

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

BETWEEN:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT CT-2015-003 June 16, 2015 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 049

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 HOLDINGS INC., PIONEER ENERGY MANAGEMENT INC., 668086 N.B. LIMITED, 3269344 NOVA SCOTIA LIMITED and 1796745 ONTARIO LTD.

Respondents

RESPONSE OF PIONEER PETROLEUMS HOLDING LIMITED PARTNERSHIP, PIONEER ENERGY LP, PIONEER PETROLEUMS TRANSPORT INC., PIONEER ENERGY INC., PIONEER FUELS INC., PIONEER PETROLEUMS HOLDINGS INC., PIONEER ENERGY MANAGEMENT INC., 668086 N.B. LIMITED, 3269344 NOVA SCOTIA LIMITED and 1796745 ONTARIO LTD.

INTRODUCTION

1. 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. (collectively, "**Pioneer**") oppose the Commissioner of Competition's (the "**Commissioner**") application requesting an order (i) prohibiting the Respondents from implementing the Proposed Transaction (as defined below) (ii) requiring Parkland Industries Ltd. and Parkland Fuel Corporation (collectively, "**Parkland**") to dispose of certain assets and (iii) requiring the Respondents to provide the Commissioner with advance notice of any future proposed merger relating to the acquisition in Canada of gasoline stations or agreements to supply gasoline stations.

2. Pioneer denies that the Commissioner is entitled to the relief sought in this application on the following grounds: (i) he has not properly defined the relevant markets, (ii) the Proposed Transaction will not result in a substantial lessening of competition in any of the markets in issue and (iii) the Competition Tribunal (the "**Tribunal**") does not have the jurisdiction to issue an order requiring the Respondents to provide notice of future acquisitions that would not otherwise be subject Part IX – Notifiable Transactions provisions of the *Competition Act* (the "**Act**").

3. Pioneer submits that it is not a proper party to this application and requests that the application should be dismissed against it. This is because, in light of the order issued by Justice Gascon on May 29, 2015 (the "**Interim Order**"), it is anticipated that the Proposed Transaction will be completed prior to the hearing of this application. Accordingly, subsequent to the completion of the Proposed Transaction, Pioneer will have no interest in the relevant assets, or any other gasoline stations or agreements to supply gasoline stations in the Relevant Areas (as

defined below). Accordingly the relief requested by the Commissioner should or cannot apply as against Pioneer.

FACTS ADMITTED AND DENIED

4. Except for the allegations in paragraphs 6-8 of the Notice of Application and as otherwise admitted herein, Pioneer denies all of the Commissioner's allegations.

STATEMENT OF GROUNDS AND MATERIAL FACTS

Pioneer

5. Pioneer carries on business as an independent marketer of fuel and petroleum products. It is headquartered in Burlington, Ontario. It delivers gasoline, diesel, propane, lubricants, heating oil, and other petroleum products to motorists, businesses, consumers, and wholesale customers in Canada.

6. Pioneer has been a gas retailer for over 50 years, starting in Ontario and gradually expanding its retail gas operations across the province and into Manitoba. In large part, Pioneer's success is due to its strategy of providing high service levels and competitive prices to consumers.

7. Pioneer operates retail gas stations ("**Corporate Stations**") and wholesales fuel to gas stations owned and operated by independent, third-party dealers ("**Independent Dealer Stations**"). While Pioneer sets the retail price of gasoline at Corporate Stations, the retail price at Independent Dealer Stations is determined exclusively by the third party dealers.

8. Pioneer currently operates 184 Corporate Stations and supplies fuel to 210 Independent Dealer Stations (this number varies as Pioneer opens new Corporate Stations or as it wins or loses supply contracts with Independent Dealer Stations). All of the stations owned or supplied by Pioneer are located in the provinces of Manitoba and Ontario.

History of the Proposed Transaction

9. The Respondents entered into an asset purchase agreement on September 17, 2014 (the "**Proposed Transaction**") and filed an advance ruling certificate request and Part IX notification with the Competition Bureau on October 3, 2014. The Proposed Transaction was to have closed on January 31, 2015, but has been extended four times to provide the Commissioner with additional time to conduct his review. On April 27, 2015, pursuant to their commitment to provide the Commissioner 15-days notice of closing, Parkland and Pioneer advised the Commissioner of their intention to close on May 13, 2015.

10. On April 30, 2015, the Commissioner filed a Notice of Application alleging that the Proposed Transaction would substantially lessen in fourteen areas (the "**Relevant Areas**"). On the same day, the Commissioner served materials in support of an order directing Parkland to hold separate certain of the Pioneer assets in the Relevant Areas.

11. On May 29, 2015, the Tribunal released the Interim Order. Importantly from Pioneer's perspective, the Interim Order permits the Proposed Transaction to close and contemplates that the Proposed Transaction will be completed in the near future, and in any event, prior to the hearing of this application.

12. The Proposed Transaction is a sale of assets, accordingly Pioneer will continue to exist as a corporate entity. Upon the completion of the Proposed Transaction, Pioneer will have no interest in any gasoline stations or gasoline supply agreements in the Relevant Areas.

13. Subsequent to the completion of the Proposed Transaction, Pioneer will have no control over any assets in respect of which the Commissioner could seek a divestiture order. This is acknowledged by the fact that the Commissioner has only sought a divestiture order against Parkland. Again, this supports Pioneer's position that it is not a proper party to this application.

14. With respect to the substantive issues raised in the Commissioner's application, Pioneer adopts and relies upon the submissions made by Parkland in its Response.

Relief Sought

15. The Commissioner is not entitled to the relief sought in this application for the following reasons:

- (a) **An order prohibiting the Respondents from implementing the Transaction (paragraph 27(a)(i)):** The Proposed Transaction is expected to be completed as soon as the appointments and arrangements required by the Interim Order are in place. As the Commissioner has not sought an order seeking the dissolution of the Proposed Transaction, his request for an order prohibiting the implementation of the Proposed Transaction is moot.
- (b) **An order requiring Parkland to dispose of assets (paragraph 27(a)(ii)):** This relief is sought as against Parkland only and supports Pioneer's position that it is not a proper party to this application.

- (c) **An order requiring the Respondents to notify the Commissioner of any future proposed merger where the proposed merger would not otherwise be subject to notification pursuant to the Part IX of the Act (paragraph 27(b)):**

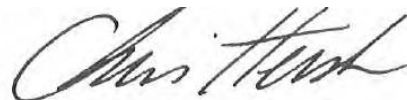
The Tribunal has no jurisdiction to make this order because Pioneer does not consent to it. Further, as Pioneer will not own any gasoline stations or gasoline supply agreements in the Relevant Areas subsequent to the completion of the Proposed Transaction, there is no reasonable basis upon which such an order should be issued against Pioneer.

16. Pioneer is not a proper party to this application and requests that the Tribunal dismiss this application as against it with costs to Pioneer on a substantial indemnity basis.

LOCATION AND CONDUCT OF THE HEARING

17. In light of its view that the application should be dismissed as against it, Pioneer takes no position regarding the location and conduct of the hearing of the application.

Dated this 15th day of June, 2015



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THE COMPETITION TRIBUNAL

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ENERGY LP, PIONEER PETROLEUMS
TRANSPORT INC., PIONEER ENERGY INC.,
PIONEER FUELS INC., PIONEER PETROLEUMS
HOLDINGS INC., PIONEER ENERGY
MANAGEMENT INC., 668086 N.B. LIMITED,
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