Z ENERGY LIMITED SUBMISSION ON MBIE'S CONSULTATION PAPER: REGULATIONS UNDER A FUEL INDUSTRY BILL AND OTHER MATTERS

EXECUTIVE SUMMARY

1 Z Energy welcomes MBIE's consultation on the Fuel Industry Regulations and regulatory backstop regime, and appreciates the extension of time for submissions due to the COVID-19 disruption.

2 The Fuel Industry Bill and Regulations have the potential to enhance transparency and the conditions for competition in wholesale markets. The information disclosure regime should also give the government confidence about the market, avoiding the need for additional intensive and costly inquiries.

3 These are important reforms for New Zealand, and Z is committed to working with MBIE to ensure the regime is fit for purpose.

There is significant supply chain uncertainty

4 The landscape of the fuel industry has changed since the Commerce Commission's final report on the retail fuel market study. Perhaps most significantly, Refining NZ has announced a strategic review to determine its optimal business model and capital structure, noting low refining margins and stating that the future for the refinery "will need to look different".[1]

5 This announcement has introduced substantial uncertainty to the New Zealand fuel supply chain, including the real possibility that the refinery will cease to refine crude oil. This makes it even more important that the Fuel Industry Bill and Regulations are set up to be as neutral as possible to the structure of the supply chain above the terminal gate. That is:

5.1 The terminal gate pricing regime should not depend on any particular model of supply chain, including the continuation of the borrow and loan arrangements (Z understands this to be consistent with the Commission's intentions[2]).

5.2 Any regulatory backstop regime must be fit for purpose in any fuel industry landscape and must ensure efficient incentives to invest in the supply chain (and, as demand ultimately winds down, disinvest). Further consultation on this regime is needed as the industry changes, as noted below.

6 In Z's view shorter wholesale contractual terms (a maximum of two years for contracts with distributors) are also appropriate in the face of a shifting landscape.

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[1] See Refining NZ's 15 April 2020 NZX announcement available here: https://www.nzx.com/announcements/351663.

[2] See paragraph 8.52 of the Commission's 5 December 2019 final report on the retail fuel market study (**Final Report**).

Distributors and dealers have different roles in the competitive landscape

7 The Commerce Commission rightly distinguished between "distributors" and "dealers".

8 Distributors (e.g. Waitomo and NPD) operate substantial retail and/or commercial networks in competition with the majors, Gull and other distributors. They are a significant part of the competitive landscape.

9 Dealers (e.g. Caltex sites) are retail sites that carry the brand of one of the major fuel firms or Gull but are owned and operated by individual owners. They are a channel to retail markets for suppliers, and a less capital intensive business model compared to owning retail sites outright. Dealers are a significant part of fuel suppliers' offering, but are effectively a channel to market and not independently an important source of competition. Dealers are therefore not an appropriate target for much of the Fuel Industry Bill and Regulations. There is no basis for the regime to favour any particular model of competing in retail markets (e.g. owning retail sites) over any other (e.g. contracting with dealer sites).

10 The Commission's key recommendations for wholesale contracts – maximum term lengths and a non-exclusive portion of volume – were made only in relation to distributors. The Commission acknowledged that certain provisions may be anti-competitive in distributor contracts but pro-competitive in dealer contracts.[3]

11 This distinction should continue to be borne in mind in the Fuel Industry Bill and Regulations:

11.1 It is appropriate for regulations to require the use of transparent pricing methodologies (e.g. TGP or MOPS-based methodologies) in distributor contracts. But this is unnecessary for dealer contracts, where closer control by suppliers is appropriate – such regulation would unjustifiably disadvantage dealer models.

11.2 Dealers should be allowed to agree to give their supplier first right of refusal over their sites. In respect of dealers, such rights have no material downside for competition, and on the upside can protect a supplier's investment in a site's assets and brand.[4] Prohibiting them would, again, unjustifiably disadvantage dealer models.

Further consultation is required

12 Z considers that further industry engagement is needed as the Fuel Industry Bill and Regulations are developed. In particular:

12.1 Z requests that MBIE consult on exposure drafts of the Fuel Industry Bill and Regulations. Targeted consultation is of particular value where legislation is detailed, involves industry restructuring and risks unintended consequences – as is the case here.

12.2 Further consultation on the regulatory backstop regime will be required as options are developed. The regime will also need to take account of the upcoming period – including the final design of the Fuel Market Bill and

[3] See paragraph 6.75 of the Commission's Final Report for more detail.

[4] This is acknowledged in paragraph 6.107 of the Commission's Final Report.

Regulations, the initial experience of the regulatory regime, and any significant developments in the industry.

12.3 Z supports transparency, and the disclosure of costs as part of the proposed information disclosure and monitoring regime. Further discussion is needed in relation to the importers' costs component of the proposed regime, particularly MBIE's intended use of these costs, which will guide what data is most useful, and any estimates and assumptions they entail.

Other key points

13 Other key points addressed in this submission include:

13.1 The Australian terminal gate pricing regime has been effective, transparent and low cost. Z agrees with MBIE's proposals to take a similar approach, with some adaptations specific to New Zealand circumstances. Terminal gate pricing is discussed in **Part A**.

13.2 MOPS and TGP-based pricing methodologies should be deemed transparent and capable of use in distributor contracts. However regulations should retain the option for suppliers and distributors to agree other transparent pricing methodologies. Pricing methodologies are discussed in **Part B**.

13.3 A maximum length of two years is appropriate for contracts with distributors. Given the restricted length of distributor contracts there is no sound justification for restricting exclusivity in those contracts. Regulation of non-price terms in wholesale contracts is discussed in **Part C**.

13.4 The regulatory backstop regime should be subject to further consultation (discussed above). But as a general point, a robust assessment is necessary ahead of any decision to impose price regulation. The regulatory backstop regime is discussed in **Part D**.

13.5 To achieve transparency and allow consumers to compare prices, regulations should require the display on price boards of prices for all mainstream retail fuel grades (including premium 95, 98 and 100). Retailers should not be prohibited from displaying more information, including discounted prices. Consumer information is discussed in **Part E**.

13.6 Z supports the establishment of a thorough information disclosure and monitoring regime to aid transparency and ensure further inquiries are not required. Treatment of importers' costs will need more consideration. Information disclosure and monitoring is discussed in **Part F**.

14 Z sets out at **Appendix 1** its responses to the specific questions asked by MBIE.

Confidentiality

15 This version of the submission is public; confidential and commercially sensitive information has been redacted. Release of this information would be likely to unreasonably prejudice Z's commercial position. Please contact us if you receive a request for the information.

PART A: TERMINAL GATE PRICING

Z agrees with MBIE's view that the terminal gate pricing regime ought to be similar to its Australian counterpart, with some adaptations. It should include all mainstream retail fuels, including premium 98 and 100. Terminal gate prices should be capable of including all costs incurred above the terminal gate, including applicable taxes and throughput fees. Z considers that "must supply" obligations should apply per port, for each product and supplier with the right to draw it at the port. Z agrees with MBIE's proposed must supply prescribed minimum and reasons for refusal, and supports inclusion of additional de minimis and force majeure grounds for refusal. Regulations should not set standard terms and conditions for technical matters.

Price setting and publication

Australian Oil Code is a useful starting point

16 The Australian terminal gate pricing regime (set out in the Oil Code) has been effective, transparent and low cost. Review of the regime by the Australian Government Department of Resources, Energy and Tourism in 2016 identified that the Code continued to be fit for purpose through facilitating an equitable market environment for petroleum wholesalers and retailers.[5]

17 There is no need for New Zealand to reinvent the wheel. Taking a similar approach to Australia should result in low cost, effective regulations.

Detail of price setting and public posting

18 As MBIE has noted, the key element of the Australian regime is that the terminal gate price must be calculated on a standardised basis. Z agrees with this approach, with the one difference noted by MBIE that New Zealand practice is to price products on ambient temperature. That is, the terminal gate pricing regime should require prices to be:

18.1 set per fuel product, on an ambient temperature basis;

18.2 expressed in cents per litre; and

18.3 expressed independently of other amounts charged for additional services provided (see the discussion from paragraph 20 below).

19 Regarding publication, in Z's view the regulations should require the daily publication of prices for each specified product, and require that only one price apply (per supplier, terminal and product) at any one time. For administrative ease and responsive pricing, regulations should not prevent suppliers from changing the price throughout the day without notice (as per the Australian regime).

Components of the terminal gate price

20 Suppliers ought to be free to set the terminal gate price in the manner they see fit, with no regulation of pricing methodologies or requirements to publicly itemise costs within the terminal gate price. Z understands that this position accords with the Commission and MBIE's views, and matches the Australian regime.[6] Terminal gate

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[5] Australian Government Department of Resources, Energy and Tourism, *Oilcode Review – Final Report* (May 2016) at page 22.

[6] Ministry of Business, Innovation and Employment, *Consultation Paper – Regulations under a Fuel Industry Bill and other matters* (March 2020) at paragraph 37 and 83.

prices can be expected to be set competitively for the reasons Z has previously explained in detail.[7]

21 Z agrees with MBIE that the terminal gate price must be expressed independently of amounts charged for additional services, e.g. truck parking, delivery beyond the terminal gate, administration support and fuel card services. This position aligns with the Australian regime; it ensures that terminal gate prices are comparable on a like-for-like basis and price transparency is not obscured by additional services.

