

**Court File No. CV-19-616077-00CL**

**Imperial Tobacco Canada Limited and  
Imperial Tobacco Company Limited**

**FIFTH REPORT OF THE MONITOR**

**September 25, 2019**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO  
COMPANY LIMITED

**FIFTH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**A. GENERAL**

1. In this Report, unless otherwise defined, all capitalized terms shall have the respective meanings specified in the glossary attached to this Report as Appendix "A". Each capitalized term throughout this Report, if defined in the glossary, is hyperlinked to its respective definition in the glossary.

**B. INTRODUCTION**

2. Pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) made on March 12, 2019, as amended and restated as of April 5, 2019 and further amended and restated as of April 25, 2019:
  - (a) Imperial was granted an initial stay of proceedings under the CCAA until April 11, 2019; and
  - (b) FTI was appointed as the Monitor.
3. The principal purpose of these CCAA Proceedings, and the related Chapter 15 Proceedings, is to restructure and compromise Imperial's liabilities, specifically

- the liabilities arising from the Tobacco Claims, including the Quebec Appeal Judgment.
4. The Comeback Motion was heard on April 4 and 5, 2019. Following the Comeback Motion:
    - (a) the Court extended the Stay of Proceedings to June 28, 2019, pursuant to the June Stay Extension Order;
    - (b) the Hon. Warren K. Winkler, Q.C. was appointed as the Court-Appointed Mediator; and
    - (c) the Court issued the First Amended and Restated Initial Order, a copy of which can be found [here](#).
  5. On April 17, 2019, the US Bankruptcy Court granted the Foreign Recognition Order, which recognizes these CCAA Proceedings. The Foreign Recognition Order can be found [here](#).
  6. The Comeback Motion continued on April 25 and 26, 2019 and the Court issued the Second Amended and Restated Initial Order, a copy of which can be found [here](#).
  7. Following a further hearing on May 14, 2019, the Court issued the following Orders: (a) the Notice Procedure Order, which can be found [here](#); (b) the Professional Fee Disclosure Order, which can be found [here](#); and (c) the Clarification of Insurance Lift-Stay Order, which can be found [here](#). Additionally, on May 24, 2019, by way of endorsement, the Court approved the Communication and Confidentiality Protocol as between the Court and the Court-Appointed Mediator. The endorsement can be found [here](#).
  8. On June 26, 2019, the Court heard a motion seeking, among other things, the extension of the Stay of Proceedings and made the following orders:

- (a) the October Stay Extension Order, which extended the Stay of Proceedings to October 4, 2019. A copy of the October Stay Extension Order can be found here; and
  - (b) the Genstar Settlement Approval Order, a copy of which can be found here.
9. On June 27, 2019, the Court issued the Order Appointing a Financial Advisor to the Court-Appointed Mediator, a copy of which can be found here.
  10. On July 9, 2019, the Court issued the Court-to-Court Communications Order, a copy of which can be found here.
  11. On July 18, 2019, the US Bankruptcy Court granted an order recognizing the Genstar Settlement Approval Order, which can be found here.
  12. On September 5, 2019, the US Bankruptcy Court granted an order recognizing the Court-to-Court Communications Order, which can be found here.

#### **TERMS OF REFERENCE AND DISCLAIMER**

13. In preparing this Report, the Monitor has relied upon unaudited financial information of Imperial and affiliates of Imperial, the books and records of Imperial, certain financial information prepared by Imperial, and discussions with Imperial's management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this Report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this Report is based on Imperial management's assumptions regarding future events; actual results may vary from the forecast and such variations may be material.

#### **PURPOSE OF THIS REPORT**

14. The purpose of this Report is to provide the Court with information regarding:

- (a) Imperial's business activities, industry developments and trends impacting Imperial's business;
  - (b) Imperial's budget to actual cash flow results for the 14-week period ending September 15, 2019;
  - (c) the Cash Flow Forecast for the 25-week period commencing the week beginning September 16, 2019 through the week of March 2, 2020;
  - (d) certain cash management agreements with BNS;
  - (e) Imperial's payment obligations to BAT Mexico in connection with the BAT MX Agreement;
  - (f) the BAT global simplification program;
  - (g) the Reassessments issued to Imperial by the CRA in respect of its 2011 and 2014 taxation years;
  - (h) the Settlement reached in respect of the cessation of payments by Imperial under the Genstar Retirement Plans;
  - (i) the status of the issues being mediated by the Court-Appointed Mediator;
  - (j) the Data Rooms established in connection with the Mediation;
  - (k) Imperial's request for an Order extending the Stay of Proceedings to March 6, 2020;
  - (l) the Monitor's comments and recommendations in respect of the foregoing matters; and
  - (m) the activities of the Monitor and its counsel since June 24, 2019, the date of the Fourth Report.
15. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.

16. This Report should be read in conjunction with the September Thauvette Affidavit which can be found here.

### **C. BACKGROUND**

17. Imperial is the largest distributor of Tobacco Products in Canada and operates two businesses: tobacco and logistics. The tobacco business includes the marketing and sale of Tobacco Products, as well as, Vapour Products. The logistics business distributes Tobacco Products and Vapour Products for tobacco manufacturers, as well as certain non-tobacco products and services.
18. Imperial is highly integrated with BAT and its affiliates. Imperial benefits from a wide range of services, licences and rights provided by certain of BAT's affiliates. These services and functions have been and continue to be vital for preserving Imperial's business and value.
19. In preparing this Report, the Monitor has relied upon the audited and unaudited financial information of Imperial based on its books and records, certain financial information and forecasts prepared by Imperial, and discussions and correspondence with, among others, the senior management and advisors to Imperial.
20. Further information regarding these CCAA Proceedings and Imperial's background is provided in the Monitor's Reports.
21. All Court materials filed in these CCAA Proceedings are available on the Monitor's website at: <http://cfcanada.fticonsulting.com/imperialtobacco/>

### **D. IMPERIAL'S BUSINESS ACTIVITIES, INDUSTRY DEVELOPMENTS AND TRENDS IMPACTING IMPERIAL'S BUSINESS**

22. A number of developing trends are impacting the tobacco industry as a whole. The tobacco industry in Canada appears to be experiencing a higher than historic downward trend in the volume of cigarettes sold.

