



Statement of Issues

10 August 2017

BP – Proposed acquisition of Woolworths’ network of retail service station sites

Purpose

1. BP Australia Pty Ltd (**BP**) proposes to acquire Woolworths Limited’s (**Woolworths**) network of retail service station sites (the **proposed acquisition**).
2. This Statement of Issues:
 - gives the Australian Competition and Consumer Commission’s (ACCC) preliminary views on competition issues arising from the proposed acquisition
 - identifies areas of further inquiry
 - invites interested parties to submit comments and information to assist our assessment of the issues.

Overview of ACCC’s preliminary views

3. The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010* (the **Act**). Section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.
4. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'.

Issues that may raise concerns

5. The ACCC is concerned that the proposed acquisition may substantially lessen competition in retail fuel markets by:
 - removing a strong competitor in fuel retailing with a distinct competitive strategy. The ACCC’s concern is strengthened by a preliminary assessment that Woolworths actively leads price discounting or quickly reacts to price discounting by other retailers

- replacing the more competitive pricing strategy currently used at Woolworths sites with a strategy that tends to restore earlier, discount later and discount less deeply
 - enabling the remaining fuel retailers to more effectively co-ordinate price increases during the 'price increase' phase of petrol price cycles.
6. In addition, the ACCC will soon publish a preliminary analysis of local markets. The ACCC expects that a number of local markets are likely to raise concerns.
 7. The ACCC is also concerned that the proposed acquisition may substantially lessen competition in convenience groceries, through the amalgamation of BP and Woolworths' forecourt convenience offerings.

Issues unlikely to raise concerns

8. At this stage the ACCC does not consider it likely that the proposed acquisition will substantially lessen competition in the wholesale supply of fuel.

Making a submission

9. The ACCC is seeking submissions from interested parties, particularly on the following key issues:
 - whether Woolworths is a particularly vigorous and effective competitor in the retail supply of fuel, whose acquisition by BP would lead to higher fuel prices
 - whether the removal of Woolworths as an independent competitor would increase the likelihood and stability of co-ordinated conduct amongst fuel retailers, particularly during the price increase phase of retail price cycles in metropolitan markets
 - whether the proposed acquisition would raise any concerns in relation to the supply of convenience groceries.
10. Detailed discussion of these and other issues, along with specific questions, is contained in this Statement of Issues.
11. Interested parties should provide submissions by no later than 5pm on 7 September 2017. Responses may be emailed to BP-Woolworths-Petrol@acc.gov.au with the title: Submission re: BP Woolworths - attention Mandy Bendelstein/Andrew Gallagher. If you would like to discuss the matter with ACCC officers over the telephone or in person, or have any questions about this Statement of Issues, please contact Mandy Bendelstein on 02 9230 3890 or Andrew Gallagher on 02 9230 9129.
12. The ACCC plans to separately publish in September 2017 a preliminary screening of all relevant local areas in the vicinity of each Woolworths site, identifying any areas which raise preliminary competition concerns based on an analysis of the local market. The ACCC will seek public comment on these local markets at that time.

13. The ACCC anticipates making a final decision on 26 October 2017, however, this timeline can change. To keep abreast of possible changes in relation to timing and to find relevant documents, including lists of BP and Woolworths sites, interested parties should visit the Mergers Register on the ACCC's website at www.accc.gov.au/mergersregister.

Confidentiality of merger review submissions

14. The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the Act. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate and clearly mark it as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Submissions to the review of the related authorisation applications

15. If the proposed acquisition proceeds, BP and Woolworths also propose to enter into an ongoing retail convenience, shopper docket discount and customer loyalty partnership (the **Commercial Alliance**). More information on the Commercial Alliance is provided at paragraph 72.
16. The ACCC has received authorisation applications from BP and other parties to implement the Commercial Alliance.
17. The process for the assessment of authorisation applications is different to the review of proposed mergers and acquisitions, and submissions made in relation to the applications for authorisation, including oral submissions, are *not* automatically treated as confidential. Submissions relating to the authorisation applications will be placed on the ACCC's public register subject to any request for exclusion. Our *Authorisation Guidelines* contain further information and are available at: <https://www.accc.gov.au/publications/authorisation-guidelines-2013>.
18. The ACCC undertook consultation on the authorisation applications between 12 May 2017 and 14 June 2017. The ACCC received a number of public submissions from interested parties on the authorisation applications which are available on the Public Register, available at: <http://registers.accc.gov.au/content/index.phtml/itemId/6031>.
19. The ACCC will issue a draft determination in respect of the authorisation applications in August 2017, at which time we will invite interested parties to make further comment.

About ACCC 'Statements of Issues'

20. 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.
21. 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 parties and other interested parties with the basis for making further submissions should they consider it necessary.

Timeline

Date	Event
15 March 2017	ACCC commenced review of the proposed acquisition
10 August 2017	ACCC publication of Statement of Issues
7 September 2017	Deadline for submissions from interested parties in response to this Statement of Issues
September 2017	Planned publication of initial screening of relevant local markets
26 October 2017	Anticipated date for ACCC final decision

The parties

BP

22. BP (with its related entities) is a vertically integrated refiner-wholesaler of petrol, diesel and automotive liquefied petroleum gas (**LPG**). It is engaged in the exploration for and production of oil, natural gas and LPG and the refining, transportation and marketing of petroleum and lubricant products.
23. BP supplies fuel to approximately 1 400 BP-branded service stations throughout Australia. Of these sites, BP controls the price of all fuels at 369 sites. This includes 334 of BP's own network of sites referred to by BP as 'company-owned-and-company-operated' (**BP COCO**) and 35 'commission agency' sites (**BP CA**). Additionally, BP sets the price of diesel only at a further 33 'diesel commission agency' (**DCA**) sites.

Woolworths

24. Woolworths entered fuel retailing during the late 1990s, establishing service stations that offer fuel discounts to those purchasing groceries at its stores.
25. In August 2003, Woolworths entered into an alliance with Caltex Australia Group (**Caltex**) to operate dual-branded (Caltex/Woolworths) service stations. These dual-branded sites are operated by Woolworths and obtain all fuels from Caltex. Woolworths currently operates 531 sites and has a further 12 sites currently in development. In addition, over 103 Caltex/Woolworths sites are operated by Caltex.
26. The ACCC estimates that BP branded sites and Woolworths sites together make up approximately 27 per cent of all sites in Australia. Of that combined total, approximately 14 per cent are BP dealer sites.

