

THE COMPETITION TRIBUNAL

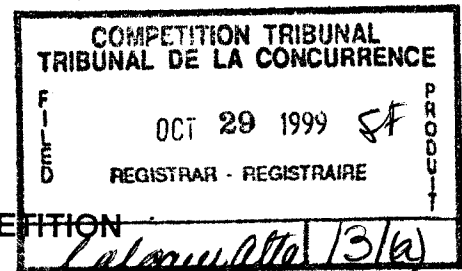
IN THE MATTER OF THE *COMPETITION ACT*, R.S.C. 1985, c.C-34, as amended, and the *Competition Tribunal Rules* SOR/94-290, as amended (the "Rules");

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 for an order pursuant to section 92 of the *Competition Act*

BETWEEN:

THE COMMISSIONER OF COMPETITION



Applicant

- and -

SUPERIOR PROPANE INC. and ICG PROPANE INC.

Respondents

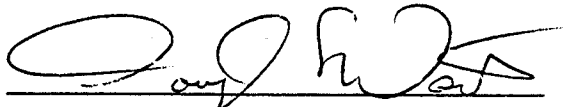
REBUTTAL AFFIDAVIT OF DOUGLAS WEST

I, Douglas West, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY THAT:

1. I was retained by the Commissioner of Competition to provide expert economic evidence in this matter, to review the expert reports submitted by the expert witnesses of the Respondents, and to provide my comments with respect to those reports.

2. I have reviewed the expert witness affidavit of Dennis Carlton filed herein. Attached hereto and marked as Exhibit "A" is a true copy of my comments with respect to that Affidavit. The contents of Exhibit "A" and the findings and opinions expressed therein are true to the best of my knowledge, information and belief.
3. Attached hereto and marked as Exhibit "B" is a true copy of my curriculum vitae.
4. I make this affidavit pursuant to Rule 47(2) of the *Competition Tribunal Rules*.

SWORN BEFORE ME)
AT *Hull (Québec)*)
THIS 14th DAY OF September 1999)



Douglas West

Hélène Chartrand
BARRISTER AND SOLICITOR
Commissioner for Oaths



This is Exhibit "A" to the Affidavit of Douglas West sworn/affirmed before me at the city of Hull in the Province of Quebec this 14th day of September, 1999.

Hélène Chartrand 14/9/99

Commissioner of Oaths for Canada, etc.



I. Introduction

1. I have reviewed the evidence of Dennis W. Carlton. I have found that there are significant errors or discrepancies in the preparation of data sets, particularly with respect to the market share calculations and compilation of branch lists. These errors are significant enough to invalidate the market share comparisons in paragraph 26 of his report, and may affect his regression results.
2. Professor Carlton has also inappropriately characterized the possibility of entry by U.S.-based propane dealers into a Canadian retail propane market. Such entry has not occurred, and would face the same sort of obstacles as entry and expansion by Canadian firms.
3. Professor Carlton has constructed a table (Table 5) to help illustrate the extent of new entry into retail propane markets in Canada in the last three years. This table is reproduced by me, with Superior's (SPI's) estimates of these new entrants' market shares. This table shows that the majority of the new entrants have only been able to acquire a one or two percent share of sales in the branch trade area that they enter. Several of the larger market shares estimated for new entrants by SPI are incorrect.
4. Professor Carlton may also have compromised his analysis by using 1998 share estimates in his 1997 regressions. SPI has made market share estimates for 1997, and as I show in a table, these estimates differ, sometimes quite substantially, from the 1998 estimates.
5. The next section of my affidavit will critique Professor Carlton's discussion of possible entry by U.S. retailers. Subsequent sections will focus on problems in Professor Carlton's branch lists and market share data, his description of new entry into Canadian retail propane markets, and his use of 1998 market share estimates in 1997 regressions.

