

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

9 May 2006

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1 Background

- 1.1 ABC and Kids Campus are Australian public limited liability companies listed on the Australian Stock Exchange.
- 1.2 ABC (through its subsidiaries) is a leading provider of early childhood education services in Australia, New Zealand and the USA. It owns, operates or manages child care centres in all Australian states and territories.
- 1.3 Kids Campus owns and manages child care centre businesses located in Queensland, Victoria, Western Australia and New South Wales.
- 1.4 On 14 March 2006, ABC announced its intention to make offers under an off-market takeover bid for all shares in Kids Campus. On 31 March 2006, ABC provided a bidder's statement under the *Corporations Act 2001* to Kids Campus shareholders setting out the terms of the offer.
- 1.5 The Commission has made market inquiries and considered information provided by the parties and other industry participants. The Commission's inquiries 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.
- 1.6 The Commission has expressed the view that the Proposed Acquisition raises competition concerns under section 50 of the Act in separate markets for the supply of long day child care services, in the Relevant Regional Areas.
- 1.7 ABC does not agree that the Proposed Acquisition will be likely to substantially lessen competition in respect of any of the centres it proposes to acquire, including those in the Relevant Regional Areas.
- 1.8 In order to avoid delay and any possibility of the Commission objecting to the Proposed Acquisition ABC has, without admission, provided this Undertaking.
- 1.9 In addition ABC understands that Kids Campus has contracted to sell another site in one of the Relevant Regional Areas, which sale is expected to complete in the near future. ABC also proposes, without admission, to include the completion of that sale in this Undertaking.
- 1.10 The Commission is of the view that, taking into account, and subject to the implementation of, this Undertaking, any 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

- 2.1 The following rules of interpretation apply unless the context requires otherwise.
 - (a) Headings are for convenience only and do not affect interpretation.
 - (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 person includes any corporation or non-natural person.

- (e) A reference to a paragraph, paragraph, annexure or schedule is to a paragraph or paragraph of, or annexure or schedule to, the Undertaking.
- (f) 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.
- (g) 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.
- (h) A reference to conduct includes any omission and any statement or undertaking, whether or not in writing.
- (i) Mentioning anything after include, includes or including does not limit what else might be included.
- (j) 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;

ABC Group means ABC and its Related Bodies Corporate (and includes, from the Control Date, Kids Campus 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 13;

Approved Person means a person appointed by ABC to effect the sale of the Unsold Businesses pursuant to paragraph 13, and not objected to by the Commission pursuant to paragraph 13.2;

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;

Commencement Date means the date on which the Undertaking comes into effect, in accordance with paragraph 4;

Commission means the Australian Competition and Consumer Commission;

Completion Period means, the period described in Confidential Annexure B to this Undertaking, or such further period or periods determined in accordance with paragraph 12;

Contract means, in relation to a Divestiture Business or a Contracted Business, a contract for the provision of goods or services to the Divestiture Business or Contracted 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 or Contracted 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 franchise agreement between ABC or any of its Related Bodies Corporate and a regional management company; or
- (c) the terms of any contract of employment to the extent that it may offer a right to participate in a share plan scheme;

Contracted Business means a business which is, at the Control Date:

- (a) owned by Kids Campus or any of its Related Bodies Corporate; and
- (b) the subject of a contract for sale to a third party executed by Kids Campus (or any of its Related Bodies Corporate) and the third party prior to the Control Date; and
- (c) in respect of which the Commission has competition concerns;

which as at the date of this Undertaking are the businesses listed in Confidential Annexure E;

Contracted Business Completion Date means the date of completion of the sale of a Contracted Business;

Contracting Period means the period described in Confidential Annexure A to this Undertaking, or such further period or periods determined in accordance with paragraph 12;

Control Date means the later to occur of:

- (a) the date on which the Takeover Bid becomes unconditional; and
- (b) the date on which ABC receives acceptances under the Takeover Bid equal to 50% of the ordinary shares in Kids Campus;

