

Our reference
SCK/NA/GENE7827-9025719

Bourke Place
600 Bourke Street Melbourne VIC 3000
GPO Box 9925 VIC 3001
Tel (03) 9672 3000
Fax (03) 9672 3010
www.corrs.com.au

**CORRS
CHAMBERS
WESTGARTH**
lawyers

22 December 2006

**AUST. COMPETITION &
CONSUMER COMMISSION**
MELBOURNE

12 2 DEC 2006

Sydney
Melbourne
Brisbane
Perth
Canberra
Gold Coast

By hand delivery

Australian Competition and Consumer
Commission
Level 35, The Tower
360 Elizabeth Street
Melbourne Central
MELBOURNE VIC 3000

Contact
Nicholas Andersen (03) 9672 3143
Email: nicholas.andersen@corrs.com.au

Partner
Stephen Kroker (03) 9672 3494
Email: stephen.kroker@corrs.com.au

Dear Sir/Madam

BP Australia Pty Ltd

We act for BP Australia Pty Ltd and attach on behalf of our client:

- two notifications in accordance with section 93(1) of the Trade Practices Act 1974;
- supporting submissions in respect of each notification; and
- two cheques for \$100 each in payment of the applicable statutory lodgement fees.

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

Yours sincerely



Stephen Kroker
Partner

attachments

FILE No:	
DOC:	
MARS/PRISM:	

FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA

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

EXCLUSIVE DEALING

N92748

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 engaged 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").

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

BP is involved in the refinement, wholesale and retail sale of petroleum and related products and the operation of retail sites, including convenience stores, cafés, bakeries and diners. It also licences third parties to operate a large number of BP branded retail sites, convenience stores, cafés, bakeries and diners in Australia.

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

c/- Corrs Chambers Westgarth
Level 36, 600 Bourke Street
MELBOURNE VIC 3000
Reference: Stephen Kroker

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

- design and building services and related building and branding materials associated with the fit-out or re-fit of BP branded retail sites, convenience stores, cafés, bakeries and diners; and
- a range of appliances and equipment used in the operation of convenience stores, cafés, bakeries and diners including appliances used for the storage, preparation and heating of food and beverages.

(b) Description of the conduct or proposed conduct:

BP proposes to require parties who operate BP branded retail sites to:

- have those sites fitted (or re-fitted) and re-branded by design and building service providers nominated by BP from time to time; and
- purchase appliances and equipment which are specifically branded and have particular specifications, for the operation of convenience stores, cafés, bakeries and diners at BP retail sites from equipment and appliance suppliers nominated by BP from time to time.

Further details are provided in the accompanying submission.

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

- All parties who operate a BP branded retail site and/or associated convenience store, café, bakery or diner in Australia, whether now or in the future.

(b) Number of those persons -

(i) At the present time:

- There are currently about 700 – 800 operators of BP branded retail sites and associated facilities.

(ii) Estimated within the next year:

- No material change is expected within the next year in respect of the number of operators referred to above.

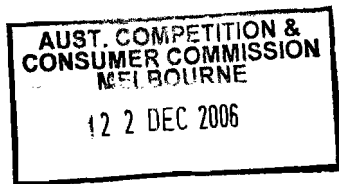
(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:

Not applicable.

4 Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Stephen Kroker
Partner
CORRS CHAMBERS WESTGARTH
600 Bourke Street
MELBOURNE VIC 3000

Dated 22 December, 2006



Signed by/on behalf of the person giving this
notice

Stephen Kroker

(Signature)

STEPHEN KROKER

(Full Name)

PARTNER, CORRS CHAMBERS WESTGARTH

(Description)

DIRECTIONS

- 1 If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbers 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 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 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.

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 and retail sale of petroleum and related products, and the operation of retail sites, including convenience stores, cafés, bakeries and diners.

1.2 BP currently directly operates approximately 260 retail fuel sites in Australia.

Additionally, there are currently approximately 1100 BP branded retail fuel sites operated in Australia by:

- BP franchisees (being sites owned by BP and operated by franchisees to whom BP supplies petroleum and related products, and sites which are owned and operated by franchisees to whom BP supplies petroleum and related products);
- BP distributors (being sites which are owned and operated by BP branded distributors); and
- BP distributor customers (being sites which are operated by third parties who are supplied petroleum and related products by BP distributors and to whom BP grants a licence to use the BP brand and trade marks).

