File No. CT-98/2

THE COMPETITION TRIBUNAL

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*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

SUPERIOR PROPANE INC. and ICG PROPANE INC.

Respondents

AFFIDAVIT OF DENNIS W. CARLTON AND GUSTAVO E. BAMBERGER

I, DENNIS W. CARLTON, of the City of Glencoe, in the State of Illinois, economist, and I, GUSTAVO E. BAMBERGER, of the City of Chicago, in the State of Illinois, economist, MAKE OATH AND SAY:

1. We have been asked by counsel to Superior Propane Inc. and ICG Propane Inc. to evaluate the expert reports served by the Commissioner of Competition (the "Commissioner") on August 18, 1999 (the "August 18, 1999 Reports").

2. Attached hereto and marked as Exhibit "A" is a true copy of our report, which represents the work we have done and analyses made with respect to the Commissioner's August 18, 1999 Reports.

Subscribed and sworn to before me, this 14th day of September 1999.

Margaret J. Kush
Notary Public

My Commission expires: 7-26-03

OFFICIAL SEAL
MARGARET J KUSH
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:07/26/03

Dennis W Carlton
Dennis W. Carlton

Gustavo Bamberger
Gustavo E. Bamberger

This is Exhibit "A" to the Affidavit of Dennis W. Carlton and Gustavo E. Bamberger

Subscribed and sworn to before me,)
this 14th day of September, 1999.)
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)

Dennis W. Carlton

Gustavo E. Bamberger

Notary Public

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REBUTTAL REPORT OF DENNIS W. CARLTON AND GUSTAVO E. BAMBERGER

I. INTRODUCTION.

1. I, Dennis W. Carlton, previously submitted the Report of Dennis W. Carlton ("prior report") in this proceeding on behalf of Superior Propane Inc. ("Superior") and ICG Propane Inc. ("ICG"). A copy of my curriculum vitae, which describes my professional qualifications and prior experience, is attached to my prior report. I, Gustavo E. Bamberger, am a Principal and Vice President of Lexecon. A copy of my curriculum vitae is attached as Exhibit A. I assisted in the preparation of the prior report.[1]

2. In my prior report, I reached the following principal conclusions:

- Economic evidence does not support the claim that retail propane prices depend on the number of "national" suppliers in Canada.
- Despite ICG's relatively high share of retail propane sales in Canada, there is no systematic evidence that ICG substantially constrains Superior's pricing. In contrast, there is evidence that independent retailers constrain Superior's propane prices.
- Evidence from a prior Superior acquisition supports my finding that the proposed merger will not substantially lessen competition.

3. I have reviewed six of the expert reports filed on behalf of the Commissioner.[2] On several of the important economic issues in this case, the Commissioner's experts appear to agree with me and reach conclusions that are inconsistent with the Commissioner's claims. On other issues, the Commissioner's experts reach conclusions that are different from mine. However, these conclusions are reached primarily on theoretical grounds or based on anecdotal information; the conclusions are not based on systematic empirical evidence. In particular, the

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1. In some places in this report, we refer to the Report of Dennis W. Carlton; in others, we refer to additional analyses we have conducted for this rebuttal report. For ease of exposition, "I" refers to Dennis W. Carlton when the earlier report is referenced, and "I" refers to Dennis W. Carlton and Gustavo E. Bamberger when we refer to work conducted for this report.
2. In this report, I limit my analysis to reports filed on behalf of the Commissioner on the same day as mine. I will address the reports filed later, including Professor Ward's, in a later

Commissioner's experts' conclusions that the proposed merger will lead to higher propane prices, and that barriers to entry and expansion are high, are contradicted by empirical evidence. The failure of the Commissioner's experts to provide systematic empirical evidence, or to review such evidence in their reports, is a serious flaw in their methodology and undermines their conclusions that the proposed merger will substantially lessen competition in the retail propane industry.

4. The remainder of my report is organized as follows. In Section II, I identify the important areas where the Commissioner's experts appear to agree with me and discuss the significance of these apparent agreements. In Section III, I point out where the Commissioner's experts' conclusions that the proposed merger will lead to higher propane prices is based primarily or only on theoretical grounds and is contradicted by empirical evidence. In Section IV, I review where the Commissioner's experts' conclusions that barriers to entry and expansion are high also is based largely on theory, and also is contradicted by the empirical evidence.

II. THE COMMISSIONER'S EXPERTS APPEAR TO AGREE WITH ME ON SEVERAL IMPORTANT ECONOMIC ISSUES.

5. On several important economic issues in this case, the Commissioner's experts appear to agree with my conclusions and contradict the Commissioner's claims. In particular, the Commissioner's experts agree that to evaluate the likely effect of the proposed merger on competition in the retail propane industry, it is important to determine whether (1) independent retailers constrain Superior's retail propane prices; and (2) there are significant barriers to entry and expansion by independent retailers. Furthermore, they appear to agree that independent retailers <u>do</u> constrain Superior's prices, and that the empirical evidence shows that entry by independent retailers <u>has</u> taken place in many local areas.[3]

(...continued)
report.

3. The Commissioner's experts also agree that the empirical evidence suggests that the

6. The apparent agreements on these issues are important because if Superior's prices are constrained by the presence of independents (as the empirical evidence reviewed in my prior report shows), and if entry and expansion by other propane retailers can and does take place, Superior will continue to face competition that will constrain its prices if its acquisition of ICG goes forward.

A. The Commissioner's Experts Appear to Agree that Independent Retailers Could Constrain the Prices of a Merged Firm; Furthermore, They Agree that Independent Retailers Currently Constrain Prices.

7. According to the Commissioner, "significant, overall, sustained" competition in the retail propane business, when it takes place, is "primarily" between Superior and ICG.[4] That is, the Commissioner claims that Superior typically does not face "significant" competition from independent retailers. The Commissioner's experts, however, appear to concede that the presence of independent retailers can determine the effect of the proposed merger on prices. For example, Professors Globerman and Schwindt ("Globerman and Schwindt") explain that:

> [i]n geographical markets in which [Superior] will not account for all (or virtually all) propane sales in the post-merger period, the competitive effects of the merger could be conditioned by the behaviour of other sellers. In particular, the substantial presence of other suppliers that are willing and able to compete aggressively with [Superior] might constrain the merged entity from increasing prices, even though market share concentration will increase as a result of the merger. On the other hand . . . the remaining competitors might decide to match any price increases introduced by [Superior] in order to maintain the same price relationship to [Superior] as existed in the pre-merger period (Globerman and Schwindt, at 32).

