

COMPETITION TRIBUNAL

Reference: *The Commissioner of Competition v. Suncor Energy Inc. and Petro-Canada*

File No.: CT-2009-011

Registry Document No.:

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended, and the *Competition Tribunal Rules*, SOR/94-290;

AND IN THE MATTER OF the filing and registration of a Consent Agreement in relation to the amalgamation by Suncor Energy Inc. and Petro-Canada;

AND IN THE MATTER OF an Application pursuant to section 106(1)(b) of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

SUNCOR ENERGY INC. and PETRO-CANADA

Respondents

Decided on the basis of the written record.

Presiding Judicial Member:

Date of Order:

Order signed by:

**ORDER ALLOWING AN APPLICATION UNDER PARAGRAPH 106 OF THE
COMPETITION ACT TO VARY A CONSENT AGREEMENT**

PUBLIC VERSION

- [1] FURTHER to the Consent Agreement filed on July 22, 2009, by the Commissioner of Competition (“**Commissioner**”) in relation to the amalgamation of Suncor Energy Inc. (“**Suncor**”) and Petro-Canada (“**Consent Agreement**”);
- [2] AND FURTHER to an Application made on consent pursuant to section 106 of the *Competition Act*, R.S.C. 1985, c. C-34 (“**Act**”), by the Commissioner and Suncor, to vary the Consent Agreement;
- [3] AND UPON considering a letter from counsel for the Commissioner and counsel for Suncor dated May 25, 2010, explaining why the parties require the amendment of the Consent Agreement;
- [4] AND UPON being satisfied with the explanation provided;
- [5] AND UPON noting that the amendment of the Consent Agreement is on consent but is nevertheless a discretionary matter for the Tribunal;
- [6] AND UPON dispensing therefore with the application of the *Competition Tribunal Rules*, SOR/2008-141, which require the filing of pleadings in proceedings under section 106 of the Act;

THE TRIBUNAL ORDERS THAT:

- [7] The Application made pursuant to section 106 of the Act is allowed.
- [8] The Consent Agreement be and hereby is varied by adding the following sentence to the end of paragraph 37 of the Consent Agreement: “In respect of the stations identified in **Confidential Schedule “C.1”**, the Commissioner’s approval has been granted pursuant to the terms contained in that Schedule.”
- [9] Paragraph 108 of the Consent Agreement be and hereby is varied to read as follows (the variation is underlined): “With the exception of the information in **Confidential Schedules “A”, “C.1” and “F”** to this Agreement (and, if the Divestiture is completed prior to the end of the Initial Sale Period, **Confidential Schedule “B.2”**), which information shall remain confidential at all times during and following the duration of this Agreement, confidential terms in this Agreement shall be made public upon the expiration of the Initial Sale Period, or when the Divestiture has been completed, whichever is later, provided that Amalco or the Commissioner may disclose the contents of **Confidential Schedule “F”** to any Pioneer Entity. The Respondents agree to the immediate registration of this Agreement with the Tribunal and the Respondents agree that it shall be binding upon Amalco.”
- [9] The Consent Agreement be and hereby is varied by the addition of **Confidential Schedule “C.1”** in the form attached hereto as **Appendix “A”**.

DATED at Ottawa, this ___ day of _____ 2010.

SIGNED on behalf of the Tribunal by the Chairperson

COUNSEL:

For the applicant:

The Commissioner of Competition
Nikiforos Iatrou

For the respondent:

Suncor Energy Inc.
Calvin S. Goldman and Jason Gudofsky

Appendix "A"

CONFIDENTIAL SCHEDULE "C.1."

[CONFIDENTIAL]