

Competition Tribunal



Tribunal de la concurrence

Reference: *The Commissioner of Competition v Hudson's Bay Company*, 2018 Comp Trib 4
File No.: CT-2017-008
Registry Document No.: 54

IN THE MATTER OF the *Competition Act*, RSC, 1985, c C-34 as amended:

IN THE MATTER OF an application for orders pursuant to section 74.1 of the *Competition Act* for conduct reviewable pursuant to paragraph 74.01(1)(a) and subsection 74.01(3) of the *Competition Act*;

BETWEEN:

The Commissioner of Competition
(applicant)

and

Hudson's Bay Company
(respondent)



Date of hearing: February 9, 2018
Before Judicial Member: J. Gagné
Date of Order and Reasons: February 22, 2018

ORDER AND REASONS FOR ORDER REGARDING AMENDED NOTICE OF APPLICATION

[1] The Commissioner of Competition (“**Commissioner**”) made a motion to the Competition Tribunal, on February 9, 2018, for leave to amend his Notice of Application. He sought to specify that his claim against Hudson’s Bay Company (“**HBC**”) pertains not only to the four sleep sets identified in his original Notice of Application and for the periods identified therein, but that it encompasses all of HBC’s sleep sets and that the practice is ongoing.

[2] HBC opposed the motion on the basis that the proposed amendments would dramatically expand the Commissioner’s claim against it. As a result, HBC would be prejudiced by having to defend against the Commissioner’s expanded claim on the basis of its existing documentary production and within the existing schedule.

[3] Rule 34(1) of the *Competition Tribunal Rules*, (“**Rules**”), provides that, if a question arises as to the practice or procedure to be followed in proceedings before the Tribunal that is not provided for in the Rules, the *Federal Courts Rules*, (the “**Federal Courts Rules**”) may govern. As such, Rule 75 of the *Federal Courts Rules*, SOR/98-106, gives me the discretion, on motion and at any time, to allow a party to amend a document on such terms as will protect the rights of all parties. A pleadings amendment to correct the name of a party or the capacity in which the party is bringing a proceeding may be made, even if it has the effect of adding or substituting a new cause of action, so long as the new cause of action arises out of substantially the same facts as a cause of action in respect of which the party seeking the amendment has already claimed relief in the action (Rules 76 and 201).

[4] The “general rule is that an amendment should be allowed at any stage of a proceeding for the purpose of determining the real questions in controversy between the parties” (*Canderel Ltd v R*, [1994] 1 FC 3 (CA) at para 10). To preclude an amendment, a party opposing leave must demonstrate that allowing the amendment would result in an injustice and that this injustice is not compensable by costs.

[5] In my view, the Commissioner’s motion should be granted.

[6] First, his proposed amendments arise out of substantially the same facts as his prior pleading. The amendments clarify the fact that the four sleep sets enumerated in the Commissioner’s original pleading are just examples of HBC’s alleged deceptive ordinary selling price representations and that HBC’s compliance policy applies to the sales of all of its sleep sets. HBC’s compliance policy, as it applies to the sale of sleep sets, is thus at the heart of the debate between the parties. The proper administration of justice requires that the amended allegations be heard together with the rest of the Commissioner’s case, rather than leaving those connected issues to be brought forward by the Commissioner in a separate case.

[7] Second, HBC has not demonstrated that, should the amendments be allowed, it would suffer a prejudice that cannot be compensated by an award of costs and/or by varying the existing schedule. HBC will simply be in the same position after the amendments as it would have been had the Commissioner pleaded correctly in the first instance (*Canderel*, above at para 11), in the event that costs are awarded and the current schedule amended.

[8] It is therefore in the interests of justice for the amendments to be allowed.

FOR THE ABOVE REASONS, THE TRIBUNAL ORDERS THAT:

[9] The Commissioner's motion is granted;

[10] The Commissioners to file his proposed Amended Notice of Application within 3 days of the issuance of this Order;

[11] The parties are required to confer and propose to the Tribunal, within 7 working days of this Order, a new schedule in line with the Tribunal's statutory mandate and its general obligation to deal with matters as informally and expeditiously as circumstances and considerations of fairness permit, and that will take into consideration the complementary affidavit of documents that will be required of the Respondent Hudson's Bay Company. Should the parties fail to agree on a new schedule or should the Tribunal not be satisfied with the proposed new schedule, a case management conference will be scheduled within 14 working days of this Order.

[12] Costs on this motion to follow the event.

DATED at Ottawa, this 22th day of February 2018.

SIGNED on behalf of the Tribunal by the Judicial Member.

(s) Jocelyne Gagné

COUNSEL:

For the applicant:

The Commissioner of Competition

Alexander Gay
Katherine Rydel
Derek Leschinsky

For the respondent:

Hudson's Bay Company

Eliot Kolers
Mark Walli
William S. Wu