MTA Submissions

Market Study into Retail Fuel

22 February 2019

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Commerce Commission
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For: Keston Ruxton
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Dear Keston

Submission: Market Study into Retail Fuel

This submission is from:

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Thank you for the opportunity for MTA to provide comment on the Market Study into Retail Fuel regarding the views of and its effect on the automotive industry.

Yours sincerely

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Sector Manager-Energy & Environment

Introduction

The Motor Trade Association (MTA) is an incorporated society. Its members include a range of parties involved in various aspects of the motor trade, including the retail fuel sector. MTA was founded in 1917 and in 2017 celebrated 100 years of trust with the NZ motoring community.

MTA currently represents approximately 3,600 businesses within the New Zealand automotive industry and its allied services. Members of our Association operate businesses including automotive repairers (both heavy and light vehicle), collision repair, service stations, vehicle importers and distributors and vehicle sales.

The automotive industry employs 57,000 New Zealanders and contributes around $3.7 billion to the New Zealand economy. MTA service station membership represent approximately 78% of all manned service stations operating in New Zealand.

Submission on Market Study into the retail fuel sector – Invitation to comment on preliminary issues

This submission is on the Market study into the retail fuel sector ("**Fuel Market Study**"), and in respect of the invitation contained in the 31 January 2019 "Invitation to comment on preliminary issues" (the "**Preliminary Issues Paper**").

The Preliminary Issues Paper invited interested parties to: (i) respond to the questions raised in the Preliminary Issues Paper which relate to their business operations or experience; and (ii) make submissions on any other issues that parties consider should be addressed during this study, having regard to the terms of reference issued by the Minister. MTA responds to that invitation.

MTA's response to the specific questions raised in the Preliminary Issues Paper appears in the Schedule to this submission (from page 19)***.***

In addition, ***MTA also takes this opportunity to put its response into context by setting out its position regarding the Fuel Market Study in this submission***.

In summary :

- MTA welcomes the Fuel Market Study. It perceives that, at a high level, ***there are competition law issues arising in respect of the wholesale fuel market***, which impact significantly on the retail fuel market. In particular it appears that there are significant issues arising in respect of the supply chain arising between import prices and at the pump prices to consumers (excluding the international fuel price/dollar value fluctuations/taxes and levies).

- MTA's assessment and understanding is that margins within the retail market are modest, and in some cases (once the impact of discount cards and the like are considered) non-existent, with some retailers reporting that transactions involving discount cards will always result in a loss. In that context, it perceives that the primary issues arise in respect of the wholesale market, and that accordingly ***the Fuel Market Study should focus on the wholesale market, and associated market structures and arrangements***. Primarily that is because MTA perceives that this arises because of the *considerable market power in hands of a small number of vertically integrated wholesaler/suppliers*, with any *independent retailers effectively captured under long term exclusive supply contracts on terms directly or indirectly imposed by those majors,* which mean that ***in the absence of a liquid (or transparent) wholesale market or market oversight from some sort of regulatory body, wholesaler/distributer prices are infrequently effectively tested or contested***.

- ***Confidentiality is a significant issue*** here, as retail fuel supply contract terms in this market (and probably also any independent wholesaler fuel supply contracts) are understood to include expansive confidentiality provisions. Consequently, access to information regarding the reasons for the apparently larger overall margins taken between import and delivery at the pump is significantly restricted. MTA considers that ***it will be critical for the Fuel Market Study to get past any such confidentiality provisions to identify the relevant terms and pricing positions, which it is perceived are largely dictated by and in the interests of upstream wholesaler/supplier entities (principally "the majors").*** *MTA elaborates on this issue in (Part IV, page 17, below).*

- The New Zealand Institute of Economic Research "New Zealand fuel market financial performance study", "A report for the Ministry of Business, Innovation, and Employment", 29 May 2017 (the "**2017 NZIER Study**") is a useful background resource and starting point;

- So is the information that MTA is able to contribute (in more general terms, given the confidentiality constraints limit MTA access to specific contract details) regarding independent retailer contracting, concerns and issues;

- Primarily issues arise from:

(1) the impact of ***prominent vertically integrated "majors" across the wholesale/retail market***, and potentially some vertically integrated independent wholesalers (many if not all of which each appears to be contracted to, and arguably captive to, one of the majors) that have strongholds in some markets; and

(2) the sorts of apparently ***one-sided long term, exclusive supply contract terms available to independent retailers*** (a fuller outline of which appears below in Part (II)) but which is overview includes the following features:

(a) largely ***"take it or leave it" terms***, bedding in established market rules and norms;

(b) ***confidential trading terms and conditions, and prices***, leading to limited information/transparency;

(c) ***exclusive supply arrangements***, meaning there is basically no", within contract term" opportunities for retailers to seek better prices (or terms) through another supplier or wholesale market;

(d) ***long term contracts*** (perhaps 5 or 10 years), meaning opportunities to review wholesaler/supplier relationships and seek better prices (or terms) are few and far between;

(e) ***supplier/operational control mechanisms***, including in some cases sale prices but at least buy prices, and with pricing significantly impacted by card discount schemes;

(f) ***restraints of trade*** and ***personal guarantees***, tying in key traders/owners to existing arrangements;

(g) ***"whole agreement" or "entire agreement" clauses*** or similar, which limit other legal protection that might otherwise be available to retailers; and

(3) ***the growing significance of fuel/loyalty/discount cards,*** *which can cloud actual prices, and which afford discounts to end-user customers but only at the expense of*

already modest retailer margins, shifting the focus away from wholesaler/supplier margins, and obfuscating actual prices (given that discounts around fuel may be traded for other discounts or offset against other product prices/products); anecdotally and in confidence at least one member say simply that whenever a fuel/loyalty/discount card is provided their modest margin becomes a loss on that transaction; *and*

(4) ***the absence of a liquid wholesale fuel market***, accessible for regular trading by independent retailers – which otherwise appear to be confined to wholesaler/supplier dictated prices pursuant to long term exclusive supply agreements, except at the end of contract terms when a new contract can be negotiated; and/or

(5) ***the absence of direct regulatory oversight****, either to implement and/or apply some form of market rules or at least to be available to intervene in particular cases*.

- Those features of the market are significant, in the context of:
  - unsubstantiated concerns that there are or may be unlawful arrangements or understandings between wholesalers/independent wholesalers and group/branded retailers and others (given their contract terms);
  - anecdotal accounts from some MTA members, provided to MTA in strict confidence for disclosure only on an anonymised basis) about the gist of their contract terms and trading arrangements, ***which suggest that independent retailers are seeing a price and/or margin squeeze (ie. that margin is being captured upstream of independent retailers leaving them facing criticism for prices that largely just cover, or just fail to cover, costs), or in some cases even preferential or predatory pricing***.
- These issues:
  - **may raise issues under the Commerce Act 1986 ("the Commerce Act"),** particularly s36 (taking advantage of market power), s27 (contracts/arrangements/understandings substantially lessening competition) and ss30-34 (the cartels provisions); and
  - ***more particularly for the purposes of the Fuel Market Study raise broader issues as to whether there is workable competition in the wholesale market, and whether there is a need for regulatory intervention*** to reform the operation of the wholesale market.
- It appears that the ComCom Study will be addressing a number of these issues directly, and that its terms of reference and the Preliminary Issues Paper already identify some of the key issues.
- In that context, MTA wishes to identify some possible options for reform:

(1) further regulation to create a liquid wholesale fuel market and ensure that that retailers are not constrained by exclusive trading obligations that are typical in contracts in the current market; in particular, MTA floats the possibility that there could be a **virtual liquid wholesale market for basic fuel product, extending the existing borrow and loan/reconciliation arrangements, but otherwise utilising the existing infrastructure, branding and delivery arrangements;**

(2) regulation of the emerging fuel/loyalty/discount space, to ensure greater clarity and to ensure that competition law issues aren't arising in terms of how those discounts schemes are implemented, and that are not deflecting attention away from other competition issues; and/or

(3) creation of a regulatory body to create and/or enforce market rules, potentially including powers to intervene where inflexible long-term exclusive supply arrangements are having an anticompetitive effect.

- In addition, this submission elaborates as to:
  - MTA's involvement in the fuel market, and its contribution to the Fuel Market Study (Part I - below);
  - MTA's view of the issues arising in respect of the Fuel Market Study (Part II);
  - some high-level possible regulatory reform options (Part III); and
  - some housekeeping matters – MTA's response to the questions raised, confidentiality and further engagement/participation (Part IV).

Part I: MTA'S INVOLVEMENT IN THE FUEL MARKET STUDY:

Over the years, MTA has engaged formally and informally with its retail fuel sector members, including but not limited to through its Service Station Advisory Group, in relation to issues impacting on those members. In that context, MTA considers that it has a good feel for the issues of concern to its members in this sector, and in that context welcomes the Fuel Market Study, and the opportunity to make submissions to the Fuel Market Study.

Some MTA members are involved in the wholesale delivery of fuel. But it is anticipated that the issues impacting on more substantial fuel market participants (the "major" importers/distributers/wholesalers) will be traversed in detail for the purposes of the Fuel Market Study by those entities.

The vast majority of MTA's members involved in the retail fuel sector are retail fuel suppliers, and many of them are independent retail fuel suppliers. Some are independent wholesalers.

It is anticipated that some of these smaller operators will make submissions to the Fuel Market Study, but many will not be sufficiently resourced to do so and/or will be concerned that if they speak up they will be exposed in terms of their commercial relationships with their suppliers. In that context, MTA seeks to put forward submissions identifying what appear to be the issues impacting on smaller participants in the retail fuel sector.

