

**NOTICE SEEKING CLEARANCE OF A BUSINESS ACQUISITION PURSUANT TO SECTION 66 OF THE COMMERCE ACT 1986**

20 April 2022

The Registrar  
Business Acquisitions and Authorisations  
Commerce Commission  
PO Box 2351  
WELLINGTON

Pursuant to s 66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

**EXECUTIVE SUMMARY**

- 1.1 This notice seeking clearance is given on behalf of Mobil Oil New Zealand Limited (defined as "**MONZ**" or the "**Applicant**"), which proposes to acquire up to 100% of Z Energy Limited's ("**Z**") ownership interest in the Auckland Airport Joint User Hydrant Installation ("**JUHI**") (the "**JUHI Acquisition**").
- 1.2 A parallel notice has also been filed by MONZ seeking clearance to acquire up to 100% of Z's ownership interest in the Wiri to Auckland Pipeline ("**WAP**") (the "**WAP Acquisition**"). In this notice, we collectively refer to the WAP Acquisition and the JUHI Acquisition as the "**Acquisitions**".
- 1.3 The ownership and operation of the WAP and JUHI (together, the "**JVs**") are governed by the *Wiri Pipeline Ownership Agreement* ("**WAP Agreement**") and the *Agreement for ownership and operation of the depot, storage and administration facilities at Auckland Airport as joint user facilities* ("**JUHI Agreement**") respectively (collectively the "**JV Agreements**").
- 1.4 The WAP and JUHI are jointly owned by MONZ, BP Oil New Zealand Limited ("**BP**") and Z. Both JV Agreements contain pre-emptive rights in the event that a current owner of the relevant infrastructure undergoes a change of control.
- 1.5 On 16 March 2022, the Commerce Commission ("**Commission**") granted clearance for Ampol Limited ("**Ampol**") to acquire 100% of the shares in Z ("**Ampol/Z Transaction**"). If the Ampol/Z Transaction completes, this will trigger the change of control provisions in the JV Agreements and require Z to give MONZ and BP the right to acquire Z's ownership interests. MONZ intends to exercise its pre-emptive rights to acquire up to 100% of Z's ownership interest in both JVs. While MONZ seeks clearance to acquire up to 100% of Z's ownership (ie up to [ ]% of the WAP joint venture, and up to [ ]% of the JUHI joint venture), the total percentage of ownership interests in the JVs it will ultimately acquire will depend on the extent to which BP intends to independently exercise its own pre-emptive rights.
- 1.6 MONZ's decision to exercise its pre-emptive rights is motivated by its intention to modernise the JV Agreements, and how the WAP and JUHI are owned and operated, in a way that will:
- (a) Facilitate new entrants into the jet fuel markets at Auckland Airport by removing the requirement that new users need to acquire an ownership interest in the WAP and the JUHI to be able to use them; and
  - (b) Encourage future investment in the quality and capacity of the infrastructure by enabling the JVs to generate a return (which is consistent with best practice) and [ ], thereby removing barriers to capital investment in the infrastructure;
  - (c) Address the concerns raised by the Government Inquiry into the Auckland Fuel Supply Disruption ("**Government Inquiry**").<sup>1</sup>
- 1.7 The only potentially relevant markets that may be affected by the Acquisitions are the downstream markets for the sale of jet fuel at Auckland Airport. In this context, the Commission has previously defined markets for:

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<sup>1</sup> *Government Inquiry into the Auckland Fuel Supply Disruption* (August 2019), available at [https://www.dia.govt.nz/diawebsite.nsf/Files/Inquiry-into-the-Auckland-Fuel-Supply-Disruption/\\$file/AFSD-Inquiry-Report-August-2019.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Inquiry-into-the-Auckland-Fuel-Supply-Disruption/$file/AFSD-Inquiry-Report-August-2019.pdf)

- (a) The supply of Jet A-1 to Air New Zealand at Auckland Airport; and
- (b) The supply of Jet A-1 to all other (non-Air New Zealand) customers at Auckland Airport.

1.8 MONZ is confident that the Acquisitions will be pro-competitive and lead to better market outcomes that are in the best interests of jet fuel suppliers, airlines, and the New Zealand public. Post-Acquisitions, the markets for the supply of jet fuel at Auckland Airport will continue to be fiercely competitive on the basis that:

- (a) Fundamentally, the Acquisitions are designed to eliminate the requirement that new users need to acquire an ownership interest in the WAP and the JUHI to be able to use them, and therefore they will facilitate further competition in the Auckland Airport jet fuel markets and support the continued investment in the infrastructure that enhances the efficiency of the supply chain;
- (b) BP will remain an active participant in both joint ventures and will continue to be a vigorous competitor in the supply of jet fuel at Auckland Airport;
- (c) Z will remain a vigorous competitor in the supply of jet fuel at Auckland Airport;
- (d) Airlines can, and do, negotiate region-wide arrangements with fuel suppliers, and can punish any attempt to increase jet fuel prices at Auckland Airport by shifting more significant volumes to competitors at other airports;
- (e) As the largest purchaser of jet fuel at Auckland Airport, Air New Zealand has countervailing buyer power, and could therefore defeat any (hypothetical) attempt by BP or MONZ to increase prices above competitive levels;
- (f) MONZ and the other joint venture participants have strict firewalls in place to ensure that decisions are made to maximise utilisation of the infrastructure (irrespective of which supplier is selling the jet fuel downstream) in order to spread the fixed costs of the infrastructure over the largest possible volume to drive the most efficient per litre cost of jet fuel;
- (g) given the expected growth in demand for jet fuel at Auckland Airport post-pandemic, it is almost inevitable that additional supply chain assets to the WAP and JUHI will also be developed in the future;
- (h) airlines and/or AIAL can integrate up the supply chain to establish alternative supply infrastructure;
- (i) The WAP can be bypassed, enabling others to enter and participate in the market for the supply of jet fuel at Auckland Airport; and
- (j) Auckland International Airport Limited ("**AIAL**") has countervailing power over JUHI in its capacity as owner of the site where the JUHI is situated.

1.9 For the reasons described in this Application, MONZ is confident that the Acquisitions will lead to even greater competition than the status quo, by better enabling innovation and investment in supply chain assets, and encouraging new entrants in the supply of jet fuel at Auckland Airport.

## PART A: TRANSACTION DETAILS

### PARTY DETAILS

#### 2. THE APPLICANT: MOBIL OIL NEW ZEALAND LTD

2.1 This notice seeking clearance is given on behalf of Mobil Oil New Zealand Limited (defined as "**MONZ**" or the "**Applicant**"), which proposes to acquire up to 100% of Z Energy Limited's ("**Z**") ownership interest in the Auckland Airport Joint User Hydrant Installation ("**JUHI**") (the "**JUHI Acquisition**").

2.2 A parallel notice has also been filed by MONZ seeking clearance to acquire up to 100% of Z's ownership interest in the Wiri to Auckland Pipeline ("**WAP**") (the "**WAP Acquisition**"). In this notice, we collectively refer to the WAP Acquisition and the JUHI Acquisition as the "**Acquisitions**".

2.3 The contact details for the Applicant are:

[ ]

Email: [ ]

Telephone: [ ]

2.4 All correspondence and notices in respect of the application for the Applicant should be directed in the first instance to:

**Russell McVeagh**

PO Box 8

Shortland Street

Auckland 1140

Attention: Troy Pilkington (Partner) / Bradley Aburn (Senior Associate)

Telephone: 09 367 8108 / 09 367 8816

Email: [troy.pilkington@russellmcveagh.com](mailto:troy.pilkington@russellmcveagh.com) / [bradley.aburn@russellmcveagh.com](mailto:bradley.aburn@russellmcveagh.com)

2.5 MONZ is part of the ExxonMobil group of companies, and is ultimately owned by Exxon Mobil Corporation. ExxonMobil Corporation is a publicly traded international energy provider and chemical manufacturer. Globally, its entities (under various brands) have operations in the fuel, lubricants and chemicals industries.

2.6 MONZ is New Zealand's oldest oil company, having first established a presence in the country through its predecessor companies in 1896.

2.7 In New Zealand, MONZ supplies a full range of fuel products, including jet fuel at Auckland and Wellington Airport,<sup>2</sup> and distributes these using a number of storage terminals, pipelines, trucks and other infrastructure assets that it has ownership interests in, or access to.

