

9 March 2022



Official Information Act #21.124 - Ampol / Z Energy

1. We refer to your Official Information Act 1982 (**OIA**) request received on 11 February 2022 for the following information in respect of the clearance application received by Commerce Commission (**Commission**) from Ampol Limited (**Ampol**) to acquire 100% of the shares in Z Energy Limited:¹
 - 1.1 a copy of the Proposed Divestment Deed provided to the Commission in the form of Confidential Appendix 7 to the Clearance Application; and
 - 1.2 if any amendments to the Proposed Divestment Deed have subsequently been offered by Ampol to the Commission, a copy of the latest version of the Proposed Divestment Deed(together, **the information**).
2. You have advised that your client, [REDACTED], recognises some of the contents of the Proposed Divestment Deed may be commercially sensitive to Ampol and, therefore, has instructed you to receive the information on an external counsel-only basis and subject to any confidentiality undertakings that the Commission considers to be appropriate.

Our response

3. We have decided to decline your request. We consider that release of the information, including on a counsel-only basis, would be likely to:

¹ <https://comcom.govt.nz/case-register/case-register-entries/ampol-limited-and-z-energy-limited>

- 3.1 cause an unreasonable prejudice to the commercial position of Ampol and/or Gull New Zealand Limited (**Gull**). This prejudice could arise by giving [REDACTED]'s advisers knowledge of specific, commercially sensitive details of the Proposed Divestment Deed that could be used to [REDACTED]'s advantage in any processes or commercial negotiations that may follow from the Proposed Divestment Deed (if it is accepted) and associated sale of Gull;² and/or
- 3.2 prejudice the future supply of information to the Commission by disincentivising parties who submit clearance applications from also providing detailed terms of proposed divestment deeds as early as possible.³
4. We do not consider the proposal to release the information on a counsel-only basis sufficiently mitigates the risk of prejudice in this instance. This includes the potential for prejudice to arise from inadvertent disclosure of the information, or the information being subconsciously utilised if advising on related commercial negotiations.
5. We consider the good reasons which exist for withholding information are not outweighed by other considerations which would make it desirable, in the public interest, to make the information available (section 9(1) of the OIA).
6. We consider there is a strong public interest in parties continuing to provide draft divestment deeds to the Commission at an early stage of the clearance process, to allow the opportunity for engagement on the terms of the deed.
7. We note that Part G of the public version of the clearance application describes the Proposed Divestment Deed in some detail. We consider that any party wishing to comment on the overall approach to the divestment and mechanisms contained within the Proposed Divestment Deed is sufficiently informed by this information to do so. The Proposed Divestment Deed itself contains a level of technical detail which we consider is not necessary for third parties to see or comment on.
8. If you are not satisfied with the Commission's response to your OIA request, section 28(3) of the OIA provides you with the right to ask an Ombudsman to investigate and review this response. However, we would welcome the opportunity to discuss any concerns with you first.
9. The Commission will be publishing an anonymised version of this response to your request on our website.
10. Please do not hesitate to contact us at oia@comcom.govt.nz if you have any questions about this request.

² Section 9(2)(b)(ii): would be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information.

³ Section 9(2)(ba)(b): protect information which is subject to an obligation of confidence, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied to the Commission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alex Murray', with a long, sweeping horizontal stroke extending to the right.

Alexandra Murray
OIA and Information Coordinator

Released Under Official Information Act 1982