

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by **Shahin
Enterprises Pty Ltd ACN 008 150 543**

1. Person giving the Undertaking

- 1.1. This Undertaking is given to the ACCC by Shahin Enterprises Pty Ltd (ACN 008 150 543), on behalf of itself and its Related Entities (**Shahin**) pursuant to section 87B of the *Competition and Consumer Act 2010* (the **Act**).

2. Background

The Parties

- 2.1. Shahin is a privately owned operator of retail service stations in Adelaide. Its main operating entity is Shahin Enterprises Pty Ltd. Shahin currently operates 94 service stations in South Australia, 78 of which are in metropolitan Adelaide:
- (a) 29 are supplied by Mobil and are branded 'On the Run' for fuel and convenience stores; and
 - (b) the remaining 49 are supplied by and are branded BP on the 'forecourt', with 'On the Run' convenience stores on site.
- 2.2. BP Australia Pty Ltd (ACN 004 085 616) (**BP**) is a refiner-marketer of fuel – it refines, imports, wholesales and retails petrol, diesel and automotive LPG in Australia. BP supplies fuel to approximately 1,400 service stations around Australia. It owns and operates approximately 225 of these service stations in metropolitan areas. In addition, BP's subsidiary – Reliance Petroleum (Centrel Pty Ltd) – operates approximately 250 sites in regional areas. The remainder are independently owned and typically sell fuel under the BP brand.
- 2.3. Caltex Australia Petroleum Pty Ltd (ACN 000 032 128) (**Caltex**) and its related bodies corporate are one of the four refiner-marketers of petrol, diesel and automotive LPG operating in Australia. Caltex's national network of 1826 branded or co-branded retail service station sites comprises:
- (a) 333 sites operated by Caltex or their commission agents;
 - (b) 258 sites operated by Caltex franchisees;
 - (c) 695 sites that are Caltex branded, but are operated independently; and
 - (d) 540 sites co-branded with Woolworths.
- 2.4. Weeroona Holdings Pty Limited (ACN 008 115 526), Frank Agostino and Talunga Properties Pty Ltd (ACN 092 695 335) (**Agostino**) operate as an independent petrol retailer in Adelaide. Agostino currently owns and operates nine BP-branded sites in metropolitan Adelaide, two sites in regional South Australia and has a site in development in Stirling, South Australia.

The Proposed Acquisition

- 2.5. In May 2013, Shahin entered into an agreement to acquire 25 service station sites from BP, comprising:
- (a) 16 sites in metropolitan Adelaide (**Proposed Acquisition**); and

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- (b) nine sites in regional South Australia.

The ACCC's review

- 2.6. The ACCC commenced its public review of the Proposed Acquisition and the acquisition of the nine regional sites on 15 May 2013.
- 2.7. The ACCC has conducted market inquiries and considered information provided by Shahin, BP, industry participants and others. The purpose of the ACCC's inquiries was to assess whether or not the Proposed Acquisition and the acquisition of the nine regional sites would have the effect, or would 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

- 2.8. The ACCC considered that, in the absence of this Undertaking, the Proposed Acquisition would have the effect, or would be likely to have the effect, of substantially lessening competition in the retail supply of petrol in local markets surrounding each of the following BP sites:
 - (a) BP Westbourne Park;
 - (b) BP Elizabeth Vale;
 - (c) BP Mitchell Park; and
 - (d) BP Mile End (each a **Local Market**).
- 2.9. The ACCC considered that these BP sites and existing Shahin sites in each Local Market are close competitors to each other; taking into account their geographic location, the goods and services that they supply, and the types of customers to which they cater.
- 2.10. Shahin already operates a high proportion of the sites in each Local Market. With the Proposed Acquisition, Shahin would acquire an additional site in each Local Market, and remove a competitor. Having regard to the geographic location and characteristics of any remaining competitors in each Local Market, the ACCC considered that there would be few effective competitors to Shahin in each Local Market if the Proposed Acquisition proceeded.
- 2.11. As a result the ACCC considered that the Proposed Acquisition would be likely to have the effect of reducing the competitive constraints on Shahin, allowing it to increase prices (or implement an equivalent reduction in the non-price aspect of its retail offer) at one or more of its sites (including former BP sites) in each Local Market. The ACCC considered that new entry into each Local Market would be unlikely to occur on a sufficient scale, or in a timely enough fashion, to constrain Shahin from acting in this manner if the Proposed Acquisition proceeded.

The Undertaking remedy

- 2.12. Shahin has, without admission, offered this Undertaking under section 87B of the Act to divest, or cause the divestiture of:
 - (a) BP Elizabeth Vale;
 - (b) BP Westbourne Park;
 - (c) OTR South Plympton; and

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(d) BP Mile End.

2.13. This Undertaking addresses the ACCC's competition concerns in the Local Markets by:

- (a) in relation to the ACCC's competition concerns regarding Shahin's acquisition of BP Elizabeth Vale, requiring Shahin to divest BP Elizabeth Vale to an Approved Purchaser;
- (b) in relation to the ACCC's competition concerns regarding Shahin's acquisition of BP Westbourne Park, requiring Shahin to divest BP Westbourne Park to an Approved Purchaser;
- (c) in relation to the ACCC's competition concerns regarding Shahin's acquisition of BP Mitchell Park, requiring Shahin to divest OTR South Plympton to an Approved Purchaser;
- (d) in relation to the ACCC's competition concerns regarding Shahin's acquisition of BP Mile End, requiring Shahin to divest BP Mile End to an Approved Purchaser
- (e) ensuring the Approved Purchasers have the necessary assets to operate the Divestiture Businesses effectively;
- (f) ensuring the provision of any Technical Assistance by Shahin required by the Approved Purchasers to operate the Divestiture Businesses effectively;
- (g) preserving the Divestiture Businesses prior to divestiture; and
- (h) providing for the effective oversight of Shahin'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 Shahin; 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

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- 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, 11, 12, 13, 14, 15, 16 and 17 survive completion of the obligations in clauses 5, 6, 7, 8, 9, 10, Schedules 4 and 5.