22 However when discussing this topic MBIE notes that "additional charges, fees, duties or taxes should be identified separately" and includes throughput fees an example (paragraph 39). No reason is given.

23 Z notes that these costs are included in terminal gate prices in Australia, and are not separately identified in the prices.

24 In Z's view all costs incurred "above" (or upstream of) the terminal gate should be capable of forming part of the terminal gate price, including:

24.1 excise taxes, including payments to the National Land Transport Fund, Petroleum or Engine Fuels Monitoring Levy and ACC Motor Vehicle Account – these fees apply when imported refined product is unloaded from a ship or when locally refined product leaves the customs zone at the refinery;

24.2 Emissions Trading Scheme (**ETS**) levies – these levies apply at the same time as excise taxes discussed above; and

24.3 throughput fees, which terminal owners charge to cover terminal overhead costs and delivery of fuel from storage into customers' vehicles (e.g. via pipeline or truck loading gantry).

25 These are all costs that suppliers incur above the terminal gate, in the course of acquiring and delivering product to New Zealand. There is no suggestion in the Commission's market study final report, or the material prepared by MBIE, that suppliers should be prevented by regulation from recovering costs they incur to supply at the terminal gate.

26 It is not clear to Z how the separate identification of these particular types of cost component would contribute to the goals of the regime, principally transparency and comparability. These goals are best achieved by an "all-in" price for supply at the terminal gate, which is set and published on a consistent basis. Any breakdown should be optional and additional – mandating that particular components be itemised rather than simply included in the price would only add complexity and potential confusion for customers.

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[7] See Z's October 2019 post-conference submission on the Commerce Commission's market study, available here, from paragraph 84 onwards.

"Must supply" obligation

27 In Z's view, MBIE's proposed prescribed minimum volume of 30,000 litres per week for spot sales to one customer is appropriate. However Z considers that the must supply obligation should apply per port[8] where a supplier has the right to draw product, not per terminal.

28 Currently suppliers have access to certain of each other's terminals, primarily given the National Inventory Agreement and its "borrow and loan" system in place between Z, BP and Mobil. The result is that the majors often have the right to draw product at ports where they do not own tanks.

29 For example:

29.1 At Bluff, only Mobil owns tanks but Z and BP currently have the right to draw product from them through the National Inventory Agreement. All three suppliers would be required to make 30,000 litres available per week.

29.2 At Mt Maunganui, Z, BP and Mobil all own tanks and currently have the right to draw product from each other's through the National Inventory Agreement. All three suppliers should not be required to make 30,000 litres available per week, per terminal (e.g. 90,000 litres from each terminal).

30 In other words, under current arrangements, at some ports there would be an unnecessarily large amount of product available if this obligation applied per terminal (although this would reduce in the event the arrangements were unwound, or suppliers were to withdraw in part or full).

31 In addition, a per terminal obligation would mean the amount of stock available under the obligation would swing significantly if terminals were added to or withdrawn from the borrow and loan system. [9]

32 Given there is, rightly, no intention to "lock in" the borrow and loan arrangements[10], the regime should safeguard what is considered to be sufficient volume under the must supply obligation with a per-port obligation. In other words, if MBIE wishes more product to be kept aside for the must supply obligation, it should require a larger must supply obligation per port.

33 A per port must supply obligation would also avoid arbitrary distinctions about the definition of a terminal. For example, Z and Chevron previously operated different terminals at Nelson. Z now operates both as one terminal. The extent of the must supply obligation should not change based on operational or definitional choices such as these.

34 Finally, a must supply obligation that is effectively multiplied by cross-terminal access would be difficult for suppliers to administer. The current National Inventory Agreement allocates product at the port level, i.e. it does not specify the exact volumes that sit in each of Z, BP and Mobil's terminals. Requiring 30,000L to be set

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[8] Z submits that Lyttelton and Woolston should be considered one port location for these purposes.

[9] Z acknowledges that the must supply obligation will not be entirely unaffected by changes to industry arrangements, either way. But under a per port must supply obligation there would be at least 30,000 litres per week available under the obligation, and up to 120,000.

[10] See paragraph 8.52 of the Commission's Final Report.

aside per terminal, per participant in the arrangement, would be technically complex and in Z's view inefficient.

Changes to prescribed minimum

35 In Z's view the prescribed minimum should not be able to be changed without consultation. Z notes that larger demand centres already tend to have more suppliers with the right to draw specified product, and therefore more volumes held for the must supply requirement overall.

36 For example, Mount Maunganui has four suppliers, implying a must supply obligation of 120,000 litres per week. As explained above, Z does not consider that shared access across those suppliers' terminals should multiply the must supply obligation any further.

Reasonable grounds for refusal

37 Z agrees with the grounds for refusal to supply the prescribed minimum that MBIE proposes to set out in the Bill.

38 Z also considers that the following grounds for refusal should be included (either in the Bill or regulations):

38.1 **De minimis volume**: where a user requests supply below a de minimis volume. In Z's view, this level should be 5,000 litres for one load. Customers tend to fill a vehicle (especially at the lower end of the scale). Vehicles with capacity less than 5,000 litres are unlikely to comply with health and safety requirements.[11]

Z notes that the Australian regime goes further, allowing suppliers to set their own minimum volume under which they are not obliged to supply. Z understands that many Australian suppliers have set their minimum to 35,000 litres.

38.2 **Force majeure/supply disruption**: where an unforeseen event has occurred, which is outside the supplier's control and affects the supplier's product availability at the relevant storage facility. In Z's view there is no reason why all of the risk should be required to be borne by the fuel supplier in these circumstances; suppliers have no ability to avoid force majeure/supply disruption. Reasons for refusal to supply should include at least:

(a) a general inability to supply product for circumstances beyond the supplier's control;

(b) inability to supply product connected with any order, demand, requirement, request or recommendation of any international, national, state, port, transportation, local or other authority or agency, governmental department or of any court, or of any person purporting to be or to act for such authority, agency, department or court; or

[11] Z notes that in its experience 12,000 litres represents the smallest end of typical distributors' tanker capacity, so a 5,000 litre minimum should not disadvantage small suppliers. [REDACTED]

(c) any strike, labour or industrial dispute, whether or not the supplier is party to the dispute and would be able to influence or procure the settlement of the dispute.

39 As for grounds to refuse supply above the prescribed minimum, Z supports MBIE's proposed grounds for refusal that the amount sought is required to meet the supplier's own or term-contracted volumes, including in times of shortage but subject to the must supply obligation.

Standard terms and conditions

40 Regulations should not prescribe standard terms and conditions. Suppliers should be free to set their own requirements, within the bounds of existing laws. Z notes in particular that:

40.1 Requirements such as those relating to occupational health and safety are already governed by laws and regulations.

40.2 Requirements may be different depending on the nature of the location, terminal and customer. Suppliers should also remain free to waive certain requirements, for example if the customer is generally known to meet them.

40.3 Different suppliers may have different requirements driven by external factors, such as credit or insurance requirements.

41 For reference, Z has provided (confidentially) with this submission its current general terms and conditions for TGP supply at Nelson.

42 Z notes that, in practice, technical requirements for sale are assessed once, at the beginning of a relationship (or even in advance of anticipated sales), and then only revisited where circumstances change. They are not reassessed every time a customer takes supply. As such, while they can take time to finalise (and in answer to MBIE's question 8, are unlikely to be determined within a day), once completed they would not hold up any given transaction.

43 In other words, a potential acquirer could clear its technical requirements with Z up-front, and then acquire from Z at short notice (subject to product availability). Z's current general terms and conditions allow for this approach.

44 Z does not intend to use technical requirements as a means to refuse supply. It would have no incentive to refuse supply – Z's incentives and presumably those of all suppliers will continue to be to maximise throughput at terminals in a highly competitive environment. Further, Z considers it unlikely in practice that a new customer would seek product urgently within a day, with no prior engagement with Z.

Specified products

45 In Z's view the terminal gate pricing regime should apply to all mainstream retail fuels, including diesel, 91, 95, 98 and retail 100 (not avgas or racing 100). MBIE has already clarified that the terminal gate pricing regime will apply to diesel, 91 and 95. 98 and 100 are also mainstream premium fuel grades sold at retail by established brands.

46 If a TGP regime is expected to result in benefits for retail competition, then there would need to be a good reason to exclude any grade of retail fuel. This approach would match the Australian regime, where declared petroleum products (those subject to the regime) are defined broadly as including "premium unleaded petrol (other than premium unleaded petrol proprietary product)".

47 As to whether additional fuels should be included (e.g. marine fuel or jet fuel): retail fuels were the subject of the fuel market study and there is no suggestion of additional regulation being justified outside those products.

48 The product specifications used in the Engine Fuel Specifications Regulations 2011 should be used in defining diesel, 91, 95, 98 and 100 for the purposes of the Fuel Industry Regulations.

PART B: PRICING METHODOLOGIES

Regulation of pricing methodologies should apply only to distributor contracts. Regulations should deem as transparent pricing methodologies set by reference to MOPS and TGP, but leave open the ability to agree other methodologies so long as they are transparent. Regulation requiring itemisation of costs should be high level at most, and apply only where appropriate. Other costs, not directly related to the fuel price, should remain unregulated. Z supports MBIE's proposed exception allowing change to the pricing methodology in specified circumstances.

