Z ENERGY LIMITED

Notice seeking clearance to acquire Chevron New Zealand Limited

Public version

30 June 2015

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COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

30 June 2015

The Registrar
Mergers and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to section 66(1) of the Commerce Act 1986, notice is hereby given seeking clearance of a proposed business acquisition.

EXECUTIVE SUMMARY

1 Z Energy Limited (*Z*), a publicly-listed company, seeks clearance to acquire 100% of the shares in Chevron New Zealand Limited (*Chevron*, *proposed transaction*). The proposed transaction was announced on 2 June 2015.

2 Both Z and Chevron import crude oil and refined petroleum products. As the New Zealand subsidiary of Chevron South Asia Holdings Pte Limited, Chevron is also part of a global operation that is vertically integrated upstream into the exploration and production (and offshore refining) of crude oil. Along with BP and Mobil, Z and Chevron participate in a number of arrangements through which they operate nation-wide refining, primary distribution and storage infrastructure, which underpins downstream distribution in New Zealand (*Midstream*). Both parties also participate in the commercial and retail supply and distribution, and sales and marketing, of refined products.

3 The proposed transaction would not result in a lessening of competition at any functional level of petroleum product supply in New Zealand for the following reasons:

3.1 *Midstream* – the proposed transaction would reduce the number of participants in the Midstream from four (Z, Chevron, BP and Mobil (*Midstream Participants*)) to three, but this would not adversely impact competition because:

(a) The underlying conditions (including current joint venture terms), under which no one Midstream Participant is in a position to exercise market power over any of the others, remain unchanged, in respect of both the governance of the infrastructure and operational access. Any ability for Z to raise its rivals' costs is limited by the fact that other Midstream Participants control certain strategic assets critical to Z's business. In addition, governance arrangements in relation to key shared assets ensure that no single party has the power unilaterally to impose significant change, with access to refining capacity and key pipelines (the Refinery-to-Auckland Pipeline (*RAP*) and the Wiri-to-Airport Pipeline (*WAP*)) being determined by reference to downstream market share. This means an increased stake in the Midstream infrastructure would not increase Z's ability to restrict access for the other Midstream Participants.

(b) The aggregate set of physical Midstream infrastructure, which materially influences the cost efficiency of the Midstream Participants, will be operated without change, or more efficiently.

3.2 In relation to downstream *commercial sales*:

(a) *Aviation* – Following the proposed transaction, Z would not attempt to exercise market power in relation to the supply of jet fuel at Auckland Airport (which is the only airport at which Chevron and Z overlap in the supply of jet fuel) because customers are served through infrastructure that is shared on equal terms by BP and Mobil and because customers have significant bargaining power due to the fact that [**REDACTED**].

(b) *Marine* – The market would be unaffected by the proposed transaction because Chevron is not a significant participant in the supply of marine fuel oils. It has a share of supply of only [**REDACTED**] of heavy fuel oil (*HFO*) and [**REDACTED**] of light fuel oil (*LFO*) and owns no marine distribution infrastructure. In addition, [**REDACTED** **REDACTED**].

(c) *Bitumen* – The market will be unaffected by the proposed transaction because [**REDACTED**]. In any event, imports constitute a meaningful constraint in relation to the supply of bitumen. Importantly, the sophisticated customers in this market control bitumen infrastructure and accordingly can and do import bitumen themselves.

(d) *Petrol and diesel* – Commercial sales of petrol and diesel are carried out by the Midstream Participants and independent distributors supplied by those Midstream Participants. There would be no lessening of competition because:

(i) Independent distributors and retailers will retain a choice of two alternatives to their existing wholesale supplier (plus potentially, in the case of distributors in the North Island, Gull).

(ii) Commercial customers will retain choice following the proposed transaction including the remaining Midstream Participants, a range of distributors and, potentially, Gull and direct imports by one or a consortium of larger distributors.

(iii) In relation to truck stops, Z would face ongoing effective competition due to the abundance of truck stops and the ability of customers to use any combination of them.

3.3 In relation to the *retail sales of petrol and diesel*:

(a) Analysis of pricing data by Professor Jerry Hausman shows that the removal of Chevron's Caltex as an independent brand is unlikely to result in a statistically significant price rise in a given geographic area (based on local markets with a radius of 5km and even 2km).

(b) Chevron's retail operating model means that it does not have contractual ability to set retail pricing, which limits its competitive influence in the retail market. This would continue both under Z ownership and in the counterfactual.

(c) Following the proposed transaction, the retail market will remain highly competitive, characterised by the following features:

(i) A broad range of retail fuel ownership structures, which gives rise to distinct pricing incentives and manifests in a variety of service offerings. In particular:

(A) Two of the three remaining Midstream Participants will be integrated upstream into exploration and production of crude oil, while the other (Z) will be exposed only to the Midstream and downstream in New Zealand.

(B) Retail sites that are operated under one of the Midstream Participants' brands are subject to varying levels of control by the Midstream Participants (from direct control to independent ownership and operation).

(C) Fourteen brands, including Gull and Foodstuffs, will continue at the retail level, with meaningful pricing independence from the Midstream Participants.

(ii) Service differentiation, regional discounting and one-off discounting days, loyalty schemes, supermarket dockets and rewards schemes.

(d) There is potential for further expansion by existing players at the retail level as evidenced by the incremental growth of the g.a.s. and Gull networks.

(e) New entry could also occur by securing wholesale supply from one of the Midstream Participants, or by other means such as direct import of refined product (e.g. Gull has entered with its own infrastructure), and the likelihood of this will not be diminished by the proposed transaction.

4 A glossary of key terms used in this application is set out at **Appendix A**. An overview of the downstream oil industry can be found at **Appendix B**.

PART 1: APPLICANT AND OTHER PARTY DETAILS

Applicant for clearance

5 This notice seeking clearance is given by Z Energy Limited.

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Physical address:	3 Queens Wharf Wellington New Zealand
Telephone:	+64 4 463 4115
Website:	http://www.z.co.nz
Contact person:	Debra Blackett Company Secretary debra.blackett@z.co.nz
Relevant related entities:	Not applicable

6 All correspondence and notices in respect of this notice should be directed in the first instance to:

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Other party to the acquisition

7 The other party is Chevron South Asia Holdings Pte Ltd

Postal & physical address:	30 Raffles Place 21-01, Chevron House Singapore, 048622
Telephone:	+65 6318 1542
Website:	http://www.chevron.com/countries/newzealand/
Contact person:	Melissa Kwek Corporate Counsel, Downstream Law Function melissa.kwek@chevron.com

8 All correspondence and notices in respect of this notice should be directed in the first instance to:

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PART 2: TRANSACTION DETAILS

The proposed transaction

9 The proposed transaction would involve the acquisition by Z of 100% of the shares in Chevron (with the exception of its shareholding in The New Zealand Refining Company (*Refining NZ*)) a subsidiary of Chevron South Asia Holdings Pte Limited, part of the NYSE-listed Chevron Corporation. The Share Purchase Agreement is at **Appendix C** and structure diagrams are at **Appendix D.**

10 The proposed transaction is subject to Z receiving clearance from the Commerce Commission (*Commission*) and approval from the Overseas Investment Office.

Commercial rationale

11 Since becoming independent from Royal Dutch Shell plc in 2010, Z has been aware that other major participants in the New Zealand downstream fuels market may seek to divest their New Zealand operations in order to recycle capital into upstream or more attractive downstream markets. Z's sole business focus is the New Zealand downstream fuels market.

12 Z's specific investment case is based on three key positions. First, the proposed transaction will create value in the form of cost synergies generated by Z leveraging its existing supply chain and corporate functions (i.e. economies of scale). Secondly, the scale generated by the proposed transaction will give Z the option to optimise its network and channels to market through a second differentiated brand and customer offer. Finally, the proposed transaction is complementary to Z's existing corporate strategy, for example refinery optimisation and enhancement of its customer offer.

Other competition agencies being notified of the proposed transaction

13 Not applicable.

Overview of parties to the acquisition

Z

14 Z is a publicly-listed company, formed following the purchase of Shell's New Zealand downstream business by Infratil and the Guardians of New Zealand Superannuation and subsequently listed on the NZX and ASX main boards in August 2013.[1] The company distributes and markets fuel through commercial and retail channels.

15 Z procures crude oil which is refined by publicly-listed Refining NZ (of which Z is a shareholder and a customer) pursuant to a processing agreement between Z and Refining NZ, and also procures refined product from outside New Zealand. Z partially owns and utilises the Midstream to supply its commercial and retail businesses.

16 Z supplies a number of products to commercial customers, including aviation fuel (both avgas and Jet A-1), marine fuel oils, diesel, petrol and bitumen. Z also participates in the wholesale supply of petrol and diesel, including through its 92 truck stops.

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[1] Copies of Z Energy's annual reports, financial statements and sales revenues and volumes may be found at **Appendices E, F and G** respectively.

17 Z supplies petrol and diesel to retail and commercial customers through a network of 211 Z-branded service stations throughout New Zealand, many of which also include convenience stores.[2] Z has a 25% stake in Loyalty New Zealand, which runs the Fly Buys loyalty programme in which Z participates. Z also participates in the Progressive Enterprises Limited (*Progressive*) dockets programme.

18 Z also owns and operates, through regional operating contracts, Mini-Tankers – a direct-to-machine refuelling operation serviced by mobile fuel trucks.

19 Further information about Z is available at z.co.nz.

Chevron

20 Chevron is a New Zealand subsidiary of Chevron South Asia Holdings Pte Limited, which bases its Asia-Pacific regional headquarters in Singapore.[3]

21 Chevron procures crude oil which is refined pursuant to a processing agreement between Chevron and Refining NZ. Chevron also procures refined product from outside New Zealand. Chevron partially owns and utilises the Midstream to supply its commercial business and retailers.

22 Chevron supplies a broad range of commercial and industrial products, including aviation fuel (Jet A-1 at Auckland Airport only), marine fuel oils, diesel, bitumen, kerosene and lubricants. Chevron also participates in the wholesale and commercial supply of petrol and diesel.

23 Chevron's retail arm is characterised by supply to approximately 146 retail service stations under its Caltex brand. There are also 73 Caltex truck stops. Chevron group owns the Challenge brand, which it licenses on a non-exclusive basis to Farmlands. Farmlands (which obtains its fuel supply from Chevron) sub-licenses the brand to retailers, which resell the fuel at the Challenge-branded sites.

24 Chevron and its retailers participate in AA Smartfuel, a loyalty scheme that allows members to earn fuel discounts from purchases at Caltex retail sites.

25 Further information about Chevron is available at caltex.com/nz.

Horizontal overlap between the parties

26 A series of arrangements mean that Z and Chevron, along with other major fuel companies, participate in Midstream arrangements.

27 The parties overlap in the supply of certain commercial products, being:

27.1 aviation fuel (Jet A-1 at Auckland Airport only);

27.2 marine fuel oils;

27.3 bitumen [

REDACTED

]);

[2] All Z site numbers in this notice are as at 10 June 2015.

[3] Copies of Chevron's annual reports, financial statements and sales revenues and volumes may be found at **Appendices H, I and J** respectively.

27.4 very small quantities of kerosene[4] and lubricants,[5] neither of which is discussed separately in this notice; and

27.5 commercial and bulk petrol and diesel.

28 Z and Chevron both participate in the retail supply of petrol and diesel.

29 Z and Caltex's total annual revenue and volumes for petrol, diesel, Jet A-1 fuel and marine fuel oils over the last three fiscal years are attached as **Appendices L and M**. Z's fiscal year ends on 31 March and Caltex's fiscal year ends on 31 December.

30 Z and Chevron both procure crude oil and refined product in the international markets. Chevron sources crude oil and refined product through its upstream global operations, while Z sources crude oil from independent sources, currently under a supply contract with Shell International Eastern Trading Company (*SIETCO*), and refined product through Hyundai Oilbank in South Korea.

31 Information regarding the parties' competitors, relevant industry associations, key customers and suppliers is set out in **Appendix K**.

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[4] Z supplies a very small amount of kerosene in Dunedin and Southland through its Mini-Tankers business. Z purchases kerosene from Fulton Hogan as it needs it, and sells it either as pure kerosene or a 50/50 mix with diesel fuel. In the financial year ending 31 March 2015, Mini-Tankers sold:

- approximately [**REDACTED**] of pure kerosene, for a total amount of approximately [**REDACTED**]; and
- approximately [**REDACTED**] of mixed product [**REDACTED**], for a total amount of approximately [**REDACTED**].

Z also supplies kerosene to Downer as a cutback for bitumen (see further below at footnote 44).

In 2012 and 2013, Chevron sold [**REDACTED**] and [**REDACTED**] of kerosene respectively, amounting to a market share of about [**REDACTED**] and [**REDACTED**]. However, in 2014, Chevron sold [**REDACTED**].

[5] Z buys Shell branded lubricants from Orica New Zealand and onsells a range of approximately 25 packed lubricant products through its retail sites. Additionally, Z's direct delivery operation, Mini-Tankers buys packed lubricants from Orica and NZ Lubes and onsells to its direct customers. Z does not offer wholesale or direct supply of lubricant products to its commercial customers. The volumes of lubricant that Z turns over are low – approximately [**REDACTED**] through its retail outlets and [**REDACTED**] through Mini-Tankers. It is difficult to calculate Z's market share due to the large number of suppliers in the New Zealand market (estimated to be in excess of 50 suppliers), but Z estimates that its market share would be [**REDACTED**]. Z generally incorporates lubricants in its retail offering to satisfy customers looking for fuel and lubricants at the same time.

Z understands that Chevron supplies lubricant products at its retail sites, but also direct to automotive, industrial and manufacturing customers and through a range of distributers. Chevron estimates it has a [**REDACTED**] national share of commercial motor lubricant supply and an [**REDACTED**] national share of retail motor lubricant supply. [**REDACTED**].

PART 3: COMPETITION ANALYSIS

COUNTERFACTUAL

32 Without the proposed transaction the Chevron business will continue to operate independently of Z, as it does currently, although potentially under different ownership.

33 Z understands that Chevron South Asia Holdings Pte Limited will likely sell Chevron to another buyer if not to Z. If that occurs, it is possible such a buyer might be other than one of the current Midstream Participants (such as a private equity buyer or an independent downstream participant such as Caltex Australia Limited[6]). That scenario is largely the same as the status quo except that Chevron would no longer be sourcing crude and refined product internally and so the volumes controlled by both Z and Chevron would not be subject to vertically integrated procurement arrangements. That would also be the case following the proposed transaction.

34 Accordingly, Z submits that the status quo represents an appropriate basis for the Commission's analysis. In the status quo and in the context of an alternative transaction as described above, the following features may be observed:

34.1 The current Midstream arrangements would continue.

34.2 Commercial supply of products would likely continue largely unchanged, including with respect to the participation of independent commercial petrol and diesel distributors.

34.3 Caltex retail sites would continue to be owner-operated (as would be the case following the proposed transaction).

34.4 Gull would continue to operate in the North Island based on its current model, with the potential for further expansion.

34.5 At the retail level:

(a) The same principal service station brands would continue to compete in the retail petrol and diesel market. Entry and expansion may occur in this part of the market (as may be the case if the proposed transaction proceeds); and

(b) Midstream Participants would continue to supply a number of independently owned retailers.

RELEVANT MARKETS

35 Z submits that petroleum product supply in New Zealand is appropriately segmented as follows:

35.1 Exploration and production of crude oil (*E&P* – see paragraph 37*)*;

[6] Caltex Australia Limited became fully independent of Chevron Corporation on 26 March 2015.

35.2 Trading and procurement of crude or refined product (*procurement* – see paragraph 38);

35.3 Infrastructure supporting refining of crude oil, and primary distribution and terminal storage of refined product (Midstream – see paragraph 42);[7]

35.4 Secondary distribution of refined product (*secondary distribution* – see paragraph 126);

35.5 Commercial supply of refined product, being:

(a) Supply of aviation fuel (see paragraph 128);

(b) Supply of marine fuel oils (see paragraph 150);

(c) Supply of bitumen (see paragraph 166); and

(d) Commercial supply of petrol and diesel, wholesale, direct and through truck stops (see paragraph 177); and

35.6 Retail supply of petrol and diesel (see paragraph 220).[8]

36 The following sections analyse each of the segments set out above, before a section regarding coordinated effects (see paragraph 302).

EXPLORATION AND PRODUCTION

37 Z does not participate in E&P and it is not separately considered in this notice. E&P is only relevant to this notice to the extent that Midstream and downstream participants' E&P integration (or lack thereof) affects downstream incentives.

PROCUREMENT

38 Crude oil imported into New Zealand from around the world is refined into various products at New Zealand's only oil refinery (*Refinery*), owned by Refining NZ. Z, BP, Chevron and Mobil each imports crude oil into New Zealand. BP, Chevron and Mobil primarily (but not exclusively) source crude oil from their upstream global operations through their respective trading entities,[9] while Z currently sources crude oil under contract to supply from SIETCO. Z's arrangements with SIETCO are governed by a three year contract ending in March 2016. Approximately 55% to 60% of crude oil delivered into New Zealand comes from the Middle East, with most of the remainder from Asia. A small portion of local crude oil (approximately 1% of total volumes) is also processed from time to time.

39 Z and BP currently have an agreement under which they collaborate with Refining NZ in the selection of crude oil procurements. Z and BP (generally) take turns to arrange the procurement of crude oil requirements through their respective existing crude oil suppliers. The agreement enables benefits from lower

[7] A list of the joint venture agreements relevant to this application is at Appendix L.

[8] This notice does not analyse liquefied petroleum gas (*LPG*) as Z does not supply this product (with the exception of its retail "swap-a-bottle" offering).

[9] Such trading entities are able to purchase crude oil from third parties.

procurement costs, better quality, greater quantity procured and more refined product produced. The arrangements assist the Refinery to reduce its processing costs which flow through as a benefit to Z and BP through their respective processing agreements with Refining NZ (*Processing Agreements*).[10]

40 Z, BP, Mobil, Chevron and Gull (and Downer and Trafigura, in relation to bitumen) all import refined fuel products directly into port storage around New Zealand. In the case of Z, BP, Mobil and Chevron, this supplements what is processed through the Refinery. Gull tenders its supply internationally, on an annual basis. Following the most recent of these tenders, Gull obtains supply from Mobil at Mt Maunganui (Mobil-imported supply), and Wellington (comprising both Mobil's product that has been processed at the Refinery and Mobil-imported supply).

41 The only change that would be brought about by the proposed transaction in relation to procurement is that [

REDACTED

]. Analysis of imported refined product as a substitute for locally-refined product is set out below from paragraph 78.

MIDSTREAM

Market definition

42 The Midstream infrastructure exists in a range of forms and in a variety of locations across the country. At the Midstream level, Z and Chevron together with BP and Mobil are party to arrangements (described below) that allow them access to key infrastructure underpinning downstream distribution in New Zealand, including:

42.1 the Refinery;

42.2 the RAP;

42.3 the coastal shipping logistics services of Coastal Oil Logistics Limited (*COLL*);

42.4 storage terminals at New Zealand ports and Wiri; and

42.5 the WAP.

43 Each of the Midstream Participants has a bilateral Processing Agreement with Refining NZ pursuant to which it obtains access to Refinery processing capacity, and also key distribution pipeline capacity. The Midstream Participants have various additional arrangements among themselves by which they access other primary distribution systems and pipelines, and terminal storage arrangements (in particular, "shared storage" arrangements facilitated by a "borrow and loan" inventory tracking system).

44 The fixed, finite and shared nature of the infrastructure arrangements as a whole means that, in effect, Midstream Participants make an "all or nothing" commitment

[10] See below at paragraph 43 and paragraph 71.

to the system (committing them to compete across all regions). As such, Z submits that the proposed transaction should be analysed on the basis that there is a single national Midstream market. Nevertheless, this application includes an analysis of individual components of the Midstream as though they stood apart from the other components in separate markets. This shows that the proposed transaction would not result in a lessening of competition on any basis.

45 Gull is an independent fuel company that participates to a limited extent at this level of the market, but outside of the framework of the Midstream industry arrangements described above. In particular, Gull has its own import terminal, at Mt Maunganui, from which it trucks refined product around the North Island, and accesses a small volume of refined product from Mobil's terminal at Wellington. [

REDACTED

]

46 The following sections:

46.1 describe the Midstream Participants' mutual commitment to the Midstream arrangements, and the implications of that commitment for downstream competition (see paragraph 47);

46.2 provide an overview of why the proposed transaction will not lessen competition in the Midstream (see paragraph 59); and

46.3 set out the reasons the proposed transaction will not lessen competition in relation to each of the key individual Midstream components (see paragraph 64).

Common infrastructure in the Midstream shapes competition

47 Given New Zealand's low population density and geography, a single full set of Midstream infrastructure provides cost efficiency (ultimately of benefit to fuel consumers). The cost implications for any Midstream Participant in opting out of supporting the Midstream infrastructure would be significant.

48 For example, should COLL and the shared storage arrangements split into two separate sets of arrangements (such as Mobil and BP forming their own arrangements separate from Z), assuming investments were made to allow continued participation in all regions, Z estimates that the total cost across all Midstream Participants would be up to approximately [**REDACTED**]. Importantly, Z notes that it is unable to predict the total cost of any break-up with certainty, since the nature and scale of the other Midstream Participants' response to any move to withdraw from some or all of the Midstream infrastructure is difficult to predict. The unquantifiable (but potentially significant) nature of the risk itself provides a disincentive to disrupt the current arrangements. The sequence could be as follows:

48.1 Z may choose to manage its own coastal deliveries from the Refinery, in the hope of causing an uncontrolled breakup of the COLL joint venture, leaving the other participants to make their own arrangements either together or separately. Z currently uses around [**REDACTED**] of COLL's shipping capacity, which amounts to approximately [

REDACTED

]. Following the proposed transaction, Z's coastal deliveries would comprise approximately [

REDACTED

].

