

THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF the proposed acquisition by Parkland Industries Ltd., a wholly-owned subsidiary of Parkland Fuel Corporation, of substantially all of the assets of Pioneer Petroleum Holding Limited Partnership, Pioneer Energy LP, Pioneer Petroleum Transport Inc., Pioneer Energy Inc., Pioneer Fuels Inc., Pioneer Petroleum Holding Inc., Pioneer Energy Management Inc., 668086 N.B. Limited, 3269344 Nova Scotia Limited and 1796745 Ontario Ltd.; and

AND IN THE MATTER OF an Application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*.

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

- and -

**PARKLAND INDUSTRIES LTD., PARKLAND FUEL CORPORATION, PIONEER
PETROLEUMS HOLDING LIMITED PARTNERSHIP, PIONEER ENERGY LP, PIONEER
PETROLEUMS TRANSPORT INC., PIONEER ENERGY INC., PIONEER FUELS INC.,
PIONEER PETROLEUMS HOLDING INC., PIONEER ENERGY MANAGEMENT INC., 668086
N.B. LIMITED, 3269344 NOVA SCOTIA LIMITED AND 1796745 ONTARIO LTD.**

Respondents

**REPLY OF THE COMMISSIONER OF COMPETITION TO THE RESPONSE OF PARKLAND
INDUSTRIES LTD. AND PARKLAND FUEL CORPORATION**

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I. OVERVIEW

1. The Commissioner of Competition (the "Commissioner") repeats and relies upon the allegations in his Notice of Application, Statement of Grounds and Material Facts and Concise Statement of Economic Theory (the "Application"), and except as hereinafter expressly admitted, denies the allegations in the Response filed by Parkland (the "Response"). Unless otherwise indicated, defined terms in this Reply have the meaning ascribed to them in the Application.

II. POINTS IN REPLY

A. CHRONOLOGY

2. The Commissioner's review of the Proposed Merger included:
- a. *October 3, 2014*: the Respondents submit a request for an advance ruling certificate to the Commissioner in respect of a proposed transaction that includes the Proposed Merger.
 - b. *October 6, 2014*: the Respondents submit a pre-merger notification filing pursuant to Part IX of the Act in respect of the proposed transaction that includes the Proposed Merger.
 - c. *October 17 and 24, 2014*: the Commissioner issues two voluntary information requests to each Respondent.
 - d. *November 5, 2014*: the Commissioner issues a Supplementary Information Request ("**SIR**") to each Respondent.
 - e. *January 22, 2015*: the Respondents amend the proposed transaction by removing the commercial fuel business, which results in the Proposed Merger.
 - f. *January 23, 2015*: the Respondents certify their respective responses to the SIR after providing the Bureau with approximately 70,000 documents.
 - g. *February 11, 2015*: the Commissioner informs the Respondents that he has competition concerns with 22 markets, including the 14 Relevant Markets.

- h. *February 18, 2015*: the Respondents agree to provide the Commissioner with 15 days' prior written notice of the closing of the Proposed Merger.
 - i. *April 27, 2015*: the Respondents provide the Bureau with 15 days' written notice of closing and advise that the Proposed Merger is scheduled to close on May 13, 2015.
 - j. *April 28, 2015*: the Commissioner commences an inquiry pursuant to section 10 of the Act.
 - k. *April 30, 2015*: the Commissioner files the Application, in which the Commissioner alleges a substantial lessening of competition in the 14 Relevant Markets.
 - l. *May 7, 2015*: the Commissioner files the application for an interim order under section 104 of the Act.
3. On May 29, 2015, the Tribunal issued an interim hold separate order (the "Hold Separate Order") in respect of the assets in six of the 14 Relevant Markets (the "Hold Separate Markets").

