



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

BY

DAIRY FARM MANAGEMENT SERVICES LIMITED

AND

FRANKLINS LIMITED

1. BACKGROUND

1.1 The Dairy Farm group, through its subsidiary Franklins, operates a chain of food and grocery retail stores in New South Wales, Queensland, South Australia, the Australian Capital Territory and Victoria under the Franklins banner.

1.2 Dairy Farm proposes to undertake a managed exit from its involvement in food and grocery retailing in Australia and proposes that Franklins sells its stores, warehouses, distribution facilities and other related assets, which it does not close, including:

- (a) the majority of its 287 stores to FAL, Pick 'n Pay and other Independent Operators through the Joint Independent Divestiture Alliance (**JIDA**) between Franklins and Metcash; and
- (b) other stores to Woolworths or Coles.

(The Proposed Managed Exit Plan).

1.3 The Commission acknowledges that the Proposed Managed Exit Plan is expected to enable the transfer of a substantial number of Franklins stores to Independent Operators. 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 Operators would be likely to substantially lessen competition in the Australian food and grocery retailing industry in breach of s 50 of the Act (**the Commission's competition concerns**).

1.4 As part of the Proposed Managed Exit Plan, and following consultation with the Commission, Franklins proposes to sell the 67 Franklins stores set out in Schedule 1 to Woolworths. The Commission acknowledges that a necessary part of the Proposed Managed Exit Plan is the sale of these 67 Franklins stores to Woolworths.

1.5 To address the Commission's competition concerns Dairy Farm and Franklins have provided these Undertakings in relation to the sale of Franklins stores to Woolworths or Coles and certain other matters.

1.6 On the basis of these Undertakings and undertakings given by Woolworths, the Commission will grant clearance to the Proposed Managed Exit Plan.

2. DEFINITIONS

In these Undertakings, unless the context otherwise requires:

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

Business day means a day on which the major trading banks are open for business in Hong Kong, Sydney and Canberra excluding a Saturday, Sunday or public holiday.

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

Commission means the Australian Competition and Consumer Commission.

Confidential Provisions means provisions of these Undertakings which are stated to be or marked confidential.

Dairy Farm means Dairy Farm Management Services Limited.

FAL means Foodland Associated Limited (ACN 008 667 650) and includes any Related Company.

Force Majeure means any circumstance beyond the reasonable control of Dairy Farm or Franklins and without limiting the generality of the foregoing, shall include:

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

Franklins means Franklins Limited (ACN 000 929 902).

Franklins stores means the food and grocery retail stores operated in New South Wales, Queensland, South Australia, the Australian Capital Territory and Victoria by Franklins.

Franklins brands means the:

- (a) Franklins facia brands;
- (b) No Frills and First Choice product brands,

controlled by Franklins.

Independent Operator means a food and grocery retailer or prospective food and grocery retailer not being Woolworths or Coles.

JIDA means the Joint Independent Divestiture Alliance between Franklins and Metcash.

JIDA process means the process for the sale of JIDA stores set out in the proposed JIDA agreement between Franklins and Metcash. For the purposes of these Undertakings, the JIDA process is deemed to conclude on 8 September 2001 (being three months after the date on which bids for JIDA stores must be received by Franklins).

JIDA stores means the stores set out in Schedule 2 which are to be either offered for sale through the JIDA process or otherwise directly offered for sale to parties other than Woolworths or Coles and does not include the stores in confidential Schedule 3 which are to be closed.

Metcash means Metcash Trading Limited (ACN 000 031 569).

Pick 'n Pay means Pick 'n Pay Retailers (Pty) Limited and includes any Related Company.

Related Company has the 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.

Undertaking Period means the period starting from the commencement of these Undertakings and finishing five Business days after the date on which the last of the Franklins stores is sold or closed.

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

Interpretation:

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 and Schedules 1 to 5.

3. UNDERTAKINGS

Franklins undertakes that:

3.1 Subject to these Undertakings, it will not sell any Franklins store to:

- (a) Woolworths, other than the 67 Franklins stores listed in Schedule 1; or
- (b) Coles,

without the prior consent in writing of the Commission.

3.2 Subject to these Undertakings, Franklins will not without the prior consent in writing of the Commission dispose of the Franklins brands to, or confer a right to use the Franklins brands upon:

- (a) Woolworths; or
- (b) Coles,

other than a non-exclusive licence for a period of three months to use the Franklins No Frills and First Choice product brands solely in connection with a Franklins store acquired by either Coles or Woolworths to sell any existing stocks of the branded products.

