



## *Public Competition Assessment*

*9 February 2010*

### *Caltex Australia Limited - proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd*

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#### **A Introduction**

1. On 2 December 2009, the Australian Competition and Consumer Commission (ACCC) announced its decision to oppose the proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd by Caltex Australia Limited (**proposed acquisition**). The ACCC decided that the proposed acquisition would be likely to have the effect of substantially lessening competition in various fuel markets in contravention of section 50 of the *Trade Practices Act 1974* (the **Act**).
2. The ACCC made its decision on the basis of the information provided by the merger parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis for the ACCC's decision on the proposed acquisition, subject to confidentiality considerations.

#### **B Public Competition Assessment**

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
  - a merger is opposed;
  - a merger is subject to enforceable undertakings;
  - the merger parties seek such disclosure; or
  - a merger is not opposed but raises important issues that the ACCC considers should be made public.
4. This Public Competition Assessment has been issued because the ACCC opposed the proposed acquisition, and raises important issues that the ACCC considers should be made public.
5. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues that can be disclosed publicly. It will focus on key reasons for a decision, and may not include all information on

which the ACCC based its decision. Public Competition Assessments also alert the public to circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change.

6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or similar markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.
7. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

## **C The parties**

### **The acquirer: Caltex Australia Limited**

8. Caltex Australia Limited (**Caltex**) is one of the four refiner-marketers of petrol, diesel and automotive liquefied petroleum gas (**LPG**) operating in Australia. It owns the Kurnell refinery in Sydney and the Lytton refinery in Brisbane, and owns or operates 15 fuel terminals located across Australia.
9. Caltex sells petrol, diesel and LPG on a wholesale basis to customers including its own retail sites and independent fuel retailers (including Woolworths and Caltex-branded independent retailers).
10. Caltex's national network of 1826 branded or co-branded retail service station sites, comprises:
  - 333 sites operated by Caltex or their commission agents
  - 258 sites operated by Caltex franchisees
  - 695 sites that are Caltex branded, but are operated independently
  - 540 sites co-branded with Woolworths (the **Retail Alliance sites**).
11. The key elements of Caltex's Retail Alliance with Woolworths are summarised below.
  - All 407 Woolworths-owned retail sites are co-branded as Caltex retail sites. Woolworths sets the price of unleaded petrol at these sites.

- Certain Caltex owned sites (the 133 ‘Caltex contributed sites’) are co-branded with Woolworths and the pricing of petrol at these sites is controlled by a Woolworths subsidiary at the direction of Woolworths.
- Caltex is the exclusive wholesale fuel supplier to Woolworths.

### **The target: Mobil Oil Australia Pty Ltd**

12. Mobil Oil Australia Pty Ltd (**Mobil**) and its parent company ExxonMobil Australia Pty Ltd, is one of the four refiner-marketers of petrol, diesel and LPG in Australia. The ultimate holding company of Mobil is Exxon Mobil Corporation (**Exxon Mobil**), a US-based corporation. Mobil owns a refinery in Altona, Melbourne, and the ‘mothballed’ Port Stanvac refinery in South Australia. Mobil has recently announced the Port Stanvac refinery will be demolished and the site rehabilitated. Mobil also owns or operates five fuel terminals located across Australia.
13. Mobil sells petrol, diesel and LPG on a wholesale basis to its own retail sites as well as independent fuel retailers (including United and Mobil branded independent retailers in regional areas).
14. Strasburger Enterprises (Properties) Pty Ltd (**SEP**) is 50% owned by Mobil and operates the 302 retail sites that are part of the sale. These 302 retail sites consist of 202 Mobil/SEP owned sites and 100 head leased sites (where Mobil or SEP is the primary lessee of the site). Nine of these sites are vacant or idle. The vast majority of the sale sites are located in metropolitan areas.

