



TRADE PRACTICES ACT 1974 - SECTION 87B

**Undertaking to the Australian Competition and Consumer
Commission given by Woolworths Limited
(ACN 000 014 675)**

1. Background

- 1.1 Woolworths Limited (ACN 000 014 675) ("Woolworths"), operates a chain of supermarkets throughout Australia.
- 1.2 Dairy Farm, through its subsidiary Franklins, operates supermarkets in New South Wales, Queensland, South Australia, the Australian Capital Territory and Victoria under the Franklins banner.
- 1.3 Dairy Farm proposes to undertake a managed exit from its involvement in supermarkets in Australia and proposes to sell the Franklins stores, warehouses, distribution facilities and other related assets, which it does not close, to:
- (a) Independent Purchasers including Pick n' Pay and FAL either directly or through the Joint Independent Divestiture Alliance (JIDA) between Franklins and Metcash;
 - (b) Woolworths; and
 - (c) Coles

(The Proposed Managed Exit Plan).

- 1.4 The Commission acknowledges that the Proposed Managed Exit Plan will enable the sale of Franklins stores to Independent Purchasers. The Commission acknowledges that the sale of some Franklins stores to Woolworths is a necessary component of the Proposed Managed Exit Plan. The Commission has expressed concern that the acquisition of too substantial a number of the Franklins stores by Woolworths, where those stores might otherwise be acquired by Independent Purchasers, would be likely to substantially lessen competition in the Australian retail food and grocery industry, in breach of s 50 of the Act (the Commission's competition concerns).

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- 1.5 As part of the Proposed Managed Exit Plan and following consultation with the Commission, Woolworths proposes to acquire from Franklins the 67 Franklins stores set out in Schedule 1 (the "specified Franklins stores").
- 1.6 To address the Commission's competition concerns Woolworths has, without admission, provided these Undertakings in relation to its acquisition of the specified Franklins stores and certain other matters. The Commission notes that it has agreed to accept these Undertakings from Woolworths as a result of negotiations which are expected to result in the participation of Pick n' Pay and FAL who will compete with Woolworths in the Australian retail food and grocery industry.
- 1.7 On the basis of these Undertakings and undertakings given by Dairy Farm and Franklins, the Commission will not object to the proposed acquisition by Woolworths of the specified Franklins stores in accordance with these Undertakings.
- 1.8 Nothing in these Undertakings will limit :
- (a) the ability of Woolworths, subject to the Act, to acquire supermarkets not the subject of these Undertakings or to lease new sites for supermarkets in the future;
or M.C
 - (b) the Commission's right to take action against Woolworths for a breach of the Act arising from an acquisition of a supermarket other than as provided for in these Undertakings; *or A F*
 - (c) the Commission's right to take action against Woolworths for a breach of the Act arising from an acquisition of any supermarket the subject of these Undertakings, where information which was false or misleading in a material particular was provided to the Commission by Woolworths in the course of the negotiations leading to the execution and acceptance of these Undertakings.

2. Definitions

2.1 In these Undertakings, unless the context otherwise requires:

Act means the Trade Practices Act 1974 (Commonwealth) as amended from time to time.

Business Day means a day on which a branch of the Commonwealth Bank is open for business in the Australian Capital Territory.

Coles means Coles Myer Limited (ACN 004 089 936) and includes any Related Company.

Commission means the Australian Competition and Consumer Commission.

Dairy Farm means Dairy Farm Management Services Limited.

FAL means Foodland Associated Limited (ACN 008 667 650)

Force Majeure means any circumstance beyond the reasonable control of Woolworths or a Related Company and without limiting the generality of the foregoing, shall include:

- (a) any act of God, acts or omissions by any governmental authority;
- (b) war, revolution or any other act against public order or authority;
- (c) industrial action or trade disputes of whatever nature;
- (d) the requirements of any law (including fiduciary duties of directors and any stock exchange listing rule);
- (e) any act of a third person other than Woolworths or a Related Company.

Franklins means Franklins Limited (ACN 000 929 902) and includes any Related Company.

Franklins stores means supermarkets operated in New South Wales, Queensland, South Australia, the Australian Capital Territory and Victoria by Franklins at the date of the commencement of these Undertakings

Franklins Brands means the:

- (f) Franklins facia brands; and
- (g) No Frills and First Choice product brands,

controlled by Franklins

Franklins Avalon means the Franklins store number 2083 located at Cnr Barefoot Bvde & Avalon Pde, Avalon, New South Wales.

Franklins Burwood means the Franklins store number 2058 located at Burwood Plaza, Railway Pde, Burwood, New South Wales.

Franklins Marrickville means the Franklins store number 2164 located at Cnr Smidmore & Murray Streets, Marrickville, New South Wales.

Franklins Belrose means the Franklins store number 2056 located at Glenrose Centre, Glen Street, Belrose, New South Wales.

Franklins Leichhardt means the Franklins store number 2161 located at Cnr Flood & Marion Streets, Leichhardt, New South Wales.

Franklins Strathfield means the Franklins store number 2085 located at Strathfield Plaza, Churchill Avenue, Strathfield, New South Wales.

Homebush Site means the site formerly occupied by Arnott's Limited at George Street, Homebush, New South Wales.

Independent Purchaser means a purchaser of a store to be sold under these Undertakings who proposes to operate the store as a retail food and grocery store and who is not Woolworths and who is not acting on behalf of or otherwise in concert with Woolworths.

JIDA Store means a Franklins store which is proposed to be sold under a divestment process managed jointly by Franklins and Metcash under the JIDA Programme.

JIDA Programme means the process for the sale of JIDA Stores set out in the proposed JIDA agreement between Franklins and Metcash. None of the specified Franklins stores set out in Schedule 1 is a JIDA Store.

Metcash means Metcash Trading Limited. (ACN.001 031 569)

Pick n' Pay means Pick n' Pay Retailer Pty Limited and includes any Related Company

reasonable normal commercial terms means terms which are, in addition to the usual English meaning of "reasonable", "normal" and "commercial", not materially less advantageous to Woolworths than the prevailing market terms for the divestment of supermarkets, and which exclude:

- (a) the guarantee of any site or equipment lease by Woolworths;
- (b) any form of vendor finance by Woolworths;
- (c) any other ongoing financial obligation of Woolworths; or

(d) any license of any trademark or other intellectual property owned by or licensed to Woolworths.

Related Company has the same meaning given to the term "Related Body Corporate" by s 4A of the Act.

Subsidiary has the meaning given to the term "Subsidiary" by s 4A of the Act.

Woolworths means Woolworths Limited (ACN 000 014 675) and includes any Related Company.

Woolworths Leichhardt means the Woolworths supermarket located at Cnr Flood & Marion Streets, Leichhardt, New South Wales.

Woolworths Newport means the Woolworths supermarket located at 381 Barrenjoey Road, Newport, New South Wales.

Woolworths Newtown means the Woolworths supermarket located at 259 King Street, Newtown, New South Wales.

Woolworths North Strathfield means the Woolworths supermarket located at Concord Road, North Strathfield, New South Wales.

Woolworths Forestville means the Woolworths supermarket located at Shop 20, Forestville Shopping Centre, Darley Street, Forestville, New South Wales.

Woolworths Waterloo means the Woolworths supermarket located at 13-21 Botany Road, Waterloo, New South Wales.

Woolworths Market Square means the Woolworths supermarket located at Cnr Mallop & Yarra Streets, Geelong, Victoria.

3. Interpretation

3.1 In these Undertakings, the singular includes the plural and vice versa.

A reference to "**these Undertakings**" is a reference to all the provisions of this document, Schedule 1 and Confidential Schedule 2.

4. Undertakings

- 4.1 Subject to Clauses 4.2, 4.3 and Clause 1 of Confidential Schedule 2, Woolworths will not acquire, directly or indirectly, any interest in a Franklins store or a Franklins Brand during the term of these Undertakings except as otherwise provided for in these Undertakings.
- 4.2 These Undertakings do not prevent Woolworths acquiring the specified Franklins stores listed in Schedule 1 subject to Woolworths' compliance with the terms of these Undertakings.
- 4.3 These Undertakings do not prevent Woolworths acquiring:
- (a) a store sold under the JIDA Programme if 12 months has elapsed from the date the store was sold under the JIDA Programme; or
 - (b) any Franklins store after 18 months from the date of these Undertakings.
- 4.4 These Undertakings are subject to the provisions of the Confidential Undertakings contained in Confidential Schedule 2.
- 4.5 Where Woolworths acquires a specified Franklins store in accordance with these Undertakings, Woolworths must within 3 months of each acquisition:
- (a) remove any reference to the store having been a Franklins store; and
 - (b) stop selling products from the store under a Franklins Brand.
- 4.6 (a) Woolworths undertakes that it will not, subject to these Undertakings:
- (i) participate in the JIDA Programme; or
 - (ii) take any action having the purpose or effect of hindering or preventing the sale of any JIDA Store to an Independent Purchaser.
- (b) It is acknowledged by the Commission that these Undertakings do not prevent Independent Purchasers, as part of the JIDA Programme, having the opportunity to obtain supply of products to be sold from the JIDA Stores by way of receipt of competitive offers from Metcash or Australian Independent Wholesalers Pty Ltd as competing wholesalers.

