

ACCC INQUIRY INTO THE PRICE OF UNLEADED PETROL

Public hearing – Sydney, 3 September 2007

Time: 2pm

Address: Novatel Brighton
Cnr Grand Parade and Princess Street
Brighton-le-Sands

Room: La Perouse room

Time	Witness	Submission
2pm	United Petroleum Mr David Szymczak Mr Avi Silver	28
	National Roads and Motorists Association Mr Alan Evans, President.	36

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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: NOVOTEL BRIGHTON BEACH,
BRIGHTON-LE-SANDS (SYDNEY)**

DATE: 2.00 PM, MONDAY, 3 SEPTEMBER 2007

MR SAMUEL: My name is Graeme Samuel. I am the Chairman of the Australian Competition and Consumer Commission and the chair of this Public Inquiry into the price of unleaded petrol.

5 As chair, I welcome you all and declare this hearing open. I am joined by John Martin on my right and Commissioner Stephen King, who are the other two presiding members for this inquiry.

10 This hearing is convened under Part VIIA of the Trade Practices Act. It is held pursuant to the Federal Treasurer's approval for the ACCC to hold a price inquiry into the price of unleaded petrol.

15 Matters to be taken into consideration by the inquiry shall include, but not be restricted to: The current structure of the industry; the extent of competition at the refinery, wholesale and retail levels, including the role of imports; the determination of prices at each of these levels, including the methodology for determining wholesale prices; and current impediments to efficient petrol pricing and possible methods to address them.

20 During the course of the inquiry we will endeavour to find answers to these issues.

The ACCC is pleased that written submissions to the inquiry have focused on pertinent issues. With regard to submissions, witnesses should take them as being read.

25 If time permits, following the questioning of scheduled witnesses, I may invite others here today to give evidence but, as with scheduled witnesses, anyone planning on giving evidence to this inquiry will need to be sworn in and subject to questioning under oath.

30 We understand that the price of petrol is of immense concern to all Australian motorists. It will greatly assist us in the efficient and effective operation of hearings if participants confine their remarks to the critical issues and not simply provide commentary on the price of petrol.

35 I strongly urge those of you participating to abide by this requirement. The public hearings will enable the ACCC to hear evidence that will help inform the ACCC in reporting to the Treasurer.

40 Results of the ACCC's inquiry will be reported to the Treasurer by 15 October 2007. Unless directed otherwise, the ACCC must make its report public after 28 days.

45 The ACCC views the primary goals of the inquiry as being to increase transparency in the marketplace about petrol prices at the various levels of the industry and to identify any current impediments to efficient pricing.

Before we start, I will go over a few procedural issues. 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 outlines the procedures followed by the ACCC at public hearings. The names of the witnesses who are scheduled to appear today have been published on the ACCC's website.

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Some important procedural points for taking evidence at today's hearing: A number of witnesses appearing today will be questioned by counsel assisting the ACCC. Counsel appearing today are Senior Counsel Simon Marks, joined by Fiona Forsyth.

10 All evidence will be taken on oath or affirmation. Where a witness statement has been provided, the witnesses will be asked to verify, on oath or affirmation, that their statement is true and correct.

15 Witnesses will then be questioned by counsel assisting the ACCC. Members of the Commission may also have questions for witnesses.

Witnesses will then be given the opportunity to make any clarifying remarks. These should be confined to clarifying or responding to issues that arise during questioning.

20 I would also note that the conduct of this inquiry is within the discretion of the inquiry chair. Persons who use insulting language or otherwise disrupt the hearing may be excluded from the hearing.

25 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. The ACCC intends to hold hearings in public as far as possible, but we do want to be able to ask witnesses about matters that are
30 commercially sensitive. This means we may need to close the hearings at certain points.

35 An audio recording of proceedings will be taken. This recording will be transcribed and the transcript of hearings will be made available on the ACCC's website as soon as possible after the hearing. Evidence given in private will be recorded and transcribed but will not be made available on the website.

40 The ACCC may find it necessary to conduct follow-up questioning of witnesses on certain issues before the conclusion of this inquiry and we reserve the right to do that. So notwithstanding that witnesses may have completed the giving of evidence at any particular hearing, we may in fact call upon witnesses, re-call witnesses, to provide some follow-up questioning.

45 With those matters dealt with, I propose to begin by asking the witnesses from United Petroleum, Mr David Szymczak and Mr Avi Silver, to please come forward.

MR SILVER: My name is Avi Silver. I am the managing director of United Petroleum.

MR SZYMCZAK: My name is David Szymczak, I'm the general manager of United Petroleum.

5 THE CHAIRPERSON: Thank you. Do you have legal representatives with you here today?

MR SZYMCZAK: No.

10 THE CHAIRPERSON: I would like to inform you about the rules regarding the giving of evidence at this inquiry. Firstly, it is an offence to refuse to be sworn, to refuse to answer questions or to refuse to produce documents that are required of you by summons under Part VIIA of the Trade Practices Act 1974. Secondly, it is an offence under the Criminal Code to give evidence at this inquiry that a witness knows is false or misleading or omits any matter or thing without which the evidence is misleading. Further, I advise you that you can either swear under oath or, if you believe that an oath would not be binding or for religious reasons you are prevented from swearing an oath on the bible, you may make an affirmation of your evidence at this inquiry.

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<AVI SILVER, SWORN

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<DAVID SZYMCZAK, SWORN

THE CHAIRPERSON: Mr Marks?

30 MR MARKS: Gentlemen, I have a series of questions that I would be greatly assisted by your answers to on behalf of the Commission. As we have the advantage of there being two of you, you will ultimately have to decide between yourselves as to who answers a question. I will direct my questions, if I may, predominantly to Mr Silver, you are the director. But, Mr Szymczak, please feel free to answer such questions as you think you can add something to.

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I want to start, if I may, by just acknowledging we have a copy of your written submission, for which we are grateful, and also some further materials which you have provided. You can take it that the Commission has read that material. We will have a number of questions arising from both that we would like to ask you today and there will be other matters not covered. Your submission deals with the retail aspects of the market in some detail and in particular the shopper docket issue or schemes. We do want to ask you about that, but there are a number of other matters which our questions will traverse. So that gives you some framework.

45

I want to start if I can, please, with some questions about what United does in the marketplace. You say in your submission that it is the largest independent retailer, that it operates nationally. You say it has got 189 branded United locations and then

there are another 300 which you describe as independent service stations. Can I ask you, Mr Silver, please, can you tell us clearly - - -

5 MR SILVER: 189 retail sites totally controlled by United Petroleum.

MR MARKS: Does that mean they are owned and operated by you?

10 MR SILVER: Some are freehold and some are leasehold, but the possession of those sites are in the hands of United Petroleum.

MR MARKS: What about the remaining 300?

15 MR SILVER: The remaining are what we call resellers. I would say about two-thirds of them are branded United, and a third of them are branded in either the proprietary name or any trading name that the proprietor might have chosen to use.

20 MR MARKS: Let me just make sure I understand the general structure that you had at retail. You have United owned sites and they are commissioned agent sites, are they?

MR SILVER: They are managed by commissioned agent mainly.

MR MARKS: I take it that at those sites United sets the price?

25 MR SILVER: Correct.

MR MARKS: Then there are, as you say, independent owned or operated sites. They are United branded in some cases?

30 MR SILVER: Correct.

MR MARKS: There, I take it, the independent owner sets the price?

35 MR SILVER: That is right.

MR MARKS: Then there are, as you say, a series of what I will describe as unbranded sites?

40 MR SILVER: Unbranded.

MR MARKS: I take it that the independent obviously sets the price there?

MR SILVER: Absolutely.

45 MR MARKS: I think you have also said that United doesn't have any franchisee or lessee locations now, is that right?

MR SILVER: At the moment we operate only with commissioned agents or we operate the sites ourselves if we can't find an appropriate commissioned agent to manage the site. Nevertheless, we are launching a franchising concept in the immediate future and the plan is to move on to franchising.

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MR MARKS: I will come back to that, if I may, a little later. But have we covered there the parameters of the retail site structure?

MR SILVER: I would say 95 per cent would be commissioned agent operated and 5 per cent would be company operated just because we didn't find the appropriate commissioned agent to place.

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MR MARKS: That's useful. Thank you. I want to ask you some questions about the refining and wholesale area of the market and go through that area with you and elicit some information.

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MR SILVER: Okay.

MR MARKS: Firstly, can you tell us what the sources of your United Petroleum products are? Where do they come from?

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MR SILVER: Only petrol or gas as well?

MR MARKS: All of them, just to get a feeling. I know your principal suppliers are Shell and Mobil.

25

MR SILVER: Correct.

MR MARKS: I want to understand how the supply operations work and in relation to what products, please.

30

MR SILVER: Shell and Mobil are suppliers of petroleum products and a little bit - a small amount - of LP gas. Shell is the major supplier, with a greater contract than Mobil. We like to obtain supply from dual suppliers if we can at every market. Obviously each supplier has their own overheads scheme and in some markets they are more competitive than others. I would say that in most markets we have dual suppliers. And in some market we just get supply from one of the two suppliers because the other one simply hasn't got a competitive price to offer.

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MR MARKS: Let me just ask you while we are talking about markets how you delineate markets.

40

MR SILVER: By state.

MR MARKS: But not necessarily metropolitan/regional, simply by state.

45

MR SILVER: By state.

MR MARKS: You say Shell is your major supplier.

MR SILVER: Yes.

5 MR MARKS: What role, then, does Mobil play? Does it play a pick-up role?

MR SILVER: No, it's a second supplier. It supplies a material quantity of fuel.

10 MR MARKS: In terms of volume, are you able to tell us what - - -

MR SILVER: The Shell contract is in the 600 and a little over. And the Mobil contract is probably a fraction below that.

15 MR MARKS: Are you talking about megalitres per annum?

MR SILVER: Yes.

20 MR MARKS: I want to then ask you within the parameters of this discussion a little bit about the decisions you have made since 2000 in your operation so that we can understand where United sits in the market and what it does at wholesale. Firstly, does United import today any petrol into Australia from outside Australia?

25 MR SILVER: We have not done it - funny you say, we just booked our first ship today.

MR MARKS: We will come to that, but you say you have not done it for how long?

MR SILVER: Never.

30 MR MARKS: You have never, ever imported fuel into Australia?

MR SILVER: No.

35 MR MARKS: Is there a reason why you have chosen to obtain all of your fuel from Australian suppliers up till now?

40 MR SILVER: Yes, of course it was available litres that I have for an offshore deal. We are a fairly young company. So as we were building up the litres and obviously chasing a better price, we were relying on our local suppliers and it's only now that we managed to obtain, if you like, reserve volumes where we can mix it with a bit of importation. I always had the philosophy that I wanted two suppliers. Ideally I wanted one offshore and one locally, but so far we have two local suppliers due to the fact that we are a young company, growing company, and never had the litres to offer to an overseas supplier.

45 MR MARKS: When did you start in the Australian market?

MR SILVER: United Petroleum opened its first site in '96 on the Mornington Peninsula. I was involved in the industry before, but not under the United brand name.

5 MR MARKS: Since then you have developed operations in - - -

MR SILVER: All states.

10 MR MARKS: The last four or five years in particular have seen changes of a structural kind in our petrol industry here in Australia. I want to understand how and whether these changes have impacted upon your business at the wholesale level.

MR SILVER: I would say that the changes - - -

15 MR MARKS: Can I just ask you to focus on a few different things and then I will ask you more generally, because I want to understand how globally your business has been affected. There have been a number of changes to fuel standards. How have they impacted, if at all, on United's wholesale operations?

20 MR SILVER: Fuel standards has been an issue for a few years. It has been a graduated change to the quality of fuel available in this country and refined in this country. The major impact was that importers were finding it very difficult to find overseas refineries that would produce that particular standard. If they were prepared to do so, they had to flush their system, which made it uneconomical.

25 MR MARKS: Describe to me, "flush the system", what do you mean by that?

MR SILVER: They don't produce that type of fuel day in, day out. To be able to get this quality fuel they had to flush their system and then produce a batch to the
30 standard and then go back to what they are producing. But the flushing made it uneconomical and, therefore, it was fairly difficult to import the quality of fuel that is required now in our markets. There were a few markets that are producing it, like California and others, but not many in our region. Therefore, the impact that we felt as retailers is that the few importers that were operating in Australia became
35 uncompetitive in comparison to pre-changing of the quality of fuels.

MR MARKS: In terms of the supply of the fuel through Shell and Mobil to your company, was that impacted by a tighter supply?

40 MR SILVER: No. The impact was on price. The oil companies or the refiners justified an increase in price due to the fact that they invested substantial amounts money to enable them to produce type fuel and, therefore we, have suffered significant increases in price. But it didn't really impact on our trading, because everybody was subject to the same increases.

45 MR MARKS: Your supply arrangements are under ongoing contracts with both of those organisations?

MR SILVER: Yes.

MR MARKS: Do we take it that those contracts have price review arrangements -
periodic price review arrangements?

5

MR SILVER: With one of our suppliers, no, the price is the price and it is for the term. With our other supplier they can change the price if their production cost or any other cost that will need to be substantiated - they have been subjected to.

10 MR MARKS: But is the position that neither of the supply contracts has a review provision enabling the parties to effectively negotiate going forward at a periodic interval the pricing?

15 MR SILVER: No, the price is for the term of the contract. We do have economic hardship that both parties want in the contract just in case something goes off the boil and you need to get out because economically you can't sustain the balance of the contract. You obviously have to prove why. I guess it's a way out due to unsatisfactory pricing in different market conditions.

20 MR MARKS: What about the closure Port Stanback refinery? You were taking supply from Mobil. That is one of your key suppliers. Did that have any impact?

25 MR SILVER: Yes, that caused our prices to go up. Both of our suppliers ship into the South Australian market. Mobil is using a bit of a smaller ship than Shell does, and therefore Shell's price is a little bit more competitive.

MR MARKS: I think Stanback was producing, what, about 78 - - -

30 MR SILVER: I'm not sure what they were producing.

MR MARKS: I think it was about 78,000 barrels a day. I'm just trying to work out, was the closure something that caused a tightness in the market? Did United discern a change?

35 MR SZYMCZAK: I think that it happened at around about the same time as the premia, and it did cause a tightness in supply. There is no doubt about that. But the price effect I guess got mixed up with our contractual negotiations at the time. So very difficult for us to say well it's this or it's that because it's a bit mixed together. But there is no doubt that it is a tighter supply situation and the incremental barrels
40 that the oil companies bring in are obviously at import parity plus. So there was an impact.

MR MARKS: I'm just thinking of the dates here. If you look at the Mobil
45 production, when Stanback ceased in the beginning of July 2003.

MR SZYMCZAK: Yes.

MR MARKS: And standards had started to come in from January 2002 onwards. They were progressively introduced from then through until 2006. You say it's a little hard to attribute exactly to one or the other that there were changes?

5 MR SZYMCZAK: My recollection is that the supply negotiations fell on end of calendar years. Particularly with Shell contracts, they were negotiated towards the end of the years, so you didn't really see the impact until that time. To what extent you can attribute it to either it's very difficult to say.

10 MR MARKS: There was also around this time - I am thinking now of around 2003-04 - there was a glut in the availability of refined petrol in the Asia-Pacific region. I was wondering how that impacted. Is that something you are able to say anything about?

15 MR SZYMCZAK: I don't think we saw an impact at all.

MR MARKS: Not in the prices under your contract?

MR SZYMCZAK: No.

20

MR MARKS: Or availability of supply?

MR SZYMCZAK: We really haven't had a problem with availability of supply. Generally what we have needed we have been able to purchase. So that really didn't

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MR MARKS: Can I ask you some questions about your terminalling space/storage space. You might need to explain to us where your storage facilities are and from where you supply from each of those storage facilities.

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MR SZYMCZAK: Generally, if you are referring to terminals as opposed to depots, we have no terminalling locations under our direct control.

MR MARKS: So where do you - you get your petrol from the Shell refinery and

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MR SZYMCZAK: Let's start with Melbourne. In the case of Melbourne, most of our supply we pick up from Shell Newport, which is a terminal joined by pipeline to the Shell Lara refinery. We also pick up from Mobil Yarraville, which is just down the road. In Sydney we pick up mainly from Parramatta Shell terminal and Silverwater Mobil terminal. In Brisbane we pick up from Shell Pinkenbah terminal and I think there is also a Mobil terminal, though I can't recall the name of it. Do you want me to go on with the various terminals?

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MR MARKS: If you could give us a broad indication of where your terminalling space is.

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MR SZYMCZAK: Generally we use the oil company terminals to pick up.

MR MARKS: Your principal retail markets, tell us about those.

MR SZYMCZAK: Principal markets I guess are Victoria, New South Wales. We also have sites in every other state. Generally we have quite a large mixture of
5 country and regional sites, and I guess the percentage would be about 60 per cent country - country/regional versus city. In the metropolitan areas our sites have tended to be more on the outskirts of the cities. So places that are further away from the actual centre, places like Marriwarra, Branburn, those sorts of suburbs that are a little bit further out.

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MR MARKS: You said, I think, Mr Silver, a short time ago that you had made a decision only very recently to start importing.

MR SILVER: Yes.

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MR MARKS: Can you tell us about that decision, please, why it was made?

MR SILVER: It was made because it's a source of supply that we wanted to explore and long term have it on a regular base. The parcel that I have mentioned is for the
20 Tasmanian market, and it will be stored in the Mobil - ex-Mobil terminal in Bell Bay, which is controlled today by a company called Mastelle.

25

MR MARKS: What I wanted to explore with you - I want to put this in some context - we have heard quite a lot of evidence recently about the availability of fuel refined to Australian Standards from external suppliers. We want to get a better idea of what the true position is.

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So far as your inquiries go, do I take it that before this decision was made you explored on your company's behalf who might be able to source fuel to the Australian grade from international sources? Can you tell us about those inquiries and what you found?

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MR SILVER: It wasn't done by me personally. We had consultants specialising in that sort of work. What we find, today there are quite a few sources where we can buy fuel which is suitable for our market. Quite a few of them were in our region, especially Korea. Japan is a good address for diesel. Singapore. So it wasn't a question of availability. It was rather a question of price.

