

COMPETITION AND CONSUMER ACT 2010

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

by

Equipserve Solutions Pty Ltd

ACN 123 907 755

Persons giving this Undertaking

- (1) This Undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by Equipserve Solutions Pty Ltd (ACN 123 907 755) (**Equipserve**) of 8 Clydesdale Drive, Two Wells, South Australia for the purposes of section 87B of the *Competition and Consumer Act 2010* (**the Act**).

Background

- (2) Equipserve is a refrigeration and electrical installation and maintenance business engaged in service and installation of commercial kitchen equipment, including commercial refrigeration equipment which uses the synthetic greenhouse gas refrigerant R404A.
- (3) On 26 June 2012, Equipserve sent an e-mail to a number of its customers containing the following statements:

As you would be aware the Labour Government has introduced the Carbon Tax effective 1 July 2012, this will affect us all in many different ways...

Before the Carbon Tax the price of R404A Refrigerant Gas was \$98 per Kg (plus GST)

After the Carbon Tax the price of the same R404A Gas is \$395 per Kg (plus GST)...

Sorry for the bad news, but this is out of our control and is a (sic) Australia wide increase. (Carbon Price Statements)

- (4) On 1 July 2012 the Australian Government introduced an Equivalent Carbon Price Levy (**ECP Levy**) on the import or manufacture of certain synthetic greenhouse gases covered by the Kyoto Protocol, including R404A, as part of its carbon pricing scheme.

- (5) From 1 July 2012 the ECP Levy for R404A refrigerant is \$74.98 per kilogram of R404A.
- (6) The ACCC is concerned that by making the Carbon Price Statements, Equipserve represented that the increase in its prices for R404A from \$98 to \$395 per kilogram was due, wholly, to the introduction of the carbon price, when this was not the case.
- (7) Equipserve acknowledges the ACCC concerns and admits that:
 - (i) it had not conducted any analysis in relation to the impact of the introduction of the carbon pricing scheme upon the price of Equipserve's refrigerant products at the time of making the Carbon Price Statements;
 - (ii) it is unable to substantiate that the increase from \$98 to \$395 per kilogram of R404A is wholly attributable to the introduction of the carbon price; and
 - (iii) by making the Carbon Price Statements Equipserve contravened the false, misleading and deceptive conduct provisions of the Australian Consumer Law (ACL), contained in Schedule 2 to the Act, namely sections 18 and 29(1)(i).

Commencement of Undertaking

- (8) This Undertaking comes into effect when:
 - (i) the Undertaking is executed by Equipserve; and
 - (ii) the ACCC accepts the Undertaking so executed.
- (9) Upon the commencement of this Undertaking, Equipserve undertakes to assume the obligations set out in paragraphs 10 to 13 below.

Undertakings

- (10) Equipserve undertakes, for the purposes of section 87B of the Act, that it will not make any representations attributing increases to its prices to the carbon price unless it has evidence which substantiates that the increase which is attributed to the carbon price is, in fact, due to the carbon price.

Corrective Notice

- (11) Equipserve undertakes, at its own expense, to:
 - (i) within fourteen (14) days of commencement of this undertaking, send a corrective notice in the form of Annexure A to this undertaking to each customer to whom Equipserve sent the email dated 26 June 2012 referred to in paragraph (3) above (the **Corrective Notice**); and
 - (ii) within fourteen (14) days of sending the Corrective Notice referred to in paragraph 11(i) above, provide to the ACCC evidence of its compliance with paragraph 11(i) by providing copies of each Corrective Notice sent.

Website Notice

(12) Equipserve undertakes, at its own expense, to:

- (i) within fourteen (14) days of commencement of this undertaking, cause to be published on Equipserve's website, www.equipserve.com.au, a website notice in the form of Annexure A to this undertaking (the **Website Notice**); and
- (ii) ensure that the Website Notice and the link from the homepage is displayed in accordance with paragraph 11(i) above for a period of not less than one (1) month; and
- (iii) ensure that the Website Notice is substantially the same as the Corrective Notice in Annexure A with the following specifications:
 - (a) the words "CORRECTIVE NOTICE FOR MISLEADING ADVERTISING" to be in uppercase not less than 18 point, sans serif, bold, black typeface on a white background, centred and in a bordered box;
 - (b) the words "Click here for further information" to be no less than 14 point, Times New Roman, black typeface on a white background, centred below the text at (a) above and in the same bordered box;
 - (c) the bordered box is not less than 255 pixels wide by 60 pixels high; and
 - (d) the bordered box and its contents, including white space, are to operate in the form of a one-click hyperlink to the Website Notice.
- (iv) the Website Notice will be no less than 540 pixels wide by 500 pixels high;
- (v) the Website Notice will have a top banner of at least 25 points, sans serif, white typeface, centred and in a black box of height not less than 40 pixels;
- (vi) the headline typeface will be bold, sans serif, not less than 30 point size, centred, in lower case;
- (vii) the Equipserve logo will be in colour, centred below the headline and be no less than 20mm in height;
- (viii) the Website Notice will have body text of at least 12 point Times New Roman, black typeface on a white background;
- (ix) the border will be 100 per cent black and have a minimum width of 3 pixels;
- (x) the ACCC and Commonwealth logos will be in colour, centred below the body copy and be no less than 20mm in height;
- (xi) the baseline text will be at least 10 point, Times New Roman, black typeface and centred beneath the ACCC and Commonwealth logos;

- (xii) the Website Notice will be displayed on a stand-alone webpage which is coded in standard HTML format; and
- (xiii) the Website Notice will not be displayed as a 'pop-up' or 'pop-under' window.