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- 4.7 Woolworths will not enter into a tenancy for a supermarket at the Homebush Site within 3 years of the final certificate of occupancy being issued for the site or within 5 years of the commencement of these Undertakings whichever is sooner.
- 4.8 **Woolworths North Strathfield**
Woolworths will use its best endeavours to divest the Woolworths North Strathfield store to an Independent Purchaser on reasonable normal commercial terms after the date of the later of the acquisition of Franklins Burwood and Franklins Strathfield stores in accordance with Confidential Schedule 2.
- 4.9 **Woolworths Newport**
Woolworths will use its best endeavours to divest the Woolworths Newport store to an Independent Purchaser on reasonable normal commercial terms after the date of acquisition of Franklins Avalon store in accordance with Confidential Schedule 2.
- 4.10 **Woolworths Leichhardt**
Woolworths will use its best endeavours to divest the Woolworths Leichhardt store to an Independent Purchaser on reasonable normal commercial terms after the date of acquisition of Franklins Leichhardt store in accordance with Confidential Schedule 2.
- 4.11 **Woolworths Market Square**
Woolworths will vacate Woolworths Market Square Store at the expiry of the current lease term, being 12 November, 2005.
- 4.12 **Woolworths Waterloo**
Woolworths will use its best endeavours to divest the Woolworths Waterloo Store to an Independent Purchaser on reasonable normal commercial terms after the date of acquisition of Franklins Marrickville store in accordance with Confidential Schedule 2.
- 4.13 **Woolworths Newtown**
Woolworths will use its best endeavours to divest the Woolworths Newtown Store to an Independent Purchaser on reasonable normal commercial terms after the date of acquisition of Franklins Marrickville store in accordance with Confidential Schedule 2.

4.14 **Woolworths Forestville**

Woolworths will use its best endeavours to divest the Woolworths Forestville store to an Independent Purchaser on reasonable commercial terms after the date of acquisition of Franklins Belrose store in accordance with Confidential Schedule 2.

- 5 Woolworths will continue to operate, as supermarkets and as an ongoing concern, the Woolworths stores referred to in Clauses 4.8, 4.9, 4.10, 4.12, 4.13 and 4.14 from the date these Undertakings are executed until the divestment of the relevant store.
- 6 Woolworths will undertake the divestment activity referred to in these Undertakings through the services of an independent broker nominated by Woolworths who is approved by the Commission. Such approval will not be unreasonably withheld by the Commission.
- 7 Where an obligation in these Undertakings would require Woolworths or a Subsidiary of Woolworths to perform or refrain from any action, Woolworths will procure the conduct of Woolworths or the relevant Subsidiary.
- 8 If Woolworths notifies the Commission that it is unable to comply with its obligations in these Undertakings, or believes it is necessary to seek some modification due to changed circumstances, then the Commission will review these Undertakings and negotiate in good faith the variation or revocation of all or any of the Undertakings in light of such circumstances having regard to the need to maintain competition in the retail food and grocery industry in Australia.
- 9 In the event that the Commission forms the view that the circumstances under which these Undertakings were negotiated, materially change, the Commission may so notify Woolworths and Woolworths will negotiate with the Commission in good faith for any variation or revocation of all or any of the Undertakings having regard to the need to maintain competition in the retail food and grocery industry in Australia. Provided that Woolworths will not be requested to divest any supermarket, except as presently obliged under the terms of these Undertakings including Confidential Schedule 2.

10 Notification

- 10.1 To assist the Commission to monitor compliance with these Undertakings, Woolworths will advise the Commission in writing, within five (5) business days of the relevant event:
- (a) the date on which Woolworths acquires each of the specified Franklins stores referred to in Schedule 1; and
 - (b) the date on which Woolworths divests a store referred to in clause 4.
- 10.2 Woolworths must provide promptly to the Commission any further information reasonably requested by the Commission relating to compliance with these Undertakings.
- 10.3 Woolworths must promptly provide the Commission a report in writing on any development that materially effects or may prevent completion of the divestiture of Woolworths' stores in accordance with these Undertakings.

11 Confidentiality

Woolworths gives these Undertakings on the express advice of the Commission that it may publish these Undertakings but, save for the purposes of enforcement action under Section 87B of the Act or under any other legal obligation, the Commission will not publish or disclose the provisions of Confidential Schedule 2 forming part of these Undertakings.

12 Force Majeure

- 12.1 If Woolworths is prevented from performing any obligation under these Undertakings due to Force Majeure and if Woolworths has used all reasonable diligence and employed all reasonable means to remedy or abate the Force Majeure as expeditiously as possible, then Woolworths will not be liable for the failure to perform any such obligation or to perform the obligation within the designated period, during the presence of, and to the extent of, the Force Majeure.
- 12.2 If Woolworths is, by reason of Force Majeure, in accordance with clause 12.1 above, unable to perform any obligation under these Undertakings, Woolworths will notify the Commission in writing within three (3) business days specifying:

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- (a) the cause and extent of non-performance;
 - (b) the date of commencement of Force Majeure;
 - (c) the means proposed and adopted to remedy or abate the Force Majeure.

