



COVERSHEET

Minister	Hon Dr Megan Woods	Portfolio	Energy and Resources
Title of Cabinet paper	Fuel Industry Act 2020 – Regulations	Date to be published	25 May 2021

List of documents that have been proactively released

Date	Title	Author
March 2021	Fuel Industry Act 2020 – Regulations	Office of the Minister of Energy and Resources
17 March 2021	Fuel Industry Act 2020: Proposed Regulations DEV-21-MIN-0030	Cabinet Office
March 2021	Impact Statement: Regulations under the Fuel Industry Act	MBIE

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reason of constitutional conventions.

Coversheet: Regulations under the Fuel Industry Act

Advising agencies	Ministry of Business, Innovation and Employment (MBIE)
Decision sought	Agree to draft regulations implementing the new regulatory framework for the fuel industry under the Fuel Industry Act 2020.
Proposing Ministers	Energy and Resources

Section A: Summary problem and proposed approach

<p>Problem Definition</p> <p>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</p> <p>An active wholesale market for petrol and diesel does not exist in New Zealand. Competition largely occurs in retail fuel markets and is less intense than could be expected, particularly for premium petrol. The result is consumers paying higher pump prices.</p>
--

<p>Proposed Approach</p> <p>How will Government intervention work to bring about the desired change? How is this the best option?</p> <p>The choice of Government intervention has already been made. The Fuel Industry Act passed in 2020, and provided for the making of regulations which would set out the detail of the interventions. The specific interventions proposed in the regulations will facilitate a more active wholesale market for petrol and diesel, thereby allowing for increased price competition. The benefits of this competition will flow through to retail markets in lower prices. The regulations will also require better information to be available for consumers about premium fuel prices, which will facilitate more informed purchasing decisions. The effects of the regulations need to be considered together, as they are in some cases tightly interlinked, but in any case work together as a package. Taken together, these interventions represent the best balance between promoting competition and avoiding imposing unnecessary compliance costs which are likely to be passed on to consumers.</p>

Section B: Summary impacts: benefits and costs

<p>Who are the main expected beneficiaries and what is the nature of the expected benefit?</p> <p>The main beneficiaries will be New Zealand households and businesses that use petrol and diesel for land transport. The benefits will be in the nature of lower fuel prices, and more innovative fuel service offerings that meet the needs of consumers.</p>
--

<p>Where do the costs fall?</p> <p>The costs primarily fall on:</p> <ul style="list-style-type: none"> • Importers, distributors and retailers of petrol and diesel. There will be moderate transitional compliance costs as these companies move to the new regulatory regime
--

(e.g. renegotiating contracts, amending price boards) and low to moderate ongoing compliance costs in participating in the terminal gate pricing regime. These costs will likely ultimately be passed on to consumers.

- The regulators (MBIE and the Commerce Commission) responsible for monitoring and enforcement of the regulations.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

- The terminal gate price regime set out in the regulations may impose additional costs (e.g. stock holding, investment, increased shipping frequency, or shortages for own-supply) which could lead to higher retail prices if wholesale competition does not increase. Moderate impact. This is minimised by the design of the preferred minimum supply requirement, which has a number of features which address this risk.
- Increased transparency of fuel pricing may facilitate collusion. Moderate to high impact. This risk will be minimised by the enhanced fuel monitoring regime (to be introduced through subsequent regulations) to enable the regulator to identify potential competition issues. Where broad information disclosure could facilitate collusion, the preferred option in the regulations been designed to limit disclosure.

Identify any significant incompatibility with the Government’s ‘Expectations for the design of regulatory systems’.

The proposals are consistent with the Government’s expectations.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

Overall we have a high level of confidence in the evidence base for the nature and extent of the problem. MBIE has been monitoring weekly retail petrol and diesel prices since 2008. A 2017 Fuel Market Financial Performance Study commissioned by MBIE concluded that it had reason to believe that fuel prices may be unreasonable. The Commerce Commission has undertaken an in-depth market study into the retail fuel sector and concluded that competition is not as effective as it could be.

The regulatory proposals were recommended by the Commerce Commission following consultation on its draft report for the retail fuel sector. This consultation included two rounds of submissions and a conference. MBIE has also carried out targeted consultation with key stakeholders on the regulatory proposals. We will continue to engage with these stakeholders in the course of developing the new regulations to give effect to the detail of the regulatory proposals.

The Covid-19 pandemic has had a significant impact on parts of the fuel industry, particularly in relation to Refining NZ, and the supply and demand for jet fuel. This has made it more difficult to determine whether trends since the completion of the market study are enduring or primarily reflect the impact of the pandemic. In our view it is still reasonable to rely on the Commission’s analysis of the market, as indicative of the likely counterfactual in “non-pandemic” times.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:
Treasury and MBIE
Quality Assurance Assessment:
Reviewer Comments and Recommendations:

Impact Statement: Regulations under the Fuel Industry Act

Section 1: General information

Purpose
The Ministry of Business, Innovation and Employment (MBIE) is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by the Minister for Resources and Energy and Cabinet on the detailed regulatory framework set out in regulations under the Fuel Industry Act (the Act).
Key Limitations or Constraints on Analysis
<p>Range of options considered</p> <p>The range of options considered is based on the Commission’s market study and the subsequent consultation process with stakeholders.</p> <p>The range of options is constrained by the regulation-making power set out under the Act. The Minister may only recommend that regulations be made if certain conditions are met. For example, the Minister may only recommend that regulations be made prescribing requirements relating to the display of information at retail fuel sites about the price of engine fuels only if:</p> <ul style="list-style-type: none">• The Minister has consulted any fuel industry participants that the Minister considers are likely to be significantly affected by the regulations; and• The Minister is satisfied that the regulations are necessary or desirable after having regard to providing transparency in retail fuel prices so that end users are able to make informed purchasing decisions. <p>Quality of data used for impact analysis</p> <p>This RIS relies upon the Commission’s analysis in the Final Report, the submissions from interested parties to the Commission as part of that study, MBIE’s consultation with targeted stakeholders, and submissions made to Select Committee during the development of the Bill. The sources used did not include much quantitative assessments of the costs and benefits of the options. While we have made use of multiple evidence sources wherever possible, particular reliance has been placed on the Commission’s findings and analysis given the Commission’s rigorous testing process. Where possible we have updated the analysis with more recent market data.</p>

Responsible Manager:

Authorised by:

Osmond Borthwick
Special Advisor, Energy Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment

19 February 2021

Section 2: Problem definition and objectives

2.1 What is the current state within which action is proposed?

The Fuel Industry Act was passed in 2020. The purpose of the Act is to promote competition in engine fuel markets for the long term benefit of end users. The Act allows the Minister for Resources and Energy to recommend regulations.

Characteristics of the retail fuel market

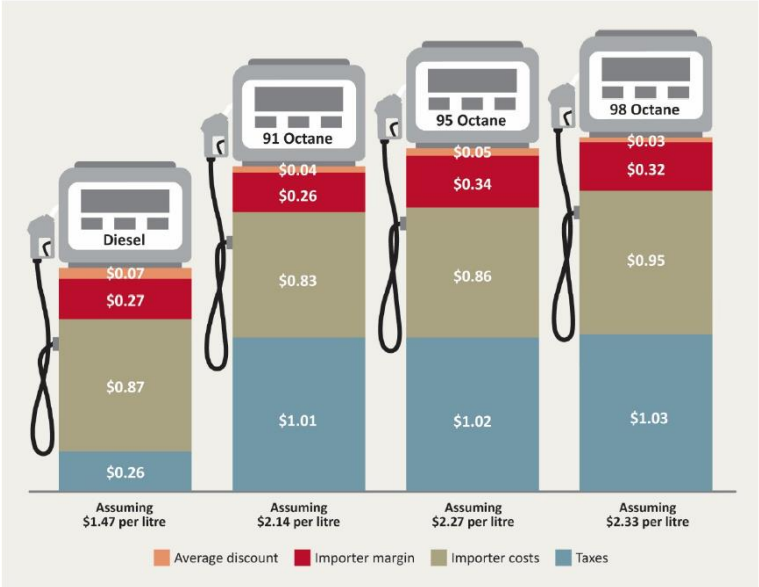
About 3.2 billion litres of petrol and 3.6 billion litres of diesel are consumed annually in New Zealand. According to Bloomberg, New Zealanders spend more income on fuel each year than people in 55 other countries (out of a total of 61 countries) with the average New Zealand driver purchasing 673 litres of fuel a year, making up 2.5 percent of the typical salary.¹

Currently fuel purchased at retail sites is evenly split between petrol and diesel (about 54 percent and 46 percent respectively):

- Households' light vehicles tend to consume petrol
- Premium petrol (95 or 98 octane) makes up about 23 percent of total petrol consumption
- Diesel is more likely to be used in heavier vehicles and in over 97 percent of trucks and buses. The number of diesel vehicles has increased steadily since 2000.

Figure 1 illustrates the components that make up fuel board prices, across different types of fuel. This is representative of average prices over the 2018 calendar year.

Figure 1: Components of the average board price of fuel (2018 calendar year)



Source: Commerce Commission analysis of the Singapore benchmark cost index data and retail sales data.

The importer margin represents the gross margin available to fuel importers to cover domestic importation, distribution and retailing costs in New Zealand, as well as profit margins.

¹ Bloomberg <https://www.bloomberg.com/graphics/gas-prices/#20191:New-Zealand:NZD:I>. (Viewed on 9 July 2019).

Retail fuel prices can vary quite significantly over short periods of time. However, overall fuel expenditure tends to increase when prices go up because fuel consumption does not reduce significantly in response to price increases, both for short-term fluctuations and longer term trends. Fuel is an essential purchase for many consumers.

Fuel company research suggests that between a quarter and a half of consumers may be relatively price sensitive and motivated to switch between brands – either looking out for the cheapest prices or actively searching for discounts between loyalty programmes. Up to half of consumers are less price sensitive and value various non-price aspects of fuel offerings more highly than price. In particular:

- convenience of location (i.e. proximity to consumers when they need to fill up and ease of accessibility such as from a main road)
- forecourt features (e.g. availability of attendants or canopies)
- shop features, including the variety and quality of food and drink choices
- ease of purchase
- attractiveness of the loyalty programme on offer
- branding and connection with the brand.

Discount and loyalty programme offerings are widespread. It is common for consumers to participate in multiple programmes.

Industry structure

There are currently five companies that import fuel into New Zealand: BP, Mobil, Z Energy, Tasmanfuels and Gull.

BP, Mobil, and Z Energy are regarded as ‘the majors’ in the New Zealand fuel industry. The majors import both crude oil to be refined at Marsden Point (New Zealand’s sole refinery) or already refined petrol and diesel, mostly from Singapore and Korea, which generally arrives at ports in Mount Maunganui, Wellington and Lyttelton.

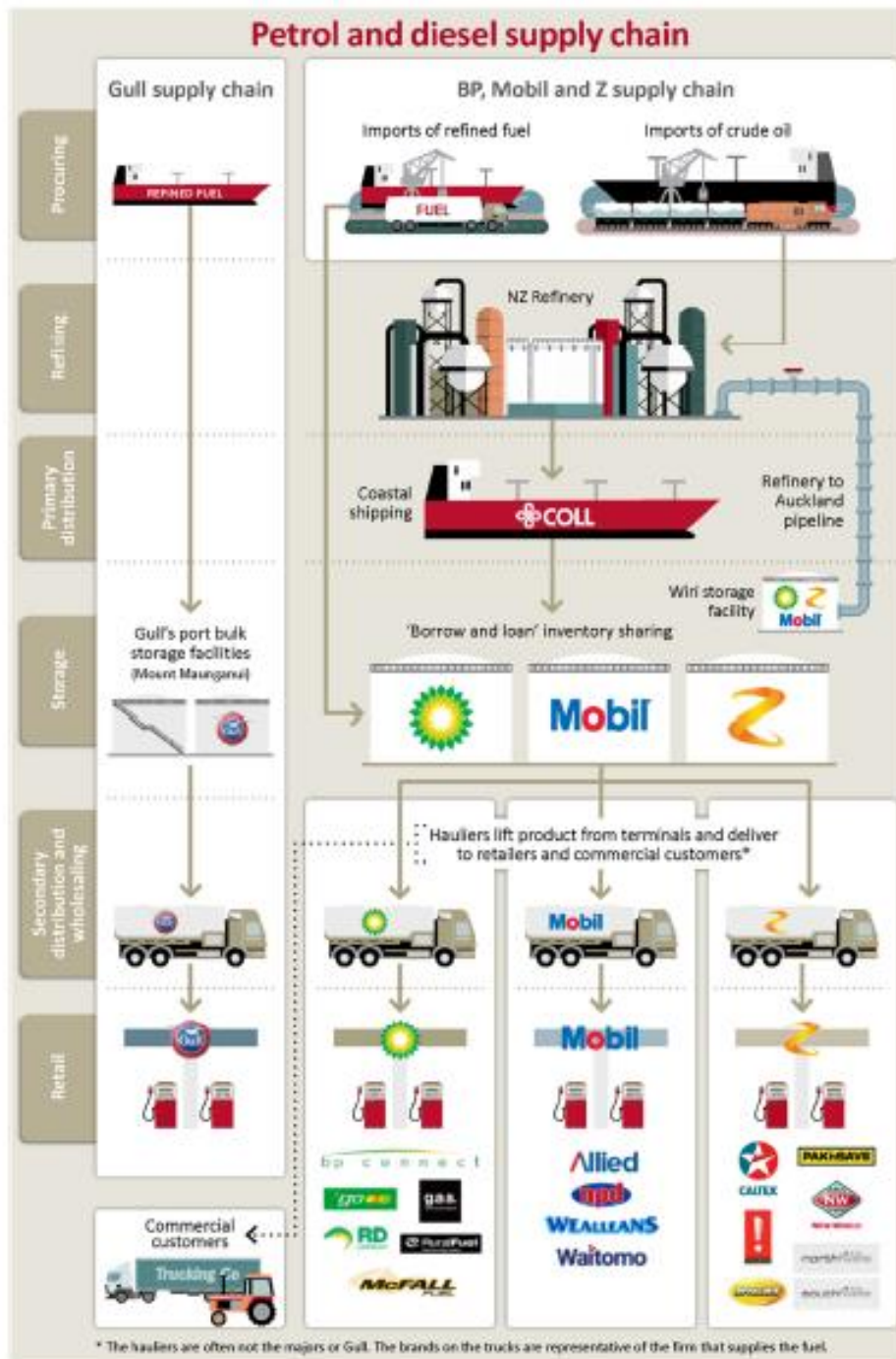
The majors jointly own or control the following infrastructure:

- the Marsden Point refinery, which produces approximately 58 percent of the petrol and 67 percent of the diesel used in New Zealand
- the pipeline infrastructure that carries the refinery’s products to Auckland for storage and further transmission
- Coastal Oil Logistics Ltd, a shipping venture which transports refined fuel to other ports around New Zealand.

