



TRADE PRACTICES ACT 1974

**Undertaking to the Australian Competition and Consumer Commission given for the
purposes of section 87B of the Trade Practices Act 1974**

By

DCA Group Limited

(ACN 002 808 746)

September 2004

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Interpretation

The following rules of interpretation apply unless the context requires otherwise.

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The singular includes the plural and conversely.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a paragraph, clause, annexure or schedule is to a paragraph or clause of, or annexure or schedule to, the Undertaking.
- (e) A reference to any agreement or document (including the Undertaking) is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time.
- (f) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- (g) A reference to conduct includes any omission and any statement or undertaking, whether or not in writing.
- (h) Mentioning anything after include, includes or including does not limit what else might be included.
- (i) A reference to “the Undertaking” is a reference to all of the provisions of this document and Annexures A, B, C and D.

Definitions

Act means the Trade Practices Act 1974 (Cth);

Auditor means a person with the qualifications and experience necessary to undertake the certification process referred to in paragraph 25 of the Undertaking and who is independent on the basis that he or she is:

- (a) is not a present or past staff member or director of DCA;
- (b) has not acted or does not act for DCA;
- (c) is not retained by DCA in any other capacity, either currently or in the past;
- (d) has not and does not provide consultancy or other services for DCA; and
- (e) has no substantial shareholding or other interests in DCA;

Business Day means a day on which trading banks are open for business in Sydney, Australia, but does not include any Saturday, Sunday or public holiday;

Calvary Business means the diagnostic imaging business conducted at the Calvary Clinic;

Calvary Clinic means the clinic operated by the MIA Group at 89 Strangways Terrace, North Adelaide SA 5006 within the Calvary Hospital;

Calvary Hospital means the hospital also known as Calvary Health Care Adelaide owned and operated by the Little Company of Mary;

Clare means the diagnostic imaging business conducted at the Clare Hospital pursuant to an agreement dated 6 November 2000 with Clare District Hospital.

Commission means the Australian Competition and Consumer Commission;

Contract means, in relation to a Divestiture Business, a contract between MIA or DCA and any third party, including but not limited to a private hospital, a finance provider, a landlord, an equipment lessor and the staff of the Divestiture Business, that was in existence on 7 June 2004, or entered into after 7 June 2004 and continues to be in existence as at the date on which the Undertaking commenced that relates to the relevant Divestiture Businesses;

Control Date means the date on which all the issued shares in MIA are registered in the name of I-Med or another member of the DCA Group;

Customer Service Levels includes the availability, range, quality and frequency of services provided at, and the hours of operation of, a Divestiture Business;

DCA means DCA Group Limited (ACN 002 808 746);

DCA Group means DCA and its Related Bodies Corporate (and includes, from the Control Date, the MIA Group);

Display Advertisement means an advertisement placed, or caused to be placed, in a national daily newspaper and in a major metropolitan daily newspaper in South Australia, seeking expressions of interest to purchase separately or together the Divestiture Businesses;

Divestiture Businesses means the Calvary Business, the Ingleview Business, the Mayo Business, the Memorial Business, the Salisbury Business, the Europa Business and the Mitcham/Hawthorn Business (and **Divestiture Business** means any one of them);

Divestiture Clinics means the Calvary Clinic, the Ingleview Clinic, the Mayo Clinic, the Memorial Clinic, the Salisbury Clinic, the Europa Clinic and the Mitcham/Hawthorn Clinic (and **Divestiture Clinic** means any one of them);

Divestiture Date means, in relation to a Divestiture Business, the date on which the divestiture of the relevant Divestiture Business is completed and settled by or on behalf of DCA pursuant to the Undertaking;

Europa Business means the diagnostic imaging business conducted at the Europa Clinic;

Europa Clinic means the clinic operated by the DCA Group at Salisbury Highway, Salisbury Downs, South Australia;

Final Discharge Date means :

- (a) except with respect to paragraph 50, the later of:

- (i) the final Divestiture Date; and
 - (ii) the date DCA ceases to be obliged to provide the services of Radiologists to a Divestiture Business under a contractual provision contemplated by paragraph 38(d) of this Undertaking; and
- (b) in respect of paragraph 50, 1 March 2011;

I-Med means I-Med Limited (ACN 093 625 346);

Information Memorandum means a memorandum in writing that sets out certain information relating to the sale of the Divestiture Businesses in accordance with paragraph 24 of the Undertaking;

Ingleview Business means the diagnostic imaging business conducted at the Ingleview Clinic;

Ingleview Clinic means the clinic operated by the DCA Group at 23 Roopena Street, Ingle Farm, South Australia;

Initial Sale Period means the period of time defined in Annexure A of the Undertaking;

Mayo Business means the diagnostic imaging business conducted at the Mayo Clinic;

Mayo Clinic means the clinic operated by the MIA Group at 168 Ward Street, North Adelaide South Australia 5006;

Memorial Business means the diagnostic imaging business conducted at the Memorial Clinic and includes the Memorial MRI Unit;

Memorial Clinic means a clinic operated by the MIA Group at Sir Edwin Smith Avenue, North Adelaide South Australia 5006 in the Memorial Hospital owned by The Adelaide Community Healthcare Alliance (ACHA) and managed by Healthscope Limited;

Memorial MRI Unit means the GLX Hi-Speed MRI Unit with the serial number G144 at the Memorial Clinic which has “eligible equipment” status within the meaning of rule 35 of schedule 1 of the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2003* (Cth);

MIA means MIA Group Limited (ACN 080 020 104);

MIA Group means MIA and its Related Bodies Corporate;

MIA Undertaking means the undertaking provided by MIA to the Commission in relation to the Proposed Acquisition, a copy of which forms Annexure D to this Undertaking;

Mid-North Rural/Barossa means the local government areas of Clare & Gilbert Valleys, Goyder, Mount Remarkable, Northern Areas, Orroroo/Carrieton, Peterborough, Port Pirie City & Districts, Wakefield, Barossa and Light;

Mitcham/Hawthorn Business means the diagnostic imaging business conducted at the Mitcham/Hawthorn Clinic;

Mitcham/Hawthorn Clinic means the clinic operated by the DCA Group at 80 Belair Road, Hawthorn, South Australia;

Objection Notice means a notice in writing that is prepared by the Commission that sets out its objection to a Prospective Purchaser/s acquiring all or any of the Divestiture Businesses;

Offer Notice means a notice in writing to a Prospective Purchaser identified by DCA inviting expressions of interest to purchase separately or together the Divestiture Businesses;

Offer Period means the period determined by DCA, having regard to DCA's undertaking to take reasonable steps to divest or cause the divestiture of the Divestiture Businesses within the Initial Sale Period, by the expiration of which, written offers to purchase all or any of the Divestiture Businesses must be submitted to DCA, such Offer Period being identical for all persons having registered an expression of interest and/or having received the Information Memorandum;

Person includes any corporation or non-natural person;

Port Augusta means the diagnostic imaging business conducted at the Port Augusta Hospital pursuant to an agreement dated 3 March 1994 with Port Augusta Hospital Inc;

Port Lincoln means the diagnostic imaging business conducted at the Port Lincoln Hospital pursuant to an agreement signed on 4 May 2004 and effective from 1 December 2003 with the Department of Human Services, South Australia;

Port Pirie means the diagnostic imaging business conducted at the Port Pirie Hospital pursuant to an agreement dated 17 June 1993 with Port Pirie Regional Health Service Inc;

Proposed Acquisition means the proposed acquisition of MIA by DCA as described in paragraph 2 of the Undertaking;

Proposed Purchaser Notice means a confidential notice in writing to the Commission that identifies the person/s to whom DCA proposes to divest the Divestiture Businesses, and sets out certain other information in relation to the Prospective Purchaser including the information referred to in paragraph 43 of the Undertaking;

Prospective Purchaser means a prospective purchaser of all or any of the Divestiture Businesses;

