



MTA Submission

To MBIE on the *Regulations under a Fuel Industry Bill and other matters* consultation

29 May 2020

Dear Sir / Madam

Submission: to MBIE on the *Regulations under a Fuel Industry Bill and other matters* consultation

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MTA is an industry association for the motor trade. We represent our members, which includes fuel retailers.

Thank you for the opportunity for MTA to provide comment on the *Regulations under a Fuel Industry Bill and other matters* consultation regarding the views of and its effect on the automotive industry.

This submission was written with support from Dr Julian Williams from NZIER and Tony Stevens, Barrister.

Yours sincerely,



Greig Epps
Advocacy & Strategy Manager

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I. OVERVIEW

1. MTA welcomes the opportunity to respond to the MBIE Consultation Paper, “Regulations under a Fuel Industry Bill and other matters” (“**the MBIE Paper**”), and the questions raised in the MBIE Paper (“**the MBIE Questions**”). The MBIE Paper relates to implementation of the findings of the Commerce Commission’s Market Study into the Fuel Market Sector (“**the Market Study**”), in which context MTA has commented previously.
2. MTA’s members include 3600 businesses within the automotive industry and allied services, including automotive and collision repairers, fuel suppliers and service stations, vehicle importers, distributors, and sellers. Given this diversity of membership, MTA does not necessarily claim to have a mandate from all its members or all of its fuel supply chain members to make a single submission on their behalf. Nevertheless, MTA is able to use its more than 100-year experience¹ of representing businesses (many of them small-medium businesses) in the retail fuel sector to provide a view on how to improve the current market set-up.
3. MTA expects that (as with the Market Study) there will be substantial responses from well-resourced wholesaler and reseller market participants, and relatively limited input from smaller participants such as (particularly) retailers and smaller resellers, especially independents². In that context, this is a submission by MTA focussed on issues it considers impact significantly on this market, including a substantial number of MTA’s members. Given that other perspectives will likely be well-represented already, this submission focusses on the issues impacting on resellers and retailers, particularly independents, who might not otherwise have a voice in respect of these reforms. MTA maintains that those independents, including many small enterprise front line fuel service stations, are an important part of the fuel supply chain. They are also an important part of many communities, providing not just fuel supplies but often operating other services and creating a social and economic hub for small towns.
4. MTA’s position in respect of this process is, simply, “if you’re going to do it, do it right.” The Market Study covers significant ground and makes important recommendations, but to translate that into effective market reforms a sufficiently comprehensive regulatory regime is critical. In overview:
 - 4.1 The Commerce Commission was originally tasked with a review of the fuel market, but the Market Study correctly focussed on a lack of competition in the wholesale market as the primary issue in terms of the delivered price at the pump. *The Market Study identified issues in a wholesale fuel market almost entirely supplied by three fuel majors/wholesalers (apart from Gull) in a market occupied by various vertically integrated firms, and suggested reforms focussed on addressing those wholesale market issues. The retail market, which is populated by a large number of entities from small independents to vertically integrated outlets, was not identified as a problem in itself – although aspects of the Market Study’s findings and recommendations impact (positively) on retailers and the retailer’s interface with the wholesale market.* MTA agrees with and supports the findings and recommendations of the Market Study.

¹ MTA was formed in April 1917 by a group of fuel retailers and associated vehicle workshops.

² By “independents” we mean those businesses that retail fuel to the public, have a supply agreement with a wholesaler or reseller and are able to set their pump prices independent of their suppliers influence.

- 4.2 MBE's Questions identify various issues as to the breadth and reach of the suggested reforms, and MTA perceives that a number of the issues are critical to whether the reforms: (i) achieve the desired outcome; or (ii) fall short of achieving workable competition in the wholesale market, probably at the expense of existing independents (particularly retailers).
- 4.3 MTA maintains that, fundamentally, **regulatory change to address the wholesale market issues will also need to deal with the interface between retailers and wholesalers, ensure that retailers too have access to TGP information and supply, and deliver significant improvements in regulatory oversight and access to meaningful dispute resolution options.**
- 4.3.1. That will need to involve **effective, joined up, complete reforms (from point of importation to the retailer's tank) involving fairer processes, practices, and pricing throughout the fuel market.**
- 4.3.2. **If the reforms do not go far enough there is a real risk they will only have a limited impact and (perversely) will concentrate market power further in vertically integrated fuel supplier's hands (albeit perhaps increasing the number of more resellers), without establishing a workably competitive wholesale market and at the expense of existing independent retail operations.** This a critical issue, from MTA's perspective.
- 4.3.3. The current impacts of Covid19 on the international fuel market are not a reason to delay implementation of reforms – to the contrary.
- 4.4 MTA maintains that **there are four key elements to the required comprehensive reforms:**
- (1) Clarification that the reforms of wholesale market terms (contract term limits, access to other fuel suppliers for a proportion of fuel requirements, and standard supply terms) will apply and extend consistently not only on wholesaler contracts with resellers and retailers, but also all contracts retailers have with wholesaler and/or reseller suppliers.**
- Freeing up retailers and resellers from long term exclusive onerous one-sided supply contracts with vertically integrated wholesalers will only be a partial fix if retailers are not freed up from equally onerous long-term exclusive one-sided supply contracts with vertically integrated resellers.*
- MTA says existing contract terms should be capped at 5 years, with that cap to be reviewed in 2-3 years, and that new fuel supply contracts to resellers and retailers should be required to offer both 3 year and 5 year options (but perhaps with a mechanism for longer contracts in limited/regulated circumstances). MTA maintains that shorter retail supply contracts are essential to give wholesale market competition viable supply outlets.*
- TGP pricing/transparency/options to acquire from other suppliers will be significantly less effective if: (i) retailers contractually cannot access those prices (except when their supply contracts roll over); and/or (ii) wholesalers/resellers seeking to compete cannot access suppliers/sites to sell to (because sites/suppliers are tied up contractually).*
- (2) Appropriate pricing transparency and market information (through an effective spot fuel/TGP option) to support a more competitive wholesale market;**

Market participants, including independent retailers and resellers, cannot be flying blind. Information will inform and promote a more active wholesale market.

(3) Adequate available fuel supplies from terminal gates etc to support and meet the proposed flexibility for resellers/retailers to have the option to take up a percentage (MTA suggests no less than 20% as a starting point, with some flexibility) of their supply from a supplier other than their contracted supplier

The right to acquire a proportion of fuel supply from a non-contracted supplier through TGP should go some distance towards encouraging fair market pricing and a wholesale market, but only if there is supply capacity to serve any demand for such fuel at market/TGP prices. To facilitate that:

- *majors/significant resellers should be obliged to maintain capacity to serve their own supply and contracted supply chains with equal priority, as well as providing sufficient capacity to serve whatever volumes are necessary to serve the non-contracted supply requirements;*
- *vertically integrated fuel majors should be obliged to draw on “Borrow and Loan” (“B&L”) capacity at existing terminals to serve market needs, not just their own.*

The option to take fuel supply from another supplier could be extended to up to 30%, but should be at least 20%. However, MTA maintains that if the starting point is 20% then a regulator should have authority to adjust that proportion between 20% and 30% as it sees fit to stimulate competitive engagement in the wholesale market (if required). Similarly it suggests the starting point should be that the 20% (or up to 30%) flexibility of supply should be available on a 12 month cycle basis, but that a regulator should have authority to adjust the length of that cycle upwards or to allow supplied parties to carry over a proportion of any unused flexible supply to the next cycle, to stimulate competition. Otherwise, if the regulator does not have access to levers to encourage competition, there may not be sufficient incentive for wholesalers to offer competitive TGPs in that market to stimulate wholesale market trading volume and establish a workably competitive wholesale market.

(4) An appropriate regulatory regime/environment, regulator and disputes process accessible to all market participants, including funding/costs arrangements

The competition issues to address need to be addressed through a regulatory regime, regulator, and disputes process, which needs to be accessible for all participants. Smaller independent retailers and resellers too are important components of the existing fuel market, particularly in the context of market reforms seeking to facilitate competition. But smaller independents cannot, without regulatory assistance, be expected to be able to effectively maintain and manage relationships with international firms and large local firms that are their vertically integrated oligopoly suppliers in this market.

5. In that context, MTA’s submission will:

5.1 First focus on the main big picture issues highlighted above (II., below)

- 5.2 Secondly, focus on some other more specific issues that particularly affect MTA members, which are highlighted by the MBIE questions (III., below)
- 5.3 Thirdly, address the relevant questions raised by MBIE's questions, by cross reference to earlier general submissions or with specific answers as appropriate (IV, below).

II. BIG PICTURE ISSUES:

A. Comprehensive reforms are required to do the job *and* avoid adverse effects:

6. MTA's submissions to the Commission regarding the Commission's Draft Report captured what is the key issue now as follows:
 - 9.1 *Complete solutions to create wholesale market liquidity are unlikely to come from the fuel service entities that comprise the existing oligopoly wholesale market suppliers - their input is essential to ensure changes are workable, but those fuel firms' focus is to maintain, not erode, their profits.*
 - 9.2 *An effective response to the lack of an active wholesale market will need to consider options to remove impediments to market participation by alternative wholesalers/resellers and also impediments to market participation by retailers.*³ [emphasis added]
7. The recommendations emerging from the Market Study, and the issues raised by MBIE's Questions appear to address the impediments to market participation by retailers. But aspects of the Market Study are not entirely consistent as to how far the recommendations would apply to independent retailers (particularly in terms of retailer/reseller contracting) or how retailers would be connected in to the wholesale market reforms, and in some key respects MBIE is seeking input as to how far the reforms ought to go. MTA sees this as critical.
8. MTA says that:
 - 8.1 ***It is essential that the reforms capture how retailers and resellers, particularly independents, engage fairly with and actively participate in the wholesale market.*** In that context regulatory reforms need fairly to extend to, link in with and flow seamlessly (end to end) through the engagement of *both* resellers and retailers in the wholesale fuel market.
 - 8.2 ***That should afford resellers and retailers, including independent retailers, the opportunity to be active participants in the wholesale market*** in which (directly or indirectly) they buy fuel, to impact actively on the price they pay (and thus also the price they can deliver to customers), without being squeezed out of even modest reasonable market returns.
 - 8.3 Specifically:
 - 8.3.1. ***The regulation of contractual arrangements to preclude unfair/one-sided contract terms in the fuel market must apply to all fuel market contracts involving reseller and retailers (with wholesalers, resellers, and any other suppliers).*** At the very least that should include shortening contract terms and paring back exclusive supply arrangements to allow resellers *and* retailers the option to access a reasonable

³ Sub-paragraph 9.1, MTA 13/9/19 Submission.

proportion of their fuel from an alternative supplier through a functional wholesale market. Otherwise:

8.3.1.1. resellers and (particularly if they are not comprehensively covered by the reforms) retailers will not be able to engage with a more competitive wholesale market except occasionally at the end of their contract terms (which might currently be every 5-10 years); wholesalers, resellers and any new/alternative supply chain offerings will not be able to sufficiently engage with retailers (many of whom occupy key retail sites in a fairly geographically limited market) in order to establish viable supply chains; and any remaining one-sided retailer supply contracts will continue to operate as a significant barrier to entry and competition in the wholesale market;

8.3.1.2. retailers will continue to face long term locked in take it or leave it contract terms, and situations in which their buy price is not competitive, including situations in which (to paraphrase the gist of a repeated anonymous/confidential complaint are from independent retailers) “ I look at what my fuel supplier is selling fuel for at their own station down the road and I can’t buy fuel from that supplier at that price so how can I compete?” .