40

MR MARKS: So let me just explore that a little further, if I may. I just want to talk for a moment about refined petrol and leave diesel just to one side. Who are, as best you can discern it at the moment, the available suppliers in the region that can supply Australian petrol to Australian Standards at the present time? For example, let's start with Singapore. Obviously, we know about Exxon Mobil. Are there other refiners in Singapore who you know can supply petrol to the Australian Standard?

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MR SILVER: I think David would be better suited to answer that. I do know that there are some more.

MR SZYMCZAK: Clearly you can obtain supply from the majors and it is a matter of at what price. By the majors I refer to Mobil, Caltex, BP, Shell out of Singapore. As far as - - -

5 MR MARKS: Are they all out of Singapore?

MR SZYMCZAK: I'm not sure where their product would come from, but I imagine it would be out of Singapore, yes. Apart from that, most of our dealings would have been with traders such as Masefield, such as Trafagura, who then on-source the
10 supply. In the past I have had a discussion with Luke Oil, which is a Russian owned company based in Singapore. But as far as what are the refineries that it may come out of and where is the supply, it's not an area that we have spent a great deal of time in.

15 MR MARKS: I just want to understand the position, because we want to know what is available in the market at the moment against which Australian product has to or at least theoretically compete. We know that in Singapore there are major refineries. There is Exxon Mobil, there is Chevron, there are other refineries. Petrol can be
20 obtained from those refineries to Australian Standard. Have you had any negotiations with any refineries in Singapore in this last process wherein you made a decision to import fuel?

MR SILVER: Yes, we spoke to Mobil in Singapore.

25 MR MARKS: Were Mobil prepared to supply you?

MR SILVER: Yes.

MR MARKS: You say it was a question of at what price?
30

MR SILVER: Correct. Price wasn't good enough.

MR MARKS: Were there any other refiners?

35 MR SILVER: No, it is the only refiner that I spoke to. But we were told by the broker that the parcel we have booked now, the one we referred to before, was actually coming out of Korea. Who refined it in Korea I do not know.

MR MARKS: When you say the broker, this last decision has been made through
40 the intervention of another supplier?

MR SILVER: I'm sorry?

MR MARKS: I just want to understand what the bottom line position is. You are
45 negotiating with one supplier in Singapore. The price didn't attract you.

MR SILVER: We negotiated with Shell, we negotiated with Mobil in Singapore. We negotiated with Masefield, which is a large international brokerage firm, and they end up getting the business, purely based on price.

5 MR MARKS: And they said to you that that petrol was coming out of, they thought, Korea?

MR SILVER: Korea.

10 MR MARKS: You mentioned Japan. Is that only diesel or is there also a source of refined petrol to Australian Standards?

MR SILVER: I just know around the industry the talk is that Japan is an extremely good source for diesel. They are long on diesel and they are offloading it at very competitive prices.

15 MR SZYMCZAK: We have had a number of Japanese companies come and see us over, say, the last couple of years, keen to sell diesel, not very keen to sell gasoline at all.

20 MR MARKS: When you say not very keen, have you inquired as to whether they could?

MR SZYMCZAK: Basically, they have told us that Japan is long on diesel but short on gasoline; that at some times of the year there may be gasoline available, but really they are on a diesel mission.

25 MR MARKS: From the work you have done of late, are you able to say that at the present time you can obtain fuel from international refiners at or refined to the Australian Standard, the question is at what price?

30 MR SILVER: And where you put it.

MR MARKS: And where you put it. Let's take the price first, if we may. The price when you are purchasing from international refiners is based on the IPP benchmark, is it?

35 MR SILVER: No, it's based on Platts Singapore, either RON 92 or RON 95. Then you build in a shipping component, the dollar and so on.

40 MR MARKS: That's the benchmark to which I was referring. Are you obtaining petrol under this new contract that you just arranged at a Platts benchmark price?

MR SILVER: Yes.

45 MR MARKS: Is it the 92 price or the 95 Mogas price?

MR SILVER: It's off 92.

MR MARKS: Does that 92 price buy you 91 octane petrol or does it buy you 92 RON petrol?

5 MR SILVER: I believe it buys us 91.

MR MARKS: Is there a reason why - I imagine it's simply because there isn't a 91 Mogas price, that you are buying at 92?

10 MR SILVER: We haven't been offered 91. I know there is lower RONS.

MR MARKS: Is there?

MR SILVER: Yes.

15 MR MARKS: But I don't think there is anything above - - -

MR SZYMCZAK: No. I guess it's the markets for buying gasoline. The two that are quite a deep market is 92 and 95 quotes. Generally if you are negotiating it is either off 92 or 95.

20 MR SILVER: And a bit of 97 from time to time as well.

MR MARKS: Can you help us with those negotiation details, please, because it is an interesting issue. I should say also that, just to give you some degree of comfort, if in the course of answering any of these questions you are uncomfortable answering them in a public forum and you would prefer - - -

MR SILVER: It's getting to be a bit like that.

30 MR MARKS: Please feel free to say so and we will try to accommodate you. Bear in mind that at these inquiries everybody is being asked these questions, and we don't want to go into private session to the extent we can avoid it for obvious reasons, but we will try to accommodate it. I do want to understand, though, the 95, 92 Mogas prices and the basis on which they are used to trade. That's an important
35 consideration for us. When we look at the oil majors, what we are seeing is predominantly negotiations for imported fuel based on a Mogas 95 quote. You have been able to obtain a quote based on 92. You say that provides you with fuel to a standard which is appropriate for the Australian market? Can you explain to us why one might be trading on Mogas 95 rather than 92?

40 MR SZYMCZAK: I guess I can't give you the overall answer. What I can tell you is this: In our negotiations and discussions with the majors in Australia, the quote that they always want a quote off is 95. With the traders we have spoken to quite often they will quote off 92 and usually they will quote off 92.

45 MR MARKS: Is there, are you aware, of a reason why 95 is the popular quote price with the majors?

MR SZYMCZAK: I think that's something you would need to ask the majors. I understand they do the buy/sells with each other off the 95 as well.

5 MR MARKS: Do you know whether they also buy on the international market at 95 or whether they buy at Mogas 92?

MR SZYMCZAK: I don't know.

10 MR MARKS: This latest supply of fuel that you have been able to obtain, is it at a price which is competitive with the price being offered to you by the two Australian majors with whom you deal?

MR SILVER: Yes, it is.

15 MR MARKS: Is it a possible alternative source for greater volumes in the future?

MR SILVER: Yes, it is.

20 MR MARKS: Is it a possible basis on which you will be able to negotiate more palatable or better prices from your Australian suppliers do you think in the future?

MR SILVER: Hopefully.

25 MR MARKS: This arrangement that you have just entered into, will it be or is it already the product of a long-term supply arrangement or is it a short-term arrangement?

MR SZYMCZAK: We would like to leave that to a private discussion.

30 MR MARKS: Sure. We can come back to that. Can I ask you just a more general question. If United was to decide in the near future to access more of its fuel from international sources, does it have the requisite storage facilities in Australia to do that and, if so, to what extent?

35 MR SILVER: Not in all markets.

MR MARKS: Tell us about that, please. I want to understand where you could do it, where you can't do it and why.

40 MR SILVER: All right. Let's start from Victoria and we will go around the coast. In Victoria there is only one independent storage facility that can take those parcels, and that is Hastings.

45 MR MARKS: Is Hastings the Trafagura facility?

MR SILVER: Yes, it is. I believe it is on the market and I believe that it is close to be sold. We don't know who is buying it and therefore we don't know what the future will hold for that particular facility. Then if we go to New South Wales, we

have Bopec. But if you wanted today to use Bopec as a storage I don't know if they will have the space to accommodate you.

MR MARKS: Have you asked them recently?

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MR SZYMCZAK: I think the answer would be - my last discussion with them indicated that there wouldn't necessarily be a problem except that you would have to have tanks built. So you are probably talking 12, 18 months if we pushed the button today.

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MR SILVER: There is a storage place being built in Newcastle, I believe. That's a couple of years away. Then in Queensland there is the Neumann terminal, but I don't think that would accommodate a third-party parcel on a throughput basis. I don't know.

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MR MARKS: You haven't discussed that?

MR SILVER: No, long term I would doubt it. Northern Territory, again, is Bopec. Bopec, we wanted to ship some product into that terminal, they didn't have the storage. Happy to build tanks, but again if we press the button it's a little while to come. That was in regards to ethanol.

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MR SZYMCZAK: That was, yes.

MR SILVER: So it was a smaller parcel. Nevertheless they couldn't accommodate it. They had to build more tanks for that purpose.

25

MR MARKS: Is the reality that - - -

MR SILVER: You couldn't ship to the Northern Territory.

30

MR MARKS: What about WA?

MR SILVER: WA I believe you can.

35

MR MARKS: You have made any inquiries?

MR SILVER: Not directly. But I think you have got Coogee there, which is an independent terminal. I haven't made an approach, but it's very possible that they could. They are under contract to Mobil. The fuel that we get from Mobil today we draw from there. The other terminal is Gales, which they would probably agree to accommodate someone on a throughput deal, but again we haven't asked them.

40

MR MARKS: Just to understand your position, then, before I move on, are you planning on - at this stage - expanding your importation of fuel in the future?

45

MR SILVER: Yes.

MR MARKS: As a consequence of that, will you be commencing, if you have not already begun, discussions with various storage facilities in Australia to see the extent to which you can utilise those facilities for international supply purposes?

5 MR SILVER: Yes, we are at the very early stages. We have spoken to some of them. We are negotiating with one oil company to buy a sea terminal off them. I don't know if we will be successful or not, but we are trying. I think that it will be a little while before we will be able to ship into each state. But we will just take each opportunity as it comes and try and split our supply between local and offshore to the
10 markets that will allow us to do so.

MR MARKS: Have you considered the possibility of getting together with one or more of the other independent operators and wholesalers in Australia to see if you can, on a combined basis, import fuel?

15 MR SILVER: No.

MR MARKS: Is that something that you would consider doing?

20 MR SILVER: Yes.

MR MARKS: I'm thinking about volume, obviously, but would there be an advantage - - -

25 MR SILVER: If I look at Victoria today, I couldn't think of anyone that I could propose to share a load with. There would be some markets that you could find a partner, I guess.

MR MARKS: But it's not been something that you have explored to date?

30 MR SILVER: Not yet.

MR MARKS: Is it something you might explore?

35 MR SILVER: We will be.

MR MARKS: The market at the present time at the refining/wholesale level, do you regard it in its present state as a competitive market?

40 MR SILVER: Compared to what? Previous market?

MR MARKS: Just in its present state, do you think it's competitive? You know you have got four major players in the market. There are other independent operators in the market. Is the market operating competitively, do you think?

45 MR SILVER: Not as competitively as it was. But, yes, it is competitive.

MR MARKS: Do you want to elaborate on that?

MR SILVER: Yes. If you went back five or six years ago, there were more players in the marketplace. There were more independent chains that were driven by price. A lot of them have disappeared.

5 MR MARKS: This is at the refining/wholesale level.

MR SILVER: No, that's at the retail level.

10 MR MARKS: I understand what you are saying and where you are going, but I wanted to focus just on wholesaling at the moment.

15 MR SILVER: The wholesale market has changed completely. We have four majors, three of them are not interested in you at all as an independent. Shell, if you are a one-off service station they have no interest in you. Caltex will have no interest in you whatsoever as an independent service station. Mobil will have no interest in you as well. BP will under their own terms and conditions and they will insist on you branding your site as a BP site, and they will charge you for the brand a monthly fee. As a one-off service station or a small operator you don't have many options. You have very few options today. If that's what you refer to, it's not as competitive as it was. It is not even remotely close to what it was.

MR MARKS: What about for your organisation?

25 MR SILVER: Our organisation is a little different because we are talking big parcels of volume. That is attractive to refiners, to enter into a contract with one entity, one statement. We have people in our organisation that worked for oil companies, they speak their language, they know how the deals are done and they find it easy and convenient to do deals with us. With our level we have no problems with supply.

30 MR MARKS: Now, what about the other medium-sized players? You are the largest.

35 MR SILVER: They will find it harder. Again, it depends what market they are in, who is the refiner, who is the importer, what fuels are available in the marketplace. But in general they will find it harder, and the smaller you are the harder it will get and the worse the price that you obtain will be. I think the future for the one-off operators is very, very grim.

40 MR MARKS: I want to ask you a few questions about your prices. These may be matters that you want to discuss in private session. If you do, we can accommodate that. But I wanted to ask you some general questions first. Terminal gate pricing as a concept, there seems to be quite a lot of confusion around it conceptually because nobody seems to adhere to it much. Tell us about it. Is the position that terminal gate prices are used as a basis or are they really not? What is your experience in the
45 wholesale market of the terminal gate price that is offered?

MR SZYMCZAK: I guess increasingly it's less relevant. If you go back five years ago, there were a lot of people that bought off TGP and had a whole lot more

importers. But a lot of the smaller independents that were buying off TGP have now gone. So it's of less consequence. A lot of the larger players buy off formulas. So it's a benchmark, but it is of less emphasis in the industry than what it had before.

5 MR MARKS: So it was relevant, was it, when small players were buying on a more spot arrangement basis?

MR SZYMCZAK: It is. But I guess it's still relevant for some of the smaller ones. But what I'm saying is the proportion of that market has decreased to a great degree.
10 So the terminal gate price as it is is of less consequence in the industry, I guess.

MR MARKS: For those on long-term contracts or long-term supply arrangements, you say there is normally a reference price or some sort of an agreed price which may or may not be close to terminal gate but may have all sorts of factors built into it.
15

MR SZYMCZAK: Terminal gate is just really a formula, at the end of the day. I guess it is a reference point for most contracts or all contracts really.

20 MR MARKS: When you say it's a reference, what does it mean? Does it mean it's the maximum wholesale price effectively from which by volume and other advantages you can get discounts? Is there any meaning to be given to it.

MR SILVER: I don't think it's got any meaning in our industry, because oil
25 companies can change TGP as they see fit. Therefore, it really reflects how much fuel they want to sell. And it's not a mechanism that they adopted to be the main gate for customers. And I don't know if anyone buys by TGP today, to tell you the truth.

30 MR MARKS: Do you publish a TGP price?

MR SILVER: We publish a wholesale price.

MR MARKS: You call it a reference price, do you?
35

MR SZYMCZAK: We call it a wholesale list price.

MR MARKS: And I presume that's based on terminal gate, is it?

40 MR SZYMCZAK: Yes.

MR SILVER: Well, it is based on a price that we want to sell the product for. I really don't have a formula that I need to establish what price I'll sell the fuel tomorrow. We simply look at our buying price. We look at how much product we
45 have available and then we'll decide we will sell today for such and such. Look at what our competitors offer and come up with a price. If we want to sell more, we will put it a little bit below our competitors, or otherwise not.

MR MARKS: Can I ask you: Is your basic sell price formula built upon a buy price effectively? Do you take your buy price and then say, "This is what we need to add to that price in order to get the margin we want"?

5 MR SILVER: That's right.

MR MARKS: And the sale price we are prepared to go with is X.

10 MR SILVER: If supply is tight we might put it up a couple of points to slow the volume.

MR MARKS: Is the reality then this, that volume will be an important consideration?

15 MR SILVER: It's a combination. Volume without margin is not important at all.

MR MARKS: I'm thinking more of you selling. When you are selling to somebody, I imagine that volume is an important consideration?

20 MR SILVER: No, it's how many dollars you are left with at the end of the transaction. That's what is important. It's not the litres, it's the dollars.

25 MR MARKS: But if you have got somebody buying a lot of fuel from you, for example, a lot of the time, they're likely, are they, to strike a better price or get a better discount from your basic reference price than somebody who is buying less; is that the way it works?

30 MR SILVER: I don't really have any chains that I supply. It's all individual bodies or if it's service stations, or it might be a factory or it might be a government body. So we don't have those types of negotiations with people or entities coming and offering us big parcels of business for a highly competitive price.

35 MR MARKS: So is the position, then, that you base your price upon the buy price that you get? Do you have a set margin?

MR SILVER: We have a margin we like to work. It's not set, but it's something that we adopted that that's what we should try and achieve.

40 MR MARKS: The margin, is that something that you would prefer to deal with in a private hearing?

MR SILVER: Definitely.

45 MR MARKS: The price that ultimately you achieve as your sell price, is it a competitive price? Does it put people who buy from United into a competitive position?

MR SILVER: We try to make sure it is competitive with what is available in the marketplace, yes. If it wasn't, they wouldn't buy from us.

5 MR MARKS: The buy price that you are getting from Shell or Mobil or whoever it might be, that is good enough to enable you to do that?

MR SILVER: Absolutely.

10 MR MARKS: Can I then ask you - you touched on this already, Mr Silver, but can I just you to elaborate a little on who your main customers are so that we can get a feel of the dimension. You have, you say, no very large customers.

15 MR SILVER: I will tell you about our wholesale business, if you like. We supply single service stations. We have probably 10,000 farmers on our books. We have 300-odd transport companies. We have government bodies. Our wholesale business is really diversified. It is not only service stations, it is anybody that needs fuel. But I couldn't tell you of a client that has multiple outlets of any type or colour.

20 MR MARKS: Tell us about Independent Fuels and Andrews Oils. What are those companies?

25 MR SILVER: Independent fuels is the trading name of our wholesale arm. So our wholesale activities are done under the entity of Independent Fuels. Andrews Oil - as Mobil Oil been offloading parcels of their business and mainly their country business, Andrews Oil is the old Mobil distributorship, if you like, that operated from Adelaide up through the Riverland to Renmark, down to as far as Murray Bridge and down south. So it's a wholesale arm that we acquired from Mobil in September of 2005.

30 MR MARKS: Can I ask you, then, some questions about your retail operations, just to make sure we understand those. You explained to us a little earlier in the questions what sites you have in terms of structure. Where are the majority of your sites located? Can you give us a feeling state by state?

