

10 January 2022

Commerce Commission New Zealand

Dear Sir/Madam

Subject: Ampol/Z – Statement of Issues date 23 December 2021

Ampol is seeking clearance to acquire 100% of Z Energy (Z) shares and is offering to divest itself of Gull as part of its application. This submission is in response to the 'Statement of Issues' (SOI) released by the Commerce Commission New Zealand.

**Issues paper- 53:** In relation to the issue of a shareholder with no voting rights exercising influence over the company, this could occur for actions that don't involve voting.

For example, if Gull was considering raising more capital the Board may feel constrained in pursuing a share issue if it is concerned that an owner with a large shareholding would not be supportive. The existence of a large shareholder may make it more difficult for the company to secure an underwriter for the share issue if there is a perception that the large shareholder would not take up its shares.

This perception or hesitancy could exist within the Gull Board even with the best intentions of Ampol.

*This risk could be reduced by specifying a maximum percentage of shares that Ampol could retain in Gull during the transition period. The Commerce Commission would be in a better position to determine a precise figure, but I suggest it would be no more than 5% of Gull shares and possibly as low as 2%, depending on the other matters considered relevant by the Commission.*

**Issues paper- 54-57:** It is understandable that Ampol would want to time their sale of Gull for the best market conditions. However, this is not a matter of a company simply choosing to sell a business it no longer wants to own. This is a situation where, in order to address competition concerns arising from Ampol buying Z, Ampol is having to dispose of its interest in another company, Gull. In a sense, the Commerce Commission is 'forcing' the sale of Gull to secure the Commerce Commission's clearance to acquire Z.

*The Commerce Commission should not accept market timing as a valid consideration given the reason for this undertaking, namely the competition issues.*

The SOI refers to several months of preparatory work for the launch of an IPO to sell Gull. It has also been noted that an IPO can't be launched until the proposed acquisition is complete.

*The Commerce Commission could require that the preparatory work for the IPO be completed before the vote on the scheme (takeover) at a meeting of Z shareholders, in order to secure clearance by the Commission. This would save months of delays. The preparatory work, as distinct from the launch of the IPO, could be done on the assumption that the*

*scheme will be approved by Z shareholders. Obviously, the preparatory work would not be needed if Z shareholders vote against the scheme. These preparations completed in advance, to save time in launching the sale of Gull, should just be seen as a cost of securing Commerce Commission clearance in order to proceed with the Z scheme meeting.*

*To help ensure there is no degradation of the Gull business due to uncertainty of its ongoing ownership, the IPO should have to proceed within a very short period of the approval and implementation of the Z scheme. Launching the Gull IPO within 14 days from which the Z shares are transferred to Ampol would provide the opportunity for a speedy divestment. This could be done if the preparatory work is completed before the Z scheme meeting, as suggested in the previous paragraph.*

**Other issues identified by the Commerce Commission**

The Commerce Commission has identified a number of other issues or concerns about the operation of Gull during the period it remains in Ampol's ownership, post Ampol's acquisition of Z.

Whilst not commenting on those issues in detail, it may be that the only way the Commerce Commission can be confident that these issues or concerns can be addressed is for Ampol to divest itself of Gull before being permitted to acquire Z. This would also allow Ampol to time their divestment to suit their priorities.

*The Commerce Commission should consider a ruling that Ampol can only acquire Z if it has already divested itself of Gull.*

Thank you for the opportunity to comment on this matter.

Yours sincerely

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