48.2 Additionally, breaking up the COLL arrangements would likely result in logistical difficulties associated with deliveries being made to individual tanks by (at least) two independently-scheduled ships. Z considers it is likely this would lead to a breakup of the shared storage arrangements, and consequently significant additional cost for all Midstream Participants to secure their own storage infrastructure.

49 In summary all parties would be disadvantaged by undermining the economics of unanimous support for the Midstream infrastructure. For this reason, opting out has not occurred.

50 The Commission should assume that these incentives to preserve the current Midstream arrangements will continue for the foreseeable future, both in the factual and the counterfactual. In large part this is because on 27 April 2012 the shareholders of Refining NZ voted (by a slim but decisive majority – see paragraph 58 below) to support the deployment of an additional $365 million in capital expenditure at the Refinery. This growth project (generally referred to as "Te Mahi Hou") is expected to realise real efficiency gains at the Refinery.[11] The Midstream Participants participate in these gains through the processing fee arrangements.[12] This reinforces their commitment to the Refinery itself and the Midstream as a whole.

51 All of this means that, regardless of whether the Chevron business is owned independently of Z, the volumes derived from all Midstream Participants that use the Refinery will continue to be generated and distributed from a largely common cost-base. The one exception would be procurement costs, which may be different for Z as the only party not vertically integrated upstream. In addition, Z and BP collaborate in the selection and procurement of crude oil. There may also be differences for Mobil and BP, for example in respect of underlying upstream economics.

52 The mutual commitment to the Midstream described above dictates a large component of the competitive strategy of the Midstream Participants. It means that Midstream Participants take a national approach to Midstream infrastructure and, accordingly, geographic cross-subsidies for Midstream infrastructure are inevitable.[13] Conversely, there is little scope to disrupt the Midstream market because a relatively long-term view – aligned with fellow participants – is required to ensure the continued efficient and safe operation of, and sustainable investment in, Midstream infrastructure.

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[11] For further information see http://www.refiningnz.com/investor-centre/growth/ccr-project.aspx (accessed 26 May 2015).

[12] See paragraph 76.

[13] This also enables operational flexibility between participants particularly in times of supply disruption, increasing overall system resilience.

53 The Midstream Participants incur significant cost owning, operating and maintaining Midstream infrastructure. In that environment, there is an economic imperative to ensure utilisation and unit cost efficiencies by defending market share. This means that in practice it is difficult to command a market premium because raising price delivers an opportunity to competitors to grow volume share and improve their economics. Correspondingly, it is difficult in this environment to grow market share by discounting as competitors will match price to defend share and preserve supply chain economics. This dynamic will be unaffected by the proposed transaction because Z will be taking up Chevron's legacy market share, which it will have an incentive to defend to drive recovery of fixed costs and asset utilisation.

54 It follows that a "spot" approach to downstream pricing is more likely to be driven by non-Midstream Participant players, such as Gull, or other independent retailers retaining significant pricing discretion and focused on the narrow commercial context of their particular site.

55 As noted above, Gull has one large terminal (at Mt Maunganui) and procures refined product for distribution by truck, predominantly to the more populous regions of New Zealand, that is, the upper North Island. This model affords Gull flexibility in its competitive strategy, meaning it is able to pick opportunities to price to gain market share without the same level of concern about the returns required to maintain existing infrastructure. This is evidenced by the historic pricing behaviour of Gull (in particular, Z observes [**REDACTED**][14]).

56 By contrast, the Midstream Participants are committed to seeking and retaining substantial domestic market share, and committed to a nationwide presence because of their Refinery incumbency. Accordingly, they are less likely to engage in localised, opportunistic competition, and this will be the case regardless of whether the proposed transaction proceeds. In other words, this feature limits any potential competitive impact from the reduction from four to three Midstream Participants, since these incentives would have an equally important influence on competitive behaviour in both the factual and counterfactual.

57 In addition to the dynamic outlined above, it might be tempting to suggest that Refinery incumbency translates to a competitive advantage in relevant downstream markets in New Zealand. However, that is not necessarily the case. The Refinery acts as a tolling service, with its fees intended to result in the cost of local refining being equivalent to importing refined product. Due to the structure of the processing fee,[15] the relative advantage or disadvantage of the Midstream Participants to the import-only alternative fluctuates with variations in gross refining margins, oil prices and the strength of the New Zealand Dollar.

58 Additionally, the recent capital expenditure commitment at the Refinery (Te Mahi Hou) was supported by Z and [

REDACTED

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[14] Z understands that Gull's pricing is supported in part by its strategy of ethanol blending, which Z estimates amounts to a net reduction in product cost of [**REDACTED**]. [**REDACTED**]

[15] See further below at paragraph 76.

]. This all suggests that there is a view held by experienced and sophisticated players that the Refinery gives rise to a competitive disadvantage at least at some times, in comparison with an import model such as that operated by Gull.

Impact of proposed transaction on Midstream arrangements

59 The proposed transaction would neither disrupt the current national refining, distribution and storage arrangements, nor facilitate the exercise of market power by Z. Accordingly, it will not have the effect of lessening competition compared with any realistic counterfactual. In summary:

59.1 Governance arrangements for Midstream assets shared among Z, BP, Chevron and Mobil involve negative control rights allowing each a veto in respect of significant decisions.[16]

59.2 Access to Refinery capacity and key primary infrastructure is calculated by reference to nationwide downstream market share (as outlined below) and accordingly the proposed transaction would not result in any increase in power relative to the other Midstream Participants.

59.3 In relation to the separately owned terminal storage infrastructure, even where one Midstream Participant holds an apparently powerful position in respect of one component, the remaining Midstream Participants hold countervailing power in respect of another. These dynamics would continue following the proposed transaction.

60 More generally, all Midstream Participants have an incentive to retain access to the Midstream arrangements, and an incentive to ensure their assets are utilised. These incentives guard against any Midstream Participant seeking excessive returns at the Midstream level, and will not change as a result of the proposed transaction. As Refinery incumbents committed to competing on a national basis,[17] the Midstream Participants must have the ability to distribute product nationwide. To do this outside of the current Midstream arrangements would add costs and so all Midstream Participants are incentivised to continue with the arrangements and avoid cost and maximise the utilisation of their own investments. This leads to, for example, "shared storage", where storage tanks at terminals are typically owned by one Midstream Participant but used for the benefit of all by way of borrow and loan arrangements.[18] These incentives would not change as a result of the proposed transaction.

61 It would be difficult to enter the midstream level of the market on a national basis and this would not change as a result of the proposed transaction. As described above, the Midstream infrastructure is in practice only available to the Midstream Participants. Any would-be national Midstream entrant would need to arrange its own separate supply, distribution and terminal storage, or purchase the relevant shares and assets of one of the existing Midstream Participants. This would continue to be the case following the proposed transaction and in any realistic counterfactual scenario.

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[16] [**REDACTED**]

[17] See paragraph 58, above.

[18] See further below from paragraph 107.

62 Entry at the midstream level is most likely to occur on a regional basis, as evidenced by Gull's successful entry and sustained participation as a retail (and, to a small extent, commercial) supplier. Z submits that further market entry (or further expansion by Gull) is feasible, for example by building a terminal at a South Island port and distributing refined product by truck, as it has done in the North Island. Alternatively, Gull may secure access to the South Island through a Midstream Participant, noting that it has recently begun to serve the lower North Island through Mobil's Wellington terminal. Such entry (or expansion in the case of Gull) would not be affected by the proposed transaction, would become even more likely were importer margins to increase above competitive levels, and would be sufficiently likely and sufficient in extent and timeliness to constrain Z following the proposed transaction.

63 Existing competition in each major component of the Midstream infrastructure is assessed in turn below. The proposed transaction would not have the likely effect of lessening competition in relation to any of the components.

Refining NZ

Ownership and operation

64 Crude oil imported into New Zealand from around the world is refined into various products at the Refinery. As noted above, only the four Midstream Participants import crude oil into New Zealand; BP, Chevron and Mobil primarily source crude oil from their upstream global operations, while Z currently sources crude oil from SIETCO pursuant to a supply contract.

65 Refining NZ supplies approximately 70%[19] of New Zealand's total refined product demand, with the remainder met by direct imports from overseas refineries. Midstream Participants import different types of crude oil to optimise Refinery output, specifically:

65.1 maximising high value products such as petrol and diesel (with the balance of demand being made up of refined product imports);

65.2 seeking to match the output of jet fuel with domestic demand; and

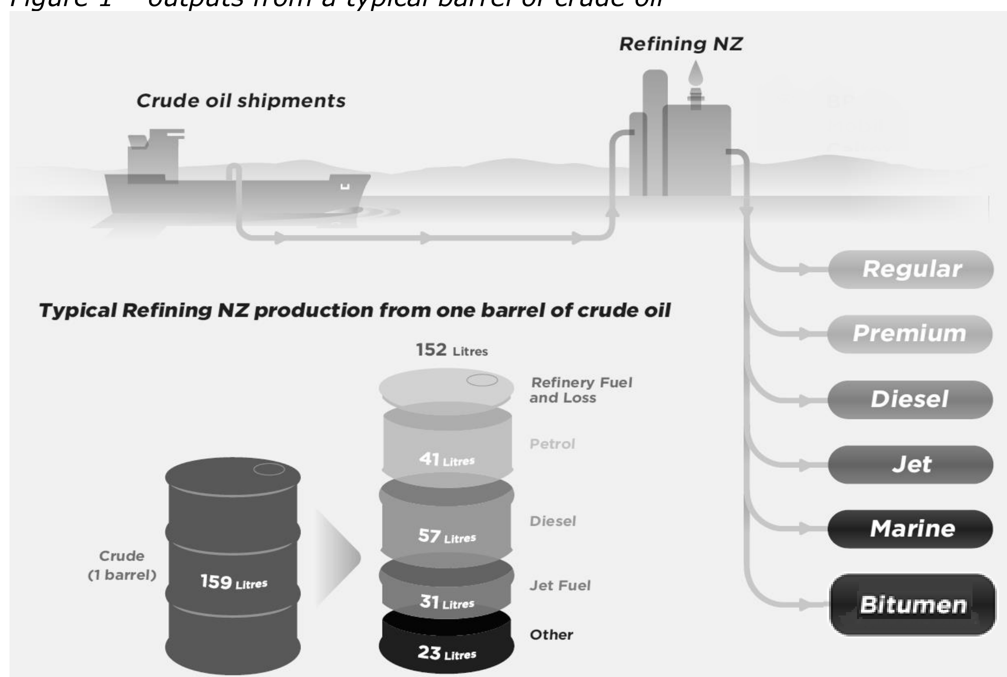
65.3 minimising production of low value fuel oil and bitumen.

66 The outputs from refining a typical barrel of crude oil at the Refinery are set out in the figure below.[20]

[19] Refining NZ analyst presentation, August 2014.

[20] Z Investment Statement and Prospectus, 25 July 2013.

Figure 1 – outputs from a typical barrel of crude oil



67 There is an element of supply substitutability between fuel oil and bitumen as both are based on the same refinery by-product (cut back asphalt). This substitution has allowed BP and Mobil to choose not to participate in the supply of bitumen. [**REDACTED**] This in turn ensures strong competition for these domestic sales and export parity pricing of these products.

68 As noted above, Refining NZ is presently undertaking a $365 million expansion project (Te Mahi Hou). Te Mahi Hou is due for completion in November 2015 and will increase production capacity. Following completion a further three million barrels of crude oil will be able to be processed on average each year (an increase of approximately 8%) and there will be improved energy efficiency.[21]

69 Note that there is no direct link between a shareholding in Refining NZ and access to refined product through the Refinery; capacity allocation is dealt with under the Processing Agreements. Accordingly Chevron has sold its interest in Refining NZ in advance of the proposed transaction.[22] Z, BP and Mobil in aggregate hold the majority of the shares in Refining NZ. As at 25 June 2015, their shareholdings in Refining NZ were:

69.1 Z –15.36%;

69.2 BP – 21.19%; and

69.3 Mobil – 17.20%.

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[21] Refining NZ Notice of Annual Meeting Explanatory Notes 2012; https://www.nzx.com/companies/NZR/announcements/262592 (accessed 8 April 2015).

[22] See paragraph 71 below.

70 There will be no change to Z's shareholding in Refining NZ arising out of the proposed transaction.

Processing Agreements

71 As noted above, Z, Mobil, BP and Chevron are each party to a Processing Agreement, which entitles each to use processing capacity in the Refinery and to access the RAP and the WAP. Z would take on Chevron's Processing Agreement as a result of the proposed transaction. [

REDACTED

]

72 Parties other than the Midstream Participants do not process crude oil through the Refinery. [

REDACTED

] The Refinery is typically at full operating capacity except during times of planned or unplanned maintenance work. This is consistent with incentives on the Midstream Participants to keep the Refinery at full capacity (as outlined below at paragraph 84), which will continue following the proposed transaction. Accordingly, the proposed transaction would not affect third parties' access to refined products, or crude processing through the Refinery.

73 Nor would the proposed transaction allow Z to restrict the access of BP and Mobil to Refinery processing capacity. Each Midstream Participant's Processing Agreement is re-negotiated annually and each party's allocation of access to the Refinery's processing capacity is calculated by reference to a three-year rolling average of its downstream market share for each refined product (that is, taking account of downstream sales of both locally-refined and imported refined product).

74 The Refinery is operated according to optimisation choices made by each Midstream Participant having regard to feedstock selection, refinery efficiencies, market requirements and alternative sources and costs of supply. As noted above,[23] there is variation in the products that can be produced from crude oil at the Refinery, but this is limited and access to Refinery capacity necessarily entails participation in the supply of, at least, petrol, diesel, jet fuel and fuel oils.

75 The allocations of Refinery processing capacity between the Midstream Participants [**REDACTED**][24]

75.1 [

REDACTED

]

[23] At paragraphs 64 and 65.

[24] [**REDACTED**].

76 The Processing Agreements set out the calculation of processing fees for using the Refinery. Processing fees are calculated by reference to a gross refining margin (*GRM*), determined by the Midstream Participant's particular GRM calculation and subject to a maximum and minimum processing fee. The GRM is the difference between the notional US Dollar costs of importing and landing crude oil, and the notional US Dollar costs of importing and landing refined product. The notional costs are generally set by reference to benchmarks. The processing fee is a percentage of the GRM, currently 70%. As such, the balance (30%) is effectively retained by the Midstream Participant.

77 The calculation of the processing fees, particularly allocating a 30% share to the Midstream Participant,[25] provides an incentive on each of the Midstream Participants to maximise its own use of the Refinery in order to maximise its refining margin, promoting full utilisation of the Refinery.

Imported supply of refined product as an alternative to the Refinery

78 Imports of refined product are a realistic and readily available alternative to refined product processed through Refining NZ, and this would not change as a result of the proposed transaction. The competition analysis is not sensitive to the precise geographic scope of any market for refining, and importing refined, product, since the key features of competition remain unchanged.

79 Each of the four Midstream Participants currently supplements its Refinery supply with imported refined product where the Refinery does not have the capability to produce a certain fuel or is unable to meet demand, and also in circumstances where imports are more cost effective. The mix of imported and locally-refined product can be managed at the margin by each Midstream Participant's regular optimisation decisions, referred to above at paragraph 73, taking account also of distribution constraints and regional stock levels.

80 As noted above at paragraph 40, Gull contracts its supply out on the open market annually. In recent years this has resulted in Mobil being its sole supplier, although BP has supplied Gull in the past [**REDACTED**]. As noted above, Mobil supplies Gull by a mix of imports and locally-refined product allocation (via COLL-scheduled ships).

81 Furthermore, as set out at paragraph 58 above, the recent vote on capital expenditure at the Refinery, and the fact that toll levels reference import pricing, indicate that reliance on imported product does not necessarily put a competitor at a disadvantage compared with Midstream Participants. Gull's import-only model may from time to time give rise to cost advantages relative to that of the Midstream Participants (in times of below average gross refining margins, above average oil prices or a higher than average New Zealand Dollar).

82 It is telling that Gull has competed at the retail level, and has expanded its network, particularly over the last five years, with a business model based largely on importing refined product and without the use of the Midstream shared storage arrangements. Gull's model has proven longevity, with it having competed with the Midstream Participants since 1998. As set out above at paragraph 62, and as illustrated by Gull, Z considers entry by importing is more likely than entry to local

[25] See paragraph 76 above.

refining and such entry would be likely, sufficient in extent and timely enough to constrain Z following the proposed transaction.

83 The proposed transaction will impact neither any market participant's ability to import refined product, nor the differential between locally refined and imported product. As noted above, the Refinery is obliged to link its pricing closely to import alternatives and to have a transparent and equitable basis for its capacity allocation. Following the proposed transaction, its incentives will remain unchanged. [

REDACTED

]

84 Given the Refinery processing fee arrangements and the related domestic supply chain costs, the four current users are effectively committed to full Refinery utilisation. For example, should use of the Refinery reduce, COLL would in turn become under-utilised but its fixed costs would of course remain.

Primary distribution of refined products

85 In general, New Zealand's refined products are transported to storage terminals through the RAP, in coastal shipping tankers scheduled by COLL, or by direct import. A small proportion of product is transported from a truck loading facility located at the Refinery.

Refining NZ pipelines and terminals – distribution to Auckland

86 Refining NZ owns and operates the RAP, through which refined product is transported to the Wiri Terminal storage facility in South Auckland (*Wiri Terminal*) run by Wiri Oil Services Limited (*WOSL*). Together, these facilities comprise the primary method by which the Midstream Participants transport fuel to the Auckland and Waikato regions. In the following paragraphs Z considers, first, the proposed transaction's effect on competition in relation to the RAP and Wiri Terminal and, secondly, the proposed transaction's effect on any market for distribution to the areas serviced by these assets.

87 By way of background:

87.1 The RAP is approximately 168 kilometres long and carries approximately 36.9% of sales of all Refinery and imported products in CY2014 to the Wiri Terminal.[26]

87.2 Typically only refined product produced at the Refinery is transported along the RAP and the RAP is the only way to transport refined product from the Refinery to the Wiri Terminal.

87.3 Access to the RAP is governed by each Midstream Participant's Processing Agreement. [

REDACTED

]

Accordingly, use of the RAP is linked to participation in the Refinery.

88 The Wiri Terminal is New Zealand's largest fuel terminal and is the only terminal to be supplied by pipeline (the RAP) from the Refinery. Refined product is distributed

[26] Source: Z estimates based on data regarding COLL and Refining NZ.

from the Wiri Terminal throughout the greater Auckland region and beyond by way of the secondary distribution arrangements described below.[27] The Wiri Terminal supplies around 90% of Auckland's refined product demand and 100% of Auckland Airport's jet fuel via the WAP.

89 [

REDACTED

] Z holds a 27.8% shareholding in WOSL, while Chevron holds 16.7%, Mobil holds 27.8% and BP holds 27.8%. [**REDACTED**]

90 The proposed transaction would not lessen competition in relation to these distribution assets. In particular:

90.1 Given the RAP [**REDACTED**] owned by Refining NZ,[28] the proposed transaction would not allow Z to exercise market power in relation to their governance following the proposed transaction on the same basis as set out above.[29]

90.2 Given access to the RAP is linked to [**REDACTED**], the proposed transaction will not enable Z to restrict BP or Mobil's access to the RAP.

90.3 Z's post-transaction control of 44.45% of the shares in WOSL would not allow Z any additional influence over WOSL, as operator of the Wiri Terminal, because significant decisions require unanimous agreement.

91 Accordingly, the proposed transaction would not affect competition in relation to the RAP and/or the Wiri Terminal.

92 In relation to the geographic scope of any distribution market, a single storage terminal can be used as a base for distribution of product over a large area (e.g. Gull distributes from its Mt Maunganui terminal to most of the North Island).

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[27] From paragraph 126.

[28] [

REDACTED

]

[29] Paragraph 70.

93 The competition analysis is not sensitive to the precise geographic scope since the key features of competition remain unchanged. In particular:

93.1 Currently, the RAP is not used by suppliers other than the Midstream Participants to distribute any product. This would not be likely to change following the proposed transaction or in any realistic counterfactual.

93.2 Currently, Gull competes effectively in the supply of petrol and diesel at the retail level (and to some extent as a commercial supplier) in the North Island, including the areas serviced by the RAP, by distributing product by truck from its Mt Maunganui terminal. Its ability to do so would be unaffected by the proposed transaction and thus entry would be likely and sufficient in extent and timeliness to continue to constrain Z following the proposed transaction. This also demonstrates that access to the RAP and the Wiri Terminal is not necessary in order to compete effectively in those areas.

93.3 Currently, suppliers other than the Midstream Participants do not distribute jet fuel by any means to the areas the RAP services. Given the RAP represents an efficient way to distribute jet fuel [**REDACTED**] Z would not expect this to change following the proposed transaction or in any realistic counterfactual scenario. The ability of any new entrant to distribute jet fuel would be unaffected by the impact of the proposed transaction on governance or access to the RAP. Furthermore, the ability of the remaining Midstream Participants to increase their share of jet fuel supply would be unaffected by the proposed transaction and would provide a likely, timely and sufficient constraint on Z following the proposed transaction (see further below at paragraph 128).

Coastal shipping – COLL

94 COLL, a joint venture owned by the four Midstream Participants, performs logistical services for the companies, including:

94.1 scheduling ships operated by Silver Fern Shipping Limited, MT Torea and MT Kakariki, to transport approximately [**REDACTED**] of sales of all Refinery and imported products in CY2014[30] to and between coastal terminals throughout New Zealand (COLL transports predominantly Refinery production, and only rarely imported refined product); and

94.2 scheduling deliveries of imported refined products to New Zealand port terminals using vessels chartered by the Midstream Participants. These services are limited, and comprise ensuring import shipments arranged by the individual Midstream Participants are accommodated by the coastal shipping scheduling.

95 In the following paragraphs Z addresses the proposed transaction's effect on the COLL arrangements and on any wider distribution market.