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

Dedicated Divestiture Officer means the person appointed by ABC with responsibility for overseeing and managing the divestiture of the Divestiture Businesses and the completion of the sale of the Contracted Businesses, in accordance with paragraph 8 of this Undertaking;

Divestiture Business means a business which:

- (a) is owned by ABC or any of its Related Bodies Corporate (or to be owned by ABC or any of its Related Bodies Corporate) at the Control Date; and
- (b) is to be divested by ABC in accordance with this Undertaking,

being those businesses listed in Confidential Annexure C (but subject to paragraph 5.2), but does not include:

- (c) any of the businesses listed in Confidential Annexure C in respect of which Kids Campus (or any of its Related Bodies Corporate) executes prior to the Control Date a contract for sale to a third party. Any such business is to be treated in this Undertaking as a Contracted Business.

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 date that the sale of all Divestiture Businesses have been completed and settled by or on behalf of ABC, pursuant to the Undertaking;

Kids Campus means Kids Campus Limited ACN 009 815 472;

Objection Notice means a notice in writing prepared by the Commission which sets out its objection to a Prospective Purchaser/s acquiring all or any of the Divestiture Businesses, in accordance with paragraph 11.2;

Prior Contract means a contract for the sale of a Contracted Business to a third party executed by Kids Campus (or any of its Related Bodies Corporate) prior to the Control Date;

Proposed Acquisition means the proposed acquisition of Kids Campus by ABC as described in paragraph 1.4 of this Undertaking;

Proposed Person means a person proposed by ABC to be the Approved Person who must be independent of ABC and Kids Campus and with relevant experience and possessing the necessary qualifications to act as the Approved Person;

Proposed Purchaser Notice means a confidential notice in writing to the Commission that identifies the person/s to whom ABC proposes to divest the Divestiture Businesses, and sets out certain other information in relation to the Prospective Purchaser including the information referred to in paragraph 11.1 of this Undertaking;

Prospective Purchaser means a prospective purchaser of all or any of the Divestiture Businesses (including an Unsold Business);

Qualified Purchaser means a purchaser of a 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 in accordance with paragraph 11 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 of an 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 areas listed in Confidential Annexure D;

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

Takeover Bid means the takeover bid described in paragraph 1.4 of this Undertaking;

Unsold Business means any Divestiture Business:

- (a) in respect of which a Sale and Purchase Agreement has not been executed by the conclusion of the Contracting Period; or

- (b) the divestment of which has not been completed by the conclusion of the relevant Completion Period.

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 on which ABC makes a public announcement to the effect that the Proposed Acquisition will not proceed.

5 Undertakings

- 5.1 ABC undertakes that, in accordance with this Undertaking, it will use its best endeavours to:
- (a) prior to the expiry of the Contracting Period, execute a Sale and Purchase Agreement in respect of each Divestiture Business with:
 - (1) a Qualified Purchaser; or
 - (2) a person who ABC reasonably believes will not be the subject of an Objection Notice;
 - (b) divest or cause the divestiture of the Divestiture Businesses:
 - (1) either separately or together; and
 - (2) with each Divestiture Business to be divested as a viable going concern in accordance with paragraph 7.4 below,and complete the divestiture of the Divestiture Businesses prior to the end of the Completion Period; and
 - (c) facilitate the completion of the sale of the Contracted Businesses, prior to the end of the Completion Period.
- 5.2 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 Divestiture Businesses listed in Confidential Annexure C, 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 centre being replaced but the provisions of the Undertaking will apply to the new centre being substituted.

6 Control Date

- 6.1 Within one week of the Control Date, ABC must advise the Commission in writing of the date of the Control Date.

