

Anthony Stewart
Senior Investigator Competition Branch
Commerce Commission, Te Komihana Tauhokohoko
PO Box 2351
Wellington NZ 6140

July 31 2015

Dear Anthony,

Re: Z Energy's Proposed Acquisition of Chevron NZ

On behalf of Mobil Oil New Zealand (Mobil), I would like to offer our views in relation to the proposed purchase of Chevron NZ shares by Z Energy ("Z"), as input to the Commerce Commission review currently underway. In general, we have concerns that the proposed acquisition will result in one company having approximately 50 percent market share of ground/aviation fuels and 100 percent of bitumen supply, with a significant increase in midstream supply and distribution assets ownerships – giving them significant market power to exercise to the potential detriment of competition and consumers.

In the course of our comments, we have highlighted some possible options for the Commission to explore. These are simply examples as we do recognize there are many possible alternates. We are happy to explore with you alternates, solutions, and outcomes you identify, as you progress your review.

1. Concentration of Arrangements with Discount Programs within Z

There are currently four prominent independent discount / loyalty programs in the market (excluding proprietary under-canopy discounting arrangements), that is Foodstuffs discount fuels docket (DFD), Countdown DFD, Flybuys and AA Smartfuel (AASF).

Each market retail participant participates in one or more of these programs:

- Z: Accepts Countdown DFDs, Offers Flybuys loyalty points
- Caltex: Offers fuel discount to AASF members
- BP: Offers fuel discount to AASF members
- Mobil: Accepts Foodstuffs DFDs

Post-acquisition, Z will have agreements with three of the four current programs. It is not known whether Z will maintain agreements with all three, but if so, this would effectively concentrate the majority of discount programs within a single large market player – raising concerns that:

- Z, with increased bargaining power, would potentially be able to exclude other market players from existing programs, and

Note: All information in this letter is based on ExxonMobil analysis, knowledge and observations or on publicly available information.

- with interests in and possible inside knowledge of three programs, they could exert influence on the program and be able ‘optimize’ their overall offer to the end-consumer
 - As an example: If Z were planning a Flybuys promotion over a holiday weekend, they might choose to not carry out a AASF promotion, which historically would have been carried out over the same period
 - Another example would be Z pre-empting competitor promotions with AASF and then launching a counter promotion in turn.

Z suggests (paragraph 286) that it will have “no control over the terms on which the AA Smarfuel scheme is operated”. However, we challenge this claim on the basis that:

- their network size means they are in a position to negotiate exclusivity as well as discount sharing rates with AASF
- they would have some influence in (1) the timing of promotions, (2) promotional discount amounts, and (3) the duration of promotions as indicated in the examples above; this is because they would need notice to implement the promotions at their sites in a manner that is satisfactory to both themselves and the program owner

In short, their involvement with multiple independent programs gives them an undue competitive advantage over others in the industry, which may deliver such an advantage that they could unilaterally influence the market, potentially substantial lessening competition and reducing choices to consumers.

2. Discount Fuel Dockets (DFD) - Participating Agreements with Caltex and Challenge Dealers

As referenced in paragraph 289 of the Z Energy application, Mobil currently has DFD participating agreements with 19 Chevron dealers (17 Caltex, 2 Challenge). These agreements allow Foodstuffs customers to enjoy fuels savings in geographic areas where there is a Foodstuffs supermarket but no nearby Mobil site for customers to redeem their docket. A list of the Chevron sites that accept DFDs is included in Appendix A. The current agreements will run for approximately [**REDACTED**].

[**REDACTED**].

[**REDACTED**].

Mobil proposes that the Commerce Commission ensures that Z Energy [**REDACTED**].

Note: All information in this letter is based on ExxonMobil analysis, knowledge and observations or on publicly available information.

3. Reduction of Brand Alternatives

In paragraph 244 of Z's application, Z states that "brand-switching for any retailer is relatively simple and low-cost if they own the fuelling system and are not subject to right of first refusal terms" and that "branding is usually maintained by the oil company, so that all that may be required is a change in livery". The sensitivity is not the simplicity and cost of brand-switching but the alternatives in terms of available suppliers, and the significant movement that would be required to change the competitive structure when one party (the Z- Chevron entity) has contracted such a high portion of the market.

This brings us to another point raised by Z (refer paragraph 297) where it states that "barriers to retail-only entry are relatively low". Again, we believe this is not really the point. A new entrant will come into a market only if there is sufficient scale to leverage in a timely manner, and so justify the investment*. If a large portion of the market is contracted to one supplier, it leaves a relatively small portion of the market for a new competitor to target. Our observation is that in a mature market, such as NZ, there is more likely to be inter-brand changing by customers (as to whether that has a significant competitive impact, see our previous paragraph) rather than a new entrant trying to establish itself in a saturated market.

We suggest that a big picture intensive analysis is required to understand the potential adverse impact to consumer choices resulting from the market concentration by one supplier.

4. Truck-Stop competitiveness and the commercial market

Z and Chevron currently have the largest truck stop networks in New Zealand, post-acquisition, the Z truck stop network of 165 will be by far the largest (with BP the next largest with 54 locations.) The newly combined network would give Z more influence and bargaining power when dealing with commercial fleet customers (especially large-truck companies) and the removal of one key major retailer effectively reduces the refuelling options to large-truck companies from five to four.

