

Record

COMPETITION TRIBUNAL		P R O D U C T
TRIBUNAL DE LA CONCURRENCE		
CT-98/02		
DEC 8 1998		
F I L E D	REGISTRAR - REGISTRAIRE	
OTTAWA, ONT. # 26		

**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 an interim order pursuant to section 100 of the *Competition Act*.

**BETWEEN:**

**THE DIRECTOR OF INVESTIGATION  
AND RESEARCH**

Applicant

- and -

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

Respondents

**MEMORANDUM OF ARGUMENT  
OF THE RESPONDENTS PETRO-CANADA,  
THE CHANCELLOR HOLDINGS CORPORATION  
AND ICG PROPANE INC.**

**INTRODUCTION**

1. These Respondents rely on the Memorandum of Argument filed on behalf of Superior and the authorities relied on therein.

## **BACKGROUND OF TRANSACTION**

2. Petro-Canada decided in 1996 to dispose of ICG and thereafter initiated a process by which that would occur. Discussions with the Competition Bureau with respect to a possible transaction with Superior began on or about June 19, 1998. Superior stated that it was willing to take on the risks relating to any possible proceedings under the *Competition Act* (the "Act"). On June 29, 1998, based in part on the apparent willingness of the Competition Bureau to be flexible and accommodate its concerns regarding the risks associated with any possible proceedings under the Act, Petro-Canada and its subsidiary, The Chancellor Holdings Corporation (collectively, "Petro-Canada"), decided to pursue an agreement with Superior.

### **Affidavit of Andrew Stephens, paragraphs 2-13**

3. The parties executed a share purchase agreement as of July 20, 1998, and notified the Director of such pursuant to Part IX of the Act on July 21, 1998. The agreement provided that the transaction was to close by December 15, 1998, the initially proposed closing date being October 30, 1998. Subsequently, the parties agreed to postpone the intended closing and, on three weeks' notice to the Bureau, advised of the revised intended closing date, being December 7, 1998.

### **Affidavit of Andrew Stephens, paragraphs 14-15**

4. The Bureau's review of the proposed transaction is detailed in the Affidavit of John Pecman on behalf of the Applicant. The Bureau provided its preliminary conclusions on October 30, 1998, and confirmed its final conclusions on November 30, 1998.

### **Affidavit of John Pecman; Affidavit of Andrew Stephens, paragraph 16**

## **HOLD SEPARATE ARRANGEMENTS**

5. Throughout the period of the Bureau's review of the proposed transaction, Petro-Canada has continued to pursue reasonable hold separate arrangements with the Bureau which would:
- (a) Permit a full review of the proposed merger by the Director;
  - (b) Preserve ICG as a separate and viable competitive entity pending completion of a review under the merger provisions of the Act by the Director; and

sought by the Director to prevent closing of the proposed transaction is more intrusive or restrictive than necessary to ensure the Tribunal's ability to remedy the effect of the proposed merger on competition would not be substantially impaired.

10. The parties believe that the proposed transaction will not result in a substantial lessening of competition and will generate great efficiencies in the propane distribution and supply business. If the transaction does not proceed, these benefits will not be realized.

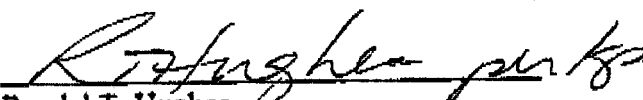
**Affidavit of Andrew Stephens, paragraph 24**

**CONCLUSION**

11. The two material issues on which the Director and the parties differ, namely the substantial lessening of competition and efficiencies, will be determined by the Tribunal after a full proceeding under section 92 of the Act. It is submitted that, in the interim, it is in the public interest for the Tribunal to permit the transaction to close under the hold separate arrangement proposed by Superior since that will preserve the opportunity for the transaction to be completed and, at the same time, preserve the Tribunal's ability to remedy the effect of the proposed acquisition on competition under section 92 of the Act.

**Affidavit of Andrew Stephens, paragraphs 24 and 26**

All of which is respectfully submitted this <sup>3rd</sup> day of December, 1998.

  
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