8.3.2. *There must be both sufficient transparent market information and non-contracted fuel capacity accessible to market participants (including independent retailers and resellers), otherwise regulations allowing retailers and resellers to seek a proportion of their supply outside of their existing contracted supply will be ineffective (as the option to access alternative supply will largely be theoretical/unavailable/illusory):*

8.3.2.1. this is a fuel market in which, with the exception of the Gull network, the entire market (and the bulk of the market as a whole) is served, directly or indirectly, by three major fuel wholesalers⁴, and the Market Study has identified the significant extent to which existing market structures and conditions dominated by vertically integrated supply are presenting barriers to entry and competition in wholesale markets; and

8.3.2.2. in that context regulations are necessary to ensure that oligopoly suppliers, with their own vertically integrated supply lines, offer fairer contract terms in supply contracts (freeing up resellers and retailers currently locked down by long term exclusive supply arrangements) , deliver pricing transparency and fair access to wholesale markets, and that the wholesalers are required to make available fuel supplies to serve alternative supply lines, in volumes sufficient to facilitate a workably competitive wholesale market.

8.3.3. *Market regulation, accessible affordable dispute resolution, and regulatory oversight (ideally generally light-handed, but with teeth where required) are critical to make this work:*

8.3.3.1. without significant regulatory support independent retailers (who have for years been the backbone of the fuel market) and independent resellers cannot

⁴ Market Study, paragraph 2.80.3, and the heading above paragraph 2.103.

hold their own in oligopoly markets dominated directly and indirectly by major fuel suppliers and by vertically integrated supply chains.

9. Any ***incomplete market reforms that address some but not all issues (particularly regarding independents, especially independent retailers, and how they engage with the wholesale market) could – perversely – have an anti-competitive effect*** by effectively:

9.1 shifting market power to a slightly expanded vertically integrated group of wholesalers and resellers, *concentrating market power further on wholesalers and resellers that are vertically integrated, or which have captive existing retail supply networks*; and

9.2 ***enhancing the ability of those wholesalers and resellers to use their market power to reduce the scope for independent participation and competition at reseller and retailer level, and to effectively squeeze out existing independents afforded less favourable contract terms and pricing, thereby reducing retail competition.***

10. The risk of any “incomplete” regulatory solution having unintended anti-competitive consequences is important, so MTA elaborates on those concerns:

10.1 the current *retail* market includes a large number of outlets/participants and, despite vertically integrated supply, a substantial proportion of resellers and a large number of retailers are independents;

10.2 such independent retailers are almost universally “price takers” as they are contractually obliged to accept whatever price their (usually long term) contracted supplier determines, and they will only really be “in the wholesale market” at the end of their (generally lengthy) current supplier contract term, and even then they may have limited opportunities to consider other supplier options (depending on timing and other market forces largely outside their control);

10.3 anecdotally independent retailers (who will generally be bound by confidentiality obligations and face commercial pressures that limit their ability to speak out) continue to report situations where their “buy” price exceeds the *retail* price advertised by other non-independent local outlets sourcing fuel from the same vertically integrated supplier – in other words, independent smaller businesses without the financial ability to “fight their corner” are forced to accept what appear to be unfair differential prices;

10.4 regulatory reforms that encourage competition in the wholesale market, and other factors like Covid19’s impact on international oil prices (see paragraphs 14-15 below), will put price pressure on wholesaler and reseller suppliers to preserve their profitability;

10.5 unless regulatory reforms even-handedly ensure access for independent resellers and retailers to the wholesale market and equivalent benefits from other proposed reforms, independents (particularly those further along the supply chain) are likely to bear the brunt of any price pressure, with a very real prospect of independents being crowded out of the market by oligopoly supply arrangements and their vertically integrated suppliers through differences in contract terms, supply availability, differential pricing and/or in effect a price squeeze:

10.5.1. if independent resellers and (in particular) independent retailers are not (sufficiently) even-handedly protected by the reforms, they can only be price takers and are likely to be the meat in the sandwich between wholesalers and consumers;

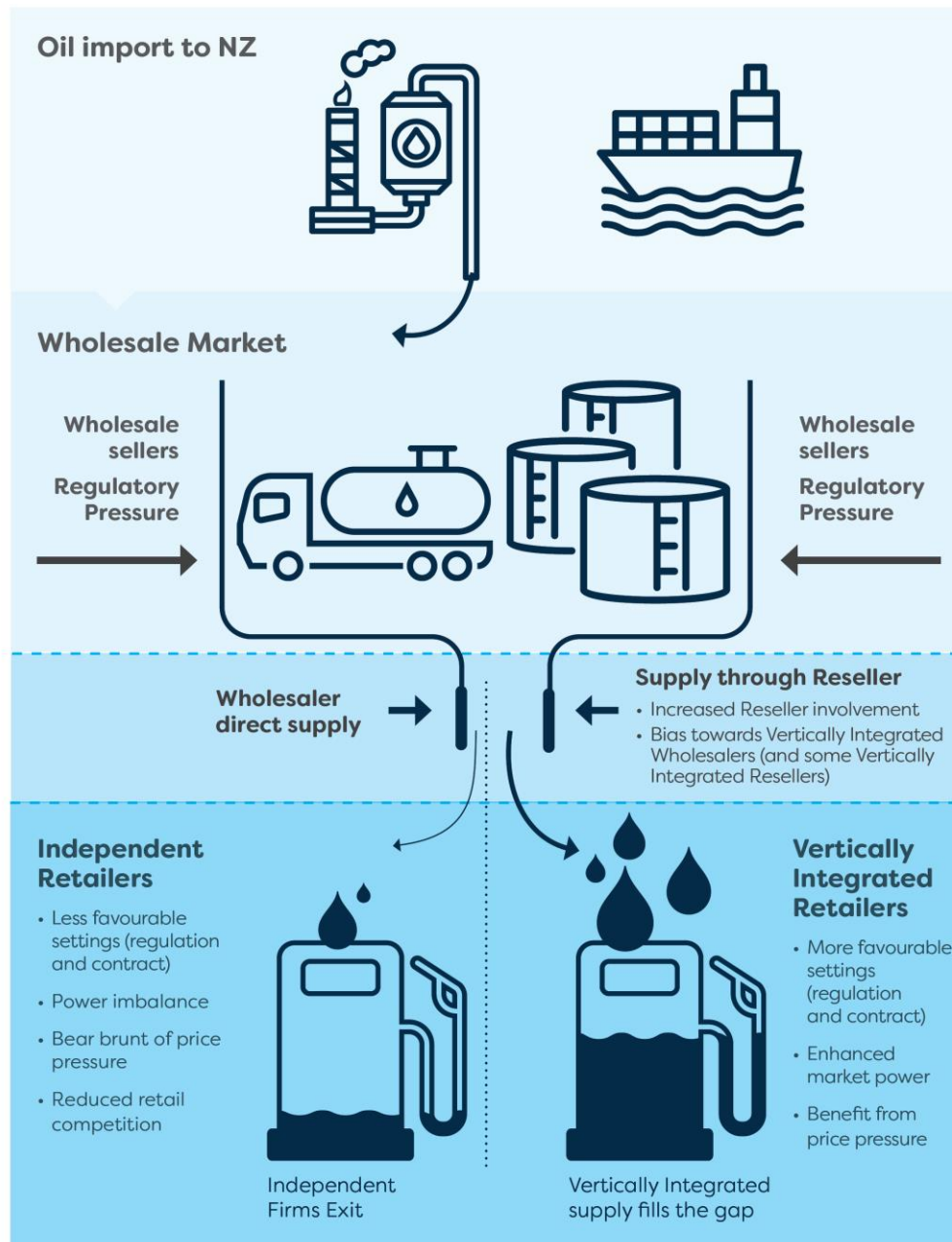
10.5.2. retailers, particularly small independents, are dependent on wholesalers and resellers for supply and, even if there are some improvements around terms and conditions generally, have limited bargaining power;

10.5.3. vertically integrated retailers in contrast will have more certainty around supply and pricing, may be favoured by a parent wholesaler (differential pricing or “raising rival’s costs”), and are likely to be better placed to survive pressured retail margins of the available margin is captured within the vertically integrated entity at wholesale level (i.e. a “price squeeze”);

10.6 ultimately, any incomplete market reforms that improve conditions for some market participants but which do not even-handedly extend equivalent improvements to all resellers *and* all retailers, including retailers contracting with resellers and including all of the independents, is likely – perversely – to concentrate the market (and market power) further in the hands of wholesalers and retailers that are vertically aligned, reducing the scope for independent retailer participation and competition, and significantly decrease retail competition (as prices will be determined by vertically integrated suppliers taking their margins further up the supply chain). .

11. Those concerns are as outlined in the following graphic. It shows a hypothetical market in which the main potential gaps identified as (1)-(4) have been filled but not with respect to all of the market issues involving independent resellers and (particularly) independent retailers, and shows the adverse impact that the resulting regulatory and market pressure on the wholesale market would likely have on independent resellers relative to vertically integrated resellers and independent retailers relative to vertically integrated retailers.

Incomplete Regulatory Response - Risks



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Figure 1: Risks of an Incomplete Regulatory Response

12. From MTA's perspective, for those reasons MTA:

12.1 maintains that the wholesale market reforms need to be complete/end to end otherwise they run the real risk of doing little more than shuffling the deck amongst wholesalers and some resellers, without resulting in workable wholesale competition, and with the

(currently well populated and apparently competitive) retail sector, particularly independent retailers, likely to bear the brunt; and

12.2 urges MBIE to ensure that the delivery of these reforms is complete and even-handed, at least in the key four areas identified in paragraph 3.4 above, but also including key mechanical details covered below, to ensure a relatively more level wholesale market playing field.