(...continued)

proposed merger should be evaluated in terms of its effect on "all propane" instead of end-use specific local markets. In particular, Professors Globerman and Schwindt conclude that the "overwhelming majority of recent entrants identified by [Superior] serve more than one customer segment which <u>further supports</u> the appropriateness of evaluating market share changes on an "all propane" basis" (Globerman and Schwindt, at 51, emphasis added).

4. Notice of Application, "In the Matter of the *Competition Act*, R.S. 1985, c.C-34, as amended, and the *Competition Tribunal Rules*, SOR/94-290, as amended (the "*Rules*"); And in the Matter 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 Director of Investigation and Research for an interim order pursuant to section 100 of the *Competition Act*. Between: The Director of Investigation and Research and Superior Propane, Inc., Petro-Canada Inc., The Chancellor Holdings Corporation and ICG Propane Inc.", ¶ 10.

That is, Professors Globerman and Schwindt concede that the "substantial presence" of independent retailers could constrain a merged Superior/ICG from raising retail propane prices. Their discussion also shows that they recognize that the extent to which Superior is constrained by independents is an issue that cannot be determined as a matter of economic theory. Instead, it must be determined by analyzing the empirical evidence.

8. In my prior report, I empirically investigated the extent to which Superior's prices are constrained by the substantial presence in a local area of independent retailers. My empirical analysis of Superior's prices showed that independents – but not ICG – constrained Superior's prices. I concluded that "Superior's margins are not statistically significantly lower in areas where ICG has a substantial presence – as would be expected if ICG were a significant constraint on Superior's prices – than in areas where it does not. In contrast, Superior's margins are statistically significantly lower in areas where independents, in the aggregate, have a substantial presence" (Carlton Report, ¶ 33).[5]

9. Professors Globerman and Schwindt do not report any empirical analysis of the effect of independents' presence in an area on Superior's prices. Indeed, none of the Commissioner's experts appear to have conducted such analyses, notwithstanding the importance of this issue to the Commissioner's claims. Instead, Professors Globerman and Schwindt rely, for example, on an internal ICG document to conclude that "[t]he responses [by ICG personnel] systematically suggest that competition is greater in [markets in which there were several competitors to Superior and ICG] than in . . . duopoly [i.e., only Superior and ICG] markets. We interpret this as indicating that the presence of other competitors (besides ICG or [Superior]) enhances competition in the relevant market" (Globerman and Schwindt, at 34,

5. After I filed my prior report, I discovered that a few branches had been inadvertently dropped from my analysis and I discovered a few data discrepancies. Adding these branches to my analysis and correcting the discrepancies does not substantially affect my conclusions – there is no systematic evidence that ICG substantially constrains Superior's pricing; in contrast, there is evidence that independent retailers constrain Superior's prices. My analysis is attached as Appendix A. The underlying data and programs used to conduct the

emphasis added). They also conclude that "[Superior] and ICG documents identifying independent propane suppliers as competitors in the relevant market, as well as documents describing price discounting by specific independents are relevant evidence" (Globerman and Schwindt, at 34).[6]

B. **The Commissioner's Experts Appear to Agree that the Likely Effect of the Proposed Merger on Propane Prices Depends on the Extent of Barriers to Entry and Expansion, and They Agree that Entry has Taken Place.**

10. Professors Globerman and Schwindt also recognize that evaluating the likely effect of the proposed merger on retail propane prices requires evaluating the likelihood of entry or expansion by propane suppliers. In particular, they explain that "[t]he likely impacts of the merger on competition are further conditioned by the potential for propane supply to expand given a price increase. Two sources of additional supply are possible: entry of new competitors and expansion of existing competitors" (Globerman and Schwindt, at 41).

11. Professors Globerman and Schwindt explain that "it is impossible to be definitive about the extent, nature and speed of *de novo* entry or expansion of incumbents that might follow a significant price increase for propane in the post-merger period" (Globerman and Schwindt, at 49). Nevertheless, they concede that "[h]istorical patterns of *de novo* entry are instructive about the nature of the entry process" (Globerman and Schwindt, at 49). For this reason, they investigate the evidence on entry into the retail propane business. They conclude – as do I – that entry into the retail propane business <u>has</u> taken place. (See Carlton Report, ¶ 27).

12. Professors Globerman and Schwindt examine the membership list of the Propane Gas Association of Canada ("PGAC") and find that "there were 41 new memberships

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(...continued)
analysis will be provided on data diskette.

6. Professors Globerman and Schwindt also cite examples where they believe that independent retailers did not constrain Superior or ICG's prices.

in the PGAC" over the period 1994 through May 1999 (Globerman and Schwindt, at 50). They note that "[t]his number likely understates the true number of new entrants," and they concede that "it is clear that new entry has taken place" (Globerman and Schwindt, at 50, emphasis added). They conclude that "small-scale entry is not an unusual event in propane retailing" (Globerman and Schwindt, at 52). Professors Globerman and Schwindt also report that, according to an internal ICG assessment of likely entry in local areas, about 50 percent of ICG's branches face a "medium" or "high" threat of entry (Globerman and Schwindt, at 54). Presumably, the perceived threat of entry would be even higher if the merger resulted in propane price increases.

13. By way of example, a witness statement filed on behalf of the Commissioner shows that expansion by an entrant has taken place. Don Edwards, the President and CEO of EDPRO Energy Group Inc., a rival propane retailer, explains that EDPRO, which was formed in June 1997, "has grown in the marketplace in just over two years of operation. EDPRO has since branched out to Brampton, Kitchener-Waterloo, Hamilton and the greater Toronto area" (Affidavit of Don Edwards, at 3).[7]

14. Although Professors Globerman and Schwindt concede that entry into the retail propane business has taken place, and that small-scale entry by new firms is feasible, they nevertheless conclude that "potential entry is not a sufficient threat to render unprofitable price increases initiated by [Superior in the post-merger environment]" (Globerman and Schwindt, at 54). But Professors Globerman and Schwindt fail to provide systematic evidence to support their conclusion that the threat of entry would not constrain a post-merger attempt to increase retail propane prices. In contrast, as the evidence discussed in my prior report shows, the aggregate share of independent retailers in an area affects Superior's prices even though most of Superior's independent rivals are small. Thus, a number of small entrants could constrain

7. Mr. Edwards was formerly President and CEO of Superior.

Superior's prices. Indeed, the aggregate share of independent retailers exceeds ICG's share in about two-thirds of the Superior branches.

III. THE COMMISSIONER'S EXPERTS' CONCLUSION THAT THE PROPOSED MERGER WILL LEAD TO HIGHER PROPANE PRICES IS BASED PRIMARILY ON THEORETICAL GROUNDS AND IS CONTRADICTED BY EMPIRICAL EVIDENCE.

