

TRADE PRACTICES ACT 1974

**Undertaking to the Australian Competition and Consumer Commission given for the
purposes of section 87B of the Trade Practices Act 1974**

By

A.B.C. Learning Centres Limited

(ACN 079 736 664)

December 2004

TABLE OF CONTENTS

1. BACKGROUND.....	3
2. INTERPRETATION.....	3
3. DEFINITIONS	4
4. COMMENCEMENT OF UNDERTAKING.....	8
5. UNDERTAKINGS	8
6. CONTROL DATE.....	9
7. INITIAL SALE PERIOD	10
8. CONDITION OF OWNED DIVESTITURE BUSINESSES	11
9. ADVERTISING OF DIVESTITURE.....	12
10. INFORMATION MEMORANDUM.....	13
11. COMMISSION REVIEW OF INFORMATION MEMORANDUM	14
12. PROVISION OF INFORMATION MEMORANDUM TO PROSPECTIVE PURCHASERS	14
13. ACCESS TO OWNED DIVESTITURE BUSINESSES.....	15
14. DIVESTITURE TERMS	16
15. OFFER PERIOD.....	17
16. COMMISSION APPROVAL OF QUALIFIED PURCHASER/S	17
17. RELEASE	19
18. COMPLIANCE	20
19. OBLIGATIONS TO PROCURE AND NOTIFY	20
20. CONFIDENTIALITY	21
21. NO DEROGATION	22
22. ACKNOWLEDGMENT	22
23. COSTS.....	22

1. Background

- 1.1 PMG, CCA and ABC are all Australian public limited liability companies listed on the Australian Stock Exchange. ABC (through its wholly owned subsidiary, ABCDLC) and CCA own child care centre businesses and PMG provides child care centre management for CCA and other privately owned child care centres in various locations throughout Australia, including New South Wales, Queensland and Western Australia. PIF owns child care centre businesses which are managed by PMG.
- 1.2 The PIF Businesses and child care centre businesses owned by CCA are operated by PMG under Management Agreements.
- 1.3 ABC entered into agreement with PMG which provided for the implementation of a Scheme of Arrangement under Part 5.1 of the Corporations Act, pursuant to which ABC will acquire all of the shares in PMG for cash.
- 1.4 ABC entered into agreement with CCA which provided for the implementation of 2 Schemes of Arrangement under Part 5.1 of the Corporations Act, pursuant to which ABC will acquire all of the shares in CCA for shares in ABC.
- 1.5 ABC has entered into the PIF Agreement pursuant to which ABC has agreed to acquire the PIF Businesses.
- 1.6 The Commission has made market enquiries and considered information provided by the parties and other industry participants. The Commission's enquiries were aimed at assessing whether or not the Proposed Acquisition was likely to substantially lessen competition in any substantial Australian market, in breach of section 50 of the Act.
- 1.7 The Commission has expressed concerns that the Proposed Acquisition would be likely to breach section 50 of the Act in separate markets for the supply of long day child care services, in the Relevant Regional Areas.
- 1.8 ABC does not agree with the concerns expressed by the Commission and is of the view that the Proposed Acquisition will not result in a substantial lessening of competition in the Relevant Regional Areas (or any other market). However, to address the Commission's concerns ABC has, without admission, provided this Undertaking.
- 1.9 The Commission is of the view that, taking into account, and subject to the implementation of, this Undertaking, its concerns in respect of the Proposed Acquisition will be overcome. Accordingly, on the basis of this Undertaking, the Commission will not object to the Proposed Acquisition.

2. Interpretation

The following rules of interpretation apply unless the context requires otherwise.

- (a) Headings are for convenience only and do not affect interpretation.

4

- (b) The singular includes the plural and conversely.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a paragraph, clause, annexure or schedule is to a paragraph or clause of, or annexure or schedule to, the Undertaking.
- (e) A reference to any agreement or document (including the Undertaking) is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time.
- (f) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- (g) A reference to conduct includes any omission and any statement or undertaking, whether or not in writing.
- (h) Mentioning anything after include, includes or including does not limit what else might be included.
- (i) A reference to "the Undertaking" or "this Undertaking" is a reference to all of the provisions of this document including any Annexure.

3. Definitions

ABC means A.B.C. Learning Centres Limited ACN 079 736 664;

ABCDLC means A.B.C. Developmental Learning Centres Pty Ltd ACN 010 788 502;

ABC Group means ABC and its Related Bodies Corporate (and includes, from the Control Date, PMG and its Related Bodies Corporate and CCA and its Related Bodies Corporate);

Act means the *Trade Practices Act 1974 (Cth)*;

Appointment Date means the date on which an Approved Person was appointed under paragraph 7.5;

Approved Person means a person, independent of ABC, approved by the Commission in writing (which approval must not be unreasonably withheld), to effect the sale of Owned Divestiture Businesses pursuant to paragraph 7.5;

Business Day means a day on which trading banks are open for business in Brisbane, Australia, but does not include any Saturday, Sunday or public holiday;

CCA means Child Care Centres Australia Limited ACN 100 250 646;

Commission means the Australian Competition and Consumer Commission;

