



Australian
Competition &
Consumer
Commission

14th June 2007

The Hon Peter Costello MP
Treasurer
Parliament House
CANBERRA ACT 2600

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Dear Treasurer

In recent discussions with you concerning retail petrol pricing in Australia, we have addressed two issues. The first related to retail petrol prices in Australia and the second to the detection of anti-competitive practices and conduct in relation to petrol price setting in breach of the *Trade Practices Act 1974* (the Act).

I am writing to you to set out the thoughts of the Australian Competition and Consumer Commission (ACCC) on these issues.

Retail petrol prices in Australia

In light of recent developments in relation to retail petrol prices in Australia, the ACCC considers that it is appropriate to hold a price inquiry under Part VIIA of the Act.

Therefore, pursuant to sections 95G(3) and 95H(2) of the Act, I seek your approval for the ACCC to hold an inquiry into petrol prices. This is against the background of the divergence over recent times between movements in domestic petrol prices and movements in international benchmark prices.

I propose that the inquiry should cover the current industry structure, an assessment of competition in the industry and current impediments to efficient petrol pricing and possible methods to address them. A draft inquiry notice, for the purposes of section 95H of the Act, is attached for your consideration.

Please note that the proposed inquiry relates to the supply of petrol in general and does not relate to the supply of petrol by a particular person or persons. As a result, the price restriction provisions in section 95N of the Act will not apply. This means that petrol prices in Australia will be free to move according to market conditions during the price inquiry.



I propose that the inquiry be completed and a report be provided to you by 15 October 2007.

Anti-competitive conduct

Allegations of price fixing arrangements in relation to petrol prices in Australia have been the subject of a number of investigations and prosecutions by the ACCC in recent years.

There are a number of issues relating to anti-competitive conduct in petrol price setting and otherwise generally, that may require attention by Government. It is our view that addressing the issues raised below will assist the ACCC in detecting and prosecuting cartel conduct in contravention of Sections 45/45A of the Act.

The decision of the Federal Court in the Geelong petrol case raises some immediate issues for us. The ACCC has sought Senior Counsel's advice on the outcome of that case and the prospects for appealing the Court's decision.

We believe that consideration may need to be given by Government to issues designed to overcome the difficulties that the ACCC faced in that case and seems likely to face in future cartel cases.

In summary, these issues relate to the definition of the conduct that would amount to a cartel offence under Sections 45/45A of the Act and the ACCC's ability to satisfy the necessary evidentiary burden of proof.

We will provide further advice to you on these matters in due course, depending on the advice from Senior Counsel and matters that may arise during the course of the Part VIIA Inquiry.

Yours sincerely



Graeme Samuel
Chairman

Trade Practices Act 1974

INQUIRY INTO PETROL PRICES

I, Peter Costello, Treasurer, noting the divergence over recent times between movements in domestic retail petrol prices and movements in international benchmark prices, hereby approve, pursuant to section 95H(2) the *Trade Practices Act 1974* (the Act) the holding of a price inquiry by the Australian Competition and Consumer Commission (the Commission) into the price of unleaded petrol.

Matters to be taken into consideration by the inquiry shall include, but not be restricted to:

- the current structure of the industry;
- the extent of competition at the refinery, wholesale and retail levels, including the role of imports;
- the determination of prices at each of these levels, including the methodology for determining wholesale prices; and
- current impediments to efficient petrol pricing and possible methods to address them.

This is not an inquiry in relation to the supply of petrol by particular persons.

The inquiry is to be completed and a report submitted to me by 15 October 2007.

Dated this day of June 2007.

PETER COSTELLO
Treasurer