

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by **Gallagher Holdings Limited** (New Zealand company number 1187732)

1) Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Gallagher Holdings Limited (New Zealand company number 1187732), a company incorporated in New Zealand, on behalf of itself and its subsidiaries including Gallagher Group Limited (New Zealand company number 194068), Gallagher Australia Pty Limited (ACN 005 550 845) and Gallagher Fuel Systems Australia Pty Ltd (ACN 127 141 308), and on behalf of the Gallagher Australia Finance Holding Partnership (together referred to as **Gallagher** in this Undertaking).

2) Background

The Parties

- 2.1 Gallagher Holdings Limited, through Gallagher Group Limited, is involved in the design, manufacture, and marketing of a range of animal management, security and fuel systems products, including electric fencing energisers and accessories and animal weigh scales, which are exported to various countries including Australia. Gallagher Australia operates as a sales and distribution company for the Gallagher group's animal management products in Australia.
- 2.2 Country Electronic Pty Ltd, trading as Thunderbird Agricultural Products (ACN 003 806 040) (**Thunderbird**), is a manufacturer and supplier of electric fencing energisers and accessories, weigh scales, and other animal management products in Australia.
- 2.3 Gallagher Holdings Limited has a 11.86% interest in Tru-Test, a company incorporated in New Zealand which manufactures and sells, in Australia and other countries, a range of agricultural equipment including electric fencing energisers and accessories, weigh scale and other animal management products in Australia.

The Proposed Acquisition


- 2.4 Gallagher, through a wholly-owned subsidiary incorporated in Australia, proposes to acquire the assets of Thunderbird (**Proposed Acquisition**).

The ACCC's review

- 2.5 The ACCC commenced its review of the Proposed Acquisition on 25 October 2012. The ACCC conducted market inquiries and considered information provided by Gallagher, industry participants and others. The purpose of the ACCC's inquiries was to assess whether or not the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in contravention of section 50 of the Act.

The ACCC's competition concerns

- 2.6 The ACCC has concluded that, in the absence of this Undertaking, the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the market for the supply of electric fence energisers in Australia.

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- 2.7 The ACCC was concerned that the relevant market for the supply of electric fence energisers is already highly concentrated and will become further concentrated as a result of the Proposed Acquisition.
- 2.8 Further, in the absence of this Undertaking, following completion of the Proposed Acquisition, Gallagher would have an interest of up to 11.86% in its only remaining major competitor in the supply of electric fence energisers.
- 2.9 The ACCC was concerned that, in the absence of this Undertaking, Gallagher would have an increased ability and incentive to unilaterally raise prices and reduce the quality of its service offering since Gallagher, through its shareholding in Tru-Test, would be in a position to receive a part of the profit made by Tru-Test on sales to any customer lost to Tru-Test by Gallagher.
- 2.10 The ACCC was also concerned that following the Proposed Acquisition, the highly concentrated market structure, together with the common ownership between Gallagher and Tru-Test in the absence of this Undertaking, would increase the likelihood of coordination between Gallagher and Tru-Test with respect to their product, price and service offerings in the market.

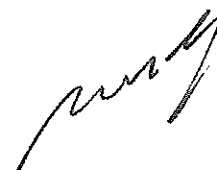
The Undertaking remedy

- 2.11 Gallagher offers this Undertaking to divest the shareholding held by Gallagher Holdings Limited in Tru-Test in order to address the ACCC's competition concerns relating to the Proposed Acquisition, as set out above. The Undertaking aims to achieve this objective by:
- (a) providing for Gallagher to divest its shareholding in Tru-Test within a set timeframe;
 - (b) maintaining the independence of Tru-Test and Gallagher while Gallagher remains a shareholder by ensuring that Gallagher does not exercise any influence over Tru-Test, and vice versa; and
 - (c) providing for the effective oversight of Gallagher's compliance with this Undertaking.

3) Commencement of this Undertaking

Commencement

- 3.1. This Undertaking comes into effect when:
- (a) this Undertaking is executed by Gallagher; and
 - (b) this Undertaking so executed is accepted by the ACCC
- (the **Commencement Date**).



4) Cessation of Ongoing Obligations

Withdrawal

- 4.1. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to the withdrawal of this Undertaking in accordance with section 87B of the Act.

