RETAIL FUEL STUDY CONSULTATION CONFERENCE
25 SEPTEMBER 2019

MS RAWLINGS: Ata marie, good morning everybody. Thank you for joining us again this morning, we'll kick off. No great introductory comments this morning except a new day, a new set of microphones, so you'll notice that these ones light up when they're turned on, red at the top, and just use the button at the bottom and you'll get a sense of whether it's picking up your voice I think as we go along.

So we're going to start today with a session looking at the infrastructure sharing aspects of the draft report and conditions of entry and then move on to talk a little more about wholesale markets. I suspect the agenda today will be a little bit fluid perhaps in terms of timing and how the conversation flows, and in particular we've provided for a wrap-up and discussion about potential changes at the end of the day, but we suspect that some of that discussion may come out in the course of the day, so we'll just keep the agenda as a bit of a work in progress. But I'll hand over to Commissioner Small to kick off some of the work on the infrastructure area and see how we go.

SESSION FOUR: Infrastructure Sharing and Conditions of Entry

Cost Advantage of Infrastructure Sharing Arrangements

DR SMALL: Thanks Anna and good morning everyone. Good to see everyone's found the right place. So today the first session is about infrastructure arrangements and conditions of entry and expansion, and this relates primarily to chapters 4 and 5 of our draft report. The topics we'd like to cover in this session are - there's three of them; just to give you a preview and then we get into it. The first one is to what extent do the infrastructure sharing arrangements provide a cost advantage to the majors over other current or potential importers of refined fuel, so that's a cost advantage question.

The second one is something that we touched on in the draft report regarding investment incentives and whether the infrastructure sharing arrangements, particularly the borrow and loan scheme, have affected investment incentives, and we're thinking here mainly about terminals and the impact of those arrangements also on wholesale competition more generally. So those are sort of, I guess, important preliminary issues.

Then we're going to focus on the options for reducing barriers to entry and expansion at the wholesale level, both through wider participation in the borrow and loan arrangements which we suggested in our draft, or an alternative system such as terminal gate pricing.

So things we're not going to cover are matters on which there was reasonably general agreement in the submissions. So we noted fairly broad support for an alternative to the current 3-year averaging period used to allocate refinery capacity, didn't seem to be strong objections to that. And similarly for sort of following suggestions that were previously made by Hale & Twomey regarding the level of information sharing through the refinery and via COLL. So those are topics we're not going to cover.

So going straight into topic one, which is about whether or not and to what extent do the infrastructure sharing arrangements provide the majors with a cost advantage relative to independent importers. So as we indicated in our draft report, we do consider that various infrastructure sharing arrangements benefit the majors obviously by overcoming some of the structural challenges of fuel supply and we noted the historic genesis and motives for that. And this includes reducing the cost of supplying fuel when compared to stand-alone supply chains. That was talked about in chapter 5 of our report.

The flip-side of that, our preliminary view was that these arrangements could also adversely impact competition because potentially entrants who are unable to participate in the infrastructure sharing may face higher costs to compete in New Zealand by importing and distributing their own fuel.

We do acknowledge submissions that access to domestically refined fuel may not always be cheaper than imports, and in particular that majors also need to account for the cost of coastal shipping from the gross refining margin that they retain. So we accept that point that was made in submissions.

So just to get into this topic a little in more detail, I want to talk about the economics of trucking long distance versus access to a network of terminals. In the draft we noted that entrants at the importer level are unlikely to be able to construct a large or extensive network of terminals and therefore they're likely to face a transport cost disadvantage, particularly when supplying customers in smaller provincial regions. This was covered in chapter 4 of our draft. And the reason was that the cost of trucking over long distances can be significantly higher than the cost of transporting fuel via COLL, the coastal shipping, and also via the RAP.

BP submitted this view reflects a fundamental misunderstanding of the efficiency of transporting fuel by truck and that access to primary distribution does not have a material influence on retail fuel prices in New Zealand and doesn't give rise to barriers to entry or expansion, and it argues that building bigger terminals and trucking longer distances is clearly a feasible business model.

BP also submitted that a simple supply chain of supplying imported product into a single terminal and then delivering to an area within one truck driving shift of the terminal is a highly efficient and effective mechanism for delivering fuel to retail outlets.

So in our draft we did estimate the approximate cost of trucking fuel for various distances. For example, our estimate was 7.5 to 8.5 cents per litre for trucking 500 kilometres. These estimates don't appear to have been disputed in the submissions, but feel free to do that now if you wish. Our observation was that this appears to be quite a significant cost which would generally be avoided by being able to withdraw fuel from a wider network of storage terminals.

So I'd like to start with BP please, and ask whether you could explain what's wrong with our analysis and what have we fundamentally misunderstood here. Do you disagree with our view that an importer with a single terminal is likely to face higher transport costs than a major who has the ability to import directly or ship via COLL into regional ports and truck shorter distances?

MS BOFFA: Good morning. So what I'm going to do today is I've actually got key members of the supply and infrastructure team here, so I'm actually going to pass to them. So I think it would be useful to hear directly from them around this.

MS RAWLINGS: Sorry to interrupt. Can I just ask, for our transcriber, if you weren't here yesterday, so she's not familiar with who you are and with your voice, if you can introduce yourself as you start speaking, that would be great.

MR COURTNEY IRELAND: Great. I was here yesterday so I think I'm all right but I'm Courtney from BP. I think the question you asked is around would their trucking cost be higher. The answer is yes, their trucking cost would be higher but their total cost to serve the particular region may not be, because they may be able to rely on the simplicity and the scale which they have from a single terminal. They also have the ability to negotiate bilateral arrangements in respect of terminals.

So I think to say that they are faced with - again, if we started from scratch again, you wouldn't build terminal network of a footprint that you have today, it's there for historic reasons which the Commission has acknowledged. On that basis I think that's why we see more recent entrants into the market and the new TOSL entrant is looking to have firstly one terminal then a second terminal from which they will sell from, and in the case of Gull they have had one terminal which they've built a business off and through a business model of trucking.

DR SMALL: Right, I don't think we'd disagree with anything you've just said. But you would agree, I suppose, that there's a distance at which trucking would become uneconomic. Presumably at some point the cost of trucking becomes so high that it's better to either not serve, or if you do think you've got a market in that more remote area, invest in terminal storage at that point?

MR COURTNEY IRELAND: I think we ourselves, whilst we're part of the industry system, we also maintain supply of 98 across the country. We do so by maintaining our own supply chain which is discrete from industry arrangements. We do that through a network of three terminals rather than leveraging on the broader supply envelope. We negotiate that through trucking which we structurally account for in our business, and we operate in that manner.

DR SMALL: Okay. Thank you. Could you help us with the driving shift issue, which we were interested in in your submission and wasn't something that we'd factored into our costs. How does truck driving shifts affect the cost of trucking long distances? For example, is there sort of a step change in costs, do they increase significantly for trucking distances greater than what can be managed under a single driver shift?

MR COURTNEY IRELAND: I think the point is really that truck drivers have a simple number of hours that they can work in any one shift safely and to do that, so it may vary between I think it's 12 and 13 hours approximately, if I'm not entirely right, I can get that information for you later. But what we typically work on is that you then have to accommodate an overnight and it's just the sheer logistics of, you know, you're away, the truck is not utilised for that period of time because it's away from its home base, it's not necessarily as efficient as it would otherwise be.

DR SMALL: Yeah, I understand. Would that 12 or 13 hour shift - I'm not familiar with actually what the rules are on this, but when you talk about one shift, would you be talking about going somewhere that was half of that driving time away so that you can get back again?

MR COURTNEY IRELAND: Yeah, typically, or there might be different arrangements where you can backload out of another terminal so that you're optimising your delivery as well.

DR SMALL: Okay, thanks for that. So obviously we've seen some reinvestment in some smaller regional terminals over time as opposed to sort of a clear consolidation of regional terminals into larger terminals in the major centres. And you yourselves have referred to your own investment in terminals that are not - well, Dunedin and New Plymouth, for example.

MR COURTNEY IRELAND: Yes.

DR SMALL: And maybe this is related to your premium fuel point before, but was reducing trucking costs a significant factor when deciding to invest in those terminals?

MR COURTNEY IRELAND: It was a consideration. I think we also looked at the size of the market and a desire to have representation in that market. You know, we recently entered into an arrangement in New Plymouth and part of that business case considered trucking into the region, but also was, you know, we wanted to support the business that we had there, which a lot of that was rural based and we thought that was important to have a terminal in that location.

DR SMALL: Yes, that's also very consistent with, I think, the way we've been thinking about the logistics of the industry. But is that view consistent with the idea that a one or two terminal model with long distance trucking would be a viable form of entry?

MR COURTNEY IRELAND: I think what I'd say is we have a different model to a number of our competitors, I think we talked to that, the variation and the way we like to go to market. I think that's not only consistent with, you know, the customer offer, it's also consistent in the way that we choose to operate our logistics and our terminal arrangements; we have arrangements with a number of parties, we do different things.

So it's not inconsistent, I think it's just that different parties would chose to go to market in different ways and that's just the way we support our businesses through infrastructure and different locations.

DR SMALL: So you wouldn't think that there'd be necessarily a cost disadvantage in doing it the other way, despite you've chosen this method?

MR COURTNEY IRELAND: Yeah, agreed. I mean we face fierce street competition in all areas of the business, irrespective of where there's terminals.

DR SMALL: Yeah, we're talking here really mainly about cost -

MR COURTNEY IRELAND: Yeah, okay.

DR SMALL: - rather than what happens at the other end. So would you say that a one or two terminal model would be more costly than the alternative?

MR COURTNEY IRELAND: I don't think it would be for them. We have existing participants that can access the product in that area choose not to, so that's very much I think - they'll make their choice as to whether they entry or not.

DR SMALL: Okay, thank you very much for that. I think it would be useful to hear from Gull on this point if we could. What are your views on the cost-effectiveness of trucking long distances from a single terminal compared to the majors who have got access to a network of terminals and therefore presumably shorter trucking distances?

MR BODGER: We haven't got a choice, number one, because we only have access to one terminal, we only own one terminal. We have had a business that's been in existence for 20 years based on trucking and for - yes, for that period have been trucking extreme distances.

Again, confirming with BP, it's a one shift piece. If you park your driver and truck up overnight you have downtime on the rig, you pay for accommodation for the driver and importantly you need a safe and secure place to park that rig even if it is empty. So that is a further cost.

DR SMALL: That's an interesting point. The downtime of the rig is something I hadn't thought about. So would you otherwise -

MR BODGER: Otherwise it comes back to its home which may be a terminal or it may be another place, another driver jumps in and that rig is producing money for us and for the transport operator.

DR SMALL: Overnight while the first driver's resting.

MR BODGER: Yeah.

DR SMALL: Okay.

MS RAWLINGS: Is it possible to reduce those costs by having drivers located to pick up the rig and continue on? Do you tend to have a driver and a rig that stays in that for the load?

MR BODGER: The more accurate answer on that would be to have some logistics providers in the room. I think Allied were turning up, they may have an opinion on that as well. I haven't seen anybody here so far, but that might be a question for them.

MS RAWLINGS: Okay, thanks.

MR BODGER: And I guess further, it is a total cost to serve and that you will have different ports that will have - we believe currently we have a very efficient model for distribution, so we bring in what's known as an MR tanker into Mt Maunganui now, we discharge that whole tanker and we send it back to Asia. So that is a one port call, that is a cheaper hire for the ship, more efficient discharge taking all of that fuel off the ship in one go rather than in teaspoons, and you'll find that some of the ports around the country will be draft restricted, so you actually have to download the ship before she comes into that port to discharge fuel. So you get some incremental costs to each of those ports.

DR SMALL: Indeed. Does that mean - because I think BP commented on this question about the one drop model for import, and if I remember rightly suggested that it would be a lovely thing to have but it's not really very feasible. Am I paraphrasing you correctly?

MR COURTNEY IRELAND: Yeah, that's correct.

DR SMALL: So it's not feasible if you want - am I right in saying, would you like to elaborate, it's not feasible if you want a full coverage is it?

MR COURTNEY IRELAND: I guess it goes to the point around having a single larger terminal of scale enables you to extract some benefits from the supply economics, so that if we have a smaller infrastructure then your ability to load a single cargo into one location is somewhat limited.

DR SMALL: Okay. Thank you. All right, so could I ask now about the - I guess another aspect of the borrow and loan system, the sharing scheme, is that part of the model here is that terminal owners have throughput fees that apply when somebody else picks up fuel from your terminal. Actually I'm going to direct this to Z.

And so it has been suggested to us that those throughput fees are constrained effectively by the threat of another major raising throughput fees on you somewhere else, and we have referred to previous statements from Z Energy that it would be unable to unilaterally raise throughput fees because of BP and Mobil's ability to retaliate against those increases.

So does that suggest to you, Z, that the majors are actually dependent on terminals of other majors and that therefore the alternative of trucking longer distances is perhaps not as strong, not an effective constraint?

