

Competition Tribunal



Tribunal de la Concurrence

CT - 1990 / 001 – Doc #295a

IN THE MATTER of an application by the Director of Investigation and Research for orders pursuant to section 92 of the *Competition Act*, R.S.C., 1985, c. C-34, as amended;

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

B E T W E E N:

The Director of Investigation and Research

Applicant

- and -

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

Respondents



ORDER REGARDING DIVESTITURE

Date of Hearing:

January 29, 1993

Presiding Member:

The Honourable Mr. Justice Max M. Teitelbaum

Lay Members:

Dr. Frank Roseman
Mr. Victor Clarke

Counsel for the Applicant:

Director of Investigation and Research

Stanley Wong
Mary L. Ruhl

Counsel for the Respondents:

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

Glenn F. Leslie
John J. Quinn

COMPETITION TRIBUNAL
ORDER REGARDING DIVESTITURE

WHEREAS the Tribunal has determined that the acquisition by the respondents of the *North Shore News* and the *Real Estate Weekly* resulted in a likely substantial lessening of competition in the print real estate advertising services market on the North Shore of the Lower Mainland of British Columbia and has required the respondents to divest, at their option, either the *North Shore News* or the *Real Estate Weekly*;

UPON HEARING the submissions of counsel for the parties with respect to the terms of the divestiture;

AND FURTHER TO the Reasons and Order, dated June 2, 1992, and the Reasons and Decision Regarding Remedy, dated December 10, 1992;

THE TRIBUNAL ORDERS THAT:

DEFINITIONS

1. For the purposes of this order the following definitions shall apply:

"Director" means the Director of Investigation and Research;

"LMPL" means Lower Mainland Publishing Ltd.;

"*North Shore News* business" means the business of publishing and distributing the *North Shore News* (including the Homes real estate supplement) which is carried on by the respondent North Shore Free Press Ltd. and the assets used in or necessary to the business that a purchaser wishes to acquire. For greater certainty, the assets used in or necessary to the business include, but are not limited to, the following:

- (a) the *North Shore News* trade mark and trade name and all other trade marks used in the business;
- (b) advertising lists, rate cards, customer lists, accounting and administrative information, computer data bases and all ancillary proprietary software required to access such data bases, files, information and know-how;

- (c) supply contracts, printing contracts, distribution contracts and other material contracts or arrangements;
- (d) inventory, leases and all other assets, interests and personal property;

"*Real Estate Weekly* business" means the business of publishing and distributing all editions of the *Real Estate Weekly* and *New Homes and Developments* which is carried on through the respondent Elty Publications Ltd. and the assets used in or necessary to the business that a purchaser wishes to acquire. For greater certainty, the assets used in or necessary to the business include, but are not limited to, the following:

- (a) the *Real Estate Weekly* trade mark and trade name and all other trade marks used in the business;
- (b) advertising lists, rate cards, customer lists (both realtors and agents), accounting and administrative information, computer data bases and all ancillary proprietary software required to access such data bases, files, information and know-how;
- (c) supply contracts, printing contracts, distribution contracts and other material contracts or arrangements;

- (d) inventory, leases and all other assets, interests and personal property.

DIVESTITURE BY RESPONDENTS

2. (1) The respondents shall use their best efforts to divest, within 180 days after the date on which this order takes effect, either the *North Shore News* business or the *Real Estate Weekly* business, at their option.

(2) The period set out in subparagraph 1 may be extended with the consent of the Director or by further order of the Tribunal.

3. The divestiture shall be accomplished in a manner which ensures that the purchaser:

- (a) is buying the business for the purpose of competing effectively in the North Shore print real estate advertising services market; and
- (b) has the managerial, operational and financial capability to compete effectively in the North Shore print real estate advertising services market.

4. The Director shall have the right to approve or to object to the proposed purchaser. If the Director objects to the proposed purchaser, the respondents may apply to the Tribunal for an order approving the proposed divestiture.

5. The divestiture shall be accomplished by the sale of shares or by the sale of assets, with the result that none of the respondents has any remaining interest, whether direct or indirect, in the divested business.

6. The divestiture shall be effected through the sale of the business to be divested as a going concern.

7. The divestiture shall be effected by way of a disposition to a purchaser who is arm's length to each of the respondents.

8. (1) The divestiture shall be carried out in a manner that provides a fair opportunity to potential purchasers to obtain notice of the sale and to acquire the business to be divested.

(2) A bona fide prospective purchaser shall be furnished, subject to the execution of a customary confidentiality agreement, with all information regarding the business to be divested which is reasonably required to assess the

financial viability and prospects of the business. The information shall also be provided to the Director.

(3) A bona fide prospective purchaser shall be permitted to make such inspection of the premises and of all financial, operational or other documents or other information as is reasonably required to further assess the financial viability and prospects of the business to be divested.

