



Reference: *Commissioner of Competition v. Quebecor Inc.*, 2001 Comp. Trib. 1
File no.: CT2000005
Registry document no.: 009a

IN THE MATTER of an application by the Commissioner of Competition pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34, for a consent order;

AND IN THE MATTER of the merger between Quebecor Inc. and Le Groupe Videotron Ltée whereby the former will acquire, *inter alia*, indirect control of TVA Group Inc., a subsidiary of Le Groupe Videotron Ltée.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

Quebecor Inc.
(respondent)

Date of hearing: 20010115
Members: Nadon J. (presiding), A. Reny, V. Roy
Date of order: 20010115
Order signed by: Marc Nadon



CONSENT ORDER

[1] FURTHER TO the application by the Commissioner of Competition (the "Commissioner") pursuant to sections 92 and 105 of the *Competition Act* (the "Act"), R.S.C. 1985, c. C-34, for a consent order imposing divestiture of the interests of TQS Inc. ("TQS") affected by the merger between Quebecor Inc. ("Quebecor") and Le Groupe Videotron Ltée ("Videotron") (the whole in accordance with the definitions recited herein) and prescribing various other remedies;

[2] AND ON CONSIDERING the notice of application dated November 10, 2000, the statement of grounds and material facts, the impact statement of the consent order, the affidavit executed on October 31, 2000 by Denis Corriveau, the draft consent order and the consent of the parties filed in the present case;

[3] AND ON CONSIDERING THAT the Commissioner has expressed his conviction, in view of the considerations expressed in the impact statement of the consent order, that the remedies provided herein will, if ordered, be sufficient to likely prevent or lessen competition substantially in the French-language television advertising market in the Province of Quebec, as described in the statement of grounds and material facts;

[4] AND ON CONSIDERING THAT the Commissioner and the respondent are in agreement as to the conditions of the present consent order;

[5] AND IT BEING UNDERSTOOD THAT the parties are in agreement that the Commissioner has alleged certain significant material facts, the existence of which the respondent denies in whole or in part without, however, objecting to the statement of grounds and material facts or to the impact statement of the consent order, insofar as it relates to the present application;

[6] AND IT BEING UNDERSTOOD THAT the parties are in agreement that nothing in the present application shall be considered, now or in the future, an admission by the respondent of any fact, submission or argument in support of the allegation that the merger prevents or lessens, or is likely to prevent or lessen competition substantially, in any market, or for any reason other than that of the present application, including any other proceeding under section 92, 100, 104 or 106 of the Act;

[7] AND AFTER being informed that the respondent admits the jurisdiction of the Tribunal only for the purposes of the present application and of any proceeding instituted by the Commissioner with respect to the present consent order, specifically, an application to vary or rescind the order;

[8] AND AFTER hearing counsel for the parties on the present application at Ottawa on January, 15, 2001;

[9] AND BEING SATISFIED that the present order should be rendered in this case;

THE TRIBUNAL ORDERS THAT:

Definitions

[10] The following definitions shall be applicable to the present order:

- (a) "buyer" refers to the person, entity or group of persons or entities that acquires TQS' interests;
- (b) "shares deposited" refers to the shares of 9076-1883 Québec inc., which holds 99.88 percent of TVA's votes, that are deposited as defined in the TVA trust agreement;
- (c) "affiliate" refers to an affiliated corporation within the meaning of the definition in subsection 2(2) of the Act;
- (d) "CRTC approval" refers to the decision of the CRTC whereby the CRTC authorizes the indirect acquisition by Quebecor Média of control of the shares deposited, according to conditions acceptable to Quebecor Média;
- (e) "Commissioner" refers to the Commissioner of Competition appointed pursuant to section 7 of the Act;
- (f) "TVA trust agreement" refers to the trust agreement required by the CRTC, whereby any shares deposited are delivered to Richard Drouin or his replacement appointed under the aforesaid agreement;
- (g) "CRTC" refers to the Canadian Radio-Television and Telecommunications Commission created under the *Broadcasting Act*;
- (h) "divestiture" refers to the sale, transfer, assignment, surrender or any other alienation of all TQS' interests or assets, *inter alia*, the sale or indirect transfert by means of alienation of all the shares of a company having a direct or indirect interest in TQS;
- (i) "business" refers to TQS' operations;
- (j) "trustee" refers to the trustee appointed under § [13] of the present order;
- (k) "merger" refers to the acquisition by Quebecor, through its subsidiary Quebecor Média, of all of Videotron's multiple and subordinate voting shares issued and outstanding in accordance with the public take-over bids dated September 27, 2000;
- (l) "TQS" interests" refers to the interests of Quebecor and its affiliates in TQS;
- (m) "Act" refers to *Competition Act*, R.S.C. 1985, c. C-34;

