

Video Ezy Australasia Pty Ltd

(ACN 073 076 294)

Section 87B Undertaking


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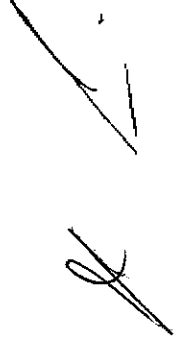


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Background

- A Video Ezy and Blockbuster are owners and franchisors of stores in Australia that primarily rent and retail DVDs and games to consumers. Video Ezy and Blockbuster also provide franchise services to their franchisees including procurement, marketing, advertising and advising on the operation of a DVD Rental Business and DVD Retail Business.
- B Video Ezy proposes to acquire Blockbuster and the master franchise rights to the Blockbuster business in Australia. Under the transaction:
- (a) Video Ezy, or a wholly owned subsidiary of Video Ezy, will acquire 100% of the shares in Blockbuster; and
 - (b) Video Ezy will enter into a master franchise agreement with BBI for an initial 10 year term with the possibility of renewal for a further 10 years.
- C As part of the transaction, Video Ezy will enter into a master franchise agreement with BBI known as the **IMFA**. The IMFA requires that Video Ezy operate, support and conduct the Blockbuster Network branded stores separately from the Video Ezy Network.
- D On 12 March 2007, the Commission commenced its public review of the proposed acquisition.
- E On 9 May 2007 the Commission issued a Statement of Issues (**Statement of Issues**) identifying potential competition concerns arising from the proposed acquisition.
- F In the Statement of Issues, the Commission formed the preliminary view that:
- (a) post-acquisition competition in the national market for the wholesale purchase of New Release DVD Titles from Distributors (**National Wholesale Market**) was of concern; and
 - (b) post-acquisition competition in the local markets for the rental supply of DVDs to consumers (**Local Rental Supply Markets**) may raise concerns.
- G In relation to the National Wholesale Market, the Commission formed the preliminary view in its Statement of Issues that post acquisition, the Combined Group might have an increased ability to secure Exclusive Deals and Rental Windows with suppliers with respect to non-box office hit New Release DVD Titles. The Commission considered that this may have a detrimental impact on the competitive viability of other DVD Rental Businesses purchasing New Release DVD Titles in the National Wholesale Market, as their network, buying group or franchisor may not be able to procure or purchase New Release DVD Titles that are the subject of an Exclusive Deal, or may be required to pay a higher price than the Combined Group for a DVD subject to a Rental Window. The Commission was also concerned that if the Combined Group were to increase the quantity of its Exclusive Deals, customers at other rental stores may be offered a diminished range of New Release DVD Titles.
- H In relation to the Local Rental Supply Markets, the Commission observed in its Statement of Issues that market participants had raised concerns regarding the increased possibility of coordinated conduct by the Combined Group post-acquisition. The Commission noted that coordinated conduct was an issue that may raise competition concerns post-acquisition. The Commission identified local markets in



which the level of concentration will be high post-acquisition where such competition concerns were likely to arise.

I Video Ezy understands that, after receiving comments on the Statement of Issues from Video Ezy and market participants, the Commission remained concerned about any increased ability of the Combined Group to secure Exclusive Deals and the possible anti-competitive effects of such deals.

J In relation to the Local Rental Supply Markets, Video Ezy understands that after consulting on the Statement of Issues, the Commission remained concerned about possible coordination between the Video Ezy Network and the Blockbuster Network and/or between Video Ezy and Blockbuster franchisees.

K While Video Ezy does not accept that the proposed acquisition will confer substantial buying power on the Combined Group in the National Wholesale Market, or adversely affect competition in the downstream markets as a result, or that the proposed acquisition will give rise to coordination by the Combined Group, Video Ezy has provided this Undertaking, without admission, for the purpose of addressing the Commission's competition concerns.

L Pursuant to this Undertaking, Video Ezy has agreed to a restriction on it securing New Release DVD Titles on an exclusive basis; restrictions on the communication of Confidential Information between the Networks; and implementation of a Compliance Program and retention of transactional data.

M For a term of five years, Video Ezy will be required to appoint a number of persons to monitor compliance with this Undertaking and implement the Compliance Program. Video Ezy will be required to appoint a Compliance Auditor to oversee and report on compliance with this Undertaking, and a Compliance Officer, Compliance Advisor and Reviewer in respect of the Compliance Program. Each of the persons nominated for these positions must be approved by the Commission in writing. Video Ezy must also appoint a suitably qualified compliance professional or legal practitioner with expertise in trade practices law to conduct Compliance Training.

N The Commission is satisfied that this Undertaking, the primary purpose of which is to address competition concerns over Video Ezy's ability to use any upstream buying power and the concern over potential coordination by the Combined Group, alleviates its competition concerns.

1 Definitions and Interpretation

Definitions

1.1 In this Undertaking, the following definitions apply:

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

Area Manager means a person or persons within Video Ezy or Blockbuster holding a Business Partner position, a Franchise Business Manager position, a position where they are responsible for multiple store operations, or a similar position.

BBA Holdings means BBA Holdings Pty Ltd (ACN 123 628 151) being a wholly owned subsidiary of Video Ezy Australasia Pty Ltd (ABN 74 073 076 294).

BBJ means Blockbuster Inc, the US registered company which controls the use of the 'Blockbuster' trade mark in Australia.



Blockbuster means Blockbuster Australia Pty Ltd (ABN 39 058 986 673).

