

COMPETITION TRIBUNAL

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

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

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to section 105 of the *Competition Act*,

BETWEEN:

THE COMMISSIONER OF COMPETITION

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENREGISTRÉ FILED / PRODUIT September 4. 2003 CT-2003-007 Jos La Rose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT.	#0001c

Applicant

and

RONA INC.

Respondent

CONSENT AGREEMENT IN RELATION TO THE ACQUISITION

OF RÉNO-DÉPÔT INC. BY RONA INC.

WHEREAS Kingfisher plc, Kingfisher SA, RONA inc. ("RONA") and a subsidiary of RONA have entered into an agreement for the acquisition of the shares of Réno-Dépôt Inc. by RONA, which agreement is referred to as the "Transaction" as more particularly defined hereinafter;

AND WHEREAS the Commissioner of Competition (the "Commissioner") has certain concerns regarding the impact of the Transaction on competition in the Sherbrooke area;

AND WHEREAS the Commissioner declares himself satisfied that this Consent Agreement will suffice to ensure that the Transaction does not prevent or lessen competition substantially;

AND WHEREAS with the execution of this Consent Agreement, the Commissioner will not oppose the Transaction, in whole or in part, pursuant to sections 92, 100 or 104 of the *Competition Act* (the "Act");

RONA and the Commissioner hereby agree as follows:

Definitions

1. For the purposes of this Consent Agreement, the following definitions apply:
 - (a) "Affiliate" means an affiliated entity as defined in subsection 2(2) of the Act;
 - (b) "Commissioner" means the Commissioner of Competition appointed pursuant to section 7 of the Act;
 - (c) "Confidential Information" means any information pertaining to the activities of the Sherbrooke Business capable of affecting competition and of which RONA does not have independent knowledge. Confidential Information includes, without limitation, information concerning customers, prices, operating revenues, inventory, marketing methods and any other business or marketing information capable of affecting competition, together with any information owned by, or in the possession or control of, the Sherbrooke Business that is not in the public domain related to the manufacture, marketing, commercialization, distribution, importation, exportation, cost, pricing, supply, sales, sales support or use of a product;
 - (d) "Consent Agreement" means this Consent Agreement entered into by RONA and the Commissioner;
 - (e) "Divestiture" means, with respect to a business, the sale, transfer, assignment or other disposal necessary to ensure that following such divestiture, RONA no longer has any direct or indirect interest in the divested business;
 - (f) "Réno-Dépôt" means Réno-Dépôt Inc., a Canadian retailer of home improvement products, which operates 20 big box stores, fourteen of them under the Réno-Dépôt banner in Quebec and six under the banner The Building Box in Ontario;
 - (g) "RONA" means RONA inc., a Canadian retailer and distributor of home improvement products, which has approximately 16,000 employees and whose network of stores recorded retail sales amounting to \$2.8 billion for the 12-month period ended December 29, 2002;
 - (h) "Sherbrooke Business" means the land, building, equipment and inventory of the Réno-Dépôt store located at 600 Jean-Paul Perrault in Sherbrooke comprising a total floor space of 93,624 square feet;
 - (i) "Transaction" means the share purchase agreement entered into on April 23, 2003 by RONA and 4152760 Canada Inc. (the "Purchaser"), a wholly-owned subsidiary of RONA, with Kingfisher plc ("Kingfisher") and Kingfisher SA, formerly known as Castorama SA (the "Sellers"), pursuant to which the Purchaser

will indirectly acquire all of the issued and outstanding shares of Réno-Dépôt for a purchase price of \$350 million, subject to certain closing adjustments, including an adjustment based on Réno-Dépôt's working capital as at March 29, 2003;

- (j) "Tribunal" means the Competition Tribunal established by the *Competition Tribunal Act*.

Divestiture

2. Subject to the provisions of this Consent Agreement, RONA shall divest all of its rights, title and interest in and to the Sherbrooke Business, in accordance with the provisions of this Consent Agreement, to a buyer wishing to operate the business principally for the retail sale of home improvement products.
3. RONA shall promptly commence the Divestiture process and shall use its best efforts to effect the Divestiture as soon as possible within the time specified in paragraph 4 of this Consent Agreement, for such price and on such terms as are most favourable and reasonably acceptable to RONA. The Divestiture [CONFIDENTIAL] and the buyer shall receive from RONA the representations and warranties necessary to ensure that the buyer is not assuming RONA's obligations, except for those obligations that the buyer is required to assume by applicable law, the servitudes affecting the immovable and the contracts that are required for the operation of the Sherbrooke Business such as contracts for the maintenance of equipment and contracts for the rental of space.
4. The divestiture by RONA must in any event be completed no later than [CONFIDENTIAL] following the closing of the Transaction. However, if, prior to the expiry of the time specified in this paragraph, RONA has received from a prospective buyer a formal offer or other written indication of the intent to purchase the Sherbrooke Business, which RONA has accepted, the time for effecting the Divestiture shall be extended by a period that is reasonable in the circumstances (not to exceed one month from the time of acceptance), within which time the Divestiture will have to be completed. If the Divestiture is not completed within the time specified in this paragraph, the provisions of paragraph 5 shall apply.

