

IN THE ONTARIO COURT (PROVINCIAL DIVISION)

HIS HONOUR)	THURSDAY	,	THE 30 TH	DAY
JUDGE M ^C FEE)	OF	MAY	,	1991

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

PERRY FUELS INC.

AGREED STATEMENT OF FACT

The accused admits the following facts with regard to these proceedings pursuant to section 61 of the Competition Act, R.S., c.C-34, as amended:

1. Ultramar Canada Inc. (Ultramar) and Perry Fuels Inc. (Perry Fuels) are, and have been at all material times, validly incorporated companies engaged in business as retailers of home heating oil and other products in the Regional Municipality of Durham in the Province of Ontario.

2. Ultramar operated as aforesaid through a division carrying on business at the material times under the name Dixon Fuels (Dixon).

3. In the years 1986 to 1988 Perry was the largest, and Dixon the second largest, retailer of home heating fuel in the Oshawa market in terms of volume.

4. In June 1986, the General Manager of Dixon, Mr. William F. Webb, organized a telemarketing campaign offering free furnace cleaning and 100 litres of heating oil to new customers signing contracts with that company. This campaign was successful in increasing Dixon's business.

5. In June and July, 1986 Mr. Webb received several telephone calls from Jack Perry, President of Perry Fuels, requesting that Mr. Webb stop soliciting the business of Perry Fuel's customers and stating that if the telemarketing continued, he would drop the price of oil.

6. Perry Fuels was partly owned by Petro-Canada Inc. at the time and had a supply relationship with that company and its own bulk oil storage facilities. As a result, Mr. Webb took these statements as threats.

7. Mr. Webb, however, subsequently did not comply and continued the telemarketing campaign. As a result, Mr. Perry contacted Mr. Bob Campbell, the General Manager for home heat for Ultramar in Toronto, to state that there would be a price war if Dixon continued its telemarketing campaign. As a result of these

communications, Mr. Webb advised Mr. Perry by telephone that the discounting would not continue. However, Mr. Webb was uncomfortable with this decision and subsequently continued offering incentives and discounts.

8. In response, Mr. Perry again complained to Ultramar concerning this solicitation of customers and discounting. Mr. Webb was as a result instructed by Mr. Campbell to meet with Mr. Perry.

9. In compliance with these instructions, in late September or October, 1986, Mr. Webb met with Mr. Perry and Mr. Bill Salter, also of Perry Fuels, at the Magic Car Restaurant in Oshawa. The parties agreed that Dixon and Perry Fuels would not solicit each others' customers or offer discounts in the sale of home heating oil.

10. Following this meeting, Dixon dismantled its telemarketing campaign and Perry Fuels did not solicit or offer discounts to Dixon's customers.

11. The foregoing agreement was still in place in August, 1988, when Mr. Webb left the employment of Dixon.

12. This course of conduct by the accused constitutes conduct contrary to subsection 61(1)(a) of the Competition Act,

in that the accused by agreement, threat, promise or like means attempted to influence upward or discourage the reduction of the price at which another person engaged in business in Canada supplied or offered to supply a product in Canada.

Dated at Ottawa, this 30th day of May,
1991.

Hails

Counsel for Perry Fuels Inc.

L.S. Tylman

Counsel for the Attorney General of Canada