Southam - Expert Aug 16/91

Original

CT-90/1

[redacted] THE COMPETITION TRIBUNAL

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

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



B E T W E E N:



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 PUBLISHER INC., ELTY PUBLICATIONS LTD.,

Respondents.

## AFFIDAVIT

I, STEVEN GLOBERMAN, of the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY:

## INTRODUCTION

1. I am currently Professor of Economics at Simon Fraser University in Burnaby, British Columbia. Prior to that I was a professor in the Faculty of Business Administration at Simon Fraser University, and a professor in the Faculty of Administrative Studies at York University in Toronto. I have also been a visiting professor in The Faculty of Commerce and Business Administration at the University of British Columbia and a visiting professor at the University of California.

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2. In my academic capacity, I have taught courses in industrial organization, a specialty in economics concerned with how the behaviour and performance of organizations are related to the economic features of the environments in which they operate. I have also carried out research on various issues in this specialty area including the motivations for and consequences of mergers and acquisitions. In this regard, I carried out research on mergers and acquisitions in Canada for The Royal Commission on Corporate Concentration.

3. The major focus of my recent research and consulting work has been the telecommunications industry. I have also carried out research and consulting activities concerned with industrial organization issues affecting the petroleum industry and culture industries such as film and broadcasting. In this latter capacity, I was a consulting economist to the Organization For Economic Cooperation and Development where I carried out research on emerging competition between cable television companies and other existing and potential suppliers of local distribution services including telephone companies.

4. My affidavit addresses the broad issue of whether the acquisitions by Southam Inc. of The North Shore News ("NSN"), the Vancouver Courier ("Courier") and The Real Estate Weekly (the "REW") are likely to have significant anti-competitive effects. In addressing this broad issue, I consider three specific questions:

(i) What economic criteria should be invoked to assess whether these acquisitions will make price increases by Pacific Press and the Courier, NSN and REW more profitable and, therefore, more likely?

(ii) What evidence might be considered to evaluate whether these acquisitions will make price increases by Pacific Press and the Courier, NSN and REW more profitable and, therefore, more likely?

(iii) Does the available evidence support a claim that the acquisitions in question will significantly increase the likelihood of price increases for services supplied by the daily and community papers?

5. I note explicitly at this point that there are both economic and legal distinctions between mergers and acquisitions; however, these distinctions are immaterial for my evidence. Hence, for convenience I will simply use the term "merger" to refer to any consolidation of firms or specific assets of firms including the acquisitions under consideration in this proceeding.

6. My analysis draws upon documents provided to me by Counsel, the affidavit evidence of other witnesses in this case, interviews I conducted with various industry participants and upon the relevant economics literature.

**FRAMEWORK FOR ASSESSING THE COMPETITIVE EFFECTS OF MERGERS**

7. Analysis of the economic effects of a merger typically involves identification of the relevant market and evaluation of how the merger in question will affect competition in that market. While defining the relevant market can be treated as an exercise separate from that of identifying the competitive characteristics of that market, the exercises are arguably interdependent as is suggested by the definition of a relevant market under the Merger Enforcement Guidelines:

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> Conceptually, a relevant market for merger analysis under the Act is defined in terms of the smallest group of products and smallest geographic area in relation to which sellers, if acting as a single firm that was the only seller of those products in that area, could profitably impose and sustain a significant and non-transitory price increase above levels that would exist in the absence of the merger.1

8. The constraints that other firms and products put on the power of those whose actions are being examined are clearly integral to the empirical implementation of market definitions under competition legislation.2 To this extent, an appropriate broad focus on the relevant issues would seek to identify whether as a result of a merger, it is more profitable for any group of sellers, if acting as a single firm, to impose and sustain a significant and non-transitory price increase.

9. The basic premise underlying concern about a given merger is that it will facilitate the coordination of price increases.3 Two or more sellers would be more likely to find a post-merger price increase profitable:

(i) the greater the extent to which their products are close substitutes;

(ii) the less substitutable are other sellers' products for each of those of the merging partners.

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1. See Director of Investigation and Research (1991, p. 7)

2. See Fisher (1987)

3. There is no necessary implication that the producers involved raise their prices by the same absolute or relative amount, only that they seek to maximize their combined profits.

10. The basic rationale is as follows. If sellers of close substitutes jointly increase their prices and other products are relatively poor substitutes, the loss in unit sales to other producers resulting from the coordinated price increase is unlikely to offset the effect of higher average prices charged by the sellers. As a result, higher revenue can be expected. Conversely, if the products involved in a coordinated price increase are poor substitutes for each other but confront relatively close substitutes in the form of other products, a post-merger price increase may well lead to lower revenues. The rationale underlying this statement can be illustrated by considering the following limiting case: imagine that two products involved in a merger are not substitutable at all; i.e., any price change for either product leaves demand for the other product completely unaffected. However, a price increase for either product will lead to a substantial defection of customers to producers not involved in the merger. In this case, the merger per se provides no benefits in terms of "buffering" either merger partner from a loss of sales. The loss in sales each party to the merger suffers is the same whether the parties coordinate a price increase or whether they implement independent price increases.

11. Several other factors should be considered in evaluating the prospective profitability of a post-merger price increase. One is the likely competitive responses of producers not involved in the merger. For example, producers of substitute products might react to a coordinated price increase by the merger partners by raising their own prices. To the extent that they do, it would increase the profitability (or reduce the losses) associated with a coordinated price increase implemented by parties to the merger. On the other hand, if producers of substitute products aggressively sought to increase their market shares in the face of a coordinated

post-merger price increase, the latter action is more likely to prove unprofitable. The likely reactions of competitors in markets characterized by product differentiated competition are difficult to predict; however, implicit price coordination is less likely, all other things constant, the greater the relevant number of competitors and the quicker and easier is entry by rivals.

12. A second factor is the behaviour of costs with respect to output changes. For the reasons discussed above, a coordinated price increase on the part of the merger partners can be expected to reduce the parties' sales and output. The larger the reduction in costs associated with any cutback in output, the larger will be the offset to any reduction in revenues associated with a price increase. On the other hand, if costs are relatively insensitive to modest changes in output, the impact of a coordinated post-merger price increase on profits will essentially reflect the impact on revenues.

