Australian Institute of Petroleum

SUBMISSION BY

THE AUSTRALIAN INSTITUTE OF PETROLEUM

TO THE

INQUIRY INTO MOTOR VEHICLE FUEL PRICES

BY THE

ACT INDEPENDENT COMPETITION AND REGULATORY COMMISSION

MAY 2001

SUMMARY OF RECOMMENDATIONS

Recommendation 1: that the Commission note the intense competition that characterises the Australian petroleum industry, which is demonstrated by the low returns to refiner-marketer companies, and the fact that Australian petrol prices are among the lowest in the developed world.

Recommendation 2: that the Commission note the specific circumstances of the development of the industry in the ACT, including the land release policy of the ACT Government which has led to significantly higher establishment costs in the ACT compared to other major cities, and which in turn affects prices in the ACT.

Recommendation 3: that the Commission note that external factors including global crude oil and product prices, the Australian/US dollar exchange rate and tax have been the key drivers of higher fuel prices in the ACT and across Australia.

Recommendation 4: that the Commission note that the differential in prices between Canberra and Australia's other major cities are due to the higher establishment costs in Canberra, the lack of volume sold through many sites due to the size of individual markets within the ACT, and the cost of transporting fuel from Sydney and Melbourne to the ACT.

Recommendation 5: that the Commission note that price fluctuations are caused by competition between retailers to gain and maintain market share. Fluctuations are also influenced by changes in external factors including international oil and product prices, and the Australian/US dollar exchange rate.

Recommendation 6: that the Commission note that the measures contained in the Western Australian *Petroleum Products Pricing Amendment Act 2000* are anti-competitive and impose new and unnecessary costs on petroleum wholesalers and retailers, and therefore ultimately on consumers.

Recommendation 7: that the Commission in its report recommend that the ACT Legislative Assembly and the ACT Government reject the measures contained in the *Petroleum Products Pricing Amendment Act 2000* (WA). as against the interests of the ACT community, and which would further exacerbate the historic price differential between ACT and Sydney prices.

Recommendation 8: that the Commission notes that the "50-50" rule will place upward pressure on fuel prices, reduce consumer protection, increase environmental exposures, attack small business and undermine investor confidence in jurisdictions where it is proposed to be adopted.

Recommendation 9: that the Commission in its report recommend that the ACT Legislative Assembly and the ACT Government reject the measures contained in the *Petroleum Legislation Amendment Bill 2001* (WA) as fundamentally against the interests of ACT motorists, the ACT environment and the ACT business community.

Recommendation 10: that the Commission in its report recommend that the ACT Legislative Assembly and the ACT Government actively support the removal of the Commonwealth *Petroleum Retail Marketing Sites Act* and *Petroleum Retail Marketing Franchise Act* and the adoption of new protections for franchisees, in line with the industry's reform proposals.

CHAPTER 1: Introduction

The Australian Institute of Petroleum (AIP) was established in 1976 as a non-profit making industry association. AIP's mission is to promote and assist in the development of a sustainable, internationally competitive petroleum products industry, operating efficiently, economically and safely, and in harmony with the environment and community standards.

AIP welcomes the opportunity to make a submission to the ACT Independent Competition and Regulatory Commission inquiry into Motor Vehicle Fuel Prices.

AIP acknowledges the interest of the ACT Legislative Assembly and the wider community in regard to petroleum products pricing issues. This submission explains the particular dynamics of the ACT fuel market, and makes recommendations to ensure that ACT motorists are not disadvantaged by regulatory proposals that would increase costs and reduce competition in the petroleum market.

AIP makes this submission on behalf of the following member companies:

