ACCC INQUIRY INTO THE PRICE OF UNLEADED PETROL

Public hearing – Melbourne, 10 October 2007

Time: 11am
Address: CQ Functions
123 Queen Street
Room: Room 6 (level 12)

Time	Witness	Submission
11am	Trafigura Barrie Jacobson, (former Managing Director). Doug Curtis, Director.	-
	Marstel Terminals Pty Ltd Graham Catley, Managing Director Australia and New Zealand. Tim Gunning, General Manager Australia.	-

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TRANSCRIPT OF PROCEEDINGS

AUSTRALIAN COMPETITION

AND CONSUMER COMMISSION

MR GRAEME SAMUEL, Chairman
MR JOHN MARTIN, Commissioner
DR STEPHEN KING, Commissioner

PETROL PRICE INQUIRY HEARING

CONDUCTED AT: **CQ FUNCTIONS**
MELBOURNE

DATE: **11.00 AM, WEDNESDAY 10 OCTOBER 2007**

THE CHAIRPERSON: My name is Graeme Samuel. I'm the Chairman of the Australian Competition and Consumer Commission and Chair of this public inquiry into the price of unleaded petrol. I'm joined by Commissioner John Martin. Commissioner Stephen King gives his apologies. He is committed on another important matter just at the moment. As Chair, I welcome you all and declare this hearing open.

The hearing is convened under Part VIIA of the Trade Practices Act, pursuant to the Federal Treasurer's approval for the ACCC to hold an inquiry into the price of unleaded petrol. The terms of reference for this inquiry have been published on the ACCC's website, together with an issues paper and all public submissions that have been received. The ACCC has also published notes for witnesses at this inquiry which outline the procedures followed by the ACCC at public hearings. The names of the witnesses appearing today have also been published on our website.

Witnesses appearing today will be questioned by counsel assisting the Commission. Counsel appearing today is Mr Simon Marks of Senior Counsel, assisted by Fiona Forsyth.

Could I just note some procedural matters. The conduct of the inquiry is within the discretion of the inquiry Chair. Anyone using insulting language or otherwise disrupting the hearing may be excluded.

The ACCC may wish to question witnesses about information that has been provided on a confidential basis. The ACCC can take evidence in private if a witness objects to giving evidence of a confidential nature in public and the ACCC considers it appropriate to do so. If this occurs, it may be necessary for all other persons to leave the room for parts of the hearing. We do intend to hold hearings in public as far as possible, but we want to be able to ask witnesses about matters that are commercially sensitive. This means we may need to close the hearings at certain points. A transcript of this hearing will be taken and made available on our website as soon as possible after the hearing. However, evidence given in private will be recorded and transcribed but will not be made available on the website.

With those matters dealt with, could I begin by asking the witnesses from Trafigura to, please, come forward and sit at the table.

Could I ask you to state your name and position, please?

MR CURTIS: Douglas John Curtis. I am director of Trafigura Services Australia, a nonexecutive director, I work for Trafigura Beheer B.V as an agent in Australia.

MR JACOBSON: I'm Barrie Jacobson. I am a private citizen at the moment. I have concluded my work as managing director of Trafigura at the beginning of July 2007.

THE CHAIRPERSON: Thank you. You have no legal representatives here today, have you?

MR JACOBSON: No.

THE CHAIRPERSON: Could I just inform you of some of the rules regarding giving evidence at this inquiry? Firstly, it is an offence to refuse to answer a question that you are required to answer by the inquiry Chair. Secondly, it is an offence to give evidence that you know is false or misleading or omits any matter or thing without which it is misleading. You can give your evidence under oath or under affirmation if you believe an oath would not be binding or for religious reasons you are prevented from swearing an oath on the Bible. Could I ask each of you whether you wish to swear under oath or affirm the evidence you give at this inquiry, and then take the appropriate course of action, either with the Bible or without it.

<DOUGLAS JOHN CURTIS, AFFIRMED [11.07am]

<BARRIE JACOBSON, AFFIRMED

MR MARKS: Gentlemen, good morning. Can I start with some introductory questions, please. Firstly, Mr Curtis.

MR CURTIS: Yes.

MR MARKS: Can I ask you just to clarify what you said a moment ago to the Chairman. You are presently a director of Trafigura Services Australia Pty Ltd?

MR CURTIS: A nonexecutive director.

MR MARKS: You are a director, you are not an executive director?

MR CURTIS: Yes, I am not an executive director of Trafigura.

MR MARKS: Yes, thank you. Am I right in saying that you also mentioned a moment ago that you are an agent for MBVB; is that right?

MR CURTIS: No, for Trafigura Beheer B.V (Amsterdam).

MR MARKS: You will need to speak up a little bit, Mr Curtis. This is a large room. We have to transcribe what you say, and you might also speak a little more slowly.

MR CURTIS: Okay.

MR MARKS: Could you just repeat that, please?

MR CURTIS: I work - I'm employed as an agent by Trafigura Beheer B.V (Amsterdam), which is an oil trading company.

MR MARKS: Okay. I have seen - I'm going go back to some documents in a moment, but I have seen the initials "NBBV". Is that the company that you are talking about, or is that a different acronym?

MR CURTIS: I don't know of any "NBBB".

MR JACOBSON: TBBV.

MR MARKS: It may be TBBV. I apologise. Just tell me what those initials stand for.

MR CURTIS: Trafigura Beheer B.V (Amsterdam).

MR MARKS: Can you tell me the relationship between that company and Trafigura Services Australia?

MR JACOBSON: The ultimate shareholder?

MR MARKS: Yes.

MR JACOBSON: 100 per cent?

MR MARKS: But can you tell me, is it a direct owner or are there any intermediary series of companies?

MR CURTIS: Trafigura Services Australia is owned by Trafigura Retail Fuels Pte Ltd.

MR MARKS: Where is that company based?

MR CURTIS: Domiciled in Singapore.

MR MARKS: Right. Is that company a 100 per cent owner of the Australian operation?

MR CURTIS: Yes.

MR MARKS: Thank you. That company, in turn, is that 100 per cent owned by the Amsterdam - - -

MR CURTIS: It is owned by Trafigura Beheer B.V (Amsterdam).

MR MARKS: It is owned - is that 100 per cent ownership?

MR CURTIS: Correct.

MR MARKS: Thank you. Mr Jacobson, you are the ex-managing director. Your services were terminated in July, is that so, of this year?

MR JACOBSON: I resigned.

MR MARKS: You resigned?

MR JACOBSON: Yes.

MR MARKS: I'm sorry. Are you able to explain the circumstances of your resignation to the Commission?

MR JACOBSON: Sure. Yes. I don't know how far back the history would be relevant.

MR MARKS: Whatever puts the resignation in context, please.

MR JACOBSON: Yes, but I was the managing director of Burma Fuels Australia when we started the wholesale business in importing product to supply our network and we went into an alliance with Woolworths. We found the retail business in Burma very difficult and Burma Castrol, my shareholder at the time, asked me to sell the business. I told it off in two parts - the retail business got sold in pieces and the wholesale business I sold to Trafigura.

MR MARKS: I see.

MR JACOBSON: They then subsequently, after I had left - - -

MR YOUNG: What year was that, please?

MR JACOBSON: That was in 2000. In 99 we sold the Burma business but the wholesale business was only sold to Trafigura in 2000. That had a number of customers, being 7 Eleven, Woolworths and a multitude of smaller independents. A short time after I left, Trafigura asked me to come and run their wholesale business, which I agreed to, and it was successful for a number of years, but certain events, which I am sure you might be or might not be interested in, caused a real decline in the ability of independents to compete in Australia. So not only our customers but also ourselves, as an importer, were severely disadvantaged, and so we got to a point where Trafigura then asked me last year to sell the assets or whatever was left of Trafigura Australia, which I tried, through a process of public tender, to sell at the end of last year.

By February, it appeared to me that there were no viable buyers of what assets we still had. And so I said to Trafigura: Well, my mother is dying of cancer, I have other problems that I want to take care of, I'm - I'm leaving. That's why I resigned. And I feel, you know, for them, left with - in quite a difficult position - and Doug is in that position because he is having to pick that up.

MR MARKS: Managing director. Now, I want to pick up some of the things by way of background that you have said to give context to your answer.

MR JACOBSON: Yes.

MR MARKS: And it will perhaps make a little clearer Trafigura's original position in the Australian market.

MR JACOBSON: Yes.

MR MARKS: The company that I see on the letterhead now, Trafigura Services Australia, how long has that company been operating in the Australian market?

MR JACOBSON: Since May 2000.

MR MARKS: In what capacity?

MR JACOBSON: As an owner of - of a business in Australia that was set up from May 2000. They - at that point, Trafigura only had leases over terminal assets, fuel storage terminal assets in Sydney and in Melbourne, and they imported product to - well, actually, Trafigura Services imported product but exclusively from our parent trading company, which was Trafigura Beheer B.V, to supply those terminals with fuel which we on sold to Woolworths, 7 Eleven, independents, major oil companies, whoever, you know - there was over the years a range. We imported more than 100 shipments of fuel into each terminal. So - - -

MR MARKS: What years are you talking about now?

MR JACOBSON: From 1997 until - - -

MR MARKS: Let me go back to 1997 and I will just get that picture. I can see where you are going.

MR JACOBSON: Yes.

MR MARKS: Woolworths commenced operations in Australia - I only go back to Woolworths because it's a good way to start this analysis. I think Woolworths commenced its retail petrol sales in about 1996/1997.

MR JACOBSON: Well, actually, yes, it was late 96 in New South Wales and - because they couldn't get supplies from the majors, when we commenced our first shipment into the Port Botany storage terminal, and it was early 97 in Victoria.

MR MARKS: Now, when Woolworths started, you say Trafigura, in an earlier guise, was supplying Woolworths?

MR JACOBSON: No.

MR MARKS: Who was supplying Woolworths then?

MR JACOBSON: Well, Burma Fuels.

MR MARKS: Was Burma Fuels the sole supplier to Woolworths when it started its retail operations, or was Woolworths getting petrol from other sources also?

MR JACOBSON: No, Burma Fuels was the sole supplier. In fact, they started in New South Wales and in Victoria, and then on the strength of our contract we had with Mobil, we didn't have storage in Queensland, they started - we started supplying five of the first Woolworths sites in Queensland. Woolworths subsequently, when they started expanding nationally, did a deal with BP, who then took over the Queensland supply, West Australia as they went in there, and South Australia.

MR MARKS: Oh, I see.

MR JACOBSON: So we continued to supply New South Wales and Victorian suppliers - - -

MR MARKS: And from when was that, about?

MR JACOBSON: No - well, we started - - -

MR MARKS: When did BP pick up the Queensland - - -

MR JACOBSON: That was pretty early on. It would have been late 97/early 98.

MR MARKS: I see, while Burma Fuels was still the - - -

MR JACOBSON: Yes, and then Woolworths bought the Liberty service station - - -

MR MARKS: I'm going to come to that in a moment, but just going back a second, just to pick up this history, Burma Fuels had storage facilities in Sydney, did it?

MR JACOBSON: A lease, yes.

MR MARKS: A lease - the lease was through Vopac?

MR JACOBSON: That's right.

MR MARKS: Of a storage facility at Port Botany?

MR JACOBSON: 65 million litres and Woolworths had a lease for 35 million litres - - -

MR MARKS: Yes, I understand that.

MR JACOBSON: - - - and they subleased that to Burma Fuel. So we utilised that whole terminal for the benefit of Burma Fuels and Woolworths.

MR MARKS: All right, now, going down to Melbourne, this is still in 96-97, what was the fuel storage facility available to Burma Fuels in Melbourne?

MR JACOBSON: Okay, there was a company called Wickland Oil, and Wickland was a, I believe, California-based company.

MR CURTIS: California-based company.

MR JACOBSON: And Wickland bought four tanks on a piece of ground out at Hastings, near Western Port Bay, from a guy, David Tomea(?), who had a dream in the eighties about an independent import storage facility, and nothing ever - these tanks got built but I think some hippies were living in them. I don't - nothing was ever done.

MR MARKS: They weren't utilised to full capacity.

MR JACOBSON: And Wickland decided to develop it into a proper storage terminal with a link to a port and load out gantry for loading trucks and that kind of thing. And Burma at the time was threatened by - well, I wouldn't say "threatened" - but our supply contract was terminated with one of the oil majors and we were scared of security of supply because we had $100 million invested in retail service station chains. So we then signed up with Mitsui, which is an international trading company, as a supplier, and Wickland and Vopac for terminal. And then Woolworths came along, happened to be at about the exact same time and said, "Look, we want to get into the petrol business. We'd like you to supply us and we'll take some of the storage costs in Sydney and lease them back to you and we'll take your supplies from you in Victoria." They had no contractual arrangement in terms of terminalling but they had a contractual arrangement in Victoria for supply.

MR MARKS: I see. Who was that with?

MR JACOBSON: With Burma Fuels.

MR MARKS: I see. You are saying Burma - - -

MR JACOBSON: Woolworths had no - sorry.

MR MARKS: That's all right. In Victoria, what was the terminalling space at Hastings?

MR JACOBSON: At the time, it was 70 million litres.

MR MARKS: Okay. Now, I think you said around 2000, the Trafigura deal occurred.

MR JACOBSON: Yes.

MR MARKS: Do I understand you to be saying that Trafigura effectively took Burma Fuels' wholesale business and in doing so - - -

MR JACOBSON: It bought it.

MR MARKS: It bought it, and in doing so it took over the Port Botany lease arrangements?

MR JACOBSON: Yes.

MR MARKS: At least insofar as those lease arrangements were with Burma Fuels? Woolworths - - -

MR JACOBSON: Exactly. There was an assignment of all the leases from Burma Fuels Australia to Trafigura Services.

MR MARKS: All right. Now, Woolworths kept its independent fuel - I think it was 30,000 or 35,000 litres, you said.

MR JACOBSON: 35 million litres. But that was, in turn, also assigned to Trafigura Services, because Woolworths had assigned that sublease.

MR MARKS: The sublease was assigned?

MR JACOBSON: Yes.

MR MARKS: So Woolworths kept the head lease. We just want to make sure.

MR JACOBSON: Yes.

MR MARKS: So that continued to be a Woolworths storage facility, even though it was subleased?

MR JACOBSON: But not practically, yes.

MR MARKS: I understand.

MR JACOBSON: Not the way it operated, but, yes.

MR MARKS: All right. That's helpful. Thank you. Now, let me just go back to Woolworths for a moment, because Woolworths was, from the time - please correct me if I'm wrong about this - Woolworths, I suspect, was from the time it took up retail operations the principal customer of Burma Fuels in Australia, was it not?

MR JACOBSON: Definitely not.

MR MARKS: Okay, who was?

MR JACOBSON: No, no, when we started Woolworths would have been less than 5 per cent of our business.

MR MARKS: Is that so?

MR JACOBSON: Even when we sold to Trafigura - - -

MR MARKS: So who were the principal customers? You said 7 Eleven, Woolworths and some small independents.

MR JACOBSON: Yes. With 7 Eleven and - see, Burma's main business at the time was its service station chain. A lot of its service station chain went to 7 Eleven, but Woolworths had very few sites. You got to remember in the beginning they had one, two - the ramp up was quite slow.

MR MARKS: I want to come to that in a moment, but who was Burma Fuels' principal customer?

MR JACOBSON: Well, Burma Fuels' principal customer was its own retail network, right, its own retail network but there were other independents we supplied.

MR CURTIS: What happened to that retail network?

MR JACOBSON: It got sold - 50 of the sites were taken by 7 Eleven. At the bid I think we had something like 120 sites. A lot of them we ended the leases, we just got out, and some we just auctioned off the sites where we held the freehold.

MR MARKS: 7 Eleven were the principal buyer - - -

MR JACOBSON: Yes.

MR MARKS: - - - but there were some others - - -

MR JACOBSON: And 7 Eleven continued as a wholesale supply customer of Burma Fuels Australia, but we also had distributors. We had five independent distributors located in different parts of New South Wales and Victoria, and we also had some other independent service station groups, like, say Foodies in Victoria was a small group that we supplied that had four or five service stations.

MR MARKS: I see. I am just going back to Woolworths for a moment. As you say, they started off small and got big.

MR JACOBSON: Yes.

MR MARKS: They started with - I'm not sure how many sites but they were mainly - - -

MR JACOBSON: They built the sites, because the original business plan with Woolworths was that they would only build sites in shopping centre parking lots. So they didn't go and buy sites, they built sites and that's why the process of approval and construction took quite a long time and the ramp up was quite slow. In fact, they only - at the time I was selling the Burma Fuels network, Woolworths were quite interested, as were 7 Eleven, in buying the network, but they had a strategy at the time that they were not in freestanding petrol stations. So even as late as 99, they still had that strategy, that they wouldn't go into freestanding.

MR MARKS: So by about 1999, they had about 170 parking lot sites?

MR JACOBSON: Yes.

MR MARKS: They then, in 2001, acquired further sites - I think they acquired the Liberty sites.

MR JACOBSON: That's right.

MR MARKS: Liberty then withdrew from retail, effectively.

MR JACOBSON: Pretty much.

MR MARKS: And now - - -

MR JACOBSON: And now he they had another supply in New South Wales and Victoria from the time they bought the Liberty sites because Liberty became - or Caltex/Liberty became a supplier from Caltex to acquire it.

MR MARKS: I see. That expansion of Woolworths went on through to 2004 - and I'm thinking now prior to the alliance with Caltex - they had around 290 or 300-odd sites. They had expanded significantly.

MR JACOBSON: I believe at the alliance time they had 340 or something.

MR MARKS: All right. That sounds in the ballpark to me. I think it's also right to say that from the time Woolworths went into the retail market, they had a scheme, a shopper docket scheme of types, up and running.

MR JACOBSON: Absolutely.

MR MARKS: And that was important to Woolworths' operation operations at retail.

MR JACOBSON: It was the best ever promotional tool they found for the supermarket business.

MR MARKS: Whilst Woolworths were being supplied by Trafigura, it was also a very important feature of that relationship, wasn't it?

MR JACOBSON: Sorry? I - - -

MR MARKS: Whilst Woolworths enjoyed - or whilst Trafigura enjoyed supplying Woolworths, they enjoyed the benefit that the Woolworths shopper docket scheme was giving in terms of sales volumes and the like.

MR JACOBSON: Well, I think Trafigura would dispute that, because unfortunately the commercial aspects of that deal didn't really work so well for Trafigura.

MR MARKS: I see.

MR JACOBSON: On total, the business in Australia made some margin and, obviously, the growth of the Woolworths business was good for the Australian entity, but my understanding is that Trafigura Beheer, on those cargoes at the price contracted, were losing significant amounts of money. I don't know if Doug wants to comment on that, because he might know more about that than me. So when you say enjoyed the benefits, it depends - - -

MR MARKS: Tell me about the Woolworths arrangement. Was it a long term supplier? When was the arrangement struck originally?

MR JACOBSON: Okay, it was struck in 96.

MR MARKS: Was it a long term agreement? What was the duration of the original agreement?

MR JACOBSON: The original agreement was three years.

MR MARKS: So it was due to expire or be extended. Did it have an extension in 1999?

MR JACOBSON: 1999 is when Trafigura won the supply contract from Mitsui. Mitsui lost a lot of money on it as well and didn't want to continue.

MR MARKS: But in so far as the Woolworths contract is concerned, you say it went through to 1999. I am then wanting to know what happened then. Was it renegotiated, was it extended?

MR JACOBSON: No, it was totally rebid.

MR MARKS: And there was a new contract between Woolworths and - - -

MR JACOBSON: A new contract - Trafigura.

