



Final Determination

Application for authorisation AA1000619

lodged by

bp Australia Pty Ltd on behalf of itself and resellers of fuel under the BP brand

in respect of

the expansion of the BP Rewards Program

Authorisation number: AA1000619

Date: 27 October 2022

Commissioners Keogh
 Brakey

Summary

The ACCC has decided to grant authorisation until 18 November 2027 to enable BP Australia Pty Ltd (BP) and participating BP fuel resellers to expand the BP Rewards Program.

BP proposes to expand the BP Rewards Program by introducing various fuel and non-fuel offers at BP sites and participating BP Reseller sites for all, or certain groups of, consumers who are members of the BP Rewards Program. The ACCC granted a related authorisation to BP, BP Resellers, Qantas Airways Limited and Qantas Frequent Flyer Limited to establish the BP Rewards loyalty program on 27 February 2020.

The ACCC considers the Proposed Conduct will result in public benefits, including some direct benefits to consumers, some enhanced competition in the retail fuel and convenience items market, more consistent offers across BP-branded sites and limited transaction cost savings.

The ACCC considers the Proposed Conduct is unlikely to result in significant public detriment. The Proposed Conduct is unlikely to result in competitive harm in retail fuel and convenience markets. However, the ACCC considers the Proposed Conduct may give rise to some risk of privacy detriments due to BP's collection and use of consumer data. These risks will be mitigated by privacy safeguards put in place by BP and the application of the Privacy Act.

The application for authorisation

- 1.1. On 29 June 2022, BP Australia Pty Ltd (**BP**), on behalf of itself and current and future participating resellers of fuel under the BP brand (**BP Resellers**), lodged application for authorisation AA1000619 with the Australian Competition and Consumer Commission (the **ACCC**). BP is seeking authorisation to expand the BP Rewards Program to provide additional fuel and non-fuel offers to members. BP seeks authorisation for a period of five years.
- 1.2. This application for authorisation AA1000619 was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). The ACCC can grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in the Act, but are not harmful to competition and/or are likely to result in overall public benefits.

The Proposed Conduct

- 1.3. BP is seeking authorisation to expand the BP Rewards loyalty program by introducing various fuel and non-fuel offers at BP sites and participating BP Reseller sites for consumers who are members of the BP Rewards Program (**BP Rewards Members**). In addition to the existing BP points or Qantas points offers available under the current BP Rewards Program, BP intends to provide some further offers to qualifying BP Rewards Members, including both fuel and non-fuel offers.
- 1.4. BP proposes to provide these offers to all, or certain groups of, BP Rewards Members, particularly members who are also employees, contractors, members, customers, or persons otherwise associated with existing or future BP customers/corporate partners

with whom BP negotiates a fuel and/or non-fuel offer.¹ These are the **proposed offers**.

- 1.5. BP proposes that these fuel and non-fuel offers may sometimes be available to all, or certain groups of, BP Rewards members during promotional periods, or conditional on certain behaviour, such as:
 - their purchase of fuel, convenience, or ancillary items
 - them completing research or providing extra data
 - their use of a BP proprietary platform or service, such as BPme, the BP Rewards member portal, or BP fuel card digital platforms, or
 - their use of certain payment mechanisms, such as credit card, debit card, a BP proprietary or third-party fuel card, digital wallet, or any other payment mechanism (either at a BP site or BP Reseller site).
- 1.6. BP seeks authorisation for aspects of these commercial arrangements, including:
 - Any exclusive dealing that may arise when or in the event that:
 - BP, or a participating BP Reseller, supplies, or offers to supply, benefits to a qualifying customer (including fuel and non-fuel discounts for customers at BP Reseller sites), on condition that the qualifying customer has acquired goods or services from BP, a BP Reseller or a third party, or
 - BP makes participation in the proposed offers mandatory as a condition of BP's supply of other goods and services to a BP Reseller.
 - Coordination between BP and BP Resellers in respect of their collective participation in implementing the proposed offers including in relation to:
 - the benefits to be provided to qualifying customers (whether by BP or a participating BP Reseller), including any discount, allowance, rebate or credit to be given or allowed in relation to fuel and non-fuel purchases at BP Reseller sites, or
 - any charge paid by BP Resellers to BP in respect of the proposed offers.

