

THE COMPETITION TRIBUNAL

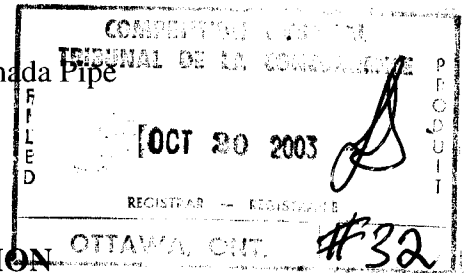
IN THE MATTER OF THE *COMPETITION ACT*,
R.S.C. 1985, c. C.-34 as amended;

IN THE MATTER OF an application by the Commissioner of
Competition pursuant to sections 79 and 77 of the *Competition*
Act;

AND IN THE MATTER OF certain practices by Canada Pipe
Company Ltd. through its Bibby Ste-Croix Division.

BETWEEN:

THE COMMISSIONER OF COMPETITION



Applicant

- AND -

CANADA PIPE COMPANY LTD./TUYAUTERIES CANADA LTÉE

Respondent

COMMISSIONER OF COMPETITION'S REPLY

PART I: OVERVIEW OF THE COMMISSIONER OF COMPETITION'S REPLY

1. The Commissioner of Competition (the "Commissioner") repeats the allegations in his Notice of Application and Statement of Grounds and Material Facts ("Notice of Application"). Except as is hereinafter expressly admitted, the Commissioner denies each and every allegation in the Response.
2. The Commissioner admits the allegations in paragraph 14 of the Response.
3. The Commissioner admits that Tyler Pipe was acquired in 1995 and not part of the acquisition of Bibby Ste-Croix in 1997. Paragraph 97 of the Response is of no consequence on the Commissioner's Notice of Application.

4. The Commissioner denies the allegations contained in paragraph 99 of the Response, but in any event states that they are irrelevant.
5. The Commissioner reiterates that the Respondent controls the supply of cast iron drain, waste and vent (“DWV”) pipe, fittings and mechanical joint (“MJ”) couplings (the “three relevant product markets”) in British Columbia, Alberta, the Prairies (Saskatchewan and Manitoba), Ontario, Quebec and Atlantic Canada (New Brunswick, Nova Scotia, Newfoundland and Labrador and Prince Edward Island) (the “six relevant geographic markets”), collectively defined as the relevant markets, that the Respondent has engaged and continues to engage in a practice of anti-competitive acts and that such anti-competitive acts have had, are having and are likely to have the effect of lessening or preventing competition substantially in the relevant markets.

PART II ABUSE OF DOMINANCE

A. Relevant Market Definition

(1) Relevant Product Markets

6. The Commissioner reiterates that the relevant product markets are the supply of cast iron DWV products for use in buildings of a certain height and occupancy. Cast iron’s characteristics such as its ability to reduce plumbing related noise, its proven durability, its fire resistance properties, its simple fire-stopping procedures and its low thermal expansion rate make it a distinct product for DWV applications in buildings of a certain height and occupancy and market participants’ preferred choice. Products such as plastics do not enjoy the same fire resistance as cast iron thus restricting its use in buildings over a certain height and occupancy and requiring more complex fire-stopping procedures. New coated plastic products have no proven effectiveness and have not gained any recognizable acceptance from market participants nor is it likely to be accepted on a large scale in the foreseeable future. Copper products are significantly more expensive and asbestos-cement products suffer from significant safety concerns. There are no indications the above products have constrained or will constrain the Respondent’s ability to exercise market power in the relevant markets. The Commissioner therefore submits that the allegations contained in paragraphs 12 and 35 to 39 of the Response are no answer to the Notice of Application.
7. The Commissioner has defined the relevant product market as the supply of cast iron DWV pipe, fittings and MJ couplings for use in buildings of a certain height and occupancy. Therefore, the allegations contained in paragraphs 22 and 43 are no answer to the Notice of Application.