Scope of requirement for transparent pricing methodologies

49 In Z's view the requirement for transparent pricing methodologies should apply to wholesale arrangements with distributors. Z understands the rationale for transparent pricing methodologies in this context: they will allow distributors to easily compare prices in a context where they can switch supplier more frequently due to shorter term limits or the ability to source alternative supply for their non-exclusive portion.

50 The dealer context is substantially different:

50.1 The Commission acknowledged that dealers are different wholesale customers to distributors: certain provisions that may be anti-competitive in distributor contracts may be pro-competitive in dealer contracts.[12]

50.2 Consequentially, the Commission did not recommend limits to term length or exclusivity in relation to dealers.

50.3 Dealers are better considered a channel to retail markets for suppliers, and a less capital intensive business model compared to owning retail sites outright.

51 Dealers are a significant part of fuel suppliers' offering, but are not an important source of competition independent of their supplier.

52 In this context, pricing methodologies for dealers should remain unregulated. Regulating them is unnecessary and results in different treatment based solely on suppliers' choice of business model – dealer or company owned. Such regulation would unjustifiably disadvantage dealer models and may arbitrarily influence suppliers' ownership decisions going forward.

"Transparency" should enable bespoke arrangements

53 MBIE is consulting on pricing methodologies that regulations deem transparent, which we discuss below. Z notes that it is also important to ensure that the regime (whether in the Act or regulations) allows for other transparent pricing methodologies, which have not been expressly deemed transparent, to be used in wholesale contracts.

54 Were the regime to effectively require use of methodologies deemed to be transparent, it would stifle commercial innovation and the capacity for suppliers and their customers to agree mutually beneficial arrangements. In particular, it may

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[12] For example where a dealer uses its wholesale supplier's branding, established systems and other intellectual property, or the supplier makes relationship-specific investments in the dealer's business. See paragraph 6.75 of the Commission's Final Report for more detail.

prevent arrangements that took novel (but nonetheless transparent and mutually agreed) approaches to the allocation of risk.

Pricing methodologies deemed transparent

55 Z supports the TGP and MOPS-based pricing methodologies outlined in MBIE's consultation paper being deemed transparent pricing methodologies.

56 The regime should allow some flexibility in how the TGP is identified for TGP-based pricing. For example, the contracting parties should be free to determine the port at which the TGP is observed, to average TGPs at several ports, or to agree the time periods over which the TGP or TGPs are observed (to "smooth" the price), depending on commercial practicalities and questions of risk allocation. The purpose of regulating pricing methodologies was to increase transparency but not to stifle diversity, which could have flow-on effects in the diversity and vibrancy of retail competition.

Itemisation of costs in pricing methodologies

57 In Z's view, transparent pricing methodologies should be required to itemise costs and margins, but at a high level, resulting in prices that:

57.1 are transparent and easily comparable in terms of core cost items; but

57.2 do not risk exposure of suppliers' commercially sensitive information, for example detailed cost analysis of breakdowns or margin expectation.

58 As for the two pricing methodologies deemed transparent:

58.1 Prices set by reference to TGP should be broken out into TGP and differential (e.g. the discount compared to TGP). The TGP is a single "cost" not capable of further itemisation,[13] and the differential will be commercially negotiated.

58.2 Prices set by reference to MOPS should be broken out into MOPS, shipping (identifying the specific MOPS and shipping markers being used), tax and margin.

59 This proposal would ensure transparency and comparability (avoiding unnecessary complexity).

60 As discussed above, the regime should allow for other pricing methodologies, not explicitly deemed transparent, to be used in wholesale contracts. MBIE should ensure that any required itemisation of costs applies more generally, and not just to MOPS and TGP based pricing, to ensure that pricing methodologies are not effectively limited.

Reasonable exceptions to the ability to change pricing methodology

61 Z supports the exception proposed at paragraph 68 of the consultation paper, allowing unilateral change to the pricing methodology so long as the other party has sufficient notice and the right to terminate the contract if the change is unacceptable.

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[13] See also paragraph 20 above, where Z notes that suppliers should be free to set the terminal gate price as they see fit, which Z understands accords with the Commission and MBIE's views, and matches the Australian regime. The same point applies here; the terminal gate price is a transparent marker without requiring further itemisation.

PART C: REGULATION OF NON-PRICE TERMS IN WHOLESALE CONTRACTS

Z supports a prescribed maximum contractual term of two years, with limited exceptions available. Z also supports a small prescribed share of non-exclusive volumes (if any), applying to distributors' total fuel needs. Z has no concerns with the majority of MBIE's proposed items for inclusion in a "grey list", but notes several scenarios where legitimate terms should not be listed. Z agrees with MBIE that regulations should not require suppliers to prioritise other contracted volumes over their own.

Prescribed period (maximum term length) for distributors

62 Z supports short prescribed maximum contractual terms between suppliers and distributors.

Z supports two year maximum terms

63 In Z's view maximum terms of two years are appropriate.

64 Two year terms for distributors are long enough to be practically workable, and sufficiently long for customers' security of supply and planning needs. Z notes for comparison that [REDACTED], and allocation of processing capacity at the refinery will soon be reduced to a one year lead time.

65 So long as they are practically workable, shorter terms will enhance conditions for competition by allowing distributors to regularly test the market and consider switching supplier.

66 Z previously advocated for maximum terms of seven years, so that distributors could offer security of supply to commercial customers, and could use term to justify investment by suppliers in distributor business support. On further reflection:

66.1 Distributors should be well placed to (continue to) obtain supply on competitive terms when the terminal gate pricing regime is in place, so there should be no material concern about the ability for distributors to offer security of supply (over and above any such concern that arises for the industry generally).

66.2 With two year terms distributors should still be in a position to obtain investment from suppliers, even if the terms of that investment might be different.

66.3 Allocation of processing capacity at the refinery is expected to be reduced to a one year lead time (currently three), following the Commission's recommendation. A shorter allocation should enable suppliers to more readily ramp up volumes to supply new customers (or reduce them when a customer switches away).[14]

67 Z's preference also takes into consideration the changing landscape and supply chain uncertainty (discussed in more detail from paragraph 4 above). For example, Refining NZ is currently consulting on its operational model going forward "into a

[14] See paragraph 5.113 of the Commission's Final Report.

lower carbon future",[15] including considering ceasing to refine locally in New Zealand.

68 In this new context, and in the face of the inevitable decline in demand for retail fuels, Z believes the market should be more dynamic and capable of adapting to change, including through shorter contractual terms.

If not two years, Z supports generally shorter terms

69 Z understands that MBIE is considering limiting terms to three to five years, and MBIE's current proposal is five years. Z prefers shorter terms in general; if two years is considered too short, Z nonetheless supports the shortest period MBIE considers will be efficient and practically workable.

Prescribed share (non-exclusive volumes) for distributors

70 Given the restricted length of distributor contracts there is no sound justification for restricting exclusivity in those contracts. Distributors have the opportunity to split their supply, or test different suppliers for a short period, every time they go to market. In a context where that can take place as frequently as every two years, and at most every five, in Z's view there is no need for further intervention.

71 If regulations are to prescribe a non-exclusive share, Z considers it should be small, no more than 5-10%. That way:

71.1 any upside of the non-exclusive share is realised – in Z's view distributors can test the market and other suppliers with a small percentage of overall volumes. See also the discussion from paragraph 74 below; but

71.2 distributors can still offer their suppliers volume certainty (which may result in cost savings for suppliers and price advantages for distributors), on 90-95% of their volumes. As MBIE acknowledges, distributors are effectively unable to command better prices on the basis of non-exclusive volumes, as they cannot grant their supplier contractual certainty over them.

72 MBIE notes also that larger non-exclusive shares may facilitate new entry, by granting new entrants access to a reasonable portion of volume. In Z's view this factor is less important than ensuring distributors are able to trade their volumes for sharper prices, particularly where those volumes are potentially coming to market frequently. Z notes:

72.1 Timaru Oil Services Limited entered the New Zealand market without any committed volumes, Z understands; and

72.2 entry will be better facilitated if distributors can commit a substantial portion of their volume (e.g. all, or all but a small prescribed share) to a new entrant, noting the additional frequency with which distributors will be able to test the market as provided by other regulations.

73 Finally, Z notes that several distributors are part-owned by their suppliers. In Z's view distributors are significantly less likely to seek alternative suppliers for their non-exclusive share when they are supplied by a shareholder. The larger the proportion of non-exclusive volume that is prescribed, the more regulations will

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[15] See: https://www.nzx.com/announcements/351663.

advantage owner-suppliers and potentially encourage more vertical integration between suppliers and distributors. Minimising the prescribed share ensures that regulations are more neutral between different industry ownership models.

