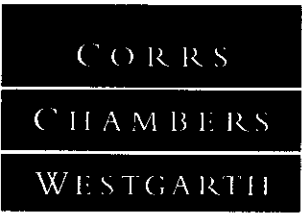


N 90820



L A W Y E R S

18 September 2000

Contact
David Flavell (03) 9672 3205
Email: David_Flavell@corrs.com.au

BY COURIER

Partner
Stephen Kroker

Mr J O'Neil
Senior Assistant Commissioner
Australian Competition & Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

Our reference
SCK/DJF/BPAU7602-6420010

Dear Sir

BP AUSTRALIA LIMITED ("BP") - THIRD LINE FORCING NOTIFICATION

We act for BP and **enclose:**

- a notification for BP in accordance with section 93(1) of the Trade Practices Act 1974, concerning the proposed offer of BP products at particular prices or subject to a discount, allowance, rebate or credit, on the condition that persons supplied or offered supply will acquire products from Wishlist.com.au Pty Ltd or, refusing to supply BP products at a particular price or subject to a discount for the reason that persons will not or have not agreed to acquire products from Wishlist;
- a submission in support of the notification; and
- a cheque for \$1,000 in payment of the applicable statutory fees.

ACCC
19 SEP 2000

BOURKE PLACE 600 BOURKE STREET MELBOURNE VIC 3000
GPO BOX 9925 VIC 3001
TELEPHONE (03) 9672 3000 INT +613 9672 3000 FAX (03) 9602 5544
DX 336 MELBOURNE

18 September 2000

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Australian Competition & Consumer Commission

**BP AUSTRALIA LIMITED ("BP") - THIRD LINE FORCING
NOTIFICATION**

If you require any further information, please contact David Flavell on 9672 3205
or Stephen Kroker on 9672 3494.

Yours faithfully

CORRS CHAMBERS WESTGARTH



Stephen Kroker
Partner

encl

FORM G

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 93(1)

**EXCLUSIVE DEALING
NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or (9)(a), (b), (c) or (d) of that Act in which the person giving notice engaged or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) Name of person giving notice:

BP AUSTRALIA LIMITED ACN 004 085 616 ("**BP**")

(See Direction 2 on the back of this Form)

(b) Short description of business carried on by that person:

Manufacturer, distributor and marketer of refined petroleum products.

(c) Address in Australia for service of documents on that person:

C/- Corrs Chambers Westgarth
600 Bourke Street
MELBOURNE VIC 3000
Reference: Stephen Kroker

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Supply of petrol, other refined petroleum products and other goods and services ("**BP Products**") by BP and of products by Wishlist.com.au Pty Ltd ACN 085 529 979 ("**Wishlist**") ("**Wishlist Products**").

(b) Description of the conduct or proposed conduct:

Offering to supply the BP Products, or supplying or offering to supply the BP Products at a particular price or subject to a discount, allowance, rebate or credit, on the condition that the person supplied or offered supply will acquire Wishlist Products, or has acquired Wishlist Products of not less than a nominated value from Wishlist, and refusing to supply the BP Products at a particular price or refusing to give a discount, allowance, rebate or credit in relation to the supply of the BP Products, for the reason that the person has

not acquired, or has not agreed to acquire, Wishlist Products of not less than a nominated value from Wishlist.

(See Direction 4 on the back of this Form)

3. (a) Class or classes of persons to which the conduct relates:

BP, Wishlist and all retail customers and all potential customers of BP and Wishlist, wishing to purchase Wishlist Products from Wishlist and/or BP Products from BP.

(b) Number of those persons:

(i) At the present time:

All potential customers of BP and Wishlist who have not purchased from Wishlist or registered as a Wishlist member prior to the commencement of the promotion.

(ii) Estimated within the next year:

45,000.

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:

Not applicable.

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Stephen Kroker
Partner
Corrs Chambers Westgarth
600 Bourke Street
MELBOURNE VIC 3000.

Dated: 18 September, 2000. Signed by/on behalf of the person giving this notice.



