

13 September 2019

Keston Ruxton
Manager, Price-Quality Regulation
Commerce Commission
44 The Terrace
Wellington 6011

via e-mail: marketstudies.submissions@comcom.govt.nz

Dear Keston

Submission on the market study into the retail fuel sector: Draft Report

BusinessNZ is pleased to have the opportunity to provide a submission to the Commerce Commission on its draft report entitled 'Market Study into the Retail Fuel Sector', published on 20 August 2019.¹

Introduction

The purpose of the study is to consider and evaluate whether competition in the retail fuel market is promoting outcomes that benefit New Zealand consumers over the long-term. In delivering the draft report, the Commerce Commission has raised, and proposed recommendations to a number of issues that it considers are hindering the fuel market working well for consumers over the long term.

As we did with the BusinessNZ Energy Council submission on the draft terms of reference, before providing any comments, we would once again like to express our disappointment at the short timeframe for responses. This has made it difficult for participants to respond as robustly as they would have preferred, in support of achieving the best possible outcomes for the inquiry and the market.²

Comments

Rather than getting into the technical detail of the fuel market (preferring to leave this up to others who are more directly involved in it), as we have done in all of our recent submissions on the issue of market studies we use this submission to stand above the specifics and raise some meta-issues the Commerce Commission need to

¹ Background information on BusinessNZ is attached in Appendix One.

² In our submission to the Transport and Infrastructure Committee dated 15 June 2018, we suggested that the time allowed for comment on a draft report be at least 8 weeks in order to ensure that the time required for the Commerce Commission does not erode the private sector's ability to consider and submit on a draft report.

be mindful of going forward and inevitably, as it moves into others.. BusinessNZ suggests the consideration of the following points:

- we agree it is important that fuel prices and profitability reflect normal rates of return over time, as can be expected in a workably competitive market. However, in light of the potential breadth and magnitude of the regulatory responses set out by the Commerce Commission we remind the Commerce Commission of the precedent or demonstration effect of this, its first market review under its new legislative power. BusinessNZ has previously expressed considerable concern about the exercise of this new power and the risks it entails;
- more specifically, the widespread risks that could emerge from the Commerce Commission assessing the 'appropriate' rate of return of businesses who operate in contestable markets (as opposed to natural monopoly businesses). This could manifest in the dampened desire to invest due to the ex post risk of returns being expropriated by regulatory fiat not just in the fuel market, but across the entire economy;
- the need for the Commerce Commission to recognise and respect the sanctity of private contracting arrangements and private property rights. In its absence, the Commerce Commission's regulatory responses could impact on established property rights where the value of a person's property may be significantly impacted upon. Property rights and their enforcement are a fundamental pillar of a market economy. Without reasonable security from confiscation by the state or others, the incentive on individuals and businesses to invest and build up productive assets is severely weakened; and
- we were somewhat surprised to see the Commerce Commission say in the draft report:

" a cost-benefit analysis of each option lies beyond the scope of the study and has not been undertaken."

and again:

"We are not required to undertake cost-benefit analysis,"³

We appreciate that there is a line to be drawn between the market inquiry undertaken by the Commerce Commission, and the public policy making role of the Ministry of Business, Innovation and Employment (MBIE), but we wonder how the Commerce Commission can assess or even rank the efficacy of its recommended options without completing at the least a high-level initial cost-benefit analysis. Without this, we believe that the entire process, including the public policy making element will become highly problematic (with the risk of options being presented to MBIE that do not subsequently make the cut, and expectations management). This could call the process into disrepute.

³ Commerce Commission report entitled 'Market study into the retail fuel sector Draft report', ISBN 978-1-869457-20-4, Project no. 14.07/16465 PUBLIC version, paragraphs 8.44 (page 239) and B12 (page 250).

When stepping into the realm of regulating contestable markets, these issues are non-trivial, and we expect them to be at the forefront of the Commerce Commission's mind when completing its analysis.

We urge the Commerce Commission to continue to engage deeply and often with the market participants to ensure that the issues we have raised in this submission are appropriately managed. We look to the Commerce Commission running an exemplary process that can be held up as a model for future market inquiries and we look forward to engaging with the Commerce Commission as this study unfolds.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Carnegie', written in a cursive style.

John Carnegie
Executive Director, Resources and Infrastructure
BusinessNZ

APPENDIX ONE: ABOUT BUSINESSNZ

[BusinessNZ](#) is New Zealand's largest business advocacy body, being able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Employers Otago Southland](#)
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [BusinessNZ Energy Council](#) is a group of New Zealand organisations taking on a leading role in creating a sustainable energy future for New Zealand
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods



www.businessnz.org.nz

BusinessNZ undertakes research, analysis and advocacy on behalf of all business in New Zealand. Its analysts work in economic, environmental, employment and skills disciplines and provide submissions on current and proposed legislation affecting the environment for business and New Zealand's growth. BusinessNZ champions policies leading to:

- international competitiveness
- balanced employment, economic and environmental legislation
- compliance and tax levels that foster growth and investment
- innovation and skill development
- an environment fostering the production of high value goods and services

Research activities include producing monthly surveys of the manufacturing and services sector – the BNZ-BusinessNZ Performance of Manufacturing Index (PMI) and BNZ-BusinessNZ Performance of Services (PSI) as well as other surveys on business issues. In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).