

Competition Tribunal



Tribunal de la concurrence

Citation: *McKesson Canada Corporation and Rexall Pharmacy Group ULC v Commissioner of Competition*, 2024 Comp Trib 9

File No.: CT-2024-009

Registry Document No.: 4

IN THE MATTER OF the *Competition Act*, RSC 1985, c C-34, as amended;

IN THE MATTER OF a consent agreement registered with the Competition Tribunal on December 14, 2016, in File No CT-2016-016, with respect to the acquisition by Rexall Pharmacy Group Ltd, an affiliate of McKesson Canada Corporation, of the pharmacy, medical clinic, and benefits management administration and claims adjudication businesses carried on by Katz Group Canada Inc. and its affiliates;

AND IN THE MATTER OF an application on consent pursuant to paragraph 106(1)(b) of the *Competition Act* to rescind the Consent Agreement of December 14, 2016;

BETWEEN:

**McKesson Canada Corporation and
Rexall Pharmacy Group ULC**
(applicants)

and

Commissioner of Competition
(respondent)



Decided on the basis of the written record.

Before: Justice Andrew D. Little (Chairperson), Dr. Ted Horbulyk, and Dr. Stephen Law

Date of order: December 17, 2024

ORDER GRANTING AN APPLICATION TO RESCIND A CONSENT AGREEMENT

[1] **FURTHER TO** a consent agreement registered with the Competition Tribunal on December 14, 2016, by the Commissioner of Competition (“Commissioner”) in relation to the acquisition by Rexall Pharmacy Group Ltd (now Rexall Pharmacy Group ULC) (“RPG”), an affiliate of McKesson Canada Corporation (“McKesson Canada”), of the pharmacy, medical clinic, and benefits management administration and claims adjudication businesses carried on by Katz Group Canada Inc. and its affiliates, including ClaimSecure Inc. (“ClaimSecure”) (the “Consent Agreement”);

[2] **AND FURTHER TO** an informal application made by letter dated November 13, 2024 under paragraph 106(1)(b) of the *Competition Act*, RSC 1985, c C-34, and the *Competition Tribunal Rules*, SOR/2008-141, by McKesson Canada and RPG, with the consent and agreement of the Commissioner, to rescind the Consent Agreement effective upon closing of a Proposed Transaction (the “Application”);

[3] **AND UPON** considering the terms of the Consent Agreement, the Competition Bureau’s position statement dated December 16, 2016, and the Application and the reasons set out in it for the proposed rescission of the Consent Agreement;

[4] **AND UPON BEING ADVISED BY THE PARTIES THAT:**

- (a) the Divestiture (as defined in the Consent Agreement) was completed on August 22, 2017;
- (b) RPG completed the sale of all of the shares of ClaimSecure to The Canada Life Assurance Company on September 1, 2021;
- (c) pursuant to a Master Purchase Agreement dated September 4, 2024, and a Share Purchase Agreement dated September 4, 2024, Rexall Holdings Limited Partnership proposes to sell RPG to entities controlled by funds managed by Birch Hill Equity Partners Management Inc. (“Birch Hill”) (the “Proposed Transaction”);
- (d) on November 12, 2024, the Commissioner issued a no-action letter indicating that he does not, at this time, intend to make an application under section 92 of the *Competition Act* in respect of the Proposed Transaction;
- (e) upon completion of the Proposed Transaction, McKesson Canada and its affiliates will no longer have any ownership interest in the pharmacy retail business carried on by RPG and its subsidiaries;
- (f) ClaimSecure is, and upon completion of the Proposed Transaction RPG will be, operated by independent third-party owners, thereby eliminating the Commissioner’s competitive concerns that gave rise to the Consent Agreement;
- (g) the Proposed Transaction is intended to close before December 31, 2024;

[5] **AND UPON** requesting additional information and assurances and receiving a further letter dated December 12, 2024, which included (without limitation) that (i) McKesson Canada will provide to Birch Hill a usual and customary commitment not to acquire or otherwise invest in any retail pharmacies in any of the provinces in which RPG operates for a period that extends beyond the remaining term of the Consent Agreement; and (ii) the relationship between McKesson Canada and Birch Hill/RPG after the closing of the Proposed Transaction will be no different than other typical relationships between wholesale suppliers and their third party retail customers and that this relationship will also be consistent with the distribution relationship between McKesson Canada and RPG that existed prior to McKesson Canada's 2016 acquisition of RPG;

[6] **AND UPON** being satisfied that the application should be granted, based on the reasons and information provided in the Application and the letter dated December 12, 2024;

[7] **AND UPON** noting that the requested rescission of the Consent Agreement is on consent of the Commissioner, but is nevertheless a discretionary matter for the Tribunal;

THE TRIBUNAL ORDERS THAT:

[8] The Consent Agreement dated December 14, 2016, in Tribunal file CT-2016-016, is rescinded effective upon closing of the Proposed Transaction, provided the Proposed Transaction is completed before November 12, 2025.

[9] There is no order for costs.

DATED at Ottawa, this 17th day of December, 2024.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Andrew D. Little (Chairperson)

COUNSEL OF RECORD:

For the applicant:

McKesson Canada Corporation

Chanakya Sethi
Jim Dinning

For the respondent:

Commissioner of Competition

Steve Sansom