

# CLAYTON UTZ

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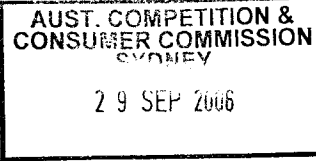
Clayton Utz  
Lawyers  
Levels 19-35  
No. 1 O'Connell Street  
Sydney NSW 2000  
Australia

29 September 2006

## By Hand

Mr Scott Gregson  
General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
Level 7  
123 Pitt Street  
SYDNEY NSW 2000

FILE No:
DOC:
MARS/PRISM:



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N31734

Our reference: 608/12847/21728347

Dear Mr Gregson

### Australian Independent Retailers Pty Ltd - Third Line Forcing Notification

We act for Australian Independent Retailers Pty Ltd ("AIR"), a wholly owned subsidiary of Woolworths Limited.

We enclose a Form G Notification from AIR under Section 93(1) of the *Trade Practices Act 1974* and a supporting submission for consideration by the Australian Competition and Consumer Commission, together with a cheque on behalf of our client in the amount of \$100, being the relevant lodgement fee.

If you have any queries, please do not hesitate to contact Kirsten Webb.

Yours sincerely

**Kirsten Webb, Partner**  
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kwebb@claytonutz.com

**Rob Shilkin, Senior Associate**  
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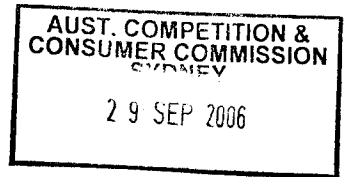
Enclosure

## COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - Sub-section 93(1)*

## EXCLUSIVE DEALING:

## NOTIFICATION



N31734

To: The Australian Competition & 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(6) of that Act in which the person giving notice engages or proposes to engage.

- 
1. (a) **Name of person giving notice:** Australian Independent Retailers Pty Limited ACN 004 678 675 ("AIR"). AIR is a wholly owned subsidiary of Woolworths Limited.
  - (b) **Short description of business carried on by that person:** Petroleum operator and supplier of petrol and other fuels.
  - (c) **Address in Australia for service of documents on that person:** Messrs Clayton Utz, Level 34, No.1 O'Connell Street, Sydney, NSW, 2000, Attention: Ms Kirsten Webb.
  2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:** Supply of petrol and diesel ("Motor Fuel") by AIR and of products by Calstores Pty Ltd ACN 000 175 342 ("Calstores") and third party site operators ("Caltex Site Operators"). Calstores is a wholly owned subsidiary of Caltex Australia Petroleum Pty Ltd which is in turn a wholly owned subsidiary of Caltex Australia Limited ("Caltex") (more specifically described at Appendix "A" hereto).
  - (b) **Description of the conduct or proposed conduct:** The proposed conduct comprises offers by AIR, and the supply by AIR pursuant to such offers, of Motor Fuel at a discounted price from time to time in circumstances where the offeree has purchased a product, products, range of products or products of not less than a specified value from Calstores or Caltex Site Operators.
  3. (a) **Class or classes of persons to which the conduct relates:** Potential customers of AIR.
  - (b) **Number of those persons:**
    - (i) **At present time:**  
Unknown
    - (ii) **Estimated within the next year:**  
Unknown

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

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice: Ms K Webb, Clayton Utz, Level 34, No.1 O'Connell Street, Sydney, NSW, 2000 (Telephone: (02) 9353 4608; Facsimile: (02) 8220 6700).

Dated: 29 September 2006

Signed by/on behalf of the person giving this notice

*K Webb*

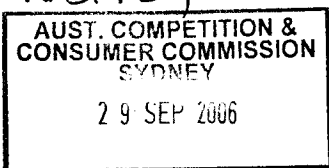
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Kirsten Mary Webb

Partner

Clayton Utz

for and on behalf of Australian Independent  
Retailers Pty Limited

N31734



## 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 subsection 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.
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 subsection 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.

## Appendix A: Submission

### 1. Background and proposed conduct

Woolworths Limited presently offers to supply petrol and other fuels to customers at a discount at Caltex/Woolworths and Caltex/Safeway co-branded sites ("**Woolworths Contributed Sites**") on production of a valid shopper docket ("**Qualifying Docket**") which indicates that the nominated product, products, range of products or products of not less than a specified value has or have been acquired from Woolworths Limited, Woolworths (South Australia) Pty Limited or other related companies ("**Related Companies**").

