Working Party No. 2 on Competition and Regulation

ROUNDTABLE ON COMPETITION POLICY FOR VERTICAL RELATIONS IN GASOLINE RETAILING

-- Australia --

20 October 2008

The attached document is submitted to Working Party No. 2 of the Competition Committee FOR DISCUSSION under item III of the agenda at its forthcoming meeting on 20 October 2008.

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1. **Introduction**

1.1 *The ACCC petrol inquiry*

1. In June 2007, the Australian Competition and Consumer Commission (ACCC) Chairman sought approval from the Commonwealth of Australia’s Treasurer to conduct an inquiry into the price of unleaded petrol under the Commonwealth’s competition law, the *Trade Practices Act 1974* (the TPA).

2. The ACCC proposed an inquiry into the price of unleaded petrol, with matters to be taken into consideration by the inquiry including:

   - the current structure of the industry;
   - the extent of competition at the refinery, wholesale 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.

3. The Treasurer approved the ACCC’s request. On 29 June 2007 the ACCC released a paper that outlined the issues which the ACCC was examining and the process for the inquiry, as well as describing how interested parties could make submissions to the inquiry. The ACCC received over 50 submissions from interested parties, who ranged from major oil companies to members of the general public. As part of the inquiry the ACCC conducted 25 public hearings across all Australian capital cities and in several regional towns. Forty-eight organisations were represented at the public hearings and the inquiry heard from 94 witnesses.

4. In addition to submissions, the ACCC also exercised its information gathering powers under the TPA. The powers enabled the ACCC to obtain information and documents from interested parties, as well as summoning a person to appear at an inquiry hearing to give evidence and produce documents. As well as taking into account the information provided by submissions and witnesses, the ACCC commissioned surveys and requested data from other sources.

5. The ACCC’s report of its inquiry was handed to the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs on 14 December 2007. The information below outlines a number of key issues identified in the inquiry report, which may be relevant to the OECD’s Roundtable on *Competition Policy for vertical relations related to gasoline retailing*. Australia’s submission will cover:

   - the wholesale and retail petroleum market in Australia;
   - current industry structure of the petroleum market;
   - issues affecting petroleum retailing, including bundling of petrol and supermarkets;
   - retail pricing in Australia; and

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1. [http://www.accc.gov.au/content/index.phtml/itemId/790921](http://www.accc.gov.au/content/index.phtml/itemId/790921)
• the role of industry regulation, such as the mandatory Oilcode on vertical relationships in the supply chain.

2. The Wholesale and Retail Petroleum Market in Australia

2.1 Refiners

6. There are four integrated refiner/marketers operating refineries in Australia: BP Australia Pty Ltd (BP), Caltex Australia Limited (Caltex), Mobil Oil Australia Pty Ltd (Mobil) and the Shell Company of Australia Limited (Shell).

• BP is a wholly owned subsidiary of BP plc (UK), which is a major international energy explorer, producer and marketer. While BP in Australia is primarily involved in refining and marketing, it also produces solar cells on a commercial scale and is involved in the export of liquefied natural gas.

• Caltex is an Australian publicly listed company. While Chevron Corporation (US) is a 50 per cent shareholder, Caltex is not a subsidiary and all decisions are made by Caltex’s board and management in Australia. Caltex is a refiner/marketer, but has no oil or gas exploration interests.

• Mobil is an operating company of ExxonMobil Corporation (US). ExxonMobil is involved in oil and gas production and refining and marketing in Australia through a number of operating companies including Mobil Oil Australia Pty Ltd and Esso Australia Pty Ltd.

• Shell is part of Royal Dutch Shell plc. In addition to importing, refining, wholesaling and retailing unleaded petrol in Australia, Shell is involved in the development and sale of liquefied natural gas, the supply of aviation and marine fuels and lubricants, bitumen and chemicals.

7. All of the refiner/marketers import petrol into Australia. There are also independent importers who import petrol for wholesale within Australia from time to time. These independent importers only import small volumes and source most of their product from the refiner/marketers in Australia.

2.2 Wholesale Market

8. The refiners/marketers operate at the wholesale level and some have equity in distributor operations. Some independent companies also operate at the wholesale level.