Blockbuster Confidential Information means any information:

(a) of the Blockbuster Network, Blockbuster, BBI, individual Blockbuster franchisees or of any business of the Blockbuster Network that is not publicly available and is reasonably regarded as confidential or commercially sensitive, including, but not limited to, information recording or referring to:

- (i) the Blockbuster System;
 - (ii) customer details;
 - (iii) pricing information in respect of prices charged by the Blockbuster Network to customers; or
 - (iv) marketing or promotional information, or
- (b) that is not publicly available and which prior to the date of this Undertaking was confidential or commercially sensitive to the Blockbuster Network, Blockbuster, BBI and was not, as at the date of this Undertaking, disclosed to the Video Ezy Network.

Blockbuster Network means the network of rental and retail stores (both corporate and franchisee-owned) trading in Australia under the Blockbuster name.

Blockbuster System means the methods, techniques, standards and specifications of operating businesses for the supply of DVDs with respect to:

- a distinctive exterior and interior design, store format and décor and colour scheme;
- signs;
- equipment, including point of sale and back office computer systems;
- fixtures and furnishings;
- procedures for inventory, management and financial control;
- training programs;
- customer information, data techniques and manuals; and
- advertising, marketing and promotional programs,

developed and which may be developed, improved and modified for the Blockbuster Network from time to time.

Combined Group means Video Ezy, Blockbuster and the combined Video Ezy and Blockbuster Networks post-acquisition.

Commission means the Australian Competition and Consumer Commission.

Completion means completion of the Proposed Acquisition in accordance with the Share Sale Agreement.

Compliance Advisor means the person appointed as Compliance Advisor in accordance with Annexure A of this Undertaking to conduct a Trade Practices Act risk assessment.



Compliance Auditor means the person appointed as Compliance Auditor in accordance with clause 9 of this Undertaking to assess and report on Video Ezy's compliance with this Undertaking.

Compliance Officer means the person appointed as Compliance Officer in accordance with Annexure A of this Undertaking to ensure that the Compliance Program is effectively designed, implemented and maintained.

Compliance Program means the compliance program set out in Annexure A to this Undertaking.

Confidential Information means Blockbuster Confidential Information and Video Ezy Confidential Information.

Compliance Instructor means the person appointed as Compliance Instructor in accordance with Annexure A to conduct Compliance Training.

CRM Systems means any customer relationship system (or similar system) used by the Combined Group as a means by which franchisees or corporate stores are able to collect, store and transmit data during the Term.

Distributor means the copyright owner of DVD Product in or for Australia, which acts as the agent between a Producer and a DVD Rental Business or DVD Retail Business.

DVD Product means content including but not limited to movie titles, television series, sports programs, music programs and documentaries supplied to DVD Rental Businesses and DVD Retail Businesses.

DVD Rental Business means a franchise system, network group or buying group, and also an individual business or store whose primary function is to offer DVD Product for rental to consumers.

DVD Retail Business means any business that offers DVD Product for sale to consumers.

Exclusive Deals means Rental Exclusive Deals and Retail Exclusive Deals.

Exclusivity Period means the period during which DVD Product is supplied to a DVD Rental Business or DVD Retail Business on an exclusive basis pursuant to a Rental Exclusive Deal or a Retail Exclusive Deal.

Film Festival means a market or a festival where Distributors purchase the distribution rights to DVD Product, including but not limited to the American Film Market and the Cannes Film Festival.

IMFA means the International Master Franchise Agreement between Video Ezy and BBI, as amended by the Amendment to the International Master Franchise Agreement between Video Ezy and BBI to be executed at Completion.

Network means either the Blockbuster Network or the Video Ezy Network, as the context requires.

New Release DVD Title means a DVD title in physical form that has been released to the retail and/or rental supply channels in Australia for a period of less than 3 months following its first release to those channels.



Producer means a film production company or any other creator of a title involved in initiating, coordinating and supervising the making of a title and controlling matters such as fundraising, personnel, and attending to arrangements with Distributors.

Proposed Acquisition means the proposed acquisition by BBA Holdings (a wholly owned subsidiary of Video Ezy) of the shares in Blockbuster and the master franchise agreement between Video Ezy and BBI in accordance with the Share Sale Agreement.

Purchase means, in relation to a New Release DVD Title, to purchase, procure, or negotiate the procurement of a New Release DVD Title, on behalf of the Video Ezy Network and/or Blockbuster Network (as the case may be). For the avoidance of doubt, this includes negotiations for the purchase by any Video Ezy or Blockbuster franchisee of a New Release DVD Title.

Related Body Corporate has the meaning given in section 4A(5) of the Act and, for the avoidance of any doubt, Blockbuster will be a Related Body Corporate of Video Ezy from Completion.

Rental Exclusive Deal means an arrangement between one or more DVD Rental Businesses and a Distributor, Producer, Studio or Film Festival in relation to a New Release DVD Title under which the DVD Rental Business(es) obtain the exclusive right to offer for rent that New Release DVD Title to customers during an Exclusivity Period. For the avoidance of doubt, a Rental Exclusive Deal means the exclusive right over a New Release DVD Title and does not include a New Release DVD Title offered in a particular format, packaging, and/or with a gift accompaniment with a title, where the New Release DVD Title itself is available to offer to rent by other DVD Rental Businesses (albeit in a different form).

Rental Window means an arrangement whereby a Distributor of a New Release DVD Title makes that New Release DVD Title available for wholesale purchase to all DVD Rental Businesses to offer for rental only to consumers, but not for wholesale purchase to offer for retail sale, during a specified period (i.e. the 'window').

Retail Exclusive Deal means an arrangement between one or more DVD Retail Businesses and a Distributor, Producer, Studio or Film Festival in relation to a New Release DVD Title under which the DVD Retail Business(es) obtain the exclusive right to offer to retail and/or rental consumers that New Release DVD Title during an Exclusivity Period. For the avoidance of doubt, a Retail Exclusive Deal means the exclusive right over a New Release DVD Title and does not include a New Release DVD Title offered in a particular format, packaging, and/or with a gift accompaniment, where the New Release DVD Title itself is available to offer to retail and/or rent by other DVD Rental and/or Retail Businesses (albeit in a different form).