MR JONES: Good morning, I'll introduce Nicola Law who runs our supply chain. Probably of most value that you hear from her.

MS LAW: Good morning. So your question around do we think that relying on each other and the threat of retaliatory action from a competitor within the borrow and loan system; absolutely, we agree that we cannot and we don't expect our competitors can either unilaterally increase a borrow and loan fee the way the system is set-up, yes.

But keeping in mind that that system was set up a long time ago, now that you have got all of those terminals in all of those locations you do want to be able to access those. I think BP's point earlier and also Gull's around if you were doing this today you wouldn't make the same investments, you may choose to have something very, very different. So the trucking alternative is different with the system that we have because the investment has already been made.

DR SMALL: Thank you for that. But nevertheless doesn't it mean that the fact that retaliation is a threat, does that not imply that you can't avoid that threat by trucking?

MS LAW: The retaliation is a threat, I guess, to the point of where the trucking becomes the next best alternative effectively, so -

DR SMALL: Right, that's kind of what I'm getting at, so I think we're agreed on that. That up to a point, as long as the trucking distance is not too - sorry, if the trucking distance is reasonably long, then the alternative of going by truck is not a credible threat and therefore the retaliation threat is not so strong. Would you agree with that?

MS LAW: Yes, I would agree with that.

SESSION FOUR: RAP

DR SMALL: Okay, that's kind of the point I was getting at. Thank you for that. Okay, that's helpful. So could we talk now about the RAP. So in the draft report we noted that, together with local transport, the RAP provides an efficient way to transport fuel to Auckland for the majors and we noted that the fee for using the RAP was in the order of a cent per litre. Whereas our estimate in the draft report of the cost of trucking from Mt Maunganui into Auckland was 3 or 4 cents per litre.

So we've observed obviously that Gull has had success in growing market shares in Auckland despite that cost disadvantage. Z and BP have also noted that this is evidence that importing and the trucking model can compete against New Zealand refined product delivered through the RAP.

So questions for Z and BP; perhaps we'll start with BP. Maybe I should start by whether or not you agree that there might be a cost disadvantage, but then following that up, can you explain why that doesn't seem to be a major constraint?

MR COURTNEY IRELAND: There's a fee that is paid for the transporting fuel from RNZ through to Auckland, so it's not necessarily free and I can't talk to the import economics of Gull in terms of how cheaply or expensively they deliver their product to The Mount. I think we spoke briefly previously about the import economics they're able to derive through having one terminal of scale, so I don't know what their landed price is, but I guess evidentially in terms of the market they're able to compete.

DR SMALL: Yeah. I was interested in your submission that access to primary distribution doesn't affect retail prices. And I think this is perhaps an example of that, that, you know, the prices in Auckland - whatever the cost differences might be, the prices don't seem to be necessarily affected. Is this the kind of thing that you're thinking of when you said that access to primary distribution doesn't affect retail prices?

MR COURTNEY IRELAND: Yes.

DR SMALL: Okay, thank you.

MS LAW: Can I add to that one please?

DR SMALL: Yes please.

MS LAW: I think again it's to Gull's point and BP's earlier as well, that you actually need to not focus necessarily just on that primary distribution point. What you need to be looking at, or you need to concern yourselves with, in our view, is the overall cost of supply. So the product ex-RNZ is sold at an import parity number which does not necessarily equal the economics that Gull are getting on the shipping side of this.

So yes, whilst you might look at the RAP in isolation and think that that is a material cost advantage, the overall cost to supply into Auckland is where you should be concerning yourselves, in our view. And I think that it is evidenced by Gull's success in the Auckland market that it isn't a material advantage.

DR SMALL: Okay, thank you. Any comment from Gull on this?

MR BODGER: I think we cut our cloth differently as a, hesitate to use new player, but we don't work on a corporate overhead model of existing players. We are frugal in the extreme at times in how we operate, and I think that also enables us to compete. And again if you look at what we're building now, we're building, you know, on a 1,000 square metre handkerchief, and we're not building a C store and we're not paying for air conditioning and we're not paying for labour, and that is enabling us to compete going forward.

DR SMALL: Thank you very much. BP.

MR COURTNEY IRELAND: I think there's two points to make. I think one is that different organisations will have different business models and that operating tankage is not free, there's a cost associated with operating and maintaining that infrastructure up to standard. So making a choice to have a different business model where you only have one terminal, two terminals, is one which is also based around the cost to operate that.

The second point is also that having product at the RAP and at Wiri still means it has to be transported to its end location. So it's not just, you know, there's a number of steps in the process to enable that product to get to where it needs to be.

DR SMALL: Yeah, that's a good point, including loading it on to trucks obviously from Wiri and delivering it around Auckland, yeah. Thank you.

MR BODGER: If I can note, I think if there was a magic wand waved today and there was a terminal gate pricing mechanism put in tomorrow, would we lift fuel from Napier and New Plymouth? Probably not. You know, you can look at the numbers, but it's definitely not top of my wish list. We've got a good terminal that's supporting our markets in those areas. You'd look at it but it would be down the priority list I would think.

DR SMALL: Yeah, thanks. Did you pick those two places because they're sort of within reach of you anyway?

MR BODGER: Well, it's a decent haul and there's a coastal terminal there.

DR SMALL: Yeah. Okay, thanks.

MS RAWLINGS: I think the point sort of to probe a bit is whether different arrangements could in fact alter the landscape. So it's sort of all very well to talk about different operating models and different business models within the framework that we have but looking again at those locations within reach, but if there were those kinds of arrangements available in areas that were outside of reach or outside of a driving shift or whatever, does that change the landscape?

MR BODGER: I suspect we'd be there like a robber's dog.

DR SMALL: We are going to come on to that obviously.

MS RAWLINGS: Can I just ask one more question on that. Because the other thing we talked about yesterday was the extent of differentiation between retail service offerings, and this goes a bit to the question about whether access to primary distribution affects retail price, but we also had a lot of input relating to the need to look at service offering and quality of service offering as well.

And so I'm just interested in whether - again, these different arrangements - just going really to your comment, Dave, about the operating model - are having an effect on the type of service offering as well, or whether that's just a choice that would be made in any event? And that might be something you can reflect on.

MR BODGER: I think it still comes down to site to site. I often get asked is the unmanned model the sole thing you're going to do for the future, and it's not. There's a place for the convenience store. For development it's certainly simpler, for operational basis it's certainly simpler. But can you make a large amount of money out of coffee and other C store items? Yes, as demonstrated in this room, there's huge amount of effort and I imagine very good return made, and our operating partner Night 'n Day are very passionate about that area. So there is a place there but when parties agree, or when your model or your opinion says build it.

MS RAWLINGS: Thank you.

MS LAW: May I add to that one as well please. So from our perspective I think we can see evidence in the market where the operating model of the infrastructure level clearly does not influence how you choose to operate or behave in the retail market. For example, as you heard yesterday, we, as Z, have been trialing an unmanned facility down in Alex and we reserve the right to trial that further if that is successful for us or not, irrespective of what our operating model is for the infrastructure arrangements.

And I would say we have also seen evidence of what you would have previously considered a low cost operator who have operated unmanned sites elsewhere operating and building full service sites, such as NPD in Queenstown, irrespective of the infrastructure arrangements.

DR SMALL: Yeah, that's good evidence, thank you. Okay. Let me just change tack slightly and we'll have a little bit of time on investment incentives and tight supply. And we did note in the report that we thought there was a risk that the borrow and loan arrangements may be deterring investment in terminals. That view was informed by trends of terminal capacity against overall demand, the frequency of port coordination events and the views of certain industry participants, and we set all this out in chapter 5. We noted those views were not generally shared by BP and Mobil who considered that borrow and loan arrangements do not deter investment and that terminal capacity is sufficient to support a highly competitive retail market.

We did recognise that port coordination events may reflect a trade-off between increased trucking costs and the costs associated with increasing terminal capacity, and we recognise that this may be particularly so for smaller regional ports where demand might not justify capacity expansion, and that we also recognise that port coordination events reflect this trade-off between the various ways of doing things, i.e. between trucking and shipping/terminals.

More generally we suggested that port coordination events may reflect the just-in-time approach to supply management and that there may be good business reasons for this, but we worried, I guess, that tight capacity and frequent coordination events might be detrimental to wholesale competition. We have been told that security of supply is an important factor when considering competing bids for supply.

So I want to talk about investment levels and we noted that Z previously stated that terminal infrastructure is under stress and cited diverging trends between storage capacity and overall volumes and agreed that investment incentives are not well configured under the borrow and loan arrangements.

So Z, could you explain please how you see the borrow and loan scheme affecting terminal investment incentives?

MS LAW: Certainly. So under the borrow and loan scheme if you are to invest, place any significant investment in tankage, then yes you are eligible for some shipping advantages, which is much the same as Dave talked about earlier with respect to you are able to bring in larger ships and your drop sizes are better and your shipping economics improve.

However, they also improve that of your competitors. So whilst the capital outlay may be entirely yours, the efficiency advantage from that is not, it is also for you and for your competitors. So we're not suggesting that there is no incentive, we're suggesting that the incentive is weak and is shared by that of your competitors.

The other point that I think is worth noting in that, is that under the borrow and loan system you are required to hold a minimum level of stock. That minimum level of stock is determined by the amount of tankage that you have in the system. So if you are to invest in more tankage you essentially incur a working capital penalty at all times for your investment. So yes, some incentives but they're weak.

DR SMALL: Thank you very much. Those views, I think, align pretty well with the statements we made in the draft report regarding the lack of full, I guess, capture of the economic benefit of a terminal investment on the one hand and, I guess, the sharing of risk that's associated with it as well.

So thank you for that. BP I think disagrees with that and BP submitted that there was material surplus capacity following deregulation and so it's not valid to compare changes in capacity and demand over time, or not informative at least. However, we have also been told that in the pre-deregulation days overall profitability was driven by economic efficiencies which encouraged minimisation of capital employed through co-mingled primary distribution in joint storage with minimal infrastructure investment. We cited that view in our draft report.

So I'm interested in BP's view on whether those two statements are consistent and how we should reconcile them, in other words was there excess capacity previously?

MR COURTNEY IRELAND: Yeah, I think in terms of the second point you made around the co-mingling of product, a lot of that aligns back to the refinery and the need for users to uplift product in a timely manner that continue to make the refinery operable. So I think that can hold true.

I guess the second point is that I think some of the information you're referring to was from 2012 around the asset infrastructure that took a view back to 1988 or 1990 or something like that. So I guess the point we made was that didn't necessarily say that that was right at any one time, it had changed over time.

I note that since 2012 other terminals have been reopened, either Timaru or New Plymouth and, you know, for BP we've continued to invest in terminal infrastructure throughout that period irrespective of necessarily any weaker signals which you purport under the existing system.

DR SMALL: Thanks for that about the refinery. I certainly take that point that I think the common desire to keep the refinery operating and therefore product flowing has a consequent impact on the need for storage elsewhere. But you wouldn't, I presume - asking - you wouldn't define storage capacity as being excessive on the grounds that it was required to keep the refinery flowing would you?

MR COURTNEY IRELAND: I think what we're saying is that it's not - I don't know that we're validating saying whether it was, you know, it was designed for what was required at the time due to the regulation. And I just would assume that, you know, given that if we flash forward to the future, to now, we wouldn't rebuild infrastructure of that kind now. So the assumption would be that that was driven out of the regulatory environment of the day.

DR SMALL: Okay, thank you. Anyone else like to comment on that point?

MS LAW: I think I'd just like to clarify one of your comments earlier with respect to our view on the overall infrastructure in New Zealand. So we don't necessarily think there should be more infrastructure built to service the New Zealand petroleum needs, particularly given this is a declining market and we are already seeing the entrance of TOSL into the South Island.

So once that terminal is built we don't necessarily expect that there would be more given the demand and size of New Zealand. All we're saying is that the incentives within the current B and L system are weak to encourage investment and it would be up to each individual participant to decide whether or not they wanted to invest in that and, as you heard yesterday, Z at this stage has no plans to do so.

DR SMALL: That was interesting in your submission that you did more or less suggest that we've probably got enough once TOSL's in there. And so do I take it that your view is perhaps that this whole question of terminal investment is somewhat moot in that regard?

MS LAW: Our view probably is that, yes. You know, obviously individual participants, and there may be other players that are not part of this market yet that may be, and you will have seen in the Australian market where people are still investing and entering; their demand profile is very different.

New Zealand is a small, geographically isolated country that has a declining market. With the entrance of TOSL into the South Island, yeah, it is our view that it would be somewhat surprising to expect further significant terminal investment in the near term. Possibly, yeah, there may be something on the horizon, but unlikely that you would expect another kind of large significant player.

DR SMALL: Okay, thank you for that.

MR COURTNEY IRELAND: May I speak?

DR SMALL: Please.

