

THE COMPETITION TRIBUNAL

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 :

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED	JULY 15 1991 <i>AB</i>
REGISTRAR - REGISTRAIRE	
OTTAWA, ONT.	* 129

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.

AMENDED RESPONSE

(Filed pursuant to an Order of Mr. Justice
Teitlebaum made July 4, 1991)

A. STATEMENT OF GROUNDS ON WHICH THE APPLICATION IS OPPOSED

The Respondents Southam Inc. ("Southam"), Lower Mainland Publishing Ltd. (the "LMPL"), RIM Publishing Inc., Yellow Cedar Properties Ltd., North Shore Free Press Ltd., Specialty Publishers Inc. and Elty Publishers Ltd. (collectively the "Respondents") oppose the Notice of

Application as amended on July 8, 1991 (the "Application") of the Director of Investigation and Research (the "Director") on the following grounds:

1. The direct and indirect acquisitions (the "Acquisitions") by Southam, the publisher of the Province and the Vancouver Sun (collectively the "Southam Dailies"), of controlling interests in the publishing businesses of the Courier and the North Shore News (collectively the "LMPL Papers") and the Real Estate Weekly (the "REW") do not, and are unlikely to prevent or lessen competition substantially in any relevant market in Canada.

2. The Respondents deny that "newspaper retail advertising services" or that "multi-market newspaper retail advertising services" is a relevant product market. The Southam Dailies, which are daily newspapers, serve distinctly different markets than each of the LMPL Papers, which are community newspapers. The two types of publications cater to different needs of both readers and advertisers and serve different geographic markets.

3. To the limited extent that there is competition between the Southam Dailies and either the LMPL Papers individually or as part of the Vancouver Area Newspaper Network

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("VanNet") for retail advertising, there are numerous media in the Lower Mainland competing very effectively for such advertising. The presence of these available substitutes means that effective competition will remain for both the Southam Dailies and the LMPL Papers in each of their relevant markets subsequent to the Acquisitions.

4. The Respondents deny that "print real estate advertising" is a relevant product market. There is minimal competition between the Southam Dailies, which are mass media, and the REW, which is highly location-selective. The Southam Dailies serve different advertisers, different advertising needs and different geographic markets than the REW.

5. To the extent that the REW competes with the North Shore News for real estate advertising, the countervailing market power of real estate advertisers and the availability of substitutes make it unlikely that the REW will be able to exert increased market power in the North Shore subsequent to the Acquisitions.

6. In any event, the merger provisions of the Competition Act and the relevant provisions of the Competition Tribunal Act infringe Sections 2, 7, 11 and 15 of the Charter of Rights and are not saved by Section 1 thereof, and violate Sections 1 and

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2 of the Canadian Bill of Rights, and are ultra vires Parliament as contrary to Sections 96 to 101 of the Constitution Act, 1867.

B. MATERIAL FACTS ON WHICH THE RESPONDENTS RELY

I. Overview and Background

(i) Overview of Lower Mainland Newspaper Industry

7. The Respondents accept the definition of the Lower Mainland set forth in paragraph 3 of the Statement of Grounds and Material Facts filed with the Application (the "Statement"). The Vancouver Metropolitan Area ("VMA") is sometimes referred to as well in this Response because some of the data relied upon by the Respondents relate specifically to that area. The VMA is the Greater Vancouver Regional District and the surrounding communities of Abbotsford, Langley, Matsqui, Sumas, Dewdney, Maple Ridge, Mission and Pitt Meadows. The VMA comprises about 580,900 households.

8. The Respondents accept the definition of community newspapers in paragraph 5 of the Statement with the following qualifications:

- (a) community newspapers in the Lower Mainland are distributed solely on the basis of geographic location;
- (b) other community newspapers in the Lower Mainland, such as the Burnaby/New Westminster News and the Surrey/North Delta Leader (both owned by Hacker Press Inc. ("Hacker")), have circulations comparable to that of the LMPL Papers; and
- (c) unlike the circulation of a daily newspaper, which is dependent upon the number of readers who wish to purchase that product, the circulation of a controlled distribution community newspaper is determined solely by its publisher.

9. The Respondents admit the allegation in paragraph 6 of the Statement as it applies to special-interest newspapers. A special-interest newspaper focuses upon a specific subject matter rather than a specific community. Moreover, special-interest newspapers are distributed on bases other than geographic location including age, gender and income levels. The Respondents have no knowledge of what constitutes a "general" newspaper.

(ii) Summary of the Acquisitions

10. The Respondents admit that paragraphs 7 to 21 and 131 of the Statement are substantially correct, except that:

- (a) the operations of The Richmond News and The Richmond Times have been combined; and
- (b) Southam acquired the remaining outstanding shares of North Shore Free Press Ltd. from Yellow Cedar Properties Ltd. and transferred them to LMPL on February 1, 1991.