35 MR SILVER: Sure. If you would like, we will start with New South Wales. Two-thirds of my sites are in the country or regional centres, mainly between Newcastle and the border with Queensland, a little bit on the other side of the Blue Mountains. Those sort of 60 per cent or 70 per cent being in the country are as a result of buying three Mobil distributorships again in New South Wales. We bought
40 the representation from Coolangatta down to Newcastle to two distributors, Performance in Coffs Harbour and Midcoast in Newcastle. And then we bought the distributor called Excel, which operated on the other side of the Blue Mountains. Referring to Orange, Dubbo, Bathurst - - -

45 MR MARKS: So how many sites do you have in New South Wales. Two-thirds are regional.

MR SILVER: Our own sites - we have about 50 sites that we control.

MR MARKS: And how many branded?

MR SILVER: About 110 branded sites.

5 MR MARKS: That's regional?

MR SILVER: The 110?

10 MR MARKS: No, of the two thirds which you set out - - -

MR SILVER: Fifty is United owned and controlled, where two-thirds of the 50 is in the country, one third in the city, plus 110 resellers. And I would say there are probably fifty-fifty between city and country.

15 MR MARKS: Do you have any idea of what proportion of the total number of sites in New South Wales that represents in percentage terms, just roughly?

20 MR SILVER: The regional about 25 per cent and the wholesale probably about 33 per cent.

MR MARKS: It's that high, the retail, 25 per cent?

MR SILVER: If we have about 200 sites that we control, 50 is 25 per cent.

25 MR MARKS: No, I'm trying to get to the bottom for the moment of what percentage of the total number of sites, retail sites, in New South Wales, are United.

MR SILVER: I wouldn't have a clue.

30 MR MARKS: One per cent, two per cent.

MR SILVER: I don't know. I don't know how many sites there are in New South Wales.

35 MR MARKS: You don't know?

MR SILVER: No.

40 MR MARKS: Tell us what your position is in Victoria.

MR SILVER: In Victoria we have 75 retail sites that we control and a very small number of reseller sites, maybe 10.

45 MR MARKS: And locations, regional/city, just give us a feeling.

MR SILVER: Fifty-fifty.

MR MARKS: Other states?

MR SILVER: South Australia, we have got about 20 of our own. And I know when we bought Andrew Oil there were 79. I'd say there is about 70, mainly in the country. In Perth we have no resellers and we have 15 retail outlets all in Perth itself. Darwin - - -

5

MR MARKS: Just before you leave Perth, you have just started retailing - - -

MR SILVER: Yes, we bought the Metcash network, which is the ex-Mobil network in Perth.

10

MR MARKS: And how many sites?

MR SILVER: Fifteen.

15 MR MARKS: And Darwin? You commenced operations in Darwin relatively recently, during the last couple of years?

MR SILVER: We went into Darwin about three years ago. On 1 June I have completed a deal where we bought the Mobil distributor out of the Northern Territory. It's called Darwin Petroleum. It had a limited number of retail outlets. Only four retail outlets and about 20 resellers. We are the fuel resellers ourselves. We have probably 7 or 8 retail sites and probably 25 branded resellers.

20

MR MARKS: Just to give us a quick indication, can you tell us of your sale - perhaps I will put it differently - national sales of petrol annually, what percentage represents sales by United branded sites, can you tell us?

25

MR SILVER: The majority. I would say about a billion litres we sell through our retail outlets.

30

MR MARKS: What does that work out at as a percentage of the overall volume sold Australiawide? I'm just trying to get a feeling - - -

MR SILVER: 70 per cent.

35

MR MARKS: My question is this - just make sure we are not at cross-purposes. I want to know what percentage of total retail sales of petrol in Australia are sales by United.

40

MR SILVER: Not 70.

MR MARKS: I know you would like it to be 70.

MR SILVER: I think it's about 4 or 5 per cent.

45

MR MARKS: Are you able to help us roughly state by state, give us a feeling of the percentage.

MR SILVER: I wouldn't have a clue.

MR MARKS: You wouldn't know?

5 MR SILVER: I wouldn't.

MR MARKS: That position that you've just described to me, it's been growing, I take it?

10 MR SILVER: It has.

MR MARKS: Can you tell us what the growth rate has been? I want to understand where United is going? Is it selling more fuel annually as a percentage of the total of amount of fuel sold? Is it stable?

15

MR SILVER: No, we want to grow. We have at the moment a window of opportunity where we have the ability to take more business, especially in the country, due to the computer systems that we implemented that has given us the ability to control fairly well far-away sites.

20

MR MARKS: Can you give us a little rundown on that?

MR SILVER: We are linked into the sites electronically. We can change the price of those sites from head office. We are very close to a position where the petrol side of the service station will be managed and controlled entirely from our head office. That's including dips and price changes on the boards themselves as well as the pumps of course. That sort of investment has given us an edge and the ability to control fairly well far-away sites and therefore we are interested in purchasing distributors in the country. We are negotiating with quite a few at the moment. Hopefully we will succeed with some of them. So, yes, we want to grow. We want to grow in the country. We feel that the country environment is where we should be due to the supermarkets.

25

30

MR MARKS: Let me just ask you a couple of questions to build upon what you just told us. You see your growth as being in country areas. Is that Australiawide?

35

MR SILVER: Yes.

MR MARKS: Your strategy, I take it therefore, is in the future to enhance growth in those areas to the extent that you can?

40

MR SILVER: Yes.

MR MARKS: Do you have any particular strategies that you can share with us here that are aimed at ensuring that that occurs?

45

MR SILVER: We have a good system that works well in the country. We sponsor the local footie teams and cricket teams, and we turn our service station into a little

bit of a community centre in those small communities or smaller communities. And margins are higher in the country. We don't enjoy the same capital gain that we enjoy in the city but we enjoy more profitable trading due to the price, and that is something that is attractive to me because it's less speculative. And the most
5 important thing, we don't have to compete with the shopper docket or not as much.

MR MARKS: The margins you say are higher? Why is that?

10 MR SILVER: Less competition.

MR MARKS: Is that the predominant reason, the only reason, do you think?

MR SILVER: I would say so, yes. I would say that it's because of less competition,
15 yes.

MR SZYMCZAK: And less volume through the sites.

MR SILVER: Less volume, less competition.

20 MR MARKS: So higher margin?

MR SILVER: Yes.

MR MARKS: Let me ask you quickly about metropolitan areas, what plans for
25 growth there? Firstly, the major metropolitan areas, Melbourne, Sydney, perhaps Brisbane. Do you have plans for expansion in those metropolitan areas?

MR SILVER: I will give you an example. I have four building teams on the go. They are all building in the country. We have not one site under construction in any
30 major city.

MR MARKS: What about purchases or lease arrangements?

MR SILVER: Only if an opportunity arises, we look at the trading figures and we
35 say, yes, we can make a dollar here, we will buy it.

MR MARKS: What about perhaps Perth where you have just started, what's the plan there?

40 MR SILVER: The Perth purchase was because it was an opportunity to become a truly national company.

MR MARKS: But do you see Perth as being a profitable venture, somewhere you want to expand or is it going just stay at 15?
45

MR SILVER: At this point of time I'm not looking to expand there. It's got a different way of pricing, the Perth market. As a result, I think that the market is a little more competitive than other markets. And therefore the returns we are

generating are not overly exciting. So, no, I'm not putting extra emphasis on growing in Perth, no.

MR MARKS: And what about Darwin?

5

MR SILVER: Darwin is great.

MR MARKS: Tell me about Darwin.

10 MR SILVER: Darwin, first of all, the culture of the people in Darwin is to spend a lot more money in service stations. Service stations sell alcohol there, service stations operate as your local milk bar. Therefore, we get fantastic figures out of our shops. The fuel is okay. Volumes are reasonable. They are not huge volumes but they are okay. It's not an overpumped market. Margins are okay, too. They are
15 okay because Darwin hasn't got a cycle.

MR MARKS: I want to come back and ask you some questions about that. But just tell me, Darwin, has your market share increased since - - -

20 MR SILVER: Yes, it has since we bought it. We bought the Mobil distributor. It wasn't Mobil, it was a joint venture with Mobil, then they sold it to the partner and the partner sold it to us. Yes, definitely the market share has increased because we took over the Mobil volume. What it is exactly I'm not sure.

25 MR MARKS: Do you see it increasing further?

MR SILVER: The numbers are greater, absolutely. We probably increased our volume by 200 per cent.

30 MR MARKS: That compares favourably with some of the positions in other states, does it?

MR SILVER: Well, Darwin is a market that is - hasn't got the ups and downs. It's steady and therefore it's easier to budget. It's easier to achieve targets. We like it.

35

MR MARKS: Can I ask you about E10?

MR SILVER: Sure.

40 MR MARKS: What percentage of your sales nationally are E10 at the moment? Can you tell us?

MR SILVER: Can we leave that for the second half?

45 MR MARKS: We will ask you about that and we will ask you some questions related to it. Perhaps I can just ask you more generally: Is E10 a profitable part of your business, comparatively speaking?

MR SILVER: E10 has been a great factor in our growth. We were fairly early in supporting E10, when the media and everybody else was actually bagging the product and saying how terrible it was. As a result, we managed to obtain a supply agreement with most of the manufacturers in Australia, if you like. And today we
5 sell E10 at probably 80 per cent of our sites. The only two markets that we're not selling it yet is northern Queensland and Western Australia. We will be selling it in northern Queensland in the immediate future. It's a great product. It's a little bit cheaper. It's cleaner. And the public loves it.

10 MR MARKS: Is it a product that you can sell, do you think, nationally on a competitive basis given that - - -

MR SILVER: I do now.

15 MR MARKS: You do now. Where do you get ethanol from at the moment?

MR SILVER: There are three manufacturers in Australia. The bigger one is Manildra based out of Sydney. The second biggest is CSR, manufactured in Sarina, just south of Mackay. And there are a couple of small ones, one in Beenleigh in
20 Brisbane, and one in South Australia somewhere. There is only three. The Beenleigh one is the third one. We have supply agreements with the first two, with the two larger ones. And, yes, it's been very good.

MR MARKS: How does it work? Do you blend it in?
25

MR SILVER: We blend it ourselves. We have blending facilities in each state.

MR MARKS: Is your plan to bring it into Western Australia any time soon?

30 MR SILVER: The cost of transportation is horrific.

MR MARKS: That's what I'm thinking of.

MR SILVER: I'm very close to being able to get the product across the Nullabor,
35 which will still leave us probably a couple of cents difference between E10 and unleaded.

MR MARKS: By the time you take into account transport costs. Where is it
40 positioned in the metropolitan markets at the moment?

MR SILVER: We have 4 cents difference in Melbourne, 3c in Sydney, two or three in Adelaide.

MR SZYMCZAK: I'm not sure.
45

MR SILVER: Either two or three in Adelaide. Two in Queensland. Two in the Northern Territory and two in Tasmania.

MR MARKS: The obvious question is: Why the differences?

MR SILVER: Because logistics can play a huge part. For example, we actually truck the ethanol from Sarina to Adelaide. That is a huge component of the price.
5 So it's really logistics that impact on the price in different markets.

MR MARKS: The advantage that you have enjoyed is I think underpinned by what you said a few moments ago, that it was slow to take off and was unpopular. Will ethanol become more popular?
10

MR SILVER: I think ethanol is here to stay. I think it will be available everywhere in 2011. That's when you will be able to - everybody will be subject to the same tax, offshore producers same as onshore. I think we have done the hard work and it won't require a price advantage in the future to be a viable product. Because it's just a high octane, cleaner burning product. Why wouldn't you use it?
15

MR MARKS: Do you think that price advantage might also be eroded a bit by the fact that the majors will turn to it?

MR SILVER: I think that what will erode the price advantage is once everything is subject to tax, there will be no price advantage. The oil companies, I think, will always treat it as a foreign product. It's not a product they make, not do they want to be seen making a product out of food, if you like. But once it's a level playing field and everybody is subject to the same tax, offshore and onshore, I'm talking
20
25 manufacturers, everybody will have it.

MR MARKS: I want to change topics and ask you some questions about price cycles. You would know from following the inquiry that's been a matter that the commission is concerned about and wants to make sure is understood. Can I ask you, perhaps focusing on the major metropolitan areas in which you trade, perhaps Sydney or Melbourne - you might want to take Melbourne. I think you make some reference to Melbourne in your materials. Tell us, if you can, what do you believe causes the Melbourne price cycle? If I can ask you about that one first.
30

MR SILVER: I think it's simple. If everybody were to work on a full margin you would have the price at the top of the cycle sitting there all week. But let's start when the cycle is at the top. Usually it's a Thursday. And market forces will push it down. So the service station down the road will drop a couple of points to get the well educated consumer onto their driveway. Then if you want to go a couple of points below him to get the consumer back. As the price goes down due to market forces, the suppliers have no choice and they have to start supporting the service stations, otherwise they won't be able to maintain the race down, if you like. Usually it's a 7-day cycle, and on the 7th day one of the oil companies will take the initiative and say that's not sustainable and stop the support. Once they stop the support, the buying price at the particular service station will be greater than the price board. So
35
40
45 there will be a rush to the price board to put the price up. The other oil companies sees the move and do the same. That's really the basis of the weekly cycle.

MR MARKS: Why is it weekly, do you think? And why not as it is in Western Australia?

5 MR SILVER: I have been in this industry for 30 years. I have seen a fortnightly cycle, monthly cycle, weekly cycle. I think weekly is some sort of a method that the industry adopted over years of playing the game, I guess.

MR MARKS: Well - - -

10 MR SILVER: I couldn't tell you why weekly.

MR MARKS: When you say "years of playing the game", I'm trying to understand - - -

15 MR SILVER: For years as a supplier you find yourself in a situation where you have supported your customers and it's unviable any more. So when you cut that support your customers, your service stations, has no choice and they put the price up, because once the support is gone their buying price is greater than the price on the board that was there because of the support.

20

MR MARKS: I accept all of that, but why weekly?

25 MR SILVER: I have no idea. But I can tell you that I have experienced periods of time where it was fortnightly. I experienced low periods of time where it was monthly. I experienced times where it was random. I don't think there is an oil company that determines we will go to weekly this year or to fortnightly this year. I guess it's market forces, coincidence.

30 MR MARKS: You say that the majors get to a stage where they want to move it up. Who are you talking about? When you say "majors", do you mean the oil majors?

MR SILVER: The oil majors.

35 MR MARKS: The supermarkets, who are you talk about?

MR SILVER: For me, of course, it's Shell and I will refer to them as a major. I haven't seen Safeway pushing the price up. I haven't seen - - -

40 MR MARKS: Are you talking about the Melbourne market?

MR SILVER: I'm talking about the Melbourne market. But I have seen different oil companies cutting their support at different times. So I couldn't tell you that there is one oil company that does it all the time. It looks like some sort of a random thing.

45 MR MARKS: Putting the oil companies to one side in Melbourne, what about the supermarkets? Do you see them driving up the cycle in some weeks?

MR SILVER: I've seen Shell doing it. I haven't seen Safeway doing it, no.

MR MARKS: When you say that, you mean you have seen Coles?

MR SILVER: Yep.

5 MR MARKS: But not Safeway, not Woolworths? How often do you see Shell?

MR SILVER: As I said, it happens every week, so it happens 52 times a year.

10 MR MARKS: Of the 52 times a year how often might Coles do it in Melbourne?

MR SILVER: Maybe 20 per cent. I'm not sure. I haven't taken a count. But it's pretty equal.

15 MR MARKS: When you say equal, equal between the oils and the oils or equal between the oils and the supermarkets?

MR SILVER: No, between the oil companies.

20 MR MARKS: How do I fit, when you talk about the oils, the supermarkets into that picture? Is it just the oils that you focus on?

25 MR SILVER: I think we are talking about the price board now. The price board is going up once a week. As I said before, I mean, the price goes up, the instigators are the oil companies because obviously they have the majority of the market share. I think if I went up, it wouldn't make a difference because I just don't have the numbers to push a market up. For example, if I wanted to go up.

30 MR MARKS: If I could ask you to stop there and ask you to explain that a bit further. The realities of the market are this, aren't they: Shell doesn't have sites? It's now Coles predominantly? It is has a few sites but not many.

MR SILVER: When you look at the Shell sites it still looks like a Shell.

35 MR MARKS: But I'm talking to you at the moment about who is moving the prices, that's what I want to understand. In the case of Shell it's predominantly Coles.

40 MR SILVER: I'm not sure who determines the price in the Shell-Coles arrangement. I know that Shell still has hands-on involvement with the service station. But one of them does.

MR MARKS: But when you talk about the majors are you talking about Shell in that?

45 MR SILVER: Absolutely, I'm talking about the four.

MR MARKS: Even though Shell's sites are predominantly Coles' sites now, do you understand what I'm saying?

MR SILVER: Okay, yes.

MR MARKS: Now let me ask you about Caltex. It's one of the majors.

5 MR SILVER: Yes.

MR MARKS: It now has many, many shared sites with Woolworths.

10 MR SILVER: Yes.

MR MARKS: When you talk about Caltex who are you talking about?

MR SILVER: I'm talking Caltex-Caltex, not Caltex Woolies.

15 MR MARKS: And you see Caltex-Caltex moving prices in Melbourne sometimes?

MR SILVER: Yes, correct. Mobil.

20 MR MARKS: What about BP?

MR SILVER: Absolutely.

MR MARKS: Do you see BP moving prices?

25 MR SILVER: Absolutely, and Mobil.

MR MARKS: Let me ask you about Sydney.

30 MR SILVER: I'm not that familiar with Sydney but I will try.

MR MARKS: Give me a feeling.

MR SILVER: It's those four.

35 MR MARKS: I don't want you to generalise here. I want you to tell me what you know, not what you think is the case. When you talk about the Sydney market and people moving the price up in Sydney in that weekly fashion, who are the people who you are seeing are behind those things?

40 MR SILVER: From what I hear in the office it's the four oil companies. It might be two of them sort of cutting support within the hour, and it's very hard to know who has cut first and who has cut second, and then the others will follow very quickly.

