

MGA Response to the
Application for Authorisation A(91580,A91581&A91582-
further supplementary submission and draft determination by
BP Australia Pty Ltd on its behalf. BP Resellers and
Woolworths Ltd.

November 2017

Master Grocers Australia (MGA) Response to the Application for Authorisation A(91580,A91581&A91582- further supplementary submission and draft determination by BP Australia Pty Ltd on its behalf. BP Resellers and Woolworths Ltd.

Introduction

This is a response by MGA to the further supplementary submission by BP Australia on its own behalf and on behalf of BP Resellers and Woolworths Pty Ltd. (the Applicants)

It is noted that the Applicants in the supplementary submission address a number of issues including:

- the public benefits and detriments that may arise from the fuel discounts under the Shopper Docket Discount scheme
- the public benefits and detriments that may arise from the fuel discounts under the Woolworths Rewards Loyalty Program
- Public benefits from more consistent consumer offerings
- Public detriment in relation to an increased risk of coordinated behavior between BP and Woolworths
- Issues arising from the ACCCs proposed condition of authorization that BP and Woolworths offer and comply with section 87B undertakings limiting per litre fuel discounts offered through the Shopper Docket Discount Scheme and Woolworths rewards Loyalty Program to no more than 4 cents per litre.

MGA notes that in December 2013 both Woolworths Pty Ltd and Coles accepted enforceable undertakings to voluntarily limit fuel discounts that linked to supermarket purchases to a maximum of 4 cents per litre. These became operational in 2014 and have operated successfully since that date.

The relationship between Woolworths and Caltex has now changed but there is a a new fuel reseller that will make fuel discounts being available to the public, which in turn will be linked to Woolworths grocery prices thereby providing a significant attraction to the consumer. .

MGA is particularly concerned that if this further application for authorization is approved there will be serious consequences for the smaller groceries sector.

We thank the ACCC for the opportunity to submit our further 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 in excess of \$14.5 billion. Our members around Australia are engaged in selling many of the same goods and fresh produce that are obtainable by consumers currently at small convenience stores attached to service stations.

MGA Comments on the Application

MGA supports healthy competition and has never denied that all competitors should have the right to compete to the best of their ability and have the right to aspire to be better than their competitors. However, all competition has to be fair and every competitor should operate on a level playing field. In this situation it is necessary to consider whether, with the huge anticipated increase in the number of outlets and the changed pattern of shopper dockets and new loyalty programme, this situation will become a monopolistic activity that is an increased risk to the competitive process.

MGA does not doubt that shopper docket fuel discounts are attractive to consumers and is not suggesting that they should not be available, but MGA does support the views of the ACCC that there is a risk to the competitive process if the 4 cents limit is left uncapped and strongly supports the retention of the cap at the current level. As the ACCC has pointed out there is serious risk to “*foreclosure of price sensitive (ie shopper dockets holding) consumers to other fuel retailers , a higher risk of reduction in the intensity of competition for other (non- shopper docket holding) consumers and increased risks faced by other fuel retailers to invest or remain in retail fuel markets- leading to higher retail fuel prices*” (ACCC Draft Determination)

MGA does not agree that Woolworths or BP would be “constrained in their ability to compete with retail, fuel and loyalty competitors who would be permitted to offer fuel discounts without being subject to any

such restrictions or limitations” and submits that is just not conducive to healthy competition. This is an example of a retail giant simply using its corporate strength to exert itself on another aspect of retail, by coupling with another equally powerful force to take over a significant portion of the retail industry. This will destroy a significant vulnerable part of the retail market and enable an extension of Woolworths market power. Woolworths is an aggressive and powerful competitor in the retail market. The growth of the small convenience Woolworths outlets is already evident in metropolitan locations with the expansion of the small convenience store concept by Woolworths, currently branded Woolworths Metro. The retail giant already has a large retail footprint in the hundreds of Woolworths supermarkets across the country.

MGA does not agree that *“Woolworths and BP would be constrained in their ability to compete with retail, fuel and loyalty competitors who would be permitted to offer fuel discounts without being subject to such restrictions or limitations”* (Application page 17) Woolworths has an agreement that the shopper dockets should be capped at 4 cents and that has operated successfully over the last three years. It is likely that if the cap is removed there would be a distortion of the market because there can be no doubt that a business of the size of Woolworths would be in a position to exercise its market strength to the detriment of its smaller rivals. Shopper dockets and the Loyalty Programme could be utilized extensively thus giving the Woolworths even more power that they have already. This would be against the principles of fair and healthy competition.