15. The Commissioner's experts argue that it is "likely that competition will be reduced" in some local areas (Globerman and Schwindt, at 55). Their conclusion is based largely on "market structure changes associated with the merger." That is, Professors Globerman and Schwindt predict that because measured concentration in several local markets will increase as a result of the proposed merger, prices in those markets are likely to rise.

16. If they were correct, one would expect to find that propane prices are currently higher in areas where Superior has a large share than in areas where Superior and ICG compete. As I discussed in my prior report, I have investigated whether ICG currently constrains Superior's prices, and find that it does not.

17. Professors Globerman and Schwindt use different definitions of local geographic markets than I rely on for my analysis.[8] In particular, they rely on Professor West's delineation of geographic markets for retail propane sales. Although Superior price information is available for the Superior branches in the West-defined markets, Professors Globerman and Schwindt do not report any empirical analysis of the effect of ICG's presence on Superior's prices. Their failure to do so is important, because they have thus failed to empirically test their prediction that the proposed merger likely will lead to price increases.

18. Because Professors Globerman and Schwindt use different local market definitions than I do, I investigated whether my findings would change if I repeated my regression analysis using the West-delineated local markets. I have done so and find that my

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8. My market definitions were based on information supplied by Superior personnel.

conclusions are substantially unchanged. It remains the case that the substantial presence of independent retailers is associated with lower Superior prices, but there is no systematic evidence that the substantial presence of ICG significantly constrains Superior's prices.

19. Professor West calculated shares for each of his local markets. I consider his market share estimates less reliable than information provided to me by Superior, so I use sales estimates provided to me by Superior to calculate market shares for the West-defined geographic markets. I explain how I calculate shares for these markets, and why Professor West's shares appear to be unreliable, in Appendix B.

20. I repeat the regression analysis in my prior report on the West-defined markets using my calculations of market shares. My results are summarized in Tables 1 (for 1998) and 2 (for 1997). Tables 1 and 2 show that the substantial presence of ICG does not systematically constrain Superior's prices if the West-defined local markets are used as the unit of observation in the analysis. Thus, there is no systematic evidence that the substantial presence of ICG in the West-defined local markets significantly constrains Superior's prices in those markets.[9]

21. Professors Globerman and Schwindt's claim that the proposed merger will eliminate competition and lead to higher propane prices is based primarily on "market structure" changes. But they apparently did not examine whether current propane prices are higher where Superior and ICG do not compete. My investigation shows that there is no empirical evidence that ICG systematically constrains Superior's prices, whether geographic markets are based on estimates made by Superior personnel or on Professor West's definitions.

9. Full regression results are reported in Appendix C.

Table 1

Effect of Rival's Presence on Superior Margins, 1998
(In Cents Per Liter)

Supplier	Substantial Presence Defined as Share Greater Than: 15 Percent	20 Percent	25 Percent	30 Percent
ICG	1.15 *	1.18 *	0.27	1.47 *
	3.48	4.15	0.87	4.59
Independent	-1.25 *	-1.71 *	-2.10 *	-1.71 *
	-3.78	-5.69	-7.97	-6.57

t-statistics are listed below coefficient estimates.
* Statistically significant at the five percent level.

Each observation is the volume weighted average monthly price within markets as defined by West. Market shares are aggregates of Spring 1999 SPI Template data according to West's markets.

The estimated coefficient shows by how many cents Superior's overall margin is affected by the substantial presence of rivals, after adjusting for branch and region factors, including alternative fuel prices. For example, the coefficient estimate for the first row and first column (1.15) implies that Superior's margins are 1.15 cents higher in branches where ICG's share exceeds 15 percent than in areas where ICG's share is less than 15 percent. If the coefficient estimate is negative (such as -1.25 in the first column, second row), the coefficient implies that Superior's margins are 1.25 cents lower in areas where the independents' share is less than 15 percent. The number under the coefficient estimate (e.g. 3.48) indicates whether the estimated coefficient is statistically significant. As a general matter, a t-statistic above two in absolute value indicates statistical significance at conventional testing levels.

Table 2

Effect of Rival's Presence on Superior Margins, 1997
(In Cents Per Liter)

Supplier	Substantial Presence Defined as Share Greater Than: 15 Percent	20 Percent	25 Percent	30 Percent
ICG	0.42	0.49	-0.30	0.91 *
	1.43	1.75	-1.00	3.13
Independent	-0.80 *	-0.76 *	-1.71 *	-1.43 *
	-2.62	-2.55	-6.27	-5.18

t-statistics are listed below coefficient estimates.
* Statistically significant at the five percent level.

Each observation is the volume weighted average monthly price within markets as defined by West. Market shares are aggregates of Spring 1999 SPI Template data according to West's markets.

The estimated coefficient shows by how many cents Superior's overall margin is affected by the substantial presence of rivals, after adjusting for branch and region factors, including alternative fuel prices. For example, the coefficient estimate for the first row and first column (0.42) implies that Superior's margins are 0.42 cents higher in branches where ICG's share exceeds 15 percent than in areas where ICG's share is less than 15 percent. If the coefficient estimate is negative (such as -0.80 in the first row, second column), the coefficient implies that Superior's margins are 0.80 cents lower in areas where ICG's share is greater than 15 percent. The number under the coefficient estimate (e.g., 1.43) indicates whether the estimated coefficient is statistically significant. As a general matter, a t-statistic above two in absolute value indicates statistical significance at conventional testing levels.

IV. THE COMMISSIONER'S EXPERTS' CONCLUSIONS THAT BARRIERS TO ENTRY AND EXPANSION ARE HIGH ALSO IS BASED LARGELY ON THEORY AND IS CONTRADICTED BY THE EMPIRICAL EVIDENCE.

22. Several of the Commissioner's experts argue that barriers to entry to the retail propane business are high.

- Professors Globerman and Schwindt claim that a variety of factors constitute barriers to entry or expansion.
- Mr. Kemp argues that economies of scale are a barrier to entry.
- Professor Whinston argues that Superior and ICG's standard contract terms constitute a barrier to entry.
- Mr. Mathieson suggests that a Superior/ICG "supply cost advantage" is a barrier to entry.

1. Professors Globerman and Schwindt's Claim that Entry Barriers are High is not Based on Empirical Evidence.

23. Professors Globerman and Schwindt discuss a variety of factors that they contend constitute barriers to entry. After reviewing these factors, they conclude that "conditions surrounding entry do not correspond to the conditions describing a 'contestable' market. A contestable market is one in which sunk costs associated with entry at an efficient scale are relatively low and entry at an efficient scale can take place quickly" (Globerman and Schwindt, at 49). That is, they claim that the threat of entry will not constrain prices in the retail propane industry because sunk costs are relatively high in this business.

