

No. CT-90/1

THE COMPETITION TRIBUNAL

COMMISSION TRIBUNAL TRIBUNAL DE LA CONCURRENCE		P R O D U I T
FILED	JULY 8 1991 <i>108</i>	
REGISTRAR - REGISTRAIRE		
OTTAWA, ONT.		#114

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

AMENDED NOTICE OF APPLICATION

(The Notice of Application filed November 29, 1990 is amended pursuant to the Order of Mr. Justice Teitelbaum made July 4, 1991 and the Consent of the parties dated July 5, 1991)

TAKE NOTICE that the Applicant, the Director of Investigation and Research (the "Director"), will make an application to the Competition Tribunal pursuant to section 92 of the Competition Act for orders directing the disposition of certain publishing businesses in the Lower Mainland of British Columbia. Specifically, the Director is applying for the following orders:

1. with respect to the merger whereby the Respondent Southam Inc. ("Southam") indirectly acquired a significant interest in the Respondent Rim Publishing Inc. ("Rim"), the publisher of The Vancouver Courier newspaper through the acquisition by the Respondent North Shore Free Press Ltd. ("NSFP") of 75% of the issued and outstanding common shares and 100% of the issued and outstanding preferred shares of the Respondent Rim,
 - a) an order directing the Respondent NSFP to dispose of its shares in the Respondent Rim in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii) of the Competition Act;
 - b) an order directing the Respondent Rim to dispose of all of its assets used in connection with the business of publishing The Vancouver Courier newspaper in such manner as the Competition Tribunal directs pursuant to

subparagraph 92(1)(e)(ii) of the Competition Act; or

c) an order pursuant to subparagraph 92(1)(e)(iii) of the Competition Act;

2. with respect to the merger whereby the Respondent Southam acquired 49% of the issued and outstanding shares of the Respondent NSFP, the publisher of the North Shore News newspaper, which shares were transferred by the Respondent Southam to its subsidiary, the Respondent LMPL,

a) an order directing the Respondent LMPL to dispose of its shares in the Respondent NSFP in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii) of the Competition Act;

b) an order directing the Respondent NSFP to dispose of all of its assets used in connection with the business of publishing the North Shore News newspaper in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii) of the Competition Act; or

c) an order pursuant to subparagraph 92(1)(e)(iii) of the Competition Act;

3. with respect to the proposed merger whereby the Respondent Southam will acquire from the Respondent Yellow Cedar Properties Ltd. ("Yellow Cedar") 51% of the issued and outstanding shares of the Respondent NSFP and will transfer these shares to the Respondent LMPL,

- a) an order directing the Respondents Southam, Yellow Cedar and LMPL not to proceed with the proposed merger in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(f)(i) of the Competition Act; or
- b) an order pursuant to subparagraph 92(1)(f)(iii) of the Competition Act;

and if the proposed merger is completed before the disposition of this Application, in the alternative to the above-mentioned orders,

- c) an order directing the Respondents Southam and LMPL to dispose of their shares in the Respondent NSFP in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii) of the Competition Act;
- d) an order directing the Respondent NSFP to dispose of all of its assets used in connection

with the business of publishing the North Shore News newspaper in such manner as the Competition Tribunal directs pursuant to the subparagraph 92(1)(e)(ii) of the Competition Act; or

e) an order pursuant to subparagraph 92(1)(e)(iii) of the Competition Act;

4. with respect to the merger whereby the Respondent Southam indirectly acquired control of, or a significant interest in, the Respondent Elty Publications Ltd. ("Elty"), the publisher of the Real Estate Weekly publication, through the acquisition by the Respondent LMPL of 100% of the issued and outstanding shares of the Respondent Specialty Publishers Inc. ("Specialty") which owns 100% of the issued and outstanding shares of the Respondent Elty,

a) an order directing the Respondent Specialty to dispose of its shares in the Respondent Elty in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii) of the Competition Act;

b) an order directing the Respondent Elty to dispose of all of its assets used in connection with the business of publishing the Real Estate

Weekly newspaper in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii) of the Competition Act; or

c) an order pursuant to subparagraph 92(1)(e)(iii) of the Competition Act;

5. such further and other orders as to this Tribunal may seem just.

AND TAKE NOTICE that if you do not file a response with the Registrar of the Competition Tribunal within thirty days of the date upon which this Notice of Application is served upon you, the Tribunal may, upon the ex parte application of the Director, make such order as it considers appropriate.

AND TAKE NOTICE that in support of this Application the Director will rely upon the following Statement of Grounds and Material Facts.

TO: Registrar, Competition Tribunal

AND TO: Southam Inc.
Suite 900, 150 Bloor Street West,
Toronto, Ontario

AND TO: Lower Mainland Publishing Ltd.
Suite 1700, 1030 West Georgia Street
Vancouver, B.C. V6E 2Y3

AND TO: Rim Publishing Inc.
Suite 1700, 1030 West Georgia Street
Vancouver, B.C. V6E 2Y3

AND TO: Yellow Cedar Properties Ltd.
Robson Court, Suite 1000, 840 Howe Street
Vancouver, B.C. V6Z 2Y3

AND TO: North Shore Free Press Ltd.
Robson Court, Suite 1000, 840 Howe Street
Vancouver, B.C. V6Z 2Y3

AND TO: Specialty Publishers Inc.
Toronto Dominion Bank Tower
Suite 2600, 700 West Georgia Street
Vancouver, B.C. V7Y 1B3

AND TO: Elty Publications Ltd.
1272 West Pender Street
Vancouver, B.C. V6E 2S8

STATEMENT OF GROUNDS AND MATERIAL FACTS

INTRODUCTION

1. The Director brings this Application on the grounds that certain direct and indirect equity investments in community newspapers and a real estate advertising publication by the Respondent Southam prevent or lessen, or are likely to prevent or lessen, competition substantially in the following markets in the Lower Mainland area of British Columbia:

- a) the supply of newspaper retail advertising services in the City of Vancouver;
- b) the supply of newspaper retail advertising services in the North Shore; ^
- c) the supply of multi-market retail advertising services throughout the Lower Mainland; and
- d) the supply of print real estate advertising services in
 - i) the Lower Mainland excluding the North Shore; and
 - ii) in the North Shore.

2. This Statement of Grounds and Material Facts is divided into six parts:

- a) Part I provides an overview of the newspaper publishing industry in the Lower Mainland, a summary

of the acquisitions made by the Respondent Southam, a detailed description of each of the acquisitions which the Director is challenging, a description of the parties against which the Director is seeking an order and a description of newspaper advertising; and

b) Parts II, III, ~~IIIA~~ and IV contain a statement of grounds and material facts in support of this Application by the Director in respect of the acquisition of:

i) The Vancouver Courier newspaper (Parts II and ~~IIIA~~);

ii) the North Shore News newspaper (Parts III and ~~IIIA~~); and

iii) the Real Estate Weekly publication (Part IV).

c) Part V relates to procedural matters.

PART I: OVERVIEW AND BACKGROUND

A. Overview of Lower Mainland Newspaper Industry

3. For the purpose of this Application the "Lower Mainland" refers to that part of British Columbia consisting of the Fraser Valley south of Hope which includes the Cities of Vancouver, North Vancouver, Langley, Port Moody, White Rock, New Westminster and Port Coquitlam; and the Districts of North Vancouver, Chilliwack, Abbotsford, Matsqui, Mission, Maple Ridge, Pitt Meadows, Surrey, Coquitlam, Delta, Burnaby, Richmond, Langley and West Vancouver. The estimated population in the Lower Mainland is 1,600,000.

4. The Lower Mainland is currently served by two daily newspapers, The Vancouver Sun and The Province, both of which are owned and published by Pacific Press Limited ("Pacific Press"), a subsidiary of the Respondent Southam. The Vancouver Sun is an afternoon paper in a broadsheet format published daily except Sundays and distributed primarily in the Lower Mainland. Pacific Press recently announced its plans to also publish a morning edition of The Vancouver Sun. The Province is a morning newspaper in a tabloid format published daily except Saturdays and distributed primarily in the Lower Mainland. Both newspapers provide news and editorial coverage typical for daily publications, including international, national, regional and local news in addition to business, sports and entertainment coverage. According to the Audit Bureau of Circulation, an industry reporting service,

The Province and The Vancouver Sun had a circulation of 154,269 copies and 214,979 copies, respectively, in their respective primary circulation area for the twelve-month period ending September 30, 1989. For the purposes of this Application, "primary circulation area" of a daily newspaper refers to the combined circulation of a newspaper in its City Zone and Retail Trading Zone, as these terms are used by the Audit Bureau of Circulation.

5. The Lower Mainland is also serviced by community newspapers. The Canadian Community Newspaper Association considers a community newspaper to be a publication that targets a distinct geographic market and has more than 25% original editorial comment. Community newspapers are generally controlled-distribution publications, that is, newspapers which are delivered free of charge to one or more groups of persons defined by one or more common characteristics such as location, age, gender or income levels. Community newspapers provide extensive coverage of news and events of a local nature. There are over 30 community newspapers currently published and distributed in the Lower Mainland, of which The Vancouver Courier and the North Shore News have the highest circulations. Different groups of community newspapers have formed newspaper networks in the Lower Mainland from time to time, which co-ordinate purchases of multi-market advertising services for advertisers.

6. There are also a number of general and special-interest

newspapers with limited circulations serving the Lower Mainland.

7. Prior to the Southam acquisitions described in Section B of Part I hereof, Southam had no interest in any community newspapers published in the Lower Mainland.

B. Summary of the Acquisitions by Southam

8. Pursuant to transactions completed on January 27, 1989 and May 8, 1990, the Respondent Southam acquired direct or indirect control of, or a significant interest in, inter alia, 13 community newspapers, a real estate advertising publication, three flyer distribution businesses and two printing businesses operating in the Lower Mainland. These acquisitions were made by direct and indirect equity investments by the Respondent Southam in the Respondent NSFP, BMA Holdings Ltd., the Respondent Specialty, Union Ink Ltd., One Cent Publishing Ltd., the Respondent Rim and Tepnyl Holding Co. Ltd. ("Tepnyl"). These equity acquisitions are described briefly in paragraphs 9 to 14 below and the resulting corporate structure is illustrated in Appendix A hereto.

9. On January 27, 1989, the Respondent Southam acquired 49% of the issued and outstanding shares of the Respondent NSFP, which carries on the business of publishing the North Shore News.

