

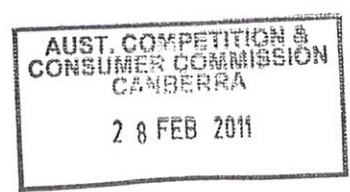
# Schetzer Brott & Appel

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FILE No:
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MARS/PRISM:



Our Ref: JA:BJR:051604:  
Your Ref:

24 February 2011

Australian Competition & Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

Dear Sirs

Re: **THIRD LINE FORCING NOTIFICATION  
LODGED BY: AA ENTITIES**

We act on behalf of the AA Entities referred to in Annexure 1 in the Form G enclosed.

In November 2008, we lodged on behalf of forty-four AA Entities, Third Line Forcing Notifications which Notifications were placed on the ACCC's public register in Third Line Forcing Notifications N93649-N93692.

The enclosed Form G is a notification on behalf of three further AA Entities the details of which appear in Annexure 1 and Annexure 2.

We also enclose cheque in the sum of \$300 representing the fee of \$100 per AA Entity.

Should you have any queries please do not hesitate to contact the writer.

Yours faithfully  
SCHETZER BROTT & APPEL

Jeffrey Appel  
Principal

## FORM G

### COMMONWEALTH OF AUSTRALIA

#### *Competition and Consumer Act 2010 - 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 *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to in 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:

N95300 *(Refer to direction 2)*

N95301 Each of the entities identified in Annexure 1 to this notification document  
N95302 (collectively, the "AA Entities").

- (b) Short description of business carried on by that person:

*(Refer to direction 3)*

Each of the AA Entities leases property from which it currently sells petroleum and related products (through a commission agent). In essence, each of these properties is a BP branded petrol station with a BP Branded convenience store. Some of the petrol stations also have a BP branded café. In respect of convenience store products, each AA Entity currently acts as a buying agent for the operator of the convenience store.

- (c) Address in Australia for service of documents of each AA Entity:

c/- Schetzer Brott & Appel  
Level 4, 50 Market Street  
Melbourne VIC 3000  
Reference: Jeffrey Appel  
Email: jappel@sbalaw.com

#### 2. Notified arrangement

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

- The full range of convenience store products commonly supplied by convenience stores and retail fuel outlets from time to time, including but not limited to food, beverage and grocery items, "impulse" and

readily consumable food items, confectionary, café and bakery style products and the ingredients thereof, individual newspapers and magazines, tobacco products, general merchandise items such as sunglasses, film, batteries, toys, barbeque products and car care products.

- The services required for the routine maintenance and upkeep of BP branded retail sites and the facilities located at those sites.

(b) Description of the conduct or proposed conduct:

The AA Entities propose to require fuel commission agents, that is, the persons or entities selling petroleum and related products at the relevant petrol stations, to purchase a range of convenience store products, or the ingredients thereof, and maintenance services from suppliers nominated by it from time to time.

Further details are provided in the accompanying submission.

*(Refer to direction 4)*

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)*

All commission agents which sell petrol and related products at a petrol station on behalf of the relevant AA Entity (whether now or in the future).

(b) Number of those persons:

(i) At the present time:

There are currently 3 BP branded petrol stations at which commission agents sell petrol and related products. In respect of those petrol stations, the total number of commission agents is 3. These are the persons affected or likely to be affected by the conduct of the AA Entities which is the subject of this notification.

There are another 44 BP branded petrol stations at which commission agents sell petrol and related products. In respect of those petrol stations, the total number of commission agents is 44. Those persons are affected or likely to be affected by the conduct of other corporations related to the AA Entities, which other corporations and their conduct are the subject of third line forcing notifications N93649 to N 93692 (both inclusive).

(ii) Estimated within the next year:

It is expected within the next year that the number of commission agents referred to above will increase by at least approximately 2.

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

Refer to Annexure 2 to this notification.

4. **Public benefit claims**

- (a) Arguments in support of notification:

*(Refer to direction 7)*

AA submits that the conduct which is the subject of this notification will have benefits for both commission agents referred to in item 3(a) above and for consumers.

Refer to the accompanying submission, in particular, section 3 thereof.

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

Refer to the accompanying submission.

