

Competition Tribunal



Tribunal de la Concurrence

CT - 98 / 2 – doc - 71

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 MISCELLANEOUS MATTERS CONSIDERED AT  
THE PRE-HEARING CONFERENCE ON JUNE 16, 1999**

---

**Date of Pre-hearing Conference:**

June 16, 1999

**Members:**

McKeown J. (presiding)  
Dr. Lawrence P. Schwartz

**Counsel for the Applicant:**

**The Commissioner of Competition**

William J. Miller  
Jo'Anne Streckf

**Counsel for the Respondents:**

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

Neil Finkelstein  
Melanie L. Aitken  
David Stevens

**Petro-Canada  
The Chancellor Holdings Corporation**

Barry Zalmanovitz

**COMPETITION TRIBUNAL**

**ORDER REGARDING MISCELLANEOUS MATTERS CONSIDERED AT  
THE PRE-HEARING CONFERENCE ON JUNE 16, 1999**

---

*The Commissioner of Competition*

v.

*Superior Propane Inc. et al.*

FURTHER TO the motion brought by Superior Propane Inc. (“Superior”) and ICG Propane Inc. (“ICG”) for an order designating certain ICG documents as Level B documents in accordance with the Interim Confidentiality Order, dated April 9, 1999 and the Order Regarding the Commissioner’s Motion Considered at the Pre-hearing Conference on May 25, 1999;

AND FURTHER TO the motion brought by Superior and ICG for an order permitting Andrew Carroll, an employee of Superior, to view the ICG documents designated as Level B;

AND FURTHER TO the motion brought by Superior and ICG for an order requiring the Commissioner of Competition (“Commissioner”) to answer certain questions refused at the examination for discovery of John Pecman on May 19 and 21, 1999;

AND FURTHER TO the motion brought by the Commissioner for an order requiring the designated representative of Superior, Mark Schweitzer, to provide complete answers to the undertakings taken under advisement at his examination for discovery, as listed at paragraph 3(a)

in the affidavit of John Pecman dated June 9, 1999, and to re-attend for examination for discovery;

AND FURTHER TO the motion brought by the Commissioner for an order requiring the designated representatives of ICG, Andrea Cherkas and Geoff Mackey, to provide complete answers to the undertakings taken under advisement at their examination for discovery, as listed at paragraph 4 in the affidavit of John Pecman dated June 9, 1999;

AND FURTHER TO the motion brought by the Commissioner for an order requiring Andrea Cherkas and Geoff Mackey to re-attend for examination for discovery and give answers to questions or undertakings to make inquiries to determine the information of ICG with respect to certain questions put to them or undertakings requested at their examination for discovery on May 13, and 14, 1999 and on June 2 and 3, 1999, as listed at paragraph 5 in the affidavit of John Pecman dated June 9, 1999;

AND ON READING the notice of motion and the memorandum of argument of Superior and ICG, the affidavit of Mark Schweitzer dated June 8, 1999, and the memorandum of argument of the Commissioner in response;

AND ON READING the notice of motion and the memorandum of argument of the Commissioner, the affidavit of John Pecman dated June 9, 1999, and the memorandum of argument of Superior and ICG in response;

AND ON HEARING the submissions of counsel for the respondents, Superior and ICG and the Commissioner;

THE TRIBUNAL ORDERS THAT:

1. With respect to the examination for discovery of John Pecman, counsel for the respondents, Superior and ICG, shall conduct their examination by either having Mr. Pecman available by telephone in Ottawa on July 7, 1999 or examine him in person in Ottawa on July 7 or 8, 1999.

**Designation of certain ICG documents as Level B**

2. A new category of protected documents shall be designated as Level A-1. ICG shall designate all its documents as described in the following categories as Level A-1: the strategic business plans, the documents containing sales volumes and budgets, the information on supply and, for the last three years the information on distribution and costs.

3. Protected documents designated as Level A-1 may be disclosed to the persons who have acquired access to protected documents designated as Level A pursuant to the Interim Confidentiality Order, dated April 9, 1999, as well as to Mark Schweitzer, the designated representative of Superior, for the purpose of assisting counsel for Superior and ICG in preparing the efficiencies defence.

4. With respect to the protected documents designated as Level A-1, Mark Schweitzer shall remain bound by any confidentiality agreement executed by him in accordance with the Interim Confidentiality Order dated April 9, 1999.

5. On or before July 15, 1999, counsel for Superior and ICG shall provide counsel for the Commissioner with a list of the protected documents to be designated as Level A-1.

6. Protected documents to be designated as Level A-1 pursuant to this order which have not yet been produced to the Commissioner shall be produced to the Commissioner.

**Andrew Carroll permission to view documents designated as Level A-1**

7. Andrew Carroll, an employee of Superior, shall not be granted access to view the documents designated as Level A-1.

**Questions taken under advisement by Superior**

8. With respect to branch specific questions for Superior provided in written form, by Exhibit D-16 to the Superior transcript, Superior shall provide the information identified as (i) to (vii) at page 8 of its memorandum of argument in response to the Commissioner's motion, a complete list of the branches closed down in the last three years, and the answers to questions 1, 27, 29, and 30. In addition, if the satellite branches referred to at questions 6 and 14 do report volume sales data directly to Superior's head office, answers to these questions shall be provided to the extent that the information is available.

### **Questions taken under advisement by ICG**

9. With respect to the questions posed in Exhibit D-18 to the ICG transcript, and for which ICG has refused to provide answers, ICG shall provide answers to questions 4, 5 and 13. In addition, ICG shall provide a list of all its branches including satellites and identify which satellite is attached to which branch along with the current business plans of all the branches enumerated at paragraph 2 of Exhibit D-18 in the affidavit of John Pecman, to the extent that the information is available.

### **Refusals from continued examination for discovery of ICG representatives**

10. With respect to ICG's refusal at pages 799 and 800 of the ICG transcript to undertake to make inquiries and advise if ICG has prepared or had prepared any studies regarding the willingness of consumers of alternate fuels to switch amongst alternative fuels between 1995 and 1999, ICG shall advise if it has prepared or had prepared any studies regarding the willingness of consumers of alternative fuels to switch amongst alternative fuels between 1995 and 1999 and produce them if they have not yet been produced.

11. With respect to pages 938 and 939 of the ICG transcript, ICG shall advise what outsourcing is performed by Canada Post and any other outside organization that assists in billing or payments and shall provide particulars of that, including the cost and any information as to whether or not this is more advantageous than doing it in-house.

**Answers to questions for which answers were refused at the examination for discovery of John Pecman**

12. The Commissioner shall provide either expurgated notes or an aggregated summary of the discussions which the Competition Bureau has had with customers and competitors who are not complainants, to the extent that such information has not yet been provided by way of discovery or otherwise. The Commissioner need not provide the names or other details which might identify the customer or competitor who is not a complainant.

13. The Commissioner shall advise counsel for Superior and ICG whether the Commissioner is taking the position that market power is measured by the ability to raise the total retail or distribution price of propane, or by reference to the propane gross margins, when this information becomes available and in any event at the time of production of his experts reports.

14. The reasons will follow shortly with respect to the order regarding the confidentiality designation of certain ICG documents as Level A-1 and regarding the refusal to grant Andrew Carroll access to view certain ICG documents, and some other miscellaneous matters referred to in this order.

DATED at Ottawa, this 16<sup>th</sup> day of June, 1999.

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

(s) W.P. McKeown \_\_\_\_\_  
W.P. McKeown