

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:

N99797

Eureka Operations Pty Ltd, ACN 104 811 516 (Trading as **Coles Express**)

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

Operator of retail fuel service stations and convenience stores across Australia

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

Legal Corporate
Coles Express
800 Toorak Road
Hawthorn East, VIC, 3123

2. Notified arrangement

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

The Notice relates to the retail supply of fuel products (including LPG, diesel, unleaded and premium unleaded petrol) and the supply of motor vehicles and motor vehicle servicing.

(b) Description of the conduct or proposed conduct:

As part of the Loyalty Card scheme, Coles Express proposes to offer a 4 cents per litre discount on fuel products supplied by Coles Express nationally on the condition that the customer presents a valid Automotive Holdings Group Limited (**AHG**) Loyalty Card. AHG Loyalty Card is a card provided by AHG to certain individuals who purchase motor vehicles or motor vehicle servicing.

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)

Customers who acquire fuel from Coles Express service stations and who are entitled to an AHG Loyalty Card.

- (b) Number of those persons:

(i) At present time:
Greater than 50

(ii) Estimated within the next year:
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:

While there is an argument that section 47(6) or (7) of the Competition and Consumer Act 2010 may apply to the conduct described, it is submitted that the notified conduct will result in the following benefits:

- Motorists who have an AHG Loyalty Card will have the option to obtain a discount off their fuel at Coles Express sites.
- Where customers choose to accept the offer, they will benefit from lower prices or fuel products purchased.
- The 4 cents per litre offer will not be able to be redeemed in conjunction with supermarket shopper dockets.
- This is an offer which can be replicated by other fuel retailers, and to an extent responds to existing similar offers by other fuel retailers and loyalty scheme providers.

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

see (a) above

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):

Coles Express has not attempted to precisely define each potentially relevant market in Australia and submits it is not necessary to do so for the purposes of this notification. Generally, the conduct is related to the markets for the supply of retail petroleum products, the market for loyalty based schemes and the markets for the supply of motor vehicles and servicing.

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:

Coles Express submits that there is no public detriment arising from the notified conduct.

(b) Facts and evidence relevant to these detriments:

See section 4(a) above

7. Further information

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

Talia Metz, Legal Counsel
800 Toorak Road
Hawthorn East
VIC 3123
(03) 9829 6623

Dated 3 August 2017

Signed by/on behalf of the applicant


.....
(Signature)

Talia Metz
.....
(Full Name)

Coles Express
.....
(Organisation)

Legal Counsel
.....
(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 *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.