II. U.S. Propane Retailers

6. Professor Carlton, on page 8 of his Affidavit, has suggested that major U.S. retailers could expand into Canada if prices in Canada increased relative to U.S. prices. He offers as support for this possibility (1) the availability of propane in Canada at the wholesale level, (2) the proximity of U.S. retailer locations to the U.S.-Canada border, and (3) the similarity of regulatory requirements in Canada and the U.S.
7. Even though the top 10 propane retailers in the U.S. reportedly (by Carlton) have 1500 retail locations in states that border Canada, none of them has a single retail outlet in Canada. Professor Carlton, in his Table 5, shows that some Canadian retail propane markets have supported new entry in the past three years. If entry by U.S.-based retailers is easy, why would they not have taken advantage of such entry opportunities? These large American propane retailers certainly have the expertise to expand into a Canadian market if entry is easy. The fact that they have not suggests that there are some entry barriers that Professor Carlton has not discussed.
8. There are several ways in which an American propane retailer might attempt entry into a Canadian retail propane market. First, the American retailer could attempt to ship propane into Canada by tanker truck from one of its U.S.-based branches. However, an American-based retailer would face the same sorts of constraining factors on the ability to serve more distant customers as a Canadian-based retailer. These were listed in my earlier Affidavit as (i) the distance of the branch to the different points in the candidate market, (ii) the storage capacity of the branch, (iii) the number of customers available to the branch that are not locked into a supplier through contracts, (iv) the propane dealer's reputation in the area of the candidate market and the costs to overcome any reputational barriers, (v) the density of customers in different areas of the candidate market and the volumes purchased, (vi) natural barriers to transport such as mountains and rivers, and (vii) the existing road network.

9. In addition, an American-based propane retailer would have the additional costs associated with crossing the U.S.-Canada border. These costs could include (1) additional money and time costs because of delays at the border crossing caused by traffic congestion and the need to clear customs, (2) any costs resulting from the use of different measurement regimes in Canada and the U.S., (3) costs associated with differences in tax, regulatory, and licensing regimes between Canadian jurisdictions and the U.S., (4) costs associated with dealing with different currencies and fluctuations in exchange rates, and (5) costs associated with dealing with French language requirements in Quebec. These additional costs could make it unprofitable for a U.S.-based retailer to serve a Canadian retail propane market even if the market can support profitable Canadian-based retail expansion.
10. I am aware of only one case of a U.S.-based firm supplying a Canadian retail propane market from a branch located in the U.S. This case involves a company called Lake Gas, which supplies propane to Fort Frances from a branch in International Falls, Minnesota. SPI has estimated its 1998 market share in Fort Frances as 2%.
11. The second way that an American retailer could attempt to serve a Canadian retail propane market is by establishing a branch in a Canadian retail propane market. However, the majority of new entrants in Canadian retail propane markets in the last three years have only managed to acquire a one or two percent share of the market that they have entered. (See Table 2 in Section IV below.) Furthermore, I am unaware of any cases where a U.S.-based retailer has opened up branches in Canada. Even in markets where entry has been possible, U.S.-based retailers have not responded to the incentive to enter.
12. The third way in which an American-based firm could enter a Canadian retail propane market is by buying an existing firm. Entry or expansion by acquisition has historically been the quickest and most common means of entry and expansion in the propane industry in the face of entry impediments.

