

Competition Tribunal



Tribunal de la Concurrence

CT - 98 / 2 – doc # 38

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



INTERIM CONFIDENTIALITY ORDER

Decided on the basis of the written record.

Member:

McKeown J. (presiding)

Counsel for the Applicant:

The Commissioner of Competition

William J. Miller

Jo'Anne Streckf

Steve Robertson

Jennifer Quaid

Counsel for the Respondents:

Superior Propane Inc.

ICG Propane Inc.

Neil Finkelstein

Petro-Canada

The Chancellor Holdings Corporation

Randal T. Hughes

Barry Zalmanowitz

COMPETITION TRIBUNAL

INTERIM CONFIDENTIALITY ORDER

The Commissioner of Competition

v.

Superior Propane Inc. et al.

FURTHER TO the motion by the Commissioner of Competition for an interim confidentiality order;

AND FURTHER TO the draft interim confidentiality order filed on consent by the parties;

THE TRIBUNAL ORDERS THAT:

1. For purposes of this order:
 - (a) "protected documents" shall mean the documents listed in the affidavits of documents filed by the parties in this application, or otherwise produced in this application, with respect to which claims for confidentiality have been advanced which claims have not been withdrawn in writing or determined by the Tribunal, and shall consist of Level A protected documents and Level B protected documents. Protected documents adduced in evidence at the hearing of this application shall be identified as such and clearly marked as Level A or Level B protected documents.

(b) Level A - Protected documents designated as "Level A" may be disclosed to counsel for the parties, counsel's staff directly involved in this application, independent experts retained by the parties, the Commissioner of Competition ("Commissioner") and the Commissioner's staff directly involved in this application.

(c) Level B - Protected documents designated as "Level B" may be disclosed to counsel for the parties, counsel's staff directly involved in this application, independent experts retained by the parties, the Commissioner, the Commissioner's staff directly involved in the application and the representatives of each respondent (notwithstanding the provisions of the Interim Consent Order dated December 11, 1998) who have been designated pursuant to paragraph 10 of this order.

2. This order shall apply to all persons, to the extent that they acquire access to protected documents through this application.

3. No protected documents produced in this application shall be disclosed except with the prior written consent of the person that claimed confidentiality over the document or in accordance with this order or any other order of the Tribunal.

4. Each party shall provide a copy of the protected documents listed in its affidavit of documents or otherwise produced by it in this application to counsel for each other party who requests a copy.

5. A party may, at its option, provide another party with copies of electronic versions of its documents. Copies of electronic versions of documents may be used at the hearing of this application.

6. On or before April 15, 1999, each respondent shall provide counsel for each other party with written notice identifying the confidentiality level claimed by it with respect to the protected documents listed on its affidavit of documents.

7. On or before April 15, 1999, the Commissioner shall provide counsel for each other party with written notice identifying the confidentiality level claimed by the Commissioner with respect to the protected documents listed in its affidavit of documents which were not obtained from the other parties to the application. Documents listed in the Commissioner's affidavit of documents which were obtained from the other parties to the application shall, on a preliminary basis, be afforded the confidentiality level claimed by that party, pending further determination of the confidentiality level pursuant to this order.

8. Following the exchange of documents, the parties shall use their best efforts to agree on appropriate levels of confidentiality for the documents or portions of the documents. If agreement cannot be reached, the parties may apply to the Tribunal to determine the confidentiality or level of confidentiality of any document or portion of a document.

9. In the event that it proves necessary, a pre-hearing conference shall be held on or before August 19, 1999 to deal with outstanding claims of confidentiality over any documents or portions of documents likely to be adduced into evidence at the hearing of this application.

10. Each respondent may designate two individuals as its representatives who will be permitted access to Level B protected documents in accordance with the terms of this order. Such designation shall be made by written notice to the Tribunal, with copies sent to all parties.

11. Counsel for a party may disclose Level A protected documents to counsel's staff directly involved in this application, to independent experts retained by the parties, to the Commissioner and to the Commissioner's staff directly involved in this application.

12. Counsel for a party may disclose Level B protected documents to counsel's staff directly involved in this application, to independent experts retained by the parties, to the representatives designated by each respondent pursuant to paragraph 10 of this order, to the Commissioner and to the Commissioner's staff directly involved in this application.

13. Prior to gaining access to protected documents referred to in this order, independent experts and designated representatives permitted by this order to such access shall execute a confidentiality agreement in the form attached as Schedule A. A confidentiality agreement signed pursuant to this order shall be filed promptly with the Registrar of the Tribunal who shall retain all such agreements in confidence until completion or final disposition of this application and any related appeals, at which time the agreements may be disclosed to the parties upon request.