5. Divestiture of Divestiture Businesses

Divestiture

- 5.1. Shahin must, in accordance with this Undertaking, divest, or cause the divestiture of, each of the Divestiture Businesses to one or more Approved Purchasers.
- 5.2. For each Divestiture Business, Shahin must divest, or cause the divestiture of, all of the Divestiture Business within the Initial Sale Period by the sale, assignment, transfer and/or licence of all of the relevant assets in Schedule 4 in respect of each of the Divestiture Businesses to an Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement, otherwise clauses 8 and 10 apply.

Consents

- 5.3. For each Divestiture Business, Shahin must:
- (a) obtain or assist the Approved Purchaser to obtain as expeditiously as possible, all Consents as required before completion of the divestiture of the Divestiture Business;
 - (b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
 - (c) act in good faith in its negotiations with the Approved Purchaser in relation to obtaining any Consents; and
 - (d) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents.
- 5.4. If, seven Business Days before completion of the divestiture of a Divestiture Business, the Approved Purchaser fails to obtain or is unable to obtain one or more Consents, then Shahin must:
- (a) immediately provide to the ACCC, in writing, details of the:
 - (i) Consents that have not been obtained;

- (ii) reasons why the Consents have not been obtained; and
 - (iii) information or material required to obtain the Consents.
 - (b) continue to do everything in its power to satisfy clause 5.3 as soon as possible after the completion of the divestiture of the Divestiture Business (and until such time as clause 5.3 is satisfied).
- 5.5. Even if Shahin has complied with clauses 5.3 and 5.4, it remains a breach of this Undertaking if Shahin is unable to effect the divestiture of a Divestiture Business by reason of a failure to obtain Consents.

Technical Assistance

- 5.6. For each Divestiture Business, at the option of the Approved Purchaser, Shahin must provide Technical Assistance to the Approved Purchaser pursuant to an Approved Technical Assistance Agreement, subject to the Technical Assistance being:
- (a) required by the Approved Purchaser in order to operate the Divestiture Business;
 - (b) provided on a transitional basis for no more than 3 months, which period is to be nominated by the Approved Purchaser, or such other period as agreed in writing with the ACCC;
 - (c) provided at cost and otherwise on arm's length terms; and
 - (d) approved by the ACCC pursuant to clause 6.9(a)(ii).
- 5.7. For the avoidance of doubt, any option to renew the supply of Technical Assistance exercised pursuant to the Approved Technical Assistance Agreement can only be exercised subject to the requirements of clause 5.6 being satisfied.

6. Divestiture of Divestiture Businesses to Approved Purchaser

Divestiture only to an Approved Purchaser

- 6.1. Shahin must divest the Divestiture Businesses to one or more Approved Purchasers, and must not authorise the Approved Divestiture Agent to divest any of the Divestiture Businesses to a purchaser other than an Approved Purchaser.

Purchasers approved at the time the Undertaking was accepted

- 6.2. At the time this Undertaking was accepted, the ACCC also approved Caltex as the Approved Purchaser of the BP Elizabeth Vale, OTR South Plympton and BP Westbourne Park Divestiture Businesses and Agostino as the Approved Purchaser of the BP Mile End Divestiture Business.
- 6.3. ACCC approval of Caltex as the Approved Purchaser of the BP Elizabeth Vale, OTR South Plympton and BP Westbourne Park Divestiture Businesses and Agostino as the Approved Purchaser of the BP Mile End Divestiture Business includes approval of:

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- (a) each of the Caltex Agreements as an Approved Sale and Purchase Agreement; and
 - (b) the Agostino Agreement as an Approved Sale and Purchase Agreement.
- 6.4. In making the decision described in clause 6.2, the factors to which the ACCC had regard included whether the:
- (a) Approved Purchasers will acquire the Divestiture Businesses from Shahin, pursuant to the Caltex Agreements and the Agostino Agreement;
 - (b) Approved Purchasers are and will remain independent of and have no direct or indirect interest in Shahin, except for the terms of the Caltex Agreements and the Agostino Agreement;
 - (c) Approved Purchasers are of good financial standing and have an intention to maintain and operate each of the Divestiture Businesses as a going concern;
 - (d) Approved Purchasers are able to conduct the Divestiture Businesses effectively; and
 - (e) divestiture of the Divestiture Businesses to the Approved Purchasers will address any concerns in relation to the likely long-term viability and competitiveness of the Divestiture Businesses after divestiture by Shahin.
- 6.5. The ACCC may revoke an Approved Purchaser's status as an Approved Purchaser if the ACCC becomes aware that any material information provided to it by Shahin was incorrect, inaccurate or misleading.

Approval of a Proposed Purchaser if the sale of the Divestiture Businesses is not completed

- 6.6. If at any time it becomes apparent that the sale of:
- (a) any of the BP Elizabeth Vale, OTR South Plympton and BP Westbourne Park Divestiture Businesses to Caltex cannot be completed by the end of the Initial Sale Period, Shahin must seek approval for an alternative Proposed Purchaser by providing the ACCC with a Proposed Purchaser Notice in respect of the acquisition of that Divestiture Business as soon as practicable after it becomes apparent that the sale of that Divestiture Business to Caltex cannot be completed;
 - (b) the BP Mile End Divestiture Business to Agostino cannot be completed by the end of the Initial Sale Period, Shahin must seek approval for an alternative Proposed Purchaser by providing the ACCC with a Proposed Purchaser Notice in respect of the acquisition of BP Mile End as soon as practicable after it becomes apparent that the sale of BP Mile End to Agostino cannot be completed.
- 6.7. For the avoidance of doubt, this clause does not affect the obligation of Shahin under clause 5.2 to divest, or cause the divestiture of, all of the Divestiture Businesses within the Initial Sale Period.