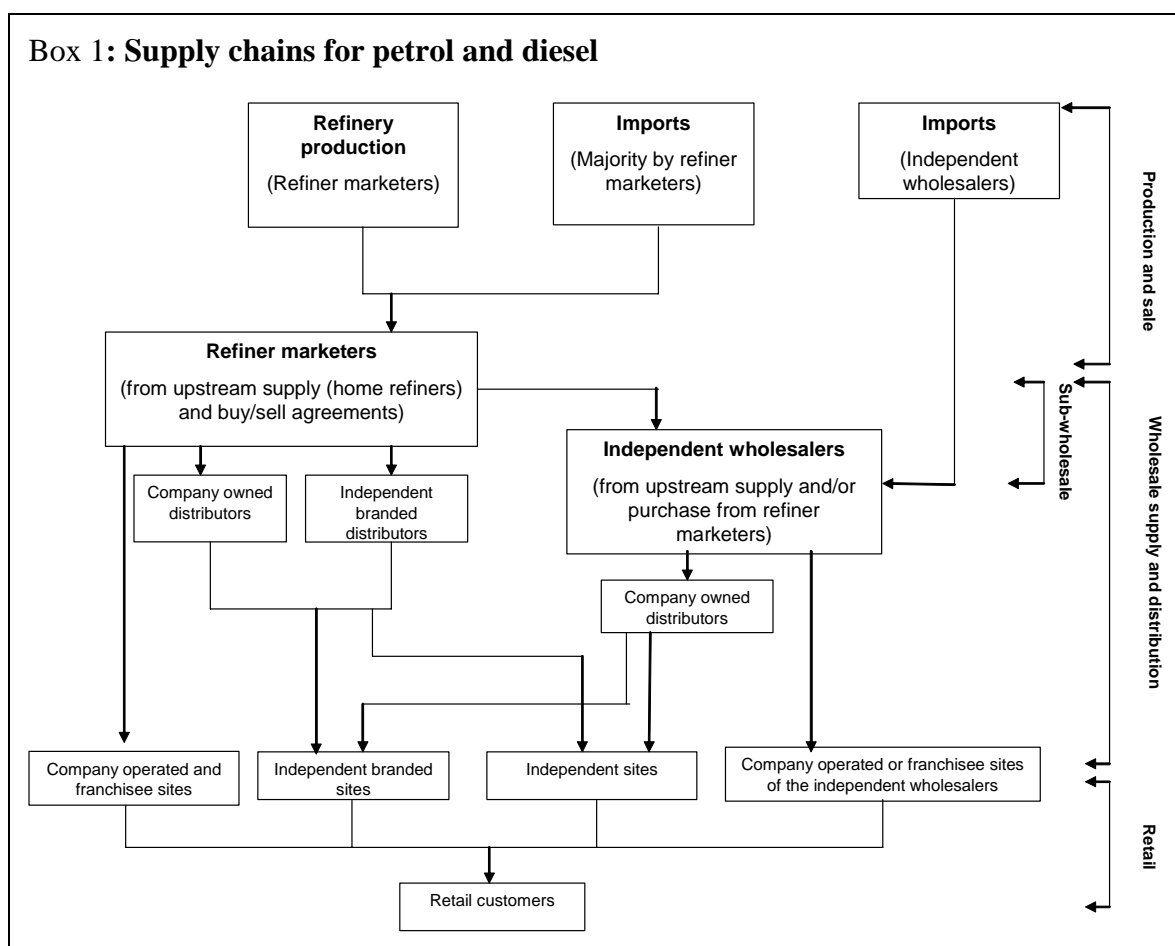
### **D The proposed transaction**

15. During mid to late 2008 Exxon Mobil commenced a tender process to divest Mobil’s retail fuel business (SEP). Parties invited to participate in due diligence were requested to submit a binding offer by December 2008.
16. On 26 May 2009, Caltex and Mobil executed a Share Sale Agreement and a Business Sale Deed.
17. Under the Share Sale Agreement, Caltex would acquire all of the issued shares in SEP. Under the Business Sale Deed, Caltex would acquire the fuel retail business operated by Mobil and SEP, and the assets used in connection with the business, including the 302 Mobil service station sites (the **Sale Sites**).
18. The Sale Sites are located in Queensland, New South Wales/Australian Capital Territory, Victoria and South Australia. These states are therefore the focus of the competition analysis below.
19. Caltex and Mobil have also negotiated a fuel supply agreement that involves Caltex acquiring fuel from Mobil fuel terminals in Melbourne and Adelaide sufficient to support the supply of the Sale Sites in Victoria and South Australia. Caltex will also use fuel storage services at Mobil terminals sufficient to support the supply of the Sale Sites upon completion in each of the relevant states where sale sites are located.

20. The acquisition does not include the use of the Mobil brand (after a transition period) or acquisition of any of Mobil's upstream refining, importing and wholesaling assets.

## E Industry background

21. The Australian petrol and diesel industry comprises three broad levels: production and importing, wholesale and distribution and retail. The broad structure is summarised in box 1 below.



22. Each of these functional levels is discussed below.

### Production and importing of petrol and diesel

23. Petrol and diesel sold in Australia is either refined from crude oil at local refineries or imported as a finished product from overseas refineries.
24. There are seven refineries currently operating in Australia. They are owned and operated by four companies that also participate in the wholesale and retail supply of fuel, known as the 'refiner-marketers' (BP, Shell, Mobil and Caltex). The refineries they operate are:

- Shell — Clyde (NSW) and Geelong (Victoria)

- Mobil — Altona (Victoria)
  - Caltex — Lytton (Queensland) and Kurnell (NSW)
  - BP — Kwinana (WA) and Bulwer Island (Queensland).
25. Refining volumes for petrol and diesel across Australia are not sufficient to meet demand. Imports of petrol and diesel are therefore a feature of the industry. Each of the refiner-marketers imports petrol and diesel. The majority of imports to a particular state are by the operator(s) of the refineries within that region. Independents also import small volumes of petrol in some states — for example, Neumann imports petrol into Queensland and United imports petrol into Victoria. These parties still acquire some of their petrol requirements in these states from the refiner-marketers.
26. Most of the import terminal infrastructure is owned or leased by the refiner-marketers.
27. In states where they do not operate a refinery, the refiner-marketers (BP, Shell, Caltex and Mobil) contract to purchase petrol and diesel from one of the other refiner-marketers. These are known as ‘buy/sell’ agreements. Despite the fact that a refiner may sell to another refiner-marketer in one state and then buy from the same refiner in another, these agreements are not reciprocal but are discrete agreements. For example, Mobil has a petroleum agreement with Caltex to buy product in Sydney, and Caltex has a separate agreement to buy product from Mobil in Melbourne.

### **Wholesale supply and distribution of petrol and diesel**

28. The refiner-marketers supply wholesale petrol and diesel (from their refining and import operations and fuel purchased under the ‘buy’ arrangements) to their own retail outlets and to independent retailers. In regional areas in particular, refiner-marketers may supply wholesale petrol and diesel to distributors, who then on-sell to retail outlets. Some distributors are owned by the refiner-marketers and others are independently owned.
29. The refiner-marketers also engage in the wholesale supply of petrol and diesel to independent wholesalers. Independent wholesalers (such as Liberty, United, Neumann) engage in the wholesale supply of petrol and diesel to their own retail outlets and sell fuel to other independent retailers.

