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TRANSCRIPT OF PROCEEDINGS

O/N 62210

AUSTRALIAN COMPETITION

AND CONSUMER COMMISSION

MR GRAEME SAMUEL, Chairman
MR JOHN MARTIN, Commission
DR STEPHEN KING, Commissioner

PETROL PRICE INQUIRY HEARING

CONDUCTED AT: TOWNSVILLE

DATE: 9.01 AM, THURSDAY, 23 AUGUST 2007

THE CHAIRMAN: Good morning. My name is Graeme Samuel. I am the Chairman of the Australian Competition and Consumers Commission and the chair of this Public Inquiry into the Price of Unleaded Petrol. As Chair, I welcome you all and declare this hearing open. I am joined by Commissioner John Martin on my right, and Commissioner Steven King, who are the other two presiding members for this inquiry. This hearing is convened under Part VIIA of the Trace Practices Act 1974. It's held pursuant to the Federal Treasurer's approval for the ACCC to hold a price inquiry into the price of unleaded petrol.

Matters to be taken into consideration by the inquiry shall include, but not be restricted to: the current structure of the industry; the extent of competition at the refinery, wholesaler and retail levels, including the role of imports; the determination of prices at each of these levels, including the methodology for determining wholesale prices; and, current impediments to efficient petrol pricing and possible methods to address them. During the course of the inquiry, we will endeavour to find answers to these issues.

The ACCC is pleased that written submission to the inquiry have focused on the pertinent issues. With regard to submissions, witnesses should take them as being read. If time permits, following the questioning of scheduled witnesses, I may invite others here today to give evidence but, as with scheduled witnesses, anyone planning on giving evidence to this inquiry will need to be sworn in and subject to questioning under oath. We understand that the price of petrol is of immense concern to all Australian motorists. It will greatly assist us in the efficient and effective operation of hearings if participants confine their remarks to the critical issues and not simply provide commentary on the price of petrol. I strongly urge those of you participating to abide by this requirement.

The public hearings will enable the ACCC to hear evidence that will help inform the ACCC in reporting to the Federal Treasurer. Results of our inquiry will be reported to the Treasurer by 15 October 2007. Unless directed otherwise, the ACCC must make its report public after 28 days. We view the primary goals of this inquiry as being to increase transparency in the marketplace about petrol prices at the various levels of the industry, and to identify any current impediments to efficient pricing.

Before we start, I will go over a few procedural issues. The terms of reference to this inquiry have been published on the ACCCs website, together with an issues paper, and all public submissions that have been received. The ACCC has also published notes for witnesses of this inquiry which outlines the procedures followed by the ACCC at public hearings. The names of the witnesses who are scheduled to appear today have also been published on the ACCCs website.

Some important procedural points for taking evidence at today's hearings are as follows. All evidence will be taken on oath or affirmation. Where a witness statement has been provided, the witness will be asked to verify on oath or affirmation that their statement is true and correct. The commission will then proceed to ask questions of witnesses. Witnesses will then be given the opportunity to make any clarifying remarks. These should be confined to clarifying or responding to issues that arise during questioning.

I would also note the conduct of the inquiry is within the discretion of the inquiry chair. Persons who use insulting language or otherwise disrupt the hearing may be excluded from the hearing. The ACCC may wish to questions witnesses about information that has been provided on a confidential basis. The ACCC can take evidence in private if a witness objects to giving evidence of a confidential nature in public and the ACCC considers it appropriate to do so. If this occurs, it may be necessary for all other persons to leave the room for parts of the hearing.

The ACCC intends to hold hearings in public as far as possible, but we do want to be able to ask witnesses about matters that are commercially sensitive. This means we may need to close the hearings at certain points. An audio recording of proceedings will be taken. This recording will be transcribed, and the transcript of hearings will be made available on the ACCCs website as soon as possible after the hearing. Evidence given in private will be recorded and transcribed but will not be made available on the website.

With those matters dealt with, I propose to begin by asking witnesses from the Motor Traders Association of Queensland to come forward and, for the record, to please state your name and position.

MR BLUMS: I am Aivars Blums. I am the Chief Executive of the Motor Trades Association of Queensland.

MR KANE: I am Tim Kane, the Chairman of the Service Station and Convenience Store Association of Queensland, which is a division of the Motor Traders Association of Queensland.

MS DEWAR: Kelly Dewar, General Manager, Member Services and Support for MTAQ.

THE CHAIRMAN: Thank you. You don’t have legal representatives here today?

MR BLUMS: No, we don’t.

MR KANE: No.

THE CHAIRMAN: As I proceed to swear in each of you as witnesses, can I inform you about the rules regarding evidence of this inquiry? Firstly, it’s an offence to refuse to be sworn, refuse to answer questions or refuse to produce documents that are required of you by summons under Part VIIA of the Trade Practices Act. Secondly, it’s an offence under the Criminal Code to give evidence at this inquiry that a witness knows is false or misleading, or omits any matter or thing without which the evidence is misleading.

Further, I advise you that you can either swear under oath, or, if you believe an oath would not be binding, or for religious reasons you are prevented from swearing an oath on the Bible, you may make an affirmation of the evidence at this inquiry. Could I ask each of you, do you wish to swear under oath or affirm the evidence you give at this inquiry and, then, if you could either swear under oath or make an affirmation?

<AIVARS BLUMS, AFFIRMED [9.06 am]

<KELLY DEWAR, AFFIRMED [9.06 am]

<TIM KANE, AFFIRMED [9.06 am]

THE CHAIRMAN: Thank you very much. Now, do you wish to make any preliminary comments? We take the submissions as having been read, but do you wish to add anything to what has been provided in the written submissions.

MR BLUMS: Perhaps we can make a brief statement, if that's okay? Firstly, perhaps, I could brief the Commission that the Motor Trades Association of Queensland is an industrial association of employers incorporated pursuant to the Industrial Relations Act of Queensland. Its membership is approximately 2000 members, which goes across the entire value chain of the automotive industry. This includes a service station sector which is representative of 417 operators at various sites across the state. These 417 establishments include independent operators, distributor-owned sites, independent chains, and small independent operators.

Our submission relates to matters that are within the purview of our members or those issues which are impacting on our members. We request that the Commission, in addition to taking the facts in the submission into consideration, also take into consideration the context in which the submission is made, and that is that we're of the view that this Commission should also consider the issue of policy settings and the impact of policy settings, particularly in the context of an economy that is likely to be at near full capacity, and against capacity constraints for some period of time, perhaps as long as a decade or longer.

We think in this circumstance that the issue of policy settings, particularly in relation to section 46 of the Trade Practices Act is an important consideration in relation to this inquiry. The issue of reconciliation, of policy settings for long term competition, and the issues of intervention in relation to predatory pricing, against the mitigation of discounts, is an issue, we think, that's important at the end of the day.

We also think it's important that, contextually, this Commission take into consideration that the present cycle of evolution in the fuel market is not complete, that there isn't an ongoing evolution in that fuel market, as such, and that they should take consideration of where that evolution may lead, that at this stage change is continuing at quite a rapid rate and that an equilibrium, as far as the level of competition and as far as the level of structure, doesn't appear to have been reached, as far as I can gather in discussing these issues with my members.

I would also preface our statements by saying that in many cases we have had some difficulties in evaluating the economic dynamics along the supply chain, because often they're opaque. In some cases, we have to say that the positions we have arrived at have been based on anecdotal information and, in some cases, on deductions that fit, on a best case scenario, the facts as we can see them because, in many cases, we've got to say that the facts may be hidden behind what we can only call "the petroleum curtain."

Based on that, we would like to reinforce some of the things that we have said in our submission, and that is that based on the buy price for our members and the margins that they're able to command in the market, the final price to consumers would not appear to be excessive where it comes to my members, who are the independent retailers. To that end, Commissioners and Chairman, we would like to submit some information confidentially on the pricing parameters, the buying prices for Central Queensland as indicative. If we may do that on a confidential basis.

THE CHAIRMAN: We will do that, and I think what we might do is take the public information from you first, and then we will move into closed session to take the confidential information.

MR BLUMS: Certainly, Chairman.

THE CHAIRMAN: We will do it that way.

MR BLUMS: We would like to say that in the metro regions, the modal price range would be in the order of one to three cents as a margin to my members, the upper range is in the order of five cents, and some parts of the industry at times operate at negative margins. This information would indicate and support that that we're going to supply confidentially later on.

I would also reinforce the submission to say that my members are price takers, not price makers. There are caps and collars that operate in the market that mitigate prices a retail level for the independent retailer. The majors, Coles and Woolworths, set the cap with coupon discount pricing in the form of shopper dockets. The collar is set by the buying price at the terminal gate for my members.

There are, no doubt about it, periods of high demand, where the price does move outside the modal range, and where there can be some recovery of the margins. In these cases, I do admit that the industry is guilty of practising capitalism, but usually it's to claw back the margins. We have also heard discussions about the cycle that occurs in the retail industry.

Again, this is beyond the control of my members. In the case of my members, the cycle is usually given by the terminal gate price, but it's interesting to note that in Queensland the cycle is usually three and a half days of very aggressive pricing and three and a half days of less than aggressive pricing in a week. So 50 per cent of the week appears to be fairly - highly competitive prices and 50 per cent at less than competitive prices.

I understand that on general terms there are some discussions about the divergence of the Australian price of unleaded petrol with that of international benchmarks, and in these circumstances again we say this situation is beyond the control of my members, or beyond the influence of my members. We are price takers.

We are, however, concerned about the circumstances that my members find themselves in where the majors, Woolworths and Coles, do appear to use market power and economic power in behaviours that do create unfair circumstances for my members, and could be called predatory. We submit that these are issues that the Commission should take into consideration as part of this inquiry.

We find it concerning and difficult for our members to compete in circumstances, and to remain viable where Coles and Woolworths command 80 per cent of the retail market for groceries, and that in some cases in metropolitan areas, their control over the petroleum price - petroleum market, is as high as 70 per cent of those spatial markets. We recognise that there is a relationship between the two, and we also consider that there is some form of implicit cross-subsidisation, and if it doesn't happen on a line-item item, it certainly happens at the bottom line as such.

We also say in the short term, in this restructuring that's occurring in the market, in the fuel market, there is some consumer benefit at the front end of the restructuring, but, in those areas where we see that the restructuring has become relatively mature, that the consumer welfare benefit appears to contract very dramatically after that. There has also been a dramatic contraction in the number of retail outlets that are independent. One of the results of the restructuring in the market, and the evolution that's occurring in the retail market, has been a dramatic reduction in the number of service station outlets, and particularly the independent service station outlets. I think that the Commission has, at its disposal, considerable information on this.

The other issue that is of concern to us is the issue of terminal gate pricing. There - we think there is a lack of transparency in that. It would appear anecdotally that the majors that have economic and market power receive a considerably greater advantageous price at the terminal gate than my members do. We have some information to submit as well, confidentially, on that. This puts my members at a considerable disadvantage and, in fact, it's difficult to have economic sustainability based on fuel retail business alone, and, as you would know, most outlets have had to go into convenience store operations and use fuel as a loss leader.

We think that the issue of terminal gate pricing is one where there isn't a justification for the Commission to consider some form of intervention to increase the level of transparency at the end of the day. We also think that there could be a case to look at both some form of establishment of floor pricing so everyone knows where the bottom is, not just where the top is, because at this stage, the pricing arrangements are to cap the price, not to collar the price and therefore various discounts lead to situations where sections of my membership become non-viable or unsustainable in the face of what appear to be, and we say anecdotally again, appear to be advantages that are not available to my members.

In some ways, we also submit that the issues relating to predatory pricing are somewhat analogous to the unfair trading scenarios that have been the purview of the world trade organisation. That is, in some cases, some of the actions can only be said to be business at less than fair value which causes economic injury. In the international field, this is usually prosecuted with dumping duties. Some of the cross-subsidies would certainly attract countervailing duties in international trade markets, and be the subject of world trade organisation sanctions.

We're strongly of the view that economical behaviour in the fuel industry, where it is below what we consider to be a properly costed level, does cause injury and does drive competition out of the market and we think that there could be a case to consider these issues under section 46, as it's been revised.

THE CHAIRMAN: I don't want to cut you short, Mr Blums, but I just want to be sure that you're adding to rather than just repeating what's in the submissions, because we have read the submission as I indicated in my opening comments, and we're anxious to get to some questions that - - -

MR BLUMS: Well, we'll end there, Commissioner, and we'll go on to questions.

THE CHAIRMAN: All right. There's a few issues that you've raised in your submissions in some of those comments but I just want to try and, sort of, take a line through. You've talked about a reduction in the number of independent outlets which you'd, of course, be aware of through the reduction in number of your members over a period of time. Can you give us some more specific details of that perhaps in the period leading up to – because you've focused a bit on the Coles Woolworths entry into the market which was about 2003/4. Can you give us an idea of the pace of reduction of numbers of independent outlets both before and after that period of time?

MR BLUMS: Commissioner, we would say in general terms in our membership over the last five years, the reduction in the number of members, and the reduction in the number of outlets that are members of the Motor Trades Association, and our service station division, we'd have lost in the order of 200 members.

THE CHAIRMAN: Now how many of those would be outlets that have been taken over by the Coles Woolworths and other operations? I'm just trying to see how many have actually exited the market as distinct from transferred to other - - -

MR BLUMS: Of those, we agree that of those a fairly high number would have been taken over by Coles Woolworths.

THE CHAIRMAN: So in terms of exit from the market, this is the important thing; how many do you anticipate over that period of time have actually exited the market?

MR BLUMS: Well, the actual operators have exited - the retail outlets have been amalgamated in a number of cases, but we would have said that somewhere in the order of between 70 and 80 per cent would have been taken over by Coles or replaced by Coles operators.

