

Competition Tribunal



Tribunal de la Concurrence

CT - 1995 /001 – Doc # 2

IN THE MATTER OF an application by the Director of Investigation and Research
under sections 100 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF the proposed acquisition by Quebecor Printing Inc.
of the totality of shares of Maclean Hunter Printing Limited and
its subsidiary 1074353 Ontario Inc., Litho Plus Limited,
The Jasper Printing Group Ltd. and Templeton Studio Ltd.

B E T W E E N:

The Director of Investigation and Research

Applicant

- and -

Quebecor Printing Inc.

Respondent



CONSENT INTERIM ORDER

Date of Hearing:

January 16, 1995

Presiding Member:

The Honourable Mr. Justice William P. McKeown

Counsel for the Applicant:

Director of Investigation and Research

François Rioux
André Dorion

Counsel for the Respondent:

Quebecor Printing Inc.

Réal A. Forest
Robert Paré

COMPETITION TRIBUNAL

CONSENT INTERIM ORDER

The Director of Investigation and Research

v.

Quebecor Printing Inc.

FURTHER TO the application of the Director of Investigation and Research ("Director") pursuant to sections 100 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34 ("Act") to preserve, during the course of the Director's investigation of the acquisition (as hereinafter defined), each of the businesses (as hereinafter defined) as independent, viable, ongoing and competitive businesses and to preserve the Competition Tribunal's ability to order appropriate relief pending final disposition by the Tribunal of a possible application pursuant to section 92 of the Act;

AND ON READING the notice of application for an interim order on consent, the statement of grounds and agreed material facts, the affidavit of André Brantz sworn on January 16, 1995 and the exhibits thereto, the Director's memorandum of argument on interim relief and the draft consent order and the schedules attached thereto, all of which were filed on January 16, 1995;

AND ON HEARING the submissions of counsel for the parties on January 16, 1995;

AND ON CONSIDERING that the Director and the respondent have reached a settlement which is reflected in the draft consent order;

AND IT BEING UNDERSTOOD by the parties that nothing in these proceedings shall be taken as an admission now or in the future by the respondent or the Director of any facts, submissions or legal arguments for any other purposes, including an application under sections 92, 100, 104 or 106 of the Act;

AND IT BEING FURTHER UNDERSTOOD that should the transaction close, the respondent agrees that the terms of this consent order will bind the acquired companies.

THE TRIBUNAL ORDERS THAT:

Definitions

1. For the purposes of this interim order, the following definitions shall apply:
 - (a) "Acquired companies" means MHPL, Jasper, Templeton, Litho and 1074353 and "acquired company" means any one of them (identified by the context of use);
 - (b) "Acquisition" means QPI's acquisition of all of the issued and outstanding shares of MHPL, Litho, Jasper, Templeton and 1074353 currently held by RCI;
 - (c) "Businesses" means the printing businesses and other related businesses carried

on by the acquired companies and purchased by QPI and "business" means any one of them (identified by the context of use);

(d) "Confidential information" means competitively sensitive or proprietary information of the businesses other than information which is known to QPI from sources other than the acquired companies;

(e) "Divest" means to sell, transfer, assign, grant any option for the purchase of, pledge or otherwise dispose of or encumber;

(f) "Interim period" means, subject to paragraph 19 of this interim order, the period of time commencing on the date of this interim order and ending on February 6, 1995;

(g) "Jasper" means The Jasper Printing Group Ltd.;

(h) "Litho" means Litho Plus Limited;

(i) "Managers" means the managers of the acquired companies, set forth in Schedule A;

(j) "MHPL" means Maclean Hunter Printing Limited;

(k) "Monitor" means the monitor to be appointed to monitor compliance of the businesses within the terms of this interim order;

- (l) "Person" means any natural person, corporation, association, firm, partnership or other business or legal entity;
- (m) "Printing contract" means the Maclean Hunter Canadian Publishing Printing Contract executed between Maclean Hunter Publishing Limited and MHPL;
- (n) "QPI" means Quebecor Printing Inc.;
- (o) "QPI group" means QPI and all of its directly and indirectly-owned subsidiaries;
- (p) "RCI" means Rogers Communications Inc.;
- (q) "Templeton" means Templeton Studios Limited;
- (r) "1074353" means 1074353 Ontario Inc.