Other industry participants

Caltex

27. Caltex's business operations include the refining, wholesaling and retailing of transport fuels.
28. Caltex's business operations include the retail supply of fuel through its Caltex owned and operated service stations. There are approximately 1 400 Caltex branded sites across Australia, 785 of which Caltex or its agents currently operate.

7-Eleven

29. 7-Eleven Stores has been retailing fuel since the late 1970s.
30. In 2010, 7-Eleven Stores purchased a large number of retail service stations from ExxonMobil, which significantly lifted its presence in fuel retailing. There are approximately 500 7-Eleven sites across Australia.

United

31. United is an independent, Australian-owned wholesaler and retailer of fuel, and convenience retailer.
32. United controls terminal facilities in Victoria, New South Wales, Northern Territory and Tasmania which allows it to import fuel from overseas and operate in both wholesale as well as retail fuel markets in Australia. There are approximately 500 United branded sites across Australia (including some operated independently of United).

Coles Express

33. Coles has been retailing fuel since mid-2003, following a commercial alliance with Shell Australia (now owned by Viva Energy Australia Ltd), under which Coles became the owner of franchisee-operated dual-branded Shell service stations Australia-wide.
34. There are approximately 700 Coles Express sites throughout Australia.

Other fuel retailers

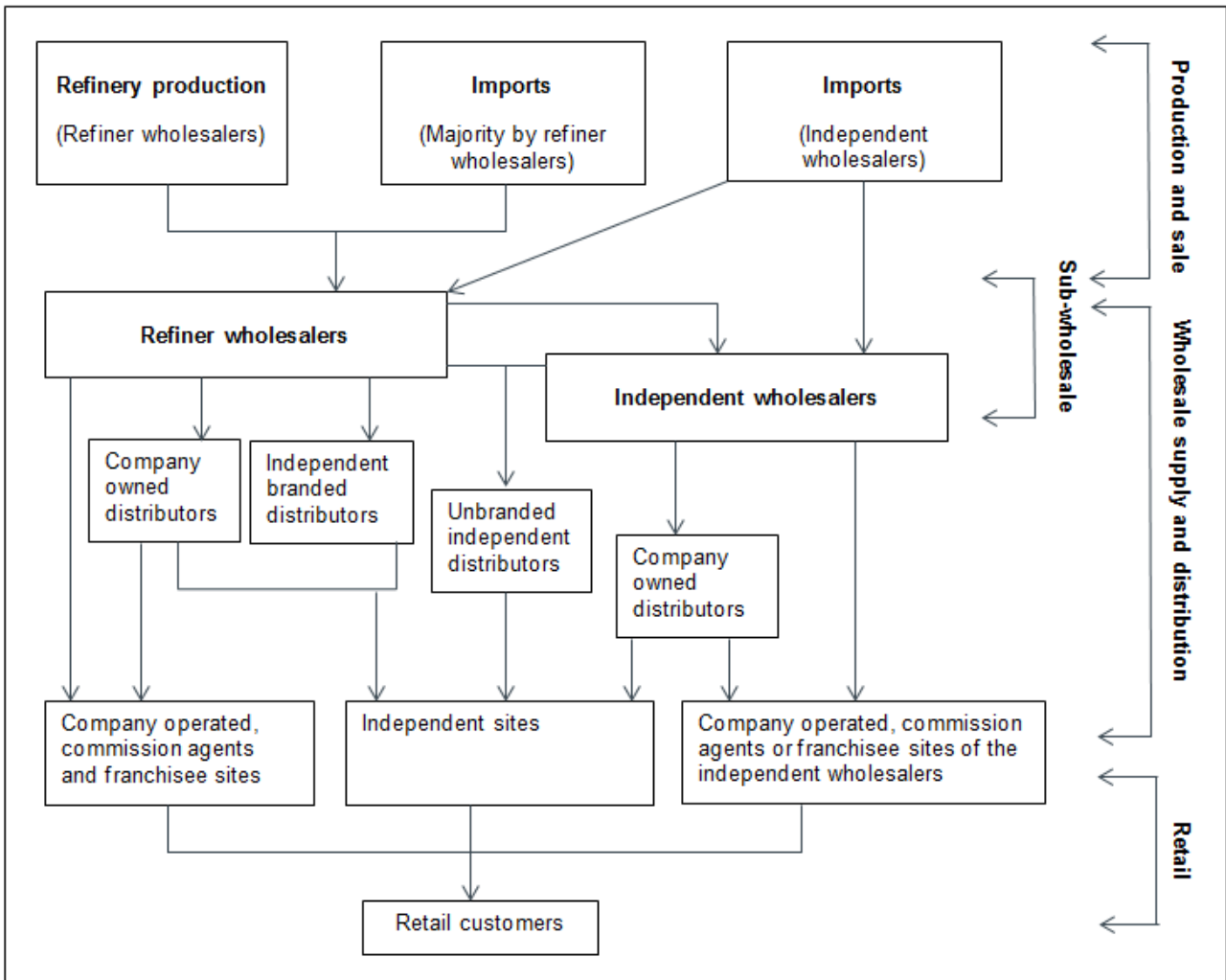
35. Other major fuel retailers include large regional or single-state retail chains. These include:
 - Peregrine, who operate as "On The Run" in South Australia (over 100 sites)
 - Freedom Fuels in Queensland (approximately 50 sites)
 - Puma nationally (approximately 400 branded sites including 260 operated by Puma)
 - Metro Petroleum in the Eastern states (approximately 200 branded sites)
 - Liberty in Victoria and NSW (approximately 100 branded sites)

Industry background

Overview of Australia's downstream petroleum industry

36. Australia's downstream petroleum industry consists of three broad levels – production and importing, wholesale supply and retail supply. This structure is depicted in the figure below.

Figure 1: Australia's downstream petroleum industry



Refining and importing

37. Petrol sold in Australia is either refined from crude oil at local refineries or imported as a finished product from overseas refineries.
38. There are four refineries currently operating in Australia (down from eight refineries in 2003). They are owned and operated as follows:
- Corio, Geelong (Viva Energy)
 - Kwinana, Perth (BP)

- Lytton, Brisbane (Caltex)
- Altona, Melbourne (Mobil).