24. Although Professors Globerman and Schwindt recognize the importance of sunk costs to an economic analysis of entry, they do not appear to have determined what portion of entry costs are sunk. In particular, they provide no estimates of the sunk costs of entry as compared to the total costs of entry, or of the expected profits associated with entry. Indeed, they explain that "we [cannot] assess the typical pattern of financial performance of new entrants (i.e., are they profitable or unprofitable)" (Globerman and Schwindt, at 51). Professors

Globerman and Schwindt thus provide no empirical basis for their claim that sunk costs – and thus entry barriers – are high in the retail propane business.

25. As I have discussed, Professors Globerman and Schwindt concede that numerous firms have entered the retail propane business in the last several years. Indeed, they conclude that "small scale entry by new firms is feasible, especially for applications which require relatively modest sunk cost investments, e.g., residential heating, and to serve local markets that are near sources of propane supply" (Globerman and Schwindt, at 54).[10] This empirical evidence of entry is inconsistent with their claim that entry barriers are high.

26. Furthermore, the ability of incumbent rivals to expand sales can be even more of a constraint on a merged firm's ability to raise prices than the threat of *de novo* entry. For example, an incumbent firm could incur relatively low, or no, sunk costs if it expanded its sales – an incumbent firm already could have established a favorable reputation in the local area in which it was trying to expand sales.

2. Mr. Kemp's Claim that Economies of Scale are a Barrier to Entry is Contradicted by the Empirical Evidence.

27. Mr. Kemp claims that

> [t]he barriers to entry into this business are formidable. The issue is not that an individual may be able to get the appropriate licenses or purchase the necessary equipment; it is the ability to capture and secure anchor customers, the risk of capital invested, and the ability to maintain a level of threshold business necessary to sustain a profitable operation. This sustainable retail propane distributor will be characterized as a customer who is fully involved in the business and has achieved a threshold volume in excess of 2.0 [million liters per year] from a mixed customer base. Companies who have not achieved this level are likely in the business as a sideline either because they already have other related activities or have placed a propane dispenser at a retail gas station. These groups would not be characterized as a real measure of competition (Kemp, at 16).

10. Professors Globerman and Schwindt thus suggest that entry should be feasible only for certain end uses. This suggestion is contradicted by their finding that "[t]he overwhelming majority of recent entrants identified by [Superior] serve more than one customer segment (e.g., residential, commercial and industrial)" (Globerman and Schwindt, at 51).

28. Mr. Kemp's claim that a "sustainable" retail propane distributor must have sales in excess of two million liters per year appears to be contradicted by the empirical evidence. As I have discussed, numerous firms have entered the retail propane industry in the last several years. If Mr. Kemp's claim were correct, entrants that have survived for a number of years presumably should currently have sales in excess of two million liters per year. The evidence does not support Mr. Kemp's claim. In particular, there are numerous examples of firms that entered the retail propane business in the last few years that had 1998 sales of substantially less than two million liters per location.[11] See Table 3.

29. For example, Canwest has entered in several locations since 1990. In at least two of those locations, its annual sales appear to be less than two million liters in 1998. Lo Cost has entered three of Superior's branch areas since 1990, and its 1998 sales appear to be less than two million liters in each location. Similarly, Neufeld Propane also appears to have opened several locations with 1998 volumes of less than two million liters.

30. Professor West also identifies numerous "Competitive Dealers" with estimated annual sales volumes of less than two million liters. See, for example, tabs 2, 3, 4, 5, 14, 17, 18, 22, 33, 41, 46, 58, 62, 63 and 67 to his report.

31. Mr. Kemp's claim is based on his analysis of the capital needed for "a startup greenfield retail propane operation." Mr. Kemp bases his analysis on several assumptions that also appear to be inconsistent with the empirical evidence. For example, Mr. Kemp assumes that a startup propane distributor would need two trucks. However, an ICG assessment of its competitors shows that many of its rivals have only one truck. Similarly, ICG has only one truck at many of its locations.[12]

11. Even if Mr. Kemp's claim were correct, several entrants have achieved volumes substantially in excess of two million liters in 1998, as reported in Table 3. The success of these firms shows that entry has taken place even at current retail propane prices and thus demonstrates that firms have surmounted any claimed barriers to entry into the retail propane business.

12. Based on a review of the ICG "branch templates."

Table 3

Estimated 1998 Volume of Independent Retailer Recent Entrants
Years of Entry 1990-1998

Year of Entry	Superior Branch Number	Superior Location	Name of Entrant	1998 Volume	Less Than Two Million Liters?
1990	1	CONCORD	CAM CARB	360,000	Yes
	5	FENELON FALLS	BUDGET PROPANE	1,033,209	Yes
	23	OTTAWA	LEVAC	11,649,851	
	42	SUDBURY/SAULT STE MARIE	BOC GASES	342,328	Yes
			BROWN PROPANE	99,674	Yes
			LIQUID AIR	1,026,984	Yes
			PRAXAIR	342,328	Yes
			WELDCO	308,095	Yes
	202	ST-CONSTANT	SONIC PROPANE	8,595,552	
	235	JOLIETTE	SONIC PROPANE	10,673,017	
	241	VIMONT (VAL DAVID) 241	CARON PROPANE	904,693	Yes
			PCQ-PROPANE CONSIGNE	1,602,375	Yes
			PROPANE PLUS	1,973,150	Yes
	245	THETFORD MINES	BO-GAR	1,132,128	Yes
	248	LES CEDRES	BUDGET PROPANE	408,337	Yes
	250	RIVIERE-DU-LOUP	SONIC PROPANE	1,151,970	Yes
	443	SLAVE LAKE/RED EARTH	ANP	694,020	Yes
			CANWEST	9,208,900	
	459	RED DEER/ROCKY MOUNTAIN HOUSE	GASEX	9,200,000	
			LO COST	976,000	Yes
			MOUNTAIN VIEW COOP	490,000	Yes
	801	COQUITLAM	SUPERSAVE	15,477,137	
1991	1	CONCORD	MURRAY PATTON	2,860,000	

Table 3

Estimated 1998 Volume of Independent Retailer Recent Entrants Years of Entry 1990-1998

