

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) by Italiotech Australia Pty Limited ABN 18 151 977 365

1. Person giving this Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Italiotech Australia Pty Ltd ABN 18 151 977 365 (**Italiotech**) of Level 1, 45-49 Crystal St, Petersham NSW 2049 for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

2. Background

- 2.1. Italiotech carries on business in Australia as the importer and wholesale distributor of certain brands of bicycle parts and accessories.
- 2.2. The ACCC commenced an investigation into Italiotech after it received allegations that Italiotech was engaging in resale price maintenance by attempting to prevent retailers from selling below the recommended resale price (RRP).
- 2.3. The alleged conduct of Italiotech relates to dealings with three separate retailers.
- 2.4. For the first retailer:
- 2.4.1. From at least July 2012, Italiotech supplied the retailer with bicycle accessories, namely a particular brand of bicycle saddle, and a particular brand of bicycle helmet
- 2.4.2. Between July 2012 and December 2012, a representative of Italiotech made multiple requests to the retailer not to sell the bicycle accessories for less than

the RRP.

2.4.3. In December 2012, Italiattech ceased supply to the retailer because the retailer continued to sell the bicycle accessories below the RRP

2.4.4. In September 2013, Italiattech recommenced supply to the retailer, but continued to request that the retailer observe the RRP for the bicycle accessories.

2.5. For the second and third retailers, between September 2013 and January 2014, Italiattech made requests to the retailers to refrain from selling a particular brand of bicycle helmets below the RRP.

2.6. The ACCC considers that:

2.6.1. By making the requests to the first retailer as referenced in items 2.4.2 and 2.4.4, Italiattech induced or attempted to induce the retailer not to sell the bicycle accessories below a specified price, being the RRP. This conduct was likely to constitute resale price maintenance in contravention of sections 48 and 96(3)(b) of the Act.

2.6.2. By ceasing supply to the first retailer as referenced in item 2.4.3, Italiattech withheld supply to the retailer because the retailer sold the bicycle accessories below a specified price, being the RRP. This conduct was likely to constitute resale price maintenance in contravention of sections 48 and 96(3)(d) of the Act.

2.6.3. By making the requests to the second and third retailers as referenced in Item 2.5, Italiattech induced or attempted to induce the retailers not to sell the bicycle accessories below a specified price, being the RRP. This conduct was likely to constitute resale price maintenance in contravention of sections 48 and 96(3)(b) of the Act.

2.7. Italiattech admits that its conduct as described in items 2.4 and 2.5 amounted to or was likely to amount to resale price maintenance in contravention of sections 48 and 96(3)(b) & (d) of the Act.

3. Commencement of this Undertaking

3.1. This Undertaking comes into effect when:

- (a) the Undertaking is executed by Italiattech; and
- (b) the Undertaking so executed is accepted by the ACCC, (the **Commencement Date**).

4. Undertaking

4.1. Italiattech undertakes for the purposes of section 87B of the Act that:

- (a) it will not engage in resale price maintenance for a period of five years from the Commencement Date;
- (b) it will ensure that its current managing director and all staff in a sales role will undertake, within two months of the Commencement Date, a training program administered by a suitably qualified legal practitioner. This training program will cover resale price maintenance and any other Australian competition and consumer law topics that the legal practitioner considers relevant to Italiattech's business;
- (c) it will ensure that any future managing director of Italiattech (or persons holding an equivalent role) as well as any future staff in a sales role, will undertake within two months of their appointment, a training program administered by a suitably qualified legal practitioner. This training program will cover resale price maintenance and any other Australian competition and consumer law topics that the legal practitioner considers relevant to Italiattech's business;
- (d) it will provide to the ACCC a written statement or certificate from the legal practitioner that delivers any training pursuant to items 4.1 (b) or (c) within 14 days of the completion of the training verifying that such training has occurred and setting out the date on which the training occurred, who conducted the training and the topics covered;

- (e) it will, within two months of the Commencement date, engage a suitably qualified legal practitioner to prepare a document which explains, in plain language, resale price maintenance and the types of conduct that are prohibited by section 48 of the Act (**RPM Briefing Note**);
- (f) it will provide the RPM Briefing Note to all current and future staff members or sales representatives that have or are likely to have contact with any customers of Italiattech;
- (g) it will provide the ACCC with a copy of the RPM Briefing Note when it is provided to Italiattech's current staff members;
- (h) it will keep records of the provision of the RPM Briefing Note to all staff members and make these records available to the ACCC on request;
- (i) it will, within two months of the Commencement date, provide a written statement to its current dealership network advising of the Undertaking provided to the ACCC, explaining the conduct the subject of the Undertaking and explaining that references to resale prices are recommendations only and that there is no obligation to comply with the recommendation;
- (j) it will keep records of the provision of the statements referred to in (i) and make these records available to the ACCC on request;
- (k) if, after the Commencement Date, it provides or sends to any customers of Italiattech a document setting out recommended retail prices for the products that Italiattech supplies, it must include in it a statement to the following effect:

"The recommended retail prices set out in this document are recommended prices only. There is no obligation to comply with the recommendation. You are free to set the price at which you sell a product purchased from Italiattech."


5. Acknowledgements

5.1. Italiattech acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B Undertakings on its website;
- (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an Undertaking

Executed by Italiattech Australia Pty Limited ABN 18 151 977 365 pursuant to section 127(1)
of the *Corporations Act 2001* (Cth) by:



Signature of sole director and company secretary

DAVIDE PESCAROLO

Name of director (print)

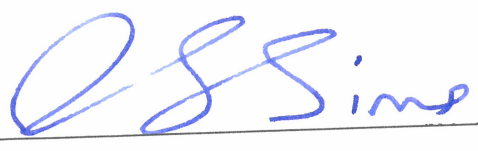
20.11.14

Date

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

Date

and signed on behalf of the Commission:



Chairman

9/12/14

Date