot of those have since gone out of business, and News America has had a hand in putting them out of business.”).

6-23-09 Trial Tr. at 38:19-39:3, Testimony of Alan Schultz, Chairman and CEO of Valassis (“Q. And with that in the aisle sort of promotions, do you know what percentage of that business is controlled by News? A. From a virtual standpoint, News has virtually all the business in the aisles of the store. That's not to say that there aren't alternatives. There are alternatives but it would be kind of like buying electricity from someone other than Detroit Edison, you can put in a generator and put a windmill on your roof but it's just not a practical alternative.”).

6-23-09 Trial Tr. at 173:12-19, Testimony of Alan Schultz, Chairman and CEO of Valassis (“Q. Mr. Schultz, when we left off, we were talking about your claim that News's bundling costs caused Valassis to offer a low price for the FSI to the Mars business for 2007, do you recall that? A. I don't recall making that claim. I think what I said is that bundling time, leveraging drove down net effective rates to artificially low levels which infected the whole industry.”).

6-23-09 Trial Tr. at 174:24-175:6, Testimony of Alan Schultz, Chairman and CEO of Valassis (“Q. What about for the calendar year 2008 FSI business, did that have anything to do with in-store? A. I don't know. I mean, again, I think I made the statement that says the in-store bundling and tying has affected all the prices in the business, whether it was used at this particular count or not doesn't make any difference. It's driven down all the prices to that level.”).

6-23-09 Trial Tr. at 181:17-182:3, Testimony of Alan Schultz, Chairman and CEO of Valassis (“Q. Now I believe it's your testimony that there has been a price war in the FSI industry since 2001, correct? A. Well, I think originally I would have viewed it as a price war. I think I might view it a little differently today and I think what I would view it as more is it's tying and bundling that is driving down net effective rates in the industry more so than what I would view as a traditional price war. This is about leverage and coercion of customers and driving down net effective rates and driving the profitability out of the Valassis FSI business.”).

6-24-09 Trial Tr. at 110:8-21, Testimony of George Rebh, Executive Vice President of FloorGraphics (“Q. Is News dominant in the in-store promotions business? A. Yes. Q. As you understand the business. A. Yes.”).

17. News' in-store promotions customers were willing to pay “the higher rates” because News has been largely “unchallenged” by competitors.

P-349, admitted 5-29-09 Trial Tr. at 90:22-23, News America Marketing, 01 September 2005, ConAgra Proposal Discussion Notes - 9/1/05, NAM07-00236864 - NAM07-00236866 at 864 (In an agenda for a proposal discussion with ConAgra, News America states, “Ramifications of not continuing with relationship... In Store Rates go up 54% - History has proven (Sara Lee, Quaker) that even at higher rates, this stuff works and companies continue to run.”).

P-254, admitted 6-22-09 Trial Tr. at 183:22-184:1, Campanelli, Wayne, 10 August 2005, FW: Sara Lee FY07-08 ROFR Bid.xls (“Here is the Sara Lee RFP for '06/'07, '07/'08 & '08/'09. For In Store, they have also requested In Store rates without the FSI business. Frankly, this is why they are now talking to

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us since they didn't give us the ROFR last time, we billed \$1.5MM more because [sic] of the 45% increase we took on In Store. If we don't get the FSI business, I would be willing to hold the In Store rates that they are currently paying in calendar 2005. Again, this is a 45% jump from the rates when we did enjoy the ROFR.”).

18. Elaine Mozetti, Manager of Consumer Promotions at H.J. Heinz, testified that the threat of higher in-store rates was the reason News received the additional Heinz FSI business.

6-10-09 Trial Tr. at 190:10-14, Testimony of Elaine Mozetti, Manager of Consumer Promotions at Heinz (“Q. Was the reason that News America ultimately received this contract as Exhibit 1, based upon the difference in the in-store prices if Valassis was awarded the FSI versus not awarded the FSI? A. Yes.”).

19. Elaine Mozetti, Manager of Consumer Promotions at H.J. Heinz further testified that Heinz would have preferred to continue using Valassis for its FSIs.

6-10-09 Trial Tr. at 190:15-18, Testimony of Elaine Mozetti, Manager of Consumer Promotions, Heinz (“Do you recall telling the folks at Valassis that you would have preferred to have continued to utilize them for the FSI or free-standing inserts? A. Yes.”).

6-10-09 Trial Tr. at 193:23-194:2, 02 August 2007 Deposition of Elaine Mozetti, Manager of Consumer Promotions, Heinz at 24:16-9 (“Q. Would giving News America one hundred percent of the free-standing insert business be a deviation from what your preference and practice would have been? A. Yes.”).

20. Intentionally Left Blank

21. CPGs have informed Valassis that the reason News won the FSI business was because News threatened higher in-store pricing if the CPG gave its FSI business to Valassis.

P-2169, admitted 6-25-09 Trial Tr. at 98:22-23, Tunnell, Suzanne, 11 November 2002, Email from Bausch & Lomb to Valassis, Subject: RE: Follow-up to our conversation this morning, VLS00070644 - VLS00070644 at 644 (Suzanne Tunnell of Bausch & Lomb emailed Charlie Quinn of Valassis, telling him with respect to News, “We are contracting with them for one year with an out clause should their service not improve. As I mentioned we have only four FSIs next year (3 1/2 pages in your lingo). The in-store rates are excellent and we cannot pass them up. I tried giving them only a portion of the FSI work but as you can imagine, given the rates we are getting for in-store, they did not go for a one year commitment with the out clause plus less than 100% of the FSIs.”).

22. News attributed its increase in FSI market share from 44% to 62% to “offering in-store savings to our FSI clients.” (Emphasis added).

P-0571, admitted 6-2-09 Trial Tr. at 87:5-6, News America Marketing, 08 October 2004, News America Partnership Proposal – Georgia Pacific, NAM07-00252948 – NAM07-00252958 (A presentation to Georgia Pacific in 2004 states “From 2002 to 2004 News America has grown FSI share from 44% to 62% by offering in-store savings to our FSI clients.”).

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6-2-09 Trial Tr. at 87:9-88:1, Testimony of Thomas Leprine News Vice President, Business Operations (“Q. [] From 2002 to 2004 News America has grown FSI share from 44 percent to 62 percent by offering in-store savings to our FSI clients.” Did I read that correctly? A. That's correct. Q. And that's the same substance as what Mr. Garofalo just said; is that right? A. Said we were at 63 percent share, that's correct. Q. And it's because of the in-store linkage to the FSI business, correct? That's what this says? A. Literally, yes, it does. Q. And that's the same thing Mr. Garofalo said, it was because of the in-store being tied to the FSI that you went from 44 percent to 62 percent of the FSI business, correct? A. That's what was said, correct.”)

23. News credits its in-store bundles with winning FSI agreements.

6-16-09 Trial Tr. at 77:10-20, Testimony of News' Christopher Mixson, President of News (“Q. And isn't also accurate that bundling or leveraging your portfolio was part of that success during that time period? A. I think being able to respond to client's interest and having leveraging their full purchasing power to get improved pricing across a broad portfolio of products that they are interested in certainly, yeah that played a role in it as well. *Q. So, the selling of the products jointly did help you take market share from Valassis? A. Yes.*”). (Emphasis added).

P-0850, admitted 5-29-09 Trial Tr. at 132:24, Leprine, Tom, 04 April 2002, RE: Dial ROFR Agreement - CY2003 - 2005, NAM07-01005483 - NAM07-01005496 at 492 (“I think the key (besides a low FSI rate) is the leverage we have for IS business - there is no way we should lose this renewal (if we need to slightly lower FSI rate then less [sic] discuss). Account should give you every opportunity before they go to V - as long as we play the IS card up big and the benefits of partnering with News.”).

P-14, admitted 5-28-09 Trial Tr. at 166:10-25, 2002 News Sales Conference [Speech by Thomas Leprine, News' VP of Business Operations] (“From the inception of acquiring Act Media, Paul and Dominick established a game plan, and a brilliant one at that I may add, Rita. *A game plan whereby we would use the in-store products to drive FSI volume...* That's to say that for clients who were heavy users of our in-store products, we developed deals that rewarded those clients with favorable in-store rates and added value in return for adding FSI volume and thus increasing News America's total revenue. *That strategy worked with clients like SC Johnson, General Mills, Clorox and ConAgra. And also greatly helped us retain deals with Reckitt Benckiser, GlaxoSmithKline and Tyson.*”). (Emphasis added).

5-29-09 Trial Tr. at 30:11-32:19, Testimony of Thomas Leprine, News Vice President, Business Operations (“Q. Sir, the first two companies that you mentioned were S C Johnson and General Mills or GMI, correct? A. That's correct. Q. And you attributed News getting that business to this bundle strategy of in-store and FSI, correct? A. To the single source, correct. Q. To the brilliant strategy that you called it -- that was you speaking, correct? A. Correct. Q. And you were telling the truth when you said that you got S C Johnson and General Mills as a result of the single source or bundle strategy, weren't you? A. I was pointing out that we had -- they were big users of our in-store products and so that enabled us to provide discounts and therefore provide a package that was attractive so they would accept that and give us their FSI business. Q. But it worked as to those two big customers; is that correct? A. That's correct. Q. And GM I and S C Johnson were pretty big players in the FSI business, weren't they? A. They were large players. Q. Between the two they accounted for 6 or 7 percentage

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of the FSI business total? A. Roughly. Q. And you were able to take that business from Valassis as a result of this brilliant integrated single source strategy in this 2000-2001 time period, correct? A. Well, the S C Johnson business was split 50/50. We got 50 percent and Valassis got 50 percent. And we turned that into getting a ROFR deal for that. And General Mills was we did get the FSI business. Q. So S C Johnson it was split 50/50 and then you got a 100 percent? A. Correct. Q. And General Mills, Valassis had it and then you got 100 percent? A. Right before that Valassis had it, correct. Q. And that was due to, in your view, as you say the success of the strategy, right? A. It was the success of being able to offer both of our products into a package that was attractive to the customer. Q. So now let's put up the logo slide that Mr. Stone showed to the jury during opening where he said that General Mills and S C Johnson were losses to Valassis, because Valassis took a price increase in 2001. I know you weren't here, Mr. Leprine, but you would agree that you won those because of the success of your strategy, isn't that right? A. I would say it's mainly due to one of the factors, was that we were able to offer them attractive in-store stores rates for FSI.”)