96 Effectively COLL operates at capacity, which is incentivised by the high fixed costs associated with the arrangements and its link to Refinery output, and at times in-charters an import vessel to make up a capacity deficit. Accordingly, COLL is not

[30] Source: Z estimates based on data regarding COLL and Refining NZ.

used by companies outside of its owners. Access to coastal shipping and/or other primary distribution arrangements would not be affected by the proposed transaction.

97 COLL is currently owned in equal shares by BP, Mobil, Chevron and Z, which means Z would own 50% of COLL following the proposed transaction. COLL operates as follows:

[

REDACTED

].

98 Following the proposed transaction, Z will account for one of the three participants and so will not obtain either positive or negative control in respect of scheduling review decisions. Moreover, upon arrival at a port, product is typically delivered to terminals within the shared storage arrangements and can be uplifted (or "borrowed") by any Midstream Participant. As such, by increasing its share of the product transported using COLL, Z would not obtain any ability to have COLL prioritise Z deliveries or restrict the other participants' access to product.

99 By effectively increasing its share from 25% to 50% Z would not obtain any positive control[

REDACTED

].

100 The competition analysis is not sensitive to the precise nature and geographic scope of any wider distribution market in which COLL operates. The proposed transaction can have no effect on the likelihood of entry to the provision of ship scheduling services (or any other method of distribution – see also above at paragraph 62). The only change brought about by the proposed transaction would be the reduction from four to three shareholders in the COLL joint venture, which both before and after the proposed transaction would carry out all coastal shipping services for the Midstream Participants as set out above.

Distribution by truck facilitated by Refinery Truck Loading Facility

101 The four Midstream Participants hold [**REDACTED**] shares in a joint venture that owns a Truck Loading Facility (*TLF*) located at the Refinery and run and maintained by WOSL. [**REDACTED**] The following paragraphs address competition in relation to the TLF and in relation to any wider distribution market.

102 A small percentage of refined product (approximately [**REDACTED** [31]] is trucked from the TLF directly to retailers and commercial customers in the Northland region.[32]

103 The TLF has sufficient loading capacity for the Midstream Participants to service Northland and the TLF is unlikely to be used to service any other regions because:

103.1 the RAP transports fuel to Auckland. Trucking fuel to Auckland or further south is likely to be significantly higher cost than using the RAP; and

103.2 the TLF is typically only used for product produced at the Refinery. Refinery capacity is fully utilised in the New Zealand market, meaning that any user expanding its use of the TLF would be compromising its supply to the rest of New Zealand.

104 [**REDACTED**]. The TLF is not a constrained facility and is not considered realistically likely to become so. Each of the Midstream Participants simply uses the facility as required.

105 Following the proposed transaction Z will control [**REDACTED**] of the shares in the TLF [**REDACTED**]. This change would not give Z any additional benefits such that it could disadvantage the other shareholders because:

[**REDACTED**].

106 The proposed transaction will also not result in any lessening of competition by detrimentally affecting the ability of any participant outside the Midstream Participants to distribute any product to Northland:

106.1 No competitors outside the Midstream Participants use or have rights to use the TLF. Given existing competitors (and any new entrants) do not and are not likely to participate in the Refinery Z would not expect this to change either following the proposed transaction or in any realistic counterfactual.

[31] [**REDACTED**].

[32] Secondary distribution arrangements are as discussed from paragraph 126 below.

106.2 Currently, Gull competes in the supply of petrol and diesel in Northland, by distributing product by truck from its Mt Maunganui terminal. Its ability to do so would be unaffected by the proposed transaction (see also above at paragraph 62). This also demonstrates that access to the TLF is not necessary in order to compete effectively in that area.

Terminal storage facilities

107 Each of the four Midstream Participants has a stake in key New Zealand terminal assets, at which refined product is stored, and moved out of storage, for secondary distribution. Most of the terminal assets are owned by one of the companies individually, while certain assets are owned and/or operated by joint venture. A summary of the ownership of New Zealand's "shared storage" terminal storage tanks is at **Appendix M**. As noted above, Gull owns terminal infrastructure at Mt Maunganui, which falls outside of the Midstream shared storage arrangements.[33] Additionally, as noted above, not all of the storage in New Zealand falls within these arrangements, such as [**REDACTED**].

108 In the following paragraphs Z addresses, first, the proposed transaction's effect on the Midstream shared storage arrangements and, secondly, the proposed transaction's effect on competition in relation to the provision of terminal storage facilities.

109 Invariably, governance arrangements (primarily joint ventures relating to terminal operation) are structured so as to ensure that no single party (regardless of its voting share) has the power unilaterally to impose a significant change or decision on the other participants.[34]

110 In the context of shared storage, all four Midstream Participants take supply from one another at the terminal facilities[35] within the purview of the borrow and loan inventory tracking system. That is, Midstream Participants' product is discharged into others' tanks, and at that time (until it is drawn from the tanks by truck) product custody and risk transfer but not title. "Borrowing" and "lending" are netted off against each other, on an equal basis regardless of the location, in calculating a Midstream Participant's "balance". Balances on individual products can be up to hundreds of millions of litres, but each Midstream Participant is generally in balance (that is, neither materially in credit nor in debit) across all products nationally.

111 Storage tanks are not necessarily easily substitutable as among the various products (tanks can be relatively readily converted as between jet fuel and diesel, but marine fuel oil tanks tend to be dedicated for their life, and conversion to petrol is expensive due to the higher costs of fire protection and vapour management). Storage in the context of the Midstream can be considered together – that is, on a national basis and not segmented by product – due to the borrow and loan arrangements, and their nationwide operation.

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[33] Although note that Gull leases some of its storage to BP and Z, both of which include this in shared storage.

[34] [**REDACTED**]

[35] Except Wiri and the TLF.

112 Each Midstream Participant is able to account for approximately [**REDACTED**] of its own volume at major ports (i.e. Mt Maunganui, Wellington and Lyttelton) and uses others' storage (and makes its own available) to facilitate the management of peak volumes. The exception is Lyttelton, where Chevron currently has no tanks, and Mobil has no tanks following a landslide in March 2014 (Z understands that Mobil has resource consent to re-build its tanks).

113 The proposed transaction would result in the consolidation of storage capacity at several terminal locations where either or both of BP and/or Mobil also own tanks (see **Appendix M**). There are also two locations at which Z would be the only Midstream Participant owning key terminal storage facilities, namely: Nelson (although BP owns a small diesel/LFO terminal at Nelson) and Timaru. As explained above, Z's ability to exercise market power in relation to any one Midstream asset is, and following the proposed transaction will continue to be, constrained by its dependence on the continuation of the shared industry storage arrangements as a whole. Accordingly, Z will maintain a competitive position having regard to:

113.1 "Retaliation" in the form of being priced out of competitive access to the assets of other Midstream Participants at other locations. [

REDACTED

].

113.2 The threat that other Midstream Participants, or other third parties such as international terminal development companies (e.g. Stolt-Nielsen Limited (*Stolt*)), might duplicate or otherwise invest to allow bypass of Z's assets (which would also introduce inefficiency into the supply chain). [

REDACTED

] Furthermore, BP and Mobil (and Gull) have all either built new tanks or invested to bring de-commissioned tanks back into service in the last five years. These competitive constraints will continue to exist following the proposed transaction.

114 Following the proposed transaction, no one company will have a practical commercial ability or incentive to extract monopoly rents for accessing product through the terminal assets it owns, because it must deal with the other three in other areas (or in the same area for other product grades, or at different points in time when their stock is low relative to demand).

115 The proposed transaction would also not lessen competition by affecting any existing competitor or new entrant's access to terminal storage or prospects of entry or expansion to the provision of terminal storage for any product, in any region. In this regard, Z submits that any markets for terminal storage infrastructure would be, at their narrowest, segmented by product and regional in their geographic scope. In practice, product shipped to any particular port can be distributed throughout most of the island – for example, Z understands that Gull is able economically to truck product from Mt Maunganui throughout the upper North Island and as far south as Levin by way of a single driver shift. As noted above, product is

frequently trucked from Christchurch and Dunedin to areas that could be more readily serviced from Timaru.

116 The proposed transaction would not reduce the prospect of another fuel company accessing storage capacity at any terminal. For example, as noted above, Gull currently accesses a small volume of refined product from Mobil's terminal at Wellington and the likelihood of other such arrangements will be unaffected by the proposed transaction. Furthermore, there are tanks owned other than by Midstream Participants, which could potentially be leased by other players, and the prospects of this would be unaffected by the proposed transaction (for example, Stolt owns fuel oil, bitumen and diesel tanks in Auckland; the bitumen tank is currently leased to [**REDACTED**] and the diesel and fuel oil tanks are currently leased to BP). Also, the removal of Chevron as an independent owner of terminal storage within the Midstream would not increase barriers to entry for any company that wished to build a new tank. Gull has relatively recently entered with infrastructure at this level (see further above at paragraph 62).

117 Z estimates that a petrol tank on an existing operational site would cost approximately [**REDACTED**] per litre of storage, and tanks for other types of fuel would cost approximately [**REDACTED**] per litre, with tanks usually having a capacity of not less than [**REDACTED**] litres. There is no basis on which to expect the proposed transaction would make such an investment more difficult or less likely.

Pipelines from terminal facilities

118 Key pipeline assets in the context of the Midstream arrangements are the WAP and the Woolston pipeline and terminal. The proposed transaction would not adversely impact competition for either of these assets for the reasons set out below.

WAP

119 Jet fuel (or Jet A-1) produced at the Refinery is pumped down the RAP to the Wiri Terminal, and then from the Wiri Terminal to Auckland Airport through the WAP. [

REDACTED

]. Auckland Airport uses the majority of New Zealand's aviation fuels. It is not feasible to supply Auckland Airport by truck due to the amount of fuel required.

120 WAP ownership shares are as follows:

[

REDACTED

].

121 Following the proposed transaction, [

REDACTED

] Z would hold a 60% ownership share in the WAP [

REDACTED

].

122 The competition analysis is not sensitive to the precise scope of any market for distribution of jet fuel, since the key features of competition remain unchanged. Importantly, the amount of product each of the Midstream Participants is able to supply through the WAP is determined by the Refinery capacity allocation calculation and not by reference to ownership interest in the pipeline. There is no ability either before or after the proposed transaction for a single Midstream Participant, or two acting together, to foreclose or impair access to the pipeline.

123 The proposed transaction would not affect the ability for players other than the Midstream Participants to distribute jet fuel, for the reasons set out above at paragraph 93.3.

Woolston pipeline and terminal

124 The Woolston pipeline runs between Lyttelton and Woolston and is currently the most cost effective and practical route for transporting large quantities of refined product from Lyttelton to Christchurch. The Woolston terminal is situated at the end of the pipeline. Both the pipeline and terminal gantry are wholly owned by Mobil and consequently would not be affected by the proposed transaction. This is a clear example of a strategic asset which could potentially be used as a vehicle for retaliation were any other Midstream Participant to seek to take advantage of an infrastructure position to Mobil's detriment.[36]

Conclusion on Midstream competition

125 In summary, reducing the number of Midstream Participants from four to three would not result in any lessening of Midstream competition because:

125.1 Competitive tension would remain in all areas of the Midstream infrastructure, and no one player would be in a position to foreclose infrastructure or raise its rivals' costs.

125.2 In factual and counterfactual scenarios, it is not realistic that an additional player would participate in the existing national Midstream infrastructure. The most likely form of new entry or expansion in this level of the market is to build a new terminal and tank infrastructure and enter on a regional basis, as Gull has done at Mt Maunganui. In Z's view, there is a realistic prospect of this occurring, whether by Gull or another player (e.g. at Timaru). Because any such new entrant or expansion investment will result in a loss of share and therefore a loss in returns on sunk investment and on operating costs for the incumbents, the Midstream Participants would avoid pricing unreasonably even if other factors permitted them to do so. This prospect contributes to

[36] Currently, due to a temporary earthquake-driven exception, petrol products may be trucked through the Lyttelton tunnel at night.

further ensuring industry competitiveness and would be unaffected by the proposed transaction.

SECONDARY DISTRIBUTION

126 It is not necessary to conclude on any market definition in relation to secondary distribution, since on any basis there would be no lessening of competition at this functional level of the market. The Midstream Participants and Gull each contract with an independently-owned haulage contractor for road distribution of refined product from terminals to retailers and end users. As noted at paragraph 101 above, a small amount of refined product is trucked direct from the Refinery. The relevant haulage contractors are:

126.1 Z – Pacific Fuel Haulage and, for a small amount of product, Southfuels.

126.2 Chevron – Farmlands, Pacific Fuel Haulage in the North Island and Allied Petroleum (*Allied*) in the South Island.

126.3 BP – McFall Fuel (BP owns 30% equity and owns some of the assets used by McFall Fuel).

126.4 Mobil – Allied.

126.5 Gull – TranzLiquid.

127 [**REDACTED**].

COMMERCIAL SUPPLY OF REFINED PRODUCTS

Aviation

Market definition

128 Aviation encompasses two types of customer, described as "big jet" and "general aviation".

128.1 Big jet customers operate international and domestic scheduled airline services and consume jet fuel. Jet fuel accounts for approximately 20% of the product of a barrel of crude refined at the Refinery and is typically (although not exclusively) supplied directly into planes, by way of hydrants or refuelling trucks. Supply takes place at 25 airports nationwide, but approximately 95% of total volume is supplied at Auckland, Christchurch and Wellington airports.[37]

128.2 General aviation refers to customers other than those that operate scheduled airlines, including companies and individuals that operate planes and helicopters commercially and for leisure. This segment consumes both jet fuel and avgas. Supply is much more fragmented than is the case for big jet and includes airports and air fields nationwide. General aviation accounts for

[37] Source: Z estimates.

approximately [**REDACTED**] litres per annum [**REDACTED**], or approximately [**REDACTED**] of total aviation fuel supply.[38]

129 Chevron does not supply to general aviation customers and accordingly aggregation occurs only in relation to jet fuel supply to big jet customers.

130 Big jet contracts are typically divided by port and split into domestic and international. So, a major airline will typically have different contracts for Auckland domestic, Auckland international, Wellington domestic, Wellington international, and so on. Z understands that airlines typically split their contracts this way because:

130.1 the cost of jet fuel differs substantially across airports, in particular because of different costs of transport; and

130.2 there are different combinations of suppliers at each airport, and airlines make up their supply differently across the different airports.

131 Taking the three major airports in New Zealand:

131.1 Approximately [**REDACTED**] litres of jet fuel are supplied at Wellington Airport per year. Mobil and BP supply jet fuel at Wellington Airport and Z understands that BP likely has the larger current footprint.

131.2 Approximately [**REDACTED**] of jet fuel are supplied at Christchurch Airport per year. Z, Mobil and BP supply jet fuel at Christchurch Airport and Z understands that the three currently supply approximately [**REDACTED**].

131.3 Approximately [**REDACTED**] litres of jet fuel are supplied at Auckland Airport per year, where Z, BP, Mobil and Chevron all operate.

132 The parties only overlap in big jet supply at Auckland Airport, to which Chevron sells all of its jet fuel supply. The analysis below proceeds on the basis of a market for big jet supply at Auckland Airport.

133 Big jet customers typically purchase jet fuel under fixed supply agreements. The agreements are often for a percentage of the customer's total annual volume to the particular location e.g. Auckland International Airport. For example, Z, Chevron, BP and Mobil all supply Air New Zealand at Auckland Airport.

134 The majority of big jet supply agreements have a term of one year, although some run for two years and in rare cases three. Airlines run tenders for supply agreements of with a term of their choosing. Airlines use different tactics such as multi-round tenders, with feedback, or asking for "best and final" prices at the outset.

135 Because airlines can have several supply agreements for different percentages of total supply, airlines are able to structure their contracts so that tranches of volume go to market at different times. Airlines usually conduct a competitive process in which there are multiple participants. Any tranche of supply up for tender at any given time might be awarded to a supplier in full or split amongst suppliers. From

[38] Source: Z estimates.

time to time airlines roll over an agreement or renegotiate it directly with the incumbent.

136 Agreements are based on assumptions airlines make about volume for the contractual period. The airline and supplier both take risk on the airline's actual volume requirements over the period.

137 [

REDACTED

]

138 [

REDACTED

]

139 Jet fuel is a homogenous product and, as such, fuel from different sources can be mixed in a tank. Most aircraft can fly several trips on a fuel tank. Because of these factors, airlines have options for where to purchase fuel on a daily basis. Airlines will fill for several trips at one airport where different pricing makes it efficient to do so. The difference in price will be weighed against the cost of operating a plane carrying additional weight in fuel.

140 This dynamic means that pricing at Auckland Airport is somewhat constrained by pricing at other New Zealand airports and airports on the East Coast of Australia. It also means that airlines often fill their planes in Auckland instead of smaller airports, in particular where the costs of the airline flying on a heavier tank are cheaper than the airline incurring a supplier's domestic transport costs.

141 As noted above, access to capacity to process jet fuel at the Refinery is governed by the Processing Agreements and linked to market share, and jet fuel is inevitably produced as a by-product of the refining process [**REDACTED**]. For supply to Auckland Airport, all participants obtain supply from the Refinery and do not import jet fuel.

142 At the Auckland Airport terminal:

142.1 the Midstream Participants own shared depot, storage and administration facilities known as "joint user hydrant installation facilities" (*JUHI*), [

REDACTED

]; and

142.2 jet fuel is transferred to aircraft by trucks and dispensing units for fuelling aircraft. Two joint ventures own these assets. First, the Joint Into-Plane Fuelling Services (*JIFS*), which is a joint venture between Z and BP. The joint

venture agreement nominates an "Operator" (currently BP) to assume responsibility for the operation and maintenance of the JIFS. [**REDACTED**] Secondly, the Joint Ramp Service Operations Agreement (*JRSOA*) is a joint venture between Mobil and Chevron. Key features of the joint ventures, and aircraft fuelling, are the following:

(a) Aircraft at the domestic and international sections of the airport are fuelled in different ways. Aircraft at the domestic section are typically fuelled by standard refuelling trucks and aircraft at the international section are typically fuelled by hydrant dispensing vehicles which connect aircraft to underground pipes.

(b) Hydrant dispensing vehicles are fairly standard for most aircraft and Z understands that there is no material difference between the hydrant dispensing vehicles each of the two joint ventures uses.

(c) Refuelling trucks come with different tank sizes. Smaller tanks are typically used for smaller aircraft such as turboprop, compared to larger tanks for jet aircraft. However trucks of any capacity are usually able to fill any aircraft, and the JIFS does in fact use its larger trucks to fill small aircraft where truck availability requires it. Trucks with larger tanks need to be more careful manoeuvring around small aircraft and trucks with smaller tanks need to return to the depot more often while refuelling larger aircraft.

(d) At present, the JRSO owns larger trucks and Z understands that the JRSO trucks typically have a tank capacity of 23,000 litres. Approximately half of the JIFS' trucks have smaller tanks, most with a capacity of 9,000 litres, which are used to fuel Air New Zealand's turboprop planes.

(e) [**REDACTED**]

(f) A new refuelling truck costs approximately [**REDACTED**].

(g) Aircraft themselves typically control the flow rate during refuelling, so the size or type of refuelling truck does not have a significant influence on the speed of refuelling.

(h) The JIFS and the JRSO implement the [**REDACTED**] customer supply contracts outlined above. [**REDACTED**]

143 The JUHI is supplied continuously from the Refinery via Wiri and there is storage equivalent to approximately three days of demand at Auckland Airport in the supply chain. This increases customer bargaining power because it results in an imperative to clear the available product promptly.

Analysis – big jet supply to Auckland Airport

144 On a national basis, Z estimates Jet A-1 supply for CY2014 as:[39]

144.1 Z – [**REDACTED**];

144.2 Chevron – [**REDACTED**];

144.3 BP – [**REDACTED**]; and

144.4 Mobil – [**REDACTED**].

145 Z estimates the share of supply of Jet A-1 to Auckland Airport to be approximately:[40]

145.1 Z – [**REDACTED**] (approximately [**REDACTED**]);

145.2 Chevron – [**REDACTED**] (approximately [**REDACTED**]);

145.3 BP – [**REDACTED**] (approximately [**REDACTED**]); and

145.4 Mobil – [**REDACTED**] (approximately [**REDACTED**]).

146 As a result of the proposed transaction:[41]

146.1 there will be an aggregation of Z and Chevron's entitlement to aviation fuel from the Refinery. However, as this is linked to overall downstream market share it does not raise a separate competition issue;

146.2 Z would increase its share in the JUHI, [

REDACTED

[42]

];

146.3 Z would have a share in each of the Auckland JIFS. Following the proposed transaction, Z will not hold any rights in either of the Auckland refuelling joint ventures that are additional to those it and Chevron currently hold in the respective joint ventures; and

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[39] [**REDACTED**].

[40] Source: Z estimates for CY2014. Note that Z is not easily able to estimate shares of supply split between domestic and international.

[41] Distribution to Auckland Airport (through the WAP) is discussed above at paragraph 119.

[42] [**REDACTED**].

146.4 Chevron's customers at Auckland Airport that transition to Z would be supplied by Z. This would not result in any lessening of competition because it would not put Z in a position to increase prices to customers. Any attempt to do so would be subject to competitive response by Mobil or BP, both of which serve customers through the same infrastructure and therefore are likely to have similar cost structures to Z.

147 There is substantial churn in the supply of jet fuel at Auckland Airport (e.g. over the last eighteen months Z has lost substantial volume from [**REDACTED**]. Z understands that [**REDACTED**] has grown in market share and the other three suppliers have all lost and gained supply with different airlines). Customers have substantial countervailing power. Bidding is competitive between the suppliers and further constrained by external prices. Customers are easily able to switch providers of tranches of volume because:

147.1 the fact of volume often being split across several suppliers means that airlines often have ongoing relationships with several suppliers, making switching percentages of supply between suppliers is easy; and

147.2 all volume is supplied from the same refinery, using the same pipeline and the same two joint ventures, meaning security and logistics of supply are interchangeable and quality is essentially identical.