(Together, the **Proposed Conduct**).

2. Background

BP Australia Pty Ltd (BP)

- 2.1. BP refines, imports and supplies petrol, diesel and automotive liquid petroleum gas (petrol) on a retail and wholesale basis. Relevant to the Proposed Conduct, BP:
 - supplies retail fuel, convenience items and ancillary services through a network of BP-branded company-owned-company-operated (**COCO**) and commission agent (**CA**) service stations, and

¹ BP refers to these partners as its B2B2C (business-to-business-to-consumer) partners throughout its application.

- supplies wholesale fuel to BP Resellers (independent operators of service stations at which fuel is re-sold under the BP brand), and to distributors that re-sell fuel to BP Resellers.

2.2. BP is seeking authorisation for the proposed conduct on behalf of itself and current and future participating Resellers of BP fuel.

Resellers of fuel under the BP brand (BP Resellers)

2.3. BP Resellers are independently owned and operated fuel retailers that onsell fuel supplied by BP under the BP brand. BP Resellers conduct their businesses independently of BP, negotiate their own commercial contracts with non-fuel suppliers, and retain absolute discretion over their retail fuel pricing. Of the 1391 BP-branded sites in Australia, 1049 are operated by BP Resellers.²

2020 BP Rewards Authorisation

2.4. On 27 February 2020, the ACCC issued a determination granting authorisation to BP, BP Resellers, Qantas Airways Limited and Qantas Frequent Flyer Limited (together, **Qantas**) to establish the BP Rewards loyalty program (**BP Rewards Program**), appointing Qantas as the first cornerstone partner (2020 **BP Rewards Authorisation**).³

2.5. This program enabled members of the BP Rewards program and Qantas Frequent Flyer (**QFF**) program to elect whether to earn Qantas or BP points when they make a purchase at BP.

2.6. The program also extended to the business rewards programs both BP and Qantas offered, whereby businesses that use the BP Plus fuel card at BP and BP Reseller sites may earn Qantas points on their purchases.

2.7. The ACCC granted authorisation until 20 March 2025.

2.8. BP submits that the proposed offers will not affect the current operation of the BP Rewards Program at BP sites or BP Reseller sites. BP proposes that the 2020 BP Rewards Authorisation will continue and will co-exist with the additional offers proposed in the current application for authorisation.

Customer loyalty schemes in Australia

2.9. In December 2019, the ACCC released its final report on its review into consumer and competition issues in loyalty schemes. The report identified that:

*many firms invest in loyalty schemes with the aim of gaining a competitive advantage over rivals by influencing customer behaviour to encourage repeat purchases and introduce customer resistance to competing offers or products.*⁴

2.10. The review identified several concerns with the practices of loyalty schemes in Australia, including competition issues and data practices.

2.11. Competition concerns from loyalty schemes depend on the extent to which they 'lock up' customers and introduce switching costs that increase barriers to entry and expansion for rival firms.

² BP Australia Pty Ltd & Ors application for authorisation AA1000619, 29 June 2022, p. 8.

³ AA1000452-1 – BP Rewards, Qantas Frequent Flyer and Qantas Business Rewards loyalty program Final Determination, 27 February 2020.

⁴ ACCC, *Customer loyalty schemes: Final report*, December 2019, p. v.

- 2.12. In addition to considering competition concerns, the report identified several concerns about the data practices of firms using loyalty schemes, noting that many loyalty schemes derive value from consumers by collecting data, including personal information, about them. The ACCC was concerned with practices around firms collecting, using and disclosing consumer data through loyalty schemes in ways that do not align with consumer's preferences.

3. Other similar authorisations

- 3.1. In addition to the 2020 BP Rewards Authorisation, the ACCC has previously granted authorisations for customer loyalty schemes similar to the Proposed Conduct.