III. Branch Lists and Market Share Data

13. In paragraph 26 of his report, Professor Carlton carries out some market share comparisons using 1998 data supplied by SPI. According to Appendix B to his report, these data were obtained from templates that were distributed to branch managers in the spring of 1999. Branch numbers were assigned to the data based on location names in accordance with SPI documents. Some satellites were combined with their respective branches, and Attachment 5 to his report contains the program that carries out this aggregation. The templates filled out by branch managers that report 1998 sales and market shares have been supplied by SPI to the Commissioner in response to Undertaking 63.
14. My initial reaction to reading paragraph 26 was to attempt to replicate Professor Carlton's results. The first step in that replication would be to identify the 64 Superior branches that Professor Carlton refers to in paragraph 26. While Professor Carlton refers to these 64 branches, he never identifies the branches by name. I first looked at Attachment 5, which has a list of branches and satellites, some of which are being combined. Attachment 5 contains a list of 63 branch names, but it does not contain the names of the other 17 SPI branches for which SPI provided branch template information. To verify that this was the list that was being used for the comparisons in paragraph 26 as well as Professor Carlton's regression analysis, I compared the post-aggregation branch list (which should have 50 branches in it) with those appearing in two data files used for the regression analysis. These two files, regdatab.dbf and regdat7b.dbf, were supplied by Professor Carlton on a disk.
15. Data file regdat7b.dbf contains the data used in Professor Carlton's 1997 regressions. There are 57 numbered branches in this data file (and not the expected 50). Data file regdatab.dbf contains the data used in Professor Carlton's 1998 regressions. There are 65 numbered branches in this data file. There are 10 branch numbers listed in the 1998 regression data that are not listed in the 1997 data as follows:
15- Smithville
22- Pembroke

444- Grande Prairie

807- Chetwynd

831- Watson Lake

16- Simcoe

14- Strathroy

467- Fort McMurray

808- Terrace

17- Walkerton.

None of the above branches appear to have been new branches in 1998.

16. In addition, the 1997 regression data file contains two branch numbers, 345- Trenton and 348- Truro, that are not referred to in the 1998 regression data file. These branches were not on a list of closed branches provided by Superior in response to undertaking 95.
17. In an effort to resolve these discrepancies in branch lists, I examined the other attachments in Professor Carlton's report, hoping to find the definitive branch list. Instead, in Attachment 10, which contains a program that sorts data into rural and urban branches, I found branch numbers that were not listed in Attachment 5. These branch numbers are 6, 33, 240, 246, 421, 427, 445, 456, 557, 704, 712. Of these, 33, 240, and 456 do not appear in either the 1997 or 1998 regression data files.
18. In Attachment 5, as well as in the regdatab.dbf file, Professor Carlton assigns some branch numbers to Superior branch names which differ from the branch numbers assigned by Superior. It is not clear whether Professor Carlton intended to use the data attached to the branch number or to the branch name that has been incorrectly identified with the branch number. For example, in Attachment 5, branch number 420 is associated with Maidstone when in fact Superior has it assigned to Macklin. In Attachment 5, branch number 431 is assigned to Fort Nelson when in fact Superior has it assigned to Fort St. John. Further errors of this type are encountered with respect to branches that Professor Carlton numbers 343, 344, 346, 348 and 350. He calls these branches Dartmouth, Bridgewater, Kentville, Truro, and Sydney, respectively, but Superior assigns those branch names the numbers 344, 345, 347, 350, and 343, respectively.

19. Because of the discrepancies between branch lists, I am not sure which 64 branches were selected by Professor Carlton for the market share comparisons that are described in paragraph 26. I am also uncertain as to which branches and satellites have been aggregated for the regression analysis that Professor Carlton has conducted. This makes it difficult, if not impossible, to replicate Professor Carlton's results by building a regression data file from the data supplied by SPI. Replication of results by starting with primary data is a useful way of checking to see if data entry errors or data manipulation errors have been made in building data files.
20. The differing branch lists is not the only problem that is encountered in the process of trying to replicate Professor Carlton's results. The market share variables that are used by Professor Carlton in his regression analysis are also problematic. These variables are called SPISHARE, INDSHARE, and ICGSHARE in both regdatab.dbf and regdat7b.dbf. They are used to define when either an ICG share or the independents' share in a particular market exceeds a certain defined threshold, like 15, 20, 25 or 30 percent. They are also presumably used for the market share comparisons discussed in paragraph 26. They also enter directly as explanatory variables in some of Professor Carlton's regressions (see his footnote 38). The problem is that the market share figures in these variables, which Professor Carlton states come from the branch templates (see page 2 of Appendix B of his Affidavit), do not correspond to the market shares that SPI has estimated for itself, ICG and its other competitors and reported in its 1998 branch templates.
21. I have done a branch by branch comparison of Professor Carlton's market share estimates and those that are reported by SPI in its branch templates. See Table 1. While none of the non-zero numbers match up, some of the share estimates used by Professor Carlton are not even close to those reported by SPI, and some can lead to unreasonable conclusions. Note that when there are two entries in the table for a given branch number, the first entry is for the branch name that SPI attaches to the branch number (except for the discrepancies mentioned in paragraph 18 above), while the second entry is for the branch that is aggregated with the first entry in Professor Carlton's Attachment 5.

