



Reference: *The Commissioner of Competition v. Superior Propane Inc.*, 2000 Comp. Trib. 21
File no.: CT1998002
Registry document no.: 204

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

AND IN THE MATTER OF an inquiry pursuant to subsection 10(1)(b) of the *Competition Act* relating to the proposed acquisition of ICG Propane Inc. by Superior Propane Inc.;

AND IN THE MATTER OF an application by the Commissioner of Competition under section 92 of the *Competition Act*.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

Superior Propane Inc.
ICG Propane Inc.
(respondents)

Date of hearing: 20000908
Member: Nadon J. (presiding)
Date of reasons: 20000915
Reasons signed by: Nadon J.



**REASONS FOR ORDER REGARDING THE RESPONDENTS' MOTION FOR AN
ORDER CONFIRMING THE TERMINATION OF THE CONSENT INTERIM ORDER
DATED DECEMBER 11, 1998**

[1] On September 8, 2000, I allowed the respondents' motion for an order confirming that the Tribunal's August 30, 2000 order had terminated, as of August 30, 2000, the consent interim order (the "hold-separate order") dated December 11, 1998. These are the reasons for that order.

[2] The August 30, 2000 order is now enforceable. Thus, pursuant to Rule 398(1)(b) of the *Federal Court Rules*, 1998, only a judge of the Federal Court of Appeal can stay that order. The Commissioner submits that the hold-separate order remains in force until the Tribunal orders otherwise. In other words, the Commissioner's position is that the August 30, 2000 order did not terminate the hold-separate order.

[3] The Tribunal's hold-separate order was made pursuant to section 104 of the *Competition Act* (the "Act"), which reads as follows:

104. (1) Where an application has been made for an order under this Part, other than an interim order under section 100, the Tribunal, on application by the Commissioner, may issue such interim order as it considers appropriate, having regard to the principles ordinarily considered by superior courts when granting interlocutory or injunctive relief.

(2) An interim order issued under subsection (1) shall be on such terms, and shall have effect for such period of time, as the Tribunal considers necessary and sufficient to meet the circumstances of the case.

(3) Where an interim order issued under subsection (1) is in effect, the Commissioner shall proceed as expeditiously as possible to complete proceedings under this Part arising out of the conduct in respect of which the order was issued.

[4] As subsection 104(1) of the Act clearly provides, an interim order may be issued by the Tribunal when an application under Part VIII of the Act has been made. The Commissioner's application for an order under section 92 of the Act is an application under Part VIII. When the hold-separate order of December 11, 1998 was issued, there was before the Tribunal an application by the Commissioner, under Part VIII, which the Tribunal dismissed by its order of August 30, 2000.

[5] In my view, by reason of the August 30, 2000 order, the Tribunal no longer has jurisdiction to make interim orders under section 104 of the Act. No application under Part VIII is pending before the Tribunal. The Commissioner's appeal to the Federal Court of Appeal stems from section 13 of the *Competition Tribunal Act*.

[6] In *Director of Investigation and Research v. Southam Inc.* (22 September 1992), CT1990001/251, Direction on the Status of Interim Order at 9, [1992] No. 11, Teitelbaum J, in dealing with a section 104 order similar to the one in the instant case, concluded that such an order terminated when the Commissioner's application for an order under section 92 was finally disposed of by the Tribunal. He stated:

Interlocutory relief, by its nature, does not survive the final determination by the court of the matter in question. Therefore, if the decision rendered by the Tribunal on June 2, 1992 represents the final disposition of the application, then the interim order of March 1991 fell with that decision.

[7] In light of subsection 104(3) of the Act, Teitelbaum J.'s conclusion makes perfect sense. That subsection provides that upon being granted an interim order under subsection 104(1), the Commissioner must proceed, with respect to the proceedings that he has commenced, "as expeditiously as possible". In my view, a fair reading of section 104 of the Act necessarily leads to the conclusion that interim orders under subsection (1) remain in force until a final decision is made on the merits of the Part VIII application. When the Tribunal renders its final decision on the said application, the interim order lapses. There cannot be any doubt that the order of August 30, 2000 is a final decision.

[8] The preamble to the hold-separate order supports the above conclusion. It reads as follows:

AND FURTHER TO an application by the Director for an interim order pursuant to section 104 of the Act to preserve the ICG Enterprise (as hereinafter defined) as an independent, viable, ongoing and competitive business in order to preserve competition in the market and the Competition Tribunal's ability to order appropriate relief *pending final disposition by the Competition Tribunal (the "Tribunal") of the application pursuant to section 92 of the Act;* (emphasis added)

[9] The Commissioner, in support of his submissions, refers to paragraph [31] of the hold-separate order, which provides:

This interim order is effective on the date hereof and ceases to have effect on the date ordered by the Tribunal.

[10] Since the Tribunal has not yet made an order terminating the hold-separate order, the Commissioner argues that the interim order is still in force. I agree with the respondents that the parties, through their consent, could not confer jurisdiction on the Tribunal, allowing it to make interim orders after the rendering of the August 30, 2000 decision. It goes without saying that the Tribunal itself could not extend its jurisdiction by reason of paragraph [31] of the hold-separate order, nor could the Tribunal extend its jurisdiction by reason of the order made on May 31, 2000.

[11] For these reasons, I allowed the respondents' motion.

DATED at Ottawa, this 15th day of September, 2000.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Marc Nadon

APPEARANCES:

For the applicant:

The Commissioner of Competition

William J. Miller
Jo'Anne Strekaf

For the respondents:

Superior Propane Inc.
ICG Propane Inc.

Neil Finkelstein
Melanie L. Aitken
Russell Cohen
Brian Radnoff