5-29-09 Trial Tr. at 33:3-7, Testimony of Thomas Leprine, News Vice President, Business (“One of the factors in winning those two pieces of business [SC Johnson and General Mills] was that we were able to give discounts on their in-store business and with the additional volume, get the FSI business.”).

P-206 (Linguitti Dep. Exh. 187), admitted 5-29-09 Trial Tr. at 71:1-2, News FY2003 Highlights *From News Fiscal 2003 Budget Book re: News implementing strategies to replace Unilever and P&G* at NAM07-00278094 and NAM07-00278096 (“News America Marketing’s continued emphasis on selling integrating programs will result in revenue increases in the in-store division of 19.7 million and a FSI packaged good market share increase from 49 percent to 54 percent (Fiscal 2002) to 54.0% (Fiscal 2003)...New right of first refusal (ROFR) agreements include the following: General Mills, Sara Lee, Colgate, Del Monte, Nabisco, Kimberly Clark, SC Johnson *** News America Marketing has implemented strategies to replace lost FSI Packaged Good volume (Unilever and a share of Proctor & Gamble). *These strategies were successful in almost all competitive situations during Fiscal 2002.*”). (Emphasis added).

6-3-09 Trial Tr. at 174:20-22, Testimony of John Linguitti, CFO of News, about **P-206** (Mr. Linguitti testified that “integrating programs” means selling in-store and FSI together: “Q. And the integrating programs is – means selling in-store and FSI together, is that correct? A. As it relates to this statement.”).

P-1909, admitted 6-17-09 at 133:20, 2006 Sales Summit Business Highlights 10/11/04 to present, NAM07-00394052 - NAM07-00394108 at 082 (“Congratulations to Mike Pollack for securing our first ROFR with Snyder's of Hanover, a long time V loyal client. This agreement is worth approximately 5.5 NEPs across 2 years. Interestingly, Mike was notified last week that they were going to renew with Valassis due to a top level relationship between Snyder's management and Valassis. However, Mike would not take ‘no’ as an answer and successfully negotiated and structured a deal that integrated our in-store portfolio and offered added-value services that the incumbent could not match. This represents the third central Pennsylvania account in the past 15 months that the team has converted from either a share or V loyal status to a News America ROFR and further solidifies our share in that region for years to come.”).

6-15-09 Trial Tr. at 209:7-14, News 2004 Sales Conference [Speech by Wayne Campanelli, Senior Vice President of Finance and Strategic Sourcing] (“We hit an all time high in market share in January 2003

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and we have not backed off since. *Right now we are holding at 60%, up from 49%* the last time we were all here together. Look at that graph, isn't it great? It goes straight up like that. Impressive. How did we do this? *I think a lot credit, as John has said, has to go to the project pre-empt initiative.*"). (Emphasis added).

P-291, admitted 5-29-09 Trial Tr. at 21:14-15, Chris Mixson's Self-Appraisal *Christopher Mixson - Fiscal Year 2007 Self-Appraisal*. (Chris Mixson, President of News, defined Project Preempt as a "a strategy to compete and convert business under contract with News's competitors and existing customers by engineering comprehensive, *multi-year single source agreements*" which "resulted in the *emergence of News as the dominant vendor of FSI/In-store related services*" and "resulted in the emergence of News as the dominant vendor of FSI/In-store related services. *[T]hese combined strategies were successful in reversing the declines suffered in 2001 and 2002, and marked the advent of the most successful and profitable years in News's history.*"). (Emphasis added).

5-29-09 Trial Tr. at 23:4-15, Testimony of Thomas Leprine, News Vice President, Business Operations ("Q. So project preempt was a strategy to compete and convert business under contract with News's competitors -- that's Valassis, right? A. Correct. Q. -- and existing customers. That's customers you already had? A. That's correct. Q. -- by engineering comprehensive multi years single source agreements, and single source is ones that involve more than one, just the FSI product also involves the in-store products, right? A. That's correct.").

P-27-4, 6-2-09 Trial Tr. at 84:9-21, News 2006 Sales Conference [Speech by Martin Garofalo, Executive Vice President of Trade] ("And this is where the trade group really plays a very important part in our company's success. Because without the trade network obviously we can't sell in-store dollar number one. And without in-store revenue we can say goodbye to almost half of our profits. *Or maybe even more than that because much of the success we've had and enjoyed really of late on the FSI side of the business where we know we have 63% market share on the packaged good side of the business has been generated by our ability to sell single-source integrated agreements.* So it's clear that our retail relationships are critical to success in the in-store business."). (Emphasis added).

6-4-09 Trial Tr. at 22:22-24:4, Testimony of Paul Carlucci, News Chairman and CEO; ("Q. Mr. Carlucci, Exhibit 78 is the budget book for 2000. It seems to be missing the cover, but I think it's clear what year it is. Is that correct? A. Yes. Q. And this is one of those budget books that we have been talking about where News America Marketing is presenting the state of the business to the News Corp -- A. Yes. Q. -- executives, correct? A. Correct. Q. And it's -- you go through a lengthy workout process to prepare these books every year, is that right? A. They do. I do not personally go through them but the people working at News America Marketing do. Q. I want to direct your attention to page 1-1. Section 1-1. Do you have it, sir? A. Yes. Q. At the -- under the heading "revenue enhancement initiatives," there is one headed "single source." Do you see that? A. Yes. Q. And in fact it says "in fact, a key strategy in leveraging the in-store and FSI consolidated businesses has been offering single source agreements to packaged goods companies which has resulted in News American obtaining 100 percent of the company's FSI business, do you see that statement? A. Yes, I do. Q. I read it correctly, correct? A. Yes, you did.")

6-16-09 Trial Tr. at 193:3-11, Trial Testimony of Tom Dittrich, Senior Vice President and Regional Manager of Central Trade Division ("Q. Do you believe it was a true statement when you wrote to Mr.

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Naze on November 11th, 2003 we've raised these rates by 25 percent and it will provide us leverage to close the deal. Is that a true statement, yes or no? If you can't answer it, just tell me you can't answer it. A. It would enable us not to lose the deal.”)

5-29-09 Trial Tr. at 125:21-23, Testimony of Thomas Leprine, News Vice President, Business Operations (“We were using in-store, as I said, we were using in-store to get FSI”).

6-22-09 Trial Tr. at 69:11-70:4, Testimony of West Naze, News Executive VP, Central Division; (“Q. And you don't have any memory of companies only wanting to talk to you or only willing to entertain your proposals because you increased their in-store rates or told them their in-store rates would increase if they gave their free-standing insert business to Valassis? A. That's correct. Q. But at the time, now being look at this, you believe that that is what happened with respect to Sara Lee? A. That's what I wrote. Q. And you believe that was -- that is in fact what happened? A. That they talked to me? Q. That they were only talking to you because of the fact that you raised their in-store rate by a million and a half dollars because they gave their free standing insert business to Valassis? A. That was my opinion.”).

24. A News “Sales Strategies” document discussing T. Marzetti describes how News should have won T. Marzetti’s FSI business based on the in-store discounts. It goes on to state, “It would be nice to get their FSI business, but for now we actually enjoy higher instore margins than we would under our ROFR proposal.”

P-1475, admitted 5-29-09 Trial Tr. at 111, News America Marketing, 20 January 2004, FY ‘06 Sales Strategies, NAM07-00364740 – NAM07-00364754 at 751 (“[Heading] T. Marzetti [sub-heading] Original Core Strategy [Bullet] Our strategy was to continue to build on Instore success and leverage that, C&D market lists and other added value to secure their ROFR business. [sub-heading] Effectiveness of Strategy to Drive News’s Business [Bullet] Outstanding success on instore, and our positive relationships throughout the brand teams should have secured us the business but the VP Marketing denied us the ROFR. Our instore business grew to a level that actually exceeded the FSI revenue enjoyed by our competitor... [Bullet] It would be nice to get their FSI business but for now we actually enjoy higher instore margins than we would under our ROFR proposal.”).

25. Valassis historically had a FSI market share between 50-52% percent.

6-10-09 Trial Tr. at 176:23-177:8, Testimony of Robert Recchia (“If you go back to 1993 -- and I can event take you back to '88. What you would find is that our market share was always between 48 and 52 [percent]...The market forces are all up north and in some years we get 50, and in some years we get 48, and some years we get 52, and that they way the business works.”).

P-2486-B, admitted 6-10-09 Trial Tr. at 178:2-3, Chart re FSI Market Share.

26. News used its dominance in in-store promotions to punish those CPGs that purchased FSIs from Valassis.

P-843, admitted 5-29-09 Trial Tr. at 77:2-3 (“Also, Mark/Chris, let’s make sure that Sales knows and we ensure that all clients that decrease our share get increases for their IS rates - esp. the very low rate

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clients. Need to have a process in place for this as well (maybe an SJO for someone.”). Mr. Leprine testified about P-843 (5-29-09 Trial Tr. at 78:1-9): “We need to bring, since the FSI volume was gone, we needed to increase the rates that they were paying for in-store...anybody in this situation where they take a volume away from us on the FSI side, we need to increase their rates on in-store.”).

P-1642, admitted 5-29-09 Trial Tr. at 80:21-22 (For Valassis ROFR clients “we don’t always but I think we always should increase these client’s rates.”). Mr. Leprine testified that the reference to “increase these client’s rates” referred to increasing the in-store rates of Valassis’ clients (5-29-09 Trial Tr. at 81:18-82:1).

P-2414, admitted 5-29-09 Trial Tr. at 85:20-21 (“This is why some clients like to debundle, and if they insist then we need to go with increase in-store rates and let them negotiate back to original rates at most.”). (emphasis in original). Mr. Leprine testified about P-2414 as follows (5-29-09 Trial Tr. at 87:1-7): “Q. And so you go to the market, bundled and if they don’t like it and they insist, some clients like to debundle and if they insist, we need to go with increasing their in-store rates, that’s what you lectured your in-store executive committee to do, correct? A. That’s correct.”).

5-29-09 Trial Tr. at 94:11-96:25, 97:13-18 Testimony of Tom Leprine [position] discussing P-349 (“Q. – Ramifications of not continuing with relationship. Do you see that? A. Yes. Q. In-store rates go up 54 percent, do you see that? A. Yes. Q. History has proven Sara Lee, Quaker that even at higher rates this stuff works and companies continue to run. Did I read that right? A. Yes. *** Q. What this means about this time about 2005 both Sara Lee and Quaker had given their FSI business to Valassis, had they not? A. I believe that’s correct. Q. And they both got a big rate increase on their in-store, did they not? A. I don’t know that. Q. Well, isn’t that what this says? History has proven that even at higher rates this stuff works and companies continue to run. A. Right. You asked if they got high increases. I don’t know that they had got any increases. *It just says they are paying high rates.* *** [I]t says *in-store rates go up 54 percent.* *** Q. Isn’t it true, Mr. Leprine, that Sara Lee and Quaker did take big rate increases and did continue to buy? A. *This says that they pay high rates.* It doesn’t say anything about that they took high increases.”). (Emphasis added).

