

Committee Secretary  
House Standing Committee on Economics  
House of Representatives  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

Dear Committee Secretary

**COMMITTEE INQUIRY INTO THE COMPETITION AND CONSUMER AMENDMENT BILL (NO. 1) 2011:  
THE GOVERNMENT'S PRICE SIGNALLING LEGISLATION**

I am writing in response to the Committee's invitation for interested organisations to make submissions to the Committee's Inquiry into the *Competition and Consumer Amendment Bill (No. 1) 2011* – the Government's price signalling legislation.

AIP was established in 1976 as a non-profit making industry association. AIP's mission is to promote and assist in the development of a sustainable, internationally competitive petroleum products industry, operating efficiently, economically and safely, and in harmony with the environment and community standards. AIP's four core member companies are BP Australia Pty Ltd, Caltex Australia Ltd, Mobil Oil Australia Pty Ltd and The Shell Company of Australia Ltd.

To assist the Committee's considerations, AIP would like to make the following comments in relation to the potential extension to the downstream petroleum industry of 'price signalling' amendments to the Competition and Consumer Act 2010 (CCA) and also comment on aspects of the amendments themselves.

*Extension of Price Signalling Amendments to the Fuels Industry*

AIP is concerned about the potential extension of the 'price signalling' amendments to CCA to the Australian petrol retailing and fuels industry.

While we understand that the proposed price signalling legislation will initially apply to the banking sector, we note that the ACCC has repeatedly called for price signalling legislation to apply more broadly to a range of industries including petrol retailing, and the Government has indicated a preparedness to consider application to other sectors (subject to several criteria including strong evidence of anti competitive behaviours, the avoidance of unintended consequences, and after further review and detailed consideration).

If the proposed 'price signalling' amendments to the CCA were applied to the Australian fuels industry, we believe they would neither be practical nor workable. There could be significant unintended consequences impacting on the efficient operation of the fuel supply chain, ultimately reducing Australia's high level of fuel supply reliability.

This will be a result of the considerable industry uncertainty surrounding the provision of information relating to 'fuel supply' which is essential to most day-to-day operations in the market and has no anti-competitive implications. Fuel companies may need to adopt new or modified business and fuel supply practices to remove this legal risk. Almost inevitably, these practices are likely to be costly for the fuels industry, and could impact on consumers either in terms of supply reliability or price.

## 2.

As the Committee will be aware, the ACCC has analysed millions of fuel industry transactions over three successive years under the Government's Formal Price Monitoring of the petroleum industry. This extensive analysis has not resulted in any evidence that information disclosures by fuel companies in Australia have led to a lessening of competition within the industry or, more importantly, to an adverse impact on fuel consumers.

Further, there is no evidence that countries with price signalling legislation enjoy more competitive fuel prices compared to Australia.

In the case of the Australian retail fuels market, there are well established competition drivers that influence the price cycles in metropolitan areas and reflect a highly competitive market. This conclusion is supported by academic literature, international research, and analysis of the price cycles that exist in the liquid fuels markets in the USA, Canada, Norway, Germany and Belgium. Fundamentally, retail petrol price cycles benefit price conscious consumers, particularly in outer-metro areas, and ACCC analysis clearly supports this.

'Price Signalling' Amendments to CCA

As noted above, we are particularly concerned that the legislation will create uncertainty around the provision of essential day-to-day information relating to the operation of the fuel supply chain which has no anti-competitive implications. We are also concerned that the legislation will create uncertainty around the provision of information to governments, parliaments, consumers and the media regarding historical fuel prices, 'ability to supply' or 'commercial strategy'. It is essential that oil companies retain their dialogue with governments and others on supply reliability and other policy issues including environmental and occupational health and safety matters.

In light of these issues, AIP and some AIP member companies made detailed public submissions to the Treasury consultation process outlining our concerns and suggestions in relation to the exposure draft legislation, and assuming they will apply to the Australian fuels industry. AIP acknowledges that the Government, through the consultation process, has taken account in the Bill of some of the issues identified by AIP and its members, and these changes will help address some of the unintended commercial consequences for the fuels industry.

Specifically, these improvements by the Government to the exposure draft legislation include the exclusion in the Bill of disclosures relating to: (i) purchases or sale of goods; (ii) by companies to agents; and (iii) relating to proposed joint ventures. While the Explanatory Memorandum (EM) provides some qualified guidance related to disclosures which are not intended to be covered - including (i) submissions to Government or Parliamentary inquiries and (ii) public statements about pricing issues, normal activities or price displays which are not intended to be covered by the private disclosure provision - we do not believe such statements provide sufficient certainty to remove the legal risks of such activities being caught by the prohibitions in the legislation.

However, our fundamental concerns remain with the basis for, and approach in, the Bill and the likelihood of regulatory overreach and unintended consequences if extended to the fuels market.

Overall, we are extremely concerned that neither the Bill, nor the ACCC statements about the need for such measures, provides any indication as to how the proposed measures will change market outcomes, how these changes will be measured to evaluate the 'success' of the measures, and whether these changes will produce demonstrably better outcomes for consumers.

## 3.

More specifically, AIP is concerned that the draft Bill retains:

- the *per se prohibition* (without a competition test), which AIP does not support;
- a focus on *historical prices*, as we consider the prohibition should only apply to intentions about future prices where that information has competitive significance; and
- provisions on *ability to supply and commercial strategy* (notwithstanding the changes to the Bill and the guidance in the EM in relation to JVs and agents), which will continue to create industry uncertainty in relation to the provision of information relating to fuel supply which is essential to day-to-day operations in the market and has no anti-competitive implications.

AIP is also concerned that the authorisation and new notification regimes as proposed will not provide workable remedies to alleviate business uncertainty in our industry, particularly on more general, but essential, day-to-day information disclosures. As a result, there would need to be comprehensive and clear new guidelines and a more streamlined process if authorisation of these more general information disclosures was required.

Thank you for the opportunity to provide our views to the Committee through this AIP Submission. AIP is happy for our submission to be made publicly available on the Committee's website.

Yours sincerely

A handwritten signature in black ink, reading "John Tilley". The signature is written in a cursive, flowing style with a large initial 'J' and a long, sweeping underline.

Dr John Tilley  
**Executive Director**

20 May 2011