



Motor Trades Association of Australia

39 Brisbane Ave, Barton. ACT. PO Box 6273, Kingston, ACT. 2604.

Telephone: (02) 6273 4333 Facsimile: (02) 6273 2738 ABN 66 008 643 561

Email: mtaa@mtaa.com.au

FILE NO:

DOC:

MARS/PRISM:

FACSIMILE TRANSMISSION

To: Mr Scott Gregson	Company: General Manager Adjudication Branch Australian Competition and Consumer Commission PO Box 1199 DICKSON ACT 2602
Phone: 02 6243 1111	Fax: 02 6243 1199

From: Mr Michael Delaney	Position: Executive Director
Date: 8 June, 2007	Pages including this cover page: 3

AUSTRALIAN COMPETITION & CONSUMER COMMISSION

8 JUN 2007

This facsimile may contain ~~PRIVILEGED AND/OR CONFIDENTIAL INFORMATION~~ and is only intended for the use of the addressee. If you are not the addressee, or the person responsible for delivering it to the addressee, you may not copy or deliver this to anyone else. If you receive this facsimile by mistake, please immediately notify the author by telephone (reverse charges). The contents of the facsimile are copyright and may not be reproduced or published in any form without the express written permission of the author.

KH



Motor Trades Association of Australia

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

Dear Mr Gregson

I write on behalf of the Motor Trades Association of Australia (MTAA) in relation to the Exclusive Dealing Notification lodged by BP Australia on 23 May 2007 (N92928). BP Australia's proposal to undertake exclusive dealing conduct in the form of the provision of Cash-in-Transit services for its Single Site and Agency franchisees has the potential to significantly impact upon these franchisees and, therefore, these franchisee's capacity to provide goods and services to the public.

While the proposed conduct would seem to offer a logical and beneficial support to franchisees, the sanction of refusing to supply BP products to a franchisee as a consequence of it declining to agree to, and / or accept, BP Australia's nomination of an accredited Cash-in-Transit service provider, is disproportionate to any benefit the franchisee or members of the public might derive. If circumstances were in place such that a franchisee might reasonably decline to accept the proposal before it, and that BP Australia subsequently imposed the sanction of refusal to supply as indicated, it is difficult to imagine how any public benefit could be the result. This might particularly be the case in relation to those franchisees that are situated in, and provide service to, rural areas.

In BP Australia's application, a supporting argument for the proposed conduct is constructed that is based heavily on notions of, "*... 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*". Additionally, BP Australia claims that under the proposed conduct these franchisees will acquire, "*... appropriate Cash-in-Transit Services at no cost to them, as BP will bear the cost of the Nominated Providers.*"

MTAA believes that if BP Australia is in its application demonstrating its concern for employees and members of the public on the basis of health, safety and welfare issues, and that it has indicated its preparedness to provide Cash-in-Transit services at no cost to affected franchisees, that it ought also be prepared to offer the provision of Cash-in-Transit services to the franchisees in question under no possible sanction such as the refusal to supply BP products.

Motor Trades Association House, 39 Brisbane Avenue, Barton ACT 2600
PO Box 6273, Kingston, ACT 2604
Telephone: + 61 2 6273 4333. Facsimile: + 61 2 6273 2738.
Email: mtaa@mtaa.com.au A.B.N. 66 008 643 561

- 2 -

MTAA considers the sanctions proposed in BP Australia's application to be significantly at odds with the outcome BP Australia seeks. MTAA also considers that the imposition of these sanctions, as a result of what might be considered reasonable circumstances by a franchisee, would also not be conducive to public benefit.

I would request, therefore, that the Australian Competition and Consumer Commission consider this matter further, with a view to denying BP Australia's Notification on the basis that the proposed sanction is harsh and unfair.



MICHAEL DELANEY
Executive Director

8 June 2007