

COMPETITION TRIBUNAL

IN THE MATTER OF THE *COMPETITION ACT*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an inquiry under subparagraph 10(1)(b)(ii) of the *Competition Act* concerning the trade practices of Éconoco inc. and others and of an application for an order filed by the Commissioner of Competition under section 74.1 of the *Competition Act*;

AND IN THE MATTER OF the filing and registration of a consent under section 74.12 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

FILED / PRODUIT
REGISTERED/ENREGISTRÉ
September 28, 2006

JOS LAROCHE / pour
REGISTRAR / REGISTRAIRE

Applicant

- and -

ÉCONOCO INC.

- and -

OTTAWA, ONT

0017a

REAL LAROCHE, CLAUDE TARDIF

Respondents

CONSENT

WHEREAS the Commissioner of Competition (the Commissioner) directs the Competition Bureau and is responsible for the administration and enforcement of the *Competition Act* (the Act), including the provisions of Part VII.1 of the Act concerning deceptive marketing practices, which includes paragraphs 74.01(1)(a) and 74.01(1)(b), which respectively prohibit representations that are false or misleading in a material respect and

representations in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that are not based on an adequate or proper test thereof;

WHEREAS Éconoco Inc. ("Éconoco") is a company incorporated in the province of Quebec under Part 1A of the *Companies Act*, R.S.Q., c. C-38, and the respondents Réal Laroche and Claude Tardif are or have been directors and shareholders thereof and President and Vice-President respectively;

WHEREAS the respondents are all domiciled in Quebec, although Éconoco carries on its activities throughout Canada;

WHEREAS Éconoco engages in the economic activity of designing and marketing fuel-saving and anti-pollution devices and products;

WHEREAS the respondents have marketed a device known as the "Econopro" held out as being capable of reducing fuel consumption in and emissions of polluting gases from gasoline and diesel engines;

WHEREAS the respondents have been the subject of an inquiry under subparagraph 10(1)(b)(ii) of the *Competition Act* in respect of marketing practices contrary to paragraphs 74.01(1)(a) and 74.01(1)(b) of the Act;

WHEREAS following her inquiry, the Commissioner found, and the respondents admit solely for the purposes of this consent, that in order to promote business interests generally and to promote the supply and/or use of the Econopro, the respondents made a representation to the public that was false or misleading in a material respect, including concerning the ability of the Econopro to reduce fuel consumption in and the emission of polluting gases from a diesel or gasoline engine and the ability of the Econopro to improve the performance of the engine and the exhaust system of vehicles fuelled or propelled by a gasoline or diesel internal combustion engine;

WHEREAS following her inquiry, the Commissioner found, and the respondents admit solely for the purposes of this consent, that in order to promote business interests generally and to promote the supply and/or use of the Econopro, the respondents made representations to the public in the form of a statement, warranty or guarantee of the performance or efficacy of the Econopro that were not based on adequate and proper tests thereof;

WHEREAS the Commissioner found, and the respondents admit solely for the purposes of this consent, that the conduct of the respondents was conduct subject to review pursuant to paragraphs 74.01(1)(a) and 74.01(1)(b) of the Act;

WHEREAS the parties are convinced that this case may be settled by the registration of a consent that will, as of the date on which it applies, resolve all the problems and apprehensions raised by the Commissioner concerning the marketing practices of the respondents referred to in paragraphs 74.01(1)(a) and 74.01(1)(b) of the Act;

WHEREAS the respondents agree to comply with the Act generally and, more specifically, with the provisions of Part VII.1 of the Act concerning deceptive marketing practices;

WHEREAS the Commissioner and the respondents agree that, when the consent is signed, it shall be filed with the Tribunal for immediate registration;

WHEREAS the Commissioner and the respondents understand that, when it is registered, this consent shall be binding in accordance with section 74.12 of the Act;

THE PARTIES AGREE TO THE FOLLOWING AGREEMENT:

Definitions

1. The following definitions apply to this consent:

- (a) "written opinion" has the meaning given to it by section 124.1 of the Act;
- (b) "Commissioner" means the Commissioner of Competition appointed in accordance with section 7 of the Act and her authorized representatives;
- (c) "consent" means this consent concluded by the respondents and the Commissioner;
- (d) "Tribunal" means the Competition Tribunal created under the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2^d Supp.), as amended;
- (e) "Respondents" means Réal Laroche, Claude Tardif and Éconoco inc.