B. Regulatory oversight

13. MTA maintains that regulatory oversight, not just the possibility of a backstop legislation if required, is essential.

13.1 The Market Study has established how the market is currently operating, with fuel supply (except for the limited supply through Gull) ultimately almost all coming directly or indirectly from one of three major fuel entities, in a market dominated by vertically integrated suppliers. This is an oligopoly market populated by (on the one hand) large multinational fuel firms, one direct importer (not on the same scale as the majors) and some large resellers *and* (on the other hand) smaller resellers and retailers which include small independents. International fuel companies that see their profitability hinging on whether the international per-barrel price exceeds a certain \$/barrel price are not focussed on encouraging competition in the wholesale or retail markets in which they are vertically integrated (and in which a low \$/barrel price would arguably be better for their wholesale and at least retail businesses). There are substantial inequalities of bargaining power which will inevitably impact both on contracting/terms and resolution of market issues and disputes.

13.2 Major oil companies have significant influence on price levels in global wholesale markets. They are not mere price takers. They actively trade physical oil and gas commodities, currencies and associated forward financial instruments to make profits. In that context there is a risk that, without a regulator in the wholesale market, one or more of the major oil importers will seek to set a TGP that is influenced by its own financial arrangements for current and forward prices. This information is only possessed by each major oil importer and not retailers. Hence there would be an information asymmetry in the wholesale market that favours the major oil company and its vertically integrated resellers.

13.3 These market participants have their own significant influence on price levels, internationally (see above), domestically (including involvement in terminal and supply arrangements) and terms of the way that independent market participants engage in this market. The market effects arising from that have already been identified in the Market Study, and those issues (or variations on those issues) are likely to prevail unless there is sufficient regulation to result in change.

13.4 In MTA's experience it is often difficult to provide a clear indication of the extent of these market forces from affected members and market participants, because their contracts generally require confidentiality and because there are risks for a smaller enterprise speaking out against such substantial supplier entities. MTA has received some relevant comment from a well-informed affected market participant on a confidential basis, and on the basis that their identity would be kept confidential. On that basis, the following bullet

points relay the gist of those comments in anonymised form and on the basis that identity of the party making the comments remains strictly confidential, to provide a broader perspective:

- The commercial users are now being offered such massive discounts that the margins involved are minimal. Car drivers have no idea that the truck or farm contractor on the road with them pays significantly (could be up to 40 cents per litre) less than they just paid at the local service station. The result is that the margins in the retail sector have to prop up the missing margin from the commercial sector.
- For the second-tier sellers the problem is exactly the same. Again they must chase volume in the commercial market at pitiful margins but to a greater or lesser degree must pass on that pain to the retail sector.
- The answer is not [just] transparency or disputes mediation. It is regulation to level the playing field.

13.5 The answer is not [just] transparency or disputes mediation. It is regulation to level the playing field. In that context an effective regulator is needed because the major oil companies, which are vertically integrated through wholesale and into retail outlets in this market, have significant influence on price levels (globally and domestically). MTA still sees a place for disputes processes between participants (with appropriate funding/costs arrangements to ensure access to justice for all). However, given the inevitable power imbalances, MTA's view is that there will need to be a regulator that can step in, to give effect to the intended arrangements and ensure the market is functioning as intended.

13.6 An effective regulator would need to have a range of tools at their disposal.

13.6.1. That would need to include a monitoring role, and an ability to deal with market participant's complaints or concerns. A regulator would be best placed to issue a "please explain" and, if necessary, to request access to underlying/supporting information to assess an explanation offered.

13.6.2. They could oversee whether the reforms are being properly implemented, and whether and to what extent reforms are stimulating a more active wholesale market as intended. They could assess whether the critical TGP pricing component of the market reforms is working. They could also have oversight over whether vertically integrated supply is delivering differential terms/conditions or pricing to vertically integrated buyers as opposed to independents.

13.6.3. Finally, they could also have power to pull harder on whatever levers are available to them to encourage competition (for example to signal or implement increases in the % of fuel allowed to be taken from another supplier, or to allow supplied parties to "roll over" some of their entitlement to take alternative supply in a subsequent year), to take regulatory action or impose further regulations within their delegated power, or report to the Minister if further statutory market reforms are necessary to establish workable wholesale market competition.

13.7 Some examples where regulation would be required include:

13.7.1. If there are issues or concerns with what appears to be inflated TGP pricing available from a wholesaler. A regulator would be best placed to require the supplier to "please explain" and if necessary to request access to underlying/supporting information to

assess an explanation offered, to assess whether the critical TGP pricing component of the market reforms is working, and then to take steps as appropriate (along the lines identified in paragraph 12.5 above).

13.7.2. If issues arise with respect to contract terms and pricing arrangements put up by a wholesaler or reseller, including as to whether that involves some sort of differential pricing (“raising rival’s costs”), availability of less favourable contract terms (or unfair pressure to agree particular terms), or price squeeze effects. This might include a situation in which a contract supplied retailer sees another local site owned by the same supplier retailing fuel at a lower price than the retailer can buy at. A regulator would be best placed to assess whether the vertically integrated supplier is acting outside of regulated expectations (not to mention competition law principles), and to take steps as appropriate.

13.7.3. If issues arise in relation to timely access to fuel supply to serve the intended access to fuel from a supplier other than a contracted supplier. Again, given that the availability of such fuel will be critical to the reforms to the wholesale market, a regulator (not adversely affected individual market participant that can’t access fuel and which may not be able to afford to take the issue on) should be responsible for oversight of whether the market systems are working, and taking steps as appropriate.

13.8 Other similar markets, such as the gas and electricity markets, have regulators. They are dealing with substantial market participants. Nevertheless, MTA envisages that a fuel market regulator would, by comparison, generally be a light-handed form of regulator, but (particularly given the substantial market participants involved) with strong regulatory powers to enable it to intervene where that is necessary to ensure the market operates as intended.

13.9 MTA accepts that may involve rolling out reforms in phases, which might involve phase one regulatory reforms ahead of some sort of phase 2 regulatory process setting up a regulator and related regulatory regime, and perhaps even a phase 3 process of further clarification and reform/refinement of the statutory/regulatory regime once a regulator and market participants have established what is and isn’t working, and what else is required. But it maintains that the need of regulatory oversight as part of the delivery of the overall reform package should be recognised now, and planned for now.

13.9.1. The following infographic sets out MTA's suggestion as to required regulatory controls.

Required Regulatory Controls



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Figure 2: Required Regulatory Controls

C. Covid19 impacts on fuel prices should not change the reform process

14. MTA anticipates that some industry participants might suggest that, with international fuel stockpiling and unforeseen raw fuel price drops resulting from Covid19 impacts on international trade, Fuel Market reforms are no longer necessary or a current issue.
 - 14.1 MTA maintains that the likelihood of short-term at the pump price relief for consumers is not a reason for abandoning or slowing necessary fuel market reforms:
 - 14.2 Market issues have been identified, and those issues will continue until they are addressed.
 - 14.3 The market is likely to rebound, so it is important that the market issues are addressed before then.
 - 14.4 Even during any period of lower pricing, unless and until appropriate reforms are in place:
 - 14.4.1. vertically integrated majors and resellers (which are captive to majors) will still be in a position to be able to potentially manage pricing to capture profits at wholesale levels, potentially inflating the at the pump price by retaining their margins further up the supply chain;
 - 14.4.2. smaller independents, particularly retailers (many of whom have for years been both the face and the backbone of the fuel market) will be vulnerable to price squeezes from their vertically integrated suppliers leaving little or no margin to cover costs, and in some cases forcing losses on retailers;
 - 14.5 arguments that the sums in issue will be less (given lower prices) are unhelpful:
 - 14.5.1. if ROACE for New Zealand fuel firms exceeds that of their international peers (see figure C5, Market Report) then:
 - 14.5.2. that is likely to persist even if international markets mean lower raw fuel commodity prices; and
 - 14.5.3. lower international fuel pricing will at least encourage those firms to seek to maintain margins and may even encourage them to seek to extend their margins if the regulatory environment allows it;
 - 14.6 for some retailers (probably many retailers) at the end of the supply chain the difference between the current vertically integrated supplier-controlled fuel arrangements and a fair market price may be the difference between affordability/viability and failure (particularly in the current market).
15. On that basis MTA maintains that implementation of the market study's recommendations should continue.

III. OTHER ISSUES PARTICULARLY IMPACTING ON MTA MEMBERS

A. Limits on contract time frames

16. A limit on contract term (time frames) is a key element of the proposed contractual reforms.

MTA broadly supports the 5-year maximum term proposed, but says:

16.1 the maximum term must extend to all wholesaler/reseller/retailer supply contracts;

16.2 existing contract terms should be capped at 5 years, and suppliers should be required to offer new fuel supply contracts to resellers and retailers on no more than 3 year and 5-year terms;

16.3 there will need to be mechanical regulatory provisions to deal with tanks/pumps/equipment arrangements; and

16.4 maximum term arrangements should be subject to regulator oversight (including options for regulatory intervention and possibly an exception regime – see “E” below) and a review of the appropriate maximum term should be scheduled (2-3 years after initial implementation).

17. MTA’s rationale regarding time frames:

17.1 Maximum time frame regulations must apply to all supply contracts with resellers and retailers, per #(1) in Part I above.

- The contractual problems and issues with long term contracts do not just arise regarding wholesaler/reseller and wholesaler/retailer contracts, but also regarding reseller/retailer contracts. The list of contractual issues in reseller/retailer fuel supply contracts identified by the MTA Submissions, Market Study into Retail Fuel, dated 22 February 2019 identified eight characteristics of “one-sided long term, exclusive supply contract terms available to independent retailers” (including exclusivity and long terms)⁵, which are captured in the Market Study’s findings regarding the sorts of issues arising in fuel market contracts.
- Steps to facilitate better engagement with the wholesale market - for example by shortening maximum contract terms - need to ensure that resellers *and* retailers (which may occupy key sites) too are freed up, at least reasonably frequently, to engage with the wholesale market (wholesalers/resellers) to seek better deals *and* to be available as supply outlets for other wholesale market participants (wholesalers/resellers) looking to offer competitive supply deals.

⁵ See: page 4, 4th bullet point, (2) (a)- (e); and pages 8-9, final bullet point on page 8 and first six bullet points on page 9. In summary those issues were: take it or leave it up terms; confidential trading terms and conditions; exclusive supply arrangements; long-term contracts; suppliers/operational control mechanisms; restraints of trade; and whole agreement/entire agreement/clauses excluding other obligations.

