

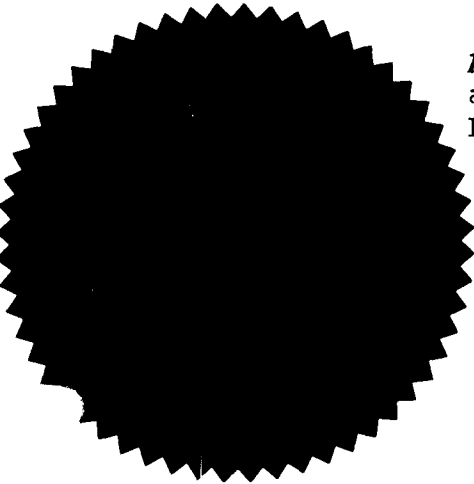
CT-88/4

THE COMPETITION TRIBUNAL

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE		P R O D U I T
DEC 14 1988 <i>RB</i>		
REGISTRAR - REGISTRAIRE		
OTTAWA, ONT.	# 1	

IN THE MATTER OF an application by the Director of Investigation and Research under Section 75 of the Competition Act, R.S.C., 1985, c. C-34 as amended;

AND IN THE MATTER OF a refusal to supply automotive parts for export by Chrysler Canada Ltd. to Richard Brunet;



B E T W E E N:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

- and -

CHRYSLER CANADA LTD.

Respondent

NOTICE OF APPLICATION UNDER SECTION 8 OF
THE COMPETITION TRIBUNAL ACT

TO: Chrysler Canada Ltd.
Chrysler Centre
Windsor, Ontario
N9A 4H6

AND TO: The Registrar
The Competition Tribunal
Royal Bank Centre
90 Sparks St.
P.O. Box 1899, Station "B"
Ottawa, Ontario
K1P 5R5

TAKE NOTICE that the Applicant, the Director of Investigation and Research (the "Director"), will make an application to the Competition Tribunal (the "Tribunal") pursuant to section 75 of the Competition Act, R.S.C. 1985, c. C-34 as amended (the "Act") (formerly section 47 of the Act) for:

1. An order against the Respondent Chrysler Canada Ltd. ("Chrysler") requiring that it forthwith and thereafter accept Richard Brunet ("Brunet") as a customer on trade terms usual and customary to its relationship with Brunet for the supply of Chrysler Parts (as hereafter defined) to Brunet; and
2. Such other and further orders which in the circumstances may be just, including:
 - a) requiring and directing that Chrysler reverse all steps taken to dissuade any person (including Chrysler franchised dealers) in Canada from conducting business with Brunet with respect to Chrysler Parts;

- b) restraining Chrysler from combining or arranging with any other person to refuse, suppress, hinder or delay the supply of Chrysler parts to Brunet; and
- c) directing that Chrysler take all such ancillary and necessary steps and actions to restore Brunet to the position he enjoyed before the actions herein complained of.

AND TAKE NOTICE that if you do not file a response with the Registrar of this 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 the within Application the Director will rely upon the following Statement of Grounds and Material Facts:

STATEMENT OF GROUNDS AND MATERIAL FACTS FOR
THE APPLICATION BY THE DIRECTOR OF INVESTIGATION
AND RESEARCH UNDER SECTION 75 OF THE COMPETITION ACT

A. **THE PARTIES**

- 1) The Applicant, the Director of Investigation and Research ("the Director") under the Competition Act is the officer appointed under section 7 of the Act (formerly section 5) and is charged with the administration of the said Act.

- 2) The Respondent, Chrysler Canada Ltd. ("Chrysler"), is a company incorporated under the laws of Canada with its head office in the City of Windsor in the Province of Ontario. Chrysler is controlled by the Chrysler Corporation ("Parent") which has its head office in Detroit, Michigan in the United States. Mr. Moe Closs is President of Chrysler and the Vice-President in charge of parts, service and technical programs is Mr. C.R. Burnett.

- 3) Mr. Richard Brunet ("Brunet") carries on business from his premises at 360 St. James Street West, Suite 918, in Montréal, Québec, as a sole proprietor under the registered trade name R. Brunet Company. Brunet's major line of business is the purchase and export of Chrysler branded automotive parts ("Chrysler Parts" or "the product") to markets outside of North America. Brunet's major export markets have been, until affected by the Respondent's activities as hereinafter set out, the Middle East, Europe, and South America. Brunet has never sold the product to the United States.