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)*

- This notification relates to the wholesale market(s) for products sold to the retail operators of petrol station convenience stores principally in Melbourne, including convenience stores at the relevant petrol stations.
- In the wholesale market(s), the ultimate suppliers offer most products to intermediate suppliers and retailers. The retailers select supplier(s) based on many factors including convenience issues, cost & price incentives and exclusive dealing arrangements (as notified to the ACCC). Substitution is possible in respect of all relevant products.
- This notification also relates to the market(s) for such products sold to the ultimate consumers by retailers, including the operators of petrol station convenience stores. Substitution is possible in respect of all relevant products.

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)*

The AA Entities do not believe that the proposed conduct will result in any detriment to any parties or the public.

(b) Facts and evidence relevant to these detriments:

Not applicable.

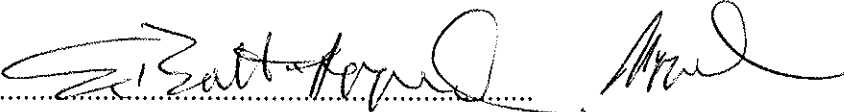
7. **Further information**

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

C/- Schetzer Brott & Appel  
P O Box 400, Collins Street West  
MELBOURNE VIC 8007  
Reference: Jeffrey Appel  
Telephone: (03) 9614 7000

Dated 23 February 2011

Signed by/on behalf of the applicant

  
.....  
**Jeffrey Appel, Principal, Schetzer Brott & Appel,  
Solicitors & Agents for the AA Entities**

**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 *Competition and Consumer Act 2010* 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.

**AA ENTITIES**  
(as listed in Annexure 1)

**SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER  
COMMISSION REGARDING THIRD LINE FORCING NOTIFICATION**

**1. INTRODUCTION**

- 1.1 Each AA Entity is involved in the retail sale of petroleum and related products at a BP branded petrol station. There are currently 47 such petrol stations in Victoria. These sites, together with any future AA sites, are collectively referred to in this submission as “**AA Retail Sites**”. The notification attached to this submission relates to 3 AA Retail Sites. The balance of the AA Retail Sites are the subject of third line forcing notifications N93649 to N 93692 (both inclusive). All AA Retail Sites include a convenience store.
- 1.2 Each AA Entity is and was a subsidiary of AA Holdings Pty Ltd (“**AAH**”).
- 1.3 For each AA Retail Site, there is a commission agent which or who sells petrol and related products to consumers on behalf of an AA Entity (that is the registered owner of the AA Retail Site).
- 1.4 Each of these commission agents sells petrol and related products on behalf of the AA Entity pursuant to a Fuel Re-Seller Agreement within the meaning of the *Trade Practices (Industry Codes – Oilcode) Regulations 2006 (Cth)* (that is, the “**Oilcode**”).
- 1.5 Under the system provided for in the Fuel Re-Seller Agreements used by the AA Entities, each commission agent will sell fuel on behalf of an AA Entity (as owner of that fuel).
- 1.6 Moreover, under the system, as a condition of operating any AA Retail Site, the AA Entities want the commission agents to purchase a minimum range of convenience store products from “*authorised suppliers*” which are nominated from time to time. The AA Entities want to nominate AAH as the initial “*authorised supplier*” of convenience store products to the commission agents responsible for operating the convenience stores at the AA Retail Sites.
- 1.7 There are hundreds of convenience products available at most AA Retail Sites, including (collectively referred to as “**Retail Products**”):
- grocery and beverage items, including refrigerated and frozen food products;
  - other “*fast food*” and readily consumable food products such as pies, pasties, sandwiches, baguettes, fried food, pastries, muffins and cookies;
  - “*impulse*” products, such as confectionary items, chips and ice creams;
  - newspapers and magazines;
  - tobacco products;

- general merchandise items such as sunglasses, film, batteries, toys and barbeque products; and
  - car care products.
- 1.8 AAH has established a centralised system in respect of the buying, selling and storing of almost all convenience products. Under this system:
- AAH is able to purchase products in large volumes on a wholesale basis.
  - AAH is able to negotiate so that it receives rebates, discounts and allowances in respect of convenience store products purchased in large volumes.
  - AAH is able to manage the timely distribution of convenience store products to each of the 47 AA Retail Sites (and future sites).
  - Through the use of a sophisticated computer and bar-coding system, AAH is able to replenish automatically stock at all AA Retail Sites.
- 1.9 The AA Entities, along with AAH, want to use this centralised system to ensure that a consistent range and quality of Retail Products is available at each of the AA Retail Sites.