MR MARKS: And for what period?

MR JACOBSON: Sorry, no, no, the new contract was between Woolworths and Burma Fuels in 1999.

MR MARKS: And that got transferred - - -

MR JACOBSON: For another three years.

MR MARKS: Which, in turn, Trafigura purchased?

MR JACOBSON: But Trafigura won the supply contract.

MR MARKS: I understand. It sounds more like it.

MR JACOBSON: So - yeah - it's a long time ago but I was the guy doing the deals - - -

MR MARKS: That's fine. Not a problem, just as long as I get the picture clear.

MR JACOBSON: Yeah, the picture is we tendered the supply, so we didn't pick Trafigura, but Burma Fuels tendered their supply. Woolworths also tendered their supply separately but we included Woolworths in our numbers, and we had a number of offers from Glencore and - oh, there were - - -

MR CURTIS: Veetoll.

MR JACOBSON: There was Trafigura. Shell made an offer as well. In the end, Trafigura's offer was the best. We did a three-year contract with Trafigura, and Woolworths came - - -

MR MARKS: When was that contract done, please?

MR JACOBSON: It was, I think, October 99. Yes.

MR MARKS: You were going say then?

MR JACOBSON: Woolworths came into our contract. So even though they were separately looking at their own supply sources and they came very close to doing a deal with Shell, as I understand, they came into the Trafigura contract, which was the Burma - there was a contract between Woolworths and Burma Fuels.

MR MARKS: And when was that to expire?

MR JACOBSON: Three years after 99.

MR MARKS: So that was in 2002, was it?

MR JACOBSON: Yes.

MR MARKS: And then was it extended in 2002?

MR JACOBSON: Yes.

MR MARKS: Till when?

MR JACOBSON: It was extended until the end of 2004.

MR MARKS: Till August 2004?

MR CURTIS: August 2003.

MR JACOBSON: August 2003, was it? Yes.

MR MARKS: 2003.

MR CURTIS: I think Caltex took over on 1 January - - -

MR MARKS: 2004.

MR JACOBSON: It was the end of 2003 -- yes, the end of 2003.

MR MARKS: That makes sense?

MR JACOBSON: Even though it didn't quite line up because we had our terminal contract, which was a - in Sydney was a seven-year lease.

MR MARKS: Yes, I see.

MR JACOBSON: It went till August 2004.

MR MARKS: Yes, I see.

MR JACOBSON: That's right. But with the - the Woolworths business ended December 31, 2003.

MR MARKS: Now, at the time the Woolworths business ended, what percentage of Trafigura's wholesale sales in Australia were taken up by Woolworths?

MR JACOBSON: They would have been roughly 70 per cent at that time.

MR MARKS: So by that stage, Trafigura really had a lot of its eggs in the Woolworths basket?

MR JACOBSON: Yes.

MR MARKS: All right. Now, let me just now make sure I understand the terminalling arrangements. I understand the Sydney arrangement. By this time in Melbourne, Trafigura had picked up the Hastings terminal.

MR JACOBSON: Yes, we bought the Hastings terminal in July 2001. Yes.

MR MARKS: All right.

MR JACOBSON: Yes.

MR MARKS: Now, who was that purchased from?

MR JACOBSON: Well, if you want the sequence, the sequence was Wickland sold to Vopac. Vopac did a redevelopment of the terminal.

MR MARKS: Did they add to the capacity?

MR JACOBSON: Yes. Yes, they added - - -

MR MARKS: So what was the capacity by the time Vopac sold it?

MR JACOBSON: That was the 70 million. There were only these original four tanks, which was - what - the two elevens, the eight and the two halves, so that's 33 million that Wickland had. Vopac bought it fairly quickly - I mean, Vopac's extension happened in 97, so they bought it right at the beginning, because I think Wickland worked out it wasn't viable to use this.

MR MARKS: So Vopac bought it, they expanded it?

MR JACOBSON: They added - - -

MR MARKS: By the time they sold it - - -

MR JACOBSON: They added another 40 million, so it took it up to about 72 million.

MR MARKS: All right. Did Trafigura acquire it in 2001 from Vopac?

MR JACOBSON: Yes.

MR MARKS: After they acquired it, did they add to the capacity?

MR JACOBSON: Yes.

MR MARKS: What capacity is it now?

MR JACOBSON: We added another 18 million, so it's got just about over 90 - I think it's - - -

MR MARKS: When was that capacity added?

MR JACOBSON: In 2006.

MR MARKS: For what purpose?

MR JACOBSON: Well, at the time we - we believed that - we'd been through that period of - of the fuel standards really hurting us.

MR MARKS: I want to ask you about that separately but I accept what you say now. But just quickly, why was it added?

MR JACOBSON: Okay, so from 2004 we were quite disadvantaged by the fuel standards and then we saw that the fuel standards were now going to impinge on the majors, and in fact we didn't expect Altona to survive.

MR MARKS: I see.

MR JACOBSON: Because the - - -

MR MARKS: When you say Altona, you mean Mobil, or are you talking about - - -

MR JACOBSON: Yes, the Mobil refinery at Altona. We didn't expect they would spend the money because they have never made money out of that refinery and it was old and, you know, needed significant investment, and they delayed and delayed and delayed on their decision. So we saw the Victorian market as desperate for import capacity.

MR MARKS: Certainly, yes.

MR JACOBSON: And that's why we - we wanted a terminal that you could bring enough shipments into - - -

MR MARKS: So the expansion was not dictated by the needs of any particular customer but, rather, by the philosophy or the attitude to the market that you've just described?

MR JACOBSON: Yes.

MR MARKS: On the part of the Trafigura account.

MR JACOBSON: Well, the whole balance in the Australian market was changing, it was becoming an import market. We knew that, and we thought that- - -

MR MARKS: When was this? By 2006, you say?

MR JACOBSON: As soon as they closed the Port Stanvac refinery, which is in 2004.

MR MARKS: Yes, I am with you - which is July 2003.

MR JACOBSON: Yes. Well, then it became an import market but we expected a further ramp up of that - - -

MR MARKS: So, by "import market", what you mean is that it was short product?

MR JACOBSON: Yes.

MR MARKS: And that was going dictate various changes in the way in which the majors would operate in the market.

MR JACOBSON: Yes.

MR MARKS: And in the way in which others within the market?

MR JACOBSON: And you had to have facilities that can accommodate large import shipments.

MR MARKS: Now, let me ask you about that.

MR JACOBSON: Yes.

MR MARKS: When Port Stanvac occurred, closes around that time and gets mothballed, there is one less refinery?

MR JACOBSON: Yes.

MR MARKS: Port Stanvac is, I think, at its closure producing about 78,000 barrels a day? Does that sound right to you?

MR JACOBSON: Yes.

MR MARKS: That's gone. Did that have an immediate impact on supply in the Australian market - - -

MR JACOBSON: Yes.

MR CURTIS: - - - or did it occur over time?

MR JACOBSON: No, it had an immediate impact. They were importing - import ships, I think we calculated they needed six ships a month just for the South Australian market.

MR MARKS: Now, was Trafigura able to take any advantage of that change in the position created by Port Stanvac on its closure?

MR JACOBSON: No.

MR MARKS: Why was that? Because you weren't in South Australia or was it - - -

MR JACOBSON: Yes. We did - I mean, the market still is very - even though we had, at the time, over 5 per cent of the petrol market in New South Wales and Victoria, the market was still very much dominated by the major oil companies, who had these exchange arrangements which turned into buy sell arrangements. So, effectively, what happened was as soon as Adelaide shut down, the imports which Exxon Mobil bought to replace that capacity out of Singapore, were just exchanged out with other majors in other states for - so Exxon Mobil, effectively, became still the supplier to South Australia, but it exchanged for product with BP in Queensland or Caltex in - - -

MR MARKS: But those exchange arrangements had been changed a year before the closure of Port Stanvac.

MR JACOBSON: They were buy sales.

MR MARKS: They became buy sells - - -

MR JACOBSON: Which is the same - they exchanged where there was a buy and a sell of a similar volume.

MR MARKS: I understand, but I thought there was something you were saying that was significant about the buy sell. You are really just saying it was the general feature of - - -

MR JACOBSON: It effectively didn't allow us into the South Australian market anyway because - - -

MR MARKS: Why is that?

MR JACOBSON: Well, because we had been to the majors many times to ask whether they would do exchanges or buy sells with us.

MR MARKS: And what had happened?

MR JACOBSON: They never - they were never interested.

MR MARKS: When had you made those inquiries?

MR JACOBSON: Every six months from - - -

MR MARKS: Was this - every six months from when? Is this before the closure of Port Stanvac? After it?

MR CURTIS: About 2000, I think.

MR MARKS: I see. So am I right in saying from about 2000, you were seeking ways - that is, Trafigura, if I can just describe it in that way, by this time.

MR JACOBSON: Yes.

MR MARKS: Trafigura was seeking a means by which to supply fuel at wholesale into markets where it - or to extend into the South Australian market and perhaps other markets; is that so?

MR JACOBSON: Yes.

MR MARKS: And as part of that ambition, you say it sought arrangements with all of the majors?

MR JACOBSON: Supply arrangements, whatever, yes, so - - -

MR MARKS: I think you said before it sought from all of the majors this ability?

MR JACOBSON: Yes, pretty much.

MR MARKS: And all of the majors refused?

MR JACOBSON: Well, it's not so much that they refused, that they asked us for prices sometimes and we gave prices and they rejected the offers.

MR MARKS: Prices for what?

MR JACOBSON: For a buy sell.

MR MARKS: I'm sorry, I don't understand. You have gone to them and you've said, "We want to do a deal with you whereby we can obtain fuel from you effectively at the buy sell price." That's what you were really saying to them.

MR JACOBSON: But the buy sell price is a negotiated price.

MR MARKS: I understand that - - -

MR JACOBSON: Sorry.

MR MARKS: - - - and it's negotiated as part of a reciprocal arrangement.

MR JACOBSON: Yes.

MR MARKS: Now, you went to them and said, "We want that price." Is that really the gist of it?

MR JACOBSON: It doesn't quite work that way.

MR MARKS: What was the reciprocal nature of the arrangement that you could offer? They would offer you petrol or fuel at the buy sell; what were you going offer them in return?

MR JACOBSON: No, we will - when you say the buy sell, you talk as if there is one buy sell price.

MR MARKS: I am just talking about - let me put it to you differently so I'm not confusing you here. You said you went to each of the majors - - -

MR JACOBSON: Yes.

MR MARKS: - - - some time, 2000 onwards, and said, "Look, we'd like to a deal of the kind that you do between yourselves."

MR JACOBSON: Yes, but ours obviously, to start with, wouldn't be a balanced deal because we had no customers, so we have to negotiate a buy price and a sell price. Right?

MR MARKS: I understand. You were trying to negotiate a buy price.

MR JACOBSON: That's right.

MR MARKS: And what was going to be on the other side of the ledger was what?

MR JACOBSON: We were offering a sell price in the other states. But it never - their buy price that they offered us, I - and I don't have access to what they offered the other oil companies, but it certainly wasn't competitive enough for us to gain customers in those states.

MR MARKS: Yes, I see.

MR JACOBSON: So when you say you made - you said like buy sell, at the buy sell price like it was a defined price - - -

MR MARKS: No, not at all. It is obviously a bilateral arrangement - - -

MR JACOBSON: Yes.

MR MARKS: - - - but what you are really saying is that you couldn't attract them with the sell price that you could have offer in other states.

MR JACOBSON: That's right.

MR MARKS: I understand.

MR JACOBSON: And the buy price we didn't like that they offered us, or the customers that would take supplies from us didn't like it, either.

MR MARKS: No, no, I understand. Was that the case with each of the majors that you approached?

MR JACOBSON: I think pretty uniform. I didn't see any good deals, did you?

MR CURTIS: You didn't.

MR MARKS: I want to know really this: Did you approach each of Mobil, BP, Caltex and Shell and did you get the same reaction from each?

MR JACOBSON: At different times over the period from 2000 to 2004, yes, we approached every single one of them. Some of them gave us numbers, others said, "No, we just can't accommodate you at the moment. Our supply arrangements are" - - -

MR MARKS: The closest you got perhaps was with Mobil, was it?

MR JACOBSON: No, I think the people who we did more numbers with than anyone else was Caltex.

MR MARKS: Was it?

MR JACOBSON: Yes.

MR MARKS: What happened there? Eventually, it was rejected?

MR JACOBSON: Well, this is only an opinion, right, so I can't actually state this as fact, but it appeared to me that Caltex were extremely concerned about the same things we thought - Victoria was going to be very short and Altona was going close --and they kept coming for us for numbers every six months for a long period.

MR MARKS: When was this? Was this after the Port Stanvac closure?

MR JACOBSON: Yes, and they kept like holding the hook out and then when they made their decision - because it was a six month buy sell program and we did it every six months - they kept saying, "Not this time. Your price isn't good enough, but next time for sure", and this went on for a long time.

MR MARKS: I see. How long did it go on for? A couple of years?

MR CURTIS: It's still going.

MR MARKS: It's still going?

MR JACOBSON: I'm not involved in it.

MR MARKS: Right. That's helpful, thank you very much. In 2003, Woolworths ceased obtaining supplies from Trafigura. That was - - -

MR JACOBSON: Well, January 2004, yes.

MR MARKS: That was the end, but the writing was on the wall some time before that - - -

MR JACOBSON: Yes.

MR MARKS: - - - and Woolworths indicated that it was - - -

MR JACOBSON: It was 25 August 2003.

MR MARKS: That's when I was thinking of.

MR JACOBSON: There is Roger Corbett's announcement, "We have got a really good supply line at the present time but with the government changing specifications it will change the refining base from which we can draw product quite significantly." That's a quote in the Financial Review of August 25, 2003.

MR MARKS: You have brought that along, have you? Okay. Now, that is consistent I think with what Woolworths told you at the time, is it not?

MR JACOBSON: Yes.

MR MARKS: And it seems to be consistent with what they say now. The Woolworths evidence to the Commission was, as I understand it - it was given in open submission, I think - I had better just check - was broadly - in any event, they gave oral evidence to this effect, that there was a growing tightening in the market, that they were concerned about supply issues, that they had been independently importing, obviously through Trafigura and the like - - -

MR JACOBSON: Yes.

MR MARKS: - - - and that they became concerned about that.

MR JACOBSON: Yes.

MR MARKS: And that was what led to the - - -

MR JACOBSON: I wouldn't think Roger Corbett said that in a newspaper, you know, in quotes, if it weren't the case.

MR MARKS: Exactly.

MR JACOBSON: Yes.

MR MARKS: Now, that was a real blow for Trafigura, wasn't it?

MR JACOBSON: Yes.

MR MARKS: Trafigura tried, did it, and I imagine tried very hard, to resurrect that arrangement with Woolworths?

MR JACOBSON: Well, there was very little we could do about the arrangement.

MR CURTIS: Was the reality that by that time the alliance deal had reared as an alternative?

MR JACOBSON: No, they came to us when it was a fait accompli.

MR MARKS: I see. So that's the answer?

MR JACOBSON: Yes. So, that's it.

MR MARKS: So really they said, "That's it, guys" - - -

MR JACOBSON: Yes.

MR CURTIS: - - - and that was the end. That was unfortunate timing, as I think you said earlier, because the Vopac Sydney Port Botany facility was nearing the end - - -

MR JACOBSON: Six more months, yes - - -

MR CURTIS: - - - of its life.

MR JACOBSON: - - - or eight more months of contract, yes.

MR MARKS: All right. Let me ask you very briefly about that. That facility was to expire in August 2004?

MR JACOBSON: Yes.

MR MARKS: It had up till that time - one other thing I should ask you: Under the contract, the lease contract, there was no further extension option, was there?

MR JACOBSON: No.

MR MARKS: So it was an agreement that was to terminate. The question really was: Could Vopac do another deal?

MR JACOBSON: Well, they clearly did.

MR MARKS: What was that?

MR JACOBSON: They clearly did.

MR MARKS: No, forgetting what else - could they do another deal - - -

MR JACOBSON: Yes.

MR MARKS: - - - and, from your perspective, with Trafigura.

MR JACOBSON: They could have done.

MR MARKS: Could have done one with anyone. It was a new deal and it had to be negotiated and they could do it with anyone they liked.

MR JACOBSON: That's right.

MR MARKS: When I say the difficulty - having lost the Woolworths volume, I'm just looking at your own figures there, Trafigura was in quite a difficult position, wasn't it?

MR JACOBSON: Yes - well, it depends on how you define that, because I think I made it clear that as - in an overall sense, Trafigura didn't make money out of the Woolworths business.

MR MARKS: No, but it was 70 per cent of its business by volume.

MR JACOBSON: That's right, but my understanding is that in 2004 in the company overall, including the Australian operations, if you just took the supply into Australia, we did better than we did in 2003. So - - -

MR MARKS: I'm just looking at the sales here.

MR JACOBSON: Yes, that's only one side of the equation.

MR MARKS: What do you mean by "did better"?

MR JACOBSON: We made more money.

MR MARKS: Doing what?

MR JACOBSON: Importing and selling product in 2004. As a global - - -

MR MARKS: I'm looking at your importing and selling sales figures here. Just tell me if I've got this wrong.

MR JACOBSON: The volumes are much higher in 2003, and if you are losing money on every barrel of oil you sell, the more the volume, the more you will lose. So if you lose 70 per cent of your volume - - -

MR MARKS: So you talking about margins?

MR JACOBSON: Absolutely.

MR MARKS: The reality though, was this: Essentially, at the end of the day, margins are tied to volumes. One is trying to get, if you like, a combination to get the best margin from the volume you sell, would you agree?

MR JACOBSON: Well, it's a product, right.

MR MARKS: You don't want to be selling fuel for nothing.

MR JACOBSON: You want to maximise the total margin, and that doesn't always come from increasing volume.

MR MARKS: No.

MR JACOBSON: Because sometimes increasing volume might - especially in this business with high volatility, it might increase your risks.

MR MARKS: So what you are really saying is we've been selling a lot, it is true.

MR JACOBSON: Yes.

MR MARKS: Most of it to Woolworths; that's true, too.

MR JACOBSON: Yes.

MR CURTIS: We lost the Woolworths deal, we lost a lot of volume but a little while we made margin?

MR JACOBSON: Yes.

MR MARKS: I understand that. But at the end of the day, what I'm saying to you is that volume is critical to the conduct of a business of the kind that Trafigura was undertaking; would you agree?

MR JACOBSON: Yes, I don't think we were so fixated by the volume. You know, in fact - I mean, history more than anything proves this rather than disproves it - it was very important for us to have two dropoff points because of freight logistics and being able to put the ships in, you know, without incurring demurrage and just fully load a ship up and, you know - because as I say, we expanded Hastings in the end, but at the time Hastings didn't have quite adequate capacity.

MR MARKS: I understand. I want to come back to you about that in the context of some questions about terminalling and importing generally, because they are very important matters.

MR JACOBSON: But I want to answer your question.

MR MARKS: Just quickly, if you would.

MR JACOBSON: We went back to Woolworths and rented some tanks back from them for a while, after we were out of Port Botany. It was about six months after.

MR CURTIS: Yes, March of 2000 and - - -

MR JACOBSON: I forget the exact dates now. We were out from August.

MR MARKS: August 2004.

MR JACOBSON: Yes, and I think in about February the next year, I think it was February or March the next year - - -

MR CURTIS: March, I think.

MR JACOBSON: - - - we took back the Woolworths tankage from Woolworths.

MR MARKS: That's the 35,000?

MR JACOBSON: Yes, because we wanted - we saw that in order to keep operating, we really needed supply points and more capacity to discharge our shipments.