Qualified Purchaser means a purchaser of a Divestiture Business who is not objected to by the Commission in accordance with paragraph 45 of the Undertaking;

Radiologist means a radiologist, nuclear physician, radiographer or sonographer;

Related Body Corporate in relation to a company, means any other company which would be deemed to be related to the first named company by the operation of section 4A(5) of the Act;

Relevant Markets include markets for the supply of:

- (a) MRI services;

- (b) nuclear medicine services; and
- (c) other diagnostic imaging services,
excluding public hospital in-patients in:
 - (d) Adelaide; and
 - (e) the regional area encompassing at least the Mid-North Rural/Barossa;

Relevant Radiologist means a Radiologist who:

- (a) was or is practising at a Divestiture Clinic as at the Control Date; and
- (b) agrees to terminate his or her service arrangement with the DCA Group and to provide services at a Divestiture Clinic following completion of the sale of the relevant Divestiture Business;

Sale and Purchase Agreement means the agreement or agreements in respect of the sale and purchase of a Divestiture Business;

Salisbury Business means the diagnostic imaging business conducted at the Salisbury Clinic;

Salisbury Clinic means the clinic operated by the DCA Group at 133 Frost Road, Salisbury, South Australia; and

Whyalla means the diagnostic imaging business conducted at the Whyalla Hospital pursuant to an agreement dated 9 May 1994 with The Whyalla Hospital & Health Services Inc.

Background

1. MIA and DCA are both Australian public limited companies listed on the Australian Stock Exchange. Both DCA (through its wholly owned subsidiary, I-Med) and MIA operate diagnostic imaging businesses in various locations throughout Australia, including South Australia.
2. On 7 June 2004, MIA, DCA and I-Med entered into an agreement which provided for the implementation of a scheme of arrangement under Part 5.1 of the Corporations Act, pursuant to which I-Med will acquire all of the shares in MIA (other than the 0.3% already held by the DCA Group) for approximately \$700 million.
3. The implementation of the scheme of arrangement (and hence the acquisition of MIA) remains subject to a number of conditions and approvals, including MIA shareholder approval, court approval, and approval by the Commission.

4. The Commission has made market enquiries and considered information provided by the parties and other industry participants. The Commission's enquiries were aimed at assessing whether or not the Proposed Acquisition was likely to substantially lessen competition in any substantial Australian market, in breach of section 50 of the Act.
5. The Commission has expressed concerns that the Proposed Acquisition would be likely to breach section 50 of the Act in separate markets for the supply of MRI services, nuclear medicine services, and other diagnostic imaging services, excluding public hospital in-patients, in Adelaide and in the regional area encompassing at least the Mid-North Rural/Barossa.
6. Up until the Control Date, the Memorial Business, Mayo Business and the Calvary Business will be operated by MIA and the Commission expressed concerns that prior to the Control Date the condition of those Divestiture Businesses may deteriorate. The MIA Undertaking was provided to the Commission to overcome the Commission's concerns in relation to the condition of the Divestiture Businesses prior to the Control Date.
7. DCA, on a without prejudice basis, offers the undertakings contained in this document to overcome the Commission's concerns in relation to the Proposed Acquisition.
8. The Commission is of the view that, taking into account, and subject to the implementation of, the Undertaking and MIA Undertaking, its concerns in respect of the Proposed Acquisition will be overcome.

Commencement of Undertaking

9. The Undertaking comes into effect when:
 - (a) the Undertaking is executed by DCA; and
 - (b) the Undertaking so executed is accepted by the Commission,and terminates on the earlier of:
 - (c) the Final Discharge Date; and
 - (d) the date DCA makes a public announcement to the effect that the Proposed Acquisition will not proceed.

Undertakings

10. DCA undertakes that it must divest or cause the divestiture of the Divestiture Businesses in accordance with the Undertaking:
 - (a) either separately or together; and
 - (b) as a viable going concern and as fully operational at the relevant Divestiture Dates as at the Control Date,and must complete the divestiture within the Initial Sale Period.
11. DCA further undertakes to complete and settle the divestiture of the Divestiture Businesses within 60 days of the signing of the Sale and Purchase Agreement/s between DCA and a Qualified Purchaser/s, or such sooner time as may be agreed between DCA and the Qualified Purchaser.

Control Date

12. DCA must, within 1 week after the Control Date:
 - (a) advise the Commission in writing of the date of the Control Date;
 - (b) provide the Commission with copies of the relevant court order, and of any documents in relation to the Commission condition precedent in the Scheme Implementation Agreement dated 7 June 2004;
 - (c) provide the Commission with a list of all other documents executed in relation to the Proposed Acquisition,and must, within 1 week after the date of any written request by the Commission, provide the Commission with copies of any documents identified by the Commission from the list referred to in paragraph 12(c).

Initial Sale Period

13. Subject to paragraph 14 below, DCA may, no later than 3 weeks prior to the expiration of the Initial Sale Period, submit a request in writing to the Commission only once, seeking the Commission's written approval for an extension of the Initial Sale Period provided that the request by DCA:

- (a) is accompanied by reasons for the request; and
 - (b) stipulates the duration of the extension requested.
- 14. DCA acknowledges that the Commission may, in its absolute discretion, within 3 weeks of receipt of DCA's written request in accordance with paragraph 13 above, provide its written approval for one extension of the Initial Sale Period pursuant to paragraph 13 above for a period not exceeding 6 weeks.
- 15. DCA acknowledges that the Commission:
 - (a) may make whatever enquiries it considers necessary in its absolute discretion in deciding whether to approve or reject a request pursuant to paragraph 13 above; and
 - (b) may approve an extension of the Initial Sale Period for a lesser duration than that requested by DCA pursuant to paragraph 13 above.
- 16. DCA acknowledges that nothing in paragraphs 13 to 15 shall operate to affect the confidentiality of the Initial Sale Period (as such period may be extended in accordance with the terms of this Undertaking) as described in paragraph 59 of this Undertaking.

Condition of Divestiture Businesses

- 17. DCA must not, except in accordance with the Undertaking, sell or transfer its interests in the Divestiture Businesses, or remove or make any material change to the assets, operations or businesses comprising the Divestiture Businesses (including, but not limited to, the Contracts, plant, equipment, brands and trade marks, staffing levels, management, premises, stock levels, raw material levels and Customer Service Levels).
- 18. DCA must, within 3 weeks after the Control Date, provide the Commission with a schedule in writing that lists, and provides a detailed description of, each of its assets, operations and businesses comprising the Divestiture Businesses as at the Control Date (including, but not limited to, the working capital, sources of credit, Contracts, plant, equipment, brands and trade marks, staffing levels, management, premises, stock levels, raw material levels and Customer Service Levels).

19. DCA must, from the Control Date to the Divestiture Dates, and in relation to Ingleview Business, the Salisbury Business, the Europa Business and the Mitcham/Hawthorn Business, from the day the Undertaking commences, take all reasonable steps to ensure that:
- (a) each of the Divestiture Businesses is managed and operated in the ordinary course of business as a fully operational competitive going concern and in such a way that preserves the goodwill of the Divestiture Business; and
 - (b) each of the Divestiture Businesses and each material asset within any of the Divestiture Businesses is maintained in good working order and as fully operational on the relevant Divestiture Date as they were on the Control Date, and in relation to the Ingleview Business, the Salisbury Business, the Europa Business and the Mitcham/Hawthorn Business, on the day on which the Undertaking commenced.
20. Prior to the relevant Divestiture Date, DCA will use its best endeavours to ensure that any Contracts in existence as at the Control Date are on expiry renewed on commercial terms no less favourable to the relevant Divestiture Business.