39. These four companies also operate in wholesale markets and are known as “refiner-wholesalers”.

Wholesale supply

40. Wholesale supply is dominated by the four refiner-wholesalers and large independent wholesalers including United and Puma Energy. The refiner-wholesalers supply wholesale petrol to their own outlets as well as supermarkets, independent distributors and retailers.
41. In 2013-14 (the latest data available) the four refiner-wholesalers supplied over 90 per cent of wholesale petrol volumes in Australia.
42. BP supplies wholesale fuel to its company-owned and company-controlled (**COCO**) sites, independent BP-branded sites and independent wholesale distributors (that on-sell to independent retail sites).

Retail supply

43. At the retail level, service stations supply fuel to retail customers. Service stations can be:
- supermarket operated sites (Woolworths or Coles Express)
 - refiner-wholesaler COCO sites, where the refiner-wholesaler sets retail prices
 - refiner-wholesaler commission agent sites, where the refiner-wholesaler typically sets retail prices
 - refiner-wholesaler franchisee sites, where typically the franchisee sets retail prices, but this may be influenced by price support from the refiner-wholesaler
 - refiner-wholesaler branded but independently operated sites, where typically the independent operator sets retail prices
 - independently owned and/or operated sites which range from large independent chains to single-site operations (these may be operated on a COCO, commission agent or franchisee basis).
44. A given site may fit more than one of these categories.
45. Based on ACCC monitoring, the supermarket operated sites comprise nearly half of Australian retail petrol sales volumes, followed by Caltex and BP.¹ Since the early 2000s, supermarket operated sites have gained market share of sales

¹ The Australian retail petrol volumes are based on data from the refiner-marketers, two supermarkets and 7-Eleven, Peregrine, Puma and United. It does not include other smaller independent chains or independent sites.

volumes at the expense of refiner-wholesalers. The share of large independent chains has grown marginally, apart from a sharp increase in 2010-11 when 7-Eleven and Peregrine acquired Mobil's company-owned sites.

Retail petrol price cycles

46. Price cycles are a prominent feature of retail petrol prices in Australia's largest cities. Price cycles have at least two distinct phases:
- a substantial increase in prices that generally occurs across a metropolitan area (the **price increase phase**)
 - a more prolonged phase of decreasing prices (the **discounting phase**).

Price increase phase

47. The price increase phase is generally initiated by one or two of the major retailers increasing prices substantially at a number of retail sites in a metropolitan area (or in some cases all of their retail sites in that metropolitan area). If other retailers respond to this move with similar increases, then the increased price usually spreads across the retail networks within a metropolitan area.
48. Some retailers follow shortly after the leader (or 'first mover') raises prices; others take longer to follow price increases (they 'lag' price increases). This is because there is a (short-term) incentive for individual retailers to delay their price response during the price increase phase of the price cycle, thereby potentially gaining a temporary increase in sales and a reputation for low prices. The risk for retailers who delay is that the first mover (or those that follow quickly) may abandon their attempt to increase prices, and return their prices to the previous, lower level. The longer other retailers delay in following an attempted price increase, the greater the potential that the first mover or early followers will abandon their price increase.
49. Generally during the price increase phase, retailers increase prices to the same or a similar price point across different local areas within a city. However, in recent times in Melbourne (for example), the ACCC has observed some retailers increasing prices to a level below what was initially set by the first mover.

Discounting phase

50. In contrast, the discounting phase involves a slower process of retailers undercutting and matching each other's prices on a local basis in small increments.
51. During the discounting phase, the rate at which retailers reduce their prices from the cyclical peak tends to vary on a site-by-site basis depending on factors that include the prices of nearby sites. As a result, during the discounting phase, there will often be a degree of price variability between a retailer's sites across a city, although the market as a whole tends to shift downwards within a price band.

Informed Sources

52. Informed Sources is an Australian company which collects and disseminates electronic retail price information in respect of unleaded petrol, diesel and LPG to

its subscribers. Informed Sources subscribers can obtain near real-time petrol price information.

53. Current subscribers to the Informed Sources service include retailers such as BP, Woolworths, 7-Eleven and Caltex.

Informed Sources litigation (2012-2015)

54. In May 2012, the ACCC announced that it had commenced an investigation into price information sharing arrangements in the retail petrol industry. On 19 August 2014, the ACCC instituted proceedings against Informed Sources, BP, Caltex, Coles Express, Woolworths and 7-Eleven for alleged contraventions of section 45(2) of the Act by giving effect to price information sharing arrangements which had the effect or likely effect of substantially lessening competition in the retail petrol market or markets in metropolitan Melbourne.

55. The ACCC alleged that the information sharing arrangements between Informed Sources and the petrol retailers:

- allowed these retailers to communicate with each other about their prices
- were likely to increase retail petrol price co-ordination and co-operation
- were likely to decrease competitive rivalry.

56. The matter was resolved in late 2015 when Coles undertook to cease being a subscriber to the Informed Sources service and the other respondents agreed to make the price information available to consumers at the same time the retailers receive it. This data is available to consumers through the 'Motormouth' website and app.

Alternative sources of near real-time petrol price information

57. There are an increasing number of alternative sources of near real-time petrol price information to Informed Sources' subscription service, including:

- the Western Australian and NSW government schemes, FuelWatch and FuelCheck (respectively);
- the NRMA app (a free app drawing on FuelCheck data), the GasBuddy app and the Petrol Spy website and app (both using crowd-sourced data);
- private free apps provided by petrol retailers (such as 7-Eleven and Woolworths).

BP dealers

58. BP dealers are third party owned and operated petrol retailers which on-sell fuel supplied by BP under the BP brand. BP dealers set their own retail prices for fuel and negotiate their own commercial contracts with non-fuel suppliers (although they have access to a buying group, provided by BP, for convenience products).
59. The potential implications of the relationship with BP and its dealers on competition in retail fuel markets is examined further below at paragraphs 149 to 153.

