

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by

CC 1 (2011) LIMITED

**MAX-INF (NINGBO) BABY PRODUCT CO.,
LTD**

and

BRITAX CHILDCARE PTY LTD

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1. Persons giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by:
- (a) CC 1 (2011) Limited (Co Reg No 07467836) (CC 1);
 - (b) Max-Inf (Ningbo) Baby Product Co., Ltd (Max-Inf); and
 - (c) Britax Childcare Pty Ltd (ACN 006 773 600) (Britax).

2. Background

The Proposed Acquisition

- 2.1. On 8 June 2015, Nordic Capital Fund VII (Nordic Capital) and Max-Inf Holdings Limited announced they had signed a definitive agreement, under which an acquisition vehicle controlled by Nordic Capital proposes to acquire a 60 per cent interest in the share capital of Max-Inf Holdings Limited (Proposed Acquisition).

Relevant parties

- 2.2. Nordic Capital is a private equity fund incorporated in Jersey and is one of a number of private equity funds bearing the name of "Nordic Capital". Nordic Capital is the parent of CC 1, which is in turn the parent of Britax, a wholesale supplier of child restraint systems (CRS) and related products (collectively, CRS products) in Australia.
- 2.3. CC 1 has operational control over Britax and is the entity which, from the Control Date, will exercise control of the 60 per cent interest in the share capital of Max-Inf Holdings Limited.
- 2.4. Max-Inf Holdings Limited is a company incorporated in the British Virgin Islands. Max-Inf is a wholly owned subsidiary of Max-Inf Holdings Limited. Max-Inf is headquartered in China, and manufactures and supplies CRS products and other related baby products through original equipment manufacturer contracts and original design manufacturer contracts to a range of global and regional brand owners across 50 countries, including Australia. Max-Inf currently manufactures all CRS products for Infa-Secure Pty Ltd (Infa) for supply in Australia. Infa competes with Britax in the wholesale supply of CRS products in Australia.

The ACCC's review

- 2.5. On 11 June 2015, the ACCC commenced a confidential assessment of the Proposed Acquisition.

- 2.6. The ACCC considered information provided by CC 1 and, with its consent, undertook targeted market inquiries to assess whether the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the *Competition and Consumer Act 2010* (Cth) (Act).

The ACCC's competition concerns

- 2.7. Max-Inf supplies CRS products to Infa, and Infa competes closely with Britax for the wholesale supply of CRS products in Australia. The ACCC considered that competition concerns are likely to arise from the Proposed Acquisition if Infa cannot source CRS products from Max-Inf on suitable terms while it secures satisfactory alternative supply arrangements.
- 2.8. The ACCC considers that, following the Proposed Acquisition, Max-Inf is likely to have the ability and incentive to reduce supply, or adversely change the terms of supply, of CRS products to Infa while Infa is establishing alternative supply arrangements.
- 2.9. The ACCC considers that:
- (a) Infa needs continuity of supply of CRS products on suitable terms from Max-Inf in the transitional period to switch manufacturers;
 - (b) Infa needs access to intellectual property rights and critical tooling in order to be able to secure supply of CRS products from a new manufacturer;
 - (c) It will take some time for a new manufacturer to meet the applicable Australian standard and Infa's requirements in terms of both the quality of its systems and the quality of CRS products it manufactures for Infa; and
 - (d) Britax may be able to gain a competitive advantage through access to commercially and competitively sensitive information about Infa's business.
- 2.10. The ACCC is concerned that, in the absence of the Undertaking, the Proposed Acquisition may have the effect, or be likely to have the effect, of substantially lessening competition in the Australian market for the wholesale supply of CRS products.
- 2.11. CC 1, Max-Inf and Britax do not consider that the Proposed Acquisition would be likely to substantially lessen competition in any relevant market. However, CC 1, Max-Inf and Britax offered this Undertaking to the ACCC pursuant to section 87B of the Act in order to address the ACCC's concerns.

Objective of the Undertaking

- 2.12. The objective of this Undertaking is to address the ACCC's competition concerns about the Proposed Acquisition by:
- (a) requiring Max-Inf to:

- (i) comply with the terms of a Transitional Supply Agreement between Max-Inf and Infa, which provides for continuity of supply and access to intellectual property rights and tooling for a certain period, to allow Infa to establish satisfactory alternative supply arrangements; and
 - (ii) maintain the confidentiality of Confidential Information;
- (b) preventing CC 1, Max-Inf and Britax from doing anything to hinder or prevent Infa from obtaining CRS products;
- (c) preventing Britax from receiving, seeking to access or using Confidential Information;
- (d) requiring CC 1 to ensure that:
 - (i) Max-Inf complies with the Transitional Supply Agreement and with this Undertaking; and
 - (ii) Britax complies with this Undertaking; and
- (e) providing for the effective oversight of CC 1's, Max-Inf's and Britax's compliance with this Undertaking.

