CT-98/2

THE COMPETITION TRIBUNAL

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 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 Director of Investigation and Research for orders pursuant to s. 92 and other provisions of the *Competition Act* consequential thereto

BETWEEN:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

APPLICANT

- and –

SUPERIOR PROPANE INC., PETRO-CANADA, THE CHANCELLOR HOLDINGS CORPORATION and ICG PROPANE INC.

RESPONDENTS

RESPONSE OF PETRO-CANADA AND THE CHANCELLOR HOLDINGS CORPORATION TO FRESH AS AMENDED NOTICE OF APPLICATION

SUMMARY OF RESPONSE

1. These Respondents oppose the application brought by the Director under section 92 of the *Competition Act* ("Act") as set out in the Fresh as Amended Notice of Application ("Application") on the grounds that:

(a) The acquisition of ICG Propane Inc. ("ICG") by Superior Propane Inc. ("Superior"), hereinafter referred to as the "Merger"), does not prevent or lessen and is not likely to prevent or lessen competition substantially in any relevant market;

(b) Alternatively, and in any event, the Merger has brought about or will likely bring about gains in efficiency that will be greater than and will offset the effects of any prevention or

lessening of competition that will result or likely result from the Merger, and such gains in efficiency could not be realized without the Merger;

(c) In the further alternative, if the Tribunal finds that a remedial order should be issued under section 92 of the Act, these Respondents oppose the issuance of any order that would require the Merger to be dissolved or any order that would impose any obligations on these Respondents with respect to the dissolution of the Merger or disposal of assets or shares.

ADMISSIONS AND DENIALS

2. These Respondents adopt the admissions and denials set out in the Response filed on behalf of Superior and ICG.

STATEMENT OF GROUNDS AND MATERIAL FACTS

3. In support of the grounds set out in paragraphs 1(a) and (b) above, these Respondents also adopt the statement of grounds and material facts set out in the Response filed on behalf of Superior and ICG.

4. The grounds on which these Respondents oppose the Application for relief to the extent that it seeks a dissolution of the Merger and the material facts upon which these Respondents rely are as follows:

(a) In 1996, Petro-Canada decided to dispose of ICG. In June of 1998, Petro-Canada was in the course of disposing of ICG by way of a public offering through an Income Fund Trust ("IFT"), when Superior expressed an interest in acquiring ICG. Superior believed that the transaction would not ultimately be found to result in a substantial lessening of competition, and represented to Petro-Canada that it was prepared to take on the risks associated with possible proceedings under the Act.

(b) Between June 19, 1998 and June 29, 1998, representatives of these Respondents (who at the time also represented ICG) and Superior had discussions with representatives of the Applicant to discuss an interim arrangement that would permit these Respondents to sell ICG to Superior and avoid the risk of being required as a result of proceedings under the Act to take back the ICG shares. On the morning of June 29, 1998 based in part on the apparent willingness of the Applicant's representatives to accommodate these

Respondents' concern about ultimately being required to take back the shares of ICG, Petro-Canada withdrew the public offering of the IFT. In the afternoon of June 29, 1998, after these Respondents had withdrawn the IFT, the Applicant's representatives advised these Respondents that the Applicant would not be prepared to provide a favourable advisory opinion concerning an interim arrangement that would address their concerns before completing a review of the proposed Merger. The facts in this paragraph are not intended as criticism of the Applicant or his representatives but are provided as relevant background.

(c) In July of 1998, the parties entered into a Share Purchase Agreement under which Superior agreed to acquire the shares of ICG and notified the Applicant pursuant to Part IX of the Act. The prescribed waiting period under the Act expired July 27, 1998. However, the parties had voluntarily agreed to give the Applicant 21 days' notice of their intention to close the transaction. On October 9, 1999, the parties gave the Applicant notice of their intention to close on October 31, 1999; however, at the request of the Applicant agreed to defer the closing and continued the agreement to give the Applicant 21 days' notice of their intention to close in order to give the Applicant more time to complete a review of the Merger and to bring any application for interim relief. The Applicant had previously stated that he would provide preliminary conclusions of his review of the Merger by October 30, 1998 and a final conclusion by November 30, 1998. On November 16, 1998, the parties gave notice to the Applicant of their intention to close the transaction on December 7, 1998.

(d) On November 30, 1998 the applicant filed a Notice of Application with the Competition Tribunal ("Tribunal") for interim relief under section 100 of the Act and on December 6, 1998 the Tribunal dismissed the application.

(e) On December 7, 1998 the parties closed the Share Purchase Agreement.

(f) On December 11, 1998, in response to an application by the Applicant under section 104 of the Act, the Tribunal issued a Consent Interim Order (the "Consent Interim Order") which, *inter alia:* acknowledged that the Merger had been completed; required Superior to hold separate the business of ICG but permitted the integration of some of the business and the assets; permitted changes to the Board of Directors and the appointment by Superior of two interim managers to assume complete managerial responsibilities over the operation of ICG. These Respondents did not consent to the

order. They did not oppose the consent interim order as it imposed no obligations on them.

5. If the Tribunal finds that an order under section 92 of the Act should be made, an order dissolving the Merger would not be necessary to restore competition to the point where it no longer results in a substantial lessening or prevention of competition.

6. In addition, an order dissolving the Merger would be difficult, impractical and costly to implement and would likely result in unfairness, given that there has been a change in management, some integration of the two businesses and the passage of considerable time and its attendant changes in market circumstances.

7. Further, an order dissolving the Merger would not be the most effective remedy because these Respondents are not committed to owning ICG and would, if required to take back ICG, again take steps to dispose of ICG to a third party.

8. In the circumstances, these Respondents submit that the Tribunal should exercise its discretion against issuing an order dissolving the Merger because such an order would likely have intrusive and punitive effects or would involve complex issues of costs, compensation and/or adjustments as between the parties to the Merger when other remedies that would be effective in remedying any substantial lessening or prevention of competition would be available.

Procedural Issues

9. These Respondents agree to the Application being heard in Calgary, Alberta.

10. These Respondents agree to the use of the English language in these proceedings.

11. For the purpose of this Application, service of all documents on these Respondents may be served on:

Barry Zalmanowitz
Fraser Milner
2900, 10180 – 101 Street
Edmonton, Alberta T5J 3V5
Phone (780) 423-7344
Fax (780) 423-7276

or

Randal T. Hughes
Fraser Milner
1 First Canadian Place
100 King Street West
Toronto, Ontario M5X 1B2
Phone (416) 863-4446
Fax (416) 863-4592

DATED at Edmonton, Alberta this 29th day of January, 1999.

FRASER MILNER

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Randal T. Hughes	Barry Zalmanowitz

Counsel for Petro-Canada and The Chancellor Holdings Corporation

[EDMDOCS/BZALMANOWIT/29782.1]