

INFORMATION NOTE*

Commissioner of Competition v. Canada Pipe

February 14, 2005. The Competition Tribunal (“Tribunal”) issued its reasons and order today in the *Canada Pipe* case. The Tribunal panel was composed of Mr. Justice Edmond P. Blanchard, Mrs. Andrée L. Reny and Mr. Paul Gervason.

The Commissioner of Competition (“Commissioner”) alleged that the Respondent had brought about a substantial prevention or lessening of competition by abusing its dominant position in the supply and sale of cast iron Drain, Waste and Vent (“DWV”) pipes, fittings and mechanical joint (“MJ”) couplings in six Canadian regions covering the ten provinces. The Commissioner also alleged that Canada Pipe’s Stocking Distributor Program was a practice of exclusive dealing under section 77. The Commissioner applied to the Tribunal for an order to have Canada Pipe cease its Stocking Distributor Program, which the Commissioner argued was substantially lessening competition.

The Stocking Distributor Program (“SDP”) is a rebate program whereby distributors of plumbing products in Canada receive substantial discounts in return for being supplied in cast iron DWV products exclusively by Bibby Ste-Croix (“Bibby”), a wholly-owned subsidiary of Canada Pipe.

The Tribunal found, under section 79 of the Act, that the Respondent did substantially control the class of business comprising cast iron DWV products (pipe, fittings and MJ couplings) in the six areas of Canada. However, the Tribunal found that for a loyalty program such as the SDP to be anti-competitive, the switching costs must prevent buyers from changing suppliers. The Tribunal concluded that the Commissioner had not shown this to be the case. Moreover, the SDP did not have the attributes of anti-competitive acts as found in other decisions of the Tribunal. Therefore, the Tribunal did not find that the SDP was a practice of anti-competitive acts, nor did the Tribunal find that the SDP had substantially lessened or prevented competition.

Under section 77, the Tribunal found that the SDP could be characterized as exclusive dealing and that Bibby was a major supplier, but that there was insufficient evidence to lead to a conclusion that as a result of the SDP competition was or was likely to be lessened substantially.

The application was dismissed. The issue of costs was reserved.

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