

FILED / PRODUIT

Date: January 29, 2013

CT- 2012-002

Chantal Fortin for / pour
REGISTRAR / REGISTRAIRE

CT-2012-002

OTTAWA, ONT.

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THE COMPETITION TRIBUNAL

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

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

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

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

and

RELIANCE COMFORT LIMITED PARTNERSHIP

Respondent

NOTICE OF MOTION

TAKE NOTICE THAT Reliance Comfort Limited Partnership (“Reliance”) will make a motion to the Competition Tribunal, at a date, time, location and in a manner directed by the Tribunal.

THE MOTION IS FOR THE FOLLOWING RELIEF:

1. An Order, pursuant to Rule 221(1)(a) of the *Federal Courts Rules*, SOR/98-106, striking out the Notice of Application (“Application”) brought by the Commissioner of Competition (“Commissioner”) against Reliance on December 20, 2012;

2. In the alternative, an Order that the Commissioner amend the Application so as to clearly and completely identify and define:
 - (a) all product and geographic markets Reliance is alleged to substantially and completely control for the purposes of the Application; and
 - (b) all policies, procedures, fees, charges and any other acts relied upon by the Commissioner in support of the allegation that Reliance has or is engaged in a practice of anti-competitive acts for the purpose of the Application,and to include a concise statement of economic theory as required by sub-rule 36(2)(d) of the *Competition Tribunal Rules*.
3. In the further alternative, an Order pursuant to Rule 181(2) of the *Federal Courts Rules* that the Commissioner provide the further and better particulars demanded in the Demand for Particulars served by Reliance on the Commissioner on January 25, 2013 and attached hereto as Exhibit "A";
4. An Order extending the time for Reliance to serve and file its response to the Application;
5. The costs of the motion on a solicitor and client basis; and
6. Such further and other relief as counsel may advise and the Tribunal may permit.

THE GROUNDS FOR THE MOTION ARE:

1. The Commissioner, by his Application, seeks an Order pursuant to sections 79(1), 79(2) and 79(3.1) of the *Competition Act*, R.S.C. 1985, c. C-34 (the "*Act*") against Reliance.
2. In the absence of the pleading of a relevant market for the purpose of the

Application, the Application discloses no reasonable cause of action upon which an Order under section 79 of the *Act* can issue.

3. For an order to issue under section 79 of the *Act*, the Commissioner must prove all three criteria set out in section 79(1) of the *Act*, namely:
 - (a) that Reliance substantially or completely controls throughout Canada or any area thereof, a class or species of business;
 - (b) that Reliance has engaged in or are engaging in a practice of anti-competitive acts; and
 - (c) that practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market.
4. The pleading of a cognizable market is a necessary element of an application under section 79 of the *Act*. It is therefore incumbent upon the Commissioner to plead sufficient material facts upon which the relevant geographic and product market or markets can be unambiguously identified and defined.
5. Sub-rule 36(2)(d) of the *Competition Tribunal Rules* requires that a Notice of Application set out a concise statement of economic theory. The Commissioner's purported statement of economic theory is no more than a summary of the Application. The requirement for the inclusion of a concise statement of economic theory is a requirement distinct from pleading the grounds for the application and the material facts on which the Commissioner relies.

The Application Provides No Basis by Which the Tribunal Could Establish a Relevant Geographic Market

6. The Commissioner does not plead sufficient material facts from which a discernible geographic market could be established by the Tribunal. Further, the Commissioner

has not pled any economic theory in support of any such market. Without having pled the material facts necessary for the finding of a relevant market, the Commissioner is unable to demonstrate that Reliance has violated section 79(1), with the result that the Application discloses no reasonable cause of action.

7. The Notice of Application at paragraphs 29, 31 and 32 states that for the purposes of the Application the Relevant Market is an aggregate of these undefined markets.
8. The Commissioner purports to define the relevant geographic markets as:
 - i. the local markets of Ontario where Union Gas distributes natural gas; and
 - ii. certain other local rural markets in Ontario.

This suggests a plurality of markets. By a letter dated January 22, 2013, counsel for the Commissioner sought to clarify the boundaries of the market described as “other local rural markets in Ontario” by noting that they are “those that are not supplied natural gas”.