45 MR MARKS: Who is doing the observing here in the office? Have you got people who are assigned dutifully to - - -

MR SILVER: No. We have a computer system, the ones I mentioned before. Every service station we determine what sites that particular station competes with. We

asked that particular operator to email three times a day the prices of those sites that are on his list, the ones he competes with. We get it early in the morning, after lunch and drive. We have two guys sitting in the office occupying that computer from 7 pm till 8 pm and they have instructions who to match, who to undercut and by how much. Usually we simply go two points below the cheapest out of the list. But there is a specific instruction, if the site is too far or we're not sure - we don't think it's got a material impact we might only say this particular site you match, the others you go two points under.

10 MR MARKS: Apart from those observations that you are collecting, do you subscribe to any data agencies like Informed Sources?

MR SILVER: No.

15 MR MARKS: So it's solely with the benefit of those observations that you have described.

MR SILVER: Yes.

20 MR MARKS: You said, "We sit two points below the cheapest." Is that at the top? Where am I looking here now?

MR SILVER: At the top always. As it becomes more and more painful, we become more and more selective. Every couple of days we will instruct as to the level of competitiveness that we want them to achieve. But in principle I would probably say that up the top and in the middle it's two points from the cheapest and, when it gets really painful and down the bottom, it's probably match the cheapest.

30 MR MARKS: Does the bottom often get below wholesale price, below the average terminal gate?

MR SILVER: Yes.

35 MR MARKS: How often?

MR SILVER: I'm not sure about the terminal gate. We're not suffering - in the last few years we don't have a situation of negative margins, something we were suffering from at the bottom of the cycle years ago. Nevertheless, our buying price is much better than TGP. So I would say that at the bottom of the cycle we are at TGP or maybe slightly below or slightly above. But it is above my buying price.

40 MR MARKS: You said that things are better now in terms of the bottom of the cycle, it doesn't go as well; is that what you are saying?

45 MR SILVER: That's right.

MR MARKS: It doesn't eat into or get below TGP?

MR SILVER: In the old days every second week we used to enjoy negative margins at the bottom of the cycle. I don't think that has happened in the last couple of years.

MR MARKS: Do you know why that is so?

5

MR SILVER: Yes, I don't think it goes as low and my buying price improves.

MR MARKS: Let's take the first of those. Why doesn't it go as low?

10 MR SILVER: Because if had in a certain market 100 independents fighting over the consumer - there is only 20 now or 50.

MR SZYMCZAK: I think another part of that is that the price board price has become less important, because consumers now are more focused on the shopper docket. It is how big is my shopper docket rather than what is the board price. So there is a lot more of that. The board price has become less important to the consumer.

15

MR MARKS: I want to come back and ask you a few questions about that. You said quite a lot about that in your submission. But just picking up, Mr Silver, where you left off, I want to understand these observations you are making about the bottom of the cycle, are they observations that hold good for both Melbourne and Sydney?

20

25 MR SILVER: Yes.

MR MARKS: What about the other major capital cities, the other three?

MR SILVER: Yes.

30

MR MARKS: Are you seeing a similar pattern?

MR SILVER: Yes, we are seeing a similar trend, yes.

35 MR MARKS: So that over the last couple of years the cycle is not diving as low?

MR SILVER: It doesn't have the same spikes. It is rounded.

MR MARKS: And at the low end it is not diving below terminal gate price as often?

40

MR SILVER: That's where I'm not sure, because I don't follow the terminal gate price.

MR MARKS: Perhaps if I said cost.

45

MR SILVER: Well, it's not below cost anymore.

MR MARKS: In your submission - perhaps I should just ask you fairly quickly: The WA system has a separate cycle, you have said that already, it's a two-week cycle.

5 MR SILVER: Yes.

MR MARKS: Can you give us any observations from your knowledge of that Perth cycle what is driving it?

10 MR SILVER: It certainly is a different method to compete. The benefit to the consumer is that it takes longer to put the market up. The negatives to the consumer is that if I determine what my price tomorrow is and someone has determined that his price is a cent below my price I can't match it or below that for another 24 hours. So from a consumer point of view that is anti-competitive. And on the other side, to try
15 and get the market up, if it takes a normal market to go 24 hours, that might take three days. I haven't done the exercise, I'm not sure as to what is better for the industry, which is obviously not what is better for the consumer, but that's really the two different factors.

20 MR MARKS: A little earlier I think you said that the different method of pricing may be a bit more competitive and from the retailer's perspective it lowered the return. Does that mean that from the consumer's perspective the Western Australian market offers a more palatable and more competitive price?

25 MR SILVER: It's hard for me to compare. Because in Western Australia all the sites we got are in town. And therefore it's not - it's probably a network that would appreciate in capital gain, but it doesn't show great margins, no. We are still making a dollar - we are still making small profits, but that system, when I look at our margins there is nothing exciting about them.

30 MR MARKS: I suppose it was picking up on that point that you made earlier that made me wonder whether what we are seeing in Perth is leading - you said you have got two perspectives here. There is the consumer's perspective, which you said is not ours, and then there is ours.

35 MR SILVER: Sure.

MR MARKS: If the perspective that I am seeing through you is lower returns, more competitive market, am I seeing conversely a more competitive or a better position
40 for the consumer and is that the reason why you are not planning on expanding in Western Australia?

MR SILVER: As you grow through the cycle in Western Australia, because I can't undercut my competitor for 24 hours and when I do I'm not sure what he will do in
45 the following 24 hours, I guess that's anticompetitive. But then if you look at process of the cycle working and the fact that the consumer has an opportunity to buy fuel at the bottom of the cycle for more than a day, that I guess counters the anticompetitive nature of the middle of the cycle.

MR MARKS: Is your pricing strategy different in Perth?

MR SILVER: Absolutely not. Same thing. But because we want to stay last before we go up, it takes three days. So we have very high volume sites, very low margin
5 sites and at the end of the day they make a little bit of money.

MR MARKS: What do you think from the consumer's perspective about having this Fuelwatch application that enables the consumer to follow the market movements?
Is that a good thing, do you think?
10

MR SILVER: If you educate yourself to - I'll go back. For my limited experience in the Western Australian market, firstly, I can't say that they have a weekly cycle. There is weekly and then it is fortnightly and then I see it dragging for three or four weeks. I guess if you go into weekly cycles and the consumer has the opportunity to
15 buy at the bottom because it takes so long to go up it's in the benefit of the consumer. There is no doubt about that. Nevertheless, if the cycle goes to three weeks, or the consumer has to buy three times until we get to the bottom of the cycle, I think that the consumer is disadvantaged under those circumstances. I really can't tell you if it's a good system or not. I'm not sure.
20

MR MARKS: I'm wondering whether you can tell us anecdotally if you have got a system like Western Australia where the reaction time is slower from both perspectives, whether as a supplier of petrol into that market you have got to do things a little differently. Do you have to price a little closer to cost, for example, to
25 be, and to be perceived to be, competitive in that market?

MR SILVER: Because we would like to be perceived as the discounter, as the cheaper option, I have to be at the bottom of the cycle for much longer periods of time than elsewhere.
30

MR MARKS: Yes, I understand.

MR SILVER: But because I haven't seen a fixed pattern, a weekly or fortnightly, and because it moves from a short cycle to a long cycle, I think if you are at the short
35 cycle the consumer is, as I said, benefiting and we probably over the long term look at our policy and say do we want to be a player in that sort of market. But then when you have the longer cycles it changes the picture. So I really don't have an opinion if it's a better market or not. You have got to remember, too, that we have been there for a very short time and we are not diversified into the bush, where it's
40 predominantly a healthier market with lower volumes and bigger margins.

MR MARKS: Just more generally, how do you see the existence of price cycles in the metropolitan markets? Do you think it does advantage consumers?

MR SILVER: Absolutely.
45

MR MARKS: Is that quite simply because they are able to buy petrol if they so desire at close to cost?

MR SILVER: If you buy on Wednesday petrol in Melbourne you are on a very good deal. If you buy it on the Monday you are on an okay deal, and if you buy it just after it went up, well, you pay full price.

5 MR MARKS: A bad deal.

MR SILVER: It depends what you call a bad deal. We trade seven days a week and average our margins. I guess this system is giving the switched on, the smart consumer, the ability to fill up his tank at very competitive prices.

10 MR MARKS: What about from the independents' perspective looked at through your eyes. Are price cycles a good thing?

MR SILVER: Very good thing.

15 MR MARKS: Tell me why.

MR SILVER: Because as independents we are lighter, we can manoeuvre and therefore we can be perceived as discounters. You have a choice. You can be at the back of the cycle or you can be at the front of the cycle. We made the decision to be at the front of the cycle and, as a result, that is our reputation. I sell more than our competitors.

25 MR MARKS: What does "at the front of the cycle" mean?

MR SILVER: Being 0.2 under the cheapest all the time is the front of the cycle.

30 MR MARKS: I was wondering whether it might mean that on occasion you lead the cycle?

MR SILVER: I have never led the cycle, only downwards. Because if I were to lead it up I don't just sit there by myself.

35 MR MARKS: Has that changed?

MR SILVER: As far as what?

40 MR MARKS: Leading it down. Did you lead it downwards in the old days and you don't know?

MR SILVER: We always lead it down. That's really the foundation of our business. We started as pump jockeys in Solo, and we learn from them how to discount the price and we virtually copied the way they did it when we started many years ago, and that was our marketing method.

45 MR MARKS: Now you don't do that?

MR SILVER: Yes, we do.

MR MARKS: You still do that?

MR SILVER: Absolutely.

5 MR MARKS: Is there anything else - - -

MR SILVER: If you look at internet in Western Australia you will see that United is the lowest price on average from the day we started, on all products.

10 MR MARKS: Just tapping into the Darwin position again for one moment so I can understand it, we know there is no cycle there. You like the Darwin market.

MR SILVER: We love the Darwin market.

15 MR MARKS: You have told us that. What about the consumer, are they being better serviced in the Darwin market, do you think?

MR SILVER: When we arrived in the Darwin market there was no competition whatsoever between the players. The price was, if you like, up all the time. The
20 level of service was down, facilities were not upgraded. When we came to the market quite a few sites couldn't cope with the change and simply shut down. Some did change their infrastructure, if you like, to accommodate a much leaner margin and they are there today. I would say that we probably in the Darwin market - probably anywhere between 2c or 3c on average below our competitors. So that
25 market has given us the ability not to be two points but rather cents under the competitors.

MR MARKS: But from the consumer's perspective, accepting that that's so and they have the advantage of that, are they nevertheless suffering because there is not a
30 price cycle in Darwin? Are they at a disadvantage, do you think?

MR SILVER: I think before we showed up they were. Because we undercut our competitors by a few cents rather than a few points, I would say that they are probably on a reasonable deal now.

35 MR MARKS: When you say a "reasonable deal", accepting that there are differences between Darwin prices and prices in other capital cities, nevertheless do you think that the average price in Darwin is competitive or are Darwin customers paying more than other states?

40 MR SILVER: Before we arrived, the players in the Darwin market didn't bother about price boards. So, no, they were not competitive at all and the consumer got a raw deal.

45 MR MARKS: I accept that.

MR SILVER: When we arrived, a few of them compete with us, a few of them don't. Because we undercut them by a few cents as I said before, I think overall they

are on a reasonable deal now. So, you know, they don't have the peaks and they don't have the troughs but they got something in the middle.

5 MR MARKS: But no price cycle?

MR SILVER: No price cycle. Sorry, when I say "no price cycle". There is a price cycle, but it might take two months to go up.

10 MR MARKS: It's a change, a movement?

MR SILVER: It's a movement and then it will take a long time to go down. So there is a cycle. It is just a very long one.

15 MR MARKS: Now, you spent - I'm going move on - you spent quite a lot of the time taken up in your written submission discussing the impact of shopper dockets and the supermarkets in retail.

MR SILVER: Yes.

20 MR MARKS: Obviously, the Commission is concerned about a number of comments that you made and is interested in exploring them further. Do you have your submission in front of you. You deal at pages 2 and 3 - and raise a large number of different matters.

25 MR SZYMCZAK: Are you referring to the submission or are you referring to the - -
-

MR MARKS: I'm referring to your open submission.

30 MR SZYMCZAK: The documents under 95ZK?

35 MR MARKS: No, I'm referring to your open submission. You say that you believe that the entry of the supermarkets into the retail market has had three consequences. You say there has been higher retail margins, higher prices for consumers and decreased competition in the industry. I want you to elaborate on that for me, if you would, shortly and then I wanted to ask you a couple of more specific questions. Firstly, higher retail margins.

40 MR SILVER: Are you referring to the supermarkets?

MR MARKS: You say the entry of the supermarkets has had that consequence. You say higher prices for consumers and the retail margins of the supermarkets and oil majors have grown. Where is your evidence of that? Do you have any empirical evidence to support that?

45 MR SILVER: I rang someone that I know just before I came here. He owns a chain of supermarkets, about 40 of them. And I have obtained from him prices 2005, 2006, 2007. Yes, I believe that prices of groceries have gone up. For example, Tiptop

bread has gone up 36.95 per cent between 2005 and 2007 retail. And I can give you other examples if you like. This is prices of a chain of IGA, which competes with the big boys. The way I look at it is when you have got a promotion that is going on forever, it doesn't really achieve anything because everybody gives the same sort of promotion out there. You need to get it elsewhere. And you get it elsewhere by putting prices up. I tried to get the evidence as I can and I did it through IGA and this particular operator, which I'm happy to share the information with you.

MR MARKS: When?

MR SILVER: Last week.

MR MARKS: But it was after you wrote this?

MR SILVER: Yes.

MR MARKS: What was this material based on? Did you have any empirical data at the time you wrote this or was it just gut feel?

MR SILVER: No. I didn't. I had my wife telling me how much she pays in the supermarket and how much I have to give her to spend in the supermarket every week.

MR MARKS: That would have been persuasive.

MR SILVER: Yes, it was.

MR MARKS: But nothing much more than that.

MR SILVER: No.

MR MARKS: What about the oil majors, higher prices for consumers. What are you talking about there?

MR SILVER: The oil majors?

MR MARKS: First bullet point, page 2.

MR SILVER: The oil majors were referring to - I believe we were referring to fuel rather than dry goods.

MR MARKS: So you are saying that the margins of the majors have grown?

MR SILVER: Most definitely.

MR MARKS: Is that something that you have empirical evidence to support.

MR SILVER: I know that our margins have grown and therefore there is no reason why the oil companies' margins would go the other way.

MR MARKS: So it follows - - -

5

MR SILVER: We both base everything on Platts.

MR MARKS: I can't tell you the numbering of these articles. They are just bullet points. But on page 2 you will see that the introduction of the shopper docket has stripped independents of between 15 and 30 per cent of their base volume. Where does that figure come from?

MR SILVER: That came from my own service stations. When - you see, the Safeway launch was graduated and it took a long time. Our volume was decreasing but not at an alarming rate. But come 2003, those figures are taken from my own volume.

MR MARKS: What you are saying is that when the shopper dockets were introduced - and when was that, what time period are you referring to?

20

MR SILVER: Safeways introduced theirs in Dubbo in '96 and Shell, I believe, in June 2003.

MR MARKS: Let's just make sure we are right about that. Woolworths came into the market.

25

MR SILVER: '96, Dubbo.

MR MARKS: They introduced a shopper docket system of some kind and then rolled it out over some years.

30

MR SILVER: That's right.

MR MARKS: Do you say that going right back to 1996 you discerned a significant decrease in volume?

35

MR SILVER: No, since 2003. You have got to remember that the Shell network was the strongest network in the industry. It was run by the most professional people in the industry, in my view, with the strongest locations. And when the strongest network gets the boost of shopper docket, it was devastating to the others.

40

MR MARKS: Who are the others?

MR SILVER: People like us.

45

MR MARKS: The independents?

MR SILVER: I'm sure that Mobil wasn't having a party.

MR MARKS: But the people for whom it was devastating.

MR SILVER: All of us, the BPs, the Mobils, ourselves.

5 MR MARKS: So right across the market?

MR SILVER: Absolutely.

10 MR MARKS: The initial 15 per cent to 30 per cent, has that changed.

MR SILVER: Yes, it has?

MR MARKS: In what direction?

15 MR SILVER: We recuperated because of the ethanol product that we managed to offer to the consumer.

20 MR MARKS: How have your volumes changed or increased between 2003 and now?

MR SILVER: I would say that we suffered till about 2005-06, when we introduced the ethanol. Since then we gained in volume and probably selling today more than we did in 2003 - - -

25 MR MARKS: You have recovered your 2003 position?

MR SILVER: Correct.

30 MR MARKS: And improved on it?

MR SILVER: Yes, with ethanol.

35 MR MARKS: In terms of overall sales, are you up on 5, 10, 15 per cent, where are you in relation to 2003 sales?

MR SILVER: Maybe 5 to 10.

MR MARKS: The 15 to 30 you have come back and are - - -

40 MR SILVER: We see it as a window of opportunity, because we got the ethanol and the others don't. Once everybody has the ethanol I suspect we will go back to where we were.

45 MR MARKS: Now, you say at bullet 3 that the combination of higher board margins, higher supermarket grocery margins and increased volumes through sites has funded the shopper docket discount. Where do you get those statements from?

MR SILVER: Well - - -

MR SZYMCZAK: It follows logically. At the end of the day a Shell outlet prior to the introduction of the shopper docket did volume X and after the introduction of the shopper docket its volumes tended to increase by up to 60 per cent in some cases in those outlets. When you sell more product through a service station, you make a
5 higher dollar gross margin. And because your costs are fairly fixed - - -

MR MARKS: Where are you getting these figures from? You just talked about much higher volumes through the supermarkets.

10 MR SZYMCZAK: In 2003 we could see our volumes drop at sites between 15 per cent and 30 per cent. And at the same time you could see by the number of cars on the Shell Coles outlets that their volumes had boosted. We are quite I guess adept at looking at service stations and looking at the number of cars on the driveway
15 to have a feel of what volume is done. In a lot of cases you could tell that those sites were pumping much larger volumes.

