

2 ACCC activities related to the petroleum industry

Key points

In 2011–12, the ACCC:

- commenced a formal investigation into price information sharing arrangements in relation to the retail petrol sector
- began examining the effect of ‘shopper docket’ discounts on competition in the retail fuel market
- started working with state government regulators and industry stakeholders to develop a consistent national approach to fuel price boards
- continued to undertake its fuel monitoring activities in Australia, including in all Australian capital cities and in around 180 regional locations
- sought to improve consumer understanding about fuel issues by continuing to actively engage with stakeholders. The ACCC continued to publish daily capital city fuel price information on its website and distributed new factsheets and other publications. The ACCC also held two Fuel Consultative Committee meetings in 2012
- reviewed and allowed four fuel-related merger proposals and considered 11 fuel-related exclusive dealing notifications and allowed immunity to continue in each case. The ACCC also responded to four Oilcode-related enquiries and one complaint.

2.1 Introduction

The ACCC’s primary role is to enforce the *Competition and Consumer Act 2010* (the Act) across the Australian economy, which includes the fuel industry. The ACCC’s activities in the fuel industry under the Act include: enforcement and compliance, mergers and acquisitions; authorisations and notifications; and administration of the Oilcode. This chapter outlines the ACCC’s activities in relation to the downstream petroleum industry over 2011–12.

2.2 Fuel industry and the *Competition and Consumer Act 2010*

In 2012, the ACCC commenced projects within the fuel industry to address concerns about possible breaches of the Act: a formal investigation into price information sharing arrangements in the retail petrol industry and an examination of the effect of ‘shopper docket’ discounts on competition in the retail fuel market. In addition, the ACCC began working with stakeholders to develop a consistent national approach to fuel price boards. These are discussed further below.

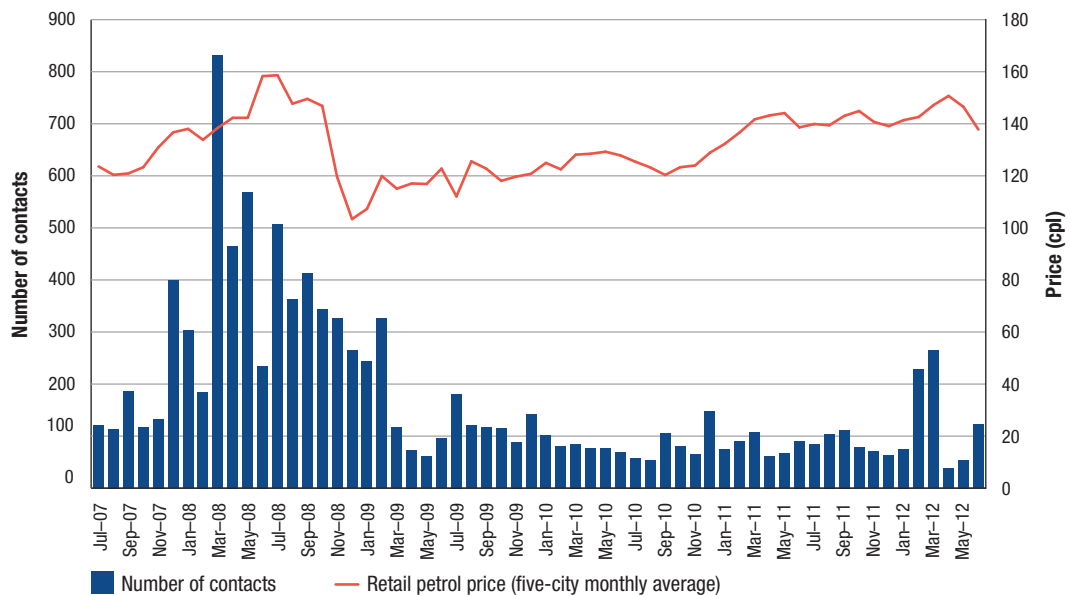
2.2.1 Enforcement and compliance

Complaints and inquiries regarding fuel

The ACCC receives information about potential breaches of the Act from a wide variety of sources. However, the most common source is complaints and enquiries originating from consumers. During 2011–12, the ACCC Infocentre received a total of 197 963 phone calls, 70 891 emails and 18 389 letters. Of these, just over 1300 contacts raised fuel-related issues.

