

**Mobil Oil New Zealand Limited**

Building B, Level 2, 8 Nugent Street  
Grafton, Auckland  
New Zealand 1023



Susan Brown and Sam Holmes  
Competition Branch  
Commerce Commission  
Level 12, 55 Shortland Street  
Auckland

**Statement of Preliminary Issues: Ampol Limited / Z Energy Limited**

Dear Susan and Sam,

**Introduction**

1. Mobil Oil New Zealand Limited ("**MONZ**") welcomes the opportunity to provide comments on the Commerce Commission's ("**Commission**") statement of preliminary issues ("**SOPI**") regarding Ampol Limited's ("**Ampol**") proposed acquisition of Z Energy Limited ("**Z**") ("**Acquisition**").
2. We have focused our submission on the potential issues that we foresee with Ampol's proposed undertaking to divest Gull New Zealand Limited ("**Gull**") ("**Proposed Divestment Undertaking**") to resolve the competition concerns arising from the Acquisition.
3. In particular, we understand that the rationale for the Proposed Divestment is to establish Gull as a separate and independent competitor from Ampol/Z to address potential competition concerns that would otherwise arise.
4. While many of the material details of the Proposed Divestment Undertaking have been redacted from Ampol's application, we have comments on three key points that we consider the Commission should take into account:
  - (a) **Supply arrangements:** If the Commission's intention is to have Gull operate as a standalone independent competitor from Ampol/Z, then there should not be a long-term supply contract between Ampol/Z and Gull. Specifically, prior to being acquired by Ampol, Gull periodically ran a competitive tender every contract period for its volumes and a range of local and international suppliers would participate in those tenders. The duration of these supply contracts was typically between one and two years, enabling Gull to determine the most competitive fuel supply option for it on the international market. It would appear counterproductive to the purpose of retaining Gull's independence from Ampol/Z for it to be tied into a long-term supply contract to Ampol/Z, rather than having the usual competitive freedom to operate periodic tenders to test the market.
  - (b) **The Commission's ability to verify the suitability of the purchasers of a divested Gull in an IPO context:** If Gull is divested by IPO, we understand that Ampol only intends to notify the Commission of those purchasers who intend to purchase shares above a specified threshold. To enable the Commission to properly assess the "purchaser risk", we consider that Ampol should be required to notify the Commission of all purchasers who either:
    - (i) Intend to purchase more than 5% of the shares in Gull; or

- (ii) Are already active in any of the same markets as Ampol or Gull.

That is so that the Commission can properly understand the impact on the market of any divestment by way of IPO, including to consider the suitability of other material owners, and whether any potential cross-shareholdings could give rise to issues.

- (c) **Ampol's ongoing influence over Gull as a result of its retained shareholding in Gull in an IPO context:** We understand that Ampol/Z proposes to retain a meaningful shareholding in Gull ("**Retained Shareholding**") to support a successful IPO until at least after the announcement of Gull's 2023 annual financial results ("**Lock Up Period**"). In our view, the Retained Shareholding means the Commission cannot rule out a material risk of Ampol/Z continuing to exercise a degree of influence over Gull post-Divestment – in particular given Ampol/Z's "size and position" in the market, which means its influence on Gull would inevitably be larger than its Retained Shareholding figure would itself indicate. Taking that into account would be consistent with the Commission's approach in *National Foods / Fonterra*,<sup>1</sup> and the UK Competition Commission's approach in *BSkyB / ITV*.<sup>2</sup> Therefore, even if the Commission considers it necessary for Ampol/Z to have a Retained Shareholding to enable an IPO, close scrutiny should be given to allowing for Ampol/Z to have any voting rights in relation to such a Retained Shareholding, and whether Ampol/Z should be allowed to retain that shareholding for any longer than the minimum period that is reasonably necessary to facilitate the IPO.

#### **Concluding remarks**

5. MONZ looks forward to continuing to assist the Commission in its consideration of Ampol's application, and we are happy to provide more detail to the Commission on any of the points raised in this submission.

Yours faithfully,

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**Mobil Oil New Zealand Limited**

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<sup>1</sup> Decision No. 459 *National Foods Limited / New Zealand Dairy Foods Limited* (26 September 2002) at [56].

<sup>2</sup> UK Competition Commission report sent to the Secretary of State (BERR) - Acquisition by British Sky Broadcasting Group plc of a 17.9 per cent stake in ITV plc (14 December 2007) at [3.66].