APPENDIX B.1: Selected correspondence between MTAA and the Australian Competition and Consumer Commission in relation to the joint ventures between Shell, Coles, Caltex and Woolworths and their associated 'shopper docket' discount schemes.

Motor Trades Association of Australia

FACSIMILE TRANSMITTAL	No. of Pages: 2
To: Alistair Davey	From: M Blaney
Date: 18·6·03	Fax No: 02 6273 2738
Fax No: 6243 1212	Phone No: 02 6273 4333

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Mr Alistair Davey
Director
Mergers and Asset Sales
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Mr Davey

Thank you for the opportunity to comment on the proposed acquisition of the service station network of the Shell Company of Australia Limited by Coles Myer Limited.

In preparing this response MTAA has consulted with its Members Associations. Our views are as follows:

- if this acquisition is to be approved by the Commission, that should only occur on the basis that Shell provide the ACCC with enforceable undertakings in relation to continued supply of petroleum products to independents. There is a concern that as the throughput at Coles branded sites increases (because of expected discounting), Shell will not need to supply the independents to secure the necessary off-take for the efficient operation of its refineries. Guarantee of supply to independents needs to be assured. Some independents already have difficulty accessing supply and if Shell were to withdraw from that market the viability of independents and their competitiveness would come under further threat. MTAA therefore believes that as a first step the Commission must establish the number of independents currently supplied by Shell (including volume and pricing arrangements) and obtain enforceable undertakings from Shell that it will continue to supply those independents on no less advantageous terms;

- service station operators believe that a petrol 'price war' between Woolworths and Coles Myer is almost inevitable should this acquisition be approved. As the Commission is aware, retail margins in the petroleum industry are already very thin. We would expect that many independent operators and probably some franchisees will not be able to compete with the two major retail chains and will thus be forced out of the market. While in the short-term a 'price war' may benefit consumers, the longer term consequences should also be considered. Independents are significant players in the petroleum market and are a major competitive force at retail. Should independents disappear from the market due to a petrol price war between the two supermarkets that competitive force will be lost and the Australian retail petroleum market will be dominated by, at most, five

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companies (two supermarkets and three refiner marketers – assuming the remaining three continue retail operations in Australia; though we do not believe that assumption sustainable) and we would expect then that retail fuel prices would rise. In the longer term we do not see that scenario as being of benefit to motorists; and

- more generally MTAA is concerned about the already high degree of concentration of market power in the retail sector and we believe that this acquisition by Coles Myer will lead to an increase in that concentration. MTAA has always been of the view that competition is best secured by diversity in the retail market.

If I can be of any further assistance in this matter, please do not hesitate to contact me.

Yours sincerely

Michael Delaney

MICHAEL DELANEY
Executive Director

13 June 2003

FACSIMILE TRANSMITTAL	No. of Pages: 4
To: S. Chenoweth	From: M Delaney
Date: 30/10/03	Fax No: 02 6273 2738
Fax No: 6243 1211	Phone No: 02 6273 4333

Motor Trades Association of Australia

Ms Stephanie Chenoweth
Acting Director
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

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Dear Ms Chenoweth

Thank you for your letter of 21 October 2003 seeking comments from MTAA on the third line forcing notification (N31261) lodged by JVC2 Pty Limited (the joint venture company established by Woolworths and Caltex).

MTAA understands that the conduct the subject of the notification involves the offer and supply of fuel by JVC2 Pty Ltd at a discounted price on the condition that the customer has purchased goods of not less than a nominated amount from Woolworths (including Big W) and Safeway stores.

MTAA believes that the Commission should revoke immunity from prosecution in relation to this notification. MTAA does not believe that the public benefits from this proposed arrangement will outweigh the public detriment.

The Association understands that Woolworths/Safeway already has existing third line forcing notifications lodged with the Commission and that the discounted fuel offer, which was the subject of those notifications, has been provided by Woolworths for a number of years.

However, the conduct which is the subject of the current notification will extend the fuel discount offer from Woolworths own petrol outlets to up to a further 160 Caltex sites which are to be operated by the JVC2 company. MTAA understands that the remainder of the Caltex and Ampol branded network will not be able to accept the discount vouchers.

That construct immediately raises concerns about the viability of those sites which are not able to accept the discount vouchers. MTAA would expect that any introduction of a discounted fuel offer for the JVC2 sites will immediately result in a transfer of fuel volume from those sites which cannot offer the discount/accept the voucher to those sites that can. A reduction in fuel volumes obviously reduces fuel turnover and profitability and also reduces, because of fewer customers, shop and other ancillary sales at the site. Inevitably there will be site closures and as the Commission is aware, a reduction in the number of competitors will affect the level of competition in a market.

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The announcement in August 2003 by Woolworths and Caltex that they intended to enter into a joint venture arrangement which would only encompass a small number of the existing Caltex and Ampol branded sites has already resulted in those businesses which are to remain outside the new arrangements being devalued. For those business which operate under a franchise arrangement, their business has been devalued by the actions of their own franchisor; a situation which we believe is totally unacceptable and unconscionable in terms of section 51AC of the Act and that those affected retailers must be compensated for their changed circumstances.