Reviewer means the person appointed as Reviewer in accordance with Annexure A to conduct Reviews in respect of the Compliance Program.

Senior Manager means a person (excluding directors) within Video Ezy or Blockbuster who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of Video Ezy or Blockbuster; or has the capacity to affect significantly Video Ezy or Blockbuster's financial standing.

Share Sale Agreement means the Share Sale Agreement between BBI, BBA Holdings, Video Ezy, Paul Uniacke and Edward Nedelko dated 9 February 2007.



Staff means all persons engaged by Video Ezy and/or Blockbuster for the purposes of providing labour including but not limited to casual and permanent employees, contractors, consultants and advisers. For the avoidance of doubt, Staff includes the Compliance Officer, the Compliance Advisor and Reviewer.

Studio means a content production company. Content includes but is not limited to movie titles, television series, sports programs, music programs and documentaries.

Term means the period commencing when the Undertaking comes into effect in accordance with clause 2.1 and terminating in accordance with clause 2.2 of this Undertaking.

Termination Date means five years from Completion.

Undertaking means all of the provisions of this document, including its Annexures.

Video Ezy means Video Ezy Australasia Pty Ltd (ACN 073 076 294).

Video Ezy Confidential Information means any information:

- (a) of the Video Ezy Network, Video Ezy or of individual Video Ezy franchisees or of any business of the Video Ezy Network that is not publicly available and is reasonably regarded as confidential or commercially sensitive, including, but not limited to, information recording or referring to:

- (i) the Video Ezy System;
 - (ii) customer details;
 - (iii) pricing information in respect of prices charged by the Video Ezy Network to customers; or
 - iv) marketing or promotional information, or
- (b) that is not publicly available and which prior to the date of this Undertaking was confidential or commercially sensitive to the Video Ezy Network or Video Ezy and was not, as at the date of this Undertaking, disclosed to the Blockbuster Network.

Video Ezy Network means the network of rental and retail stores (both corporate and franchisee-owned) trading in Australia under the Video Ezy name.

Video Ezy System means the methods, techniques, standards and specifications of operating businesses for the supply of DVDs with respect to:

- a distinctive exterior and interior design, store format and décor and colour scheme;
- signs;
- equipment, including point of sale and back office computer systems;
- procedures for inventory, management and financial control;
- fixtures and furnishings;
- training programs;
- customer information, data techniques and manuals; and
- advertising, marketing and promotional programs.



developed and which may be developed, improved and modified for the Video Ezy Network from time to time.

Interpretation

- 1.2 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- 1.2.1 A reference to 'this Undertaking' includes all of the provisions of this document.
 - 1.2.2 Headings are inserted for convenience only and do not affect the interpretation of this Undertaking.
 - 1.2.3 A reference in this Undertaking to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney, NSW.
 - 1.2.4 If the day on which any act, matter or thing is to be done under this Undertaking is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.5 A reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.6 A reference in this Undertaking to any company includes its Related Bodies Corporate.
 - 1.2.7 A reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders.
 - 1.2.12 A reference to the word 'include' or 'including' is to be construed without limitation.
 - 1.2.13 A construction that would promote the purpose or object underlying the Undertaking (whether expressly stated or not) shall be preferred to a construction that would not promote that purpose or object.
 - 1.2.14 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.

1.2.15 In determining whether consideration should be given to any material in accordance with clause 1.2.14, or in considering any weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to the:

- (a) effect that reliance on the ordinary meaning conveyed by the text of the clause would have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
- (b) the need to ensure that the result of the Undertaking is to address the Commission's competition concerns.

1.2.16 The Commission may authorise the Mergers Review Committee, a member of the Commission or a member of the Commission staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the Commission may impose.

1.2.17 In performing its obligations under this Undertaking, Video Ezy will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of the Undertaking.

2 Commencement and Termination of Undertaking

Commencement

- 2.1 This Undertaking comes into effect when:
 - 2.1.1 the Undertaking is executed by Video Ezy; and
 - 2.1.2 the Undertaking so executed is accepted by the Commission.

Termination

- 2.2 This Undertaking terminates on the earlier of:
 - 2.2.1 the Termination Date; or
 - 2.2.2 the date the Commission consents in writing to the withdrawal of this Undertaking in accordance with section 87B of the Act.

3 Dual-Network Exclusive Deals Undertaking

- 3.1 Video Ezy undertakes that it, and its Related Bodies Corporate, will not, directly or indirectly, Purchase any New Release DVD Title subject to an Exclusive Deal for the joint benefit of the Video Ezy Network and Blockbuster Network during the Term.



3.2

Video Ezy undertakes that it, and its Related Bodies Corporate, will not, directly or indirectly, give effect to any Exclusive Deal for the joint benefit of the Video Ezy and Blockbuster Networks, entered into with any Distributor, Producer, Film Festival or Studio in the 6 months preceding the Commencement of this Undertaking.

4 Exclusive Deals Undertaking

4.1 Video Ezy undertakes that during the Term it, and its Related Bodies Corporate, will not, directly or indirectly, Purchase:

- 4.1.1 any New Release DVD Title subject to a Rental Exclusive Deal from any Distributor, Producer, Studio or Film Festival for either Network; and/or
- 4.1.2 any New Release DVD Title subject to a Retail Exclusive Deal that confers exclusivity on either Network, except where that Retail Exclusive Deal only allows for the exclusive retail supply of the New Release DVD Title and prohibits the rental supply of that New Release DVD Title during the Exclusivity Period.

4.2 Video Ezy undertakes that it, and its Related Bodies Corporate, shall not, directly or indirectly, give effect to any Exclusive Deal of the type referred to in clause 4.1.1 or clause 4.1.2 for either Network, entered into with any Distributor, Producer, Film Festival or Studio in the 6 months preceding the Commencement of this Undertaking.