10. The Respondent LMPL was incorporated as a wholly-owned subsidiary of the Respondent Southam. As a result of the transactions completed on May 8, 1990, the Respondent Southam currently holds approximately 63% of the issued and outstanding common shares of LMPL, with the remaining 37% of the common shares being held by Madison Venture Corporation and four of its subsidiaries (collectively, the "Madison Shareholders"). Southam has the right to purchase, and the Madison Shareholders have the right to require Southam to purchase, at any time, all of the common and preferred shares in LMPL owned by the Madison Shareholders.

11. On May 8, 1990, the Respondent LMPL acquired:
- a) the 49% interest in the Respondent NSFP from the Respondent Southam;
 - b) 100% of the issued and outstanding shares of each of Union Ink Ltd., the Respondent Specialty, One Cent Publishing Ltd. and BMA Holdings Ltd. which carry on, through subsidiaries, the businesses of:
 - i) publishing the South Delta Today, the Burnaby Now, the Royal City Record Now, the Coquitlam/Port Coquitlam/Port Moody Now, the Maple Ridge/Pitt Meadows Times, the Surrey/North Delta Now, the Abbotsford/Clearbrook Times, the Chilliwack Times and the Richmond News newspapers and the

Real Estate Weekly publication;

- ii) distributing published materials and advertising flyers in the Lower Mainland; and
- iii) providing printing services to commercial customers, including the publisher of The Globe and Mail newspaper.

12. On May 8, 1990, the Respondent Southam also acquired 100% of the issued and outstanding shares of Tepnyl which through its wholly-owned subsidiary, Bex Publishing Ltd., carries on the businesses of publishing the Delta Optimist and the Richmond Times.

13. Pursuant to a further equity acquisition on May 8, 1990, the Respondent NSFP acquired 75% of the issued and outstanding common shares and 100% of the issued and outstanding preferred shares of the Respondent Rim which carries on the business of publishing The Vancouver Courier.

14. In addition to the share acquisitions completed on May 8, 1990, the Respondents Southam, NSFP and LMPL acquired further rights and obligations on the same date which if and when fully exercised will result in:

- a) Southam acquiring 100% control of LMPL;
- b) LMPL acquiring 100% control of NSFP; and
- c) NSFP acquiring 100% control of the Respondent Rim.

C. Description of the Acquisitions Challenged

15. This Application is concerned with the acquisition by the Respondent Southam of direct or indirect control of, or a significant interest in, the businesses of publishing The Vancouver Courier, the North Shore News and the Real Estate Weekly.

North Shore News

16. The Respondent NSFP carries on the business of publishing the North Shore News. On January 27, 1989, the Respondent Southam acquired from Peter Speck and the Respondent Yellow Cedar 49% of the issued and outstanding common shares of NSFP. On the same date the Respondent Southam acquired the option to purchase and Yellow Cedar acquired the right to require Southam to purchase, in specific circumstances, all of the remaining shares in NSFP from Yellow Cedar (the "Yellow Cedar Shares").

17. On September 29, 1990, the Respondent Yellow Cedar gave notice to the Respondent Southam triggering Southam's obligation to purchase the Yellow Cedar Shares on January 27, 1991.

18. Pursuant to a transaction completed on May 8, 1990, the Respondent Southam transferred its 49% interest in the Respondent NSFP to the Respondent LMPL and agreed to transfer to LMPL the Yellow Cedar Shares on January 27, 1991 in the event Southam acquired the Yellow Cedar Shares. As a result, LMPL will own 100%

of the shares of NSFP as of January 27, 1991.

The Vancouver Courier

19. The Respondent Rim carries on the business of publishing The Vancouver Courier. On May 8, 1990, the Respondent NSFP acquired 75% of the issued and outstanding common shares and 100% of the issued and outstanding preferred shares of Rim from Roger Phillip Hager ("Hager"), Peter Farris Ballard ("Ballard"), Martha Lou Henley, A. Geoffrey Wellens, Beryl Wellens and James A. Davis. As a result of this transaction, the shareholders of Rim are NSFP, Hager and Ballard.

20. Also as of May 8, 1990, the Respondent NSFP acquired a right and, in specific circumstances an obligation, to purchase all of the remaining shares in the Respondent Rim as follows:

a) Ballard and Hager each acquired the right to require NSFP to purchase their respective shares in Rim at any time; and

b) NSFP acquired the right to require Ballard and Hager to sell to NSFP their respective shares in Rim at any time after the earlier of May 8, 1992 and the termination of their respective employment with Rim.

As of the date of this Application, none of the above-mentioned rights has been exercised by its respective holder.

Real Estate Weekly

21. The Respondent Elty carries on the business of publishing the Real Estate Weekly. On May 8, 1990 the Respondent LMPL acquired from R.E.W. Holdings Ltd. and Netmar Inc. 100% of the issued and outstanding shares of the Respondent Specialty which owns 100% of the issued and outstanding shares of Elty.

D. Description of the Parties

22. The Applicant, the Director of Investigation and Research, is the person appointed under section 7 of the Competition Act.

23. The Respondent Southam Inc. is a company incorporated under the laws of Canada and carries on, inter alia, the business of publishing newspapers and related businesses in the Province of British Columbia and elsewhere in Canada. Its head office in the Province of British Columbia is located at Suite 2800, 650 West Georgia Street, Vancouver, British Columbia, V6B 4R7.

24. Pacific Press Limited is a company incorporated under the laws of British Columbia and is a subsidiary of the Respondent Southam. It carries on, inter alia, the businesses of publishing The Province and The Vancouver Sun. Its registered office is at 2250 Granville Street, Vancouver, British Columbia, V6H 3G2.

25. The Respondent Lower Mainland Publishing Ltd. is a company incorporated under the laws of British Columbia with its registered office at Suite 1700, 1030 West Georgia Street, Vancouver, British Columbia, V6E 2Y3

26. The Respondent Rim Publishing Ltd. is a company incorporated under the laws of British Columbia with its registered office at Suite 1700, 1030 West Georgia Street, Vancouver, British Columbia, V6E 2Y3. It carries on the business of publishing The Vancouver Courier.

27. The Respondent Yellow Cedar Properties Ltd. is a company incorporated under the laws of British Columbia with its registered office at Robson Court, Suite 1000, 840 Howe Street, Vancouver, British Columbia, V6Z 2M1. It currently owns 51% of the issued and outstanding common shares of the Respondent NSFP.

28. The Respondent North Shore Free Press Ltd. is a company incorporated under the laws of British Columbia with its registered office at Robson Court, Suite 1000, 840 Howe Street, Vancouver, British Columbia, V6Z 2M1. It carries on the business of publishing the North Shore News.

29. The Respondent Specialty Publishers Inc. is a company incorporated under the laws of British Columbia with its registered office at Toronto Dominion Bank Tower, Suite 2600, 700 West Georgia

Street, Vancouver, British Columbia, V7Y 1B3. Specialty owns all of the issued and outstanding shares of the Respondent Elty.

30. The Respondent Elty Publications Ltd. is a company incorporated under the laws of British Columbia with its registered office at 1272 West Pender Street, Vancouver, British Columbia, V6E 2S8. It carries on the business of publishing the Real Estate Weekly.

E. Description of Newspaper Advertising

31. Newspaper advertising consists of classified advertising, display advertising and advertising flyers.

32. Classified advertising is advertising which is printed in a specific section of a newspaper known as the "classified section" and placed in one of the category headings pre-determined by the newspaper according to the type of product advertised.

33. Display advertising is generally defined to be advertising which is printed on the pages comprising the newspaper other than the pages containing the classified section. This category of advertising is also known as "run-of-the-press" or "run-of-the-paper" ("R.O.P.") advertising. The two main sources of display advertising are retailers ("retail display advertising") and national advertisers. Retail advertisers are suppliers of

products who have one or more retail outlets in the primary circulation area of the newspaper. National advertisers are suppliers of products who may not have a retail outlet in the primary circulation area of a newspaper and usually place their newspaper advertising through an advertising agency. The third source of display advertising is governments and non-profit organizations.

34. An advertising flyer is a publication devoted exclusively to advertising material. With few restrictions, it may be printed on any type, size or colour of paper. Advertising flyers may be distributed in a newspaper or otherwise. An advertising flyer is distributed with a newspaper by inserting the flyer into the newspaper, in other words, using the newspaper as a wrap for the flyer ("flyer insert"). Retail advertisers are the primary users of flyer inserts. An advertising flyer may also be distributed on its own ("free-standing flyer").

35. "Newspaper retail advertising services" consist of the printing and distribution of retail display advertising and the distribution of flyer inserts by a newspaper.

36. "Print real estate advertising services" consist of the printing and distribution of display advertising, classified advertising and flyer inserts for the sale of residential properties in a publication.

PART II: THE VANCOUVER COURIER MERGER

A. Background

37. The Director is challenging the indirect acquisition by the Respondent Southam of a significant interest in the business of publishing The Vancouver Courier, as described in paragraphs 19 and 20 of Part I hereof, (the "Vancouver Courier Merger") on the grounds that the acquisition is a merger which prevents or lessens, or is likely to prevent or lessen, competition substantially within the meaning of sections 91 and 92 of the Competition Act.

B. Relevant Market

38. The Director submits that the Vancouver Courier Merger prevents or lessens, or is likely to prevent or lessen, competition substantially in the market for the supply of newspaper retail advertising services in the area of the City of Vancouver (the "Vancouver Newspaper Retail Advertising Market").

C. Market Participants

39. The City of Vancouver is the main community of the Lower Mainland area of the Province of British Columbia. The estimated population and number of households in the City in 1990 are 470,000 and 195,600 respectively.

40. The City of Vancouver is served by two daily newspapers, several community newspapers including The Vancouver Courier and a variety of specialized newspapers ranging from special interest newspapers to non-English language newspapers. Most of these newspapers carry advertising.

41. The three largest suppliers of newspaper retail advertising services in the Vancouver Newspaper Retail Advertising Market are The Province, The Vancouver Sun, and The Vancouver Courier. For the years 1986 to 1989, The Vancouver Courier's total gross revenues from newspaper retail advertising services have increased 89% while that of The Province and The Vancouver Sun recorded approximate increases of 42% and 1%, respectively.

42. The Province, a morning tabloid newspaper, is published by Pacific Press in the City of Vancouver and distributed throughout the Lower Mainland. In 1988, 1989 and 1990 (as of August, 1990), the average daily circulation of the newspaper in the City of Vancouver, as estimated by Pacific Press, was 47,301, 48,535 and 45,245, respectively.