3.3 Subject to these Undertakings, Franklins will do everything reasonable within its power during the period of the JIDA process to effect the transfer of JIDA stores to Independent Operators.

3.4 Franklins will, unless the Commission agrees otherwise, include in sale contracts for the JIDA stores a condition that the purchaser may not sell the acquired JIDA store or stores to either Coles or Woolworths for a period of 12 months from the date of the execution of the sale contract without the prior written consent of the Commission.

4. PROCUREMENT UNDERTAKING

- 4.1 Where an obligation under these Undertakings would require Franklins or a Related Company of Franklins to perform or refrain from any action, Dairy Farm will procure the conduct of Franklins or the relevant Related Company.

5. CONFIDENTIAL UNDERTAKINGS

- 5.1 These Undertakings are subject to the provisions of the Confidential Undertakings contained in confidential Schedule 4.

6. ANCILLARY MATTERS

6.1 Variation

If Dairy Farm or Franklins is unable to comply with its obligations in these Undertakings, or believes it is necessary to seek some modification due to changed circumstances, then Dairy Farm, Franklins and the Commission agree that they 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.

6.2 Consents

Where, under these Undertakings, Dairy Farm or Franklins must perform or refrain from any action unless the Commission consents, the Commission will consider any request from Dairy Farm or Franklins for that consent promptly, in good faith and not unreasonably refuse or delay consent.

6.3 Information

- (a) To assist the Commission to monitor compliance with these Undertakings, Franklins will advise the Commission, in respect of all agreements entered into by it for the sale of Franklins stores, of the identity of the purchaser and the location of the store.
- (b) Dairy Farm and Franklins must provide promptly to the Commission any further information reasonably requested by the Commission relating to the operation of, and their compliance with, these Undertakings.
- (c) Dairy Farm and Franklins must provide to the Commission a written progress report in relation to their compliance with these Undertakings within five Business days of:

- (i) 8 June 2001 being the closing date for the receipt of bids for JIDA stores;
 - (ii) 8 September 2001 being the expiration of three months from the closing date for the receipt of bids for JIDA stores;
 - (iii) the last Franklins store being sold or closed.
- (d) Dairy Farm and Franklins must provide the Commission a report on any development that materially affects the sale of Franklins stores in accordance with these Undertakings or may prevent completion of the sale of Franklins stores in accordance with these Undertakings within two Business days of the development coming to the attention of Dairy Farm and Franklins.

6.4 Force Majeure

- (a) If Dairy Farm or Franklins is prevented from performing any obligation under these Undertakings due to Force Majeure and if Dairy Farm and Franklins have used all reasonable diligence and employed all reasonable means to remedy or abate the Force Majeure as expeditiously as possible, then Dairy Farm and Franklins will not be liable for the failure to perform any such obligation during the presence of, and to the extent of, the Force Majeure.
- (b) If Dairy Farm, or Franklins, is by reason of Force Majeure, in accordance with paragraph (a) above, unable to perform any obligation under these Undertakings, Dairy Farm or Franklins will notify the Commission in writing within three Business days specifying:
- (i) the cause and extent of non-performance;
 - (ii) the date of commencement of Force Majeure;
 - (iii) the means proposed and adopted to remedy or abate the Force Majeure.

6.5 Acknowledgments

- (a) Dairy Farm and Franklins acknowledge that, with the exception of the confidential provisions, the Commission will make these undertakings available for public inspection and that the Commission may, from time to time, publicly refer to these undertakings.
- (b) Dairy Farm and Franklins have provided these Undertakings in the acknowledgment by the Commission that it will keep all the confidential provisions of these Undertakings

confidential and will not disclose them to any party without the prior consent of Dairy Farm and Franklins.

6.6 Duration of Undertakings

Subject to clause 6.7, these Undertakings come into effect on their execution by Dairy Farm and Franklins and their acceptance by the Commission and cease at the end of the Undertaking Period.

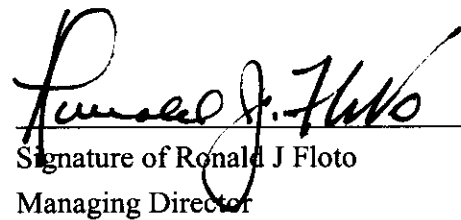
6.7 Enforcement Action

For the avoidance of doubt, the Commission may take enforcement action at any time during the relevant limitation period whether:

- (a) during the Undertaking Period; or
- (b) after the Undertaking Period,

in respect of any breach by Dairy Farm or Franklins of a term of these Undertakings.

