



TRADE PRACTICES ACT 1974 - SECTION 87B

UNDERTAKING

PERSON GIVING UNDERTAKING

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Primera Pty Limited (ACN 000 932 276) ("Primera") under section 87B of the *Trade Practices Act 1974* ("the Act").

BACKGROUND

In discussions and communications between representatives of the Commission and representatives of Primera in April 1996 in relation to the proposed sale of the port of Geelong, Victoria, the Commission expressed concerns that the proposed acquisition of the port businesses conducted at the port of Geelong, by a consortium comprising Primera, a wholly owned subsidiary of TNT Limited (ACN 008 427 021) ("TNT"), and Infrastructure Investment Corporation Limited (ACN 064 567 086) ("Infrastructure Investment") through Ports Pty Limited (ACN 073 772 077) ("Ports P/L"), as Trustee of the Port of Geelong Unit Trust, a company and a Unit Trust in which Infrastructure Investment has a 70% shareholding and unit holding, and in which Primera has a 30% shareholding and unit holding may have the effect of substantially lessening competition in a relevant market, in contravention of section 50 of the Act.

The Port of Geelong Authority, Ports P/L and the State of Victoria have now executed an asset sale agreement ("Asset Sale Agreement") dated 14 May 1996 pursuant to which Ports P/L as Trustee of the Port of Geelong Unit Trust is to acquire the port businesses conducted at the port of Geelong.

Pursuant to an operating agreement ("Operating Agreement") between Ports P/L and Metvale Pty Ltd (ACN 003 996 594) ("Metvale") dated 10 May 1996, Metvale was appointed by Ports P/L to operate the Port of Geelong and is to be granted a lease by Ports P/L in respect of the land and assets to be purchased by Ports P/L. On 29 May 1996 Metvale changed its name to GeelongPort Pty Ltd ("GeelongPort P/L").

Primera on its own behalf and as a shareholder in Ports P/L, has agreed to give the undertaking contained herein to the Commission under section 87B of the Act to address the Commission's concerns in relation to the proposed acquisition.

The Commission has agreed to accept the Primera undertaking under section 87B of the Act.

COMMENCEMENT OF UNDERTAKING

1. This undertaking comes into effect when:
 - (a) the undertaking is executed by Primera;
 - (b) the undertaking so executed is accepted by the Commission; and
 - (c) the Government of Victoria accepts the bid by the Primera/Infrastructure Investment consortium for the purchase of the port businesses conducted at the port of Geelong,provided that if the Asset Sale Agreement is rescinded or terminated, this undertaking shall be of no force and effect and Primera shall be released from this undertaking as from the date of such rescission or termination.

OBLIGATIONS UNDER UNDERTAKING

2. Primera will not hinder or prevent any land transport operator or freight forwarding operator from having access to the port of Geelong and its associated facilities, for the purposes of its business, and if requested to do so, and where it is reasonably able to do

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so, to the extent that it has power to do so, Primera will give access to any such operator, for the purposes 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:

- (a) the legitimate business interests of Ports P/L and GeelongPort P/L and their investment in the port of Geelong and its associated facilities (in this clause referred to as "the facility");
- (b) the public interest, including the public interest in having competitive markets;
- (c) the costs to Ports P/L and GeelongPort P/L of providing access, including any costs of extending the facility but not costs associated with losses arising from increased competition in upstream or downstream markets;
- (d) the economic value to Ports P/L and GeelongPort P/L of any additional investment that the person seeking access, Ports P/L or GeelongPort P/L has agreed to undertake;
- (e) the interests of all persons holding contracts for use of the facility;
- (f) contractual obligations of Ports P/L, GeelongPort P/L or other persons (or all of them) already using the facility;
- (g) the operational and technical requirements necessary for the safe and reliable operation of the facility;
- (h) the economically efficient operation of the facility; and
- (i) the legitimate business interests of the person seeking access.

3. Primera will not hinder or prevent any operator of a business (other than a land transport operator or freight forwarding operator referred to in clause 2 above), which uses or proposes to use the port of Geelong for the movement by sea of goods or produce, or which provides or proposes to provide services at the port of Geelong, for the purposes of the operator's business, from having access to the port of Geelong and

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its associated facilities and if requested to do so, and where it is reasonably able to do so, to the extent that it has power to do so, Primera will give access to any such operator, for the purposes 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:

- (a) the legitimate business interests of Ports P/L and GeelongPort P/L and their investment in the port of Geelong and its associated facilities (in this clause referred to as "the facility");
 - (b) the public interest, including the public interest in having competitive markets;
 - (c) the costs to Ports P/L and GeelongPort P/L of providing access, including any costs of extending the facility but not costs associated with losses arising from increased competition in upstream or downstream markets;
 - (d) the economic value to Ports P/L and GeelongPort P/L of any additional investment that the person seeking access, Ports P/L or GeelongPort P/L has agreed to undertake;
 - (e) the interests of all persons holding contracts for use of the facility;
 - (f) contractual obligations of Ports P/L, GeelongPort P/L or other persons (or all of them) already using the facility;
 - (g) the operational and technical requirements necessary for the safe and reliable operation of the facility;
 - (h) the economically efficient operation of the facility; and
 - (i) the legitimate business interests of the person seeking access.
4. Primera will not conduct, or acquire an interest in, any stevedoring, towage, ship operating or provedore business which operates out of the port of Geelong, or which uses the facilities of the port of Geelong without first giving the Commission reasonable

advance notice of its intention to conduct any such business or acquire any such interest.

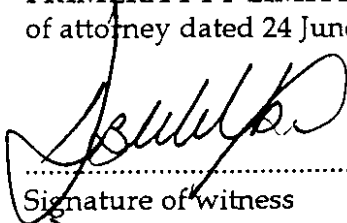
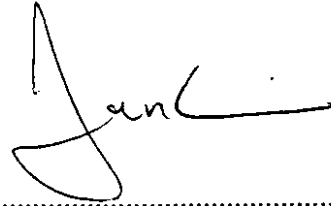
5. Primera will not conduct any business which uses the port of Geelong for the movement by sea of goods or produce produced by that business, or which provides services at the port of Geelong, for the purposes of its business, (other than the land transport, transport logistics and freight forwarding businesses currently conducted by any of the companies in the TNT group of companies) where, in the case of Primera acquiring an existing business, the actual turnover of that business in the year immediately preceding such acquisition was greater than \$500,000 and, in the case of Primera commencing a new business, the projected turnover of that business for its first year of operation is greater than \$500,000, and will not acquire an interest in any such business which gives it control of that business or entitles it to participate in more than 10% of the capital or profits of that business, unless Primera first gives the Commission reasonable advance notice of its intention to conduct that business or acquire that interest.
6. Primera will not acquire an ownership interest in any other port in any of the States of South Australia, Victoria and New South Wales, or acquire an interest in any of the facilities at any such port or acquire, or engage in, any business which provides services at any such port (other than the operation of the TNT Logistics bulk berth facilities in the Port of Newcastle and the land transport, transport logistics and freight forwarding business currently conducted by any of the companies in the TNT group of companies) where, in the case of Primera acquiring an existing business, the actual turnover of that business in the year immediately preceding such acquisition was greater than \$500,000 and, in the case of Primera commencing a new business, the projected turnover of that business for its first year of operation is greater than \$500,000, without first giving the

Commission reasonable advance notice of its intention to acquire any such interest, or acquire or engage in any such business in such other port, as the case may be.

7. Primera will promptly notify the Commission of the details of any proposal that another person acquire an ownership interest in the port of Geelong together with or in place of one or more of the members of the acquiring consortium which currently comprises the following persons:
 - Primera
 - Infrastructure Investment.
8. Primera will promptly notify the Commission of the details of any proposal to change the proportion of equity interest held by any member of the consortium which, through Ports P/L, holds the ownership interest in the port of Geelong.
9. Primera will promptly notify the Commission of any proposal whereby:
 - (a) GeelongPort P/L ceases to be the operator of the port of Geelong;
 - (b) any other person is to acquire a shareholding in GeelongPort P/L; or
 - (c) any other person or persons is or are to be appointed either solely or jointly with any other person or persons as operator of the port of Geelong.
10. Primera will ensure that any related company controlled by Primera will comply with the terms of clauses 2, 3, 4, 5, 6, 7, 8 and 9 above as if that related company was expressly named.
11. Primera notes that the Commission may make public the terms of this undertaking, provided that the Commission will provide to Primera a copy of any proposed announcement no less than 2 business days before the release of that announcement.

EXECUTED on the 25th day of June 1996

SIGNED by JAMES ANDREW)
BOWDEN JENKIN as attorney for)
PRIMERA PTY LIMITED under power)
of attorney dated 24 June 1996:)



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Signature of witness

DAVID WILKIE

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Name of witness

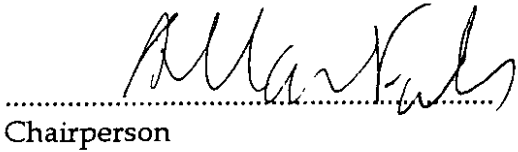
Level 5, 39 Martin Place

.....
Address of witness

SYDNEY NSW

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By executing this undertaking the attorney
states that the attorney has received no
notice of revocation of the power of attorney

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION


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Chairperson

Dated

26 June 1996