MR SILVER: Some of those sites that were in close proximity to big supermarkets increased their volume by 200 per cent.

20 MR MARKS: Where do you get those figures from?

MR SILVER: From even talking to people within the Shell organisation. Just general discussion.

25 MR MARKS: But you haven't done any of your own empirical research?

MR SILVER: I haven't taken meter readings.

MR MARKS: More than that, you haven't done any other empirical research?
30

MR SILVER: Just general discussions with fellow - Shell employees.

MR MARKS: That's the way we should accept it, you have anecdotal stories and statements by people to suggest what you are really saying here?
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MR SILVER: "Statements" is better than "stories".

MR MARKS: You say that there have been higher board margins. Are you talking there about petrol margins, and are you talking about cents per litre margins?
40

MR SZYMCZAK: Yes.

MR MARKS: What about margins, though, as a percentage of the total price? Have they changed? I understand why cent a litre margins have increased. If the price
45 goes up you are going to get more cents a litre margin.

MR SILVER: Not necessarily.

MR MARKS: If you've got a margin, let's say, of 10 per cent and you are charging \$1 - - -

5 MR SILVER: But margin is determined by market forces. Therefore, it doesn't mean the product is dearer, therefore the margin grows bigger.

MR MARKS: Have you discerned or do you have any evidence that there are changes in percentage margins as opposed to cents a litre margins?

10 MR SILVER: Yes, if we do our own numbers of United Petroleum, I would suggest that that is the case. Margins are higher. And percentage-wise, it won't be the same.

MR MARKS: Let me tie you down a little bit on that, if I may; because you can tell us about United, we are interested to know this. Since the time that shopper docket have been introduced, tell us about the growth in your margin and help us understand why.

MR SILVER: Why? Okay. I would say that our margin has grown by, would you say, 20 per cent, 25 per cent, 20 per cent?

20 MR SZYMCZAK: Probably.

MR SILVER: I'm happy to say - - -

25 MR MARKS: Is this your wholesale/retail combination.

MR SILVER: Retail margin. Can we have had it offline, this discussion?

MR MARKS: Yes, most certainly.

30 MR SILVER: We will be able to give you specific figures.

MR MARKS: You say that many supermarket customers will still redeem their dockets even when the price board difference is less than 4c a litre. You go on to say that many of your customers report that they no longer take note of the board price. They simply rely on their docket and you describe them as being locked in.

MR SZYMCZAK: We don't have any specific market research that - - -

40 MR SILVER: Sorry, we do. I can take you to two of my service stations which are immediately across the road from Safeway service stations.

MR MARKS: Where are these?

45 MR SILVER: One is in Patterson Lakes in Victoria and one is in Hampton Park in Victoria as well. In both situations you can drop a U-turn and enter into each of the sites no matter what direction you drive. Well, every Wednesday when Woolworths goes up before us, I'm happy to actually invite you to observe it, we might be 12c

below Woolies, 10c, depends on the cycle, you stand there and the Woolworths driveway has got 50 cars and we got 2.

5 MR MARKS: Even though you are - - -

MR SILVER: 12c cheaper.

10 MR MARKS: You have told us about Patterson Lakes and so on. Is that something you can say more generally is an observation that holds good?

15 MR SILVER: Yes. If you drive from A to B every day on your way to work or on your way only you don't see that many service stations. It is very hard for you to determine where there is a good deal and where there is a bad deal. Whether you can get it cheaper or whether you can get it a little dearer. What the docket has done is disengage people from the market cycles altogether. They say, "I've got the docket. That's where I'm going to get my discount. It's a competitive deal and that's where I'm going." I can see it with my own wife. She guards those dockets and that's where they buys her fuel. That's all to it. She doesn't look at price boards like she used to.

20 MR MARKS: Is that despite your protestations?

MR SILVER: And my constant protests as well.

25 MR MARKS: But what you are really saying again is that there is anecdotal material available, you have seen it through your sites and you say you have consistently seen it?

30 MR SILVER: Absolutely.

MR MARKS: Across all markets?

35 MR SILVER: The consumer simply disengages from the cycle and he just adopts the docket as his door for a cheaper deal.

MR MARKS: The way you observe that is by looking out your window and seeing the - seeing the cars - - -

40 MR SILVER: At more than one location in more than one market.

MR MARKS: You say that consumers are now forced to collect dockets and pay more for their fuel.

45 MR SILVER: Because of the cycle.

MR MARKS: Tell me what you mean by that.

MR SILVER: Because it's not as competitive as it used to be.

MR MARKS: You say that, down towards the bottom of page 3, consumers are now forced to collect docket and pay more for their fuel.

5 MR SZYMCZAK: Consumers as a group - clearly, the board prices have moved up relatively. And in order to get a decent deal they need to collect a docket. Now, as a group, we would contend that they are worse off.

10 MR MARKS: But when you say they are now paying more for their fuel, you are just making that as a broad statement?

MR SILVER: Yes. I think all consumers pay more for fuel.

15 MR MARKS: Is there a reason why you think that all consumers are paying more for their fuel?

MR SILVER: Yes, because the cycle today is not as generous to the consumer as it used to be.

20 MR MARKS: How has the shopper docket impacted on that?

MR SILVER: You see, predominantly the competition is driven by independents. Oil companies traditionally haven't been undercutting each other. Those independents relied on the price chasers. Those price chasers have gone. They have found a good method. They have the docket. They don't have to follow the board. 25 They don't have to drive a little further for the cheaper price. Once those independents lost their core business, some of them got out and some of them changed their marketing policies and they don't rely on driving the price down, they work on lower volume, higher margins, concentrating on the shops and so on, to make ends meet. Because you don't have the independent driving the price like you 30 used to, that's why you don't have the cycle going as low as it used to.

MR MARKS: You say that's why the cycle is not as generous to consumers as it used to be.

35 MR SILVER: Exactly.

MR MARKS: Your thesis is effectively built around the notion that price elasticity, to use an economic term, or the responsiveness of the consumer to price has been dampened by these dockets, which in some way ally a consumer to buying his fuel 40 from supermarket sites; that's the way you put it.

MR SILVER: And the fact that the guys that were driving the price and were accommodating to the price chasers, they are not there any more because they simply can't survive. Their customers have gone. They have gone to buy on a different 45 basis, on a docket basis.

MR MARKS: Do you have any evidence of that?

MR SILVER: Well, my evidence is my customers that I speak to. I can tell you about many customers that used to sell three years ago, let's say, a half a million litres a month, and now they sell 120,000 litres a month. They used to discount it at the time. It was a family business. Drive was full of cars. It was cash flow driven.
5 Today it's a different business altogether. And the result is they are still there but their customers are a lot fewer between and they pay a lot more for the same litre.

MR MARKS: Your response to the shopper dockets was to go into ethanol fuel. Is that so?
10

MR SILVER: I would hang onto anything I could to help me out.

MR MARKS: Let me put the question differently: Has ethanol been - - -

15 MR SILVER: My saviour.

MR MARKS: - - - a good response?

MR SILVER: Excellent.
20

MR MARKS: What about other strategies?

MR SILVER: We think what we are going to come up next post ethanol days. We have a few ideas but we will have to come up with something new to survive in the marketplace because once ethanol is available to everyone we will go back to where we were in 2004, 2005.
25

MR MARKS: What about the new shop offer that you were talking about on page 5 of your submission. You say market participants have increasingly moved to new - put their efforts into new shop offers and other schemes like that? Is that something which has attracted United?
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MR SILVER: You know, we have more merchandises today and we do our shops more professionally and we try to attract business - doing business in a more professional way.
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MR MARKS: But is the bottom line that you are deriving a higher percentage of your overall returns from your shop business?

40 MR SILVER: I wouldn't say they are higher. No, they are probably the same.

MR MARKS: Is your aim to try and make them higher?

MR SILVER: Yes.
45

MR MARKS: Do you have any particular strategies?

MR SILVER: Yes, we have a few ideas. If you like, we will share them in private as well.

5 MR MARKS: Any other strategies that you have utilised to, if you like, negate the impact of the shopper dockets?

MR SILVER: No, but we have got a couple of ideas that we are throwing around at the moment that might be our next post ethanol move.

10 MR MARKS: Mr Chairman, that completes the questions I wanted to ask in open session. There are some questions that we would like to follow up in closed session.

15 THE CHAIRPERSON: Before we go into closed session, Mr King has a couple of questions.

DR KING: Mr Silver, you were talking about the gap between the E10 price and the standard unleaded fuel price. I think you said that it was about 3c cheaper in Sydney but about 4c cheaper in Melbourne.

20 MR SILVER: Correct.

DR KING: You said that the price difference tended to depend on logistics.

25 MR SILVER: Correct.

DR KING: Do you mind expanding on that particular example. As I understand it, you source your ethanol from either Queensland or New South Wales and yet the price gap is bigger in Victoria.

30 MR SILVER: I would love to expand on that, if we can please do it in private. You have got to remember that the deals are not the same.

35 DR KING: We will leave that till the private session. Again, this might be another one for the private session, but you can let me know. You have run through how you set prices outside the Perth region. So in the other states of Australia in general at top of the cycle you try and stay about 0.2c - - -

MR SILVER: Below the cheapest.

40 DR KING: As the price cycle comes down, the gap below the cheapest erodes somewhat until you might meet the cheapest. In Perth you have got a very different system, with the 24-hour rule under the Fuelwatch scheme. Under that scheme you don't know who is going to be the cheapest tomorrow - - -

45 MR SILVER: You don't. And you don't have a chance to match them or undercut them again until the following day and then you don't know what they are going to do again.

DR KING: How do you set your prices in Perth? When you have got to put your price in I think at 2 o'clock or 2.30 the day before how do you do that?

5 MR SILVER: We look at our competitors and try to be philosophers and psychologists and try to work out what they are going to do and then we counter them and undercut it to a further level to end up below them tomorrow.

10 DR KING: Let's say it is on the downward part of the cycle. You look at who is cheapest in the market today?

MR SILVER: I don't know if you looked at the actual page, but what you got have is you have got the prices for an area from the cheapest to the dearest. At 2 o'clock we look at that list and we - the whole exercise is what our competitor is going to do. Once we establish what we think they are going to do, we then undercut it by two or
15 three points further. Sometimes we are right and sometimes we are totally wrong.

DR KING: On what basis do you judge what you think your competitors - - -

20 MR SILVER: We try and pick up the pattern of how they do things. There is one of them that never does anything unless they got a 9 on the end. So it's easier - that's one that we find a bit easier to deal with. But really it's a guessing game. You try and look at the pattern of how they price and then you make a call.

25 DR KING: You said you sometimes get it wrong. Presumably that means sometimes you price a bit higher than - - -

MR SILVER: It's not unusual that one of the majors will just drop it, like, 8c because they have had enough. And then the day after they go back up. Or they wait another day and then they go back up. But it's not unusual suddenly to get upset and
30 just make something completely unpredictable.

DR KING: On those days when you are at a higher price than you would otherwise like, and obviously you can't decrease that price, how does that affect your volumes on and that day?
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MR SILVER: Surprisingly, not substantially. Surprisingly - I don't think the consumer there is looking at the page daily. I think if you give yourself a reputation as someone that offers a competitive deal, you have got to follow us. Many times someone will have enough of us and will drop it substantially and end up the day
40 after 4c or 5c cheaper and we would lose only maybe 5 per cent of the volume. Obviously if we left it for a long time it would hurt. But those situations don't seem to drag for too long.

45 DR KING: If you left it for a long time?

MR SILVER: If I left it for a long time and the competitor would stay where he is, I would obviously within days lose a major percentage of my turnover, 50 per cent, 60 per cent.

DR KING: Why is that?

MR SILVER: Because the consumer would pick up that down the road he can get it 5c cheaper. It doesn't drag for more than one or two days the loss is minimal.

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DR KING: On those days when you find yourself out of the market in a sense what do you do the next day? Do you run the risk - - -

MR SILVER: It depends how upset you are. Sometimes you just hit it hard. Sometimes we hit it 10c. And sometimes we pick up a market where the player that did it has four or five or six sites and we hit that one, and it will be in a different market altogether, but they will know.

10

DR KING: Given that this possibility is there, does that weigh on your mind at 2 o'clock in the afternoon? Do you tend to be a bit more aggressive in your own pricing?

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MR SILVER: When we were smaller our life revolved around the pricing. But now when our business has grown and we have a lot of things on our plate, we have employees that are doing it and dedicated to this particular job, that's the only job they do. Over time they are actually better than me. Just when I get upset I ask them to drop it, like a big drop. But otherwise they are pretty good. They are probably better than me.

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DR KING: Can I move to another topic that we touched on. I think Mr Silver, you said the TGP has no meaning and you expanded on that, it has no meaning as the oil companies can change it as they see fit.

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MR SILVER: That's right.

30

DR KING: Can you expand on what you mean by them changing it as they see fit?

MR SILVER: They can just put it up. If they want to sell less fuel they can put it up. There is no basis to that formula. There is nothing that you can follow. If you are a service station proprietor and you are looking for a lot of fuel, you will ring one of the majors and say, "I would like to buy fuel TGP" and they will say, "You have got to get your own tanker. It has got to be an approved tanker with an approved driver with an approved driver. They you have got to put the money cleared in our bank account and then you can pick it up tomorrow between 7 am and 7pm. A service station proprietor, he doesn't know about tankers that can be there on call and be there with an approved driver and an approved vehicle between 7 and 7. It's really a transaction that doesn't happen at all.

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DR KING: Can I just step back a little bit. When you say they can just change the TGP, do you mean they can change the elements that go into the TGP?

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MR SILVER: Yes.

DR KING: They - - -

MR SILVER: Cost and overheads.

5 DR KING: Again, if we stick with the majors, you said with the exception of BP if you are a small one-site independent they essentially have no interest in you.

MR SILVER: None whatsoever.

10 DR KING: In your opinion why don't they have an interest? Why aren't they interested in selling petrol?

MR SILVER: I can't speak for them. But in the case of Caltex, Caltex recently have been going around and getting rid of a lot of their customers due to - they say they
15 simply don't have the product. I know that Shell - if you go to Shell and say, "I have a service station. I would like you to brand it and supply me", they will say thank you but no thank you. Same case with Mobil. If you make the call they will say, "We're not interested." BP is interested. But on certain conditions. And BP will supply you only if you are a branded BP. So first of all they have to approve the
20 sites in relation to their network. And then they will charge you a fee for that brand. And quite a few people went that way because that's the only choice they had. They wanted to still display a major sign and as a result they went BP.

DR KING: With the small guys who Shell, Mobil and Caltex don't want to deal
25 with, do they refer them on to yourselves?

MR SILVER: Not to me, no.

DR KING: That's all I have.
30

THE CHAIRPERSON: I just wanted to pursue the concept of the irrational consumer you described. I think you actually included your wife amongst that, although she may not want that description put on the record. You have given us two different examples. One is Perth, you said that if you continued to price 5c, 6c above
35 what another site might be pricing, that you will soon lose volume and you talked about losing 6 per cent of your volume and the like.

MR SILVER: Absolutely.

40 THE CHAIRPERSON: Which would suggest that there is a sensitivity to a price difference of 5c or 6c.

MR SILVER: That would be the case in any market.

45 THE CHAIRPERSON: Why is it not happening in the market when you describe the differential as being 12c as the example you gave, but you said there were 50 or 60 cars lined up in the driveway of the supermarket outlet, and there are only two lined up in yours? That seems to be inconsistent.

MR SILVER: I suggest to you that, if you leave the price as I described, between the supermarket price and the United price for fuel, that balance will change and you will see the 50 cars at United. What I was saying is the consumer doesn't look at the price board like it used to. And that's why when Woolworths goes up and we don't they
5 still go to Woolworths, but if you left it for a few days they would see it.

THE CHAIRPERSON: So we have got a blind spot for a day or two?

MR SILVER: The docket is the docket and that's where they are heading. They are
10 not blind. Initially they don't, because they don't look. But it doesn't take them long. You know, if we stayed 10c below Woolworths within a few days we will have 50, 60 cars on the drive and they will not. But it will have to take time.

THE CHAIRPERSON: A few days being one day, two days?
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MR SILVER: I reckon a few days, maybe three or four days and then it will start changing. For the consumer it's very difficult to work out what's a good deal and what's not. He is not a part of the market. He drives to work every day and he drives home. He might see two service stations, he might see three service stations. One
20 might be competitive, one might not. He doesn't know what's a good deal. Usually consumers when they see a queue of cars they join the back. They feel if there is a queue there is a good deal. That means it will be cheap and they join the back. It's a fact.

THE CHAIRPERSON: I just want to test this a bit further because it is all sounds
25 terribly irrational. I can take 12c and deduct 4c and get 8c. There is a price difference. I'm trying to understand what is happening.

MR SILVER: You see it every Wednesday.
30

THE CHAIRPERSON: Take the sites you are talking about. Is there an influence flowing from one site being on the way that the traffic is heading at a particular time?

MR SILVER: No, I took purposely two situations where you can cross, it doesn't
35 matter which way you drive. You can fill up at either side. In other words, you can simply cross the white line and go to the other side. I guess we are creatures of habit. If the docket has been our mechanism, it takes time to change it. People don't click to the price board straightaway. It takes a little bit of time.

THE CHAIRPERSON: Okay.
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MR MARKS: I have a couple of matters before we go to the closed section. One was following up the question you asked. Taking one example, the King Street United site in Melbourne, opposite that site is a Caltex.
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MR SILVER: Woolworths.

MR MARKS: The observations that you have just made, do they hold good at that site?

MR SILVER: No.

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MR MARKS: Why not?

MR SILVER: Two different traffic flows. You can't cross from one side to the other. That is a typical - that is a situation where you have got a Woolworths site that actually caters to a number of Safeways supermarkets that probably most of them don't have a petrol offer nearby. So it sits on an arterial road. It collects traffic from many suburbs heading into the city. And as a result it probably sells three times more than what we do. Even though that we are on the going home side, which traditionally means that we should sell more; from observing that side it would sell three times the amount we do.

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MR MARKS: How do you know that? Just from the looking?