Revocation

- 4.2. The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

- 4.3. The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or amend the date by which any such obligation is to be satisfied.

Completion

- 4.4. Clauses 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, and 16 survive completion of the obligations in clauses 5, 6 and 7.

5) Divestiture of Shares in Tru-Test

Divestiture

- 5.1. Gallagher must, in accordance with this Undertaking, divest, or cause the divestiture of the Shares to one or more Approved Purchasers within the Initial Sale Period.
- 5.2. Prior to the Commencement Date the ACCC approved Tru-Test as an Approved Purchaser of the Shares.
- 5.3. In the event that Gallagher fails to divest some or all of the Shares to one or more Approved Purchasers by the end of the Initial Sale Period, clause 8) applies.

6) Divestiture of the Shares to an Approved Purchaser

Divestiture only to an Approved Purchaser

- 6.1 Within the Initial Sale Period, Gallagher must divest the Shares to one or more Approved Purchasers.
- 6.2 Gallagher must not authorise the Approved Divestiture Agent to divest the Shares to a purchaser other than an Approved Purchaser.

Provision of a notice for a Proposed Purchaser



- 6.3 To seek approval for a Proposed Purchaser, Gallagher must provide the ACCC with a Proposed Purchaser Notice in the form prescribed in Schedule 2 to this Undertaking (**Proposed Purchaser Notice**).
- 6.4 The Proposed Purchaser Notice must be provided to the ACCC at least 10 Business Days prior to the end of the Initial Sale Period.

Approval of a Proposed Purchaser

- 6.4. After receiving a Proposed Purchaser Notice, the ACCC must decide whether to:
- (a) approve the person named in the Proposed Purchaser Notice as an Approved Purchaser which includes approving the draft sale and purchase agreement attached to the Proposed Purchaser Notice;
 - (b) not approve the person named in the Proposed Purchaser Notice as an Approved Purchaser.
- 6.5. Without limiting the ACCC's discretion, in making the decision described in clause 6.4, the factors to which the ACCC may have regard include whether the:
- (a) draft sale and purchase agreement is consistent with this Undertaking and otherwise acceptable to the ACCC;
 - (b) Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (c) Proposed Purchaser is independent of, and has no direct or indirect interest in, Gallagher;
 - (d) Proposed Purchaser is of good financial standing; and
 - (e) divestiture of the Shares to the Proposed Purchaser will address any competition concerns of the ACCC.
- 6.6. Within 5 Business Days after receiving a Proposed Purchaser Notice, the ACCC must notify Gallagher in writing of its decisions made pursuant to clause 6.4.
- 6.7. The ACCC may extend the period within which it will provide the notice described in clause 6.6 by notifying Gallagher in writing of the extension within 5 Business Days after receiving the Proposed Purchaser Notice.
- 6.8. Any extension of time by the ACCC pursuant to clause 6.7 extends the Initial Sale Period by the same length of time.
- 6.9. The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

7) Protection of the Shares

Protection of the Shares

- 7.1. From the Commencement Date, Gallagher must not transfer the Shares or cause the Shares to be transferred, except in accordance with this Undertaking.

Undertaking given to the Australian Competition and Consumer Commission under section 87B of the *Competition and Consumer Act 2010* by Gallagher Group Limited

Gallagher's obligations in relation to the Shares

- 7.2. From the Commencement Date until completion of the divestiture of the Shares in accordance with this Undertaking, Gallagher must:
- (a) except to the extent required to facilitate the divestiture of the Shares in accordance with this Undertaking, give all of Gallagher Holdings Limited's voting rights attached to the Shares to the Chairman of Tru-Test's board of directors by way of proxy, with such voting rights to be exercised at the Chairman's sole discretion;
 - (b) except to the extent required to facilitate the divestiture of the Shares in accordance with this Undertaking, not exercise any voting rights attached to the Shares; and
 - (c) not seek representation on the board of directors of Tru-Test.
- 7.3. Gallagher must not, during the term of this Undertaking, take steps to appoint (or cause the appointment) to the board of directors of Gallagher, a person who is at that time a director of Tru-Test, subject to Gallagher's obligation to accept nominations for election as a director of Gallagher at a general meeting, and Gallagher shareholders' right to appoint any person they wish as a director of Gallagher by ordinary resolution.

