

Form A

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

A91580

BP Australia Pty Ltd (ABN 53 004 085 616) (BP) on behalf of itself, resellers of fuel under the BP brand, and Woolworths Limited (ABN 88 000 014 675) (Woolworths) (collectively, the Applicants).

- (b) Description of business carried on by applicant:
(Refer to direction 3)

BP refines, imports and supplies (on a wholesale and retail basis) petrol, diesel and automotive liquid petroleum gas (referred to collectively as fuel or fuels). BP's business includes:

- *the retail supply of fuel through a network of approximately 347 BP service stations (**BP sites**) that are either operated by BP, or operated by a commission agent for BP in respect of petrol and diesel sales; and*
- *the wholesale supply of fuel and lubricants to approximately 1,053 service stations operated by independent dealers, distributors, or other site operators (**BP Resellers**) who re-sell fuel under the BP brand.*

*Woolworths' primary business is in food, liquor and general merchandise retailing. Woolworths also operates a retail fuel business comprising a network of 528 service stations (**Woolworths sites**).*

- (c) Address in Australia for service of documents on the applicant:

*Mark McCowan
Corrs Chambers Westgarth
Level 22, 567 Collins Street
Melbourne VIC 3000
Email: mark.mccowan@corrs.com.au*

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

(Refer to direction 4)

*Woolworths and BP have executed a Put and Call Option Deed under which it is proposed BP will acquire all of the Woolworths sites (the **proposed acquisition**), and enter into an ongoing retail convenience offering, shopper docket discount and customer loyalty partnership (the **Commercial Alliance**).*

*As integral elements of the Commercial Alliance, the Applicants will (pursuant to the terms of a Redemption Agreement and related agreements), participate in Woolworths' shopper docket discount scheme (the **Shopper Docket Discount Scheme** or **Scheme**), and also (pursuant to the terms of a Loyalty Scheme Participation Agreement and related agreements), participate in the Woolworths Rewards loyalty program (the **Woolworths Rewards Loyalty Program** or **Program**).*

BP Resellers that participate in the Scheme will be required to make the Shopper Docket Discount Scheme available to the exclusion of competing fuel discount offers. BP Resellers that participate in the Program will be required not to participate in any competing third party loyalty program. Authorisation is sought for various potential contraventions of sections 4D/45 of the Competition and Consumer Act 2010 (Cth) arising in that context.

Refer to sections 7 and 8 of the supporting submission for detail regarding the conduct for which authorisation is sought.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:
(Refer to direction 4)

Refer to the supporting submission.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Refer to the supporting submission.

- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

10 years. Refer to the supporting submission for the grounds supporting that period.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Authorisation is sought on behalf of BP, current and future BP Resellers and Woolworths. Refer to the supporting submission.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Refer to 3(a).

4. Public benefit claims

- (a) Arguments in support of application for authorisation:
(Refer to direction 6)

The proposed conduct as a whole will result in significant public benefits, including the following.

- *(Increased aggregate fuel discounts under the Shopper Docket Discount Scheme)* Consumers will obtain greater aggregate fuel discounts under the Shopper Docket Discount Scheme as a result of a net increase in the size and geographic scope of the network of service stations participating in the Scheme.
- *(Increased aggregate fuel discounts, and opportunities to earn and redeem points, under the Woolworths Rewards Loyalty Program)* Consumers will obtain greater aggregate fuel discounts, and be presented with greater opportunities to earn and redeem points, under the Woolworths Rewards Loyalty Program as a result of a net increase in the size and geographic scope of the network of service stations participating in the Program, and the introduction of automatic point redemption at former Woolworths sites.
- *(Further enhancements to competition in retail fuel markets)* The proposed conduct will improve the competitiveness of BP-branded sites and BP expects that other petrol retailers will competitively respond, in terms of both price- and service-based competition.
- *(More consistent consumer offerings)* Consumers will be presented with a more consistent shopper docket and loyalty offering across BP-branded sites, which lowers consumer search costs and reduces the prospect of consumer confusion. BP-branded sites (including BP Reseller sites) will feature clear signage to allow consumers to easily identify BP-branded sites that are participating in the Shopper Docket Discount Scheme and/or Woolworths Rewards Loyalty Program. Exclusivity assists to:
 - ensure that the Applicants, particularly BP and BP Resellers, are consistently committed to the promotion of the Shopper Docket Discount Scheme and the Woolworths Rewards Loyalty Program; and
 - avoid consumer confusion that may arise from BP-branded service stations offering benefits in relation to various competing shopper docket discount schemes and/or loyalty programs.
- *(Transaction cost savings)* BP Resellers will be able to improve the competitiveness of their offers by opting in to the Shopper Docket Discount Scheme and/or Woolworths Rewards Loyalty Program, without the need for individually negotiated shopper docket and loyalty arrangements. In the context of highly competitive retail fuel markets, these transaction cost savings can be expected to be passed on to consumers.

Refer to the supporting submission for further information.

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

Refer to the supporting submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) 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 7)

Refer to the supporting submission.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

(Refer to direction 8)

The proposed conduct will have no discernible public detriments.

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

Refer to the supporting submission.

7. Contracts, arrangements or understandings in similar terms

- (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

- (b) Is this application to be so expressed?

Yes.

- (c) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

Refer to the supporting submission.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

(Refer to direction 10)

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Resellers of fuel under the BP brand.

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No, not as the proposed conduct is presently conceived.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

9. Further information

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

Mark McCowan

Corrs Chambers Westgarth

Level 22, 567 Collins Street

Melbourne VIC 3000

Email: mark.mccowan@corrs.com.au

Dated: 10 May 2017

Signed by/on behalf of the applicant

PP

.....
(Signature)

Mark McCowan
(Full Name)

Corrs Chambers Westgarth
(Organisation)

Partner
(Position in organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing their application for authorisation.

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. Where the application is made 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 application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.

8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of Applicant:

(Refer to direction 2)

A91581

BP Australia Pty Ltd (ABN 53 004 085 616) (BP) on behalf of itself, resellers of fuel under the BP brand, and Woolworths Limited (ABN 88 000 014 675) (Woolworths) (collectively, the Applicants).

(b) Short description of business carried on by applicant:

(Refer to direction 3)

BP refines, imports and supplies (on a wholesale and retail basis) petrol, diesel and automotive liquid petroleum gas (referred to collectively as fuel or fuels). BP's business includes:

- *the retail supply of fuel through a network of approximately 347 BP service stations (**BP sites**) that are either operated by BP, or operated by a commission agent for BP in respect of petrol and diesel sales; and*
- *the wholesale supply of fuel and lubricants to approximately 1,053 service stations operated by independent dealers, distributors or other site operators (**BP Resellers**) who re-sell fuel under the BP brand.*

*Woolworths' primary business is in food, liquor and general merchandise retailing. Woolworths also operates a retail fuel business comprising a network of 528 service stations (**Woolworths sites**).*

- (c) Address in Australia for service of documents on the applicant:

*Mark McCowan
Corrs Chambers Westgarth
Level 22, 567 Collins Street
Melbourne VIC 3000
Email: mark.mccowan@corrs.com.au*

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

(Refer to direction 4)

*Woolworths and BP have executed a Put and Call Option Deed under which it is proposed BP will acquire all of the Woolworths sites (the **proposed acquisition**), and enter into an ongoing retail convenience offering, shopper docket discount and customer loyalty partnership (the **Commercial Alliance**).*

*As integral elements of the Commercial Alliance, the Applicants will (pursuant to the terms of a Redemption Agreement and related agreements), participate in Woolworths' shopper docket discount scheme (the **Shopper Docket Discount Scheme or Scheme**), and also (pursuant to the terms of a Loyalty Scheme Participation Agreement and related agreements), participate in the Woolworths Rewards loyalty program (the **Woolworths Rewards Loyalty Program or Program**).*

Authorisation is sought to implement BP's and BP Resellers' participation in the Shopper Docket Discount Scheme and the Woolworths Rewards Loyalty Program. Authorisation is sought for various potential contraventions of

sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK or 45 of the Competition and Consumer Act 2010 (Cth) arising in that context.

Refer to sections 7 and 8 of the supporting submission for detail regarding the conduct for which authorisation is sought.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:

(Refer to direction 4)

Refer to the supporting submission.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Refer to the supporting submission.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

10 years. Refer to the supporting submission for the grounds supporting that period.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Authorisation is sought on behalf of BP, current and future BP Resellers and Woolworths. Refer to the supporting submission.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

(Refer to direction 5)

Refer to 3(a).

4. Public benefit claims

- (a) Arguments in support of authorisation:

(Refer to direction 6)

The proposed conduct as a whole will result in significant public benefits, including the following.

- *(Increased aggregate fuel discounts under the Shopper Docket Discount Scheme) Consumers will obtain greater aggregate fuel discounts under the Shopper Docket Discount Scheme as a result of a*

net increase in the size and geographic scope of the network of service stations participating in the Scheme.

- *(Increased aggregate fuel discounts, and opportunities to earn and redeem points, under the Woolworths Rewards Loyalty Program)* Consumers will obtain greater aggregate fuel discounts, and be presented with greater opportunities to earn and redeem points, under the Woolworths Rewards Loyalty Program as a result of a net increase in the size and geographic scope of the network of service stations participating in the Program, and the introduction of automatic point redemption at former Woolworths sites.
- *(Further enhancements to competition in retail fuel markets)* The proposed conduct will improve the competitiveness of BP-branded sites and BP expects that other petrol retailers will competitively respond, in terms of both price- and service-based competition.
- *(More consistent consumer offerings)* Consumers will be presented with a more consistent shopper docket and loyalty offering across BP-branded sites, which lowers consumer search costs and reduces the prospect of consumer confusion. BP-branded sites (including BP Reseller sites) will feature clear signage to allow consumers to easily identify BP-branded sites that are participating in the Shopper Docket Discount Scheme and/or Woolworths Rewards Loyalty Program. Exclusivity assists to:
 - *ensure that the Applicants, particularly BP and BP Resellers, are consistently committed to the promotion of the Shopper Docket Discount Scheme and the Woolworths Rewards Loyalty Program; and*
 - *avoid consumer confusion that may arise from BP-branded service stations offering benefits in relation to various competing shopper docket discount schemes and/or loyalty programs.*
- *(Transaction cost savings)* BP Resellers will be able to improve the competitiveness of their offers by opting in to the Shopper Docket Discount Scheme and/or Woolworths Rewards Loyalty Program, without the need for individually negotiated shopper docket and loyalty arrangements. In the context of highly competitive retail fuel markets, these transaction cost savings can be expected to be passed on to consumers.

Refer to the supporting submission for further information.

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

Refer to the supporting submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2(c) 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 7)

Refer to the supporting submission.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

(Refer to direction 8)

The proposed conduct will have no discernible public detriments.

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

Refer to the supporting submission.

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

Yes.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

Refer to the supporting submission.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Resellers of fuel under the BP brand.

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No, not as the proposed conduct is presently conceived.

- (c) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (d) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

*Mark McCowan
Corrs Chambers Westgarth
Level 22, 567 Collins Street
Melbourne VIC 3000
Email: mark.mccowan@corrs.com.au*

Dated: 10 May 2017

Signed by/on behalf of the applicant


.....

(Signature)

Mark McCowan
(Full Name)

Corrs Chambers Westgarth
(Organisation)

Partner
(Position in Organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

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. Where the application is made 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 application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
 8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

Form E

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 88 (8)

EXCLUSIVE DEALING: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (8) of the *Competition and Consumer Act 2010* for an authorisation under that subsection to engage in conduct that constitutes or may constitute the practice of exclusive dealing.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of applicant:
(Refer to direction 2)

A91582

BP Australia Pty Ltd (ABN 53 004 085 616) (BP) on behalf of itself, resellers of fuel under the BP brand, and Woolworths Limited (ABN 88 000 014 675) (Woolworths) (collectively, the Applicants).