BP Australia Ltd

Caltex Australia Ltd

Mobil Oil Australia Pty Ltd

The Shell Company of Australia Ltd

CHAPTER 2: BACKGROUND

2.1: Structure of the Australian Petroleum Industry

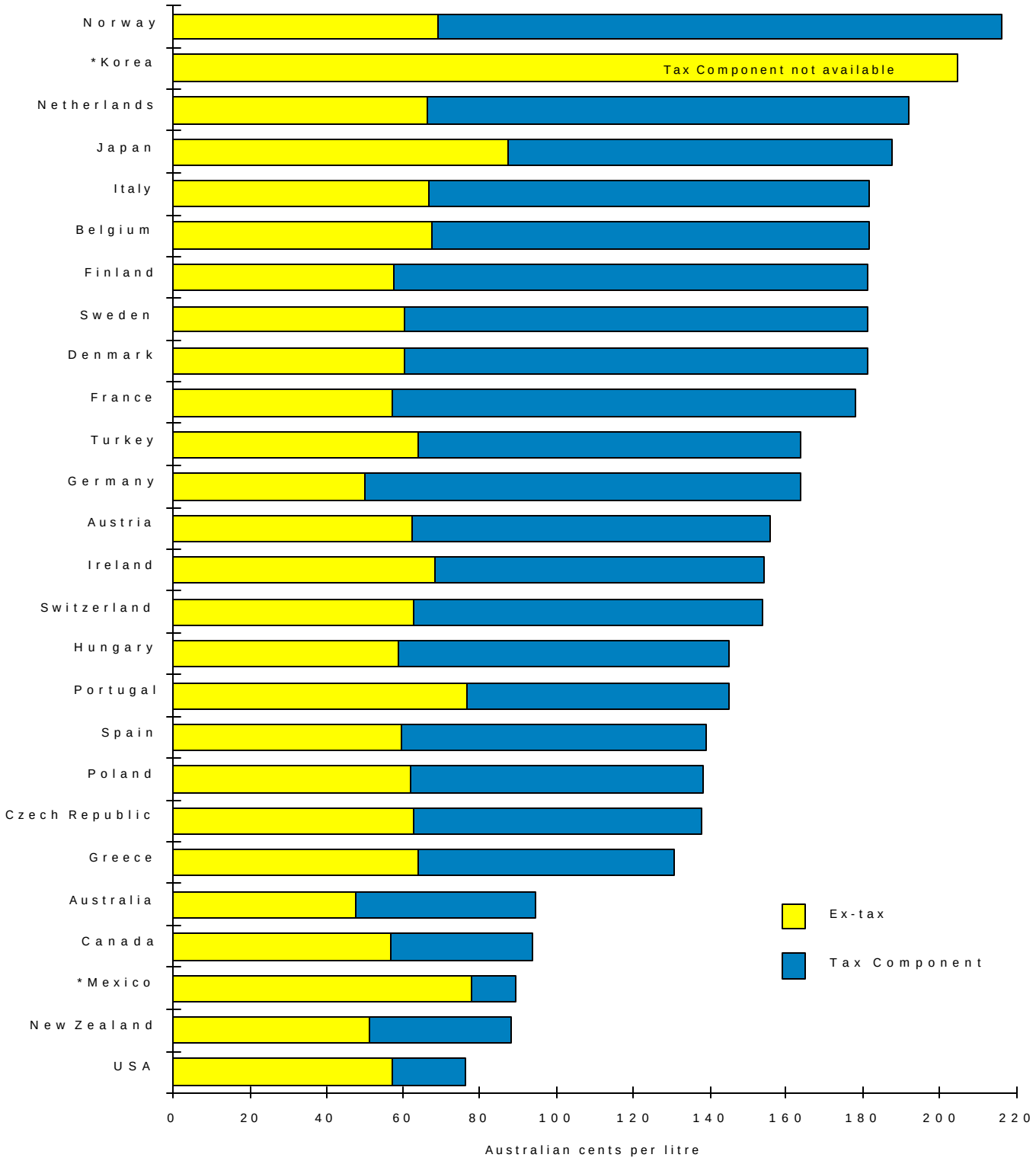
Australia's wholesale petroleum market is characterised by intense competition between the domestic refiner-marketer companies and importers of refined product.

Contrary to some perceptions in the community, the Australian refiner-market oil industry does not achieve high returns, and is in fact facing considerable financial difficulties. The independent Ernst & Young Downstream Oil Industry Financial Survey for 1999 showed that Australia's oil refining industry actually recorded a net loss of $61 million in 1999, while the marketing sector recorded only a modest positive result of $282 million (Appendix B). The industry's return on assets in 1999 was only 2.6 per cent, well below the bond rate.

The fundamentally competitive nature of the industry has also been borne out in recent years by a number of analyses of the industry, including those by the Industry Commission and the Australian Competition and Consumer Commission (ACCC).

However, the most compelling evidence is provided by the comparison of Australian prices with international petroleum product prices. The International Energy Agency publishes a quarterly analysis of petrol prices in OECD countries, including the pre-tax impost component. This analysis has consistently shown that Australia has pre-tax petrol prices amongst the lowest in the world – including those of the USA. The chart below illustrates the price of Australian petrol compared with other OECD countries:

Petrol Prices and Taxes in OECD Countries
December Qtr 2000



Source: International Energy Agency

In August 1999, the ACCC was tasked by the Consumer Affairs Ministers to investigate the relationship of Australian petrol price movements to those of international crude oil prices, following the major rise in crude oil prices between January and August 1999. The ACCC released a report in November 1999 which found that:

- average capital cities' unleaded petrol prices increased about 1.8 cents per litre *less* than international prices
- average country prices increased by 3.7 cents per litre *less* than the rise in international prices
- the city-country price differential had decreased by 1.9 cents per litre over the period.

The Australian industry has delivered this performance in spite of major disadvantages compared to countries with larger customer bases, smaller distances and oil refining economies of scale. This is clear evidence of the working of a highly competitive wholesale and retail market.

This competition takes place between oil refiners and importers, between refiner-marketers and independent marketers, between distributors, and between service stations. Petroleum product suppliers – refiner-marketers, independent suppliers, and distributors – compete vigorously to gain rights to supply owner-dealer service stations.

The Retail Sector

The retail sector of the Australian petroleum industry is competitive but is hampered by an outdated set of Federal laws that prevent full and fair competition by all industry participants.

AIP advocates significant reform of national petroleum retail marketing regulation to bring about greater competition and lower prices for Australian motorists.

Contrary to widespread perceptions, the four refiner-marketer oil companies do not control the price of fuel at the majority of retail sites in Australia. The Commonwealth *Petroleum Retail Marketing Sites Act 1980* places a limit on the number of sites at which the four refiner marketers can set the price.

Recommendation 1: that the Commission note the intense competition that characterises the Australian petroleum industry, which is demonstrated by the low returns to refiner-marketer companies, and the fact that Australian petrol prices are among the lowest in the developed world.

2.2 Petroleum Marketing in the Australian Capital Territory

Wholesale Supply

Supply of petroleum products to the ACT is generally sourced from Sydney refineries, with some supplies of proprietary petroleum products being sourced from Victoria.

All four refiner-marketers supply into the ACT market. The refiner-marketers arrange supply through regional distributors or directly from Sydney.

The wholesale price at which the refiner marketers sell reflects the highly competitive domestic environment between the refineries, together with the fact that Australian refineries are competing against imports from highly efficient refineries in the Asian region, operating in a context of significant excess refining capacity.

Petroleum Retailing

There are 75 service stations currently retailing petrol in the ACT, according to the most recent service station survey conducted by AIP (Appendix C). Of these, more than half are sites franchised by the major oil companies, while the major companies also operate or have Commission agency arrangements at a number of sites.