23. Vapour products are also coming under increased scrutiny globally. As a result, vapour products are being regulated, and in some cases, banned, in numerous jurisdictions. For example, Brazil, Singapore and India have banned certain vapour products. In the US, on September 19, 2019, Senators Mitt Romney and Jeff Merkley introduced a bill titled the *Ending New Nicotine Dependencies (ENND) Act*, that would tax the vaping industry and ban flavoured e-cigarettes. Many US states are taking a similar approach. In Canada, the Heart and Stroke Foundation of Canada, the Canadian Medical Association and the Canadian Cancer Society have urged the government to regulate vaping. On September 19, 2019, Imperial issued a press release outlining its position regarding the regulation of vapour products. A copy of this press release can be found [here](#).

**E. RECEIPTS AND DISBURSEMENTS FOR THE FOURTEEN-WEEK PERIOD ENDING SEPTEMBER 15, 2019**

24. Imperial's cash balance as of the week ended September 15, 2019 was \$825.9 million, an increase over the fourteen-week period from the beginning cash balance of \$577.5 million as of June 9, 2019.
25. Imperial's actual net cash inflow for the fourteen-week period ending September 15, 2019, was approximately \$245.8 million. This is compared to the forecasted net cash inflow of \$262.2 million, resulting in a negative variance of approximately \$16.4 million, as summarized below:

(CAD\$ in thousands)

VARIANCE REPORT	Actuals	Forecast	Variance
	<b>For the 14-week period ending Sep 15, 2019</b>		
<b>RECEIPTS</b>			
Trade Receipts	1,453,230	1,610,146	(156,916)
<b>DISBURSEMENTS</b>			
<i>Operating Disbursements</i>			
Taxes and Levies	(978,131)	(1,092,837)	114,706
Operations	(228,180)	(247,246)	19,066
<i>Total Operating Disbursements</i>	(1,206,311)	(1,340,082)	133,771
<b>OPERATING CASH FLOWS</b>	<b>246,919</b>	<b>270,064</b>	<b>(23,145)</b>
<i>Financing Disbursements</i>			
Interest and Related Fees on Existing Facilities	3,452	3,576	(123)
<i>Restructuring Disbursements</i>			
Professional Fees	(4,621)	(11,451)	6,830
<b>NET CASH FLOWS</b>	<b>245,750</b>	<b>262,189</b>	<b>(16,438)</b>
<b>CASH</b>			
Beginning Balance	577,494	577,494	-
Net Cash Inflows / (Outflows)	245,750	262,189	(16,438)
Other (FX)	2,699	-	2,699
<b>ENDING CASH</b>	<b>825,943</b>	<b>839,682</b>	<b>(13,739)</b>

26. The significant budget to actual variances and corresponding explanations are as follows:

- (a) *trade receipts*: negative permanent variance of \$156.9 million or 9.7% against the forecast, primarily driven by lower than forecast volumes and lower than planned price increases. The volume decline experienced during the fourteen-week reporting period was higher than the decline in previous years. This industry-wide trend is also consistent with declining cigarette volume trends recently observed in the US market;
- (b) *taxes and levies*: positive permanent variance of \$114.7 million that corresponds to the lower trade receipts described above and is driven by

lower sales volumes due to industry-wide trends, resulting in lower than forecast taxes and levies payable;

- (c) *operating disbursements*: positive timing variance of \$19.1 million that is expected to reverse in future periods, primarily driven by certain disbursements that are expected to be processed after the reporting period; and
- (d) *professional fees*: positive variance of \$6.8 million that consists of a positive permanent variance of \$4.7 million due to lower than forecast fees incurred and a positive timing variance of approximately \$2.1 million, which is expected to reverse in future forecast periods as outstanding invoices are paid.

## **F. CASH FLOW FORECAST**

- 27. Imperial, with the assistance of the Monitor, has prepared an updated Cash Flow Forecast for the 25-week period commencing the week beginning September 16, 2019 through the week of March 2, 2020. The Cash Flow Forecast is attached as Appendix “B” to this Report.
- 28. During the Forecast Period, total operating receipts are forecast to be approximately \$2,289 million and total operating disbursements are forecast to be approximately \$2,160 million, resulting in net positive operating cash flow of approximately \$129 million. This includes intercompany payments that are discussed in paragraphs 38-40 below. In addition, Imperial forecasts interest income of approximately \$9 million in respect of cash balances on deposit in Canada and professional fees disbursements of approximately \$14 million, such that net cash flow is forecast to be approximately \$124 million. Although net cash flows are positive during the Forecast Period, there are ten weeks within this period which are forecasted to have negative operating cash flows. These are largely driven by the timing of the payment of taxes and government levies due at the end of each month. As such, cash flows in the weeks that fall on or around

month-end tax payments are expected to be negative, which are then offset by the receipt of the positive cash flows during the remainder of the month.