Advertising of Divestiture

21. DCA must, within 3 weeks after the Control Date:
- (a) send, or cause to be sent, an Offer Notice to Prospective Purchasers identified by DCA; and
 - (b) publish, or cause to be published, Display Advertisements,
- such Offer Notice and Display Advertisements must:
- (c) inform any Prospective Purchaser that the Divestiture Businesses are offered for sale pursuant to the Undertaking; and
 - (d) request each Prospective Purchaser to register their expression of interest in the purchase of all or any of the Divestiture Businesses by a date no later than 3 weeks following the date of the Offer Notice being sent to the Prospective

Purchasers or the date of publication of the Display Advertisements (as applicable).

22. DCA must, within 1 week after:
 - (a) the date of sending or causing to be sent an Offer Notice to Prospective Purchasers pursuant to paragraph 21(a) above, advise the Commission in writing of the names of each person to whom DCA has sent or caused to be sent an Offer Notice;
 - (b) the date of publishing or causing to be published a Display Advertisement pursuant to paragraph 21(b) above, provide a copy of each such Display Advertisement to the Commission.

23. DCA must, within 1 week after the expiration of the period for registering expressions of interest as determined by paragraph 21(d) above, provide to the Commission on a confidential basis the names, phone numbers and addresses of all persons who have registered expressions of interest in response to the Offer Notice or the Display Advertisements.

Information Memorandum

24. Subject to paragraph 25 below, DCA must, within 4 weeks after the Control Date, prepare an Information Memorandum which must include, but not be limited to:
 - (a) a copy of the Undertaking, excluding Annexures A, B and C;
 - (b) the postal address for the General Manager, Mergers and Asset Sales Branch, Commission;
 - (c) a comprehensive timeframe for the divestiture of the Divestiture Businesses, including, but not limited to, registrations of interest, the Offer Period, due diligence, submission of a Prospective Purchaser Notice to the Commission, signing of a Sale and Purchase Agreement/s and completion of the divestiture;
 - (d) a detailed description of all land, premises, plant, equipment, brands and trademarks, raw materials, stock and other assets that comprise the Divestiture Businesses;

- (e) a detailed description of the operations of the Divestiture Business;
- (f) details of any Contracts relevant to the Divestiture Businesses;
- (g) a comprehensive draft Sale and Purchase Agreement for the divestiture of all or any of the Divestiture Businesses in accordance with the Undertaking; and
- (h) a statement that (subject to paragraph 31(b)) negotiations for the sale of any or all of the Divestiture Businesses in accordance with the Undertaking will only be entered into with those persons who have registered an expression of interest and/or received the Information Memorandum prior to the expiration of the Offer Period, and who submit an offer within the Offer Period.

Commission approval of Information Memorandum

25. Within 4 weeks after the Control Date, DCA must seek, in writing, the Commission's written approval of the Information Memorandum prepared by DCA in accordance with paragraph 24 above, by:

- (a) providing the proposed Information Memorandum to the Commission; and
- (b) causing an Auditor to prepare a certificate, which is to be provided to the Commission by DCA together with the proposed Information Memorandum, such certificate certifying that, so far as is material, all of the attributes and the extent of each of the Divestiture Businesses described in the Undertaking (including, but not limited to, assets, working capital, sources of credit, Contracts, plant, equipment, brands and trade marks, staffing levels, management, premises, stock levels, raw material levels and Customer Service Levels) are clearly and correctly represented in the proposed Information Memorandum as being for sale pursuant to the terms of the Undertaking.

26. DCA must, within 4 weeks after the Control Date, cause the Auditor to advise the Commission in writing of the investigations, physical inspections and other enquiries made by the Auditor in providing the certification referred to in paragraph 25 above.

27. DCA acknowledges that the Commission will, as soon as practicable from the date of receipt of the proposed Information Memorandum consider granting approval of the proposed Information Memorandum and, advise DCA in writing of its decision to

approve (which approval will not be unreasonably withheld) or object to the proposed Information Memorandum, in which case the Commission will provide DCA with its written reasons for its objection.

28. DCA acknowledges that the Commission will provide DCA with a reasonable period from the date of indicating its objection pursuant to paragraph 27 above, to amend the proposed Information Memorandum to address the Commission's concerns as stated in its reasons of objection.
29. DCA acknowledges that at any time prior to the divestiture of all or any of the Divestiture Businesses, DCA must, if the Commission so requests:
 - (a) provide information to the Commission as to the attributes and extent of the Divestiture Businesses;
 - (b) cause the Auditor to provide information to the Commission, or to allow the Commission to inspect the Auditor's relevant records, as to the accuracy of the certificate given by the Auditor under paragraph 25 above; and/or
 - (c) discuss and negotiate with the Commission in good faith any difference of view in relation to the inclusion in, or exclusion from, the description of the businesses and assets for sale in the Information Memorandum, of any asset which may form part of the Divestiture Businesses.

Provision of Information Memorandum to Prospective Purchasers

30. DCA must not provide the Information Memorandum (or any part of it) to any Prospective Purchaser unless the Commission's written approval of the Information Memorandum has first been obtained pursuant to paragraph 27 above.
31. Subject to paragraphs 30, 32, 34, 35 and 37, DCA:
 - (a) must provide the Information Memorandum to any person who has first registered an expression of interest in the purchase of all or any of the Divestiture Businesses, as soon as practicable and, in any event, within 1 week after the expiration of the period for registering expressions of interest as determined by paragraph 21(d) above; and

- (b) must also provide the Information Memorandum to any person who has not registered an expression of interest within 3 weeks after the date of the Offer Notice being sent to the Prospective Purchaser or the date of publication of the Display Advertisements, but who seeks the Information Memorandum prior to the expiration of the Offer Period.
32. DCA acknowledges that it must not provide the Information Memorandum to a person pursuant to paragraph 31 above, where:
- (a) DCA submits a written request to the Commission in which it sets out its reasons why the person should not receive the Information Memorandum, and the Commission agrees in writing that DCA may choose not to provide the Information Memorandum to that person; or
 - (b) the Commission directs that the person should not be provided with the Information Memorandum, the Commission making such direction if, in its opinion, a sale of all or any of the Divestiture Businesses to that person would not sufficiently mitigate the Commission's competition concerns arising from the Proposed Acquisition.
33. DCA must, within 1 week of the date of provision of the Information Memorandum to a person pursuant to paragraph 31 above, provide to the Commission on a confidential basis the name, phone number and address of that person.

Access to Divestiture Businesses

34. Subject to paragraphs 33 and 36, within 3 weeks of the Control Date, DCA must request the Commission's written approval for DCA to place confidentiality restrictions or assurances on access to the:
- (a) Information Memorandum by Prospective Purchasers; and
 - (b) business records, personnel, physical premises, assets and operations of the Divestiture Businesses by Prospective Purchasers,
- and the Commission will not unreasonably withhold such approval.

35. Subject to paragraph 34, DCA must permit a Prospective Purchaser to have reasonable access to the business records, physical premises and staff of DCA in relation to each of the Divestiture Businesses, and to inspect the assets and operations of the Divestiture Businesses unless:
- (a) DCA submits a written request to the Commission in which it sets out its reasons why a person or persons should not have such access, and the Commission consents in writing to DCA denying that person or persons from having such access; or
 - (b) the Commission directs that a particular person or persons should not be provided with such access, the Commission only making such direction if, in its opinion, a sale of all or any of the Divestiture Businesses to a particular person or persons would not sufficiently mitigate the Commission's competition concerns arising from the Proposed Acquisition.
36. DCA must not, directly or indirectly, limit the ability of a Prospective Purchaser to contact the Commission in relation to the Undertaking or DCA's compliance with the Undertaking.
37. (Without prejudice to paragraph 59) DCA must not, directly or indirectly, limit the ability of a Prospective Purchaser to make any enquiries of any government department or authority, or to seek any professional advice from a lawyer, accountant, auditor, consultant or other advisor, that the Prospective Purchaser considers relevant to its possible purchase of all or any of the Divestiture Businesses.