THE CHAIRMAN: Yes, they said they were the – because Coles took over the Shell outlets - - -

MR BLUMS: That's right.

THE CHAIRMAN: - - - and Woolworths took over - - -

MR BLUMS: That's right.

THE CHAIRMAN: - - - of course, a number of independent outlets including the Liberty chain.

MR BLUMS: Yes, so it would have accounted for 75, then we would have had another 25 that would have exited because of the competition - - -

THE CHAIRMAN: Right. So what - - -

MR BLUMS: - - - that occurred because of spatiality and proximity.

THE CHAIRMAN: Yes. So we're talking of approximately 50 that have exited over the five year period?

MR BLUMS: Yes. About 10 that have been - - -

THE CHAIRMAN: About 10 a year.

MR BLUMS: - - - in addition to those a year.

THE CHAIRMAN: Yes. Okay. I just want to put that in perspective in terms of the competition. Now – yes, sorry.

COMMISSIONER KING: Sorry. Just on that, how does that rate of about 10 per year, if we go back over a longer period of time, say, the last 10 years because obviously there's been – nationally, there's been some rationalisation in the petrol industry that's been going on for a long time, and I notice the numbers that you give in your submission. So what – yes, what are the historic numbers, if we go back, say - - -

MR BLUMS: Well, historically, the circumstances have changed because there have been structural changes. The issue is that the range of tanks on motor vehicles and the need to stop has changed. So what we had before that five years was that those that were specifically on highways that were spaced at tank distances for fuel, and you take into consideration that Queensland is the most decentralised of the states, and therefore it has probably the largest spatiality between stops, so there was, say, a fuel station stop in between, so we had some losses where the longer range on cars and the better performance of vehicles, technical reliability, meant that they were made redundant.

Then you had a second structural change and that is as roads by-passed towns, all of a sudden, you replace – say, you got two or three small outlets replaced by a Matilda or one of those big centres, so probably it's difficult to compare apples with apples, but probably we would have had a rationalisation of two or three in the years before based on the information that we have, and that's gone up to 10 or 12 then plus the concentration of the large number into Coles Woolies situation.

THE CHAIRMAN: You've indicated and you're not the first to give evidence to this effect that the – it's described the independent, and we'll come back to what is an independent, just for the moment, but the independent outlets that you represent are price takers, they're not price setters, which suggest – and I think without wanting to put words into your mouth, that the price taking is – taking prices set by the suppliers, be they the wholesalers or the major oil companies as the case may be; is that correct?

MR BLUMS: What we say is that they set the upper and lower limits to which you can retain a market share that is worth retaining. If you move outside the limits, the upper limit set by Coles and Woolworths, you start to discard market share and below the TPG, you start to incur losses that mean that you're unsustainable so you have a range that most people operate in. As we said, there's a modal margin but in some case, and for some periods, there is negative margins when you take into consideration delivery and other on-costs.

THE CHAIRMAN: Yes. No, I understand that. I'm just trying to establish who is actually setting the competitive dynamic in this industry. Now, I think that you've given evidence, just in your opening statement and it accords with evidence given by others in Canberra and yesterday in Brisbane, that the prices at the pump are largely not being set by the retailer. There's a cap and a collar, but - - -

MR BLUMS: Yes.

THE CHAIRMAN: - - - they've been set at a higher level by – that's the wholesalers and/or the major oil companies; is that correct?

MR BLUMS: That's correct.

THE CHAIRMAN: I'm just interested then in your suggestion that the major oil companies, if they are the price setters are being, in their own way, controlled by the prices being set by Coles and Woolworths, because I think you've indicated that Coles and Woolworths tend to set the cap and you're suggesting then that the major oil companies are working in accordance with what Coles and Woolies are setting as their price?

MR BLUMS: I think there are some interesting situations that occur on the pricing, because there are cross product sales between the refineries as well. So implicitly, there is some price setting that occurs at the collar that is based on the buying price but what we're also suggesting is that there isn't just one terminal gate price. There are a number of terminal gate prices and what we are saying is that the price to my independents is set at a range above what appears to be a lower price and that usually sets the collar for us, and that collar for us in some cases, as we'll show, may be above what the retail price sometimes is at the Coles/Woolworth situation.

THE CHAIRMAN: Yes, I'm sorry. I'm just trying to put in perspective the role of Coles and Woolworths because the implication of what you're putting to us, I think is that Coles and Woolworths are setting the price and the major oil companies, Caltex, Shell with some of its remaining outlets, Mobil and BP march to the tune of Coles and Woolworths, is that right?

MR BLUMS: Anecdotally, that would appear the case. I can't say what Coles and Woolworths do at the end of the day. That's a decision for them, but there would appear to be anecdotal evidence that what you're saying is substantially correct. That market power does work, and it does work with what is a symbiotic relationship.

THE CHAIRMAN: Yes, that's – I'm just trying to test this a bit further because that's fairly extensive market power in pitting yourself against the major oil companies.

MR BLUMS: Yes.

THE CHAIRMAN: Can you give us some more information to just elaborate on that because it's a very interesting proposition.

MR BLUMS: I think we would probably like to give most of that confidentially.

THE CHAIRMAN: Okay.

COMMISSIONER KING: Can I just come back to the TGP and obviously one of your clear recommendations in your submission to us, is to have some transparency of the TGP and as you've just mentioned, also a collar based on the TGP. Now, you've stated that small independents are unable to purchase fuel at the published TGP prices. In your opinion, why aren't your members able to purchase at the TGP and what price are they purchasing at? Are they purchasing at a TGP plus, or what's happening?

MR BLUMS: I think I'd probably defer to my colleague here but what we're saying is, that there isn't a single TGP as such. That there are various purchase prices at the terminal gate rather than a single one. While there's one published, that is the overt one, we say that there are other prices that appear to act in the market as well.

COMMISSIONER KING: Okay, just to follow up on that before we hand over to Mr Kane, what you're really saying is that there may be a published TGP but there's a variety of other parties, obviously via TGP minus or TGP plus or - - -

MR BLUMS: We say there's mechanisms. There appear to be mechanisms which impact on or change the real impact, whether the – the impact and the incidents of terminal gate pricing appears to be different for different customers.

COMMISSIONER KING: Okay, well, Mr Kane, are your members unable to buy at the published TGP?

MR KANE: No, we can buy at the published TGP but there appears to be other TGPs in place for other customers which we cannot have access to, and we don't know what they are.

COMMISSIONER KING: In other words, it appears to you that other parties receive discounts off the TGP.

MR KANE: It appears that way.

COMMISSIONER KING: Okay, are you familiar with the arrangements in Victoria and Western Australia with regards to the TGPs there?

MR KANE: I know there is a model in Victoria with their TGP which is a discountable TGP which somewhat cements my view that there is discounts available off the published TGPs. As an independent service station dealer, we do not have access to what those discounted TGPs are and what formulas they're calculated on and to what commercial levels of volume or credit that are given to be able to obtain those TGPs. It's all held in confidence which we can't obtain.

COMMISSIONER KING: It's a fair thing to say that you don't view the Victorian and Western Australian arrangements which are slightly different for Queensland arrangements. Well, let me ask you, do you view those as being preferable or indifferent between them?

MR KANE: Between the Western Australian one and the Victorian one, I can't comment on, I'm not familiar with the Western Australian one.

COMMISSIONER KING: No, that's fine, that's fine. Just in your opening remarks, Mr Blums, you referred to a collar, so you said, well, there should be a – rather than just a – well, let me clarify it first, when you're talking about a collar, are you talking about a collar at the terminal price or are you saying at the retail level?

MR BLUMS: No, I said there's a collar at the retail level which is an index of the buy in price or the terminal gate price, but we also referred to the terminal gate price and suggested that there has to be a review of that or we suggest to the Commission to look at that because there seems to be a lack of transparency, and we suggested that perhaps rather than just setting a maximum that if there was a floor price set that everyone knew where the bottom of the terminal gate price could go, that it might provide a better opportunity for competition than just capping it.

I don't know how we'd do that. I haven't thought about that, but certainly just having a maximum, means that various discount mechanisms can then operate to totally change the comparative advantages that exist.

COMMISSIONER KING: Okay, again, I just want to come back – because, you know, this is obviously an important point from the perspective of your submission, I mean, essentially, there's two main recommendations. One is the TGP, and it wasn't quite clear to me in your submission, were you saying that there should be a TGP that is required for everybody to pay, so whether you're Coles or whether you're Bob Schill, or are you saying there should be a range of TGPs and perhaps Bob Schill has to pay a bit more than Coles because he has lower volume.

MR BLUMS: Well, we think there should be the one TGP at the end of the day for everyone and then there can be premiums on that at the end of the day. We find it difficult or incongruous to reconcile situations where mining companies appear to get a better terminal price than even my members get and things like this. So there's mechanisms do seem to act to provide some discounts on the price that is there now and those discounts aren't transparent in any way, nor are the mechanisms by which those discounts are triggered, are transparent.

So, we think there should be a single terminal gate price and then there should be transparent mechanisms on how any premiums above that are set for the various classifications of purchaser of fuel at the terminal gate, so that there is a very clear understanding, where everyone stands, and what performance levels trigger what sort of benefits at the terminal gate. At this stage, as we said, these sorts of things are hidden behind this petroleum curtain.

COMMISSIONER KING: Given, I mean, if the current terminal gate price arrangements are part of the oil code, do you view - given your opinion of the current process or current terminal gate pricing process, do you think oil code is effective at the moment or has little effect, or quite frankly, you'd be just as well off without it?

MR BLUMS: Well, we have a view that your code has had unintended consequences in relation to the independents and has in some ways disadvantaged their circumstances. We don't think that it has addressed the issues that were intended to address. It may be a way to manage the behaviour between Coles and Woolworths and the refiners, I think. That in discussions with Caltex, they've indicated that they had some benefits out of the oil code. My members have not.

The unintended consequences have been to disadvantage them considerably and in fact put them probably in a more precarious economic position than was the case before. We are awaiting the review which is going to happen early next year and we will be putting in a very substantive case for some amendments to the oil code to allow a more equitable position for my independent members.

COMMISSIONER KING: Would your members be better off with an amended oil code or if the oil code was actually just eliminated?

MR BLUMS: I would have to take that on notice. I would have to consider the implications of having not code whatsoever as such. It would depend on – quite frankly, much of it will depend on where section 46 ends up at the end of the day. I think we've got to realise that section 46 has now become quite a critical issue to the economic performance of Australia generally and to many sectors in it, not just for the service station sector, but across my value chain in the motor industry. Section 46 and the way it is reviewed will in large part determine the ability of smaller participants to exist in a large number of sectors across the value chain.

It will also determine, in some ways, a lot of the productivity outcomes of the value chain that I have under my purview. And so I think that whether we have an oil code or not will depend on - the preference for us having an oil code or not will depend on what other developments occur in the TPA. So, we've got to take it strategically, not tactically.

THE CHAIRMAN: I just want to understand the structure of the industry, as you would, perhaps, like to see it. Now, can I try and step and step paint a picture, because we're trying to get to a picture as you might see the industry being, keeping in the back of our minds the existence of section 46. In terms of wholesale pricing, are you advocating that the same wholesale price should be charged to all retailers, or that there can be differential wholesale pricing?

MR BLUMS: We think that there can be a differential wholesale price, but there should be a base, and then everyone is in - would be charged a premium above that to arrive at their price, and that premium that will be charged will be based on size and quantities and other such things that would be known to everyone.

THE CHAIRMAN: Right. So, whether it's a base and then a premium, or it's a level there and levels of discounts. We get to the same result, though, don't we?

MR BLUMS: As long as they're known; as long as it's transparent.

THE CHAIRMAN: Right.

MR BLUMS: Yes, you're quite right. We could work it either way. It's just that the problem is that if you go to a cap and, you know, discounts, there's always someone who will want to wangle a different discount so that you don't actually know what the fundamental bottom of the barrel level is.

THE CHAIRMAN: Okay. So, we're contemplating then differential pricing but transparency as to the differences?

MR BLUMS: That's right. I think in a market economy, Mr Chairman, that there will always have to be a differential for different circumstances, and I think we will have distortions unless we have that.

THE CHAIRMAN: Right. Now, I just want to take it a step further. The differentials are to be regulated or are to be simply transparent and capable of free negotiation between buyer and seller?

MR BLUMS: I think that they should be, in the first place, free for negotiation. I don't think that we should contemplate intervention unless it becomes absolutely necessary. I think, in a market economy, we should see if market actions will initially do it, and that intervention should only be if we see distortions occurring, or unintended consequences occurring from the system that's put in.

THE CHAIRMAN: And one of those mechanisms might be the effective operation of section 46 in terms of predatory pricing.

MR BLUMS: Exactly.

THE CHAIRMAN: Right.

MR BLUMS: If we get section 46 right, then the system we're just talking about should operate of its own circumstance with recourse to section 46, if a really severe, unintended consequence occurs.

THE CHAIRMAN: Right. Now, then, lets move to - from the wholesale to the retail level, and you would be advocating a free market operation there, or some restrictions on the ability of the market to operate?

MR BLUMS: I think if we get the pricing right, and if we get section 46 right, again, we can allow the market to dictate, based on economic efficiency, who should participate in the market.

THE CHAIRMAN: Right.

MR BLUMS: What we're saying at this stage, it is not market efficiency that is determining participation in the market. It's market power and financial power that's determining it, and cross-subsidies.

THE CHAIRMAN: Okay. Now, I just want to understand the - - -

MR BLUMS: Sure.