Contract means, in relation to a Divestiture Business, a contract for the provision of goods or services to the Divestiture Business which are of such an essential nature that it is required for the continued operation of a child care centre business such as a lease of the premises, the lease of equipment and the employment of staff in the Divestiture Business, that was in existence on the date of this Undertaking; but does not include:

- (a) any contract arrangement or understanding that ABC may have with suppliers of good or services that relates to the provision of goods or services across the ABC Group or the benefit of any contract with one of ABC's corporate partners; or
- (b) any Management Agreement; or
- (c) any franchise agreement between ABCDLC and a regional management company; or
- (d) the terms of any contract of employment to the extent that it may offer a right to participate in a share plan scheme;

Control Date means the Effective Date as that expression is defined under the Scheme Booklets prepared by CCA and PMG;

Customer Service Levels includes the availability, range, quality and frequency of services provided at, and the hours of operation of, a Divestiture Business;

Display Advertisement means an advertisement placed, or caused to be placed, in a national daily newspaper and in a major metropolitan daily newspaper in New South Wales seeking expressions of interest to purchase separately or together the Owned Divestiture Businesses;

Divestiture Businesses means the Managed Divestiture Businesses and the Owned Divestiture Businesses and **Divestiture Business** means any one of them;

Divestiture Date means, in relation to a Divestiture Business, the date on which the divestiture of the relevant Divestiture Business is completed and settled by or on behalf of ABC pursuant to the Undertaking;

Final Divestiture Date means the date on which the last divestiture of a Divestiture Business occurs being the later of the date that:

- (a) the sale of all Owned Divestiture Businesses have been completed and settled by or on behalf of ABC;
- (b) the Management Agreements in respect of any Managed Divestiture Business have been terminated by ABC (and/or the relevant ABC subsidiary) and the ABC Group has ceased to provide management services under such Management Agreements, pursuant to the Undertaking;

Information Memorandum means a memorandum in writing that sets out certain information relating to the sale of the Owned Divestiture Businesses in accordance with paragraph 10 of this Undertaking;

Initial Sale Period means the period described in Annexure A to this Undertaking or such further period or periods determined in accordance with clause 7 (including the period for an Approved Person to complete the sale of the Owned Divestiture Businesses pursuant to paragraph 7.5);

Managed Divestiture Business means a Divestiture Business that comprises the business of the provision of management services to a third party centre owner under the terms of a Management Agreement and which it is contemplated that divestiture shall be effected by termination of that Management Agreement, being those businesses listed in Annexure B and those businesses to which clauses 5.4 or 5.5 apply);

Management Agreement means the agreement that provides for the management of the child care centre between PMG and a centre owner for a Managed Divestiture Business;

Owned Divestiture Business means a Divestiture Business that is:

- (a) owned by ABC or a subsidiary of ABC (or to be owned by ABC or a subsidiary of ABC) at the Control Date or in the case of a PIF Business, at the PIF Business Control Date; and
 - (b) which it is contemplated that its Divestiture by the ABC Group is effected by way of the sale of that Divestiture Business as a going concern,
- being those businesses listed in Annexure C (but subject to clauses 5.4 and 5.5);

Objection Notice means a notice in writing that is prepared by the Commission that sets out its objection to a Prospective Purchaser/s acquiring all or any of the Divestiture Businesses;

Offer Notice means a notice in writing to a Prospective Purchaser identified by ABC inviting expressions of interest to purchase separately or together the Owned Divestiture Businesses;

Offer Period means the period determined by ABC, having regard to ABC's undertaking to take reasonable steps to divest or cause the divestiture of the Owned Divestiture Businesses within the Initial Sale Period, by the expiration of which, written offers to purchase all or any of the Owned Divestiture Businesses must be submitted to ABC, such Offer Period being identical for all persons having registered an expression of interest and/or having received the Information Memorandum;

Person includes any corporation or non-natural person;

PIF means the Peppercorn Investment Fund;

PIF Agreement means the agreement or agreements between ABC and DDH Graham Limited as responsible entity for PIF under which the ABC Group will acquire certain child care centre businesses;

PIF Business Control Date means the date of completion of the acquisition of the PIF Businesses by the ABC Group;

PIF Businesses means the child care centre businesses which are owned by PIF through its responsible entity DDH Graham Limited that are to be acquired by ABC under the PIF Agreement;

PMG means Peppercorn Management Group Limited ACN 087 155 860;

Proposed Acquisition means the proposed acquisition of PMG, CCA and the PIF Businesses by ABC as described in paragraph 3.2 of this Undertaking;

Proposed Purchaser Notice means a confidential notice in writing to the Commission that identifies the person/s to whom ABC proposes to divest the Owned Divestiture Businesses, and sets out certain other information in relation to the Prospective Purchaser including the information referred to in paragraph 16 of this Undertaking;

Prospective Purchaser means a prospective purchaser of all or any of the Owned Divestiture Businesses;

Qualified Purchaser means a purchaser of an Owned Divestiture Business who is able to lawfully operate a child care centre under the relevant state legislation and who is not objected to by the Commission (acting reasonably) in accordance with paragraph 16 of this Undertaking;