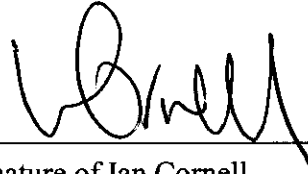
**SIGNED BY DAIRY FARM MANAGEMENT
SERVICES LIMITED BY:**



Signature of Ronald J Floto
Managing Director

DATED: 2 JUNE 2001

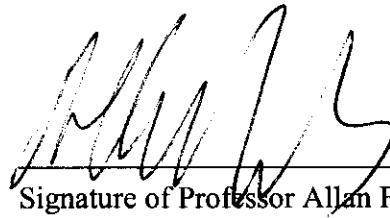
SIGNED BY FRANKLINS LIMITED BY:



Signature of Ian Cornell
Managing Director

DATED: 4th JUNE 2001

ACCEPTED BY THE AUSTRALIAN
COMPETITION AND CONSUMER
COMMISSION:



Signature of Professor Allan Fels
Chairman

DATED: 5 JUNE 2001

SCHEDULE 1

LIST OF STORES TO BE SOLD TO WOOLWORTHS

2005 Cherrybrook Village
2006 Franklins Lane Cove
2007 Chester Square
2019 Castle Towers
2040 Westfield Hurstville
2056 Glenrose SC
2058 Burwood Plaza
2062 Southgate Sylvania
2066 Parkway Plaza
2068 Warriewood Square
2073 Minto Mall
2083 Barefoot Boulevard
2085 Strathfield Plaza
2098 Emerton SC
2107 Roselands SC
2108 Charlestown Square
2116 Windsor Town Centre
2121 Chatswood Westfield
2137 Royal Randwick SC
2141 Westfield Figtree
2146 Campbelltown Mall
2149 Lake Haven SC
2154 Bay Village SC
2155 St Marys Village
2159 Valley Plaza
2161 Leichhardt Marketplace
2163 Nowra Fair
2164 Marrickville Metro
4415 Kippa Ring Village
4422 Lismore Square
4433 Morayfield SC
4440 St Ives Shopping Village
4446 Pines Elanora SC
4460 Kallangur Fair
4466 Noosa Village
4474 Harbourtown
4479 Koala Point SC

4480 Fresh Fields SC
4481 Sunnybank Hills SC
4482 Big Top SC
4484 Nerang Mall
3303 Braybrook Village
3305 Franklins Eltham
3312 Brunswick SC
3315 Wodonga Plaza
3322 Bellarine Village
3323 Corio Village
3328 Lansell Plaza
3330 Wendouree Village
3331 Station Square SC
3340 Churinga Village
3342 Cranbourne Park SC
3344 Parkmore SC
3349 Summerhill Village HQ
3354 Cobram Town Centre
3355 Franklins Yarrawonga
3357 Franklins Kyabram
3358 Mountaingate Plaza
3359 Frankston House
3361 Franklins Coburg
3366 Vermont South SC
3348 Westfield Doncaster
3381 Altona Gate SC
5501 Northpark SC
5503 Hollywood Plaza
5509 Old Port Canal SC
5513 Colonnades SC

SCHEDULE 2

LIST OF STORES TO BE OFFERED FOR SALE PURSUANT TO UNDERTAKING IN CLAUSE 3.3

2001	Fairfield Forum
2002	Crows Nest Plaza
2003	Sutton Place
2004	Engadine Court
2008	Bass Hill Plaza
2009	Riverside Plaza
2010	Franklins Panania
2011	Franklins Rose Bay
2013	Westleigh SC
2014	Maroubra Plaza
2017	Franklins Revesby
2018	Lakemba Palms Plaza
2020	Westfield Liverpool
2024	Ramsgate Plaza
2025	Forestway SC
2026	Settlement City
2027	Bankstown Square
2031	Moorebank Shopping Village
2032	Franklins Corrimal
2033	Franklins Warilla Grove
2037	Eastwood SC
2042	Macarthur Square
2043	Franklins Jannali
2044	Eastlakes SC
2045	Glenquarie SC
2046	Riverwood Plaza
2047	Cessnock Marketplace
2048	Rockdale Plaza
2049	Rose Bay North SC
2051	Shellharbour Square
2053	Franklins Fresh Nambucca Heads
2054	Penrith Plaza
2061	Peninsula Plaza
2063	Westfield North Rocks