THE CHAIRMAN: - - - context of the difference at this point of time from what we have at present. We don't have the transparency in terms of the negotiated buy-sell price between wholesaler and retailer, but we do have differential, you suspect, in pricing.

MR BLUMS: We have differentiation that is opaque, and as we have mentioned here, the issue is that we don't have an effective section 46 which can accommodate any very major unintended consequences.

THE CHAIRMAN: Okay. Now, I'll come to section 46 in just a moment. So, if the current, what I'll put down as suspected differential pricing - let's just put it at that level at the moment because it's opaque, but if the current suspected differential pricing at wholesale level were to continue but be in a more transparent form, what difference would that have on your members?

MR BLUMS: Well, our members would be able to make economic decisions and pricing decisions that were based on real facts and know where they can position themselves, and understand what efficiencies they need in their businesses to be competitive. At this stage, irrespective of what efficiencies are introduced, they don't know whether they have (a) viability and (b) sustainability, and therefore it makes it very, very difficult to make investment decisions in this business, because, irrespective of the investment decision you make, the outcome of that investment decision can be totally and completely compromised by a change in the dynamics in the market, because the majors are able to apply pricing pressures that are simply not available to my members because, in some cases, the pricing pressures involve prices that approximate that terminal gate price that my members have available to them.

THE CHAIRMAN: Now, that's what I wanted to test with you. If this became a transparent process, mightn't the differential pricing still result in the same consequence for your members in terms of their buy price, and thus their ability to discount at the retail level?

MR BLUMS: Maybe my members could, under the arrangement that allows for collectivisation, get together and become a collective when they knew what was happening, and how to do it, and there would be a capacity for them to collect and to approach on a collective basis, and then become viable on that basis, once they knew what the collection should be. At this stage, we don't know what the market dynamic is.

We know that there's a collective called Woolworths that gets a very good price, there's a collective called Coles that gets a very good price, but we can't actually construct a collective called Independent because we don't know what the dynamic is and we are not allowed to know what the dynamic is. We are actually prevented actively from knowing the dynamic to have this collective.

In fact, Mr Chairman, I was the one who approached the Prime Minister one night and said that the number for collectives - the cap for collective operations, should be lifted specifically to take consideration of the large monetary volume but very small margins that exist in this particular industry.

THE CHAIRMAN: Why haven't your members pursued collective bargaining to date, even in the absence of a knowledge? I mean, just to put it in its most simplistic form: if they collectively got together to negotiate with suppliers and said, "We want a reduction of five cents a litre" - I am just pulling numbers out of the air, but just as a start, and collectively try and negotiate, why has that not occurred to date?

MR BLUMS: Because it's very hard to put a model together that works and you can put numbers to it. In other words, it becomes an exercise in herding cats.

THE CHAIRMAN: Well, there's a difference between herding cats and between - and then sorting out what meal they might all eat when they're herded together. I can understand the problem of herding cats - that is, that you've got a large number of members. To try to get them to collectively come to a collective bargaining process might be difficult. But, I guess, without wanting to be too simplistic, if you can collect the cats together into a single room, with our authority of course - authorisation - - -

MR BLUMS: Exactly. We would have to approach you and ask for authorisation.

THE CHAIRMAN: But that's probably not an overwhelming task. I just want to test this. Wouldn't it then be easier to negotiate a better price - a better wholesale price, so that the differential that you suspect is there is just - - -

MR BLUMS: If you knew - if you knew generally what the outcome of the collective was, because you don't want to get to the stage where the cost of the collective, and the difficulties of the collective, outweigh the benefits that you're going to get. And one of the things we have been asking: what are the stepping stones in benefits, and we can't get a response.

THE CHAIRMAN: Let's - I just want to test this a bit further and I am just - can I try to take this hypothesis through as to what we might end up with as the structure you're trying to put together, and we have accepted differential wholesale pricing, we're indicating that a critical factor is transparency, and then I'm putting aside section 46 just at the present time as a protection mechanism, if you like. But, collecting your members together and then approaching their wholesalers and saying, "Look, we just simply want a better price," if you have got no more than one cent, wouldn't that be one cent better off than what it currently is?

MR BLUMS: If you got one cent.

THE CHAIRMAN: But the transparency - - -

MR BLUMS: What if we put a collective together and we approached them, and they said, "No."

THE CHAIRMAN: Approached who? The wholesalers?

MR BLUMS: Yes.

THE CHAIRMAN: But that will be the case if it's transparent or non-transparent.

MR BLUMS: No. But if you knew what the trigger levels were for various things, and they had to advise us of trigger levels, then we could say, “Okay. We have put it together. We have accorded with this trigger level. This is the price we should be accorded on the basis of a collective.”

THE CHAIRMAN: Okay. I want to take the scenario one step further, that is, that you now know that the price at which a particular retailer – let’s not identify who it is – a particular retailer, the price at which that retailer is purchasing fuel is X cents below TGP, below published TGP, and you say, “Well, look, collectively, our group will acquire almost the same level or the same volume of fuel as that particular other volume retailer. We also want X cents.” And the wholesaler says, “Not interested; won’t do it.” What do you do then?

MR BLUMS: Go to section 46 when you’ve fixed it up.

THE CHAIRMAN: Yes. I don’t want to get into a legal debate about section 46 but I suspect that may be having far, far higher expectations on the operation of section 46 than – what would be the basing under section, not predatory pricing?

MR BLUMS: Well, we’d say that they’d acted in an unconscionable way.

THE CHAIRMAN: Yes. Okay. Well, we’re getting into a debate about some of the legalities of the Trade Practices Act, but I suspect you might need to consult legally on that.

COMMISSIONER KING: Just on this, I mean, there’s many industries where large buyers get volume discounts, there’s also a number of industries that have collective bargaining arrangements in place. Now, the normal way that these work, and to address the exact issues you’re talking about, is that if the collective goes to one wholesaler, in which case let’s say you go to Caltex and say, “Well, this is the price we want, can you do this for us? We want TGP minus 2 cents” – just pick, again, some numbers out of the air – and then if Caltex says “no” you say, “Well, our members are taking our volume and we’ll wander across the road and we’ll go to BP. And if BP can’t do it, well, there’s – they may not have a refinery, but Shell wholesales petrol in Brisbane, so we’ll go to them,” and in most industries you’d expect to see the collective getting a significant volume discount simply by playing off the main wholesalers and there are, of course, four wholesalers. Why isn’t that practical in petrol in Queensland?

MR BLUMS: Because I would suggest that we have two refiners and I suggest that they don’t constitute a perfect market.

COMMISSIONER KING: I’m not saying it’s a perfect market but, still, why can’t you play them off against each other.

MR BLUMS: Because they don’t constitute an imperfect market either.

THE CHAIRMAN: Well, what do they constitute?

MR BLUMS: An olygopolistic market where, because of product across sales and things like that, there are implicit price rigidities that both of them seem to work on. It's interesting that, in a situation where a part of the independent formulas are used to determine terminal gate pricing, that the terminal gate pricing to my members inevitably comes in from either of the refineries within a tenth of a cent of a litre, sometimes even finer than that. So basically, to arrive at the position that your chairman said, of getting 1 cent is very difficult. You can go to either of them and, usually, the pricing response is amazingly similar. Now, I agree that it's only coincidental; I wouldn't say anything more, but the coincidence is rather amazing.

THE CHAIRMAN: But I think what Commissioner King is putting to you is this, is not an individual independent going and seeking a discount?

MR BLUMS: I think - - -

THE CHAIRMAN: And it's a collection of independents that have, in certain respects, a much more significant market power than one single independent might have. Now, if a collection of independents were to proceed to negotiate with a wholesaler and, potentially talking quite a significant percentage of that wholesaler's distribution, does that not give that collective group some market power and the ability to negotiate discounts similar to, for example, a "single collective" as you've called it, which is one of the supermarket chains.

MR BLUMS: Hypothetically, Mr Chairman, I'd agree with you. I would like to test that empirically and see what happens and maybe, in due course, we may ask for permission to see if we can construct something of this nature to test it. I would say that, hypothetically, I would like to test that circumstance. I would agree with you that logic would indicate that that should be the type of outcome you'd get.

THE CHAIRMAN: Well, let me just ask you, what would happen – and I don't want to take this too much further – but what would happen if – I'm not sure what the "collective" as you describe it, I will say Coles, in terms of outlets in this state would be? Have you got an idea of the number of outlets; say Coles or Woolworths?

MR BLUMS: No, we wouldn't, but it's very significant.

THE CHAIRMAN: Yes, significant, but it may be at the order of, what, 50, 75? I'm trying to think of their total outlets across the country which are about 500.

MR BLUMS: They're about 57, I think.

THE CHAIRMAN: 75, yes. So if you were to gather together 50 to 75 of your own members and say to their supplier, "Well, look, we're going to move from one wholesaler to another," or whatever, would that not be very similar to Coles turning to its supplier, Shell, and saying, "Potentially, we're going to move, give us a better price."

MR BLUMS: I agree. Hypothetically, it should happen and we've just seen that the government just finalised a tender for its fuel here in Queensland and there was a move to a different supplier and obviously there was competitive pricing and there was contestability for that. And hypothetically I'd agree if they put a collective together like that, you would think that there would be contestability for the business of that collective.

COMMISSIONER KING: Sorry, just one thing I wanted to clarify just to make sure that I understood you correctly, Mr Blums, you said, "If there was no cap," when talking about collective bargaining – right at the beginning we turned to collective bargaining and you said something about, "If there was no cap we could do this," or did I mishear you?

MR BLUMS: I'd have to go back and - - -

COMMISSIONER KING: I just wanted to make sure that you weren't mistaking – because, obviously, there's a number of ways that you can seek collective bargaining under the law there is a new notification regime where there's no cap on the number of members but there is a cap on the number of - - -

MR BLUMS: No. There was a cap on the size of the straightforward approval for a collective right?

COMMISSIONER KING: Yes, threshold.

MR BLUMS: Threshold - - -

THE CHAIRMAN: Three million threshold for the buyer, okay.

MR BLUMS: Yes. And we, in fact, asked for an increase in the threshold specifically in response to the petroleum industry and it was increased. But there is also provision in that threshold to ask for special consideration of the commission to establish a cap and we said, "If we put a collective not only would we have to ask for permission to collect but, also, we will probably have to ask for a threshold as well."

THE CHAIRMAN: Do you think petrol prices have been lower as a result of the supermarkets entering?

MR BLUMS: Yes.

THE CHAIRMAN: Because their bought prices are lower or because of the discounts, discount schemes?

MR BLUMS: I think the biggest motivation is that, as we said on the cycle that they're running, they've actually gone into buy market share. So they've used their buy-power to go in and get a lower terminal or gate price; they've contracted margins; they've cross-subsidised from, implicitly or explicitly, supermarkets to buy market share.

THE CHAIRMAN: Right, but we - - -

MR BLUMS: The interesting thing is what will happen once they've bought market share and in some of the mature phases of the cycle it appears that they restore margin at that stage.

THE CHAIRMAN: Now, implicit in that commentary you've just made is the suggestion that they are the ones that are leading the prices down.

MR BLUMS: They are.

THE CHAIRMAN: It's part of the cycle. Yes.

MR BLUMS: And during this part of the cycle, when they're in the formative stage of the cycle, at this stage of the evolution they price aggressively and the intention is to buy market share and the intention is to command, spatially, quite considerable areas of market.

THE CHAIRMAN: And then who leads the prices up at the peak ends of the cycle?

MR BLUMS: At the peak end of the cycle, the market is also led by movement upwards, initially, by Coles and Woolworths. In some cases the independents do commit capitalism and do say, "Well, demand has gone up." We will try and restitute some of the market because my members always have a skinnier margin available to them; a potential skinnier margin than anyone else.

THE CHAIRMAN: Are they guilty of committing capitalism every Thursday?

MR BLUMS: No. Capitalism is committed every Thursday at the terminal gate price.

THE CHAIRMAN: Right. So it's the terminal gate price that's pushing up the retail price - - -

MR BLUMS: Yes.

THE CHAIRMAN: - - - on a Thursday.

MR BLUMS: Yes.

THE CHAIRMAN: And then the discounting that's taken to occur then, the leading down is, you say, being led by Coles and Woolworths?

MR BLUMS: That's right.

THE CHAIRMAN: Yes. Information provided to us, evidence provided to us over the past two or three days from both representatives of the independent outlets in

Canberra and in Queensland yesterday suggest that, in fact, it's the independents that are leading the prices down.

MR KANE: I would say we could probably tender some different - - -

MR BLUMS: Information.

MR KANE: - - - information in the future - - -

MR BLUMS: - - - empirical information in future that would show that that's not the case.

THE CHAIRMAN: Okay. I think it would be useful if we could get that. It's - - -

MR BLUMS: We can certainly provide that. But I'd still stand by the situation that we are price takers and that, at out disposal, we usually don't have mechanisms – you've got to realise that one of the things that happens when prices go up at the terminal gate, that the financial facilities, the draw-downs, and the facilities at banks that my members have to have access to really get drawn very, very heavily at that stage, because my members have to pay COD.

So not only are the other caps and collars in place but there's also a financial capacity constraint on my members at the end of the day. So when terminal gate prices respond – and one thing I will say, that there is some evidence in all the research we've done, that the prices in Australia respond very quickly upwards and are sticky in a downward direction against the international situation.

But when the prices respond upwards, the financial draw on my members is quite enormous because they have to pay COD and they have to pay transport and other things at the same time, so not only is there a cap and collar price, there is also a constraint financially because they have to use up all their facilities and draw their facilities to be able to run the inventories at these higher prices.

THE CHAIRMAN: Now, if the independents are not leading the prices up - in fact, no one seems to leading prices up if we can observe on the information given to us to date, but if the independents are not leading the prices up and the independents are not leading the prices down, that would be suggesting that they are price followers throughout the cycle; is that right?

