

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS ABOUT THE BILL

Committee's views

6.1 The evidence presented to the Committee indicates that in many respects the petroleum industry in Australia is not as competitive as it could be and therefore consumers are not always able to purchase fuel at a competitive price.

6.2 The Committee concludes that, regrettably, in some instances, exigencies external to the petroleum industry limit the action that may be taken to increase competition. The density of service stations in remote areas, for example, is likely always to be so low that any service station in a remote area will have a de facto regional monopoly and may therefore charge a monopolist's price for the fuel it retails.

6.3 The Committee noted that competition is not lacking in all areas. In metropolitan areas, especially those where independent retailers are active, competition is substantial. The Committee therefore concludes that in more populous areas, areas that are able to support several service stations within a reasonable distance of one another, the entry of independents into the local market would allow greater scope for competition.

6.4 Local government planning regulations sometimes inhibit the entry of more independent service stations into the marketplace.

Recommendation

The Committee recommends that the Government commence discussions with a view to making local government authorities more amenable to facilitating the entry of independents into rural areas.

6.5 Another major inhibiting factor preventing more service stations from becoming independents is the existence of the franchising system of the major oil companies. The very nature of franchising agreements is that they tie service stations to a particular oil company, thus precluding service station operators from acquiring the cheapest possible fuel.

6.6 The major oil companies assured the Committee that the price they charge their franchisees for fuel is fair, thus implying that altering current franchising arrangements would have no beneficial effect on the retail price of fuel at the bowser. There was, however, a considerable lack of transparency about how the major oil companies determine the wholesale price they charge their franchisees for fuel.

6.7 The clear existence of price support for lengthy periods in some markets fundamentally undermines the oil companies' assertions that the price they are offering tied service stations is competitive. A wholesale price that is consistently above the retail price is not a credible price.

6.8 Service station operators, in situations where the wholesale price exceeds the retail price, must rely on the price support provided by the oil majors to maintain the viability of their businesses. The Committee is conscious of the potential this gives the major oil companies to use price support as a means of manipulating retail prices, although the evidence presented was not sufficiently persuasive to allow the Committee to draw any conclusions about the oil majors using price support as an anti-competitive mechanism.

6.9 It was clear, however, that there is considerable distrust and resentment in some quarters regarding the behaviour of the major oil companies. If the oil majors persist with their current mode of operation it seems inevitable that pressures to force the breaking of tied supply arrangements will increase.

6.10 The current bill is an attempt to boost competition, and thereby lower the price of fuel for consumers, by allowing service station operators who have entered into franchise agreements to purchase fuel from a source other than their franchisor. Evidence, however, was presented to the Committee indicating that there may be a number of obstacles to the bill achieving its objectives.

6.11 The oil majors argued that the need to differentiate their fuels, of necessity prevented the breaking of tied supply franchise arrangements. The Committee was unconvinced by these arguments.

6.12 It is true that some of the majors do sell products that they differentiate, but this is not the case in respect of all products. Standard unleaded petrol is an obvious example of a homogeneous product. All of the oil majors claim that their additives have certain benefits, but these claims are difficult to substantiate, moreover, evidence was presented indicating that the oil majors themselves do not, on occasion, differentiate between their own products.

6.13 The oil majors also raised the issue of guaranteed quality of supply as an obstacle to the bill's provisions. Again, this is not an insurmountable obstacle and it could be addressed through a combination of mandatory sampling and the development of product standards.

Recommendation

The Committee recommends that the bill be amended to require the establishment of a comprehensive fuel sampling and testing regime.

6.14 The Committee considers the dire warnings of withdrawal from the Australian market of some oil majors to be extravagant. As has been noted, the proponents of the bill do not expect that it would lead to large scale sourcing of fuel from sources other

than franchisors. The ties that bind franchisees to franchisors extend well beyond price and the reality is that very few would exercise the option to source fuel elsewhere. The bill, if passed, may therefore be of limited effect, in the sense that large numbers of franchisees will not necessarily avail themselves of the options it introduces. However, the bill would have the effect of redressing to some extent the unequal relationship that currently exists between franchisees and franchisors. The Committee is of the view that the prospect of franchisees seeking alternative sources of supply will force the oil companies to offer their franchisees more competitive terms, which should flow through to consumers in the form of lower prices at the bowser.

6.15 It would be irresponsible of the Committee if it failed to warn that the bill is likely to be challenged. The oil companies are resolutely opposed to the concepts in the bill and have indicated that it will certainly be challenged as unconstitutional if it applies to existing franchise agreements. However, the Committee notes that the proponent of the bill, Mr Fitzgibbon, has indicated that the bill is not intended to apply to existing franchise agreements and will apply only to new agreements.

Recommendation

The Committee recommends that the bill be amended to ensure there is no doubt that the bill will only apply to new franchise agreements.

6.16 While this recommendation, if adopted, will remove some grounds for challenge, the oil majors indicated that they may still challenge the bill as providing for the acquisition of property on other than 'just terms', even if the bill is redrafted to make it clear it applies only to future contracts. The Committee discounts this threat, as there is nothing in the bill to prevent parties to new contracts from negotiating new terms and site fees. There is no question of acquiring property rights on other than 'just terms'. The Committee notes however that the unconscionable conduct provisions of the Trade Practices Act may also be brought to bear to ensure that any contract changes are just.

Recommendation

The Committee recommends that the bill be re-introduced and passed.

