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NCP Inquiry  
Productivity Commission  
PO Box 80  
BELCONNEN ACT 2616

Dear Sir / Madam

ExxonMobil Australia welcomes the opportunity to provide its views to the Commission in relation to the Review of National Competition Policy Arrangements.

ExxonMobil Australia is one of Australia's largest oil and gas producers and a major refiner and marketer of petroleum products. The ExxonMobil head office is located in Melbourne and the Company employs around 2,500 people and provides jobs to over 1000 contractors.

Since 1969 ExxonMobil, under the name Esso Australia, has operated the Bass Strait offshore oil and gas fields and associated production and processing facilities. ExxonMobil produces a significant amount of Australia's crude oil requirements and supplies natural gas to Victoria, Tasmania, New South Wales and South Australia.

ExxonMobil's Australian downstream business, trading as Mobil Oil Australia, was established in Melbourne in 1895. ExxonMobil operates a refinery at Altona, in Melbourne. Mobil also operates and/or supplies a number of product distribution terminals and bulk storage facilities and a nationwide network of more than 1,000 service stations.

## **FUTURE LEGISLATION REVIEWS - PETROLEUM MARKETING SECTOR**

ExxonMobil believes that there are a number of pieces of legislation relevant to the company's operations in Australia, that serve to reduce competition, create unnecessary marketplace distortions, or generate investment uncertainty.

ExxonMobil believes the Commission should consider the following legislative instruments as requiring review and reform to promote competition and market liberalisation.

### ***Petroleum Retail Marketing Sites Act 1980 ("the Sites Act")*** ***Petroleum Retail Marketing Franchise Act 1980 ("the Franchise Act")***

The Sites and Franchise Acts selectively target market participants that are both refiners and marketers of petroleum products.

The Acts prevent these companies conducting both activities from fully optimising their operations and competing on a level playing field with independent fuel retailers. This in turn distorts the petroleum products market by not allowing competition to fully determine the composition of the market.

The Sites Act provides that "prescribed oil companies" (ExxonMobil, BP, Caltex and Shell, ie those that have both refining and marketing operations) are limited to setting retail prices to the quota that is set by the Minister responsible for the Act. For example, ExxonMobil has a quota of 87 sites. This means it can only set retail prices at 87 of its sites. Companies other than prescribed oil companies are not restricted by the Sites Act and are able to set prices at all of their sites.

The Franchise Act imposes a number of obligations on franchisors in the petroleum industry that are not imposed on other franchisors in other industries. Together, the Sites and Franchise Acts are discriminatory and inequitable.

While the Sites and Franchise Acts were never justified when initially legislated, they are clearly unnecessary in today's highly competitive market. It is estimated that in Australia, major and minor brand independent outlets comprise approximately 30% of the retail market in the major retailing centers. In addition to the major refiner/marketer companies, the retail sector now includes major independent chains and a range of smaller independent outlets. The presence in the market of such a diverse range of participants demonstrates that the market is highly competitive and contains low barriers to entry.

The Sites Act has been rendered further irrelevant by the recent introduction of alliances between major supermarket chains and two of the four refiner-marketer companies (Caltex and Shell). Retail sites that operate pursuant to these alliance arrangements do not fall within the bounds of the Sites Act.

ExxonMobil notes that the most recent Australian Government NCP Legislation Review Compendium (5th edition) states that the NCP legislation review of these Acts had not commenced as at early March 2004<sup>1</sup>.

While acknowledging the Commonwealth Government's stated policy of supporting repeal of these Acts, this has not occurred to date. The continued existence of this legislation is of ongoing concern to ExxonMobil, and the company advocates the urgent repeal of both of these Acts.

### ***Petroleum Products Pricing Amendment Act 2000 (WA) ("the WA Act")***

The WA Act incorporates a number of measures that in ExxonMobil's view restrict competition, by impacting on the ability of market participants to set wholesale and retail prices.

