

Submission by BP Oil New Zealand Limited to the Commerce Commission on Z Energy Limited's Clearance Application to Acquire Chevron New Zealand Limited

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Proposed Acquisition of Chevron New Zealand Limited by Z Energy Limited

Introduction

1. We refer to the notice by Z Energy Limited (**Z**) dated 30 June 2015 seeking clearance from the Commerce Commission to acquire Chevron New Zealand Limited (**Chevron**), and the Commission's statement of preliminary issues in relation to that notice. BP Oil New Zealand Limited (**BP**) welcomes the opportunity to comment on Z's notice.
2. In summary, BP has concerns that the proposed acquisition, if approved, would result in Z having:
 - 2.1 around 50% market share in the national markets for the commercial supply of petrol, diesel and Jet fuel; and
 - 2.2 access to 100% of the local manufacturing capacity for bitumen in NZ, as well as a very high market share of commercial sales of bitumen.
3. It is BP's view that a single company with such a significant market share could seek to exercise market power in future, potentially increasing costs to its competitors in the areas of distribution and supply, and ultimately raising prices to consumers.
4. To illustrate our concerns, we point to four areas below in particular which we recommend the Commission carefully reviews when assessing the impact of the proposed acquisition. These areas relate to:
 - 4.1 retail supply;
 - 4.2 commercial supply of petrol and diesel – in particular supply through Truckstops and supply to distributors;
 - 4.3 commercial supply and national manufacture of bitumen; and
 - 4.4 access to terminal storage facilities at Nelson and Timaru.
5. We note these are only some of the potential areas of impact that BP believes the Commission should consider in assessing the clearance application from Z. BP would be happy to explore or discuss other areas, solutions or outcomes as the Commission progresses its review.
6. Please note that the version of our submission marked "Confidential" contains information that is confidential and commercially sensitive to BP. Such information is identified in that submission in square brackets with yellow shading, and has been redacted from the Public version of our submission. To the extent that any third party requests a copy of the confidential version of our submission, then BP requests that the Commission advises us of the same and gives us a chance to provide our views on that request prior to any disclosure taking place.

Retail Supply

7. BP believes that a single player controlling the wholesale supply (and setting the wholesale price) to around 50% of the market, and with a wide range of loyalty options, would have the ability to use its size and scale to exercise market power to the detriment of its partners (i.e. dealers) and consumers.
8. Z has asserted in its clearance application that “... *the geographic positioning of the parties’ retail networks is largely complementary. In particular there are only five instances where an alternative would not remain within a 5km radius ...*” (refer to paragraph 276). However, based on our analysis and understanding of the local retail supply markets, we believe that competition issues may well arise in a greater number of geographic areas than just the sites identified by Z at Appendix Q of its clearance application.
9. Using a radius around Z stations of both 5km and 2km¹, [**REDACTED**] (as listed in **Appendix A**). We recommend that the Commission investigates the level of competition that would apply in each of these further local areas should the acquisition proceed. If the Commission has concerns that competition would be substantially lessened in these local areas, then Z should be required to divest stations in these locations.
10. As a separate point, in paragraph 244 of its clearance application, Z has stated that “*Brand switching for any retailer is relatively simple and low cost if they own the fuelling system and are not subject to first right of refusal terms*”. [**REDACTED**]

[The approval of this acquisition will make switching even harder to achieve on the basis that a major switching option is removed.

Commercial Supply of Petrol & Diesel

11. As with Retail Supply (detailed above), we hold the view that a single player setting the wholesale price to close to 50% of the market for the commercial supply of petrol and diesel would have the ability to use its size and scale to exercise market power to the detriment of its partners (i.e. distributors) and customers. In particular we have concerns about the ability for Z to exercise market power in relation to supply through truckstops and supply to distributors.

¹ While Z submits at paragraph 224 of its clearance application that a radius of 5km is appropriate when assessing the geographic scope of the retail supply markets, we believe it is important to look at both the 5km and 2km radii impacts.

Supply Through Truckstops

12. Commercial on-road customers choose a supplier/truckstop network based on price and network location. Should the acquisition be approved in its current form, the Z/Chevron truckstop network will not be able to be matched by its competitors.
13. Using a radius around Z Truckstops of both 5km and 2km, [**REDACTED**] (as listed in **Appendix B**). The concentration of one company's Truckstops on key trucking routes or at key commercial locations may reduce competitive activity.
14. We recommend that the Commission investigate the level of competition that would apply in these Truckstop sites should the acquisition proceed, so it can assess whether Z should be required to divest Truckstops in these sites.

Supply to Distributors

15. At paragraph 204 of its clearance application, Z states that “*The reduction of supply alternatives for these distributors from four to three will not result in any lessening of competition ...*”.
16. BP's view is that it would likely be difficult for the current distributors supplied by Z and Chevron to switch suppliers post-acquisition. This is because contracts are in place (we presume fixed term and evergreen) and there are ties established via technology (card acceptance, etc), transportation contracts and some distributors owning and operating Caltex retail sites. Under the proposed acquisition Z would control supply to [REDACTED] Distributor market (as listed in **Appendix C**).

Manufacture & Commercial Supply of Bitumen

17. Following the acquisition, Z will have access to 100% of the local manufacturing capacity for bitumen in NZ, as well as a very high market share of commercial sales of bitumen. BP considers that this would have the effect of substantially lessening competition in the national market for the commercial supply of bitumen.
18. Z and Chevron are currently the only two producers of bitumen from Refining NZ. [**REDACTED**]
Bitumen customers will not be able to counterbalance Z's market power by importing bitumen as the cost will be prohibitive.

Access to Terminal Storage Facilities – Nelson and Timaru

19. Post-acquisition Z will control both the Nelson and Timaru oil infrastructure where they will have almost 100% of the tanks and 100% of the truck loading gantries.
20. BP accepts that trucking alternatives do exist for the Timaru supply envelope from both Lyttelton and Dunedin. However the trucking alternative for the Nelson supply envelope

(from Lyttelton) is even more expensive and, if required, would raise costs for BP to supply the Nelson area on an ongoing basis.

- 21.** BP is concerned that Z could use its market position particularly in Nelson to raise supply costs for its competitors. We recommend that the Commission examines further what options exist to ensure Z provides competitive terminal access.
- 22.** Please let us know if you have any questions about this submission. We would be happy to meet with the Commission and discuss the issues further if that would assist.

Site information is gathered through publicly available sources.

Appendix A

[REDACTED]

Appendix B

[REDACTED]

Appendix C

[REDACTED]