It is clear that the Application regards the imposition of the 4 cents per litre cap as being inappropriate and using the Tasmanian market as an example where it has been submitted there is scope for an increase of the cap by at least another 2 cents is clearly wrong. This claim ignores the fact that the Tasmanian market is much smaller than anywhere else in Australia and and is not reflective of the situation on mainland Australia

Although the Applicant argues that there will be a consumer benefit in this process, we strongly believe that an increase would outweigh other more serious consequences for the industry. If the success of the use of shopper dockets and a Woolworths Rewards loyalty programme eventually reduces or eliminates the competition that has continued relatively successfully over the last 3 years then the consumer will be the loser in the long run. It is well known that Woolworths keeps its prices low, but without competition this may not continue.

MGA is seeking that the cap of 4 cents a litre remains in as the maximum discount because it is important that those who are able to maintain successful partnerships cannot distort the market. Increased shopper docket discounts will not lessen the price of supermarket products in fact in the longer term they will increase prices because the smaller rivals will be driven out and there will be an extension of monopolistic power. The higher the cap the greater the market distortion. Only big businesses can drive this desire to increase their market strength and if that happens it will come at the risk of having no competition at all. An increase in the value and usage of shopper dockets and the wider use of the Woolworths rewards loyalty card will together be a greater incentive to the consumer, which will wreak heavy damage on smaller retailers. MGA remains seriously concerned about the anti – competitive effect on the small independent sector by this application.

We have a significant number of small convenience stores apart from the larger supermarkets that will be affected by an uncapped shopper docket system. The ones that are closely associated with MGA include FoodWorks, Friendly Grocers, IGA Express, IGA and SPAR These stores would be affected by the expansion of the increased use of the higher value shopper dockets and the Woolworths Rewards Loyalty programme.

It appears that BP and Woolworths will build a retail store format, known as Metro@BP which will be a combination of retail fuel and grocery. We understand that there will be take away meal options for consumers as an added attraction. These will be established in the current 531 sites, plus the 12 sites under construction and a further 200 sites. The total number of outlets could be significantly higher. The Woolworths shopper dockets and the Woolworths Loyalty programme will be available for use at all these sites.

The greater the proliferation of the smaller convenience stores by a powerful retailer such as Woolworths the greater their dominance in the market. Woolworths will increase its market share further than already exists. Its very size enables it to keep prices low and with the increased retail opportunities in the fuel outlets it will inevitably lead to increased market power that will result in a decline in the number of their competitors. This is just not healthy competition, this is an example of a retail giant simply using its corporate strength to exert itself on another aspect of retail, by coupling with another equally powerful force to take over a significant portion of the retail industry. This will destroy a significant vulnerable part of the retail market and enable an extension of Woolworths market power. Woolworths is an aggressive and

powerful competitor in the retail market. The growth of the small convenience Woolworths outlets is already evident in metropolitan locations with the expansion of the small convenience store concept by Woolworths, currently branded Woolworths Metro, this is of course in addition to the retail outlets in petrol stations that already exist and the larger retail footprint in the hundreds of Woolworths supermarkets across the country. It is inevitable that the corporate power of Woolworths will, as their Metro Convenience outlets grow, impact on the ability of smaller convenience outlets to remain sustainable and viable.

Woolworths has the commercial muscle to pursue this venture and this proposed activity should be recognised as a serious competitive threat to the Australian retail market.

Conclusion

MGA is concerned about the proposed use of shopper dockets that propose an uncapped value as well as the associated Woolworths Rewards loyalty programme. Their usage should continue to be capped at 4 cents in accordance with the enforceable undertaking, as was agreed with the ACCC in 2013.

Should that agreed amount be increased the threat of increased power and influence on the market by Woolworths will seriously affect the viability of the smaller grocery retailers in the market. It is the opinion of MGA that the terms that are now being sought in the Application present a serious threat to the balance of fair trading in the retail industry and the need to ensure that there is not just competition in the market place, but that there is fair competition.

We thank the ACCC for the opportunity to make this short comment on our concerns in this matter.

Jos de Bruin



CEO - Master Grocers Australia – Trading as MGA Independent Retailers