5 Data retention

5.1 Video Ezy undertakes that during the Term it, and its Related Bodies Corporate, will retain all transaction data and information received through CRM Systems.

6 Confidential Information Undertaking

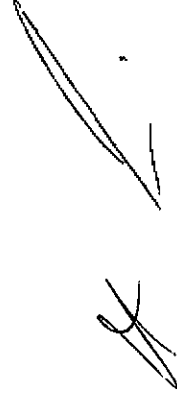
6.1 Video Ezy undertakes that it and its Related Bodies Corporate will not, subject to clauses 6.3 and 6.4 below, disclose:

6.1.1 Video Ezy Confidential Information to:

- (a) Blockbuster Network's franchisees;
- (b) Blockbuster Network's Area Managers;
- (c) Blockbuster Network's store managers, store operators or store staff;
- (d) any other person involved in the day to day management or operation of a Blockbuster store; or
- (e) any committee comprised, in whole or in part, of any person referred to in (a), (b), (c) and (d) above (including any committee responsible for making marketing decisions for or on behalf of the Network); and

6.1.2 Blockbuster Confidential Information to:

- (a) Video Ezy Network's franchisees;
- (b) Video Ezy Network's Area Managers;



- (c) Video Ezy Network's store managers, store operators or store staff;
- (d) any other person involved in the day to day management or operation of a Video Ezy store; or
- (e) any committee comprised, in whole or in part, of any person referred to in (a), (b), (c) and (d) above (including any committee responsible for making marketing decisions for or on behalf of the Network).

6.2 Video Ezy undertakes that it, and its Related Bodies Corporate, during the Term will implement procedures to properly identify Confidential Information and treat Confidential Information in a manner consistent with the obligations imposed by clause 6.1.

6.3 Nothing in this Undertaking prevents the disclosure of Video Ezy Confidential Information or Blockbuster Confidential Information to the persons named in Annexure B to this Undertaking.

6.4 For the avoidance of doubt, the persons named in Annexure B to this Undertaking:

- 6.4.1 may have disclosed to them Video Ezy Confidential Information or Blockbuster Confidential Information; and
- 6.4.2 are bound by clauses 6.1 and 6.2 in respect of disclosure by them of that information.

7 Compliance Training

7.1 Video Ezy undertakes that it and its Related Bodies Corporate will at its own expense:

- 7.1.1 within 3 months of Completion establish and implement a Compliance Program in accordance with the requirements set out in Annexure A for the Staff and other persons involved in the businesses of Video Ezy and its Related Bodies Corporate, including franchisees of Video Ezy and Blockbuster stores. The Compliance Program will primarily focus on compliance with Part IV of the Act, including the price-fixing and anti-competitive agreements provisions;
- 7.1.2 maintain and continue to implement the Compliance Program; and
- 7.1.3 provide, at its own expense, a copy of any documents required by the Commission, the Compliance Auditor or the Reviewer in accordance with Annexure A.

8 Completion

8.1 Within 1 business day following Completion, Video Ezy will inform the Commission in writing of the date of Completion.



9 Compliance Auditing
Appointment of Compliance Auditor

- 9.1 Video Ezy must engage a Compliance Auditor in accordance with the process set out in clauses 9.2, 9.3, 9.4, 9.5, 9.6 and 9.7 to fulfill the functions set out in clauses 9.10, 9.11, 9.12 and 9.15.
- 9.2 Within 10 days of Completion, Video Ezy must propose to the Commission a person to act as the Compliance Auditor by giving notice in writing to the Commission of the proposed Compliance Auditor's name, contact details and relevant qualifications, together with any information that the Commission reasonably requires to assess whether the Commission may wish to object to the appointment of the proposed Compliance Auditor in accordance with clause 9.5.
- 9.3 If the Commission objects under clause 9.5 to the person that Video Ezy proposes to appoint as the Compliance Auditor under clause 9.2, Video Ezy must within 10 business days of receiving such objection propose to the Commission another person to act as the Compliance Auditor by giving notice in writing to the Commission of that other person's name, contact details and relevant qualifications, together with any further information required by the Commission in accordance with clause 9.2.
- 9.4 If the Commission objects to the person proposed by Video Ezy under clause 9.3, the Commission will, at its own discretion, as soon as practicable appoint a suitable person as Compliance Auditor or require that Video Ezy appoint such a person within 5 business days.
- 9.5 The Commission may object to a person that Video Ezy proposes to appoint as the Compliance Auditor by giving Video Ezy notice in writing within 10 business days or any further period that the Commission decides, on receiving a written notice from Video Ezy under clause 9.2 or 9.3 (as the case may be), provided that the Commission considers that the person:
- 9.5.1 is not independent;
 - 9.5.2 does not have sufficient expertise to carry out to the Commission's satisfaction the functions of the Compliance Auditor set out in clauses 9.10, 9.11, 9.12 and 9.15; or
 - 9.5.3 does not meet any other grounds the Commission considers important for the effective performance by that person of the functions of the Compliance Auditor.
- 9.6 A person is not independent for the purposes of clause 9.5 if he or she, without limitation:
- 9.6.1 is a present or past staff member or director of Video Ezy, Blockbuster or any of their Related Bodies Corporate;
 - 9.6.2 has a shareholding or a financial interest in Video Ezy, Blockbuster or any of their Related Bodies Corporate;
 - 9.6.3 has a prior or existing contractual relationship with Video Ezy, Blockbuster or any of their Related Bodies Corporate, including a supplier or customer relationship;

