

TRADE PRACTICES ACT 1974

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN FOR THE PURPOSE OF SECTION 87B

BY

ZUELLIG INSURANCE BROKERS LIMITED (ACN 052 336 900)

PERSON GIVING UNDERTAKING

1. This undertaking is given to the Australian Competition and Consumer Commission ('the Commission') by Zuellig Insurance Brokers Limited ('Zuellig') (ACN 052 336 900) of Level 39 Northpoint, 100 Miller Street, North Sydney in the State of New South Wales under section 87B of the *Trade Practices Act 1974* ('the Act').

BACKGROUND

2. Zuellig is a public company based in New South Wales that trades as Zuellig Insurance Brokers ('Zuellig'), insurance brokers, at Level 39 Northpoint, 100 Miller Street, North Sydney, New South Wales, 2060.
3. The Commission received a complaint that Zuellig has charged Goods and Services Tax (GST) on one-off public liability insurance cover for 20 April 2000.
4. On 30 May 2000 the Commission wrote to Zuellig to express its concerns that Zuellig had engaged in price exploitation in breach of section 75AU of the Act, making false or misleading representations with respect to price in breach of section 53(e) of the Act, and had engaged in misleading and deceptive conduct in breach of section 52 of the Act, if it had in fact charged GST on a supply made before 1 July 2000. The Commission sought information on the reason for and the quantum of GST levied on one off cover before 1 July 2000 and whether GST was charged for any other services supplied before 1 July 2000.

5. On 30 May 2000 Zuellig promptly responded to the Commission's letter, admitted that it attempted to charge the complainant GST on a supply made before 1 July 2000, as a result Zuellig's insurer Ansvar Australia Pty Ltd, calculating GST incorrectly. Zuellig indicated that once the complainant brought this to Zuellig's attention, Zuellig corrected the amount payable. The complainant did not proceed with the transaction. Zuellig advised that there was one instance of GST being charged on one-off cover supplied before 1 July 2000 on which GST was charged.
6. On 2 June 2000 the Commission wrote to Zuellig requesting that Zuellig provide the details of all customers charged GST for one-off cover before that date, and that Zuellig provide all invoices for one-off and multiple coverage supplied before 1 July 2000 in which reference is made to GST.
7. On 7 June 2000 Zuellig provided the Commission with copies of policy notices relating to multiple insurance cover spanning 1 July 2000. Each notice was for coverage of property in the Grafton area. Zuellig confirmed that it would work with Ansvar Australia Pty Ltd, the insurer in those instances, to ensure that any of the insured that were incorrectly charged GST would be refunded the GST amount of approximately \$50 or less.
8. On 28 June 2000 the Commission issued a section 155 Notice to Zuellig for documents for one-off and multiple/annual cover issued prior to 28 June 2000 on which GST has been levied or on which GST is mentioned.
9. On 13 July 2000 Zuellig provided information pursuant to the section 155 Notice, being the "Register for Zuellig for the period 1 July 1999 to 30 June 2000". The Commission could not ascertain with certainty, the amount for GST charged on each transaction because of the combination of amounts for underwriters fees and GST under the same field. However, the Commission is of the view that there are likely to be other instances of overcharging.

10. The Commission and Zuellig agreed to resolve this matter by the giving and acceptance of an undertaking in the terms contained herein.

COMMENCEMENT OF UNDERTAKING

11. This undertaking comes into effect when:
- a) the undertaking is executed by Zuellig; and
 - b) the Commission accepts the undertaking so executed.

UNDERTAKINGS

12. Zuellig gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*.

INJUNCTIVE UNDERTAKINGS

- A. Zuellig its agents and employees will not seek to collect an amount for GST on:
- one off insurance cover where the date of the cover is before 1 July 2000; or
 - the portion of the insurance coverage supplied before 1 July 2000 for annual or multiple insurance cover where the cover begins before 1 July 2000 and ends on or after 1 July 2000.

AUDITOR UNDERTAKINGS

- B. Zuellig will, within seven days of this undertaking being accepted by the Commission, retain an independent auditor, to be approved by the Commission, to review Zuellig's records in relation to:
- all one off insurance cover where the date of the cover is between 1 July 1999 and 30 June 2000, inclusive; and
 - all annual and multiple insurance cover where the period of the cover begins before 1 July 2000 and ends on or after 1 July 2000

to ascertain which customers, have, on the balance of probabilities:

- been incorrectly charged GST on one off insurance cover where the date of the cover is before 1 July 2000; or
 - overcharged GST on the portion of the insurance coverage supplied before 1 July 2000 for annual or multiple insurance cover where the cover begins before 1 July 2000 and ends on or after 1 July 2000.
- C. Zuellig will require the independent auditor to provide a report ('the auditor's report') to the Commission setting out the following:
- (i) the names and addresses of all customers from whom Zuellig incorrectly charged an amount for GST on:
 - one off insurance cover where the date of the cover is before 1 July 2000; or
 - the portion of the insurance coverage supplied before 1 July 2000 for annual or multiple insurance cover where the cover begins before 1 July 2000 and ends on or after 1 July 2000
 - (ii) the amounts which each customer identified in (C)(i) has been overcharged; and
 - (iii) identify reasons for the errors and make recommendations for avoiding similar errors in the future.
- D. Zuellig will require the auditor to provide in writing within seven days of the auditor being retained, an estimate of the time to complete the audit and prepare their report.

