Trafigura Fuels Australia Pty Ltd

ABN 96 092 210 127 ACN 092 210 127
Postal: Locked Bag 2215, North Ryde Business Centre, NSW, 1670
Unit 6a, 5 Talavera Road, North Ryde, NSW, 2113
Phone: 61 2 8870 3600 Fax: 61 2 9889 2222

FILE No:	
DOC:	
MARS/PRISM:	

30 October 2003

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
Dickson ACT 2602

Notification of Exclusive Dealing (Third Line Forcing) - JVC2 Pty Limited(N31261)

I am writing on behalf of Trafigura Fuels Australia, an independent importer of petrol and diesel into NSW and VIC. In 2003 Trafigura supplied 7 to 8% of the petrol sold in NSW and VIC , mostly through independent service stations. Those stations which are currently part of Woolworths , will be supplied by Caltex in 2004. The remainder are now under threat as a result of the exclusive dealing arrangements being used by companies with excessive market power like Shell/Coles and Caltex/Woolworths.

Once Caltex gains control of Woolworths supply at the end of this year, it will supply about 40% of the national petroleum product market, and Shell, which with the volume increase evident at the Shell/Coles sites in Victoria , will supply about 30% of the national petroleum product market. Not only will 70% of the supply be controlled by 2 players , representing a highly concentrated market , but the retail supermarket giants associated with these 2 suppliers are using a cross-subsidy which will wipe out independent retailers. With no customers, independent suppliers are also at risk.

The argument used by JVC2 of increasing competition (3 (c) in their submission) is not real. The 4 majors (in the downstream petroleum industry) claim to have made unacceptable returns on their investments and cannot therefore afford increased competition. The object of the exercise is to drive independents or one of the majors out, and then raise prices to improve returns. There is no long term commitment to increased competition and current third line forcing arrangements are certain to result in a substantial lessening of competition over time, with many players who do not have access to the retail market power of the 2 large supermarket chains to provide this cross-subsidy , likely to exit the industry.

It seems inconsistent for JVC2 to argue a public benefit is increased competition (which we dispute above), if, as your letter points out, as a per se provision it is a contravention regardless of its effect on competition. We have also argued throughout this submission how damaging this will be to competition in the wholesale market.

The further concentration of market power in the wholesale and retail petroleum markets, which is self evident from the market share changes brought about by the JV's using this exclusive dealing, is not consistent with the claims made in JVC2 Pty Limited's submission that there will continue to be wide choice open to customers in acquisition of products form suppliers in competition with the companies. This is clearly already not the case in many of the wholesale markets for petrol around Australia and further concentration and removal of import competition is likely.

It is also clear from the public announcements made by the 4 companies involved in these 2 JV's that one of their primary motivations in forming the JV's is to use the exclusive dealing arrangement to increase their sales and market shares in their respective markets. This cannot happen without an equal and opposite impact on others in those markets without the benefit of these exclusive dealing arrangements. Therefore, it follows from their own expectation of increased sales and market share , that the exclusive dealing , if allowed to proceed , will bring about further market concentration and reduced competition.

It is stated in the Caltex/Woolworths media announcements that the Woolworths pricing policy will be followed by the Caltex/Woolworths JV. This policy is to equal the lowest price within a 3 km radius. This is a price following , not a price leading policy. Neither JVC2 or any of the majors will lead the market down. Independents have been the ones leading the market down for the last 20 years. The 4 cents per litre cross-subsidy offered as part of this exclusive dealing arrangement is about equal to (in some cases greater than) the total gross margin an independent dealer makes from petrol.

Therefore , independent dealers , not having the deep pockets or heavy cross subsidy offered by the supermarket giants , will not survive. The destruction of independents will result in the forces reducing prices being eliminated. We have already seen in Melbourne a massive transfer of volume from independents to the Shell/Coles JV. Replicate this on a national basis and add in the increased size of the Caltex/Woolworths network and the future for independents is unsustainable in such a low margin business against such market power and cross-subsidisation.

Also, a large number of consumers who cannot take advantage of the cross-subsidy will be worse off as the independent influence on the market decreases.

If the exclusive dealing provisions of the act are not there to protect against this huge market power being used in a cross-subsidy that will damage smaller players, then it is hard to see what they are there for. The 70% wholesale market share that Caltex and Shell will gain of the Australian petroleum market as a result of these JV's with the Supermarkets , will grow very quickly to 80% and beyond. It is hard to see how this can be allowed to continue as the market power of the companies concerned is already unhealthy for competition.

These very high market share companies should not be allowed to cross-subsidise one another in an exclusive way as they are far too large and powerful to ensure that consequential damage to independents is avoided. If independents would otherwise survive in a competitive market, and only the impact of an exclusive cross-subsidy wipes them out, then it is clear that this cross-subsidy cannot be allowed. Without independent customers, independent importers only hope of survival is to supply some of the imported product required by the majors. This will do nothing for the consumer as the majors will effectively control the wholesale market. As you can see from the table below , the impact of these JV's on the wholesale market is dramatic.

National wholesale petrol market share – primary suppliers Pre and Post JV's (Shell/Coles and Caltex/Woolworths).

	PRE JV's	POST JV's
Caltex	34	40
Shell	26	30
Mobil	17	13
BP	18	16
Trafigura	5	1

These market shares we see as being the immediate effect of the JV's. Within 2 or 3 years we expect that the impact of these changes will result in Mobil leaving the market and the Caltex and Shell market shares will grow to around 80%. This cannot be a healthy long term competitive situation.

Unlike the European situation where the entry of supermarkets into fuel retailing has proved to be most effective for price competition, in Australia the joint ventures will see the promotional fuel discounts funded by the supermarkets while the oil companies control the fuel supply. In effect, the oil companies have managed the supermarkets out of the fuel industry, not into it, by allowing them (the supermarkets) to fund the use of petrol as a promotional tool. Only the ACCC can restore fair competition to the industry by enforcing the exclusive dealing provisions of the TPA.

This is surely why the exclusive dealing provisions of the Trade Practices Act 1974 exist and should be upheld.

Yours sincerely

Barrie Jacobson
Managing Director
Trafigura Fuels Australia Pty Limited