MR COURTNEY IRELAND: I think our view would be that TOSL saw an opportunity in the market and chose to pursue it. I don't know that somebody else might not see another opportunity in the future. I think we wouldn't necessarily preclude somebody else seeing an opportunity in wishing to build infrastructure to pursue that. So I don't think we're as black and white in terms of saying this is the end, I think we'd say that different parties will form their own view as to what they wish to pursue.

DR SMALL: Yeah, I didn't take Z's view as being black and white, but I do take your point. But you would also further say that there's nothing in the borrow and loan arrangements that deters that investment or weakens the incentives, would you not?

MR COURTNEY IRELAND: No, I don't think so.

MR BONE: Maurice Bone from BP. We'd have a different view on the requirement to hold extra stock in the system if you build Tankage. Our view would be that if you would build tankage you have to fill the bottom of that tank with product which we would call the heels and that product is in there as long as you have the tank in service. If you had a completely independent supply chain, as we do for 98, if you build a tank you increase working capital. So the counterfactual to the borrow and loan system isn't that if you build a tank you don't increase working capital. We wouldn't see any difference.

DR SMALL: Okay. Yeah, I think I understand what you're saying, thank you.

MR BODGER: What Maurice is saying, if we built a tank, we put product in it, we've increased our inventory level, our costs have gone up.

DR SMALL: Yeah, that's right, but there's a - maybe Z would like to comment on this, because my understanding was it does make a difference at times of coordination.

MS LAW: So whilst I actually agree with Maurice's point, you put the heels in the tank, but the person who owns the tank has put the heels in and your competitors just get to access that tank for importing without having to hold the heels. So your counterfactual is somewhat true if you were doing that by yourself, and I agree with Dave's point on that as well. But under the B and L system, if we were to build a tank, I'm required to hold the heels and then my competitors get to access that capacity without holding the heels.

DR SMALL: I think we understand each other on that, but please clarify if you think that there's something missing.

MR BONE: Just as a general thing around incentive to invest, there is options in the system and BP has taken these options previously. We didn't have to have tank in that system. You still have choice as to how you want to resupply your tankage and how you operate that, how you contribute working capital and what your investment case is.

And I think one of the other things that we would say is, regardless of any historical analysis on this, a lot of this is about looking forward, and it's important to note that the ports now are supplied more by imports than by the refinery.

So going forward, investment in infrastructure will be focused on optimising imports, and that changes certainly the way that BP looks at terminal investments going forward. Again, we've gone through a change in the business structure with the majority of product now being supplied by import.

SESSION FOUR: Options to Reduce Barriers to Entry at the Wholesale Level

DR SMALL: Okay. Thank you. I think we can leave that topic there now and, as Maurice encouraged us to look forward, and so this is the third topic in this session which is starting to look at how barriers to entry at the wholesale level might be reduced. And in our report we did consider that infrastructure sharing gives the majors a cost advantage over independent importers and created a bit of a barrier to entry, and we contemplated the idea of greater participation in those arrangements. So we considered in particular that barrier to entry could be reduced by facilitating competitive entry without the entrant having to incur terminal investment infrastructure at multiple points.

So one of the ways that we thought about doing that was to open participation up into the borrow and loan system by enabling an import entrant to add - I want to be very clear about this so please listen carefully - to add one or more terminals to the borrow and loan system arrangements, the ability to add one or more terminals to the system would then bring with it the access to COLL's services in relation to accounting for additions and withdrawals within the system and its import scheduling services.

In raising this option we were alive to the fact that terminals are costly assets and we expressed the view that cost reflective terminal pricing would have a number of advantages. In case this caveat wasn't clear in the report, let me emphasise our proposal would not be a free hit for any importer. One or more terminals would need to be contributed and fair cost-based pricing would apply to the use of another firm's terminals.

I think there was perhaps some misunderstanding on that and that might be down to our drafting but I hope that's clear now.

So I'm interested to know - we are going to talk about terminal gate pricing, but I'm interested first of all to explore this suggestion that we had in our report, and I'd invite comment from Z and from Gull and from BP and also from Mobil if they care to comment.

So the question is, what are your views on such an option and - just that.

MR COURTNEY IRELAND: Okay, so I think as you noted the COLL joint venture arrangement allows for somebody to enter that, considers it as part of it. I think there's no established criteria in terms of the B and L system. I think it's important to note that no one's sought to ever join that as far as my understanding is, there's never been a thing. So it's an academic and something we need to consider rather than it's not a real issue as it sits today.

I think our principle would come back to one of equity in sort of saying look if somebody bought infrastructure of scale - and I can only speak on behalf of BP, I can't speak on behalf of the other participants - so we would consider that if they bought assets of scale that improved the efficiency of the system as a whole, then I think we would consider that.

But I don't know that, you know, would a single terminal in a location which is not necessarily advantageous to the efficiency of the overall system, I don't know that that would be something you'd go, that works, it meets that criteria. I appreciate it's a little bit loose but it is hard to -

DR SMALL: That's a helpful perspective, thank you.

MS RAWLINGS: Do you have a sense of it's not one, how many might be it, where might they be?

MR COURTNEY IRELAND: I think we'd need to consider that further, but it would certainly be more than one, in my view.

MS RAWLINGS: Broadly put then, what are the factors that you'd be thinking about as adequately contributing to improving the efficiency of the system as a whole if we're not sort of talking numbers and geography?

MR COURTNEY IRELAND: I think in terms of efficiency it's around what derives a lower cost to the entire model of delivered product at the terminal gate, what delivers the cheapest or the most efficient price set across that.

DR SMALL: So would that necessarily - I mean just talking in principle here, the efficiency of the whole system is one way of looking at it, but another way of looking at it is the efficiency, from BP's point of view, of the whole system. And bearing in mind that it's an agreement, in a sense, between the three of you, would that mean that the entrant's infrastructure would have to be more efficient for every single one of you, or do you think we'd take an overall view?

MR COURTNEY IRELAND: I think I'd like to discuss that further on Friday if that's okay.

DR SMALL: That's fine, thank you. Z, any views from you on this?

MS LAW: Yeah, certainly. So this isn't a proposal that we would support and for kind of slightly different reasons to BP. So from our perspective COLL is intrinsically linked to the efficiency of Refining NZ. So if you are to allow new entrants into COLL with the import scheduling alone, that is hugely problematic from an operational perspective and to the efficiency of Refining NZ.

One of the reasons for that is if you're allowing simply more imports into the system and to all of the terminals that currently are primarily supplied by RNZ, they won't necessarily be able to achieve the same drop sizes and efficiencies that they do now. Whilst COLL is owned by the participants of the B and L system, actually you just cannot walk past the link to RNZ's efficiencies, and for that reason almost alone we wouldn't support it.

DR SMALL: Thank you. Could I just test that slightly, because I suppose the way that we were thinking about it was that the borrow and loan system currently works by certainly COLL delivers product from the refinery to these regional ports. If it was possible for third parties other than yourselves or your contracted parties to uplift product from one of those ports, that's not really going to change the demand for fuel in that region is it.

So we didn't see why the movements of the physical product would necessarily change very much under wider participation, and the reason for that was because - maybe we're wrong here, but we were thinking that, you know, the demand for fuel in a region is somewhat independent of who supplies it.

MS LAW: I agree with all of that, Z agrees with all of that. I think that the way you have just described it then, you would actually be able to achieve the same outcomes via a TGP model, which we do support and we'll come to later.

In terms of the way you've talked about the B and L system would actually be allowing someone else or a third party to import into those facilities as opposed to, when you just spoke about it then, you talked about the ability to be able to lift out.

DR SMALL: I see.

MS LAW: So if they're importing product into those facilities then that does undermine the efficiencies of COLL and RNZ.

DR SMALL: I see, I totally take that point. So we've been talking at slightly cross-purposes here, so this is good to bottom this out. What we were thinking of was a system where - and this goes to the heart of the difference between sort of an access model and a participation model which we were thinking participation because we were thinking an independent importer has its own import terminal, imports its product into there and opens that, contributes that to the system, to the borrow and loan system, so that other people can draw from it, but in return for that has the ability to draw in outlying ports. So not that they would import into outlying ports, that they would still import into their own terminals. So that's a different -

MS LAW: And we think you can get all of those things you were talking about via a TGP model. So I think you're conflating those two things together. Essentially what you're saying - because if they're just importing into their own port then that kind of isn't anything really to do with the B and L system as such, it wouldn't make sense.

DR SMALL: The difference would be that they'd be able to draw out in other ports.

MS LAW: Which they'd be able to do under a TGP as well.

DR SMALL: So either of these ways -

MS LAW: Yeah.

DR SMALL: So these things are identical in that respect?

MS LAW: Yes.

DR SMALL: Right, okay.

MR BONE: Just picking up on that; the borrow and loan system, as Z pointed out, is intrinsically linked to COLL which is intrinsically linked back to the refinery model. And the purpose of the joint venture for coastal shipping, of which COLL is a company that we formed under, the purpose of that model is to move product from the refinery to the ports.

DR SMALL: Yeah.

MR BONE: Borrow and loan system supports that. Again you'd ask the question, and you could ask Gull, if you like, after this; the huge amount of complexity that comes with operating that model, and it has efficiencies and it's effective, but it takes a lot of work, and there's a lot of complexity in accounting and in stock accounting.

The purpose of COLL is to take product from the refinery to the ports and as a necessity, because not all product is made at the refinery, we also have to coordinate the import of product and that is then given to the COLL team to schedule.

DR SMALL: Yeah.

MR BONE: So for the whole system to work properly COLL have to be able to schedule everything to meet the outcomes that it's been put in place to make, which is to move product from the refinery to the ports.

DR SMALL: Yeah, appreciate that.

MR BONE: So as you mentioned earlier, we bring in full ships on an MR. They can go to four ports because COLL decide that they need to schedule it into four ports because they need to fit the refinery product into the ports as well.

DR SMALL: Yeah.

MR BONE: I question as to why anyone would want to join up and change from a single port discharge to a four port discharge to employ three accountants to try and understand the whole thing - I'm not trying to be silly.

DR SMALL: No, no.

MR BONE: I'm just trying to point out -

MR BODGER: You're not selling it to me, Maurice.

MR BONE: The system is very complex and interrelated and -

DR SMALL: We are aware of that.

MR BONE: The B and L piece is fundamental to the way that COLL works efficiently.

DR SMALL: That's right, that's right. So I suppose, as you say, this is the system that you currently have and that it has its efficiencies but there's a price, a cost for those efficiencies. It's currently there, and so is it - okay, so I guess the fundamental question is whether anybody would want to join, as you say.

Perhaps, I note in Gull's submission that you envisage costs and constraints and that I got the impression that you didn't want to join. Could you help us here?

MR MILLER: Sure, David Miller from Gull. It's good to hear a bit more background from BPNZ on the existing model. I think our view would be that we have, as Dave's alluded to, we have an efficient model today. And any change from that model would need to be carefully thought through, particularly given Maurice's sales pitch on the complexities. I think it's important to note we would also see that from a wholesale market perspective rather than import level perspective, the same mechanism can be achieved through the TGP model. And in fact to some degree the same sorts of outcomes can be achieved through bilateral agreements where that's possible.

So I think our view would be there's a number of different mechanisms that can provide broader access to the infrastructure that's in place; potentially also avoiding the need to create additional infrastructure where it's not warranted, because again that becomes a cost that the market incurs, and having come from the Australian industry and seen some areas end up overtanked, that becomes an issue for the industry and the market to deal with.

I think at an import level maybe under the existing structures that's quite complex. Again, not knowing how the COLL, B and L refining links work. There are probably alternate models where someone could fit into an import pattern, but I guess that would have to be worked through with people that understand those existing systems more.

DR SMALL: Okay. Thank you very much indeed.

MS RAWLINGS: Can I just - I think it's useful to sort of summarise the perspective from BP because I find it quite helpful. What you're really characterising is - and I think it's the same comment actually that Z started with - that you're encouraging us to think of the borrow and loan and COLL scheduling system all as a means of distribution from the refinery itself, and the addition of import scheduling through that as a side effect really, or potentially even inconvenient necessity associated with that system that has evolved for the purposes of refinery production originally, and it is an interesting perspective that hasn't really come through to us before.

Whereas this as an option, this is predicated upon thinking of contributions of imports and, you know, in simplistic terms a bolt on of the import scheduling on to that system. So we've had the sort of starting point, which was a slight misunderstanding I think, about whether we were suggesting actual access to existing tankage by importers, which we were not suggesting, so we take that away.

Then we're just left with this discussion about actually contributing capacity, effectively broadening the group to add another importer in, but recognising that that would be imports only and that the access to COLL required for that would be for scheduling purposes only. But I think what I take from you is you're encouraging us to actually move back from that and think about the system primarily as a means of distribution for refinery production.

MR COURTNEY IRELAND: Yes, that's correct.

