



FILE No:
DCC:
MARS/PRISM:

Your ref:

Our ref: PJR:0005756

20 June 2005

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Mr Gregson

STRASBURGER ENTERPRISES (PROPERTIES) PTY LTD - NOTIFICATION

We act for Strasburger Enterprises (Properties) Pty Ltd ("SEP").

Please find **enclosed**:

1. notification under section 93(1) of the *Trade Practices Act 1974* ("TPA");
2. submission to the Australian Competition & Consumer Commission; and
3. a cheque for \$100 in payment for the required lodgment fee.

The main business activity of SEP is the retailing of petroleum products, automotive products, groceries, fast food and other shop products from service stations and convenience stores throughout Australia.

Notified conduct

1. The notified conduct is intended to facilitate involvement of participating site operators in the SEP/Mobil alliance arrangements.
2. Each of the participating site operators will enter into a commission agent agreement with SEP, pursuant to which the operator will:
 - (a) act as an agent to sell fuel at retail on behalf of SEP in connection with the sale of fuel to customers;
 - (b) conduct a shop/convenience store business at the site; and
 - (c) act as an agent to sell fuel at retail on behalf of Mobil in connection with the sale of motor fuel to Mobil card customers.
3. Where a workshop and/or car wash facility is at the site, each of the relevant operators will be required to enter into a workshop licence agreement with SEP, pursuant to which each of the relevant operators will:

Email: enquiries@porterdavies.com

Web: www.porterdavies.com

Level 5, 46 Edward Street, Brisbane 4000

Postal GPO Box 2942, Brisbane 4001

Tel 07 3001 2100 - Fax 07 3105 7360

636 Moggill Road Chapel Hill Qld 4069

Tel 07 3878 8800 - Fax 07 3878 3633

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition & Consumer Commission

20 June 2005

- (a) agree to provide workshop and/or car wash services as an agent of SEP; and
 - (b) acquire products and services from Mobil and/or related bodies corporate of Mobil.
4. SEP will require each of the participating site operators to provide agency services:
- (a) for the retail sale of motor fuel to Mobil customers making a purchase with a Mobil card; and
 - (b) in respect of all other retail sales of motor fuel and other products and services, to SEP customers.

As this may result in a technical contravention of sections 47(6) and 47(7) of the TPA SEP lodges the enclosed notification pursuant to section 93(1) of the TPA.

We are of the opinion that the proposed conduct does not raise any significant competition issues.

Should there be an aspect of this application which you would like to discuss or if you require any further information, please do not hesitate to contact Paul Rigo.

Yours faithfully



PORTER DAVIES

Encl

Contact person: Paul Rigo
Direct line: 07 3001 2107
Direct fax: 07 3105 7368
Email: pjr@porterdavies.com

Form G

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

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 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 NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice

Strasburger Enterprises (Properties) Pty Ltd ACN 002 913 911 ("**Strasburger**")

(See Direction 2 on the back of this Form)

(b) Short description of business carried on by that person

Strasburger:

- A. Operates and controls the petroleum, retailing, marketing and distribution activities under the Mobil banner;
- B. Appoints dealers to operate businesses which sell petroleum and related products and convenience goods from retail fuel sites and on-site convenience stores; and
- C. Supplies fuel to dealer-owned sites and distributors who retail petroleum and related products and convenience goods under the Mobil banner.

(c) Address in Australia for service of documents on that person

Paul Rigo
 Porter Davies Lawyers
 Level 5
 46 Edward Street
 BRISBANE QLD 4000

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates

This notice relates to the:

- A. supply of goods and services by Strasburger of petroleum and related products and convenience goods, to certain site operators ("**Participating Site Operators**");
- B. entry into a Commission Agent Agreement with each of the Participating Site Operators, pursuant to which the relevant operator will act as an agent to sell fuel at retail on behalf of Strasburger; and
- C. entry into a Workshop Licence Agreement with each of the Participating Site Operators, pursuant to which the relevant operator will provide workshop and/or car wash services as an agent of Strasburger.

(b) Description of the conduct or proposed conduct

Strasburger proposes to supply to each of the relevant Participating Site Operators a licence to occupy specific premises. In each case, the premises will be suitable for the retailing of motor fuels, convenience store items and ancillary services. In some instances, the premises will also include a workshop, suitable for providing workshop services, and/or a car wash facility, suitable for providing car wash services.

In each case, the licence to occupy the premises will be subject to a condition that the operator acquires products and services from Mobil Oil Australia Pty Ltd ACN 004 052 984 ("Mobil"), and/or from bodies corporate related to Mobil.

