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TRADE PRACTICES ACT 1974 (C'TH.)

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

BY

**VILLAGE EQUIPMENT DISTRIBUTION AUSTRALIA PTY LTD
ACN 077 569 414**

1. The Australian Competition and Consumer Commission ("the Commission") has alleged that Village Equipment Distribution Australia Pty Ltd ("Village") and Sega Enterprises Limited ("Sega") attempted to engage in conduct having the purpose, or having or being likely to have the effect, of fixing controlling or maintaining the price of coin operated video games in Australia.
2. The Commission has alleged that Village and Sega attempted to engage in conduct having the purpose, or having or being likely to have the effect, of substantially lessening competition in the supply of coin operated video games in Australia.
3. The Commission has alleged that Village and Sega attempted to engage in the practice of resale price maintenance in the supply of coin operated video games in Australia.
4. Village is engaged in the operation of indoor theme parks under the trading name Intensity. Village entered into a joint venture agreement ("JV") with Sega for the exclusive distribution of certain Sega coin operated video games and the servicing of Intensity and Sega World indoor theme parks.
5. A memorandum of understanding ("MOU") was entered into between Village and Sega giving effect to the JV agreement, a copy of which is annexed hereto and marked "Confidential Attachment A". A copy of this MOU has been provided to the Commission by Village.
6. Under clause 2(a)(ii) of the MOU the joint venture will be granted a licence of the rights for the entire range of coin operated arcade games supplied by Sega which are released after 1 September 1996. Rights are also granted for products released prior to 1 September 1996; however these rights are subject to existing exclusive licences or distribution arrangements. Certain attractions developed by Sega are also excluded from the terms of the MOU.
7. Under Clause 2(a)(vi) of the MOU there is provision for an agreement between Village and Sega as to the terms and conditions of a preferred buying agreement to be offered by the JV to Leisure and Allied Industries ("LAI").
8. Clause 6(b) of the MOU provides:

Transfer pricing for the JV shall be established as follows:

(i) Equipment supplied by SOJ (ie: Sega) shall be purchased by the JV at the official distributor price from time to time as quoted by SOJ, where such price is on at least the same terms and conditions as the current pricing for Equipment set for LAI and is consistently applied, including all discounts, allowances and rebates.

(ii) Equipment supplied and/or serviced provided by the JV to VNL (ie: Village) shall be sold and/or charged as set out in Schedule B to this MOU.

(iii) Equipment supplied by the JV to SEGA Enterprises Australia ('SEA') for its sole and dedicated use shall be sold as set out in Schedule C annexed to this MOU.

(iv) Equipment supplied by the JV to LAI shall be sold as set out in Schedule D annexed to this MOU.

9. Schedule D to the MOU provides *inter alia*:

(4) LAI purchases from the JV will be at a discount of 15% off the normal retail price on total purchases up to \$7.5 million per annum, and 20% on annual purchases above \$7.5 million. The level of purchases at which the higher discount level becomes applicable will be pro-rated from the commencement of the agreement of the first review date.

Where LAI has exclusive products, it provide (*sic*) the JV with a reciprocal Preferred Buying Agreement on substantially the same terms.

10. Under Schedule B and C of the MOU, provision is made for the servicing of Intensity (Village) and Sega World (Sega) video arcades by the JV. These Schedules provide for the sourcing, installation, maintenance, upgrades, warehousing and distribution of equipment. In particular, the terms of Schedules B and C provide for the prices at which the JV will provide installation and maintenance services to Intensity and Sega World.

11. Under Schedule D of the MOU it is provided that:

(3) LAI warrants it will not parallel import Sega products or any other products for which the JV is the exclusive distributor.

12. Clause 6 (b) of the MOU provides:

(v) Unless otherwise determined by the JV all equipment supplied and sold by the JV to any other third party shall be supplied and sold without discount and at recommended retail price.

13. On consideration of the above clauses, the Commission concluded that:

- the combined effect of clauses 2(a)(vi), 6(b)(i), (iv) and Schedule D (4) were likely to constitute a breach of section 45 (2)(a)(ii), by the operation of section 45A, of the Act;
- the undertaking described in Schedule D (3) above was likely to constitute a breach of section 45 (2)(a)(ii) of the Act (depending on the outcome of current litigation concerning the legality of the parallel importation of video games);
- the agreements described in Schedule B and C above, seen in conjunction with clauses 2(a)(vi), 6(b)(i), (iv) and Schedule D (4), were likely to constitute a breach of section 45 (2)(a)(ii) of the Act; and
- the agreements described in clause 6 (b)(v) above were likely to constitute a breach of section 48 of the Act.