MTA has (in confidence) been encouraged by some of its members to make submissions voicing member concerns, and it has taken on board anecdotal (and in some instances quite detailed) accounts from some members, but it has secured that information in strict confidence and on the understanding that it may be used in this context but only in an "anonymised" form.

In that context, particularly in the limited time frames in which Fuel Market Study is taking place, MTA does not have an ostensible mandate to make submissions on behalf of all its retail fuel members. nevertheless, it is hoped that MTA's submissions are useful to the Fuel Market Study in identifying relevant issues that will affect many MTA members and other participants in the retail fuel market, and consumers.

Part II: MTA'S ASSESSMENT:

The context:

The wholesale and retail markets

The 2017 NZIER Study provides a useful indicative snapshot overview of the shape of the market, which MTA perceives is still in many respects sufficient. On that basis, using the terms used in the 2017 NZIER Study:

- The ***wholesale market*** comprises a range of participants, which comprise (broadly): "majors" (household name wholesalers, including subsidiaries of "supermajors") and independent/intermediary wholesalers. This is in some respects a national market, but there are geographical differences with different wholesalers (including independent wholesalers) having differing profiles is particular areas.

    - The "majors", to clarify, are (or at least were) BP, Mobil and Z Energy. What was (and sometimes still is) known as Caltex became Chevron in 2006, and Chevron was acquired by Z Energy in 2016.

    - There were 11 independent wholesalers, all supplied by one of the majors. That includes, for example, NPD and Waitomo branded independent wholesalers. The 2017 NZIER Study suggests that independent wholesalers will each be contracted to a single major wholesaler on long term supply contracts.

    - Gull is not strictly a "major" as described in the 2017 NZIER Study. But it operates its own wholly independent supply chain as a wholesaler, procuring refined fuel from international markets (independently of the "majors") and delivering it to company owned and dealer owned retail sites. It should also be noted that Gull NZ Ltd is owned by Caltex Australia and as such may have access to refined fuel products at preferential rates similar to those that may also apply to Mobil NZ Ltd and BP Oil NZ Ltd.

    - Of course, different wholesalers or independent wholesalers will feature more, or less, in different geographical areas.

- The ***retail market*** *is populated by* the majors (including group, interconnected or related companies), (perhaps) also independent wholesalers (again including group/interconnected/ related companies), Gull sites, and independent retailers.

    - Retail sites that are effectively owned by the majors, and perhaps some effectively owned by the independent wholesalers, reflect the vertically integrated aspect of the market.

    - Independent retailers *(other than Gull independents) are all each contracted to a single wholesaler*. Some of them have their own vertically integrated retail outlets, and as well as supplying independent outlets operating under the independent's brand.

    - Separately there are also some vertically integrated company owned company operated Gull retail sites and some independent retail sites.

    - Within those arrangements (according to the 2017 NZIER Study) there appear there are a range of models as to who sets prices – it may be the site owner, distributor or the major that sets the retail fuel price.

The 2017 NZIER Study comprises an overview of some possible competition issues in the wholesale market. It includes the revealing observation "*that* ***there is only a limited wholesale "market" in New Zealand***"[1] (emphasis added). That conclusion is followed by an observation that anecdotally most wholesale contracts involve a pricing formula pegging to the cost of imported refined product and that while prices move based on movements on crude oil price, the pricing formulas are fixed for the terms of the contract. MTA considers this to be a critical issue for the Fuel Market Study. The 2017 NZIER Study also identifies potential issues relating to:

[1] Page 10, 2017 NZIER Study.

- ***vertically-integrated majors***, observing that "*if it allows firms to raise prices by limiting competition, then consumers can be worse off than with a separated industry structure*"[2]; and "*vertical integration may create incentives for the majors to restrict rivals' access to key infrastructure assets, like the refinery and fuel terminals. This access restriction creates a barrier to entry that may have allowed margins to rise*"[3];

- **refinery arrangements**, suggesting tight capacity fully committed to the majors and bundling of products present barriers to entry[4]; and

- ***the independent's limited sources of product***, regarding which in summary the report says (with emphasis added):

  - "While Gull has its own supply arrangements enabling it to serve much of the North Island, New Zealand lacks liquid regional wholesale markets through which independent suppliers can reliably access fuels – instead they are reliant on being able to secure long-term supply contracts from the majors.

  - This reliance potentially limits their ability to compete head-to-head with the majors – either on price, or on expansion/entry – dampening the downward pressure they can exert on margins."

Against that background it appears that much of the retail market (putting Gull to one side) is served by two main categories of retailer:

- ***vertically integrated retail outlets*** *(a major or an independent wholesaler that will be effectively captured on a long-term contract with a major, or entities within their respective trading groups); and*

- ***independent retail outlets that it appears will be obliged to sign up to long-term supply contracts directly or indirectly from the majors.***

The 2017 NZIER Study observations about the market, together with the limited information available to MTA regarding independent retailers' contracts with wholesalers (see below) and the trading environment they operate in, suggests the lack of liquid access to wholesale markets for independent retailers (and perhaps also for independent wholesalers) is a significant factor.

Contractual terms for independent retailers:

MTA does not have direct access to the contractual arrangements, and relating trading arrangements, to which its fuel market participants are party. As noted already, such contracts are generally subject to confidentiality constraints. It is hoped that the Commission can access those contracts.

In the meantime, MTA does have some historical understanding and insight into the nature of these sorts of contracts as they relate to independent retailers, as well as some more recent anecdotal accounts, which have been related to MTA by members in confidence. It can (without betraying confidences) broadly identify that the key features of the sorts of contract terms generally available to independent retailers include:

- largely ***"take it or leave it" terms***, meaning there is significant pressure on retailers to agree to play by the established market rules and norms;

[2] Page (iv), Executive Summary, 2017 NZIER Study.
[3] Ibid.
[4] Page (v), Executive Summary, 2017 NZIER Study.

- ***confidential trading terms and conditions***, and prices, meaning that there is limited information/transparency in respect of "upstream" costs and pricing, or other wholesale or retail market costs structures – other than international market crude/bulk pricing;

- ***exclusive supply arrangements***, meaning there is basically no "within contract term" opportunity for retailers to seek better prices (or terms) from another supplier, arguably preventing retailers from going to market to negotiate or otherwise impact on the wholesale price and/or terms;

- ***long term contracts*** (perhaps 5 or 10 years), meaning opportunities to review wholesaler/supplier relationships and seek better prices (or terms) are few and far between, so retailer opportunities to seek new terms and negotiate new wholesale arrangements will arise only infrequently between contract terms, again reducing incentives on the wholesale market to compete on price;

- ***supplier/operational control mechanisms***, including in some cases sale prices determined by the major supplier or distributor, in other cases sale prices substantially constrained by a combination of buy price and market forces (in a market involving many vertically integrated suppliers), and pricing impacted by card discount schemes, which it appears in real terms significantly limit retailer scope for competition;

- ***restraints of trade***, precluding retailer (and key retailer personnel) opportunities to compete elsewhere; and ***personal guarantees***, tying in key players/owners to the business and the existing contract/term (and terms);

- "***whole agreement***" or "***entire agreement***" clauses or similar, and other terms which provide that the arrangement does not give rise to any form of partnership or fiduciary or good faith obligation, which prevent the retailer from seeking to rely on promises or representations, or to require the wholesaler to act fairly or in good faith in terms of market price availability to the retailer.

These sorts of contractual constraints appear likely to impact significantly on the ability of those retailers (and perhaps also independent wholesalers) to:

- push wholesalers to provide competitive prices; and
- compete with each other.

Fuel/loyalty/discount cards

The further market feature that emerges, along-side the vertically integrated market structure and available contract terms, is ***the emergence of fuel/loyalty/discount cards.*** These cards are becoming an increasingly prevalent feature of the market.

- It is not yet entirely clear whether retailers are directly required to participate in these schemes because of their contract terms, ancillary arrangements with their wholesaler/distributer, pressure from their wholesaler/distributor, because of market pressure (given the prevalence of such cards with competitors) or a mixture of those causes. But it is clear that retailers often, but perhaps generally or almost always, bear the some of the discounts that are involved, that wholesaler/distributor margins are often unaffected, and that some of the fuel/loyalty/discount card schemes lead to confusion as to what discounts are being offered where and what quid pro quo is involved.

- In that context such schemes can muddy the waters as to what consumers are actually paying for what (given that there may be a quid pro quo with another product/offering such as a supermarket) and deflect attention in respect of the end-user price onto the retailer and may actually cloud rather than illuminate where margins within the supply chain are actually accrued.

Margins?

MTA notes that the Commission's Preliminary Issues paper suggests that there are margins accruing in New Zealand between arrival into the country and delivery at the pump that (excluding taxes etc) exceed equivalent margins in other similar countries, such as Australia.

MTA's inquiries, through its own 2018 Survey, suggest that independent retailer margins are modest at best. That survey reference only sought responses by reference to various ranges rather than any specific margin details, and it only touched on the margins issue at a high level as part of a broader annual survey, without specifying exactly what was being asked, and what MTA expected respondents to take into account in assessing their margins. The survey suggested margins in the region of 3.5%. But as noted already that was a fairly raw survey, and MTA perceives that if anything the survey responses would not necessarily have factored in all relevant retailer costs, including (for example) finance costs, fuel/loyalty/discount card discount margins and associated delays in payment/finance costs.

MTA accepts that an assessment needs to be made as to whether there are additional market structure and geographical costs involved in the New Zealand supply chain that need to be accounted for and/or investigated further. But it perceives that the NZIER 2017 Study was correct to identify the impact of vertically integrated majors and issues regarding available market contract terms, and respectfully submits that the Fuel Market Study should be focussing on:

- Contract terms available to independent retailers, and independent wholesaler/distributers, generally from the majors;
- wholesaler/distributer margins; and
- whether reform is required to ensure that there is a liquid wholesale market, at least for basic fuel components.

