

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 Franklin Preece; Roy Ernest Tesch; Denis James Brett and Nigel Stephen Rehbock (collectively "the Directors") 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 Trident Fire Protection Pty Ltd ("Trident"), and its directors and shareholders Messrs Preece, Tesch, Brett and Rehbock ("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, the Directors have agreed to provide to the Commission the undertaking contained herein that they will participate in trade practices compliance training to ensure, so far as reasonably possible, they are not involved in further contraventions of Part IV of the Act.

Trident's capacity to pay the penalties out of its own funds has been reduced because of the redistribution of its assets by the directors since June 1997, and the fact that Trident has ceased contracting new business. In recognition of this, the Directors have each individually undertaken to personally guarantee the payment by Trident of the pecuniary penalty in accordance with the orders to be recommended to the Court, to a maximum of \$75,000 each.

The Directors have further undertaken to use their best endeavours to operate Trident and its related companies, and to deal with the remaining assets of Trident and related companies, in such a manner as to ensure that Trident is able to meet its obligations

under the orders to be recommended to the Court, and that the Directors are able to fulfil the guarantees individually offered herein.

The Commission has agreed to accept the undertaking from the Directors under section 87B of the Act.

Commencement of Undertaking:

1. This undertaking comes into effect when:
 - (a) the undertaking is executed by the Directors; and
 - (b) the undertaking so executed is accepted by the Commission.

Undertakings:

2. Each of the Directors 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 the Directors further undertakes that:

- (a) he will use his best endeavours to ensure that Trident is able, and at all times remains able, to comply with Trident's obligations to pay pecuniary penalties and costs by the due dates therefor under the orders agreed between Trident, the Directors, and the Commission, and to be recommended to the Court;
- (b) should Trident 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, he will personally pay to the Commonwealth of Australia, on behalf of Trident, the amount of pecuniary penalty remaining unpaid, up to the amount of \$75,000 each;
- (c) he will use his best endeavours to ensure that the remaining assets of Trident and its related companies, including Trident Industries Pty Ltd, Fire Protection Systems Pty Ltd, and Trident Fire Systems Pty Ltd, are dealt with in such a manner as to ensure that Trident is able to meet its obligations under the orders to be recommended to the Court, and that the Directors are able to fulfil the guarantees individually offered above if and as required.


Acknowledgments:


4. Each of the Directors acknowledges and accepts 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.

Execution:

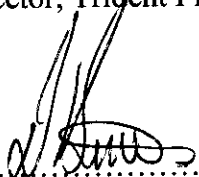
SIGNED on the 13th day of December 2000.



.....
JOHN FRANKLIN PREECE
Director, Trident Fire Protection Pty Ltd



.....
WITNESS Solicitor


.....
ROY ERNEST TESCH
Director, Trident Fire Protection Pty Ltd


.....
WITNESS Solicitor

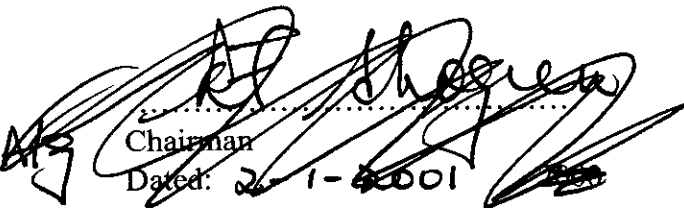

.....
DENIS JAMES BRETT
Director, Trident Fire Protection Pty Ltd



.....
WITNESS Solicitor


.....
NIGEL STEPHEN REHBOCK
Director, Trident Fire Protection Pty Ltd


.....
WITNESS Solicitor

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION


.....
Chairman
Dated: 2-1-2001

ACTING CHAIRMAN: 

DATE: 9-1-2001