
Competition and Consumer Act 2010

Variation to an Undertaking given to the
Australian Competition and Consumer
Commission under section 87B

Given by Video Ezy Australasia Pty Ltd

1 Persons giving this Variation

- 1.1 This Second Variation is given to the Australian Competition and Consumer Commission (ACCC) by Video Ezy Australasia Pty Ltd (**Video Ezy**).
-

2 Background

- 2.1 On 18 September 2007, the ACCC accepted the Undertaking under section 87B of the *Trade Practices Act 1974*, now the *Competition and Consumer Act 2010* (the **Act**), from Video Ezy in connection with its Proposed Acquisition of Blockbuster Australia Pty Ltd and the master franchise rights to the Blockbuster business in Australia. The Undertaking was first varied on 1 September 2008.
- 2.2 Pursuant to clause 2.2 of the Undertaking, the Undertaking will terminate on 3 October 2012, being five years after the completion of the Proposed Acquisition.
- 2.3 The Undertaking requires, amongst other things:
- i. six monthly reviews by a Compliance Auditor of compliance with the Undertaking by Video Ezy and its Related Bodies Corporate; and
 - ii. annual reviews by an independent Reviewer of the Compliance Program established by Video Ezy pursuant to Undertaking.
- 2.4 In circumstances where the Undertaking is due to terminate on 3 October 2012, Video Ezy has sought a variation of the Undertaking (**Second Variation**) to:
- iii. remove the requirement that the Compliance Auditor conduct a separate review in respect of the period from 1 July 2012 to 3 October 2012, by providing that the Compliance Auditor's final review cover the period from 1 January 2012 to 3 October 2012; and
 - iv. remove the requirement that the annual review of the Compliance Program be completed by October 2012, by providing that the final review by the independent Reviewer, in respect of the period from October 2011 to 3 October 2012, be submitted by no later than 31 December 2012.
-

3 Commencement

- 3.1 This Second Variation comes into effect when:
- (a) this Second Variation is executed by Video Ezy; and
 - (b) the Commission accepts this Second Variation so executed.
-

4 Variation to clause 9.10 – Compliance Reporting

- 4.1 Clause 9.10.1 of the Undertaking is amended by:
- (a) deleting the words "each six months of the Term of this Undertaking";
 - (b) inserting a colon after the words "in respect of"; and
 - (c) adding the following subclauses:

- “(a) each six months until 31 December 2011; and
- (b) the period from 1 January 2012 to 3 October 2012,”

4.2 The varied Clause 9.10.1 of the Undertaking will accordingly read as follows:

“in respect of:

- (a) each six months until 31 December 2011; and
- (b) the period from 1 January 2012 to 3 October 2012,

the Compliance Auditor undertakes a review of compliance by Video Ezy and its Related Bodies Corporate with clauses 3, 4, 5, 6, 6A 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”

4.3 Clause 9.10.2 of the Undertaking is amended by inserting the words “, except for the review in respect of the period from 1 January 2012 to 3 October 2012, which will be completed on or before 3 October 2012”.

4.4 The varied Clause 9.10.2 of the Undertaking will accordingly read as follows:

“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, except for the review in respect of the period from 1 January 2012 to 3 October 2012, which will be completed on or before 3 October 2012.”

5 Variation to Clause 13 – Review

5.1 Clause 13.4 of the Annexure to the Undertaking is amended by:

- (a) inserting a colon after the words “Video Ezy shall ensure that”;
- (b) inserting “(a)” before the words “the first review” and a semi-colon after the words “coming into effect”;
- (c) deleting the words “and that” after the words “coming into effect”;
- (d) inserting the words “(b) until October 2011,” before the words “each subsequent Review”
- (e) inserting a semi colon and the word “and” after the word “thereafter”; and
- (f) inserting the words “(c) for the period from October 2011 to 3 October 2012, the Review is completed by no later than 31 December 2012”.

5.2 The amended clause 13.4 of the Annexure to the Undertaking will read as follows:

“Video Ezy shall ensure that:

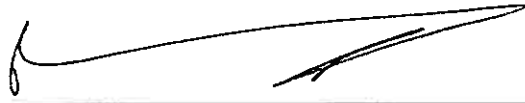
- (a) the first review is completed within one year and one month of this Undertaking coming into effect;
- (b) until October 2011, each subsequent Review is completed within one year thereafter; and

- (c) for the period from October 2011 to 3 October 2012, the Review is completed by no later than 31 December 2012."
-

6 Defined terms and interpretation

- 6.1 Any term defined in the Undertaking and not defined in this Second Variation has the meaning given in the Undertaking, unless the contrary intention appears.
- 6.2 **Second Variation** means this variation to the Undertaking.

Signed by Video Ezy Australasia Pty Ltd by its authorised signatory:



[Name] Paul Unmacke

[Position] Director

21/6/12

Date

Accepted by **The Australian Competition and Consumer Commission** pursuant to section 87B



Dr Michael Theodore Schaper

Acting Chairman

27 June 2012

Date: