CT-2015-003

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 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.;

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*.

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

FILED / PRODUIT

CT-2015-003
April 30 2015

Jos LaRose for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT # 1

BETWEEN:

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

NOTICE OF APPLICATION

TAKE NOTICE that the Commissioner of Competition (the "**Commissioner**") will make an application to the Competition Tribunal (the "**Tribunal**"), on a day and place to be determined by the Tribunal, pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "**Act**") for:

(a) an order:

i. prohibiting the Respondents from implementing the Proposed Merger in the Relevant Markets (defined in paragraph 13 herein) in the provinces of Ontario and Manitoba; and / or

ii. requiring Parkland (defined below) to dispose of such assets in the Relevant Markets, as well as such other assets, if any, as are required for an effective remedy in all the circumstances, on such terms as may appear just;

(b) an order that the Respondents provide the Commissioner with at least 30 days' advance written notice of any future proposed merger, as such term is defined in section 91 of the Act, relating to the acquisition in Canada of gasoline stations or agreements to supply gasoline stations for a period of five years from the date of the order, where the proposed merger, would not otherwise be subject to notification pursuant to the Act;

(c) costs; and

(d) such further and other relief as the Commissioner may request and this Tribunal may consider appropriate.

AND TAKE NOTICE that if you do not file a response with the Registrar of the Tribunal within 45 days of the date upon which this Application is served upon you, the Tribunal may, upon application by the Commissioner and without further notice, make such Order or Orders as it may consider just, including the Orders sought in this Application.

AND TAKE FURTHER NOTICE that the Applicant will rely on the Statement of Grounds and Material Facts below in support of this Application.

AND TAKE FURTHER NOTICE that a concise statement of the economic theory of the case is attached hereto as Schedule "A".

THE ADDRESSES FOR SERVICE ARE:

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Attention: John Rook
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For 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.:

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Attention: Chris Hersh
Imran Ahmad

The Applicant proposes that the hearing of this matter be held in Ottawa, Ontario and heard in English.

For the purposes of this Application, service of all documents on the Commissioner may be served upon:

Department of Justice Canada
Competition Bureau Legal Services
Place du Portage, Phase I
50 Victoria Street, 22nd Floor
Gatineau QC KIA OC9
Tel: 819.997.2837
Fax: 819.953.9267

Attention: John Syme
Antonio Di Domenico
Tara DiBenedetto

STATEMENT OF GROUNDS AND MATERIAL FACTS

I. OVERVIEW AND GROUNDS

1. Gasoline represents a significant cost for most Canadian households and businesses. Competition among gasoline retailers is important to Canadian consumers. Absent the orders sought by the Commissioner, consumers in 14 local markets in Ontario and Manitoba are likely to face less choice and materially higher retail prices for gasoline.

2. Parkland and Pioneer compete in the supply of gasoline to consumers in local markets in Ontario and Manitoba through retail gas stations that they own as well as gas stations that they exclusively supply gasoline to, but that are owned and controlled by third parties. If the Proposed Merger proceeds, Parkland will have the ability to exercise enhanced market power, either unilaterally or through coordinated behaviour, in 14 Relevant Markets (defined below) to the detriment of consumers.

3. In two Relevant Markets, the Proposed Merger will lead to a merger to monopoly and Parkland will be able to unilaterally exercise enhanced market power resulting in a substantial lessening of competition.

4. The other Relevant Markets are susceptible to the unilateral or coordinated exercise of market power that will result from the Proposed Transaction. By increasing concentration in these Relevant Markets, the Proposed Merger will likely substantially lessen competition by significantly increasing the extent, likelihood, frequency and duration of coordination among some or all of the retailers who would remain in these markets post-merger.

5. Where coordination among retailers breaks down and firms "cheat" or deviate from coordination, or where the merged entity otherwise acts independently in these markets, the merged entity will be able to unilaterally exercise enhanced market power due to the significant increase in concentration in these Relevant Markets. Post-merger, Parkland's

market shares in all the remaining Relevant Markets will be in excess of 39%. By eliminating rivalry between Parkland and Pioneer, the Proposed Merger is likely to result in a substantial lessening of competition.

II. THE PARTIES

6. The Applicant, the Commissioner, is appointed under section 7 of the Act and is responsible for the administration and enforcement of the Act.