(iii) Description of the Parties

11. The Respondents admit the allegations in paragraphs 22 to 30 of the Statement, except that:

- (a) the head office of Southam is at 150 Bloor Street West, Suite 910, Toronto, Ontario, M5S 2Y9; and
- (b) Yellow Cedar Properties Ltd. no longer owns any issued and outstanding common shares of North Shore Free Press Ltd.

(iv) Description of Newspaper Advertising

12. The Respondents deny that newspaper advertising constitutes a relevant product market for the purpose of analyzing any competitive implications of the Acquisitions. However, the Respondents admit that the description of newspaper advertising as set out in paragraphs 31-34 is substantially correct. With respect to paragraph 33 of the Application, the Respondents further state that:

- (a) National advertisers comprise manufacturers and distributors of brand name consumer products, governments and institutions. Such advertisers generally utilize advertising to promote the image of a product or service, or of the company, institution or government itself to a large audience;
- (b) Retail advertisers promote the purchase or use of a product or service at a particular location. "Major" retailers have multiple outlets, or single outlets, which draw customers from a substantial portion of the Lower Mainland. Major retailers must be distinguished from "local" retailers, which generally have only one outlet serving a local trade area.

13. The Respondents deny paragraphs 35 and 36 of the Statement.

II. The Southam Dailies and the LMPL Papers are in Different Markets

14. The Respondents deny that there is any substantial competition between the Southam Dailies and the LMPL Papers either for readers or for advertisers as alleged in paragraphs 38, 40, 90, 92 and 133 of the Statement. Accordingly, the acquisitions by Southam of the LMPL Papers cannot result in a substantial lessening of competition in any relevant market.

15. The Respondents admit that the Courier is a community newspaper published in a tabloid format twice a week and that the North Shore News is a community newspaper published in tabloid format three times a week as alleged in paragraphs 52, 54, 104 and 151 of the Statement. With respect to paragraphs 40 and 92 of the Statement, the Respondents state that the Southam Dailies serve the VMA and beyond and that The Globe & Mail is another daily newspaper in the same geographic market.

News and Editorial Content

16. From a reader's perspective, the Southam Papers and the LMPL Papers are not substitutable. Readers generally

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perceive the Southam Papers and the LMPL Papers as providing different types of news and editorial comment.

17. The Southam Dailies, like most daily papers serving large metropolitan areas, have a number of characteristics which distinguish them from community newspapers. These include their content, frequency of publication, and circulation. The Southam Dailies attract a general readership within the Lower Mainland and beyond by transmitting information with broad appeal. The Southam Dailies offer readers a unique cluster of services combined in one package. They provide a daily written record of current events (international, national and regional) in a more in-depth fashion than any other media.

18. The Southam Dailies carry community-level stories only to the extent that they might be of interest to their readership as a whole. The Southam Dailies also contain current reference information including stock market and weather reports, sports results, entertainment listings, and syndicated items such as comics and columnists. The Respondents admit the allegations regarding the content of the Southam Dailies made in paragraphs 43, 48, 95, 100, 141 and 143 of the Statement.

19. The news and editorial content of the LMPL Papers, like that of other community newspapers, is generally not as time sensitive and is limited predominantly to matters of local interest. Sports and entertainment items are carried only to the extent they are of local interest. The LMPL Papers also do not normally carry many of the features of daily newspapers such as stock market quotations and weather reports. The Respondents admit the allegations made regarding the content of the LMPL Papers set forth in paragraphs 55, 56, 106 and 107 were correct as of July, 1990, except that the Respondents have no knowledge as to what is meant by "consumer-useful advertising" in paragraph 56 of the Statement.

Operations and Organization

20. There are significant operational differences between the Southam Dailies and the LMPL Papers. The Southam Dailies employ about 1,500 employees to maintain extensive reporting and editorial departments which can deliver news under extreme time pressures, print (at their dedicated printing plant) and distribute a large number of papers on a daily basis, and maintain subscriber services and newspaper boxes, among other things.

21. The LMPL Papers are organized much differently from the Southam Dailies. The North Shore News has 94 full-time

employees; the Courier has 46 full-time employees. The LMPL Papers are not subject to the same time pressures as the Southam Dailies, nor do they need to support an extensive news and editorial bureau because their news content is focused on local and neighbourhood events; they obtain this news using a small number of full and part-time reporters. The LMPL Papers do not require the same infrastructure as the Southam Dailies because both the Courier and the North Shore News are presently printed under contract with outside printers. Further, they do not incur the costs of maintaining subscriber services and coin newspaper boxes.