9. The respondents may request that the Director review a preliminary list of proposed purchasers. The Director shall, within three business days after the request, communicate to the respondents any objection to a person on the list. Failure to object to a person pursuant to this paragraph does not prejudice the right of the Director to refuse to approve the eventual proposed purchaser.

10. The respondents shall, within three business days after a request by the Director, provide the Director with a written report on the progress of their efforts to accomplish the divestiture. The report shall include a full description of any substantive contacts, negotiations and offers regarding the business to be divested and the identity of the persons involved.

11. The respondents shall maintain a complete and detailed record of all efforts made to accomplish the divestiture in a separate file. The respondents shall provide access to the file to the Director or his representatives upon request.

TRUSTEE SALE

12. If the respondents have not completed the divestiture within the period set out in paragraph 2, including any extensions, the Director or the respondents may apply to the Tribunal for an order appointing a trustee ("Trustee").

13. Seven days prior to the expiry of the period set out in paragraph 2, including any extensions, the respondents shall provide the Director with the names of at least two persons acceptable to the respondents to be appointed as a trustee and the proposed terms and conditions of the appointment.

14.(1) The respondents shall, within five days after the appointment of the Trustee, elect which of either the *Real Estate Weekly* business or the *North Shore News* business will be offered for sale by the Trustee.

(2) If the respondents fail to make an election within the period set out in subparagraph (1), the Director shall elect which of the two businesses is to be offered for sale by the Trustee.

15. Forthwith after an election has been made pursuant to paragraph 14, the respondents shall transfer to the Trustee the authority to dispose of the business elected to be sold ("elected business").

16. The Trustee shall sell the elected business on the following terms ("Trustee Sale"):

- (a) Only the Trustee shall have the right to effect a sale, subject to the approval of the purchaser by the Director.
- (b) The Trustee shall have the full power and authority to effect the Trustee Sale and shall use all reasonable efforts to accomplish it.
- (c) The elected business shall be sold by the Trustee within 60 days of the Trustee's appointment, subject to an extension on the consent of the Director or by further order of the Tribunal, at the most favourable price and on the most favourable terms and conditions available.
- (d) The Trustee Sale shall be accomplished in accordance with paragraphs 3, 4, 5, 6, 7 and 8 of this order.

- (e) The Trustee shall have full and complete access to the personnel, books, records and facilities of the elected business. At the request of the Trustee, the respondents shall provide to the Trustee such financial or other information as is reasonably necessary to accomplish the Trustee Sale.

- (f) The respondents shall take no action to interfere with or impede the Trustee's accomplishment of the Trustee Sale. At the request of the Trustee, the respondents shall assist the Trustee in accomplishing the Trustee Sale.

- (g) Every 30 days after appointment, the Trustee shall provide a written report to the Director and to LMPL on the progress of the Trustee's efforts to accomplish the Trustee Sale. The report shall include a full description of any substantive contacts, negotiations and offers regarding the elected business and the identity of the persons involved.

- (h) The Trustee shall maintain a complete and detailed record of all efforts made to accomplish the Trustee Sale in a separate file. The Trustee shall provide access to the file to the Director, the respondents or their representatives upon request.

- (i) The Trustee shall serve at the cost and expense of the respondents, on such reasonable and customary terms and conditions as the Tribunal may set. The Trustee shall have the authority to employ, at the cost and expense of the respondents, such accountants, lawyers, appraisers and other persons as are reasonably necessary to accomplish the Trustee Sale.

- (j) Upon completion of the Trustee Sale, the Trustee shall account for all monies derived from the sale and all expenses incurred. The expenses of conducting the Trustee Sale, including all expenditures of the Trustee, shall be reasonable in the circumstances and shall be subject to review by the Tribunal at the request of the respondents. Upon approval by the Tribunal of the account of the Trustee, including fees for his services, the account shall be paid from the proceeds of the sale and all remaining monies shall be paid at the direction of LMPL and the Trustee's power shall be terminated.

- (k) If the Trustee ceases to act or fails to act diligently, upon the application of the Director or the respondents a substitute trustee shall be appointed by the Tribunal.

- (1) The Trustee shall have such other powers as the Tribunal may deem appropriate.

17.(1) If the Director objects to the purchaser proposed by the Trustee, the respondents may apply to the Tribunal for an order approving the Trustee Sale.

(2) The respondents may object to the proposed Trustee Sale solely on the grounds of the Trustee's malfeasance, gross misconduct or contravention of any of the terms of this order. If the respondents object to the proposed Trustee Sale, the Director may apply to the Tribunal for an order approving the proposed Trustee Sale.

18. If the Trustee has not accomplished the Trustee Sale within 60 days of his appointment, the Trustee shall promptly file with the Tribunal, on a confidential basis, a report setting forth:

- (a) the Trustee's efforts to accomplish the required divestiture;
- (b) the reasons, in the Trustee's judgment, why the required divestiture has not been accomplished; and
- (c) the Trustee's recommendations.