Shopper docket discount schemes

60. Shopper docket discount schemes are arrangements under which fuel discounts are offered to customers who make qualifying purchases typically at supermarkets.
61. Under these arrangements, customers who make qualifying purchases at relevant retail outlets receive an offer for discounted fuel on their printed store receipt. They can then redeem the discount by presenting the receipt to participating fuel outlets operated by the supermarket or a fuel retailer affiliated with the supermarket.
62. All Caltex/Woolworths sites accept redemptions of Woolworths shopper docket discounts. The discounts that are offered at these sites are:
 - 4 cents per litre (cpl) for \$30 or more spent at Woolworths retail outlets
 - a further 4cpl discount when \$5 or more is spent in the convenience store at Woolworths fuel sites.
63. In 2013 Woolworths provided the ACCC with a Court enforceable undertaking that Woolworths would not make or allow fuel discounts where those discounts are:
 - not funded wholly by the fuel subsidiary or division of Woolworths
 - greater in value than 4 cpl and, contingent on purchases of goods or services at a store or business separate from the retail fuel outlet (the **Woolworths Undertaking**).
64. Other examples of shopper docket discount schemes in the industry include:
 - Coles Express sites offer a 4cpl discount on fuel on condition of a customer spending \$30 or more at Coles Group retail outlets (subject to a Court enforceable undertaking with the ACCC)
 - some fuel retailers offer a 4cpl discount on fuel when customers spend \$30 or more at the IGA supermarkets in NSW, QLD, SA and VIC.

Loyalty programs

65. Loyalty programs are structured programs that reward consumers for purchasing goods or services from a particular retailer with points, which can be redeemed for discounts or free goods and services.
66. Woolworths' customers can currently earn points by making qualifying purchases at Woolworths' retail outlets (including fuel outlets, but excluding Tasmanian retail fuel outlets). Members of the Woolworths Rewards Loyalty Scheme are eligible for member-only discounts at Woolworths' group retail outlets, and members can also earn Qantas Frequent Flyer points.
67. The earning of points is typically funded by the program partner whose goods or services were purchased to earn them. Conversely, the redemption of points is typically funded by the program operator. In the proposed Woolworths Rewards Loyalty Scheme, BP will pay Woolworths in respect of Woolworths Rewards

points earned by customers at BP-branded sites, and Woolworths will pay BP when Woolworths Reward Loyalty Scheme members redeem rewards at BP-branded sites.

68. Other examples of loyalty programs in the industry include:
- the Myer One loyalty program, which is partnered with Caltex, credits one point for every dollar spent
 - Coles and Shell are partnered with the Flybuys loyalty program which credits one point for every 2 dollars spent
 - Virgin Velocity Frequent Flyer Program, which is partnered with BP across its retail fuel network, credits two points per one litre of fuel purchased. BP has sought to terminate its relationship with Velocity to give effect to the proposed acquisition. The matter is currently before the Supreme Court of Queensland.

The proposed transaction

69. BP proposes to acquire Woolworths' network of retail service station sites which includes 531 sites and 12 sites under development located throughout Australia.
70. If the proposed acquisition proceeds:
- it is intended that Woolworths' current wholesale supply arrangement with Caltex will be terminated
 - BP and Woolworths propose to enter into an ongoing retail convenience, shopper docket discount and customer loyalty partnership (the Commercial Alliance).
71. As discussed above at paragraph 16 the ACCC has received authorisation applications from BP and other parties to implement the Commercial Alliance.
72. Under the Commercial Alliance:
- BP and Woolworths would establish a pilot program to roll out the Metro@BP retail store format. The Metro@BP stores would combine BP's retail fuel assets with Woolworths' grocery and food retailing expertise, and is intended to provide a variety of food and meal options for consumers. If the pilot program is successful, BP proposes to roll out the format to more than 200 sites
 - Woolworths shopper dockets would be redeemable at certain BP Sites (subject to authorisation being granted), including the sites BP acquires from Woolworths, some pre-existing BP COCO sites, and some sites operated by BP dealers. This discount would be partially funded by BP, and partially funded by Woolworths. In order to give effect to this arrangement, Woolworths has sought a variation to the Woolworths Undertaking

- BP would join the Woolworths Rewards Loyalty Scheme as a key partner. Consumers will be able to earn and redeem points on fuel and convenience store purchases at participating BP sites. The arrangements of the Woolworths Rewards Loyalty Scheme are also subject to authorisation being granted.

Future with and without the acquisition

73. Section 50 of the Act prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the effects of the acquisition by comparing the likely future competitive environment post-acquisition if the acquisition proceeds (the “with” position) to the likely future competitive environment if the acquisition does not proceed (the “without” position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.
74. The ACCC considers that if the proposed acquisition did not proceed, Woolworths would be likely to retain its fuel business and continue to operate it in competition with BP. Woolworths may or may not seek an alternative purchaser.

Previous ACCC decisions

Caltex/Mobil (2009)

75. In December 2009, the ACCC opposed the proposed acquisition by Caltex of the retail assets of Mobil Oil Australia Pty Ltd (**Mobil**). At the time, Caltex had a national network of 1826 branded or co-branded service stations, 333 of which were operated by Caltex or by commission agents on behalf of Caltex. Mobil had 302 service stations.
76. The ACCC analysed local areas where there was competitive overlap between a Caltex controlled site and a Mobil site. 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.
77. The ACCC also noted the price cycles that were a feature of retail petrol prices in major cities at the time (and still are, as discussed at paragraphs 46 to 51 above). Petrol price cycles pose a co-ordination problem for retailers. The ACCC noted at the time that Caltex regularly led price increases in some cities. The ACCC formed the view that by increasing the retail presence of Caltex, the proposed acquisition would be likely to substantially lessen competition in city-wide retail petrol markets. The ACCC concluded the proposed acquisition would create a greater risk of more stable and more effective co-ordinated pricing behaviour in the price increase phase of price cycles.
78. After the ACCC opposed the proposed acquisition by Caltex, Mobil sold the relevant assets to 7-Eleven, subject to an undertaking to divest service stations in local areas where the ACCC considered that a substantial lessening of competition would arise.