Table 1

Comparison of SPI's and Carlton's Market Share Estimates: 1998

Branch #	Branch Name	SPI's Share Estimates			Carlton's Share Estimates		
		SPI's Share	ICG's Share	Independents' Share	SPI's Share	ICG's Share	Independents' Share
1	Concord	35	30	35	32.96	21.53	46.50
2	Stratford	45	12	43	37.79	13.66	48.55
4	Belleville	60	25	15	56.72	21.40	22.88
5	Fenelon Falls	25	25	50	32.04	31.85	36.11
5	Bancroft	40	35	25			
6	Barrie	45	30	25	24.66	22.51	52.83
7	Guelph	40	15	45	24.47	22.54	52.99
9	Huntsville	42	2	56	62.88	4.89	32.22
9	Bala	70	8	22			
14	Strathroy	45	12	43	39.13	15.37	45.51
15	Smithville	48	4	48	99.97	0.01	0.02
16	Simcoe	60	5	35	52.67	5.04	42.29
17	Walkerton	60	5	35	45.59	4.90	49.51
20	Whitby	30	25	45	32.95	28.42	38.62
22	Pembroke	58	38	4	71.49	27.52	1.00
23	Ottawa	40	31	29	44.07	22.53	33.40
30	Porcupine	27	48	25	36.23	41.38	22.39
30	Hearst	75	10	15			
39	Chatham	28	4	68	48.83	3.23	47.94
41	North Bay	74.1	24.6	1.3	67.73	28.92	3.35
41	New Liskeard	74.2	22.5	3.3			
42	Sudbury	45	40	15	39.52	51.09	9.39
91	Thunder Bay	45	55	0	44.69	55.22	0.09
91	Dryden	60	40	0			
91	Fort Frances	75	23	2			
100	Winnipeg	30	37	33	27.45	33.33	39.21
100	Viriden	25	40	35			
202	St. Constant	25	30	45	25.53	31.33	43.34
203	Drummondville	16.35	38.02	45.63	21.66	23.13	55.21
233	Gatineau	36	30	34	46.78	30.66	22.56
235	Joliette	22	16	62	25.29	25.16	49.55
241	Vimont	33	15	52	37.04	25.52	37.43

