



Response to Dr Bertram

**Presented by: Professor Neil Quigley
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14 November 2003**

Superior Propane

Dr Bertram claims that

1. The total surplus standard “has not been explicitly written into the competition legislation of any country known to me” (para 26).
2. The Federal Court in Superior Propane rejected the total surplus standard and required “specific account to be taken of of the identities of the parties to any transfer” (para 26).

Superior Propane

Total Surplus Standard = Efficiencies Defence

1. Section 96 of the *Competition Act* (Canada): merger that leads to a substantial lessening of competition may proceed providing the efficiency gains are greater than any lessening of competition.
2. The Bureau made an error in the calculation of the efficiencies in Superior Propane.
3. The Federal Court suggested that the Bureau should look at weights to different types of benefits, but it never suggested that only consumer benefits should be counted.

Superior Propane

4. The Bureau found it impossible to obtain the data to attach weights to gains by different types of consumers and producers.

5. The Bureau thus used the total surplus standard with minor modification (impact on low income consumers) and the court approved this analysis.

6. If the Commission follows Dr Bertram's recommendations it will have to calculate weights for all affected types of consumers and producers – and this is certainly not what OXERA and the Commission have done.

Vertical Integration

Dr Bertram says that “Vertical foreclosure unequivocally hurts consumers when denial of access to [a bottleneck facility] has the effect of raising price and restricting quantity” (para 42).

- I agree with this statement and I support a rule of reason approach. In claiming that I do not, Dr Bertram shows that he has either not read or not understood my paper.
- The question is, when will the rents resulting from ownership of a bottleneck facility be increased by vertical integration? Dr Bertram does not address this question.