Specifically, Strasburger will require that each of the relevant Participating Site Operators:

- A. Enter into a Commission Agent Agreement with Strasburger, pursuant to which the operator will:
- (i) act as an agent to sell fuel at retail on behalf of Strasburger in connection with the sale of fuel to customers;
 - (ii) conduct a shop/convenience store business at the site; and
 - (iii) act as an agent to sell fuel at retail on behalf of Mobil in connection with the sale of motor fuel to Mobil card customers.
- B. Where a workshop and/or a car wash facility is at the site, enter into a Workshop Licence Agreement with Strasburger, pursuant to which the operator will:
- (i) agree to provide workshop and/or car wash services as an agent of Strasburger; and
 - (ii) acquire products and services from Mobil and/or related bodies corporate of Mobil.

(See Direction 4 on the back of this Form)

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

Strasburger, dealers and distributors.

(b) Number of those persons

- (i) At present time
More than fifty (50).
- (ii) Estimated within the next year
More than fifty (50).

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

Not applicable.

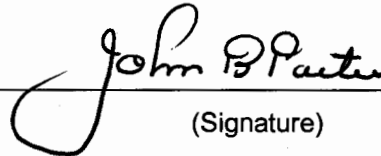
4. **Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice**

Paul Rigo
Porter Davies Lawyers
GPO Box 2942
BRISBANE QLD 4001

Tel: 07 3001 2100
Fax: 07 3105 7368

Dated this ~~28th~~ day of June 2005

Signed by/on behalf of the applicant giving notice



(Signature)

John Barwick Porter

(Full Name)

Partner, Porter Davies Lawyers

(Description)

DIRECTIONS

5. 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.
6. 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.
7. 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.
8. 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 provided with the notice.
9. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
10. 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 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.

STRASBURGER ENTERPRISES (PROPERTIES) PTY LTD ACN 002 913 911

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

1. INTRODUCTION

(a) Strasburger Enterprises (Properties) Pty Ltd ACN 002 913 911 ("Strasburger") of Level 2, 79 Victoria Parade, Collingwood in the State of Victoria, is involved in the retail sale and marketing of petroleum and related products. In addition, Strasburger:

- (i) Appoints entities to operate businesses which sell petroleum and related products and convenience goods from retail fuel sites and on-site convenience stores; and,
- (ii) Supplies fuel to dealer-owned sites and distributors who retail petroleum and related products and convenience goods under the Mobil Oil Australia Pty Ltd ACN 004 052 984 ("Mobil") banner.

("Participating Site Operators")

(b) Strasburger currently has agreements with 56 Participating Site Operators which account for 182 retail outlets.

2. PROPOSED CONDUCT

(a) The notified conduct is intended to facilitate involvement of Participating Site Operators in the Strasburger/Mobil alliance arrangements.

(b) Each of the Participating Site Operators will enter into a Commission Agent Agreement with Strasburger, pursuant to which the operator will:

- (i) act as an agent to sell fuel at retail on behalf of Strasburger in connection with the sale of fuel to customers;
- (ii) conduct a shop/convenience store business at the site; and
- (iii) act as an agent to sell fuel at retail on behalf of Mobil in connection with the sale of motor fuel to Mobil card customers.

(c) Where a workshop and/or car wash facility is at the site, each of the relevant operators will be required to enter into a Workshop Licence Agreement with Strasburger, pursuant to which each of the relevant operators will:

- (i) agree to provide workshop and/or car wash services as an agent of Strasburger; and
- (ii) acquire products and services from Mobil and/or related bodies corporate of Mobil.

(d) Strasburger will require each of the Participating Site Operators to provide agency services:

- (i) for the retail sale of motor fuel to Mobil customers making a purchase with a Mobil card; and
- (ii) in respect of all other retail sales of motor fuel and other products and services, to Strasburger customers.

3. RELEVANT MARKET

Strasburger submits that a number of relevant markets are affected by the proposed conduct; namely:

- (a) First, there is the Australia-wide market for the supply of motor fuel, related petroleum products, motor lubricants and oil at the wholesale level. Mobil is a participant in that market, where it is one of four major competitors – the others being Caltex, BP and Shell.
- (b) Secondly, there is the market in which Strasburger operates, which is (in essence) the market for granting franchises, dealerships, leases, licences, commission agency agreements and other agreements or arrangements governing the operation of a specific site for the retail sale of motor fuel and related products and services. So far as Strasburger is aware, the major oil companies other than Mobil tend to enter into such arrangements directly with the site operator, rather than through a master franchisor or the like, so that Strasburger's principal competitors in this market are, again, Caltex, BP and Shell.
- (c) Arguably, the market referred to in paragraph 3(b) can be sub-divided in a number of ways. One possibility is to sub-divide the market by reference to the character of the agreement entered into with the site operator, whether the site operator is a lessee or licensee, a franchisor, dealer or distributor, or a commission agent. Alternatively, the same market can be sub-divided by reference to the characteristics of the sites which are the subject of such arrangement; for example, the size and turnover of the site, whether it is located on a highway or a major arterial road, or in a suburban or rural area; and whether the site has particular associated facilities such as a takeaway food outlet, a mechanical workshop, a car wash facility, or a convenience store.
- (d) Another relevant market is the market in which Participating Site Operators compete. Each of the Participating Site Operators will (generally speaking) compete with other retail fuel outlets in the relevant locality. In Strasburger's submission, the geographical extent of each such market is defined by the distance which a motorist may be expected to drive in order to obtain similar products or services from a competitor. At least in urban areas, that geographical market may have a radius of as little as 2kms; in relation to sites situated on major highways and in country towns, the radius may be as much as 20kms.
- (e) Again, the markets mentioned in paragraph 3(d) may arguably be subject to further sub-division. For example, a retail site which provides "full service" to customers may not necessarily be in direct competition with a "self service" site; a site which offers additional facilities, such as a fast food outlet, a convenience store, a mechanical workshop, or a car wash, is not necessarily directly competitive with a site which offers different facilities, or no such facilities.

