

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* (Cth) by Eureka Operations
Pty Ltd (trading as Coles Express)

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1. Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Eureka Operations Pty Ltd (trading as Coles Express) ACN 104 811 216 (**Coles Express**).

2. Background

- 2.1. Coles Express carries on business as a retailer of fuel (being regular and unleaded petrol and ethanol blended petrol, diesel and liquefied petroleum gas (**LPG**)) and convenience store retailer from petrol stations operating under the "Coles Express" business and brand name. Coles Express is a subsidiary of Coles Group Limited.
- 2.2. From 2012 to 2014, the ACCC conducted an investigation into arrangements for the supply in Australia of electronic retail petrol price information (the **Oil PriceWatch service**) between Informed Sources (Australia) Pty Ltd ACN 003 714 332 (**Informed Sources**) and Coles Express, and as between Informed Sources and other companies. The ACCC is concerned that subscription to the Oil PriceWatch service by the petrol retailer subscribers to the service facilitated non-rivalrous behaviour in the retail sale of petrol in Melbourne.
- 2.3. On 20 August 2014, the ACCC instituted proceedings in the Federal Court of Australia against Informed Sources, Coles Express and other petrol retailers alleging that they contravened section 45 of the *Competition and Consumer Act 2010* (Cth) (the **Act**) (the **Proceedings**). The ACCC alleges that the arrangements between Informed Sources and petrol retailers, through the Oil PriceWatch service, had, and in the future would continue to have, the effect or likely effect of substantially lessening competition in markets for the sale of petrol in Melbourne.
- 2.4. Coles Express has decided not to renew its subscription to the Oil PriceWatch service with Informed Sources at the expiration of the current term of its subscription (15 April 2016) and has given notice of termination to Informed Sources accordingly.
- 2.5. While Coles Express does not accept that its subscription, or the subscription of others, to the Oil PriceWatch service had any adverse effect on competition in any relevant market in Australia, Coles Express and the ACCC have agreed to resolve the Proceedings in accordance with the terms of this Undertaking.

3. Commencement of this Undertaking

- 3.1. This Undertaking comes into effect when:
- (a) this Undertaking is executed by Coles Express; and
 - (b) this Undertaking so executed is accepted by the ACCC; and
 - (c) the Federal Court makes all of the orders set out in the Annexure to this Undertaking
- (the **Commencement Date**).

4. Undertaking

- 4.1 Coles Express undertakes, for the purposes of section 87B of the Act, that for a period of five years from the Commencement Date it will not, and it will ensure that its related entities will not, without the ACCC's consent, make or enter into any contract or arrangement for the acquisition by it of:
- (a) the Oil PriceWatch service; or
 - (b) any similar retail petrol price information exchange service (concerned with retail petrol prices in Australia) which:
 - (i) directly or indirectly informs a petrol retailer subscriber (**Subscriber**), or otherwise enables the Subscriber to determine, that other subscribers will have access to retail price information which the Subscriber provides to the service; and
 - (ii) makes the Subscriber's receipt of, or access to, retail petrol price information provided by other subscribers to the service, conditional upon the Subscriber providing retail petrol price information to the service.
- 4.2 Coles Express undertakes, for the purposes of section 87B of the Act, that for a period of five years from 15 April 2016, it will not, and it will ensure that its related entities will not, without the ACCC's consent, give effect to any contract or arrangement for the acquisition by it of:
- (a) the Oil PriceWatch service; or
 - (b) any similar retail petrol price information exchange service (concerned with retail petrol prices in Australia) which:
 - (i) directly or indirectly informs the Subscriber, or otherwise enables the subscriber to determine, that other subscribers will have access to retail price information which the Subscriber provides to the service; and
 - (ii) makes the Subscriber's receipt of, or access to, retail petrol price information provided by other subscribers to the operator of the service, conditional upon the Subscriber providing retail petrol price information to the service.

5. Review of Undertaking

- 5.1. If:
- (a) Coles Express is unable to comply with its obligations under this Undertaking; or
 - (b) legislative provisions are enacted that prohibit the conduct identified in clause 4.1 or clause 4.2 of this Undertaking; or

- (c) Coles Express or the ACCC believe it is necessary to vary this Undertaking due to changed circumstances (including any material change in the markets in which fuel is retailed),

then Coles Express and the ACCC agree that they will review the Undertaking and negotiate in good faith a variation or withdrawal of all or any of the terms of the Undertaking in light of such circumstances.

6. Information

- 6.1. For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable inquiries of Coles Express in respect of its compliance with this Undertaking and Coles Express will respond to such inquiries within a reasonable period of time.

7. Disclosure of the Undertaking

- 7.1. Coles Express acknowledges that the ACCC may:
 - (a) make this Undertaking publicly available; and
 - (b) publish this Undertaking on its public section 87B Undertakings Register; and
 - (c) from time to time publicly refer to this Undertaking.

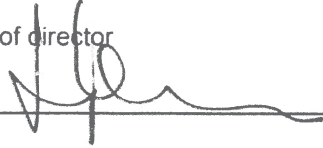
8. Obligation to procure

- 8.1. Where the performance of an obligation under this Undertaking requires a related body corporate of Coles Express to take or refrain from taking some action, Coles Express will procure that related body corporate to take or refrain from taking that action.

Executed as an Undertaking


Executed by Eureka Operations Pty Ltd (trading as Coles Express) ACN 104 811 216 pursuant to section 127(1) of the Corporations Act 2001 by:

Signature of director



John Durkan

Signature of a director



Simon McDowell

Date

15th December 2015

Date

15/12/15.

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

And signed on behalf of the Commission:

Chairman



Date

15/12/15

Annexure

SHORT MINUTE OF ORDERS

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL**

No VID 450 OF 2014

**AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION**

Applicant

**INFORMED SOURCES (AUSTRALIA) PTY LTD
(ACN 003 714 332)**

and others named in the Schedule
Respondents

THE COURT ORDERS BY CONSENT THAT:

1. The proceedings against the Fifth Respondent be discontinued.
2. There be no order as to costs.

THE COURT NOTES:

3. The Fifth Respondent has agreed to give the Applicant an undertaking pursuant to section 87B of the *Competition and Consumer Act 2010* in the form attached to these orders.

Date: 2015

Schedule

No. VID 450 of 2014

Federal Court of Australia
District Registry: Victoria
Division: General

Respondents

| | |
|-------------------|--|
| Second Respondent | BP Australia Pty Ltd (ACN 004 085 616) |
| Third Respondent | Caltex Australia Petroleum Pty Ltd (ACN 000 032 128) |
| Fourth Respondent | Woolworths Ltd (ACN 000 014 675) |
| Fifth Respondent | Eureka Operations Pty Ltd trading as Coles Express (ACN 104 811 216) |
| Sixth Respondent | 7-Eleven Stores Pty Ltd (ACN 005 299 427) |