B. NATURE OF THE APPLICATION

- 4) The Respondent is a major supplier in Canada of Chrysler Parts to its franchised dealers and, also, since 1977, to Brunet. On October 8th, 1986, Chrysler advised Brunet that it would no longer supply him with Chrysler Parts and that all future orders would be handled by the "U.S. Chrysler Export Sales Office" in Detroit, Michigan. Starting in January 1987, Brunet continued exporting from Canada by purchasing Chrysler Parts from several franchised Chrysler dealers in Canada. In May 1987, the Respondent initiated steps to dissuade Canadian Chrysler dealers from continuing to sell to Brunet.

- 5) The aforesaid refusal on the part of the Respondent to deal with Brunet has substantially affected Brunet in his business due to his inability to obtain adequate supplies of Chrysler Parts anywhere in Canada because of insufficient competition among the suppliers of the product in the market, notwithstanding that he is willing and able to meet the usual trade terms of the supplier. Chrysler Parts are otherwise in ample supply.

C. MATERIAL FACTS

i) Automotive Parts

- 6) The following terms are used herein to describe Chrysler Parts and are also common in the automotive parts industry. These definitions are not mutually exclusive and are often applied in a manner in the industry which may cause an overlap of categories.

a) Service Parts

Most of these parts are "non-competitive" or "captive" to the auto maker in that they cannot be substituted by parts manufactured by sources unauthorized by the said auto maker.

b) Aftermarket Parts

These are parts which are available from the auto maker and from other sources in the automotive parts industry. They are available on a competitive basis and are used in the normal maintenance of vehicles.

c) Component Parts

These are parts which are available from the auto maker or its privies which are to be used in the automotive assembly or sub-assembly process. The customers of the component parts segment are mainly assemblers and other volume purchasers. There are minimum purchase order requirements to participate in this segment.

d) Others

"Genuine" "original", "original equipment manufacturers", "accessories" are other terms used in this industry but are not used in this present application.

ii) Chrysler parts

- 7) Chrysler Service Parts, often marketed under the name MOPAR, are usually supplied out of existing inventories in the Respondent's main depot in Mississauga or depots elsewhere in Canada, or when ordered from the Respondent's Parent in Detroit, Michigan, they are supplied out of depots in the United States.
- 8) Chrysler Aftermarket Parts are marketed by the Respondent in Canada under the trade name AUTOPAR and these are usually supplied out of depot inventories in Canada. There is no comparative Aftermarket Parts program in the United States at present.
- 9) Chrysler Component Parts are usually manufactured in the U.S. and elsewhere by the Parent or by manufacturers designated by the Parent. Should Service

or Aftermarket Parts requirements for some parts be sufficient to justify supply from a production line, the Parent may fill these orders directly in a manner similar to the Components Parts. Such orders require longer order and delivery times. The individual quantities of Chrysler Parts which Brunet requires usually are not large enough to order in this way. The name "Interparts" has been associated with the Parent's Component parts programs offered to Brunet, to other North America based exporters, and to some foreign accounts. Upon request, the Parent will provide component parts for the export market under a red, white and blue "Interparts" label.

- 10) Chrysler manufactures some parts and obtains others either from the Parent or its authorized manufacturers in the United States, Canada, and to a smaller extent from other countries such as Mexico and Japan.
- 11) Many Service Parts sold by Chrysler are less expensive than the same Service Parts sold by the Parent in the U.S. This situation exists regardless of the place of manufacture of those parts.

iii) Brunet's Business

- 12) Brunet's business is that of a small trading house operation specializing in the sale of Chrysler Parts to clients located in foreign countries (excluding North America). Brunet succeeded to the automobile parts supply business of his father which he transferred from the United States to Montréal, Québec in 1976. Brunet dealt with the Parent in the United States prior to that time, however, when he commenced Canadian

operations in 1976, the Export-Import Division of the Parent refused to deal with him because the account was now based outside of the United States.

- 13) Chrysler, however, accepted Brunet as an account in 1977. To the extent that Brunet required it, the Parent accepted up to 1982 two small Service Parts orders from Brunet on the condition that parts be received by Brunet at U.S. locations.
- 14) Brunet's principal area of activity is in the supply of Chrysler Service Parts to foreign dealers and distributors of Chrysler products. Chrysler Parts are stocked in its warehouse in Mississauga, Ontario and were delivered to Brunet's order for packing and shipment abroad.
- 15) Although the Service Parts sold by Chrysler and by the Parent are physically identical, the two sources of supply are distinct from Brunet's perspective when all the following elements that are specific to the Canadian products are taken into consideration:
 - a) Brunet could generally obtain Chrysler Parts from Chrysler cheaper than from the Parent;
 - b) Chrysler consistently provides a high level of service and accuracy in its delivery of parts and in the flow of information:
 - i) As a matter of routine an availability analysis of parts was provided by Chrysler such that Brunet knew promptly and with a high degree of accuracy what would be available and what would be backordered.