These sites, together with any future BP sites, are collectively referred to in this submission as "**BP Retail Sites**".

1.3 BP Retail Sites include a convenience store and some of those Sites also have an extended food offer, such as a café, bakery or diner.

1.4 There are hundreds of convenience products available at most BP Retail Sites, including:

- grocery and beverage items, including refrigerated and frozen food products;
- other 'fast food' and readily consumable food products such as pies, pasties, sandwiches, baguettes, fried food, pastries, muffins and cookies;
- 'impulse' products, such as confectionary items, chips and ice creams;
- newspapers and magazines;
- tobacco products;
- general merchandise items such as sunglasses, film, batteries, toys and barbeque products; and
- car care products.

- 1.5 Many BP Retail Sites also have available a wide range of café and bakery style products, freshly made sandwiches, muffins, cookies, pastries and a range of coffees, teas and other hot drinks (**Café and Bakery Products**). Customers may break from their travels and consume Café and Bakery Products in a café or diner style environment located at the BP Retail Sites which offer those Products.
- 1.6 Convenience stores and cafes within BP Retail Sites currently operate under a number of BP banners, including the "BP Connect", "BP Express", "BP Shop", "Wild Bean Café", "Café Zip" and "Baker's Basket" banners and also a number of banners owned by the third party operators.
- 1.7 BP's long term strategy is to rationalise the number of brands used across the entire network of BP Retail Sites for the purpose of fostering a fresh and consistent image across that network.
- 1.8 BP wishes to implement this re-branding exercise in conjunction with:
 - (a) a new fit-out of the convenience stores and cafés, bakeries and diners (where applicable) at BP Retail Sites to achieve greater consistency of appearance and layout across the network of BP Retail Sites;
 - (b) the purchase and installation of new equipment and appliances to be used in the operation of convenience stores, cafés, bakeries and diners, including equipment used for the storage, preparation and heating of food and beverages at BP Retail Sites; and
 - (c) the installation of new signage and branding at the BP Retail Sites to achieve greater branding consistency across those Sites.

2 PROPOSED CONDUCT

- 2.1 As part of its arrangements, BP is proposing to require parties who operate a BP Retail Site specified banners to:
 - (a) have the Site fitted (or re-fitted) and re-branded by design and shop-fitting service providers nominated by BP from time to time; and
 - (b) purchase appliances and equipment which are specifically branded and have particular specifications and which are to be used in the operation of convenience stores, cafés, bakeries and diners at the BP Retail Site, from equipment and appliance suppliers nominated by BP from time to time.
- 2.2 BP will also be acquiring the goods and services referred to in point 2.1 from the nominated suppliers in respect of the BP Retail Sites that it operates.
- 2.3 BP is lodging the attaching Notification pursuant to section 93(1) of the Trade Practices Act 1974 ("Act").

3 PUBLIC BENEFITS

BP submits that the proposed conduct described in the Notification will have the following benefits.

Benefits to Operators of BP Retail Sites

- 3.1 The proposed conduct will ensure that the suppliers of the relevant equipment, appliances and shop design and building services meet BP's required standards, thereby benefiting the operators of BP Retail Sites.

The suppliers which BP wishes to nominate have been selected on the basis of factors such as:

- product quality and suitability;
- service quality;
- level of experience and expertise;
- (in respect of the nominated design and building services supplier(s)) the need to ensure that the supplier's services comply with all applicable building safety standards and planning requirements and do not compromise the safety and wellbeing of employees and customers of the BP Retail Sites;
- (in respect of the equipment and appliances) the need to ensure that high quality equipment and appliances with the appropriate specifications are used in the storage, preparation and heating of food products (such as the Café and Bakery Products) at the BP Retail Sites, so that those food products meet all applicable health and safety standards as well as the Australian and New Zealand Food Standards Code 2001 which is a voluntary industry standard which BP is committed to complying with; and
- price.

3.2 Due to BP's scale and purchasing power, BP has negotiated, and will continue to negotiate, the proposed supply of the equipment, appliances and design and building services at attractive prices. These prices have been offered on the basis that all operators of relevant BP Retail Sites (including BP) will, if required by BP to do so, acquire the relevant equipment, appliances and services from the nominated suppliers.