- (b) Short description of business carried on by applicant:
(Refer to direction 3)

BP refines, imports and supplies (on a wholesale and retail basis) petrol, diesel and automotive liquid petroleum gas (referred to collectively as fuel or fuels). BP's business includes:

- the retail supply of fuel through a network of approximately 347 BP service stations (BP sites) that are either operated by BP, or operated by a commission agent for BP in respect of petrol and diesel sales; and*
- the wholesale supply of fuel and lubricants to approximately 1,053 service stations operated by independent dealers, distributors or other site operators (BP Resellers) who re-sell fuel under the BP brand.*

Woolworths' primary business is in food, liquor and general merchandise retailing. Woolworths also operates a retail fuel business comprising a network of 528 service stations (Woolworths sites).

- (c) Address in Australia for service of documents on the applicant:

*Mark McCowan
Corrs Chambers Westgarth
Level 22, 567 Collins Street
Melbourne VIC 3000
Email: mark.mccowan@corrs.com.au*

2. Contract, arrangement or understanding

- (a) Description of the conduct that would or may constitute the practice of exclusive dealing:
(Refer to direction 4)

*Woolworths and BP have executed a Put and Call Option Deed under which it is proposed BP will acquire all of the Woolworths sites (the **proposed acquisition**), and enter into an ongoing retail convenience offering, shopper docket discount and customer loyalty partnership (the **Commercial Alliance**).*

*As integral elements of the Commercial Alliance, the Applicants will (pursuant to the terms of a Redemption Agreement and related agreements), begin to participate in Woolworths' shopper docket discount scheme (the **Shopper Docket Discount Scheme or Scheme**), and also (pursuant to the terms of a Loyalty Scheme Participation Agreement and related agreements), participate in the Woolworths Rewards loyalty program (the **Woolworths Rewards Loyalty Program or Program**).*

Authorisation is sought for various potential contraventions of section 47 of the Competition and Consumer Act 2010 (Cth) in the context of the above arrangements.

Refer to sections 7 and 8 of the supporting submission for detail regarding the conduct for which authorisation is sought.

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

Refer to the supporting submission.

- (c) The term for which authorisation of the conduct is being sought and grounds for supporting this period of authorisation:

Refer to the supporting submission.

3. Parties to the proposed arrangement

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

Authorisation is sought on behalf of BP, current and future BP Resellers and Woolworths. Refer to the supporting submission.

- (b) Number of those persons:

- (i) At present time:

Substantially in excess of 50.

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

Substantially in excess of 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 authorisation:
(Refer to direction 6)

The proposed conduct as a whole will result in significant public benefits, including the following.

- *(Increased aggregate fuel discounts under the Shopper Docket Discount Scheme) Consumers will obtain greater aggregate fuel discounts under the Shopper Docket Discount Scheme as a result of a net increase in the size and geographic scope of the network of service stations participating in the Scheme.*
- *(Increased aggregate fuel discounts, and opportunities to earn and redeem points, under the Woolworths Rewards Loyalty Program) Consumers will obtain greater aggregate fuel discounts, and be presented with greater opportunities to earn and redeem points, under the Woolworths Rewards Loyalty Program as a result of a net increase in the size and geographic scope of the network of service stations participating in the Program, and the*

introduction of automatic point redemption at former Woolworths service stations.

- *(Further enhancements to competition in retail fuel markets) The proposed conduct will improve the competitiveness of BP-branded sites and BP expects that other petrol retailers will competitively respond, in terms of both price- and service-based competition.*
- *(More consistent consumer offerings) Consumers will be presented with a more consistent shopper docket and loyalty offering across BP-branded sites, which lowers consumer search costs and reduces the prospect of consumer confusion. BP-branded sites (including BP Reseller sites) will feature clear signage to allow consumers to easily identify BP-branded sites that are participating in the Shopper Docket Discount Scheme and/or Woolworths Rewards Loyalty Program. Exclusivity assists to:*
 - *ensure that the Applicants, particularly BP and BP Resellers, are consistently committed to the promotion of the Shopper Docket Discount Scheme and the Woolworths Rewards Loyalty Program; and*
 - *avoid consumer confusion that may arise from BP-branded service stations offering benefits in relation to various competing shopper docket discount schemes and/or loyalty programs.*
- *(Transaction cost savings) BP Resellers will be able to improve the competitiveness of their offers by opting in to the Shopper Docket Discount Scheme and/or Woolworths Rewards Loyalty Program, without the need for individually negotiated shopper docket and loyalty arrangements. In the context of highly competitive retail fuel markets, these transaction cost savings can be expected to be passed on to consumers.*

Refer to the supporting submission for further information.

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

Refer to the supporting submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (b) 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 7)

Refer to the supporting submission.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:
(Refer to direction 8)

The proposed conduct will have no discernible public detriments.

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

Refer to the supporting submission.

7. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

8. Further Information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Mark McCowan

Corrs Chambers Westgarth

Level 22, 567 Collins Street

Melbourne VIC 3000

Email: mark.mccowan@corrs.com.au

Dated: 10 May 2017

Signed by/on behalf of the applicant

PP



.....
(Signature)

Mark McCowan
(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 application for authorisation.

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. Where the application is made 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 application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business in the course of which the conduct is engaged in.
4. Provide details of the conduct (whether proposed or actual) which may constitute the practice of exclusive dealing in respect of which this authorisation is sought.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. 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.
 7. Provide details of the market(s) likely to be effected by the 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 authorisation.
 8. Provide details of the detriments to the public which may result from the conduct including quantification of those detriments where possible.

PUBLIC VERSION

Application for authorisation to collectively participate in arrangements under the BP / Woolworths Commercial Alliance – supporting submission

BP Australia Pty Ltd on behalf of itself,
BP Resellers,
and Woolworths Limited

Contents

1	Executive summary	4
2	Confidentiality	6
3	Background to parties, proposed acquisition and Commercial Alliance	6
3.1	BP	6
3.2	BP Resellers	7
3.3	Woolworths	8
3.4	Proposed acquisition of Woolworths sites by BP and Commercial Alliance	11
4	Industry background – fuel retailing	13
4.1	Broader supply chain	13
4.2	Competing retail fuel brands	14
5	Industry background – shopper docket discount schemes	16
5.1	Basic features of a shopper docket discount scheme	16
5.2	Competing shopper docket discount schemes	17
6	Industry background – loyalty programs	18
6.1	Basic features of a loyalty program	18
6.2	Competing loyalty programs	19
6.3	Existing major fuel brand / loyalty program partnerships	22
7	Proposed extension of Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program	23
7.1	Extension of Shopper Docket Discount Scheme under Redemption Agreement	23
7.2	Extension of Woolworths Rewards Loyalty Program under Loyalty Scheme Participation Agreement	24
8	Authorisation sought	28
8.1	Conduct relating to BP and BP Reseller participation in the Shopper Docket Discount Scheme	28
8.2	Conduct relating to BP and BP Reseller participation in the Woolworths Rewards Loyalty Program	29
8.3	Conduct involving BP and Woolworths	31
9	Period for which authorisation is sought	31
10	Relevant areas of competition	32
11	Counterfactual	33
12	Public benefits	33
12.1	Overview	33
12.2	Approach to assessing benefits across elements of the proposed conduct	34
12.3	Increased aggregate fuel discounts under the Shopper Docket Discount Scheme	34

PUBLIC VERSION

12.4	Increased aggregate fuel discounts, and opportunities to earn and redeem points, under the Woolworths Rewards Loyalty Program	35
12.5	Further enhancements to competition in retail fuel markets	36
12.6	More consistent consumer offerings	37
12.7	Transaction cost savings	37
12.8	Public benefits relating to mandatory BP Reseller participation	38
13	Public detriments	38
13.1	Retail fuel markets	38
13.2	Loyalty services markets	39
14	Conclusion	40

1 Executive summary

On 24 December 2016, BP Australia Pty Ltd (**BP**) and Woolworths Limited (**Woolworths**) executed a Put and Call Option Deed under which it is proposed that BP will acquire Woolworths' network of retail service stations (**Woolworths sites**) (the **proposed acquisition**) and enter into an ongoing retail convenience, shopper docket discount and customer loyalty partnership with Woolworths (the **Commercial Alliance**).

As integral elements of the Commercial Alliance, BP and certain third-party resellers of BP fuel (**BP Resellers**) will participate in Woolworths' shopper docket discount scheme (the **Shopper Docket Discount Scheme** or **Scheme**) and the Woolworths Rewards loyalty program (the **Woolworths Rewards Loyalty Program** or **Program**).

In that context, authorisation is sought for certain aspects of the Commercial Alliance, including in particular the following:

- in relation to the Shopper Docket Discount Scheme, arrangements between BP and BP Resellers concerning the fuel discounts to be allowed to consumers at BP Reseller sites under the Scheme, and any technical third-line forcing conduct in respect of the supply of goods or services to consumers or BP Resellers; and
- in relation to the Woolworths Rewards Loyalty Program, arrangements between BP and BP Resellers concerning the fuel discounts and other benefits to be allowed to consumers at BP Reseller sites under the Program, funding arrangements between the parties in respect of loyalty program "points" earned or redeemed by members of the Program and any technical third-line forcing conduct in respect of the supply of goods or services to consumers or BP Resellers.

Out of an abundance of caution only, authorisation is also sought for certain conduct involving BP and Woolworths relating to benefits to be supplied to consumers under the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program, and certain arrangements regarding the ongoing competitiveness of pricing at former Woolworths and BP sites.

The proposed conduct preserves the availability of the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program at former Woolworths sites and extends those offers to certain BP and BP Reseller sites. As a result, the proposed conduct has a range of public benefits, including increased aggregate fuel discounts under both the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program, increased consumer opportunities to earn and redeem points under the Woolworths Rewards Loyalty Program, enhancements to competition in retail fuel markets and transaction cost savings for BP Resellers.

The proposed conduct will have no discernible public detriments. In relation to retail fuel markets, a low proportion of the overall number of retail fuel sites in Australia will be involved in the proposed conduct, there will only be limited and

pro-competitive co-ordination of the level of retail fuel discounts (and not pre-discount prices) and participation will be voluntary for consumers (and either voluntary or effectively voluntary for BP Resellers given the intense competition for wholesale supply to independently operated retail fuel sites). In relation to loyalty services markets, participation will be voluntary or effectively voluntary for consumers and BP Resellers.

Authorisation in respect of the proposed conduct as a whole is sought for 10 years.

This submission is structured as follows.

- Section 3 provides background information concerning BP, BP Resellers and Woolworths. In section 3.1, BP's downstream businesses in Australia, including its retail fuels business, is described. Section 3.2 describes the businesses of BP Resellers and their commercial relationships with BP. Section 3.3 describes Woolworths' business, including its retail fuels business, Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program. Finally, section 3.4 outlines the proposed acquisition and Commercial Alliance between BP and Woolworths, including the roll-out of the "*Metro@BP*" concept, and extensions of the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program to BP and BP Reseller sites.
- Section 4 provides background information concerning retail fuel markets and describes various fuel retailers with which BP, BP Resellers and Woolworths compete.
- Sections 5 and 6 provide background information concerning the nature of shopper docket discount schemes and loyalty programs respectively, and the various competing offers currently available to Australian consumers.
- Section 7 provides detailed information relating to the arrangements between BP and Woolworths to extend the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program to BP and BP Reseller sites. These have been negotiated as integral aspects of the proposed acquisition and Commercial Alliance. Section 7 also sets out the arrangements that BP proposes to seek to negotiate with BP Resellers to give effect to the Commercial Alliance insofar as it is proposed to involve BP Resellers.
- Section 8 sets out the conduct arising from the arrangements described in section 7 for which authorisation is sought.
- Section 9 provides the rationale for seeking authorisation for a ten-year period.
- Sections 10 and 11 set out BP's views on the relevant areas of competition and the appropriate counterfactual respectively.
- Section 12 describes the significant public benefits that will result from the proposed conduct.

