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By email: susan.brown@comcom.govt.nz;

Dear Susan

**MOBIL OIL PROPOSED ACQUSITION OF Z ENERGY'S JV OWNERSHIP INTERESTS**

Thank you for providing us with an opportunity to submit on the proposed acquisition by Mobil Oil of Z Energy's ownership interests in the Auckland Airport Joint User Hydrant Installation (JUHI) and the Wiri to Auckland pipeline (the WAP), (the **proposed acquisitions**). This response supplements the comments on our call of 25 May 2022.

**Summary**

Air New Zealand has significant concerns that the proposed acquisitions will lead to a substantial lessening of competition. The WAP and JUHI infrastructure (the **Fuel Infrastructure)** are essential to the supply of jet fuel in Auckland. Without ownership rights in that Fuel Infrastructure, there is significant risk that Z will be foreclosed from supplying jet fuel in Auckland. A reduction of three competitors down to two will lead to a significant increase in jet fuel prices for Air New Zealand. Air New Zealand would not have sufficient countervailing power post the acquisitions to mitigate this reduction in competition to constrain jet fuel prices.

Air New Zealand considers there is significant uncertainty that Mobil will be able to implement the open access model proposed in its application. Even if it was implemented, Air New Zealand does not believe it will lead to viable long-term competition without other structural changes to the market and significant Commerce Commission oversight. Air New Zealand agrees that reform in the jet fuel supply market is required to facilitate new entry and increase investment in infrastructure, but it does not believe that the proposed acquisitions are the appropriate mechanism to achieve that reform. Air New Zealand would support a Commission led review or inquiry of the current ownership model and its impact on competition with proper consultation and consideration of the key issues.

**1. Background**

***Competitive supply of Jet fuel at Auckland is critical to Air NZ network and operations***

Auckland Airport is central to Air New Zealand's network. Every long-haul route which Air New Zealand operates out of Auckland Airport. In addition, a significant proportion of our remaining international flights (i.e., our trans – Tasman and Pacific Islands services) as well as our domestic operation operates to, from or through Auckland.

The importance of Auckland as a "hub" in Air New Zealand's network strategy is reflected in the proportion of Air New Zealand's fuel requirements which are uplifted from Auckland via the Fuel Infrastructure: [redacted]

[redacted]

Maintaining a competitive supply of jet fuel at Auckland is not only critical to support Air New Zealand's network strategy and operations, it also has significant implications for Air New Zealand's financial performance and competitive proposition. Jet fuel represents approximately [redacted] of our operating costs, [redacted]. A significant increase in fuel costs will ultimately put upward pressure on the fare levels that Air New Zealand can offer to its customers.

***Air NZ relies on competition between Mobil, Z and BP***

Z, Mobil and BP are the only suppliers of Jet fuel to Air New Zealand in New Zealand. Z currently holds the largest share of Air New Zealand's fuel supply, followed by BP and then Mobil.

To meet its fuel requirements, Air New Zealand will periodically run competitive tenders. While Air New Zealand will award a significant proportion of its fuel volume requirements to one of the three suppliers based on price, it distributes volume across each of the suppliers to try and maintain competitive tension between the suppliers where possible.

Historically, Air New Zealand has switched volumes between Z, BP and Mobil and, as far as possible, it leverages the competition between these three participants to secure the best pricing outcome from these tenders. [redacted]

2. **The proposed acquisitions will substantially lessen competition**

Air New Zealand has significant concerns that the proposed acquisitions will lead to a substantial lessening of competition because there is a very real risk that Z would be foreclosed from the supply of jet fuel at Auckland post-acquisitions. Air New Zealand's ability to exhibit any countervailing power will be significantly weakened with only two suppliers remaining in the market. This will lead to a material increase in the rates that Air New Zealand pays for jet fuel in New Zealand.

***Post-acquisition, Z would be foreclosed from the supply of jet fuel at Auckland***

As the Commission is aware, only BP, Z and Mobil, as joint owners of the Fuel Infrastructure, are able to access that infrastructure to supply jet fuel to Auckland.

Contrary to what Mobil states in its application, access to the Fuel Infrastructure is essential to viably compete in the supply of Jet Fuel at Auckland. It is not commercially feasible for a supplier to bypass the Fuel Infrastructure to supply meaningful volumes of jet fuel at Auckland. This would involve either trucking fuel from Marsden Point or from the Wiri Terminal to the Auckland JUHI. As evidenced by the Marsden Point fuel pipeline crisis in 2017, a road tanker supply chain is fundamentally infeasible as a BAU alternative to the Fuel Infrastructure. The roading infrastructure around the Airport precinct cannot support the supply of the volume of fuel required to meet Air New Zealand's fuel requirements [redacted]. During the crisis, approximately [redacted] of Air New Zealand's fuel requirements were supplied by road and this came at significant additional cost to Air New Zealand.