### **Retail supply of petrol and diesel**

30. Service station sites supply petrol and diesel to retail customers (individuals and businesses). There are a range of different ownership structures of service stations broadly falling into the following categories:
- supermarket-operated sites (Coles Express and Woolworths)
  - refiner-marketer company owned sites

- refiner-marketer franchisee sites
  - refiner-marketer branded but independently operated sites
  - independently owned and/or operated sites — from large independent chains (e.g. United, Neumann) to single-site operations.
31. These ownership structures determine who sets the price (or exerts control over the price) of petrol and diesel at each retail site. Each refiner-marketer has direct control over the board price at its company owned and leased sites.
32. Refiner-marketers (other than BP) also influence the board price of petrol and diesel at their franchisee sites through the provision of price support. For example, Caltex's price support scheme provides its franchisees with a temporary discount off their buy price in order to meet local competition. Price support is provided subject to the franchisees' retail price not exceeding a stipulated maximum during periods of support. Caltex can choose to withdraw its price support arrangements at any time.
33. At independent sites (including refiner-marketer branded but independently owned and operated sites), the site owner/operator is responsible for setting the board price of petrol and diesel.

#### *The supermarket alliance agreements*

34. Coles and Woolworths are large vertically integrated grocery retailers. Each has entered into an alliance with one of the refiner-marketers to support their retail petrol operations (Coles with Shell and Woolworths with Caltex).
35. At the supermarket-operated sites, price setting for petrol and diesel is determined by their respective alliance arrangements.
36. Under the supply arrangement between Woolworths and Caltex, Woolworths owns the petrol sold at all of the Retail Alliance sites. Woolworths also sets the pump price at these outlets.
37. Shell supplies fuel and branding rights to Coles. While Coles operates and determines the prices at these sites, it also receives price support from Shell.

#### **LPG**

38. The LPG industry structure has some important differences to petrol and diesel. The refiner-marketers produce around a quarter of all domestically produced LPG in their refineries, with the remainder coming from naturally occurring LPG in domestic oil and gas fields. Major producers of naturally occurring LPG in Australia include BHP Billiton, Esso, Santos and Woodside.
39. A large portion of the naturally occurring LPG (propane and butane) is produced in Western Australia, and this is largely exported. Imports of LPG into the east coast (propane) from Western Australia account for around 20% of the LPG sold in Australia. LPG imports – including imports sourced by independent retailers –

are typically through entities not related to the refiner-marketers (Elgas and Origin).

40. Automotive LPG sales are far less significant than those of petrol and diesel. In 2008-09 automotive LPG represented around 10% of total retail sales of transport fuels in Australia (compared with 67% for petrol and 22% for diesel).

## **F Timing**

41. The following table outlines the timeline of key events in this matter.

Date	Event
27-May-2009	Caltex announced that it had entered into an agreement to acquire 302 Mobil service station sites located in metropolitan areas in South Australia and along the east coast of Australia.
09-Jun-2009	ACCC commenced review under the Merger Review Process Guidelines.
03-Jul-2009	Closing date for submissions from interested parties, consumers and market participants.
10-Jul-2009	ACCC requested further information from Caltex. ACCC timeline suspended.
14-Aug-2009	Caltex responded to the ACCC's information requested of 10 July 2009. ACCC timeline recommenced.
02-Sep-2009	ACCC published a Statement of Issues outlining preliminary competition concerns. Former proposed date for announcement of ACCC's findings deferred to allow for submissions relating to Statement of Issues.
16-Sep-2009	Closing date for submissions relating to Statement of Issues.
30-Sep-2009	Former proposed date for announcement of ACCC's findings of 7 October 2009 deferred in response to a request by Caltex to allow it additional time to provide further information to the ACCC. ACCC timeline suspended pending receipt of this information.
20-Oct-2009	Further information provided by Caltex. ACCC timeline recommenced.
10-Nov-2009	Former proposed date for announcement of ACCC's findings of 11 November 2009, amended in response to a request by Caltex to allow it additional time to provide further information to the ACCC and to allow the ACCC to consider the information.
02-Dec-2009	ACCC announced that it would oppose the proposed acquisition.

## **G Market inquiries**

42. The ACCC conducted market inquiries with a wide range of industry participants, including the refiner-marketers, independent chains, independent fuel wholesalers, branded independent distributors and retailers, motoring groups, major fuel card customers, retail fuel consumers and other interested parties.

## **H Statement of Issues**

43. The ACCC published a Statement of Issues on 2 September 2009 identifying a number of competition issues. In the Statement of Issues the ACCC set out its preliminary views that the proposed acquisition was likely to substantially lessen competition in:

1. Wholesale petrol and diesel markets in NSW and Queensland
  2. Certain retail petrol, diesel and LPG markets across Queensland, NSW, ACT, Victoria and South Australia.
44. The Statement of Issues also identified potential competition concerns in wholesale petrol markets in Victoria and South Australia, and in a large number of retail petrol, diesel and LPG markets.

## **I With/without test**

45. In assessing a merger pursuant to section 50 of the Act, the ACCC must consider the effects of the transaction by comparing the likely competitive environment post-merger if the transaction proceeds (the “with” position) to the likely competitive environment if the transaction does not proceed (the “without” position).
46. The ACCC took the view that if the proposed acquisition did not proceed, there was a real chance that the Sale Sites would be sold to a single buyer (most likely the under bidder from the sale process) or would be sold either individually or in groups to other buyers for either petroleum or non-petroleum use. Due to confidentiality restrictions, the ACCC cannot identify any party or parties that could potentially acquire the assets if the proposed acquisition does not proceed.
47. The ACCC did not need to form a concluded view on the likely counterfactual position of the Mobil retail business, as it found that the merger would be likely to result in a substantial lessening of competition in a market when adopting any of the likely counterfactuals.

