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TRADE PRACTICES ACT 1974

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER ACCC
GIVEN FOR THE PURPOSES OF SECTION 87B OF THE
TRADE PRACTICES ACT 1974.**

BY

JV MOBILE PTY LTD

(ACN 085 600 424)

of Level 1, 327 Main Road East, St Albans, VIC, 3021

PERSON GIVING UNDERTAKING

1. This Undertaking is given to the Australian Competition and Consumer Commission (the **ACCC**) by JV Mobile Pty Ltd ACN 085 600 424 of Level 1, 327 Main Road East, St Albans (**JV Mobile**), in the State of Victoria, pursuant to section 87B of the *Trade Practices Act 1974 (the Act)*.

BACKGROUND

2. JV Mobile was incorporated pursuant to the *Corporations Act 2001* on 18 October 2005.
3. The sole director of JV Mobile since 18 October 2005 is Mr Khai Quan Vo (**Mr Vo**) of 71 Charles Street, Abbotsford, Australia.
4. Since 2003 JV Mobile has sold and continues to sell JV Mobile Dealerships.
5. JV Mobile Dealerships (**JV Dealers**) re-sell mobile phone airtime, retail mobile phones and mobile phone accessories. JV Dealers acquire the mobile phone airtime, mobile phones and mobile phone accessories for retail sale from JV Mobile.

CONDUCT

6. In late 2006 the ACCC became aware of a dispute between JV Mobile and a group of JV Dealers. An aspect of the dispute concerned that JV Mobile had failed to provide the directors of the JV Dealers with disclosure documents in accordance with clause 6 and 6B of the *Trade Practices (Industry Codes-Franchising) Regulations 1998 (the Code)*.
7. As a result of market inquiries, staff of the ACCC became aware that JV Mobile was representing, through advertising in such media as Australian Vietnamese newspapers and outdoor advertising, that JV Mobile had "franchises available" for sale.

8. Further, JV Mobile has requested and/or received payments for the sale of a franchise or payment of franchise fees from JV Dealers.
9. Following an examination of all the information available, staff of the ACCC remained concerned that a franchise agreement, as defined by clause 4 of the Code, may exist between JV Mobile and the JV Dealers and, as such, JV Mobile may have failed to comply with the Code.
10. In response to the concerns expressed by staff of the ACCC, JV Mobile has offered this Undertaking to the ACCC.

COMMENCEMENT OF UNDERTAKING

11. This Undertaking comes into effect when:
 - (a) The Undertaking is executed by JV Mobile; and
 - (b) The ACCC accepts this Undertaking so executed.

ACKNOWLEDGEMENTS

12. JV Mobile acknowledges that:
 - (a) the ACCC will make this Undertaking available for public inspection;
 - (b) the ACCC will from time to time publicly refer to this Undertaking; and
 - (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

UNDERTAKINGS

13. JV Mobile hereby undertakes to the ACCC, for the purposes of section 87B of the Act that:

Agreements with JV Dealers

- (a) from the date that this undertaking commences, JV Mobile will ensure in respect of all new agreements with JV Dealers that are substantively similar to the agreements that JV Mobile has with current JV Dealers, JV Mobile will treat such agreements as franchise agreements and comply with all the requirements of the Code. Accordingly in respect of all such agreements, inter alia:
 - (i) JV Mobile will provide a disclosure document to the prospective JV Dealer;

- (ii) include dispute resolution and termination provisions which are in accordance with the Code;
 - (iii) A copy of the Code will be provided to the prospective JV Dealer within the requisite time; and
 - (iv) JV Mobile will advise the prospective JV Dealer of the cooling off period available under the Code;
- (b) for existing JV Dealers JV Mobile must offer to enter into a binding agreement with each JV Dealer, acknowledging the application of the Code to the agreement. Where a JV Dealer accepts JV Mobile's offer and enters into such an agreement, such agreement shall, for the purposes of the Code be treated as an extension or renewal of an existing franchise agreement and accordingly, JV Mobile must provide a current disclosure document to each JV Dealer who accepts this offer;
 - (c) JV Mobile accepts the application of the Code in respect of any party falling within (a) or any JV Dealer accepting the offer of JV Mobile in (b) above.

Franchising Code of Conduct education

- (d) JV Mobile will at its own expense within 1 month of the commencement of this undertaking take all necessary steps:
 - (i) have the article in the form of **Annexure A (the Article)** translated and typeset into Vietnamese;
 - (ii) take all necessary steps to publish that translated version of **Annexure A** in a quarter page article for a period of 4 weeks, on a weekly basis, on the right hand side of the early general news section of the national Australian Vietnamese newspaper Nhan Quyen;
 - (iii) provide the ACCC with a copy of each edition of Nhan Quyen that the article appears in within 4 weeks of publication;
 - (iv) provide the ACCC with a certified translation of the article.