It perceives that inquiry should extend further into fuel/loyalty/discount cards, and whether a market regulator is required.

A Commerce Act 1986 perspective

To some extent, the competition law principles in the Commerce Act 1986 ("**Commerce Act**") put the broader issues that the Fuel Market Study is to consider into context.

Section 36 Commerce Act issues: The available information regarding the wholesale and retail markets suggests that the vertically integrated majors (and possibly in some contexts independent wholesalers supplied by those majors) have substantial market power, at least in some areas, and may be taking advantage of their market power in various ways with respect to their supply arrangements with independent retailers.

- It appears that independent retailers are being compelled to accept one-sided contract terms, as outlined above, which arguably substantially restrict the retailer's entry into, prevent or deter the retailer from engaging in competitive conduct in, or in some respects eliminate the retailer from, other retail and/or wholesale markets.
  - It appears that the majors (directly and in some cases indirectly through independent wholesalers) are able to require independent retailers to commit to long term exclusive supply arrangements (including associated restraints of trade and personal guarantees) on terms that include operational supply constraints, tying the retailer into the prices the wholesaler delivers.
  - It is understood that many of these contracts will, in some way, effectively lock the retailer into a pricing regime (at least "buy" pricing) determined by the wholesaler, generally by the major, or the distributor.

    - Anecdotally, there have been some suggestions that at least some independent retailer contracts do not a contain clear buy price formula or mechanism, potentially leaving the retailer to some extent at the mercy of the wholesaler. MTA does not have much information about this issue but perceives it should be assessed if contract terms can be accessed.

    - Perhaps most significantly, MTA understands that these contracts will lock in the independent retailer into a long term (perhaps 5-10 years in some cases) exclusive supply arrangement, with no option to go to the market for a better price or terms *until* the contract next comes to an end of term. In effect, that means that generally independent retailers' engagement with the wholesale market is significantly restricted, and they are prevented from engaging in competitive conduct in the wholesale market, except occasionally (perhaps every 5 or 10 years) when they negotiate new terms. On that basis, independent retailers are generally not involved in an active wholesale market at all.

- Concerns have been raised with MTA – anecdotally and in confidence at least – about wholesalers delivering fuel to independent retailers at prices that leave little or no room for the retailer to sell at the rate the market will pay *and* still make a commercial margin.

    - That raises issues as to whether this is a price squeeze or margin squeeze. In other words where: (i) a vertically integrated firm controls the wholesale price at a high level and retail price at a sufficiently low level to ensure that competitors who are only operating at a retail level cannot match the dominant firm's retail price and operate profitably; and/or (ii) commercial margins are "captured" at the wholesale level by the vertically integrated majors (and possibly in some contexts independent wholesalers who are supplied by those majors), who then sell at retail prices that are very close to the wholesale rates, leaving independent retailers to seek to operate thin (or intolerably thin) margins, and (anecdotally at least) in some cases at a loss.

    - That appears to have been an issue, historically, across the broader market. For example, at times historically independent retailers have said there is no money in the fuel business but that they continued to trade in order to attract customers onto the premises to buy goods from their retail shop or (at least in days gone by) to use the vehicle service/repair business. Anecdotally, at least, it appears that many independent retailers would now say they operate very close to the bone, with small margins or no margin to speak of, particularly once fuel card discounts etc are accounted for.

    - In that context independent retailers appear to be significantly constrained by the supply cost, their contract terms, and "market" prices that may largely be determined by the vertically integrated retailer (which may effectively have taken its margin at the wholesale level, or which might even have a better buy price arrangement to vertically integrated/group entity retailers).

    - Anecdotal confidential reports of some "other brand" independent/intermediate wholesaler trading suggest this is happening in the other brand context.

        - There are some reports from an independent retailer operating in an "other brand" context that there may even be differential pricing, in which it appears independent retailer is not acquiring fuel at the same price that a competitor within the vertically integrated entity or group is paying. Anecdotally, some independent branded retailers believe this is happening because they say they see other nearby unmanned branded sites apparently operated by the independent wholesaler selling the same fuel products for less than the independent's buy price. There may be other (lawful) explanations, but on the face of it that suggests preferential pricing.

  - The 2017 NZIER Study identifies something further along those lines: "*Another possibly anti–competitive effect of vertical integration is that it provides incentives for integrated firms to increase the wholesale price they offer to separated retailers ("raising rivals' costs").*" In some cases that may amount to predatory pricing. If this is happening (again, there may be other lawful explanations) that sort of pricing appears more obviously to be intended to knock the independent out of the market, or at least constrain their involvement in the market. It would become even more obvious where, as has been reported anecdotally and confidentially to MTA, the supplier will not entertain discussion about relieving price pressure (so that the buyer can acquire fuel at a rate that might allow them to make a modest profit) but makes offers to acquire the site.

  - In that context, it appears that issues might arise as to whether an independent wholesaler/supplier operating an "other brand" in a local market in which they have a strong position could also be taking advantage of a substantial degree of power in that market.

Section 27 Commerce Act issues: Other issues will arise as to whether there are contracts, arrangements or understandings that are substantially lessening competition in the market.

- First, the contract terms that appear to be available to independent retailers arguably appear, in various respects, to lessen competition in at least some wholesale markets by locking those retailers in to long term unilateral trading arrangements with a single major, on the sorts of terms identified above. There appears to be a real possibility that such contracts are likely to have the effect of *substantially* lessening competition in particular markets, because those retailers that captured under a long-term agreement will obliged to accept whatever price has been agreed or is delivered.

- A second possibility is that, within a vertically integrated wholesaler group of entities (a major or an independent wholesaler) there may be contracts, arrangements or understandings between group members that have the purpose or are likely to have the effect of substantially lessening competition in particular markets. This could happen where a major operates a wholesaler entity which contracts separately with retailer entities or where an independent wholesaler is contracting with a related or group entity. MTA is aware, anecdotally and in confidence, of allegations that this is happening in respect of at least one independent intermediate wholesaler but is not in a position to present evidence of this.

- A third possibility is that there is horizontal coordination, between the majors. MTA hopes this is highly unlikely and is not aware of evidence that suggest its occurrence. We note that the 2017 NZIER Study observes that: "…*we have uncovered no reason to suggest that industry participants are engaging in explicit collusion (e.g. deliberate price–fixing). There remains the possibility, however, of firms tacitly colluding – i.e. coming to an implicit understanding that they will enjoy higher profits on a long–term basis if they refrain from competing in certain ways. Such tacit collusion can arise in industries in which few firms with comparable costs have repeated multi-market contacts, instable and non—innovative markets, and with barriers to entry and high transparency over each other's activities.*"[5] *Based on the NZIER comment i*t is not inconceivable that the majors might have, to some extent, slipped into some level of tacit collusion at least, particularly given that there is some horizontal cooperation already (Borrow & Loan etc), contract terms appear to be broadly similar, and the brands prices tend to "track" (at least to some extent). The Fuel Market Study should be well placed to establish whether there is any sufficient basis for suggesting

[5] 2017 NZIER Study, page 60.

that such an arrangement or understanding in fact exists. But if it does exist, it seems likely that would substantially lessen competition in at least some markets.

Section 30-34, cartel issues:

- The involvement of vertically integrated majors means that those majors (or their associated companies) will in some cases also be operating as retailers in the same market as the independent retailers to whom the majors are selling. That means that if the majors (or associated group companies – given s30B) are involved in contracts that are price fixing, restricting output or market allocating in terms of the cartel provisions, then that raises issues under s30-34.

- The same could apply to a vertically integrated independent wholesaler, and even potentially to group entities in such an arrangement (by operation of s30B(a)/30B(b), and s2(7)).

- At least some of these arrangements may, subject to their terms (to which MTA does not have access), comprise a provision in a contract, arrangement or understanding that has the purpose, or likely effect of "price fixing" (s30A(1)), if major wholesalers and independent wholesalers may effectively be fixing the fuel price (s30A(2)(a)) or discounts through fuel cards etc (s30A(2)(b)) that independent retailers use when supplying goods in competition with the wholesaler through its retail operation or its (interconnected bodies corporate) subsidiary's retail operation.

- Finally, it is acknowledged that the cartel provisions are subject to various statutory exceptions, including potentially relevant exceptions that apply to "collaborative activity" (s31) and (some) vertically integrated markets (s32).

- However, MTA does not have access to such contracts, and so can only speculate that this is or may be what is actually happening. MTA considers that the Fuel Market Study is better placed to make that assessment.

Broader issues/scope for regulatory reform

Of course, the terms of reference for the Fuel Market Study are broader than the specific statutory provisions that might otherwise apply. There is scope for a more far reaching assessment of the market, and options for regulatory reform.

Again, the 2017 NZIER Study provides some useful perspectives in that regard:

- "*… the goal of policy has been to use "workable" or "effective" competition as the benchmark, based on the work of United States economist J.B. Clark. Clark emphasises three key features of competition: rivalry among sellers, the free option of buyers to buy from alternative vendors, and efforts by sellers to equal or exceed the attractiveness of others' offerings.*"[6];

- *"In Australia there are "true" independent retailers: companies that are not tied to anyone wholesaler and source petrol via a competitive wholesale market"; and there is "[s]tate as well as federal government industry–specific regulation"*[7]*;* and

- *"… there are some aspects of the industry which we recommend be subject to policy development, including detailed cost benefit analysis, to determine if action would benefit consumers. These areas are: … The creation of a liquid wholesale market."*[8]

[6] 2017 NZIER Study, p 55.
[7] 2017 NZIER Study, p 84.
[8] 2017 NZIER Study, p 90. This was the third of three areas suggested in the 2017 NZIER Study.