## **J Market definition**

### **Product dimension**

48. As outlined above, there are three functional levels in the supply of petrol, diesel and LPG in Australia: production/importing; wholesale and distribution; and retail. The ACCC considered that given the different functions and characteristics of each functional level of the supply chain, each should be considered to fall within separate markets.
49. Although the ACCC took the view that each of the three functional levels of the supply chain were not in the same markets, it recognised the importance in understanding the interdependencies between the different functional activities in conducting the competition analysis.
50. The ACCC also considered whether the product dimension of the relevant markets should include all three types of fuel, or whether each type of fuel should be defined as separate markets. Three types of fuel products are commonly sold at retail service stations: unleaded, diesel and LPG:



- **Petrol (ULP/PULP):** Petrol is used primarily by private motorists. ULP is the most common fuel type for motor vehicles. PULP is a special blend of petrol designed to increase engine power.
- **Diesel:** Diesel is primarily an ‘industrial’ fuel used by heavy vehicles and is commonly used for road transport and heavy haulage, construction and rural applications, such as farm machinery/tractors and irrigation pumps, although private-use vehicles using diesel are increasing in number.
- **LPG:** LPG (or autogas) is a hydrocarbon fuel and a widely available alternative fuel for motorists. Most vehicles operating on LPG are taxis or fleet vehicles.

51. From a demand-side perspective, there is no substitutability in the short to medium term between petrol, diesel and LPG as motorists and commercial end users must use the type of fuel product suitable for their vehicle/engine.
52. On the supply side, petrol and diesel are produced at refineries in relatively fixed proportions. For example, Caltex’s refineries are configured as ‘3-2-1’ refineries which means they produce roughly 3 parts petrol, 2 parts diesel and 1 part jet fuel from each barrel of crude oil. Through separate processes, the refineries also produce LPG and other fuels such as marine bunker fuel and other products such as lubricants. As refineries cannot be reconfigured without significant new investment, the ACCC took the view that these products are not supply side substitutes in production or wholesaling.
53. At the retailing level, it was found that petrol and diesel appear to be complements in supply as they are commonly supplied at the vast majority of retail service station sites. The volumes of each fuel type sold are highly dependent on the demand characteristics of the site customers — for example, the majority of private motorists purchase petrol, whereas large trucks all use diesel — which are in turn determined by the characteristics of the site — location, forecourt access for heavy vehicles etc.
54. The ACCC received information to suggest that it would be relatively easy for a retailer to switch particular tanks at a site from unleaded petrol to diesel (or vice versa). In particular, the cost of undertaking such a switch appears to be relatively low (around \$15,000, compared with a much higher cost of installing an LPG tank – estimated by Caltex to be between \$185,000 and \$250,000). Accordingly, the ACCC took the view that on the supply side, petrol and diesel retailing were close substitutes. However, LPG retailing and retailing other fuels were not close substitutes.
55. On the basis of the above, the ACCC considered it appropriate to define the product dimensions of the relevant markets for the purpose of examining the proposed acquisition as:
  - separate product markets for the production of petrol, diesel and LPG;
  - separate product markets for the wholesale sale of petrol, diesel and LPG; ,

- retail petrol and diesel product markets; and
- retail LPG markets.

### **Geographic dimension**

56. The ACCC analysed both the production and wholesale markets at a state level. While there is in some cases transportation of fuels across state borders, in general, transportation costs are such that there is a significant cost advantage to sourcing supply within a particular state. This is most evident in the fact that, in states where they do not have their own refinery or import infrastructure, the refiner-marketers source the majority of their petrol and diesel from other refiner marketers that do have a refinery in that state. Similarly, independent retailers acquiring fuel will, in the main, acquire it from a wholesaler with infrastructure in their state of operation.
57. In identifying the relevant geographic scope of local retail markets, the ACCC examined the geographic substitution possibilities in relation to each of the Sale Sites. The ACCC's inquiries following the Statement of Issues confirmed its preliminary view that the appropriate starting point for defining retail markets for the retail supply of petrol, diesel and LPG is a 3-5km radius from each site. In forming this view, the ACCC recognised that certain features of retail markets, such as the layout of roads in the area, are potentially important when defining the geographic scope of a local market. A key factor in determining this as an appropriate approach was the information provided by retailers, including the merger parties, which explained how they set prices in local regions, and, in particular, the competitors to which they respond.
58. Consequently, although a 3-5km radius was used as the starting point, the ACCC took a case-by-case approach to examining competition in each local area, taking account of the features of each local market. In some cases, the ACCC took the view that the geographic scope of the local retail market was a narrower geographic area and in others the relevant market was found to be broader than 3-5km.
59. The ACCC received some submissions which suggested that competition for retail diesel and LPG sales occurred across geographic areas broader than 3-5km in radius, primarily because trucks and other commercial vehicles that use these fuels travel longer distances. However the ACCC formed the view that other information – particularly the pricing systems of retailers of these fuels – was consistent with a view that 3-5km was an appropriate starting point for examining competition in each local market.

### **Conclusion – market definition**

60. In light of the above, the ACCC took the view that the relevant markets for the purpose of assessing the proposed acquisition were:

1. state-based markets<sup>1</sup> for the production and sale of
  - petrol;
  - diesel; and
  - LPG;
2. state-based markets<sup>2</sup> for the wholesale supply and distribution of:
  - petrol;
  - diesel; and
  - automotive LPG.
3. metropolitan and local markets for the retail supply of:
  - petrol and diesel; and
  - automotive LPG.