MR VAN CINGEL: Might I speak? Peter van Cingel, Refining NZ. If I can just add one nuance to these discussions. The system we have is a result of history, of progression, of all kinds of factors. From our perspective we would say that the borrow and loan system ability for different players to operate an entire country without having terminals in every place is both efficient, but it's also enabled by COLL. So although COLL is required in order to ensure the refinery keeps operating 100%, it also enables all ports to stay wet all the time. And from our perspective, which may be challenged, it also enables the import system to be efficient, notwithstanding complications that there are.

One nuance to think about if there was any activity in the space is that any new player coming into the borrow and loan system, even whilst contributing the terminal somewhere, the ability for them to lift product anywhere in the country is enabled by the COLL system.

DR SMALL: That's right.

MR VAN CINGEL: So the question mark to be had as to who's funding the process, and to add to that, within the borrow and loan system there is a significant amount of stock held at the refinery. So the borrow and loan system doesn't have hydrocarbons only in the coastal terminals, there's also a large proportion of stock held at the refinery. So if a new player was to come into the borrow and loan system, there are question marks to be had around we're providing tankage, we're part of the infrastructure that enables the system to work; we've got to think about that.

DR SMALL: Yeah, okay. That's a very useful perspective, thank you for that.

MS RAWLINGS: I think Z was going to comment on my probably drawn-out summary of the circumstances.

MS LAW: Overall I think your drawn-out summary was actually very good. There's only one other point that I'd like to add to that in terms of if what you're actually suggesting is that other parties simply import into their own terminals and then access terminals from the B and L system, I don't really see why you need COLL to do that. So you suggested that they would have the import scheduling facilities of that.

DR SMALL: Yeah.

MS LAW: But if you're just importing into your own terminal you don't need COLL to do that for you because you're not kind of trying to marry that up with someone else's imports. If Gull wanted to be part of that then I doubt very much that they would be happy for COLL to actually be scheduling their imports into their own third party terminal.

So I just don't think that the advantages are there that you may think are. I don't think there would be any point whatsoever in involving them in the COLL and the B and L system. You can get the same outcome by other means.

DR SMALL: Yeah, I think the reason that we took that view is that we're aware of the work that COLL currently does for you in respect of not just scheduling imports but also a degree of physical transfer, and so that seemed to be another dimension, an important dimension of the supply chain and so that's why we were thinking of it in that way.

MS RAWLINGS: And I think where we probably move on to is the alternative option, but it's the point of facilitating the right to uplift that you derive. That's really what - in terms of this option focussed in borrow and loan, we're not sure that import aspect is an aspect of it. But the reason for contemplating it is obviously to look at a tool for facilitating uplift by an entrant from anywhere, and to overcome many of these constraints we've talked about with trucking from a single terminal or restricting entry to particular geographical areas that are subject to those kind of constraints. So that's obviously the key driver behind that as an option, but it's a very useful discussion.

SESSION FOUR: TGP

DR SMALL: It is indeed. I think probably now it is time to talk about the TGP, which has been raised by a couple of submitters. And I think I suppose the most - well, there's a number of ways into this, but I think it's clear from Z's proposal that it sees TGP as being an alternative to the current borrow and loan arrangements. That's the way it reads to me.

Can I just get you to confirm that, what do you think would happen to the borrow and loan arrangements?

MS LAW: I don't think it's necessarily an alternative to borrow and loan. I think how we would characterise it is a TGP model can exist whether there is a borrow and loan system or not, so it's almost an irrespective of borrow and loan. So in a TGP - what I mean by that is that a TGP model in our minds, similar to how it works in Australia, would include all parties who own a terminal in New Zealand, would be required to provide access to those who met certain criteria. As to how that product is actually delivered into a terminal or whatever almost is not of a concern. It would be, what you're facilitating is access and the ability to lift ex the terminal gate in a more liquid wholesale market at that level.

So I don't think, again, we should conflate those two. The borrow and loan system may well continue as it does today or it may not. In either scenario a TGP model would still achieve the outcomes I think you're trying to get to.

MS RAWLINGS: I think, picking up on the earlier discussion, what you would say is that if you're talking about the existing borrow and loan you would have it in its existing and unadulterated form and then terminal gate pricing alongside that rather than talking about new entrant into the borrow and loan system?

MS LAW: So possibly it may continue exactly as it is today, but possibly it may not. But yes, we are saying that we are not talking about bringing a new entrant into the borrow and loan system because the TGP model would not require that.

DR SMALL: Thank you. It's helpful to hear that review about how they interact because we certainly read your submission as if it was going to be a replacement. So you're confirming I think that -

MS BLACKETT: Can I just add to that?

DR SMALL: Yeah.

MS BLACKETT: I just wanted to - sorry, Debra Blackett, I wasn't here yesterday, Z Energy. The only difference would be that Z believes the wholesale market is competitive but acknowledges that the B and L system somewhat occludes that from visibility because of the complexity.

The issue of TGP, from my understanding, is that it promotes transparency and openness to the market to people that access it through regulators and a B and L system doesn't do that. So that's the downside, is are new entrants and competitors accessing the same deal in terms of barriers to entry as people in the B and L system. It's not that visible, so that's the complexity that you have to deal with.

DR SMALL: Thank you for that. Okay, so just to clarify, then, Z's proposal here, which I presume other people have read. So you say that it would apply to terminal owners, including Wiri, and that terminal owners would be required to publish a TGP. Are you thinking here - I think I'm gathering from what you said earlier that you're talking about all terminal owners irrespective of whether they're in the borrow and loan or not?

MS LAW: Yes.

DR SMALL: So every single terminal in the country?

MS LAW: Yes.

DR SMALL: And new terminals yet to come online presumably?

MS LAW: Yes.

DR SMALL: Okay.

MS RAWLINGS: Is that how BP might see it operating as well, if there was a process of this nature?

MR COURTNEY IRELAND: As I read the Z submission I sort of read it through the lens of it was an either/or.

DR SMALL: So did we.

MR COURTNEY IRELAND: So we're sort of considering the co-existence. I think our initial thoughts are that they're not mutually exclusive, so you could potentially have both, but I think there's a lot of work to be done before you move forward because of the interdependencies right across that supply chain. And I think if we look at the Australian model, that's predicated on the product owner setting the TGP so that it's just working back, under a B and L scenario, who is the product owner and would you have four terminal gate prices for a respective terminal.

So I think there's a lot of detail that would need to be considered and how it would be applied in this market. I think we're up for a discussion and certainly, you know, keen to be part of that, but I think we're just - we're not entirely sure how it would be applied in the New Zealand context.

MS RAWLINGS: That might be a good question for Z, but assumedly if anyone with an opportunity to draw from that terminal could offer a price from it.

MS LAW: Potentially yes. So we agree with BP on that. So conceptually we think it's a good idea, we think it facilitates a more liquid wholesale market. We think that it can co-exist with a B and L system. But agree that we need to have many discussions around how the logistics of that will actually work. But in principle, yes.

DR SMALL: Thank you. This is relevant, I think, to Gull's submission because your submission outlined, I think, five conditions and one of them was that - the last one, I think, was that it should apply to product owners rather than terminal owners. So does that mean that you're really assuming that there's a difference obviously and so therefore that there's a borrow and loan system sitting in the back of it?

MR MILLER: I think, so just to clarify, so in the Australian context, which again I think most of us have looked to to draw some of these guidelines out, the Australian context has some individually-owned terminals where it is a genuine infrastructure provider, so they don't own the product that sits in their terminal.

DR SMALL: Just a stand-alone.

MR MILLER: It's an infrastructure provider. I guess I'd liken it to maybe the RNZ kind of model in terms of there's a service being provided without the product, and so that service provider can't sell the fuel because they don't own the fuel. So I think for us that's the distinction between product owner and terminal owner.

I think to take another step, I guess under a TGP system, anyone who is offering pricing under a TGP arrangement will need to be able to, under their supply planning processes, account for, I guess you'd call a TGP-type sale in some instances will occur without a long-term contract behind it. So you still need to have the resilience in your supply planning process to be able to supply that potential customer market that you don't currently potentially supply, or don't know that you're going to need to supply.

I think to the points of the guidelines, one of the common themes in the Australian mechanisms is most infrastructure, or product owners, have the requirement or the right to look at their own ability to supply existing customers in that decision process as to whether or not they sell fuel under the TGP.

I guess again, similar to some of the other commentary, the B and L system, from our perspective, is a mechanism for getting product to the terminals on the other side of the gate, and that should be able to sit somewhat independently of what's happening on the other side of the gate as long as the supply planning processes are effective, for which every organisations are looking at that.

MS RAWLINGS: Assumedly that would have some implications for the rules relating to the borrow and loan and what parties were entitled to do within the borrow and loan system that would have to be worked through, and I'm sort of puzzled, I'm not sure we need to go into the detail of it, but about just how the two might actually interact in those circumstances and that may be what you're sort of thinking, BP.

MR COURTNEY IRELAND: Yeah, I wouldn't imagine it's a conversation for this forum, but it's certainly something that needs to be worked through.

MR BODGER: I don't think that it's an immediate game changer overnight, because if you're, again, the magic wand that brings this in; all parties have their own contracted business, they still have their owned service stations, the percentage of change in fuel is minor and you would have people that are genuine long-term players actually wanting to work outside of the TGP system as in saying "We will give you our business for X period and by the way it's rateable, we will take this volume each week, each month" etc, so you can plan and so you know and that is a value to give and a value to receive.

Now you're looking for a fair value on a product for that, but having that ability to have that open access then drives the next steps after that. But I don't see it as a fundamental major change.

MS RAWLINGS: Isn't there coupled with that, Dave, just a degree of transparency actually that comes from the TGP which just shines a light on what's going on - I think it probably goes back to Debra's comment - that actually influences conduct even if it's not facilitating transactions through that system necessarily?

MR BODGER: It gives you firm rights to fairly request product and be told you can fairly receive it, whereas at the moment we can make a phone call and not have that phone call returned for many months.

DR SMALL: So there has to be - I guess I'm thinking about a situation where there's some discussion about a spot market here, but it seems to me this would be somewhat difficult to supply, wouldn't it, because of the need to plan volumes and shipments and so on. So in the Australian system, as I understand it, there's some kind of obligation to supply unless there's good reason that you can't. And I wonder whether a number of ports around New Zealand that good reason that you can't - aspect of it might preclude sort of real spot pricing or real spot trading. What do you think about that Z?

MS LAW: I think in effect the TGP is a spot market and I would look to Australia for an example of how this actually works. So the TGP model is available for all parties if they want to pick up, if and when they meet the criteria and they decide they want an up to small kind of truckload of product, I think it might be something like 35,000 litres is what the TGP code in Australia represents.

But there is also the ability for bilateral agreements outside of that. So the TGP isn't necessarily something that all volume would trade on. So don't necessarily make the mistake of assuming that the spot market is then the only market. So it is an element of the market but there would still be many other transactions occurring that are actually not at a TGP level.

DR SMALL: Yeah, I think we appreciate that, and there was the discussion we were having before about the fact that having a transparent price gives people to contract around that.

MS LAW: Yeah.

MS RAWLINGS: And equally I think, my understanding of how the code operates is it's using that TGP price as the start point for the pricing which is offered in those bilateral negotiations as well. So everybody knows where they're at a baseline, even though there may be discounts or additional services negotiated on top of that. I think that's the prescription in the code which assumedly is intended to facilitate a transparent start point, which really goes to my question before from which you can move and that may take any direction but at least you're all starting in the same place. Is that -

MR MILLER: Yeah, I think just to clarify the practical implication in supply contracts in Australia from the way that the TGP has been used; so spot market is a component of that, it's a lowish volume market. So in terms of impact to supply chains it should be relatively small because we're talking about a truck at a time.

From a contractual perspective, however - and I'd have to look at the oil code itself - but TGP just becomes one mechanism where two parties may agree to supply fuel to one another. So it doesn't take away the right of two companies to structure an agreement off a completely different pricing mechanism, it also doesn't stop you from using TGP as your marker.

Where we see TGP assisting us around the transparency component of the discussion, so if I'm buying from someone who's supplying me at their TGP and their TGP goes up by 3 cents relative to everyone else in the market today, there's going to be a discussion around why all of a sudden the pricing has moved relative to the competitors.

I think I've anecdotally heard it described as like a terminal board price in the Australian context. So it becomes a point of discussion between customers and suppliers, if there are strange shifts relative to the market shift in pricing.

DR SMALL: That's helpful. We're just about ready for a break, I think, but I just wondered if anybody else has got comments they want to feed into this where we've got to do so far. I think we've covered a fair bit of ground.

MS BLACKETT: I just have one small point just to follow on to that, which was essentially how we see the TGP operating is as an influence on conduct rather than a thing in itself. So that it's not that it sets or creates a spot market any more than I think you'll note that the dispute resolution service is hardly ever used, but it's been in existence for 16 years because it provides a forum for people to have a discussion otherwise there's going to be a discussion. So I think the point of it is not the thing in itself but that it sets access and creates the opportunity for the bilateral market.

