

TRADE PRACTICES ACT 1974

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

by Australian Pharmaceutical Industries Limited (ACN 000 004 320)

BACKGROUND

On 7 October, 1999 API requested the Australian Competition and Consumer Commission ("Commission") to give API an informal clearance for its proposed acquisition of the pharmaceutical wholesaling and manufacturing operations of Washington H Soul Pattinson and Company Limited ("Soul Pattinson"). On 16 November 1999, API publicly announced its intention to make an offer to acquire the pharmaceutical wholesaling and manufacturing operations of Soul Pattinson.

The Commission undertook public market enquiries in relation to the proposed acquisition in November and December 1999. On the basis of its market enquiries the Commission expressed concerns that the proposed acquisition of the pharmaceutical wholesaling and manufacturing operations of Soul Pattinson might substantially lessen competition in the supply of pharmaceutical products and the supply of pharmaceutical wholesaling services in New South Wales if pharmacies in New South Wales were not permitted flexibility in acquiring pharmaceutical products and pharmaceutical services from a preferred wholesaler. By letter dated 21 December 1999 the Commission informed API that the Commission did not propose to intervene in the proposed acquisition pursuant to section 50 of the *Trade Practices Act 1974* (Cth) provided that API gave an undertaking to the Commission on the terms set out in this document.

DEFINITIONS

"Act" means the *Trade Practices Act 1974* (Cth).

"API" means Australian Pharmaceutical Industries Limited (ACN 000 004 320).

"commencement date" means the date on which this undertaking comes into effect as specified

in clause 1 below.

"Commission" means the Australian Competition and Consumer Commission.

"Existing Licence Agreement" means a licence agreement between Soul Pattinson and the Soul Pattinson member in force at the commencement date of this Undertaking.

"information technology systems" means Portable Data Entry (PDE), two-way PDE or point of sale systems, or other electronic ordering systems however described.

"Licence Agreement" means an agreement between API and a pharmacist which provides for the pharmacist to carry on an independent retail pharmacy business under the Soul Pattinson banner in accordance with the terms of that agreement substantially in the form of Confidential Attachment 1 to this Undertaking.

"pharmaceutical products" means ethical pharmaceuticals (including PBS and non-PBS ethical products) and OTC, general health and beauty products (including for example cosmetics, nappies, paper products, healthcare equipment and photographic products).

"pharmaceutical services" means electronic ordering, wholesaling and retail marketing support services.

"Soul Pattinson" means Washington H Soul Pattinson and Company Limited (ACN 000 002 728).

"Soul Pattinson member" means a pharmacist located in New South Wales that is a party to an Existing Licence Agreement or is or becomes a party to a Licence Agreement.

The singular includes the plural and vice versa.

COMMENCEMENT OF UNDERTAKING

1. This undertaking comes into effect when:

- (a) the undertaking is executed by API; and
- (b) the undertaking so executed is accepted by the Commission.

UNDERTAKING

2. API undertakes to the Commission under section 87B of the Act that:
- (a) subject to paragraph (b) below, API will not hinder or prevent any pharmacy in New South Wales to whom it supplies pharmaceutical goods and services from obtaining supplies of pharmaceutical goods and services from whatever source it desires;
 - (b) API may enter into or give effect to a licence agreement with pharmacies that currently, or seek during the period of this Undertaking, by agreement with API to trade as a Soul Pattinson pharmacy substantially in the form of the Licence Agreement, which, in particular, provides for the parties to terminate the agreement without reason on 30 days' notice;
 - (b) API will not recommend, promote, offer to supply or supply to Soul Pattinson members any information technology system the use of which would have the effect, or be likely to have the effect, of hindering or preventing Soul Pattinson members from acquiring pharmaceutical products or pharmaceutical services from their preferred supplier; and
 - (c) API will not recommend, promote or effect any alterations or modifications to the information technology systems currently installed in Soul Pattinson members' pharmacies that would have the effect, or be likely to have the effect, of hindering or preventing Soul Pattinson members from acquiring pharmaceutical products or pharmaceutical services from their preferred supplier.

EXPIRY OF UNDERTAKING

3. This Undertaking ceases to have effect three (3) years after the commencement date.

ACKNOWLEDGMENTS

4. The Commission acknowledges that API proposes to rely on the terms of the Licence Agreement in its supply of pharmaceutical products or services to Soul Pattinson members who execute Licence Agreements.

5. The Commission acknowledges that:

- (a) Soul Pattinson members have entered into Existing Licence Agreements with Soul Pattinson prior to the date of this Undertaking;
- (b) API will request but cannot require those members to each enter into a Licence Agreement as soon as practicable following completion of the acquisition referred to in this Undertaking;
- (c) in cases where:
 - (i) pharmacies decline to enter a Licence Agreement; or
 - (ii) for an interim period before the parties execute the Licence Agreement,

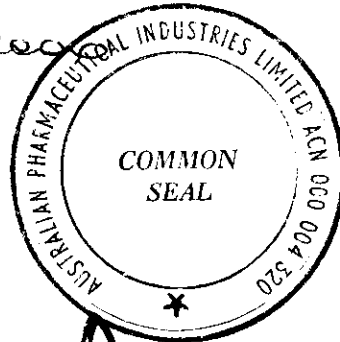
API shall give effect to and rely on the terms of any applicable Existing Licence Agreement in its supply of pharmaceutical products or services to such pharmacies.

- (d) in cases where pharmacies do not wish to continue to be Soul Pattinson members, API will permit those members to terminate their Existing Licence Agreement in accordance with their terms as though API was a party to those Agreements in place of Soul Pattinson and will ensure that its contractual arrangements with Soul Pattinson permit API to do so.

6. API acknowledges that the Commission may make this Undertaking available for public inspection.
7. API further acknowledges that the Commission from may time to time publish and publicly refer to this Undertaking at its discretion.

EXECUTED on 14 March 2000

THE COMMON SEAL of
 AUSTRALIAN PHARMACEUTICAL
 INDUSTRIES LIMITED (ACN 000 004
 320) was hereto affixed by authority of the
 Board of Directors in the presence of:



[Handwritten signature]

 Secretary

[Handwritten signature]

 Director

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

[Handwritten signature]

 (Professor Allan Fels)
 Chairperson

Dated: 16 March 2000