Circulation Characteristics

22. The Southam Dailies and the LMPL Papers serve different geographic markets. The geographic market for the news and editorial comment provided by the Southam Dailies extends across the Lower Mainland into the rest of British Columbia. The geographic market of the Courier is limited to parts of the City of Vancouver. The geographic market of the North Shore News is limited to the North Shore.

23. The Respondents admit paragraphs 140 and 142, but state that these do not set forth the relevant circulation data for the Southam Dailies. Both of the Southam Dailies are

throughout the Province of British Columbia. The average paid circulation of the SUN for the 12 month period ending September 30, 1989 was 216,528 copies (Monday-Thursday); 274,850 copies (Friday) and 279,276 copies (Saturday). The Province's average paid circulation for the same period was 183,027 copies (Monday-Friday) and 223,681 copies (Sunday). Approximately 14% of the Sun's and 24% of the Province's paid circulation was to areas of British Columbia outside the VMA.

24. The Respondents dispute the circulation data set out in paragraph 4 of the Statement, but otherwise are in essential agreement with the description of the Southam Dailies in paragraphs 4, 42, 47, 94 and 99. The Respondents further state that the circulation figures for the Southam Dailies in the City of Vancouver and North Shore alleged in paragraphs 42, 47, 94 and 97 of the Statement are rough approximations of the actual circulation by the Southam Dailies in the City of Vancouver and the North Shore for the relevant periods.

25. The Respondents admit that both of the LMPL Papers are controlled circulation publications delivered to confined geographic areas within the VMA as set forth in paragraphs 52, 54 and 104 of the Statement.

26. The Respondents admit that the Courier is circulated to parts of the City of Vancouver as stated in paragraph 53 of the Statement. The Respondents also admit that the population and household data set forth in paragraph 39 of the Statement is substantially correct. The Respondents further state that:

- (a) nearly 40% of the households in the City of Vancouver do not receive the Courier at all. The Wednesday edition of the Courier is circulated to only 1/3 of the households of the City of Vancouver, while the Sunday edition is circulated to only about 61% of the households in the City of Vancouver; and
- (b) the Courier suspended its plans for a Friday edition for reasons not connected with the Acquisitions.

27. The Respondents admit that the allegations in paragraphs 91, 104 and 105 are substantially correct and further state that the North Shore News is distributed only in the North Shore, but is now delivered to approximately 62,000 households.

28. The penetration levels of the Southam Dailies (i.e., the percentage of households reached in an area) are substantially lower than those of the LMPL Papers. In 1989,

The Sun and the Province had penetration levels in the VMA of about 33% and 25% respectively. The LMPL Papers have virtually 100% penetration in each of the limited geographic areas they serve. Penetration levels are of significant concern to advertisers.

Advertisers

29. The Southam Dailies and the LMPL Papers are, and are perceived by advertisers to be distinctly different advertising vehicles because of their different qualities (content, reader profiles, etc.), advertising rates and circulation characteristics (i.e. geographic coverage, penetration, etc.). The Southam Dailies are mass media which attract virtually all of their display advertising from national and major retail advertisers seeking a mass audience within the VMA and beyond. The LMPL Papers, which are location-selective media, attract advertising predominantly from local retailers who wish to transmit messages within their local trade areas.

30. National advertisers generally advertise in the Southam Dailies, rather than in the LMPL Papers, because the broad coverage the Southam Dailies provide more closely matches the large area of availability of their products or services. This enables national advertisers to take advantage of the

economies of scale in advertising offered by the Southam Dailies. National advertisers find it more cost effective to advertise in the Southam Dailies rather than in the numerous community newspapers or other location-selective media that would be required to reach the same broad geographic market. Moreover, national retailers are frequently attracted to the Southam Dailies by the socio-demographic characteristics of their readers.

31. The geographic coverage of the Southam Dailies is much greater than the trade area of any local retailer in the VMA. The cost of ads in the Southam Dailies reflects the large total circulation of these papers. It is prohibitively expensive for a typical local retailer in the VMA to advertise in one of the Southam Dailies to reach readers within its trade area because most of the circulation paid for is wasted.

32. The coverage of each of the LMPL Papers is much closer to the trade area of local retailers. The cost of ads in the LMPL Papers is significantly lower than in the Southam Dailies because of the more limited circulation of these papers. The LMPL Papers also provide 100% penetration in the areas in which they are circulated. Accordingly, the effective cost per person of reaching readers within an advertiser's trade area is much lower than would be the case in the Southam Dailies.

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33. In 1989, the Southam Dailies derived 2% or less of their display and flyer insert advertising revenue from local advertisers across the VMA. This means that only a minute portion of their respective advertising revenues came from local advertisers in the City of Vancouver and on the North Shore. In contrast, each of the LMPL Papers derived close to 2/3 of its display and flyer insert advertising revenues from local retail advertisers in its community.