7 Condition of Divestiture and Contracted Businesses

- 7.1 Subject to paragraph 7.2, ABC must not, except in accordance with the Undertaking, sell or transfer its interests in the Divestiture Businesses or Contracted Businesses, or remove or make any material adverse change to the assets, operations or businesses comprising the Divestiture Businesses or Contracted Businesses (including, but not limited to, the Contracts, plant, equipment, staffing levels, management, premises, inventory and Customer Service Levels).
- 7.2 In respect of 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 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 a Divestiture Business appointed a regional management company as its franchisee to provide services to ABC then it will not be a breach of these undertakings if ABC terminates that regional management agreement before divestiture.
- 7.3 Within 14 days of the Control Date the Commission may request ABC to provide a schedule in writing that lists and provides a detailed description of, each of the assets, operations and businesses comprising the Divestiture and Contracted Businesses as at the Control Date (including, but not limited to, the Contracts, plant, equipment, staffing levels, management, premises, inventory and Customer Service Levels). ABC must provide the schedule within 21 days of such a request by the Commission.
- 7.4 ABC must, from the Commencement Date and from the Control Date until:
- (a) the Divestiture Date (in respect of a Divestiture Business); or
 - (b) the Contracted Business Completion Date (in respect of a Contracted Business),
- take all reasonable steps to ensure that:
- (c) each of the Divestiture and Contracted 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 or Contracted Business; and
 - (d) each material asset within the Divestiture and Contracted Businesses is maintained in good working order.
- 7.5 In complying with, and without limiting, the obligations in paragraph 7.4, ABC must in respect of each of the Divestiture and Contracted Businesses:
- (a) not make any material adverse change to the attributes or extent of the business of each of the centres;
 - (b) provide and maintain access to reasonable working capital and sources of credit;
 - (c) provide and maintain reasonable levels of administrative, promotional, advertising and marketing support to each of the centres;

- (d) maintain current staffing levels and use reasonable endeavours to ensure that each of the centres has a sufficient number of appropriately qualified management personnel and staff; and
 - (e) not, indirectly or directly, procure, promote or encourage the redeployment of staff working at the Divestiture and Contracted Businesses at the Control Date to any other business operated by ABC or any of its Related Bodies Corporate.
- 7.6 Prior to the relevant Divestiture Date or Contracted Business Completion Date, ABC will use its best endeavours to ensure that any Contracts in existence as at the Control Date are, on expiry, renewed or replaced on commercial terms no less favourable to the relevant Divestiture or Contracted Business, as applicable.

8 Dedicated Divestiture Officer

- 8.1 Within 5 Business days of the Control Date, ABC must appoint a Dedicated Divestiture Officer with responsibility for overseeing and managing the divestiture of the Divestiture Businesses and the completion of the sale of the Contracted Businesses in accordance with this Undertaking by:
- (a) the diligent pursuit of Prospective Purchasers for the Divestiture Businesses during the Contracting Period including:
 - (1) taking appropriate steps and using the resources at his or her disposal to identify Prospective Purchasers;
 - (2) advertising the Divestiture Businesses in all appropriate national, regional and local newspapers and publications;
 - (3) directly approaching Prospective Purchasers he or she identifies or which respond to advertisements; and
 - (4) providing Prospective Purchasers with information about the relevant Divestiture Business or Businesses, as appropriate;
 - (b) progressing negotiations with any Prospective Purchasers;
 - (c) using best endeavours to secure the divestiture of the Divestiture Businesses within the relevant Completion Periods, including by facilitating the obtaining of relevant regulatory approvals in a timely manner;
 - (d) using best endeavours to secure the completion of the sale of the Contracted Businesses within the Completion Period, including taking all steps to facilitate the obtaining of relevant regulatory approvals in a timely manner;
 - (e) every month from the Control Date, providing a report (which may be oral) to the Commission as to the progress made in the divestiture of the Divestiture Businesses and sale of the Contracted Businesses; and
 - (f) responding in a timely manner to any queries made by the Commission about the divestiture of the Divestiture Businesses or the sale of the Contracted Businesses.

- 8.2 Within 5 Business days of the Control Date, ABC must advise the Commission in writing of the name, phone number and email address of the Dedicated Divestiture Officer.
- 8.3 ABC must provide the Dedicated Divestiture Officer with appropriate resources, access to information and powers as are necessary for the Dedicated Divestiture Officer to carry out the functions identified in paragraph 8.1.