<u>SPI's Share Estimates</u>					<u>Carlton's Share Estimates</u>		
Branch #	Branch Name	SPI's Share	ICG's Share	Independents' Share	SPI's Share	ICG's Share	Independents' Share
243	St. Romuald	27	33	40	27.66	44.04	28.31
245	Thetford Mines	30	35	35	24.81	32.45	42.74
246	Sept Iles	21	76	3	21.22	75.19	3.59
248	Les Cedres	40	10	50	94.00	0.84	5.16
250	Riviere du Loup	33	60	7	24.28	49.60	26.12
271	Cap-de-la Madeleine	30	45	25	36.17	46.13	17.70
343	Dartmouth	49	0	51	48.24	0.00	51.76
344	Bridgewater	45	1	54	43.69	0.70	55.61
345	Trenton	65	0	35	0.15	0.00	99.85
346	Kentville	46	2	52	38.33	0.34	61.32
348	Truro	38	2	60	0.06	5.75	94.19
350	Sydney	45	1	54	36.65	0.15	63.20
401	Regina	32	38	30	32.03	34.64	33.33
401	Swift Current	30	26	44			
406	Saskatoon	30	30	40	36.35	11.69	51.97
407	Prince Albert	20	20	60	27.67	32.02	40.31
413	Kelowna	25	33	42	28.10	9.75	62.15
414	Kamloops	40	32	28	40.75	29.44	29.81
420	Maidstone	30	30	40	26.71	34.35	38.95
420	Elk Point	27	43	30			
421	Campbell River	42	46	12	47.94	40.07	12.00
423	Edson	27	27	46	37.21	34.34	28.45
423	Valemont	40	60	0			
423	Whitecourt	20	80	0			
427	Burns Lake	48	48	4	54.51	43.56	1.93
431	Fort St. John	30	30	40	28.35	48.83	22.82
431	Whitehorse	20	80	0			
443	Slave Lake	30	32	38	30.67	33.99	35.35

<u>SPI's Share Estimates</u>					<u>Carlton's Share Estimates</u>		
Branch #	Branch Name	SPI's Share	ICG's Share	Independents' Share	SPI's Share	ICG's Share	Independents' Share
444	Grand Prairie	39	34	27	23.13	32.92	43.94
445	Prince George	36	39	25	43.11	36.26	20.63
459	Red Deer	29	27	44	19.72	14.69	65.58
467	Fort McMurray	49	49	2	48.77	51.23	0.00
550	Charlotte-Town	34	0	66	32.55	0.00	67.45
557	Moncton	30	5	65	39.56	2.93	57.51
701	Lethbridge	40	38	22	42.90	41.69	15.42
704	Calgary	32	30	38	39.60	34.26	26.15
707	Cranbrook	38	38	24	46.08	38.89	15.04
707	Radium	na	na	na			
709	Edmonton	29	22	49	32.27	28.24	39.49
712	Peace River	46	26	28	99.90	0.05	0.05
801	Coquitlam	34	31	35	33.30	30.63	36.06
802	Nanaimo	30	25	45	30.72	28.20	41.08
807	Chetwynd	30	49	21	28.57	48.82	22.61
808	Terrace	60	38	2	71.14	25.79	3.07
831	Yukon	20	80	0	13.33	86.67	0.00
841	St. John's	52	0	48	99.73	0.00	0.27
843	Bathurst	38	2	60	37.16	1.22	61.62
845	Pasadena	54	0	46	38.24	0.00	61.76

22. For example, for branch 345, Trenton, Professor Carlton reports an SPI share of 0.15%, an independent share of 99.85% and a zero share for ICG.

SPI's 1998 share estimates for Trenton are a 65% share for itself and a 35% share for Irving. These share estimates, while different from the actual shares based on sales volumes, are much closer to the actual shares than Professor Carlton's numbers.

23. For a second example, Professor Carlton reports SPI, independent, and ICG shares for branch 348 (Truro) as 0.06, 94.19, and 5.75%, respectively. SPI's 1998 share estimates for Truro are a 38% share for itself, a 50% share for Irving and a 2% share for ICG.

Even SPI's share estimates, which give it a smaller share than Irving, are not consistent with the actual sales volumes.

24. For a third example, for branch 712, Peace River, Professor Carlton reports an SPI share of 99.90%, an ICG share of .05%, and a .05% share for independents.

It is also of interest to note that SPI's 1998 market share estimates for itself and ICG in Peace River are inconsistent with the sales figures above. SPI estimates that it has a 46% share of Peace River and High Level, while ICG is estimated to have a 26% share.

25. For a fourth example of where Professor Carlton's market share figures are way out of line with actual sales volumes, one can look at St. John's (branch 841), where Professor Carlton has reported a 99.73% share estimate for SPI and a 0.27% share estimate for Irving.