Application of the prescribed share

74 Any prescribed share should apply to distributors' total fuel needs, rather than applying to each fuel type. This design choice will help maximise any benefits of the prescribed share while keeping the share itself low. Taking the benefits identified by MBIE at paragraph 73 of the consultation paper, a low share applied across total fuel needs will not materially reduce the potential for the prescribed share to:

74.1 enable distributors to test the market and confirm other suppliers' security of supply by allowing them to choose fewer fuels and test capabilities with a larger portion of volume per chosen fuel type;

74.2 enable distributors to take advantage of favourable terminal gate prices or offers from new entrants, because distributors will have flexibility in the types and proportions of fuel they acquire using the prescribed share;

74.3 improve conditions for entry by new importers, by allowing distributors to commit more volumes to one or two fuel types, facilitating incremental entry rather than requiring new entrants to supply all products from the outset; and

74.4 not undermine competition between the major wholesale fuel providers, who already provide full ranges of fuel products and will be incentivised to retain and compete for the prescribed share regardless of its product mix.

75 By allowing flexibility, any benefits above can be realised with a smaller prescribed share (Z supports no more than 5-10%), retaining distributors' ability to trade substantial volumes for discounts, and minimising any advantages to owner-suppliers (see from paragraph 70 above for more detail).

76 Z notes also that applying the prescribed share to distributors' total fuel needs is technically simpler to manage, especially in relation to small, regional or new entrant distributors who may take small volumes of certain products.

Regime should retain distributor choice

77 Regardless of prescribed maximum term length and non-exclusive share, the regime must strike the right balance between:

77.1 ensuring distributors can regularly test the market and achieve the best terms available (and, conversely, ensuring that suppliers remain competitive); and

77.2 allowing distributors the freedom to contract and make the best, most efficient decisions for their businesses.

78 Distributors should be free to take 100% of their supply from one supplier, and to renew their previous contractual arrangements, without being compelled to go to market. The technical design of the regime should facilitate choice for distributors, but not choose for them. For example, limits on term lengths should not make it difficult for distributors to re-sign for additional periods on the same contractual terms, should they choose to.

Potential "grey list" terms presumed likely to hinder competition

79 MBIE has proposed at paragraph 82 of its consultation paper several categories of contractual term to be included in a list of terms which are likely to limit the ability of the dealer or distributor to compete. Z understands that these terms will effectively form a "grey list", where the presumption that they limit competition is rebuttable.

80 Z has previously submitted to the Commerce Commission that a grey list of terms is not required; wholesale customers have bargaining power and, regardless, a terminal gate pricing regime and limited contractual term lengths are sufficient to enhance the conditions for wholesale competition.

81 But if a grey list is to be required, Z has no real concerns with the addition to a grey list of long notice periods for termination and rights of renewal, restraints of trade and exclusive territories, and terms granting suppliers the option to unilaterally acquire customers' businesses.

82 Z addresses other grey list terms being considered by MBIE in turn below.

First rights of refusal over dealer businesses should be allowed

83 Z has no concerns with the inclusion in a grey list of terms granting suppliers:

83.1 the option to unilaterally acquire customers' businesses; or

83.2 first right of refusal over distributors' businesses.

84 However in Z's view terms granting suppliers first right of refusal over dealers' businesses are legitimate and should not be included in a grey list.

85 Z refers to paragraph 50 above – the relationship suppliers have with dealers is substantially different to the relationship with distributors (as acknowledged by the Commission). Dealers are better thought of as a channel to market for suppliers, and a less capital intensive business model compared to owning retail sites outright.

86 Dealers should be allowed to agree to give their supplier first right of refusal over their sites:

86.1 In many cases suppliers may have sold sites to dealers on the understanding that they would remain a channel to market for that supplier.

86.2 A first right of refusal can protect a supplier's interest in ensuring dealers operate in a manner aligned with the interests and incentives of the supplier, whose brand the dealers operate under. The supplier may also own assets on the sites e.g. land or tanks. Tighter control over the ownership of dealer sites helps to ensure the supplier is able to protect its investment in its brand or assets.[16]

87 The alternative (including first rights of refusal over dealers' businesses in a grey list) effectively disadvantages dealer models and may arbitrarily influence suppliers' future ownership decisions.

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[16] This is acknowledged in paragraph 6.107 of the Commission's Final Report.

88 Z notes also that first rights of refusal do not create meaningful barriers to sale, and regulations in general acknowledge the lesser importance to competition of dealer switching compared to distributors (hence term limits and the prescribed non-exclusive share are not proposed to apply to dealers). First rights of refusal simply mandate a process to be followed to give suppliers the option to acquire back part of their network, typically on terms comparable to the market value of the site.

89 If MBIE has specific concerns about harmful processes in first rights of refusal, Z may support regulation of those processes (e.g. ensuring that dealers are no worse off selling to their supplier) rather than addition of first rights of refusal to a grey list altogether.

Scrutiny over transfer of ownership or assets

90 Similarly, while suppliers need not be entitled to veto their customers' transfer of ownership or assets, suppliers must retain the ability to undertake standard checks, and ensure control of their proprietary assets and intellectual property.

91 Z considers it critical that suppliers remain able to agree and enforce provisions allowing them to assess the suitability of purchasers to acquire a dealer or distributor's contractual rights and obligations (a point flagged by MBIE at paragraph 82(b)). In particular, suppliers should remain entitled to check and, if needed, block transfer of ownership on the basis of:

91.1 creditworthiness;

91.2 ability to take on the dealer or distributor's contractual obligations and generally perform the contract; and

91.3 health and safety track record.

92 Suppliers need to be able to require a reasonable standard of proof on the matters above, without which they can block transfer of ownership. These sorts of requirements are standard across many industries, and are unlikely to allow suppliers to block transfers of ownership to genuine purchasers who are appropriately placed to take over a fuel dealer or distributor.

93 Suppliers should also be capable of requiring (via contract) that any proprietary assets or intellectual property they share with dealers or distributors be returned or destroyed prior to transfer of ownership or assets. Suppliers often give their customers access to property (including intangible property) that they would not want a new owner obtaining or having access to. Without these protections, suppliers will be less willing to assist customers due to the risk that their property could fall into a competitor's hands.

Liquidated damages

94 Z has no concerns with regulations to grey list the use of liquidated damages that are intentionally punitive, or attach to other grey listed or prohibited topics (e.g. a penalty which seeks to avoid restrictions on volume exclusivity).

95 However in Z's view liquidated damages in general are not harmful, can be beneficial, and do not need be added to a grey list. Liquidated damages allow parties to agree in advance how they will resolve disputes and set reasonable compensation for breach. They give certainty up-front and avoid lengthy and costly disputes in the event of breach.

96 Legitimate grounds for the use of reasonable liquidated damages include failures to meet term and volume commitments (as far as allowed by regulation). Suppliers and their customers should be entitled to contract minimum expectations; the alternative would strip suppliers of all certainty and remove a key bargaining tool from distributors. Where distributors make such commitments, they should be capable of agreeing a fair cost of breach in advance, similar to early termination clauses.

97 Z would be supportive of regulations that clearly draw a line grey listing punitive or exemplary liquidated damages, or liquidated damages clearly designed to encourage behaviour that cannot be explicitly required (e.g. full volume exclusivity), so long as it remained clear that in all other cases liquidated damages are not deemed anti-competitive (i.e. captured by any grey list).

No other terms likely to hinder competition

98 In Z's view, there are no other terms that are likely to hinder the ability of dealers or distributors to compete, noting that Z is unaware of the nature of other firms' arrangements and (as noted above) non-contractual factors such as ownership shares may similarly hinder competition and result in advantages to certain suppliers under the regulations proposed.

Supply prioritisation

99 Z agrees with MBIE's proposal to exclude a requirement that term contract volumes be prioritised ahead of wholesale suppliers' own retail sites.

100 Z does not consider that further regulation of prioritisation is required because the major suppliers all need to draw product from each other's terminals. This would continue to be the case if the borrow and loan arrangements ended. As such, each is incentivised to offer supply terms it would be willing to agree to as a buyer. If it does not, it risks suffering "retaliation" at locations where it draws from others.

101 The need for reciprocal supply also protects buyers that do not own terminals; a major would not offer unattractive terms to a distributor because the distributor could seek terms from another major, and majors all have sufficient bargaining power to secure competitive terms.

102 De-prioritising an owner's own retail sites would also expose terminal owners to earlier and greater costs of shortage compared to their downstream competitors. This would reduce suppliers' incentives to own terminals, in conflict with the Commission's goal to ensure efficient incentives to invest in terminals.

PART D: REGULATORY BACKSTOP REGIME

Z provides initial views below, but requests further consultation as regulations are finalised and backstop options developed. Z agrees that the backstop should only apply to the TGP regime (if at all). The threshold for intervention should be robust and not pre-suppose that regulation is warranted. Z prefers MBIE's threshold option 2. Regardless of the threshold, the Commerce Commission should conduct any analysis that leads to a recommendation on whether to impose regulation. Regulatory intervention, if required, should make use of enforceable undertakings given their practical upside and low cost.

Further consultation on the backstop regime is important

103 MBIE has requested initial thoughts on high level concepts related to the backstop regime, which Z has provided below. Z appreciates the opportunity to comment at an early stage, but considers that meaningful further consultation will be required as options are developed. In particular, Z notes:

103.1 Design decisions subject to this round of consultation, once finalised, will help inform what is possible and practical for the regulatory backstop regime. In particular, as MBIE notes, under either regulatory threshold the monitoring regime will assist assessment of whether the threshold is met.[17] The information disclosure regime itself requires further discussion, as Z notes in Part F. After that point, interested parties should have a clearer idea of how triggers for the backstop regime could be set, and any regulated prices calculated.

