COMMERCE COMMISSION MARKET STUDY INTO RETAIL FUEL CONSULTATION CONFERENCE – Submission following confidential session, Friday 26 September 2019

PUBLIC SUBMISSION

1. Mobil Oil New Zealand Limited (Mobil) welcomes the opportunity afforded to us by the Commerce Commission (the Commission) to provide additional feedback subsequent to the consultation conference sessions regarding the Market Study into the Retail Fuel Market in New Zealand.

2. As stated to the Commission previously, Mobil wants New Zealand's retail fuel market to work well, and wants New Zealand consumers to have confidence that the market is working well.

3. Mobil agrees with the Commission's statement in its draft Market Studies Guidelines that "New Zealanders are better off when markets work well and consumers and businesses are confident market participants."

4. While Mobil's position is that the New Zealand retail fuel market is "workably competitive", we recognise that the Commission has identified some areas where competition can be enhanced.

5. Since the Market Study began on 5 December 2018, Mobil has provided extensive information to the Commission, and has actively participated in multiple face-to-face meetings to clarify Mobil's position and provide clarification where necessary. Mobil considers that all information and feedback it has provided to date has been frank, valuable, and insightful.

6. As we have indicated in our closed session with the Commission, there are some recommendations and observations that were raised during the open Consultation Conference sessions that we do not agree with, while there are others that we would support.

7. As the Commission has stated, businesses also need to be confident market participants, and we are concerned that the implementation of some of the Commission's recommendations will reduce the sector's ability to compete effectively, which in turn will remove the capability for confident participation.

Return on Capital calculations

8. [redacted]

9. [redacted]

10. [redacted]

11. [redacted]

12. [redacted]

Wholesale contract terms

13. As we have indicated in our submission, the Commission should not remove the ability of wholesale participants (importers and resellers) to negotiate various terms in their contracts, including mandating non-exclusivity and “split supply” agreements.

14. Mobil strongly believes that contracts need to be beneficial to all parties, and enforcing certain terms and conditions (such as tenure) will negatively impact the market without producing desirable outcomes for New Zealand consumers.

15. The Commission has acknowledged there are a vast range of negotiations and relationships, and Mobil considers that its wholesale supply agreements are already negotiated in good faith. This ensures they are not unfavourable to either party, and already adhere to all applicable laws. Such relationships must be symbiotic, and undue regulation could prevent that symbiosis.

16. This follows through to Mobil’s supply agreements with Mobil-branded agents and dealers. Mobil works very hard to ensure their businesses are successful and benefits both parties. Mandating contractual terms may negatively impact those agreements.

17. Enacting a “grey list” in the manner the Commission has proposed would increase the complexity of contract negotiations, particularly if conducted in an environment where exceptions could be granted, and creates scope for contractual discourse throughout the term of the contract. This would be a costly exercise and would potentially result in negative outcomes for the contract parties, and for New Zealand consumers.

18. [redacted]

19. The same logic applies to the creation of an Oil Code of Conduct, which Mobil considers to be unfeasibly complex. Mobil would prefer to engage and develop solutions with the Ministry of Business Innovation and Employment (MBIE) or a similarly appropriate government agency.

Terminal Gate Pricing

20. As Mobil has previously indicated to the commission, we are supportive of a Terminal Gate Pricing (TGP) regime, and believe TGP and the shared infrastructure arrangements (colloquially known as borrow and loan) can successfully coexist.

21. Similarly, Mobil is confident that the presence of a TGP regime in New Zealand would not hinder incentive for terminal storage investment, or negatively impact borrow and loan arrangements.

22. As discussed, there are existing examples in Australia around multiple gate prices at a single terminal, rather than the price being set by the terminal owner, and we see such a regime working in a similar manner in New Zealand.

Borrow and Loan

23. As indicated during our closed session, Mobil believes that the existing borrow and loan system works well in terms of increasing efficiencies for the customers of the Marsden Point refinery, and with regard to optimising shipping for the participants.

24. [redacted]

25. [redacted]

26. Further to this, Mobil considers that borrow and loan arrangements do not disincentivise investment.

27. There are multiple benefits to companies in providing additional tankage in the borrow land loan arrangements, which help them to further optimise shipping arrangements, and increased product allocations in the instance of a supply coordination protocol. A participant with lower tankage volume in the arrangements would likely see greater impact in such a scenario as they would have less product available.

28. Once again, Mobil is pleased to have the opportunity to provide additional feedback to the Commission.