BP Australia Pty Ltd (Velocity) – Authorisation – A91485 – A91487⁵

- 3.2. In August 2015, the ACCC granted authorisation until 9 September 2020 to enable BP and BP Resellers to collectively participate in the Velocity Frequent Flyer Program, a loyalty scheme associated with Virgin Australia. The authorisation enabled BP and BP Resellers to provide opportunities for Velocity members to earn points for purchases made at BP sites.⁶
- 3.3. The ACCC accepted that the conduct was likely to result in consumer benefits to Velocity members being able to earn points at a broader range of locations, and increased competitiveness of BP as a fuel retailer.⁷
- 3.4. The ACCC considered that the conduct was unlikely to lead to any significant public detriment because co-ordination was limited to participation in the program, the arrangements would not impact the ability of competitors to enter into partnerships with other merchants, and resellers could cease retailing BP fuel if they did not want to participate in the program.⁸

BP Australia Pty Ltd (Woolworths) - Authorisations A91580 – A91582⁹

- 3.5. In December 2017, the ACCC granted authorisation until 31 January 2028 to enable BP, Woolworths and BP Resellers to introduce the Woolworths Rewards Loyalty Program at BP owned and operated service stations and certain BP Reseller service stations.¹⁰ The parties have not engaged in this conduct due to the proposed acquisition by BP of Woolworths retail fuel sites not being completed.
- 3.6. The ACCC accepted that the conduct was likely to result in consumer benefits to members due to increased opportunities to earn and redeem points, increased consistency in offers that will meet consumer expectations and reduce search costs, and some transaction cost savings.¹¹
- 3.7. The ACCC noted it was possible that there would be some additional offers made by competing fuel retailers in response to the expansion of the Woolworths Rewards Loyalty Program, but concluded that there was not likely to be significant benefit in the

⁵ <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/bp-australia-pty-ltd-authorisations-a91485-a91487>

⁶ A91485 – A991487 - BP Australia Pty Ltd Final Determination, 18 August 2015, p. 1-2.

⁷ A91485 – A991487 - BP Australia Pty Ltd Final Determination, 18 August 2015, p. 7-10.

⁸ A91485 – A991487 - BP Australia Pty Ltd Final Determination, 18 August 2015, p. 12.

⁹ <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/bp-australia-pty-ltd-ors-authorisations-a91580-a91582>

¹⁰ A91580 – A91582 – BP Australia Ltd & Ors Final Determination, 14 December 2017, p. i.

¹¹ A91580 – A91582 – BP Australia Ltd & Ors Final Determination, 14 December 2017, p. 20.

form of improved price competition in fuel retailing given the ability for shopper docket discounts to increase pre-discount pump prices.¹²

4. Consultation

- 4.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.
- 4.2. The ACCC invited submissions from a range of potentially interested parties including fuel retailers, airlines, automotive representative groups, industry associations, supermarket retailers, department stores and relevant regulatory bodies.
- 4.3. Prior to the release of the draft determination, the ACCC received one public submission from the Office of the Australian Information Commissioner (**OAIC**). The OAIC raised some privacy concerns around BP's collection and use of customer data under the Proposed Conduct.
- 4.4. On 28 September 2022, the ACCC issued a draft determination proposing to grant authorisation for five years. A pre-decision conference was not requested following the release of the draft determination.
- 4.5. The ACCC received one public submission in response to the draft determination from the Master Grocers Association (MGA) who submitted it did not oppose the proposed authorisation.
- 4.6. The submissions from the MGA, the OAIC and BP's response are available on the [Public Register](#) for this matter.

5. ACCC assessment

- 5.1. BP has sought authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act, give rise to exclusive dealing within the meaning of section 47 of the Act, and may substantially lessen competition within the meaning of section 45 of the Act¹³.
- 5.2. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (authorisation test).