MR BLUMS: There are some situations where demand gets very high, during public holidays and things like that where they still follow but sometimes they do peak above others, but it depends on spatiality. I mean, the interesting thing is that when we talk about modal margins, we talk about metropolitan and areas that have high levels of competition. There are other areas where independents are in a monopoly position and they can take advantage of their spatiality.

So it's not just saying pricing situations. It's also location that's important and proximity of competition and – well, we've all see the movie, the Annabelle principle does work. The little girl who says, “Daddy, if we drive all these miles, the petrol has to be much cheaper”, so the Annabelle principle does work. It’s a simple equation on spatiality.

THE CHAIRMAN: Now, if they’re price following, the independents, both on the upward trend of the cycle, and on the downward trend cycle, where are they contributing to the competitive dynamic in petrol pricing?

MR BLUMS: They’re providing an alternative at the end of the day because there is a slight differential and, after all, people do react to a slight differential at the end of the day, and so that we do have differential pricing, we do provide a service, and we are competitive because to maintain market share, you have to be competitive. A lot of my members have been losing market share because they get assaulted during that cycle in the week and in a month very, very heavily, but they do provide competition, and they also have a situation that if there is a spike by Woolworths and Coles at times - in fact, we did a quick economic analysis of the market driving in from the airport. The taxi drivers told us all about the price dynamics of fuel in Townsville last night.

We got a full enunciation of it and certainly, the independent, he said, “I don’t buy at the majors any more unless I’ve got a docket”. So we provide the situation that if you haven’t got a docket, ours is the best fuel price going around at that stage in a lot of areas, depending again on spatiality and where you are.

THE CHAIRMAN: Okay. That would be suggesting though that you’re just not price followers, you’re price leaders if that’s the case, because you’re providing a better price than the board price of the major supermarket chains which are those I think you’re comparing against. So if you’re providing a better price, then you must be leading the price, wouldn’t you, rather than just following it? I’m just trying to establish the role of the independents in this context.

MR BLUMS: The issue is that you’ve got to distinguish between a coupon based price and a non-coupon based price.

THE CHAIRMAN: No, I’m leaving the coupons out for the moment.

MR BLUMS: Well, if you took the coupons out and you looked at it in some places, and sometimes we do lead the price down, again it depends on circumstances, spatiality, but if you take the coupon out and you take the discount out, yes, my people are very productive and very competitive on straight price, and they do provide an attractive alternative in the market.

MR KANE: May I also just say on that too, is most independent sites as well also offer a better shop offer. They discount their other range of products, for example drinks and cigarettes, have normally got a better shop layout and format and a better shop offer for our customers.

THE CHAIRMAN: I'm glad you led it back, as the very next question I was going to ask you was the shop offers. Did you want to jump on to anything before we get to that?

COMMISSIONER KING: Look, I've got a few more questions on the cycles but why don't we go to the shop offer and then come back to the cycle.

THE CHAIRMAN: : Okay. And actually it's the very next question I'm going to ask, with the shop offer, the convenience store operation, because it's been suggested to us that one of the responses that's – and perhaps the predominant response that's coming from independent outlets to the price challenge, if you like, the price competition on petrol sales, is to offer significantly enhanced and beneficial convenience store operations, shop offers. Could you perhaps explain that a bit better to us.

MR BLUMS: That the shop offers may include more of a traditional based convenience store which they also offer food, food offers as well, branding with food, better discounts through their change of products. Most Coles and Woolworths' specifically built service stations only have a very limited sales room and very limited products which they don't seem to discount.

MR KANE: And the real issue is do we have a petrol industry with a convenience store attached, or have we got convenience store industry with a fuel outlet attached, and do we have in the majors a grocery chain with fuel attached, or a fuel chain with groceries attached.

MR BLUMS: Also, you'll find with the independent, convenience stores are open a longer range of hours. They do offer a better public service.

THE CHAIRMAN: The convenience stores that we're talking about, and the independent outlets, are they – well, we've talked about some that have disappeared over a – leaving aside those that have transferred ownership to Caltex – sorry, to Coles or Woolworths, but is there a restructure that's occurring amongst the independent outlets into – we've heard evidence that suggests that many of those that have been disappearing are what were described to us as three pump outlets with a tiny convenience store and there's a move to the much larger outlets of 20 or 30 pumps and very large convenience stores with coffee outlets and fast food and the like; is this the trend that you're noticing with your membership?

MR KANE: Yes, it is. There's also a lot of older sites that are being retro-fitted. It's either close them down or move with the times, so yes, there is a definite move towards that, and a lot of that is because of the low margins in the petroleum sector. which can be up to 80 per cent of your turnover of business, can be at a loss.

COMMISSIONER MARTIN: So isn't this therefore a question of what are the business models I think you were saying these are – all the issues. It's where is the consumer taking this market?

MR KANE: Where is the consumer taking this market? I think the consumers are taking the market – marketing two different ways. They're either following the shopper dockets or they're going for a better convenience offer. Some people are sheer price driven on their petroleum purchase, and others would – a lot of the time, too, is the convenience store sales on some of the independent sites are actually going up even though their fuel volumes are going down. They're - people who are going to buy their fuel on a discounted shopper docket offer, but they're buying their convenience items in the independent sites, and not using the petroleum offer.

THE CHAIRMAN: You've said to us – sorry.

MR BLUMS: So that the – so that the model that we're talking about is a model that will, I think, evolve into not being a fuel station and not being a convenience store or a grocery store, but some hybrid of that that will become the future economic model that will be sustainable and this will – and the mix between convenience and groceries and fuel and the resources and the capital that is split in this business will be looked at in a homogeneous way. We won't look at it – in future, when we do these inquiries and in five to seven years' time when - - -

THE CHAIRMAN: Can we make it a bit longer?

MR BLUMS: - - - when Inquiry 52 or 55 occurs, Mr Chairman, we won't be talking about the fuel; we'll be talking about this model as a homogeneous issue because that's what it will evolve to, and the interesting thing is how will Woolworths and Coles reconcile the spatiality of where fuel is and where groceries are, because my independents have put them contiguous, while Woolworths and Coles have kept them apart and they're spatially separated.

Now, the issue will be whether the consumer is attracted to a contiguous model, or whether they still find it okay to line up in big long lines after they've bought their groceries to discount this shopper docket that they've got as a coupon for buying groceries, at the end of the day, or will they be attracted to a homogeneous model where you have a contiguous situation where you buy your fuel and you go and then you do your situation.

The other thing is there's, as Mr Kane has pointed out, that the hours that are done are an important component of the convenience at this stage, and that my members can demand and hold a premium in the market for the hours that they operate, and in due course, petrol might just be the loss leader and may not be the most important revenue stream in these businesses in future, in the model that we see emerging.

THE CHAIRMAN: To take this one step further, it's been put to us over the past couple of days, that in fact the shopper dockets, although they - there have been two separate strains of thoughts in respect of shopper dockets. One is they ought to be banned, and the other is that they're becoming less relevant, that consumers are treating them with less enthusiasm and are, perhaps, potentially going more towards the convenience store or the better food/grocery offering that might be provided by those that have expanded their convenience store operations.

And so it's been suggested to us that some of the major independent chains are focusing on the development of their convenience store operations as a means of attracting shoppers and at the same time, fuel sales, rather than trying to compete with the shopper dockets. Do you want to comment on that proposition?

MR BLUMS: Well, I think that anecdotally there's probably been some loss of popularity in the discount coupon sale as such. I would probably leave it to Mr Kane to comment on whether the convenient stores are becoming more popular as such, but I think that probably, people are questioning the real value of the docket, because we know the exchange rate between the Australian dollar and the US dollar and we can work out the parity price, but it's very difficult to work out the exchange rate between a docket and the Australian dollar, and it's very hard to work out the exchange rate between the four cents as the arbitrage on this at the end of the day. So, I think that some of the consumers are probably looking at this and saying, well, is this really the circumstance that it portrays itself to be. So, there is some question about the popularity.

THE CHAIRMAN: Okay, did you want to comment on this?

MR KANE: I think perhaps, with all due respect, you may have to ask the question to Coles and Woolworths on their redemption rates for their coupons to see whether their docket rate redemption is still as high as what it was initially. I would suspect that their rates have dropped off.

THE CHAIRMAN: Would you be – if we had the power to do so, would you be seeking the removal of the shopper dockets altogether?

MR KANE: I think the shopper docket program is probably – it's their commercial decision to offer a discount, but how they're funding that discount is probably what should be looked into, on the grounds that – are they receiving a better terminal gate price and are they using that with their shopper docket system. Are they passing that discount on?

THE CHAIRMAN: There's been a suggestion put to us by Mr Bowden of the Service Station Association that shopper dockets ought to be redeemable at any service station but of course, that the cost of that be borne by Coles and Woolworths. It's an interesting suggestion. I'm not sure how Coles and Woolworths will react to that, but how do you react to that?

MR KANE: I think Mr Bowden may be living in a different world.

MR BLUMS: I think it's commercially and administratively not possible at this stage, to run a system – I mean, just thinking about it, it would be very, very difficult and very complex. I mean, or do we set up another bank of shopper docket settlement. I mean, I think that - - -

THE CHAIRMAN: We could probably sell the shopper docket scheme to the same buyer of the Qantas Frequent Flyer scheme.

MR BLUMS: Exactly, exactly, what a far sighted thought.

MR KANE: But who would pay for the redemption, like who's going to pay for the redemption.

MR BLUMS: Well, Woolworths and Coles they say would pay for it, right.

THE CHAIRMAN: I think Mr Bowden suggested it be paid for by Coles and Woolworths, but I think this is – I'm just trying to paint your hypothetical scenario where things would head and I think what your – if I can try and summarise it, you are saying, if we could get transparency as to wholesale pricing mechanisms and wholesale pricing, and if we can get collective bargaining, which we can authorise, but that's a matter as you described as herding the wild cats, and if we can do both those things, then they're the fundamental changes in the structure of the industry you would like to see, and you are then, I think suggesting – I don't want to sort of put words in your mouth but I am just trying to summarise the position – you are then suggesting that the restructuring that's occurring amongst your members, in particular to consolidate and perhaps enhance their convenience to offering, is the alternative model to providing straight discounts on petrol sales, which appears to be the model that you are putting to us, is the model being pursued by Coles and Woolworths and that the gradual diminution in the relevance or attractiveness of the shopper dockets will see them move into, if you like, on stream of competitive dynamic whereas your members are moving into another stream of competitive dynamic. Is that a fair summary, or have I verballed you?

MR BLUMS: No, that's a fair summary. I think that the other issue that we did raise and I draw it to your attention again, is that we also think that this has to be a strategic view of things and it needs some view of section 46 at the same time, to make those things work, at the end of the day, whatever form we do that there, but I think that if we got those dynamics in place, that we would have a strategy which would allow the levels of competition that are needed in this market to be envisaged.

THE CHAIRMAN: Now, can I just take you to 46, without wanting to get into a legal debate about what section 46 does or doesn't do, can I get your perspective on where you would see section 46 intervening to protect the competitive dynamic and the structure that we have just described. Where do you think section 46 would operate? What are the scenarios?

MR BLUMS: Section 46, the important scenario here is that section 46 should act to prevent injury, economic injury where sales occur at less than fair value. In other words, very similar to dumping, when you look at the Customs Act and the World Trade Organisation, that if there is a circumstance where pricing is specifically brought down to cause sustained injury and to drive people out of the market by taking away market share or causing a price suppression to the point where economic damage is intended and occurs, that should be stopped.

THE CHAIRMAN: Okay, can we put that in lay terms, just for the moment. That would be a particular service station outlet, or group of outlets discounting to a level that was designed to drive competitors out of business?

MR BLUMS: That's right.

THE CHAIRMAN: Okay, I understand that. That would be, in a sense, a classic section 46 possible scenario.

MR BLUMS: That's right.

THE CHAIRMAN: Now, let's take it – I want to take you back to a proposition you put before. Let's assume you can herd your wild cats together into collective bargaining, and you've got transparency and you know that another collective group, it might be a Coles, it might be Woolworths, or it might be a collective group that belongs to another association, whatever, but that collective group was able to negotiate a wholesale price at TGP minus X and your collective group seeks to negotiate the same wholesale price but finds it can only get TGP minus Y which is less than X. Do you regard that as a section 46 issue, or it's just, that's the process of capitalism.

MR BLUMS: That's right. That's capitalism. If they can get a better deal and they sell into the market based on that terminal gate price, on a properly costed basis. That is, they add transport and everything into it, sell into it and beat us in the market, that shouldn't be subject of section 46. But if they get TGP minus X and they sell at minus 3X or 4X then it should be considered.

COMMISSIONER MARTIN: You mentioned earlier that perhaps the market was moving towards this mix between convenience and petrol, that petrol will be a loss leader. How would you reconcile that situation, because whoever was loss leading, would they be acting illegally?

MR BLUMS: On a properly costed basis, if the pricing wasn't predatory or there was a reasonable circumstance – see again, I think that if the cross subsidy is intended or causes economic injury then - - -

COMMISSIONER MARTIN: But where do you draw the line between just bringing people through the door and selling them more - - -

MR BLUMS: But they can do it under the international trade protocols. You have counter veiling duties. I mean, there are protocols established in international law for this. Again, if you do a cross subsidy which drops your price to below a fair value in the market – in a sense, if you cross subsidise to where you're selling the fuel at below terminal gate price then clearly you're intending to injure. Right, and we're not saying that anyone's guilty but we just say that there's a case to answer, explain to us why you are doing this thing. You might say, the guy up the road did it, so I had to do it to retain my circumstance.

