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6 July 2004

FILE No.
DOC
104/31 735
19936

Mr Tim Grimwade
General Manager, Adjudication Branch
Australian Competition and Consumer
Commission
PO Box 1199
Dickson ACT 2602

Contact
Georgina Robertson (03) 9672 3493
Email: Georgina.Robertson@corrs.com.au

Partner
David Flavell

Dear Mr Grimwade

BP AUSTRALIA PTY LTD ("BP") - THIRD LINE FORCING NOTIFICATION

We act for BP and **attach a:**

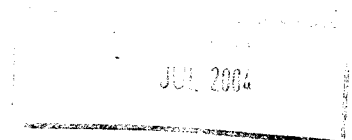
- notification for BP in accordance with Section 93(1) of the *Trade Practices Act 1974*, concerning the proposed supply of goods and services by BP to its franchisees, dealers and distributors on the condition that they acquire EFTPOS/credit card processing services from National Australia Bank Ltd;
- supporting submission; and
- cheque for \$100 in payment of the applicable statutory fee.

If you have any queries, please contact David Flavell on (03) 9672 3205.

Yours faithfully
Corrs Chambers Westgarth


David Flavell
Partner

attachments



N91423

Form G

Commonwealth of Australia
Trade Practices Act 1974 - subsection 93 (1)
**EXCLUSIVE DEALING:
NOTIFICATION**

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), or (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:
BP Australia Pty Ltd ABN 53 004 085 616 ("BP")
(See Direction 2 on the back of this Form)
 - (b) Short description of business carried on by that person:
The refinement, wholesale, retail sale and marketing of petroleum and related products. In addition, BP:
 - (i) as franchisor, appoints franchisees to operate franchise businesses which sell petroleum and related products and convenience goods from retail fuel sites and on-site convenience stores;
 - (ii) operates a number of like businesses itself from retail fuel sites; and
 - (iii) supplies fuel to dealers-owned sites and distributors who retail petroleum and related products and convenience goods under the BP banner.
 - (c) Address in Australia for service of documents on that person:
C/- Corrs Chambers Westgarth, 600 Bourke Street, Melbourne, Victoria. 3000. Reference: David Flavell
2. (a) Description of the goods or services in relation to the supply or acquisition of which this application relates:
Supply of EFTPOS/credit card processing services.
 - (b) Description of the conduct or proposed conduct:
BP proposes to supply goods and or services to its franchisees, dealers and distributors on the condition that they will acquire EFTPOS/credit card processing services from National Australia Bank Limited.
(See Direction 4 on the back of this Form)
3. (a) Class or classes of persons to which the conduct relates:
BP franchisees, dealers and distributors.
 - (b) Number of those persons:
 - (i) At present time:
Approximately 800
 - (ii) Estimated within the next year:
As above

- (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 applicant to provide additional information in relation to this notice:

David Flavell
Partner
Corrs Chambers Westgarth
600 Bourke St
Melbourne VIC 3000

Signed for and on behalf of the person giving this notice:

Dated 6 July 2004



(Signature)

David James Flavell

(Full Name)

Partner

(Description)

Corrs Chambers Westgarth.



BP AUSTRALIA PTY LTD

SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION REGARDING THIRD LINE FORCING NOTIFICATION

1 INTRODUCTION

- 1.1 BP Australia Pty Ltd ABN 53 004 085 616 ("**BP**") of 360 Elizabeth Street, Melbourne, Victoria, is involved in the refinement, wholesale, retail sale and marketing of petroleum and related products. In addition, BP:
- (a) as franchisor, appoints franchisees to operate franchise businesses which sell petroleum and related products and convenience goods from retail fuel sites and on-site convenience stores;
 - (b) operates a number of like businesses itself from retail fuel sites; and
 - (c) supplies fuel to dealer-owned sites and distributors who retail petroleum and related products and convenience goods under the BP banner.
- 1.2 BP currently has franchise agreements with 22 franchisees which account for approximately 220 retail outlets. BP currently supplies fuel to approximately 1200 dealer and distributor reseller sites/retail outlets.

2 THE PROPOSED CONDUCT

- 2.1 As a result of a competitive tender process, BP proposes to enter into an agreement with National Australia Bank Limited ("**NAB**"), under which NAB will be the nominated operator of EFTPOS/credit card processing services to BP, its franchisees, dealers and distributors.
- 2.2 BP owns the EFTPOS/credit card terminals which are used by franchisees, dealers and distributors.
- 2.3 BP proposes to require its franchisees, dealers and distributors using a BP owned terminal to acquire EFTPOS/credit card processing services from NAB.
- 2.4 Franchisees, dealers and distributors will enter into Merchant Service Agreements for these services directly with NAB.

3 THE RELEVANT MARKET

- 3.1 BP submits that the relevant market is for the supply of EFTPOS/credit card processing services in Australia.

4 THE PROPOSED CONDUCT AND FRANCHISEES

- 4.1 As indicated above, BP proposes to require its franchisees to obtain EFTPOS/credit card processing services from NAB.
- 4.2 Under its franchise agreements, BP provides for franchisees' rental of EFTPOS/credit card processing terminals and dedicated communication line rental for their operation. Whilst these terminals are required primarily to process BP's proprietary card transactions, BP Plus, they also have sufficient functionality to facilitate EFTPOS and credit cards transactions.
- 4.3 BP is responsible for the Merchant Service Fees charged by the nominated bank that processes the franchisees' EFTPOS/credit card transactions.
- 4.4 Under the proposed agreement between BP and NAB, the Merchant Service Fees for which BP is responsible under its franchise agreements will be significantly reduced.
- 4.5 BP intends to continue to provide terminal and line rental for franchisees, and pay all Merchant Services Fees related to the EFTPOS/credit card processing services provided by NAB.
- 4.6 For franchisees using a BP owned EFTPOS/credit card terminal it will not be necessary to operate an additional EFTPOS/credit card processing terminal if they acquire processing services from NAB. If franchisees wish to enter an arrangement with an alternative provider of EFTPOS/credit card processing services, then an additional terminal and communications line is required. The franchisee will be responsible for all fees and charges associated with these services.
- 4.7 Furthermore, by obtaining their EFTPOS/credit card processing services from NAB, franchisees will receive the benefit of NAB's improved security and functionality for EFTPOS/credit card processing services. Franchisees will remain entitled to choose with whom they bank.
- 4.8 In addition, BP will facilitate the introduction of NAB representatives to franchisees who are able to assist franchisees by providing comprehensive business and banking advice.

5 THE PROPOSED CONDUCT AND DEALERS/DISTRIBUTORS

- 5.1 As indicated above, BP proposes to require its dealers and distributors using a BP owned terminal to obtain EFTPOS/credit card processing services from NAB.
- 5.2 Under its arrangements with dealers and distributors, dealers and distributors pay BP a monthly fee for the rental of EFTPOS/credit card processing terminals. Dealers and distributors are also liable to pay the Merchant Service Fees charged by the nominated bank which processes the EFTPOS/credit card transactions, and BP's fees for the processing of its proprietary card, BP Plus. The cost of the

communication line rental for the operation of the terminals is included in the Merchant Service Fees and the BP Plus card processing fees.

- 5.3 As a consequence of the proposed agreement with NAB, when dealers and distributors obtain their EFTPOS/credit card processing services from NAB, they will receive the benefit of the more competitive processing service charges negotiated between BP and NAB thereby reducing costs to their businesses.
- 5.4 For dealers and distributors using a BP owned EFTPOS/credit card terminal it will not be necessary to operate an additional EFTPOS/credit card processing terminal if they acquire processing services from NAB. If dealers and distributors wish to enter an arrangement with an alternative provider of EFTPOS/credit card processing services, then an additional terminal and communications line is required. The dealers and distributors will be responsible for all fees and charges associated with these services.
- 5.5 Furthermore, by obtaining their EFTPOS/credit card processing services from NAB, dealers and distributors will receive the benefit of NAB's improved security and functionality for EFTPOS/credit card processing services.
- 5.6 In addition, BP will facilitate the introduction of NAB representatives to dealers and distributors who are able to assist them by providing comprehensive business and banking advice.
- 5.7 Dealers and distributors also receive other benefits from BP in the form of stationery for the BP owned EFTPOS/credit card terminals.
- 5.8 Dealer and distributors are free to bank with the bank of their choice.

6 PUBLIC BENEFITS/CONCLUSION

- 6.1 BP submits that the agreement between BP and NAB will not have any adverse impact upon competition.
- 6.2 The agreement between NAB and BP will enable BP to obtain more competitive pricing for the processing of franchisees' EFTPOS/credit card transactions, thereby reducing BP's costs of Merchant Service Fees.
- 6.3 As noted above, as dealers and distributors pay their own Merchant Service Fees, they will receive the benefit of the more competitive processing service charges negotiated between BP and NAB when they obtain their EFTPOS/credit card processing services from NAB, thereby reducing costs to their businesses.
- 6.4 Furthermore, the agreement will allow BP's franchisees, dealers and distributors to access high levels of service from NAB for EFTPOS/credit card services and other related banking services.