MR SILVER: Just from observing it and passing it every day.

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MR MARKS: It's a much smaller site.

MR SILVER: And much busier.

MR MARKS: I accept that you will want to say it's busier. But when you look at the site, it's not got nearly the room, it's got not the number of bowsers, it's about half the size of the United site opposite. So any small increase in volume is going to look a lot bigger than a similar volume at a United.

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MR SILVER: That particular site has got three islands. There is three multi-product pumps on each island. That site has got the ability to pump out a lot of petrol.

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MR MARKS: Compared to a United site how much can it pump out, do you know - and only tell me what you know - how much can it pump out a day compared to the United site opposite? What is its capacity?

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MR SILVER: Probably 100,000 a day.

MR MARKS: Would it be as much as the United site?

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MR SILVER: United has got four islands. Trust me. Every week.

MR MARKS: The only other matter I wanted to ask you about in open session was just a general question. It is one question. It is this. You say at the very start of your submission - it's a point I wanted to finish on. You say United is very concerned about the state of competition, that "we believe the substantial divergence between movements in domestic petrol prices, movements in the international benchmark price for refined petrol that the ACCC detected is a symptom of an industry out of

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balance, with falling levels of retail competition". I wanted to ask you about that. You have got that in front of you. It's the third paragraph on page 1.

MR SILVER: Yes.

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MR MARKS: Do you want to elaborate on that paragraph or explain it any further?

MR SILVER: We feel that, again, I mean it's what we talked all this afternoon. Because level of competition is deteriorating, and in my view the trend is mellowing and it's less and less competitive, it throws the trend of the retail pricing from the buy price and therefore increased margins.

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MR MARKS: When you talk about this lessening of competition, are you talking about - - -

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MR SILVER: Less players.

MR MARKS: - - - what you perceive to be an integration vertically in the market by the shopper docket alliances or are you talking about something different? I want to understand what you are talking about.

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MR SILVER: There is players in the market that the whole marketing philosophy is the quality of the facilities and it's not built on undercutting their competitors. It is all about the offer. But not the offer at the cheaper price than your competitor. The fading level of retail competition is a result of players in the marketplace that their marketing philosophies is to get the business through offering a cheaper deal than your competitor. It's not necessarily the quality of the facility. But it's rather the price of the product in comparison to the competitors and what they offer the price at. Those guys are disappearing out of the marketplace. They are disappearing because the consumer has been swept under their feet into the driveways of the supermarkets. As a result, I feel that the retail price and the wholesale price, the gap is opening in that trend. And as a result we are making greater margins. That's what I was meaning.

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MR MARKS: Mr Chairman, thank you. I have some questions in private session.

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THE CHAIRPERSON: I will clear the room, if I can, which means also clearing some microphones, media microphones.

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PUBLIC SESSION ADJOURNED [4.27pm]

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PUBLIC HEARING RESUMED [4.53pm]

THE CHAIRPERSON: Mr Evans, sorry, we have kept you a lot longer than we expected. If you would not mind for the record stating your name and role.

MR EVANS: Alan Evans, President, NRMA.

MR SEPKITWICZ: Wal Setkiewicz, Economist, NRMA.

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<ALAN EVANS, AFFIRMED

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<WAL SETKIEWCZ, AFFIRMED

MR MARKS: Mr Setkiewicz, you say you are an economist. What role do you come to us today in? Have you been retained by NRMA?

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MR SETKIEWICZ: No, I'm an employee of the NRMA.

MR MARKS: In what position are you employed?

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MR SETKIEWICZ: Senior policy adviser, economics. I call myself an economist.

MR MARKS: Thank you. Mr Evans, thank you for your submission. The Commission has digested it. We do have a few matters we wanted to ask you about. Can I first of all ask you a couple of general questions. You represent some 2 million members in New South Wales.

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MR EVANS: And the ACT.

MR MARKS: And the ACT?

30

MR EVANS: Yes.

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MR MARKS: You say that the NRMA has taken a leading interest in rising fuel prices and the consequences for motorists, which we understand. I wanted to ask you broadly what strategies or techniques you have employed in particular to monitor the price of petrol and for that matter the conduct of players in the industry in recent years?

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MR EVANS: We avail ourselves of a number of services that are in existence to provide us with information on the price of petrol. And also for fuel at service stations in New South Wales and the ACT. And we also equally get information as to the price of Mogas 95, Tapis crude, et cetera, so that we are kept abreast of what is happening in the marketplace. And we also engage consultancies to undertake research for us in this field and have done for some years in regard to the price of fuel. We have also availed ourselves of dialogue with a range of people with expertise in this field, and we undertook a national petrol summit in 2005, an alternative fuels summit in 2006, where we gathered together relevant experts to comment on the market and its operation and to provide their view as to what may be

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done or may not be done to try and provide a better environment for the consumer, that being the motorist.

5 MR MARKS: Can I just quickly ask you: The services that you say you have access to, what are they? Who are they?

MR EVANS: We have got - could I take that on notice to provide you with a list of those?

10 MR MARKS: You may.

MR EVANS: To make sure I get them exactly right. I wouldn't want to either increase or improve someone's reputation or diminish their reputation by them being seen to provide a service to us. But I will undertake to provide a correct name of the
15 organisations.

MR MARKS: The consultancies that you refer to, are these people engaged by your organisation from time to time to deal with specific questions that you put to them?

20 MR EVANS: Yes.

MR MARKS: What sort of consultants are these people?

MR EVANS: They range from Allen Consulting, for example, Access Economics,
25 Gavin Anderson, who have a particular group in Melbourne working on these sorts of issues. Again, I can look at some of the ones we have used over the last few years, but they are the ones that readily spring to mind.

MR MARKS: Most of the data I think you said - or a lot of the data related to the
30 position in New South Wales.

MR EVANS: Yes.

MR MARKS: Does your data collection extend beyond New South Wales?
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MR EVANS: No, we don't. But the AAA, of which the NRMA is a constituent member, would have data on a broader basis.

MR MARKS: Apart from collecting data in the way in which I have heard you say,
40 do you publish data on a website or - and if so what sort of data do you publish and for whom?

MR EVANS: We have on our website the ability for people to access that website and obtain the price of fuel in Sydney and in the regions. In Sydney it's morning
45 prices and afternoon prices. It will give an indication of the lowest price in Sydney that day. The highest - I think today as I recollect the lowest is about 111c a litre and the highest is about 139c a litre. It will give an average as well. And also you can pick it by local, so that people can make decisions as to whether they buy in the

morning, or the afternoon, where they might buy from. On the regional basis, because it is a significantly more costly exercise, we only have yesterday's data.

5 MR MARKS: You are a day late.

MR EVANS: A day late in the regions.

MR MARKS: Same data? Highest, lowest?

10 MR EVANS: We get the data for the regions. We are in the process of examining doing it on the same basis as Sydney, but it's a fairly costly exercise and we are trying to find others who might be interested in partnering with us to defray some of that cost.

15 MR MARKS: Is your website well patronised?

MR EVANS: Yes, it certainly has been. I can get you the number of hits that the petrol watch site gets.

20 MR MARKS: On average per month?

MR EVANS: We will know on a daily, weekly and monthly basis how many hits it gets.

25 MR MARKS: The other thing you mentioned - you said you engaged experts in a conference in 2005-06?

MR EVANS: Yes.

30 MR MARKS: Was that arranged by the NRMA?

MR EVANS: Yes. Again, that was done quite deliberately by us because there had been a sharp increase in the fuel price at that time, which was creating some concern in the community.

35 MR MARKS: Can I ask you a few questions about what is in your submission to us. I wanted to start, if I could, with the area around 3.3 of your submission, where you deal with what you describe as petroleum industry pricing strategies. You say that
40 Australia's oil industry implements and manages its pricing strategies with reference to what is known as import parity. Now, you then set out effectively what import parity means. Now, do you - this doesn't include some features of import parity and I was just wondering if you had done that intentionally. For example, it doesn't make any reference to the fuel standards?

45 MR EVANS: No.

MR MARKS: Or the penalty associated with - if I can loosely describe it as a penalty, 2c or 3c a litre associated with the fuel standards. What was the intention here? Was it to simply articulate the standard or was it to define it with clarity?

5 MR EVANS: It was to broadly outline it.

MR MARKS: So you would accept it doesn't include all of the features?

10 MR EVANS: No. It is a complex area and we still have not worked out a dummy's guide to explaining petrol pricing to the community. We are constantly asked. It is a complex area. Trying to put it in simple terms so the general community can understand it is defying us for the moment. We are still working on it. We are hopeful we will get there someday.

15 MR MARKS: I notice there is a gentleman opposite me I had not noticed before. Are you represented by somebody here today?

MR EVANS: He is one of our advisers. He is one of us.

20 MR MARKS: Just as long as we know. Thank you. Can we go to the notion of import parity pricing. I take it you accept that the IPP benchmark is, as you say, the reference upon which prices in Australia are built?

MR EVANS: Yes.

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MR MARKS: Do I take it from that that you accept that the IPP benchmark being the basis means that Australian prices, wholesale particularly and first and foremost are necessarily therefore being prices that are set by reference to a market determined price?

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MR EVANS: Yes.

35 MR MARKS: In a sense, insofar as the IPP itself reflects the underlying costs of production and so on, it will be a market price that is broadly reflective, but the underlying costs of production may not necessarily be borne out by it; do you understand what I'm saying? In other words, it is not a cost which is necessarily designed to or does reflect the underlying costs of production?

40 MR EVANS: That could be the case.

MR MARKS: It may or may not be the case, but it is a traded price.

45 MR EVANS: It could be the case in certain circumstances. It may or may not be the case in certain circumstances but it is a traded price.

MR MARKS: I suppose as a matter of logic, as the underlying costs of production will in any event be often quite different in different locations and by reference to different circumstances and so on for different refiners, it is logical that it will be a

benchmark price in a sense. Accepting that is so, can I take that a step further. You mentioned shipping costs and so on. The shipping costs are also benchmarked, are they not, to an internationally traded price?

5 MR EVANS: As I understand it, that are benchmarked to a category of vessel, the cost of carting oil and the category of vessel.

MR MARKS: But that in turn is benchmarked in a shipping context and in a shipping market to an internationally traded price, is it not?

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MR EVANS: Yes.

MR MARKS: And thus the same principles apply, it is essentially a traded price and not necessarily reflective of the underlying costs of production?

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MR EVANS: No, or the actual price, and that's one of the issues we have.

MR MARKS: I wanted to ask you about that because one of the points you make - and it is in that context - is, look, shipping costs don't take account of economies of scale. And you say, look, there is a practice of assuming shipping costs consistent with a size or scale of tanker, 38,000 tonnes, when in practice tankers are different sizes. I accept that may be the reality, but what I'm really wanting to understand here is you are not suggesting, are you, that they ought to be in a market which is picking up a cost by reference to the internationally traded price?

25

MR EVANS: No, I think what we are suggesting here, and it is in the whole context, is when you are trying to explain to the community or the public why fuel is at a particular price, and you come back to the benchmark product, it has elements in it which are very difficult for the community to understand as to why that should be the reference. It may be that it is one of the roles of this inquiry to determine whether that is appropriate or whether it needs to be changed, so that you can in fact kind find an easier approach to explain to the public why a particular benchmark is the price referenced. I think that would be a valid activity of this inquiry.

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MR MARKS: Accepting that that be so, and we will take this onboard, the point you make in your submission, though, is a rather different one, and that is that consumers don't benefit from the economies of scale. The economies of scale point really is essentially, look, they price to one type of tanker of one size and more often than not another is used. That's where I want to go with the question. What I'm asking you is: That's not a good point, is it, in circumstances where in truth it is an internationally traded shipping price that is being utilised for a whole variety of reasons?

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MR EVANS: I come back to my point. It highlights the issue with the benchmark that needs to be addressed. That's what we were trying to highlight.

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MR MARKS: I just want to understand this. You made a point a moment ago about it being important for consumers in the market to understand. I accept that. My

point, though, is a different one. If the internationally traded benchmark for shipping costs is - for example, let's take it based on 38,000 tonne tankers - it is because although there are different sized ports, there are different sized portage facilities and wharfage arrangements and so on, there are different sized ships used, nevertheless
5 as a matter of frequent trades in the market there is a price which is generally accepted as appropriate. I take it you are not suggesting that that ought to be changed?

MR EVANS: Yes, I think we are.
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MR MARKS: What are you suggesting ought to replace it?

MR EVANS: That's not my role. My role is to say, look, we think in the circumstances from the point of time which it is set to now the market - the operation
15 of the market has changed and, therefore, you should look at it and see whether or not that is an appropriate benchmark to operate under. The same as we raised the issue about 95 RON, Mogas 95.

MR MARKS: I want to come back to that in a moment, but I accept where you are
20 going. Have you done any research to understand what the average - just say for Australia - what the average tanker size is and, if so, what research have you done?

MR EVANS: As far as I can recollect, Wal's predecessor was doing a lot of work on this. He was examining the market and what was the size of tankers used generally
25 in the trade. I can't recollect - it is some weeks since I have had the discussion with him and he has since departed. He has been pinched by Telstra. It was an area he was looking at because it was something we had looked at and thought we needed to pursue.

MR MARKS: What you are really saying to the Commission now is, look, this
30 might be an area that you want to look at. It might not be, but it's an area we want to bring to your attention.

MR EVANS: It's something that we think should be on the table and examined. If
35 the conclusion is they are all entirely appropriate benchmarks then say so and we can all go forward from there.

MR MARKS: If what you are told and what the community is told is that there is,
40 just like IPP in the petrol industry, a benchmark of an international kind which is applicable to shipping and that that benchmarking is followed in the case of shipping to Australia, you would not be content with that?

MR EVANS: But there are more than one benchmark. That's the interesting thing.
45 It is not the only benchmark.

MR MARKS: Do you think there is another benchmark that is better or more appropriate than the benchmark that has currently being selected?

MR EVANS: Do I think there is? The answer is I don't know and it is not my function to say.

5 MR MARKS: You just want to bring it to our attention?

MR EVANS: I want to raise it and put it on the table.

10 MR MARKS: You did mention before the Mogas 95 price and I just want to understand where you are going with that. Firstly, can I ask you a broad question: Do you think that the 95 Mogas price is the appropriate price or is there a problem and, if so, what is it?

15 MR EVANS: Again, as I mentioned earlier, trying to explain petrol pricing to the broad public becomes extremely difficult because the first question you get asked is why do they use Mogas 95 when the bulk of fuel sold in Australia is 91.

MR MARKS: What is your answer when they ask you that?

20 MR EVANS: Is it the appropriate. That is a matter that needs to be examined.

MR MARKS: Do you know why the 95 benchmark is used?

MR EVANS: Off the top of my head, no.

25 MR MARKS: Can I ask you another question. You refer I think to the consequence of using the benchmark, that you describe and you say there is a 0.8c a litre consequence. Where do you get that figure from?

30 MR EVANS: Can I take that on notice?

MR MARKS: I can tell you, if you like.

MR EVANS: Where did I get it from?

35 MR MARKS: I think you got it from the HEH submission.

MR EVANS: I know they were one - I'm aware that HEH is one of the consultants we did engage to do some work.

40 MR MARKS: Do you think that might have been where you got the figure from? I know they mentioned that.

MR EVANS: I will say, yes, I think it was. If it is wrong I will correct it. But HEH were one of the consultants we engaged in this work.

45 MR MARKS: Do you know how that figure is derived?

MR EVANS: No.

MR MARKS: Could it be the difference between the 95 and the 92 price?

MR EVANS: I don't know.

5 MR MARKS: Do you know the difference between the 92 and the 95 price?

MR EVANS: Off the top of my head, no.

10 MR MARKS: What you are really saying to us about Mogas is, look, I want to raise some issues with you that may be matters you want to explore, beyond that I can't really go.

15 MR EVANS: I certainly wouldn't see that as the NRMA's role. It's the role of the ACCC as we see it.

MR MARKS: The only reason I put it to you that way - and you would understand it, I would imagine - is because you have made not just to us but you have made more publicly comments about the 95 and the use of the 95 and I'm wanting to understand how you would justify your position if you were asked.

20 MR EVANS: Because we represent 2 million consumers, and 2 million consumers ask these questions. My role and the role of the NRMA is to very clearly put these issues on the table.

25 MR MARKS: Do you think it is part of your role to provide an answer to those questions if you are asked them?

MR EVANS: Do I think it is my role?

30 MR MARKS: If I was a consumer and I was to ring you and ask you why the 95 Mogas price is used, and I anticipate from what you are saying that that question is asked frequently, do you regard it as part of your role to find out what the real answer is to that question?

35 MR EVANS: No. What our role is, we say this is a matter that needs to be examined. We have consistently said that the ACCC needs to be given the power to examine fuel prices. I will say if I have not said it publicly that we regard fuel as an essential commodity, a major part of the fabric of Australian society. Therefore, like water, like gas, like electricity, which are all closely regulated, there needs to be
40 some method of making sure that the consumer is getting a fair deal. Is it our role to provide the answer, well, absent anyone else doing it, yes, but what we have been seeking for some time is for the very inquiry that is going on now or something like it to occur.

45 MR MARKS: Let me change the topic and ask you some different questions. In your submission at page 11 you deal with the relationship between crude, wholesale and retail prices. You say at that part of the submission that follows the heading at

point 4, you say while - and I'm looking really about three-quarters of the way down the page.

MR EVANS: We've got a different numbering system.

5

MR MARKS: Point 4 you will see is the relationship between crude, wholesale and retail prices; do you see that?

MR EVANS: Yes.

10

MR MARKS: Then there are about three paragraphs to one full paragraph which commences "while crude oil prices"?

MR EVANS: Yes.

15

MR MARKS: You say in that paragraph that while crude oil prices are undoubtedly a major underlining factor in the price of petrol, recent retail price increases exceed the global price hike in crude oil. In other words, you draw a nexus or seek to draw a nexus between the crude oil price and the price of petrol. That is a nexus that you have drawn on frequent occasions.

20

MR EVANS: Exactly.

