

TRADE PRACTICES ACT 1974

WITHDRAWAL OF UNDERTAKING GIVEN UNDER SECTION 87B

This instrument will, upon acceptance by the Australian Competition and Consumer Commission ("Commission"), effect the withdrawal by TNT Australia Pty Limited (ACN 000 495 296) ("TNT"), with the consent of the Commission, of the undertaking given to the Commission by TNT on 26 August 1997 under section 87B of the *Trade Practices Act 1974* and accepted by the Commission on 26 August 1997.

EXECUTED on the *6th* day of *November* ~~October~~ 1998

The Common Seal of TNT Australia Pty Limited (ACN 000 495 296) was affixed in accordance with its Articles of Association:)
)
)



[Signature]
Director COLIN CHARLES GREEN

[Signature]
Secretary LISA GAI MARTIN

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

.....
Chairperson

Dated: ~~October 1998~~ *AK*

July 21, 1999
[Signature]

18 August 1997

Katrina Close
Trade Practices Unit
Australian Government Solicitor
PO BOX 43
BELCONNEN ACT 2616

RECEIVED
21 AUG 1997
TRADE PRACTICES
UNIT

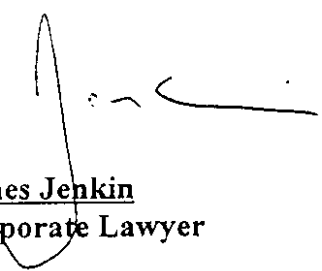
Dear Katrina

PORT OF HASTINGS

I **enclose** Section 87B undertakings (in triplicate) which have been executed by TNT Australia Pty Limited.

I look forward to receiving TNT's copy of the fully executed undertakings in due course.

Yours sincerely


James Jenkin
Corporate Lawyer
encl

TRADE PRACTICES ACT 1974 - SECTION 87B
UNDERTAKING

PERSON GIVING UNDERTAKING

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by TNT Australia Pty Limited (ACN 000 495 269) ("TNT") under section 87B of the *Trade Practices Act 1974* ("the Act").

BACKGROUND

In discussions and communications between representatives of the Commission and representatives of TNT in April 1997 in relation to TNT's proposal for management of the business of the Port of Hastings, Victoria, the Commission expressed concerns that the proposed management of the port business by TNT may have the effect of substantially lessening competition in a relevant market, in contravention of section 50 of the Act.

The State Government of Victoria, the Port of Melbourne Authority and TNT have executed a Port Management Agreement ("the Agreement"), with a commencement of 1 July 1997, pursuant to which TNT is appointed Port Operator responsible for the management of the port business conducted at the Port of Hastings.

TNT has agreed to give the undertaking contained herein to the Commission under section 87B of the Act to address the Commission's concerns in relation to TNT's management proposal.

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

COMMENCEMENT OF UNDERTAKING

1. This undertaking comes into effect when:

- (a) the undertaking is executed by TNT; and
- (b) the undertaking so executed is accepted by the Commission,

provided that if the Agreement is rescinded or terminated, and TNT provides the Commission with copies of the rescission or termination documentation as the case may be, this undertaking shall be of no force and effect and TNT shall be released from this undertaking as from the date of such rescission or termination.

OBLIGATIONS UNDER UNDERTAKING

2. TNT will not hinder or prevent any land transport operator or freight forwarding operator from having access to the Port of Hastings and its associated facilities, for the purposes of its business, and if requested to do so, and where it is reasonably able to do so, to the extent that it has power to do so, TNT will give access to any such operators, for the purposes of the operator's business, 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 TNT as Port Operator of the Port of Hastings and its associated facilities (in this clause together referred to as "the Hastings facilities");
- (b) the public interest, including the public interest in having competitive markets;

