

TRADE PRACTICES ACT 1974

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B**

BY

**OPTIMA TECHNOLOGY SOLUTIONS PTY LTD
ACN 003 833 074**

PERSON GIVING THIS UNDERTAKING

1. This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Optima Technology Solutions Pty Ltd (ACN 003 833 074) of Building Basement, Campus Business Park, 350-374 Parramatta Road, Homebush in the State of New South Wales (**Optima**) under section 87B of the *Trade Practices Act 1974* (**the Act**).

BACKGROUND

2. Optima is incorporated in New South Wales and carries on business in Australia as a supplier of computers and computer accessories, supplying these products to retailers, known as Optima dealers, throughout Australia.
3. Following the receipt of a complaint, the ACCC conducted an investigation into an allegation of resale price maintenance against Optima. The ACCC was concerned that in 2005 Optima had:
 - (a) made it known to an Optima dealer that Optima would not supply products to the dealer unless the dealer agreed not to advertise or sell Optima products at prices less than Optima's recommended retail prices; and/or
 - (b) induced or attempted to induce the Optima dealer not to advertise or sell Optima products for prices less than Optima's recommended retail prices.
4. Optima admitted to the ACCC that it had engaged in conduct which constitutes resale price maintenance in contravention of section 48 of the Act on two separate occasions in 2005. Optima admitted that on each of the two occasions it had made it known to an Optima dealer that the dealer should raise the prices at which it sells Optima products to Optima's recommended retail prices, otherwise Optima would withhold the supply of products or cancel the dealer's dealership agreement with Optima.
5. The ACCC acknowledges that Optima has co-operated in resolving this matter and taken preliminary steps to address the ACCC's concerns, including the engagement of professional advisers to assist it in the development of a trade practices compliance program.

6. In response to the ACCC's concerns, Optima has offered to give this Undertaking in the terms set out below to the ACCC for the purposes of section 87B of the Act. The ACCC has agreed to accept this Undertaking under section 87B of the Act.

COMMENCEMENT OF UNDERTAKING

7. This Undertaking comes into effect when:
 - a. the Undertaking is executed by Optima; and
 - b. the ACCC accepts the Undertaking so executed.

UNDERTAKINGS

Refrain from Engaging in Resale Price Maintenance

8. Optima undertakes that it will, for a period of 3 years from the date of this Undertaking coming into effect, whether by itself, its directors, servants or agents or otherwise howsoever, refrain from:
 - a. making it known to Optima dealers that Optima will not supply Optima products to the dealers unless the dealers agree not to sell those products at prices less than Optima's recommended retail prices;
 - b. inducing or attempting to induce Optima dealers not to sell Optima products at prices less than Optima's recommended retail prices; and
 - c. withholding the supply of Optima products to an Optima dealer for the reason that the dealer has not agreed not to sell those products at a price or at prices lower than Optima's recommended retail prices or has sold, or is likely to sell, those products at a price or at prices less than Optima's recommended retail prices.

Compliance Program

9. Optima undertakes that it will:
 - a. establish and implement a Trade Practices Compliance Program in accordance with the requirements set out in "Annexure A", for the employees and other persons involved in Optima's business, being a program designed to minimise Optima's risk of future breaches of section 48 of the Act and to ensure its awareness of the responsibilities and obligations in relation to the requirements of section 48, within 3 months of the date of this Undertaking coming into effect;
 - b. maintain and continue to implement the Trade Practices Compliance Program for a period of 3 years from the date of this Undertaking coming into effect; and

- c. provide, at its own expense, a copy of any documents required by the ACCC in accordance with **Annexure A**.

Audit Process

10. Optima undertakes that it will:
 - a. implement an audit process of Optima's past business interactions with Optima dealers in accordance with the requirements set out in "**Annexure B**";
 - b. complete the audit process within 6 months of this Undertaking coming into effect; and
 - c. provide, at its own expense, a copy of any documents required by the ACCC in accordance with **Annexure B**.

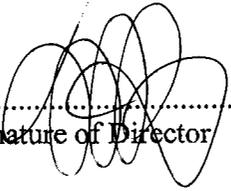
Letter to Optima Dealers

11. Optima undertakes that it will within 30 days of the date of this Undertaking coming into effect send to all Optima dealers a letter in the form set out in "**Annexure C**".

ACKNOWLEDGEMENTS

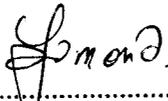
12. Optima acknowledges that the ACCC will make this Undertaking available for public inspection.
13. Optima further acknowledges that the ACCC will from time to time publicly refer to this Undertaking.
14. Optima further acknowledges that this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
15. Optima further acknowledges that a summary of the ACCC Compliance Program Review Reports referred to in **Annexure A** of this Undertaking may be held with this Undertaking on the public register.