- (n) "period of divestiture" refers to the period commencing at the latest on the date of CRTC approval and ending on the date of divestiture by Quebecor or by the trustee;
- (o) "Quebecor" refers to Quebecor Inc.;
- (p) "Quebecor Média" refers to Quebecor Média Inc.;
- (q) "CRTC rejection" refers to the CRTC's decision whereby it rejects indirect acquisition by Quebecor Média of control over the shares deposited or approves such an acquisition but under conditions unacceptable to Quebecor Média;
- (r) "confidential information" refers to information that is proprietary or sensitive in terms of competition relating to TVA business of which Quebecor and its affiliates do not have independent knowledge. Such confidential information includes, *inter alia*, information relating to client lists, price lists, marketing methods or other trade secrets;
- (s) "TQS" refers to TQS Inc.;
- (t) "TVA" refers to TVA Group Inc.;
- (u) "Tribunal" refers to the Competition Tribunal established under the *Competition Tribunal Act*;
- (v) "sale by trustee" refers to divestiture executed under § [13] of the present offer.

Divestiture

[11] Subject to the provisions of § [12] of the present order, Quebecor is required to divest all its rights and titles of any nature relating to TQS' interests, in accordance with the provisions of this order. Quebecor must undertake divestiture immediately and endeavour to complete it as soon as possible. In any event, divestiture must be completed by December 31, 2001. If it is not completed within the period provided in the present paragraph, § [13] of this order shall apply.

[12] Should the CRTC reject, or Quebecor Média withdraw, for any reason whatsoever, its application to the CRTC to acquire control of the shares deposited, Quebecor will no longer be required to proceed with divestiture under § [11] of this order.

Sale by Trustee

[13] Subject to the provisions of § [12], if divestiture is not completed within the period provided under § [11] of the present order, the Tribunal may, at the Commissioner's request, appoint a trustee nominated by the Commissioner, after providing Quebecor with a reasonable opportunity to be heard concerning the identity of that person, to effect the sale by trustee under the following conditions:

- (a) once his appointment takes effect, only the trustee shall have authority to effect the sale by trustee under this order;
- (b) the trustee shall have all the necessary powers to conduct the sale by trustee and must do everything possible to effect the sale;
- (c) the sale by trustee shall be effected in accordance with §§ [13] to [15] of the present order;
- (d) the trustee shall proceed to divest TQS' interests, subject to the *Broadcasting Act* and the existing rights of the other TQS shareholders, at a price and under terms as favourable to Quebecor as may reasonably be obtained at the time, in his opinion;
- (e) the trustee shall take reasonable measures to effect the sale by trustee within six months following his appointment;
- (f) Quebecor shall take reasonable business measures to assist the trustee in effecting the sale and shall sign any documents and perform any other reasonable action required by the trustee with respect to the sale;
- (g) after his appointment, the trustee shall deliver to the Commissioner and Quebecor a monthly report on any measures that he has taken to effect the sale;
- (h) the trustee shall immediately inform Quebecor and the Commissioner of any negotiations entered into with a potential buyer that, in his opinion, may result in a sale;
- (i) any costs reasonably and duly incurred by the trustee in relation to the sale by trustee shall be paid by Quebecor;
- (j) the net proceeds of the sale by trustee shall be paid to Quebecor or in accordance with the latter's instructions;
- (k) at the request of the Commissioner or of Quebecor, any other powers that the Tribunal may deem appropriate to grant the trustee shall be vested in him.

[14] Quebecor may only oppose the sale by trustee in cases of breach of trust or serious misconduct by the trustee, or if the latter violates the present order.