DR SMALL: Yeah. I agree with that.

MS RAWLINGS: I think that's consistent with what Gull's suggesting.

DR SMALL: Any other comment on this before we take the break? Very helpful, thank you very much indeed. We'll come back at quarter past. Thank you.

Adjournment from 10.46 am to 11.15 am

MS RAWLINGS: I think we've come to an end of the issues that we wanted to talk about with entry and infrastructure sharing, but I think just given that we've had the break, I'll just give the opportunity for anyone who wanted to add anything, having a few minutes to reflect on it before we move on, if you'd like. No?

SESSION FIVE: Wholesale Supply Arrangements

MS RAWLINGS: So we'll move on then to just talk about the wholesale supply arrangements. And so in chapter 6 of the draft report we talked about extent of vertical integration in the industry at some length and its potential effects on competition, and we talked about what we've sort termed structural vertical integration, so fuel companies that are supplying fuel at wholesale but also own and operate their own retail sites, and also, we struggle with a term for this really, but effective vertical integration really is a shorthand for situations where supply contracts are creating effects that are very similar to vertical integration; so contracts with distributors which retail under their own brands, or contracts of supply with dealers which are owning and operating retail sites under the brands of their supplier or one of the major fuel companies.

And as you'll know, one of the draft conclusions that we posited, or one of the key conclusions really, was that the effects of these types of vertical supply agreements may be simulating a degree of vertical integration because of their stability, and that that was impacting competition in the wholesale market.

So we're interested in just exploring that a bit further in this session, looking at whether these arrangements are contributing to low levels of switching and possible entry by those who might be looking for wholesale customers and whether aspects of the arrangements are limiting the scope for dealers and distributors to compete also, and we talked already about the ways in which wholesale prices are determined, so we may not need to focus so much on that now.

We asked for comments on all of these issues in our draft and in particular for consideration of less restrictive means of contracting in supply agreements that might overcome some of the concerns that we expressed.

We want to really focus today on the kinds of options that we might be looking at, and we also discussed in the draft a range of relationship-based but non-contractual issues which really go to the relationship but are not, strictly speaking, contained within the terms of the agreements.

And I think submissions on these issues are pretty clear, so we don't intend to spend much time on those, but I'll probably come back to them at the end of the session. They're things like the importance of access to fuel card schemes and the location of reseller sites vis-à-vis those of their wholesale suppliers. So we'll see whether we need to come back to that towards the end.

It's an interesting session and session for discussion, this one, because we acknowledge that the nature of the arrangements are many and varied throughout the industry. This comes through in our draft report in terms of the level of generality with which we try to have that discussion, because we also didn't want a chapter of the report that was full of confidential and commercially sensitive information and really left everybody with no sense of what on earth we were talking about at all.

So we're aware that it's difficult to make simple and blanket sort of characterisations that accurately portray all market participants and all of the arrangements. That will impact the kinds of solutions potentially that could be posited as well in the final report.

And we've also received a range of views on the nature of these arrangements and not all parties who provided those views to us are represented in the room today, so we'll just explore with those who are here some of these issues and that might help us to understand some of the differences in view.

Finally, what makes the session a bit complicated is that degree of commercial sensitivity in relation to contractual arrangements. So the way that I want to address that is to just deal with issues at a high level. I think there's very little benefit in really trying to talk in isolation about length of term of contract, or termination provisions of one type or another, or other types of contractual provision that may be unique to one or two parties or not. And so I think what we'll do instead is just focus more on some of the common ground and some of the proposals for addressing these issues that we might work on for the final report.

So I wonder if we might start, before we get into those options, just with some more general comments. One I actually wanted to start with, which we haven't really addressed upfront in the last day or so, is just a question actually about our focus on factors affecting wholesale competition rather than retail. So we did kick off with a session yesterday morning talking about the types of competition at the retail level and the intensity of competition, but we also concluded in our draft that of course we would expect to see wholesale competition to provide a level of intensity different to retail and that for that reason we're focused really on the wholesale level with any options or recommendations rather than at retail.

But I just thought it might be worth exploring that a little more and asking people what their perception is really of the degree of competition that occurs in vertically integrated entities at a wholesale supply level versus retail, whether efforts are focused evenly at those levels, or whether you see one level or another being more important. So I might start with BP if I could.

MS BOFFA: So to answer your - BP's view, the level of competition and how hard we fight at a retail level as well as at a wholesale level to retain and win our resellers is equivalent. We want to protect the relationships we have and ensure that we continue to retain them, and likewise when opportunities present to win new wholesale customers we'll go after those too. Different ways, of course, because both groups of customers, whether it's a retail customer or a wholesale customer, will have very different drivers and that's where we start to see the diversity of the types of contracts that we've shared with you in terms of what provisions we put into those and also what value we give in those.

MS BLACKETT: We wouldn't necessarily see lack of intensity or switching as consistent with a lack of competition. Rather, we'd see these as long-term agreements that need some stability and investment on both sides. We've referred to some of this in our confidential submissions, but we have investments, we have partnerships around that.

The distributors on their part need a consistent security of supply. They need a length of contract that can support their own financing and back-to-back customer relationships. So it's not necessarily a market that you would expect a lot of switching for those sorts of reasons, particularly if they've got enough negotiating power to get a reasonable price, which we would argue that they do.

And some of those agreements also - as you will see confidentially - have long-term historic reasons. For example, there has been some asset gifting and some of those contracts have been either gifted or given at below cost in response for a long-term contract.

So all of those factors, I think, don't point to a lack of competition, they much more refer to a partnership-type model. Having said that, as we've said in our submissions, a faster switch around term rates would assist a TGP model. We're not necessarily averse to that.

MS RAWLINGS: Thanks for that. I think when we look at just the wholesale supply relationships, interested in understanding, if it's possible to discuss it in this forum, just the kinds of factors that influence a choice between company-owned/company-operated and independently-owned and operated branded retailers, and whether you've got an eye to striking a particular balance in your portfolio between those two options. Everybody's got a slightly different model and approach to these things, and we're just interested in understanding a little bit more about what influences those different approaches, I guess, at a high level. I don't know if that's something that you can speak to again first, BP.

MS BOFFA: Yeah. And I'm happy to expand further on this on Friday. What I can say now - so I'm just working out what I can say and what I can't say. So the way in which we participate in the market, which is evident to everyone in this room, is we operate two channels. So you're asking specifically about branded retail, right?

MS RAWLINGS: Yeah, and it's the choice really between how much effort is in those different channels and why, for example, you might concentrate on maintaining different channels as opposed to predominantly - just maybe the Z brand, putting to one side Caltex - more of a company-owned and operated model.

MS BOFFA: Yeah, so we participate in the New Zealand market with two channels of trade through branded retail, so we have company-owned and operated and we have our independent dealer network. We've always had a form of that for as long as I've worked in industry. And the reason we do that is that in delivering our branded customer offer, where we focus our efforts and put our capital, and as I mentioned yesterday, is in large sites with extensive offerings, which tend to be on the major highways, the main metro sites and large provincial towns. And we see our dealer network as one that's complementary to that, generally filling in gaps and in further parts of regional New Zealand and local communities. So we feel that those two offers sit very nicely side by side in terms of how we want our operating model to work in both those places.

And then we work hard to ensure that customers, when they see that helios, that they get that consistent level of offer, acknowledging that not all sites have exactly the same coffee offer, but we want people to still be able to get a really good coffee. Does that kind of answer the question? We can do more tomorrow on this.

MS RAWLINGS: Yeah, that's fine.

MS BOFFA: I'm just a little bit uncomfortable.

MS RAWLINGS: Yes, thanks. I don't know if, Z, you feel that you can contribute to that?

MR BAIRD: Yeah, so we have a similar sort of role. Obviously the Caltex network is very much a dealer-owned/operated model, and that works very, very well. We work hard with those retailers to make sure they're profitable and we give them lots of business advice and programmes and loyalty programmes etc, etc. And that's a model that, as I said, just works well for us.

We also, on the Z side, have a sort of a pseudo franchise kind of model, ownership model. And it just means there that we are operating more in the convenience store business and have more of a direct control in that in terms of how we scope that out into the marketplace.

So it's just really two models, they both work well within a marketplace, and obviously it's accommodating for a number of independent people that want to run their own business. So it's really a degree of freedom between the two that is really the difference. But both work very, very well in the marketplace.

MS BLACKETT: Could I just add on to that, the main distinction to make for us is that the dealer model is a channel to market model as opposed to what we would think of as a true wholesale model such as the distributors. So the channels to market, there is a choice between the capital intensity, depending on whether we own the site and the business and employ staff and set prices, or whether we devolve some of that. And we would change sites in and out of those models over time. And you can see over historically as well Caltex devolved a lot out, but it's a channel to market; whereas the distributors are their own business, their own brands, they make their own pricing decisions.

So we just wanted to clear that up because sometimes the wholesale market appeared to be referred to as though it was the same one and we see those as quite separate.

MS RAWLINGS: Yeah, and they obviously are quite separate, and I think it's a distinction that's drawn out in part in the draft report but I think we acknowledge we can do better. And I think it becomes more acute as we look towards different types of issues facing the two groups actually as well and the potential opportunities for change that there may be. And so, yeah, I'm happy to signal that we are looking to actually just draw that distinction a bit more carefully as we work towards the final so that we can try to look more clearly at the issues affecting different groups, because I think it is possible to do that.

Thanks for that. Can I just see whether anyone else wants to sort of comment on that concept of, I guess, building that operating model and the mix that you might choose to do that? I'm thinking maybe Gull or others in the room, but not necessary if you don't have anything to add.

SESSION FIVE: Switching

MS RAWLINGS: All right, well, let's just move on to just a general question about switching, because we noted in the draft report a lack of switching, I guess, of supply by distributors with just a couple of examples cited, and a number of submitters then have suggested that that lack of switching is likely due just to everybody being very happy, which would be a great outcome. But I wanted just to explore that proposition a little bit further, and again Z and BP really, just see whether you've got anything to add to the discussion on that that came through in the submissions.

And one party that we spoke with suggested, for example, that distributors actually hold all the ultimate power, whereas we've had some feedback that they don't necessarily feel the same way, and so I wonder if you might just help us to unpack that a little bit. Maybe we'll start with Z.

MS BLACKETT: I think there's probably not much more we can say outside the Friday sessions. We've only got a handful in each of those (inaudible).

MS RAWLINGS: BP, shall I just see whether you've got any comment on that?

MS BOFFA: We can talk more about it in our session on Friday, but I think I just want to add to the point actually you made, that our view is that relatively infrequent switching with distributors in our view is not necessarily a lack of competition. We actually think that it's probably more around the fact of long service partnerships and price offering that's actually enabling that to - as what you're observing in the market in those instances. Because from my observation distributors compete very hard and they do that primarily around price in the market to their customers.

MS RAWLINGS: Thanks for that. Anyone else wanted to contribute to that?

MR JONES: Excuse me, just one thing I would add just more generally about the market. So if there is a hypothesis that the absence or low rate of switching is a sign there's absence of competition and that leads to poor outcomes, in particular in the retail market, I think generally that would all kind of assume that the level of economic rent is captured more in the wholesale market than potentially, or it's insufficiently captured in the retail market for them to compete; and if I look at the growth in the retail networks of those distributors, it would suggest that there is sufficient economic rents to compete.

And I'd contrast that with, say, the electricity industry where the economic rent and the wholesale and the retail market is very different. You've seen very different commercial outcomes or market outcomes. Generally at a market level I think there's some observations that we can draw.

SESSION FIVE: Commercial Markets Versus Wholesale Markets

MS RAWLINGS: Okay. Just a couple of other points that are sort of just odd points before we get into contracts themselves. One is that relates to an observation that potentially commercial markets look more competitive than the wholesale market that we've been looking at for fuel destined for retail. So commercial supply is not something that came within the terms of reference, as you know, but nevertheless we are cognisant of comment that the nature of our conclusions in this study and any recommendations that might be made or options explored later by Government could have implications for commercial markets as well.

But in particular I just wonder whether there are comments on whether comparisons between the large scale supply agreements that are the subject of this study are comparable or not to larger commercial contracts. So, you know, I think Waitomo has made a comment that perhaps there are better terms available under some of those commercial agreements than available to distributors, and I just wondered if we could obtain some comment on that. I don't know if you want to start with elaborating on that.

MR PARHAM: We can start. I guess yes, that's what our own analysis shows that there's potentially better transparency and better terms, but that's dictated by the market segment that it's getting sold into. So whether that's valid or not we can leave it to the Commission and we'll discuss further when we have our confidential meeting.

MS RAWLINGS: Thank you.

MR JONES: I can't replicate the analysis conducted by the Waitomo teams, we don't have that data available to us. Just reinforce Debra's points, though, that the extent to which there is any difference in pricing would, in part at least or in whole, reflect the level of involvement in the relationship.

