



***Public Competition Assessment
11 October 2006***

ABC Learning Centres Limited - proposed acquisition of Hutchison's Child Care Services Ltd

Introduction

1. On 8 September 2006, the Australian Competition and Consumer Commission (ACCC) announced that it would not oppose the acquisition of Hutchison's Child Care Services Ltd (Hutchison) by ABC Learning Centres Limited (ABC) after ABC provided a court-enforceable undertaking to the ACCC to divest seven long day care (LDC) centres in five regional areas, mainly in Queensland.
2. The ACCC made its decision on the basis of information provided by the parties and information arising from its market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed transaction, subject to confidentiality requirements.

Public Competition Assessments

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:
 - a merger is rejected;
 - a merger is subject to enforceable undertakings;
 - the merger parties seek such disclosure; or
 - a merger is approved but raises important issues that the ACCC considers should be made public.
4. In this case, the merger is subject to enforceable undertakings.
5. By issuing Public Competition Assessments, the ACCC aims to provide the market with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the market to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change, because of developments.
6. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in

one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.

7. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or identify the sources of such information. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, maintaining confidentiality will be the ACCC's paramount concern.

The Parties

ABC Learning Centres Limited (the acquirer)

8. ABC is listed on the Australian Stock Exchange and it is the largest listed global provider of child care services. Prior to the acquisition, ABC owned over 755 LDC centres in Australia.

Hutchison's Child Care Services Ltd (the target)

9. Hutchison is also listed on the Australian Stock Exchange. Prior to the acquisition it owned and managed 86 LDC centres in Queensland, New South Wales, Victoria, South Australia and Tasmania.

Proposed transaction

10. On 7 July 2006, ABC publicly announced that it proposed to acquire Hutchison. The ACCC commenced an assessment of the proposed acquisition under its Merger Review Process Guidelines on the same day.

Timing

7 July 2006	ABC publicly announced its proposal to acquire Hutchison.
12 July 2006	ACCC commenced market inquiries.
26 July 2006	Closing date for submissions.
25 August 2006	ACCC invited public comments on a draft undertaking offered by ABC.
1 September 2006	Market inquiries on ABC's proposed undertaking closed.
8 September 2006	ACCC accepted a court-enforceable undertaking from ABC and announced that it would not oppose the acquisition.

Market inquiries

11. The ACCC received submissions from competitors, industry associations, government agencies and other interested parties.

Market definition

Product market

12. There are about 5000 LDC centres in Australia. These centres are located throughout Australia, in both major urban cities and regional towns.
13. Market inquiries confirmed that family day care (FDC), pre-schools and kindergartens, after school care and occasional care are not close substitutes for centre-based LDC services. This finding is consistent with the results from market inquiries conducted by the ACCC in relation to ABC's acquisitions of Kids Campus Limited in May 2006 (Kids Campus acquisition) and Peppercorn Management Group Limited and Child Care Centres of Australia in December 2004 (Peppercorn acquisition).
14. In particular, market inquiries in the present matter indicated that there were clear qualitative differences between LDC and FDC services, pre-schools and kindergartens, after school care and occasional care.
15. The main qualitative differences between LDC and other services raised during market inquiries were as follows:
 - whereas LDC centres are required to recruit qualified staff (that is, staff with specific formal child care qualifications), FDC schemes are not, although FDC staff are required to undergo induction programmes and satisfy medical and police checks among other things. Also, LDC centres operate relatively bigger centres with more places than that provided by FDC schemes (which operate from carers' homes). In addition, FDC schemes provide a home-like environment for children in the sense that children are involved in household routines (for example, shopping).
 - pre-schools and kindergartens only provide services during school terms for a limited number of hours per week spread over a number of sessions;
 - after school care does not cater for children below school age; and
 - occasional care does not offer parents the certainty and routine that LDC centres provide.
16. Market inquiries indicated that parents were unlikely to switch to one of these alternative services in response to a small but significant price increase for LDC services. Consequently, the ACCC concluded that the relevant product market was the supply of centre-based LDC services.

