

# Update on Consultation Conference

## Market study into the retail fuel sector

**Monday 16 September 2019**

### Purpose

The purpose of this update is to:

- confirm that the Commission will hold a consultation conference from Tuesday 24 September to Friday 27 September 2019 in relation to the Commission's draft report on competition in the retail fuel market; and
- provide additional details on how the conference will be run, including an update on the indicative agenda.

### Background

On 20 August 2019, we published our draft report on competition in the retail fuel market. The draft report forms part of our market study into the factors affecting competition for the supply of retail petrol and diesel used for land transport in New Zealand, which was requested by the Government in December 2018.

In our draft report, we identified several factors we consider are affecting competition in New Zealand's retail fuel market and may mean that consumers are paying higher pump prices for petrol and diesel than could be expected in a workably competitive market. The draft report also identifies some potential options that could improve competition and outcomes for New Zealand consumers.

The findings and options in the draft report are preliminary and we are currently consulting on them, including through public submissions and a conference:

- comments on the draft report were due by Friday 13 September 2019;
- the conference will be held in central Wellington from Tuesday 24 September to Friday 27 September 2019; and
- post-conference comments are due by 4pm Friday 11 October 2019.

Following consultation, the final report is due to be published by 5 December 2019.

### Date, time and place of conference

The conference will be held from **Tuesday 24 September** to **Friday 27 September 2019** in central Wellington at the following locations:

- Tuesday 24 September – the Intercontinental Hotel, 2 Grey Street, Wellington 6011;
- Wednesday 25 September – the Rydges Hotel, 75 Featherston Street, Wellington 6011; and

- Thursday 26 September to Friday 27 September – the Intercontinental Hotel, 2 Grey Street, Wellington 6011.

Please note the change in location for day two of the conference, which differs to our previous communications.

The conference will **start at 9.30am and finish by 5.00pm each day**. There will be a lunch break and breaks for morning and afternoon tea. These breaks will not be catered by the Commission but tea and coffee will be provided during the morning and afternoon tea breaks.

## **Purpose and agenda of the conference**

The purpose of the Conference is to inform our final report by testing our preliminary findings and options to improve competition with interested parties, including by clarifying and testing comments received on the draft report into the retail fuel sector.

The Conference will allow:

- the Commission to test its preliminary views with interested parties and test the submissions of interested parties on the draft report; and
- interested parties and experts to answer any questions addressed to them by the Commission.

The broad topics that we intend to address at the Conference are set out in the indicative agenda in **Attachment A**. This includes the dates on which each session will be held and the order of sessions. The specific timings of each session on particular days is preliminary and may change.

By **12pm Friday, 20 September 2019**, we will confirm the timeframes of individual sessions and provide details on the topics to be covered at each session. This will take account of our consideration of submissions from interested parties on the draft report.

We have published public versions of written comments we received on the draft report on our website.<sup>1</sup>

## **Attendance at the conference sessions**

Thank you to those who have registered their interest in attending the conference. We can confirm that there is sufficient space for all those who have registered their interest to attend.

Please provide by **5pm Wednesday 18 September 2019** details of the attendees representing your organisation and the sessions each will be attending. These sessions are in the indicative agenda in **Attachment A**.

For each attendee (including experts), please confirm:

- their name and job position title;
- which sessions they intend to attend; and
- whether they will be attending as a participant, who may speak and could reasonably be expected to respond to questions from the Commission, or as an observer.

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<sup>1</sup> As noted in our draft report, if, after we have published the public versions, we identify further information in written comments that may be made public, we will ask for additional public versions to be provided for publication and inform all stakeholders when they are available on our website.

Please note that Thursday 26 September and Friday 27 September of the conference have been reserved for confidential sessions. We will be contacting individual parties to arrange these sessions.

### **Attendance of experts at the conference**

The Commission expects that all experts that have been advising parties will be available at the conference to respond to the Commission's questions. Experts attending the conference should appear as experts assisting the Commission rather than as an advocate for any particular party.

We expect experts to follow the guidance provided in the Code of Conduct for expert witnesses contained in the High Court Rules. A copy of the Code of Conduct is attached as **Attachment B**.

Experts are requested to confirm in writing before the conference that they are appearing as experts and agree to follow the guidance in the Code. We would appreciate receiving confirmation by **12pm Monday, 23 September 2019**.