Divestiture Terms

38. The terms on which each of the Divestiture Businesses is to be divested must include provision for, on normal contractual terms:
- (a) the assignment or transfer to the purchaser or purchasers of all assets that comprise the Divestiture Businesses, including terms regarding collection of receivables by the vendor;
 - (b) in respect of the Memorial Business, the assignment to the purchaser or its nominee of the Memorial MRI Unit;

- (c) the assignment to the purchaser or its nominee of the freehold or leasehold to the (as applicable) premises of the Divestiture Businesses;
 - (d) the purchaser to offer employment to any of the staff of the Divestiture Businesses which it wishes to employ, on terms which are no less favourable to those staff individually than the terms on which they are employed prior to the divestiture;
 - (e) DCA not to do anything, the intention or likely effect of which is, to discourage any staff of the Divestiture Businesses from taking up employment with the purchaser, and for DCA to take all reasonable steps to facilitate the transfer of those employees;
 - (f) DCA to continue to operate the Divestiture Businesses in the ordinary course of business between the date of execution of the relevant Sale and Purchase Agreement and the relevant Divestiture Date;
 - (g) the assignment or transfer to the purchaser or its nominee of the rights and obligations under any of the Contracts, or (so far as lawfully possible in the circumstances) arrangements which place the purchaser or purchasers in a commercial position equivalent to that it or they would have been in had such an assignment or transfer occurred.
39. If the Commission is satisfied, based on written submissions from the relevant Prospective Purchaser (to which DCA is given the opportunity to respond), that a Prospective Purchaser of a Divestiture Business requires DCA to provide the services of Radiologists to the relevant Divestiture Business following the Divestiture Date, then the Commission may give notice to DCA:
- (a) requiring the terms on which the relevant Divestiture Business is to be divested to the relevant Prospective Purchaser to include provision for DCA to provide to the Divestiture Business after the Divestiture Date, on a cost to company basis, the services of Radiologists which are:
 - (i) at least equivalent to that provided on the Control Date, and in relation to the Ingleview Business, the Salisbury Business, the Europa Business

and the Mitcham/Hawthorn Business the day on which the Undertaking commenced; and

- (ii) sufficient to ensure that that the Customer Service Levels can be maintained at the level they were on the Control Date, and in relation to the Ingleview Business, the Salisbury Business, the Europa Business and the Mitcham/Hawthorn Business the day on which the Undertaking commenced, after the Divestiture Date,

(or such lesser services as the Commission may specify, having regard to the requirements of the Prospective Purchaser); and

- (b) specifying the period (not exceeding 12 months after the Divestiture Date) during which such services are to be provided.

For the purposes of this paragraph 39, “cost to company basis” means the cost to the DCA Group of providing the relevant Radiologist services, including salary or consultancy fees, payroll tax (and any applicable GST), insurance, workers compensation, business travel and accommodation (eg to rural clinics), superannuation, holiday and conference cover, professional licensing/registration fees, and an appropriate allocation of general overheads (eg rent, telecommunications, IT, and head office functions).

Offer Period

- 40. Prior to the expiration of the Offer Period, DCA may extend the Offer Period at its discretion, having regard to DCA’s undertaking to take reasonable steps divest or cause the divestiture of the Divestiture Businesses within the Initial Sale Period such extended Offer Period being identical for all persons having registered an expression of interest and/or having received the Information Memorandum.
- 41. DCA must, within 1 week after determining any extension to the Offer Period, inform the Commission and each person who registered an expression of interest and/or received the Information Memorandum of the extension to the Offer Period.

42. DCA must, within 1 week after the expiration of the Offer Period or the extended Offer Period as the case may be, provide to the Commission (on a confidential basis) copies of all offers to purchase all or any of the Divestiture Businesses.

Commission approval of Qualified Purchaser/s

43. DCA must, no later than 8 weeks prior to the expiration of the Initial Sale Period, provide the Commission with a Proposed Purchaser Notice on a confidential basis that:
- (a) sets out the name, address, telephone number and any other available contact details of the Prospective Purchaser/s from whom offers to purchase have been received to whom DCA proposes to divest the Divestiture Businesses;
 - (b) attaches a copy of the proposed sale and purchase agreement with the Prospective Purchaser/s, and identifies any changes to the proposed sale and purchase agreement from that which was included in the Information Memorandum;
 - (c) includes a description of the business carried on by the Prospective Purchaser/s;
 - (d) includes the names of the owners and directors of the Prospective Purchaser/s;
 - (e) attaches a statutory declaration by DCA's Managing Director or other qualified representative of DCA, attesting to:
 - (i) any current contracts, arrangements or understandings between DCA (or the related bodies corporate, directors and managers of DCA) and the Prospective Purchaser/s (or the related bodies corporate, directors and managers of the Prospective Purchaser/s); and
 - (ii) any contracts, arrangements or understandings between DCA (or the related bodies corporate, directors and managers of DCA) and the Prospective Purchaser/s (or the related bodies corporate, directors and managers of the Prospective Purchaser/s) made or arrived at in the last 5 years,

such contracts, arrangements or understandings including, but not limited to, equity interests, joint ventures, supply arrangements, licensing agreements, directorships and management positions, in Australia and overseas.

44. DCA must use its best endeavours to cause the Prospective Purchaser/s to, concurrently with the Proposed Purchaser Notice by DCA, provide to the Commission a statutory declaration attesting to:

- (a) the independence of the Prospective Purchaser/s (and its related bodies corporate, directors and managers) from DCA (and its related bodies corporate, directors and managers), having regard to any current or previous contracts, arrangements or understandings between them;
- (b) any equity, joint venture or other interest held by, or activity carried on by, the Prospective Purchaser/s in the separate markets for the supply of MRI services, nuclear medicine services, and other diagnostic imaging services, excluding public hospital in-patients, in Adelaide and in the regional area encompassing at least the Mid-North Rural/Barossa; and
- (c) the prospective purchaser or purchaser's commitment to being a vigorous and effective competitor in the separate markets for the supply of MRI services, nuclear medicine services, and other diagnostic imaging services, excluding public hospital in-patients, in Adelaide and in the regional area encompassing at least the Mid-North Rural/Barossa.

45. DCA acknowledges that the Commission may, within 3 weeks after receipt by the Commission of the Proposed Purchaser Notice, or such further period as is reasonably required by the Commission and notified to DCA prior to the expiration of the 3 week period referred to herein, provide DCA with an Objection Notice having regard to, in the Commission's opinion:

- (a) the adequacy of the Prospective Purchaser/s expertise or financial resources to purchase and conduct the relevant Divestiture Business(es);
- (b) the likelihood of the Prospective Purchaser/s being a vigorous and effective competitor in any of the Relevant Markets in which the relevant Divestiture Business(es) operate(s);

- (c) the likely independence of the Prospective Purchaser/s (and its related bodies corporate, directors and managers) from DCA, its related bodies corporate, directors and managers; and/or
 - (d) the likelihood of the Prospective Purchaser/s acquisition and operation of all or any of the Divestiture Businesses overcoming the Commission's competition concerns.
46. DCA must not divest a Divestiture Business to a person named in an Objection Notice and must only divest a Divestiture Business during the Initial Sale Period to a Qualified Purchaser.
47. DCA further acknowledges that, should the Commission fail to provide DCA with an Objection Notice pursuant to paragraph 45 above, the Prospective Purchaser will be deemed to be a Qualified Purchaser.

Release of Radiologists

48. Where
- (a) a Divestiture Business is sold as contemplated by the Undertaking; and
 - (b) the terms of sale contemplate that, immediately following the completion of the sale, a Relevant Radiologist will have a direct or indirect ownership interest in, or be employed by or otherwise provide services to, the relevant Divestiture Business (other than as contemplated under paragraph 38(d)),
- DCA must ensure that each member of the DCA Group releases the Relevant Radiologist with effect from the Divestiture Date from:
- (c) any obligation to provide services to the DCA Group; and
 - (d) any non-compete or similar restraint of trade obligation, to the extent that such obligation would otherwise prevent the Relevant Radiologist from his or her contemplated role in relation to the relevant Divestiture Business.
49. DCA further undertakes that it will not, directly or indirectly, discourage a Radiologist from seeking employment with the Prospective Purchaser/s of the Divestiture Businesses.