Eleven of these 75 service stations, are operated by independent retailers and have no direct relationship with a refiner-marketer company, apart from sourcing product from terminals operated by these companies.

Investment and Risk

The refiner-marketers have invested heavily in the ACT, to establish the infrastructure necessary to supply the ACT petroleum product requirements. This infrastructure covers both distribution facilities and retail outlets. The overall investment can be measured at hundreds of million of dollars. This investment is much higher than that required for a similar level of infrastructure in other capital cities.

The key factor behind the relatively high historic cost of fuel in the ACT is the restrictive system of land release in the ACT. This point was highlighted by the 1992 Report of the ACT Government Working Group on Petrol Prices, in its section on Land Issues. This identified that planning restrictions had led to a premium on the value of the land, which had led to prices being paid for service stations at auction of up to $3.9 million. Comparable prices in other capital cities would at similar times have been unlikely to exceeded $1 million. The Report also noted that these high prices had generally been paid by developers, who in turn leased the site to oil companies. The Government was the beneficiary of these high prices.

Site development costs, such as buildings and tanks, would need to be added to arrive at the total cost of the sites. On this basis, the total investment required for some ACT service stations could easily have exceeded $5 million. As with any investment, these costs have to be recovered in the market place, ultimately through prices.

This level of investment required makes investment in service stations in the ACT relatively high risk, compared to other capital cities. A further factor underlying the high level of risk is that the high value placed on the land is not due to natural advantages but to planning policies.

Recommendation 2: that the Commission note the specific circumstances of the development of the industry in the ACT, including the land release policy of the ACT Government which has led to significantly higher establishment costs in the ACT compared to other major cities, and which in turn affects prices in the ACT.

CHAPTER 3: TERMS OF REFERENCE FOR INQUIRY

3.1. Efficient retail prices in the ACT

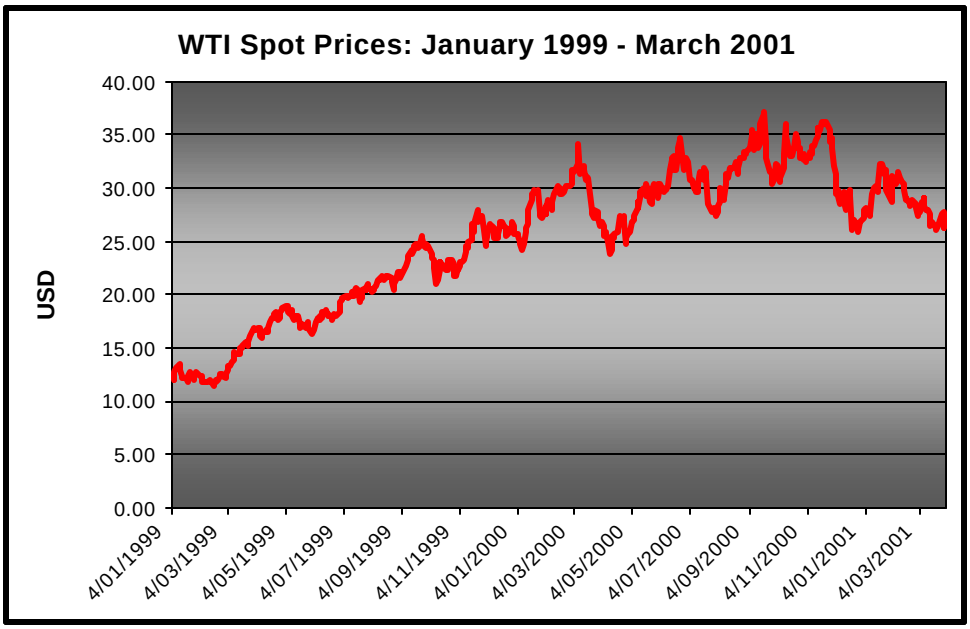
In recent months, there has been considerable community concern about the absolute level of prices, both in the ACT and across the nation. Similar concerns have been expressed in most other countries in recent months.

The particular competitive dynamics of the ACT market are discussed later in this submission, however the overwhelming reason behind the increase in fuel prices across Australia relate to international crude oil and product prices, and the Australian/United States dollar exchange rate. These key external factors cannot be ignored when analysing the level of local prices.

The price of crude oil accounts for the vast majority of the cost of producing a litre of petrol or diesel. Australian refiners buy their crude oil on the open market and therefore must pay the prevailing market price, which is set by global and regional factors.

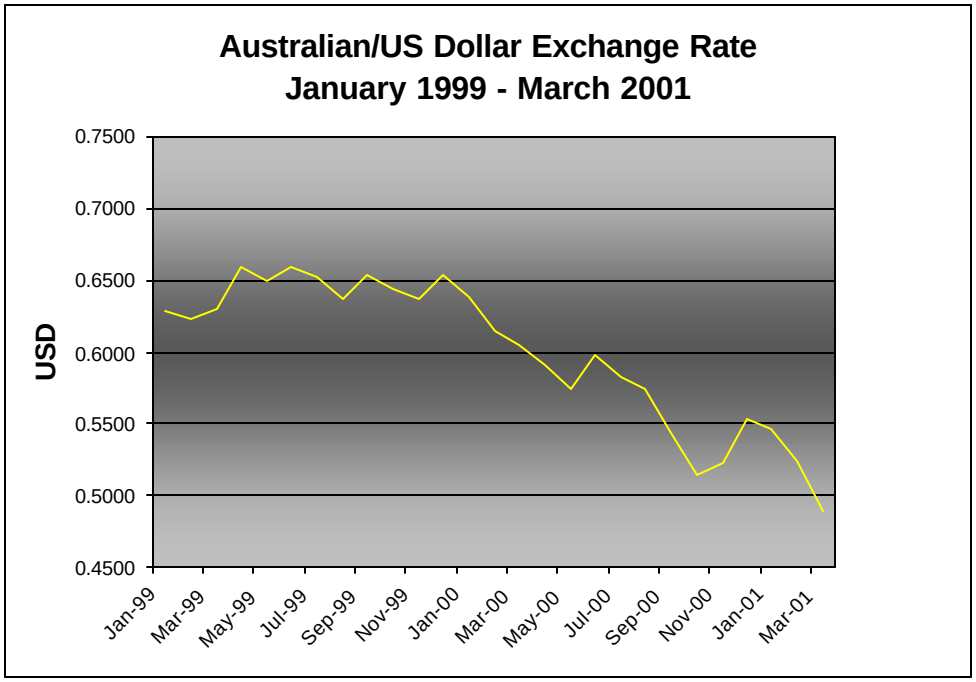
Evidence shows that the major companies have actually been absorbing a portion of crude oil price rises and cushioning the Australian motorists from the full effects of rising crude oil prices.