2.8 MONZ is a member of a number of industry associations. The only association of relevance to jet fuel supply is the National Operating Committee on Jet Fuel Supply Assurance ("**NOC**"). The NOC was established by the Australian Government following a jet fuel supply disruption at Sydney Airport in 2003. It consists of representatives from the jet fuel suppliers

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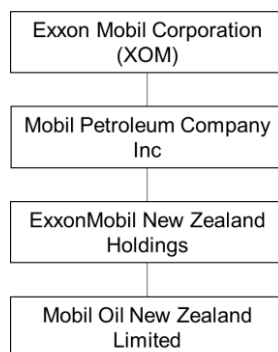
<sup>2</sup> MONZ does not supply jet fuel at any other New Zealand airport.

and Australian Government who monitor and report potential disruption to jet fuel supplies at major Australian, New Zealand and Fijian airports.<sup>3</sup>

- 2.9 A simplified corporate structure chart for MONZ and its related companies in relation to the distribution of fuel in New Zealand is provided at Figure 1.

*Figure 1*

*Simplified corporate structure chart*



### 3. THE VENDOR: Z ENERGY

- 3.1 As a party to both of the JV Agreements, Z has agreed to the pre-emptive rights that arise in the event of a change in control of any of the JV participants.

- 3.2 The contact details for Z Energy are:

**Z Energy**  
 Z Energy Head Office  
 3 Queen's Wharf  
 Wellington 6011  
 New Zealand

- 3.3 Z is a New Zealand-based fuel company that has operations across the fuel supply chain, including in relation to refining, importing, storing, distributing, and supplying to customers via wholesale and retail channels.

- 3.4 On 10 October 2021, Z entered into a scheme implementation agreement with the Australian-based fuel company Ampol Limited ("**Ampol**"). This scheme implementation agreement would enable Ampol to acquire 100% of the shares in Z, conditional upon receiving regulatory approval, with the acquisition intended to complete in the second quarter of 2022.

- 3.5 Of relevance to the Acquisitions, Z currently owns:

- (a) [ ]% interest in the WAP pipeline; and
- (b) [ ]% interest in the JUHI facility at Auckland Airport.

These ownership interests are the "**Targets**" of the Acquisitions.

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<sup>3</sup><https://www.directory.gov.au/portfolios/industry-science-energy-and-resources/department-industry-science-energy-and-resources/national-operating-committee-jet-fuel-assurance>

#### 4. THE TARGETS

##### Overarching intention

- 4.1 As noted above, MONZ intends to acquire all ownership interests in the JUHI and WAP that it would be entitled to as a result of exercising its pre-emptive rights.
- 4.2 For the avoidance of doubt, the Acquisitions will not result in any change to either the ownership or governance arrangements that are currently in place in relation to other shared infrastructure in the broader New Zealand jet fuel supply chain.
- 4.3 The operation of the WAP and JUHI are governed by:
- (a) the Wiri Pipeline Ownership Agreement ("**WAP Agreement**"): An agreement between Z, MONZ and BP [ ] in relation to the ownership and operation of the 6.7km long pipeline that transports jet fuel from the Wiri Terminal to the JUHI storage facilities at the Auckland Airport; and
  - (b) the Agreement for ownership and operation of the depot, storage and administration facilities at Auckland Airport as joint user facilities ("**JUHI Agreement**"): An agreement between Z, MONZ and BP [ ] in relation to the ownership and operation of the depot, storage and administration facilities at Auckland Airport, where the WAP terminates.
- 4.4 A copy of each of the JV Agreements, and all related operational and management agreements, is provided at **Confidential Appendix 1**.
- 4.5 Both JV Agreements contain pre-emptive rights in the event that a current owner of the relevant infrastructure undergoes a change of control. If the Ampol/Z transaction completes, this will trigger the change of control provisions on the JV Agreements and require Z to give MONZ and BP the right to acquire Z's ownership interests.
- 4.6 While MONZ seeks clearance to acquire up to 100% of Z's ownership interest in both the WAP and JUHI joint ventures, the total percentage it will acquire will depend on the independent decisions of MONZ and BP:
- (a) If both MONZ and BP choose to exercise their pre-emptive rights in full, MONZ would be entitled to purchase:
    - (i) [ ]% of the overall interests in WAP, bringing its total ownership interest to [ ]%; and
    - (ii) [ ]% of the overall interests in JUHI, bringing its total ownership interest to [ ]%.
  - (b) If BP chooses to waive its pre-emptive rights, BP's share of entitlements will be made available to MONZ to purchase. This means that MONZ would be entitled to purchase:
    - (i) [ ]% of the overall interests in WAP, bringing its total ownership interest to [ ]%; and
    - (ii) [ ]% of the overall interests in JUHI, bringing its total ownership interest to [ ]%.

(c) Alternatively, BP may choose to purchase a percentage of the interests that they are entitled to (ie between [ ]% and [ ]% of the interests in WAP, and between [ ]% and [ ]% of the interests in JUHI).

4.7 The JV participants all agreed to grant each other pre-emptive rights in the event of a change of control. [ ].

**Ownership interests**

4.8 Ownership interest charts for the WAP and JUHI are provided at Figure 2 and Figure 3.

*Figure 2  
Current structure of ownership interest in the WAP  
[ ]*

*Figure 3  
Current structure of ownership interest in the JUHI  
[ ]*

4.9 Both JV Agreements require a JV participant who undergoes a change of control to offer their ownership interest to the other participants in proportion to their current ownership interest. If either of the remaining participants chooses not to exercise their rights (or only exercise some of its rights), the other remaining participant may then exercise those non-utilised rights. MONZ intends to acquire as much of Z's current ownership interest in the JUHI as it is offered. Tables 1, 2 and 3 below show the potential permutations for MONZ's ownership interest in each JV depending on whether BP determines to exercise its rights under the JV Agreements.

*Table 1  
Ownership of WAP and JUHI today*

	Share of WAP	Share of JUHI
<b>MONZ</b>	[ ]%	[ ]%
<b>BP</b>	[ ]%	[ ]%
<b>Z</b>	[ ]%	[ ]%

*Table 2  
Ownership of WAP and JUHI post-Acquisitions  
if both MONZ and BP exercise pre-emptive rights*

	Share of WAP	Share of JUHI
<b>MONZ</b>	[ ]%	[ ]%
<b>BP</b>	[ ]%	[ ]%
<b>Z</b>	0%	0%

*Table 3  
Ownership of WAP and JUHI post-Acquisitions  
if only MONZ exercises its pre-emptive rights*

	Share of WAP	Share of JUHI
<b>MONZ</b>	[ ]%	[ ]%
<b>BP</b>	[ ]%	[ ]%
<b>Z</b>	0%	0%

4.10 Further information on the WAP and JUHI, and the role that this infrastructure plays within the fuel supply chain is provided in Part C of the Application.

**THE PROPOSED TRANSACTIONS**

**5. TRANSACTION DETAILS**

**Outline and structure of the transaction**

5.1 The Applicant intends to acquire up to 100% of Z Energy's ownership interests in:

- (a) the WAP joint venture; and separately
- (b) the JUHI joint venture,

thereby reducing the number of interest holders in these two joint ventures to two (Mobil and BP) (the "**Acquisitions**"). A more fulsome description of the WAP and JUHI joint ventures is provided in Part C of this Application.

**The change of control provisions in the JV Agreements**

5.2 The Acquisitions arise pursuant to the triggering of MONZ's pre-emptive rights contained within the JV Agreements. On 16 March 2022, the Commission announced that it had granted clearance for Ampol to acquire 100% of the shares in Z.<sup>4</sup> If the Ampol/Z Transaction completes, Z is required to offer its interests in the JUHI to the other participants (MONZ and BP), and has no right to influence whether or not the respective participant chooses to accept that offer. In the event that either party chooses to exercise none, or only part of their rights, the other party (MONZ or BP) has the first right to purchase those remaining rights.

5.3 Table 4 below provides a summary of the change of control provisions and the pre-emptive rights contained in the JV Agreements.