Release of radiologists from Whyalla, Port Pirie, Port Augusta, Clare and Port Lincoln

50. DCA further undertakes that it will ensure that following the Control Date each Radiologist which is a party to a Facilities Management Agreement with Jones Holding Co Limited is released from the restraint of trade provisions of that Facilities Management Agreement to the extent that such provisions would otherwise operate to prevent the Radiologist from practising as a radiologist, nuclear physician, radiographer or sonographer, or from carrying on or being concerned or interested in any business, at Whyalla, Port Pirie, Port Augusta, Clare and Port Lincoln following termination of the Facilities Management Agreement.

Non-Compliance

51. DCA acknowledges that the Undertaking is Court-enforceable in accordance with section 87B of the Act and if DCA is unable to comply with its obligations as set out in the Undertaking due solely to circumstances outside of its control, or if the Commission considers that DCA is not complying with the spirit and intention of the Undertaking, then DCA and the Commission must review the Undertaking, and negotiate in good faith for the amendment or revocation of the Undertaking, having regard to the objective that competition in the Relevant Markets is not to be substantially lessened, prevented or hindered as a result of the Proposed Acquisition.
52. DCA acknowledges that in these circumstances further undertakings to divest clinics with similar or higher revenues and range of modalities to those of the unsold Divestiture Business(es) will be negotiated with the Commission.
53. DCA acknowledges that paragraph 51 above shall not apply in respect of circumstances that arise, whether directly or indirectly, by virtue of any act, matter or thing done by or on behalf of DCA or the failure of DCA to do any act, matter or thing.

Obligations to procure and notify

54. DCA will use its best endeavours to procure a Related Body Corporate of DCA to take action or to refrain from taking action when the performance by DCA of an obligation

under the Undertaking requires a Related Body Corporate of DCA to take some action or refrain from taking some action.

55. DCA must;
- (a) provide to the Commission the information and materials specified in paragraphs 12, 18, 22, 23, 33, 41 and 42 in accordance with the terms of those paragraphs;
 - (b) notify the Commission forthwith if it does not obtain any third party consent to assignment or transfer in accordance with the terms referred to in paragraphs 38 (a), (b) and (g) within 14 days of the request for consent;
 - (c) provide to the Commission as soon as practicable after the execution of any Sale and Purchase Agreements, a copy of the agreement, on a confidential basis and written confirmation of the anticipated completion date; and
 - (d) provide to the Commission as soon as practicable after the completion of the divestiture of any Divestiture Business, written confirmation of such completion.
56. DCA must promptly, and in any event within 2 weeks after a request by the Commission, provide to the Commission all information reasonably requested by the Commission which is relevant to the performance of its obligations under the Undertaking and identify in writing to the Commission any such information that it considers confidential and its reasons as to why the information is confidential.
57. Any notice, demand, consent or other communication given or made under the Undertaking should be sent to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

DCA

To: DCA Group Limited

Attention: Company Secretary

Address: Level 8, 50 Carrington Street
Sydney NSW 2000

Fax No: (02) 8270 5099

The Commission:

To: Australian Competition &
Consumer Commission

Attention: General Manager, Mergers and
Asset Sales

Address: 470 Northbourne Avenue
Dickson ACT 2602

Fax No: (02) 6243 1212

Confidentiality

58. Subject to paragraph 59 below, DCA acknowledges that the Commission will make the Undertaking available for public inspection.
59. DCA further acknowledges that Annexures A, B and C to the Undertaking will remain confidential, in the manner contemplated in Annexures A, B and C, until:
- (a) in the case of Annexures A and C, the end of the Initial Sale Period; and
 - (b) in the case of Annexure B, the final Divestiture Date.
60. Subject to paragraph 59 above, DCA acknowledges that the Commission will from time to time publicly refer to the Undertaking.
61. Nothing in this clause prevents the Commission from disclosing such information referred to in clauses 54, 55 or 56 as:
- a. is required by law;
 - b. is reasonably necessary for the purpose of enforcement action under section 87B of the TPA; or
 - c. is reasonably necessary for the purpose of making such market inquiries as the Commission thinks fit to assess the impact of competition arising in connection with the sale of the Determined Divestiture Businesses.

No derogation

- 62. The Undertaking does not prevent the Commission from taking enforcement action at any time whether during or after the period of the Undertaking in respect of any breach by the DCA Group of any of the Undertaking.
- 63. Nothing in the Undertaking is intended to restrict the right of the Commission to take action under the Act for penalties, divestiture or any other remedy/s in the event that the divestiture of the Divestiture Businesses is not implemented in accordance with the Undertaking.

Acknowledgment

- 64. The Commission acknowledges that unreasonable delay in providing any consent or approval pursuant to this Undertaking may prejudice the ability of DCA to perform its obligations under this Undertaking within the time periods required by this Undertaking, and that in such event it will consider in good faith any request to extend any such time periods.

Costs


- 65. All costs incurred by the Auditor and DCA in either providing information to the Commission or in responding to Commission enquiries as required by the Undertaking are to be paid by DCA.

Signed by DCA Group Limited (ACN 002 808 746)

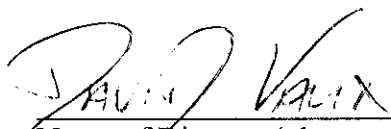
by:




Signature of Director



Signature of Director/Secretary



Name of Director (please print)



Name of Director/Secretary (please print)

This 14th day of September 2004

**The Undertaking offered by DCA Group Limited (ACN 002 808 746) is Accepted by
The Australian Competition & Consumer Commission pursuant to Section 87B of
the Trade Practices Act 1974**



Graeme Julian Samuel

Chairman

This 16th day of September 2004

CONFIDENTIAL

Annexure A

Confidentiality granted for Annexure A

CONFIDENTIAL

Annexure B

Confidentiality granted for Annexure B

CONFIDENTIAL

Annexure C

Confidentiality granted for Annexure C

Annexure D

MIA Undertaking

TRADE PRACTICES ACT 1974

**Undertaking to the Australian Competition and Consumer Commission given for the
purposes of 87B of the Trade Practices Act 1974**

By

MIA Group Limited

(ACN 080 020 104)

September 2004

Interpretation

The following rules of interpretation apply unless the context requires otherwise.

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The singular includes the plural and conversely.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a paragraph, clause, annexure or schedule is to a paragraph or clause of, or annexure or schedule to, the Undertaking.
- (e) A reference to any agreement or document (including the Undertaking) is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time.
- (f) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- (g) A reference to conduct includes any omission and any statement or undertaking, whether or not in writing.
- (h) Mentioning anything after include, includes or including does not limit what else might be included.
- (i) A reference to “the Undertaking” is a reference to all of the provisions of this document.

