

TRADE PRACTICES ACT 1974
**UNDERTAKING TO THE AUSTRALIAN COMPETITION &
CONSUMER COMMISSION**

**GIVEN UNDER SECTION 87B of the TRADE PRACTICES
ACT 1974**

BY SANTOS LIMITED (ABN 80 007 550 923) (Santos)

BACKGROUND

- 1 Santos and QGC each operate as suppliers of coal seam gas in Queensland.
- 2 On 5 October 2006 Santos announced a takeover offer to acquire QGC. Santos sought informal clearance from the ACCC. On 26 October 2006 the ACCC published a Statement of Issues in respect of the takeover offer. The ACCC raised a concern that the merger would increase ownership concentration for the supply of wholesale gas in Queensland. The ACCC expressed the view that although QGC was only a small coal seam gas producer, it is a relatively vigorous competitor, and the proposed acquisition of it by Santos would remove QGC as a key source of competitive tension for the supply of wholesale gas.
- 3 Without admission as to whether the acquisition of QGC might have the effect of substantially lessening competition in any relevant market, Santos wishes to acquire QGC subject to the implementation of the demerger proposal. The demerger proposal is outlined in Santos' public announcement to the ASX of 30th January 2007.
- 4 Santos wishes to enter into the MIA with QGC to effect the demerger proposal.
- 5 Pursuant to the MIA, the Santos Group will only acquire the business, assets and obligations of QGC directly associated with QGC's interests in the area known as the "Undulla Nose" in Queensland.
- 6 QGC's other assets, liabilities and obligations directly associated with QGC's interests in other areas outside the "Undulla Nose" will be de-merged into a separate entity (Newco). QGC shareholders will receive shares in Newco.
- 7 Therefore, pursuant to the demerger proposal, Newco will hold interests in permits and licences for more than 50% of QGC's (pre-demerger) gas in place and will operate as an independent supplier of coal seam gas. Prior to Santos acquiring QGC, and pursuant to the MIA, Newco will enter into facilitating agreements with QGC (referred to in this Undertaking as the Implementation Agreements).
- 8 Pursuant to the demerger proposal, Santos will enter into facilitating agreements with Newco (referred to in this Undertaking as the Commercial Agreements).
- 9 Santos will subscribe for a non-controlling interest in Newco in accordance with the terms and conditions of the Subscription Agreement. Santos does not seek to appoint directors to the board of Newco.

- 10 Santos has offered this Undertaking to the ACCC under section 87B of the Trade Practices Act 1974.
- 11 The means by which competition is preserved by this Undertaking is by ensuring that as a result of the implementation of the demerger proposal:
- a) QGC owned by Santos will only hold interests in the "Undulla Nose",
 - b) Newco will hold QGC's former interests in the areas outside the "Undulla Nose",
 - c) Newco will have the benefit of the Implementation Agreements and the Commercial Agreements, and
 - d) Newco will operate as an independent legal entity and independent supplier of coal seam gas in competition with Santos and others.

UNDERTAKING

PART ONE: Preliminary Obligations

- 1 Commencement of Undertaking
- 1.1 This Undertaking comes into effect when:
- (a) the Undertaking is executed by Santos; and
 - (b) the Undertaking so executed is accepted by the Commission.
- 2 ***Termination of Undertaking***
- 2.1 This Undertaking terminates when the Commission consents to the withdrawal of the Undertaking in accordance with section 87B of the Act.
- 2.2 This Undertaking will cease to have effect on the Long Stop Date because the demerger has not been implemented, or on the date of any announcement to the ASX by Santos that it no longer intends to proceed with the acquisition of QGC pursuant to the MIA, or in the event the MIA is terminated.
- 3 ***Good Faith***
- 3.1 Santos undertakes to perform its obligations under the Undertaking in good faith and in a manner which is consistent with promoting the purpose and object of the Undertaking.

