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31 May 2017

Mr David Hatfield,
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601
GPO Box 3131
Canberra ACT 2601

Via e-mail: adjudication@accc.gov.au

Dear David,

**Re: BP Australia Pty Ltd & Ors applications for authorisation A91580, A91581 & A91582-
interested party consultation ("Application")**

Reference is made to the Commission's letter of the 12 May 2017 ref 62113 concerning the Application.

In response to the invitation which has been extended 7-Eleven Stores Pty Ltd (7-Eleven) is pleased to present for consideration the following submission in relation to the Application.

Background

7-Eleven is the largest convenience and independent petrol retailer in Australia, generating approximately \$3.6 billion in sales through a network of around 650 corporate and franchised stores across VIC, NSW, ACT, QLD & WA, operated by approximately 8,500 people. Of these outlets around 480 retail fuel making 7-Eleven the largest independent fuel retailer in the country. The company is privately owned by the Withers and Barlow families, and is the third largest private company in Australia.

7-Eleven is a member of the Franchise Council of Australia (FCA), the Australasian Association of Convenience Stores (AACS), the Australasian Convenience and Petroleum Marketers Association (ACAPMA), and the Australian Retailers Association (ARA).

7-Eleven's Submission

It is considered that while supermarket shopper docket schemes and associated loyalty programs may appear to provide consumer value on first blush, a review of the history of such programs reveals a quite different picture.

In past years shopper docket programs left unchecked in Australia saw a significant misuse of market power by Australia's largest supermarket chains. This occurred through cross-subsidising fuel discounts to levels up to 40 cents per litre from their larger grocery business to the detriment generally of the retail fuel industry. In particular this led to a rationalisation of the standalone independent sector, resulting in a lessening of competition and ultimately an increase in retail fuel prices.

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7-Eleven was pleased to see the ACCC recognise the competition issue and through its intervention secure, in December 2013, enforceable undertakings limiting cross-subsidised discounts to 4.0 cents per litre. There is a concern however that these undertakings are due to expire in December 2018. That concern is heightened by the proposed broadening of shopper docket use in Australia such as would occur if the Application is approved.

It is submitted that approval of the Application would result in a lessening of competition and be contrary to the interests of consumers for the following reasons:

- The supermarkets have been losing market share and volume since January 2014 when the enforceable undertakings became effective because of the need to compete on a more level footing (although standalone retailers do remain disadvantaged to the extent of 4.0 cents per litre) thus highlighting the unevenness of the playing field prior to the undertakings ;
- The expansion of the acceptance of the shopper-docket redemption footprint will impact adversely on independent retailers in the affected markets as they have no means to compete;
- The notion that stand alone service station loyalty programs could in any way compete with the supermarket shopper docket programs and the Woolworths loyalty program with a combined membership of 9 million is unrealistic in the extreme;
- The Woolworths loyalty program will effectively facilitate cross-subsidised fuel discounts with discount rewards proposed to be redeemed at the fuel point of purchase, something that is new to the Woolworths program;
- If BP were to provide discounts in addition to the Woolworths 4.0 cents per litre (as opposed to sharing the expense) this would be a cost which would ultimately be passed on to consumers, or if not passed on would have to be funded through BP's vertical integration producing an uneven playing field for standalone businesses such as 7-Eleven;
- The rollout of Woolworths loyalty program across BP branded fuel outlets in partnership with what will be Australia's largest fuel retailer post acquisition (with close to a third of the nation's fuel outlets) would deliver an exceptional level of consumer reach to one of Australia's largest and most formidable retailers;
- Branded BP resellers may be placed in a situation where they are left with no choice but to participate in major supermarket loyalty schemes and be subject to the costs associated with such schemes;
- There is currently no undertaking limiting the loyalty points on fuel purchases leaving open the opportunity for implementation of a strategy of high cross subsidised discounts conducive to a misuse of market power.

7-Eleven's Position

As has been made clear in a separate submission 7-Eleven is opposed to the BP acquisition of Woolworth's retail fuel assets as it believes a reduction in competitors in the marketplace (in particular the removal of a perceived value-based competitor) will lead to a lessening of competition.

Additionally, 7-Eleven is opposed to any expansion of Woolworths' current shopper docket redemption base and BP's participation in Woolworths loyalty rewards program.

7-Eleven is of the view that retailers should be afforded the protection of the Regulator to ensure that at all times participants in the retail fuel market can operate and compete on a level playing

field and not be placed at a disadvantage to grocery chains which have chosen to use fuel as a marketing tool or loss leader..

An additional consideration is that prior to the introduction of the Oilcode the Sites Act once existed and operated to limit the level of vertical integration and market control BP would achieve if successful with its acquisition proposal.

Considerations

It is 7-Eleven's submission that to ensure preservation of a competitive market environment the ACCC should:

1. address shopper docket discounts levels and strengthen undertakings to protect independent retailers as a key condition of any approval. 7-Eleven notes that the current supermarket undertakings are due to expire at the end of 2018, leaving the door open for the previously experienced abuse of market power by the supermarkets to resume.
2. prevent Woolworths operating its loyalty program through BP's retail network as it effectively expands its consumer reach to tie a far greater number of fuel consumers to its already dominant grocery footprint.

7-Eleven trusts this submission will be of assistance to the ACCC in its investigation and assessment of the Application.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Amc', with a stylized flourish at the end.

Angus McKay
Chief Executive Officer
7-Eleven Stores Pty. Ltd.