



Thursday, 1st June, 2017

Mr Andrew Gallagher
Australian Competition and Consumer Commission
Merger Investigations
GPO Box 3131
Canberra ACT 2601
Email: BP-Woolworths-Petrol@acc.gov.au

**BP - proposed acquisition of Woolworths' retail service station sites -
attention Andrew Gallagher.**

Dear Mr Gallagher,

1. Introduction

1.1 The Motor Trades Association Queensland (the MTA Queensland or the Association) responds to Australian Competition and Consumer Commission's (ACCC) request for views on the *proposed acquisition of Woolworths Limited's (Woolworths) network of retail service station sites by BP Australia Pty Ltd (BP)* (the proposed acquisition). The MTA Queensland's response is as an interested party.

2. Context

- 2.1 In preparing this submission and developing its stance on matters before the ACCC, the MTA Queensland has taken into consideration the issue of national interest and the desirability for fair competition to be advanced and the benefits that micro-economic reform would confer on participants in Australia's regional and national economies.
- 2.2 Australia's fuel supply markets are in the process of structural change in response to national and international energy reformations and energy dynamic. The unprecedented market power of the major supermarkets to negotiate terminal gate prices enable them to dominate both fuel retail markets and the entire fuel automotive value chain. The acquisition of market share by the supermarket giants has created a circumstance unparalleled in Australia's fuel market history.

3. Submission

- 3.1 The MTA Queensland submits two issues of general principle for the consideration of the ACCC which set precedents that maintain and magnify the distortions in Australia's retail automotive fuel market.
- 3.2 Firstly, BP's proposal to continue shopper docket retail fuel discounts at its discretion through the outlets it acquires from Woolworths and other BP proprietary outlets has been the subject of other substantial comments¹ by the MTA Queensland to the ACCC. The proposal to apply a discount for what is now an unrelated grocery transaction tends to confirm the comments the Association has made about the models of the fuel retail majors.

e.g: 1. The MTA Queensland submission: '*Consequences for competition arising from the super discounting and restructuring of the retail fuel market*' 18th April 2013.

2. The MTA Queensland submission: '*Supermarket's Retail Fuel Market Super Discounting Program*' 8th April 2013.

3. The MTA Queensland submission: '*Additional Comments - Supermarket duopoly petrol discounts*', 15th July 2009

4. The MTA Queensland submission: '*Caltex Australia Ltd – proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd*', 3 July 2009.

5. The MTA Queensland submission: '*ACCC Inquiry into the Price of Unleaded Petrol*' 27th July 2007.

Motor Trades Association Queensland

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3.3 In the case of Woolworths on a corporate group basis, the shopper docket fuel retailing 'business model' allowed for cross subsidisation. By using a very broad and liberal definition of 'legitimate corporate interests' this market behaviour could be understood, but it still required an advantageous Terminal Gate Price (TGP) to justify this business model.

3.4 The fact that BP contemplates continuing the shopper docket discount (in respect of selected Woolworth's fuel retailing outlets it proposes to acquire) would lend empirical support to the MTA Queensland prior submissions that the TGP in the operating model for the fuel retailing majors is considerably lower than that available to the independent service station operators.

The MTA Queensland remains strongly of the view that if competition is not to be distorted in those regions which are sensitive to a takeover by Caltex of Mobil's retail assets this should entail that retailers retain viability in the face of the economic power brought to bear by the nearby entity. To do this, Independents need to be assured they had access to volume discounts or wholesale fuel supplies or a transparent Terminal Price Gate price similar to or equivalent to that is available to the new Caltex/Mobil conglomerate in any micro – economic region. (The MTA Queensland submission: ACCC Statement of Issues re Caltex Australia Ltd – proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd, 16th September 2009.)

Uniform transparent Terminal Gate Price (TGP) from which the wholesale price can be determined and discounts negotiated for volume. The published TGP should reflect the lowest price and the benchmark volumes at which premiums apply. Franchisees, Independents, Commission Agents should be informed as to the base TGP and the volume level at which premiums cut in to assist in determining fuel purchasing decisions or other strategic business arrangements. (The MTA Queensland submission: Caltex Australia Ltd – proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd, 3 July 2009.)

To better monitor and understand the shopper docket and reward loyalty program discounting phenomenon and to prevent a further erosion of competition, a uniformly based transparent Terminal Gate Price (TGP) is required from which the wholesale price can be determined is essential so that transparent retail petrol pricing restores real competition in this market. (The MTA Queensland submission: Consequences for competition arising from the super discounting and restructuring of the retail fuel market, 18th April 2013.)

This is inequitable as it allows the supermarket majors to use market and financial power to both distort the retail fuel market and to suppress prices in a way that damages independent fuel retailers and directly attacks their 'business model.'

