

21 October 2010

Statement of Issues — BP Australia Pty Ltd - proposed acquisition of Centrel Pty Ltd

- 1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition of Centrel Pty Ltd by BP Australia Pty Ltd (proposed acquisition).
- 2. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC's preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
- 3. In line with the ACCC's *Merger Review Process Guidelines* (available on the ACCC's website at www.accc.gov.au) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by 5 November 2010 and anticipates making a final decision by 18 November 2010. However, the anticipated timeline can change in line with the *Merger Review Process Guidelines*. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC's website at www.accc.gov.au/mergersregister.
- 4. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

Background

5. On 25 August 2010 the ACCC commenced a public review of the proposed acquisition after receiving a submission from BP Australia Pty Ltd seeking informal clearance for its proposed acquisition of Centrel Pty Ltd.

The parties

BP Australia Pty Ltd

- 6. BP Australia Pty Ltd is a refiner and marketer of petrol, diesel and automotive liquefied petroleum gas (LPG) in Australia. BP owns the Bulwer Island refinery in Brisbane and the Kwinana refinery in Perth, and has an ownership stake in a number of fuel terminals and fuel depots around Australia. In addition BP owns or leases a number of retail sites in Australia, and supplies fuel and branding to third party owned and operated retail sites.
- 7. BP has arrangements with several BP-branded distributors (including Reliance) for distribution of fuel and lubricants in non-metropolitan areas. Outside its own distribution network, BP also supplies fuel and lubricants to independent and non-BP-branded wholesalers and retailers. BP also supplies bulk fuel and related services to large commercial customers throughout Australia within the key segments of mining, government, transport and rail.

Centrel Pty Ltd

- 8. Centrel Pty Ltd (Reliance) operates 215 BP-branded service stations, supplies and distributes BP fuel and lubricants to a significant number of third-party owned and operated BP-branded retail sites and supplies BP fuel and lubricants to commercial customers. It also manages depots and has a line—haul operation. Reliance's operations are focused on rural and regional areas.
- 9. Reliance purchases and collects fuel and lubricants from BP-designated facilities and uses its own line-haul operations to either deliver the fuel to its own regional depots or direct to large customers. It also uses its line-haul operations to transport fuel for BP as its contracted carrier to BP's large commercial customers. Reliance also operates bulk fuel depots. Reliance also operates its own fuel card business, which is cobranded Reliance-BP, and is a national distributor of BP-branded and Castrol-branded motor oils, greases and other lubricants.

Market inquiries

10. On 25 August 2010 the ACCC commenced market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including other fuel suppliers and distributors, suppliers of BP and Reliance products and motoring associations.

Industry background

- 11. The Australian petrol and diesel industry operates at three broad levels: refining and importing, wholesale and distribution, and retail.
- 12. At the refining and importing level petrol and diesel sold in Australia is either refined from crude oil at local refineries or imported as a finished product from overseas refineries. BP and Caltex are involved at all levels of the petrol and diesel supply chain. Shell has refining and wholesaling operations and owns retail service stations, most of which are operated by Coles Express. Mobil has refining

- and wholesaling operations and recently sold its retail operations to 7-Eleven Stores Pty Ltd. These parties also import petrol to supplement the domestically refined supply. Independents also import fuel directly into Australia.
- 13. In states where they do not operate a refinery, the refiner-marketers will contract to purchase petrol and diesel from one of the other refiner-marketers. These are known as 'buy/sell' agreements.
- 14. At the wholesale level 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, this occurs through distributors. Some distributors are owned by the refiner-marketers and others are independently owned (such as Reliance).
- 15. The refiner-marketers also engage in the wholesale supply of petrol and diesel to independent wholesalers. Independent wholesalers (e.g. Liberty, United, Neumann) engage in the wholesale supply of petrol and diesel to their own retail outlets and sell fuel to other independent retailers.
- 16. At the retail level service station sites supply petrol and diesel to retail customers (individuals and businesses). There are a range of different ownership structures of service stations including supermarket-operated sites (Coles Express and Woolworths), refiner-marketer company owned sites, refiner-marketer franchisee sites, refiner-marketer branded independent sites, and independent operator sites from large independent chains (e.g. United, Neumann) to single-site operations.
- 17. These ownership structures determine who sets (or exerts control over) each retail site's prices. Each refiner-marketer has direct control over the board price at its 'company owned' (including leased) sites.
- 18. In addition to petrol and diesel, service stations in Australia may also supply LPG. Around 20% of LPG is produced by the major refiners in their refineries with the rest being sourced 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. 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).

Areas of overlap and market definition

19. The operations of BP and Reliance retail businesses overlap in respect to the retail sale of petrol, diesel, and automotive LPG in all states and territories in Australia, except the Northern Territory. Accordingly, the ACCC is examining the possible competitive effects of the proposed acquisition in relation to the retail sale of fuel and the supply of fuel card services.

