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**Sent:** Friday, 23 June 2017 2:10 PM

**To:** Adjudication

**Cc:** Schaper, Michael

**Subject:** ACCC Consultation - Re A91580, A91582 - BP Australia PL & Ors Applications for authorisations - interested party consultation

Attention: Mr David Hatfield, Adjudication Branch of ACCC

Dear David,

Please forgive me for the very late addition to a submission I put forward to you on 29<sup>th</sup> May 2017 concerning - ACCC Consultation - Re A91580, A91582 - BP Australia PL & Ors Applications for authorisations - interested party consultation.

Since having forwarded you a submission outlining our members concerns regarding the above matter I have received numerous communications from members and industry voicing their disappointment and somewhat confusion as to the impact of an authorisation such as this upon robust competition, market concentration and ultimately consumer choice.

Below is a note from a particularly concerned MGA member that encapsulates most of the concerns and the conundrum that surrounds this authorisation request by BP

Kind Regards and thank you for your consideration

Jos de Bruin CEO MGA

## **Jos & board,**

In addition to the MGA's submission to the ACCC I believe there are other consequences of the Woolworths Loyalty program being utilised in BP service stations owned by BP resellers (or independent owner operators).

One situation is, that if they are forced to give exclusivity to that program, then any current arrangements they may have in place with Independent supermarkets such as IGA, Foodworks, Farmer Jacks, Foodland, Leo's, Lomana or SPAR would be at risk of being turned "off" . This would obviously take effect if the BP reseller is pressured by BP in any way, either directly or indirectly by stealth and or other means, to 'sever' any current arrangements they may have with independent supermarkets or local business's and go with the majority BP corporate deal on Woolworths shopper dockets and Woolworths loyalty.

The whole proposition poses a number of potential issues and complexities around 'fair competition' if one group or subset 'under the one 'brand' is treated differently in regard to a number of areas for example;

- are all BP sites charged the same price for wholesale fuel
- are all BP sites charged the same expense items such as 'freight'
- what is the cost of the 'loyalty scheme' to the BP outlet?
- Do the BP resellers have access to the same cost of goods for their convenience offer that BP corporate stores will enjoy under the supply deal with Woolworths?
- is there a corporate/retailer contribution to Woolworths to be in the scheme
- if Woolworths chooses to market over and above offers of discounts, reduced retail prices or extra points for extra spend than is the normal loyalty and or shopper dockets offers, is the BP reseller expected to honour such offers and at whose expense?

- if all the same parameters are not offered to BP resellers who come onto the scheme then it's not a level playing field and one side maybe disadvantaged

What is the consequence for a BP reseller (should really be referred to as 'the independent service station operator who is currently supplied by BP) who chooses not to take part?

Is the independent reseller expected to fund the 'Woolworths' loyalty in any way? And if so, why should they pay anything at all for a program that they have to hand over any rights they may have to loyalty customer transactional data either in their own right or via another supermarket brand due to an 'exclusivity' clause.

We also have IGA Express convenience outlets attached or very much a part of a current BP outlet, so is this BP retailer allowed to operate a Woolworths Loyalty scheme in conjunction with an IGA loyalty scheme? For example;

- BP One Stop IGA Express Warrnambool
- BP IGA Express, North Road, CAULFIELD South

There are many, many arrangements in place all over Australia with independent supermarkets and BP fuel sites (no doubt some independently owned and some BP corporate stores where both operator and supermarket will be adversely affected)

Shouldn't a BP re-seller have the right to offer any number of loyalty offers and let his customers, the consumer make a choice rather than Woolworths or BP making that choice for the consumer by giving them 'the BP reseller 'NO' choice, under an enforced 'exclusive' loyalty offer.

Also is 'the deal' or 'legal contract' between BP corporate sites (the ex Caltex Woolworths Company owned sites which I'd assume will be re-bannered BP) and Woolworths, negotiated at a corporate level, the exact same deal that potentially 'impacts, effects, costs, constrains any current BP resellers 'independents' ?

This needs to be addressed because they (the independent BP resellers) are not vertically integrated like 'BP Company' owned sites and may not have had any part or consultation in what has been negotiated. There must be full and total transparency for BP resellers 'independents' to what a corporate entity has negotiated for themselves and expects an independent to offer the same loyalty scheme (yet may have differing costs than the corporate site, but by virtue of a supply arrangements that they may have with BP, call fall under an agreement that was negotiated and agreed to by a vertically integrated model with different cost/margin/profit percentages (inputs - outputs) than a single stand alone reseller.

So the ACCC must ask question, were BP resellers part of negotiations with Woolworths?

If so how or who was involved?

If not then it raises many concerns and questions?

How can BP market something so significant under the Woolworths arrangement if 'BP resellers 'independents' are not buying fuel or goods at the same price as the new BP corporate sites?

Saying, or writing in small print on any advertising medium that the Woolworths loyalty is only available at participating BP outlets really wouldn't explain the true nature of the situation if a BP reseller 'independent' chooses not to participate because the program either costs too much or is of no benefit to the independent or he is paying a different cost of goods than his fellow corporate store, and being a stand alone outlet none of his expenses are amortised across the total business and yet he is or may be expected to offer the same deal as

- a Woolworths Supermarket
- a BP company owned service station
- any other affiliate that Woolworths chooses to admit to 'the program'
- if the deal or contract between Woolworths and BP has any negative impact on an independent BP reseller in any way then it should not be allowed to proceed as it would be abuse of market power to leave the resellers out of the loop because they are impacted negatively - If we have a situation where they are damned if they do or damned if they don't then it's a bit like 'third line forcing by stealth'

Finally who owns the BP resellers 'independent' 'customer data base' under the deal?

And more importantly who owns the BP resellers 'independent' retailers 'customer transactional data' ?

This is crucial, as that store/sites data is the resellers customer data on his customers, not BP's or not 'Woolworths' yet he may be unwittingly handing that information over to a third party who could do what they like with it - target marketing to his customers with product and or price that benefits Woolworths or BP and has a negative impact on the reseller.

Just my thoughts on what other effects such a deal would entail

A concerned MGA Member

## Jos de Bruin

Chief Executive Officer | GAICD



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