



D04/30529

UNDERTAKING
TRADE PRACTICES ACT 1974

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

by

Village Roadshow Limited

(ACN 010 672 054)

and

Graham Burke

and

Robert Kirby

1 Background

- 1.1 As part of inquiries by the Commission into the conduct of cinema industry participants, the Commission served a Notice dated 6 December 2002 upon Village to furnish information and produce documents pursuant to paragraphs 155 (1)(a) and 155(1)(b) of the TPA. The section 155 Notice indicated that the Commission's then Chairman had reason to believe that Village was capable of furnishing information and producing documents relating to the matters the subject of the Commission's inquiries. Notices under section 155 were also served upon other industry participants.
- 1.2 Pursuant to the section 155 Notice, as varied on 30 January 2003, Village furnished a considerable body of information and produced a substantial number of documents to the Commission.
- 1.3 The Commission has expressed concerns about the risk of collaboration between cinema exhibitors to oppose market entry and/or expansion by other cinema exhibitors.
- 1.4 Following discussions between Village and the Commission, and without admitting that any of its conduct constituted a contravention of section 45 or any other prohibition in the TPA, Village has agreed to give undertakings herein which are intended to reduce the risk of Village collaborating with other cinema exhibitors to jointly oppose entry into and/or expansion within cinema exhibition markets.

1.5

Confidentiality granted.

- 1.6 To support the undertakings given by Village, Graham Burke and Robert Kirby, respectively the Managing Director and Chairman of Village, and without admitting that any conduct of Village constitutes a contravention of section 45 or any other prohibition in the TPA, have each agreed to give undertakings on their own behalf in addition to the Village undertakings.
- 1.7 The Commission has agreed to accept these Undertakings as part of the conclusion to its inquiries referred to in clause 1.1 above.

2 Definitions and Interpretation

- 2.1 **AMJVA** means the agreement entered into on 26 May 1989 between Village and other companies including GUO, as varied or altered by reason of assignment or release and includes any substitute joint venture agreement to similar effect.

AMJV means the joint venture constituted under the AMJVA.

Business Day means a day on which the major trading banks are open for business in Sydney, Melbourne and Canberra excluding a Saturday, Sunday or Public Holiday.

Commission means the Australian Competition and Consumer Commission.

Communication means a communication made pursuant to these Undertakings.

GUO means The Greater Union Organisation Pty. Limited (ACN 000 024 439).

Related Company has the meaning given to the term "Related Body Corporate" by section 4A of the TPA.

section 155 Notice means the Notice dated 6 December 2002 and served upon Village pursuant to paragraphs 155(1)(a) and 155(1)(b) as varied on 30 January 2003.

term of these Undertakings means the period from the commencement pursuant to clause 3.1 to expiration pursuant to clause 4.1.

these Undertakings means all the provisions of this document.

TPA means the *Trade Practices Act 1974* (Cth).

Undertaking Parties means each of Village, Graham Burke and Robert Kirby.

Village means Village Roadshow Limited (ACN 010 672 054).

2.2 In these Undertakings, the singular includes the plural and vice versa.

3 **Commencement of these Undertakings**

3.1 These Undertakings come into effect upon the Commission accepting and duly executing a copy of these Undertakings that has been executed by the Undertaking Parties.

4 **Expiration of these Undertakings**

4.1 Unless withdrawn sooner, these Undertakings will remain in force until 30 June 2008.

4.2 On 30 June 2007, or so soon as practicable thereafter, the Undertaking Parties and the Commission will review these Undertakings and, as part of such review, may agree that these Undertakings be varied, withdrawn or extended.

5

Confidentiality
granted

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- 5.5 Village will notify the Commission in writing not less than 30 days after the relevant event, of any of the following:
- (a) any change of the terms of the AMJVA;
 - (b) any change to the parties to the AMJVA; or
 - (c) any change in the ownership interest held in any cinema exhibition complexes held or developed pursuant to the terms of the AMJVA.
- 5.6 Without in any way limiting the powers of the Commission under the TPA, the Commission may at any time during the term of these Undertakings request information from the Undertaking Parties that the Commission reasonably requires for the purpose of monitoring these Undertakings, including in connection with any request for the consent of the Commission to withdraw or vary these Undertakings pursuant to sub-section 87B(2) of the TPA. The

Undertaking Parties will use their best endeavours to comply with any such request within 10 Business Days of receipt of such request or such other period of time as may be agreed to by the Commission.

6 Collaborative opposition to entry and/or expansion

6.1 Subject to clause 6.2. Village will not, by itself, its servants or agents, or otherwise, communicate (whether in writing or otherwise) with any commercial cinema exhibitor operating in Australia where:

- (a) the communication relates to any proposal to establish or expand a cinema exhibition complex by a competitor or potential competitor to any party to the communication; and
- (b) the communication identifies or describes steps taken or to be taken by each of Village (or any of its Related Companies) and any other party or parties to the communication or any of their Related Companies to oppose or hinder any proposal of the kind referred to in (a) above; and
- (c) the steps identified or described in the communication involve or relate to any one or more of the following:
 - (i) objections or possible objections to such proposals pursuant to local or other government planning or approval processes;
 - (ii) inducing or attempting to induce property landlords or property developers not to deal with other cinema exhibitors or potential cinema exhibitors; or
 - (iii) inducing or attempting to induce film distributors to refuse, limit or restrict supply of film prints.