[15] If the trustee has not conducted the sale within six months following his appointment, he shall immediately file with the Tribunal a confidential report detailing the following: (i) what measures he has taken to effect the sale, (ii) the reasons why, in his opinion, the sale has not been effected and (iii) his recommendations. At the same time, he shall provide the report to Quebecor and the Commissioner, who will both have the right to be heard by the Tribunal and to submit additional comments concerning the sale by trustee. The Tribunal may then make any orders deemed advisable to effect the sale by trustee.

Approval of Divestiture

[16] The divestiture is subject to the approval of the Commissioner, who shall, for the purposes of such approval, rely on the criteria detailed in § [17] of this order. Approval is obtained in accordance with the procedures established in §§ [18] to [23] of this order.

[17] The divestiture must be made in favour of a buyer who intends to operate TQS in the French-language television market in the Province of Quebec, and who has the financial and operational abilities to manage the business. The Commissioner must also consider the implications that the acquisition of TQS' interests by the buyer would have on competition.

[18] Quebecor or the trustee (depending on which one is responsible at the time for effecting the divestiture prescribed in the present order) shall inform the Commissioner (and in the case of sale by trustee, the trustee shall also inform Quebecor) in writing ("notice of divestiture") of the outcome of any binding agreement (subject to the Commissioner's approval) with respect to the divestiture or sale by trustee. The notice of divestiture shall set out the details of the proposed divestiture or sale by trustee.

[19] Within 14 days of receipt of the notice of divestiture, the Commissioner and, in the case of sale by trustee, Quebecor may request additional information on the proposed divestiture. Quebecor or the trustee, as the case may be, is required to forward the additional information within seven days of receipt of the request, unless the Commissioner agrees in writing to an extension.

[20] Within 14 days of the notice of divestiture or, where the Commissioner or Quebecor requests additional information within the period provided in § [19], within 21 days of receipt of the additional information, the Commissioner shall advise Quebecor and, in the case of sale by trustee, the Commissioner or Quebecor shall advise the trustee, in writing, of any objection to the proposed divestiture or to the sale by trustee on the grounds that it violates the provisions of the present order, and give reasons for his objection.

[21] Where neither the Commissioner nor Quebecor objects within the period provided in § [20] and on the strength of the criteria detailed in § [17] of the present order, or where the Commissioner informs Quebecor or the trustee, as the case may be, in writing that he has no objections, divestiture may proceed.

[22] Where the Commissioner or Quebecor objects to the proposed divestiture or to the sale by trustee under § [20], the proposed divestiture or sale by trustee may proceed only with the approval of the Tribunal.

[23] Where divestiture may proceed under the present order, the Commissioner shall, within five days of the date on which divestiture was completed, inform the Tribunal in writing that divestiture took place.

Confidential Information

[24] For the duration of the present order, Quebecor, its affiliates and their administrators, directors and employees shall receive, consult or use confidential information only in accordance with the present order.

[25] Any violation of § [24] shall be deemed a breach by Quebecor of the present order.

Maintenance of Independent Commercial Viability of Business

[26] Except in the case of divestiture, neither Quebecor nor its affiliates shall, for the duration of the present order, knowingly do anything as direct or indirect shareholders of TQS that could be detrimental to the competitiveness, assets, operations or financial status of TQS, without the consent of the Commissioner. Without prejudice to the general application of the foregoing, Quebecor shall not cause, without the consent of the Commissioner, TQS to do any of the following:

- (a) divest its assets beyond the normal course of business, with the exception of the 20 percent interest held by TQS in the Canal Indigo, or not grant a licence with respect thereto;
- (b) significantly reduce any aspect of its client services;
- (c) significantly reduce its financial arrangements;
- (d) significantly reduce its marketing, sales or promotional operations, or any other canvassing operations with existing or potential clients;
- (e) terminate or amend without reasonable cause any agreement relating to the employment, salary or benefits of a director, manager or employee in the sales or marketing sector of the business.

Supervisor

[27] After giving a seven-day notice to Quebecor, the Commissioner may appoint a supervisor responsible for monitoring compliance with the present order. If it objects to the appointment, Quebecor may ask the Tribunal to make the appropriate order, giving the Commissioner a five-day notice and explaining the reasons for its objection.

[28] Should the supervisor become unable to perform his duties by reason of death, disability, removal for cause or for any other reason, the Commissioner shall appoint a new supervisor within 15 days, and that appointment shall be subject to § [27].