34. Major retailers have trade areas which cover, at the least, a substantial portion of the VMA. Accordingly, major retailers spend significant amounts on advertising in mass media such as the Southam Dailies. However, major retailers with multiple outlets sometimes require advertising for individual outlets or to reach specific customers. To achieve these advertising objectives, major retailers also advertise in the LMPL Papers, but to a much more limited degree. This use of the LMPL Papers complements the advertising done in the Southam Dailies.

35. In 1989, the Sun and the Province derived over 50% and 55% respectively, of their display and flyer insert revenues from major retail advertising. In contrast, only about 1/3 of the revenues of the Courier and the North Shore News were derived from major retail advertising. To a large degree, this

use of the LMPL Papers by major retailers complements rather than replaces retail advertising in the Southam Papers.

Advertising Revenues

36. The Respondents admit that the revenue data set forth in paragraphs 44, 49, 96 and 101 are substantially correct. For the year 1989, the advertising revenue of the Province from display and flyer inserts was approximately \$27,449,000; the similar figure for The Sun was about \$65,818,000.

37. The Respondents admit that paragraphs 57 and 108 of the Statement are substantially correct. The Courier had display advertising and flyer insert revenues in 1989 of about \$4,407,000. The same figure for the North Shore News was \$6,970,000.

38. In 1989, the Sun and the Province derived approximately 43% (about \$28,000,000) and 40% (about \$11,000,000), respectively, of their display and flyer insert advertising revenues from national advertising. In contrast, the North Shore News and the Courier derived only 6% (about \$423,000) and 1% (about \$39,000) respectively of their display and flyer insert ad revenues in 1989 from national advertisers.

39. With respect to paragraphs 41 and 93 of the Statement, the Respondents deny that newspaper retail advertising services is a relevant market. Further, while the Respondents do not dispute the figures cited in paragraph 41, they state that the rates of growth in gross retail advertising revenues of the Courier and the Southam Dailies are unrelated.

40. With respect to paragraphs 45, 50, 97 and 102 of the Statement, the Respondents admit that between 1985 and 1989 the gross revenues derived by the Sun and the Province from retail display advertising and flyer inserts declined in percentage terms. However, the dollar revenues from such advertising actually increased by approximately 75% for The Province and remained stable for the Sun over that period.

41. The Respondents deny the allegations in paragraphs 46, 51, 98 and 103 of the Statement insofar as they allege that a percentage of the Southam Dailies' advertising revenues can be attributed to the City of Vancouver or the North Shore. Retailers predominantly purchase advertising in the Southam Dailies to obtain broad geographic coverage of the Lower Mainland and sometimes beyond, rather than to target any particular community within the Lower Mainland, such as parts of the City of Vancouver or the North Shore.

No Substantial Lessening of Competition

42. Daily newspapers in the Lower Mainland are in a different market than are the LMPL Papers. The market in which daily papers in the Lower Mainland compete is unaffected by the Acquisitions.

43. Community newspapers, such as the LMPL Papers, are in a different market than are the Southam Dailies. Further, each LMPL Papers serves a different geographic market. As a result, the LMPL Papers have not competed in the past with each other and it is highly improbable that they would have done so in the future, even if the Acquisitions had not taken place.

44. Consequently, the Respondents deny the allegations made in paragraphs 67 to 70 and 111 to 113 of the Statement. The acquisitions of the LMPL Papers by Southam have not led to, nor are likely to lead to, a substantial lessening of competition in any relevant market in Canada.

III. Media Competition for Advertising in the Lower Mainland

45. There are many different media available to retail advertisers in the Lower Mainland in addition to the Southam Dailies and the LMPL Papers. These media include radio,

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network television, cable television, magazines, other community newspapers, direct mail, free-standing flyers, shoppers, handbills, directories (including Yellow Pages), billboards and transit ads. Each advertising medium has distinct attributes for communicating with consumers. For this reason, many advertisers will utilize a mix of the available media in order to most effectively convey their advertising messages.

46. In 1989, display and flyer insert advertising expenditures in the Southam Dailies and in all community newspapers in the VMA accounted for only 25% (approximately) of total media advertising expenditures in the VMA.

47. The principal sources of competition for the Southam Dailies, as mass media, are network television and radio. Television, in particular, is a powerful competitor because it provides advertisers with wide geographic coverage and because it transmits both audio and video messages simultaneously. The Southam Dailies will continue to compete with other mass media after the Acquisitions. The Respondents, therefore, deny the allegations in paragraphs 75, 76, 118 and 119 of the Statement as they relate to the Southam Dailies.

48. The LMPL Papers will continue to face vigorous competition for advertising revenue from other location-selective media such as other community newspapers, direct mail, free-standing flyers, shoppers, handbills, directories, billboards and transit ads. Accordingly, the Respondents deny the allegations in paragraph 76 and 119 of the Statement as they relate to the LMPL Papers.