Crude oil is purchased in US dollars, meaning that changes in the value of the Australian dollar against the US dollar have a direct impact on the relative price of crude oil in Australian dollar terms. Therefore, changes in the Australian dollar/US dollar exchange rate must be taken into account when looking at movements in crude oil prices. The chart below shows spot price movements for West Texas Intermediate Crude Oil (WTI) since January 1999. While Australian refiners utilise crude from a variety of sources, all of which are linked to international prices, WTI is a broad indicator of the trend in world crude oil prices.



Source: United States Department of Energy

At the same time, the Australian dollar has lost substantial ground against the US dollar, which has exacerbated the impact of rising crude oil prices. The attached graph shows the value of the Australian dollar against the US dollar since January 1999.



Source: Reserve Bank of Australia

In addition to crude oil cost, the other major component of the price of a litre of petrol or diesel is tax. Commonwealth fuel excise is a fixed amount, currently levied at 38.143 cpl on unleaded petrol and diesel, and the 10 per cent Commonwealth Goods and Services Tax is also added to the price.

These taxation measures account for approximately half the price of a litre of petrol in the ACT.

The Issues Paper released by the Commission states “there is a considerable body of popular opinion in the ACT and nationally that motor vehicle fuel prices are too high.” It is essential that, when such statements are made, it is understood that by far the greater proportion of these prices is attributable to factors outside the supplying companies' control, namely the international crude oil price, the A$/US$ exchange rate and Government tax measures.

Recommendation 3: that the Commission note that external factors including crude oil and product prices and the Australian/US dollar exchange rate have been the key drivers of higher fuel prices in the ACT and across Australia.

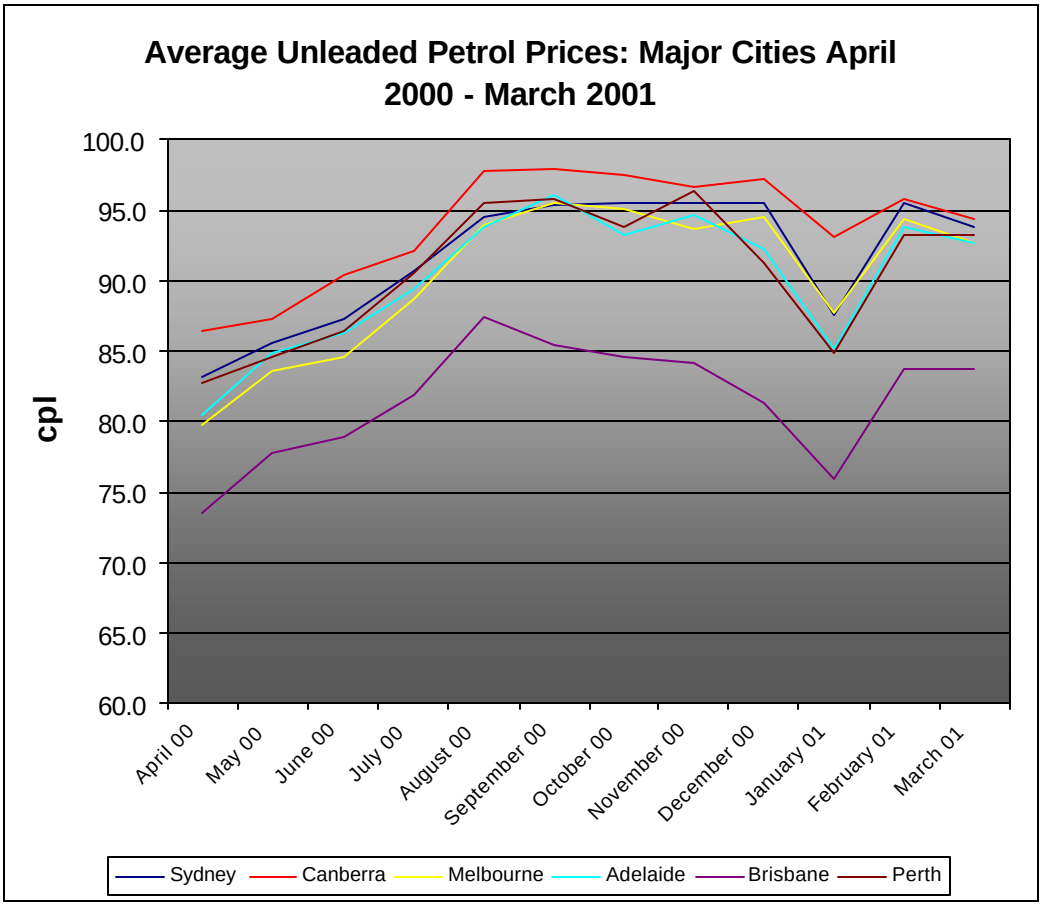
3.2. Price Comparisons

There has been considerable community debate about the relative level of petrol prices in the ACT compared particularly to other Australian capital cities. As outlined above, notwithstanding the considerable exogenous forces which have driven prices higher in recent months, it is true that prices in the ACT have generally been in excess of prices in other major cities.

