



Australian
Competition &
Consumer
Commission

23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

tel: (02) 6243 1111

fax: (02) 6243 1199

adjudication@accc.gov.au

www.accc.gov.au

Our ref: 62113
Contact officer: Natalie Morton
Contact phone: (02) 6243 3003

29 August 2017

Dear Sir or Madam

BP Australia Pty Ltd & Ors applications for authorisation A91580, A91581 & A91582—interested party consultation

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the applications for authorisation lodged by BP, Woolworths and BP Resellers on 28 April 2017.

Please see the ACCC's publication [Authorisation process - the basics](#) for a summary of the authorisation process and how to make a submission to the ACCC.

Background

BP plans to enter into an ongoing partnership with Woolworths in relation to convenience stores at service stations, the Woolworths Rewards loyalty program and the Woolworths shopper docket discount scheme. This partnership is related to BP's proposed acquisition of Woolworths' network of service stations - which is currently being [reviewed separately by the ACCC](#).

BP, BP resellers (independent dealers, distributors, or other site operators that re-sell fuel under the BP brand) and Woolworths (**the Applicants**) seek authorisation for conduct that preserves the availability of the Woolworths Rewards loyalty program and Woolworths shopper docket discount scheme at the Woolworths sites to be acquired by BP, and extends those offers to certain BP and BP reseller sites.

The Applicants seek authorisation to implement BP's and BP resellers' participation in the Woolworths Rewards loyalty program and Woolworths shopper docket discount scheme, including:

- arrangements relating to the fuel discounts and other benefits to be provided to consumers under the Woolworths Rewards loyalty program and Woolworths shopper docket discount scheme;
- BP and BP resellers supplying benefits to consumers on the condition that they acquire loyalty program services from Woolworths, and/or goods or services from Woolworths Group retail outlets or other nominated retailers; and
- a requirement that BP resellers that participate in the Woolworths Rewards loyalty program and/or Woolworths shopper docket scheme do so on the condition that they do not participate in a competing loyalty program or shopper docket discount scheme (as relevant).

In the event that BP does not take possession of some Woolworths sites immediately, the Applicants have sought authorisation for arrangements between BP and Woolworths in relation to fuel discounts and other benefits to be provided to consumers, exclusivity obligations, and fuel price competitiveness requirements that may raise potential cartel conduct and exclusionary provision concerns.

Draft determination

In respect of the aspects of the Proposed Conduct relating to 'transitional arrangements' between BP and Woolworths, the ACCC proposes to grant conditional authorisation for a period of one year. The ACCC otherwise proposes to grant conditional authorisation to the Applicants in respect of the Proposed Conduct for a period of 10 years.

The ACCC proposes to grant authorisation subject to a condition that Woolworths and BP offer and comply with a section 87B undertaking acceptable to the ACCC which caps Woolworths' shopper docket and Woolworths Rewards loyalty program fuel discount offers to 4 cents per litre in aggregate for a single fuel purchase.

Next steps

Once the ACCC issues a draft determination, the Applicants or any interested party may make a written submission and/or request that the ACCC convene a 'pre-decision conference'.

If you wish to make a submission in response to the ACCC's draft determination, please lodge your submission by **18 September 2017**. Submissions should be emailed to adjudication@acc.gov.au with the subject 'A91580, A91581 & A91582 – BP Australia Pty Ltd & Ors – submission'.

A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Conferences are conducted informally and while legal or professional advisers are able to attend they are not entitled to participate in the discussion.

If you wish the ACCC to hold a pre-decision conference in relation to the draft determination you must notify the ACCC in writing by **12 September 2017**.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-decision conference be called, and will then release a final determination in relation to these applications.

Submissions will be placed on the ACCC's public register subject to any request for exclusion. Please see the ACCC's publication [Guidelines for excluding information from the public register](#).

Timetable

The ACCC will continue to progress its assessment of the application in a timely manner. An updated indicative timetable is set out below for your information.

Indicative date	Stage in assessment process
28 April 2017	Lodgement of application and supporting submission.
12 May 2017	Public consultation process begins.
1 June 2017	Closing date for submissions from interested parties.
28 July 2017	Applicant responds to issues raised in the public consultation process.
29 August 2017	Draft determination.
12 September 2017	Deadline to call pre-decision conference ¹

¹ Note that in the event a pre decision conference is called, the final determination will be delayed to account for the time between interested parties calling a conference and the date the conference is held.

18 September 2017	Closing date for submissions in relation to the draft determination
25 September	Applicants response to submissions
October 2017	Final determination.

Please advise if you do not wish to make a submission at this time, but would like to be informed of the progress of the applications at the final determination stage.

You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding the applications.

Merger review

The related, proposed acquisition by BP of Woolworths retail petrol network does not form part of the ACCC's consideration of these applications for authorisation, and this draft decision does not in any way indicate the ACCC's view of the proposed acquisition.

For more information about the merger review process please see the [Public Register](#).

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 Liz Batten on (02) 6243 1359 or Natalie Morton on (02) 6243 3003 or by email to adjudication@accc.gov.au.

Yours sincerely



David Hatfield
Director
Adjudication Branch