Compliance Program

- (13) Equipserve undertakes, for the purposes of section 87B of the Act, to:
 - (ii) establish and implement a Trade Practices Compliance Program (**Compliance Program**) in accordance with the requirements set out in Annexure B, being a program designed to minimise Equipserve's risk of future breaches of sections 18 and 29(1)(i) of the ACL and to ensure its awareness of the responsibilities and obligations in relation to the requirements of sections 18 and 29(1)(i) of the ACL, within 3 months of the date of this Undertaking coming into effect; and
 - (iii) maintain and continue to implement the Compliance Program for a period of 3 years from the date of this Undertaking coming into effect; and
 - (iv) provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure B.

Acknowledgments

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

Executed by

Equipserve Solutions Pty Ltd ACN 123 907 755 and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.


.....
Secretary/Director

STEVEN CHAPMAN
.....
(Print) Name of Secretary/Director


.....
Director

David Hoppo
.....
(Print) Name of Director

This.....24.....day ofJuly.....2012

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


.....

Rodney Graham Sims
Chairman

This.....25th.....day ofJuly.....2012

CORRECTIVE NOTICE

A correction from Equipserve Solutions Pty Ltd



**Equipserve
Solutions Pty Ltd**

In June 2012, Equipserve Solutions Pty Ltd ACN 123 907 755 (**Equipserve**) sent an e-mail to customers announcing a price increase for R404A refrigerant gas.

The e-mail was misleading because it attributed an increase from \$98 per kilogram to \$395 per kilogram for R404A refrigerant to the carbon price in circumstances where it was false and misleading to suggest that the increase was wholly due to the carbon price.

The ACCC was concerned that Equipserve engaged in misleading or deceptive conduct which is prohibited by section 18 and section 29(1)(i) of the Australian Consumer Law, Schedule 2 to the *Competition and Consumer Act 2010 (the Act)*.

Equipserve acknowledges the ACCC's concerns and admits that its conduct breached the Act.

In response to the ACCC's concerns, Equipserve has provided a court enforceable undertaking to the ACCC pursuant to section 87B of the Act. This undertaking requires Equipserve to send a corrective notice to affected customers, publish this corrective notice and to implement a Trade Practices Compliance Program to minimise the risk of this type of misleading conduct occurring in the future. The undertaking can be viewed on the ACCC's undertaking register at www.accc.gov.au.



**Australian
Competition &
Consumer
Commission**

Annexure B

TRADE PRACTICES COMPLIANCE PROGRAM

Equipserve Solutions Pty Ltd ACN 123 907 755 (**Equipserve**) will establish a Trade Practices Compliance Program (**Compliance Program**) that complies with each of the following requirements:

1. Appointments

- 1.1. Within one month of the date of the Undertaking coming into effect Equipserve will appoint a Director or a Senior Manager of the business to be responsible for the development, implementation and maintenance of the Compliance Program (**the Compliance Officer**).

2. Compliance Officer Training

- 2.1. Equipserve will ensure that, within three months of the Undertaking coming into effect, the Compliance Officer attends practical training focusing on sections 18 and 29(1)(i) of the Australian Consumer Law (**ACL**), Schedule 2 of the *Competition and Consumer Act 2010* (**CCA**).
- 2.2. Equipserve shall ensure that the training is administered by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law;
- 2.3. Equipserve, within 14 days of completion of training, will provide the ACCC with a written statement from the compliance professional or legal practitioner who conducts the training, confirming the completion of the training conducted in accordance with 2.1 and 2.2 above.

3. Staff Training

- 3.1. Equipserve will cause all employees of Equipserve whose duties could result in them being concerned with conduct that may contravene sections 18 or 29(1)(i) of the ACL, Schedule 2 of the CCA to receive regular (at least once a year) practical training, administered by the Compliance Officer (once trained) or a qualified compliance professional or legal practitioner with expertise in trade

practices law, that focuses on sections 18 or 29(1)(i) of the ACL, Schedule 2 of the CCA.

4. Complaints handling – Equipserve will:

4.1. develop procedures for recording, storing and responding to trade practice complaints within 2 months of the Undertaking coming into effect; and

4.2. provide the ACCC with an outline of the complaint handling system within 2 months of the Undertaking coming into effect.

5. If requested by the ACCC, Equipserve shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.