13. It should also be noted that greater economic profits attendant to coordinated price increases will encourage an increased supply of products that are more or less substitutable (at the margin) for products whose profitability is enhanced by post-merger price increases. Supply responses can be expected from new producers as well as from already established producers of related products or established producers of similar products in other geographic markets. The resulting increases in production will have the effect of reducing prices for a set of products that are substitutable at the margin for the merged products, thereby intensifying the loss in sales suffered by the merger partners if they maintain their new higher prices. The faster and more substantial is such new entry and expansion, the less profitable will be any post-merger price increase.

14. This general theoretical framework suggests a set of empirical relationships that should be considered when evaluating whether or not a coordinated post-merger price increase will be profitable. They include:

(i) the price elasticity of each product involved in the merger. Price elasticity of demand is the percentage change in the quantity demanded of a product divided by the percentage change in the product's price. The higher the price elasticities of demand, the less profitable will be a coordinated price increase, all other things constant. Two key factors influencing a product's price elasticity of demand are the availability of substitute products and the consumer's sensitivity to price changes.

(ii) the relationship between costs and output changes for the products involved in the merger. The weaker this relationship, the less profitable will be a coordinated price increase. That is, the smaller the decrease in costs associated with reductions in output, the less profitable will be any price increase, other things constant.

(iii) the likely responses of producers not involved in the merger including potential new entrants. A coordinated price increase will be less profitable to the extent that the prices of extant rival products do not increase. It will also be less profitable to the extent that it encourages increases in the supply of reasonable substitutes.

(iv) cross-price elasticities of demand of each of the merged products with each of the other merged products, as well as with products not involved in the merger. Cross-price elasticity is the percentage change in the quantity demanded of one product divided by the percentage change in the price of a related product. The lower the cross-price elasticities of demand of each of the merged products with respect to the other merged products, all other things constant, the less profitable will be a coordinated price increase involving those products.

**IMPLEMENTING THE FRAMEWORK**

15. Taking into account all of these relevant factors in order to evaluate a merger represents an extremely difficult statistical task. Difficulties arise not only because of the need for accurate and often difficult to obtain data, but also because a large number of statistical relationships must be derived. Approaches have been suggested to mitigate these difficulties, essentially by reducing the number of empirical relationships to be evaluated.4 However, the statistical procedures involved are complex and require precise measurement of the relevant economic variables, especially the prices of the products involved in the merger. Construction of a reliable set of data over a sufficient period of time to perform the necessary statistical estimations is an extremely difficult task. In particular, reliable price data series are difficult to construct when characteristics of the relevant products change over time, when actual transactions prices reflect discounts and when customer mix changes over time.

16. Partly reflecting these difficulties with formal statistical modelling, several economists working in the antitrust area have proposed taking a "pragmatic" approach

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4. See, for example, Baker and Bresnahan (1985).

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toward evaluating the likely consequences of a merger. This approach essentially involves assessing a range of identifiable characteristics of an industry which are directly or indirectly related to the empirical relationships identified above, particularly to the price and cross-price elasticities of the relevant products.5 Through the use of careful case studies and related types of evidence, reliable insights into important empirical relationships can be generated.

**Demand Related Characteristics**

17. The Director proposes a set of factors to consider when evaluating whether products are in the same market. These factors are also arguably relevant to the broader issue of whether or not a coordinated post-merger price increase will be profitable.

**Views, Strategies, Behaviour and Identity of Buyers**

18. To the extent that buyers express the view that a set of good alternatives to the merged products exist at current prices, it is consistent with the presumption that price elasticities of demand for the merged products are relatively high, as are the cross-price elasticities of demand for the merged products with other products in the set. This view would be buttressed by observations that consumers have engaged in significant substitution for each of the merged products when their prices have increased in the past. Similarly, buyers' expressions of the view that the merged products are poor substitutes for each other is consistent with the presumption that their cross-price elasticities with each other are relatively low.

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5. See Salop and Simons (1984) and Salop (1986).

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19. Observation that each of the merged products is sold to buyers having distinct characteristics, e.g. one product is sold to households and the second to businesses, is suggestive, although certainly not conclusive of the products being relatively weak substitutes. By the same token, observation that each of the merged products is sold to the same buyers is suggestive of substitutability; however, one must be especially cautious against inferring too much from this observation. For example, although most everyone buys food and clothing, they are not close substitutes on the margin. Clearly, inferences drawn from utilization patterns must be buttressed by more direct evidence bearing upon the substitutability issue.

**Trade Views, Strategies and Behaviour**

20. To the extent that "insiders" and "outsiders" knowledgable about the industry consider a set of products outside the merger to be highly substitutable (on the margin) for products inside the merger, it is consistent with the relevant set of cross-price elasticities being relatively high. It is also consistent with the price elasticities of demand of the merged products being relatively high. This inference would be supported by observing that the strategies and behaviour of existing producers (both inside and outside the merger) acknowledge significant substitution possibilities. In this respect, promotional claims made by one company that its product is superior to that of another company are suggestive of the former company seeing the latter company's product as an actual or potential rival. Internal company memos and documents suggesting that strategic initiatives be launched against specific products are also evidence suggesting that the latter are effective substitutes for the former.

21. Illustrative of the use of this type of evidence is the Federal Trade Commission's product market definition claim

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in the proposed merger of Coca-Cola and Dr. Pepper. The FTC claimed that the appropriate definition was carbonated soft drinks (CSD) and should not include producers of other beverages. The Federal Trade Commission appealed to the fact that CSD executives, when asked, indicated that their primary competitors were other CSD producers. Their pricing and marketing strategies were developed with an eye towards other CSD producers not toward sellers of fruit juices, milk, coffee, tea or other beverages. Moreover, the information on rivals' prices and sales volumes that they regularly collected pertained almost exclusively to other CSD producers and not the producers of other beverages.6

**Physical and Technical Characteristics**

22. In general, the greater is the value that buyers place on the actual or perceived unique physical or technical characteristics of a product, the less likely it is that the product faces close substitutes on the margin, at any set of relative prices. The emphasis here is on the value placed on the relevant characteristics and not simply the existence of differences. In virtually all relevant instances of industrial competition, products are differentiated to a greater or lesser extent, and features of different products change over time.