We just say that there is a case after that – a prima facie case has to be constructed and established beyond doubt and we're not saying anyone is guilty, we're just saying that if these circumstances occur, then there should be a mechanism by which they can be considered at statute.

COMMISSIONER MARTIN: Related partly to how one was sustained and - - -

THE CHAIRMAN: Right, can I take you on to the issue of price cycles. Do your members like them?

MR BLUMS: Mr Kane, I think would be - - -

MR KANE: I would say no. We all can't - not all of our members can compete to the extent that the price cycle is ranging, mainly because of the TGP issues that we've already spoken about. So, in fact, probably the consumers are the biggest ones missing out with the price cycles, because we all can't compete in the level of discounting that happens because we don't have privy to the discounted TGPs.

MR BLUMS: Mr Chairman, can I make the observation that there appears to be two types of cyclical events in this industry. One is that driven by demand and supply. Certainly public holidays, Christmas, Easter and things like that, where the level of motoring goes up, there's a demand cycle driven there, and we an understand the cyclical action there. Then there appears to be weekly cycles that appear to be induced for reasons other than demand and supply.

In fact, it's interesting that during the high part of the cycle many consumers avoid that section and in fact go to the low part of the cycle, and it's difficult to see, with this move across from consumers to the low part of the cycle, that this high part of the cycle on a weekly basis can be attributed to high demand. This is unusual, or it seems incongruous that this is the circumstance.

THE CHAIRMAN: Why have we still got them? I mean, they have been around for years.

MR BLUMS: As we said, we think anecdotally that it may be generated higher up the value chain by changes in price at that level. There might be also some cycle that's driven to try and gain market share as well at some stages and, then, when you've got the low price, you've got to recoup the margin that you've lost so you have, you know, one part of the week where you lose margin and the other half of the week - as we said, it's interesting that it's three and a half days and three and a half days. I mean, I know it's a coincidence, but, in economics, an unusual coincidence like that usually don't occur.

THE CHAIRMAN: It's fascinating but, to date, everyone seems to say they don't want the price cycles, but no one takes any blame for them - - -

MR BLUMS: For generating them.

THE CHAIRMAN: - - - either going up or down, and no one seems to know how to get rid of them. But that's interesting. Regional - - -

COMMISSIONER KING: Just before - - -

THE CHAIRMAN: I am sorry. Yes, please.

COMMISSIONER KING: It's partly related to regional. You've got members who obviously are operating in areas like Brisbane where there are price cycles. You have got members who are operating in regional areas where there are no price cycles, or price cycles are much less formal, where they don't tend to be every week. Do you have any feel about whether - in terms of just of just bottom line, in terms of the profit that your members can make, are they better off with the cycle or are they better off without the cycle? So, are the Brisbane guys better off than the Rockhampton guys because of the cycle, or is it just too hard to separate other things out?

MR BLUMS: Well, before I ask Mr Kane to comment on it, I would just say that the base buying price at various areas differs - - -

COMMISSIONER KING: Of course.

MR BLUMS: - - - by so much that it's hard to actually determine what profit margins anyone really generates at the end of the day because, in some ways, the pricing available regionally doesn't make rational sense at the end of the day. Some places that are much further out get a better price because of supply and competition - - -

COMMISSIONER KING: Yes. I think we're about to come back to that actually.

MR BLUMS: - - - and things like that, where, in closer, you would think there would be a shorter because of the logistics distance. So, in some ways there is some irrationality, but I think Mr Kane would be better at answering.

MR KANE: Well, also, too, is: in the regional areas you have lower volume sites, and they do need to sustain slightly higher margins to offer service. We have seen in some regional areas where price competition has been so fierce that sites have closed, and consumers have to drive 80 - 80 to 100 kilometres just to access fuel. So, there has to be some sustainability with the lower fuel volume sites.

COMMISSIONER KING: But there isn't a feel that - you know, you don't have any members who say, you know, "Gee, thank God I've at least got the cycle. I can make some money on the up side." Or, you don't have members who say, you know, "Oh, we're surviving, but, you know, if we had price cycles here, I'd just be doomed." I mean, there's not feel about that?

MR KANE: We have to be extremely careful how we talk on fuel prices, otherwise we will end up in court with the ACCC. And margins, you know, is one instance, but also, too, is just my own gut feeling. The price cycles are more of an inconvenience than anything else for a service station dealer. You know, we spend a lot of time driving, out looking at price signs, you know. I think our consumers, if we had a more stable retail pricing, they would look at the shop offer more so than the board price.

COMMISSIONER KING: Okay.

THE CHAIRMAN: The regional price differential - and you've almost answered this just in passing, but I just wanted to get to some, you know, greater detail on it - what do you think is contributing to the - you call it, at times, a marginal price difference, but in some cases we're looking at far more significant price differences between what's happening in the capital cities and what's happening in regional Australia?

MR KANE: I think it's straight - as I said, it's volume-based, where it's a scale of economy of running the site. Its' - you can work on a smaller margin if you've got a higher throughput. It's, as I said, a straight scale of economy. If you've got a site doing 100,000 litres, it has to make more margin on that product to one that's doing a million litres a month. It's sheer economics.

MR BLUMS: But, also, some of the buying prices don't have rationality as well.

MR KANE: Some of the buying price. Also, with the regional areas, you have different freight differentials. Every site has a different buying price. I, myself, run two sites and I have two different freight levels. I have two different buy prices, even though they're - - -

THE CHAIRMAN: Is there an explanation given for that? Is it transport costs?

MR KANE: It's a straight transport cost. But, then, in some areas, the terminal - as we can - later on we will give you some confidential information about terminal gate pricing, how it differs in different ports.

THE CHAIRMAN: It's a bit hard to use some of these numbers, but we've got the submission that's been lodged with us by the Queensland Treasury that shows some of the approximate distances from the supply terminal and the difference in average price from the terminal centre in cents per litre, and there doesn't seem to be an exact correlation. In fact - - -

MR KANE: Random.

THE CHAIRMAN: Yes. I was going to say that. It's far from exact correlation, it's completely random. For example, if we take Brisbane Supply Terminal to Toowoomba, where the difference in average price is .77 cents per litre, and the difference here is 122 kilometres; but, then, if we take Mackay to Moranbah, which is just an additional 10 kilometres, 132 kilometres, we've got a differential of six cents a litre; and, then, Townsville as the supply terminal to Charters Towers, where the supply differential - sorry, the price difference is 6.22 cents; and then we have Brisbane to Warwick which is 153 kilometres, so that's further than Townsville to Charters Towers, and the difference there is .19 of a cent of a litre. So, it does seem to be very random. Has anybody got any idea: is this just sort of something plucked out of the air, or what's happening?

MR BLUMS: I think in some cases there are situations where the prices are based on what they consider the market will bear, rather than the cost structure. And you're right. I think we mentioned the term, that some of the cost structures cannot be rationalised, and we have looked similarly at those numbers, and we have looked at the circumstances facing our members, and we can't rationalise the pricing parameters, because in some cases, where you think there would be a cost for a greater distance from the port, because of other factors such as competition in that particular centre, the prices are lower.

In other areas that are in closer where the competition is less, there is less contestability between the refiners, the prices will be higher because - the only thing we can put that down to is the market will bear a slight premium because of the lower contestability between the refiners.

THE CHAIRMAN: Yes. It looks like we've got some very intolerant people in Gympie, because they won't bear any differential at all - in fact, they want the differential to go the other way, that is, minus .45 cents a litre - whereas we've got some very tolerant people in Charters Towers because they will bear a differential of 6.22 cents a litre.

MR BLUMS: That's it.

THE CHAIRMAN: So maybe people ought to become less bearable and less tolerant.

MR BLUMS: Yes, Gympie, it could be Matilda could be influencing.

COMMISSIONER KING: So when you talk about the competition there, it's the competition and the distribution network, is that a fair way – so it's competition from the local depots in regional areas?

MR BLUMS: I think it's – rather than competition, I think we should call it contestability. Right, and if there is a contest to be the supplier or the retaining one's position, then you find that the pencil is sharpened somewhat. If there is a lesser contest, or if there isn't a contest for that particular node, then you find that the pricing appears to take up the available margin of tolerance that the people have.

COMMISSIONER KING: But is the contest between supply depots or is the contest between a supply depot in a town and someone trucking in the fuel?

MR BLUMS: It's a contest between two value chains. So, the whole chain contests for any of these nodes. Again the price can be adjusted along the value chain to allow contestability by submission from the person at the end saying, why are you losing market share, because Joe Bloggs across the road, has got a better price, so the value chain adjusts all along. If they wish to retain the market there, there’s an adjustment by the value chain to allow a contestable position to be arrived at.

THE CHAIRMAN: All right, just one other or sorry, two other questions and then I just want to – we will perhaps - - -

COMMISSIONER KING: Okay, why don’t I do that now. One question which I keep asking, do your members or do you observe in the market place, situations where the members are offered, irregularly obviously, but on occasion, cheap fuel. So, for example, is it the situation that your members ever get approached and sort of say, look, a truckload of fuel quite frankly, I need to get rid of it - - -

MR BLUMS: A job lot?

COMMISSIONER KING: Yes, is fuel jobbed around like that?

MR KANE: Well, I know myself, I haven’t been approached in a number of years. Some of us are branded independents as well, where we pay a brand fee to the oil company, so we can accept their cards. So, we’re contractually obliged not to have any other fuel in the ground apart from theirs but to my knowledge I haven’t seen any.

COMMISSIONER KING: So, if it exists, it’s very rare?

MR KANE: That’s correct.

COMMISSIONER KING: Just on the other side, are there any situations where, for example, it can be difficult to get fuel for a period of a week or two weeks, you know, people have noted that say a refinery issue in Brisbane, does that tend to flow through to your members and so your members are stuck in a situation where perhaps the fuel isn’t flowing at the rate they’d like.

MR KANE: There has been some fuel rationing of late and some products have been short, but I must say it seems to work down the chain where the company-operated sites will have first privy to fuel and then the branded independents and then the non-branded seem to be on the end of the food chain for it.

COMMISSIONER KING: Does that mean the non-brandeds sometimes actually, you know, essentially run out or they are starting to get low on their storage tanks and so they - - -

MR KANE: They could do, but also because they’re non-branded they probably have an ability to buy from other sources but they may pay a premium for it.

COMMISSIONER KING: Okay, I mean, there are obviously times when the prices just seem, to use the colloquial, get out of whack where, you know, the prices just seem to be higher than we would expect or lower than we would expect. I mean, do you notice that, for example, when, say, the unbrandeds are having trouble getting fuel, whether that tends to be a time when the retail prices are high?

MR KANE: Not normally, no.

COMMISSIONER KING: Just as - business as usual just means you just have to shop around a bit more.

MR KANE: That's correct, yes.

THE CHAIRMAN: You've put a proposal for a petrol ombudsman. What role would that ombudsman play, and how would it differ from that of the dispute resolution advisor under oil code?

MR BLUMS: Well, we found that the mechanics for the dispute resolution under the oil code a bit cumbersome and clumsy for my members. We thought that, depending on what the circumstance of section 46 are, that the ombudsman could attend to those issues that are not of significant situation for section 46 and that we would have – what we really want is a situation that has a very, very short time response between when you have an issue and when you find resolution for it.

At this stage, the real issue in this industry is that the exposure is financially to the independents and the issue of viability is, in some stage, so compromised by actions that you want a very quick and a short-term resolution to issues that come up. And we thought that an ombudsman who was well briefed on this may be a solution. We're not saying that, at the end of the day, that would be the be-all and end-all; we still think there should be some strengthening of section 46, but it would mean the section 46 and those issues that are of more substance would be attended to that way and that we could have someone closer to the industry with a far shorter leave time, to attend to the more mundane issues that occur.

COMMISSIONER MARTIN: Do you have examples – like, the oil code has been in operation now for over six months – of this sort of, the types of issues and what the delays were or inadequacies of the dispute resolution and what may have occurred after that?

MR BLUMS: Well, we have seen circumstances where we would like to see the ombudsman perhaps have a look at the issues of terminal gate pricing because they're moving in an irrational way. And he could have a look and see if, in fact, the terminal gate prices that are occurring are justified because he could look at the formulations that are being used on a confidential basis and assure the industry that they are justified.

COMMISSIONER MARTIN: But was this attempted to be raised under the oil code in terms of a dispute and a process that - - -

MR BLUMS: The process under the oil code would be long enough for the whole game to over and the terminal gate price would have changed a couple of months ago, about four or five or six or 30 or 40 times by the time we got to that situation. I mean, you'd go under the oil code to have a look at the whole of the actual formula but the application of the formula and its administration would be looked at by the ombudsman. So one would be tactical and one would be strategic.

We think the oil code and section 46 is strategic but maybe there is a role for a tactical response as well as a strategic response. I mean, we think that it would benefit the industry, particularly in any transition to collectivisation and things like that, to maintain levels of competition and to prevent tactical issues happening. We had this interesting situation where we had an independent in the middle of a Coles/Woolworths axis and he was getting hit from both sides as well as a very unfavourable terminal gate price that seemed to be moving all over the place for no reason.

We probably would have asked an ombudsman to have a look at that because he could do something to prevent this guy going out of business if could react quickly. While under the oil code he would have been well and truly out of business before we got a resolution of the issue.

THE CHAIRMAN: Yes. We've got some confidential too, can I just ask you one question, you may want to put this into confidential. I notice that you're not affiliated with the MTAA, would you like to just explain the reason for that?