17.2 Existing contracts tend to lock retailers into a price regime which may get out of step with the market, whereas shorter contracts would expose contracted resellers and retailers more regularly to the wholesale market the reforms seek to stimulate. Even 5-year contract terms will not expose those resellers/retailers (and their sites) to the market particularly often. That said, MTA also recognises that some suppliers and supplied parties might at times agree there is a commercial case for longer terms. On balance, MTA suggests the balance should cap existing contracts at 5 years, require suppliers to offer new contracts on 3 and 5 year terms, but with an option for longer contracts per an exceptions regime (see “E” below) and with the 5 year cap and 3/5 year term requirements subject to review in 2-3 years. MTA sees this as a reasonable compromise, avoiding the excesses of smaller businesses (typically independents, largely retailers but also resellers) being forced to “take it or leave it” regarding long term exclusive deals that might lock them in for 10 years or more, but also allowing a reasonably substantial commitment from both parties to a fuel supply arrangement.

17.3 A potential complication arises with existing long-term contracts that include supplier provided tanks, pumps and/or other hardware (“Supplied Fuel Hardware”) with longer term payment arrangements (exceeding any 5-year cap) for the Supplied Fuel Hardware. MTA maintains that such arrangements should not be enforceable to oblige a retailer to maintain a contract term exceeding 5 years, but suggests there should be an associated regulatory regime to unravel such arrangements. MTA expects such a regime would involve retailer rights and appropriate regulatory mechanisms to allow a retailer to opt to: (i) value and separate the Supplied Fuel Hardware component (perhaps excluding branding/branded elements), and continue to pay that separately to the original fuel supplier; and/or (ii) value and buy-out the Supplied Fuel Hardware (either themselves or through their new supplier/new arrangements).

17.4 MTA says that these sorts of fundamental cornerstones should generally be subject to regulatory oversight, to ensure that resellers and retailers (which will need to secure continuing supply at the end of their terms) are not leveraged through market forces into longer commitments and to ensure that they can genuinely engage with the wholesale market to explore supplier options.

B. Flexibility to buy a proportion of supply from other sources
(proposed 80-20 flexibility)

18. The other significant reform, from a contractual perspective, is to release market participants to acquire a proportion of their fuel requirements from a supplier other than their usual contracted supplier. **MTA supports flexibility to buy some fuel from other suppliers (per #(3) in Part I above), but says:**

18.1 this flexibility too must extend to all wholesaler/reseller/retailer supply contracting;

18.2 20% should be the starting point proportion, but the regulator should be entitled to signal and/or adjust that proportion between 20% and 30% to stimulate wholesale market competition and engagement;

- 18.3 *similarly, the starting point could be that such flexibility is available within 12 month cycle, but the regulator should be entitled to signal and/or adjust the length of that cycle, or allow supplied parties to carry over a proportion of any unused flexibility to a subsequent year to stimulate wholesale market competition and engagement;*
- 18.4 *the volumes that need to be held at terminal gates to ensure fuel is available to meet demand for a proportion of supply from other sources will need to be subject to regulatory oversight to ensure there is adequate supply;*
- 18.5 *in that context, contracting should be required to reflect that the agreement is for supply up to the maximum proportion of the buyer's total fuel supply requirement per the current regulations/regulated levels, subject to any regulatory adjustments*
- 18.6 *also, the contracting should be required to reflect (in line with paragraph 77 of the MBIE Paper) that a wholesale supplier contracting to deliver up to the maximum amount allowed is obliged to deliver the remaining proportion of the fuel buyer's requirements on the same terms, provided that the buyer give reasonable notice;*
- 18.7 *there will need to be mechanical provisions to deal with raw fuel/additives as part of the alternative supply arrangements; and*
- 18.7.1. *wholesalers/significant resellers should be obliged to maintain capacity to serve their own supply and contracted supply chains with equal priority, and those with storage facilities should be obliged to provide sufficient capacity to serve whatever volumes are necessary to serve the non-contracted supply requirements, and to draw on "Borrow and Loan" ("B&L") capacity at existing terminals to serve market needs (not just their own).*

19. The rationale for MTA's position:

- 19.1 The flexibility to access some alternative supply gives a supplied entity some limited release/flexibility and an option to: secure better terms/pricing for at least some of their supply (if their contracted supply is out of line with the market); encourage their supplier to deliver better ongoing terms/pricing; and test alternative supply channels, to assess possible alternatives to which it might change when it gets to the end of its contract term.
- 19.2 This option will only deliver real value if alternative supply options are available at competitive prices. To some extent that will turn on whether the reforms deliver an affective TGP regime and stimulate workable competition in a wholesale market. It is not clear whether an ability to source up to 20% of fuel requirements from another supplier will encourage incumbent wholesalers to provide sufficiently competitive TGP pricing to establish a workably competitive wholesale market. So, it is suggested the regulator should have the power to signal and/or increase the proportion of the alternative market supply option (between 20% and 30%) to stimulate competition. That flexibility gives the regulator a lever to stimulate workable competition in the wholesale market, if it is perceived that is necessary.
- 19.3 Allowing a supplied party to utilise their flexibility to take a proportion of supply from someone other than their contracted supplier at any point in their contract term (and

then average that out over the whole term) could raise practical difficulties and supply chain volatility for suppliers. That could be avoided by assessing compliance with these requirements in 12 month cycles, so up to (say) 20% of supply could be obtained from another supplier in the first 12 months, and again in the second and subsequent 12 month periods, until the end of the supply contract. Also, MTA maintains that the regulator should have the power, if the wholesale market is not functioning to deliver available competitively priced alternative supply options, to either extend the 12 month cycle or to allow supplied parties to “carry over” a proportion of their unused flexible supply entitlement. Again, such flexibility would give the regulator a lever, if needed, to stimulate wholesale market engagement.

19.4 Furthermore, it is important that the changes designed to stimulate wholesale market engagement don't leave the buyer at risk of not being able to secure the remaining (say) 20% of their supply or just lock most buyers (who will need continuity of supply) into two longer term contracts rather than one. In that context, MTA agrees with the approach contemplated in paragraph 77 of the MBIE Paper, which would ensure that subject to giving reasonable notice a supplied party could source their remaining (say) 20% from their existing supplier per the existing agreed terms. That would allow and even incentivise continuity of supply in good competitively priced supply relationships, but leave the buyer the option to access other suppliers in a more active wholesale market if need be.

19.5 Some existing contracts will provide for exclusive branded supply and for use of Supplied Fuel Hardware only with that branded the supply. The Market Study's recommendations appear to contemplate those sorts of restrictions would not be enforceable and cannot be suggesting resellers and retailers would have to duplicate equipment (particularly expensive tanks and pumps). MTA considers this should be addressed by some mechanical regulations given that: (i) alternative fuel supply could source raw fuel, not branded fuel (raw fuel plus the alternative supplier's additives); (ii) the raw fuel from a different supplier is likely to come from the same (shared) Terminal tanks anyway, and existing B&L wholesaler arrangements mean raw fuel delivered to retailers may already come from another source; (iii) branded additive consistency is still achievable on collection from the Terminal Gate (with additives being added to raw fuel at that point) and/or potentially through additives being sourced separately for a raw fuel delivery.

19.6 Again, regulatory oversight will be required, to ensure that the required fuel volume is available from terminal gates to meet the demand for a proportion of fuel outside of contracted supply (which may require active regulatory involvement to adjust the required volumes to meet changing market demands), that its availability is workable and does not disrupt supplier's supply commitments or continuity of supply, to ensure this does not add unnecessary costs, and to ensure that market participants taking up the alternative supply option (even occasionally) are not prejudiced in terms of their contracted supplies. Again, as well as flexibility for adjustment as necessary, MTA perceives that some broader review might be appropriate, perhaps after 2-3 years.

C. Standard contract terms to be regulated

20. **MTA supports introduction of fair regulated standard term contracts** (again, per #(1) in Part I above), **which are critical to address many of the contractual issues identified in paragraph 18.1.1 above, and says:**

20.1 *such regulations should extend to contracting throughout contractual supply chains, including independents resellers and retailers, such that the terms and conditions available to independent market participants/buyers are comparable to those offered within vertically integrated supply chains;*

20.2 *the prevalence of confidentiality provisions in retailer and reseller supply contracts, on terms that preclude these market participants from comparing the price structures set for them against other price structures in the market, needs to be addressed; and*

20.3 *again, active regulation and regulator oversight will be required, given the predominance of the majors and vertically integrated supply chains; the regulator's role should include oversight of contracting/terms and also contracted pricing (in much the same way as re TGP pricing – see below).*

D. Terminal gate pricing

21. Terminal gate pricing (“**TGP**”) is a key lever in the proposed reforms (per #(2) in Part 1 above) - alongside the changes re contract term, access to alternative supply lines and regulation of standard contract terms. **MTA supports TGP pricing but says:**

21.1 *TGP will only serve its purpose if it delivers fair market prices; and*

21.2 *objective standards for appropriate TGP may be difficult to prescribe, and in some respects TGP and may be more readily identified in terms of various touchstones (red-flags/warning signs) that may identify TGP anomalies, so TGP could be better be regulated by an active regulator with power to seek information, intervene or take action when red flags/warning signs arise.*

22. MTA's rationale regarding TGP:

22.1 Wholesaler suppliers will need to deliver price competitive TGP, and there will need to be fuel available (over and above existing vertically integrated and contracted supply) to buy at that price, to establish workable competition in the wholesale market. Conversely, unless and until there is workable competition in a wholesale market, competitive TGP pricing may not emerge. This suggests some level of regulation is required.

22.2 There is no clear current identifiable universal objective terminal gate price that the wholesalers (or market participants) could disclose or a market could rely upon. So, any attempt to establish objective TGP reference points will be complex:

- It would need to account for raw fuel cost at the point of sale (extraction, transport/pipelines/shipping/storage, any insurance, taxes & levies etc), sale costs (transaction costs/storage at point of sale pending shipping), shipping/transport (from the raw fuel point of sale to a NZ arrival point), transport from NZ arrival to the Terminal (any shipping/freight/pipelines), storage until point of sale, insurance and taxes & levies etc, and reasonable tolerable profits. But the major fuel firms will be playing a role in determining, not just meeting, some of those costs, given some of them are involved in extraction of fuel and/or will have multiple options for sourcing raw fuel, as well as involvement in the main terminal sites and important NZ transport pipelines.
- In any case, wholesaler's pricing is likely to involve a more complex mix of cost to acquire, forward buying/longer term planning, in some cases hedging through internationally traded oil futures, as well as commercial responses to more immediate visible market price effects internationally (oil prices/exchange rates) and nationally (consumer demand and local competitor behaviour) etc.
- In addition, it is not clear whether a TGP ought to reflect current landed costs (today's costs), the aggregated costs of the wholesalers fuel at the terminal, an assessment of landed fuel supply costs but factoring in local market conditions, something bearing a relationship to the wholesaler's existing sale prices internally or to contracted suppliers, or the wholesaler's own objective assessment of what a spot price at the terminal gate should be.