Related Body Corporate in relation to a company, means any other company which would be deemed to be related to the first named company by the operation of section 4A(5) of the Act;

Relevant Licence means in respect to an Owned Divestiture Business a licence to operate that child care centre issued by a relevant government body under relevant state legislation;

Relevant Regional Areas means the regional areas listed in Annexure E;

Restricted Period means the period described in Annexure D to this Undertaking;

Restricted Town means the towns identified in Annexure D to this Undertaking;

Sale and Purchase Agreement means the agreement or agreements in respect of the sale and purchase of an Owned Divestiture Business;

Scheme Booklets means the scheme booklets issued by CCA and PMG to their shareholders in connection with the Proposed Acquisition;

Schemes of Arrangement means the scheme of arrangement for the acquisition by ABC of PMG and the scheme of arrangement for the acquisition by ABC of CCA; and

Termination Notice means a notice to be given by ABC under a Management Agreement to terminate a Management Agreement.

4. Commencement of Undertaking

4.1 This Undertaking comes into effect on the Control Date subject to:

- (a) this Undertaking having been executed by ABC; and
- (b) this Undertaking so executed having been accepted by the Commission,
and terminates on the earlier of:
 - (c) the Final Divestiture Date; or
 - (d) the date ABC makes a public announcement to the effect that the Schemes of Arrangement will not proceed,

except in the case of the undertakings in paragraph 5.1(c) and (d) which terminate at the end of the Restricted Period.

5. Undertakings

5.1 ABC undertakes that it must in accordance with this Undertaking:

- (a) divest the Managed Divestiture Businesses by terminating or procuring the termination of the Management Agreements for the Managed Divestiture Businesses;
- (b) divest or cause the divestiture of the Owned Divestiture Businesses:
 - (i) either separately or together; and
 - (ii) each Owned Divestiture Business must be divested as a viable going concern and as an operational concern at the relevant Divestiture Dates (the operational level being at the same level as the business was operating at the Control Date),

and must complete the divestiture of the Divestiture Businesses prior to the end of the Initial Sale Period. For the avoidance of any doubt, in relation to each Divestiture Business that is the subject of a Management Agreement between a third party owner, divestiture will be achieved by the termination of that Management Agreement and effective from the date the Management Agreement is terminated and ABC and its subsidiaries cease to provide any services under such agreement;

- (c) during the Restricted Period, not (directly or indirectly) acquire beneficial ownership of, freehold title to, or lease, any long day child care centre from any holder of a licence to operate a child care centre in any Restricted Town provided that the undertaking in this paragraph 5.1(c) does not apply to the acquisition of any businesses or interests as part of the Proposed Acquisition and does not prevent or restrict ABC (or any member of the ABC group) from itself acquiring and developing a new "green field" long day child care centre; and

- (d) not (directly or indirectly) manage or operate any long day child care centre in any Restricted Town during the Restricted Period and not enter into any agreement for the management or operation of any long day child care centre during the Restricted Period in any Restricted Town provided that the undertaking in this paragraph 5.1(d) does not apply to any long day child care centre managed or operated (or under development) by a member of the ABC Group as at the Control Date or the acquisition of any businesses or interests as part of the Proposed Acquisition.
- 5.2** ABC further undertakes to complete and settle the divestiture of the Owned Divestiture Businesses:
- (a) after signing of the Sale and Purchase Agreement/s between ABC and a Qualified Purchaser/s; and
- (b) within one month of the Qualified Purchaser obtaining a Relevant Licence or such sooner time as may be agreed between ABC and the Qualified Purchaser.
- 5.3** ABC further undertakes that prior to 28 February 2005 it will cause Termination Notices (for the relevant periods of notice required under the Management Agreements) to be sent to each third party owner under the relevant Management Agreements for those Managed Divestiture Businesses.
- 5.4** In the event that ABC does not complete the acquisition of the PIF Businesses, then:
- (a) any Owned Divestiture Business which is listed in Annexure C will become a Managed Divestiture Business; and
- (b) the provisions of this Undertaking in relation to Owned Divestiture Businesses will cease to apply to it but the provisions in relation to Managed Divestiture Businesses will apply to such PIF Businesses.
- 5.5** ABC may, with the prior written consent of the Commission (not to be unreasonably withheld), substitute any long day child care centre it owns or manages for any of the Owned Divestiture Businesses listed in Annexure C or the Managed Divestiture Businesses listed in Annexure B provided the child care centre being substituted in and the child care centre being replaced are in the same town or suburb. Where this paragraph applies, the provisions of this Undertaking will cease to apply to the business being replaced but the provisions of the Undertaking will apply to the new business being substituted.
- 6. Control Date**
- 6.1** Within 1 week of the Control Date, ABC must:
- (a) advise the Commission in writing of the date of the Control Date; and
- (b) provide the Commission with copies of the relevant supreme court orders for the Schemes of Arrangement.

- 6.2 Prior to 28 February 2005, ABC must provide the Commission with copies of all notices of termination sent to the third party owners terminating the Management Agreements.