Application

2. The provisions of this consent apply:

(a) to the respondents and to any other person acting on their behalf or in their interest, including all the successors, assignees, managers, officers, agents or assigns of the respondents, or any other person or company acting on behalf of any or all of the respondents;

(b) to the Commissioner.

3. The Preamble is an integral part of this consent.

Prohibition of False or Misleading Representations and of Representations That Are Not Based on an Adequate and Proper Test

4. The respondents or any other person acting on their behalf and in their interest, including all managers, officers, employees, agents or assigns of the respondents, or any other person or company acting on behalf of any or all of the respondents shall, for a period of ten (10) years from the registration of the consent, cease to make, have others make or permit to be made, to the public in any manner whatsoever false or misleading statements in order to promote, directly or indirectly, the supply or use of the Econopro or any other similar device held out as being capable of improving combustion in a gasoline or diesel engine and/or as being capable of saving fuel in, reducing and/or eliminating polluting emissions from and, on the other hand, to make representations in the form of a statement, warranty or guarantee of the performance or efficacy of the Econopro unless before doing so, the respondents establish beforehand that these representations are based on adequate and proper tests.

5. The respondents or any other person acting on their behalf or in their interest, including all managers, officers, employees, agents or assigns of the respondents, or any other person or company acting on behalf of any or all of the respondents shall, for a period of ten (10) years from the date of registration of the consent, and without limiting the generality of the preceding paragraph, cease to make, have others make or permit to be made to the public in any manner whatsoever, representations that convey a general false or misleading impression or representations in the form of a statement, warranty or guarantee of the performance or efficacy of the Econopro or any other similar device that are not based on an adequate and proper test of the capabilities of the Econopro or any other similar device, including:

- Enhancing the performance or efficacy of gasoline consumption by ten per cent (10%) or more (an average of 20%

in the city and on the highway) and/or the performance or efficacy of gasoline/diesel consumption by fifteen per cent (15%);

- Enhancing performance through re-oxygenation that cleans the engine and its components;
 - Elimination of emissions of Nox gases by one hundred per cent (100%) from gasoline engines and reducing them by between forty per cent (40%) and seventy per cent (70%) from diesel engines;
 - Reducing emissions of carbon dioxide (CO₂) by 47.5% from gasoline engines and by 34.5% from diesel engines;
 - Generally improving the performance of internal combustion engines.
6. Before making any representation in the form of a statement, warranty or guarantee of the performance or efficacy of the Econopro or any other similar device, the respondents shall first establish that these representations are based on adequate and proper tests thereof, and in order to do so, shall submit these representations and tests in writing beforehand, in accordance with section 124.1 of the Act, to the Commissioner, who shall examine them and indicate in writing whether the tests submitted are adequate and proper.

Duration of consent

7. This consent shall be applicable for a period of ten (10) years from the date on which it is registered.

Compliance with consent and notice

8. On the written request of the Deputy Commissioner of Competition, Fair Business Practices Branch, giving the respondents thirty (30) days' advance notice, the respondents shall provide the Commissioner with a written report on any question concerning this consent.
9. Any notices to be given under this consent shall be sent by registered mail to the following addresses:

(a) For the Commissioner of Competition

Attention:
Deputy Commissioner of Competition
Fair Business Practices Branch
Competition Bureau
Place du Portage, Phase 1
50 Victoria Street, 22nd Floor
Gatineau, Quebec K1A 0C9
Telephone (819) 997-1231
Fax (819) 953-4792

(b) For the respondents:

ÉCONOCO INC.
Attention: Réal Laroche
2479, boul. Labelle
Prévost, Quebec J0R 1T0

Réal Laroche
33, 216ième avenue
Saint-Hyppolyte, Quebec J8A 1W6

Claude Tardif
1352, chemin du Lac Renaud
Prévost, Quebec J0R 1T0

- 10. The respondents shall provide or ensure that a copy of this consent in its entirety is provided to any person acting either on their behalf or in their interest, including all managers, officers, employees, agents or assigns or any other person or company acting on behalf of any or all of the respondents within thirty (30) days of the date on which this consent is signed.**
- 11. Within sixty (60) days of the date on which this consent is signed, the respondents shall confirm in writing to the Deputy Commissioner of Competition, at the address shown in paragraph 9 for the purposes of service, that they have complied with the requirements set out in paragraphs 10 to 15 inclusive of this consent.**
- 12. The respondents shall indicate in the confirmation letter referred to in paragraph 11 the name and position title of each person who has received a copy of this consent in accordance with paragraph 10.**

Corrective notices

- 13. Within 30 days of the issuance of the registration of this consent, the respondents shall distribute a single publication on Wednesdays at**

intervals of one week in the *Journal de Montréal* (in French) and in *The Gazette* (in English) of a notice entitled [TRANSLATION] "Notice from Éconoco to motorists and truckers" that accurately reproduces the terms of the Notice contained in the attached Schedule to this consent.

14. The text of the Notice referred to in the preceding paragraph shall occupy a space of not less than 5 inches x 6 inches and be printed in normal font of at least 10 points. The title of the Notice shall be printed in block letters and in normal font of not less than 16 points.

Administrative monetary penalty

15. The respondents shall pay an administrative monetary penalty of fifteen thousand dollars (\$15, 000).
16. The administrative penalty shall be paid in certified funds or by certified bank cheque made out to the Receiver General for Canada.
17. The respondents shall be severally liable for payment of the whole amount of the administrative penalty set out in paragraph 15.

General

18. It is agreed that the Tribunal shall retain the jurisdiction conferred on it by section 74.13 of the Act.
19. In the event of a dispute concerning the interpretation or application of this consent, including any decision of the Commissioner under this consent or any breach of this consent by the respondents, the parties may make an application to the Tribunal.
20. This consent shall be governed and interpreted in accordance with the laws in effect in Canada that apply to it.

DONE at Blainville, in the province of Quebec, September 15, 2006

ÉCONOCO INC.

Per:

REAL LAROCHE

DONE at Blainville, in the province of Quebec, September 15, 2006

REAL LAROCHE

DONE at Blainville, in the province of Quebec, September 15, 2006

CLAUDE TARDIF

DONE at Gatineau, in the province of Quebec, September 22, 2006

DEPUTY COMMISSIONER OF COMPETITION

Schedule

Notice from Éconoco to motorists and truckers

This notice is given by Éconoco inc. The Commissioner of Competition is of the opinion that the representations made to the public by Éconoco inc. concerning the "Econopro" device are false and misleading in a material respect and are not based on adequate and proper tests in accordance with sections 74.01(1)(a) and 74.01(1)(b) of the *Competition Act*.

Furthermore, the Commissioner of Competition is of the opinion that installing this device on the engine of a vehicle or a truck does not improve the fuel consumption or reduce polluting emissions and does not enhance the performance of the engine.

Having admitted its liability solely for the purposes of registration of the consent agreed upon with the Commissioner of Competition, Éconoco inc. and its President, Réal Laroche, and Claude Tardif have agreed no longer to promote the Éconopro device or any other similar device unless the representations made concerning the performance and/or efficacy of this device are accurate and based on tests considered to be adequate and proper in accordance with the *Competition Act*.

This notice is published in accordance with the consent registered in the Competition Tribunal on September 28, 2006, which may be accessed on the Website of the Competition Tribunal at www.ct-ct.gc.ca