PART TWO – Newco and Arrangements with Newco

- 4 *No purchases of further shares in Newco otherwise than pursuant to the MIA*
- 4.1 Santos undertakes that upon the approval by the shareholders in QGC of the Scheme of Arrangement, it will not acquire shares in Newco except under the Scheme of Arrangement provided for in the MIA or under the Subscription Agreement, and thereafter, will not, without the prior written approval of the ACCC, acquire from another shareholder any legal or equitable title in further shares in Newco such that Santos' shareholding in Newco does not exceed 30% of the total issued ordinary voting share capital of QGC.
- 5 *Santos will comply with relevant contracts*
- 5.1 Santos undertakes that it will not interfere in any way with the Implementation Agreements and will observe and perform its obligations under each of them in all material respects.
- 5.2 Santos undertakes that it will enter into the Commercial Agreements with Newco will observe and perform its obligations under each of them in all material respects.
- 5.3 Santos undertakes that it will at all times do all things reasonably necessary to preserve the confidentiality of Newco's confidential information.
- 5.4 Santos will provide the ACCC with copies of the executed MIA, Implementation and Commercial Agreements within 5 business days of being asked to do so.
- 6 *Santos not to acquire assets of Newco*
- 6.1 Santos undertakes that it will not, without the prior written approval of the ACCC, or except as provided for by the MIA, Implementation Agreements and Commercial Agreements, acquire any legal or equitable interest in any asset of Newco.

PART THREE- Independence of Newco

- 7 *Ringfencing concerning the operations of Newco*
- 7.1 Subject to the performance of its contractual obligations and other terms of, and the enforcement of its rights under or in respect of, the MIA, the Implementation Agreements and the Commercial Agreements, and except in respect of Santos' conduct in the ordinary course of its business of supplying coal seam gas by offering market competitive terms to customers and by accepting market competitive terms from its suppliers, Santos will not:
- (i) interfere with the management or operation of Newco;
 - (ii) do anything to prevent Newco from continuing to operate independently, and any dealings between Santos and Newco will be conducted on arm's length commercial basis;
 - (iii) seek any confidential information from Newco; or
 - (iv) attempt to influence, either directly or indirectly, the decisions of the Newco board of directors, including but not limited to decisions relating to pricing, removal or appointment of management personnel.

- 7.2 Santos is entitled to receive and use:
- (a) publicly available information;
 - (b) information necessary to enable Santos to comply with obligations on it under the Undertaking and any legal and mandatory reporting obligations in Australia, including taxation, accounting and ASX continuous and periodic disclosure obligations; and
 - (c) such aggregate commercial and financial information as is reasonably necessary to enable the directors of Santos to fulfil their duties as directors of Santos.

8 *Ring fencing obligations concerning the board of Newco*

- 8.1 Santos will use its best endeavours, including by proposing and voting on motions as a shareholder to procure that no person is appointed to the Board of Newco or continues to act as a director of Newco, unless they are an Independent Person.
- 8.2 Santos may seek to remove, and may vote in favour of the removal of, directors from the board of Newco for the purpose of providing vacancies to give effect to the appointment of one or more Independent Person(s), unless the removal relates to an Independent Person nominated, or voted in favour of, by Santos.
- 8.3 If requested by the ACCC, Santos will within 5 Business Days of the appointment of any person to the Board of Newco provide to the ACCC any information available to Santos which is relevant to determining whether a person is an Independent Person.
- 8.4 If upon considering the information provided under clause 8.3 the ACCC informs Santos that it requires additional information concerning the person appointed to the Board of Newco, Santos will use its best endeavours to procure such additional information and supply it to the ACCC within 10 Business Days of the request.
- 8.5 If, following consideration of the information provided to it (and such other information as is relevant to the matter), the ACCC determines that a person appointed to the Board of Newco is not an Independent Person and that Santos should take steps to have the person removed, Santos will, upon being notified of the Commission's decision (which Santos undertakes not to challenge), use its best endeavours (including the payment of such compensation as is necessary) to procure the removal of the person who the ACCC has determined not to be an Independent Person.
- 8.6 Santos will ensure that no officer or employee of Santos will accept a position on the Board of Newco.
- 8.7 Santos undertakes not to appoint to any of its boards any person who is an officer or employee of Newco.
- 8.8 Unless otherwise permitted by the ACCC, or as provided for by the MIA, the Implementation Agreements and the Commercial Agreements, Santos will not propose or consent to any sale or transfer of the assets of Newco to Santos.
- 8.9 Santos will not attempt to influence any other shareholder in Newco to act in a way which Santos has undertaken not to do under this Undertaking, but may attempt to

influence a shareholder to vote for any matter which Santos is permitted or required to do under this Undertaking.

8.10 Santos will not without the written approval of the ACCC:

- (a) propose,
- (b) vote on, or
- (c) act in any way to influence,

a resolution to change the structure of, or otherwise seek to make changes to the corporate structure of Newco, or to raise capital or undertake another transaction for the funding of the operations of Newco.