29. The Monitor has reviewed the Cash Flow Forecast to the standard required of a Court-appointed monitor by Section 23(1)(b) of the CCAA. Section 23(1)(b) requires a monitor to review the debtor's cash flow statement as to its reasonableness and to file a report with the Court on the Monitor's findings. The Canadian Association of Insolvency and Restructuring Professionals' Standards of Professional Practice include a standard for a Monitor fulfilling its statutory responsibilities under the CCAA in respect of its report on the Cash Flow Forecast.
30. In accordance with the standard, the Monitor's review of the Cash Flow Forecast consisted of inquiries, analytical procedures and discussions related to the Cash Flow Forecast and its underlying assumptions. The Monitor's procedures with respect to the assumptions were limited to evaluating whether they were consistent with the purpose of the Cash Flow Forecast. The Monitor also reviewed the support provided by Imperial's management for the assumptions and the preparation and presentation of the Cash Flow Forecast.
31. Based on the Monitor's review, nothing has come to its attention that causes it to believe, in all material aspects, that:
  - (a) the assumptions are not consistent with the purpose of the Cash Flow Forecast;
  - (b) as at the date of this Report, the assumptions are not suitably supported and consistent with the plans of Imperial or do not provide a reasonable basis for the Cash Flow Forecast; or
  - (c) the Cash Flow Forecast does not reflect the assumptions.
32. As described in the Terms of Reference above, since the Cash Flow Forecast is based on assumptions regarding future events, actual results will vary from the

information presented even if the assumptions occur, and the variations could be material. Accordingly, the Monitor expresses no assurance as to whether the Cash Flow Forecast will be achieved. In addition, the Monitor expresses no opinion or other form of assurance with respect to the accuracy of the financial information presented in the Cash Flow Forecast, or relied upon by the Monitor in preparing this Report.

33. The Cash Flow Forecast has been prepared solely for the purposes described above, and readers are cautioned that it may not be appropriate for other purposes.

#### **G. CASH MANAGEMENT**

34. Following the commencement of these CCAA Proceedings, Imperial, in consultation with the Monitor, entered into discussions with BNS to amend the terms of certain cash management agreements. As disclosed in the Fourth Report, on May 22, 2019, Imperial entered into a Letter Agreement with BNS relating to the cash management services provided to Imperial by BNS and letters of credit issued by BNS to secure certain of Imperial's pension and tax obligations.<sup>1</sup>
35. On July 29, 2019, Imperial entered into an amended and restated Letter Agreement with BNS. The amended and restated Letter Agreement incorporates amendments relating to (a) the amount of the minimum cash balance that must be maintained by Imperial in their accounts with BNS, (b) BNS agreeing (at its discretion) to issue additional letters of credit, and (c) Imperial, at the request of BNS, obtaining an order for a charge in favour of BNS to secure the obligations under the outstanding letters of credit. No such order has been sought to date.

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<sup>1</sup> See paragraphs 51-52 and 84-85 of the Initial Affidavit.

## **H. NEW TOBACCO REGULATIONS**

36. As described in the Fourth Report, the Regulations are coming into force on November 9, 2019 and require that manufacturers of Tobacco Products use plain, unbranded packaging. Under the Regulations, Imperial is required to cease selling branded Tobacco Products to wholesalers and retailers by November 9, 2019 and retailers must cease selling branded Tobacco Products by February 7, 2020. If the retailers cannot sell the products by February 7, 2020 they are permitted to return the branded Tobacco Products to Imperial for destruction.

### **IMPACT ON RECEIPTS AND DISBURSEMENTS**

37. The Monitor has been advised by Imperial that, in light of the Regulations, Imperial expects accelerated sales of certain branded Tobacco Products to their wholesale and retail customer base, which will result in inventory fluctuations into early 2020. As a result, the Monitor understands that Imperial anticipates variations from historic levels and timings of receipts and disbursements in the short term. Imperial expects the timing of receipts and disbursements to return to historic norms once the transition to plain packaging is complete.

### **PAYMENT TO BAT MEXICO UNDER THE BAT MX AGREEMENT**

38. ITCAN purchases 99% of its cigarettes by volume from BAT Mexico. At ITCAN's request and in order to comply with the Regulations, BAT Mexico has agreed to implement changes to its manufacturing and packaging of Tobacco Products.
39. ITCAN's purchases of Tobacco Products from BAT Mexico are governed by the BAT MX Agreement. The Monitor has been advised by ITCAN that BAT Mexico will be required to write off the undepreciated cost of manufacturing equipment used to package and wrap Tobacco Products for ITCAN that has been rendered obsolete by the Regulations, as well as some wrapping materials that can no longer be used for packaging due to the Regulations.

40. ITCAN has advised the Monitor that, under the terms of the BAT MX Agreement, approximately £5.4 million (\$8.9 million) will be due to BAT Mexico in respect of obsolete branded wrapping material purchased by BAT Mexico and £27.8 million (\$45.8 million) will be due to BAT Mexico in respect of the undepreciated cost of the obsolete manufacturing equipment. These amounts are currently reflected in the Cash Flow Forecast in December 2019 and January 2020, respectively. The Monitor is reviewing these payments and will report to the Court prior to any payment being made.

#### **I. BAT GLOBAL SIMPLIFICATION PROGRAM**

41. On September 12, 2019, BAT announced a global program to simplify its organization through, among other things, the reduction of business units and the number of layers of management. The program is intended to drive the growth of its new categories such as vapour, tobacco heating products and oral tobacco. Imperial has advised the Monitor that it is their understanding that the program is planned to be substantially complete by January 2020 and will have minimal impact on the Canadian operations, as Imperial has for some time been reducing headcount where possible, primarily by attrition.

#### **J. ITA REASSESSMENTS**

42. The Monitor was advised that on June 10, 2019, CRA issued Reassessments under the ITA to Imperial for its taxation years ended December 31, 2011 and December 31, 2014 in the aggregate amount of \$152,230,369.60.
43. Imperial's counsel sent a notice of objection to CRA on September 5, 2019, objecting to the Reassessments.