The majors also control the majority of New Zealand’s existing fuel storage infrastructure around the country, and the stored fuel is then shared with the others through a system known as a “borrow and loan” arrangement.

Gull and Tasmanfuels are not a party to any of the infrastructure sharing arrangements. Gull imports refined fuel to its Mount Maunganui terminal and from there trucks it to its retail outlets. Tasmanfuels imports refined fuels to its Timaru terminal. Figure 2 show the petrol and diesel supply chain prior to the entry of Tasmanfuels.

Figure 2: The petrol and diesel supply chain



Source: the Commerce Commission final report on the retail fuel sector

New Zealand's fuel industry is essentially a vertically integrated oligopoly. Collectively, Z Energy, BP, Mobil and Gull control the supply of fuel to more than 1,300 retail sites under 20 different retail brands, either directly or indirectly through a distributor. Tasmanfuels has only recently commenced operations and has yet to make a significant impact on the market.

Many of the wholesale supply relationships that the majors have with distributors and dealers have been in place for decades and supply is typically on an exclusive basis. Each of the importers and distributors supply to retail sites that they own and operate and to franchisees (or in some cases, commissioned agents) that are dealer-owned and operated.

The Commission estimated that approximately 57 percent of retail fuel by volume is sold

through importer-owned and -operated retail sites, and 27 percent of retail fuel by volume is sold through franchisees or commissioned agents that are importer-branded, dealer-owned retail sites.

Approximately 60 percent of retail sites carry brands outside of the majors. However, these sites account for approximately 20 percent of petrol volumes sold in 2018, and many are located outside of the major metropolitan areas.

Since 2016, there has been an increase in the number of retail sites with most of these sites being operated by non-majors. Along with Gull, brands distributing and retailing Mobil fuel (NPD, Waitomo, and Allied Petroleum) have expanded. The number of sites operated by the majors has only marginally changed.

In addition, a new importer – Timaru Oil Services Ltd (**TOSL**) – has recently completed building a terminal storage at the Port of Timaru and has commenced trading as Tasmanfuels. A further terminal is planned in Mount Maunganui.

This growth in retail sites is occurring at a time when growth in total fuel demand has been slow. Over the past three years, national demand for petrol and diesel has been growing at an average rate of 3 percent and 13 percent respectively.

Future demand is more uncertain, due to changes in technology, such as increased vehicle efficiency and growth of demand for electric or hybrid vehicles. However, forecasts are that the demand for fuel is likely to remain reasonably flat over the next decade or more, but (for petrol in particular) is likely to decline over a longer timeframe.

The information about fuel markets is drawn from the Commission’s Market Study, which reported in December 2019. Because of the impact of Covid 19 (particularly on jet fuel supply and demand), more recent data about fuel markets may look quite different. However, the characteristics recorded here are likely to persist in less historically anomalous circumstances.

The Commission’s market study (counterfactual)

The Commission carried out an extensive analysis of the state of competition in retail fuel markets. It considered that price competition in fuel markets is not working as well as it could be. In summary, its reasons for this are:

- Fuel companies have been making persistently higher profits over the past decade than would be expected in a competitive market
- Regional differences in retail fuel prices reflect variations in local competition and not solely differences in cost of supply
- Discounts and loyalty schemes avoid direct competition on price
- Premium petrol margins have grown faster than regular petrol and do not reflect actual cost differences in supply
- Competition largely occurs in retail markets and this is less intense than could be expected.

These market outcomes are briefly explained below.

Regional differences in retail fuel prices not explained by cost differences

There are material differences in retail fuel prices between regions and locations in New Zealand. Figure 4, taken from the Final Report, shows the average retail board prices across New Zealand for regular petrol (2019).

Some of the regional price differences can be explained by differences in taxes (with the regional fuel tax introduced in Auckland) and costs of supply, based on such things as transport costs and lack of economies of scale (e.g. Westland). However, differences in competitive pressures in the regions and locations may be a better explanation.

Figure 4: Average retail board prices across New Zealand for regular petrol (2019)



Source: The Commerce Commission final report on the retail fuel sector. Analysis of data provided by industry participants.

The three majors have fuel infrastructure that covers the span of New Zealand, including storage terminals at Wellington and South Island ports, and a shipping operation which facilitates the transport of fuel to these ports. This infrastructure allows the majors to serve retailers and stations across New Zealand.

Gull, on the other hand, has a single storage terminal at Mount Maunganui, and its geographical reach has been limited, until very recently, to destinations which can feasibly be served by truck from that terminal. Tasman Fuels has a single storage terminal in Timaru. In practice this means that the level of competitive pressure faced by the three majors differs considerably by region.

Analysis conducted for MBIE has shown that fuel prices in the South and the North Island were roughly similar up until about 2014. However, over the next five years, a significant gap emerged between the (higher) prices paid in the South Island and Wellington, on the one hand, and the rest of the North Island, on the other. However, more recently, fuel board prices have been reported to have fallen by much more in Canterbury than in Auckland. This appears to be attributable to competition from independents.

Discounting is not a substitute for price competition

Discount and loyalty programmes available in the retail fuel sector have become increasingly common. Many consumers are members of more than one loyalty programme. In 2018, more than 41 percent of petrol and diesel sales were made at a discount to the advertised pump price. This has almost doubled since 2011. The average size of the discounts offered has also increased from 2 cents to 11 cents per litre for petrol and from 2 cents to 16 cents per litre for diesel over this period.

Discounts and loyalty schemes can benefit consumers if they result in lower prices or other benefits. Generally such schemes have the effect of discriminating between price sensitive customers who claim discounts and those that don't. With increasing use of digital technology, such discrimination is likely to become increasingly prevalent in markets. However, the Commission found evidence that discounts were correlated with higher board prices and have increased as margins have increased over the past decade. This suggests that discounting is a poor substitute for price competition.

The concern is that discounts may shift consumers' attention away from the actual price they pay and more on the size of the discount or reward. Some discounts and loyalty schemes have conditions, such as minimum or maximum qualifying purchases or when rewards must be used before they expire. This can make it difficult for consumers to compare post-discount or reward prices between retailers to determine which one is offering the lowest actual price. In such circumstances, consumers are less likely to switch in response to competitive fuel prices and retailers have weaker incentives to offer them.

Increases in premium petrol margins are unrelated to costs

As can be seen in Figure 1, premium (95 octane) petrol prices tend to be about 13 to 15 cents per litre above the price of regular (91 octane) petrol on average after accounting for discounts. The difference was about 7 to 8 cents in 2011. The premium petrol margin has increased faster than for regular petrol.

Pre-tax premium petrol prices in New Zealand have moved from being in the bottom third of OECD countries in 2008 to the most expensive in 2017. While there are differences in how countries report fuel prices to the OECD, the methods used have not significantly altered since 2008, suggesting that New Zealand's dramatic move up the rankings is due to a real shift in our relative position.

There is no obvious reason why the underlying cost of supplying premium petrol to New Zealand, compared to other markets, would have changed so significantly over the last decade. The Commission did not find any corresponding increase in the costs of producing premium petrol that could explain the increasing gap in importer margins between regular and premium petrol.

Retail price competition is less intense than could be expected

Approximately 84 percent of retail fuel is sold through importer-owned and -operated retail sites or through importer-branded, dealer-owned retail sites. While there are over 20 brands of retail fuel, each brand is closely tied to one of the importers through typically exclusive and stable contracts.

The entry of an independent importer, Gull, had a significant impact on retail prices and margins. In 2015-2016, the price difference between areas where Gull was represented and non-Gull regions were between 10 to 30 cents per litre.

While there has been a growth in the number of retail sites, particularly by the non-majors, the effectiveness of this on price competition is localised. The non-majors primarily operate in low-cost unmanned sites in secondary locations, away from central metropolitan areas. Often the best sites have already been secured by existing suppliers.

Gull and Waitomo are most likely to open new retail sites in close proximity to those of the majors, and this had a material impact on local prices in a third of cases analysed in the Commission's sample (50 new site openings over a five year period to February 2019). The new NPD retail sites in the South Island appear to have the greatest impact on majors' prices (after discounts). However, the Commission notes that this growth in retail sites is largely by distributors that source their supply from Mobil, and therefore, it is vulnerable to changes in strategy by one oil company.

Retail competition is also marked by differentiation in service offerings, such as whether it is manned or unmanned, includes a convenience store, takeaway food, barista coffee toilets and/or a car wash, and the ease of access and convenience of location. This product differentiation, coupled with the growth of discounts and loyalty programmes, weakens competition on price.

2.2 What regulatory systems are already in place?

Fuel markets in New Zealand are subject to generic competition and consumer protection legislation under the Commerce Act 1986, Fair Trading Act 1986 and Consumer Guarantees Act 1993.

Energy markets regulatory system

MBIE is responsible for the Energy Markets Regulatory System, which includes the Fuel Industry Act. This system provides for the effective and efficient operation of energy markets by regulating the allocation of, access to, and standards applying to energy resources and infrastructure in New Zealand.

The key objective of the energy markets regulatory system is to promote competition and outcomes consistent with workably competitive markets. The system also has objectives relating to reliability and security of supply, access, energy efficiency and renewable energy.

The Fuel Industry Act received Royal Assent in 2020, thereby introducing a sector-specific competition regime for the fuel industry. The Act establishes:

- a terminal gate pricing regime to improve competition in the wholesale market by

making it easier for a fuel reseller to access fuel more cheaply and in more locations

- rules to ensure contracts between wholesale fuel suppliers and their wholesale customers are fair and support competition
- a dispute resolution scheme for the new regime
- improvements to the monitoring of the fuel market by requiring fuel companies to collect and disclose certain information
- requirements for retail fuel sites to display premium fuel prices on forecourt price boards

MBIE monitors importer margins to promote transparency in retail petrol and diesel pricing. Some inputs are provided by Statistics NZ, which it collects as part of its consumer price index (CPI) statistical series. MBIE currently publishes weekly data on inputs into fuel costs, and consequent estimates of fuel importer margins. This data is then made public on MBIE's website, alongside historical data to provide context for the current information. Unlike in other energy sectors such as electricity and gas, there is no statutory requirement for fuel companies to provide MBIE with the data for this monitoring. While some companies do provide data voluntarily, the monitoring regime is largely based on a mixture of data from other sources, both international and domestic.

There are also regulations which relate to monitoring and enforcing petrol and diesel quality standards, and a regime for demand restraint in the event of supply shortages.

Fitness-for-purpose of the regulatory systems

MBIE has primary responsibility for maintaining, monitoring, evaluating and improving the relevant regulatory systems. MBIE is accountable to:

- the Minister of Commerce and Consumer Affairs for the competition and consumer and commercial regulatory system
- the Minister of Energy and Resources for the energy markets regulatory system.

Regulatory charters and systems assessments are publicly available on MBIE's website. The last regulatory system assessments were completed in June 2017, and these are expected to take place every five years. The 2017 system assessments found the regimes to be generally fit for purpose.

2.3 What is the policy problem or opportunity?

The core problem is the inactive wholesale market

The main cause of poor outcomes in the retail fuel sector is the lack of an active wholesale market. Competition is largely limited to retail markets, where strong price competition is less likely to occur because the markets are smaller, geographically scattered and retailers have differentiated their service offerings. The absence of wholesale competition increases the costs of fuel for retailers, which then places a floor under retail prices.

Resellers, predominately those supplied by Mobil, can and do offer petrol and diesel prices below the majors and Gull, primarily by offering low cost service offerings like unmanned, pay-at-the-pump sites. However, there is a limit to the price competition they can offer. This is dictated by the wholesale price they pay their suppliers and the individual strategies of the majors.

Two interrelated factors that limit wholesale competition and which are unlikely to change in the counterfactual. These are:

- The cost advantages that the majors have over rivals through their infrastructure sharing arrangements
- Restrictive or dependent wholesale supply relationships that limit competition.

Cost advantage of infrastructure sharing arrangements

As mentioned above, the majors jointly own or control the following infrastructure:

- the Marsden Point refinery, which produces approximately 58 percent of the petrol, 85 percent of the jet fuel, and 67 percent of the diesel used in New Zealand.
- the pipeline infrastructure that carries the refinery's products to Auckland for storage and further transmission
- Coastal Oil Logistics Ltd, a shipping venture which transports refined fuel to other ports around New Zealand.

