

Competition Tribunal



Tribunal de la Concurrence

CT-1990 / 001 – Doc # 406a

IN THE MATTER of an application by Southam Inc. et al.
under sections 105 and 106 of the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER of the direct and indirect acquisitions by
Southam Inc. of equity interests in the business of publishing
The Vancouver Courier, the *North Shore News* and the *Real Estate Weekly*.

B E T W E E N:

Southam Inc.
Lower Mainland Publishing Ltd.
Rim Publishing Inc.
Yellow Cedar Properties Ltd.
North Shore Free Press Ltd.
Specialty Publishers Inc.
Ely Publications Ltd.

Applicants

and

The Director of Investigation and Research

Respondent



REASONS FOR REVISED DIVESTITURE ORDER

Date of Hearing:

October 16, 1998

Members:

Rothstein J. (presiding)

Mr. André Côté

Mr. Lorne R. Bolton

Counsel for the Applicants:

Southam Inc.

Lower Mainland Publishing Ltd.

Rim Publishing Inc.

Yellow Cedar Properties Ltd.

North Shore Free Press Ltd.

Specialty Publishers Inc.

Elty Publications Ltd.

Mark J. Nicholson

Counsel for the Respondent:

The Director of Investigation and Research

Stanley Wong

Kevin Wright

COMPETITION TRIBUNAL
REASONS FOR REVISED DIVESTITURE ORDER

Southam Inc. et al.

v.

The Director of Investigation and Research

At the hearing in this matter on October 16, 1998 the Tribunal heard the application and granted the order sought (the Revised Divestiture Order). Brief reasons were given orally. The following is the text of those reasons as edited.

By its Reasons and Order Regarding Application to Vary dated January 8, 1998,¹ the Tribunal dismissed the application brought by Southam Inc., Lower Mainland Publishing Ltd., Rim Publishing Inc., Yellow Cedar Properties Ltd., North Shore Free Press Ltd., Specialty Publishers Inc., and Elty Publications Ltd. to vary the Order Regarding Divestiture dated March 8, 1993.² The Tribunal summarized its reasons for dismissing the application as follows:

The evidence heard by the Tribunal leads to the conclusion that the applicants' proposed remedy carries with it high risk that the REW-NS will not be an effective competitor for print real estate advertising on the North Shore. Without repeating *in extenso* what we have already said, we have been presented with what, objectively, is a very weak proposal, which includes estimates and projections which the Tribunal finds neither credible nor realistic. The Tribunal is unable to accept a proposal with the level of risk of failure inherent in the applicants' proposal. The evidence put before the Tribunal falls short of proving, on a balance of probabilities, that the proposed divestiture of the REW-

¹ *Southam Inc. v. Director of Investigation and Research* (1998), 78 C.P.R. (3d) 341, [1998] C.C.T.D. No. 1 (QL).

² *Director of Investigation and Research v. Southam Inc.* (1993), 48 C.P.R. (3d) 224, [1993] C.C.T.D. No. 12 (QL).

NS to Mr. Delesalle would effectively remedy the substantial lessening of competition in the market for print real estate advertising on the North Shore.³

The Tribunal then added:

The Tribunal is not unmindful that the March 8, 1993 divestiture order does not focus strictly on the relevant geographic and product market, i.e., print real estate advertising on the North Shore. Perhaps it would not be inopportune for the Tribunal to observe that an effective remedy focused as directly as possible on the relevant geographic and product market is far preferable to one that overshoots the mark. Had the evidence on this application satisfied it that the proposed remedy would have been effective, the Tribunal would have had a strong inclination to grant the application.⁴

The parties have presented the Tribunal with a revised consent divestiture order which they submit has been motivated by an intention to provide an effective remedy focused on the relevant geographic and product market. The Tribunal is satisfied that the revised consent divestiture order is acceptable in meeting the concerns expressed by it in its Reasons and Order Regarding Application to Vary dated January 8, 1998. The revised divestiture order is granted.

DATED at Ottawa, this 16th day of October, 1998.

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

(s) Marshall Rothstein
Marshall Rothstein

³ *Supra* note 1 at 373

⁴ *Ibid.*