7. Initial Sale Period

- 7.1 Subject to paragraphs 7.2 and 7.3 below, ABC may, no later than 3 weeks prior to the expiration of the Initial Sale Period, submit a request in writing to the Commission only once, seeking the Commission's written approval for an extension of the Initial Sale Period provided that the request by ABC:
- (a) is accompanied by reasons for the request; and
 - (b) stipulates the duration of the extension requested.
- 7.2 ABC acknowledges that the Commission may, in its absolute discretion, within 3 weeks of receipt of ABC's written request in accordance with paragraph 7.1 above, provide its written approval for one extension of the Initial Sale Period pursuant to paragraph 7.1 above for a period not exceeding 6 weeks.
- 7.3 Notwithstanding paragraph 7.1, in respect to any Owned Divestiture Business, ABC may at any time seek and the Commission must grant an extension or extensions to the Initial Sale Period where the request for the extension arises from a delay in the issue of a Relevant Licence for the Qualified Purchaser to operate the Owned Divestiture Business and the extension or extensions sought are for periods that are reasonable to complete the sale of the Owned Divestiture Business (having regard to the time needed to obtain a Relevant Licence). In that event the notice to the Commission must specify the period or periods of extension requested.
- 7.4 ABC acknowledges that the Commission:
- (a) may make whatever enquiries it considers necessary in its absolute discretion in deciding whether to approve or reject a request pursuant to paragraph 7.1 above; and
 - (b) may approve an extension of the Initial Sale Period for a lesser duration than that requested by ABC pursuant to paragraph 7.1 above.
- 7.5 If after the Initial Sale Period (as extended pursuant to paragraphs 7.1 to 7.3), the sale of any Owned Divestiture Business has not been completed (**Unsold Business**), then ABC and the Commission must review the Undertaking, and for at least 3 weeks negotiate in good faith for the amendment or revocation of the Undertaking, having regard to the objective that competition in the Relevant Regional Areas is not to be substantially lessened as a result of the Proposed Acquisition. If at the end of that 3 week period, the Commission and ABC cannot agree on an amendment or revocation of the Undertaking, ABC must, if the Commission requests in writing, appoint an Approved Person to sell any Unsold Business (within 3 weeks of the written request by the Commission). The Commission must consider the approval of any person proposed by ABC. The appointment of the Approved Person must be on terms approved by the Commission, which must include terms to the effect that:

11

- (a) the Approved Person is empowered by ABC and required to effect the divestiture of any Unsold Business, in one line or separately, to a Qualified Purchaser or Qualified Purchasers, within 4 months of the Appointment Date, at the best price that is attainable within that period of 4 months;
- (b) the Approved Person may charge such fees as are agreed between the Approved Person and ABC, to be paid by ABC;
- (c) after the Appointment Date, only the Approved Person may divest any Unsold Business;
- (d) the Approved Person may, with the approval of ABC (which must not be unreasonably withheld) retain any lawyer or other adviser or agent reasonably required to effect the divestiture of any Unsold Business, and the fees of that adviser or agent must be paid by ABC;
- (e) the Approved Person must account to ABC for any moneys derived from the divestiture of any Unsold Business, and
 - (i) all disbursements, fees and charges incurred by the Approved Person in undertaking his duties; and
 - (ii) all fees of the Approved Person;
- (f) ABC must reasonably assist the Approved Person to effect the divestiture of each Unsold Business;
- (g) the Approved Person must provide a written report each month to the Commission and to ABC, setting out the work undertaken by the Approved Person; and
- (h) the Approved Person must use his best endeavours to ensure that ABC complies with its obligations as set out in this Undertaking and notify the Commission of any significant failure by ABC to do so.

7.6 ABC acknowledges that nothing in paragraphs 7.1 to 7.5 shall operate to affect the confidentiality of the Initial Sale Period (as such period may be extended in accordance with the terms of this Undertaking) as described in paragraph 20.2 of this Undertaking.

8. Condition of Owned Divestiture Businesses

8.1 Subject to clause 8.2, ABC must not, except in accordance with the Undertaking, sell or transfer its interests in the Owned Divestiture Businesses, or remove or make any material adverse change to the assets, operations or businesses comprising the Owned Divestiture Businesses (including, but not limited to, the Contracts, plant, equipment, staffing levels, management, premises, inventory and Customer Service Levels).

- 8.2** In respect to Divestiture Businesses that are operated under the ABC Developmental Learning Centres name and marks there is no obligation for ABC to transfer the name or any trade mark or other form of intellectual property including but not limited to policies and procedures used by the ABC Group in connection with the sale of an Owned Divestiture Business and the centre may be altered in its physical appearance in particular its colour scheme and signage to ensure that customers do not associate the centre with the ABC Group. If ABC has in respect to an Owned Divestiture Business appointed a regional management company as its franchisee to provide services to ABC then ABC shall be entitled to terminate that regional management agreement before divestiture.
- 8.3** If prior to 10 January 2005 the ACCC requests in writing for the lists referred to in this paragraph 8.3 to be provided, ABC must prior to 31 January 2005 provide the Commission with a schedule in writing that lists, and provides a detailed description of, each of its assets, operations and businesses comprising the Owned Divestiture Businesses as at the Control Date (including, but not limited to, the Contracts, plant, equipment, staffing levels, management, premises, inventory and Customer Service Levels).
- 8.4** ABC must, from the Control Date to the Divestiture Dates, and in relation to the Divestiture Businesses from the day the Undertaking commences, take all reasonable steps to ensure that:
- (a) each of the Divestiture Businesses is managed and operated in the ordinary course of business as a fully operational competitive going concern and in such a way that preserves the goodwill of the Divestiture Business; and
 - (b) each of the Divestiture Businesses and each material asset within any of the Divestiture Businesses is maintained in good working order and as fully operational on the relevant Divestiture Date as they were on the Control Date, and in relation to the Divestiture Businesses, on the day on which the Undertaking commenced,
- 8.5** Prior to the relevant Divestiture Date, ABC will use its best endeavours to ensure that any Contracts (other than a Management Agreement which is to be terminated in accordance with this Undertaking) in existence as at the Control Date are on expiry renewed or replaced on commercial terms no less favourable to the relevant Divestiture Business.