43. In 1989 The Province had an average of 40.70% news and editorial content, 53.89% paid advertising content and 5.41% other content. The news and editorial focus of the newspaper is regional, national and international but not local.

44. According to Pacific Press, the total gross advertising revenues of The Province in 1989 were \$46,430,100 of which \$16,331,700 or 35.32% were derived from retail display advertising and retail flyer inserts.

45. The gross revenue derived from retail display advertising and flyer inserts (retail and non-retail) declined from 44.7% of total gross advertising revenues in 1985 to 35.9% in 1989.

46. In 1989, the average daily circulation of The Province in its primary circulation area was 154,269 copies of which 48,535 copies or 31.46% were distributed in the City of Vancouver. Assuming that 31.46% is an approximate measure of the portion of the advertising revenues attributable to the City of Vancouver market, \$5,137,952 approximately were derived from the City of Vancouver market for retail display advertising and retail flyer inserts.

47. The Vancouver Sun, an afternoon broadsheet newspaper, is also published by Pacific Press in the City of Vancouver and distributed throughout the Lower Mainland. The average daily circulation of the newspaper in the City of Vancouver for 1988, 1989 and 1990 (as of August, 1990), as estimated by Pacific Press, was 79,490, 78,557 and 72,060, respectively.

48. In 1989 The Vancouver Sun had an average of 37.90% news

and editorial content, 56.78% paid advertising content and 5.32% other content. The news and editorial focus of this newspaper is similar to that of The Province but with a greater emphasis on national and international issues.

49. According to Pacific Press, the total gross advertising revenues in 1989 of The Vancouver Sun were \$98,383,600 of which \$37,538,900 or 38.16% were derived from retail display advertising, retail flyer inserts and advertising in the weekly publication containing television broadcast listings ("television weekly").

50. The gross revenue derived from retail display advertising, flyer inserts (retail and non-retail) and advertising in the television weekly, declined from 45% of total gross advertising revenues in 1985 to 38.73% in 1989.

51. In 1989, the average daily circulation of The Vancouver Sun in its primary circulation area was 214,979 copies of which 78,557 copies or 36.54% were distributed in the City of Vancouver. Assuming that 36.54% is an approximate measure of the portion of the advertising revenues attributable to the City of Vancouver market, \$13,716,714 approximately were derived from the City of Vancouver market for retail display advertising, retail flyer inserts and advertising in the television weekly.

52. The Vancouver Courier is a controlled-distribution

community tabloid newspaper published by the Respondent Rim in the City of Vancouver. Established in 1908, The Vancouver Courier is recognized as one of the oldest and most successful community newspapers published in Canada. It is published on Wednesdays and Sundays and distributed only in the City of Vancouver.

53. The Wednesday edition has a circulation of 65,000 copies and is distributed to households and businesses in that part of the City of Vancouver known as the "West Side", namely, the area of the City west of Main Street excluding the Downtown area. The Sunday edition has a circulation of 120,000 copies and is distributed to households and businesses in all parts of the City of Vancouver excluding the Downtown. In the Fall of 1989, the Respondent Rim announced that it intended to publish as of the Spring, 1990 a Friday edition of The Vancouver Courier. These plans were suspended during the negotiations which resulted in the purchase by the Respondent NSFP of 75% of the common shares and 100% of the preferred shares of the Respondent Rim. As of the date of this Application the Friday edition has not been published.

54. In 1990 The Vancouver Courier added to its Wednesday edition a "Neighbourhood News" supplement. A different supplement is published each week of a month. Each of the four supplements has a circulation of 20,000 and is aimed at slightly overlapping neighbourhoods.

55. The Vancouver Courier currently has an average of 32 pages and 43 pages, respectively, for the Wednesday and Sunday editions.

56. The Vancouver Courier has approximately 40% news and editorial content and 60% advertising content. The news and editorial component consists almost exclusively of coverage of civic and community news, issues and events occurring in the City of Vancouver or of particular interest to people living and working in the City. The advertising component consists of a wide range of consumer-useful advertising.

57. According to the Respondent Rim, the total gross advertising revenues in 1989 for The Vancouver Courier were \$4,490,648 of which \$3,662,202 or 81.55% were derived from retail display advertising and flyer inserts. Almost all of the flyer inserts in The Vancouver Courier were from retail advertisers.

58. The Vancouver Courier is not a typical community newspaper for the following reasons:

- a) it is distributed in the core area of a major metropolitan area;
- b) its circulation in the City of Vancouver is comparable to that of the daily newspapers;
- c) The Vancouver Courier is the primary source of newspaper coverage of City of Vancouver news, issues

and events; and

- d) through a combination of extensive coverage of local news and a broad spectrum of consumer-useful advertising, The Vancouver Courier has achieved a higher readership than most controlled-distribution newspapers in Canada.

For these reasons, The Vancouver Courier is an important advertising vehicle in the City of Vancouver for retail advertisers and is the strongest competitor of The Province and The Vancouver Sun for the supply of retail advertising services in this market.

59. Other participants in the Vancouver Newspaper Retail Advertising Market are: The West Ender, the Metro Vancouver News, The Vancouver Echo, The Revue and The Georgia Straight. Until September 1990 when it ceased publishing, the Western News was a community newspaper with a controlled distribution of 55,000 copies which were distributed in the West Side.

60. The West Ender is a community tabloid newspaper with an average of 24 pages per issue and a controlled distribution of 56,000 copies. It has 35% news and editorial content and 65% advertising content. It is published and distributed each Thursday to households and businesses in the Downtown, West End, Kitsilano, Granville Island, False Creek and Fairview areas of the City of Vancouver. It is not distributed to the more affluent neighbourhoods of the West Side such as Shaughnessey, Kerrisdale,

Point Grey, South Granville and Southlands, all of which are included in the circulation area of The Vancouver Courier, The Province and The Vancouver Sun.

61. The focus of the West Ender both in news and editorial as well as advertising is on entertainment such as cinemas, restaurants and nightclubs, reflecting the market niche it has developed among young adults who comprise a substantial proportion of the population of the neighbourhoods where the newspaper is distributed.

62. The Metro Vancouver News, which recently changed its name from the "East Ender", has the same publisher as the West Ender. Both newspapers were acquired indirectly in December, 1989 by Hacker Press Inc. The Metro Vancouver News is a controlled-distribution community newspaper with an average of 24 pages per issue and a circulation of 75,200 copies. It has 35% news and editorial content and 65% advertising content. It is published each Wednesday and distributed to households and businesses in the following neighbourhoods of the East Side of the City of Vancouver: Grandview, Strathcona, Woodlands, Hastings, Sunrise, Mount Pleasant, Riley Park, Cedar Cottage, Renfrew, Collingwood, Killarney, Champlain Heights and South Slopes areas of the City of Vancouver.

63. The Vancouver Echo is a community tabloid newspaper

distributed only in the East Side of the City of Vancouver. The Wednesday edition with an average of 26 pages has a controlled distribution of 53,000. The Sunday edition with an average of 12 pages has a distribution of 20,000 copies which are delivered to households and businesses in a small area of the North East part of the City of Vancouver. The Vancouver Echo has 35-40% editorial content and 60-65% advertising content. The editorial focus is local news.

64. The Revue is a community tabloid newspaper published on Wednesdays in three editions. The South Vancouver Revue with a circulation of 11,500 copies is distributed in the South Vancouver area of the East Side of the City of Vancouver. The Marpole Revue with a circulation of 2,200 copies is distributed in the Marpole area of the West Side. The Mount Pleasant Revue with a circulation of 9,500 copies is distributed in the Mount Pleasant area which straddles Main Street, the dividing line between the West Side and the East Side of the City of Vancouver.

65. The Georgia Straight is a controlled-distribution newspaper published every Friday and has a circulation of 75,000 copies in the Lower Mainland of which 28,000 copies are distributed in the City of Vancouver. The editorial and advertising focus of the newspaper is arts, entertainment, travel and fashion. It does not cover local news. The newspaper with an average of 49 pages per edition has a 40% editorial content and 60% advertising

content.

66. The competition in the Vancouver Newspaper Retail Advertising Market provided by each of the West Ender, The Metro Vancouver News, The Vancouver Echo, The Revue and The Georgia Straight is not substantial for one or more of the following reasons:

- a) limited geographic coverage;
- b) limited focus of news and editorial content; and
- c) limited focus of advertising content.

The West Ender is not distributed to the more affluent neighbourhoods of the West Side where The Vancouver Courier is distributed. In the affluent neighbourhoods of the West Side, the only competitors are The Province, The Vancouver Sun and The Vancouver Courier.

67. In 1989 the total gross advertising revenues in the Vancouver Newspaper Retail Advertising Market were approximately \$26 million. The market shares of the participants were as follows:

	<u>Market Shares</u>
The Province	19.7%
The Vancouver Sun	52.7%
The Vancouver Courier	14.1%
Combined of	13.5%
The West Ender	
Metro Vancouver News	

The Vancouver Echo
The Revue
The Georgia Straight

100.0%

D. Post-Merger Market

68. The Director submits that the Vancouver Courier Merger prevents or lessens, or is likely to prevent or lessen, competition substantially in the Vancouver Newspaper Retail Advertising Market having regard to the factors enumerated in section 93 of the Competition Act, discussed below.

69. The substantial lessening of competition will result from the increased market power that the Respondent Southam will be able to exercise through its direct or indirect control of, or significant interest in, the three largest market participants. The Vancouver Courier Merger is likely to enable Southam to unilaterally impose and maintain a material price increase in a substantial part of the Vancouver Newspaper Retail Advertising Market for a substantial period of time.

70. As a result of the Vancouver Courier Merger, The Province, The Vancouver Sun and The Vancouver Courier collectively account for approximately 86.5% of the advertising revenues in the Vancouver Newspaper Retail Advertising Market on the basis of 1989 statistics.

E. Section 93 Factors

Foreign Competition

71. Foreign products and foreign competition do not provide, and are not likely to provide, effective competition to The Province, The Vancouver Sun and The Vancouver Courier for newspaper retail advertising services in the City of Vancouver.

Failing Business

72. The business of publishing The Vancouver Courier of the Respondent Rim has not failed and is not likely to fail. Neither The Province nor The Vancouver Sun is a business which has failed or is likely to fail.

Acceptable Substitutes

73. The Director submits that the availability of acceptable substitutes which could be provided by other market participants is not likely to have a significant effect on the ability of the Respondent Southam to materially raise prices in a substantial part of the Vancouver Newspaper Retail Advertising Market for a substantial period of time.

