



Reference: *The Commissioner of Competition v. Labatt Brewing Co. Ltd. et al.*, 2007 Comp. Trib. 8
File No.: CT-2007-003
Registry Document No.: 0030

IN THE MATTER OF an application by the Commissioner of Competition for an Interim Order pursuant to section 100 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an inquiry pursuant to paragraph 10(1)(b) of the *Competition Act* into the proposed acquisition by Labatt Brewing Company Limited of all of the outstanding units of Lakeport Brewing Income Fund.

B E T W E E N :

The Commissioner of Competition
(applicant)

and

Labatt Brewing Company Limited
Lakeport Brewing Income Fund
Lakeport Brewing Limited Partnership
Roseto Inc.
Teresa Cascioli
(respondents)



Date of hearing: 20070326-20070327
Presiding Judicial Member: Phelan J.
Date of Order: March 28, 2007
Order signed by: Mr. Justice M. Phelan

ORDER DISMISSING THE APPLICATION OF THE COMMISSIONER FOR AN INTERIM ORDER PROHIBITING THE RESPONDENTS FROM CLOSING THE ACQUISITION OF UNITS OF LAKEPORT BREWING INCOME FUND

[1] **FURTHER TO** the application filed by the Commissioner of Competition (the "Commissioner") for an Interim Order pursuant to section 100 of the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act") prohibiting the Respondents from closing or taking steps toward closing the proposed acquisition by Labatt Brewing Company Limited ("Labatt") of all of the outstanding units of the Lakeport Brewing Income Fund (the "Transaction").

[2] The Transaction is scheduled to close on March 29, 2007 and therefore a decision on this matter is urgent.

[3] For reasons to follow, the Tribunal is dismissing the application because the Commissioner has failed to establish that the Tribunal's ability to remedy the effect of the proposed merger on competition, that is to remedy the substantial prevention or lessening of competition, is substantially impaired by the closing of the Transaction.

[4] Given the Commissioner's position in regard to hold separate agreements at this stage of the inquiry, the Tribunal does not require that the closing be subject to the Hold Separate Agreement/Undertaking proposed by Labatt that would have required the Commissioner's participation.

NOW THEREFORE THE TRIBUNAL ORDERS THAT:

[5] The application is dismissed.

DATED at Ottawa, this 28th day of March, 2007.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Michael Phelan

COUNSEL

For the applicant:

The Commissioner of Competition:

Finlay, Bryan
Miller, William J.
Iatrou, Nikiforos
Levine, Robert
Vermette, Marie-Andrée

For the respondents:

Labatt Brewing Company Limited:

Finkelstein, Neil R
Facey, Brian A.
Beagan Flood, Catherine
Wood, Micah V.

Lakeport Brewing Income Fund, Lakeport Brewing Limited Partnership, Teresa
Cascioli and Roseto Inc.:

Kay, Katherine L.
Neylan, Shawn C.D.
Kilby, Michael D.