Similar to previous years, the number of fuel-related complaints and inquiries received by the ACCC during 2011–12 moved broadly in line with movements in retail fuel prices. The ACCC has generally found that when prices increase, complaints and inquiries to the ACCC also increase. In 2011–12, the number of consumer complaints continued to respond to changing prices. While petrol prices in early 2012 were within a similar range to price levels in early 2008, there were far fewer complaints than in 2008. Complaints increased when prices rose in early 2012, which is not surprising given consumer sensitivity to rapid price rises (see chart 2.1 below).

Chart 2.1 Fuel contacts received by the ACCC by month and average fuel prices in the five largest cities: July 2007 to June 2012



Source: ACCC and Informed Sources data

High prices

The ACCC does not set wholesale or retail fuel prices in Australia: companies set their prices according to market conditions. As detailed in chapter 8, retail fuel prices are largely driven by movements in international market prices for crude oil and refined petroleum products. Despite this, concern about high fuel prices constitutes the bulk of fuel-related complaints and enquiries to the ACCC.

In 2011–12, around 53 per cent of the complaints and enquiries received about the fuel industry related to the price of fuel being ‘too high’. Similar to 2010–11, complaints or inquiries about high prices were based on concerns about:

- differences in fuel prices between suburbs, towns or retail sites
- differences in fuel prices for one type of fuel compared to another
- the relationship between retail fuel prices in Australia and international benchmark prices.

Potential compliance issues

Around 23 per cent of complaints and inquiries received about the fuel industry related to potential compliance issues under the Act. The ACCC examined these contacts carefully and made further inquiries or assessments in respect of 25 matters.

The topics that could have raised concerns under the Act included: alleged collusion, price discrepancies between boards and fuel pumps, accuracy of fuel pumps, issues concerning ethanol blended petrol and price cycles.

2.2.2 Misleading conduct and false representations

In 2011–12, the ACCC received around 70 complaints alleging misleading and deceptive conduct and false or misleading representations. Conduct will be in breach of the Act where it misleads, deceives or is likely to mislead or deceive consumers. Such conduct may include lying to consumers, leading them to a wrong conclusion, creating a false impression or making false or inaccurate claims.

The main issues raised by consumers in 2011–12 included concerns about pricing practices, labelling on fuel pumps, advertising promotions (such as discount schemes), fuel quality claims and concerns about inaccurate fuel measurements.

2.2.3 Anti-competitive conduct

During 2011–12, the ACCC continued its focus on examining allegations of anti-competitive conduct in the retail fuel industry. Where there is information to suggest a breach of the Act may have occurred, the ACCC will investigate by making targeted inquiries. If the information available to the ACCC shows that a breach of the Act may have occurred, it may take legal action.

While most matters were addressed directly with the complainants, the ACCC identified a number of matters concerning allegations of anti-competitive conduct for further investigation over the 2011–12 financial year.

2.2.4 Price information sharing arrangements

On 3 May 2012, the ACCC announced it had commenced an investigation into price information sharing arrangements in relation to the retail petrol sector because of concerns that such arrangements may be in breach of the Act.

The petrol price sharing arrangements allow for the private and very frequent exchange of comprehensive retail price information between the major petrol companies. The ACCC is concerned that this allows petrol retailers to signal price movements, monitor competitors’ responses, and react to them.

The ACCC is concerned that these arrangements may lessen price competition in petrol retailing to the detriment of consumers. The competition provisions of the Act prohibit contracts, arrangements or understandings that have the purpose, effect or likely effect of substantially lessening competition.

2.2.5 Shopper docket discounting schemes

In its 2007 inquiry into the price of unleaded petrol, the ACCC assessed the effects of the petrol shopper docket discounting on competition and consumers. At the time, the ACCC concluded that shopper docket arrangements had no anticompetitive effect but had delivered discounts to the net benefit of consumers and promoted competition from other retailers.