## 2. PROPOSED CONDUCT

- 2.1 As part of the system under the form of Fuel Re-Seller Agreement the AA Entities wish to use, the AA Entities propose to require the commission agents at all AA Retail Sites to purchase from the nominated “*authorised supplier*” or “*authorised suppliers*”:
- a minimum range of convenience store products, or the necessary ingredients for those products; and
  - services required for the routine maintenance and upkeep of AA Retail Sites and the facilities located at those Sites.
- 2.2 Each AA Entity lodges the attached notification pursuant to section 93(1) of the *Competition and Consumer Act 2010* (“**the Act**”).

## 3. PUBLIC BENEFITS

AA submits that the proposed conduct described in the Notification will have the following benefits.

### *Benefits to commission agents at all AA Retail Sites*

- 3.1 The AA Entities have selected AAH as the initial “*authorised supplier*” on the following grounds:
- The price at which it will be able to supply the relevant convenience store products and services. The price of any product supplied by AAH to a commission agent is based on a number of factors, including the volume of products to be acquired by AAH from suppliers and the volume of products to be acquired by the commission agents from AAH.



- The terms on which AAH proposes to supply products to commission agents, including the provision of credit in respect of sales.
  - The quality and suitability of the specific products and services, bearing in mind that each of the AA Retailer Sites is a BP branded operation forming part of an independent network of 47 such sites.
  - The level of customer demand for specific products.
  - The reliability of supply, including the speed with which AAH is able to replenish depleted stocks through the centralised buying and distribution system.
  - AAH is accredited under the Hazard Analysis and Critical Control Point system (“**HACCP**”). HACCP is an internationally recognised methodology used to systematically identify, evaluate and control hazards which are significant to food safety, with a focus on preventative measures rather than end product testing.
- 3.2 If the AA Entities decide to select any other “*authorised suppliers*”, they will do so on the same or like grounds.
- 3.3 The proposed conduct will improve the capacity of commission agents to compete in their respective markets. In particular, by supplying a wide range of products which are of a high quality and meet appropriate health standards, the proposed conduct will enable the commission agents to compete as a more vigorous and effective force against operators of other convenience stores.
- 3.2 The proposed conduct will facilitate the creation of a distinctive business platform and product range for commission agents at AA Retail Sites, enabling them to better differentiate their businesses from their competitors’ businesses.
- 3.4 The proposed conduct will enable the commission agents to take advantage of a stable and reliable system of product supply.

***Benefits to Consumers***

- 3.5 The proposed conduct will provide consumers visiting AA Retail Sites with the following benefits:
- familiarity with store lay out and product range;
  - reliability and consistency in respect of the core types, brands and range of specific products stocked at those AA Retail Sites;
  - access to specific products which are of a consistent and a high quality; and
  - access to food and beverage products which meet applicable health and safety standards and which have been sourced from suppliers which are HACCP compliant.

Date: 23 February 2011

**ANNEXURE 1 – LIST OF AA ENTITIES**

	<b>Corporation Name</b>	<b>ACN</b>
N95300	AA Wallan Inbound Pty Ltd	134 108 240
N95301	AA Officer Inbound Pty Ltd	145 213 181
N95302	AA Officer Outbound Pty Ltd	145 213 190

**ANNEXURE 2 – LIST OF CURRENT COMMISSION AGENTS**

<b>Site Location</b>	<b>Commission Agent</b>	<b>Address</b>
Wallan inbound	Melbourne Petroleum Pty Ltd (ACN 134 735 452)	14 Beechworth Avenue, Greenvale Vic 3059
Officer inbound	JJL Enterprises Pty Ltd (ACN 143 613 316)	27 St Claire Crescent, Mount Waverley, Vic 3149
Officer outbound	Haytec Group Pty Ltd (103 970 305)	4 Blue Bell Court, Pakenham, Vic 3810