

8 June 2022

The Registrar
Commerce Commission
PO Box 2351
Wellington 6140

Mobil/WAP and JUHI jet fuel assets – submission on Statement of Preliminary Issues

1. Thank you for the opportunity to submit on Mobil's application for clearance to acquire up to 100% of Z Energy Limited's ownership interest in the Wiri to Airport Pipeline (WAP) and the Joint User Hydrant Installation (JUHI) (referred to herein as the "Proposed Acquisitions").
2. Channel Infrastructure owns the fuel import terminal system infrastructure comprising the jetties, unloading facilities and 280 million litres of storage tanks at Marsden Point, and the 170-kilometre pipeline from Marsden Point to Auckland (formerly referred to as the RAP). The pipeline ends at, and connects to, the Wiri Terminal in south Auckland (which is owned by bp, Mobil and Z Energy), from which the WAP and JUHI distribute all of the jet fuel supplied to Auckland International Airport.
3. Accordingly, Channel Infrastructure's import terminal system assets are upstream infrastructure assets from the WAP and JUHI, and as such form a critical part of the strategically important infrastructure supply chain for distribution of jet fuel to Auckland International Airport.
4. This submission focusses on matters Channel Infrastructure considers important for the Commission to consider regarding how the Proposed Acquisitions will impact on:
 - (a) fuel supply chain capacity and resilience, which we consider relevant to the quality of the service provided by the infrastructure; and
 - (b) open access to critical infrastructure, which we consider relevant to the assessment of potential vertical effects of the Proposed Acquisitions.

Supply chain capacity and resilience

5. Channel Infrastructure is committed to ensuring a reliable and resilient supply chain for the supply of jet fuel to Auckland International Airport, with investments being undertaken by Channel Infrastructure at Marsden Point as part of the conversion from refinery operations to import terminal operations adding additional capacity to distribute jet fuel through our infrastructure. These investments include works to enable two jetties (up from one) to receive jet fuel imports and additional jet fuel storage which will more than double jet fuel storage capacity at Marsden Point. Based on current forecasts, we expect the capacity that will exist within Channel Infrastructure's import terminal system (i.e. in both unloading and storage infrastructure at Marsden Point and in transport to Auckland via the Marsden Point to Auckland pipeline) will be sufficient to meet forecast demand for fuels over the next 20 years, as petrol and diesel demand peaks and then declines (due to a transition away from fossil fuels) and jet fuel demand recovers from COVID-related lows, and then grows over the longer term, replacing the declining petrol and diesel volumes.
6. However, we do not believe there is sufficient capacity in downstream parts of the supply chain (including the WAP and JUHI) to meet the forecast growth in jet fuel demand. Over the same period of significant expansion to jet storage capacity at Marsden Point, there have been no capacity increases at the Wiri Terminal. Accordingly, we think it important to assess whether any change in ownership of the WAP and JUHI will positively or negatively impact on the incentives to invest in increasing the throughput capacity of these assets.



7. The 2017 Marsden Point to Auckland pipeline incident highlighted a lack of resilience in the jet fuel supply chain and the substantial costs and practical challenges of alternative jet supply options such as trucking jet fuel from Marsden Point. Following a ministerial review, numerous recommendations were made by government, and those recommendations sitting with Refining NZ (as it then was) have been actioned. However, those recommendations sitting with the owners of the Wiri Terminal, JUHI and WAP infrastructure have not. We understand this has been due to a lack of alignment between the owners of that infrastructure. This reinforces the importance of assessing whether any change in ownership of the WAP and JUHI resulting from the Proposed Acquisitions will positively or negatively impact on the incentives to invest in these assets, in this case to improve their resilience.
8. In our view, to ensure adequate capacity and improve resilience of the jet fuel supply chain into Auckland Airport:
 - (a) a long-term infrastructure investment and management plan is required to ensure the jet fuel supply chain to Auckland International Airport (including the WAP and JUHI) has both adequate capacity and resilience; and
 - (b) the owners and users of the WAP and JUHI infrastructure assets need to reach agreement regarding the investments to be made and infrastructure charges in respect of those investments.
9. It is not clear to us that the Proposed Acquisitions will increase the likelihood of emergence of an accepted long-term infrastructure plan, and incentivise agreement on the infrastructure charges in respect of those investments in a manner that does not create a risk of distortion in the relative competitive position of suppliers of jet fuel. The Proposed Acquisitions may in fact decrease the incentives to agree such a plan, and increase the risks of such a distortion, due to the shift from three vertically integrated suppliers of jet fuel (with all jet fuel suppliers in the same position as joint owners of the WAP and JUHI) to two vertically integrated jet fuel suppliers and one jet fuel supplier no longer having an ownership interest in the WAP and JUHI infrastructure.