Peregrine/BP (2014)

79. The ACCC announced in May 2014 its decision not to oppose Peregrine Corporation's proposed acquisition of 25 BP petrol retail sites in South Australia, after accepting a court-enforceable undertaking. The undertaking required Peregrine to divest three sites that it would otherwise have acquired from BP, and one of its existing sites.
80. The undertaking addressed concerns that Peregrine's acquisition of these sites could have resulted in higher fuel prices in some local areas.
81. The ACCC also considered whether Peregrine's acquisition of the sites would have a broader impact on competition across metropolitan Adelaide, but concluded that any changes that may occur following the acquisition would be unlikely to substantially lessen competition in an Adelaide-wide market.

Caltex/Milemaker (2017)

82. The ACCC announced in May 2017 its decision not to oppose Caltex acquiring certain assets relating to 46 retail service stations in Victoria from Milemaker Petroleum (**Milemaker**). At the time, Milemaker was a Caltex independent franchisee. It owned service stations which operated under the Caltex brand and received wholesale supply of fuel from Caltex. Milemaker set the retail prices at those sites (except for diesel at 8 sites), around 30 of which are in metropolitan Melbourne. Caltex completed this acquisition on 9 May 2017.
83. The ACCC considered that Milemaker was a vigorous competitor, leading discounting or quickly following its competitors in the discounting phase of the price cycle, and was slow to follow price increases. In contrast, the ACCC considered that Caltex was slower to follow price reductions (and less likely to lead them), and more likely to lead or quickly follow price increases.
84. The acquisition removed Milemaker as an independent retail competitor in Melbourne. The ACCC considered that Caltex was likely to replace Milemaker's strategy at the target sites with its own. The ACCC considered that the acquisition was likely to reduce the competitive pressure faced by Caltex and other retailers in metropolitan Melbourne.
85. However, the ACCC considered that the lessening of competition, which was likely to arise from the acquisition, was not likely to be substantial because:
 - Milemaker controlled a relatively small number of sites in Melbourne, its sites were branded "Caltex" and the combined market share of the parties was relatively low
 - Milemaker was not the only retail chain that led or quickly followed price discounting, and delayed price increases
 - there were limited areas of local overlap between Milemaker and Caltex sites.

Relevant markets

86. The ACCC's starting point for delineating relevant markets, to assess the competitive effects of the proposed acquisition, involves identifying the products

and geographic regions actually or potentially supplied by the parties to the transaction. The ACCC then focuses on areas of activity where competitive harm could occur as a result of the proposed acquisition.

Product dimension

87. Three types of fuel products are commonly sold at retail service stations in Australia: petrol (including regular unleaded, premium unleaded and ethanol blends), diesel and LPG.
88. The ACCC does not consider it necessary to form a definitive view as to whether there are separate markets for these fuel types, or whether they should be considered a single market. For simplicity, the ACCC is considering the effect of the proposed acquisition on competition in the retail supply of petrol.
89. In principle, narrower market definitions may be appropriate. In particular:
 - consumers of fuel are generally unable to easily switch between using petrol, diesel and LPG. Different vehicle types use different types of fuel, and are not usually easily or cost-effectively adapted to use another type
 - there may be some supply-side substitutability between diesel and petrol: retailers may be able to switch between supply of the two fuel types at relatively low cost. However, the presence of 'truck stop' sites catering primarily to commercial vehicles powered by diesel may indicate a separate market is appropriate, at least in respect of those customer segments
 - it is difficult for a retailer to switch easily between the supply of LPG and petrol/diesel, due to the need to invest in different types of tanks and pumps.
90. However, the ACCC has not at this stage identified any major issues likely to arise from the proposed acquisition that would affect competition for the retail supply of diesel or LPG, but do not affect competition in the retail supply of petrol.
91. The ACCC welcomes input on whether the proposed acquisition is likely to raise any particular concerns in relation to diesel or LPG.

Relevant fuel markets

Local markets

92. The ACCC considers that competition in local markets is an important determinant of retailers' pricing decisions, particularly in the discounting phase of the price cycle.
93. Major retail petrol chains generally set fuel prices at each of their sites centrally (rather than being determined by individual site managers). When setting prices at a site, these retailers often monitor the prices at a number of other competing sites in the same local area. These are commonly known as '**marker sites**'. Marker sites are frequently located close to the site at which the price is being set, hence local competition is important.

94. As discussed further below, the ACCC plans to publicly release its preliminary screening of all relevant markets, identifying any which raise competition concerns, in September 2017.

Metropolitan markets

95. While there are areas of close local competition between fuel retailers, it is also helpful to also consider the competitive dynamics in fuel retailing across broader geographic markets.
96. In metropolitan areas where retail petrol prices follow cycles, price outcomes can depend on behaviours of retailers across the city. As noted above, in the price increase phase, retailers generally increase prices to the same or a similar price point across the city, regardless of differences in local area competition. If a price increase fails to 'stick', it is most likely because one or more major retailers decide not to follow the increase on a city-wide basis. These factors suggest the relevant competitive constraints in these circumstances may be city-wide in addition to local.
97. Further, in cases such as this one where the retailers have a large number of sites across cities, a merger or acquisition can have city-wide effects in addition to local effects.

Wholesale supply

98. The ACCC is also considering regional (possibly state-based) markets for the wholesale supply of fuel to retailers. As detailed further below, the ACCC's preliminary view is that the proposed acquisition is unlikely to raise significant competition concerns in relation to the wholesale supply of fuel.

Convenience groceries

99. As discussed further below, the proposed acquisition has the potential to affect competition in the supply and/or acquisition of convenience groceries. These competitive effects may be additional to the effect on the retail supply of fuel.
100. While many businesses might be said to offer 'convenience groceries', the ACCC's preliminary view is that petrol stations selling convenience groceries are likely to be substitutable for one another for the purpose of the analysis of the proposed acquisition. The ACCC is considering whether this market would include stand-alone convenience stores that are not connected to petrol sites. A broader market might include supermarkets, but the ACCC considers most customers of convenience stores at petrol stations would not be likely to consider supermarkets a close substitute.
101. In order to assess the appropriateness of this preliminary view of the relevant market, the ACCC is continuing to examine the extent to which the BP and Woolworths' service stations compete with other retailers such as standalone convenience grocery stores and supermarkets.
102. The ACCC invites comments from market participants regarding the ACCC's preliminary views on relevant markets.