P-566, admitted 5-29-09 Trial Tr. at 99:15-16, News proposal to ConAgra says “News has carefully reviewed clients that are similarly situated and are not placing their FSI business with News. On average, these clients...are paying rates that are 54 percent higher. However, News will alter the RFP structure and will raise the in-store only space structure by 27 percent.” Mr. Leprine testified about P-566 (5-29-09 Trial Tr. at 100:21-101:6): “A. So it’s saying currently with an FSI deal ConAgra is paying 54 percent less than what the average customer is, even based on the same volume. Without the FSI volume, they should go up 54 percent and be where the average customer is and we are only going to increase them by 27 percent, half the amount. Q. You’re saying on average, all customers doing business with Valassis are paying 54 percent higher for in-store, correct? A. No. No, they are paying 54 percent more than what ConAgra is paying under a single source fee.”).

P-696, admitted 5-29-09 Trial Tr. 106:17-18 (“[C]onversely News will make up margin shortfall from ‘all other’, i.e., nonsingle source customers. Hormel will undoubtedly fall into this category if they award their FSI business elsewhere.”) Mr. Leprine testified about P-696 (5-29-09 Trial Tr. at 109:5-12): “Again, Hormel was a News America client and with that FSI business, we gave them discounted in-store rates so they were well below what the marketplace was. *Once again all he is saying is that if Hormel chooses*

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to not give News America their FSI business, it's a lower volume, we have to increase the in-store rates." (Emphasis added).

6-8-09 Trial Tr. at 25:21-26:15, Testimony of Debra Lucidi, Former Director of Business Services Procurement, Sara Lee ("Q. Do you believe that News America was attempting to coerce Sara Lee into entering an FSI contract with News America by using its market power in the in-store promotions market? A. Yes, I do. *Q. Do you believe that News America imposed an economic penalty on the price of in-store promotions because Sara Lee awarded the FSI contract to Valassis? A. I believe they attempted to and unless something changed, yes, they would have done that. Q. They did do it in 2004, right? A. Yes. Q. If someone from News America were to testify that News America never threatened to charge a higher in-store price if the company gave its FSI business to Valassis, that would not be an accurate statement in your experience, would it? A. Absolutely incorrect and there's documentation that shows that.*"). (Emphasis added).

P-254, admitted 6-8-09 Trial Tr. at 82:25, Campanelli, Wayne, 10 August 2005, FW: Sara Lee FY07-08 ROFR Bid.xls ("For In Store, they have also requested In Store rates without the FSI business. Frankly, this is why they are now talking to us since they didn't give us the ROFR last time, we billed \$1.5MM more becaus [sic] of *the 45% increase we took on In Store*. If we don't get the FSI business, I would be willing to hold In Store rates that they are currently paying in calendar 2005. *Again, this is a 45% jump from rates when we did enjoy the ROFR.*"). (Emphasis added).

6-22-09 Trial Tr. at 65:14-19, Testimony of West Naze, News Executive VP, Central Division ("Q. And again despite the fact that this has nothing to do with Valassis you wanted ConAgra to know that if they awarded their free-standing insert business to Valassis their rates on in-store, both space and production would rise? A. That's also correct.").

27. News doubled Kellogg's in-store rates when Kellogg's did not award its FSI business to News.

P-2017, admitted 6-26-09 Trial Tr. at 101:17, Simon, Tom, 28 April 2006, E-mail re Kellogg's Meetings re: Insignia- 4.19.06, VLS00078812 – VLS00078814 at 812 ("News has doubled their price to Kellogg's on in-store from last year based on not getting FSI deal.").

28. A News Sales Strategies document that discusses the SCA Personal Care account indicates that SCA had higher in-store rates, at least in part, because it was a Valassis customer.

P-0547, admitted 3-9-09 Hearing Tr. at pg. 120, News America Marketing, 12 June 2006, FY'07 Sales Strategies, NAM07-00224106 – NAM07-00224125 at 119 ("Because SCA is a VROFR and runs chain-specific or regional programs, they have higher Instore rates.").

29. When Unilever awarded its FSI business to Valassis for the 2002-2004 period, News raised Unilever's in-store rates.

P-1789, admitted 5-29-09 Trial Tr. at 136:3-4, 04 May 2001 Porco, Dominic Letter to Unilever, NAM07-00332676 – NAM07-00332677 at 676 ("News America Marketing has just been informed that Valassis has been awarded the Right of First Refusal for the period 2002 through 2004. *** As outlined in a follow up document sent to you on January 19, 2001, you should anticipate a *3-5% increase for all of*

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the above [in-store rates] per year. Additionally, all Partnership pricing incentives related to In-store products outlined in the presentation on January 16th are no longer in effect for 2002-2004.”). (Emphasis added).

30. When Pactiv gave its FSI business to Valassis, News increased Pactiv’s in-store rates.

6-16-09 Trial Tr. at 86:1-13, Testimony of Christopher Mixson (“Q. So, did Pactiv, in fact, give their FSI business to Valassis during this time period? A. They awarded their FSI business to Valassis sometime prior to this, I believe. *Q. And you did increase their in-store rates, correct? A. Oh, yes.* In fact, they had the lowest rates in the industry, and it was just something that we wanted to raise for a long time. If you – if you took a look at the Pactiv rates compared to every other player in the category, their rates were probably 20 percent of what was the going rate for that category was.”). (Emphasis added).

31. Sara Lee changed from News to Valassis, and Sara Lee says it was told its in-store prices would increase 30% once its single source agreement expired. A later internal News e-mail says that News actually raised the prices Sara Lee paid for in-store promotions by 45% because of the lost FSI business, and furthermore, that in the next contract cycle, if Sara Lee again refused to use News, it would continue to pay prices 45% above the rate it paid when it was under a ROFR with News.

P-1054, admitted 6-2-09 Trial Tr. at 20:5-6, Mixson, Chris, 03 December 2003, RE: FSI- InStore, NAM07-00456118 – NAM07-00456120 at 119 (An e-mail from Brian Bancroft at Sara Lee to News America states, “I have also been informed that News intends to take a 30% increase on Instore once our current Agreement expires. This is far in excess of what Laura Grasing had conveyed to me during the sourcing process.”).

P-0975 (Lucidi Dep. Exh. 3), admitted 6-18-09 Trial Tr. at 301:15, Michelsen, Doug, 25 August 2005, RE: In-Store Coupons/FSI – Response Needed, SARALEE00000409 – SARALEE00000412 at 411-412 (Debra Lucidi writes in an internal Sara Lee e-mail, “Our [Sara Lee] contract with Valassis for FSI is coming to an end, and News America (who does our In-Store) tells me we could save so much money on In-Store if we moved our FSI to them that I want to understand what this looks like...A little history – News America had our FSI business until two years ago when it was awarded to Valassis. As a result of that business being moved, News America increased our In-Store pricing by \$1.2Million/year...What they propose now is if we give the FSI business back to them, they will ‘roll back’ the In-Store pricing to where it was.”).

P-254, admitted 6-8-09 Trial Tr. at 83:11-12, Campanelli, Wayne, 10 August 2005, FW: Sara Lee FY07-08 ROFR Bid.xls (“Here is the Sara Lee RFP for ‘06/’07, ‘07/’08 & ‘08/’09. For In Store, they have also requested In Store rates without the FSI business. *Frankly, this is why they are now talking to us since they didn’t give us the ROFR last time, we billed \$1.5MM more becaus [sic] of the 45% increase we took on In Store.* If we don’t get the FSI business, I would be willing to hold the In Store rates that they are currently paying in calendar 2005. Again, this is a 45% jump from the rates when we did enjoy the ROFR.”). (Emphasis added).

32. In May of 2006, News presented Kraft with a renewal option that would increase their in-store media rates by 20% if Kraft ended the 100% ROFR relationship with News. News proposed to

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increase Kraft's in-store media rates by a lesser amount (5%) if Kraft committed to \$20 million of annual in-store spending. News also proposed to immediately raise in-store production rates to the 2005 rate card, which would have been a 40% increase.

P-0799, admitted 5-29-09 Trial Tr. at 139:25-140:1, News America Marketing, May 2006, Single-Source Partnership Proposal, NAM07-01107929 – NAM07-01107960 at 948 (“What a Non-Single Source In-Store Agreement Would Look Like. Our in-store agreement expires in December 2006 at which point: [Bullet] Media rates will increase by 20%* [Bullet] Production rates will follow News America Marketing's published rate card (average 40% increase)... [Footnote] *5% increase per year if Kraft commits to at least \$20 million of in-store spending.”).

33. News' punitive pricing forced Valassis make cash payments or offer CPGs equivalent discounts on FSIs to make up for News' penalty pricing on ISPs.

6-8-09 Trial Tr. at 69:12-70:12, Testimony of Robert Recchia, CFO, Valassis (“A. Okay. The two and a half million difference, that penalty price is what the customer will come to us for, and they will say look, we want to do business with you but we have a problem, it's a two and a half million dollar problem if we go with you. So we have a choice at that point, we can write a check for two and a half million dollars and we are then competitive and we can win that business. Or we can lower that rate from \$4 down to a net effective rate that saves them the two and a half million dollars which if you look at it in this case, the two and half million is a little bit more than half their FSI buy...Q. So you can either write them a check or lower your price? A. Yes.”).

6-8-09 Trial Tr. at 71:5-72:4, Testimony of Robert Recchia, CFO, Valassis (“Q. Have there been circumstances Mr. Recchia, where you have in fact written a check to try account for this in-store differential? A. Many times. Q. Can you give the jury an example of one. A. I will give you an example of one that we wrote to Sara Lee for about \$1.5 million to do just this. Q. Do you know when that was? A. I believe 2003. Q. Now during News' opening, it was suggested that there was no interference with respect to your Sara Lee relationship because you guys got the business, do you recall hearing that? A. Yes, I do. Q. Were you interfered with by News's tying in-store into the FSI with respect to Sara Lee? A. It's true we kept the business but in order to do that we had to lower our rate and we wrote a check for \$1.5 million. And I believe when that business came up for renewal, the second check that we had to write to maintain it went up to \$1.8 million. So from our perspective there is clearly interference with going on in relation to that contract.”).