74. In addition to newspaper retail advertising services, there is a variety of other advertising vehicles which are used or could be used by retailers in the City of Vancouver: television and radio broadcasts; magazines; directories, billboards and other signage; specialty and foreign-language publications; classified

advertising; and free-standing flyers.

75. These alternative advertising vehicles are not included as products in the Vancouver Newspaper Retail Advertising Market because they are not acceptable substitutes for newspaper retail advertising services. A significant price increase in newspaper retail advertising services would not result in a significant shift to these products.

76. Television and radio advertising, billboards and signage have limited information content and information retention value. Magazines and directories cannot be used for time-sensitive retail advertising messages. Specialty and foreign-language publications have limited readership. Classified advertising restricts the format in which an advertising message can be conveyed. Free-standing flyers are less attractive than flyer inserts as retail advertising because of the high desirability of distribution of flyers in a newspaper.

Barriers to Entry

77. The Director submits that future entry into the Vancouver Newspaper Retail Advertising Market is not likely to occur on a sufficient scale to ensure that prices will not be materially higher in the relevant market for a substantial period of time as a result of the Vancouver Courier Merger.

78. If entry occurs, it is likely to be in the form of a community newspaper. The sources of potential entry into this Market are:

- a) expansion by community newspapers distributed in the City of Vancouver;
- b) expansion by community newspapers distributed in adjacent geographic markets;
- c) entry by specialized newspapers distributed in the City of Vancouver or in adjacent geographic markets; and
- d) the creation of a new community newspaper.

79. Regardless of the source of potential entry, an entrant will encounter substantial difficulty in achieving an acceptable level of readership and advertising. These two objectives are interrelated. The level of readership depends on the mix of news, editorial and advertising content as well as the type of advertising. In turn, the decision by advertisers to buy space in a newspaper depends on the nature and level of readership in the target audience and the degree to which other advertisers appear in the newspaper.

80. The costs of entry, including costs of equipment, staff, production and distribution, have a significant irrecoverable or "sunk" component in that they will not be recoverable in the event the entry initiative failed.

81. The significant sunk costs of entry into the Vancouver Newspaper Retail Advertising Market further include:

- a) costs resulting from operating at a loss for the substantial period of time that will be required to achieve credibility in the market;
- b) costs incurred in making an entry decision;
- c) costs of developing a product;
- d) costs of hiring new staff; and
- e) costs of setting up a distribution system.

82. Strong community identification adds substantially to the difficulties that would be encountered by an entrant into the relevant market. The dominant position of the Respondent Southam in the Vancouver Retail Advertising Market, the resources available to Southam and the opportunities for strategic behaviour by Southam are likely to further delay and to increase the perceived risks associated with entry.

83. Similarly, the strong community identification of existing community newspapers distributed in adjacent geographic areas will make it unlikely that such newspapers will be the source of new entrants in the Vancouver Newspaper Retail Advertising Market.

84. The Director submits that entry would not likely occur

to limit the ability of the Respondent Southam to impose and maintain a material price increase for a substantial period of time in the Vancouver Newspaper Retail Advertising Market because the level of sunk costs associated with entry are high relative to the expected returns from successful entry.

Effective Competition Remaining

85. As discussed above in paragraphs 66 and 73 to 76, the remaining sources of competition in the Vancouver Newspaper Retail Advertising Market, from other market participants or otherwise, are not and would not likely be able to constrain the exercise of increased market power by the Respondent Southam.

Removal of a Vigorous and Effective Competitor

86. The Director submits that the Vancouver Courier Merger results in the removal by the Respondent Southam of The Vancouver Courier as the most vigorous and effective competitor of The Province and The Vancouver Sun in the City of Vancouver for newspaper retail advertising services for the reasons discussed in paragraph 58 above.

Change and Innovation

87. The Director submits that there are several change and innovation considerations which are relevant to the assessment of the impact of the Vancouver Courier Merger on competition. There has been a decline in the daily newspaper industry in the past

decade. People are buying daily newspapers less frequently and when they do they are reading them less thoroughly, as sufficient international and national news can be obtained from radio and television broadcasts. Readers are increasingly interested in local news and consumer-useful advertising. Community newspapers with their in-depth coverage of local news and large component of retail advertising have built a strong constituency of readers and advertisers. The better community newspapers with their increasing readership have been able to attract advertising from major retailers and occasionally national advertisers.

F. Relief Sought

88. In view of the substantial lessening of competition which results or is likely to result from the Vancouver Courier Merger, the Director applies for the following orders:

- a) an order directing the Respondent NSFP to dispose of its shares in the Respondent Rim in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii) of the Competition Act;
- b) an order directing the Respondent Rim to dispose of all of its assets used in connection with the business of publishing The Vancouver Courier newspaper in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii) of the Competition Act; or

- c) an order pursuant to subparagraph 92(1)(e)(iii) of the Competition Act.

PART III: THE NORTH SHORE NEWS MERGER

THE NORTH SHORE NEWS PROPOSED MERGER

A. Background

89. The Director is challenging the indirect acquisition by the Respondent Southam of a 49% equity interest in the business of publishing the North Shore News, as described in paragraphs 16 to 18 of Part I hereof (the "North Shore News Merger"), on the grounds that the acquisition is a merger which prevents or lessens, or is likely to prevent or lessen, competition substantially within the meaning of sections 91 and 92 of the Competition Act.

B. Relevant Market

90. The Director submits that the North Shore News Merger prevents or lessens, or is likely to prevent or lessen, competition substantially in the market for the supply of newspaper retail advertising services in the area of the Lower Mainland known as the North Shore (the "North Shore Newspaper Retail Advertising Market").

C. Market Participants

91. The North Shore is that part of the Lower Mainland consisting of the City of North Vancouver, the Municipality of

North Vancouver and the Municipality of West Vancouver. The estimated population and number of households in the North Shore are currently approximately 148,735 and 58,400, respectively.

92. The North Shore is served by two daily newspapers, The Province and The Vancouver Sun. The North Shore News is the only community newspaper distributed in the North Shore that offers significant competition to The Province and The Vancouver Sun.

93. The largest suppliers of newspaper retail advertising services in the North Shore are The Province, The Vancouver Sun and the North Shore News.

94. The Province, a morning newspaper, had an average daily circulation in the North Shore in 1988, 1989 and 1990 (as of August, 1990) of 13,837, 14,083 and 14,221, respectively, as estimated by Pacific Press.

95. In 1989 The Province had an average of 40.70% news and editorial content, 53.89% paid advertising content and 5.41% other content. The news and editorial focus of the newspaper is regional, national and international but not local.

96. According to Pacific Press, the total gross advertising revenues of The Province in 1989 were \$46,430,100 of which \$16,331,700 or 35.32% were derived from retail display advertising

and retail flyer inserts.

97. The gross revenue derived from retail display advertising and flyer inserts (retail and non-retail) declined from 44.7% of total gross advertising revenues in 1985 to 35.9% in 1989.

98. In 1989, the average daily circulation of The Province in its primary circulation area was 154,269 copies of which 14,083 copies or 9.13% were distributed in the North Shore. Assuming that 9.13% is an approximate measure of the portion of the advertising revenues attributable to the North Shore market, \$1,491,084 approximately were derived from the North Shore market for retail display advertising and retail flyer inserts.

99. The Vancouver Sun, an afternoon newspaper, had an average daily circulation in the North Shore in 1988, 1989 and 1990 (as of August, 1990) of 26,673, 26,390 and 25,449, respectively, as estimated by Pacific Press. From September 28, 1988 to April 18, 1990, The Vancouver Sun published a special zoned supplement, the North Shore Extra, which contained local news and advertising and which was distributed in the North Shore only.

100. In 1989 The Vancouver Sun had an average of 37.90% news and editorial content, 56.78% paid advertising content and 5.32% other content. The news and editorial focus of this newspaper is similar to that of The Province but with a greater emphasis on

national and international issues.

101. According to Pacific Press, the total gross advertising revenues of The Vancouver Sun in 1989 were \$98,383,600 of which \$37,538,900 or 38.16% were derived from retail display advertising, retail flyer inserts and advertising in the weekly publication containing television broadcast listings ("television weekly").

102. The gross revenue derived from retail display advertising, flyer inserts (retail and non-retail) and advertising in the television weekly, declined from 45% of total gross advertising revenues in 1985 to 38.74% in 1989.

103. In 1989, the average daily circulation of The Vancouver Sun in its primary circulation area was 214,979 copies of which 26,390 copies or 12.28% were distributed in the North Shore. Assuming that 12.28% is an approximate measure of the portion of the advertising revenues attributable to the the North Shore market, \$4,609,777 approximately were derived from the North Shore market for retail display advertising, retail flyer inserts and advertising in the television weekly.

104. The North Shore News is a controlled-distribution community tabloid newspaper which has been published by the Respondent NSFP in the City of North Vancouver since 1970. It is published on Wednesdays, Fridays and Sundays and is distributed

only in the North Shore.

105. The North Shore News had an average circulation in 1988, 1989 and 1990 of 59,700, 60,535 and 60,946, respectively. Delivery to households and businesses in the North Shore is free.

106. The North Shore News currently has an average of 64 pages per issue. The Friday edition contains a real estate supplement and is therefore the largest edition, having as many as 120 pages.

107. The North Shore News has an average of 26% news and editorial and 74% advertising content. The news and editorial component consists almost exclusively of coverage of civic and community news, issues and events occurring in the North Shore or of particular interest to people living or working in the North Shore.

108. According to the Respondent NSFP, the total gross advertising revenues for the North Shore News for the twelve month period ended August 31, 1989 were \$9,223,979 of which \$6,944,669 or 75.29% were derived from retail display advertising and flyer inserts (retail and non-retail).

109. The North Shore News is not a typical community newspaper for the following reasons:

a) it is published three times weekly;

b) in the North Shore, it has a significantly higher circulation than the combined circulation of the daily newspapers;

c) the North Shore News is the primary source of newspaper coverage of North Shore news, issues and events; and

d) through a combination of extensive coverage of local news and a broad spectrum of consumer-useful advertising, the North Shore News has achieved a significantly higher readership than most controlled-distribution newspapers in Canada.

For these reasons the North Shore News is an important advertising vehicle in the North Shore for retail advertisers and is the strongest competitor of The Province and The Vancouver Sun for the supply of retail advertising services in this market.

110. The Georgia Straight, which is described in paragraph 65 above, has a circulation of 6,500 in the North Shore. The retail advertising revenues derived from the North Shore market are insignificant.