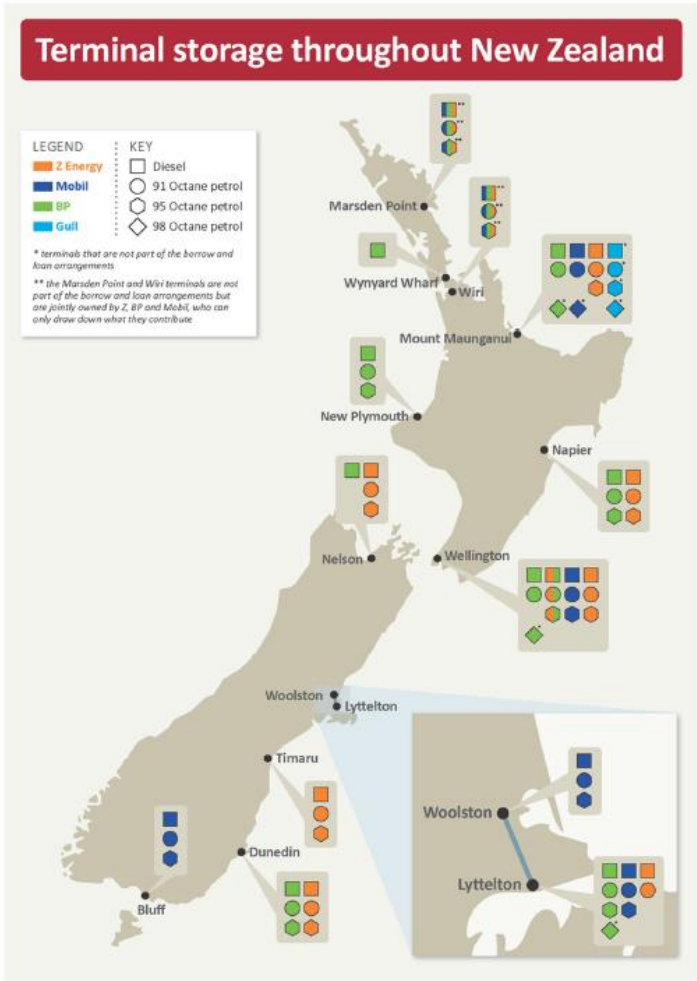
The majors also control the majority of New Zealand's existing fuel storage infrastructure around the country, and the stored fuel is then shared between the majors through a system known as a "borrow and loan" arrangement. Figure 5 indicates the location of terminal storage throughout New Zealand with the exception of the Tasmanfuels terminal in Timaru.

There are strong interrelationships between these infrastructure-sharing arrangements. The scheduling and shipping services provided by Coastal Oil Logistics are critical for the successful distribution of product from the refinery. The shared pipeline from the refinery to Auckland is also critical, given the limited storage capacity at Marsden Point and the need to safely and efficiently convey product to its largest customer base.

The borrow and loan arrangements also provide significant benefits to the majors by:

- avoiding duplication of terminal assets, particularly in relatively low volume and geographically dispersed areas
- enabling majors to compete nationally, particularly in areas where a major does not own its own terminal.
- constraining the exercise of market power in some regions, by the ability of each of the majors to retaliate to high fees for access at one terminal with higher fees at a terminal that it owns.

Figure 5: Terminal storage throughout New Zealand



Source: Commerce Commission analysis of industry participants’ data.

In comparison, an existing or potential competitor must import refined fuel and establish a stand-alone supply chain, including owning or accessing independent storage terminals and using trucks for secondary distribution. The majors’ infrastructure sharing arrangements provide a cost advantage compared to any rival importers that need to establish separate stand-alone supply chains.

Following a review of its operations, Refining NZ announced in 2020 that it would develop plans to simplify refinery operations and structurally reduce operating costs, while focusing on fuel supply into the Auckland and Northland markets where it had a competitive advantage due to its Marsden Point infrastructure and Refinery to Auckland Pipeline. The company also announced that it would continue to evaluate a possible future staged transition to an import terminal, including exploration of a commercial framework with customers.

While such a transition would align the business models of the majors more with other importers (such as Gull), it would not necessarily unwind all the advantages that accrue from shared ownership of infrastructure and shared shipping arrangements.

The Ministers of Energy and Resources and Commerce and Consumer Affairs wrote to the fuel companies setting out their expectations and deadlines for the industry to respond to the Commission’s recommendations for non- regulatory changes to the infrastructure sharing

arrangements. Constitutional conventions

Restrictive or dependent wholesale supply relationships

The Commission found that the wholesale market is characterised by stable and typically exclusive supply arrangements with distributors and dealers. Switching at the wholesale level is rare. Distributors and dealers rarely use the same competitive tendering processes used by larger commercial customers. The Commission outlined that this reflects a combination of:

- non-contractual features, which result in the resellers being dependent on their existing suppliers
- restrictive contract terms that make switching difficult.

Restrictive contract terms

There are terms in wholesale supply agreements between the importers and distributors or dealers that are overly restrictive and inconsistent with what would be expected in a workably competitive market. These agreements:

- are typically exclusive – exclusivity may be justified if it is required to protect the investments or intellectual property of the supplier, but without such justification, these terms may unreasonably impede competition
- commonly have long durations – many contracts were for terms of 10 to 15 years, and in some cases much longer, which is significantly longer than similar supply contracts with commercial customers
- sometimes tie wholesale prices to retail prices or are unclear on the methodology for calculating wholesale prices, and typically provide the majors with the ability to unilaterally change wholesale prices, making it difficult to compare offers between suppliers
- include other contract terms, such as ‘first right of renewal’ and restraint of trade provisions, which reduce the ability of the distributor or dealer to switch supplier.

Consequences of the lack of an active wholesale market

The combined effect of infrastructure sharing arrangements and restrictive supply relationships is to prevent rival fuel importers from entering the market or competing more vigorously against the majors.

Rival importers do not have the ability to match the majors’ comparatively low cost of production and distribution, and on entering New Zealand would find it difficult to attract wholesale customers that are not contractually bound under existing restrictive arrangements. For example, Gull does not import fuel into the South Island and it is not party to any of the infrastructure sharing arrangements. Gull now operates in the South Island. However, its ability to expand and compete depends on it securing and maintaining competitive wholesale supply arrangements.

Distributors and dealers lack transparent information about wholesale prices in order to negotiate competitive supply, and may become dependent on their suppliers. As part of the Commission’s market study, almost all industry participants emphasised the value of freedom of contract and the ability to negotiate terms of supply that best meet their needs. However, some dealers, and most distributors, were concerned about feeling unable to negotiate terms that provided greater price transparency and better enabled them to assess supply options and switch supply if they chose to do so.

The consequences of this are:

- independent importers face barriers to entry or expansion as there are few wholesale customers actively looking for new supply opportunities
- competition between existing wholesale suppliers is reduced because many dealers and distributors face barriers to switching
- it is difficult for distributors and dealers to obtain competitive wholesale supply as they may lack bargaining power and transparent pricing information
- wholesale prices appear higher than would be expected and this flows through to retail pricing.

Consumers lack clear information to compare prices

When consumers have access to information about competing offers, they can make better decisions about their purchasing options. In the earlier part of this RIS, we outlined the Commission's findings that discount and loyalty schemes may focus consumers' attention on the size of the discounts and not necessarily the cheapest fuel available. These schemes may also make it more difficult to make choices between retailers.

With new technology, more information is being provided to consumers to inform them about fuel offers. This includes

- Real-time pricing through apps, such as Gaspy
- Price boards on the roadside of most retail sites with different strategies for displaying fuel prices and their discount or loyalty scheme offers.

The Commission found that industry practices with display of information are evolving. There is a risk that some information on price boards or signs outside retail outlets that advertised discounts could risk misleading consumers, or at worst, act as a form of bait advertising. Alternatively, access to some real-time retail price information could be used by the industry to facilitate accommodating behaviour.

Many retail sites do not include the price of premium petrol on price boards. Consumers must drive on to the forecourt before they can see the price at the pump, at which point they may feel they have already made a commitment to purchase. The margins on premium petrol are higher and growing at a faster rate than other grades of fuel. Posting of premium petrol prices on price boards would make it easier for a driver to compare prices and make a decision about whether to purchase at the site.

2.4 What do stakeholders think?

Stakeholders

Fuel companies

- *Importers:* Z Energy, Mobil, and BP are the three 'majors' and Gull import fuel and operate retail sites. Tasmanfuels also imports fuel but does not operate retail sites.
- *Distributors:* Gasoline Alley, Allied Petroleum, Waitomo, NPD, RD Petroleum, Challenge, McKeown, South Fuels, and McFall.
- *Dealers:* Independent operators of retail sites that are branded under one of the importers' or distributors' brands.

Other fuel associated stakeholders

- Refining NZ – the operators of the Marsden Point refinery, which produces approximately 58 percent of the petrol and 67 percent of the diesel used in New Zealand.
- Motor Trade Association is the main automotive industry body in New Zealand whose members include fuel retailers (primarily dealers).

Consumer stakeholders

- Business NZ – New Zealand's largest business advocacy body.
- Automobile Association (AA) – in addition to being New Zealand's most popular automobile association, AA operates a fuel loyalty discount scheme in conjunction with BP.
- Gaspy – an independent app that allows consumers to see fuel prices at retail outlets across the country.

Stakeholders' views of the problem

The major importers (Z Energy, Mobil, and BP) did not consider that there was a problem with competition in the fuel market in New Zealand. They considered that the evidence of retail entry and growth was consistent with a competitive market. They considered that their shared infrastructure arrangements did not give them a significant advantage, as other firms could compete by importing fuel and trucking it to retail outlets. They considered that wholesale contracts were made between well informed parties with balanced negotiating power. They considered that consumers were well informed about the price of retail fuel, and did not need additional interventions to allow them to make informed judgements.

Other stakeholders (including Gull and new entrant Tasmanfuels) tended to share the Commission's and MBIE's view that the main cause of poor outcomes in the retail fuel sector is the lack of an active wholesale market in New Zealand.

The Motor Trade Association also had this view, but expressed strong concern that key elements of the Act applied only to distributors, and not to the dealers who they represent. Dealers are resellers of fuel who supply fuel using a brand owned by another person. The MTA considered that this undermined the potential for the Act to promote competition.

Consultation

The Commission conducted multiple rounds of consultation as part of its market study including hosting a consultation conference. The consultation was open to the wider public. MBIE carried out targeted consultation with key stakeholders following the release of the

study, during the legislative process and during the initial development of the regulations.

2.5 What are the objectives sought in relation to the identified problem?

The objectives sought in relation to the identified problem are:

- a more active and competitive wholesale market, leading to more competition in retail markets
- clear information being available to consumers to compare prices, leading to improved competition in retail markets
- in the case of regulations specifying engine fuels that are included in, or excluded from the terminal gate pricing regime, preserving incentives to innovate and to invest in markets for specified engine fuels

Section 3: Options identification

3.1 What options are available to address the problem?

Summary of options

Under the Act, regulations can be made to implement the new regulatory regime for the fuel industry.

Problem	What the Act provides	What's left for the regulations discussed in this RIS?
<p>The cost advantages that the majors have over rivals through their infrastructure sharing arrangements</p>	<p>The Act introduced a terminal gate pricing (TGP) regime, which requires wholesale suppliers to supply fuel at a publicly posted price to resellers at bulk storage facilities. The regime requires wholesale suppliers who have a right to draw fuel at a terminal through infrastructure sharing arrangements to supply fuel, even where they do not own the storage facility.</p> <p>Suppliers may refuse to supply if they need the requested amount to supply their commercial or wholesale customers, or their own retail outlets. However, they may only do so if they have already supplied a minimum amount over a particular period.</p>	<p>The regulations cover:</p> <ul style="list-style-type: none"> • which fuel types are captured by the regime • requirements relating to posting terminal gate prices • where terminal gate prices must be posted • requirements relating to requests for supply by resellers • documentation that must be provided by wholesale suppliers to resellers • pre-certification to allow wholesale suppliers to determine before supply if the reseller is likely to pay or to meet health and safety requirements; • the minimum purchase amount • the period over which demand may be forecast for the purpose of assessing whether the supplier needs the fuel for its own use; or • any other grounds to refuse to supply • the time period

		<p>during which the minimum amount of fuel must be supplied if requested</p> <ul style="list-style-type: none"> • the minimum amount that must be supplied • requirements relating to notices in the event that the supplier is refusing to supply on the grounds of needing the fuel for its own customers or retail outlets
Restrictive or dependent wholesale supply relationships that limit competition.	The Act allows regulations to be made which govern the contractual terms between wholesale suppliers, distributors and, as relevant, dealers. These requirements would apply to new contracts and, after a transitional period, all existing contracts.	<p>The regulations cover:</p> <ul style="list-style-type: none"> • a requirement for wholesale suppliers to specify a transparent pricing method in fixed wholesale contracts • circumstances in which such a pricing method can be changed • a maximum duration of fixed wholesale contracts between wholesale suppliers and distributors • the maximum proportion of the distributor's annual requirement that can be sourced exclusively from the wholesale supplier through a fixed wholesale contract.
Consumers lack clear information to compare prices	The Act allows regulations to be made to provide for transparency in retail fuel prices so that end users are able to make informed purchasing decisions.	<p>The regulations may prescribe:</p> <ul style="list-style-type: none"> • the fuel types and kinds of retail fuel sites the regulations apply to • the price information that must be

		<p>displayed in relation to the relevant fuel types</p> <ul style="list-style-type: none"> • the circumstances in which the information must be displayed • the form and manner in which the information must be displayed • any information that must not be displayed.
Dispute resolution	The Act allows regulations to be made setting procedures for dispute resolution between suppliers and resellers	<p>The regulations may prescribe:</p> <ul style="list-style-type: none"> • procedures for mediation • a method of calculation how mediation costs must be split between parties • prescribing 1 or more dispute resolution schemes

As the relevant parts of the Act come into force over the next year, new obligations will apply to market participants. If no regulations were promulgated, there would be a high and undesirable degree of uncertainty as to how the enforceable obligations affect market participants, as the detail of the obligations can only be set through regulations.