Direction to personnel of Gallagher

- 7.4. As soon as practicable after the Commencement Date, Gallagher must direct its personnel, including directors, contractors, managers, officers, employees and agents, not to do anything inconsistent with Gallagher's obligations under this Undertaking.

Confidential Information

- 7.5. Subject to clause 7.6, Gallagher must not, at any time from the Commencement Date, use or disclose any confidential information about Tru-Test gained through:
- (a) ownership of the Shares; or
 - (b) fulfilling any obligations pursuant to this Undertaking.
- 7.6. Clause 7.5 does not apply to information that Gallagher requires to:
- (a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or
 - (b) carry out its obligations pursuant to this Undertaking;

provided such information is only used for that purpose and is only disclosed to those officers, employees, contractors and advisers of Gallagher who need to know the information to carry out the permitted purpose.


8) Failure to divest the Shares by the end of the Initial Sale Period

Divestiture of the Unsold Shares

- 8.1. In the event that the divestiture of some or all of the Shares to an Approved Purchaser is not completed by the end of the Initial Sale Period, those Shares become unsold shares and the provisions of this clause 8 apply (**Unsold Shares**).

Obligation to appoint an Approved Divestiture Agent

- 8.2. From the end of the Initial Sale Period, Gallagher must appoint and maintain an Approved Divestiture Agent to effect the divestiture of the Unsold Shares.
- 8.3. Without limiting its obligations in this Undertaking, Gallagher must from the end of the Initial Sale Period:
- (a) comply with and enforce the Approved Terms of Appointment for the Approved Divestiture Agent;
 - (b) maintain and fund the Approved Divestiture Agent to carry out his or her functions, including:
 - (i) indemnifying the Approved Divestiture Agent for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of his or her functions as the Approved Divestiture Agent except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent; and
 - (iii) paying such fees as are agreed between the Approved Divestiture Agent and Gallagher (but not fees contingent on the price to be obtained for the Unsold Shares);
 - (iv) if an agreement as to fees cannot be reached between the Approved Divestiture Agent and Gallagher within 15 Days after the end of the Initial Sale Period, Gallagher agrees to pay such fees as are directed by the ACCC;
 - (c) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out his or her functions as the Approved Divestiture Agent, including:
 - (i) directing its personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 8; and
 - (ii) providing to the Approved Divestiture Agent any information, documents or other assistance requested by the Approved Divestiture Agent that he or she considers necessary for carrying out



his or her functions as the Approved Divestiture Agent or for reporting to or otherwise advising the ACCC;

- (d) within three Business Days after receiving notice from the ACCC pursuant to clause 6.6 that the ACCC has approved a Proposed Purchaser, Gallagher must instruct the Approved Divestiture Agent to complete the divestiture of some or all of the Unsold Shares to that Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 6.6; and
- (e) other than in accordance with clause 8.3(d) of this Undertaking, not instruct the Approved Divestiture Agent to divest the Unsold Shares.

Approval of the Approved Divestiture Agent

- 8.4. At least 15 Business Days prior to the end of the Initial Sale Period, if the divestiture of all the Shares to one or more Approved Purchasers has not been completed, Gallagher must provide the ACCC with a notice for a Proposed Divestiture Agent in the form of Schedule 3 to this Undertaking (**Proposed Divestiture Agent Notice**).
- 8.5. After receiving a Proposed Divestiture Agent Notice, the ACCC must decide whether to:
 - (a) approve the appointment of the person named in the Proposed Divestiture Agent Notice as the Approved Divestiture Agent which includes approving the:
 - (i) terms of appointment attached to the Proposed Divestiture Agent Notice;
 - (ii) draft share sale agreement attached to the Proposed Divestiture Agent Notice; and
 - (iii) draft marketing and sale plan attached to the Proposed Divestiture Agent Notice; or
 - (b) not approve the person named in the Proposed Divestiture Agent Notice as the Approved Divestiture Agent.
- 8.6. If clause 8.5(b) applies, the ACCC may, at its absolute discretion:
 - (a) direct Gallagher to submit a Proposed Divestiture Agent Notice that:
 - (i) names a person identified by the ACCC as the Proposed Divestiture Agent; and/or
 - (ii) includes attachments that:
 - (A) relate to the person identified by the ACCC under clause 8.6(a) (if applicable); and/or
 - (B) address any issues identified by the ACCC in relation to the terms of appointment, draft business sale agreement, and/or draft marketing and sale plan; or



