



Trade Practices 1974 – Section 87B

Revised Undertaking

Persons Giving Undertaking

This undertaking is given to the Australian Competition & Consumer Commission (the **Commission**) by Perkins Industries Pty Ltd (**Perkins**) and its wholly-owned subsidiaries, Perkins Shipping Pty Ltd (**Perkins Shipping**) and Perkins Properties Pty Ltd (**Perkins Properties**) under section 87B of the *Trade Practices Act 1974* (Cth) (the **Act**).

Background

Perkins is a privately owned transport and logistics company based in Darwin. It carries on operations through its wholly-owned subsidiary, Perkins Shipping. On 1 July 2003, Perkins acquired 100% of the shares of Gulf Freight Services Pty Ltd (**GFS**) from Riverside Coal Transport Company Pty Ltd, trading as Riverside Marine-Queensland (**Riverside**) (the **acquisition**).

The Commission is concerned that the acquisition may have had the effect of substantially lessening competition in the market for the provision of general cargo freight services to the remote communities of north-western Australia, the Northern Territory and the Gulf of Carpentaria (the **market**) in breach of section 50 of the Act.

In particular, the Commission is concerned that as a result of the acquisition, any new entrants to the market which may be potential competitors of Perkins Shipping may be foreclosed from access to and use of the present wharf facilities and any new general cargo wharf facility to be constructed on land leased by Perkins Properties in the Port of Gove (the **leased area**).

In addition, the Commission is concerned that as a result of the acquisition, the costs of services to the remote mainly indigenous communities in the market could increase unreasonably or the quality and frequency of those services could decline.

On 23 December 2003, in response to the Commission's concerns, Perkins gave a s87B undertaking to the Commission (the **2003 undertaking**). The 2003 undertaking related to the provision of access to the wharf facilities that existed and were managed by Perkins at the Port of Gove at that time, and to the provision of access in the future to a new heavy lift wharf (the **new heavy lift wharf**) that was proposed to be built at Gove in the near future.

At the time of the 2003 undertaking, Perkins anticipated that the new heavy lift wharf would be built over the existing public wharf at Gove, which was managed by Perkins (the **old wharf**). Perkins also anticipated that its concrete landing ramp (the **old landing ramp**) would be unaffected by the construction work. The 2003 undertaking reflected these assumptions. The old wharf is limited as to the weight of the cargo it can bear.

Alcan Gove Pty Limited and Alcan Gove Development Limited Pty Ltd (together **Alcan**) have now commenced construction of the new heavy lift wharf. However, contrary to Perkins's expectation at the time of the 2003 undertaking, the new heavy lift wharf is being built over the site of the old landing ramp. A new landing ramp has been constructed on the leased area. The construction work does not involve the old wharf, which will continue to operate, managed by Perkins.

The new heavy lift wharf will be managed by Perkins and will initially be used for the delivery of parts and equipment necessary for Alcan's planned expansion of its alumina refinery at Gove (the ***Alcan expansion***). The ***period of the Alcan expansion*** is from the commencement of construction on the leased area to the commencement of commercial production of the expanded alumina refinery. After the period of the Alcan expansion, it is anticipated that the new heavy lift wharf will be used to service the needs of Perkin's major customers and the Gove community.

In order that the concerns that the Commission had at the time of the 2003 undertaking continue to be addressed, while accurately reflecting the current and future wharf facilities at the Port of Gove, Perkins, Perkins Shipping and Perkins Properties have agreed to give the revised undertaking contained herein to the Commission under section 87B of the Act.

The Commission has agreed to accept the revised undertaking from Perkins, Perkins Shipping and Perkins Properties under section 87B of the Act.

Commencement of the Revised Undertaking

This undertaking comes into effect when:

- (a) the undertaking is executed by Perkins, Perkins Shipping and Perkins Properties;
and
- (b) the undertaking is accepted by the Commission.

Obligations under the Revised Undertaking

1. During the period of the Alcan expansion, Perkins Shipping:
 - (a) will give priority use of the new heavy lift wharf to vessels delivering parts and equipment necessary for the Alcan expansion, but will provide access to the new heavy lift wharf on the terms set out in clause 2 below to any other vessel where to do so would not interfere with Alcan's priority use of the new wharf; and
 - (b) will continue to provide access to the old wharf to any vessels seeking access to that wharf on the terms set out in clause 2 below.
2. Subject to clause 1 above, both during and after the period of the Alcan expansion, assuming that Perkins Shipping remains responsible for the management of the relevant wharf, Perkins Shipping will not, consistent with Perkins Shipping's own operations, hinder or prevent the operator of any business which:
 - (a) uses or proposes to use the old wharf or the new heavy lift wharf for:
 - (i) land transport or freight forwarding operations;
 - (ii) the movement by sea of goods or produce; or
 - (b) provides or proposes to provide services at the Port of Gove for the purposes of its business

from having access to the old wharf or the new heavy lift wharf and associated hard stands and access roads within the leased area in the Port of Gove for the purposes of its business and, if requested to do so, and where it is reasonably able to do so and to the extent that it has power to do so, Perkins Shipping will give access to any such operator,