Maintain Current Ownership

- 2. QPI shall not directly or indirectly divest its interests in the businesses and none of QPI or any of the acquired companies shall directly or indirectly divest any shares of any body corporate which owns or operates any of the businesses.
- 3. None of QPI or any of the acquired companies shall issue, or cause to be issued, any additional equity securities, or rights or options to acquire additional equity securities, of any of

the acquired companies, amend the articles, by-laws, memoranda or other constating documents of any of the acquired companies, or do any other act which may directly or indirectly alter the ownership of the acquired companies or the businesses from that which existed on December 22, 1994, without the consent of the Director.

Recognition of Corporate Responsibilities and Competitiveness of the Businesses

4. QPI has established high standards of conduct with regard to its dealings with customers, suppliers, employees and shareholders. Insofar as such standards of honesty, integrity and fairness are consistent with sound public policy, QPI shall cause, to the extent permitted herein, the acquired companies to:

(a) adhere to the QPI Code of Business Conduct, appended hereto as Schedule B, and in particular to comply strictly with all laws and regulations and to maintain its highest ethical standards;

(b) adhere to the QPI Enviro-Printer Policy and Practices, appended hereto as Schedule C, regarding the protection of the environment and the responsible use of natural resources;

(c) adhere to all provisions of the Act and in particular to strictly avoid any act that may be or may be perceived to be anti-competitive including collusive activities, price

discrimination, engaging in a policy of selling below cost, refusing to supply or any other prohibited activity; and

(d) otherwise generally carry on their businesses in the ordinary course of business in accordance with generally prevailing industry standards and strive to maximise the profit of the businesses in the interim period.

5. QPI shall cause, to the extent permitted in this interim order, the acquired companies to, and each of the acquired companies shall:

(a) use best efforts to preserve and enhance the goodwill of the businesses;

(b) use best efforts to maintain each of the businesses at least the same level of competition as existed prior to December 22, 1994;

(c) take all commercially responsible steps to honour the printing contract and provide quality, service, delivery standards, sharing of efficiencies and any and all terms and conditions of substance for the customer; this obligation shall also extend to all other printing contracts of the acquired companies;

(d) use best efforts to enhance the competitiveness of each of the businesses without regard to whether its competitors are members of the QPI group; and

(e) not knowingly take any action that adversely affects the competitiveness, assets, operations or financial status of any of the businesses.

6. In particular, but without limiting the generality of paragraphs 4 and 5, QPI shall not cause the acquired companies to, and none of the acquired companies shall, other than in the ordinary course of business or with the approval of the Director:

(a) divest any assets of any of the businesses to any person;

(b) reduce any aspect of the businesses' level of service to any customers;

(c) make any material changes to the financial arrangements of the businesses; save that, QPI shall be entitled to cause each acquired company to execute and deliver with Credit Suisse, as Canadian Agent and Lead Manager of QPI's banking syndicate, and adopt instruments required under the Canadian Credit Agreement dated as of April 15, 1994, namely the Canadian Guarantee Agreement, the Canadian Intercompany Notes and the Canadian Subordination Agreement envisaged therein, and to enter into any such documents and do such things that are provided for therein or as may be considered desirable to give effect to such agreements;

(d) curtail marketing, sales, promotional or other activities of any of the businesses in connection with the solicitation of existing or prospective customers; and

(e) except as is contemplated by the terms of this interim order, terminate or alter any current employment, salary or benefit agreements for any executive, managerial, sales or marketing personnel of any of the businesses.