*Table 4  
Summary of the change of control provisions in the JV Agreements*

JUHI Reference	WAP Reference	Provisions and timeframes
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

**Rationale for the Transaction**

5.4 MONZ's decision to exercise its pre-emptive rights is motivated by its intention to modernise the JV Agreements and how the WAP and JUHI are owned and operated in a way that will:

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<sup>4</sup>(16 March 2022). Commission grants clearance for Ampol to acquire Z subject to divestment of Gull. Retrieved from <https://comcom.govt.nz/news-and-media/media-releases/2022/commission-grants-clearance-for-ampol-to-acquire-z-subject-to-divestment-of-gull>



- (a) Facilitate new entrants into the jet fuel markets at Auckland Airport by removing the requirement that new users need to acquire an ownership interest in the WAP and the JUHI to be able to use them;
- (b) Encourage future investment in the quality and capacity of the infrastructure by enabling the JVs to generate a return (which is consistent with best practice) and [ ], thereby removing barriers to capital investment in the infrastructure; and
- (c) Address the concerns raised by the Government Inquiry.<sup>5</sup>

*Issues with current operating models*

5.5 The current WAP and JUHI arrangements:

- (a) Require new users to acquire an ownership interest in the WAP and the JUHI in order to use them, whereas removing that requirement will likely facilitate new entrants into the Auckland jet fuel markets (by enabling entry without the need for any such capital investment); and
- (b) As recognised in the Government Inquiry, do not incentivise timely investment in the infrastructure for resilience purposes, as it is not possible to generate a return on that investment.

5.6 Under the current JV Agreements:

- (a) A new party seeking access to the WAP is currently required to:
  - (i) [ ]
  - (ii) [ ]
  - (iii) [ ]
  - (iv) [ ]
    - (aa) [ ]
    - (bb) [ ]
    - (cc) [ ]
    - (dd) [ ]
    - (ee) [ ]
- (b) A new party seeking access to the JUHI is currently required to:
  - (i) [ ]
  - (ii) [ ]

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<sup>5</sup> *Government Inquiry into the Auckland Fuel Supply Disruption* (August 2019), available at [https://www.dia.govt.nz/diawebsite.nsf/Files/Inquiry-into-the-Auckland-Fuel-Supply-Disruption/\\$file/AFSD-Inquiry-Report-August-2019.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Inquiry-into-the-Auckland-Fuel-Supply-Disruption/$file/AFSD-Inquiry-Report-August-2019.pdf)

- (iii) [ ]
- (iv) [ ]
- (aa) [ ]
- (bb) [ ]
- (cc) [ ]
- (dd) [ ]

*The proposed new operating model*

- 5.7 Following the Acquisitions, MONZ intends to renegotiate the commercial model of both JV Agreements with BP to introduce an open access model consistent with best practice, whereby all users (including MONZ and BP) will pay a non-discriminatory fee for the usage of the WAP and JUHI. This open access model will therefore remove the current requirements that require a new entrant to purchase equity, [ ] before they can access this infrastructure. MONZ considers that a new open access model will lead to a better understood means of third-party access and, therefore, even more competition. As the Government Inquiry noted:<sup>6</sup>

Open access, with payment of a throughput fee, presents a lower barrier to entry for new entrants in terms of start-up costs (as opposed to the requirement to purchase an equity share).

- 5.8 MONZ proposes to introduce an open access model – consistent with best practice principles derived from standards developed by the world-leading organisation for the development of aviation fuel supply standards, the Joint Inspection Group<sup>7</sup> - under which new users would typically be required to:
- (a) Make no capital investment in the infrastructure;
  - (b) Become a party to a non-discriminatory User Access Services Agreement;
  - (c) Pay a non-discriminatory tariff for access services; and
  - (d) Meet objective technical criteria for Operating Committee review and approval within an established timeframe. Such criteria would include reasonably necessary criterion for dealing with a hazardous and quality-critical product such as:
    - (i) Being able to deliver jet fuel on a continuing basis compatible with relevant jet fuel specifications;
    - (ii) Having access to adequate laboratory testing facilities which are available consistently and promptly to confirm such quality;
    - (iii) Having in place quality control procedures which at a minimum comply with relevant industry standards;

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<sup>6</sup> Government Inquiry, at [17.46].

<sup>7</sup> <https://www.jig.org/>

- (iv) Being technically able to and have sufficient resources to comply with the operating procedures and standards set out in the User Access Services Agreement; and
- (v) With respect of users of the JUHI, being capable of providing (either directly or via a third party) aircraft refuelling services to its customers.

5.9 [ ]

*Increased investment in the infrastructure*

5.10 In addition to the new operating model facilitating even further competition in the Auckland Airport jet fuel markets, it will also incentivise investment in increasing the efficiency and resilience of the jet fuel supply chain.

5.11 The current ownership and governance structure of the JUHI and WAP has impeded investment in the infrastructure:

- (a) As submitted by the Board of Airline Representatives New Zealand ("**BARNZ**") during the Commission's Market study into the retail fuel sector, the lack of future investment plans to improve supply capacity and resilience in the jet fuel supply chain "seem to stem from the complex ownership arrangements that this infrastructure is subject to."<sup>8</sup>
- (b) The Government Inquiry similarly noted that:

In our view, the fuel companies have failed to make timely investments to achieve and maintain the level of resilience in the supply chain that we regard as appropriate.<sup>9</sup>

[...]

The Inquiry believes that for several reasons, the current joint venture governance arrangements for the Wiri Terminal, the WAP, and the JUHI have been a significant contributing factor in the reduction of the resilience of this infrastructure.<sup>10</sup>

[...]

... the joint venture arrangements for Wiri, the WAP, and the JUHI usually require unanimous agreement by all three fuel companies to make investment decisions: that is, three different companies with three different internal decision-making processes, priorities, risk appetites, and opinions on what is economically feasible.<sup>11</sup>

5.12 The Government Inquiry specifically recommended:<sup>12</sup>

That the fuel sector make investment decisions without delay in order to enable work to start on the building of new infrastructure that takes into account the resilience-enhancing measures articulated in this report, including:

- Diversity of supply;

<sup>8</sup> BARNZ. *Submission to the Commerce Commission: Market study into the retail fuel sector* (3 September 2019), at [8].

<sup>9</sup> *Government Inquiry*, at [18.5].

<sup>10</sup> *Government Inquiry*, at [16.11].

<sup>11</sup> *Government Inquiry*, at [16.15].

<sup>12</sup> *Government Inquiry*, recommendation 18, at xiv.

- Storage at or near Auckland Airport that provides at least 10 days' cover at 80% of operations, based on the average of the 30 non-contiguous peak days in a calendar year; and
- Input capacity into the JUHI that exceeds 110% of peak days' demand.

The second two recommendations fall within the scope of the WAP and JUHI joint ventures. MONZ's current view is that:

- (a) Additional storage at or near Auckland Airport for capacity maintenance to achieve the desired resilience will likely require investment in the order of [ ]; and
- (b) Increasing input capacity into the JUHI to maintain capacity (whether via truck-bridging or increasing WAP throughput) to achieve the desired resilience is likely to require investment in the order of [ ].

Furthermore, the anticipated future relocation of the JUHI at the end of the current lease is anticipated to require an investment in the order of [ ] between 2030 and 2035.

5.13 The Acquisitions will enable MONZ to implement the new operating model, which will incentivise and expedite future investments in the WAP and JUHI by:

- (a) providing a reasonable return on all capital investment (consistent with best practice);
- (b) providing alternate capital funding options, such as from retained income from operating the WAP and JUHI, or third party capital (private or public); and
- (c) enabling a more timely project development and approval process, by virtue of there being fewer participants involved in the ownership of the infrastructure.

*The Acquisitions are both necessary and procompetitive*

5.14 MONZ therefore considers the Acquisitions are procompetitive in that they will facilitate new entries into Auckland Airport jet fuel markets and, therefore, even greater competition. Additionally, they will allow for an appropriate return on the infrastructure, consistent with best practice, that will incentivise further investment in the infrastructure. This will become increasingly necessary and urgent when demand for air travel returns to pre-pandemic levels. The Acquisitions will help meet governmental objectives through enhancing the long-term sustainability of jet fuel supply through increasing resilience in the supply chain.

## 6. NOTIFICATION OF OTHER COMPETITION AGENCIES

6.1 No other competition agencies are being notified regarding the Acquisitions.

**PART B: COUNTERFACTUAL**

**7. COUNTERFACTUAL**

7.1 As a result of the Ampol/Z Transaction, the change of control provisions in the JV Agreements will be triggered.<sup>13</sup> [ ]

7.2 [ ]<sup>14</sup>

7.3 [ ]<sup>15</sup>

7.4 In the counterfactual, it is most likely that whatever share is not taken up by MONZ or BP will be retained by Ampol/Z. If neither MONZ nor BP acquire any proportion of Z's ownership interest, the ownership structure of both the WAP and the JUHI will remain as it is currently, with Ampol/Z owning a [ ]% share in the WAP and a [ ]% share in the JUHI.