Year of Entry	Superior Branch Number	Superior Location	Name of Entrant	1998 Volume	Less Than Two Million Liters?
	5	FENELON FALLS	HIGHLAND'S	400,205	Yes
	13	PETERBOROUGH	HIGHLAND'S	88,676	Yes
	39	CHATHAM	UPI	304,584	Yes
	420	PROVOST	CALGAS	6,623,706	
	444	GRANDE PRAIRIE	NEUFELD PROPANE	6,907,720	
1992	5	FENELON FALLS	NORTHWOOD	200,103	Yes
	39	CHATHAM	AABCO	6,179,909	
	445	PRINCE GEORGE BC	DEL'S PROPANE	4,705,510	
1993	5	FENELON FALLS	BRITISH EMPIRE	400,205	Yes
	13	PETERBOROUGH	BRITISH EMPIRE	1,519,319	Yes
	202	ST-CONSTANT	BUDGET PROPANE	9,286,647	
	243	ST-ROMUALD	PROPANE CHALEVOIX	3,084,067	
	401	SWIFT CURRENT	CANWEST	4,526,800	
	413	KELOWNA	TRISTAR	8,451,043	
	444	GRANDE PRAIRIE	NORTHERN PROPANE	3,343,180	
	845	PASADENA	IRVING PROPANE	5,849,102	
1994	5	FENELON FALLS	VALUE PROPANE	2,027,777	
	7	GUELPH	CALEDON	2,626,686	
			PRIMAX	1,527,567	Yes
	420	MAIDSTONE	CANWEST	1,547,222	Yes
	431	FORT ST JOHN BC	NEUFELD PROPANE	1,626,643	Yes

Table 3

Estimated 1998 Volume of Independent Retailer Recent Entrants Years of Entry 1990-1998

Year of Entry	Superior Branch Number	Superior Location	Name of Entrant	1998 Volume	Less Than Two Million Liters?
	807	CHETWYND BC	JOY PROPANE	3,020,747	
			LODGE PROPANE	76,296	Yes
1995	23	OTTAWA	BUDGET PROPANE	2,455,028	
	41	NEW LISKEARD	NASCO	554,776	Yes
	42	SUDBURY/SAULT STE MARIE	KING PROPANE	165,114	Yes
	233	GATINEAU	BUDGET PROPANE	4,507,273	
	413	KELOWNA	PERFORMANCE PROPANE (AGENT)	400,962	Yes
	420	ELK POINT	CANWEST	4,061,963	
	806	TERRACE	COAST PROPANE	327,322	Yes
1996	1	CONCORD	CHEMWELD	1,440,000	Yes
	5	FENELON FALLS	CSE	200,103	Yes
			SPARLING PROPANE	2,087,225	
	9	HUNTSVILLE	LEGGAT PROPANE	375,479	Yes
	13	PETERBOROUGH	SPARLING PROPANE	3,335,703	
	30	HEARST	NASCO	742,169	Yes
	39	CHATHAM	EDPRO	118,329	Yes
	100	WINNIPEG	AESHU	1,040,351	Yes
	343	DARTMOUTH	PRAXAIR	108,133	Yes
	421	CAMPBELL RIVER	COLUMBIA FUELS	770,286	Yes
			SUPERSAVE	1,480,663	Yes
	459	RED DEER/ROCKY MOUNTAIN HOUSE	TESKEY	1,380,000	Yes
	707	RADIUM SATELLITE	LO COST	203,143	Yes

Table 3

Estimated 1998 Volume of Independent Retailer Recent Entrants Years of Entry 1990-1998

Year of Entry	Superior Branch Number	Superior Location	Name of Entrant	1998 Volume	Less Than Two Million Liters?
1997	1	CONCORD	EDPRO	11,460,000	
			SMS	360,000	Yes
			SUNRISE	17,160,000	
			WELDERS SOURCE	720,000	Yes
	5	BANCROFT	KELLY'S FUELS	918,745	Yes
	13	PETERBOROUGH	KELLY'S FUELS	5,011,683	
	20	WHITBY	SPARLING PROPANE	2,793,074	
			SUNRISE	2,993,182	
			VALUE PROPANE	3,508,918	
	22	PEMBROKE	BUDGET PROPANE	57,611	Yes
	23	OTTAWA	EXPERT PROPANE	300,516	Yes
	202	ST-CONSTANT	PROPANE SUROIT	6,873,741	
	233	GATINEAU	PROP EXPERT	134,286	Yes
	248	LES CEDRES	PROPANE SUROIT	179,408	Yes
	250	RIVIERE-DU-LOUP	MILLIARD	195,714	Yes
	343	DARTMOUTH	ACTION PROPANE	82,354	Yes
	704	CALGARY	COWBOY PROPANE	78,400	Yes
	709	EDMONTON/CAMROSE/WESTLOCK	BO-LI	290,783	Yes
			HUGHES	2,001,875	
1998	5	BANCROFT	ALGONQUIN PROPANE	662,701	Yes
			NORTHMORE	200,103	Yes
	6	BARRIE	BUDGET PROPANE	16,023,810	

Table 3

Estimated 1998 Volume of Independent Retailer Recent Entrants
Years of Entry 1990-1998

Year of Entry	Superior Branch Number	Superior Location	Name of Entrant	1998 Volume	Less Than Two Million Liters?
			CO-OP	4,204,762	
			SPARLING PROPANE	15,916,667	
	23	OTTAWA	SUNRISE	392,758	Yes
	246	SEPT-ILES	SOUDE R	59,965	Yes
	346	KENTVILLE	IRVING PROPANE	7,287,451	
	350	SYDNEY	SCOTIA PROPANE	332,205	Yes
	401	REGINA, WEYBURN, YORKTON	LO COST	119,172	Yes
			LOW COST	103,608	Yes
	406	SASKATOON	CANWEST	2,460,230	
	423	EDSON	NEUFELD PROPANE	1,514,564	Yes
	431	FORT ST JOHN BC	CANWEST	1,235,804	Yes
	443	SLAVE LAKE/RED EARTH	CALGAS	579,700	Yes
			NEUFELD PROPANE	8,191,080	
	444	GRANDE PRAIRIE	CANWEST	4,673,073	
	459	RED DEER/ROCKY MOUNTAIN HOUSE	CALGAS	6,706,957	
			KEEBEE	316,000	Yes
	707	RADIUM SATELLITE	GAS PLUS	474,771	Yes
	802	NANAIMO/VICTORIA	COLUMBIA FUELS	16,660,967	

32. Mr. Kemp also bases his analysis on the assumption that the startup propane retailer would have a storage tank with a capacity of 30,000 U.S. water gallons ("USWG"). However, ICG believes that a substantial number of its rivals have storage tanks smaller than 30,000 USWG (e.g., 18,000 USWG).[13]

33. Mr. Kemp's analysis also assumes that a startup propane distributor would have a particular customer mix. "The customer makeup for a small operator would largely be residential, commercial, agricultural and industrial" (Kemp, at 8). In particular, he assumes a customer mix of 40 percent residential; 17.5 percent commercial; 20.0 percent agricultural; 17.5 percent industrial; and 5.0 percent other (Kemp, Table 3.2). However, the empirical evidence is not consistent with Mr. Kemp's assumptions. For example, Superior believes that the business mix for several recent entrants is substantially different than the one Mr. Kemp assumes. For example, only 20 of the 106 entrants (since 1990) identified by Superior had a customer mix where residential sales accounted for between 30 and 50 percent (i.e., about 40 percent) of sale.[14] See Table 4.

