

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. Direct Energy Marketing Limited*, 2013 Comp. Trib. 8

File No.: CT-2012-003

Registry Document No.: 13

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 Direct Energy Marketing Limited.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

Direct Energy Marketing Limited
(respondent)



Decided on the basis of the written record.
Before Judicial Member: Rennie J. (Chairperson)
Date of Order: March 28, 2013
Order signed by: Justice Donald J. Rennie

ORDER AMENDING THE ORDER EXTENDING THE TIME TO SERVE AND FILE A RESPONSE

[1] FURTHER TO the Notice of Application filed by the Commissioner of Competition (the “Commissioner”) pursuant to section 79 of the *Competition Act*, R.S.C. 1985, c. C-34 against Direct Energy Marketing Limited (the “Application”);

[2] AND WHEREAS the Commissioner has filed a similar application against Reliance Comfort Limited Partnership (“Reliance”) in CT-2012-002 (the “Reliance Application”);

[3] AND FURTHER TO a motion filed by Reliance on January 29, 2013, seeking, among other things, an order striking out the Reliance Application and an order extending the time for it to serve and file its response (the “Motion”);

[4] AND FURTHER TO the Tribunal Order of February 1, 2013, extending the time for delivery of Direct Energy’s response to the Application pending the outcome of the Motion filed by Reliance (the “Order”) (see: *The Commissioner of Competition v. Direct Energy Marketing Limited*, 2013 Comp. Trib. 3);

[5] AND FURTHER TO the Tribunal’s Reasons for Order and Order of March 12, 2013, on the Motion denying Reliance’s request for an order striking out the Reliance Application, ordering Reliance to provide a response to the Reliance Application by March 28, 2013, and ordering the Commissioner to provide Reliance with additional information by March 19, 2013 (the “Reliance Order”);

[6] AND FURTHER TO the Notice of Appeal filed by Reliance on March 22, 2013, in which it asks the Federal Court of Appeal to set aside the Reliance Order;

[7] AND FURTHER TO the Tribunal’s Order of March 19, 2013, extending the time for Reliance to file its response to the Reliance Application pending the outcome of Reliance’s motion for a stay of the Reliance Order (see: *The Commissioner of Competition v. Reliance Comfort Limited Partnership*, 2013 Comp. Trib. 7);

[8] AND FURTHER TO the letter filed by counsel for Direct Energy on March 22, 2013, requesting a further extension of the time for delivery of Direct Energy’s Response to the Application, pending the outcome of Reliance’s motion for a stay;

[9] AND WHEREAS the Commissioner consents to the extension requested by Direct Energy;

THE TRIBUNAL ORDERS THAT:

[10] Paragraph 6 of the Order of February 1, 2013, shall be amended to extend the time for Direct Energy’s response to the Application pending the outcome of Reliance’s motion to the Federal Court of Appeal for a stay of the Reliance Order;

[11] Should Reliance's motion for a stay be granted, the time for delivery of Direct Energy's response is extended until 20 days after the earlier of the following:

- (a) Following the determination of Reliance's appeal, delivery by the Commissioner of an amended Notice of Application, or any additional particulars, to Direct Energy;
- (b) Following the determination of Reliance's appeal, delivery by the Commissioner of notice to Direct Energy that he does not intend to amend his Application against Direct Energy, or provide any additional particulars to Direct Energy, because any relief granted does not affect Direct Energy; or
- (c) Should Reliance's appeal be dismissed, delivery by the Commissioner of the particulars ordered by the Tribunal in the Reliance Order

[12] Should Reliance's motion for a stay be denied, Direct Energy shall serve and file its response no later than the end of the 10th full day following the issuance of the Federal Court of Appeal's decision on the stay.

DATED at Toronto, this 28th day of March, 2013.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Donald J. Rennie

COUNSEL:

For the applicant:

The Commissioner of Competition

David R. Wingfield
Josephine Palumbo
Parul Shah

For the respondent:

Direct Energy Marketing Limited

Donald B. Houston