## **K Competition analysis – local retail markets**

61. The ACCC considered whether the proposed acquisition could result in unilateral effects in local retail markets for the supply of petrol/diesel and LPG.
62. The *Merger Guidelines* note that:

Mergers have unilateral effects when they remove or weaken competitive constraints in such a way that the merged firm's unilateral market power is increased. That is, as a result of the merger the merged firm finds it profitable to raise prices, reduce output or otherwise exercise market power it has gained, and can do so, even given the expected response of other market participants to the resulting change in market conditions.<sup>3</sup>

### **Barriers to entry**

63. The ACCC found that barriers to entry in local retail petrol, diesel and automotive LPG markets are high. Market participants indicated that there are significant difficulties in obtaining suitable sites for use as retail fuel stations, particularly in metropolitan and suburban areas. These participants noted that regulatory approvals for new sites may take several years and that the ability to obtain sites is effectively limited to circumstances where existing sites are being sold off. In this regard, the ACCC considered that the key source of competitive constraint in each local market, post-merger, was likely to be the existing competitors in each area.

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<sup>1</sup> As the transaction involves the sale of sites in Queensland, NSW/ACT, Victoria and South Australia, these are the relevant geographic markets for the purposes of the analysis.

<sup>2</sup> As the transaction involves the sale of sites in Queensland, NSW/ACT, Victoria and South Australia, these are the relevant geographic markets for the purposes of the analysis.

<sup>3</sup> ACCC, *Merger Guidelines*, November 2008, p.24

### **Likely impact of the proposed acquisition**

64. The ACCC focussed its local retail market analysis on those areas where there is competitive overlap between a 'Caltex controlled site'<sup>4</sup> and a Mobil site. Usually, but not always, these were in close proximity to each other and were sites which were in close competition with each other according to the pricing systems of the merging retailers.
65. In local markets where there would be a lack of effective competitors to the Caltex controlled sites post-acquisition, the ACCC determined that a substantial lessening of competition was likely to arise.
66. In total, the ACCC formed the view that the acquisition by Caltex of 53 of Mobil's retail sites would be likely to substantially lessen competition in local retail fuel markets. This consisted of 45 acquisitions which would be likely to substantially lessen competition in relation to petrol/diesel and a further 8 acquisitions which would be likely to substantially lessen competition in relation to LPG only. A list of these sites is included as Attachment A.
67. In each of these markets, the ACCC formed the view that the acquisition of relevant Sale Sites by Caltex would enable it to unilaterally increase prices to a small but significant extent, given high barriers to entry and a lack of effective competition from other retailers.

### **L Competition analysis – coordinated effects in retail markets**

68. The ACCC also considered whether the proposed acquisition would be likely to result in a substantial lessening of competition in the relevant markets due to coordinated effects.
69. While the ACCC examined the potential for coordinated effects in each of the relevant markets, this section focuses on retail petrol markets since this was one of the reasons for the ACCC's opposition to the proposed acquisition.
70. Coordinated effects depend on (are only profitable because of) the mutual accommodation of multiple market players, whereas unilateral effects depend only on the market power of the merged firm.
71. As stated in the ACCC's *Merger Guidelines*:

Mergers have coordinated effects when they assist firms in the market in implicitly or explicitly coordinating their pricing, output or related commercial decisions.<sup>5</sup>

...

Mergers have coordinated effects when they alter the nature of interdependence between rivals such that coordinated conduct is more likely, more complete or more sustainable.<sup>6</sup>

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<sup>4</sup> In addition to the sites where Caltex sets the price or exerts some direct influence on the retail price through price support, the Caltex contributed sites have also been treated as 'Caltex controlled' sites for this competition analysis even though Woolworths (through AIR) currently sets the price at these sites. This is because these sites could return to Caltex's control if the alliance was terminated.

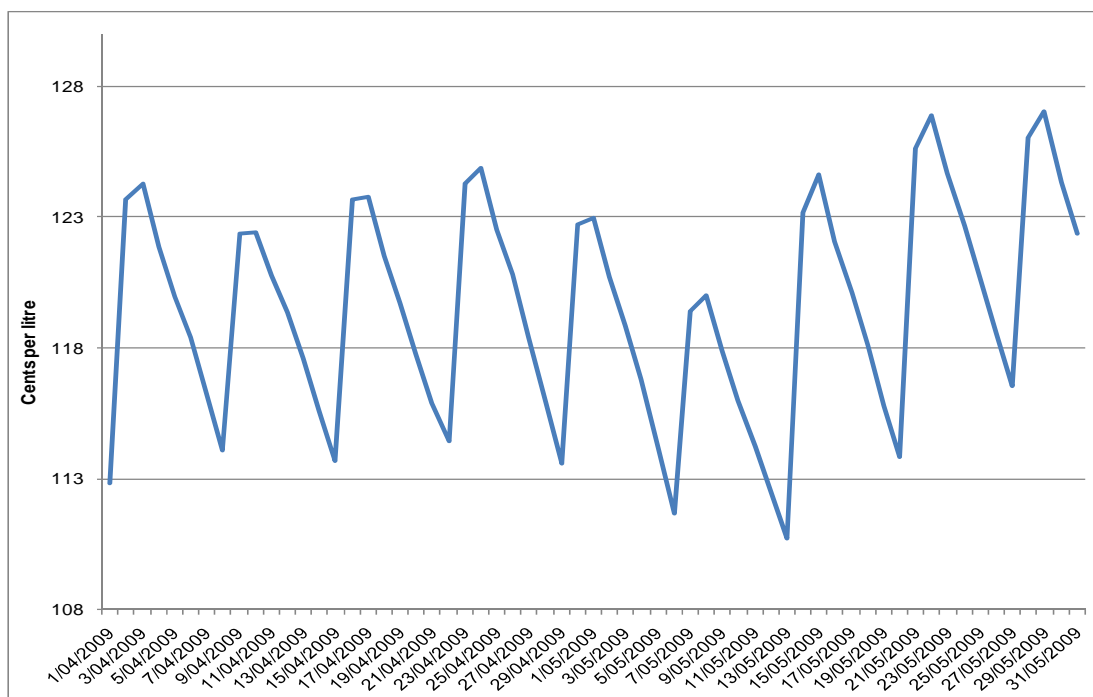
<sup>5</sup> ACCC, *Merger Guidelines*, November 2008, p.32

72. The sections that follow explain the conditions that exist currently for coordinated behaviour in retail petrol markets and the likely impact of the proposed acquisition.