- Section 13 sets out the reasons why the proposed conduct will have no discernible public detriments.

2 Confidentiality

Portions of this document that have been highlighted in red and are preceded by the word “**CONFIDENTIAL:**” contain confidential and commercially sensitive information. Subject to the below, this information must not be disclosed to any third party without the express written consent of BP and Woolworths. BP and Woolworths:

- acknowledge that there is no restriction on the internal use, including future use, that the ACCC may make of confidential information consistent with the ACCC’s statutory functions;
- consent to the disclosure of confidential information to the ACCC’s external advisors and consultants on the condition that each such advisor or consultant will be informed of the obligation to treat the information as confidential; and
- acknowledge that the ACCC may disclose confidential information to third parties (in addition to its external advisors and consultants) if compelled by law or in accordance with section 155AAA of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

3 Background to parties, proposed acquisition and Commercial Alliance

3.1 BP

As the ACCC is aware, BP’s downstream business in Australia includes:

- the refining of petrol, diesel and automotive liquid petroleum gas (**LPG**) (referred to in this submission collectively as **fuel**) at its Kwinana refinery in Perth, Western Australia;
- the operation of fuel terminals in major seaboard cities via a joint venture with UGL;
- the retail supply of fuel and convenience products through BP’s own network of 316 BP-branded petrol stations, referred to within BP as “company-owned-and-company-operated” (**COCO**) sites;
- the retail supply of fuel through 31 BP-branded sites that are owned by BP or third parties, and which are operated by third parties as commission agent for BP either in respect of both petrol and diesel sales or diesel sales alone (**commission agent**) sites;
- the wholesale supply of fuel and lubricants to operators of independently owned and operated BP-branded petrol retail sites,

referred to within BP as “dealer-owned-and-dealer operated” (**dealer**) sites, as well as other independent retailers;

- the wholesale supply of fuel to a number of independent distributors who sell that fuel directly to retail customers through their own retail site networks and/or resell to branded and unbranded independent sites;¹
- commercial bulk fuel operations involving the direct supply of bulk fuels (usually diesel), lubricants and ancillary services to commercial customers in the mining, agriculture, aviation, transport, marine and other industries;
- the operation of the BP Plus fuel card, which allows commercial customers to purchase fuel and lubricants on account at any BP-branded retail outlet and to centrally manage their fuel purchasing; and
- the supply of a range of motor oils, greases and other lubricants under both the BP and Castrol brands.

BP controls the retail price of fuel at BP COCO and commission agency sites (collectively referred to in this submission as **BP sites**). In doing so, BP competes with BP Resellers (which are BP-branded dealers, distributors and operators of distributor-supplied sites) in the retail supply of fuel. Collectively, BP sites and BP Reseller sites are referred to in this submission as **BP-branded sites**.

As part of its retail fuel offer, BP currently participates in the Velocity Frequent Flyer loyalty program (**Velocity Program**), under which Velocity Program members can earn and redeem loyalty program “points” at BP sites. The Velocity Program is described in further detail in section 6.2(e) below.

3.2 BP Resellers

Of the approximately 1,400 BP-branded sites in Australia, BP sites account for only 347. The remaining approximately 1,053 BP-branded sites are operated by BP Resellers. BP Resellers conduct their businesses independently of BP and, in particular, retain absolute discretion over their retail fuel pricing.

BP’s commercial relationships with BP Resellers are governed by “Privately Owned Sites Agreements” or similar agreements (referred to in this submission simply as **POSAs**). POSAs are the agreements under which BP agrees to supply BP Resellers with fuel and other goods and services, and licence BP Resellers to operate their sites under the BP brand.

¹ Distributor sites also include sites operated by the Ocwen Energy Pty Ltd, a joint venture between BP and Chippen Holdings Pty Ltd (a wholesale and retail fuel supplier trading as Lowes, [REDACTED]). The Ocwen JV owns and operates 39 BP-branded retail fuel sites in regional NSW, Victoria and Queensland.

POSAs provide for a range of rights and obligations, including the following.

- **(BP Plus fuel card)** BP Resellers are required to accept the BP Plus fuel card and must install, or allow BP to install, an EFTPOS terminal for the purpose of processing credit and debit card transactions, including transactions via the BP Plus fuel card.
- **(Velocity Program)** BP Resellers are able to participate in the Velocity Program, and offer Velocity Program members the opportunity to earn and redeem Velocity Program points at BP Reseller sites. Arrangements relating to BP's and BP Resellers' collective participation in the Velocity Program are the subject of ACCC authorisation numbers A91485-A91487 dated 18 August 2015.
- **(BP buying group)** BP Resellers are able to access discounts and promotional pricing on convenience store products through a BP co-ordinated buying group.
- **(Marketing support)** BP provides some additional marketing support to BP Resellers through joint advertising, sales promotions and marketing campaigns conducted on behalf of BP and BP Resellers. BP Resellers generally have the option of participating in these initiatives.

On expiry of a POSA, BP Resellers have the option of entering into a new or re-negotiated POSA, or concluding equivalent arrangements with an alternative wholesale competitor of BP (such as Caltex, Viva Energy, 7-Eleven, Puma or United).

3.3 Woolworths

(a) Food, liquor and general merchandise businesses

Woolworths' primary business is in food, liquor and general merchandise retailing. In that respect, Woolworths' businesses include the following.

- **(Woolworths Supermarkets)** Woolworths operates traditional "bricks and mortar" Woolworths-branded supermarkets and smaller-format grocery stores branded *Woolworths Metro*. Woolworths also operates an online grocery retailing business.
- **(Endeavour Drinks Group)** Woolworths' Endeavour Drinks Group (EDG) operates the *Dan Murphy's* and *BWS*-branded liquor store chains, as well as the *Cellarmasters*, *Langtons* and *winemarket.com.au* online liquor businesses.
- **(Big W)** Woolworths operates a chain of *Big W* discount department stores, which sell a range of general merchandise from both bricks and mortar stores and an online store.
- **(ALH Group)** Woolworths participates in a hotel and pub joint venture with the Mathieson Family (the **ALH Group**). EDG manages liquor product ranging and merchandising on behalf of the ALH Group.

(b) Retail fuel business

Woolworths operates a retail fuel business currently comprising 528 sites throughout Australia in an alliance with Caltex – both as a wholesale fuel customer of Caltex from 2003, and as an alliance partner with Caltex in the redemption of shopper docket fuel discounts. However, as a result of the proposed acquisition of Woolworths sites by BP, Woolworths will exit fuel retailing in Australia.

(c) Woolworths' Shopper Docket Discount Scheme

(i) Overview

Since 1996, the Shopper Docket Discount Scheme has offered discounts on fuel purchases at Woolworths sites for customers who make qualifying purchases at Woolworths supermarkets. Discounts under the Shopper Docket Discount Scheme have also been available at certain Caltex sites participating in the Shopper Docket Discount Scheme (**Caltex co-branded sites**) since 2004, of which there are currently [REDACTED]

Under the Shopper Docket Discount Scheme, consumers who spend \$30 or more on qualifying goods or services at a Woolworths supermarket are entitled to a discount of 4 cents per litre (**cpl**) off a fuel purchase within 28 days. Supermarket shopper docket discounts can be recorded electronically by the customer presenting a Woolworths Rewards card, or printed on the paper receipt provided to consumers when making a qualifying purchase. Customers can then redeem the fuel discount by presenting their Woolworths Rewards card, or their paper receipt, at a Woolworths fuel site or participating Caltex co-branded site. Each shopper docket can be redeemed once, for a maximum purchase of up to 150 litres of fuel.

(ii) Woolworths Undertaking in respect of Shopper Docket Discount Scheme

In December 2013, the ACCC accepted separate statutory undertakings from Woolworths (the **Woolworths Undertaking**) and various entities owned by Wesfarmers Limited (collectively referred to as **Coles**) respectively.

The Woolworths Undertaking generally prevents Woolworths from making a fuel discount offer or allowing a fuel discount where:

- the discount is funded, in whole or in part, by any division or subsidiary of Woolworths other than its "Petrol Division"; or
- the discount is greater than 4cpl and contingent upon the purchase of goods or services other than from a petrol station operated by Woolworths' Petrol Division.

BP understands that Woolworths will shortly propose variations to the Woolworths Undertaking so that from completion of the proposed

acquisition the Woolworths Undertaking will continue to cap discounts contingent on non-petrol station sales at 4cpl.

(d) Woolworths Rewards Loyalty Program

Woolworths also operates the Woolworths Rewards Loyalty Program. The Woolworths Rewards Loyalty Program allows members to earn points by making qualifying purchases at Woolworths supermarkets, BWS stores, Woolworths fuel sites and via the Woolworths online shopping platform, and then redeem those points in exchange for various benefits. The Woolworths Rewards Loyalty Program does not currently operate in Tasmania.

The key elements of the current Woolworths Rewards Loyalty Program offer are as follows.

- **(Earning points)** Members earn at least 1 point for each \$1 spent at participating Woolworths group retail outlets (including Woolworths fuel sites). Points are generally earned on all purchases (exceptions include tobacco, gift cards and cash withdrawals).
- **(Earning bonus points)** Members can earn bonus points on goods and/or services acquired from Woolworths group retail outlets during promotions.
- **(Redeeming points)** Members are entitled to discounts on purchases at Woolworths group retail outlets (currently not including Woolworths or Caltex co-branded fuel sites) through the automatic redemption of points at a rate of 2,000 points per \$10 discount. Alternatively, members may choose to accumulate points for redemption on a date prior to Christmas that is nominated by Woolworths (known as the "Save for Christmas" option).
- **(Conversion to Qantas Frequent Flyer Program points)** Members may also accumulate points for conversion to points in the Qantas Frequent Flyer loyalty program (**QFF Program**). This is available to members of the Woolworths Rewards Loyalty Program who are also QFF Program members.
- **(Connection with Shopper Docket Discount Scheme)** As noted above, members may use their Woolworths Rewards card to record their entitlement to a fuel discount under the Shopper Docket Discount Scheme, and may also share those discounts with other Woolworths Rewards members with linked accounts.
- **(Exclusive offers)** Members are also granted access to exclusive, members-only offers, such as additional discounts on shopping during for limited periods, or promotional prices on particular products.

Membership of the Woolworths Rewards Loyalty Program is free for all consumers (in particular, there are no joining or periodic membership fees).

3.4 Proposed acquisition of Woolworths sites by BP and Commercial Alliance

(a) Proposed acquisition

The Put and Call Option Deed grants each party the right to require the other party to enter into a Business Sale Agreement (**BSA**) setting out the agreed terms and conditions of the proposed acquisition. Broadly, the BSA provides for the acquisition of leasehold or sub-leasehold interests in the Woolworths sites, and related assets of Woolworths' retail fuel business. Copies of the Put and Call Option Deed and the BSA are set out in **Confidential Annexures A** and **B** respectively.

The BSA contemplates that BP may not be able to take possession of a small number of Woolworths sites immediately upon completion of the proposed acquisition.

[REDACTED]

BP considers that, as a result of [REDACTED] BP and Woolworths will no longer be competitive with one another in relevant retail fuel markets on and from completion of the BSA. However, it could conceivably be argued (incorrectly, in BP's view) that during the transitory period before the relevant site(s) are transferred to BP, BP and Woolworths will be competitive with one another. Accordingly, out of an abundance of caution only, authorisation is sought for certain conduct involving BP and Woolworths (see section 8.3 below).

Completion of the BSA is subject to the following conditions precedent, among others.

- **(ACCC clearance)** ACCC informal clearance of the proposed acquisition (alternatively, a merger authorisation from the Australian Competition Tribunal or a Federal Court decision permitting the proposed acquisition to proceed) – an application for informal clearance in relation to the proposed acquisition was lodged separately with the ACCC on 10 March 2017.
- **(ACCC authorisation)** ACCC authorisation of various aspects of the Commercial Alliance that may otherwise involve technical contraventions of the CCA – this application seeks authorisation for those aspects.

On completion under the BSA, BP and Woolworths will enter into various commercial agreements to implement the Commercial Alliance, including a Commercial Alliance Agreement, a Convenience Pilot Participation Agreement, a Loyalty Scheme Participation Agreement and a Redemption Agreement. Copies of these documents are set out in **Confidential Annexures C to F** respectively.

(b) Key elements of the Commercial Alliance

The Commercial Alliance represents a long-term strategic partnership that BP anticipates will intensify competition in the Australian retail fuel and convenience industry through the establishment of a world-class, market-leading offering.

The Commercial Alliance has the following three main elements.

- **(Metro@BP convenience partnership)** First, under the Convenience Pilot Participation Agreement, BP and Woolworths will initiate a collaboration for the development and implementation of a retail convenience offer proposed to be co-branded *Metro@BP*. The *Metro@BP* concept combines BP's retail fuel assets and brand with Woolworths' grocery supply chain and retail capabilities. *Metro@BP* sites will be high-quality retail outlets with a sophisticated grocery and fresh meals offering.
- **(Extension of the Shopper Docket Discount Scheme)** Second, under the Redemption Agreement, BP will continue to redeem shopper dockets at the Woolworths sites, and also extend the redemption of shopper dockets to certain existing BP and BP Reseller sites. BP has made a commitment to extend the Shopper Docket Discount Scheme to ensure that a higher proportion of Woolworths supermarkets have a participating site in proximity, which will result in new opportunities for consumers to more conveniently obtain fuel discounts in areas where there is not currently a site that offers redemptions under the Shopper Docket Discount Scheme.
- **(Extension of Woolworths Rewards Loyalty Program)** Third, under the Loyalty Scheme Participation Agreement, BP will join the Woolworths Rewards Loyalty Program as a cornerstone partner and will offer Woolworths Rewards at all BP sites, as well as seeking to roll out the Program to BP Reseller sites. Under these arrangements, consumers will be invited to earn *and redeem* Woolworths Rewards points at participating BP-branded sites (including all former Woolworths fuel sites). It is intended that the Woolworths Rewards Loyalty Program will replace BP's current participation in the Virgin Velocity Program, on and from completion of the BSA.

(c) Metro@BP convenience partnership

The *Metro@BP* concept is proposed to involve the following.

- **(Pilot Metro@BP sites)** [REDACTED] BP and Woolworths will establish a pilot of the *Metro@BP* format at [REDACTED]. The main purpose of the pilot will be to test and refine the *Metro@BP* store concept ahead of the planned further roll out referred to below.

- **(Further roll out)** Following successful completion of the pilot, BP and Woolworths will progressively roll out the *Metro@BP* format at more than 200 sites.
- **(Concept development)** BP and Woolworths will undertake joint initiatives to design *Metro@BP* store formats and branding, refurbish and upgrade relevant sites, and further develop and refine *Metro@BP* store concepts that can be adopted by BP Resellers.
- **(Continuous improvement)** Woolworths will continue to invest in, develop and improve where possible the Metro brand and Metro-branded products for *Metro@BP* sites.
- **(Wholesale supply)** Woolworths will supply a range of grocery, fresh food and ready-to-eat meals to support expanded non-fuel offerings at *Metro@BP* sites.
- **(Woolworths' supply chain expertise)** Woolworths will provide expertise in supply chain management to improve efficiencies and reduce costs across the *Metro@BP* network.
- **(BP's convenience store expertise)** BP will provide expertise regarding BP's convenience ventures [REDACTED]

Overall, BP proposes to invest up to [REDACTED] to roll out the *Metro@BP* concept to over 200 sites comprising existing BP and former Woolworths retail fuel sites, over the next 10 years. BP will retain operational control, including discretion over convenience pricing, at *Metro@BP* sites.

(d) Extension of Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program

The arrangements between BP and Woolworths under which the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program will be extended are described in detail in section 7 below.

(e) Extent of authorisation sought

It is important to note that authorisation is not sought for implementation of the Commercial Alliance as a whole, or for any aspect of the *Metro@BP* convenience partnership. Rather, authorisation is sought only for certain aspects of the Commercial Alliance, as detailed in section 8 below.

4 Industry background – fuel retailing

4.1 Broader supply chain

Broadly speaking, the fuels supply chain is comprised of three functional levels:

- refinery production / imports – the refining of crude oil domestically, or the importation of refined fuel products from refineries located overseas;

- wholesale supply / distribution – the supply of fuels to distributors and/or retailers; and
- retail supply – the supply of fuels to end customers (consumers and businesses) from retail sites.

4.2 Competing retail fuel brands

At the retail level, BP, BP Reseller and Woolworths sites compete against a large number of alternative sites operating under a wide variety of competing brands, the most significant of which are as follows.

(a) Caltex

The Caltex-branded network is the largest retail fuel network in Australia, comprising approximately 1,450 sites. Caltex-branded sites represent between 17-37% of total sites in each State and Territory, except for the Northern Territory where they represent 9% of sites. As with BP, a proportion of Caltex-branded sites are operated by independent dealers (BP understands that is also the case in respect of retailers listed below, including United, Puma and Metro, for example).

Since 2003, Caltex has been in an alliance with Woolworths. Under that alliance, Caltex supplies fuel to Woolworths sites, and consumers are able to take advantage of the Shopper Docket Discount Scheme and the Woolworths Rewards Loyalty Program at those sites as well as certain Caltex co-branded sites.

Caltex also participates in the MYER one loyalty program operated by Myer. Consumers who are members of the MYER one program are able to earn MYER one points when making fuel or other purchases at approximately 800 Caltex sites across Australia.

(b) Coles Express

Coles Express operates the second-largest retail fuel network in Australia, comprising approximately 696 sites, or approximately 10% of retail fuel sites. Coles Express controls the price of fuel across its retail network, and it sells Shell-branded fuel supplied by Viva Energy.

Coles Express sites include a convenience store offering that is supported by Coles Express' integration with Coles supermarkets.

Coles Express provides discounts to consumers on fuel through its own shopper docket discount offer (see further section 5.2 below). Coles Express sites also participate in the Flybuys loyalty program operated by Coles' parent company, Wesfarmers Limited (**Wesfarmers**). Consumers who are members of the Flybuys program can earn or redeem Flybuys points when making purchases (including fuel) at Coles Express sites. Coles Express also offers Flybuys members the ability to convert shopper docket discounts offered under the Coles shopper docket discount scheme into Flybuys points for future benefits or discounts.

(c) 7-Eleven

The 7-Eleven retail fuel network consists of approximately 462 retail fuel sites, representing approximately 6.7% of overall site share in Australia. 7-Eleven sites sell Mobil-branded fuel.

7-Eleven has a broad convenience store offering at its retail fuel sites. It also operates a large network of non-fuel convenience store sites.

(d) United

The United Petroleum (**United**) retail fuel network consists of approximately 407 sites, representing approximately 5.9% of the total number of retail sites in Australia.

United has adopted various discounting initiatives at its retail sites. For instance, it provides members of the Royal Automobile Club of Tasmania (**RACT**) and the Automobile Association of the Northern Territory (**AANT**) discounts in Tasmania and the Northern Territory, respectively. United offers the United Club Rewards loyalty program for members of certain sports clubs (for example, members of the AFL Collingwood Football Club or AFL Gold Coast Suns Football Club), which allows those members to obtain discounts on fuel purchases. In addition, United customers are given the option of a fuel card (the United Card), for credit purchases in-store and discounts on fuel.

(e) Puma

The Puma Energy (**Puma**) network consists of approximately 327 retail fuel sites in Australia, branded as either *Puma*, *Gull*, *Neumann*, *Choice*, *Matilda* or *Peak*.

Puma participates in a shopper docket discount scheme with IGA supermarkets in Western Australia. Under this scheme, consumers are able to obtain a 4cpl discount on fuel purchases at certain Puma sites when they make qualifying purchases of \$25 or more at participating IGA supermarkets.

Puma also provides consumers with the *Pumacard* fuel card, and the *Puma Local Rewards* card loyalty program. *Pumacard* is offered through an arrangement with WEX Australia, and provides consumers the ability to make credit purchases on fuel and non-fuel products at Puma sites and other major fuel retailers, and obtain discounts on fuel at Puma sites. The *Puma Local Rewards* card gives consumers who become members of that loyalty program the ability to obtain discounts on fuel (for example, 4cpl) at participating Puma sites.

(f) Metro

Metro Petroleum (**Metro**) has a network of approximately 121 branded retail fuel site in the eastern States of Australia, mainly centred in Sydney and regional NSW.

Metro provides commercial and retail consumers the *Metro Petroleum Fuel Card*, which allows credit purchases and discounts on fuel purchased at Metro sites.

(g) Liberty

Liberty Oil (**Liberty**) has a network of approximately 60 Liberty-branded retail fuel sites across Australian States, mainly centred in Victoria and NSW.

Liberty offers the *Liberty Card* to retail fuel consumers, which can be used at other major fuel retailers as well as Liberty sites, and provides credit on purchases of fuel and other non-fuel products. Liberty also provides commercial and bulk fuel consumers with the *Liberty Shell Affinity Card*, a co-branded fuel card with Viva Energy. The *Liberty Shell Affinity Card* can be used for purchases at Shell-branded sites (including Coles Express sites), in addition to Liberty sites.

Certain Liberty-branded sites in South Australia also participate in a shopper docket discount scheme offered by Drakes Supermarkets, an independent supermarket chain with stores in South Australia and Queensland (see further below).

(h) Freedom Fuels

Freedom Fuels has a network of approximately 41 controlled or branded sites in Queensland. Freedom Fuels also provides a fuel card for businesses that allows business consumers to purchase fuel on credit and gives access to discounts based on fuel volumes purchased.

(i) Mogas

Mogas Regional is a privately owned company, operating approximately 35 Mogas branded retail fuel sites in Adelaide and regional South Australia.

Certain Mogas Regional sites participate in the shopper docket discount scheme offered by Drakes Supermarkets.

(j) Westside

The Westside Petroleum network consists of approximately 26 retail fuel sites in Sydney and regional NSW.

(k) Costco

Costco operates eight warehouses in Australia for the purchase of non-fuel products and groceries in bulk. Retail fuel is sold at five of these locations in Kilburn (South Australia), North Lakes (Queensland), Crossroads (NSW), Moorabbin (Victoria) and Canberra. Costco has also announced plans to open two additional retail sites at Epping (Victoria) and Marsden Park (NSW).

5 Industry background – shopper docket discount schemes

5.1 Basic features of a shopper docket discount scheme

Broadly, shopper docket discount schemes are arrangements under which fuel discounts are offered to customers who make qualifying purchases at a supermarket (or other retail outlet).

Under these arrangements, customers who make qualifying purchases at relevant retail outlets typically receive an offer for discounted fuel on their printed store receipt. They can then redeem the discount by presenting the receipt to participating fuel outlets operated by the supermarket or a fuel retailer affiliated with the supermarket.

Under an alternative model, a supermarket may offer consumers a reimbursement (equivalent to say 4cpl) upon the presentation of a receipt establishing a qualifying fuel purchase from *any* fuel retailer. This may be applied as a discount off grocery or other retail purchases. This structure enables a retailer to offer consumers the benefits of a shopper docket discount without owning or operating retail fuel sites, or entering into a formal arrangement with any particular fuel retailer. An example of this model is the scheme offered by certain IGA supermarkets in New South Wales, Victoria, South Australia and Queensland (see **Table 1** below).

5.2 Competing shopper docket discount schemes

Table 1 below outlines various shopper docket discount schemes currently offered to consumers.