In that context, MTA perceives that the underlying issues here is that with vertically integrated majors dominating the wholesale market, joined only by a few independent wholesalers who are effectively by contract captured by one or other major and Gull (which does not have the presence of the majors, or possibly even some independent wholesalers), and all independent retailers (save for those with Gull) also tied into long term contracts captured (directly or indirectly) by the majors:

- there is no real or active liquid wholesale market; and
- it appears likely there isn't workable competition in the wholesale market, or at least in some (and perhaps many) elements of that market; and
- fuel/loyalty/discount cards don't necessarily offer clear discounts, and appear to shift the focus onto the retailer's margin and potentially deflecting attention away from wholesale market issues/margins; and
- there is no market specific rules or regulation.

In that context MTA considers that the bigger issue is that there is also scope for regulatory reform to implement new market arrangements to seek to address those issues.

Further investigation, including consideration of confidential contract terms, through the Fuel Market Study

Notwithstanding the gaps in the information available to MTA (which the Commission ought to be able to fill in the context of the Fuel Market Study), there appears to be a credible basis that there are some significant deficiencies in the operation of the wholesale market, arising largely from the dominance of the majors *and* the captive terms on which independent wholesalers and independent retailers (other than Gull) operate.

The additional information that MTA can bring to the table in general terms regarding the terms and conditions available to independent retailers suggests that the absence of a liquid wholesale market is a significant issue – more significant than the 2017 NZIER Study had suggested. Again MTA considers that ought to be able to be verified by the Fuel Market Study, which notwithstanding confidentiality issues ought to be able to access copies of relevant contracts first hand for the purposes of the Fuel Market Study.

MTA considers that it is critical to the efficacy of the Fuel Market Study that the Commission finds a mechanism to access copies of relevant market contract terms and trading/price information, from independent retailers and independent/intermediate wholesalers/distributers. It considers that verification of those details is critical to a complete understanding of the operation of these markets. It urges the Commission to resource this aspect of the Fuel Market Study, and to find mechanisms that allow such contracts and trading/price information to be available to the Commission for the purposes of the study (but otherwise respecting commercial sensitivity and confidentiality) despite confidentiality provisions in such contracts.

Part III: REGULATORY REFORM OPTIONS, INCLUDING A LIQUID WHOLESALE MARKET

In that context MTA broadly accepts the proposition in the 2017 NZIER Study view that increased transparency in the wholesale market is not likely to be sufficient and could be a double-edged sword for consumers because it would give competing majors (and other wholesalers) more information to assist with coordinating prices.

MTA considers that ***the suggestion in the 2017 NZIER Study that there needs to be a liquid wholesale market has merit****.* It urges the Commission to consider options for regulatory reform to create a liquid wholesale market.

That raises issues as to whether it is a practical viable option given the current market arrangements and configuration. Possible impediments to the creation of a liquid wholesale market in New Zealand are that:

- ***retailers make long-term commitments to branded supply*** from one of the majors, or an independent wholesaler, which are reflected (amongst other things) in: acquisition of extensive branded signage ("BP", "Z" etc) and branded product lines (not just fuel, but oil and other products), and related IP licensing etc; and long term financial commitments regarding expensive underground fuel tanks, pumps etc;

- ***retailers do not acquire "unbundled" refined fuel, they acquire "delivered/pump-ready" fuel products*** to a specification that generally *either* includes a branded package of additives and characteristics (fuel from the majors) *<u>or</u>* they received "delivered/pump ready" plain pack fuel without additives (as with some or all of the independent intermediate wholesaler/suppliers); and the fuel product they receive is kept consistent because it is received *from* the same wholesaler/supplier into underground tanks that contain the same branded bundled fuel product – so retailer tanks can therefore be "topped up" without mixing fuels; and

- ***it could be suggested that those arrangements make liquidity in terms of who supplies wholesale fuel to retailers, and what fuel they supply, problematic***.

Those issues could be addressed by ***regulating to require a <u>physical</u> separation of: (i) the acquisition of basic standard fuel product, from a liquid wholesale market; and (ii) branding, addition of any additives to branded specifications, and delivery***.

- That way there could at least be a competitive wholesale market for the baseline fuel product, albeit that in line with capital investments they have made already, retailers might still be "captured" on a longer-term basis in relation to their branded additives/processing and delivery.

- A commoditised basic fuel product appears to be viable because the majors already operate a borrow and loan ("**B&L**") system, effectively taking fuel from each other's terminals. In other words, they already sometimes use each other's basic fuel product, which they include in delivered branded product fuel lines.

- However, ***difficulties may arise with a physical separation model, given the existing arrangements and infrastructure***:

    - It is anticipated that the majors (that provide additives to their branded fuels) would maintain that there is some material difference between different delivered products. Also, it isn't clear whether a separated process like that would be practical, given the points of difference between various end use products (or at least most of them). However:

        - MTA understands that to a significant extent the differences between fuel products within particular categories (such as 91octane/regular and 95 octane/super) are not substantial other than meeting stated minimum octane ratings. The raw material must meet basic specifications. Beyond that some might suggest any differences are marginal and even largely cosmetic, with most consumers assuming brands are interchangeable.

        - In any case, MTA perceives that delivered branded fuels can be created from the same basic fuel product (or products) plus the relevant supplier's branded additives, or raw fuel can be supplied without additives (which MTA understands is usually the case for independent intermediate wholesalers – other than the major brands). MTA understands that for major brand sites additives are already routinely added at a gantry at the bulk storage terminals, as fuel is collected for delivery.

- Separation of the basic fuel product from the additives could create an extra step in the process. Delivery of raw fuel from different suppliers would involve more complex supply arrangements. Depending on what additional infrastructure would be required, that could arguably involve a market inefficiency, with the additional step resulting in that party too claiming a margin, which could increase overall costs.

- Also, a “two-pot” mix fuel supply, with the bulk fuel coming from one wholesaler and the additives from another wholesaler, which could potentially involve a further party/process the mix, could lead to difficulties and disputes if there were a contamination or product defect issue with the end product.

Another option would involve regulation for ***an effectively virtual separation*** ***of: (i) the wholesale market for acquiring the basic fuel component*** (through extended borrow and loan arrangements in the wholesale market, subject to a wholesaler reconciliation mechanism); ***from (ii) the market for branded fuel supply and delivery (which would stay with the existing wholesaler/supplier)***. In that context, and as a working outline for discussion purposes:

- the customer would still contract with a branded wholesaler/supplier for bundled fuel supply (the “**Wholesaler Supplier**”), but they would only *pay* that Wholesaler/Supplier for: the usual branded signage etc, IP licensing, related product stock, tanks and pumps etc; the branded additives and any additional processing required; delivery/transport; retailer support; and in effect, everything that they currently pay the wholesaler/supplier for in the current market, *except* the basic fuel component;

- the customer would buy the basic fuel component within a separate liquid wholesale market in which they would be paying the relevant wholesaler (the “**Market Wholesaler**”) from whom they buy particular basic fuel product;

- a retailer acquiring fuel from a Market Wholesaler:

    - would trigger the delivery of bundled branded fuel by the retailer’s Wholesaler Supplier to the retailer, in the same was as they currently deliver fuel to retailers; and:

    - the retailer would pay the Wholesaler Supplier for the Wholesaler Supplier goods/services; and

    - the retailer would pay the Market Wholesaler for the basic fuel product (possibly through a separate wholesale market process); and

    - the Market Wholesaler would be paid for the fuel they supplied through the wholesale market, though a reconciliation process that would effectively be an extension of the existing borrow and loan arrangements (or a regulated version of same).

Legislation and/or regulation would be required to set up such a wholesale market *(real or virtual),* and to clarify that contractual exclusionary provisions would not preclude access to such a market.

- There may be some parallels with similar arrangements in respect of gas or electricity markets, albeit that those are closed systems that will not have the additional complication of measuring quantities outside of a closed delivery system (such as gas or electricity lines).

- Careful consideration of the issues would be required to clarify whether determine the viability of setting up such a wholesale market (real or virtual), or something along similar lines. *But MTA considers that this merits proper consideration.*

In addition, MTA's view is that ***consideration should be given to regulation of the emerging fuel/loyalty/discount space***, to ensure greater clarity as to what discounts are offered, to ensure that competition law issues aren't arising in terms of how those discounts schemes are implemented, and to ensure that they do not have the effect of deflecting attention away from issues in other aspects of the fuel market and thereby resulting in anti-competitive outcomes. This option is covered further in response to the Preliminary Issues Paper questions, in the Schedule that follows.

Finally, MTA considers that ***consideration should be given to creation of a regulatory body to create and/or enforce market rules***, potentially including powers to intervene where inflexible long-term exclusive supply arrangements are having an anticompetitive effect. That could involve some form of market regulator, akin to the Electricity Authority or the Gas Industry Company (but probably on a smaller scale), or some sort of market ombudsman. Some form of regulatory body would probably be needed to administer any liquid wholesale market (real or virtual).

Part IV: Housekeeping matters – MTA's response to the questions raised, confidentiality and further engagement/participation

The schedule to this submission sets out MTA's response to the questions raised in the Preliminary Issues Paper, in the context of MTA's broader response above.

MTA considers that one of the significant issues that the Commission will need to grapple with is the impact of contractual confidentiality constraints on visibility as to how the relevant markets are operating.

- Those provisions and market arrangements, in the context of a market that still appears to be dominated by substantial vertically integrated "majors" with considerable market power, provide a considerable disincentive for smaller independent retailers to speak out. They also mean that those retailers are not in a position to work cooperatively to pool information and/or resources in order to provide useful input to the Commission.