Relevant areas of Competition

- 5.3. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 5.4. BP submits that the relevant areas of competition are competition in retail supply of fuel, and competition in the retail supply of convenience items and ancillary services.
- 5.5. Consistent with the ACCC's determination for the 2020 BP Rewards Authorisation, the ACCC considers that businesses use customer loyalty or reward schemes with the aim of attracting and retaining customers by offering a discount or rebate to customers who make repeat purchases, rather than forming a separate market.

¹² A91580 – A91582 – BP Australia Ltd & Ors Final Determination, 14 December 2017, p. 16.

¹³ Including in relation to concerted practices.

- 5.6. The ACCC also recognises that competition issues may arise not only in the primary market in which the loyalty scheme predominately operates, but may also be extended to related markets through exclusive partnerships with firms supplying complementary products.¹⁴ In the 2020 BP Rewards Authorisation, the ACCC identified airline markets as a relevant area of competition, due to the benefits flowing to Qantas as a partner of the BP Rewards Program.¹⁵ BP is not currently seeking authorisation for any further conduct relating to its partnership with Qantas. However, the ACCC considers there will be likely incidental benefits to Qantas from the Proposed Conduct. BP intends to attract more customers to its Rewards program by increasing customer benefits, and consequently Qantas is likely to benefit from the expansion of the BP Rewards program.
- 5.7. Accordingly, the ACCC considers that the relevant areas of competition are likely to be:
- competition in retail supply of fuel
 - competition in the retail supply of convenience items and ancillary services, and
 - competition in airline markets.

Future with and without the Proposed Conduct

- 5.8. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.
- 5.9. The ACCC considers that the likely future without the Proposed Conduct would be:
- BP and Qantas continue their partnership (which authorisation is due to expire in February 2025) without expanding the BP Rewards program in the manner proposed by the current application for authorisation, or
 - BP may decide to partner with specific corporate partners to negotiate offers for consumers, which may also require authorisation. If BP decided to do this without seeking authorisation, it may not include BP Resellers.
- 5.10. In the circumstances, the ACCC considers it appropriate to begin by assessing the benefits and detriments of the Proposed Conduct by comparison to a future in which BP continues to run its Rewards program in its current state. The ACCC also considers a future in which BP decides to partner with specific corporate partners to negotiate offers to consumers.

Public benefits

- 5.11. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as

¹⁴ ACCC, Customer loyalty schemes: Final report, December 2019, p. xi.

¹⁵ AA1000452 – BP Rewards, Qantas Frequent Flyer and Qantas Business Rewards loyalty program Final Determination, 27 February 2020, p. 8.

*one of its principal elements ... the achievement of the economic goals of efficiency and progress.*¹⁶

5.12. The ACCC has considered the following public benefits:

- direct consumer benefits
- enhanced competition in retail fuel and non-fuel markets
- more consistent consumer and business offerings, and
- transaction cost savings.

Enhanced competition in retail fuel and convenience markets

5.13. BP submits that the benefits available under the Proposed Conduct are valued highly by consumers, and so this will enhance competition in retail fuel and convenience markets.

5.14. BP submits the Proposed Conduct will have the following competitive benefits:

- it will cause other fuel and convenience retailers to reassess the competitiveness of their offerings, and consider improving those offerings
- it will improve the attractiveness of the BP Rewards Program, because the proposed offers will only be available to members of the program, and
- the fuel offers are likely to elicit pro-competitive responses from loyalty programs that are partnered with other fuel retailers, as BP submits that the anticipated fuel discounts are highly competitive.

5.15. As noted in the Australian Convenience and Petroleum Marketers Association (**ACAPMA**) *2019 Monitor of Fuel Consumer Attitudes*, for the majority of consumers, the price of fuel is the most important driver of their decision about where to purchase fuel.¹⁷ The ACCC considers fuel discounts to be highly valued by consumers.

5.16. Therefore, the ACCC considers there are likely to be some pro-competitive responses from competitor fuel retailers in response to the proposed fuel offers. The ACCC notes that to the extent that competitors respond to the Proposed Conduct, such as through fuel discounts and non-fuel offers, this would likely benefit a wider range of consumers than just those who participate in loyalty programs.

