



Dolby complaint silenced *Sono Pro loses bid to force supply of Dolby equipment at discount*

BY W. MICHAEL G. OSBORNE, AFFLECK GREENE ORR LLP.

Sono Pro Inc., a Montreal professional audio equipment reseller, has lost its attempt to force Sonotechnique P.J.L. Inc. to supply it with Dolby products. The Competition Tribunal dismissed Sono Pro's application for leave to commence a private application on June 11, 2007, because Sono Pro did not lead enough evidence.¹

Section 75 of the *Competition Act* allows Tribunal to order a supplier of a product to supply the product to a customer. To obtain such an order, the customer must show, among other things, that its business has been substantially affected by its inability to obtain adequate supplies of a product, that the refusal is because of a lack of competition in the market for the product, and that the refusal is likely to have an adverse effect on competition. A private party such as Sono Pro can bring an application under section 75, but it must first obtain leave from the Tribunal. At the leave stage, Sono Pro had to lead evidence to give rise to a *bona fide* belief that its business would be directly and substantially affected and that the elements of section 75 could be met.

Sono Pro and Sonotechnique both sell professional audio equipment and related services. Sono Pro's owner, Mario Sauriol, used to work for Sonotechnique. He founded Sono Pro in 2006. Sonotechnique is the exclusive distributor of Dolby products in Canada.

Sono Pro applied to the Tribunal for leave to commence a private application under the *Competition Act's* refusal to supply provisions in March 2007. In a two page affidavit, Mr Sauriol claims that he was unsuccessful in obtaining supplies of Dolby products from Sonotechnique. He said that sales of Dolby products represent 10% of

his revenue but 25% in total when related products and services are included. While Mr Sauriol cited an order he lost as an example, he gave no further details about his business.

In dismissing the application, Mr Justice Blais held that Sono Pro gave only a vague description of its business and of the importance of Dolby products to that business. Sono Pro did not provide details as to its size, revenues, or geographic market. Thus there was insufficient evidence for the Tribunal to have reason to believe that Sono Pro was directly and substantially affected by Sonotechnique's conduct.

Blais J. did not need to address the second branch of the leave test, namely, whether there was reason to believe that the elements of section 75 could be established in this case. It is unlikely, however, that Sono Pro's evidence met this requirement.

In order to obtain leave, Sono Pro needed to lead some evidence to show that refusal to supply is having or is likely to have an adverse effect on competition. It did not do so.

Sono Pro also needed to deal with the product market, since section 75 requires that its inability to obtain supplies be as a result of a lack of competition among suppliers of the product. While Sono Pro referred to the "market for Dolby products" it did not offer any evidence to suggest that Dolby products are a separate product market. In its response, Sonotechnique stated that Dolby is not the only manufacturer to offer ambisonic (surround-sound) technology.

Finally, section 75 only allows the Tribunal to force sales on the supplier's usual trade terms, including its usual price. Sono Pro asserted its willingness

meet Sonotechnique's usual trade terms. However, Sonotechnique said it was willing to sell Dolby equipment to Sono Pro at the same price as it sells to its customers, who are end users. What it refused to do was to sell to Sono Pro at a discount. It appears, therefore, that Sono Pro was really trying to obtain product for a lower price than that prevailing under the usual trade terms.

¹ *Sono Pro Inc. v. Sonotechnique P.J.L. Inc.*, 2007 Comp. Trib. 18. The decision and materials, which are in French only, are on the Tribunal's website at <http://www.ct-tc.gc.ca/english/CaseDetails.asp?x=64&CaseID=284>



For more information contact:

W. Michael G. Osborne, Affleck Greene Orr LLP

Tel: 416-360-5919

Email: mosborne@agolaw.com