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The Secretary  
Senate Standing Committee on Economics  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Re: INQUIRY INTO NATIONAL FUELWATCH (EMPOWERING CONSUMERS) BILL 2008 AND THE NATIONAL FUELWATCH (EMPOWERING CONSUMERS) (CONSEQUENTIAL AMENDMENTS) BILL 2008

Thank you for the opportunity to submit APCO Service Stations Pty Ltd (APCO) view on the proposed national Fuelwatch scheme. The Fuelwatch scheme debate is a very important issue and one that reaches to the very core of APCO and our Franchisee's long term survival. APCO Service Stations Pty Ltd is strongly opposed to the introduction of the Western Australian Fuelwatch scheme for reasons explained below;

### **BACKGROUND**

Apco Service Stations Pty Ltd ("Apco") is an independent petrol & convenience store retailer based in Geelong operating nineteen franchised service stations throughout Melbourne and regional Victoria. In particular the service stations are situated in Geelong (7), Ballarat (2), Bendigo (2), Melbourne (3), Barwon Heads, Hoppers Crossing, Bacchus Marsh, Albury, Wangaratta and Warrnambool. Site's are presently under construction in Bairnsdale, Mildura and Ararat.

Each service station has a convenience store facility and is operated by a franchisee that has entitlement to a 10 year Franchise Agreement with APCO. The franchisee is paid a set monthly commission (cents per litre) on fuel sales and pays APCO Service Stations Pty Ltd a 10% royalty on shop sales.

APCO Service Stations was one of the first independent petrol retailers to introduce price discounting in Victoria in the early 1980's. The company has since acquired a reputation as a petrol discounter. APCO's policy is to sell petrol at a price which is below the price of its competitors by being the first to reduce and the last to increase its price during each petrol price cycle.

Independent petrol retailers can be classified as discounters or margin retailers. Discounters seek fuel volume through having the lowest price and to make a profit as a result of greater volume and through increased turnover in their convenience stores. Margin retailers prefer to keep their price up as long as possible or raise their prices first in order to preserve their margins on lower volume of sales. These margin retailer sites are often not located in prominent positions or typically 'owned and operated' by larger retail organisations

Petrol retailing is an example of competition in its purest form as competitors declare their price not only to their customers but also their competitors by posting it on large display boards.

## **FUELWATCH SCHEME IS ANTI-COMPETITIVE**

The Fuelwatch pricing model is anti-competitive. The 24-hour price change rule removes the competitive and proactive right for Apco (&/or any petrol seller) to match or drop below their direct competitors.

Apco as a 'True Independent' has established a strong reputation as a leader in discount fuel in all the regions it markets. It is no coincidence that all the regional towns that APCO operate in happen to have the cheapest and most competitive fuel prices within regional Victoria. Removing the Independents' flexibility to match or drop the price of fuel below their nearest competitor will further harm the Independents' ability to survive against the major Oil Company and Supermarket Retail giants.

It is fact that the "independent petrol seller" reduces fuel prices at the pump which creates downward pressure on price resulting in true competition. The Major (Oil company) retail chains increase petrol prices and the Independents decrease them; so it would be foolish to remove the independents flexibility to drop fuel prices.

Introducing an anti-competitive Fuelwatch pricing model will only transfer more retail market control and market share to the Supermarket duopoly. Independent market share will further decrease resulting in a lessening of competition and higher fuel prices in the future.

## **NO INCENTIVE OR REWARD TO REDUCE PRICES – DISCOUNTING AT THE PUMP WILL BE REDUCED**

The Fuelwatch scheme removes any incentive for the "Independent Retailer" such as APCO to drop fuel prices and therefore offers no reward to the company who might create further competition by dropping fuel prices below their competitors. As a consequence of the 24 hour price set rule, the discount petrol seller is adversely impacted if they get the price wrong and spend the day (24 hours) uncompetitive in their local market.

As a result of the 24 hour price rule under Fuelwatch APCO (and any discount retailer) when setting retail price's would do so less aggressively and "play it safe" which, would result in a levelling of prices at the pump. Hence, the motorist will pay more for their fuel. The Fuelwatch data from Perth proves that this is the case. Retailers are less inclined to drop prices in fear of their competitors dropping prices below them and being "caught" uncompetitive for 24 hours. The Perth data demonstrates that the price drops are not as aggressive during the normal competitive cycle and it is well recognised that the low points in each cycle are not as low.