4. PROPOSED CONDUCT AND PARTICIPATING SITE OPERATORS

- (a) As indicated above, Mobil proposes to require its Participating Site Operators to obtain motor fuel, related petroleum products, lubricants and oil from Strasburger, Mobil and related bodies corporate of Mobil.
- (b) Under the Commission Agent Agreement the Participating Site Operators are required to:
 - (i) Acquire motor fuel, related petroleum products, lubricants and oil from Strasburger;
 - (ii) Act as agents to sell fuel at retail on behalf of Strasburger in connection with the sale of fuel to customers;
 - (iii) Conduct a shop/convenience store business at the site; and
 - (iv) Act as agents to sell fuel at retail on behalf of Mobil in connection with the sale of motor fuel to Mobil card customers.

- (c) Under the Workshop Licence Agreement the Participating Site Operators are required to:
 - (i) Provide workshop and/or car wash services as agents of Strasburger; and
 - (ii) Acquire products and services from Mobil and/or related bodies corporate of Mobil.
- (d) Participating Site Operators are entitled to acquire shop/convenience store products and services from whomever they desire.
- (e) As a consequence of the proposed agreements with Strasburger, Participating Site Operators will receive the benefit of the more competitive costs of motor fuel, related petroleum products, lubricants and oil negotiated between Strasburger and Mobil, thereby reducing costs to their businesses.

5. PUBLIC BENEFITS/CONCLUSION

- (a) Strasburger submits that the proposed agreements between Strasburger and Participating Site Operators will increase their competitiveness, rather than having any adverse impact on competition.
- (b) It is well-known that, at the present time, competition within the retail market for motor fuel and related products is at an all-time high. This is the result, at least in part, of discounting arrangements entered into between Mobil's competitors and major grocery chains; in particular, the arrangement between Coles and Shell, and the similar arrangement between Woolworths and Caltex.
- (c) Within that highly competitive market, the proposed agreements between Strasburger and Participating Site Operators will enable the later to remain competitive, especially against "branded" sites which participate in the Coles/Shell and Woolworths/Caltex arrangements.
- (d) In particular, agreements between Mobil and Strasburger, and Strasburger and Participating Site Operators, will enable the later to obtain motor fuel, related petroleum products, lubricants and oil at prices which are more competitive, thereby:
 - (i) reducing costs to their businesses;
 - (ii) enabling them to pass on lower costs to retail customers; and
 - (iii) enabling them to remain in business so as to provide competition, especially to Coles/Shell and Woolworths/Caltex branded sites.
- (e) It is commonly the case that the operators of retail motor fuel outlets actually derive very little profit from the sale of motor fuel and other automotive products: the profit margins on such sales are often barely sufficient to cover overheads, and the real profit centre for the business may come from other sources – such as the sale of grocery, tobacco and other products through a convenience store; the provision of mechanical workshops and car wash services and facilities; or the operation of a fast food outlet. The availability of motor fuel and other petroleum products at more competitive prices does not only allow the site operator to carry on business more competitively with other retail fuel outlets; it can also draw customers to the site, thereby enabling the operator to be more competitive in relation to the sale of non-automotive products and the provision of ancillary services.
- (f) The great majority of retail fuel sites in Australia are "branded" to one of the four major oil companies. To Strasburger's knowledge, it is the case that each of the other major oil companies (apart from Mobil) makes it a condition of the use of that company's trade name, logo and get-up that only authentic motor fuel and petroleum products supplied by their company may be sold at the site. The competitive advantages of such an arrangement are well documented. In any event, Strasburger submits that both it and Mobil would be put at a severe commercial disadvantage to their competitors – such as Caltex, BP and Shell – if they were not permitted to maintain a similar regime.

- (g) In addition, the proposed arrangements allow for added flexibility, in that sales to Mobil card customers will be conducted by Participating Site Operators as agents for Mobil, whilst other sales will be conducted as agents for Strasburger. This allows operators to take advantage of the competitive benefit which flows from being able to provide credit facilities to Mobil card customers.
- (h) For these reasons, Strasburger submits that the proposed conduct is unlikely to result in any public detriment; on the contrary, it is likely to enhance competition to the public benefit. To the extent that it constitutes exclusive dealing, it is a very technical and inoffensive type of exclusive dealing.