So a relationship with a commercial customer is very, very low touch. There's very little reliance between the two parties or co-dependencies or co-investment. The extent to which that difference plays out goes a long way to explaining any difference in prices.

MS RAWLINGS: Even if we're just focused on distributors for the purpose of that discussion rather than looking at the dealer-owned retail site model? With supply to distributors, is it really that different to bulk commercial supply?

MR JONES: Yes, it is, yeah. So the level of codependence, co-investment is much higher for a distributor model or relatively higher than it is for a commercial customer.

MS BLACKETT: We can share some details with you, but in our submissions we refer to things like we have distributors that we make annual marketing investments in and provide some head office support around health and safety and all of those sorts of initiatives. So if you looked at it along a continuum we'd say the dealers are here on a partnership model, the distributors are here and commercial's here, and that's reflected in the cost and the head office contribution to those relationships.

MS RAWLINGS: Any additional comment from BP?

MS BOFFA: I'd prefer to leave that for Friday if that's okay.

MS RAWLINGS: That's fine. Dave.

MR BODGER: If I could comment that the traditional, if I can say, distributor before several have grown into a service station chain were diesel-heavy. You were supplying commercial businesses and commercial businesses run on diesel. The commercial market is, again, diesel-heavy. If you look at the delivered diesel market in New Zealand we have been invited to tender for large businesses such as Fonterra, KiwiRail in the past for those large diesel businesses.

My understanding and my estimation of the distributor business is that they will be at least of that size in diesel and probably greater than those large commercial businesses in New Zealand. And they are separate markets, because we have not been invited to tender to supply - now we cannot physically supply in the South Island so you can understand that - but we have not been invited to tender for supply for distributors for significant long-term portions of business.

So they are obviously satisfied, or the arrangements are key with their existing that they do not go out for a tender, whereas a commercial business has a lot more freedom and a lot more ability to tender that. So I see them as two quite separate markets in that respect, even though in my appraisal the distributor volumes would be much greater and you would think demand a greater price.

MS RAWLINGS: Do you have any observations which might just be anecdotal as to why those differences might exist?

MR BODGER: Well, a standard thing such as terms of trade, I don't have a view on what they are and where they are, security, long-term association with that supplier, investment ownership by a supplier. The supplier may well have handed over customers over time. The supplier will probably cherish, hey these are good customers, you cherish that relationship and you look to ensure and make sure that that person is happy so they do not go to tender, if I was in that fortunate position.

MS BLACKETT: I think we'd just like to reinforce that. There's an economic perspective to that too, that anybody that participates in the refinery has a certain amount of volume that they've got to be able to place and those very large distributor relationships are a really important component of that.

MS RAWLINGS: That list is probably, you know, roughly ticking off in my mind the kind of list of factors, that we're looking at in the draft some potentially pro-competitive and some are others where there's been feedback of some restrictions that people might be less happy with, so that's a helpful kind of check on that.

One other point in relation to comparisons. In the draft we did draw some comparison with observations on contract terms in Australia, and the feedback that we received on that was just, I guess, a bit dismissive or critical of drawing comparisons with Australia on the basis that the market there is different.

I think BP, this is something that you raised with us and just be helpful to unpack again, even at a high level, what you perceive the differences to be really influencing the nature of the supply arrangements that might exist in Australia versus New Zealand, whether it can be simplified or not. But just trying to get a little behind that submission.

MS BOFFA: Yeah, so what we put in our submission was around the fact that the Australian market is very different from the New Zealand market in terms of the number of participants, how they choose to play in different parts of the supply chain, importers versus terminal operators versus retailers versus people are focused more on B to B, it's so different, that we just want people to be aware that - and the relationships that then sit under that and the types of contracts there are; it's vastly different in some areas.

And to just say that this is how it works there therefore it should just work here, it's around understanding why does it work that way there and does that then - is something that might be a benefit to New Zealand and the fuel purchasing public, or is that something that would then have a knock-on effect into a whole bunch of other things and create unintended consequences. That was merely the point we were making around that, and that can impact into length of contract by way of example.

MS RAWLINGS: So can I just clarify whether you're suggesting that from an information base that it's an inappropriate comparison to draw, or you're just encouraging us to look more closely at the underlying information.

MS BOFFA: Look more closely at it. So we're saying yes, it's relevant to the point that there's something different, so scratch into it to understand why it's different rather than creating a situation where someone might jump to a conclusion that it's wrong here, because it's not like that. I think that's merely the point we were trying to make.

MS RAWLINGS: Any sort of view on that? Anybody else on the comparison with the Australian operating framework around the - we're really, I think, in the draft drawing attention to some much shorter terms for contract length and that kind of a thing.

MR MILLER: I think just to second some of the other points, it's important to look at the segments of the market on an equivalent basis. So if you have - so looking at the

Australian market - branded distributors relative to unbranded independent distributors, there will be, I imagine - not knowing the exact details - different relationships that exist, different contractual terms that exist, potentially different pricing mechanisms that exist, I guess to reflect the potential for a supplier to have a greater commitment into financial relationship or asset base.

I think understanding maybe in the Australian context looking at that dynamic, so unbranded independent reseller market compared to a branded, I guess, extension of a supplier's retail market through a different ownership model, that might help to flesh out some of those differences to see which parts of the New Zealand market those comparisons might be best drawn.

DR SMALL: Could I just clarify when you refer to this distinction between branded and unbranded in Australia; is the branded side of that, sort of bearing in mind we're talking about distributors rather than retailers, but would that be broadly analogous to a BP station that might be owned by someone else but carry the BP brand, in other words would the brand be the same between the supplier and the distributor in the example that you just gave?

MR MILLER: Both versions exist. So we see in the Australian market, I guess, all forms of that company-owned/company-operated, retail-owned/retail-operated, and then within the wholesale market companies that carry their own brand but may have a supply relationship for a period of time with one particular supplier in a location. There may then also be branding agreements with other distributors where, you know, I guess the consumer as they drive past might not see a difference between one site and the next but actually the ownership model and the supply model that sits behind it is quite different.

And I guess that's where - so when we look at things like the TGP model and access across the market, again, to me that's where the differences are, is someone coming, in a commercial sense, unencumbered, not asking for anything more than product, whereas someone asking for an all-in relationship, long-term, asset commitments or whatever else goes into it, and being able to draw a distinction between the terms and conditions that might apply to both of those, and I guess the pricing that then sits behind it.

DR SMALL: Absolutely, thanks for that. That's something that we were certainly cognisant of when writing the draft, is if you're carrying your supplier's brand then there is a very different level of co-dependency there rather than if you've got your own brand and your own stations and you're buying fuel from someone else. So thank you for that.

SESSION FIVE: Contractual Terms

MS RAWLINGS: That's probably quite a good entrance point actually, thanks, into just talking about some of the contractual aspects that we talked about in the draft. So again, just sort of pointing to the idea that although in the draft we talked about categories of contractual terms, just for the purpose of getting across a sense of some of the types of terms that we thought were, or that we had had feedback on as being difficult to manage, but also that might require attention. Here I think we can probably take as a starting point that a number of the parties that we've spoken to have expressed that varying degree of concern with some of these contracts and have supported steps to revise contracting in one way or another.

It's been an interesting sort of set of submissions, because on the one hand I think it's reasonably safe to say that everyone has acknowledged in varying degrees of expressed sort of acknowledgment that fair contracting terms are important and that even potentially we could do better with some of the supply arrangements that we have, whilst also cautioning against interference with freedom of contract, which is something that we're particularly cognisant of and focused upon, possibly the lawyers among us more than others, but we really have grappled with that in putting the draft together and it's something that we want to have a close eye to in finalising any recommendations. And also the need to preserve what we recognise to be many pro-competitive benefits of a number of these contracts and contractual provisions, and that's an acknowledgment that John has spoken to.

So we also think, though, that although we identified individual types of terms in the draft, that it is really important, for the purposes of evaluating competition, to look at terms for wholesale supplier contracts in the round and think about the effect of the contracts as a whole rather than terms in isolation to the extent that we can do that. And that's something that's reflected in other areas of law that deal with contracting and that's something that I'll come back to.

And another really important submission that Z has made, which I think, you know, I could probably safely say has resonated with other suppliers, has been that a willingness to address some of these issues really needs to be fair to all participants in the market where practices have evolved over time, and the contracts - and this is not uncommon in any industry really where contracts evolve over time - to look similar to one another, that freeing up or regulating aspects of those contractual relationships need to be even-handed in some way to create a level playing field.

So the most obvious, I guess, in respect of Z's suggestion, at least in relation to the term of a contract, is that you don't - you know, I read into it you don't want to be releasing contracting parties under a shorter term contract to find that competitors can still sign them up to 20-year or in perpetuity contract terms. So that seems, you know, obviously an important and sensible point to make.

So as I've said, for today's purposes I think we've tried to focus on some solutions to meet these issues. One, just drawing that distinction that we talked about earlier a little more precisely, really relates to distributors. In the draft we suggested that it may be possible to provide for some form of split supply in relationships with distributors. So that would enable distributors to take a portion of supply from a third party whilst they had their primary contract for supply with a main supplier or with a major party supplier.

And it struck us that an analogous example to these kinds of split supply provisions can facilitate entry because it enables a bit of a testing of the market without the need to switch an entire contract. And an analogy may be drawn loosely with the regulatory regime in the dairy sector, for example, where you have a statutory requirement in that case which is not necessarily the method that you would use, to enable the supply of a percentage of supply to an independent party to just test the market and to support the entry of new entrants into the market.

So I don't think we received any submissions on that particular proposition, and so it's something that we did want to explore a little bit further in relation to some of the larger distributor contracts, whether it is a feasible option to, I guess, mandate in some way, putting to one side the tool that might be used for the moment, whether it's a feasible option to provide for some form of split supply in supply agreements; and secondly, you know, whether that is a desirable thing and people's views on that. So we can start with Z.

MS BLACKETT: On exclusivity, the issues that I think we have raised, if not; they're particularly around the tracing of the hydrocarbons in terms of product quality, and of course consumer laws still apply. So in terms of any claims that we're making around additives, and we do have some differentiation on that, we do need to be able to trace it.

I think the other point on exclusivity is that we do, for the reasons I said before about the volume commitments, both parties want a volume commitment and some security. I think without going too far into the terms of these contracts, I take your point about when looked at as a whole some bits may be pro-competitive and some bits may have some issues, but I think if you go into the solution, a term restriction plus TGP can open all that up for you, in any case, because you can see a transparent price in the contracts coming to market.

We would suggest that you don't disincent the freedom of contract by discounting the factors such as the investment by both parties into one another and into the security of supply and those sorts of issues. So we don't think that you necessarily need to regulate around the exclusivity point because you'd end up with the operational complexity around product quality and Fair Trading Act claims around what additives are in what hydrocarbon and where.

MS RAWLINGS: Can I test BP's view on this?

MS BOFFA: I think given that we have two types of distributor models in terms of ownership, I think I'd be better to talk to you about this on Friday if that's okay.

MS RAWLINGS: Okay. Anyone else who has comments on this?

MR ORMSBY: Kia ora, Jimmy Ormsby from Waitomo. Yeah, we'd welcome the opportunity, I suppose, to test the market. Not saying that we would, but I think just repeating your words back to you, we'd probably like to see and test the level of intensity in that wholesale fuels market. And I think that's a mechanism that could do that without having exclusivity.

MS RAWLINGS: So what's your view on some of the other sort of issues raised about fuel quality and chain of sort of custody and liability for issues?

MR ORMSBY: I think depending on, you know, how mature or complex your distribution business is, you can certainly track product and know where product comes from and obviously ensure that any claims are met, or else not have those claims. For instance, we take product from our supplier Mobil and it's Mobil product, but we don't have any of the claims or the product, it is synergy product, so our product isn't differentiated in that respect.

So I understand that that would, you know, coming from the terminal you could additise on additised product, and obviously if you own the product, we take ownership from the terminal gate, so that responsibility comes back on us if there's any product quality issues.

MS RAWLINGS: Yeah, this is certainly a perspective that we have been considering and it also occurred again to us that it's really a question of looking at the contract in the round and that there may be other contractual provisions that would balance the provision for an ability to take supply from a couple of sources. So I guess by that I mean, you know, it's possible hypothetically that someone may be prepared to relinquish liability for certain claims in return for the ability to obtain a mix supply.

MR ORMSBY: Under the B and L agreements anyway we're taking product from multiple different terminals anyway, so, you know, we're taking product ex-Napier, ex-New Plymouth, and that product isn't our supplier's product, it's through the B and L agreement. So that's happening as we speak anyway.

MR PARHAM: Just add in there, our fuel is 100% mineral grade, so we don't have any additisation in it, so we don't make any claims. So that lowers that complexity earlier, which is why it's always important to go back to independent dealers that operate under a brand that's very important, because, you know, you're making claims and that's what the brand pins, you know, is important to the brand.

