



TRADE PRACTICES ACT 1974

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN PURSUANT TO SECTION 87B**

by

Austereo Pty Ltd (ACN 007 914 641) ("Austereo")

PERSON GIVING UNDERTAKING

This Undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Austereo Pty Ltd ("**Austereo**") under Section 87B of the *Trade Practices Act 1974* ("**the Act**").

BACKGROUND

Austereo currently owns through its wholly owned subsidiary New Broadcasting Pty Ltd (ACN 008 912 203) ("**New Broadcasting**") the commercial radio station Triple M Perth ("**Triple M**") which broadcasts in the Perth region.

Austereo proposes to purchase directly or indirectly through one or more wholly owned subsidiary companies the radio stations PMFM and 94.5FM which also operate in the Perth region ("**the proposed acquisition**") and to subsequently sell Triple M.

In discussions and communications between representatives of the Commission and representatives of Austereo in July and August 1997 in relation to the proposed acquisition, the Commission expressed concerns that the proposed acquisition of the Perth commercial radio stations may have the effect of substantially lessening competition in a relevant market, in contravention of Section 50 of the Act and Austereo proposed that, following completion of the proposed acquisition, commercial radio station Triple M would be sold to an independent third party.

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Austereo 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 the proposed acquisition.

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

INTERPRETATION

Associated body corporate has the meaning given to that expression in Part 1.2 of Division 2 of the Corporations Law.

Completion Date means the date of completion of the contracts for the acquisition by Austereo or its related companies of the business and assets of the radio stations PMFM and 94.5FM which is currently contemplated to be 1 September 1997.

Related body corporate has the meaning given to that expression by Section 4A of the Act.

Syndicated Program means a substantially complete radio program supplied to the operator of a radio station ("**Operator**") in either a pre-recorded or live audio feed format under an agreement for the supply of programs where the conditions of the agreement relate only to the program so supplied or its promotion and the Operator promotes the program under its own call sign.

The singular includes the plural and vice versa.

A reference to a person includes a body corporate.

A reference to the doing of or refraining to do anything directly or indirectly by a body corporate shall include the doing of or refraining to do that thing by a body corporate which is a related body corporate of the body corporate referred to.

Where these undertakings require Austereo to do or to refrain from doing a certain thing directly or indirectly, Austereo shall take all reasonable steps to procure that a relevant

body corporate shall do or refrain from doing that thing so as to ensure that thing is done or not done, as the case may be.

COMMENCEMENT OF UNDERTAKING

1. This undertaking comes into effect in the event that the proposed acquisition proceeds and, if so, when:
 - (a) the undertaking is executed by Austereo; and
 - (b) the undertaking so executed is accepted by the Commission.

OBLIGATIONS UNDER UNDERTAKING

2. Subject to completion of the purchase by Austereo or its wholly owned subsidiaries of the commercial radio stations PMFM and 94.5FM, Austereo will cause directly or indirectly the sale, within the period ending six months from the Completion Date ("**the Divestiture Period**"), on an arm's length basis, of radio station Triple M including the business of radio broadcasting carried on under the radio station name Triple M (but excluding any rights in the name of Triple M) and the relevant commercial radio broadcasting licence to a company that is not a related body corporate or an associated body corporate of Austereo.
3. If at the end of the Divestiture Period radio station Triple M has not been sold Austereo will cause directly or indirectly the radio station to be put up for sale within 2 months of the expiration of the Divestiture Period by public tender with no reserve and radio station Triple M will be sold as a result of the public tender to a person which is not Austereo or a related body corporate or an associated body corporate of Austereo.
4. Pending the sale of radio station Triple M in accordance with **Clauses 2** or **3** above (as the case may be), Austereo will take all steps necessary to ensure that, so long as radio station Triple M is owned or controlled by Austereo, or a body corporate controlled by Austereo, it is managed and operated in such a way that:
 - (a) the business of radio station Triple M is managed in its normal and in a proper and efficient manner;
 - (b) New Broadcasting uses all reasonable endeavours to preserve the goodwill of radio station Triple M;