34. Finally, Mr. Kemp provides no empirical support for his claim that entrants that sell less than two million liters per year are not a "real" source of competition. As I have discussed, my analysis in my prior report showed that the <u>aggregate</u> presence of independents, not necessarily individual independent retailers, constrains Superior's prices.

3. Professor Whinston's Claim that Standard Contract Terms Reduce the Threat of Entry is Based on Economic Theory Only and is Unsupported by Empirical Evidence.

35. Professor Whinston claims that contractual provisions in Superior and ICG's standard contracts "have the effect of making competitive entry by new firms, as well as expansion by existing rivals, less attractive. This reduced threat of entry by new firms and

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13. Based on a review of the ICG "branch templates."
14. Customer business mix for entrants is taken from the Superior-supplied "branch template"--

Table 4

Estimated 1998 Business Mix of Independent Retailer Entrants
Years of Entry 1990-1998

Year of Entry	Superior Branch Number	Superior Location	Name of Entrant	Percentage of Sales in End Use: Agent	Agricultural	Auto	Commercial	Industrial	Residential	Res <30 or >50 Percent?
1990	1	CONCORD	CAM CARB	0.00	0.00	0.00	0.00	100.00	0.00	Yes
	5	FENELON FALLS	BUDGET PROPANE	12.86	2.69	6.21	46.61	0.58	31.07	
	23	OTTAWA	LEVAC	3.46	16.49	3.31	25.87	0.00	51.07	Yes
	42	SUDBURY/SAULT STE MARIE	BOC GASES	0.00	0.00	0.00	0.00	100.00	0.00	Yes
			BROWN PROPANE	0.00	0.00	0.00	29.20	34.34	36.45	
			LIQUID AIR	0.00	0.00	0.00	0.00	100.00	0.00	Yes
			PRAXAIR	0.00	0.00	0.00	0.00	100.00	0.00	Yes
			WELDCO	0.00	0.00	0.00	0.00	100.00	0.00	Yes
	202	ST-CONSTANT	SONIC PROPANE	5.26	44.86	1.52	14.87	22.82	10.88	Yes
	235	JOLIETTE	SONIC PROPANE	0.00	71.06	10.94	10.13	4.88	3.88	Yes
	241	VIMONT (VAL DAVID) 241	CARON PROPANE	0.00	0.00	0.00	66.89	0.00	33.11	
			PCQ-PROPANE CONSIGNE	0.00	0.00	0.00	56.65	34.00	9.35	Yes
			PROPANE PLUS	0.00	0.00	0.00	61.34	38.66	0.00	Yes
	245	THETFORD MINES	BO-GAR	0.29	30.56	0.00	30.35	33.19	5.62	Yes
	248	LES CEDRES	BUDGET PROPANE	36.47	0.72	0.00	0.00	62.04	0.80	Yes
	250	RIVIERE-DU-LOUP	SONIC PROPANE	0.43	13.16	0.00	60.37	26.04	0.00	Yes
	443	SLAVE LAKE/RED EARTH	ANP	0.00	0.00	0.00	31.48	66.21	2.31	Yes
			CANWEST	0.00	0.00	1.31	7.12	89.83	1.74	Yes
	459	RED DEER/ROCKY MOUNTAIN HOUSE	GASEX	0.00	0.00	100.00	0.00	0.00	0.00	Yes
			LO COST	0.00	10.22	47.03	2.66	0.00	39.88	
			MOUNTAIN VIEW COOP	0.00	20.41	0.00	0.00	0.00	79.59	Yes
	801	COQUITLAM	SUPERSAVE	1.88	0.00	65.30	26.30	3.46	3.05	Yes
1991	1	CONCORD	MURRAY PATTON	0.00	0.00	100.00	0.00	0.00	0.00	Yes
	5	FENELON FALLS	HIGHLAND'S	13.37	0.00	6.42	48.13	0.00	32.09	
	13	PETERBOROUGH	HIGHLAND'S	0.00	0.00	0.00	0.00	0.00	100.00	Yes
	39	CHATHAM	UPI	0.00	25.78	0.00	0.00	38.86	35.37	
	470	PROVOST	CALGAS	0.00	2.81	0.62	0.47	93.21	2.89	Yes
	444	GRANDE PRAIRIE	NEUFELD PROPANE	0.00	8.78	30.31	27.47	13.08	20.37	Yes
1992	5	FENELON FALLS	NORTHWOOD	13.37	0.00	6.42	48.13	0.00	32.08	
	39	CHATHAM	AABCO	6.40	1.21	16.67	2.38	59.36	13.85	Yes
	445	PRINCE GEORGE BC	DEL'S PROPANE	0.00	0.00	60.43	14.80	14.43	20.34	Yes
1993	5	FENELON FALLS	BRITISH EMPIRE	13.37	0.00	6.42	48.13	0.00	32.09	
	13	PETERBOROUGH	BRITISH EMPIRE	10.70	0.00	12.84	64.20	6.42	5.84	Yes
	202	ST-CONSTANT	BUDGET PROPANE	3.24	27.70	0.00	27.52	31.68	9.87	Yes
	249	ST-ROMUALD	PROPANE CHALEVOIX	2.49	21.46	10.23	57.29	0.00	8.53	Yes
	401	SWIFT CURRENT	CANWEST	0.00	0.00	0.00	0.67	95.52	3.81	Yes

Table 4

Estimated 1998 Business Mix of Independent Retailer Entrants
Years of Entry 1990-1998