148 Competition on price is particularly tight between suppliers at Auckland Airport. Airlines are able to drive prices low because of continuous operation of the Refinery, limited Jet A-1 storage, and because jet fuel is inevitably produced as a by-product of the refining process and allocated to each of the Midstream Participants [**REDACTED**]. In any event, it is clear from the foregoing that the remaining Midstream Participants would have access to the facilities and products to expand their supply in a way that would be likely, and sufficient in extent and timeliness to constrain Z following the proposed transaction.

149 As noted above, the suppliers have similar cost structures since they share the Midstream infrastructure (except for the two similar refuelling joint ventures). As a result, the suppliers' costs are fairly transparent and the suppliers effectively compete only on margin.

Marine

Market definition

150 Marine fuel oils are a by-product of refining crude oil, accounting for approximately 13% of the product of a barrel of crude refined at the Refinery. Fuel oil is mixed with diesel to obtain varying grades of marine fuel oils ranging from HFO to LFO. Typically, large international ships run on HFO, while smaller domestic vessels use LFO (or diesel).

151 Z estimates that approximately half of HFO customers purchase HFO through supply arrangements which typically run for one or two year terms, although cruise ship companies are typically on seasonal contracts. Request for proposal processes are often run, although direct negotiations are also common. Prices are typically based on the MOPS price plus a negotiated component.

152 Z's HFO supply contracts generally contain [**REDACTED**].

153 HFO customers that are not on supply contracts purchase HFO in spot markets at each port as they need it. Customers on supply contracts may also purchase on the spot market at ports of their choice if their supply agreements allow. Spot customers often have long-running relationships with suppliers and customers usually have expectations or agreed pricing ranges, providing a degree of certainty.

154 Chevron supplies LFO to a single customer out of Nelson, where Z and BP also operate LFO facilities. Z and BP both have storage tanks at Nelson that are not currently part of shared storage. Chevron supplies its customer based on a [**REDACTED**].

155 LFO is used almost exclusively by fishing vessels. Fishing vessels are typically built to use diesel but most are able to be modified to use LFO as well. Once modified, switching between the two fuels is simple. Z estimates that approximately 50% of current fishing vessels by fuel volume are modified for LFO.

156 LFO customers also purchase LFO under supply contracts and within spot markets, although buying LFO on the spot market is uncommon and, when it does happen, the purchaser typically has an expectation around price. It is common for large fishing companies to align themselves with a single LFO supplier.

157 Given the different customer types for HFO and LFO, each could be considered a separate product market (with diesel potentially forming part of the LFO market). However, this distinction does not drive any changes to the competition analysis due to Chevron's small participation in the supply of both types of marine fuels. The same reasoning applies to the geographic scope of the market.

Analysis

158 Z estimates shares of marine fuel oils on a national basis to be:[43]

	HFO	**LFO**	**Total fuel oils**
Z	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Chevron	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
BP	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Mobil	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]

159 Chevron owns no marine fuel oil distribution infrastructure, although the Midstream Participants all have access to shared fuel oil storage facilities at the Marsden Point and in Auckland, Tauranga, Wellington, Lyttelton, Dunedin and Timaru. Chevron's participation in the supply of marine fuel oils in New Zealand does not currently represent a significant competitive constraint; its supply volumes are limited [**REDACTED**]. In any event, the remaining Midstream Participants have access to sufficient product and

[43] Z estimates. Figures sum to more than 100 due to rounding.

distribution infrastructure to expand their supply in a way that would be likely, and sufficient in extent and timeliness, to constrain Z following the proposed transaction. Accordingly, Chevron's removal as an independent supplier of marine fuels would not result in competitive detriment.

160 Specifically, Chevron:

160.1 participates in the spot supply of HFO at Tauranga. Z, BP and Mobil also compete to supply HFO on a spot basis at Tauranga through the same infrastructure (a HFO tank owned by Mobil), so competitive tension would remain following the proposed transaction;

160.2 supplies LFO to a single customer out of Nelson and in rare circumstances may supply LFO on a spot basis (for example, where one of its HFO customers requests LFO on a one-off basis). Other than Z, BP also operates LFO facilities at Nelson; and

160.3 supplies COLL's ships out of Marsden Point. Following the proposed transaction, BP and Mobil would remain alternative suppliers to COLL.

161 Accordingly competition will remain in relation to each instance of Chevron's current supply.

162 Importantly, marine fuel oils produced by the Refinery significantly exceed New Zealand demand, so all suppliers are seeking to avoid costly exports, which drives down the domestic price.

163 In relation to HFO, customers can travel significant distances on one tank, and the cost of carrying more fuel is minor. HFO customers are typically large international ships that are able to refuel anywhere in New Zealand, the East Coast of Australia or Asia. They can usually make refuelling decisions on a trip-by-trip basis so as to minimise fuel costs. The effect is that both the spot market and supply by contract are significantly constrained.

164 Similarly, the LFO price is constrained by a number of factors, including:

164.1 existing competition to supply LFO at ports. At Nelson (the only port where Chevron supplies LFO), Z and BP have facilities and supply LFO. Chevron only supplies one customer at Nelson, based on a [**REDACTED**];

164.2 diesel, which is used for a significant number of ships and can be used for almost all vessels that use LFO. Diesel is easy to supply to most ports and so the diesel price effectively sets a cap on the LFO price; and

164.3 other alternatives, including, for example:

(a) bunkering at a different port;

(b) building a tank on the port (made more feasible by the fact that major fishing companies already have access to ports); or

(c) seeking supply from a competitor that does not currently supply at that port.

165 Accordingly, the proposed transaction will not result in any lessening of competition in relation to the supply of marine fuel oils.

Bitumen

Market definition

166 Bitumen is manufactured in New Zealand at Refining NZ (from crudes with bitumen-yielding properties) and also imported as a refined product. New Zealand's bitumen is largely consumed by a small number of customers, which import additional supply themselves.

167 Only Z and Chevron utilise the Refinery's bitumen-producing capacity, which supplies two thirds of New Zealand's demand. Z understands that Chevron's domestic production of bitumen is currently linked to the supply of a particular type of "equity" crude oil from Chevron's upstream system. [**REDACTED**][44]

168 Z submits that the geographic scope of the market is national, as the majority of suppliers, and key customers, operate on a national scale. Primary distribution from the Refinery is by way of the COLL coastal shipping arrangements, with approximately [**REDACTED**] distributed by road haulage directly from a bitumen gantry at the Refinery by the three major bitumen customers, Downer, Fulton Hogan and Higgins. Neither Z nor Chevron owns any bitumen storage infrastructure. Fulton Hogan owns port infrastructure at Mt Maunganui, Nelson, Lyttelton and Dunedin, Higgins owns port infrastructure at Napier and Downer owns storage infrastructure at Mt Maunganui, Lyttelton and Bluff. All three are able to draw on one another's infrastructure on the basis of shared storage arrangements. Additionally, and outside the shared storage arrangements, Stolt leases storage facilities at Wynyard Wharf to [**REDACTED**] and Technix owns storage infrastructure at New Plymouth.

169 Z supplies bitumen predominantly to Fulton Hogan and Higgins, and also to HEB Construction and smaller roading contractors. [**REDACTED**]

170 [**REDACTED**]. Z and Chevron take part only in the manufacture and primary distribution stages (and Chevron does not import bitumen); as noted above, import and storage infrastructure is owned by customers.

171 Other than Z and Chevron's domestic supply, supply is made up of imports procured by:

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[44] Z also supplies kerosene to [**REDACTED**] for use as a cutback in its bitumen (that is, to make the product less viscous). [**REDACTED**].

171.1 Downer, generally only for its own consumption;

171.2 [**REDACTED**];

171.3 Trafigura, a commodity trader and recent entrant. [**REDACTED**]; and

171.4 Technix, which is a very small player that owns tankage at New Plymouth and imports bitumen for sale.

172 Downer, Fulton Hogan and Higgins together make up approximately [**REDACTED**] of bitumen demand in New Zealand, with the remainder comprising small local roading contractors. The latter are typically locally-based customers although HEB Construction purchases product throughout New Zealand.

173 Given that the vast majority of supply and demand is national [**REDACTED**] the bitumen market can be considered national in its geographic scope.

Analysis

174 Current approximate shares of supply are:[45]

174.1 Z – [**REDACTED**];

174.2 Chevron – [**REDACTED**];

174.3 Downer (which currently consumes all of the supply it imports) – [**REDACTED**];

174.4 Trafigura – [**REDACTED**]; and

174.5 Technix – [**REDACTED**].

175 There is no structural reason preventing BP and Mobil from re-entering the supply of bitumen (or Z reducing its supply in response to imports) by, for example, altering their Refinery product mix. Additionally, bitumen imports are readily substitutable for locally-manufactured bitumen, and [**REDACTED**]. Bitumen customers could increase their use of imports to counteract any attempted use of market power by Z post-transaction. Downer, Fulton Hogan and Higgins, as owners of relevant storage infrastructure, are well-placed to substitute imports for domestic procurement. Thus, entry or expansion by importing or based on locally-refined supply would be likely, and sufficient in extent and timeliness, to constrain Z in the national bitumen market following the proposed transaction.

176 In any event, as noted above, [**REDACTED**]. Accordingly, the proposed transaction would not result in any lessening of competition in relation to bitumen supply.

Commercial supply of petrol and diesel

Market definition

177 Broadly, there are four types of commercial petrol and diesel customer:

[45] Source: Z estimates.

177.1 distributors, who purchase wholesale fuel to distribute to commercial customers by way of bulk delivery and, in many cases, their own-branded truck stops and retail sites (e.g. Allied, Farmlands Fuel (*Farmlands*), Waitomo Petroleum (*Waitomo*), Nelson Petroleum Distributors (*NPD*) and McKeown Group (*McKeown*));

177.2 independent retailers, who purchase wholesale fuel for sale at their own-branded retail sites (e.g. g.a.s., Gull and Foodstuffs);

177.3 truck stop users, who purchase fuel at truck stops using fuel cards. Truck stop users are often in the transport or construction sectors; and

177.4 bulk, or direct commercial customers, who purchase bulk fuel, often for their own tanks or for use at transport depots and on farms.

178 Note that the Midstream Participants and Gull also engage in the wholesale supply of petrol and diesel (from their refining and import operations) to their own-branded retail outlets, which operate under a range of ownership structures.

179 For suppliers, particularly the Midstream Participants, supply to any of the four types of commercial customer involves bulk commercial volume and so assists to manage the commercial risks associated with always being committed to substantial minimum output from the Refinery. On the demand side, many commercial customers have a wide range of choices available to them as they are able to switch wholly or partly between on-site storage (their own or provided by their supplier), the use of a truck stop network and in some cases the use of retail sites. So in practice all of the methods of supply overlap to some degree. Nevertheless separate consideration is given to each customer type below, which shows that on any basis the proposed transaction would not result in any lessening of competition.

180 As a general rule, larger commercial customers (particularly those that account for volumes of approximately 5mpla or more) have longer term supply arrangements and more sophisticated procurement processes. For example:

180.1 Distributors are typically supplied on contracts with a term of [**REDACTED**]. For example, Z supplies Southfuels on a [**REDACTED**] agreement and Chevron supplies Farmlands and McKeown on [**REDACTED**] contracts.

180.2 Retailers are also typically supplied on contracts with a term of [**REDACTED** **REDACTED**]. Southfuels, Farmlands and McKeown supply their own retail sites based on the agreements outlined above, and Z understands that g.a.s. recently re-signed its supply contract with BP after testing the market.

180.3 Large truck stop users and bulk customers (such as NZ Bus, Oceania Gold, KiwiRail, Fonterra and NZ Post) tend to hold supply contracts with a term of [**REDACTED**].

181 Large customers of all types typically contract with a single supplier at any one time and the account will be actively supported and managed by the supplier. Tender processes are often sophisticated and customers obtain visibility of suppliers' costs and margins. The contracts can include volume targets or commitments.

182 Contract customers usually select a supplier by way of a request for proposal process. Customers requiring only bulk supply usually invite all distributors and Midstream Participants in their area to tender. Customer requirements regarding product can generally be met by any competitor (e.g. no supply offers unique additives or grades that are crucial to particular customers).

183 Z considers smaller commercial customers (mainly bulk and/or truck stop customers) in two categories – medium-sized customers, such as regional transport firms, waste removers and other firms with vehicle fleets; and small commercial customers, such as small to medium sized enterprises with small fleets of light commercial vehicles.

184 Z's medium-sized customers may or may not hold a supply contract but typically have a relationship with an account manager. These customers can split their volume across several providers by carrying several fuel cards (described below). To encourage customers to use its fuel cards, and to facilitate growth, Z may offer customers volume targets which, if met, unlock greater discounts or rebates.

185 In some cases, business groups (for example the Chamber of Commerce) negotiate fuel prices and/or discounts on behalf of their members. The members then request fuel cards from the business group or the supplier which allow them to access those benefits. Z may offer business groups rebates for the volume that their members purchase as an incentive for the groups to promote Z cards.

186 Z's small commercial customers typically do not have fixed term contracts and discounts for these customers may or may not vary with volume. Small customers usually purchase fuel from Z sites using fuel cards and are not managed by a particular account manager (rather they deal with card resellers, call centres and websites).

187 In the case of bulk supply, customers are typically charged by invoicing or fuel card. For many bulk customers, a Midstream Participant or a distributor delivers fuel to a tank and invoices the customer for the amount delivered. However in some cases, either:

187.1 the bulk customer is a "consignment" customer. A Midstream Participant or a distributor delivers fuel to the customer's tank but, instead of invoicing for the amount delivered, the customer uses a fuel card to take fuel from the tank; or

187.2 the bulk customer simply fills its own tanks from a truck stop or other bulk fuel facility and pays by fuel card.

188 As noted above, fuel cards are a feature of competition in relation to users of truck stops (which may also be bulk customers). Fuel cards are set up to "permit" their holders to purchase diesel, regular, premium or "all fuels". Customers usually select which fuels their employees may use their fuel card for, rather than leaving the choice up to the card holder. Customers can differentiate between their employees, giving some access to different fuels than others, and changing permitted fuels on fuel cards is simple.

189 Fuel cards are used by customers to pay for fuel from truck stops, retail sites and consignment sites on account. A fuel card allows an individual customer to access any price, discount, rebate and credit payment terms negotiated between a supplier

and its commercial customer, and allow suppliers to charge prices agreed through supply contracts.

190 Customers that typically use fuel cards at truck stops include:

190.1 trucking companies such as national linehaul providers and major delivery and logistics firms;

190.2 roading and construction firms; and

190.3 some farming companies, which require diesel for farm equipment and vehicles.

191 Customers that typically use fuel cards at retail sites include:

191.1 firms with light commercial vehicle fleets;

191.2 small and medium-sized businesses that use company cars or pay for their employees' petrol; and

191.3 truck stop customers where some employees (e.g. executives) drive cars.

192 Pricing on fuel cards can be considered in two categories:

192.1 *Standard offers* – Many customers order standard offer fuel cards online or through a supplier's commercial channels, and accept the cards with standard terms and conditions. To be eligible for a standard offer, a customer is usually required to have a GST number. Standard offers do not typically require customers to give volume commitments and prices do not differentiate based on different volumes purchased. Z's standard offer is a discount off the displayed pump price at any retail sites (currently [**REDACTED**] for all fuel grades) and a discount off the national list diesel price at all truck stops (currently [**REDACTED**]). Standard offer customers are free to carry several brands' cards and suppliers can review and adjust standard offers at any time in competition with one another;

192.2 *Non-standard offers* – Commercial customers with supply contracts for supply at truck stops, retail sites and consignment sites (including firms accessing group benefits negotiated by business groups) typically hold fuel cards that charge their contractually-agreed rates and may be bound to contractually-agreed volume commitments or targets. [

REDACTED

REDACTED

]

192.3 [

REDACTED

]

193 Most fuel cards are brand-specific but not exclusive. However some independent firms have started negotiating with suppliers and providing cards that offer discounts on the pump price across several brands. For example, CardSmart is accepted at all major retail station networks across New Zealand.

194 Z estimates that approximately [**REDACTED**] of Z fuel card customers carry at least one other brand's fuel card. For some customers it is common for managers or head office to monitor the prices and discounts on different fuel cards and direct their staff to use a particular card on any given day. Some large trucking customers have multiple supply relationships but allow individual drivers to use only one brand of card based on the truck stop network that is best aligned to that truck's activities, thereby reducing overall truck operating costs. In addition to customers holding several fuel cards, Z experiences substantial churn (for example Z experiences approximately [**REDACTED**] churn across its small to medium sized enterprise customers annually).

Product market

195 Z submits that the supply of regular and premium petrol, and diesel, should be analysed as a single product market. Suppliers typically offer both products and, while diesel comprises a more significant proportion of this segment, there is a high degree of customer overlap (in particular, commercial petrol customers can also be commercial diesel customers). Diesel comprises a larger proportion of bulk supply and supply through truck stops, while bulk petrol deliveries tend to be of a smaller scale (e.g. for on-farm tanks) and customers often obtain their petrol supply from retail service stations, often by using a fuel card.

196 The vast majority of commercial sales are for diesel (for example, in the year ended 31 March 2015 Z sold [**REDACTED**]). Commercial customers who predominantly buy petrol will almost always be small customers, although some large diesel customers also buy a small amount of petrol.

197 There are no significant differences between premium and regular petrol. The only differences between the two fuels are that premium petrol:

197.1 includes an additive which manufacturers recommend (but do not require) for higher performance vehicles; and

197.2 has a higher octane rating (i.e. 95 octane as opposed to 91 octane for regular petrol).

198 Both premium and regular petrol are transported in the same way, use the same types of tank and are supplied through the same types of pump. Switching tanks and pumps from use with one fuel to the other is simple. Customers can mix premium and regular petrol in their petrol tanks.

199 On the demand side, commercial customers typically view premium and regular petrol as interchangeable. Z and Southfuels (a distributor supplied by Z) supply both in bulk directly to customers and both are available at all Z retail sites (where the vast majority of petrol sold to commercial customers is supplied).

200 There are no categories of customer that require a particular type of petrol. Rather, the particular petrol/s commercial customers buy depends on preferences often linked to their vehicle type and cost considerations. Z considers it likely that most customers operating fleet vehicles will buy regular petrol due to unit cost.

Geographic market

201 Geographically, the four Midstream Participants, and most other major distributors, operate on a national basis. In addition to the Midstream Participants, some distributors hold a national, or near-national, network, while others operate over large (overlapping) regions. Even in the truck stops segment, local geographic areas are of less relevance than is the case in retail supply, since customers tend to contract with a brand whose sites they use throughout a wide transport area. Commercial customers generally cover greater distances than retail customers, with light commercial vehicles, trucks and buses travelling 30%, 100% and 110% respectively further per year than light passenger vehicles, on average.[46] In addition, many transport fleet operators access multiple truck stop networks, with suppliers competing to gain market share by offering volume-related tiered discounts. Alternatively, some customers contract with their suppliers on the basis of assets that are located very close to that customer's own hub of activity, with suppliers competing on targeted asset provision as well as price. Taking all these considerations into account, Z submits that the market is most appropriately analysed as national in its geographic scope.

Analysis

202 As noted above, participants in the commercial supply of petrol and diesel include the Midstream Participants, and a number of independent brands. Current arrangements and approximate total annual supply volumes are set out in the table below. Note that the estimated volumes in the table include direct commercial supply, supply through truck stops and supply to independent retailers. The following distributors also supply to their own-branded retail outlets, and those volumes are included in the figures:

202.1 Allied supplies to its own-branded retail outlets;

202.2 Farmlands, which supplies to its own-branded truck stop and marina fuelling facilities network, as well as the Challenge retail network;

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[46] According to the Ministry of Transport – see the Ministry's Transport Indicators (http://transport.govt.nz/ourwork/tmif).

202.3 RD Petroleum, which supplies 14 of its own-branded retail sites, all in the South Island;

202.4 NPD, which supplies 27 of its own-branded retail sites in the South Island;

202.5 McKeown, which supplies approximately 19 of its own-branded retail sites in the South Island;

202.6 Waitomo, which supplies approximately 16 of its own-branded retail sites in the North Island; and

202.7 Southfuels, which supplies several of its own-branded retail sites.

Table 1 – annual commercial volumes[47]

Supplier	Estimated annual volume (mlpa)[48]	Ownership	Current means of upstream supply
Z	[**REDACTED**]	NZ publicly listed company	Not applicable
Southfuels	[**REDACTED**]	Owned independently of the Midstream Participants	Z[49]
Chevron	[**REDACTED**]	NZ subsidiary of Chevron Corporation	Not applicable
Farmlands Fuel	[**REDACTED**] (of which [**REDACTED**] is supply to Challenge)	Owned independently of the Midstream Participants (a division of Farmlands Co-operative Society)	Chevron[50]
McKeown Group	[**REDACTED**]	Owned independently of the Midstream Participants	Chevron[51]
BP	[**REDACTED**] (of which [**REDACTED**] is supply to g.a.s.)	NZ subsidiary of BP	Not applicable
Rural Fuel	[**REDACTED**]	100%-owned by BP	BP
McFall Fuel	[**REDACTED**]	30%-owned by BP	BP
RD Petroleum	[**REDACTED**]	49%-owned by BP	BP
Direct Fuels	[**REDACTED**]	100%-owned by McFall Fuel	BP
Toll United Petroleum	[**REDACTED**]	Owned independently of the Midstream Participants	BP
Aratuna Freighters	[**REDACTED**]	Owned independently of the Midstream Participants	BP
Mobil	[**REDACTED**] (of which [**REDACTED**] is supply to Gull and [**REDACTED**] is supply to Foodstuffs)	NZ subsidiary of Exxon Mobil Corporation	Not applicable
Allied Petroleum	[**REDACTED**]	Owned independently of the Midstream Participants	Mobil
Waitomo Petroleum	[**REDACTED**]	Owned independently of the Midstream Participants	Mobil
NPD	[**REDACTED**]	Owned independently of the Midstream Participants	Mobil
Wealleans Petroleum Distributors	[**REDACTED**]	Owned independently of the Midstream Participants (50%-owned by Allied)	Mobil

[47] Source: Z estimates. Z notes that its knowledge of other participants' volumes is limited and accordingly the figures are approximate only.