Provision of a notice for a Proposed Purchaser

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- 6.8. To seek approval for a Proposed Purchaser of one or more of the Divestiture Businesses in accordance with clause 6.9, Shahin or the Approved Divestiture Agent must provide the ACCC with a Proposed Purchaser Notice in the form prescribed in Schedule 2 to this Undertaking (**Proposed Purchaser Notice**).
- 6.9. 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:
 - (i) the draft sale and purchase agreement attached to the Proposed Purchaser Notice; and
 - (ii) any draft technical assistance agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clause 5.6; or
 - (b) not approve the person named in the Proposed Purchaser Notice as an Approved Purchaser.
- 6.10. Without limiting the ACCC's discretion, in making the decision described in clause 6.9, 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, Shahin;
 - (d) Proposed Purchaser is of good financial standing;
 - (e) Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
 - (f) Proposed Purchaser is able to conduct the Divestiture Business effectively; and
 - (g) divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including in relation to the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser.
- 6.11. Within 10 Business Days after receiving a Proposed Purchaser Notice, the ACCC must notify Shahin in writing of its decisions made pursuant to clause 6.9.
- 6.12. The ACCC may extend the period within which it will provide the notice described in clause 6.11 by notifying Shahin in writing of the extension within 10 Business Days after receiving the Proposed Purchaser Notice.
- 6.13. Any extension of time by the ACCC pursuant to clause 6.12 extends the Initial Sale Period by the same length of time.

- 6.14. The ACCC may revoke an Approved Purchaser's status as an Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

7. Divestiture Business Protection

Protection of the assets of the Divestiture Businesses

- 7.1. From the Commencement Date, Shahin must not sell or transfer its interest, or any assets comprising part of, or used in, any of the Divestiture Businesses (other than the sale of goods and services in the ordinary course of business) or make any Material Change (excluding branding or signage changes), except in accordance with this Undertaking.
- 7.2. Notwithstanding clause 7.1 above, Shahin may temporarily cease trading activities being carried on the subject site for a reasonable duration (but in any event no longer than five Business Days) in order to effect signage and branding changes reasonably required in order to comply with its obligations to BP, Caltex or an Approved Purchaser.

Shahin's obligations in relation to the Divestiture Businesses prior to completion of divestiture

- 7.3. Without limiting this clause 7, for each Divestiture Business, Shahin must, from the Commencement Date until completion of the divestiture of the Divestiture Business, take all steps available to it to:
- (a) ensure that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Commencement Date;
 - (b) minimise any risk of loss of competitive potential for the Divestiture Business;
 - (c) continue to provide access to working capital and sources of credit for the Divestiture Business in a manner which is consistent with the financing of the Divestiture Business before the Commencement Date;
 - (d) continue to provide administrative and technical support for the Divestiture Business in a manner which is consistent with the operation of the Divestiture Business before the Commencement Date and in accordance with any plans established before the Commencement Date;
 - (e) maintain staffing levels consistent with the management of the Divestiture Business as a fully operational, competitive going concern;
 - (f) maintain the supply of those goods and services that are part of the Divestiture Business to existing customers in a manner consistent with the supply of those goods and services as at the Commencement Date;
 - (g) maintain the standard of manufacture, distribution, promotion and sale of those products which form part of the Divestiture Business as at the Commencement Date; and

- (h) carry out promotion and marketing of the products which form part of the Divestiture Business in accordance with any plans established before the Commencement Date.

Personnel of Shahin

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

Company's ongoing obligations in relation to the Divestiture Businesses

- 7.5. To the extent that Shahin has obligations in relation to the provision of technical assistance pursuant to clauses 5.6 to 5.7 of this Undertaking in relation to one or more Divestiture Business, Shahin must not sell, assign, transfer, and/or licence directly or indirectly any of the assets required by Shahin to fulfil such obligations without the prior written consent of the ACCC.

Confidential Information

- 7.6. Subject to clause 7.7, Shahin must not, at any time from the Commencement Date and for a period of 12 months after the termination of this undertaking use or disclose any confidential information about the Divestiture Businesses gained through:

- (a) ownership and/or management of the Divestiture Businesses; or
- (b) fulfilling any obligations pursuant to this Undertaking.

- 7.7. Clause 7.6 does not apply to information that Shahin 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 Shahin who need to know the information for that purpose.

8. Independent Management of Unsold Business

Application of clause

- 8.1. For each Divestiture Business, in the event that the divestiture of the Divestiture Business to an Approved Purchaser is not completed by the end of the Initial Sale Period, the Divestiture Business becomes an unsold business and the provisions of clause 8 apply (**Unsold Business**).

Obligation to appoint an Approved Independent Manager

- 8.2. Shahin must appoint and maintain an Approved Independent Manager to manage each Unsold Business, from the end of the Initial Sale Period until the completion of the divestiture of the Unsold Business in accordance with this Undertaking.
- 8.3. Without limiting its obligations in this Undertaking, Shahin must:
- (a) comply with and enforce the Approved Terms of Appointment of the Approved Independent Manager;
 - (b) maintain and fund the Approved Independent Manager to carry out his or her functions, including:
 - (i) indemnifying the Approved Independent Manager for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Manager of his or her functions as the Approved Independent Manager except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Manager;
 - (ii) ensuring that the Approved Independent Manager is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Independent Manager considers are required by the Unsold Business; and
 - (iii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager; and
 - (c) not interfere with the authority of, or otherwise hinder, the Approved Independent Manager's ability to carry out his or her obligations as the Approved Independent Manager, including:
 - (i) accepting (and directing its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Independent Manager as to the control, management, financing and operations of the Unsold Business, and for the Unsold Business to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;
 - (ii) providing access to the facilities, sites or operations of the Unsold Business required by the Approved Independent Manager;
 - (iii) providing to the Approved Independent Manager any information or documents requested by the Approved Independent Manager that he or she considers necessary for managing and operating the Unsold Business or for reporting to or otherwise advising the ACCC; and
 - (iv) not requesting information or reports regarding the Unsold Business or from the personnel of the Unsold Business except through the Approved Independent Manager; and
 - (v) not appoint the Approved Independent Manager, or have any Agreements with the Approved Independent Manager, to utilise the Approved Independent Manager's services for anything other than compliance with this Undertaking until at least 12 months after the