- The market context also puts retailers in a difficult position. Independent retailers generally obtain fuel directly from one of the majors, or in some cases indirectly through an intermediate wholesaler that generally obtains their fuel directly from one of the majors. These will generally be "B to b" contractual arrangements, on terms that are largely determined by the "B" entity. New Zealand's regulatory landscape does not offer significant protection to "b" entities in "B to b" arrangements. Smaller entities will not, generally, be as well-resourced as their suppliers. In that context, individual retailers or affected groups of retailers who can only secure fuel through "B to b" contracts are in a vulnerable position if they raise their heads above the parapet and make submissions to the Commission, and they will face significant risks even if they seek to do so in confidence.

In those circumstances, and notwithstanding the indication that submissions supported by evidence will be preferred, MTA considers that it is appropriate that it conveys to the Commission its best understanding of the relevant market arrangements and conditions, even if it cannot always provide specific examples or contract documents. It does so based on: (i) years of involvement with its members in this sector; (ii) available information, including publicly available information from earlier market studies; and (iii) anecdotal accounts (sometimes detailed accounts) that have been provided to MTA in confidence, which MTA is able to share on an anonymised basis but otherwise to preserve confidentiality.

MTA considers that, in such circumstances, where the prevailing structural conditions and what is known about contractual arrangements indicate there may be aspects of the market where there is a lack of workable competition, the Commission ought to use its powers in the Fuel Market Survey to dig deeper into those arrangements and confidential contract terms.

MTA is also seeking further information from its members, through anonymised inquiries, focussing on issues which it perceives it can usefully clarify in general terms without breaching contractual confidentiality. It is hoped that an initial tranche of such information will be available soon, and that other more expansive responses will be available in due course. MTA will seek to provide any such further information that it appears might be useful to the Commission as soon as it can and notes that the Commission has granted one week for a supplementary MTA response regarding the Preliminary Issues Paper/Questions if further information emerges in that time frame.

MTA is happy to assist with that process, in any way that it can, and to encourage individual members to assist the Commission. It is also happy to engage further with the Commission, to seek to elaborate on the issues and concerns that have been identified already, if that would assist.

SCHEDULE 1:

QUESTIONS RAISED IN THE PRELIMINARY ISSUES PAPER:

Q1 Do you have any comments on our proposed approach to the study, including the scope and areas, we intend to consider? Are there any additional areas relevant to the terms of reference that should be considered and may not be captured by our approach? If so, please explain.

We support the focus on the competitive outcomes in the retail fuel market and what factors are affecting competition in the retail fuel markets.

For some time, MTA members have raised issues with us that could be described as issues that restrict competition at the retail level, generally relating to the terms available to those retailers from their wholesale suppliers. But we have been unable to get into the detail of those issues due to the confidentiality provisions contained in the fuel supply agreements between wholesaler and retailer.

We have strong anecdotal evidence – provided to MTA in confidence - that many (and probably most) fuel supply agreements contain conditions that restrict competition due to the one-sided long term, exclusive supply contract terms available to independent retailers from wholesalers/distributers. The anecdotal evidence suggests that in many instances independent retailers' contract terms are such that the wholesale rates at which they acquire fuel are largely (or entirely) dictated directly or indirectly by the majors (wholesalers/suppliers) and/or independent intermediate wholesalers/suppliers (perhaps to a lesser extent), with little opportunity for the retailer to go to market to seek competitive wholesale fuel prices except occasionally at the end of their contract term (which may be 5 – 10 years).

The anecdotal evidence suggests that (for reasons explored further below) independent retailers may be experiencing a price/ margin squeeze, or even in some cases suffering adversely because of preferential or predatory pricing.

This is arising in the context of a market that the NZIER Study identifies is dominated by a small number of "majors", which feature directly and indirectly both as wholesalers/suppliers and retailers. Further, we understand that the independent wholesalers/suppliers that buy from the majors do so on similar long-term exclusive supply arrangements that largely (or entirely) leave those apparently independent wholesalers/suppliers (to some extent) effectively "captive". That suggests the majors continue directly and indirectly to exert significant market power, directly and indirectly.

We would strongly suggest that the market study explores:

- the dominant position of the major fuel importers/wholesalers/distributers;
- the extent to which any 'own brand' intermediate suppliers are actually still supplied by an intermediary/independent wholesaler that is itself subject to a long-term exclusive supply arrangement with one of the majors (i.e. a supplier that is captive to a major);
- the terms of wholesale and retail fuel supply agreements, notwithstanding any confidentiality restrictions, to assess the impact of the dominant majors (directly and indirectly) in this market, and the impact of the contractual arrangements in which they are involved on restricting competition in the wholesale market (and thus also limiting any scope for competition at the retail level);
- the impact of fuel/brand/loyalty cards, which appear in many cases to offer discounts to consumers at the expense of the retailer, without impacting on the margins taken by the wholesaler/distributer;
- the broader issues as to whether there is workable competition in the wholesale market; and
- consideration of possible market reform options including:
    - including the creation of a more liquid wholesale market; and
    - regulatory reform in the fuel/loyalty/discount card space; and
    - creation of a regulatory body to create and/or enforce market rules.

Questions on trends in market structure

Q2 What could explain the fall in retail sites that carry the brands of the major fuel firms and the increase in the number of retail sites that carry their own brand (eg, Allied, NPD, Waitomo, Gull, RD Petroleum) as observed in Figure 1?

This is an interesting trend comparison looking at the growth in these ‘own brand’ but major fuel brand supplied sites over the period 2012-2016 particularly in the sense that these branded sites were not considered ‘significant’ in terms of influence during the 2017 study.

Gull seems to be the only entirely independent wholesale fuel option, or at least the only significant such option. But its market share does not appear to be as substantial as some other apparently independent wholesalers that are exclusively tied to one or other of the majors. No doubt the Market Study will be assessing whether, to some extent, Gull explains lower prices in the (largely North Island, excluding Wellington) in which it has a presence. However, we perceive that at best this reflects improved competition in some areas (and evidence that improved competition at the wholesale level would have a positive impact on prices for consumers), but not sufficient competition. It is also unclear what advantages accrue to Gull from its ultimate parent company Caltex Australia (a global major).

Otherwise, if – as the NZIER Study found – the ‘own brand’ sites are supplied by an ‘own brand” entity that is itself captured on a long-term contract with a ‘major’ anyway, the appearance of increased competition may be more illusory than real, particularly if the major is already capturing a significant margin for supplying the ‘own brand’ entity (leaving the ‘own brand’ entity limited scope for competition) . Some independent intermediate wholesalers (which it is understood will generally have long term contracts with a major) do appear to be having some impact on price in some areas, but it is not clear whether that will last, or whether this reflects the majors off-loading the budget end of the market to preserve volume with some margin and greater margins elsewhere.

One factor that plays a large part in the growths of these ‘own brand’ sites is that many of them are unmanned sites. (Of course, unmanned site can lead to apples with oranges comparisons, as unmanned sites do not offer the same services that manned sites do, and accordingly they benefit from significant overhead (staff costs and safety compliance) savings[9]. Anecdotally it has been suggested that this involves savings in the order of $250,000 pa when compared to an average manned service station staff cost overhead). However, it should not in our view, be assumed that unmanned sites are necessarily inherently beneficial to competition or consumer. We are aware, again anecdotally and in confidence, of situations in which at least one independent “own brand” entity has gained a foothold in a geographical area through independent retailer sites then later began to run its own unmanned sites which it is suggested are selling fuel at prices that are less than the price paid for fuel by the established manned sites. If that puts manned sites “to the wall” that will create market inefficiencies, and there is a risk that if an entity emerges with local market control through its own unmanned sites, that entity will not face significant competition.

Q3 How is the market structure, including ownership arrangements throughout the supply chain, affecting competition in the retail fuel market? How are recent changes to the market structure affecting competition in the retail fuel market?

Understanding the structure of the retail fuel market to be able to compare similar fuel service offerings is something MTA has struggled with due to the complexity and variety of business operating models, the range of service offerings, confidential fuel supply arrangements and prices, the lack of a visible wholesale market, and the impact of loyalty card and discount schemes.

The NZIER Study indicates that this is a market dominated by the “majors” which directly and indirectly (through largely captive independent wholesalers) control most of the fuel supply to retail, and which operate at a retail level in competition with any independent retailers. It is perceived that the major’s direct and indirect influence has not changed significantly, notwithstanding the emergence

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[9] MTA has long held concerns about effective consumer safety at unmanned sites (dealing with spills, emergency shut off switches, signage and fire extinguishers etc)

of some independent brands, because it is perceived that those brands will still be committed to long term contracts to one or other major, and in that sense "captive".

International comparisons suggest that somewhere between the wholesaler and the pump, more substantial margins are being extracted in New Zealand than in most other countries. And MTA retailer members are reporting modest margins. For example, anecdotally and in confidence, one large established multi-site retailer suggests it can only achieve margins in the region of 1c/litre, and others suggest that for their sites all fuel/loyalty/discount transactions run at a loss. That suggests that if there are reasonable margins available in the domestic fuel market as a whole, unless and to the extent that supply/processing chain costs in New Zealand accounts for a significant part of the higher retail price (which may in itself suggest other market inefficiencies), wholesalers are taking significant margins. Broadly that raises issues as to whether this amounts to a price squeeze, in a market dominated by majors that can take their margin prior to supply to retailers.