3.3 The proposed conduct will enable the suppliers to achieve efficiency gains, which in turn will have benefits for the operators of BP Retail Sites. Having one or more selected suppliers carry out the design and building works at BP Retail Sites will enable those suppliers to achieve efficiency gains through:

- bulk purchases of building and branding materials; and
- the suppliers' staff and contractors obtaining familiarity with the relevant tasks and therefore completing those tasks in a more efficient manner and shorter timeframe, resulting in a shorter interruption to the Site operators' businesses.

3.4 The proposed conduct will facilitate the creation of a distinctive business platform for the operators of BP Retail Sites, enabling them to better differentiate their businesses from their competitors' businesses.

3.5 The proposed conduct will relieve operators of BP Retail Sites of the need to separately identify suitable equipment and appliances and suitable suppliers of equipment, appliances and shop design and building services.

Benefits to Consumers

3.6 The proposed conduct will provide consumers visiting BP Retail Sites with:

- (a) greater consistency in the quality, appearance and lay out of BP Retail Sites and facilities; and

- (b) Café and Bakery Products and other fast food products which have been stored, prepared and maintained using suitable equipment and appliances which:
 - (i) maximise the quality and taste of those products; and
 - (ii) assist in ensuring those products meet all applicable health and safety standards as well as the Australian and New Zealand Food Standards Code 2001.

4 DETRIMENTS

BP does not believe that the proposed conduct will result in any significant detriment to the public.

22 DECEMBER 2006

FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA

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

N92749

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 engaged 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").

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

BP is involved in the refinement, wholesale and retail sale of petroleum and related products and the operation of retail sites, including convenience stores, cafés, bakeries and diners. It also licences third parties to operate a large number of BP branded retail sites, convenience stores, cafés, bakeries and diners in Australia.

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

c/- Corrs Chambers Westgarth
Level 36, 600 Bourke Street
MELBOURNE VIC 3000
Reference: Stephen Kroker

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

- the full range of convenience store and café products commonly supplied by convenience stores, retail fuel outlets, cafes, bakeries and diners from time to time, including but not limited to food, beverage and grocery items, 'impulse' and readily consumable food items, confectionary, café and bakery style products and the ingredients thereof, individual newspapers and magazines, tobacco products, general merchandise items such as sunglasses, film, batteries, toys, barbeque products and car care products; and

- services required for the routine maintenance and upkeep of BP branded retail sites and the facilities located at those sites.

(b) Description of the conduct or proposed conduct:

BP proposes to require parties who operate BP branded retail sites to purchase a range of convenience store and café, bakery and diner products, or the ingredients thereof, and maintenance services from suppliers nominated by BP from time to time.

Further details are provided in the accompanying submission.

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

All parties who operate a BP branded retail site and/or associated convenience store or café in Australia, whether now or in the future.

(b) Number of those persons -

(i) At the present time:

- There are currently about 700 – 800 operators of BP branded retail sites and associated facilities.

(ii) Estimated within the next year:

- No material change is expected within the next year in respect of the number of operators referred to above.

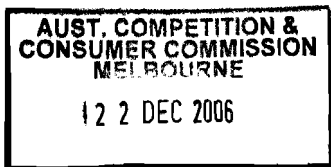
(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:

Not applicable.

4 Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Stephen Kroker
Partner
CORRS CHAMBERS WESTGARTH
600 Bourke Street
MELBOURNE VIC 3000

Dated 22 December 2006



Signed by/on behalf of the person giving this notice

A handwritten signature in black ink, appearing to read "Stephen Kroker", written over a dotted line.

(Signature)

STEPHEN KROKER

(Full Name)

PARTNER, CORRS CHAMBERS WESTGARTH

(Description)

DIRECTIONS

- 1 If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbers 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 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 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.

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 and retail sale of petroleum and related products, and the operation of retail sites, including convenience stores, cafés, bakeries and diners.

1.2 BP currently directly operates approximately 260 retail fuel sites in Australia.

Additionally, there are currently approximately 1100 BP branded retail fuel sites operated in Australia by:

- BP franchisees (being sites owned by BP and operated by franchisees to whom BP supplies petroleum and related products, and sites which are owned and operated by franchisees to whom BP supplies petroleum and related products);
- BP distributors (being sites which are owned and operated by BP branded distributors); and
- BP distributor customers (being sites which are operated by third parties who are supplied petroleum and related products by BP distributors and to whom BP grants a licence to use the BP brand and trade marks).