9 ***Reporting breaches and audit***

9.1 If Santos becomes aware of a breach of clauses 7 and 8, Santos must immediately advise the Commission of:

- a) the full particulars of the breach, including the role of the persons involved;
- b) the identity of all persons involved in the breach;
- c) details of any information or documents disclosed (if relevant);
- d) an explanation of how the breach occurred, and
- e) the measures Santos will take to rectify the breach and to avoid its repetition.

9.2 Santos must, by 1 September each year, for a period of five years commencing 1 September 2007, provide an Independent Auditor's report to the ACCC at Santos' expense, reporting on:

- a) Santos' compliance with clauses 7 and 8;
- b) makes such recommendations as the auditor consider necessary to ensure that Santos complies with the clauses;
- c) any qualifications made by the Auditor in forming its view;
- d) any recommendations by the Auditor to improve the integrity of the audit process.

9.3 Santos shall ensure that the audits are able to be conducted by the Auditor on the basis of any relevant information in Santos' possession or control, including without limitation any of the following sources of information:

- (a) investigations of any officers, employees, representatives and agents of Santos to find out how the Undertakings are implemented and understood, and
- (b) the records of Santos.

9.4 Santos shall authorise the Auditor to engage any technical expertise that the Auditor reasonably requires to conduct the audits.

PART FOUR – GENERAL

10 *Conduct formally approved by the Commission*

- 10.1 Regardless of any other provision of the Undertaking, conduct formally approved by the Commission in writing will not constitute a breach of the Undertaking.

11 *Related Bodies Corporate*

- 11.1 Where the performance of an obligation under the Undertakings requires a Related Body Corporate of Santos, including at the relevant time QGC, to take or refrain from taking some action, Santos will use its best endeavours to procure that Related Body Corporate to take or refrain from taking that action as the case may be.

12 *Failure to Comply with Undertaking*

- 12.1 If the Commission determines in its absolute discretion that a breach of the Undertaking has occurred the Commission will notify Santos of this view.
- 12.2 If there is a dispute between the Commission and Santos as to whether or not a breach has occurred, Santos will use its best endeavours to convene a meeting between the Commission and the Chief Executive Officer of Santos, or in his absence, the Chief Financial Officer, within 10 Business Days of Santos having received notice from the Commission of the breach.
- 12.3 Where Santos has not remedied the notified breach to the Commission's satisfaction or agreed with the Commission on an appropriate action plan for remedy within:
- (a) 21 days of having received notice from the Commission of the breach; or
 - (b) 14 days of the date on which the meeting between the Commission and the Santos referred to above occurred,

(whichever is later but in any event not later than 30 days after receiving notice from the Commission) the Commission may in its absolute discretion direct Santos by notice in writing to, among other things:

- (a) where the breach concerns clauses 4 of the Undertaking, divest any shares acquired in breach of the clauses by putting the shares out for sale to the market via the ASX or other private arm's-length sale; or
- (b) where the breach concerns clauses 6 of the Undertaking, divest the assets by putting the assets out for private arm's-length sale or public auction, and

For the avoidance of doubt, this clause 12.3 in no way derogates from the Commission's ability or right to seek Court orders or other remedies for a breach of any aspect of this Undertaking, or to direct Santos to act in any other specific way not listed above.

13 *Provision of Information to the Commission*

- 13.1 Santos will provide the Commission with all information and documents that the Commission reasonably requires for the purpose of monitoring compliance with the

Undertakings (and Santos acknowledges that the Commission is free to use such information for any purpose consistent with its functions as a regulator).

- 13.2 Santos will use its best endeavour to comply with any request for information by the Commission within 5 business days or such other period of time as may be agreed by the Commission.

14 ***Confidentiality***

- 14.1 Santos acknowledges that the Commission will make this Undertaking available for public inspection and that the Commission may, from time to time, publicly refer to the Undertaking.

15 ***Interpretation***

- 15.1 In the interpretation of clause of this Undertaking, a construction that would promote the purpose or object underlying the Undertaking (whether that purpose or object is expressly stated in the Undertaking or not) shall be preferred to a construction that would not promote that purpose or object.

- 15.2 In the interpretation of this Undertaking, material not forming part of this Undertaking may be considered to:

- (a) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
- (b) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause taking into account its context in the Undertaking and the purpose or object underlying the Undertaking leads to a result that does not promote the purpose or object underlying the Undertaking.