MTA is unable to comment more precisely on whether the margin extracted at the primary wholesale level is reasonable, as those margins are of course shrouded by confidentiality provisions and are derived in the absence of a visible wholesale market. But it can say that it appears that a substantial margin is taken by wholesalers/suppliers, leaving retailers operating on slim margins at best, with limited room to compete on price. Similarly, where a major fuel supplier supplies to an intermediate wholesaler and that wholesaler supplies both their own branded sites as well as other independent sites the major can still take a significant profit prior to supply to the independent own branded wholesaler/supplier and/or through any price control they exert over the apparently independent wholesaler/supplier. And if the independent wholesaler can secure fuel at more competitive rates there is still scope for that independent wholesaler to take the lion's share of the available margin, or to offer preferential pricing to their own sites making the independent sites suffer. As previously indicated, MTA is aware anecdotally and in confidence of allegations that this is happening in the market, but it is difficult for MTA to obtain concrete evidence of this due to the confidential nature of supply agreements and pricing.Also, given that fuel volumes are controlled from a primary wholesale level, the flow on effect down a vertically integrated supply chain does restrict competition by the very nature of controlling retail volumes that are influenced by price. For example, were a retailer thinking of dramatically reducing their pump price they would quickly run out of fuel unless they could rapidly secure additional fuel. But with exclusive supply arrangements in place, often with regular allocated volumes scheduled for delivery, an independent retailer's ability to dramatically vary their resupply schedule outside contracted or agreed schedules in some ways discourages retailer driven price variations at the pump.

MTA urges the Commission to take an active approach to seeking access to relevant contractual documents, and pricing information, impacting on the wholesale/retail environment -particularly the sorts of contract terms and associated pricing available to independent retailers, and whether significant margins are being extracted prior to supply to retailer entities. The Commission may also wish to look at is the influence over retail competition exerted by the majors, through their supply arrangements with independent/intermediate wholesalers, and might consider whether the nature of those contractual arrangements is such that real effect of any apparent increase in the number of other brands is illusory, marginalised (in the low value/cut price sector of the market), or at least not as significant as it might at first appear.

Questions on trends in gross margins and regional pricing

Q4 What factors could be contributing to an observed rise in gross margins?

MTA has some insight into retailer margins, through its members, and perceives independent retailer margins are at best modest, and are not rising or rising significantly.

MTA perceives that the explanation for any observed rise in gross margins lies in:

(i) the impact of prominent vertically integrated "majors" across the wholesale/retail market, and potentially some vertically integrated independent wholesalers (many if not all of which each appears to be contracted to, and arguably captive to, one of the majors) that have strongholds in some markets;

(ii) the sorts of apparently one-sided long term, exclusive supply contract terms available to independent retailers, which limit the ability of retailers to access competitive prices from wholesalers and limits the incentives for wholesalers to compete;

(iii) the absence of a liquid wholesale fuel market;

(iv) price competition at the pump being focussed on brand/loyalty cards, which cloud rather than clarify true pricing and which in most/many cases erode retailer margins but leave wholesaler/supplier margins unaffected and which deflect attention away from those other market issues;

(v) the absence of market rules and/or a market regulatory body.

Q5 Could an observed rise in gross margins, or differences in gross margins between regions, be explained by capital expenditure or other costs?

MTA is not able to offer a more detailed response to this question as we have insufficient knowledge of the detail of any capital expenditure or other costs involved. However, MTA maintains that other factors that are identified in response to the previous question impact significantly on whether there is workable competition in the relevant wholesale market, as well as other impediments to entry into that market, which comprise a substantial explanation for any observed increases in gross margins.

Q6 What factors contributed to observed differences in gross margins between the South Island and Wellington on the one hand, and the rest of the North Island on the other? Is this trend continuing?

MTA's view is that these differences are largely a direct result of *some* improvements in market competition in some areas where low-cost fuel operators exist. This includes what might be called the 'Gull effect', but also in some cases where there are other increases in the number of low-cost and/or self-service stations. That is to not say that MTA perceives there is workable competition at a wholesale level across the North Island excluding the Wellington area, merely that there may be somewhat more competition. If anything, indications that prices are lower where Gull has a presence suggests that generally there is room for improvement.

We understand that where major fuel supplier owned and operated sites must compete with a low-cost fuel operator (for example an operator that adds few additives etc) that may be dealt with on a national network performance basis or by part of a group network, such that where margins are eroded in high competition areas they will be recovered in areas where competition is less fierce. Although confidentiality arrangements make it difficult to access information to prove that is happening, it appears that some areas that are paying higher prices may be bearing the brunt of competition in other areas.

As to whether these trends are continuing it would appear that they are. We acknowledge that our market monitoring shows us that where external factors affect both commodities and currency, we do see fuel prices moving in line with external factors. But MTA remains of the view that the primary issues that the Fuel Study should be focussing on are the points identified as (i) to (v) in answer to Q4 above.

Q7 Can the various suppliers of retail fuel increase output in the short term? Are there any constraints that reduce their ability and incentive to expand output/sales in a timely manner?

See response to Q3, and (i) to (v) in answer to Q4 above. It appears that there is little incentive for the majors to increase output available to retailers.

Questions on trends in profits

Q8 Is an observed rise in gross margins leading to an increase in the level of profits being achieved by the fuel firms?

MTA perceives this must be the case, for the reasons covered already. However, for the reasons covered previously MTA can only infer that margins are being taken by fuel wholesaler/supplier entities, and arguably ultimately to a substantial extent by the fuel firms (majors).

Q9 Is "return on average capital employed" (ROACE) a reasonable method to assess the reasonableness of prices (the approach taken by the 2017 Fuel Study)?

MTA is not able to comment on this at this time. However, if ROACE is the standard that is applied, it should be applied to assess each element of the relevant supply chain, and to explore whether margin is being taken disproportionately.

Questions on trends in discounts

Q10 Do you have any comments on the methodology or data utilised by MBIE to calculate a rise in retail price discounts?

MTA has no comments on the methodology or data used by MBIE, at this time.

But it does urge the Commission to focus on how the proliferation of loyalty cards and fuel discount vouchers affects this market. MTA understands that there are loyalty card schemes where the scheme (generally available through their fuel wholesaler/supplier) requires the participating retailer to pass on a fixed discount to the customer, or to offer a particular discount price to the customer, but which discount or reduction in price is met (wholly, substantially or least to a significant extent) by the retailer and not by the wholesaler/supplier (except where the wholesaler/supplier is also a retailer). That has the effect of focussing competition in this market on those fuel card prices, but again to some extent may leave the retailer to bear the brunt of any such discounting and in some cases may leave the wholesaler/supplier's margin unaffected. That in itself may have an anticompetitive effect.

Again, it may also have the effect of preserving wholesaler/supplier margins and (further) squeezing retailer margins. Also, if those involved in some such schemes are taking margins elsewhere, as a quid pro quo for participation in these schemes, then a more sophisticated model may need to be developed to properly and accurately identify real margins.

Q11 What are the likely explanations for the rise in discounting? Is there a relationship between the level of discounting and retail gross margins? If so, why?

Discounting provides for competition to the extent that customers are price focussed and seek the benefit of loyalty cards. It also means that margin is not affected if the customer is not price focussed in terms of seeking to use a loyalty card. In addition, discounting imposed by wholesalers/distributers which is born by the retailer preserves the wholesaler/distributer's margin and only impacts on whatever margin is available to the retailer. To the extent that the level of discounting is borne by a retailer that is captured on a long-term contract, particularly to the extent that in some cases the discount may render the transaction unprofitable for the retailer, the discounting may give the appearance that retail gross margins are being reduced when in fact wholesaler/distributer margins are not affected and are preserved.

Anecdotally and in confidence MTA is aware of a member that says that when a fuel card is presented at the pump that ensures a loss at the pump. If retailer margins are already squeezed under long term contract terms, then the focus on discount cards eroding any remaining retailer margin may not be a sustainable vehicle for such competition and may only serve to mask a lack of competition at the wholesale price level.

Q12 What are the potential benefits and harms to consumers from the increased use of loyalty schemes and fuel discounts? For example, does this increase switching costs for consumers or make it easier for consumers to benefit from a lower price?

The use of loyalty cards or discount vouchers are beneficial to consumers where these cards and vouchers are available. But from a retailer point of view they do affect profitability, and business viability, due to margin erosion. Perhaps more importantly, where retailers are bearing the discount costs loyalty cards and discount vouchers, and where that creates a focus on price competition through those discounts, that can shift the focus away from wholesale competition and wholesaler/distributer margins (which it is perceived may be where more substantial margins are being captured).

Also, in some cases where large discount vouchers are offered through supermarket purchases it is difficult to gauge where the cost of these discounts are covered or whether consumers perceive they are saving on fuel costs but paying more for groceries? There is a risk of a smoke and mirrors effect concealing real pricing and clouding or concealing the true extent of the benefit of the discount on offer.

MTA would support Commerce Commission forming a view on the use of loyalty cards and discount vouchers in terms of overall savings to consumers. Media reports indicate that in 2013 the Australian Competition and Consumer Commission announced that, following an investigation, it had accepted undertakings from the supermarket giants capping (at 4 cents/litre) fuel shopper docket deals to their customers that are funded by other arms of their businesses. MTA considers that these sorts of issues should be explored in this jurisdiction too.

Q13 Do retail discounts differ by region? What are the main drivers of any regional differences in discounting?

MTA is unable to offer any data on this issue at this time. It does note that there is some anecdotal evidence from members around the country that issues arise where discount vouchers from some supermarket brands are presented for redemption in areas where these supermarket brands are not located, creating situations where the service station refuses to redeem the voucher. That may mean that, in effect, consumers are not able to redeem, at least until they are in the right geographical area.It also notes that there is anecdotal evidence of differing levels of compulsion to participate, depending on the product on offer and in commercial terms, depending on what level of participation there is in similar loyalty card schemes. MTA considers that the Fuel Market Study should also focus on those issues.

Questions on other trends

Q14 Are there other trends that are likely to affect competition for retail fuel in the foreseeable future? If so, please explain how.