Geographic market

17. Market inquiries confirmed that generally parents prefer LDC services which are located either close to home, close to work or somewhere convenient in-between. This finding is consistent with the market inquiry results in relation to the Kids Campus and Peppercorn acquisitions.

18. Consequently, a price increase by a centre located near where parents live would be likely to be constrained by other centres also located near where parents live, as well as centres located near where parents work or somewhere convenient in-between.
19. This suggests that LDC markets are relatively local in nature. However, it is difficult to precisely define geographic markets in metropolitan areas as parents living in one part of a city may work in that area or in a variety of locations in the city.
20. Even in regional areas, where geographic markets are generally likely to comprise individual towns and their immediate surrounds, difficulties regarding the definition of precise geographic markets might arise where other towns (or a city) are located nearby.
21. Given the difficulties with defining the geographic dimension of LDC markets, the ACCC initially relied on geographic markets comprising an area within approximately 10 kilometres of the LDC centres being acquired by ABC (in specific cases, the market might be narrower or wider because of, among other factors, local geography and road and rail systems).
22. Where competition concerns did not arise in this narrowly-defined market, the ACCC considered it unlikely that they would arise if a broader geographic market was adopted.

Competition assessment

23. Initially, the ACCC examined the change in market concentration (and particularly ABC's post-merger share by number of places) in each local LDC market (as defined in paragraph 21) post-merger.
24. In a substantial number of local markets, market concentration did not change at all, or did not change significantly. No competition concerns arose in these markets.
25. In other markets, ABC's market share rose reasonably significantly post-merger. However, the ACCC concluded that in some of these markets, the proposed merger would not be likely to substantially lessen competition. In reaching this decision, the following considerations were relevant:
 - whether post-merger, there would exist a significant number of competitive centres with vacant places;
 - whether centres owned by competitors had recently entered the relevant markets;
 - whether many of the local markets had a significant and growing number of below-school-age children. Growing markets are more likely to attract new entry, meaning current market shares may not be sustained;
 - the existence of a significant number of development sites owned by competitors - this strengthened the potential for new entry in the near future; and
 - the likelihood that, particularly in metropolitan areas, a proportion of parents would consider childcare centres outside the local market to be substitutes.

26. However in certain regional markets, after taking into account the considerations outlined above, the ACCC concluded that the proposed acquisition would still have been likely to substantially lessen competition. In particular, in these markets:
- ABC would have had substantial market share post-merger; and
 - the available evidence did not indicate that new entry was likely in the foreseeable future. Market inquiries in some of the relevant areas also raised concerns about the ability of new entrants to obtain sufficient qualified staff to meet customer demand and regulatory requirements.

Section 87B undertaking

27. On 8 September 2006, the ACCC accepted a court-enforceable undertaking offered by ABC under section 87B of the *Trade Practices Act 1974*. This undertaking requires ABC to divest seven LDC centres in five regional markets where the ACCC considers that post-acquisition, a substantial lessening of competition is likely to occur. The ACCC is satisfied that these divestitures will address its competition concerns.
28. The non-confidential version of the undertaking is at **Attachment A**. The identity of the centres to be divested and the timeframe for the divestitures are confidential.

ATTACHMENT - A

8 September 2006

A.B.C. Learning Centres Limited
ACN 079 736 664

Section 87B undertaking

Freehills

101 Collins Street Melbourne VIC 3000 Australia
GPO Box 128A Melbourne VIC 3001 Australia
Sydney Melbourne Perth Brisbane Singapore

Telephone +61 3 9288 1234 Fax +61 3 9288 1567
www.freehills.com DX 240 Melbourne
Correspondent Offices in Hanoi Ho Chi Minh City Jakarta

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1 Background

ABC and Hutchison are Australian public limited liability companies listed on the Australian Stock Exchange.

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.

Hutchison owns and manages child care centre businesses located in Queensland, Victoria, New South Wales, South Australia and Tasmania.