49. The Courier will continue to compete with other community newspapers and special-interest newspapers after the Acquisitions. These community newspapers include the Kerrisdale Revue, which was omitted from the Statement, and those newspapers set forth in paragraphs 59 to 65 of the Statement. The Respondents also note that the Metro Vancouver News was recently expanded into two community newspapers, the East Vancouver News and the South Vancouver News. Other special-interest newspapers available in the City of Vancouver include the Metro Vancouver Buy & Sell, the Senior Advocate and the Financial Post.

50. The Respondents deny the allegations in paragraphs 66 and 85 of the Statement that other community newspapers and special-interest newspapers in the City of Vancouver do not represent substantial competition to the Courier. To one degree or another, the editorial content and advertising

content of these newspapers are similar to that of the Courier. Moreover, the geographic coverages of these papers overlap with that of the Courier.

51. In particular, the West Ender, the East Vancouver News and the South Vancouver News, all three of which are owned by Hacker, present the Courier with significant competition. The content and formats of these papers are similar to those of the Courier. The combined circulation areas of these Hacker papers overlap with 25% of the Courier's circulation in the West Side and all of its circulation in the East Side. Further, these Hacker papers are delivered to virtually as many households in the City of Vancouver as the Courier.

52. With respect to the circulation figures provided for the newspapers referred to in paragraphs 59 to 65 of the Application, the Respondents state that:

- (a) the West Ender has a circulation of 56,250
- (b) the Marpole Revue has a circulation of 9,100;
- (c) The Mount Pleasant Revue has a circulation of 2,200;
- (d) the South Vancouver Revue has a circulation of 16,600;

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- (e) the East Vancouver News has a circulation of 31,000 and the South Vancouver News has a circulation of 31,500; and, in addition

- (f) the Kerrisdale Revue has a circulation of 1,000.

53. As to paragraph 52 of the Statement, the Respondents deny the Courier is one of the oldest and most successful community newspapers published in Canada. The Courier was put into receivership on August 26, 1979 and was bought from the receiver by its current management for \$10,000. The Respondents further state that the Courier is a typical community newspaper, contrary to the allegation in paragraph 58 of the Statement for the following reasons:

- (a) the Respondents have no knowledge of what constitutes the "core area of a major metropolitan area", but in any event, the geographic circulation of the Courier is not unique;

- (b) the Courier's circulation is not comparable to the circulation of either of the Southam Dailies, whether in terms of geographic coverage or penetration levels. Moreover, the Courier is distributed free of charge while the Southam Dailies are sought goods

which are paid for by readers;

- (c) the Courier is only one of a number of sources for news concerning the City of Vancouver; and
- (d) The Courier's readership levels do not differ significantly from those of other community newspapers in the City of Vancouver, such as the Echo.

54. The Respondents state that the North Shore News is also a typical community newspaper, contrary to the allegation in paragraph 109 of the Statement for the following reasons:

- (a) the fact that the North Shore News is published three times a week only indicates that there is sufficient demand by local advertisers to justify that number of editions per week. Further there are other community newspapers that are published as frequently as the North Shore News. The Richmond Review, for example, is published three times a week by Hacker;
- (b) the circulations of the North Shore News and of the Southam Dailies cannot be compared because the former is distributed free of charge while the latter are acquired only by paying customers;

- (c) the North Shore News is only one of a number of sources of news concerning the North Shore;
- (d) the Respondents deny that the North Shore News has achieved a significantly higher readership than other community newspapers.

55. The LMPL Papers will also continue to face competition from independent flyer distributors and Canada Post's Admail service.

56. Canada Post will remain a significant source of competition for flyer delivery for both LMPL Papers. Admail offers retailers a number of advantages. It permits advertisers additional cost savings by allowing the specification of distribution areas as small as a portion of a city block. Other advantages are flexible delivery schedules, competitive rates, and exclusive access to individual mail boxes in apartments.

57. The LMPL Papers face significant potential competition and the Respondents, therefore, deny that those papers will not be disciplined, inter alia, by the threat of future entry by competitors.

58. There are low entry barriers into the community newspaper business. This is attributable, in part, to recent developments in computerized typesetting and printing which have substantially lowered the cost of publishing such newspapers. The number of community newspapers is in constant flux because many publications are short-lived and new entries are common.

59. Hacker is a potential entrant into the markets served by the Courier and the North Shore News. Hacker owns the largest and oldest chain of community newspapers in the VMA. Hacker's fourteen community newspapers in the Lower Mainland already circulate in all significant communities in the VMA, except for the North Shore and West Side of the City of Vancouver. Moreover, Hacker has been expanding its chain in the recent past. In 1990, it purchased four newspapers, including the Undercurrent, the Richmond Review, the West Ender and the East Ender. It recently created the South Vancouver News which circulates in the City of Vancouver.

