

TRADE PRACTICES ACT 1974

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

**BY
BAKER BROS (AUST) PTY LTD
ACN 006 977 886**

BACKGROUND

(1) Baker Bros (Aust) Pty Ltd (ACN 006 977 886) ("Baker Bros") is involved in the Australian compressor market at a wholesale level as:

- an importer and distributor of ABAC Aria Compressa S.p.A. ("ABAC") brand compressor pumps to Australian based assemblers;
- an assembler of compressors that include ABAC compressor pumps, as well as components not sourced from ABAC; and
- a distributor of fully imported ABAC compressors.

(2) On 24 March 1994 an agreement was signed by ABAC, SIP Australia Pty Limited ("SIP") and Baker Bros that provided for a categorisation of customers between SIP and Baker Bros and agreement on pricing levels for direct drive ABAC compressors. This agreement to market share and price fix was carried into effect.

On 6 November 1997 an agreement was signed by ABAC, SIP and Baker Bros to come to another arrangement whereby each party would respect certain of each other's existing customers and prepare a structure of minimum selling prices. This second arrangement was put into effect in December 1997 when SIP and Baker Bros exchanged customer lists, although the parties agreed that it would not be practical to establish any minimum selling price for ABAC products.

(3) On 25 June 1999, Baker Bros, in an action brought by the Australian Competition and Consumer Commission, was found by the Federal Court, Melbourne, to have contravened pars 45(2)(a)(i) and (ii) and pars 45(2)(b)(i) and (ii) of the *Trade Practices Act 1974* ("the Act") by engaging in the conduct outlined in paragraph 2 above. In a Joint Supplementary Submission to the Court on 13 May 1999, Baker Bros agreed to enter into an undertaking pursuant to section 87B of the Act to implement a compliance program.

UNDERTAKING

- (4) Baker Bros hereby undertakes for the purposes of section 87B of the Act, within 3 months of the signing of this undertaking, to develop a Trade Practices Corporate Compliance program ("the Program") with the following characteristics and attributes:

A Aim

To create a culture of compliance within Baker Bros (having regard to Australian Standard AS 3806-1998 **Compliance Programs**) and to prevent, so far as possible, any contraventions of Part IV of the Trade Practices Act 1974 ("the Act") by Baker Bros or by its directors, employees or agents.

B Policy

The formal adoption or reaffirmation by Baker Bros of a policy of strict compliance with both the letter and spirit of Part IV of the Act within Baker Bros and the adoption or reaffirmation and enforcement of sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of that part of the Act.

C Compliance Officer

The appointment of a senior executive as the Compliance Officer with overall responsibility for compliance with the Program.

D Coverage

The Program is to cover all directors, employees and agents of Baker Bros whose duties could result in them being concerned in conduct that might breach Part IV of the Act ("the relevant staff"). The Program will include a specific reference to the duty of care of company directors in respect of Part IV of the Act.

E Education

In conjunction with a trade practices consultant having expertise in trade practices law, develop and implement an education program calculated to have the relevant staff conversant with Part IV of the Act to a level where:

- (i) relevant staff can avoid obvious contraventions of Part IV of the Act and can identify more complex potential trade practices problems arising from those provisions for referral to the Compliance Officer;
- (ii) persons with responsibilities within Baker Bros can effectively carry out those responsibilities; and
- (iii) Baker Bros' Compliance Officer can address more complex trade practices issues and (if that person is not legally qualified and able to give the relevant advice) identify issues that require referral to its solicitors.

F. Seminars and Programs

As part of Baker Bros' education program, Baker Bros shall conduct and/or maintain:

- (i) training seminars for the relevant staff on Part IV of the Act. The seminars shall be conducted by Baker Bros on two (2) occasions during the three (3) year period following the implementation of the Program. The first of these training seminars is to be completed within twelve months (12) of the implementation of the Program and the remaining one (1) training seminar is to be held twelve (12) months thereafter.
- (ii) induction programs that incorporate comprehensive coverage of all issues dealing with Part IV of the Act; and
- (iii) a register of all relevant staff and their attendance in relation to the subject training seminars.

G. Baker Bros' education program should meet the following minimum criteria:

- (i) examples should if possible be illustrative of the compressor supply industry and relevant to the day to day work of the target audience; and
- (ii) concepts should be expressed in language that the target audience understands, rather than in jargon or technical terms, eg. the terminology used in legislation.

H. Duration of Program

Baker Bros will implement the Program referred to above for a period of three (3) years.

I. Approval of Program

Baker Bros will ensure that prior to implementation of the Program a person or firm of practitioners with expertise in trade practices corporate compliance programs provides written confirmation to Baker Bros that the Program possesses all the characteristics and attributes set out herein.

J. Reports of an Independent Third Party

At the end of each twelve (12) month period following the implementation of the Program, until the third anniversary of the Program, Baker Bros will cause a suitably qualified compliance professional ("the Independent Third Party") to review and report on:

- (i) the implementation of the Program and the achievement of its objectives over the preceding twelve (12) months; and
- (ii) any recommended changes to the Program that may be necessary to ensure achievement of its objectives.

K. Selection of the Independent Third Party

The Independent Third Party will be selected on the basis that he or she has a knowledge of the Act and experience in implementing or auditing trade practices compliance programs.

L. The Independent Third Party will qualify as independent on the basis that he or she

- is not a present or past staff member or director of Baker Bros;
- has not acted or does not act for Baker Bros;
- is not retained by Baker Bros in any other capacity;
- has not and does not provide consultancy or other services for Baker Bros; and
- has no substantial shareholding or other interest in Baker Bros.

M. Extent of review by the Independent Third Party

The review conducted by the Independent Third Party may be based on but not limited to:

- (i) Baker Bros' records;
- (ii) Baker Bros' complaints register;
- (iii) any documents recording attendance by Baker Bros' staff at training seminars on Part IV of the Act;
- (iv) documents created by Baker Bros' consultants and solicitors for use in the Baker Bros' compliance program;

- (v) any documents relevant to Baker Bros' training or induction program;
- (vi) any other relevant documents; and
- (vii) a select number of oral reports sought from Baker Bros' staff.

It is not necessary for the Independent Third Party to attend training seminars or induction programs in order to conduct the review.

N. Reports to the ACCC

Baker Bros will cause the Independent Third Party to complete the review and provide a copy of its report to Baker Bros and to the ACCC within one month of the end of each twelve (12) month period.

O. Amendments to the Program

Baker Bros will incorporate into the Program and implement as part of the Program all reasonable changes to it that are recommended by the Independent Third Party.

ACKNOWLEDGMENTS

- (5) Baker Bros acknowledges that the Commission will make this undertaking available for public inspection.
- (6) Baker Bros further acknowledges that the Commission may from time to time publicly refer to this undertaking.
- (7) Baker Bros further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

IN WITNESS of these undertakings
and its agreement the common seal of
BAKER BROS (AUST) PTY LTD (ACN 006 977 886)
was hereunto affixed by authority of the
Board of Directors in the presence of:



Secretary/Director..... *[Signature]* Director..... *[Signature]*

This 24th day of August 1999

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

[Signature]
.....
(Professor Allan Fels)
Chairperson

This 2nd day of September 1999