

TRADE PRACTICES ACT 1974 - SECTION 87B**UNDERTAKING****PERSONS GIVING UNDERTAKING**

This undertaking is given to the Australian Competition and Consumer Commission (the **Commission**) by Mackay Refined Sugars Pty Limited (ACN 054 641 824) (**MRS**) and CSR Limited (ACN 000 001 276) (**CSR**) under section 87B of the *Trade Practices Act 1974* (the **Act**).

BACKGROUND

In June 1997 MRS and CSR submitted to the Commission for consideration under the Act a proposed joint venture for the purchasing, refining, storage, distribution and sale of refined sugar within Australia and for export (**Joint Venture**).

The Commission expressed concerns as to some aspects of the Joint Venture in relation to their effect on competition and MRS and CSR agreed to give the undertaking contained herein under section 87B of the Act to address the Commission's concerns.

The Commission has agreed to accept the undertaking under section 87B of the Act.

DEFINITIONS AND INTERPRETATION

1. In this undertaking:

1.1 Definitions

Import Facilities means:

- (a) the leased warehouse currently located at Kewdale Western Australia;
- (b) the equipment located at the warehouse for the purposes of storage and loading of bulk and bagged refined sugar including without limitation a motorised monorail hoist for decanting bags into bulk containers;
- (c) a bulk delivery bin currently owned by MRS; and

- (d) any other facilities established or acquired from time to time by MRS or CSR in replacement for the facilities in (a), (b) or (c).

Related Body Corporate has the meaning set out in section 50 of the Corporations Law.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- (a) The **singular** includes the plural and conversely;
- (b) A **gender** includes all genders;
- (c) Where a **word or phrase** is defined, its other grammatical forms have a corresponding meaning;
- (d) A reference to a **person** includes a body corporate, an unincorporated body or other entity and conversely; and
- (e) A reference to a **clause** is to a clause of this undertaking.

COMMENCEMENT OF UNDERTAKING

2. This undertaking comes into effect when:

- (a) the undertaking is executed by MRS and CSR;
- (b) the undertaking so executed is accepted by the Commission; and
- (c) an agreement between MRS and CSR to form the Joint Venture (**Joint Venture Agreement**) is executed and commences;

provided that if the Joint Venture Agreement is rescinded or terminated, this undertaking shall be of no force and effect and MRS and CSR shall be released from this undertaking as from the date of such rescission or termination.

OBLIGATIONS UNDER UNDERTAKING

3. MRS and CSR will, upon request by any person seeking to import refined sugar into Western Australia (**sugar importer**) give access to the Import Facilities to any such sugar importer for the purposes of the sugar importer's business, at cost and otherwise on terms which shall be non-discriminatory and which shall be reasonable commercial terms having regard to, inter alia, the following matters:
 - (a) the legitimate business interests of MRS and CSR and their investment in the Import Facilities;
 - (b) the public interest, including the public interest in having competitive markets;
 - (c) the costs to MRS and CSR of providing access but not costs associated with losses arising from increased competition in upstream or downstream markets;
 - (d) contractual obligations of MRS and CSR or other persons (or all of them) already using the Import Facilities;
 - (e) the operational and technical requirements necessary for the safe, hygienic and reliable operation of the Import Facilities;
 - (f) the economically efficient operation of the Import Facilities; and
 - (g) the legitimate business interests of the sugar importer seeking access.

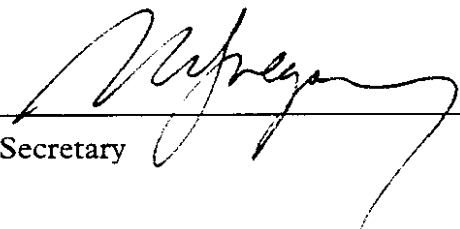
4. In the event that MRS or CSR or both MRS and CSR establish or acquire facilities, or obtain the right to use facilities, for the importation of refined sugar into Western Australia (other than those falling within the definition of "Import Facilities" for the purposes of this undertaking), MRS and CSR will give access to those facilities in the same manner and subject to the same access dispute provisions as are set out in clauses 3 and 5 of this undertaking.