- ii) For those items that were backordered, Chrysler would define a price. This information guided Brunet in his purchasing decision. When ordering from the Parent, delayed items were subject to "price at time of shipment" which is not defined beforehand.

- iii) Brunet's purchase orders to Chrysler were always filled with a high degree of accuracy and as such, virtually no claims for defective orders were made against Chrysler. Brunet's claims against the Parent were numerous and for significant amounts.

- iv) Parts were delivered in Canada and came in sensibly sized deliveries. Most of the time, Brunet's purchase orders were made by Chrysler in two deliveries: items that were "available" in stock and the other for all backordered items. This is preferable to the several small shipments that Brunet was subjected to, at times, when ordering from the Parent.

- v) Brunet paid Chrysler in Canadian dollars;

- c) Lower shipping rates are available through the Canadian shipping industry to some foreign destinations. Ocean freight rates from Canada to some countries were less than half the freight rates from U.S. ports;

d) By 1986, the Canadian AUTOPAR line relating to the aftermarket was beginning to attract interest in Europe. There is no U.S. equivalent of AUTOPAR offered by the Parent to Brunet.

16) Brunet has been able to obtain clients in South America, the Middle East and Europe. These clients demand branded Chrysler Parts and sales to these clients are conditional upon this. Brunet's customers frequently seek assurance that the automotive parts supplied to them are branded Chrysler Parts and will not accept substitutes therefore.

D. GROUND'S FOR THE APPLICATION

17) Chrysler promoted, fostered and encouraged Brunet in the development of an export business relying upon Chrysler Parts. Chrysler, through its senior officers, represented to Brunet the importance and desirability of their continued business relationship both orally and in correspondence, including the following:

a) Letter dated August 21, 1979 from C.F. Madott, Chryco Sales Manager of Chrysler to Brunet:

"...From this information you will be able to establish your competitive position when measuring our price against the price as stated in the U.S. price lists... We encourage you to go to South America with the confidence of knowing, we at Chrysler Canada Ltd. will do everything in our power to assist you in expanding the sale of Chrysler parts through R. Brunet Company to your customers."

- b) Letter dated January 3, 1980 from C.R. Burnett,
General Parts Manager of Chrysler to Brunet:

"... We value our business
association and assure you of our
continued support."

- c) Letter dated May 8, 1980 from C.R. Burnett,
General Parts Manager of Chrysler to Brunet
referring a potential client:

"Please find attached a copy of
correspondence received from
Lebanon for your reply..."

- d) Letter dated October 5, 1981 from C.R. Burnett,
General Parts Manager of Chrysler to Brunet:

"...I am very interested in
supporting further exports to other
countries such as your recent one
to Lebanon."

- e) Letter dated October 13, 1983 from C.R.
Burnett, General Parts Manager of Chrysler to
Brunet:

"... You explained to me that you
were having difficulty filling
orders through the Export Division
on occasion in keeping with the
timing of 'Letters of Credit'.

This is to advise you formally that
I have requested and received
approval from the Automotive Parts
Sales Coordination Committee today
allowing Chrysler Canada to fill
all or part of an order from stock
that will allow you to meet your
timing requirements in reference to
Letters of Credit."

- f) Brunet has also represented the Respondent's
Autopar program, in view of its high Canadian
content, in two trade missions sponsored by
the Government of Canada to three Latin
American countries. Brunet did this with the

approval of the Respondent. In a letter dated April 8, 1985, P.R. Williams, National Parts Sales Manager of Chrysler wrote to Brunet:

"We appreciate you keeping us informed of your progress in developing new world markets. We regret that the pricing position offered you on our Autopar parts line was not more favourably received. It is our intent to do whatever is feasibly possible to improve upon our position..."

- 18) In 1986 the Parent expressed concerns about the impact of Brunet's business which was dependent upon the supply of Chrysler Parts from Chrysler. This was especially so in areas of Europe and South America which the Parent had endeavoured to supply from the United States following the reduction of its overseas activities through franchised and direct owned operations in the early 1980's.
- 19) Since the entrepreneurial efforts of Chrysler to exploit these foreign markets through Brunet were regarded as inconsistent with the Parent's preferred mode of serving its markets, in October 1986, Brunet was told by officials of Chrysler that they would no longer handle his orders in Canada. He was advised that Chrysler lacked "organizational responsibility" regarding his orders and that the Parent's Chrysler Export Sales Office located in Detroit would handle all his requirements in the future.
- 20) Chrysler refuses to handle Brunet's purchase orders and now requires Brunet to obtain supply from the Parent's Export Sales Office. Many Chrysler Parts are priced by the Parent at a higher level in the U.S. than the price available in Canada through the Chrysler distribution system. Chrysler Parts obtained from the Parent have

to be received at U.S. locations. Brunet is unable to serve his clients upon a realistic basis if he is to purchase only from the Parent as aforesaid.