26. The market shares contained in the market share variables would appear to be in error. I do not know where the market share figures contained in regdatab.dbf and regdat7b.dbf come from.
27. Besides the fact that Carlton's market share figures are not the same as those reported by SPI on its branch templates, there is also the problem that SPI's market share estimates are not always accurate.
28. There are two types of market share estimate inaccuracies that can be examined. First, one can look at SPI's estimates of its market share and ICG's market share in specific branch trade areas. It can be difficult to assess the accuracy of these estimates in some branch trade areas because it is not always clear over what area SPI is estimating a market share, and ICG does not always have a branch in the same city as SPI. One can, however, look at estimates of SPI and ICG market shares in areas where SPI and ICG have branches close to one another, and where they do not have other branches nearby.
29. For example, for Thunder Bay, SPI estimates that it had a 45% share in 1998, while ICG had a 55% share.
30. For Saskatoon, SPI has estimated that it and ICG had equal market shares in 1998.
31. For Swift Current, SPI has estimated that its 1998 share (30%) is larger than ICG's (26%).
32. For Fort McMurray, SPI has estimated that it and ICG had equal market shares in 1998.
33. For Kelowna, SPI has estimated that SPI had a 25% share in 1998, while ICG had a 33% share.
34. In Prince George, SPI has estimated that SPI had a 36% share in 1998, while ICG had a 39% share.

35. The second type of market share estimate inaccuracy can arise from inaccurate estimates of other competitors' market shares. For example, SPI has estimated that Joy's 1998 market share in Fort St. John is 35%.

As another example, SPI estimates its 1998 Moncton share at 30%, ICG's share at 5% and Irving's share at 65%.

Not only is ICG's estimated share incorrect, but it is inconceivable that Irving would have increased its sales volume from 1997 to 1998 to such an extent as to give it a 65% share of the market.

36. As a third example, SPI has estimated that Kelly's 1998 market share in Bancroft is 15%, while Algonquin's market share is estimated at 10 percent.

IV. New Entry

37. In paragraph 27, Professor Carlton describes the extent of new entry into Canadian retail propane markets over the past three years. Table 5 of his report lists the names of new entrants by SPI branch trade area for each year 1996, 1997, and 1998. The purpose of this description is apparently to indicate the ease of entry over the last three years. However, there is no indication in the table of the extent to which these entrants were successful at capturing large shares of the markets that they entered. For this reason, I have reproduced Professor Carlton's Table 5 below, but I have also included the 1998 market share for each entrant that has been estimated by SPI. (There are five entrants for which market share estimates are not available.)

Table 2
Entrants Making Sales in Competition with Superior and Superior's
Estimates of Their 1998 Market Shares:
1996-1998

Year	Superior Branch Number	Superior Location	Name of Entrant	Market Share (%)
1996	1	Concord	Chemweld	0.5
	5	Fenelon Falls	CSE	1.0
			Sparling Propane	10.0
	9	Huntsville	Leggett	5.0
	22	Pembroke	MacDonald's	1.0
	39	Chatham	Edpro	1.0
	100	Winnipeg	Aeshu	2.0
	343	Dartmouth	BOC Gases	<1.0
			Praxair	<1.0
	421	Campbell River	Columbia Fuels	6.0
			Super Save	2.0
	459	Red Deer/Rocky Mountain House	Teskey	1.0
	704	Calgary	Bayne	3.0
			Keebee	1.0
			Sure Fire	4.0
	707	Radium	Lo Cost	
	1997	1	Concord	Edpro
			SMS	
			Sunrise	5.0
			Welder's Source	<1.0
5		Bancroft	Kelly's Fuels	15.0
15		Smithville	Edpro	1.0
20		Whitby	Sparling	5.0
			Sunrise	5.0
			Value	10.0
22		Pembroke	Budget	3.0
23		Ottawa	Expert	2.0
41		North Bay	Budget	<1.0
202		St. Constant	Propane du Suroit	10.0
233	Gatineau	Propane Expert	1.0	
248	Les Cedres	Propane du Suroit	10.0	