MR MARKS: So you were able to get the 35 million litre capacity back?

MR JACOBSON: Yes.

MR MARKS: How long did you maintain some use of that?

MR JACOBSON: Until Shell took over the contract.

MR MARKS: When was that?

MR CURTIS: I think that was six to eight months.

MR MARKS: Am I right then in saying that from August 04, you lost 65 million litre capacity, and then - - -

MR JACOBSON: No, we lost the whole lot in August 04 and we had no supply in New South Wales. So we were out of business for about six or seven months. Then we did - in fact, I think BP were renting some of the tanks off Woolworths.

MR MARKS: Yes, I see.

MR JACOBSON: And then - and then we kept asking and asking for tankage - - -

MR MARKS: Could we have some?

MR JACOBSON: - - - looking for storage and eventually Woolworths said, "Okay, our storage is becoming available" - I think it was from March, and we put a shipment in there in April.

MR MARKS: Okay. Now, they gave you some sort of a licence or sublease or something?

MR JACOBSON: Yes.

MR MARKS: How much capacity did that give you?

MR JACOBSON: The 35.

MR MARKS: The 35 million litres?

MR JACOBSON: That's right. It was from April 2005.

MR MARKS: You continued to enjoy that till when?

MR JACOBSON: Oh - - -

MR CURTIS: I think it was to the end of the year.

MR JACOBSON: No, I think it was longer than that. It was into 2006. I think we were still bringing ships in in 2006.

MR MARKS: All right.

MR JACOBSON: Yes, I would have to check. I mean, I can't remember the exact dates, but - I think my recollection is Woolworths still had 15 months left on their contract.

MR MARKS: I see.

MR JACOBSON: So --when we took it over. I don't know if we used the full 15 months, but it went into around the middle of 2006 we - - -

MR CURTIS: Our last shipment into Botany was on the 11th of the 2nd, 2006.

MR JACOBSON: We were still selling that for a few months after that, yes.

MR MARKS: All right.

MR JACOBSON: So my recollection is not that bad.

MR MARKS: No, it's very good, if I might say. Now, that's given us a good insight into where Woolworths went and Trafigura's operations.

MR JACOBSON: But - sorry to interrupt, but I think I wanted to answer your question about that losing Woolworths. We didn't see that as the end of the world, you know, because actually we thought, with a reasonable volume, at better margins where we could control the risk profile better, and still having supply in two states, we could have a very sort of decent, long term business with some potential upside as refineries closed or the fuel standards started impacting the majors. Otherwise, I wouldn't have stayed as long as I did. We did see a future at that point.

MR MARKS: Yes. All right. The market conditions changed in Australia. You mentioned - and I'm thinking now of the early 2000s. You said two things in your earlier evidence.

MR JACOBSON: Yes.

MR MARKS: Firstly, you made a reference to the fuel standards.

MR JACOBSON: Yes.

MR MARKS: Secondly, you made a reference more generally to the changing role of independents and the difficulty that independents experienced with the changing conditions in the market.

MR CURTIS: Excuse me, can you define "independent"?

MR MARKS: Yes, I can, and that's a perfectly fair proposition. What I am thinking of when I talk about an independent is the large - by this stage, Woolworths is no longer an independent. None of the majors are independent. I am thinking now of - - -

MR CURTIS: In 2002 Woolworths was independent.

MR MARKS: I'm thinking here of the people like United and Liberty, and the medium to large true independents from certainly 2004.

MR JACOBSON: Yes, they were retailing independents but they were supplied by the majors. So - - -

MR MARKS: Now, you say that the supermarkets were still independent until 2004?

MR CURTIS: Correct.

MR MARKS: Yes, I understand. So, subject to those riders, I want to ask you some questions about the changing conditions in the market. There are a number of features that we have been told about and I want to understand their impact on Trafigura most particularly. The Port Stanvac refinery closure I have already asked you about. The fuel standards I have said I wanted to come back to. What was their impact? Just let me premise it with one more introductory remark. We know from our own workings that the fuel standards came in at the time, they obviously promulgated from January 2002, they continued through to 2006 and they are not finished yet, but the impact started from about 2004, did they?

MR JACOBSON: Well, yes. I mean, we did an enormous amount of work with what was then EA, Environment Australia, which later became DEH, which is the federal department, and that work was really aimed at looking at the impact of the proposed change in the fuel standards on imported product and the availability of imported product in the region.

MR MARKS: Yes.

MR JACOBSON: And might I say that the ACCC was an ally, because we did a lot of work - I came to a lot of meetings with the ACCC, they were a great ally in the process leading up to 2002. We went to all the Federal ministers and, you know, everybody involved, to explain that basically the way they had structured the timing of the fuel standards' introduction was to introduce immediately the things that didn't impact on the major oil companies and delay till 2006 anything that impacted on the major fuel companies, like benzene levels in petrol, which we saw as a major fuel standards issue from a health and safety point of view for the public, and the other one was sulphur, which are probably the two most critical ones were delayed until 2006 because it didn't suit the oil majors. Right? But the ones that were really going knock us out of business in 2002 was the reduction in olefins content in petrol and the removal of MTB from the ability to import petrol.

MR MARKS: When were they introduced from?

MR JACOBSON: No, that was 2002 it was going to happen. The Treasury and the government made a decision they would delay for two years the olefins and the MTBE reduction, and they would investigate it again prior to its introduction in 2004.

MR MARKS: Yes.

MR JACOBSON: Well, when the time came to do the review, we put up our hand again and said, look, you still have to delay it, give us at least till 2006, the same as these guys have got, because this will wipe us out of business. Unfortunately, we got no support at that point in time.

MR MARKS: All right. Now, why did the MTBE and olefins requirements prejudice the independents or the smaller players in the market and not the majors so much? Can you just explain that to the public?

MR JACOBSON: Well, the majors didn't use MTBE in their refineries in Australia.

MR MARKS: I see.

MR JACOBSON: And they already had low enough olefins to meet the level that was proposed in the Euro - this was the Euro 2 standards.

MR CURTIS: Yes, but one thing we should be cognisant of here is that the government policy at that point in time was to harmonise with the Euro 3 specifications. Right? This did not happen.

MR JACOBSON: Because Euro allowed 15 per cent.

MR MARKS: And the Australian Government only allowed 1.5?

MR JACOBSON: No, effectively none. It was just trace elements. It was like 1 per cent.

MR MARKS: So it was totally - - -

MR CURTIS: And the addition of MTBE in the European spec allowed, right, them to reduce the olefins content. Putting 10 per cent MTBE in effectively reduced the olefins content.

MR MARKS: Okay, that makes sense.

MR JACOBSON: Apart from that, all the independent refineries, which there were many in this region of the world, used MTBE, and most of them had higher olefins. So we saw that changing over time. But, effectively, independents needed more time, and that was recognised in 2004 - 2002.

MR MARKS: But not in 2004, are you saying?

MR JACOBSON: Well, I think the majors' lobbying must have had something to do with that. I mean, that's just my take on that, but I'm a bit cynical nowadays.

MR MARKS: All right. Now, that's helpful, too. Thank you.

MR CURTIS: Can I add something? We actually offered a trading scheme, because the products we were bringing in were extremely low in benzene.

MR JACOBSON: And sulphur.

MR CURTIS: And benzene is a serious carcinogen. I'm not a chemist but if you go and look at your chemistry books, right, you will find that benzene is a very, very serious carcinogen. We were offering to trade lower sulphur levels and lower benzene levels for a higher olefins level - - -

MR MARKS: How would that have worked in practice? When you say we offered to trade - - -

MR CURTIS: It's a trading scheme where you put values on the various things. That's in operation in the US.

MR JACOBSON: That's how the US fuel qualities work. You can offset benefits on one property against - - -

MR MARKS: And that wasn't a goer?

MR CURTIS: No, they said it was too hard.

MR MARKS: The consequence then of the fuel standards in practice - I understand now the reasoning behind what you were trying to do and what you say you did not achieve. The consequence I'm now interested in from 2004, what did it mean for Trafigura and for other medium and large independents? I'm now putting out of that category the alliances that the major supermarkets created.

MR CURTIS: You know, you cannot regard someone who has contractual obligation to a major as an independent.

MR MARKS: That's right. That's why I put them out of the equation. I said forget Woolworths, forget Coles, don't treat them as independents. I'm not interested.

MR JACOBSON: Yes, forget Liberty, forget United, because they are all contracted to a major oil company. So is 7 Eleven.

MR MARKS: But what do you mean?

MR CURTIS: For supply.

MR MARKS: Okay. I'm not - I don't want you to do that. I want you to tell me, call it any name you like, I want to know, firstly, what impact it had on Trafigura and, secondly, what impact it had on the small to medium players in the market generally from 2004 January onwards, please. First of all, Trafigura, what was the impact of the introduction?

MR CURTIS: It just - it limited the opportunities - we had to go to different refineries to get our product.

MR MARKS: Now, at that time, where had Trafigura been sourcing its imports from?

MR CURTIS: North Asia, Singapore, that region - from China, Korea.

MR MARKS: In Singapore, had it been sourcing its fuel from Exxon Mobil or from Shell?

MR CURTIS: Singapore is a blending operation and you get the components from all of the refineries up there.

MR MARKS: What does that mean?

MR CURTIS: Well, gasoline can be blended from various components.

MR MARKS: Yes, but what do you mean you get all the components?

MR CURTIS: Well, you buy them them - you might buy alkylate from Exxon, you might buy isomerate from somebody else.

MR JACOBSON: Trafigura rents its storage in Singapore and they would blend like that.

MR MARKS: Yes, I see. That makes sense.

MR CURTIS: But that also had an element of MTBE, and that limited the position there.

MR MARKS: What was the consequence post 2004? Where did the source go to?

MR JACOBSON: China was knocked out. Basically, they were the biggest gasoline surplus in the region.

MR MARKS: But they pretty quickly became a deficit for other reasons, didn't they, China's internal requirements?

MR CURTIS: No, they are still exporting gasoline.

MR MARKS: They are still exporting gasoline?

MR CURTIS: Six or seven cargoes a month, I believe.

MR MARKS: You are saying China went; what about your other sources?

MR JACOBSON: Korea used MTBE.

MR MARKS: Did Korea go?

MR CURTIS: We bought some cargoes from Korea.

MR JACOBSON: It's very hard, though, because you have got to go to a refiner who would normally use a product and then say, "Prepare a special tank for me."

MR MARKS: I want you to tell me what the impact was. The impression we get, looking at materials and from the evidence we have heard, is that initially there was quite a substantial impact for the very reason you described, but as time went on, the suppliers in the international region became more accustomed to fulfilling the higher standard requirements.

MR CURTIS: No, the specifications changed in Asia.

MR MARKS: All right. That, no doubt, would have assisted, because it - - -

MR CURTIS: That then makes more product available to meet Australian Standards.

MR MARKS: All right. That happened from almost the beginning of 2004. How long did that process take?

MR CURTIS: Well, it depends. There are still some refineries you can't get it from but you - - -

MR MARKS: My question to you really is this and help me as best you can. I'm seeking to understand what the impact was on your organisation and others in the market. From your perspective, it would appear that the initial impact was considerable.

MR JACOBSON: Yes.

MR MARKS: And that over time it diminished.

MR CURTIS: Correct.

MR MARKS: I want to understand - - -

MR CURTIS: As the various markets in Asia, their product standards or their product qualities continued to go closer towards where we are, right, then more product became available from those areas. And it was the advent of other refineries such as Reliance - - -

MR MARKS: Initially where did Trafigura have to go? I want to get the answer to that question, if I can. Korea is gone, China is gone, Singapore is difficult. Where was Trafigura sourcing its fuel from?

MR CURTIS: We picked up some local products. We picked up from - - -

MR JACOBSON: Italy.

MR CURTIS: Italy. We went to Egypt. Yenbu out of Saudi Arabia.

MR MARKS: The cost?

MR CURTIS: Increased freight.

MR MARKS: First of all, increased product cost?

MR CURTIS: On FOB basis, probably not. But the freight would have been a bigger impact than that.

MR MARKS: So freight was a significant matter. Any other cost increases that had to be - - -

MR JACOBSON: Well, I can tell you from a local supply point of view, we often didn't get shipments for some time, because when you say cost, yes, they would - I mean, it's like I said, you are not going to just sell volume for the sake of it. Probably some of the shipments were so expensive we didn't - the trading company wouldn't even fix them because we would lose too much money doing the deal. So there were times when we were totally out of petrol. You can go back and look through our records. I know there were times from - - -

MR CURTIS: I think it was June 2006.

MR JACOBSON: And we would purely buy local supplies from Exxon Mobil to try and tide our customers over. But, you know, we were not deemed to be an importer at that point in time. We kept dropping in and out of supply of petrol.

MR CURTIS: That's physically not a supply risk as well.

MR MARKS: Not - I'm sorry?

MR CURTIS: Not a supply cost risk. It is actually a hedging risk because you don't have a hedge mechanism to hedge gasoline in the Far East. Okay, you have to use naphtha, Singapore naphtha, because that's the physically traded commodity on the paper market. There is a very, very small gasoline paper market happening now, but that, you know, the spreads on that are about 80 cents from bid to offer. And it's a bit of a problem.

MR MARKS: I see.

MR CURTIS: See, you know, the big thing for the independent thing is to be able to sell the cargo within the month. Okay? So you are talking about 45 million-odd litres. This goes back to what Barry was saying before, is that when we had two outlets, Sydney and Melbourne, you know, we could probably accommodate that.

MR MARKS: Because you had the storage capacity?

MR CURTIS: Yes, and we could get through probably a cargo a month and manage the risk.

MR MARKS: Yes.

MR CURTIS: Right? What we are doing currently now, you can't manage that risk.

MR MARKS: I see. But is the risk as significant with the availability of supply? Is it now a practical issue, such as - - -

MR CURTIS: Your risk is a market risk. If a market drops $5 a barrel and you are not hedged, you are going to do $5 a barrel, which is roughly 5c a litre, and that has a serious impact on your business.

MR MARKS: So the storage is part of the hedge.

MR CURTIS: And the access to markets. I go back to your buy sell thing, right. That - if we were able to compete in that, then we would have been able to compete in a lot of other markets around Australia. Okay?

MR MARKS: Yes.

MR CURTIS: Just like the majors do.

MR MARKS: All right. The fuel standards were obviously then a significant matter. Other matters in the period in the last few years that have adversely affected Trafigura's operations, can you tell us are there any?

MR JACOBSON: Yes. The first one was the merger of Shell and Coles. Then the - obviously the Caltex/Woolworths alliance. The granting of the - the breaching - both of those alliance breached the exclusive dealing provisions.

MR MARKS: You have talked about the Caltex/Woolworths alliance and I have asked you a number of questions about that.

MR JACOBSON: Yes.

MR MARKS: It is clear that that has had a significant and immediate impact. You referred to the Shell/Coles alliance.

MR JACOBSON: Yes.

MR MARKS: Do you want to expand on that quickly? How did that impact your business?

MR JACOBSON: Well, you know, at the time we made submissions to the ACCC, especially with the exclusive dealing breaches that I know that in some ways that happened and it did happen before when Woolworths was our customer, the fact that it was now sort of such a huge share of the market, being the alliance of Coles and Shell and Woolworths and Caltex were breaching the exclusive dealing part of the Trade Practices Act - they seriously damaged all of the other competitors in the market. I'm not only talking about independents. I'm talking about Mobil as well, and BP as well, who have basically lost massive market share.

MR MARKS: I understand. So you damage you are talking about here is really the increase in share they were able to capture?

MR JACOBSON: Yes.

MR MARKS: Yes, I see. But when you look at the increase in share, are you talking about an increase which is more than their then-existing combined share? Do you understand what I'm saying by that? If you took day 1, on day 1, say, take Caltex/Woolworths, on day 1 Caltex might have had 10 per cent, Woolworths might have had 10 per cent, between them they have 20 or 25 per cent or whatever.

MR JACOBSON: Yes.

MR MARKS: And then over time that might have changed. Are you talking about the difference without regard to what they already had had or with regard to what they already had?

MR JACOBSON: No, I'm talking about the increased they grabbed from these alliances. Because if you look - I mean, it's in the paper this morning. I think our submission at the time said together they'd be 50 per cent of the market before the alliance, but we think they will very soon go to 70.

MR MARKS: Okay. We have got all of those figures.

MR JACOBSON: That's in fact what has happened. This morning's Financial Review has got their numbers here.

MR MARKS: Mr Jacobson, we have got all of those figures. You can feel comfortable with that. What I really want to ask you more broadly - that's the impact you are talking about.

MR JACOBSON: Of course, there's enormous numbers of customers who have been damaged by that because they have lost that market share, and they were customers or potential customers of ours.

MR MARKS: Yes, I understand. To what extent - I asked you a few general questions about the shopper docket scheme in the Woolworths context earlier.

MR JACOBSON: Yes.

MR MARKS: To what extent do you think the shopper docket schemes have impacted upon the market share that you are talking about? Are you able to make a comment on that, other than just a broad statement?

MR JACOBSON: In my opinion, and I ran a retail network for some years for Burma Gas, so I have some exposure and I have been in the oil industry all my life in different areas of the industry. My opinion of it is that it had a massive effect. Their volumes - and we saw this for Woolworths sites, because their volumes went to - from a site that before you had shopper dockets would get, say, 300,000 or 400,000 litres a month, Woolworths would put their brand and shopper docket up and it would go to a million, sometimes more, litres per month. So it had an incredible effect. It wasn't like a percentage growth, it was a doubling or tripling of volumes at the sites. So that has got to have an impact on other people.

MR MARKS: A number of the people who have given evidence in one form or another to the Commission have talked about the immediate impact and they have said there was an immediate impact.

MR JACOBSON: Yes.

MR MARKS: But so, too, have a number of them said over time they have been able to recover the position to an extent. Now, what about Trafigura?

MR JACOBSON: Well, we weren't in retail so - - -

MR MARKS: But you were selling to retailers.

MR JACOBSON: My perception is that the average retail throughput for the independents, for their sites dropped and is still lower than it was prior to Burma Fuels getting out of the business. Because Burma Fuels are now good convenience store sites. We average over half a million litres a month per site. And I was talking to our customers who were independents and they reckoned that independents were averaging much lower numbers than that, even in 2006. So you are talking some years down the track, with the cost base, you know, inflation has gone up, people have higher working capital costs, because petrol is so much more expensive than it was in 99, when oil was $15 a barrel. So running their whole business is more expensive, and to quote you about volume, they are not getting the same average volume - even they have got a bigger reduction in average volume than they were getting in 99, so it must have had a massive impact on them.

MR MARKS: All right. Now, those matters are matters about which the Commission is interested and is considering carefully. Are there any other matters that you say impacted any conditions in the market in the 2000s that have impacted the position of Trafigura adversely?

MR JACOBSON: Well, we also felt that - and we objected to Shell taking the Port Botany lease.

MR MARKS: We understand that objection.

MR JACOBSON: So that one was - - -

MR MARKS: You have explained the basis of it and I understand that. I don't want to diminish its importance in your mind or in Trafigura's case.

MR JACOBSON: Yes.

MR MARKS: What other issues are there? Have I really touched on most of them? Is there something about the market in the 2000s really, you know, from 2003, 2004 onwards that we have not discussed here that had a significant impact?