22.3 Against that background, MTA apprehends that, in addition to statutory criteria for TGP pricing, the regulatory regime should focus on identifying TGP anomalies by reference to identified red-flag/warning signs, to assess whether the TGP pricing provided is an impediment to workable competition in the wholesale market. Possible warning signs (calling for further consideration) could include:

- supplied entities not accessing alternative supply (that could suggest TGP prices are not competitive, that alternative fuel is not available, or that contracted prices are competitive);
- TGP pricing is out of alignment with a supplier's other retail prices, which could be visible through reseller/retailer buyer complaints or comparisons with retail price board pricing;
- a TGP is significantly out of alignment with other wholesaler's TGPs;
- a TGP is not reacting to international or national developments;
- a TGP is not tracking consistently with a retailer's own market projections (which could be disclosed confidentially to a regulator as a touchpoint); or
- if (conversely) all wholesaler TGPs appear to be tracking together too closely.

22.4 In that context, TGPs (and other contracted pricing) could be subject to fairly light-handed regulation based on wholesaler declared TGP information and other market

information access, provided that warning signs don't arise, but with the regulator empowered to respond (perhaps in some cases confidentially but in appropriate cases more publicly) to warning signs by:

- seeking an explanation for the possible TGP anomaly from a wholesaler, which in some cases might progress to requiring disclosure supporting/relevant material;
- in more serious cases or where explanations/disclosure do not satisfy the regulator, investigating any concerns, working with market participants to facilitate the removal of impediments to a workably competitive wholesale market, and/or taking enforcement action with respect issues arising; and
- extended market regulation further, within established statutory parameters, and/or making recommendations to the Minister/government if the statutory regime requires adjustment or extension to achieve its objectives.

a.

E. Preserving contractual flexibility, subject to appropriate constraints

23. MTA agrees that the default statutory position should afford supplied resellers and retailers the full ambit of proposed market protection in respect of their contract terms (limits on the time/ability to seek some supply outside of contract/fair market terms), but also suggests that:

23.1 there should be a regulated "opt in" exception regime allowing parties to waive some of the regulated contractual protections with respect to existing or future contracts, in specific exceptional circumstances and subject to regulatory constraints (to ensure that market conditions don't pressure supplied resellers and retailers to accept exceptional terms as the market norm).

24. MTA's members include⁶ resellers and retailers that are or would be comfortable (provided acceptable terms are offered) committing to longer term contracts and/or contracts that incentivise their loyalty. It is envisaged fuel wholesaler and reseller suppliers too will contend that such contracts may be appropriate in some instances. MTA considers an exceptions regime would be appropriate, but says that that (given the market structures and forces involved) any exceptions regime would need to be tightly regulated to limit exceptions to appropriate cases and to avoid undermining important reforms to generally deliver fairer contract terms.

25. On that basis, broadly, MTA proposes:

25.1 a default regime along the lines MBIE has outlined already (subject to MTA's comments above) generally capping existing and new fuel supply contract terms, allowing all supplied entities flexibility to take a regulated proportion of alternative supply from

⁶ In addition to members with concerns about the adverse effects of current fuel market trading conditions and contracts.

someone other than the contracted supplier, and requiring standard contract terms (or terms no less favourable than standard contract terms); *but adding*

25.2 an exception regime to allow a supplier and supplied party to agree to continue with existing terms or agree new contract terms outside the default regime provided that:

- any non-compliance is within maximum exception parameters set by the regulatory regime – which might require longer contracts only through rights to renew or include a long-stop time frame (perhaps 7 or 10 years), and/or lock in an option to revert to default regime terms at some point during any longer contract commitment (perhaps the ½ way point of any term over the default) *or* in specified exceptional circumstances (perhaps if contracted terms are exceptionally out of line with current market terms);
- a supplier may only offer compliant exceptional terms or offer to continue compliant exceptional terms in an existing contract *only* on request from the party to be supplied (although the supplier may invite such a request) and:
 - any offer of exceptional terms must be accompanied by a reasonable offer of compliant default regime terms, include a fair explanation of the pros and cons of the exceptional terms, and allow the supplied party to choose; and
 - the supplied party must in fact be given an adequate opportunity to obtain legal, accounting and/or other professional advice, and any resulting exceptional terms contract would have to include an express acknowledgement of the supplied party having had that opportunity.

F. Transparency – information collection and disclosure

26. **MTA supports a level of transparency, in terms of TGP pricing** (per #(2) in Part I above), **but suggests:**

26.1 *aggregated market information should be available to the regulator and market participants, but with scope for access to further information when required for regulatory or disputes processes; and*

26.2 *less detailed aggregated information should be available to the public, and the regulator's role should include informing/educating the public regarding fuel costs.*

27. MTA would advocate the following:

27.1 *The regulator will generally need to have access to reasonably detailed aggregated TGP pricing from those offering wholesale and/or resale supply, including some granular information about the breakdown of that pricing, in order to oversee market trading. However, the regulator would also need to be able to require further relevant information from market participants, where that is necessary so the regulator can look under the bonnet at the aggregated TGP information disclosed, in the context of requests for supporting information, investigation or further regulatory action;*

27.2 *Market participants (wholesalers/resellers/retailers)* will generally need to access to similar reasonably detailed aggregated TGP pricing, for the purposes of engaging with the wholesale market, including decisions about whether to seek to access some of their fuel needs through alternative supplier sources. Market participants might in some cases also be able to seek access to relevant further information if it is relevant to any market disputes processes, subject of course to regulatory oversight.

27.3 *The public* may be entitled to TGP pricing in broad outline terms (but not detailed/granular aggregated details), in order better to understand what they are paying for and why. *The public* would not generally access any further disclosure, except in so far as it might properly be disclosed by the regulator or in the context of any public disputes process.

27.4 *The regulator* could have a role in better informing and educating the public about underlying costs in the fuel market, with reference to TGP prices and other costs, to compliment the work industry participants and other relevant entities (such as MTA) might do in that context.

G. Pre-certification for TGP collection/access

28. *MTA perceives that any TGP/alternative supply options will, mechanically, require some sort of complimentary pre-certification regime. Given that a limited number of entities and vehicles would likely be involved, and to avoid on the spot certification and associated delays, MTA advocates some sort of centralised graded pre-certification arrangement.*

H. Price boards

29. ***MTA broadly supports the proposed changes in relation to include price boards, in line with the proposals regarding transparency, but maintains that reforms will need to:***

29.1 *allow reasonable time for compliance;*

29.2 *include some automatic exemptions and a streamlined “on application” exemption regime.*

30. MTA understands that typical costs to upgrade an existing price board to include more fuel categories would be in the region of \$5000-\$7000. For some smaller independent retailers such costs would be prohibitive, or the costs might well outweigh the benefits in terms of compliance (particularly when there may be other options available). In that context, MTA’s support for price board changes assumes there will be some automatic exemptions and some by application exemptions. MTA sees that along the following lines:

30.1 *Reasonable lead time for compliance:* MTA suggests 1-2 years, or perhaps 1 year generally but extended to 2 years for small-medium sized retailers with total annual fuel sales (petrol and diesel products from the pump) below **[500,000L]**.

30.2 *Automatic exemptions from price board requirements for lower volume operations or low volume products:*

30.2.1. smaller retailers with total annual fuel sales below [500,000L] should be automatically exempted from requirements to update to fully compliant signboards; and

30.2.2. low volume fuel products, with annual fuel sales below a specific threshold (perhaps 20% of total sales and a specific threshold) could also be automatically exempted from requirements to include those products on an updated fully compliant signboard, or that could be dealt with by an exemption application (as noted below).

30.3 *On application exemptions from fully compliant price board requirements are, on various grounds:*

30.3.1. retailers should be able to apply, pursuant to a user-friendly online process, for exemptions from price board requirements, to deem their existing price board compliant or for more time to comply; and in

30.3.2. grounds for exemptions or extension of time applications should include: grand-fathering existing signage on the basis of substantial “good-enough” existing compliance; low volume products where there is good reason for not adding same to a price board; financial hardship; excessive/disproportionate compliance costs; local government/environmental requirements that preclude a compliant price board display; unavailability of compliant signage options; unforeseen circumstances.

30.4 *Provision for use of smaller/lower cost price board alternative options where a full price board is not viable/required:*

30.4.1. MTA suggests that flexible alternative display options, including all available fuel prices, should be an available alternative to fully compliant price board requirements where automatic or on application exemptions apply, to ensure that the same information is available and reasonably accessible, albeit perhaps on smaller scale but still publicly accessible signage;

30.4.2. basic low-cost signage (within broad/practical/achievable margins) could be a standard requirement where automatic exemptions apply; and

30.4.3. applicants seeking on application exemptions could also be required to identify, as part of their application, what signage is already in place and what alternative low cost signage is proposed, so that alternative options may be specified as part of any exemption application approval.

I. Dispute resolution

31. MTA agrees that a proper dispute resolution process is critical (per #(4) in Part I above), **and that this should involve mediation and arbitration options, but (in the context of the identified predominance of major fuel firms and vertically integrated supply arrangements) maintains that:**

31.1 *mediation and arbitration arrangements need to be carefully regulated to seek to deliver a reasonably level playing field for dispute resolution;*

31.2 *funding and costs provisions will be critical to support fair dispute resolution processes; and*

31.3 *dispute resolution processes should complement and supplement, not replace, regulatory oversight through a market regulator.*

32. In that context MTA offers the following comments:

32.1 Mediation and arbitration are generally attractive cost-effective dispute resolution options. But it is necessary to consider the context. Small independent resellers and, particularly, retailers (which are in some cases single site, even family business, enterprises) are rarely going to be in a position, commercially, to take on David v Goliath dispute with major fuel firms. Indeed, many independent resellers and (particularly) retailers are generally not going to be in a position to take on any dispute, no matter how meritorious, with their supplier (regardless of whether the supplier is a wholesaler or a retailer). Quite simply, and realistically, they are likely to be outgunned or “burned off” in a dispute process they cannot afford.

