

# CLAYTON UTZ

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## UNDERTAKING

DATED DEC 21 2000

**By Nine Network Australia Pty Limited**

**To**

**Australian Competition & Consumer Commission**

**Concerning**

**Agreement with A C Nielsen Australia Pty. Limited**

### CLAYTON UTZ

Lawyers

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**Our ref - 187/1462893 Contact - Michael Corrigan**

**Sydney • Melbourne • Brisbane • Perth • Canberra • Darwin**

# UNDERTAKING

**THIS UNDERTAKING** is given to the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION** by **NINE NETWORK AUSTRALIA PTY LIMITED ACN 008 685 407** of 24 Artarmon Road, Willoughby, New South Wales ("**Nine**"):

**WHEREAS:**

- A. Nine is a party to an agreement dated 14 July 1995 with A C Nielsen Australia Pty. Limited, ACN 003 212 922 of 85 Epping Road, North Ryde in the State of New South Wales ("**Contractor**") for the provision of Ratings Services upon and subject to the terms and conditions set out therein ("**Agreement**").
- B. Surveys to be conducted by the Contractor in accordance with the Agreement will provide the Contractor with respondent level data after editing and validation ("**Elemental Data**").
- C. Certain limitations are imposed upon the use and disclosure of Reports produced by the Contractor in accordance with the Agreement and, by implication of Elemental Data used by the Contractor to compile such Reports, such limitations being contained in clause 11 of the Agreement, including ensuring that the form of Elemental Data complies with the Gold Standard referred to in the attached Consent.
- D. Compliance with the Gold Standard in respect of Elemental Data is intended to ensure that consistent forms of analysis of such Data are adopted by all users for comparative purposes, to avoid any misleading or deceptive use of the Elemental Data.
- E. The ACCC has expressed its concern to Nine that if access to Elemental Data on reasonable commercial terms is denied to persons intending to use that Elemental Data in the course of and for purposes of their businesses such denial might contravene certain provisions of the Trade Practices Act 1974.
- F. Without conceding the need for such concern Nine has offered to give this Undertaking to the ACCC as a result of which the ACCC has decided not to commence any proceedings against Nine in respect of any conduct of Nine in having made or in giving effect to the Agreement.

**NINE NOW UNDERTAKES** that in consideration of the ACCC agreeing not to commence any proceedings against Nine in respect of or arising out of Nine having made or giving effect to the Agreement as evidenced by the ACCC's acceptance of this Undertaking endorsed at the foot hereof, Nine

will:

1. forthwith upon the completion of that acceptance complete and deliver to the Contractor a Consent in the form annexed hereto and marked "A";
2. perform its obligations under that Consent according to its terms;
3. not amend the Consent or agree to do so without the written consent of the ACCC; and
4. promptly notify the ACCC in the event that it is not satisfied with the financial standing or bona fides of a third party as required by condition 1 of the Consent.

**Dated:** 1 December 2000

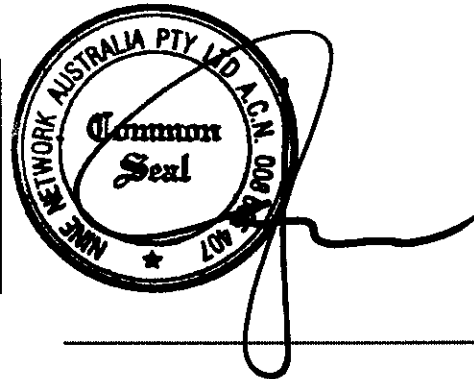
**THE COMMON SEAL** of NINE NETWORK AUSTRALIA PTY LIMITED, ACN 008 685 407 was hereunto affixed by the authority of the Board of Directors in the presence of:



(Signature of Secretary/Director)

Stephen Wright

(Name of Secretary/Director in Full)



(Signature of Director)

DAVID LECKIE

(Name of Director in Full)

DL

**ACCEPTED** by the AUSTRALIAN COMPETITION AND CONSUMER COMMISSION.

**Dated:** 21 Dec 2000

  
.....  
**PROFESSOR ALLAN FELS**  
**CHAIRMAN**

**"A"**

**CONSENT**

TO: A C Nielsen Australia Pty. Limited  
ACN 003 212 922  
85 Epping Road  
NORTH RYDE NSW

**NINE NETWORK AUSTRALIA PTY LIMITED, ACN 008 685 407** of 23 Artarmon Road, Willoughby, New South Wales ("**Nine**"), **HEREBY CONSENTS** to your providing respondent level data, after editing and validation ("**Elemental Data**"), created or coming into existence from the surveys to be conducted by you in accordance with the agreement between us dated 14 July 1995 (the "**Agreement**") to any third party on the following conditions:

1. that Nine is reasonably satisfied and notifies you in writing that the third party to whom the Elemental Data is to be supplied is:
  - (a) financially able to meet the cost of supply of the Elemental Data; and
  - (b) gives a bona fide assurance of compliance with the attached Gold Standard;
2. that you will ensure that:
  - (a) the form in which you supply the Elemental Data to the third party complies at all times with the Gold Standard specified in the Schedule hereto;
  - (b) the party to whom you supply the Elemental Data also complies at all times with the Gold Standard; and
  - (c) the third party to whom the Elemental Data is supplied acknowledges that it acquires no copyright in the Elemental Data;
3. that Nine is satisfied and notifies you in writing that any fee to be charged for the supply of the Elemental Data to the third party has been negotiated in good faith and is payable on reasonable commercial terms.

For the purposes of this Consent, compliance with the Gold Standard means compliance in all material respects with the requirements of the Gold Standard.

This Consent (subject to any amendment Nine may notify you in writing from time to time) shall remain in full force and effect until 31 December 2000.

Words and expressions used in this Consent which are defined in the Agreement have the same meanings as prescribed in the Agreement.

## **Schedule**

### **General**

The Gold Standard is the application of consistent formulas to the calculations of "elemental" audience measurement data to ensure different applications software use identical measures of television audiences.

"Elemental Data" is the most basic or fundamental elements of the viewing information collected by the audience measurement system used in producing aggregated data for publication.

Use of different software by potential subscribers to the audience measurement Data, is conditional upon acceptance of "Gold Standard" formulas by the Service Provider and the third party as to the basis of calculation of audience estimates used in that software.

The calculation procedures used to estimate audiences and ratings from the raw Elemental Data polled from the people meter are set out below.

This calculation applies to all audience measurement produced. The Services will be organised in "reporting panels", each reporting panel being a sample that has been defined for the purpose of calculation of audience estimates.

A "reporting panel" may represent any of the Sydney, Melbourne, Brisbane, Adelaide or Perth areas surveyed, the Areas, or a universe of receivers of a service such as Cable TV, or the viewers of a program.

An individual panel Premises may be included in a number of reporting panels.

The uniform formulas and procedure for calculating TV audiences is set out in the following steps:

- **Calculations of weights**

Processing weights are calculated for all panel individuals aged 0+ including guests that are included in the responding panel on that day. Separate weights are calculated for each reporting panel that an individual belongs to.

- **Aggregate raw minute counts**

Raw minute counts are aggregated for each minute by summing the weights of those Premises, individuals or guests (where appropriate) who are viewing in that minute.

Raw minute counts will be accumulated for a range of TV stations, reporting panels, audience categories and viewing activities (live viewing, playback, teletext etc).

Audiences are calculated for each reporting panel, with the weights aggregated being those pertaining to that particular panel.

- **Combined and derived audiences**

Audiences can be combined to derive audiences for certain categories, channels or areas. Audiences for time periods or transmission events are calculated by averaging the audiences of the individual minutes that they span. Examples below.

- **Quarter hour Audiences**

Audiences for clock quarter hours are the average of the 15 one-minute audiences in those quarter hours.

- **Program Audiences**

Program audiences are calculated by averaging the audiences for all minutes covered by the program transmission, from the start time of the program until the end of the program.

- **Commercial break Audiences**

The commercial break is considered as a program and therefore the same procedure described above are applied.

- **Commercial Spot Audiences**

The audience for a commercial is the audience for the minute in which the commercial starts.

- **TVR Calculation**

TV ratings may be calculated for minutes results, time period, program or commercial audiences. TVR's are calculated by applying the following formula:

$$\text{Category audience TVR} = \frac{\text{Final category audience}}{\text{Category Universe}} \times 100$$

Where no universe exists for a category, the sum of weight of panel reporters for the category for that day should be used instead to calculate TVR's.

In this case a warning should be added to the effect that "Universes are not controlled to the Establishment Survey Estimates".

- **Calculation of a rating over time**

An audience to a number of events (program, quarter hour or time segment) may be expressed as:

- The average of the events audiences in thousands; or
- The average of the events of TVR's.

In either case the calculation procedure should be duration weighted in the same manner as that to calculate, for example, the audience to a program ie. the sum of the audiences to all minutes in the program divided by the number of minutes in the program.

- **Reach**

An individual is a Reach viewer if they are viewing the same station/channel for at least one consecutive minute within a defined period of time.

The reach audience is calculated by summing the weights of the Reach viewers.

Reach over more than one response day may be calculated, in this case the average of weights that apply to that individual in each of the day of the given period is used.

$$\text{Reach of the period} = \frac{\text{Weights of individuals for each day}}{\text{Number of days of the period}}$$