[48] Estimated volumes include diesel, petrol and a very small amount of marine fuel oils.

[49] On a [**REDACTED**] year agreement.

[50] [**REDACTED**].

[51] On a [**REDACTED**] year agreement.

Supply to distributors

203 Independent suppliers obtain refined product from one of the four Midstream Participants, and there is potential for them to be supplied by Gull in the North Island.

204 The reduction of supply alternatives for these distributors from four to three will not result in any lessening of competition. When a supply contract expires, the incumbent and two other Midstream Participant suppliers (plus, potentially at least in the North Island, Gull[52]) will remain available to a distributor. Such supply represents an attractive channel for the Midstream Participants, given the lower capital expenditure required and lower operational risk. These contracts are also attractive because they involve large volumes, and so are important mechanisms by which the Midstream Participants manage the commercial risks associated with always being committed to substantial minimum output from the Refinery (and volumes produced by their upstream operations in the case of BP and Mobil). Furthermore, distributors are able to advance their negotiating position by making a credible threat of importing directly, which in itself would be likely, and sufficient in extent and timeliness, to constrain Z following the proposed transaction. Accordingly, they will continue to be in a position to source fuel at competitive prices from independent suppliers.

Direct commercial supply

205 These same points apply from a commercial customer perspective, which means that even if the Midstream Participants' supply volumes were treated as their share of supply of this market, no adverse effect on competition would arise. Furthermore, Z considers that in practice there is vigorous competition among the participants in this market, with each typically having a significant degree of pricing freedom. Z's experience is that prices to distributors are typically set relative to international market prices, and pricing to customers is at distributors' discretion. For example, Z faces particularly vigorous competition in the South Island from Allied, NPD and RD Petroleum. Z also observes vigorous competition among these distributors, including those that have the same Midstream Participant supplier (again, Allied and NPD are an example, competing on price, service and network infrastructure such as offering investments in tanks). They also compete effectively with the Midstream Participants by offering customer service that is based on local knowledge and relationships, lower-cost, better-suited trucks and a different approach to return on equity expectations, the timing of returns on sales time or capital invested.

206 Z, BP, Chevron and Mobil supply diesel to marine customers through shared infrastructure at ports, and all the Midstream Participants along with Gull and a number of the independent distributors directly supply diesel to smaller marine customers, for example by truck. Z understands that Gull may also supply diesel to larger marine customers. Finally, operators of marina diesel and petrol supply infrastructure supply smaller marine customers such as coastal shipping vessels and pleasure craft through their bowsers. The largest of these is Petroleum Logistics, which owns a large proportion of fuelling facilities at New Zealand marinas. [

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[52] Z assumes that [

REDACTED

].

REDACTED
]

207 Moreover, this is a dynamic part of the market.[53] The independent distributors have expanded over time, both in geographical scope and by targeting more customer segments (including increasing their presence in the truck stops part of the market), at the expense of Midstream Participants. For example, Allied, NPD and Farmlands have recently expanded in terms of both customers and truck stops, and Southfuels has expanded in the North Island.

208 Finally, Z considers that direct imports of refined fuel by distributors or large commercial customers would be feasible. This could occur in relation to significant volumes in a short time period. The threat of this occurring would deter any attempt by Z to exercise market power because, were such a commitment made by a distributor or customer, incumbent suppliers would lose both margin and volume, compromising fixed cost recovery and asset utilisation.

209 Thus expansion by existing participants, or entry (including by importing) would be likely, and sufficient in extent and timeliness to constrain Z following the proposed transaction.

Supply through truck stops

210 Truck stops are fuel sale sites for commercial customers, which:

210.1 are equipped with high-flow commercial pumps. These flow at more than twice the rate of retail bowsers and are unsuitable for use with light vehicles;

210.2 generally do not accept ordinary payment cards, and accept fuel cards only; and

210.3 typically supply diesel only.

211 The proposed transaction would allow Z to present to customers a more comprehensive truck stop network and consequently a more attractive fuel card proposition.[54] Z will face ongoing effective competition, particularly from:

211.1 BP – which has a strong network in its own right, but also has the ability to exploit the coverage of its third party distributors;

211.2 Mobil – which is in a position to compete using a combination of its own sites and those of its distributors, particularly Allied.

212 A tool that will be separately provided to the Commission sets out the geographic distribution of truck stops for Z and rival networks and shows that competitive options remain for firms seeking to uplift fuel from truck stops. As noted above,

[53] For example:

- [**REDACTED**];
- [**REDACTED**]; and
- [**REDACTED**].

[54] [**REDACTED**].

trucks can travel long distances on a single fill, meaning that it takes relatively few sites to operate a credible truck stop network. The economics of operating a truck stop network are not particularly sensitive to scale (because truck stops are generally configured to take a full tanker load of diesel). Z considers it is possible to supply national transport firms with as few as [**REDACTED**] (appropriately geographically distributed) truck stops.

213 More generally, transport companies (e.g. New Zealand Post, PBT and Freightways) require significant volumes of fuel and so are well positioned to exercise countervailing market power.

214 In addition, there are low barriers to entry for truck stops given that sites are:

214.1 unmanned;

214.2 relatively low cost in terms of required infrastructure; and

214.3 able to be positioned on lower value land on the outskirts of urban areas.

215 This ease of entry is reflected in:

215.1 significant expansion by distributors into the provision of truck stops. For example, Allied has developed truck stops in Invercargill, Greymouth, Taupo and Hamilton in the past 12 months; and

215.2 the fact that the trucking firms themselves often host storage and filling facilities at their own depots, often installed and maintained by diesel distributors such as Allied (these facilities will not be represented on the truck stops tool to be provided separately).

216 Accordingly, entry or expansion by the other Midstream Participants, Gull, distributors or commercial customers themselves is likely to be sufficient in extent and timeliness to constrain Z following the proposed transaction.

Supply to fuel retailers

217 The Midstream Participants, along with Gull, participate in the wholesale supply of fuel to retail outlets that carry their brand (under a range of ownership structures – as to which see further below). In addition:

217.1 Mobil supplies refined product to the independently-owned Allied network of sites, and to Foodstuffs (as well as participating in the Foodstuffs dockets programme);

217.2 BP supplies the independently-owned g.a.s. network of sites;

217.3 Chevron supplies Farmlands, which in turn supplies the independently-owned Challenge network of sites. Following the proposed transaction Z would assume Chevron's role; and

217.4 although not a wholesale supply arrangement, note that Z and Gull participate in Progressive's supermarket dockets programme.

218 The reduction of potential wholesale suppliers to fuel retailers from four to three (with Gull also remaining as a potential supplier in the North Island) will not lessen

competition. At the time of expiry of its contract, a retailer will have an opportunity to engage with two Midstream Participant suppliers in addition to its incumbent supplier. As with the commercial and bulk supply of fuel, this is an attractive channel to the Midstream Participants, since it accommodates significant volume with low capital investment, and accordingly vigorous competition to supply retailers can be expected to continue.

219 As noted above, distributors could enter or expand by arranging imports for themselves and supplying their own-branded truck stop and retail sites. As noted elsewhere, Z considers that entry is most likely at the retail level, by securing supply on competitive terms from one of the Midstream Participants. Entry and expansion would be likely, and sufficient in extent and timeliness to constrain Z following the proposed transaction.

RETAIL SUPPLY

Market definition

220 For Z, the retail segment accounts for approximately half of total refined product sales by volume (with the commercial segment accounting for the other half). Retail service stations also supply varying ranges of convenience goods and services to consumers.

221 Petrol and diesel are supplied to retail and commercial customers through service station sites under a range of ownership structures. There are three broad forms of ownership and operation structure:

221.1 sites that are controlled and operated by one of the Midstream Participants, and use the Midstream Participant's brand, either directly or through an agency agreement. The Midstream Participant sets prices at these sites;

221.2 sites that are owned and operated independently, usually facilitated by a franchise agreement and wholesale supply agreement. The independent owners set prices at these sites, which are operated either:

(a) under one of the Midstream Participants' brands; or

(b) under another brand (e.g. Gull); and

221.3 sites owned and operated by a Foodstuffs supermarket and branded as either a Pak'nSave or New World fuel site, and supplied by a wholesale supply agreement with a Midstream Participant. Z does not know how prices are set at such sites.

222 Loyalty schemes also form part of the retail supply structure, including Foodstuffs (redeemable at Mobil service stations) and Progressive (redeemable at Z and Gull service stations) supermarket docket schemes, and reward card schemes (particularly the Fly Buys and AA Smartfuel programmes).

223 Diesel and petrol are not substitutable on the demand side, while premium and regular petrol are partly substitutable (vehicles can typically run on both types, but premium petrol is often used for "high performance" vehicles). On the supply side, the distribution of such fuels is made at the same point of sale in order to serve the maximum number of motorist customers. Thus Z submits that the analysis is

appropriately conducted on the basis of a single product market for the retail supply of petrol (both regular and premium) and diesel.

224 The nature of the geographic substitution possibilities for retail customers varies by site, but Z submits that a highly conservative starting point for any analysis of the proposed transaction's effect on retail competition should be a radius of 5km because:

224.1 Fuel consumers are by definition mobile and able to move easily within this radius. For example, they can readily be assumed to be able to travel greater distances than, for example, supermarket shoppers. In *The Warehouse* decision, the Commission acknowledged that "the willingness of customers to travel to avoid a SSNIP [small but significant and non-transitory increase in price] may be affected by such matters as… the level of motor vehicle ownership".[55] In that decision the Commission concluded an appropriate starting point for local geographic markets was a travelling distance of 5km from each actual and prospective Warehouse Extra.[56]

224.2 In reality, although particular service stations might be too far apart to be considered direct competitors for some customers, there is a marginal "chain" effect where intersecting circles of at least 10km radius constrain each other in sequence (with prices signalled through prominent signage). In those circumstances the chain sets the price for the marginal customer. Since it is not possible to price discriminate between consumers exercising a choice and those that are more "captive", this catchment represents a single geographic sphere of competition.[57]

225 A 5km radius would be in line with that adopted by the Australian Competition and Consumer Commission in its assessment of Caltex Australia's proposed acquisition of the retail assets of Mobil Oil Australia.[58]

226 The market research in Figure 2 below demonstrates the extent of mobility and choice that retail consumers have. Consumers can exercise a choice of retail fuel supplier at virtually no cost or inconvenience, every time they require fuel. For many customers this choice is exercised weekly. Only 10% of customers choose to fill exclusively with Z (i.e. five out of five times). 47% of consumers choose not to fill from Z at all. The remaining 43% of consumers switch between fuel brands based on their preferences. Some of the relevant consumer considerations in making fuel purchasing decisions are set out at paragraph 292.

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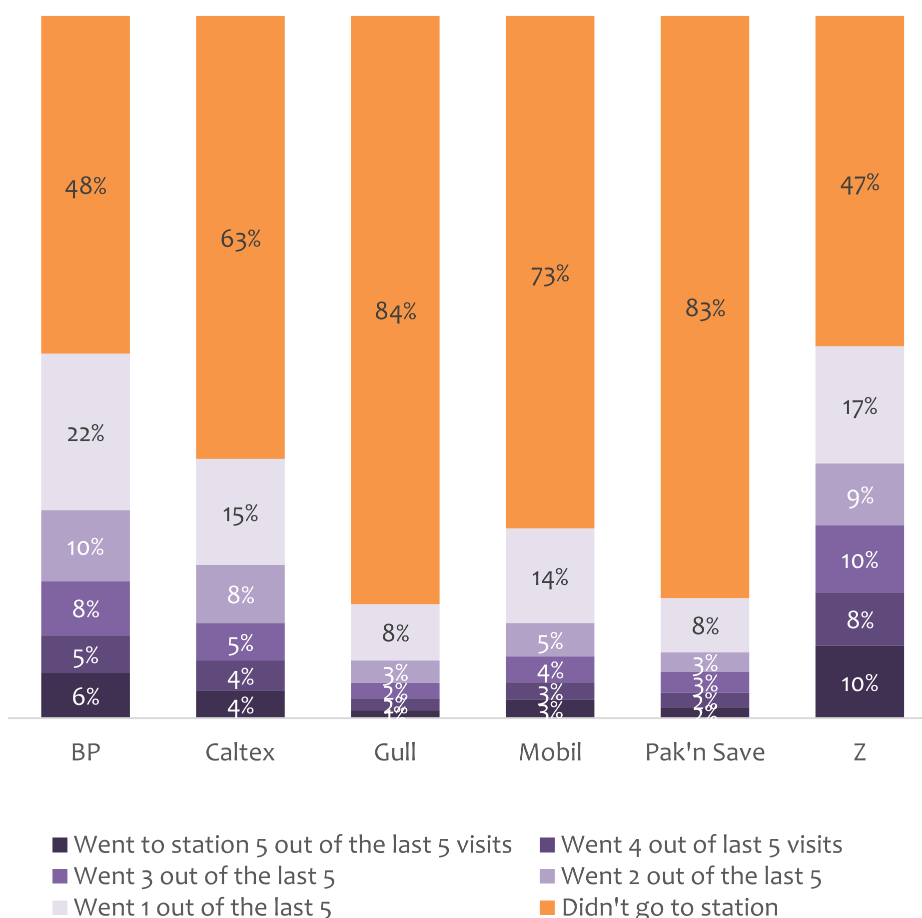
[55] See New Zealand Commerce Commission, Decisions 606 and 607, 8 June 2007, paragraph 141.

[56] Ibid, paragraph 150.

[57] Similar logic has been applied by the Commission in relation to milk processing – see New Zealand Commerce Commission, Decision 341, Kiwi/Tui memorandum.

[58] ACCC Public Competition Assessment, Caltex Australia Limited – proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd, 9 February 2010.

Figure 2 – All New Zealanders – frequency of visits to each station in last five visits



227 The following sections set out the reasons the proposed transaction will not lessen retail competition. Specifically, they address:

227.1 the continuing constraint from existing retail suppliers (see paragraph 228);

227.2 the lack of effect on price competition, including by reference to analysis undertaken by Professor Jerry Hausman (see paragraph 271);

227.3 the lack of effect on other key aspects of retail competition (including supermarket dockets and loyalty schemes, service differentiation and convenience stores – see paragraph 283); and

227.4 the lack of effect on conditions of retail entry and expansion (see paragraph 295).

Existing competitors

228 The proposed transaction would not give rise to a lessening of competition in relation to the retail supply of fuel. There are currently 16 suppliers in this market. The following table sets out Z's estimates of their shares of supply and wholesale supply arrangements.

Table 2 – retail shares of supply[59]

Retail supplier	**Estimated share of supply**	**Ownership**	**Current means of upstream supply**
Z	[**REDACTED**]	NZ publicly listed company	Supplied by its own refined product imports, and through Refining NZ
Chevron (Caltex)	[**REDACTED**]	NZ subsidiary of Chevron Corporation	Supplied by its own refined product imports, and through Refining NZ
BP	[**REDACTED**]	NZ subsidiary of BP	Supplied by its own refined product imports, and through Refining NZ
Mobil	[**REDACTED**]	NZ subsidiary of Exxon Mobil Corporation	Supplied by its own refined product imports, and through Refining NZ
Gull	[**REDACTED**]	Owned independently of the Midstream Participants	Supplied by imports (which it tenders internationally every year). Current supplier is Mobil
Foodstuffs	[**REDACTED**]	Owned independently of the Midstream Participants	Supplied by Mobil on terms that are unknown to Z
Challenge	[**REDACTED**]	Chevron group-owned brand, network owned independently of the Midstream Participants	Supplied by Farmlands [**REDACTED**], which is supplied by Chevron. The term is [**REDACTED**] years
g.a.s.	[**REDACTED**]	Owned independently of the Midstream Participants	Supplied by BP on terms that are unknown to Z
Allied Petroleum	[**REDACTED**]	Owned independently of the Midstream Participants	Supplied by Mobil on terms that are unknown to Z
Nelson Petroleum Distributors	[**REDACTED**]	Owned independently of the Midstream Participants	Supplied by Mobil on terms that are unknown to Z
RD Petroleum	[**REDACTED**]	49% owned by BP; 51% independently owned	Supplied by BP on terms that are unknown to Z

[59] Z estimates based on the Z fiscal year ending 31 March 2015.

Retail supplier	Estimated share of supply	Ownership	Current means of upstream supply
McKeown Group	[**REDACTED**]	Owned independently of the Midstream Participants	Supplied by Chevron on a [**REDACTED**] year agreement
Waitomo Petroleum	[**REDACTED**]	Owned independently of the Midstream Participants	Supplied by Mobil on terms that are unknown to Z
Southfuels	[**REDACTED**]	Owned independently of the Midstream Participants	Supplied by Z on a [**REDACTED**] year agreement
Farmlands	[**REDACTED**]	Owned independently of the Midstream Participants	Supplied by Chevron [**REDACTED**]
Rural Fuels	[**REDACTED**]	Z does not know	Arrangements are not known to Z

229 Following the proposed transaction Z would hold a share of supply of approximately [**REDACTED**].

230 It should also be noted that while Z controls all but six of its 211 retail sites through operating agreements with retail site operators, with Z owning the fuel (and the majority of the assets) and controlling pricing, Chevron has over the past few years moved progressively towards a wholesaler model (see below at paragraph 255). Approximately [**REDACTED**] of BP and Mobil's network of retail sites are independently owned and operated, with prices set by their owners.

231 Z understands that independent retailers, such as Foodstuffs, g.a.s. and Challenge generally obtain prices in the same way as large commercial customers, on competitive terms (derived from import parity pricing), which provides them with significant retail pricing discretion.

232 There is vigorous competition among all retail suppliers and Chevron's exit from the market as an independent wholesaler will not lessen competition. Following the proposed transaction Z will face significant constraints from a range of players, including both the other Midstream Participants' brands and the independently owned and operated fuel retailers. The retail market will continue to be characterised by a range of ownership structures, pricing incentives and service propositions.

The parties

Z

233 Z currently directly controls 205 retail service station sites throughout New Zealand through a franchise-style operating agreement (*Z Retailers*). For these sites, Z either owns or leases the land and buildings and owns the fuel, fuel systems (tanks and related equipment such as pumps, pipes and hoses) and site fitout, and directly controls the pricing.

234 There are six independently-owned, Z-branded sites, which are resellers of product (*Z Independent Retailers*).[60] At these sites, the retailer owns or leases the land and buildings, and owns the fitout. [

REDACTED

]

235 Contracts with Z's Independent Retailers are negotiated on an individual basis. [

REDACTED

] However, in all cases, these independent owners are free to set their own retail price. The Z Independent Retailers are:

235.1 Z Onetangi (located on Waiheke Island)*;

235.2 Z Wilmot Motors (located in Warkworth);

235.3 Z Taipa (located near Kaitaia);

235.4 Z Edgecumbe (located in Whakatane);

235.5 Z Motueka (Bowater Motors located in Motueka)*; and

235.6 Z Rutherford (Bowater Motors located in Nelson).

236 As noted above, Z directly controls fuel pricing for the Z Retailers. [

REDACTED

[60] As noted above at footnote 2, all Z site numbers are as at 10 June 2015.

237

REDACTED

238

REDACTED

239 [61]

REDACTED

240

REDACTED

]

241 The following sets out the ability of Z Retailers and Z Independent Retailers to switch to a competitor’s brand and supply:

241.1 Z Retailers operate under Z's Business Operating Agreement. For all of these sites, Z has secured occupancy under a freehold or leasehold interest. [

REDACTED

]

241.2 The ability of Z Independent Retailers to switch to a competitor's brand and supply depends on the contractual terms that each has negotiated individually with Z. [

REDACTED

[61] Additional commentary about discounting is below from paragraph 270.

REDACTED

241.3

REDACTED

]

242 Z Independent Retailer contracts are negotiated on an individual basis, and so the terms vary between contracts. However, in general, supply contract agreements last [**REDACTED**], with an option to extend for a further period of time [**REDACTED**]. In general, exit from the contract occurs:

242.1 Following termination by Z or the retailer (on grounds that vary from contract to contract); or

242.2 Following expiry of the contract or following determination by Z or the retailer not to renew the supply agreement.

243 Occasionally, Z has decided to terminate the supply agreement with a Z Independent Retailer (see **Appendix O**). Given there are only six Z Independent Retailers, their ability to switch is of marginal significance from a competition perspective. Independent retailers are more common amongst other brands (including Chevron) and these retailers do switch between competitors. For example:

243.1 a number of g.a.s. stations were previously Mobil or BP stations (Z does not know the nature of the supply agreements in force at the stations at the time that they were changed); and

243.2 [**REDACTED**]

244 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. The branding is usually maintained by the oil company, so all that may be required is a change in livery.

Z is incentivised to pass on crude oil price movements to consumers

245 Z has introduced a range of innovations in its service offering that did not feature under previous Shell ownership. Z has also become the clear leader on price. There are currently four Midstream Participants, three of which are part of global operations that are vertically integrated upstream into E&P. The incentives on Z

both as the only one of the four Midstream Participants that is not present upstream, and as a result of its competitive strategy, contribute to it being the player most likely to pass on crude oil price movements (downwards as well as upwards). This is illustrated by Z's conduct in response to recent unprecedented decreases in global oil prices.