Direct consumer benefits

5.17. BP submits that the Proposed Conduct will benefit consumers directly, as it will enable consumers who are BP Rewards members to obtain additional fuel and non-fuel discounts at BP and participating BP Reseller sites.¹⁸

5.18. BP submits that the Proposed Conduct will benefit more consumers as it may incentivise consumers who are not BP Rewards members to sign up to the program. BP submits that this will provide additional opportunities for consumers to earn and redeem points under the BP Rewards Program, including BP points and Qantas points.

¹⁶ *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42, 677.

¹⁷ Australian Convenience and Petroleum Marketers Association 2019 Monitor of Fuel Consumer Attitudes, 8 November 2019, p. 13.

¹⁸ BP Australia Pty Ltd & Ors application for authorisation AA1000619, 29 June 2022, p. 28.

5.19. The ACCC accepts that there will be an increased benefit to consumers under the Proposed Conduct as they will be able to obtain fuel and non-fuel discounts in addition to offers already available under the BP Rewards program.

Consistent offerings for consumers and businesses

5.20. BP submits that the Proposed Conduct will allow the benefits of the BP Rewards Program to be offered more consistently across BP branded sites. BP submits that, while participation in the Proposed Conduct will be voluntary for existing BP Resellers, BP expects that the majority of BP Resellers that currently participate in the BP Rewards Program will also participate in the Proposed Conduct.¹⁹

5.21. BP submits that the Proposed Conduct will allow consumers to access more consistent benefits than if BP and BP Resellers were to negotiate the offers independently with other corporate partners.

5.22. BP submits that a consistent offering of the program will benefit consumers and businesses in the following ways:

- clarifying the manner in which the benefits of BP's and participating BP Reseller's offers are communicated to consumers
- according with consumer expectations that BP-branded sites will generally participate in promotions that are advertised in relation to the BP brand
- reducing the extent to which consumers need to seek out BP-branded sites at which the proposed offers are available, and
- allowing BP to more efficiently develop, undertake and implement network-level marketing initiatives and promotions across the BP-branded network for the proposed offers (including to corporate partners).

5.23. The ACCC notes that, in its application, BP submits that in a possible future without the Proposed Conduct, BP Resellers may negotiate their participation in similar offers independently with BP and other corporate partners. The ACCC considers that there will be greater consistency of offers across BP-branded sites under the Proposed Conduct than if BP and BP Resellers independently negotiated offers with specific corporate partners.

Transaction cost savings

5.24. BP also submits that the Proposed Conduct will result in some transaction cost savings. This is due to BP and BP Resellers being able to collectively negotiate their fuel and non-fuel offers with one another and with their corporate partners.

5.25. BP submits this will result in transaction costs savings compared to if BP and BP Resellers had to negotiate their proposed offers individually.

5.26. The ACCC considers it likely that there will be some transaction cost savings under the Proposed Conduct by BP and BP Resellers collectively negotiating the offers than if BP and BP Resellers independently negotiating offers with specific corporate partners.

¹⁹ In its application, BP submits it expects that all 337 bp sites and 720 bp Reseller sites that currently participate in the BP Rewards Program will participate in the proposed offers.

ACCC conclusion on public benefit

5.27. The ACCC considers that the Proposed Conduct is likely to result in public benefits from:

- some direct consumer benefits due to BP Rewards members gaining access to additional fuel and non-fuel offers
- some enhanced competition in retail fuel markets due to consumers highly valuing fuel discounts
- some limited consumer benefits due to the consistent offerings of the Proposed Conduct across BP-branded sites, and
- some limited transaction cost savings due to BP and BP Resellers being able to collectively negotiate their proposed offers.

Public detriments

5.28. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.²⁰

5.29. The ACCC has considered the following public detriments:

- potential risks regarding the use of personal data, and
- potential detriment in retail fuel and convenience markets.