5. In the event of a disagreement with a sugar importer as to access or the terms of access to the Import Facilities (an **access dispute**), MRS and CSR will cause the access dispute to be referred to expert determination as follows:
- (a) either the sugar importer or MRS and CSR (referring party) may notify the other that it considers that an access dispute has arisen;
 - (b) within 7 days of notification of the access dispute MRS, CSR and the sugar importer will appoint a properly qualified independent expert by agreement. Failing agreement on the expert, the expert will be a person selected by the President of the Institute of Chartered Accountants in Australia and agreed to by the Commission;
 - (c) the particulars of the access dispute shall be submitted in writing to the expert by the referring party, together with all matters that party considers relevant to the cause and resolution of the access dispute. The other party shall be entitled to put material to the expert in relation to the access dispute;
 - (d) the expert may request information, assistance or cooperation reasonably relevant to the access dispute from CSR and MRS or the sugar importer, who shall comply with any such request;
 - (e) the expert shall have power to determine all matters relevant to the access dispute, including the terms of access;
 - (f) the expert must act as an expert and not as an arbitrator and take into account in making his or her determination the matters set out in clause 3 of this undertaking;
 - (g) MRS and CSR will bear one half of the costs of the expert, the other party will bear the other half of those costs and the parties will bear their own costs;
 - (h) MRS and CSR undertake to abide by the determination of the expert, and to provide access to the sugar importer in accordance with the terms of the determination.

6. In the event of notification of an access dispute, MRS and CSR will, as soon as practical, notify the Commission in writing of the fact of the access dispute, the names of the parties to the access dispute and the nature of the access dispute.
7. Upon the making of a determination under clause 5 or any agreed resolution of the access dispute, MRS and CSR will, as soon as practical, provide the Commission with a copy of the determination or written notice of the agreed resolution.
8. MRS and CSR will, as soon as practical after the occurrence of the relevant event listed below, provide the Commission with written notice of:
 - (a) the commencement of the Joint Venture Agreement;
 - (b) any rescission or termination of the Joint Venture Agreement; and
 - (c) the name of any person requesting access pursuant to this undertaking.
9. MRS will ensure that any Related Body Corporate of MRS, and CSR will ensure that any Related Body Corporate of CSR, will comply with the obligations under clauses 3-8 above as if that Related Body Corporate was expressly named.
10. MRS and CSR note that the Commission may make public the terms of this undertaking.

EXECUTED on the 25th day of July 1997.

THE COMMON SEAL of MACKAY REFINED SUGARS PTY LIMITED is affixed in accordance with its articles of association in the presence of:


Secretary


Director

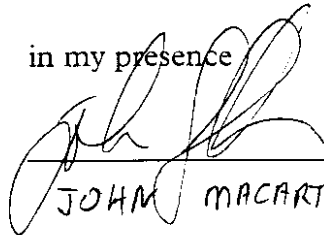
SIGNED by **CSR LIMITED** by its Attorneys

Frazer Brian Gill

and

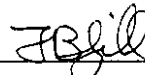
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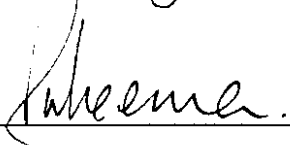
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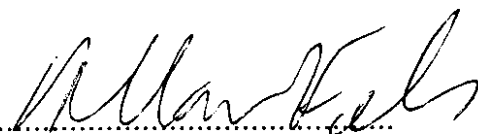
JOHN MACARTHUR-STANHAM

CSR LIMITED by its Attorneys who respectively state that at the date of their execution hereof they have had no notice of the revocation of the Power of Attorney dated 16 February 1995 and registered in New South Wales with the Registrar General in Book 4088 No. 523 under the authority of which they have executed this instrument





ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION


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Chairperson

Dated 30th July 1997