

Record

Tribunal File No. CT-98/2

THE COMPETITION TRIBUNAL

COMPETITION TRIBUNAL		P R O D U I T
TRIBUNAL DE LA CONCURRENCE		
DEC 3 1998		
REGISTRAR - REGISTRAIRE		
OTTAWA, ONT. #13(4)		

IN THE MATTER OF THE *COMPETITION ACT*, R.S.C. 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 section 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

AFFIDAVIT OF PETER D. JONES

I, PETER D. JONES, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY:

I. Introduction

1. I am Vice President, Western Operations of Superior Propane Inc. ("Superior") and have held this position since November, 1997. As such, I have personal knowledge of the matters set out herein. Unless otherwise stated, all statements made in this affidavit are based on my knowledge, information and belief, due to my position with Superior. Where I have been provided with information, I believe such information to be true.

2. At Superior, I am responsible for Superior's operations in western Canada, including managing supply, transportation, safety, and over 50 retail distribution branches. Aside from my day-to-day duties, I have been responsible for the following initiatives since joining Superior: (i) coordinating the development of Business Plans for all Branches; (ii) reorganizing the Branch/Region structure to improve profitability; (iii) negotiating collective agreements; and (iv) revising Superior's supply and inventory storage strategy. Prior to becoming Vice President, Western Operations, I was Vice President and Chief Information Officer at Norcen Energy Resources Limited. Attached hereto as Exhibit "A" is a copy of my current résumé.

II. The Proposed Acquisition

3. Pursuant to a Share Purchase Agreement entered into on July 20, 1998 (the "SPA"), Superior agreed to acquire from The Chancellor Holdings Corporation, a wholly-owned indirect subsidiary of Petro-Canada, all of the issued and outstanding shares of ICG Propane Inc. ("ICG"), another wholly-owned indirect subsidiary of Petro-Canada, for a purchase price of \$175 million (the "Proposed Acquisition").

4. The SPA anticipated a closing of the Proposed Acquisition on October 30, 1998, and expressly provided that, in any event, if the closing had not occurred by

December 15, 1998, Petro-Canada would be free to walk away from the Proposed Acquisition. At the same time, Superior is obliged, under the SPA and the accompanying mutual covenant side-letter, to use its *best efforts* to close the Proposed Acquisition by December 15, 1998, failing which it may be liable to ICG for damages. If the transaction does not close by December 15, 1998, Superior will lose its right to purchase the shares of ICG and its opportunity to realize the considerable efficiencies from the merger of its operations with ICG's operations.

III. The Director's Application

5. The Director seeks to enjoin the closing of the Proposed Acquisition for a period of 21 days, which, if granted, would extend to December 25, 1998; i.e., a date after December 15, 1998, the last possible date on which the Proposed Acquisition can close pursuant to the SPA and related agreements.

IV. Superior's Proposed Hold-Separate Arrangement

6. I have read the affidavit of Mark Schweitzer and I understand that it is being filed with the Tribunal in response to the Director's application for an order pursuant to s. 100 of the Act enjoining the closing of the Proposed Acquisition, and in support of closing the Proposed Acquisition under the terms proposed by Superior as set out in the draft hold-separate Order attached to Mr. Schweitzer's affidavit as Exhibit "U".

7. Superior is very concerned that the value of ICG will be deeply eroded if the Tribunal permits the Proposed Acquisition to close yet prohibits Superior from implementing the merger. In particular, as Mr. Schweitzer has expressed in his affidavit, Superior is concerned that, following closing, a number of key ICG personnel would leave ICG to exploit financial incentives built into their employment agreements; other key individuals would be likely to leave ICG due to the persisting uncertainty.

- 4 -

V. Appointment as Interim Managers at ICG

8. To address this risk, Mr. Schweitzer, on behalf of Superior, proposes immediately putting effective and knowledgeable leadership in place at ICG to support the company in meeting its financial goals, promoting its competitiveness, and ensuring effective management during the period of any interim period. The new interim management would be comprised of two individuals presently employed by Superior, including me, who, prior to joining ICG, would terminate their employment and sever all employment ties to Superior.

9. I understand and accept that following my termination from Superior, I will have no legally enforceable guarantee or right of re-employment at Superior in the event that, ultimately, Superior is not permitted to fully implement its acquisition of ICG, or I am otherwise terminated by ICG.

10. Following my termination from Superior, I would be hired as Senior Vice President, Chief Operating Officer of ICG, on the following terms.

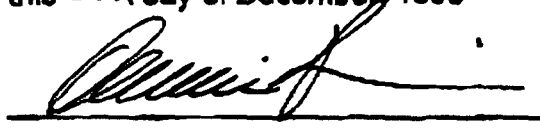
- (i) an annual salary of \$165,000;
- (ii) an incentive bonus that is tied to maintaining and improving operating cash flow will be implemented in 1999 and focus on retaining value in ICG. The value of the incentive could range from 0-100% of base salary depending on financial performance;
- (iii) benefits equivalent to those currently offered to ICG executives; and
- (iv) a severance package equal to two years' salary in the event of constructive dismissal or upon a change of control of ICG if it is sold to a third party.

11. I further understand and accept that, once at ICG, I will be prohibited from communicating any confidential information to any person not involved in the management or operations of ICG and, for greater certainty, I will be prohibited from disclosing any confidential information to Superior.

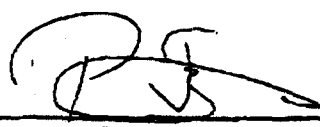
12. I have been managing Superior's business operations in western Canada since November 1997. I believe that I have the knowledge and experience in the propane industry to manage ICG effectively. I am confident that, under my management, ICG will continue as a vigorous competitor to Superior, thereby preserving, if not enhancing, its value.

13. I swear this affidavit in response to the application of the Director for an interim order pursuant to s. 100 of the Act enjoining the closing of the Proposed Acquisition and in support of the hold-separate order proposed by Superior and attached as Exhibit "U" to Mr. Schweitzer's affidavit, and for no other or improper purpose.

SWORN BEFORE ME at the City of
Calgary, in the Province of Alberta,
this 3rd day of December, 1998



Commissioner for taking Affidavits, etc.
in the Province of Alberta


PETER D. JONES

HERESA R. REISCH
MY COMMISSION EXPIRES
ON JUNE 11, 1999