103.2 The initial experience of the regulatory regime should be taken into account during development of the regulatory backstop. So too should any significant developments in the industry, including the supply chain, arising out of COVID-19 or otherwise (e.g. any consequences that may arise from any changes to the operational model of the refinery).

103.3 The backstop regime will involve high stakes. It will need to strike a balance that ensures that there are efficient investment signals with respect to terminals, that suppliers have certainty, that regulatory oversight is as low cost as possible, and that any regulation (should it be required) is fit for purpose. Legislation of this nature should be consulted on widely before introduction to the House.

What is the problem being addressed?

104 Z agrees with MBIE that no regulatory backstop regime is required for the new wholesale contracts regulations, given the enforcement powers Cabinet has agreed to grant the Commerce Commission, and the dispute resolution process that is a subject of this consultation (see MBIE's consultation paper at paragraph 112).

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[17] See paragraph 120 of MBIE's consultation paper.

105 Z does not agree that there is a problem to be addressed in relation to terminal gate pricing. In Z's view, terminal gate pricing will be competitive for reasons that have been given previously.[18] Z discusses below its suggestions for a backstop regime on the basis that Cabinet has decided one is required, but notes:

105.1 As above, the Government should continue to monitor developments in the industry in general and following the commencement of the new regulatory regime. The Government should remain open to the possibility that a backstop regime is not required.

105.2 If it is nonetheless decided that a backstop regime is required, it should continue to be borne in mind that terminal gate prices may well be competitive (otherwise the Commission might have been expected to recommend immediate price regulation rather than a backstop regime). Further, regulation of the type proposed is intrusive and costly. As such there is a high risk of wasted resources (and potentially unintended consequences), and it is critical that there is a robust process ahead of any decision to impose the backstop regime.

Threshold for application of the backstop regime

General settings for intervention

106 Z agrees with MBIE's guidance that regulatory intervention would ordinarily require:[19]

106.1 "evidence of a significant and sustained competition problem that is not addressed by other means; and/or

106.2 assessment that the public benefits of regulation materially exceed the detriments, where such an assessment need not be quantitative."

107 These requirements should apply in the case of the regulatory backstop regime.

108 In terms of evidence of a significant and sustained competition problem, Z notes:

108.1 As a general point, terminal gate prices will be constrained (as discussed above). If any pricing behaviour occurs that is of concern to the regulator, it is likely to be transitory, given that suppliers attempting to act non-competitively will face a competitive response.

108.2 The Commission has noted the importance of efficient investment incentives in relation to terminals. This means that it will be important that terminal owners are not prevented by threat of regulation from earning enough to preserve investment incentives, while being kept from "over-recovering" (noting that Z considers that terminal prices will be competitively constrained in any event).

108.3 The terminal gate pricing regime will be brand new, and so it will be difficult to draw on observations about past practices and outcomes to understand current and future conduct.

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[18] See Z's October 2019 post-conference submission on the Commerce Commission's market study, available here, from paragraph 84 onwards.

[19] See paragraph 116 of MBIE's consultation paper.

109 These features suggest that a robust investigation will be required to determine that there is evidence of a significant and sustained competition problem that is not addressed by other means.

110 The cost of price regulation is inevitably high. Recognising that, there should be a robust threshold for identifying a competition problem. That would help to avoid frequent assessments of whether the benefits of regulation materially exceed the detriments.

111 Any process should allow for the possibility of warnings following an investigation, as that would mean an investigation could result in improved pricing practices even where regulation could not be justified.

Z prefers option 2 – Commerce Commission assessment

112 Z supports MBIE's option 2, i.e. a threshold based on a detailed assessment of whether a supplier or suppliers at any terminal have substantial market power, taking into account the benefits and detriments of imposing regulation.

113 Option 2 utilises the Commission's experience and should therefore result in robust, reliable and consistent assessments. In particular, Z notes that:

113.1 option 2 is similar to the grounds for regulation in Part 4 of the Commerce Act, which the Commission also administers and which focus on whether there is little or no competition, and little or no likelihood of a substantial increase in competition; and

113.2 the Commission has expertise assessing substantial market power in the context of section 36 of the Commerce Act.

114 Z notes that MBIE's option 2 requires that any assessment take account of the benefits and detriments of imposing regulation (consistent with the general thresholds discussed above). This requirement is important; it will ensure that regulation is not imposed merely because of the existence of market power. The assessment should take into account, for example:

114.1 whether, and the extent to which, the presence of substantial market power has resulted in adverse outcomes; and

114.2 the high costs of regulation, which should only be incurred if there is an overall benefit.

115 Given the presence of real competition (unlike, for example, the scenarios that are subject to regulation under Part 4 of the Commerce Act), the desire to ensure investment incentives and entry, and the newness of the terminal gate regime, the alternative – option 1 – is too blunt a tool and is likely to be costly even before it is needed.

116 Option 1 would effectively impose price control from the outset. The regulator would calculate what it perceives to be reasonable returns without reference to observed market practices or outcomes and, should suppliers exceed those levels, potentially trigger regulation. Option 1 would:

116.1 potentially entail a conclusion that terminal gate prices are not competitive when returns exceed specified levels for a certain period, without more detailed investigation or time allowed to measure whether prices in fact will face a competitive response (either in terms of price or new investment).

This would undermine the concept of a "backstop" regime that allows the market to operate according to market forces in the first instance; and

116.2 incur significant ongoing compliance and monitoring costs before regulation has been determined to be required, because calculating reasonable returns for monitoring purposes is a similar exercise to what would be required in imposing price regulation.

117 MBIE has rightly emphasised the need to identify public benefits, given the high cost involved in price regulation. Option 1 would give rise to costs that could be comparable to those of price regulation, *before* a problem potentially requiring regulation is even identified.

Commission should be required to make an assessment under either option

118 MBIE has suggested that under option 2 the Minister's decision would need to be informed by expert competition analysis, "such as following a recommendation by the Commission".[20] In Z's view regulations should expressly require that option 2 involve Commerce Commission analysis. As discussed above, the Commission is expert in the questions raised by the option 2 trigger.

119 Z also considers that if option 1 is chosen the Commission should make any assessment and recommendations to the Minister. The Commission has substantial expertise in information disclosure and price control from the Part 4 context so will be well placed to carry out relevant assessments.

Application of price control under the backstop regime

Z supports a regulatory model that utilises enforceable undertakings

120 Z supports the use of enforceable undertakings for the backstop regime itself, in the event that it is required (which Z considers is unlikely).

121 Enforceable undertakings will effectively allow suppliers to contract with the Commission, agreeing a pricing methodology subject to which they will set prices. This form of price control will be relatively effective and efficient for the following reasons:

121.1 Suppliers will already have been subject to an information disclosure regime that in some way estimates the underlying "cost" of supplying fuel. Suppliers and the Commission will therefore already have to hand the cost inputs required to calculate and set prices in enforceable undertakings.

121.2 This form of regulation will be lower cost to apply and enforce than a more prescriptive alternative. The legal mechanisms for enforcement of undertakings can be prepared in advance and stand ready for use at short notice should the backstop regime be triggered. The Fuel Industry Bill already anticipates strong enforcement powers for the Commission, and the Commission already has experience agreeing and enforcing undertakings in the merger control context.

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[20] See paragraph 121(b) of MBIE's consultation paper.

122 Enforceable undertakings of the nature described above are most similar to the raw milk model (see the various models outlined by MBIE from paragraph 127). However they allow flexibility for different circumstances, per supplier, rather than setting one universal methodology. Z considers that this flexibility is important in the context of fuel supply at terminals, where different circumstances may apply or different methodologies may be appropriate based on the relevant terminals and suppliers subject to regulation.

123 In Z's view the other options raised by MBIE – Part 4 price/quality path or designated service model – are much higher cost and will likely render the backstop regime unusable (given it can only be triggered where the benefits of regulation materially exceed the detriments). New Zealand Part 4 experience shows that development of input methodologies (or other pricing principles) and price/quality path determinations is highly complex and time-consuming, with lengthy consultation periods.

Any regulatory pricing methodology should use import parity benchmarks and reasonable pre-agreed assumptions

124 Z agrees with MBIE's point at paragraph 126(c) that "as much as possible, [any regulatory model] should reflect industry practices for determining prices and quality". Z supports the use of import parity benchmarks when determining the "cost" of supplying fuel at a terminal. This topic is discussed in more detail in relation to information disclosure from paragraph 135 below.

Any regulatory model should be subject to appeal

125 Z supports MBIE's proposal at paragraph 129 that any determination by the Commission, under any regulatory model, would be subject to appeal.

PART E: PRICE BOARDS

Regulations should require the display on price boards of prices for all mainstream retail fuel grades. No further regulation is required, noting current consumer protection laws.

Display of all grades

126 In Z's view, the prices for all mainstream retail fuel grades should be displayed on price boards, including all premium grades e.g. 95, 98 and retail 100 (not avgas or racing 100).

127 The Commerce Commission found that one explanation for premium petrol having higher prices and margins than regular petrol is that premium petrol prices are seldom displayed on price boards, making it difficult for consumers to compare prices.[21] If this is the case, then it is difficult to justify not displaying the price of any mainstream retail fuel grades on price boards.