As a result in most (but not all) cases there is no real option not to make regulations, and non-regulatory options are not available. The choices are about which options for making regulations best address the problems described above. This means that standard elements of options analysis such as comparing options with “doing nothing” or with non-regulatory solutions are less valuable. In the discussion of the options, we will focus on comparing the main alternative forms of regulation that have been raised by submitters in contrast with our preferred options. This is most efficiently done at the level of particular regulations where significantly different choices are available, and the impacts of the choices are significant. This would identify the important decision-points that would address discrete elements of the broader problem.

The consultation processes that we have undertaken have also revealed that there are some proposed regulations that deal with narrow technical issues, and are relatively uncontroversial. In these cases, we will outline the key advantages and disadvantages of our preferred option but will not specifically compare impacts of different options. This analysis is set out in **Annex A**.

The following section is MBIE's assessment of these options for the purposes of developing the necessary regulations to give it effect.

Options to improve wholesale competition for fuel

Terminal gate pricing regime – setting key features

The TGP regulations provide a suite of tools to offset the advantages the major suppliers derive from their infrastructure sharing arrangements, by allowing other importers and distributors to access fuel from the existing network of terminals at a transparent price. In order to be competitively neutral, these obligations will apply not just to the major suppliers, but to all suppliers with access to terminal facilities. These obligations on suppliers under the terminal gate pricing regime are enforceable by the Commission.

Most of the tools specify procedural elements of the regime to ensure an efficient operating environment where neither suppliers nor resellers inappropriately impose costs on each other, and competition is promoted. These have not been controversial, are technical or procedural in nature and are not expected to impose significant costs on suppliers or resellers. In these cases, alternative options have not been set out in detail, although advantages and disadvantages have been set out in **Annex A**.

However, some elements of the regime have been strongly opposed by some or all suppliers:

- Some suppliers have strongly advocated that some lower volume fuel types should be excluded from the scope of the terminal gate pricing regime.
- The Act requires suppliers to provide a minimum amount of fuel on request, even during situations where inventory is low in fuel storage terminals.

The regulations which implement these elements have therefore been more controversial, partly because they attempt to take into account the concerns expressed by suppliers. Some potential wholesale customers argue that too much weight has been placed on submissions made by suppliers.

Option 1: Specified engine fuel subject to the terminal gate pricing regime.

Subsection 13(1)(a) of the Act allows regulations to be made prescribing any engine fuels that are included in, or excluded from, the definition of *specified engine fuel*.

However, the Act has, in effect, made most retail engine fuels, including regular grade petrol, diesel and premium grade petrol, subject to the regime by default. Therefore the primary consideration is whether any engine fuels should be excluded. Exceptionally, this does give a clear status quo option against which other options can be compared.

The Minister may recommend regulations only if:

- the Minister has had regard to the impact of the regulations on incentives to innovate and to invest in markets for specified engine fuels; and
- is satisfied that a significant proportion of the relevant engine fuel is used by motor vehicles; and

- is satisfied that the regulations are necessary or desirable after having regard to the purpose of this Act, which is to promote competition in engine fuel markets for the long-term benefit of end users of engine fuel products.

The three types of fuel in New Zealand that are sold by all major fuel retailers are 91 octane, 95 octane (a premium fuel) and diesel. These engine fuels are required for a retail fuel supplier to make a competitive service offering. Approximately 10 per cent of petrol sales are of 98 octane petrol (a premium fuel). Only three wholesale suppliers (two in the South Island) and Nelson Petroleum Distributors Ltd (NPD) sell 98 octane or higher. In addition, only Gull and Z Energy sell bio-ethanol blended fuels. A significant proportion of all of these fuels is used by motor vehicles.

Specialised supply chains and storage facilities are used for 98 octane (and above) petrol. This fuel type (and bio-ethanol blended fuels) sit outside the infrastructure sharing arrangements between the major suppliers for shipping and fuel storage.

We have identified 2 options for including or excluding fuels:

- Option 1A: (status quo) Including all fuels supplied at retail in the regime
- Option 1B: (**preferred**): excluding 98 octane and above, and bio- or ethanol- blended petrol

Options	Benefits	Costs	How would this option deliver the objectives?
1A	<p>There would be the same transparency of pricing for 98 (and above) grades and blended fuels as for other fuels.</p> <p>Excluding 98 octane and blended fuels may not be competitively neutral as they compete with other finished products.</p>	<p>Maintaining a costly separate supply channel for a fuel grade which is subject to the regime, and therefore no longer be a point of competitive differentiation could be much less attractive, and compromise incentives to innovate or invest.</p>	<p>This would promote competition by providing more transparency across all retail fuel types than 1B, but would compromise incentives to innovate or invest in lower volume fuels.</p>
1B	<p>Access to diesel, 91 octane and 95 octane at transparent prices at fuel storage facilities would allow resellers and new entrants to compete in a wider range of geographical areas across the range of fuels commonly purchased by New Zealand motorists.</p> <p>Excluding 98 octane and above,</p>	<p>There would be less transparency in relation to some types of premium fuels.</p>	<p>This would promote competition by providing access to the full range of fuel types (regular, diesel and premium) usually supplied at retail fuel outlets. It would preserve incentives to innovate and invest</p>

	and bio- or ethanol-blended petrol or diesel would maintain incentives to innovate or invest in the markets for that fuel or any other engine fuel with similar characteristics. Companies could invest in more specialised fuel products such as 98 Octane petrol to differentiate without having to also supply them to competitors.		in lower volume fuels.
--	--	--	------------------------

Some submitters were concerned about the associated compliance cost of having an obligation to supply lower volume fuels under the terminal gate pricing regime. While these costs could in part be recovered by the wholesale suppliers through higher terminal gate prices, the benefits for competition of requiring them to do so are limited. In particular, new entrants do not require access to these fuels to make a competitive service offering.

Some submitters maintained that:

- the terminal gate pricing regime should apply to all mainstream retail fuels, including 98 and retail 100 so that resellers are in a position to offer to facilitate effective competition
- excluding 98 and above fuels would depart from the Australian TGP regime
- this sort of price visibility is a key element of the suggested reforms, and that 98 octane and (particularly) blended fuels may well be the way the market is heading
- any biofuel blend of diesel, 91 or 95 should be available under a terminal gate pricing regime as it is essentially sold as the same finished product.

Option 2: The minimum supply amount and the period to which it relates.

Under the Act, the wholesale supplier must supply the reseller with the requested amount at its terminal gate price, unless the wholesale supplier has reasonable grounds to refuse to supply.

Section 12(2) allows (in effect) a wholesale supplier to refuse supply because it needs the fuel for its own or contracted requirements - but only if it has supplied a minimum amount in a prescribed period. For example, under the preferred option, a wholesale supplier would be entitled to refuse supply because it needed the fuel for its own retail outlets, only if it had already supplied 30,000 litres to an unaffiliated reseller (or resellers) in the previous week. Each reseller is not entitled to this amount. Once the amount has been supplied (which could be a total of 30,000 litres to several different resellers), the obligation to supply effectively lapses if the supplier needs the fuel for its own outlets.

Subsections 13(1)(h) and (i) of the Act provides for regulations to be made to specify the minimum supply amount and the relevant period to which it applies.

The minimum supply amount recognises that in New Zealand it is relatively common for there to be situations of tight supply at particular ports, during which importers impose some restrictions on supply. The Commission expressed concern in its market study that this could mean that fuel was frequently unavailable to competitors seeking to make use of the TGP

regime at that port. The minimum supply obligation means that there will always be a minimum amount of fuel available, even in situations of tight supply.

It also recognises that it would be unreasonable to always prioritise supply to TGP customers over retail and contract customers. It does not require that the supplier provides any more than that minimum amount during the period prescribed in regulations, if it needs the fuel to supply its own retail outlets or customers.

This has been one of the most contentious elements of the new regime. Suppliers have been concerned that it may impose additional holding costs, while resellers have been concerned that insufficient amounts of fuel may be available to competitors.

The obligation applies to wholesale suppliers with a right to draw fuel from a terminal. Under the infrastructure sharing arrangement between the major suppliers, each supplier has the right to draw fuel at the terminals included within that arrangement. This means that a reseller can seek supply from a wholesale supplier at a terminal even if that supplier does not own or operate the terminal, so long as the supplier has a right to draw under the arrangement.

On the demand-side, an average full service site would sell in the region of 4.4 million litres of fuel per annum (or 85,000 litres per week). This 85,000 litres would be a mix of diesel, regular petrol and premium petrol, and the likely mix may vary by site. The Commerce Commission estimated this mix makes up on average (nation-wide) about 46.2 per cent diesel (39,118 litres), 41.4 per cent regular (35,112 litres) and 12.4 per cent premium (10,524 litres).

However, as the majority of new sites in recent years are unmanned and in secondary locations, this estimate is likely to be at the upper end. The 85,000 litres sold by an average retail site roughly equates to three tanker loads of fuel (assuming a standard tanker size of about 30,000 to 35,000 litres).

We have identified 2 options for the minimum amount/period:

Option 2A: (**preferred**):

- 30,000 litres (a tanker load) per week per supplier by specified location (in most cases, a port) for regular diesel and regular grade petrol.
- 30,000 litres per month per supplier by specified location for premium 95 octane petrol
- where there are three wholesale suppliers per specified location, there should be at least 90,000 litres of each specified engine fuel available each week at each specified location pursuant to this regime, even during periods of tight inventory
- The specified locations would be: Bluff, Dunedin, Christchurch (Lyttelton/Woolston), Mount Manganui, Napier, Nelson, New Plymouth, Timaru, Whangarei (Marsden Point), Wellington, Auckland (Wiri/Wynyard Wharf). This could be reviewed if the infrastructure sharing arrangements lapsed at a terminal.

Option 2B:

- sufficient availability of fuel to service uncontracted demand (across those three main categories) generated by reforms to wholesale contracts – estimated by one submitter to be 6.56 million litres/week across the whole system.

Options	Benefits	Costs	How would this option deliver the objectives?
2A	Balances supply availability with recognition of supply constraints during periods of low inventory. Avoids imposing increased holding costs on suppliers which would then be passed on to consumers.	May be insufficient to service potential independent demand during periods of low inventory	It would promote competition by making fuel available on request at transparent prices
2B	If demand is strong for fuel following reform of contractual terms, this option will be able to service such demand even in situations of tight inventory.	May impose high holding costs on suppliers May not be necessary to service normal demand	It would comfortably meet any level of expected levels of demand compared to 2B, but could disrupt supply and storage, or increase costs unnecessarily.

The MTA submitted that the context in which the minimum amount must be considered is the new provision in the Act which limits the ability of suppliers to require exclusive supply. The regulations will prescribe a maximum percentage of the distributor's annual supply which can be subject to exclusive supply requirements in a contract. We had consulted on a maximum of 80%, and as discussed later, this remains the preferred option. The MTA argued that we should therefore be anticipating that supply under the TGP regime should be able to meet all the potential demand released when distributors take advantage of this provision to seek spot supply. The MTA argued that the amount proposed in Option 2A would be inadequate to service this demand. In addition, the prescribed minimum sales would be available to all independent resellers, meaning even less would be available for independent dealers.

Mobil submitted that applying a prescribed minimum supply amount will effectively result in a minimum stock holding at each port and effectively reduce working capacity by raising the lower operating limit to maintain that minimum stock holding. However it also stated that this minimum was acceptable.

Wholesale supply contracts

The Fuel Industry Act allows regulations to be made which govern the contractual terms between wholesale suppliers, distributors and, as relevant, dealers. These requirements would apply to new contracts and, after a transitional period, all existing contracts.

Some of the features of the wholesale contract regime have not been controversial, are technical or procedural in nature, and are not expected to impose significant costs on suppliers or resellers. In these cases, alternative options have not been set out in detail, although advantages and disadvantages have been set out in Annex A.

Option 3: Right to terminate wholesale contracts after a maximum duration

Section 17 of the Act allows distributors, in some circumstances, to terminate their wholesale supply contract with a wholesale supplier on reasonable notice once the contract has been in

force for a prescribed maximum duration. Section 20(1)(c) allows regulations to be made to prescribe the maximum duration.

This provision is intended to address the long term lock-in of wholesale customers by the major suppliers which has characterised the industry. There is little switching between wholesale suppliers, and wholesale contracts rarely come up for competitive supply opportunities,

We have identified 3 options for the maximum duration:

Option 3A: (**preferred**): a maximum duration of five years, after which the distributor can terminate, with reasonable notice, their fixed wholesale contract with a wholesale supplier.

Option 3B: a maximum duration of two years, after which the distributor can terminate, with reasonable notice, their fixed wholesale contract with a wholesale supplier. Option 3C: a maximum duration of greater than five years, after which the distributor can terminate, with reasonable notice, their fixed wholesale contract with a wholesale supplier.

Options	Benefits	Costs	How would this option deliver the objectives?
3A	A duration of five years would give distributors more frequent opportunities to seek competitive supply alternatives than are currently available, but would give suppliers some volume certainty and ability to organise their supply chains. It would avoid the transactions costs to distributors of going to market too frequently.	This would have fewer opportunities for distributors to switch suppliers than shorter periods.	This would promote competition by moving away from the long term contracts that characterise the industry, and would avoid unnecessary transaction costs, compared with option 3B.
3B	This would maximise opportunities for distributors to switch suppliers and could reduce the likelihood that particular parties would benefit materially from the “accident of timing” that could arise from settling on a longer duration period.	This would be too brief to provide certainty and would create transaction costs because the parties would need to be negotiating a new contract not long after finalising the previous contract. This would reduce the volume certainty for wholesale suppliers and could result in increased costs.	This would promote competition by giving more frequent opportunities to test the market compared to 3A, but would be likely to materially increase the transaction costs of wholesale supply for both parties.
3C	This would provide long term	This would limit the	This would preserve

	certainty to wholesale suppliers and to those distributors who valued such certainty.	opportunity for distributors to 'shop around' for competitive supply	the status quo where wholesale relationships are subject to the long term lock-ins, and would not deliver the objectives.
--	---	--	---

Z Energy submitted that two year terms would be long enough to be practically workable, and sufficiently long for distributors' security of supply and planning needs. It argued that two year terms minimise the impact of the arbitrary line being as to when rights to terminate arise, since no particular contractual parties would benefit materially by accident of timing.