- 21) Since January 1987, Brunet has kept his business operating by obtaining supplies from the parts departments of some of Chrysler's franchised automotive distributors or dealers in Canada. Most of these distributors are independently owned.
- 22) In May 1987, Chrysler issued bulletin no. 87-37 directing all its dealers and distributors that the sale of MOPAR and AUTOPAR products was "strictelement réservée à nos clients canadiens, et non à l'exportation."
- 23) This bulletin did not provide any explanation why exporting is now forbidden, and it did not define who are "clients canadiens". When dealers continued to supply Brunet as a "client canadien", those dealers of which the Respondent had knowledge were subsequently dissuaded by Chrysler from taking purchase orders from Brunet, and more than one order was actually blocked.
- 24) As a result of his inability to obtain supplies of automotive parts from the Respondent, Brunet has incurred considerable expense and loss in order to stay in business. The actions of Chrysler have had and continue to have a substantial adverse effect upon his business in that:

- a) For the 1986 calendar year, Chrysler Parts sourced by Brunet from Chrysler amounted to \$293,826.87. Parts sourced by Brunet from Chrysler represented 61.1% of his total gross profits of \$80,114.
- b) In 1987 the volume of Brunet's purchases from Chrysler went down to \$61,048.02, approximately one fifth of the volume of such purchases in 1986, and in the first quarter of 1988 there were no purchases made from Chrysler. Both sales and profits from sales of Chrysler Parts have been dropping significantly throughout 1987 and 1988.
- c) Brunet had many years of marketing efforts to promote sales from Canada of Chrysler Parts. These efforts have been rendered valueless and his reputation has been accordingly injured.
- d) Being unable to obtain supplies directly from Chrysler, Brunet has been unable to exploit any opportunities for long term growth in the sales of Chrysler Parts.
- e) Claims for Duty Drawback on Chrysler Parts are not possible without the cooperation of Chrysler.
- f) From Brunet's point of view, the availability of products from the Parent is not a substitute to sourcing from Chrysler in Canada as the products, including all its elements, are quite distinct.

25) Brunet is unable to obtain adequate supplies of Chrysler Parts because of insufficient competition in the supply of Chrysler Parts in Canada in that:

- a) Chrysler is the sole source of new Chrysler Parts in Canada;
- b) Chrysler has exerted its control over the supply of such parts by requiring its dealers not to supply parts for export purposes, thereby eliminating actual and potential competition in the supply of Chrysler Parts for export;
- c) All of Brunet's Chrysler customers require branded Chrysler Parts. The goodwill developed from selling to these accounts is not transferable to other auto makers' products;
- d) Because of their captive nature and particular application, most Chrysler Parts cannot be substituted by those of another auto maker; and
- e) Apart from the differences in the product, the option of purchasing Service Parts from the Parent in the U.S. is not an adequate alternative because from the viewpoint of foreign clients, it would make little sense to purchase U.S. sourced Chrysler products from a Canadian based trading house. Furthermore, some of these same clients could simply purchase directly from the Parent and the latter would ship directly abroad.

- 26) Brunet is willing and able to meet the usual trade terms of Chrysler and its dealers. In fact, Brunet has always paid the Respondent for purchases within the agreed payment terms and in so doing has satisfied their usual trade terms pertaining to credit.
- 27) There is ample supply of Chrysler Parts in Canada, although not to Brunet. Chrysler has never suggested that limited supply exists nor, if it does, that it is a factor relating in any way to their decision not to deal with Brunet.

E. PARTICULARS OF THE ORDER APPLIED FOR

- 28) The Applicant therefore applies to the Tribunal for an order under subsection 75(1) of the Competition Act as outlined in the Notice of Application.

F. LANGUAGE

- 29) The Applicant requests that the within Application be heard in the English language.

G. PROCEDURE

- 30) The Applicant will seek an order from the Tribunal for directions regarding the interlocutory proceedings herein and for the expeditious hearing of the within Application.

H. ADDRESS FOR SERVICE OF THE APPLICANT

31) The address for service on the Applicant for all pleadings relating to this application is:

W.J. Miller
Department of Justice
Counsel to the Director of
Investigation and Research
Department of Consumer and
Corporate Affairs
Place du Portage
Phase 1, 22nd Floor
Hull, Québec,
K1A 0C9

Dated at the City of Hull in the Province of Québec on this
14th day of December, 1988.



Calvin S. Goldman Q.C.
Director of Investigation
and Research

TO: The Registrar of the
Competition Tribunal

AND TO: Chrysler Canada Ltd.
Chrysler Centre
Windsor, Ontario
N9A 4H6