



TRADE PRACTICES ACT 1974 - SECTION 87B

UNDERTAKING

PERSON GIVING UNDERTAKING

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Independent Fire Sprinklers Pty Ltd, ACN 009 976 854 ("IFS"), Independent Fire Alarms Pty Ltd, ACN 009 705 720 ("IFA"), Gordon Edmund Day ("Day") and Allan Geoffrey Murrell ("Murrell"), 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 IFS, its subsidiary company IFA, and its directors Day and Murrell ("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, IFS, IFA, Day and Murrell have agreed to provide to the Commission the undertaking contained herein as to the establishment and maintenance of a trade practices compliance training program, to ensure, so far as reasonably possible, IFS, IFA and their officers and employees are not involved in further contraventions of Part IV of the Act. Day and Murrell have also undertaken to use their best endeavours to operate IFS and IFA in such a manner as to ensure that those companies are able to meet their respective obligations under the orders to be recommended to the Court.

Both Day and Murrell are considering retirement, and resignation as directors of IFS and IFA, prior to the expiry of the undertakings to be given herein. They have accordingly given additional undertakings to ensure as best they can compliance with the matters required by these undertakings should they ceased to be involved in the control of the companies.

IFS and IFA are also considering restructuring or other material changes to their ownership or operations such that either or both companies may cease to exist prior to

the expiry of the undertakings or may otherwise be unable to comply with them. They have accordingly given undertakings not to do so unless prior arrangements satisfactory to the Commission have been made to ensure compliance with these undertakings and payment of all penalties as if such restructuring or other changes had not occurred.

The Commission has agreed to accept the undertaking from IFS, IFA, Day and Murrell under section 87B of the Act.

COMMENCEMENT OF UNDERTAKING

1. This undertaking comes into effect when:
 - (a) the undertaking is executed by IFS, IFA, Day and Murrell; and
 - (b) the undertaking so executed is accepted by the Commission.

UNDERTAKINGS

2. Each of IFS and IFA undertakes that:
 - (a) IFS will implement a trade practices compliance program for staff that is in accordance with the Australian Standard for Compliance Programs AS3806-1998, with particular regard to Part IV of the Act (“the Program”).
 - (b) The Program will aim to create a culture of compliance within IFS and IFA and to prevent, so far as is reasonably possible, any contraventions of the Act by IFS or IFA, or their officers, employees or agents.
 - (c) IFS will appoint an appropriately qualified senior officer as the compliance officer with overall responsibility for trade practices compliance.
 - (d) The Program will cover all officers, employees and agents of IFS and IFA whose duties could result in their being concerned in conduct that might breach the Act.
 - (e) The Program will include:
 - (i) a timetable for the Program;
 - (ii) a compliance manual, a copy of which will be distributed to each staff member;

- (iii) operating procedures, compliance registers and audit documents;
 - (iv) education and training;
 - (v) effective monitoring;
 - (vi) a reporting system;
 - (vii) record keeping, including a report on the implementation and maintenance of the Program to be given to the Commission one year from the date of execution of this undertaking.
- (f) IFS and IFA will submit a draft of the Program to the Commission within 30 days of the date of this undertaking.
- (g) IFS and IFA will incorporate into the Program, and implement as part of the Program, any reasonable changes to the draft program that are recommended by the ACCC in writing.
- (h) IFS and IFA will implement the Program within 30 days of the ACCC advising whether any changes are required to the draft program, as referred to in subparagraph (g) above.
- (i) The Program will remain in force for a minimum period of three years from the date of its implementation.

3. Day undertakes that:

- (a) while he remains a director of IFS and IFA (or either of them), he will use his best endeavours to ensure that IFS and IFA (as applicable) comply in all respects with the undertakings they have given herein;
- (b) if he ceases to be a director of IFS or IFA he shall, until all pecuniary penalties ordered by the Court to be paid by either IFS or IFA have been paid:
 - (i) take all steps necessary to ensure that he or his legal advisers are aware of all directors appointed from time to time to either IFS or IFA;

- (ii) notify all such directors in writing of the terms of these undertakings within 14 days of their appointment;
- (iii) provide a copy of each such notification to the Commission within 7 days of the notification of the director concerned.

4. Murrell undertakes that:

- (a) while he remains a director of IFS, he will use his best endeavours to ensure that IFS complies in all respects with the undertakings it has given herein;
- (b) if he ceases to be a director of IFS, he will notify any incoming directors (if relevant) of the existence of this undertaking.

5. IFS, IFA and, for so long as they remain directors of either IFS or IFA, Day and Murrell, undertake that they will use their best endeavours not to take any step (including, without limitation, altering the means or methods by which either company conducts its business) nor enter into any transaction, arrangement or dealing (including, without limitation, the sale or transfer of the assets of either IFS or IFA, otherwise than in the ordinary course of business) by which either IFS or IFA becomes significantly less able to give full effect to these undertakings or to meet all pecuniary penalty payments on the date ordered by the Court in these proceedings, unless, prior to taking such step or entering into such transaction, arrangement or dealing:

- (a) they provide full details of the proposed step or transaction, arrangement or dealing to the Commission; and
- (b) they and any other person or entities which are proposed to or may become responsible for, or have the benefit of, their current operations or are proposed to have the power or ability to give effect to these undertakings, enter into such written agreements, undertakings or arrangements with the Commission as will ensure, to the reasonable satisfaction of the Commission, that the undertakings hereby given will be given full and proper effect and that all corporate penalties ordered by the Court will be paid.

- 6. IFS, IFA, Day and Murrell note that the Commission may make public the terms of this undertaking.
- 7. IFS, IFA, Day and Murrell acknowledge that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

EXECUTED on the 8TH day of June 2000.

The Common Seal of **INDEPENDENT FIRE SPRINKLERS)
PTY LTD** was affixed in accordance with its Articles of)
Association in the presence of:



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Signature of authorised person

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Signature of authorised person

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Office held

.....
Office held

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Name of authorised person

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Name of authorised person

The Common Seal of **INDEPENDENT FIRE ALARMS)
PTY LTD** was affixed in accordance with its Articles of)
Association in the presence of:



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Signature of authorised person

.....
Signature of authorised person

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Office held

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Office held

.....
Name of authorised person

.....
Name of authorised person

AND SIGNED BY

.....
ALLAN GEOFFREY MURRELL

.....
GORDON EDMUND DAY

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

.....
Chairman

Dated:.....2000

25 Jan 2000