There would be no reward for APCO as a fuel discounter to drop prices under Fuelwatch if we do not have the choice to always have the flexibility to either match or drop below our competitors – and not be "caught" out to be uncompetitive for 24 hours. Fuelwatch will potentially destroy APCO's goodwill and reputation for discount fuel because we could no longer 'guarantee' our customers the most competitive fuel prices in town. Our reputation as a fuel discounter will be savaged and the APCO customers would leave us in droves resulting in major losses in fuel sales and market share.

With little or no reward to lower prices under Fuelwatch APCO would be influenced to amend its pricing policy from 'Discount fuel retailer' to a 'Margin retailer' – which would be bad news for the motorist in regional Victoria. Inevitably all discount retailers would likely adapt a similar path as the incentive to drive prices down is removed and loss of sales would have to be offset by an increase in retail margin.

## **FUELWATCH WILL INCREASE REGIONAL VICTORIAN PETROL PRICES**

APCO's pricing policy in regional Victorian markets has always been to set a fair and competitive price. In many or most instances, Apco has significantly lowered retail board prices in these markets on our entry and where there was never any competition on the boards, there is now.

Unfortunately under a Fuelwatch scheme, there is no doubt in regional Victoria (particularly where a regular competitive price cycle does not already exist) fuel prices would remain very stable and would most likely

increase over a period of time due to a lack of competitive 'spirit' amongst retailers because no retailer could establish a long term competitive advantage or discount reputation by dropping their board prices.

Retailers will err on the side of caution when considering their option of dropping fuel prices.

### **FUELWATCH WILL INCREASE THE SUPERMARKET DUOPOLY MARKETSHARE WITH THEIR DISCOUNT DOCKETS AT THE EXPENSE OF INDEPENDENT RETAILERS**

Fuelwatch removes a key competitive advantage APCO has over the Supermarket docket system; *i.e., the **ABILITY** to drop the price to 'narrow' the retail price gap between the supermarket 4cpl discount docket and APCO's board price.*

The independent retailer cannot afford to match the 4cpl discount docket but do effectively reduce board prices to narrow the gap of the 'perceived docket value' from 4 cents to 3 cents or 2.5 cents, etc. No longer will the Supermarkets need to do a market price check to see what the independent retailer prices are. Fuelwatch makes it easier for the Supermarkets by FEEDING them with our price information and restricts our competitive edge to close the 'gap' between our board price and their discount docket offer.

Supermarket discount dockets are anti-competitive and have already resulted in the demise of many Independent retailers through excessive docket discounting. The Supermarket Discount dockets should be removed from the Australian market place if Fuelwatch is to be introduced.

The supermarket docket system allows the Supermarket Alliances to manipulate the market and Fuelwatch would most certainly increase the discount dockets' market advantage with the 24 hour price set rule. Discount dockets would allow the Supermarkets to be even lower (by the discount docket cpl amount) than the independent retailer's board price. Imagine the consequences for the independent retailer 'if and when' the retailer is already hurting because it **predicted** the price incorrectly and was found to be **uncompetitive** on the board price?

The current prostitution of petrol through supermarket discount petrol dockets is having an enormous damaging impact on all sectors of small businesses and we find fuel Independents continually exiting the market as a result. The reason being the Discount Docket system has resulted in a minimum of 65% of the retail petrol market is now controlled by Shell/ Coles and Caltex/Woolworths alliances.

The effect of the Discount docket has controlled the petrol board price and put it into the hands of the two giant supermarket chains. The simple fact being we are unable to match their discount docket scheme. The Supermarkets have achieved what the Oil companies could not; the demise of the Independent.

Without doubt the Docket system has destroyed what was a strong and competitive market. It is a system designed overseas to destroy small businesses in all sectors and once the competition is removed petrol will be a very lucrative profit centre for the majors.

It must be of debate whether the Discount docket system constitutes third line forcing when you frequently note offers by Supermarket discount chains of 8 cents per litre up to 20 cents per litre discount in the market place. It must be apparent that no one can offer such a discount without inflating prices in some other area to help subsidise the fuel discount. **Supermarket Petrol Discount dockets are without a doubt predatory pricing tactics employed by the Supermarket duopoly and has destroyed 'true transparent' competition at the petrol bowser.**

Surely if Fuelwatch was to be introduced then the Supermarket discount docket powers would have to be reigned-in otherwise the Independent retailer would have little prospect of long term survival.

## FUELWATCH WILL PROVIDE MORE MARKET POWER & CONTROL TO THE MAJOR OIL COMPANY & SUPERMARKET ALLIANCES

There are only a few remaining franchise operating sites by the major companies; Mobil and Caltex, but the majority of Caltex branded sites are also company operated by Woolworths. The reality is that most, if not all the major Oil branded sites are either Company Operated or controlled by the Oil Company Distributor system which essentially renders control to the Big Oil Company anyway.

