

INFORMATION NOTE*

RONA inc. v. Commissioner of Competition

May 30, 2005. The Competition Tribunal (“Tribunal”) issued its reasons and order today in the *RONA* case. The Tribunal panel was composed of Mr. Justice Pierre Blais (presiding member), Mr. Justice François Lemieux and Mrs. Lucille Riedle.

RONA applied to the Tribunal under section 106 of the *Competition Act* (“Act”) for an order to rescind the consent agreement which it had signed with the Commissioner of Competition (“Commissioner”) and which had been registered on September 4, 2003. In April 2003, RONA had acquired all the shares of the Réno-Dépôt stores. The Commissioner determined following his investigation that the merger was likely to substantially lessen competition in the big box home renovation market in the Sherbrooke region, since RONA would now be the owner of the only two big box stores. The Commissioner and RONA signed a consent agreement which provided for the divestiture of the Réno-Dépôt store in Sherbrooke.

On January 10, 2005, Rona filed an application for an order to rescind the consent agreement, on the basis that the circumstances that led to the making of the agreement had changed. It was by then certain that Home Depot, RONA’s main competitor in Canada, would be opening a new store in Sherbrooke.

The Tribunal found that the circumstances had indeed changed, and that in the new circumstances, the parties would not have signed the agreement. The Tribunal dismissed the Commissioner’s other arguments to give effect to the consent agreement despite the change of circumstances. The Commissioner argued that it was important to ensure that consent agreements be enforceable, and further argued that maintaining the consent agreement would allow competition to be more quickly reestablished in the Sherbrooke market. Moreover, according to the Commissioner, RONA had abused the process by unduly delaying the sale of its store.

The Tribunal held that although consent agreements should be enforceable, it was important to take into account the possibility provided by Parliament of varying them. There would be no substantial lessening of competition in the Sherbrooke market, essentially within the time frame envisaged by the Bureau’s own guidelines, i.e., within two years of the transaction. Finally, the Tribunal found no abuse of process in RONA’s actions throughout.

The application was allowed. Costs will be decided after further submissions.

* This is an unofficial summary prepared by the Registry of the Tribunal.