In relation to a similar notification lodged in respect of the Shell Coles Myer arrangements MTAA wrote to the Commission (see letter of 28 August 2003) in the following terms:

> *'MTAA is concerned however that the Shell/Coles Myer arrangement and now also the recently announced Caltex/Woolworths joint venture arrangement will result in a fundamental restructuring of the retail petroleum market. That restructuring is likely to see a significant reduction in the number of small, independent operators in the market (thus removing a strong competitive element from the market), possibly see one refiner/marketer exit from the Australian market altogether and which is likely to largely remove any real competitive threat to the domestic refiners from imported fuel; all of which will result in a retail petroleum market dominated by two supermarkets and two to three refiners.*
>
> *These changes are not in MTAA's view principally being driven by the oil majors competing for each other's market share (although some are clearly winners from these alliances), but more by the desire of the two dominant retailers to secure a greater share of the retail spend, by attracting more customers to their supermarkets (and their other outlets which offer the fuel discount to customers).*
>
> *Ultimately the cost of the discount schemes must be borne by consumers; in this particular case it will be all Coles supermarket and certain liquor store customers; not just by those who redeem their vouchers at service stations. Motorists benefit from low fuel prices; however it is likely that a large percentage of motorists would spend more at the supermarket each week than on petrol and MTAA would assume that the cost of the fuel discount will be recovered by the retailers in their general supermarket pricing.*
>
> *The changes which will occur in the retail petroleum market as the Shell/Coles Myer arrangement is progressively 'rolled-out' around the country and as the Caltex/Woolworths joint venture arrangement is established, are largely being facilitated by the existence of the fuel discount offers. The outcome will most probably be disastrous for small service station operators, but will also affect competition in a number of markets; including the importation of fuel, the supply of grocery and other convenience store items to convenience stores covered by the two arrangements, the retail petroleum market through increasing concentration and in the wholesale market for fuel through the exclusive*

supply arrangements entered into by Shell and Coles Myer and by Caltex and Woolworths.

MTAA has been concerned for some time about the increasingly concentrated nature of many markets in our economy. The seeming inability of the merger provisions of the Trade Practices Act to address the issue of 'creeping acquisitions' has been a matter of concern, particularly to those involved in the retail sector, for some time. The arrangements between Shell and Coles Myer and the announced proposed joint venture between Caltex and Woolworths has, and will, deliver a significant new market to each of the supermarket retailers; allowing them to further increase their already significant share of consumer spending and to also increase the level of concentration in the grocery market.

Finally we would only add that while the Shell/Coles Myer (and the proposed Caltex/Woolworths) fuel discount voucher would appear to offer a short-term benefit to motorists, the Commission should consider the wider competition issues, outlined above, associated with their introduction. Ultimately it is likely that small, and particularly independent, service station operators will be unable to compete with the 'offer' presented by the two strategic alliances. Service station operators, as the Commission is already aware, operate on very slim retail margins and in fact many franchisees in metropolitan areas receive price and/or profitability support from their franchisor in order to be able to compete. Service station operators are very concerned about below cost selling of fuel by the supermarkets in particular. Small service station operators make their livelihood from their service station – selling fuel and convenience store items and in some cases from workshops, car washes, trailer hire and so on. Small operators do not have the opportunity to subsidise their service station activities from supermarket and discount store sales. For small service station operators fewer forecourt sales (because market share is being eroded through the voucher arrangements) means fewer customers in their convenience stores; a combination which we believe will see many of those operators exit the sector and thus ultimately damaging competition.'

Those issues remain our concerns. We do not believe that in the long term, these discount voucher arrangements offer an overall benefit to consumers (and in fact we believe that some consumers will bear the costs without receiving the so-called benefits).

The likely exit from the market of significant numbers of small franchisees and independent operators in the next few years, which will primarily be due to the impact in the market of the fuel discount vouchers rather than the entry of Coles Myer to petrol retailing, or the expansion of Woolworths current network of sites, is not a pro-competitive outcome.

Australia's dispersed population means that it is essential that there is a strong network of service stations in rural and regional Australia, and not just in larger towns or on highways. If that is not the case, then the so-called benefits of any discount offered by supermarket sites will most certainly be considerably diminished by the increased travel costs and the time taken to reach those sites.

MTAA has previously made the point that once a service station closes in a small town, the town loses more than a fuel outlet. The mechanical repair service will also likely close, there is a loss of employment and training opportunities and often more importantly there is a 'flow-on' effect which means that residents purchase not only fuel in other towns, but other goods and services as well, further reducing business activity in their home town and resulting in the likely closures of other businesses.

Finally, MTAA believes that the Commission must ensure that Caltex continues to make supplies of fuel available to independent wholesalers and retailers. MTAA is concerned that as the volume throughput of the JVC2 sites increases (due to the discount voucher arrangement) there will be a reluctance on the part of Caltex to make fuel available to independents. The Commission is urged to ensure that that does not happen. However, even if 'supply' is available the question of whether it is available at competitive prices is even more crucial and should be the key factor in the Commission's consideration of the impact of the notification in the longer term.

I have no objection to this material being placed on the Commission's public register.

If you require any further information please do not hesitate to contact me.

Yours sincerely

Michael Delaney

MICHAEL DELANEY
Executive Director

30 October 2003