23. Factors similar to those identified by the Director can be found in the broader legal/economics literature concerned with demand characteristics of a market. For example, in their survey article, Stein and Brett (1979) list the following factors as being suggestive of whether two or more products compete in the same market:

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6. See White (1979).

**Industry Recognition**

24. This consideration encompasses a variety of factors such as whether people knowledgable about the products in question consider them to be reasonable substitutes in the minds of consumers.

**Recognition by the Parties**

25. If the producer of one product acknowledges the producer of a second product to be a competitor, especially in formulating its own competitive strategies, the recognition is consistent with a view that the products are in the same market.

**Particular Characteristics and Uses**

26. Unique physical attributes and/or distinct end uses for products are suggestive of the products being in different markets.

**Distinct Customers**

27. The existence of distinct groups of customers for the products in question is supportive of the products being in different markets.

28. As noted above, these factors are also relevant to a consideration of the likely profitability of a coordinated price increase by parties to a merger.

**Supply Related Characteristics**

29. As noted above, a coordinated price increase following a merger is more likely to be unprofitable to the extent that existing producers of substitutes for the products involved

fail to increase their prices. More important perhaps, a price increase following a merger is more likely to be unprofitable to the extent that it leads to substantial and fairly rapid increases in the supply of reasonably good substitutes in consumption. What is relevant in this regard are the abilities of existing producers to expand output given higher prices for the relevant products, as well as the ability of new suppliers to enter into production of those products, either by converting productive assets from other uses or by de novo entry.

30. In deciding whether to enter a market de novo or from a related market, a would-be entrant must balance uncertain revenues against (presumably less uncertain) costs, where the latter includes a "normal" return to capital. If an entrant believes it can (in the long-run) be as efficient, or even more efficient, than incumbents, then having to incur specific costs that have already been incurred by the incumbent is not an absolute entry barrier. That is, the entrant can reasonably anticipate being able to recoup these costs over time; however, to the extent that there is a significant potential that costs will not be recouped, risk is attached to entry. The greater the associated risk, the less likely is entry, all other things constant.

31. The financial risk associated with entry will be a function of several factors. One is the magnitude of the associated "sunk" costs relative to the anticipated revenue stream. Sunk costs may be thought of as expenditures that cannot be recovered in the event that the entrant decides to withdraw from the market. In the limit, if all expenditures could be fully recovered given a decision to withdraw from the market, the necessary expenditures to enter the market would impose no financial exposure. In practice, some costs will be sunk either because the acquired assets are highly specialized

and, therefore, not easily resold and/or because expenditures are made on services that are "used-up" in the process. The longer the entry process takes, the greater will be the associated expenditures on inputs that are used-up. For an entrant, sunk costs increase the financial exposure associated with entry.

32. Holding other things constant, risks associated with entry will be greater the larger the overall scale and scope at which viable entry must occur. This is because a potential entrant rationally might fear that it will be unable to gain enough sales to justify entry, even at existing (or higher) prices, or it might fear that the competition caused by its entry may induce prices to fall.7

33. Ultimately, the minimum viable scale of an entrant will depend upon the extent to which indivisible expenditures must be made in order to earn a sufficient rate of return on its invested capital to justify entry. For example, promotional efforts may be largely ineffectual up to some minimum (but relatively large) level of expenditure. Similarly, production and distribution activities may be characterized by sharply declining unit costs over a wide range of output.

34. In summary, if entry takes a relatively long time or if new producers are unable to gain sales rapidly after entering a market, then potential entry is a weaker competitive check on incumbent producers. The greater is the need for large scale entry in order to be a financially viable entrant, the more risky (and less likely) is entry. And the greater the fraction of entry costs that are sunk and therefore not recoverable in the event entry fails, the greater is the

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7. This and other factors affecting the risks of entry are discussed in Salop (1986).

financial exposure of an entrant. In practice, minimum viable scale and the importance of sunk costs are likely to be related, as will the length of time required to enter and the resources that will be used up (or effectively sunk).

35. Economic factors such as market growth and the ratio of fixed costs to total costs condition the impact of minimum viable scale on entry. Specifically, when market demand is growing rapidly, it is less likely that new entry at a relatively large scale will be associated with a sharp decrease in price. A sharp decrease in price associated with entry is also less likely when fixed costs are low relative to market price.

**Speed of entry**

36. There are several factors that can influence speed of entry. One is whether customers have long-term contracts with existing suppliers. Where such contracts are spread out over time, their existence might hamper an entrant's ability to enter a market quickly at minimum viable scale. A second factor is whether customers assess the "quality" of a supplier by the length of time the supplier has been in the market. A third factor is whether critical inputs are in short supply owing, for example, to long-term contracts with incumbent producers. In this case, entry may be delayed until new sources of supply become available.

**Economies of scale and scope**

37. The measurement of economies of scale and scope in an activity is a relatively complex and technical matter. Various approaches have been taken in the literature to address this issue. One involves statistical estimation of the relationship

between costs and the quantity and mix of output produced. A second, the "survivor technique", uses observations of firm sizes over time to determine if there is a propensity for surviving firms to cluster around a specific size.

38. Put broadly, economies of scale are reductions in average costs attributable to increases in scale. In this regard, lower average costs can be associated with increasing the scale of production of a single product, or a set of products, with increasing the scale of the plant being used, with using multiple plants and with increasing the overall size of the firm including overhead functions such as research and development, and marketing.8

**Other considerations**

39. Salop and Simons (1984) describe a set of factors suggesting the likely supply response of producers. Besides economies of scale and the importance of sunk costs, they include:

(i) the number of producers capable of switching over facilities to produce and sell the relevant product. Existing producers, especially if they have excess capacity in capital and labour that can be relatively easily switched into producing and selling the relevant product, constitute a likely set of "quick" entrants.

(ii) evidence of such switching in the past in response to price increases.

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8. For a straightforward discussion of these factors, see Lecraw (1978).

(iii) evidence that significant amounts of entry and exit have occurred in the past, especially in response to relatively small price changes, strongly suggests an absence of entry barriers. On the other hand, the lack of entry does not by itself indicate troublesome barriers to competitive entry. An industry that is performing competitively may attract no new entrants; however, lack of entry in the face of significant increases in profit margins suggests the existence of entry barriers.