9. The Commissioner does not plead sufficient material facts from which the Tribunal could reasonably ascertain the geographical boundaries of “the local markets of Ontario where Union Gas distributes natural gas”. The only facts pled in support of this market definition are at paragraph 13 of the Application, where it is pled that those areas of Ontario where Union Gas distributes natural gas is within “**the area corresponding generally to parts of** the following: Northern Ontario, from the Manitoba border to the North Bay/Muskoka area; Southwestern Ontario, from Windsor to west of the Greater Toronto Area; and Eastern Ontario, not including Ottawa” (emphasis added).
10. The facts pled at paragraph 13 of the Application are insufficient to establish a

cognizable geographic market for purposes of section 79 of the *Act*. First, the use of the phrase “corresponding generally to parts of” itself indicates that the description that follows fails to completely or accurately define the Commissioner’s intended geographic market; yet no material facts have been pled as to the areas of the proposed geographic market that do not generally correspond to the description (either because the description is too broad or too narrow). Second, the date on which Union Gas’ service areas purportedly determine the boundaries of the market is not provided, notwithstanding that the markets served by Union Gas’ distribution network are continually evolving. Third, terms such as “Southwestern Ontario, from Windsor to west of the Greater Toronto Area” do not propose any actual geographic limiters, such as a line on a map or border cities in all directions, by which the Tribunal could define a geographic market. Fourth, the Commissioner has not pled any facts as to either the number of relevant local markets or where in the area described at paragraph 13 of the Application those local markets are located.

11. The Commissioner defines the second relevant geographic market as “certain other local rural markets in Ontario”. Again, this suggests a plurality of markets. This is imprecise, and not supported by material facts which would allow the Tribunal to define a geographic market within which to evaluate Reliance’s market power and conduct. The Commissioner has pled no facts in the Application pertaining to the meaning of “local rural” markets which would allow such markets to be defined by the Tribunal for purposes of section 79 of the *Act*.
12. In a letter dated January 22, 2013, counsel for the Commissioner advised that “certain other local rural markets in Ontario” are “those that are not supplied natural gas”. However, this statement offers no means by which the areas can be

ascertained, and no further facts on which the Tribunal could define such markets. Further, such a geographic market is inconsistent with the definition of product market proposed by the Commissioner, as gas water heaters, which are claimed to be part of the product market in such areas, require the supply of natural gas.

13. In light of the foregoing, on the facts pled by the Commissioner, it is impossible to determine the relevant geographic market or markets in which Reliance is alleged to have substantially or completely controlled any product market and in which the anti-competitive acts it is alleged to have engaged in could have had, are having or are likely to have the effect of preventing or lessening competition substantially..

The Application Provides No Basis by Which the Tribunal Could Establish a Relevant Product Market

14. Although the Application should be struck out on the basis of its failure to plead facts which would allow the Tribunal to define a relevant geographic market, the Application also fails to plead facts which would allow the Tribunal to define a relevant product market, providing a further ground on which it should be struck.
15. The Commissioner purports to define the relevant product market within which Reliance's market power and conduct should be evaluated as the supply of "natural gas and electric water heaters and *related services* to residential consumers". At paragraphs 10 and 29 of the Application, related water heater services are stated to "***include***" installation, repair, maintenance and disconnection services (emphasis added). This suggests that the relevant product market is either a bundled market or a series of bundled markets.
16. The Application does not propose any limits on the services claimed to be related to the supply of natural gas and electric water heaters to residential consumers.

Reliance sells other related products and services, such as heating systems. No facts are pled to establish which services are in fact related to the supply of such equipment. Nor is any economic theory posed upon which to support the Commissioner's product market definition.

17. It is impossible for the Tribunal to engage in an assessment of Reliance's control of any purported market without a clear description of the totality of products and/or services alleged to form part of the relevant product market. As such, it is impossible for the Tribunal to determine whether Reliance has market power in a relevant product market for purposes of section 79(1)(a), or whether the anti-competitive acts it is alleged to have engaged in could have had, are having or are likely to have the effect of preventing or lessening competition substantially in a market.