9. The supply of fuel from terminal to retailer is conducted by distributors. The refiners/marketers and independent wholesalers supply wholesale customers through a mix of their own operations and independent distributors (and distributors in which they have an equity interest). Distributors supply businesses such as primary producers, commercial and industrial, aviation, mining, and the service station network.

10. Depending on the proximity of wholesale customers to the wholesaler’s terminals, distributors either supply wholesale customers directly, or from inland depots. In general, metropolitan areas are supplied directly from the terminal by the operations of refiner/marketers while regional areas are supplied by distributors.

11. At the retail level, the refiner/marketers supply to retail operations they own and operate, commission agent sites, franchisees and independent operators (both branded and unbranded). Independent wholesalers supply their own and other independent retail sites.
2.3 Retail Structure

12. Petrol retail sites in Australia can be separated into four broad categories on the basis of ownership and wholesale supply arrangements. These are:

- refiner/marketer owned sites
- refiner/marketer branded independent and distributor owned sites
- supermarket operated sites
- independent operator sites selling their own brands.

13. Retail sites within these categories are operated in one of the following ways:

- Owner operated—the owner of the site is free to choose its wholesale supplier and determine its retail price. An independent owner-operator may choose to align its site with the brand of fuel sold by a particular wholesaler, by receiving branding (signage identifying that site as sourcing its fuel from a particular wholesale supplier).

- Commission agent—an individual manages a site (owned by a refiner/marketer or independent chain), and compensation is generally in the form of a commission based on the quantity of product sold.

- Franchise operated—an individual rents a site or a number of sites, (generally owned by a refiner/marketer) and operates under a franchise agreement. At these sites, fuel is sourced from the owner of the site and branded accordingly.

14. The business structures observed in the retail market largely reflect the operation of two pieces of recently repealed legislation:

- the Petroleum Retail Marketing Sites Act 1980 (the Sites Act), which placed a quota on the number of retail sites that the refiner/marketers could operate directly or on a commission agent basis

- the Petroleum Retail Marketing Franchise Act 1980 (the Franchise Act), which specified minimum terms and conditions for franchise arrangements.

15. The Sites Act was designed to counteract the dominance of the petrol retail market by the refiner/marketers by restricting oil companies from operating or controlling more than 5 per cent of total retail sites. The Franchisee Act set out minimum terms and conditions governing a franchise agreement in the retail petrol market and covered all retail outlets selling above a certain minimum quantity of petrol a year. In response, the refiner/marketers adopted other marketing strategies (including multi-site franchising).

16. Under the Downstream Petroleum Reform Package², the Sites Act and the Franchise Act were repealed and a mandatory code (the Oilcode) under the TPA was introduced. The Oilcode, among other

things, provides wholesalers and fuel resellers with specific rights and obligations in relation to fuel reselling arrangements.

2.4 Refiner/marketer owned sites

17. The refiner/marketers own and operate their own sites, have commission agent sites, and market their fuel through single or multi-franchise operations. The refiner/marketers determine prices at company owned and commission agent sites. While prices are determined by franchisees at franchise sites, the refiner/marketers may influence prices at these sites through the provision of price support.

2.5 Refiner/marketer branded independent operators and distributor-owned sites

18. Independent operators tend to own their site but retail the fuel of one of the refiner/marketers. There are also distributor-owned sites that do this. The price of fuel at these sites is determined by the operator.

19. Distributor-owned sites are run by a local fuel distributor, some of which are owned or part-owned by the refiner/marketers and others which, like branded independent operators, use their own site and equipment and have a brand and supply agreement with a refiner/marketer. These sites tend to be located in rural and regional areas.

2.6 Supermarket operated sites

20. The two major supermarket chains in Australia—Coles and Woolworths—operate sites which have shopper docket discount schemes linked to grocery sales at their supermarkets. These are the Coles Express and Caltex/Woolworths joint venture sites. Prices at these sites are determined by Coles Express and Woolworths.

2.7 Independent operator sites selling their own brands

21. Independent operators selling their own brands range from the large independent chains to small one- to two-site operations. There are also independent operators that purchase fuel from independent wholesalers and align themselves with that independent wholesalers’ brand.