D. Post-Merger Market

111. The Director submits that the North Shore News Merger prevents or lessens, or is likely to prevent or lessen, competition substantially in the North Shore Newspaper Retail

Advertising Market having regard to the factors enumerated in section 93 of the Competition Act, as discussed below.

112. The substantial lessening of competition will result from the increased market power that the Respondent Southam will be able to exercise through its direct or indirect control of, or a significant interest in, all three of the only significant market participants. The North Shore News Merger is likely to enable Southam to unilaterally impose and maintain a material price increase in a substantial part of the North Shore Newspaper Retail Advertising Market for a substantial period of time.

113. As a result of the North Shore News Merger, The Province, The Vancouver Sun and the North Shore News, in each of which the Respondent Southam has indirect control or a significant interest, collectively account for virtually all of the advertising revenues in the North Shore Newspaper Retail Advertising Market.

E. Section 93 Factors

Foreign Competition

114. Foreign products and foreign competition do not provide, and are not likely to provide, effective competition to The Province, The Vancouver Sun and the North Shore News for newspaper retail advertising services in the North Shore.

Failing Business

115. The business of publishing the North Shore News of the Respondent NSFP has not failed and is not likely to fail. Neither The Province nor The Vancouver Sun is a business which has failed or is likely to fail.

Acceptable Substitutes

116. The Director submits that the availability of acceptable substitutes which could be provided by other market participants is not likely to have a significant effect on the ability of the Respondent Southam to materially raise prices in a substantial part of the market for a substantial period of time.

117. In addition to newspaper retail advertising services, there is a variety of other advertising vehicles which are used or could be used by retailers in the North Shore: television and radio broadcasts; magazines; directories, billboards and other signage; specialty and foreign-language publications; classified advertising; and free-standing flyers.

118. These alternative advertising vehicles are not included as products in the North Shore Newspaper Retail Advertising Market because they are not acceptable substitutes for newspaper retail advertising services. A significant price increase in newspaper retail advertising services would not result in a significant shift to these products.

119. Television and radio advertising, billboards and signage have limited information content and information retention value. Magazines and directories cannot be used for time-sensitive retail advertising messages. Specialty and foreign-language publications have limited readership. Classified advertising restricts the format in which an advertising message can be conveyed. Free-standing flyers are less attractive than flyer inserts as retail advertising because of the high desirability of distribution of flyers in a newspaper.

Barriers to Entry

120. The Director submits that as a result of the North Shore News Merger, future entry into the North Shore Newspaper Retail Advertising Market is not likely to occur on a sufficient scale to ensure that prices will not be materially higher in the relevant market for a substantial period of time.

121. If entry occurs, it is likely to be in the form of a community newspaper. The sources of potential entry into this Market are:

- a) expansion by community newspapers distributed in adjacent geographic markets;
- b) entry by specialized newspapers distributed in the North Shore or in adjacent geographic markets; and
- c) the creation of a new community newspaper.

122. Regardless of the source of potential entry, an entrant will encounter substantial difficulty in achieving an acceptable level of readership and advertising. These two objectives are interrelated. The level of readership depends on the mix of news, editorial and advertising content as well as the type of advertising. In turn, the decision by advertisers to buy space in a newspaper depends on the nature and level of readership in the target audience and the degree to which other advertisers appear in the newspaper.

123. The costs of entry, including costs of equipment, staff, production and distribution, have a significant irrecoverable or sunk component in that they will not be recoverable in the event the entry initiative failed.

124. The significant sunk costs of entry into the North Shore Newspaper Retail Advertising Market further include:

- a) costs resulting from operating at a loss for the substantial period of time that will be required to achieve credibility in the market;
- b) costs incurred in making an entry decision;
- c) costs of developing a product;
- d) costs of hiring new staff; and
- e) costs of setting up a distribution system.

125. Strong community identification adds substantially to the difficulties that would be encountered by an entrant into the relevant market. The dominant position of the Respondent Southam in the North Shore Newspaper Retail Advertising Market, the resources available to Southam and the opportunities for strategic behaviour by Southam are likely to further delay and to increase the perceived risks associated with entry.

126. Similarly, the strong community identification of existing community newspapers distributed in adjacent geographic areas will make it unlikely that such newspapers will be the source of new entrants in the North Shore Newspaper Retail Advertising Market.

127. The Director submits that entry would not likely occur to limit the ability of the Respondent Southam to impose and maintain a material price increase for a substantial period of time in the North Shore Newspaper Retail Advertising Market because the level of sunk costs associated with entry are high relative to the expected returns from successful entry.

Effective Competition Remaining

128. As discussed above in paragraphs 109, 110 and 116 to 119, the remaining sources of competition in the North Shore Newspaper Retail Advertising Market, from other market participants or otherwise, are not and would not likely be able to constrain the

exercise of increased market power by the Respondent Southam.

Removal of a Vigorous and Effective Competitor

129. The Director submits that the North Shore News Merger results in the removal by the Respondent Southam of the North Shore News as the only vigorous and effective competitor of The Province and The Vancouver Sun for newspaper retail advertising services in the North Shore for the reasons discussed in paragraph 109 above.

Change and Innovation

130. The Director submits that there are several change and innovation considerations which are relevant to the assessment of the impact of the North Shore News Merger on competition. There has been a decline in the daily newspaper industry in the past decade. People are buying daily newspapers less frequently and when they do they are reading them less thoroughly, as sufficient international and national news can be obtained from radio and television broadcasts. Readers are increasingly interested in local news and consumer-useful advertising. Community newspapers, with their in-depth coverage of local news and a large component of retail advertising, have built a strong constituency of readers and advertisers. The better community newspapers with their increasing readership have been able to attract advertising from major retailers and occasionally national advertisers.

F. North Shore News Proposed Merger

131. In addition to the North Shore News Merger, the Respondent Southam has agreed to acquire on January 27, 1991 the remaining 51% equity interest in the Respondent NSFP from the Respondent Yellow Cedar, which will be transferred to the Respondent LMPL, as described in paragraphs 16 to 18 of Part I hereof (the "North Shore News Proposed Merger").

132. The Director is challenging the North Shore News Proposed Merger on the grounds that it is a merger which prevents or lessens, or is likely to prevent or lessen, competition substantially under sections 91 and 92 of the Competition Act.

133. Sections A to E above, which apply to the North Shore News Merger, shall apply, mutatis mutandis, to the North Shore News Proposed Merger. If this proposed merger is completed before the disposition of this Application, then Sections A to E shall also apply mutatis mutandis to the then completed merger.

G. Relief Sought

134. In view of the substantial lessening of competition which results or is likely to result from the North News Merger, the Director applies for the following order:

- a) an order directing the Respondent LMPL to dispose of its shares in the Respondent NSFP in such manner

- as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii) of the Competition Act;
- b) an order directing the Respondent NSFP to dispose of all of its assets used in connection with the business of publishing the North Shore News newspaper in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii) of the Competition Act; or
 - c) an order pursuant to subparagraph 92(1)(e)(iii) of the Competition Act.

135. In view of the substantial lessening of competition which results or is likely to result from the North Shore News Proposed Merger, the Director applies for the following orders:

- a) an order directing the Respondents Southam, Yellow Cedar and LMPL not to proceed with the proposed merger pursuant to subparagraph 92(1)(f)(i) of the Competition Act; or
- b) an order pursuant to subparagraph 92(1)(f)(iii) of the Competition Act.

If the proposed merger is completed before the disposition of this Application, the Director applies, in the alternative to the above-mentioned orders, for the following orders:

- c) an order directing the Respondents Southam and LMPL to dispose of their shares in the Respondent NSFP in such manner as the Competition Tribunal directs

pursuant to subparagraph 92(1)(e)(ii) of the Competition Act;

- d) an order directing the Respondent NSFP to dispose of all of its assets used in connection with the business of publishing the North Shore News newspaper in such manner as the Competition Tribunal directs pursuant to the subparagraph 92(1)(e)(ii) of the Competition Act; or
- e) an order pursuant to subparagraph 92(1)(e)(iii) of the Competition Act.

**PART IIIA: LOWER MAINLAND NEWSPAPER
RETAIL ADVERTISING MARKET**

A. Background and Relevant Market

136. The Director is also challenging both the Vancouver Courier Merger and the North Shore News Merger (jointly, the "Mergers") on the grounds that each Merger or both Mergers prevents or lessens, or is likely to prevent or lessen, competition substantially for the supply of multi-market newspaper retail advertising services throughout the Lower Mainland (the "Lower Mainland Newspaper Retail Advertising Market"). For the purposes of this Part IIIA, the term "North Shore News Merger" refers to the North Shore News Merger and the North Shore News Proposed Merger as these terms are used in Part III above.

B. Market Participants

137. As described in Part I above, the Lower Mainland is a broad geographic area consisting of the Fraser Valley south of Hope. The population of the Lower Mainland is approximately 1,600,000 people, of which the City of Vancouver and the North Shore account for 470,000 and 148,735 people, respectively. The Lower Mainland's most affluent neighbourhoods are found in the City of Vancouver and the North Shore.

138. The following market participants offer advertisers broad coverage of the Lower Mainland for newspaper retail advertising

services:

- a. The Vancouver Sun;
- b. The Province;
- c. the Vancouver Area Newspaper Network; and
- d. the MetroValley Newspaper Group.

139. The supply of multi-market newspaper retail advertising services is attractive to multi-market retailers, who are interested in coverage extending to all of the significant geographic areas of the Lower Mainland.

The Province

140. The Province, a morning tabloid newspaper published by Pacific Press in the City of Vancouver, is distributed throughout the Lower Mainland. In 1989, the average daily circulation of the newspaper in the Lower Mainland exceeded 154,269 (based on the combined circulations of the newspaper in its City Zone and Retail Trading Zone, as these terms are used by the Audit Bureau of Circulation).

141. In 1989 The Province had an average of 40.70% news and editorial content, 53.89% paid advertising content and 5.41% other content. The news and editorial focus of the newspaper is regional, national and international but not local.

The Vancouver Sun

142. The Vancouver Sun, an afternoon broadsheet newspaper, is also published by Pacific Press in the City of Vancouver and distributed throughout the Lower Mainland. In 1989 the average daily circulation of the newspaper in the Lower Mainland exceeded 214,979 (based on the combined circulations of the newspaper in its City Zone and Retail Trading Zone, as these terms are used by the Audit Bureau of Circulation).

143. In 1989 The Vancouver Sun had an average of 37.90% news and editorial content, 56.78% paid advertising content and 5.32% other content. The news and editorial focus of this newspaper is similar to that of The Province but with a greater emphasis on national and international issue.

