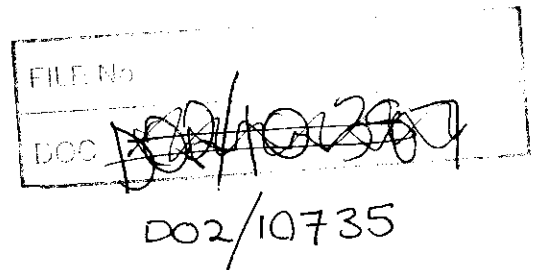


L A W Y E R S



1 March 2002

Contact
Nicholas Andersen (03) 9672 3143
Email: Nicholas_Andersen@corrs.com.au

Mr Tim Grimwade
Acting General Manager of Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Partner
Stephen Kroker

Our reference
SCK/NA/BPAU7602-6525039

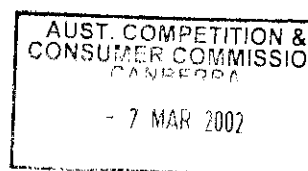
Dear Mr Grimwade

**BP AUSTRALIA LIMITED
THIRD LINE FORCING NOTIFICATION**

We act for BP Australia Limited and **attach**:

- a notification for BP in accordance with Section 93(1) of the *Trade Practices Act 1974*, concerning the proposed supply of services by BP to its franchisees on the condition that the franchisees purchase particular products from BP's preferred suppliers;
- submission in support of the notification; and
- a cheque for \$1000 in payment of the applicable statutory fees.

You will see that there is a list of BP's preferred suppliers which is marked as confidential and **attached** to the submission. BP does not wish for this list to be included on the ACCC's public notifications register or disclosed in any way to any third party.



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

SYDNEY MELBOURNE BRISBANE PERTH CANBERRA GOLD COAST

OUR LIABILITY IS LIMITED BY THE SOLICITORS SCHEME, APPROVED UNDER THE PROFESSIONAL STANDARDS ACT 1994 (NSW).
 THIS LIMITATION OF LIABILITY APPLIES TO CLAIMS THE PROPER LAW OF WHICH IS THE LAW OF NEW SOUTH WALES.

M/877573/1

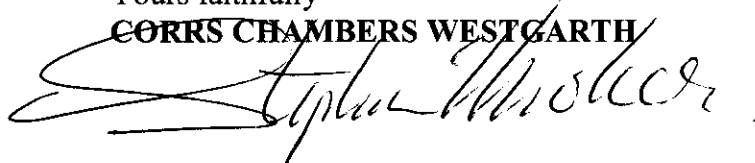
1 March 2002
Australian Competition and Consumer Commission
BP AUSTRALIA LIMITED
THIRD LINE FORCING NOTIFICATION

Page 2

If you have any queries, please do not hesitate to contact me on (03) 9672 3494 or
Nicholas Andersen on (03) 9672 3143.

Yours faithfully

CORRS CHAMBERS WESTGARTH



Stephen Kroker
Partner

encl

FORM G

Regulation 9

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 ABN 53 004 085 616 (“BP”)

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

BP is involved in the refinement, wholesale and marketing of petroleum and related products. BP also, as franchisor, appoints franchisees that operate franchise businesses which sell petroleum and related products and convenience goods from retail fuel sites and on-site convenience stores. BP also operates a number of like businesses itself from retail fuel sites.

(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.

- A range of food, drink and other grocery and convenience items including without limitation groceries, confectionary, impulse and readily consumable food items, and cafe and bakery style products.
- A range of services associated with the day-to-day operation of BP retail outlets, on-site convenience stores and Cafe Zip facilities and the other facilities at those sites, including without limitation, product recycling services, waste collection services, window cleaning services and car wash maintenance services.

(b) Description of the conduct or proposed conduct

Requiring all of BP's current and future franchisees who operate BP retail outlets, on-site convenience stores and Cafe Zip facilities (including stand-alone Cafe Zip facilities) to purchase a specified range of goods and services from particular BP preferred suppliers as specified by BP from time to time. Further details are provided in the accompanying submission.

(See Direction 4 on the back of this Form)

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

BP's existing and future franchisees who operate BP retail outlets, on-site convenience stores and Cafe Zip facilities at retail fuel outlets and stand-alone Cafe Zip sites.

(b) Number of those persons -

(i) At the present time

BP currently has franchise arrangements with approximately 300 - 400 franchisees which operate retail fuel sites and on-site convenience stores.

