Economic Development, Science and Innovation Select Committee
Fuel Industry Amendment Bill

23 January 2023

Introduction

bp New Zealand welcomes the opportunity to provide feedback to Members of the Economic Development, Science, and Innovation Select Committee on the Fuel Industry Amendment Bill.

This Bill amends the Fuel Industry Act 2020 to provide a right of price regulation, subject to a recommendation from the Commerce Commission, to intervene in wholesale fuel markets by regulating the price at which suppliers are able to offer wholesale customers terminal gate prices.

As a fuel wholesaler in the New Zealand market, we believe this Bill poses a potentially significant regulatory settings change for the New Zealand fuels market and therefore requires an appropriate opportunity to participate and engage.

The purpose of bp New Zealand's submission is to express our initial view and address aspects we believe require further engagement to accurately understand and assess the potential impact for bp.

bp does intend to make a supplementary submission with further detail of our recommendations once we receive clarification on these aspects, we believe require further engagement.

Observations

1. The Commerce Commission's first Quarterly Fuel Monitoring Report (published November 2022) presented its findings on trends and activity during the three months to June 2022, and noted market changes since the market study was completed in December 2019. As expected this showed that the market is working competitively.

   The summary of findings state:

   - ***"The market is volatile, and there have been significant domestic structural changes***

     Global and domestic fuel markets have been volatile over the past two and a half years, and retail fuel prices are currently high relative to long-term average prices. International events have affected crude oil and refined product prices worldwide, and significant structural changes within the domestic sector in the first half of 2022 have altered the domestic operating environment. The full impact of this volatility on New Zealand's domestic fuel sector may only become apparent over time.

   - ***Importer margins in the June 2022 quarter were lower than at the time of the market study***

     Importer margins are the difference between retail prices and the cost of importing fuel into New Zealand. Importer margins cover the domestic costs of operating terminal storage facilities, distribution costs (such as trucking and *pipeline costs), and retail costs, as well as aggregate importer, wholesale and retail profit margins.*

Trends in importer margins are one indicator of how competition is evolving over time. Falling margins indicate that competition has intensified.

We have compared importer margins for the June 2022 quarter against those observed during the market study (which reviewed 2018 data). This comparison indicates that importer margins in the June 2022 quarter were lower than observed during the market study:

- *In the June 2022 quarter, average importer margins were 21 New Zealand cents per litre (cpl) for diesel, 22 cpl for Regular 91, and 34 cpl for Premium 95.*
- *In 2018, comparable margins were 31 cpl for diesel, 30 cpl for Regular 91, and 40 cpl for Premium 95.*
- *On this measure, since the period considered in the market study, margins have fallen by: 32% for diesel; 27% for Regular 91; and 15% for Premium 95."*

2. As communicated in earlier submissions on the Fuel Industry Act and Retail Fuel Market Study, bp's view is that the retail fuel market is highly competitive and operates on a long cycle, and is currently undergoing a period of significant change, with flat to declining market volume occurring alongside a significant number of new sites being opened by independent operators as well as investment and a recent entry at a terminal level. It's our view that this investment would not be happening if the wholesale and retail markets were not operating in a competitive way.

3. **From the available Bill Amendment information, it is bp's view that it is not currently possible to determine at which point a regulatory backstop would be triggered, therefore we are unable to make an informed assessment on the potential impact to the business.** As we have stated in earlier submissions, we agree a clear and transparent process must be followed if backstop regulation is to be triggered but it is unclear as it stands currently as well as why the backstop regulation is actually required.

   17.1 of the cabinet paper states: The Commission can, on its own initiative, or at the request of the Minister, <u>consider whether TGPs have been persistently higher than would be expected in a workably competitive market,</u> after taking into account views from interested persons.
   29c of the Amendment to principal Act to enable price regulation of terminal gate prices states: ***When terminal gate prices may be regulated***
   The Commission may make a recommendation that price regulation should be imposed on terminal gate prices only if it is satisfied that the relevant wholesale supplier has posted terminal gate prices, for the relevant specified engine fuel and bulk storage facility, <u>that were not consistent with what would be expected in a competitive market</u>.

   bp notes this change referenced in 21 of the cabinet paper. *"I have also agreed to make refinements to the test referred to in paragraph 17.1 above. Instead of having the Commission consider whether TGPs have been persistently higher than would be expected in a competitive market, instead price regulation may only be imposed if the relevant wholesale supplier has posted TGPs, for the relevant specified engine fuel and* *bulk storage facility, that were not consistent with what would be expected in a competitive market."*

It is unclear to bp why this 'measure' has changed and how either of these 'measures' would be assessed. How will the components of Terminal Gate Price be assessed as not being competitive and how would 'expected' be defined and assessed? What 'measures' will the Minister use and how will these differ to those of the Commerce Commission?

4. Similar clarification is required for 17.5 of the cabinet paper. *The Commission may, of its own accord or in response to a complaint referred or made to it, investigate whether <u>a pricing principle or methodology has been correctly applied by one or more wholesale supplier</u>. If the Commission finds that a pricing principle or methodology has been incorrectly applied, it may apply to the Court to impose a pecuniary penalty.*

   Recommendation 48 states: The Minister of Energy and Resources recommends that the Committee:

   - ***4. note** that Cabinet previously agreed [CAB-22-MIN-0300] that if the Minister receives recommendation from the Commerce Commission (the Commission) to regulate one or more wholesale supplier with price regulation, and the Minister considers that regulation is in the public interest, the Minister may make a recommendation to the Governor General to make an Order in Council, which would provide that one or more wholesale supplier is subject to regulated terminal gate prices (TGPs) for the specified fuel type or types, at a particular terminal or terminals, for a specified time;*
   - ***5. note** that the Minister of Energy and Resources has agreed that if the Minister receives recommendation from the Commission to regulate one or more wholesale supplier with price regulation, and if, in the opinion of the Minister, all or any of the TGPs recommended by the Commission should be regulated, the Minister may make a recommendation to the Governor-General to make an Order in Council, which would provide that one or more wholesale supplier is subject to regulated TGPs for the specified fuel type or types, at a particular terminal or terminals, for a specified time*

   bp seeks to understand how this would be implemented. What actions are possible and what form of intervention would occur? If only one party is present in a location, how would an assessment be made on what is expected? What timeframes are considered for a specified time?

5. bp notes that this Bill is slated to be enacted by mid-2023. bp believes this Bill poses a potentially significant regulatory settings change for the New Zealand fuels market and therefore requires an appropriate opportunity to participate and engage. We are concerned about this timeframe given the significant aspects we believe require further engagement in order to understand and assess the impact for bp.

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