Option 4: Maximum exclusivity of wholesale contracts

Section 18 of the Act prohibits any exclusivity provision(s) in a distributor's wholesale supply contract from applying to more than a prescribed share of the distributor's annual requirement for engine fuel. Section 20(1)(d) provides the ability to set the maximum percentage of the distributor's annual requirement for engine fuel that a wholesale contract can require the distributor to purchase from the wholesale supplier (prescribed share).

This provision addresses the lock-in effect of wholesale contracts which require the distributor to source all of their fuel from the wholesale supplier.

We have identified 2 options for maximum exclusivity:

Option 4A: a wholesale contract cannot require the distributor to purchase more than 95 per cent of the distributor's annual requirement for engine fuel from the wholesale supplier.

Option 4B: (preferred): a wholesale contract cannot require the distributor to purchase more than 80 per cent of the distributor's annual requirement for engine fuel from the wholesale supplier.

Options	Benefits	Costs	How would this option deliver the objectives?
4A	Distributors can seek volume discounts available in relation to a higher volume of exclusive supply.	This would reduce the competition benefits for distributors as it will make it more difficult for new importers to gain market share. It would also reduce the bargaining power that distributors have to seek contracts with other suppliers, due to the smaller volume with which	This would not significantly contribute to the objective, as it would not be materially different from current market arrangements.

		they will be testing the market.	
4B	This allows distributors to seek alternative supply in relation to a high enough volume to attract competitive offers, but also gives suppliers a reasonable degree of volume certainty.	There is less certainty around the amount supplied, and the volume discounts for the exclusive supply may be lower.	This would promote competition by giving new entrants greater opportunities to access existing market volumes than 4A, and give distributors more bargaining power.

Z proposed that the prescribed maximum percentage for the purposes of section 18 of the Fuel Industry Act be set at 90 to 95 per cent. It linked this to its proposal above that two year maximum contract terms would be long enough, noting that if distributors were able to go to market that often, they would be less concerned about exclusivity. However, most distributors were supportive of both the five year term and the 80% maximum percentage.

Some submitters argued that wholesale customers should be able to contract 100% of their fuel volume in instances where both parties agree. Given the provisions of the Act, distributors will not be able to contract to 100% exclusive supply but should be able to buy 100% from one supplier if they choose to.

Procedures for dispute resolution

Section 46 of the Act deals with disputes between a wholesale supplier and a reseller relating to the rights and obligations set out in subpart 1 (terminal gate pricing regime) or subpart 2 (wholesale contract terms) of Part 2 of the Act. It enables parties who are unable to resolve a dispute to refer the dispute to mediation and follow the process set out in the regulations. If the parties are unable to resolve a dispute by mediation then they may refer the dispute to arbitration.

Some of the features of the dispute regime have not been controversial, are technical or procedural in nature, and are not expected to impose significant costs on suppliers or resellers. In these cases, alternative options have not been set out in detail, although advantages and disadvantages have been set out in Annex A.

Option 5: Dispute Resolution Schemes

Section 47 of the Act enables the regulations to prescribe one or more dispute resolution schemes for the purpose of section 46.

We considered a range of options ranging from using an existing scheme, such as schemes in the electricity or telecommunications industries, to having a mandatory, voluntary or ad hoc scheme. In this case the status quo of no dispute resolution scheme is an option.

Option 5A: – Mandatory membership scheme

A scheme would be created with one centralised scheme provider that would be mandatory for fuel industry participants. The scheme would require members to pay a fixed amount based on size or market share etc. and then pay a smaller variable amount per case. The scheme provider would set the rules of the scheme.

A variation on this approach would be to use an existing scheme, but.

Option 5B – Broker system / independent nominating authority

An independent nominating authority could be appointed for the purposes of nominating a mediator / arbitrator under the Fuel Industry Act. This would be an independent and unbiased third party to appoint and appropriately qualified dispute resolver. Once a dispute arises participants approach the independent nominating authority who will then appoint a suitable mediator / arbitrator.

Option 5C – Ad Hoc Scheme

Industry participants could use a scheme provider to provide once off dispute resolution services. No membership would be required, so no membership fees. Would only pay per dispute.

Option	Benefits	Costs	How would this option deliver the objectives?
5A	<p>Having a centralised decision maker means experience can be built up by the provider in dealing with specific types of disputes.</p> <p>Pre- funded scheme’s reduces the cost per use. Members of schemes will usually pay a fixed amount based on market share, or size etc. and then play a smaller variable amount per case. This makes it easier for smaller players to participate, where otherwise it might be too expensive.</p>	<p>Setting up a scheme is timely and resource intensive. If there is a low volume of disputes then might not be worthwhile.</p> <p>If there is a low number of disputes / no disputes, then it might be more expensive for parties who don’t have dispute, where otherwise they would be paying nothing.</p> <p>The scheme provider might not necessarily have the expertise required.</p>	<p>It would contribute to promoting competition by balancing the negotiating power of large and small businesses. It would be costly to set up and maintain, if the number of disputes is low, and consumers would likely ultimately bear the cost.</p>
5B	<p>Less time consuming and resource intensive than a scheme to set-up.</p> <p>If there are a low number of disputes then could be more costs effective for industry participants.</p>	<p>Is likely to be more expensive than a scheme which often aims to have a low marginal cost of use.</p> <p>Doesn’t enable the same build-up of</p>	<p>Would be cost effective for industry participants.</p>

	An independent nominating authority should be well placed to know who the appropriate available person is to act as the mediator.	experience that a scheme provides. Won't have any oversight of the number of disputes and types of disputes the new regime is generating etc. Doesn't address issues of a power imbalance.	
5C	Might be more affordable for industry if a low number of disputes are generated. Wouldn't be as time consuming to set-up.	It could be very expensive using a scheme on a one-off basis. Doesn't enable the build-up of experience that a mandatory scheme provides. Won't have any oversight of the number of disputes and types of disputes the new regime is generating etc.	It would contribute to promoting competition by balancing the negotiating power of large and small businesses However, using a scheme on a one off basis can be very expensive.

The MTA considered that the preferred option did nothing to redress the imbalance in bargaining between smaller businesses and large suppliers.

We discussed this issue the Government Centre for Dispute Resolution, the Arbitrators and Mediators Association of New Zealand (AMINZ) and Resolution Institution. They all considered that the procedure outlined in the Act with the detail in the regulation is the most appropriate type of dispute resolution mechanism required for this industry, the type of disputes and volume of disputes likely to arise.

The availability of mediation is in itself a way to reduce costs, and there is also the option of the going to the Dispute Tribunal.

In Australia, which operates a similar Terminal Gate Pricing regime, a review of their dispute scheme found that the service had averaged 1.5 mediations per year. It is hard to estimate how many disputes that might result in mediation in New Zealand. However, based on the Australian regime and what we have been told by industry participants so far, we expect that the volume of disputes likely to be taken to mediation would be low. If this were to be the case then the investment to create a new scheme with a centralised decision maker or even to expand the jurisdiction of an existing scheme to take on these issues might not be warranted.

Options to facilitate informed consumer choice

The Act introduces requirements for the display of the price of fuel at retail fuel sites to assist consumers to compare prices, thereby promoting competition in the fuel market.

The purpose of the consumer information requirements is to provide transparency in retail fuel prices so that end users are able to make informed purchasing decisions.

The regulations may prescribe:

- the fuel types and kinds of retail fuel sites the regulations apply to
- the price information that must be displayed in relation to the relevant fuel types
- the circumstances in which the information must be displayed
- the form and manner in which the information must be displayed
- any information that must not be displayed.

Section 21 of the Act provides that the purpose of the consumer information requirements is to provide transparency in retail fuel prices so that end users are able to make informed purchasing decisions.

Section 22 of the Act requires a retailer, or the person responsible for displaying information at a retail fuel site, to comply with any requirements prescribed by the regulations.

The approach to regulations applying to consumer information that was suggested during consultation was broadly supported and most of the suggested changes were technical in nature. As with other matters of this kind, the more technical aspects where limited options emerged during consultations are dealt with in Appendix A.

Option 6: Types of retail fuel the consumer information requirements should apply to

We have identified 2 options for the types of retail fuel the consumer information requirements :

Option 6A: if a retail site retails more than one grade of premium fuel (e.g. 95 and 98 octane), then only the most common grade of premium fuel price (95) should be displayed.

Option 6B: (preferred) 91 octane, diesel, all grades of premium petrol prices should be displayed.

Both options would exclude low volume fuels such as LPG.

Option	Benefit	Cost	How would this option deliver the objectives?
Option 6A	Less busy price boards, and less customer confusion.	Customers won't be able to compare the price of 95 and 98 from the same supplier, which could be important	It would not deliver the objectives. The absence of all premium fuel prices on these boards makes it harder for

		to their purchasing decision.	customers to shop around for the best price, which may adversely affect competition, prices and margins for premium fuel.
Option 6B	Retail customers would have full access to information about premium fuel prices before they pulled into a service station.	Where 95 and 98 prices are shown (along with other prices), price boards could contain a lot of information for consumers to digest when driving past.	Requiring the display of all premium fuel prices will enable all users of any grade of fuel the ability to compare prices, which will promote informed consumer choice.

Option 7: The kinds of retail fuel sites the consumer information regulations apply to

We have identified 2 options for the kinds of retail fuel sites the consumer information requirements should apply to :

Option 7A: (preferred) The consumer information regulations should apply to all retail fuel outlets, except sites (truck stops) which primarily service large trucks, sell largely diesel, and at which most transactions are with a fuel card at a pre-negotiated price.

Option 7B: the consumer information regulations should apply to all retail fuel outlets (including truck stops), except for those operated by single site operators.

Option	Benefit	Cost	How would this option deliver the objectives?
Option 7A	This would be a relatively simple rule to administer, but it would exclude sites (truck stops) where the display of information is not relevant to the customer base (because prices are pre-negotiated).	It may benefit some market participants more than others, as not all suppliers have the same range of retail outlets. There may be issues where sites do not clearly fit into the exclusion for truck stops.	It would provide consumers with information about fuel prices on a very comprehensive basis, as the only sites that would be excluded would be those at which consumers do not depend on price displays to make choices. It would allow consumers to more easily compare prices and make more

			informed purchasing decisions.
Option 7B	The exclusion would mean that fewer costs are imposed on small, family operators who operate single sites.	Some high volume sites could be captured, including those with the brands of major supplier. There are potentially hundreds of single site operators, it could mean that a high number of sites are excluded.	It would not deliver the objectives as it could exclude too many sites meaning that consumers have more limited access to information about fuel prices.

Option 7B reflects submissions made by Mobil.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

- *Comment on relationships between the criteria, for example where meeting one criterion can only be achieved at the expense of another (trade-offs)*

The purpose of the Act is to promote competition in engine fuel markets for the long-term benefit of end users of engine fuel products. This is the key criterion that applies to all options.

The purpose of sub-Part 3, Consumer Information Requirements, is to provide transparency in retail fuel prices so that end users are able to make informed purchasing decisions.

We have identified some more generic criteria:

- regulatory options are proportionate to the harms identified
- regulatory options are certain and predictable, and do not impose any more costs than necessary to achieve the objectives.

3.3 What other options have been ruled out of scope, or not considered, and why?

We are not aware of any options that are permissible under the Act that have been ruled out of scope or not considered. Options that have been raised by stakeholders have been considered. Some options that were warmly advocated for earlier in the consultation have not been raised recently, and we have put less weight on those.

The MTA has strongly advocated for the ability of dealers to terminate contracts after a prescribed period, and to have limits on exclusive supply, as is the case with distributors. However, the Act does not allow the regulations to provide for these elements for dealers.

We have not considered arguments from submitters further when we believed that they were based on a misunderstanding of the Act.

Section 4: Impact Analysis

	No action	Option 1	Option 2A	Option 2B	Option 3A	Option 3B	Option 3C	Option 4A	Option 4B
		Excluding 98 octane and above, and bio- or ethanol-blended petrol from the terminal gate pricing regime	Minimum supply amount: 30,000 litres per week for diesel and regular petrol, and 30,000 litres per month for premium 95 petrol	A minimum supply amount sufficient to service uncontracted demand	A maximum duration of 5 years, after which the contract can be terminated with reasonable notice	A maximum duration of 2 years, after which the contract can be terminated with reasonable notice	A maximum duration of greater than 5 years, after which the contract can be terminated with reasonable notice	Maximum of 95% of the distributor's annual requirement for engine fuel exclusively sourced from the wholesale supplier	Maximum of 80% of the distributor's annual requirement for engine fuel exclusively sourced from the wholesale supplier
Promote competition	0	++ Lowers barriers to entry and expansion in wholesale market	++ Lowers barriers to entry and expansion in wholesale market	++ Lowers barriers to entry and expansion in wholesale market	++ Lowers barriers to entry and expansion in wholesale market	++ Lowers barriers to entry and expansion in wholesale market	0	0	++
Incentives to innovate and invest in markets for specified engine fuels	0	+ Doesn't compromise incentives to invest	0 N/A	0 N/A	0 N/A	0 N/A	0 N/A	0 N/A	0 N/A
Proportionate regulation	0	++ Only regulates the fuels necessary to provide a competitive offer	++	+	++	+	0	++	++
Certain and predictable regulation	0	0	+	+	+	+	+	++	++
Overall assessment	0	5	5	4	5	4	1	4	6

	No action	Option 5A	Option 5B	Option 5C	Option 6A	Option 6B	Option 7A	Option 7B
		Mandatory dispute resolution scheme	Broker/ independent nominating authority	Ad hoc scheme	If retail site retails more than one grade of premium fuel, only most common premium fuel price must be displayed.	Regular, diesel and all grades of premium fuel prices must be displayed	Price display obligations would apply to all retail fuel outlets except truck stops	Price display obligations would apply to all retail fuel outlets except those operated by single site operators
Promote competition	0	+ Lowers barriers to entry and expansion in wholesale market	+ Lowers barriers to entry and expansion in wholesale market	+ Lowers barriers to entry and expansion in wholesale market	+ Promotes price competition by providing timely and comparable price information. However, it doesn't apply to all premium fuels.	++ Promotes price competition by providing timely and comparable price information, including all premium fuels.	++ Promotes price competition by providing timely and comparable price information	+ Promotes price competition by providing timely and comparable price information. However, a large number of sites may be excluded from the requirement.
Consumers well informed	0	0 N/A	0 N/A	0 N/A	+ Requiring the display of most premium fuel prices will better enable users to compare prices, and this will promote greater price transparency and informed consumer choice.	++ Requiring the display of all premium fuel prices will enable all users of any grade of fuel to compare prices, and this will promote greater price transparency and informed consumer choice.	++ Provides timely and comparable fuel prices	+ Provides timely and comparable premium fuel prices. However, a large number of sites may be excluded from the requirement.