CONDUCT UNDERTAKINGS

- E. Zuellig will provide the Commission with a copy of the auditor's estimate of the time to complete the audit and prepare their report on the same day that Zuellig receives that estimate.

- F. Zuellig will advise the Commission in writing of any difficulties that are preventing the auditor from completing the auditor's report in a timely fashion.
- G. Zuellig will provide the Commission with a copy of the auditor's report within seven (7) days of Zuellig's receipt of the auditor's report.
- H. Zuellig will pay refunds to all customers identified in the auditor's report as being entitled to a refund within fourteen (14) days of Zuellig's receipt of the auditor's report.
- I. Zuellig will send a letter in the form, design and content of **Annexure A** with each refund paid in accordance with (H).

REPORTING UNDERTAKINGS

- J. Zuellig will provide to the Commission any information relevant to the performance of undertakings reasonably requested by the Commission.

TRADE PRACTICES COMPLIANCE PROGRAM

- K. Zuellig will implement a trade practices compliance program ('the Program') in accordance with **Annexure B**.

ACKNOWLEDGEMENTS

- 13. Zuellig acknowledges that the Commission will make this undertaking available for public inspection.
- 14. Zuellig further acknowledges that the Commission will, from time to time, publicly refer to this undertaking.
- 15. Zuellig acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct of Zuellig.
- 16. Zuellig further acknowledges that the information referred to in the Annexures and in the compliance program as in force from time to time will be held with this undertaking on the public register.

Signed on behalf of Zuellig by

IN WITNESS of these undertakings:
The COMMON SEAL of
Zuellig Insurance Brokers Limited
was affixed hereunto by authority of
the Board of Directors in the presence of:



[Signature]
.....
Secretary/Director
Name (Printed): Anthony J. Chapman

[Signature]
S. TOFLER
SECRETARY

This 1st day of March 2001

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

[Signature]
.....
Professor Allan Fels
Chairman

This 13 day of March 2001

Annexure A

<date>

<name>

<address>

Dear <addressee>

Re: Error in GST Charge

Enclosed is a refund cheque for \$# as your insurance cover included a GST amount which was calculated incorrectly.

We have been in discussion with the Australian Competition and Consumer Commission ('the Commission') because we incorrectly charged GST on some policies. The Commission has required us to appoint an auditor to determine which customers were overcharged GST and how much each customer was overcharged. We are paying refunds on the basis of the auditor's findings.

Zuellig will implement a trade practices compliance program specifically in relation to the New Tax System changes to ensure our conduct will not mislead consumers in the future.

Please contact <Zuellig contact> on <contact phone>, if you have any queries about this refund.

Yours sincerely

Annexure B

The Trade Practices Compliance Module ('the Module') to be undertaken by Zuellig will be implemented as follows:

General

- 1) Within two (2) months of the undertaking coming into effect, Zuellig will develop for consideration by the Commission, a Trade Practices compliance Module ('the draft module') to be incorporated in its staff manual.
- 2) Zuellig will make whatever changes to the draft module that the Commission may reasonably require.
- 3) Once the Commission has approved the module, Zuellig will, within one (1) month of receipt of the Commission's approval, implement the module to its staff at its own expense.
- 4) Zuellig will place responsibility for the implementation and effectiveness of the module with its Director.
- 5) Zuellig will appoint a senior officer as the Trade Practices Compliance Officer ('the Compliance Officer'). The Compliance Officer will be appointed at the time the module is implemented.

Complaints Handling

- 6) Zuellig will ensure that the Module incorporates an appropriate complaint handling mechanism.

Education

- 7) The Compliance Officer will ensure that staff receive a copy of the Trade Practices compliance Module and sign a commitment ('the Commitment') within one (1) month of receiving the module.
- 8) The Compliance Officer will ensure that staff have signed the Commitment and inform the Commission if the Commitments have not been signed by staff member/s.
- 9) The Commitment will indicate that the Trade Practices sections of the Module covering part V and VB have been read and understood by staff members.
- 10) The Module will indicate that the Compliance Officer will address any questions or concerns raised by staff in relation to the Trade Practices compliance Module or the Act in generally.

Review

- 11) Zuellig will ensure that an independent external auditor, with expertise in trade practices law, conducts an audit ('the audit') of awareness of the staff of Zuellig of the Module. The audit will be conducted between eleven (11) and twelve (12) months after the implementation of the module. The audit will identify deficiencies and make recommendations as to possible improvements to the Module and its distribution.
- 12) Zuellig will provide the Commission with a report of the deficiencies identified and the recommendations as to possible improvements made by the auditor.

Reporting

- 13) Zuellig will provide the Commission with the following within ten (10) working days of the implementation of the Module:
 - a) a copy of the Module; and
 - b) notice of the appointment of the Compliance Officer including name, position and contact details.
- 14) Zuellig will make changes to the module as reasonably requested by the Commission having considered the documentation referred to at paragraph twelve (12). Such changes are to be implemented within two (2) weeks of the Commission's request.

Duration

- 15) The Module will remain in effect for three (3) years following the undertaking coming into effect.