Maintain Independent and Separate Businesses

7. QPI shall cause, to the extent permitted herein, the acquired companies to, and the acquired companies shall:

(a) take all steps necessary to ensure that each of the businesses is maintained as a separate and independent business;

(b) not take any steps toward integrating the assets, management, operations or books and records of any of the businesses with those of QPI or any other person; and

(c) maintain, in accordance with generally accepted accounting principles, separate and complete financial ledger books and records of material financial information for each of the respective businesses.

8. Subject to paragraph 19, QPI shall not directly or indirectly receive, have access to, or use any confidential information relating to the businesses, except as is necessary to comply with the terms of this interim order, and except for confidential financial information required by QPI and its accountants to prepare standard financial reports, if required.

9. None of the acquired companies shall divulge any confidential information relating to the businesses to any person, except as is necessary to comply with the terms of this interim order and except for confidential information required by QPI and its accountants to prepare standard financial reports, if required.

10. None of QPI or any of the acquired companies shall:

(a) enter into or withdraw from any contracts or arrangements in regard to the businesses or make any changes to their operation that would have the effect of materially inhibiting or unreasonably delaying the divestiture of the businesses or materially reducing the value of the businesses;

(b) without the consent of the Director, relocate, destroy or dismantle any fixed assets of any of the businesses unless, due to circumstances beyond the control of QPI or the acquired companies, a business is forced to move, relocate or dismantle any of its assets to preserve such assets and QPI has notified the Director; or

(c) enter into any agreement to lease any assets of the businesses, or real property occupied by the businesses, to any other person, without the consent of the Director.

Management

11. QPI and the acquired companies shall not alter, or cause to be altered, the boards of

directors, officers or managers of any of the acquired companies, as set forth in Schedule A, except:

(a) to replace directors, officers and managers who have voluntarily resigned, died or become disabled or whose office or employment has been terminated; or

(b) as is permitted hereunder or as is necessary to comply with the terms of this interim order;

provided, however, that no replacement director, officer or manager shall be appointed or elected without the consent of the Director.

12. Each of the acquired companies shall not appoint and shall remove from office any director, officer or manager who, at any time during the effectiveness of this interim order, serves as a director, officer or manager of any other company or business in QPI, save and except that directors of QPI representing a minority interest shall be allowed to serve as directors of the acquired companies. Further, independent directors of Quebecor Inc. or of its subsidiaries (excluding QPI which is governed by the preceding sentence) shall be allowed to act as directors of the acquired companies provided they are not directors, officers or managers of QPI.

However, said directors shall not divulge any confidential information to QPI save in extraordinary circumstances. In recognition of the fact that the purchase price for the acquired companies and the commitment of financial resources for the operation of the businesses shall be totally provided by QPI's Central Cash Management System, all cheques, credit instruments or

requests for funds shall be signed by the monitor and countersigned by a member of the board of directors of the acquired companies.

13. Each of the acquired companies and QPI shall provide a copy of this interim order to the managers of their respective businesses and to the members of the board of directors of QPI and of the acquired companies and they shall direct the board of directors and managers to operate and manage the business in accordance with the terms of this interim order.

14. Subject to paragraphs 4 and 5, QPI shall not directly or indirectly seek any confidential information in connection with, or, without the consent of the Director, acting reasonably, exert or attempt to exert any influence, direction or control over, the managers or operational, sales, distribution, marketing or financial decisions of the businesses, including without limitation, decisions relating to:

- (a) printing rates;
- (b) production, printing, materials procurement, marketing, distribution and other costs;
- (c) contracts with third parties;
- (d) accounting procedures and other financial information;
- (e) strategic planning; and

(f) administration.

Monitor

15.(1) QPI shall cause Matthew Fyfe to be appointed to act as a monitor for each respective business of the acquired companies. Mr. Fyfe shall be responsible for monitoring each such business as is necessary to ensure compliance with this interim order.