#### **K. SETTLEMENT WITH THE GENSTAR RETIREE GROUP**

44. On April 25, 2019, Imperial, the Monitor and Representative Counsel for the Genstar Retiree Group reached agreement on a Settlement in respect of the

cessation of payments by Imperial under the Retirement Plans. The details of the Settlement are outlined in paragraph 17 of the Third Report.

45. On June 26, 2019, the Court issued the Settlement Approval Order which gave effect to the Settlement.
46. On July 18, 2019, the US Bankruptcy Court granted the “Order Granting Motion for Recognition and Enforcement of the Order of the Canadian Court Approving Settlement with the Retiree Group”, which recognized the Settlement Approval Order and can be found here.

#### **SETTLEMENT OVERPAYMENT**

47. Following the approval and recognition of the Settlement, Imperial, through the plan administrator for the Retirement Plans, made the required Settlement payments to the beneficiaries of such plans. The Monitor was advised that due to processing errors, the plan administrator inadvertently overpaid two beneficiaries of the Retirement Plans. The aggregate amount of the overpayment was US\$81,980.33. Following correspondence between the two beneficiaries and counsel to Imperial and Morgan Lewis, US counsel<sup>2</sup> to the Monitor in the Chapter 15 Proceedings, each of the beneficiaries returned their respective share of the overpayment to the plan administrator.

#### **L. THE COURT-APPOINTED MEDIATOR**

##### **ISSUES REFERRED TO THE COURT-APPOINTED MEDIATOR**

48. Since the date of the Fourth Report, the Monitor has held a number of discussions with the Court-Appointed Mediator and his counsel to attempt to resolve certain issues that have been referred to him by this Court, as set out below.

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<sup>2</sup> Bracewell LLP was previously counsel to the Monitor in the Chapter 15 Proceedings. The counsel at Bracewell LLP that had carriage of this matter moved their practice to Morgan Lewis.

***Professional Fee Disclosure***

49. As described in the Fourth Report, an agreement was reached between the Tobacco Monitors, counsel to each of Imperial, JTI, and Rothmans, and the Quebec Litigation Plaintiffs, regarding professional fee disclosure. Pursuant to the Fee Disclosure Order, which can be found here, the Tobacco Monitors agreed to provide the Quebec Litigation Plaintiffs, and to such other parties on Imperial's service list who request this information in writing, on or before the 15th day of each month commencing with the month of June 2019, the fees and disbursements paid to each of the CCAA Professionals, broken down by firm, for the prior month.
50. On July 15, 2019, August 14, 2019 and September 13, 2019, and pursuant to the Fee Disclosure Order, the Monitor provided to the Quebec Litigation Plaintiffs, and to other parties who had requested such information, a summary, by firm, of the restructuring fees incurred on or after March 12, 2019 and paid to the CCAA Professionals during the months of June, July and August 2019, respectively.

**MEDIATING A GLOBAL SETTLEMENT OF TOBACCO CLAIMS**

***Details Regarding the Mediation***

51. The Court-Appointed Mediator's main purpose in these CCAA Proceedings, as described in the Initial Order, is to mediate a global settlement of the Tobacco Claims.
52. On August 1, 2019, counsel to each of the Mediation Participants delivered mediation briefs to the Court-Appointed Mediator and each of the Tobacco Monitors. On September 12, 2019, counsel for the Consortium of Provinces and the Provinces of Quebec, Ontario, Alberta, Newfoundland and Labrador submitted reply briefs. The Court-Appointed Mediator has scheduled a Plenary Session with each of the Mediation Participants, the Tobacco Monitors and their counsel. Counsel to each of the Mediation Participants will be given an opportunity to present at the Plenary Session.

***Non-Disclosure Agreements and the Imperial Data Room***

53. Since the commencement of these CCAA Proceedings, the Monitor has received a number of requests for information concerning Imperial's financial status and forecast activities from the Mediation Participants. The Monitor understands that similar requests were made of the other Tobacco Monitors.
54. On June 27, 2019, counsel to the Court-Appointed Mediator circulated a "Next Steps" memorandum in connection with the Mediation. Among other things, this memorandum instructed each of the Tobacco Monitors to establish and administer a Data Room for each of the Applicants.
55. The Tobacco Monitors, under the auspices of the Court-Appointed Mediator, developed consensual, common categories of information to be included in Data Rooms for each of the Applicants, which are responsive to requests submitted by Mediation Participants, and as well as other information, which the Tobacco Monitors considered relevant.
56. During the months of June and July 2019, the Monitor worked with Imperial and its counsel to establish the Imperial Data Room. During this time the Tobacco Monitors also met regularly and reviewed information to be included in the Data Rooms to ensure, to the extent possible, consistency as to content and quality of information across the three estates.
57. The Imperial Data Room, which went live on August 16, 2019, is controlled by the Monitor and is limited to those Mediation Participants and their advisors who have signed a non-disclosure agreement. The Court-Appointed Mediator and his counsel and advisors have access to the Imperial Data Room. The Tobacco Monitors and their counsel also have access to each of the Data Rooms.
58. At the date of this Report, Imperial has entered into a non-disclosure agreement with the counsel and financial advisor for the Consortium of Provinces, the financial advisor to the Province of Ontario and counsel for the Provinces of Alberta and Newfoundland and Labrador. The Monitor is advised that Imperial

and the Consortium of Provinces, the Provinces of Alberta, Newfoundland and Labrador and Ontario are continuing to negotiate the terms of a non-disclosure agreement for signature by those provinces.