- 9.6.4 currently acts for, or has in the past acted for, Video Ezy, Blockbuster or any of their Related Bodies Corporate;
- 9.6.5 is retained by Video Ezy, Blockbuster or any of their Related Bodies Corporate in any other capacity, either currently or in the past;
- 9.6.6 has provided or does provide consultancy or other services to Video Ezy, Blockbuster or any of their Related Bodies Corporate; or
- 9.6.7 is a partner at, or is employed or otherwise engaged by, a firm that falls within clauses 9.6.2, 9.6.3, 9.6.5 or 9.6.6.
- 9.7 The engagement of the Compliance Auditor in accordance with clause 9.1 is subject to the Commission also approving the terms of engagement referred to in clause 9.8. Once the Commission advises in writing that:
- 9.7.1 it does not object to a person proposed by Video Ezy (or that it nominates a person to be engaged as Compliance Auditor in accordance with clause 9.4); and
- 9.7.2 it has approved the terms of engagement of the Compliance Auditor, Video Ezy will engage that person as Compliance Auditor within 5 business days of receiving the Commission's advice.

Terms of engagement of Compliance Auditor

- 9.8 Video Ezy must ensure that the terms of engagement of the Compliance Auditor:
- 9.8.1 provide that the Compliance Auditor will perform the functions set out in clauses 9.10, 9.11, 9.12 and 9.15;
- 9.8.2 do not include any provision which is inconsistent with the Undertaking;
- 9.8.3 provide for the Compliance Auditor to engage any third party whose expertise or assistance the Compliance Auditor requires in order to perform the functions set out in clauses 9.10, 9.11, 9.12 and/or 9.15;
- 9.8.4 provide that Video Ezy will financially maintain the Compliance Auditor in the performance of his or her functions and all fees, costs, liabilities and expenses payable to the Compliance Auditor for the Compliance Auditor's functions and obligations under this Undertaking will be at the expense of Video Ezy;
- 9.8.5 acknowledge that, despite being engaged by Video Ezy, the Compliance Auditor will act on behalf of, and be accountable to the Commission for overseeing and reporting on compliance with this Undertaking, including in performing the Compliance Auditor's functions or acting in accordance with any related rights or obligations in this Undertaking;
- 9.8.6 are approved by the Commission.
- 9.9 Video Ezy will inform:
- 9.9.1 its top 20 suppliers by revenue to it and its Related Bodies Corporate; and
- 9.9.2 the franchisees of it and its Related Bodies Corporate, of the name and contact details of the Compliance Auditor as soon as reasonably practicable after the engagement of the Compliance Auditor.

Compliance reviews

- 9.10 Video Ezy must use its best endeavours to ensure that:
- 9.10.1 in respect of each six months of the Term of this Undertaking, the Compliance Auditor undertakes a review of compliance by Video Ezy and its Related Bodies Corporate with clauses 3, 4, 5, 6 and 7 of this Undertaking (noting that it is not intended that the Compliance Auditor duplicate the role of the Reviewer under the Compliance Program, but the Auditor will have regard to the reports of the Reviewer in undertaking its review of compliance with the Undertaking); and
- 9.10.2 the first review is completed within six months of the appointment of the Compliance Auditor and that each subsequent review is completed within six months thereafter.
- 9.11 The reviews undertaken by the Compliance Auditor under clause 9.10 are to involve all steps reasonably necessary to provide the Commission with:
- 9.11.1 a supportable verification that Video Ezy and its Related Bodies Corporate are complying with clauses 3, 4, 5, 6 and 7 of this Undertaking; and
- 9.11.2 the reports and opinions set out in clause 9.15.
- 9.12 The steps referred to in clause 9.11 are to include:
- 9.12.1 monitoring the conduct of Video Ezy and its Related Bodies Corporate;
- 9.12.2 reviewing any relevant publicly available information;
- 9.12.3 reviewing any information provided to the Compliance Auditor by Video Ezy and its Related Bodies Corporate, any customer or supplier of Video Ezy or its Related Bodies Corporate; or the Commission;
- 9.12.4 interviewing any Staff or officers of Video Ezy or its Related Bodies Corporate or any franchisee, customer or supplier of Video Ezy or its Related Bodies Corporate;
- 9.12.5 investigating the actions, conduct and operations of Video Ezy and its Related Bodies Corporate; and
- 9.12.6 researching the operation of the markets and industries relevant to the compliance of Video Ezy and its Related Bodies Corporate with clauses 3, 4, 5, 6 and 7 of this Undertaking (as applicable).
- 9.13 Video Ezy will ensure that the Compliance Auditor has access to all relevant sources of information in the possession or control of Video Ezy and its Related Bodies Corporate including by being:
- 9.13.1 able to make enquiries of any Staff, officers, employees, representatives, agents, stakeholders, franchisees or suppliers of Video Ezy and its Related Bodies Corporate; and
- 9.13.2 provided with documents in the possession or control of Video Ezy and its Related Bodies Corporate.
- 9.14 Video Ezy acknowledges that in conducting the review the Compliance Auditor is acting on behalf of the Commission and is accountable to the Commission.



