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**SUBMISSION TO THE
AUSTRALIAN COMPETITION &
CONSUMER COMMISSION**

REFERENCE

**CALTEX AUSTRALIA LTD
PROPOSED ACQUISITION
OF THE
MOBIL OIL AUSTRALIA PTY LTD
RETAIL ASSETS**

SUBMISSION PREPARED BY

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HEH AUSTRALIAN PETROLEUM CONSULTANCY CO

JUNE 2009



**SUBMISSION TO THE ACCC
REFERENCE
CALTEX AUSTRALIA LTD PROPOSED ACQUISITION
MOBIL AUSTRALIA PTY LTD RETAIL ASSETS**

INTRODUCTION:

We thank the ACCC for the opportunity to make this submission relative to the proposed acquisition by Caltex Australia Ltd of the retail assets of Mobil Australia Pty Ltd.

By way of background, **HEH Australian Petroleum Consultancy Co (HEH)** is the trading name of Hughes Energy Consultants Pty Ltd of which **Kevin M Hughes** is the Managing Director.

HEH provides consultancy services, support, and guidance and mediation services to Petroleum Distributors (wholesalers), Service Station Operators, Associations, Biofuels Manufacturers, Motoring Associations, Oil Company Majors, Corporate entities, Governments and the media.

As part of our consultancy process we maintain daily monitoring of retail & wholesale pricing in Australia for both petrol & diesel and their relativity to import parity.

We are also publishers of the monthly petroleum industry email newsletter - **Australian Petroleum Marketers News (APMN)** which provides news and commentary on issues of importance for petroleum marketers.

Kevin Hughes has been continuously involved in the downstream sector of the oil industry in Australia for in excess of (45) years in various capacities including – Senior Executive (Regional Manager) with the Shell Co of Australia, the operation of his own large petroleum distributorship/wholesaler company, the management of a wholly owned Mobil wholesale subsidiary company, as CEO of the Service Stations Association and National President (3 terms) of the Australian Petroleum Agents and Distributors Association (APADA) now ACAPMA.

Kevin also had the privilege of serving on the Federal Government’s Trebeck Fuel Tax Inquiry and the Federal Government’s Ethanol Task Force.



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GENERAL COMMENTS AND RECOMMENDATIONS

1: The increase in market dominance through the proposed Caltex acquisition will of course be obvious. Based on the oil majors' own figures the combination of Caltex/Woolworths and Shell/Coles share of the retail petrol market currently stands at 65%. With the Mobil acquisition, if it proceeds, that market power will increase to around 75%. Such dominance in market power is never a healthy position for the protection of true competition in the market place.

2: It is disingenuous of Caltex in their public statements to state they have no control of their Woolworth's alliance pricing. They are their wholesale supplier and they are 50% owners with Woolworths of a company formed for the purpose of operating sites under dual control and ownership. Through such a corporate relationship pricing policy would undoubtedly be established.

3: Increased market dominance will also have a further serious influence on the retail "cyclical pricing" phenomenon which is prevalent in Australia. HEH view cyclical pricing as a "major oil" manipulative device to maximise margins. Amplitudes at the high end are regularly within the "exploitive" area relative to import parity pricing, while at the low end, often enter the "predatory" area by being at or below what an independent service station operator may buy at.

As at the 17th of June 2009, second quarter retail figures for Sydney indicate that pricing fell to the "predatory" area on (7) occasions.

Predatory pricing is the major cause of damage to the independent service station market and has already forced many out of business.



Predatory pricing does not occur universally but is intermittent and is implemented over differing geographical situations/areas.

Cyclical pricing is dominated by the major players – Caltex/Woolworths and Shell/Coles. While it is not collusion, their sheer market power dominance forces other marketers to follow their pricing.

By permitting Caltex to purchase the Mobil retail outlets will give Caltex extraordinary influence over the price cycles thus increasing Caltex ability to dominate, if not control, retail petrol pricing in capital cities in Australia.

***Recommendation:** Pricing cycles can be eliminated by introducing a regulation that prohibits petrol and diesel retail board pricing from increasing by no more than say – 3cpl within any 5 day period. (Import parity pricing changes excluded).*

Predatory pricing may be protected by introducing a regulation which prohibits board pricing from falling at or below the refiner marketer supplier's published TGP.

