

EXECUTIVE OFFICE



**Australian
Competition &
Consumer
Commission**

21st September 2017

Ms Kerryn Riseley
Executive Officer
Economic, Education, Jobs and Skills Committee
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Dear Ms Riseley

Inquiry into fuel prices in regional Victoria

The ACCC thanks the Victorian Parliament's Economic, Education, Jobs and Skills Committee for the opportunity to comment on fuel prices in regional Victoria.

Since December 2007, the ACCC has had Ministerial directions, under Part VIIA of the *Competition and Consumer Act 2010* (the Act), to monitor the prices, costs and profits relating to the supply of unleaded petroleum products in the petroleum industry in Australia.

From 2008 to 2014 the ACCC prepared annual petrol monitoring reports. Following a new Ministerial direction in December 2014, the ACCC now publishes quarterly petrol monitoring reports. These look at fuel price movements in all capital cities and around 190 regional locations across Australia, including 34 regional locations in Victoria.

The ACCC has also conducted four regional market studies - in Darwin, Launceston, Armidale and Cairns - under the new monitoring arrangements. These in-depth market studies aim to explain why petrol prices are higher in certain regional locations and where profit is being made in the petrol supply chain. The ACCC uses its mandatory information gathering powers to obtain relevant information for the studies. The ACCC is in the process of reviewing the overall lessons learned from these studies and how they may apply in other regional locations, including those in Victoria.

When analysing regional fuel prices it is important to note at the outset that comparisons of retail prices in regional locations need to be made over a period of time, such as monthly or quarterly. This is because there are substantial fluctuations in prices which can make short-term comparisons misleading.

For example, there are petrol price cycles in Melbourne, during which prices can vary by 25-30 cents per litre (cpl) from the bottom to the top of the price cycle. In contrast, prices in regional locations are broadly stable and do not change much over time. Therefore, it is not particularly meaningful to compare, as some motorists do, the low point of the price cycle in Melbourne with the price in a regional location at that same point in time.

The ACCC's quarterly reports and regional market studies indicate that petrol prices, and average profit per site, are generally higher in regional locations than in the larger cities.

The ACCC has identified four key factors that may contribute to higher fuel prices in regional locations. These are:

- a lower level of local competition
- lower volumes of fuel sold by retailers in the market
- the market's location, and
- lower convenience store sales.

The influence of these factors varies significantly between locations, meaning there may be substantial differences in prices between specific regional locations.

Prices tend to be higher where there is a lack of competition among retailers to drive prices downwards. For example, the ACCC found in its Cairns market study that the lack of a vigorous and effective price competitor in Cairns contributed to high retail prices. Conversely, the entry of a strong competitor with a discounting pricing strategy in nearby Innisfail in February 2016 led to retail prices being lower in Innisfail than in Cairns, despite the larger number of retailers operating in Cairns.

Overall operating costs, including rent and wages, are typically lower in regional locations than in the larger cities. However, the lower volume of fuel sold by retailers in regional locations limits their economies of scale and results in higher operating costs on a per litre basis. The ACCC's Armidale market study indicated that operating costs for E10 in 2014-15 were around 3 cpl higher for retailers in Armidale than in Sydney. These increased costs per litre contribute to higher fuel prices in regional locations.

Regional markets are typically located further from fuel terminals than the larger cities. This can increase freight costs for regional fuel retailers, as fuel must be transported further to regional retailers than their counterparts in the larger cities. Additionally, storage between terminals and regional locations may be required. This may lead to higher prices in regional areas, as retailers need to cover these costs. The ACCC found in its four regional market studies that freight costs ranged between 1 cpl and 4cpl.

Convenience store products typically earn high margins for retailers. However, regional fuel retailers tend to sell much lower volumes of convenience products than retailers in the larger cities. For example, the ACCC's Launceston market study indicated that average convenience store revenue per site in Launceston in 2014-15 was about \$610 000 lower per site than in Adelaide (the capital city used for comparison). Low convenience store sales increases regional fuel retailer reliance on fuel to remain profitable, which can result in higher prices.

These factors affecting fuel prices in regional locations are largely driven by economic and market forces. However, the ACCC believes that fuel price transparency can help promote a more competitive outcome in regional locations.

During 2016 a number of websites and apps were introduced in Australia which provide consumers with near real-time retail petrol pricing information:

- 7-Eleven introduced an app in February 2016 that provides information about retail prices at all 7-Eleven sites

- GasBuddy (a crowd-sourced site) commenced operations in Australia in March 2016
- the NSW FuelCheck website, and NRMA app, commenced in August 2016
- the existing MotorMouth app and website were modified in May 2016 to provide near real-time prices.