The Application Fails To Disclose a Reasonable Cause of Action

18. As the Commissioner has failed to plead any or any sufficient material facts to support the proposed definitions of the relevant geographic or product markets upon which he intends to rely, and has not provided a concise statement of economic theory to support his allegations, it follows that the Application discloses no reasonable cause of action and should be struck pursuant to Rule 221(1)(a) of the *Federal Courts Rules*.

In the Alternative, the Commissioner Must Amend the Application to Resolve Ambiguities

19. In the event that the Tribunal decides not to strike out the Application, the Tribunal should exercise its discretion under section 9(2) of the *Competition Tribunal Act* to require the Commissioner to amend the Application to resolve both the considerable

uncertainties described above with respect to the Commissioner's definitions of the relevant product and geographic markets, as well as ambiguities as to the scope of the conduct engaged in by Reliance that is alleged to constitute a practice of anti-competitive acts.

20. In order for Reliance to appropriately and meaningfully respond to the Application and to engage in the necessary factual and economic analysis, it must understand the precise nature of the allegations against it. As currently pled, the allegations made in the Application against Reliance are materially incomplete.

Demand For Particulars in the Further Alternative

21. On January 25, 2013 Reliance served the Commissioner with a Demand for Particulars in the form attached hereto as Exhibit "A" ("the Demand"). Without such particulars Reliance cannot meaningfully respond to the Commissioner's allegations.
22. In the further alternative, Reliance therefore seeks an order that the Commissioner respond to the Demand by within a time to be specified by the Tribunal.
23. Section 8 and subsection 9(2) of the *Competition Tribunal Act*.
24. Rules 34(1), 36(2) and 82 to 88 (inclusive) of the *Competition Tribunal Rules*, SOR/2008-141.
25. Rules 181 and 221 of the *Federal Courts Rules*.
26. Such further and other grounds as counsel may advise and the Tribunal may permit.

DATE: January 28, 2013

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B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

and

RELIANCE COMFORT LIMITED PARTNERSHIP

Respondent

DEMAND FOR PARTICULARS

The Respondent, Reliance Home Comfort Limited Partnership (“Reliance”) demands that pursuant to Rule 181(2) of the *Federal Courts Rules*, SOR/98-106 and also pursuant to Rule 36 of *Competition Tribunal Rules*, SOR/2008-141 the Commissioner of Competition (“Commissioner”) serve and file further and better particulars of the allegations in the Notice of Application filed on December 20, 2012, as follows:

Demand 1:

In paragraph 10 the Commissioner states that most residential consumers who rent or purchase a water heater also obtain related water heater services '*including*' installations, repair, maintenance and disconnection. Similarly, in paragraph 29, the Commissioner has defined the purported product market to include water heater related services. The Commissioner pleads that these related services '*include*' installation, disconnection, maintenance and repair of water heaters. By using the term 'including' and 'includes' the Commissioner has failed to identify all of the other services that fall within the ambit of "related services".

Please provide particulars with respect to paragraphs 10 and 29 as to:

- (a) Identify the other services which are distinguished from "installation, disconnection, maintenance and repair of water heaters"; and,
- (b) Confirm that each of these other services are contained within the alleged aggregated product market.

Demand 2:

In paragraph 31 of the Application the Commissioner purports to define the relevant geographic markets as (i) the local markets of Ontario where Union Gas distributes natural gas; and (ii) certain other local rural markets in Ontario. In paragraph 13 the Commissioner has identified the area where Union Gas distributes natural gas as the area corresponding generally to parts of Northern Ontario, from the Manitoba border to the North Bay/Muskoka area; Southwestern Ontario, from Windsor to west of Greater Toronto Area; and Eastern Ontario, not including Ottawa. The Commissioner has not pleaded any facts on the number

of local markets or where in this area these local markets are located.