MR BLUMS: Yes. Well, we were affiliated to the MTA and then the board took a strategic decision to say that the issues and challenges facing the Queensland automotive value chain were so complex and so serious because we have some very, very peculiar threats to our industry that we would like to represent our own views and our own circumstances first-hand rather than having them aggregated in advocacy. So there was a strategic decision that we would advocate on our own basis.

THE CHAIRMAN: Now, is that suggesting that you preferred to go direct? Or is it because you think there are different circumstances in Queensland that don't apply in other states?

MR BLUMS: Both.

THE CHAIRMAN: And the differences in Queensland don't apply elsewhere?

MR BLUMS: We have far greater decentralisation here; far more regional and fragmented areas; far more areas that have sub-optimal populations for the industry. We have the issues of the fastest growing conurbation in Australia between the Gold Coast and the Sunshine Coast. And these issues have altered things and we have some very peculiar circumstances as far as external competition are concerned to the automotive industry, where it finishes up.

THE CHAIRMAN: All right. I think we'll move just to take, briefly, some of that confidential material that you wanted to put to us. So if I could ask the room to be cleared. We've got two representatives of the ACCC here, so I take it you won't object if they continue to be present. Yes. And then we're resuming, yes, with representatives of the RACQ. So we will do that, I would anticipate, by – we'll take a 5, 10 minute break. We will resume about 11 o'clock.

WHEREUPON THE PROCEEDINGS MOVED IN-CAMERA [10.41 am]

<THE WITNESSES WITHDREW [10.54 am]

ADJOURNED [10.54 am]

PUBLIC HEARING RESUMED [11.07 am]

<GARY FITES, AFFIRMED [11.07 am]

THE CHAIRMAN: And just for the record, if you would state your name and organisation?

MR FITES: My name is Gary Fites. I'm general manager - external relations for the RACQ.

THE CHAIRMAN: Okay. Did you want to make an opening statement or comment at all, Mr Fites?

MR FITES: I would appreciate the opportunity to do so, Mr Chairman.

THE CHAIRMAN: Yes, good, thank you.

MR FITES: Again, thanks for the opportunity to represent the RACQ at this Townsville hearing of the inquiry. Our organisation, the RACQ, was a contributor to the national submission prepared by the Australian Automobile Association. However, I am pleased on the RACQs behalf to provide hopefully some Queensland perspective to that submission. The RACQ directly represents more than 1.1 million members in Queensland, and more than a third of those reside and travel outside south-east Queensland so we have a particular concern to see that those members and, indeed, all motorists in regional Queensland are not unfairly disadvantaged in terms of fuel prices as a result of where they choose to reside.

Further, and this point was made earlier by the previous party, the geographical size and decentralised population of Queensland combine to make fuel prices a particularly critical factor in the cost of goods and services in this state. You can be assured that the price of all automotive fuels is a continuing hot issue for Queensland motorists, and this is reflected in the communications we continually receive from RACQ members on the matter, and I think it's fair to say, reaffirmed by the most recent national market research conducted by ANOP for the Australian automobile clubs, including the RACQ.

Noting that the AAA, the Australian Automobile Association's submission to the Inquiry highlighted the national findings of that research, I would draw the Commissioners attention to the Queensland results, which show in this state less frequent use of shopper dockets, and that's 42 per cent frequent use compared with 48 per cent nationally, and 45 per cent of Queensland motorists who shop around for fuel as opposed to 49 per cent nationally as indicated in the ANOP research. The RACQ would concur with ANOPs conclusions that these figures reflect the greater proportion of regional motorists in this state, many of whom have less choice of retail petrol outlets available to them than their metropolitan counterparts.

It's hardly surprising then that 62 per cent of Queensland respondents to that research rated monitoring of petrol prices as "extremely important", compared with 58 per cent nationally. It probably doesn't come as a surprise to the Commission that the RACQ and affiliated organisations interstate are very much at the coal face of receiving and addressing these consumer concerns. Unlike some government agencies, our phone numbers seem to be in bold type in the White Pages on a number of issues and it's not unusual for very senior members of staff to be directly fielding and responding to the ongoing member concerns on this issue and, indeed, on a range of motoring issues, and, sure, it did not take a formal survey to tell us that fuel prices make motorists angry, and we appreciate and largely support their concerns in that regard.

We make no apology for being vocal about our concerns on members' behalf recognising that our role is largely about highlighting pricing anomalies and lack of competition in the market place as we perceive it. We recognise that it's up to government and its agency to take matters further if what we and others observe warrants investigations for possible breaches of the Trade Practices Act, or warrants consideration of new legislative powers or other government initiatives to address any impediments to motorists getting a fair go at the pumps. I'd like to make it clear, however, that as a responsible motoring advocate, the RACQ neither subscribes to nor promulgates a cheaper fuel at all costs mantra.

Our policy in regards to automotive fuels is in part that they be supplied at reasonable and competitive prices that reflect the local supply and demand situation and underlying international pricing benchmarks. We recognise that many would advocate and they, in fact, do, that the federal government simply cut excise to deliver cheaper petrol. Instead the RACQ supports a greater investment of that revenue stream into making our roads safer and more efficient. We see the flaw in the logic of lowering excise in times of high oil and refined product prices - the flaw in that logic is, of course, the opportunity it presents to the Commonwealth Government to raise tax again when international prices drop.

In a era of increasing concern over energy resource security and climate change, the RACQ believes motorists should be given every opportunity to make informed decisions about the types of motor vehicles they buy and how they use them based on very clear market signals as to the international trends in the supply and demand of the fuels they use, whether that be petrol, diesel, LPG, or bio-fuels. The problem is that those signals in relation to petrol prices are often distorted to the detriment of Queensland motorists, especially for those in regional centres who are, of necessity, far more dependent on their cars than their capital city residents who are blessed with regular public transport services and often far less distances to travel to work, shop, schools, medical services, etcetera.

We believe that such regional price distortions have certainly been evident on two occasions in the past nine months alone when petrol prices in regional centres continue to climb well after clear downturns in the accepted benchmark price for Mogas 95 from Singapore. To that, the RACQ does not constitute fair and reasonable pricing, and we were heartened by the ACCCs particular interest in that issue within the terms of reference of this inquiry.

We were also very heartened by the market response to public pronouncements by the ACCC in the two instances of such pricing anomalies in recent terms: firstly, when Chairman Samuel threatened to name and shame those artificially inflating prices over the last Christmas holiday period; and, secondly, when this inquiry was announced. It seems to us more than coincidental that regional pump prices began to fall almost immediately both announcements were made, and suggests to the RACQ the desirability of the ACCC having the powers and resources to exert that sort of influence on the fuel industry in a more overt and proactive form than it currently has.

The RACQ has stated publicly that when it comes to gathering all the necessary information and understandings of the fuel industry to fix the issues that disadvantage motorists, our organisation is on the outside looking in, albeit as a more than interested spectator. The ACCC has the power to get inside the terminal gate and behind the service station console, and we trust that this inquiry will elicit the necessary information and understanding of the industry to ultimately enable motorists to have the competence, wherever they fill up, that the price they pay is fair and reasonable, with the various cost components far more transparent than they are today. Thank you.

THE CHAIRMAN: Thank you very much. If I was to try and summarise the four areas about which you have raised some concerns, and correct me if I’ve got the summary incorrect, but it would seem to be this: the regional price differential relative to metropolitan areas, and the slower response, if you like, to movements that occur in metropolitan areas relative to that that - I am sorry, a slower response in regional areas to what occurs in metropolitan areas to price movements, particularly, the international price. That would be item number one.

The second one would be the lack of a price cycle in regional areas, and I want to come back to that because we get some conflicting views on those issues. The third would be independent imports, and then the fourth would be the last item that you just mentioned - that is, the divergence away from the Singapore Mogas 95 unleaded price. So, let's see if we can take - does that, I think, summarise what - - -

MR FITES: That's fine, yes. Correct.

THE CHAIRMAN: Right. Now, let's just take each of those in turn, and I think it's a well-recognised fact that in regional areas there will tend to be slower movements - perhaps, at times, no movement at all, and certainly disparity in prices relative to those in the metropolitan area. I think you were present when we were taking some evidence from representatives of the MTAQ - - -

MR FITES: Correct.

THE CHAIRMAN: - - - when we were drawing attention to some of the, shall we say, random differentials that occur. They don't appear to bear a great deal of relevance to the approximate distance from a terminal, and it may be that there are specific local factors in the various examples that have been given by the Queensland Treasury in its submission to us. Do you - in the analysis that's been taken - I'm taking from the RACQ, do you have any explanation for the somewhat random differentials between metropolitan Brisbane and some of these regional areas in terms of average prices?

MR FITES: Really, none whatsoever. They can scarcely be explained, from our understanding, by such factors as transport, which, in the past, has been, I think, tended to be over-inflated - overstated. Volumes, one would reasonable expect, and I think a good example we've seen lately has been the cost differential between Cairns and Atherton, for example, where Atherton has been significantly cheaper. Further away from the terminal, one would reasonably conclude, again from the outside looking in, that the volumes in a town like Atherton would be much smaller than in Cairns and, so, frankly, we see no logic at all in those sorts of anomalies.

THE CHAIRMAN: Is it - I think the MTAQ has suggested that it was what the market will bear, which is essentially, in other terms, just putting it down to the competitive dynamic, ie, that you might find larger differences in average price where there was less competition and, of course, lower - lower differences in average price where there was strong competition. Is your observation that that might be correct?

MR FITES: Well, that's right, but, again, you know, if we can just come back to this example of Cairns, and I know from the amount of media interest generated from that town, it is a particularly hot issue there. One would, on face value, conclude that there would be far more competition at the retail level, at least, in a city such as Cairns compared with a smaller centre on the Atherton Tableland, which leads one to conclude, or to think along the lines of, "Well, is the competitive problem at the wholesale, as opposed to the retail, level?"

THE CHAIRMAN: Now, that's interesting. So, you're suggesting that the problem might be the competition at the wholesale level as distinct from the retail level. Why would that differ in regard to the regional centres?

MR FITES: Well, we can drive around the streets of Cairns and count the number of service stations, do similar on the Atherton Tableland, and we - I haven't done the exercise, but I am sure we would come to the conclusion, in terms of sheer numbers of retail outlets, there is far more choice for the consumers. I think the interesting point would be, though, how much - what choice do those retailers in Cairns have in terms of their source of supply compared with in Mareeba. It may be much the same, or less.

THE CHAIRMAN: What - just to get his clear, that there are an equal number or more service station retail outlets in the Atherton Tablelands than there might be in Cairns or - - -

MR FITES: No, that - you know, that there would be less choice of retail outlets, but perhaps those retailers - the retailers in Cairns have no more choice when it comes to their source of supply than that fewer number of retail outlets in a smaller centre of the Tablelands.

THE CHAIRMAN: Yes. Can you just - because I am just fascinated - the supply terminal for Atherton and Cairns is the same so - I am just trying to understand why there would be that differential at the wholesale level - why there would be a difference in source of supply.

MR FITES: I can't explain that. I'm sorry. I wouldn't see a difference in a source of supply, but there would certainly be no - the Cairns retailers would have no more choice in terms of where they source their petrol than the few number of retail outlets in Mareeba.

COMMISSIONER KING: Do you know if Atherton has more depots than the Cairns area?

MR FITES: That I'm not aware of, Commissioner, I'm sorry.

COMMISSIONER KING: Okay.

MR FITES: But it could be a factor, because certainly there is that greater overlay of distributorships within the supply chains in regional Queensland than there is metropolitan Queensland, and I suspect that's the same in other states as well.

THE CHAIRMAN: The difficulty is that we don't seem to have at the moment - we will get some more information as we proceed with our discussions with the suppliers, but we don't seem to be getting a lot of information as to why these random differentials occur. What we do know is the random regional - - -

MR FITES: Absolutely.

COMMISSIONER KING: It could be explicable. We just don't know why.

THE CHAIRMAN: It could be explicable, yes. It doesn't appear to be rational at the moment, but maybe there's some irrational market behaviour occurring.

COMMISSIONER KING: It's got to be driven by something.

THE CHAIRMAN: Yes. So you can't help us further on that?

MR FITES: I am sorry, I can't. We would love to. As I say, we're outside that gate looking in. We would love to be inside.

COMMISSIONER KING: Okay.

THE CHAIRMAN: Okay, price cycles. We get extraordinarily conflicting views on these. Most of the suppliers and retailers say they would like price cycles to disappear. Everyone denies that they are leading up or down, they're all price followers - but someone has got to be leading it one way or the other, but we haven't out who's leading - and they say that the price cycles cause them costs, cause disadvantages to them, and, they say, equally cause disadvantage to consumers. Yet, I think the RACQs submission is to the contrary.

MR FITES: I think within the current broad structure of the industry, we think it would be a disadvantage to south-east Queensland consumers if the current price cycle was to disappear, in that at least it provides a couple of days a week that consumers have the opportunity to buy at a lower price, and I think it's a phenomenon - as much as it frustrates, and annoys, and mystifies consumers - which motorists in a city such as Townsville would be pleased to see happening in their town. The opportunity at least for a couple of days a week to buy lower than the sorts of prices that they see usually on a one to two week pattern, rather than on the cyclical pattern we see in south-east Queensland.

THE CHAIRMAN: If price cycles were removed all together, or dampened, but the result was that the price that was set on a more flatter basis was below the average price that you would otherwise see in a price cycle, would that be to the advantage of motorists or a disadvantage?

MR FITES: Well, it strikes us that – here's a case where the idea of an average is a bit nebulous because it, you know, appears to us that most people are queuing outside the garage driveways on Tuesdays and Wednesdays in Brisbane, that's when the volume is pumped. So the smart and savvy motorist knows when to buy their fuel. Sure, it does disadvantage people who get caught short or just aren't thinking ahead about it, but I would suggest that most motorists in south east Queensland know the cycles well. Sure, over a couple of years they've tended to drift from Tuesday probably out to Thursday morning these days, but most motorists get to know that cycle and buy their petrol accordingly.