Stephen Kroker
(Signature)

STEPHEN KROKER
(Full Name)

PARTNER, CORRS CHAMBERS WESTGARTH
(Description)

DIRECTIONS

- 1 If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbers consecutively and signed by or on behalf of the person giving the notice.
- 2 If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
- 3 In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
- 4 If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be furnished with the notice.
- 5 In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
- 6 In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

BP AUSTRALIA LIMITED

**SUBMISSION TO
THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
REGARDING THIRD LINE FORCING NOTIFICATION**

- 1 BP Australia Limited ACN 004 085 616 (“**BP**”) is a manufacturer, distributor and marketer of refined petroleum products in Australia. BP’s petroleum products are sold at retail level in Australia directly by BP and indirectly through approximately 1,200 franchisee, distributor and privately owned BP branded sites throughout Australia.
- 2 Wishlist.com.au Pty Ltd (“**Wishlist**”) is an on-line retailer operating a number of Wishlist branded internet sites and providing on-line retailing services to other businesses.
- 3 BP and Wishlist have entered into a strategic relationship aimed at:
- (i) increasing their respective customer bases;
 - (ii) providing a convenient chain of locations for Wishlist customers to pick up purchases and drop off returns of Wishlist products; and
 - (iii) increasing the number of reasons for consumers to visit BP stores.
- 4 To promote the BP/Wishlist relationship the parties wish to conduct a promotion. The promotion will operate in either or both of the following ways:
- (i) for persons who have not purchased from Wishlist or registered as a Wishlist member prior to the start of the promotion, if they purchase a gift worth at least \$25 (excluding delivery and wrapping and including GST) from Wishlist before 30 November 2000 (or such later date agreed by the parties) they will receive a voucher for \$25 worth of fuel which they can redeem at participating BP service stations (it is anticipated these sites will include BP owned sites, franchisee owned sites, distributor supplied sites and privately owned sites); and/or
 - (ii) for persons who purchase \$25 worth of fuel from a participating BP service station, who have not purchased from Wishlist or registered as a Wishlist member prior to the start of the promotion, they will receive a \$25 gift voucher to spend at Wishlist.

- 5 The parties intend to run a trial of approximately two weeks duration at approximately 15 sites to determine which offer is more attractive to consumers.
- 6 Wishlist and BP may agree to increase the purchase and corresponding voucher offer from \$25 to \$30 prior to the start of the promotion. The maximum number of vouchers will initially be 60,000. Wishlist and BP may together agree to increase the maximum number of customers who will receive a free voucher to 80,000 based on a reasonable assessment of Wishlist's fulfillment capability and merchandising position at the time. Vouchers will expire on 15 December 2000 (or such later date agreed by the parties) and will be limited to one per customer.
- 7 Persons who have purchased from Wishlist or registered as a Wishlist member prior to the start of the promotion will be offered a \$12 super car wash voucher, for purchases of \$25 and over (excluding delivery and wrapping and including GST). Wishlist will purchase the vouchers from BP for \$2 cash per voucher up to a maximum of 10,000 vouchers. Vouchers will expire on 15 December 2000 (or such later date agreed by the parties) and will be limited to one per customer.
- 8 This proposal may involve BP in a contravention of the prohibition against third line forcing in sub-sections 47(6) and (7) of the Trade Practices Act ("TPA").
- 9 The proposal is in the interests of consumers, in that:
- customers can buy the package of fuel and Wishlist products at a genuine saving on the total price of the products bought separately; and
 - the conduct results in lower prices for customers and serves to increase competition in the markets for both fuel and on-line products.
- 10 The proposal will not substantially lessen competition. On the contrary, it may assist BP in competing with other retail fuel providers. The supply of BP products or Wishlist products is not conditional upon customers purchasing products from both BP and Wishlist. Only the supply of free vouchers will be subject to such a condition.

- 11 To avoid any risk of contravening the prohibition against third line forcing, BP is lodging notification with the Commission in accordance with sub-section 93(1) of the Trade Practices Act 1974.