[29] For the purpose of monitoring compliance with the present order by Quebecor, the latter shall, without prejudice to any privilege provided by the legislation, allow the supervisor access, during regular office hours and in the presence of Quebecor's lawyers:

- (a) to the administrators, directors and employees of Quebecor and its affiliates;
- (b) to Quebecor's financial information and records relating to TQS' interests;
- (c) to excerpts from the minutes of board meetings of Quebecor and its affiliates on the subject of TQS' interests;

[30] For the purpose of monitoring compliance with the present order by Quebecor, the supervisor may, without prejudice to any privilege provided by the legislation, demand access during regular office hours and in the presence of Quebecor's lawyers:

- (a) to the premises of Quebecor and its affiliates;
- (b) to any information concerning the financial records, operations and assets of TQS;
- (c) to TQS' management meetings.

[31] Where necessary, Quebecor shall take every reasonable measure to comply with such a demand by the supervisor.

[32] Quebecor shall neither exert nor attempt to exert any influence, authority or control over the supervisor that could prejudice the performance of his obligations under the present order.

[33] Where the supervisor is of the opinion that Quebecor is not in compliance with the present order, he shall immediately inform the Commissioner, who shall inform Quebecor thereof in writing, giving details of the violations.

[34] At the Commissioner's request, the supervisor shall provide him with a sworn report in writing concerning compliance with the present order.

[35] No actions or omissions under the present order shall entail the personal liability of the supervisor.

[36] The supervisor shall not communicate confidential information obtained in the performance of his duties to anyone, other than the Commissioner to the extent required by the present order.

Term of TVA Trust Agreement

[37] The TVA trust agreement shall remain in effect at least until the first of the following: (1) date on which the Commissioner informs the Tribunal in writing that divestiture has been completed; (2) date on which, following rejection by the CRTC, the sale of the shares deposited has been concluded in accordance with the TVA trust agreement; (3) date on which, following CRTC approval, arrangements having the same effect as the TVA trust agreement and provisions equivalent to §§ [24] and [25] of the present order have been introduced with respect to TQS; or (4) date on which Quebecor Média abandons, for any reason, its application to the CRTC to acquire control of the shares deposited.

General Provisions

[38] Quebecor shall provide a copy of the present order to its administrators, as well as to TVA, TQS and any affiliate of Quebecor that has a direct or indirect interest in TQS, and to their administrators, directors and managers. Quebecor shall inform the board of directors, directors and managers of TQS of the obligation on both it and its affiliates to operate and manage TQS in accordance with the provisions of the present order. Quebecor shall do everything possible to ensure that the operation and management of TQS are in accordance with the present order.

[39] Any notices, reports or other communications provided or permitted under the present order shall be made in writing and delivered in person to the party to whom they are addressed, or sent by registered mail or fax to the persons mentioned in Schedule A of this order.

[40] The Tribunal shall retain jurisdiction with respect to any application by the Commissioner or by Quebecor to rescind or amend any provision of the present order in case of change of circumstances or for any other reason.

[41] In case of disagreement as to the interpretation or application of the present order, including decisions by the Commissioner made in execution of the present order, or any breach of the present order by Quebecor, the Commissioner or Quebecor may ask the Tribunal to make a new order.

Duration of Consent Order

[42] The present order shall remain in effect until the Commissioner informs the Tribunal in writing that divestiture has taken place, until either of the contingencies mentioned in § [12] of the present order occurs, or until the Tribunal makes a completely new order.

DATED at Ottawa, this 15th day of January, 2001.

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

(s) Marc Nadon

[43] Schedule A: Notice

To the Commissioner:

François Handfield
Duane Schippers
Lawyers for the Commissioner of Competition
Department of Justice
Competition Law Section
Industry Canada, Legal Services
Place du Portage, Phase I, 22nd Floor
50, rue Victoria
Hull, Quebec
K1A 0C9

Telephone: (819) 997-3325
Fax: (819) 953-9267

To the respondent:

Denis Gascon
Ogilvy Renault
Barristers and Solicitors
1981, avenue McGill College, Room 1100
Montreal, Quebec
H3A 3C1

Telephone: (514) 847-4747
Fax: (514) 286-5474

APPEARANCES

For the applicant:

Commissioner of Competition

François Handfield
Duane Schippers

For the respondent:

Quebecor Inc.

Denis Gascon