- 20. The ACCC is also examining possible competitive effects in any related areas of activity including the wholesale supply and distribution of petrol, diesel and automotive LPG.
- 21. The ACCC's preliminary view is that the relevant markets in this matter are:
 - state-based markets for the wholesale supply and distribution of:
 - o petrol;
 - o diesel; and
 - o automotive LPG.
 - local markets for the retail supply of:
 - o petrol;
 - o diesel; and
 - o automotive LPG.
 - state-based markets for the supply of commercial bulk fuels
 - state-based markets for the supply of wholesale lubricants
 - national market for the supply of fuel cards

With and without test

- 22. In assessing a merger pursuant to section 50 of the Trade Practices Act 1974, the ACCC must consider the effects of the transaction by comparing the likely competitive environment post-acquisition if the transaction proceeds (the "with" position) to the likely competitive environment if the transaction does not proceed (the "without" or "counterfactual" position) to determine whether the acquisition is likely to substantially lessen competition in any relevant market.
- 23. The ACCC is exploring the possible counterfactuals as part of its review. One possible counterfactual is that Reliance will continue to be independently owned and will operate as an independent BP branded distributor (the status quo). The ACCC is also exploring whether Reliance being acquired by, or seeking supply from, a party other than BP is a likely counterfactual.
- 24. The ACCC has not formed any concluded views on the likely counterfactual.
- 25. The ACCC seeks comments from interested parties on the most likely counterfactual(s) to be considered relevant to the ACCC's assessment of the proposed acquisition.

Statement of Issues

26. For the purposes of this Statement of Issues, the issues in this matter are divided into two categories: 'issues that may raise concerns' and 'issues unlikely to pose concerns'.

Issues that may raise concerns

Wholesale markets

- 27. The ACCC notes that Reliance has a significant retail and distribution presence in rural and regional Australia and that its network has the potential to play an important role in the competitive dynamics in rural and regional fuel areas.
- 28. The ACCC has identified a potential issue that relates to the relevant counterfactual for the analysis. As outlined above, analysis of a transaction pursuant to section 50 involves a comparison of the likely future with and without the acquisition.
- 29. Under the proposed acquisition BP will acquire all of the assets of Centrel and the Reliance assets will be operated by BP.
- 30. The ACCC is examining the likely state of competition absent the proposed acquisition (the "counterfactual") to determine whether the proposed acquisition (the "factual") would involve a substantially lower level of competition, particularly at the wholesale level of the market.
- 31. As Reliance has a significant retail and distribution presence in rural and regional areas, the price that it pays for fuel is an important factor in the price that consumers pay for fuel at the retail level of the market. To the extent that Reliance is a potential contestable customer to other wholesale suppliers, competition is likely to be an important factor in the wholesale price Reliance pays and, therefore, the price it charges for fuel to consumers.
- 32. The ACCC is therefore seeking comments from interested parties on:
 - Whether Reliance is considered to be a contestable customer for wholesale suppliers of fuel other than BP.
 - The likelihood of Reliance being acquired by a party other than BP in the foreseeable future and in particular, the extent to which Reliance's network is separable from BP.
 - The extent to which Reliance periodically reviews its options for branding, wholesale supply and supply of other services (e.g. fuel card).

Issues unlikely to raise concerns

33. Based on market inquiries and the ACCC's analysis, BP's proposed acquisition of Reliance appears unlikely to raise competition concerns in relation to the issues set out below. Nonetheless, the ACCC will accept further submissions from interested parties on any of the following issues and will revisit them if it considers further consideration is warranted.

Retail markets

34. The ACCC considers that the proposed acquisition is unlikely to raise competition concerns in relation to local retail markets for the supply of petrol, diesel and automotive LPG. The ACCC considers that BP's acquisition of Reliance will not substantially lessen competition in local retail markets due to the minimal overlap between the retail networks of BP and Reliance and the presence of sufficient local competitors in those areas where there are overlap.

Vertical issues

- 35. The ACCC has examined whether the proposed acquisition of retail sites in markets where BP currently supplies wholesale fuel to BP-branded or non-BP independent retailers is likely to raise competition concerns. The potential issue relates to any incentive and ability BP might have to discriminate against its wholesale customers to the benefit of the acquired retail sites.
- 36. The ACCC's preliminary view is that the proposed acquisition is unlikely to raise competition concerns in this manner since:
 - There is minimal overlap between the Reliance retail network and retail sites owned by BP's unbranded wholesale customers.
 - While there is some overlap between the Reliance retail network and BP-branded independent retail sites, where overlap exists it is unlikely to result in a substantial lessening of competition in the relevant local markets due to the presence of other competing retail sites. The presence of competition in these local areas is likely to limit any incentive BP would otherwise have to raise wholesale prices to a BP-branded independent retailer since that retailer would be likely to lose sales to BP's retail competitors in the local market.

Supply of fuel card and commercial bulk fuels and lubricants

- 37. Although BP and Reliance both supply fuel cards and both supply bulk fuels and lubricants to commercial customers, the ACCC considers that there is minimal competitive overlap between the companies in these areas. BP, by virtue of its size, vertical integration and national presence, is able to offer fuel cards and commercial fuels and lubricants to large customers at a more attractive price than Reliance and is also able to supply associated services required by large customers.
- 38. By contrast, Reliance has the expertise and distribution network which enables it to supply bulk fuel and lubricants to smaller customers that are unable to be efficiently serviced by BP. Reliance's fuel card offering is targeted towards smaller customers and Reliance is not able to offer the level of discount on fuel card purchases that is demanded by the larger customers serviced by BP and is not able to offer a real discount at BP branded sites outside of the Reliance network. The ACCC understands that BP does not actively compete for the smaller-sized bulk fuel, lubricant and fuel card customers targeted by Reliance.

ACCC's future steps

- 39. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
- 40. The ACCC now seeks submissions from interested parties on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter.
- 41. Submissions are to be received by the ACCC no later than **5 November 2010**. The ACCC will consider the submissions received from the market and the parties in light of the issues identified above and will, in conjunction with information and submissions already provided by the parties, come to a final view as to the appropriate course of action to take to resolve any competition concerns that remain.
- 42. The ACCC intends to publicly announce its final view by **18 November 2010**. However, the anticipated timeline may change in line with the *Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement.