



**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B OF THE TRADE
PRACTICES ACT 1974**

BY

TASSAL LIMITED (ACN 009 548 770)

BACKGROUND

- 1 In proceeding No. T2 of 2003 in the Federal Court of Australia, Tasmania District Registry, Tassal Limited (“Tassal”) has admitted that it contravened section 45 of *Trade Practices Act 1974* (‘the Act’) in that by making an arrangement or understanding with its competitors to limit the supply of atlantic salmon by grading out atlantic salmon stocks that would otherwise have reached the market, which arrangement or understanding would be likely to have the effect of controlling or maintaining the price of atlantic salmon, it contravened s45(2)(a)(ii) of the Act and by grading out part of its 2001 atlantic salmon stock pursuant to that agreement or understanding it contravened s45(2)(b)(ii) of the Act.
- 2 In part settlement of the proceeding, Tassal gives the following undertaking to the Australian Competition and Consumer Commission (‘the Commission’).

UNDERTAKING

- 3 Tassal will implement a Trade Practices Compliance Program in the following terms and for the period defined in clause 4 of this undertaking:

(a) Trade Practices Training Program:

- (i) Tassal will implement a training program about the Act and its application to the business of Tassal for the following classes of its office holders, employees, servants or agents (hereinafter referred to as “the relevant staff”):
 - (1) those who represent Tassal at meetings held under the auspices of the Tasmanian Salmonid Growers Association Limited;
 - (2) sales staff; and
 - (3) supervisors of sales staff; but
 - (4) excluding any external administrator appointed to administer Tassal pursuant to the Corporations Law.
- (ii) The training is to be:
 - (1) in the first instance, conducted within two months of the acceptance by the Commission of this undertaking, and thereafter at least once in each subsequent 12 month period or part thereof for the duration of the compliance program;
 - (2) of not less than three hours in duration;

- (3) conducted by a solicitor or other person suitably qualified to provide knowledgeable Trade Practices Act compliance training.

(b) Trade Practices compliance manual:

- (i) A Trade Practices Act compliance manual (“the compliance manual”) will be provided to:
 - (1) each of the relevant staff within two months of the date of acceptance by the Commission of this undertaking, and
 - (2) to each person who commences as one of the relevant staff at the time that person commences in that position;
- (ii) The compliance manual will include:
 - (1) an outline of the provisions of the Act and include a description of the application of those provisions to the business of Tassal;
 - (2) an outline of the potential liability of a business, employee, servant or agent engaging in, or being knowingly concerned in, conduct in contravention of the Act;
 - (3) a copy of the findings and orders made in proceeding number T2 of 2003;
 - (4) an unequivocal statement that the administrator or the board of directors of Tassal do not condone, authorise or expect Tassal’s employees, servants or agents to engage in conduct that contravenes the Act;
 - (5) a description of policy and procedures for any employee, servant or agent of Tassal to seek advice or assistance regarding a potential trade practices issue.

(c) Report to the Administrator or Board of Directors

- (i) The Administrator or Board will require the annual presentation to him or it of a written report setting out the actions taken by Tassal in compliance with this undertaking;
 - (ii) In the first instance, the report will be provided to the Administrator or Board within six months of the acceptance by the Commission of this undertaking.
- 4 The undertaking will operate for a period of four years from the date of its acceptance by the Commission, but if during that period Tassal ceases to be a salmon farmer in Australia, the undertaking will terminate on the date of that cessation.

ACKNOWLEDGEMENTS

- 5 Tassal acknowledges the Commission’s right to make this undertaking available for public inspection and notes that the Commission may, in its absolute discretion, from time to time publish and publicly refer to this undertaking.

6 Tassal acknowledges and accepts that this undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct of Tassal.

IN WITNESS of these undertakings and its agreement the common seal of Tassal Limited (ACN 009 548 770) was hereunto affixed by authority of the Administrator in the presence of:



[Handwritten signature]
RECEIVED
MANAGER

Secretary: Director:

This 25th day of July 2003

Accepted by the Australian Competition and Consumer Commission:

[Handwritten signature of Graeme Samuel]

(Graeme Samuel)
Chairman
Australian Competition and Consumer Commission

This 19th day of August 2003