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- for the purpose of the operator's business, on terms which shall be non-discriminatory and which shall be reasonable commercial terms having regard to, inter alia, the following matters:
- (c) the legitimate business interests of Perkins Shipping and Perkins Properties in the leased area and in the Port of Gove;
 - (d) the public interest, including the public interest in having competitive markets;
 - (e) any operating or capital costs incurred by Perkins in providing access but not costs associated with losses arising from increased competition in upstream or downstream markets;
 - (f) the interests of all persons holding contracts for use of the old wharf or the new heavy lift wharf;
 - (g) contractual obligations of Perkins Shipping or other persons (or all of them) already using the old wharf or the new heavy lift wharf;
 - (h) contractual obligations of Perkins Shipping or other persons (or all of them) already using the old wharf or the new heavy lift wharf;
 - (i) the operational and technical requirements necessary for the safe and reliable operation of the old wharf and the new heavy lift wharf;
 - (j) the economically efficient operation of the wharf infrastructure on the leased area; and
 - (k) the legitimate business interests of the person seeking access.
3. Perkins Shipping will take steps to publicise its service charter which will be maintained at a high standard reflecting industry best practice. The service charter covers the nature of its services, delivery times/scheduling, pricing policies, policies with respect to damage to goods, insurance and complaints handling. Perkins Shipping will also institute a dispute resolution procedure involving independent referees and experts where necessary. Accordingly, Perkins Shipping will communicate details of its service charter and dispute resolution procedures to its existing customer base, ensuring that appropriate communication is made to its remote mainly indigenous customers.
4. Perkins Shipping will promptly notify the Commission in writing of the details of any proposal whereby:
- (a) Perkins Shipping ceases to be the manager of the old wharf or the new heavy lift wharf;
 - (b) any other person or persons is or are to be appointed either solely or jointly with any other person or persons as manager of the old wharf or the new heavy lift wharf.
5. Perkins, Perkins Shipping and Perkins Properties will ensure that any related company controlled by either of them will comply with the terms of clauses 1, 2 and 3 above as if the related company was expressly named.
6. Perkins, Perkins Shipping and Perkins Properties agree with the Commission that if issues or problems arise relating to the fulfilment of this undertaking, they will meet with the

Commission to address the issues or problems or discuss the question of adequacy of access to the old wharf or the new heavy lift wharf as the case may be. Perkins will provide to the Commission such information as the Commission reasonably requests in relation to the fulfilment of this undertaking.

7. Perkins, Perkins Shipping and Perkins Properties note that the Commission may make public the terms of this undertaking provided the Commission will provide to Perkins Shipping a copy of any proposed announcement no less than 2 business days before the release of that announcement.

THE COMMON SEAL of PERKINS
INDUSTRIES PTY LTD was hereunto
affixed by authority of its Board of Directors
in the presence of:

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)
)



Signature

M. Gallivan
Witness

MICHELLE GALLIVAN
Print Name

THE COMMON SEAL of PERKINS
SHIPPING PTY LTD was hereunto affixed
by authority of its Board of Directors in the
presence of:

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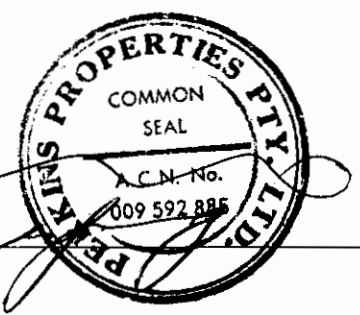


Signature

M. Gallivan
Witness

MICHELLE GALLIVAN
Print Name

THE COMMON SEAL of PERKINS)
PROPERTIES PTY LTD was hereunto)
affixed by authority of its Board of Directors)
in the presence of:)



Signature

M. Gallivan
Witness

MICHELLE GALLIVAN
Print Name

ACCEPTED BY THE AUSTRALIAN)
COMPETITION AND CONSUMER)
COMMISSION :)

Graeme Julian Samuel

Signature

Graeme Julian Samuel
Chairman

Date 5th July 2005