9 Contracted Businesses

- 9.1 In the event that it becomes apparent to ABC that the sale of a Contracted Business is unlikely to proceed to completion for any reason, ABC must, as soon as practicable, provide written notice to the Commission identifying:
- (a) the relevant Contracted Business or Businesses;
 - (b) the reason that the sale of the Contracted Business or Businesses is unlikely to proceed to completion; and
 - (c) the actions that ABC has taken or will take in order to facilitate the completion of the sale.
- 9.2 Within 5 Business Days of the termination of the sale of a Contracted Business, whether by reason of variation to or termination of a Prior Contract, ABC must notify the Commission, in writing, of the termination (regardless of whether ABC has previously provided notice under paragraph 9.1 of the Undertaking) and the reasons for the termination.
- 9.3 5 days after the termination of the sale of a Contracted Business, the Contracted Business will become a Divestiture Business and the provisions in relation to Divestiture Businesses will apply to it, with references to the Control Date to be read as references to the date on which the Contracted Business became a Divestiture Business.

10 Divestiture Terms

- 10.1 The terms on which each of the Divestiture Businesses is to be divested must include provision for:
- (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 Divestiture Businesses,
 - (b) 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 Divestiture Businesses;
 - (d) the purchaser to offer employment to any of the staff of the Divestiture Businesses which it wishes to employ,;

- (e) ABC not to do anything, the intention or likely effect of which is, to discourage any staff of the 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 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; and
- (g) the assignment or transfer to the purchaser or its nominee of the rights and obligations under any of the Contracts.

11 Commission approval of Qualified Purchaser/s

11.1 In respect of a Prospective Purchaser ABC may, and within 21 days of executing a Sale and Purchase Agreement ABC must, 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;
- (b) attaches a copy of the Sale and Purchase Agreement or proposed Sale and Purchase Agreement;
- (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:
 - (1) any current or likely 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
 - (2) 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.

11.2 ABC acknowledges that the Commission may, within 21 days 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 21 day period referred to herein, provide ABC with an Objection Notice. An Objection Notice can be issued by the Commission if it is of

the view (reasonably formed) that the Prospective Purchaser is not an appropriate purchaser having regard only to:

- (a) the adequacy of the Prospective Purchaser/s expertise or financial resources to purchase and conduct the relevant Divestiture Business(es);
 - (b) the likelihood of the Prospective Purchaser/s being a vigorous and effective competitor in any of the areas in which the relevant Divestiture Business(es) operate(s);
 - (c) the likely independence of the Prospective Purchaser/s (and its Related Bodies Corporate, directors and managers) from ABC and 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 Divestiture Businesses overcoming the Commission's competition concerns.
- 11.3 ABC must not divest a Divestiture Business to a person named in an Objection Notice and must only divest a Divestiture Business to a Qualified Purchaser.
- 11.4 Should the Commission fail to provide ABC with an Objection Notice pursuant to paragraph 11.2, the Prospective Purchaser will be deemed to be a Qualified Purchaser.
- 11.5 If the Commission provides ABC with an Objection Notice in accordance with paragraph 11.2, the Contracting Period in respect of the relevant Divestiture Business(es) will be extended by a further 3 month period from the date on which the Objection Notice was issued unless the Commission reasonably forms the view that:
- (a) ABC did not reasonably believe that the Prospective Purchaser would not be objected to by the Commission; or
 - (b) ABC would not have reasonably believed that the Prospective Purchaser would not be objected to by the Commission if proper inquiries had been made.
- 11.6 If the Commission forms the view in paragraph 11.5(a) or 11.5(b), it must notify ABC of that opinion and provide reasons for that opinion in writing.

12 Extension of Contracting and Completion Periods

- 12.1 Subject to paragraphs 12.2 and 12.5, ABC may, no later than 21 days prior to the expiration of the Contracting Period or of the Completion Period, submit a written request to the Commission, seeking the Commission's written approval for an extension of the relevant Contracting Period or Completion Period. The Commission must consider that request provided that the request:
- (a) is accompanied by reasons for the request; and
 - (b) stipulates the duration of the extension requested.
- 12.2 ABC acknowledges that the Commission may, in its absolute discretion, within 21 days of receipt of ABC's written request, in accordance with paragraph 12.1 above, provide its written approval for an extension of the Contracting Period or Completion Period (as applicable) for a period not exceeding 3 months.