Table 1 – Competing shopper docket discount schemes

Supermarket	Fuel retailers	Summary of offer
Woolworths	Woolworths, Caltex	4cpl when \$30 or more spent at Woolworths supermarkets and/or 4cpl when \$5 or more spent in-store at Woolworths fuel sites.
Coles	Coles Express	4cpl when \$30 or more spent at Coles Group retail outlets, including Coles and BI-LO supermarkets and Coles Central stores (approximately 787 outlets across Australia) and/or 10cpl when \$20 or more spent in-store at Coles Express sites.
IGA (WA)	Puma / Gull / BP Resellers / Better Choice	4cpl when \$25 or more spent at participating IGA and Supa IGA stores. This offer involves approximately 80 fuel outlets in WA.
IGA (NSW, QLD, SA and VIC)	Any fuel retailer in the relevant state - see summary of offer	Reimbursement of 4cpl at participating IGA supermarkets when customers produce a fuel receipt from any service station and spend \$30 or more at the supermarket. This offer involves at least 500 IGA stores.
Coles and Woolworths supermarkets in NT	United	4cpl when customers produce a printed shopper docket from Coles or Woolworths supermarkets at one of 11 participating United service stations in the Northern Territory. This offer is not endorsed by Woolworths.

Supermarket	Fuel retailers	Summary of offer
Woolworths / Coles	Liberty	BP understands that certain Liberty sites offer a discount of 4cpl when \$30 or more spent at a Woolworths or Coles supermarket, based on notification N99105 lodged with the ACCC on 20 May 2016. This offer is not endorsed by Woolworths.
Ritchies Supa IGA	Participating United, BP Reseller, Mobil and independent service stations	4cpl at participating petrol outlets when \$25 or more spent at participating Ritchies Supa IGA stores.
Drakes Supermarkets	Participating BP Reseller, Liberty, Mobil, Mogas and other independent service stations	4cpl when \$30 or more spent at any Drakes Foodland Supermarket or Drakes Supa IGA stores. This offer involves approximately 35 fuel outlets across SA and QLD.

Source: Various public sources

6 Industry background – loyalty programs

6.1 Basic features of a loyalty program

Loyalty programs are structured programs that reward (and therefore encourage) desired consumer behaviours such as the purchase of goods or services from a particular retailer.

Loyalty programs range from relatively simple loyalty cards for a single store or network of stores (e.g. “buy five, get one free” coffee cards) to relatively sophisticated points-based programs involving multiple participating suppliers.

Generally, a loyalty program involves the following three types of participant.

- **(Operator)** A program operator co-ordinates the program by recording consumer point balances (credits and redemptions), administering points earning and redemption payments with participating retail partners, and licensing intellectual property rights to promote the program.
- **(Partners)** Program partners such as retailers (including fuel retailers) participate in the program by offering benefits to members, typically through earning or redeeming points. The program operator may effectively be one of the main retail partners by offering the opportunity to earn and redeem points under a program at its own retail outlets.

- **(Members)** Program members (consumers), whose membership of the program is established by the presentation of an identifier (normally in the form of a membership card or number).

From the perspective of members, a loyalty program will usually (but not always) involve the following two basic processes.

- **(Points earning)** By purchasing eligible goods or services, members are credited with points in their points accounts.
- **(Points redemption)** Members are offered benefits (usually in the form of discounts or free goods or services) in exchange for a reduction in the balance of their points accounts.

A loyalty program member's account usually represents a single pool of points which is added to, or drawn from, via transactions with all program partners. As a result, benefits can be accessed across partners participating in the program (usually with no requirement they be used with any one particular partner).

The rates at which points are earned or redeemed for given values or volumes of goods or services are agreed between the program operator and program partners. For example, it might be agreed that the program operator will credit a member with one point for every \$1 in purchases at a program partner's stores, and that a discount of \$1 will be applied for every 200 points redeemed at that program partner's stores.

The earning of points is typically funded by the program partner whose goods or services were purchased to earn them. For example, it may be agreed between a program operator and a program partner that, for every point earned via purchases at the program partner's stores, the program partner will pay the program operator a certain fraction of a cent (sometimes called the **earn rate**).

The redemption of points is typically funded by the program operator. For example, it may be agreed that, for every point redeemed at a program partner's stores, the program operator will pay the program partner a certain fraction of a cent (sometimes called the **redeem rate**).

Loyalty programs also often facilitate the gathering of consumer and transaction data, which can be analysed for market research and direct marketing purposes (subject to appropriate privacy measures).

6.2 Competing loyalty programs

Loyalty programs are a well-established feature of the Australian commercial landscape. BP estimates that approximately 90% of Australian fuel consumers are members of one or more loyalty programs. Further information in relation to some of the major loyalty programs offered in Australia is provided below.

(a) Altitude Rewards

Altitude Rewards is a loyalty program launched in 2001 by Westpac.

Altitude Rewards points are earned from purchases using Westpac-issued Altitude credit cards. Bonus points are also available for purchases made from program partners using an Altitude credit card.

Altitude Rewards points can be redeemed for a wide range of benefits including flights, shopping vouchers and Westpac financial products. Altitude Rewards points can also be exchanged for points in six different frequent flyer programs including Qantas Frequent Flyer, Virgin Australia's Velocity, Malaysia Airlines' Enrich program, Air New Zealand's Airpoints program, Singapore Airlines' KrisFlyer and Cathay Pacific's AsiaMiles program.

Partners of the Altitude Rewards program include Holden, American Express, Apple, Sony, Bose, Dyson, David Jones, Harvey Norman and Qantas.

For further information regarding the Altitude Rewards program, see <https://altituderewards.com.au/>

(b) Flybuys

Flybuys is one of the largest loyalty programs in Australia, with over 10 million members. It is operated by Wesfarmers.

The Flybuys program has a well-established and varied portfolio of partners, including: Coles, Coles Express, Target, Kmart, Liquorland, AGL, OPSM and Medibank. Flybuys members earn points by purchasing goods or services from these and other partners or by using a co-branded Flybuys/Visa or Coles/Mastercard credit card to make purchases from partners and non-partners.

Flybuys members redeem points by selecting goods or services at the online Flybuys store or through the in-store redemption of "Flybuys dollars" at Coles group retail outlets (e.g. Coles, Target, Kmart and Liquorland).

For further information regarding Flybuys, see <https://www.flybuys.com.au>

(c) MYER one

MYER one is a loyalty program launched in 2005 by Myer, with over 5 million members.

MYER one points (known as "shopping credits") are earned by making purchases at Myer and partner retail outlets (including Caltex, Ritchie's/IGA supermarkets, Hertz, Swissotel, Air New Zealand and Wilson Parking). Shopping credits can also be earned by using a Myer/Visa co-branded credit card to make purchases from partners and non-partners.

Customers earn two shopping credits for every \$1 spent. Once a MYER one member accrues 2,000 shopping credits, they are provided with \$20 in credit that can be redeemed in Myer stores or through the Myer online store.

MYER one members are also eligible for other benefits, including member-only discounts and invitations to Myer special events.

For further information regarding the MYER one program, see <https://www.myerone.com.au/> and <http://myeroneaffiliates.com.au/>

(d) Qantas Frequent Flyer

The Qantas Frequent Flyer program is a longstanding loyalty program operated by Qantas (launched in 1987). Together with the Flybuys program, the Qantas Frequent Flyer program is one of the largest in Australia, with approximately 11.4 million members.

Qantas Frequent Flyer points are earned by purchasing Qantas or affiliate airline flights or goods or services from program partners such as David Jones, The Iconic, Hertz and Hyatt hotels. Points are also earned by using a co-branded credit card (issued by a wide variety of major and regional banks) to make purchases from partners and non-partners.

In June 2009, the Qantas Frequent Flyer program entered into a partnership with the Woolworths group.² By linking a Qantas Frequent Flyer program membership with a Woolworths Rewards program membership, a consumer can earn Qantas Frequent Flyer points by making purchases at Woolworths group businesses.

Points can be redeemed for Qantas or affiliate airline flights (or airfare upgrades) and other goods or services through the online "Qantas Store".

For further information regarding the Qantas Frequent Flyer program, see <https://www.qantas.com.au/fflyer/dyn/program/welcome>.

(e) Velocity Program

The Velocity Program was launched in 2005, and has approximately 6 million members in Australia. It is operated by Velocity Frequent Flyer Pty Limited (a company majority owned by Virgin Australia Holdings).

Velocity members can earn "Velocity Points", by purchasing goods or services from Velocity Program partners, which can then be redeemed in return for Virgin Australia or affiliate price tickets or upgrades, goods and services from the online Velocity Frequent Flyer Rewards Store, or free or reduced cost goods or services from Velocity Program partners. Partners of the Velocity Program include: BP, Europcar, Hertz, Thrifty, Intercontinental Hotels, Jetts Fitness and Mirvac.

Upon successful completion of the proposed acquisition, BP's current arrangement as a participant in the Velocity Program will cease, as BP will enter into arrangements with Woolworths with respect to its fuel discount and rewards schemes.

Further information about the Velocity Program is available at <https://www.velocityfrequentflyer.com>

(f) Woolworths Rewards

Woolworths Rewards is a loyalty program operated by Woolworths, with approximately 9 million members.

² Woolworths Limited, Annual Report 2009, page 8.

Woolworths Rewards members are eligible for member-only discounts at Woolworths group retail outlets (including Woolworths, Big W and BWS). Members can also earn Qantas Frequent Flyer points by linking their memberships (as noted above). Once enough Qantas Frequent Flyer points have been earned, they can be redeemed in the usual way through the Qantas Frequent Flyer program.

For further information regarding Woolworths Rewards, see <https://www.woolworthsrewards.com.au/>

(g) Other loyalty programs

Other loyalty programs available to Australian consumers include the following.

- **(MyIGA)** MyIGA is a free loyalty program operated by technology company WorldSmart Retail for various participating IGA stores around Australia. Members of the MyIGA program receive benefits and discounts on their shopping with IGA supermarkets.
- **(Priceline Sister Club)** Priceline Sister Club is a free loyalty program operated by Priceline (a company owned by Australian Pharmaceutical Industries Limited). The Priceline Sister Club has approximately 6.4 million members in Australia and provides discounts to customers shopping at Priceline stores, or with various other partners during promotional periods.
- **(David Jones American Express Card)** Operated by David Jones with American Express, it provides benefits that can be redeemed at David Jones stores or other partners including Ticketmaster, Hoyts Cinemas, Singapore Airlines.
- **(Other credit card / bank operated loyalty programs)** ANZ Rewards (operated by ANZ and partnered with retailers such as Myer, David Jones and JB Hi-Fi), CommBank Rewards (operated by Commonwealth Bank and partnered with retailers such as Qantas, Myer and Flight Centre) and NAB Rewards (operated by National Australia Bank, the NAB Rewards program partners with retailers such as Webjet, Myer, David Jones, Bunnings, Mitre 10 and the Australian Football League).

6.3 Existing major fuel brand / loyalty program partnerships

Reflecting the broader retail sector, loyalty programs are well established in the retail fuel markets.

Table 2 below outlines the current major partnerships between major fuel brands and loyalty programs, and shows the current offers available to relevant loyalty program members.

Table 2 – Current partnerships between major fuel brands and loyalty programs

Major fuel brand	Loyalty program partnership(s) / current offers
Caltex	<ul style="list-style-type: none"> • MYER one: earn one shopping credit for every \$1 dollar spent. • Altitude Rewards: earn one Altitude point for every \$1 spent.
Woolworths	<ul style="list-style-type: none"> • Qantas Frequent Flyer / Woolworths Rewards (where Qantas Frequent Flyer and Woolworths Rewards memberships are linked): For every 2,000 Woolworths points accrued, customers can redeem 870 Qantas Points.
Coles Express / Shell	<ul style="list-style-type: none"> • Flybuys: earn one point for every \$2 spent (which includes fuel purchases).
BP	<ul style="list-style-type: none"> • Velocity Program: earn two Velocity Points for every litre of fuel purchased up to 150 litres of fuel and 2 Velocity Points for every \$1 spent in-store up to \$100, per transaction at participating BP service stations.
Puma	<ul style="list-style-type: none"> • Puma Local Rewards: obtain discounts of up to 4cpl for every litre purchased up to 80 litres of petrol/diesel, at participating Puma sites.
United	<ul style="list-style-type: none"> • United Club Rewards: members of certain sports clubs are can obtain discounts up to 4cpl for every litre of fuel purchased up to 150 litres of fuel, at certain United sites.