B. PARKLAND HAS CONCEDED COMPETITION CONCERNS IN THE HOLD SEPARATE MARKETS

4. With respect to the Hold Separate Markets, Parkland submits that the Proposed Merger will not (i) create, enhance or maintain market power (at paragraph 20); (ii) enable it to exercise greater market power, either unilaterally or on a coordinated basis (at paragraph 25); and (iii) substantially lessen competition in the Relevant Markets (at paragraph 28).
5. Contrary to Parkland's submission, Parkland, through its expert, has already conceded competition concerns in the 6 Hold Separate Markets.

C. PARKLAND CAN INCREASE PRICES AT ITS CORPORATE STATIONS AND NON-CORPORATE STATIONS

6. Parkland pleads in its Response, including at paragraphs 23, 25, 27(d) and 28, an artificial distinction between its Corporate Stations and its Non-Corporate Stations. This distinction is no distinction at all in that Parkland has the ability to materially influence retail gasoline prices at both its Corporate Stations and Non-Corporate Stations. Parkland controls retail gasoline prices at its Corporate Stations, which it both supplies and owns. Parkland supplies gasoline to Non-Corporate Stations owned by third parties pursuant to exclusive, long-term contracts. As such, Parkland has the ability to materially influence retail gasoline prices at those Non-Corporate Stations, including by increasing the wholesale price of gasoline charged to those stations at any time without prior notice to and without recourse by the Non-Corporate Stations.

D. PARKLAND CLAIMS THE COMMISSIONER'S ALLEGATIONS OF UNILATERAL EFFECTS AND COORDINATED EFFECTS ARE EXAGGERATED

7. Parkland pleads at paragraph 3 of its Response that the Commissioner's allegations of unilateral and coordinated effects are "exaggerated". Moreover, Parkland pleads no facts that indicate the absence of the circumstances that facilitate and render coordination more likely, as set out in the Commissioner's Application at paragraphs 20-21.

E. GEOGRAPHIC MARKETS ARE LOCAL IN SCOPE

8. The relevant geographic markets are local in scope because transportation costs constrain the ability of purchasers of retail gasoline to cost-effectively source gasoline from outside their locality. Other factors relevant to defining these local markets include, among other things: (a) the geographic proximity of competing gas stations; (b) the geographic characteristics of the Relevant Markets; and (c) the views, strategies and behavior of market participants in those Relevant Markets.

F. PARKLAND'S PROPOSAL IS INCOMPLETE, AND, IN ANY EVENT, IS NOT A VIABLE AND EFFECTIVE REMEDY

9. Parkland's bare proposal to unilaterally attempt to "undo" some of the problematic portions of the Proposed Merger on its own timeline and in a manner that suits its commercial interests is not a viable and effective remedy to address the alleged harm to competition and consumers in the Relevant Markets. The remedy proposal referred to by Parkland in its submission was provided on the eve of the Commissioner's filing and is a scant letter outlining Parkland's intentions (no guarantee was provided) following the closing of the Proposed Merger. Parkland's letter failed to identify even the most basic elements that would be required before Parkland's proposal may be considered to resolve competition concerns in these markets.

10. In any event, Parkland has not proposed a viable and effective remedy in respect of 10 of the 14 Relevant Markets and has not proposed any remedy whatsoever in respect of the remaining 4 Relevant Markets.

G. PARKLAND'S CLAIMED EFFICIENCIES DO NOT OFF-SET THE ANTI-COMPETITIVE EFFECTS

11. The efficiencies described in paragraph 29 of Parkland's Response are not solely related to the 14 Relevant Markets, but to the Proposed Merger as a whole. In addition, the pleaded efficiencies include efficiencies that are not cognizable under the Act. Any cognizable efficiencies that may flow from the implementation of the Proposed Merger, which are not admitted but denied, are not likely to be greater than, and not likely to offset, the anti-competitive effects of the Proposed Merger on Canadian consumers in the Relevant Markets.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of June, 2015.

JOHN PECMAN

John Pecman

Commissioner of Competition

Competition Bureau

Place du Portage, Phase I

50 Victoria Street

Gatineau, Quebec

K1A 0C9

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