Specifications of price boards

128 Regulations should not mandate specifications on the layout, size or other requirements of a price board. Colour coding and similar choices are typically part of a brand's differentiation, and in Z's view current consumer protection laws provide sufficient assurance that signage will be clear.

129 Detailed specifications may also drive substantial cost. Z draws a distinction between the additional costs likely to be incurred to advertise all fuel grades and those incurred to meet detailed specifications. In Z's view:

129.1 Requiring the display of additional prices to existing price boards is unlikely to make a material difference in cost (and, in Z's view, is sufficiently important to justify the cost).

129.2 However additional specifications about layout, size or other requirements of a price board could drive substantial additional cost, including due to the potential need to install new signs altogether (which could also involve additional building consents).

130 Z notes also that local authorities can have different requirements regarding price board dimensions, size, colour, luminosity and other elements of design. To the extent that regulation of price board specifications is required, in Z's view it should be left to the relevant authorities and consumer protection laws.

Display of additional information

131 Z understands that the Commerce Commission had concerns about the display of discounted prices on boards, but considered it too early to confirm the effects.[22] In Z's view, issues of transparency and price comparability will be addressed by mandating the display on price boards of prices for all fuel grades, along with existing consumer law protection. There is no reason to prohibit the display of discounted prices and other information that may be of use to consumers.[23]

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[21] See paragraph X74 of the Commission's Final Report.

[22] See paragraphs 7.114, 7.129-7.134; 7.8.170-8.179 of the Commission's Final Report.

[23] Referred to at paragraph 148 of MBIE's consultation paper.

PART F: INFORMATION DISCLOSURE AND MONITORING

Z is willing and able to provide almost all of the information proposed by MBIE. Z requests a meeting to discuss importers' costs. The costs MBIE has proposed will involve estimates and assumptions, and may lack comparability across suppliers; alternatives may be better suited for MBIE's intended purposes. Z makes other, minor suggestions and requests for clarification below.

Purpose of information disclosure and monitoring

132 Z supports the establishment of an information disclosure and monitoring regime aimed at meeting the three key purposes identified by MBIE at paragraphs 163 and 164.

133 In Z's view a key outcome of the regime should be that no additional (intensive and costly) market inquiries are required; instead the Government should have confidence that its ongoing monitoring gives it a clear and continuous picture of fuel markets.

Information to be collected

134 Z is willing and able to provide most of the information outlined at MBIE's table one (paragraph 167). Z notes several suggestions for further consideration below. The key point for discussion is importers' costs.

Importers' costs

135 Z supports the inclusion of costs in the information disclosure regime, but certain costs will involve estimates and assumptions, and may lack comparability across suppliers. Z requests a meeting with MBIE to discuss importers' costs in the information disclosure regime, including:

135.1 Z would like to discuss MBIE's intended uses for importers' cost information. There are several ways to approach importers' costs, and likely some estimates and assumptions to be made regardless. Z wishes to help ensure that the regime is fit for MBIE's intended purposes.

135.2 Z sets prices on the basis of replacement cost (current import parity) rather than actual historic cost incurred, reflecting the significant input cost volatility in upstream fuel markets. Import parity:

(a) may be a more useful benchmark than actual costs, depending on MBIE's intended uses for importers' costs;[24]

(b) better reflects an environment where suppliers with different upstream business models and supply lines set wholesale prices in competition with each other; and

(c) may limit the number of assumptions and estimates required to be made when disclosing importers' costs. This may in turn simplify information disclosure and increase comparability between suppliers.

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[24] Z notes that MBIE has also proposed that market participants be required to provide financial statements, so the regulator will be able to track overall profit and loss, including windfalls or losses due to the difference between actual fuel costs and import parity.

135.3 Calculation of actual importers' costs involves estimates and assumptions. Z wishes to discuss these with MBIE, should MBIE prefer the disclosure of actual costs. MBIE will need to take care to ensure that different suppliers disclose importers' costs on comparable bases, and using the same estimates and assumptions.

135.4 Whether actual costs or import parity benchmarks are used, other costs will involve estimates and assumptions worth discussing further with MBIE. For example:

(a) In Z's experience freight is typically paid for at a general level, not split by port. Any cost allocation would require estimates and assumptions to be made about technical cost differences at different ports.[25]

(b) Similarly, COLL costs are not allocated on an actual basis per port and product.[26] Any allocation of these costs for the purposes of information disclosure would require estimates and assumptions to be made.

Other comments on importers' costs

136 There is some natural variance in ETS levies depending on whether and when suppliers pay the fixed price offer or use credits. As a result, ETS costs should be considered over a reasonable period, or using a notional cost per credit.

137 Z considers that the information disclosure regime should not include disclosure of foreign exchange hedging costs. Please note:

137.1 [REDACTED]

137.2 Any notional allocation of hedging costs is likely to be highly imprecise and may risk skewing "costs" disclosed between different suppliers.

137.3 [REDACTED]

138 Z assumes that MBIE intends for terminal holding costs to be disclosed in the form of profit and loss for terminals. In Z's view these costs should include capital recovery charges (including for working capital), actual terminal operating costs, and corporate overheads allocated to suppliers' terminal businesses.

139 Finally, Z notes that importers' costs generally may be subject to change given Refining NZ's current strategic review.

Other information proposed for collection

140 Z notes the following minor requests and clarifications sought on the other information MBIE proposes to include in the disclosure regime:

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[25] For example, the higher relative cost of supplying small ports or the fact that import vessels must stop at Mount Maunganui before Nelson because Nelson's port is too shallow for a fully laden vessel.

[26] COLL does have a cost allocation key in its NewSpeed cost model, which allocates COLL's budget to each port and product, and is used to allocate actual costs between participants. However in practice, costs and delivery schedules vary substantially throughout the year and the charges in any one month will not reflect the costs attributable to a particular terminal.

140.1 Z requests that all disclosure allow for practical timeframes. In particular, MBIE should allow at least 10 working days for firms to collect, check and finalise information following the end of the relevant disclosure period.

140.2 MBIE has proposed daily collection of wholesale market volumes by customer, terminal, product and supply type (TGP or term), disclosed monthly. This has the potential to be a substantial exercise. Z requests that suppliers be required to disclose this data quarterly rather than monthly, in line with disclosure periods for wholesale revenues.

140.3 Z interprets the requirement for standalone financial statements as requiring one set of statements for the entire New Zealand business, i.e. being a New Zealand company, Z's financials published on its investor site would suffice.

APPENDIX 1: RESPONSE TO MBIE QUESTIONS

<table>
<tr><th>#</th><th>Question</th><th>Z submission</th></tr>
<tr><td colspan="3">WHOLESALE MARKETS</td></tr>
<tr><td colspan="3">Terminal gate pricing</td></tr>
<tr><td>1</td><td>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.</td><td>The terminal gate pricing regime should apply to all mainstream retail fuels, including diesel, 91, 95, 98 and retail 100 (not avgas or racing 100). MBIE has already clarified that the terminal gate pricing regime will apply to diesel, 91 and 95. 98 and 100 are also mainstream premium fuel grades sold at retail by established brands.

If a TGP regime is expected to result in benefits for retail competition, then there would need to be a good reason to exclude any grade of retail fuel. This approach would match the Australian regime, where declared petroleum products (those subject to the regime) are defined broadly as including "premium unleaded petrol (other than premium unleaded petrol proprietary product)".

As to whether additional fuels should be included (e.g. marine fuel or jet fuel): retail fuels were the subject of the fuel market study and there is no suggestion of additional regulation being justified outside those products.

Further, these other fuel products often require additional infrastructure (e.g. pipelines) and labour to deliver, as well as additional safety and quality checks at multiple stages along the delivery chain. Delivering them is more complex and accordingly they do not fit neatly within a TGP regime. These other fuel types are not included within the Australian TGP regime that the New Zealand regime is broadly being modelled on.</td></tr>
</table>

#	Question	Z submission
2	If the regime should apply to other fuel products, what are the standards used by industry for defining these fuel products?	The product specifications used in the Engine Fuel Specifications Regulations 2011 should be used in defining diesel, 91, 95, 98 and 100 for the purposes of the Fuel Industry Regulations. To be clear, Z is not proposing that all fuel types outlined in the Engine Fuel Specifications ought to be included within the terminal gate pricing regime. Any future fuels that may be added to the regulations should also be defined in accordance with the Engine Fuel Specifications Regulations 2011, or added to those specifications if they are new fuels, to ensure quality.
3	Should there be a notice period for changes in the TGP price during a day?	No. For administrative ease and responsive pricing, regulations should not prevent suppliers from changing the price throughout the day without notice (as per the Australian regime), provided that only one price applies, per product, at any one time.
4	Do you have any comments on how terminal gate prices should be set and publicly posted?	Yes. See the detailed discussion from paragraph 16 above.
5	Is the prescribed minimum of 30,000 litres per week to one retailer or wholesaler appropriate?	Yes, and see the additional notes and clarifications from paragraph 27 above.
6	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?	Not without consultation. Z notes that larger demand centres already tend to have more suppliers with the right to draw specified product, and therefore more volumes will be held for the must supply requirement overall (e.g. Mount Maunganui has four relevant suppliers whereas smaller locations have fewer).
7	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	Yes, in Z's view, the regulations should provide for reasonable refusal to supply where the quantity demanded is below a de minimis amount (5,000 litres), and for reasons of force majeure. See from paragraph 37 above for more detail.