Please provide particulars with respect to paragraph 13 and 31 as to:

- (a) Geographic identifiers such as postal codes, census tract or names of streets and roads to identify the parameters and identity of these local markets.
- (b) The communities that Union Gas serves are identified on its corporate website as of January 2013 as listed in Exhibit 'A' hereto. Please confirm whether Exhibit 'A' completely and accurately defines the communities referred to as "the local markets of Ontario where Union Gas distributes natural gas".
- (c) Please further confirm with reference to the list of communities identified in Exhibit 'A', whether the "local markets of Ontario where Union Gas distributes natural gas" include the totality of the communities identified. For example, Exhibit 'A' lists Peel Region as a community, which in turn includes the cities of Mississauga, Brampton and Caledon. For example, Exhibit 'A' lists Peel Region as a community, notwithstanding that Peel Region includes the cities of Mississauga, Brampton and Caledon. Please confirm wherever such a municipal region is listed in Exhibit 'A' whether the cities, towns and communities that comprise that municipal region are intended to be included in the definition of "the local markets of Ontario where Union Gas distributes natural gas".

Demand 3:

In paragraph 31 of the Application the Commissioner purports to define the Relevant Geographic Market to include the aggregate of (i) the local markets of Ontario where Union Gas distributes natural gas; and (ii) certain other local rural markets in Ontario. The Commissioner has pled no further facts in the Application to identify or indicate where in Ontario these local rural markets are located. In a letter dated January 22, 2013, Ms. Palumbo advised that the boundaries of “certain other local rural markets in Ontario” are “those that are not supplied natural gas”. A copy of that letter is Exhibit ‘B’ hereto. This further confuses the stated market definition. Paragraph 29 of the Application states that the relevant product market for the purposes of the Application is the aggregated market of the supply of gas and electric water heaters and related services. If the geographic market includes “local rural markets in Ontario where natural gas is not supplied”, is it the position of the Commissioner that there are no substitutes for electric water heaters in these local rural markets, as obviously gas water heaters cannot be deployed. The relevant product market as defined is inconsistent with this suggested clarification.

Please provide particulars with respect to paragraph 14 and 31 as to:

- (a) Geographic identifiers such as postal codes, census tract or names of streets and roads to identify the parameters and identity of the ‘***other local rural markets***’.
- (b) Whether that Commissioner takes the position as indicated by the letter from Ms. Palumbo on January 22, 2013 that in areas that are not supplied by natural gas there are no substitutes for electric water heaters.

Demand 4:

In paragraph 17 of the Application the Commissioner alleges that Reliance creates significant barriers to the return of its water heaters through the use of its RRN Return Policy. In this paragraph the Commissioner uses the phraseology '*among other things*' and therefore fails to identify all of the ways in which it is alleged the RRN Return Policy creates barriers to return Reliance's water heaters. Please provide particulars with respect to paragraph 17 as to:

- (a) Identify the ways other than those listed in (i) to (iv) by which it is alleged the RRN Return Policy creates significant barriers to the return of Reliance's water heaters.

Demand 5:

In paragraph 20 of the Application the Commissioner alleges that Reliance imposes arbitrary restrictions on the return process at its return depots. In this paragraph the Commissioner uses the word '*including*' and therefore fails to identify all of the alleged arbitrary restrictions.

Please provide particulars with respect to paragraph 20 as to:

- (a) Identify the other alleged arbitrary restrictions imposed by Reliance.

Demand 6:

In paragraph 22 the Commissioner alleges that Reliance levies multiple and unwarranted exit fees and charges to impede, prevent and deter customers from switching to competitors and to penalize competitors. The Commissioner alleges these charges

'**include**' damage; account closure; drain, disconnection and pick-up as well as extra billing charges.

Please provide particulars with respect to paragraph 22 as to:

- (a) The other alleged charges imposed by Reliance upon which the Commissioner intends to rely.

Demand 7:

In paragraph 34 of the Application the Commissioner pleads that Reliance controls 76% of the Relevant Market based on '**annual revenues**'. The Commissioner pleads no further facts to identify what these annual revenues represent.

Please provide particulars with respect to paragraph 34 as to:

- (a) Is this alleged revenue based on revenue from rental customers in the aggregate or based on annual sales of water heaters?
- (b) Is the basis of the market share approach based on Reliance's installed base of customers or on its annual sales of water heaters?
- (c) Identify which of the alleged markets to which this 76 % market share relates.
- (d) Identify the specific years on which these annual revenue figures are based.