*Price cycles in retail petrol markets*

73. Regular weekly cycles are a feature of retail petrol prices in Adelaide, Brisbane, Melbourne and Sydney (as well as some other regions). In each of these cities retail petrol prices follow a sawtooth pattern with prices increasing sharply (the restoration phase)<sup>7</sup> followed by a gradual decline in prices over the remainder of the week (the discounting phase).
74. The behaviour of the refiner-marketers and major retailers during the discounting and restoration phases differ. During the discounting phase, retailers adjust prices on a site-by-site basis in response to local competition. During the restoration phase, retailers adjust prices across a broad number of sites at the same time. In the vast majority of cases, prices are increased to the same level at each of those sites across multiple local retail markets.
75. The restoration phase involves a sharp increase in prices of around 10-17 cents per litre. In a given city, the price increase is initiated by one retailer (one of the refiner-marketers) and other retailers follow by increasing their prices to the same or very similar level. An example of this pricing pattern is shown at Figure 1, below.

**Figure 1: Melbourne average daily retail prices for unleaded petrol, 1 April 2009 to 31 May 2009**



Source: informed Sources data and ACCC analysis

<sup>6</sup> ACCC, *Merger Guidelines*, November 2008, p.32

<sup>7</sup> Restoration currently occurs on a Thursday but has in the past occurred on a Wednesday.

*Incentives to initiate and support the restoration phase of the petrol price cycle*

76. The ACCC considers that the repeated interaction of major retailers over time has led them to recognise that it is in their mutual interests to raise prices in this manner.
77. Some retailers follow shortly after the leader (or ‘first mover’) raises prices; others ‘lag’ further behind. The restorations can take 24 hours or more — being the time between the price increase at the first site and the last site. Different retailers appear to have competing interests. In particular, several of the non-refiner-marketers have a strategy of temporarily delaying their price increases during the restoration phase.
78. Retail pricing of petrol is highly transparent and retailers have access to detailed and timely information on the pricing of their competitors. Presently, the main source of price transparency among retailers is the Informed Sources Oil Pricewatch service. This service involves subscribers submitting their own prices and in return receiving information on competitors’ prices as frequently as every 15 minutes.<sup>8</sup>
79. All of the refiner-marketers (as well as some other major petrol retailers) are currently subscribers to the Informed Sources service. Other petrol retailers who do not subscribe to Informed Sources monitor prices by physically observing the board prices of their competitors.
80. The ACCC’s investigation of the proposed acquisition uncovered a significant amount of information about how petrol retailers use this price information. This included internal documents and strategy papers from a number of parties. The ACCC found that the price information:
  - enables the first mover to effectively signal its intentions to increase prices to other refiner-marketers and major petrol retailers
  - provides the first mover with comprehensive and timely information on the response of other refiner-marketers and major retailers to its price increase.
81. This is consistent with the findings from the 2007 Petrol Inquiry Report:

The quality and quantity of the information available to the major players also effectively reduces the risk encountered by retailers who seek to lead prices up in a market. By carefully monitoring the market price data, a price leader can tell whether its competitors follow the price rise or not. If not, then the price leader can drop its price back in line with the market within a short period of time after its initial price rise.<sup>9</sup>

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<sup>8</sup> More information on the role of Informed Sources is included in *Petrol prices and Australian consumers—report of the ACCC inquiry into the price of unleaded petrol* (p.135)

<sup>9</sup> ACCC, *Petrol prices and Australian consumers—report of the ACCC inquiry into the price of unleaded petrol*, p.135

82. The ability of the price leader to monitor the prices of its competitors is critical to the effectiveness of a price increase. This is because there is a (short-term) incentive for individual refiner-marketers and major retailers to delay their price response during the restoration phase. A refiner-marketer or major retailer can temporarily increase sales by delaying increasing their prices during the restoration phase. Coles Express, Woolworths, 7-Eleven and United typically lag other major retailers during the restoration phase of the price cycle. The risk from delaying is that other refiner-marketers or major retailers will rollback their price increases. The price advantage will be temporary and prices will remain low (at least until the next restoration).
83. As a result, the exchange of prices among retailers – presently facilitated by Informed Sources – has at least two critical effects:
- It reduces the risk of being the first to increase prices during the restoration phase of the cycle — since the ‘first mover’ can readily reduce its price if other refiner-marketers and major retailers do not follow in a timely fashion.
  - It limits any temporary competitive advantage to a refiner-marketer or major retailer from delaying increasing prices at their sites during the restoration phase — since other refiner-marketers and major retailers can readily observe such delays and reduce their prices accordingly (known as “rollback”).
84. The latter effect operates as an effective ‘punishment’ mechanism in the coordination of retail price restorations. As noted in the Merger Guidelines, effective punishment mechanisms assist in the stability of coordination.
85. The ACCC examined the likely impact of the proposed acquisition in light of the above behaviour of retailers and characteristics of the market.