**M. OVERVIEW OF THE MONITOR'S ACTIVITIES**

59. Since the date of the Fourth Report, the Monitor and its counsel have held numerous meetings and/or discussions with Imperial and its counsel to:  
(a) monitor Imperial's business activities; (b) monitor Imperial's receipts and disbursement; (c) gather Information to be included in the Imperial Data Room; and (d) further their understanding of Imperial's business environment and factors expected to impact its future business prospects.
60. The Monitor has worked with its Canadian and US counsel to facilitate the approval and implementation of the Genstar Settlement in these CCAA Proceedings and its recognition in the Chapter 15 Proceedings.
61. Following the issuance of the October Stay Extension Order, counsel to the Monitor provided the Order to the Consolidated Service List, Justice Riordan of the Superior Court of Quebec, Justice Boone of the Supreme Court of Newfoundland and Labrador and either the seized judge or registrar for all other courts in Canada where there is active litigation involving Imperial.
62. The Monitor's counsel engaged with counsel to various parties in respect of the Court-to-Court Communications Order. In July 2019, counsel for the Monitor provided the Court-to-Court Communications Order to the Consolidated Service List, Justice Riordan of the Superior Court of Quebec, Justice Boone of the Supreme Court of Newfoundland and Labrador and either the seized judge or registrar for all other courts in Canada where there is active litigation involving Imperial. The Monitor also obtained an order of the US Bankruptcy Court recognizing the Court-to-Court Communications Order.
63. The Monitor is currently working with Imperial to prepare a five-year financial forecast. As with the historic Information currently in the Data Rooms, the

Tobacco Monitors will review the forecast prepared by each of the Applicants to ensure consistency as to the framework and underlying industry assumptions used in each forecast. These forecasts are anticipated to be available in the Imperial Data Room by the end of November 2019.

**N. STAY OF PROCEEDINGS**

64. Imperial is seeking an extension to the Stay of Proceedings to March 6, 2020. The Monitor understands that such extension is necessary for Imperial to operate the business in the ordinary course as it continues to participate in the Mediation and work towards developing a plan of compromise or arrangement for the resolution of the Tobacco Claims.
65. The Monitor supports an extension of the Stay of Proceedings for the following reasons:
- (a) Imperial is acting in good faith and with due diligence;
  - (b) Imperial is in the early stages of Mediation with the Court-Appointed Mediator in an effort to reach a global settlement of the Tobacco Claims;
  - (c) the Cash Flow Forecast reflects that Imperial is projected to have sufficient funding to continue to operate in the normal course through the proposed extension to the Stay of Proceedings; and
  - (d) no creditor will be materially prejudiced if the extension is granted.

The Monitor respectfully submits to the Court this Report.

Dated this 25<sup>th</sup> day of September, 2019.

*FTI Consulting Canada Inc.*

**FTI Consulting Canada Inc.**

in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

## APPENDIX A

### GLOSSARY

“**Applicants**” means, collectively, Imperial, JTI and Rothmans.

“**BAT**” means British American Tobacco p.l.c., a public company listed on the London Stock Exchange.

“**BAT Mexico**” means British American Tobacco Mexico S.A. de C.V.

“**BAT MX Agreement**” means the BAT MX Agreement dated July 2, 2015 between BAT Mexico and ITCAN.

“**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

“**BNS**” means the Bank of Nova Scotia.

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

“**CCAA Proceedings**” means Court File No. CV-19-616077-00CL commenced by Imperial under the CCAA.

“**CCAA Professionals**” means the Monitor, counsel to the Monitor, counsel to Imperial, and any financial advisor Imperial has retained in connection with these CCAA Proceedings, except for any financial advisor in respect of whose work Imperial properly asserts solicitor-client, settlement, litigation or other privilege.

“**Cash Flow Forecast**” means the consolidated cash flow projection of Imperial’s receipts and disbursements for the period beginning the week of September 16, 2019 and through the week of March 2, 2020.

“**Chapter 15 Proceedings**” means the proceedings commenced by ITCAN on March 13, 2019, for relief under Chapter 15 of the US Bankruptcy Code.

“**Comeback Motion**” means the Comeback Motion, as defined in the Initial Order, which was heard on April 4, 5, 25 and 26, 2019.

“**Consolidated Service List**” means the consolidated service list for all of the Tobacco CCAA Proceedings.

“**Consortium of Provinces**” means, collectively, the Province of British Columbia, Province of Manitoba, Province of New Brunswick, Province of Nova Scotia, Province of Prince Edward Island and Province of Saskatchewan, in each Province’s capacity as a plaintiff in the HCCR Claims.

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

**“Court-Appointed Mediator”** means the Honourable Warren K. Winkler Q.C., acting as an officer of the Court and as a neutral third party to mediate a global settlement of the Tobacco Claims, in the context of these CCAA Proceedings.

**“CRA”** means Canada Revenue Agency.

**“Data Room”** means a data room containing the Information.

**“EY”** means Ernst & Young Inc.

**“Fee Disclosure Order”** means an order of this Court which authorized, among other things, the disclosure of the professional restructuring fees in these CCAA Proceedings by the Monitor on or before the 15<sup>th</sup> of every month, beginning with June 2019.

**“First Amended and Restated Initial Order”** means the Initial Order, as amended and restated as of April 5, 2019.

**“First Report”** means the report filed by the Monitor on April 3, 2019, in connection with the relief sought at the Comeback Motion.

**“Forecast Period”** means the period beginning the week of September 16, 2019 and through the week of March 2, 2020.

**“Foreign Recognition Order”** means an order of the US Bankruptcy Court recognizing the CCAA Proceedings as the main proceedings and staying proceedings against ITCAN in the US.

