



TRADE PRACTICES ACT 1974 - SECTION 87B UNDERTAKING

PERSON GIVING UNDERTAKING

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by John Barney ("Barney"); Brian Geoffrey Davies ("Davies"); David Wellmand Douyere ("Douyere") and David William Kemp ("Kemp") under section 87B of the *Trade Practices Act 1974* ("the Act").

BACKGROUND

On 29 September 1999 the Commission instituted Federal Court proceedings Q239 of 1999 against fire protection companies and individuals in Queensland including The Asset Group (Brisbane) Pty Ltd ("Asset"), and its then directors and shareholders Barney, Davies, Douyere and Kemp ("the proceedings"). The proceedings involve price-fixing and market sharing conduct in the Queensland fire protection industry, in breach of sections 45(2)(a)(ii) and 45(2)(b)(ii) of the Act. The conduct is set out the statement of claim filed in the proceedings.

As part of the resolution of the proceedings, Barney, Davies, Douyere and Kemp have agreed to provide to the Commission the undertaking contained herein that they will participate in trade practices compliance training program, to ensure, so far as reasonably possible, they are not involved in further contraventions of Part IV of the Act.

Barney, Davies, Douyere and Kemp have further undertaken to use their best endeavours to operate Asset in such a manner as to ensure that the company is able to meet its obligations under the orders to be recommended to the Court.

Barney, Davies, Douyere and Kemp have also undertaken to personally guarantee the payments by Asset of the pecuniary penalties and costs in accordance with the orders to be recommended to the Court.

The Commission has agreed to accept the undertaking from Barney, Davies, Douyere and Kemp under section 87B of the Act.

Commencement of Undertaking

1. This undertaking comes into effect when:
 - (a) the undertaking is executed by Barney, Davies, Douyere and Kemp; and
 - (b) the undertaking so executed is accepted by the Commission.

Undertakings

2. Each of Barney, Davies, Douyere and Kemp undertakes that:
 - (a) he will, within 30 days of the acceptance of this undertaking, nominate to the Commission for its approval a form of trade practices compliance training which he will undertake at his own expense, such training to deal, at a minimum, with the responsibilities of small businesses under Part IV of the Act, and to commence not later than 90 days from the date of acceptance of this undertaking;
 - (b) he will, unless advised by the Commission within 21 days of his nomination that the nominated training is not acceptable, participate in the nominated trade practices compliance training within 90 days of the date of this undertaking; and
 - (c) he will, if advised by the Commission that the nominated training is not acceptable, participate in trade practices compliance training nominated by the Commission, within 90 days of such notification.
3. Each of Barney, Davies, Douyere and Kemp further undertakes that:
 - (a) they will use their best endeavours to ensure that Asset is able, and at all times remains able, to comply with Asset's obligations to pay pecuniary penalties and costs by the due dates therefor under the orders agreed between Asset, the individuals and the Commission, and to be recommended to the Court;
 - (b) should Asset fail to meet any of its obligations to pay pecuniary penalties by the due dates as referred to above, or as otherwise ordered by the Court, they will personally pay to the Commonwealth of Australia, on behalf of Asset, the amount of pecuniary penalty remaining unpaid;

- (c) should Asset fail to meet its obligations to pay the Commission's costs in the agreed amount by the due date as referred to above, or as otherwise ordered by the Court, they will personally pay to the Commission, on behalf of Asset, the amount of agreed costs remaining unpaid.

Acknowledgments

4. Barney, Davies, Douyere and Kemp acknowledge and accept that:

- (a) the Commission may make this undertaking available for public inspection including by placing it on a register, publishing it and allowing third parties to publish it, and that the Commission may from time to time publicly refer to this undertaking, including by way of media release;
- (b) this undertaking in no way derogates from the rights and remedies which may be available to any other person arising from the alleged conduct.

SIGNED on the 4th day of October 2000.

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JOHN BARNEY

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WITNESS

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BRIAN GEOFFREY DAVIES
Director, The Asset Group Brisbane Pty Ltd

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WITNESS

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DAVID WELLMAND DOUYERE
Director, The Asset Group Brisbane Pty Ltd

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WITNESS

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DAVID WILLIAM KEMP
Director, The Asset Group Brisbane Pty Ltd

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WITNESS

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

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Chairman

Dated: 12/10/2000