					However, it doesn't apply to all premium fuels.			
Proportionate regulation	0	-	-	-	+	++	++	+
Certain and predictable regulation	0	0	0	0	++ Regulation is clear and on what must be displayed	++ Regulation is clear and on what must be displayed	++ Regulation is clear and on what must be displayed	+ Not obvious to consumers who single site operators are so may be confusing.
Overall assessment	0	0	0	0	5	8	8	4

Key:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

Preferred options

MBIE recommends that the following combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits. As with the discussion of options, the conclusion highlights the main strategic choices when considering the parameters of the regulations, while also recording the more narrowly technical recommendations discussed in Annex A.

Terminal gate pricing regime:

98 octane and above, and bio- or ethanol- blended petrol should be excluded from the regime

95 premium may not be a substitute for 98 premium for some motorists, and this may limit the effectiveness of making premium fuel available under the regime. However, its limited presence in the market suggests that even major suppliers consider that supplying 95 premium is sufficient to compete for motorists seeking premium fuel. A new entrant could make a competitive service offering with diesel, regular petrol and 95 octane petrol. Excluding these fuels supports proportionate regulation.

The sale of these lower volume fuels is also a point of competitive difference between the industry participants, and including them in the regime at this point could lessen incentives to invest in specialised supply chains and storage facilities.

The Australian regime does include a wider range of premium fuels. However, having considered the impact on incentives to innovate and invest in markets for specified engine fuels (as required by the Act), it is our view that a departure from that regime is justified in New Zealand. Scale of supply is smaller in New Zealand.

Excluding 98 octane and above, and bio- or ethanol-blended petrol or diesel remains our preferred option.

It is likely that bio- and ethanol- blended fuels in particular will become more important and less “niche” over time, so MBIE proposes to review the market periodically to check whether regulations should be made extending the regime to these fuels.

The minimum supply amount and period should be:

- **30,000 litres (a tanker load) per week by specified location for regular diesel and regular grade petrol.**
- **30,000 litres per month by specified location for premium 95 octane petrol**

These figures represents the minimum that must be supplied in situations of low inventory, and the amounts identified in this option should still be substantial enough to support additional competition in those situations without compounding or complicating fuel

shortages, or alternatively increasing holding costs. This would support proportional regulation.

In response to the arguments made by the MTA about the inadequacy of the amounts in the context of a new contractual regime freeing up demand, we note that:

- The minimum supply amount will not determine the amount available in the system as a whole – it represents the amount that will be available at ports where inventories are sufficiently low that a supplier needs the requested fuel for contract customers and retail outlets.
- The minimum supply amount recognises that there will be situations of inventory constraint, and that requiring high minimum amounts to be available in such circumstances creates risks of supply disruption, or could increase holding costs which would be passed on to consumers.
- Distributors, who are likely to have the most significant impact on competition, did not appear to be concerned about this issue.
- It is unclear how much spot supply will be required. Some submitters expected that most supply would remain contracted, but on improved terms and conditions because of the option to seek alternative contracted supply (as well as spot supply).

This aspect of the legislation is not present in the equivalent Australian regime, so there are no grounds for comparison with how it is operationalised.

This option provides a balance between availability of a reasonable amount of fuel to resellers and avoiding imposing unreasonable costs on suppliers. However, there should be regular reviews of whether the minimum supply amount is adequate.

Consideration was also given to requiring the minimum supply amount to be available at each terminal at each specified location, rather than at each specified location. However, the above option avoids unnecessary complexity, which could arise from setting different minimum offtakes by both fuel type and location. This could be reviewed if the infrastructure sharing arrangements lapsed at a terminal.

Other more technical recommendations in relation to the TGP regime are:

Requirements for publicly posting the terminal gate price

The terminal gate price should be posted by each wholesale supplier:

- by bulk storage facility by specified engine fuel that the supplier has a right to draw at that facility;
- with the price in cents per litre, on an ambient temperature basis²;
- specifying the time when the price is posted; and
- covering all costs incurred behind the terminal gate in supplying the fuel (i.e. taxes, charges and throughput fees, as relevant) but excluding amounts charged for additional services (e.g. delivery beyond the terminal gate or fuel card services).

The wholesale supplier must:

²Ambient temperature means the assessment of the volume of a declared petroleum product by reference to the number of litres that the declared petroleum product occupies, or would occupy, at a temperature of 15°C.

- post the current terminal gate prices on their own website in a way that is accessible to public; and
- post a phone number or contact details for making requests.

Requirements relating to requests by resellers

The reseller should be required to make the request at the wholesale supplier's designated contact point and during working hours. If requested by the wholesale supplier, the reseller should be required to advise:

- the bulk storage facility, the specified engine fuel, and the amount in litres that is requested;
- the estimated time of pick-up of the fuel, which must be within operating hours for the bulk storage facility;
- the proposed means of payment;
- that the driver has met any relevant site access requirements; and
- that the vehicle has any relevant certification.

Documents to be provided to reseller for each sale at terminal gate price

No regulations should be prescribed for this purpose at this time

Providing for pre-certification of resellers

Each wholesale supplier must prepare and publish on its website a procedure for pre-certification and what evidence would be required to enable the wholesale supplier to assess the resellers' ability to pay and comply with health and safety requirements.

If the wholesale supplier is not the operator of the bulk storage facility for which they have a right to draw fuel, they should ensure that the relevant site requirements are readily accessible.

The minimum amount that a reseller can request to purchase

5,000 litres for each specified engine at each bulk storage facility is an appropriate minimum purchase amount.

The period over which fuel demand is forecast

The period over which forecast demand shall be set for the purposes of assessing whether there are grounds to refuse supply is a rolling 28 day period. It does not need to be differentiated by port or engine fuel.

Any other grounds for refusal to supply

A wholesale supplier should be able to refuse to supply if there is an event outside the control of the wholesale supplier that make it unreasonable for the wholesale supplier to be required to supply at that bulk storage facility. Examples include fuel contamination, industrial action, or force majeure grounds.

Requirements relating to notices

The following information should be included in the notice provided to the Commerce Commission where a wholesale supplier has refused supply on the basis of its own requirements:

- the grounds for refusal to supply;
- any evidence to support a conclusion that the fuel was required to meet the wholesale suppliers' contractual obligations or forecast demand for its own sales; and
- advice on whether the wholesale supplier has supplied the minimum supply amount in the relevant period.

The notice must be provided to the Commerce Commission within 5 working days of the refusal to supply.

The grounds for the refusal to should be included in the notice provided to the reseller who has been declined supply on the grounds that the supplier requires it for its own outlets or contracted customers. If requested by the reseller, this notice must be provided in writing to the reseller on the day that the request is declined.

Wholesale contract regime

The maximum wholesale contract duration should be 5 years, after which the contract can be terminated with reasonable notice.

Most submitters supported the preferred option, and this widespread support among both suppliers and distributors indicated that a reasonable balance had been struck between the two contracting parties thereby promoting competition while also supporting proportional, stable and predictable regulation. A shorter period would impose transaction costs on distributors and create significantly more uncertainty for suppliers.

Maximum percentage of distributor's annual requirements that can be subject to exclusivity in a wholesale contract should be 80%

In general, this was not a controversial provision. It would promote competition by breaking the pattern of long-term exclusive contracts which has characterised the industry. This will increase contestability and increase the scope for entry into the wholesale market. It will support proportional regulation by avoiding increasing volume risks and transaction costs unreasonably for both resellers and suppliers. A larger proportion would significantly reduce the benefit from restricting exclusivity, and have little impact on long term lock in arrangements.

Other more technical recommendations in relation to the wholesale contract regime are:

Transparent pricing under fixed wholesale contracts

All significant elements of the pricing method must be identified in the fixed wholesale contract and how they fit together as a pricing method must be explained; and if the pricing method is a formula then the formula must be set out in the fixed wholesale contract.

Varying a transparent pricing method

The pricing method can be changed to another pricing method only when sufficient notice has been given and both parties agree to the new pricing method.

Dispute resolution system

No dispute resolution scheme should be provided for in regulations

Given indications from submitters about the low likelihood of the new regime generating a large number of disputes, we consider it would be consistent with proportional regulation not to regulate for a dispute resolution scheme at present. This should be kept under review.

The availability of mediation under the regime provides a low cost alternative to court action without requiring a costly scheme at this stage.

Other more technical recommendations in relation to dispute resolution are:

General procedures

Mediation may be initiated by either party by writing to the other party and identifying the dispute which is being suggested for mediation within one month of the dispute arising. The other party must respond within 10 days of receiving the dispute notice.

The parties should have the opportunity to agree on a mediator between themselves and if they can't agree then an independent nominating authority will appoint a mediator or arbitrator with qualifications and experience relevant to the dispute for them. Independent nominating authorities will be appointed by the Minister of Energy and Resources.

The mediator should, as a minimum requirement, be appropriately qualified and certified by either of the two professional bodies for alternative dispute resolution practitioners in New Zealand: the Arbitrators and Mediators Institute of New Zealand (AMINZ) or the Resolution Institute; which also intend to act as independent nominating authorities. The nominated mediator should have appropriate experience and/or training and the ability of the parties to pay should be considered in making the appointment.

Mediation must proceed within one month of all notices having been served as long as the parties have agreed on the mediator and the procedure for mediation.

If resolution is reached on the whole or part of a dispute, the terms of the settlement must be recorded in a settlement agreement. The settlement agreement will be binding on the parties. A party may enforce the settlement agreement by way of proceedings in a court of competent jurisdiction.

If the parties are unable to resolve the dispute at mediation within any timeframe prescribed by regulations made under this subpart, either party may refer the dispute to arbitration. The prescribed timeframe should be 60 days from the date the dispute notice is served.

The regulations do not need to set out a procedure for arbitration. It is already covered in the Arbitration Act 1996.

Split of costs

Each party to the dispute:

- 1.1 Pays their own costs and expenses in relation to the mediation; and

- 1.2 Splits the fees and expenses of the mediator 50/50.

Improving consumer information

91 octane, diesel, all grades of premium petrol prices should be displayed, but not low volume fuels such as LPG.

The Commerce Commission considered in their market study that the absence of premium fuel prices on these boards makes it harder for customers to shop around for the best price, which may adversely affect competition, prices and margins for premium fuel. Requiring the display of all premium fuel prices will enable all users of any grade of fuel the ability to compare prices, and this will promote greater retail price transparency and informed consumer choice.

The consumer information regulations should apply to all retail fuel outlets, except sites (truck stops) which primarily service large trucks, sell largely diesel, and at which most transactions are with a fuel card at a pre-negotiated price.

While there may be differences in business models which mean that some suppliers do not benefit as much as others from the exclusion of truck stops, there is still no point in requiring price displays where customers are indifferent to the information (because they have pre-negotiated prices). The exclusion of single site operators, while a simple decision rule, could exclude many sites and reduce the benefits for consumers. In any case, because of the regulations will not specify detailed requirements for price boards (as discussed in Annex A), the costs imposed by including small operators will not be significant.

Other more technical recommendations in relation to consumer information are:

The information in relation to the prices of engine fuels that must be displayed

The “standard retail price” - the price that is available to all consumers – should be displayed on price boards.

The circumstances in which the information must be displayed

Prices for the regulated fuels must be displayed at any time the fuel is available for purchase at a site.

The form and manner in which the information must be displayed

The regulations should:

- 1.3 require the regulated information to be displayed on a “price board”;
- 1.4 not dictate the type of price board; and
- 1.5 require that the prices must be visible to passing motorists.

Information that must not be displayed

Cabinet agreed in February 2020 [CAB-20-MIN-003] that monitoring of discounts is the most appropriate response at this time.

No regulations are prescribed for this purpose at this time.

Stakeholders' views

There was a relatively broad degree of consensus in the most recent submissions on the regulations. The strongest objection to the proposed approach came from the Motor Trades Association (MTA), which submitted that:

- the regulatory settings for the proposed minimum supply amount that fuel suppliers must make available from terminals appear to be set far too low to serve, or stimulate, competitive wholesale market /Terminal Gate fuel requirements.
- the regulatory settings in terms of other grounds on which fuel suppliers could decline to deliver fuel even within the minimum supply amount allow too much “wriggle room” for manipulation by vertically integrated oligopoly suppliers.
- the default position (when MBIE is not in a position to impose detailed regulatory settings in some areas, based on the information available at this stage) should still require market participants to deal with each other fairly and reasonably (rather than not regulating at all).
- the draft dispute resolution regulations are extremely disappointing, as they do not in any sense provide for dispute resolution processes that will in any way level the playing field amongst market participants in a way that will ultimately “promote competition”.