The Trustee shall at the same time furnish the report to the Director and LMPL. After the report of the Trustee is received, the Director or LMPL may apply to the Tribunal for any further order to carry out the purpose of the divestiture.

NOTIFICATION

19. The respondents or the Trustee, whichever is then responsible for effecting the divestiture or Trustee Sale required by this order, shall notify the Director of any proposed divestiture or Trustee Sale. If the Trustee is responsible, it shall similarly notify LMPL.

20. The notice referred to in paragraph 19 shall include:

- (a) the details of the proposed transaction;
- (b) information concerning whether the proposed purchaser would satisfy the terms of paragraph 3;
- (c) an update to the last report provided pursuant to paragraph 10 or subparagraph 16(g); and

- (d) the agreement of the proposed purchaser that it will respond within seven days to a request by the Director for additional information regarding the proposed divestiture or Trustee Sale.

21. Within seven days after receipt of the notice of the proposed divestiture or Trustee Sale, the Director may request additional information concerning the proposed divestiture or Trustee Sale and the proposed purchaser which is reasonably necessary to fully assess the proposed transaction. The respondents, the Trustee or the proposed purchaser, as the case may be, shall respond to the request within seven days of the receipt of the request unless the Director agrees in writing to extend the time.

22. Within seven days after receipt of the notice of the proposed divestiture or Trustee Sale or, if the Director has requested additional information pursuant to paragraph 21, within 21 days after receipt of the notice, the Director shall notify in writing LMPL and the Trustee, if there is one, if he objects to the proposed divestiture or Trustee Sale and the reasons for his objection.

23. Subject to paragraph 24, if the Director fails to object within the period set out in paragraph 22 or if the Director notifies in writing LMPL and the Trustee, if there is one, that he does not object, then the divestiture or Trustee Sale, as the case may be, shall be completed.

24. Within seven days after receipt of the notice of a proposed Trustee Sale, the respondents shall notify the Director and the Trustee in writing if they object to the proposed Trustee Sale pursuant to subparagraph 17(2) and the grounds for their objection.

25. LMPL or the Trustee, as the case may be, shall notify the Director forthwith after a divestiture or Trustee Sale required by this order has been completed.

26. When notice is required to be given pursuant to any of the terms of this order, it shall be considered given if delivered, sent by registered mail or facsimile addressed to the party or parties to whom it is to be given at the following address:

(a) If to the Director to:

Director of Investigation and Research
Bureau of Competition Policy
21st Floor, Place du Portage, Phase 1
50 Victoria Street
Hull, Quebec
K1A 0C9
Facsimile No.: (819) 953-6169

With a copy to:

Davis & Company
2800-666 Burrard Street
Vancouver, B.C.
V6C 2Z7
Facsimile No.: (604) 687-1612
Attention: Stanley Wong

- (b) If to the respondents or to LMPL to:

Lower Mainland Publishing Ltd.
Suite 1700
1030 West Georgia Street
Vancouver, B.C.
V6E 2Y3
Facsimile No.: (604) 879-1483

Attention: Sam Grippo

With a copy to:

Blake, Cassels & Graydon
Box 25, Commerce Court West
Toronto, Ontario
M5L 1A9
Facsimile No.: (416) 863-2653

Attention: Glenn F. Leslie

- (c) If to the Trustee to:

Such address as is provided to LMPL and the Director by the
Trustee.

Any such notice or other document shall, if delivered or transmitted by facsimile, be deemed to have been given and received on the business day next following the date of sending, and if mailed, be deemed to have been given and received on the third business day following the date of mailing.

COMPLETION OF DIVESTITURE

27. The divestiture or Trustee Sale shall be considered to be completed when all right, title and interest of the respondents in either the *North Shore News* business or the *Real Estate Weekly* business has been conveyed to a purchaser in accordance with the terms of this order.

POST-DIVESTITURE

28. Following divestiture by the respondents or the Trustee Sale, none of the respondents, their agents or representatives shall acquire the business divested or sold or any part of the business for a period of ten years.

CONFIDENTIALITY

29. The Director, the respondents and the Trustee, if any, shall keep confidential among the Director, the respondents and the Trustee, if any, and their respective advisors, the identities of all prospective purchasers and all persons expressing an interest in purchasing the business to be divested or sold as well as the details of their offers and expressions of interest.

30. After the completion of the divestiture or Trustee Sale, both the Director and the respondents shall be entitled to make public announcements of the divestiture or sale and the identity of the purchaser.

JURISDICTION

31. Either the respondents or the Director may apply to the Tribunal at any stage of the divestiture or Trustee Sale for directions or such other order as may be appropriate.

32. The Tribunal shall retain jurisdiction in this matter for the purpose of addressing any matters in this order where specific reference is made to the Tribunal, for purposes of variation and for any other purposes provided for in the *Competition Act*.

DATED at Ottawa, this 8th day of March, 1993.

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

(s) M.M. Teitelbaum
M.M. Teitelbaum