246 As at 16 January 2015, Z's main port price for 91 octane petrol had decreased 23 times, totalling 47cpl, since 10 October 2014.[62] [

REDACTED

]

247 The proposed transaction would sever links with Chevron and accordingly convert the Chevron business into a New Zealand downstream-focused player, ensuring pricing decisions are made independently of upstream considerations. This is not to say, however, that the Chevron business would become exactly like Z's, in particular due to structural differences in their respective retail service station models – see paragraph 253 below. Of course, Z would still be constrained in the market by:

247.1 the price and non-price competitive behaviour of the two remaining Midstream Participants, including potential cross-subsidies from the upstream business, or enhancing investment, facilities and service;

247.2 price and non-price competition (such as service differentiation and loyalty schemes) from Gull, other retailers such as g.a.s., supermarkets and distributors with a retail presence such as Allied and NPD; and

247.3 the threat of new entry or expansion, locally, regionally, or nationally, that would eventuate if high margins were able to be exacted, leading to unrecoverable market share losses for Z.

Z is incentivised to ensure competitive and sustainable fuel supply in New Zealand

248 Although the four Midstream Participants operate off a largely common set of infrastructure, and therefore a largely similar cost-base, that is not the case right through the supply chain. One of the key exceptions to this commonality is procurement, where the sale by Shell of the business that is now Z has resulted in the market presence of a player that is not vertically integrated into E&P and

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[62] A recent paper prepared by the New Zealand Institute of Economic Research (*NZIER*) found that increases and decreases in international oil prices are passed on to consumers. (NZIER "Petrol prices [still] rise and fall at the same speed", 20 April 2015, http://nzier.org.nz/static/media/filer_public/4c/37/4c378936-ecee-45e9-81ca-49b19c7469cb/nzier_update_on_petrol_price_dynamics.pdf (accessed 9 June 2015)). NZIER came to the same conclusion when it analysed prices in 2013 (NZIER Insight, "NZ petrol prices reflect input costs not gouging", 2 August 2013, http://nzier.org.nz/static/media/filer_public/b0/a1/b0a12ddb-694e-428f-8ee7-315b8e663017/nzier_insight_43_petrol_prices_-_final_aug.pdf (accessed 20 January 2015)), and 2011 (see NZIER Insight, "No bias in pump price movements up or down", September 2011, http://nzier.org.nz/static/media/filer_public/05/64/05646d53-ffd5-4ca9-ab25-54b711595e96/nzier_insight_29_-_no_bias_in_pump_price_movements_up_or_down_0.pdf (accessed 30 January 2015)), and the findings of a 2008 Hale and Twomey report regarding the New Zealand petrol market (Hale and Twomey, "2007 ACCC report into Australian petrol prices: review of applicability to the New Zealand petrol market", July 2008, http://www.med.govt.nz/sectors-industries/energy/pdf-docs-library/liquid-fuel-market/nz-petrol-review/2007-accc-report-into-australian-petrol-prices-review-of-applicability-to-the-new-zealand-petrol-market-706-kb-pdf.pdf (accessed 30 January 2015)).

accordingly is without its own internal sources of crude supply.[63] This provides Z with a distinctive competitive profile (relative to the other three Midstream Participants) as a player that is completely focused on downstream as a discrete business. Z is also unique among the Midstream Participants for operating solely in New Zealand, meaning its success entirely depends on the success and sustainability of fuel supply (and its brand) in New Zealand.

249 The other factor at play is Z's competitive strategy. Z expressly seeks to command a premium in the retail market at some locations based on its differentiated service proposition and New Zealand-focused brand. Z considers that in order to be sustainable, the premium must be transparent, and consumers must consider it justified (given the range of alternatives readily available to them). Thus, the premium must be based on, for example, capital expenditure that would demonstrably improve security of local fuel supply, or service differentiators such as its forecourt concierge between 10am and 5pm daily, or "pay at pump" facilities allowing customers to pay for fuel at the pump using an EFTPOS, credit or fuel card. [

REDACTED

]

250 Given its distinct profile compared to the other Midstream Participants, Z has a strong incentive to stimulate the development of the New Zealand fuel industry, rather than to "sweat" existing assets to boost returns (particularly when upstream margins are suffering). This incentive contributes to Z maintaining a commitment to capital investment, and stimulating continued investment in local infrastructure by all Midstream Participants. These incentives will not change following the proposed transaction.

251 It is in this context that any increases in fuel margins over the last five years must be viewed. Notably, there has recently been a significant and growing difference between the importer margins calculated by the Ministry of Business, Innovation and Employment and Z's actual retail margins, primarily due to the cost of loyalty and discounting.

252 Nevertheless, Z does agree that retail fuel margins have improved over the last five years. The improvement has enabled Z to accommodate what it considered to be necessary increased capital expenditure (Z's annual capital expenditure has been approximately $60 million to $70 million (a total of $244 million for the period FY2011 to FY2014 and was $70 million for FY2015)) and to invest in its offer, particularly in relation to service (as described at paragraph 245). In any event it has occurred in the status quo competitive environment, which as noted above represents an appropriate proxy for realistic counterfactual scenarios. Furthermore, in any realistic counterfactual, there is no reason to expect Chevron to lead any reduction in margins or price – see further below from paragraph 253.

Chevron

253 All of the approximately 146 Caltex-branded retail service station sites are dealer-owned (with the exception of nine, which are owned by Chevron). At the independent sites, the dealer owns the tanks, fitout and fuel and owns or leases the

[63] The other key exception to the commonality of cost profile is retail supply, where Chevron has progressively divested itself of ownership of Caltex branded service stations and now effectively operates a wholesale supply model (see further at paragraph 255 below).

land and buildings. At the other nine sites, Chevron owns or leases the land and buildings, and owns the fitout, fuel and tanks.

254 [

REDACTED

]

255 The fact that Chevron does not own the Caltex-branded service stations has served to limit its practical ability to operate as a market leader. Chevron only controls the wholesale price to its dealers and so is not able to take a centrally co-ordinated approach to pricing throughout its retail network. This limitation will continue both in the factual with Z as a new owner and in the counterfactual. [

REDACTED

]

256 Following the proposed transaction, Z's current plan is to continue to operate the Z and Caltex sites and brands unchanged initially. No plans have been finalised for the subsequent period but at this stage Z's own brand would continue along similar lines to its current strategy, including its premium service offering outlined below at paragraph 291. [

REDACTED

]

BP

257 There are approximately 80 company-operated, BP-branded retail service station sites, with the balance of BP sites (approximately 156) being dealer-owned and operated. Z assumes BP directly controls the price at the sites it owns.

258 Following the proposed transaction Z will continue to be constrained by BP, the player that has invested most extensively in its service proposition, including its brand, perceptions about its fuel quality and its convenience store offering. BP is a global company with ample resources to defeat any attempt by Z to exercise market power following the proposed transaction.

Mobil

259 There are approximately 170 Mobil-branded retail sites. Z understands that approximately 120 sites are operated under an agreement along similar lines to Z Retailers, with Mobil retaining ownership of fuel and setting the retail price. Remaining sites appear to be independent dealer-owned sites.

260 Like BP, Mobil is a well-resourced global player, which will operate as a continuing constraint on retail fuel pricing.

Gull

261 As noted above, Gull is the only retail competitor that sources its supply outside of the Midstream industry arrangements. In part due to the nature of its supply chain (i.e. it owns only one storage terminal and distributes product by way of road haulage) Gull operates largely in the upper North Island. It has 55 retail service station sites, which Z understands are a mix of dealer and company owned. Gull is observed to attempt to maintain a discount to other retail players [

REDACTED

] and has historically focused on competing on price rather than enhancing or differentiating its service proposition. Gull's position will be unaffected by the proposed transaction and accordingly Gull will continue to constitute a meaningful price constraint on the remaining participants at the retail level, in the areas it operates. It also has potential to expand into other geographic areas (see above at paragraph 62).

Independent retailers

262 Even if the Commission were to take the narrowest possible view of retail competition, by not treating other retailer suppliers and supermarkets, which obtain supply from the Midstream Participants, as having pricing independence of the Midstream Participants, Z would be subject to significant ongoing pricing constraints following the proposed transaction such that there would be no lessening of competition at the retail level.

263 In reality, independent retailers and supermarkets are also able effectively to constrain the Midstream Participants in various ways. Although their retail price is ultimately a function of the Midstream Participant's wholesale price, in practice they are able to procure wholesale supply very competitively, and they are free from midstream investment and so have fewer commercial risks. This means they have significant freedom to compete on price. [

REDACTED

]

Foodstuffs

264 Foodstuffs represents an important constraint in the retail fuel market. Foodstuffs is a sophisticated retailer operating at commercial scale, with existing marketing and back-office infrastructure and a nationwide network of retail sites. Mobil is currently the wholesale supplier to its Pak'nSave and New World-branded retail service station outlets. Foodstuffs' other supermarket brand, New World, has a docket scheme redeemable at Mobil service stations, and a number of their owner-operators have invested in their own service stations, effectively committing themselves to competing in this market. These service stations also accept Mobil Card (Mobil's fuel card). Z understands that Foodstuffs' pricing may include loss-leading fuel (e.g. using dockets) to attempt to increase sales of groceries. Foodstuffs is one of the parties that is able to secure highly competitive wholesale fuel prices (as described

above at paragraph 263). Z understands they do so based on the large volumes for which their dockets programme accounts.

Challenge

265 The Challenge brand represents 84 retail service station sites supplied by Farmlands, which is in turn supplied by Chevron. The Challenge brand is owned by the Chevron group and licensed on a non-exclusive basis to Farmlands, which sub-licenses the brand to retailers (which resell the fuel) and coordinates the retailers' marketing activity. [

REDACTED

]

g.a.s.

266 The g.a.s. network comprises more than 121 retail service station sites nationwide, most of which are dealer-owned and set their own retail prices. g.a.s. has been effective at increasing its network by obtaining sites switching away from the Midstream Participants' brands, many of which the Midstream Participants were no longer willing to support. g.a.s.'s proposition is based on providing a convenient service for local communities.

Allied

267 Allied supplies approximately 75 retail service station sites and truck stops nationwide, all of which are dealer-owned. Allied's proposition includes "the desire to ensure important local services continue"[64] and its sites are frequently located in smaller centres.

268 As noted above, Allied is currently supplied by Mobil and Z assumes it supplies its retail fuel sites with fuel obtained through its distributor contract.

Other distributors

269 As noted above, in addition to Allied, NPD, RD Petroleum, McKeown, Waitomo Petroleum and Southfuels participate in the retail supply of petrol and diesel.

Rural Fuels

270 Rural Fuels, previously Spirit, has two sites, in Stratford and Egmont Village. Z does not have information on its ownership and supply arrangements.

Price effect of the proposed transaction in local markets

271 The largest brands are owned by the Midstream Participants, which as noted above have pricing incentives arising in part out of the costs of operating and maintaining the Midstream infrastructure. In recent years localised discounting has increased, particularly in certain geographical "pockets" concentrated in the larger metropolitan areas of the upper North Island.

[64] http://alliedpetroleum.co.nz/allied-fuel-plus-card/locations-use-fuel-card/ (accessed 27 May 2015).

272 [

REDACTED

[65]

]

273 [

REDACTED

]

274 Professor Jerry Hausman has examined local pricing behaviour and his report is at **Appendix P**. In summary, the report:

274.1 Examines "local markets" on the basis of a radius around a Z station of 5km. It also presents findings on the basis of a radius around a Z station of 2km, and on the basis of a radius around a Z station of 2km in metropolitan areas and 5km outside metropolitan areas, although for the reasons set out above Z considers a 5km radius to be highly conservative.

274.2 Measures the effect on Z's prices specifically in local markets in which Caltex is the only other brand present. This effectively isolates the Caltex effect and the finding is that Caltex does not materially influence Z's pricing. This strongly suggests that the proposed transaction would not be expected to cause adverse price effects.

274.3 Measures other brands' effect on Z's average price in local markets in which they are present but Caltex is not present (essentially, the factual). It separately measures the other brands' effect on Z's average price in local markets in which both they and Caltex are present (essentially, the counterfactual). The results demonstrate that:

(a) [**REDACTED**]

(b) [**REDACTED**
]

(c) The other brands' impact on Z's price does not differ meaningfully depending on whether Caltex is present in a local market. In other words, based on the report, Z's prices would not be expected to be affected by the removal of Caltex as an independent competitor.

---

[65] [
REDACTED
]

275 These findings are consistent with Z's market experience and show that the proposed transaction would not result in any diminution of price competition on any view. The effect of the proposed transaction would instead be to realise significant efficiencies for Z which will enhance its ability to present a competitive proposition.

276 Nevertheless, Z understands the Commission may be interested in understanding the geographic spread of the parties' retail networks, and accordingly the extent of the consolidation that would be brought about by the proposed transaction. In that regard, 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 following the proposed transaction. Further detail is provided at **Appendix Q**.

277 [

REDACTED

]

278 In addition to the need to defend volume share, there is an incentive not to charge a higher price for petrol or diesel arising from the prospect of securing the related and often much healthier margin on complementary grocery and convenience items. On average a visitor to a Z station purchases approximately [**REDACTED**] of fuel. The average basket size at a Z convenience store is approximately [**REDACTED**]. Given a theoretical shop margin of approximately [**REDACTED**],[66] there is significant risk in pricing petrol or diesel too high and reducing shop transactions.

279 Additionally, retail networks are under constant review and optimisation by all participants, opening, closing, expanding or relocating outlets in response to shifting circumstances, performance and opportunity. Were it ever possible to contemplate exploiting a lack of alternatives in a local geographic area, the tendency by players to seek improvements in their networks would quickly result in the loss of this opportunity by entry or relocation, which would both thwart the price increase and probably result in a permanent loss of share. Incremental barriers to entry would remain low for any of the remaining independent retail competitors.

280 There are other factors in play as well, including a level of sensitivity to the brand damage that might arise from being seen as "opportunistic" in specific areas. That would be problematic not just from a broader competitive positioning perspective, but also from the perspective of the over-arching role of Government in monitoring petrol prices.

281 Other aspects of service differentiation and loyalty-based discount schemes reduce the relative importance of a retail service station's location by creating a degree of brand loyalty and correspondingly diminishing the market power that can be held based on an advantageous location within a given geographic area. These price and non-price components of retail competition are outlined in greater detail below.

---

[66] [**REDACTED**]

282 In any event, as the data shows, while the proposed transaction will result in common ownership of two brands that are currently independent, that alone cannot be expected to lead to higher prices.

Other aspects of retail competition

Supermarket dockets and loyalty schemes

283 Supermarket dockets and other loyalty schemes and discounts have become a significant feature of the market – approximately [**REDACTED**] of Z's retail transactions attract some form of discount or additional financial benefit off the price board (comprising Fly Buys, supermarket dockets or Z card). As well as illustrating the vigorous nature of competition, these features mean it is not appropriate to analyse retail competition solely by reference to headline retail fuel prices. Accordingly there are many pressures on margin and many ways customers seek offer terms that suit them – some value Fly Buys, others organise their purchase around supermarket discounts, while others value service features such as location, speed or in-store purchases. This phenomenon will not be detrimentally affected by the proposed transaction.

284 BP and Chevron participate in the independently owned AA Smartfuel loyalty scheme. [**REDACTED**] of Chevron's retail volume involves a customer presenting an AA Smartfuel card. Under this scheme consumers accumulate discounts by using their cards when they make purchases at participating service stations and other non-fuel retailers and then redeem the fuel discounts at BP or Caltex sites. Z assumes BP will continue to offer this loyalty scheme following the proposed transaction. [**REDACTED**]

285 Z participates in the Fly Buys scheme, which is operated by Loyalty NZ in which Z has a 25% share. Under this scheme, consumers accumulate points by using their cards when they make purchases at participating retailers and then redeem the points for any of a range of products. In 2014, [**REDACTED**] of Z's retail volumes attracted Fly Buys, [**REDACTED**].

286 AA Smartfuel is an independent scheme with Chevron's participation being governed by contract. Accordingly, the proposed transaction will not affect the terms on which BP participates in the scheme. In addition, following the proposed transaction Z intends to continue with its 25% shareholding in Loyalty NZ,[67] but will have no control over the terms on which the AA Smartfuel scheme is operated. There will remain a strong incentive for the independent operators of the AA Smartfuel scheme to optimise its competitive positioning (including by comparison to the Fly Buys scheme). That would extend not only to retaining BP as members, but also seeking to retain the Caltex-branded sites and/or recruiting additional participants. The same would apply in reverse for Loyalty NZ, which of course is 75% owned by parties other than Z with an interest in ensuring that the scheme continues to be successful.

287 As noted above, Progressive's supermarket dockets are redeemable at Z and Gull retail sites. [

[67] [**REDACTED**]

REDACTED

] In 2014 [**REDACTED**] of Z's retail volumes were associated with the scheme. [

REDACTED

] Z does not anticipate that the proposed transaction will result in any change to this association.

288 As noted above, Mobil currently participates in Foodstuffs' dockets programme. Z understands that BP held the Foodstuffs contract until 2012. However, when BP's contract expired Foodstuffs initiated a request for proposal process and Mobil won the contract. Z did not bid for it due to [**REDACTED**]. Z does not know why Foodstuffs conducted this process, the reasons Mobil won the contract or the term of the current contract.

289 In areas where there are no Mobil sites, Z understands Foodstuffs has agreements with some Caltex sites and Challenge sites as redemption outlets. Similarly, in areas where there is no Z site, Progressive vouchers are redeemable at Caltex sites. Z further understands that Challenge retail sites exchange any supermarket docket for a 6cpl discount (Challenge would bear the full cost of this discount).

290 The proposed transaction will not reduce the diversity of discount and reward scheme offerings. Loyalty schemes as well as both supermarket docket schemes will continue to play an important role.

Service differentiation

291 The offerings of retail market participants have become increasingly differentiated from a service perspective. Z has introduced a premium service model, for example forecourt concierges, "Good in the Hood" and "pay at pump" (at approximately 133 retail sites[68]). [**REDACTED**]

[68] As at the date of this notice.

292 A Nielsen report prepared for Z in December 2013 demonstrates the importance of non-price factors influencing fuel customers' choice:[69]

*Figure 3 – **[REDACTED]***[70]

REDACTED

293 The importance of non-price factors is also illustrated by reference to Gull's experience. Despite appearing typically to attempt to discount relative to other market participants, Gull's market share has increased marginally, and even then mainly as a result of expansion of its network and not expansion of sales at existing sites. A large majority of customers choose to pay a (small) premium to access product from the four largest brands (those of the Midstream Participants). This shows that the non-price aspects of competition are important in this market as a means to defend overall profits in the face of tough fuel price competition and defend volume share other than by directly discounting price. Customers want to purchase what they know and trust as a quality product for use in their vehicles, and/or a differentiated service proposition that appeals to them or best meets their needs. This means that, for a significant constituency, presentation is important and quality matters.

[69] Nielsen, "Segmentation refresh and market report", December 2013, 49.

[70] [

REDACTED

]

Convenience stores

294 Convenience stores have become a very important component of the retail offering and an extensive convenience store features as part of many participants' offerings. BP and Z in particular have improved many of their convenience stores, and Mobil has recently begun to develop its convenience store offering with its On the Run convenience store brand. Some Caltex dealers have also invested over the last few years in shop offerings, with formats including "Fix" and "On the Spot". Other retailers have scaled back to self-service pumps and focus predominantly on price competition. The revenues derived from these offerings have a significant role in retail pricing. In particular, the potential for consequential loss of convenience store revenues is a meaningful deterrent to fuel price rises. For example, on average [**REDACTED**] of customers to a Z service station purchasing fuel also purchase an item in the store. The prospect of losing such customers' potential additional non-fuel purchases is a meaningful price constraint.

Conditions of retail entry and expansion

295 As described above, significant capital would be required in order to enter at the Midstream level on a national basis, and even to construct infrastructure to support imported supply at a single port. Accordingly Z believes that new entry at retail could occur by securing wholesale supply from one of the existing Midstream Participants, which allows the entrant to bypass Midstream infrastructure costs. Additionally, another player could establish a regional position in the manner of Gull, and Gull could expand, as noted at paragraph 62 above.

296 Z considers it likely that the total number of service stations in New Zealand will continue to reduce incrementally. Tanks must be renewed approximately every 30 years, and this requires significant investment, typically in the range of $600,000 to $800,000 per site. Sites with low turnover, particularly in areas with reducing populations, are likely to consider the required investment prohibitive. In Z's view, the most likely source of new entry is by buying an existing independent network, or re-branding existing service stations incrementally.

297 Barriers to retail-only entry are relatively low; as described above Midstream Participants are willing wholesale suppliers to independent retailers. Z estimates that supply at a price that would provide an economic return for the retailer would require volume of approximately [**REDACTED**], which is approximately the average size of service stations in New Zealand (although smaller retail sites may account for volumes of only approximately [**REDACTED**]). Barriers to expansion at this level are also low because a network can be expanded incrementally by re-branding individual service stations, which can remain under independent ownership. This is evidenced by the incremental growth of the g.a.s. and Gull networks. In addition, it is possible to convert currently active truck stops to unmanned retail sites. For example, NPD has taken over a truck stop in Picton formerly operated by Caltex and has converted it to an unmanned truck stop, and McKeown Group is in the process of opening certain of its truck stops to retail customers. In addition, **Appendix O** sets out a list of Z retail sites that opened, closed and re-branded and been re-built during the period 2011-2015.

298 The main factors involved in establishing a new site are:

298.1 *Obtaining resource consent* - Z estimates that a complete resource consent application (including transport planning and supporting drawings) costs in the region of $118,000 to $200,000 and takes approximately six months. Important regional variations include:

(a) In Auckland, Z considers that the introduction of new rules has resulted in longer consent processes of approximately three months (at least while the new rules become established).

(b) In Canterbury, Z considers that strict water and environmental regulations can make the consent process more difficult.

298.2 *Finding an affordable site* - It is typically much easier, and cheaper, to lease than to purchase land. [**REDACTED**]. Typically Z would lease a piece of land at [

REDACTED

]. Z understands most new entrants lease sites. It is particularly difficult to find affordable sites in Auckland, where Z estimates that purchasing a site can cost in excess of [**REDACTED**] to purchase.