Definitions

Act means the Trade Practices Act 1974 (Cth);

Calvary Business means the diagnostic imaging business conducted at the Calvary Clinic;

Calvary Clinic means the clinic operated by the MIA Group at 89 Strangways Terrace, North Adelaide SA 5006 within the Calvary Hospital;

Calvary Hospital means the hospital also known as Calvary Health Care Adelaide operated by the Little Company of Mary;

Commission means the Australian Competition and Consumer Commission;

Contract means, in relation to a Relevant Divestiture Business, a contract between MIA and any third party, including but not limited to a private hospital, a finance provider, a landlord, an equipment lessor and the staff of the Relevant Divestiture Business that was in existence on 7 June 2004, or entered into after 7 June 2004, and continues to be in existence as at the date on which the Undertakings commenced that relates to the Relevant Divestiture Business;

Control Date means the date on which all the issued shares in MIA are registered in the name of I-Med or another member of the DCA Group;

Customer Service Levels includes the availability, range, quality and frequency of services provided at, and the hours of operation of, a Relevant Divestiture Business;

DCA means DCA Group Limited (ACN 002 808 746);

DCA Group means DCA and its Related Bodies Corporate (and includes, from the Control Date, the MIA Group);

DCA Undertaking means the Undertaking provided to and accepted by the Commission in relation to the Proposed Acquisition;

Divestiture Businesses means the Calvary Business, Ingleview Business, Mayo Business, Memorial Business, the Salisbury Business, the Europa Business and the Mitcham/Hawthorn Business (and **Divestiture Business** means any one of them);

Divestiture Clinics means the Calvary Clinic, the Ingleview Clinic, the Mayo Clinic, the Memorial Clinic, the Salisbury Clinic, the Europa Clinic and the Mitcham/Hawthorn Clinic (and **Divestiture Clinic** means any one of them);

Europa Business means the diagnostic imaging business conducted at the Europa Clinic;

Europa Clinic means the clinic operated by the DCA Group at Salisbury Highway, Salisbury Downs, South Australia;

I-Med means I-Med Limited (ACN 093 625 346);

Ingleview Business means the diagnostic imaging business conducted at the Ingleview Clinic;

Ingleview Clinic means the clinic operated by the DCA Group at 23 Roopena Street, Ingle Farm, South Australia;

Mayo Business means the diagnostic imaging business conducted at the Mayo Clinic;

Mayo Clinic means the clinic operated by the MIA Group at 168 Ward Street, North Adelaide South Australia 5006;

Memorial Business means the diagnostic imaging business conducted at the Memorial Clinic and includes the Memorial MRI Unit;

Memorial Clinic means a clinic operated by the MIA Group at Sir Edwin Smith Avenue, North Adelaide South Australia 5006 in the Memorial Hospital owned by The Adelaide Community Healthcare Alliance (ACHA) and managed by Healthscope Limited;

Memorial MRI Unit means the GLX Hi-Speed MRI Unit with the serial number G144 at the Memorial Clinic which has “eligible equipment” status within the meaning of rule 35 of schedule 1 of the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2003* (Cth);

MIA means MIA Group Limited (ACN 080 020 104);

MIA Group means MIA and its Related Bodies Corporate;

Mid-North Rural/Barossa means the local government areas of Clare & Gilbert Valleys, Goyder, Mount Remarkable, Northern Areas, Orroroo/Carrieton, Peterborough, Port Pirie City & Districts, Wakefield, Barossa and Light;

Mitcham/Hawthorn Business means the diagnostic imaging business conducted at the Mitcham/Hawthorn Clinic;

Mitcham/Hawthorn Clinic means the clinic operated by the DCA Group at 80 Belair Road, Hawthorn, South Australia;

Proposed Acquisition means the proposed acquisition of MIA by DCA as described in paragraph 2 of the Undertaking;

Related Body Corporate in relation to a company, means any other company which would be deemed to be related to the first named company by the operation of section 4A(5) of the Act;

Relevant Divestiture Businesses means the Memorial Business, the Mayo Business and the Calvary Business (and **Relevant Divestiture Business** means any one of them); and

Relevant Markets include markets for the supply of:

- (a) MRI services;
- (b) nuclear medicine services; and
- (c) other diagnostic imaging services,

excluding public hospital in-patients in:

- (d) Adelaide; and
- (e) the regional area encompassing at least the Mid-North Rural/Barossa;

Salisbury Business means the diagnostic imaging business conducted at the Salisbury Clinic;

Salisbury Clinic means the clinic operated by the DCA Group at 133 Frost Road, Salisbury, South Australia.

Background

1. MIA and DCA are both Australian public limited companies listed on the Australian Stock Exchange. Both DCA (through its wholly owned subsidiary, I-Med) and MIA operate diagnostic imaging businesses in various locations throughout Australia, including South Australia.
2. On 7 June 2004, MIA, DCA and I-Med entered into an agreement which provided for the implementation of a scheme of arrangement under Part 5.1 of the Corporations Act, pursuant to which I-Med will acquire all of the shares in MIA (other than the 0.3% already held by the DCA Group) for approximately \$700 million.
3. The implementation of the scheme of arrangement (and hence the acquisition of MIA) remains subject to a number of conditions and approvals, including MIA shareholder approval, court approval, and approval by the Commission.
4. The Commission has made market enquiries and considered information provided by the parties and other industry participants. The Commission's enquiries were aimed at assessing whether or not the Proposed Acquisition was likely to substantially lessen competition in any substantial Australian market, in breach of section 50 of the Act.
5. The Commission has expressed concerns that the Proposed Acquisition would be likely to breach section 50 of the Act in separate markets for the provision of MRI services, nuclear medicine services, and other diagnostic imaging services, excluding public hospital in-patients, in Adelaide and in the regional area encompassing at least the Mid-North Rural/Barossa.
6. The DCA Undertaking provides for the divestiture of the Divestiture Businesses to overcome the Commission's concerns in relation to the Proposed Acquisition.

7. Up until the Control Date, the Relevant Divestiture Businesses are operated by MIA and the Commission expressed concerns that prior to the Control Date the condition of the Relevant Divestiture Businesses may deteriorate. MIA, on a without prejudice basis, offers the Undertakings contained in this document to overcome the Commission's concerns in relation to the condition of the Relevant Divestiture Businesses prior to the Control Date.
8. The Commission is of the view that, taking into account, and subject to the implementation of, the Undertaking and the DCA Undertaking, its concerns in respect of the Proposed Acquisition will be overcome.

Commencement of Undertaking

9. The Undertaking comes into effect when:
 - (a) the Undertaking is executed by MIA; and
 - (b) the Undertaking so executed is accepted by the Commission,and terminates on the earlier of:
 - (c) the Control Date; and
 - (d) the date DCA or MIA makes a public announcement to the effect that the Proposed Acquisition will not proceed.

Undertakings

10. MIA must not, up until the Control Date, sell or transfer its interests in the Relevant Divestiture Businesses, or remove or make any material change to the assets, operations or businesses comprising the Relevant Divestiture Businesses (including, but not limited to, the Contracts, plant, equipment, brands and trade marks, staffing levels, management, premises, stock levels, raw material levels and Customer Service Levels).

11. MIA must, up until the Control Date, take all reasonable steps to ensure that:
 - (a) each of the Relevant Divestiture Businesses is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the goodwill of the Relevant Divestiture Business; and
 - (b) each of the Relevant Divestiture Businesses and each material asset within any of the Relevant Divestiture Businesses is maintained in good working order and as fully operational on the Control Date as they were on the day on which the Undertaking commenced.
12. Up until the Control Date MIA will use its best endeavours to ensure that any Contracts in existence on the date on which this Undertaking commenced are renewed on commercial terms no less favourable to the Relevant Divestiture Businesses.

Non-Compliance

13. MIA acknowledges that this Undertaking is Court-enforceable in accordance with section 87B of the Act and if MIA is unable to comply with its obligations as set out in this Undertaking due solely to circumstances outside of its control, or if the Commission considers that MIA is not complying with the spirit and intention of this Undertaking, then MIA and the Commission must review the Undertaking, and negotiate in good faith for the amendment or revocation of this Undertaking, having regard to the objective that competition in the Relevant Markets is not to be substantially lessened, prevented or hindered as a result of the Proposed Acquisition.
14. MIA acknowledges that paragraph 13 above shall not apply in respect of circumstances that arise, whether directly or indirectly, by virtue of any act, matter or thing done by or on behalf of MIA or the failure of MIA to do any act, matter or thing.

Obligations to procure and notify

15. MIA will use its best endeavours to procure a Related Body Corporate of MIA to take action or to refrain from taking action when the performance by MIA of an obligation

under this Undertaking requires a Related Body Corporate of MIA to take some action or refrain from taking some action.