- (b) identify and approve a person as the Approved Divestiture Agent together with the:
 - (i) terms of appointment;
 - (ii) draft share sale agreement and/or
 - (iii) draft marketing and sale plan.
- 8.7. As soon as practicable, and within two Business Days after any direction by the ACCC under clause 8.6(a), Gallagher must submit a Proposed Divestiture Agent Notice in accordance with the direction.
- 8.8. Without limiting the ACCC's discretion, in making the decisions described in clause 8.5 or 8.6, the factors to which the ACCC may have regard include whether the:
 - (a) person named in the Proposed Divestiture Agent Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Divestiture Agent;
 - (b) person named in the Proposed Divestiture Agent Notice or identified by the ACCC is sufficiently independent of Gallagher;
 - (c) terms of appointment, draft share sale agreement and draft marketing and sale plan are consistent with this Undertaking; and
 - (d) terms of appointment, draft share sale agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.
- 8.9. Within 10 Business Days after receiving a Proposed Divestiture Agent Notice, the ACCC must notify Gallagher in writing of its decisions and any direction made pursuant to clause 8.5 and/or 8.6.
- 8.10. The ACCC may extend the period within which it will provide notice of the decision or direction (if applicable) described in clause 8.9 by notifying Gallagher in writing of the extension within 10 Business Days after receiving the Proposed Divestiture Agent Notice.
- 8.11. Any extension of time by the ACCC under clause 8.10 extends the Initial Sale Period by the same length of time.
- 8.12. If the Approved Divestiture Agent has not been appointed:
 - (a) within 10 Business Days after the Shares become the Unsold Shares;
 - (b) within 17 Business Days after the Approved Divestiture Agent resigns or otherwise ceases to act pursuant to clauses 8.18, 8.19 or 8.20; or
 - (c) if the ACCC has not received a Proposed Divestiture Agent Notice pursuant to clause 8.21;then the provisions of clause 8.13 apply.
- 8.13. If clause 8.12 applies, the ACCC may, at its absolute discretion:



- (a) identify and approve a person as the Approved Divestiture Agent;
- (b) approve the terms of appointment of the Approved Divestiture Agent;
- (c) approve the draft share sale agreement; and
- (d) approve the draft marketing and sale plan.

Appointment of the Approved Divestiture Agent

8.14. After receiving notice from the ACCC of its decisions pursuant to clause 8.5, 8.6(b) or 8.13, Gallagher must within two Business Days:

- (a) appoint the person approved by the ACCC as the Approved Divestiture Agent on the Approved Terms of Appointment; and
- (b) forward to the ACCC a copy of the executed Approved Terms of Appointment within one Business Day of execution.

Obligations and powers of the Approved Divestiture Agent

8.15. Gallagher must procure that any proposed terms of appointment for the Approved Divestiture Agent include obligations on the Approved Divestiture Agent to:

- (a) maintain his or her independence from Gallagher apart from appointment to the role of Approved Divestiture Agent, including not form any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with Gallagher for the period of his or her appointment;
- (b) not use any confidential information gained through the divestiture of the Unsold Shares other than for performing his or her functions as Approved Divestiture Agent;
- (c) follow the Approved Marketing and Sale Plan;
- (d) divest the Unsold Shares only to one or more Approved Purchasers, with no obligation imposed by Gallagher to achieve a divestiture at a minimum price;
- (e) use his or her best endeavours to enter into a binding agreement for the divestiture of the Unsold Shares as quickly as possible using the Approved Share Sale Agreement;
- (f) every 30 Business Days following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC which include:
 - 1. information regarding the implementation of the Approved Share Sale Agreement and the Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - 2. information regarding any suggested changes to any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;