EXECUTED by **OPTIMA TECHNOLOGY SOLUTIONS PTY LTD (ACN 003 833 074)** by its authorised officer pursuant to section 127(1) of the *Corporations Act 2001*:


.....
Signature of Director

CORNEL UNG
.....
Print Name of Director

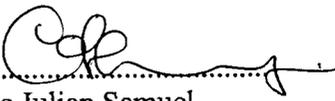
Date: 23 November 2006


.....
Signature of Director/Secretary

EDMOND CHAN
.....
Print Name of Director/Secretary

Date: 23 November 2006

ACCEPTED by the **AUSTRALIAN COMPETITION AND CONSUMER COMMISSION** pursuant to section 87B of the *Trade Practices Act 1974*


.....
Graeme Julian Samuel
Chairman
Australian Competition and Consumer Commission

Date: 5^r ~~November~~ December 2006 

ANNEXURE A

TRADE PRACTICES COMPLIANCE PROGRAM

Optima will establish a Trade Practices Compliance Program (**the Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within one month of the date of the Undertaking coming into effect Optima will appoint a Director or a Senior Manager of the business, whose responsibilities are to include the development, implementation and maintenance of the Compliance Program, and who reports directly to the company Board or governing body (**the Compliance Officer**).
2. Optima shall appoint a qualified, internal or external compliance professional with expertise in trade practices issues (**the Compliance Advisor**) within 3 months of the Undertaking coming into effect, for the purposes set out in paragraph 3.
3. Optima shall instruct the Compliance Advisor to conduct a Trade Practices Act risk assessment (**the Risk Assessment**) in accordance with 3.1 – 3.4 below:
 - 3.1. identify the areas where Optima is at risk of breaching section 48 of the Act;
 - 3.2. assess the likelihood of these risks occurring and the consequences of the risks to the business operations of Optima should they occur;
 - 3.3. identify where there may be gaps in Optima's existing procedures for managing these risks; and
 - 3.4. provide recommendations for action having regard to the assessment.

Compliance Policy

4. Optima will issue a policy statement outlining Optima's commitment to trade practices compliance (**the Compliance Policy**). Optima will ensure the Compliance Policy:
 - 4.1. is written in plain language;
 - 4.2. contains a statement of commitment to compliance with the Trade Practices Act 1974;
 - 4.3. contains a requirement for all staff to report any compliance related issues and trade practices compliance concerns to the designated officer (**Compliance Officer**); and
 - 4.4. contains a clear statement that Optima will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the Trade Practices Act and will not indemnify them.

Complaints Handling System

5. Optima will ensure the Compliance Program includes a complaints handling system capable of identifying, classifying, storing and where necessary, referring internal and external trade practices complaints.

Training

6. Optima will ensure that the Compliance Program includes a requirement for regular (at least once a year) and practical trade practices training for all employees of Optima, whose duties could result in them being concerned with conduct that may contravene section 48 of the Act. The training program will be designed to ensure the employees' awareness of the responsibilities and obligations in relation to section 48 of the Act. Optima must ensure that the training is conducted by a suitably qualified compliance professional or legal practitioner with expertise in trade practices law.
7. Optima will ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the induction of all new employees whose duties could result in them being concerned with conduct that may contravene section 48 of the Act.

Reports to Senior Management

8. Optima will ensure that the Compliance Officer reports to the Board and/or senior management meetings every 6 months on the continuing effectiveness of the Compliance Program.

Supply of Compliance Program Documents to the Commission

9. Optima shall, at its own expense, within 6 months of the date of this Undertaking coming into effect, cause to be produced and provided to the Commission copies of each of the documents constituting the Compliance Program. Optima will implement promptly and with due diligence any recommendations the Commission may make that are reasonably necessary to ensure that Optima maintains and continues to implement the Compliance Program in accordance with the Undertaking.

Review

10. Optima shall, at its own expense, cause annual reviews of the Compliance Program (**the Reviews**) to be carried out in accordance with each of the following requirements:
 - 10.1. **Scope of the Review** – the Reviews should be broad and rigorous enough to provide Optima and the Commission with supportable verification that Optima has in place a program that complies with each of the requirements detailed in paragraphs 1-9 above and to provide the Review reports and opinions detailed at point 11 below.
 - 10.2. **Independence of Reviewer** – Optima shall ensure that the Reviews are carried out by a suitably qualified, independent compliance professional with

expertise in trade practices law (**the Reviewer**). The Reviewer will qualify as independent on the basis that he or she:

- 10.2.1. did not design or implement the Compliance Program;
 - 10.2.2. is not a present or past staff member or director of Optima;
 - 10.2.3. has not acted and does not act for Optima in any trade practices related matters;
 - 10.2.4. has not and does not act for or consult to Optima or provide other services on trade practices related matters other than Compliance Program reviewing; and
 - 10.2.5. has no significant shareholding or other interests in Optima.
- 10.3. **Evidence** – Optima shall use its best endeavors to ensure that the Reviews are conducted on the basis that the Reviewer has access to all relevant sources of information in Optima’s possession or control, including without limitation:
- 10.3.1. enquiries of any officers, employees, representatives, agents and stakeholders of Optima;
 - 10.3.2. Optima’s records, including the company’s complaints register/reports and any documents relevant to the Optima training or induction program; and
 - 10.3.3. documents created by Optima’s consultants and legal practitioners for use in Optima’s Compliance Program.
- 10.4. Optima shall ensure that the first Review is completed within one year and one month of this Undertaking coming into effect and that each subsequent Review is completed within one year thereafter.

Reporting

11. Optima shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in two separate reports as outlined below:

Company Compliance Program Review Report (to be provided to Optima)

- 11.1. Optima’s Company Compliance Program Review Report will provide particular and specific information regarding the performance of the Trade Practices Compliance Program including:
- 11.1.1. if, and to what extent, the Compliance Program of Optima includes all the elements detailed in paragraphs 1-10 above;
 - 11.1.2. if, and to what extent, the Trade Practices Compliance Program adequately covers the parties and areas identified in the initial Risk Assessment;
 - 11.1.3. if, and to what extent, the trade practices training is effective;

11.1.4. if, and to what extent, Optima's complaints handling system is effective;

11.1.5. recommendations for rectifying deficiencies in 11.1.1 – 11.1.4. that the Reviewer thinks are reasonably necessary to ensure that Optima maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

Commission Compliance Program Review Report (to be provided to the Commission)

11.2. The Commission Compliance Program Review Report will supply particular and specific information regarding the scope of the Review and the effectiveness of the Trade Practices Compliance Program including:

11.2.1. details of the evidence gathered and examined during the Review;

11.2.2. the name and relevant experience of the person appointed as the company Compliance Officer;

11.2.3. the Reviewer's opinion on whether Optima has in place an effective Trade Practices Compliance Program that complies with the requirements detailed in paragraph 1 – 10 above;

11.2.4. actions recommended by the Reviewer to ensure the continuing effectiveness of Optima's Trade Practices Compliance Program;

11.2.5. confirmation that any actual and potential inadequacies in the Optima Compliance Program have been brought to the attention of the Compliance Officer and the governing body;

11.2.6. confirmation that the Reviewer has revisited any actual and potential inadequacies in Optima's Compliance Program identified in the previous Company Compliance Program Review Report, and assessed how they have been addressed by Optima;

11.2.7. any reservations that the Reviewer might have about the reliability and completeness of the information to which the Reviewer had access in the conduct and reporting of the Review; and

11.2.8. any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.

11.3. Optima will ensure that the Review Reports are completed and provided to Optima within two months of each Review.

11.4. Optima will retain the Company Compliance Program Review Report and cause the Commission Compliance Program Review Report to be provided to the Commission within 14 days of its receipt from the Reviewer.

12. **Recommendations** - Optima shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the Commission, that are reasonably necessary to ensure that Optima maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.
13. Optima shall, at its own expense, if requested by the Commission, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.
14. In the event the Commission has sufficient reason to suspect that the Compliance Program is not being implemented effectively, Optima shall, at its own expense and if requested by the Commission, cause an interim or additional Review to be conducted and cause the resulting Review Report to be provided to the Commission.

ANNEXURE B

AUDIT PROCESS

Optima will undertake an audit of Optima's past business interactions with Optima Dealers (**the Audit Process**) that complies with each of the following requirements:

Scope of Audit

1. The Audit Process should be broad and rigorous enough to satisfy Optima and the ACCC that there has been an opportunity for all instances of conduct engaged in by Optima that potentially amount to resale price maintenance during the period between 1 January 2005 and the date of this Undertaking to be identified.
2. The Audit Process will be completed and a report (**the Audit Process Report**) submitted to the ACCC no later than 6 months after this Undertaking comes into effect.

Independence of Auditor

3. Optima shall ensure that the Audit Process is carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (**the Auditor**). The Auditor will qualify as independent on the basis that he or she:
 - 3.1. is not a present or past staff member or director of Optima;
 - 3.2. has not acted and does not act for Optima in any trade practices related matters;
 - 3.3. has not and does not act for or consult to Optima or provide other services on trade practices related matters other than those required by the Audit Process; and
 - 3.4. has no significant shareholding or other interests in Optima.