298.3 *Obtaining approval from the New Zealand Transport Agency (NZTA)* - There are local authority and NZTA requirements regarding site accessibility. In particular, some major roads are designated as having "limited access" and new sites must be built on a side road. NZTA approval also requires a number of other matters to be addressed, such as the use of deceleration and acceleration lanes for access to and from highways, and the use of the land as a petrol station in general.

299 The total cost to build a new "tier 1" Z store (Z's most comprehensive type of site) is approximately [**REDACTED**], excluding land costs, while Z's least comprehensive offering can be built for approximately [**REDACTED**]. Many new or smaller companies build much smaller sites with less infrastructure and Z estimates a site can be built from approximately [**REDACTED**] for an unmanned offering with no shop front, with an extra [**REDACTED**] for a very basic shop offering, excluding the cost of the land. In addition, it is possible to convert currently active truck stops to unmanned retail sites. For example, NPD has taken over a truck stop in Picton formerly operated by Caltex and has converted it to an unmanned truck stop, and McKeown Group is in the process of opening certain of its truck stops to retail customers. Z expects such costs to be readily affordable by Midstream Participants and a number of the independent retailers.

300 Alternatively, sites can be purchased from a market participant who is exiting from upwards of $750,000 (depending on the site and the condition of the assets already on the site). If the new operator installs new tanks, this will add approximately [**REDACTED**] (depending on the size of the tanks). The proposed transaction would not raise barriers to entry or expansion because, as described above, reducing the number of independent Midstream Participants from four to three would not reduce the level of competition in the Midstream, nor have flow-on effects at the retail level of the market. In particular, three Midstream Participants would remain as potential competing suppliers to any new retail entrant. A direct import operation, on a similar basis to Gull or even under the ownership of a regional or global upstream participant, either with its own network or through supply or acquisition of existing outlets, remains a further threat particularly if prices were, for some reason, to lack competitiveness.

301 Z considers that there is a real prospect of new entry and/or expansion at the retail level over the next few years, particularly because retail competition is likely to continue to develop and service propositions are likely to continue to become more differentiated for the foreseeable future. As evidenced by the factors outlined above, Z expects entry or expansion at the retail level to be likely to be sufficient in extent in a timely fashion to deter or constrain any attempted exercise of market power at the retail level and prevent a substantial lessening of competition following the proposed transaction.

COORDINATED EFFECTS

302 The proposed transaction will not change the conditions in the market such that coordination becomes more likely, more complete or more sustainable for the following reasons:

302.1 As discussed above, the vertically integrated Midstream Participants' pricing incentives are likely to be influenced by their E&P operations. In contrast, Z's pricing incentives are much more directly linked to downstream market conditions. Accordingly, the Midstream Participants' pricing incentives are not sufficiently aligned that they would benefit from coordinating their pricing in respect of any downstream product. This would continue to be the case following the proposed transaction.

302.2 At the retail level:

(a) The lack of direct retail price control by Mobil, BP and, following the proposed transaction, Z, over large parts of their retail network would continue to make coordination at a national level more difficult.

(b) The increasingly differentiated service propositions and importance of discounts, supermarket dockets and loyalty schemes mean that the retail supply of fuel is not, or is no longer, consistent with the dynamic that would be seen in a homogeneous product market. This applies at the local as well as the national level.

302.3 Given the term nature of their wholesale supply, and the variation in expiry dates, independent retailers are well-placed to thwart any coordinated price rises among the retail brands of the Midstream Participants. Independently owned retailers provide a constraint on the Midstream Participants and are able competitively to select between the Midstream Participants as their wholesale supplier each time their supply arrangements expire (typically they have a term of [**REDACTED**]).

PART 4: CONFIDENTIALITY

Specific information contained in or attached to the notice

303 Confidentiality is requested for all the information contained in this version of the notice.

304 A "public version" of this notice will be provided subsequently that will specifically identify all information that is commercially sensitive to the Applicant.

305 The parties request that they be notified if a request is made to the Commission for release of the information under the Official Information Act 1982.

DECLARATION

I, **Michael Bennetts**, have prepared, or supervised the preparation, of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to me that is relevant to the consideration this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am an officer of the company and am duly authorised to submit this notice.

Name and title of person authorised to sign

Michael Bennetts, Chief Executive Officer, Z Energy Limited

____

30 June 2015

Sign:___________________________________ **Date:**________________

APPENDIX A: GLOSSARY

Term	Definition
Allied	Allied Petroleum
Borrow and loan	The inventory tracking system that facilitates the shared storage arrangements
Chevron	Chevron New Zealand Limited
COLL	Coastal Oil Logistics Limited
Commission	New Zealand Commerce Commission
cpl	Cents per litre
E&P	Exploration and production of crude oil
GRM	Gross refining margin
HFO	Heavy fuel oil
JIFS	Joint Into-Plane Fuelling Services
JRSOA	Joint Ramp Service Operations Agreement, a JIFS joint venture between Mobil and Chevron
JUHI	Joint User Hydrant Installation facilities
LFO	Light fuel oil
LPG	Liquefied petroleum gas
McKeown	McKeown Group
Midstream	Onshore refining of crude oil, primary distribution of refined product and storage of refined product at terminal storage locations
Midstream Participants	Z, Chevron New Zealand, BP and Mobil
mlpa	Million litres per annum
MOPS	Mean of Platts Singapore price
NPD	Nelson Petroleum Distributors
NZIER	New Zealand Institute of Economic Research
NZOSL	New Zealand Oil Services Limited
NZTA	New Zealand Transport Agency
Primary distribution	Distribution of locally-refined product from the Refinery to terminal storage locations, and imported refined product from outside New Zealand to terminal storage locations
Processing Agreements	Bilateral agreements between each Midstream Participant and Refining NZ pursuant to which the Midstream Participant obtains access to Refinery processing capacity, and key distribution pipeline capacity
Procurement	Trading and procurement of crude or refined product
Progressive	Progressive Enterprises Limited
Proposed transaction	Z’s proposed acquisition of 100% of the shares in Chevron
RAP	Refinery-to-Auckland Pipeline, owned by Refining NZ
Refinery	New Zealand’s only oil refinery, owned by Refining NZ
Refining NZ	The New Zealand Refining Company Limited

Term	Definition
Secondary distribution	Distribution of refined product from terminal storage to point of supply (e.g. commercial customer, retail site)
SIETCO	Shell International Eastern Trading Company
Shared storage	Arrangements by which certain storage tanks are owned by one Midstream Participant but used by all, facilitated by borrow and loan
Stolt	Stolt-Nielsen Limited
Terminal Manuals	Information manuals detailing operation, maintenance, stock control and accounting practices for parties utilising storage terminals at the Truck Loading Facility
TLF	Truck Loading Facility located at the Refinery
Waitomo	Waitomo Petroleum
WAP	Wiri-to-Airport Pipeline
Wiri Terminal	Wiri terminal storage facility in South Auckland, run by Wiri Oil Services Limited
WOSL	Wiri Oil Services Limited
Z	Z Energy Limited
Z Independent Retailers	Independently-owned, Z-branded sites
Z Retailers	Retail service station sites directly controlled by Z via a franchise-style operating agreement

APPENDIX B: INDUSTRY OVERVIEW

1 The proposed transaction involves activities spanning from the importation of crude oil and refined products into New Zealand to the marketing and sale of refined products to retail and commercial customers. These activities together are generally considered to comprise the downstream oil industry. The upstream oil industry relates to the exploration and production of crude oil, which is largely outside the scope the proposed transaction.

2 The upstream industry is only relevant to the extent that each of Chevron, BP and Mobil are vertically integrated businesses with substantial upstream businesses. The Z business is not vertically integrated in this manner and the proposed transaction would mean that this would also hold for the Caltex business. The merged business would be solely focused on the downstream oil industry in New Zealand, albeit in competition with BP and Mobil as well as other downstream participants such as Gull.

3 The New Zealand downstream fuels industry can be separated into the following key supply chain steps:

3.1 Procurement (both crude oil and refined product)

3.2 Refining

3.3 Primary distribution

3.4 Terminal storage

3.5 Secondary distribution

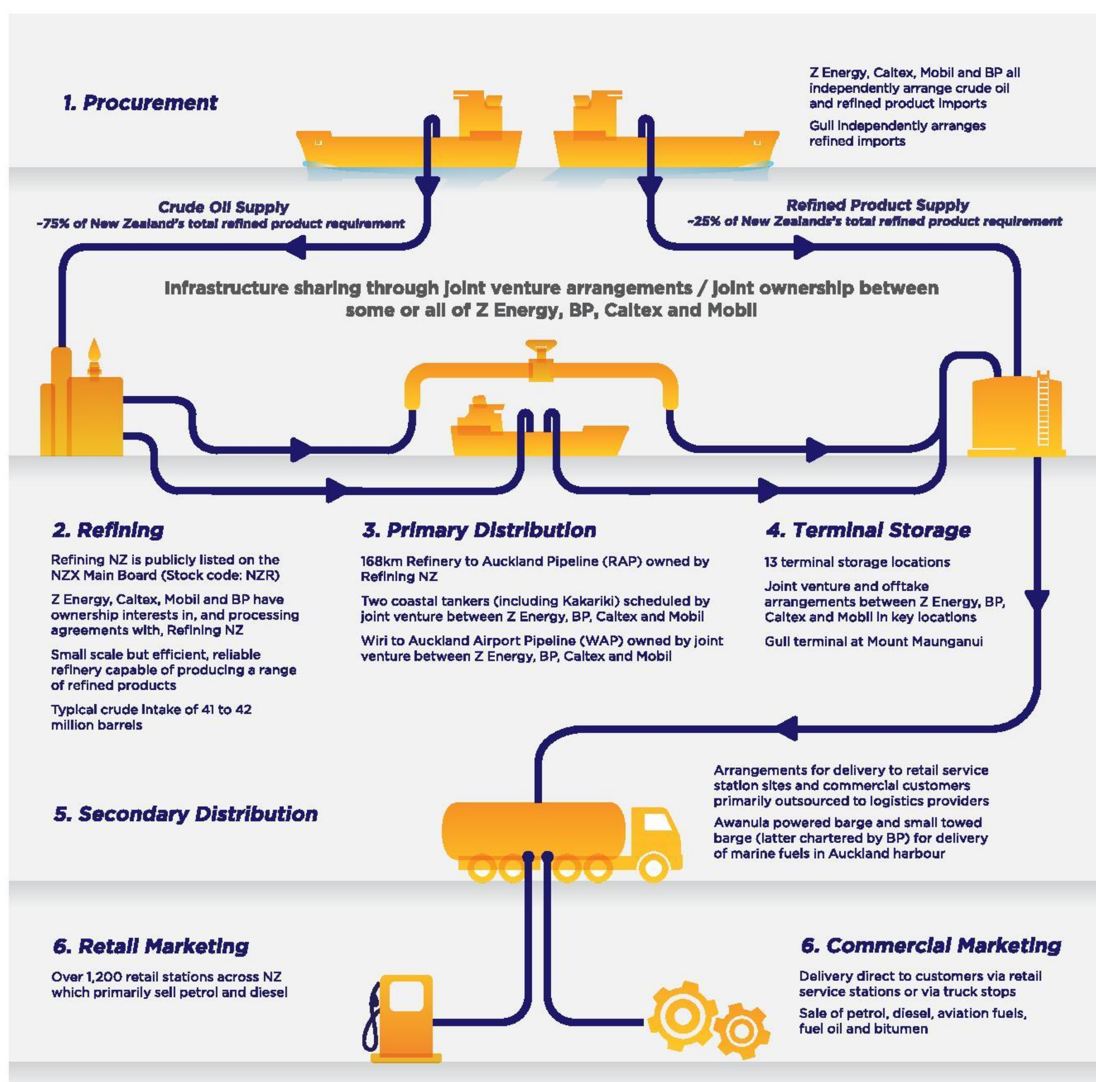
3.6 Marketing - Commercial

3.7 Marketing - Retail

These supply chain steps and a broad description of each are provided in the diagram below.[71]

[71] Figures in the diagram are Z estimates.

New Zealand's Refined Products Supply Chain



4 Competitors in the New Zealand downstream oil industry can be broadly categorised as follows:

4.1 *Midstream Participants*. These are Z, Caltex, BP and Mobil each of which have operations that span the entire downstream supply chain.

4.2 *Gull*. Gull participates in the procurement of refined product, however does not participate in refining or primary distribution. It participates in terminal storage through the tank it owns in Mt Maunganui. Gull participates in secondary distribution and marketing in the North Island.

4.3 *Distributors and resellers*. These participants are only involved in secondary distribution and marketing activities. These participants source refined product from the integrated players. Participants in this group are set out in paragraph 202.

4.4 *Independent retailers and supermarkets*. These participants are involved in marketing activities only. These participants source refined product from the

integrated players or other distributors and sell the fuel through their own retail service stations. Participants in this group are set out in paragraph 228.

Procurement

5 Both crude oil and refined products are shipped into New Zealand. Crude oil is delivered directly to Refining NZ by each of the Midstream Participants where it is refined into a range of transport fuel and non-transport fuel products. Refined product is imported from foreign refineries and delivered directly to terminals around New Zealand. Again, it is primarily the Midstream Participants that import refined products into New Zealand, although Gull can import into its terminal at Mt Maunganui. Z must procure both its crude and finished products from independent sources. However, each of Chevron, Mobil and BP are able to access supply from their own global upstream businesses. In addition, Downer and Trafigura carry out imports of bitumen to port storage.

Refining

6 All crude oil imported into New Zealand is refined by Refining NZ at New Zealand's only oil refinery at Marsden Point. Refining NZ supplies approximately 70% of New Zealand's total refined product demand, including approximately 65%[72] of petrol and diesel.

7 The refining process produces not just petrol and diesel but also:

7.1 aviation fuel (Jet A-1 for large jet engine aircraft. Avgas for smaller aircraft is imported);

7.2 marine fuel oils (both HFO, used by larger ships, and LFO used by smaller vessels); and

7.3 bitumen (primarily used in roading applications by firms such as Downer and Fulton Hogan).

8 Accordingly, these other products are traded in New Zealand markets by the Midstream Participants.

9 Access to Refining NZ capacity is governed by Processing Agreements entered into with each of the Midstream Participants, which exist independently of any shareholding arrangements. The arrangements relevant to Refining NZ are discussed in detail at paragraphs 64 to 84. The commitment by the Midstream Participants to the Refinery is significant from a competition perspective because it defines a minimum level of participation by each player in relevant markets.

Primary Distribution

10 Primary distribution encompasses the ownership and operation of the distribution infrastructure used to transport refined products from Refining NZ to storage terminals located around New Zealand.

11 The key primary distribution infrastructure assets (discussed in more detail from paragraph 85) are:

[72] Source: Z estimate.

11.1 *RAP:* 168km pipeline that delivers refined product (accounting for approximately 36.9% of all product sales) to the Wiri Terminal in South Auckland. The RAP is owned by Refining NZ with access granted under the Processing Agreements to each of the Midstream Participants.

11.2 *Wiri Terminal*: New Zealand's largest fuel terminal which is [**REDACTED**] operated by WOSL. WOSL is owned by the Midstream Participants. [

REDACTED

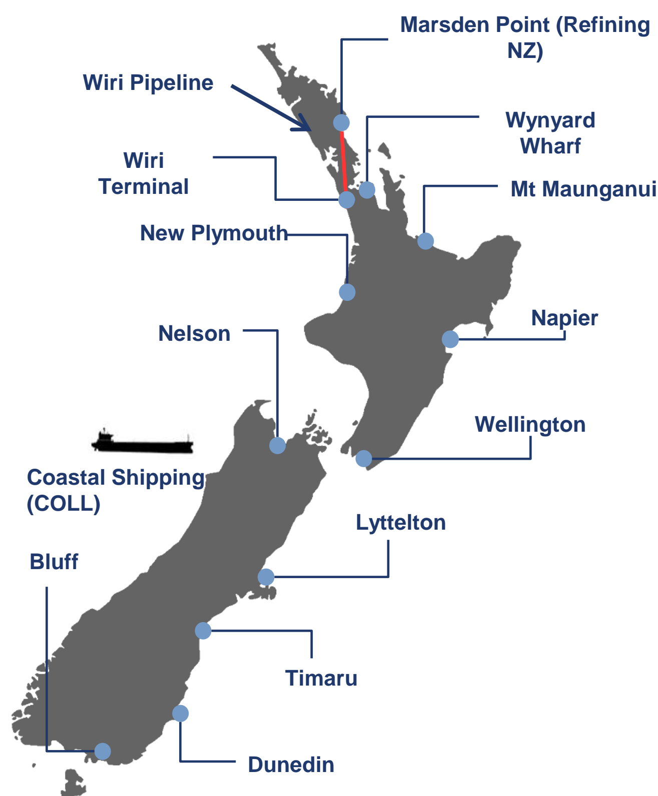
]

11.3 *COLL*: This joint venture owned by the Midstream Participants performs logistical services including scheduling two vessels used to transport refined product from the Refinery to terminal storage facilities (and also between terminal storage facilities) at various ports around New Zealand.

Terminal storage

12 Each of the Midstream Participants has a stake in key New Zealand terminal storage assets, which receive supply of and store refined product for secondary distribution. Certain terminal assets are owned by joint venture, while others (particularly storage tanks) are owned by one of the companies individually. The Midstream Participants are able to access supply at each of the terminal locations through shared storage facilitated by the borrow and loan inventory tracking arrangements. A summary of New Zealand's terminal storage arrangements is set out at **Appendix M**.

13 The map below sets out the locations of New Zealand's storage terminal infrastructure:



14 There are also two additional key pipeline assets, namely:

14.1 *WAP*: This pipeline is owned by Refining NZ and is operated by a joint venture involving each of the Midstream Participants. The WAP connects the Wiri Terminal with Auckland Airport; and

14.2 *Woolston pipeline*: This pipeline is owned by Mobil and connects Lyttelton port with inland storage facilities at Woolston.

Secondary distribution

15 Refined product is distributed from terminal storage facilities by road tankers, marine barges and pipelines to retail service stations, truck stops and commercial customers. The Midstream Participants and Gull each independently contract with haulage contractors for road distribution of refined product from terminals to retailers and end users. These arrangements are described at paragraph 126 below.

Marketing – commercial

16 Each of the Midstream Participants compete to sell petrol and diesel to commercial and industrial customers, including independent retailers, both directly and through wholesalers such as Southfuels; Farmlands Fuel; McKeown; McFall Fuel and Allied (see a full list at paragraph 202).

17 The ultimate customers (either served directly or via wholesalers) hold significant countervailing power because they present as compelling opportunities for each of the Midstream Participants to secure volume and in turn improve the overall economics of their operations. Fuel cards are widely used by commercial customers and negotiations revolve largely around the rates applicable for those cards and customers often hold multiple cards relating to competing providers. This segment is also supported by a network of truck stops at which larger vehicles can conveniently stop and refuel with diesel.

18 The other products produced at the Refinery are sold to commercial customers in the following segments:

18.1 *Aviation*: jet fuel is supplied by the Midstream Participants in an environment where the commercial imperative is to sell all product onshore to avoid the costs of export. The Midstream Participants also own and operate related facilities and infrastructure; relevantly, at Auckland Airport, the JUHI, JIFS and JRSO (see further from paragraph 141);

18.2 *Marine*: both HFO and LFO products are supplied by the Midstream Participants at various sites around New Zealand. Chevron is not a significant player in these markets and so the proposed transaction will have limited effect (see further from paragraph 150); and

18.3 *Bitumen*: this market operates on an "import parity" basis and is unaffected by the proposed transaction (given Chevron's planned withdrawal) (see further from paragraph 166).

Marketing – retail

19 The retail sector is highly competitive with 16 brands (set out in a table at paragraph 228) operating in the market.

20 The Midstream Participants compete aggressively for share in an environment where additional volume in an overall static market invariably improves the overall economics of the underlying business.

21 Gull serves regions on a more selective basis and has a track record of competing hard on price. Other smaller player such as g.a.s. and Allied have extensive networks primarily constituted by the legacy of elements of the national network no longer supported directly by the Midstream Participants.

22 Supermarkets play a significant role both through direct participation (in the case of Foodstuffs) as well as through docket schemes.