22. Independent chains generally purchase fuel in bulk from local refiner/marketers and sell it through their company-owned sites. Sites are generally operated on a commission agency basis. The smaller independent operators tend to use their own site, equipment and brand name and purchase fuel on an ad hoc or contractual basis from local refiner/marketers or independent wholesalers.

3. Current Industry Structure of the Petroleum Market

3.1 Site rationalisation

23. There are currently around 6500 retail sites in Australia. There has been continual rationalisation of retail sites in Australia over the past 30 years. In 1970 there were 20 000 sites, in 1980 there were 12 500 sites and in 2000 there were 8000 sites. Service station rationalisation has been a feature of most developed countries over recent decades.

24. While rationalisation of service stations has occurred for many reasons, changes in underlying supply and demand factors in the petroleum market have been important contributors.
• On the supply side, lower operating costs have been achieved with the development of high volume service stations, the use of self-service technology, and the availability of complementary goods and services (such as the sale of convenience goods) with petrol. The entrance of large independent chains, convenience stores and, more lately, supermarkets into the market has provided greater competition.

• At the same time, demand has changed for service stations. Motorists have different driving patterns because of the development of highways and major arterial roads to accommodate higher traffic volumes. Consumers desire longer shopping hours and more convenient arrangements for purchasing goods and services. The small service station with one or two pumps is being replaced by more modern sites—generally located on major thoroughfares—with multiple pumps, a shop and other facilities.

3.2 Increasing importance of non-fuel competition

25. A number of industry participants indicated that, while the board price was an important component of the competitiveness of a retail site, there was an increasing focus on deriving revenue from non-fuel products and services.

26. Some parties to the inquiry submitted that competitive pressure on fuel margins has led retailers to focus on developing sites that are capable of delivering very high fuel throughput, as well as additional margin from non-fuel offerings such as convenience stores, car washes and repair facilities. Non-fuel price competition - through factors like brand and product differentiation, site facilities, customer service, and site condition and appearance - is becoming increasingly relevant in the market.

4. Issues affecting petroleum retailing

4.1 Bundling with groceries—shopper docket

27. Another market characteristic at the retail level that the ACCC examined closely concerns the emergence and impact of supermarket shopper docket arrangements. The emergence and expansion of shopper docket arrangements over the past 10 years has changed the competitive landscape for the retail supply of petrol.

28. The shopper docket schemes, first introduced in Australia by Woolworths in 1996, provide consumers with an incentive to link their purchases of groceries to a particular petrol retailer. Coles Express matched Woolworth’s shopper docket scheme when it entered the market in July 2003.

29. In August 2003 Woolworths and Caltex announced that they were proposing to enter into a joint venture for the retailing of motor fuel. As at November 2007 Woolworths operated from 505 petrol outlets across Australia—371 outlets were owned and operated directly by Woolworths and the remaining 134 were owned by Caltex. All 505 outlets were branded with dual logos of Caltex and Woolworths. The petrol sold at these outlets is owned by Woolworths. Transactions for around 60 per cent of fuel sold at Woolworths service stations involve a shopper docket.

30. In July 2003 Coles and Shell entered into an alliance under which Coles took over the management of Shell’s core franchise network across Australia. The roll-out of the ‘Coles Express’ network was completed in March 2004. As at November 2007 there were around 600 ‘Coles Express’ service station sites in operation.
31. Both Coles Express and Woolworths offer a 4 cents per litre (cpl) discount on the price of petrol to customers who have purchased a minimum value of goods or services from their respective supermarkets or other companies in the group. From time to time, Coles Express and Woolworths offer special promotions above the standard 4 cpl discount.

32. The key competition concern with regard to Coles’ and Woolworths’ shopper docket arrangements is the argument that supermarkets may have the ability to leverage their strong positions in the grocery sector into the petrol retailing sector, leading to anti-competitive effects in the market.

33. The emergence and expansion of shopper docket arrangements over the past 10 years has changed the competitive landscape for the retail supply of petrol. Consumers have enjoyed the benefits of discounted fuel in increasing numbers. There is little doubt that the shopper docket arrangements have aided the establishment and expansion of supermarkets in petrol retailing, and have created significant challenges for those retailers not aligned with the supermarkets.