MR JACOBSON: Look, you know, I hear all the time these statements about, Oh, the world's changed and there is a shortage of refining capacity and, therefore, refiners are making a lot more money because they have got - there is much more margin because of the shortage. And yet, you know, I think a lot of it, when you go back to the old intervention price, when the ACCC set an intervention price, which was the maximum wholesale price, the refiners - and then they allowed them - in that price formula, they allowed them 7.2 cents a litre for local component. Now, the refiners argued that refining margins were no good at that time, but yet they would give away in discounts to attract independents all of that 7.2 plus as discounts.

I'm aware, because we were competing against those discounts, that there were discounts that gave away all of the margin. So to claim refining margins were no good when they were, say, $2 a barrel, yet they were giving 7.2 is more than $7 a barrel away in discounts, to me this argument doesn't make sense. So the world has changed and refining margins are great now, but in fact when they were lousy, they were still giving away 7.2 cents, which I can't see why they had to give it away. We're not like a market that is - trading refinery market, where they are competing, you know, with huge number of refiners to get business. It's a limited supply market. So I could never understand it. I know people will say, yes, the world has changed now and there is a shortage of refining capacity and they should be entitled to these higher margins, but - - -

MR MARKS: Let's talk about the word now. I just want to ask you a few questions. There is a shortage of fuel. We know that.

MR JACOBSON: Yes.

MR MARKS: We know also the volumes and capacities of the major refineries here and we know broadly the demand.

MR JACOBSON: Yes.

MR MARKS: Tell us, if you will - I think you have said in earlier comments to the Commission in the informal meeting that you did not believe there was room for an independent importer in Australia now. Is that proposition one you still adhere to? And if it is, why is that so?

MR JACOBSON: Well, clearly, I don't believe it, because I'm not prepared to continue fighting for that position. But - and I think it's - for many reasons it's the case, the market - the customer base is too dominated by too big players.

MR MARKS: All right, so the customer base?

MR JACOBSON: Yes.

MR MARKS: Yes?

MR JACOBSON: The availability of storage around the country - - -

MR MARKS: All right. That's an important point.

MR JACOBSON: - - - is just too difficult to get.

MR MARKS: Let's just talk with that for a moment. I'm sorry to cut in on you but it is important.

MR JACOBSON: That's another thing I didn't mention. I wrote - when we lost our storage, I wrote to every major oil company at the time seeking storage, and basically most of them said, "We can't accommodate you." I think Mobil said, "We'll talk to you about it", and we went for some meetings with Mobil but, in the end, we were -

we were just getting dragged around. We never really got to a commercial deal with - - -

MR MARKS: With Mobil? Okay.

MR JACOBSON: Yes.

MR CURTIS: By the way, we also offered co-mingle - requested Vopac to co-mingle.

MR MARKS: Right, and that didn't go by either?

MR CURTIS: No.

MR MARKS: Let me ask you that - - -

MR JACOBSON: Because Trafigura is in this business trading petrol or diesel around the world, in my view - and I'm independent now - they are as good as any other suppliers and I believe they will source the product and manage the risk and hedge it better than most. I think, because I've seen them supply to the majors many times, that they beat the pants off the majors. Yet we can't get into this market because we don't have access to customers or storage. Who else is going to do it?

MR MARKS: Let's just tackle the storage issue because it is an important one and you rightly raise it, but I really want to focus on the position now.

MR JACOBSON: Yes.

MR MARKS: Tell me about storage now. Let's do it in a little bit more detail. First of all, let's take Melbourne, because we have got Hastings. Trafigura has its terminal here. It's 90 million-odd litres.

MR JACOBSON: Yes.

MR MARKS: Does it have any other storage access in the Melbourne area or surrounds?

MR JACOBSON: No.

MR MARKS: No. It utilises - does it utilise any Mobil storage?

MR JACOBSON: Only as a customer of Mobil. We buy - as I was saying, there were times when we couldn't get viable - so we would just be another customer to keep supplying our customers.

MR MARKS: Yep, that makes sense. So there is nothing else in Victoria.

MR JACOBSON: There is nothing else Trafigura has in Australia as storage.

MR MARKS: What about the other independents who might want to store here? I'm thinking more broadly of - - -

MR JACOBSON: In Melbourne?

MR MARKS: - - - the position of the independent. My question to you is this: Your feeling was - and I accept it and I'm concerned about it - that there is no room for an independent importer in Australia any more. Why? You say, "Well, look at the customer base." Then you say to me, "Look at the terminalling opportunities." There is your facility in Victoria.

MR JACOBSON: Yes.

MR MARKS: You say there is not much else for the independent at all in Victoria.

MR JACOBSON: The rest of the storage is Mobil's storage at Altona.

MR MARKS: Yes.

MR JACOBSON: And the terminals in Port Melbourne at Yarraville, and they are major owned and controlled. Or Shell's Corio.

MR MARKS: Correct, and that's also taken up. Now, Tasmania? There is the Marstel facility there, isn't there, which used to be Mobil?

MR JACOBSON: Yes, Mobil has sold some small terminal I think at Bell Bay.

MR MARKS: Bell Bay in the north.

MR JACOBSON: Yes.

MR MARKS: That is a terminal.

MR JACOBSON: Yes, but when you are bringing product sort of halfway around the world you need to be able to bring it in sizes that make sense. Bell Bay is not.

MR MARKS: You say, yes, Bell Bay is there but you are not going to be able to import into it in an efficient way.

MR CURTIS: I have had a request from one of the companies to supply imported fuel into there.

MR MARKS: Recently?

MR CURTIS: Yes, and we are talking with those guys at the present time. Barrie is not aware of this. This is from the Trafigura Beheer side.

MR MARKS: Just picking up his point though, I wonder can I ask you, the Bell Bay terminal is 45 million-odd litre capacity. There is some of it being utilised I think at the moment. Is it a possibility?

MR CURTIS: But you have got to look at market size of Tasmania. That's the big consideration you would have to take - I don't know. I can't remember off the top of my head the size of cargoes they wanted, but I thought it was probably less than 10,000 tonnes a drop.

MR MARKS: Is that right? Into Bell Bay?

MR CURTIS: Yes.

MR MARKS: Yes, I see. That's interesting. It's got a 45 million litre capacity and less than 10,000 tonne drop/

MR CURTIS: Yes.

MR MARKS: Okay.

MR CURTIS: Don't hold me to those but that's simply - - -

MR MARKS: No, no, that's your suspicion.

MR CURTIS: Yes, yes. It's not like - - -

MR MARKS: What about in other states? In Sydney, we know about Vopac obviously. That's mainly, it would appear, taken up by majors' requirements and capacity is limited. Is there any other facility available for an independent such as Trafigura?

MR CURTIS: I don't think there is any other facility available that can handle Mogas, or gasoline, as you call it. There is potential at, say, Terminals Limited to store diesel and I think the company Glencore is storing diesel there, and that's for their Xstrata Mines in the Hunter Valley.

MR MARKS: Yes. What about in Brisbane? Is there any space for independents in Brisbane or the surrounds region?

MR JACOBSON: There is a fairly strong independent presence there.

MR MARKS: Yes. There is Neumann and - - -

MR CURTIS: Freedom and Matilda.

MR MARKS: But they're not singing the streets about the amount of space that is available or terminalling facilities that are available. I am wondering what your experience is in Brisbane.

MR CURTIS: Well, my understanding is that the terminal is the old Caltex terminal in Brisbane. It has draught limitations, and they found it more economic and less of a risk, and they take supply down the pipeline from the majors.

MR MARKS: Yes. So Brisbane has got difficulties.

MR CURTIS: Yes, it's got - but it's something that - well, let's put it this way - you can overcome those difficulties. It is just the cost.

MR MARKS: Adelaide?

MR CURTIS: Nothing that we know of.

MR MARKS: Perth, we know about Coogee and Gull. They are independents with - - -

MR CURTIS: Well, I understood Coogee was under term contract to Mobil.

MR MARKS: Any facilities which can be accessed by independents there that you are aware of?

MR CURTIS: There is only probably the Gull facility.

MR MARKS: The what?

MR CURTIS: Gull at Kwinana.

MR MARKS: Apart from the Gull?

MR CURTIS: There was a tank offered for diesel by one of the electricity providers over there.

MR MARKS: So not for gasoline?

MR CURTIS: Not for gasoline.

MR MARKS: Well - - -

MR CURTIS: Unless you have other information.

MR MARKS: No, no, I'm asking you. But the terminalling, then, is obviously an issue. Is there anything that can be done about it? What would you recommend?

MR JACOBSON: Well, I thought the majors agreed back some years ago with the Treasurer to open up their terminals, wasn't there some kind of - - -

MR MARKS: But assuming that the Mobils are up to the hilt at the moment, let's just work on that assumption, all the majors are saying to us, perhaps with the exception of one, that they have not got and indeed they are themselves looking to expand terminalling capacity, what can we do? What options are there? Do you have any answers?

MR JACOBSON: Grassroots investment is incredibly expensive. We know, because we just expanded Hastings. Imagine if you had to build pipelines to the wharf and all the infrastructure that goes around supporting the terminal. And then you'd have to have a customer base. But, you know, that would sign up and commit to take throughput. So short of that, I don't see people without an inherent customer base - and maybe Glencore do have because of their mines - signing up.

MR MARKS: And my next question to you: Is that reality likely to change in the future? Let me perhaps direct the question a bit more. Let's say that the availability of fuel from international sources was to increase in the next year to 18 months. Might that be an incentive or create an incentive for the sort of investment that is necessary?

MR JACOBSON: If the customers were available, and I know that's a big if, then I think the availability of product meeting the Australian fuel grades is already there. And I'm pretty sure competitively - - -

MR MARKS: It's already there but it's there at a price.

MR JACOBSON: But it's a price that will welcome people into the Australian market. What I'm saying is if the hedge risk were not as great as it is, because you can't get enough volume to take out the risk, so - I think Doug was trying to explain that if you buy a cargo now and you price it and you are only going to sell it over six months, what can happen to the valve that cargo in six months can be very expensive. So what you need is enough customers to take that full cargo - - -

MR MARKS: So you are saying the customer base problem would remain a significant issue, no matter what happened to the availability of supply from other areas in this region?

MR JACOBSON: I think there is availability of supply. My point is there is not the customer base available because the market is too dominated.

MR MARKS: I understand that. And how - is there a way to resolve that problem, do you think? How does one resolve the problem about the customer base?

MR CURTIS: I really don't want to get into that one.

MR MARKS: What is the solution, from Trafigura's perspective? You don't have to say it in open submission. If you want to tell us confidentially, I am happy to hear it. I want to know what your view is.

MR JACOBSON: I'm an independent person now. My personal opinion is that Shell and Coles and Woolworths and Caltex shouldn't be in an alliance.

MR MARKS: That, you say, is the answer?

MR JACOBSON: Yes.

MR MARKS: Get them out of the alliances that they are in and you will resolve the customer base problem.

MR JACOBSON: I believe so.

MR MARKS: Is that right, do you think, thinking about it? Do you think doing away with the alliances would really resolve the customer base problem, or would it simply cause a realignment of the existing independent capacities of each of the players?

MR JACOBSON: I think - you know, the problem is - and I don't have the formulas, but obviously the ACCC does. But where you do the formulas for market power and market dominance, it's very hard for anyone - say that Woolworths and Coles had to every year tender for their business or every two years or three years or whatever it was, and they were not now aligned to one of the majors, so it would be an open tender, and I believe there would be pieces of that business that would be attractive and independents would be able to pick up, because that's what's happened - that's what happened in the past. I see no reason why - sure, the other majors would also tender for it, which would be good for Mobil and BP, but it's not beyond the realms - and again, this is only my opinion, but I believe Mobil have been on a 10 year exit strategy out of Australia, because they have sold off more assets than anybody else, closed down more stations than anybody else. It may save them being able to tender. I mean, you know, we are heading to a point where there will be only two, maybe three, because I think BP will stay around for other reasons with their diesel business they have got. But, you know, three companies in the industry, I mean, that's crazy. That's dangerous to the consumers. That's my opinion.

MR MARKS: All right. That's where you see a significant source of the problem?

MR JACOBSON: Yes.

MR MARKS: And you think that it could be resolved by undoing those alliances; that's really what your evidence is.

MR JACOBSON: Yes. I think there should be more players in the market.

MR MARKS: Is that Trafigura's evidence as well?

MR CURTIS: I would prefer not to comment on that.

MR MARKS: Well, I'm happy to ask you confidentially.

MR CURTIS: Well, perhaps.

MR MARKS: We might take it up because I have some other matters that I want to ask you about in a confidential context anyway so I'm happy to do that.

MR CURTIS: Okay.

MR MARKS: I was interested in your answers about fuel and its availability and so on in the region. I want to ask you just a few more questions about that, if you don't mind. You say that fuel is available in the region. My response to you is, yes, but at what price. There are just a couple points I want to take up with you in that context. The first is the fuel standards. The fuel standards were effectively introduced by the majors, at least they came on stream, from the beginning of 2004. They seem at the moment to be around 2 cents, 3 cents a litre, broadly stated, without going into the particulars of each refiner's fuel standard premium.

MR JACOBSON: Yes.

MR MARKS: Do they broadly reflect the costs associated with the quality standard that must be achieved, do you think? Are the standards fair?

MR JACOBSON: Again, I can only offer you my opinion, and I have worked in refining as well in my lifetime.

MR MARKS: That's why I'm asking you.

MR JACOBSON: In a world scale refinery in Asia, there is no way it would cost you anywhere near 2 cents a 3 cents a litre to meet those standards. Of course, I can't comment about the majors because they are smaller refineries, they have a lot of capital investment. Depending on what return on investment criteria they use, I'm sure they can justify their number. But I'm saying the international market would not give you 2 cents 3 cents for that.

MR MARKS: If that's so, can you get fuel on the international market 2 cents or 3 cents a litre cheaper at volume?

MR JACOBSON: Yes, but you have got a bit of a freight disadvantage then.

MR MARKS: Sure, I accept that. I'm just talking about the fuel standard. I know there are other aspects to the costs.

MR JACOBSON: Yes.

MR MARKS: You said, look, the fuel standard issue is a significant one, because if you went into the Asian market, you would probably find it would not cost you anything like that to refine to the relevant standard. I want to take up that point.

MR JACOBSON: It was a significant one. I made the point because of the timing of its introduction.

MR MARKS: Sure.

MR JACOBSON: We felt that at the time we would be quite competitive, as the larger Asian refineries hadn't started producing their clean fuels, and I didn't see any real issue, on an FOB cost basis, competing in the Australian market. I'm now talking about the pure cost on to ship compared to this - - -

MR MARKS: That's what I'm helped by.

MR JACOBSON: Yes, I didn't see any issue as a buyer. I'm buying from him, right, because he is the agent for my supplier, but I didn't see any issue on a pure cost basis. There were the risk issues and there were, you know, sometimes availability issues, but they tended to go - get less and less with time. But our bigger problem was the one of not having a big enough customer base to offtake the product and then the risk of holding the product was too great.

MR MARKS: Leaving aside, just on the FOB basis for a moment, I'm interested in whether if there is a player here in the market, an independent or otherwise, who is endeavouring to source fuel from the international market, if he is going to find that he can obtain fuel at a significantly better rate than - or without much of the premium that's currently being charged for compliance with the standards by the majors, 2 cents or 3 cents a litre.

MR JACOBSON: So if he has got access to storage?

MR MARKS: I accept those are the riders. I'm just interested in an FOB answer.

MR JACOBSON: I think he will do better than what they - - -

MR MARKS: How much better, a cent, a cent and a half?

MR JACOBSON: Oh, it's - - -

MR MARKS: Hard to say.

MR JACOBSON: I mean at least a cent.

MR MARKS: At least a cent?

MR JACOBSON: Yes.

MR MARKS: All right. Is that from Singapore or somewhere else?

MR JACOBSON: No, that would be getting supply from the trader like Trafigura. I'm not dealing directly with refiners. So, you know, I can only tell you in my experience is buying from a trading company, who then goes and sources the best supply to meet my requirement.

MR MARKS: Tell me this, Mr Jacobson, if you would: The major who goes to import, goes over to Singapore through his international trader or his international trading arm, he knocks on the door of a refiner - we know that he has got a price that he is going to give. How does the price relate to the IPP or the mean of Platts price? Just taking that component, is he able to purchase fuel by affiliation, by volume or otherwise at a price below the mean of Platts price?

MR JACOBSON: So he is buying from an independent refiner or one of his own affiliates?

MR MARKS: That's a fair question. Let's deal with the affiliate case first. Shell is buying from Shell Bulkom, Mobil is buying from Exxon Mobil.

MR JACOBSON: My understanding is they pay a premium to the mean of Platts to their own affiliate.

MR MARKS: When you say "they pay a premium", what does it mean in terms of the price? Are they buying at a price below or above?

MR JACOBSON: Above, a premium above the Platts price.

MR MARKS: Why is that?

MR JACOBSON: Because they are buying from their affiliates. They want to make money.

MR MARKS: In Singapore?

MR JACOBSON: Yes.

MR MARKS: What about from an independent?

MR JACOBSON: Well, that's what I said, I think you would pay a lesser premium than - but I don't have their numbers. This is only my opinion.

MR MARKS: Okay. But, I mean, they are obviously not buying at a significant premium to the mean of Platts price, because if that were so it would have to be built into their price in Australia; their price in Australia is a mean - it's a landed cost price, obviously, but it is based on - a significant key component is the mean of Platts price.

MR JACOBSON: Well, don't they add a quality premium of 2.7-something cents?

MR CURTIS: I think this should be taken in camera.

MR MARKS: If you want to answer those questions confidentially, I'm happy to do it that way, but I do want to explore with you a little more about the basis upon which petrol is sold at the international level, because it's a significant, or has a potentially significant impact here. The import issue then, you essentially say is this: It is costly, there are risks, the present market does not justify the likes of Trafigura and perhaps other medium-sized or large-sized independents undertaking the risk or paying the cost associated with creating its own terminal infrastructure or otherwise undertaking what is necessary to import. Is that what you are really saying?

MR JACOBSON: Yes, well, look, Trafigura in this period that we are talking about, the last four or five years, at the time we are sort of closing up shop in Australia, has got into terminalling and supply in how many other countries? I mean, it's a large number.

MR CURTIS: We are building storage in Vancouver, we're building storage in Hawaii.

MR JACOBSON: Bought a business in Estonia.

MR CURTIS: The Baltics. Quite significant investments. We have got a lot in South America. So it is not like the company is not of a mind-set to get out in a business where we are expanding everywhere else in the world. We just see the structures in this market don't work. I mean, that, to me, is the biggest indictment. Here is a very innovative trading company that, from what I have seen, and I have dealt with many in my career, understand how to trade the product and hedge the risk better than most and, in fact, even make some benefit out of that hedging basis, and they can't make it work. So I don't see anyone else making it work. That's why I came to that conclusion.

MR MARKS: Okay. Now, can I change topics. I want to ask you a few questions around matters which have been dealt with by you in your answers to the section 95ZK notice which you received. I wanted to ask you initially, though, are the matters which you have dealt with in these answers all matters which you are - you want to treat confidentially? They are.

MR CURTIS: Yes. Barrie wasn't part of that. Those answers were written by the staff - - -

MR MARKS: That's fine, but you would be more comfortable with the answers to all of those questions?

MR CURTIS: Correct.

MR MARKS: All right. I have just a couple more matters I wanted to ask you about in open hearing, just for your views. I haven't asked you much about the retail aspect of the market, with the exception of my questions to you about shopper dockets and their impacts. Can I ask you just very briefly for your comments about price cycles. I know you are not in the retail market. Do you have any comments you want to make about whether price cycles are beneficial to consumers, whether they are detrimental and, if so, why?

