

## Fuelwatch and independent operators

5.1 A number of submitters expressed concern that a decline in the number of small independent operators in the retail petrol market would erode competition and ultimately lead to higher prices. The committee respects these concerns. However, it is important to distinguish long-term influences on the number of independents that would occur with or without Fuelwatch from any impact arising from Fuelwatch itself.

### Challenges facing independents

5.2 Small independent petrol chains face many challenges in competing with the petrol retailing operations of the major oil companies and this challenge has become harder since the large supermarket chains have entered the markets. The large companies have the benefits of diversification, can afford advertising campaigns and achieve economies of scale in many areas of their operations.

5.3 Furthermore, the large companies can buy petrol from the refineries at a lower price than can small independents. One perspective on this is that it is just a normal 'bulk discount':

prices that are set in the marketplace reflect the sizes and the negotiating power of the various players.<sup>1</sup>

5.4 Others would point out that the same handful of very large companies are the principal importers, refiners, wholesalers and retailers in the Australian market.<sup>2</sup> They would then question whether the arrangements in the wholesale petrol market are truly competitive or whether they are unfairly stifling the growth of independents.

5.5 While the operation of the wholesale fuel market involves important issues, they are outside the scope of this interim report on Fuelwatch. As the ACCC remarked:

The fate of those smaller independent operators is almost entirely in the hands of the refiners and the wholesalers that supply fuel to them. If they do not supply fuel to them at a price that enables them to compete with others

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1 Mr Topham, Caltex, *Proof Committee Hansard*, 1 August 2008, p. 27.

2 The four oil companies (Shell, Caltex, Mobil and BP) and the two supermarket chains (Coles and Woolworths) between them account for 100 per cent of refining, over 90 per cent of importing, over 95 per cent of wholesaling, and over 90 per cent of retailing; ACCC (2007, pp 6-7 and 77). The ACCC identified a number of impediments to any large scale importing of petrol by a rival firm; ACCC (2007, p. 20).

in the marketplace they will not be able to compete. It is not to do with FuelWatch...<sup>3</sup>

5.6 A further challenge posed to independents by the supermarket chains is that the chains offer 'shopper docket'.<sup>4</sup> There is evidence suggesting they make consumers less price-responsive, and harder for independents to attract. Of course, these dockets are offered both in WA where Fuelwatch operates and in the eastern States where it does not.

### **Concerns raised by independents about Fuelwatch**

5.7 Many independents pride themselves on being quick to respond to price cuts by the major chains to keep themselves competitive. However, they are disadvantaged by the current market situation where the majors have access through Informed Sources to much better price data than do the independents. Fuelwatch would even things up. The independents would have access to the same pricing information as the major chains.

5.8 Some independents are worried about the 24 rule leaving them with an uncompetitive price:

We particularly oppose the prohibition on any downward price movement in the notified price in a 24-hour period. This means a retailer is unable to meet market forces in his trading area if he is off the pace or he gets it wrong when he sets his price for the 24-hour period.<sup>5</sup>

5.9 This seems a rather pessimistic attitude. If the independent has nominated too high a price for a day, their sales will be lower for that day. But equally if their large rival has nominated a higher price, the independent will achieve very strong sales and the large chain's station will be unable to respond until the next day.

5.10 The opposition to the '24 hour rule' was not shared by all independents. Australian Farmers Fuel said:

We have no problem with the price being locked for a period of time... We all take our chances in the market as long as it is fair and equitable.<sup>6</sup>

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3 Mr Graeme Samuel, ACCC, *Proof Committee Hansard*, 7 August 2008, p. 14.

4 The majority of customers using Coles-Shell and Woolworths-Caltex outlets get a 4 cents a litre discount by presenting a shopper docket obtained by spending over \$30 in one of the affiliated supermarkets.

5 Mr Charles Wright, Neumann Petroleum, *Proof Committee Hansard*, 17 July 2008, p. 15.

6 Mr Andrew Fischer, Australian Farmers Fuel, *Proof Committee Hansard*, 21 July 2008, p. 19.

### ***The 'Cherry Ripe' strategy***

5.11 Some concerns were raised that the large chains could try to subvert Fuelwatch by offering other forms of discounts to lower the effective price to motorists.<sup>7</sup> For example, they may offer a 3 cents a litre discount to motorists who buy a cherry ripe at the station. However, this strategy could prove expensive if large numbers of motorists are using Fuelwatch. The cherry ripe discount would not be reflected in the Fuelwatch price listings so it would not attract any more Fuelwatch users to the station. However, all the customers going to the station anyway may take advantage of it when they are there.