Mediation

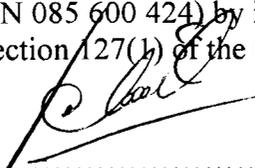
- (e) In respect of disputes with former JV Dealers, JV Mobile must mediate or attempt to mediate the disputes and conduct itself in good faith in the course of mediation;

Trade Practices Compliance Program

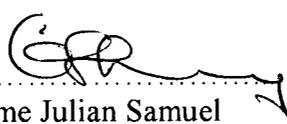
- (f) within 3 months of this Undertaking coming into effect, JV Mobile will implement a Trade Practices Compliance Program in accordance with the requirements set out in **Annexure B**;
- (g) JV Mobile will maintain and continue to implement the Trade Practices Compliance Program for a period of 3 years and 3 months from the date of this Undertaking coming into effect; and
- (h) JV Mobile will provide, at its own expense, a copy of any documents requested by the ACCC in accordance with **Annexure B**.

IN WITNESS OF THIS UNDERTAKING AND ITS AGREEMENTS

EXECUTED by JV MOBILE PTY LTD)
(ACN 085 600 424) by its authorised officer pursuant)
to section 127(l) of the Corporations Act 2001.)


.....
Mr Khai Quan Vo
Director
JV Mobile Pty Ltd
ACN 085 600 424

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

This 26 day of April 2007

Annexure A

Are you thinking about entering a franchise agreement?

If you are thinking about buying a franchise, it is vital that you understand your rights under the Franchising Code of Conduct (**the code**). This mandatory code, contained in the *Trade Practices Act 1974*, regulates franchising arrangements in Australia and is enforced by the Australian Competition and Consumer Commission (ACCC).

One of the code's main objectives is to ensure franchisors provide accurate and current business and financial information to prospective franchisees to help them make an informed decision about entering a franchise system. The code requires that this information must be provided in the form of a disclosure document, which includes details of financing arrangements, the franchisor's business experience, any legal action against the franchisor and the establishment costs you will have to pay.

A franchisor must provide you with a copy of the disclosure document and a hard copy of the code at least 14 days before you enter into a franchise agreement or make a non-refundable deposit. You should also be aware that you are entitled to terminate a new franchise agreement within 7 days of entering into the agreement or making a payment under the agreement.

You can help yourself make the right decision by getting advice about the disclosure document from legal, accounting or business professionals who have experience in franchising, contract and/or trade practices law. It is also recommended that you get written confirmation of any arrangements or agreements with the franchisor.

The ACCC has many franchising publications available to assist you when you are deciding whether to become a franchisee. These publications are available on the ACCC website at <http://www.accc.gov.au> or can be requested by calling the ACCC Small Business Helpline on 1300 302 021. If you require translating and interpreting services for information in languages other than English call 131 450 and ask to connect to the ACCC helpline.

[Commonwealth Coat of Arms and Commission logo – not less than a total of 2cm high x 5 cm long. No larger than 4 cm high and 6 cm long].

Annexure B

COMPLIANCE PROGRAM UNDERTAKINGS AND ORDERS

Section 87B Undertaking

JV Mobile Pty Ltd ACN 085 600 424 (**JV Mobile**) undertakes, to the Australian Competition and Consumer ACCC (**the ACCC**), for the purposes of section 87B of the *Trade Practices Act 1974* (**the Act**) that JV Mobile will design and implement a Trade Practices Compliance Program covering the *Trade Practices (Industry Codes-Franchising) Regulations 1998* (**the Code**) and Part IVB – *Industry Codes* of the Act in accordance with the requirements set out below and will maintain and continue to implement the Trade Practices Compliance program for a period of 3 years and 3 months from the date of the Undertaking coming into effect.

1. Appointments

- 1.1 Within one month of the date of the Undertaking coming into effect JV Mobile will appoint Mr Khai Quan Vo of 71 Charles Street, Abbotsford, sole director of the business to be responsible for the development, implementation and maintenance of the compliance program (**the Compliance Officer**).

2. Training

- 2.1 JV Mobile must:

2.1.1 Procure that the Compliance Officer will attend practical trade practices training focusing on the Code within one month of this Undertaking coming into effect, and thereafter at least once a year for the period of the Undertaking, and which is provided in accordance with the following criteria:

2.1.1.1 the Compliance Officer must be made aware of their responsibilities and obligations in relation to the requirements of the Code and Part IVB – *Industry Codes* of the Act; and

- 2.2 the Compliance Officer must be made aware of the potential consequences of contravening the requirements of the Code and Part IVB – *Industry Codes* of the Act.

2.2.1 Ensure that the training referred to in paragraph 2.1.1 above is administered by a suitably qualified, compliance professional or legal practitioner with expertise in trade practices law;

2.2.2 Provide a written statement or certificate from the trade practices professional who conducts the training referred to in paragraph 2.1.1 above to the ACCC within 14 days of completion of the training verifying that such training has occurred.

3. Complaints handling

3.1 JV Mobile must:

- 3.1.1 develop procedures for recording, storing and responding to trade practices complaints within two months of this Undertaking coming into effect; and
- 3.1.2 provide the ACCC with an outline of the complaint handling system developed within two month of the Undertaking coming into effect.

4. Provision of information

- 4.1 If requested by the ACCC, JV Mobile will provide, at its own expense, copies of any other documents or information in respect of matters which are the subject of the Compliance Program.