On 7 July 2006, ABC announced its intention to make offers under an off-market takeover bid for all shares in Hutchison. On 4 August 2006, ABC provided a bidder's statement under the *Corporations Act 2001* to Hutchison shareholders setting out the terms of the offer.

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.

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 a number of regional areas.

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.

In order to avoid delay and any possibility of the Commission objecting to the Proposed Acquisition ABC has, without admission, provided this Undertaking.

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 Definitions and interpretations

2.1 Definitions

The meanings of the terms used in this document are set out below.

Term	Meaning
ABC	A.B.C. Learning Centres Limited ACN 079 736 664.
ABC Group	ABC and its Related Bodies Corporate (including, from the Control Date, Hutchison and its Related Bodies Corporate).

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Term	Meaning
Act	the <i>Trade Practices Act 1974</i> .
Appointment Date	the date on which an Approved Person was appointed under paragraph 11.
Approved Person	a person appointed by ABC to effect the sale of the Unsold Businesses pursuant to paragraph 11, and not objected to by the Commission pursuant to paragraph 11.3.
Business Day	a day on which trading banks are open for business in Brisbane, Australia, but does not include any Saturday, Sunday or public holiday.
Commission	the Australian Competition and Consumer Commission.
Completion Period	the period described in Confidential schedule 2 to this Undertaking, or such further period or periods determined in accordance with paragraph 10.
Contract	<p>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:</p> <ol style="list-style-type: none"> 1 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; 2 any franchise agreement between ABC or any of its Related Bodies Corporate and a regional management company; or 3 the terms of any contract of employment to the extent that it may offer a right to participate in a share plan scheme.
Contracting Period	the period described in Confidential schedule 1 of this Undertaking, or such further period or periods determined in accordance with paragraph 10.
Control Date	<p>the later to occur of:</p> <ol style="list-style-type: none"> 1 the date on which the Takeover Bid becomes unconditional; and 2 the date on which ABC receives acceptances under the Takeover Bid equal to 50% of the ordinary shares in Hutchison.
Customer Service Levels	Includes the availability, range, quality and frequency of services provided at, and the hours of operation of, a Divestiture Business.

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Term	Meaning
Dedicated Divestiture Officer	the person appointed by ABC with responsibility for overseeing and managing the divestiture of the Divestiture Businesses, in accordance with paragraph 7 of this Undertaking.
Divestiture Business	a business which: <ol style="list-style-type: none"> 1 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 2 is to be divested by ABC in accordance with this Undertaking, being those businesses listed in Confidential schedule 3 (but subject to paragraph 4.3).
Divestiture Date	in relation to a Divestiture Business, the date on which the divestiture of the business is completed and settled by or on behalf of ABC, pursuant to the Undertaking.
Final Divestiture Date	the date on which the last divestiture of a Divestiture Business occurs, being the date on which the sale of all Divestiture Businesses has been completed and settled by or on behalf of ABC, pursuant to the Undertaking.
Hutchison	Hutchison's Child Care Services Ltd ACN 100 493 874.
Objection Notice	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 9.2.
Proposed Acquisition	the proposed acquisition of Hutchison by ABC.
Proposed Person	a person proposed by ABC to be the Approved Person who must be independent of ABC and Hutchison and with relevant experience and possessing the necessary qualifications to act as the Approved Person.
Proposed Purchaser Notice	a confidential notice in writing to the Commission that identifies the person/s to whom ABC proposes to divest one or more of the Divestiture Businesses, and sets out certain other information in relation to the Prospective Purchaser including the information referred to in paragraph 9.1 of this Undertaking.
Prospective Purchaser	a prospective purchaser of all or any of the Divestiture Businesses (including an Unsold Business).
Qualified Purchaser	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 9.2 of this Undertaking.

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Term	Meaning
Related Body Corporate	in relation to a company, 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	in respect of a Divestiture Business, a licence to operate that child care centre issued by a relevant government body under relevant state legislation.
Sale and Purchase Agreement	the agreement or agreements in respect of the sale and purchase of a Divestiture Business.
Takeover Bid	the takeover bid described in paragraph 1 of this Undertaking.
Unsold Business	Any Divestiture Business: <ol style="list-style-type: none"> 1 in respect of which a Sale and Purchase Agreement has not been executed by the conclusion of the Contracting Period; or 2 the divestment of which has not been completed by the conclusion of the relevant Completion Period.