5.12 Asked about whether new forms of discounting had been a problem for the WA FuelWatch scheme, the relevant WA department replied:

There is no evidence that this has operated to defeat the intention of the Western Australian legislation. If it became apparent that loyalty discounts or similar activities were being used to undermine the intent of the legislation then advice would be provided to the Government for appropriate action.<sup>8</sup>

### ***The 'rolling price leaders' strategy***

5.13 Another potential concern expressed by independents themselves and the watchdog was that the large supermarket chains can employ a 'rolling price leaders' strategy:

FuelWatch has harmed the competitive position of independents as it allows large operators to adopt a strategy of rolling price leaders. Media reports of FuelWatch price information highlight retail stations with the lowest prices. This provides an opportunity for larger competitors with bigger networks of retailers to have rolling price leaders in the market, with different stations under the same banner being publicised as the cheapest for a region or suburb at different times. Operators with smaller networks are less able to employ this pricing strategy placing these retailers at a competitive disadvantage in the market.<sup>9</sup>

so-called rolling price leaders where the bigger operators have the ability to deliberately underprice some of their sites so that they get into the top 10 or top 20 cheapest lists ... Because they are a fair size, they can even in a sense be selling petrol at a loss to get their sites into those lists whereas

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7 Among variants suggested are discounts for locals, happy hours, lucky dips and member discounts; Informed Sources, *Submission 22*, p. 15.

8 WA Department of Consumer and Employment Protection.

9 Gull Petroleum, cited in ACCC (2007, p. 246). Concerns about this rolling price strategy are also expressed by the Australasian Convenience and Petroleum Marketers Association, *Submission 6*, p. 5; and Trade Practices Committee of the Business Law Section of the Law Council of Australia, *Submission 21*, p. 5.

independents do not have the financial wherewithal to do that. The argument is that the majors are able to create an impression that they are cheapest because they are in the top 10 cheapest sites.<sup>10</sup>

5.14 However, this strategy may be *less* effective under Fuelwatch than under the various backward-looking petrol price reporting schemes currently in operation. At present, a chain can arrange for a handful of its stations to offer a very low price one day. These will be reported on the nightly news as the cheapest outlets but by the time customers are attracted to these stations the following day the price has gone back up so the chain does not lose much profit. By contrast under Fuelwatch, viewers will be able to go to the few stations offering a very low price the next day, rather than other stations operated by the same chain, and so the strategy will be quite expensive for the chain.

5.15 Again, the WA experience is illuminating. The Royal Automobile Club of Western Australia observe:

While there is a risk of large companies with many sites gaming the system, the RAC does not have any hard evidence that it is occurring to any significant extent.<sup>11</sup>

### **The experience of independents under FuelWatch in Western Australian**

5.16 When pushed to give an 'assurance' that a national Fuelwatch would not have an adverse impact on independents, the ACCC replied that:

Is there any reason why FuelWatch could or should have an adverse impact? The answer is no.<sup>12</sup>

5.17 The ACCC buttressed this by reference to the Western Australian experience under FuelWatch there:

we had a fairly close look at that...we just could not see any evidence that independents in Western Australia had been adversely affected by FuelWatch. Sure, they had declined, but independents have declined across Australia. Indeed, they have been declining for the last 20 years... we had evidence presented to us that suggested that independents in Western Australia, following the introduction of FuelWatch, had probably done a bit better than independents in other states.<sup>13</sup>

5.18 This view that independents had fared relatively well in WA was confirmed by the relevant department there. Between 2001 and 2008, within the FuelWatch

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10 Mr Barrie Cassidy, ACCC, *Proof Committee Hansard*, 7 August 2008, p. 14.

11 RACWA, *Submission 20*, p. 4.

12 Mr Graeme Samuel, ACCC, *Proof Committee Hansard*, 7 August 2008, p. 14.

13 Mr Barrie Cassidy, ACCC, *Proof Committee Hansard*, 7 August 2008, p. 14.

boundaries, the proportion of service stations operated by 'branded independents'<sup>14</sup> rose from 34 to 35 per cent; the proportion operated by 'independent chains'<sup>15</sup> was steady at 13 per cent and the proportion of 'unbranded independents'<sup>16</sup> rose from 2 to 6 per cent.<sup>17</sup>

5.19 An alternative data source is provided by Independent Sources. Their analysis, which is restricted to the Perth metropolitan area and uses different definitions of 'independents', suggests there has been a marginal fall in their market share. Unfortunately they do not present any data for the Eastern states for comparison.

**Senator Annette Hurley**

**Chair**

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14 A service station owned by an independent operator, but having the branding of an oil company or independent chain. This type of site makes up a majority of regional sites.

15 These are sites that are owned by a large independent company. In Western Australia, these companies are Gull, Peak and United. These sites are predominantly located in the Perth metropolitan area.

16 These are sites that have no branding, and are owned by an independent operator.

17 WA Department of Consumer and Employment Protection, *Submission 5*, p. 13.