7. Parkland Industries Ltd., a private company, is a wholly-owned subsidiary of Parkland Fuel Corporation, which is listed on the Toronto Stock Exchange. Parkland Industries Ltd. and Parkland Fuel Corporation are collectively hereinafter referred to as "**Parkland**".

8. The remaining Respondents, collectively hereinafter referred to as "**Pioneer**" (encompassing 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.), are privately-held companies.

9. Parkland and Pioneer compete in the retail supply of motor vehicle fuels ("**gasoline**") to consumers at motor vehicle filling stations ("**gas stations**") that they own ("**Corporate Stations**").

10. Parkland and Pioneer also supply gasoline to gas stations owned and controlled by third parties ("**Non-Corporate Stations**") pursuant to exclusive long-term contracts, having terms of up to 10 years. Pursuant to these contracts, Parkland and Pioneer can increase the wholesale price of gasoline charged to Non-Corporate Stations at any time without notice to and without recourse by the Non-Corporate Stations. Accordingly, Parkland and Pioneer have the ability to materially influence retail gasoline prices at their respective Non-Corporate Stations.

III. THE PROPOSED MERGER

11. Pursuant to an asset purchase agreement dated September 17, 2014, as amended on January 22, 2015, Parkland proposes to acquire from Pioneer 181 Pioneer Corporate Stations and 212 supply agreements between Pioneer and Non-Corporate Stations in Ontario and Manitoba (the "**Proposed Merger**").

12. The Proposed Merger is a merger within the meaning of section 91 of the Act.

IV. THE RELEVANT MARKET

13. The anti-competitive effects of the Proposed Merger would affect consumers and businesses that purchase gasoline within 14 local markets in Ontario and Manitoba, identified in paragraph 19 herein (the "**Relevant Markets**").

A. Relevant Product Market

14. The relevant product market for assessing the effects of the Proposed Merger is the retail sale of gasoline at gas stations.

15. There are no close substitutes for the retail sale of gasoline since a purchaser's choice of motor vehicle fuel is determined by the operating specifications of their motor vehicle.

B. Relevant Geographic Market

16. The relevant geographic markets for assessing the effects of the Proposed Merger are local in scope.

17. Transportation costs constrain the ability of purchasers of retail gasoline to cost-effectively source gasoline from outside their locality.

18. The relevant geographic markets for purposes of this Application are identified in paragraph 19 below.

V. THE PROPOSED MERGER IS LIKELY TO SUBSTANTIALLY LESSEN COMPETITION

19. The Proposed Merger is likely to substantially lessen competition in the Relevant Markets (identified below together with the post-merger market share and Four Firm Concentration Ratio for each of them), by:

    (a) significantly increasing the extent, likelihood, frequency and duration of coordination among some or all of the suppliers in those markets; or

    (b) eliminating rivalry between Parkland and Pioneer, where the merged entity is acting unilaterally.

	Relevant Markets	Parties' Combined Market Shares (%)	Four Firm Concentration Ratio (post-Proposed Merger) (%)
1	Warren, MB	100	100
2	Allanburg, ON	100	100
3	Lundar, MB	[redacted]	100
4	Tillsonburg, ON	74	100
5	Innisfil, ON	63	100
6	Kapuskasing, ON	[redacted]	100
7	Hanover, ON	50	100
8	Bancroft, ON	47	100
9	Gananoque, ON	47	100
10	Chelmsford/Azilda, ON	44	89
11	Aberfoyle, ON	43	100
12	Port Perry, ON	43	100
13	Neepawa, MB	[redacted]	100
14	Welland, ON	39	80

20. The Relevant Markets are already concentrated and the Proposed Merger will increase the level of concentration in each of these markets, in some instances by as much as 44%. If the Proposed Merger were to proceed, Parkland would have a significant post-merger market share in each of the Relevant Markets. The Proposed Merger would also increase

concentration in the Relevant Markets such that the combined market share of the four largest firms would be 100% in all but two of the Relevant Markets. In terms of concentration, the Proposed Merger would result in changes to the numbers of competitors in the Relevant Markets, including:

- a merger to monopoly in two Relevant Markets (Warren, Manitoba and Allanburg, Ontario);
- a decrease from three to two competitors in three Relevant Markets (Kapuskasing, Ontario; Lundar, Manitoba; and Neepawa, Manitoba);
- a decrease from four to three competitors in five Relevant Markets (Aberfoyle, Ontario; Bancroft, Ontario; Innisfil, Ontario; Gananoque, Ontario and Tillsonburg, Ontario); and
- a decrease from five to four competitors in two Relevant Markets (Hanover, Ontario and Port Perry, Ontario).