7.5 The Applicant considers that, [ ]

7.6 [ ]

7.7 [ ]

7.8 [ ]<sup>16</sup>[ ]

7.9 [ ]

(a) [ ]

(b) [ ]

7.10 [ ]

7.11 [ ]

7.12 [ ]

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<sup>13</sup> [ ]  
<sup>14</sup> [ ]  
<sup>15</sup> [ ]  
<sup>16</sup> [ ]

## PART C: THE INDUSTRY

## 8. BACKGROUND TO THE INDUSTRY

8.1 The Commission will be familiar with the fuel industry as a result of:

- (a) its 2018/19 market study into the retail fuel industry ("**Market Study**");
- (b) Z Energy Limited and Chevron New Zealand [2016] NZCC 10 ("**Z / Chevron**"); and
- (c) Ampol Limited and Z Energy Limited [2022] NZCC 4.

**Auckland Airport jet fuel supply chain**

8.2 We provide a condensed summary of the Auckland Airport jet fuel supply chain below. Jet fuel refers to the kerosene grade fuel used in larger, turbine engine aircrafts. This differs from Avgas, which is a motor spirit based fuel used by small, light piston engine aircrafts. The infrastructure that is the subject of this Application does not form part of the Avgas supply chain.

- (a) Crude oil has been imported into the Marsden Point Refinery where it has then been refined into different types of fuel, including jet fuel.<sup>17</sup> The Marsden Point Refinery is owned by The New Zealand Refinery Company Limited ("**NZRC**"). From April 2022, Marsden Point Refinery will cease its refinery operations and become an import only terminal. Jet fuel, as opposed to crude oil, will then be imported into Marsden Point;
- (b) The Refinery to Auckland Pipeline ("**RAP**") is used to transport jet and other grades of fuel from Marsden Point to the Wiri Storage Facility. The RAP is owned and operated by NZRC, while the Wiri Facility is owned by [ ];<sup>18</sup>
- (c) Jet fuel is then transferred from the Wiri Storage Facility to the JUHI storage facility at Auckland Airport via either the WAP or by truck. Jet fuel can also be trucked to the JUHI from other locations. The land that the JUHI facility is located on is owned by Auckland International Airport Ltd ("**AIAL**") and is leased to the JUHI joint venture;
- (d) Jet fuel then leaves the JUHI, and is delivered to the aircraft either:
  - (i) through an underground hydrant pipeline and hydrant dispenser vehicle that connects to the aircraft fuelling point. The airport hydrant is owned by AIAL; or
  - (ii) via refuelling trucks which are filled at JUHI and then driven out to the apron.

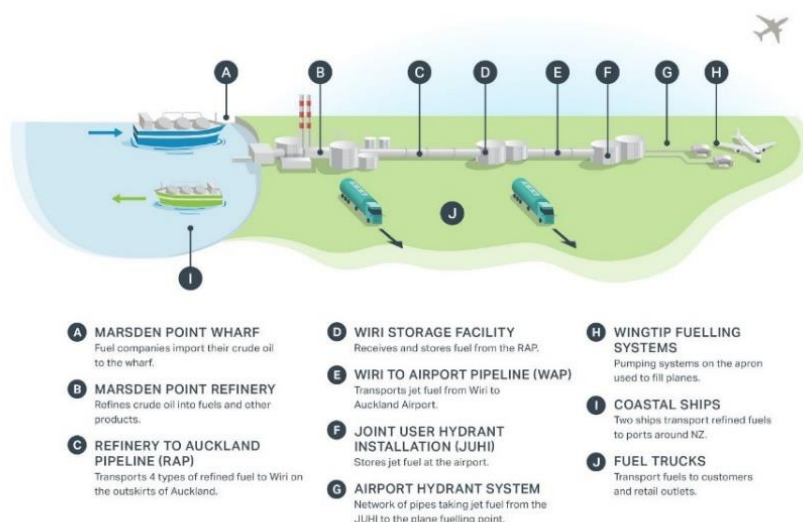
MONZ owns and operates its own hydrant service vehicles and refuelling trucks, whereas BP and Z undertake it through a separate Joint Into-Plane Fuelling Services ("**JIFS**") joint venture.

*Figure 4*

<sup>17</sup> Commerce Commission. *Market study into the retail fuel sector: Final report*. (5 December 2019), page 84.

<sup>18</sup> [ ]

The jet fuel supply chain for Auckland<sup>19</sup>



8.3 The Acquisitions only concern the WAP and the JUHI. All other infrastructure involved in the Auckland jet fuel supply chain described above will not be impacted by the Acquisitions.

**Jet fuel storage in the upper North Island**

8.4 Jet fuel is currently stored in terminals at Marsden Point, Wiri, and Auckland Airport (the JUHI). Approximate jet fuel storage capacities for each terminal are provided at Table 5 below.

Table 5  
Upper North Island terminal storage capacity

Terminal	Capacity (litres)
Marsden Point	[ ] (co-mingled only)
Wiri Terminal	35,000,000 <sup>20</sup>
JUHI	9,500,000 <sup>21</sup>

8.5 Marsden Point was recently reconfigured from a refinery to an import-only fuel terminal, owned by Channel Infrastructure New Zealand ("**CINZ**"). It offers both co-mingled and private storage services to fuel suppliers. The [ ] figure in Table 5 represents the volume of jet fuel that is co-mingled (ie suppliers' volumes are mixed in shared storage tanks). Separate to this, fuel suppliers are able to contract with CINZ for additional private storage. MONZ has a private contract that, when completed, enables it to store [ ], but has no visibility over the private storage procured by other suppliers.

<sup>19</sup> Government Inquiry, at Figure 1.

<sup>20</sup> Government Inquiry, at Figure 13.

<sup>21</sup> Government Inquiry, at Figure 13.

Overview of the WAP joint venture

8.6 The WAP runs between the Wiri Storage Facility and the JUHI storage tanks at the Auckland Airport for the sole purpose of transporting jet fuel between these destinations. It is owned by Z ([ ]%), MONZ ([ ]%) and BP ([ ]%) through an unincorporated joint venture.

8.7 [ ]<sup>22</sup>[ ]

8.8 [ ]<sup>23</sup> [ ]<sup>24</sup>  
[ ]<sup>25</sup> [ ]

8.9 [ ]<sup>26</sup> [ ]<sup>27</sup>

(a) [ ]

(b) [ ]

8.10 [ ]

(a) [ ]

(b) [ ]<sup>28</sup>

(c) [ ]<sup>29</sup>

(d) [ ]<sup>30</sup>

(e) [ ]<sup>31</sup>

(f) [ ]<sup>32</sup>

8.11 [ ]

(a) [ ]<sup>33</sup>

(b) [ ]<sup>34</sup>

(c) [ ]<sup>35</sup>

(d) [ ]<sup>36</sup>

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22

23 [ ]

24 [ ]

25 [ ]

26 [ ]

27 [ ]

28 [ ]

29 [ ]

30 [ ]

31 [ ]

32 [ ]

33 [ ]

34 [ ]

35 [ ]

36 [ ]



- (e) [ ]<sup>37</sup>
- 8.12 [ ]
- (a) [ ]<sup>38</sup>
- (b) [ ]<sup>39</sup>
- (c) [ ]<sup>40</sup>
- (d) [ ]

**Overview of the JUHI joint venture**

8.13 The JUHI is currently owned in equal parts by MONZ, BP and Z as an unincorporated joint venture. Despite its name, the Auckland JUHI is primarily a storage and pumping facility. The network of pipelines and hydrant structure connecting the JUHI to the refuelling area on the tarmac is owned and operated by AIAL.