60. Media other than community newspapers also represent potential competition in the markets served by the LMPL Papers. Barriers to entry into the flyer and shopper distribution businesses are even lower than the barriers to entry into the community newspaper business.

61. The Respondents deny the allegations made in paragraphs 73, 75 to 87 and 116 to 130 and 132 of the Statement. With respect to paragraphs 87 and 130, advertisers allocate their advertising budgets between mass and location-selective media. The Southam Dailies, as mass media, compete for that segment of retailers' advertising budgets that are allocated to mass advertising. The LMPL Papers, on the other hand, compete with other location-selective media for the expenditures that retailers dedicate to geographically targetted advertising.

62. The current trend is for advertisers to allocate more funds towards location-selective advertising. This means that the proportion of the overall advertising budgets for which the Southam Dailies compete with other mass media is declining. Moreover, as the population of the Lower Mainland expands along the Fraser River Valley, and as the Southam Dailies expand their scope in step with that growth, they become less suitable for the location-selective needs of advertisers.

63. Within the location-selective category of media, new forms of advertising, such as direct mail and flyer delivery, are experiencing rapid growth. Thus, community newspapers, such as the LMPL Papers, will continue to face intense

competition from media that can deliver even more targetted groups of consumers than they can.

IV. Competition Between the Southam Dailies and Community Newspaper Networks in the Lower Mainland Retail Advertising Business

(i) Background and Relevant Market

64. With respect to paragraphs 136, 138 and 152 of the Statement the Respondents deny that newspaper advertising services, whether "multi-market" or otherwise, comprise a relevant service market for competition law purposes.

65. With respect to paragraph 136 and following of the Statement, the Respondents agree that only "multi-market" retailers (previously referred to by the Respondents as "major retailers") require advertising services which provide broad coverage of the Lower Mainland area as stated in paragraph 139 of the Statement. The Respondents have previously referred to these services as mass media. Moreover, the Respondents agree that the market for mass media is distinct from the markets for locational-selective media.

(ii) Market Participants

66. The Respondents admit paragraph 137 of the Statement, but state that some less affluent areas in the Lower Mainland are also located in the City of Vancouver and in the North Shore.

67. The Respondents deny paragraphs 149 and 150 of the Statement.

68. The Respondents admit that VanNet was formed in the fall of 1990, and that it is composed of the community newspapers named in paragraphs 144 and 145 of the Statement. The Respondents deny, however, that VanNet distributes any newspapers. VanNet is solely a cooperative advertising placement agency. All advertising solicitation, newspaper publication and distribution is conducted by the individual VanNet members.

69. The Respondents deny that the VanNet has comprehensive coverage of the Lower Mainland, as alleged in paragraph 146 of the Statement. VanNet does not offer a newspaper with distribution in White Rock or in the West End of the City of Vancouver.

70. The Respondents admit paragraphs 147 and 148 of the Statement, except that they have no knowledge of the combined distribution of MetroValley Newspaper Group ("MetroValley").

71. The purpose of VanNet and MetroValley (collectively the "Networks") is simply to facilitate multiple community newspaper buys. Since most local retailers' trading areas do not extend beyond the confines of a single community newspaper's distribution area, local retailers in the North Shore and City of Vancouver rarely make multiple buys.

72. Major retailers with a number of outlets in the Lower Mainland have a number of advertising objectives. They use mass media to reach the sum of their outlets' trading areas. They also use selective media to reach specific locations (e.g., individual trading areas) or specific audiences.

73. The Networks facilitate placing an advertisement in a number of community newspapers. Except for minor variations, however, the same advertisement must be placed in each newspaper selected. Hence, the Networks cannot serve the locational-selective demands of major retailers.

74. Numerous advertising vehicles exist in the Lower Mainland to service major retailers' demand for mass

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advertising, including television, radio, flyers and daily newspapers.

75. The Networks never have been, are not, and are not likely to provide an effective vehicle for mass media advertising in the Lower Mainland. The Networks are ineffective and undesirable as mass media for reaching the Lower Mainland for the following reasons, among others:

- (a) high total cost;
- (b) uneven quality of individual publications; and
- (c) perceived lack of verifiable readership of community newspapers.

76. With respect to paragraph 152 of the Statement, the Respondents deny that the Southam Dailies constitute a significant source of newspaper retail advertising for the North Shore alone. Further, the Respondents deny that MetroValley cannot offer advertisers newspaper retail advertising services in the North Shore. The North Shore News currently accepts MetroValley advertisements at MetroValley discount rates.

