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09 May 2006

Mr Peter Hallahan
Secretary
Senate Economics Legislation Committee
Suite SG.64
Parliament House
CANBERRA ACT 2600

Dear Mr Hallahan

Questions taken on notice by the ACCC during the Inquiry into the provisions of the Petroleum Retail Legislation Bill 2006, Monday, 8 May 2006

At the public hearing of the Senate Economics Legislation Committee (the Committee) into the provisions of the Petroleum Retail Legislation Bill 2006 in Canberra on 8 May 2006, I undertook to provide a response to two questions taken on notice to the Committee.

The purpose of this letter is to provide the Committee with our response. The two Questions taken on notice were:

1. The Oilcode does not apply in a number of situations. One of those situations is where the investment is under \$20,000. How many stations fall under that exemption?
2. Considering that many agreements are renewed without payment of any up-front fees, is clause 32(11)(c) likely to impact on the tenure of renewed agreements, as far as the ACCC is concerned?

EXECUTIVE OFFICE



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1. The Oilcode does not apply in a number of situations. One of those situations is where the investment is under \$20,000. How many stations fall under that exemption?

While there is no specific general exemption from the Oilcode for investments of less than \$20,000, Subsection 6(3) and 6(4) of the Oilcode state that the Oilcode does not apply to a fuel reselling agreements for which:

- (a) the supplier reasonably believes that the amount of motor fuel that will be sold by retail at the site will be less than an average of 30 000 litres for each month of the term of the agreement; and
- (b) at least 3 days before entering the agreement, the supplier gives to the prospective retailer a written statement setting out the grounds for the belief.

Although the ACCC is not in a position to estimate the number of service stations in this category, it is our understanding that the category represents a mixed business type operation where the retail of Petroleum Product is not the sole or major revenue stream. In these circumstances the investment in the supply of the Petroleum Product is proportionately less significant than that of a Petroleum Retailer whose substantive or sole income is derived from the investment in the business of reselling Petroleum Products.

Furthermore, it is important to note that the under 30,000 litres per month category of retailers under section 11 of the Oilcode will receive the protections offered under Part 2 of the Oilcode which imposes obligations on suppliers with respect to their supply of petroleum without reference to fuel reselling agreements.

2. Considering that many agreements are renewed without payment of any up-front fees, is clause 32(11)(c) likely to impact on the tenure of renewed agreements, as far as the ACCC is concerned?

It is the ACCC's view that section 32(11)(c) is unlikely to have a significant impact on the tenure of renewed agreements. This view is based on the fact that the Oilcode provides 3 types of fuel re-selling agreements where tenure is provided. For "franchise-type" agreements, wholesale suppliers are required to offer tenure of nine years, for "commission agent" type agreements where the retailer has made an initial upfront investment of more than \$20,000 the tenure period is a minimum of 5 years. For other commission agent type agreements, for payments of less than \$20,000 there is no tenure specified although the minimum notice period for termination is 30 days (s37 (2)(a)) and the wholesale supplier is required to offer to buy back fuel and merchandise.

Similar to the Franchising Code of Conduct, the Oilcode requires that the wholesale supplier provide a disclosure document and a copy of the Oilcode to a prospective retailer at least 14 days before the retailer enters into a fuel reselling agreement. The Oilcode also prevents wholesale suppliers from entering agreements with retailers unless the supplier has received a statement signed by the retailer which indicates that the retailer has been given independent advice about the agreement or declined not to seek it. These protections are provided for all three categories.

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The upfront fee of \$20,000, in essence, will have the likely impact of assuring that the business relationship is more substantial than a supply contract. Whichever business relationship the Petroleum Retailer enters into with the wholesaler, the Petroleum retailer receives the protections with respect to reasonable supply and has access to the dispute resolution scheme under the Oilcode.

Please do not hesitate to contact either myself or Nigel Ridgway of this office by phone on (02) 6243 1223 if you require any further information regarding the ACCC's potential role in administering and enforcing the proposed Oilcode.

Yours sincerely



Brian Cassidy
Chief Executive Officer