

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for a consent interim order pursuant to sections 92, 104 and 105 of the *Competition Act*, R.S.C. 1985 c. C-34;

AND IN THE MATTER OF the merger of British American Tobacco p.l.c. and Rothmans International B.V. whereby British American Tobacco p.l.c. will acquire, *inter alia*, indirect control of Rothmans Inc. and thereby the controlling interest of Rothmans Inc. in Rothmans, Benson & Hedges Inc.;

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

BRITISH AMERICAN TOBACCO P.L.C.

Respondent

**AFFIDAVIT OF GERRY BIRKS IN SUPPORT OF AN APPLICATION
FOR A CONSENT INTERIM ORDER**

I, Gerry Birks, of the Village of Wakefield, in the County of LaPeche, in the Province of Quebec, Public Servant, MAKE OATH AND SAY:

1. I am a Senior Economist with the Department of Finance, currently on secondment with the Competition Bureau of Industry Canada, Mergers Branch, under the authority of the Commissioner of Competition under the *Competition Act* (the "Act").

2. This affidavit is made in support of an application for a consent interim order, pursuant to section 104 of the Act pursuant to which British American Tobacco p.l.c. ("BAT") will be required to hold separate the tobacco operations of Rothmans, Benson & Hedges Inc. (the "business") from BAT, its affiliates and Imasco. The business will be acquired by the respondent as a result of the merger of BAT and Rothmans International B.V. (the "merger"), whereby BAT will acquire indirect control of Rothmans Inc. and thereby the controlling interest of Rothmans Inc. in Rothmans, Benson & Hedges Inc. (the "Rothmans Canadian interest"). The divestiture of the Rothmans Canadian interest is the subject of the notice of application by the Commissioner for a consent order filed concurrently with this application. The consent interim order sought herein is intended to preserve the business as a separate entity pending the determination by the Tribunal of the application for the consent order.

3. The business and the circumstances of the merger are more fully described in the application. I have been responsible for the conduct and management of the examination and assessment of the merger for the Competition Bureau and as such, I have knowledge of the information in the material filed in support of the notice of application for a consent interim order. I believe to the best of my knowledge that the information is true.

4. It is my opinion that if the consent interim order sought herein is not made, the draft consent order will be ineffective. Unless the business is held separate from BAT and its affiliates pending determination of the application for a consent order, the substantial lessening of competition that would likely result from the merger would not be able to be effectively remedied. It would be impractical in those circumstances to

craft an alternative remedy and the public interest served by the Act would not be achieved.

SWORN before me, at
the City of Hull,
in the Province of Quebec
this 13th day of May, 1999

Gerry Birks

A Commissioner etc.

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OF AN APPLICATION FOR A CONSENT
INTERIM ORDER**

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