2064 Westpoint Blacktown
2069 Wetherill Park
2070 Thirroul Village Plaza
2072 The Module
2074 Erina Fair
2075 Tuggeranong Hyperdome
2076 Lennox SC
2077 Warringah Mall
2079 Woodrising SC
2080 Belmont Marketplace
2084 Southpoint SC
2086 Ingleburn Fair
2087 South Terrance Plaza
2088 Cronulla Stroll
2089 Kingsway Mall
2090 Pennant Hills Marketplace
2091 Franklins Liverpool Plaza
2092 St Ives Village
2094 Casula Mall
2095 Merrylands
2096 Bonnyrigg Plaza
2097 Marketland SC
2099 Westfield Miranda
2101 Eastpoint Food Fair
2102 Greenfield SC
2104 Maitland Marketplace
2105 Franklins Yagoona
2106 Wyong Plaza
2109 Nepean Central
2110 Ashfield Mall
2111 The Summer Centre
2112 Franklins Armidale
2113 The Hills SC
2114 Auburn Shopping Village
2117 Totem SC
2118 Wentworthville Mall
2119 Irvine SC
2120 Deepwater Plaza
2124 Crown Central
2126 Westfield Eastgardens
2127 Village Square

2128 Miller Centre
2129 Argyle Mall
2130 Bridgepoint SC
2131 Wetherill Park SC
2132 Westfield Warrawong
2133 Westfield Belconnen
2134 Baulkham Hills SC
2135 Franklins Fresh Newcastle
2136 Stockland Jesmond
2138 St Martins Village
2139 Castle Mall
2140 Top Ryde SC
2142 Macquarie SC
2143 Franklins Muswellbrook
2144 Orana Mall
2145 Turramurra Plaza
2148 Greystanes SC
2152 Springettes Arcade
2153 Westfield Parramatta
2158 Singletown Plaza
2162 Gosford Marketplace
2165 Westfield Mt Druitt
2166 Glendale Supa Centre
2167 Westfield Tuggerah
2170 Franklins Guildford
3302 Lavington Square
3311 Warringal Village
3316 Gateway Plaza
3318 Greensborough Plaza
3319 Good Food Arcade
3320 Bayswater Village SC
3321 Wangaratta Plaza
3324 Franklins Geelong West
3325 Franklins Sebastopol
3326 Town & Country SC
3327 Franklins Fresh Rosebud
3329 Franklins Fresh Ballarat South
3332 Hampton Park Foodmarket
3333 Horsham Plaza
3336 Waverley Gardens
3338 Meadow Heights SC

3339 Traralgon Centre
3343 Gladstone Park SC
3347 Franklins Fresh Mentone
3351 North Blackburn SC
3352 Franklins Ringwood North
3353 Central Walk
3356 Franklins Mt Waverley
3363 Franklins Corowa
3364 Franklins Myrtleford
3365 Lalor Plaza
3369 Franklins Fresh Thomastown
3374 Franklins Fresh Ararat
4402 Franklins East Brisbane
4403 Franklins Fresh Gympie
4412 Beenleigh Village
4413 Central Mall
4414 Cannon Hill Plaza
4423 Biggera Waters SC
4424 Hope Island
4426 Franklins Fresh Innisfail
4427 Lutwyche City SC
4428 Noosa Junction Plaza
4429 Triplecee Logan SC
4431 Franklins Fresh Dalby
4439 Bayside Plaza
4447 Village Fair
4449 Tulip Town
4451 Kawana Shoppingworld
4453 Burleigh Town Centre
4454 Kin Kora Mall
4455 Westfield Indooroopilly
4459 Deception Bay Market
4463 Franklins Bundaberg
4468 Castletown SC
4470 Franklins Brassall
4471 Franklins Samford
4476 Kingaroy
4483 Capalaba Central
4490 Franklins Port Douglas
5502 Clovercrest Plaza
5504 Elizabeth South SC

5505 Barker Plaza
5506 Rossiters Food Hall
5507 Elizabeth Park SC
5508 Golden Grove SC
5510 Franklins Aberfoyle Park
5511 Old Reynella Village
5512 Marden SC
5515 Windsor Gardens SC