



## 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 a letter received from you on 20 June 2007 regarding the Exclusive Dealing Notification lodged by BP Australia on 23 May 2007 (N92928).

MTAA notes the points the ACCC has made in coming to its decision not to take any further action, at this point in time, in relation to the BP Australia notification. However I believe that the issues MTAA raised in its letter require further consideration.

As outlined in my earlier letter to you, it is important to note that BP Australia's proposed sanction on franchisees that do not acquire their Cash-in-Transit services from BP Australia, is very much disproportionate to the arrangements that it seeks to put in place with Cash-in-Transit. BP Australia's ability to refuse to supply a franchisee with BP products for the sole reason that the franchisee does not accept the Cash-in-Transit service, changes the very nature of its agreement with the franchisee, with no public benefit being achieved.

MTAA questions how the application of this sanction, that BP Australia proposes, can provide any public benefit if satisfactory arrangements for the transport of cash are already in place? If anything, BP Australia's proposed conduct would disrupt these arrangements and the associated business relationships that the franchisee may have.

MTAA therefore asks the ACCC to reconsider its position on BP Australia's Exclusive Dealing Notification (N92928) with regard to the previously mentioned issues. MTAA's previous submission on this notification it attached for your information.

Yours sincerely

**MICHAEL DELANEY**  
Executive Director

27 June 2007



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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](mailto:mtaa@mtaa.com.au) A.B.N. 66 008 643 561

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