

**Variation to section 87B Undertaking**

**(ACN 090 703 631)**

**Prime Fuel Distributors Pty Ltd**

## COMPETITION AND CONSUMER ACT 2010

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

BY

PRIME FUEL DISTRIBUTORS PTY LTD (ACN 090 703 631)

#### PERSON GIVING VARIATION TO UNDERTAKING

1. This variation to the Undertaking of 30 March 2011 is given to the Australian Competition and Consumer Commission (**the Commission**) by Prime Fuel Distributors Pty Ltd (ACN 090 703 631) (**Prime**), trading as Speedway Mt Pritchard of 348 Elizabeth Drive, Mt Pritchard 2170 (**Speedway Mt Pritchard**) and Speedway Meadows of 365 Elizabeth Drive, Mt Pritchard 2170 (**Speedway Meadows**), in the State of New South Wales under section 87B of the *Competition and Consumer Act 2010* (CCA).

#### BACKGROUND

2. On 30 March 2011 the Commission accepted an Undertaking given by Prime pursuant to section 87B of the CCA (**the original Undertaking**).
3. The Commission alleged that between May and October 2010 Prime sold the same petrol as both unleaded and E10 unleaded 95 at the Speedway Mt Pritchard and Speedway Meadows service stations. Prime admitted to misleading motorists about the types of petrol available at its Speedway Mt Pritchard and Speedway Meadows service stations.
4. The original Undertaking requires Prime for a period of 3 years from the date of the original Undertaking coming into effect, not to engage in the promotion and sale of different fuels (including the fuels labelled "Unleaded" and "Unleaded 95" or "[E10] Unleaded 95"), at Speedway Mt Pritchard, Speedway Meadows or any other service station owned or operated by the company, when in fact those different fuels promoted and sold to customers are the same fuel.
5. Among other things, paragraph 16 of the original Undertaking requires Prime to publish a Corrective Notice in the forms and terms of Annexure B of the original Undertaking (**the Corrective Notice**) once in the following major and local daily newspapers, subject only to such variations as may be agreed by the ACCC in writing:
  - i. The Daily Telegraph;
  - ii. The Fairfield Advance;
  - iii. The Liverpool Leader
6. Prime seeks to vary the original Undertaking, such that it may publish the Corrective Notice in the Sydney Morning Herald rather than the Daily Telegraph.
7. Prime considers that the cost of publishing the Corrective Notice in the Daily Telegraph in accordance with the original Undertaking to be significant, and would

impose an undue and unfair financial burden. Alternatively, Prime considers that the cost of publishing the Corrective Notice in the Sydney Morning Herald in accordance with the original Undertaking to be more proportionate in costs and able to achieve the same purpose as publishing in the Daily Telegraph, that being the requirement to publish the Corrective Notice in a daily major newspaper. The difference in costs is approximately \$8000.

8. In addition, Prime seeks to vary paragraph 12(b) of the original Undertaking, such that the date at which the original Undertaking came into effect is 29 April 2011, that being the date at which the Commission communicated acceptance of the original Undertaking.
9. The ACCC is satisfied that the Variation sought by Prime is appropriate in the circumstances and consents to the Variation, pursuant to section 87B(2) of the TPA.

#### **COMMENCEMENT OF VARIATION**

10. This Variation comes in effect when:
  - i. The Variation is executed by Prime; and
  - ii. The Commission accepts the Variation to the original Undertaking so executed.

#### **VARIATION TO CLAUSE 12(b) OF THE ORIGINAL UNDERTAKING**

11. Prime offers to give to the Commission the following variation to the original Undertaking:
  - i. deleting the word 'accepts' in paragraph 12(b) of the original Undertaking; and
  - ii. inserting the words 'communicates acceptance of' in its place in paragraph 12(b) of the original Undertaking.

#### **VARIATION TO CLAUSE 16(a)(i) OF THE ORIGINAL UNDERTAKING**

12. Prime offers to give to the Commission the following variation to the original Undertaking:
  - i. deleting the words 'Daily Telegraph' in paragraph 16(a)(i) of the original Undertaking; and
  - ii. inserting the words 'Sydney Morning Herald' in its place in paragraph 16(a)(i) of the original Undertaking.


#### **ACKNOWLEDGEMENTS**

13. Prime acknowledges that the ACCC may:
  - i. make the Variation publicly available;
  - ii. publish the Variation on its section 87B Undertakings Public Register; and
  - iii. from time to time publicly refer to the Variation including in news media statements and in ACCC publications

**IN WITNESS OF THE VARIATION TO THE ORIGINAL UNDERTAKING AND ITS AGREEMENTS**

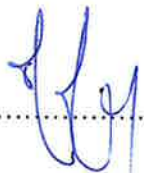
**EXECUTED** by Prime Fuel Distributors Pty Ltd (ACN 090 703 631) in accordance with section 127(1) of the *Corporations Act* 2001 by authority of its directors:

Mr Elia El-Khoury

  
.....  
Director

This.....12.....day of May 2011

Mr Jamil El-Khoury

  
.....  
Director

This.....12.....day of May 2011

This Variation offered by Prime Fuel Distributors Pty Ltd (ACN 090 703 631) is accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act* 2010

  
.....

~~Gracine Julian Samuel~~ **PETER RICHARD KELL**  
~~Chairman~~ **ACTING CHAIRMAN**  
Australian Competition and Consumer Commission

This.....20<sup>th</sup>.....day of May 2011