- 12.3 Notwithstanding paragraph 12.1, in respect of any Divestiture or Contracted Business, ABC may at any time seek and the Commission must grant, an extension or extensions to the Completion Period where (for reasons beyond ABC's Control) the request for the extension arises from a delay in the issue of a Relevant Licence for the Qualified Purchaser to operate the Divestiture or Contracted Business and the extension or extensions sought are for periods that are reasonable to complete the sale of the Divestiture or Contracted 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.
- 12.4 ABC acknowledges that the Commission:
- (a) may make whatever inquiries it considers necessary in its absolute discretion in deciding whether to approve or reject a request pursuant to paragraph 12.1 above;
 - (b) may request and ABC must provide, evidence relating to the delay referred to in paragraph 12.3;
 - (c) may approve an extension of the Contracting Period or Completion Period for a lesser duration than that requested by ABC pursuant to paragraph 12.1 above.
- 12.5 The parties acknowledge that nothing in paragraphs 12.1 to 12.4 shall operate to affect the confidentiality of the information contained in Confidential Annexures A, B, C, D and E to this Undertaking as described in paragraph 17.2 of this Undertaking.

13 Sale of Unsold Businesses

- 13.1 Within 10 business days of a business becoming an Unsold Business ABC must identify a Proposed Person to sell the Unsold Business in accordance with this paragraph, and ABC must notify the Commission, in writing, of the identity of the Proposed Person, together with such information that the Commission reasonably requires to assess whether the Commission will object to the appointment of the Proposed Person.
- 13.2 If, within 5 Business Days of receipt by the Commission of the information referred to in paragraph 13.1:
- (a) the Commission does not object to the Proposed Person, ABC must appoint the Proposed Person as an Approved Person as soon as practicable thereafter, in accordance with the minimum terms of appointment set out in paragraph 13.3, and forward to the Commission a copy of the executed terms of appointment; or
 - (b) the Commission does object to the Proposed Person, ABC must (at the Commission's election) within 5 Business Days, identify an alternative Proposed Person (whose appointment will be considered by the Commission in accordance with this Undertaking).
- 13.3 The appointment of the Approved Person must be on terms approved by the Commission, which must include terms to the effect that the Approved Person:

- (a) is empowered by ABC and required to effect the divestiture of any Unsold Business, together with other Unsold Businesses or separately, to a Qualified Purchaser or Qualified Purchasers, within 6 months of the Appointment Date (or such further period, notified by the Approved Person to the Commission, as is necessary for a Prospective Purchaser who has entered into a Sale and Purchase Agreement in respect of a Divestiture Business to obtain a Relevant Licence in respect of the Business), at the best price that is attainable within that 6 month period;
 - (b) may charge such fees as are agreed between the Approved Person and ABC, to be paid by ABC;
 - (c) is the only person who may divest any Unsold Business after the Appointment Date;
 - (d) 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) must account to ABC for:
 - (1) any moneys derived from the divestiture of any Unsold Business;
 - (2) all disbursements, fees and charges incurred by the Approved Person in undertaking his duties; and
 - (3) all fees of the Approved Person;
 - (f) must provide a written report each month to the Commission and ABC, setting out the work undertaken by the Approved Person; and
 - (g) must use his or her 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.
- 13.4 Within 5 Business Days of the Appointment Date, ABC must procure, execute and provide an unconditional and irrevocable power of attorney in favour of the Approved Person that:
- (a) grants the Approved Person all rights and powers necessary to permit the Approved Person to effect the divestiture of the relevant Unsold Business; and
 - (b) unconditionally (except for cases of fraud, negligence and breach of duty) indemnifies the Approved Person against loss and damage incurred by the Approved Person, arising directly or indirectly from the Approved Person exercising or attempting to exercise the powers and rights conferred upon it under the power of attorney.
- 13.5 ABC must provide the Approved Person all relevant information available to ABC and reasonably assist the Approved Person to effect the divestiture of each Unsold Business as quickly as possible.