Sale by Trustee

5. Subject to the provisions of this Consent Agreement, if the Divestiture is not completed within the time specified in paragraph 4, the Commissioner, following consultation with RONA, shall appoint a trustee to effect the sale by trustee upon the following conditions, for which purpose the authority to divest the Sherbrooke Business shall be transferred by RONA to the trustee:
 - (a) Once the trustee's appointment becomes effective, the trustee shall have exclusive authority to realize the sale by trustee pursuant to this Consent Agreement;
 - (b) The trustee shall have all the powers necessary to realize the sale by trustee and shall use best efforts to realize such sale;
 - (c) The sale by trustee shall be carried out in accordance with the provisions of this Consent Agreement;

- (d) The trustee shall proceed to divest the Sherbrooke Business, and may sell the land and building separately from the equipment and inventory, for the price and on the terms most favourable to RONA that are then, in the trustee's opinion, reasonably possible to obtain. The Divestiture [CONFIDENTIAL] and the buyer shall receive from RONA the representations and warranties necessary to ensure that the buyer is not assuming RONA's obligations, except for those obligations that the buyer is required to assume by applicable law, the servitudes affecting the immovable and the contracts that are required for the operation of the Sherbrooke Business such as contracts for the maintenance of equipment and contracts for the rental of space;
- (e) The trustee shall use reasonable best efforts to realize the sale by trustee within [CONFIDENTIAL] following the trustee's appointment. However, if, prior to the expiry of the said period, the trustee has received from a prospective buyer a formal offer or other written indication of the intent to purchase the Sherbrooke Business, which the trustee has accepted, the time for effecting the Divestiture shall be extended by a period that is reasonable in the circumstances (not to exceed one month from the time of acceptance), within which time the Divestiture will have to be completed;
- (f) RONA shall use commercially reasonable best efforts to assist the trustee in realizing the sale and shall execute any document and take such further action as may be reasonably required by the trustee in connection with such sale;
- (g) Following the trustee's appointment, the trustee shall report to the Commissioner and RONA every thirty days on the steps taken by the trustee to effect the sale;
- (h) The trustee shall promptly inform the Commissioner and RONA of the commencement of any negotiations undertaken with a potential buyer that may, in the trustee's opinion, lead to a sale;
- (i) All reasonable costs duly incurred by the trustee in connection with the sale by trustee shall be paid for by RONA;
- (j) The net proceeds of the sale by trustee shall be paid to RONA or in accordance with RONA's instructions;
- (k) The trustee shall have such other powers as the Tribunal may see fit to grant to the trustee upon the application of the Commissioner;
- (l) RONA may not object to the sale by trustee except in the event of misappropriation or misconduct by the trustee or if the trustee fails to abide by the provisions of this Consent Agreement;
- (m) If the trustee has not proceeded with the sale within the time specified in this paragraph, the trustee shall forthwith file a confidential report with the Tribunal describing: (i) the steps taken by the trustee to realize the sale, (ii) the reasons why, in the trustee's opinion, the sale has not been realized, and (iii) the trustee's recommendations. The trustee shall concurrently file the same report with the Commissioner and RONA, who shall be entitled to be heard by the Tribunal and to submit additional observations to the Tribunal concerning the sale by trustee.

The Tribunal may then make such orders as it deems expedient for the realization of the sale by trustee;

- (n) Except in the event of gross negligence, bad faith or breach of contract, the trustee may not be held liable for any loss, claim, damage or liability arising out of or in connection with the trustee's duties in regard to the sale of the Sherbrooke Business.

