

TRADE PRACTICES ACT 1974**UNDERTAKING TO THE AUSTRALIAN
COMPETITION AND CONSUMER COMMISSION
GIVEN FOR THE PURPOSES OF SECTION 87B****BY****QUINSITE NOMINEES PTY LTD (CORPORATE
TRUSTEES FOR MODUPLAY WHICH FORMERLY
OPERATED UNDER THE NAME ALL PARKS
EQUIPMENT)****1. PURPOSE**

- 1.1 Quinsite Nominees Pty Ltd ACN 001 421 110, trading as Moduplay and formerly trading as All Parks Equipment, has engaged in conduct which has raised concerns under the competition provisions of the Trade Practices Act 1974 ("the Act"). The purpose of this undertaking is to ensure that Moduplay implements specific measures as well as a general program to ensure compliance with the Act.

2. PERSON GIVING THE UNDERTAKING

- 2.1 This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Quinsite Nominees Pty Ltd (Corporate Trustees for Moduplay Commercial Trustees) pursuant to section 87B of the Act.

3. BACKGROUND

- 3.1 Moduplay is primarily involved in the manufacture and supply of playground equipment to individuals, councils, schools and child care centres. Moduplay currently employs ten people, and its principal place of business is 17 Waverley Drive, UNANDERRA, NSW 2526.

- 3.2 During October, 1997, the Commission received a complaint alleging that Moduplay and Megatoy had formed and implemented an anti-competitive agreement, pursuant to which both companies would refuse to compete against each other for the supply of playground equipment in New South Wales. The allegation was made in response to comments made by representatives of Megatoy and Moduplay, following Blacktown City Council's request for PAL Systems, Moduplay and Megatoy to quote for the supply of equipment for reserves 14, 222 and 370 of ward 5, which includes the Mt Druitt catchment area. Further Commission inquiries revealed additional evidence in support of this allegation.
- 3.3 The Commission subsequently wrote to the relevant officers of both companies requesting a detailed response to the allegation. Both Moduplay and Megatoy confirmed that the companies had agreed that Megatoy would not quote in business against Moduplay in NSW. However, the directors of both companies insist that they were unaware that such an arrangement would potentially breach the provisions of the Trade Practices Act.
- 3.4 The Commission has formed the view that the agreement between Moduplay and Megatoy constitutes an anti-competitive market sharing arrangement, in contravention of section 45(2) of the Act.
- 3.5 Moduplay has assured the Commission that the arrangement between the companies has now ceased. As sign of contrition and its future good intentions, Moduplay has offered to donate playground equipment to the value of \$12,000 to Blacktown City Council and equipment to the value of \$2,000 to Hurstville Council. Moduplay has also offered to implement a program to ensure future compliance with the letter and spirit of the Act.
- 3.6 Moduplay has agreed to be bound by the following undertaking given to the Commission pursuant to section 87B of the Act.

4. COMMENCEMENT OF UNDERTAKING

- 4.1 This undertaking comes into effect when:
- (a) Executed by Moduplay;
 - (b) Being so executed, is accepted by the Commission.

5. UNDERTAKING FOR THE PURPOSE OF SECTION 87B

5.1 Moduplay will not enter any agreement, arrangement or understanding with any other supplier of playground equipment which contains an exclusionary provision, in breach of section 45 (2) of the Act.

5.2 Within three months of the commencement of this undertaking, Moduplay will develop for consideration by the Commission, a trade practices compliance program, incorporating the following characteristics:

(a) Aim:

to create a culture of compliance within Moduplay, and prevent so far as reasonably possible, any contravention of the Act by Moduplay, its directors, employees or agents.

(b) Policy:

the formal adoption, or re-affirmation, by Moduplay of a policy of strict compliance with both the letter and spirit of the Act within Moduplay and the adoption, or re-affirmation and enforcement of sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act.

(c) Compliance Infrastructure:

the appointment of an appropriately qualified named director as the Moduplay compliance officer with overall responsibility for trade practices compliance.

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

(e) Education:

development and implementation of an education program 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 trade practices problems for referral to the most appropriate person in the Moduplay compliance infrastructure;

(ii) persons with responsibility within the Moduplay compliance infrastructure can effectively carry out these responsibilities; and

(iii) the Moduplay Compliance Officer can address more complex trade practices issues and (if that person is not legally qualified and able to give the relevant advice), identify issues which require referral to Moduplay's solicitors.

(f) Moduplay will make whatever changes to the draft program that the Commission may reasonably require and will then prepare and submit to the Commission a trade practices compliance program which shall be a document comprising the draft program with all changes reasonably required by the Commission incorporated therein.

(g) Moduplay will implement the trade practices compliance program within three (3) months of the Commission advising of the changes it requires to the draft program and that the trade practices compliance program will remain in force for a minimum period of one (1) year from the commencement of this undertaking.

5.3 Moduplay undertakes to donate playground equipment to the value of \$12,000 to Blacktown Council and playground equipment valued at \$2,000 to Hurstville Council. Moduplay agrees to install the equipment it has offered to donate within three (3) months of receiving written advice from the Commission of both Council's acceptance of the equipment.

6. ACKNOWLEDGMENTS

6.1 Moduplay acknowledges that the Commission will make this undertaking available for public inspection.

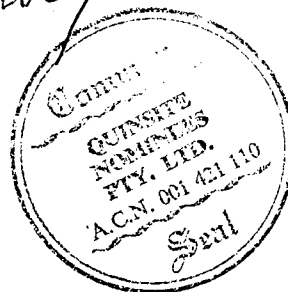
6.2 Moduplay further acknowledges that the Commission may from time to time publish and publicly refer to this undertaking at its discretion.

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

6.4 Moduplay further acknowledges that reports arising from the undertakings referred to in paragraph (2) above, will be held with this on the Commission public register.

IN WITNESS of these undertakings and its agreement the common seal of Quinsite Nominees Pty Ltd (ACN 001 421 110) was hereunto fixed by authority of the Board of Directors in the presence of

Basil B. Quinn Secretary Noel R. Pursey Director



This 20th day of October 1998

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

Alan Fels

Acting

~~(Professor Alan Fels)~~
Chairman

This 30th day of October 1998