### **Conference format**

#### **Open sessions – Tuesday 24 September – Wednesday 25 September**

The sessions scheduled for Tuesday – Wednesday of the conference are public sessions that are open to all participants attending the conference.

The Chair of the Commission will chair each session and introduce the topics for discussion. Members of the Commission and Commission staff will ask specific questions of parties and experts.

We may choose to direct some questions to experts. These questions will be clearly signalled as being for expert opinion and all experts will be asked to comment sequentially on those questions, without reference to the parties. Parties may then be provided with an opportunity to comment on the experts' opinions, once all experts have commented.

Parties may only ask questions of the Commission for the purpose of clarifying a question. No party will have the right to cross-examine the Commission or any other party during the conference. We do not intend to update stakeholders on our views on matters addressed in the draft report prior to or during the conference.

#### *Opportunity for conference participants to make introductory comments*

Conference participants will have the opportunity to make introductory comments during the Conference's opening session (see session one of the indicative agenda in **Attachment A**).

The purpose of these introductory comments is to provide interested parties an opportunity to share a summary of their views on the main issues they consider arising from the draft report, and any other issues they want to discuss with us at the Conference.

We ask that each individual party keep their comments to **5 minutes**. We will be strictly enforcing these timeframes.

This session is not an opportunity for parties to restate their written comments on our draft report.

Please confirm by **5pm Wednesday, 18 September 2019** if you or your organisation would like to share introductory comments.

### **Confidential sessions – Thursday 25 September – Friday 27 September**

We expect that confidential material should be kept to a minimum during the conference in order to maintain as transparent a process as is possible. We therefore encourage conference participants to share their comments on the draft report in the public sessions.

However, we have reserved Thursday 26 September and Friday 27 September in anticipation that there will be a need for confidential sessions with some participants. The purpose of these confidential sessions is to test and clarify comments and evidence that is confidential to parties and unable to be shared at the sessions scheduled for Tuesday 24 September and Wednesday 25 September, which are open to all conference participants. The specific topics discussed at each confidential session are likely to vary depending on the party.

We are contacting a number of individual parties to confirm planned timings for these sessions. Any party who has not been contacted, but considers they are likely to require a confidential session should contact us by **5pm Wednesday, 18 September 2019**.

Attendance at these sessions will be limited to Commission members, Commission staff, the party presenting the confidential information, and the party's counsel and/or experts.

We request that parties attending confidential sessions provide us with an indication by **5pm Wednesday 18 September 2019** of any specific topics they would like to discuss with the Commission in their confidential session. We will have regard to these topics as we confirm our conference agenda, including in-confidence sessions. There may also be opportunities to discuss these topics in a confidential meeting with the Commission after the conference.

## Next steps

### Prior to the conference

We have published public versions of written comments we receive on the draft report on our website.<sup>2</sup>

We will be in touch with individual parties to arrange confidential sessions during the conference. We may also arrange meetings with parties after the conference, where confidential matters can be discussed.

By **12pm Friday, 20 September 2019**, we will confirm the final agenda, including timeframes of individual sessions and provide details on the topics to be covered at each session. This will take account of our consideration of submissions from interested parties on the draft report.

### *Summary of confirmation we are seeking from parties prior to the conference*

In this update, we have requested confirmation from parties on the following matters.

<b>Matter</b>	<b>Confirmation date</b>
Please confirm the attendees at your organisation that will be attending each session (see the indicative agenda in Attachment A). For each attendee (including experts), please confirm: <ul style="list-style-type: none"><li>• their name and job position title</li><li>• which sessions they intend to attend; and</li><li>• whether they will be attending as a participant, who may speak and could reasonably be expected to respond to questions from the Commission, or as an observer.</li></ul>	<b>5pm Wednesday, 18 September 2019</b>
Please confirm whether you or your organisation would like to share introductory comments in session one of the conference.	<b>5pm Wednesday, 18 September 2019</b>
Parties who have been invited to attend a confidential session at the conference are requested to provide us with an indication of any specific topics they would like to discuss with the Commission in their confidential session.	<b>5pm Wednesday 18 September 2019</b>
Any party who has not been contacted by us to attend a confidential session at the conference, but considers they are likely to require a confidential session should contact us.	<b>5pm Wednesday, 18 September 2019</b>
Experts are requested to confirm in writing that they are appearing as experts at the conference and agree to follow the guidance in the Code of Conduct for expert witnesses, provided in Attachment B.	<b>12pm Monday, 23 September 2019</b>

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<sup>2</sup> As noted in our draft report, if, after we have published the public versions, we identify further information in written comments that may be made public, we will ask for additional public versions to be provided for publication and inform all stakeholders when they are available on our website.