MR JACOBSON: Over my years in the industry, I always got the impression - I don't think anybody really knows the answer to this - I always got the impression that the price cycle was - in Australia it didn't appear to be nearly the same kind of thing elsewhere in the world, because of the sites and franchise act, and because the majors couldn't control their - basically their retail chains, they kept dropping the price every week to below cost because that was a way to keep their franchisees under control, because they had to offer them price support. That was sort of like my take on why it happened. I can't prove that, but that's my opinion.

Now the sites act and the franchise act have gone, I don't actually see why it continues at all - you know, why there is a weekly price cycle. I can't see that it benefits consumers overall, or that it damages them. I think, you know, there are certainly smarter people out there who buy at the right points of the week but not everybody can do that and obviously those people are disadvantaged who can't do it. So there are pluses and minuses to it.

MR MARKS: What do you think causes it, Mr Jacobson?

MR JACOBSON: Well, I just explained what I thought caused it, that it was a mechanism the majors used to keep control of their franchisees.

MR MARKS: I am sorry. That, you think, really is at the heart of it?

MR JACOBSON: That's just what I think, yes.

MR MARKS: Okay. Is there anything else that you want to say about it?

MR JACOBSON: On price cycles, no. I mean, it's - - -

MR MARKS: Okay, well - - -

MR JACOBSON: There is just one thing, I made the point in - I think the day before I finished up, I met with Mr Samuels and a few other gentlemen, I forget their names, but I was of the opinion, since I operated a retail network, that the average margin, if you sort of averaged the price cycle, that a retailer took now was much greater than it was in 99, for instance. So not only is there a higher refining margin and a higher wholesaling margin being taken but there is also a higher retail gross margin now in the market, so the Australian consumer is paying for that. You know, to me, that is a big concern, because it's an inflationary thing. The Treasury will model exactly what every cent a litre does to the growth in the Australian economy. When I've seen those numbers, it's quite significant. So we should be concerned about 1 cents or 2 cents a litre.

MR MARKS: So your evidence of the increased margin at retail is from where, did you say? Is it from - - -

MR JACOBSON: It's just from what I see, because I knew the wholesale price and I could see the board prices. So it's my perception that the average margin, which when I was operating a retail network was below 4 cents gross margin, and it appears to me that, on average, it's much higher than 4 cents now.

MR MARKS: At retail?

MR JACOBSON: At retail. Because I was a wholesaler, right, and then I saw the retail board prices for a number of years. I mentally looked at it every week and I came to the conclusion that retail margins had improved.

MR MARKS: Had improved.

MR JACOBSON: Yes.

MR MARKS: But that's the basis upon which you say it?

MR JACOBSON: Yes.

MR MARKS: Now, were there any other comments you wanted to make about the retail market? I have asked you about price cycles and you've just you said something about margins.

MR JACOBSON: Yes.

MR MARKS: Are there any other comments you want to make?

MR JACOBSON: No.

MR MARKS: All right. Mr Chairman, thank you. They are the matters I want to ask in public forum. I have a couple of matters I wanted to take up in private session.

THE CHAIRPERSON: How long do you anticipate that will take?

MR MARKS: I would think it would be three-quarters of an hour or so.

THE CHAIRPERSON: I think we had better give the gentlemen a bit of a break, grab a bite to eat and come back straight after. What, say, we come back at - - -

MR JACOBSON: I'm on a 3.30 flight.

MR CURTIS: Why don't we take a short break and keep going?

MR MARKS: I'm happy to do that.

THE CHAIRPERSON: Why don't we take a short break, clear the room and keep going. I'm happy to do that.

WHEREUPON THE HEARING ADJOURNED TO PRIVATE SESSION [12.53pm]

RESUMED [1.47pm]

THE CHAIRPERSON: Gentlemen, thank you for coming. I'm sorry to have delayed you. I'm well aware that you are booked on a 4 o'clock out of Melbourne. You probably want to leave here at 2.45 or thereabouts. Could I get you to state your name and position just for the record.

MR CATLEY: My name is Graham Catley. I'm the managing director of Marstel Holdings, which is a company that has terminalling operations in both Australia and New Zealand.

MR GUNNING: My name is Tim Gunning. I am the general manager covering the Australian market for Marstel.

THE CHAIRPERSON: You have the option of giving your evidence under oath or affirmation, so elect which one it is.

<GRAHAM CATLEY, AFFIRMED

<TIM GUNNING, AFFIRMED

THE CHAIRPERSON: I don't think you were here when I opened the session this morning. I think that's right, isn't it, you came in after? This hearing is a public hearing, but if there is information that you wish to provide on a confidential basis, you should just say so to Ms Forsyth and then we can take that information from you on a confidential basis. The totality of what you say will be transcribed, but only the public information will go on to public website.

MS FORSYTH: Could I start, gentlemen, by asking you what your individual responsibilities are in the company just so that we can establish who might be in a best position to answer each question. I will then ask you a series of questions, but again if one of you is better placed to answer the question than the other please indicate.

MR CATLEY: As I said, I'm the managing director of Marstel Terminals as a whole. So I am responsible for the operation of the entire organisation, both in Australia and New Zealand.

MS FORSYTH: And Mr Gunning?

MR GUNNING: I am a director of Marstel Holdings Pty Ltd. We work very closely together, so we really overlap in almost all areas but my focus is in Australia.

MS FORSYTH: You are possibly both placed to answer my questions but perhaps you could indicate.

MR CATLEY: I will go.

MS FORSYTH: If you are primarily involved in the operational side of the business, that is probably my primary area of focus. Could I perhaps start by asking you a little bit about the history of Marstel just to establish how you entered the fuel storage market. I understand you were established in about 1978, is that right?

MR CATLEY: 1987. Marstel Terminals is an independent bulk liquid storage and handling company. A rough definition is that we own and operate tanks and that we will lease or make them available to any company that wants to use them, but obviously satisfies our economic and operating criteria. We started in 1987 and we've slowly built a business and we have terminals in multiple cities around Australia and New Zealand, and we entered the Australian market in the year 2000, purchasing an old fuels distribution depot in Altona, set up a business. Then we constructed a marine terminal in Coote Island in 2002. And we have been primarily up until then focused on handling hazardous chemicals, hazardous and non-hazardous chemicals. And we have a business strategy to diversify that business into handling fuels.

MS FORSYTH: I understand that's a fairly recent change, is that correct?

MR CATLEY: It's not been recent - - -

MS FORSYTH: When did you first start the handling - - -

MR CATLEY: It's not a recent idea, but in our business the opportunities to get assets don't come along every day. If you are going to construct them it takes time. So you have to be patient, and so we have been thinking about this for quite some time, particularly we have an operation in Altona and we do handle some fuel product through there. So it's really been a matter of identifying and being able to consummate that opportunity. And we have done that most recently in Bell Bay Tasmania.

MS FORSYTH: When precisely was that purchased.

MR CATLEY: 1 July 2007.

MS FORSYTH: Who was it purchased from?

MR CATLEY: Exxon Mobil.

MS FORSYTH: Was that really the first step or diversification into fuels - - -

MR CATLEY: First significant step, yes.

MS FORSYTH: You must have undertaken some analysis or some studies before diversifying into the fuels business. You said it's something you thought about for some time.

MR CATLEY: Yes.

MS FORSYTH: Can you tell the Commission a little bit about that and why you decided to get into the fuel storage business.

MR CATLEY: The history of bulk liquids handling, particularly when you are handling hazardous products, and we would put motor spirit particularly in that category. But we look at all liquids of a chemical nature as hazardous, so we treat them like that. The critical issue for us, as time has gone by clients, costs and market entry, market operating, the costs have gone up very significantly and rightly so. And you really need volume, to increase your volumes through those facilities to ensure that you have an economically viable facility that industry can afford to pay for. So we have had to build those volumes, and fuel is a key significant volume that you can build.

MS FORSYTH: So you saw fuel as a high volume product?

MR CATLEY: Absolutely, yes.

MS FORSYTH: And therefore an opportunity for expansion?

MR CATLEY: Yes.

MS FORSYTH: In terms of making the decision to enter the fuels area, if I can call it that, did you undertake any analysis of the industry in terms of storage and importing?

MR CATLEY: Yes.

MS FORSYTH: If you would prefer to talk to us about some of that confidentially we can, but can you tell us on the public record to the extent - - -

MR CATLEY: I think we can.

MS FORSYTH: What you found out and what your conclusions were.

MR CATLEY: I think the critical issue in recent times, you know, in the last five years particularly, is that Australia and New Zealand, but Australia particularly, has gone to a significant importer of refined product to meet the internal requirements of the marketplace. That is, the refining capacity in Australia is nowhere near that needed to meet the demand in the market. Particularly - obviously we took a big step/jump when Mobil shut their Adelaide refinery. So that change said that there is an opportunity in the marine terminal business for import product, and therefore we saw that as a key business opportunity for us.

MS FORSYTH: You saw terminals as being key to imports and therefore - - -

MR CATLEY: Absolutely.

MS FORSYTH: Did you undertake as part of this analysis formally or informally any evaluation of the position of the majors as distinct from the independents in relation to the importing future of Australia?

MR CATLEY: Yes, we did.

MS FORSYTH: What did you conclude?

MR CATLEY: Well, we concluded that clearly to have any positive impact on the marketplace and the business, you had to have the lowest cost supply chain.

MS FORSYTH: When you say "you", you mean the importer?

MR CATLEY: The whole package from refinery through to end user of product. So you had to have the lowest cost supply chain.

MS FORSYTH: So the fuel industry player has to have the lowest cost?

MR CATLEY: Yes. That player is players. The supply chain starts with a refinery. In our case then it has a ship or a transport. Then it has a terminal or tank. Then it has a trucking company, then it has the end user, the customer that finally gets it. There is a significant supply chain that affects the ultimate cost to the consumer or the end user, which is going to drive whether they buy it or not ultimately. We felt that - on the analysis that we were doing, that there was an opportunity to be successful. And we are moving in that direction.

MS FORSYTH: In what part of the supply chain do you see there is an opportunity to be successful?

MR CATLEY: The whole supply chain has to be successful for our piece to be successful.

MS FORSYTH: You see your link as being important?

MR CATLEY: Yes, our link is critical. And what we have to do is to - what we try and do in a business, anyway, is that we try and ensure that the supply chain components on either side of us are successful and well run as well, so that that makes at the end of the day us successful in the middle.

MS FORSYTH: I will come back to talking to you about the parts of the supply chain and where it all goes. But I think my initial question was where you saw independents and majors as part of the future of importing into Australia, analysis. Can you perhaps take that a little further?

MR CATLEY: Firstly, we said, okay, where can you be most competitive? So then we'd look at, okay, are we looking at majors as our primary marketplace? The short answer to that is, no.

MS FORSYTH: Can you perhaps explain to us very briefly why that's not the case.

MR CATLEY: The majors fundamentally have their own facilities. They have what they call proprietary facilities, which they only use for their own products. So we, we don't - they wouldn't - they don't want us to be in that play. They don't need us to run their assets, they can run them themselves. What we said was where are we best able to compete? We thought that we had a better - in the near term in the first instance, to be in regional centres out - in other words, outside of the main centres of Sydney and Melbourne really.

MS FORSYTH: By "regional centres" do you mean centres within Victoria and New South Wales that are not Melbourne and Sydney or do you mean - - -

MR CATLEY: Yes. Generally - that's right. If you go to, you know, north Queensland, we're talking about Mackay, we're talking about Gladstone, we're talking about Cairns, we're talking about Townsville and we - we saw Tasmania as one of those opportunities as well, and that's what we've done.

MS FORSYTH: Why do you see those areas as particularly attractive? Is it because the majors are not already stationed there?

MR CATLEY: Yes, because their refinery is not there, fundamentally. Basically, what they have is a transport cost as well to get their product to that market. And therefore - and for argument's sake, by way of example, you - to get product to the Sunshine Coast or north Sunshine Coast, they have got to be loaded out of trucks in Brisbane and trucked north. Our supply chain might be that we have a terminal in a close-by regional centre and ours is coming via ship from Singapore or Asia and then we have a short trucking distance from that terminal.

MS FORSYTH: Your aim is to - perhaps I'm stepping ahead a little but at least this can help establish a bit of a picture for us - establishing terminals in regional locations but with port facilities direct to those terminals?

MR CATLEY: Absolutely, yes.

MS FORSYTH: So that you can minimise the freight costs and thereby your link in the supply chain is competitive? Is that a fair assessment?

MR CATLEY: Yes.

MS FORSYTH: Coming back to the question of independents, then, where did you see independents playing a role in the selection of regional locations.

MR CATLEY: The first thing that you have got to do is have the ability to aggregate volume. So you don't necessarily want to be aligned with any in those places, because there's not one individual company that's actually big enough to actually say that they can occupy your terminal. And the terminal - we're talking about a facility that basically can take, you know, something like what they call an MR, something like 30,000 tonnes or 35 million litres.

MS FORSYTH: A tanker.

MR CATLEY: A ship. We have got to build a facility - or we have got to have a facility that can roughly take 40, 50 million litres, say 50 million litres. That's $35 million worth of facility. So you've got to have the volume. In those centres - so you really have to be independent and say, "We'll store for Joe Blo, XYZ, da, da, da, and we will aggregate volume so that you have got enough volume to make that facility economic.

MS FORSYTH: If I can take your position to be that you see that there is a future for Marstel in this market, but your view is also that there is a future for independents to import into this market; is that your view?

MR CATLEY: Yes.

MS FORSYTH: Did you undertake any specific analysis of that?

MR CATLEY: We go out and talk to people and invite people to participate in our projects.

MS FORSYTH: Is that something you can talk about on the public record?

MR CATLEY: Yes, I think so, to a limited degree. By way of example, while Trafigura is not one of those organisations, they are the sort of companies that we kind of talk to. In our business, you have a, if you like, if I can crudely talk about a push or a pull effect. That is, you can either - the end user can use your facilities or lease or use your facilities, or the supplier can use or lease your facilities. So we are kind of talking to end users and we are talking to suppliers. We are out there talking to a very significant range of companies on both of those areas.

MS FORSYTH: In terms of suppliers, are you talking about independent suppliers?

MR CATLEY: Both.

MS FORSYTH: When I say international independent suppliers?

MR CATLEY: Yes, and also the majors themselves that operate here in Australia.

MS FORSYTH: So you talk to the majors, international importers?

MR CATLEY: Yes.

MS FORSYTH: And then in terms of the pull, you are talking to everyone in the market in Australia?

MR CATLEY: Yes, you are talking to, you have, what you have, you have organisations that might have - a chain of service stations. You know, United Petroleum would be one of those. Freedom Fuel would be another one. Neumann Petroleum would be one as - by way of example.

MS FORSYTH: So large independent companies?

MR CATLEY: Yes. And then we are talking to international suppliers, like Trafigura, who are - they obviously are not the refiner and the manufacturer but they are a player in that market and they are a trader. Those companies have to have particular expertise and they have the expertise to get the product from the refinery, in most cases in Asia, here, into, landed into our tanks. So those are companies that you would talk to. And we have a number of those companies, Trafigura, there is a company called Masefield that we've been working with. And there are companies around that we have not talked to, but we know are there and we probably will get to. Inimitsu(?), they are a refiner out of Japan but they may actually own mines here as well. There is Glencore, there is all sorts of - there is a significant number.

MS FORSYTH: So you see there is a market there for independent importing?

MR CATLEY: Absolutely.

MS FORSYTH: Perhaps if I could move to your current facilities. As I understand it, you currently have three facilities? Is that correct, Bell Bay, Altona and Coote Island?

MR CATLEY: Yes.

MS FORSYTH: Perhaps if I could go through each of those very briefly. As I understand it, Coote Island does not store any fuel, is that correct?

MR CATLEY: No, but it's got land available if someone wanted - - -

MS FORSYTH: It doesn't currently do it?

MR CATLEY: It currently does not do it, but it could.

MS FORSYTH: What is stored at Altona?

MR CATLEY: Altona is what we in our business call an inland terminal. It was historically a fuel distribution centre for Total and Ampol before the - those mergers and takeovers and so on took place. In actual fact, we have got it as a chemical storage and handling company. And it's got certain fuels in it. It's actually - it runs - it's actually connected to both Corio refinery, Shell's Corio refinery, Shell's Corio refinery, and the Exxon Mobil refinery at Altona by pipeline.

MS FORSYTH: So do they use your facility?

MR CATLEY: No, they don't. We would like them to, but they don't currently. It is currently used in the fuels business by United as an ethanol product blend centre. They bring fuel into our facility and we blend ethanol into it for them, and then it goes out and goes to their service stations and they, you know, they market what they call an E10 product.

MS FORSYTH: I will ask you about that in a minute. But just stepping back to the refinery as a whole. Currently it's not used by the majors but it could be. But I take it it's not obviously on a wharf?

MR JACOBSON: No.

MR GUNNING: We do handle aviation fuel at Altona on behalf of Exxon Mobil.

MS FORSYTH: Aviation fuel?

MR GUNNING: Yes.

MS FORSYTH: But no ULP, for example, for anyone else?

MR GUNNING: No.

MS FORSYTH: Currently it's not storing those products, but it could store them but you could not import directly into Altona?

MR CATLEY: No.

MS FORSYTH: Can you tell us a little bit about the blending process for United, how that is achieved and whether that is going to be an area that you see as a growth area of your business?

MR CATLEY: Yes. Firstly, we see blending fuel as a growth area for our business.

MS FORSYTH: Why do you see that?

MR CATLEY: Because of the move in the marketplace to biofuels. And so you have a biodiesel and you have a bio-motor spirit, which is an E10 ethanol product. So companies need facilities to blend those components into their products. And so a lot of the terminals that are actually in, even the major terminals, don't have that capability. So we've got a situation where a company like United or it could be any independent fuel marketer or it could be the oil companies, they can bring motor spirit in or - into our terminal. We have ethanol and B100, they call it, biodiesel 100 per cent, stored in our terminal in bulk and then we blend it into the fuel for them and we send it back out of the terminal.

MS FORSYTH: Do they lease the tankage space or do they pay you for the service to do the blending?

MR CATLEY: They lease tank space from us, yes, and they pay a blend fee to us.

MS FORSYTH: They purchase the ethanol from you as well?

MR CATLEY: We don't own any of the product. They potentially - they will own the product on our site and we will just handle it for them.

MS FORSYTH: How does the blending happen? Is there a machine that blends it or is it all just tipped into a tank?

MR CATLEY: One leads to the other, basically. Fundamentally, we are just completing the construction of what we call an inline blending system, so that you can actually automatically inject as you are filling your road tanker, and then you can dial up whichever blend you want, whether you want 10 per cent, 5 per cent, press the button and in she goes. As the volume grows, those things are becoming much more sophisticated and we are upgrading our facilities to handle that sophistication.

MS FORSYTH: Are you intending to expand that into any other facilities?

MR CATLEY: Yes, we would extend that into Bell Bay as well. That facility that we acquired from Exxon Mobil, it didn't have ethanol in it when we acquired it and so it does have ethanol in it now. So we had to upgrade some facilities to allow that to occur.

MS FORSYTH: Moving then to Bell Bay, that's obviously the area of most interest to us in a petrol pricing inquiry. I understand you purchased that this year?

MR CATLEY: Yes.

MS FORSYTH: What's the capacity of Bell Bay?

MR CATLEY: Bell Bay has a capacity of around 40 - 45 million litres, and the potential to expand that.

MS FORSYTH: How many tanks, 10 tanks?

MR GUNNING: Ten tanks, yes.

MS FORSYTH: How does that capacity compare with a tanker load?