**“Fourth Report”** means the report filed by the Monitor on June 24, 2019.

**“FTI”** means FTI Consulting Canada Inc.

**“Genstar”** means Genstar Corporation, a subsidiary of ITCAN.

**“HCCR Claims”** means the claims started by each of the Provinces of Canada under each Province’s health care cost recovery legislation, to recover health care costs associated with smoking and the use of Tobacco Products.

**“Imperial”** means collectively, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited.

**“Imperial Data Room”** means a Data Room containing Information in respect of Imperial.

**“Information”** means common categories of information in respect of the Applicants which are responsive to requests submitted by Mediation Participants, and as well as other information, which the Tobacco Monitors considered relevant.

**“Initial Affidavit”** means the Affidavit of Eric Thauvette sworn March 12, 2019.

“**Initial Order**” means the initial order granted on March 12, 2019, by this Court which authorized, among other things, the Stay of Proceedings and FTI’s appointment as Monitor of Imperial’s CCAA Proceedings.

“**ITA**” means *Income Tax Act* (Canada).

“**ITCAN**” means Imperial Tobacco Canada Limited.

“**JTI**” means JTI-Macdonald Corp.

“**JTI CCAA Proceedings**” means the insolvency proceedings commenced by JTI under the CCAA.

“**June Stay Extension Order**” means an order of the Court, dated April 5, 2019, extending the length of the Stay of Proceedings to June 28, 2019.

“**Letter Agreement**” means an agreement entered into between BNS and Imperial on May 22, 2019, relating to the cash management services provided to Imperial by BNS and letters of credit issued by BNS to secure certain of Imperial’s pension and tax obligations.

“**March Thauvette Affidavit**” means the affidavit of Eric Thauvette, Vice President and Chief Financial Officer of Imperial, sworn March 12, 2019.

“**Mediation**” means the mediation process conducted by the Court-Appointed Mediator.

“**Mediation Participants**” means the Applicants, the Consortium of Provinces, the Provinces of Alberta, Newfoundland and Labrador, Ontario, and Quebec, the Quebec Litigation Plaintiffs, the “personal injury class action plaintiffs” represented by the Merchant Group, the “tobacco light class action plaintiffs”, and the Ontario Flue-Cured Tobacco Growers Marketing Board.

“**Monitor**” means FTI Consulting Canada Inc.

“**Monitor’s Reports**” means collectively, the Pre-Filing Report, the First Report, the Second Report, the Third Report and the Fourth Report.

“**Morgan Lewis**” means Morgan, Lewis & Bockius LLP, in its capacity as US counsel to the Monitor in the Chapter 15 Proceedings.

“**Notice Procedure Order**” means an order of the Court approving the form and manner of notice of the Settlement Approval Hearing to the Represented Parties, among other things.

“**October Stay Extension Order**” means an order of the Court, dated June 26, 2019, extending the length of the Stay of Proceedings to October 4, 2019.

“**Plenary Session**” means a meeting scheduled by the Court-Appointed Mediator to be attended by each of the Mediation Participants, the Tobacco Monitors and their counsel.

**“Pre-Filing Report”** means the report filed by the Monitor on March 12, 2019, in its capacity as proposed Monitor of Imperial, in connection with Imperial’s initial application for relief under the CCAA.

**“Quebec Appeal Judgment”** means the Quebec Court of Appeal decision on the appeal of the Quebec Judgment whereby the Court of Appeal substantially upheld the Quebec Judgment with two notable modifications: (i) the total claim amount was reduced by just over \$1 billion; and (ii) the interest schedule was adjusted, reducing the interest payable on the total claim amount by approximately \$3 billion. Imperial’s share of the liability stands at \$9.2 billion with interest and additional indemnity for moral damages and punitive damages.

**“Quebec Judgment”** means the Quebec Superior Court’s judgment on the “Letourneau action” and the “Blais action” released on May 27, 2015 in which the trial judge found the co-defendants jointly liable for \$15.6 billion, with Imperial’s share being approximately \$10.6 billion.

**“Quebec Litigation Plaintiffs”** means, collectively, the representative plaintiff and the certified class of plaintiffs in each of the “Letourneau action” and the “Blais action”, as described in the March Thauvette Affidavit.

**“Reassessments”** means reassessments under the ITA issued to Imperial for its taxation years ended December 31, 2011 and December 31, 2014 in the aggregate amount of \$152,230,369.60.

**“Regulations”** means *The Tobacco Products Regulations (Plain and Standardization Appearance)*, SOR/2019-17.

**“Representation Order”** means an order of the Court dated April 25, 2019, appointing Ari Kaplan of Kaplan Law as Representative Counsel.

**“Representatives”** means Vivian Brennan-Dolezar, Robert M. Brown and George A. Foster, the court-appointed representatives of the Represented Parties.

**“Representative Counsel”** means Ari Kaplan of Kaplan Law, in his capacity as representative counsel to the Retiree Group, pursuant to the Representation Order.

**“Represented Parties”** means all persons with entitlements under the Retirement Plans, including survivors and beneficiaries of such persons and any other person under the Representation Order.

**“Retiree Group”** means a steering committee formed to represent the interests of former officers, executives, and management employees of Genstar.

**“Retirement Plans”** means, collectively, the following pension plans: (a) a deferred income plan for approximately 53 individuals who are either former senior management employees of Genstar or their surviving spouses; (b) supplemental executive retirement plan for approximately 14 individuals who were either former Genstar employees or their

surviving spouses; and (c) a supplementary pension plan for 3 individuals who were either former Genstar employees or their surviving spouses.

“**Rothmans**” means Rothmans Benson & Hedges Inc.

“**Rothmans CCAA Proceedings**” means the insolvency proceedings commenced by Rothmans under the CCAA.

“**Second Amended and Restated Initial Order**” means the Initial Order, as amended and restated as of April 25, 2019.

