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Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By Email: economics.sen@aph.gov.au

8 August 2008

Dear Sir

Re: Inquiry into the National Fuelwatch (Empowering Consumers) Bill 2008 and the National Fuelwatch (Empowering Consumers) (Consequential Amendments) Bill 2008

We write to voice our very serious concern about the proposal for a national Fuelwatch scheme, scheduled to commence later this year.

We urge you to reconsider the adoption of this scheme, which we believe is completely flawed and will further decline the number of independent fuel retailers, thereby lessening competition and resulting in higher fuel prices.

The concept in Victoria will simply fail.

The consumer will be the loser.

Our company was a member of the Independent Petroleum Marketers Association of Australia (IPMAA) a group of independent fuel retailers operating (either themselves or through franchisees) around 600 petrol stations nationwide under various brands. We are now one of the few independent fuel retailer groups remaining since Coles and Woolworths entered the market in 2004.

Whilst we make the arguments in this letter on behalf of our own group of independent fuel retailers, we know that the concerns raised in this letter are shared by other key stakeholders in the petroleum industry, including other independent fuel retailers and bodies such as the RACV (whose interests are aligned with the motorist and not the independent fuel retailers).

Many of our comments and analysis below are focused on Melbourne, mainly because this is where our head office is located. However, these comments apply equally to other capital cities.

Fuelwatch is no more than a politically-driven scheme based on totally inadequate research, a basic lack of understanding as to how fuel retailers operate to stay competitive (not only with respect to pricing) and total disregard for how it will impact upon independent retailers thereby lessen competition and drive up prices. This is a scheme that will create the impression that the Federal Government is delivering on its platform of representing the interests of working families, but from which motorists will not benefit at all.

It is simply smoke and mirrors.

Fuelwatch cycle shift will reduce opportunities to buy cheap petrol

Successfully creating a market in which motorists can purchase fuel at lower prices requires focusing on the regularity with which motorists purchase fuel, rather than the average daily fuel price in a given year. It is our experience, based on our customer records, that Melbourne motorists predominantly purchase fuel on a weekly basis. This fact appears to have been ignored by government.

The current price cycle in Melbourne is weekly and extremely regular, with prices lowest on Tuesdays and peaking on Thursdays (with 4 to 5 troughs per month). Motorists enjoy virtual certainty as to when prices will be at or around their lowest and our records indicate that customers already know when to buy. This is real competition at work. The introduction of a Fuelwatch system in Melbourne will change the petrol price cycle and make it less predictable, with fewer troughs per month (as has resulted in Perth). Prior to the introduction of Fuelwatch in Perth there were no price cycles. They first started some three to six months into the scheme.

The obligation under Fuelwatch to publish prices 24 hours in advance and to then keep them for that 24 hour period encourages a more conservative, less aggressive approach to price changes and reduces response-time. Retailers have much less flexibility to respond when market leaders significantly slash prices. As a result, it will generally take longer for a full cycle to unfold in a given market.

Under Fuelwatch, the current price cycle in Perth has become longer and much less regular than in Melbourne, forming roughly a two-week cycle (with only 2 troughs per month). Further, the peaks and troughs in Perth are often much less dramatic, remaining flatter and often within a narrower range of around, say, 5 cents, as opposed to the more standard 10 cent margin seen in other capital cities. But these peaks and troughs last longer – often for multiple days – as opposed to dropping within 24 hours after they peak as they do in Melbourne.

This reduction in opportunity to buy at the bottom of a cycle is not available in the country or Tasmania due to these areas not enjoying the benefits of price cycles.

So whilst records might indicate that the average daily fuel price over the last year was lower in Perth than in Melbourne, Melbourne motorists had more than double the opportunities than Perth motorists did to purchase petrol at its lowest point in the price

cycle. Put another way, Perth motorists had fewer chances to buy cheap petrol than did Melbourne motorists, and so the average fuel purchase in Perth is estimated by the RACV to be around 2 cents higher than the average in Melbourne.

Focusing on lowering average annual prices, rather than retaining or increasing the number and frequency of opportunities that motorists have to buy lower priced fuel, is unhelpful, deceptive and misleading. The randomness of troughs and the longer duration of peaks under Fuelwatch will be detrimental to motorists. Motorists will be better served by having a regular, weekly opportunity to buy fuel at the low point in the price cycle. In this way, motorists can co-ordinate their visits to the petrol station with the weekly price pattern that presently exists and save money.