Vancouver Area Newspaper Network

144. In the fall of 1990, the Vancouver Area Newspaper Network ("VanNet") was formed by the 13 newspapers acquired by the Respondent Southam, through the Respondent LMPL, together with two independent newspapers. VanNet offers advertisers comprehensive coverage of the Lower Mainland. VanNet distributes 1,120,360 copies of its publications per week throughout the Lower Mainland.

145. The members of VanNet which are controlled directly or indirectly by the Respondent Southam are the North Shore News, The Vancouver Courier, the Burnaby Now, the Coquitlam Now, the Maple

Ridge/Pitt Meadows Times, the Chilliwack Times, the Times (serving Abbotsford, Clearbrook, Matsqui, Aldergrove and Mission), the Surrey North Delta Now, the Richmond Times, the Richmond News, the Royal City Record Now, The Delta Optimist and the South Delta Today. The two independent members of VanNet are The Langley Advance and The Echo (of which Southam acquired a 15% equity interest in early 1991).

146. Like The Vancouver Sun and The Province, VanNet offers advertisers total coverage of the Lower Mainland from the City of Vancouver and the North Shore to Hope.

The MetroValley Newspaper Group

147. The MetroValley Newspaper Group ("MetroValley") is controlled by Trinity International (N.A.) Holdings Inc. There are 13 community newspapers in MetroValley with a combined distribution of 743,631 publications per week.

148. The members of MetroValley are the West Ender, The Vancouver News (formerly known as The Metro Vancouver News), the Richmond Review, The Burnaby/New Westminster News, The Tri-City News, The Maple Ridge News, The Surrey Leader, The Peace Arch News, the Langley Times, the Abbotsford News, the Chilliwack Progress, The Mission Record and the Hope Standard.

149. The competition in the Lower Mainland Newspaper Retail

Advertising Market provided by MetroValley is not substantial because MetroValley cannot offer advertisers coverage of each significant geographical area of the Lower Mainland. The Vancouver Sun, The Province and VanNet do provide coverage of each significant geographical area of the Lower Mainland.

150. More importantly, MetroValley does not reach the affluent community of the North Shore and provides inadequate coverage of the highly-populated and affluent market of the City of Vancouver.

North Shore

151. The only community newspaper on the North Shore, the North Shore News, is owned by the Respondent LMPL through the Respondent NSFP, and is a member of VanNet. It has been published in the City of North Vancouver since 1970, is published on Wednesdays, Fridays and Sundays, and is distributed only on the North Shore. The North Shore News had an average distribution in 1988, 1989 and 1990 of 59,700, 60,535 and 60,946, respectively. It currently has an average of 64 pages, with its Friday edition having as many as 120 pages.

152. Through a combination of extensive coverage of local news and a broad spectrum of consumer-useful advertising, the North Shore News has achieved a high level of readership. The only other significant sources of newspaper retail advertising services on the North Shore are The Vancouver Sun and The Province. Therefore,

MetroValley cannot offer advertisers newspaper retail advertising services in the North Shore.

City of Vancouver

153. In the City of Vancouver, MetroValley cannot provide advertisers with a circulation comparable to that of The Vancouver Sun, The Province or VanNet. The two members of MetroValley which distribute in the City of Vancouver are the West Ender and The Vancouver News. The West Ender, a community tabloid published on Thursdays, has an average weekly distribution of 56,000. The Vancouver News, a community newspaper published on Wednesdays, has an average weekly distribution of 75,200.

154. The average daily circulation of The Vancouver Sun and The Province in the City of Vancouver in 1990 was 72,060 and 45,245, respectively.

155. VanNet distributes in the City of Vancouver through two of its members, The Vancouver Courier and The Echo. The Vancouver Courier, a community tabloid published on Wednesdays and Sundays, has a Wednesday distribution of 65,000 and a Sunday distribution of 120,000 in the City of Vancouver. Its distribution is significantly higher than that of any other community newspaper distributed in the City of Vancouver. The Echo, (formerly known as The Vancouver Echo), is a community tabloid published on Wednesdays and Sundays, with a Wednesday distribution of 53,000 and

a Sunday distribution of 20,000 in the City of Vancouver. The combined weekly distributions of The Vancouver Courier and The Echo give VanNet an aggregate weekly distribution in the City of Vancouver of 258,000.

156. Therefore, MetroValley offers advertisers a combined weekly distribution within the City of Vancouver of 131,200, while The Vancouver Sun, The Province and VanNet offer weekly circulations of 432,360, 271,470 and 258,000, respectively.

157. In addition to lower distribution levels of the MetroValley papers in the City of Vancouver, the two members of MetroValley which distribute in the City, The Vancouver News and the West Ender, do not have the readership or the broad coverage (specifically, coverage of the affluent areas of the West Side) of The Province, The Vancouver Sun and VanNet.

158. The West Ender, an entertainment publication, has an average of 24 pages per issue. It is composed of 35% news and editorial content and 65% advertising content. It is distributed to households and businesses in the Downtown, West End, Kitsilano, Granville Island, False Creek and Fairview areas of the City of Vancouver. It is not distributed to the more affluent neighbourhoods of the West Side such as Shaughnessey, Kerrisdale, Point Grey, South Granville and Southlands.

159. The focus of the West Ender both in news and editorial as well as advertising is on entertainment such as cinemas, restaurants and nightclubs, reflecting the market niche it has developed among young adults who comprise a substantial proportion of the population of the neighbourhoods where the newspaper is distributed.

160. The Vancouver News, with an average of 24 pages per issue, is composed of 35% news and editorial content and 65% advertising content. It is distributed to households and businesses in the following neighbourhoods of the East Side of the City of Vancouver: Grandview, Strathcona, Woodlands, Hastings, Sunrise, Mount Pleasant, Riley Park, Cedar Cottage, Renfrew, Collingwood, Killarney, Champlain Heights and South Slopes.

161. Unlike the MetroValley papers, The Vancouver Sun and The Province are circulated broadly throughout the City of Vancouver.

162. Similarly, VanNet reaches a broad part of the City, in small part through The Echo, and principally through The Vancouver Courier. The Echo is distributed only in the East Side of the City of Vancouver. The Wednesday edition has an average of 26 pages and the Sunday edition has an average of 12 pages. The Echo has 35-40% editorial content and 60-65% advertising content.

163. The Vancouver Courier is recognized as one of the oldest

and most successful community newspapers published in Canada. The Vancouver Courier has an average of 32 pages and 43 pages, respectively for the Wednesday and Sunday editions. The Wednesday edition is distributed to households and businesses in that part of the City of Vancouver known as the "West Side", namely, the area of the City west of Main Street excluding the Downtown area. The Sunday edition is distributed to households and businesses in all parts of the City excluding the Downtown. In addition, The Vancouver Courier publishes a Neighbourhood News supplement, a different edition of which is published each week of a month. The Vancouver Courier has approximately 40% news and editorial content and 60% advertising content. Through a combination of extensive coverage of local news and a broad spectrum of consumer-useful advertising, The Vancouver Courier has achieved a higher readership than most community newspapers in Canada and as a result is an important advertising vehicle in the City of Vancouver for retail advertisers.

164. Therefore, in addition to providing significantly-lower distribution in the City of Vancouver than that offered by The Vancouver Sun, The Province and VanNet, MetroValley cannot offer multi-market advertisers the readership or the coverage of the affluent areas of the West Side offered by The Vancouver Sun, The Province and VanNet.

165. There are other publications distributed in the City of

Vancouver which could potentially join MetroValley and thereby provide further City coverage for advertisers using MetroValley. However, like the West Ender and The Vancouver News, they do not offer the broad readership or distribution of The Province, The Vancouver Sun or VanNet in the City of Vancouver. These other newspapers are The Revue and The Georgia Straight.

166. The Revue is a community tabloid newspaper published on Wednesdays in three editions. The South Vancouver Revue, with a distribution of 11,500 copies, is distributed in the South Vancouver area of the East Side of the City of Vancouver. The Marpole Revue, with a distribution of 9,500 copies, is distributed in the Marpole area of the West Side. The Mount Pleasant Revue, with a distribution of 2,200 copies, is distributed in the Mount Pleasant area which straddles Main Street, the dividing line between the West Side and the East Side of the City of Vancouver. None of the editions of The Revue is distributed in the affluent communities of the West Side.

167. The Georgia Straight is a controlled-distribution newspaper published every Friday and has a distribution of 75,000 copies in the Lower Mainland, of which 28,000 copies are distributed in the City of Vancouver. The editorial and advertising focus of the newspaper is arts, entertainment, travel and fashion. It does not cover local news. The newspaper, with an average of 49 pages per edition, has a 40% editorial content and

60% advertising content. Because The Georgia Straight is not delivered to households, has a limited focus and does not serve a specific community, it would not be a significant addition to MetroValley.

168. Because MetroValley cannot offer multi-market advertisers any coverage in the North Shore and inadequate coverage of the City of Vancouver, MetroValley does not constitute effective competition to VanNet. These markets are critical due to their large populations and their affluence and because multi-market advertisers in the Lower Mainland generally have outlets in the North Shore and/or the City of Vancouver or want to draw consumers from these areas to their outlets. The only competition to VanNet in the Lower Mainland Newspaper Retail Advertising Market is The Vancouver Sun and The Province, both of which offer the broad coverage provided by VanNet.

169. Prior to the direct and indirect acquisitions by the Respondent Southam of the North Shore News, The Vancouver Courier and the other community papers acquired in May, 1990, another market participant operated in the Lower Mainland Newspaper Retail Advertising Market: MetroGroup, the Metropolitan Vancouver Associated Newspapers ("MetroGroup"). It was formed in late 1988 or early 1989 through the association of MetroVan (comprised of the North Shore News, the East Ender, the West Ender, The Vancouver Courier and the Richmond Review) and MetroValley (comprised of the

Burnaby/New Westminster Sunday News, The Tri-City News, The Maple Ridge News, The Surrey Leader, The Peace Arch News, the Langley Times, the Abbotsford News, the Fraser Valley Record, the Chilliwack Progress and the Hope Standard).

170. MetroGroup was able to offer broad coverage of the Lower Mainland and thereby compete with The Vancouver Sun and The Province in the Lower Mainland Newspaper Retail Advertising Market. With the acquisition of the North Shore News in January 1989 and of The Vancouver Courier in May, 1990 by the Respondent LMPL, and the subsequent establishment of VanNet, MetroGroup was no longer able to offer multi-market advertisers adequate coverage of the City of Vancouver or any coverage of the North Shore. As a result, MetroGroup was no longer able to provide effective competition in the Lower Mainland Newspaper Retail Advertising Market.