Demand 8:

In paragraph 40 the Commissioner pleads that Reliance implemented '**certain water heater policies and procedures**' which were prohibited by the Direct Energy Consent Order, but does not plead any facts as to which policies and procedures he is referring to.

Please provide particulars with respect to paragraph 40 as to:

- (a) The specific return policies and procedures implemented by Reliance which are alleged to have been prohibited by the Direct Energy Consent Order;
- (b) The specific return policies and procedures implemented by Reliance which are alleged to have been similar to those prohibited under the Direct Energy Consent Order;

Demand 9:

In paragraphs 46, 49 and 56 the Commissioner alleges Reliance's exclusionary water heater return policies have caused at least '**two competitors**' to exit the Relevant Market. The Commissioner further asserts that Reliance has impeded and prevented '**several competitors**' from entering or expanding in the Relevant Market. No facts have been pled regarding these allegations.

Please provide particulars with respect to paragraphs 46, 49 and 51 as to:

- (a) a complete list of the '**two competitors**' who have purported to leave the alleged Relevant Market due to Reliance's exclusionary water heater return policies and procedures including in each instance:
 - i. the name of the competitor
 - ii. the date on which the competitor is alleged to have exited the market
 - iii. each separate local market or local rural market in Ontario forming part of the Commissioner's aggregated geographic market from which the competitors are alleged to have exited.

- (b) a complete list of the '**several competitors**' who Reliance have purported to have impeded and prevented from entering or expanding in the alleged Relevant Market including in each instance:
- i. the name of the competitor
 - ii. the date on which the competitor is alleged to have exited the market
 - iii. each separate local market or local rural market in Ontario forming part of the Commissioner's aggregated geographic market from which the competitors are alleged to have exited.

DATE: January 25, 2013

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Union Gas
CONDITIONS OF SERVICE

January 1, 2013

1. About our Area and Gas Services

1.1 Area Served by Company

As outlined in these conditions of service, Union Gas has an adequate supply of gas to serve its customers, and has properly installed pipe and piping according to the appropriate legislative requirements. Union Gas supplies gas to over 400 communities within the 230 municipalities where Union Gas holds a franchise agreement. These are considered traditional place names and may not in all cases reflect the current names of these communities.

Communities

Aberfoyle	Bayham Twp	Burford
Acton	Beachville	Burford Twp
Adelaide Twp	Beardmore	Burgessville
Ailsa Craig	Belleville	Burks Falls
Alberton	Bentinck Twp	Burlington
Aldborough Twp	Berwick	Cache Bay
Alma	Bewdley	Caledonia
Alvinston	Blandford-Blen Twp	Callander
Amabel Twp	Banshard Twp	Calstock
Amherstburg	Blenheim	Cambridge
Amherstview	Blezard Valley	Camden Twp
Ancaster	Blind River	Camlachie
Appin	Bloomfield	Campbellville
Arkona	Bloomington	Canboro
Arran Twp	Blue Mountains	Canborough Twp
Artemesia Twp	Blyth	Canfield
Arthur	Bosanquet Twp	Cannifton
Arthur Twp	Bothwell	Capreol
Astra	Bracebridge	Caradoc Twp
Atherley	Branchton	Cardinal
Atikokan	Brant Twp	Carlisle
Atwood	Brantford	Carrick Twp
Awrey Twp	Brantford Twp	Castleton
Ayr	Breslau	Cathcart
Azilda	Brigden	Cayuga
Baden	Brighton	Cayuga N Twp
Balmertown	Brights Grove	Cayuga S Twp
Baltimore	Brockville	Cedar Springs
Barwick	Brooke Twp	Centralia
Batawa	Brookville	Centreton
Bath	Bruce Mines	Chaput Hughes
Bayfield	Brussels	Charing Cross