While the ACCC supports initiatives that aim to provide benefits to consumers, it is necessary to assess such schemes to consider their long term effect on competition and prices. Consequently, in 2012 the ACCC commenced an assessment into whether competitive or long term consumer detriment could arise from shopper docket discounts and the size (value), frequency and duration of these offers. The ACCC is working with industry participants to gather information to assist with assessing the competitive effects of supermarket shopper docket discounting schemes.

2.2.6 Fuel price boards

There has been growing concern among competition authorities and fuel industry stakeholders about the potential for consumers to be misled by the advertising of fuel prices, in particular discounted and undiscounted prices, on road side price boards. In response to this growing concern, in 2012 the ACCC began working with state government competition authorities, motoring organisations and other industry stakeholders to develop a consistent national approach to fuel price boards.

2.2.7 The ACCC and regional engagement on fuel prices

As part of its monitoring activities, the ACCC obtains fuel price information for around 180 regional locations throughout Australia. It also engages with industry groups and members of the public to collect additional information about regional fuel pricing issues.

The ACCC uses this information to monitor regional fuel prices against relevant benchmarks to assess whether fuel prices in regional locations are justifiable. Where there is an allegation of anti-competitive conduct, it will make targeted inquiries to investigate the issue. After making inquiries, if there is information available to the ACCC that a breach of the Act is likely to have occurred, it can take action to enforce the Act.

In addition, the ACCC pays particular attention to any potential changes in the ownership of retail sites in regional locations. Given many regional locations have a limited number of retail sites, the ACCC monitors such changes to ensure that the sale will not substantially lessen competition in that particular market. Further information about regional fuel prices is contained in chapter 9.

2.2.8 Mergers and acquisitions

Section 50 of the Act prohibits acquisitions that would have the effect of substantially lessening competition in a market. The ACCC administers and enforces the merger provisions under Part IV of the Act. During 2011–12 the ACCC completed a public review of four fuel-related acquisitions, the outcomes of which are summarised below.

Caltex Australia Petroleum Pty Ltd—proposed acquisition of capacity from Terminals Pty Ltd at a new Port Adelaide fuel storage terminal

Caltex Australia Petroleum Pty Ltd proposed to acquire a lease over the site of a new fuel storage terminal at Port Adelaide to be developed by Terminals Pty Ltd. On 27 January 2012, the ACCC decided to allow the merger as it was unlikely to substantially lessen competition.

The ACCC considered the proposed acquisition in the context of the market for the supply of fuel terminal services in Port Adelaide, which involved the services of fuel storage, loading (by ship) and unloading (by truck). The ACCC had regard to the fact that the supply of fuel terminal services in Port Adelaide was an important input for the wholesale supply of refined petroleum products in much of South Australia.

United Petroleum Pty Ltd—proposed acquisition of a number of Victorian petrol retail sites from Freedom Fuels Australia Pty Ltd

United Petroleum Pty Ltd proposed to acquire a number of petrol retail sites in Victoria from Freedom Fuels Australia Pty Ltd.

Initially the ACCC considered the acquisition of seven petrol retail sites in Kew, Mt Waverley, Churchill, Maffra, Newborough, Tyers and San Remo. On 6 December 2011 the ACCC decided to allow the acquisitions to proceed as United was not operating in any of the relevant local markets at the time.

Subsequently the ACCC also considered the acquisition of four other Freedom Fuel sites located in the towns of Warragul, Morwell, Traralgon and Sale in the Gippsland region of Victoria. On 16 February 2012 the allowed the acquisitions to proceed in all sites, except Warragul. United withdrew this site from its proposal following ACCC concerns that the proposed acquisition was likely to substantially lessen competition in the supply of petrol in the local market in Warragul.

Australian Fuel Distributors Pty Ltd (Ausfuel)—proposed acquisition of retail petrol sites from Munners Pty Ltd

Australian Fuel Distributors Pty Ltd (Ausfuel) proposed to acquire two retail fuel sites, BP Kununurra and BP Ord River Roadhouse from Munners Pty Ltd, located in Kununurra, Western Australian. Ausfuel operated a fuel depot located on the outskirts of Kununurra and is a distributor of fuel in and around the Kununurra region. On 12 April 2012, the ACCC decided to allow the merger to proceed as it was unlikely to substantially lessen competition.