(iv) the potential for buyers to be entrants. Buyers are often likely potential entrants because they can become established more readily and easily by producing for internal consumption.

**ASSESSMENT OF THE EVIDENCE**

40. In this section, we review evidence bearing upon the factors discussed in the preceding sections. Specifically, we consider available evidence bearing upon the profitability of coordinated price increases pursuant to the acquisitions in question. In reviewing this evidence, it is convenient to adopt the advertising classifications employed by the industry as they identify broad potential sets of consumers.

41. Retail advertising is advertising of goods and services for sale, usually to the general public, at specific locations, which appears on pages which also contain editorial matter or in sections of the newspaper where editorial matter is located.

42. Classified advertising is advertising of local or national origin grouped together in the newspaper by

classification determined by the content of the advertisement. It is rare to have editorial matter accompanying the advertisements unless there is a specific editorial feature to which the editorial matter would relate.

43. National advertising is predominately advertising of a display nature, originating from a source which is national or international but not of a retail nature.

44. Finally, insert/flyer distribution is the distribution of pieces of advertising copy of various shapes and sizes. Inserts are distributed within a newspaper, while flyers are distributed through other channels.

**National Advertising**

45. The evidence available to me suggests that the acquisitions in question are unlikely to have any significant impact on rates paid for national advertising. Specifically, it suggests that there is currently little competition between daily and community newspapers for national advertising. Moreover, newspapers face strong competition from magazines and electronic media for national advertising business. This, in turn, suggests that a price increase for national advertisers undertaken by Pacific Press would result in significant losses of national advertising sales to other media, and the resulting losses would closely approximate those the owner of the dailies (Southam Inc.) would suffer if it did not own NSN or the Courier.

46. To date, there has been very little national advertising done in community papers. For example, in one study, Kubas Consultants (1990) evaluated the first 25 ads appearing in The Province, The Vancouver Sun, the NSN, The

Vancouver Courier and the Ottawa Citizen on October 24, 1990. One category of advertising was "national advertising" defined as advertising placed by non-retailers and offering products available throughout Canada. Two such ads were identified in The Province, four in The Sun, four in The Citizen, while none were identified in the NSN and The Vancouver Courier.

47. Evidence that daily newspapers face strong rivalry from magazines and television in competing for national advertisers, and that this rivalry constrains price increases by the dailies at the margin is provided by the relatively high market share held by television and magazines. For 1989, these two media accounted for 69% of all national advertising expenditures in Canada compared to 20% for the dailies.[9]

48. Another indication of media competition in this activity is academic research. James Rosse references his own research in his affidavit. A study by Fournier (1986) concludes that in markets where many stations compete, or where market shares are more equally distributed, stations are no less profitable than where the number of competing stations is small. One possible explanation of this result offered by the researcher is that stations are constrained by competition with other media. Another academic study found that an increase in the number of broadcast stations in a city is associated with significantly lower daily and Sunday national and retail ROP milinch advertising rates. (Ferguson, 1983).

**Retail Advertising**

49. The evidence I have seen, on balance, suggests that rates for retail advertising will not be significantly affected

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9. Newspaper Marketing Bureau, Inc., July 1990.

by the acquisitions in question. The reasons are much the same as in the case of national advertising. Specifically, most retail advertisers arguably consider ROP advertising in dailies and community papers as being weak substitutes at the existing set of relative prices, while strong substitutes exist for ROP advertising either in dailies or community papers. For those retail advertisers who arguably do (or would) consider the two forms of print media good substitutes, the evidence suggests that other good substitutes are available which effectively constrain any market power that might otherwise arise from the acquisitions in question.

**ROP Advertising**

50. Data provided to me by Southam Inc. indicate that the bulk of "major retail" ROP advertising is found in daily newspapers. Similarly, "local retail" ROP advertising is primarily found in weekly newspapers. Major retailers have multiple outlets, or single outlets, which draw customers from a substantial portion of the Lower Mainland. Local retailers generally have only one outlet serving a local trade area.

51. Reinforcing this observation are results from a study by Kubas Consultants (1990). The study identifies the following four types of advertising:

(i) multiple coverage advertising: locationally based businesses, particularly retailers, offering products from many stores or outlets;

(ii) local advertising by a major company: large or well known businesses advertising in a limited local area;

(iii) high coverage advertising: a business with very few locations but which offers goods or services over a large or extended trade area; and

(iv) small/local advertising: advertising by a business with very few locations and a relatively limited trade area.

52. Drawing the sample advertisements as described in the preceding section, Kubas Consultants found that there were 14 multiple coverage advertisements in The Province, 11 in The Vancouver Sun, 7 in the Ottawa Citizen and none in either The North Shore News or the Vancouver Courier. There were 2 local ads by majors in both The North Shore News and Vancouver Courier with none in any of the dailies. In the small/local category, there were 15 ads in the North Shore News, 21 in The Vancouver Courier and 1 in each of the dailies. Finally, there were 8 high coverage ads in The Province, 9 in the Vancouver Sun, 13 in the Ottawa Citizen, 5 in the North Shore News and 2 in the Vancouver Courier. In sum, the "overlap" that exists appears primarily for high coverage advertisers. Kubas qualifies this latter observation by noting that where ROP display advertising in a community paper is relatively large, the retailer has special locational advertising needs. (Kubas, 1990, p.38). Examples of special locational advertising needs are provided in Roald Thomas' affidavit.

53. David Stanger's affidavit states that most single store retailers would not consider advertising in daily newspapers. Single location retailers located in North or West Vancouver might use daily newspapers (or electronic media) where the retailer's product is unique or where the retailer's trading area is unusually large. He also states that retailers with a minimum of 5 retail outlets would look at the whole

range of broad-based media, including radio, dailies and outdoor billboards, depending upon the kind of store.

54. Joya Dickson's affidavit makes a similar point in stating that a retailer who operates a single location (or even a few small locations) and generates modest sales volumes is restricted to targetted media such as community newspapers, locally distributed magazines, Yellow Pages and direct mail. Mass media (radio, television, daily newspapers) are not affordable to this type of retailer; they also extend far beyond the retailer's trading zone and therefore incorporate significant wastage.

55. These observations that, at existing prices, most retail advertisers would not find ROP advertising in the dailies and in the community papers reasonable substitutes are supported and further developed in James Rosse's affidavit.