2.2 Interpretations

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 Schedule.

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3 Commencement of Undertaking

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.

4 Undertakings

4.1 Undertaking to execute contract

ABC undertakes that, in accordance with this Undertaking, it will use its best endeavours prior to the end of the Contracting Period to execute a Sale and Purchase Agreement in respect of each Divestiture Business with:

- (a) a Qualified Purchaser; or
- (b) a person who ABC reasonably believes will not be the subject of an Objection Notice.

4.2 Undertaking to divest

ABC undertakes that, in accordance with this Undertaking, it will use its best endeavours to divest or cause the divestiture of the Divestiture Businesses:

- (a) either separately or together; and
- (b) with each Divestiture Business to be divested as a viable going concern in accordance with paragraph 6.4 below,

and complete the divestiture of the Divestiture Businesses prior to the end of the Completion Period.

4.3 Substitution

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 schedule 3, 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.

5 Control Date

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

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6 Condition of Divestiture Businesses

6.1 Dealings with Divestiture Businesses

Subject to paragraph 6.2, ABC must not, except in accordance with the Undertaking, sell or transfer its interests in the Divestiture Businesses, or remove or make any material adverse change to the assets, operations or businesses comprising the Divestiture Businesses (including, but not limited to, the Contracts, plant, equipment, staffing levels, management, premises, inventory and Customer Service Levels).

6.2 Intellectual property and regional management agreements

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 a 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.

6.3 Schedule of assets, operations and businesses

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 Business 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.

6.4 Treatment of Divestiture Businesses

ABC must, from the Commencement Date and from the Control Date until the Divestiture Date 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 material asset within the Divestiture Businesses is maintained in good working order.

6.5 Specific obligations in respect of Divestiture Businesses

In complying with, and without limiting, the obligations in paragraph 6.4, ABC must in respect of each of the Divestiture Businesses, as relevant:

- (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;

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(e) not, indirectly or directly, procure, promote or encourage the redeployment of staff working at the Divestiture Businesses at the Control Date to any other business operated by ABC or any of its Related Bodies Corporate;

(f) not:

- (1) undertake any promotional or marketing activity;
- (2) make any statement; or
- (3) operate the Divestiture Businesses in a way,

which is likely to cause a parent whose child is enrolled in a Divestiture Business to discontinue their child's enrolment in that Divestiture Business. For the avoidance of doubt, nothing in this paragraph prevents ABC from engaging in conduct, including marketing or promotional activity, directed towards parents of children generally whether in the city or town in which the Divestiture Business is located or otherwise.

(g) as soon as practicable after it becomes public that the Divestiture Business will be divested, direct each member of staff of the Divestiture Business not to do anything inconsistent with ABC's obligations in paragraph 6.5(f).

6.6 Contracts existing at Control Date

Prior to the relevant Divestiture 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 Business, as applicable.

7 Dedicated Divestiture Officer

7.1 Appointment and functions

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 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) 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

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- (e) responding in a timely manner to any queries made by the Commission about the divestiture of the Divestiture Businesses.

7.2 Notification

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.

7.3 Resources, information and powers

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 7.1.

8 Divestiture Terms

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, intellectual property 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.

9 Commission approval of Qualified Purchaser/s

9.1 Proposed Purchaser Notice

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;

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- (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.

9.2 Objection Notice

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.

9.3 Divestiture of Divestiture Businesses

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.

9.4 Deeming of Qualified Purchaser

Should the Commission fail to provide ABC with an Objection Notice pursuant to paragraph 9.2, the Prospective Purchaser will be deemed to be a Qualified Purchaser.

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9.5 Extension of time where Objection Notice issued

If the Commission provides ABC with an Objection Notice in accordance with paragraph 9.2, 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.

