



Reference: *Used Car Dealers Association of Ontario v. Insurance Bureau of Canada*, 2012
Comp. Trib. 1
File No.: CT-2011-009
Registry Document No.: 17

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an Application by the Used Car Dealers Association of Ontario
under section 75 of the *Competition Act*;

AND IN THE MATTER of an Application by Insurance Bureau of Canada under section 106 of
the *Competition Act*.

B E T W E E N:

Insurance Bureau of Canada
(applicant)

and

Used Car Dealers Association of Ontario
(respondent)



Date of Case Management Hearing: 20120110
Before Judicial Member: Phelan J.
Date of Reasons and Order: January 18, 2012
Reasons and Order signed by: Mr. Justice M. Phelan

REASONS FOR ORDER AND ORDER

[1] The Used Car Dealers Association of Ontario (“UCDA”) filed a s. 75 application alleging that the Insurance Bureau of Canada (“IBC”) refused to continue to supply data to the UCDA. Leave to make such application was granted by the Tribunal on September 9, 2011.

[2] On October 20, 2011, the Competition Tribunal, a single judicial member presiding, issued an interlocutory order pursuant to s. 104 of the *Competition Act*, R.S.C. 1985, c. C-34 (the “Act”) (the “Interim Supply Order”) requiring IBC to continue its supply of data to UCDA until the disposition of the s. 75 application. This interlocutory order was made based on the consent of the parties.

[3] However, on December 7, 2011, IBC brought an application pursuant to s. 106 of the Act seeking rescission of this Interim Supply Order. The key factual basis relied on was that one of the members of IBC had now instructed IBC to cease providing that member’s data pursuant to the Interim Supply Order.

[4] The Tribunal, concerned that s. 106 was not the appropriate provision under which to proceed, informed the parties that the IBC’s application could be refiled as a motion for relief related to an order granted under s. 104 of the Act. The Tribunal indicated that the motion would be heard by a judicial member sitting alone in accordance with s. 11 of the *Competition Tribunal Act*, R.S.C., 1985, c. 19 (2nd Supp.). In this way, the new relief related to the original s. 104 order could be dealt with expeditiously.

[5] The Tribunal gave the parties the right to object to this procedure. UCDA indicated its objection and the objection was heard on January 10, 2012.

[6] It is my view that s. 106 is not the applicable provision under which to deal with matters of an interlocutory order made under s. 104.

[7] UCDA’s position would require the Tribunal to provide notice to the general public by way of the *Canada Gazette* and newspapers, to deal with potential intervenors and to sit a three-member panel. None of these steps occurred when dealing with the initial s. 104 order.

[8] UCDA draws no distinction between “consent order/agreement” and an “order made on consent”. The Tribunal makes numerous interlocutory orders on consent in a proceeding under Part VIII, from the mundane to the significant. To impose all the strictures of a s. 106 proceeding on dealing with these orders would render amendments to s. 104 orders cumbersome, inefficient and costly.

[9] It is my view that the appropriate analysis is to firstly have regard to the source of the original order, in this case s. 104, and those provisions which relate to its operation and scope.

Section 104 provides for an interlocutory order which may be issued, consistent with the principles governing superior courts when granting interlocutory or injunctive relief.

104. (1) Where an application has been made for an order under this Part, other than an interim order under section 100 or 103.3, the Tribunal, on application by the Commissioner or a person who has made an application under section 75 or 77, may issue such interim order as it considers appropriate, having regard to the principles ordinarily considered by superior courts when granting interlocutory or injunctive relief.

(2) An interim order issued under subsection (1) shall be on such terms, and shall have effect for such period of time, as the Tribunal considers necessary and sufficient to meet the circumstances of the case.

(3) Where an interim order issued under subsection (1) on application by the Commissioner is in effect, the Commissioner shall proceed as expeditiously as possible to complete proceedings under this Part arising out of the conduct in respect of which the order was issued.

104. (1) Lorsqu'une demande d'ordonnance a été faite en application de la présente partie, sauf en ce qui concerne les ordonnances provisoires en vertu des articles 100 ou 103.3, le Tribunal peut, à la demande du commissaire ou d'une personne qui a présenté une demande en vertu des articles 75 ou 77, rendre toute ordonnance provisoire qu'il considère justifiée conformément aux principes normalement pris en considération par les cours supérieures en matières interlocutoires et d'injonction.

(2) Une ordonnance provisoire rendue aux termes du paragraphe (1) contient les conditions et a effet pour la durée que le Tribunal estime nécessaires et suffisantes pour parer aux circonstances de l'affaire.

(3) Si une ordonnance provisoire est rendue en vertu du paragraphe (1) à la suite d'une demande du commissaire et est en vigueur, le commissaire est tenu d'agir dans les meilleurs délais possible pour terminer les procédures qui, sous le régime de la présente partie, découlent du comportement qui fait l'objet de l'ordonnance.

[10] The method of dealing with those principles is given effect in s. 11(1) of the *Competition Tribunal Act*.

11. (1) The Chairman of the Tribunal, sitting alone, or a judicial member designated by the Chairman, sitting

11. (1) Le président, siégeant seul, ou un juge désigné par le président et siégeant seul, peut statuer sur les

alone, may hear and dispose of applications under subsection 100(1), section 103.1 or 103.3 or subsection 104(1) or 123.1(1) of the *Competition Act* and any related matters.

demandes d'ordonnance présentées en application du paragraphe 100(1), des articles 103.1 ou 103.3 ou des paragraphes 104(1) ou 123.1(1) de la *Loi sur la concurrence* ainsi que sur toute question afférente.

[11] IBC's proceeding is an effort to lift or quash an interlocutory order. As such, it is a "related matter" to the original s. 104(1) order. The procedural steps of a motion and a hearing of the parties before a single judicial member mirrors the process by which the s. 104 order was originally obtained.

[12] UCDA argues that a "related matter" can only refer to matters arising during the original s. 104 proceeding. This narrow interpretation is not supported by anything in the language of either s. 11 of the *Competition Tribunal Act* or s. 104 of the Act. It leads to a cumbersome, time-consuming process which in no way adversely affects UCDA's rights or abilities to resist IBC's attempt to lift or rescind the Interim Supply Order.

[13] It would be consistent with s. 104(1) and the principles governing superior courts interlocutory or injunctive relief that such orders also be amended, suspended or terminated or otherwise dealt with in accordance with those principles developed by superior courts.

[14] Those principles for dealing with interlocutory orders issued encompass a broader range of principles than are set forth in s. 106 (see, for example, *Curran Farm Equipment Ltd. v. John Deere Ltd.*, 2010 ONSC 3779 and *White Consolidated Industries, Inc. v. Beam of Canada Inc.* (1990), 32 C.P.R. (3d) 196). This is consistent with the nature of interlocutory or injunctive relief.

[15] Therefore, the procedure to be followed in the matter of IBC's relief from the s. 104 order will be as originally outlined by the Tribunal.

[16] IBC shall refile its application as a motion no later than January 20, 2012, failing which its s. 106 application will be dismissed.

[17] The parties shall file their proposed schedules by noon on January 23, 2012. In preparing their schedule, the parties are to be mindful that this matter is to be heard no later than Thursday, February 9, 2012.

DATED at Ottawa, this 18th day of January, 2012.

SIGNED on behalf of the Tribunal by Justice Phelan.

(s) Michael L. Phelan

COUNSEL:

For the applicant:

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