7 Proposed extension of Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program

7.1 Extension of Shopper Docket Discount Scheme under Redemption Agreement

The Shopper Docket Discount Scheme is proposed to be maintained and extended in accordance with the terms of the Redemption Agreement. Set out in **Confidential Annexure G** is a summary of the terms of the Redemption Agreement which BP considers are helpful for the ACCC to understand as they either form the context in which BP and BP Resellers propose to engage in conduct for which authorisation is sought (see sections 8.1 and 8.2 below) or, to a lesser extent, constitute arrangements between BP and Woolworths for which authorisation is sought out of an abundance of caution only (see sections 3.4(a) above and 8.3 below).

The Redemption Agreement includes terms to the following effect.

- **(Network Coverage)** It is intended that all former Woolworths sites, as well as certain BP and BP Reseller sites, will redeem shopper

dockets under the Shopper Docket Discount Scheme from the commencement of the Commercial Alliance. BP may, in certain circumstances, add or withdraw BP-branded sites to or from the network of sites that redeem shopper dockets (**Redemption Network**), on an ongoing basis. It is intended that the proportion of Woolworths supermarkets with a participating redemption site in proximity will be maintained or increased from current levels.

- **(Fuel discounts)** The current fuel discount of 4cpl (or 6cpl, in Tasmania) will be maintained. The parties may only make material changes to the operation of the Shopper Docket Discount Scheme (such as in relation to the level of fuel discounts) by mutual agreement. Alternatively, BP or Woolworths may seek to increase the level of fuel discounts either in response to a competing third party fuel discount offer, or on a proactive basis (subject at all times to the Woolworths Undertaking). Woolworths may make non-material changes to the redemption offer in its discretion.
- **(Funding of the Shopper Docket Discount Scheme)** The fuel discounts applied under the Shopper Docket Discount Scheme will be funded by BP and Woolworths.
- **(Exclusivity)** BP and Woolworths have agreed certain exclusivity requirements for the term of the Redemption Agreement. As part of these, BP will not enter into a competing shopper docket discount scheme with a third party supermarket, convenience retailer, liquor retailer or discount department store in Australia. Likewise Woolworths will not enter into a competing shopper docket discount scheme with a third party fuel retailer, fuel and convenience retailer or convenience retailer in Australia.
- **(Price competitiveness)** For a period of time after commencement of the Commercial Alliance, former Woolworths sites and participating BP sites must meet certain fuel price competitiveness requirements. These impose constraints on BP's price setting at certain sites that effectively constrain the potential upper limits of its prices in certain circumstances, but do not involve any limitation on BP's absolute discretion to discount prices.
- **(Data sharing)** BP and Woolworths may exchange data collected in respect of the operation of the Shopper Docket Discount Scheme, provided they meet certain strict confidentiality requirements and treat that data as commercially sensitive information at all times.

7.2 Extension of Woolworths Rewards Loyalty Program under Loyalty Scheme Participation Agreement

The Woolworths Rewards Loyalty Program is proposed to be maintained and extended in accordance with the terms of the Loyalty Scheme Participation Agreement. Set out in **Confidential Annexure H** is a summary of the terms of the Loyalty Scheme Participation Agreement which BP considers are helpful

for the ACCC to understand – again because they either form the context in which BP and BP Resellers propose to engage in conduct for which authorisation is sought (see sections 8.1 and 8.2 below) or, to a lesser extent, constitute arrangements between BP and Woolworths for which authorisation is sought out of an abundance of caution only (see section 8.3 below).

The Loyalty Scheme Participation Agreement includes terms to the following effect.

- **(Network Coverage)** It is intended that the Woolworths Rewards Loyalty Program will be made available at all former Woolworths sites, BP sites, and certain BP Reseller sites. BP has committed to maintaining certain minimum coverage obligations.
- **(Earning / Redeeming Woolworths Points)** Woolworths Rewards members will be able to earn Woolworths Rewards points automatically at participating BP-branded sites. Subject to the satisfaction of certain conditions, Woolworths Rewards members will also be able to redeem accumulated Woolworths Rewards points automatically at participating BP-branded sites.
- **(Exclusivity)** BP and Woolworths have agreed certain exclusivity requirements for the term of the Loyalty Scheme Participating Agreement. As part of these, competing loyalty programs (such as loyalty programs operated by third party retailers) will not be offered at participating BP-branded sites, and BP will be the exclusive fuel and convenience retailer for the Woolworths Rewards Loyalty Program. A range of existing BP programs, such as a Wild Bean Café loyalty card, will continue.
- **(Program Funding)** BP will pay Woolworths in respect of each Woolworths Rewards point earned at BP-branded sites (which corresponds to the concept of an earn rate described in section 6.1 above). BP will also meet certain minimum spend targets over the term of the Loyalty Scheme Participation Agreement.
- **(Data sharing)** The parties will share data in respect of the operation of the Woolworths Rewards Loyalty Program, subject to certain limitations and restrictions and strict confidentiality requirements.
- **(Program changes)** Woolworths may make material changes to the Woolworths Rewards Loyalty Program (which may be proposed by either party) through mutual agreement with BP. Woolworths may also make certain non-material changes to the Program in its discretion.

(a) **Proposed arrangements between BP and BP Resellers to extend Shopper Docket Discount Scheme and Woolworths Rewards to BP Resellers**

(i) *Overview of likely arrangements between BP and BP Resellers*

To give effect to the parties' intentions under the Commercial Alliance, particularly under the Redemption Agreement and Loyalty Scheme Participation Agreement (and to comply with BP's obligations under those agreements), BP will seek to negotiate contractual arrangements with BP Resellers that facilitate BP's and BP Resellers' participation in the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program.

The precise form of contractual arrangements between BP and BP Resellers are yet to be determined, however broadly speaking the following is envisaged.

- **(POSAs)** The obligations of BP and BP Resellers in respect of their participation in the Shopper Docket Discount Scheme and/or Woolworths Rewards Loyalty Program are likely, but not certain, to be included in POSAs between BP and BP Resellers (see section 3.2 above for a description of POSAs).
- **(Possible mandatory BP Reseller participation)** It is currently anticipated that participation in the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program will be offered to BP Resellers on a voluntary basis. However, BP may later determine that participation in the Shopper Docket Discount Scheme and/or Woolworths Rewards Loyalty Program should be mandatory for certain BP Resellers. Mandatory participation would be sought in the context of the negotiation of POSAs with new BP Resellers or the scheduled re-negotiation of POSAs with existing BP Resellers and the relevant condition would always be disclosed to the relevant BP Reseller as part of those negotiations or re-negotiations. It is not proposed that BP would rely on any existing contractual right under any existing POSA, or seek an un-scheduled re-negotiation of an existing POSA, for the purpose of seeking the mandatory participation of a BP Reseller in the Shopper Docket Discount Scheme and/or Woolworths Rewards Loyalty Scheme.

(ii) *Specific arrangements relating to extended Shopper Docket Discount Scheme*

It is anticipated that BP will seek to enter into arrangements with BP Resellers providing for the following in respect of the Shopper Docket Discount Scheme.

- **(Redemption of shopper dockets)** Participating BP Resellers will redeem shopper dockets at participating BP Reseller sites and allow consumers the applicable fuel discounts. Participating BP

Resellers will also be required to ensure that shopper docket customers are not charged additional fees, expenses or costs in respect of their purchases when redeeming shopper dockets.

- **(Exclusivity)** BP Resellers that participate in the Scheme will be required to make available the shopper docket discount offer to the exclusion of other competing fuel discount offers provided by third parties. To meet this requirement, participating BP Resellers will not be able to promote third party fuel discount offers, or allow BP branding to be associated with other fuel discount offers. Of course, as noted above, it is currently anticipated that participation will be voluntary for BP Resellers, and in that event BP Resellers will retain the option of participating in a competing shopper docket discount offer.
- **(Pass-through of Woolworths funding)** BP will arrange for BP Resellers to be credited amounts paid to BP in respect of Woolworths' contribution to funding the Shopper Docket Discount Scheme. BP may require that these payments are made less any deductions, or charges payable to BP by BP Resellers in respect of their participation in the Scheme.
- **(Upgrading facilities)** BP may require that participating BP Resellers install, or upgrade, facilities (including for point-of-sale terminals and software) at participating BP Reseller sites in order to allow the redemption of shopper dockets under the Shopper Docket Discount Scheme. Participating BP Resellers may also be required to upgrade or modify sites to adopt branding and promotion of the shopper docket discount offer.
- **(Data)** BP may also agree with participating BP Resellers that they will not supply data relating to the Shopper Docket Discount Scheme, including transactional data, customer information or data relating to their participation in the Scheme, to any third parties (such as data collection agencies or market researchers).

(iii) *Specific arrangements relating to Woolworths Rewards Loyalty Program*

It is anticipated that BP will seek to enter into arrangements with participating BP Resellers providing for the following in respect of the Woolworths Rewards Loyalty Program.

- **(Participation in Woolworths Rewards)** Participating BP Resellers will make the Woolworths Rewards Loyalty Program available at participating BP Reseller sites by permitting Woolworths Rewards members to earn and redeem points on eligible purchases.
- **(BP Reseller funding contributions)** Participating BP Resellers will pay BP a contribution for each point earned by Woolworths Rewards members when they complete eligible purchases at

participating BP Reseller sites. BP will then remit a portion of the BP Reseller contribution to Woolworths, which relates to BP's relevant Cost per Point spend to Woolworths.

- **(Pass-through)** BP proposes to pass through the compensation it is effectively paid by Woolworths in respect of points redeemed at participating BP Reseller sites, less any deductions, or charges payable to BP by BP Resellers.
- **(Exclusivity)** Participating BP Resellers will be required not to participate in any competing third party loyalty program.
- **(Upgrading facilities)** Participating BP Resellers will be required to install, or allow access to BP to install, facilities to process Woolworths Rewards card transactions including terminals and software. Relevant sites will also be upgraded to reflect the branding, trademarks, displays and shop fit-outs agreed to between BP and Woolworths in respect of the Woolworths Rewards Loyalty Program.
- **(Data)** BP may also agree with participating BP Resellers that they will not supply data relating to the Woolworths Rewards Loyalty Program, including transactional data, customer information or data relating to their participation in the Program, to any third parties (such as data collection agencies or market researchers).

8 Authorisation sought

8.1 Conduct relating to BP and BP Reseller participation in the Shopper Docket Discount Scheme

Authorisation is sought to implement BP's and BP Resellers' participation in the Shopper Docket Discount Scheme, as described in section 7 above.

Authorisation is sought for the following.

- **(Fuel discounts)** Potential contraventions of sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK or 45 of the CCA arising from any contract, arrangement or understanding between BP and BP Resellers as to the discount, allowance, rebate or credit to be given or allowed in relation to fuel purchases at BP Reseller sites under the Shopper Docket Discount Scheme.
- **(Third line forcing – consumers)** Potential contraventions of sections 45 or 47 (by virtue of sub-sections 47(6) or (7)) of the CCA arising from third-line forcing conduct by BP or BP Resellers in relation to consumers under the Shopper Docket Discount Scheme, including BP or BP Resellers giving or allowing, or offering to give or allow, a discount, allowance, rebate or credit in relation to fuel purchases under the Shopper Docket Discount Scheme on condition that a person has acquired goods or services from Woolworths (e.g. in exchange for a

shopper docket issued by Woolworths upon a purchase at a Woolworths supermarket).

