

COMPETITION AND CONSUMER ACT 2010

**UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION GIVEN
FOR THE PURPOSES OF SECTION 87B**

BY

INFORMED SOURCES (AUSTRALIA) PTY LTD

ACN 003 714 332

1 Person giving this undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Informed Sources (Australia) Pty Ltd (ACN 003 714 332) (**Informed Sources**) of 16 Benson Street, Toowong, Queensland pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

2 Background

- 2.1 Informed Sources is a company carrying on a business in Australia that relevantly includes the receipt and collection, collation and dissemination to its subscribers of electronic retail price information in respect of the retail sale of unleaded petrol (**petrol**), diesel and liquefied petroleum gas (**LPG**) (collectively referred to herein as **motor fuel**) in various regions of Australia including metropolitan Melbourne.
- 2.2 From 2012 to 2014 the ACCC conducted an investigation into arrangements for the supply in Australia of an electronic retail price information exchange service (the **Oil PriceWatch Service**) between Informed Sources and various petrol retailer subscribers. 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 commenced proceedings in the Federal Court of Australia against Informed Sources and various petrol retailers alleging that they contravened section 45 of the CCA (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 While Informed Sources does not accept that the supply of the Oil PriceWatch service to the petrol retailer subscribers, has or had or will have any adverse effect on competition in any relevant market in Australia, Informed Sources and the ACCC have agreed to resolve the Proceedings in accordance with the terms of this Undertaking.
- 2.5 The purpose of this Undertaking is to reduce the potential for adverse effects on competition as alleged by the ACCC arising from the exchange of electronic retail price information between petrol retailers. It does this by giving consumers access to the electronic retail price information in a manner that is as timely as the retailers receive it to assist consumers in making informed decisions as to when and where to purchase petrol.

The Undertaking only applies to the extent that Informed Sources supplies a petrol price information exchange service (as defined in clause 4.1). Without reducing the availability of the electronic retail price information to consumers, this Undertaking also permits measures to prevent free-riding on the petrol price information exchange service by petrol retailers that do not subscribe to that service.

3 Commencement and Termination of this Undertaking

- 3.1 Subject to clause 3.2, this Undertaking comes into effect when:
- (a) this Undertaking is executed by Informed Sources;
 - (b) the ACCC accepts the Undertaking so executed; and
 - (c) the Federal Court makes all of the orders set out in the Annexure to this Undertaking,
- (the **Commencement Date**).
- 3.2 The undertakings in clause 4 will commence on the 150th day after the Commencement Date.
- 3.3 This Undertaking will terminate on the date that is five years after the 150th day after the Commencement Date.

4 Undertakings

- 4.1 Other than with the ACCC's written consent, Informed Sources will not, and will ensure that its related entities will not, make, enter into or give effect to any contract or arrangement for the supply by it of:
- (a) the Oil PriceWatch Service in Australia; or
 - (b) any similar electronic retail petrol price information exchange service concerning the retail price of petrol in Australia that provides Real-time or Near Real-time petrol price information, which:
 - (1) directly or indirectly informs a petrol retailer subscriber, or otherwise enables a subscriber to determine, that other petrol retailer subscribers will have access to retail petrol price information which the subscriber provides to the service; and
 - (2) makes a petrol retailer subscriber's receipt of, or access to, retail petrol price information provided by other petrol retailer subscribers to the service, conditional upon the subscriber providing retail petrol price information to the service,
- (**petrol price information exchange service**) unless Informed Sources complies with the terms set out in this clause 4.
- 4.2 Subject to clause 4.4, Informed Sources must, in a timely manner, make available:
- (a) to third party information service providers, consumer organisations, motorist organisations, research organisations and regulatory agencies carrying on business or operating in Australia (**third party organisations**), all information

and data concerning the retail price of petrol offered for sale at individual petrol stations in Australia that Informed Sources provides to retail petrol subscribers under the petrol price information exchange service (**petrol price information**), on reasonable commercial terms; and

- (b) to Australian consumers the petrol price information in a form and to an extent that is usable by consumers in making informed decisions as to when and where to purchase petrol, without charge.

The requirements of sub-clause (b) will be satisfied by: (i) making information available by an app (for the avoidance of doubt, the requirements of sub-clause (b) do not oblige Informed Sources to publish information on a website); and (ii) in addition, making available to consumers a service which allows consumers to observe: (A) the distribution of subscribers' petrol prices across geographic areas within capital cities (except Perth) as selected by the consumer; and (B) petrol price cycles over time.

For the purposes of this clause, making information and data available in a timely manner means making it available in a manner that is as timely as retail petrol subscribers receive it from Informed Sources.

4.3 Informed Sources must not:

- (a) engage in conduct for the purpose of hindering or preventing consumers or third party organisations from obtaining access to any petrol price information that Informed Sources has agreed to make available under clause 4.2;
- (b) unreasonably or unfairly discriminate between third party organisations or between a third party organisation and itself or its related bodies corporate in respect of the terms on which Informed Sources makes available any petrol price information under clause 4.2.