Year	Superior Branch Number	Superior Location	Name of Entrant	Market Share (%)
	250	Riviere du Loup	Milliard	1.0
	343	Dartmouth	Action Propane	<1.0
	704	Calgary	Cowboy Propane	<0.5
	709	Edmonton/Camrose/ Westlock	Bo-Li Hughes	1.0 1.0
1998	5	Bancroft	Algonquin Northmore	10.0
	6	Barrie	Budget Propane Coop Sparling	3.0 7.0 10.0
	23	Ottawa	Sunrise	2.0
	91	Fort Frances	Lake Gas	2.0
	246	Sept Iles	Soude R	1.0
	346	Kentville	Irving Thrifty	50.0 2.0
	350	Sydney	Scotia Propane	3.0
	401	Regina, Weyburn, Yorkton	Lo Cost	0.5
	406	Saskatoon	Canwest	5.0
	423	Edson	Neufeld	
	431	Fort St. John	Canwest	2.0
	443	Slave Lake/Red Earth	Cal-Gas Neufeld	1.0 17.0
	444	Grand Prairie	Canwest	2.0
	459	Red Deer/Rocky Mountain House	Cal-Gas Keebee Rex Propane	4.0 1.0 1.0
	707	Radium	Gas Plus	
	802	Nanimo/Victoria	Columbia Fuels	25.0
	807	Chetwynd	Neufeld Propane	1.0
	841	St. John's	North Atlantic	8.0

38. Of the 56 entries for which there are market share data, 32 of the market share estimates are 2% or less. Twenty of the entries have market shares greater than 2% but less than or equal to 10%. One might ask whether all of these new entrants will be profitable in the long run and whether they will be effective competitors and continue serving the market given the market shares that they have been able to acquire so far. Only four of the entries are greater than 10%. Of these, the market share estimate for Kelly's Fuels in Bancroft is an overestimate (see paragraph 36 above). The estimated market share for Neufeld in Slave Lake (17%) is too high.

Columbia Fuels, which has an estimated Nanaimo/Victoria market share of 25%, is an ICG bulk dealer. (Indeed, several other firms on the list, including Chemweld, BOC, Praxair, and Welders Source, are SPI agents.) Irving in Kentville had positive volume in 1997, so it is not a new entrant in 1998. There is also evidence that Budget, Co-op and Sparling were serving Barrie prior to 1998, that Canwest was serving Saskatoon prior to 1998, that Cal-Gas was serving Red Deer prior to 1998, and that Neufeld was an established propane dealer prior to 1998.

39. Also with respect to the new entrant list, it should be noted that on the basis of the spatial market analysis in my earlier affidavit, not all of the entrants are in the markets as listed in the table. For example, there are three entries for Edpro on the list. But Edpro only has one branch located in London, and it is not in two of the markets for which entries appear in the table. There are three entries for Budget Propane. But it only has one branch in Aurora, and it is not in two of the markets for which entries appear in the table. Lo Cost has two entries in the table, but its one branch located in Lethbridge is not in the markets as listed in the table. Sunrise has three entries in the table, but only one branch in Toronto. Sunrise is not in one of the markets as listed in the table. Sparling has three entries in the table, but it is not in one of the markets as listed in the table.

V. **Professor Carlton's Regressions and Market Share Data**

40. Professor Carlton, on p. 14 of his report, states that he uses 1998 market share estimates for both the 1997 and 1998 regression analysis. He assumes that shares by branch did not change substantially between 1997 and 1998. He presumably assumes this because if 1997 and 1998 shares are substantially different, using 1998 shares in a 1997 regression could cause an errors in variables problem. The coefficient estimate would then be biased towards zero. The assumption regarding 1997 and 1998 shares could have been tested given that SPI did provide 1997 market share estimates for a number of its branches. (See the SPI document, dated September 30, 1998, Bates Nos. 186286-186354.) Professor Carlton could also have used the 1997 market share estimates directly in his regressions.
41. Table 3 below provides a list of branches for which SPI has estimated both 1997 and 1998 market shares for SPI/ICG. The market share estimates are also provided.

