

29th May 2017

Attention: Mr. David Hatfield, Director
Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra
ACT 2601

BY EMAIL: adjudication@accc.gov.au

Dear Mr Hatfield

Re: A91580, A 91581& A91582– BP Australia Pty Ltd & Ors applications for authorisations – interested party consultation

We refer to the above applications for authorisation made to the Australian Competition and Consumer Commission (the ACCC) by BP Australia Pty Ltd & Ors and to your invitation to make comment on the applications. We thank you for this invitation and submit our comments for your consideration.

About MGA

Master Grocers Australia (MGA) is a national employer industry association representing independent grocery and liquor stores in all States and Territories of Australia. Independent supermarkets and liquor stores comprise a significant subsector of the retail industry in Australia. The stores operate under banners such as Farmer Jacks, Foodland, FoodWorks, Friendly Grocer, IGA and SPAR. Australia's 4000-plus independent grocery and liquor retailers employ 115,000 people and generate annual sales of \$14.5 billion. Our members around Australia are engaged in selling many of the same goods and produce that are obtainable by consumers currently at small convenience stores attached to service stations.

The Application

MGA notes that BP Australia Pty Ltd (BP) proposes to acquire the Woolworths network of service stations. A consequence of the acquisition is that BP is seeking to enter into a partnership with Woolworths in respect of the Woolworths Loyalty program and the Woolworths shopper docket discount scheme.

BP is seeking authorisation from the ACCC that would enable BP and BP resellers to enter into arrangements that relate to fuel discounts and other benefits that can be passed on to consumers under the Woolworths Loyalty programme and the shopper discount scheme.

A consequence of the authorisation that BP and BP resellers are seeking is that they would be able to provide benefits to consumers, provided that they acquire the loyalty program services from Woolworths and goods and services from Woolworths or other retailers. BP resellers would also be able to participate, subject to not participating in any other competing shopper docket scheme.

Comments on the Application

MGA is concerned that there may be adverse anti-competitive consequences as a result of the acquisition by BP and BP resellers of the Woolworths service stations. It is noted that BP, with Woolworths as the retailer, will together have the ability to enter into arrangements that relate to fuel discounts, that will be passed on to consumers under the Woolworths Loyalty programme and the shopper discount scheme. Whilst the shopper docket scheme may appear to have some competitive benefits to the consumer MGA is conscious of the potential danger for anti-competitive consequences for smaller grocery retailers generally.

The use of the shopper docket system has in the past been regarded as anti-competitive particularly when the discounts reached excessively high levels. It is inevitable that small retailers will be the losers when big businesses are able to exert their corporate strength as was evidenced in the “shopper docket wars” in 2013. At that time, there was great concern about the link between the sales of goods in supermarkets and the sale of petrol in service stations. The discounts were initially around 4 cents a litre but that gradually increased in many cases to a much higher amount, causing considerable market distortions. What might have seemed in some cases to be beneficial to consumers was in fact destructive for many small retailers in Australia. Four years ago MGA argued relentlessly that our members were being seriously affected by the use of the shopper docket system where one product was being sold at one outlet and then was being linked to a different product sold elsewhere. This type of bundling was undoubtedly anti-competitive, it was dividing the petrol industry, seriously affecting the sales of goods in independent supermarkets and had the potential to lessen competition.

A compromise was reached in 2013 by the ACCC with the major retail outlets, namely Coles and Woolworths, with the introduction of enforceable undertakings and the matter seemed to be resolved in an appropriate way at that time. The intervention by the ACCC was invaluable in resolving the potential damage to the competitive process.

Now we have a new situation that could be potentially anti-competitive if the same process that was used four years ago is used once again. The purchase of the Woolworths service station outlets by BP will increase the control of the petrol market by BP from a low of 18% to as high as 39%. This will provide a greater opportunity to Woolworths to utilise the shopper docket system in a number of new outlets.

The issue for smaller and vulnerable retailers is whether the enforceable undertakings agreed to by Woolworths in 2013 will be applicable to the new dominant BP petrol giant and its newly acquired service outlets. Although it was stated by Caltex, when BP was successful in its bid for the Woolworths petrol outlets, that the shopper dockets were no longer a draw card¹ the potential remains for a resurgence of their higher value usage and the possibility of resulting damage for small independent retailers..

¹ Herald Sun “Shopper dockets the sleeper issue behind Woolworths sale to BP – Brian Robins 2 January 2017

There is no doubt that any resurgence of the shopper docket system to the levels that existed in 2013 would once again result in serious damage to the independent supermarket sector. The success of the ACCC in resolving the problems that occurred in 2013 were welcomed and MGA is hopeful that the ACCC is able to use its powers to in respect of the current application for authorisation to avoid the damage that could result from any reoccurrence of previous anti – competitive conduct. The comments made by Brian Robins² ring very true, “if petrol retailers are able to divide groups of buyers and offer selective discounts then they can effectively divide the market and reduce competition.”

MGA urges the ACCC, in its consideration of the application for authorization by BP, BP resellers and Woolworths, to ensure there is no serious effect on competition in the supermarket and liquor store industries, and also in relation to the motor fuel market. Accordingly, we seek that the ACCC monitor any anti-competitive system of marketing, which could result in a drastic loss of retail diversity for the retail industry.

MGA is in a position to assist the ACCC in any way it can by providing details of the potential effects on the independent retail sector if there is any increase the shopper docket system.

Conclusion

Since 2013 there has been relative calm in relation to the continued use of shopper discount benefits to consumers. The sales of the Woolworths service stations and the loyalty program, together with the shopper docket benefits is of concern to smaller independent retailers as they do not want to see a reoccurrence of the anti- competitive activity that was previously so damaging to the market. There has been relative acceptance of the arrangements reached in 2013 and it is hoped that these arrangements will remain in place in the future.

MGA thanks the ACCC for the opportunity to make this submission on the application for authorisation by BP and BP resellers and Woolworths in respect of the sale of the Woolworths service station outlets and the acquisition of the shopper docket discount system and Woolworths Loyalty Program.

Yours sincerely



Jos de Bruin

CEO

Master Grocers Australia

² Ibid page 2