6-8-09 Trial Tr. at 73:23-74:75:1, Testimony of Robert Recchia, CFO, Valassis (“Q. Now in 2003, you wrote a check to Sara Lee a million and a half dollars to get the -- or to keep the business? A. Yes. Q. And you understood that was because Sara Lee was going to be charged higher in-store rates? A. That's what they told us. Q. Let's take a look at this paragraph here, please. What does this paragraph tell you about the million and a half dollars that you paid to Sara Lee?. A. What it tells me is that Sara Lee was telling us the truth that the million and a half dollar penalty was real and that it cost them \$1.5 million more to buy their in-store program so this is what I was talking about. We subsidized that in-store program by having to give discounts or signing bonuses. That money ends up in News' hands. Q. So you won an FSI contract and a million and a half dollars of your money ends up in their pocket? A. Yes.”).

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6-8-09 Trial Tr. at 75:9-22, Testimony of Robert Recchia, CFO, Valassis (“Q. Now does it matter to you whether that two and a half million dollars on that chart or the million and a half dollars that you paid to Sara Lee or the 6 million in-store discount that Mr. Leprine referenced on this chart here, it says IS discount -- A. Yes. Q. -- does it matter to you whether it's termed a discount or a penalty? A. No, it doesn't matter as long as they are real dollars, the customer is going to look to us to make up the difference or not. But if we want to remain competitive we have to make up the difference whether it's discount or penalty price are the only two ways to do it.”).

34. Valassis could not overcome News' penalty pricing and lost the Heinz business as a result.

6-15-09 Trial Tr. at 156:11-161:22, Testimony of Rebekah Goldberg, Marketing Services Consultant, Valassis (“Q. Was the bundling tying as much of a concern with them as with say Heinz? A. It wasn't as much as with Heinz, but it was definitely a concern and a hurdle we had to overcome, and Terry Ellis told me that. At the time but unlike Heinz whose in-store spend was planning to be here and their FSI maybe here, Smucker's was the reverse...Q. Do you remember what the prices were in that proposal? A. In our original proposal it was FSI CPM proposal of \$4.10 and a signing bonus of \$300,000. Q. Was \$4.10 CPM was that high, low, middle of the road at the time? A. It was really low at the time. Their current contract with us was a \$5 CPM. And I would say from my knowledge during the time CPMs range from 4.50 to probably 5.50. Q. So why did you go down to 4.10 and take on a \$300,000 signing bonus? A. We knew we were competing against News America who was going to come in with an FSI and in-store bundle proposal. Terry Ellis told me that in-store was -- she knew News America was going to bring in-store into it and they had come in and made their proposal and presentation first. And so we knew that Smucker's had about a \$4 million spend on in-store. We knew from the industry and other deals we had gone through an estimate of how they were discounting the other types of penalty pricing they were putting in place, and so we ran some numbers and said we have to overcome what we thought was well over a million dollar hurdle that was coming just from the in-store. Q. How you was the proposal received? A. It was perceived well, and the meeting went great but actually six days before my weddings and it was one of the highlights of those couple of weeks, obviously the wedding superceded it, but it was a fantastic meeting and got great initial feedback. And about a week later did hear from Terry, in a meeting that I had with her when I was down in Orville, Ohio and she said that our proposal was very strong, that they did want to continue discussions with us about doing business, and that our FSI CPM was lower than News America. She didn't tell me what it was, but she did say that all the in-store, she was trying to get the in-store -- see if she could get the in-store out because with the in-store factored in she didn't think our proposal was rich enough to be awarded the business. Q. Do you know what the in-store differential was that she was facing with News? A. Yes. Q. Let me go at it this way. You gave the proposal and you talked about how it was received? A. Yes. Q. Did you give a second proposal? A. Yes. Q. Did you change the prices in that proposal? A. Yes. Q. Explain what you did in the second proposal? A. Sure. In the second proposal we decreased our FSI CPM to \$3.50. So from 4.10 and again the market had been 4.50 to 5.50, so it was the most aggressive rate I have ever been a part of putting on a proposal at that time, and we increased our spending bonus to \$400,000. Q. So walk us through again how you decided to lower the rate to 3.50 and move the signing bonus up to 400,000 generally. And slowly. A. In general, we would build the model that said where to base off of that we knew from the customer in the industry, what did we think that they were bringing the FSI rate down to, and what did we know was the in-store spend and what type of penalty pricing, so -- would they get if they did not give News America their FSI. So what was the percent discount they were receiving for giving News America the FSI along

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with the in-store. So the first model we built, we had built that knowing they were at \$12.00 and industry average was, from what we had learned from other proposals, from other customers was about a 35 percent change in price. But when, after the first proposal Terry Ellis told me that their FSI -- their in-store CPM would change from \$12.00 a thousand to \$42.00 a thousand -- Q .So you gave them- were you finished with your answer? A. I was. That's how we arrived at the hurdle we had to overcome. Q. And how was the \$3.50 plus the 4 hundred dollar signing bonus received? A. It was received extreme well and we did enter into a two-year partnership with Smucker's at that time for their FSI business. Q. So you won? A. We won, yes.”).

35. During the 2004 fiscal year contract negotiations for The Hain Celestial Group, Valassis noted that if Hain Celestial did not “use NA [News] for the FSI, their SSCM [a News ISP product] rate will increase \$15.50 [from \$24 per store] to a total of \$39.50 per store, an increase of \$802,000.” A subsequent e-mail said, “[w]e now think this proposal is too rich. We would have to pay \$802,000 to get \$1,052,640 (at \$4.50/2.39).”

P-495, admitted 6-8-09 Trial Tr. at 83:11-12, Farace, Franklyn, 07 May 2003, Valassis Internal E-mail, Subject: The Hain-Celestial Group 04 Proposal, VLS00030592-VLS00030593 at 592.

6-8-09 Trial Tr. at 76:24-78:2, Testimony of Robert Recchia, CFO, Valassis (“A. It's an internal document -- that's better -- from our west coast sales leader to Tina Schiller is the assistant for the executive vice president of sales. Q. In the context of what we are talking about here, this tying of in-store promotions into the FSI negotiation, tell the jury what is happening here with respect to this company called the Hain Celestial Group? A. What I can see from this is that Hain Celestial is buying in-store from News and there is either a discount or a penalty price amounting to \$802,000 that they are asking us to make up if we want to be competitive. Q. What would happen in our example over there, just using the same type of example, if you decided to write them an \$802,000 check to get the business? A. Yeah, we would lose a lot of money on the business. Q. Because you would get how much revenue for four nationally equivalent pages? A. You would net the 802 against the million 52 which is total cost if you will, at \$4.50 a thousand and you would have a net revenue of \$252,640 for four pages which is around a dollar a thousand. It's well below cost. Q. Do you know what ended up happening here? A. We lost that business. We did not write that check.”).

36. Valassis was forced to offer equally aggressive price concessions in order to beat News' penalty pricing on ISPs.

6-23-09 Trial Tr. at 169:17-170:17, Testimony of Alan Schultz, Chairman and CEO of Valassis (“Q. Now is it your claim that simply because Mars purchases in-store from News America that this forced Valassis to offer a low FSI price to Mars? A. Well, if they bundle the two together and tie them together and create a net effective rate that is artificially low then we would have to compete with that net effective rate. Q. That's my question, sir. Are you saying that the FSI price offered by Valassis to Mars in 2007 was lower than it would have been because of some bundling by News America? A. Oh, I think there is absolutely no doubt in my mind that bundling has infected this industry. That bundles create net effective prices which are very, very low, artificially low, clients talk about what kind of rate they are getting, what is your net effective rate, what is my net effective rate and it brings the whole industry down. There is nothing that you could do -- There is nothing you can do in this industry in

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isolation that doesn't affect other customers, nothing.”).

6-22-09 Trial Tr. at 97:17-25, Testimony of West Naze, News Executive VP, Central Division (“Q. So, Valassis will have to come with a proposal that has value in it of \$3.36 for the FSI effective in order to beat or meet News America's proposal? A. That's what Robert and I believe. I don't know what Hormel believes. Q. That's what you and Robert both believe. A. Correct.”)

6-18-09 Trial Tr. at 259:17-260:13, Testimony of Thomas Murray, Vice President and General Manager of FSI (“Q. You said that earlier and I didn't follow up. You said that if the customer is not a big in-store spender or user, you are able to sometimes compete by paying the penalty, but if they are a very big in-store spender, you're not able to compete? A. Correct. Q. Did I get that right? A. Yes, you did. Q. Would you explain what you meant by that? A. Some of these increase in prices and rates if they took the FSI rate were so large that you couldn't lower your FSI rate enough to offset the penalty that was being imposed on the customer. So if they were a small in-store customer and the penalty was proportionately a little bit smaller and the FSI spend was large then we could offset it by lowering our price which we have had to do, but if the in-store spend was let's say an even amount of money, a similar amount of money, they are going to increase it 40 percent or something like that then you cannot reduce your FSI spend, you are losing your bleeding money and there is no way to make that work. You just can't do that.”).

6-15-2009 Trial Tr. at 209:25-210:6, 2006 Christopher Mixson News Sales Summit Speech (“To date, our 21st Century strategy has worked well, the impact and influence we have with our advertisers has never been greater and our profits have never been higher. However, FY'07 is shaping up to be a most challenging year. *Our primary FSI competitor has been pushed to the brink of desperation*, causing radical and irresponsible bids to be tendered to many of News America's top customers...Now, they've taken the next desperation move, lowering FSI rates well below \$4.00...At any rate, we fully intend to continue to do what has made us successful to date; namely, provide innovative integrated promotion and advertising opportunities that span our full portfolio”). (Emphasis added).

P-604, admitted 6-2-09 Trail Tr. at 66:23, 02 November 2006 Grasing Email re: Follow Up (collection of emails) NAM07-00197760- NAM07-00197764 at NAM07-00197760 (News discusses internally how Valassis won Georgia Pacific's bid at an incredibly low CPM which means that Valassis is not making much profit on the deal: “If V cost per page is 2.70 and I am being kind then they will make 75k annually not including production costs and a potential barter arrangement.”).

