

MAGAZINE EDITORIAL MAY 2011

In April of this year, delegates of the Service Station Divisions of the MTA's from Queensland, New South Wales, Tasmania, South Australia, Western Australia and the Victorian Automobile Chamber of Commerce conducted their inaugural fuel retailers' forum under the new banner, the Australian Motor Industry Federation (AMIF). AMIF has been formed by these peak State bodies to perform the important task of national representation for the motor industry in Australia.

The April meeting represented somewhat of a watershed for the industry as it was the first time that the various State delegates had held such a meeting for several years and there was considerable ground to be made up. Underpinning the meeting was a universal acceptance of the need for national representation for the service station industry and for that representation to be more effective than what had been achieved in the past. The re-combining of all States into a national body with a united voice was seen as the critical first step.

With the decline in oil company franchising, association membership is now heavily dependent upon independent service station operators, whether they be owner/operators, commission agents or lessees. Therefore, the need to address the business conditions of the independents has become the industry's focus.

The issue of greatest importance was universally recognised as the abuse of market power by the oil companies and the supermarkets. A straw poll of all delegates revealed a similar story with uniform reports of falling profitability and site closures. The behaviour of big businesses and their marketing tactics is worthy of scrutiny as their successes seem to be at the expense of the independent sector.

Big business does not operate its sites any more efficiently than small business. In fact there are many who claim that independent operators are more efficient and deliver a more competitive offering to consumers. So, where is big business's competitive edge?

In simple terms, big business has two advantages – cross subsidisation and buying power. Big businesses receive substantial volume discounts whereas single site operators do not. Transparency and equitable access to product is essential.

Cross subsidisation occurs in different forms. Firstly, there is geographical cross subsidisation where a large network of service stations can sell petrol in one market area at a very low price - sometimes below cost – and use the profits from higher prices in the rest of its sites to fund this aggressive behaviour. In this way, overall group profitability is maintained whilst achieving market objectives in the target area. This is a commonly used tactic across all retail networks and is not confined to petrol. The oil companies have been using this tactic for decades.

Secondly, there is product line cross subsidisation where profit margins on a large range of other products sold by a network are used to fund below cost selling of petrol. This is a favourite tactic of the supermarkets as the prices on their 10,000 or so product lines are impossible for the average consumer to track and to therefore understand if their basket of goods is good value or not.

Of course, supermarkets are able to practice both geographical and product line cross subsidisation and have been able to transform these concepts into very sophisticated business strategies that are extremely effective – and difficult to track, let alone police.

It's no wonder therefore that the supermarkets have, in a few short years, become dominant in petrol retailing that no other stakeholder can effectively compete against. Mobil has withdrawn from the retail market and Shell has effectively handed over its retail network to Coles leaving only BP and Caltex to battle on. Twenty years ago, there were nine refiners/marketers active in Australia, today there are only three, with Shell only being active in the supply of fuel to dependents. In other words, there are basically now only two refiner/marketers active in the Australian market.

The only conclusion from this analysis indicates that there is very little competition at the wholesale level and abuse of market power by big business is steadily eliminating competition at the retail level. Consumers and commentators alike ask the question, "What is the ACCC doing about it?"

Unfortunately, the answer to this question is – very little.

To be fair, the ACCC is not the "Mr Fixit" of everything that goes wrong in business. As the name implies, its primary responsibility is the welfare of consumers and the continuation of competition in all industries. It does not have a mandate to protect small business. Its interest in small business is to ensure that small business can continue to provide effective competition, in any industry.

The other aspect of the ACCC's role that needs to be understood is that its powers are strictly regulated by the Government and by the Trade Practices Act (now the Competition and Consumer Act). As such, and with respect to petrol retailing, its authority is limited to a watching and analysis brief and to prosecute any breaches of the Act that could result from collusion on price setting or of cartel behaviour.

It also has the power to prosecute breaches of the Act that deal with abuse of market power and of unconscionable conduct. Some observers believe that the actions of the supermarkets and the oil companies fit into these categories and that the ACCC should launch legal proceedings. However, the requirements of proof necessary to convince a court are quite onerous and neither the ACCC nor various industry stakeholders have been able to gather satisfactory evidence to support the commencement of legal action. It's not that the ACCC doesn't know what's going on – it knows exactly what each

major player is up to – it's just that the powers it has been given by the Government and the wording of the Competition and Consumer Act leave the ACCC powerless to act.

Perhaps, then, the more relevant question is, "What is the Government doing about? Is the Government prepared to grant the ACCC additional powers?" The answers to these questions are simple – "Nothing!", and "No!"

For many years, the Service Station Association and other industry stakeholders have been lobbying government, past and present, to strengthen the Act and give the ACCC more power. Representations have been made to the many Small Business Ministers and Assistant Treasurers that have had carriage of these issues over the years.

There is an overwhelming reluctance by politicians to take on big business in this country. There have been some that have tried. The latest was Chris Bowen who, in a previous portfolio and in a different Government, actually proposed to include small business contracts within the coverage of the newly created Australian Consumer Law. Before Minister Bowen could finalise this mission, he was transferred to another portfolio and the incoming minister declined to follow his lead. Another example of big business having its way when government policies are being put into place.

Another way of understanding the situation in Canberra on this issue can be summed up as follows - "It's all too hard." This is a comment we've heard too many times. Politicians are elected to represent their constituents and Governments are meant to be able to take tough decisions. When it comes to creating a level playing field for small business, Australian governments are failing.

Perhaps the final question on this issue should be put to our elected politicians. "If overseas governments, such as those in Europe and North America, can make the tough decisions, why can't you?" Its time every small business operator in Australia asked this question of his or her MP.

The AMIF meeting of Service Station Division delegates came to the same conclusion and agreed that pursuit of the Federal Government on these issues is our number one goal and long overdue.