3. Commencement of this Undertaking

- 3.1. This Undertaking comes into effect when:
- (a) this Undertaking is executed by CC 1, Max-Inf and Britax; and
 - (b) this Undertaking so executed is accepted by the ACCC
- (the Commencement Date).

4. Cessation of ongoing obligations

Withdrawal

- 4.1. CC 1, Max-Inf and Britax may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

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 extend the date by which any such obligation is to be satisfied.

Survival

- 4.4. Unless and until this Undertaking is withdrawn in accordance with clause 4.1, clauses 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14 and 15 survive completion of the obligations in clauses 6 and 7.

5. Jurisdiction

- 5.1. CC 1, Max-Inf and Britax irrevocably submit to the jurisdiction of the Federal Court of Australia in relation to this Undertaking.
- 5.2. Clayton Utz is authorised to accept service of any originating application to the Federal Court of Australia in relation to this Undertaking and any service of process in relation to this Undertaking shall be sufficiently served on CC 1, Max-Inf and/or Britax if served on Clayton Utz at its address in clauses 14.2, 14.3 and 14.4.

6. Supply of CRS products to Infa

- 6.1. From the Control Date, Max-Inf must comply with its obligations under the Transitional Supply Agreement as at the date of its execution.
- 6.2. From the Control Date until the Transitional Supply Agreement expires or is terminated, CC 1, Max-Inf and Britax must not do anything to hinder or prevent Infa from sourcing CRS products from third parties or supplying CRS products in Australia. Nothing in this clause prevents Max-Inf from exercising any rights under the Transitional Supply Agreement or any party from taking action for the legitimate protection of intellectual property or other rights, or lawfully competing in the supply of CRS products in Australia.
- 6.3. From the Control Date, CC 1 and Max-Inf must ensure that Confidential Information is not provided to or accessed by Britax or any Australian Britax Business or any other subsidiary of CC 1 that has direct operational or strategic responsibility in relation to any Australian Britax Business.
- 6.4. Clause 6.3 does not prevent the disclosure of Confidential Information in order 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 obligations or exercise rights pursuant to the Transitional Supply Agreement or this Undertaking;

each of which is a **permitted purpose**, provided the Confidential Information is only used for the permitted purpose and is only disclosed to those officers, employees, contractors and advisers of CC 1 or Max-Inf who need to know the information to carry out the permitted purpose.

- 6.5. From the Control Date, Britax will not receive, access or seek to access from CC 1, Max-Inf or any of their Related Bodies Corporate any Confidential Information.
- 6.6. From the Control Date, CC 1 will do everything in its power to procure:
- (a) Max-Inf's compliance with the Transitional Supply Agreement and this Undertaking; and
 - (b) Britax's compliance with this Undertaking.

7. Reporting on compliance

- 7.1. From the Control Date, CC 1 and Max-Inf must prepare a detailed report that includes:
- (a) a statement of compliance with clause 6 of this Undertaking;
 - (b) a detailed description of the steps taken to comply with this Undertaking and the Transitional Supply Agreement; and
 - (c) details of any instances of non-compliance with this Undertaking during the period addressed by the report, and the steps taken to address those instances of non-compliance
- (Compliance Report).**
- 7.2. CC 1 and Max-Inf must provide a Compliance Report to the ACCC:
- (a) within 10 Business Days after the Control Date;
 - (b) every six months thereafter until the Transitional Supply Agreement terminates in accordance with its terms; and
 - (c) a final report due one month after the last report provided pursuant to clause 7.2(b).
- 7.3. CC 1, Max-Inf and Britax must comply with any direction of the ACCC in relation to remediating matters arising from a Compliance Report within 10 Business Days of being so directed (or such longer period as agreed with the ACCC).