- 8.14 [ ]<sup>41</sup> [ ]
- 8.15 [ ]<sup>42</sup> [ ]<sup>43</sup>  
[ ]<sup>44</sup>
- 8.16 [ ]<sup>45</sup> [ ]<sup>46</sup>
- (a) [ ]
- (b) [ ]
- 8.17 [ ]
- 8.18 [ ]
- (a) [ ]
- (b) [ ]<sup>47</sup>
- (c) [ ]<sup>48</sup>
- (d) [ ]<sup>49</sup>
- (e) [ ]<sup>50</sup>

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37 [ ]  
 38 [ ]  
 39 [ ]  
 40 [ ]  
 41 [ ]  
 42 [ ]  
 43 [ ]  
 44 [ ]  
 45 [ ]  
 46 [ ]  
 47 [ ]  
 48 [ ]  
 49 [ ]

- (f) [ ]<sup>51</sup>
- (g) [ ]<sup>52</sup>
- 8.19 [ ]
- (a) [ ]<sup>53</sup>
- (b) [ ]<sup>54</sup>
- (c) [ ]<sup>55</sup>
- (d) [ ]<sup>56</sup>
- (e) [ ]<sup>57</sup>
- 8.20 [ ]
- (a) [ ]<sup>58</sup>
- (b) [ ]<sup>59</sup>
- (c) [ ]<sup>60</sup>
- 8.21 [ ]
- (a) [ ]<sup>61</sup>
- (b) [ ]<sup>62</sup>
- (c) [ ]

**Customers of jet fuel**

8.22 Customers of jet fuel at Auckland Airport are predominantly commercial airlines, including Air New Zealand, Qantas and Singapore Airlines. These customers are typically large multi-national enterprises that have significant experience negotiating supply contracts around the world.

8.23 The amount of jet fuel required for any given aircraft will depend on a range of factors including each individual airline's own operating policies, the aircraft type, intended destination, and weather conditions. To assist the Commission, Table 6 below sets out

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50 [ ]  
51 [ ]  
52 [ ]  
53 [ ]  
54 [ ]  
55 [ ]  
56 [ ]  
57 [ ]  
58 [ ]  
59 [ ]  
60 [ ]  
61 [ ]  
62 [ ]

MONZ's understanding of the typical minimum and maximum refuelling volumes by common types of aircrafts that MONZ refuels at Auckland Airport.

Table 6  
Refuelling volumes for different aircraft

	Typical minimum refuelling volume (kL)	Typical maximum refuelling volume (kL)
<b>A320</b>	[ ]	[ ]
<b>787</b>	[ ]	[ ]
<b>777</b>	[ ]	[ ]
<b>A330</b>	[ ]	[ ]
<b>A350</b>	[ ]	[ ]
<b>A380</b>	[ ]	[ ]

8.24 Current aggregate jet fuel volumes supplied at Auckland Airport are in the order of [ ]. The largest purchaser of jet fuel at Auckland Airport is Air New Zealand. Historically, Air New Zealand accounted for approximately [ ]% of jet fuel volumes purchased at Auckland Airport. As a result of the pandemic, Air New Zealand accounts for approximately [ ]% of all jet fuel purchases at Auckland Airport given that Air New Zealand's domestic operations were not as materially impacted as international routes. Air New Zealand is, therefore, a particularly important customer to contract with.

8.25 Air New Zealand and other customers typically acquire jet fuel under fixed supply agreements. Airlines will run a tender for a supply agreement, with tenders typically occurring [ ]. The bidding process is highly competitive, with suppliers bidding aggressively to obtain these contracts. Bids will typically be based on two components - a price per unit of fuel delivered "into plane" and the share of the airline's volume requirements that each supplier is willing to provide at that price. To obtain the best possible price, tactics such as multi-round tendering are often used. This involves an initial round of bids being followed by a bargaining process where airlines seek to negotiate a lower price from each supplier, adjusting shares so that the accepted bids add up to 100 per cent of their volume requirements.

8.26 As a result of the short-term nature of these contracts, and the vigorous approach to bidding, customer churn occurs regularly. Further, customers will often establish relationships with multiple suppliers, with each contract stipulating a percentage of the customer's total annual volume at a particular location (eg Auckland Airport). This enables customers to switch between suppliers as necessary in any given year.

8.27 [ ] in general, the price of jet fuel reflects two key components:

- (a) The underlying product price, which is based on the appropriate Mean of Platts Singapore benchmark ("MOPS"). MOPS refers to the average price for a Singapore-based oil product, which is determined by the Platts assessment agency and published each weekday in the *Platts Oilgram Price Report*. Singapore's spot market price is used as a reasonable indicator of the cost of refined fuel imported into New Zealand since world fuel prices are closely connected and New Zealand

importers purchase fuel from Singapore.<sup>63</sup> This component of pricing is, in general, standard across all customers; and

- (b) The "differential" price, which is a margin on top of MOPS. This margin will recover the fuel companies' various operational costs associated with supplying fuel into the aircraft for that specific customer and a reasonable rate of return.

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<sup>63</sup> *Market Study*, at footnote 59.

**PART D: COMPETITIVE ASSESSMENT**

**9. RELEVANT MARKETS**

9.1 Given the nature of the Acquisitions, the only potentially relevant markets are the downstream markets for the sale of jet fuel at Auckland Airport.

9.2 When considering the sale of jet fuel at Auckland Airport, the Commission has previously defined the following relevant markets:<sup>64</sup>

- (a) sales of Jet A-1 to Air New Zealand at Auckland Airport; and
- (b) sales of Jet A-1 at Auckland Airport to all other (non-Air New Zealand) customers.

9.3 The Applicant does not consider that there have been any material changes to how the market operates since that decision that would warrant a different approach being taken to market definition. In any event, these market definitions are already narrow and, as such, if there are no plausible competition concerns in relation to these narrow markets then competition concerns are unlikely to arise under a wider frame of reference.

**Market shares**

9.4 There are currently three suppliers of jet fuel at Auckland Airport (MONZ, BP and Z). Market shares in the supply of jet fuel at Auckland Airport are highly volatile, as a supplier's share of the market will be dependent on the outcome of tenders for large customer contracts which, as outlined in 8.25 typically occur every [ ].

*Table 7  
Market shares for jet fuel at Auckland Airport<sup>65</sup>*

	Supply to Air New Zealand	Supply to all other Airlines
<b>MONZ</b>	[ ]%	[ ]%
<b>BP</b>	[ ]%	[ ]%
<b>Z</b>	[ ]%	[ ]%

**10. NO RISK OF VERTICAL EFFECTS**

10.1 The rationale for the Acquisitions is to encourage future investment in the quality and capacity of the infrastructure by enabling a return on investment, and facilitate new entrants by removing the requirement that new users need to acquire an ownership interest in the WAP and the JUHI to be able to use them. The Acquisitions are fundamentally pro-competitive, and will not result in any lessening of competition. MONZ would have neither the ability, nor incentive, to foreclose access to either of the Auckland Airport jet fuel markets by restricting access to the WAP or the JUHI. Further, even if it did (hypothetically) have both the ability and incentive to foreclose access, the Acquisitions could not plausibly have the likely effect of substantially lessening competition in those markets.

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<sup>64</sup> Z / Chevron, at [278].

<sup>65</sup> Based on MONZ's best internal sales estimates.

**No ability to foreclose access to the Auckland Airport jet fuel markets**

10.2 Post-Acquisitions, MONZ would not have the ability to foreclose access to the Auckland Airport jet fuel markets for a number of reasons.

*MONZ will not have the ability to foreclose BP from the market*

10.3 Irrespective of whether BP exercises all, or any, of its equivalent rights under the JV Agreements, BP will remain a joint owner of the WAP and JUHI. MONZ will not have any ability to foreclose BP from access to the WAP or the JUHI without BP's consent. BP will therefore remain a vigorous competitor to MONZ in these downstream markets for the supply of jet fuel at Auckland Airport to both Air New Zealand and other airlines.

*Access to the WAP is not essential to supply jet fuel at Auckland Airport*

10.4 A potential supplier of jet fuel at Auckland Airport does not require access to the WAP to be a viable competitor. This is evident in that:

- (a) In 2019, Gull announced that it was intending to enter the Auckland Airport jet fuel market in the next one to three years by importing jet fuel into a New Zealand port, and then trucking this to Auckland Airport.<sup>66</sup> Gull had begun investigating the options of Marsden Point, where it would build a truck load-out facility next to the refinery, or Mount Maunganui, which would require building a jet fuel storage tank and load out facility.<sup>67</sup> These plans were likely delayed because of the impact of the global pandemic on the demand for air travel;
- (b) Jet fuel has previously been trucked into Auckland Airport when there have been issues with the jet fuel supply chain; and
- (c) Z has investigated the possibility of transporting jet fuel from Mount Maunganui to Auckland Airport using rail. Z determined that this option was operationally feasible and would take several years to deliver.<sup>68</sup>

10.5 [ ]

*AIAL has countervailing power over the JUHI as landowner*

10.6 AIAL owns the land at the Auckland Airport where the JUHI is located and leases the site to the JUHI joint venture. This lease technically expires in [ ]. However, under the Airport Authorities Act 1966,<sup>69</sup> AIAL has a statutory power to terminate such a lease at any point, without cause or compensation. The participants in the JUHI joint venture have previously expressed that AIAL's ability to end their lease early has been a point of concern, and this countervailing power would continue to impose a material constraint on the participants' decision-making.

