

Competition Tribunal



Tribunal de la Concurrence

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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.
ICG Propane Inc.

Respondents



**ORDER REGARDING MISCELLANEOUS MATTERS CONSIDERED
AT THE PRE-HEARING CONFERENCE ON AUGUST 19, 1999**

Dates of Pre-hearing Conference:

August 19, 1999

Member:

Nadon J. (presiding)

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
Russell Cohen

COMPETITION TRIBUNAL

**ORDER REGARDING MISCELLANEOUS MATTERS CONSIDERED
AT THE PRE-HEARING CONFERENCE ON AUGUST 19, 1999**

The Commissioner of Competition

v.

Superior Propane Inc.
ICG Propane Inc.

FURTHER TO the motion brought by Superior Propane Inc. (“Superior”) and ICG Propane Inc. (“ICG”) for an order prohibiting the Commissioner of Competition (“Commissioner”) from filing a rebuttal or reply affidavit on efficiencies if no expert affidavit on efficiencies is served by the Commissioner on August 18, 1999, in the alternative, for an order requiring the Commissioner to serve any expert affidavit on efficiencies on the respondents by August 30, 1999;

AND FURTHER TO the motion brought by the Commissioner for an order extending the date for the pre-hearing conference at which any outstanding claims of confidentiality over any documents or portions of documents likely to be adduced in evidence at the hearing of this application are to be settled until September 10, 1999 or such other date as may be determined by the Tribunal;

AND FURTHER TO the motion brought by the Commissioner for an order extending the date by which the Commissioner shall be at liberty to file expert econometric evidence until 10 days following the satisfactory delivery of electronic data;

AND FURTHER TO the motion brought by the Commissioner for an order prohibiting counsel for Superior and ICG from providing to Mark Schweitzer, Grant Billing or Peter Jones any of the expert reports containing confidential or commercially sensitive information that they would not otherwise be entitled to review;

AND FURTHER TO the Order Regarding Scheduling dated February 16, 1999 and the Order Amending Order Regarding Scheduling dated May 26, 1999;

AND ON READING the notice of motion and the memoranda of argument of Superior and ICG, the affidavit of David Stevens, dated August 12, 1999, the memorandum of argument of the Commissioner and the affidavit of John Pecman, dated August 17, 1999, in response;

AND ON READING the notice of motion and the memorandum of argument of the Commissioner, the affidavits of Marc Duhamel and John Pecman, dated August 13, 1999, the memoranda of argument of Superior and ICG, the affidavit of Peter Jones, dated August 14, 1999, and the affidavit of David Stevens, dated August 17, 1999, in response;

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

THE TRIBUNAL ORDERS THAT:

Expert affidavits, affidavits in rebuttal and in reply with respect to econometric evidence

1. The Commissioner shall serve and file expert affidavits regarding econometric evidence by August 30, 1999.
2. The respondents shall serve and file rebuttal expert affidavits by September 27, 1999.
3. The Commissioner shall serve and file reply expert affidavits by October 4, 1999.

Pro-forma affidavits of witnesses evidence under oath

4. The Commissioner shall serve on the respondents the Commissioner's pro-forma affidavits of witnesses evidence under oath available as of August 23, 1999, and the unsworn summaries available on that date. The unsworn summaries provided on August 23, 1999, shall be served on the respondents in the form of pro-forma affidavits of witnesses evidence under oath as soon as possible.

Expert affidavits in rebuttal and in reply with respect to efficiencies

5. The Commissioner shall serve and file rebuttal expert affidavits on efficiencies by September 14, 1999.

6. Superior and ICG shall serve and file expert reply affidavits on efficiencies by October 5, 1999.

7. Superior and ICG and the Commissioner shall designate any confidential or commercially sensitive information contained in their expert reports as level A, level A-1 or level B in accordance with the Interim Confidentiality Order, dated April 9, 1999, the Order Regarding the Commissioner`s Motion Considered at the Pre-hearing Conference on May 25, 1999, dated May 27, 1999, and the Order Regarding Miscellaneous Matters Considered at the Pre-hearing Conference on June 16, 1999. Counsel for Superior and ICG and the Commissioner shall exchange a list setting out the information contained in their expert reports designated as level A, level A-1 or level B by August 27, 1999. In case of disagreement regarding the confidentiality designation of such information, parties shall notify the Tribunal as promptly as possible. In such event, the Tribunal will designate the confidential information in question as level A, level A-1 or level B. The Tribunal will determine what information contained in the expert reports Mark Schweitzer and Peter Jones will be entitled to review, based on the confidentiality designation of such information.

Procedural matters

8. A telephone conference shall be held on September 14, 1999, at 10:00 a.m.(EDT) to deal with any outstanding procedural matters.

DATED at Ottawa, this 24th day of August, 1999.

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

(s) Marc Nadon
Marc Nadon