The factors identified above, and in particular (i) to (v) in Q4 above, are likely to continue to be the major factors. The complexity of the regulatory compliance costs associated with setting up and operating a retail fuel site does somewhat restrict competition at the retail level, as it appears that (given market prices for fuel at the pump) by the time fuel is acquired for retail sale the margins available at the retail end of the supply chain in respect of the sale of fuel are not enough to allow significant movement or competition amongst retailers in respect of pump prices.

Health & Safety compliance costs associated with staff training, equipment operation and hazardous substance storage are a significant cost to the retail site. The proposed increases to the minimum wage will add 20% to the wage costs for the retailer by 2020. For a typical manned service station this equates to an additional $50,000 per annum.
Fuel volume sales have been either static or decreasing over the past few years and look likely to continue this trend which will have an effect on a retailer to compete by reducing prices as margins are not sufficient to cover overheads mentioned above.

Questions on the supply chain: exploration and extraction of crude oil

Q15 Does the vertical integration of some fuel companies with exploration, extraction and refining functions outside of New Zealand affect how these companies compete to supply retail fuel markets in New Zealand?

The vertical integration of some of those entities as major wholesalers/distributers with direct and indirect group involvement in retail and with other retailers is a significant factor in the New Zealand market. MTA is not in a position to comment on whether their involvement in exploration, extraction and refining outside of New Zealand gives them an additional edge in terms of purchasing international commodities such crude oil or refined fuel, or other advantages in terms of competing in the New Zealand market, other than to say that it considers this should properly be considered as part of the Fuel Market Study.

Q16 The New Zealand operations of Shell and Chevron were separated from their global exploration and extraction operations, following Z's purchase. Has this affected competition for retail fuel?

No Comment

Questions on the supply chain: refining

Q17 Does the operation of the refinery as a tolling service (as opposed to a merchant refinery) adversely impact competition in the retail fuel markets?

Potentially there is an adverse effect on the retail market given the collective 43% ownership of the Marsden Point refinery by the major fuel companies as well as their long-standing distribution and borrow and loan scheme which creates an exclusive supply and distribution of fuel around New Zealand for the major fuel brands. Given that those refinery arrangements cannot meet all of New Zealand's demand (with the 3 majors having to supplement crude oil imports with refined fuel imports, and with Gull only importing refined fuel) it appears that all capacity is accounted for by the majors and those that they supply through existing generally long-term arrangements. Those factors appear to present a barrier to entry for other prospective market participants that might otherwise seek to put fuel through the refinery.
This may also be an impediment to an independent retailer being able to offer a sharp price to secure volume sales, as they may not be able to secure additional top-up fuel from their contracted exclusive supplier, which is likely to have only a regular fuel delivery available on short notice.
The past investment of the majors into infrastructure must be acknowledged but the efficient future use is important to also consider.

Q18 Are there any features of the ownership, management, or supply/access arrangements relating to the refinery which may impact competition in the retail fuel markets?

The presence of Gull operating only in the North Island would suggest that there should be opportunities for Gull or other parties elsewhere, and for other parties in the North Island. It could be argued that to the extent that the major fuel companies supply raw or refined fuel to other low-cost fuel outlets that also provides competition for the benefit of consumers. However, it appears that the majors are still extracting a wholesale margin from the supply agreements to these low-cost outlets and as such, with little or no competition from outside the established major supply chains (or sub-chains to 'own brand' distributers who exclusively acquire fuel from one of the majors), thereby maintaining their volume market share and profitability nationally. It might reasonably be expected that, in the absence of other refinery/supply options or a visible wholesale market, the majors and their contract terms will continue to dominate the market.

It is our understanding that the present refinery arrangements have little or no spare refining capacity (as they can't meeting existing NZ fuel demand), and that if there were further capacity there would be further demand from the majors anyway. As such there would not appear to be much incentive for the existing refinery to provide increased refining capacity so that a new market participant could supply crude oil for refining. It also appears there would need to be significant investment for any newcomer to be in a position to access refinery services and establish a viable business model for selling refined product.

In addition, most existing retail outlets are already tied in, directly or indirectly, to long term exclusive supply arrangements. That is a further impediment to alternative refinery (or wholesale/supply) arrangements emerging, as the market they might provide to is already largely tied down in existing contractual arrangements. Start-up costs for an alternative refinery arrangement might also need to involve establishing alternative wholesaler/distributer and/or retailer arrangements.

Q19 Are these features restricting the ability and incentive for firms other than the major fuel firms to use the refinery?

Yes. As noted above.

Questions on the supply chain: primary distribution

Q20 Are there any features of the ownership, management, or supply/access arrangements relating to COLL, the RAP, and/or the Wiri terminal which may impact competition in the retail fuel markets?

Yes, to the extent that other potential market participants face impediments to accessing this supply/distribution process or offering an alternative.

Concentration of ownership and control of the supply/distribution process in the hands of the majors exacerbates the other market features identified earlier.

Q21 What are the advantages and disadvantages of the current arrangements that govern COLL and the RAP for competition in the retail market?

As to disadvantages, as above, per Q20.

MTA's understanding is that regional volume demands across the major fuel companies (B&L system) are quite structured and restricted to cater for existing network of service stations that in turn potentially restricts competition at the retail level (see Q3). It appears that there is no capacity for new participants, or scope for competition from new participants, except for those that are directly or indirectly supported by one of the majors.

Q22 Are there efficiency gains from the shared infrastructure? If so, how are these being shared with consumers?

Yes. It is not clear whether any efficiency gains around infrastructure sharing amongst the three majors are being shared with consumers at all. Having a shared distribution system that is third party managed (as with COLL) might help to avoid impediments to participation, and any price coordination, and should make the market more accessible to other prospective market participants without the need for each market participant to build and operate their own specific bulk fuel storage and distribution systems.

Questions on the supply chain: terminals and the borrow and loan system

Q23 Are there any features of the ownership, management, or supply/access arrangements relating to storage terminals (including the borrow and loan system) that may impact competition in the retail fuel markets?

Other than the participants of the borrow and loan scheme being able to monitor each other's market share the current system only has limitations preventing more vigorous competition at the retail end of the supply chain due to the control exerted by the majors - when supplying volume to both their own networks (vertically integrated outlets and independent retailers) as well as 'other brand' networks.

Understanding how easy it is for the 'other brands' to request extra volume would be beneficial as part of this study?

Understanding also, the contractual constraints within retail fuel supply agreements for a retailer to easily switch suppliers is critical here. It appears that both 'other brand' independent wholesalers, and independent retailers, are all ultimately tied in to long term exclusive supply contracts with a particular major, with the major exerting control of the fuel supply price at least (and in some cases, at least where there is vertical integration, the fuel sale price).

If independent wholesalers/supplier and independent retailers are stuck with the prices delivered to them under long term exclusive supply arrangements with the majors then there is limited opportunity for them to stimulate and engage with wholesale market competition (except at the end of their contract terms, every few years).

In contrast, if independent wholesalers and independent retailers were able to change suppliers quickly or have access to a liquid wholesale fuel market then there would be considerably more incentive for competition in respect of wholesale market pricing.

Q24 How has the level of capacity at terminals changed over time? Is it sufficient to meet current and future demand? Does the level of available terminal storage adversely impact competition, and if so, to what extent?

This is a difficult question to answer, particularly when thinking of what the future will look like in terms of fuel volume demand. The Government is sending strong market signals that hydrocarbon fuelled vehicles are likely to diminish over the next 5-20 years and as such the need for increased storage capacity may not be required. But the extent of the impact of electric and other fuelled vehicles remains to be seen, and MTA perceives that the fuel market will continue to be a significant market for some time. In that context, current restrictions on bulk storage along with the current control of the storage volume and supply appears to have an impact on competition at the pump as previously stated above.

Q25 Is the cost of building new terminals or accessing existing storage facilities a significant barrier to the expansion of existing participants or entry of prospective participants?

Yes

Q26 Are there examples of firms seeking to gain access to terminal capacity owned by other parties? If so, please provide details.

MTA's members are primarily operating in the retail sector, and this sort of activity would likely be kept confidential unless and until such capacity becomes available. MTA does not have visibility or insight into whether other prospective market participants are seeking such access or exploring or creating other such capacity (although it notes the Commission refers to the proposed development of a bulk storage facility in Timaru).

Q27 Will the construction of the new Timaru terminal impact competition in the South Island? Why or why not?

It depends who will be supplied from this terminal, how supply to third parties will be managed, and how much volume it creates relative to existing capacity. There may be limited impact if supply is soaked up directly or indirectly by the majors and their existing supplied networks. If not, then this might result in additional competition in some areas in the South Island, although as noted above that might well be met by competitive prices in those areas where there are outlets supplied by the new terminal but with the majors spreading the associated costs across other outlets where higher prices are sustainable.

Q28 How are retail fuel customers affected by port coordination events (rationing of fuel), particularly in areas of the South Island where these events occur relatively frequently?

They are reliant on the coastal shipping schedules along with refinery output capacities and in general these seem to be managed efficiently. Events such as the Christchurch earthquakes did have an impact on these supply schedules due to the Lyttleton terminal and wharf damage.

MTA is aware that there have been instances where supply restrictions were put in place because of refinery output problems. But so far as MTA is aware these are managed on a case by case basis. It does not have any particular input as to whether or not changes are required.

Questions on the supply chain: secondary distribution

Q29 Are there any features of secondary distribution that may affect competition in the retail markets?

Secondary distribution arrangements again appear to be captured by the majors (or in some cases independent intermediate wholesaler/distributers who will have long term contracts with a major), which provide that as a bundled up “delivered/pump ready fuel” service (including any contracted delivery component) to independent retailers at least. Majors (and intermediaries with long term commitments to a major) still appear to largely control all aspects of the wholesale/supply/delivery chain, limiting opportunities for competition.

Q30 To what extent do differences in distribution costs contribute to the observed regional differences in fuel price?