4: The Shopper Docket programs introduced by Coles and Woolworths dramatically and significantly changed the retail petroleum market in Australia. These “Loyalty” programs have undoubtedly been very successful and receive popular consumer support. However, their consequence has been to shift the dominance of market power to around 65% retail market share, in favour of the alliances of Caltex/Woolworths and Shell/Coles.

The acquisition of the Mobil sites by Caltex will further concentrate that market power.

5: It is noteworthy that **retail Diesel sales**, which are not subject to the “cyclical pricing” phenomenon within service stations, represent a much better model of how pricing operates without cyclical influences. While we have identified occasions when “exploitive” pricing prevailed, it was transparent and it never entered the “predatory” area.



Wholesale Market Influences:

5: The effect of Mobil's proposed sale to Caltex on its (Mobil) wholesale (distributor) network would be profound.

Caltex have not offered to buy the Mobil wholesale business or the significant retail network they control.

Mobil over recent years have sold off their regional retail network of some (500) retail outlets to their distributor (private ownership) largely regional network. In so doing, Mobil enabled the distributors, under contractual agreement, to utilise their "Mobilcard" credit card facility.

As is the case with all "major oil" credit cards, a large percentage of their service station sales are undertaken on their own credit cards. The development of "major oil" credit card business has enabled them to capture and retain their retail business within their own network.

The percentage of use of "major oil" credit cards in retail outlets is very significant, ranging from around 40% to 80% of individual service station fuel sales.

6: Mobil are proposing to withdraw their credit card facility from their distributor network. Indeed, they have allegedly sold their Mobilcard customer listing in its entirety to Caltex. Once the Mobilcard card facility is withdrawn, almost over night, the (500) service station businesses controlled by Mobil distributors will be placed in financial jeopardy.

Mobil distributors themselves, unless they make other supply and credit card arrangements, will also suffer severe financial loss.

Caltex will undoubtedly, utilising the Mobilcard customer listing, immediately endeavour to have those customers convert to a Caltex Starcard. Such a move, almost by stealth, could force existing Mobil Distributors and their retail networks, to switch to Caltex supply, thus giving Caltex an even greater share of the retail and wholesale market.



One has to ask the question – did Mobil and Caltex in their representations to the ACCC on their proposed acquisition, inform them of their plans with the Mobil distributor network?

Our further observation of the proposed acquisition by Caltex is that Mobil's treatment of its wholesale/distributor network is disgraceful and in our view worthy of very close scrutiny by the ACCC for breaches of contractual law and commercial obligation to its distributorship network.

Conclusion:

Our view is that if ExxonMobil wish to exit the downstream market in Australia they should be permitted to do so under terms that are commercial, fair and equitable, providing reasonable return for the industry investments they have made.

However, it is our further view, that in the event of a sale our regulators should ensure that not only consumer interests are protected, but with the added proviso, that all of the parties involved in the sale are similarly treated fairly and equitably. Such fairness and equity appears not to have been applied in relation to Mobil's handling of its distributorship network and its allied retail outlets.

There is no doubt that should the sale proceed market dominance by Caltex will be further enhanced beyond the levels envisaged by the ACCC. Without the abolition of price cycles Caltex market power in our view will be intolerable.

HEH long held and publicly espoused view is that Australian consumers can tolerate a smaller concentration of "major oil" stakeholders in Australia, providing an effective monitoring regime, with powers among others of immediate intervention to stop predatory and exploitive behaviour from occurring are in place.

Our view is that we do not have such a regime in place at this time.



Our proposition is that a **Petroleum Industry Ombudsman** should be appointed and be given the powers to apply immediate “Cease & Desist” and or “Show Cause” orders on any pricing activity in any geographic location that is purported to be exploitive or predatory.

The appointee should be a person who is intimately experienced and knowledgeable on the workings of the industry with a good appreciation of its working culture. Such a person would not normally be found in the bureaucracies of government.

The petroleum industry in Australia is an essential service. All members of the community - domestic, commerce, industry, transport, agriculture and mining rely upon it and the essential service it provides.

If an effective Petroleum Ombudsman were appointed and given the appropriate powers, as defined, we see no problem in the oil industry in Australia having (3) refiner marketers or for that matter a further reduction to (2).

Once again we thank the ACCC for the opportunity to make this submission and trust our views will be of benefit and assistance in your deliberations.

Kevin M Hughes
Managing Director
HEH AUSTRALIAN PETROLEUM CONSULTANCY CO
19TH JUNE 2009