MR MARKS: And I think you might have even drawn it today. I vaguely recall reading something to that extent. I wanted to ask you something about it. Can I take it from your early answers about IPP that you gave to me a moment ago that you accept that as a matter of practical reality it's the mean price of petrol on the Singapore market dictated or designated by the IPP price that forms the underlying constituent element of the price of petrol here, it is not the price of crude oil?

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MR EVANS: Be very careful of that. Because I'm not the one who goes out publicly every time there is a movement in price of fuel at the bowser - an increase - and says, as has the Prime Minister, as have many others, including the oil companies, as indeed does their own organisation, it is all because of the increase in the price of crude. We have conducted work with our work members examining it. That has sunk very deep into the psyche. I have actually had the Prime Minister say the same thing to me publicly. That's the reason we use the comparison.

35

MR MARKS: Let me take it step by step if I may, because we just want to make sure we're on the same page. Whatever the Prime Minister might say, you and I know that the price of petrol in Australia is dictated to predominantly by the IPP, not the price of crude oil, do you agree with that?

40

MR EVANS: Yes.

45

MR MARKS: Just accepting that is so for a moment, you also, though, publish statements and you say, well, maybe you are going to say I do it because the Prime Minister does it.

MR EVANS: And the oil company executives. I'm not the one who says when prices increase it's all because of the increase in the price of crude. If they would cease and desist in saying that. But I think they are doing that for a very deliberate reason, and it is again something this inquiry could look at. What are the underlying reasons for the increase, what should be the underlying reasons for the increase? I'm not the one who walks out and says that the increase in the price at the bowser is justified by the increase in the price of crude. It is a very strong public statement made not only by the Prime Minister but oil company executives.

10 MR MARKS: Just forget what the Prime Minister - - -

MR EVANS: I represent 2 million consumers.

15 MR MARKS: Mr Evans, please, don't argue with me. Just answer my questions if you would be so kind.

MR EVANS: You are saying don't argue with me. I'm telling you why we did something.

20 THE CHAIRPERSON: Mr Evans, I wonder if we could just conduct this in an orderly fashion. Would you just answer Mr Marks' questions.

MR MARKS: I just want to ask you the questions and I just want you to answer them. You have agreed with me that it is not the price of crude oil that dictates the price of petrol in the Australian market on any day or at any particular time and you don't deviate from that, do you?

MR EVANS: No.

30 MR MARKS: Accepting that is so, you say on occasion - and I just want to focus on what you say - you say on occasion, and this is one example, look, the prices which you are seeing at the bowser don't reflect accurately the position. Look at the price of crude oil. And you might say to the reader the price of crude oil has fallen, the price of petrol has risen. They are going in different directions, there is a divergence, how do you explain this. My question to you really is no more than this: If you accept, as I understand you do, that the price of crude oil is not a determinant why do you use the comparison you do? Is it simply because others do it too?

40 MR EVANS: There are a number of reasons. One, we said we believe that the benchmark should be looked at. Is it entirely appropriate in 2007? The second thing is the public are advised repeatedly by a range of people that the justification for the increase in the price for fuel at the bowser is the increase in the price for crude. In any research we do of members it is so deep in their psyche what is the reason for an increasing price of fuel or what is the reason for a decrease? Invariably, in 99.9 times out of 100 they will answer the "price of crude oil". That's because that's what has been conveyed to them. If a different message needs to be conveyed to them that is something that should be advised to all and sundry who comment on fuel. I have never said it is either because of the price of crude oil or something different.

MR MARKS: But you are submitting to the ACCC and to the Chairman that it is the mismatch between the price of crude oil and the price of retail petrol that you rely upon to support the argument that there is an issue, and that's really where I'm coming to. I understand the way you put it to the public and you say - but you are not putting it to the public here, you are putting it to the Commission, and I want to understand very clearly what you are asking the Commission to accept.

MR EVANS: What I'm asking the Commission to accept is that there has been a mismatch in the price of crude oil. If that is the argument used by the oil companies, and I notice today they switch it, then here is documentation which shows there has been a change in direction, and the only variable we can see is the inquiry.

MR MARKS: Can I ask you this: Have you yourself explored why a mismatch between the price of crude oil and the price of petrol at the bowser frequently occurs? Do you understand the reasons behind it?

MR EVANS: Sometimes yes and sometimes no. And it depends on - on the actual explanation offered sometimes by the companies and also the evidence and the information we can gather.

MR MARKS: You use an example in your submission in the paragraph that I have taken you to and in the paragraph immediately below it to illustrate the point you make. You say, look, if you look at the price of crude over the period leading up to June 2006 until you understand the price in June 2006 and then you compare it to the price at the bowser in June 2006 there is this gap - an unexplained gap you say.

MR EVANS: Mhmm.

MR MARKS: When you drew up that example, did you look to understand why the price of petrol in June 2006 varied greatly from the price of crude oil?

MR EVANS: Did we?

MR MARKS: Did you look?

MR EVANS: We don't have access to that sort of information.

MR MARKS: If I was to suggest to you - and I accept that - that there were a wide variety of reasons why it did not in June 2006 reflect the price of crude oil, you would accept that that may well be the case?

MR EVANS: If I was given the information. But unfortunately a bland assertion may not be convincing.

MR MARKS: I could tell you about what happened to petrol prices between June 2005 and January 2006 and I could go on to describe to you how the situation dramatically changed in August 2005 and I could go on to tell you about Hurricane Katrina and what impact that had on crude oil prices and so on and work my way

through to an explanation of why in June 2006, which is the month you have chosen, there was a significant discrepancy. If I did that, would you accept that that is so?

5 MR EVANS: I have had some intriguing conversations with oil companies. You mentioned Hurricane Katrina. The arguments put for the increase in prices post Hurricane Katrina was of course the reduction in refining capacity in the US because of Hurricane Katrina. A very senior oil company executive, in fact CEO, said therefore our view is the market can bear this cost because if we didn't sell it here we could sell it from Katrina. I said, accepting that argument, would you also deduct from that the shipping cost? If you were arguing you could sell it to the US would you deduct the shipping costs? The answer was no. For the average consumer, yes, they could probably accept that if they weren't selling it in the Australian market they could sell into the US market. But they would be hard put to understand why you wouldn't deduct the shipping cost. Because if you were going to have to sell it out of 10 15 the Australian market into the US market there would be shipping costs. This is part of the problem with trying to explain oil pricing. There are variables that just defy logic.

20 MR MARKS: If there are those difficulties why don't you do the more obvious thing and that is simply compare the price of refined petrol to the price at the bowser and look for correlations there. You would give the consumer a much more accurate idea of what is happening.

25 MR EVANS: If everyone who commented on fuel prices did that we would. But they don't.

MR MARKS: But you could and you would be more accurate if you did.

30 MR EVANS: I'm not the one who goes out and justifies the increase on the basis of crude oil prices.

MR MARKS: And you know it is unjustifiable, don't you?

35 MR EVANS: I'm not the one who makes the claim. I'm merely responding as the organisation is responding to the claims others make as to why fuel prices increase. If they want to go on and try to explain to the public that it's other variables, other factors, which have increased it, not the crude oil price, so be it, we will respond to that.

40 MR MARKS: When you made this submission to the Commission, did it occur to you that, forgetting what might happen in the market and with consumers and what explanations they get, so far as the Commission is concerned the more accurate way to look at the situation would have been by reference to the price of refined petrol, not the price of crude oil? And the correlations to be drawn?

45 MR EVANS: That is something commission can do.

MR MARKS: Yes, I know, but you haven't done it. And I was wondering why you referred the Commission to the crude price rather than the refined petrol price.

5 MR EVANS: Because that's what the vast bulk of the public believe is the reason.

MR MARKS: Can I ask you to look at the top of page 12 of your submission.

MR EVANS: I have different numbering.

10 MR MARKS: It is second last paragraph where you deal with variations in the retail pricing. You say in that paragraph that you, the NRMA, doesn't know why there has been a simultaneous increase in refiner margins, wholesale margins and retail margins, along with the record high crude prices; you are still drawing this nexus to crude, you see. There is no evidence, you say, to suggest that higher crude prices
15 would lead to other increases in other input costs, and on balance you believe that the simultaneous increases in the margins suggest that the industry is not competitive? Firstly, I wanted to ask you when you refer to margins in that context, and you refer to simultaneous increases in margins, just help me here, are you referring to margins in cents a litre? What are you talking about here?

20 MR EVANS: I think it would be cents a litre.

MR MARKS: I thought that may be so and I just wanted to ask you: If they are cent a litre figures, and I would accept that, what increases are you saying have actually
25 occurred and over what period, just so that we can make sure we understand what is being said?

MR EVANS: Can I take that again on notice?

30 MR MARKS: Certainly. If you are talking about cent a litre margins, I take it you would accept that it doesn't necessarily follow that there have been percentage increases in the margins as an overall - would you accept that?

MR EVANS: That there has not been?

35 MR MARKS: That there may not have been.

MR EVANS: There may not have been.

40 MR MARKS: While there are price increases and consequently, you would think logically, cent a litre margin increases, it does not necessarily mean that the margin has increased in real terms or as a percentage of the overall price?

MR EVANS: It may mean that, yes.

45 MR MARKS: If I understand you correctly, by taking it on notice, would you be able to provide us with information on the margins to which you refer? Would that be to impose an unreasonable - - -

MR EVANS: No. I can recollect the work we have done in house. I just didn't bring it with me.

5 MR MARKS: Can I ask you about what appears in part 5, on my page 12. You do
make a number of comments here and I really just wanted to pick up on the general
point. Mr Evans, you will forgive me, I don't mean to do your submission any
injustice. I wanted to ask you about the price cycle. You know we have asked others
about it. I want to understand from the New South Wales consumers' perspective
what you think drives it. Do you have a view about that?

10 MR EVANS: We do have a view and it's a matter we have raised with oil
companies. And being quite frank about it, I have said to them it is one of the factors
which increases I think the degree of cynicism amongst consumers about what is
going on in regard to the pricing of fuel. I have to say that the comment I have had
15 back is, yes, they understand that but they are unable to do anything about it because
the only way they could do so was to collude.

MR MARKS: Did you ask them what they meant by that?

20 MR EVANS: They would have to agree amongst themselves to stop the variation in
the weekly price cycle to try to smooth it out. I was being quite frank with them.
We do have quite frank and robust exchanges with the oil companies. In our view,
and certainly when we conduct focus groups and qualitative and surveys of members,
that is one of the issues that constantly arises as to why they have concerns about
25 petrol pricing. But we have noticed that in a period post the announcement of the
inquiry there was some smoothing out of the spikes, it wasn't quite as volatile as in
the past, which does raise questions as to is it possible to smooth those out and what
would be the consequence of smoothing them out.

30 MR MARKS: You say in your submission - "we question", that's the word you use -
"we question whether retail cyclical pricing is a means of market manipulation aimed
at disguising margins", you say, creating a perception among consumers that they are
getting a discount, restricting the activities of independents. I see you point. I
wanted to ask you a couple of things. When you say "we question", does that mean
35 we want you, the Commission, to investigate and we don't know the answer or does
it mean "we have a view that market manipulation is occurring through the use of the
price cycle by majors or by otherwise and we think it happens in this way"?

40 MR EVANS: No, put it more in the former. We question - we can't get answers
which we think would satisfy consumers. That probably is the single factor which
most raises concern amongst consumers as to whether or not there is manipulation.
They find it very difficult to understand certainly quite significant fluctuations of 10c
to 15c. When there are those sorts of fluctuations in the price of fuel our phones and
emails would run hot from members questioning why the rise occurred. And if you
45 monitor talkback radio in Sydney, that would be probably the number 1 topic.

MR MARKS: Just picking up on something you said earlier when you talked about
engaging experts and consultants to do various things. In this important topic

context, have you in recent times engaged anybody or done any what I will call independent evaluation to understand what is driving the cycle, who is leading it up, who is leading it down and, if so, what that independent evaluation is?

5 MR EVANS: No, we have not. We have not engaged anybody to do that.

MR MARKS: Can I ask you: Given your general position in your statement, do you have a view about whether the cycle is a feature of a competitive market? By "a cycle" I mean the cycle that we see in the major capital cities? Do you in New South
10 Wales when you look at the Sydney cycle see that as a feature of the competitive market that exists in Sydney or do you see it as something else?

MR EVANS: I don't think we see it as a feature of the competitive market anymore because they track up and down so closely that you are not getting any variation. I
15 probably would more convinced if I saw within a reasonable boundary or a reasonable area some variations in price. But we don't see that.

MR MARKS: When you say they track each other very closely, can you explain that a little further? What are you seeing in the Sydney market?
20

MR EVANS: And from personal experience standing on a road where there are three or four petrol stations, when you see one shift in the space of five minutes you will see the others come down or go up depending on what has occurred.

25 MR MARKS: Is that, do you think, as much a feature of a competitive market as anything else?

MR EVANS: Well, I would have thought that if - listening to some evidence before - if you were really seeking to be competitive you would not adjust your price to
30 exactly the same as the service station across the road or up the road; you might want to seek some advantage by going lower.

MR MARKS: What about when you are right down at the bottom of the cycle and you can't go any lower?
35

MR EVANS: That means all of them are at the bottom of the cycle. That means all of their input costs, all of their costs are the same, which is an unusual feature.

MR MARKS: Towards the bottom of the market you might expect that they would be matching.
40

MR EVANS: If they are all at the bottom of the market that means there are no variations, no differentials at all in the factors that go into the price of petrol at the pump to the consumer, including the retail markets and the retails costs as well.
45

MR MARKS: Can I sum up your view in this way, and tell me if I am doing it accurately: Your view is that from what you have observed and been told about the

Sydney market you are not at all sure whether the cycle that you see is a feature of a competitive market?

MR EVANS: We are not at all. We have some doubt.

5

MR MARKS: You have some doubt, you have some suspicion that it may not be, but you can't say it any further than that?

MR EVANS: No, because we don't have access to all of the information and data on all of the costs that go through the whole cycle. That is something we hope the inquiry would be able to ascertain.

MR MARKS: Can I quickly ask you a little bit about shopper dockets. I know you are probably expecting some questions about this. We are trying to understand the position of the impact. At paragraph 13 of your submission in the context of the price cycle, it must be said, and on discussions about the degree that independents or to which independents can compete, you make some statements. I just wanted to understand what your position is. I want to also tie this in with something you said I think to the Canberra Times in February of this year where you expressed a concern about the demise of the independents. I picked up that in those two spots. I might have said paragraph 13. I meant page 13. Now I know by saying page 13 I'm not being terribly helpful. You have made this comment about independents.

MR EVANS: What paragraph are you at?

25

MR MARKS: This is on page 13, you say "accordingly" - it's three paragraphs above paragraph 6, "a question of whether" - it's the same sort of area we were discussing a moment ago, cyclical pricing and so on. And you talk about the activities of independents and the restrictions on them. I am just wanting to understand whether you are saying something more than just the cycle. Are you suggesting anything beyond that? Has the shopper docket had any impact?

MR EVANS: Has it had any impact?

MR MARKS: How do you see it?

MR EVANS: Not so much the shopper docket but the companies or the retailers that offer them. We have seen on some occasions where there has been a demise of an independent that in locales that are reasonably adjacent - where there has been an independent the price has been down compared to an adjacent locale. When that independent exits the scene, then you don't see that differential that existed before.

MR MARKS: But my point was building on that a little bit. Because in what you said in the Canberra Times in February you went a bit further. You said, look, we have had this concern for some time about the demise of independents, but you go on to say that it highlights the duopoly in the market between the supermarket giants Coles and Woolworths and how they have been able to squeeze the small players. That's a big comment.

45

MR EVANS: It is a big comment.

MR MARKS: And I want to know what basis you have for making it.

5 MR EVANS: Again, representations from a range of persons who were engaged in
running independent service stations and the reason why they exited. Quite simply,
when they approached us to explain - and on some occasions we approached them
because we could see a certain dynamic in the market, when they exited that dynamic
10 changed. The argument was put to us, I have to purchase my fuel at this price from
the distributor or the refinery. I can't match the prices they are offering. Therefore, I
can't continue in business.

MR MARKS: The reason I asked you that question was in part driven by the fact
15 that, as you agree, it is a fairly heavy-handed comment.

MR EVANS: Yes.

MR MARKS: But it is also out of line it seemed to me reading the materials with
20 what the other automobile associations and representatives around Australia are
saying, and I was wondering what the reason was.

MR EVANS: In what way?

MR MARKS: The other associations have broadly supported the shopper docket.
25

MR EVANS: We are not against the shopper docket.

MR MARKS: You are not? What is your position in relation to the shopper docket?

30 MR EVANS: We accept that they are a fact in the marketplace.

MR MARKS: Do you think they are good for consumers?

MR EVANS: The simple fact is there is no such thing as a free lunch. You are not
35 getting a discount out of the generosity of either Coles or Woolworths and who are
prepared to reduce their dividends to shareholders. It is clearly a factor in their
determination to get market share, be it in groceries or petrol. I accept that. Given
the situation that exists, and we also question members closely, and we tracked it as
well. You will find a marked increase in the use of shopper docket. Certainly again
40 in dialogue with the fuel companies and the two Caltex and Shell that supply the fuel
to the two chains, again, you get a very clear indication from them that there is an
increase in the use. We see it going at the moment some - on our research some
70 per cent of members acknowledge or state that they are using shopper docket
regularly for fuel purchase and somewhere - - -

45 MR MARKS: How many is that?

MR EVANS: Over 70 per cent.

MR MARKS: Of your members?

MR EVANS: Yes. And over 50 per cent of them use it at all times when they are purchasing fuel. That's a marked increase over the last couple of years.

5

MR MARKS: Is that anecdotal or have you done some research?

MR EVANS: No, that was in a survey.

10 MR MARKS: Would you be able to provide us with that, we would be very grateful, and any other research that suggests from quizzes you have given your members whether and how their buying habits have changed as a result of the advent of shopper dockets. That would be very useful.

