



Australian Competition & Consumer Commission

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Our Ref: C2002/963; C2002/1064
Contact Officer: Amanda Dadd
Contact Phone: 02 6243 1391

4 February 2003

Ms Helen Conway
General Counsel
Caltex Australia Petroleum Pty Ltd

By facsimile: 02 9250 5018

Dear Ms Conway

**Third line forcing notifications lodged by Caltex Australia Petroleum Pty Ltd
(N31162 and N31169)**

As you are aware, the Australian Competition and Consumer Commission has been undertaking a review of the above notifications.

The Commission has completed its review of the notifications and it is not intended that further action be taken in this matter at this stage. A letter to the Motor Trades Association of Australia outlining the reasons for the Commission's decision is enclosed.

I note, however, that Caltex currently imposes a "no surcharge" rule in relation to the use of its fuel cards at Caltex sites and that a number of submissions from interested parties in relation to the above notification addressed the potential for public detriment flowing from this restriction. I note also that Caltex has submitted that it has met with the Reserve Bank of Australia to discuss this issue further.

Please note that the Commission may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the public benefit arising from the notified conduct does not outweigh the public detriment arising from the conduct.

If you would like to discuss any aspect of this matter further, please do not hesitate to contact Amanda Dadd on 02 6243 1391.



A copy of this letter has been placed on the Commission's public register.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Grimwade', written in a cursive style.

Tim Grimwade
General Manager
Adjudication Branch



Australian Competition & Consumer Commission

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Our Ref: C2002/1065; C2002/964; C2002/415; C2002/731; C2002/784
Contact Officer: Amanda Dadd
Contact Phone: 02 6243 1391

3 February 2003

Mr Michael Delaney
Executive Director
Motor Trades Association of Australia
PO Box E368
KINGSTON ACT 2604

Dear Mr Delaney

Review of certain notifications lodged by BP, Subaru and Caltex

As you are aware, the Australian Competition and Consumer Commission commenced a review of certain notifications lodged by BP Australia Limited ("BP") (N90978 and N90999), Subaru (Aust) Pty Limited ("Subaru") (N91001) and Caltex Australia Petroleum Pty Ltd ("Caltex") (N31169 and N3162) in September 2002.

The Commission has considered these notifications in light of the issues raised by the MTAA and submissions from interested parties. The Commission consulted widely on these matters and received submissions from the Franchise Council of Australia, the Service Station Association, and a number of Caltex franchisees and Subaru dealers.

Notifications lodged by BP

In summary, notification N90978 relates to the supply by BP of services to all current and future franchisees who operate BP retail outlets, on-site convenience stores and Café Zip facilities, on condition that those franchisees purchase a specified range of goods and services from particular BP "Preferred Suppliers", as specified by BP. This range of goods and services includes bakery items, confectionery, cold drinks and toiletry items, among other things.

Notification N90999 relates to a requirement for BP franchisees, including those who operate BP retail fuel sites, on-site convenience stores and Café Zip facilities, to acquire their electricity requirements from a particular electricity supplier or suppliers nominated by BP from time to time.

The Commission is of the view that public benefits are likely to flow from BP acquiring lower per unit costs on certain items as a result of bulk purchasing or contractual

EXECUTIVE OFFICE



arrangements and rebates from suppliers. In relation to this public benefit, the Commission notes that BP has submitted that franchisees benefit through discounts from suppliers as a result of supply terms negotiated by BP. Further, BP has submitted that it receives rebates on bulk purchases that, as a condition of franchise agreements, must be used to the benefit of outlets at which BP fuel is sold. The Commission is also of the view that there is likely to be little detriment that flows from franchisees being restricted in their ability to choose particular suppliers of the relevant products and that there is likely to be a limited effect on competition.

The Commission considers that, on the information before it, the public benefit flowing from the notified conduct is likely to outweigh the public detriment that flows from the notified conduct and, accordingly, will not take any further action in respect of these notifications at this stage.

Notification lodged by Subaru

The notification lodged by Subaru involves Subaru paying, or offering to pay, dealers' bailment charges to General Motors Acceptance Corporation ("GMAC") in relation to the supply of Subaru vehicles and associated services to dealers on condition that dealers acquire wholesale finance from GMAC.

The Commission is of the view that public benefit flows from Subaru offering free floor plan arrangements to dealers who obtain finance through GMAC in the way of reduced costs for dealers and the likelihood of lower cost vehicles for consumers. In considering the potential public detriment of the notified conduct, the Commission notes that Subaru does not restrict Subaru dealers from obtaining finance from sources other than GMAC and is of the view that there is likely to be little, if any, public detriment flowing from the notified conduct.

The Commission considers that the public benefit flowing from the notified conduct is likely to outweigh the public detriment that flows from the notified conduct and, accordingly, will not take any further action in relation to this notification at this stage.

Notifications lodged by Caltex

In summary notification N31162 relates to an arrangement in which Caltex issues the Caltex "StarCard" to its corporate customers. Caltex offers discounts on fuel and other goods and services if certain volumes of product are purchased using the StarCard. Under the arrangement, corporate customers may offer the StarCard to its customers, franchisees or associates.

Notification N31169 relates to conduct involving Caltex selling "StarCash cards" at face value or at a discount to Caltex outlets or third parties. Caltex outlets and third parties then either on-sell or give away those cards to end consumers who can use the card to purchase fuel or non-fuel items at participating Caltex service stations in the Caltex network.

The Commission is of the view that the public benefit flowing from the Caltex StarCard and StarCash card in the form of convenience and consumer discounts are likely to outweigh the public detriment that flows from the notified conduct and, accordingly, will not take any further action in relation to these notifications at this stage.

The Commission acknowledges the concerns of the MTAA in relation to the "no surcharge" rule imposed by Caltex in respect of its StarCash and StarCards. However, the Commission

notes Caltex's submission that, in the absence of the notified conduct, Caltex could, and indeed would, continue to impose a no surcharge rule. In this context, the Commission also notes that Caltex has indicated to the Commission that it has met with the RBA to discuss issues surrounding the no surcharge rule and that the Commission is of the view that the RBA is the most appropriate body to deal with this matter.

Please note that the Commission may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

If you wish to discuss any aspect of this matter, please do not hesitate to contact Tim Grimwade on 02 6243 1226.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brian Cassidy', with a stylized flourish at the end.

Brian Cassidy
Chief Executive Officer

FACSIMILE TRANSMISSION

DATE: 4.2.2003
TO: Helen Conway
General Counsel
ORGANISATION: Caltex Australia Petroleum Pty Ltd
FAX: 02 9250 5018
FROM: Amanda Dadd
TEL: 02 6243 1391
FAX: 02 6243 1211
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Message:

Please see attached letter.



Amanda Dadd

***** TRANSMISSION REPORT *****

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**Australian
Competition &
Consumer
Commission**

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Amanda Dadd