56. There does appear to be some substitutability between ROP advertising in dailies and in community papers for a subset of retail advertisers who apparently have good alternatives to ROP advertising. Moreover, the Director suggests in his Amended Notice of Application that the community papers are becoming stronger competitors to the dailies.

57. The extent to which dailies and community papers will compete for ROP advertising in the future is a matter for speculation. In this respect, other media, such as radio, are also attempting to strengthen their competitive position relative to print.10 The available evidence does suggest that inserts and flyers currently offer strong competition to ROP advertising. Some evidence is provided in James Rosse's

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10. See Radio Marketing Bureau, the Radiovision Plan, April 1991, mimeo.

affidavit. There is also evidence that television and/or radio offer strong competition to print media for subsets of retail advertisers. Jack Mar's affidavit highlights switching behaviour among these media in the case of Woodward's.

58. Reports of industry consultants acknowledge broad substitution possibilities across different media for "major" retail advertisers. For example, Canada Consulting Group states: "we understand that other media - shoppers, weeklies, in-house publications, radio and television - have become attractive alternatives to advertisers."[11] Southam Group publications also note a shift of retail ROP advertising to inserts.[12] An internal Southam memo noted that it was imperative for Pacific Press to divert the flow of advertising money now going into other media such as flyers, weeklies and electronic mail.[13] Roald Thomas' affidavit notes a range of advertising alternatives to dailies and weeklies, including direct mail, radio, television, bus sides and outdoor billboards.

59. Inserts, free-standing flyers and shoppers are particularly relevant substitutes for ROP advertising in community papers, whereas radio and television become increasingly relevant as additional substitutes for ROP advertising in dailies. Besides these alternatives, Joya Dickson's and David Stanger's affidavit also mentions outdoor posters and signage as relevant alternatives for retail

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11. See Exhibit 000007, the Canada Consulting Group 1978 Limited.

12. See Agenda For The Future, Appendix II, page 5.

13. Exhibit 000028, Memo to Mr. Sherman from M.J. Moore, December 3, 1979.

advertisers. Similar broad patterns of competition in the United States are indicated in James Rosse's affidavit.

60. The Director suggests in his Amended Application that differences in physical attributes make print media highly imperfect substitutes for radio and television, and that these differences are manifested in different end uses for these advertising outlets. Specifically, he states that television and radio advertising have limited information and information retention value. The implication is that printed advertisements are more likely to stress "informative" advertising, e.g. price information, while television would be best suited for "image" advertising.

61. It is unclear how much emphasis should be put on physical differences between print and electronic media.
Kubas Consultants addresses the relevance of the distinction between "hard-sell price-product" advertising and "soft-sell image awareness" advertising. They conclude that advertising typically contains both hard-sell and soft-sell elements. In practice, there are only limited examples of ads which are purely hard-sell price -product or purely soft-sell image awareness. Most retail advertising represents some mix of the two, and no techniques exist which might objectively measure relative content.14 In his affidavit, David Stanger states that he finds radio just as effective and fast as newspapers in terms of price and item advertising. Joya Dickson's affidavit states that virtually all retail advertisements represent a blend of image and price-product advertising.

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14. Kubas Consultants, Media Options For Retail Advertising, August 10, 1990.

62. I would summarize this section by concluding that ROP advertisers in newspapers enjoy a variety of good alternatives.These alternatives mitigate the profitability of increases in ROP rates charged retail advertisers in either the dailies or the community papers. Furthermore, the arguably weak substitutability between dailies and community papers for most retail advertisers implies that a merger between the two print media is largely irrelevant to the profitability of price increases for ROP advertising in those outlets.

**Inserts**

63. As noted above, inserts are apparently a strong substitute for retail ROP advertising. Jack Mar's affidavit states that the daily and community papers are two major flyer distribution systems. To this extent, the acquisitions of the <u>North Shore News</u> and <u>The Vancouver Courier</u> could reduce competition in the distribution of inserts/flyers, thereby indirectly reducing competitive pressures on ROP rates for retail advertisers and directly reducing competitive pressures on insert rates.

64. As suggested above, there are various alternatives to the newspaper medium for retail advertisers who would consider substituting between the dailies and the community papers. Their presence constrains the profitability of a coordinated price increase for insert advertising. In particular,the available evidence suggests that the distribution of flyers and shoppers by the Post Office, as well as others, offers strong competition to retail advertising in newspapers including inserts. This evidence takes the form of consulting reports and other expert testimony, some of which has been identified in earlier sections of this report.

[redacted]



65. Evidence also takes the form of actual switching behaviour, as well as strategic responses by Southam and Pacific Press managers to perceived competitive threats. Examples include:

(i) A letter on Southam Newspaper Group ("SNG") Marketing Division letterhead discussing a meeting between a Southam account representative and the print buying manager for Woolco. The latter indicated that Woolco was under a great deal of pressure to hold costs for 1991 and mentioned that while newspapers have held flyer rate increases for the last five years due to competitive pressures, ROP rate increases have outpaced Woolco's ability to absorb them. The Woolco manager suggested that all Southam Newspaper Group units should consider crediting flyer revenue to ROP contracts. He also indicated that he was being approached regularly by Admail, Door-to-Door distributors and weekly newspapers to distribute Woolco flyers at very low CPMs (cost-per-thousands). The Southam account representative argued that attributing flyer revenue to ROP contracts is a low cost insurance to hold Woolco's business.15

(ii) At about the same time, a letter from Southam Newspaper Group management to management of Lower Mainland Publishing asks: "What can we do to stop business eroding to Ad Mail...?"16

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15. Letter from Patrick Tinney on Southam Newspaper Group Marketing Division letterhead, December 10, 1990.

16. Memo from Dave Perks to Peter Speck, December 27, 1990.

[redacted]



(iii) A Southam Newspaper Group Marketing Division memo cites a discussion between a Southam Retail Sales Executive and the Director of Advertising and Administration of Canadian Tire. The latter mentioned that a group of retailers had banded together to discuss common concerns. The group included: The Bay, Eaton's, Shoppers Drug Mart, Beaver Lumber and Canadian Tire. The main concern discussed was leveraging a flat distribution rate from Southam competitive with Ad Mail.17

(iv) The affidavit of Jack Mar reports that increasing daily ROP advertising costs encouraged Woodwards to become a major flyer advertiser. Mar notes strengths and weaknesses of the different distribution systems. He also notes the sensitivity of Woodwards to those changing strengths and weaknesses.