Potential risks regarding the use of personal data

5.30. The ACCC has considered whether the Proposed Conduct is likely to lead to a potential detriment from the collection and use of consumer data.

5.31. In its submission dated 15 August 2022, the OAIC raised several concerns regarding the collection and use of personal data that consumers provide to BP when they sign up to the BP Rewards Program.

5.32. The OAIC submits that BP's application does not address how personal information will be collected, used and disclosed under the Proposed Conduct, and whether such collection would be reasonably necessary for the operation of the expanded BP Rewards Program.²¹ The OAIC recommended the ACCC seek further information from BP about the data flows under the Proposed Conduct, including a copy of the relevant Privacy Impact Assessment (**PIA**).²²

5.33. In its response to the OAIC's submission, BP responded that there will be no material change to the collection, use and disclosure of personal information under the expanded BP Rewards Program. BP confirmed that existing privacy safeguards put in place for the BP Rewards Program will remain effective to protect personal information collected, used and disclosed under the expansion. The ACCC understands that this includes any limited disclosure to BP's corporate partners.

²⁰ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

²¹ OAIC submission, 15 August 2022, p. 1.

²² OAIC submission, 15 August 2022, p. 1.

- 5.34. BP also stated that it did not revise its existing PIA or undertake a new PIA as part of the expansion. The ACCC notes that BP has stated there will be no material change in BP's collection, use and disclosure of personal information under the Proposed Conduct.²³
- 5.35. The OAIC also raised concerns that, as BP Resellers are independent operators of service stations, they may not be subject to the Privacy Act 1988 (Cth) (**Privacy Act**). The OAIC submits that the ACCC should consider whether entities that are not covered by the jurisdiction of the Privacy Act should be required to opt in.
- 5.36. BP submits that itself, its corporate partners, and most BP Reseller sites are covered by the jurisdiction of the Privacy Act. BP further submits that any BP Resellers that are not covered by the obligations of the Privacy Act will be handling limited personal information, and there are safeguards in place to mitigate privacy concerns.
- 5.37. The OAIC was particularly concerned with BP's proposed offers that are conditional on consumers completing research or providing extra data. The OAIC submits that it is not clear what types or amount of information may be collected from consumers, or the intended use or disclosure of the collected data.²⁴
- 5.38. In its response, BP submits that it may request consumers to participate in these conditional offers, and that any data obtained this way will be reasonably necessary for, or directly related to the expanded BP Rewards Program. As above, BP submits that all handling of personal information will be covered by the Privacy Act and/or BP's internal privacy policy.
- 5.39. The ACCC considers that there is likely to be some privacy detriments arising from the Proposed Conduct, including decreased privacy due to BP collecting and using consumers' information, and increased profiling by BP based on consumers' personal information.
- 5.40. However, in the circumstances, the ACCC notes that most BP sites, BP Resellers and BP's corporate partners will be subject to the Privacy Act. Further, BP's privacy safeguards that were implemented prior to the launch of the BP Rewards Program will remain in place and apply to the Proposed Conduct, which will further mitigate privacy risks.
- 5.41. The ACCC also considers that consumers who do not wish to provide additional information as part of any conditional offers can still participate in the current BP Rewards Program.
- 5.42. In the circumstances, the ACCC considers the public detriment due to any misuse of customer's information will be limited.

Potential detriment in retail fuel and convenience markets

- 5.43. The ACCC has considered the likely effects of the Proposed Conduct on retail fuel and convenience markets, specifically whether the Proposed Conduct is likely to lead to a detriment by reducing the ability of other fuel and convenience retailers to compete with BP.
- 5.44. As noted in the *ACAPMA 2019 Monitor of Fuel Consumer Attitudes*, only 6 per cent of consumers consider the ability to use loyalty cards as the most important driver of their

²³ BP Australia, response to OAIC submission, p. 3.

²⁴ OAIC submission, 15 August 2022, p. 2.

decisions about where to purchase fuel.²⁵ The ACCC considers partnered loyalty schemes are not a major driver of consumer behaviour in relation to fuel and convenience purchases.