34. The introduction of shopper docket arrangements had a significant impact on other retailers’ sales volumes and market shares, and they are likely to have contributed to decisions by some to exit the industry. In recent times, a number of participants have substantially recovered their lost volume and market shares. Some independent chains have increased their size in terms of site numbers. Other participants appear to have halted their decline, but remain at a lower market share. There is no evidence to suggest that the arrangements over the past five years have increased the industry trend of rationalisation in the number of sites.

35. Other retailers have responded to the introduction of supermarket shopper docket arrangements with a variety of strategies, including competitive promotions and a renewed focus on delivering consumer choice and convenience. In many respects, the arrangements have been a spur for competition of this nature to the benefit of consumers. However, while other shopper docket schemes have assisted competitors to recover some lost volume, the ACCC acknowledges no competing scheme can have the pulling power of those offered by the two main supermarkets.

36. To date, the general emergence of supermarket shopper docket arrangements has not had an anti-competitive effect but has delivered discounts to the benefit of consumers and promoted competition from other retailers. The use of shopper docket by motorists has increased significantly. A survey commissioned for the Inquiry by the ACCC found that 77 per cent of motorists had used shopper dockets. This compared with only 52 per cent of motorists in 2003. The survey also found that 49 per cent of those motorists that use shopper dockets claim to use dockets ‘at least most of the time’ they buy petrol.

5. Retail Pricing in Australia

5.1 Retail Price setting

37. The ACCC also looked into the general process of price setting at the retail level. The most important factor determining the retail price generally is the wholesale price at which the retailer purchased the fuel. Retail petrol prices in Australia will tend to reflect wholesale prices plus associated costs (such as branding and transport) plus a profit margin.

38. Particular pricing strategies of different types of organisations (commission agent, franchise agent, owner-operated, supermarket alliance) also have an impact.

3 The 2007 ANOP survey commissioned by the ACCC for the Petrol Inquiry is attached to the Inquiry report at Appendix H.
• At owner-operated sites, the owner of the site determines the retail price. However, such owners may have agreements with their wholesale supplier that include price support. Price support agreements generally include provision for a maximum retail price for the period in which price support is supplied and in this way the wholesaler influences the setting of prices.

• At commission agent sites, a site is managed on behalf of another organisation, typically a refiner-marketer. At such sites, the retail price will be set by the principal refiner/marketer.

• At franchise-operated sites, the operator rents a site or number of sites and operates under a franchise agreement, under which fuel will generally be sourced from the owner (refiner/marketer) of the site. While the franchisee may be responsible for setting the retail price, the wholesale price is generally determined by the owner of the site and, in addition, the owner may influence retail prices through the provision of price support.

• In relation to the supermarket alliances, the relevant refiner/marketer supplies fuel to the supermarket under a wholesale supply agreement, however, it is the supermarket that set the retail price. Again, price support may be a feature of such an arrangement.

39. In addition to these supply and structural considerations retailers take into account a range of demand conditions in their markets. In response, they formulate a particular price setting strategy and this includes their reactions to the price cycles in their areas.

5.2 Price Support

40. Price support also has an impact on the final retail price. Price support is still used in varying degrees by Shell, Caltex, Mobil and BP to control or influence the setting of retail prices at certain retail sites. Evidence provided to the ACCC is obviously commercially sensitive but some common elements can be disclosed:

• Each company sets an internal reference price at which the relevant retailers purchase fuel (plus freight and other costs).

• Each company also determines a margin that each of its retailers is entitled to obtain. The company monitors competitors’ prices and provides price support to a level that allows the retailer to match the competitors’ prices during periods of discounting, but still retain the margin above the internal reference price.

• In some circumstances a recommended retail price is communicated to the retailer and the price support may be conditional on the retailer not pricing above this price. The retailer will generally follow the recommended price.

• Price support tends to be given on the basis of a rebate at the end of a given period.

• The major oil company decides at a given point in time to withdraw price support and informs the retailer.