Approved Independent Manager ceases to act in the role of the Approved Independent Manager.

Approval of the Approved Independent Manager

- 8.4. At least 15 Business Days prior to the end of the Initial Sale Period, if the divestiture of a Divestiture Business has not been completed, Shahin must provide the ACCC with a notice for a Proposed Independent Manager in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Manger Notice**).
- 8.5. After receiving the Proposed Independent Manager Notice, the ACCC must decide whether to:
- (a) approve the appointment of the person named in the Proposed Independent Manager Notice as the Approved Independent Manager which includes approving the:
 - (i) terms of appointment attached to the Proposed Independent Manager Notice; and
 - (ii) draft separation and management plan attached to the Proposed Independent Manager Notice; or
 - (b) not approve the person named in the notice as the Approved Independent Manager.
- 8.6. If clause 8.5(b) applies, the ACCC may, at its absolute discretion:
- (a) direct Shahin to submit a Proposed Independent Manager Notice that:
 - (i) names a person identified by the ACCC as the proposed Independent Manager; and/or
 - (ii) includes attachments that:
 - (A) relate to the person identified by the ACCC under clause 8.6(a)(i) (if applicable); and/or
 - (B) address any issues identified by the ACCC in relation to the terms of appointment and/or draft separation and management plan; or
 - (b) identify and approve a person as the Approved Independent Manager together with the:
 - (i) terms of appointment; and/or
 - (ii) draft separation and management plan.
- 8.7. As soon as practicable, and within two Business Days after any direction by the ACCC under clause 8.6(a), Shahin must submit a Proposed Independent Manager 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 Independent Manager Notice or identified by the ACCC has the qualifications and experience necessary to manage the Divestiture Business;
 - (b) person named in the Proposed Independent Manager Notice or identified by the ACCC is sufficiently independent of Shahin;
 - (c) terms of appointment and the draft separation and management plan are consistent with this Undertaking; and
 - (d) terms of appointment and the draft separation and management plan are otherwise acceptable to the ACCC.
- 8.9. Within 10 Business Days after receiving a Proposed Independent Manager Notice, the ACCC must notify Shahin 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 Shahin in writing of the extension within 10 Business Days after receiving the Proposed Independent Manager Notice.
- 8.11. If the Approved Independent Manager has not been appointed:
- (a) by the end of the Initial Sale Period;
 - (b) within 17 Business Days after the Approved Independent Manager resigns or otherwise ceases to act as the Approved Independent Manager pursuant to clause 8.16, 8.17 or 8.18; or
 - (c) if the ACCC has not received a Proposed Independent Manager Notice pursuant to clause 8.19;
- then the provisions of clause 8.12 apply.
- 8.12. If clause 8.11 applies, the ACCC at its absolute discretion may:
- (a) identify and approve a person as the Approved Independent Manager;
 - (b) approve the terms of appointment of the Approved Independent Manager; and
 - (c) approve the draft separation and management plan.

Appointment of the Approved Independent Manager

- 8.13. After receiving a notice from the ACCC of its decisions pursuant to clause 8.5, 8.6(b) or 8.12, Shahin must, within two Business Days:
- (a) appoint the person approved by the ACCC as the Approved Independent Manager 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 Independent Manager

8.14. Shahin must procure that any proposed terms of appointment for the Approved Independent Manager include obligations on the Approved Independent Manager to:

- (a) maintain his or her independence from Shahin, apart from appointment to the role of an Undertaking Appointment, including not form any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with Shahin for the period of his or her appointment;
- (b) act in the best interests of the Unsold Business at all times;
- (c) not use any confidential information gained through the management of the Unsold Business other than for performing his or her functions as Approved Independent Manager;
- (d) manage the Unsold Business lawfully in the ordinary course of business, having regard to the nature of the Unsold Business;
- (e) make only those Material Changes to the Unsold Business which have been approved by the ACCC;
- (f) operate and manage the Unsold Business to the maximum extent practicable, in a manner which is financially and operationally separate from Shahin;
- (g) co-operate with the requests of any Approved Divestiture Agent appointed pursuant to this Undertaking;
- (h) provide the following reports directly to the ACCC:
 - (i) a monthly written report regarding the implementation of and any suggested changes to the Approved Separation and Management Plan; and
 - (ii) an immediate report of any issues that arise in relation to the implementation of the Approved Separation and Management Plan or compliance with this Undertaking by any person named in this Undertaking; and
- (i) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Manager pursuant to this Undertaking.

8.15. Shahin must procure that any proposed terms of appointment for the Approved Independent Manager provide the Approved Independent Manager with the sole authority to:

- (a) manage and operate the Unsold Business according to the Approved Separation and Management Plan until the completion of the divestiture of the Unsold Business;

- (b) provide any information requested by Shahin pursuant to the protocol in the Approved Separation and Management Plan;
- (c) decide whether or not to provide access and the manner of such access to competitively sensitive information relating to the Unsold Business requested by Shahin which is not covered by the protocol in the Approved Separation and Management Plan;
- (d) engage, redeploy or make redundant personnel employed in the Unsold Business as the Approved Independent Manager determines necessary; and
- (e) engage any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager.