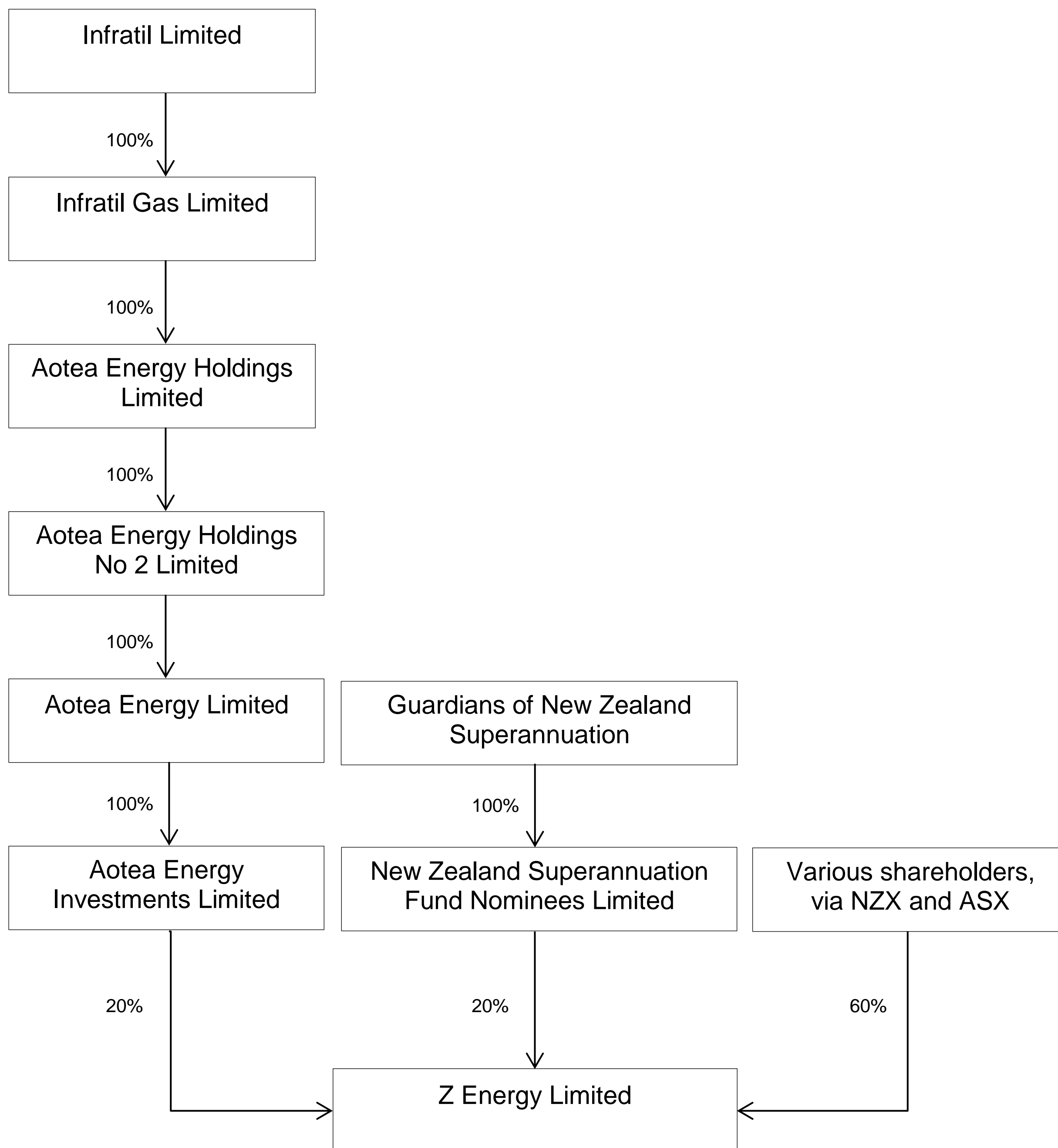
23 There is significant non-price competition through a range of mechanisms such as service differentiation; promotional activity; and loyalty schemes (particularly Fly Buys and AA Smartfuel).

APPENDIX C: SHARE PURCHASE AGREEMENT

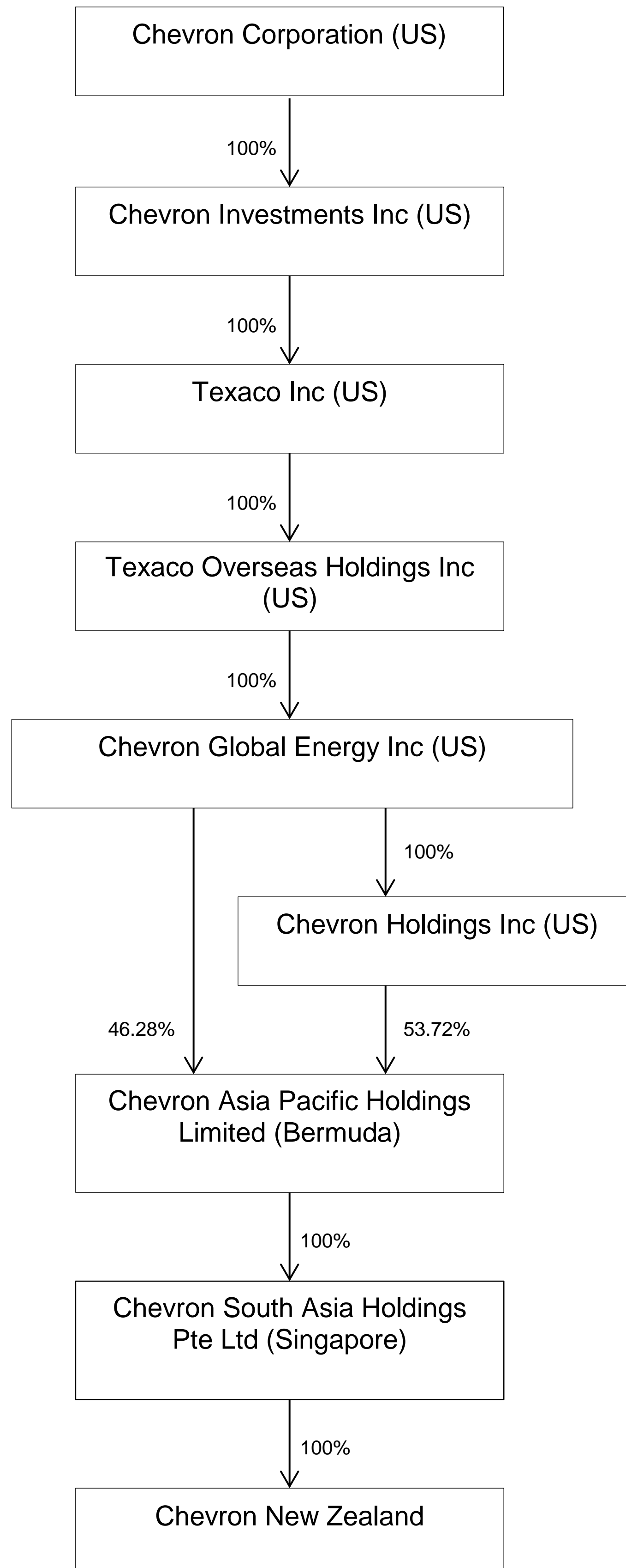
[**REDACTED**]

APPENDIX D: STRUCTURE DIAGRAMS FOR Z, CHEVRON AND MERGED ENTITY

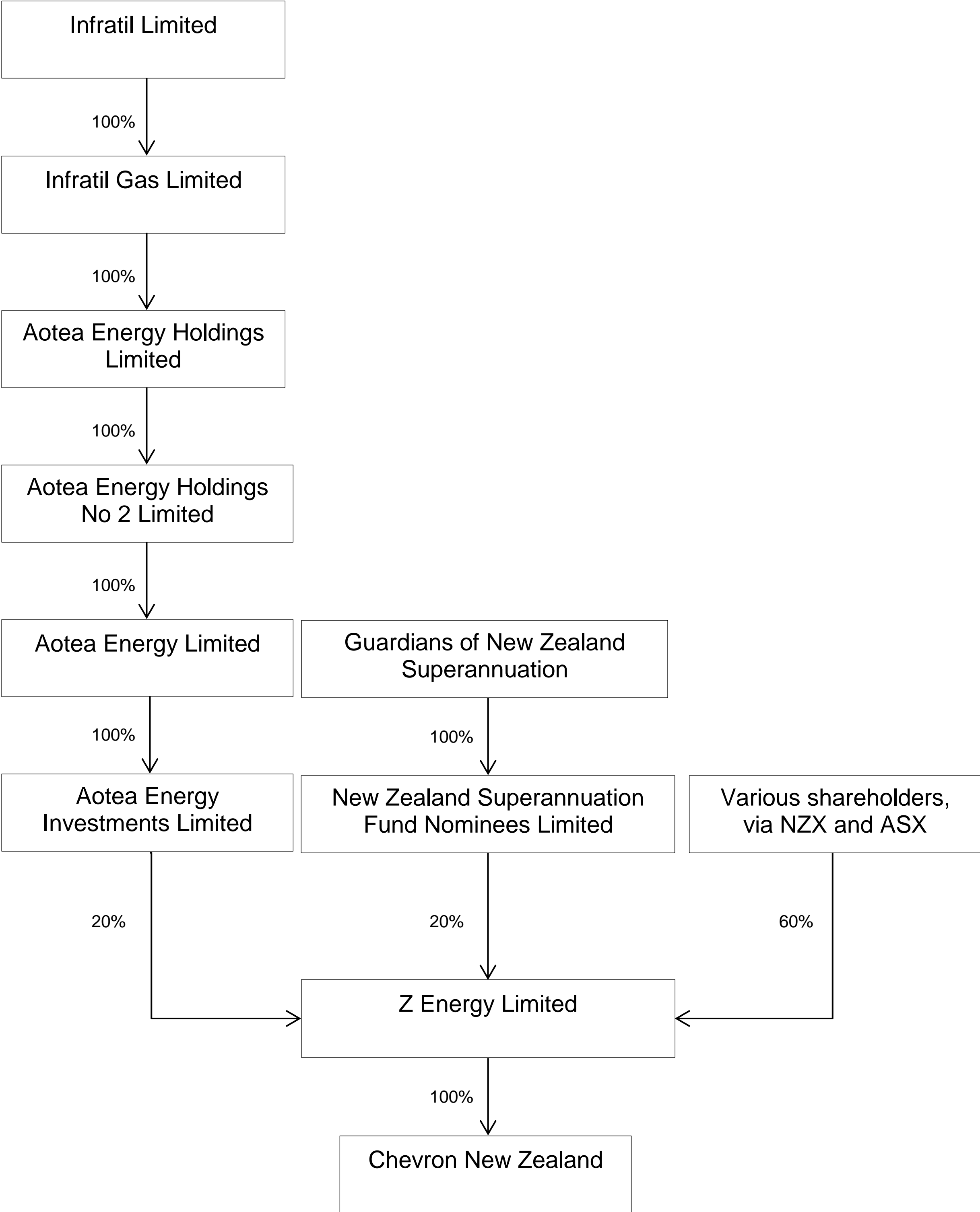
Current Z structure



Current Chevron structure



Post-transaction Z structure



APPENDIX E: Z ANNUAL REPORT AND FINANCIAL STATEMENTS - FINANCIAL YEAR ENDED 31 MARCH 2015

[**REDACTED**]

APPENDIX F: Z MANAGEMENT ACCOUNTS - FINANCIAL YEAR ENDED 31 MARCH 2015

[**REDACTED**]

APPENDIX G: Z TOTAL SALES REVENUES AND VOLUMES

Z total annual revenue for overlapping products identified in application

	Gross revenue (NZD)		
Product[73]	**Year ended 31/03/13**	**Year ended 31/03/14**	**Year ended 31/03/15**
Petrol (commercial sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Petrol (retail sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Diesel (commercial sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Diesel (retail sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Jet A-1 fuel and avgas[74]	[**REDACTED**] (approximately [**REDACTED**]% of this revenue is from Auckland Airport)	[**REDACTED**] (approximately [**REDACTED**]% of this revenue is from Auckland Airport)	[**REDACTED**] (approximately [**REDACTED**]% of this revenue is from Auckland Airport)
Marine fuel oils	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Bitumen	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]

[73] [**REDACTED**]

[74] [**REDACTED**]

Z total annual volume for overlapping products identified in application

	Total volume (litres)		
Product	**Year ended 31/03/13**	**Year ended 31/03/14**	**Year ended 31/03/15**
Petrol (commercial sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Petrol (retail sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Diesel (commercial sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Diesel (retail sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Jet A-1 fuel and avgas[75]	[**REDACTED**] (approximately [**REDACTED**]% of this revenue is from Auckland Airport)	[**REDACTED**] (approximately [**REDACTED**]% of this revenue is from Auckland Airport)	[**REDACTED**] (approximately [**REDACTED**]% of this revenue is from Auckland Airport)
Marine fuel oils	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Bitumen	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]

[75] [**REDACTED**]

APPENDIX H: CHEVRON ANNUAL REPORT AND FINANCIAL STATEMENTS - FINANCIAL YEAR ENDED 31 DECEMBER 2014

[**REDACTED**]

APPENDIX I: CHEVRON MANAGEMENT ACCOUNTS - FINANCIAL YEAR ENDED 31 DECEMBER 2014

[**REDACTED**]

APPENDIX J: CHEVRON TOTAL SALES REVENUES AND VOLUMES

Chevron total annual revenue for overlapping products identified in application

	Gross revenue (USD)		
Product	**Year ended 31/12/12**	**Year ended 31/12/13**	**Year ended 31/12/14**
Petrol (commercial sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Petrol (retail sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Diesel (commercial sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Diesel (retail sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Jet A-1 fuel	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Marine fuel oils	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Bitumen	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]

Chevron total annual volume for overlapping products identified in application

Product	**Year ended 31/12/12**	**Year ended 31/12/13**	**Year ended 31/12/14**
Petrol (commercial sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Petrol (retail sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Diesel (commercial sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Diesel (retail sales)	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Jet A-1 fuel	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Marine fuel oils	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]
Bitumen	[**REDACTED**]	[**REDACTED**]	[**REDACTED**]

APPENDIX K1: MARKET PARTICIPANT INFORMATION - COMPETITORS AND TRADE ASSOCIATIONS

	Name	Contact details
Competitors	Mobil	Mobil Oil New Zealand Limited (Headquarters) Building B, Level 2, 8 Nugent Street Grafton, Auckland 1023 PO Box 1709 Auckland 1140 Toll Free 0800 880 361 or 09 302 4700 Attention: [**REDACTED**]
	BP	BP National Office Watercare House, 73 Remuera Road Newmarket, Auckland 1050 0800 800 027 Attention: [**REDACTED**]
	Gull	Gull Head Office Level 4, 507 Lake Road Takapuna, Auckland Attention: [**REDACTED**]
	Allied	14 McAlpine St Christchurch PO Box 31 201 Christchurch 8444 contactus@alliedpetroleum.co.nz or 0800 383 566 Attention: [**REDACTED**]
	Foodstuffs	Foodstuffs New Zealand Ltd Level 8, 45 Johnston Street Lambton Quay, Wellington PO Box 5401 Wellington +64 4 472 6435 Attention: [**REDACTED**]
	Challenge	Challenge Naylor Street 101 Naylor Street, Hillcrest Hamilton 3216

		+64 7 856 7185 Attention: [**REDACTED**]
	g.a.s.	Level 1, 96 New North Road Eden Terrace, Auckland 1021 PO Box 37653 Parnell, Auckland 1151 0508 427 654 Attention: [**REDACTED**]
	Nelson Petroleum Distributors	PO Box 3412 Richmond, Nelson 7050 0800 544 6162 Email info@npd.co.nz
	RD Petroleum	69 Chapmans Road Woolston, Christchurch PO Box 1487 Christchurch 8140 Phone: 0800 440014 Fax: 03 384 9964
	McKeown Group	Waterfront Road PO Box 124 Oamaru Freephone: 0800 800 908 Direct Dial: 03 433 1022 Fax: 03 434 7978 Email: sales@mckeown.co.nz
	Waitomo Petroleum	0800 922 123 enquiry@waitomogroup.co.nz
	Southfuels	Southfuels Unit 1, 1 Edmonton Road Hornby, Christchurch PO Box 16899 Hornby, Christchurch 8441 0800 999 989 Attention: [**REDACTED**]
	Farmlands	Farmlands Support Office PO Box 271

		Christchurch 8053 Ph: 0800 200 600 Fax: 0800 278 329 Overseas: + 64 3 477 9040 Email: help@farmlands.co.nz Attention: [**REDACTED**]
	Rural Fuels	PO Box 4342 Palmerston North 4442 0800 383 582 enquire@ruralfuel.co.nz
Trade/industry associations	Employers and Manufacturers Association	[**REDACTED**]
	Motor Trade Association	[**REDACTED**]
	Road Transport Association New Zealand	[**REDACTED**]
	National Road Carriers	[**REDACTED**]
	Log Haulage Contractors Association	[**REDACTED**]
	New Zealand Trucking Association	[**REDACTED**]
	Petroleum Industry Transport Safety Forum	[**REDACTED**]
	The Chartered Institute of Logistics and Transport	[**REDACTED**]

APPENDIX K2: MARKET PARTICIPANT INFORMATION - Z KEY CUSTOMERS

[**REDACTED**]

APPENDIX K3: MARKET PARTICIPANT INFORMATION - CHEVRON KEY CUSTOMERS

[**REDACTED**]

APPENDIX K4: MARKET PARTICIPANT INFORMATION - Z KEY SUPPLIERS

[**REDACTED**]

APPENDIX K5: MARKET PARTICIPANT INFORMATION - CHEVRON KEY SUPPLIERS

[**REDACTED**]

APPENDIX L: LIST OF RELEVANT JOINT VENTURE ARRANGEMENTS BETWEEN MAJOR MIDSTREAM PARTICIPANTS

1 **Coastal Oil Logistics Limited (COLL):** a joint venture owned by the four Midstream Participants, which performs logistical services for the companies, including:

1.1 scheduling ships operated by Silver Fern Shipping Limited, MT Torea and MT Kakariki, to transport approximately [**REDACTED**] of sales of all Refinery and imported products in CY2014 to and between coastal terminals throughout New Zealand; and

1.2 scheduling deliveries of imported refined products to New Zealand port terminals using vessels chartered by the Midstream Participants.

For more information see [94].

2 **Joint Into-Plane Fuelling Services (JIFS):** a joint venture between Z and BP. The joint venture agreement nominates an "Operator" (currently BP) to assume responsibility for the operation and maintenance of the JIFS. [**REDACTED**]

3 **Joint Ramp Service Operations Agreement (JRSOA):** a joint venture between Mobil and Chevron. For more information see [142.2].

4 **Joint user hydrant installation facilities (JUHI)**: shared storage, depot and administration facilities at the Auckland Airport terminal [**REDACTED**]. For more information see [142.1].

5 **Marsden Point terminal**: a joint venture owned by the four Midstream Participants for a terminal at Marsden Point [**REDACTED**].

6 **New Zealand Oil Services Limited (NZOSL)**: a joint venture between Z and BP for terminal operation not affected by the proposed transaction. For more information see [119].

7 **Storage**: there are also a number of other joint venture arrangements relating to the operation of terminal storage and distribution facilities and related infrastructure.

8 **Wiri-to-Airport Pipeline (WAP) joint venture**: a pipeline owned by a joint venture involving each of the Midstream Participants. The WAP connects the Wiri Terminal with Auckland Airport. For more information see [119].

9 **Wiri Oil Services Limited (WOSL):** a company owned by the four Midstream Participants that operates and maintains the TLF at the refinery and [**REDACTED**] operates the Wiri Terminal. For more information see [86] and [101].

APPENDIX M: NEW ZEALAND'S SHARED STORAGE TERMINAL STORAGE TANKS

[**REDACTED**]

APPENDIX N: [REDACTED]

[**REDACTED**]

APPENDIX O: RECENT CHANGES IN Z'S RETAIL SITE NETWORK

Z-branded retail sites opened 2011-2015

Station	Date opened
Z Waiuku, Auckland	1 May 2011
Z Pukekohe, Auckland	1 October 2012
Z Tauhara, Taupo	1 June 2013
Z Porowini, Whangarei	1 February 2014
Z Stadium, Hamilton	1 April 2014
Z Albany, Auckland	1 May 2014
Z Northcote, Auckland	1 May 2014
Z Papakura Nth (Site A), Auckland	1 April 2015

Z-branded retail sites closed 2011-2015

Station	Date closed
Seaview Rd, New Plymouth*	March 2012
Tokaanu, Turangi*	June 2012
Z Queen St, Pukekohe	September 2012
Z Strathmore, Wellington	December 2012
Z Water St, Whangarei	February 2014
Z Te Ngae, Hamilton	June 2014
Z Tokoroa, South Waikato	July 2014
Z Albany (Dairy Flat Road), Auckland	May 2014
Z Omokoroa, Omokoroa	November 2014
Z Papakura Nth (Site B), Auckland	February 2015
Z Te Rapa, Hamilton	February 2015

Independent retail sites Z ceased to supply 2011-2015**

Station	Date closed
Instone Motors, Dunedin	February 2012
Helensville Service Station	October 2012
Akaroa Auto Centre, Akaroa	August 2013
Port Chalmers Motors, Dunedin	October 2013
Tekapo Services, Tekapo	March 2014

Sites re-branded to or from Z 2011-2015

Previous brand	Current brand	Date
Caltex	Z Broadway, Wellington	01/01/13
Mobil	Z Epsom, Auckland	01/02/14
Caltex	Z Otahuhu, Auckland	01/01/15
Caltex	Z Terrace End, Palmerston North	15/05/15
Z Papakura Nth (Site B)	Pak'NSave	Under construction

Re-built Z retail sites***

Station	Date reopened
Z Putaruru, Putaruru	01/10/11
Z Waiouru, Waiuru	01/08/11
Z Taradale, Hawkes Bay	01/06/12
Z Sanson, Manawatu	01/09/12
Z Vivian St, Wellington	01/05/13
Z Tawa, Wellington	01/04/14
Z Manly, Auckland	01/05/14
Z Merrilands, New Plymouth	01/05/14
Z Kilbirnie, Wellington	01/07/14
Z Moorehouse, Christchurch	01/10/14
Z Inglewood, Taranaki	01/01/15
Z Woolston	01/03/15

* These sites were Shell-branded (that is, they were closed before the Z re-brand took place in 2011).

** These sites were not Z or Shell-branded, but had a supply agreement with Shell and operated under their own sign or brand. Following the Z re-brand in 2011 Z ceased to supply these sites (and removed the tanks). Z believes that:

- Instone Motors no longer supplies petrol.
- Helensville Service Station is now Caltex-branded.
- Akaroa Auto Centre supplies fuel from NPD.
- Port Chalmers Motors is now NPD-branded.
- Tekapo Services is connected to a Challenge-branded site.

*** Tanks and buildings demolished and re-built.

APPENDIX P: PROFESSOR JERRY HAUSMAN REPORT

[**REDACTED**]

APPENDIX Q: RETAIL SITES LIST

The following table sets out the Z sites situated in areas in which, based on a radius of 5km around each Z retail site, the number of independent brands would reduce from two to one as a result of the proposed transaction.

As noted above, on a conservative basis Z has treated Challenge-branded sites as Caltex-branded sites. However, Z notes that the Challenge network is managed independently of Chevron, which merely owns the Challenge brand and supplies Farmlands, which in turn supplies the Challenge network.

Independent brands reduced from two to one	
Z Station	**Other brands in radius**
Z Darfield	Challenge
Z Kaiapoi	Caltex, Challenge
Z Kaikohe	Caltex
Z Opotiki	Caltex
Z Te Aroha	Caltex