

Competition Tribunal



Tribunal de la Concurrence

CT - 98 / 2 – doc # 54

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.  
Petro-Canada  
The Chancellor Holdings Corporation  
ICG Propane Inc.

Respondents



**ORDER REGARDING THE COMMISSIONER'S MOTION CONSIDERED AT THE  
PRE-HEARING CONFERENCE ON MAY 25, 1999: ICG MONITOR ISSUE,  
CONFIDENTIALITY ISSUES, CONFIDENTIALITY LEVEL OF THE ZIP DISK, AND  
ANDREW CARROLL'S EXAMINATION**

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**Date of Pre-hearing Conference:**

May 25, 1999

**Member:**

McKeown J. (presiding)

**Counsel for the Applicant:**

**The Commissioner of Competition**

William J. Miller  
Jo'Anne Strekaf  
Jennifer Quaid

**Counsel for the Respondents:**

**Superior Propane Inc.  
ICG Propane Inc.**

Neil Finkelstein  
Melanie Aitken  
Russell Cohen  
David Stevens

**Petro-Canada  
The Chancellor Holdings Corporation**

Randal T. Hughes

## COMPETITION TRIBUNAL

### ORDER REGARDING THE COMMISSIONER'S MOTION CONSIDERED AT THE PRE-HEARING CONFERENCE ON MAY 25, 1999: ICG MONITOR ISSUE, CONFIDENTIALITY ISSUES, CONFIDENTIALITY LEVEL OF THE ZIP DISK, AND ANDREW CARROLL'S EXAMINATION

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*The Commissioner of Competition*

v.

*Superior Propane Inc. et al.*

FURTHER TO the motion brought by the Commissioner of Competition ("Commissioner") for an order varying the Consent Interim Order of the Tribunal dated December 11, 1998 to allow the Tribunal to replace the existing monitor on application by the Commissioner or by the Respondents;

AND FURTHER TO the motion by the Commissioner for an order of the Tribunal to provide further direction to the parties regarding the nature of the documents and confidential information to be designated as Level A or as Level B pursuant to the Interim Confidentiality Order of the Tribunal dated April 9, 1999 and directing Superior Propane Inc. ("Superior") and ICG Propane Inc. ("ICG") to reconsider the confidentiality level of their documents and designate them as Level A or Level B in accordance with the Tribunal's direction;

AND FURTHER TO the motion by the Commissioner for an order of the Tribunal confirming that documents containing the mingled confidential business information of Superior

and ICG, as in the case of the Zip Disk described in the affidavit of John Pecman dated May 18, 1999, filed and served, be designated as Level A documents pursuant to the Interim Confidentiality Order;

AND ON READING the notice of motion, the memorandum of argument, the affidavits of John Pecman dated May 18 and 20, 1999, the supplementary affidavit of John Pecman dated May 25, 1999, and the affidavit of Kristine Robidoux dated May 18, 1999 and the affidavit of Mark Schweitzer dated May 20, 1999 in response;

AND ON HEARING the submissions of counsel for the Commissioner and the respondents on Tuesday, May 25, 1999;

AND FOR THE REASONS to follow shortly;

THE TRIBUNAL ORDERS THAT:

**ICG Monitor Issue**

1. The process with respect to replacing the monitor and the ancillary matters suggested by the parties on consent is approved.
2. With respect to the one part of the process where parties are not in agreement, the information obtained by the parties from the monitor is without prejudice to the litigation unless

otherwise agreed between the parties, provided that such information is obtained with prejudice to the operation of the Consent Interim Order.

3. If a party wishes to have certain information become part of the record for purposes of the litigation, it may request the other party to produce a further and better affidavit of documents.

### **Confidentiality Issues**

4. The respondents Superior and ICG shall reconsider the confidentiality level of their documents for which they seek a Level B designation.

5. The respondents Superior and ICG shall designate all their documents as described in the following three categories as Level A:

(a) the commercially sensitive information that would have a material impact on the competitive decision-making of Superior's operational managers and employees. Commercially sensitive information includes, among other things, information relating to individual customers, prices, discounts, rebates, customer inducements, marketing strategies, strategic business plans and any other matter that may have a material impact on Superior's competitive decision-making;

(b) the type of information which Petro-Canada has designated as Level A, which includes presentations to Petro-Canada board on the status of the "Project Wizard"

public offering of ICG, documents containing sales volumes and budgets, offers for ICG assets by parties other than Superior, information on supply, market outlook, and for the last three years, information on distribution and costs; and

(c) the branch-specific financial information regarding margins, revenue and profitability.

6. Documents referred in paragraph 5 shall continue to be designated as Level A until the respondents have reconsidered the confidentiality level of their documents in accordance with this order.

#### **Confidentiality Level of the Zip Disk**

7. The confidentiality level of the Zip Disk shall be designated as Level B.

#### **Mr. Andrew Carroll's Examination**

8. It is premature at this time to order Andrew Carroll to be produced for examination for discovery.

DATED at Ottawa, this 27<sup>th</sup> day of May, 1999.

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

(s) W.P. McKeown  
W.P. McKeown