*Likely effect of the proposed acquisition*

86. The acquisition would significantly increase the retail presence of Caltex, one of the leaders of price restorations in the weekly cycle.
87. Under either of the likely counterfactual scenarios, some or all of the Sale Sites would be acquired by retailers who do not lead and instead tend to lag the price restorations. The ACCC considers that this would lead to more uncertainty among retailers in their pricing decisions in the restoration phase in contrast with an acquisition by Caltex. This uncertainty would be exacerbated in circumstances where the sites are acquired by retailers that do not currently subscribe to Informed Sources. The ACCC considers that this increased uncertainty would result in less effective coordinated behaviour among the major retailers.
88. For example, the ACCC’s inquiries have shown that where failed restorations have occurred, this has been due to one or more parties lagging for extended periods of time. Under either of the likely counterfactual scenarios, the ACCC considers it likely that more lagging will occur and that this will lead to more failed restorations, compared with the situation under the proposed acquisition.

89. The ACCC considers that even a few additional failed restorations in a year may have a significant impact on the average retail price for petrol over the year.
90. As a result, the ACCC formed the view that the proposed acquisition would substantially lessen competition in retail petrol markets by creating a greater risk of more stable and more effective coordinated pricing behaviour in the restoration phase of the weekly price cycles than would be the case when compared to any of the likely counterfactual scenarios.

## **M Competition analysis – wholesale markets**

91. In its Statement of Issues, the ACCC identified preliminary concerns that the proposed acquisition is likely to significantly increase Caltex's ability and incentive to increase the wholesale price of petrol and diesel to non-refiner-marketers. The ACCC was concerned that this may also lead to an increase in retail petrol and diesel prices.
92. The ACCC received a substantial amount of information from the merger parties and other interested parties in response to the issues raised in the Statement of Issues. Some of this information suggested that there was a likelihood that higher wholesale prices would be charged to non-integrated retailers (retailers other than the refiner-marketers) in the near future. Mobil provided information to suggest that it would remain as a vigorous wholesale competitor post-acquisition.
93. The ACCC was unable to conclude whether the likelihood of increased prices in future would, of itself, amount to a substantial lessening of competition, as information about the likely magnitude of any potential price increases was unclear.

## **Conclusion**

94. On the basis of the above, the ACCC formed the view that the proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd by Caltex Australia Limited would be likely to result in a substantial lessening of competition in the various fuel markets (as outlined above) in contravention of section 50 of the Act.



**Attachment A – list of sale sites**

	PETROL/DIESEL		LPG	
	SLC	No SLC	SLC	No SLC
Adelaide		X		X
Aldinga		X		X
Algerster		X		X
Allawah		X		X
Altona		X		X
Amberley		X		X
Angle Valex		X		X
Artarmon		X		X
Ashfield		X		X
Ashgrove		X		X
Ashmore	X		X	
Ashmore Village	X		X	
Aspley		X		X
Bankstown		X		X
Bateau Bay		X		X
Bayswater		X		X
Bayswater East		X		X
Beacon Hill		X		X
Beenleigh		X		X
Belmont		X		X
Belmont East		X		X
Berkeley		X		X
Berowra	X			X
Bexley		X		X
Birkenhead		X		X
Blackburn		X		X
Blackburn South Qx		X		X
Blacktown		X		X
Blacktown East		X		X
Blacktown West		X		X
Blaxland	X		X	
Bligh Park		X		X
Boambee		X	X	
Bonnyrigg		X		X
Bow Bowing		X		X
Bowen Hills		X		X
Box Hill		X		X
Bracken Ridge		X		X
Braddon	X			X
Braeside Fuelzone		X		X
Brandon Park		X		X
Brisbane East		X		X
Broadbeach	X		X	

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	PETROL/DIESEL		LPG	
	SLC	No SLC	SLC	No SLC
Broadmeadows		X		X
Bulahdelah		X	X	
Bundoora		X		X
Burwood		X		X
Burwood East		X		X
Camberwell Metrofuel		X		X
Camden	X			X
Campbellfield	X			X
Campbelltown		X		X
Camperdown		X		X
Carina		X		X
Carrum Downs		X		X
Castle Hill North		X		X
Chadstone		X		X
Chipping Norton		X		X
Chirnside Park		X		X
Christies Beach		X		X
Clayton Fuelzone		X		X
Clayton MetroFuel		X		X
Clifton Hill		X		X
Colyton		X		X
Coomera	X			X
Corio		X	X	
Cranbourne North		X		X
Cronulla	X			X
Croydon Fueline		X		X
Croydon Hills		X		X
Croydon Park		X		X
Dandenong		X		X
Dandenong North		X		X
Dapto	X			X
Darlington		X		X
Darlington		X		X
Dee Why		X	X	
Doncaster East Fuelzone		X		X
Donvale		X		X
Doveton		X		X
East Keilor		X		X
East Mt Gravatt		X		X
Eastern Creek	X			X
Eastwood		X		X
Eatons Hill	X			X
Edensor Park		X		X
Elizabeth Vale		X		X
Eltham		X		X
Elwood (Brighton)		X		X

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	PETROL/DIESEL		LPG	
	SLC	No SLC	SLC	No SLC
Emerton		X		X
Emu Plains		X		X
Endeavour Hills		X		X
Epping		X		X
Epping Bridge		X		X
Epping North		X		X
Epping RDC		X		X
Erina	X			X
Erindale	X			X
Essendon North		X		X
Evanston		X		X
Ferntree Gully Fueline (Burwood Hwy)		X		X
Ferntree Gully Fueline (Ferntree Gully Rd)		X		X
Ferntree Gully FuelZone		X		X
Fitzroy		X		X
Footscray West		X		X
Frankston		X		X
Frankston OTR		X		X
Frenchs Forest		X		X
Fyshwick		X		X
Gaven Qx	X		X	
Geelong North		X		X
Geelong South		X		X
Giralang	X			X
Glasshouse North	X			X
Glasshouse South	X			X
Glen Osmond		X		X
Glen Waverley		X		X
Glen Waverley Nth West		X		X
Glendale		X		X
Glenside		X		X
Gosford West	X		X	
Granville	X			X
Granville East		X		X
Green Valley		X		X
Greenacre		X		X
Greenslopes		X	X	
Gymea		X		X
Haberfield		X		X
Hallam		X		X
Hampton Park		X		X
Hampton Park Drive Thru		X		X
Hassall Grove (140)		X		X
Hastings		X		X
Hawthorn		X		X