77. The Respondents admit paragraphs 153 and 154 of the Statement, except that they have no knowledge of the circulation of the West Ender and the Vancouver News. The Respondents further state that the circulation of each of the Southam Dailies, VanNet and MetroValley, are not comparable. Each offers a distinct purchase option to retailers, as each provides a different audience.

78. The Respondents admit paragraph 155 of the Statement, except that The Echo has not published a Sunday edition since April, 1991. The Respondents also state that the data presented in paragraph 155 of the Statement are meaningless because they combine measures of frequency of circulations with geographic coverage of circulation. If frequent repetition of an advertisement during a week is required by an advertiser, neither Network can provide this. Accordingly, the measure of combined weekly distribution is of no significance to major retailers.

79. The Respondents admit paragraph 156 of the Statement except that they have no knowledge of the circulation of the community newspapers which make up MetroValley. The Respondents further state that the combined weekly distribution is of no significance to retailers.

80. The Respondents deny paragraph 157 of the Statement. The MetroValley papers are distributed to approximately as many households on a weekly basis in the City of Vancouver as VanNet and more than either of the Southam Dailies.

81. The Respondents admit paragraphs 158 and 159 of the Statement. The West Ender, like all successful community newspapers, has tailored its news and editorial content to appeal to the community in which it operates. This fact increases the West Ender's attractiveness as an advertising vehicle.

82. The Respondents have no knowledge of paragraph 160 of the Statement.

83. The Respondents deny paragraph 162 of the Statement. Each of the VanNet and MetroValley groups' papers reach only a part of the City of Vancouver. Moreover, the circulation area of the Sunday edition of the Vancouver Courier is substantially identical to the combined circulation areas of the Wednesday editions of the Vancouver Courier and The Echo. The Echo has no Sunday edition.

84. With respect to paragraph 163 of the Statement, the Respondents deny that the Vancouver Courier is recognized as

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one of the oldest and most successful community newspapers published in Canada. The Respondents also deny that the Vancouver Courier is an important advertising vehicle in the City of Vancouver for all retail advertisers. The Respondents have no knowledge of whether the Vancouver Courier is one of the most successful community newspapers in Canada or that it has achieved a higher readership than most community newspapers in Canada.

85. The Respondents deny paragraphs 161, 164, 165, 166, 167, 168, 169 and 170 of the Statement. With respect to paragraph 164, the Respondents state that the Vancouver Courier currently accepts MetroValley advertisements.

(iii) Post-Merger Market

86. The Respondents deny paragraphs 171 and 172 of the Statement.

(iv) Section 93 Factors

87. The Respondents deny paragraphs 175, 177, 178, 179, 181, 182, 183 and 184 of the Statement.

88. With respect to paragraphs 180 and 181 of the Statement, the Respondents deny the allegations therein concerning entry since the market referred to is not relevant.

89. As to likely potential entrants into the markets served by the LMPL Papers, the Respondents refer to paragraphs 59 and 60 of the Amended Response. MetroValley already has knowledge of the Vancouver community newspaper business and market, and existing printing, publishing and distribution systems in the Lower Mainland.

90. As to potential entry into the production of daily newspapers in the Lower Mainland, the Respondents state that the most likely entrant is a publisher of daily newspapers elsewhere in Canada including Trinity International (N.A.) Holdings Inc.

V. The Real Estate Weekly

(i) Description of Real Estate Weekly

91. The Respondents deny the allegations in paragraphs 137, 147 and 148 of the Statement that print real estate advertising constitutes a relevant product market. The Respondents further deny that there will be a lessening of

competition in any relevant market by virtue of the acquisition of the REW.

92. With respect to paragraphs 138 and 139 of the Statement, the Respondents admit that the REW is a controlled distribution real estate advertising publication and that it now has 14 separate zoned editions, but deny the allegations in the remainder of these paragraphs. The REW was started on the North Shore as a weekly stand-alone publication in approximately 1975. By 1985, when the REW was acquired by the Madison Venture Corporation, it was publishing editions for Vancouver West Side, Vancouver East Side, Surrey-North Delta-Langley, and Burnaby-Coquitlam-Port Coquitlam-New Westminster-Maple Ridge in addition to the North Shore. From 1985 to the present, the REW has continued to launch new editions.

93. The REW is a location-selective, special interest newspaper. The REW is limited in content to real estate advertising and each edition focuses on a specific geographic community.

94. The Respondents admit that the description of the REW in paragraphs 140 and 141 is substantially correct except that approximately 460,000 copies of all the editions of the REW are

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circulated free of charge to households in the Lower Mainland each week. In addition, the REW delivers about 60,000 copies of its various editions to realtors in the Lower Mainland, who use it as a reference tool for assisting clients.

(ii) Competition with the Southam Dailies

95. The Respondents admit the allegation in paragraph 142 of the Statement that the REW is a primary supplier of advertising services to realtors in the Lower Mainland, but deny that print real estate services is a relevant product market or that the Lower Mainland is a relevant geographic market.