Audit Process Requirements

4. In order to comply with paragraph 1, areas of inquiry to be pursued by the Auditor when carrying out the Audit Process must include the following:
 - 4.1. any instance where Optima made it known to an Optima dealer that Optima will not supply Optima products to the dealer unless the dealer agreed not to sell those products at prices lower than Optima's recommended retail prices;
 - 4.2. any instance where Optima induced or attempted to induce an Optima dealer not to sell Optima products at prices less than Optima's recommended retail prices; and
 - 4.3. any instance where Optima withheld the supply of Optima products to an Optima dealer for the reason that the dealer had not agreed not to sell those products at a price or at prices less than Optima's recommended retail prices or had sold, or was likely to sell, those products at a price or at prices less than Optima's recommended retail prices.

5. **Evidence** – Optima shall use its best endeavours to ensure that the Audit Process is conducted on the basis that the Auditor has access to all relevant sources of information in Optima’s possession or control, including without limitation:
 - 5.1. enquiries of any officers, employees, representatives, agents and stakeholders of Optima; and
 - 5.2. Optima’s business records.
6. **Cooperation of Optima Dealers** – Optima shall use its best endeavors to ensure the full and frank cooperation of Optima dealers with the Auditor.
7. **Methodology** – Without predetermining the methodology of the Audit Process, nothing in this Annexure is intended to prevent the Auditor from complying with paragraphs 1 or 4 above through either:
 - 7.1. the sampling of Optima dealers; and/or
 - 7.2. limiting enquiries to be made of Optima dealers to a written request to them seeking information in respect of the issues addressed at paragraph 4 above,provided the Auditor sample Optima dealers from a broad cross-section of geographical locations and business size.

Audit Process Report

8. The Audit Process Report will be provided to the Optima Board and the ACCC no later than 6 months after this Undertaking comes into effect. The Audit Process Report will supply particular and specific information regarding the scope and findings of the Audit Process, including:
 - 8.1. details of the methodology and approach adopted by the Auditor;
 - 8.2. full details of any instances identified by the Auditor in the course of his/her inquiry conducted in accordance with paragraphs 1 and 4, including;
 - (a) the date of the conduct;
 - (b) the parties involved in the conduct;
 - (c) communications that passed between the parties in relation to the conduct; and
 - (d) actions undertaken by the parties in relation to the conduct.
 - 8.3. any other observations and comments as to specific incidents or conduct that the Auditor, in his or her professional opinion, considers necessary;
 - 8.4. any reservations the Auditor might have about the reliability and completeness of the information in Optima’s possession or control, as detailed at paragraph 5 above, to which the Auditor had access in the conduct and reporting of the Audit Process; and

- 8.5. any comments or qualifications concerning the Audit Process that the Auditor, in his or her professional opinion, considers necessary.
9. Optima shall, at its own expense, if requested by the ACCC, provide copies of documents and information in respect of matters which are the subject of the Audit Process.

ANNEXURE C

LETTER TO ALL OPTIMA DEALERS

Investigation by the Australian Competition and Consumer Commission

In 2005, the Australian Competition and Consumer Commission (**the ACCC**) received a complaint alleging that Optima had engaged in resale price maintenance in breach of section 48 of the *Trade Practices Act 1974* (**the Act**). In response to the ACCC's investigation, Optima admitted that it had engaged in resale price maintenance on two separate occasions during 2005 by representing to two Optima dealers that they must raise their prices for Optima products to Optima's recommended retail price levels, otherwise Optima would withhold the supply of products or cancel their dealership agreement.

I am writing to you pursuant to an Undertaking recently given by Optima to the ACCC.

Optima confirms that all Optima dealers are free to sell Optima products at any price they see fit. Optima cannot require or compel you to sell Optima products at prices above a certain level. Optima's recommended retail prices are simply that – recommendations only. You are not obliged to sell Optima products at or above the recommended retail prices contained in Optima's Dealer Reference Sheet.

Accordingly, if you become aware that another Optima dealer is selling products below Optima's recommended retail prices, that dealer is free to do so - do not complain to Optima. If you attempt to induce that dealer to increase its prices, you or your company may be in breach of the Act. Therefore, you should not place pressure on any other dealer to raise its prices or request that Optima take action against other dealers who sell Optima products below recommended retail prices.

A Trade Practices Compliance Advisor will be engaged by Optima for the purpose of reviewing Optima's business dealings with Optima dealers. Should you be contacted by the Advisor, I request that you cooperate fully with the Advisor in order to enable Optima to meet its obligations to the ACCC.

If you have any questions about the matters raised in this letter, please contact (*INSERT NAME AND CONTACT DETAILS OF APPROPRIATE OPTIMA REPRESENTATIVE*) who will be happy to assist you.

Yours sincerely,

Chief Executive Officer
Optima Technology Solutions Pty Ltd