Further, road tanking introduces substantial operational risks and inefficiencies into the supply chain process. Congestion, traffic management requirements and driver performance would all inevitably result in delays to fuel deliveries. These delays would have serious implications for Air New Zealand's services resulting in flight delays and significant passenger disruption.

Finally, putting aside the operational implausibility of road tanking as an alternative to the Fuel Infrastructure, the increase in the supply chain costs for any potential supplier would make it uneconomic to compete on price with a supplier utilising the Fuel Infrastructure and they would not be able to provide any meaningful constraint on jet fuel prices.

***The open access model proposed by Mobil would not lead to increased competition***

Without an ownership interest in the WAP and JUHI, Z would be reliant on Mobil implementing the proposed open access model for it to viably compete in the supply of jet fuel at Auckland. However, Air New Zealand has serious concerns that the proposed open access model would be workable post-acquisition:

a) **The proposed open access model does not include the RAP or the WIRI Terminal:** [redacted] Access to the terminal is also necessary in order to supply jet fuel at Auckland, and Mobil would still have to negotiate this access [redacted]. [redacted] The proposed open access model also does not include access to the RAP pipeline – any new entrant would also need to negotiate access to this pipeline.

b) **Negotiation with BP required:** implementation of the proposed open access model would require a commercial negotiation with BP. Air New Zealand only has access to the redacted version of Mobil's application, but it is unclear why Mobil considers it would be more likely to negotiate access with BP in the factual than it would be with BP and Z absent the acquisitions.

Even if Mobil were able to overcome these challenges and implement an "open access" model, Air New Zealand still does not believe the model would lead to sustainable competition without significant Commission oversight and intervention. In the absence of regulatory oversight, the market would be relying on Mobil and BP to voluntarily provide non-discriminatory access on a genuinely competitive basis to enable any new entrants to viably compete with them. This is very unlikely to occur given BP and Mobil, as vertically integrated suppliers, have a competitive advantage over other suppliers and will be commercially incentivized to exploit that competitive advantage to maximize their own returns at the expense of any new entrants.

***Air New Zealand's ability to exert countervailing power in the factual would be significantly limited***

Without Z, Air New Zealand would have very little ability to exert any countervailing power to constrain BP and Mobil. Air New Zealand's ability to do so is already limited and it has taken Air New Zealand a number of years to spread its purchases amongst the existing three fuel suppliers to try and preserve as much competitive tension between them as possible. The loss of Z would substantially reduce any real constraint Air New Zealand has on the remaining two suppliers. Other than leveraging the competitive tension between the three suppliers through tenders, there is no other credible way for Air New Zealand to exert countervailing power.

It is not commercially feasible or operationally achievable to shift significant supply to other airports or alter fuel schedules to eliminate or minimize the need to refuel at Auckland. [redacted] uplifted by Air New Zealand at Auckland is used for Air New Zealand's international services. As above, all of Air New Zealand's long-haul services, and a substantial proportion of our other international services, depart from Auckland. Therefore, sourcing fuel from outside of Auckland would introduce huge operational inefficiencies and cost implications. This would either require Air New Zealand to "tanker" fuel from other ports to avoid refueling at Auckland or restructure its international network so that less international services depart from Auckland. Neither of these options are plausible.

"Tankering" fuel is not possible for long-haul services. Aside from the cost and sustainability implications noted below, the huge amount of additional fuel that would need to be carried could not be supported due to payload constraints and configuration of the aircraft. It is also not commercially feasible for domestic or short-haul due to the significant additional cost Air New Zealand would have to incur to carry the extra fuel to avoid refueling at Auckland – this extra fuel means the aircraft weighs more, which in turn requires a greater fuel burn during the flight. This cost obviously increases the longer the distance travelled (and, as above, would be impossible for long-haul services). It also has untenable sustainability implications – burning avoidable amounts of fuel (and increasing avoidable carbon emissions) is not an approach that Air New Zealand would contemplate given a key focus of Air New Zealand's strategy is reducing our carbon emissions.

Finally, Air New Zealand does not consider self-supply or sponsoring a new entrant are credible constraints. Both of these options would require access to the Fuel Infrastructure. For the reasons set out above, Air New Zealand does not believe the open access model proposed by Mobil is likely to lead to sustainable access for third party suppliers (including Air New Zealand or any new entrant). It is also not commercially realistic to suggest Air New Zealand could build a new pipeline to constrain Z and BP post-acquisition given the cost, time and risk associated with such an approach.

## 3. Further information

For the reasons set out above, Air New Zealand is of the view that the proposed acquisitions would lead to a substantial lessening of competition in relation to the supply of jet fuel at Auckland, and throughout New Zealand. We are happy to provide any further information that the Commission may require to further assess our concerns.

**Air New Zealand**