

TRADE PRACTICES ACT 1974

Undertaking to the Australian Competition and Consumer Commission given for
the purposes of section 87B

by

Franklins Pty Ltd
ACN 096 722 904

Persons giving this Undertaking

1. This Undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by Franklins Pty Ltd ACN 096 722 904 (**Franklins**), of 21-25 King Street Rockdale NSW 2216, for the purposes of section 87B of the *Trade Practices Act 1974* (**the Act**).

Background

2. In 2008 the ACCC conducted an inquiry into the competitiveness of retail prices for standard groceries. The inquiry report published in July 2008 identified concerns that restrictive provisions in lease agreements in respect of supermarket space could restrict the ability of supermarket operators to establish supermarkets in shopping centres.
3. Supermarket operators are important to the development of new shopping centres, typically playing the role of anchor tenant in attracting traffic, custom and smaller retail tenants to the shopping centre. Lease agreements often involve major investment and long term commitment by both the supermarket operator and the shopping centre owner and provide a committed rental stream to assist to finance the development.
4. From time to time, as a result of population growth and consequent growth in retail grocery demand in a particular area, opportunities arise for entry into retail grocery markets which may be accommodated through the expansion or reconfiguration of an existing shopping centre to provide additional supermarket space.
5. The ACCC has conducted an industry-wide investigation into whether restrictive provisions in lease agreements could have the purpose and/or effect of substantially lessening competition in a market. Franklins is a supermarket operator in Australia. Franklins acknowledges the ACCC's concerns in relation to the potential anti-competitive effects of restrictive provisions in lease agreements and has accordingly offered to provide the ACCC with this undertaking.

Definitions

6. For the purpose of this Undertaking:
- (a) **'additional supermarket space'** means supermarket space that is separate from, and not adjoining, the relevant supermarket;
 - (b) **'lease agreement'** means a contract, arrangement or understanding relating to proprietary rights in respect of supermarket space and includes without limitation letters of agreement, agreements for lease and registered leases;
 - (c) **'relevant supermarket'** means the supermarket that would directly obtain the benefit of a restrictive provision;
 - (d) **'shopping centre'** means a shopping centre or complex, including as expanded and/or reconfigured; and
 - (e) **'supermarket space'** means retail premises for the purpose of operating a supermarket.
7. For the purpose of this Undertaking a **'restrictive provision'** means a provision of a lease agreement that, in form or substance:
- (a) prohibits the lessor from granting a lease agreement to, or allowing the entry of, another supermarket operator in the shopping centre in which the relevant supermarket is located;
 - (b) imposes a penalty upon the lessor (including, but not limited to, a reduction in the rent to a fixed percentage of turnover) if the lessor:
 - i. grants a lease agreement to, or allows the entry of, another supermarket operator in the shopping centre in which the relevant supermarket is located; and/or
 - ii. allows another supermarket operator to expand its existing premises in the shopping centre in which the relevant supermarket is located;
 - (c) prohibits the lessor from granting a lease agreement to another supermarket operator, or to another supermarket operator over a certain floor size, in the shopping centre in which the relevant supermarket is located;
 - (d) prohibits the lessor from allowing another supermarket operator to expand their supermarket over a certain floor size, in the shopping centre in which the relevant supermarket is located;
 - (e) gives the lessee a first or last right of refusal in relation to additional supermarket space in the shopping centre in which the relevant

supermarket is located unless the grant of that additional supermarket space to the lessee is conditional upon the lessee surrendering the supermarket space upon which the relevant supermarket is located;

- (f) requires the lessor to make a submission or objection in relation to a development application made by another supermarket operator to a relevant government authority in relation to the use of land at or near the shopping centre in which the relevant supermarket is located; and/or
- (g) prohibits a lessor from supplying supermarket space that has been surrendered by a lessee, to another supermarket operator.

Conduct of concern

- 8. The ACCC considers that by making or giving effect to a lease agreement containing a restrictive provision (**the conduct**), supermarket operators may have contravened the Act in that the conduct may have constituted the making of, and/or giving effect to, a provision in a lease agreement that had the purpose, effect or likely effect of substantially lessening competition in markets for the acquisition of supermarket space and/or in retail grocery markets.
- 9. In particular, the ACCC is concerned that by including restrictive provisions in lease agreements, supermarket operators may have prevented and/or hindered another supermarket operator from entering and competing in markets for the acquisition of supermarket space and/or in retail grocery markets.
- 10. Franklins wishes to responsibly address these concerns by offering this Undertaking in accordance with section 87B of the Act.

Commencement of Undertaking

- 11. This Undertaking comes into effect when:
 - (a) the undertaking is executed by Franklins; and
 - (b) the ACCC accepts the undertaking so executed.
- 12. Upon the commencement of this Undertaking, Franklins undertakes to assume the obligations set out in paragraph 15 below.

Interpretation

- 13. The object of this Undertaking is to eliminate the use of restrictive provisions in lease agreements which the ACCC considers may create a barrier to entry to markets for the acquisition of supermarket space and retail grocery markets.
- 14. In the interpretation of a clause of this Undertaking, a construction that would promote the object underlying this Undertaking (whether that object is expressly stated in this Undertaking or not) shall be preferred to a construction that would not promote that object.

Undertakings

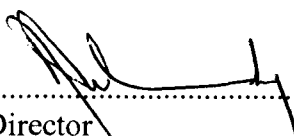
15. Franklins undertakes for the purposes of section 87B of the Act that it will not, and that its subsidiaries will not:
- (a) give effect to, or threaten to give effect to, a restrictive provision contained in a lease agreement that is in operation as at the commencement of this Undertaking, after a period of five years from the date at which the Franklins relevant supermarket commenced trading; or
 - (b) enter into a lease agreement that includes one or more restrictive provisions.

Acknowledgments

16. Franklins acknowledges that:
- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of s. 87B undertakings on its website; and
 - (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications.

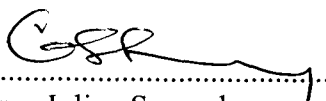
Executed by

Franklins Pty Ltd ACN 096 722 904 and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.


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Director

This...²².....day of December 2009

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


.....
Graeme Julian Samuel
Chairman

This...^{23rd}.....day of December 2009