10.7 AIAL is incentivised to ensure that airlines can obtain reasonably priced jet fuel at Auckland Airport. If the Auckland Airport jet fuel markets are not competitive, AIAL may risk losing flights to other New Zealand airports. This is particularly the case in relation to long-haul

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<sup>66</sup> [ ]

<sup>67</sup> *Government Inquiry*, at [17.17].

<sup>68</sup> *Government Inquiry*, at [17.23] – [17.24]. See also: (17 September 2019). Option 'on the table' to send jet fuel to Auckland Airport by rail, says Z. Stuff. Retrieved from <https://www.stuff.co.nz/business/115861456/option-on-the-table-to-send-jet-fuel-to-auckland-airport-by-rail-says-z>

<sup>69</sup> Airport Authorities Act 1966, s 6.

airlines transporting international travellers who are seeking a gateway into New Zealand and are largely indifferent between flying into Auckland or Christchurch.

10.8 AIAL has been considering decommissioning the current JUHI site and moving it to a different location.<sup>70</sup> In anticipation of this, it has convened an industry working group with representatives from BP, MONZ, Z, the Board of Airline Representatives of New Zealand Inc. ("**BARNZ**") and Air New Zealand to explore alternative locations. AIAL can impose conditions on any lease it grants to the JUHI joint venture to preserve competition, similar to the approach taken by a number of airports in Australia.

10.9 For example, in 2019, [ ]. Further, in 2019, when renegotiating their storage facility leases with suppliers, each of Perth, Sydney and Adelaide airports indicated that open access would be an important feature of any new agreement.<sup>71</sup>

10.10 [ ]

*Airlines and/or the Airport can integrate up the supply chain*

10.11 Both airlines and airports are strongly incentivised to ensure that the jet fuel supply chain into Auckland is as competitive as possible. If jet fuel supplies at Auckland Airport are not competitive, a consortium of airlines and/or AIAL could invest in a competing WAP or JUHI (or bring forward plans to relocate the JUHI) to promote competition. Examples of this occurring overseas include:

- (a) Qantas Airways Limited ("**Qantas**") used to have an ownership interest in the Sydney Joint User Hydrant Installation Joint Venture ("**SYDJUHI**").
- (b) In 2020, Qantas and a number of fuel companies (including Ampol, BP and Mobil) sold their interests in the Sydney Airport fuel infrastructure assets, including the SYDJUHI, to Sydney Airport Limited – with the rationale being that Sydney Airport Limited as a single owner (rather than the assets being held in a multi-party unincorporated joint venture) would "allow [it to] invest more readily to support future growth" thereby helping to "facilitate greater competition for fuel supply."<sup>72</sup>
- (c) In late 2021, Adelaide Airport Limited acquired Mobil, BP and Viva's interests in the Adelaide Airport Aviation Fuel Facility ("**AAAFF**") and is now the sole owner of the AAAFF.<sup>73</sup>
- (d) In 2017, Darwin International Airport acquired a part ownership of the Darwin JUHI with an agreement to purchase the facility outright at a later stage. This was done so that the airport could introduce "an open access regime allowing fuel suppliers to market aviation fuel to airlines, which should result in more competition in jet fuel pricing for our airline customers."<sup>74</sup> Following this transition, Director Property at

<sup>70</sup> *Government Inquiry*, at [16.3] – [16.5].

<sup>71</sup> Australian Government Productivity Commission. *Economic Regulation of Airports: Productivity Commission Inquiry Report* (June 2019), page 283.

<sup>72</sup> (1 October 2020). Sydney Airport completes acquisition of jet fuel infrastructure assets. Retrieved from <https://m.sydneyairport.com.au/corporate/media/corporate-newsroom/jet-fuel-media-release>

<sup>73</sup> (1 December 2021) Adelaide Airport Ltd purchases jet fuel storage infrastructure. Retrieved from <https://www.adelaideairport.com.au/corporate/wp-content/uploads/2021/12/nr-JOSF-1.12.21-web.pdf>

<sup>74</sup> (16 August 2017). Darwin Airport purchase jet fuel storage facility. Retrieved from <https://infrastructuremagazine.com.au/2017/08/16/darwin-airport-purchase-jet-fuel-storage-facility/>

Darwin Airport, Ross Baynes, indicated that the airport had received strong interest from aviation fuel marketers who were not previously active at Darwin Airport.<sup>75</sup>

- (e) In 2006, Canberra Airport invested in the building of a \$5.5 million fuel farm to replace aging fuel tanks and increase on-airport storage capacity. This fuel farm is comprised of five tanks buried deep underground which have capacity to store 550,000 litres of jet fuel.<sup>76</sup>
- (f) There are a number of examples in the United States of airlines and airports investing in new fuel supply infrastructure:
  - (i) In 2019, an aboveground fuel storage facility was constructed at Great Falls International Airport in Montana. These tanks, with a storage capacity of 800,000 litres, were commissioned by the airport's operator, and took only three months to build.<sup>77</sup>
  - (ii) Also in 2019, a consortium of airlines that managed, maintained and operated the existing fuel systems at St Louis Lambert International Airport ("**STL**"), commissioned a new 13.6 million litre bulk jet fuel storage facility to eventually replace the airport's aging former facility. This infrastructure was opened in 2021, and includes three above-ground fuel tanks (with the space to build a fourth should the airport's future demand warrant it), an underground fuel transmission pipeline, pipes and an operations building. In addition, STL invested a further US \$50 million into other fuelling-related infrastructure, including hydrant system improvements, emergency systems and other facilities.<sup>78</sup>

10.12 MONZ anticipates that it would take [ ] to build a second WAP and JUHI. In 2016, the replacement costs of WAP and JUHI were estimated to be [ ]

*Any hypothetical ability is likely to be transitory*

10.13 [ ]

10.14 If the Auckland Airport jet fuel market does not remain competitive as a result of the WAP and JUHI arrangements, this will provide a catalyst for other fuel companies (such as Z), airlines, and AIAL to explore an alternative supply chain solution that is not owned by MONZ and BP. Any alternative supply chain will remove any hypothetical ability to foreclose access to the Auckland Airport jet fuel markets.

#### **No incentive to foreclose access to Auckland Airport jet fuel markets**

10.15 MONZ would not have the incentive to foreclose access to Auckland Airport jet fuel markets for the following reasons:

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<sup>75</sup> (16 August 2017). Darwin Airport purchase jet fuel storage facility. Retrieved from <https://infrastructuremagazine.com.au/2017/08/16/darwin-airport-purchase-jet-fuel-storage-facility/>

<sup>76</sup> (March 2006). Canberra International Airport. *The Hub: Issue 32*. Retrieved from <https://www.canberraairport.com.au/wp-content/uploads/2018/04/hub32.pdf>

<sup>77</sup> (October 2019). New fuel farm increases efficiency at Great Falls International. Retrieved from <https://airportimprovement.com/article/new-fuel-farm-increases-efficiency-great-falls-int-l>

<sup>78</sup> (29 September 2021). Airport (STL) for Future Travel Demands. Retrieved from <https://www.burnsmcd.com/insightsnews/in-the-news/2021/09/bulk-fuel-storage-facility-st-louis-airport>



*The rationale for the Acquisitions is to implement a model that will facilitate open access to the market*

- 10.16 Foreclosing access to the WAP and/or JUHI would run contrary to the very purpose of the Acquisitions. MONZ's intention following the Acquisitions is to modernise the JV Agreements and how the WAP and JUHI are owned and operated in a way that will:
- (a) Facilitate new entrants into the jet fuel markets at Auckland Airport by removing the requirement that new users need to acquire an ownership interest in the WAP and the JUHI to be able to use them;
  - (b) Encourage future investment in the quality and capacity of the infrastructure by enabling the JVs to generate a return (which is consistent with best practice) and [ ] thereby removing barriers to capital investment in the infrastructure; and
  - (c) Address the concerns raised by the Government Inquiry into the Auckland Fuel Supply Disruption Government Inquiry.

