

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;

AND IN THE MATTER OF an Application for an interim order pursuant to section 104 of the Competition Act.

B E T W E E N:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT CT-2015-003 May 6, 2015 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 3

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. TO THE COMMISSIONER'S APPLICATION FOR AN INTERIM ORDER

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 application requesting an interim order directing Parkland Industries Ltd. and Parkland Fuel Corporation (collectively, "**Parkland**") to hold separate certain assets subsequent to the acquisition of certain assets from Pioneer.

BACKGROUND

2. 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.

3. 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.

4. Pioneer operates both 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.

5. 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.

BACKGROUND OF TRANSACTION

6. 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.

7. 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 the Pioneer assets in the Relevant Areas.

CONCLUSION

8. Pioneer opposes the Commissioner of Competition's application for an interim order requiring Parkland to hold separate certain assets to be acquired from Pioneer on the following grounds:

- (a) There is no serious issue to be tried as:

- (i) Parkland, despite disagreeing with the Commissioner's concerns, has agreed to remedies in eleven of the Relevant Areas and proposed to take steps in the remaining three Relevant Areas that fully address the Commissioner's concerns;
 - (ii) The Relevant Areas do not constitute proper competition law markets, as the Commissioner has failed to properly delineate their geographic scope, which is necessary to support his conclusion that the Proposed Transaction will result in a substantial lessening or prevention of competition in any of the Relevant Areas;
 - (b) The balance of convenience weighs against directing Parkland to hold separate certain of the Pioneer assets in the Relevant Areas, as either Pioneer or Parkland have the option of terminating the Proposed Transaction if a hold separate is required in any of the Relevant Areas.
 - (c) In light of the steps Parkland proposes to take in the Relevant Areas, allowing the Proposed Transaction to proceed will not result in irreparable harm to consumers pending the outcome of the Commissioner's application.
9. Pioneer will rely on the materials filed by Parkland.

TO: For the Commissioner of Competition:

Department of Justice Canada
Competition Bureau Legal Services
Place du Portage, Phase I
50 Victoria Street, 22nd Floor
Gatineau QC K1A 0C9
Tel: 819.997.2837
Fax: 819.953.9267

Attention: John Syme
Antonio Di Domenico
Tara DiBenedetto

AND TO: For Parkland Industries Ltd. and Parkland Fuel Corporation,:

Bennett Jones LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON Suite 201 Scotia Plaza
Tel: 416.863.1200
Fax: 416.863.1716

Attention: John F. Rook
Randal T. Hughes
Emrys Davis
Gannon G. Beaulne

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

CT-2015-003

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;

AND IN THE MATTER OF an Application for an interim order pursuant to section 104 of the Competition Act.

THE COMMISSIONER OF COMPETITION

- and -

PARKLAND INDUSTRIES LTD. et al

Applicant

Respondents

THE COMPETITION TRIBUNAL

**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. TO THE COMMISSIONER'S
APPLICATION FOR AN INTERIM ORDER**

CASSELS BROCK & BLACKWELL LLP

2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Christopher M. Hersh (LSUC No.43080N)

Telephone: (416) 869-5387
Fascimile: (416) 640-3017
Email: *chersh@casselsbrock.com*

Imran Ahmad (LSUC No.55438A)

Telephone: (416) 860-6578
Fascimile: (416) 350-6934
Email: *iahmad@casselsbrock.com*

Lawyers for the Respondents,
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.