C. Post-Merger Market

171. The Director submits that each or both of the Mergers prevents or lessens, or is likely to prevent or lessen, competition substantially in the Lower Mainland Newspaper Retail Advertising Market having regard to the factors enumerated in section 93 of the Competition Act, discussed below.

172. The substantial lessening of competition will result from the increased market power that the Respondent Southam will be able to exercise through its direct and indirect control of the three

largest market participants, The Vancouver Sun, The Province and VanNet. Each or both of the Mergers is likely to enable Southam to unilaterally impose and maintain a significant price increase in a substantial part of the Lower Mainland Newspaper Retail Advertising Market for a substantial period of time.

D. Section 93 Factors

Foreign Competition

173. Foreign products and foreign competition do not provide, and are not likely to provide, effective competition to The Province, The Vancouver Sun or VanNet for multi-market newspaper retail advertising services in the Lower Mainland.

Failing Business

174. The business of publishing The Vancouver Courier has not failed and is not likely to fail. The business of publishing the North Shore News has not failed and is not likely to fail. Neither The Province nor The Vancouver Sun is a business which has failed or is likely to fail.

Acceptable Substitutes

175. The Director submits that the availability of acceptable substitutes which could be provided by other market participants is not likely to have a significant effect on the ability of the Respondent Southam to materially raise prices in a substantial part of the Lower Mainland Newspaper Retail Advertising Market for a

substantial period of time.

176. In addition to newspaper retail advertising services, there is a variety of other advertising vehicles which are used or could be used by retailers to provide coverage throughout the Lower Mainland: television and radio broadcasts; magazines; directories; classified advertising; and free-standing flyers.

177. These alternative advertising vehicles are not included as products in the Lower Mainland Newspaper Retail Advertising Market because they are not acceptable substitutes for multi-market newspaper retail advertising services. A significant price increase in multi-market newspaper retail advertising services would not result in a significant shift to these products.

178. Television and radio advertising have limited information content and information retention value. Magazines and directories cannot be used for time-sensitive retail advertising messages. Classified advertising restricts the format in which an advertising message can be conveyed. Free-standing flyers are less attractive than flyer inserts as retail advertising because of the high desirability of distribution of flyers in a newspaper.

Barriers to Entry

179. The Director submits that future entry into the Lower Mainland Newspaper Retail Advertising Market is not likely to occur

on a sufficient scale to ensure that prices will not be materially higher in the relevant market for a substantial period of time as a result of one or both of the Mergers.

180. If entry occurs, it is likely to be in the form of an expansion of MetroValley to provide total coverage of the Lower Mainland, a new network of community newspapers, or another daily newspaper.

181. Given the dominant position of the Respondent Southam in the Lower Mainland Newspaper Retail Advertising Market, the level of sunk costs associated with entry by a potential entrant are high relative to the expected returns from successful entry.

Effective Competition Remaining

182. As discussed above in paragraphs 149, 150 and 175 to 178, the remaining sources of competition in the Lower Mainland Newspaper Retail Advertising Market, from other market participants or otherwise, are not and would not likely be able to constrain the exercise of increased market power by the Respondent Southam.

Removal of a Vigorous and Effective Competitor

183. The Director submits that each or both of the Mergers results in the removal by the Respondent Southam of MetroGroup as the most effective and vigorous competitor of The Vancouver Sun and The Province in the Lower Mainland Newspaper Retail Advertising

Market for the reasons discussed in paragraph 170 above.

Change and Innovation

184. The Director submits that there are several change and innovation considerations which are relevant to the assessment of the impact of the Mergers on competition. A network of community newspapers offering multi-market coverage can compete with daily newspapers for advertisers seeking multi-market coverage because of two trends: a decline in the daily newspaper industry and an increase in the credibility of community newspapers. People are buying newspapers less for international and national news (which they can obtain from radio and television broadcasts) and more for local news and consumer-useful advertising. Community newspapers, with their in-depth coverage of local news and large component of retail advertising, have built a strong constituency of readers and advertisers. Networks of community newspapers can now reach as many people, in as broad a geographic area, as the dailies.

E. Relief Sought

185. With respect to the Vancouver Courier Merger, the Director applies for the following orders:

- a) an order directing the Respondent NSFP to dispose of its shares in the Respondent Rim in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii) of the Competition Act;
- b) an order directing the Respondent Rim to dispose of

all of its assets used in connection with the business of publishing The Vancouver Courier newspaper in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii) of the Competition Act; or

- c) an order pursuant to subparagraph 92(1)(e)(iii) of the Competition Act.

186. With respect to the North Shore News Merger, the Director applies for the following orders:

- a) an order directing the Respondent LMPL to dispose of its shares in the Respondent NSFP in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii) of the Competition Act;
- b) an order directing the Respondent NSFP to dispose of all of its assets used in connection with the business of publishing the North Shore News newspaper in such manner as the Competition Tribunal directs pursuant to the subparagraph 92(1)(e)(ii) of the Competition Act; or
- c) an order pursuant to subparagraph 92(1)(e)(iii) of the Competition Act.

PART IV: THE REAL ESTATE WEEKLY MERGER

A. Background

187. The Director is challenging the indirect acquisition by the Respondent Southam of control over the business of publishing the Real Estate Weekly, as described in paragraph 21 of Part I hereof (the "Real Estate Weekly Merger"), on the grounds that the acquisition is a merger which prevents or lessens, or is likely to prevent or lessen, competition substantially within the meaning of sections 91 and 92 of the Competition Act.

B. Relevant Markets

188. The Director submits that the Real Estate Weekly Merger prevents or lessens, or is likely to prevent or lessen, competition substantially in the supply of print real estate advertising services in the following areas:

- a) the Lower Mainland other than the North Shore (the "Lower Mainland Print Real Estate Advertising Market"); and
- b) the North Shore (the "North Shore Print Real Estate Advertising Market").

C. Market Participants - Lower Mainland

189. The Real Estate Weekly published by the Respondent Elty is a controlled-distribution real estate advertising publication. The publication was launched in the mid-1980's in response to a protracted strike at Pacific Press, the publisher of The Province and The Vancouver Sun. Originally only one edition was published for the entire Lower Mainland. The publication then was increased to 4 and then 7 editions. In 1989, the Real Estate Weekly was first published as 14 separate zoned editions.

190. At present, the Real Estate Weekly publishes a separate edition each Friday for each of the following 14 geographic areas of the Lower Mainland: West Side Vancouver, East Side Vancouver, the North Shore, Burnaby, New Westminster, Coquitlam/Port Coquitlam/Port Moody, Maple Ridge, Surrey, Langley, Richmond, South Delta, Chilliwack, Abbotsford and Mission.

191. The combined total circulation of the 14 editions is approximately 500,000 copies which are delivered to households. Each edition is delivered only to households served by that edition. The average number of copies per edition ranges from a high of 66,800 copies in Surrey to a low of 12,200 copies in Mission. The budgeted average number of pages per edition ranges from a high of 80 pages for the West Side Vancouver edition to a low of 8 pages for the New Westminster and Mission editions.

192. The editorial content of the Real Estate Weekly is limited to the front page of each issue. The remaining pages contain display advertising for the sale of residential properties. The total gross advertising revenues of the publication were approximately \$10 million in 1989. The Real Estate Weekly only accepts advertising placed by licensed real estate brokers and agents.

193. The Real Estate Weekly is the primary supplier of print real estate advertising services to licensed real estate brokers and agents in the Lower Mainland Print Real Estate Advertising Market.

194. The Province and The Vancouver Sun are the only significant suppliers of print real estate advertising services in the Lower Mainland that can offer real estate advertisers a geographic coverage equal to or greater than the Real Estate Weekly. The Province publishes in each edition advertising for the sale of residential properties throughout the Lower Mainland by licensed real estate brokers and agents. In addition to a New Homes Section published every Saturday, The Vancouver Sun publishes in each edition advertising for the sale of residential properties throughout the Lower Mainland by licensed real estate brokers and agents.

195. Most community newspapers carry real estate advertising

for their respective geographic markets. Other than in the North Shore, discussed in Section D below, the amount of real estate advertising in these newspapers is not substantial and does not constitute effective competition to the edition of the Real Estate Weekly distributed in their respective geographic area.

D. Market Participants - North Shore

196. The North Shore is that part of the Lower Mainland consisting of the City of North Vancouver, the Municipality of North Vancouver and the Municipality of West Vancouver. In the North Shore Print Real Estate Advertising Market, the North Shore News is the main competitor of the Real Estate Weekly which publishes each Friday a North Shore edition with a budgeted average of 52 pages and a circulation of approximately 51,500 copies. The North Shore News publishes with its Friday edition a real estate supplement of approximately 50 pages. The supplement contains exclusively advertisements for the sale of residential properties by licensed real estate brokers and agents. For the period June 1989 to May 1990, the North Shore News received gross revenue of \$1,130,000 from real estate advertising.

197. In the North Shore, the only significant suppliers of print real estate advertising services are the Real Estate Weekly, the North Shore News, The Vancouver Sun and The Province.

E. Post-Merger Market

198. The Director submits that the Real Estate Weekly Merger prevents or lessens, or is likely to prevent or lessen, competition substantially in the supply of print real estate advertising services in both the Lower Mainland Print Real Estate Advertising Market and the North Shore Print Real Estate Advertising Market having regard to the factors enumerated in section 93 of the Competition Act, discussed below. The substantial lessening of competition in both markets results from the increased market power that the Respondent Southam will be able to exercise through its direct and indirect control of, or significant interest in, the largest participants in both markets. The Real Estate Weekly Merger is likely to enable Southam to unilaterally impose and maintain a material price increase in a substantial part of the Lower Mainland Print Real Estate Advertising Market and the North Shore Print Real Estate Advertising Market for a substantial period of time.

199. As a result of the Real Estate Weekly Merger, the Real Estate Weekly, The Province and The Vancouver Sun account for a significant part of the market for the supply of print real estate advertising services in the Lower Mainland other than the North Shore. In the North Shore the Real Estate Weekly, the North Shore News, The Province and The Vancouver Sun collectively account for substantially all of the print real estate advertising services.

F. Section 93 Factors

Foreign Competition

200. Foreign products and foreign competition do not provide and they are not likely to provide effective competition to:

- a) the Real Estate Weekly, The Province and The Vancouver Sun in the Lower Mainland Print Real Estate Advertising Market; and
- b) the Real Estate Weekly, the North Shore News, The Province and The Vancouver Sun in the North Shore Print Real Estate Advertising Market.