3.5 It has been reported that 'Woolworths and BP will jointly fund the 4 cents-a-litre-fuel discount offer at the 527 Woolworths petrol stations, as well as some additional sites.'² While Woolworths and BP state that they will each contribute 2 cents-a-litre discount to fund this discount, ultimately this discount will be recovered from retail fuel purchases and the inequities inherent in the system e.g. motorists who do not buy their groceries from Woolworths; or consumers who do not own motor vehicles; or those consumers who buy modest groceries each day will fund the major portion of this discount arrangement.

3.6 Assuming that BP requires the full 4 cents-a-litre-fuel discount to maintain market share in respect of the Woolworths acquisition outlets, it should have been factored into the acquisition price when the 'goodwill' component of the purchase was calculated as the risk should be carried by the trade sale proponents and not by the consumer. The rewards from this risk will be returned Woolworths and BP and therefore it is proper that they should carry the risk rather than passing it through to the consumer.

² Ferguson A, 'Retail giants brace for a war of convenience', Australian Financial Review, 5 March, 2017.

3.7 It seems incongruous to the Association that 'consumers' should be drawn into the final configuration of the transaction between BP and Woolworths (as stated in related previous submissions to the ACCC). Why should the final transaction between Woolworths and BP involve a market off-take guarantee whereby a consumer who buys \$30 in groceries from Woolworths gets a 4 cents-a litre-discount and a consumer who buys groceries from a third party or does not spend the benchmark amount is ineligible for fuel at the discount price?

3.8 Secondly, the broader issue of principle to which the MTA Queensland has alluded in its submissions to the ACCC, i.e. that the retail price of automotive fuel to private motorists should be determined by the fundamentals of demand and supply. It appears inconsistent to the Association that the ultimate retail price that a consumer may pay for fuel could depend on whether they have participated in a completely unrelated third party transaction.

3.9 In BP's proposal there appears to be a concern that the volume off-take of fuel from the service stations acquired from Woolworths is likely to diminish if the grocery docket discount is discontinued. It is our submission that this 'risk' should have been calculated into the acquisition price and that the discount and the way it is presented in the market, perpetuates a major distortion to the efficient operation of regional transport fuel markets.

3.10 Of greater concern is the precedent that approval of the acquisition would set. To relate the ultimate retail price to a third-party transaction lacks economic justification and transgresses in principle the drive for micro-economic reform that the Government and the ACCC have embarked. There is a complete lack of justification for linking the price of motoring fuel that a consumer pays to an unrelated transaction that is carried out with an entity that has no corporate relationship with the fuel retailer. These types of arrangements mitigate micro-economic reform as they lack transparency and in fact contribute to the opaqueness in sensitive markets such as Australia's retail automotive fuel market.

3.11 Additionally, any approval of the BP proposal will set an unacceptable precedent for the retail fuel market and for economic reform; it will continue the inequity of the Woolworths shopper docket arrangement. There appears to be a number of clarifications that ACCC should seek in respect of this arrangement. The most important being, - under this 'business model' which entity will ultimately absorb the 4 cent-a-litre discount? It would seem inequitable if Woolworths would continue to charge the discount to the cost of groceries. Why should groceries continue to carry the cost of the fuel discount when there is no corporate structural link?

3.12 The second question - why should consumers be involved in mitigating the market risk of BP in acquiring the service stations from Woolworths? The consumer had no say in this matter! The risk is being forced on them because BP and Woolworths are having difficulties evaluating goodwill, the quantum of risk and the 'buy price'. This is a way of empirically managing that risk at the consumer's expense - not at the corporations involved in the transaction. This seems to lack equity.

4 Summary

4.1 In summary, the Association supports the Government's and the ACCC's initiatives for micro-economic reform and considers that BP proposal would of itself, and the precedent it sets mitigate such a reform agenda. The proposal seeks to extend market distortions and continue the inequities that are inherent in the shopper docket business model.

5. The MTA Queensland background

5.1 The MTA Queensland is the peak organisation in the State representing the specific interests of businesses in the retail, repair and service sector of Queensland's automotive industry located in the State. There are some 13,000 automotive value chain businesses employing in excess of 90,000 persons generating in excess of \$14.5 billion annually. It is an industrial association of employers incorporated pursuant to the *Fair Work Act* 2009. The Association represents and promotes issues of relevance to the automotive industries to all levels of Government and within Queensland's economic structure.

5.2 The Association is the leading automotive training provider in Queensland offering nationally recognised training, covering technical, retail and the aftermarket phases of the motor trades industry through the MTA Institute (MTAI) - a registered training organisation. It is the largest automotive apprentice trainer in Queensland employing more than 35 trainers geographically dispersed from Cairns to the Gold Coast and Toowoomba and Emerald. The MTAI last financial year accredited courses to more than 1,700 apprentices and trainees.

6 Conclusion

6.1 We would be please to provide further comment on any matters in our submission that may require further clarification or amplification.

Thank you for your consideration.

Yours sincerely

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

Dr Brett Dale DBA
Group Chief Executive