3. an account and explanation of all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking his or her duties by month and to the date of the report;
 4. a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 8.16(c);
 5. the efforts made to sell the Unsold Shares;
 6. the identity of any advisers engaged;
 7. the identity of any persons expressing interest in the Unsold Shares; and
 8. any other information required by the ACCC.
- (g) within 30 Business Days after the completion of the divestiture of the Unsold Shares, provide a written report directly to the ACCC which includes a final accounting of:
1. any moneys derived from the divestiture of the Unsold Shares;
 2. all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling his or her duties; and
 3. all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 8.16(c);
- (h) immediately inform the ACCC (and Gallagher) of:
1. any issues that arise in relation to the implementation of any Approved Share Sale Agreement and any Approved Marketing and Sale Plan;
 2. non-compliance with this Undertaking by any person named in this Undertaking;
 3. any offers for the Unsold Shares;
- (i) accept any offer for the Unsold Shares upon instruction from Gallagher given in accordance with clause 8.3(d); and
- (j) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Divestiture Agent pursuant to this Undertaking.
- 8.16. Gallagher must procure that any proposed terms of appointment for the Approved Divestiture Agent contain an irrevocable grant of power of attorney conferring all necessary power and authority on the Approved Divestiture Agent to:
- (a) negotiate with purchasers to divest the Unsold Shares on terms considered by the Approved Divestiture Agent in his or her sole discretion to be consistent with this Undertaking;

- (b) upon instruction pursuant to clause 8.3(d), complete the divestiture of the Unsold Shares to the Approved Purchaser in accordance with the Approved Share Sale Agreement; and
 - (c) engage any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent.
- 8.17. Any irrevocable power of attorney granted pursuant to clause 8.16 will end upon resignation or termination of the Approved Divestiture Agent in accordance with clauses 8.18, 8.19 and 8.20, or in the event that the Unsold Shares are divested in accordance with this Undertaking.

Resignation, revocation or termination of the Approved Divestiture Agent

- 8.18. Gallagher must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the completion of the divestiture of the Unsold Shares.
- 8.19. The ACCC may revoke an Approved Divestiture Agent's status as the Approved Divestiture Agent if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 8.20. The ACCC may approve any proposal by, or alternatively may direct, Gallagher to terminate an Approved Divestiture Agent if in the ACCC's view the Approved Divestiture Agent acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.
- 8.21. If clause 8.18, 8.19 or 8.20 applies then Gallagher must provide the ACCC with a Proposed Divestiture Agent Notice within five Business Days, otherwise clause 8.13 applies.

9) Jurisdiction

- 9.1. Gallagher Holdings Limited and Gallagher Group Limited submit to the jurisdiction of the Federal Court of Australia in relation to this Undertaking.
- 9.2. Notwithstanding clause 15.2, unless and until notified in writing by Gallagher Holdings Limited to the ACCC of the appointment of another person as an agent within Australia, Gallagher Holdings Limited irrevocably appoints Gallagher Australia Pty Limited as its agent for the purposes of any service of process in relation to this Undertaking.

10) Reporting and provision of information

Reporting

- 10.1. Gallagher must, within 10 Business Days of the Commencement Date and at monthly intervals thereafter, but ending with the first report that is required under this clause after the divestiture of the Shares pursuant to this Undertaking has been completed, provide a written report to the ACCC which, for the period since the previous report (or in the case of the first report, since the Commencement Date), details:

- (a) whether its obligations under this Undertaking have been met at all times;
- (b) any actual or potential breaches of its obligations pursuant to this Undertaking;
- (c) the processes followed by Gallagher to ensure its compliance with this Undertaking;
- (d) the number of Shares held by Gallagher in Tru-Test;
- (e) the expected date(s) for divestiture of the Shares;
- (f) the identity of any expected purchaser, or any potential purchaser, of the Shares; and
- (g) the processes followed by Gallagher when gathering information in order to make its assessment pursuant to 10.1(a) and 10.1(b).

Information

- 10.2. Gallagher must notify the ACCC and, if clause 8 applies, the Approved Divestiture Agent, in writing of the proposed date of each of the following events at least five Business Days before each is proposed to occur:
 - (a) the Control Date; and
 - (b) the completion of the divestiture of the Shares.
- 10.3. Gallagher must notify the ACCC in writing of the occurrence of each of the following events within one Business Day after the date the event occurs:
 - (a) the Control Date; and
 - (b) the completion of the divestiture of any Shares.
- 10.4. The ACCC may direct Gallagher in respect of its compliance with this Undertaking to, and Gallagher must:
 - (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within Gallagher's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 10.5. Any direction made by the ACCC under clause 10.4 will be notified to Gallagher in accordance with clause 15.2.
- 10.6. In respect of Gallagher's compliance with this Undertaking or an Approved Divestiture Agent's compliance with its Approved Terms of Appointment, the ACCC may request any Approved Divestiture Agent to:

- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Approved Divestiture Agent's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 10.7. Gallagher will use its best endeavours to ensure that an Approved Divestiture Agent complies with any request from the ACCC in accordance with clause 10.6.
- 10.8. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 10 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 10.9. The ACCC may in its discretion to be exercised in good faith:
- (a) advise the Approved Divestiture Agent of any request made by it under this clause 10; and/or
 - (b) provide copies to the Approved Divestiture Agent of any information furnished, documents and material produced or information given to it under this clause 10.
- 10.10. Nothing in this clause 10 requires the provision of information or documents in respect of which Gallagher has a claim of legal professional or other privilege.

11) Disclosure of this Undertaking

- 11.1. Gallagher and the ACCC agree that Schedule 4 will remain confidential at all times.
- 11.2. Gallagher acknowledges that the ACCC may provide each Approved Divestiture Agent with a copy of this Undertaking which includes an unredacted version of confidential Schedule 4.
- 11.3. Gallagher acknowledges that the ACCC may, subject to clause 11.1:
- (a) make this Undertaking publicly available; and
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 11.4. Nothing in clause 11.1 or the confidential parts of this Undertaking referred to in clause 11.1 prevents the ACCC from disclosing such information as is:
- (a) required by law;
 - (b) permitted by s 155AAA of the Act;



- (c) necessary for the purpose of enforcement action under section 87B of the Act; or
 - (d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- 11.5. Nothing in clause 11.1 or the confidential parts of this Undertaking referred to in clause 11.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

12) Obligation to procure

- 12.1. Where the performance of an obligation under this Undertaking requires a Related Body Corporate of Gallagher to take or refrain from taking some action, Gallagher will procure that Related Body Corporate to take or refrain from taking that action, as the case may be.

13) No Derogation

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

14) Costs

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

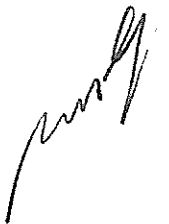
15) Notices

Giving Notices

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

Email address: mergers@accc.gov.au
Attention: Executive General Manager
Mergers and Adjudication Group

With a copy sent to: mergersucu@accc.gov.au
Director, Undertaking Compliance Unit
Coordination and Strategy Branch
Mergers and Adjudication Group



- 15.2. Any notice or communication to Gallagher pursuant to this Undertaking must be sent to:

Name: Gallagher Group Limited

Address: 181 Kahikatea Drive, Melville, Hamilton 3206, New Zealand

Email Address: steve.tucker@gallagher.co.

Fax number: +64 7 838 9899

Attention: Steve Tucker

With a copy sent to:

Name: Truman Hoyle Lawyers

Address: Level 11, 68 Pitt Street, Sydney NSW 2000

Email Address: kedghill@trumanhoyle.com.au

Fax number: +61 2 9226 9899

Attention: Kathryn Edghill

- 15.3. If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).
- 15.4. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

- 15.5. Gallagher or the ACCC must notify the other party of a change to its contact details within three Business Days.
- 15.6. Any notice or communication will be sent to the most recently advised contact details and subject to clause 15.3 and 15.4, will be taken to be received.

16) Defined terms and interpretation

Definitions in the Dictionary

- 16.1. A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
 - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation



16.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

A handwritten signature in blue ink, consisting of a series of connected loops and a final vertical stroke, located in the upper right quadrant of the page.

Executed as an Undertaking


Executed by Gallagher Holdings Limited by:



Signature of director
Sir William Gallagher

Name of director (print)

Date 13-12-13




Signature of a director
John Allan Gallagher

Name of director (print)

Date 13-12-13

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* on:



And signed on behalf of the Commission:

Date 19/12/13

Chairman
Ross Sims

Date

Schedule 1

1. Dictionary

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Agreements means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

Approved Divestiture Agent means the person appointed under clause 8.14 of this Undertaking.

Approved Marketing and Sale Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, as amended from time to time by ACCC direction given under clause 8.13(d) of this Undertaking, by which the Approved Divestiture Agent will market and effect the divestiture of the Unsold Shares.

