

Competition Tribunal



Tribunal de la Concurrence

Citation: *Canada (Commissioner of Competition) v Parrish & Heimbecker, Limited*, 2020 Comp Trib 16

File No.: CT-2019-005

Registry Document No.: 202

IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*, RSC 1985, c C-34 as amended.

BETWEEN:

The Commissioner of Competition
(applicant)

and

Parrish & Heimbecker, Limited
(respondent)



Date of hearing: December 18, 2020

Before: D. Gascon J. (Chairperson)

Date of order: December 29, 2020

ORDER ON THE COMMISSIONER'S MOTION ON CONFIDENTIALITY DESIGNATIONS

[1] **FURTHER TO** a motion filed by the Commissioner of Competition (“**Commissioner**”) on December 7, 2020 (“**Motion**”) to designate as confidential the identities of five farmers who are scheduled to appear as witnesses (“**Farmers**”) at the hearing of the Commissioner’s application against the respondent Parrish & Heimbecker, Limited (“**Application**”);

[2] **AND WHEREAS**, in light of the fact that the hearing of the Application is scheduled to start on January 6, 2021, and that the Tribunal’s decision on this Motion could have an impact on the parties’ preparation for the hearing, the Tribunal has decided to issue this Order immediately, with detailed reasons to follow shortly;

[3] **AND UPON** having reviewed the materials filed by the parties on this Motion and having heard submissions from counsel for the parties at a hearing held by video conference on December 18, 2020;

[4] **AND UPON** considering that the decision of the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, adapted as it must be to reflect the specific relevant provisions contained in the *Competition Tribunal Rules*, SOR/2008-141, provides the legal framework governing the confidentiality designations sought by the Commissioner on this Motion;

[5] **AND UPON** determining that the Commissioner has failed to meet the requirements for the confidentiality designations he is seeking;

[6] **AND UPON** determining that the Commissioner has not convinced the Tribunal, on the evidence filed in support of his Motion, that there are valid reasons to keep the identities of the Farmers confidential. More specifically:

- (a) the public interest component of the alleged harm as claimed and as framed by the Commissioner on this Motion is not supported by clear, convincing and cogent evidence; and
- (b) even though the deleterious effects on the open court principle that would result from designating the identities of the Farmers as confidential are fairly minimal in light of the public versions of the Farmers’ evidence and of the Tribunal’s decision on the Application that will be made available to the public on a timely basis, the lack of evidence on the public interest component of the alleged harm does not allow the Tribunal to conclude that the salutary effects of preventing such harm would outweigh the deleterious effects of the confidentiality designations on the open court principle.

THE TRIBUNAL ORDERS THAT:

[7] The Commissioner’s Motion is dismissed.

[8] The Commissioner shall provide to the Tribunal and serve upon Parrish & Heimbecker, Limited, by Tuesday, January 5, 2021 at the latest, revised public and confidential versions of the witness statements of the Farmers who will be testifying at the hearing of the Application, removing the confidential designations of their respective identities.

[9] The issue of costs remains under reserve.

[10] The Tribunal will aim to issue its reasons for this Order before the hearing of the Application.

DATED at Ottawa this 29th day of December 2020

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Denis Gascon

COUNSEL OF RECORD:

For the applicant:

The Commissioner of Competition

Jonathan Hood
Ellé Nekiari

For the respondent:

Parrish & Heimbecker, Limited

Davit Akman
Joshua Abaki