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- (c) the business of radio station Triple M will remain free of bank or other indebtedness or liabilities outside the ordinary course of business;
 - (d) no action is taken by way of the sale or encumbrance of assets, the retrenchment of staff or similar measures which have the effect of causing damage to the viability of the business of radio station Triple M;
 - (e) no action is taken which is likely to diminish the viability of the business of radio station Triple M as a competitive commercial radio broadcaster in the Perth region.
5. Pending the sale of radio station Triple M, Austereo shall at all reasonable times provide the Commission with such information as the Commission may require in relation to:
- (a) the management and operation of radio station Triple M; and
 - (b) arrangements for the sale of radio station Triple M.
6. Austereo will provide the Commission with :
- (a) the name and address of each prospective purchaser of Triple M who has so notified Austereo as soon as practicable after Austereo is so notified; and
 - (b) if requested by the Commission, as soon as practicable after any such request, a copy of any proposed agreement for the sale of Triple M furnished to or by a prospective purchaser.
7. While Austereo continues to control both PMFM and 94.5FM, Austereo will not:
- (a) have any ongoing involvement in the day to day running of Triple M after it has been sold as required by this undertaking;
 - (b) enter into any agreement which allows the new owner and/or operator of Triple M or the owner and/or operator of any other radio station in the Perth licence area (other than a related company of Austereo), to use the "Triple M" or "MMM" call sign and/or trade mark; or
 - (c) enter into any agreement with the new owner of Triple M to provide such services as sales representation, programming and promotion
- provided that it is acknowledged that Austereo and its related entities shall not be precluded from advertising on Triple M or from providing Syndicated Programs to Triple M on a commercial arm's length basis.

8. Austereo will require the purchaser of Triple M to immediately change the call sign "Triple M" as a condition of the sale of Triple M.
9. Austereo will give the Commission not less than 14 days advance notice of any proposed change in circumstances regarding the matters referred to in **Clauses 7 and 8** and will not proceed to implement any such change without the prior agreement in writing of the Commission.
10. Austereo will ensure that any related company will comply with the terms of **Clauses 2, 3, 4, 5, 6, 7, 8 and 9** above as if that related company was expressly named.
11. Austereo notes that the Commission may make public the terms of this undertaking.
12. If at any time following the sale of radio station Triple M pursuant to **Clauses 2 or 3** above (as the case may be) and while Austereo continues to control both PMFM and 94.5FM, Austereo, or a company related to it proposes to acquire an interest in radio station Triple M or any other radio station in the Perth licence area, Austereo, will give the Commission 7 days advance notice of the entry into any agreement for such an acquisition.
13. If at any time while Austereo continues to control both PMFM and 94.5FM, Austereo, or a company related to it, proposes to enter into an agreement relating to such services as licensing of trade marks and/or call signs, sales representation, programming (other than in relation to Syndicated Programs) or promotion with any other radio station in the Perth licence area (other than a radio station owned or operated by a company related to Austereo), Austereo will give the Commission 14 days advance notice of the entry into such an agreement.
14. If at any time while Austereo continues to control both PMFM and 94.5FM, Austereo, or a company related to it, enters into an agreement for the supply of Syndicated Programs to any radio station in the Perth licence area (other than a radio station owned or operated by a company related to Austereo), Austereo will,

upon the request of the Commission, as soon as practicable, provide to the Commission details of the Syndicated Programs so supplied and any agreements relating to such Syndicated Programs which are so supplied.

EXECUTED on the 27th day of August 1997.

THE COMMON SEAL of **AUSTEREO PTY LTD** (ACN 007 914 641) was hereunto affixed in accordance with its Articles of Association in the presence of:



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Director

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Director/Secretary

ACCEPTED by the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**

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Chairperson

Dated: 28 August 1997