Table 3
SPI /ICG Branch Trade Area Shares: 1997 and 1998

<u>Branch</u>	<u>SPI/ICG 1997</u> <u>Branch Area Share</u>	<u>SPI/ICG 1998</u> <u>Branch Area Share</u>
Moncton	58	35
Riviere du Loup	100	93
Cap-de-la-Madeleine	49	75
Drummondville	75	54.37
Joliette	38	38
Les Cedres	48	50
Vimont	48	48
St. Romuald	71	60
Sept Iles	82	97
Thetford Mines	46	65
Barrie	76	75
Pembroke	97	96
Kingston	82	85
Ottawa	73	71
Strathroy	63	57
Concord	79	65
Whitby	79	55
Dryden	100	100
Fort Frances	100	98
Peterborough	79	45
Sudbury	99	85
North Bay	98	98.7
Porcupine	90	75
Thunder Bay	100	100
Virden	70	65
Winnipeg	72	67
Maidstone	73	60
Prince Albert	40	40
Regina/Weyburn/Yorkton	72	68
Saskatoon	65	60
Swift Current	59	56
Calgary	61	62
Edmonton	63	51
Fort McMurray	99	98
Grand Prairie	88	73
Lethbridge	58	78
Peace River/High Level	86	72

<u>Branch</u>	<u>SPI/ICG 1997 Branch Area Share</u>	<u>SPI/ICG 1998 Branch Area Share</u>
Slave Lake	69	62
Medicine Hat	82	78
Red Deer	61	56
Red Earth Creek	74	62
Kamloops	72	72
Burns Lake	98	96
Terrace	87	98
Campbell River	92	88
Castlegar	100	70
Chetwynd	81	79
Fort St. John	70	60
Coquitlam	72	65
Cranbrook	80	76
Kelowna	54	58
Nanaimo/Victoria	78	55
Prince George	87	75
Watson Lake	100	100
Whitehorse	100	100

42. Clearly, there are significant differences in SPI's estimated market shares for some of the branches contained in Table 3. For example, the estimated SPI/ICG share in Moncton is 58% in 1997 and 35% in 1998, the estimated SPI/ICG share in Whitby is 79% in 1997 and 55% in 1998, the estimated SPI/ICG share in Peterborough is 79% in 1997 and 45% in 1998, and the estimated SPI/ICG share in Grand Prairie is 88% in 1997 and 73% in 1998. Other examples of major differences in market share estimates can also be found in Table 3. As discussed earlier, 1998 estimates should not be used in 1997 regressions.

VI. Conclusion

43. In this affidavit, I have highlighted some data problems that have appeared in Professor Carlton's analysis, particularly those involving market share estimates and compilations of branch lists. These data problems make it difficult to replicate Professor Carlton's results and to understand how the data sets used in his regression analysis were derived. In addition, I have found that Professor Carlton has inappropriately characterized the possibility of entry by U.S.-based propane dealers into the Canadian retail propane market. Such entry has not occurred and would face the same sort of obstacles as entry and expansion by Canadian firms.
44. Professor Carlton has constructed a table to illustrate the extent of new entry into retail propane markets in Canada in the last three years. He does not draw any conclusions from the information in the table, and given the absence of volume and share information, it is not clear that any conclusions can be drawn. I have reproduced his new entry table with market shares included. These data reveal that most new entrants have only acquired relatively small market shares since they entered the market.
45. Finally, Professor Carlton may have compromised his analysis by using 1998 share estimates in his 1997 regressions. SPI's market share estimates for 1997 and 1998 are not the same, and some of the estimates for a given market are substantially different.