



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

1 June 2017

Mr David Hatfield  
Director Adjudication  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

By email: [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)  
[david.hatfield@accc.gov.au](mailto:david.hatfield@accc.gov.au)

Dear Mr Hatfield,

**A91580, A91581 & A91582 - BP AUSTRALIA PTY LTD & ORS APPLICATIONS  
FOR AUTHORISATION—INTERESTED PARTY CONSULTATION**

I am writing to you again with regards to BP Australia's (BP) plans to enter into an ongoing partnership with Woolworths in relation to convenience stores at service stations, the "Woolworths Rewards" loyalty program and the Woolworth's "Shopper docket" discount scheme (A91580, A91581 & A91582).

I would like to emphasise my concern regarding the application's potential to seriously impact the operation of some small business operators under the proposed arrangement. I would seek to raise concerns regarding two aspects of the proposed arrangement.

***Small Business Impacts***

The first concern extends to existing BP-branded franchisees who operate under dealer-owner, dealer-operated (DoDo) arrangements. These small business owners entered into multi-year commercial arrangements and paid fees to BP to operate under a BP brand. The fees paid reflected a certain value of operating as a DoDo under the BP brand. At the time these agreements were entered into BP branded sites operated in competition to Woolworths and Woolworths/Caltex branded sites. Consequently, the location of BP branded DoDo sites can be in proximity to Woolworths and Woolworths/Caltex competitors.

This application, if approved, can have a detrimental effect on the value of the commercial arrangements for those DoDo branded sites. Consumers would be presented with a choice in a location between two BP branded sites: one offering a fuel discount and the other not. They would have no way to tell if the site is a company owned site, a commission agent site or a DoDo site. The consumer incentives and associated foot/vehicle traffic of the fuel discount scheme have significant impact on the value of the DoDo sites BP franchisee agreements.

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In the interests of a level playing field under the applications proposed we would recommend either:

1. Not approving the application to extend the fuel discount scheme to BP sites,  
or
2. Approving the application with a requirement that allows all BP sites irrespective of ownership (either company owned, commission agent or DoDo) to access the fuel discount scheme.

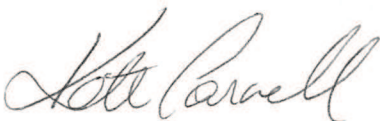
***Impacts on local area competition***

The second concern extends to the effect on local area competition. As noted earlier, many DoDo small business owners entered into arrangements with BP at sites that directly compete with Woolworths and Woolworths/Caltex sites. The approval of BP's acquisition of Woolworths service stations could lead to some geographic locations increasing the number of BP branded sites directly competing with each other. In a particular location, a consumer could not know the difference between one site or the other.

The increase in choice for consumers of a similar branded offering would materially affect the value of the franchisee agreements for DoDo operators. Consequently, the ACCC should consider, in any authorisation of the BP/Woolworths deal, allowing these small business operators who are able to demonstrate a significant change in local area competition to be provided financial compensation from BP for the devaluation of their franchising arrangement and loss of future earnings. Preferably, as an alternative, these DoDo small businesses should be able to exit their existing agreements without penalty. To enable outcome this the ACCC should develop a mechanism or process whereby small business DoDo operators can apply for an assessment by the ACCC which when completed would allow them early release or financial compensation appropriate to the devaluation of their agreement.

I will continue to follow the progress of these matters and hope that these comments assist with your work.

Yours sincerely,



**Kate Carnell AO**

Australian Small Business and Family Enterprise Ombudsman