A. Coordinated Effects

21. The Relevant Markets are highly susceptible to coordination. Coordination refers to behaviour, by a group of firms, that is profitable for each firm due to the accommodating reactions of the other firms in the group. Coordination is more likely to occur in a market when firms are able to, *inter alia*:

    (a) individually recognize mutually beneficial terms of coordination;

    (b) monitor each other's behaviour in respect of key dimensions of competition, such as pricing, and detect deviations from the terms of coordination; and

    (c) respond to, or punish, deviations from the terms of coordination by other firms in the market.

22. Given that the foregoing conditions currently exist in each of the Relevant Markets, coordination among retail gasoline stations is facilitated and rendered more likely as a result of the Proposed Merger. The significant increase in market concentration resulting from the Proposed Merger will amplify the extent, likelihood, frequency and duration of

coordination among some or all of the suppliers in the Relevant Markets leading to materially higher prices and less choice.

B. Unilateral Effects

23. In Warren, Manitoba and Allanburg, Ontario, where the Proposed Merger will lead to a merger to monopoly, Parkland will be able to unilaterally exercise enhanced market power resulting in a substantial lessening of competition.

24. In the remaining Relevant Markets, coordination can periodically break down, as cooperating retailers deviate from coordinating their behaviour.

25. If the Proposed Merger proceeds, the pre-merger rivalry that existed between Parkland and Pioneer in the Relevant Markets during periods of non-coordination will be lost. In those periods, the removal of Pioneer as a competitor coupled with, among other things, high barriers to entry and Parkland's increased market share, will allow Parkland to exercise enhanced market power to the detriment of consumers in the Relevant Markets.

VI. SECTION 93 FACTORS SUPPORT LIKELY SUBSTANTIAL LESSENING OF COMPETITION

26. In addition to the foregoing, other section 93 factors support the conclusion that the Proposed Merger substantially lessens competition in the Relevant Markets, including the following:

    (a) *No Alternative Substitutes*: consumers have no alternative to retail gasoline to fuel their gasoline dependent vehicles.

    (b) *Barriers to Entry*: there are barriers to entry into the Relevant Markets, owing in part to market maturity, the well-entrenched incumbency positions of the Respondents and environmental and regulatory approvals.

(c) *Effective Remaining Competition*: there is insufficient effective remaining competition to constrain the anti-competitive effects of the Proposed Merger in the Relevant Markets.

(d) *Removal of Vigorous and Effective Competitor*: the Proposed Merger eliminates rivalry between Parkland and Pioneer, including during periods when coordination among retailers breaks down and firms deviate from the terms of coordination.

VII. RELIEF SOUGHT

27. The Commissioner therefore seeks:

(a) an order:

i. prohibiting the Respondents from implementing the Proposed Merger in the Relevant Markets (defined in paragraph 13 herein) in the provinces of Ontario and Manitoba; and / or

ii. requiring Parkland (defined below) to dispose of such assets in the Relevant Markets, as well as such other assets, if any, as are required for an effective remedy in all the circumstances, on such terms as may appear just;

(b) an order that the Respondents provide the Commissioner with at least 30 days' advance written notice of any future proposed merger, as such term is defined in section 91 of the Act, relating to the acquisition in Canada of gasoline stations or agreements to supply gasoline stations for a period of five years from the date of the order, where the proposed merger, would not otherwise be subject to notification pursuant to the Act;

(c) costs; and

(d) such further and other relief as the Commissioner may request and this Tribunal may consider appropriate.

DATED AT GATINEAU, QUEBEC, this 30th day of April, 2015

ORIGINAL SIGNED BY
MATTHEW F.J. BOSWELL

per. **John Pecman**
Commissioner of Competition
Competition Bureau
Place du Portage, Phase I
50 Victoria Street
Gatineau, Quebec
K1A 0C9

SCHEDULE "A" – CONCISE STATEMENT OF ECONOMIC THEORY

1. The Respondents each provide gasoline to Corporate Stations and to Non-Corporate Stations in Canada. The Respondents overlap in the sale of gasoline, including in 14 Relevant Markets.