Charlotteville Twp	Drayton	Floradale
Chatham	Dresden	Florence
Chatham Twp	Dryden	Forest
Chatsworth	Duart	Fort Frances
Chelmsford	Dumfries N Twp	Foxboro
Chesterville	Dumfries S Twp	Frankford
Clifford	Dundas	Freelton
Clinton	DunnTwp	Fullarton Twp
Cobalt	Dunnville	Gananoque
Cobourg	Dunwich Twp	Garafraxa W Twp
Cochenour	Durham	Garden River
Cochrane	Dutton	Garson
Colborne	Ear Falls	Georgetown
Colborne Twp	Earlton	Geraldton
Colchester N Twp	East Wawanosh Twp	Glanbrook Twp
Colchester S Twp	Easthope N Twp	Glen Williams
Collingwood Twp	Easthope S Twp	Glencoe
Conestogo	Echo Bay	Glenelg Twp
Coniston	Eden	Goderich
Copetown	Egmondville	Goderich Twp
Copper Cliff	Egremont Twp	Gosfield S Twp
Corbyville	Ekfrid Twp	Gowanstown
Cornwall	Elginburg	Grafton
Corunna	Ellice Twp	Grand Bend
Courtland	Elliot Lake	Gravenhurst
Courtright	Elma Twp	Greensville
Crediton	Elmira	Grey Twp
Crysler	Elora	Guelph
Culross Twp	Emo	Guelph Twp
Cumberland Beach	Englehart	Hagersville
Dashwood	Enniskillen Twp	Haileybury
Dawn Twp	Eramosa Twp	Hallebourg
Delaware Twp	Erie Beach	Halton Hills
Delhi	Erieau	Hamilton
Derby Twp	Espanola	Hanmer
Dereham Twp	Essex	Hanover
Desbarats	Euphemia Twp	Harrisburg
Deseronto	Exeter	Harriston
Devlin	Falconbridge	Harrow
Dorchester	Fauquier	Harty
Dorchster N Twp	Fergus	Harwich Twp
Dorion	Finch	Hawkesville
Dover Centre	Fisherville	Hay Twp
Dover Twp	Flamborough	Hearst
Dowling	Flamborough W Twp	Heidelberg
Downie Twp	Flesherton	Hensall

Hepworth	Levack	Morewood
Hibbert Twp	Linwood	Morpeth
Highgate	Listowel	Morris Twp
Hillier	Lively	Morrisburg
Holland Twp	Lobo Twp	Morrison
Holtyre	Logan Twp	Mosa Twp
Hornell Heights	Londesborough	Moulton Twp
Howard Twp	London	Mount Brydges
Howick Twp	London Twp	Mount Elgin
Hullett Twp	Long Sault	Mount Forest
Huntsville	Longford Mills	Mount Hope
Hurkett	Longlac	Mount Pleasant
Huron Park	Lowbanks	Murillo
Ignace	Lowville	Nairn Centre
Ingersoll	Lucan	Nanticoke
Ingleside	Lynden	Napanee
Inkerman	Lynedoch	Naughton
Innerkip	Madoc	Neebing
Inwood	Maitland	New Dundee
Iron Bridge	Mannheim	New Hamburg
Iroquois	Markdale	New Liskeard
Iroquois Falls	Markstay	Newburgh
Jarvis	Marmora	Newbury
Jerseyville	Maryborough Twp	Nichol Twp
Joyceville	Maryhill	Nipigon
Kakabeka Falls	Matheson	Nissouri W Twp
Kapuskasing	Mattawa	Norfolk Twp
Keewatin	Mattice	Normanby Twp
Kenora	Maynard	North Bay
Kent Bridge	McGillivray Twp	North Buxton
Keppel Twp	McKillop Twp	North Cobalt
Kilbride	Meaford	Norval
Kilsyth	Merlin	Norwich
Kilworth	Metcalfe Twp	Norwich N Twp
Kilworth Heights	Middleport	Norwich S Twp
Kingston	Middleton Twp	Norwich Twp
Kingsville	Mildmay	Novar
Kirkland Lake	Millgrove	Oakland
Kitchener	Milton	Oakland Twp
Komoka	Minto Twp	Oakville
La Salette	Mitchell	Odessa
Lakeport	Mitchell's Bay	Oil City
Lakeshore	Monteith	Oil Springs
Langton	Moonbeam	Oliver Paipoonge
Lasalle	Moore Twp	Onaping
Leamington	Mooretown	Oneida Twp