Free website services (such as that operated by the RACV) are already available to motorists which publish petrol prices around Melbourne to help motorists plan the timing of fuel purchases. There is absolutely no problem with the current system in Melbourne, which motorists understand and are familiar with.

The bottom line is that fuel prices continue to increase and that is the real problem. In January 2007 the cost per barrel was approximately 58.88 whilst in March 2008 the cost per barrel was approximately 108.96. Over the 15 month period there has been an increase in the cost per barrel of approximately 54.62. In the same period the cost of unleaded petroleum increased from approximately 113.50 to approximately 139.7. The percentage increase in the cost per barrel has been approximately 85% whilst the increase in the cost of unleaded has been approximately 23%. Fuelwatch is the wrong response to public outcry over high petrol prices. It is a politically attractive one because it will allow the Government to appear as though it is taking action to keep petrol prices low for the Prime Minister's "working families".

It is simply smoke and mirrors.

It is universally accepted that in a free market economy, reasonable prices depend on strong competition, not price-monitoring. Unfortunately, the ACCC's short-termist, permissive attitude to Woolworths' and Coles' fuel discount schemes (which is clearly anti-competitive third-line forcing dressed up as a public benefit) has resulted in a significant erosion of competition in the Australian fuel retail market. The fuel discount schemes are a means of financial manipulation and will be used as a means to further destroy independent fuel retailers. Fuelwatch will compound this deterioration by removing a great deal of the flexibility that independent retailers need to compete against larger retailers. This will strengthen the position of Coles and Woolworths to the ultimate detriment of the consumer.

These comments made by Peter Anderson of independent fuel retailer group APCO (which runs a network of 19 petrol stations in Geelong, Victoria) to Crikey.com.au on 17 April 2008 capture the outrage of independent retailers at the prospect of Fuelwatch:

"I've spoken to a number of politicians over the years and they have no idea how we run our business. They don't realise that I look after the pricing of my business on the run. I make decisions on pricing minute-by-minute, every time I take a call from a franchisee, about how far I will go down. If they tell me Shell is at this price, I might say go down a bit more. But this plan will take that freedom away from me.

This last Sunday morning I made 21 phone calls on fuel pricing to my network. I won't be able to do that under this plan because I will have to come into my office on Sunday, analyse what the market is doing and decide what I am going to do to petrol prices at 6am the next day. Currently I can drive the price lower on a Monday or a Tuesday or Wednesday if that's what's needed to get people through the door, but this new plan will make that impossible. ... Has the fact that this plan will kill off once and for all the independent fuel retailers been properly considered? "

Continual Decline in Competition

Woolworths and Coles control 80% of Australian supermarkets (making the concentration of ownership in Australia's supermarket sector one of the highest in the world) and over 50% of fuel retailing in Australia, with the stated intention of further growth, yet they only entered the fuel market in 2003/04! They have achieved this dominant market position through using their fuel discount docket offers to crush and ultimately eliminate independent retailers, which have historically always been the major factor in achieving a competitive market. Without the independent retailers there will be no stopping the upward price movement.

The passage of time has shown that there are now in Perth fewer independent fuel retailers than there were prior to the introduction of Fuelwatch.

It is undeniable (and hardly surprising) that these fuel discount schemes have been staggeringly successful. But there's no such thing as a free lunch, and we have long held the belief that motorists were always going to pay a higher price in the long term for the short-term benefit. In four short years, the long-term effect is now materialising through erosion of competition and consistently higher prices.

In 2004, submissions were made by IPMAA to the ACCC objecting to the Coles/Shell and Woolworths/Caltex alliances. The IPMAA said that the ramifications would be serious, but no-one listened. Sadly, the IPMAA no longer exists because its membership base was decimated by the Coles and Woolworths onslaught. It, like the scores of independent retailers who have had no option but to close their doors since 2004, has been a casualty in the fight to keep independents in the market and competition alive and well. Since their departure prices have continued to increase.

Make no mistake, if it were not for the last remaining independents like us, Coles and Woolworths would have full control of the fuel retail market as a replication and extension of their supermarket duopoly.