The 24-hour pricing model provides the Major Oil Company and Supermarket Giants with more control over price as it will stabilise the fuel price which is BETTER for them and LESS OF AN ADVANTAGE FOR THE INDEPENDENT operator. Fuelwatch 'suitably fits' the larger 'company operated' chains because it creates a price levelling effect with more control over their networks providing higher margins.

The Company controlled networks of the Major Oil Company and Supermarket Alliance groups will embrace this system as it "REMOVES" the need for them to have to continually monitor APCO and other Independent discount fuel retailer prices. Currently the Major Oil Company & Supermarket Alliances have to track APCO's prices almost hourly in some cases to know what our prices are on. **The Fuelwatch scheme hands our prices (all Independents prices!) over to the Big Oil and Supermarket Alliances ON A SILVER PLATTER!**

Currently the larger companies obtain each others retail pump prices on a minute by minute basis by subscribing to a company called Informed Sources. Informed Sources is not provided with the 'Independent retailers' price information (eg; APCO, United Fuels, Liberty etc), therefore the larger chains **DO NOT KNOW** what fuel prices the Independents are on without conducting their own price surveillance by physically scouting the markets. This provides the Independents with a considerable competitive opportunity being able to gain small price advantages for periods of time (hours to days) presenting the incentive to continually drop prices to chase fuel sales from the Majors. Thanks to Fuelwatch this competitive edge will be lost!

The Independent will 'suffer' as we'll lose our competitive advantage of being able to frequently drop the price to gain a competitive price edge on Major Retailers. Fuelwatch will result in loss of fuel sales to the Independent, less foot traffic in the stores and lower shop sales which will ultimately destroy what little Independent branded business (like APCO) remains within regional Victoria.

No longer will the larger company owned Big Oil & Supermarket chains be required to employ and/or engage personnel and resources to monitor and watch the "independent" retailer.

***Just by sitting in front of a computer in their central corporate Head Offices the Retail Giant monopolies will know APCO's price's in every town across Victoria at every minute.***

How does that help the Independent operator survive against the Majors? The Big Oil and Supermarket alliances will no longer have to be concerned about 'annoying' Independent operators continually dropping prices.

## FUELWATCH WILL DESTROY APCO FRANCHISEE GOODWILL & PROFITABILITY

Of further significance and concern to APCO is that Fuelwatch will cut our franchisee's income and reduce their potential business goodwill.

APCO operates 17 of our 19 sites under a Franchise arrangement structure with 10 year agreement terms. In the past two years we have had seven of our franchisee's sell their business to new incoming franchisees all of whom have paid substantial goodwill to purchase these businesses; collectively millions of dollars of investment. We have had three other Franchisees' renew their Franchise Agreements with us for a further 10 year term.

Our franchise model and Agreement allows our franchisees to match competitor's petrol prices immediately to remain competitive within the market. It provides our Franchisee's the opportunity to remain competitive within

a market should competitors' fuel prices drop below theirs and ensures they maintain larger fuel volumes. Our Franchisee's operate as commission agents, hence an incentive for them to sell more fuel and chase the lowest prices within the market. High fuel volumes equate to larger commission payment to our Franchisee, so the revenue incentive for the Franchisee also result in a net benefit to the motorist through lower discounted fuel prices.

Our Franchisee also heavily depends on their fuel sales to increase customer foot traffic into their stores which results in increased shop sales and gross profit in the convenience store. Shop sales within the Convenience store are essential to the Franchisee's livelihood and profitability.

Fuelwatch will remove this lucrative advantage that the Independent operator and our Franchisee has 'lived and breathed' by. The goodwill paid by our franchisees will be severely damaged because we will be unable to compete in a 'free' unregulated market.

The shop sales not only support our Franchisee's business but the shops sales royalties that APCO receives from our franchisee's also heavily supports APCO's business. APCO use shop royalty income from our franchise stores to help reduce petrol prices at the pump in regional Victoria. If APCO's customer foot traffic is reduced due to our inability to remain competitive on the board price then shop sales revenue (& profits) will be reduced which heavily support our retail board prices.

The impact on our Franchisee's could potentially render them unprofitable and it will most certainly impact on APCO's ability to post and maintain lower competitive fuel board prices throughout regional Victoria.

### **FUELWATCH WILL BE EXPENSIVE TO IMPLEMENT & MAINTAIN AND WILL IMPOSE AN ADMINISTRATIVE BURDEN ON THE INDEPENDENT RETAILER**

Currently Independent retailers monitor and change fuel prices 'on the trot' by receiving price information from Franchisee's and licensee's 7 days a week, all hours of the day.