9. Advertising of Divestiture

9.1 Prior to 31 January 2005, ABC must:

- (a) send, or cause to be sent, an Offer Notice to Prospective Purchasers identified by ABC (if any); and
- (b) publish, or cause to be published, Display Advertisements,

such Offer Notice and Display Advertisements must:

- (i) inform any Prospective Purchaser that the Owned Divestiture Businesses are offered for sale [pursuant to this Undertaking]; and

13

- (ii) request each Prospective Purchaser to register their expression of interest in the purchase of all or any of the Owned Divestiture Businesses by a date no later than 3 weeks following the date of the Offer Notice being sent to the Prospective Purchasers or the date of publication of the Display Advertisements (as applicable),

provided that in the case of the Display Advertisements, such advertisements need not refer to the towns, suburbs or addresses of the Owned Divestiture Businesses but only need refer to the numbers of businesses in each state and whether the businesses are regional or metropolitan.

9.2 ABC must, within 2 weeks after:

- (a) the date of sending or causing to be sent an Offer Notice to Prospective Purchasers pursuant to paragraph 9.1(a) above, advise the Commission in writing of the names of each person to whom ABC has sent or caused to be sent an Offer Notice;
- (b) the date of publishing or causing to be published a Display Advertisement pursuant to paragraph 9.1(b) above, provide a copy of each such Display Advertisement to the Commission.

9.3 ABC must, within 2 weeks after the expiration of the period for registering expressions of interest as determined by paragraph 9.1(b)(ii) above, provide to the Commission on a confidential basis the names, phone numbers and addresses of all persons who have registered expressions of interest in response to the Offer Notice or the Display Advertisements.

10. Information Memorandum

10.1 Subject to paragraph 11.1 below, ABC must, prior to 31 January 2005, prepare an Information Memorandum which must include, but not be limited to:

- (a) a copy of the Undertaking, excluding the Annexures;
- (b) the postal address for the General Manager, Mergers and Asset Sales Branch, of the Commission;
- (c) a comprehensive timeframe for the divestiture of the Owned Divestiture Businesses, including, but not limited to, registrations of interest, the Offer Period, due diligence, submission of a Prospective Purchaser Notice to the Commission, signing of a Sale and Purchase Agreement/s and completion of the divestiture and if dependent upon the issue of a Relevant Licence by a government authority an estimate of when that usually would occur ;
- (d) a detailed description of all land, premises, plant, equipment, inventory and other assets that comprise the Owned Divestiture Businesses;
- (e) a detailed description of the operations of the Owned Divestiture Business;

14

- (f) details of any Contracts relevant to the Owned Divestiture Businesses;
- (g) a comprehensive draft Sale and Purchase Agreement for the divestiture of all or any of the Owned Divestiture Businesses in accordance with the Undertaking; and
- (h) a statement that (subject to paragraph 12.2(b)) negotiations for the sale of any or all of the Owned Divestiture Businesses in accordance with the Undertaking will only be entered into with those persons who have registered an expression of interest and/or received the Information Memorandum prior to the expiration of the Offer Period, and who submit an offer within the Offer Period.

11. Commission review of Information Memorandum

- 11.1** Prior to 31 January 2005, ABC must seek, in writing, the Commission's written notice of no objection to the Information Memorandum prepared by ABC in accordance with paragraph 10.1 above; by providing the proposed Information Memorandum to the Commission.
- 11.2** ABC acknowledges that the Commission will, within 2 weeks from the date of receipt of the proposed Information Memorandum, consider the proposed Information Memorandum and advise ABC in writing of its decision to object (in which case the Commission will provide ABC with its written reasons for its objection which must be reasonable) or not to object to the proposed Information Memorandum. If the Commission does not object or provide written reasons for any objection within 2 weeks of receipt of the Information Memorandum, it will be deemed to have given a written notice of no objection to the Information Memorandum.
- 11.3** ABC acknowledges that the Commission will provide ABC with a reasonable period from the date of indicating its objection pursuant to paragraph 11.3 above, to amend the proposed information Memorandum to address the Commission's concerns as stated in its reasons of objection.
- 11.4** ABC acknowledges that at any time prior to the divestiture of all or any of the Divestiture Businesses, ABC must, if the Commission so requests:
 - (a) provide information to the Commission as to the attributes and extent of the Divestiture Businesses;
 - (b) discuss and negotiate with the Commission in good faith any difference of view in relation to the inclusion in, or exclusion from, the description of the businesses and assets for sale in the Information Memorandum, of any asset which may form part of the Owned Divestiture Businesses.

