Mobil Oil New Zealand Limited (Mobil)

PUBLIC SUBMISSION

Submission to the New Zealand Commerce Commission in response to the Market Study into the Retail Fuel Sector Draft Report

Confidential parts of this submission have been redacted.

13 September 2019

Background

Mobil Oil New Zealand Limited (Mobil) has been operating in New Zealand for over 120 years, investing in critical infrastructure to supply fuel Kiwis rely on, and developing and supporting the people who deliver this essential product, throughout the country.

Mobil is New Zealand's oldest fuel company, and currently engages a team of approximately 200 employees and contractors across its operations. In addition, Mobil supports an extensive network of independent Mobil-branded service station operators and their respective employees (approximately 1,000 people).

Since 2012, Mobil has spent more than $200 million in maintaining and improving its fuel supply and retail operations to support a reliable supply of high quality fuels to the community.

Mobil supplies a Mobil-branded retail service station network of approximately 170 sites. In addition, it owns and operates six bulk-storage terminals in Tauranga, Wellington, Christchurch and Bluff, has a shareholding in the NZ Refining Company (with the refinery located in Northland), and is an equity participant in a number of terminal joint ventures.

As an integrated fuel supplier, our presence in New Zealand requires an intimate understanding of the unique fuel market here.

With our long involvement in the development of the local industry, Mobil is well placed to respond to this report.

Executive Summary

Mobil welcomes the opportunity afforded to us by the Commerce Commission (the Commission) to provide feedback into its Market Study into the Retail Fuel Market in New Zealand.

Mobil agrees with the Commission's statement that "New Zealanders are better off when markets work well and consumers and businesses are confident market participants".

Mobil is committed to workable competition, to actively competing in all markets in which it operates, and believes its presence in the New Zealand market delivers, and will continue to deliver, positive outcomes for customers and consumers.

Mobil's submission outlines, in broad terms, the areas where we think the Commission has made recommendations that Mobil can work with to improve transparency and competition for consumers. Mobil is willing to work with the Commission, other industry participants, and the Government to achieve this.

Mobil believes the Commission should be sensitive to proposing some of the market interventions outlined in their draft report in an industry as complex as the one that supports the New Zealand fuel market. Mobil's position is that these could harm the market and may lead to higher prices for New Zealand consumers.

Our responses to the Commission's recommendations have been grouped under some broad themes, these being:

- contractual freedom and transparency;
- joint infrastructure (including shared terminals and the supporting logistics in the 'borrow-and-loan' scheme);
- improving wholesale competition;
- improved information sharing; and
- gross margins.

Where Mobil has elected not to respond to a particular request for comment or recommendation, it should not be taken as endorsement of, or agreement with, that recommendation or statement.

Contractual freedom and transparency

Mobil supports the recommendations proposed by the Commission to prevent restrictive measures from being imposed on wholesale reseller supply contracts and promote transparent pricing.

Mobil does not believe the removal of exclusive purchasing agreements would benefit either wholesale customers, or New Zealand consumers.

[redacted]

Longer contract terms allow Mobil's wholesale customers to spread costs over the duration of the contract. Mobil understands the Commission's indicated intent regarding shorter contract durations is to increase competition amongst resellers. However, losing the ability to sign these contracts may result in an increase in consumer prices in the short term, as well as a reduced ability for resellers to compete in the commercial market (which the Commission is not assessing in its Market Study).

Mobil's wholesale customers should retain the right to obtain contract terms that allow them to effectively operate and compete in the market, whether short- or long-term, depending on their particular needs. Market regulation that infringes on the ability of wholesale customers to negotiate contract terms will have a negative impact on retail prices for New Zealand consumers, and as such should be approached cautiously, if at all.

Mobil supports the development of a disclosure regime similar to Terminal Gate Pricing, which already operates in Australia, and which could be implemented in New Zealand. Such a mechanism would enable greater public awareness of wholesale prices, and foster a greater understanding of the market in its entirety.

Mobil supports the recommendation that the price of premium fuels should be displayed on roadside boards. This is an efficient mechanism for improving price transparency in the market and something that could be implemented within approximately 12 months.

All these recommendations are clear, sensible options.

Joint infrastructure

The purpose of the Costal Oil Logistics Limited (COLL) joint venture, which transports refined fuel via ship from the Marsden Point refinery to port terminals across New Zealand, is to "provide an efficient and cost effective co-ordinated coastal shipping service for the transportation of petroleum products".

The COLL joint venture agreement already enables access to new entrants where the operations of the new entrant are consistent with the JV purpose. This is because the efficiencies of this system occur only when all participants provide value through contribution to storage capacity at multiple locations.

Measures to mandate open access to COLL would result in the loss of supply efficiencies to the existing participants, and increased costs to consumers.

As the Commission notes in its draft report, BP has 8 proprietary terminals in Auckland, Mount Maunganui, New Plymouth, Napier, Wellington, Nelson, Lyttelton, and Dunedin, Mobil has 5 proprietary terminals in Mount Maunganui, Wellington, Lyttelton, Christchurch (Woolston), and Bluff, and Z Energy has 7 proprietary terminals in Mount Maunganui, Napier, Wellington, Nelson, Lyttelton, Timaru, and Dunedin. This is in addition to joint venture infrastructure, and other infrastructure not used for retail purposes (i.e. marine and aviation fuel grades). Each of these represents a significant investment in supply infrastructure.