14. The Commission has been advised and accepts that Village and Sega did not implement the relevant clauses or, alternatively, that whilst some of the relevant clauses may have been implemented they have since ceased to have any practical operation.

UNDERTAKING

Village undertakes for the purposes of section 87B of the Act that it will:

1. omit the following clauses from the final contract:
 - 2(a)(vi);
 - 6(b)(i);
 - 6 (b)(iv); and
 - 6 (b)(vi).
2. omit the following schedules, or parts thereof, from the final contract:
 - Schedule D.
3. provide the Commission with a copy of the final contract as soon as practicable following execution;
4. advise the Commission of any variations to the final contract which occur within three (3) years of execution of the final contract;
5. refer future joint venture agreements entered into by Village, for a period of three (3) years, to external advisers with specific instructions to consider the trade practices implications of the terms and conditions of such joint venture agreements; and
6. within four (4) months of signing this Undertaking, develop a Trade Practices Compliance Program with the following characteristics:
 - (a) Aim

To create a culture of compliance throughout Village and to prevent, so far as is reasonably possible, any contraventions of the Act by Village, its directors, employees and agents.
 - (b) Policy

The formal adoption by Village, of a policy of strict compliance with both the letter and spirit of the Act within Village.
 - (c) Compliance Infrastructure

The appointment of Mr Kirk Senior, Chief Financial Officer, from within Village to become the Village Compliance Officer, with overall responsibility for Trade Practices compliance.

(d) Coverage

The compliance program is to cover all directors, employees and agents of Village whose duties could result in them being concerned in conduct that might breach the Act ("relevant staff").

(e) Education

Develop and implement an education program using the Commission's training program known as "Best and Fairest", or an alternative program acceptable to the Commission, calculated to have the relevant staff conversant with the provisions of the Act to a level where:

- (i) general staff can avoid obvious contraventions and can identify more complex potential trade practices problems for referral to the appropriate person in the Village compliance infrastructure; and
- (ii) the Village Compliance Officer can address more complex potential trade practices issues and (if that person is not legally qualified and able to give the relevant advice) identify issues which require referral to Village solicitors.

7. implement the Trade Practices Compliance Program within four (4) months of the signing of this Undertaking and that the Trade Practices Compliance Program will remain in force for a period of three years from the signing of this Undertaking.
8. Mr Kirk Senior, as designated officer responsible for compliance with the Trade Practices Act, will certify, by way of statutory declaration, that the following steps have been taken:
 - during the first year, all relevant Village personnel completed those parts of "Best and Fairest", or an alternative program acceptable to the Commission, appropriate to the nature of Village's business;
 - all relevant Village personnel who have not completed "Best and Fairest", or an alternative program acceptable to the Commission, prior to commencement of that year, have done so during that year;
 - that all personnel have been made aware or reminded that it is Village's corporate policy to comply with all provisions of the Act and that Mr Kirk Senior is the Village's Trade Practices Compliance Officer.

A certification is to be forwarded to the Commission within 30 days of the end of each of the three years.

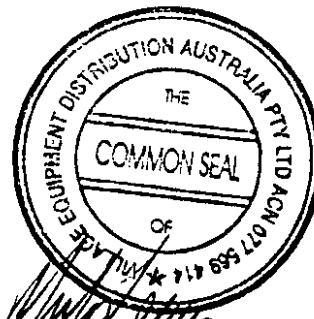
ACKNOWLEDGMENTS

Village acknowledges that the Commission will make this Undertaking available for public inspection.

Village further acknowledges that the Commission will from time to time publish and publicly refer to this Undertaking at its discretion.

Village further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any person arising from the alleged conduct.

IN WITNESS OF THESE UNDERTAKINGS AND ITS AGREEMENT THE COMMON SEAL OF VILLAGE EQUIPMENT DISTRIBUTION AUSTRALIA PTY LTD ACN 077 569 414 was hereto affixed by authority of the Board of Directors in the presence of:



[Handwritten signature]
.....
Director / Secretary

[Handwritten signature]
.....
Director

This 24th day of JULY 1997

**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974.**

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(Professor Allan Fels)
Chairman

This day of 1997