- 5.45. The ACCC considers it likely that consumers who value the relevant fuel and non-fuel discounts will be more likely to purchase fuel at BP branded sites under the Proposed Conduct. However, the ACCC considers it common practice for fuel retailers to offer a variety of fuel and non-fuel offers, and therefore competitors are likely to compete for consumers in these markets.
- 5.46. The ACCC considers it unlikely that the Proposed Conduct will have significant detriments in retail fuel and convenience markets.

Potential detriment in the supply of airline services

- 5.47. In the 2020 BP Rewards Authorisation, the ACCC assessed the impact of the conduct being authorised on competition in airline markets. The ACCC considered whether the conduct was likely to give rise to competition detriments in airline markets, by giving Qantas a significant competitive advantage due to its partnership with BP. This kind of competitive harm to airline markets may arise, for example, if having a loyalty scheme was critical to the overall success of an airline.
- 5.48. The ACCC considers it likely that Qantas will experience some increased competitive benefits due to the proposed expansion of the BP Rewards Program. However, the ACCC considers the Proposed Conduct is unlikely to give rise to any significant detriments in airline markets, due to the limited incidental financial gains that may flow to Qantas.
- 5.49. The ACCC considers the effect on competition in airlines under the Proposed Conduct to be much less significant than those gained under the 2020 BP Rewards Authorisation.

ACCC conclusion on public detriment

- 5.50. The ACCC considers it unlikely that the Proposed Conduct will give rise to public detriments in:
- retail fuel and convenience markets, and
 - airline markets.
- 5.51. The ACCC notes concerns relating to the collection and use of customer information. The ACCC also notes that the risk of harm will be mitigated by the application of the Privacy Act, and BP's internal privacy policies and safeguards.

Balance of public benefit and detriment

- 5.52. The ACCC considers that the Proposed Conduct is likely to result in some limited public benefits in the form of:
- some direct consumer benefits
 - enhanced competition in retail fuel and non-fuel markets
 - more consistent consumer and business offerings, and

²⁵ Australian Convenience and Petroleum Marketers Association 2019 Monitor of Fuel Consumer Attitudes, 8 November 2019, p. 13.

- some transaction cost savings.

5.53. In terms of public detriments, the ACCC considers that:

- the Proposed Conduct is unlikely to result in a competitive harm to retail fuel and convenience markets, as partnered loyalty schemes are not a major driver of consumer behaviour in relation to fuel and convenience purchases.
- While there is some risk of public detriments arising from the use and collection of customer data flowing from the Proposed Conduct, these risks are likely to be mitigated by the coverage of the Privacy Act as well as BP's internal privacy policies.

5.54. Therefore, for the reasons outlined in this determination, the ACCC is satisfied that the Proposed Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

6. Determination

The application

6.1. On 29 June 2022, BP lodged application AA1000619 with the ACCC, seeking authorisation for the Proposed Conduct which expands the existing BP Rewards Program. This application was made under subsection 88(1) of the Act.

The authorisation test

6.2. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.

6.3. For the reasons outlined in this determination, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.

6.4. Accordingly, the ACCC has decided to grant authorisation.

Conduct which the ACCC proposes to authorise

6.5. The ACCC has decided to grant authorisation AA1000619 to enable BP and participating current and future BP Resellers to participate in the arrangements as described in paragraphs 1.3 – 1.6 above, defined as the Proposed Conduct.

6.6. The Proposed Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act,²⁶ or constitute exclusive dealing within the meaning of section 47 of the Act.

6.7. Authorisation is granted in relation to Division 1 of Part IV and sections 45(1)(a), (b) and (c) and section 47 of the Act.

6.8. The ACCC proposes to grant authorisation AA1000619 until 18 November 2027.

²⁶ Including conduct that may constitute a concerted practice

7. Date authorisation comes into effect

- 7.1. This determination is made on 27 October 2022. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into effect on 18 November 2022.