Issues that may raise concerns:

Issue 1 - Removing strong price discounting in retail fuel markets

103. The ACCC is concerned that the proposed acquisition may substantially lessen competition by removing a strong competitor in fuel retailing, with a distinct competitive strategy. In the future without the proposed acquisition, BP and Woolworths would compete with each other, each employing its own strategy. The proposed acquisition would replace those two distinct strategies with one strategy. This may have the effect of substantially lessening competition in metropolitan and/or local markets for the retail supply of fuel.
104. The ACCC's concern is strengthened by a preliminary view that Woolworths actively leads price discounting or quickly reacts to price discounting by other retailers, while BP prices less competitively.
105. The ACCC does not consider these differences in price strategy can be explained only on the basis of systematic differences in the location or quality of the sites, the quality and range of products, or other non-price factors. Rather, they appear to be influenced by contrasting business models, which would not endure if the proposed acquisition proceeded.
106. This concern has a number of elements that the ACCC is testing further:
- first, that Woolworths is a strong price competitor in retail fuel markets and actively leads price discounting or quickly reacts to price discounting by other retailers
 - second, that BP is not as competitive on price in retail fuel markets
 - third, that post-acquisition, BP is likely to price the acquired Woolworths sites less competitively than Woolworths would
 - fourth, that removing a strong price competitor from retail fuel markets will, or is likely to, substantially lessen competition.
107. The ACCC is currently undertaking extensive analysis of retail fuel pricing and expects that the results of this analysis will, among other information and analysis, inform its final decision.

Removal of a strong price competitor in retail fuel markets

108. Based upon the ACCC's inquiries and analysis to date, Woolworths appears to be a strong price competitor in retail fuel markets.

BP's and Woolworths' pricing strategies

109. The ACCC's preliminary pricing analysis suggests that, in Melbourne² between January 2015 and April 2016, Woolworths was, on average, among the cheapest petrol retailers and BP was more expensive than Woolworths (before taking shopper docket, fuel cards and other discounts into account). This appears to be partly the result of BP increasing prices at most of its sites before Woolworths during the price increase phase of the price cycles and Woolworths more often leading prices down or quickly following during the discounting phase of the price cycles.
110. The price differential may reflect differences in the pricing strategies of BP and Woolworths. These differences have been identified by market participants in market inquiries, and can be observed in the ACCC's preliminary analysis of competitor behaviour, especially in the discounting phase of the price cycle.
111. It appears that Woolworths often initiates discounting in the discounting phase of the petrol price cycle, or rapidly reduces its prices in response to discounting by other retailers. Conversely, it appears less usual for BP to lead prices down during the discounting phase.
112. Preliminary analysis of pricing by Woolworths and BP at a site level in Melbourne suggests that:
 - Woolworths is more likely to undercut its local rivals than BP
 - local rivals are more likely to respond to local discounting by Woolworths than BP when lowering prices at their sites
 - Woolworths appears to discount more heavily than BP at the bottom of the price cycle.

Woolworths may be a particularly influential competitor

113. The ACCC, based on market inquiries and its preliminary analysis, considers that Woolworths is currently a particularly influential competitor, which may amplify the effect that its pricing strategy has on rivals in metropolitan markets.
114. Woolworths' sites tend to attract very high sales volumes, even though market participants do not consider that Woolworths' sites are in particularly advantageous locations.
115. Woolworths' shopper docket offer also appears to be an important factor driving higher retail volumes.
116. In addition to the impact of its own discounting strategies, Woolworths may also be an important transmitter of price reductions throughout metropolitan markets. Due to the large size of its network and the relatively high fuel volumes it sells per site, it appears that other retailers (many of which are slower to react to discounting) watch and follow Woolworths.

² The ACCC is not restricting its analysis to Melbourne, or suggesting that there are particular concerns in Melbourne as compared to other metropolitan areas. The references to only Melbourne are solely due to the availability of more data on Melbourne pricing at the time of publication.

117. Therefore, when Woolworths reacts quickly to follow the price reduction of a smaller retailer with a discounting strategy, it may amplify the effect that the smaller retailer has on local prices. In this way, the removal of Woolworths, in addition to removing the effect of its own discounting strategies, may reduce the extent to which smaller retailers with discounting strategies impact fuel prices.

The removal of Woolworths' pricing strategies

118. The ACCC is concerned that if the proposed acquisition proceeds, BP is likely to implement its own pricing strategies at the sites it acquires from Woolworths. BP would set retail prices at those sites according to its own business model and strategy, which differs from Woolworths' and is associated with higher prices, as discussed above. This would remove the impact that Woolworths' pricing strategy has on competition in many local and metropolitan markets.
119. Previous studies of retail petrol markets by the ACCC have revealed the critical importance of retailers with a discounting strategy. Consumers obtain cheaper prices if such retailers are present. The proposed acquisition would reduce the number of retailers with a discounting strategy in metropolitan markets.
120. The ACCC considers that, if BP replaces Woolworths' pricing strategy with its own pricing strategy, this may lead to higher prices in retail fuel markets. The Woolworths sites, under BP's control, may be more likely to lead increases, or follow them quickly. They would also be less likely to be proactive in the discounting phase.
121. BP and Woolworths have agreed to certain fuel price competitiveness requirements, which would operate for a period of time after commencement of the Commercial Alliance. These fuel price competitiveness requirements constrain BP's price setting at former Woolworths sites, and those BP sites which are added to the Shopper Docket Discount Scheme. In effect, they constrain the potential upper limits of BP's prices in certain circumstances. However, the ACCC is examining the extent to which:

- BP is likely to alter the pricing strategies currently employed at Woolworths sites following the proposed acquisition
- there may be room for a substantial increase in price at the Woolworths sites, even during the period the price competitiveness requirements are in force
- the price competitiveness requirements would mitigate the effect of the removal of Woolworths' pricing strategies in the long term.

Preliminary view – removing a strong competitor from retail fuel markets

122. The ACCC's preliminary view is that the proposed acquisition may substantially lessen competition through the removal of Woolworths, which may be a strong price competitor, from retail fuel markets.