6-22-09 Trial Tr. at 212:3-18, Testimony of Nancy Perkins, Vice President of Trade, News (“Q. Have you ever heard that the rate that Valassis would need to meet in order to be competitive would be the net effective rate including the in-store savings, as you have defined it, versus just the FSI stand-alone rate? A. Yes. Q. Where have you heard that? In and around your company? A. When we analyze a pricing proposal to a client, we will evaluate savings we give them on in-store against their FSI opportunities so that we can -- so that we can position to them how much savings they are realizing. Q. And that is the rate also that you understand that Valassis would need to beat? A. Yes.”).

6-8-09 Trial Tr. at 65:5-16, Testimony of Robert Recchia, CFO, Valassis (“Q. How does News's tying of its in-store promotions into the negotiations for this, the contract for this FSI impact your ability to negotiate for these contracts? A. It depends on the particular account but essentially what it does is it

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causes us to artificially lower our rates to meet their, what I will call a net effective price to the customer as a result of the bundling, and forces our rates down.”).

6-8-09 Trial Tr. at 78:3-79:7, Testimony of Robert Recchia, CFO, Valassis (“Q. Why not, instead of writing a check for Sara Lee, I want to go back to them for a second, instead of writing a million 8 check or even considering writing a 8 hundred thousand dollar check, which in this instance you did let the business go to News, why not let that Sara Lee business go to News? A. Well, we made a decision to try everything that we can do to protect our market share. And the reason for that is that in order to have a national program, you have to have a couple of things. You have to have a certain amount of circulation, which is where we have 60 million, I believe News has 70 million circulation and you have to have enough dates. And by dates I mean there is 52 weeks in a year, we publish on Sundays, so of those 52 we now publish on 41 dates or 42, we are right around that number. If you get down below 40 and you start getting in the high 30s, it's very difficult to service the needs of your customers. You don't have the dates that they want to run all their programs. That by itself will start to fuel another loss of market share. So what we have decided is we can no longer afford to lose anymore market share, we are down to around 35 percent today, we are maintaining that level but I would tell you anything further from there starts to erode us from a serviceability from our customer standpoint, but also our costs will start to skyrocket.”).

6-8-09 Trial Tr. at 87:15-88:22, Testimony of Robert Recchia, CFO at Valassis (“Q. Mr. Recchia, I would like you to take a look at what is the first page 11 -- if you will put page up on the screen. Do you understand what a 50/50 FSI agreement is? A. A 50/50 FSI agreement would be where the customer has chosen to split their business between the two providers. Q. So you would get 50 percent of this in this example, Novartis FSI business and 50 percent would go into News SmartSource book? A. Yes. Q. Let's go to the next page, page 12 -- let's make it page 13, excuse me. Now earlier you talked about the fact that whether it's a discount or a penalty Valassis has to account for it. I would like to direct your attention to the second bullet point on this page regarding the 50/50 agreement and let's see if we can understand this together. Without a ROFR, what does that mean? A. A ROFR stands for a right of first refusal. So what they are saying here if you don't give us all of your business then this will apply. Q. Now they total it up down here of 13 million 500,000 across the three year term or four and a half million dollars a year. Is that the type of real money that Valassis has to deal with in these types of negotiations? A. Yeah. The 4.5 million per year, we would be asked to make up that difference either by a signing bonus or reduction in our cost per thousand rate.”).

6-8-09 Trial Tr. at 88:23-92:11, Testimony of Robert Recchia, CFO, Valassis (“Q. Let's take a look at page 15, please. In-store only. If Novartis was only giving their in-store to News, where would their FSI be going? A. If they were only doing in-store with News, they would do their FSI with us. *** Q. If you will look at page 13 and 16 together. They are both on the screen, Mr. Recchia. A. Yeah, I guess what this is saying is that you need to give them a right of first refusal or you are going to pay this extra 13 and a half million dollars, no matter what you do. Q. Now turn back if you would all the way --keep that 13 and a half million dollars in mind and turn back all the way to page -- strike that. Turn to page six, please and keep that 13 and half million dollars in mind and let's look at the net effective CPM on page 6. And I know we are jumping back but it is the only way to do this. \$2.88 is this real dollars that Valassis has to account for as well? A. Yes. Q. Now assume with me that Valassis accounts for that \$5.2 million and they match this \$2.88 net effective CPM, does that end the problem for Valassis or do they have to deal with that 13 and a half million dollars on page 13 and 16? A. No, we still have to deal with

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the 13 and a half million dollars or the four and half million annual penalty that they would incur. Q. So the last numbers I think I will ask you to remember. Remember this 2.88 CPM. Okay. Now, let's look at the bottom of page 13, please. The last paragraph. Mr. Recchia, when you went and bid for the Novartis proposal, could you have given Novartis this FSI for free based on what you see in their proposal? A. Well, for, one we couldn't give it for free because we couldn't afford to do that. But that it says that penalty equates to \$2.90. If the net effective rate was 2.88 and the incremental penalty of 2.90, if we gave it to them for free they would be disadvantaged still by 2 cents per thousand. Q. Knowing all of that, did you bid on the Novartis business? A. We did submit a bid. Q. Why didn't you just lower it further? A. Well, we couldn't go to zero. I mean you can't do that. Q. Did you understand that that is where you -- that you couldn't have even done that? A. Yeah, this is one of those where the customer was telling us you can't be competitive because of the time. Q. And did you lose Novartis? A. Yes. Q. In this example, we showed you that 2.88 net effective rate, do you remember that? Yes. The real rate in this case, is it even different than that 2.88? A. The real rate, if you look at everything for that customer, for purposes of us competing is basically zero. We have to match the minus 2 cents in this case, assuming all that math is correct. Q. Does the billing rate, the billing rate, the actual invoiced rate for the FSI, does that matter in the context of what Valassis has to do to try to be competitive with respect to these FSI negotiations? A. No, it does not come into play in the contract negotiation phase. What comes into play in the contract negotiation phase are these discounts or penalty prices and how they affect the customer spend, not the billing rate, but their actual spend.”).

6-15-09 Trial Tr. at 136:13-18, Testimony of Rebekah Goldberg, Marketing Services Consultant, Valassis (“A. We did. We did, and that's when they told us that they just didn't think we could compete, that the in-store savings were just too much, that they, when they received the proposal they went to News America and did ask them to unbundle it and they were told that wasn't an option.”).

6-15-09 Trial Tr. at 138:13-140:10, Testimony of Rebekah Goldberg, Valassis Marketing Services Consultant (“Q. Did you have an understanding what price you had to meet to have a shot at the business? A. We did. In that meeting, they -- we were shocked when they told us that they didn't think we could compete. So we said, well, can you give us any idea what we are competing with. And they told us that we had to basically get down to the equivalent of a 2.80 price. *** Q. Just so we are clear, this is the FSI agreement that ultimately Heinz and News America entered into, do you see that? A. I do. Q. And I want to go to the fourth page, I think which that says proposal A across the top. And this is an Exhibit attached to the actual contract that News America entered into with Heinz, okay? A. Okay. Q. And what they have done, I will represent to you, they have attached what was their proposal as an Exhibit to the actual contract for the pricing, and it's small here, but can you see what it says there that the net CPM is that they offered and ultimately agreed to in the agreement itself? A. Yes. The \$2.80. Q. And is that the number that came up to you when you were talking with Ms. Mozetti and Ms. Scott? A. It is. Q. They didn't show you this document, did they? A. No, I have never seen this document before. Let me ask you this, did they tell you that this is what News America's net was or did they tell you this was the price that you were going to have to get to? A. They told us the price that we had to get to. I don't think they used the term net CPM, that was something that we knew was used in the industry, they said the price you are competing with.”).

6-15-09 Trial Tr. at 145:13-146:7, Testimony of Rebekah Goldberg, Marketing Services Consultant, Valassis (“Q. Why are you putting net CPM in this proposal? A. Because that's what we had seen from

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the industry, that's what we were up against with News America. That they were using a net CPM number with savings on the in-store and the FSI. And so we started doing it in order to compete. So to make sure other things we were doing we were getting credit for when someone looked at it on a spreadsheet basically they said us they were walking around with a 2.80 number in their head, so unless we come close to a 2.80 number and show it in the same fashion there is no way we even have a shot of getting this business. Q. So you got down to 2.79 for net CPM? A. Yes. Q. Did you present this to Heinz? A. I was in an internal meeting at the time so we sent it by e-mail. Q. You beat the 2.80 price, did you win? A. No, we did not.”).

6-15-09 Trial Tr. at 153:1-21, Testimony of Rebekah Goldberg, Marketing Services Consultant, Valassis; (“Q. News has taken the position in this case that net CPM is simply soft dollars or soft savings. Do you agree or disagree that? A. Completely disagree. I think there is different ways to utilize net CPM. But the way News America utilizes net CPM is they put hard costs of the in-store on that net CPM so they say if you don't give us FSI business then the in-store rate double, triples, quadruples. A. So net effective rate, that's what we are competing with in the marketplace. That's the price in our client's mind that's the price we have to overcome to win the business, to win the business. So to say it's a soft cost it's a real cost in the minds of our customers, and that's what we are up against in the marketplace and what we're up against every time I go into new agreement.”).

6-23-09 Trial Tr. at 199:23-200:6, Testimony of Alan Schultz, Chairman and CEO of Valassis (“Q. And that also puts pressure on FSI prices, doesn't it? A. Well, it's a factor, but I think it's important to be clear that the reason FSI prices are where they are at today is because of this tying and bundling that creates this net effective rate, and the threat of these penalty prices that forces us to lower our prices down to artificially low levels. I mean that's the main driver here.”).

6-23-09 Trial Tr. at 222:9-12, Testimony of Alan Schultz, Chairman and CEO of Valassis (“Well, again net effective rate is what we have to compete with.”).

6-8-09 Trial Tr. at 93:11-94:13, Testimony of Robert Recchia, CFO, Valassis (“ Q. If you have to reduce your price in order to deal with this tying or bundle, does that reduced price filter out into the rest of the market into your subsequent negotiations with your other customers? A. Yes, we have seen that continually taking place now for the entire period that this has been going on. Q. How does that happen? A. It can happen a couple of different ways. One, there is a fair amount of movement within this industry where a marketing person or a buyer from Nabisco will move to Keebler or Procter & Gamble will move to Unilever so there is some movement of people's jobs and with that they take information which can be the FSI rates. There has been a fair amount of consolidation where one company buys the other. And one of the things they do in that process is compare rates. Then the other thing that happens from time to time is our competition News will walk into a customer that we have a good rate at and they will tell that customer here is the new rates in the industry you should be doing business with us at these rates and what happens is the customer calls us up and says is this where market rates are today and what are we going to do about it? So it gets around a number of different ways.”).

