

MTA Submission

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

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Tēnā koutou

Submission Name: Fuel Industry Amendment Bill

This submission is from:
Motor Trade Association (Inc)
PO Box 9244
Marion Square
Wellington 6141

The contact person in respect of this submission is:

Name: Mathew Alderdice
Title: Sector Manager – Energy and Heavy Vehicles
Phone: +64 4 381 8843
Email: mathew.alderdice@mta.org.nz

Thank you for the opportunity for MTA to provide comment on the Fuel Industry Amendment Bill regarding the views of and its effect on the automotive industry.

Ngā mihi



Brian Anderton
Advocacy and Stakeholder Manager

Introduction

The Motor Trade Association (Inc) (MTA) was founded in 1917 and has maintained over 100 years of trust with the NZ motoring community. MTA currently represents over 3,800 businesses within the New Zealand automotive industry and its allied services. Members of our Association operate businesses including automotive repairers (both heavy and light vehicle), collision repair, service stations, vehicle importers and distributors and vehicle sales. The automotive industry employs approximately 60,000 New Zealanders and contributes around \$3.5 billion to the New Zealand economy.

Submission overview

MTA welcomes the opportunity to submit on the Fuel Industry Amendment Bill (The Bill). The amendments broadly consider how a price regulation may be imposed, the inquiry process the Commerce Commission (the Commission) must undertake when reviewing terminal gate prices and determination the Commission must make about whether regulation (if any) should apply.

MTA is surprised about the introduction of Price Regulation for Terminal Gate Prices (TGP), as the 2019 Fuel Market Study undertaken by the Commerce Commission did not recommend such an intervention. In principle, MTA sees the implementation of Price Regulation of TGP as playing a role in improving wholesale market competition. However, MTA continues to be frustrated that changes to the Fuel Industry Act 2020 (The Act) do not address the concerns of small and medium-sized independent retailers in the fuel market. Neither the Act nor the proposed Bill acknowledge the importance of these retailers as a vital part of the wholesale market, retail fuel supply chain, and the market that serves consumers. MTA's submission therefore urges the Government to continue to consider the concerns of small to medium size enterprises (SME) in both the Bill and any further amendments to the Act.

MTA's position on the Fuel Industry Act and the fuel market reforms surrounding it

The essence of the findings in the Fuel Market Study that helped shape the Act were *"... an active wholesale market does not exist in New Zealand, and this is weakening price competition in the retail market. Our final report includes recommendations for improving competition primarily in the wholesale market, as well as recommendations to help consumers make more informed purchasing decisions."* MTA previously made submissions to the market study, and in terms of implementation of its recommendations in terms of the Act and the Fuel Industry Regulations (The Regulations) that help govern the Act.

It is MTA's position that the fuel market reforms that have surrounded the Act free up only part of the wholesale fuel market, involving only the medium-large scale market participant distributor resellers (intermediate wholesalers), but not the very large number of independent SME retailer reseller market participants which buy from the same wholesale market. MTA has continued to lobby to Government that these SME need to be included in the scope of these reforms.

MTA is therefore disappointed to see that this first tranche of proposed amendments to the Act still does not take the opportunity to address the issues relating to SME involvement in the fuel market.

The Government thus far has failed to recognise the significance of large numbers of SME independent retail fuel suppliers as a key element of the retail fuel supply chain and ultimately of the market that delivers to consumers. The changes outlined in the Bill in respect of TGP, appear to be following a similar pattern, regulating the pricing between the provider and wholesaler, but failing to consider how SME independent fuel suppliers will be impacted by these regulations.

It is worth noting that a substantial proportion of fuel is delivered to consumers through SME independent fuel suppliers, under a variety of brands. These SME fuel retailers are significant buyers, in many cases directly from both the multinational fuel majors and in other cases indirectly from (still fairly large) intermediate fuel resellers. The fuel market reforms usefully recognise that issues have arisen in the wholesale market, with substantial fuel suppliers imposing long term fixed exclusive supply contracts, on supplier-dominated, supplier-friendly terms. For example, the Act includes requirements for transparency in wholesale contracts (s16 of the Act) and some general restrictions on wholesale terms limiting competition (s19 of the Act) – mirroring broader competition law principles.