32.2 In that context any effective mediation and arbitration regime needs to include significant mechanisms to seek to level the playing field somewhat, otherwise the dispute regime will itself become a tool which (in the hands of those with market power and vertically integrated supply chains) preserves existing imbalances in the market. MTA maintains that disputes regime should involve several components, and has taken the liberty of setting out an outline of some guidelines/parameters for consideration:

32.2.1. (A) *Mediation should generally be voluntary for supplied entities (regardless of their supply contract terms) or (relatively) substantially smaller entities unless pool funding is available to cover their reasonable mediation costs (see below) or their supplier agrees to meet the supplied entity’s reasonable mediation costs (see below), but suppliers should generally be obliged to attend mediation in good faith if the supplied entity reasonably proposes mediation.*

32.2.2. (B) *Mediators should generally have appropriate mediation qualifications and/or experience, and industry knowledge, and should either be available from from an appointed specialist panel or through a specialist nominating panel (based on its own list of suitable mediators or suggestions from the parties), or may be agreed between the parties; costs regarding mediators appointed through such processes and associated with the appointment process should be wholly or at least partly funded by government or through market participant levies, broadly under the oversight of the regulator.* (C) *Any other mediation costs should generally be shared 50-50 between the parties, unless a supplied or substantially smaller entity’s reasonable costs of participation are funded through the suggested funding pool or by their supplier or the substantially larger entity (to facilitate a pragmatic resolution process).*

- 32.2.3. (D) *Arbitration should be voluntary for supplied and substantially smaller entities, unless the parties are of similar size, funding is available to cover their reasonable arbitration costs (see below) or their supplier/the substantially larger entity agrees to meet the supplied entity's reasonable arbitration costs (see below). However, suppliers, similar sized entities and substantially larger entities should generally be obliged to attend arbitration in good faith if the other party proposes arbitration.*
- 32.2.4. (D) *Arbitrators should have appropriate legal qualifications and experience, and appropriate industry knowledge may be advantageous but is not essential, and arbitrators should be available from an appointed specialist panel, or through a specialist nominating panel (based on its own list of suitable arbitrators or suggestions from the parties), or may be agreed between the parties; costs regarding arbitrators appointed through such processes and associated with the appointment process should be at least partly funded by government or through market participant levies, broadly under the oversight of the regulator.*
- 32.2.5. (F) *Any other arbitration costs should be dealt with at the discretion of the arbitrator, and when considering apportioning costs an arbitrator shall consider matters which would generally be considered by an arbitrator, or a New Zealand Court, in connection with such costs, but subject to the following:*
- 32.2.5.1. if a supplier or substantially larger entity has prior to arbitration agreed to meet the other party's reasonable arbitration costs then except in exceptional circumstances that party should bear all of the arbitration costs;
- 32.2.5.2. an unsuccessful supplier or substantially larger entity should generally bear the other party's reasonable costs in full, unless they can prove that the other party had unreasonably maintained their position or unreasonably refused a reasonable offer of settlement;
- 32.2.5.3. an unsuccessful supplied or substantially smaller entity should generally only be obliged to make a contribution to the other party's costs (taking into account the relative financial positions of the parties) if the other party can prove that they had unreasonably maintained their position or unreasonably refused a reasonable offer of settlement;
- 32.2.5.4. where both parties are partly successful and partly unsuccessful, any costs awarded should reflect that a supplier or substantially larger entity should generally bear a greater proportion of the overall costs, subject to an assessment as to whether that party can show that they had not, or the other party had, unreasonably maintained their position or unreasonably refused a reasonable offer of settlement.
- 32.2.6. (G) *Mediation and arbitration of individual issues between parties will not generally begin or continue if the regulator has begun to assess, investigate or*

otherwise deal with the issues, unless the regulator so directs, or the parties otherwise agree.

32.2.7. (H) *Funding should be available from government, or through levies on all market participants, to form a pool to be available to help to resource/bear the reasonable cost of mediation or arbitration of industry disputes. Such funding should be made available on a discretionary basis, perhaps through an independent body, to fund:*

32.2.7.1. proper participation and representation of parties in disputes with wider ramifications for the industry;

32.2.7.2. costs faced by smaller less well-resourced entities involved in disputes with larger and better-resourced entities, particularly where funding support is needed in the interests of justice or because otherwise one-party would not be able to properly resource their participation in a dispute process; and

32.2.7.3. reasonable costs such as: dispute resolution process costs (mediator/arbitrator fees, premises hire etc; legal and/expert fees etc;

32.2.8. (I) Funding could also be made available by a supplier or a substantially larger entity to the supplied or substantially smaller entity, on a no strings/no conditions basis (except as noted below), to fund cost effective timely resolution of disputes through mediation and/or arbitration. However, if an arbitration is to consider a broader market issue that might be relevant to other market participants then the party offering or accepting such funding should be entitled to impose a condition that the arbitration decision will be available to other market participants or be allowed to be shared with other market participants (with the identity of the supplied or substantially smaller entity anonymised if they so require).

IV. MTA responses to specific questions posed by MBIE

MTA responses indicated in red

A. Wholesale markets

Terminal Gate Pricing

1	<p>Should fuel products other than regular 91 grade petrol, premium 95 grade petrol and regular diesel be subject to the TGP regime, for example, aviation and marine fuels, or premium 98 grade petrol? Please give reasons.</p> <p>MTA think that, as other premium grades such as 98 have been discussed as part of the overall market study and commentary related to price differentials, it would make sense to include 98 along with 91, 95 and diesel fuels in any TGP regime. We are also aware that 100 Octane rated fuel is also becoming more widespread so should also be included. But MTA says Price Board requirements should be subject to exemption regimes, including automatic exemptions for lower volume product lines: refer our main submission, section III H.</p>
2	<p>If the regime should apply to other fuel products, what are the standards used by industry for defining these fuel products?</p> <p>There are existing standards for defining Octane rating of fuel and these are appropriate.</p>
3	<p>Should there be a notice period for changes in the TGP price during a day?</p> <p>Yes, some flexibility should be allowed for price changes on a day if there is visibility of historical prices. However, purchasers should be able to place an order remotely and lock in that order price for pick up later.</p> <p>The establishment of appropriate regulatory oversight to monitor any market and market movements is key. The focus should be to monitor that any pricing/changes for anomalies and to assess any red-flags/warning signs that pricing is impeding workable competition in the wholesale market. Refer our main submission, sections II A (re the need for Comprehensive reforms), II B (re the need for Regulatory oversight) and III D (re Terminal gate pricing).</p>
4	<p>Do you have any comments on how terminal gate prices should be set and publicly posted?</p> <p>It would make sense to have TGP's posted in one common area, perhaps the MBIE website? This would require an agreed timing schedule for suppliers to notify their TGP's to MBIE in order to be posted in a timely manner.</p> <p>MTA maintains that TGP will only serve its purpose if it delivers fair market prices, which MTA maintains will require active regulatory oversight. Refer our main submission section II B-Regulatory oversight and III D Terminal Gate Price</p>

5	<p>Is the prescribed minimum of 30,000 litres per week to one retailer or wholesaler appropriate?</p> <p>It is not clear if the 30,000L minimum is related to the ‘must not refuse’ weekly volume but as a weekly amount this does seem quite small as it would equate to just one tanker load. Given the number and location of bulk fuel terminals, it is unlikely that this weekly minimum volume would support the opportunity for smaller fuel distributors (or collectives of retailers) to take up the opportunity to take a proportion of their supply from a supplier other than their contracted supplier, or establish a viable business acquiring fuel through a wholesale market.</p> <p>Refer our main submission, Section III B-Flexibility to buy a proportion of supply from other sources.</p>
6	<p>Should the prescribed minimum be able to be changed, or varied? For example, could the prescribed minimum be different for different storage facilities, given some terminals supply larger fuel volumes than others?</p> <p>As per the discussion document, the impact of increasing the storage tank ‘heel’ needs to be understood in terms of the storage capacity of terminals, tank volume, tank condition and rated storage volume, tank floor design and in certain areas, what fuel types are available. It is unclear how increasing the supplied minimum ‘must not refuse’ volume would affect the heel volume of a tank. MTA perceives that the volume of fuel required to meet any demand for a proportion of fuel outside of contracted supply will need to be adjusted to meet changing demand, and that this will require regulatory oversight: refer our main submission, Section III B.</p>
7	<p>Should there be any additional grounds for refusal, such as the quantity demanded being below a de minimis amount, or reasons of force majeure? If you consider there should be, please suggest a de minimis amount or identify which force majeure reasons should apply.</p> <p>There should be a minimum buy volume to access fuel at TGP pricing to avoid inefficiencies in terminal supply processes. Equally, it appears that TGP arrangements can deal with a small fuel tanker volume, and MTA understands a typical mini-tanker volume is 6,000-7,000L. On that basis, approximately 5,000L seems fair and practical.</p> <p>Refer our main submission, Section III B-Flexibility to buy a proportion of supply from other sources.</p>

8	<p>We seek your feedback on whether occupational, health and safety requirements and creditworthiness could be determined on the day TGP supply is sought with minimal impact on the customer or the wholesale supplier?</p> <p>If not, is it necessary to specify a pre-certification process with potential terminal gate customers in advance to allow an efficient assessment of whether these grounds for refusal have been met.</p> <p>Given the hazardous nature of fuel products and the health and safety procedures in place at bulk fuel storage terminals it is our view that it would not be practical to have each terminal assess a customers ability to meet the site specific health and safety requirements let alone carry out credit worthiness checks. It would be more practical to establish pre-certification requirements for each customer that allowed the terminal operator to quickly assess these requirements on the day of pick up.</p> <p>Refer our main submission, Section III G</p>
9	<p>What other standard terms and conditions should be prescribed for sales by a wholesale supplier for the TGP at the storage facility?</p> <p>Yes. Such terms should have broader application. Refer our main submission, Section III C</p>
10	<p>Please provide comments on any other matters related to the terminal gate pricing regime.</p> <p>Refer our main submission, Section II B, Section III D (Terminal gate pricing) and F (Transparency – information collection and disclosure)</p>

B. Regulating terms in wholesale contracts

11	<p>Should either or both of the TGP or an industry-recognised price reporting agency's price based (MOPS or equivalent) pricing methodologies be deemed to be transparent pricing methodologies?</p> <p>Refer our main submission, Section II B</p>
12	<p>Should any other pricing methodology be deemed a transparent pricing methodology?</p> <p>Refer our main submission, Section II B and Section III F</p>
13	<p>Should there be any other reasonable exceptions?</p> <p>Refer our main submission Section III F</p>
14	<p>What cost elements of a deemed pricing methodology should be itemised?</p> <p>Refer our main submission Section III D and F</p>