Approval of Divestiture

6. The Divestiture shall be subject to the approval of the Commissioner, who shall base such approval on the criteria outlined in this Consent Agreement; the Commissioner shall also take into consideration the impact that the acquisition of the Sherbrooke Business by the buyer would have on competition. The Commissioner's approval shall be obtained in accordance with the procedure set forth in this Consent Agreement.
7. The Sherbrooke Business shall be divested to a buyer that intends to operate it principally for the retail sale of home improvement products and that has the financial and operational capacity needed to manage the business. The buyer may not have RONA as a supplier, except for a transition period of at most three months, nor may it be affiliated with RONA through the adoption of a RONA banner.
8. Whichever of RONA or the trustee is then entrusted with realizing the Divestiture prescribed by this Consent Agreement shall notify the Commissioner in writing (the "Divestiture Notification") (and in the case of a sale by trustee, the trustee shall also notify RONA) of the conclusion of any agreement having binding effect (subject to the Commissioner's approval) in relation to the Divestiture or the sale by trustee. The Divestiture Notification shall set out the particulars of the proposed Divestiture or the sale by trustee.
9. Within fourteen days following the Divestiture Notification, the Commissioner and, in the case of a sale by trustee, RONA, may request additional information on the proposed Divestiture. RONA or the trustee, as the case may be, shall have seven days following receipt of the request in which to provide the additional information, unless the Commissioner agrees in writing to a longer time.
10. Within fourteen days following the Divestiture Notification or, where the Commissioner or RONA requests additional information pursuant to the preceding paragraph, within twenty-one days following receipt of the additional information, the Commissioner shall notify RONA and, in the case of a sale by trustee, the Commissioner or RONA shall notify the trustee, in writing, of any objection.
11. Where neither the Commissioner nor RONA objects within the time specified in the preceding paragraph and where the criteria outlined in this Consent Agreement are met, or where the Commissioner notifies RONA or the trustee, as the case may be, in writing that he has no objection, the Divestiture may proceed.
12. Where the Commissioner or RONA, based on this Consent Agreement, objects to the proposed Divestiture or the sale by trustee, the proposed Divestiture or sale by trustee may only proceed with the approval of the Tribunal.

13. Where the Divestiture is able to proceed in accordance with this Consent Agreement, the Commissioner, within five days following the date as of which the Divestiture is concluded, shall notify the Tribunal in writing that the Divestiture has taken place.

Confidential Information

14. While this Consent Agreement is in effect, RONA, its Affiliates and their directors, officers and employees shall not receive, consult or use Confidential Information except in accordance with this Consent Agreement.
15. Any breach of the preceding paragraph shall be deemed to be a breach by RONA of this Consent Agreement.

Maintenance of Independent Commercial Viability of the Sherbrooke Business

16. Except for the Divestiture, while this Consent Agreement is in effect, neither RONA nor its Affiliates shall knowingly do anything as direct or indirect shareholders of Réno-Dépôt that could adversely impact the competitiveness, assets, operation or financial position of the Sherbrooke Business, except with the Commissioner's consent. Without limiting the generality of the foregoing, RONA and its Affiliates shall not, in regard to the Sherbrooke Business, except with the Commissioner's consent:
 - (a) dispose of its assets outside the ordinary course of business;
 - (b) materially reduce any aspect of the services provided to its customers;
 - (c) materially reduce its financial arrangements;
 - (d) materially reduce its commercialization, sales or promotional operations or other marketing operations aimed at existing or prospective customers;
 - (e) terminate or amend, without reasonable grounds, any agreement pertaining to any employment, salary or benefits of any officer, manager or employee in the sales or marketing sector of the Business.
17. Until the Divestiture of the Sherbrooke Business is completed, the Sherbrooke Business shall continue to be operated under the Réno-Dépôt banner distinctly and separately from RONA and its Affiliates.

General

18. RONA and the Commissioner may agree to amend this Consent Agreement in any manner.
19. RONA shall provide a copy of this Consent Agreement to its directors and to every Affiliate having a direct or indirect interest in the Sherbrooke Business, and to their directors, officers and managers. RONA shall inform the board of directors and officers of Réno-Dépôt and the general manager of the Sherbrooke Business of the obligation of RONA and its Affiliates to operate and manage the Sherbrooke Business in accordance with the provisions of this Consent Agreement. RONA shall do everything possible to

ensure that the operation and management of the Sherbrooke Business are in accordance with this Consent Agreement.

20. Notices, reports and other communications required or permitted pursuant to this Consent Agreement shall be in writing and shall be hand delivered or sent by registered mail or facsimile transmission to the persons mentioned in Schedule A to this Consent Agreement.
21. The Tribunal shall retain jurisdiction for the purpose of any application by the Commissioner or RONA to rescind or vary any of the provisions of this Consent Agreement in the event of a change of circumstances or otherwise.

Duration of Consent Agreement

22. This Consent Agreement shall remain in effect until the Commissioner notifies the Tribunal in writing that the Divestiture has taken place, or until an order is issued by the Tribunal.

DATED at Gatineau, this 3rd day of September, 2003.

Gaston Jorré
Acting Commissioner of Competition

Robert Dutton, President and Chief Executive Officer
RONA inc.

SCHEDULE A: NOTICES

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