“**Second Report**” means the report filed by the Monitor on April 24, 2019.

“**September Thauvette Affidavit**” means the affidavit of Eric Thauvette, Vice President and Chief Financial Officer of Imperial, sworn September 20, 2019.

“**Settlement**” means the settlement entered into on April 25, 2019 between ITCAN and the Representatives in respect of the Retirement Plans.

“**Settlement Approval Hearing**” means the motion heard on June 26, 2019 for the approval of the Settlement.

“**Settlement Approval Order**” means an Order of this Court, approving the Settlement and the distribution of the Settlement among the Represented Parties, among other things.

“**Stay of Proceedings**” means the stay of proceedings during the Stay Period in favour of Imperial and their non-applicant subsidiaries, including Liggett & Meyers Tobacco Company of Canada Limited, as well as, a limited stay in favour of BAT and certain BAT affiliates.

“**Stay Period**” means the term of the Stay of Proceedings, to October 4, 2019, and if so approved by the Court on October 2, 2019, to March 6, 2020.

“**Third Report**” means the report filed by the Monitor on May 13, 2019.

“**Tobacco CCAA Proceedings**” means, collectively, the CCAA proceedings of ITCAN, Rothmans, and JTI.

“**Tobacco Claims**” means all claims brought or that could be brought under applicable law against Imperial in relation to the development, manufacturing, production, marketing, advertising of, any representations made in respect of, the purchase, sale, and use of, or exposure to, the Tobacco Products and Vapour Products.

“**Tobacco Monitors**” means, collectively, the Monitor, EY in its capacity as monitor for Rothmans, and Deloitte in its capacity as monitor for JTI.

“**Tobacco Products**” means tobacco or any product made or derived from tobacco or containing nicotine that is intended for human consumption, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes,

cigarette tobacco, roll your own tobacco, smokeless tobacco, heat-not-burn tobacco, and any other tobacco or nicotine delivery systems and shall include materials, products and by-products derived from or resulting from the use of any tobacco products, but does not include Vapour Products.

“**US**” means the United States of America.

“**US Bankruptcy Code**” means title 11 of the United States Code.

“**US Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of New York.

“**Vapour Products**” means potential reduced risk, rechargeable, battery-powered devices that heat liquid formulations – e-liquids – to create a vapour which is inhaled, and which are sold under the tradename of Vype.

## **APPENDIX B**

See attached.

## Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	16-Sep-19	23-Sep-19	30-Sep-19	7-Oct-19	14-Oct-19	21-Oct-19	28-Oct-19	4-Nov-19	11-Nov-19	18-Nov-19	25-Nov-19	2-Dec-19	9-Dec-19	
Forecast Week	1	2	3	4	5	6	7	8	9	10	11	12	13	
<b>RECEIPTS</b>														
Trade Receipts	[2]	93,824	101,968	98,119	98,689	94,923	94,328	126,731	147,227	118,799	89,001	115,567	88,677	112,776
<b>DISBURSEMENTS</b>														
<i>Operating Disbursements</i>														
Taxes and Levies	[3]	(105,374)	(5,187)	(248,078)	(46,211)	(60,497)	(52,082)	(199,376)	-	(132,980)	(77,721)	(53,928)	(117,319)	(41,534)
Operations	[4]	(3,511)	(57,041)	(9,795)	(14,164)	(3,412)	(14,576)	(44,939)	(10,928)	(13,235)	(5,310)	(38,090)	(8,970)	(14,259)
<i>Total Operating Disbursements</i>		(108,885)	(62,228)	(257,872)	(60,375)	(63,910)	(66,658)	(244,315)	(10,928)	(146,215)	(83,031)	(92,019)	(126,289)	(55,792)
<b>OPERATING CASH FLOWS</b>														
		(15,061)	39,740	(159,753)	38,314	31,013	27,670	(117,583)	136,298	(27,416)	5,970	23,549	(37,612)	56,984
<i>Financing Disbursements</i>														
Interest and Related Fees	[5]	-	1,332	-	-	-	-	1,368	-	-	-	1,432	-	-
<i>Restructuring Disbursements</i>														
Professional Fees	[6]	(2,652)	(509)	(509)	(488)	(488)	(488)	(488)	(488)	(488)	(488)	(488)	(483)	(483)
<b>NET CASH FLOWS</b>														
		(17,713)	40,563	(160,263)	37,826	30,525	27,182	(116,704)	135,810	(27,904)	5,481	24,492	(38,095)	56,501
<b>CASH</b>														
Beginning Balance		825,943	808,230	848,793	688,530	726,356	756,881	784,063	667,359	803,169	775,265	780,747	805,239	767,144
Net Cash Inflows / (Outflows)		(17,713)	40,563	(160,263)	37,826	30,525	27,182	(116,704)	135,810	(27,904)	5,481	24,492	(38,095)	56,501
Other (FX)		-	-	-	-	-	-	-	-	-	-	-	-	-
<b>ENDING CASH</b>		808,230	848,793	688,530	726,356	756,881	784,063	667,359	803,169	775,265	780,747	805,239	767,144	823,645