(2) Relevant Geographic Markets

8. The six relevant geographic markets are British Columbia, Alberta, the Prairies (Saskatchewan and Manitoba), Ontario, Québec and Atlantic Canada (New Brunswick, Nova Scotia, Newfoundland and Labrador and Prince Edward Island) reflected by the six pricing zones that the Respondent has established. In each of these six pricing zones, distributors are required to purchase the three relevant products from the Respondent at different prices and prices in one price zone are not strongly correlated to prices in other zones. In the alternative (but only in the alternative), as stated in paragraph 53 of the Response, Canada can be considered a single national relevant geographic market in which the Respondent is the dominant firm of the three relevant products in all zones.
9. The Commissioner reiterates that sales of importers of cast iron DWV products are negligible in terms of volume and competitive effects in the relevant geographic markets and therefore denies the allegations contained in paragraph 13 of the Response that there are significant sales of imported cast iron DWV products.
10. The United States is not part of the relevant geographic markets. Exports to the United States are negligible. The Commissioner therefore submits that the allegations in paragraphs 16 and 52(a) of the Response are irrelevant.
11. In regard to the allegations in paragraph 58 of the Response, the prices in the United States are irrelevant given that the relevant geographic markets do not include that country.

B. Control of the Relevant Markets

12. The Commissioner reiterates that the Respondent controls the relevant markets. The Respondent's high market share is protected by significant barriers to entry. Through its Stocking Distributor Program ("SDP"), the Respondent has the ability to set prices above competitive levels, deter new entry and expansion of competitors in the relevant markets and induce stocking distributors' compliance, thus exercising its market power. The Commissioner therefore denies the allegations in paragraphs 54, 55 and 94 of the Response.

(1) Market Shares

13. The Commissioner reiterates that the Respondent controls more than 80% of the total sales of cast iron DWV pipe, fittings and MJ couplings in each of the relevant geographic markets. Therefore, the allegations contained in paragraph 44 of the Response are no answer to the Notice of Application.

(2) Barriers to Entry

14. The Commissioner asserts that exclusivity and full line forcing combined with the Respondent's pricing, involving a lower unit price and high quarterly and annual rebates for stocking distributors, create an insurmountable barrier to entry. Since the stocking distributors are locked into the SDP, the distribution network is foreclosed to other suppliers who can not compete at the margin but must compete for the distributors entire requirements for cast iron DWV products. Therefore, the SDP significantly raises the costs of entry by creating high switching costs and forcing new suppliers to offer a full line of products and to compensate the distributors for the lost rebates if they stop buying exclusively from the Respondent.
15. The Commissioner consequently denies the allegations in paragraphs 19, 25 to 27, 29, 30, 65 and 73 of the Response. Additionally, contrary to the allegations in paragraphs 27 and 93, a number of stocking distributors have been penalized in the past and have not received their accumulated rebates.
16. The Respondent benefits from excess capacity. In that regard, it is able to supply the entire demand of cast iron DWV products within the relevant geographic markets. The Commissioner therefore submits that the Respondent's allegations in paragraph 21 are no answer to the Notice of Application.
17. Cast iron DWV industry is not a declining industry. The combination of the Respondent's excess capacity for the production of the three relevant products and the mature nature of the industry deters entry and expansion of competitors in the relevant markets given that the Respondent has engaged and continues to engage in a practice of anti-competitive acts. The Commissioner consequently denies the allegations in paragraph 60 of the Response.
18. The Commissioner reiterates that the SDP forecloses at least 80 percent of the distribution network and that the SDP significantly raises the costs of entry by creating high switching costs. Furthermore, there has not been any effective and viable entry in the relevant markets. The Commissioner therefore denies the allegations in paragraph 63 of the Response.
19. The SDP acts as a disincentive to switching suppliers for most of the Respondent's customers and Wolseley's decision to leave the SDP in Western Canada does not impact the Respondent's ability to exercise its market power in the relevant markets. Vandem Industries Inc. ("Vandem") has been able to sell to distributors that previously had been part of the SDP but only in a limited scale and not sufficiently to constrain the Respondent's ability to exercise its market power in the relevant markets. The allegations

in paragraph 66 of the Response are no answer to the Notice of Application.