#	Question	Z submission
8	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? 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.	These requirements can take time, and are unlikely to be determined within a day. However Z notes that, in practice, technical requirements for sale are assessed once, at the beginning of a relationship (or even in advance of anticipated sales), and then only revisited when circumstances change. Once completed they would not hold up any given transaction. In other words, a potential acquirer could clear its technical requirements with Z up-front, and then acquire from Z at short notice (subject to product availability). Z's current general terms and conditions allow for this approach. Regulations should not prescribe standard terms and conditions including a pre-certification process. Suppliers should be free to set their own requirements, within reason. See the additional notes from paragraph 40 above.
9	What other standard terms and conditions should be prescribed for sales by a wholesale supplier for the TGP at the storage facility?	None.
10	Please provide comments on any other matters related to the terminal gate pricing regime.	Nothing further to the points above.

#	Question	Z submission
	Pricing methodologies	
11	Should either or both of the TGP or an industry-recognized price reporting agency's price based (MOPS or equivalent) pricing methodologies be deemed to be transparent pricing methodologies?	The requirement for transparent pricing methodologies should apply to wholesale arrangements with distributors, not dealers (see paragraph 49, above). Z supports the TGP and MOPS-based pricing methodologies outlined in MBIE's consultation paper being deemed transparent pricing methodologies. The regime should allow some flexibility in how the TGP is identified for TGP-based pricing. E.g. the contracting parties should be free to determine the port at which the TGP is observed, to average TGPs at several ports, or to agree the time periods over which the TGP or TGPs are observed (to "smooth" the price), depending on commercial practicalities and questions of risk allocation. The purpose of regulating pricing methodologies was to increase transparency but not to stifle diversity, which could have flow-on effects in the diversity and vibrancy of retail competition.
12	Should any other pricing methodology be deemed a transparent pricing methodology?	No others need to be deemed transparent pricing methodologies. However it is important to ensure that the regime (whether in the Act or regulations) allows for other transparent pricing methodologies, which have not been expressly deemed transparent, to be used in wholesale contracts. Were the regime to effectively require use of methodologies deemed to be transparent, it would stifle commercial innovation and the capacity for suppliers and their customers to agree mutually beneficial arrangements. In particular, it may prevent arrangements that took novel (but nonetheless transparent) approaches to the allocation of risk. See the related point about itemisation of costs discussed in answer to question 14 below. On a similar note, MBIE should ensure that any required itemisation of costs can apply generally, beyond MOPS and TGP-based pricing, to ensure that pricing methodologies are not effectively limited.

#	Question	Z submission
13	Should there be any other reasonable exceptions?	No, except that proposed at paragraph 68 of the consultation paper, allowing unilateral change to the pricing methodology so long as the other party has sufficient notice and the right to terminate the contract if the change is unacceptable.
14	What cost elements of a deemed pricing methodology should be itemised?	See paragraph 57 for more detail. In short: • Prices set by reference to TGP should be broken out into TGP and differential (e.g. the discount compared to TGP). The TGP is one "cost" not capable of further itemisation[27], and the differential will be commercially negotiated. • Prices set by reference to MOPS should be broken out into MOPS, shipping (identifying the specific MOPS and shipping markers being used), tax and margin. As discussed in relation to question 12 above, the regime should allow for other pricing methodologies, not explicitly deemed transparent, to be used in wholesale contracts. MBIE should ensure that any required itemisation of costs applies more generally, and not just to MOPS and TGP based pricing, to ensure that pricing methodologies are not effectively limited.
	Other contractual terms	
15	What would be an appropriate prescribed period after which distributors can terminate their wholesale fuel supply contracts?	Two years. Two year terms are long enough to be practically workable. So long as they are practically workable, shorter terms will enhance conditions for competition by allowing distributors to regularly test the market and consider switching supplier. See from paragraph 62 above for more detail.

[27] See also paragraph 20 above, where Z notes that suppliers should be free to set the terminal gate price as they see fit, which Z understands accords with the Commission and MBIE's views, and matches the Australian regime. The same point applies here; the terminal gate price is a transparent marker without requiring further itemisation.

#	Question	Z submission
16	What proportion of a distributor's annual requirements should be permitted to be subject to exclusive supply provisions?	Non-exclusive volumes are not justified in a context of limited contractual terms. If non-exclusive volumes are to be required, they should be no more than 5-10% of the total. See from paragraph 70 above for more detail.
17	Should the maximum exclusivity requirement apply as an average across the whole length of the contract? If not, how should it be applied?	For ease of reference, the discussion below assumes a requirement for 5% of volumes to be non-exclusive. The key point is that distributors should be entitled to use their non-exclusive volumes to trial alternative suppliers, but not to defeat contractual obligations e.g. by ending contracts early. For example, a distributor should not be entitled to agree a two year contract, take 100% of its volumes for 95% of the term, and then effectively end the contract with 5% of the term remaining. Such an outcome would result in substantial uncertainty for suppliers, even with reasonable notice. It is also unnecessary, as maximum contractual terms will be separately regulated. Instead, at any point in time during a supply contract, a distributor should be entitled to switch 5% of its ongoing supply to an alternative supplier. For simplicity's sake, that 5% can be calculated as an average of the distributor's total volumes for the contracted period applicable to the relevant months where it splits supply (which may be MBIE's intention). For example, if a distributor's total fuel requirements are 100 million litres for a two year period, the distributor may use an alternative supplier for up to 2,083 litres in any given month (5% of 100 million divided evenly by 24 months).
18	Should the exclusivity requirement apply to the total fuel requirement of distributors, or to each fuel type?	The prescribed share should apply to distributors' total fuel needs, rather than applying to each fuel type. This design choice will help maximise any benefits of the prescribed share while keeping the share itself low. See from paragraph 74 above for more detail.

#	Question	Z submission
19	Do these terms hinder the ability of dealers or distributors to compete?	Z has previously submitted to the Commerce Commission that a grey list of terms is not required; wholesale customers have bargaining power and, regardless, a terminal gate pricing regime and limited contractual term lengths are sufficient to enhance the conditions for wholesale competition. But if a grey list is to be required, Z has no concerns with the majority of MBIE's proposed items for inclusion in a "grey list", but notes several scenarios where legitimate terms should not be listed. See from paragraph 79 above for more detail.
20	Are there any other terms that are likely to hinder the ability of dealers or distributors to compete?	In Z's view, there are no other terms that are likely to hinder the ability of dealers or distributors to compete, noting that Z is unaware of the nature of other firms' arrangements and non-contractual factors such as ownership shares may similarly hinder competition and result in advantages to certain suppliers under the regulations proposed.
21	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?	Z agrees with MBIE's proposal to exclude any requirement that term contract volumes be prioritised ahead of wholesale suppliers' own retail sites. See from paragraph 99 above for more detail.
	Dispute resolution	
22	Do your wholesale supply contracts currently provide for a means of dispute resolution? If so, what does this look like?	[REDACTED]

#	Question	Z submission
23	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?	Z [REDACTED] that frequent use would not be made of a new dispute resolution scheme. However Z is unaware of other suppliers' contractual arrangements, and has no concerns with the implementation of MBIE's proposed regulatory dispute resolution scheme which Z understands: • provides an option for parties to wholesale arrangements, should one party wish to exercise it; but • does not override or render unenforceable any current dispute resolution arrangements (except to the extent that they explicitly prohibit the alternative means of resolution proposed). In Z's view MBIE's proposal strikes the right balance, ensuring a dispute resolution regime is in place for all, including new customers buying at spot, but not disrupting workable current arrangements.
24	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?	Z has no concerns with MBIE's proposal on this point, that participation in the regulatory dispute resolution scheme should be mandatory if one party to a dispute initiates it, but that there should be no obligation on the parties to reach an agreement.
25	Should the dispute resolution scheme apply if a wholesale supplier refuses to supply fuel at TGP?	Z has no concerns with the regulatory dispute resolution scheme being available, along with other dispute resolution processes in existing contracts, where a wholesale supplier refuses to supply fuel at TGP.
26	Should the dispute resolution scheme apply to disputes that result from the new wholesale contract terms?	Z has no concerns with the regulatory dispute resolution scheme applying to disputes related to the new requirements for wholesale contractual terms, along with other dispute resolution processes in existing contracts. For the avoidance of doubt, the regulatory dispute resolution scheme should only apply to those terms that are regulated under incoming regulations, not all contractual disputes.