THE CHAIRMAN: It’s interesting that the external observer, such as the motoring organisations and the like, tend to get most irritable in a public sense when the price cycles are operating, particularly when they’re operating up.

MR FITES: Here in Queensland we don’t have a particular irritation in regards to the price cycle. Our major irritation lies in this issue of the city/country differential where I – when I took the taxi ride in to the hotel – and I must get a life, you know, watching petrol prices seems to be my lot in life – but I noticed it was around about 115, 116 cents a litre here and, again, although there’s a danger in averages, I looked at the average price for Brisbane in the past week was probably about $1.08 for unleaded petrol and it begs the question, to me, why should there be an 8 cents a litre difference, 7 to 8 cents a litre difference in the average prices between Brisbane and a major provincial city such as – and seaport – such as Townsville. I don’t think it can be explained either by freight transport or, as much as I can understand of the industry, by volumes as well.

THE CHAIRMAN: What was the high point of the cycle in Brisbane? Just to take those examples to the high point of the cycle.

MR FITES: Around about 114, 115 in the past week down to about $1.05 for regular unleaded.

THE CHAIRMAN: So what it’s suggesting is that Townsville is copping the high point of the cycle and it’s not dropping at all.

MR FITES: It is suggesting that within the context that in the last few weeks we have seen a downward movement, grateful to see it in regional centres, but still, to us, it’s indicating not only a lag between what happens between Brisbane prices and the regional prices, but year round there is a differential between metropolitan and regional city prices which can’t be explained by the usual suspects, if you like.

THE CHAIRMAN: Okay. So then just to summarise where we’re at at the moment, you see two areas of concern: the first is that the absence of the price cycle in regional centres means that, consistently, those motorists in regional centres are paying prices that tend to be at the upper level of what it would otherwise be - - -

MR FITES: Yes.

THE CHAIRMAN: - - - the cycle in - - -

MR FITES: Absolutely, yes.

THE CHAIRMAN: Right – in metropolitan areas. And then you say you have less concern – I won’t say the RACQ has less concern about the movements of the price cycle either when they’re going down or when they’re going up, you just accept that as a fact of life but that that has a potential advantage to consumers in that they can pick the bottom of the cycle.

MR FITES: Well, within the current structure of the industry, we don't share the same concern as other groups in regards to that, nevertheless, you know, it leads us to wonder at times what gives the major oil companies, for example, the capacity to maintain that sort of regular cycle each week where, at times, it can be seen to be selling below the terminal gate price. It leads our train of thought to the make-up of what some people have called that "indicative parity import price" which includes, to our understanding, something like a seven to seven and a half cents component to cover marketing-type activities, etcetera. Is this the sort of make-up of that commonly-accepted indicative price which gives the oil companies a wherewithal to sustain the sort of regular or weekly price-cycling in metropolitan areas.

THE CHAIRMAN: Yes. There would be some observers that would suggest the reason they can sustain the price cycle is because at the top end of the cycle they're making enough to compensate for the potential that they're losing at the bottom end.

MR FITES: But that would be an interesting line of inquiry, again, to see actually how much fuel is being sold in a city such as Brisbane compared with the lower end.

COMMISSIONER KING: Is it your view that the petrol majors are the driving factor behind the price cycles?

MR FITES: On the evidence and observations available to us that would seem to be the case. The more so, we think since the effective demise of the major independent importers of fuel – again, are coming back to this point of the choice or lack of choice that retailers, particularly the independent retailers, have in terms of their source of supply. The oil companies, it would seem to us, really do have the market power there at the wholesale level.

COMMISSIONER KING: I wonder then, if you're running them in the metro areas why wouldn't the majors want cycles – now, let's assume they're doing it for a reason, but it must be profitable for them in some sense – why wouldn't they want them then in regional areas as well?

MR FITES: It's a good point. Again, look, this is merely speculation – is the market situation somewhat different in these regional centres because of the injection of the distributor networks into the distribution chain which you don't have in metropolitan areas where the distribution tends to be more direct from the refineries or the major oil companies itself.

COMMISSIONER KING: I don't know why we have the disparity, I don't know why we have the cycles, but keep going.

THE CHAIRMAN: Yes. Well, I guess if you can hold your petrol price cycle at the high point day in day out, week in week out, you'd prefer not to have a price cycle.

COMMISSIONER KING: I guess, actually - - -

THE CHAIRMAN: Sorry, when you - - -

COMMISSIONER KING: Sorry, just on that point, I mean, just on what you were saying before, I mean, another way to view the price cycle could be the petrol-savvy customers turn up on a Tuesday in the forecourt, or Tuesday evening in the forecourt, because that's when they expect the low price. If you're running your retail outlet you know you'd better be moving volume on Tuesday otherwise you're going to be - - -

MR FITES: Miss out.

COMMISSIONER KING: - - - it's a lot of fuel.

MR FITES: Yes.

COMMISSIONER KING: And you know they're the savvy customers so you'd better be pretty price-competitive on the Tuesday, whereas on the weekend or when the guy turns up with the fuel card that was given by the employer – quite frankly they don't care what their fuel costs.

MR FITES: They don't care, that's right. Yes.

COMMISSIONER KING: I mean, in that situation, is it actually the customers driving the cycle. Is it the fact that the customers turn up on Tuesday, and they're the savvy customers that you say, "I've got to move my petrol today so I've got to be price competitive." They've gone on Friday, so I'll put up my price and take the fuel-card business and next Tuesday I'll expect them again so I'll have to push the price down?

MR FITES: Yes. Look, it's a fair point but, again, you know, we just wonder how the – and I've listened to the evidence from the Retailers' Association today and I've heard how tough they're doing it there – it leads us to speculate how the oil companies, then, can continue to maintain this type of cycle in metropolitan regions without having some margin built in somewhere along the supply chain and that margin is going to them.

COMMISSIONER MARTIN: Mr Fites, having heard what they were, the association was saying, if you're looking, you're the consumer representative here, and they're saying the business model is probably moving in terms of what is presented to the consumer, why would you be arguing for this sort of disruptive price cycle when petrol is only going to be one part of the economics that go into the petrol station? You know, where people have got to queue and they've got, sort of, work out when they should go and buy this commodity, why would it be favourable to the consumer that there's all this market intelligence they've got to get, whether it's Tuesday afternoon or whenever?

MR FITES: Because in our view it's price, price, price. There's very little, or no, brand loyalty.

COMMISSIONER MARTIN: But who is telling you that?

MR FITES: That's what our member feedback is about, both informally and by research including the ANOP research.

COMMISSIONER MARTIN: But they - - -

MR FITES: They will make full use of those shopper dockets wherever they can. They will chase a couple of cents a litre cheaper if they can get it. We don't hear our members saying to us, "Look, I prefer that BP over that Mobil or that Caltex fuel," the prime concern is the price of the fuel.

COMMISSIONER MARTIN: But, for instance, with shopper-dockets, do you think that the usage is as high as it was initially when the price of petrol was 80 cents – it's now $1.10 – or is there - - -

MR FITES: Well, I can – I, again, refer to the ANOP research which indicates there is an increased take-up of, and use of, shopper-dockets where they're available.

COMMISSIONER MARTIN: An increase?

THE CHAIRMAN: I thought – I'm sorry, I wasn't sure whether it was your figures or the MTAQs that suggest that, in fact, that the shopper-docket take-up had decreased from, didn't you say, 48 per cent to 42 per cent or have I misunderstood you?

MR FITES: Well, I'm referring to that ANOP research which, I understand, is quoted in part in the Triple-A submission, that is, that's market research in terms of asking the consumers themselves whether or not they use their dockets and have a preference for them, and that indicates to us that the use of them is as strong as ever. Of course, you know, it's one thing for consumers to say something in market research; the bottom line is where they hand those dockets in, but on the evidence and research available to us, they are still very much favoured by motorists where they can get their hands on them.

COMMISSIONER MARTIN: But do they do it on Tuesday afternoon or do they – or is that through the week? I mean, these are issues as to how it interacts with the price cycle.

MR FITES: Well, purely on anecdotal and personal experience, when I was filling up at a Woolies on Tuesday night, people do pick the time of the week they use them.

THE CHAIRMAN: There's been a number of propositions put to us about the shopper-dockets, ranging from, "They ought to be banned," from, "They ought to be redeemable at any service station and not just a Coles or Woolworths one but Coles or Woolworths should bear the cost of them," through to, "Look, the diminishing irrelevance and we can offer an alternative service to motorists which is the better convenience of operation." Do you have a view, one way or another, in respect of those, sort of, three ranges of propositions?

MR FITES: First of all, we do have some concerns in terms of the overall effect on competition in the marketplace which has come about through the increasing dominance, at the retail level, of the two major grocery chains. Having said that, we recognise and support any organisations right to say, "Look, here's a reward for your loyalty," if you like. To us, it's no different to Fly-Buys or frequent-flyer schemes, so we wouldn't be suggesting that Woolworths or Coles be forced to move to a model whereby people could redeem anywhere.

But, yes, look, we do – the point is if people have shopped at Woolworths and Coles – and let's face it, in this country, they have very little choice otherwise, it is quite unreasonable – in fact, we'd say it would be foolish of someone not to take advantage of the four cents a litre on offer. So we certainly wouldn't support any precipitous moves to outlaw or, any other way, restrict people from being able to avail themselves of what benefit those shopper-dockets deliver.

THE CHAIRMAN: Now, other members of the Australian Automobile Association, with which you're affiliated of course, have had some somewhat stronger views about the shopper-dockets and have suggested that, for example, they're adding four cents a litre to the cost of petrol, do you share those views?

MR FITES: Well, look, the inquiry's investigations may, you know, receive some evidence and will confirm some evidence that it is having that pressure. Again, I'm talking about the here and now under the current structure, under the current market conditions we would very reluctant to say that people don't have some opportunity to get some reduction in the price of that fuel whether it's here in a regional centre where the price is going to be the same throughout the week, or in a metropolitan area where, if they're smart enough – and I think most motorists are – they will make use of that docket at the low point in the price cycle.

THE CHAIRMAN: You've suggested that competition in the wholesale market could be fostered by encouraging independent importers to re-enter the market. Are you familiar with the reasons why they exited the market?

MR FITES: Yes. Well, our understanding is it was largely because of fuel standards, fuel quality issues, and that led to the end of those glory days, if you like, of the liberties in traffic, etcetera, they're ability to source a standard of fuel overseas which provided Woolworths, in those days, the opportunity to sell at a very competitive price.

Let me say this. We appreciate and support moves to make sure that fuel standards are higher these days and that that may, as a result, probably has put potential or current independent importers in the situation, now, that they may find it particularly difficult to source fuel of appropriate standards to meet – well, to meet Australian standards at a price any better than anyone else, particularly if they're going to Asia where our understanding is there is a continuing strong, if not rising, demand. And so I suppose the days of buying cheap fuel overseas is gone, for the time being at least anyway.

THE CHAIRMAN: That certainly seemed to be the evidence provided to us yesterday, which was that import competition was more illusory than real. But even if importing were available, or the if the terminals were available to take the imports, that the price at which fuel is offered by the Australian refiners to Australian distributors and retailers, tends to be marginally, albeit marginally, cheaper than that that could be obtained on the overseas market.

MR FITES: That could well be the case and, you know, that's – although we, you know, we – there is a model we'd like to see, have more competition at the wholesale level, we do recognise those realities as they exist at the moment.

THE CHAIRMAN: You talked, in a number of comments that you've made yourself and Mr Ken Willard has made, about the TPA being inadequate and this limits the ability of the ACCC to deal with anti-competitive behaviour in the oil industry and you've just – if I can quote a couple of references:

> *The ACCC can only go by the Trade Practices Act that is totally inadequate to deal with the anti-competitive behaviour in the oil industry at the present time. Though it has to show explicit collusion between the oil companies, which is extremely difficult to do, they might best be described as a "toothless tiger."*

What do you see as the inadequacies – well, let me – I should go back – what do you see as the anti-competitive behaviour in the oil industry at the present time and the inadequacy in the Trade Practices Act to deal with it?

MR FITES: We would see that, primarily, in the area of the exercise of market power which isn't related to collusion, as such, in the areas of – well, it could be construed as predatory pricing, where it just takes one of the major players to put the squeeze on prices acting quite independently. That's the area of concern to us, where it's not a matter of a couple of representatives of competing organisations gathering in the golf club on a Saturday afternoon to talk about prices or fixed prices but, rather, within a market with a shrinking number of large players, the ability of any one of those players to exercise their strength to the detriment, particularly, of the independent players.

THE CHAIRMAN: Okay. Can I test that a bit, because the independent players are often thrown up as the parties that are victimised by predatory pricing, but we've heard evidence over the past three days that the independent players actually don't set the prices, they take the price offered to them by their suppliers, for the most part, the major oil companies. Now, as we'd be aware, predatory pricing involves someone who has got substantial market power exercising that power to damage or to try and destroy a competitor.

If it's true that "the independents," as we've described them, are price-takers and that the parties that are setting the price are, in fact, the oil majors, that is, their suppliers, then where would we see – what would you see as really occurring in the competitive dynamic where a major – and I assuming for this purpose you're talking about a Coles or Woolworths – are offering fuel at very low prices, let's suggest even below cost, but the response from the suppliers, that is, the price-setters, to the independents is that they don't seek to match it; they don't seek to assist their independent distributors, their independent retailers, to match that price.