Fuel companies sometimes share this infrastructure where it benefits each of the parties. For example, other fuel companies may pay Mobil a fee to lift their fuel from its Lyttleton terminal, where they have none; we in turn pay to lift fuel from BP's terminal in Dunedin, where Mobil has no terminal. It is economically efficient for fuel companies to share what is very expensive infrastructure, both to build and to maintain. It would make no sense in a country as small as New Zealand to duplicate this, as the costs would ultimately be borne by New Zealand consumers.

Mobil supports the principle of open access to joint infrastructure and logistics joint ventures on an equity basis, so long as it delivers benefits to all parties. The cost of building terminal infrastructure is not a barrier to entry and is a cost incurred by any party who wishes to participate in the market (including the existing participants). In our view, this directly address the Commission's concerns about a perceived lack of an active wholesale market. New entrants can enter the market, they just need to do so on an equity basis.

This is evident in the entry of the Timaru Oil Services Limited (TOSL) terminal, and Gull New Zealand's presence in the North Island**.** Where some parties [redacted] have publically indicated that they are unwilling to make infrastructure investments in order to enter markets [redacted], other new entrants [redacted] have seen clear benefits in infrastructure investment, and have therefore been willing to incur the cost of these investments.

Removing the cost of entry to new participants unfairly disadvantages the existing participants, who have already made the required investments for market entry. Measures to remove the requirement for new entrants to accept some financial risk (through investment) would undermine the ability of existing participants to compete, and weaken the overall supply chain resilience by removing the motivation to invest.

It would also burden equity participants with significantly higher costs and lower volumes, which would follow through into the retail cost to consumers.

There is currently no structural impediment to a third party accessing existing terminal infrastructure through a mutually beneficial commercial agreement.

[redacted]

Some ports in New Zealand have relatively low demand, in which case building further infrastructure is not a cost effective measure. The most efficient means of increasing supply in these cases are more frequent ship deliveries via the existing COLL coastal shipping program.

Requiring open access on a non-equity basis is contrary to the Commission's views on infrastructure investment, and would actively discourage new and existing participants from making a necessary long-term investment.

Wholesale competition

Mobil believes that there is already significant contractual freedom for resellers.

This freedom will be increased by the measures we support to implement Terminal Gate Pricing and an improved information disclosure regime for government agencies. By ensuring that as much information as possible is publically available, resellers will be able to ensure they are receiving a fair market price when they are negotiating their contracts.

We do not support the recommendation to require divestment of distribution or retail activities.

Vertical integration is a key part of an efficient supply chain and delivers better outcomes to consumers.

Limiting Mobil's involvement in certain segments of the supply chain would not enhance competition, and is more likely to create inefficiencies that could increase costs for New Zealand consumers.

Information sharing

Mobil is supportive of the measures outlined to ensure information sharing, which will enhance competition in the market.

Given the nature of the information that is being requested, we feel it is appropriate that it be collected by an independent third party that can then collate and manage the data.

It is also important that there are adequate processes to maintain the integrity of information, as without this this collection may compromise competition in the marketplace.

Gross margins

In the Commission's executive summary (Figure X3) and its media briefing presentation (p7, Retail price components), it published an informational graphic of the estimated components of the board price of fuel, which refers to "importer margins" and "gross margins".

The Commission states in Appendix D of the draft report (D118) gross margins are "an incomplete measure of performance" as they do not reflect all operating costs, differences in volume sold at each location, capital, or risk.

The use of "importer margin" or "gross margin" in this context could mislead government, media and the public, who are likely to equate it with profit. Mobil considers that "importer margins" and "gross margins" should be removed from any further graphics of such a nature.

Conclusion

Mobil is committed to workable competition, to competing actively in all markets in which it operates, and believes its presence in the New Zealand fuel market delivers, and will continue to deliver, positive outcomes for New Zealand customers and consumers.

That is why Mobil agrees with many recommendations put forward by the Commission in its Draft Report, and will continue to work with relevant authorities into the future.

Recommendations such as the Terminal Gate Pricing and the display of the price of premium fuels have been implemented in other markets and Mobil supports them being considered in the New Zealand market.

There are also some recommendations Mobil does not believe would support workable competition, or positive outcomes for New Zealand consumers.

Mobil believes resellers should continue to be able to negotiate exclusive purchasing agreements if they feel that it is in their best interests. Preventing them from doing so will distort the market and possibly lead to increased prices for consumers.

Resellers should also be able to enter into contracts that extend for as long as they require in order to minimise their costs (and optimise their financing). This is one area where an unnecessary regulatory intervention could lead to higher prices at the pump for consumers.

Mobil believes that the interests of retail consumers are a critical component of workable competition, and is mindful that the best outcomes for them will be delivered through ongoing engagement with industry, not through regulatory interruptions.

Mobil urges the Commission to continue to consult and discuss these issues with the industry.