This year, the Northern Territory Government announced in January 2017 that it would introduce MyFuel NT, a territory-wide real-time mandatory retail fuel price reporting scheme (identical to the NSW FuelCheck scheme). It is expected to be fully operational from 1 November 2017.

In March 2017 the Tasmanian Government announced that it would provide a one-off grant of \$60 000 to the Royal Automobile Club of Tasmania to support a crowd-sourced Tasmanian fuel price app in partnership with GasBuddy.

These new and modified fuel pricing websites and apps joined existing ones, such as the Woolworths fuel app, and the Western Australian FuelWatch website. Easy access to information about current retail petrol prices enables motorists to shop around and purchase fuel at relatively lower priced retail sites. The more information on petrol prices available to the public, the better informed motorists will be about when to buy petrol and from which retail site.

The ACCC found in its regional market studies that fuel price transparency can be a way for smaller, lower-priced retailers to be seen by the general public. However, these operators were not always covered by the current fuel price transparency schemes, or if they were, the prices were often out of date. The ACCC believes this to be the case in many regional locations throughout Australia. We therefore believe that fuel price transparency works best when pricing information is both timely and comprehensive.

It is a decision for the state and territory governments as to whether fuel price transparency is provided by the private sector or whether government has a role to play in ensuring consumers have access to fuel pricing information. However, the ACCC views fuel price transparency for consumers as a positive development for an industry where comprehensive fuel prices were previously only seen by the major retailers.

I recently gave a speech to the Asia Pacific Fuel Industry Forum in Melbourne on the topic of 'fuel price transparency and retail industry competition'. A copy is attached.

Further information about the ACCC's fuel monitoring role, and the annual and quarterly petrol reports along with the regional petrol market studies, are available on the ACCC website, at <https://www.accc.gov.au/regulated-infrastructure/fuel/acccs-fuel-monitoring-role>. The annual reports provide more detail and analysis on prices in regional locations, including a number of case studies.

Should you wish to discuss this matter further, please contact Matthew Schroder, General Manager, Infrastructure and Transport - Access and Pricing Branch, on 03 9290 6924.

Yours sincerely



Rod Sims
Chairman



Australian
Competition &
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Commission

Asia Pacific Fuel Industry Forum
Fuel price transparency and retail industry
competition

ACCC Chairman Rod Sims

13 September 2017, Melbourne

Check against delivery

Good morning ladies and gentlemen.

When it comes to consumer issues, petrol prices are among the most pressing concerns for consumers and, as a result, for the ACCC and governments.

Pressing and aggravating.

Many consumers appear to be convinced that petrol prices are a rip-off. Indeed, I meet many journalists who are of the same view.

The wild fluctuations in prices that occur in the larger cities as a result of the petrol price cycles only reinforce this view. Consumers can see that international petrol prices have not risen; but fuel prices have.

In regional areas, large variations in the price of petrol between one town and another also leave some consumers understandably frustrated in the belief that they are getting a raw deal on petrol.

These perceptions have been around for many years and remain today.

This is why the current focus of the ACCC is to highlight to consumers the ability of technology to help them find where the cheapest petrol prices are, to encourage them to buy where petrol is cheapest, and to reward retailers which have the lowest prices.

This takes us from a long-standing arrangement whereby only the major retailers had access to comprehensive information about petrol prices, to consumers now being empowered to make purchasing decisions through a range of fuel price apps and websites.

We believe this will, in turn, help drive more competitive markets in petrol retailing.

Today I will take you through some history on the ACCC's role in petrol and how we arrived at where we are today.

1. The ACCC's role in petrol

The ACCC has had a role in petrol ever since our establishment in 1995. Some of the key activities in the early years of the ACCC include:

- one of the first reports released by the ACCC was the report of the inquiry into the Petroleum Products Declaration in 1996

- up until August 1998 the ACCC used to regulate wholesale petrol prices
- following the introduction of the GST in July 2000 the ACCC was responsible for monitoring the Fuel Sales Grant Scheme
- in 2001 the ACCC prepared a report looking into the options for limiting petrol price cycles
- in 2004 the ACCC assessed the supermarket ventures into petrol and their shopper docket schemes, and
- in the early-2000s the ACCC took several price fixing cases in regional Victoria to court, with some wins and some losses.

As petrol prices increased over the 2000s, so did community concerns.