Year of Entry	Superior Branch Number	Superior Location	Name of Entrant	Percentage of Sales in End Use: Agent	Agricultural	Auto	Commercial	Industrial	Residential	Res.<30 or >50 Percent?
	413	KELOWNA	TRISTAR	0.00	0.37	74.98	10.43	0.93	13.29	Yes
	444	GRANDE PRAIRIE	NORTHERN PROPANE	0.00	0.58	40.30	7.32	17.44	34.27	
	845	PASADENA	IRVING PROPANE	1.49	0.00	2.63	20.97	65.70	8.00	Yes
1994	6	FENELON FALLS	VALUE PROPANE	13.19	1.32	6.33	47.49	0.00	31.66	
	7	GUELPH	CALEDON	0.00	0.00	25.63	18.65	55.62	0.00	Yes
			PRIMAX	0.00	0.00	0.00	6.45	47.73	45.76	
	420	MAIDSTONE	CANWEST	0.00	0.00	9.89	1.06	85.54	3.59	Yes
	431	FORT ST JOHN BC	NEUFELD PROPANE	0.00	0.00	75.97	24.08	0.00	0.00	Yes
	807	CHETWYND BC	JOY PROPANE	25.88	0.05	31.48	12.63	0.00	30.16	
			LODGE PROPANE	0.00	0.00	0.00	100.00	0.00	0.00	Yes
1995	23	OTTAWA	BUDGET PROPANE	0.00	37.37	0.00	42.91	0.00	19.72	Yes
	41	NEW LISKEARD	NASCO	0.00	0.00	0.00	11.68	79.02	9.30	Yes
	42	SUDBURY/SAULT STE MARIE	KING PROPANE	0.00	0.00	0.00	35.26	20.73	44.01	
	233	GATINEAU	BUDGET PROPANE	0.61	4.44	0.00	57.88	13.31	23.96	Yes
	413	KELOWNA	PERFORMANCE PROPANE (AGENT)	0.00	0.00	0.00	43.97	0.00	56.03	Yes
	420	ELK POINT	CANWEST	0.00	1.72	2.86	3.50	86.26	5.74	Yes
	806	TERRACE	COAST PROPANE	0.00	0.00	88.98	0.00	0.00	11.02	Yes
1996	1	CONCORD	CHEMWELD	0.00	0.00	0.00	0.00	100.00	0.00	Yes
	5	FENELON FALLS	CSE	13.37	0.00	6.42	48.13	0.00	32.09	
			SPARLING PROPANE	12.82	3.85	6.15	46.14	0.28	30.76	
	9	HUNTSVILLE	LEGGAT PROPANE	0.00	0.00	0.00	0.00	0.00	100.00	Yes
	13	PETERBOROUGH	SPARLING PROPANE	8.75	7.31	29.24	29.24	5.85	18.61	Yes
	20	HEARST	NASCO	6.06	0.00	11.45	37.69	4.63	40.28	
	39	CHATHAM	EDPRO	0.00	0.00	0.00	0.09	100.00	0.00	Yes
	100	WINNIPEG	AESHU	0.00	0.00	18.22	35.78	34.04	11.96	Yes
	343	DARTMOUTH	PRAXAIR	0.00	0.00	0.00	0.00	100.00	0.00	Yes
	421	CAMPBELL RIVER	COLUMBIA FUELS	21.84	0.00	51.86	14.70	0.00	11.51	Yes
			SUPERSAVE	11.36	0.00	80.94	5.13	0.00	2.57	Yes
	459	RED DEER/ROCKY MOUNTAIN HOUSE	TESKEY	0.00	0.00	100.00	0.00	0.00	0.00	Yes
	707	RADIUM SATELLITE	LO COST	0.00	0.00	0.00	0.00	0.00	100.00	Yes
1997	1	CONCORD	EDPRO	0.00	0.00	74.87	0.00	25.13	0.00	Yes
			SMS	0.00	0.00	0.00	0.00	100.00	0.00	Yes
			SUNRISE	0.00	0.00	100.00	0.00	0.00	0.00	Yes
			WELDERS SOURCE	0.00	0.00	0.00	0.00	100.00	0.00	Yes
	5	BANCROFT	KELLY'S FUELS	0.00	0.00	0.00	36.49	0.00	63.51	Yes

Table 4

Estimated 1998 Business Mix of Independent Retailer Entrants
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Year of Entry	Superior Branch Number	Superior Location	Name of Entrant	Percentage of Sales in End Use: Agent	Agriculture	Auto	Commercial	Industrial	Residential	Res.<30 or >50 Percent?
	13	PETERBOROUGH	KELLY'S FUELS	8.49	4.87	10.46	68.39	1.86	8.65	Yes
	20	WHITBY	SPARLING PROPANE	0.00	11.83	55.33	11.25	5.97	15.51	Yes
			SUNRISE	22.55	0.00	77.45	0.00	0.00	0.00	Yes
			VALUE PROPANE	0.00	4.75	22.02	26.87	14.25	32.11	
	22	PEMBROKE	BUDGET PROPANE	3.65	0.00	0.00	59.48	0.00	36.87	
	23	OTTAWA	EXPERT PROPANE	0.00	0.00	0.00	0.00	100.00	0.00	Yes
	202	ST-CONSTANT	PROPANE SUROIT	2.19	28.06	0.00	27.89	28.53	13.33	Yes
	233	GATINEAU	PROP EXPERT	0.00	0.00	0.00	56.32	44.88	0.00	Yes
	248	LES CEDRES	PROPANE SUROIT	26.91	0.70	0.09	1.02	70.60	0.68	Yes
	250	RIVIERE-DU-LOUP	MILLIARD	0.00	0.00	0.00	0.09	76.64	23.28	Yes
	343	DARTMOUTH	ACTION PROPANE	0.00	0.00	0.00	0.00	0.00	100.00	Yes
	704	CALGARY	COWBOY PROPANE	0.00	0.00	0.00	100.00	0.00	0.00	Yes
	709	EDMONTON/CAMROSE/WESTLOCK	BO LI	0.00	5.02	0.00	0.00	0.00	94.98	Yes
			HUGHES	0.99	0.00	99.01	0.00	0.00	0.00	Yes
1996	5	BANCROFT	ALGONQUIN PROPANE	5.34	0.00	10.87	25.90	0.00	58.70	Yes
			NORTHMORE	13.37	0.00	6.42	48.12	0.00	32.09	
	6	BARRIE	BUDGET PROPANE	2.60	13.26	0.00	0.00	3.90	80.24	Yes
			CO-OP	0.00	67.38	0.00	0.00	0.00	32.62	
			SPARLING PROPANE	5.24	8.90	0.00	10.47	0.00	76.38	Yes
	23	OTTAWA	SUNRISE	0.00	0.00	100.00	0.00	0.00	0.00	Yes
	246	SEPT-ILES	BOUDE R	0.00	0.00	0.00	74.93	0.00	25.07	Yes
	346	KENTVILLE	IRVING PROPANE	1.65	19.01	10.24	24.21	19.86	25.04	Yes
	350	SYDNEY	SCOTIA PROPANE	0.00	0.00	0.00	83.14	0.00	16.86	Yes
	401	REGINA, WEYBURN, YORKTON	LO COST	0.00	0.00	0.00	0.00	0.00	100.00	Yes
			LOW COST	0.00	0.00	0.00	0.00	0.00	100.00	Yes
	408	SASKATOON	CANWEST	1.09	0.00	97.79	0.00	0.00	1.12	Yes
	423	EDSON	NEUFELD PROPANE	0.00	0.00	23.16	8.59	56.83	11.42	Yes
	431	FORT ST JOHN BC	CANWEST	0.00	0.00	100.00	0.00	0.00	0.00	Yes
	443	SLAVE LAKE/RED EARTH	CALGAS	0.00	0.00	20.73	0.00	79.27	0.00	Yes
			NEUFELD PROPANE	0.00	0.00	1.47	10.67	84.16	3.72	Yes
	444	GRANDE PRAIRIE	CANWEST	0.00	0.42	77.04	12.22	6.24	4.09	Yes
	459	RED DEER/ROCKY MOUNTAIN HOUSE	CALGAS	0.00	1.49	27.43	2.09	53.48	15.51	Yes
			KEEBEE	0.00	0.00	0.00	17.72	0.00	82.28	Yes
	707	RADIUM SATELLITE	GAS PLUS	0.00	0.00	0.00	0.00	91.44	8.56	Yes
	802	NANAIMO/VICTORIA	COLUMBIA FUELS	0.03	0.05	41.21	30.81	1.08	27.81	Yes