Compliance reports

- 9.15 Video Ezy must use its best endeavours to ensure that the Compliance Auditor sets out the findings of each review conducted under clause 9.10 in a report that includes:
- 9.15.1 details of the evidence gathered and examined during the review under clause 9.10, including the persons interviewed by the Compliance Auditor and the documents reviewed;
 - 9.15.2 a summary of the investigation and research methods that the Compliance Auditor has used;
 - 9.15.3 the Compliance Auditor's opinion on whether Video Ezy and its Related Bodies Corporate have complied with clauses 3, 4, 5, 6 and 7 of this Undertaking, including his or her opinion on the number of New Release DVD Titles Purchased, directly or indirectly, by Video Ezy and its Related Bodies Corporate subject to a Rental and/or Retail Exclusive Deal from any DVD Distributor, Producer, Studio or Film Festival for either or both of the Networks during the review period;
 - 9.15.4 actions recommended by the Compliance Auditor to ensure that Video Ezy and its Related Bodies Corporate continue to comply with clauses 3, 4, 5, 6 and 7 of this Undertaking.
 - 9.15.5 confirmation that the Compliance Auditor has revisited any actions recommended by it to Video Ezy and its Related Bodies Corporate in previous reports under this clause 9.15 and an assessment of whether and how they have been implemented by Video Ezy and its Related Bodies Corporate;
 - 9.15.6 any reservations that the Compliance Auditor might have about the reliability and completeness of the information to which the Compliance Auditor had access in the conduct and reporting of the review; and
 - 9.15.7 any comments or qualifications concerning the review process that the Compliance Auditor, in his or her professional opinion, considers necessary.
- 9.16 Video Ezy must use its best endeavours to ensure that a report that is to be prepared by the Compliance Auditor under clause 9.15 is completed and provided to Video Ezy and the Commission by the Compliance Auditor within one month of the Compliance Auditor completing the relevant review under clause 9.10.
- 9.17 Video Ezy must implement promptly and with due diligence any recommendations made by the Compliance Auditor that are reasonably necessary to ensure that Video Ezy maintains and continues to maintain its compliance with clauses 3, 4, 5, 6 and 7 of this Undertaking.
- 10 Information**
- 10.1 Notwithstanding clause 11, Video Ezy will respond in a timely manner to any queries or requests for information made by the Commission (including a person authorised by the Commission under clause 1.2.16) about this Undertaking.



- 10.2 The Commission can request information from the Compliance Auditor directly at any time and the Compliance Auditor will provide the information so requested directly to the Commission, or as otherwise required by the Commission.
- 10.3 In addition, the Compliance Auditor can advise the Commission directly on any matter pertaining to the engagement and functions of the Compliance Auditor, to the Compliance Program or to any other matter pertinent to compliance by Video Ezy with this Undertaking.
- 10.4 The Commission may in its discretion to be exercised in good faith:
- 10.4.1 advise Video Ezy of any request made by it under clause 10.2; and/or
 - 10.4.2 provide copies to Video Ezy of any information furnished, documents and material produced or information given to it under clause 10.2 or 10.3.

11 Further Information

- 11.1 The Commission may direct Video Ezy in respect of its compliance with this Undertaking to, and Video Ezy will:
- 11.1.1 furnish information, documents and materials to the Commission in the time and in the form requested by the Commission;
 - 11.1.2 produce information, documents and materials to the Commission within Video Ezy's custody, power or control in the time and in the form requested by the Commission; and/or
 - 11.1.3 attend the Commission at a time and place appointed by the Commission to answer any questions the Commission (its Commissioners, its staff or its agents) may have.
- 11.2 In respect to Video Ezy's compliance with this Undertaking, the Commission may request the Compliance Auditor to:
- 11.2.1 furnish information, documents and materials to the Commission in the time and in the form requested by the Commission;
 - 11.2.2 produce information, documents and materials to the Commission within the Compliance Auditor's custody, power or control in the time and in the form requested by the Commission; and/or
 - 11.2.3 attend the Commission at a time and place appointed by the Commission to answer any questions the Commission (its Commissioners, its staff or its agents) may have.
- 11.3 Video Ezy will use its best endeavours to ensure that the Compliance Auditor complies with any request from the Commission in accordance with clause 11.2.
- 11.4 Information furnished, documents and material produced or information given in response to the Commission's direction under clause 11.1 and 11.2 may be used by the Commission for any purpose consistent with the exercise of its statutory duties.
- 11.5 Any direction made by the Commission under clause 11.1 will be notified to Corporate Legal Counsel of Video Ezy, in accordance with clause 15.2.

- 11.6 Clauses 11.1 and 11.2 do not require Video Ezy or the Compliance Auditor to furnish information, or produce a document, that would disclose information that is the subject of legal professional privilege.
- 11.7 The Commission may in its discretion to be exercised in good faith:
- 11.7.1 advise Video Ezy of any request made by it under this clause 11; and/or
- 11.7.2 provide copies to Video Ezy of any information furnished, documents and material produced or information given to it under this clause 11.
- 11.8 A reference to Video Ezy in this clause 11 includes a reference to its Related Bodies Corporate.

12 Disclosure of Undertaking

- 12.1 Video Ezy acknowledges that the Commission may:
- 12.1.1 make this Undertaking publicly available; and
- 12.1.2 publish this Undertaking on its Public Section 87B Undertakings Register; and
- 12.1.3 from time to time publicly refer to this Undertaking.

13 No Derogation

- 13.1 This Undertaking does not prevent the Commission from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by Video Ezy of any term of the Undertaking.
- 13.2 Nothing in this Undertaking is intended to restrict the right of the Commission to take action under the Act for penalties or other remedies in the event that Video Ezy does not fully implement and/or perform its obligations under this Undertaking or in any other event where the Commission decides to take action under the Act for penalties or other remedies.

14 Costs

- 14.1 Video Ezy must pay all of its own costs incurred in relation to this Undertaking.