However, in our view:

- the default requirement under the terminal gate pricing regime is that the wholesale supplier must supply the reseller with the requested amount;
- the level of the proposed minimum supply amount recognises that while some fuel must be available to competitors when inventories are low, requiring the supplier to supply the requested amount in that circumstance would create unacceptable risks;
- the areas where few specifications have been set are low risk, and other stakeholders (including those who have had the most impact on competition to date) have not shown the same level of concern, and
- the dispute resolution regulations provide for low cost options, which are appropriate when current indications are that volumes of disputes will be low

Have non-regulatory options been considered?

In this context, non-regulatory options are generally not available, as market participants become subject to obligations which require detail to be specified in regulations. However, where there are realistic alternatives to regulation, these have been considered and in some cases adopted. For example, consultation revealed that most market participants did not consider that specifying the type of documentation required for terminal gate price transactions was useful, so no regulations have been made in that case.

Has relevant overseas experience been taken into account?

Wherever possible the experience from other countries, particularly Australia, has been considered in the development of these options. For example, Australia has long experience with an Oil Code for a terminal gate pricing regime, which has been evaluated and found to be a successful low cost mechanism to facilitate competition in the wholesale fuel market.

Many Australian States have also introduced regulations requiring the display of premium petrol prices on price boards and prohibiting the display of discounted prices; we have drawn on this experience where relevant.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks</i>	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>	Evidence certainty (High, medium or low)
--------------------------------	---	--	---

Additional costs of proposed approach, compared to taking no action

Regulated parties	We expect the fuel companies to incur medium one-off costs in setting up the terminal gate pricing regime, renegotiating wholesale supply arrangements as required and changing price boards. Ongoing costs would be low.	Medium.	Low
Regulators	The regulator will incur medium costs from monitoring and enforcing the regime.	Medium	Low
Wider government	Fuel consumption may impose some environmental costs, but this would be limited due to fuel demand not being price sensitive.	Low	Low
Consumers	Some of the increased costs to regulated parties may be passed on to consumers in higher fuel prices. This is likely to be a small amount spread over a large number of customers.	Low	Low
Other parties	We do not foresee increased costs to other parties.	Low	Low
Total Monetised Cost	<i>Without accurate quantifiable evidence, it is not possible to provide an estimate.</i>	<i>Unknown</i>	<i>Unknown</i>

Non-monetised costs	<i>We anticipate a medium increase in overall costs, mainly from compliance and enforcement.</i>	<i>Medium</i>	<i>Low</i>
----------------------------	--	---------------	------------

Expected benefits of proposed approach, compared to taking no action			
Regulated parties	Regulated parties seeking to grow market share and compete may benefit from a more active wholesale market.	Medium	Low
Regulators	The regulator will have better information to monitor the sector and greater ability to intervene to protect competition.	Medium	Low
Wider government	There are social benefits from improving affordability of essential items.	Low	Low
Consumers	Consumers benefit from stronger competition through lower prices, better services and more convenience.	Low	Low
Other parties	We are not aware of increased benefits to any other parties.	Low	Low
Total Monetised Benefit	<i>Without accurate quantifiable evidence, it is not possible to provide an estimate</i>	<i>Unknown</i>	<i>Unknown</i>
Non-monetised benefits	<i>We anticipate a medium level of benefits from increased competition and more transparency in the fuel sector over the longer term.</i>	<i>Medium</i>	<i>Medium</i>

5.3 What other impacts is this approach likely to have?

There are some potential other impacts with the proposed options. For example:

- Reduced profitability of the major fuel companies may lead to reduced incentives to invest and rationalisation of fuel supply in high cost regions. Moderate to low impact. This is minimised by the preferred options focusing on avoiding imposing unnecessary costs on suppliers while promoting competition.
- Lower fuel prices may increase demand for fuel and detrimentally impact on the environment. Low impact. Initial analysis of emissions impacts shows that the per annum impacts of the preferred proposals will be below the CIPA threshold of 250,000 tonnes per annum. Analysis shows that emissions impacts could range from between approximately 11 Kt CO₂ per annum for a price change of 1cpl (cents per litre) in the short run, through to approximately 219 Kt CO₂ per annum in the long run for a price change of 12cpl.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

The preferred package of options for further work is compatible with the Government's 'Expectations for the design of regulatory systems'.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

The Commerce Commission is responsible for enforcement of the Act and regulations. The new functions for the Commission will not be able to be met within existing baselines. The Commission is currently seeking additional funding through a budget bid.

The regulations come into force on 11 August 2021, with the exception of:

- regulations applying to existing wholesale contracts (other than those relating to the maximum term of contracts), which come into force on 11 August 2022, and
- regulations applying to display of pricing information at retail fuel outlets, which come into force on 11 February 2022.

The regulations will also provide for alternative dispute resolution for the industry to resolve disputes about the application of the terminal gate pricing regime and the changes to wholesale supply contracts. Existing mediators or arbitrators with suitable qualifications and experience will carry out this function, and the parties to the dispute may appoint the mediator (or arbitrator, as relevant) in the first instance.

6.2 What are the implementation risks?

There are some implementation risks from unexpected shocks to the system, recently demonstrated by the impact of Covid 19, and from the pace of longer term changes to fossil fuel consumption, driven by the electrification of the transport system. In addition, the suppliers' gross margins have been quite volatile recently, rising sharply during the initial Covid lock-downs, but more recently trending down for some fuel grades.

These risks will be managed through an enhanced regime for information disclosure to enable MBIE and the Commission to monitor the impact of the regime. This regime will be implemented through another set of regulations, which is subject to different timelines. The regime can be calibrated through revision of the regulations if necessary.

A number of choices of options have been made noting that outcomes should be monitored and parameters re-calibrated if necessary.

There are also risks if the regulators are not adequately resourced to carry out the new functions, such as monitoring and enforcement. This regime requires effective monitoring of industry practices to maintain incentives for competitive conduct and allow timely intervention if the regime is not working as intended.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

A key feature of the Fuel Industry Act is an enhanced regime for information disclosure to enable MBIE and the Commission to monitor the effectiveness of the regime and to regularly publish summaries and analysis of the results. This will be implemented through

another set of regulations, which is subject to different timelines. The impacts of the new arrangements will be identified by this means.

MBIE continues to regularly publish information on industry margins.

MBIE will also monitor industry practice with loyalty programmes and advertising or displays of discounted prices.

7.2 When and how will the new arrangements be reviewed?

It is envisaged that the regulations would be reviewed on a periodic basis, the first being after it has been in effect for a suitable period (e.g. two to three years). The monitoring regime will also identify issues and enable earlier amendment of the regime if required. Stakeholders will be able to raise concerns directly with MBIE or Ministers.

Some issues will need to be more actively reviewed as noted in this document.

Annex A

Terminal Gate Pricing Regime

Posted terminal gate prices.

Subsection 13(1)(b) allows the making of regulations prescribing requirements relating to posting terminal gate prices.

This option proposes that the terminal gate price should be posted by each wholesale supplier:

- by bulk storage facility by specified engine fuel that the supplier has a right to draw at that facility;
- with the price in cents per litre, on an ambient temperature basis;
- specifying the time when the price is posted; and
- covering all costs incurred behind the terminal gate in supplying the fuel (i.e. taxes, charges and throughput fees, as relevant) but excluding amounts charged for additional services (e.g. delivery beyond the terminal gate or fuel card services).
- on their own website in a way that is accessible to public; and
- include a phone number or contact details for making requests.

How would this option address the problem?

Advantages

The proposed approach expresses the terminal gate price as simply as possible and allows easy comparison between suppliers. It is similar to what is required in Australia, where wholesale suppliers post terminal gate prices inclusive of GST and excise taxes, and generally do not itemise these costs.

Disadvantages

Some submitters argued that each cost element that is included should be specified. However, that is likely to compromise the comparability of the prices.

Some submitters suggested a common repository (such as an MBIE-operated website) to allow wholesale suppliers to post prices in one place. However, this would impose additional costs to operate the regime.

How would this option achieve the objective?

A simple approach would promote competition by allowing for easy comparison between suppliers, while imposing fewer costs on suppliers. Requiring posting on suppliers' own websites preserves accessibility and transparency while avoiding the additional costs of a common repository.

Requirements relating to resellers.

Section 10 of the Act confers a right for a reseller to request a wholesale supplier to supply, at a bulk storage facility and on the day of the request, an amount of a specified engine fuel at its terminal gate price.

Subsection 13(1)(c) allows the making of regulations prescribing requirements relating to requests by resellers under section 10.

This option proposes that if requested by the wholesale supplier, the reseller should be required to advise:

- the bulk storage facility, the specified engine fuel, and the amount in litres that is requested;
- the estimated time of pick-up of the fuel, which must be within operating hours for the bulk storage facility;
- the proposed means of payment;
- that the driver has met any relevant site access requirements; and
- that the vehicle has any relevant certification.

How would this option address the problem?

Advantages

The requirements are narrow in scope, avoiding costs for both parties.

Disadvantages

Parties should be able to work out most of the detail themselves. However, some basic matters should be specified to avoid unnecessary costs being imposed on the supplier.

How would this option achieve the objective?

The requirement for the reseller to advise the matters listed above will promote competition by improving the efficiency of the process, and by limiting the scope of the reseller to impose unnecessary costs on the supplier.

Documents to be provided to resellers for each sale at the terminal gate price.

Subsection 11(3) of the Act provides that a wholesale supplier must comply with any terms and conditions set in regulations made under subsection 13(1)(d) relating to the documentation that must be provided by wholesale suppliers to resellers for each sale at the terminal gate price.

This option proposes that no regulations are prescribed for this purpose at this time.

How would this option address the problem?

Advantages

During consultation submitters did not support regulations setting out documentation requirements. Generic law covers the sale of goods and this provides sufficient protections.

The benefits of specifying further document requirements do not outweigh the costs to suppliers.

Disadvantages

There are no obvious disadvantages from the approach at this time.

How would this option achieve the objective?

It would not impose unnecessary costs on the supplier, which would not have commensurate benefits for the reseller.

Pre-certification of resellers.

Section 13(d)(ii) of the Act allows the making of regulations providing for pre-certification to allow wholesale suppliers to determine before supply if the reseller is likely to pay or to meet health and safety requirements.

This option proposes that:

- each wholesale supplier must prepare and publish on its website a procedure for pre-certification specifying what evidence would be required to enable the wholesale supplier to assess the resellers' ability to pay and compliance with health and safety requirements.
- if the wholesale supplier is not the operator of the bulk storage facility for which they have a right to draw fuel, they should ensure that the relevant site requirements are readily accessible.

How would this option address the problem?

Advantages

Some submitters have raised concern about suppliers setting anticompetitive or unreasonable requirements. This option would require terms and conditions for pre-certification to be fair and reasonable, and provide a standard – industry practice – for assessing this. Resellers would also have clarity about what information is necessary to be pre-certified, but suppliers would have some discretion to determine procedures without being inefficiently constrained by requirements which are not consistent with industry practice.

Disadvantages

By not specifying the detailed procedure for pre-certification, there may be a risk that suppliers could impose unreasonable requirements. However, detailed specification creates a risk of imposing inefficient procedures that depart from industry practice without significant pro-competitive benefits. In addition, both suppliers and resellers have an interest in developing an efficient pre-certification system.

How would this option achieve the objective?

It would provide an effective minimum standard for pre-certification without inefficiently constraining the discretion of suppliers, who in any case have a strong interest in ensuring that standards for creditworthiness and health and safety are met.

The minimum purchase amount.

Subsection 12(1)(a) of the Act provides that one of the reasonable grounds to refuse to supply a reseller is if the amount of specified engine fuel requested is below some minimum purchase amount (or de minimis) prescribed in regulations made under subsection 13(1)(e).

How would this option address the problem?

Advantages

A wholesale supplier should not have to supply small amounts of fuel as this would impose undue costs. This also creates certainty for resellers. The minimum purchase is set at a level that gives the reseller some flexibility if it needs to obtain amounts smaller than a standard tanker load.

Disadvantages

Requiring the wholesale supplier to supply amounts of fuel smaller than a standard tanker load may impose costs on the supplier, as it may be below efficient scale supply (as submitted by Gull). However, most suppliers were not concerned by this requirement.

How would this option achieve the objective?

The amount is set at a level that avoids imposing unreasonable demands on the supplier but gives the reseller some flexibility to seek supply of amounts smaller than a standard tanker load if required by its business needs.

The period over which fuel demand is forecast.

Subsection 12(1)(e) of the Act sets out that it is a reasonable ground for a wholesale supplier to refuse supply if the wholesale supplier requires the requested amount:

- To meet its obligations under its contracts with end users or its fixed wholesale contracts; or
- To meet forecast demand, over a prescribed period, for the specified engine fuel sold by the wholesale supplier at retail fuel sites to end users. This would include fuel sold at the wholesale suppliers' own retail fuel sites (which includes truck stops) and fuel sold at a fuel site under an agency agreement with the wholesale supplier.

Subsection 13(1)(f) provides for regulations to be made to specify the period over which demand should be forecast for this purpose.

This option proposes that the period over which forecast demand shall be set for the purposes of assessing whether to restrain supply is a rolling 28 day period, and that it does not need to be differentiated by port or engine fuel.

How would this option address the problem?

Advantages

The period would be short enough so that forecasts would be relatively accurate, which would provide more certainty to resellers seeking supply. The system would be more practical than the current forecast period used by the majors to manage situations of tight supply.

Disadvantages

This prescribed period could impose additional costs by forcing changes to refuelling schedules. However, suppliers were not concerned about this requirement.

How would this option achieve the objective?

This would provide certainty for resellers without imposing additional costs by forcing changes to refuelling schedules.

Any other grounds for refusal to supply.

How would this option address the problem?