Australian Fuel Distributors Pty Ltd (Ausfuel)—completed acquisition of Choice Petroleum

On 31 October 2011, Ausfuel acquired Choice Petroleum. Choice Petroleum had retail fuel operations, primarily in rural and regional areas of Queensland. Choice Petroleum operated 21 retail fuel sites in Queensland and also supplied fuel directly to farming and industrial customers. Ausfuel operated a wholesale fuel supply and transport business in all states of Australia excluding Tasmania. In Queensland, Ausfuel operated seven retail petrol stations and two fuel depots. On 13 March 2012 the ACCC announced that competition concerns were unlikely to arise in relation to the retail supply of fuel in any of the local markets given the lack of overlap between the retail operations of the parties.

2.2.9 Authorisations and notifications

In certain circumstances, the ACCC can grant protection from legal action for certain anti-competitive conduct where that conduct delivers an offsetting public benefit. Businesses may obtain protection from legal action by applying for an authorisation or lodging a notification with the ACCC. All authorisation applications and notifications are available on a public register and on the ACCC's website.

Authorisations

Authorisation is a process under which legal protection can be provided for potential breaches of the competition provisions of the Act, except for misuse of market power, if the ACCC is satisfied the conduct delivers a net public benefit. There were no fuel-related authorisations lodged with the ACCC in 2011–12.

Exclusive dealing notifications

For certain types of conduct, including exclusive dealing, protection from legal action under the Act can also be obtained by lodging a notification with the ACCC. Exclusive dealing involves placing restrictions on the supply of goods or services such as requiring a person to purchase goods from a third-party supplier (known as third line forcing).

In 2011–12, the ACCC considered 11 fuel-related third line forcing exclusive dealing notifications, all of which were allowed. The third line forcing conduct under the notifications fell into two broad categories:

- shopper docket arrangements involving IGA supermarkets
- supply arrangements requiring the acquisition of goods or services from nominated suppliers.

2.2.10 Administration of the Oilcode

The Oilcode aims to regulate the conduct of suppliers, distributors and retailers in the downstream petroleum retail industry. It came into effect on 1 March 2007 as a prescribed industry code of conduct under the Act. In 2009, the Department of Resources, Energy and Tourism (RET) released its review of the Oilcode and made 11 recommendations. The recommendations were accepted by the government in 2011 and amendments came into effect on 3 July 2012, a further review of the Oilcode will be conducted in 2013.²⁰

The ACCC's role is to ensure compliance with the Oilcode and the Act by informing downstream petroleum industry participants of their rights and obligations under the law and by enforcing the law where necessary. In 2011–12, the ACCC received one complaint and four enquiries about the Oilcode. The complaint was not pursued because there was insufficient evidence to establish a breach of the Oilcode or the Act.

2.3 Monitoring

In addition to the production of this monitoring report, the ACCC collected extensive fuel price information as part of its price monitoring program. The fuel price information collected by the ACCC includes:

- retail prices of petrol, diesel and automotive liquefied petroleum gas (LPG) in all Australian capital cities and in around 180 regional locations
- premium unleaded petrol (PULP) 95/96 and PULP 98 prices in all capital cities and available regional locations
- E10 petrol (regular unleaded petrol with up to 10 per cent ethanol) prices in around 60 locations across Australia
- relevant international crude oil and international refined fuel prices
- data on import, buy-sell and wholesale transactions related to petrol

²⁰ Further information is available on the Department of Resources, Energy and Tourism website, at http://www.ret.gov.au/resources/fuels/petroleum_refining_and_retail/downstream_petroleum_legislation/oilcode_review/Pages/OilcodeReview.aspx

- published terminal gate prices (TGPs) of the refiner-wholesalers and some independent wholesalers
- certain financial information from firms monitored under the formal monitoring program.

2.4 Informing consumers

While the ACCC's primary role is to enforce the provisions of the Act, it also monitors fuel prices. On the basis of this monitoring, the ACCC seeks to educate consumers on what influences domestic retail prices by providing factsheets, information on its website and by responding to calls to its Infocentre. Throughout 2011–12, the ACCC expanded its public information activities to provide a broad range of information to consumers.