MR CATLEY: As I said, what we - our objective is to allow our customers to bring in full loads of 30 to 35 million litres. So we are upgrading that - that's not how it was handled before. How product was handled before and in Tasmania generally is that the ships do what we call a milk run. They drop a bit here, they drop a bit there and then they drop a bit at Bell Bay. We see the potential for us to be - our supply chain to be more economic and therefore attractive, is that we can take a full ship - a refinery loads 30 to 35 million litres and dumps the whole lot into our terminal.

MS FORSYTH: Has that happened yet?

MR CATLEY: No.

MS FORSYTH: It's early days?

MR CATLEY: It's early days. We are only landing our first cargo in the next two or three weeks.

MS FORSYTH: Is that the milk run cargo?

MR CATLEY: That's a milk run cargo, yes.

MR GUNNING: Those 10 tanks that we spoke about have been - numbers have been out of operation so we are just recommmissioning those tanks. Our efforts are very much to spending money to upgrade it and bring it back into operation.

MS FORSYTH: What will be the ULP capacity?

MR GUNNING: We are looking at having about 30 million litres of ULP.

MS FORSYTH: So it's about 75 per cent?

MR CATLEY: Yes.

MS FORSYTH: And you are looking to expand that potentially, is that correct?

MR CATLEY: Yes.

MS FORSYTH: Any dates or plans for that or is that just something that at the moment is a future proposal?

MR GUNNING: We are learning. This is our first step. We've been there for three months. You know, we're testing the water. We have got plans. But in terms - we couldn't be definitive today as to when the next - we have got some steps to take before we get to the point where we would be putting in additional tanks.

MS FORSYTH: The current capacity is the best estimate of what it will be in the near future?

MR GUNNING: It's a good starting point. It really allows us to achieve what we are setting out to achieve and to demonstrate to the industry, the majors, what we are potentially capable of in terms of providing, as Graham said, a more cost-effective supply chain.

MS FORSYTH: We have heard some other evidence to this inquiry that there were some limitations on the cargo size that can come into Bell Bay. Perhaps the drop is going to be less than 10,000 tonnes. Is that just because of the milk run practice?

MR CATLEY: No, see, what happened was that Mobil had no interest in running a terminal which could take a full ship, and therefore - what in our business happens is your tanks have to stay in service and to keep them in service you have to continuously inspect them and they go through formal inspections and so on, which costs money. Mobil chose to allow those inspections to lapse, and so the terminal at that point in time has gone to a site that could only take those types of drops. But as Tim mentioned just a moment ago. We have been very busy and that's why we couldn't take one - we probably can't take 35 million, 30 million litres until probably next month, as we bring all these tanks back and we are investing in bringing these tanks back into service.

MS FORSYTH: That limitation will have gone when the tanks are fully recommissioned?

MR CATLEY: Yes.

MS FORSYTH: Who uses the terminal at the moment? I understand you mentioned United.

MR CATLEY: United use the terminal at the moment.

MS FORSYTH: How much do they use?

MR CATLEY: In terms of how much they take up of the terminal?

MS FORSYTH: That's right.

MR GUNNING: We are pretty sensitive about that sort of information, if that's okay.

MS FORSYTH: We can talk about that in confidential session.

MR GUNNING: We are, as we say, in the early stages of demonstrating our capabilities to the industry. We are very concerned about confidentiality and how we deal with our individual customers as an independent - - -

MS FORSYTH: Certainly, we can deal with that in a closed session. Can I ask you this, and if I can't ask you this let me know: Is there any spare capacity available?

MR CATLEY: Yes.

MS FORSYTH: Can you give me any indication as to whether or not that's something that you have discussed with anyone as to the use that can be made of that spare capacity?

MR CATLEY: Absolutely. We are talking to, as I said, those companies that we talked about before, which is the suppliers and the users. So we're talking to the Masefields, we are talking to other fuel consumers, we are talking to the majors, like Shell and Caltex and BP. So we're talking to everyone. That's our business. We go everywhere. And there is - you know, there is reasonable attraction there.

MS FORSYTH: What are the sorts of conditions that you would require for someone to use any spare capacity? What I mean by "conditions" is, are you prepared to allow small amounts to be purchased on a spot basis? Do you require long-term arrangements and shared arrangements? Can you give us a bit of an indication as to how a partial capacity might be able to be used by another person?

MR CATLEY: Generally our preference is - and for longer term contracts - that would be in the three-year time frame. The reason for that generally is often we are investing for that specific customer. Some customers, for instance, dope their fuel with ethanol. Some of them put specialty additives into it. Some of them do this and some of them do that. We would have to put those facilities in and have them - capital invest for them. So we would look to go through the longer term. The spot people as such that might buy a road tanker, they would actually work with a company, a supplier, not us necessarily. And that could be, you know, like Trafigura. Trafigura might land 10,000 tonnes or 10 million litres, and they'll sell it by the road tanker lot to whoever they want. Those companies don't generally work with us. We would work with a company that had a major volume down there, but not one where a guy would have one service station.

MS FORSYTH: You might work with a trader who might have effectively - correct my use of words if I am wrong - sold some of the space off to a number of people and then deliver it to you as a larger - - -

MR CATLEY: They don't sell the space as such. They buy the space off us and they sell the product at the other end.

MS FORSYTH: So you wouldn't be responsible for the grouping together of a group of smaller players but - - -

MR CATLEY: No.

MS FORSYTH: But the effect might be that those smaller players can use that spare capacity?

MR CATLEY: Yes, that's correct.

MS FORSYTH: Can you tell the Commission a little bit about the terminalling industry generally. I accept that you haven't been involved in the fuel terminalling industry for a very long time. So some of your answers might be limited to that extent. But I understand your experience in the terminalling industry generally is broader. Who are the key players in the terminalling industry in Australia and where are they located?

MR CATLEY: The first thing about the terminalling industry that I think everyone needs to understand - this is the good part about it actually, and the bad part of it, but it's a very good part, is that there are very high barriers to entry. So when you get in there it's a great business to be in. But the problem with that is that barriers to entry are incredibly high. So it's very hard to get into as well. We have some commercial reasons why we don't really want to go into the big major centres because there are refineries there and other reasons, but also at the end of the day they are the hardest places, port zones, to get land. That barrier to entry is incredibly high.

MS FORSYTH: Can I ask you to expand on barriers to entry or is that confidential?

MR CATLEY: No, I think everyone who wants to import and handle fuel knows about the barriers to entry. The barriers to entry are that you, one, need a deep water berth. Two, you have got to have a piece of land where you can get approvals, licence approvals, to operate with hazardous products. Then you've got to have the knowhow to actually get the licence, the intellectual capital or the intellectual property to get the licence, and know how to go through the system. Those things are extremely difficult to do.

MS FORSYTH: What about long-term contracts?

MR CATLEY: Last but not least, there is a commercial component of all that as well. I just sort of took that for granted. That is an incredible challenge as well. You are going to invest between 30 and $50 million and you don't do that on spec.

MS FORSYTH: You described these as barriers to entry. That's very logical to explain them in that way. Have you in your experience - and I say "you" I mean your company - had any experience of not being able to set up terminals in various places because of these barriers to entry? Have there been any specific examples you can give us?

MR CATLEY: Yes. Brisbane is very hard.

MS FORSYTH: Is that because of the depth of the port?

MR CATLEY: What you need is - you want a terminal like this to be east of the - I forget what rock it is called. There is a rock - at Fisherman Islands, which is where the main port has been moved to. You need to have land in the Fisherman Islands precinct because there is a bar into the port and that limits the depth of water. So you need land down there. So you have to work with the port. And the problem for the ports generally is that they get much better returns by having containers come through their ports than they do by having bulk liquids. So they don't rush cross hot coals to embrace us when we come to say give us some of your prime real estate to get into this business.

MS FORSYTH: That's why you are more interested, say, in north Queensland as well?

MR CATLEY: Yes, because the land is easier to get.

MS FORSYTH: Who are the players in the terminalling industry for fuel? We know about Vopac.

MR CATLEY: Primarily Vopac is in fuels, and really ourselves. Independents, I presume you are talking about?

MS FORSYTH: Yes, as distinct from the majors, independent terminalling facilities. Where would you fit in, you must be a fairly small player?

MR CATLEY: Very small player, yes, a very small player.

MS FORSYTH: Would Vopac be Marstel's key competitor?

MR CATLEY: Potentially. They mightn't see us as a potential competitor, but we would like to think we were.

MS FORSYTH: If there was anyone in the market who is considered to be your competitor when it's in such early stages would it be Vopac?

MR CATLEY: Yes, correct.

MS FORSYTH: Do you think there is a shortage of terminalling space in Australia at the moment?

MR CATLEY: Absolute. It is worldwide, actually, but there is definitely a shortage. It all depends on how you look at some of these things - there has been a lot of rationalisation with the majors in terms of terminalling and a shut-in of capacity. But the market is growing and particularly the commercial market. The motor spirit market is probably not growing as fast as the commercial market for diesel fuel because of the mining booms and, you know, those commodity plays that are going on in the world, as everyone knows about in Australia, particularly in north Queensland. When you are looking to underpin a terminal investment somewhere, a diesel play is a good volume to underpin and you can then back that up with motor spirit volume in a more incrementalised sense, if you like, if you want to term it like that. Each centre clearly has different market dynamics.

MS FORSYTH: Do the majors use independent terminals, to your knowledge, or do you see the majors as a potential customer?

MR CATLEY: Yes, they do. The trend in the world really is that the majors are putting more and more volume through independents. One of the reasons for that is the - again, the nature of our business, the change in the increase in safety, the increase in handling is becoming more and more specialalised and knowledgeable. And they have had an attitude that says, well, crikey, do we really want to be in this part of the market? So in the rest of the world significantly they are doing that. And in Australia to a lesser extent are starting to do that. Again, you would have to talk to Vopac. But obviously they have a significant supply of services, if you like, both to the majors in Sydney in Botany and in Darwin.

MS FORSYTH: I'm just aware of time here. I'm not trying to push you through. I understand we have some limitations here, but I did want to make sure we spent enough time talking about any plans you might have for expansion. I'm not sure how much of that you can say on the public record. If possible, we would like to discuss as much as possible. And if it's convenient for you, we can start by talking about things in a general way and then move to something more specific if there are things that are sensitive.

MR CATLEY: Do you want to go straight to - - -

MR GUNNING: We are happy to talk to you in private.

MR CATLEY: Then we can get straight into the nitty-gritty.

MS FORSYTH: Can I ask you broadly whether you do have expansion plans?

MR CATLEY: Yes.

MR GUNNING: We are a purchaser of any available terminalling assets.

MS FORSYTH: I will ask you about that probably in more detail in the confidential session. One question I will ask you on the public record, if I can is, in terms of your expansion, if it's rather than purchasing facilities if it's actually - do you look to build some new facilities?

MR CATLEY: Yes, I think it's public knowledge that we are in the final approvals process to construct a new terminal, new fuel terminal in Newcastle.

MS FORSYTH: I will come to that in more detail, but if you do build new facilities, and I'm talking generally here, what sort of commitment do you require from customers? The reason I'm asking this question is really do you require some kind of long-term contract commitment or are you prepared to build beyond what the customer so far needs as in future requirements?

MR CATLEY: Generally, in a greenfields investment you have to have - you have to adopt an attitude where you are not going to have a customer or customers on day 1 that are going to give you a 100 per cent return. What we have to do is we set our own investment hurdle, if you like, in terms of the capacity that we need to pre-sell, and then we will take a commercial decision on whether we actually go ahead with that facility. So, no, we - you could argue that we are building more capacity than we are actually going to have customers for on day 1.

MS FORSYTH: So you don't require a firm commitment for every litre of tankage space but you might require some commitment in the - - -

MR CATLEY: We would be looking for a key customer to underpin, if you use that terminology, the investment.

MS FORSYTH: I see. Mr Chairman, the main questions I had for these witnesses are primarily about further expansion. It may be better - - -

THE CHAIRPERSON: We have only got about 10 minutes.

MS FORSYTH: Mr Chairman, did you have anything?

THE CHAIRPERSON: No. We will move into closed session. I am conscious of the time.

WHEREUPON THE HEARING PROCEEDED IN CAMERA [2.35pm]

RESUMED [3.02pm]

THE CHAIRPERSON: Mr Kevin, would you just state your name and position for the record?

MR KEVIN: Mark Kevin, consultant to the oil industry.

THE CHAIRPERSON: I think you are familiar with the procedures that we use in conducting the inquiry. You can choose to affirm or to give your evidence under oath.   What do you prefer?

MR KEVIN: Oath.

<MARK KEVIN, SWORN [3.03pm]

MR MARKS: Mr Kevin, good afternoon. I wanted to ask you a few questions, if I may, to tap into your expert knowledge as a consultant in the industry. Can I tell you I have the benefit of a short note of some of the comments which were made by you in the context of an earlier discussion with the Commission, so you can assume I have the knowledge of that. Can I ask you if you would just tell the Commission your consultancy work, what does it involve?

MR KEVIN: Various work to various players in the oil industry, which I have done over the last two years. It involves consulting to some individual players, like service station operators, chains of service stations; recently done some work for the Queensland Government with their investigation into the fuel subsidy.

MR MARKS: And what about to the majors - do you do any consultancy to them - - -

MR KEVIN: No.

MR MARKS: - - - or the supermarket chains?

MR KEVIN: No.

MR MARKS: So it has tended to be the smaller operators in the market, leaving government to one side.

MR KEVIN: Yes.

MR MARKS: The smaller operators. Are you able to identify who your - who your key customers are?

MR KEVIN: Well, I wouldn't say they are ongoing key customers. It is more, you know, project work.

MR MARKS: Is it full time work, your consultancy?

MR KEVIN: No.

MR MARKS: What do you do - - -

MR KEVIN: Well, hang on, not full time in the oil industry.

MR MARKS: Right, and what - - -

MR KEVIN: So from time to time there will be work that various players in the oil industry want and I will help them out.

MR MARKS: When you are not consulting to the oil industry, what - are you doing other work?

MR KEVIN: Some property work.

MR MARKS: I see. Can I ask you a little bit quickly about your background. You joined Ampol in 1908, did you?

MR KEVIN: Yes.

MR MARKS: What role occupied you there?

MR KEVIN: I was a sales representative. I joined there as a sales representative number 1908.

MR MARKS: And how long did you stay with Ampol?

MR KEVIN: I was with Ampol for three years and I left and then I - - -

MR MARKS: Did your role change or did you - - -

MR KEVIN: No, I stayed in the same role.

MR MARKS: And then what did you do - - -

MR KEVIN: I went overseas for a couple of years and worked for a Belgium-based oil company in the UK, and then I - - -

MR MARKS: In what role, please?

MR KEVIN: As a sales representative, in the retail side of things.

MR MARKS: Yes. What did you do from there?

MR KEVIN: I returned to Australia in late 85 and rejoined Ampol - - -

MR MARKS: Right.

MR KEVIN: - - - as a - as the metropolitan retail manager, so that's service stations in Sydney.

MR MARKS: I see. And you were at Ampol then until 1986, is that so, and then you joined Caltex?

MR KEVIN: Yes, I was with Ampol through to 1995, at which time Caltex and Ampol merged.

MR MARKS: So, sorry, till 95, yes.

MR KEVIN: And then I was in the merged company, working for, you know, Caltex Ampol.

MR MARKS: And you eventually acquired the role of national retail manager?

MR KEVIN: Yes.

MR MARKS: You then moved from Caltex, did you, or the merged company, around 1997?

MR KEVIN: 1997, moved from Caltex and moved across to Liberty Oil.

MR MARKS: And what was your role there?

MR KEVIN: Chief executive.

MR MARKS: Of Liberty - - -

MR KEVIN: Liberty Oil.

MR MARKS: Right. So until 1997, you were almost exclusively involved in retail operations in the oil industry?

MR KEVIN: I actually covered - the final role was retail, but prior to that I covered other roles which involved supply and wholesale sales of fuel. So it wasn't just retail.

MR MARKS: Your time at Ampol was substantially retail sales, was it not?

MR KEVIN: No. It covered a whole range of activities.

MR MARKS: So it was sales beyond retail?

MR KEVIN: Yes, it was, as well as operations. It involved terminals and so on.

MR MARKS: That's an expansion of what you told me a moment ago, because I asked you about Ampol, you said you joined in 1980 and you were involved principally in sales, but it sounds like your experience extended beyond that.

MR KEVIN: I joined - well, let me explain that. I joined in 1980, and apart from two years working overseas, I left them in 97, and over that time I started as a retail representative in various roles and ended up in 1987 as the retail manager. So there were other roles in there over that period of time.

MR MARKS: I see. All right. Now, at Liberty, as CEO, you had a wider exposure because at least at that time, 1997 until about 2001, Liberty had a retail operation as well as its wholesale business. 2001, that business, or the retail arm of the business, if I can describe it that way, was sold to or divested to Woolworths, was it not?

MR KEVIN: Yes.

MR MARKS: And thereafter Liberty had a wholesale business and has maintained that business to now; is that so?

MR KEVIN: Yes.

MR MARKS: All right. From that base, can I just ask you some general questions, just tapping into some of the things that you told the Commission, or information you provided to the Commission in your informal discussions. Firstly, can I ask you just about one matter. In your view, it would appear there was a change in the industry in Australia, that is, the supply arrangements in the industry, that was marked between the 1990s and the 2000s. Can you just give us a quick summary of that? I presume that what you are talking about is the oversupply or the excess of product that dominated the position in Australia until the 1990s and then the move away from that in, really, the 1990s but most particularly in the early 2000s, when Port Stanvac went and that evolution. Is that what you were referring to in those discussions?

MR KEVIN: Yes. Yes.

MR MARKS: Can you give me a quick precis, please, of what your view is about that?

MR KEVIN: Okay - you're after my view of what the supply situation from the early nineties through the - - -

MR MARKS: Through until about 2005-06.

MR KEVIN: Okay, and I will give you probably a couple of perspectives, one from being at the oil company, a major oil company, and also then moving across to an independent.

MR MARKS: Sure.

MR KEVIN: In the nineties, and we are talking most of the nineties but certainly the early to mid nineties, oil companies struggled to sell all of the fuel that they produced through their own controlled networks, whether that be service stations or whether it be distributor networks. So, therefore, you were always looking for some place to sell that excess fuel, and the independents were great customers - large independent chains were great customers.

MR MARKS: Such as?

MR KEVIN: Such as Liberty. United, at that stage, wasn't in the market.

MR MARKS: You might have to speak up a little bit, Mr Kevin, I am sorry.

MR KEVIN: Okay. Sure. United, at that stage, weren't really in the market, so Liberty was a major player, and dealing with those bigger independents was easy because you'd have one customer. They swallowed - they would buy a lot of fuel and usually they were financially stable so there was no issues with payment and so on. And so, coming from the major oil company point of view, you are always sort of looking for those customers because you get a lot of money from that fuel. From the independents' point of view - and don't forget I went across in 97, so we're still in that time of oversupply - it was a good place to be because you knew you had oil companies who were all in a similar position of having excess supply but they wanted to sell to one big customer.

So that was - a lot of the time that I spent was talking to various major oil companies and trying to keep them on their toes, to make sure that the deal you had with the major oil company was the best you could get, and you were continually sort of playing them off against each other, to make sure that the deal you had was the best you could get. So that was sort of in the nineties. With supply tightening, it was quite noticeable that the oil companies didn't need that independent source of customers.

MR MARKS: Just interrupting you there, you say "with supply tightening", I'm thinking here of the time period. About 1995 I think you said was the Caltex Ampol merger. Now, there was a growing concern, was there not, about the availability of supplies to independents even at that time?