When you're 100% mineral grade like us, we're not making claims so it's very different, it's a whole lot lower on the spectrum. And as Jimmy mentioned anyway, we pick up product at multiple terminals, take ownership at the gate and we know where it's going.

DR SMALL: Can I just follow-up on the sort of freedom of contracting point that Z made as well, that, you know, this is about if people want it or not. I think what I heard you say, Mr Ormsby, was that this would be more or less an option, if there was an option, you may or may not choose to exercise it. So did I hear you right on that? It sounds like it's more freedom rather than less from your point of view?

MR ORMSBY: Yeah, I think, you know, true competition is having the ability to test the market and that's the ultimate test, isn't it, what the market will -

DR SMALL: Yeah, you may choose not to take it up but -

MR ORMSBY: Yeah, exactly. And you've got all that other stuff like relationships and historical or new relationships and performance and obviously price comes into it as well. So our brand anchors are people, performance and price, so all those factors would be considered when making a decision about supply and whether you opted to take supply from, you know, other parties.

MS RAWLINGS: One of the advantages that we see might sit with somebody like Waitomo is that you have the opportunity, rather than waiting for the end of a contract and a switch no matter what term that contract is, just to actually try out - this is how it facilitates entry anyway - try out a new entrant, or just try out a new supplier relationship and see how that relationship can be built without putting all your eggs in one basket, so to speak.

MR ORMSBY: Yeah, you know, our customers rely on us for the product that we deliver, so any transition from one supplier to another or anything like that you'd obviously want to ensure that you had continuity of supply. Not sure if anyone watched the rugby on the weekend, but obviously sometimes things don't go to plan, so we would obviously want to ensure continuity of supply. So the ability to test those, you know, structures and processes would obviously feature quite importantly in that supply channel.

MS RAWLINGS: Thank you. That's a really helpful insight. Anything Gull wants to add?

MR BODGER: On a non-branded basis I don't see product quality as a stumbling block. The trade agreements can be simply made at a reference to the New Zealand product quality standards which are quite strong, and/or slight variations of them, and we've traded with many parties in the room on that basis; here is our product, you can buy at this and it will meet the New Zealand PQ standards, or a slight variation of that, and that's the warranty that's handed over and then the distributor takes that product and moves it on to their customers. For a non-branded basis where you are not using any marketing claims or marketing additives, I don't see that as an issue.

MS RAWLINGS: Thank you.

DR WALKER: Can I just ask a follow-up to Z particularly, I guess. You're saying you don't see a need for non-exclusivity, yet you're in support of TGP as potentially facilitating a spot market. I just wonder how you can have the spot market if the market is actually all long-term contracts.

MR JONES: Yeah, I think it's a good question. So if we go back to our submission, what we propose to augment those factors of competition in the wholesale market that, yes, you could limit the length of contracts for distributors. We also believe that the distributor market has - distributors have significant market power. So if they, at that point in time, wanted to negotiate our exclusivity, that would be a good time to do it and they'd have the ability to do that. That would also enable parties such as ourselves to understand the risk of that relationship in terms of us managing our commitment to supply chains in refining.

So if you put our submission together as a whole, TGP plus limiting the distributor supply term and the market power that distributors have, we think that would be a sufficient response and to go further we're uncertain about.

DR WALKER: So it's not that you don't see scope for non-exclusive contracts?

MR JONES: Yeah, yes, you're correct, in the context of the market power that distributors have and the rest of our submission.

DR WALKER: Okay, thanks.

MS RAWLINGS: I guess some form of mandated requirement might take the shape where a distributor who wants to negotiate out of exclusivity and wants to take some part supply from somewhere else raises it and feels an unequal level of bargaining power, I guess would be the best way to put it, that it would require a party like Z to entertain that supply, so it might be a percentage or it might be a volume requirement. I guess it's predicated, to some extent, on a finding or a suspicion that there is an unequal level of bargaining power based on what you said.

What I hear you saying is actually at the time that the contract comes for negotiation there's sufficient bargaining power sitting with distributors that they could ask for that and you would assess whether that was in their interest, in your interests and in the interest of the contract. But do you think that the ability to negotiate those sorts of terms is actually there at the moment?

MS BLACKETT: I just refer to our submissions, we've given some confidential examples of that which we can pick up again on Friday, but yes, I think we can provide you with evidence that it is.

DR SMALL: Just one more point on that. It's an interesting sort of chicken and egg issue here, I think, in that if one party, if one distributor and one major were to agree on a non-exclusive - so for example something like the dairy model where there was split supply - that would not be actually be able to work unless there was another major or at least another importer willing to do the same thing. Am I right on that? In other words there's no point splitting supply with one party if you can't fill up with someone else. Maybe Waitomo could comment on that.

MR ORMSBY: Yeah, hi, Jimmy here again from Waitomo. Yeah, that's one of the concerns we raised in our submissions, I do refer you to that. That, you know, there might not be an appetite to supply by that alternative supplier due to - obviously we're not a fully integrated oil company, so there could be other concerns or, you know, competitive tension that might preclude other oil companies from wanting to tender for our business.

MS RAWLINGS: I think in that context too, I just emphasise that I draw the dairy analogy just as a very loose one as an example of where that sort of provision applies, but it applies in very different circumstances and it applies to supply sort of arguably in the other direction; just wouldn't like people to misunderstand that.

MS MILLER: Could I make one - so along the lines of split supply, my understanding - and I could be wrong - but there are existing fuel customers in a commercial sense, so not resellers potentially, who do negotiate, do ask for or make decisions around split supply.

So I guess the hypothetical that we would have, and similar to Jimmy's point, you require more than one to offer non-exclusive supply, and I guess our view is that in an unbranded wholesale arrangement there should be very little difference between that sort of terms and conditions option compared with a commercial customer who is also buying fuel unbranded, obviously not for the purpose of reselling it in a retail market. But I guess our perspective would be if you're selling in a retail market unbranded with no claims or anything else, it shouldn't matter where you're selling that product to, those options should be available to you in the market.

And I guess that's a hypothetical because we haven't tested that. But again, I guess that would be the concern if those same options weren't available in that relationship. Understand branding relationships, own sites gets far more complicated, but in a genuine buying product from a gate for your own use somewhere, that's where I think the non-exclusivity would be an interesting test between those two markets.

MS RAWLINGS: Thanks for that.

MR JONES: Could I just - sorry, so there are commercial customers that do purchase off different wholesalers. Often it's because their place of business isn't suited, or the business they conduct is not suitable to being supplied out of one location or by one supplier. So it necessitates that's the best thing for them to do, so it's the nature of the business they conduct. I think that's where I see that multiple supplier situation being conducted.

MS RAWLINGS: Can I just see whether there are others in the room who have a view on this issue? No takers.

SESSION FIVE: Potential changes to Wholesale Supplier Contracts

MS RAWLINGS: We'll move on then to just talking a bit about Z's proposal that perhaps there could actually be an intervention to restrict supplier contracts with distributors to a term of seven years.

So picking out one of the types of terms we discussed. I just wanted to explore with you a little more what - I guess the immediate question is, what brings you to seven years as a suggestion and perhaps we can start there.

MS BLACKETT: Sure, so where we're coming at it from was a balance of the point you made, which is the freedom of contract and the minimum regulatory intervention. So we think anything shorter of that doesn't give the parties the mutuality. It would undermine the incentive that we certainly have where we make investments and provide corporate head office and that kind of assistance.

We don't see that as paying off in a shorter period than that, so we don't see ourselves as being able to put the kind of deal together that we currently would. And I think we're also hearing that the distributors value security and length of supply as well. And I think you need to be able to balance those things and not make too much of an intervention at this point of view. So that was what we picked as something that satisfies both those objectives.

I guess the other key point about us seeing that as being very key to be a Commission recommendation rather than something that we did, is obviously, particularly in a Caltex deal, but over our business we have often paid a lot for those long-term supply contracts and we have a responsibility to our shareholders not to give those away. So unless we had a kind of equal opportunity to compete for those - which we're up for - that isn't something that we could do without that coming as an industry recommendation.

MS RAWLINGS: And I take from just the earlier discussion that exclusivity would remain an option in those contracts, you're really just talking about the status quo, whatever that might be?

MS BLACKETT: We sort of think the status quo, so pick up the contracts you've got but put in a term length into the oil code, same as it's done in Australia. So you have your dispute resolution, a minimum fuel price, a term length and then you've got transparent price, an end of the contract, then you allow the market to take care of itself under there.

And that also assists you with, I know you've said in your draft report that you haven't done a cost-benefit analysis, but this one in the oil code has been done, it's been done in the two 8-yearly reviews, and it's a very low cost one so you can be assured on that basis it is a minimum intervention.

MS RAWLINGS: Yeah, I think from the point of view of the cost benefit analysis in any event it's not an exercise we're going to do.

MS BLACKETT: No, totally agree.

MS RAWLINGS: But it also doesn't restrict the nature of the recommendations that we will make, because as you all will know, that's an ultimate exercise for the decision-making about any recommendations and implementation of those. So I think really at this level it's more a question of looking at the likely feasibility of the options and their potential effects as options that could be picked up for further investigation, but that is a helpful point.

You've mentioned the Australian oil code alongside the provision for terminal gate pricing. It doesn't extend significantly in the case of distribution agreements, as I understand it, to mandatory terms, for example, of the nature that we were just talking about or dealing with any other kinds of terms, and I'll talk about its application to the reseller arrangements shortly.

There are other kinds of codes that have been used overseas which do contain much stronger mandatory requirements and those are focused around conduct. So I'm thinking about things like supermarket codes in various places. And codes, of course, can be voluntary or mandatory, and the ACCC has an active role in codes.

We don't have a view at the moment on any of that, but I just did want to take the opportunity to test views of the room on whether a code might be an appropriate vehicle for looking at things like the terms - Z's obviously expressed a view on that - or any other terms that might be appropriately dealt with. You know, do people have a view on whether a code would be a correct vehicle for that or any other ways that these things could be implemented?

MS BLACKETT: We think a code is useful in terms of providing a clear and simple New Zealand solution which is industry-wide. We think the market is workably competitive, obviously we don't necessarily share your view on that; but we think what a code provides is transparency of that competition.

And one of the things that the ACCC uses it for, as you know, is an ongoing marketing mechanism which provides - I think theirs is 8-yearly, but whatever it is it provides a mechanism for Government, regulators and customers to have a look and make sure that it's working, and it also - in terms of really good regulatory principles, that allows you to start light and then have a review provision in there. And minimum regulatory intervention should be the principle at this point, but you have a review mechanism there if time goes on, which, as I was saying before about the TGP, can be very effective just because it exists.

MS RAWLINGS: Just to sort of close that train of thought, do you have a view on how that might be best implemented - so even if you just take your proposal for looking at, and monitoring, I guess there would be some monitoring associated with the TGP regime and the term length - whether that would be done, for example, through Ministry or through a specialist regulator, or I guess us I should include in that.

MS BLACKETT: I don't have a view other than that's over to you and over to MBIE to sort out, but I think we'd stick with whatever the minimum model is at this point without creating a whole new regulator, particularly in a declining industry. Without doing a cost-benefit analysis, a new regulator doesn't feel - it feels like a lot, but it seems to me if you have a simple code and a simple monitoring regime, you've got minimum regulatory but you've got re-entry if you need it.

MS RAWLINGS: Thanks for that. So I know BP's views are different on the need for any sort of intervention or any kind of intervention potentially, but can I just ask whether you've got any comment on that latter question, that if there was to be some form, say modeled on Z's proposal or otherwise, whether you've given any thought to, or how you might see that best implemented in the industry?

MS BOFFA: So just clarify, when you say what Z have suggested, are you talking about their view of a code or are you talking about the view of the term?

MS RAWLINGS: If you had something like a mandatory maximum term or requirements relating to any other contractual provisions for distributors, how that might be best implemented.

MS BOFFA: Our view, if that is where we end, that a code is the best way to do that and ensuring that all participants in the market are required to follow that code. The caveat being recognising there are some very small players, so anything overly onerous on them could be detrimental, which gets me back to my point of unintended consequences and ensuring that those are fully assessed before we move forward.

MS RAWLINGS: Is there an appetite for discussion of, you know, to determine a voluntary code? Some processes provide for the development of voluntary codes followed by mandatory codes, but, you know, is there a preference in the room on some of that?

MR BODGER: You've achieved the miracle of getting most of the oil industry in New Zealand in the one room and I think people have even said the word price. Chances of us actually holding hands and agreeing something would be very little and - sorry from the renegade; don't like. I mean often we'll sit there and say the big guys are doing that, we're over here. So got to be honest, I don't see a voluntary code happening or being subscribed to.

MS BLACKETT: I would totally agree with that and we would all, I think, be gun shy too when we're thinking about terms and conditions, we don't have a capability of agreeing that without a regulatory forum.