14. If a party is required by law to disclose a protected document, or if a party receives written notice from a person who has signed a confidentiality agreement pursuant to this order

that they are required by law to disclose a protected document, that party shall give prompt written notice to the party that claimed confidentiality over the protected document so that the party that claimed confidentiality may seek a protective order or other appropriate remedy.

15. For greater certainty, all persons, including the Commissioner and his staff, who obtain access to documents through the discovery process in this application are subject to an implied undertaking to use the documents and information for the purposes of this application and any related appeals only.

16. Counsel for a party, and the Commissioner and his staff, may make such copies as they require in connection with these proceedings. Copies of protected documents may be provided to representatives designated by each respondent pursuant to paragraph 10 of this order and to independent experts retained by a party.

17. Upon completion or final disposition of this application and any appeals, all protected documents and any copies of protected documents disclosed in accordance with this order, with the exception of protected documents in the possession of the Commissioner and his staff, shall be returned to the party that listed the documents in its affidavit unless the documents have become public or the party that listed the documents states, in writing, that they may be disposed in some other manner. The protected documents and any copies in the possession of the Commissioner and his staff shall be dealt with as directed by the Tribunal.

18. The termination of proceedings in this application shall not relieve any person to whom protected documents were disclosed pursuant to this order from the obligation of maintaining the confidentiality of such information in accordance with the provisions of this order and any confidentiality agreement.

19. This order shall be subject to further direction of the Tribunal.

DATED at Toronto, this 9th day of April, 1999.

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

(s) W.P. McKeown

W.P. McKeown

W.P. McKeown
SCHEDULE A

IN CONSIDERATION of being provided with information or documentation in connection with this application over which claims for confidentiality have been advanced, I,

_____, of the City of

_____, in the Province of _____, hereby agree to maintain the confidentiality of the information or documentation so obtained. I will not copy or disclose the information or documentation so obtained to any other person, except (a) counsel for the party on whose behalf I have been retained and members of his or her firm who are directly involved in this application; (b) other experts retained by or on behalf of the party on whose behalf I have been retained and who have signed a similar confidentiality agreement with the parties to this application; and (c) persons permitted by order of the Competition Tribunal, nor will I use the information or documentation so obtained for any purpose other than in connection with this application and any related appeals only.

Upon completion of this application and any related appeals, I agree that such information or documentation, and any copies of same, shall be dealt with in accordance with instructions from counsel for the party I am retained by or as prescribed by order of the Competition Tribunal.

I acknowledge that I am aware of the order granted by the Competition Tribunal on _____, in this regard, a copy of which is attached to this agreement, and agree to be bound by same. I acknowledge that any breach of this agreement by me will be considered to be a breach of the said order of the Competition Tribunal. I further acknowledge and agree that the Commissioner of Competition ("Commissioner"), Superior Propane Inc., Petro-Canada, The Chancellor Holdings Corporation and ICG Propane Inc. or any other owner of the information or documentation may not have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this agreement are not performed in accordance with its specific terms or otherwise breached. Accordingly, I agree that any one or more of the Commissioner, Superior Propane Inc., Petro-Canada, The Chancellor Holdings Corporation and ICG Propane Inc. or any other owner shall be entitled to injunctive relief to prevent breaches of this agreement and to specifically enforce the terms and provisions hereof, in addition to any other remedy to which they may be entitled at law or in equity.

In the event that I am required by law to disclose any of the information or documentation which is subject to this agreement, I will provide (insert name of retaining or employing party) with prompt written notice so that the person that claimed confidentiality over such information or documentation may seek a protective order or other appropriate remedy. In any event, I will furnish only that portion of the information or documentation which is legally required and I will exercise my best efforts to obtain reliable assurance that confidential treatment will be accorded to the information or documentation.

I will promptly, upon the request of the person providing the information or documentation, advise where such material is kept by me and at the conclusion of my involvement in this application and any related appeals, deliver to the said person the material without retaining any copies thereof. I will destroy all documents received by me relating to the material, except that I may retain in my confidential files, subject to the requirements of confidentiality imposed by this agreement, materials prepared by me, such as study results and materials of a general nature which do not replicate any confidential information.

I hereby attorn to the jurisdiction of the Federal Court of Canada and/or the Competition Tribunal to resolve any disputes arising under this agreement.

SIGNED, SEALED AND DELIVERED before a witness this ____ day of _____, 1999.

(Witness Signature)

(Signature)

(Print Name)

(Print Name)