Resignation, revocation or termination of the Approved Independent Manager

- 8.16. Shahin must immediately notify the ACCC in the event that the Approved Independent Manager resigns or otherwise stops acting as the Approved Independent Manager before the completion of the divestiture of the Unsold Business.
- 8.17. The ACCC may revoke an Approved Independent Manager's status as the Approved Independent Manager if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 8.18. The ACCC may approve any proposal by, or alternatively may direct, Shahin to terminate the appointment of the Approved Independent Manager if in the ACCC's view the Approved Independent Manager acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.
- 8.19. If clause 8.16, 8.17 or 8.18 applies, Shahin must provide the ACCC with a Proposed Independent Manager Notice within five Business Days after the relevant event occurs, otherwise clause 8.12 applies.

9. Reporting on compliance with this Undertaking

- 9.1. Shahin must prepare a detailed report that includes:
 - (a) a statement of Shahin's compliance with this Undertaking;
 - (b) a detailed description of the steps Shahin has taken to comply with this Undertaking; and
 - (c) if Shahin is aware of any non-compliance by it with this Undertaking during the period addressed by the notice, identify and describe all known instances of Shahin's non-compliance with this Undertaking during that period and the steps taken by Shahin to address those issues of non-compliance,

(Compliance Report).

- 9.2. Shahin must provide a Compliance Report to the ACCC:

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- (a) within 10 Business Days after the Control Date;
 - (b) every month thereafter until the first month after the date on which the divestiture of the Divestiture Business is completed;
 - (c) every three months after the date of provision of the last Compliance Report pursuant to clause 9.2(b), until the ACCC confirms in writing to Shahin that it is satisfied that the divestiture of the Divestiture Business pursuant to clause 5 of this Undertaking has been completed; and
 - (d) a final report due three months after the last report provided pursuant to clause 9.2(c).
- 9.3. Shahin must comply with any direction of the ACCC in relation to matters arising from a Compliance Report within 10 business Days of being so directed (or such longer period as agreed with the ACCC).

10. Divestiture of Unsold Business

Application of clause

- 10.1. For each Divestiture Business, in the event that the Divestiture Business becomes an Unsold Business, the provisions of clause 10 apply.

Obligation to appoint an Approved Divestiture Agent

- 10.2. From the end of the Initial Sale Period, Shahin must appoint and maintain an Approved Divestiture Agent to effect the divestiture of the Unsold Business.
- 10.3. Without limiting its obligations in this Undertaking, Shahin 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 Shahin (but not fees contingent on the price to be obtained for the Unsold Business);

- (iv) if an agreement as to fees cannot be reached between the Approved Divestiture Agent and Shahin within 15 Days after the end of the Initial Sale Period, Shahin 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 10;
 - (ii) providing access to the facilities, sites or operations of the Unsold Business as required by the Approved Divestiture Agent; and
 - (iii) 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 6.9, Shahin must instruct the Approved Divestiture Agent to complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 6.9; and
- (e) other than in accordance with clause 10.3(d) of this Undertaking, not instruct the Approved Divestiture Agent to divest the Unsold Business.

Approval of the Approved Divestiture Agent

- 10.4. At least 15 Business Days prior to the end of the Initial Sale Period, if the divestiture of the Divestiture Business has not been completed, Shahin 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**).
- 10.5. 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 business 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.

- 10.6. If clause 10.5(b) applies, the ACCC may, at its absolute discretion:
- (a) direct Shahin 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 10.6(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 business sale agreement and/or
 - (iii) draft marketing and sale plan.
- 10.7. As soon as practicable, and within two Business Days after any direction by the ACCC under clause 10.6(a), Shahin must submit a Proposed Divestiture Agent Notice in accordance with the direction.
- 10.8. Without limiting the ACCC's discretion, in making the decisions described in clause 10.5 or 10.6, 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 Shahin;
 - (c) terms of appointment, draft business sale agreement and draft marketing and sale plan are consistent with this Undertaking; and
 - (d) terms of appointment, draft business sale agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.
- 10.9. Within 10 Business Days after receiving a Proposed Divestiture Agent Notice, the ACCC must notify Shahin in writing of its decisions and any direction made pursuant to clause 10.5 and/or 10.6.
- 10.10. The ACCC may extend the period within which it will provide notice of the decision or direction (if applicable) described in clause 10.9 by notifying Shahin in writing of the extension within 10 Business Days after receiving the Proposed Divestiture Agent Notice.

- 10.11. Any extension of time by the ACCC under clause 10.10 extends the Initial Sale Period by the same length of time.
- 10.12. If the Approved Divestiture Agent has not been appointed:
- (a) within 10 Business Days after the Divestiture Business becomes an Unsold Business;
 - (b) within 17 Business Days after the Approved Divestiture Agent resigns or otherwise ceases to act pursuant to clause 10.18, 10.19 or 10.20; or
 - (c) if the ACCC has not received a Proposed Divestiture Agent Notice pursuant to clause 10.21;
- then the provisions of clause 10.13 apply.
- 10.13. If clause 10.12 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 business sale agreement; and
 - (d) approve the draft marketing and sale plan.