Failing Business

201. The business of publishing the Real Estate Weekly of the Respondent Elty has not failed and is not likely to fail. None of The Province, The Vancouver Sun or the North Shore News is a business which has failed or is likely to fail.

Acceptable Substitutes

202. There are no acceptable substitutes for print real estate advertising services. Cable television is the sole existing alternative to print advertising available to realtors. It is not acceptable because the delivery system has inherent capacity limitations and is regarded by advertisers to have inadequate message retention value.

Barriers to Entry

203. The Director submits that as a result of the Real Estate Weekly Merger, future entry into the Vancouver Lower Mainland Print Real Estate Advertising Market and the North Shore Print Real Estate Advertising Market is not likely to occur on a sufficient scale to ensure that prices will not be materially higher in the relevant markets for a substantial period of time.

204. The potential sources of entry into the Lower Mainland Print Real Estate Advertising Market are:

- a) expansion by a community newspaper distributed within the same geographic market and which provides a real estate section;
- b) entry by a community newspaper distributed within the same geographic market and which does not provide a real estate section; and
- c) entry by a new real estate publication.

205. Entry into the Lower Mainland Print Real Estate Advertising Market will be difficult because in order to provide effective competition to the Real Estate Weekly, The Province and The Vancouver Sun, an entrant must offer advertisers a publication with multi-area discounts and a broad geographic coverage comparable to the coverage provided by the Real Estate Weekly through its 14 editions, and by The Province and The Vancouver Sun through their broad circulation. If entry occurs in the Lower

Mainland Print Real Estate Advertising Market, it is likely to be in the form of a real estate publication with multiple editions covering the entire Lower Mainland.

206. The sources of potential entry into the North Shore Print Real Estate Advertising Market are:

- a) entry by a community newspaper with or without a real estate section currently distributed in an adjacent geographic market; and
- b) entry of a new real estate publication.

207. Entry by a community newspaper into the North Shore Print Real Estate Advertising Market will encounter strong community identification with the North Shore News. This adds substantially to the difficulties that would be encountered by an entrant into the market. Similarly, the strong community identification of existing community newspapers distributed in adjacent geographic markets will make it unlikely that such newspapers will be the source of new entrants in the North Shore Print Real Estate Advertising Market.

208. Regardless of the source of potential entry, an entrant into the Lower Mainland Print Real Estate Advertising Market or the North Shore Print Real Estate Advertising Market will encounter substantial difficulty in achieving an acceptable level of advertising. To attract advertising, an entrant will have to

overcome the reluctance of an advertiser to buy advertising space unless a substantial number of its competitors advertises as well in the new publication. This problem is compounded where advertising is placed and paid for by individual real estate agents rather than the real estate broker with which they are associated. With such real estate agents, a publication must contact each agent individually to solicit advertising. An entrant must be prepared to sustain substantial financial losses until acceptability is reached.

209. The costs of entry, including costs of equipment, staff, production and distribution, have a significant irrecoverable or sunk component in that they will not be recoverable in the event the entry initiative failed.

210. The significant sunk costs of entry further include:

- a) costs resulting from operating at a loss for the substantial period of time that will be required to achieve credibility in the market;
- b) costs incurred in making an entry decision;
- c) costs of developing a product;
- d) costs of hiring new staff; and
- e) costs of setting up a distribution system.

211. The dominant position of the Respondent Southam in the Lower Mainland Print Real Estate Advertising Market and in the

North Shore Print Real Estate Advertising Market, the resources available to Southam and the opportunities for strategic behaviour by Southam are likely to further delay and to increase the perceived risks associated with entry.

212. The Director submits that entry would not likely occur to limit the ability of the Respondent Southam to impose and maintain a material price increase for a substantial period of time in the Lower Mainland Print Real Estate Advertising Market or in the North Shore Print Real Estate Advertising Market because the level of sunk costs associated with entry are high relative to the expected returns from successful entry.

Effective Competition Remaining

213. As discussed above in paragraphs 195, 197 and 202, the remaining sources of competition in the Lower Mainland Print Real Estate Advertising Market and the North Shore Print Real Estate Advertising Market from other market participants or otherwise, are not and would not likely be effective competition against the market power of the Respondent Southam in the relevant markets.

Removal of a Vigorous and Effective Competitor

214. The Director submits that the Real Estate Weekly Merger results in the removal of the Real Estate Weekly as the most vigorous and effective competitor of The Vancouver Sun and The Province in the Lower Mainland Print Real Estate Advertising Market

for the reasons discussed in paragraphs 194 and 195; and of The Province, The Vancouver Sun and the North Shore News in the North Shore Print Real Estate Advertising Market for the reasons discussed in paragraphs 196 and 197 above.

Change and Innovation

215. The Director submits that there are no change or innovation considerations which are relevant to the assessment of the impact of the Real Estate Weekly Merger on competition.

G. Relief Sought

216. The Director applies for the following orders, with respect to the Real Estate Weekly Merger:

- a) an order directing the Respondent Specialty to dispose of its shares in the Respondent Elty in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii);
- b) an order directing the Respondent Elty to dispose of all of its assets used in connection with the business of publishing the Real Estate Weekly newspaper in such manner as the Competition Tribunal directs pursuant to subparagraph 92(1)(e)(ii) of the Competition Act; or
- c) an order pursuant to subparagraph 92(1)(e)(iii) of the Competition Act.

PART V: PROCEDURAL MATTERS

Place of Hearing

217. The Director requests that the hearing of this Application be held in the City of Vancouver, British Columbia.

Language of Hearing

218. The Director requests that the hearing of this Application be conducted in the English language.

Service on the Director

For the purposes of this Application, service of all documents on the Director may be served on:

Stanley Wong
Mary L. Ruhl
Keith E.W. Mitchell

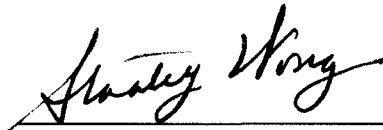
Counsel to the Director
of Investigation and Research

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This Amended Notice of Application is dated the 8th day of July, 1991 in the City of Vancouver, in the Province of British

Columbia.

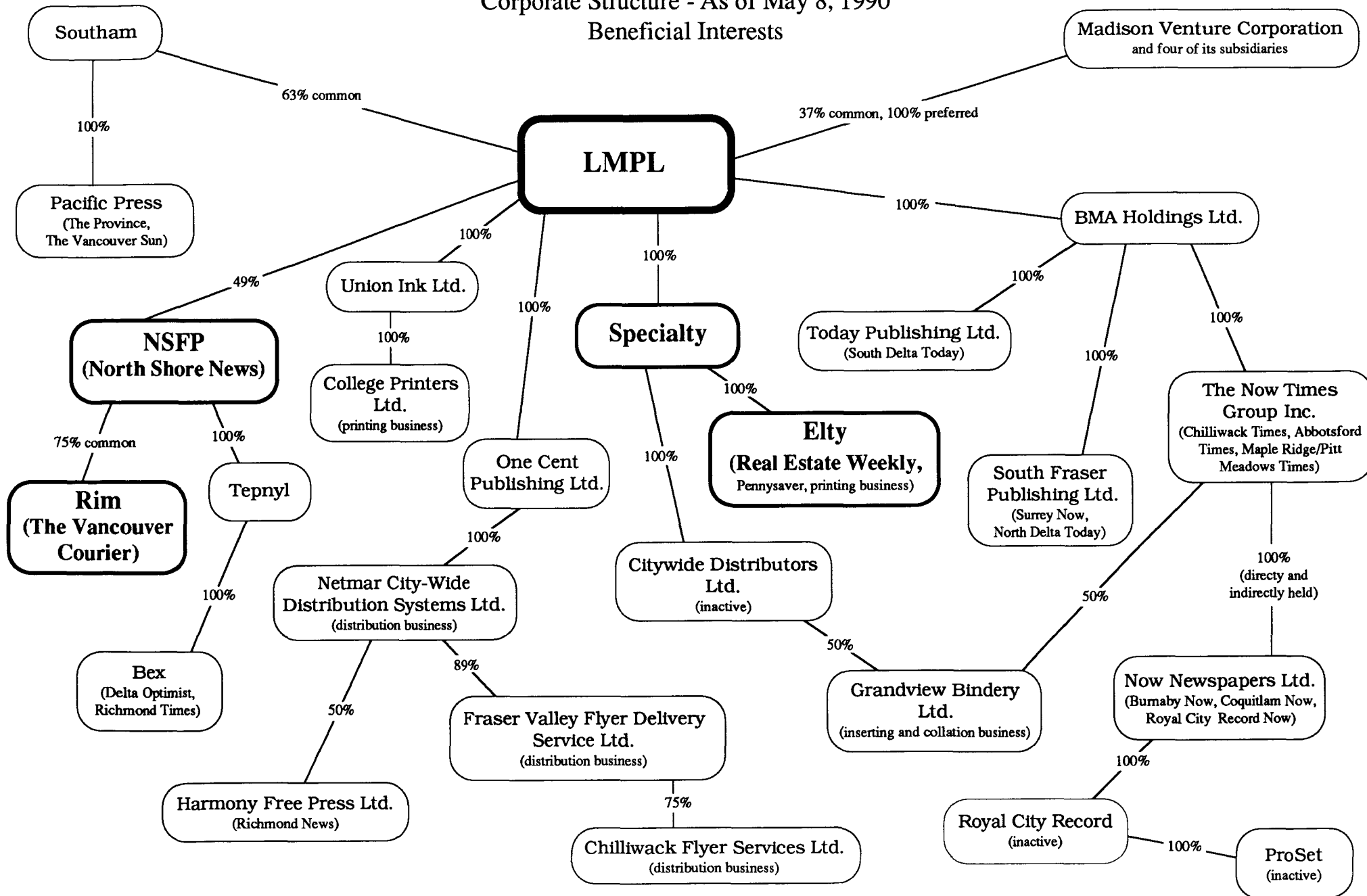
A handwritten signature in cursive script that reads "Stanley Wong". The signature is written in black ink and is positioned above a horizontal line.

Stanley Wong
Counsel to the Director of
Investigation and Research

(Notice of Application dated and filed November 29, 1990 was signed by Howard I. Wetston, Director of Investigation and Research under the Competition Act.)

(Amended)
Appendix A

Corporate Structure - As of May 8, 1990
 Beneficial Interests



* Some of the numbers have been rounded to the nearest whole number