MR KEVIN: It was on the horizon somewhere but it wasn't - - -

MR MARKS: But there was a concern in the context of the merger, was there not, about how, if the merger were to take place, independents in the market would be able to source fuel supplies and so on, and that caused the Trade Practices Commission some concern at the time, do you recall?

MR KEVIN: That's right.

MR MARKS: In the end, I think the merger was allowed and went through in March of 1995 but with stringent or fairly stringent conditions attached to it; do you recall?

MR KEVIN: Yes - yes, that's correct.

MR MARKS: Was the consequence of the merger - or what was the consequence of the merger on the tightening of supply, if any?

MR KEVIN: There wasn't. There was a fear that it was going to be tightened.

MR MARKS: More an apprehension than a reality. All right. Just again on the time period here, we're moving now forward, when was the next significant tightening occurring? Are we to move right forward to Port Stanvac or - - -

MR KEVIN: I think - well, let me come at it in a different way. What happened in 1996, we saw Woolworths become involved in the retail fuel and they were sourcing their product from overseas sources, so they were importing, and we could see where that was going to go, in that as - - -

MR MARKS: Who is "we"?

MR KEVIN: Sorry, Liberty, the management of Liberty. We understood that they were going to grow, and they did, they grew dramatically, and at some point an oil company would supply Woolworths. Woolworths would drop the independent supply and they would move to an oil company. So that was what's - - -

MR MARKS: You are saying we could see that was going to happen - - -

MR KEVIN: Well, I was - sorry, it was our best guess - - -

MR MARKS: And what was the best guess based on?

MR KEVIN: Because supply domestically for an oil company for an independent like Woolworths would have been cheaper than supply from overseas. Woolworths, prior to getting into fuel, actually did the rounds of the oil companies to try and secure supply.

MR MARKS: This is in 96 or thereabouts. Yes?

MR KEVIN: They did the rounds of the oil companies to secure supply. They were unsuccessful and that's why they then set up overseas, you know, import arrangements.

MR MARKS: Yes.

MR KEVIN: So at some stage we could see that. Now, was supply tightening? No, but we knew it was going to tighten, and that scenario played out and actually happened.

MR MARKS: Indeed. Now, the actual tightening, tell us about that. Did it really occur with Port Stanvac? That's an obvious - you had 78,000-odd barrels of - - -

MR KEVIN: Yes, but it did not affect - - -

MR MARKS: - - - an 800,000 barrel company suddenly going, so that's 10 per cent of the production line. Tell me what your views are about that.

MR KEVIN: Well, it became a little bit more critical, as an independent, to advise your supplying oil company of what your offtakes were going to be, going forward. That's where it started to bite a little. Prior to that, it was - - -

MR MARKS: It doesn't matter.

MR KEVIN: It wasn't a worry, but the oil companies would like to see you as much as they could, so you never sort of worried about telling the oil company what your offtakes were going to be, going forward.

MR MARKS: And was the position, prior to 2003, that the contracts didn't tend to focus so much on forward penalties and the like in the event that - you know, take up penalties and so on as they do now. Is that the - - -

MR KEVIN: Correct. It wasn't an issue of focus in the contracts, because at that time the oil companies were also from time to time exporting product out.

MR MARKS: Yes.

MR KEVIN: And as time went on, so we are in the, say, 2000s, and new contracts were put in front of us, the focus was on what you are going to take, as opposed to there was no concern about it. So we could see this happening. It was actually happening to us.

MR MARKS: At Liberty. Now, where on to from then? In 2004, the petrol standards, which had - fuel standards, everybody calls them - that had been promulgated initially, January 2003, but going forward, were starting to bite. What impact did the fuel standard have? Changes to those standards? And upon whom?

MR KEVIN: Yeah. The big impact that those standards had was to give the major oil companies a significant bargaining chip with the independents. Because, as you are probably aware, the fuel standards changed to something that was quite unique in this area at that time, which meant as an independent, or as anyone, to try and source that fuel from the Asian area was difficult. They could make that standard but it would have to be a one-off. So I am not saying you couldn't source it but you could source it but it would be a price which was prohibitive - which effectively cut out the independents' ability to import, or the independents' ability to threaten to import, took that out of the negotiating basket, if you like, with the major oil companies.

MR MARKS: One of the independents has said to us, "Look, it was particularly difficult for the independents vis-à-vis the majors, because the way the standards were promulgated, and the requirements, meant that it was international supplies that were immediately affected. The requirements for olefin and MTBE and so on were more of a worry if petrol was being obtained from an international supplier than they were for the Australian majors, and so the promulgation made it much more difficult for the international - for the independents to have a position in the Australian market. Is that something you can make any comment on?

MR KEVIN: Oh, look, it's correct - what you say is correct, because a lot of the stuff that was - what you are saying is that a lot of specifications or standards didn't apply to the fuel that was here, for example, there was no MTBE here, and when they banned it, or made the specification so it was zero MTBE, it had no effect here at all. And there was another standard, too - I forget one of those - but that was, certainly from the independents' point of view, that's what works for them, that there was changes that had no effect on the domestic refiners but effectively cut out or shut down or made it impossible to source that product at a competitive price overseas.

MR MARKS: All right. Now, at this time, was Liberty doing any importing?

MR KEVIN: No.

MR MARKS: It was obtaining all its fuel from Caltex.

MR KEVIN: Yes.

MR MARKS: So to the extent this did happen, from Liberty's perspective, it didn't have much of an impact.

MR KEVIN: Well, it did have an impact because - - -

MR MARKS: Why was that? Explain that to me.

MR KEVIN: I'll go back to what I said. It's the - it was the threat of having a viable alternative source to the major oil companies that enable - and still to this day, I assume - enables independent players or anyone negotiating with a major oil company to get a better deal than they would otherwise. Now, with the standards changing, the oil companies knew very well. In fact, a lot of product that you can access in the Asian region is out of refineries owned by the parent companies or, you know, the Asian companies of the majors that are here. And that was the big thing. It was not so much the actual import, it was the threat of importing.

MR MARKS: Because through - for a long period of time, but most particularly from when product became short, the majors priced, did they, on really an alternative availability basis, so that if you could get an import price, they would try and offer you something which was just below it or would make it just better for you to obtain product here in Australia through them?

MR KEVIN: Correct.

MR MARKS: That, really, is a feature that we're seeing in the short product reality of the market. Is that something you confirm?

MR KEVIN: Yes.

MR MARKS: Are able to confirm?

MR KEVIN: Yes.

MR MARKS: And from Liberty's perspective, are you saying, in reality, that once you are in this short product market, then it mattered not whether Liberty imported; what mattered was whether Liberty could, and as soon as it became apparent that these standards were changing, the position vis-à-vis Caltex and Liberty changed. Is that what you are saying?

MR KEVIN: Yes, that's correct.

MR MARKS: Now, were Liberty's arrangements with Caltex at that time long term arrangements that could not be changed quickly or could they - - -

MR KEVIN: Well, the contracts were somewhere between three and five years.

MR MARKS: So when did the bite - I mean, assuming this all happened, as it seemed to have, at the early 2000s, 2003 or thereabouts - when did it impact on Liberty?

MR KEVIN: I'm just trying to recall the - - -

MR MARKS: In your experience?

MR KEVIN: It was the contract that was around about the year 2002.

MR MARKS: Was it that early?

MR KEVIN: Yes, because, don't forget, the other thing that's happening at the same time as this is you have Woolworths, who have been in the game 96 through to 2003, they had taken the Liberty sites, they had a big jump up in volume.

MR MARKS: Which they did in 2001.

MR KEVIN: Yeah, and prior to that - and I think it's 2002/2003 - you've got Shell - Coles coming in with Shell, who - what that meant to the oil - and, as a result, taking, say, the Shell sites over but increasing their volume dramatically - you know, not 1 per cent or 2 per cent but probably in cases of 50 per cent through the sites. And I don't know the overall volume of Shell pre-Coles to after Coles operating their sites but there's been - - -

MR MARKS: But you don't know that?

MR KEVIN: Look, I don't know that off the top of my head, what percentages - - -

MR MARKS: You suspect it was considerable?

MR KEVIN: I suspect it is considerable.

MR MARKS: Yes.

MR KEVIN: And so you've got Shell coming through this period - go back ten years, well, you have plenty of product to get rid of. Now they have tightening because of the inability to import, they have also had Stanvac go out of the picture, and you've got more volume going through their own service stations.

MR MARKS: Yes.

MR KEVIN: Therefore, their need for an independent source to unload their excess product doesn't become as important.

MR MARKS: No.

MR KEVIN: And, similarly, too, with Caltex, with a number of sites going across to Woolworths and their experience - well, I don't know what the number is, but they have also had increases through their sites, which has meant that all the other supply - customers who are supplied, say, by Caltex, then that focus on what are you going to take going forward becomes pretty important.

MR MARKS: Just looking again at the market generally, what appears to be the position then is that there was this move away from a reliance on imports as much because that was the reality of the market from 2002-3 onwards. Prior to 2003 - and I'm thinking now back to the 1980s - was much importing going on? I mean, if you really looked at the market, was there much importing? We know Woolworths was doing some importing.

MR KEVIN: Well, if you take Woolworths out, so if you are saying was there much, well, with Woolworths there was a lot.

MR MARKS: Yes, there was a lot with Woolworths.

MR KEVIN: Yes.

MR MARKS: But putting them to one side - - -

MR KEVIN: You have Gull in Western Australia. So if you take them out, so you get Woolworths and Gull. Then if you look at the others, I don't know if it will be by much, but my answer to that would be not a lot.

MR MARKS: Not a lot. I mean, you can talk about percentages of overall volumes of petrol sold. I'm just trying to get a feeling for what percentage, broadly, of the market might have been satisfied or been satisfied prior to, say, 2000 by imports. I suspect that the answer is going to be, "Not much, because we weren't short on product", and I suspect if you were then going say to me, "But the pressure of being short on product opened or potentially opened the gate to imports but there were other difficulties associated with imports". Have I summarised the position accurately?

MR KEVIN: That's right.

MR MARKS: I come to now, where short on product, we're getting shorter on product as time goes on, are we not, in Australia?

MR KEVIN: Yes, we are, with fuel standard changes and the effect of that on refineries. It just - - -

MR MARKS: And just in addition to that, the availability of product and so on and in the Australian region is getting shorter, is it not?

MR KEVIN: Yes.

MR MARKS: So that reality is upon us. Now, what about imports? Is there a role for imports in the market in Australia at the moment, do you think? If so - - -

MR KEVIN: For who?

MR MARKS: For - well, eventually, of course, the buyer, the customer at the bowser, but initially, taking the position of the independents and your experience at Liberty, can the independent look to imports now to try and buy more effectively, more cost effectively, or is that not a reality and, if so, why?

MR KEVIN: Yes. Well, let me answer it this way - when we say independents, we're talking - I'm assuming you are sort of saying the guy who is the independent service station down the road, who trades as John's Gas, through - - -

MR MARKS: I am really not so much worried about him. He is a sort of small player category who has been going from the market really for some time now.

MR KEVIN: Well, he is probably worried about that.

MR MARKS: He, no doubt, would be worried about that, but as a category, I am more thinking of the medium to large truly independent players in the market, not the majors, not the Coles, not the Woolworths. Are you with me?

MR KEVIN: Yes.

MR MARKS: Now, those people like United and Gull and Matilda and Neumann and - those people - Liberty - what's the position for them in the market at the moment, vis-à-vis - - -

MR KEVIN: Well, the history has been that they haven't been big importers. They have been opportunistic importers. So they might buy a cargo here and there. And in Liberty's case, it's very rare. In United's case, it's very rare, if at all. And the reasons behind that are - there are a number of them. We heard the Marstel people here before talk about they have space available. But that's one issue. And probably I am going to take you back a bit, I might wander a little bit off the course and tell if me if I am, but as a large independent in that category that you were talking about, the decision to import is a big one because you currently have a supply arrangement with maybe one major oil company or two major oil companies and because of that focus on the offtakes, what you are going take forward is big. If you start not taking the fuel that you said you were going to take, you then start breaching contracts and so on.

MR MARKS: Sure.

MR KEVIN: So there is number one thought. If you are an independent that does, say, 60 million litres a month in one city, to import, you actually need to import, as these chaps said, 30 million to 40 million litres of fuel, and if you don't import that sort of size then your costs go through the roof. So you need to import that sort of size. So, you're an independent, you do 60 million litres in Melbourne a month. You're going to import a big lump of fuel, and you need to import it regularly to get decent prices. So we're not talking opportunistic purchase; we're talking about setting up a long term supply arrangement from overseas.

MR MARKS: Yes.

MR KEVIN: So you go down this path; you have got to consider how your existing supplier is going handle that when you ring them up and say, "Look, I actually have a ship coming." You say, "The 60 million litres I told you I'm going take in November, it's actually going to be 20 million litres." So that's the scary one. That's really significant, because the supplier may well use that, depending on the contracts, to trigger some sort of breach and, you know, annulment of the contract. So that's a big risk.

The second, not risk but the second consideration is you do need to have the terminal space, and the terminal providers are not going to do one-off deals for one-off cargoes. They want to do deals that lock that person in for three, four, five years. It's not six months. It's a longer term if you are talking the volumes of fuels. So, you, as the independent, has got another consideration, that you are actually going to have to sign a contract, and it is basically a take or pay, so unless you put that fuel through the terminal, you will still be paying a charge. So you are on the book for three or four or five years for a monthly payment, regardless whether you've put any fuel through that terminal. So you have got two there.

The third one, which is probably the biggest one, is the risk you have to take to actually buy the fuel. You are talking significant money, 30 million or 40 million litres of fuel is somewhere between $20 million or $30 million that you actually have to pay. And you don't get credit on these things, you actually have to have that money through a, you know, bank loan and so on. And then you've got the issue not only of buying it and funding it, you've got the issue of what price you buy it at and whether you can spread that risk somewhere else. Because the suppliers of fuel, like the Trafiguras, the Mitsuis and all of the other international players, I mean, they sell it at this is what the price is at this day and they are not too fussed about the six weeks it takes to get it to Australia and what the retail price might or might not be in Australia, that's not their concern, but it's the independent's concern that they can buy at this price and there might be a huge price war in Australia, which means you've got this fuel and then it's costing you more - - -

MR MARKS: Nobody to sell it to.

MR KEVIN: - - - and you can't sell it - well, you can sell it but you take the loss. And if you don't sell it, then you've got the terminal operator still charging you money as if you were going to sell it.

MR MARKS: Yes, so you can't hold it.

MR KEVIN: Well, you can't hold - - -

MR MARKS: Not for long.

MR KEVIN: Well, you can hold it but, you know - - -

MR MARKS: At you own cost.

MR KEVIN: - - - but at a cost.

MR MARKS: Yes.

MR KEVIN: So these four major ones - now, there are probably other ones in there but they are the fours ones that sort of come to your front of mind when you, as an independent, think about importing. Now, my view is that that scares a lot of people, I don't know which one, but those four factors are enough to make importing for independents probably the last option.

MR MARKS: Okay. Now, if that's the reality in the market, then we are seeing, at the moment, the market dominated by the four majors, who effectively supply the market themselves, or supply those who do. Is there an alternative to that, do you think, in this market? Is there something that can be done to improve the opportunity to get alternative suppliers and, if so, what?

MR KEVIN: It's - just go back to those four factors. To address those it's actually bigger than the independents that we have here. They actually can't tackle - take the biggest independent, talk about United, for example, I mean, those four factors are probably too hard for them of their size to tackle.

MR MARKS: What about jointly? Or is that unrealistic? Or are you really saying it's too big a problem and it needs to be tackled in some other way?

MR KEVIN: I don't know about that second bit, but I'm certainly saying for independents it is a big problem. As to the independents getting together, well, my view is that most of the independents hate each other. Like, they are independent because they are independent people. That's why they started their own business, they run a service station and fought and fought and fought and got more service stations, and now they might have a couple of hundred service stations and they have done it all very tough.

MR MARKS: From the ground up.

MR KEVIN: From the ground up. And everyone is an enemy. They hate the major oil companies, they probably hate overseas suppliers and they certainly hate any other competition that might look a bit like them, which is other independents. Logically it would be a great idea to get them together and you could have enough volume whereby you could actually address those four factors with regard to importing. If it was going to happen I think it would have happened, because of the pressure, because of the pressure that they have been under with regard to supply, which I think is going to continue going forward. I would also say that they would be very wary about talking together, because of, you know, recent history that's happened under the Trade Practices Act, action the ACCC has taken. So that's certainly made people very wary about having any sort of contact.

MR MARKS: All right. Insofar as importing is concerned, you don't see it as being an answer in the present market; is that a fair summary, just because as you say there are too many barriers, there are too many impediments, all the things you have talked about, the berthing, the access to land, the costs, all of these things, and we have heard them earlier today, the licensing approval requirements and so on, the long-term forward contract obligation, all of those things, it's just not a reality, is that what you are saying?

MR KEVIN: I think it is. No-one is importing at the moment because of those factors. I shouldn't say no-one, but they are not - they haven't developed long-term supply arrangements offshore that enable them to be independent of the major oil companies. And I think that will continue. I can't see an alternative to the majors being put together by the existing independents that exist in this market.

MR MARKS: If terminalling was taken out of those difficulties, if there was a player such as Marstel or if there was some other way that terminal access could be obtained, would that substantially alleviate the difficulty do you think or would there remain the market commercial difficulties?

MR KEVIN: My view would be the same. You are addressing one of those four.

MR MARKS: You don't think terminalling is the answer; it is just one?

MR KEVIN: Yes. I think terminalling is used as the reason publicly by a lot of independents, but it's only one of many reasons.

MR MARKS: All right. Where, then, do you see the petroleum market going wholesale in Australia? Do you see it eventually just being even fewer players than there are now? Where is the direction?

MR KEVIN: Let's break that up. If we can talk supply, I see the majors controlling the supply as they do now. I don't see, as I've just said before, any emergence of a force that sets up long-term overseas supply in competition to the majors. On the retail side of things, I see the smaller chaps that we touched on before disappearing. I see the dominance of Coles and Woolies becoming greater. What I mean by that is they will get more service stations and therefore have a greater proportion of the market share in the retail part of the world. And I see Shell - so Coles very happy about that, it takes them out of that end that they probably weren't very good at. I see Woolworths probably taking more sites from Caltex as time goes on. I see Woolworths getting more sites themselves, separate to their supermarkets. I see them becoming a player in their own right, like a major oil company. Whereas Woolworths have had a philosophy of getting service station outlets near their supermarkets, I think they are moving away from that and going for outlets on major highways, probably nowhere near supermarkets. And I see that as - I don't know whether it's healthy or unhealthy, but I see that happening in that their market share will increase dramatically. I see the larger independent chains still being there because that's what they do, they survive and they change. But instead of them having some ability to influence the retail price of fuel in the market, I see that ability being really curtailed by the fear of retribution, if you like, in the marketplace from Coles and Woolworths. When I say "retribution", reaction from Coles and Woolworths to their attempts maybe to lower the prices in various markets.

MR MARKS: Are these feelings you have got and this vision that you have, is it simply based on your experience in the industry or is it based on a bit more than that, discussions you have had with the players or - can you just give us some feeling of the foundation for your views?

MR KEVIN: Yes. It is certainly driven by my sort of knowledge over 25 years. It is driven by conversations in the industry from players, current players. It is probably also driven by an understanding of what happened in the UK with supermarkets decimating the independents, in the UK market or the English market, where most of them disappeared.

MR MARKS: What is the position now in the UK? Are you able to shed some light on that?

MR KEVIN: The supermarkets have something like around 70-odd per cent.