6-15-09 Trial Tr. at 196:21-197:18, Testimony of Rebekah Goldberg, Marketing Services Consultant, Valassis (“ Q. Does News America's bundling have an effect on the price in general, not for a particular bidding process, but the price in general of the FSI? A. Yes, based on my experience in the industry, it does. We talked about Smucker's, for example, we had to, you know, industry pricing at the time was

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4.50 to 5.50, and we ended up going down to 3.50. To be honest, we didn't -- we worked out some things in the agreement and a lot of people in the building didn't see that contract agreement /E they saw a little bit higher rate because we knew once people see it and contracts go into the hands of agencies who are helping other CPGs with their planning may cross, so no one knows each other's exact rates: Do I have 3.50 or 3.53 on my contract, but they know about where the industry is, and they also understand they might have slightly different pricing depends on how much they are running, but when the bundling at the customer drives down the industry and where we have to go drive down a customer to where we have to compete, quickly the industry will follow and that's why this has been so detrimental over time to our business and our ability to sustain in the FSI world”).

6-23-09 Trial Tr. at 23:20-25:6, Testimony of Alan Schultz (“Q. Why was it difficult to do so, to compete for Valassis? A. In essence what this does is create net effective price which is exceptionally low and from our perspective we have to compete with that net effective price and oftentimes it can push the price below what our actual cost for raw materials to produce the product. *** A. In essence what happens is the net effective rate is so below our cost we can't compete for the business effectively, because we would have to sell below our raw material costs”).

37. News executives testified about the norms of ethical or proper behavior in the FSI and ISP industries.

6-4-09 Trial Tr. 55:25-57:21, Testimony of Paul Carlucci, News Chairman and CEO (“Q. Mr. Carlucci what is Exhibit 328? It's captioned, 'Standards of Conduct News Corporation.' A. Yes. Q. Are you familiar with this? A. I might have seen it in the past but I don't recall it. Q. Is it something that applies to News America Marketing? A. I need a few seconds to read it over, and I would be very glad to answer your question. Q. Sure, I just want to know if you're familiar and if it applies to you? A. I don't recall seeing it and it looks like a standards of business conduct. And certainly it would apply to us. Q. On the page marked in the lower corner 00928 -- A. Yes Q. -- the bottom of that page under -- it's under the heading "relationships with competitors and other trade practices." A. Yes Q. The bottom paragraph is headed "fair competition" Do you see that? A. Yes. Q. And it says the company will compete fairly for business, respecting the rights of other parties. This includes respect for the legitimate business relationships of competitors with the company's prospective customers. If as a result of our wrongful act the customers breaches a contract or terminates a business relationship with a competitor, the company and its employees may be liable for damages.' Do you see that? A. I do. Q. I read that correctly? A. Okay. Q. And you understand that to be a standard of business conduct to be applicable to News America Marketing? A. Yes, I do. Q. Do you consider it to be the business principles of News America Marketing dating back to that time period to avoid engaging in wrongful acts vis-a-vis competitors? A. Absolutely.”).

6-22-09 Trial Tr. at 226:15-227:8, Testimony of News' of Nancy Perkins, News Vice President, Trade (“Q. I ask if you can turn to the second page. The second bullet point under ‘In-store efficiencies’ says, ‘Guaranteed in-store pricing through 2008 locks in aggressive rates and protects Pfizer from standard 10 percent annual increases.’ Are you aware of a standard 10 percent annual increase? A. No. Q. Have you ever heard of a standard 10 percent annual increase? A. We raise our prices on an annual basis. Q. I appreciate that. Have you ever heard of a standard 10 percent annual increase? A. I don't recall. ***Q. Would you agree with me that if there is no such thing as a standard 10 percent annual increase, then***

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it would be improper to tell Pfizer that there is? A. Yes.”). (Emphasis added).

6-22-09 Trial Tr. at 34:7-17, Testimony of News' West Naze, SVP, Divisional Manager – 2004 and News American Marketing EVP/National Sales Manager – 2007 (“Q. Okay. Do you think it would be wrong to tell a customer that they would pay higher rates for in-store if they didn't purchase their freestanding inserts from you as well?...Do you think it would be improper as well? A. Yes.”).

6-22-09 Trial Tr. at 67:12-20, Testimony of News' West Naze, SVP, Divisional Manager – 2004 and News American Marketing EVP/National Sales Manager – 2007 (“Q. Have you ever believed that a – the only reason a company would talk to you is because you either have, in fact, charged higher in-store rates when they gave business to Valassis or have told them that their rates will be higher on in-store if they give their business to Valassis? A. No Q. That wouldn't be proper? A. No.”).

6-22-09 Trial Tr. at 86:24-87:14, Testimony of News' West Naze, SVP, Divisional Manager – 2004 and News American Marketing EVP/National Sales Manager – 2007 (“Q. Is that something that you would sanction or approve to make – unless you get 100 percent the business [sic], to make the rest of the proposal disadvantageous? A. No I would not. Q. That wouldn't be proper?...you don't think it should be done that way either, right? A. No.”).

6-22-09 Trial Tr. at 103:10-24, Testimony of News' West Naze, SVP, Divisional Manager – 2004 and News American Marketing EVP/National Sales Manager – 2007 (“Q. And you think it would be wrong to increase in-store rates for those customers who don't give you their FSI business as a general policy; it wouldn't be...an ethical business practice?...A. I guess my opinion, it would be unethical.”).

6-22-09 Trial Tr. at 120:21-121:5, Testimony of News' West Naze, SVP, Divisional Manager – 2004 and News American Marketing EVP/National Sales Manager – 2007 (“Q. –are you aware of anyone ever telling Georgia Pacific that, if they didn't buy the FSI contract, that News America would look to partner with one of their competitors on the in-store side; therefore, locking them out of the store? A. I'm not aware of any conversation that took place to that nature. Q. And that wouldn't be ethical, would it?...A. I don't believe that it would be.”).

6-16-09 Trial Tr. at 194:10-14, Testimony of Thomas Dittrich, Senior Vice President and Regional Manager of Central Trade Division (“Q. Would you believe it would be a violation of the business ethics that you operate under to tell a customer or potential customer something that was not true in order to gain their business? A. I would not endorse that, no.”).

6-22-09 Trial Tr. at 203:4-204:2, Testimony of Nancy Perkins, News Vice President, Trade (“Q. Well, let me ask a couple that maybe you can agree with me on. Would a limit on selling tactics -- would you agree that your selling tactics should not include lying to customers? A. Yes. Question: Would that be a limit on tactics that should be used? A. Yes. Q. Would you agree that your selling tactics should not include misrepresenting facts to customers? Answer: Yes. Q. That would be a limit on the tactics that should be used by your selling force, sales force, is that fair? A. Yes. Q. Okay. A. Yep. Q. Would you agree that your selling tactics should not include threatening a customer? A. Yes. Q. That would be a limit on selling tactics that you thought should be used, is that fair? A. Yes.”).

38. News' executives testified that it is improper to set prices that are below cost.

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6-15-09 Trial Tr. at 244:7-10, Testimony of Chris Mixson, President of News (“Q. And it would be just as radical, just as irresponsible and just as improper if News America was tendering its bids below cost? A. Yes.”).

6-15-09 Trial Tr. at 213:5-7, Testimony of Chris Mixson, President of News (“It’s -- it’s basically, a verbal understanding that you don’t -- you don’t sell products below cost. We don’t at News America.”).

6-2-09 Trial Tr. at 27:7-28:8, Testimony of Thomas Leprine, Vice President of Business Operations at News (“Q. You would agree with me, would you not, sir, that you would never agree to prices below zero. That would be wrong. A. That is correct. Q. And are there any other principles that you have that you wouldn't violate, you know, other than below zero is wrong? A. Certainly below cost. We would never go below. And even informally on a -- as we change from time to time, I mean we wouldn't want to go below what is standard in the industry at that particular time. Q. So why would it be wrong to go below zero to get business? A. To have an effective rate below zero? Q. Yeah. A. That's producing for -- for -- for no cost -- for no revenue....*Q. So you would agree that a net effective rate below your cost would be wrong as well? A. Yes.*”). (Emphasis added).

39. Christine Hall, Former Pepsi Employee, told News that its bundling of in-store with FSI was not aligned with her business ethics.

6-11-09 Trial Tr. at 184:25-186:9, Testimony of Christine Hall, Former Pepsi Employee (“Q. Before I get into any of those specific proposals, in your experience did you ever encounter News America linking their free-standing insert and in-store proposals? A. Yes. Q. Do you recall when you first encountered that? A. Probably six years ago or so. Seven years ago. Q. Around 2002, 2003 time period? A. Yeah. Q. Can you tell the jury what your reaction was to that tactic? A. I did not think it was right. I view free-standing inserts and in-store as being very, very different. I felt that Valassis -- that News America had somewhat of a monopoly on in-store so you were pretty much forced to go with them in-store. And leveraging their in-store to get FSI I did not think was fair and I didn't like it. Q. Did you have any opinion on whether it aligned with your business ethics? A. No, it did not. And I told them that. Q. You told News America that? A. Yes. Q. Do you recall who specifically you might have spoken to at News America? A. I would have told that to Robert Spitz, to Tom Dittrich and I think -- I'm not positive on the name, but I think the name was Chris Fink, but I'm not positive. Q. Would you have had any conversations with a gentleman named Wes Naze? A. Oh, yeah, Wes as well.”).

40. CPGs wanted News to unbundle its offers.

6-4-09 Trial Tr. at 201:16-21, Testimony of Debra Lucidi of Wrigley and Formerly of Sara Lee (“[w]hen we requested a proposal, we requested a proposal for... FSIs only. News America would not give us a proposal for FSIs only. They included a proposal for in store with FSIs. And if we didn't give them the FSI business, the in store rates were going to increase.”).

6-4-09 Trial Tr. at 207:7-23, Testimony of Debra Lucidi of Wrigley and Formerly of Sara Lee (“Q. Did you or anyone at Sara Lee, to the best of your knowledge, bring up the displeasure that you had with News America over this? A. To News America? Q. Uh-huh. A. Yes. I did. Q. Do you know on how many occasions you brought it up? A. Multiple occasions. Q. Do you recall to whom you brought it up

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at News America? A. That would be West Naze and probably to Tom Dittrich. Q. What was their response? A. They never seemed to care that much. Basically, *it's their business model*. I believe they said that, it was their business model.”). (Emphasis added).