Confidentiality

16. MIA acknowledges that the Commission will make this Undertaking available for public inspection.
17. MIA acknowledges that the Commission will from time to time publicly refer to this Undertaking.

No derogation

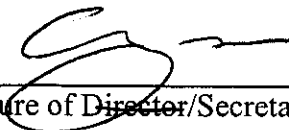
18. This Undertaking does not prevent the Commission from taking enforcement action at any time whether during or after the period of the Undertaking in respect of any breach by the MIA Group of this Undertaking.
19. Nothing in this Undertaking is intended to restrict the right of the Commission to take action under the Act for penalties, divestiture or any other remedy/s in the event that MIA contravenes or is knowingly concerned in a contravention of the Act relating to the Proposed Acquisition.

Signed by MIA Group Limited (ACN 080 020 104)

by:



Signature of Director



Signature of Director/Secretary

PAUL A. MIRABELLE

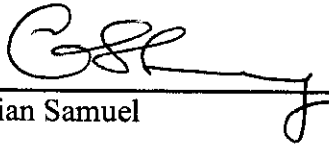
Name of Director (please print)

CRAIG JONES

Name of Director/Secretary (please print)

This 14 day of September 2004

**The Undertaking offered by MIA Group Limited (ACN 080 020 104) is Accepted by
The Australian Competition & Consumer Commission pursuant to Section 87B of
the Trade Practices Act 1974**



Graeme Julian Samuel
Chairman

This

16th

day of September 2004



CONFIDENTIAL

Annexure A

Not to be placed on the Public Register until the expiration of the Initial Sale Period in accordance with the Undertaking

Initial Sale Period

The Initial Sale Period is the period to Thursday 31 March 2005, or any longer period approved by the Commission in accordance with the terms of the Undertaking.

Confidential

Not to be placed on the Public Register until the expiration of the Initial Sale Period occurs in accordance with the Undertaking

CONFIDENTIAL

Annexure B

**Not to be placed on the Public Register until the occurrence of the final Divestiture Date
in accordance with the Undertaking**

Fall-back Sale Period

The Fall-back Sale Period is the period of 8 weeks from the Appointment Date, or any longer period approved by the Commission in accordance with the terms of the Undertaking.

Confidential

**Not to be placed on the Public Register until the final Divestiture Date occurs in
accordance with the Undertaking**

CONFIDENTIAL

Annexure C

**Not to be placed on the Public Register until the end of the Initial Sale Period in
accordance with the Undertaking**

Fall-back Sale Process

Definitions

1. In this Annexure C:

Appointment Date means the date on which the Approved Person is appointed under paragraph 7 of this Annexure of the Undertaking;

Approved Person means a person with the qualifications and experience (including but not limited to experience relating to the sale of a business) to effect the sale of any unsold Divestiture Businesses as at the expiration of the Initial Sale Period, and who is:

- (a) approved by the Commission pursuant to paragraph 7 of this Annexure of the Undertaking;
- (b) independent on the basis that he or she:
 - (i) is not a present or past staff member or director of DCA Group or MIA Group;
 - (ii) has not acted or does not act for DCA Group or MIA Group;
 - (iii) is not retained by DCA Group or MIA Group in any other capacity, either currently or in the past;

- (iv) has not and does not provide consultancy or other services for DCA Group or MIA Group; and
- (v) has no substantial shareholding or other interests in DCA Group or MIA Group;

Fall-back Sale Period means the period of time defined in Annexure B of the Undertaking;

Fall-back Sale Process means the process for the divestiture of any unsold Divestiture Businesses after the expiration of the Initial Sale Period, in accordance with paragraphs 4, 5 and 8 to 11 of this Annexure;

Proposed Fall-back Purchaser Notice means a confidential notice in writing to the Commission that identifies the person/s to whom DCA proposes to divest any Divestiture Businesses that remain unsold as at the expiration of the Initial Sale Period, and sets out certain other information in relation to the Prospective Purchaser including the information referred to in paragraph 8(m) of this Annexure;

Qualified Fall-back Purchaser means a purchaser of any unsold Divestiture Business who is not objected to by the Commission in accordance with paragraph 10 of this Annexure;

Fall-back Sale Process

2. If, on the expiration of the Initial Sale Period, DCA has not completed the sale of all of the Divestiture Businesses, DCA must, within 5 Business Days of the end of the Initial Sale Period, write to all persons who received the Information Memorandum during the Initial Sale Period pursuant to paragraph 31 of the Undertaking, to inform them of the end of the Initial Sale Period and to advise that the Fall-back Sale Process will be implemented with respect to the unsold Divestiture Businesses.
3. DCA must appoint an Approved Person to cause the divestiture of the unsold Divestiture Business, as provided in paragraphs 4, 5 and 8 to 11 below of this Annexure, if, on the expiration of the Initial Sale Period, the divestiture by DCA of all or any of the Divestiture Businesses has not been completed.

4. DCA acknowledges that the divestiture of the unsold Divestiture Businesses pursuant to the Fall-back Sale Process must be:
 - (a) conducted by an Approved Person;
 - (b) to a Qualified Fall-back Purchaser/s, and from among those persons having received the Information Memorandum during the Initial Sale Period pursuant to paragraph 31 of the Undertaking;
 - (c) carried out by the signing by DCA and the Qualified Fall-back Purchaser/s of a Sale and Purchase Agreement/s within the Fall-back Sale Period); and
 - (d) completed at the best price attainable in good faith within the Fall-back Sale Period, but at whatever price (provided that price is not less than \$1.00 in respect of any unsold Divestiture Business).
5. DCA must effect completion and settlement of the divestiture of the unsold Divestiture Businesses within 60 days of the signing of the Sale and Purchase Agreement/s between DCA and a Qualified Fall-back Purchaser/s, or such sooner time as may be agreed between the Approved Person, DCA and the Qualified Fall-back Purchaser/s.

Commission approval of Approved Person

6. DCA must, within 2 weeks after the expiration of the Initial Sale Period, seek the Commission's approval to appoint the proposed Approved Person by submitting a written request to the Commission that sets out the following information:
 - (a) the name, telephone number, address and any other available contact details for the proposed Approved Person;
 - (b) details of the proposed Approved Person's qualifications and experience that would justify their appointment;
 - (c) details of any current and previous business dealings between the proposed Approved Person and DCA, or between their related bodies corporate, directors and managers; and

- (d) the proposed contract for the proposed Approved Person's appointment, having regard to paragraph 8 of this Annexure.
7. DCA acknowledges that the Commission will, as soon as practicable from the date of receipt of DCA's request seeking the Commission's approval to appoint the proposed Approved Person pursuant to paragraph 6 of this Annexure:
- (a) consider granting approval of any person proposed by DCA as an Approved Person; and
 - (b) advise DCA in writing of its decision to approve (which approval will not be unreasonably withheld), in which case the Commission will specify the Appointment Date, or object to the proposed Approved Person, in which case the Commission will provide DCA with its written reasons of its objection.