MTA understands that most fuel suppliers calculate fuel distribution and delivery costs dependant on the location of the nearest bulk storage facility from which supplied fuel is loaded, so stations at the outer extremities of a region furthest away from the bulk storage terminal will have a higher distribution cost which forms a component of the price of every litre sold at the station. Details of those costs are not transparently available. But MTA anticipates that costs associated with geography do not account for all the observed margin differences.

Questions on the supply chain: wholesale supply

Q31 Are there aspects of wholesale supply agreements to other fuel firms (eg, resellers and dealer sites) that could impact on competition in retail fuel markets?

Yes.

Confidentiality restrictions contained in such agreements limits MTA’s ability to specifically access such agreements.

But anecdotally and in confidence MTA understands from its independent retailer members that the market is dominated by long term exclusive supply contracts/arrangements, with the major/supplier dictating buy prices that leave little margin for the retailer if it is to offer competitive prices. Further elements understood to feature in such agreements are identified in paragraph 12 of our covering letter (to which these responses are attached).

Those contract terms, dictated by majors that dominate these markets, limit the ability of independent retailers to seek competitive wholesale market prices and thus limit the scope for retailers to offer competitive prices. In effect such retailers are left to accept what are broadly “take it or leave it” terms and will generally only have the opportunity to seek competitive prices when their contract terms (which may be 5-10 years) come to an end.

There are also issues regarding specified volumes in contracts or in wholesale sales/delivery arrangements, and that this impacts on the ability of a retailer to sharpen price significantly to increase sales volumes, when that may leave the retailer vulnerable in terms of its ability to replace any extra fuel sold.

Finally, as previously mentioned, it is perceived that a significant proportion of any available margin is taken prior to delivery to the retailer, which could in some instances amount to a price squeeze, and that in some instances there may be preferential or even possibly predatory pricing. Such market structures and arrangements are perceived to be a significant impediment to competition in the wholesale market.

MTA does not have significant visibility (anecdotally/confidentially or otherwise) into the terms available to independent/ intermediate 'other brand' wholesalers, which will have networks they supply directly as well as supplying to other independent sites. However, MTA understands from the NZIER 2017 Study that these contracts typically tie those independent/intermediate wholesalers in to one or other of the majors too. MTA understands that typically these will also be long term exclusive supply arrangements.

MTA's understanding – again anecdotally and in confidence - from its independent retailer members receiving fuel from such independent/intermediate wholesalers will also generally then be tied in to long term exclusive supply contracts along similar lines to those imposed directly by the majors when they provide such supply. As previously mentioned, MTA has been made aware anecdotally and in confidence of instances where the effect appears to amount to a price squeeze, and where independent retailers perceive that 'other brand' owned retail outlets appear to be receiving preferential pricing (for example if their sale price appears to be lower than the independent's buy price) or predatory pricing practices appear to be used.

Q32 What are the key factors affecting the terms on which suppliers are willing to offer wholesale fuel to other fuel firms (eg, resellers and dealer sites)? What is the effect of these factors on competition in retail fuel markets?

The dominance of vertically integrated majors in much of the market is critical. In that context it is perhaps unsurprising that contract terms available to independent retailers (and presumably also resellers) are largely determined by those majors (the wholesalers/distributers) on one-sided terms favourable to the wholesaler/distributer suppliers. In particular, those terms tie independent retailers in to exclusive long-term supply arrangements that have the effect of significantly limiting opportunities for competition in the wholesale market. Nor is it surprising that the evolving fuel/loyalty/discount schemes on offer from wholesalers/distributers (including independent/intermediate wholesalers/distributors) appear to impact primarily on retailer margins, largely preserving wholesaler/distributer margins. The fact that these arrangements proceed largely in secret, protected by confidentiality provisions and without access to any liquid visible wholesale market is a further significant factor.

It is perceived that these factors, in combination:

- mean that there is scope for the majors and associated wholesale/distribution entities to secure margins in the wholesale market that would not be available to them in a more competitive liquid wholesale market;
- are likely to account for a significant proportion of any increased margins;
- conceal whether independent retailers are operating on a level playing field with their vertically integrated competition, which in at least some cases appear to be operating on more favourable terms; and
- limits the scope for competition amongst independent retailers.

Q33 Are there differences in the way that the major fuel firms supply fuel to other fuel firms (eg, resellers and dealer sites) in different regions that may affect retail competition?

Unknown

Q34 To what extent do the major fuel firms compete to win supply to other fuel firms (eg, resellers and dealer sites)?

The long-term exclusive supply contract terms common in this market limits competition between the majors. MTA does not have much insight into whether there is competition between the majors apart from when a retail site is approaching the end of its contract term, but it perceives that most changes in supplier happen at the end of retailers' contract terms. It is aware of the recent change in wholesale supply to Foodstuffs (Z from BP), but the reason for this change is not clear.

Q35 Do other fuel firms (eg, resellers and dealer sites) have sufficient information to compare offers between the major fuel firms? Are there examples of other fuel firms (eg, resellers and dealer sites) switching between the major fuel firms, and if so, what were the main factors incentivising them to switch?

From what MTA can see, the switching of fuel suppliers tends to be more at the independent retail level where a site and assets are owned independent of the fuel supplier and where the supply relationship has broken down resulting in a parting of ways between wholesaler and retailer.

In these cases, the new wholesaler may offer incentives like covering the cost of rebranding the site or offering capital via a repayment levy on volume sales.
But in the absence of a more liquid, visible, wholesale market it seems doubtful that independent retailers would have enough information to make meaningful comparisons as to whether whatever is on offer meets the market (to extent there is a market) in terms of fuel price or trading terms/conditions.

MTA's impression is that in many cases the independent retailer will only have their existing relationship and the new terms offered available to them. The retailer's desire to get away from their current provider may lead to them leaving that provider for another without necessarily securing significantly better terms; it may be a case of "out of the frying pan and into the fire".

Also, where there is a breakdown in such a relationship during an existing contract term, the only real alternative to "toughing it out" with the existing arrangement may be to sell the business to the existing wholesaler/distributor; MTA is aware (anecdotally and in confidence) of at least one independent retailer facing pressure to sell the business to a supplier that will not engage to seek to agree more acceptable supply terms.

Q36 Are there any limits on the ability or incentive of other fuel firms (e.g., resellers and dealer sites) to compete against the major fuel firm that supplies them?

Yes. See above, including the response in question 32. MTA's understanding is that these entities too are generally party to long term exclusive supply contracts with a single major: if those contract terms do not give them sufficient scope (given their buy price etc) to compete then they can't; and it is perceived that often their pricing may only really give them scope to compete with other "cut price"/basic fuel only independent suppliers.

Questions on the supply chain: the nature of retail competition

Q37 Are there features of the retail fuel market that may inhibit the ability of consumers to obtain competitive offerings?

The market feature outlined earlier, for example in response to Q32, appear to significantly inhibit competition in the wholesale market, and in that context, there is limited scope for independent retailers to secure competitive buy prices and thus to offer more competitive pricing to consumers. The absence of a liquid wholesale market is critical in this context.

The covering letter with which this response is provided considers options for the creation of a wholesale market, or a form of virtual wholesale market, that it is perceived might address at least some of those issues. Regulatory intervention in the fuel/loyalty/discount space is another possibility.

The practice of price following rather than price setting by fuel retailers competing in the same local market does inhibit the ability of consumers to obtain competitive offerings particularly when the prices rise. The apparent absence of available margin headroom for independent retailers may also be significant in this context – and again a more competitive wholesale market might enable more competition at all levels, including local retailer levels.

Q38 What are the advantages and disadvantages of the increase in service differentiation in service stations, ranging from full service to unmanned?

Service differentiation is advantageous for consumers in some respects. But MTA understands that there is a perception that consumer uptake regarding the pros and cons of unmanned stations (as opposed to just the price upside, where that is passed on) is not rapid, so that is a live issue for market participants trading manned pumps.

For the reasons noted already above, it should not be assumed that the spread of unmanned lower cost sites is always advantageous.

Although not within the scope of the market study, the increase in the number of unmanned stations impacting on the viability of other local manned stations does has an impact on the community in terms of job losses.

Similarly, given the hazardous nature of service stations, having trained staff on site able to respond quickly to emergencies does provide a lesser risk. Based on data received from NZ Fire & Emergency showed there were 33 instances where NZF&E attended an incident at an unmanned service station site over a three-year period (2015-2018). Of these 33 incidents, 15 were either related to a major hazardous substance incident or a fire of some sort.

Q39 Are there currently any factors limiting the ability or incentive of retail customers to compare the offers they receive at different service stations and decide which offers best meet their needs?

MTA's view is that retail customers are relatively uninformed when it comes to understanding the comparison of fuel prices and service offerings at retail fuel outlets and this is something it understands its members are actively working on addressing. There are several websites or mobile apps available to consumers to assist them find a competitive fuel price (GASPY, Cardlink, AA Fuel Watch).
Also, as identified above, some of the fuel/loyalty/discount cards involve combining different goods and services, and rates, and so their effect and value may be difficult for consumers to assess – on an "apples with apples" basis.

Questions on other issues

Q40 Are there any other issues not raised in this paper that could impact competition in the retail fuel markets?

While Government taxes make up a significant component of the price of fuel, understanding how the introduction (or threat of) regional fuel taxes trigger price hikes through the price following behaviour that exists in the retail fuel market, could be helpful as part of this study? Similarly, the introduction of the Auckland regional fuel tax does appear to have increased prices nationwide contrary to what Government said would not happen, so it may be appropriate to consider the possible extension of the Auckland regional fuel tax to better understand this market.

Otherwise, there are several issues raised in our covering letter, and in our answers to the questions raised in this submission. But those points need not be repeated here.

Yours faithfully

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