13 Duration of Undertakings

The obligations imposed pursuant to these Undertakings are deemed to be separate and distinct and come into effect on the execution by Woolworths of this document and its acceptance by the Commission, and cease on completion of the performance by Woolworths of each of the obligations under these Undertakings including any variation thereof.

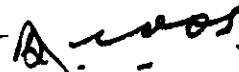
EXECUTED on 6 June 2001

For and on behalf of Woolworths Limited



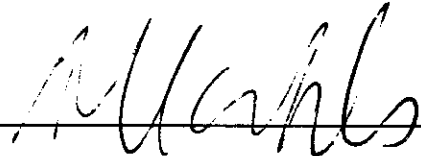
Roger Corbett

Group Managing Director/CEO



Witness

Accepted by the Australian Competition & Consumer Commission



Professor Allan Fels Chairman

DATED 7 June 2001

Schedule 1

Listing of 67 Stores For Which ACCC Approval is Given

| Store Name | Store Number | State |
|----------------------|--------------|-------|
| Cherrybrook | 2005 | NSW |
| Lane Cove | 2006 | NSW |
| Chester Hill | 2007 | NSW |
| Castle Hill | 2019 | NSW |
| Hurstville | 2040 | NSW |
| Belrose | 2056 | NSW |
| Burwood Plaza | 2058 | NSW |
| Sylvania | 2062 | NSW |
| Thornleigh | 2066 | NSW |
| Warriewood Square | 2068 | NSW |
| Minto Mall | 2073 | NSW |
| Avalon | 2083 | NSW |
| Strathfield | 2085 | NSW |
| Emerton | 2098 | NSW |
| Roselands | 2107 | NSW |
| Charlestown | 2108 | NSW |
| Windsor | 2116 | NSW |
| Chatswood | 2121 | NSW |
| Randwick | 2137 | NSW |
| Wollongong (Figtree) | 2141 | NSW |
| Campbelltown | 2146 | NSW |

Listing of 67 Stores For Which ACCC Approval is Given

| Store Name | Store Number | State |
|-------------------------------|---------------------|--------------|
| Gorokan | 2149 | NSW |
| Bateau Bay | 2154 | NSW |
| St Marys | 2155 | NSW |
| Hinchinbrook | 2159 | NSW |
| Leichhardt | 2161 | NSW |
| Nowra Fair | 2163 | NSW |
| Marrickville Metro | 2164 | NSW |
| Total NSW Stores: | 28 | |
| | | |
| Kipparing | 4415 | Qld |
| Lismore | 4422 | Qld |
| Morayfield | 4433 | Qld |
| Goodna | 4440 | Qld |
| Elanora | 4446 | Qld |
| Kallangur | 4460 | QLd |
| Noosaville | 4466 | Qld |
| Harbourtown | 4474 | Qld |
| Victoria Point (Koala Pnt SC) | 4479 | Qld |
| Proserpine | 4480 | Qld |
| Sunnybank Hills | 4481 | Qld |
| Maroochydore (Big Top) | 4482 | Qld |
| Nerang | 4484 | Qld |

Listing of 67 Stores For Which ACCC Approval is Given

| Store Name | Store Number | State |
|-----------------------------|---------------------|--------------|
| Total QLD Stores: | 13 | |
| Northpark | 5501 | SA |
| Salisbury (Hollywood Plaza) | 5503 | SA |
| Port Adelaide | 5509 | SA |
| Colonnades | 5513 | SA |
| Total SA Stores: | 4 | |
| Braybrook Village | 3303 | Vic |
| Eltham | 3305 | Vic |
| Brunswick | 3312 | Vic |
| Wodonga | 3315 | Vic |
| Bellarine | 3322 | Vic |
| Corio | 3323 | Vic |
| Bendigo | 3328 | Vic |
| Wendouree | 3330 | Vic |
| Oakleigh | 3331 | Vic |
| Kilsyth (Churinga Village) | 3340 | Vic |
| Cranbourne | 3342 | Vic |
| Keysborough | 3344 | Vic |
| Doncaster | 3348 | Vic |
| Reservoir | 3349 | Vic |

Listing of 67 Stores For Which ACCC Approval is Given

| Store Name | Store Number | State |
|--------------------------------|---------------------|--------------|
| Cobram | 3354 | Vic |
| Yarrawonga | 3355 | Vic |
| Kybram | 3357 | Vic |
| Ferntree Gully | 3358 | Vic |
| Frankston | 3359 | Vic |
| Coburg | 3361 | Vic |
| Vermont South | 3366 | Vic |
| Altona Gate | 3381 | Vic |
| Total Victorian Stores: | 22 | |
| Total Stores: | 67 | |