20. The Commissioner reiterates that stocking distributors are reticent to purchase products from other suppliers that do not offer a full line of the relevant products. The Commissioner therefore denies the allegations in paragraphs 67 and 68 of the Response.
21. There has been no successful competition from other DWV products in the relevant markets. The Commissioner consequently denies the allegations in paragraph 72 of the Response.
22. The establishment of a new foundry capable of producing the relevant products is difficult and involves, among other things, significant sunk costs. The possibility of converting an existing foundry is limited. The Commissioner therefore denies the allegations in paragraphs 78 to 81 of the Response.
23. Vandem has begun operations but denies that this entry has been and is effective and viable. The Commissioner consequently denies the allegations in paragraph 83 of the Response.

C. Practice of Anti-Competitive Acts

24. The Respondent has not provided a factual basis to conclude that there exists a legitimate and lawful business rationale behind the Respondent's practice of anti-competitive acts. The Commissioner therefore denies the allegations in paragraph 7(c)(i) of the Response.
25. With respect to paragraph 17 of the Response, stocking distributors must not only provide the Respondent with the first opportunity to supply their cast iron needs, but they are required to exclusively buy all their cast iron needs from the Respondent to be entitled to receive a lower unit price, quarterly and annual rebates. The SDP only applies to cast iron DWV products and does not apply to other cast iron products sold by the Respondent.
26. The description of the purpose of the SDP stated in paragraph 20 of the Response is no answer and is therefore irrelevant.
27. With respect to paragraphs 58 and 59 of the Response, the Commissioner's Notice of Application does not list "a strategy of lowering prices to meet competition" and "a strategy of narrowing of pricing between it and its competitors" as being anti-competitive acts and are therefore irrelevant.
28. With respect to paragraphs 91 to 94 of the Response, the Commissioner reiterates that the exclusivity and full line forcing components of the SDP, along with the Respondent's pricing, involving a lower unit price and high quarterly and annual rebates for stocking

distributors, deters entry and expansion of competitors in the relevant markets and locks in stocking distributors. As set out above, contrary to the allegations in paragraph 93, a number of stocking distributors have been penalized in the past and have not received their accumulated rebates.

29. The Commissioner states that it is irrelevant as to who initiated acquisitions. The Respondent's acquisitions constitute anti-competitive acts part of a practice of anti-competitive acts for the purpose of eliminating competition. The Commissioner therefore submits that the allegations contained in paragraph 95 of the Response is no answer to the Notice of Application.

D. Substantial Lessening or Prevention of Competition

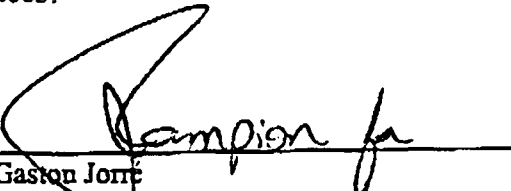
30. The Commissioner states that the SDP has given rise to a substantial lessening or prevention of competition in the relevant markets as the Respondent has the ability to exercise its market power and charge prices of its cast iron DWV products above competitive levels. The Commissioner accepts that there has been a decrease in the real price of certain cast iron DWV products as stated in paragraph 7(d)(i) of the Response. However, any decrease in the real price of cast iron DWV products is no answer to the Notice of Application and irrelevant.
31. The Commissioner reiterates that the Respondent's dominance, in conjunction with its practice of anti-competitive acts, have amounted to a substantial lessening or prevention of competition in the relevant markets. Therefore, the Commissioner denies the allegations in paragraph 100 of the Response.

PART III: EXCLUSIVE DEALING

32. The Respondent has engaged and is engaging in a practice of exclusive dealing and full line forcing. The Commissioner denies the allegations in paragraph 101 of the Response.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Gatineau, this 20th day of October, 2003.


Gaston Joré
Acting Commissioner of Competition

The Commissioner's address for service is as follow:

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CT-2002/006

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