- **(Third-line forcing – BP Resellers)** Potential contraventions of sections 45 or 47 (by virtue of sub-sections 47(6) or (7)) of the CCA arising from third-line forcing conduct by BP in relation to BP Resellers, including BP supplying, or offering to supply, goods or services to BP Resellers (for example, under POSAs) conditional upon their participation in the Shopper Docket Discount Scheme.
- **(Exclusivity)** Potential contraventions of sections 4D, 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK, 45 or 47 of the CCA arising from any contract, arrangement or understanding between BP and BP Resellers that BP Resellers will not, or will not except to a limited extent, supply or acquire to or from a third party services of a kind similar to those supplied or acquired by BP Resellers to or from BP under the Shopper Docket Discount Scheme (including regarding data). Notwithstanding that authorisation is sought in this respect, BP considers that such restrictions are likely to receive the benefit of the anti-overlap provisions in sections 44ZZRS and 45(6) of the CCA and should be assessed under the prohibition on exclusive dealing in section 47 of the CCA and further that the conduct does not raise substantive competition concerns under that prohibition.

8.2 Conduct relating to BP and BP Reseller participation in the Woolworths Rewards Loyalty Program

Authorisation is sought to implement BP's and BP Resellers'³ participation in the Woolworths Rewards Loyalty Program, as described in section 7 above.

Authorisation is sought for the following.

- **(Terms of participation in Woolworths Rewards Loyalty Program)** Potential contraventions of sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK or 45 of the CCA arising from any contract, arrangement or understanding between BP and BP Resellers as to the terms on which they directly or indirectly supply or acquire services to or from Woolworths under their participation in the Woolworths Rewards Loyalty Program, including but not limited to:
 - Program funding in terms of any earn rate (such as the Cost per Point provided for in the Loyalty Scheme Participation Agreement) or redeem rate. Insofar as an arrangement involves any alignment between BP and BP Resellers about any earn rate, BP considers that to relate to a collective acquisition of loyalty program services from Woolworths and for that reason authorisation in respect of that conduct is sought out of an abundance of caution; and

³ A commission agent for BP could conceivably be argued to be a competitor to BP in relation to non-fuel goods and services. To ensure that all relevant arrangements between BP and its commission agents in respect of the Woolworths Rewards Loyalty Program are authorised (such as "earn/burn" rates for non-fuel purchases), references to BP Resellers in this section 8.2 should be taken to include references to BP commission agents.

- charges, fees or expenses that may be paid by Woolworths (either directly to BP under the Loyalty Scheme Participation Agreement or indirectly to Participating BP Resellers via BP).
- **(Fuel discounts or other benefits)** Potential contraventions of sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK or 45 of the CCA arising from any contract, arrangement or understanding between BP and BP Resellers as to any discount, allowance, rebate or credit (or other benefit) to be given or allowed in relation to fuel purchases at BP Reseller sites under the Woolworths Rewards Loyalty Program.
- **(Third-line forcing – consumers)** Potential contraventions of sections 45 or 47 (by virtue of sub-sections 47(6) or (7)) of the CCA arising from third-line forcing conduct by BP or BP Resellers in relation to consumers under the Woolworths Rewards Loyalty Program, including BP or BP Resellers supplying, or offering to supply, benefits to consumers on condition that they acquire or have acquired:
 - loyalty program services from Woolworths;
 - goods or services from Woolworths group retail outlets; and/or
 - goods or services from a third party (which may arise where BP or BP Resellers redeem, or offer to redeem, points earned from another participant of the Woolworths Rewards program, or where BP or BP Resellers honour, or offer to honour, discounts or other benefits obtained by Woolworths Rewards members through Woolworths).
- **(Third-line forcing – BP Resellers)** Potential contraventions of sections 45 or 47 (by virtue of sub-sections 47(6) or (7)) of the CCA arising from third-line forcing conduct by BP in relation to BP Resellers, including BP supplying, or offering to supply, goods or services to BP Resellers (for example, under POSAs) conditional upon their participation in the Woolworths Rewards Loyalty Program or the acquisition of goods or services from third parties in connection with facilities (such as terminals and software) required to process Woolworths Rewards card transactions.
- **(Exclusivity)** Potential contraventions of sections 4D, 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK, 45 or 47 of the CCA arising from any contract, arrangement or understanding between BP and BP Resellers that BP Resellers will not, or will not except to a limited extent, supply or acquire to or from a third party services of a kind similar to those supplied or acquired by them to or from BP or Woolworths under the Woolworths Rewards Loyalty Program (including regarding data). Again, notwithstanding that authorisation in this respect is sought, BP considers that such restrictions are likely to receive the benefit of the anti-overlap provisions in sections 44ZZRS and 45(6) of the CCA and should be assessed under the prohibition on exclusive dealing in section 47 of the

CCA and further that the conduct does not raise substantive competition concerns.

8.3 Conduct involving BP and Woolworths

As noted in section 3.4(a) above, in circumstances where BP cannot take possession of any Woolworths site(s) immediately upon completion (which may occur for a small number of sites only), BP and Woolworths could conceivably be argued to be competitive with one another during the transitory period before the relevant site(s) are ultimately transferred to BP. Accordingly, out of an abundance of caution only, authorisation is sought for the following.

- **(Fuel discounts)** Potential contraventions of sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK or 45 of the CCA arising from any contract, arrangement or understanding between BP and Woolworths as to any discount, allowance, rebate or credit (or other benefit) to be given or allowed in relation to fuel purchases at BP and former Woolworths sites under the Shopper Docket Discount Scheme or Woolworths Rewards Loyalty Program. See the “Fuel discounts” and “Temporary reactive and proactive offers” sections of Confidential Annexure G, and the “Earning / redeeming Woolworths Rewards points” section of Confidential Annexure H.
- **(Arrangements regarding price competitiveness)** Potential contraventions of sections 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK or 45 of the CCA arising from any contract, arrangement or understanding between BP and Woolworths in relation to the price competitiveness requirements relating to BP and former Woolworths sites, as described in section 7.1 above. See also the “Pricing issues” section of Confidential Annexure G for further detail regarding those requirements.
- **(Exclusivity)** Potential contraventions of sections 4D, 44ZZRF, 44ZZRG, 44ZZRJ, 44ZZRK, 45 or 47 of the CCA arising from any contract, arrangement or understanding between BP and Woolworths that they will not, or will not except to a limited extent, supply or acquire services of a kind similar to those supplied or acquired by them to or from each other under the Shopper Docket Discount Scheme or Woolworths Rewards Loyalty Program (including regarding data), to or from a third party. Notwithstanding that authorisation is sought in this respect, BP considers that such restrictions are likely to receive the benefit of the anti-overlap provisions in sections 44ZZRS and 45(6) and should be assessed under the prohibition on exclusive dealing in section 47 of the CCA and further that the conduct does not raise substantive competition concerns under that prohibition.

9 Period for which authorisation is sought

Authorisation is sought for 10 years. BP considers this period to be appropriate for the following reasons.

- **(Terms of Commercial Alliance agreements)** The relevant Commercial Alliance agreements are for minimum terms of 10 years and authorisation is sought for 10 years to reflect the commercial arrangements agreed between the parties.
- **(Straightforward and established conduct)** The Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program have been in place for 21 and 9 years respectively, and have previously been subject to close ACCC scrutiny. The ACCC will be in a position to assess whether the public benefits identified in this submission that result from the extension of the Scheme and Program to include BP and BP Reseller sites, and the lack of any discernible public detriments, will persist over a 10-year time horizon. In that context, it is not necessary for the ACCC to grant authorisation for a shorter period on the basis that, for instance, the effects of the proposed conduct are unpredictable and will therefore require re-assessment at a relatively early stage.
- **(Intense retail competition to persist)** Retail fuel markets are likely to remain highly competitive over the longer term. Indeed, the Commercial Alliance between BP and Woolworths is likely to prompt renewed investments and innovation in service-based competition amongst BP's competitors, and encourage new entrants or new investment in retail fuel and convenience markets.

10 Relevant areas of competition

In relation to shopper dockets, the ACCC's previous decisions (such as its assessments of third-line forcing notifications by Woolworths in 2001 (N90959 and N90960) and 2006 (N31734), and Caltex in 2014 (N97368)) have previously focused on retail fuel and convenience markets. Similarly, when the ACCC assessed BP's and BP Resellers' participation in the Velocity Program in 2014 the ACCC focused on the retail supply of fuel (as well as competition among loyalty programs).

BP considers that it is unnecessary for the ACCC to precisely define relevant markets for the purposes of assessing the parties' application for authorisation. However, BP considers that the ACCC should have regard to the proposed conduct's impact on:

- competition for the supply of fuels, convenience store products and ancillary services in retail fuel markets; and
- competition for the supply or acquisition of loyalty program services (from the perspective of loyalty program operators, actual or potential loyalty program partners, and consumers).

11 Counterfactual

BP has not formed a final view on the appropriate counterfactual should the proposed conduct not be authorised.

However, one possible counterfactual is that BP, BP Resellers and/or Woolworths would enter into slightly modified terms so as to allow the parties' commercial objectives to be realised – including in particular the extension of the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program to BP Reseller sites – without giving rise to potential contraventions of the CCA. In doing so, BP considers that the parties would likely seek to implement modified structures that more clearly rely on exceptions to the relevant prohibitions in the CCA (such as the joint venture, exclusive dealing and collective acquisition exceptions) and agency arrangements. BP does not consider it likely that the parties would simply abandon relevant aspects of the proposed acquisition or Commercial Alliance if authorisation is not obtained.

In any event, it is not necessary for the ACCC to reach a conclusion on the appropriate counterfactual. For the reasons set out in section 13 below, the proposed conduct will not result in any material public detriment that need be weighed against the likely future without the proposed conduct.

Finally, BP notes that any modified structures required to be implemented in the absence of authorisation would be likely to diminish the ability of the parties to deliver the public benefits described in section 12 below. For example, if BP were not authorised to require BP Resellers to participate in the Woolworths Rewards Loyalty Program as a condition of BP supplying fuel (or another good or service), then the direct benefits arising from the earning and redemption of points at BP Reseller sites and the benefits associated with a more consistent loyalty offering across the BP-branded network may be achieved to a lesser extent.

12 Public benefits

12.1 Overview

BP submits that the proposed conduct as a whole will result in significant public benefits, including the following.

- **(Increased aggregate fuel discounts under the Shopper Docket Discount Scheme)** Consumers will obtain greater aggregate fuel discounts under the Shopper Docket Discount Scheme as a result of a net increase in the size and geographic scope of the Scheme network.
- **(Increased aggregate fuel discounts, and opportunities to earn and redeem points, under the Woolworths Rewards Loyalty Program)** Consumers will obtain greater aggregate fuel discounts, and be presented with greater opportunities to earn and redeem points, under the Woolworths Rewards Loyalty Program as a result of a net increase in the size and geographic scope of the Program

network and the introduction of automatic points redemption at former Woolworths fuel sites.

- **(Further enhancements to competition in retail fuel markets)** The continued availability of the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Scheme at former Woolworths sites will maintain the competitiveness of those sites, and the extension of those offers to BP and BP Reseller sites will improve the competitiveness of those sites. BP expects that other petrol retailers will competitively respond, in terms of both price- and service-based competition.
- **(More consistent consumer offerings)** Consumers will be presented with a more consistent shopper docket and loyalty offering across BP-branded sites, which lowers consumer search costs and reduces the prospect of consumer confusion. BP-branded sites (including BP Reseller sites) will feature clear signage to allow consumers to easily identify BP-branded sites that are participating in the Shopper Docket Discount Scheme and/or Woolworths Rewards Loyalty Program.
- **(Transaction cost savings)** BP Resellers will be able to improve the competitiveness of their offers by opting in to the Shopper Docket Discount Scheme and/or Woolworths Rewards Loyalty Program, without the need for individually negotiated shopper docket and loyalty arrangements. In the context of highly competitive retail fuel markets, these transaction cost savings can be expected to be passed on to consumers.

12.2 Approach to assessing benefits across elements of the proposed conduct

The various elements of the proposed conduct for which authorisation is sought (as described in section 8 above) will operate as a cohesive whole and are highly interdependent. In that context, BP does not consider it appropriate to adopt a mechanical analytical approach by which public benefits are assessed separately for each element of the proposed conduct.