There are three fundamental reasons behind the differential:

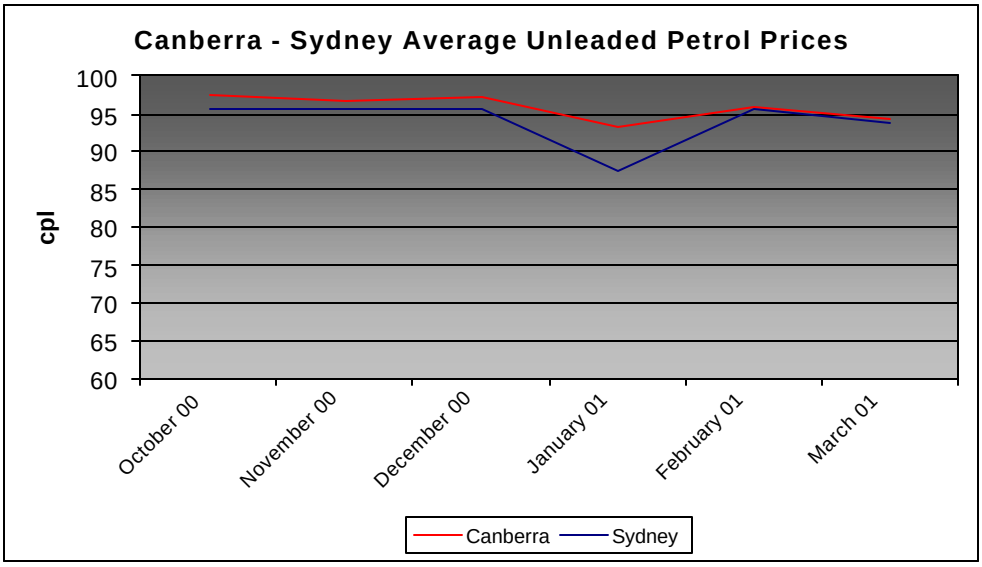
- the significantly higher investment required to establish retail outlets in the ACT (discussed above);
- freight costs involved in transporting product from Sydney and Melbourne. These costs are not incurred in the mainland State capital cities, each of which is home to at least one oil refinery, supplying the majority of that city's fuel requirements;
- there are generally lower volumes flowing through ACT service stations, with consequent higher per unit costs.

The chart below shows average unleaded petrol prices in the ACT compared to the major cities for the past twelve months:



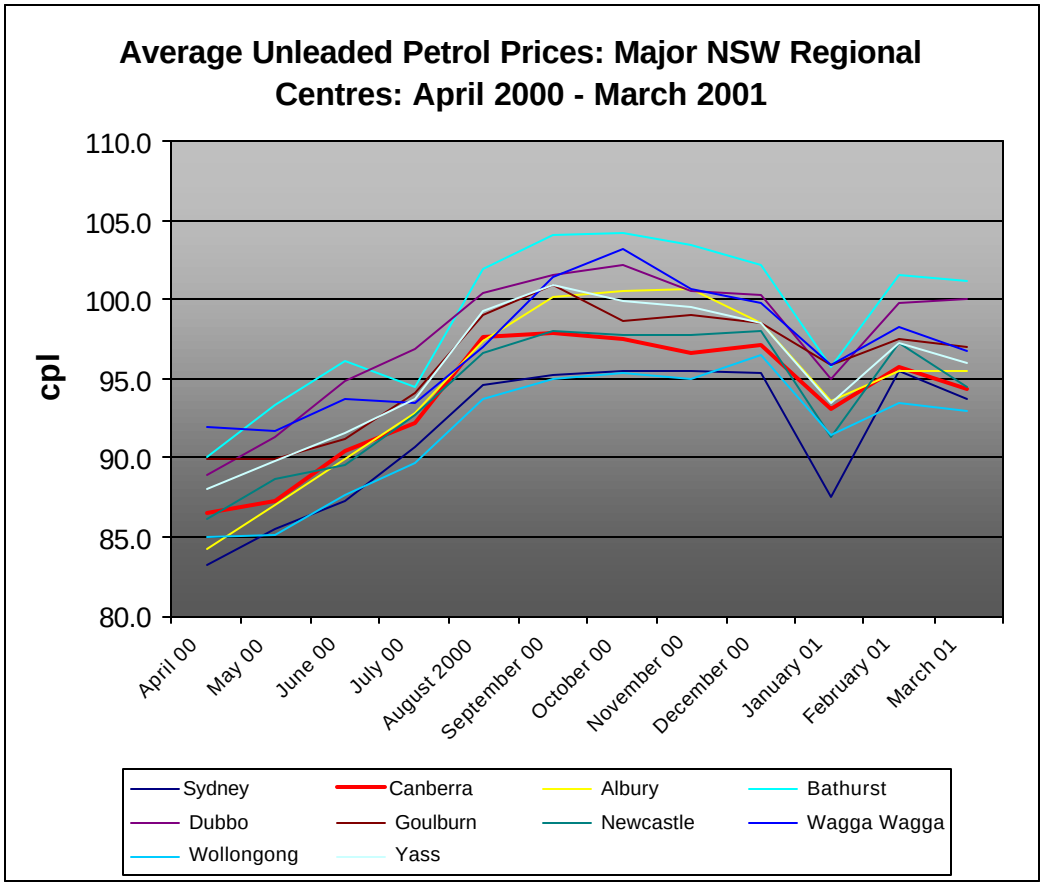
Source: Informed Sources

In recent months, the Canberra-Sydney price differential has narrowed, with an average gap of approximately 1.9 cents per litre over the six month period dating back to October 2000. As freight costs to the ACT are in the order of 1 cent per litre, this demonstrates that margins in the Canberra market have tightened, relative to the Sydney market:



Source: Informed Sources

The chart below shows average unleaded prices in Canberra and major New South Wales regional centres over the past twelve months, and demonstrates that prices in Canberra have consistently been among the lowest in these major centres:



Source: Informed Sources

The reasons for petrol prices being generally higher in the ACT than in Sydney have been set out in the various reports by the former Prices Surveillance Authority, that of the ACT Government Working Group, and that of the 1994 Industry Commission Inquiry into Petroleum Products.

All these reports point to the effect of ACT Government planning controls in imposing extra levels of cost in the Canberra market, while restricting the level of competition in the market. In particular:

- land release policies. The former Prices Surveillance Authority in its 1987 study estimated that site financing costs were 3 to 5 cpl higher in the ACT than in Sydney due to the ACT site release policy. It is important to note that such costs are long-term and fixed. There is limited ability to influence such costs once the investment is committed. It is important to note that the chief beneficiary of these higher land costs was the ACT Government;

- construction costs were higher in Canberra. Again, once incurred, these cannot be varied;

- award rate differences (at least during the periods in which the PSA reviews were carried out);

- restrictions on the locations of service stations. In particular, the planned location of service stations into local shopping centres, while providing a level of visual amenity, restricted the market open to those service stations, and thus their sales volumes. This has led to those service stations requiring high margins to be viable, while reducing the level of competition that those service stations faced;

- restrictions on the ancillary non-fuel services that can be provided by service stations - for instance restrictions on sizes of convenience stores. In Sydney, new service stations will now routinely plan on deriving over half the site income from non-fuel sources, to allow low margin sales of fuel to be viable. This option is less open to ACT service stations;

- freight costs to the ACT.

It is evident from the above that there are clear and real reasons for differentials in ACT petrol prices compared to Sydney, and that it will not be easy to change these fundamentals quickly, as many of them are long term by nature. In the case of land release policies, the benefits of the higher prices flowed to Government. The effect of this was that the Government benefited from a short term revenue gain in exchange for higher long-term petrol prices.

Recommendation 4: that the Commission note that the differential in prices between Canberra and Australia's other major cities are due to the higher establishment costs in Canberra, the lack of volume sold through many sites due to the size of individual markets within the ACT, and the cost of transporting fuel from Sydney and Melbourne to the ACT.

3.3. Fluctuations in Prices

The fluctuations in prices in the Australian petroleum market, including in the ACT, are a manifestation of the intense competition in the industry.

In metropolitan areas such as Canberra, where there are many outlets selling to a given number of potential customers, competition leads to strong and frequently quite pronounced discounting cycles.

One outlet may reduce its price, in the process reducing profit margins but intending to increase market share. The outlet's competitors closely monitor prices and usually respond by also similarly reducing prices, or discounting even further.

The downward movement in price continues and outlet operators seek price support from their wholesalers (the distributor, oil company or independent wholesaler) when their margins are reduced to unsustainable levels. If this downward trend continues, the wholesaler eventually begins to lose money and price support is discontinued. The retail prices usually return to earlier levels and the pricing cycle begins again. This same occurs if similarly one of the companies reduces its price across a number of service stations.

While some in the community are frustrated by the fluctuations in retail prices, this is actually competition at work, and this discounting results in lower prices than consumers would pay if this intense competition did not occur.

The magnitude of retail price changes over short periods of time is also a manifestation of the fact that fuel retailing is not conducted under the same rules for all retailers.

The Commonwealth *Sites* and *Franchise Acts* prevent the major companies from achieving maximum efficiencies in their operations, by restricting the options for operation of retail sites. The major companies are prohibited from setting prices at more than 5 per cent of sites nation wide. At franchised and branded owner-dealer sites, the price is set by the retailer, not their supplying oil company.

The major companies strongly support the repeal of the *Sites* and *Franchise Acts* to provide for full and fair competition among all industry participants. The industry also believes the repeal of these arbitrary restrictions would remove structural market maladjustments and reduce the volatility of retail prices. The industry's proposals for reform of the petroleum products market are set out in chapter 4 of this submission.

In addition to the factors driving retail price volatility, wholesale prices can change rapidly due to changes in international prices and the exchange rate. As Australian prices are by necessity benchmarked against regional prices, which are traded in US dollars, any movement in these factors will flow quickly through to Australian wholesale prices.

Price rises prior to weekends and public holidays have recently attracted considerable community comment. However, these price movements reflect the competitiveness of the market and consequent discount cycles and not, as has been alleged, some form of collusion over pricing.

Recommendation 5: that the Commission note that price fluctuations are caused by competition between retailers to gain and maintain market share. Fluctuations are also caused by changes in external factors including international oil and product prices, and the Australian/US dollar exchange rate.

The Western Australian Government has recently embarked on a series of regulatory measures that will work actively against the interests of WA motorists. The measures constitute significant distortions in the marketplace, are anti-competitive and are not reflective of the market realities operating in that State.

3.4.1 Measures Contained in the Petroleum Products Pricing Amendment Act 2000

The "24 hour" rule

This measure provides that retail prices must be fixed for a 24 hour period. The industry's view is that this requirement is anti-competitive, as retailers have no ability to discount their product in response to competitors' retail prices.