41. Price support arrangements are an important feature of the retail market. They are a significant tool used by the refiner-marketers to influence the market and enable retailers to match competitors’ prices during periods of discounting. The withdrawal of price support is also significant in controlling the rapid upward movement at the commencement of each cycle.
5.3 Price Cycles

42. A unique feature of petrol prices, compared with the prices of other goods and services, is the regular price cycles in the larger metropolitan cities. The way that petrol prices go up and down by relatively large amounts over short time periods is often a cause of consumer concern. Petrol prices in the larger capital cities in Australia tend to move in regular weekly cycles. The rise in each cycle is relatively fast after which the price tends to fall more gradually.

43. There are a number of characteristics of petrol which appear to make it susceptible to price volatility. These include:

- Regular unleaded petrol is generally a very similar product with limited brand loyalty. Competition is therefore based primarily on price. For the individual retailer, there is an incentive to discount prices to attract sales from competitors when demand is low.

- The price of petrol is highly visible, as it is prominently displayed on price boards at service stations. Petrol prices are more visible than the price of most other products. Therefore there is greater incentive to discount when demand declines.

- The refiner/marketers and other retailers receive comprehensive up-to-date information on their competitors’ petrol prices at regular intervals during the day, which means they can quickly respond to price movements (both up and down).

- Service stations with shops attached may have lower petrol prices to attract customers who may then buy other products with a greater profit margin.

44. In Australia, regular price cycles in retail petrol are generally confined to the largest metropolitan cities and areas close by. The price cycles that occur in Sydney, Melbourne, Adelaide, Brisbane and Perth are fairly regular and have been a recurring feature in these markets. Canberra, Darwin, Hobart and rural areas still have petrol price volatility associated with price movements in the upstream products of crude oil and refined petrol. However they are less likely to have regular or persistent short term price cycles.

45. Responding to price cycles is a major component of pricing strategy at the retail level of the market. In participating/responding to price cycles there are patterns of behaviour among different types of retailers.

46. While there may be individual differences in pricing strategy among the major refiner/marketers, it appears that in individual markets, it is generally a refiner/marketer that initiates price increases from the trough of a price cycle. The refiner/marketers operate very sophisticated strategies which allow them to adjust prices on a localised basis. They follow pricing strategies location by location that can extract the greatest benefit from the price cycles.

47. Refiner/marketers with a significant retail presence in a particular location, often together with having a refinery in the area, generally lead prices up. A major oil company which uses price support measures decides at a given point in time to withdraw price support and informs the retailer. This inevitably results in a rise in retail prices generally.

48. In an examination of price cycles, the price monitoring service provided by Informed Sources seems to be influential in retail price setting. The data collected and collated by Informed Sources is made

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4 Informed Sources Pty Ltd is
available to subscribers (primarily the refiners/marketers and supermarkets) through an internet service and covers about 3500 sites. Subscribers can generate reports based on data received. High transparency of competitors’ prices effectively reduces the risk encountered by retailers who seek to lead prices up in a market. A price leader can tell whether its competitors follow the price rise or not. If not, then the price leader can drop its price back in line with the market within a short time.

49. With regard to retail price setting in regional areas the ACCC concluded that:

- Prices and retail margins in regional areas are generally higher and more stable than those in the largest capital cities of Australia. Focusing on the largest five cities, the average annual city–country differential over the last five years is 5 cpl.

- The reasons for this difference include smaller populations in country areas, which results in less competition and higher required margins and greater transport costs.

- There is also a lag effect to be considered. Prices in country areas tend to take longer to reflect the movements in international petrol prices often with a lag of around one to two weeks. In part this is because petrol stocks are replenished less often in country areas. This lag leads to city prices being closer to country prices during a rise in international prices and further apart during a fall in international prices.

5.4 Retail Price Competition

50. Drawing this evidence together the ACCC found that the state of competition at the retail level can be summarised in the following way:

- There is a significant degree of price competition at the retail level. The retail sector is substantially less concentrated than both the refining and wholesale level of the market. However, the strong presence of the refiner/marketers at the retail level of the market is evidence of a significant level of vertical integration at this level, most obviously through company-owned and supplied sites. The refiner/marketers also influence retail prices through price support.

- Retail margins have remained broadly constant over the last four years. Margins fell with increased competition from the supermarkets (between 2003–04 and 2004–5), before increasing to 2006–07. Retail margins are relatively small. Interested parties to the inquiry supported this view. The average gross indicative retail margin in the five largest metropolitan cities over the last four financial years is 4.2 cpl. Margins in regional areas are generally higher than margins in metropolitan areas.