12.3 Increased aggregate fuel discounts under the Shopper Docket Discount Scheme

Under the proposed conduct, the Shopper Docket Discount Scheme will be:

- retained at the 528 Woolworths sites to be acquired by BP;
- extended to approximately [REDACTED] existing BP and BP Reseller sites (the precise mix is yet to be determined, but will involve a substantial number of BP Reseller sites);
- withdrawn from the [REDACTED] Caltex-operated co-branded sites that currently participate in the Scheme.

Overall, the proposed conduct will result in a significant net increase of approximately 150 to 200 sites participating in the Shopper Docket Discount

Scheme. As noted in section 3.4(b) above, many of these sites will be located in areas in which there is not currently a nearby Woolworths or Caltex site participating in the Scheme.

The net increase in the size and geographic scope of the Shopper Docket Discount Scheme network will inevitably result in an increase in the aggregate amount of discounts delivered to consumers. Although the precise amount of discounts delivered to consumers through the extended Shopper Docket Discount Scheme network will ultimately depend on BP's and BP Resellers' success in attracting new consumers to their respective sites and the competitive responses of their competitors, [REDACTED]

Further, as noted in section 7.1 above, BP is obliged to maintain the price competitiveness of fuel sold at former Woolworths sites (all of which currently participate in the Shopper Docket Discount Scheme) and BP sites added to the Shopper Docket Discount Scheme. [REDACTED]

12.4 Increased aggregate fuel discounts, and opportunities to earn and redeem points, under the Woolworths Rewards Loyalty Program

Under the proposed conduct, the Woolworths Rewards Loyalty Program will be:

- retained at the 528 Woolworths sites to be acquired by BP;
- extended to all 316 BP sites, and as many BP Reseller sites as possible; and
- withdrawn from the [REDACTED] Caltex-operated co-branded sites that currently make the Woolworths Rewards Loyalty Program available.

Overall, the extension of the Woolworths Rewards Loyalty Program to all BP and certain BP Reseller sites will increase the network of sites participating to at least [REDACTED] sites within 12 months, and at that level would be [REDACTED] the current number of 632 sites. As with the Shopper Docket Discount Scheme, the net increase in the size and geographic scope of the Woolworths Rewards Loyalty Program network will necessarily result in a substantial increase in the aggregate benefits delivered to consumers.

Importantly, the automatic redemption of Woolworths Rewards points in return for fuel discounts will also be offered for the first time. Currently, Woolworths Rewards points cannot be redeemed at the point of sale at Woolworths fuel sites. Under the proposed conduct, consumers will benefit from automatic redemptions at a rate of 2,000 points per \$10 discount at the former Woolworths fuel sites, BP sites and participating BP Reseller sites.

More broadly, the expanded Woolworths Rewards Loyalty Program network will provide consumers with significantly increased opportunities to earn and redeem Program points, including under various promotional offers to be developed and implemented on an *ad hoc* basis.

12.5 Further enhancements to competition in retail fuel markets

The benefits available to consumers under the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program are highly valued by consumers.

In that context, the proposed conduct will improve the competitiveness of BP-branded sites and, to the extent that BP Resellers participate in the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program, the proposed conduct will enhance the competitiveness of independently-operated sites.

BP expects that the proposed conduct will cause other fuel retailers to re-assess the competitiveness of their own shopper docket and loyalty offerings, and to consider improving them. For example, it is conceivable that:

- Caltex may seek to participate in the Velocity Program, noting that as a result of the termination of BP's arrangements with Velocity, Caltex may be able to enter into arrangements with Velocity as its exclusive fuel partner;
- although unlikely given Coles' existing exclusive fuel supply arrangements with Shell, Caltex could conceivably seek to negotiate access to Coles shopper docket discount scheme;
- other fuel retailers may begin to allow members of competing loyalty programs to redeem points for fuel discounts at the point of sale, or other promotional offers (for example, Coles Express may begin to allow Flybuys members to redeem their points for fuel discounts); and
- competing fuel retailers such as 7-Eleven, United or Puma may choose to partner with a retail or loyalty program operator and allow shopper docket discounts or loyalty program points to be earned and/or redeemed at their respective fuel sites.

The proposed conduct in no way affects or limits the ability of these fuel retailers to implement these or other equally competitive offerings.

12.6 More consistent consumer offerings

The proposed conduct will allow the benefits of the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program to be offered more consistently across the BP-branded network post-transaction.

This benefits consumers in a number of ways, including by:

- improving the clarity with which the benefits of BP and BP Resellers' participation in the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program are communicated to consumers;
- according with consumer expectations that BP-branded sites will generally (but not necessarily always) participate in promotions that are advertised in relation to the BP brand; and
- reducing the extent to which consumers need to seek out BP-branded sites at which benefits under the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program can be obtained.

Relatedly, to the extent that the proposed conduct will technically involve boycott conduct (as a result of limiting any party's participation in other shopper docket discount schemes and/or loyalty programs), it assists to:

- ensure that the parties – particularly BP and BP Resellers – are consistently committed to the promotion of the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program; and
- avoid consumer confusion that may arise from BP-branded sites offering benefits in relation to various competing shopper docket discount schemes and/or loyalty programs.

In view of this consistency, the proposed conduct would also allow BP to more efficiently develop, undertake and implement network-level marketing initiatives and promotions with respect to the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program.

12.7 Transaction cost savings

BP's and BP Resellers' participation in the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program allows a relatively large number of fuel retailers to improve the competitiveness of their operations without the need for individually negotiated shopper docket discount scheme or loyalty program arrangements.

Although BP has not attempted to quantify the costs likely to be avoided, BP notes that the exploration and negotiation of commercial arrangements between BP and Woolworths has been lengthy and costly. BP anticipates that, in the absence of a collective participation with BP, BP Resellers would have incurred similarly significant costs on an individual basis.

12.8 Public benefits relating to mandatory BP Reseller participation

BP considers that any level of BP Reseller participation in the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program will serve to deliver each public benefit listed in sections 12.3 to 12.7 above and, to the extent that it is necessary for BP to make specific public benefits claims in respect of this aspect of the proposed conduct, those claims are made separately by way of this section.

13 Public detriments

BP submits that the proposed conduct will have no discernible public detriments in retail fuel or loyalty program markets.

13.1 Retail fuel markets

Insofar as the proposed conduct relates to retail fuel markets, no public detriments will result, for the following reasons.

- **(Low proportion of retail fuel sites involved)** Following completion of the proposed acquisition, BP-branded sites (including both BP and BP Reseller sites) will still account for only approximately 21% of retail fuel sites in Australia, and some of those BP-branded sites will not participate in the Shopper Docket Discount Scheme and/or Woolworths Rewards Loyalty Program.
- **(Limited and pro-competitive co-ordination of benefits)** BP and BP Resellers will only agree the level of benefits to be delivered to consumers under the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program (including applicable fuel discounts). Further, to the extent that authorisation is sought for such co-ordination between BP and Woolworths, potential contraventions only arise because Woolworths may retain possession of a small number of sites for a transitory period following completion of the BSA (see sections 3.4(a) and 8.3 above). Finally, authorisation in respect of conduct that relates to pre-benefit (e.g. pre-discount) retail fuel prices is sought only to allow implementation of the price competitiveness arrangements under the Redemption Agreement (which clearly do not place any upward pressure on retail fuel prices).
- **(No detriments regarding pre-2013 competition concerns)** The proposed conduct does not raise the prospect of public detriments related to the competition concerns which were addressed by the Woolworths Undertaking when it was accepted by the ACCC in 2013. In BP's view, it is not necessary for BP (or any BP Reseller) to give an undertaking to the ACCC in respect of participation in the ongoing Shopper Docket Discount Scheme, including for the reasons that BP is not in a position to cross-subsidise any contribution it will make to discounts under the extended Shopper Docket Discount Scheme from another "non-fuel" business and, as noted above, it is anticipated that

Woolworths will have continuing obligations under a varied Woolworths Undertaking.

- **(No limitations on further benefits)** BP and BP Resellers will be free to provide to consumers with further benefits outside their collective participation in the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program. For example, BP and BP Resellers will be free to offer additional fuel discounts as part of ad hoc or regular promotional offers (provided they do not involve Woolworths competitors or compete with, or cause any material reductions in, the Woolworths Rewards Loyalty Program).⁴
- **(Voluntary participation for consumers)** Participation in the Shopper Docket Discount Scheme and Woolworths Rewards Loyalty Program will remain entirely voluntary for consumers, and BP and BP Reseller sites will continue to serve a mix of consumers seeking to take advantage of the various benefits available under those offers and those who do not. In relation to the Shopper Docket Discount Scheme, consumers will remain free to acquire fuel at BP and BP Reseller sites without the benefit of a shopper docket at prevailing retail prices. In relation to the Woolworths Rewards Loyalty Program, there will be no obligation on members to acquire any goods or services from BP or BP Resellers, or to redeem points any Program points at BP or BP Reseller sites.
- **(Effectively voluntary participation for BP Resellers)** BP Resellers are able to choose or switch brands in response to the offers of competing wholesale suppliers and competitors offering commission agency arrangements – such as Caltex, Viva, 7-Eleven and Puma – and BP faces this risk of bypass when it engages in any contract re-negotiations. These alternative wholesale suppliers, as well as Mobil (which BP understands is currently developing an improved dealer offer), are very active in seeking new arrangements to grow their brand representation and underwrite their respective investments in production and importing infrastructure. BP has also observed an intensification of wholesale competitor activity over the past 12-24 months. In this context, a decision of a BP Reseller to agree to participate in either the Shopper Docket Discount Scheme and/or Woolworths Rewards Loyalty Scheme, under a new or re-negotiated POSA, is effectively voluntary notwithstanding that it may be a condition of supply by BP.

13.2 Loyalty services markets

Insofar as the proposed conduct relates to loyalty services markets, no public detriments will result, for the following reasons.

⁴

- **(No detriment for Woolworths)** While the terms of participation in the Woolworths Rewards Loyalty Program (such as in relation to funding contributions to Woolworths for points earned at BP-branded sites) may effectively be aligned between BP and participating BP Resellers, Woolworths will not suffer any harm from that alignment. Indeed, to that extent, the proposed conduct merely facilitates aspects of the Commercial Alliance agreed directly between Woolworths and BP.
- **(No detriments for consumers)** To the extent that the proposed conduct technically involves BP and participating BP Resellers engaging in third line forcing conduct (for example, supplying benefits to consumers on the condition that they have acquired loyalty program services from Woolworths), no detriment will result. Consumers remain free to acquire loyalty services from Woolworths and qualifying goods and services from Woolworths group retail outlets without acquiring any goods or services from BP or participating BP Resellers. Consumers may also continue to acquire goods and services, including fuel, from BP and participating BP Resellers without being Woolworths Rewards Loyalty Program members or availing themselves of any of the benefits under that program.
- **(Low impact of exclusivity and boycotts)** As suggested in section 6.2 above, there is a wide variety of alternative loyalty programs and an even wider array of merchants with whom those programs may partner. Programs such as Flybuys, MYER one, Altitude Rewards and the Velocity Program, will continue to be able to offer customers of BP and participating BP Resellers benefits. In relation to the Velocity Program in particular, although BP and BP Reseller participation in that program will conclude, Velocity will have renewed opportunities to engage with competing fuel retailers (such as Caltex) as its exclusivity obligations to BP will also cease. Accordingly, exclusivity arrangements negotiated between BP and Woolworths, or between BP and participating BP Resellers – including where they technically involve boycott conduct – will have limited impacts. Finally, it is important to note that BP and BP Resellers have not and will not engage in any boycott for the purposes of negotiating with Woolworths or any other potential loyalty partner.

14 Conclusion

For the reasons set out above, BP submits that the extensive public benefits of the proposed conduct will significantly outweigh any public detriment.