12. Provision of Information Memorandum to Prospective Purchasers

- 12.1** ABC must not provide the Information Memorandum (or any part of it) to any Prospective Purchaser unless the Commission's written notice of no objection to the Information Memorandum has first been obtained (or deemed to have been obtained) pursuant to paragraph 11.3 above.

12.2 Subject to paragraphs 12.1, 12.3, 13.1, 13.2 and 13.4, ABC:

- (a) must provide the Information Memorandum to any person who has registered an expression of interest in the purchase of all or any of the Divestiture Businesses, as soon as practicable and, in any event, by the later of:
 - (i) 1 week after the expiration of the period for registering expressions of interest as determined by paragraph 9.1 (b)(ii) above; and
 - (ii) 1 week after the Commission's written notice of no objection to the Information Memorandum has been obtained (or deemed to have been obtained) pursuant to paragraph 11.3 above, and
- (b) must also provide the Information Memorandum to any person who has not registered an expression of interest within 3 weeks after the date of the Offer Notice being sent to the Prospective Purchaser or the date of publication of the Display Advertisements, but who seeks the Information Memorandum prior to the expiration of the Offer Period.

12.3 ABC acknowledges that it must not provide the Information Memorandum to a person pursuant to paragraph 12.2 above, where;

- (a) ABC submits a written request to the Commission in which it sets out its reasons why the person should not receive the Information Memorandum, and the Commission advises in writing of its decision to approve ABC not providing the Information Memorandum to that person (such approval not to be unreasonably withheld); or
- (b) the Commission (acting reasonably) directs that the person should not be provided with the Information Memorandum, the Commission making such direction if, in its opinion, a sale of all or any of the Divestiture Businesses to that person would not sufficiently mitigate the Commission's competition concerns arising from the Proposed Acquisition.

12.4 ABC must, within 1 week of the date of provision of the Information Memorandum to a person pursuant to paragraph 12.2 above, provide to the Commission on a confidential basis the name, phone number and address of that person.**13. Access to Owned Divestiture Businesses****13.1** ABC may place reasonable confidentiality restrictions or assurances on access to the:

- (a) Information Memorandum by Prospective Purchasers; and
- (b) business records, personnel, physical premises, assets and operations of the Owned Divestiture Businesses by Prospective Purchasers,

and may refuse to provide such access where the person to whom ABC would otherwise be required under paragraphs 12 and 13.2 to grant access has not agreed to comply with such confidentiality restrictions or assurances.

- 13.2 Subject to paragraph 13.1, the *Privacy Act* and the relevant state legislation, ABC must permit a Prospective Purchaser to have reasonable access to the business records, physical premises and staff of ABC in relation to each of the Owned Divestiture Businesses that ABC are permitted by law to allow, and to inspect the assets and operations of the Owned Divestiture Businesses unless:
- (a) ABC submits a written request to the Commission in which it sets out its reasons why a person or persons should not have such access, and the Commission consents in writing (such consent not to be unreasonably withheld) to ABC denying that person or persons from having such access provided that ABC is not obliged to seek the consent of the Commission if ABC is not permitted to allow such access or inspection under the relevant state legislation or paragraph 13.1 applies; or
 - (b) the Commission (acting reasonably) directs that a particular person or persons should not be provided with such access, the Commission only making such direction if, in its opinion, a sale of all or any of the Owned Divestiture Businesses to a particular person or persons would not sufficiently mitigate the Commission's competition concerns arising from the Proposed Acquisition.
- 13.3 ABC must not, directly or indirectly, limit the ability of a Prospective Purchaser to contact the Commission in relation to the Undertaking or ABC's compliance with the Undertaking.
- 13.4 (Without prejudice to paragraph 20.2) ABC must not, directly or indirectly, limit the ability of a Prospective Purchaser to make any enquiries of any government department or authority, or to seek any professional advice from a lawyer, accountant, auditor, consultant or other advisor, that the Prospective Purchaser considers relevant to its possible purchase of all or any of the Owned Divestiture Businesses.
14. **Divestiture Terms**
- 14.1 The terms on which each of the Owned Divestiture Businesses is to be divested must include provision for, on normal commercial contractual terms used by ABC:
- (a) the assignment or transfer to the purchaser or purchasers of all assets (other than the Relevant Licence or any trade marks or names that include the ABC Developmental Learning Centres name) that comprise the Owned Divestiture Businesses,
 - (b) for the purchaser to promptly apply for and obtain the Relevant Licence as a condition for completion and to supply all information and do all things reasonably necessary to secure the Relevant Licence;
 - (c) the assignment to the purchaser or its nominee of the freehold or leasehold (as applicable) to the premises of the Owned Divestiture Businesses;
 - (d) the purchaser to offer employment to any of the staff of the Owned Divestiture Businesses which it wishes to employ, on terms which are no less favourable to those

staff individually than the terms on which they are employed prior to the divestiture (except in relation to any share plan for staff operated by ABC);

- (e) ABC not to do anything, the intention or likely effect of which is, to discourage any staff of the Owned Divestiture Businesses from taking up employment with the purchaser, and for ABC to take all reasonable steps to facilitate the transfer of those employees;
- (f) ABC to continue to operate the Owned Divestiture Businesses in the ordinary course of business between the date of execution of the relevant Sale and Purchase Agreement and the relevant Divestiture Date;
- (g) the assignment or transfer to the purchaser or its nominee of the rights and obligations under any of the Contracts, or (so far as lawfully possible in the circumstances) arrangements which place the purchaser or purchasers in a commercial position equivalent to that it or they would have been in had such an assignment or transfer occurred.