It would be in the interest of commercial fleet customers for the Commerce Commission to closely review the large truck stop network to find areas on key transport routes where a Z and Caltex site might overlap, to ensure that key transport routes still offer large-truck companies the choice of multiple suppliers for refuelling.

5. Concentration of Terminal ownership at Nelson and Timaru

Post-acquisition, Z will have 100% ownership of all terminals in Nelson and Timaru, that is, Z would have a monopoly hold on strategic assets which could lessen competition in these areas. When Z purchased the Shell business in 2012, throughput fees to Mobil were raised at their terminals by up to [REDACTED]. We are concerned that we would see similar increases at the corresponding Chevron terminals at Nelson and Timaru, effectively raising supply costs for Z's competitors utilising these terminals with no nearby alternate available. As these costs pass through the supply chain, the

*Footnote: This holds true in other parts of the market. For example, if there are not sufficient customers and opportunities for a new entrant to justify significant capital expense on new tanks, it is unlikely to happen. So existing customers will make do with what they have. If existing resources become scant /expensive, it may still not be economic for a new entrant as it takes time to establish. And within the same time the existing provider may be able to reduce the market pressure in a way which makes a new entrant opportunity less attractive and viable.

Note: All information in this letter is based on ExxonMobil analysis, knowledge and observations or on publicly available information.

possible consequence of this is to limit the ability of oil companies to offer realistic, competitive offerings in the marketplace.

Mobil does not advocate for prices to be fixed or controlled in any way, but it is important for the Commerce Commission to appreciate that such an eventuality could contribute to increased fuel prices.

We recommend that the Commerce Commission explore options to ensure Z provides open and competitive terminal access in these locations.

6. Exclusion from collaborative crude import arrangements

Currently, there are four ‘users’ (as opposed to shareholders) of RNZ: Mobil, BP, Chevron and Z, with each user responsible for importing crude to feed the refinery’s needs. There are varying approaches at present, including a joint purchase arrangement by Z and BP. If Chevron were to be consolidated into this arrangement, it would cover 75% of the crude requirements, and [

REDACTED

].

Additional Clarifications

For completeness, we would like to correct some additional misrepresentations in the Z document, relating to the Mobil business.

Para 38 : It is incorrect to state that Mobil sources crude oil primarily from ExxonMobil upstream global operations – [**REDACTED**].

Para 42 : This characterization of midstream is misleading. The refinery and RAP are owned by the RNZ. RNZ is a publicly listed company. Processing agreements exist between the refinery and the users of the refinery. All of these agreements are bilateral and separately negotiated. There is no other “arrangement” that operates between industry for the refinery or the RAP.

Para 59.2 : For clarity’s sake only the refinery and RAP access is governed by market share – everything else is governed by ownership.

Para 215 : We note that large haulage operators do not typically have their own bulk fuel tank facilities, but leverage access to a truck stop network. The comment by Z (refer paragraph 215) may refer to the fact that in some cases, the truck stop facility maybe be located on a Transport Operator’s site.

Note: All information in this letter is based on ExxonMobil analysis, knowledge and observations or on publicly available information.

In closing, I would like to thank you for the opportunity to comment. We would be happy to meet to discuss these issues in more detail and to answer any questions you may have.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'A. McNaught', with a large, stylized flourish extending to the right.

Andrew McNaught
Lead Country Manager

Note: All information in this letter is based on ExxonMobil analysis, knowledge and observations or on publicly available information.

Appendix A

Site	MOSO	Region 1	Region 2	Address	Post Cod
Caltex Glover Road	Dealer	NI	Hawera	137 Glover Road	4610
Caltex Bridge Street	Dealer	NI	Opotiki	79 Bridge Street	3162
Caltex Whakatane	Dealer	NI	Whakatane	149 Commerce Street	3158
Caltex Nga Puhi Service Station	Dealer	NI	Kaikohe	19 Broadway	405
Caltex Victoria Avenue	Dealer	NI	Wanganui	241 Victoria Avenue	4500
Caltex Stratford	Dealer	NI	Stratford	90 Broadway Stratford West	4332
Caltex Chartwell	Dealer	NI	Hamilton	145 Comries Rd	3210
Caltex Glenbrook	Dealer	NI	Waiuku	410 Glenbrook Waiuku Road	
Caltex Kerikeri	Dealer	NI	Kerikeri	Cnr Hobson & Kerikeri Road	
Challenge Waitara	Dealer	NI	Waitara	Cnr McLean & Browne Sts	
Caltex Washdyke	Dealer	SI	Washdyke	184 Hilton Highway	7910
Caltex Rangiora	Dealer	SI	Rangiora	Cnr of King and High Street / 300 High Street	7400
Caltex Oamaru	Dealer	SI	Oamaru	457A Thames Street	9400
Caltex Balclutha	Dealer	SI	Balclutha	Cnr James & Elizabeth Streets	9240
Challenge Lincoln	Dealer	SI	Lincoln	23 Gerald Street	7608
Caltex Wanaka	Dealer	SI	Wanaka	19 Ardmore Street	9305
Caltex Kaiapoi	Dealer	SI	Kaipoi	169 Williams Street	7630
Caltex Bishopdale	Dealer	SI	Christchurch	318 Harewood Rd	
Caltex Basin Reserve	Dealer	NI	Newtown	28 Adelaide Road	6021
Caltex Feilding	Dealer	NI	Feilding	114 South Street	

Note: All information in this letter is based on ExxonMobil analysis, knowledge and observations or on publicly available information.