15 MR EVANS: We are briefed by the consultants that people would even go to the extent of - they were buying \$90 worth of groceries and going through three times to make sure they got three dockets. It certainly shows the penetration of shopper dockets into the market and the way - the behaviour that has occasioned. As I said, we don't condemn it. We accept it is there. What I'm concerned about is if it gets to
20 such a dominant position in the market that there are no independents, what will be the consequences.

MR MARKS: Let me ask you about that. Do you have a view about whether a shopper docket scheme in its present general form were allowed to continue it would
25 have an impact on the independent part of the market and, if so, what impact?

MR EVANS: It would be lovely to have a crystal ball. I don't. I guess the concern and why we have raised it is - our assessment - our members operate in the retail
30 market - the advice we have got is that they probably occupy some 65 per cent of that market. If you then try and break that down, and we intend to do it over time, into both the metropolitan and regional market, there may be different percentages applying there. What our concern would be is if they got to the point where there were the only two in the marketplace, what would be the consequence of that
35 situation?

MR MARKS: So it's a broad concern?

MR EVANS: Yes.

40 MR MARKS: Really flowing perhaps from some general things. That the supermarkets have got a large share by volume of the retail market. And you foresee that if that share grows it might have an impact - - -

MR EVANS: I would put a warning flag up.

45

MR MARKS: Something we ought to look at?

MR EVANS: Something we ought to keep an eye on. Again, we would all like people to be honest and true and do all the right things all the time, but sometimes when you get market dominance you get carried away.

5 MR MARKS: Can I change the topic again, Mr Evans. I won't keep you much longer. I'm grateful for your help. You have made a number of comments over time about increases in petrol prices on long weekends. No doubt it's a sensitive issue with your members.

10 MR EVANS: It certainly is.

MR MARKS: What research have you undertaken into this topic with the resources open or available to you?

15 MR EVANS: It's one of those unfortunate factors of life that the oil companies argue that there hasn't been any changed behaviour. But most public holidays fall on weekends. I think the only one that doesn't these days is Anzac Day. The Christmas/New Year period fluctuates but you will get holidays adjacent to that. So the price spike. Again, it is one of the arguments I have had with the oil companies.
20 They are their own worst enemies by that sort of behaviour and, if they smooth that out, they wouldn't get the criticism they do. Yes, the price rise - the oil companies argue that it is entirely the weekly price cycle, but it is occurring prior to a long weekend.

25 MR MARKS: How do you know that? What research have you done to show that that is in fact happening?

MR EVANS: It may be that it's just part of the weekly price cycle but the fact is most public holidays occur on weekends, so the price is going up on the Thursday
30 according to the cycle, and that's why I have had the discussion with the oil companies that they really need to think about that behaviour and why they get the criticism.

MR MARKS: But is the reality that it really is not any different or you can't say
35 whether it is different to any ordinary week?

MR EVANS: The most stark example we saw was somewhere about two years ago, when there was a public holiday in the eastern states but not in the west. There was a sharp increase in fuel prices in east and there wasn't one in the west. It didn't have a
40 long weekend. That sort of behaviour - and I actually sat down with the oil companies and said that sort of behaviour is why consumers are so cynical about what goes on with petrol pricing. "What's your explanation for that?" They couldn't offer me one.

45 MR MARKS: But just following up on what you can tell me rather than what others have told you, we are concerned about this. You have made a couple of strong comments about oil prices or petrol prices on long weekends. One was to this effect - and this is in some of the material you have provided or that we have - you say oil

companies try to disguise that, that is, the rising prices on long weekends as part of the normal weekly price fluctuations, but it is about much more than that. You say that it is about time someone was able to publish the real figures so that motorists know when they are being ripped off. That is a strong statement. Have you had an opportunity to look at the submission that was made to the Senate's Economics Legislation Committee in July of last year by the ACCC as part of its petrol pricing inquiry?

MR EVANS: Not recently, no.

MR MARKS: Did you know that in that document there is a large amount of information about not only the cycle but about long weekends and in relation to long weekends a whole part which analyses the impact on pricing on long weekends and whether or not there have been aberrations from the cycle; did you know that?

MR EVANS: I would have to have another look. It is some time since I read it. I can't recollect.

MR MARKS: I only bring it to your attention because it has quite a different conclusion to the one that your comments to the public would suggest. Having analysed the position, the finding was that in fact when you looked at it right across all states, but Sydney as well, there was not evidence that there was this artificial movement in prices in the immediate lead-up to long weekends. Sometimes it happened, sometimes it did not. But that it was more closely probably explained by the ordinary variations that were going on in the cycle from week to week. Were you aware of this analysis?

MR EVANS: I'm broadly aware of it. But it is something that is on our agenda to look at more closely to see what the differentials were over a period of time. You are aware of course, as you would be, that that differential across the weekly cycle varies as well. So it's not always a uniform amount. We want to have a closer look at that material when we have got the time and resources to see whether there is anything in that.

MR MARKS: Do you think, though, that before you make further public comment about the realities of long weekend trading by oil companies and by retailers it may be worth having a look at that?

MR EVANS: Certainly.

MR MARKS: Can I ask you, then, about price fixing simply because it's something that I discerned from some of the comments you have made as being an issue that you are concerned about. I have got, as you can understand, all these articles everywhere - - -

MR EVANS: Not all of them are necessarily correct.

MR MARKS: In that they don't record what you say accurately?

MR EVANS: On numerous occasions. As I have said, we are still trying to find the dummy's guide to petrol pricing. We had the experience today trying to explain to someone just how petrol pricing occurs. And I had to say the day we develop
5 dummy's guide will be a wondrous day because it will save me a lot of discussion with a lot of journalists.

MR MARKS: There are a couple of points I want to make. You will forgive me. I appreciate this is journalism. But you say in today's paper that you were going to tell the inquiry - and this is what somebody else says, so forgive me - that you had
10 evidence that the big four fuel suppliers, Caltex, Shell, Mobil and BP, have been inflating the price of petrol to line their pockets. We "knew they were profiteering and now we have the evidence to prove it". Where is the evidence?

MR EVANS: It's the very public statements made by others that the reason for the increase in the price of fuel is the change in crude price, not me, the oil companies, the Prime Minister and others. When we went back and looked at that and said, okay, here is the change in the price of crude, here is the change in the price of fuel. If that's your argument in the past - - -
15

MR MARKS: It's that point?
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MR EVANS: It's that point. If they want to change their argument, then I am prepared to go and rework it. But they have to actually say it's not the price of crude that determines the price at the bowser - - -
25

MR MARKS: When you say "we have the evidence to prove it" that's what you are referring to?

MR EVANS: That's what it is.
30

MR MARKS: You have made some comments about price fixing. I have pulled out an example. On the ABC on 25 June you were reported as making some fairly serious comments. I will not read it all out, but suffice it to say it was approximately this. You said, look, in answer to the question is price fixing going on in petrol
35 companies, you said this. You said, "Look, I'm absolutely sure it is. I mean, the reality is that you can't ignore the fact that there is no price differential."

MR EVANS: Can I say that was not - that was a bit of a cut and paste. Because one thing I'm very conscious of and I never say - because I don't think it occurs - is fixing in terms of collusion going on between them. But they - - -
40

MR MARKS: We were just a bit concerned about that and that's why we wrote to you and asked you whether you could provide - you didn't respond to that.

MR EVANS: I intend to do it here. Because I am very conscious of the fact - I do not believe they sit in smoke filled rooms or get on the telephone. I think by a range of other behaviours they actually mirror each other in their behaviour and that's - it's
45

not an action of collusion, it's just, "This is the way that the market can operate and we will follow that operation."

5 MR MARKS: I see. This comment, then, here - I just want to make sure from your perspective that we have not misunderstood it. You say it's not just the oil companies, it's the supermarket chains, there is no real competition, they are manipulating it to the advantage of you and I, there is - - -

10 MR EVANS: I would not say to the "advantage" of you and I. I would say to the disadvantage of you and I.

MR MARKS: Let's assume that is a typo. You would know what I'm saying.

15 MR EVANS: I - - -

MR MARKS: Just hear me out if you could. You have made very strong comments about the existence of price fixing. That was the question you were asked. Is your response to the commission now by way of explanation, look, my comments were perhaps not attributed to me correctly? Is that what you are saying?

20 MR EVANS: Part of them weren't.

MR MARKS: Secondly, are you saying that, "When I talk about price fixing, I'm not talking about illegal collusion"; is that what you are saying?

25 MR EVANS: Yes.

MR MARKS: "I'm talking about something more general, perhaps even as wide as parallel pricing"?

30 MR EVANS: Exactly. Why we have raised it - when you walk into the supermarket, Coles and Woolworths in particular, you will find variation in the price of goods on the shelf. The same product will not be exactly the same in Woolies or Coles and it varies. But the one thing, and we can't offer an explanation to members, it's the one that keeps getting raised with us, is why can I find differential pricing in the supermarkets for a variety of products, but I can't find differential pricing with fuel between Coles and Woolworths? And I don't have an explanation for it.

40 MR MARKS: I just noticed looking at this that it is a Media Monitors transcript. I tend - - -

MR EVANS: You can still get cut and pasted when you are doing a radio interview.

45 MR MARKS: Does it happen to you very often?

MR EVANS: It happens regularly.

MR MARKS: You say in that same transcript that 65 per cent of the retail petrol sale market are now controlled by supermarket chains. Where did you get that figure from? Is that from HEH as well?

5 MR EVANS: Yes, we engaged them to analyse the market. That's the retail market that our members are utilising.

MR MARKS: I understand. You have for our benefit recorded some conclusions in your written submission about impediments and recommendations. Is there anything
10 having heard what you have today or from what I have asked you, is there anything that you want to add to the matters you have raised there? I will not go through them all, but I did want to ask you that general question.

MR EVANS: No, I don't think so. Some of those quite clearly fall under the
15 purview of this inquiry. Others might have other parties involved as well. We will pursue them.

MR MARKS: Mr Evans, thank you. They are the questions I have.

20 THE CHAIRPERSON: I have just one question or maybe two or three that will follow on. But you have referred to the confusion in the minds of motorists as to the benchmark in relation to petrol pricing. And you have indicated that a number of parties - I think you have said that the Prime Minister, and we will leave the Prime
25 Minister aside for the moment, but all the oil companies referred to the Tapis crude oil as the benchmark. Can you give me any examples of that?

MR EVANS: Not off the top of my head, no. But we will do a search of our media.

THE CHAIRPERSON: That would be useful for the record to understand that. Are
30 you aware that one of the oil companies was quoted as describing that reference to Tapis crude oil by yourself in this morning's paper as "pure fantasy"?

MR EVANS: Yes.

35 THE CHAIRPERSON: Because the clear statement was that it was Singapore and Mogas that was the benchmark?

MR EVANS: I'm aware of the comment. Yes, I saw it. That's why we will go
40 digging. Because in the past they have quite consistently argued the reason for the increase in fuel at the bowser has been the increase in crude.

THE CHAIRPERSON: I'm concerned about this confusion, because on many occasions over the past 12 months representatives of the ACCC, including myself, have indicated that the oil companies have consistently maintained that it is not Tapis
45 crude that's the issue, but it is Singapore Mogas that's the benchmark. In fact, I think I have used a catchphrase that you don't put crude oil into your petrol tank, you put refined petrol. And that's the benchmark that the oil companies consistently maintain

is the benchmark against which petrol prices are set in Australia. But you say that they are consistently maintaining that it is crude oil?

5 MR EVANS: And Tapis crude in particular. But you do need crude to get refined petrol. That is the problem I think they have created. When there has been a shift in
10 crude price or there has been a shift in fuel prices when crude has varied, that is the argument that has been used. They might be trying to shorthand the argument; it is a very complex issue. But they have been caught by their own verbiage. There is no doubt in the minds of consumers, from our research, that the price of crude is the
15 determining factor. It may be, Mr Chairman, that they have not been able to absorb what you have been saying because it's been overridden by others.

THE CHAIRPERSON: Perhaps overridden by some of their representatives as well,
15 yourself.

MR EVANS: I don't actually go out and justify - I only ever respond to the
20 comments.

THE CHAIRPERSON: Are you aware of evidence that was given to us by the
25 associated bodies - I say "associated", that is, the representatives of the motoring organisations in Western Australia and South Australia in the past few days that there appears to be - and I can't quote them because I don't have the transcript in front of me - but there appears to be very little comment on the price cycles in those states because "they seem to understand it"?

MR EVANS: I'm not aware. I was aware they have appeared. I have been
30 otherwise occupied for the past few days. I have been out of the media loop.

MR MARTIN: Mr Evans, just on price cycles, your view is that - precisely what is
35 your view?

MR EVANS: On the price cycle? I think I have mentioned a couple of times. I
40 think it creates a problem for the oil companies in trying to justify price variations, because people find it difficult to understand the fluctuations that occur. They will argue that there are motorists who are attuned to the cycle and buy their petrol on
45 Tuesday. Others who don't. But equally I would argue back that we can't all govern the distance we drive so that you can always fill up your car on a Tuesday. A whole range of factors come into play. But what I say is that variation in fact creates some problems for the oil companies in terms of the public accepting the shifts in prices.

MR MARTIN: But do you see it as pro-competitive?

MR EVANS: I think I have indicated that because the prices are so parallel it is very
50 difficult to see that there is competition in the sense that you can get a price differential and - your previous witness talking about 0.2c a litre. It's fine if you happen to be driving down a road and you have got a choice within a very short space of time that you can get 0.2c a litre. But if you have to drive 5 kilometres to get that 0.2c a litre differential it is not worth while. But again people do drive - we

are aware from surveys people will drive some distances in order to save themselves the 4c a litre from the shopper docket.

MR MARTIN: You said that you have spoken quite a lot to the oil companies.
5 What do you see as the real competitive dynamics in the industry? Is it importing?
So that there is more competitive - what are the sources of competitive pressure?

MR EVANS: Now or in the future?

10 MR MARTIN: Well - - -

MR EVANS: I think we have a general concern that the domination of the retail
market by two major players may not be all that positive. But we are willing to be
persuaded. We observe and have discussions with BP, for example, who are
15 pursuing what I might call the green path. And certainly again our research shows
that there has been a marked switch in sentiment over the last - over a relatively short
space of time in the latter part of last year/in the early yearly part of this year in the
minds of motorists about greenhouse gases and their contribution to them and what
they should do to try and alleviate that. I think BP may well have tapped into a
20 growing sentiment about what motorists should do to reduce their emissions. As I
said, it occurred in quite a rapid space of time from our experience.

MR MARTIN: I recall the AAA and NRMA having a view on E10 and that product.
What is the current position? The last witness indicated that was an important
25 dynamic from its position. How do you see that from your members' perspective?

MR EVANS: What we saw was almost a complete reversal over a 12-month period
in motorists' attitude to the use of E10 fuels. Whereas 70 per cent were not in favour
of it and 30 per cent were, we saw a switch, almost overnight but over a short space
30 of time, a few months, where that completely reversed. We have analysed it a bit
further, and this is the interesting part about consumers' behaviour. They are
conscious about greenhouse gas emissions. But they don't want to give up driving
their motor vehicle and they don't want to inconvenience themselves too much in
order to reduce their contribution to emissions. So E0 was something they could do
35 positive without any great price disadvantage to themselves. Again, price was a
factor in their thinking.

THE CHAIRPERSON: Finally, in response to a question I think by Commissioner
Martin just a minute ago, you suggested that the similarity of pricing on the boards
40 during the price cycles suggests that there was a lack of competition.

MR EVANS: In the minds of consumers, they don't see it as competitive because
they are paying, be it Coles, Woolworths or the others, they are paying exactly the
45 same price.

THE CHAIRPERSON: If there was no competition why would the price even move
down rather than just stay up at the high price right through?

MR EVANS: If there was no competition?

THE CHAIRPERSON: If there was a lack of competition why wouldn't the prices have just remained high?

5

MR EVANS: If there was no competitors. When you try to argue there are competitors and the price is exactly the same - the question we get asked repeatedly is why is there a differential in the price of beans inside the supermarket and we come outside and whether it is Coles or Woolworths the price is exactly the same. I can't answer that question.

10

THE CHAIRPERSON: When you are asked that question what response do you give?

15

MR EVANS: "That's a matter you have to take up with Coles or Woolworths."

THE CHAIRPERSON: Can I ask you the question, just for the record, if there was a lack of competition why wouldn't prices just remain high right through the week and there would be no price cycle and prices would never move down?

20

MR EVANS: I'm not sure that one could argue that the cycle is necessarily competition in all its full-blown glory.

THE CHAIRPERSON: So what is causing the prices to move down as part of the price cycle?

25

MR EVANS: I'm not convinced yet that we haven't got in such a habit or the oil companies haven't got in such a habit they go up and down. As I said, we saw latterly that that price cycle smoothed out. There wasn't the pattern of variations that we had seen before.

30

THE CHAIRPERSON: Weren't you indicating before your concern - I think that's indicated in your submission - that on weekends and on long weekends prices go up but then they fall down during the week. I am wondering what is causing that to happen? Is it a habit?

35

MR EVANS: When I put to the oil companies one of the problems they had in trying to convince the consumer that they are not trying to take advantage of the consumer is the variation in the price cycle - they all agreed that that is a detriment to their image, but they can't break out of it because it is such a part of the pattern now that no-one is prepared to change the pattern. And the only way they could change the pattern was if they got together and colluded and agreed to change the pattern.

40

THE CHAIRPERSON: Yet you heard the previous witness from United indicate that that habit is a pretty bad habit; when it gets to the bottom of the price cycle it actually causes them to lose money.

45

MR EVANS: That may well be.

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THE CHAIRPERSON: That's a strange habit.

MR EVANS: I can only accept the explanation offered to me by the oil company executives in saying to me why the cycle occurs why it does. They agree with me, by the way, that it does adversely impact on their image but they don't know how to
5 break out of it.

THE CHAIRPERSON: Thank you. Thank you very much, gentlemen. You have got a number of things that you are going to provide to us as a follow-up. Thank you very much. I will close this hearing and we will reconvene tomorrow morning at 9
10 am.

MATTER ADJOURNED UNTIL 9am ON TUESDAY, 4 SEPTEMBER 2007

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