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Our Ref: JM:020435

20 August 2003

Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON
ACT 2602

FILE No:
DOC:
MARS/PRISM:

Dear Madam/Sir

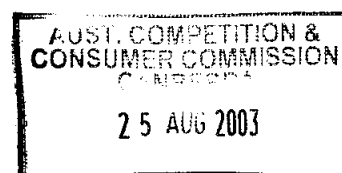
Re: **Exclusive Dealing Notification**
Andrianopoulos Motors Pty Ltd trading as AA Petroleum

We act on behalf of AA Petroleum.

We enclose on behalf of our client Form G Exclusive Dealing Notification together with filing fee cheque in the amount of \$100.00 made payable to the Commission.

Please note that the below comments set out in this letter are intended to serve as a submission in support of our client's Exclusive Dealing Notification as to conduct which potentially falls within sub-sections 47(6) or (7) of the *Trade Practices Act 1974* ("Act").

The conduct in which our client proposes to engage is described in paragraph 2(b) of the accompanying Form G Notice. In brief, our client proposes to offer a small discount to customers when they purchase fuel from various BP petrol station sites around Victoria on the condition that customers produce a sales receipt from selected IGA supermarkets in evidence that the customer has purchased items to the value of at least \$25.00 from IGA.



We note as a preliminary point that a search of the public notification and adjudication register reveals that a number of other fuel retailers have been permitted by the Commission to engage in such conduct: see *Caltex Australia Petroleum Pty Ltd* C2003/663 - N70630, *Mobil Littlehampton* C2003/525 - N91096, *Camptown Pty Ltd* C2003/414 - N91089, *Julross Pty Ltd* C2003/348 - N91081, *Bowen Petroleum Services Pty Ltd* C2003/285 - N91075, *Pearlday Pty Ltd* C2003/178 - N31214).

The Commission has not revoked immunity in each of the instances cited above, each of which has involved a petrol retailer offering discounts to customers on condition that customer produce evidence of purchases from nominated supermarkets and/or grocery retailers. We see no distinction between the conduct undertaken by the applicant in each of the above matters and the conduct proposed to be undertaken by our client as described above. On that basis, our client submits that the Commission should act consistently and not revoke immunity in respect of our client's proposed conduct.

Turning to the relevant test to be applied by the Commission in assessing conduct such as that proposed by our client, being that set out in sub-section 93(3A) of the Act, whereby the Commission assesses whether the public benefits associated with the relevant conduct outweigh any public detriment, we note the following:

- As is amply illustrated above, a number of other fuel retailers are presently offering very similar (effectively the same) promotional offers to customers. Our client has instructed us that in addition to the above list of fuel retailers, Safeway (through its affiliated fuel outlets) and Shell (in conjunction with Coles supermarkets) are also engaging in this promotional conduct. Accordingly, our client submits that the conduct proposed to be engaged in by it will have no appreciable competitive detriment to the Victorian fuel retail market. In fact, it is submitted that our client's conduct will be likely to have a pro-competitive impact.
- The fact that an increasing number of fuel retailers are engaging in the conduct proposed by our client has actually forced our client to take the action of commencing to offer the conditional discount as proposed. The fuel sales of our client have appreciably decreased over the last month or so, and our client attributes this decrease directly to the availability of these types of offers being made by other retailers. The effect of the "petrol price war" between Safeway and Coles/Shell in particular, has had a marked effect on our client's business.
- The discount offer proposed to be provided by our client will simply expand the number of fuel retailers making discount offers to the petrol purchasing market. This can only provide substantial public benefit in the form of the continued and broadened availability of fuel discount offers to the general public.

- In the context of a market of such considerable volume as the fuel purchasing general public, the overall number of customers likely to take advantage of the offer proposed to be made by our client in particular is relatively small.

On the basis of all of the above, our client submits that the Commission ought not to revoke immunity in respect of our client's proposed conduct.

Please do not hesitate to contact the writer should you have any queries in relation to this correspondence, or should the Commission require any further details in order to assist it in reaching its determination.

We look forward to receiving the Commission's response as soon as possible.

Yours faithfully
SCHETZER BROTT & APPEL

Per: 

Joseph McCarthy
Solicitor

FORM G

EXCLUSIVE DEALING: NOTIFICATION

Commonwealth of Australia
Trade Practices Act 1974 - Subsection 93(1)

To the Australian Competition and Consumer Commission:

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

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) **Name of person giving notice.**
(See Direction 2 on the back of this Form)

Andrianopoulos Motors Pty Ltd (ACN 004 975 955) of 1/40 Johnston Street, Collingwood, Victoria 3066 trading as AA Petroleum ("Andrianopoulos Motors")
- (b) **Short description of business carried on by that person.**

Sale of petroleum, oil and fuel products.
- (c) **Address in Australia for service of documents on that person.**

C/- Schetzer Brott & Appel Solicitors, 52 Market Street, Melbourne, Victoria 3000, PO Box 400 Collins Street West, Melbourne 8007, DX 31315 Midtown, Phone (03)9614 7000, Fax (03) 9614 7100
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates.**

Sale of petroleum, oil and fuel products.
- (b) **Description of the conduct or proposed conduct**
(See Direction 4 on the back of this Form)

Andrianopoulos Motors is the franchisee pursuant to a Franchise Agreement with BP Australia Pty Ltd ("BP"). Andrianopoulos Motors (both directly and via its licensees) operates the BP petrol station sites in Victoria listed in Annexure A to this Notification ("BP Sites") and retails BP fuel products to the general public.

Andrianopoulos Motors proposes to enter into a promotional agreement ("Promotional Agreement") between itself and various supermarket and grocery retail store operators trading under the trading names "IGA", "Food-Way" and "Food-Rite" and possibly some other alternative trading names from time to time which operate supermarkets and grocery retail stores in the greater Melbourne area, the Geelong Bellarine Peninsula district and the Mornington Peninsula district (collectively "IGA").

Pursuant to the Promotional Agreement, customers of IGA who purchase products from IGA to the value of \$25.00 or more will be entitled, upon presenting an IGA sales receipt at BP Sites as proof of their IGA purchase, to receive a discount of 2 cents per litre of fuel purchased from a BP Site.

As the availability of the discount to customers of Andrianopoulos Motors is conditional upon each customer having first purchased \$25.00 or more worth of products from IGA, the proposed conduct falls into a class of exclusive dealing prohibited by Sections 47(6) and (7) of the *Trade Practice Act 1974*.

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

Customers of IGA who receive sales receipts from IGA evidencing purchases to the value of \$25.00 or more.

(b) **Number of those persons**

(i) **At present time**

Nil.

(ii) **Estimated within the next year.**

The Promotional Agreement has no specified termination date. It is impossible to estimate the number of persons.

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

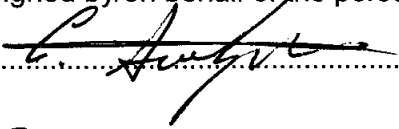
Not applicable.

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

Schetzer Brott & Appel Solicitors, as per above details.

Dated: 19th AUGUST 2003

Signed by/on behalf of the person giving this notice


.....

(Signature)

GEORGE ANDRIOPOULOS
.....

(Full Name)

GENERAL MANAGER
.....

(Description)

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 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 authorized 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 subsection 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.

NOTICES

If this notification is in respect of conduct of a kind referred to in subsection 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 subsection 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 subsection 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.

AA PETROLEUM NETWORK

02	BP CARLTON	117 ELGIN STREET, CARLTON. 3053
03	BP RICHMOND	581 CHURCH STREET, RICHMOND. 3121
04	BP FITZROY	143-153 JOHNSTON STREET, FITZROY. 3065
05	BP GLEN IRIS	44-56 HIGH STREET, GLEN IRIS. 3146
06	BP DROMANA	1 MARINE DRIVE, SAFETY BEACH. 3936
07	BP WEST HEIDELBERG	184 BELL STREET, WEST HEIDELBERG. 3081
08	BP FAIRFIELD	490-500 HEIDELBERG ROAD, FAIRFIELD. 3078
09	BP SOUTH CARLTON	2-6 RATHDOWNE STREET, CARLTON. 3053
10	BP NORTH FITZROY	269-273 ST GEORGES ROAD, NORTH FITZROY. 3068
11	BP NORTH COBURG	989 SYDNEY ROAD, NORTH COBURG. 3058
12	BP BAYSWATER	362-366 BAYSWATER ROAD, BAYSWATER. 3153
13	BP SWAN STREET	282 SWAN STREET, RICHMOND. 3121
14	BP RESERVOIR	35-37 GISBORNE CRESCENT, RESERVOIR. 3073
15	BP NORLANE	298-304 PRINCES HIGHWAY, NORLANE. 3124
16	BP SUNSHINE	139 McINTYRE ROAD, SUNSHINE. 3020
17	BP BROOKLYN	737 GEELONG ROAD, BROOKLYN. 3012
18	BP BRAYBROOK	277-281 BALLARAT ROAD, BRAYBROOK. 3019
19	BP PRESTON	408 BELL STREET/CNR ST. GEORGES ROAD, PRESTON. 3072
20	BP BURWOOD	144 BURWOOD HIGHWAY, BURWOOD. 3125
21	BP PRAHRAN	500 MALVERN ROAD /CNR WILLIAMS ROAD, PRAHRAN. 3181
22	BP DOVETON	60-64 PRINCES HIGHWAY, DOVETON. 3177
23	BP BOX HILL	839-843 WHITEHORSE ROAD, BOX HILL. 3128
24	BP MT ELIZA	1386 NEPEAN HIGHWAY, MT ELIZA. 3930
25	BP SUNBURY	53-55 HORNE ST (CNR GAP ROAD), SUNBURY. 3429
26	BP MULGRAVE	303 WELLINGTON RD (CNR SPRINGVALE RD), MULGRAVE. 3170
27	BP EAST KEW	1399-1401 BURKE RD, EAST KEW. 3102
28	BP SOUTH WANTIRNA	444 STUD RD, (CNR HIGH STREET RD), WANTIRNA SOUTH. 3152
29	BP KINGSBURY	925 PLENTY ROAD, (CNR BROWNING ST), KINGSBURY. 3083
30	BP BOX HILL SOUTH	891 CANTERBURY ROAD, (CNR STATION ST), BOX HILL STH. 3128
31	BP DEER PARK	1001-1007 WESTERN HIGHWAY, DEER PARK. 3023
32	BP CROYDON	244 MT DANDENONG ROAD, CROYDON. 3136
33	BP THOMASTOWN - Keon Pde	72 KEON PARADE (CNR DALTON RD) THOMASTOWN. 3074
34	BP FERN TREE GULLY	855 BURWOOD HWY, FERN TREE GULLY. 3156
35	BP DONCASTER	880 DONCASTER ROAD, DONCASTER. 3108
36	BP STH SPRINGVALE	580 CNR CLARKE & SPRINGVALE RDS, SPRINGVALE SOUTH. 3172
37	BP CHADSTONE	720 WARRIGAL ROAD, CHADSTONE. 3148
38	BP THOMASTOWN - High St	123 HIGH STREET, THOMASTOWN. 3074
39	BP GLADSTONE PARK	2-6 GLADSTONE PARK DRIVE, GLADSTONE PARK. 3043
40	BP BURWOOD EAST	217 BURWOOD HWY (CNR BLACKBURN RD) BURWOOD EAST. 3151
41	BP LWR TEMPLESTOWE	2-4 UNION STREET (CNR FOOTE ST) LOWER TEMPLESTOWE. 3107
42	BP OAKLEIGH	162-168 WARRIGAL ROAD, OAKLEIGH. 3166
43	BP CALDER FREEWAY	THOMPSONS ROAD, KEILOR NORTH. 3036