15. Offer Period

- 15.1** Prior to the expiration of the Offer Period, ABC may extend the Offer Period at its discretion, having regard to ABC's undertaking to take reasonable steps to divest or cause the divestiture of the Owned Divestiture Businesses within the Initial Sale Period such extended Offer Period being identical for all persons having registered an expression of interest and/or having received the Information Memorandum.
- 15.2** ABC must, within 2 weeks after determining any extension to the Offer Period, inform the Commission and each person who registered an expression of interest and/or received the Information Memorandum of the extension to the Offer Period.
- 15.3** ABC must, within 2 week after the expiration of the Offer Period or the extended Offer Period as the case may be, provide to the Commission (on a confidential basis) copies of all offers to purchase all or any of the Owned Divestiture Businesses.

16. Commission approval of Qualified Purchaser/s

- 16.1** ABC must, no later than 8 weeks prior to the expiration of the Initial Sale Period, provide the Commission with a Proposed Purchaser Notice on a confidential basis that:
 - (a) sets out the name, address, telephone number and any other available contact details of the Prospective Purchaser/s from whom offers to purchase have been received to whom ABC proposes to divest the Owned Divestiture Businesses;

18

- (b) attaches a copy of the proposed sale and purchase agreement with the Prospective Purchaser/s, and identifies any changes to the proposed sale and purchase agreement from that which was included in the Information Memorandum;
- (c) includes a description of the business carried on by the Prospective Purchaser/s and whether the Prospective Purchaser operates or has operated a child care centre business or held a Relevant Licence to do so;
- (d) includes the names of the owners and directors of the Prospective Purchaser/s;
- (e) attaches a statutory declaration by ABC's Chief Executive Officer or other qualified representative of ABC, attesting to:
 - (i) any current contracts, arrangements or understandings between ABC (or the related bodies corporate, directors and managers of ABC) and the Prospective Purchaser/s (or the related bodies corporate, directors and managers of the Prospective Purchaser/s); and
 - (ii) any contracts, arrangements or understandings between ABC (or the related bodies corporate, directors and managers of ABC) and the Prospective Purchaser/s (or the related bodies corporate, directors and managers of the Prospective Purchaser/s) made or arrived at in the last 5 years,

such contracts, arrangements or understandings including, but not limited to, equity interests, joint ventures, supply arrangements, licensing agreements, directorships and management positions, in Australia and overseas.

16.2 ABC must use its best endeavours to cause the Prospective Purchaser/s to, concurrently with the Proposed Purchaser Notice by ABC, provide to the Commission a statutory declaration attesting to:

- (a) the independence of the Prospective Purchaser/s (and its related bodies corporate, directors and managers) from ABC (and its related bodies corporate, directors and managers), having regard to any current or previous contracts, arrangements or understandings between them;
- (b) any equity, joint venture or other interest held by, or activity carried on by, the Prospective Purchasers in the separate markets for the supply of child care services or management services .

16.3 ABC acknowledges that the Commission may, within 3 weeks after receipt by the Commission of the Proposed Purchaser Notice, or such further period as is reasonably required by the Commission and notified to ABC in writing prior to the expiration of the 3 week period referred to herein, provide ABC with an Objection Notice having regard to, in the Commission's opinion:

- (a) the adequacy of the Prospective Purchaser/s expertise or financial resources to purchase and conduct the relevant Owned Divestiture Business(es);

19

- (b) the likelihood of the Prospective Purchaser/s being a vigorous and effective competitor in any of the Relevant Regional Areas in which the relevant Owned Divestiture Business(es) operate(s);
- (c) the likely independence of the Prospective Purchaser/s (and its related bodies corporate, directors and managers) from ABC, its related bodies corporate, directors and managers; and/or
- (d) the likelihood of the Prospective Purchaser/s acquisition and operation of all or any of the Owned Divestiture Businesses overcoming the Commission's competition concerns.

16.4 ABC must not divest a Owned Divestiture Business to a person named in an Objection Notice and must only divest an Owned Divestiture Business during the Initial Sale Period to a Qualified Purchaser.

16.5 Should the Commission fail to provide ABC with an Objection Notice pursuant to paragraph 16.3 above, the Prospective Purchaser will be deemed to be a Qualified Purchaser.