(v) An SNG Marketing Division 1989 Retail Monthly Activity Report dated February 1990 reports that Consumer's Distributors was dissatisfied with the price charged by Flyer Force for distributing Consumer's spring catalogue. It informed SNG that a new distributor would be sought for its Fall catalogue, and perhaps its regular flyer business (then distributed by the Vancouver Sun). The SNG sales representative reported that they negotiated with Vancouver Flyer Force to lower the cost per thousand.

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17. Letter from Debra Rother, Retail Sales Executive, dated September 19, 1990.

(vi) An April 1990 SNG Marketing Division Retail Monthly Activity Report by the same individual states that it is imperative that all newspapers position themselves as a flexible distribution source, able to satisfy Consumer Distributor's changing needs.

(vii) A March 1990 Southam Marketing Division Retail Monthly Activity Report notes that Mark's & Spencer's 1990 insert program has been cancelled. Mark's and Spencer inserts that ran in September 1989 and December 1989 apparently didn't drive sales. However, the client's direct mail program of the same period apparently enjoyed very good results.

66. The foregoing "switching" stories are illustrative of strong competition for the distribution of flyers.

67. Additional evidence of the relevance of competition from the Post Office is provided by the activities of newspapers and other distributors of flyers/inserts and shoppers. The Coalition of Canada Post Competitors, which consists of companies ranging from courier services to newspapers, has publicly argued that Canada Post is subsidizing its courier and flyer delivery business through the revenue it gains from its monopoly on regular mail delivery. It points out that the U.S. Postal Service is required to prove that it does not subsidize competitive products with revenues generated from its monopoly on general mail delivery by revealing information such as the volumes, revenues and costs of each line of business. Canada Post does not currently do that because it says it would give crucial information to its competitors, which include members of the coalition.18

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18. Casey Mahood, "Canada Post finances queried", The Globe and Mail, June 25, 1991, B5.

68. As in the discussion surrounding substitution between print and electronic media, an argument has been made that differences in "physical attributes" between inserts incorporated in newspapers and free-standing flyers and shoppers significantly constrain substitutability in consumption across these vehicles. The Director states that inserts in newspapers are more attractive and therefore more desirable to advertisers than free-standing inserts and flyers. However, there are also surveys and opinions arguing that direct mail is every bit if not more effective than newspaper inserts. Roald Thomas' affidavit refutes the Director's contention that flyers inserted in newspapers and free-standing flyers are different in kind. David Stanger and Carol Kirkwood in their affidavits also refute the Director's contention.

**Classified Advertising**

69. In the category of classified advertising, the major area of interest for matters considered in this report is real estate advertising. I am given to understand that there is currently relatively little overlap between real estate advertising in the daily newspapers and advertising in the REW. In particular, the REW carries advertisements placed by real estate agents, whereas dailies carry ads placed by individuals and developers. The exclusivity of the REW for agents is a policy of the paper, and one cannot infer that dailies are intrinsically a poor substitute for the REW because they cater to different customers.

70. Indeed, in other cities in Canada, dailies are major sources of real estate advertising placed by agents, and in some major Canadian cities, there is no real estate board publication comparable to the REW. This is suggestive of

substitutability between these print media. Moreover, in some geographical areas, community papers carry significant amounts of real estate advertising. The Friday real estate supplement to the North Shore News is one such example.

71. There are other sources of advertising available to sellers of real estate including signs, billboards and electronic media. Indeed, one recent report documents a successful Ontario real estate agent's use of a variety of other advertising outlets besides newspapers including outdoor signage, "for sale" signs and television.[19] However, it is unclear how strong a set of substitutes these are for newspapers. One survey suggests that only very limited substitution away from newspaper advertising is likely to occur barring relatively large changes in relative prices. This survey asked a set of respondents: When thinking of publications that advertise homes or properties for sale, which one comes to mind? The response rate for REW was 57%. It was 30% for The Sun and 27% for The Province. No other source, including The Real Estate Channel, responded more than 3%.[20]

72. The relatively strong substitution potential between the newspapers for real estate advertising and the relatively weak substitution potential from other media suggest that a coordinated post-merger price increase is likely to be profitable and, therefore, likely to be implemented, all other things constant. The threat of relatively quick entry into print sources of classified real estate advertising could dissuade a coordinated post-merger price increase for this type

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19. See Mark Heinzl, "A not so humble approach", The Globe and Mail, June 25, 1991, B1-2.

20 See Mark Trend Marketing Research Inc., Consumerscope, GVRD, May 1990.

of advertising. As discussed in an earlier section of this evidence, the threat of relatively quick entry and/or expansion by other suppliers is an important constraint on the profitability of a coordinated price increase undertaken by any group of producers.

**ENTRY CHARACTERISTICS**

73. Concerns about a coordinated post-merger price increase for retail advertising and/or real estate advertising would be mitigated to the extent that a relatively rapid supply response can be expected from producers of reasonably close substitutes for the relevant products.

74. As noted in an earlier section, if all costs of entry were fully recoverable given unsuccessful entry, there would be no meaningful financial exposure facing the entrant. This is a characteristic of what economists identify as a "perfectly contestable" market. However, to the extent that some costs are sunk upon entry, meaningful financial exposure will be present. As discussed in an earlier section, this exposure is likely to be amplified to the extent that significant economies of scale characterize the activity in question.

75. The extent to which costs are sunk depends, in part, upon precisely how the newcomer chooses to enter the market and how long it takes to establish successful entry. In particular, if most of the relevant capital services can be "rented", there is less risk of the entrant being stuck with non-fungible plant and equipment in the event of unsuccessful entry. The shorter the time period over which the services must be rented before successful entry can be established, the smaller the sunk costs associated with "used-up" services.

[redacted]



**Community Papers, Flyers and Shoppers**

76. In the case of printing and distributing community newspapers, flyers (including inserts), and shoppers, it would appear that a competitive market exists to rent the relevant services.