In the 2004 IPMAA submissions, it was explained that inevitable and drastic anti-competitive outcomes that would result if the Coles and Woolworths alliances were allowed to proceed. It was argued that:

- the Coles and Woolworths shopper docket schemes would result in the serious erosion of competition;
- higher fuel prices in country areas already gave us a glimpse of what happens when little if any competition exists in a market; and

- the high level of fuel market control enjoyed by Tesco and Sainsbury's in the UK illustrated what the future Australian landscape would look like if Coles and Woolworths were left to go unchecked: fewer retailers, less competition, higher prices.

This is exactly what has happened in Australia and it was entirely predictable. Unlike other fuel retailers, Coles and Woolworths can afford to treat fuel as a loss-leader and have used shopper docket schemes as a Trojan horse to eradicate opposition and grab market power. Surely all of this is very obvious by now, especially to the ACCC, which is currently holding an inquiry into why grocery prices in Australia are so high (it will defy credibility if the conclusion from that inquiry completely absolves Coles and Woolworths of any responsibility for driving up and maintaining high prices).

The Federal Government and the ACCC must change its focus if it is genuine about prosecuting its mandate to keep fuel prices competitive. Strong competition, not Fuelwatch-style price monitoring, will deliver consistently lower fuel prices. We have once again recently requested the ACCC to reconsider its approval of shopper docket schemes, as their cessation may be the only realistic way to curb the relentless charge of Coles and Woolworths into the fuel market at the ultimate expense of working families.

Lack of research and justification for Fuelwatch: political expediency prevails

The Federal Government and the ACCC now find themselves in a predicament of their own making. Having allowed Coles and Woolworths to consolidate massive market power by chasing out independent players, the Government will not risk incurring the ire of those giant companies (and their shareholders) by withdrawing approval for the key tool driving their success, fuel discount schemes. But at the same time the Government must be seen to be doing something to control fuel prices.

Fuelwatch is a politically attractive answer, nothing more. It will be of little consequence to Coles and Woolworths and it will beguile the public into believing that the Government has stepped in to clamp down on over-pricing. Fuelwatch will achieve very little if anything to assist the customer at the bowser. There will be nothing stopping Coles and Woolworths from using their fuel discount schemes to totally undermine the effects of Fuelwatch.

The justifications for Fuelwatch so far wheeled out by the Prime Minister and the ACCC include:

- there is confusion in the marketplace;
- greater transparency of pricing and certainty is required
- Fuelwatch will place more downward pressure on prices; and
- the annual average price of petrol in Perth has consistently been around 2 cents per litre lower than in the eastern State capital cities.

These justifications are misleading and wrong. We simply cannot understand why Fuelwatch is being adopted, as it makes absolutely no sense at all.

The ACCC has a poor track record on being able to successfully come to grips with fuel pricing issues, as demonstrated recently by its failed attempt to prove price-fixing allegations against a group of retailers in and around the Geelong area. If the Federal Government's decision to introduce Fuelwatch is based solely on the ACCC's fuel pricing intelligence, this is cause for grave concern, as is the complete lack of industry consultation. Fuelwatch is a large-scale proposal that has the capacity to re-shape the entire fuel retail industry. It will affect motorists and business operators alike all over the country, and yet the ACCC appears to be the only body that has had an opportunity to contribute to the policy development.

Retailing fuel is our area of expertise and we know what we're talking about. But we are continually ignored, despite our predictions being accurate and our views well considered. It is not as though our position is blindly skewed or biased in favour of independent retailers – our fundamental arguments are underpinned by the same principles that motivate the ACCC and the Rudd Government: allowing regulated competition to thrive and to deliver the best possible outcome to the consumer. If the voices of independent retailers and other stakeholders in this industry, representing decades of experience and insight, go unheard, we can only conclude that this is because it is politically inexpedient for you to listen to us.

It is independents like us that will prove to be the difference between a competitive market with reasonable prices and a shrunken market controlled by a powerful few who will charge what they like. We urge you to act now by reviewing the decision to adopt Fuelwatch, with such review to allow scope for public and industry submissions to be made. Surely that is not an unreasonable request for an issue of this wide-ranging importance.

We sincerely hope that you take the time to consider the issues that we have raised above. George Andrianopoulos of AA Holdings Pty Ltd is available at any time to discuss our position. Please think again, speak to those who know, and do something for "working families" that can actually deliver.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'A. Andrianopoulos', written in a cursive style.

Andreas Andrianopoulos
Managing Director.