

TRADE PRACTICES ACT 1974 – SECTION 87B

Undertaking



Person giving Undertaking:

This undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Bristile Operations Pty Ltd (ACN 079 711 603) (Bristile) under section 87B of the *Trade Practices Act 1974* (TPA).

BACKGROUND

1. On 27 June 2003 the ACCC instituted proceedings in the Federal Court against Bristile and others (W143 of 2003).
2. On 31 May 2004, the Federal Court found, by consent, that:
 - Bristile had contravened section 45(2) of the Act by making an arrangement or arriving at an understanding in about October and November 2001 with Midland Brick Company Pty Ltd ('Midland') that contained a provision that Bristile and Midland fix, control, or maintain prices for clay brick products supplied by Bristile and Midland to trade builders from in or about October 2001 and to major builders from in or about January 2002; and
 - Bristile had contravened section 45(2) of the Act by making an arrangement or arriving at an understanding in or about October 2001 with Midland that contained a provision that Bristile and Midland fix, control or maintain a price of \$570 per thousand bricks for "Maxibrick" and "Verticore" clay bricks supplied to major builders by Midland and Bristile respectively.
3. On 9 June 2004, His Honour Justice Lee of the Federal Court made orders in the proceedings, including a probation order pursuant to section 86C of the TPA that, within 90 days of the making of the order, Bristile:

...establish, and maintain for a period of three years thereafter, a compliance program and a training and education program for employees and other persons involved in the second respondent's business of manufacture and supply of clay brick products in the State of Western Australia, being programs designed to ensure their awareness of the responsibilities and obligations in relation to the contravening conduct of Bristile set out in [paragraph 1 above], similar conduct or related conduct.
4. This undertaking sets out elements of the abovementioned probation order, and is provided, at the suggestion of His Honour Justice Lee, as an ancillary provision to that order. It is accepted by the ACCC in connection with a matter in relation to which the ACCC has a power or function under the TPA.

UNDERTAKINGS BY BRISTILE

1. Prior to the implementation of the compliance program, and the training and education program Bristile will ensure the programs are approved by a firm of solicitors or compliance professionals with expertise in trade practices law.

2. Bristile shall, at its own expense, cause an audit of the Compliance Program to be undertaken annually from the date of implementation of the program for a period of three (3) years with a view to identifying deficiencies and implementing improvements to the Compliance Program (Audits). The Audits shall be performed by a firm of solicitors or compliance professionals with expertise in trade practices law that is acceptable to, and approved in writing by, the ACCC (the Auditor). The findings in relation to each of the Audits are set out in a written report to be provided to Bristile by the Auditor (Reports).
3. Bristile shall, at its own expense, cause to be produced and provided to the ACCC copies of each of the Reports, within ten (10) days of Bristile receiving them. Should any of the Reports identifying significant deficiencies in the Compliance Program, Bristile will make such alterations to the Compliance Program as are reasonably necessary within twenty eight (28) days of receiving the Reports. Such alterations and their implementation are to be notified to the ACCC within ten (10) days of implementation.

Commencement of undertaking

This undertaking by Bristile comes into effect when:

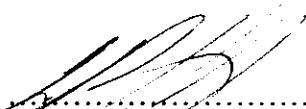
1. Bristile execute this undertaking; and
2. the Commission accepts the executed undertaking.

Acknowledgments

Bristile acknowledges and accepts that:


- (a) the ACCC may make this undertaking available for public inspection including by placing it on a register, publishing it and allowing third parties to publish it, and that the ACCC may from time to time publicly refer to this undertaking, including by way of media release;
- (b) this undertaking in no way derogates from the rights and remedies which may be available to any other person arising from the alleged conduct.

IN WITNESS of these undertakings and its agreement the common seal of Bristile Operations Pty Ltd (ACN 079 711 603) was affixed by authority of the Board of Directors in the presence of:

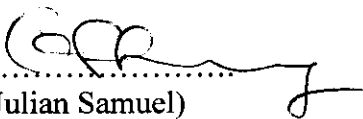

.....
Director

This 9th day of June 2004




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Director SECRETARY

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


.....
(Graeme Julian Samuel)
Chairman

This ~~24~~²⁵ day of June 2004