



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2007/1043
Contact Officer: Sarah Chubb
Contact Number: (02) 6243 1088

20 June 2007

Mr Michael Delaney
Executive Director
Motor Trades Association of Australia
PO Box 6273
KINGSTON ACT 2604

Dear Mr Delaney,

Third line forcing notification N92928 lodged by BP Australia Pty Ltd

Thank you for your letter dated 8 June 2007 regarding the above third line forcing notification, which was lodged with the Australian Competition and Consumer Commission (the ACCC) on 24 May 2007.

Under the notification, BP Australia Pty Ltd (BP) proposes to:

- Supply and offer BP Products to Single Site Franchisees and Agency Franchisees on condition that the franchisees acquire Cash-in-Transit Services from a provider of such services determined by BP; and
- Refuse to supply BP Products to Single Site Franchisees and Agency Franchisees if the franchisees do not agree to acquire Cash-in-Transit Services from a provider of such services determined by BP.

According to your letter, the Motor Trades Association of Australia (MTAA) considers that the notified conduct may offer some benefit to BP franchisees and to members of the public. However, MTAA is concerned about BP's refusal to supply BP Products to franchisees who do not agree to acquire Cash-in-Transit Services from a provider determined by BP. MTAA submits that the detriments flowing from BP's refusal to supply BP Products to franchisees will outweigh any benefits generated by the notified conduct.

In response to your concerns, the ACCC notes that under the *Trade Practices Act 1974* (the Act), third line forcing occurs when either:



a party offers to supply goods or services to a second party on condition that the second party acquires additional goods or services from a third party (section 47(6)); or

- a party refuses to supply goods or services to a second party unless the second party acquires additional goods or services from a third party (section 47(7)).

Third line forcing notifications lodged with the ACCC often describe the proposed conduct in conformity with section 47(6) and section 47(7), as parties are at risk of breaching both provisions if they wish to force a second party to acquire goods or services from a third party.

In relation to notification N92928, BP intends to require franchisees to acquire Cash-in-Transit Services from specific service providers, and it has phrased its third line forcing conduct in accordance with both section 47(6) and section 47(7). In effect, BP's refusal to supply BP Products to franchisees who do not agree to acquire Cash-in-Transit Services from the relevant providers is simply the reverse of BP supplying BP Products on condition that franchisees acquire Cash-in-Transit Services from the relevant providers.

In assessing notification N92928, the ACCC has considered the public benefits and public detriments that are likely to arise from BP requiring its franchisees to acquire Cash-in-Transit Services from specific providers. On the basis of the information provided to the ACCC on this matter, the ACCC has decided not to take any further action in relation to notification N92928 at this stage. However, BP has been advised that the ACCC may review this matter further if it receives concerns from affected franchisees.

A copy of this letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Sarah Chubb on (02) 6243 1088.

Yours sincerely

A handwritten signature in black ink, appearing to be 'S. Gregson', written over a horizontal line.

Scott Gregson
General Manager
Adjudication Branch