15 Notices

Giving Notices

- 15.1 Any notice or communication to the Commission pursuant to this Undertaking must be sent to:

Name: Australian Competition and Consumer Commission
Address: 23 Marcus Clarke Street
CANNING ACT 2602
Fax number: (02) 6243 1212
Attention: General Manager - Merger and Asset Sales Branch

- 15.2 Any notice or communication to Video Ezy pursuant to this Undertaking must be sent to:

116567475 | 0420151 | FCG01

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Name: Video Ezy
Address: PO Box 3531, Rhodes Shopping Centre
RHODES NSW 2138
Fax number: (02) 9635 7900
Attention: Corporate Legal Counsel

Change of address or fax number

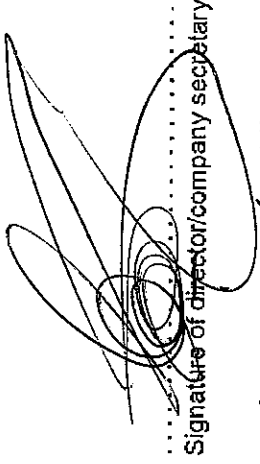
15.3 If Video Ezy or the Commission gives the other three business days notice of a change to its address or fax number, any notice or communication is only given to the relevant entity if it is delivered, posted or faxed to the most recently advised address or fax number.

Execution and date

Executed by **Video Ezy Australasia Pty Ltd (ACN 073 076 294)** acting by the following persons or, if the seal is affixed, witnessed by the following persons:



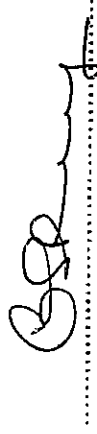
Signature of director
.....
Paul Wraiche
.....
Name of director (print)



Signature of director/company secretary
.....
Julie-Anne Rhodes
.....
Name of director/company secretary (print)

Date: **12th September 2007**

This Undertaking offered by Video Ezy Australasia Pty Ltd (ACN 073 076 294) is accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Trade Practices Act 1974



Graeme Julian Samuel
Chairman
Date: **18th September 2007**



Annexure A

Compliance Program

Video Ezy will establish a Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within 6 weeks of the Commencement of this Undertaking, Video Ezy will appoint a Senior Manager with suitable qualifications or experience in corporate compliance as **Compliance Officer** with responsibility for ensuring the Compliance Program is effectively designed, implemented and maintained. The person nominated as Compliance Officer must be approved in writing by the Commission.
2. Within 10 weeks of the Commencement of this Undertaking, Video Ezy shall appoint a qualified external, compliance professional with expertise in trade practices issues, approved in writing by the Commission (**the Compliance Advisor**). Video Ezy shall instruct the Compliance Advisor to conduct a Trade Practices Act (the **Act**) risk assessment (**Risk Assessment**) in accordance with paragraphs 2.1 – 2.4 of this Annexure A below:
 - 2.1. identify the areas where Video Ezy, its Related Bodies Corporate or its franchisees are at risk of breaching Part IV of the Act;
 - 2.2. assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Video Ezy, its Related Bodies Corporate or its franchisees should they occur;
 - 2.3. identify where there may be gaps in Video Ezy, its Related Bodies Corporate or its franchisees' existing procedures for managing these risks; and
 - 2.4. provide recommendations for action having regard to the assessment.

Compliance Policy

3. Video Ezy will, within 1 month of Completion, issue a policy statement outlining Video Ezy's commitment to trade practices compliance (**Compliance Policy**). Video Ezy will ensure that the Compliance Policy:
 - 3.1 is written in plain language;
 - 3.2 contains a statement of commitment to compliance with the Act;
 - 3.3 contains a statement of how the commitment to trade practices compliance will be realised within Video Ezy and its Related Bodies Corporate;
 - 3.4 contains a requirement for all Staff of Video Ezy, its Related Bodies Corporate to report any compliance related issues and trade practices compliance concerns to the Compliance Officer;
 - 3.5 contains a guarantee that whistleblowers will not be prosecuted or disadvantaged in any way and that their reports will be kept confidential and secure; and
 - 3.6 contains a clear statement that Video Ezy or its Related Bodies Corporate will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the Act and will not indemnify them.



Complaints Handling System

4. Video Ezy shall, within 14 weeks of the Commencement of this Undertaking, implement a complaints handling system capable of identifying, classifying, storing and where necessary, referring internal and external complaints that relate to Video Ezy, its Related Bodies Corporate and franchisees' compliance with Part IV of the Act to Video Ezy.
5. Video Ezy will ensure that the Compliance Program includes whistleblower protection mechanisms to protect those coming forward with trade practices complaints. Video Ezy shall use its best endeavours to ensure that these mechanisms are consistent with Australian Standard 8004, though tailored to Video Ezy's circumstances.

Reports to Directors

6. Video Ezy will ensure that the Compliance Officer reports to the directors of Video Ezy every 6 months on the continuing effectiveness of the Compliance Program.

Compliance Training

7. Video Ezy will ensure that the Compliance Program provides for regular (at least once a year and at Staff inductions) and practical trade practices training (**Training**) for:
 - 7.1 all Staff, directors, officers, employees, representatives and agents of Video Ezy, Blockbuster and their Related Bodies Corporate whose duties could result in them being concerned with conduct that may contravene Part IV of the Act. For the avoidance of doubt, this includes all staff and officers of Ezy Entertainment Marketing Pty Limited; and
 - 7.2 franchisees of stores and store managers in the Video Ezy and Blockbuster Networks.
8. Video Ezy will use its best endeavours to procure the attendance at the Training of each franchisee or store manager of stores in the Video Ezy and Blockbuster Networks.
9. The Training will focus on the provisions of Part IV of the Act, in particular the prohibition against price-fixing and anti-competitive agreements and on the Confidential Information obligations in clause 6.
10. Video Ezy must ensure that the Training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law who is independent of the Combined Group (**Compliance Instructor**). The Compliance Instructor must be acceptable to and approved in writing by the Commission. For the avoidance of doubt, the Compliance Advisor may be engaged as the Compliance Instructor, provided the Compliance Advisor is independent of the Combined Group.
11. Video Ezy will ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the Induction of:
 - 11.1 all new directors, officers, employees, representatives and agents whose duties could result in them being concerned with conduct that may contravene the price fixing or anti-competitive agreements provisions of the Act; and
 - 11.2 new franchisees and store managers of stores in the Video Ezy and Blockbuster Networks.