Appointment of the Approved Divestiture Agent

- 10.14. After receiving notice from the ACCC of its decisions pursuant to clause 10.5, 10.6(b) or 10.13, Shahin 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

- 10.15. Shahin 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 Shahin, apart from appointment to the role of an Undertaking Appointment, including not form any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with Shahin for the period of his or her appointment;
 - (b) not use any confidential information gained through the divestiture of the Unsold Business other than for performing his or her functions as Approved Divestiture Agent;
 - (c) follow the Approved Marketing and Sale Plan;
 - (d) divest the Unsold Business only to an Approved Purchaser, with no obligation imposed by Shahin 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 Business as quickly as possible using the Approved Business Sale Agreement;
- (f) co-operate with the requests of any Approved Independent Manager appointed pursuant to this Undertaking;
- (g) every 30 Business Days following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC which include:
 - (i) information regarding the implementation of the Approved Business Sale Agreement and the Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (ii) information regarding any suggested changes to any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (iii) 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;
 - (iv) a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.16(d));
 - (v) the efforts made to sell the Unsold Business;
 - (vi) the identity of any advisers engaged;
 - (vii) the identity of any persons expressing interest in the Unsold Business; and
 - (viii) any other information required by the ACCC.
- (h) within 30 Business Days after the completion of the divestiture of the Unsold Business, provide a written report directly to the ACCC which includes a final accounting of:
 - (i) any moneys derived from the divestiture of the Unsold Business;
 - (ii) all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling his or her duties; and
 - (iii) all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.16(d));
- (i) immediately inform the ACCC of:
 - (i) any issues that arise in relation to the implementation of the Approved Sale and Purchase Agreement and any Approved Marketing and Sale Plan;
 - (ii) non-compliance with this Undertaking by any person named in this Undertaking; and

- (iii) any offers for the Unsold Business;
 - (j) accept any offer for the Unsold Business upon instruction from Shahin given in accordance with clause 10.3(d); and
 - (k) 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.
- 10.16. Shahin 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 Business on terms considered by the Approved Divestiture Agent in his or her sole discretion to be consistent with this Undertaking and the Approved Marketing and Sale Plan;
 - (b) execute any agreements with the Approved Purchaser required pursuant to clause 6.9
 - (c) upon instruction pursuant to clause 10.3(d), complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the Approved Business Sale Agreement; and
 - (d) engage any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent.
- 10.17. Any irrevocable power of attorney granted pursuant to clause 10.16 will end upon resignation or termination of the Approved Divestiture Agent in accordance with clauses 10.18, 10.19 and 10.20, or in the event that the Unsold Business is divested in accordance with this Undertaking.

Resignation, revocation or termination of the Approved Divestiture Agent

- 10.18. Shahin 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 Business.
- 10.19. 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.
- 10.20. The ACCC may approve any proposal by, or alternatively may direct, Shahin 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.
- 10.21. If clause 10.18, 10.19 or 10.20 applies then Shahin must provide the ACCC with a Proposed Divestiture Agent Notice within five Business Days, otherwise clause 10.13 applies.

11. Information

- 11.1. Shahin must notify the ACCC and each Undertaking Appointment 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 each Divestiture Business.
- 11.2. Shahin must notify the ACCC and each Undertaking Appointment 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 each Divestiture Business.
- 11.3. The ACCC may direct Shahin in respect of its compliance with this Undertaking to, and Shahin 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 Shahin'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.
- 11.4. Any direction made by the ACCC under clause 11.3 will be notified to Shahin, in accordance with clause 16.2.
- 11.5. In respect of Shahin's compliance with this Undertaking or an Undertaking Appointment's compliance with its Approved Terms of Appointment, the ACCC may request any Undertaking Appointment 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 Undertaking Appointment'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.
- 11.6. Shahin will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 11.5.
- 11.7. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 11 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.

- 11.8. The ACCC may in its discretion to be exercised in good faith:
- (a) advise any Undertaking Appointment of any request made by it under this clause 11; and/or
 - (b) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 11.
- 11.9. Nothing in this clause 11 requires the provision of information or documents in respect of which Shahin has a claim of legal professional or other privilege.

12. Disclosure of this Undertaking

- 12.1. Shahin and the ACCC agree that:
- (a) Schedule 4 and clause 1 of Schedule 5 will remain confidential until after the completion of the divestiture of all of the Divestiture Businesses; and
 - (b) Clauses 2 and 3 of Schedule 5 will remain confidential at all times.
- 12.2. Shahin acknowledges that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes unredacted versions of Schedules 4 and 5.
- 12.3. Shahin acknowledges that the ACCC may, subject to clause 12.1:
- (a) make this Undertaking publicly available; and
 - (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.
- 12.4. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 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.
- 12.5. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

13. Obligation to procure

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

14. No Derogation

- 14.1. 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 Shahin of any term of this Undertaking.
- 14.2. 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 Shahin 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.

15. Costs

- 15.1. Shahin must pay all of its own costs incurred in relation to this Undertaking.

16. Notices

Giving Notices

- 16.1. 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
Mergers and Adjudication Group

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

- 16.2. Any notice or communication to Shahin pursuant to this Undertaking must be sent to:

Name: Legal Department, Shahin Corporation

Address: 270 The Parade
Kensington Park, South Australia, 5068

Email Address: legal@perecorp.com.au

Fax number: (08) 8 333 9711

Attention: Peter Piliouras

With a copy sent to (if applicable):

Name: Patrick Gay

Address: Herbert Smith Freehills
ANZ Tower
161 Castlereagh Street
Sydney NSW 2000

Email Address: Patrick.Gay@hsf.com

Fax number: +61 2 9322 4000

- 16.3. 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).
- 16.4. 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

- 16.5. Shahin or the ACCC must notify the other party of a change to its contact details within three Business Days.
- 16.6. Any notice or communication will be sent to the most recently advised contact details and subject to clause 16.3 and 16.4, will be taken to be received.

