

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given for
the purposes of section 87B

by

Retail Food Group Limited

ACN. 106 840 082

Persons giving this undertaking

- (1) This Undertaking is given to the Australian Competition and Consumer Commission (the ACCC) by Retail Food Group Limited ACN 106 840 082 (RFG) of 1 Olympic Circuit, Southport, Queensland for the purposes of section 87B of the Competition and Consumer Act 2010 (the Act).

Background

- (2) Retail Food Group Limited (RFG) is a registered corporation in the state of Queensland and, via various subsidiaries, has franchisee stores located in each state and territory in Australia and in New Zealand including but not limited to stores operating under the Brumby's Bakery franchise system (Brumby's).
- (3) Neither RFG nor its subsidiaries have conducted any analysis in relation to the effect of carbon pricing on Brumby's retail product prices.
- (4) On 8 June 2012, the managing director of Brumby's distributed a newsletter to approximately 250 Brumby's franchisees which contained the following statement:

"... We are doing an RRP review at present which is projected to be in line with CPI, but take an opportunity to make some moves in June and July, let the Carbon tax take the blame, after all your costs will be going up due to it." (the carbon price statement).
- (5) The ACCC considers, and RFG acknowledges, that the carbon price statement may have had the effect of inducing or encouraging Brumby's franchisees to make representations to retail customers linking product price increases to the carbon price without reasonable basis.
- (6) Such representations may breach false, misleading and deceptive conduct provisions of the Australian Consumer Law (ACL), specifically sections 18 and 29(1)(i) of the ACL, schedule 2 of the Act.

- (7) RFG has taken the following prompt actions to redress any impact of the carbon price statement:
- a) On 4 July 2012, RFG wrote to each Brumby's franchisee:
 - i) advising that the carbon price statement was not sanctioned by RFG and was not representative of its policies;
 - ii) outlining each franchisees' obligations under the ACL; and
 - iii) stating that neither Brumby's nor RFG "encourages or condones the making of any representation or statement linking, in whole or in part, the introduction of the Carbon Tax to impending RRP changes, or indeed, any changes to pricing [within a franchisee's] outlet."
 - b) Also on 4 July 2012, RFG distributed material to franchisees of its other franchise systems, namely Donut King, Michel's Patisserie, BB's Cafe, Esquires Coffee Houses and Pizza Capers in similar terms to 7(a) above.
 - c) On 5 July 2012, RFG published a further notice to Brumby's franchisees which reinforced its correspondence of 4 July 2012, and drew Brumby's franchisees' attention to the potential penalties under the Act for engaging in false, misleading or deceptive conduct.
 - d) On the weekend of 7-8 July 2012 RFG published full page newspaper advertisements in The Sydney Morning Herald, Sunday Herald Sun, The Sunday Mail, The Sunday Times, The Sunday Mail and Sunday Territorian newspapers which, in reference to the carbon price statement, said, among other things:

Price rises are inevitable in any business ... "The unfortunate mistake was head office suggesting the carbon tax should be left to take the blame. This was wrong and for this they have sincerely apologised."
 - e) RFG has commenced the development of:
 - i) internet based training courses which will provide RFG personnel and its franchisees with further guidance regarding the legal obligations associated with price representations and the effect of the carbon price; and
 - ii) a training module to form part of initial and refresher franchisee training courses run by the RFG National Training Academy which will reinforce the training outlined in 7(e)(i) above;
- (8) RFG has offered to give this Undertaking in the terms set out below to the ACCC for the purposes of section 87B of the Act.

Commencement of undertaking

- (9) This Undertaking comes into effect when:
- a) the undertaking is executed by RFG; and
 - b) the ACCC accepts the undertaking so executed.
- (10) Upon the commencement of this Undertaking, RFG undertakes to assume the obligations set out in paragraphs 11 to 12 below.

Undertakings

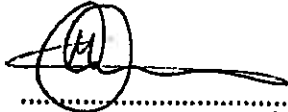
- (11) RFG undertakes for the purposes of section 87B of the Act that it will:
- a) refrain from making any representations, without a reasonable basis, that prices have increased due to the carbon price;
 - b) refrain from making any communications that may encourage or induce Brumby's franchisees from making representations to consumers, without a reasonable basis, that retail prices have increased due to the carbon price; and
 - c) cause its subsidiaries, including Donut King, Michel's Patisserie, BB's Cafe, Esquires Coffee Houses and Pizza Capers, to comply with Items (11)(a) & (b) above.

Acknowledgments

- (12) RFG acknowledges that:
- a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
 - b) the ACCC will, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications; and
 - c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed by

Retail Food Group Limited ACN 106 840 082 and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.



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Secretary/Director *ANTHONY MARK CONNORS*



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Director *ANTHONY JAMES ALFORD*

This *10th* day of July 2012

**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 87B OF THE *COMPETITION AND
CONSUMER ACT 2010*.**



Chairman

This *16th* day of July 2012