MR MARKS: When did they come into the market in the UK?

MR KEVIN: They have been in since - it would be late eighties/early nineties.

MR MARKS: So it's a fair while longer.

MR KEVIN: Yes, it is.

MR MARKS: How many chains are there?

MR KEVIN: I don't know.

MR MARKS: Are they alliance arrangements with the chains, is it comparable to Australia?

MR KEVIN: There is a mixture. Some are aligned with oil companies. Others have taken the initial Woolworths route and set up their own supply chins and are quite independent of oil companies, which is a little bit different here in that the supermarkets we see here are reliant. Some might say that the oil companies are relying on them. It's a relationship that has worked. It works.

MR MARKS: All right. Now, one factor I wanted to ask you but also - we have heard from a few different players that the availability of fuel in the region may improve, and by that I mean fuel refined to the Australian standard and at a reasonable comparative price in the next year. There is a big refinery in India, Reliance Refinery, which will be open for business and looking to expand into this region and so on. There are other areas where expansion is also under way. Do you think that those changes, with all the limitations on importing and the like that you have already alluded to or referred to directly, will have an impact or might have an impact on the market?

MR KEVIN: The availability of supply - when you build a refinery in India, for example, you would be building it for the Indian market primarily and at the margin there might be product available for export.

MR MARKS: Take Reliance, for example. That refinery will be a new refinery entirely. It will be a substantial capacity refinery, such as the big ones in Singapore. It will refine on its own more fuel per barrel per day, considerably more, than the whole of Australia. If we are correct, Reliance will be looking to expand a substantial part of its operations into this region. Now, if that were so - and just on the assumption that it is for a moment - do you see that as having an impact or a potential impact on this market?

MR KEVIN: No.

MR MARKS: Can you just confirm why not? Is it for the reasons you have already are articulated.

MR KEVIN: That probably then takes two of the reasons, assuming you have terminalling and the standards - - -

MR MARKS: Assuming those.

MR KEVIN: You have the terminalling and the standards. I base the answer on a lot of the history that's happened. I mean, even when there was a lot of supply overseas, the big players - Mitsuis, Trafigura's, Glencores and so on, would regularly come down here because they had excess product up there. And very little importing apart from the Woolworths imports was done. Now it's probably a little bit different because there might have been a bit more supply here. But I go back to what I said before, the independents are wary about importing because you still have those other two factors, which is how do you tell your major supplier who has been supplying you here and will stop supplying you if you turn off? How do you - I just don't know. I don't know if I'm helping explain that a bit. But my answer is it is great to hear they have got capacity and they may have some export capacity. Is that going to mean that there will be a big independent supply chain set up from overseas sources? My answer will be no.

MR MARKS: You don't think there will be? Can I change topics a little bit. I want to ask you about the international market a little bit more and what happens there. The petrol - at least so far as Australia is concerned - the petrol being purchased by the majors and by independents and so on to the extent that there is some importation of product by independents, seems to be done through international brokers; is that right? In the case of Mobil and in the case of Shell, they've got international trading companies and the position is a little bit different. Those trading companies organise their supplies or tend to organise their supplies for them, whether it comes from the affiliate refiners in Singapore or elsewhere. Subject to those riders, I want to understand the position. In our examination of the majors, the story we're told is, look, they have to import the fuel, the pricing policy is to base the pricing upon IPP and so on, which is essentially the price at which they buy. So in the international market, the position is as follows: We knock on the door of an international refiner or trader - - -

MR KEVIN: "We" being?

MR MARKS: "We" being a major. We knock on the door and, yes, we can buy fuel and we do, and we buy it at IPP and then of course we have got to pay the landed costs to get it here. And at the end of the day we build the IPP - I call it the IPP, but you know what I mean, the Mogas price, the 95 price, we build that in as the key component and then we add to it these costs. We add on a margin and away we go. That's the way it's done. Firstly, what price they buy at is a bit of a riddle to us. Can I ask you: Do you know anything about that? Do you have any insight into the international market and the basis upon which petrol can be obtained by the majors?

MR KEVIN: I have been fed that same line about - - -

MR MARKS: But do you know anything about it?

MR KEVIN: No.

MR MARKS: I have no doubt you have strong views about it. But to help us really I want to go right to the heart of it and ask you do you have, from your own knowledge, experience or otherwise, the basis or the ability to answer that question?

MR KEVIN: No.

MR MARKS: Thank you. I then wanted to ask you about, just very quickly, about the buy sell arrangements. Again, is that outside your sphere of knowledge? You could express opinions about it, no doubt. You could tell us broadly how it operates, we already know all of that. But is it an area where you profess any expertise?

MR KEVIN: Yes.

MR MARKS: Just on the buy sell arrangements, to make sure we understand them correctly, we understand the reciprocal nature of the arrangements. We understand the foundation of them and so on. The buy sells were the follow-on of the exchange arrangements, and we have been told by the refiners really why that evolution occurred. Under buy sells, refiners are giving each other the ability to operate in a location where a refiner doesn't have a refinery footprint. But are they more than just a distribution at cost? Is there a commercial margin built into these arrangements, can you say?

MR KEVIN: Can I answer it this way?

MR MARKS: Do you understand the basis of my question? I want to know what underlies it and whether there is anything in, say, a Mobil, who is not doing much in the retail market anymore, it's contracting and as is obvious from the retail market, it's a net supplier as it said in open forum to us here. It is bringing in and supplying to others to sell, but what is in it for a Mobil? Do you know where I'm going with the question?

MR KEVIN: Can I try and answer it this way, and stop me if you think I'm giving you my opinion rather than the facts. In Liberty, when the buy and sell took over from the refinery exchange we certainly approached Shell and Caltex and asked them to be part of it. We said we will put down product where you want it, so we want to be able to buy at the price at, say, Caltex, you are buying in Melbourne from whoever they deal with here, Shell or Mobil. And the reaction to that was just, no. The reaction we got was, no, this is - you can't enter into this arrangement because this is - the feeling we got was certainly this is a club, "This is what we are doing." Our clear argument was if you are buying and selling it at a price that you are all happy to buy and sell at, we will buy at that price, too, and sell it at that price, too. We wanted to get into that buy and sell-type arrangement.

MR MARKS: Sure. But vis-à-vis refiners, the heart of the arrangement, the bilateral kind that it is, involves each offering each other something. So to take two, say, BP and Mobil, Mobil has a refinery here, BP a refinery in Western Australia, and there is a logic to the buy sell arrangement. Mobil is able to have a presence at wholesale and then compete with other refiners than BP, in Western Australia, by reference to and reason of the buy sell arrangement. But the reciprocal basis for it is that BP then has the same right and ability in Melbourne or in Victoria. Now, what reciprocal or sell ability did you have to offer?

MR KEVIN: We talked about importing product.

MR MARKS: But you weren't importing.

MR KEVIN: No, we weren't importing. Once again, it can probably be seen as a bit of a - it wasn't us importing at the time.

MR MARKS: I'm just trying to tap in on the realities of this. You weren't importing at the time. You weren't going to be able to import at the time, or if you were it was going to take time - - -

MR KEVIN: Yes, it was going to take time.

MR MARKS: It was a long-term, look, maybe blue sky idea. But is it the reality that if Liberty knocked on the door at one of the refiners and said, "We want a deal like they've got, pointing to a buy sell arrangement", that was never going to be a proposition?

MR KEVIN: That's what we wanted, but we never got anywhere near it.

MR MARKS: You never got anywhere near it because you didn't have to offer a buy sell partner what the buy sell partner could get from the other majors, did you?

MR KEVIN: At the end of it, no. But at the time, you know, it was a logical - we believed the oil companies thought that we could.

MR MARKS: Now, let's accept that that's so and that's the way you approached it or the way you sought to deal with it. Coming back to my question, is there anything in the buy sell for the refiner vis-à-vis the outcome? So that someone like Mobil, for example, would be content with a refiner-wholesaler arrangement where it was supplying a lot of the product it was bringing in to another refiner?

MR KEVIN: I think there is something in it.

MR MARKS: But you don't know?

MR KEVIN: I don't know. If the question is do I factually know, the answer is no.

MR MARKS: Do you have any knowledge about the underlying costs of production at the refinery level here in Australia? And how it compares, for example, to the IPP?

MR KEVIN: No.

MR MARKS: Can I ask you a little bit about a couple of other matters. You talked earlier in your answers to the Commission about the impact of the alliances. I accept that you think they have had an impact. Can I just ask you about the shopper docket. Looking at the alliances, you don't have to be Einstein to come to the conclusion that the shopper dockets are a key element of it, and have been an important part in the gathering of market share. How do you see shopper dockets? First of all, do you see them as good for consumers and, if so, why?

MR KEVIN: I see them on the face of it, the 4c a litre that you get off the price board, as terrific for consumers.

MR MARKS: That's the obvious answer, but what about the longer term answer? Do you think shopper dockets are going to be good for consumers in the long term?

MR KEVIN: As long as they - - -

MR YOUNG: I'm just tapping in really to what you said already and wondering if the end result is going to be something quite different in the Australian market.

MR KEVIN: Let's assume they continue. The experience that the major supermarket chains have had through their service stations by using the shopper dockets has meant quite significant market share increases. Couple that with the fact that they are actually getting many more sites. So they are not only growing volume through existing service stations but they are also getting more sites. My concern is what it gets them to in market share and then their ability to influence the retail prices before the shopper docket discount. That's my - - -

MR MARKS: That's really where I'm coming to. I'm wondering - you have had a lot of retail experience, that's really your bag, if you don't mind me saying so. And it's something about which you can really express a view. If left untrammeled, do you think that the shopper docket scheme we are currently seeing in the market might continue to influence the future of petrol sales in Australia and, if so, with what consequence, please?

MR KEVIN: Well, it will continue to influence and it will lead to that market share dominance of the Coles and Woolworths, without any sustainable robust competitive response from anyone else in the market.

MR MARKS: Why do you think the market share will continue to increase? It's been fairly static for a while, hasn't it. Just focusing on market share by volume. When the shopper docket arrangements came in as part of the supermarket alliances with the majors there was an immediate substantial impact. We know about that and a lot of the players have said that to us. But there has been a recovery from that to some extent and, if you look at the overall market share, it doesn't look to me - and I don't profess to know too much about it - but it doesn't look to me that after the initial impact there has been a giant continuing impact.

MR KEVIN: Don't forget we have got up to between 45 and 50 per cent or around about that.

MR MARKS: We think it's around about 43 per cent, which is of some significance certainly, but it's not the 60 or 70 per cent that we are hearing for a lot of people.

MR KEVIN: No, I don't think that's it's 60 or 70 per cent. But that's probably the effect that some of the smaller people fear. But if it's that sort of 43, 45 per cent - - -

MR MARKS: Really, your point to me, though, is that you think that that will increase, and I'm asking you on what basis you say that.

MR KEVIN: Okay. We have certainly Woolworths looking for other service station sites well away from the supermarkets. We touched on that before. We have Caltex who are trying to manage a whole bunch of Woolworths Caltex sites and another whole bunch of company operated or franchise sites. I can see in time those sites going across to Woolworths. Probably a lesser number, because they will be able to sell a whole lot off. I see that going across, because it's easier for them. Caltex at the moment their franchisees are having a nightmare because of the fact that you might have a Caltex franchise site here and within a kilometre or two kilometres or three kilometres you might have another Caltex site which is merged with Woolworths. I see that becoming too hard for Caltex. And they are moving to company operation of some of those sites. Possibly one of the reasons they are doing that is that it takes away that franchisee complaining to them. So they actually have a free hand, free rein. I see that continuing, I see the sites going across to Woolworths. I see the sites going across to Woolworths. I see that as market share increase. I also see Woolworths, as I said, getting more service stations outside their normal model. When Coles ever gets through the ether with the Wesfarmers takeover, they will be out there doing the same thing. I see that happening. I see the independent, the smaller independents, disappearing. There is evidence on that. So that market is going somewhere. I see that going to the Coles and Woolies in the proportion that they have got now. But the big thing I see is the inability of the players that are left to mount a proper challenge with regard to retail prices, meeting the discount against Coles and Woolies, because over the last five years they have learnt that if you actually do that you will receive a fair, not a fair, you will receive a big competitive reaction from Coles and Woolies. Where they have an ability, where they have a network of 500 or 600 sites across Australia, where they can discount dramatically in one area and subsidise in another.

MR MARKS: When you talk about that cross-subsidisation do you have anything in particular in mind?

MR KEVIN: You can see, logically, if you have a network that spans a whole bunch of markets - - -

MR MARKS: Sure, but are you talking about using profits from groceries to subsidise petrol?

MR KEVIN: No, I'm not going that far. I'm talking about higher margins on fuel over the national network. You average it. That's certainly what national players do. That's what Liberty did. You average them out, so you can afford to take a hit in some market and subsidise them - that is not available to all independent players.

MR MARKS: That's helpful. Thank you. There is just one other area and I don't want you to go without asking you, because of your retail experience. We have heard a lot of evidence about price cycles and the causes of them and so on. They are obviously of significant interest to motorists and they are an important matter for the Commission. I just wanted to ask you your views, and I'm really wanting to be brief with this - do you have a view about what in this present market is driving the cycles that we're seeing? You can take Melbourne as an example if you like. But we have focused on cycles in the Perth, Brisbane, Sydney, Melbourne metropolitan areas. Do you have a view about what is driving the cycle? Is it the majors? Is it the independents? Can you elaborate?

MR KEVIN: What's probably driving it is the inherent behaviour that has been built into just about all the players who have been in a major metropolitan retail market for any length of time. I mean, it's rote behaviour, it's what happens; prices go up and somebody starts cutting it.

MR MARKS: Let me ask you this question. Observed from data that we have seen, there is a real - there is real evidence to suggest that the majors, the oil majors who have a dominant position, and by that I mean usually a refinery and a number of, larger number of, by proportion, of the retail sites in the metropolitan locality, tend to be significant players in the upward movement in the cycle. For example, BP in Perth, with a refinery and a large proportion, the largest proportion of all retail sites is a significant driver, if you look at figures. In Melbourne, Mobil is a key player, 75 per cent of the time. In Brisbane it tends to be Caltex and to some lesser extent BP. Is that a sound conclusion or is that - - -

MR KEVIN: It depends on what time frame you are looking at. You mentioned Mobil in the Melbourne market. Over what time are you basing that on?

MR MARKS: A 13-month time frame, from July 2006 to August 2007, both months inclusive.

MR KEVIN: Well, that's significant.

MR MARKS: It's a significant period.

MR KEVIN: The point I was going to make is that from time to time that major that you mentioned will change.

MR MARKS: Of course, and that has happened, as you rightly observe. But over time - and we took that 13-month period as being a fairly long slab of time to make it - and that's what we have observed. Is that a surprise to you? Is it bleedingly obvious to you? What's your reaction to that?

MR KEVIN: My reaction is I'm surprised that Mobil is the one that is doing most of the increasing.

MR MARKS: In Melbourne.

MR KEVIN: In Melbourne.

MR MARKS: It has a refinery here, it has a large percentage, it has got over 100, nearly 100 out of 700-odd sites; that surprises you, does it?

MR KEVIN: Yes, it does.

MR MARKS: Why is that?

MR KEVIN: I can't - I can only guess at the reasons that Mobil might be doing it. But with their lesser reliance on their retail sign, because they have been divesting much of their sites and selling the subsequent volume, thankfully, to independents, maybe they have taken that sort of role on in their own heads; they are thinking that no-one else is going lift this price up, so we will do the heavy lifting and take that onboard. I'm guessing the regions. The other issue with increases in prices is how long it takes to get the market up. I don't know if you have any data on this. I certainly don't have any data. It is one thing for a major to lift the price up on, say, a

Wednesday at 2 pm. And a good indication of what is happening in the market is how quickly the whole market gets up. Now, in my time on the retail side of Liberty, that process, say someone went up Wednesday at 2 o'clock, you notice it on the price board, it might be until the Friday or the Saturday for some of the recalcitrant independents to lift their price. I think you will find now that what is happening is if someone goes up the whole market is nearly moved in that day or at the worst the Thursday morning. But it's - - -

MR MARKS: Much quicker?

MR KEVIN: It's much quicker. That's sort of backing up what I said before, in that those players who might have in the past stayed down Friday and reaped the benefits by being 10c cheaper than the others, they may well be moving in a far shorter time frame because they are scared of what the supermarkets might do. And that's - - -

MR MARKS: Can you just elaborate on that, "scared what the supermarkets do"? You mean that the supermarkets will then price them out by aggressive discounting?

MR KEVIN: The behaviour that is - that may well be happening is that everyone is moving in a shorter time frame than previously.

MR MARKS: And that's the consequence of greater knowledge and information available?

MR KEVIN: Plus the fear that if I'm an independent, if I don't get my prices up, then I know what happened three weeks ago; they brought the market down, went below me and kept it down for another week. Kept it down for another two weeks. So I'm not going to do that one again, I'm going to go up within the four hours or so.

MR MARKS: So it's a fear that if you don't react, then - - -

MR KEVIN: You will get a reaction.

MR MARKS: You will get a hit from them because or you will be punished by them bringing prices down below what you are charging and leaving them there?

MR KEVIN: Yes.

MR MARKS: Is there much evidence of that happening in this present market? Or is it just the threat of it that you think is a significant stick?

MR KEVIN: The players that are in the market, most, have been through the time where that would happen, where the Coles and Woolworths have taken exactly that behaviour.

MR MARKS: Just a couple of other things before we finish. You said I think that - don't hold me to this because it's only a summary - I think you said in your conversation with the Commission the other day that Liberty found that petrol consumers had a tendency to associate the brand, the Liberty brand, with lower priced petrol. That had a beneficial effect on Liberty in the sense that, although Liberty might on some occasion here and there be higher in price, it wouldn't lose custom. Can you just tell me - is that - is that - - -

MR KEVIN: That's right. Do you want me to expand?

MR MARKS: If you could. It is an interesting point.

MR KEVIN: When Liberty had their retail network, our policy was to be a half a cent cheaper than the competition. And we drove that very hard. And what that did to the consumer was build up a confidence that Liberty was going to be the cheapest or equal to the cheapest in the market.

MR MARKS: Sort of an association in the mind of the consumer that Liberty meant cheap?

MR KEVIN: That's right, Liberty meant cheap petrol. A lot of the times - I probably need to quantify that - but we certainly understood that because of that confidence not every customer that came into Liberty drove around and checked the prices, because they were confident that Liberty was cheaper.

MR MARKS: I'm just wondering in the context of Coles and Woolies whether that's also a reality, that many in the market who might not be observers of prices, and even for that matter that price conscious, might nevertheless take the view that commonsense would dictate that if they don't know anything about prices they are better to go to someone who they associate with being cheap? And that Coles and Woolies might benefit from that? Is that something - - -

MR KEVIN: I would agree with that view, plus the fact - - -

MR MARKS: Is that a real point, do you think, or is it just an interesting surmise on your part?

MR KEVIN: I don't have any data to back it up. It's certainly an interesting surmise. Plus the fact that even if they are not the cheapest I've got a 4c discount from what that is.

MR MARKS: Or whatever that may mean.

MR KEVIN: Whatever that is.

MR MARKS: Discount from what?

MR KEVIN: But I'm still getting the 4c off.

MR MARKS: 4c off something and that sounds beaut to me.

Mr Chairman, thank you very much. I have no further matters.

THE CHAIRPERSON: Mr Kevin, I am going to ask you one question which I will want to be answered in confidence and I think your answer will also want to be in confidence. Is there anyone in the room that you would prefer not to be present?

ADJOURNED **[4.08pm]**

Index of Witness Events