Issue 2 - More effective co-ordination during the price increase phase of petrol price cycles

123. Based on market inquiries and its preliminary analysis to date, the ACCC considers that the proposed acquisition may raise competition concerns by increasing the likelihood of co-ordination amongst rival retailers, particularly in the price increase phase of metropolitan fuel price cycles.
124. Transactions have co-ordinated effects when they weaken constraints that may otherwise limit firms in the market in implicitly or explicitly coordinating their pricing, output or related commercial decisions. A merger or acquisition may do so simply by reducing the number of firms among which to coordinate, by removing or weakening competitive constraints or by altering certain market conditions that make co-ordination more likely, more complete or more sustainable. In some cases, this may amount to a substantial lessening of competition.

Co-ordinated conduct in metropolitan retail fuel markets

125. Retail fuel markets exhibit characteristics which can be conducive to co-ordinated conduct. These include:
- largely homogenous fuel products
 - transparent pricing and the ability of retailers to monitor prices on a metropolitan-wide and site basis on a close to real-time basis. This is aided by the collection and reporting of petrol pricing information on the Informed Sources Oil Price Watch Service (which is made available to subscribers) and the monitoring of prices and use of "marker sites" on a local level by retailers and fuel price monitoring applications
 - repeated interactions between retailers through frequent adjustment of prices
 - the ability of retailers to retaliate to deviations from co-ordinated conduct. For example, retailers can change prices dynamically in response to other retailers' price movements.
126. At the bottom of the price cycle, retailers face a co-ordination problem: it is in their collective interest to raise prices, but each individual has an incentive to hold prices below their rivals' to attract volumes. Retailers therefore appear to observe each other's behaviour closely when attempting to increase prices. The leader of the price increase phase of the price cycle will raise prices in the expectation that, based on past behaviour, other retailers will recognise their shared interest in a higher price, and raise their own prices accordingly.

The impact of the proposed acquisition on co-ordinated conduct

127. In general, the ACCC considers that a proposed acquisition may make co-ordinated conduct more likely, complete, or sustainable if it:
- reduces the number of firms among which to co-ordinate

- strengthens the position of a firm which is likely to promote or support co-ordination
 - removes a firm which is otherwise likely to disrupt co-ordination.
128. The proposed acquisition would reduce the number of rival firms. It would also reduce the number of firms sharing price information through Informed Sources. With fewer firms, the risk of co-ordination breaking down is lower.
129. The ACCC considers that it would also strengthen the position of BP, which, due to its pricing strategy, would be more likely to promote or support co-ordination, and remove Woolworths, which due to its discounting pricing strategy is more likely to disrupt co-ordination.
130. The ACCC is aware that BP has historically led cyclical price increases in several metropolitan markets.
131. The ACCC's preliminary view is that the proposed acquisition may create a greater risk of more stable and more effective co-ordinated pricing behaviour in the price increase phase of the price cycles.

The potential effect of co-ordination amongst fuel retailers

132. Co-ordination could result in the following effects:
- **In the price increase phase of the petrol price cycle** – larger price increases, price increases earlier (i.e. discounting phases that are shorter and shallower), faster following of price increases by retailers during a price increase phase, more stable price increase phases (including less failed price increase attempts) and longer periods at the top of the price cycle.
 - **In the price increase phase of the petrol price cycle** – longer periods before discounting commences, slower discounting through the cycle and shorter periods of low prices at the bottom of the price cycle.
133. This would result in longer periods of relatively high petrol prices, and higher average prices overall.

Preliminary conclusion – co-ordinated effects

134. The ACCC's preliminary view is that the proposed acquisition may reduce the intensity of competition between the remaining fuel retailers, such that they would be more likely to tacitly co-ordinate their behaviour. The ACCC does not consider that such co-ordination would necessarily require any explicit communication or commitment between rivals. Rather, rivals would act in their own self-interest, taking into account each other's likely actions and reactions. By reducing the number of major rivals to take into account, this tacit co-ordination would become easier and more stable.

The ACCC invites comments from market participants on the above issues. In particular market participants may wish to comment on the following:

- a) Do the ACCC's preliminary findings appear consistent with your understanding of the relative pricing position of each of the retailers identified and how these pricing differences manifest over the pricing cycle?
- b) Are there other factors that could explain the differences in pricing positions between retailers?
- c) To what extent do Woolworths' competitive strategies influence the prices and non-price offers of other retailers? If BP raised the retail prices at Woolworths' sites, would you expect to see other retailers' prices rise (or not fall as quickly)?
- d) Is there anything about the particular characteristics of Woolworths' sites that compels it to follow its particular pricing strategy, such that BP could be expected to carry on with that strategy at those sites?

Issue 3: Ability and incentive for BP to unilaterally raise prices in areas of local overlap

135. In addition to the issues raised above, the proposed acquisition has the potential to affect competition in local markets where the target Woolworths sites (including development sites) compete directly with BP sites (or are likely to do so).
136. The ACCC considers that competition in local areas is an important determinant of retailers' pricing decisions, particularly in the discounting phase of the price cycle (in markets where price cycles occur). It is therefore possible for the proposed acquisition to lead to a substantial lessening of competition in local markets, separate to the metropolitan-wide competition effects discussed above.
137. The ACCC is currently analysing the effects of the proposed acquisition on local markets where Woolworths sites and BP sites are in close proximity. The ACCC is concerned that by removing a close local competitor, the proposed acquisition may provide BP with the ability and incentive to unilaterally raise prices at its sites. Whether this is likely to be the case will depend on, among other factors:
 - the closeness of competition between neighbouring BP and Woolworths sites
 - the presence and proximity or otherwise of other fuel retailers in the local area.
138. The ACCC is currently analysing areas of local overlap between Woolworths and BP sites. In doing so, we take account of the preliminary concerns expressed in Issue 1 above, in relation to the contrasting competitive strategies of BP and Woolworths. These concerns have potential to amplify local market concerns.
139. While the ACCC has in some past retail petrol matters accepted undertakings to divest particular sites to address local market issues, it has only done so where it had concluded that no substantial lessening of competition was likely to arise in any broader geographic market.