The 24 hour rule removes the ability to react in a competitive manner in the retail marketplace and will result in a risk-averse approach to setting prices in advance. As a result, aggregate retail prices are more likely to rise, over time to he detriment of consumers.

AIP has advised the WA Government that this measure will fall most harshly on retailers as opposed to wholesalers. A retailer will have no capacity to match a competitor's price on a given day, with the risk that the retailer will sell little fuel on that day if the nominated price is well above the market. As a consequence, other shop sales will be severely reduced and perishable stock may be lost. Conversely, if the nominated price is too low and sales are very high, fuel stocks may run out which would not only anger customers but cut other shop sales.

Maximum Wholesale Price

The Western Australian Government has adopted a prescriptive Maximum Wholesale Price (MWP) formula for sales of petroleum products to non-contract or "spot" purchasers. The approach of the Government has failed to represent accurately the actual costs of supply and operation of terminals in Western Australia and has resulted in a MWP that is unviable. As a result, there is no supply to the spot market at the MWP.

Retail Price Caps

The Western Australian Government has indicated it intends to impose caps on retail prices in certain areas of the States. The setting of retail price caps in selected areas may have the effect of setting higher target prices for efficient retailers in that area, while forcing the closure of less efficient retailers.

In addition, requirements for the itemisation of wholesale accounts, notification of prices to Ministry of Fair Trading and other administrative impositions will add to costs and therefore prices.

Mandatory Price Boards

The Act provides that regulations may be made to require the display of the standard price for each type of motor fuel sold at a particular location. AIP supports price information at retail sites, and refiner-marketer companies already display price boards at the sites they own, including franchise sites.

However, the mandating of price boards for all fuels, as opposed to the major products, will impose a significant cost on the industry that would need to be recovered in the marketplace, while there is no evidence that such a requirement would improve competition.

Further to the cost and competition issues, there are also safety considerations to take into account. A price board of the type contemplated in the Act would need to be of sufficient size to be clearly seen from the road and may reduce driver vision and vehicle visibility.

There is a further safety consideration. With price board of heights of up to 6 metres, there would be a safety issue for service station staff required to climb ladders in all weather to change the prices on the price boards. While electronic price boards are an alternative, the costs of installing such boards would be prohibitive for many retailers.

Recommendation 6: that the Commission note that the measures contained in the Western Australian Petroleum Products Pricing Amendment Act 2000 are anti-competitive and impose new and unnecessary costs on petroleum wholesalers and retailers, and therefore ultimately on consumers.

Recommendation 7: that the Commission in its report recommend that the ACT Legislative Assembly and the ACT Government reject the measures contained in the Petroleum Products Pricing Amendment Act 2000 as against the interests of the ACT community, and which would further exacerbate the historic price differential between ACT and Sydney prices.

3.4.2 Measures Contained in the *Petroleum Legislation Amendment Bill 2001*

Proposed "50-50" legislation

The new Western Australian Government has introduced the Petroleum Legislation Amendment Bill 2001 into State Parliament, which will allow retailers to source up to 50 per cent of their fuel from other than their supplying company (the 50-50 rule).

The 50-50 rule is a fundamentally flawed approach to regulation of the petroleum industry, and is predicated on a misunderstanding of the nature of the industry's structure and competitive dynamics. The refiner-marketer oil companies are strongly opposed to such measures.

The Nature of Franchise Agreements

Franchising is an established retail format, and is one of the fastest growing types of business construct. Franchising in the petroleum product industry follows the format established in the wider franchising context.

Key elements of the format for franchising in the petroleum products industry are:

- investment in the site and building by the oil company. Franchise service stations are generally owned or leased by the franchisor oil company, which secures the property, and invests in the building and equipment. This allows small business operators to enter the industry with investment, very substantially less than the $1 million that they would have to incur if they entered as an independent owner and operator;
- sale of fuel products of the franchisor oil company. Franchise service stations always sell the product of their franchisor, which has a reputation for quality and which has been carefully and expensively developed. Where franchisors do not own local refineries, they source fuel locally or internationally to a quality that meet their standards and may also modify the fuel with proprietary additives at their terminals;
- provision of brand supported by brand promotion and marketing;
- provision of various forms of financial support. These include price support to assist the franchisee to remain competitive in the event that market prices fall. This greatly reduces franchisee risk compared with an independent operator;
- business manager support;
- loyalty programs and other buyer reward schemes;
- oil company fuel card;
- group purchasing, promotional and marketing support for shops.
- training;
- minimum 9 year tenure under the Petroleum Retail Marketing Franchise Act
- terms and conditions covered in comprehensive franchise agreements.

50-50, Fuel Contamination and the Environment

The 50-50 rule will render it impossible for oil companies to guarantee the quality of fuel sold from branded sites, that exercise their right to purchase from an alternative supplier, as it will not be possible to determine the origin of the fuel sold from such sites. In this situation, neither motorists nor oil companies will have certainty over the product at such sites, with consequent risk of contamination or poor quality substitute fuels. Fuel substitution has been a major problem in the eastern states.

Widespread use of the 50-50 rule by service stations will increase environmental exposure as it will make it impossible for oil companies to monitor fuel losses on sites they either own or supply so as to provide early warning of any breakdown of equipment. As well as increased risk of environmental damage, the lack of clarity as to who is responsible in a situation where the supply can come from any number of sources will complicate and delay any remediation that may be required.

50-50 is an Attack on Small Business and is Anti-Competitive

The 50-50 rule will render franchising unviable both for oil companies and small business franchisees and reduce the role of small business in the petroleum market.

