



Gail Hambly
Group General Counsel & Company Secretary
Fairfax Media Limited

Telephone: (+612) 9282 1674
Facsimile: (+612) 9282 1633
Email: ghambly@fairfaxmedia.com.au

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By email: Damien.O'Donovan@accc.gov.au
and mail

Mr Tim Grimwade
General Manager, Mergers and Asset Sales
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

Dear Mr Grimwade

Fairfax undertakings

[Redacted]

Fairfax understands that the Commission has concerns about its compliance with the Undertaking and Fairfax wishes to ensure that the Commission's concerns are addressed.

[Redacted]

Fairfax acknowledges that the Commission has limited information about the operations of the *Lower Hunter Star* and the *Hunter Post* since the sale of the Post. If changes need to be made at the *Lower Hunter Star* or the *Hunter Post* to bring Fairfax into compliance with the terms of the Undertaking, Fairfax will make the necessary changes. **[Redacted]**

Fairfax also acknowledges that the Commission may choose to make public comments in relation to its investigation and any final resolution of its investigation.

In this letter:

- **'the Post'** means *The Newcastle and Lake Macquarie Post* and *The Hunter Post* newspapers;
- **'the Star'** means *The Newcastle and Lake Macquarie Star* and *The Lower Hunter Star* newspapers;
- **'the Undertaking'** means the s 87B undertaking given by Fairfax Media Limited to the Australian Competition and Consumer Commission dated 17 April 2007;
- **'Constantine'** means Camillaro Pty Ltd ABN 47 003 529 940, Con Constantine and Nicky Constantine;
- **'NNP'** means Newcastle Newspapers Pty Ltd;
- **'the Transition Period'** means the period beginning on the date the Commission accepts the undertakings in this letter and ending on 1 April 2008; and
- **'the Licence Period'** means the period beginning on the date the Commission accepts the undertakings in this letter and ending 12 months after that date.

Subject to the agreement of the Commission the terms of the Undertaking are supplemented by the following additional obligations:

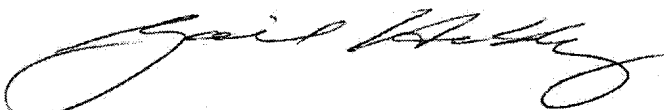
- 1 Fairfax will reappoint Ian Crowther, or, if he is unwilling or unavailable Fairfax will appoint another person approved by the Commission, as Independent Manager of the Post for at least the Transition Period on the terms of engagement previously approved by the Commission, to manage the publication of the Post in accordance with the provisions of clause 6 of the Undertaking and the terms of this letter.
- 2 Until the Divestiture Date, Fairfax will direct those staff of NNP whose duties related to the publication of or the sale of advertising in the Post as at 26 November 2007 that they must report to and take instructions from the Independent Manager and from Constantine or his nominee in respect of the performance of those duties. This clause will not apply to those staff in respect of any other duties they may have.
- 3 Fairfax will offer to Constantine a non-exclusive **[Redacted]** licence to use the 'Domain' brand in the Post for the purposes of a print publication in the circulation area in which the Post was circulated as at 26 November 2007 for at least the Licence Period. It will be a condition of the licence that:
 - (a) the brand 'Domain' is used only in the form 'Domain in the Post';
 - (b) where the brand appears there is a statement that the brand is used under licence from Fairfax; and
 - (c) subject to the Commission determining whether and if so how Domain was used on line by the Post prior to 1 December 2007, the brand is not used online.
- 4 During the Licence Period, and for such additional time thereafter as required by the Commission, Fairfax agrees not to use the Domain brand in the *Newcastle and Lake Macquarie Star*, whether or not Constantine accepts the licence in clause 3.

- 5 Fairfax will offer to assign to Constantine the 'TE' and 'That's Entertainment' brand for no consideration.
- 6 Fairfax agrees not to use the 'TE' or 'That's Entertainment' brands in the Star (even if Constantine does not accept the offer to assign).
- 7 For the first four editions of *The Newcastle and Lake Macquarie Star* in 2008, Fairfax will not publish the 'After Hours' section of the *Newcastle and Lake Macquarie Star* (or any other entertainment supplement or pages); and at least for the balance of the Transition Period, entertainment advertising in the *Newcastle and Lake Macquarie Star* will only appear in the same format and layout and at the same volume which applied prior to 26 November 2007;
- 8 For at least the Transition Period, Fairfax will not solicit or otherwise approach any advertiser or agent of any advertiser, who has advertised in the TE supplement between 26 August 2007 and 26 November 2007 (Post Entertainment Advertiser), and offer them advertising in the Star. Fairfax may, if a Post Entertainment Advertiser makes an unsolicited approach for advertising in the Star, publish that advertiser's ad in the Star.
- 9 For the first four editions of the *The Newcastle and Lake Macquarie Star* in 2008, Fairfax will not publish any real estate advertising in the *Newcastle and Lake Macquarie Star* unless contracted to do so prior to 24 December 2007 (and such contract was not to place advertising in Domain).
- 10 For at least the balance of the Transition Period, real estate advertising in the *The Newcastle and Lake Macquarie Star* will appear only in the form of the StarTimes property guide and the format and layout and at the same volume as it appeared in the three months between 26 August 2007 and 26 November 2007.
- 11 In the Transition Period, Fairfax will not solicit or otherwise approach any real estate advertiser or any agent of such real estate advertiser who advertised in the Domain section of Post in the period 26 August 2007 and 26 November 2007 to advertise in the *Newcastle and Lake Macquarie Star*, unless that particular advertiser had placed advertisements in the *Newcastle and Lake Macquarie Star* between 26 August 2007 and 26 November 2007.
- 12 Fairfax will on terms approved by the Commission inform in writing each real estate advertiser who transferred from the Post to the Star in the period from 26 November 2007 to the date the Commission accepts the undertakings in this letter that, under arrangements agreed by Fairfax with the Commission and with Constantine:
 - (a) the 'Domain' real estate supplement will cease to be published by or in the *Newcastle and Lake Macquarie Star*;
 - (b) if Constantine accepts the licence in clause 3, that supplement will be published in the Post under the name 'Domain in the Post' for at least 12 months; or if Constantine does not accept the licence in clause 3, that a supplement very similar to Domain will be published in the Post under the name chosen by Constantine; and
 - (c) Craig Slavec will be acting as account manager for the Post until further notice and not for the Star in respect of real estate advertising.