In regard to wholesale petroleum prices, the WA Act requires that suppliers set wholesale prices according to a Maximum Wholesale Price formula that is mandated under an Order issued by the Western Australian Prices Commissioner.

By mandating a common formula for the setting of wholesale petroleum prices, the WA Act inhibits suppliers developing innovative forms of wholesale pricing.

Further, the formula used pursuant to the WA Act makes no clear allowance for local supply and demand factors to be taken into account in setting prices.

Additionally, the WA Act precludes declared suppliers from setting different wholesale prices for different classes of customers, and thus negatively impacts on the development of more efficient, market-based pricing models.

In regard to the retail market, the WA Act imposes a restriction under which retail prices must be notified to the Prices Commissioner a day in advance, and no change from the notified price is then permitted for the day in which the price applies in the market. As such, retail competition is restricted as retailers cannot change prices to match, or discount beneath, competitors. ExxonMobil submits that this measure is a clear restriction on competition.

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<sup>1</sup> NCP Legislation Review Compendium (Fifth edition 2004) - Australian Government, February 2004, p2.41

ExxonMobil notes that the *Petroleum Products Pricing Amendment Act 2000* is noted in the most recent NCP Legislation Review Compendium for Western Australia as having been reviewed in 2001.<sup>2</sup> The Compendium states that the restrictions on competition in this legislation were found to be in the public interest.

However, ExxonMobil believes that restrictions of the nature contained within the WA Act both raise costs for market participants as well as reducing choice and competition for consumers. As such, ExxonMobil recommends that the Commission consider whether it would be appropriate for the WA Act to again be reviewed using NCP criteria.

### ***Petroleum Products (Terminal Gate Pricing) Act 2000 (Vic) ("the Victorian TGP Act")***

The Victorian TGP Act imposes a number of conditions upon the petroleum products market that restrict the competitive operation of the market.

In particular, the Victorian TGP Act specifies a formula that must be used by ExxonMobil and other declared suppliers in setting wholesale prices for automotive petrol and diesel sales, for contracts entered into after 1 November 2002 and inhibits suppliers from developing innovative forms of wholesale pricing.

ExxonMobil notes that the *Petroleum Products (Terminal Gate Pricing) Act 2000*, does not appear in the most recent NCP Legislation Review Compendium for Victoria.<sup>3</sup>

ExxonMobil recommends that this legislation be reviewed in accordance with the criteria of the National Competition Policy legislation review program.

## **CURRENT AND RECENT REVIEW ACTIVITY IN THE ENERGY AREA**

In his terms of reference, the Treasurer asks the Commission to consider but not replicate recent work by CoAG in the area of energy. The most recent CoAG review of the energy market was the CoAG Energy Markets Review or "Parer Review", released in 2003.

It is important that, in any consideration of gas market issues, the Productivity Commission avoids consideration of the Parer Review in isolation but rather considers the responses to the Review made by the Ministerial Council on Energy and the Ministerial Council on Minerals and Petroleum Resources.

We believe that a number of recommendations on upstream competition in chapter seven of the Parer Report were based on an incomplete understanding of the state of the gas market.

The Parer Review was conducted at a time of intense contracting activity in the south eastern Australia wholesale gas market and the Review Panel had no way of fully comprehending how the market was evolving.

ExxonMobil submits that, contrary to the view expressed in the Parer Report, there is in fact increasing upstream competition in the gas market, and that view is now shared by the majority of the gas industry.

Given the substantial changed circumstances since the release of the Parer Report, ExxonMobil believes the Commission should ensure that it is using the most contemporary analysis and understanding of the gas market. As such, aspects of the Parer Review relating to gas market competition are no longer relevant.

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<sup>2</sup> NCP Legislation Review Compendium (Fifth edition 2004) - Western Australia, February 2004, p6.61

<sup>3</sup> NCP Legislation Review Compendium (Fifth edition 2004) - Victoria, February 2004

## **COMPETITION REFORM ISSUES IN THE GAS MARKET**

In developing its review of the National Competition Policy Arrangements, ExxonMobil submits that the Commission should have particular regard to issues in the gas market, where existing regulatory arrangements are restricting competition and reducing incentives to further invest in this market.

