

Our reference
SCK/BPAU7602-9041981

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23 May 2007

By express post

FILE No:
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Sydney
Melbourne
Brisbane
Perth
Gold Coast

Mr Scott Gregson
General Manager - Adjudication Branch
Australian Competition and Consumer
Commission
PO Box 1199
Dickson ACT 2602

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

Dear Mr Gregson

BP Australia Pty Ltd

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

- Notification in accordance with section 93(1) of the Trade Practices Act 1974; and
- cheque for \$100 in payment of the applicable statutory lodgement fee.

If you have any queries, please contact me.

Yours sincerely



Stephen Kroker
Partner

attachments



Form G **Notification of exclusive dealing**
(regulation 71)

Form G

Commonwealth of Australia

Trade Practices Act 1974 – subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

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 subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1 Applicant

N92928

- (a) Name of person giving notice:
(Refer to direction 2)

BP Australia Pty Ltd ABN 53 004 085 616 (**BP**).

- (b) Short description of business carried on by that person:
(Refer to direction 3)

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

BP's franchisees include:

- franchisees which operate one BP branded retail site from which they supply BP Petroleum Products in their own right (**Single Site Franchisees**); and
- franchisees which operate one or more retail sites from which they supply BP Petroleum Products as agent for BP (**Agency Franchisees**).

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

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

2 Notified arrangement

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

- Goods and services supplied by BP to Single Site Franchisees and Agency Franchisees pursuant to franchise/agency agreements (**BP Products**).
- The acquisition by Single Site Franchisees and Agency Franchisees of transportation services for the delivery of cash to their BP branded retail sites and the collection of cash from those sites (**Cash-in-Transit Services**).

(b) Description of the conduct or proposed conduct:

(Refer to direction 4)

In relation to Single Site Franchisees, BP proposes to:

- supply and offer BP Products to Single Site Franchisees on the condition that the Single Site Franchisee acquires Cash-in-Transit Services from a provider of such services determined by BP from time to time (**Nominated Provider**); and/or
- refuse to supply BP Products to a Single Site Franchisee for the reason that the Single Site Franchisee has not agreed to acquire Cash-in-Transit Services from the Nominated Provider.

In relation to Agency Franchisees, BP proposes to:

- supply and offer to supply BP Products to the Agency Franchisees on the condition that the Agency Franchisee acquires Cash-in-Transit Services from providers of such services determined by BP from time to time (**Accredited Providers**); and/or
- refuse to supply BP Products to an Agency Franchisee for the reason that the Agency Franchisee has not agreed to acquire Cash-in-Transit Services from Accredited Providers.

3 Persons, or classes of persons, affected or likely to be affected by the notified conduct

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

(Refer to direction 5)

- (i) Current Single Site Franchisees, and Single Site Franchisees appointed in the future.
- (ii) Current Agency Franchisees, and Agency Franchisees appointed in the future.

(b) Number of those persons:

(i) At present time:

1. BP currently has seven Single Site Franchisees.
2. BP currently has eight Agency Franchisees.

(ii) Estimated within the next year:

(Refer to direction 6)

1. BP estimates that it will appoint no more Single Site Franchisees in the next year.
 2. BP has no current proposals to appoint more Agency Franchisees within the next year, but may appoint a small number (up to approximately six) of such Franchisees within the next year.
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:
- (i) Single Site Franchisees:
- Mary Jane Investments Pty Ltd
T/a BP Jamison
Cnr Redfern & Bowman Streets
MACQUARIE ACT 2614
- Shaska Pty Ltd
T/a BP Waramanga
Nemerang Crescent
WARAMANGA ACT 2611
- Charlesburgh Pty Ltd
T/a BP Express Pymble
Bannockburn Rd & Pacific Hwy
PYMBLE NSW 2073
- RK & R Buckley
T/a BP Uralla
New England Hwy
URALLA NSW 2358
- Washcraft Pty Ltd
T/a BP Hartwell
1237 Toorak Road
HARTWELL VIC 3125
- Liguria Pty Ltd
T/a BP Carine
471 Beach Road
CARINE WA 6020
- Jomar Pty Ltd
T/a BP The Lakes
Corner Great Eastern and Great Southern Hwys
THE LAKES WA 6556
- (ii) Agency Franchisees:
- Salmed
T/a Burmah Katoomba
199 Great Western Hwy
KATOOMBA NSW 2780

Panna Holdings Pty Ltd
T/a BP Salisbury and BP Sunnybank
Cnr Bye St & Evans Rd
SALISBURY QLD 4107

