



Competition Policy Review Panel
280 Albert St., 10th floor
Ottawa, ON
K1A 0H5

January 11, 2008

Re: Submission

Please find attached our submission to The Competition Policy Review Panel.
Thank you very much for this opportunity. If you have any questions, please feel free to contact the undersigned.

Best Regards,

Jane Savage
President and CEO
Canadian Independent Petroleum Marketers Association (CIPMA)

Cc CIPMA Board of Directors



Introduction

Thank you for this opportunity to comment on the state of competition in Canada and possible directions forward.

Our comments will concentrate on one of the four focus areas outlined in the October 30, 2007 Summary Document, namely the area of “Competition Policies”. We will not be commenting directly on the other three areas; that is “Investment Policies”, “Promoting Canadian Direct Investment Abroad” and “Canada as a destination for Talent, Capital and Innovation”.

CIPMA

The Canadian Independent Petroleum Marketers Association represents the interests of medium sized enterprises who are in the business of distributing, storing, marketing and selling petroleum and renewable fuel products to Canadians. The “independent” sector of fuel marketing are those who are non- refiners. Independents buy their fuel products at the wholesale level (mainly from refiners) rather than refine their fuel products. CIPMA’s members include the larger independents in Canada, representing over 8 billion litres per year in fuel products (primarily gasoline, diesel, heating oil, and renewable fuels) sales, through retail, wholesale, and commercial channels.

The state of competition in gasoline retail and wholesale markets

We would like to explain our perspective on the state of competition in both the retail and the wholesale gasoline markets in Canada, as context for recommendations to competition laws included in this submission.

Independent fuel marketers are significant contributors to the competitive nature of retail fuel products markets.

- Independent businesses own and operate 71% of the retail gasoline sites in Canada. Of these, 66 companies own 2 or more sites and hundreds of others own just one site.⁽¹⁾

(1) M.J. Ervin: National Petroleum Retail Site Census, 2006 (June 27, 2007)

Price movements at gas stations are a well watched phenomena and when prices move in concert, this is often mistaken for a lack of competition or suspicion of price collusion. Our experience shows that similar retail price movements occur following changes in the wholesale price, a daily occurrence in most markets. Retail gasoline sites compete vociferously with each other, using very public price postings, to ensure their market share is protected. The large number of participants at the retail level keeps these markets competitive.

However our experience shows that the state of competition in Canadian wholesale markets is less healthy with little price competition. This is likely due to:

- there being are only a handful of suppliers at the wholesale level in most markets and
- in many markets, wholesale gasoline is fundamentally undersupplied due to a shortage in refining capacity.

In many regions in Canada, these structural realities often lead to equivalent rack prices across all suppliers.

Competition Policy

The experience of independent fuel marketers shows that the *Competition Act* is lacking in its ability to meet the goal, stated here:

“ The purpose of this Act is to....ensure that small and medium sized enterprises have an equitable opportunity to participate in the Canadian economy in order to provide consumers with competitive prices and product choices” (Section 1.1)

It is the *equitable opportunity* aspect which is lacking. Large players are often allowed to gain market share by setting their rack price higher than their retail price to the consumer. The independent cannot compete with their supplier in this scenario, regardless of the two participants' relative efficiency in the activity of gasoline retailing. Because this situation threatens the existence of a large proportion of gasoline retailers, we view the practice as anti-competitive, even though it is not illegal under the Act according to the Competition Bureau:

“ The Bureau investigated these matters under section 79 of the *Competition Act* and found no evidence that pricing resulted from an attempt by a group of majors to discipline or eliminate the independent retailers in these markets, either through predation or margin squeezing.” ⁽²⁾

(2) March 30, 2006- Report by the Competition Bureau.



After much discussion with the Bureau, we have concluded that they do not have the tools to prosecute behaviour under the current laws which has the effect of reducing competition. We feel therefore that the *Competition Act* needs to be changed to ensure small and medium business in ours and other industries are afforded an equitable opportunity to compete, thrive and contribute positively to the economy for the benefit of all Canadians.

Specifically, we have made the following recommendations in the past ⁽³⁾ and make them here to this panel.

- 1) The pricing provisions (price discrimination, predatory pricing) should be decriminalized and enforced under a revised Section 79, or under a new section in the *Competition Act*.
- 2) The right to recover damages for non-criminal conduct should be expressly added to the *Competition Act*.

We have suggested that Canadian policy makers and politicians look to the United States and their competition law provisions around these two recommendations and bring Canada's competition laws at least to a par level with the US in these regards. We believe this will foster a business climate where equally efficient companies can participate equitably. More importantly, it will ensure much domestic competition, driving all market participants to develop into stronger more efficient enterprises positioning them well for success globally.

(3) Standing Committee on Industry, Natural Resources, Science and Technology, Evidence Number 28, Wednesday April 6, 2005