### Notes to the CCAA Forecast:

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Company during the forecast period.
- [2] Forecast Trade Receipts include collections from the sale of tobacco-related products and other categories, net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality, and current management's expectations, including the estimated impact of transition to plain-packaging regulations. The cash flow forecast includes certain 2020 price increases. The Company's ability to maintain the price increase is dependent on market conditions and is uncertain.
- [3] Forecast Taxes and Levies disbursements reflect the remittance of the federal excise tax, provincial tobacco taxes, sales taxes, and the Company's corporate income taxes.
- [4] Forecast Operations disbursements include employee-related costs, selling, general, administrative costs and intercompany costs. Intercompany costs include costs relating to the purchase of tobacco-related products and other categories, and services including: innovation fees, consulting and advisory fees, IT-related costs, product development and testing, accounting and human resources. Included in the intercompany costs is a disbursement of \$55 million to BAT Mexico for costs associated with the retirement of certain equipment and materials (\$9 million in December 2019 relating to wrapping material and \$46 million in January 2020 relating to equipment) that will become obsolete after the implementation of the Tobacco Products Regulations (Plain and Standardized Appearance), as detailed in paragraph 40 in the Monitor's Report.
- [5] Forecast Interest and Related Fees reflect interest income earned net of any sundry payments relating to existing facilities.
- [6] Forecast Professional Fees include fees for the Company's Counsel, the Monitor, the Monitor's Counsel, the Company's US Counsel, the Monitor's US Counsel, the US Noticing Agent, the Court-Appointed Mediator and the Court-Appointed Mediator's Counsel.
- [7] Due to plain-pack regulations, the Company expects accelerated sales of certain branded Tobacco Products to their wholesale and retail customer base, which will result in inventory fluctuations into early 2020. As a result, the Monitor understands that the Company anticipates variations from historical levels and timings of receipts and disbursements in the short term. The Company expects the timing of receipts and disbursements to return to historic norms once the transition to plain packaging is complete.

## Imperial Tobacco Canada Limited

CCAA Cash Flow Forecast

(CAD\$ in thousands)

Week Beginning (Monday)	16-Dec-19	23-Dec-19	30-Dec-19	6-Jan-20	13-Jan-20	20-Jan-20	27-Jan-20	3-Feb-20	10-Feb-20	17-Feb-20	24-Feb-20	2-Mar-20	25-Week Total	
Forecast Week	14	15	16	17	18	19	20	21	22	23	24	25		
<b>RECEIPTS</b>														
Trade Receipts	[2]	115,804	104,557	133,648	27,084	27,800	48,204	62,183	74,389	78,353	76,434	78,801	81,372	2,289,258
<b>DISBURSEMENTS</b>														
<i>Operating Disbursements</i>														
Taxes and Levies	[3]	(44,558)	(4,919)	(121,716)	(29,896)	(26,392)	(25,510)	(119,231)	-	(20,464)	(28,574)	(37,991)	(77,584)	(1,677,122)
Operations	[4]	(58,444)	(13,712)	(4,164)	(17,363)	(6,054)	(14,292)	(60,273)	(4,791)	(13,266)	(3,126)	(44,838)	(4,256)	(482,809)
<i>Total Operating Disbursements</i>		(103,002)	(18,631)	(125,880)	(47,259)	(32,446)	(39,802)	(179,504)	(4,791)	(33,730)	(31,700)	(82,829)	(81,840)	(2,159,931)
<b>OPERATING CASH FLOWS</b>														
		12,803	85,926	7,768	(20,175)	(4,646)	8,402	(117,321)	69,598	44,623	44,734	(4,028)	(468)	129,327
<i>Financing Disbursements</i>														
Interest and Related Fees	[5]	-	-	1,395	-	-	-	1,759	-	-	-	1,540	-	8,826
<i>Restructuring Disbursements</i>														
Professional Fees	[6]	(483)	(318)	(368)	(488)	(488)	(488)	(488)	(488)	(488)	(488)	(488)	(483)	(14,100)
<b>NET CASH FLOWS</b>														
		12,320	85,608	8,796	(20,664)	(5,134)	7,914	(116,050)	69,110	44,135	44,245	(2,977)	(951)	124,054
<b>CASH</b>														
Beginning Balance		823,645	835,965	921,574	930,370	909,706	904,572	912,485	796,435	865,545	909,679	953,925	950,948	825,943
Net Cash Inflows / (Outflows)		12,320	85,608	8,796	(20,664)	(5,134)	7,914	(116,050)	69,110	44,135	44,245	(2,977)	(951)	124,054
Other (FX)		-	-	-	-	-	-	-	-	-	-	-	-	-
<b>ENDING CASH</b>		835,965	921,574	930,370	909,706	904,572	912,485	796,435	865,545	909,679	953,925	950,948	949,997	949,997

### Notes to the CCAA Forecast:

- [1] The purpose of this cash flow forecast is to estimate the liquidity requirements of the Company during the forecast period.
- [2] Forecast Trade Receipts include collections from the sale of tobacco-related products and other categories, net of returns, and inclusive of sales taxes. The sales forecast is based on historical sales patterns, seasonality, and current management's expectations, including the estimated impact of transition to plain-packaging regulations. The cash flow forecast includes certain 2020 price increases. The Company's ability to maintain the price increase is dependent on market conditions and is uncertain.
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- [5] Forecast Interest and Related Fees reflect interest income earned net of any sundry payments relating to existing facilities.
- [6] Forecast Professional Fees include fees for the Company's Counsel, the Monitor, the Monitor's Counsel, the Company's US Counsel, the Monitor's US Counsel, the US Noticing Agent, the Court-Appointed Mediator and the Court-Appointed Mediator's Counsel.
- [7] Due to plain-pack regulations, the Company expects accelerated sales of certain branded Tobacco Products to their wholesale and retail customer base, which will result in inventory fluctuations into early 2020. As a result, the Monitor understands that the Company anticipates variations from historical levels and timings of receipts and disbursements in the short term. The Company expects the timing of receipts and disbursements to return to historic norms once the transition to plain packaging is complete.

**IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF IMPERIAL TOBACCO  
CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED**

Court File No. CV-19-616077-00CL

***ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**FIFTH REPORT OF THE MONITOR  
SEPTEMBER 25, 2019**

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