



Australian
Competition &
Consumer
Commission

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Our Ref: C2007/1043
Contact Officer: Sarah Chubb
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31 July 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 letters dated 8 June 2007 and 27 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 (a Nominated or Accredited Provider); 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 letters, 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 the concerns raised by MTAA, the ACCC sought some additional information from BP in relation to the notified conduct. In particular, the ACCC

sought information regarding the process that BP will follow in the event that a Single Site or Agency Franchisee:

- Does not wish to acquire Cash-in-Transit Services from an external service provider.
- Wishes to obtain Cash-in-Transit Services from an external provider, but not from a Nominated or Accredited Provider.
- Fails to comply with the requirement to obtain Cash-in-Transit Services from a Nominated or Accredited Provider on a short or long term basis.

In a letter to the ACCC dated 17 July 2007, BP indicated that it is not aware of any Single Site or Agency Franchisees having expressed concerns about the notified conduct. However, BP stated that if a franchisee refuses or fails to acquire Cash-in-Transit Services from a Nominated or Accredited Provider, then BP would seek to resolve the matter by engaging in dialogue with the franchisee. BP stated that in deciding what action to take, it would consider a range of legal and commercial issues, and would comply with the provisions of BP's agreement with the relevant franchisee, the requirements of the *Trade Practices Act 1974* and the requirements of the *Trade Practices (Industry Codes – Oilcode) Regulations 2006*.

On the basis of the information provided by BP, the ACCC does not intend to take any further action in relation to notification N92928 at this stage. However, in its correspondence with BP, the ACCC has emphasised its ability to review the notification if concerns are raised in the future regarding the notified conduct. A copy of the ACCC's most recent letter to BP is attached for your information.

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



Scott Gregson
General Manager
Adjudication Branch