Approved Purchaser means Tru-Test, the Confidential Approved Purchaser identified in clause 2 of Confidential Schedule 4 to this Undertaking, or any other person approved by the ACCC under this Undertaking as a purchaser of Shares.

Approved Share Sale Agreement means a contract for the divestiture of some or all of the Unsold Shares which has been approved by the ACCC in accordance with the terms of this Undertaking.

Approved Terms of Appointment means the terms of appointment for the Approved Divestiture Agent as approved by the ACCC in accordance with the terms of this Undertaking.

Associated Entity has the meaning given by section 50AAA of the Corporations Act.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Commencement Date means the date described in clause 3.1 of this Undertaking.

Control Date means the date on which the Proposed Acquisition is completed.

Corporations Act means the *Corporations Act 2001* (Cth).

Entities Connected has the meaning given by section 64B of the Corporations Act.

Gallagher has the meaning given to it in clause 1.1 of this Undertaking.

Initial Sale Period is defined in clause 1 of Confidential Schedule 4 to this Undertaking.

Proposed Acquisition is defined in clause 2.4 of this Undertaking.

Proposed Divestiture Agent means a person named in a Proposed Divestiture Notice.



Proposed Divestiture Agent Notice means a completed notice in the form of Schedule 3 to this Undertaking provided to the ACCC with all required attachments in relation to the Proposed Divestiture Agent.

Proposed Purchaser means a person named in a Proposed Purchaser Notice.

Proposed Purchaser Notice means a completed notice in the form of Schedule 2 to this Undertaking provided to the ACCC with all required attachments in relation to the Proposed Purchaser.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Related Bodies Corporate has the meaning given to it by section 50 of the Corporations Act.

Related Entities has the meaning given to it by section 9 of the Corporations Act.

Related Parties has the meaning given to it by section 228 of the Corporations Act.

Shares means all of the shares in Tru-Test held by Gallagher, which as at the date of this Undertaking is 5,425,322 shares.

Subsidiary has the meaning given by section 4A of the Act.

Tru-Test means Tru-Test Corporation Limited (New Zealand company number 104108).

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

Unsold Shares has the meaning given to it in clause 8.1 of this Undertaking.


2. Interpretation

- 2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
 - (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
 - (c) 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;
 - (d) 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;
 - (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;

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- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) 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;
- (j) 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;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) 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
 - (ii) 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;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) 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
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;

- (p) in performing its obligations under this Undertaking, Gallagher 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 this Undertaking;
- (q) a reference to:
- (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.
- 

Schedule 2 – Proposed Purchaser Notice Form

Please note in relation to information given on or in relation to this form, giving false or misleading information is a serious offence.

The completed form with requested documents attached may be provided to the ACCC using the following method:

Email

Subject line: Proposed Purchaser Notice – Gallagher Undertaking
Address: mergers@accc.gov.au
Attention: Executive General Manager - Mergers and Adjudication Group

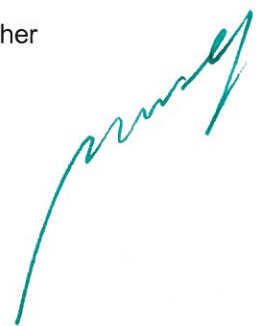
With an email copy sent to:

Address: mergersucu@accc.gov.au
Attention: Director, Undertaking Compliance Unit Merger Coordination and Strategy Branch

- 1) In relation to the Proposed Purchaser, please provide the following information:
 - (a) Name of the Proposed Purchaser:
 - (b) Address:
 - (c) Contact name:
 - (d) Telephone number:
 - (e) Other contact details:
- 2) Please attach a submission containing the following information to this form:
 - (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business.
 - (b) the names of the owner/s and the directors (as applicable) of the Proposed Purchaser.
 - (c) details of any of the following types of relationships between Gallagher and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) Gallagher and the Proposed Purchaser are Associated Entities;
 - (ii) Gallagher is an Entity Connected with the Proposed Purchaser;
 - (iii) the Proposed Purchaser is an Entity Connected with Gallagher;
 - (iv) Gallagher and the Proposed Purchaser are Related Entities;
 - (v) Gallagher and the Proposed Purchaser are Related Parties;