Open access to critical infrastructure

10. Channel Infrastructure supports open access for critical fuels supply chain infrastructure, to support both the competitive utilisation and resilience of the infrastructure. This is aligned with the findings of the 2019 Retail Fuel Market Study Report published by the Commission and with recent legislative changes to increase wholesale market competition through the enactment of the Fuel Industry Act.
11. Consistent with this, Channel Infrastructure negotiated new open-access terms for the Marsden Point import terminal system as part of the new Terminal Services Agreements signed with the three major fuel companies at the time of conversion of Marsden Point operations from refinery to import terminal operations. These terms, which are the same for all three customers, come into effect from 2025 and will allow new third-party suppliers of fuel to access surplus capacity in the Marsden Point to Auckland pipeline on the same terms as the existing users of the import terminal system.
12. However, any new users of the Marsden Point import terminal system wishing to distribute jet fuel through the Marsden Point to Auckland pipeline will still require access to the Wiri Terminal in order to distribute land transport fuels, and to the Wiri Terminal, the WAP and JUHI infrastructure in order to supply jet fuel to Auckland International Airport.
13. We understand that under the agreements currently in place, access to the Wiri Terminal, WAP and JUHI is reserved exclusively for parties with an ownership interest in the assets, and accordingly access by third parties (including Z Energy, if its ownership interests in the WAP and JUHI were acquired by Mobil) would require the agreement of the owners of the Wiri Terminal, WAP and JUHI infrastructure. While Mobil has indicated an intention to put such an agreement in place, no such agreement exists today and therefore the Proposed Acquisition must be assessed based on the agreements in place today.



14. As the owners of the infrastructure are also existing fuel suppliers to Auckland International Airport, they may not be incentivised to open up the infrastructure they own to third party users, as has been the case since the time of establishment of the Wiri Terminal and WAP infrastructure in the 1980s. Furthermore, commercial terms for use of the infrastructure assets would also need to be agreed and the owners of the infrastructure assets would have different incentives in setting the charges for use of the assets (including when setting charges that also apply to users who are also owners of the assets), in comparison with third parties who are seeking access only. In short, it cannot be assumed that the owners of the Wiri Terminal, WAP and JUHI would readily agree commercial terms with a third party seeking access to the assets, including, but in the future not limited, to Z Energy.
15. Given the Proposed Acquisitions would result in a shift from three vertically integrated suppliers of jet fuel (with all jet fuel suppliers in the same position as joint owners of the WAP and JUHI) to two vertically integrated jet fuel suppliers and one jet fuel supplier no longer having an ownership interest in the WAP and JUHI infrastructure, it is important that the Commerce Commission assesses the risks of:
 - (a) a foreclosure of the jet fuel market to those who do not also own infrastructure;
 - (b) an effective foreclosure of the jet fuel market to those who do not also own infrastructure, as a result of the infrastructure charges adversely impacting on the market competitiveness of non-asset owning jet fuel suppliers; and
 - (c) potential for flow-on impacts to competition in the land transport fuel markets, should one fuel company exit the jet fuel market and which in turn may adversely impact scale benefits associated with Wiri Terminal infrastructure charges.
16. Accordingly, it is uncertain that agreement on open access terms could be reached following the Proposed Acquisitions, or if agreement were reached following the Proposed Acquisitions, that third-party users of the infrastructure who did not have an ownership interest in the infrastructure would not be commercially disadvantaged. This could result in vertical effects which are adverse to competition, both in relation to the supply of jet fuel to Auckland International Airport but also in relation to the supply of land transport fuels, to the extent that the competitive distribution of land transport fuels is also impacted by the scale benefits of distribution of large volumes of jet fuel through existing terminal and pipeline assets.
17. We note that both of the considerations raised in this letter could be addressed by infrastructure investment plans and third party access agreements being negotiated and agreed ahead of the Proposed Acquisitions. This would allow the Commission to make an accurate assessment of the impact of the Proposed Acquisitions.
18. We would be happy to meet with the Commission staff to discuss any queries the Commission has in relation to this submission.

Yours sincerely

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