In February 2003 the average regular unleaded petrol price in the five largest cities (that is, Sydney, Melbourne, Brisbane Adelaide and Perth), which the ACCC has historically used as one of the benchmarks to monitor petrol price movements, reached \$1 per litre.

In April 2008 it reached 150 cents per litre (cpl).

In July 2008 prices peaked at around 167 cpl.

Concern that movements in retail petrol prices in Australia may not be reflecting movements in international refined petrol prices led to the ACCC's petrol inquiry in 2007.

Following the release of the report of that inquiry, in December 2007, the Australian Government issued a direction under Part VIIA of the *Competition and Consumer Act 2010* for the ACCC to monitor the prices, costs and profits relating to the supply of unleaded petroleum products in the petroleum industry in Australia.

Over the following seven years the ACCC released comprehensive annual monitoring reports which were widely respected though not widely read by consumers.

In December 2014 there was a change in the focus in the Ministerial Direction – from our longer, annual reports to shorter, more consumer-focused quarterly reports.

We also started our detailed market studies into competition in regional petrol markets, as many regional locations have by far the least competitive petrol markets in Australia.

These studies were backed by compulsory information gathering powers under the Competition and Consumer Act.

To date, we have released four of these reports – covering Darwin, Launceston, Armidale and Cairns – and we are now reviewing the lessons learned and how we might apply those lessons to our monitoring of regional locations.

But our monitoring work is only one part of our involvement in the petrol industry.

Looking back over the last 10 years, activity in the petrol industry has involved a number of areas of ACCC responsibility.

For example, in terms of our enforcement role:

- In 2013 we investigated the competitive effect of ‘excessive’ shopper docket discounts.
 - This led to an undertaking with the major supermarkets that prevented discounts in excess of 4 cpl, and also prevented their supermarket businesses cross-subsidising their fuel businesses to cover the cost of these discounts.
 - We were concerned that offers by the major supermarkets of fuel discounts of 8 cpl or more could have longer-term effects on the structure of retail fuel markets. When the discounts were 8 cpl or more we also saw an increase in the underlying price of petrol; some people received high discounts, but around 80% of the population paid more for petrol.
 - We were particularly concerned about the impact of excessive shopper docket discounts on the viability of some independent retailers who play an important role in driving prices down in retail petrol markets.
- We also investigated price information sharing by the major retailers, through the Informed Sources Oil Price Watch service, which resulted in an undertaking to share this information with consumers. I will return to this issue later.

We also keep a close eye on merger activity in the sector as there have been several significant transactions over the last 10 years:

- in 2010 7-Eleven acquired much of Mobil’s retail network following our decision to oppose a bid by Caltex
- in 2013 Peregrine acquired BP’s retail network in South Australia
- this year, Caltex acquired MileMaker’s retail sites in Victoria, and
- we currently have before us the proposed BP acquisition of Woolworths’ retail sites (which I will also address later on).

2. Historically site-specific fuel price data was only available to the major retailers

The 2007 petrol inquiry enhanced our understanding of the Informed Sources fuel price monitoring service, and its influence on retail price setting.

Through the Informed Sources service, major petrol retailers had the ability to exchange fuel price data across all their sites on a near real-time basis. But this information was only available on a near real-time basis to the subscribers to the Informed Sources service – the major petrol retailers.

We were concerned that this contributed to an imbalance in pricing transparency between petrol retailers and Australian consumers, and circumstances where retailers could use this pricing information to make decisions about their own prices but consumers could not identify the cheaper sites or compare prices.

We were also concerned about the frequency of the information exchange between the petrol retailers.

Each subscriber to the Informed Sources service is required to provide the price of fuel at each of their service stations, usually updated electronically every 15 minutes, and receives the prices provided by other subscribers in return.

The Informed Sources service seems to be unique to Australia.

If it did operate this way in other jurisdictions, it could well be illegal under competition law, particularly where there are prohibitions against 'concerted practices'.

A concerted practice is a form of coordination where competitors substitute cooperation with each other for the uncertainties of competition.

In August 2014, following a complex investigation, the ACCC took court action against Informed Sources and several petrol retailers that subscribed to the service (BP, Caltex, Coles Express, Woolworths and 7-Eleven).

We alleged that by facilitating the exchange of price information, the Informed Sources service enabled petrol retailers to communicate with each other about their prices. By doing so, the Informed Sources service had the effect or likely effect of substantially lessening competition.

While it had national application, we focussed on the market for the sale of petrol in Melbourne.

Our case was that the fuel price information service allowed subscribers not only to receive their competitors' prices, but also to know that their own prices were being communicated to those competitors on a regular basis.

