

Annex to Regulatory Impact Statement: Government response to Commerce Commission retail fuel sector market study.

7.1 Additional policy proposals

- *What additional proposals are being made in relation to this regulatory approach?*
- *What is the impact of the additional proposals and how do the proposals relate to the current preferred options?*

During drafting of a Fuel Industry Bill to implement the preferred options outlined in the impact statement: Government response to Commerce Commission retail fuel sector market study, issues relating to implementing preferred options have arisen which necessitate minor changes in approach in some areas. These additional proposals and their impacts are outlined below.

These additional proposals relate to the issues and the preferred options identified in the existing regulatory impact analysis. Making these proposed changes does not alter the overall preferred options for the government response to the Commerce Commission market study. Making the changes also does not affect the overall costs and benefits of the identified preferred options. The proposed changes in policy approach should result in a small decrease to the overall costs of the regime. The proposed changes and their impacts are as follows:

- As part of implementation of a terminal gate pricing regime, it is proposed that wholesale suppliers at a storage terminal be required to provide information on whether forecast supply at that terminal is not sufficient to meet forecast demand in a prescribed time period. Relative to the status quo, making this change will increase transparency, providing greater clarity and certainty on fuel availability for those seeking supply under the terminal gate pricing regime. The costs for wholesale suppliers to provide this information are minimal, as wholesale suppliers will be notifying information that they already hold to those seeking supply.
- In relation to wholesale contracts, a change is proposed to provide a list of terms that may limit the ability of dealers or distributors to compete in legislation rather than regulations. As is currently the policy, wholesale suppliers must not enter into, or offer to enter into a wholesale contract that contains such provisions. Relative to the status quo, this change in approach will increase certainty and stability for stakeholders by removing the ability for a Minister to add, change or remove examples from a list. Adding or removing examples would make it difficult for market participant to rely on stable contractual provisions. Costs of implementation are the same as under the status quo.
- A change is also proposed to make the maximum timeframe for implementation of some wholesale contract provisions the same for both new and existing contracts: 12 months from the date the Bill receives Royal assent. The provisions in question allows some wholesale customers to terminate wholesale contracts if they exceed a specified period. Timeframes for implementation of these provisions had been set at 12 months for new contracts and 24 months for existing contracts. This provision is designed to increase wholesale competition for distributor contracts which are otherwise tied up in very long term contract periods. Setting a long period for implementation would defeat the point, and could allow existing contracts to run well past the proposed maximum term (beyond which the contract could be terminated, under the provisions of the Bill). 12 months still provides reasonable notice of requirements, while ensuring implementation of options is timely.
- A change is proposed to enable the Commission to issue a notice for corrective action in relation to non-compliance with consumer information requirements. This change will enable the Commerce Commission to provide a notice requiring a person who has not complied with an information requirement to remedy the compliance or ensure that non-compliance is not continued or repeated. Relative to the status quo, this change provides the Commerce Commission, with a lower level, lower cost mechanism to seek compliance with requirements. Without this change, there would be no avenue for the Commission to

seek compliance with an engine fuel information requirement without recourse to the court.

- Some amendments to the purposes of information disclosure are proposed. In particular:
 - to amend one of the purposes from 'enabling assessment of the regulatory regime' to 'ensuring information is available to assess whether the purpose of the Act is being met. It was considered that assessing the regulatory regime is more appropriately a role for a policy agency, rather than an assessment that could be made by the Commerce Commission as part of data gathering/implementation. Information on whether the purpose of the Act is being met will enable policy assessment of the effectiveness of the regulatory regime, but will not require the Commission to assess the regime it is administering.
 - to remove 'enabling enforcement of the regime' as a purpose of information disclosure. This change is being made to address any potential human rights issue relating to the human right to be free from unreasonable search or seizure. It would be inappropriate for the information disclosure regime to explicitly support enforcement purposes. While information gained through the regime could indicate whether there may have been a contravention (which could lead to further investigation), the information disclosure regime should be focussed on enabling the monitoring of fuel markets and understanding whether the purpose of the Act is being met.

We have consulted with government agencies and they were supportive of the changes proposed above. The proposed changes do not alter the arrangements for implementation and operation of the regime outlined in the existing impact analysis. Monitoring and evaluation of changes will be covered by the monitoring and evaluation arrangements outlined in the existing impact analysis.