

Federal Court



Cour fédérale

Date: 20041019

Docket: T-1836-04

Toronto, Ontario, October 19th, 2004

Present: The Honourable Mr. Justice Phelan

BETWEEN:

HER MAJESTY THE QUEEN

Applicant

and

JOHN DEERE LIMITED

Respondent

PROHIBITION ORDER

UPON application of the Attorney General of Canada for an order pursuant to subsections 34(2) and 34(2.1)(h) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, (the "Act") against the Respondent for having done acts or things directed towards an offence under section 61(i)(a) of the Act;

AND UPON reading the said Application, the Information of the Attorney General of Canada and the Agreed Statement of Facts, filed, on consent, herein;

AND UPON reading the consent of the Respondent, which does not admit any liability or offence under the Act, but consents to the issuance of this Order;

AND UPON hearing the submissions of counsel for the Attorney General of Canada and counsel for the Respondent;

THIS COURT DOES PROHIBIT that:

1. The commission or the doing or the continuation of any act or thing constituting or directed towards an offence under section 61(1)(a) of the Act.
2. The Respondent, including each of the Respondent's corporate affiliates, directors, officers and employees, from directly or indirectly by agreement, threat, promise or any like means, attempting to influence upward, or discouraging the reduction of, the prices at which John Deere 100 Series lawn tractors are supplied or advertised in Canada.

THIS COURT DOES REQUIRE that:

1. The Respondent to take the steps as agreed to between the Respondent and the Attorney General of Canada as set out in Schedule "A" (including Schedule "B" thereto) hereto, which schedules shall form part of this Order.

THIS COURT FURTHER ORDERED that:

1. This Order shall be binding on the Respondent for a period of five (5) years from the date hereof; and each and every paragraph of this Order that applies to the Respondent shall be binding on the Respondent's corporate affiliates, successors and assigns, if any.
2. Any notice required to be delivered pursuant to this Order shall be deemed validly delivered if delivered by facsimile transmission or registered mail to:

The Applicant, the Attorney General of Canada

Per Gordon E. Kaiser
ORR KAISER
Barristers & Solicitors
330 University Avenue, 5th Floor
Toronto, Ontario M5H 1R7
Telephone (416) 977-8999

with a copy to:

Place du Portage, Phase I
22nd Floor - 50 Victoria Street
Gatineau, Quebec K1A 0C9
Facsimile: (819) 953-9267
Attention: Director, Competition Law Division
Commissioner of Competition

The Commissioner of Competition
Competition Bureau
Place du Portage, Phase I
20th Floor - 50 Victoria Street
Gatineau, Quebec K1A 0C9
Facsimile: (819) 997-3835
Attention: Deputy Commissioner, Criminal Matters Branch

The Respondent, John Deere Limited

John Deere Limited
295 Hunter
P.O. Box 1000
Grimsby, ON L3M 4H5
Facsimile: (905) 945-7311
Attention: General Counsel

with a copy to:

Blake, Cassels & Graydon LLP
Barristers and Solicitors
Box 25, Commerce Court West
Toronto, ON M5L 1A9
Facsimile: (416) 863-2653
Attention: Brian A. Facey

THIS COURT SHALL retain jurisdiction over the parties to this proceeding for the purposes of varying or rescinding any of the provisions of this Order, or dealing with any issues arising from this Order upon the application of either party pursuant to subsection 34(2.3) of the Act or upon this Court's own direction.

“Michael L. Phelan”

J.F.C.

Schedule "A"

Steps Agreed to by John Deere Limited and the Attorney General of Canada

1. John Deere Limited will develop a Competition Compliance Policy and provide annual training to the Relevant Persons in respect of such Policy on or before January 31, of each year for the duration of this Order. For the purposes of this Order, Relevant Person is defined as each officer and employee of the Respondent and its affiliates responsible for the pricing, sales and marketing of the 100 Series lawn tractors in Canada ("Relevant Person").
2. John Deere Limited will provide to each Relevant Person;
 - (a) a copy of this Order;
 - (b) a copy of the Respondent's Competition Compliance Policy; and
 - (c) a written statement that it is the Respondent's policy to require compliance with the Act and this Order.
3. John Deere Limited will provide to (i) each of the Respondent's authorized dealers in Canada as of the date of this Order; and (ii) each newly appointed authorized dealer in Canada prior to such dealer becoming a John Deere authorized dealer after the date of this Order:
 - (a) a copy of this Order; and
 - (b) a written statement that it is the Respondent's policy to require compliance with the Act and this Order.
4. John Deere Limited has agreed to make a voluntary refund payment to each person who purchased a Series 100 lawn tractor in the period January 1, 2003 to August 31, 2003 from an authorized John Deere dealer in Canada, in an amount equal to 5% of the purchase price as outlined in Schedule B, and will provide to the Commissioner of Competition ("Commissioner") and to this Court within 90 days of the issuance of this Order a copy of the letter sent to

customers as agreed upon by the Commissioner, and a report as to the amount of monies that have been refunded to customers. If requested thereafter by the Commissioner or this Court, John Deere Limited will provide further reports on the status of the voluntary refunds.

5. John Deere Limited will file with the Commissioner no later than December 31st of each year, for the duration of this Order, confirmation that the written communications required to be sent pursuant to paragraphs 2 and 3 of this Schedule have been sent.

Schedule "B"

100 SERIES REBATE PROGRAM

	Suggested List Price	Rebate (%)	Rebate (\$)	# of Units Sold	Total Rebates to Consumers
L100	\$2,149.00	5%	\$106.00	1445	\$153,170.00
L110	\$2,599.00	5%	\$127.00	4256	\$540,512.00
L120	\$3,189.00	5%	\$157.00	1755	\$275,535.00
L130	\$3,619.00	5%	\$178.00	1004	\$178,712.00
G100	\$6,219.00	5%	\$308.00	143	\$44,044.00
Total					<u><u>\$1,191,973.00</u></u>