2.4.1 Public communication

In 2011–12, the ACCC updated the fuel related content on its website. The ACCC also updated its existing factsheets to better address common consumer inquiries about fuel pricing in Australia. The website is located at <http://www.accc.gov.au/fuel>.

The six updated factsheets available on the ACCC website in 2012 covered the following issues:

- *What influences the price of unleaded petrol?*
- *What influences the price of automotive LPG?*
- *What influences the price of diesel?*
- *Petrol price cycles in Australia*
- *Fuel prices in regional Australia*
- *How do international factors influence petrol prices?*

The ACCC continued to engage with newspapers, television, radio and internet media outlets to provide informed comment about its analysis and developments in the petroleum industry. In 2011–12 the ACCC responded to around 40 media enquiries on a variety of issues including:

- high petrol prices in regional locations compared to capital cities
- petrol prices around public holidays
- differences in fuel prices between regional locations and capital cities
- movements in LPG prices around February 2012 as a result of the demand in Europe
- questions about possible predatory pricing in the retail fuel industry.

2.4.2 Ministerial correspondence

In 2011–12, the ACCC addressed 36 pieces of correspondence from Commonwealth and state parliamentarians on fuel issues. The most common topics were:

- the level of competition in the retail fuel markets
- fuel price differentials between various (usually regional) locations
- the relationship between domestic fuel prices and relevant international benchmarks
- price differences between different fuel types.

2.5 Engagement with key stakeholders

In 2011–12, the ACCC continued to engage with key stakeholders, including consumers, industry and government organisations on fuel issues. The ACCC also distributed the 2011 petrol monitoring report and the summary to key stakeholders.

2.5.1 ACCC Fuel Consultative Committee

In addition to ongoing liaison with key stakeholders as part of its broader role, the ACCC formally consulted with the fuel industry and consumer groups through its Fuel Consultative Committee meetings (FuelCC).

During 2011–12, the FuelCC met on two occasions and discussed issues including availability of pricing information to consumers, state government mandates on biofuels, confusion about price cycles, fuel supply concerns, broader industry regulation and profitability of the fuel industry.

The ACCC formed the FuelCC in 2010 to:

- provide an opportunity for meaningful dialogue between the ACCC, the fuel industry and motoring organisations
- provide information to increase the ACCC's understanding of fuel industry issues and to assist the ACCC in undertaking its role under the Act on issues related to competition and consumer protection in the fuel industry.

2.5.2 Other government bodies

As part of its broader role, the ACCC liaises and shares information in accordance with its Information Sharing Policy with the following government bodies to fulfil its functions under the Act:

- the Treasury concerning fuel pricing issues and the fuel industry broadly
- the Department of Resources, Energy and Tourism concerning the fuel industry broadly and fuel supply, including security of supply
- the Commonwealth Department of Sustainability, Environment, Water, Population and Communities in relation to the quality of fuel supplies, including allegations of contamination
- the National Measurement Institute in relation to concerns regarding trade measurement practices
- state government bodies, such as state offices of fair trading and the FuelWatch monitoring service administered by the Western Australian Government, concerning consumer protection and other related issues.

2.5.3 Consumer groups

In addition to meetings of the FuelCC and its efforts to increase consumer understanding about fuel prices, the ACCC corresponds and meets with consumer groups and motoring organisations to address concerns raised about the conduct of fuel retailers that effect consumers. In 2011–12, the ACCC continued to actively engage the motoring organisations across Australia.

Issues raised by these groups and considered by the ACCC included:

- labelling of fuel price boards at retail sites
- proposals for increasing fuel pricing information available to consumers
- cost differentials between RULP and E10

- retail price differences between metropolitan and regional areas
- allegations of anti-competitive conduct
- new and emerging issues in the fuel industry.

2.5.4 Industry associations

The ACCC regularly corresponds and meets with industry associations to address key issues in the fuel industry. Organisations that the ACCC has engaged with in 2011–12 included the Australian Automobile Association, the Australasian Convenience and Petroleum Marketers Association, the Australian Institute of Petroleum and the Biofuels Association of Australia.