17. Defined terms and interpretation

Definitions in the Dictionary

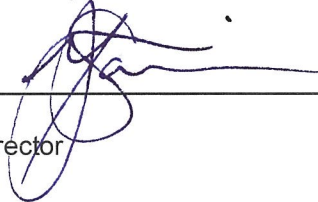
- 17.1. A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
 - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to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

Interpretation

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

Executed as an Undertaking

Executed by Shahin pursuant to section 127(1) of the Corporations Act 2001 by:



Signature of director



Signature of a director/company secretary

Name of director (print)

YASSER SHAHIN

Name of director/company secretary (print)

KHALIL SHAHIN

Date

2 / 5 / 2014

Date

2 / 5 / 2014

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



Date

8th May 2014

And signed on behalf of the Commission:

Chairman

Date

Schedule 1

1. Dictionary

ACCC means the Australian Competition and Consumer Commission.

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

Agostino means Weeroona Holdings Pty Limited (ACN 008 115 526), Frank Agostino and Talunga Properties Pty Ltd (ACN 092 695 335).

Agostino Agreement means the Agreement between Shahin and Agostino relating to the acquisition of BP Mile End as further described in Schedule 5 of the Undertaking.

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 Business Sale Agreement means a standard form contract for the divestiture of an Unsold Business which has been approved by the ACCC in accordance with the terms of this Undertaking.

Approved Divestiture Agent means the person appointed under clause 10.14 of this Undertaking.

Approved Independent Manager means the person appointed under clause 8.13 of this Undertaking.

Approved Marketing and Sale Plan means a plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Divestiture Agent will market and effect the divestiture of an Unsold Business.

Approved Purchaser means a person approved by the ACCC under clauses 6.2 or 6.9 of this Undertaking.

Approved Sale and Purchase Agreement means a contract approved by the ACCC in accordance with the terms of this Undertaking, by which an Approved Purchaser will acquire a Divestiture Business from Shahin.

Approved Separation and Management Plan means a plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Manager will:

- a) separate an Unsold Business from any business to be retained by Shahin; and
- b) manage and operate an Unsold Business independently of Shahin and any retained business.

Approved Technical Assistance Agreement means any agreement approved by the ACCC in accordance with the terms of this Undertaking.

Approved Terms of Appointment means the terms of appointment for the Approved Independent Manager or Approved Divestiture Agent, as applicable, 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 trading banks are open for business generally in South Australia.

BP Elizabeth Vale means the land, building and equipment comprising the petrol retail business located on the corner of Main North Road and Hogarth Road, Elizabeth Vale and further defined in Schedule 4 of the Undertaking.

BP Mile End means the land, building and equipment comprising the petrol retail business located at 95 Henley Beach Road, Mile End, and further defined in Schedule 4 of the Undertaking.

BP Westbourne Park means the land, building and equipment comprising the petrol retail business located at 427 Goodwood Road, Westbourne Park and further defined in Schedule 4 of the Undertaking.

Caltex means Caltex Australia Petroleum Pty Ltd (ACN 000 032 128).

Caltex Agreements means the Agreements between Shahin and Caltex relating to the acquisition of BP Elizabeth Vale, BP Westbourne Park and OTR South Plympton as further described in Schedule 5 of the Undertaking

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

Control Date means in respect of the BP Elizabeth Vale Divestiture Business, the date on which Shahin acquires from BP, BP Elizabeth Vale; means in respect of the BP Mile End Divestiture Business, the date on which Shahin acquires from BP, BP Mile End; means in respect of the BP Westbourne Park Divestiture Business, the date on which Shahin acquires from BP, BP Westbourne Park; means in respect of the OTR South Plympton Divestiture Business, the date on which Shahin acquires from BP, BP Mitchell Park.

Consents means any Government Consents or Third Party Consents.

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

Divestiture Business means each of BP Elizabeth Vale, BP Mile End, BP Westbourne Park and OTR South Plympton.

Entity Connected means such entities connected with a corporation as defined in section 64B of the Corporation Act.

Government Consents means any consents from any government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the conduct of a Divestiture Business.

Initial Sale Period is defined in clause 1 of Schedule 5 to this Undertaking.

Local Market has the meaning given to it in clause 2.8 of this Undertaking.

Material Change means any change to the structure, attributes, extent or operations of a Divestiture Business or product or service sold by a Divestiture Business that may affect, or impact on, the competitiveness of the Divestiture Business.

OTR South Plympton means the land, building and equipment comprising the petrol retail business located at 279 Marion Road, South Plympton and further defined in Schedule 4 of the Undertaking.

Shahin means the entity referred to in clause 1.1 of this Undertaking.

Proposed Acquisition is defined in clause 2.5 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 Independent Manager means a person named in a Proposed Independent Manager Notice.

Proposed Independent Manager 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 Independent Manager.

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 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.

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.

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

Technical Assistance includes advising on technical knowledge documentation, supporting the Approved Purchaser on acquiring specific assets necessary for the ongoing conduct of a Divestiture Business, providing staff with suitable experience and skills to assist and/or advice on technical issues, assisting in training for the Approved Purchaser's staff, and providing guidance on regulatory and legal aspects relating to the transfer of or application for licences.

Third Party Consents means any Consent from any entity that is not a government agency required for the assignment, novation, sale, sub-licensing or transfer of any

assets, licences, permits, approval or contracts required for the conduct of a Divestiture Business.

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.

Undertaking Appointment means the Approved Independent Manager or the Approved Divestiture Agent, as applicable.