## **After the conference**

We intend to publish on our website written transcripts of the open sessions at the conference as soon as they are available.

Once we have considered matters discussed at the conference, we will provide a process update in the event there are any further opportunities for parties to contribute evidence and views to our study.

We invite interested parties to provide us with further written comments, including comment on matters raised at the conference and in published comments made by others, **4pm, Friday 11 October 2019**.

We are required to publish our final report by **5 December 2019** and make the report available to the Minister at least five working days prior to publishing it.

## Attachment A - Indicative agenda for the Consultation Conference of 24th – 27th September 2019

By 12pm Friday 20 September 2019, we will confirm the timeframes of individual sessions and provide details on the topics to be covered at each session.

Tuesday 24 September - the Intercontinental Hotel, 2 Grey Street, Wellington 6011				
Start time	Session no.	Topic	Indicative time	Participants
9.30am		Opening remarks from the Commission	15 minutes	All participants
9.45am	One	Introductory Comments from parties	1 hour 15 minutes	All participants
11.00am		Morning refreshments	30 minutes	
11.30am	Two	Retail price and product offer	1 hour 30 minutes	All participants
1.00pm		Lunch	1 hour 10 minutes	
2.10 pm	Two	Retail price and product offer - continued	40 minutes	All participants
2.50 pm		Afternoon refreshments	30 minutes	
3.20 pm	Three	Profitability	1 hour 40 minutes	All participants

Wednesday 25 September - the Rydges Hotel, 75 Featherston Street, Wellington 6011				
Start Time	Session no.	Topic	Indicative time	Participants
9.30am		Introductory comments from the Commission	5 minutes	All participants
9.35am	Four	Infrastructure sharing and conditions of entry	1 hour 25 minutes	All participants
11.00am		Morning refreshments	30 minutes	
11.30am	Five	Wholesale supply arrangements	1 hour	All participants
12.30pm		Lunch	1 hour 10 minutes	
1.40pm	Five	Wholesale supply arrangements - continued	35 minutes	All participants
2.15pm		Afternoon refreshments	30 minutes	
2.45pm	Six	Wrap-up on potential changes to wholesale market	1 hour 45 minutes	All participants

**Thursday 26 September – the Intercontinental Hotel, 2 Grey Street, Wellington 6011**  
**Reserved for confidential sessions. By invite only.**

<b>Time</b>	<b>Topic</b>	<b>Indicative time</b>	<b>Participants</b>

**Friday 27 September – the Intercontinental Hotel, 2 Grey Street, Wellington 6011**  
**Reserved for confidential sessions. By invite only.**

<b>Time</b>	<b>Topic</b>	<b>Indicative time</b>	<b>Participants</b>

## **Attachment B - Code of Conduct for expert witness**

### **High Court Rules**

#### **Schedule 4**

#### **Code of conduct for expert witnesses**

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#### **Duty to the court**

1. An expert witness has an overriding duty to assist the court impartially on relevant matters within the expert's area of expertise.
2. An expert witness is not an advocate for the party who engages the witness.

#### **Evidence of expert witness**

3. In any evidence given by an expert witness, the expert witness must—
  - (a) acknowledge that the expert witness has read this code of conduct and agrees to comply with it:
  - (b) state the expert witness' qualifications as an expert:
  - (c) state the issues the evidence of the expert witness addresses and that the evidence is within the expert's area of expertise:
  - (d) state the facts and assumptions on which the opinions of the expert witness are based:
  - (e) state the reasons for the opinions given by the expert witness:
  - (f) specify any literature or other material used or relied on in support of the opinions expressed by the expert witness:
  - (g) describe any examinations, tests, or other investigations on which the expert witness has relied and identify, and give details of the qualifications of, any person who carried them out.
4. If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.
5. If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in his or her evidence.

#### **Duty to confer**

6. An expert witness must comply with any direction of the court to—
  - (a) confer with another expert witness:
  - (b) try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses:
  - (c) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement.

7. In conferring with another expert witness, the expert witness must exercise independent and professional judgment, and must not act on the instructions or directions of any person to withhold or avoid agreement.