(ii) Estimated within the next year

BP expects that, within the next year, it will have franchise arrangements with approximately 400 franchisees which operate retail fuel sites, on-site convenience stores, and/or possibly stand-alone Cafe Zip facilities.

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

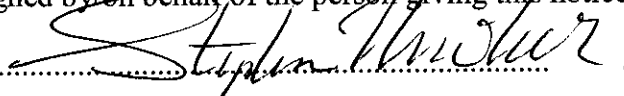
Not applicable.

- 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.....1 March, 2002

Signed by/on behalf of the person giving this notice



(Signature)

STEPHEN CHARLES 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 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 INTRODUCTION

- 1.1 BP Australia Limited ABN 53 004 085 616 (“**BP**”) of 360 Elizabeth Street, Melbourne, Victoria, is involved in the refinement, wholesale and marketing of petroleum and related products. BP also, as franchisor, appoints franchisees that operate franchise businesses which sell petroleum and related products and convenience goods from retail fuel sites and on-site convenience stores. BP also operates a number of like businesses itself from retail fuel sites.
- 1.2 BP currently has franchise arrangements in place with approximately 400 franchisees in Australia which operate retail fuel sites which also have an on-site convenience store (“**BP Retail Sites**”).
- 1.3 BP Retail Sites offer for sale, in many cases, hundreds of convenience goods such as:
- grocery and beverage items;
 - other ‘fast food’ and readily consumable food products such as hot dogs, pies, pasties and sandwiches; and
 - ‘impulse’ food and confectionary items;
- (collectively the “**Convenience Goods**”).
- 1.4 A number of the BP Retail Sites also have facilities known as a “Cafe Zip”, which consists of an on-site cafe-style facility (including tables and seating) through which bakery and other cafe-style products that are wholly or partially prepared at the BP Retail Sites are sold under the BP owned brand name ‘Cafe Zip’ (“**Cafe Zip Facility**”). The products sold at Cafe Zip Facilities include:
- bakery style savoury products such as pasties, sausage rolls and a selection of gourmet pies;
 - pastry and related products such as croissants, fruit lattices, danishes, muffins and cookies;
 - a selection of different blends of coffee and other hot drink varieties; and
 - freshly pre-made sandwiches or products located in a sandwich bar facility which allow consumers to choose the fillings for their sandwich;
- (collectively the “**Cafe Zip Products**”).
- 1.5 In addition, in the next 12 months BP may commence entering into franchise agreements for the operation of stand-alone Cafe Zip facilities at sites such as shopping centres and shopping malls.

2 MATTERS OF IMPORTANCE TO BP'S FRANCHISE BUSINESSES

2.1 BP wishes to ensure that the Convenience Goods and Cafe Zip Products which are offered for sale at BP Retail Sites and Cafe Zip Facilities are:

- of high quality and meet all applicable food health and safety standards; and
- competitively priced against products sold in other 'convenience' outlets, cafes and bakeries.

2.2 In the case of Cafe Zip Products, BP wishes to ensure that these Products are made from high quality and fresh ingredients which are sourced from suppliers which BP has researched and approved. BP sees the fulfilment of this objective as helping to ensure that the:

- health and safety of consumers is not compromised;
- Cafe Zip Products are of a high quality thereby protecting the name and reputation of the Cafe Zip brand which is used by BP and its franchisees; and
- Cafe Zip Products are trusted and sought after by Australian consumers.

To ensure that the objectives in this point 2.2 are met, BP is currently moving towards having a system whereby it will only approve a supplier (of goods or services) for its preferred supplier list where the supplier is compliant with the criteria contained in the International Organisation for Standardisation's ISO-9002. Accordingly, before approving a supplier ("**BP Preferred Supplier**"), BP will require the supplier and its business to:

- be HACCP certified¹;
- have acquired the necessary registration certifications to conduct a food manufacturing or food supply business (as the case may be); and
- be compliant with the relevant food, health and safety guidelines and legislation that applies to manufacturers or suppliers of food products (as the case may be).

For the ACCC's information we have **attached** a copy of the current list of BP Preferred Suppliers, which BP requests the ACCC keep confidential.

2.3 As part of its supply relationship with BP Preferred Suppliers, BP has negotiated with each Supplier a system of pricing and promotional support whereby in return for a franchisee participating in a product promotion, the Supplier will:

- (a) offer to the franchisee a discount on the wholesale price of the promoted product that is purchased from the Supplier; and/or
- (b) pay the cost of each franchisee's point of sale advertising for the particular product promotion.