AIR, through the services of Calstores and Caltex Site Operators as selling agents appointed by Caltex Fuel Services Pty Limited ACN 065 097 761 (**CFSL**), a subsidiary of Caltex, on behalf of AIR, presently offer to supply Motor Fuel to customers at a discount at Caltex/Woolworths and Caltex/Safeway co-branded sites ("**Caltex Contributed Sites**") on production of a Qualifying Docket which indicates that a nominated product, products, range of products or products of not less than a specified value has or have been acquired from the Related Companies.

These offers ("**Existing Offers**") are the subject of Notifications N30735, N90360, N90959 and N90960 ("**Existing Notifications**").

Under the proposal referred to in the Notification, customers who hold a Qualifying Docket and who purchase a nominated product, products, range of products or products ("**In Store Products**") of not less than a specified value from the convenience store shop located at a Woolworths Contributed Site or a Caltex Contributed Site will receive:

- (a) the Existing Offer, when they present their Qualifying Docket; and
- (b) an additional fuel discount ("**Additional Offer**").

For purchases made at Woolworths Contributed Sites (where the petrol and other fuels and the In Store Products are each supplied by one of the Related Companies), the proposed conduct is the subject of the Existing Notifications.

However, at Caltex Contributed Sites, In Store Products at the convenience store shop located at the site are supplied by Calstores or Caltex Site Operators, while the Motor Fuel is supplied by AIR. Accordingly, for those sites, the proposal involves the offer of a discount on Motor Fuel by AIR in circumstances where the customer has purchased In Store Products of not less than a specified value from Calstores or Caltex Site Operators or, alternatively, a refusal to provide a discount on Motor Fuel by AIR in circumstances where the customer has not

purchased In Store Products of not less than a specified value from Caltex or Caltex Site Operators. It is this conduct that is the subject of this Notification.

### **Example of proposed conduct**

It is currently contemplated that customers who purchase Motor Fuel supplied by AIR at Caltex Contributed Sites and who qualify for the Existing Offer and who, as part of the same transaction, purchase In Store Products to a specified minimum value (eg \$5.00 or more, inclusive of GST) from Calstores (or Caltex Site Operators) at Caltex Contributed Sites will receive a discount (eg 4.0 cents per litre) on Motor Fuel supplied by AIR. This discount will be provided to such customers **in addition** to the discount provided under the Existing Offer.

## **2. Benefits to the public outweigh any detriment to the public**

The notified conduct will result in benefits to the public which will outweigh any detriment to the public.

The notified conduct will result in no detriment to the public because:

- (a) there will continue to be a wide choice open to customers in the provision of petrol and other fuels from other fuel dealers. The fuel sector is highly competitive;
- (b) there will continue to be a wide choice open to customers in the provision of non-fuel convenience store items. This sector is highly competitive;
- (c) consumers will not be forced to purchase In Store Products and Motor Fuel. Consumers will retain the freedom to buy the products individually from AIR, Calstores and Caltex Site Operators or their competitors.
- (d) the notified conduct is an example of competitive behaviour. As the ACCC noted in its report "Assessing Shopper Docket Petrol Discounts and Acquisitions in the Petrol and Grocery Sectors" ("**Shopper Docket Review**") shopper dockets are "not likely to lead to a reduction in competition overall in the industry" and "can encourage further competition in the industry";
- (e) the link between the purchase of Motor Fuel at a discount and the purchase of In Store Products will be clearly disclosed in writing to customers for example through signs in Woolworths, Related Companies and at Caltex/Woolworths and Caltex/Safeway co-branded sites where the fuel is purchased;
- (f) as noted above, the proposed conduct is covered by the Existing Notifications if the customer attends a Woolworths-Contributed Site. Customers who attend a Caltex-

Contributed Site should not be disadvantaged merely as a consequence of the structure of the commercial arrangements between Caltex and Woolworths, which have the result that for Caltex Contributed Sites, the proposal may fall within the definition of exclusive dealing in sections 47(6) and 47(7) but not be covered by the Existing Notifications.

The notified conduct will result in benefit to the public because:

- (a) where consumers choose to accept the offer, consumers will benefit by obtaining Motor Fuel at lower prices. The ACCC considered this to be a significant public benefit in its Shopper Docket Review;
- (b) competition will be enhanced by AIR's ability to offer Motor Fuel at an additional discount because this may, in turn, encourage further competitive response within the industry to the further benefit of consumers.