

Our reference
RJF/CD/8PAU7602-9065481

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**CORRS
CHAMBERS
WESTGARTH**
lawyers

6 October 2009

Sydney
Melbourne
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Perth

By email: adjudication@accc.gov.au

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
Level 7, Angel Place
123 Pitt Street
SYDNEY NSW 2000

Contact
Claire Davie (03) 9672 3513

Partner
Richard Flitcroft (02) 9210 6435
Email: richard.flitcroft@corrs.com.au

Dear Dr Chadwick

BP Australia Pty Ltd - Exclusive Dealing Notification

We act for BP Australia Pty Ltd.

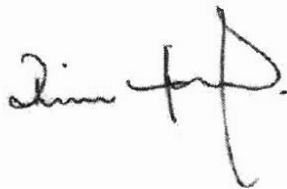
Accompanying this letter is a Form G Exclusive Dealing Notification pursuant to Section 93(1) of the Trade Practices Act 1974 (TPA).

This Notification is lodged in respect of conduct that may amount to third line forcing and contravene Section 47(7) of the TPA.

Also accompanying this Notification are extracts from the relevant agreement between BP Australia Pty Ltd and American Express Australia Pty Ltd. Those extracts contain commercially confidential and sensitive information. Pursuant to Section 95(2) of the TPA, BP Australia Pty Ltd applies for the extracts to be kept confidential by the Commission and excluded from the Register.

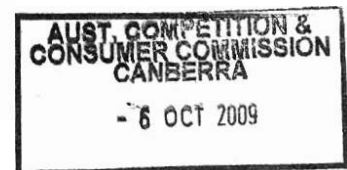
The lodgement fee of \$100 will be paid by cheque tomorrow at the Commission's Sydney office.

Yours faithfully
Corrs Chambers Westgarth



Richard Flitcroft
Partner

attachments



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

- (a) Name of person giving notice:

(Refer to direction 2)

N94251

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 and the operation of retail sites, including convenience stores, cafés, bakeries and diners (**Service Establishments**). It also licences third parties, including its franchisees, to operate a large number of BP branded Service Establishments in Australia.

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

c/- Corrs Chambers Westgarth
Governor Phillip Tower
1 Farrer Place
SYDNEY NSW 2000
Reference: Richard Flitcroft

2. Notified arrangement

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

This notice relates to the supply of:

- petroleum and fuel products and related services available in BP Service Establishments; and
- payment card services by American Express Australia Limited (**American Express**).



(b) Description of the conduct or proposed conduct:

(Refer to direction 4)

BP and American Express have entered into an arrangement pursuant to which they intend to provide a new co-brand American Express BP Corporate Card (**AEBPCC**) and existing American Express Qantas Corporate Card (**AEQCC**) (together, the **Cards**) with the following benefits:

- eligible companies or businesses which become account holders (**Clients**) will be entitled to rebates calculated on a bi-annual basis on the amount spent on qualifying purchases at BP Service Establishments using the Cards, provided that the amount exceeds or equals a minimum amount;
- Clients will be provided with enhanced data capture and reporting on fuel and other spend at BP Service Establishments; and
- Clients will be able to enable fuel spend controls on the Cards.

BP will refuse to give the rebates (in relation to the supply of BP qualifying purchases) to customers who have not acquired the co-branded card service from American Express.

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)

Current and future holders of the Cards.

(b) Number of those persons:

(i) At present time:

At the present time there no AEBPCC holders as this will be a new card product.

(ii) Estimated within the next year:

(Refer to direction 6)

Not known, but substantially greater than 50.

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable.

4. Public benefit claims

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

The proposed conduct offers significant benefits to Clients by giving them the opportunity to obtain benefits from BP if they have opened a co-branded card account with American Express.

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

The notified conduct will result in:

- benefits of increased choice for Clients who wish to obtain a card with an associated loyalty program and rebate scheme, and increased competition in the market for these products;
- benefits to Clients through the opportunity to earn and use rebate points when using their Cards; and
- benefits to the relevant Clients through the opportunity to receive promotional benefits and privileges, including fuel promotions, enhanced credit terms and other benefits.

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; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 8)

The markets in which petroleum and fuel products and services are supplied are highly competitive. Petroleum and fuel products and services are supplied by BP, Shell, Caltex, Ampol, Mobil and other independent operators. Competitors in this market may be prompted to introduce or extend similar schemes attaching competitive benefits and privileges to their customers. There are a large number of competitive offers available to the public in respect of the provision of petroleum and fuel products and services at any given time.

In the markets in which payment card services are provided, customers have a significant number of product options available to them, including charge and credit cards provided by Diners Club and American Express and credit or debit cards offered by financial institutions on the MasterCard and Visa networks.

Co-branded card products which award benefits through the accumulation of points or rebates are widespread in Australia and elsewhere.

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)

BP submits that there is no likely detriment to the public resulting from the proposed conduct, and that the proposed conduct would have a negligible effect on competition in the markets noted above in clause 2(a).

(b) Facts and evidence relevant to these detriments:

Customers are free to choose whether or not to apply for a Card from American Express, whether or not they wish to have a Card, and whether or not they wish to use their Card to accrue rebate points or other promotional benefits or privileges. In addition, customers not holding the Card will continue to have access to goods in BP Service Establishments at the usual prices.

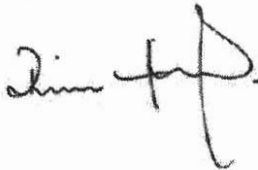
7. Further information

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

Richard Flitcroft
Partner
Corrs Chambers Westgarth
Governor Phillip Tower
1 Farrer Place
SYDNEY NSW 2000
Telephone: (02) 9210 6435

Dated 6 October 2009

Signed by/on behalf of the applicant



(Signature)

Richard Flitcroft

(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 the 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.