Onondaga Twp	Red Rock	Stockdale
Opasatika	Red Lake	Stoney Creek
Orford Twp	Ridgetown	Stratford
Orillia	Rockwood	Strathroy
Orkney	Rodney	Stratton
Orland	Romney Twp	Sturgeon Falls
Orrville	Rondeau Park	Sudbury
Otterville	Roseville	Sullivan Twp
Owen Sound	Rothsay	Sundridge
Oxford Southwest Twp	Rutherglen	Swastika
Paincourt	Salem	Sydenham Twp
Palmerston	Sarawak Twp	Tara
Paris	Sarnia	Tavistock
Parkhill	Sauble Beach	Tecumseh
Parry Sound	Saugeen Twp	Teeswater
Peacock Point	Sault Ste. Marie	Teeterville
Peel Twp	Schumacher	Temagami
Petersburg	Scotland	Thamesford
Petrolia	Seaforth	Thamesville
Picton	Sebringville	Theford
Pilkington Twp	Selby	Thessalon
Pinewood	Selkirk	Thornbury
Plainfield	Seneca Twp	Thorne
Plattsville	Shallow Lake	Thunder Bay
Plympton Twp	Shanty Bay	Tilbury
Point Edward	Sherbrooke Twp	Tilbury E Twp
Porcupine	Shrewsbury	Tillsonburg
Porquis Junction	Shuniah Twp	Timmins
Port Dover	South Mountain	Townsend
Port Elgin	South Porcupine	Townsend Twp
Port Hope	South River	Trenton
Port Lambton	Southampton	Trout Creek
Port Rowan	Southwold Twp	Tuckersmith Twp
Port Ryerse	Springford	Tupperville
Port Stanley	St Agatha	Turnberry Twp
Port Sydney	St Andrews West	Tweed
Powassan	St Clements	Usborne Twp
Prescott	St George	Val Caron
Princeton	St Jacobs	Val Gagne
Puslinch Twp	St Marys	Val Rita
Quinte West	St Thomas	Val Therese
Rainham Twp	St Vincent Twp	Vanastra
Rainy River	St Williams	Vermilion Bay
Raleigh Twp	Stanley Twp	Verner
Rama	Stephen Twp	Vickers Heights
Ramore	Stirling	Vittoria

Wahnapiatae
Walkerton
Wallace Twp
Wallaceburg
Wallenstein
Walpole Twp
Walsingham
Walsingham N Twp
Walsingham S Twp
Wardsville
Warren
Warwick Twp
Waterdown
Waterford
Waterloo
Watford
Wellesley
Wellesley Twp

Wellington
West Lorne
West Montrose
Westbrook
Westlake
Westminster Town
Wheatley
Whitefish
Warton
Wilkesport
Williams E Twp
Williams W Twp
Williamsburg
Wilmot Twp
Winchester
Windham Twp
Windsor
Wingham

Winterborne
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Woodslee
Woodstock
Wooler
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Yarmouth Twp
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Zorra-Tavistock East
Zurich



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VIA EMAIL**

Borden Ladner Gervais LLP
Scotia Plaza
40 King Street West, 44th Floor
Toronto, Ontario M5H 3Y4

Attn.: Mr. Robert S. Russell

Dear Mr. Russell:

Re: The Commissioner of Competition v. Reliance Comfort Limited Partnership (CT/002)

I acknowledge receipt of your letter dated 18 January 2013 in relation to the above-noted matter and specifically your query regarding the definition of the relevant geographic markets for the supply of natural gas and electric water heaters contained in paragraph 31(ii) of the Notice of Application (the "Application").

When read in the context of the Application itself and in particular paragraph 9, we believe that the relevant geographic markets have been adequately described and therefore the Application meets the provisions of Rule 36(2)(c) of the *Competition Tribunal Rules*. Nevertheless, for the avoidance of any doubt that you might have on this point, the "certain other local rural markets in Ontario" in paragraph 31(ii) refers to the local rural markets in Ontario that are not supplied natural gas.

We trust the above responds to your query.

Yours truly,

Josephine A.L. Palumbo
Senior Counsel

cc. David R. Wingfield, Executive Director and Senior General Counsel, Department of Justice
Parul Shah, Counsel, Department of Justice

Canada

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