



PUBLIC VERSION

Reference: *The Commissioner of Competition v. Suncor Energy Inc. and Petro-Canada*, 2010
Comp. Trib. 10
File No.: CT-2010-004
Registry Document No.: 0005

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 paragraph 106(1)(b) of the *Competition
Act*;

B E T W E E N:

The Commissioner of Competition
(applicant)

and

Suncor Energy Inc.
(respondent)



Decided on the basis of the written record.
Before: Phelan M. (presiding), Gauthier J., H. Lanctôt
Date of Order: June 3, 2010
Order signed by: Mr. Justice Michael Phelan,
Madam Justice Johanne Gauthier, Mr. Henri Lanctôt

**ORDER ALLOWING AN APPLICATION UNDER PARAGRAPH 106(1)(b) OF THE
COMPETITION ACT TO VARY A CONSENT AGREEMENT**

[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 paragraph 106(1)(b) 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 variation of the Consent Agreement;

[4] **AND UPON** being satisfied with the explanation provided;

[5] **AND UPON** noting that the variation 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;

NOW THEREFORE THE TRIBUNAL ORDERS THAT:

[7] The Application made pursuant to paragraph 106(1)(b) 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.”

[10] The Consent Agreement be and hereby is varied by the addition of the **Confidential Schedule “C.1”** in the form attached hereto as Schedule A.

DATED at Ottawa, this 3rd day of June, 2010.

SIGNED on behalf of the Tribunal by the panel members.

(s) Michael L. Phelan

(s) Johanne Gauthier

(s) Henri Lanctôt

[11] Schedule A: Confidential Schedule “C.1.”

[CONFIDENTIAL]

COUNSEL:

For the applicant

The Commissioner of Competition

Nikiforos Iatrou

For the respondent

Suncor Energy Inc.

Calvin S. Goldman, Q.C.
Jason Gudofsky