- However, it is important to note that while an understanding of margins is relevant to petrol pricing, an analysis of margins on a cent per litre basis may not, by itself, enable an accurate assessment of profitability to be made at individual sites for individual retailers. This is because overall profitability of individual sites will depend to a large extent on the volumes traded and the ability to achieve a successful balance between volume sold and margin. It is quite possible for a high margin, low volume site to be less profitable than a low margin, high volume site.

- Price cycles are a distinguishing characteristic of Australian metropolitan retail unleaded petrol markets.
5.5 **Price cycles conclusions**

51. Given the impact of price cycles, the ACCC decided that further work should be undertaken at both the theoretical and applied level to understand the nature of price cycles as they operate in the various Australian markets for the sale of unleaded petrol.

52. The following findings were made:

- There are a range of explanations for price cycles. Many of these are consistent with competitive market behaviour and the existence of price cycles does not provide any evidence of a lack of retail competition. It is clear, however, that compared to international experience, Australia’s price cycles appear distinctive.

- There is little evidence to support the media claim that cyclical petrol price increases before public holidays are always higher than the cyclical price increases that occur at non-public holiday times.

- There is no evidence to suggest that price cycles are ‘caused’ by the activity of Shell, Mobil, Caltex and BP alone. The major oil companies usually lead the price hikes that commence each cycle while the supermarkets, independents and majors engage in competitive discounting over the following week. What is more difficult to pinpoint is the precise reason why the cycles are so regular and steep. The timing of the provision and termination of price support, as well as the amount of price support, may all reinforce regular price cycles. However, there is no evidence to suggest that the price support scheme itself is a cause of price cycles.

- Undoubtedly the existence of price cycles is contributed to by key players influencing/controlling retail prices through complex and sophisticated pricing strategies. Price support arrangements and Informed Sources price monitoring may have facilitated this.

- As for consumers, significant numbers of price sensitive consumers take advantage of the cycles, but others do not or cannot. On the whole it is not possible to say conclusively whether the cycles operate to the benefit of consumers or retailers. The rapid movement of the cycles and the speed of responsive movements by price followers makes it harder for some motorists to time their purchases to take advantage of any price movements.

- However, despite the extensive analysis undertaken, the conclusion has to be made that the causes of the well-defined price cycles in Australia’s retail unleaded petrol markets are an enigma.

5.6 **Retail price transparency**

53. As the ACCC’s work on price cycles has indicated, there is evidence that consumers can take advantage of price cycles but at the cost of time and some individual effort. This raises the issue of price transparency—a vexed issue for the consumer and one that has broader implications for market competition.

54. There is currently an imbalance in pricing transparency between buyers and sellers of petrol in Australia. The imbalance allows sellers to react more quickly than buyers to price movements with likely negative effects on competition and consumer search costs. Price volatility in the form of intraday price movements and price cycles is one contributor to this imbalance.
55. A second contributor to this imbalance in Australia is the Informed Sources price sharing service. This service provides a centralised exchange of retail petrol pricing information for its subscribers, primarily the major refiner-marketers and larger independent retailers. The depth of real time information available to Informed Sources subscribers is not available to consumers. This raises particular concerns for the relative levels of price transparency between retailers and consumers in the retail petrol market in Australia.

6. **Industry Regulation in Australia**

56. The petrol industry has been subject to significant degrees of regulation at various levels over the years.

57. Before 1 August 1998 the Australian Government (via the ACCC and prior to its establishment the Prices Surveillance Authority) regulated the wholesale prices of BP, Caltex, Mobil and Shell under the price notification provisions of the then *Prices Surveillance Act 1983*.

58. Currently, at the Commonwealth level, regulation is applied to specify standards for domestic fuel supply and to regulate the conduct of market participants at various levels of the supply chain. Some State Governments also stipulate fuel standards and have introduced measures that are intended to improve price transparency at the retail and wholesale level and reduce price volatility.