*MONZ has strict firewalls in place*

- 10.17 MONZ (and the other members of the JUHI joint venture) operates in accordance with JIG industry-wide core principles and its own strict firewalls. MONZ has, and has had for many years, separate teams responsible for (i) managing their participation in the JUHI joint ventures ("**Operations Team**"); and (ii) selling jet fuel to airlines ("**Jet Fuel Team**"). The Operations Team are:
- (a) prohibited from sharing any information relating to other users of the JUHI with the Jet Fuel Team; and
  - (b) incentivised based on the performance of the infrastructure they are responsible for.

- 10.18 The Operations Team would therefore be incentivised to grow the use of the WAP and JUHI and encourage greater throughput irrespective of who is selling the jet fuel downstream. These strict firewall requirements are imposed on MONZ by ExxonMobil and are implemented throughout the world and, as noted, have been in place for many years. MONZ does not have any ability to unilaterally depart from them.

#### **The Acquisitions are pro-competitive**

- 10.19 Even if MONZ did hypothetically have both the ability and incentive to foreclose access to the downstream Auckland Airport jet fuel markets, the Acquisitions could not plausibly have the likely effect of substantially lessening competition in either of these markets.

*BP will remain a vigorous competitor*

- 10.20 Even if Z was hypothetically foreclosed from the Auckland Airport jet fuel markets, these markets will remain highly competitive with vigorous competition between MONZ and BP.
- 10.21 This is evidenced by the fact that despite there only being two suppliers of jet fuel at Wellington Airport (those being MONZ and BP), [ ]<sup>79</sup> The guaranteed ongoing

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<sup>79</sup> [ ]. MONZ does not supply jet fuel at any other New Zealand airport.

presence of both MONZ and BP will allow airlines to continue to run competitive tender processes and play the suppliers off against each other. The Commission has previously found that the Auckland Airport jet fuel markets are highly competitive noting that:

... within a bidding market context, BP and Mobil are likely to be able to expand sufficiently to compete for and supply any of these [non-Air New Zealand] customers. Any such expansion is likely to be achieved without incurring any additional costs and so would be profitable at, or close to, current prices.<sup>80</sup>

[...]

Evidence also indicates that at times fuel firms can be aggressive in bidding for an airline contract (eg, by offering a low price to win or retain volume).<sup>81</sup>

[...]

Additionally, tender information obtained from the parties indicates that customer churn is a regular occurrence.<sup>82</sup>

- 10.22 Suppliers have strong economic incentives to win tenders to supply airlines, as supplying an increased volume of jet fuel is a key way to minimise a supplier's operating and production costs. The same market dynamics continue to exist today, and will continue to exist after the Acquisitions.

*Airlines can and do negotiate region-wide arrangements with fuel suppliers*

- 10.23 Although Auckland Airport is New Zealand's largest airport, it is relatively small when compared to other airports in the Asia-Pacific region. Airlines are global businesses who can and do negotiate region-wide jet fuel supply arrangements. NERA Economic Consulting has recognised that this characteristic gives airlines greater bargaining power through the "prospect of reprisals in other geographic locations" if they perceive that a price at a particular airport is not competitive.<sup>83</sup> Airlines would therefore be able to punish any purported attempt to increase jet fuel prices at Auckland Airport by shifting more significant volumes away to other competitors at other airports. MONZ and BP are both global fuel companies who would not risk losing a contract at a major international airport (eg Singapore Airlines in Singapore, Cathay Pacific in Hong Kong, or Qantas in Sydney) in an attempt to extract higher prices out of Auckland Airport. [ ].

*Airlines can alter their fuelling schedules to bypass Auckland Airport if prices are not competitive*

- 10.24 Airlines have some flexibility to alter their fuelling schedules to minimise, or eliminate, the need to refuel at more expensive airports. This is particularly the case with respect to domestic flights and trans-Tasman flights. The aircraft used on these routes can hold sufficient fuel for a return trip which bypasses the need to refuel the aircraft at *both* the origin and destination. This is best demonstrated by the steps that airlines took in 2017 when the RAP ruptured to limit the need to refuel in Auckland (including refuelling flights at other domestic airports and flying in fuel from other airports on inbound flights where possible to supplement outbound flights).<sup>84</sup> Accordingly, the prices offered at Auckland Airport need to

<sup>80</sup> Z / Chevron, at [286].

<sup>81</sup> Z / Chevron, at [287].

<sup>82</sup> Z / Chevron, at [289].

<sup>83</sup> NERA Economic Consulting. *Caltex Jet Fuel Pipeline – Assessment of Declaration Criteria* (2011), page 23. Retrieved from <http://ncc.gov.au/images/uploads/DEJFBASu-016.pdf>

<sup>84</sup> Although the rupturing of the RAP did lead to a shortage of supply of jet fuel at Auckland Airport, [ ]

be competitive against the prices offered at other New Zealand airports and airports on the east coast of Australia.

*The rationale for the Acquisitions is to shift to an open access model*

- 10.25 MONZ has no intention to restrict access to either the WAP or the JUHI to fuel companies that have an ownership interest in WAP or JUHI. As discussed above, the rationale for the Acquisitions is to shift to an open access model, consistent with best practice, where all potential suppliers can access the infrastructure for a throughput fare that will be set on a non-discriminatory basis so that those assets can generate a return on investment to fund further development of the infrastructure.
- 10.26 Based on overseas experience, the implementation of an open access model will lead to more, rather than less, competitive outcomes. The world's first open access jet fuel supply model was introduced at Hong Kong International Airport ("**HKIA**") in 1998. All jet fuel suppliers were able to access infrastructure under the same price and terms, with a "Fuel Throughput Levy" imposed to both recover costs and earn a return on investment. HKIA was later presented an award by the International Air Transport Association in recognition of the excellent management of its aviation fuel system. Its open access nature led to "intense competition" reflected in the considerable fluctuation in market shares of the many fuel suppliers active at the airport.<sup>85</sup> HKIA is frequently promoted by groups such as the Board of Airline Representatives Australia ("**BARA**") as a best practice model for jet fuel supply:

The implementation of open access fuel supply at HKIA upon its opening was a commercial success for the airlines in improving competition in fuel supply. Overnight, the market grew from seven fuel suppliers at the old airport (each of which had an equity stake in the fuel facilities) to 13 at the new airport.<sup>86</sup>

- 10.27 The Acquisitions are likely to facilitate even greater competition in the Auckland Airport jet fuel markets, in addition to incentivising further investment to create a more efficient supply chain for the benefit of all market participants.

*Air New Zealand has countervailing buyer power*

- 10.28 Air New Zealand remains the largest purchaser of jet fuel at Auckland Airport. Whereas historically Air New Zealand accounted for approximately [ ]% of all jet fuel purchased at Auckland Airport it now accounts for approximately [ ]% of all jet fuel purchases. This is a result of Air New Zealand's domestic operations being less impacted by the pandemic whilst international airlines have significantly reduced, or suspended, their flights to New Zealand. Air New Zealand is therefore a significant customer with high volume needs. Even in the hypothetical absence of Z/Ampol, BP and MONZ will be highly motivated to compete vigorously with each other to secure these high-volume contracts, given that increased volumes is the key way for jet fuel suppliers to minimise their operating and production costs. Air New Zealand will continue to be able to play BP and MONZ off against each other to secure lower prices.
- 10.29 Further, the countervailing power of airline customers, such as Air New Zealand, is not limited to this ability to play suppliers off against each other. NERA Economic Consulting has cautioned that the countervailing power of airlines should "not be underestimated" given

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<sup>85</sup> (11 September 2006). Fuelling excellence at HKIA. Retrieved from

<https://www.internationalairportreview.com/article/1635/fuelling-excellence-at-hkia/>

<sup>86</sup>Board of Airline Representatives of Australia Inc ("**BARA**"). *Submission to the Productivity Commission – the competitive supply of jet fuel* (2 September 2018), page 26. Retrieved from <http://bara.org.au/wp-content/uploads/2018/08/BARA-sub-to-PC-jet-fuel.pdf>

the various steps they could take if they perceived competition between existing suppliers was ineffective, including:<sup>87</sup>

- (a) building a new pipeline;
- (b) sponsoring a new entrant; and/or
- (c) arranging for jet fuel to be trucked in.