Subsection 13(1)(g) of the Act provides that regulations can be made specifying any other grounds for a wholesale supplier to refuse supply to a reseller.

This option proposes that a wholesale supplier should be able to refuse to supply if there are grounds outside of the control of the wholesale supplier, that are not inconsistent with this subpart, that make it unreasonable for the wholesale supplier to be required to supply at that bulk storage facility. Examples include fuel contamination, industrial action, or force majeure grounds.

Advantages

This gives the supplier some ability to refuse supply on grounds that are legitimate but were not anticipated at the time the regulations were promulgated.

Disadvantages

This may give the supplier scope to refuse supply on grounds that are ultimately found to be inconsistent with the sub-part.

How would this option achieve the objective?

It would provide an efficient means of dealing with unanticipated issues, without imposing costs inappropriately on a supplier.

Requirements relating to notices.

Subsections 12(2) and (3) of the Act set out obligations on a wholesale supplier to provide or publish a notice in certain circumstances. The two circumstances are:

If the wholesale supplier anticipates that the specified engine fuel at the bulk storage facility will be required to meet its obligations under contracts with end users or fixed wholesale contracts or forecast demand over the prescribed period; and

If the wholesale supplier has supplied the prescribed minimum amount to an independent reseller (or independent resellers) during the prescribed period.

Subsection 13(1)(j) allows regulations to be made relating to these notices, relating to the information that must be contained in the notice, the form and manner in which it must be published or provided, or to whom it must be provided.

This option proposes that a wholesale supplier should provide a notice to the Commerce Commission when fuel from any wholesale supplier was not available due to a shortage. The following information should be included in the notice provided to the Commerce Commission:

- In the circumstance where a wholesale supplier has refused supply under section 12(1)(e), the period over which the wholesale supplier expects to refuse supply on the grounds of needing to meet their own forecast or contracted fuel requirements.
- In the circumstances where a wholesale supplier has met the minimum supply obligation under section 12(2), that the wholesale supplier has met that obligation.

The notice should be submitted to the Commerce Commission within 20 working days of the circumstance arising.

How would this option address the problem?

Advantages

It would allow the Commission to monitor the frequency of supply issues and their impact on the regime.

Disadvantages

It would not provide transparency to resellers about supply issues. However, it was highlighted in submissions that public notification could provide a signal to other wholesale suppliers to raise prices.

How would this option achieve the objective?

It would provide some scrutiny of the use by suppliers of a potentially controversial reasonable excuse not to supply the requested amount of fuel. This level of transparency would discourage gaming by suppliers.

Wholesale contract regime

Transparent pricing under fixed wholesale contracts

Section 16(1)(a) of the Act requires wholesale suppliers to ensure that their fixed wholesale contracts specify the method by which the price is to be calculated. Section 20(1)(a) allows for regulations to be made relating to the specification of a pricing method in a fixed wholesale contract for the purpose of section 16(1)(a).

The regulations cannot prescribe the exact method or methods by which the price of fuel supplied under wholesale contracts is to be calculated. They can only specify how the transparent pricing method is expressed. This allows participants to choose from a range of pricing methods.

This option proposes:

- that all significant elements of the pricing method must be identified in the wholesale contract and how they fit together as a pricing method must be explained; and
- that if the pricing method is a formula then the formula must be set out in the wholesale contract.

How would this option address the problem?

Advantages

The Commission considered that any increased transparency that a TGP regime may provide is likely to be of value only if pricing terms in contracts are sufficiently certain and explicit.

This option would provide certainty and transparency as to how prices are calculated under the wholesale contract, while avoiding prescribing the methodology for how prices are set.

Disadvantages

This option does not unpack all the cost elements of the price method, as argued for by Waitomo. However, there was little further support for this approach from other current or potential wholesale customers.

How would this option achieve the objective?

Greater certainty and transparency around how the wholesale price is calculated will improve the ability of distributors and dealers to both obtain better prices at the wholesale level, and compete with the majors at the retail level.

Varying a transparent pricing method

Section 20(1)(b) of the Act provides for regulations to set the circumstances whereby the pricing method in a fixed wholesale contract can be varied.

This option proposes that the regulations provide that the pricing method can change to another pricing method only when sufficient notice has been given; and both parties agree to the new pricing method.

How would this option address the problem?

Advantages

The Commission considered that any increased transparency that a TGP regime may provide is likely to be of value only if pricing terms in contracts are not subject to change at the discretion of one party.

There would be no capacity for the majors to unilaterally vary prices under this option. If wholesale suppliers had the unilateral ability to change pricing methods, this would leave dealers and distributors bearing the risks associated with any increase in wholesale margin.

Disadvantages

The majors may find it more difficult to accommodate price fluctuations caused by underlying oil prices. However, the resellers should not be obliged to bear the risks resulting from this volatility.

How would this option achieve the objective?

The regulations would avoid leaving dealers and distributors bearing the risks associated with any increase in the wholesale margin.

Dispute Resolution

Determine procedures for dispute resolution

Section 46 of the Act deals with disputes between a wholesale supplier and a reseller relating to the rights and obligations set out in subpart 1 (terminal gate pricing regime) or subpart 2 (wholesale contract terms) of Part 2 of the Act. It enables parties who are unable to resolve a dispute to refer the dispute to mediation and follow the process set out in the regulations. If the parties are unable to resolve a dispute by mediation then they may refer the dispute to arbitration.

Under section 47 of the Act regulations can be made:

- prescribing procedures for the purpose of section 46 (dispute arising from subpart 1 or 2 of Part 2 must be referred to mediation);

This option proposes that:

- mediation may be initiated by either party writing to the other party and identifying the dispute which is being suggested for mediation within one month of the dispute arising. The other party must respond within 10 days of receiving the dispute notice.
- the parties should have the opportunity to agree on a mediator between themselves and if they can't agree then an independent nominating authority will appoint a mediator or arbitrator with qualifications and experience relevant to the dispute for them.
- the mediator should, as a minimum requirement, be appropriately qualified and certified by either of the two professional bodies for alternative dispute resolution practitioners in New Zealand: the Arbitrators and Mediators Institute of New Zealand (AMINZ) or the Resolution Institute. The nominated mediator should have appropriate experience and/or training and the ability of the parties to pay should be considered in making the appointment.
- mediation must proceed within one month of all notices having been served as long as the parties have agreed on the mediator and the procedure for mediation.
- parties are not able to refuse to engage in the process by not responding to a notice of dispute or refusing to agree to appoint a mediator.
- if resolution is reached on the whole or part of a dispute, the terms of the settlement must be recorded in a settlement agreement. The settlement agreement should be binding on the parties. A party may enforce the settlement agreement by way of proceedings in a court of competent jurisdiction.

Section 46(4) provides that if the parties are unable to resolve the dispute at mediation within any timeframe prescribed by regulations made under this subpart, either party may refer the dispute to arbitration.

This option proposes that the prescribed timeframe is 60 days from the date the dispute notice is served. Once this period has expired, if the dispute is to be referred to arbitration, this must be done within 10 days.

The regulations do not need to set out a procedure for arbitration as it is already covered in the Arbitration Act 1996.

How would this option address the problem?

Advantages

This avoids procedural complexity.

Disadvantages

Smaller businesses may still be reluctant to use such a service

How would this option achieve the objective?

This sets out a simple and accessible way to access low cost dispute resolution.

It also allows for plenty of flexibility for the parties to determine with their mediator how the mediation will run, but includes triggers for advancing and ending the process so that the process doesn't drag on forever.

Cost split

Section 47(1)(b) of the Act enables the regulations to specify or set out a method of calculation for how mediation costs incurred under section 46 must be split between the parties.

This option proposes that for mediation each party to the dispute:

- Pays their own costs and expenses in relation to the mediation; and
- Splits the fees and expenses of the mediator 50/50.

How would this option address the problem?

This would provide a fair and straightforward way of dealing with costs.

Advantages

This is typically standard practice for commercial disputes in New Zealand.

Once the mediator has been appointed, both parties will agree to the mediation procedure. At this point they can choose to deviate from the default split if they choose. They may also agree this at any other time, including in the settlement agreement. This allows some flexibility in terms of how the costs are split.

Disadvantages

During consultation one submitter disagreed with splitting the fees 50/50 and requested differential treatment and differential funding of dispute resolution processes. They were concerned about costs to smaller players in the industry. However, there is a requirement that the parties must agree on the mediator so if the mediator is too expensive for one party they can refuse to agree to that mediator. There is also a requirement that if the independent nominating authority is to appoint the mediator they must consider affordability of the mediator when appointing a mediator.

There is also the option of the going to the Dispute Tribunal, if smaller participants in the industry still found the costs of mediation prohibitive. This tribunal is a low-cost option as it has low application fees and only allows lawyers at members' discretion.

How would this option achieve the objective?

The availability of mediation is in itself a significant way to reduce costs, as opposed to going through the courts. This would support competition by increasing the bargaining power of smaller players.

Consumer information regime

The information in relation to the prices of those engine fuels that must be displayed

Section 24 of the Act enables regulations to be made prescribing the information in relation to the price of engine fuels that must be displayed.

This option proposes that the regulations require the display of the 'standard retail price' of the required fuel types. This would be the price at which the fuel can be purchased by any member of the public, prior to the application of any additional promotional or loyalty discount available to customers meeting specified eligibility criteria e.g. holding an eligible price discount voucher.

How would this option address the problem?

Advantages

The purpose of the consumer information requirements is to provide transparency in retail fuel prices so that end users are able to make informed purchasing decisions.

The display of the 'standard retail price' of the required fuel type, provides transparency on the price available to all consumers, and enables consumers to more easily compare prices with nearby outlets, and have the information available to them so that they are able to make more informed purchasing decisions.

This was supported by all submitters during consultation.

Disadvantages

There are no obvious disadvantages.

How would this option achieve the objective?

This would create a clear and easily implementable rule which would provide the key information of interest to consumers, making comparing prices easier and aiding them to make more informed purchasing decisions.

The circumstances in which the information must be displayed

Section 24 of the Act enables regulations to be made prescribing the circumstances in which the information must be displayed.

This option proposes that prices for the regulated fuels must be displayed at any time the fuel is available for purchase at a site. The regulations will allow for circumstances outside of a retailer's control that might mean that prices cannot be displayed for a period of time e.g. power outages.

How would this option address the problem?

Advantages

The rule is simple and easy to follow, and is flexible in circumstances outside of a retailer's control. It means the information that consumers need to make more informed purchasing decisions is available to them when they need it (i.e. when the site is open).

Disadvantages

There are no obvious disadvantages.

How would this option achieve the objective?

It will assist consumers in making more informed purchasing decisions at any time the regulated fuel is available for purchase at a site.

The form and manner in which the information must be displayed

Section 24 of the Act enables regulations to be made prescribing the form and manner in which the information must be displayed.

This option proposes that the regulations should:

- not be overly prescriptive on the form and manner in which the information must be displayed, but should require the regulated information to be displayed on a "price board";
- not dictate the type of price board; and
- require that the prices must be visible to passing motorists.

How would this option address the problem?

This would enable consumers to have access to better information without imposing unnecessary costs on retailers.

There is also a requirement to comply with other relevant bylaws such as those set by NZTA or councils to do with advertising signs, to address any health and safety concerns.

Advantages

Any specific regulation around the type of price board, order of grades, size and colour would significantly increase compliance costs and would likely require substantial upgrading of existing price boards. Most submitters did not support regulations being too prescriptive on the form and manner of which the prices must be displayed i.e. the layout size and colour of

the prices. The cost of modifying price boards or putting up a new price board could disproportionately impact smaller sites.

Disadvantages

Businesses will determine the best way within their financial capability to meet the regulations. This may mean that information is presented in diverse ways, which may create customer confusion. However, by providing that 'standard retail prices' are displayed on a price board, and these prices are visible to passing motorists, the key information to assist motorists make decisions will be available.

How would this option achieve the objective?

Consumers would be able to see the pricing information without driving into the retail outlet, which will help them more easily compare prices and make more informed purchasing decisions. In addition the regulations would not impose unnecessary costs on retailers.

Information that must not be displayed

Section 24 of the Act enables regulations to be made prescribing the information that must not be displayed

This option proposes that no regulations be made, but that instead MBIE monitors evolving industry practices for displaying discount pricing for fuel on price boards and whether this is causing consumer detriment or impeding competition.

How would this option address the problem?

Advantages

Monitoring of evolving industry practices is a proportionate response, given that the Commission reported that the display of prices on price boards that consumers can pay if they participate in a retailer's discount and loyalty programme is still evolving. Some fuel retailers, including Z Energy and BP, are starting to display discounted prices and in many cases these discounts include minimum or maximum purchase terms. The impact of this practice on consumers is unclear.

The Government can act in a timely manner (by making regulations) if detriment is found.

The Commission recommended monitoring discounting practices instead of prohibiting their display at this time.

Cabinet agreed in February 2020 [CAB-20-MIN-003] that monitoring of discounts is the most appropriate response at this time.

Disadvantages

A focus on discounting, and the desire of consumers to obtain a perceived 'bargain', can distort consumer purchasing decisions. Consumers may focus on the amount of the discount and not the base price. In addition, loyalty programmes that offer non-fuel price rewards, such as airpoints, make it difficult for consumers to compare fuel prices. Moreover, some displays of discount pricing could be misleading, such as if the purchase terms are not clearly displayed so as to confuse the consumer as to their entitlement to the discount or if the 'discount price' is actually the everyday price.

If such distortions and confusion were taking place, this option would permit them to continue. However, given the changes reported by the Commission, and given that the other rules being implemented in relation to the display of prices may affect current practice, it would be risky to intervene strongly at this point. Monitoring may also in itself constrain less responsible behaviour in relation to discounting.

How would this option achieve the objective?

This option would enable regulators and the government to act quickly if consumer detriment and impediments to competition are identified, but would not impose unnecessary costs if such features are not present in the market.