9.6 Opinion in writing

If the Commission forms the view in paragraph 9.5, it must notify ABC of that opinion and provide reasons for that opinion in writing.

10 Extension of Contracting and Completion Periods

10.1 ABC may request extension of Contracting or Completion Periods

Subject to paragraph 10.3, 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.

10.2 Commission may extend Contracting or Completion Periods

The Commission may, in its absolute discretion, within 21 days of receipt of ABC's written request, in accordance with paragraph 10.1 above, provide its written approval for an extension of the Contracting Period or Completion Period (as applicable) for a period not exceeding 3 months. 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 10.1;
- (b) may approve an extension of the Contracting Period or Completion Period for a lesser duration than that requested by ABC pursuant to paragraph 10.1.

10.3 Delay in Issue of Relevant Licence

Notwithstanding paragraph 10.1, in respect of any Divestiture 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 and the extension or extensions sought are for periods that are reasonable for ABC to complete its obligations under paragraph 4.2 (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.

The Commission may request and, if such a request is made, ABC must provide, evidence relating to the delay in this paragraph.

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10.4 Confidentiality of information

The parties acknowledge that nothing in paragraphs 10.1 to 10.3 shall operate to affect the confidentiality of the information contained in the Confidential schedules of this Undertaking as described in paragraph 15.2 of this Undertaking.

11 Sale of Unsold Businesses

11.1 Notification of Proposed Person

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.

11.2 Alternative Proposed Person

If, within 5 Business Days of receipt by the Commission of the information referred to in paragraph 11.1 the Commission objects 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).

11.3 Appointment of Approved Person

If, within 5 Business Days of receipt by the Commission of the information referred to in paragraph 11.1 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 this paragraph and forward to the Commission a copy of the executed terms of appointment.

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 an Unsold 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;

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- (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.

11.4 Power of Attorney

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.

11.5 Assistance to Approved Person

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.

12 Release

12.1 Release of staff

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 8(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.

12.2 Employment of staff by Prospective Purchaser

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.

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13 Compliance

13.1 Review of Undertaking

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.

13.2 Negotiation of further undertakings

ABC acknowledges that in the circumstances contemplated by paragraph 13.1 (but not otherwise) further undertakings to divest child care centre businesses with similar or higher revenues to those of the relevant Divestiture Business(es) may be negotiated with the Commission.

13.3 No review in certain circumstances

ABC acknowledges that paragraph 13.1 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.

14 Obligations to procure and notify

14.1 Obligation to procure

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.

14.2 Obligation to notify

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 8(a), 8(c) and 8(g) within 14 days of the request for consent; and
- (b) provide to the Commission as soon as practicable after the completion of the divestiture of any Divestiture Business, written confirmation of such completion.

14.3 Provision of information reasonably requested

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.

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14.4 Addresses for service

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, Murarie, Queensland 4172
Fax No: (07) 3908 2577

with a copy (for information purposes) to:

Freehills:

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

15 Confidentiality and disclosure

15.1 Public inspection

Subject to paragraph 15.2, ABC acknowledges that the Commission will make the Undertaking available for public inspection.

15.2 Confidential schedules

ABC and the Commission agree that subject to paragraph 15.3, the Confidential schedules of the Undertaking will remain confidential until the Final Divestiture Date.

15.3 Disclosure of Undertaking

Subject to paragraph 15.2, ABC acknowledges that the Commission will from time to time publicly refer to the Undertaking.

Nothing in paragraph 15.2 prevents the Commission from disclosing such information as:

- (a) is required by law;
- (b) is reasonably necessary for the purpose of enforcement action under section 87B of the TPA; or

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- (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 of the Divestiture Businesses.

16 No derogation

16.1 Action for breach of Undertaking

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.

16.2 Other action under the Act

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.

17 Acknowledgment


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.

18 Costs

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.

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

by:



 Signature of Director



 Signature of Director Secretary

LE NEVE ANN GROVES

MARTIN VINCENT KEMP

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Name of Director (please print)

Name of Director/Secretary (please print)

Date: 8 September 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: 8th September 2006

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Confidential schedules

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