(2) In the event that Mr. Fyfe (or any replacement for Mr. Fyfe) is unable to perform his duties under the terms of this interim order because of death, disability, termination for cause, or any other reason, QPI shall appoint, subject to the Director's approval, a new monitor (who may be an employee of QPI or of any of its affiliates) for each business within five business days. The same individual or different individuals may be appointed to act as the monitor for each of the acquired companies. Should a new monitor not be so appointed, the Tribunal, upon application of the Director, may appoint a new monitor on behalf of the acquired company.

(3) If, in the Director's reasonable opinion, a monitor is not fulfilling the obligations of the monitor pursuant to this interim order, the Director may request that the acquired company for which such monitor is acting appoint a new monitor who shall be subject to the Director's reasonable approval. If a new monitor has not been appointed within five business days, the Director may apply to the Tribunal for such an appointment.

(4) All remuneration and expenses of the monitor, if any, shall be paid by the Director, provided that if such monitor is an employee of QPI or a current employee of the acquired companies, QPI shall pay for all remuneration and expenses of such particular monitor.

(5) Each monitor shall be permitted to perform his regular duties in addition to his duties as monitor to the extent permitted in this interim order, provided such monitor is an employee of QPI or of an affiliate of QPI.

(6) Each of the acquired companies shall give its monitor unlimited access to:

(a) its premises and its business;

(b) any information relating to its operations and assets and its business; and

(c) meetings of its management;

as is required by the monitor to fulfil his obligations pursuant to the terms of this interim order.

(7) None of QPI or the acquired companies shall exert or attempt to exert any influence, direction or control over the monitor which has or could have the effect of adversely affecting the discharge of his duties under the terms of this interim order.

16. Each of the acquired companies, as the case may be, shall direct its monitor to discharge his responsibilities on the following terms:

(a) in the event that a monitor determines, in his reasonable opinion, that QPI or an acquired

company is in default of any of the terms of this interim order the monitor shall notify the Director and QPI of such breach;

(b) the monitor shall not consult with QPI or any other member of the QPI group except as is necessary to ensure compliance with this interim order;

(c) the monitor shall not communicate confidential information about the acquired companies or the businesses to any person except to the extent required by the terms of this interim order;

(d) the Director shall have the right to request from the monitor from time to time, and forthwith upon such request the monitor shall provide to the Director and to QPI, a written report relating to an acquired company's compliance with the terms of this interim order;

(e) the monitor shall not be subject to personal liability for any breach by him or by any of the acquired companies, QPI or any of their affiliates.

General

17. Notices, reports or other communications required or permitted pursuant to this interim order shall be in writing and shall be given by personal delivery to the party to whom such notice is to be given or by registered mail or telecopier to the address or telecopier number below:

If to the Director:

Director of Investigation and Research
Bureau of Competition Policy
50 Victoria Street
Hull, Quebec K1A 0C9

If to the respondent:

Quebecor Printing Inc.
612, St-Jacques Street
Montreal, Quebec H3C 4M8

Attention: Chairman of the Board and Chief Executive Officer
President and Chief Operating Officer
Vice-President Legal Counsel and Secretary

18. In the event that the Director's approval is sought pursuant hereto and such approval is not granted, or if a decision of the Director is unreasonably delayed or withheld, the respondents may apply to the Tribunal for directions.

19. Except as provided otherwise herein or as may be otherwise ordered by the Tribunal, this interim order shall terminate on the earlier of the end of the interim period or the date the Director notifies QPI that he does not intend to challenge the acquisition or any portion thereof, as the case may be, under the Act, in which case the interim period shall be abridged to such date for the purposes of this interim order. When such notification regards less than all of the acquired companies or less than all of the businesses, this interim order shall continue to apply only to those acquired companies or businesses for which a challenge under the Act is reserved under the said notification.

20. Nothing in this interim order prohibits the obtaining and use of confidential information by any respondent or other person for the purposes of any application to the Tribunal or any other legal recourse that may be instituted.

DATED at Ottawa this 16th day of January, 1995.

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

(s) W.P. McKeown

W.P. McKeown