



## FORM G

## COMMONWEALTH OF AUSTRALIA

TRADE PRACTICES ACT 1974 - SUB-SECTION 93(1)

N31132

## 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 engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE AT END OF FORM)

1. (a) Name of person giving notice  
Caltex Australia Petroleum Pty Ltd ACN 000 032 128 ("Caltex")  


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(See Direction 2 below)
- (b) Short description of business carried on by that person  
Caltex operates and controls the petroleum refining and marketing and  
franchise activities of the Caltex and Ampol brands. This notice concerns  
Caltex's retail franchise operations conducted through its network of owned/controlled  
convenience store and fuel retailing facilities in Australia.  


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- (c) Address in Australia for service of documents on that person  
c/- Robert Anderson, Deacons, 1 Alfred Street, Sydney NSW 2000.  


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2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates  
This notice relates to the supply of a range of food, drink and other grocery  
and convenience items and services for retail sale through convenience store  
and fuel retailing facilities.  


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- (b) Description of the conduct or proposed conduct  
The conduct involves Caltex requiring under its franchise agreements that  
franchisees agree to purchase a designated range of goods and services  
from particular approved suppliers as specified by Caltex from time to time.  
Further details are set out in Confidential Attachment 1.  


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(See Direction 4 below)

- 3 (a) Class or classes of persons to which the conduct relates  
The conduct relates to Caltex's franchisees, further details of which are  
provided in confidential Attachment 2.
- (b) Number of those persons:  
(i) At present time See confidential Attachment 2  
(ii) Estimated within the next year See confidential Attachment 2
- (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  
Robert Anderson, Deacons, 1 Alfred Street, Sydney NSW 2000.

Date 3rd May 2001

Signed on behalf of the person giving this notice

JCB  
(Signature)

TONY BLEVINS

(Full Name)

Managing Director

Caltex Australia Petroleum Pty Ltd



## DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered 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 provided 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 the 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 sub-section 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, the 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 sub-section 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 sub-section 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.

## CONFIDENTIAL ATTACHMENT 1

### A. PROPOSED CONDUCT

Caltex proposes to supply franchise rights to Star Mart and Star Shop franchisees under standard franchise agreements which include terms to the following effect:

#### 5. Definitions

- (1) **"Approved Goods and Services"**, as at a particular date, means goods and services which, at that date, are included the All Star Register;
- (2) **"All Stars Register"** means the register of approved suppliers, contractors, goods and services published by Caltex from time to time;
- (3) **"Approved Supplier"**, as at a particular date, means a supplier or contractor which, at that date, is included in the All Stars Register;
- (4) **"Caltex Manual"** means any manual or manuals published by or on behalf of Caltex in any form including, but not limited to, in hard copy and/or electronically, as current from time to time setting out standards, rules, procedures and guidelines concerning the Caltex franchise system.

#### 6. Approved Suppliers

##### 6.1 Caltex:

- (1) will link the All Stars Register to the Caltex Manual;
- (2) may, in its sole and absolute discretion, at any time, add to or delete from the All Stars Register, the name of a supplier, contractor, good or service.

##### 6.2 The Franchisee may propose to Caltex that it add to the All Stars Register:

- (1) as an Approved Supplier, a supplier or contractor which will:
  - (a) satisfy a demonstrated consumer demand;
  - (b) maintain continuity of supply of products or services;
  - (c) supply quality products or services in keeping with the standards required to comply with the Caltex image;

- (d) provide technical, innovative merchandising aids to all or a material group of Caltex stores;
  - (e) provide and maintain satisfactory margins;
  - (f) provide a readily understandable and acceptable form of operation including appropriate methods of delivery, returns, invoicing, payment, collection and credit;
  - (g) provide appropriate financial incentives in support of the Caltex franchise system;
- (2) as Approved Goods and Services, other goods or services provided they are of like quality, otherwise compatible with the Caltex image and available at a competitive price.

6.3 Within 30 days (or such longer time as agreed) of receipt of a proposal by the Franchisee under clause 6.2, Caltex will respond to the Franchisee advising its acceptance or rejection of the proposal. If the proposal is rejected by Caltex it will indicate to the Franchisee the reasons for its rejection.

6.4 Caltex may from time to time stipulate that the Franchisee will not be entitled to purchase or otherwise acquire particular goods or services in connection with the Caltex franchise business from a supplier other than an Approved Supplier.

6.5 Without limiting clause 6.1(2), Caltex may withdraw or vary its approval of an Approved Supplier or Approved Goods and Services if in the reasonable opinion of Caltex it or they do not continue to meet the criteria specified in clause 6.2.

## **7. Compliance with Standards**

The Franchisee will at all times comply with all standards for the merchandising, presentation and food safety of Approved Goods and Services and all related environmental, health and safety and security standards as may be prescribed from time to time in the Caltex Manual.

## **B. CALTEX SUBMISSION**

Caltex operates throughout Australia a network of approximately 650 retail outlets under distinctive Caltex identifications including the "Star Mart" and "Star Shop" brands. The proposed conduct relates to supply to the franchisees at those outlets, but most pertinently to

the market for the supply of grocery and convenience items at retail level to Australian consumers.

Historically, Caltex has operated a range of franchises with somewhat different terms under the Caltex and Ampol brands. It is now seeking to address issues of disparity in relation to levels of store presentation and service. It is also seeking to maximise competitiveness by building the buying power of the Caltex franchise group. The objective is to negotiate standard grocery industry terms from approved suppliers of quality goods and services which are more advantageous to the group. It anticipates the advantages which it expects to flow to the Caltex franchise group will be passed on to consumers in the form of lower prices.

The main competitors of the franchise group in Australia are:

Coles Supermarkets, Woolworths Supermarkets (including approximately 138 company owned combined fuel and grocery sites), Independent Grocers Australia, BP, Shell and Mobil.

Caltex's objective is to place its franchise group in the best position to compete effectively with their competitors. Although the proposed conduct described above may be considered to amount to exclusive dealing conduct within section 47(6) of the *Trade Practices Act*, Caltex is firmly of the view that it will have a pro-competitive effect on the relevant markets. In particular, the increased buying power of the franchise group and the ability of Caltex to facilitate the consistent application of quality standards of presentation and service will allow franchisees to compete more effectively with the competitors in the market.

The proposed conduct will tend to exert downward pressure on prices both to franchisees and at the retail level. It will be pro-competitive in increasing the countervailing power of the franchise group to constrain the pricing of large suppliers. (By way of example see the current list of approved suppliers attached).

The proposed conduct is therefore of great public benefit, and is also directly comparable to conduct covered in other notifications previously lodged with the Commission by similar organisations and competitors of Caltex which have not been contested or revoked.

**May 2001**