6-15-09 Trial Tr. at 219:21-25, Testimony of Christopher Mixson, President of News (“Q. Are there customers that have asked you to bid individually on FSI and in-store and you’ve, nonetheless, submitted a joint proposal, a combined proposal [for pricing for in-store and FSI]? A. Probably, yes.”).

6-4-09 Trial Tr. at 180:17-21, Testimony of Debra Lucidi of Wrigley and Formerly of Sara Lee (“Q. At some point, did Sara Lee ask News America: ‘Give us a price for in-store only’? A. Yes, multiple times. Q. And was that provided to you? A. No.”).

P-2157, admitted, Trial Tr. 69:116-17-09 Trial Tr. at 133, Theresa Enk, 24 March 2005, Procurement Discussion: March 29, NAM07-00518498 - NAM07-00518500 (“[Campbell’s] Procurement dictated that there would be 2 phases of the negotiation. The first on in-store only. The second on FSI only. When we came in to present In-store, we combined [sic] with the FSI and provided a net effective CPM against their wishes - Purchasing was not at all pleased... said News was not listening to them, etc.”).

41. Reckitt Benckiser expressed anger and annoyance when News told Reckitt that its in-store rates would increase if it did not “renegotiate the deal as a whole.”

P-2362, admitted, 6-25-09 Trial Tr. at 119:17, Spitz, Melissa, 16 June 2004, RE: Update on Reckitt - Need to Revise Proposal, NAM07-01056130 - NAM07-01056131 at 130 (“Alan, Melissa and I presented our revised proposal to Patty Mandel and her Purchasing counterpart yesterday. As you know, our strategy was to show them that it doesn’t make sense to de-bundle InStore, and to get them to value the efficiencies that they’ve had with the Single Source agreement. We did that by offering \$4.25 for 07/08 with no roll-back on our current deal, and increased InStore prices from that same period. The meeting didn’t go very well. They were clearly angry that we weren’t offering the \$4.25 effective immediately, and that we were indicating that their InStore prices would go up if we didn’t renegotiate the deal as a whole... However, they are clearly annoyed with us and claim they will give us once less chance to propose a deal that shows that they feel competes more closely with V (they disclosed that V is at \$4.00 for 50% and shows that we value them as one of our premier InStore clients.”).

42. T. Marzetti was quoted a rate for a Frozen Garlic Bread Ownership program and signed a letter of commitment for the program at that rate. Dick Anderson, a T. Marzetti executive at the time, put a hold on the program and told News that he felt T. Marzetti was being held hostage by higher in-store rates for giving its FSI business to Valassis.

P-1025, admitted 6-22-09 Trial Tr. at 183:25, Naze, West, 05 July 2006, Sales Executive Minutes, NAM07-00652762 – NAM07-00652774 (“T. Marzetti: Evan Bollie has received feedback from Schrade Radke (main point of contact for the Frozen Garlic Bread Ownership) that a commitment letter for a 13 cycle ownership worth over \$850K in revenue has been signed by the President but is being held up with Dick Anderson...He left West Naze a message citing that he feels News is ‘holding him hostage’ and charging him higher rates because we did not get the FSI business.”).

43. CPGs reacted negatively when they perceived News was using its ISP power to force CPGs to

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buy FSIs from News.

P-87, admitted 6-17-09 Trial Tr. at 133 (Del Monte “was very frustrated that News would not provide in-store value and incentives at 30% FSI share. She informed Ryan that she will not be *‘held hostage’* on the FSI deal based on in-store programs.”). (Emphasis added).

P-2362, admitted 6-25-09 Trial Tr. at 119:17 (Reckitt Benckiser were “*clearly angry* that we weren’t offering the \$4.25 effective immediately, and that we were indicating that their InStore prices would go up if we didn’t renegotiate the deal as a whole [...] However, *they are clearly annoyed with us* and claim they will give us once less chance to propose a deal that shows that they feel competes more closely with V (they disclosed that V is at \$4.00 for 50% and shows that we value them as one of our premier InStore clients.”). (Emphasis added).

6-8-09 Trial Tr. at 30:12-31:3, Testimony of Debra Lucidi, of Wrigley and former director of business services procurement at Sara Lee from January of 2005 until March of 2006 (“Q. At the time of this in August -- late August of 2005 when you’re in this negotiation and you’re not happy with News America - that’s fair, right? A. That’s fair.”).

P-0913 admitted, 6-18-09, 5-28-09 Trial Tr. at 65:18-66:9, Debra Lucidi, Former Director of Business Services Procurement, Sara Lee (“Was so pissed at them when they raised rates because they did not keep FSI. Told them she does not appreciate tactics; this is not the way we work with suppliers. Is intolerable and unforgivable Cut in-store as a result. Was just livid with them. This is the way they have been across the board. Adding insult to injury, have had huge issues related to accuracy of placement of in-store vehicles. *Feels like they are raping us* and they enjoy it and there is no desire to work with us in partnership to grow our business.”). (Emphasis added).

P-2157 admitted 6-17-09 Trial Tr. at 133 (“[Campbell’s] Procurement dictated that there would be 2 phases of the negotiation. The first on in-store only. The second on FSI only. When we came in to present In-store, we combined [sic] with the FSI and provided a net effective CPM against their wishes - *Purchasing was not at all pleased...* said News was not listening to them, etc.”). (Emphasis added).

D-2273, admitted 6-2-09 Trial Tr. at 76:25-77:1, Thomas Leprine, News Vice President, Business Operations, testified about D-2273 (6-2-09 Trial Tr. at 77:3-779:15) (“Q. This is relating to talking points prepared internally at News for negotiation with Sara Lee and it says at the top that Elise Kramer is relatively new to the S L organizations, about six weeks. Our initial discussions started with Debra Lucidi, Elise’s boss. Do you see that? A. Yes, I do. Q. And Debra was very aggressive from the start and continued to express her displeasure over the fact that, without awarding us the FSI business, that our in-store rates would be sizeable [sic] higher. Do you see that? A. I do. Q. So you were aware that Sara Lee was unhappy with the increase in the in-store rates because they did not give you the FSI business, right? A. That’s correct. Q. And, in fact, you did raise their rates 40 percent when you didn’t get the FSI business, right? A. That’s correct. Q. And they were only using about 500,000 of in-store prior to that but their in-store billings went from 500,000 to 4 million, right? A. That’s correct. Q. Of which about 1.2 million in additional revenue to News came from the rate increase? A. That would be true based on that correct. Q. And that rest was because they started using in-store tactics more frequently? A. It seems to say that, yeah. *** Q. You were aware that that was their position, that you were cornering [Sara Lee], holding a gun to their head, blackmailing them, et cetera. News America was? A. That’s what it’s

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saying, yes. Yeah, those are the terms that they're using, yes.").

44. Christopher Mixson, News' President, told his sales force that Valassis' stock fell by 50% which reduced Valassis' market cap by over \$1 billion dollars, and that Valassis has "been pushed to the brink of desperation" and was tendering low FSI rates.

6-16-09 Trial Tr. at 98:11-22, 2006 Christopher Mixson News Sales Summit Speech (At News's 2006 Sales Summit, News's President, Christopher Mixson, told News's sales representatives: "It wasn't until News America had successfully converted the majority of accounts to multi-year agreements, many of them former long time Valassis businesses, and after we had grown our market share to over 63% that Valassis realized they had a problem. Certainly, the handwriting was on the wall when, in September of 2005 they could no longer sustain the positive spin with Wall Street, and their stock fell by 50% to a sub \$20 rate...effectively reducing their market cap by over \$1 billion dollars.").

6-15-2009 Trial Tr. at 209:25-210:6, 2006 Christopher Mixson News Sales Summit Speech ("To date, our 21st Century strategy has worked well, the impact and influence we have with our advertisers has never been greater and our profits have never been higher. However, FY'07 is shaping up to be a most challenging year. *Our primary FSI competitor has been pushed to the brink of desperation*, causing radical and irresponsible bids to be tendered to many of News America's top customers...Now, they've taken the next desperation move, lowering FSI rates well below \$4.00...At any rate, we fully intend to continue to do what has made us successful to date; namely, provide innovative integrated promotion and advertising opportunities that span our full portfolio"). (Emphasis added).

6-15-08 Trial Tr. at 243:7-17, Testimony of Christopher Mixson, President of News ("Q. 'Our' -- do you see that, 'Our' -- A. Got it. Q. -- 'primary FSI competitor' -- A. Yes. Q. -- *'has been pushed to the brink of desperation'*? A. Yes. Q. Did you believe that to be true in -- at the time you gave this speech, that they were at the brink of desperation? A. Yes."). (Emphasis added).

5-28-09 Trial Tr. at 182:8-11, News 2004 Sales Conference [Speech by John Linguiti, CFO of News] ("We never would never have been able to push Valassis to what we hope is the brink of utter desperation").

45. News targeted Valassis' customers by using News's in-store promotions and advertising.

6-15-09 Trial Tr. at 216:20, 29 August 2008 Deposition of Christopher Mixson at 82:3-11 ("Q. Do you recall an effort being made to specifically target Valassis right of first refusal clients by using in-store as leverage to gain those clients? A. We -- we certainly had Valassis right of first refusal clients as objectives of competing to win their business by providing proposals that would span the -- all of our products, including FSI, in-store.").

46. The FSI industry is no longer a duopoly with News commanding 62% market share in 2004.

P-1652, admitted 5-28-09 Trial Tr. at 210:15-16, News America Marketing, 28 December 2004, Notes on Chris Mixson's Comments 12/28/2004, NAM07-00267319 -- NAM07-00267319 at 319 ("NAM will finish calendar 2004 at 62% market share. The FSI industry is no longer a duopoly.").

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47. News's strategy has been to target Valassis' clients and take business away from Valassis.

6-3-09 Trial Tr. at 155:11-23, 03 October 2008 Deposition of John Linguiti at 74:25-75:11 (Q. Would you look at the top of the next page of this same document please. It says, "Pursue Valassis ROFR Clients." Do you see that? The top heading. A. Oh, yes, I do. Q. Did I read that correctly? A. Yes. Q. And that's been part of the [News] strategy since at least 2002 and maybe earlier? A. I would say that's true. Q. And continues to this day? A. In one form or another yes, I would say that's true.").

48. John Linguiti, CFO of News, testified that News tracks Valassis' financial information on a regular basis, and that he is aware of Valassis' worsening financial performance.

6-3-09 Trial Tr. at 158:16-22, 03 October 2008 Deposition of John Linguiti at 87.