16 ***Service of Notices***

- 16.1 Any notice or other communication to the Commission pursuant to the Undertakings must be sent to:

General Manager, Mergers & Asset sales
 Australian Competition & Consumer Commission
 470 Northbourne Avenue
 Dickson ACT 260

or in whatever manner the Commission subsequently notifies Santos

- 16.2 Any notice or other communication from the Commission to Santos pursuant to the Undertaking must be sent to :

Santos Ltd
 Attention: General Counsel and Secretary
 Santos House, Level 29
 91 King William Street
 Adelaide SA 5000

Signed for Santos Limited

(ABN 80 007 550 923) by:

Director Signature

Director/Secretary Signature

Print Name

Print Name

This Undertaking offered by Santos Limited (ABN 80 007 550 923) is accepted by the Australian Competition & Consumer Commission pursuant to section 87B of the Trade Practices Act 1974.

Graeme Julian Samuel

Chairman

Date:

DICTIONARY

Term	Definition
ACCC or Commission	Means the Australian Competition & Consumer Commission
Act	Means the <i>Trade Practices Act 1974</i> (Cth)
Business Days	Means a day other than Saturday, Sunday or a public holiday in New South Wales.
Commercial Agreements	Means the agreements entered into between the relevant Santos entity and Newco (unless Newco elects not to do so) which are identified by the following names, Interim Funding Agreement and Transportation and Swap Agreement, substantially in the form of the copies of confidential annexures "A" and "B" respectively to this Undertaking.
Implementation Agreements	Means the agreements entered into between the relevant QGC entity and Newco pursuant to the MIA, which are identified in Schedule 7 of the MIA by the following names, Transitional Services Agreement, ATP 648P Agreement, Infrastructure Access Agreement, Pipeline Consent Agreement and Drilling Rig Access Agreement, substantially in the form of the copies which are confidential annexures "C" to "G" respectively to this Undertaking.
Independent Auditor	<p>Means a highly qualified and experienced professional, and a person will not qualify as an independent auditor unless he or she:</p> <ul style="list-style-type: none"> (a) is not a present or past member or director of Santos, (b) has not acted in the past five years, or does not act for Santos or Newco, (c) is not retained by Santos or Newco in any other capacity, (d) has not in the past five years and does not provide consultancy or other services for Santos or Newco, and (e) has no shareholding or other interests in Santos or Newco.

Independent Person

Means a person who is independent of Santos. Without limitation, a person who is not independent is a person who:

- (a) is a current employee of Santos,
- (b) has been an employee or officer of Santos in the past five years,
- (c) has an agreement, arrangement or understanding with Santos relating to the performance of his or her functions as a director of Newco,
- (d) is a substantial shareholder of Santos, or an officer of, or otherwise associated directly with, a substantial shareholder of Santos,
- (e) has, within the last 5 year, been a principal of a material professional adviser or a material consultant to Santos or an employee materially associated with the provision of such services to Santos,
- (f) is a material supplier or customer of Santos or an officer of or otherwise associated directly or indirectly with a material supplier or customer of Santos,
- (g) has a material contractual relationship with Santos,
- (h) has served on the board of Santos for a period which could, or could reasonably be perceived to, materially interfere with his or her ability to act independently of Santos, or
- (i) is a family member of a person who is not an independent person.

Long Stop Date

Means the date determined in accordance with the definition set out in the MIA.

Material Interest

Means:

- (a) in relation to an entity, any interest, direct or indirect, in excess of 5%,
- (b) in relation to an entity, any other interest whether by agreement, arrangement, understanding or otherwise, that gives a degree of control over an entity.

MIA

Means the Merger Implementation Agreement entered into between Santos, QGC and Newco, which includes provisions substantially in the form of clauses 1 and 2 and the Demerger Schedule in the

document identified by the name Merger Implementation Agreement a copy of which is confidential annexure "H".

Newco	Means the public company to be incorporated by QGC and to be listed on the ASX.
QGC	Means the Queensland Gas Company Limited (ACN 089 642 553)
Related Body Corporate	Has the meaning given in section 50 of the <i>Corporations Act 2001</i> (Cth)
Santos	Means Santos Limited (ABN 80 007 550 923) and any subsidiary and related body corporate of Santos within the meanings given to those terms by the Act..
Subscription Agreement	Means the agreement entered into between Santos and Newco substantially in the form of confidential annexure "I" to this Undertaking.
Undertaking	Means the undertakings provided by Santos in this document.
Undulla Nose	Means ATPs 610P,648P, 676 S1,676S2,651P(as to 15%),PL 179,PLA 180 (ATP 620P),PL 201,PLA 211, PLA 248 (ATP 632), PLA 212(ATP 632P), PL 228, PL229.