MR FITES: Yes. Look, again, you know, I noted with interest, you know – the evidence from people within the industry, the retail industry this morning, but going back over time, within the last decade as we've ramped up what monitoring we can do of prices – it's been interesting to note, for example, let me quote the example of United Petroleum, the role-out of their site, it's almost in a, sort of, progressive northward movement, they got a little further north each year, our observations as to pricing in regional centres over that roll-out of United Petroleum was that it seemed to us more than coincidental that when United came to town the existing outlets at that stage that the oil majors – I think the grocery chains were up and running then – they sharpened their pencils and prices, overall, came down.

So that was evidence to us, or it indicated to us, at least, again, from the outside looking in, that an independent chain with some critical mass to it did have the ability to influence prices at the retail level. So I suppose I put that up as an observation somewhat counter to claims otherwise that those sorts of larger independent chains don't have some influence in the scenario of lowering prices.

THE CHAIRMAN: Let me put this scenario to you, this proposition to you, which we're just trying to puzzle through at the moment; we've got price-takers, which are the independent retailers; we've got price-setters, which are – I'll simplify – just for current purposes remove the, if you like, intermediary wholesalers out of the process – but we've got price-setters, which are the major oil companies; and we've got price-setters, in part, that may be Coles and Woolworths.

MR FITES: Yes.

THE CHAIRMAN: If we took the propositions put to us by the independents, which is that Coles and Woolworths predatory price with the objective of driving the independents out of the marketplace and the independents can't compete, and we were to look at who is actually setting the prices, what that would be suggesting is that Coles and Woolworths, with the assistance of their suppliers Caltex and Shell or Shell and Caltex conversely, are purchasing fuel and selling at a retail level that is designed to drive out the independents, which is really targeting their suppliers - that is, BP, Mobil, Caltex with its own large independent retail outlets, and, in small part, Shell.

That is a strange scenario, because it's suggesting that Coles Shell, Caltex Woolworths, are trying to drive out of the market Caltex, Shell, BP and Mobil, and the BP and Mobil are not responding by saying, "We will meet the competition being provided by Coles and Woolworths." Does that sound rational?

MR FITES: No. It doesn't, and, look, our difficulty in all of this is that all we see are the posted prices. We have no knowledge whatsoever, no insight whatsoever, who is making the moves here. You know, the traditional model, as we understood it, of the Woolworths pricing regime was to simply come in and match the price that - the posted price of their competitors within a certain geographical area, and, again going back a few years at least and looking at the data that we had, it indicated to us that at that stage, at least, in the early years, the Woolworths-type operations certainly weren't the price leaders. They were simply matching the local prices and offering the benefit to their loyal grocery customers, if you like.

Now, the suggestion that we're hearing now, is that they moved or changed that model in recent years to actually going on the front foot, being more aggressive, to the extent that, you know, they could be accused of indulging in a competitiveness which some people may construe as being predatory pricing.

THE CHAIRMAN: Yes. It is, indeed, a strange scenario, isn't it, when, if we look at these independent retail outlets as being, can I call them, distribution arms - they're not, I know that they have different structures, franchises and commission agents and the like - that they are distribution arms of the major oil companies. But what is being put to us is that the major oil companies are happy to sit by - sit back and allow these independents to be driven out of the market by Caltex - start again, by Coles and by Woolworths, which is suggesting that, you know, that the BPs, the Mobils, the Caltex and Shells of this world, are sitting back and basically saying, "Well, we're happy for the BP outlets to go out of business.

We're happy for the Mobil outlets to go out of business and for the Caltex independent outlets to all go out of business, and, you know, the Shell's few independent outlets, all to go out of business, and that will just all leave us with Coles and Woolworths dealing with Caltex and Shell." It seems all just a bit irrational, doesn't it?

MR FITES: Or, another way that scenario could go is that it may - and I stress may - present an opportunity for the BPs and Mobils to take the opportunity to consolidate their operations into company-owned and operated sites, consolidation into larger super sites. Some may contend that that would suit their purposes.

THE CHAIRMAN: And if it did, then you might have an interesting competitive dynamic between BP with its company-owned sites which, as we understand, most of them are; Mobil with, as you described it, potentially company-owned sites; Caltex, with a number of franchised sites, 11 to 1400 in total; Caltex with the Woolworths sites; Shell with Coles running its metropolitan sites and having the regional sites. You could have some interesting competitive dynamics between four major oil companies and two major retailers.

MR FITES: Well, to us, you know, I don't think there's anything inherently anticompetitive about a situation where you've got, say, four major oil companies in or out of alliance with grocery chains, and a number of large independent chains - and by large, I say, in the Queensland context, the Freedoms, the Matildas and the Neumanns. To us, we don't see anything inherently anticompetitive in that at all. As much as one empathises with the battler running maybe one or two sites, or something like that, I don't think with the best will in the world, operations such as that were ever going to make a real contribution to price competitiveness as far as consumers are concerned.

THE CHAIRMAN: But they would if the people that set the price that they ultimately are able to charge at the bowser were interested in their continuity, given that the price setters, as they put it to us consistently across Australia, the price setters in these cases are the four major oil companies.

MR FITES: Yes. Look, you know, this is maybe perfect world stuff to us, but, I mean, again, in a perfect system, even a relatively few number of large competitors benefiting from the economy of scale, volumes, and things like that, shouldn't be inherently anathema to the situation where motorists are getting a fair deal.

COMMISSIONER KING: I've got one question, actually, slightly going back to where we were talking about fuel standards earlier on. You noted that the independent, or the demise of the independent importers was related to the change in fuel standards but, at the same time, we all like high fuel standards. Was the problem that the Australian Government went it alone in fuel standards, that, perhaps, we should have gone in lock-step with the Europeans or the Americans, or you just don't think that would have mattered?

MR FITES: Look, that's an issue, and it's a concern to us on a number of levels as well - you know, environmental and other issues as well, but I think it also relates to - in terms of pricing and benchmarks for pricing, we've got this anomaly, as we see it at the moment, that the benchmark for our regular unleaded fuel is in fact what we call premium unleaded here. You know, we're using 95 Mogas as the benchmark for regular unleaded - 91 unleaded, and, to us, I think that also gives a little bit of fat in the margins for the oil companies as well, you know. We're benchmarking the price on something which costs the consumers five to six cents a litre more at the pump here as well.

COMMISSIONER KING: But does that, again, reflect that our fuel standards, you know, are just a bit out of whack - you know, maybe we can say ahead of everywhere else in the world?

MR FITES: In a broader sense, you know, it's our view that we should really be catching up here in Australia in terms of our - how we line up with the Euro standards, etcetera, for fuel.

COMMISSIONER KING: Sorry. What do you mean by catching up?

MR FITES: Like, you know, getting up to the Euro 4, Euro 5 type standards; working more in sync with the world in terms of, you know, lead content - sorry, not lead content, sulphur content, etcetera.

THE CHAIRMAN: John? All right, do you have anything more you want to add, Mr Fites?

MR FITES: Look, if I may, thank you, Mr Chairman, just a couple of observations which the inquiry may - the Commission may want to take into account as you continue your investigations and deliberations. To complicate matters a little bit, you might want to take into account the Queensland fuel subsidy scheme and what complications that presents in here, and you would be aware of a now concurrent inquiry running as well. Just what we needed; we were sitting around waiting for another one. But another thing I would like the inquiry to give some consideration to in looking at price structures as well has been the increasing availability of ethanol blend fuels, particularly here in Queensland.

Frankly, we have a concern that at this stage, at least, that ethanol blends are not bringing the price benefits to motorists which I frankly think have been over-promised. We have a situation here where we have a range of discounts from about - on the pump, from about two cents a litre up to about three - two to three cents is the common range of posted discounts. Taking into account fuel consumption issues, we believe that doesn’t deliver cheaper motoring to our members because - simply because those sorts of discounts don’t compensate adequately enough for the recognised fuel consumption penalties in E10.

But there are also some issues we’re aware of through observation and anecdotal evidence, that the way those discounts are delivered aren’t consistent even amongst the chains. And I mean, to be specific about it, the BP scheme where one requires a discount card - a specific discount card to receive the three cents a litre discount, seems to be applied very unevenly from outlet to outlet, and those difference can be actively being invited to take the card on your first fill with the E10 and then - and receive a discount, to some instances where it’s simply not mentioned, and that simply means that there’s an extra three cents a litre for BP or the operator there as well.

So I think that’s another issue, particularly as we’re seeing – although Queensland is allegedly heading towards a mandate, an E5 mandate by 2010 – certainly, in south-east Queensland, as we look at the increasing availability of E10 amongst the various chains these days, essentially, I see, in the near future, motorists won’t have a lot of choice in that matter as well. So the price of E10 is becoming a real issue in terms of the overall cost of petrol and the overall cost of motoring as well. So that’s an avenue of inquiry which the commission may wish to pursue as well.

THE CHAIRMAN: All right. Thank you very much. Thank you for your attendance and for your assistance today.

MR FITES: Thank you.

<THE WITNESS WITHDREW [11.54 am]

THE CHAIRMAN: And at that point, we will – sir?

MR AGACY: Could I say something?

THE CHAIRMAN: I'll have to swear you in under oath and it would need to be – can you make a contribution to the issues that we're dealing with?

MR AGACY: Maybe because ..... but I can affirm.

THE CHAIRMAN: Well, okay, if you'd like to do that. We've got a limited amount of time but happy – you've signed the register, have you?

MR AGACY: No, but I can if you want me - if you want me to do that now.

THE CHAIRMAN: Yes. Okay. Why don't you take a seat over there and - - -

MR AGACY: I'm just an ordinary member of the public. I live in Townsville, I have done for many years.

THE CHAIRMAN: Well, if you'd like to state your name and then perhaps take the affirmation or oath.

MR AGACY: Rex Agacy is my name.

THE CHAIRMAN: Sorry?

MR AGACY: Rex Agacy.

THE CHAIRMAN: Rex Agacy, yes.

MR AGACY: I can spell it out for you later.

THE CHAIRMAN: And - - -

MR AGACY: Where do you want me to affirm?

THE CHAIRMAN: Affirm.

<REX AGACY, AFFIRMED [11.55 am]

THE CHAIRMAN: Thank you very much.

MR AGACY: I'm just speaking as an ordinary member of the public, and I've lived here for many years and the price of fuel in Townsville seems to be higher than that in Brisbane, for example, and has been for a long time. People complain that it's due to freight costs, etcetera. I've got the Shell submission in front of me and it says:

In Queensland, for instance, Shell typically imports directly into its north Queensland terminals mainly from its Singapore oil refinery but buys fuel for the Brisbane market from a refiner in that state.

That being the case, when it says "north Queensland" we have oil tanks a few hundreds metres from here and I would imagine it comes there or else it goes to Cairns or close by. Why are we paying such a high price in Townsville compared with Brisbane when we're getting refined petrol presumably from the Singapore refinery of Shell, say; that's one situation. That, in itself, the price in Brisbane and Queensland, we are subsidised by the government and should be getting an 8 cents difference between Queensland prices and New South Wales prices. Now, why, indeed, is that happening? I mean, why, indeed, is it the case that the prices do not exhibit an 8 cent, or whatever, difference? They're more or less on parity, Brisbane and New South Wales, or it has been.

Mainly, I'm concerned with the situation in Townsville where I think it should be cheaper, in fact, than Brisbane, but it hasn't been for maybe 20 or 30 years whatsoever. Insofar as your item – perhaps thinking about where collusion is concerned between the major oil companies, I think it's like going to the races where you see the bookmakers have their boards up and they're all looking at each other's prices and within about five seconds everyone has got the same price if the first person lowers it. So I think it's like that, that oil companies set their price, they don't actively collude, but they just observe, very quickly, within half an hour the prices have changed, for example. I think that's how it goes.

The other point I'd like to make is that the prices here, about three months ago, were maybe $1.33 that's including the shopper-docket, but have come down dramatically to about $1.14 or whatever. And I think, maybe, apart from the Australian dollar going - increasing, the real reason for that is because of the announcement of this inquiry with its powers to subpoena and compel witnesses to answer questions, etcetera, and really it's a matter, I think, of the executive just soiling their underwear – please write that down. And let me - - -

THE CHAIRMAN: Do you want to express that .....

MR AGACY: Let me – and I think that's the reason – I think, therefore, that if you did have strong powers and, indeed, someone else mentioned the ombudsman, certainly if Labor gets to power they will have a price commission, perhaps under the authority of the ACCC, but otherwise it doesn't matter who is in power. I think there should be an ombudsman just like there is for the telecommunications industry and the banking and financial sector. The other matter is, I would like to see some price control. I would like to see price control of fuel that comes into Australia and, at the very least, there should be transparency within the industry at wholesale level, perhaps not at retail level, I would like to see that too, but I don't think I want to wish us to pursue that.

I would say that, for example, just in May last year, Bolivia nationalised the oil industry. So people wanted privatisation, they got privatisation of Telstra. With the oil companies we have privatisation and now we are seeing the consequences of it, they've had so many inquiries. So I would like to see the ACCC, along with the oil companies, indulge in a mechanism for price control of fuel that's coming in to Australia, that way we control it to an extent. Or else you can put licence conditions on fuel imports, such as you put licence conditions on Telstra, for example. Those are the points I'd like to make. I hope it has been some contribution to your inquiry.

THE CHAIRMAN: Thank you, Mr Agacy. Thank you for your contribution and those points will be taken into account as part of our inquiry. Thank you very much.

MR AGACY: Thank you.

THE CHAIRMAN: You may be seated.

<THE WITNESS WITHDREW [12.00 pm]

THE CHAIRMAN: Now, I will formally close the hearing. Thank you.

MATTER ADJOURNED at 12.01 pm INDEFINITELY

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