¹ HACCP is an acronym for Hazard Analysis Critical Control Points. As the name suggests, HACCP identifies each point along the various food chains where a hazard may compromise the safety or quality of the food products, and then creates a list of safeguards which should be implemented to combat each hazard.

However, in order to guarantee the discounts mentioned in (a), each Supplier usually requires an assurance that an overall minimum quantity of stock will be purchased by BP's franchisees from that Supplier. At present, these discounts are not assured because BP can not compel its franchisees to purchase particular products from a BP Preferred Supplier. BP would expect that the promotional support mentioned in (b) is also dependent on each Supplier being assured that an overall minimum quantity of stock will be purchased by BP's franchisees from that Supplier.

It is of utmost importance to BP that this pricing and promotional support be guaranteed to its franchisees to enable them to compete effectively with their competitors.

- 2.4 BP also wishes to ensure that the range and type of core Convenience Goods and Cafe Zip Products offered for sale at the BP Retail Sites and Cafe Zip Facilities is consistent from site to site for the benefit of consumers who visit more than one BP Retail Site or Cafe Zip Facility around Australia.

3 PROPOSED CONDUCT

- 3.1 As part of its franchise arrangements, BP is proposing to require that each current and future franchisee which operates a BP Retail Site and/or a Cafe Zip Facility purchase a specific 'core' range of:

- Convenience Goods and, where applicable, Cafe Zip Products (together referred to as the "**Specific Products**"); and
- where applicable, the ingredients of the Cafe Zip Products;

as specified by BP from time to time from a BP Preferred Supplier(s) as nominated by BP from time to time.

- 3.2 Including this condition in new franchise arrangements and/or using its rights under existing franchise agreements to enforce this condition may involve BP engaging in conduct which contravenes the prohibition against third line forcing in sub-sections 47(6) and (7) of the Trade Practices Act 1974 ("**Act**").

4 RELEVANT MARKETS

- 4.1 BP submits that the relevant markets are:

- the wholesale and retail markets for the supply of grocery and convenience products; and
- the wholesale and retail markets for the supply of cafe and bakery products; and
- the wholesale markets for the supply of ingredients which form part of cafe and bakery products.

Within those retail markets BP and its franchisees each supply Convenience Goods and, in some cases, Cafe Zip Products from BP operated sites and BP Retail Sites respectively around Australia.

- 4.2 BP submits that the retail markets for the supply of grocery and convenience products is an extremely competitive market comprised of a vast number of competitors. The main businesses which compete in these retail markets with the businesses of BP and its

franchisees include the Shell, Mobil, and Caltex/Ampol franchise businesses, other retail convenience stores and 'corner stores' and most or all supermarkets.

- 4.3 BP also submits that the retail markets for the supply of cafe and bakery style products is also extremely competitive, with BP and those franchisees operating Cafe Zip Facilities competing against independent and franchised bakery and cafe businesses, and 'in-store' bakeries and cafes such as those found in various Coles and Woolworths supermarkets, McDonalds outlets and hardware stores.
- 4.4 Given the highly competitive nature of these markets and the fact that there are many thousands of competing businesses in these markets, BP's proposed conduct will not lessen competition in these markets, or any other markets. Indeed, BP submits that its proposed conduct will promote competition in the relevant markets for the reasons mentioned below.

5 PUBLIC BENEFITS

BP submits, and firmly believes, that the proposed conduct will:

- (a) create the momentum for BP's franchisees to exert downward pricing pressure on the BP Preferred Suppliers by virtue of a 'buying group' scenario, thereby allowing the franchisees to:
- (i) offer the Specific Products to consumers at lower prices;
 - (ii) pass on greater cost savings to consumers on those Specific Products that are subject to BP's regular national product promotions; and
 - (iii) compete more effectively in the relevant retail markets;
- (b) result in greater health and safety benefits to those persons consuming the Specific Products or other final products which use any Specific Products as ingredients;
- (c) create consistency in the range, type and style of Specific Products offered for sale at each BP Retail Site and Cafe Zip Facility; and
- (d) assist those franchisees which operate Cafe Zip Facilities to differentiate their businesses from other retail fuel businesses selling convenience goods.
- 5.2 BP submits that each of the above benefits will individually and collectively enhance the public benefit and have a positive effect on competition in the relevant markets, with no identifiable detriment to the public. BP also submits that the proposed conduct is directly comparable to conduct which has been the subject of previous notifications lodged with the Commission by similar organisations and competitors of BP which have not been contested or revoked.

1 March 2002

A list of preferred suppliers has been granted confidentiality.

This information is not available for public access