APCO receives price information hourly through the week and regularly on weekends via phone calls from our Franchisee's in 13 individual market places throughout Victoria which is a major competitive advantage when the Oil Company offices are closed late Friday to Monday morning.

Should Fuelwatch be introduced APCO would have to employ additional resources 7 days a week to attend to the price surveillance and monitoring compliance issues associated with assessing 13 different markets around Victoria of all fuel products.

This compliance cost will be a difficult and cumbersome task for small retailers, particularly with additional workloads over weekend and holiday periods. APCO conservatively estimates this compliance cost to be close to \$100,000 per annum.

Substantial workload to APCO's business will add further operating cost which will have to be passed on to the consumer and again will only favour the larger 'company operated' Major Oil and Supermarket alliance chains that can more easily absorb these costs into their networks.

The additional workload and administration may influence APCO (& other Independents) to set board prices and leave them particularly over weekends and holiday periods. Less time spent discounting fuel (and keeping the Major's honest) and more focus placed on obtaining higher fuel margins, as opposed to higher volumes (at lower prices) to increase in-store foot traffic.

The Major Company chains will likely reduce their price monitoring/surveillance costs substantially through the Fuelwatch scheme whilst the Independents will be hit hard with additional operational expense to implement and maintain the Fuelwatch scheme.

## COST CONSCIOUS CONSUMER WILL BE DISADVANTAGED

The RACV recently commented that analysis of fuel pricing trends in WA indicated a similar WA pricing system in Victoria would create higher average fuel prices. The RACV goes on to say that, "we also believe that under a 24-hour rule, Victorian motorists would be denied the opportunity to purchase heavily discounted fuel on a weekly basis." (31 March 2008 RACV's e-newsletter).

At times because of the aggressive competitive price cycle that exists in many markets consumers do have the opportunity to purchase fuel far cheaper than we can purchase it ourselves. The motorist will be denied this opportunity under the new Fuelwatch Scheme.

The ACCC released a paper in August 2005 (Understanding Petrol Prices in Australia) which conclusively stated that "consumers are generally better off with variable prices than they are with a fixed price." When the price is variable, consumers can buy at the lower price – and they will tend to buy more at the lower price and restrict their purchases when the price is high." This is exactly what is occurring in today's petrol price cycle environment so why change a system that is not broken?

The current fuel price cycle operating under the WA Fuelwatch scheme has fallen into fortnightly cycles versus Victoria which is weekly. Surely a weekly price cycle in Victoria is better as the motorist receives more opportunities to purchase at heavily discount prices?

Data analysis over the petrol price cycle obtained by the ACCC in this Petrol report also concluded that on average, around 60 percent of petrol is sold at prices below the average price of the price cycle, and around 40 percent is sold above.

This is definitely apparent in APCO's business; in fact analysis of APCO's data demonstrate **that 68.5% of customers** in Geelong purchase fuel at the **lower half of the price cycle** and this would most likely be the same for all Independent Discount retailers (see attached APCO price data; Schedule 'A').

The Schedule 'A' table illustrates that 68.5% of the Geelong motorist is purchasing heavily discounted fuel; up to **2.39 cents below** the average monthly board price in Geelong. Note also the APCO average discount fuel prices (average price of the lower half of price cycle) provide an average saving of 2.99 cents below Perth's average board prices. So what really is important is; "at what price" the motorist is currently paying and our data clearly proves the average 'cost conscious' motorist in Geelong is way in front compared to the Perth motorist.

Therefore the motorist in Geelong is very 'price conscious' and knows exactly when to purchase at the lowest possible price...and there's no \$30 million Fuelwatch scheme in Geelong! We would suggest that the Geelong motorist is no different to any other price conscious motorist around Australia.

**Every market behaves differently with unique variables at play.** Fuelwatch is fundamentally flawed – it is foolish to believe that you can lower fuel prices with a computer software program!

Fuelwatch does not adequately address '**WHEN**' motorists purchase and at '**WHAT**' price the majority of motorists are actually purchasing their fuel at. Fuelwatch is focussed on the average board prices for the month; instead of what the Australian motorist is 'actually paying at the pump'. If **68.5%** of APCO customers purchase their fuel on the 'lower half' of the price cycle then the motorist is receiving substantial savings. Fuelwatch will remove the opportunity for the 'cost conscious' motorist to purchase at heavily discounted prices.