Appointment Terms of Approved Person

8. DCA acknowledges that the appointment of the Approved Person must be on terms approved in advance and in writing by the Commission, which must include terms providing that:
- (a) the Approved Person is authorised by DCA and required, pursuant to that authorisation, to effect the divestiture of the unsold Divestiture Businesses to a Qualified Fall-back Purchaser/s, at the best price attainable in good faith within the Fall-back Sale Period, but at whatever price (provided that price is not less than \$1.00 in respect of any unsold Divestiture Business);
 - (b) the Approved Person shall only negotiate the sale of the unsold Divestiture Businesses with those persons having received the Information Memorandum during the Initial Sale Period pursuant to paragraph 31 of the Undertaking;
 - (c) DCA must provide the Approved Person with the contact details of all persons having received the Information Memorandum during the Initial Sale Period pursuant to paragraph 31 of the Undertaking, and provide the Approved Person with copies of all offers received during the Initial Sale Period pursuant to paragraph 42 of the Undertaking;

- (d) the Approved Person must write to all persons having received the Information Memorandum during the Initial Sale Period pursuant to paragraph 31 of the Undertaking, to inform them of:
 - (i) the fact of the unsold Divestiture Businesses not having been sold by DCA during the Initial Sale Period;
 - (ii) the implementation of the Fall-back Sale Process, in accordance with DCA's Undertaking to the Commission,;
 - (iii) an explanation of the Fall-back Sale Process, in a form that is consistent with paragraph 4 of this Annexure (but which does not disclose the Fall-back Period);
 - (iv) a comprehensive timeframe for the divestiture of the unsold Divestiture Businesses, including but not limited to submission of a Prospective Fall-back Purchaser Notice/s to the Commission, signing of a Sale and Purchase Agreement/s and completion of the divestiture;
 - (v) contact details for the Approved Person; and
 - (vi) the Appointment Date;
- (e) DCA must reasonably assist the Approved Person to effect the divestiture of the unsold Divestiture Businesses;
- (f) following the Appointment Date, subject to paragraph 14 of this Annexure, only the Approved Person may divest any of the unsold Divestiture Businesses;
- (g) the Approved Person may charge such fees as are agreed between the Approved Person and DCA and which are to be paid by DCA;
- (h) the Approved Person may, with the approval of DCA (such approval not to be unreasonably withheld) retain any investment banker, lawyer or other adviser or agent reasonably required to effect the divestiture of the Divestiture Businesses and the fees and disbursements of that adviser or agent must be paid by DCA;

- (i) the Approved Person must account to DCA for:
 - (i) any moneys received from the divestiture of the unsold Divestiture Businesses;
 - (ii) all disbursements, fees and charges incurred by the Approved Person in carrying out taking his or her duties; and
 - (iii) all fees of the Approved Person;
- (j) the Approved Person must, every 4 weeks during the Fall-back Sale Process, provide a written report to the Commission and to DCA setting out the work undertaken by the Approved Person during that period;
- (k) the Approved Person must use his or her best endeavours to ensure that DCA complies with its obligations as set out in the Undertaking, and must notify the Commission in writing of any failure by DCA to do so within 1 week of the Approved Person becoming aware of DCA's failure to comply;
- (l) subject to paragraph 12 of this Annexure, the Approved Person may, no later than 3 weeks prior to the end of the Fall-back Sale Period, submit a request in writing to the Commission only once, seeking the Commission's written approval to an extension of the Fall-back Sale Period, provided that the request by the Approved Person:
 - (i) is accompanied by reason for the request; and
 - (ii) stipulates the duration of the extension requested.
- (m) The Approved Person must, no later than 4 weeks prior to the end of the Fall-back Sale Period, provide the Commission with a Proposed Fall-back Purchaser Notice on a confidential basis that:
 - (i) sets out the name, address, telephone number and any other available contact details of the Prospective Purchaser/s from whom offers to purchase have been received to whom the Approved Person proposes to divest the Divestiture Businesses;

- (ii) attaches a copy of the proposed sale and purchase agreement with the Prospective Purchaser/s, and identifies any changes to the proposed sale and purchase agreement from that which was included in the Information Memorandum;
- (iii) includes a description of the business carried on by the Prospective Purchaser/s;
- (iv) includes the names of the owners and directors of the Prospective Purchaser/s;
- (v) attaches a statutory declaration by DCA's Managing Director or other qualified representative of DCA, attesting to:
 - (A) any current contracts, arrangements or understandings between DCA (or the related bodies corporate, directors and managers of DCA) and the Prospective Purchaser/s (or the its related bodies corporate, directors and managers of the Prospective Purchaser/s); and
 - (B) any contracts, arrangements or understandings between DCA (or the related bodies corporate, directors and managers of DCA) and the Prospective Purchaser/s (and or the related bodies corporate, directors and managers of the Prospective Purchaser/s) made or arrived at in the last five years,

such contracts, arrangements or understandings including, but not limited to, equity interests, joint ventures, supply arrangements, licensing agreements, directorships and management positions, in Australia and overseas.

Commission approval of Qualified Fall-back Purchaser/s

9. DCA must use its best endeavours to cause the Approved Person to cause the Prospective Purchaser/s to, concurrently with the provision of the Proposed Fall-back Purchaser Notice by the Approved Person to the Commission, provide to the Commission a statutory declaration attesting to:

- (a) the independence of the Prospective Purchaser/s (and its related bodies corporate, directors and managers) in relation to DCA (and its related bodies corporate, directors and managers), having regard to any current or previous contracts, arrangements or understandings between them;
 - (b) any equity, joint venture or other interest held by, or activity carried on by, the prospective purchasers or purchasers in the separate markets for the supply of MRI services, nuclear medicine services, and other diagnostic imaging services, excluding public hospital in-patients, in Adelaide and in the regional area encompassing at least the Mid-North Rural/Barossa; and
 - (c) the prospective purchaser or purchasers' commitment to being a vigorous and effective competitor in any of the Relevant Markets in which the relevant Divestiture Business(es) operate(s).
10. DCA acknowledges that the Commission may, within 3 weeks after receipt by the Commission of the Proposed Fall-back Purchaser Notice, or such further period as is reasonably required by the Commission and notified to DCA prior to the expiration of the 3 week period referred to herein, provide DCA with an Objection Notice having regard to, in the Commission's opinion:
- (a) the adequacy of the Prospective Purchaser or Purchasers' expertise or financial resources to purchase and conduct either or both of the Divestiture Businesses;
 - (b) the likelihood of the Prospective Purchaser/s being a vigorous and effective competitor in the separate markets for the supply of MRI services, nuclear medicine services, and other diagnostic imaging services, excluding public hospital in-patients, in Adelaide and in the regional area encompassing at least the Mid-North Rural/Barossa;
 - (c) the likely independence of the Prospective Purchaser/s (and its related bodies corporate, directors and managers) from DCA, its related bodies corporate, directors and managers; and/or

- (d) the likelihood of the Prospective Purchaser/s acquisition and operation of the Divestiture Businesses overcoming the Commission's competition concerns.
11. DCA further acknowledges that, should the Commission fail to provide DCA with an Objection Notice pursuant to paragraph 10 of this Annexure, the Prospective Purchaser will be deemed to be a Qualified Purchaser.

Extension of Fall-back Sale Period

12. DCA acknowledges that the Commission may, within 3 weeks after receipt of a written request by the Approved Person for an extension of the Fall-back Sale Period pursuant to paragraph 8(l) of this Annexure, in its absolute discretion, provide its written approval for one extension of the Fall-back Sale Period for a period not exceeding 6 weeks.
13. DCA acknowledges that the Commission:
- (a) may make whatever enquiries it considers necessary in its absolute discretion in deciding whether to approve or reject a request pursuant to paragraphs 8(l) and 12 of this Annexure; and
 - (b) may approve an extension for a lesser duration than that requested pursuant to paragraphs 8(l) and 12 of this Annexure,

but that nothing in paragraphs 8(l) or 12 of this Annexure shall operate to affect the confidentiality of the Fall-back Sale Period (as such period may be extended in accordance with the terms of this Undertaking) as described in paragraph 12 of this Annexure.

14. If at the end of the Fall-back Sale Period the Approved Person has not been successful in divesting all of the Divestiture Businesses, then DCA and the Commission must review the Undertaking, and negotiate in good faith for the amendment or revocation of the Undertaking, having regard to the objective that competition in the Relevant Markets is not to be substantially lessened, prevented or hindered as a result of the Proposed Acquisition. DCA acknowledges that in these circumstances the Commission and DCA will negotiate further undertakings to divest clinics with

similar or better revenues and ranges of modalities to those of the unsold Divestiture Business(es).

Confidential

Not to be placed on the Public Register until the end of the Initial Sale Period in accordance with the Undertaking