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002/008

FILE No: C2006/87
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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

St John of God Health Care Inc

ABN 21 930 207 958

and

Lake Imaging Pty Ltd

ACN 098 499 293

March 2006

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1 Persons giving undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (Commission) by St John of God Health Care Inc (ABN 21 930 207 958) (SJGHC) and Lake Imaging Pty Ltd (ACN 098 499 293) (Lake) pursuant to section 87B of the *Trade Practices Act 1974 (Act)*.

2 Background

- 2.1 SJGHC was established by the Sisters of St John of God in 1895 as a Catholic not-for-profit provider of health care. SJGHC currently operates 7 hospitals in Victoria and 4 in Western Australia as well as operating pathology businesses in Victoria and Western Australia. It also currently operates diagnostic imaging businesses in Ballarat and Geelong.
- 2.2 Lake is a privately owned single practice comprehensive radiology provider which commenced operations in 2002. It operates businesses from 8 locations in metropolitan and regional Victoria.
- 2.3 On 12 January 2006, Lake entered into an agreement with SJGHC (**Sale of Business Agreement**) under which it would acquire:
- (a) the nuclear medicine, MRI and general diagnostic imaging services components of the SJGHC diagnostic imaging business in Geelong; and
 - (b) the nuclear medicine and ultrasound components of the SJGHC diagnostic imaging business, but not the other aspects of that business, in Ballarat.
- (the **Proposed Acquisition**).
- 2.4 SJGHC currently acquires radiology services from radiologists in Ballarat who provide diagnostic imaging services to the St John of God Hospital in Ballarat pursuant to the following contracts between St John of God Hospital and:
- (a) Graham Buirski Pty Ltd and Graham Buirski, executed on 16 April 1998;
 - (b) Lockwood Ridge Pty Ltd and Anthony John French, executed on 16 April 1998; and
 - (c) K.J. King Pty Ltd and Kenneth James King, executed on 16 April 1998.
- (collectively described as the **Ballarat contracts**).
- 2.5 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 would be likely to substantially lessen competition in any substantial Australian market, in breach of section 50 of the Act.
- 2.6 The Commission has expressed concerns that the acquisition by Lake of the ultrasound component of the SJGHC diagnostic imaging business in Ballarat may contravene section 50 of the Act in respect of ultrasound services in Ballarat.
- 2.7 In the face of its concerns the Commission has invited the parties to consider undertakings by:

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- (a) SJGHC not to enforce its rights pursuant to clause 10.1 of each of the Ballarat contracts, solely in so far as the enforcement of those rights would preclude the supply of ultrasound services at a competitive ultrasound clinic in Ballarat (the SJGHC ultrasound restraints); and
 - (b) Lake not to enforce its rights pursuant to clause 13.2(a) of the Sale of Business Agreement, solely in so far as they relate to the supply by SJGHC of ultrasound services in Ballarat (the Lake ultrasound restraint).
- 2.8 SJGHC and Lake:
- (a) do not agree with the concerns expressed by the Commission;
 - (b) do not agree that either the exercise by SJGHC of the SJGHC ultrasound restraints or the exercise by Lake of the Lake ultrasound restraint expose any relevant concern under section 50 of the Act; and
 - (c) are of the view that no part of the Proposed Acquisition, including the acquisition by Lake of the ultrasound component of the SJGHC diagnostic imaging business in Ballarat, would result in a substantial lessening of competition in any relevant market.
- 2.9 However, to address the Commission's concerns, the parties have, without admission and, save for the effect of this Undertaking itself, without prejudice to any rights SJGHC and Lake have under the terms of the Ballarat contracts and the Sale of Business Agreement respectively, provided this Undertaking.
- 2.10 The parties have been advised that, taking into account, and subject to the implementation of, the Undertaking, the Commission's concerns in respect of the Proposed Acquisition will be overcome and the Commission has no objection to the Proposed Acquisition. Accordingly, on the basis of that advice, the parties have agreed to provide the undertakings set out in this section 87B undertaking.

3 Commencement of Undertaking

- 3.1 This Undertaking comes into effect upon:
- (a) the execution of this Undertaking by Lake and SJGHC; and
 - (b) the acceptance by the Commission of this Undertaking so executed, and terminates:
 - (c) with respect to the undertaking by SJGHC in paragraph 4, at the expiry or termination of the Ballarat contracts; and
 - (d) with respect to the undertaking by Lake in paragraph 5, at the expiry or termination of the Restraint Period, as that term is defined in the Sale of Business Agreement.

4 Undertaking by SJGHC

- 4.1 SJGHC hereby undertakes to the Commission that, in accordance with this Undertaking, it will not exercise or enforce, or seek to exercise or enforce, whether by legal proceedings or otherwise, any of its rights pursuant to clause

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10.1 of each of the Ballarat contracts so as to prevent any person from supplying ultrasound services or operating an ultrasound clinic in Ballarat.

5 Undertaking by Lake

- 5.1 Subject to paragraph 5.2, Lake hereby undertakes to the Commission that, in accordance with this Undertaking, it will not exercise or enforce or attempt to exercise or enforce, whether by legal proceedings or otherwise, the Lake ultrasound restraint so as to prevent SJGHC from supplying ultrasound services in Ballarat.
- 5.2 Nothing in this Undertaking precludes Lake from exercising or enforcing its rights against SJGHC under the terms of the Lake ultrasound restraint in respect of ultrasound services supplied from the St John of God Hospital, Ballarat premises for a period of three years after completion of the Sale of Business Agreement.

6 Acknowledgment

- 6.1 SJGHC and Lake acknowledge that the Commission will make the Undertaking available for public inspection.
- 6.2 SJGHC and Lake acknowledge that the Commission may, from time to time, publish and publicly refer to the Undertaking.

Signed by St John of God Health Care (N 21 930 207 958)

by:



M. Stanford

Signature of Director

Signature of Director Secretary

Dr Michael Stanford

Name of director (please print)

Group CEO

Name of Director/Secretary (please print)

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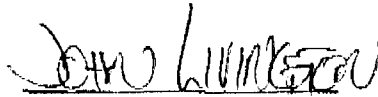
Signed by Lake Imaging Pty Ltd (ACN 098 499 293)

by:



Signature of Director

Signature of Director Secretary

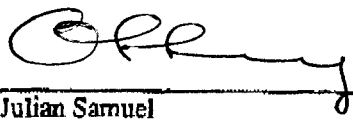


Name of director (please print)

Name of Director/Secretary (please print)

Date: ^{2nd} March 2006

The Undertaking offered by St John of God Health Care Inc (ABN 21 930 207 958) (SJGHC) and Lake Imaging Pty Ltd (ACN 098 499 293) is accepted by the Australian Competition & Consumer Commission pursuant to section 87B of the Trade Practices Act 1974.



Graeme Julian Samuel
Chairman

Date: ^{3rd} March 2006