14 Release

14.1 Where:

- (a) a Divestiture Business is sold as contemplated by this 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 Divestiture Business (other than as contemplated under paragraph 10.1(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 Divestiture Business.

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

15 Compliance

- 15.1 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, 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 is not to be substantially lessened, prevented or hindered as a result of the Proposed Acquisition.
- 15.2 ABC acknowledges that in the circumstances contemplated by paragraph 15.1 (but not otherwise) further undertakings to divest child care centre businesses with similar or higher revenues to those of the unsold Divestiture Business(es) may be negotiated with the Commission.
- 15.3 ABC acknowledges that paragraph 15.1 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.

16 Obligations to procure and notify

- 16.1 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.
- 16.2 ABC must:

- (a) 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 10.1(a), 10.1(c) and 10.1(g) within 14 days of the request for consent;
 - (b) provide to the Commission as soon as practicable after the completion of the divestiture of any Divestiture Business, written confirmation of such completion; and
 - (c) provide to the Commission, as soon as practicable after the completion of the sale of any Contracted Business, written confirmation of such completion.
- 16.3 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.
- 16.4 Any notice, demand, consent or other communication given or made under the Undertaking should be sent to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

To:

ABC:

A.B.C. Learning Centres Limited
Attention: Jillian Bannan
Company Secretary
Address: 43 Metroplex Avenue, Murarrie, Queensland 4172
Fax No: (07) 3908 2524

with a copy (for information purposes) to:

Frechills:

Attention: Chris Jose
Address: 101 Collins Street, Melbourne, Victoria 3000
Fax No: (03) 9288 1567

The Commission:

Australian Competition & Consumer Commission
Attention: General Manager, Mergers and Asset Sales
Address: 470 Northbourne Avenue Dickson ACT 2602
Fax No: (02) 6243 1212

17 Confidentiality

- 17.1 Subject to paragraph 17.2, ABC acknowledges that the Commission will make the Undertaking available for public inspection.
- 17.2 ABC and the Commission agree that subject to paragraph 17.4, Confidential Annexures A, B, C, D and E to the Undertaking will remain confidential until the Final Divestiture Date.

- 17.3 Subject to paragraph 17.2, ABC acknowledges that the Commission will from time to time publicly refer to the Undertaking.
- 17.4 Nothing in this paragraph prevents the Commission from disclosing such information referred to in paragraphs 17.1, 17.2 or 17.3 as:
- (a) is required by law;
 - (b) is reasonably necessary for the purpose of enforcement action under section 87B of the TPA; or
 - (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.
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18 No derogation

- 18.1 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.
- 18.2 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 or completion of the sale of the Contracted Businesses is not implemented in accordance with the Undertaking.
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19 Acknowledgment

- 19.1 The Commission acknowledges that unreasonable delay in it 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.
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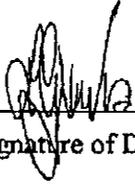
20 Costs

- 20.1 All costs incurred by ABC in providing information to the Commission, in responding to Commission inquiries as required by the Undertaking or in complying with this Undertaking are to be paid by ABC.

Strictly confidential
Without prejudice

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

by:



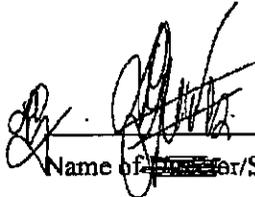
Signature of Director



Signature of Director/Secretary

Lee New Groves

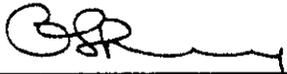
Name of director (please print)



Name of Director/Secretary (please print) Jillian Bannon

Date: 9 May 2006

The Undertaking offered by A.B.C. Learning Centres Limited ACN 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: 10th May 2006

Annexure A – Confidential: Contracting Period

Annexure B – Confidential: Completion Period

Annexure C – Confidential: Divestiture Businesses

Annexure D – Confidential: Relevant Regional Areas

Annexure E – Confidential: Contracted Businesses