49. News went after Valassis to destroy Valassis.

5-28-09 Trial Tr. at 182:16-22 ("I trust it will be coming at us at full force but for days, it's like winning the play-offs before you go to the world series, you feel pretty good, and we will win the world series (inaudible). Last night Mr. Murdoch was saying now you have to really go after them. (Inaudible) that was half the conversation, believe me.").

6-18-09 Trial Tr. at 128:6-22, Testimony of Thomas Murray, Vice President and General Manager of FSI ("Q. And you called and you spoke to Mr. Lellouche [of News]? A. Correct Q. And what did he say to you about News and Valassis? A. We were exchanging pleasantries and how is your business, what is happening there. And he said our business is doing great. We are killing Valassis, in fact we have a plan to put Valassis out of business. Q. He said that they have a plan to put Valassis out of business? A. It was how they were using their in-store products, and I think he called it a single source agreement. It was a way the were packaging their in-store products with FSIs and Valassis couldn't compete, and he felt that ultimately they would drive Valassis out of the FSI business.").

50. Robert Recchia testified about the difference between the periods before and after News' bundling and tying.

6-8-09 Trial Tr. at 56:4-17, Testimony of Robert Recchia, CFO, Valassis ("In 2001. How much profit did this co-operative FSI booklet generate for Valassis? A. In 2001, we made about \$185 million that year on that product. Q. In 2008, how much profit did this book generate for Valassis? A. Just under 2 million. It was 1.8 million dollars. Q. What is the percentage difference between 2001 when News began tying their in-store promotions into this booklet, or the negotiation for this product in 2008? A. ...It's probably close to 99 percent.").

51. Al Schultz testified about the difference between the periods before and after News' bundling and tying.

6-23-09 Trial Tr. at 27:24-32:6, Testimony of Al Schultz ("Q. And can you tell us just generally the financial impact or affect on Valassis as a result of your views of News's behavior? A. I believe our company's been damaged to the tune of about \$1.6 billion. Q. Now that's a pretty large number. Can you tell us your views as to why? A. Yeah, if you go back to 2001 when this started right around that

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time period, the value of our company was about \$1.8 billion. Back in 2001, 93 percent -- actually 92.8 percent of the profits of the company came from the FSI business. So almost the entire profits of the company. If you just do the math and you take 93 percent times 1.8 billion you will get about \$1,660,000,000. When I looked at the FSI business today, I don't think there is any value in the FSI business today because I don't think any one would want to buy the FSI business today because you have got a profit trend line that is going like this, (indicating) it's now reached the point in 2008 where we only made a segment profit of 1.8 million and that's down from roughly 190 million back in the 2001-2002 time period. So in essence there is nobody that would want to buy the FSI business today, so really what the FSI business is worth is just liquidation value which is if we shut down our printing plants and sold our equipment and sold the furniture that people use on a daily basis and in my estimate that would generate about 60 or \$70 million. So in essence when you deduct the 60 or 70 million from the 1 billion 670, we have an asset that has been damaged to the tune of \$1.6 billion. Q. Mr. Schultz, have you had an opportunity to see this chart or do you have some familiarity with it? Yes, I have seen it. Q. What does it represent? A. This represents some of the numbers that I was just talking about here a second ago. It goes back to 2001 and if you look at the top of the chart there at the top left you will see that the FSI segment of our entire business represented 92.8 percent of the profits of the company. And at the time it represented 68 percent roughly of the sales of the company. And then when you take it to 2008, you will see that the FSI today only represents .4 percent of the profits of the company and it's now percent of the revenue of the company.”).

6-23-09 Trial Tr. at 34:8-22, Testimony of Al Schultz (“Q. When Valassis is competing for business, whether with an existing customer of Valassis on a renewal or a customer of News who is coming up for the possibility of being used or brought into a contract with Valassis, what is the expectation of the company in terms of those clients or potential clients? A. Well, I think historically it has always been that we believe there is only two companies in the business, so we should have a reasonable chance that winning a customer's business. Now, with that said, there are customers where they buy a fair amount of in-store or a lot of in-store, and when News uses this combination of discount penalty pricing and drives down the net effective rate, it's very difficult for us or impossible for us to beat in those situations.”).

52. CPGs have informed Valassis that the reason News won the FSI business was the tied in-store pricing.

P-2169, admitted 6-25-09 at 98:22, 6-25-09 Trial Tr. at 98:22, Tunnell, Suzanne, 11 November 2002, Email from Bausch & Lomb to Valassis, Subject: RE: Follow-up to our conversation this morning, VLS00070644 - VLS00070644 at 644 (Suzanne Tunnell of Bausch & Lomb emailed Charlie Quinn of Valassis, telling him with respect to News, “We are contracting with them for one year with an out clause should their service not improve. As I mentioned we have only four FSIs next year (3 1/2 pages in your lingo). The in-store rates are excellent and we cannot pass them up. I tried giving them only a portion of the FSI work but as you can imagine, given the rates we are getting for in-store, they did not go for a one year commitment with the out clause plus less than 100% of the FSIs.”).

6-18-09 Trial Tr. at 159:14-162:21, Testimony of Thomas Murray, Vice President and General Manager of FSI (“Q. Have you ever in your experience with sales at Valassis trying to sell FSIs been in a position with a customer where you couldn't compete because of the bundle that the customer was getting from News? A. Sure. I would tell you probably the most extreme example that was our customer, Dannon

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Yogurt who I think we are probably all familiar with, they were a customer of yours under contract with Valassis. As their contract was coming up, General Mills owned the yogurt category for a number of the News America products, Dannon was going to buy them. They got a bundled deal from News America and the think that makes it so extreme is that they told us not to give them a proposal, that if we "gave them the pages for free," we couldn't compete with this proposal. So what makes that so extreme I have never seen one of our current customers not even ask for a proposal, because the deal that they had was so impossible to compete with and I can't imagine a case that could be anymore extreme than that. *** Yes. We had other accounts as well, Birds Eye was an account we competed for they told us that our FSI price was actually lower, but because of all the in-store that we couldn't compete with that deal either. Q. What about Novartis. Were you able to compete there? A. Novartis was quite a lengthy process. We had a many many meetings with them. They were extremely stressed and disturbed at the Defendant's tactics with their account, in fact they asked me Q. Were you able to help them or convince them to find a way around this bundle of in-store with FSI? A. You know, I gave them the best alternatives that I thought existed at the time. Correctly, they concluded that they weren't -- one of them was Insignia who was losing retailers, so that was the case. Another one was couponing application that never actually launched. So they ended up staying with News America and when they told us that we couldn't win the business, I believe what their words were what they said was what is happening -- Q. My question, sir, is the following: Why did you not keep making lower and lower offers Novartis? A. We did and we got to an extraordinarily low rate, one that I hadn't seen us give anybody and it still wasn't good enough. Q. What if anything were you advised by Novartis that caused you to stop making further or lower, ever yet lower offers? A. They told us -- in fact they told me, it wasn't us, it was me that what was happening in our lawsuit was exactly what was being done to them which was his words, Phillip Sun, and that it was just another classic case whatever the penalty was enormous and we couldn't off set it.”).

6-8-09 Trial Tr. at 120:2-23, Testimony of Robert Recchia, CFO, Valassis (“Q. Do you know why in this particular instance you couldn't obtain Kimberly-Clark back? A. What time period are we talking about now? Q. 2003. A. In this particular instance I believe the reason that we learned is that they were tying the products and we were not competitive with our FSI bid. Q. Can we turn to the page ending with numbers 23736 and I would like to focus your attention, Mr. Recchia on the first June 2003 entry. Mr. Recchia, what does this mean, this particular entry in June 2003? A. What this means is News secured the extension for another couple of years and that the customer told us that it was a bundled deal where we could not be -- it was just not possible for us to compete. Q. So -- and you have not been able to get Kimberly-Clark back as a client since? A. No, we have not.”).

53. CPGs typically place their FSI reservations no more than one and half years in advance, yet News locks up the FSI business with FSI contracts that are two years or longer into the future.

5-28-09 Trial Tr. at 208:2-24, Testimony of Thomas Leprine, News' Vice President, Business Operations (“Q. Now, isn't it true, sir, that customers place their reservations in for a book typically about a year in advance. In other words, their marketing department says we are going to run ads, we are going to have a program, we are going to have a promotion, we want a coupon and we are going to run it in weeks 13, 15, 22 and the week before Thanksgiving? A. That's a generalization. It varies from client to client. There are some clients that plan three months away from the promotion date. Q. Typically no one plans more than a year out, isn't that right? A. The specific dates, a year and a half. I would say would be generally the limit. Q. An yet you try to get ROFR clients that go two, three, four, sometimes

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longer years into the future, right? A. That's correct. Q. So you try to lock up the business even though there is nobody placing reservations for the business more than a year or sometimes a year and a half out? A. That's correct.").

6-17-09 Trial Tr. at 74:8-18, Testimony of Alan Verdun, Executive Vice President, Sales, Eastern Division ("Q. What are those substantial lead times in your business -- let me ask it this way. Do people place reservations for space in books more than a year in advance? A. I believe that they have but not necessarily as a matter of course. Q. Isn't it ordinary that they place their reservations for the coming year and then they sometimes make adjustments on the fly, but they try to reserve dates for each year and a year at a time? A. Generally.").

6-8-09 Trial Tr. at 109:14-110:4, Testimony of Robert Recchia, CFO, Valassis ("Q. Does the fact that the contracts for these free-standing inserts are for a fixed period of time whether it be a year or two years, but for a fixed period of time, affect the transfer of customers back and forth? A. Yes, if you think about the example of switching a bank when you sign up in your bank and a new checking account you don't enter into a two-year contract for it. You enter into a relationship that has not begin -- really the beginning is when you started and has no natural end. An FSI contract has an end to it and recurring negotiation that goes on and every time one of those negotiations happen both companies come together with the expectation they can win the business.").

5-29-09 Trial Tr. at 22:22-23:15, Testimony of Thomas Leprine, News' Vice President, Business Operations about P-291 ("Q. And it says Chris devised two strategies for reversing News sales decline, the first project preempt was a strategy to compete and convert business under contract with News competitors and existing customers by engineering comprehensive *multi-year single source agreements*, do you see that? A. I do. Q. So project preempt was a strategy to compete and convert business under contract with NAM's competitors -- that's Valassis, right? A. Correct. Q. -- And existing customers. That's the customers you already had? A. That's correct. Q. -- by engineering comprehensive multi years single source agreements, and single source is ones that involve more than one, just the FSI product also involves in-store products, right? A. That's correct."). (Emphasis added).

Respectfully submitted,

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