#	Question	Z submission
27	Should the dispute resolution scheme apply to disputes that result from any provision that relates to the terminal gate pricing regime?	Z has no concerns with the regulatory dispute resolution scheme being available, along with other dispute resolution processes in existing contracts, in relation to disputes concerning the terminal gate pricing regime.
28	Are there any other aspects of the new regime you think the dispute resolution scheme should apply to?	No.
29	In your view, how can we ensure the dispute resolution scheme is affordable, easily accessible, and timely for all parties involved?	In Z's view, the regulatory dispute resolution scheme proposed by MBIE contains features that will ensure affordability, accessibility and timeliness – in particular the inclusion of timeframes at each stage, and the equal allocation of costs between the parties.
30	Should each party to a dispute be required to pay half the cost of the mediation or arbitration process?	Yes, unless otherwise agreed in writing between the parties.
31	In your view how can we ensure the dispute resolution scheme is effective?	In Z's view, the regulatory dispute resolution scheme proposed by MBIE is an effective model, provided it is non-binding and does not prevent the parties from using existing dispute resolution processes (except to the extent that the regulatory scheme will be mandatory should one party request it). In Z's view, an effective scheme should operate as a default or fall back option in the event that: • Parties do not have a dispute resolution scheme in place; • Existing dispute resolution schemes do not apply to, or take account of, new regulatory requirements around the terminal gate pricing regime and wholesale contracts; or • One party to an existing scheme determines that its procedures are inadequate for the situation. An effective regulatory dispute resolution scheme should not prevent the parties from resolving issues in their pre-arranged or preferred manner.

#	Question	Z submission
32	Who should provide the dispute resolution services set up under the new regulations?	In Z's view, the parties should have the opportunity to select a provider of dispute resolution services, provided they can agree. If no agreement is reached after a reasonable period of time, the dispute resolution services provider should be selected by an independent professional body such as the Arbitrators' and Mediators' Institute of New Zealand or the New Zealand Law Society.
33	Should the dispute resolution scheme appoint an independent nominating authority to appoint dispute resolvers under the scheme?	See the answer to question 32 above.
34	Is there a specific skillset / background the mediator / arbitrator should have?	No, beyond qualification to act as a mediator or arbitrator (as appropriate).
35	Please feel free to provide comments on any other matters related to the dispute resolution process.	Nothing further to the points above.
	Regulatory backstop	
36	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.	Z supports MBIE's option 2 i.e. a threshold based on a detailed assessment of whether a supplier of suppliers at any terminal have substantial market power, also taking into account the benefits and detriments of imposing regulation. Regardless of the technical threshold, intervention should only occur where there is clear evidence of a significant and sustained competition problem that is not addressed by other means, following robust investigation, and where the benefits of regulation outweigh the cost. The threshold should also be robust, reflecting the high costs and low benefits of regulation. See Part D above for more detail.
37	How should the backstop price control regime be designed to apply to specified fuel products at a terminal or terminals? Please give reasons.	Z supports a regulatory model that utilises enforceable undertakings, given their practical upside and low cost. Price/quality or designated service models are unnecessarily complex and time-consuming. See Part D above for more detail.

#	Question	Z submission
	CONSUMER INFORMATION	
38	Do you have any comments on the costs of or time required to modify or install price boards?	Compliance costs will be generated by requiring suppliers to display premium prices on price boards. In Z's view, those costs are justified to ensure all mainstream retail fuel grades are displayed on price boards (and additional grades on boards already being updated are unlikely to make a material difference to compliance costs). The per-sign cost is approximately $8,000. The time taken for Z to upgrade the signs for the Z and Caltex networks is expected to be approximately 12 weeks for ordering and shipment of digital sign inserts, and two months for national installation. As such, the total lead time the industry should be given should be no longer than six months.
39	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?	All mainstream grades of retail fuel should be displayed on price boards (including all premium grades – 95, 98 and 100). Given the link the Commerce Commission drew between lack of display of premium grades and the margins earned on those grades, there is little justification for allowing any retail fuel grade to be unrepresented on price boards.
40	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?	All mainstream grades of retail fuel should be displayed on price boards, including all premium grades – 95, 98 and 100 (all being mainstream and sold at retail by established brands).

#	Question	Z submission
41	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?	Regulations should not mandate any specifications on the layout, size or other requirements of a price board. Colour coding and similar choices are typically part of a brand's differentiation, and in Z's view consumer law provides sufficient assurance that signage will be clear. Unlike additional prices being added to existing price boards, additional specifications could drive substantial additional cost, including due to the potential need to install new signs altogether (which could also involve additional building consents). Z notes also that price board specifications are often regulated by local authorities, which Z considers to be appropriate and sufficient. See the answer to question 44 below.
42	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?	No. The rationale for displaying fuel prices on price boards is transparency for consumers. That rationale is undermined by exceptions, unless there is a good reason. The compliance cost of a sign should not be prohibitive for a business or deter entry (and in any event the brand owner may be in a position to assist with meeting the cost). Furthermore, roading and population changes, as well as changes in the fleet, mean that volumes can vary widely at a given site. Having a minimum volume threshold would present an ongoing monitoring challenge.
43	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?	No – see the response to question 42, above.

#	Question	Z submission
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?	In Z's view no exceptions are required to allow display of additional prices on price boards. As for other specifications – regulations should not mandate specifications on the layout, size or other requirements of a price board (see the answer to question 41 above). Z notes that local authorities can have different requirements regarding price board dimensions, size, colour, luminosity and other elements of design. In some cases NZTA requirements may apply. To the extent that regulation is required (other than the requirement to display additional prices), in Z's view it should be left to these authorities and consumer protection laws, in which case no exception is required.
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?	No.
46	Do you have any comments that you wish to make on other matters relating to transparency of information for consumers?	Z understands that the Commerce Commission had concerns about the display of discounted prices on boards, but considered it too early to confirm the effects.[28] In Z's view, issues of transparency and price comparability will be addressed by mandating the display on price boards of prices for all fuel grades, along with existing consumer law protection. There is no reason to prohibit the display of discounted prices and other information that may be of use to consumers.[29]

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[28] See paragraphs 7.114, 7.129-7.134; 7.8.170-8.179 of the Commission's Final Report.

[29] Referred to at paragraph 148 of MBIE's consultation paper.

<table>
<tr><th>#</th><th>Question</th><th>Z submission</th></tr>
<tr><td colspan="3">INFORMATION DISCLOSURE AND MONITORING</td></tr>
<tr><td>47</td><td>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 is any other information not identified above that should be collected and disclosed to enable monitoring?</td><td>See the detailed discussion from paragraph 134 above. They key points are:

• Z requests a meeting with MBIE to discuss importers’ costs in the information disclosure regime.

• Z supports the inclusion of costs in the information disclosure regime, but certain costs will involve estimates and assumptions, and may lack comparability across suppliers.

• Import parity cost benchmarks may be more useful, relevant and appropriate, depending MBIE’s intended uses for importers’ costs.

• MBIE will need to take care to ensure that different suppliers disclose importers’ costs on comparable bases, and using the same estimates and assumptions.

In Z’s view no other information is required to be collected and disclosed in order to enable effective monitoring.</td></tr>
<tr><td>48</td><td>For Fuel Industry participants, what costs would there be for your business to collect and disclose this information?</td><td>The costs of the information disclosure requirements proposed by MBIE would be low, except in relation to importers’ costs.

Costs for disclosure of importers’ costs will depend on whether the regime uses actual or import parity prices, and the estimates and assumptions allowed for. Z proposes further discussion with MBIE on these topics (see also the answer to question 47 above).</td></tr>
</table>

#	Question	Z submission
49	For Fuel Industry participants, is the information outlined above currently collected by your business? • 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?	All information proposed for disclosure by Z (i.e. excluding dealer and distributors' information as discussed in response to question 52 below) is currently collected by Z, except importers' costs. See the discussion of importers' costs from paragraph 135, and answers to questions 47 and 48 above.
50	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?	Z notes its requests and clarifications sought at paragraph 140 above and answer to question 53 below above. Impractical timeframes, monthly disclosure of wholesale market volumes, and additional requirements for Z's financial statements would all increase compliance costs.
51	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?	See the detailed discussion from paragraph 135 and answer to question 47 above.
52	Have the proposed parties outlined as the owners and suppliers of information in Table One been correctly identified? • 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?	Yes, noting: • COLL may also be appropriate for disclosure of some importers' costs, depending on the final requirements. • [REDACTED] • [REDACTED]

#	Question	Z submission
53	Do you have any comments on the proposed frequencies for collection and disclosure of information outlined in Table One?	Z requests that all disclosure allow for practical timeframes. In particular, MBIE should allow at least 10 working days for firms to collect, check and finalise information following the end of the relevant disclosure period. MBIE has proposed daily collection of wholesale market volumes by customer, terminal, product and supply type (TGP or term), disclosed monthly. This has the potential to be a substantial exercise. Z requests that suppliers be required to disclose this data quarterly rather than monthly, in line with disclosure periods for wholesale revenues.
54	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?	Yes, the proposals strike the right balance between certainty and adaptability, except in relation to importers' costs where further discussion is required (see the discussion from paragraph 135 and answer to question 47 above). Z prefers that requirements are set by agencies. In Z's view the Commerce Commission has the appropriate expertise given its role in Part 4 information disclosure regimes and its understanding of the fuel industry following the market study.
55	Do you have any comments on proposals for agencies to develop templates to ensure that information is disclosed in a consistent format?	Z considers that any templates should be developed in consultation with the industry to ensure that estimates and assumptions are reasonable, and compliance costs remain low.
56	For information that is proposed to be used for periodic analysis: • Should such information still be required to be disclosed on a regular basis, or should that information be held by the companies until needed?	Z supports ongoing disclosure requirements. This will ensure good habits and smooth costs over a longer period, avoiding the need for costly intermittent reviews.
57	Do you have any other comments that you wish to make on matters relating to information disclosure and monitoring?	No.