Supply of Compliance Program Documents to the Commission

12. Video Ezy will, at its own expense, within 14 weeks of the Commencement of this Undertaking, cause to be produced and provided to the Commission and the Reviewer copies of each of the documents constituting the Compliance Policy and the Compliance Program and implement promptly and with due diligence any recommendations that the Commission may make that are reasonably necessary to ensure that Video Ezy maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.

Review

13. Video Ezy will, at its own expense, cause annual reviews of the Compliance Program (**Reviews**) to be carried out in accordance with each of the following requirements:

- 13.1 Scope of the Review - the Reviews will be broad and rigorous enough to provide Video Ezy and the Commission with a supportable verification that Video Ezy has in place a program that complies with the requirements in paragraphs 1 to 12 of this Undertaking above and to provide the review report and opinions detailed at paragraph 14 of this Undertaking below.
- 13.2 Independence of Reviewer - Video Ezy will ensure that the Reviews are carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (**Reviewer**). The person nominated as the Reviewer must be approved in writing by the Commission. The Reviewer will qualify as independent on the basis that he or she:
 - 13.2.1 did not design or implement the Compliance Program;
 - 13.2.2 is not present or past Staff or director of Video Ezy or Blockbuster;
 - 13.2.3 has not acted and does not act for Video Ezy or Blockbuster in any Trade Practices related matters;
 - 13.2.4 has not and does not act for or consult to Video Ezy or Blockbuster or provide other services on trade practices related matters other than Compliance Program reviewing; and
 - 13.2.5 has no shareholding or other interests in Video Ezy or Blockbuster.
- 13.3 Evidence - Video Ezy will use its best endeavours to ensure that the Reviews are conducted on the basis that the Reviewer has access to all relevant sources of information in Video Ezy's possession or control including without limitation:
 - 13.3.1 enquiries of any officers, employees, representatives, agents and stakeholders of Video Ezy, its Related Body Corporates or franchisees;
 - 13.3.2 records, including Video Ezy and its Related Bodies Corporate's records, including complaints register/reports and any documents relevant to Video Ezy's training or induction program; and
 - 13.3.3 documents created by Video Ezy and its Related Bodies Corporate's consultants and legal practitioners for use in Video Ezy's Compliance Program.; and



13.4 Video Ezy shall ensure that the first Review is completed within one year and one month of this Undertaking coming into effect and that each subsequent Review is completed within one year thereafter.

Reporting

14. Video Ezy will use its best endeavours to ensure that the Reviewer sets out the findings of the Review into 2 separate reports as set out below:

Company Compliance Program Review Report (to be provided to Video Ezy)

14.1 Video Ezy's Company Compliance Program Review Report will provide particular and specific information regarding the performance of the Compliance Program to Video Ezy including:

- 14.1.1 if, and to what extent, the Compliance Program of Video Ezy includes all the elements detailed in paragraphs 1 – 13 of this Annexure A above;
- 14.1.2 if, and to what extent, the Compliance Program adequately covers the parties and areas identified in the Initial Risk Assessment;
- 14.1.3 if, and to what extent, the trade practices training is effective;
- 14.1.4 if, and to what extent, Video Ezy's complaints handling system is effective;
- 14.1.5 if, and to what extent, Video Ezy is able to provide confidentiality and security to whistleblowers, and Staff are aware of the whistleblower protection mechanisms; and
- 14.1.6 recommendations for rectifying deficiencies in paragraphs 14.1.1-14.1.5 of this Annexure A above that the Reviewer thinks are reasonable necessary to ensure that Video Ezy maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

Commission Compliance Program Review Report (to be provided to the Commission)

- 14.2 The Commission Compliance Program Review Report will provide particular and specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:
 - 14.2.1 details of the evidence gathered and examined during the Review;
 - 14.2.2 the name and relevant experience of the person appointed as the company Compliance Officer;
 - 14.2.3 the Reviewer's opinion on whether Video Ezy has in place a Compliance Program that complies with the requirements detailed in paragraph 1 to 13 of this Annexure A above;
 - 14.2.4 actions recommended by the Reviewer to ensure the continuing effectiveness of Video Ezy's Compliance Program;



- 14.2.5 confirmation that any actual and potential inadequacies in Video Ezy's Compliance Program have been brought to the attention of the Compliance Officer and the Board;
- 14.2.6 confirmation that the Reviewer has revisited any actual and potential inadequacies in Video Ezy's Compliance Program identified in any previous Company Compliance Program Review Report, and assessed how they have been addressed by Video Ezy;
- 14.2.7 the Reviewer's opinion on if, and to what extent, Video Ezy has complied with the Compliance Program component of the Undertaking;
- 14.2.8 any reservations that the Reviewer might have about the reliability and completeness of the information to which the Reviewer had access in the conduct and reporting of the Review; and
- 14.2.9 any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.
- 14.3 Video Ezy will ensure that the Review Reports are completed and provided to Video Ezy within 2 months of each Review.
- 14.4 Video Ezy will retain the Company Compliance Program Review Report, and cause the Commission Compliance Program Review Report to be provided to the Commission and the Compliance Auditor within 14 days of its receipt from the Reviewer.
15. Video Ezy shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the Commission that are reasonably necessary to ensure that Video Ezy maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.
16. If requested by the Commission Video Ezy shall, at its own expense, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
17. In the event the Commission has reason to suspect that the Compliance Program is not being implemented effectively, Video Ezy shall, at its own expense and if requested by the Commission, cause an interim or additional Review to be conducted and cause the resulting Commission Review Report to be provided to the Commission.



Annexure B

Paul Unjacke

Edward Nedelko

Jason McDonald

Handwritten signature or initials in black ink, appearing to be 'AZ' with a flourish.