77. As a Southam Newspaper Group report prepared by Coopers and Lybrand Economics Practice notes: "Expansion in commercial printing capacity across Canada has increased the price sensitivity of inserts. Insert printing capability is now a commodity, highly sensitive to price."21 In the case of printing, the advent of desktop publishing software, the microcomputer and laser printer has led to a significant reduction in start-up capital costs and in lower unit-costs which further enhances the availability of competitive printing services. It also facilitates printers assuming more "lay-out" and editing functions. I understand that large retail advertisers undertake the design of flyers "in-house", presumably because it is cheaper than contracting for those services.

78. Advertisers using free-standing flyers and producers of shoppers have a range of distribution sources available to them. Addressed flyers and shoppers are delivered by the Post Office and, to this extent, there are no direct substitutes. However, there are numerous companies of various sizes who distribute unaddressed flyers and shoppers. For this type of product, it has been suggested that the distribution market in the Vancouver CMA is a patchwork of small distribution areas,

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21. The Southam Newspaper Group, Agenda For The Future, External Assessment of SNG - Appendix I, July 1989, p.8.

[redacted]



each served by different companies and newspapers. The barriers to entry are suggested to be so low in this market that a distributor in any given area may not be aware of the names of its competitors.(Document 000277, p.13). To be sure, above-average distribution costs and/or poor quality of distribution can impact critically upon an entrants' prospects; however, this does not gainsay the point that entrants should be able to rent the relevant services (or inputs to produce the services themselves) at competitive prices.

79. True "hit-and-run" entry, i.e., entry that is virtually instantaneous, is not possible at any significant scale. Perhaps the most important factor is that advertisers may have some uncertainty about the "quality" of the products offered by newly established rivals to their existing advertising outlets. The resulting "brand loyalty" may be a barrier to switching on the part of advertisers for some period of time.22 However, producers who are well established in other geographic areas should not necessarily confront this barrier to switching, at least to the same extent as de novo entrants, since established producers in other markets have an established "brand name" in the broader community. Moreover, even new producers can implement strategies to provide relatively quick feedback to advertisers about the effectiveness of their products. One example is the use of reedemable coupons which act as an auditing instrument for the advertiser.

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22. Representatives of the MetroValley Newspaper Group state that the greatest strength of MetroValley newspapers lies in the strong bonds that have been formed with readers over the years. See The MetroValley Newspaper Group, p.3. As far as I am aware, there are no long term contracts between newspapers and advertisers. Contracts in force tend to run for about one year.

[redacted]



80. It might be argued that knowledge about specific local market conditions acts as a barrier to entry, particularly for producers looking to cross quickly from other geographic markets. Undoubtedly, there is some location-specific knowledge which is relevant to success as a community paper publisher. However, one relatively quick way to capture this knowledge is to hire away managers from the incumbent publisher. Indeed, my understanding is that in a significant percentage of cases, new entry attempts are initiated by former employees of the incumbent paper. Entry by firms headed by former employees of the incumbent producer is quite usual in many industrial and commercial industries.

81. The nature and extent of economies of scale in producing and distributing community newspapers, as well as their significance, are somewhat problematic. My understanding is that there are economies of scale in printing, inasmuch as average price typically declines for larger volume orders. Price discounts also exist for distributing larger numbers of copies of a printed product.[23] Smaller distributors of flyers and shoppers can capture some cost economies by "bundling" their products together with those of other producers.

82. Editorial, advertising sales and administration are presumably not as easy to contract out as printing and distribution. Arguably, there are economies of scale in these activities over some significant range of output, particularly for community newspapers.

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23. These economies relate to increased distribution within a given geographic area.

83. Hence, there are relevant economies of scale associated with the production and distribution of print media whose magnitude varies with the nature of each specific product. What is important to note is that lower unit costs, which facilitate lower prices, are only one instrument of competition between community papers, in particular, as well as between flyers, shoppers and papers. Differentiated features of the printed product are also important "key success factors", and achieving product differentiation advantages is not necessarily related to scale.[24] For example, identifying better ways to cover and present local issues would seem to be an important determinant of success in community newspaper publishing. In this regard, Roald Thomas' affidavit notes that editorial content is an important consideration in his choice of a weekly newspaper. Innovations in "quality control" of distribution are arguably another example of product differentiation-related competitive advantages.[25]

84. Advantages related to operating multiple "plants" are another potential source of economies. The formation of networks of community papers such as MetroValley and VanNet suggest the existence of multi-plant economies. The major advantage appears to be related to consolidating ordering and billing which is presumably attractive for "multi-market"

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24. One can conceptually think of product differentiation advantages as having some "equivalent" pricing advantage.

25. The following discussion by MetroValley representatives illustrates the nature of product differentiation-based competition: "MetroValley newspapers offer the ability to target specific Forward Sortation Areas or smaller distribution zones right down to a route level in some areas. No other distribution service can offer you this high quality delivery vehicle. Flyer distribution rates are very competitive, and we offer the additional security of systematic phone checks of routes, support carriers to cover down routes,

advertisers, although the importance of this advantage is questioned in the affidavits of Carol Kirkwood and Roald Thomas. David Stanger's affidavit also suggests that community papers are bought on their individual merits rather than as a group.

85. Networking also allows individual papers to "pool expertise."26 It might be argued that successful entry into specific community markets requires a paper to be a member of a wider geographic network. There are currently two regional networks in the Lower Mainland: VanNet and MetroValley. The latter currently has no papers being distributed in the precise areas covered by the <u>North Shore News</u> and <u>The Courier</u>; however, the Metro Valley network (owned by the Hacker Group) would presumably welcome entrants in "lucrative" markets in which it is currently not represented, as it would enhance the value of the entire network. Indeed, the Hacker Group represents an extremely likely entrant into community newspaper markets which are "underrepresented" in its own network.

86. Entrants not affiliated with the MetroValley network (or another network) might also find that they can gain many of the advantages of networking through an affiliation with the B.C. & Yukon Community Newspaper Association and the Canadian Community Newspaper Association. It is my understanding that the B.C. & Yukon Community Newspaper Association also facilitates consolidated order-taking and billing across member

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zone checkers and highly motivated carriers.(Ibid., p.7). Another example cited is the advantage of locating small composing and typesetting facilities in local communities in order to create employment in those markets and to reduce turn-around time on advertising and editorial material.