4.4 Subject to clause 4.5, Informed Sources may:

- (a) employ technological or other restrictions or impose licensing restrictions on persons accessing the information; and
- (b) additionally in respect of a third party organisation, require the third party organisation to employ technological or other restrictions or impose licensing restrictions on persons accessing the information,

but only to the extent reasonably necessary to prevent parties other than consumers and third party organisations from obtaining access to the petrol price information as Real-time or Near Real-time petrol price information without subscribing to the petrol price information exchange service, and provided that such restrictions do not detrimentally affect in a material way the ability of consumers to access the petrol price information in a manner which is as timely as retail petrol subscribers receive it for the purpose of making informed decisions as to when and where to purchase petrol in the manner referred to in clause 4.2.

4.5 Prior to employing or imposing restrictions as referred to in clause 4.4, Informed Sources must notify the form of any proposed restriction to the Chairman of the ACCC in writing. If within 10 Business Days of receiving written notification under this clause 4.5 the ACCC advises Informed Sources that, in the opinion of the ACCC, the proposed restriction the subject of the notification does not comply with clause 4.4, Informed Sources must not employ or impose the restriction unless the following procedures have been complied with and the private arbitrator appointed under these procedures determines that the restriction complies with clause 4.4:

- (a) Informed Sources must notify the ACCC in writing that it disputes the ACCC's opinion.
- (b) Within 10 Business Days of receipt of a notice under clause (a), the Chairman of the ACCC will appoint an independent person having suitable qualifications as well as commercial and practical experience of at least 10 years to act as a private arbitrator of the dispute.
- (c) The costs of the arbitrator will be borne by Informed Sources.

4.6 In the event of a dispute between Informed Sources and a third party organisation in relation to the terms on which Informed Sources makes available the petrol price information to the third party organisation under clause 4.2, Informed Sources must comply with the following procedures to resolve the dispute:

- (a) Informed Sources must notify the third party organisation in writing of the procedures set out in this clause and that Informed Sources is required to comply with the procedures in this clause and ask the third party organisation whether it wishes to have the dispute resolved in accordance with the procedures in this clause.
- (b) If the third party organisation notifies Informed Sources that it wishes to have the dispute resolved in accordance with the procedures in this clause and agrees to comply with the arbitration determination, Informed Sources must use the procedures in this clause to resolve the dispute.
- (c) Informed Sources must provide written notification of the dispute to the Chairman of the ACCC containing the following information:
 - (1) the contact details for the parties to the dispute;
 - (2) a brief description of the nature of the dispute.
- (d) Within 10 Business Days of receipt of a notice under clause (c), the Chairman of the ACCC will appoint an independent person having suitable qualifications as well as commercial and practical experience of at least 10 years to act as a private arbitrator.
- (e) Informed Sources agrees to comply with the arbitration determination of the private arbitrator.
- (f) The costs of the arbitrator will be borne equally by Informed Sources and the third party organisation.

- 4.7 For the purposes of this clause 4, **Real-time or Near Real-time petrol price information** means petrol price information that is provided by, and disseminated to, subscribers within 48 hours of the time that is recorded in the subscriber's system as the time that the petrol price information was created.

5 Review of Undertaking

- 5.1 If:
- (a) Informed Sources 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) Informed Sources or the ACCC believes that it is necessary to vary this Undertaking due to changed circumstances (including any material change in the retail fuel markets or Informed Sources' business),
- then Informed Sources and the ACCC agree that they will review the Undertaking and negotiate in good faith 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:
- (a) make reasonable inquiries of Informed Sources in respect of its compliance with this Undertaking and Informed Sources will respond to such inquiries within a reasonable period of time; and
 - (b) make reasonable requests of Informed Sources to furnish information and produce documents within Informed Sources' custody, power or control to the ACCC relating to Informed Sources' obligations in clause 4 of this Undertaking at a time and in the form specified by the ACCC, and Informed Sources will comply with any such requirement.
- 6.2 Nothing in clause 6.1 requires Informed Sources to provide information or documents to the ACCC in respect of which Informed Sources has a claim of legal professional or other privilege.
- 6.3 Within 30 days of each anniversary of the Commencement Date, Informed Sources will provide a written report to the ACCC specifying:
- (a) the names and address of each third party organisation which has sought to receive the petrol price information from Informed Sources in accordance with clause 4.2; and
 - (b) the names and address of each third party organisation to which Informed Sources has made petrol price information available under clause 4.2, and the terms and conditions on which the information has been made available.

7 Acknowledgments

7.1 Informed Sources 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.

8 Obligation to procure

8.1 Where the performance of an obligation under this Undertaking requires a related body corporate of Informed Sources to take or refrain from taking some action, Informed Sources will procure that related body corporate to take or refrain from taking that action as the case may be.

Executed as an undertaking

Signed for
Informed Sources (Australia) Pty Ltd
by

sign here ►



Director

print name

ALAN STEPHEN CADD

in the presence of

sign here ►



Witness

print name

CARLY RICHARDSON

Date:

21/12/2015

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

Signed on behalf of the Commission:

OSSimp

Chairman

Date: 22/12/15

Annexure

Short minute of order

**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 First Respondent be discontinued.
2. There be no order as to costs.

THE COURT NOTES:

3. The First 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:

Date:

Signed by Matthew Blunn
For and on behalf of the Australian
Government Solicitor

Signed by
[Solicitor for the First Respondent]

Schedule

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

No VID 450 of 2014

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)

Sixth Respondent

7-Eleven Stores Pty Ltd (ACN 005 299 427)