15	<p>What would be an appropriate prescribed period after which distributors can terminate their wholesale fuel supply contracts?</p> <p>Yes, generally existing contracts should be subject to a 5-year limit, and new contracts should be offered in 3- and 5-year maximum terms, subject to a regulated exception regime, and review in 2 or 3 years. The maximum term/prescribed period needs to apply to allow retailers and resellers, including independents, to terminate supply contracts. Refer our main submission Section III A (Limits on contract time frames). and also Section III E (Preserving contractual flexibility, subject to appropriate constraints).</p>
16	<p>What proportion of a distributor’s annual requirements should be permitted to be subject to exclusive supply provisions?</p> <p>20% as a starting point, but subject to a regulator’s oversight with flexibility to signal and/or shift that proportion between 20% and 30% to stimulate wholesale market competition and engagement. Refer our main submission Section III B</p>
17	<p>Should the maximum exclusivity requirement apply as an average across the whole length of the contract? If not, how should it be applied?</p> <p>In some ways this depends on what proportion of contracted supply the maximum exclusivity would apply to. But assuming a maximum of no more than 80% would be exclusive supply, with regulator flexibility to decrease that to 70%, MTA suggests that: (i) the starting point should be 12 month cycles, with any flexibility to take a proportion of supply from another supplier to be used within a 12 month cycle; but (ii) the regulator should have the power to extend the length of such cycles and/or to allow a retailer to carry over a proportion, in order to stimulate workable competition in the wholesale market if necessary. This aspect of the arrangements would need to be subject to regulatory oversight too. Refer our main submission Section III B</p>
18	<p>Should the exclusivity requirement apply to the total fuel requirement of distributors, or to each fuel type?</p> <p>Limits on exclusivity, and thus the extent of the flexibility to acquire from a supplier other than the contracted supplier, should apply to total (contracted) fuel supply not to each particular fuel type. Otherwise, for example, if a supplier continues to maintain higher high octane fuel prices (as the Market Study has observed) the supplied party would be forced to accept that that price for (say) 80% of their high octane fuel and obtain only 20% at a better market price; MTA maintains that the supplied party should be able to use their (say) 20% flexibility as they see fit, which in this case might focus on obtaining primarily high octane fuel at a better/market price. Again, this would need to be subject to regulator oversight.</p> <p>Refer our main submission Section III B and C</p>

19	<p>Do these terms hinder the ability of dealers or distributors to compete?</p> <p>These terms may cause some inconvenience to some suppliers at times, both at wholesaler and reseller level, but MTA maintains that an ability for retailers and resellers to access wholesale market terms/pricing outside of existing long term contract supply is critical to enabling dealers (retailers) and distributors (resellers) to be able to buy fuel at competitive prices in a competitive wholesale market, and to fostering competition. Refer our main submission Section III A and E</p>
20	<p>Are there any other terms that are likely to hinder the ability of dealers or distributors to compete?</p> <p>Reseller and retailers need to be released from locked in long term exclusive supply arrangements, on confidential terms, that preclude them from engaging with the wholesale market. Ensuring that retailers and resellers have access to that wholesale market is critical. Retailers should have such access <i>both</i> to offer supply lines to wholesalers and resellers <i>and</i> to secure competitive fuel supply lines for themselves. Refer our main submission Section II A, Section III A, B, C, D, E and F.</p>
21	<p>Should a term in wholesale contracts which prioritises supply to a supplier's own retail sites over that of a term customer be considered as likely to limit the ability of the dealers or distributors to compete?</p> <p>Yes. Vertically integrated suppliers preferring their own supply lines to contracted supply lines or non-contracted supply alternatives will limit the ability of dealers (retailers) and distributors (resellers) to compete. Refer our main submission Section I A and 1B, and Section III B</p>

C. Dispute resolution processes for wholesale markets

22	<p>Do your wholesale supply contracts currently provide for a means of dispute resolution? If so, what does this look like?</p> <p>MTA is not itself party to such a supply contract. In MTA's experience, and in MTA's understanding, such supply contracts typically include confidentiality provisions that preclude parties from sharing the details of their contract terms. Anecdotally, however, MTA's understanding is that resellers and retailers, particularly independents, would rarely engage in disputes with their suppliers per dispute resolution provisions in their contracts, and generally perceive that they are substantially outgunned by their suppliers such that disputes are not really a viable option.</p>
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23	<p>Do you consider the existing arrangements for dispute resolution to be sufficient? If not, how much use do you think would be made of a new dispute resolution scheme? No they are not sufficient, for the reasons identified in Question 22 above and in our main submission, Section III I, particularly at paragraph 32,1. MTA maintains that, given the predominance of major fuel firms and vertically integrated supply arrangements, a lot needs to be done to “level the playing field” to make dispute resolution processes work in this market. In overview it says that:</p> <p>(i) mediation and arbitration arrangements need to be carefully regulated to seek to deliver a reasonably level playing field for dispute resolution.</p> <p>(ii) funding and costs provisions will be critical to support fair dispute resolution processes; and</p> <p>(iii) dispute resolution processes should complement and supplement, not replace, regulatory oversight through a market regulator.</p> <p>Refer our main submission Section III I</p>
24	<p>Should participating in mediation be mandatory for the other party if one party wishes to attempt to resolve the dispute using this dispute resolution process?</p> <p>Mediation should generally be mandatory for a supplier but voluntary for supplied entities or substantially smaller entities (unless their costs can be covered) Refer our main submission Section III I, particularly at paragraph 32.2.1 (and generally all of paragraph 32.2, including 32.2.3,32.2.7 and 32.2.8)</p>
25	<p>Should the dispute resolution scheme apply if a wholesale supplier refuses to supply fuel at TGP?</p> <p>Yes. Refer our main submission Section III I</p>
26	<p>Should the dispute resolution scheme apply to disputes that result from the new wholesale contract terms?</p> <p>Yes. Refer our main submission Section III I</p>
27	<p>Should the dispute resolution scheme apply to disputes that result from any provision that relates to the terminal gate pricing regime?</p> <p>Yes. Refer our main submission Section III I</p>
28	<p>Are there any other aspects of the new regime you think the dispute resolution scheme should apply to?</p> <p>Yes – basically all aspects of the operation of the fuel market involving arrangements between market participants (wholesalers, resellers and retailers). Refer our main submission Section III I</p>

29	<p>In your view, how can we ensure the dispute resolution scheme is affordable, easily accessible, and timely for all parties involved?</p> <p>We have addressed this in overview in response to Question 23 above and in some detail in our main submission Section III I, particularly in paragraph 32.2, and in subparagraphs 32.2.1 -32.2.8. Access, costs and funding arrangements are critical. MTA urges MBIE to review our detailed commentary regarding Dispute Resolution in our main submission.</p>
30	<p>Should each party to a dispute be required to pay half the cost of the mediation or arbitration process?</p> <p>No. Funding and costs should differentiate between the position of the supplier and the supplied party, and the substantially larger and substantially smaller parties involved. This is critical in terms of levelling the playing field. Refer our main submission Section III I</p>
31	<p>In your view how can we ensure the dispute resolution scheme is effective?</p> <p>Again, refer to our main submission Section III I</p>
32	<p>Who should provide the dispute resolution services set up under the new regulations?</p> <p>Refer our main submission Section III I, particularly paragraphs 32.2.2 and 32.2.4.</p>
33	<p>Should the dispute resolution scheme appoint an independent nominating authority to appoint dispute resolvers under the scheme?</p> <p>Refer our main submission Section III I. particularly paragraphs 32.2.2 and 32.2.4.</p>
34	<p>Is there a specific skillset / background the mediator / arbitrator should have?</p> <p>Refer our main submission Section III I. particularly paragraphs 32.2.2 and 32.2.4.</p>
35	<p>Please feel free to provide comments on any other matters related to the dispute resolution process.</p> <p>For any disputes resolution process to work there must be an understanding of trust and safety for all parties using the system. At present, most independent fuel retailers are price takers in terms of fuel supply and throughout any supply agreement term they are beholden to their fuel supplier who can have a huge influence on how pump prices are set. To truly improve competition in the retail sector, independents need good access to cost-effective dispute resolution options that establish a level playing field to efficiently address disputes where possible, but without compelling supplied parties/smaller parties into processes in which they will inevitably be outgunned substantially larger multinationals and/or larger vertically integrated suppliers. Any effective disputes resolution process needs to address funding and costs issues, but it also needs to be backed up by an active regulator.</p>

D. Regulatory backstop

36	<p>What should be the threshold and process for whether backstop regulation should be imposed on the TGP supply of specified fuel products at a terminal or terminals? Please give reasons.</p> <p>Active regulatory oversight is required, given the predominance of substantial multinational wholesalers and substantial vertically integrated supply chains. That could be light-handed regulatory oversight, provided a workably competitive wholesale market is emerging which is delivering what is anticipated by the market reforms, but it will need to have teeth to intervene more strongly if required. An industry specific market regulator will be required. MTA maintains that the regulatory environment, and the scope of a regulator’s authority, need to be established as part of the reforms. Refer our main submission Section II B (but also II A), Section III A, B, C, D and F</p>
37	<p>How should the backstop price control regime be designed to apply to specified fuel products at a terminal or terminals? Please give reasons.</p> <p>MTA maintains that reforms will need to: (i) allow reasonable time for compliance; and (ii) include some automatic exemptions and a streamlined “on application” exemption regime. Regulatory involvement will be necessary in terms of exemptions.</p> <p>Refer our main submission Section III D and F</p>

E. Consumer information

38	<p>Do you have any comments on the costs of or time required to modify or install price boards?</p> <p>Again, MTA maintains that reforms will need to: (i) allow reasonable time for compliance; and (ii) include some automatic exemptions and a streamlined “on application” exemption regime. In some cases the costs will be prohibitive or more time will be required, so an exemption regime will be appropriate. Refer our main submission Section III H, particularly paragraph 30, including 30.1-30.4.</p>
39	<p>Which grades of fuel should the requirement to display apply to? Should it apply to all grades of fuel including premium, or to premium fuels only?</p> <p>In principle, all fuel grade prices should be displayed unless the site is operating under an exception. But, again, any requirements regarding full price board displays should be subject to automatic and on application exemption options, where fuel volumes or other issues arise such that full price board display of particular fuel grades should not be required. Refer our main submission Section III H, particularly paragraph 30, including 30.1-30.4.</p>

Do you consider that an obligation to display price should apply to all grades of premium fuel, or only to the main grades of premium fuel sold?

See responses above

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In principle, all fuel grade prices should be displayed on the main fuel board unless the site is operating under an automatic or on application exemption, and then it is expected that less onerous display requirements might apply instead. Refer our main submission Section III H, particularly paragraph 30, including 30.1-30.4.