26. Ibid., p.3. However, individual community papers appear to maintain editorial and administrative autonomy. See The MetroValley Group.

papers. Furthermore, representatives of the MetroValley Group acknowledge that their affiliation with these larger associations has allowed them to keep abreast of new and innovative ideas to enhance their products.27 In effect, multi-plant economies might to some extent be captured by "unaffiliated" community papers through their common memberships in provincial and national associations. This phenomenon would mitigate the need for multi-market entry by the owners of any one specific community paper.

87. The argument that economies of scale in community papers may not be a compelling determinant of competitive success is supported by the observation that there is usually more than one community paper in defined areas of the Lower Mainland and that specific community papers overlap geographic areas in their circulation. Furthermore, community papers in the Lower Mainland vary significantly in terms of their circulation volumes.

88. If entry into an activity is relatively difficult, one would expect to observe relatively few entry attempts, all other things constant. On the other hand, if product differentiation is a key success factor and entry is relatively easy, one might expect to observe a relatively large number of entry attempts where entrants differentiate their products from incumbents in specific ways. Many of these entry attempts may well prove to be unsuccessful.

89. Community newspaper publishing in general appears to be characterized by relatively frequent entry and exit as suggested by the following quote:

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37. Ibid., p.4.

> Weeklies are easy to underestimate. They are fractionalized, cantankerous, always starting up and going under, and (in other markets) can often be accurately characterized as pesky rather than threatening.28

James Rosse's affidavit states that he has seen community newpaper entries in many markets in the U.S.

90. I also understand that there have been numerous entry attempts on the part of community newspaper publishers on the North Shore including an effort by Southam, i.e., The North Shore Extra. Data from other areas in B.C. and from other provinces suggest that the experience of the North Shore is not unique.

91. As suggested in an earlier section of this report, the continued "dominance" of The North Shore News (and The Vancouver Courier) in their respective geographic markets is not necessarily indicative of significant barriers to entry. It is also consistent with the incumbent producers being innovative and conscientious in serving the needs of their customers at competitive prices.

92. There is also some evidence of economies of scale in flyer distribution and possibly some complementarities with insert distribution in dailies. However, there are also potential diseconomies including a greater likelihood of unionization.29 Again, other features of performance, such as

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28. Urban & Associates, Future Value of the Vancouver B.C. Marketplace, Southam Inc., November 10, 1985, p.91.

29. See Exhibit No. 21, Examination of D. Perks, June 5, 1991.

[redacted]



distribution reliability and accuracy, are also important success factors. The importance of lower costs, per se, remains an open question. In any event, the relatively fragmented nature of direct mail distribution suggests that entry into the production and distribution of independent flyers and shoppers is relatively easy. Jack Mar's affidavit states that independent door-to-door flyer deliver companies can become significant competitors, even for major retailers such as Woodward's.

**Real Estate Publications**

93. Similar considerations to those discussed in the preceeding section are relevant when considering entry conditions into the publication and distribution of specialized newspapers for real estate advertising, such as the REW. What is particularly relevant in the case of real estate publications in the Lower Mainland is the "monopsony" power of local real estate boards. The existence of such boards makes more immediate and substantial the threat of a "switch" to another print advertising vehicle, since the switch can be coordinated in a relatively quick and comprehensive manner, i.e. it can include most or all real estate agents.30

94. The real estate board could conceptually "internalize" the production and distribution of a rival paper or contract out the various services depending upon the economics of each option. Real estate agents already undertake specific

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30. To be sure, a significant number of agents make independent decisions about their advertising expenditures. This would increase the costs and complexities associated with exerting monopsony power on the part of real estate agents. However, I am given to understand that the switch from dailies to the REW on the part of agents was relatively quick.

[redacted]



activities, e.g., they compile multiple listings and take pictures for the listings.

95. The existence of economies of scale in the activity is also rendered less of a risk factor because the entrant would have greater assurance of being able to capture a relatively large share of advertising business without igniting a price war.

96. I am given to understand that at least one large real estate company in the Lower Mainland threatened to organize a rival publication to the REW. This threat precipitated an effort on the part of the publisher of the REW to retain the business of other agents primarily by assuring his customers that they were receiving a competitively priced product. He also assured the large company involved that the REW would work to develop a cost efficient program for the would-be rival.

97. I also understand that Harmon Homes, a large U.S.-based publisher of a real estate magazine, attempted to enter the Vancouver market using a "drop-box" method of distribution. Community papers have also tried to add-on real estate advertising. An example is the <u>Surrey Leader</u>. As a result of the <u>Surrey Leader</u>'s initiative, the REW split its Surrey/Langley paper and cut its prices. In Abbotsford, the Hacker Group has its own stand-alone paper. The <u>North Shore News</u> built a Friday distribution insert for Sutton Real Estate. I also understand that new print vehicles for real estate advertising have emerged in other Canadian cities as a competitive response to the dailies.

98. I assess the foregoing as evidence that entry is a viable threat to an established publisher such as the REW. While there are economies of scale in real estate advertising,

particularly within local areas, i.e., agents don't like to spread their advertising "too thin", agents can switch relatively easily in a collective fashion which facilitates entry of a new specialty real estate paper or a supplement in a community paper. In this respect, The Real Estate Boards themselves are potential entrants, as is The Hacker Group of community papers.

**CONCLUSIONS**

99. Available evidence on demand patterns for retail advertising suggests that for many retail advertisers, daily and community newspapers are relatively weak substitutes. Other retail advertisers appear to have strong alternatives to the daily and community papers, as does the first group. This pattern suggests that the acquisitions of the North Shore News and The Courier by Southam Inc. per se are unlikely to encourage co-ordinated post-merger price increases by the daily and community newspapers. The threat of new competition to the North Shore News and The Courier further constrains initiatives to raise prices following the merger.

100. For real estate classified advertising, demand patterns suggest that newspapers and the Real Estate Weekly are relatively strong substitutes. This raises a priori concern about post-merger price increases; however, the potential for real estate agents to directly or indirectly promote new entry arguably restrains any pricing initiatives following the merger.

SWORN BEFORE ME at the City of Vancouver, British Columbia, this 16th day of August, 1991

A Commissioner for Taking Affidavits for British Columbia

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