Currently, the Act does not require wholesale suppliers to pass on the benefits of the transparency and TGP pricing reforms to SME independent retailer resellers. Although contractual transparency and TGP pricing requirements may to some extent flow through the supply chain, the limited scope of both the Act and proposed Bill means that large numbers of SME independent retailers cannot (directly) access TGP fuel and pricing.

In contrast, the Act delivers significant contract terms protection to independent wholesaler resellers (often large entities) taking fuel from major international fuel suppliers, but not to independent retailer resellers (often smaller/SME entities) – even though those independent retailer resellers buy their fuel wholesale from either the same major international fuel suppliers or the independent wholesaler resellers. SME independent retailer reseller market participants and suppliers through those market participants therefore continue to be vulnerable to the existing pre-reform market forces.

This is particularly frustrating when one considers the results of the 2021 Commerce Commission Grocery Study Report. This report outlined a strong first step to seek to plug a substantial legislative/regulatory gap between big business and small business. It is therefore disappointing that the Government has not taken a similar approach in the context of the Fuel Industry.

MTA's position on the Fuel Industry Amendment Bill

MTA acknowledges that introducing this legislation does not necessarily mean price regulations will be introduced. However, given the introduction of these powers, the likelihood of regulations being introduced does increase. It is MTA's hope that the price of fuel will not be set based on political pressures, rather by efficient market forces. This aside however, the changes outlined in the Bill to the TGP regime are generally commendable but will largely only have an impact in terms of improving delivery of the changes that have been made to the Act already under the existing fuel market reforms. In essence, these changes will largely only have a direct positive impact on wholesale sellers/resellers, (comprising the fuel majors and wholesale resellers) improving the TGP regime as it relates to those market participants.

More importantly however, it appears the Bill will have no impact, or limited impact, on the substantial part of the market that is served by independent SME retailer resellers, who will still be acquiring their fuel supplies through fuel majors and wholesale resellers, pursuant to one-sided onerous long term fixed term exclusive supply contracts.

As MTA understands, wholesale suppliers to independent SME retail resellers are still not obliged to deliver fair contract terms, or to pass on the benefits of access to (existing or improved) TGP pricing, to those resellers. Consequently, refinements in the Bill, particularly in terms of TGP pricing, are unlikely to have much impact on supply through to SME independent retailer resellers. Those resellers are likely to remain locked into long-term supply arrangements without the benefit of access to TGP pricing improvements. This will likely see SME independent retailer resellers either absorbing any negative economic outcomes or passing the cost on to consumers at the pump. The same will apply to other reforms, to the extent that they only refine the existing reforms without extending those reforms to independent resellers.

It is disappointing that – yet again – the amendments to the Act continue to overlook the important role of SME businesses in the fuel market and fuel supply chain. These independent retailer resellers comprise a significant proportion of the buying capacity from the wholesale market and sell a significant proportion of the fuel that is sold to end-users.

MTA is not seeking special treatment for these SME independent retailer reseller market participants, just equal treatment, alongside other resellers. A cornerstone of competition law is that equal even-handed treatment should be a given. But, despite all the progress in reforming the fuel market space, this process continues to be blind to the important role of SME independent retailer resellers.

The Bill as it stands appears to continue to create and sustain a market advantage for wholesale resellers over retailer resellers. Instead of just addressing the broader issues impacting on wholesale markets, and those selling and buying in those markets, the reforms continue to prefer and protect larger reseller entities at the expense of numerous SME independent retailer resellers, who have been the backbone of retail fuel supply for years.

Summary

In conclusion, it is disappointing that (particularly in the context of the grocery market study which has clearly “seen” the importance of SME supplier), SME independent retailer resellers remain unseen in the wider Fuel Industry reforms that encompass the Fuel Industry Act. MTA urges the Government to work with industry to ensure that these SME independent retailer resellers are included/considered in any amendments made to the Act going forward.

MTA appreciates the opportunity to submit on the Fuel Industry Amendment Bill



NATIONAL CONTACT DETAILS

Postal address: PO Box 9244, Marion Square, Wellington 6141

Phone: 0800 00 11 44 | **Email:** mta@mta.org.nz | **Website:** www.mta.org.nz