These sites, together with any future BP sites, are collectively referred to in this submission as "**BP Retail Sites**".

1.3 BP Retail Sites include a convenience store and some of those Sites also have an extended food offer, such as a café, bakery or diner.

1.4 There are hundreds of convenience products available at most BP Retail Sites, including:

- grocery and beverage items, including refrigerated and frozen food products;
- other 'fast food' and readily consumable food products such as pies, pasties, sandwiches, baguettes, fried food, pastries, muffins and cookies;
- 'impulse' products, such as confectionary items, chips and ice creams;
- newspapers and magazines;
- tobacco products;
- general merchandise items such as sunglasses, film, batteries, toys and barbeque products; and
- car care products,

(collectively referred to as "**Retail Products**").

- 1.5 Many BP Retail Sites also have available a wide range of café and bakery style products, freshly made sandwiches, muffins, cookies, pastries and a range of coffees, teas and other hot drinks (**Café and Bakery Products**). Customers may break from their travels and consume Café and Bakery Products in a café or diner style environment located at the BP Retail Sites which offer those Products.

- 1.6 BP is intending to commence a program of:

- rationalising the different BP brands that operators of BP Retail Sites currently operate under; and
- re-designing and re-fitting many of those BP Retail Sites,

as a means of achieving greater consistency between the appearance, layout and quality of those Sites and their facilities.

- 1.7 As part of that program BP also wishes to ensure that a consistent range and quality of Retail Products and (where applicable) Café and Bakery Products are available at BP Retail Sites.

2 PROPOSED CONDUCT

- 2.1 As part of its arrangements, BP is proposing to require various parties who operate a BP Retail Site to purchase:

- a range of Retail Products and Café and Bakery Products, or the necessary ingredients for those Products (collectively referred to as the "**Specific Products**"); and
- services required for the routine maintenance and upkeep of BP Retail Sites and the facilities located at those Sites (**Maintenance Services**),

from preferred suppliers nominated by BP from time to time.

- 2.2 BP will also be acquiring the Specific Products from the nominated suppliers in respect of the BP Retail Sites that it operates.

- 2.3 BP is lodging the attaching Notification pursuant to section 93(1) of the Trade Practices Act 1974 ("Act").

3 PUBLIC BENEFITS

BP submits that the proposed conduct described in the Notification will have the following benefits.

Benefits to Operators of BP Retail Sites

- 3.1 BP selects the suppliers of the Specific Products and Maintenance Services on the basis of factors such as:

- the price at which those suppliers will be able to supply the Specific Products or Maintenance Services - the prices at which BP is able to negotiate the supply of the Specific Products and Maintenance Services is based on a number of factors, in particular the volume of Products to be acquired by the operators of BP Retail Sites from the nominated suppliers;

- the quality and suitability of the Specific Products or Maintenance Services;
- the level of customer demand for Specific Products;
- reliability of supply; and
- whether the supplier of food products is Hazard Analysis and Critical Control Point (**HACCP**) accredited – HACCP is an internationally recognised methodology used to systematically identify, evaluate and control hazards which are significant to food safety, with a focus on preventative measures rather than end product testing.

The proposed conduct will improve the capacity of operators of BP Retail Sites to compete in their respective markets. In particular the proposed conduct will enable those operators to compete as a more vigorous and effective force against operators of other convenience stores, by supplying a wide range of products which are of a high quality and meet appropriate health standards.

- 3.2 The proposed conduct will facilitate the creation of a distinctive business platform and product range for the operators of BP Retail Sites, enabling them to better differentiate their businesses from their competitors' businesses.

Benefits to Consumers

- 3.3 The proposed conduct will provide consumers visiting BP Retail Sites with the following benefits:
- (b) familiarity with store lay out and product range;
 - (c) reliability and consistency in respect of the core types, brands and range of Specific Products stocked at those Sites;
 - (d) access to Specific Products which are of a consistent and high quality;
 - (e) access to food and beverage products which meet applicable health and safety standards and which have been sourced from suppliers who are HACCP compliant; and
 - (f) consistency in tastes and styles of Café and Bakery Products which are available from the BP Retail Sites which stock those Products.

4 DETRIMENTS

BP does not believe that the proposed conduct will result in any significant detriment to the public.

22 DECEMBER 2006