Nafcom Pty Ltd
T/a BP Warrego Hwy
Warrego Hwy
BLACKSOIL QLD 4306

Weeroona Holdings Pty Ltd
T/a BP Campbelltown and BP Gawler
621 Lower North East Road
CAMPBELLTOWN SA 5074

Shahin Enterprises Pty Ltd
T/a BP Hyde Park
19 King William Road
UNLEY SA 5061

Magnetic Witch
T/a BP Lilydale and BP East Doncaster
Cnr Maroondah Hwy & Nelson Rd
LILYDALE VIC 3140

Kalamrhode Pty Ltd
T/a BP Moonee Ponds
795 Mt Alexander Rd
MOONEE PONDS VIC 3039

Jasbe North Dandenong
T/a BP North Dandenong
Cnr Heatherton & Stud Rds
DANDENONG VIC 3175

4 Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

BP considers that the following benefits will arise from the proposed conduct:

- (i) The proposed conduct will promote the health, safety and welfare of employees, customers and other members of the public at BP branded retail sites operated by Single Site Franchisees and Agency Franchisees.

BP understands that currently no Single Site Franchisees and only some Agency Franchisees acquire Cash-in-Transit Services from external providers of such services. Accordingly, the proposed conduct will promote the health, safety and welfare of employees, customers and other members of the public at BP branded retail sites operated by Single Site Franchisees and Agency Franchisees by:

- ensuring that employees at such sites are not required to transport cash from the site to deposit at the bank;
- ensuring that there are regular cash pick-ups from such sites, thereby ensuring that large sums of cash are not retained on such sites;
- ensuring that properly trained and equipped Cash-in-Transit Services providers and security guards will be responsible for the delivery and collection of cash from such sites; and
- encouraging such sites to adopt safer systems of work in connection with handling cash at such sites.

Nominated Providers and Accredited Providers will be selected by BP in accordance with BP's Accredited Contractor Program, which has been formulated by BP to assist in discharging occupational health and safety obligations. It is expected that Nominated Providers will be the same providers as those providers selected by BP to provide Cash-in-Transit Services to BP in relation to BP's own retail sites.

- (ii) The proposed conduct will obviate the need for Single Site Franchisees and Agency Franchisees to independently select and accredit providers of Cash-in-Transit Services.
- (iii) The proposed conduct will result in Single Site Franchisees acquiring appropriate Cash-in-Transit Services at no cost to them, as BP will bear the cost of the Nominated Providers providing Cash-in-Transit Services to each of the Single Site Franchisees.

BP will not derive any benefit from the proposed conduct, other than the benefits that will be derived by Single Site Franchisees and Agency Franchisees.

- (iv) The proposed conduct will minimise disruption at BP branded retail sites operated by Single Site Franchisees and Agency Franchisees. Nominated Providers and Accredited Providers will be familiar with the required tasks, practices and processes at all BP branded retail sites operated by BP, Single Site Franchisees and Agency Franchisees, thereby enabling them to complete those tasks in the most efficient manner possible, thereby minimising disruption to employees, customers and other members of the public visiting BP branded retail sites operated by BP, Single Site Franchisees and Agency Franchisees.
- (v) Given the competitive nature of these markets (see relevant markets under **Market definition** in item 5), BP's proposed conduct will not lessen competition in these markets. For the following reasons, the proposed conduct is more likely to increase competition in these markets:
 - As Single Site Franchisees have little bargaining power when acquiring in Cash-in-Transit Services, having BP source such services on their behalf (and bear the cost of

such services) will increase competitive pressure on the providers of such services.

- The process whereby BP will call for tenders for the supply of Cash-in-Transit Services and select Nominated Providers will increase competitive pressure in the relevant markets.

(b) Facts and evidence relief upon in support of these claims:

Not applicable.

5 Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 8)

BP submits that Cash-in-Transit Services acquired by BP, Single Site Franchisees and Agency Franchisees in respect of BP branded retail sites are:

- not in a separate product market to comparable services acquired by other businesses; and
- acquired in a series of state-based markets for the acquisition of such services (**Relevant Markets**).

6 Public detriments

(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

(Refer to direction 9)

Single Site Franchisees and Agency Franchisees will be restricted in their choice of Cash-in-Transit Services provider.

(b) Facts and evidence relevant to these detriments:

Not applicable.

7 Further information

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

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

Dated 23 May 2007

Signed by/on behalf of the applicant



(Signature)

Stephen Kroker

(Full Name)

Corrs Chambers Westgarth

(Organisation)

Partner

(Position in Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

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. 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 section 47 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. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.