8. Notification of key dates and ACCC requests for information

- 8.1. CC 1 or Max-Inf (as appropriate) must notify the ACCC in writing of:
- (a) the anticipated date of the Control Date, at least five Business Days, or as soon as practicable, before that date;
 - (b) the expiration or proposed termination of the Transitional Supply Agreement, at least ten Business Days before that expiration or termination;
 - (c) the occurrence of the Control Date, within one Business Day of that occurrence; and
 - (d) the occurrence of the expiration or termination of the Transitional Supply Agreement, within one Business Day of that occurrence.
- 8.2. The ACCC may direct CC 1, Max-Inf and Britax in respect of their compliance with this Undertaking 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 that are within the custody, power or control of CC 1, Max-Inf or Britax 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 in relation to compliance with this Undertaking.
- 8.3. Any direction made by the ACCC under clause 8.2 will be notified to CC 1, Max-Inf and Britax (as applicable), in accordance with clause 14.
- 8.4. Information furnished, documents and/or material produced or information given in response to any request or direction from the ACCC under this clause 8, may be used by the ACCC for any purpose consistent with the exercise of its statutory duties, subject to the ACCC taking reasonable steps to maintain the confidentiality of any confidential information provided by CC 1, Britax or Max-Inf.
- 8.5. Nothing in this clause 8 requires the provision of information or documents in respect of which CC 1, Max-Inf or Britax have a claim of legal professional or other privilege.

9. Disclosure of this Undertaking

- 9.1. CC 1, Max-Inf and the ACCC agree that the Transitional Supply Agreement will remain confidential until it terminates, unless the Transitional Supply Agreement is publicly disclosed by Infa.

- 9.2. CC 1, Max-Inf and Britax acknowledge that the ACCC may:
- (a) make this Undertaking publicly available;
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 9.3. Nothing in this Undertaking prevents the ACCC from disclosing such information as is:
- (a) required by law;
 - (b) permitted by section 155AAA of the Act; or
 - (c) necessary for the purpose of enforcement action under section 87B of the Act.
- 9.4. Nothing in this Undertaking prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

10. Obligation to procure

- 10.1. Where the performance of an obligation under this Undertaking requires a Related Body Corporate of CC 1, Max-Inf or Britax to take or refrain from taking some action, CC 1, Max-Inf and/or Britax (as applicable) will procure that Related Body Corporate to take or refrain from taking that action.

11. No derogation

- 11.1. 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 CC 1, Max-Inf or Britax of any term of this Undertaking.
- 11.2. 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 CC 1, Max-Inf or Britax do not fully implement and/or perform their obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

12. Change of Control

- 12.1. From the Control Date until the Transitional Supply Agreement expires or is terminated, in the event that a Change of Control is reasonably expected to occur, CC 1, Max-Inf and/or Britax (as appropriate) must:
- (a) notify the ACCC of this expectation as soon as practicable; and

- (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on CC 1, Max-Inf and Britax pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified CC 1, Max-Inf and Britax in writing (in accordance with clause 14) that a section 87B undertaking under this clause is not required.

13. Costs

- 13.1. CC 1, Max-Inf and Britax must pay all of their own costs incurred in relation to this Undertaking.

14. Notices

Giving Notices

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

Email address: mergers@acc.gov.au
Attention: Executive General Manager
Merger and Authorisation Review Division

With a copy sent to: mergersucu@acc.gov.au
Attention: Director, Undertakings Compliance Unit
Coordination and Strategy Branch
Merger and Authorisation Review Division

- 14.2. Any notice or communication to CC 1 pursuant to this Undertaking must be sent to:

Name: CC 1 (2011) Limited
Address: 3000 Hillswood Drive, Hillswood Business Park,
Chertsey, Surrey, KT16 0RS, United Kingdom
Email Address: mark.akinlade@britax.com
Attention: Mr. Mark Akinlade

With a copy sent to:

Name: Clayton Utz
Address: Level 15, 1 Bligh Street, Sydney NSW 2000
Email Address: mcorrigan@claytonutz.com
ireynolds@claytonutz.com
Attention: Michael Corrigan / Ian Reynolds

- 14.3. Any notice or communication to Max-Inf pursuant to this Undertaking must be sent to:

Name: Max-Inf (Ningbo) Baby Product Co., Ltd
Address: No.188,West Jinhui Road, Ningbo, Zhejiang, China
Email Address: oceania@cnwinwin.com
Attention: Mr. Xu Lihong

With a copy sent to:

Name: Clayton Utz
Address: Level 15, 1 Bligh Street, Sydney NSW 2000
Email Address: mcorrigan@claytonutz.com
ireynolds@claytonutz.com
Attention: Michael Corrigan / Ian Reynolds

- 14.4. Any notice or communication to Britax pursuant to this Undertaking must be sent to:

Name: Britax Childcare Pty Ltd
Address: 99 Derby Rd, Sunshine VIC 3020
Email Address: david.jackson@britax.com
Attention: Mr. David Jackson

With a copy sent to:

Name: Clayton Utz
Address: Level 15, 1 Bligh Street, Sydney NSW 2000
Email Address: mcorrigan@claytonutz.com
ireynolds@claytonutz.com
Attention: Michael Corrigan / Ian Reynolds

- 14.5. 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).
- 14.6. 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

- 14.7. CC 1, Max-Inf and Britax must notify the ACCC of a change to the addresses in clauses 14.2, 14.3 or 14.4 within three Business Days.
- 14.8. Any notice or communication will be sent to the most recently advised contact details and will be taken to be received as provided in clauses 14.5 and 14.6.