- 13 Fairfax will procure that the Independent Manager inform each entertainment advertiser who transferred from the Post to the Star in the period from 26 November 2007 to the date the Commission accepts the undertakings in this letter that, under arrangements agreed by Fairfax with the Commission and with Constantine:
- (a) the 'TE' (That's Entertainment) entertainment supplement will cease to be published by or in the Star;
 - (b) if Constantine accepts the assignment in clause 3, that supplement will be published in the Post, or if Constantine does not accept the assignment in clause 5, that a similar supplement will be published in the Post under the name chosen by Constantine; and
 - (c) Chris Lewis will be acting as sales representative for the Post until further notice.
- 14 Fairfax will publish a notice in the *Newcastle and Lake Macquarie Star* that, under arrangements agreed by Fairfax with the Commission and with Constantine:
- (a) for at least 12 months the 'Domain' real estate supplement will cease to be published by or in the *The Newcastle and Lake Macquarie Star*;
 - (b) if Constantine accepts the licence in clause 3, the 'Domain in the Post' supplement will be published in the Post for at least 12 months, or if Constantine does not accept the licence in clause 3, that a similar supplement will be published in the Post under the name chosen by Constantine; and
 - (c) if Constantine accepts the assignment in clause 5 the TE supplement will now be published in the Post.
- 15 For at least the Transition Period, if the Independent Manager or Constantine advises Fairfax that they wish to offer real estate advertising uplift rates to bundle real estate advertising in *The Newcastle Herald* with the Post and advise Fairfax of the uplift rates, Fairfax will:
- (a) offer the uplift rates for the Post to all real estate advertisers in *The Newcastle Herald*;
 - (b) invoice the real estate advertisers who accept the offer and promptly account to Constantine for all amounts received; and
 - (c) supply copy for such real estate advertisements to the printer nominated by the Independent Manager or Constantine and a pdf copy to Constantine if so required.
- 16 For at least the Transition Period, Fairfax will not offer real estate advertising uplift rates to bundle real estate advertising in *The Newcastle Herald* with the Star.
- 17 [Redacted]

- 18 Fairfax will, [Redacted] direct all staff of Newcastle Newspapers and the Star, not to make adverse or disparaging comments about the Post for a period of at least 12 months, and advise staff that the Post, when separated from Fairfax, will be set up as a viable going concern.
- 19 Fairfax will direct each member of staff of Fairfax or NNP whose duties or functions relate to the Star or the Post not to do anything inconsistent with Fairfax's obligations under the Undertaking and under the terms of this letter. All such staff will be explicitly made aware of the Undertaking and its terms, in a manner determined by the Independent Manager.
- 20 Fairfax will direct its directors, managers, officers, employees and agents whose duties or functions relate to *The Newcastle Herald*, the Star or the Post to act in accordance with the instructions of the Independent Manager as set out in the Undertaking and in this letter.
- 21 Fairfax will implement the actions set out in this letter to ensure that:
- (a) the Post is managed and operated in the ordinary course of business as a separate fully operational, competitive going concern and in such a way as preserves the goodwill of the Post;
 - (b) the Post continues to be published with the same frequency and substantive content as at 26 November 2007 with no material change to the distribution of the Post; and
 - (c) the Post is editorially, financially and operationally separate from Fairfax.
- 22 For at least the Licence Period, Fairfax will not expand the circulation area of the *Lower Hunter Star* beyond the circulation area it had prior to 26 November 2007.
- 23 Fairfax acknowledges and accepts that (i) the obligations imposed upon it under the terms of the Undertaking continue to apply and will do so until the Divestiture Date; (ii) the Commission is at liberty to take proceedings in respect of the Undertaking and the obligations set out herein.

Yours sincerely



Gail Hambly
Group General Counsel & Company Secretary
Fairfax Media Limited