6.2 Nothing in clause 6.1 will prevent Village:

- (a) acting unilaterally;
- (b) reporting to any other party to a cinema joint venture in which Village participates, as part of its joint venture responsibilities:
 - (i) proposals for that joint venture to secure any site for cinema exhibition development;
 - (ii) steps taken or proposed to be taken by Village by way of participation as an interested or affected party in local or

other government planning or approval processes for advancing the interests of that joint venture; or

- (iii) any claim on the joint venture for reimbursement of, or contribution to, costs and expenses incurred in fulfilling its joint venture responsibilities ;
- (c) receiving reports of the kind described in paragraph (b) above from any other party to the relevant joint venture; or
- (d) complying with its obligation under the AMJVA to offer options to participate in the building, development, leasing and exploitation of potential cinema exhibition sites.

7 Personal undertakings

7.1 For so long as Graham Burke continues as an officer or director of Village, or of any Village Related Company, and for the term of these Undertakings, he will:

- (a) adhere to the undertakings described in clause 6.1 above; and
- (b) do all things incidental or reasonably necessary for Village to give effect to these Undertakings.

7.2 For so long as Robert Kirby continues as an officer or director of Village, or of any Village Related Company, and for the term of these Undertakings, he will:

- (a) adhere to the undertakings described in clause 6.1 above; and
- (b) do all things incidental or reasonably necessary for Village to give effect to these Undertakings.

7.3 Village will notify the Commission in writing within 30 Business Days of Graham Burke or Robert Kirby having ceased to be an officer or director of Village or of any Village Related Company.

8 Awareness of these Undertakings

Village will ensure that all employees of Village or any Related Company, who form part of senior cinema exhibition management operating from the head office of Village's cinema exhibition division, are provided with a copy of these Undertakings and are requested to inform Village of any conduct or proposed conduct they believe is or may be in breach of these Undertakings.

Confidentiality
granted.

10 Variation or Review of Undertakings

10.1 If any of the Undertaking Parties is unable to comply with its obligations under these Undertakings, or believes it is necessary to seek some modification due to changed circumstances, then the Undertaking Parties and the Commission agree that they will review these Undertakings and negotiate in good faith the withdrawal or variation of all or any of these Undertakings pursuant to sub-section 87B(2) of the TPA.

11 Procurement

11.1 Village is required to do all things incidental or reasonably necessary to give effect to these Undertakings, including procuring any of its Related Companies to do such incidental or reasonably necessary things.

12 Acknowledgements

12.1 Subject to clause 9, the Undertaking Parties acknowledge that:

- (a) the Commission will make these Undertakings available for public inspection; and
- (b) the Commission may issue a media release about these Undertakings and may from time to time publicly refer to these Undertakings.

12.2 The Undertaking Parties also acknowledge and accept that:

- (a) these Undertakings in no way derogate from the rights and remedies available to any person; and
- (b) receipt by the Commission of information provided pursuant to these Undertakings does not and cannot in any way imply any form of approval of conduct of which it is notified or any indication that the Commission has no concerns about, or does not intend challenging or taking other action in respect of, conduct of which it is notified.

13 **Communication**

13.1 Any communication given or made under these Undertakings:

- (a) must be in writing;
- (b) must be signed by a person duly authorised by the sender;
- (c) must refer to these Undertakings and state the clause under which the notice is given;
- (d) must be delivered to the intended recipient by prepaid post, by hand or fax or by email to the address, fax number or email address below or the address, fax number or email address last notified by the intended recipient to the sender:

- (i) to Village: Village Roadshow Limited
206 Bourke Street
MELBOURNE VIC 3000
Box 1411 M
GPO MELBOURNE VIC 3001
Attention: General Counsel
Fax: 61 3 9650 4583

- (ii) to Graham Burke: c/- Village Roadshow Limited
206 Bourke Street
MELBOURNE VIC 3000
Box 1411 M
GPO MELBOURNE VIC 3001

Attention: Graham Burke

Fax: 61 3 9662 3089

(iii) to Robert Kirby: c/- Village Roadshow Limited
206 Bourke Street
MELBOURNE VIC 3000

Box 1411 M

GPO MELBOURNE VIC 3001

Attention: Robert Kirby

Fax: 61 3 9827 6536

(iv) to the Commission: Australian Competition & Consumer
Commission

470 Northbourne Avenue

DICKSON ACT 2602

Attention: General Manager, Mergers and
Asset Sales

Fax: 61 2 6243 1199

(e) will be taken to be duly given or made:

(i) in the case of delivery in person, when delivered;

(ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);

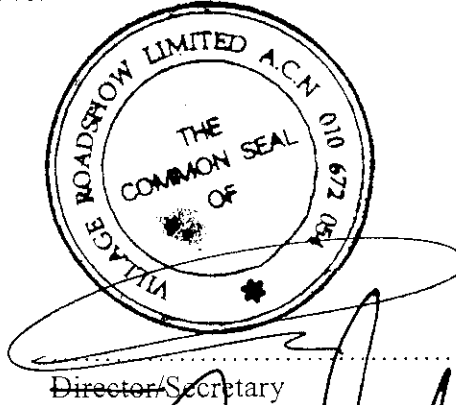
(iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error; and

(iv) in the case of electronic mail, on receipt by the sender of an electronic acknowledgement that the electronic mail has been read by the intended recipient,

but if the result is that a Communication would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

THE COMMON SEAL of
VILLAGE ROADSHOW LIMITED
(ACN 010 672 054) was hereunto
affixed in accordance with its
Constitution in the presence of:

.....
Director



SIGNED by GRAHAM BURKE
in the presence of:

.....
Signature of witness

.....
LYNNE YEAMAN
Name of witness (block letters)

.....
Graham Burke

SIGNED by ROBERT KIRBY
in the presence of:

.....
Signature of witness

.....
PHIL LEGGO
Name of witness (block letters)

.....
Robert Kirby

ACCEPTED BY THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974:

.....
Graeme Samuel
Chairman

This 29th day of June, 2004.