### ***Gas Access Regime***

Although the subject of a current Productivity Commission Inquiry, the Gas Access Regime is also relevant to any broader review of competition policy. ExxonMobil has separately made a submission to this review, the contents of which are summarised below.

ExxonMobil believes that recent pipeline developments have been the result of gas market de-regulation that has occurred to date. This market activity has not been directly as a result of the Gas Access Regime, although there are cases where the Gas Access Regime has facilitated market access. In fact, we believe that the risks posed by uncertainty associated with some aspects of the Gas Access Regime may be leading to sub-optimal pipeline developments. ExxonMobil believes it is important that in its review of the Gas Access Regime, the Productivity Commission should address these uncertainties and risks.

ExxonMobil believes that changes are required to the Gas Access Regime to ensure more timely processes and to more strongly support free commercial negotiations, particularly those by the foundation shippers who are underwriting the pipeline development. ExxonMobil believes that the COAG Energy Market Review recommendation 7.2 for an initial regulatory free period for greenfield pipelines would help to address these problems and that a regulatory free period of 20 years may be appropriate to provide such certainty.

ExxonMobil recommends that future competition related reform of the Gas Access Regime should be based on moving towards lighter handed regulation and an onus on the use of industry based codes, rather than a prescriptive and interventionist regulatory approach.

### **Victorian Common Carriage Regulated Access Regime**

Victoria has a common carriage regulated access regime on the Gasnet pipeline assets that supply the majority of Melbourne's gas from Bass Strait. This regime does not allow shippers to contract directly with the pipeline owner/operator to secure firm transportation for potential gas sales either within or outside the state.

An inability to secure firm transportation prevents the sale of firm gas at known costs. Instead, buyers and sellers must take transportation price risk each day under the "market carriage" arrangements. These arrangements can add uncertainty and additional costs to Victorian gas market arrangements.

A study of the "market carriage" arrangements was carried out by Allen Consulting (Jon Stanford) in 2001 on behalf of Victorian Gas Users. The study found there was no significant industry participant support for the costly and complex arrangements either by suppliers or buyers.

ExxonMobil believes the carriage arrangements in Victoria should be brought into line with the rest of the market which uses a traditional contract carriage arrangement where shippers are able to contract for capacity. This would be a pro-competitive initiative that should be considered by the Commission in its deliberations on future competition related reforms.

### **Retail Price Caps**

A significant factor overshadowing the development of a competitive south eastern Australian gas market is the effective State Government imposed price capping in the retail gas markets.

Price caps pose a substantial risk to the long-term health of the market and are a disincentive to investment. If a situation arises where the cost of potential new or replacement supply increases and consumer prices are capped, there will be no incentive to invest in additional capacity as there will not be an ability to generate a reasonable return in the market.

Current gas supplies in south eastern Australia utilise existing infrastructure that was in large part put in place over the past 30 years. As developed reserves in the Gippsland and Cooper basins run down, new investment will be required in these fields and others to maintain supply. Clear market signals need to connect demand and supply in this key energy market.

These new supplies will only be developed if producer prices are at a level that will provide sufficient investor returns.

The existence of capped retail prices will, over time, prevent new supplies entering the market and the retail market will eventually face shortages.

ExxonMobil believes the appropriate course of action is to remove retail price caps and allow competition between alternative gas supplies, and between gas and alternative fuels such as electricity, LPG and distillate.

## **CONCLUSION**

ExxonMobil welcomes the current review of National Competition Policy Arrangements as an opportunity to extend market liberalisation and pro-competitive reforms in the petroleum marketing and energy sectors.

I hope the information provided in this submission is of assistance to the Commission as it considers its position on petroleum marketing and energy market issues, in the context of potential future developments in competition related reforms.

Yours sincerely

David W Byers  
Public Affairs Manager