As a result, a highly efficient retail format offering benefits to the public will disappear, to be replaced by less cost-efficient unbranded or minor brand sites. The replacement of efficient sites with less efficient sites and the elimination of a key format of retail competition in the marketplace, can only place upward pressure on fuel prices.

50-50 Undermines Investor Confidence

The industry believes the WA Government's decision to proceed with the *Petroleum Legislation Amendment Bill 2001* creates both a new and unnecessary climate of risk and uncertainty in regard to investment decision making in Western Australia. Similar concerns would exist in any jurisdiction that was considering the 50-50 rule. The proposal constitutes an effective expropriation of property, as it substantially reduces the ability of oil companies to sell their product through sites and equipment which they own and in which they have invested millions of dollars.

The Proposal Has Been Rejected in Overseas Jurisdictions

The 50-50 proposal as proposed by the WA Government has been considered and rejected in studies in a number of overseas jurisdictions, as a measure that would harm, rather than assist, consumers. These jurisdictions include both the United Kingdom and within the United States.

Recommendation 8: that the Commission notes that the "50-50" rule will place upward pressure on fuel prices, reduce consumer protection, increase environmental exposures, attack small business and undermine investor confidence in jurisdictions where it is proposed to be adopted.

Recommendation 9**: that the Commission in its report recommend that the ACT Legislative Assembly and the ACT Government reject the measures contained in the Petroleum Legislation Amendment Bill 2001 as fundamentally against the interests of ACT motorists, the ACT environment and the ACT business community.

Chapter 4: Measures to Increase Competition in the Australian Petroleum Industry

AIP understands that the Commission's inquiry is focussed on measures that may be able to be taken by the ACT Government to address community perceptions in regard to petroleum marketing issues.

However, AIP strongly advocates a national approach to such issues and believes there is a key role for the ACT Legislative Assembly and Government in pursuing national reforms that would assist ACT consumers. These reform proposals are summarised below.

Petrol prices in Australia, pre-tax basis, are amongst the lowest in the world. However, there is still potential to reduce prices in country areas, if the industry is allowed to create greater efficiency through enhanced competition.

The key to reducing petrol prices and to obtaining a more competitive market lies in the Commonwealth Government's package of petroleum retail marketing reform, including repeal of two pieces of Commonwealth legislation and the adoption of a new Oilcode to protect small businesses and franchisees in the industry.

Petrol retailing in Australia is currently distorted by outdated Commonwealth legislative mechanisms - *The Petroleum Retail Marketing Sites Act* and the *Petroleum Retail Marketing Franchise Act* - that prevent full competition in the marketplace.

The two Acts must be repealed because they are unfair and actively disadvantage the four local manufacturers of petroleum products and the small business sector of the industry linked to those refiners, in favour of imports, supermarkets and other major petrol retailing operations.

This is because the Acts apply only to the four defined refiner-marketers (BP, Caltex, Mobil and Shell) and their franchisees. They do not apply to other marketers or importers.

The Acts prevent the refiner-marketers from offering their franchisees the most viable franchise systems, often used by other marketers. The end result is a serious threat to the viability of the petroleum product marketing operations of the refiner-marketers and their franchisees.

Unfortunately, efforts to repeal these Acts have stalled in the Senate. The Commonwealth Government's petroleum industry reform package was withdrawn following opposition to the package by the Australian Labor Party and the Australian Democrats, and industry efforts to gain agreement on the Government's package have not been supported by the Motor Trades Association of Australia.

Under the reform proposals, comprehensive new regulations to protect small businesses in their dealings with petroleum product suppliers would be established. The proposed framework includes:

- full protection against any unconscionable conduct towards small business by large businesses, enforceable under law by the ACCC. For example, this would cover pricing issues;
- a new mandatory code of practice for the industry, Oilcode, which has been updated by Government, and which would be legally underpinned by the Trade Practices Act;
- coverage of all resellers of petroleum products (the Petroleum Retail Marketing Franchise Act only applies to franchisees of the oil majors);
- full pre-contractual disclosure, including a mandatory business planning process involving both reseller and supplier with a requirement for independent vetting;
- review of business plans, to allow resellers advance warning of significant changes in their relationship with their supplier, or in the industry itself;
- provisions for renegotiation of the contract in the event of unforeseen changes in market circumstance;
- a mandatory, low-cost expeditious dispute resolution procedure, based on non-binding conciliation as an alternative to court action.

The proposed new Oilcode would provide all the specific protections necessary and appropriate for the industry, and its development resulted from a long process of discussion and negotiation. However, the new Oilcode can only be introduced as part of a package that includes repeal of the Sites and Franchise Acts. The industry has been disappointed that the MTAA has been unable to agree to measures that would provide protections to all fuel retailers, not just those major oil company franchisees entitled to the limited protections of the *Franchise Act.*

Repeal of the *Petroleum Retail Marketing Sites Act* is an essential step in the drive to reduce the petrol price differential between country and city. If Governments want the refiner-marketers to reduce retail petrol prices in country areas, the refiner-marketers must be allowed more ability to set retail prices. At present, the Sites Act restricts the refiner-marketer involvement at the retail level to about 5 per cent of service stations. Most of these are in city areas.

Repeal of the Acts will in no way reduce competitive forces in the industry. The independent owner-dealer sector plays a major role in the industry, particularly in country areas. It will continue to maintain this role as long as it meets customer requirements and is supported by the customers.

The consumer, in both city and country areas, would be the ultimate beneficiary of the repeal of the Sites and Franchise Acts, in terms of price and service.

Recommendation 10: that the Commission in its report recommend that the ACT Legislative Assembly and the ACT Government actively support the removal of the Commonwealth Sites and Franchise Acts and the adoption of new protections for franchisees, in line with the industry's reform proposals.