6.1 **Mandatory Oilcode of Conduct**

59. The Oilcode came into effect on 1 March 2007 as a prescribed mandatory industry code of conduct under s. 51AD of the TPA. The Oilcode regulates the conduct of suppliers, distributors and retailers in the downstream petroleum retail industry. The ACCC is responsible for promoting compliance with the Oilcode and conducting enforcement action for breaches of the Oilcode where it is necessary.

60. The purpose of the Oilcode is to:

- improve transparency in wholesale pricing and provide better access to declared petroleum products at a published terminal gate price (TGP)
- assist industry participants to make informed decisions when entering, renewing or transferring a fuel reselling agreement through the disclosure of specific information
- improve the operating environment for all industry participants by providing access to a cost-effective and timely dispute resolution scheme as an alternative to litigation.

6.2 **Terminal gate pricing**

61. The Oilcode provides a nationally consistent approach to terminal gate pricing arrangements between wholesale suppliers and their customers.

62. A wholesale supplier under the Oilcode is a person who sells declared petroleum products such as unleaded petrol and diesel from a wholesale facility such as an oil refinery, a shipping facility, a facility connected by a product transfer pipeline to an oil refinery or shipping facility, or a facility connected by a pipeline to a shipping facility. A customer is simply a person engaged in the business of buying declared petroleum products from a wholesale supplier.

63. There are a number of requirements for terminal gate pricing under the Oilcode. Broadly, these include a requirement on wholesale suppliers to:
• make their TGP publicly available each day on a website
• provide transaction documentation at the time of delivery and within 30 days of delivery if necessary
• make their declared petroleum products available at the TGP except in a limited number of circumstances where it would be not unreasonable to refuse supply
• ensure that their customers are complying with applicable health and safety responsibilities.

6.3 Fuel re-selling businesses

64. The Oilcode establishes minimum standards for parties involved in a fuel reselling business. This aims to help parties to make informed decisions when entering, renewing, extending, transferring and operating under a fuel reselling agreement.

65. Under the Oilcode, a fuel reselling agreement is between suppliers and retailers where the:

• supplier grants the retailer the right to conduct a fuel reselling business
• supplier is able to exert substantial control over that business
• fuel reselling business will be associated with a trademark, commercial symbol or advertising that is owned, used, licensed or specified by the supplier
• retailer is required to pay, or agree to pay, a fee before starting the fuel reselling business
• supplier reasonably believes that the amount of fuel that will be sold under the agreement will not be less than 30 000 litres per month.

66. If a commission agency meets these criteria, except the requirement to pay or agree to pay a fee, it would still be specifically identified as a fuel reselling agreement.

67. In relation to fuel reselling agreements, the Oilcode requires a supplier to:

• ensure the agreement has a minimum duration of five years except in certain circumstances (for example, where the upfront initial investment is less than $20 000)
• create and provide a disclosure document to a prospective retailer at least 14 days before the agreement is entered into
• make allowances for a specified cooling-off period at least seven days after entering into the agreement of paying any money under the agreement
• provide leasing documentation to the retailer
• not prohibit a retailer from associating with other retailers for a lawful purpose
• disclose materially relevant facts such as the finalisation of certain court proceedings and bankruptcy as the supplier becomes aware of them
• follow certain procedures where a renegotiation, variation or transfer of the fuel reselling agreement is sought

• follow certain procedures where it is sought to terminate the agreement because of a breach by the retailer or other special circumstances outlined in the Oilcode

• follow certain procedures before the expiry of the agreement or the parties agree to terminate it early.

6.4 Dispute resolution

68. The Oilcode provides for a dispute resolution scheme, the objective of which is to provide the industry with an effective and inexpensive way of resolving disputes. The scheme includes the appointment of the Dispute Resolution Adviser (DRA).

69. The scheme covers disputes:

• where a wholesale supplier fails to supply a declared petroleum product to a customer

• arising between parties to a fuel reselling agreement

• arising from any provision of the Oilcode covering TGP or fuel reselling agreements.

70. The Oilcode provides separate procedures for dealing with disputes about supply of products at a TGP and disputes unrelated to a failure to supply. This is because the Oilcode takes into consideration the potential for commercial damage that may flow as a consequence of a failure to supply declared petroleum products. Consequently the Oilcode provides for disputes about supply to be promptly dealt with by the DRA.