2. The relevant product market is gasoline sold at the retail level since consumers are constrained in their ability to switch to other fuels by their vehicle's specifications. A hypothetical monopolist in the retail sale of gasoline could profitably impose a small but significant and non-transitory price increase.

3. The relevant geographic market is local because consumers face transportation costs to buy gasoline at more distant stations and are typically constrained in the volume of gasoline that they purchase by the size of their vehicle's gasoline tank. A hypothetical monopolist in the retail sale of gasoline in a local area could profitably impose a small but significant and non-transitory price increase.

4. Gasoline retailers are differentiated in terms of location and brands, among other factors, and offer gasoline at a visible posted price.

5. The Respondents and other retailers of gasoline may be coordinating in certain concentrated markets, given the barriers to entry and the presence of certain facilitating factors, which indicate that coordinated behaviour may be likely.

6. Coordination refers to behaviour by a group of firms that is profitable for each firm due to the accommodating reactions of the other firms in the group. Coordination is more likely to occur in a market:

    a. when firms are able to:

        i. individually recognize mutually beneficial terms of coordination;

   ii. monitor each other's behaviour in respect of key dimensions of competition, such as pricing, and detect deviations from the terms of coordination; and
   iii. respond to, or punish, deviations from the terms of coordination by other firms in the market; and

b. when it is not disrupted by factors outside of the coordinating group, such as reactions of existing and potential competitors who are not part of the coordinating group of firms.

7. Differentiation in the retailing of gasoline is limited and raw material prices are a common cost for gasoline retailers, making it easier to recognize terms of coordination that all firms find profitable. Additionally, deviating from coordinated behaviour is less profitable and coordinated behaviour is more likely because retail purchases of gasoline are small and frequent. The retail price of gasoline is visibly posted by retailers, therefore it is easier for rivals to monitor one another's behaviour. This in turn makes effective coordination more likely. Additionally, firms can respond to deviations from the terms of coordination because prices can be changed quickly.

8. With coordinated behaviour, the Respondents may find it profitable to increase their retail prices at Corporate Stations and increase their wholesale prices to Non-Corporate Stations because some of the sales that would have been lost without coordination to other stations in the coordinating group will likely be retained due to the accommodating reaction of these stations. This diversion may make increasing prices profitable when it would not have been profitable without coordination.

9. The Proposed Merger will increase the level of concentration in the supply of gasoline in the Relevant Markets, which may make coordinated behaviour more likely.

10. It is possible for coordinated behaviour to periodically breakdown and resume. If firms deviate from the terms of coordination for a period of time, or if the Respondents merge to monopoly, then the Respondents may find it profitable to increase their retail prices at Corporate Stations and increase their wholesale prices to Non-Corporate Stations following

the Proposed Merger because some of the sales that would have been lost prior to the Proposed Merger likely will be diverted to the Corporate and Non-Corporate Stations of the other Respondent. This diversion may make increasing prices profitable when it would not have been profitable prior to the Proposed Merger.

11. Even though the Respondents do not set retail prices for their Non-Corporate Stations, the Respondents can influence the retail price by changing the wholesale price they charge their Non-Corporate Stations for gasoline. The Respondents can capture profits diverted to their Non-Corporate Stations as a result of a retail price increase following the Proposed Merger by increasing the wholesale price they charge their Non-Corporate Stations for gasoline because the Respondents can charge different wholesale prices to different Non-Corporate Stations and Non-Corporate Stations cannot purchase gasoline from alternative suppliers during the term of their exclusive long-term supply contracts.

12. Entry or repositioning by competitors is unlikely to occur in a timely and sufficient manner due to, among other things, barriers to entry and repositioning that exist.

13. Based on the above, it is likely that the Proposed Merger provides the Respondents with an increased ability to exercise market power. Therefore, the Proposed Merger will likely lead to a substantial lessening of competition in the 14 Relevant Markets.

CT-

THE COMPETITON 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 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.;

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:

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

NOTICE OF APPLICATION

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