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Tanya Cross



Our Ref: JA:LP:51604  
Your Ref:

16 December 2015

By Express Post

Australia Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

Dear Sir,

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

We act on behalf of the AA entity referred to in the attached Form G – Notification of Exclusive Dealing.

We **enclose** on behalf of our clients the following:

1. Form G.
2. Cheque in the sum of \$600.00 representing a payment of \$100.00 for each of the 6 entities referred to in Annexure 1.

We await confirmation of receipt, and should you have any queries please do not hesitate to contact the writer.

Yours faithfully  
**SBA Law**

  
**Jeffrey Appel OAM**  
Principal  
jappel@sbalaw.com

*Please note our office will be closed from Friday 25 December 2015  
and reopen at 8:30am on Monday 11 January 2016.*

## 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 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:

N98799

*(Refer to direction 2)*

N98800

N98801

N98802

N98803

N98804

Each one of the entities identified in Annexure 1 to this notification (collectively, the “**New AA Entities**”).

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

*(Refer to direction 3)*

Each of the New AA Entities leases property from which it currently sells petroleum and related products through a commission agent, which or who sells petrol and related products to consumers on behalf of a New AA Entity (“**Commission Agent**”). In essence, each of these properties is a BP branded petrol station with a BP branded convenience store. In respect of convenience store products, AA Holdings Pty Ltd, the holding company of each New AA Entity, presently acts as a buying agent for the operator of the convenience store.

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

C/- SBA Law  
Level 13, 607 Bourke Street  
Melbourne VIC 3000  
Reference: Jeffrey Appel  
Email: [jappel@sbalaw.com](mailto: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, cafe 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 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 New AA Entities propose to require Commission Agents to purchase a range of convenience store products, or the ingredients thereof, and maintenance service from suppliers nominated by them and AA Holdings Pty Ltd 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 or who sell petrol and related products to consumers on behalf of the relevant New AA Entity (whether now or in the future).

(b) Number of those persons:

(i) At present time:

- i. There are currently 6 BP branded petrol stations at which Commission Agents sell petrol and related products on behalf of a New AA Entity. In respect of those petrol stations, the total number of Commission Agents is 6. These are the persons affected or likely to be affected by the conduct of the New AA Entities the subject of this notification.
- ii. There are another 47 BP branded petrol stations at which Commission Agents sell petrol and related products on behalf of other corporations related to the New AA Entities. In respect of those petrol stations, the total number of Commission Agents is 47. Those persons are affected or likely to be affected by the conduct of other corporations related to the New AA Entities, whose conduct are the subject of third line forcing notifications N93649 to N93692 and N95300 – N95302 (both inclusive).

(ii) Estimated within the next year:  
(Refer to direction 6)

It is expected within the next year that the number of Commission Agents referred to above will not increase.

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

See Annexure 2 to this notification

#### **4. Public benefit claims**

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

Please see the attached submission.

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

Please see the attached 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 New AA entities do not believe that the proposed conduct will result in any detriment to any party or the public.

- (b) Facts and evidence relevant to these detriments:

Not applicable


**7. Further information**

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

C/- SBA Law  
Level 13, 607 Bourke Street  
Melbourne VIC 3000  
Reference: Jeffrey Appel  
Email: [jappel@sbalaw.com](mailto:jappel@sbalaw.com)

Dated.....15 DECEMBER 2015.....

Signed by/on behalf of the person giving this notice

.....

(Signature)

**Jeffrey Appel**

(Full Name)

**of SBA Law, Solicitor & Agent  
for New AA Entities**

(Description)

## 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.

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

### **1. INTRODUCTION**

- 1.1 Each entity listed in Annexure 1 ("**New AA Entity**") is and was a subsidiary of AA Holdings Pty Ltd ("**AAH**") and is involved in the retail sale of petroleum and related products at a BP branded petrol station.
- 1.2 Other AAH subsidiaries (together with the New AA Entities, "**AA Entities**") are currently involved in the retail sale of petroleum and related products at 53 BP branded 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 6 AA Retail Sites. The balance of the AA Retail Sites are the subject of third line forcing notifications N93649 to N93692 and N95300 – N95302 (both inclusive). All AA Retail Sites include a convenience store.
- 1.3 For each AA Retail Site, there is a commission agent ("**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 relevant AA Entity pursuant to a 'Fuel Re-Seller Agreement' within the meaning of the *Competition and Consumer (Industry Codes – Oilcode) Regulation 2006* ("**Fuel Reseller Agreement**").
- 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 the relevant AA Entity (as owner of the fuel).
- 1.6 Moreover, under this system, as a condition of operating an AA Retail Site, the New 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:
  - grocery and beverage items, including refrigerated and frozen food products;
  - other "*fast food*" and readily consumable food products such as pies, pasties, sandwiches, baguettes, friend 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

(collectively referred to as “**Retail Products**”).

1.11 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 53 AA Retail Sites (and future sites);
- AAH is able, through the use of a sophisticated computer and bar-coding system, to replenish stock automatically at all AA Retail Sites.

1.12 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 Fuel Re-Seller Agreements, the New 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 the relevant AA Retail Sites and the facilities located at those sites.

2.2 Each New AA Entity lodges the attached notification pursuant to section 93(1) of the *Competition and Consumer Act 2010* (“**the Act**”).

### 3. PUBLIC BENEFITS

We submit that the proposed conduct described in the attached 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 AAH 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 Retail Sites is a BP branded operation forming part of an independent network of 53 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 New 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.
- 3.4 The proposed conduct will facilitate the creation of a distinctive business platform and product range for Commission Agents at New AA Retail Sites, enabling them to better differentiate their business from their competitors’ businesses.

- 3.5 The proposed conduct will enable the Commission Agents to take advantage of a stable and reliable system of product supply.

***Benefits to Consumers***

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

**4. DETRIMENTS**

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

Date: 15 December 2015

## ANNEXURE 1 – LIST OF NEW AA ENTITIES

	Company Name	ACN
N98799	AA Eastlink Inbound Pty Ltd	157 925 810
N98800	AA Eastlink Outbound Pty Ltd	157 925 829
N98801	AA Geelong Northbound Pty Ltd	167 280 613
N98802	AA Geelong Southbound Pty Ltd	167 280 631
N98803	AA Penlink Outbound Pty Ltd	604 385 588
N98804	AA Penlink Inbound Pty Ltd	604 385 579

## ANNEXURE 2 – LIST OF CURRENT COMMISSION AGENTS

Site Location	Commission Agent	Address
EASTLINK NORTHBOUND	Brilliant Two Pty Ltd ACN 152 919 910	C/- MW Partners, Level 3, 10 Yarra Street, South Yarra, VIC 3141
EASTLINK SOUTHBOUND	Thrilos Pty Ltd ACN 090 473 975	66 Union Street Armadale, Victoria 3143
GEELONG RING ROAD NORTHBOUND	Jasmic 25 Pty Ltd ACN 124 950 296	C/- CD&G Accounting Pty Ltd, Level 2, 235 Ryrie Street, Geelong, VIC 3220
GEELONG RING ROAD SOUTHBOUND	OMM Pty Ltd ACN 148 880 237	C/- 1005 – 1007 Western Highway, Ravenhall, VIC 3023
PENINSULA LINK OUTBOUND	Davlise Pty Ltd ACN 098 867 166 as trustee for the Kaloudis Discretionary Trust	15 Mitchelton Court, Vermont South, VIC 3133
PENINSULA LINK INBOUND	ACS Corporate Pty Ltd ACN 146 265 787	3 Holden Court, Fitzroy North, Victoria, VIC 3068