

OFFICIAL ENGLISH TRANSLATION

Citation: *Commissioner of Competition v RONA Inc.*, 2005 Comp Trib 12
File No: CT-2003-007
Registry Document No: 107

IN THE MATTER OF the *Competition Act*, RSC 1985, c C-34, and its amendments;

AND IN THE MATTER OF the acquisition of Réno-Dépôt inc. by RONA inc.;

AND IN THE MATTER OF an application to rescind a consent agreement pursuant to subsection 106(1) of the *Competition Act*;

AND IN THE MATTER OF an application for approval of a sale pursuant to the consent agreement registered on September 4, 2003, under section 105 of the *Competition Act*.

BETWEEN:

RONA Inc.
(applicant, responding party)

and

The Commissioner of Competition
(respondent, moving party)

and

Ernst & Young Orenda Corporate Finance Inc.
(intervenor in application filed pursuant to section 105)

Before: Blais J (presiding judicial member)
Date of order: March 23, 2005
Order signed by: Mr. Justice Blais

**SCHEDULING ORDER PURSUANT TO THE MARCH 22, 2005, PRE-HEARING
CONFERENCE**

[1] Pursuant to the provisions of section 22 of the *Competition Tribunal Rules*, SOR/94-290, as amended, the Tribunal today issues an order following a pre-hearing conference held in Ottawa on March 22, 2005, in the presence of the undersigned.

[2] Whereas on January 10, 2005, in connection with the transaction by which RONA acquired Réno-Dépôt Inc. (“consent agreement”) and agreed to sell the Réno-Dépôt store in Sherbrooke (“Sherbrooke business”), RONA filed an application pursuant to section 106 of the *Competition Act*, RSC 1985 c C-34, as amended (the “Act”), to rescind the consent agreement registered on September 4, 2003, between the Commissioner of Competition (“Commissioner”) and RONA Inc. (“RONA”);

[3] Whereas on February 14, 2005, the Commissioner filed a motion pursuant to the consent agreement registered under section 105 of the Act to approve the sale of the Sherbrooke business;

[4] Whereas the trustee responsible for the Sherbrooke sale has been recognized as an intervenor in the section 105 application;

[5] Whereas at the pre-hearing conference held on March 22, 2005, counsel for the parties made submissions regarding the section 106 application and counsel for the parties and the trustee made submissions regarding the section 105 application;

[6] Whereas the parties and the trustee have agreed on some of the points set out below; and

[7] In light of the decisions made by the Tribunal in consideration of the arguments made by RONA, the Commissioner and the trustee;

THE TRIBUNAL ORDERS THAT:

Procedure for the presentation of evidence

[8] The Tribunal will hear the evidence regarding the section 106 application first, followed by the evidence regarding the section 105 application. Oral arguments in both proceedings will take place after the hearing of the evidence.

Clarification of issues

[9] The parties will endeavour to simplify and clarify the issues in dispute and have undertaken to provide the Tribunal with a complete list of the issues in each file. In any event, this list should be filed by no later than Thursday, March 31, 2005.

Admissions

[10] The Commissioner has agreed to respond to RONA’s requests to admit by March 24,

2005.

Witnesses

[11] Counsel for the trustee will serve counsel for RONA with a new affidavit from Anthony Ianni by no later than March 30, 2005.

[12] Counsel for the Commissioner will serve an affidavit from a representative of the purchaser by no later than March 30, 2005. Should it not be possible to obtain a voluntary affidavit from the purchaser's representative, who will be called to testify in any event, counsel for the Commissioner undertakes to serve a summary of the testimony that the purchaser's representative will provide at the hearing by no later than March 30, 2005.

[13] The parties have agreed that the hearing of witnesses will be conducted in both official languages and that there will be no need for simultaneous interpretation.

[14] The parties will make sure that witnesses are available to avoid any delays in the hearing.

Estimated time for the hearing

[15] The parties have submitted their estimates for the time required for the hearing on the application and the motion. The Commissioner has proposed three days for a full hearing for both proceedings: examination and cross-examination of witnesses, evidence and arguments. RONA is anticipating eight days for making its case in both files, not including arguments. The trustee, an intervenor in the section 105 application, has proposed a day and a half for examining its witness, cross-examining the other parties' witnesses and arguments.

[16] The Tribunal believes that justice would be well served by a 10-day hearing, including oral arguments.

Confidentiality

[17] The Commissioner has informed the Tribunal that several documents already indicated to RONA and that will be used in witness examinations could be provided to RONA's counsel subject to an undertaking that the contents are not disclosed to RONA. RONA's counsel wishes to discuss the disclosure process with his client prior to receiving the confidential documents.

[18] If necessary, the Tribunal will make a determination on the confidentiality of the documents at the time of the hearing.

[19] In the meantime, if RONA's counsel agrees to receive a copy of the confidential documents, he must undertake not to disclose their contents to his client, RONA.

Evidence

[20] The parties have agreed to submit a joint book of documents in the context of the section 105 application.

[21] The parties have agreed to provide the Tribunal with the documents they intend to file as evidence at the hearing of the section 106 application by no later than Thursday, March 31, 2005.

[22] The parties will file their witness lists with the Tribunal on the same day they serve them on the other parties, that is, Tuesday, March 29, 2005.

Costs

[23] The Tribunal notes the parties' concerns regarding costs in the context of admissions (*Federal Courts Rules, 1998*, section 255 and paragraph 400(3)(j)), but considers the issue premature at this stage of the proceedings.

Dated at Ottawa, this 23rd day of March 2005.

Signed on behalf of the Tribunal by the presiding judicial member

(s) Pierre Blais

Certified true translation
Johanna Kratz

REPRESENTATIVES:

For the applicant (responding party):

RONA

William McNamara
Eric Lefebvre
Martha Healey

For the respondent (moving party):

Commissioner of Competition

Diane Pelletier
André Brantz
Steve Joanisse

For the intervenor:

Ernst & Young Orenda Corporate Finance Inc.

Louis-Martin O'Neill