MR BODGER: Do we want to be consulted? Yes, so yes, it gets painful, you've got to do it individually and go around and around the houses, I'm sorry, from our view.

MS RAWLINGS: Any other views on that?

MS BOFFA: I think we'd be somewhat aligned. Just listening over the last day and a half, I don't think we've agreed on much, so we need some help with that.

MS RAWLINGS: An agreement that wouldn't be required.

MR BODGER: We all agreed we can ring Mark.

MS RAWLINGS: Waitomo, do you have a view on this sort of mechanism?

MR ORMSBY: No, I think something that was mandated would be good; give us, from our perspective, not being fully integrated, some protection going forward. Because, you know, at the end of the day we're dealing with not only our suppliers but our competitors, so - and our business now is, you know, significant enough and significant enough investment that we need your help to give us some protection so we can keep on investing and we can keep on, you know, bringing Kiwis competitive priced fuel. Thank you.

SESSION FIVE: Dealer Arrangements

MS RAWLINGS: Thanks for that. Is there anything else on that material? I think if we move on from there to just talking more about dealer arrangements, because I think this distinction probably is important and, I guess, a part of this is testing whether we are starting to draw the right distinctions. But again, the Australian code, as I understand it, has another set of provisions that we haven't really talked about, which is not mandated contract provisions so much, but it's more like an information disclosure regime and a set of requirements for the provision of information about various things to dealers who may be looking to enter into arrangements so that it's very clear to them what the information is that they need to know and that it's all provided for them.

I'm just interested in comments in relation to dealer contracts and, you know, acknowledging that there may be a more complex situation based on our draft view, but also the comments we've had today from Gull and Waitomo, in relation to relationship-specific investment. That whether nevertheless there is any value seen in that kind of information disclosure regime for assisting the relationships with independently owned and operated but branded sites. Again if I start with Z.

MS BLACKETT: We would not be in support of that, primarily because, as we've said before, that we see that as a channel to market which, if it was company-owned/company-operated, it doesn't have a wholesale element to it, and you end up just with an incentive to bring it back into that kind of a model and we don't think there's a problem there to be solved.

And we think maintaining the distinction between - in terms of opening up a wholesale market, distinction between wholesalers and, sorry, resellers and distributors and retailers is a really important one. So we would see that as somewhat overkill and possibly having unintended consequences.

MS RAWLINGS: Does BP have a view on that that you want to share?

MS BOFFA: We haven't actually looked at it, to be fair, so we'll look at it and tell you on Friday. We're aware of it but we haven't actually formed a view on it.

MS RAWLINGS: Looks like you might have a view.

MR BODGER: We deal with a wide range of independent service station proprietors who have our brand. Some of those are a very simple business to deal with. They will own tanks, pumps, equipment, their real estate and they have a good reputation in the industry, have been in it for a long time. It is a very simple contract to implement.

Others are saying "Hey I want to do this, I want to do this, I want investment here, I want to do this and I want to do that", and you're talking hundreds of thousands of dollars involved with that business. I wouldn't want a code to limit the ability of that individual, and I wouldn't - you know, if you put a term on something and the site is selling X million litres a year then the revenue for anybody around this table is known, so therefore you're not going to - you may be limited in what you can assist that independent person doing. If the time is there and there's an agreement to go and do that then it can happen; if not then you're stifling that business, which doesn't affect us but it affects that person.

MS RAWLINGS: Can I just go to the MTA on this particular issue of really the dealer mood around whether they're getting the kind of information that they need to make informed decisions, which is essentially a lot of the driver, I think, behind these information disclosure requirements in the Australian code. Do you have a view on that particular issue?

MR BAGGOTT: We don't have too much detailed knowledge of the oil code in that respect, but certainly what we're seeing is dealers or independents reviewing contracts, we certainly advise seeking legal advice; whether they understand that legal advice is probably questionable. But, yeah, we think that having some sort of code would certainly help in terms of getting the right deal at the right time.

MS RAWLINGS: And do you think that would need to go though to the nature of the terms that are being entered into? I'm going to come to your unfair contract terms submission in due course, but does it need to relate to the actual terms that are being offered and provided, or would it be sufficient to just have a body of information that we were ensuring that dealers were being provided when they entered into these arrangements?

MR BAGGOTT: Either, or both, absolutely.

MS RAWLINGS: We might move on then from that particular requirement, if there's no other comment on it, and I think we're just about at lunchtime, but we might just press on with this last piece and then we might just about be finished this session, I think.

SESSION FIVE: Extension of UCT Provisions

MS RAWLINGS: So the other option that I flagged yesterday, which is really just thought we'd take the opportunity in this forum to discuss, is the further extension of the UCT provisions. And I really float that because MTA has advocated an extension of that, and I see in response to yesterday's announcement advocated an extension of that.

So I wonder, rather than summarising it myself, it might be easiest to start with a bit of a summary on your view on how that might provide an additional tool and then we could move into further discussion from there.

MR BAGGOTT: I might defer to my learned colleague who is more involved in that process.

MR EPPS: Thank you. For the record, Greig Epps, Motor Trade Association. I think what we see is the work that the Commission's doing here hopefully meshing with the work that the Ministry's been doing in other places on, say, the UCT and the unconscionable conduct. Obviously what's been proposed under the unfair business practices with value cap on the unfair contract terms, it's not going to affect us here because the value of the contracts we're talking about here are well beyond 250,000.

But it is the unconscionable conduct piece that we're hoping would be able to stimulate some better conversation between the larger parties and the smaller parties. What we see the unconscionable conduct provisions doing is at least saying, you know, we're not in a take it or leave it situation any more. Information disclosure would be really good so that dealers understand what they're getting into, but also the good faith provisions in the UCT and the unconscionable conduct part of the proposal from the Ministry, that should also bring the parties to the table and have a better conversation about what deals they're getting into in that space.

And so as I say, I would see the work that's happening here as well meshing with that so that they can work together and produce a fair environment for small businesses to try and get into these conversations.

MS RAWLINGS: Thank you. That's a helpful clarification. I think we had sort of, as I mentioned yesterday, parked this issue because the contract values are higher than what's contemplated has actually been covered by the provision.

So the other relevance that we thought might lie with the approach taken in relation to unfair contract terms and standard form consumer contracts, which will now apply if this goes forward to smaller business contracts as well, is the provision of a list of grey terms in that provision, or attached to that provision of the Fair Trading Act.

So for those unfamiliar with that, the shape of that piece of law is to say that a standard form contract shouldn't include terms of a particular type, and then there is a list of those terms, that provide a starting point for a discussion then about whether the term is nevertheless fair because it can be justified on a commercial basis.

And so it's just an interesting model again if we go back to a code concept, if there was an extension of contract terms that were addressed by some form of regulatory solution that went beyond the simple term or length of the contract, whether another approach, rather than mandated contractual terms which might be quite prescriptive, would be a sort of grey list of the kinds of terms that might give rise to concern but still leaving some freedom for parties to justify those terms on the basis of their contractual needs and their business needs.

So I just thought it's useful just to raise that today, and I'm not sure if you have a view on that as a broader proposition from the MTA, but perhaps we'll start there and then just test any other views.

MR EPPS: Yeah, I think as I said, looking at something like disclosure around terms or setting some parameters on what sort of terms might be less acceptable than others would be useful. That goes to helping the small business owners when they are having these conversations understanding whether or not they're perhaps being led into an area that they don't need to be in the arrangements.

You know, as a business trade association normally we'd be the ones also talking about minimising the regulation, but in this space we are trying to talk about small business owners who usually get into what they're doing because of a passion for, in the service station space, cars, customers, people moving around. They're not in there so much because they're technically commercially experts.

So what we'd like to see is an environment where these parties can come together and meet as close to equals as possible. I think the one issue with New Zealand law around entering into contracts and competition is a sense that if you've decided to get into business then, you know, you're left to your own devices in terms of seeking legal advice, or getting into contracts.

But these are small businesses, they don't have the time to review all their contracts, they don't have the resources to engage rooms full of lawyers and they, you know, they need as much help as they can to be able to get into this business and do something they love than beyond just relying on the fact that you can take it to court; well they can't, they don't have those resources.

So again, when it comes to what we're doing here, more broadly it is around providing those small businesses with options, advice, information. And I have to say, one of the things we've been saying around the unfair business practices is making sure that you, as a Commission, and other regulators, are properly resourced to actually take some action and look into things. Because, as I said, a small business is not going to be able to take any legal action themselves, so there is a need for them to look to the regulator to actually take some steps and whack the back of some hands every so often to show the industry where the regulator thinks things should be going.

MS RAWLINGS: Thanks for that. I think what it probably highlights is again the different groups, potentially, of dealers that we're dealing with. So I think it's really interesting and important to hear the perspective, but I will just open the floor to comment on this as a proposition.

MS BLACKETT: We would just urge you to be really clear that there's a problem, particularly in terms of workable competition, in the wholesale market here. The things that I would point to is there's a counter to that which is, particularly in the case of the majors, we are providing small business opportunities, not just the mums and dads, but a key part of our retail network is new New Zealanders, and that's something, you know, that you wouldn't want to walk past.

In the case of our Caltex network in particular, they negotiate collectively so they do have some power in terms of their contracting. I think we've provided some confidential examples of that. But certainly we've recently entered into a retail partnership agreement - with a key word there being "partnership" - which was the result of 12 months of heavy bargaining between the two of us, and we have similar other results around that. So I think you want to make really sure that there is a competition problem there before you could be assuming that those terms apply, and I would also emphasise the point that it would be hard to think of any of those businesses that operate below the 250,000 level.

MS RAWLINGS: Yeah, I think as a proposition it's more the concept of either a contractual information disclosure-type regime like under the Australian code, or, just returning really to the discussion, it could equally apply to distributors or dealers, of something like an indicative grey list type list of terms that could be problematic that could then be subject to further discussion through the regulatory regime, whatever that might be. Any comment that you'd like to make?

MS BOFFA: So I guess I just want to put into the room that I think we need to be really clear what problem we're trying to solve here with this, and in our experience these are not insignificant investments these independent operators are making when they're deciding to go in and have a dealer site. I'd be really concerned if we had an operator out there who wasn't commercially savvy when, to build a new site is hundreds of thousands, if not millions of dollars for some of these guys, in terms of tank installations and buildings and working capital on top of that.

So I think we need to be really clear about the type of operator we're talking about and in my experience there's a lot of legal advice on both sides being given around these contracts, so yeah.

MS RAWLINGS: Thank you. Anyone else on those issues? The other thing too, of course, is that in relation to some of these issues we posed a few recommendations but also welcomed a bit of, you know, innovative thinking on other things that might be posited too.

I'm conscious of the time, so I think we'll probably take a break and then come back just for a short session on some of that, or do you want to continue on. Lunch was scheduled for 12.30 but I think we don't have much longer to go. We could just push through that and delay lunch on the basis that then we might be done.

I think based on that short discussion we've probably covered all of the options and issues that we wanted to discuss and, I think I said when I started this session, there were a number of non-contractual issues that were discussed in the draft report in relation to wholesale arrangements, so just to tidy that away to do with the location of sites and fuel cards and their effects and things like that.

But we're reasonably satisfied that the submissions are quite clear on this point. It doesn't mean there's agreement, in fact there's not, but we think people's positions are quite clear. But I would just like to check that people didn't have something more they wanted to contribute on those topics, or also on any other sort of options or recommendations that you'd like us to be considering.

And then if there's not then we probably can draw things to a close early I think today. So let me just canvass that first to make sure that we've covered everything that parties wanted to, or expected that we would be discussing. Nothing else to raise?

Okay, well we also have, as we've mentioned through the days, a series of confidential sessions over the next couple of days that are scheduled, but obviously everybody is here and we too are here, so if you have got a scheduled session in the next couple of days which you'd rather bring forward into this afternoon then please do hang about and we could have a discussion about that and perhaps use some of the time this afternoon.

But if I put that to one side for the minute, let me just thank everybody very much for your time over the last day and a half. I think it has been great to have everybody in the room. If it's a novel and high achievement we're happy to accept the praise for that. But it has been incredibly helpful. I think there have been areas of some misunderstanding, some cross-communication which is just much more effectively and efficiently resolved with everybody in one view and hearing a diversity of view in one go rather than necessarily talking to parties one after another is incredibly valuable to us, and I hope that it has also been of value to all of you.

So let me just extend our thanks, and in terms of our process from this point we've obviously got some more discussions to have this week, but there'll also, no doubt, be a few follow-ups that staff will conduct in the next few weeks as well as we work towards the final of the report which will be with you definitely on the 5th of December if not before. And we look forward to bringing that to a close and then seeing where that takes us.

MS RUXTON: The only thing I'd say is if there was people here that wanted to hold their confidential sessions early, please come and talk to me. We can follow-up on that and see what we can do. Thank you very much.

MS RAWLINGS: Thank you very much everybody and enjoy your afternoons somewhere other than in this room.

Day 2 hearing concluded at 12.40 pm