140. The ACCC intends to publish a preliminary screening of all relevant local markets in September 2017.

Issue 4: Convenience groceries

141. BP and Woolworths both operate service station forecourt convenience offerings at a large number of sites. The proposed acquisition would remove competition between them. However, despite selling its service stations to BP, Woolworths plans to remain closely involved in BP's grocery business.
142. As mentioned previously, following the proposed acquisition, and subject to authorisation from the ACCC, BP and Woolworths propose to enter into a Commercial Alliance including for the supply of retail convenience products. A new retail convenience offering, called *Metro @BP*, would combine BP's retail fuel assets with Woolworths' grocery and food-retail offering. It would be rolled out at a limited number of sites initially, before potentially being rolled out more broadly.
143. The ACCC's market inquiries to date have raised various concerns in relation to the effect of the proposed acquisition on convenience groceries. These concerns include that:
- the proposed acquisition would merge the convenience offering at BP COCO and Woolworths sites, which would otherwise compete with each other. The proposed acquisition represents a significant consolidation given the number of sites involved (including potentially some third-party operated BP branded sites)
 - the extension of the Shopper Docket Discount Scheme and the Woolworths Rewards Loyalty Scheme to BP's service station network would 'lock in' customers to a conglomerate offer which rivals could not match, possibly raising barriers to entry.
144. The ACCC is considering the extent to which these competition concerns would amount to a substantial lessening of competition.
145. The ACCC understands that the convenience offering does not generally drive patronage to service stations (which is primarily based on fuel price, including shopper docket discounted price), but rather attempts to capture additional high-margin sales from customers that have already made a decision to purchase fuel at the site.
146. The ACCC recognises that the proposed acquisition is part of a commercial strategy by BP to improve its convenience offering. However, through the *Metro @BP* concept, the proposed acquisition can be conceived as the expansion of a retailer (Woolworths) which already has a strong competitive position in groceries more generally. This has the potential to give rise to competitive effects. The ACCC is continuing to consider these issues.
147. The ACCC is also examining the extension of the Shopper Docket Discount Scheme and Loyalty Rewards in its review of the related authorisation applications by BP.

The ACCC welcomes comments from market participants on these potential competition issues. In particular market participants may wish to comment on the following:

- a) **Whether the quality of a convenience offering at a fuel retailer influences a consumer's choice of fuel retailer. Please provide reasons for your answer such as comparisons of fuel sales volumes at a fuel retailer's site before and after a convenience upgrade whether by that retailer or a competitor.**
- b) **Whether the convenience offering of fuel retailers directly competes for the same customers as standalone convenience stores or other grocery stores.**

Please provide reasons for your answer, such as examples of reductions in sales at standalone convenience retailers when a fuel retailer opens nearby or evidence of combined fuel and convenience retailers pricing by reference to non-fuel convenience retailers and/or supermarkets.

Other considerations

148. This section identifies issues which are relevant to the ACCC's assessment of the potential harms described above.

Position of third-party BP dealers

149. BP-branded third-party owned retailers (referred to as **BP dealers**), account for approximately 1000 of the 1400 BP-branded sites in Australia (see paragraph 23 above). Retail prices at these sites are generally set by the third-party operator of the site, rather than by BP.³
150. In the ACCC's market inquiries to date, some industry participants have suggested that BP dealers are not independent of BP and that this may affect how effectively BP dealers compete in the supply of retail fuel.
151. BP dealers rely on BP for key services including wholesale fuel supply, access to fuel card sales, branding (including access to proprietary fuel types) and marketing. In many cases, third-party operators are contractually bound to BP for a certain period of time. There may be other restrictions on those operators' ability to switch to another brand and wholesaler, such as the cost of rebranding.
152. BP's share of metropolitan (and many local) markets would be much higher if BP-branded third-party retailers were assumed to operate under BP's influence. Even short of that assumption, the ACCC is exploring the extent to which its analysis should take account of how the relationships between BP and its dealers influence the vigour of competition between them, including on non-price terms.
153. The ACCC invites comments from market participants on the ability of third-party BP dealers to constrain the actions of BP after the proposed acquisition.

³ Although some dealers have commission agency arrangements for diesel, enabling BP to set the diesel price.

Likelihood of new entry/expansion

154. The ACCC considers that due to the difficulties in obtaining suitable sites for use as service stations, there is a low likelihood of a new significant independent chain of service stations entering any metropolitan areas in the foreseeable future (other than through the acquisitions of existing retailers).
155. For example, to establish new service station sites, potential entrants may need to obtain regulatory approvals which could take a long time. The cost of building a service station, including complying with environmental regulations, can also be high. As a result, potential entrants may be largely restricted to purchasing existing sites which are being sold. This may prevent the timely establishment of an independent chain of sufficient scale to act as an effective constraint in metropolitan areas.
156. Recent examples of entry by companies such as Puma Energy (Trafigura) and Vitol into Australian retail fuel markets have been by acquisition of existing competitors rather than addition of new sites to the market.

Issue unlikely to raise concerns: wholesale supply of fuel

157. The ACCC has considered the impact of the proposed acquisition on the wholesale supply of fuel.
158. The ACCC understands that the proposed transaction would result in large wholesale volumes being transferred away from Caltex, to BP. However, the proposed acquisition would not result in a change in the number of wholesale suppliers.
159. Some market participants have suggested that, following the proposed acquisition, BP would have larger volumes through its own retail channel and therefore may have less of an incentive to provide wholesale supply of fuel at a competitive rate to third-party retailers. There may be potential for this to affect BP's supply to third-party retailers or distributors of fuel. However, the ACCC has not received significant market feedback in relation to wholesale issues to date.
160. The ACCC's preliminary view is that the proposed acquisition is unlikely to substantially lessen competition in the wholesale supply of fuel.

ACCC's future steps

161. As noted above, the ACCC now seeks submissions from market participants 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. Submissions are to be received by the ACCC no later than 7 September 2017 and should be emailed to BP-Woolworths-Petrol@acc.gov.au.
162. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues, and submissions in response to its preliminary screening of relevant local markets (to be published in September 2017).
163. The ACCC intends to publicly announce its final view by 26 October 2017. However the anticipated timeline may change in line with the *Informal Merger*

BP Australia Pty Limited – proposed acquisition of Woolworths Limited's network of retail service station sites.

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 to explain its final view.

Related authorisation applications

164. Separately, the ACCC is planning to issue a draft determination on the associated authorisation applications (A91580, A91581 & A91582 BP Australia Pty Ltd & Ors) in August 2017. The ACCC will seek submissions from interested parties in response to the draft determination, and will take these submissions into account in preparing a final determination, which it plans to issue in September or October 2017.