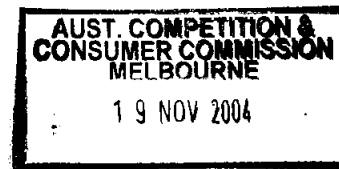


FILE No:
DOC: D04/56614
MARS/PRISM:

Mr Tim Grimwade  
General Manager Adjudication Branch  
Australian Competition and Consumer Commission  
470 Northbourne Avenue  
DICKSON ACT 2602

18 November 2004



Dear Mr Grimwade

**Third line forcing notification - Action Supermarkets Pty Ltd - sale of discount fuel**

We enclose a third line forcing notification in relation to the sale of discount petrol on behalf of Nortila Pty Ltd (ABN 92 005 820 676) (**Hi-Way Motors Murwillumbah**) which operates a BP branded service station in the Brisbane metropolitan area.

We also enclose a cheque for \$100.

As advised to the ACCC in previous notifications, Action Supermarkets Pty Ltd (ABN 43 008 882 488) (**Action**), a wholly-owned subsidiary of Foodland Associated Limited (ABN 13 008 667 650) (**FAL**), has introduced a promotion in New South Wales and Queensland whereby customers have the opportunity to purchase discounted petrol at participating service stations if the customers spend at least a specified amount at Action supermarkets (**the Promotion**).

As detailed in the notification, Hi-Way Motors Murwillumbah believes the proposed conduct will result in a number of public benefits, will promote competition, and will not have any negative effect on competition in any relevant market.

While FAL is assisting Hi-Way Motors Murwillumbah with the logistics of preparing and lodging the notification, FAL wishes to confirm that Action has approached Hi-Way Motors Murwillumbah individually, offering it the opportunity to participate in the Promotion. Hi-Way Motors Murwillumbah has agreed individually with Action to participate. In particular, we are not aware of any discussion or agreement among Hi-Way Motors Murwillumbah and other fuel retailers with respect to entering into, or the terms of, the Promotion.

In addition, we confirm that Hi-Way Motors Murwillumbah has given written authorisation to Mr Peter Hede of FAL to sign the third line forcing notification on its behalf. A copy of this authorisation is attached.

Finally, we confirm that the Promotion will operate concurrently with Action's existing arrangements with fuel retailers which have already been notified to the ACCC.

If you have any questions in relation to any of the matters raised in the enclosed notification, please do not hesitate to contact us.

Yours sincerely

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

Peter Hede  
Divisional Manager – Fuel & Convenience

Encl

**FORM G****Regulation 9**

Commonwealth of Australia

*Trade Practices Act 1974 - sub-section 93(1)***EXCLUSIVE DEALING: NOTIFICATION**

To the Australian Competition &amp; Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or proposed conduct of a kind referred to in sub-section 47(6) or (7) of that Act in which the person giving notice engaged or proposes to engage.

**1. (a) Name of person giving notice:**Nortila Pty Ltd (ABN 92 005 820 676) (**Hi-Way Motors Murwillumbah**).**(b) Short description of business carried on by that person:**

Retailing of petroleum and related products.

**(c) Address in Australia for service of documents on that person:**303 Tweed Valley Hwy  
Murwillumbah  
NSW 2484**2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

Retail petroleum products.

**(b) Description of the conduct or proposed conduct:*****Outline of proposed conduct***

The giving or allowing, or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of retail petroleum products by Hi-Way Motors Murwillumbah to consumers purchasing petroleum products at BP service stations operated by Hi-Way Motors Murwillumbah on the condition that the consumers have acquired goods of a specified value from participating supermarkets owned by Action Supermarkets Pty Ltd (ABN 43 008 882 488) (**the Promotion**).

***Proposed conduct will deliver public benefits***

Hi-Way Motors Murwillumbah considers that the proposed conduct will be of benefit to the public because:

- **Consumers will benefit from lower fuel prices** - Hi-Way Motors Murwillumbah considers that the Promotion will provide consumers with lower fuel prices and should result in greater availability of cheaper fuel;

- **The proposed conduct will generate a culture of discounting - Hi-Way Motors Murwillumbah** considers that the Promotion will promote a culture of discounting in the retail fuel market; and
- **The proposed conduct will increase non-price competition in the retail fuel market -** the Promotion will encourage innovative, competitive responses from competitors in order to attract and retain custom.

***Proposed conduct will promote competition and should have no adverse impact on competition***

The proposed conduct will not lessen competition in any relevant market as:

- there are a large number of petrol service stations in and around the Brisbane metropolitan area; and
- Woolworths and Coles have already implemented a similar “shopper docket” promotion which enables customers of Woolworths and Coles to receive a discount on fuel purchased at a large number of service stations nationwide. Accordingly, the proposed conduct is a competitive response to the existing levels of intense competition that exists between retail grocers.

Instead, the proposed conduct will promote competition between retail grocers and drive competition between supermarkets and fuel retailers, which encourages price discounting and increases non-price competition.

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

The general public of the Brisbane metropolitan area.

**(b) Number of those persons -**

- (i) **At present time:** Unknown, but more than 50.
- (ii) **Estimated within the next year:** Unknown, but more than 50.

**(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:**

Phil and Robyn King  
 Hi-Way Motors Murwillumbah Pty Ltd  
 303 Tweek Valley Way  
 Murwillumbah  
 NSW 2484

Dated

Signed by/on behalf of the person giving this notice

*P. C. Heale*

.....  
**Signature**

*P. C. Heale*

.....  
**Full name**

*Div. Mgr.*

.....  
**Position**



## 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 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 the 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 Practice 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 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.