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- (vi) any Related Party, Related Entity or Entity Connected with Gallagher is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
 - (vii) Gallagher and the Proposed Purchaser have a contractual relationship or had one within the past three years, other than those attached to this form;
 - (viii) the Proposed Purchaser is a supplier of Gallagher or has been in the past three years;
 - (ix) Gallagher is a supplier of the Proposed Purchaser or has been in the past three years; and
 - (x) any other relationship between Gallagher and the Proposed Purchaser that allows one to affect the business decisions of the other.
- 3) Please also attach to this form:
- (a) the finalised draft of the sale and purchase agreement for approval by the ACCC in accordance with this Undertaking.
 - (b) any documents required to support the information provided by Gallagher pursuant to this form.



Schedule 3 – Proposed Divestiture Agent Notice

This form sets out the information required by the ACCC in relation to proposed appointment of the Divestiture Agent under the Undertaking:

Please note in relation to information given on in relation to this form, giving false or misleading information is a serious offence.

Method of Delivery to the ACCC

The completed form, along with the additional requested information is to be provided to the ACCC with the subject line (*proposed Divestiture Agent Form – Gallagher Undertaking*) to the below email addresses:

1) mergers@accc.gov.au

Attention: Executive General Manager
Mergers and Adjudication Group

2) **With a copy sent to:**

mergersucu@accc.gov.au

Attention: Director
Undertaking Compliance Unit
Coordination and Strategy Branch
Mergers and Adjudication Group

Information Required

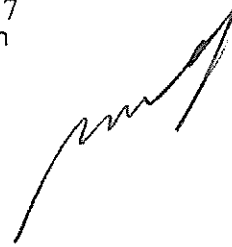
1) The ACCC requires the following information in order to assess a proposed Divestiture Agent:

- (a) the name of the Proposed Divestiture Agent; and
- (b) the name of the proposed Divestiture Agent's employer and contact details including:
 - Address;
 - Contact name;
 - Telephone number;
 - Other contact details.

2) A submission containing the following information:

- (a) details of the Proposed Divestiture Agent's qualifications and experience relevant to his or her proposed role pursuant to the Undertaking.

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- (b) the names of the owner/s and the directors (as applicable) of the Proposed Divestiture Agent's employer.
- (c) details of any of the following types of relationships between Gallagher and the Proposed Divestiture Agent or the Proposed Divestiture Agent's employer or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) Gallagher and the Proposed Divestiture Agent's employer are Associated Entities.
 - (ii) Gallagher is an Entity Connected with the Proposed Divestiture Agent's employer
 - (iii) The Proposed Divestiture Agent's employer is an Entity Connected with Gallagher
 - (iv) Gallagher and the Proposed Divestiture Agent's employer are Related Entities.
 - (v) Gallagher and the Proposed Divestiture Agent's employer are Related Parties
 - (vi) any Related Party, Related Entity or Entity Connected with Gallagher is a Related Party, Related Entity or Entity Connected with the Proposed Divestiture Agent.
 - (vii) Gallagher and the Proposed Divestiture Agent or the Proposed Divestiture Agent's employer have a contractual relationship or had one within the past three years, other than those attached to this form.
 - (viii) the Proposed Divestiture Agent's employer is a supplier of Gallagher or has been in the past three years.
 - (ix) Gallagher is a supplier of the Proposed Divestiture Agent's employer or has been in the past three years.
 - (x) any other relationship between Gallagher and the Proposed Divestiture Agent or the Proposed Divestiture Agent's employer that allows one to affect the business decisions of the other.

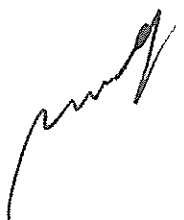
3) A document outlining the terms of appointment of the Proposed Divestiture Agent.

Specific Information required for Appointments of Proposed Divestiture Agent

The ACCC requires the below information in relation to the relevant appointment of the Proposed Divestiture Agent:

- 1) The finalised draft share sale agreement drafted by the Proposed Divestiture Agent in consultation with Gallagher. The draft share sale agreement is to provide for the divestiture of the Unsold Shares; and
- 2) The Proposed Divestiture Agent's draft marketing and sale plan for the Unsold Shares.

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Confidential Schedule 4

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