This enabled retailers to propose what some called a 'restoration price', where they significantly increased the price at some of their sites and could quickly see if their competitors would follow it by increasing their own prices.

We considered that the fuel price information service allowed this behaviour to occur with greater certainty and reduced commercial risk.

The ACCC believed that the service increased the cost and reduced the benefit of petrol retailers engaging in competitive rivalry. We were particularly concerned that it likely led to consumers paying higher prices for petrol.

In December 2015, the ACCC resolved these proceedings with undertakings from Informed Sources and the petrol retailers (BP, Caltex, Woolworths, and 7-Eleven).

Coles Express agreed to withdraw from the Informed Sources service altogether.

The undertakings from petrol retailers provide for greater transparency of fuel price information and reduce the potential for any adverse effect on competition.

The undertakings from Informed Sources ensure that it will make the same fuel price information available to consumers as it does to its subscribers.

This information has been available to consumers since May 2016, including through a mobile phone app. It assists consumers to make better decisions about when and where to buy petrol, including by identifying the best time to buy and the sites with the lowest prices.

The information also encourages price discounters by bringing their lower prices to the attention of consumers.

3. Some international evidence shows petrol price transparency helps retailers more than consumers

In recent years we have seen a move towards fuel price transparency in other jurisdictions around the world. Two examples that have been the subject of recent discussion are government schemes in Chile and Germany.

The Chilean scheme commenced in February 2012 when the government legislated that retail sites post their prices on a government website and keep prices updated as they changed.

The website was introduced in March 2012, first covering the capital, Santiago, and the whole country by July 2012.

The German scheme, the German Market Transparency Unit for Fuel, commenced in 2013, hosted by the German competition authority (the Bundeskartellamt).

It requires German petrol stations to report price changes for petrol in real time to the Market Transparency Unit. The Unit does not itself operate a consumer information service. Consumer information services must have approval to receive the price data.

A recent paper to the OECD Competition Committee discussed the impact of these two schemes.

The paper warned that when there is an increase in transparency in concentrated markets with homogeneous goods, the risk of tacit collusion may also increase.

However, I believe that the starting point is really important here.

In Germany for example, retailers were not able to see each other's prices in any comprehensive way. They relied on driving around noting down the prices of their competitors.

This is a very different starting point from what we saw in Australia, where for many years the major retailers were able to see each other's prices on a near real-time basis, but consumers could not.

The paper to the OECD notes that in Germany, there has been an increase in prices since the introduction of their fuel price transparency scheme in 2013.

However, the key reason for the increase was because the information was also available to the retailers, who could use it to respond more effectively to their competitors' prices.

In Chile, the paper found that margins increased following the introduction of the fuel price transparency scheme.

However, areas of the country where the fuel price website was used least by consumers were the same areas where retail margins increased the most. In areas where consumers took greater advantage of the fuel website margins increased only slightly or fell.

We believe that in Australia, where large retailers had been able to see each other's fuel prices for many years, giving that information to consumers empowers them to search for lower prices, rewards lower priced retailers and drives competition in the market.

Ultimately, we believe that consumers are better off and markets perform better if consumers are well informed.

4. Fuel price data is becoming widely available to consumers

Since we reached the undertaking with Informed Sources and the major retailers in December 2015, fuel price apps and websites have become a fast-growing segment of the fuel market.

In recent years we have seen the introduction of apps and websites such as MotorMouth and GasBuddy, as well as those released by the fuel retailers, like Woolworths and 7-Eleven.

Some apps – such as GasBuddy and Petrol Spy – are crowdsourced. Others – such as MotorMouth – primarily rely on data from major retailers.

And then, in some states, there are government systems.

For example, the WA FuelWatch scheme – with the 24 hour rule – has been around for 16 years.

NSW introduced a state-wide scheme in August 2016 called FuelCheck that covers all sites in the state.

The Northern Territory has announced that it will introduce a similar scheme to NSW later this year, while Tasmania has helped facilitate a partnership between the RACT and GasBuddy.

So there is a lot happening in this area at the moment, and in our recent public reports and communications we are really emphasising the benefits of these websites and apps.

These benefits not only accrue to those consumers who use a website or an app to search for cheaper petrol, but also to retailers who discount.

Based on experience, we believe this will help drive competition in the petrol market, leading to more competitive prices across the board.

We think this information is especially important today when there appears to be increasing confusion about fuel prices due to the changing nature of the price cycle over recent years.

Gone are the days of so called 'cheap Tuesdays', when there were regular weekly price cycles in most of the larger capital cities and consumers could at least know when the cheapest day to fill up was.

These days, only Perth has a regular cycle, and there we should talk about 'cheap Mondays'.

Consumers understandably find it very confusing to know when to fill up in the other four major cities.

The ACCC website, and some others, provide information about when to buy in these cities, and have done so for some time, but until recently a missing piece of the puzzle for consumers has been knowing where to buy.

Fuel price transparency apps and websites allow consumers to work out where to buy when you might see very large differences in prices between sites.

During the decreasing phase of the cycle, prices can vary across sites in a major city by up to 10–15 cpl.

When prices start to increase, the variation can be as high as 25–30 cpl.

Motorists can use the ACCC or other websites that give price cycle advice to work out when to buy, and can use the various websites or apps to work out where to buy.

By doing this, motorists filling up a vehicle with a 60 litre tank could save themselves in the region of \$10–15 per tank of petrol.

The ACCC has not endorsed one type of system of fuel price transparency, or made a judgement on whether it should be privately run or government run.

But while we believe that having many website and app providers can be a good thing, the timeliness and completeness of the price data is very important.

It is important that not only the major players are covered by these websites and apps, but also that smaller independents are also included, as they often provide competitive tension that is so important in these markets. This was an issue we found in our regional market studies, which I will talk about in a moment.

In our quarterly reports we have reported on the increased take-up of fuel price apps and websites in recent years. And while we would like to see more consumers using them, the early results have been encouraging.

5. Regional market studies

As I mentioned before, the ACCC has now released four regional market studies, covering the Darwin, Launceston, Armidale and Cairns markets.

While there were some differences that made each location unique, there were several common themes across all these studies.

One was that the profits that were being made in these locations were high, far higher in most cases than the Australian average.

For example, retail prices were so high in Darwin that in 2013-14 the average site in Darwin was making around \$1.2 million in profit. Between 2009-10 and 2013-14 net profit per site in Darwin more than doubled.

And in Cairns we found that retailers were making very high profits of around half a million dollars on average in 2015-16, which was around 38 per cent higher than the Australian average.

Market structure was also important: who were the major players in the market, and were there enough retailers pricing competitively?

More importantly, were those retailers a large enough presence in the market to make a positive impact on competition? In all four locations the answer to that was 'no'.

The importance of price transparency in improving competition in these markets was also a common theme.

We found that while fuel prices for many sites are available to consumers via apps and websites in these locations, many lower-priced smaller independents are not always covered by the current apps and websites.

We believe this to be the case in many regional locations across Australia.

In Cairns, for example, we found that while the majority of the market, including all the major retailers, were usually around the same price, there were two small independents that were consistently around 10 cpl cheaper than the market.

While the major apps and websites would show the prices of the major players in the Cairns market, these two small independents were usually missing from the apps or had prices listed that were out of date.

6. High Margins

You may have noticed in our recent quarterly reports that we've been reporting on margins being the highest they've ever been in real terms.

We do understand and have reported that the petroleum industry has been facing increased compliance costs in recent years, especially in NSW.

Examples of these include the NSW vapour recovery legislation and the ethanol mandate there, and now in Queensland. We have expressed our view regarding the ethanol mandates many times in our reports.

These costs as well as others are a legitimate reason why margins have increased in recent years.

The ACCC fully acknowledges that businesses need to make a profit.

However, based on data that was sent to us by many of the major companies last year, it is our belief that the increase in margins in recent years is well in excess of these costs.

Based on our calculations, each extra cent per litre on the price of petrol costs consumers across Australia a total of around \$180 million a year.

In this time of higher margins, the ACCC will be doing more and more to push transparency, so it is clear to consumers which companies are charging more and which companies are discounting.

7. BP's acquisition of Woolworths retail fuel network

Finally, an update on our merger review of BP's proposed acquisition of the Woolworths retail fuel network.

This is a very large and very complex task.

There are two aspects of the analysis that make it difficult:

- the complexity of the data, and using that data to try to understand price competition in various markets
- analysing price competition at the local market level, especially when it involves hundreds of sites and overlapping local markets.

In August 2017 we released a statement of issues where we noted our concern that the transaction may substantially lessen competition by removing a strong competitor in Woolworths, which has a different pricing strategy to BP, and which has historically had lower prices.

We are progressing with our analysis, and propose to have a final decision by 26 October.

Conclusion

Ladies and gentlemen, Australian consumers have long been sensitive to movements in petrol prices. Especially when price movements can be large and inexplicable.

Informed consumers through the mechanisms I have outlined today are an essential step in developing the more competitive market they want and they deserve.

Thank you for your time.