

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

AND IN THE MATTER OF certain policies and procedures of Reliance Comfort Limited Partnership.

BETWEEN:

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

FILED / PRODUIT

September 4, 2013
CT-2012-002

Jos LaRose for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT

48

THE COMMISSIONER OF COMPETITION

Applicant

- and -

RELIANCE COMFORT LIMITED PARTNERSHIP

Respondent

**RESPONSE OF THE COMMISSIONER OF COMPETITION TO THE REQUEST OF
NATIONAL ENERGY CORPORATION FOR LEAVE TO INTERVENE**

**DEPARTMENT OF JUSTICE CANADA
COMPETITION BUREAU LEGAL SERVICES**
Place du Portage, Phase I
50 Victoria Street, 22nd Floor
Gatineau QC K1A 0C9

**David R. Wingfield
Jonathan Hood
Parul Shah**

Tel: (416) 954-5925
Fax: (416) 973-5131
jonathan.hood@cb-bc.gc.ca

Counsel to the Commissioner of Competition

1. The Commissioner does not oppose an order granting National¹ leave to intervene in this proceeding, nor to an oral hearing on the issue if required. The Commissioner submits, however, that certain of the National Proposed Topics and the intervention terms are not appropriate.
2. There are two issues on this motion:
 - a. Whether National should be granted leave to intervene; and
 - b. If so, the terms on which such intervention should be granted.

Position of the Commissioner on the Motion to Intervene

3. As stated above, the Commissioner does not oppose National's application for intervenor status in this proceeding.

Scope of any National Intervention

4. In the event National is granted intervenor status, the Commissioner submits that there should be limits on such intervention, including modifications to the National Proposed Topics and to the scope of National's participation.
5. With respect to the National Proposed Topics, the Commissioner submits that:
 - a. National Proposed Topics (e) - (g),(i) and (j) should be modified to read:
 - (e) National's perspective as a participant in the industry on the product and geographic markets;
 - (f) the issue of Reliance's dominant position as it affects National;

¹ Unless otherwise indicated, defined terms in this Response have the meaning ascribed to them in the Commissioner's Notice of Application and Statement of Grounds and Material Facts and in the Request for Leave to Intervene on Behalf of National Energy Corporation.

- (g) the issue of the substantial lessening or prevention of competition as it relates to National;
 - (i) the statements made and conclusions drawn by Reliance concerning the conduct of National in the Response of Reliance filed in this proceeding; and
 - (j) the impact of the Commissioner's proposed remedies on National.
6. National has drafted these five National Proposed Topics broader than required for National to provide its unique and distinct perspective. The five modifications limit National to providing its unique and distinct perspective as these five topics relate to National.
7. With respect to the scope of National's participation, the Commissioner submits that terms (e) and (g) on which National participates in the proceeding should be modified to read:
- (e) to file expert evidence relating to the topics for which National has been granted leave to intervene within the procedures set out in the the *Competition Tribunal Rules*;
 - (g) to make non-repetitive written and oral argument relating to the topics for which National has been granted leave to intervene, including submissions on the proposed remedy.

Dated at Gatineau this 4th day of September 2013

**David R. Wingfield
Jonathan Hood
Parul Shah**

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Fax: (416) 973-5131
jonathan.hood@bc-cb.gc.ca

**Counsel to the Commissioner of
Competition**

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COMPETITION BUREAU LEGAL SERVICES**
Place du Portage, Phase I
50 Victoria Street, 22nd Floor
Gatineau QC K1A 0C9

AND COPIES

TO: Reliance Comfort Limited Partnership

BORDEN LADNER GERVAIS LLP

Barristers and Solicitors
Scotia Plaza, 40 King Street West
Toronto, Ontario M5H 3Y4

**Robert S. Russell
Renai E. Williams
Denes Rothschild
Zirjan Derwa**

Tel: (416) 367-6256
Fax: (416) 361-7060

AND TO: National Energy Corporation

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto, Ontario
M5V 3J7

Adam Fanaki

Tel: (416) 863-5564
Fax: (416) 863-0871

**AND TO: The Registrar
Competition Tribunal
Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, Ontario
K1P 5B4**

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