10.30 Air New Zealand is similarly likely to be able to defeat any purported attempt by BP or MONZ to increase prices by threatening to:

- (a) shift volumes to other suppliers at other domestic airports that Air New Zealand flies to. Air New Zealand currently flies to 19 other New Zealand airports, all of which stock Jet A-1 fuel. In its study into the retail fuel sector, the Commission noted that there had been several examples of investment in terminal capacity in recent years. This included an increase in terminal capacity for jet fuel in Dunedin, which was seen as a necessary investment given the volumes of jet fuel that had been trucked to Queenstown Airport from Christchurch;<sup>88</sup>
- (b) shift volumes to other suppliers at international airports that Air New Zealand flies to, including 10 Australian airports as well as airports throughout the South Pacific, Asia, USA, and Canada;
- (c) alter fuelling schedules to shift jet fuel volumes away from Auckland;
- (d) sponsor new entry into the market by either integrating up the supply chain (see paragraph 10.11 above) and/or committing large volumes to a potential new entrant (such as Gull) or Z's re-entry; and/or
- (e) self-supply a portion of their volume requirements, such as through purchasing jet fuel further up the supply chain. Qantas has previously engaged in self-supply at Sydney Airport, including through investing in Sydney's JUHI and negotiating access to various pipelines and storage facilities.<sup>89</sup> In addition, a policy document published by the BARA in 2014 proposed that airport operators could invest in off-airport storage to increase pricing competition.<sup>90</sup> If Air New Zealand perceived prices to exceed competitive levels, it could procure its own off-airport storage facilities.

## 11. NO RISK OF COORDINATED EFFECTS

11.1 MONZ is confident that the Acquisitions will not change the conditions of the market in such a way that would increase the potential for co-ordinated effects to arise. Specifically, there is no element of either of the Acquisitions that will make it easier for the remaining firms to:

- (a) tacitly reach and sustain agreement on any key dimension of competition;

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<sup>87</sup> NERA Economic Consulting. *Caltex Jet Fuel Pipeline – Assessment of Declaration Criteria* (2011), page 23. Retrieved from <http://ncc.gov.au/images/uploads/DEJFBASu-016.pdf>

<sup>88</sup> *Market study*, at [5.59].

<sup>89</sup> Qantas Group. "Application for declaration of the JUHI and Caltex Pipelines – Qantas Group Submission" (21 November 2011), page 6.

<sup>90</sup> BARA. *A Competitive Supply of Jet Fuel at Australia's Major Airports* (2014), page 8.

- (b) detect deviations from the agreement, so as to dissuade other suppliers of jet fuel from deviating for fear of punishment; or
- (c) deter such deviations from coordination by means of more effective punishments.

11.2 The reasons for this are as follows:

- (a) **No decrease in the number of suppliers:** The rationale for the Acquisitions is to encourage future investment in the quality and capacity of the infrastructure by enabling a return on investment, and facilitate new entrants by removing the requirement that new users need to acquire an ownership interest in the WAP and the JUHI to be able to use them. To the extent there is any change in the number of downstream suppliers, it would be an increase in suppliers, making any (hypothetical) attempt at coordination even more difficult to sustain;
- (b) **Lack of transparency:** Markets where firms can readily observe each other's prices or volume are more susceptible to coordinated effects than markets where prices and volumes are less transparent. The market for the supply of jet fuel at Auckland Airport lacks transparency, making coordination between market participants unsustainable, in particular:
  - (i) the agreements between suppliers and customers that purchase jet fuel at Auckland Airport are negotiated in private, with no public visibility as to price or volume purchased. [ ];
  - (ii) there are no publicly available price lists for MONZ or other suppliers;
  - (iii) customers negotiate on different terms, and there is no transparency over contracting mechanisms; and
  - (iv) MONZ (and the other members of the JUHI joint venture) operates in accordance with JIG industry-wide core principles and its own strict firewalls. MONZ has one team responsible for managing its participation in the joint ventures, while a separate team is responsible for selling jet fuel to airlines. Sharing sensitive information between these teams, including information related to other users' pricing and volumes, is strictly prohibited. These strict firewalls have been imposed on MONZ by ExxonMobil for many years, and MONZ is unable to unilaterally depart from them. The Acquisitions will not change the amount or nature of the information received by the MONZ individuals responsible for selling jet fuel to airlines;
- (c) **Sophisticated purchasers with countervailing buyer power:** Customers for the supply of jet fuel at Auckland Airport are predominantly commercial airlines, including Air New Zealand, Qantas and Singapore Airlines. These customers are typically large multi-national enterprises with dedicated procurement teams which have significant experience negotiating supply contracts around the world. These airlines are well positioned to exercise countervailing power in response to any coordinated price increase by MONZ and other suppliers post-Acquisitions;
- (d) **Jet fuel suppliers need to obtain volume to spread costs of fixed asset ownership:** The infrastructure used in the Auckland jet fuel supply chain is highly specialised. The jet fuel suppliers rely on selling large volumes of jet fuel to spread

the fixed costs of maintaining and owning the infrastructure over as many sales as possible to remain competitive.

- 11.3 Given the industry characteristics described above, MONZ is confident that there is no likelihood of any materially increased potential for coordinated effects in the supply of jet fuel at Auckland Airport as a result of the Acquisitions.

## **12. NO RISK OF HORIZONTAL EFFECTS**

- 12.1 The Acquisitions do not result in the removal or acquisition of a horizontal competitor to MONZ. Accordingly, and given MONZ would have neither the ability, nor incentive, to foreclose access to either of the Auckland Airport jet fuel markets by restricting access to the JUHI and/or WAP, the Acquisitions do not result in any increased risk of unilateral or coordinated effects arising.

## **13. CONCLUSION**

- 13.1 For the reasons outlined in this application, the Applicant is confident that the Acquisitions will be procompetitive and lead to even greater competition than the continuation of the existing arrangements.

**14. FURTHER DOCUMENTATION / INFORMATION**

**14.1 MONZ sales revenues and volumes**

Sales of Jet A-1 to Air New Zealand at Auckland Airport

	FY19	FY20	FY21
Revenue (NZD)	[ ]	[ ]	[ ]
Volume (KUSG)	[ ]	[ ]	[ ]

Sales of Jet A-1 to other airlines at Auckland Airport

	FY19	FY20	FY21
Revenue (NZD)	[ ]	[ ]	[ ]
Volume (KUSG)	[ ]	[ ]	[ ]

**14.2 Names and contact details of other suppliers of jet fuel at Auckland Airport**

Name	Contact
Z Energy Limited	[ ]
BP Oil Limited	[ ]

**14.3 MONZ key customers of jet fuel at Auckland Airport**

Name	Contact	FY21 Volume (KUSG)
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

**14.4 MONZ key suppliers at Auckland Airport in relation to the sale of jet fuel**

Name	Contact	FY21 Expenditure
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

**14.5 JUHI key suppliers**

Name	Contact	FY21 Expenditure
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

14.6 WAP key suppliers

Name	Contact	FY21 Expenditure
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

14.7 MONZ's existing fuel supply contracts at Auckland and Wellington Airports since 1 January 2019

See Confidential Appendix 2

14.8 MONZ's most recent financial statements

A copy of ExxonMobil New Zealand Holdings' (MONZ's parent company) audited financial statements for the year ending 31 December 2021 are available at <https://app.companiesoffice.govt.nz/companies/app/service/services/documents/870DE6642F587437EC92B511A4C88FBD>

14.9 Financial accounts for the WAP and JUHI

See Confidential Appendices 3 and 4

14.10 Internal documents

See Confidential Appendix 5 for MONZ's internal documents relating to the Acquisitions and the relevant markets.

[ ]



**PART E: CONFIDENTIALITY****15. REASONS FOR SEEKING CONFIDENTIALITY**

- 15.1 Confidentiality is sought in respect of the information in this application that is contained in square brackets (with confidentiality indicated by the coloured highlighting). Confidentiality is sought for the purposes of s 9(2)(b) of the Official Information Act 1982 on the grounds that:
- (a) The information is commercially sensitive and valuable information which is confidential to the parties; and
  - (b) Disclosure would be likely to unreasonably prejudice the commercial position of the parties, as the entities providing the information.
- 15.2 The parties request that they are notified of any request made to the Commission under the Official Information Act 1982 for release of the confidential information. The parties also request that the Commission seek and consider the Applicant's views as to whether the information remains confidential and commercially sensitive at the time responses to such requests are being considered.
- 15.3 The foregoing equally applies in respect of any additional information provided to the Commission that is expressed to be confidential.