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Mr Gary Banks
Chairman
Review of the National Access Regime
Productivity Commission
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Dear Mr Banks

In December last year MTAA made a brief submission to the Commission's Inquiry into the National Access Regime. The central view expressed in that submission was that access to petroleum terminals should be covered under the access provisions set out in the Competition Policy Reforms.

Not surprisingly that position has not been supported by the Productivity Commission or the Coalition Government. Notwithstanding that lack of support, MTAA does not resile from the views expressed in our earlier submission.

I note that in considering the views put forward by MTAA, the Commission at page 119 of its Position Paper (March 2001) has some reliance on the views expressed in the Parliamentary Library Current Issues Brief 11 1999–2000, *'Petroleum Refining and Marketing in Australia – Changes Ahead'*. I am of course aware of that paper and the views expressed in it. In fact soon after it was posted on the Internet I wrote to the Parliamentary Library rebutting some of the views expressed in that paper.

For the record and because of the Commission's reliance on the paper, which we believe to be seriously flawed, I would like to repeat some of my comments here.

There is quite some discussion in the Parliamentary Library paper about terminal access arrangements. Indeed it is noted that industry restructuring *"has also led to open access to bulk terminals owned by the refiners, allowing bulk wholesale purchase of refined product by interested parties on commercial terms."* The reality is quite different.

The issue of access is an important one for service station operators, in fact it is far more important in the context of any discussion on reform/deregulation of marketing and distribution sectors of the industry than access to terminals for mining companies, farmers and transport companies.

Service stations operators are denied the opportunity to "shop-around" for the cheapest fuel and are very much price-takers. The lack of competition in the wholesale market is therefore a major impediment to successful reform of the petroleum industry. Generally speaking those who currently have access to oil company terminals do not retail fuel and even those independent marketers (such as Liberty and Woolworths) who would like to source supply from the oil majors have difficulty negotiating "acceptable commercial terms" with them. (The oil majors willingness to negotiate on price is not, apparently, as evident as their rhetoric would suggest.) Thus the introduction of the so-called access to terminals by the oil majors has done nothing to allay the concerns of retailers about the lack of wholesale competition – nor has it resulted in there being any transparency in pricing.

In fact in a recent appearance (25 June 2001) before the House of Representatives Standing Committee on Economics, Finance and Public Administration, the Chairman of the Australian Competition and Consumer Commission, Professor Fels, was asked about access to terminals. Professor Fels noted that oil refineries are basically excluded from the access provisions of the TPA and that in relation to the freeing up of access post the ACCC's 1996 report *"the access that the oil companies eventually gave was limited to fairly narrow categories. I think they were basically to people who did not already have a contract with an oil company, that were not lessees. As I recall, a very low percentage of service stations gained potential access as a result of that"*.

The General Manager of the ACCC Mr Cassidy went on to say *"That was an arrangement between the government and the oil companies. Part of the arrangement was that the Sites Act and the Franchise Act would be repealed. That has not happened yet. To be honest, we are not aware that that terminal gate pricing arrangement is still in operation, as far as most terminals are concerned. Certainly, as the Chairman said, we have indicated previously that we think greater access to terminals for retailers of petrol would be a way of increasing competition in the industry."*

The Parliamentary Paper also notes that changes in the petroleum industry are likely *"because of a number of emerging factors including present low levels of profitability of Australia's refineries deemed by industry commentators as unsustainable, brought about by competition from imports, …"*

MTAA has quite some reservations about the level of reported profitability of the oil majors. The figures that are most often quoted are from the annual Downstream Oil Industry Financial Survey prepared by Ernst & Young from unaudited data supplied by the four refiners which is not publicly available and only industry-average data is reported. A review of the Ernst & Young Survey's commissioned from Access Economics by MTAA suggests that the data should be audited and that a dispersion of results around the average should be reported. It was also found that while an 'underlying' profit measure has been reported since 1997, there is no corresponding 'underlying' measure of assets in the balance sheet results. The basis of asset valuation in the Survey is also unknown. There was until the latest report also no indication as to a split between refining and distribution and marketing costs and earnings. It is not clear to MTAA from the Ernst & Young reporting that refining is as unprofitable as is often claimed.

It is true that there have been, in recent times, new entrants into the retailing sector, namely Woolworths and Liberty (and of course Woolworths recently announced that it had entered into an arrangement to lease Liberty's sites). While in theory those independent marketers are free to import fuel, the reality is that there is only very limited importing of refined petrol into Australia. At the time of responding to the Parliamentary Library, figures suggested the level of imports was about <u>three</u> per cent and falling – not the <u>five</u> per cent reported. These independent marketers are mostly therefore supplied by the oil majors.

The presence in the market of independent marketers is really only secured by the undertaking given to the ACCC at the time of the merger of Ampol and Caltex that one billion litres of fuel per annum would be available for sale to independents. While in theory it may be relatively easy for independents to import fuel, history shows that in practice that is not always the case and that is why the level of imports of fuel into Australia have remained low – despite new entrants at the retail level.

From the service station operator's perspective, it is not true that, as is stated in the Commission's position paper, access to terminals has improved in recent years. Access continues to be generally denied to resellers. Because of that and the nature of supply contracts and franchise arrangements in the oil industry, the oil majors have an increasing level of influence over both the wholesale and retail sectors of the petroleum industry. In our view that influence is not in the national interest, and at times, again in our view, represents an abuse of market power by big business against small business. Access to terminals will never be secured without regulatory intervention. Without access there will never be a competitive wholesale market for petroleum products in Australia.

I would appreciate your consideration of these comments during the preparation of your final report.

Yours sincerely

MICHAEL DELANEY
Executive Director

2 August 2001