Unsold Business 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;
 - (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, Shahin 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 – [insert name of undertaking]

Address: mergers@acc.gov.au

Attention: Executive General Manager - Mergers and Adjudication Group

With an email copy sent to:

Address: mergersucu@acc.gov.au

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

- 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) details of the Proposed Purchaser's experience in the relevant market/s.
 - (c) the names of the [owner/s and the directors (delete any that do not apply)] of the Proposed Purchaser.
 - (d) a section addressing the factors set out in clause 6.10 of this Undertaking, including any information adverse to the Proposed Purchaser, in the power, possession or control of Shahin.
 - (e) details of any of the following types of relationships between Shahin and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) Shahin and the Proposed Purchaser are Associated Entities;
 - (ii) Shahin is an Entity Connected with the Proposed Purchaser;
 - (iii) the Proposed Purchaser is an Entity Connected with Shahin;

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- (iv) Shahin and the Proposed Purchaser are Related Entities;
- (v) Shahin and the Proposed Purchaser are Related Parties;
- (vi) any Related Party, Related Entity or Entity Connected with Shahin is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
- (vii) Shahin 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 Shahin or has been in the past three years;
- (ix) Shahin is a supplier of the Proposed Purchaser or has been in the past three years; and
- (x) any other relationship between Shahin 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) the finalised draft of any technical assistance agreement for approval by the ACCC in accordance with this Undertaking.
- (c) any documents required to support the information provided by Shahin pursuant to this form.

Schedule 3 – Undertaking Appointment

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

- Independent Manager; or
- Divestiture Agent,

(the **Undertaking Appointments**).

This form is to be used for each of the above appointments.

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 Undertaking Appointment form, along with the additional requested information is to be provided to the ACCC with the subject line (*proposed* [only include relevant Undertaking Appointment i.e. Divestiture Agent/Independent Manager] *Form* – [insert name of undertaking] to the below email addresses:

- 1) mergers@acc.gov.au

Attention: Executive General Manager, Mergers and Adjudication Group

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

mergersucu@acc.gov.au

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

Information Required

The ACCC requires the following information in order to assess a proposed Divestiture Agent or Independent Manager (i.e. the relevant undertaking appointment).

- 1) Proposed Undertaking Appointment Details:

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

- 2) A submission containing the following information:

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- (a) details of [Undertaking Appointment]'s qualifications and experience relevant to his or her proposed role pursuant to the Undertaking.
 - (b) the names of the [owner/s and the directors (delete any that do not apply)] of [the Undertaking Appointment's employer].
 - (c) details of any of the following types of relationships between Shahin and [the Undertaking Appointment] or [the Undertaking Appointment's employer] or confirmation that no such relationship, apart from appointment to the role of an Undertaking Appointment, exists whether within Australia or outside of Australia:
 - (i) Shahin and [the Undertaking Appointment's employer] are Associated Entities.
 - (ii) Shahin is an Entity Connected with [the Undertaking Appointment's employer].
 - (iii) [The Undertaking Appointment's employer] is an Entity Connected with Shahin.
 - (iv) Shahin and [the Undertaking Appointment's employer] are Related Entities.
 - (v) Shahin and [the Undertaking Appointment's employer] are Related Parties.
 - (vi) any Related Party, Related Entity or Entity Connected with Shahin is a Related Party, Related Entity or Entity Connected with [the Undertaking Appointment].
 - (vii) Shahin and [the Undertaking Appointment] or [the Undertaking Appointment's employer] have a contractual relationship or had one within the past three years, other than those attached to this form.
 - (viii) [the Undertaking Appointment's employer] is a supplier of Shahin or has been in the past three years.
 - (ix) Shahin is a supplier of the [the Undertaking Appointment's employer] or has been in the past three years.
 - (x) any other relationship between Shahin and [the Undertaking Appointment] or [the Undertaking Appointment's employer] that allows one to affect the business decisions of the other.
- 3) A document outlining the terms of appointment for the proposed Undertaking Appointment.

Specific Information required for Undertaking Appointments

The ACCC requires the below information in relation to the relevant Undertaking Appointment.

Proposed Divestiture Agent

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

Proposed Independent Manager

- 1) The finalised draft separation and management plan for the Divestiture Business detailing the measures and timing to be implemented by Shahin's and the Approved Independent Manager in order to fulfil Shahin's and the Approved Independent Manager's obligations pursuant to this Undertaking. This plan is to be drafted by the Proposed Independent Manager in consultation with Shahin to achieve the objectives of the Undertaking including:
 - (a) the intended mode of operation of the Divestiture Business until completion of its divestiture;
 - (b) separation measures to ensure the Divestiture Business is operated in a manner which is financially and operationally separate from Shahin, including the:
 - (i) separation of the books and records of the Divestiture Business from those of Shahin;
 - (ii) severance of the Divestiture Business's participation in any private shared information technology networks, to the extent possible without compromising the viability of the Divestiture Business;
 - (iii) implementation of specific electronic, information and physical security measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Business; and
 - (iv) severance of arrangements to share personnel and plant between the Divestiture Business and any businesses to be retained by Shahin, to the extent possible without compromising the viability of the Divestiture Business;
 - (c) details of contracts for the provision of goods or services to the Divestiture Business which will expire after the completion of the divestiture of the Divestiture Business to the Approved Purchaser and the actions which will be taken to ensure they are replaced, renewed and/or renegotiated on commercial terms favourable to the Divestiture Business;
 - (d) personnel planning to maintain appropriate personnel levels and ensure that the Divestiture Business has access to all personnel necessary to operate the Divestiture Business;
 - (e) any Material Changes to the Divestiture Business required in order to fulfil Shahin's and the Approved Independent Manager's obligations pursuant to the Undertaking;

- (f) the cooperation required from the Independent Manager with Shahin in relation to the divestiture of the Divestiture Business, including:
 - (i) the method by which due diligence information, site visits and personnel interviews by and to prospective purchasers of the Divestiture Business will be managed; and
 - (ii) the method by which the Independent Manager and Shahin will preserve the confidentiality of the Divestiture Business's competitively sensitive information from Shahin and its advisers throughout this process.
 - (iii) a protocol whereby the Approved Independent Manager can provide any information requested by Shahin without disclosing the details of the Divestiture Business's competitively sensitive information to Shahin.

Confidential Schedule 4

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Confidential Schedule 5

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