

5 February 2020

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**Contact**

Alistair Newton  
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Ms Madeleine Houghton  
A/g Assistant Director, Merger & Authorisation Review Division  
Australian Competition and Consumer Commission  
Level 20, 175 Pitt Street  
SYDNEY NSW 2000

Dear Ms Houghton

## **BP, BP Resellers and Qantas – application for authorisation AA1000452-1 – response to Further OAIC Submission**

As you know, we act for BP Australia Pty Ltd (**BP**) in respect of the above application for authorisation dated 4 September 2019 (the **Application**) made on behalf of BP, resellers of fuel under the BP brand (**BP Resellers**), Qantas Airways Limited and Qantas Frequent Flyer Limited (together, **Qantas**) (together, the **Applicants**).

We refer to the Applicants' previous submissions, the draft determination and interim authorisation decision issued by the Australian Competition and Consumer Commission (**ACCC**) on 22 November 2019, and the further submission received by the ACCC from the Office of the Australian Information Commissioner (**OAIC**) on 28 January 2020 (**Further OAIC Submission**).

BP does not propose to address all aspects of the Further OAIC Submission in detail. Instead, this letter simply provides the ACCC with additional information that demonstrates that no privacy-related detriment will result from the conduct to be authorised.

The Further OAIC Submission is focused on privacy risks arising from the collection, use and disclosure of personal information by BP Resellers to which the *Privacy Act 1988* (Cth) (**Privacy Act**) does not apply. In respect of those risks, BP notes the following (which should be read in conjunction with the submissions made in our letter to the ACCC dated 30 October 2019 (see pages 10-13)).

- **(Existing Privacy Act coverage)** BP has further considered the extent to which BP Resellers are likely to be covered by the Privacy Act. Based on its knowledge of BP Reseller businesses, BP expects that around 85% of BP Reseller sites are operated by BP Resellers that are subject to the Privacy Act's requirements.
- **(Highly limited BP Reseller access to personal information)** Under the proposed conduct, BP Reseller systems will not receive personal information such as names, dates of birth, addresses, postcodes, email addresses or similar

information. Further, for most BP Reseller systems, loyalty card numbers will be masked (e.g., XXXX XXXX XXXX 1234), encrypted, and not stored by BP Resellers – and so cannot then be used by BP Resellers to construct profiles or re-identify individuals. For the remaining BP Reseller systems, unmasked (yet encrypted) loyalty card numbers will technically be transmitted by BP, but will not be accessible to BP Reseller staff or IT personnel.

- **(Additional safeguards)** Finally, through its relevant BP Reseller agreements, BP will impose additional privacy safeguards. In particular:
  - *No BP Reseller recording of member data* – BP Resellers will not be permitted to capture or record loyalty card numbers, contact details, or other personal information obtained as a result of a person's participation in the BP Rewards program; and
  - *Data security* – BP Resellers must implement and maintain appropriate and prudent security measures to prevent data losses or breaches, and must immediately notify data breaches (including in respect of the personal information of BP Rewards members) to BP.

In these circumstances, BP considers that no privacy-related detriment can be said to arise from the proposed conduct.

Please let us know if the ACCC requires anything further in relation to these issues.

Yours sincerely



**Alistair Newton**  
Partner