17. Release

17.1 Where

- (a) An Owned Divestiture Business is sold as contemplated by the Undertaking; and
- (b) the terms of sale contemplate that, immediately following the completion of the sale, a child care centre staff member will be employed by or otherwise provide services to, the relevant Owned Divestiture Business (other than as contemplated under paragraph 14.1(d)),

ABC must ensure that each member of the ABC Group releases the child care centre staff member with effect from the Divestiture Date from:

- (c) any obligation to provide services to the ABC Group; and
- (d) any non-compete or similar restraint of trade obligation, to the extent that such obligation would otherwise prevent the child care centre staff member from his or her contemplated role in relation to the relevant Owned Divestiture Business.

17.2 ABC further undertakes that it will not, directly or indirectly, discourage child care centre staff member of an Owned Divestiture Business from seeking employment with the Prospective Purchaser/s of the Owned Divestiture Businesses.

18. Compliance

- 18.1** ABC acknowledges that the Undertaking is Court-enforceable in accordance with section 87B of the Act and if ABC is unable to comply with its obligations as set out in the Undertaking due solely to circumstances outside of its control, or if the Commission considers that ABC is not complying with the spirit and intention of the Undertaking, then ABC and the Commission must review the Undertaking, and negotiate in good faith for the amendment or revocation of the Undertaking, having regard to the objective that competition in the Relevant Regional Areas is not to be substantially lessened as a result of the Proposed Acquisition.
- 18.2** ABC acknowledges that in the circumstances contemplated by paragraph 18.1 (but not otherwise) further undertakings to divest child care centre businesses or management businesses with similar or higher revenues to those of the unsold Divestiture Business(es) will be negotiated with the Commission.
- 18.3** ABC acknowledges that paragraph 18.1 above shall not apply in respect of circumstances that arise, whether directly or indirectly, by virtue of any act, matter or thing done by or on behalf of ABC or the failure of ABC to do any act, matter or thing.

19. Obligations to procure and notify

- 19.1** ABC will use its best endeavours to procure a Related Body Corporate of ABC to take action or to refrain from taking action when the performance by ABC of an obligation under the Undertaking requires a Related Body Corporate of ABC to take some action or refrain from taking some action.
- 19.2** ABC must:
- (a) provide to the Commission the information and materials specified in paragraphs 6, 8.3, 9.2, 9.3, 12.4, 15.2 and 15.3 in accordance with the terms of those paragraphs;
 - (b) notify the Commission forthwith if it does not obtain any third party consent to assignment or transfer in accordance with the terms referred to in paragraphs 14.1 (a), (c) and (g) within 14 days of the request for consent;
 - (c) provide to the Commission as soon as practicable after the execution of any Sale and Purchase Agreements, a copy of the agreement, on a confidential basis and written confirmation of the anticipated completion date; and
 - (d) provide to the Commission as soon as practicable after the completion of the divestiture of any Divestiture Business, written confirmation of such completion.
- 19.3** ABC must promptly, and in any event within 2 weeks after a request by the Commission, provide to the Commission all information reasonably requested by the Commission which is relevant to the performance of its obligations under the Undertaking and identify in writing to the Commission any such information that it considers confidential and its reasons as to why the information is confidential.

(c) is reasonably necessary for the purpose of making such market inquiries as the Commission thinks fit to assess the impact of competition arising in connection with the divestment or sale of the Divestiture Businesses.

21. No derogation

21.1 The Undertaking does not prevent the Commission from taking enforcement action at any time whether during or after the period of the Undertaking in respect of any breach by the ABC Group of any of the Undertaking.

21.2 Nothing in the Undertaking is intended to restrict the right of the Commission to take action under the Act for penalties, divestiture or any other remedy/s in the event that divestiture of the Divestiture Businesses is not implemented in accordance with the Undertaking.

22. Acknowledgment


22.1 The Commission acknowledges that unreasonable delay in providing any consent or approval pursuant to this Undertaking may prejudice the ability of ABC to perform its obligations under this Undertaking within the time periods required by this Undertaking, and that in such event it will consider in good faith any request to extend any such time periods.

23. Costs

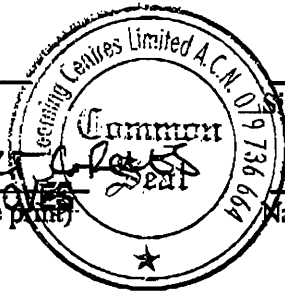
23.1 All costs incurred by ABC in either providing information to the Commission or in responding to Commission enquiries as required by the Undertaking are to be paid by ABC.

Signed by (A.B.C. Learning Centres Limited ACN 079 736 664)

by:


Signature of Director

EDMUNDO STANLEY GROVES
Name of director (please print)

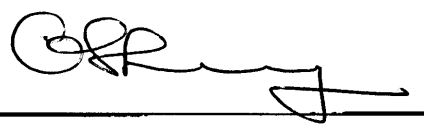



Signature of Director/Secretary

MARTIN VINCENT KEMP
Name of Director/Secretary (please print)

Date: 7 December 2004

The Undertaking offered by A.B.C. Learning Centres Limited A.C.N. 079 736 664 is accepted by the Australian Competition & Consumer Commission pursuant to section 87B of the Trade Practices Act 1974


Graeme Julian Samuel
Chairman

Date: 7 December 2004