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	PETROL/DIESEL		LPG	
	SLC	No SLC	SLC	No SLC
Hillbank		X		X
Hillcrest		X		X
Holden Hill		X		X
Holt	X		X	
Hoppers Crossing		X		X
Ingleburn		X		X
Karingal (Frankston)		X		X
Karuah		X		X
Kellyville	X		X	
Kensington Gardens		X		X
Kensington North		X		X
Kensington South		X		X
Kent Town		X		X
Keperra		X		X
Keysborough		X		X
Killara (Lindfield)		X		X
Kilsyth		X		X
Kingswood		X		X
Kirrawee	X		X	
Kogarah		X		X
Lakemba		X		X
Lambton		X		X
Langwarrin		X		X
Lansvale		X		X
Lilydale		X		X
Lindfield		X		X
Liverpool		X		X
Manly West		X		X
Maribyrnong		X		X
Marion		X		X
Marks Point	X			X
Marsden	X			X
Mawson		X		X
Mayfield		X		X
McGraths Hill		X		X
Melba Service Centre		X		X
Menai	X			X
Mill Park		X		X
Minchinbury	X			X
Mona Vale		X		X
Moonee Ponds		X		X
Moorooduc		X		X
Moorvale		X		X
Mornington		X		X
Morphettvale Qx		X		X
Mount Pleasant	X			X

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	PETROL/DIESEL		LPG	
	SLC	No SLC	SLC	No SLC
Mt Druitt		X		X
Murarie (Lytton)		X		X
Nambour		X		X
Narrabeen North		X		X
Narre Warren	X		X	
Narre Warren Fueline		X		X
Nerang Qx	X			X
New Lambton North		X		X
Newcomb (Gateway)		X		X
Newmarket		X		X
Newport		X		X
Niddrie		X		X
Noarlunga Downs Qx		X		X
Noble Park		X		X
North Melbourne		X		X
North Ryde		X		X
Northmead		X		X
Notting Hill Fuelzone		X		X
Nunawading		X		X
Nunawading		X		X
Oakleigh FuelZone		X		X
Officer East		X		X
Officer		X		X
Oxley		X		X
Paddington		X		X
Palm Beach Qx	X		X	
Para Hills Qx		X		X
Parafield Qx		X		X
Parkwood Qx		X		X
Parramatta North		X		X
Pascoe Vale		X		X
Pascoe Vale South		X		X
Pendle Hill		X		X
Penrith		X		X
Penrith		X		X
Pheasants Nest North		X		X
Pheasants Nest South		X		X
Plumpton		X		X
Prahran East		X		X
Quakers Hill	X			X
Revesby		X		X
Richlands Qx		X		X
Richmond		X		X
Ring Rd Nth		X		X
Ring Rd Sth		X		X
Ringwood		X		X

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	PETROL/DIESEL		LPG	
	SLC	No SLC	SLC	No SLC
Riverhills	X			X
Riverwood		X		X
Robertson		X		X
Robina Qx 1	X		X	
Robina Qx 2	X		X	
Rockbank		X		X
Rockdale		X		X
Rooty Hill		X		X
Rosebud		X		X
Roseville		X		X
Rowville		X		X
Rowville FuelZone		X		X
Rozelle	X			X
Rydalmere		X		X
Ryde Tanks		X		X
Salisbury Downs Qx		X		X
Sandgate		X		X
Sandown Qx		X		X
Sandringham		X		X
Sans Souci		X		X
Seaford		X		X
Seven Hills North		X		X
Seymour		X		X
Seymour North		X		X
Sheidow Park Qx		X		X
Smithfield		X		X
South Brighton Qx	X			X
South Plympton Qx		X		X
Southport Qx		X		X
Spence	X		X	
Springwood		X		X
St Albans		X		X
St Clair		X		X
St Ives	X		X	
St Kilda		X		X
St Marys		X		X
St Marys		X		X
Stafford		X		X
Strathfield South		X		X
Strathpine		X		X
Sunbury		X		X
Surfers Paradise Qx	X		X	
Sutherland		X	X	
Sydenham	X		X	
Taylors Lakes		X		X
The Entrance		X	X	

Caltex Australia Limited - proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd

	PETROL/DIESEL		LPG	
	SLC	No SLC	SLC	No SLC
The Gap		X		X
Thomastown		X		X
Thomastown East		X		X
Thomastown Qx		X		X
Thornbury		X		X
Toongabbie		X		X
Tooronga Valley		X		X
Toronto	X		X	
Tottenham		X		X
Tullamarine		X		X
Turrumurra		X		X
Tweed Heads Qx		X		X
Underdale		X		X
Upwey		X		X
Victoria Point Qx		X		X
Wahroonga		X		X
Wantirna		X		X
Wantirna South		X		X
Warners Bay		X		X
Welland Qx		X		X
Werribee		X		X
Werribee	X		X	
West Beach Qx		X		X
West Pennant Hills		X		X
West Ryde (Ryde West)		X		X
Wickham		X		X
Wishart	X			X
Woodridge Qx		X		X
Yagoona		X		X
Yallambie	X			X
<b>TOTAL</b>	<b>46</b>	<b>256</b>	<b>26</b>	<b>276</b>