



Reference: *The Commissioner of Competition v. Superior Plus LP*, 2008 Comp. Trib. 33
File No.: CT-2008-005
Registry Document No. : 0006

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

AND IN THE MATTER of the filing and registration of a Consent Agreement in relation to the Acquisition by Superior Plus LP of certain assets of Irving Oil Limited and Irving Marketing Limited pursuant to section 105 of the *Competition Act*;

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

BETWEEN:

The Commissioner of Competition
(applicant)

and

Superior Plus LP
(respondent)



Decided on the basis of the written record.

Before: Simpson J. (presiding), Mr. W. Askanas and Mr. H. Lanctôt

Date of Order: December 11, 2008

Order signed by: Madam Justice Sandra J. Simpson, Mr. W. Askanas and Mr. H. Lanctôt

**ORDER ALLOWING AN APPLICATION UNDER PARAGRAPH 106(1)(b) OF
THE COMPETITION ACT TO VARY A CONSENT AGREEMENT TO
SUBSTITUTE A 30,000 GALLON PROPANE TANK FOR AN 85,000 GALLON
PROPANE TANK**

[1] FURTHER to the Consent Agreement filed on May 12, 2008 (the “Consent Agreement”) by the Commissioner of Competition (“Commissioner”) in relation to the acquisition by Superior Plus LP (“Superior”) of certain propane assets from Irving Oil Limited and Irving Marketing Limited (collectively “Irving”) located in Newfoundland, which provides, in part, that Superior shall divest certain assets (the “Divestiture Assets”) to address the Commissioner’s concerns regarding the likely substantial lessening and/or prevention of competition in the retail propane gas and related service markets in Central and Western Newfoundland, resulting from the acquisition (the “SLC”);

[2] AND FURTHER to the fact that one of the Divestiture Assets is an 85,000 gallon bulk storage propane tank located in Western Newfoundland;

[3] AND FURTHER to a Joint Application in a letter filed on November 19, 2008, by the Commissioner and Superior pursuant to paragraph 106(1)(b) of the *Competition Act*, R.S.C. 1985, c. C-34 (the “Act”), to amend the Consent Agreement, which indicates that North Atlantic Petroleum (“NAR”) has conditionally agreed to purchase all of the Divestiture Assets, except that instead of agreeing to purchase the 85,000 gallon tank, it has conditionally agreed to purchase a 30,000 gallon tank (the “Proposed Substitution”);

[4] AND UPON noting that NAR declined to purchase the 85,000 gallon tank because it is a non-standard size and because it is of the view that a 30,000 gallon tank would be more suitable to NAR’s business purposes;

[5] AND UPON noting that Commissioner is satisfied that the sale of the Divestiture Assets to NAR, with the Proposed Substitution, would address the SLC, given the size of the commercial propane market in Western Newfoundland and the fact that virtually all other bulk propane facilities in Western and Central Newfoundland markets use 30,000 gallon bulk storage tanks;

[6] AND UPON noting that the Joint Application filed by the parties indicates that the 85,000 gallon tank was included in the divestiture package as it was the most efficient and least costly option for divestiture, not because the Commissioner was of the view that a tank with that large a capacity was required to address the SLC;

[7] AND UPON being satisfied with the foregoing explanation of the circumstances surrounding the Proposed Substitution;

[8] AND UPON dispensing pursuant to Rule 2 with the application of the *Competition Tribunal Rules*, SOR/2008-141, which require the filing of a formal application in proceedings under section 106 of the Act;

THE TRIBUNAL ORDERS THAT:

[9] The Application made pursuant to paragraph 106(1)(b) of the Act is allowed;

[10] The Commissioner shall file an Amendment to the Consent Agreement between Superior Plus LP and the Commissioner of Competition, together with a French translation thereof, which reflect the Proposed Substitution. When filed, these documents will serve to amend the Consent Agreement to allow for the sale of a 30,000 gallon tank in substitution for the 85,000 gallon tank.

DATED at Ottawa, this 11th day of December 2008.

SIGNED on behalf of the Tribunal by the panel members

(s) Sandra J. Simpson

(s) Wiktor Askanas

(s) Henri Lanctôt

COUNSEL:

For the applicant:

The Commissioner of Competition

John L. Syme

For the respondent:

Superior Plus LP

Duane Ellingson