

NPD x Gull: The Case for Clearance

*Why blocking this merger entrenches the oligopoly ComCom was established to police.
Why Supporting this merger, respects Investors, who risk capital to support competition
& cements a creditable challenger who will be able to expand .*

About Monopoly Watch NZ

Monopoly Watch NZ (MWNZ) is a New Zealand evidence-based public policy analysis group. We study and comment on competition issues in capital-intensive utility and commodity industries. MWNZ draws on wide and varied experience from game theory economists and captains of industry to workers, consumers, and suppliers. It is our goal to provide evidence-based third-party commentary and policy solutions to failing and distorted market structures, to advance the public interests of all Kiwis.

Executive Summary

MWNZ urges the Commerce Commission to grant clearance for the proposed merger between NPD and Gull Petroleum. The combination creates a stronger, better-resourced challenger capable of meaningfully contesting the dominance of Z Energy, Caltex, and the newly launched U GO flanker brand. Blocking this merger would entrench the very oligopoly the Commission professes concern about, while denying New Zealand consumers the long-term pricing benefits of a scaled, independent fuel retailer. Market structure is the problem. The solution is real competition, and real competition requires challengers with scale. *The Commission knows better than most regulators, that creating competition in entrenched monopolistic and Oligopolistic markets is damn difficult , and an imperfect science (Hence the nonsense in Supermarket , Banking and Energy competition) , Supporting this merger respects the capital of genuine challengers and catalysts for change .*

Market Context

New Zealand's retail fuel sector is dominated by a small number of well-capitalised incumbents. Z Energy, following its Commission-approved merger with Caltex, commands the largest retail network in the country, substantially ahead of the next-largest competitor, BP. Z Energy has since launched U GO, a fighting brand specifically designed to undercut independent operators on price while leveraging the group's superior cost structure and network scale. The Commission allowed this. It now must be consistent.

NPD and Gull are two of only seven fuel retailers in New Zealand operating 100 or more retail sites. Even combined, the merged entity ranks third or fourth by retail footprint, still behind Z and BP in cost structure.

This is not a merger of equals absorbing a competitor; it is challengers consolidating to survive a market transformed by the Z/Caltex combination and the aggressive deployment of technology-driven retail formats and a new technology called EV.s which will in 15 years mean petrol stations become Black and White TVs .- redundant.

This merger is a vision come good as the ladder of investment of retailers consolidates into an enterprise that can advance infrastructure investment but also is fresh PE capital who will want to not milk old tech , but look at new tech inside a rapidly changing industry . It's the fantasy of the Minister of commerce, the ComCom & MBIE to have this sort of transaction taking place in the Supermarkets, Electricity or Banking industry

We urge the Commission to open up a file and research the purpose of U Go , essentially flanker brands are always a tool of incumbents to fight off challengers (See 2Degrees submissions on Skinny in 2011, 2013 , and 2014) . Note the MWNZ submissions to the Banking market study on “ why Banks flanker brands should not be leveraged in a challenger banking context “ Its unacceptable that the Commission can consider Z's position while it leverages flanker brands for the purpose of quarantining competition

Refuting Commerce Commission Concerns

1. Local Market Overlaps

The Commission has flagged concern about geographic areas where NPD and Gull sites are proximate. The relevant test is not whether two competitors are nearby. It is whether market structure falls below a competitive threshold. MWNZ doesn't know of local market does this merger produce a 3:2 or 2:1 reduction. A minimum of three independent operators remains in all affected areas.

The suggestion that NPD and Gull, acting independently or together, could become fat and lazy is inconsistent with competitive realities and the real investment challenge of building scale and further integration of infrastructure .. Z Energy, with U GO as its flanker brand, is a better-resourced and aggressive incumbent in every local market. There is no mechanism by which the merged entity could price lazily without losing share immediately to Z.

2. Pricing Conduct and Consumer Outcomes

. The AA supports this merger precisely because of that track record, because there is an audit trail of being the lowest price brand in a commodity market, So Does Monopoly Watch

There is no evidence, historical or structural, to suggest the merged entity would deviate from low-price conduct. Greater buyer power and supply chain efficiency from the merger gives the combined entity more room, not less, to compete aggressively on price.

We urge the Commission to check the merged capital structure, because its not a take over ,(with a component of goodwill , confusing capital costs) , it's a merger to build scale in a challenger .

3. Approver's Remorse and Consistency

The Commission approved the Z/Caltex merger., the Commission cannot credibly deny the same logic to challengers when they don't have the same market power or vertical integration strengths . To do so is to permanently entrench the oligopoly the Commission was established to police, allowing incumbents to grow through merger and brand deployment while blocking the only mechanism available to challengers: scale. MWNZ says this is not a sensible strategy for a regulator trying to fix broken markets .

4. Capital Formation and the Challenger Imperative

. There has been no Greenfields fuel retail investment and no private equity entry into the challenger segment in over two decades. If the Commission blocks this merger, it forecloses the only realistic path to capital formation for an independent competitor and with it, any prospect of sustained independent pricing pressure on Z Energy. How does the Commission expect challengers to take on oligopolies it is so unhappy with, if it will not allow them to compete at scale?

NZ is a desert of challenger investment for competitive business, Not since CVP financed 2 Degrees in 2008 & Ansett came to NZ in the 1980s has there been a decent block of capital allocated to a cartel break up in NZ

MWNZ expect the ComCom to secure understanding of the difficulty in securing challenger capital because their type of capital is needed urgently in

- 1) Supermarkets
- 2) Banking
- 3) Insurance
- 4) Airports
- 5) Electricity markets
- 6) Building Materials
- 7) Construction markets

We urge the Commission to actively discriminate in “ types of capital “ and look more closely at the EU Commissions Asymmetric competition regulation . Not only should the Commission approve this, but they should also open a file on U go flanker brand with a view to shutting it down and bringing some sort of Section 36 action against it ,

MWNZ Recommendation

The Commerce Commission should grant clearance for the NPD/Gull merger. The grounds are clear:

- No local market falls below a three-competitor floor post-merger.
- Both parties have a demonstrated, empirically verified record of low consumer pricing.
- The merged entity remains a distant third or fourth by cost structure. The competitive asymmetry that drives low-price behaviour is preserved.
- Blocking the merger denies challengers the scale needed to contest U GO, a flanker the Commission itself authorised.
- No alternative mechanism exists for independent operators to attract capital or achieve supply chain efficiencies sufficient to compete with Z.

Behavioural remedies will not fix structural problems. The Commission must allow challengers the structural tools to compete. Clearance is the right outcome for New Zealand consumers. We look forward to sharing more detail in cross submissions as this is an opportunity for NZ’s competition regulator to craft how competition can emerge in capital intensive industries .

Thank you for considering the position of Monopoly Watch NZ.

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Research Director

Monopoly Watch NZ (MWNZ)

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