expansion by existing ones all reduce the competitive constraints that might otherwise help limit a merged [Superior]/ICG's exercise of market power" (Whinston, at 3).

36. Professor Whinston's claim is based on theoretical grounds, and in any event does not establish that Superior's standard contract terms make entry more difficult. Indeed, witness statements by rival propane distributors filed on behalf of the Commissioner suggest that the type of contract terms discussed by Professor Whinston may make entry easier. For example, according to Bob Bush, Vice President of Cal-Gas Inc., "[a] five year contract is typical for a large account. Time is needed to cover the cost of the equipment, installation of the equipment, pipelines from tankers to customer buildings, etc." (Statement of Bob Bush, ¶ 27.) Similarly, MacDonald's Propane has five year contracts with customers (Statement of Rod MacDonald, at 1.)

37. Professor Whinston's claim appears to be based on the theory that long-term contracts make entry more difficult because they "foreclose" sufficient sales volume so that an entrant will not be able to enter at an efficient scale. However, as I have discussed, many independent retailers appear to operate at small volumes (i.e., less than two million liters per year). Thus, Professor Whinston has not established that "foreclosure" is a concern in the retail propane business.

38. Even if Professor Whinston were correct that these standard contract terms reduce competition, the undertakings that Superior has made, if implemented, resolve the anticompetitive concerns raised by Professor Whinston. Indeed, if these contract terms reduce competition as Professor Whinston claims, then the undertakings that Superior has made are a procompetitive result of the merger. That is, absent the merger, these allegedly anticompetitive standard contract terms could remain in place.

(...continued)
data.

39. Furthermore, if Superior were unable to enter into these types of contracts, it could be disadvantaged relative to rivals who were not constrained in the same way. In this case, disallowing efficient contracts between Superior and potential customers could reduce competition (between, for example, Superior and Cal-Gas). Thus, if the Commissioner is incorrect that Superior's contracts with its customers are anticompetitive, disallowing such contracts may harm consumers.[15]

4. Mr. Mathieson's Suggestion that a Superior/ICG Supply Cost Advantage is a Barrier to Entry is a Fundamental Economic Error.

40. Mr. Mathieson's analysis "examines the barriers to entry for potential new participants and specifically how high the bar has been raised with the formation of the merged company" (Mathieson, at ii). Mr. Mathieson concludes that the proposed merger will give the merged firm a cost advantage over potential entrants. For example, he concludes that "any small new entrants will be at a disadvantage to the merged company in regard to the cost of supply acquisition" (Mathieson, at 87). He also concludes that "it appears likely that the merged company would have significant transportation cost advantages over new entrants" (Mathieson, at 87).

41 Mr. Mathieson's claim that such merger-related "cost advantages" are a barrier to entry is a fundamental economic error. Merger-related reductions in costs are efficiencies, which are procompetitive. This is a fundamental tenet of merger analysis recognized in the Commissioner's own Merger Enforcement Guidelines. Indeed, any merger-specific efficiency will give merging parties a cost advantage over rivals.

42. None of the Commissioner's experts has disputed Superior's claim that there are substantial efficiencies associated with the proposed merger. Indeed, Mr. Mathieson agrees that the merger will allow the merged firm to reduce its costs. However, none of the

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15. This is a particular concern if the merged firm will be an especially efficient supplier, as Mr.

Commissioner's experts has investigated, or even discussed, the likely effect of these efficiencies on retail propane prices. This is a key flaw in the Commissioner's experts' reports – without such an analysis, the Commissioner's experts cannot conclude that the merger will likely lead to price increases. As I discussed in my prior report, "even a monopolist has an incentive to pass along some portion of cost savings because it increases its sales (and profits) by doing so" (Carlton Report, ¶ 25). Thus, if a merger generated sufficient cost savings, even a "merger to monopoly" could lead to lower, not higher prices.

43. Merger-related cost efficiencies will give the merging parties an advantage over rivals only if the merged firm uses its lower costs to reduce its prices. If the merged firm attempted to increase its price after a merger, rivals would find it easier, not harder, to compete. Thus, rivals will be disadvantaged by a merger only if the merged firm reduces its costs as a result of the merger and passes along some or all of those cost savings to its customers.

44. I note that several of Superior's rivals have filed witness statements on behalf of the Commissioner. Several of these rivals' statements suggest that the merger will lead to lower retail propane prices. For example, a representative of Autogas Propane argues that the merger could allow Superior to "keep prices depressed" (Statement of Bob Good, at 2). Similarly, a representative of Mutual Propane claims that "[t]he combined entity would have the means to create a spot price war" (Statement of Jack Osland, at 1).[16] This evidence is consistent with Superior's claim that the merger will make it a more effective competitor, and contradicts the Commissioner's claim that the proposed merger will result in a substantial lessening of competition.

(...continued)
Mathieson (and other witnesses for the Commissioner) suggests.

16. The Commissioner has not claimed that the merger will lead to predatory pricing by the merged firm. That is, the Commissioner has argued that the merger will lead to higher, not lower, retail propane prices.