- (c) the costs to TNT of providing access, including any costs of extending the Hastings facilities but not costs associated with losses arising from increased competition in upstream or downstream markets;
 - (d) the economic value to TNT of any additional investment that the person seeking access, or TNT has agreed to undertake;
 - (e) the interests of all persons holding contracts for use of the Hastings facilities;
 - (f) contractual obligations of TNT or other persons (or all of them) already using the Hastings facilities;
 - (g) the operational and technical requirements necessary for the safe and reliable operation of the Hastings facilities;
 - (h) the economically efficient operation of the Hastings facilities; and
 - (i) the legitimate business interests of the person seeking access.
3. TNT will not hinder or prevent any operator of a business (other than a land transport operator or freight forwarding operator referred to in clause 2 above), which uses or proposes to use the Port of Hastings for the movement by sea of goods or produce, or which provides or proposes to provide services at the Port of Hastings, for the purposes of the operator's business, from having access to the Hastings facilities and if requested to do so, and where it is reasonably able to do so, to the extent that it has power to do so, TNT will give access to any such operators, for the purposes of the operator's business, 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 TNT as Port Operator of the Port of Hastings and its associated facilities (in this clause together referred to as “the Hastings facilities”);
- (b) the public interest, including the public interest in having competitive markets;
- (c) the costs to TNT of providing access, including any costs of extending the Hastings facilities but not costs associated with losses arising from increased competition in upstream or downstream markets;
- (d) the economic value to TNT of any additional investment that the person seeking access, or TNT has agreed to undertake;
- (e) the interests of all persons holding contracts for use of the Hastings facilities;
- (f) contractual obligations of TNT or other persons (or all of them) already using the Hastings facilities;
- (g) the operational and technical requirements necessary for the safe and reliable operation of the Hastings facilities;
- (h) the economically efficient operation of the Hastings facilities; and
- (i) the legitimate business interests of the person seeking access.

4. TNT will not conduct, or acquire an interest in, any stevedoring, towage, ship operating or provided business which operates out of the Port of Hastings, or which uses the facilities of the Port of Hastings, without first giving the Commission reasonable advance notice of its intention to conduct any such business or acquire any such interest.

5. TNT will not conduct any business which uses the Port of Hastings for the movement by sea of goods or produce produced by that business, or which provides services at the Port of Hastings, for the purposes of its business, (other than the land transport, transport logistics and freight forwarding businesses currently conducted by any of the companies in the TNT group of companies) where, in the case of TNT acquiring an existing business, the actual turnover of that business in the year immediately preceding such acquisition was greater than \$500,000 and, in the case of TNT commencing a new business, the projected turnover of that business for its first year of operation is greater than \$500,000, and TNT will not acquire an interest in any such business which gives it control of that business or entitles it to participate in more than 10% of the capital or profits of that business, unless TNT first gives the Commission reasonable advance notice of its intention to conduct that business or acquire that interest.

6. TNT will not acquire an ownership interest in any other port in any of the States of South Australia, Victoria and New South Wales, or acquire an interest in any of the facilities at any such port or acquire, or engage in, any business which provides services at any such port (other than the operation of the land transport, transport logistics and freight forwarding businesses currently conducted by any

of the companies in the TNT group of companies) where, in the case of TNT acquiring an existing business, the actual turnover of that business in the year immediately preceding such acquisition was greater than \$500,000 and, in the case of TNT commencing a new business, the projected turnover of that business for its first year of operation is greater than \$500,000, without first giving the Commission reasonable advance notice of its intention to acquire any such interest or engage in any such business in such other port, as the case may be.

7. TNT will promptly notify the Commission of the details of any proposal whereby:
 - (a) TNT ceases to be the operator of the Port of Hastings;
 - (b) any other person or persons is or are to be appointed either solely or jointly with any other person or persons as operator of the Port of Hastings.

8. TNT will promptly notify the Commission of the details of any proposal to change the arrangements for the operation of the Port of Hastings, which operation is currently effected pursuant to the Agreement between the State Government of Victoria, the Port of Melbourne Authority and TNT.

9. TNT will ensure that any related company controlled by TNT will comply with the terms of clauses 2, 3, 4, 5, 6, 7, and 8 above as if that related company was expressly named.

- 10. TNT notes that the Commission may make public the terms of this undertaking, provided that the Commission will provide to TNT a copy of any proposed announcement no less than 2 business days before the release of that announcement.

EXECUTED on the *26* day of August 1997

The Common Seal of)
 TNT AUSTRALIA PTY LIMITED)
 was affixed in accordance)
 with its Articles of Association)



[Handwritten Signature]
 Director

[Handwritten Signature]
 Secretary

COLIN CHARLES GREEN
 Print name

ROBERT DAVID JEREMY
 Print name

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

[Handwritten Signature]
 Chairperson

Dated *26* August 1997