Do you consider that there should be specifications in regulations on the layout, size or other requirements of a price board?

- For example, should there be a requirement for a particular ordering or colour coding of prices that are displayed on a price board?
- Are there any other requirements you consider should be applied consistently across price boards?

41

MTA supports a standardization of sorts, but this needs to consider what is typically in place at present so as not to incur additional unnecessary costs on a business. It might be appropriate for there to be minimum lettering size and perhaps an industry standard product order display i.e. 91 at top then 95,98, Diesel, LPG etc. But any such requirements would need to be subject to sensible/reasonable automatic and on application exemption processes. For example, market participants should not be required to incur costs of a full upgrade where their signage is only slightly different from the new requirements, but equally clear. Similarly, exceptions should apply where lower fuel volumes are such that the regulatory cost would be disproportionate. A reasonable time period needs to be allowed for any sign upgrades to be managed.

Refer our main submission Section III H

Should there be an exception from the requirement to display a price of a particular grade of fuel if the volume of that type of fuel being sold at a particular retail site is below a certain minimum volume? If so, why, and what would be a reasonable threshold for such an exception?

42

Perhaps. MTA notes this could be dealt with as an automatic exemption or dealt with in an exemption application.

Refer our main submission Section III H. paragraph 30.2.2 and 30.3.2

Should there be an exception from the requirement to have a price board displaying fuel prices if the total volume of fuel sold at a particular retail site is below a certain minimum volume? If so, why, and what would be a reasonable threshold for such an exception?

43

Yes. In principle MTA support the idea of not having standard price boards for lower volume fuel suppliers, particularly many small, remote service stations where annual volume sales are less than 500,000 litres. Fuel prices would still be displayed on pumps, and if some further display is required a less prominent smaller sign should be a sufficient alternative.

Refer our main submission Section III H, paragraph 30.2.1

44

Is an exception needed for the situation where sellers must comply with NZTA requirements for signage on state highways?

Are there any other situations where an exception might be needed? For example:

- is an exception required in relation to local authority bylaws?

are you aware of any issues that would mean that requirements on the display of price boards would conflict with local council requirements for signs under bylaws or the Resource Management Act? If so, describe these issues?

We are not familiar with the NZTA signage requirements for state highways, but it would make sense to allow exceptions where these sorts of issues, and other safety related issues, impact on the ability for price boards to be compliant. This is covered by our suggested “on application” exception approach.

Refer our main submission Section III H. paragraph 30.3.

45

Are there any other issues that you think should be considered in development of regulations relating to the display of prices on price boards?

Displaying the discounted price along with the non-discounted price can be confusing for some customers as well as disadvantaging customers who are not participating in a loyalty card scheme in order to qualify for the discounted price. Some members do receive regular complaints about this. This will need to be addressed, and at some level (perhaps not all on a main price boards) discounted and non-discounted prices should be identifiable/displayed somewhere. Consistency and clarity will be key.

46

Do you have any comments that you wish to make on other matters relating to transparency of information for consumers?

Refer our main submission Section III F and H

F. Information disclosure and monitoring

Do you have any specific feedback or comments on the information identified in the above table that industry participants would be required to collect and disclose?

Is there any other information not identified above that should be collected and disclosed to enable monitoring?

The collection of detailed information, whether it is collected monthly/disclosed quarterly, or collected weekly/disclosed monthly or collected daily/reported monthly, seems quite onerous and could impose significant costs. Broadly, MTA maintains that the collection of information needs to be carefully focussed, to efficiently capture all of the required/relevant information. The scope of information captured may need to be flexible in some respects, under the direction of the regulator, to best achieve the desired outcome cost-effectively.

It is not entirely clear what this information will be used for, but the assumption is that it will be to enable monitoring of prices (including TGP pricing) against disclosed cost of supply, together with an appropriate level of transparency/access to market information. Given the range of different arrangements involved, comparing prices across regions, fuel brands and business operating models will not be straightforward. These sorts of comparisons will only be accurate and informative if the information obtained is complete.

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- For example, MTA perceives that will need to include disclosure of relevant contract terms (which will identify whether disclosed costs align with those arrangements) and discounting contracts/arrangements and data (which may skew costs structures, depending on which party is bearing discounting costs).
- The information collection contemplated focusses on the wholesale supply and the retail supply but does not appear to specifically capture information about a reseller/distributor's supply arrangements to a retailer/dealer. That information too should be captured, as it will form part of the supply cost (for example) to a retailer/dealer buying fuel through a reseller/distributor.
- Information about the availability and accessibility of alternative fuel supply through access to the wholesale market should also be captured. That does not currently appear to be in focus.

As to further disclosure/availability of such information, MTA's view is that aggregated market information should be available also to the regulator and market participants, with scope for access to more information when required for regulatory and disputes processes, but that less detailed high level information only should be available to the public. Refer our main submission Section III F

For Fuel Industry participants, what costs would there be for your business to collect and disclose this information?

MTA understands that for larger groups of independent retailers (cooperatives or dealer representative groups) where collecting this sort of data for the purposes of renegotiating supply agreements is time consuming, the cost of doing this could be substantial - in the order of \$100k. It is important that the process is handled as efficiently as possible.

MTA maintains that, so far as reasonably possible, the burden of providing information should be met by the relevant supplier (as a cost of supply). The information collection contemplated by Table One in the MBIE Consultation Paper (at page 45) appears to contemplate that sort of approach, with information collection by wholesalers, distributors (resellers) and dealers (retailers), but two issues arise from that:

- Although the information should be provided by the supplier (wholesaler and/or reseller/distributor), there will need to be a mechanism in place to enable supplier provided information to be verified by the market participant receiving the supply, or for supplied parties to provide information if there are concerns as to whether information from the supplier is complete and accurate. Actual retail prices will be visible “at the pump”. But resellers and retailers too may need to provide information at times to corroborate or clarify the information provided by their supplier, and that too will involve costs. It may be appropriate to consider whether costs reasonably incurred correcting information provided by a supplier should, in some circumstances, be met by the supplier.
- Some information, at the retail end of the process, will need to be provided by the retailer.

The MBIE Paper also seems to contemplate that where possible retail information could be provided by major/supplier where there is a vertically integrated supply arrangements and or where a branded dealer (retailer) does not set their own price. MTA considers that whatever information *can* be provided by the supplier it should be provided by the supplier. However, independent retailers will have to provide some information themselves, which will be an additional operational cost for them. In that context, any costs associated with a supplier providing information regarding retail supply for some but not all retailers they supplying (i.e. for those within vertically integrated supply chains or who don't set their own price) should not be included in the supplier's overall supply cost that is shared by other independent retailers/dealers who will have to provide their own information (at their own cost).

49	<p>For Fuel Industry participants, is the information outlined above currently collected by your business?</p> <ul style="list-style-type: none"> • If so, is it collected in a form or manner that would be consistent with what’s outlined above, or would changes to your information collection processes be required? • If not, what costs would be incurred in collecting this information? <p>MTA is not, itself, directly involved but understands that:</p> <ul style="list-style-type: none"> • Most service stations will have records on what their prices, volumes and grades are but MTA does not know whether they are kept in a form that can readily be used/formatted to send to regulator. Depending on their fuel supply arrangements, most stations would have some sort of automatic tank gauging that collects and reports fuel volume usage for the purposes of arranging efficient fuel supplies. Again, whether this information could be reformatted and supplied to the regulator will need to be confirmed by the fuel suppliers themselves. • This will involve costs for participants supplying information, but MTA cannot comment on the level of those costs.
50	<p>Are there any other factors not discussed above that could have an impact on the compliance cost of collecting and disclosing information? What are these factors?</p> <p>The costs associated with collecting and supplying the information discussed above would ultimately be operational costs for market participants which would ultimately be passed on to consumers. In that context it is important that the process is as efficient as possible.</p>
51	<p>Are there any importing costs not captured in Table One that are relevant to understanding the cost of supplying fuel from a terminal in New Zealand?</p> <p>Refer our main submission Section II B (as to the impact that the importers/suppliers can have on costs) and Section III D (as to some of the costs involved).</p>
52	<p>Have the proposed parties outlined as the owners and suppliers of information in Table One been correctly identified?</p> <p>See above responses to Q47 and Q48. It is perceived that some supplier information will need to come from resellers/distributors.</p> <p>Could data returns for dealers who sell fuel under the brand of a wholesaler, and do not set their own price, be completed by suppliers? If not, do you have any comments on options for minimising compliance costs in this situation?</p> <p>Yes, they could be, but note the comment in the second bullet point in response to Q48 above.</p>

53	<p>Do you have any comments on the proposed frequencies for collection and disclosure of information outlined in Table One?</p> <p>MTA suggests that there should be further consultation with market participants regarding the proposed frequency of collection, and in particular around whether collection daily/disclosed monthly is achievable at the retailer level. Alternatively it may be appropriate for regulation in this area to allow scope for adjustment and refinement of the collection and disclosure arrangements as the process beds in.</p>
54	<p>Do you consider that the proposals outlined above strike the right balance between certainty and adaptability? Would you prefer that requirements such as frequency of information collection are set by agencies or set out in regulations?</p> <p>It is perceived that some flexibility will be needed in terms of frequency of information collection. Refer our main submission Section II B and Section III D and F</p>
55	<p>Do you have any comments on proposals for agencies to develop templates to ensure that information is disclosed in a consistent format?</p> <p>No other than that it would be desirable to have an agreed consistent approach to the format of any template used to capture this information, to consult further with relevant market participants about the format of any template, and for there to be some flexibility to adapt/refine the template.</p>
56	<p>For information that is proposed to be used for periodic analysis:</p> <ul style="list-style-type: none"> Should such information still be required to be disclosed on a regular basis, or should that information be held by the companies until needed? <p>More information would be required to address this, but it is suggested there should be some flexibility for the regulator to work with market participants to refine the processes. Refer our main submission section B-Regulatory Oversight</p>
57	<p>Do you have any other comments that you wish to make on matters relating to information disclosure and monitoring?</p> <p>One aspect of increased transparency has not been emphasised to date is the tax component that influences the price of fuel at the pump. In order to be consistent and provide consumers with complete transparency, any taxes paid will be relevant to any public disclosure of fuel market costs.</p> <p>MTA has commented further on monitoring in our submission regarding TGP, including the role of a regulator monitoring TGP prices against known/available information. MTA sees this data collection/monitoring as key to the efficacy of the proposed market reforms. Refer our main submission Section III F (and also Section II B).</p>



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