96. By limiting the geographic area of circulation of each edition of the REW and by specializing exclusively in real estate advertising by realtors, the REW is able to offer realtors attractive advertising rates. At these prices, realtors can purchase advertisements in the REW which provide prospective real estate purchasers with detailed information concerning the location and physical characteristics of houses for sale, including photographs of virtually every listing.

97. Advertisements in the Southam Dailies are viewed by realtors as ineffective from a quality, coverage and cost point

of view. That is why most real estate advertising in the Southam Dailies is placed by non-realtors (persons selling their own properties and developers).

98. Pictures of properties for sale are rarely included in the classified real estate advertisements in the Southam Dailies, and to the extent that photographs are included, they are normally much smaller, and of poorer quality, than those found in the REW. In addition, most of the real estate advertising in the Southam Dailies is short (usually no more than two or three lines) and provides few details about properties for sale.

99. The REW provides a much more targeted and cost effective means of advertising real estate than do the Southam Dailies. Because the geographic coverage of the Southam Dailies is so broad, much of the cost of real estate advertising in these publications may be wasted.

100. Advertisements in the REW are more effective in promoting the image of realtors than classified real estate advertising in the Southam Dailies. There is greater assurance that clients will see the advertisements in the REW in respect of their properties and clients perceive these advertisements

as an effective means of promoting the sale of their properties.

101. The Southam Dailies do not receive significant real estate advertising from realtors, and do not represent a viable alternative to real estate advertising in the REW. The Respondents therefore deny the allegation in paragraph 143 of the Statement.

(iii) Competition Between the REW North Shore Edition and the North Shore News

102. With respect to paragraph 144 of the Statement, the Respondents deny that the North Shore News is the only community newspaper in the Lower Mainland that carries substantial real estate advertising. Several Hacker publications, including the Tri-City News, Burnaby - New Westminster News, Surrey Leader and Chilliwack Progress all carry significant real estate advertising. The Respondents admit that the Courier and the other community newspapers owned by LMPL carry little or no real estate advertising and do not constitute effective competition to REW.

103. The Respondents admit that the allegations in paragraph 145 are substantially correct except that the amount of real estate advertising in the Friday edition of the North

Shore News varies and often does not reach 50 pages.

104. Realtors on the North Shore advertise in both the North Shore News and the North Shore edition of the REW. The Respondents otherwise deny the allegations in paragraphs 146 and 163 of the Statement.

(iv) Section 93 Factors

105. The Respondents admit the allegations in paragraphs 149 and 150 of the Statement that foreign competition and failing firm considerations are not at issue.

106. The Respondents deny the allegations made in paragraphs 152 to 161 of the Application. There are very low costs associated with entry into the specialty newspaper market and realtors on the North Shore, for example, could start their own real estate publication. Realtors in White Rock already publish their own real estate paper on a regular basis and there are many other realtors throughout Canada who already publish cooperative papers. Other potential entrants into the real estate publishing market in the VMA include Hacker and Harmon Homes, a major U.S. real estate specialty paper publisher.

107. The Respondents deny the allegations set forth in paragraphs 162 and 163 of the Statement. Realtors on the North Shore have a number of substitutes available to them other than the REW or North Shore News which will continue to provide effective competition subsequent to the implementation of the Acquisitions. The REW and North Shore News face competition from the MLS Listing Service publication of the Greater Vancouver Real Estate Board and from cable television, which has a channel devoted solely to real estate advertising. There is also competition from other specialty newspapers such as Buy and Sell which has a real estate section. Consequently, the Respondents deny the allegations in paragraph 151 of the Statement.

108. The REW provides advertising space to realtors and not to other advertisers. Because the REW relies exclusively on advertising from realtors for its revenue, these realtors have the ability to counteract, and therefore prevent, any exercise of market power by the REW. Realtors are also capable of switching en masse to a substitute advertising vehicle to demonstrate displeasure with advertising rates.

C. RELIEF SOUGHT

109. The Respondents request that the Application herein be dismissed.

D. PROCEDURAL MATTERS

(i) Place of Hearing

110. The Respondents request that the hearing of this Application be held in the City of Ottawa, Ontario.

(ii) Language of Hearing

111. The Respondents request that the hearing in this Application be conducted in the English language.

(iii) Service on the Respondents

112. Documents may be served on the Respondents:

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DATED at the City of Toronto in the Province of
Ontario this day of July, 1991.

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G.F. Leslie of Counsel to the
Respondents

TO: The Registrar
The Competition Tribunal

AND TO: Stanley Wong
Mary L. Ruhl
Keith E.W. Mitchell
Counsel to the Director of Investigation
and Research

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