**Where is the logic in 'empowering' the motorist with Fuelwatch so they will know exactly what price they will be paying for their fuel on the way to work or home (under 24 hour price rule) when those prices WILL NOT BE DISCOUNTED AS MUCH?**

The WA Fuelwatch scheme has extended the typical petrol price cycle from a 7 day cycle that motorists benefit from (68.5% of motorists in Geelong) to a slower moving 14 day cycle with a slightly reduced swing. (Schedule 'B') Available data from Perth has shown that prices do not sink as low or peak as high as the

normal 7 day cycle. The reduced swings and higher average prices (lows not as low) unfortunately result in the "price conscious" motorist paying higher prices at the bottom of the 14 day cycle.

***If there are fewer price cycles and the dips in price are not as low, then the motorist not only pays more but the 14 day cycle effectively removes the opportunity for the cost conscious motorist to purchase petrol every second week at a heavily discounted price.***

## NO CONCLUSIVE EVIDENCE TO SUPPORT FUELWATCH WILL REDUCE PRICES

APCO would certainly like to be provided with any evidence that support the claims that the WA pricing model will make Australian motorists better off! All the evidence thus far points to the opposite and there is no conclusive evidence to support claims that this scheme will save the motorist up to 1.9 cents per litre.

APCO's net fuel margin return for the March year to date period is only 1.1 cents per litre? This proves that Fuelwatch cannot deliver the proposed savings.

We also enclose APCO statistical data of a 10 month period demonstrating that APCO Geelong pump prices are on average 1.53 cents per litre CHEAPER than Perth's Fuelwatch prices which categorically refutes claims that Perth's prices are cheaper and the Fuelwatch scheme will reduce Eastern States prices by as much as 1.9 cents per litre. (Schedule C: APCO Fuel prices in Geelong are cheaper than Perth's FuelWatch average prices)

Note this 10 month price comparison takes into account the 'reduced' shipping costs from Singapore of around 0.7 cents to 1.3 cents per litre compared with eastern states. Of course on the surface Perth fuel prices should reflect lower retail prices than the eastern states, but when you scrutinise the 'actual' wholesale prices there is significantly lower cost prices in Perth which will equate to lower retail prices anyway.

The ACCC's recent econometric analysis report released 29 May 2008 concludes at best:

**"From the econometric analysis, on a conservative basis, the ACCC can say that there is no evidence that the introduction of Fuelwatch in Western Australia led to increase in prices and it appears to have resulted in a small price decrease overall."**

The ACCC's econometric analysis concludes that prices under Fuelwatch has not led to any increase in prices; surely if a \$30 million dollar scheme is to be introduced then you would expect more conclusive and positive analysis that prices will be REDUCED?

## PRICE SUPPORT

Price Support is another key factor which plays a huge part in determining the price of petrol at the bowser.

Price Support in the petrol market is selective and discriminative. APCO does not receive price support however we are led to believe that some retailers do. Price support by its nature forces some retailers to lose money if they match price and eventually to vacate the market. It is our belief that if an Oil company believes it is necessary to support one account to maintain market share then that support should be extended to all fuel accounts through a reduction of the Terminal Gate Price. Selective discounting for major accounts Plus price support creates a death sentence for small retailers.

High level discounting at the 'trough' of the price cycle results in higher 'peak' prices to help offset the losses. So a price support mechanism causes upward pressure at the 'peak' (highest price) of the petrol price cycle.

When the Terminal Gate Price is fully transparent to all 'retailers' to create a level playing field it's then and only then, will the motorist receive true, transparent and fair competition on the price boards.

## CONCLUSION

For the fuel industry to remain competitive it is imperative that the Independent retailer has a competitive landscape in which it can survive. .

Fuelwatch does not reward the company responsible for providing competitive prices and decades of retailing experience tells us that Fuelwatch will reduce competition and drive fuel prices higher; not result in savings for the motorist.

In closing APCO is very concerned by the political hype surrounding petrol prices and the obscene suggestion that retailers have excessive profit margins to giveaway. If this was true then why has the industry faced a massive exodus of retailers over the past decade? Net margin returns between 1.0 to 1.5 cents per litre are being made by retailers which represent a moderate return on investment.

We trust that the Senate Committee can filter out the political hype from the actual fact that the Australian motorist is receiving competition between retailers in its' purest form at the pump. Further regulative intervention will destroy the high spirit of competition that exists today and will only lesson competition by setting the stage for further demise of the Independent Retailer.

APCO appreciate the opportunity to provide this submission and welcome the opportunity to attend one of the Senate Committee inquiry hearings into the National Fuelwatch (Empowering Consumers) Bill 2008.

Yours Sincerely,

*RF Anderson*

**Robert Anderson**  
DIRECTOR  
APCO Service Stations Pty. Ltd.