15. Defined terms and interpretation

Definitions in the Dictionary

- 15.1. 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 2001 (Cth)* (**Corporations Act**), but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

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

Executed as an Undertaking

Executed by CC 1 (2011) Limited (Co Reg No 07467836) by its authorised signatory:



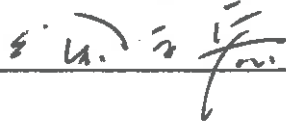
17/12/2015

Signature

Date

MARK AKINLADE AUTHORIZED
Name and Title SIGNATORY

Executed by Max-Inf (Ningbo) Baby Product Co. Ltd by its authorised signatory:



17/12/2015

Signature

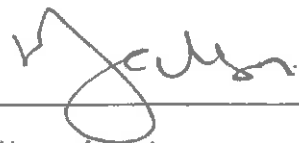
Date

XU Lihong CEO
Name and Title

Executed by Britax Childcare Pty Ltd (ACN 006 773 600) pursuant to section 127(1) of the Corporations Act 2001 by:

Signature of director

Signature of director/company secretary





Name of director

Name of director/company secretary

D. R. JACKSON

M. V. PATEL

Date

17/12/2015

Date

17/12/2015

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Competition and Consumer Act 2010 on: 16/12/15

And signed on behalf of the Commission:



17/12/15

Chairman

Date

Schedule 1 – Dictionary and interpretation

1. Dictionary

ACCC means the Australian Competition and Consumer Commission.

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

Australian Britax Business means any business involved in the provision of CRS products carried on in Australia by Britax or any of its Related Bodies Corporate.

Britax means Britax Childcare Pty Limited (ACN 006 773 600).

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

CC 1 means CC 1 (2011) Limited (Co Reg No 07467836).

Change of Control means:

- (a) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of Max-Inf Holdings Limited or Max-Inf to any other person or entity; or
- (b) the sale or transfer of any assets of Max-Inf Holdings Limited or Max-Inf to any other person or entity, being assets that are necessary, or which may be necessary, to enable compliance with this Undertaking.

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

Compliance Report has the meaning given to it by clause 7.1 of this Undertaking.

Confidential Information: means information that belongs to Infa or its Related Bodies Corporate that is by its nature confidential or is known, or ought reasonably to be known, by Max-Inf or Britax or their Related Bodies Corporate to be confidential or commercially valuable to Infa, including but not limited to information about Infa's business or business plans, customers, or existing and planned range, volumes and prices of products. Confidential Information does not include information that is in, or comes into, the public domain or the possession of Max-Inf, Britax or CC 1 (or their Related Bodies Corporate) other than through a breach of the Transitional Supply Agreement or this Undertaking.

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

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

CRS means child restraint systems.

Infa means Infa-Secure Pty Ltd (ACN 149 173 660).

Max-Inf means Max-Inf (Ningbo) Baby Product Co., Ltd, a company duly established and existing under the Laws of the People's Republic of China.

Nordic Capital means Nordic Capital Fund VII, a private equity fund incorporated in Jersey.

Proposed Acquisition is defined in clause 2 of this Undertaking.

Public Mergers Register means the ACCC's public register of merger clearances, available at www.accc.gov.au.

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 2001* (Cth).

Transitional Supply Agreement is the Australian & New Zealand Supply Agreement between Max-Inf and Infa dated 9 December 2015.

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.

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 agreement or document other than the Transitional Supply Agreement is to that agreement or document as amended, novated, supplemented or replaced;
 - (f) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
 - (g) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
 - (h) 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;
 - (i) 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;
 - (j) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;

- (k) 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;
- (l) 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;
- (m) in determining whether consideration should be given to any material in accordance with paragraph (l), 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;
- (n) the ACCC may authorise the ACCC 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;
- (o) in performing their obligations under this Undertaking, CC 1, Max-Inf and Britax will do everything reasonably within their power to ensure that their performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (p) 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.