

Competition Tribunal



Tribunal de la Concurrence

CT - 89 / 3

IN THE MATTER OF an application by the Director of Investigation and Research under Section 92 of the *Competition Act*, R.S.C., 1985, c. C-34, as amended;

AND IN THE MATTER OF the acquisition by Imperial Oil Limited of the shares of Texaco Canada Inc.;

AND IN THE MATTER OF an Application by the Director of Investigation and Research pursuant to Section 104 of the *Competition Act*.

B E T W E E N :

The Director of Investigation and Research

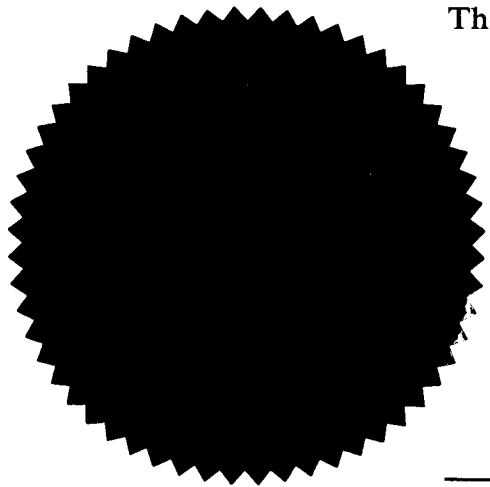
Applicant

- and -

Imperial Oil Limited

Respondent

CONSENT INTERIM ORDER



Date of Hearing:

July 4, 1989

Presiding Member:

The Honourable Madame Justice Barbara Reed

Counsel For the Applicant:

Director of Investigation and Research

George N. Addy

Counsel For the Respondent:

Imperial Oil Limited

John W. Brown, Q.C.

John J. Quinn

Robert J. Patton

COMPETITION TRIBUNAL
CONSENT INTERIM ORDER

The Director of Investigation and Research

v.

Imperial Oil Limited

FURTHER TO the application of the Director of Investigation and Research ("Director") pursuant to section 104 of the *Competition Act*, R.S.C., 1985, c. C-34, as amended (the "Act") and pursuant to a Notice of Motion dated June 30, 1989, for a Consent Interim Order limiting the respondent, Imperial Oil Limited, from fully integrating its business operations with those of Texaco Canada Inc. ("Texaco");

ON CONSIDERING the said Notice of Motion, the Applicant's Memorandum of Argument, the affidavit of D. McAllister and the Consent of the Parties filed herein;

AND ON HEARING the submissions of counsel for the parties on Tuesday, July 4, 1989;

THIS TRIBUNAL ORDERS THAT:

Purpose

1. The purpose of this Interim Order is to preserve the Downstream Assets (as herein defined) in their current state as viable, fully maintained assets used in the operation of an on-going business pending the final decision by this Tribunal regarding the Draft Consent Order (as herein defined).

Definitions

2. In this order the following terms shall have the meaning as set forth below:

- (a) "Acquisition" means the purchase by Imperial of substantially all of the shares of Texaco Canada Inc.
- (b) "Downstream Assets" means all the Service Stations and Terminals and the Eastern Passage Refinery.
- (c) "Draft Consent Order" means the Draft Consent Order filed as Appendix "1" to the Notice of Application filed in regard to this matter on June 29, 1989.

- (d) "Eastern Passage Refinery" means the Texaco refinery in Dartmouth, Nova Scotia, and the Dartmouth terminal as set forth in Schedule 1 of the Draft Consent Order.
- (e) "Imperial" means Imperial Oil Limited and all its subsidiaries and affiliates in Canada.
- (f) "Service Stations" means the sites where gasoline is offered for sale to the general public identified for divestiture in Schedules 3, 4, 7, 8 and 9 in the Draft Consent Order.
- (g) "Terminals" means those terminals of Texaco or Imperial identified for divestiture in Schedules 2 and 5 of the Draft Consent Order.
- (h) "Texaco Atlantic Operations" means operation of (i) the Service Stations and Terminals of Texaco located in the Provinces of New Brunswick, Nova Scotia, Prince Edward Island, or Newfoundland and (ii) the Eastern Passage Refinery but does not include the lubricants and specialty chemicals operations.

- (i) "Texaco Atlantic Employees" means the employees of Texaco located in New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland involved in the Texaco Atlantic Operations as of the date of this Interim Order.

Preservation of Assets

3. Imperial shall not, without further order of this Tribunal or approval of the Director, divest or cease to operate any Downstream Assets.

4. Imperial shall, until further order of this Tribunal or the Director otherwise approves, maintain the Downstream Assets in a condition which is at least as good as their condition prior to the date of Acquisition and preserve the goodwill associated therewith.

5. Imperial shall not, without the further order of this Tribunal or the approval of the Director, enter into or withdraw from any contracts or arrangements in regard to the Downstream Assets that would have the effect of materially inhibiting or unreasonably delaying the divestiture of the Downstream Assets as contemplated in the Draft Consent Order, or materially reducing the value of the Downstream Assets or the business carried on in association with them.

Atlantic Operations

6. Imperial shall not take any steps towards combining its operations with the Texaco Atlantic Operations. Imperial and Texaco shall not discharge any Texaco Atlantic Employees except for cause without the prior approval of the Director.

7. Imperial shall, until further order of this Tribunal or the Director otherwise approves, direct its Texaco Atlantic Employees to operate the Texaco Atlantic Operations in the ordinary course of business in accordance with generally prevailing industry standards.

8. Employees and officers of Imperial shall be entitled to exchange information regarding the Texaco Atlantic Operations with Texaco Atlantic Employees except for the types of information identified in this paragraph which shall remain confidential to Texaco Atlantic Employees. Confidential information may be disclosed to employees of Imperial but only for the limited purposes of ensuring the on-going viability of the Downstream Assets and business operations in relation thereto, and for the purpose of complying with the requirements contained in the Draft Consent Order. Confidential information shall include:

- (a) customer lists in relation to the Downstream Assets;
- (b) pricing information with respect to all products at present manufactured or distributed by the Texaco Atlantic Operations;
- (c) accounting policies that are utilized in the Texaco Atlantic Operations;
- (d) production, distribution, advertising and marketing of products of the Texaco Atlantic Operations, and
- (e) the terms of contractual relations save such information which must necessarily be disclosed to allow Imperial to enforce those relations or negotiate new arrangements that are not normally handled by Texaco Atlantic Employees.

9. In order to ensure the ongoing viability and competitiveness of the Texaco Atlantic Operations, Imperial, Texaco or both may provide to the Texaco Atlantic Operations such services as were normally provided by Texaco to the Texaco Atlantic Operations prior to the acquisition of Texaco by Imperial including but not limited to centralized oil purchasing and supply planning, and engineering and technical services.

DATED at Ottawa, this 4th day of July, 1989.

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

(s) B. Reed
B. Reed