

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth)

by Nero Bathrooms International Pty Ltd ACN 148 833 989.

Person giving the Undertaking

1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Nero Bathrooms International Pty Ltd (**Nero**) ACN 148 833 989, for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**).

Background

2. Nero, trading under the business name 'Nero Tapware' is a supplier of bathroom products including tapware, showerheads, towel rails and bathroom fixtures (**Nero Products**). Nero distributes these via a network of over 1,000 retailers across Australia (**Nero Retailers**).
3. Between 4 March 2020 and 19 March 2020, Nero made statements to the following effect to a retailer of Nero Products (the **Retailer**) that the:
 - a. Retailer's online pricing of Nero Products was too low
 - b. Retailer should not advertise Nero Products at a price lower than 15% off Recommended Retail Price (**RRP**) and
 - c. Retailer must amend its online advertised pricing to be no lower than 15% off RRP.
4. On 19 March 2020 Nero:
 - a. significantly reduced the Retailer's discount rate on the purchase price of Nero Products, including as a result of the Nero Retailer's failure to amend its online prices as requested by Nero, as outlined at paragraph 3.c. and
 - b. ceased supply of Nero products to the Retailer as a result of the Retailer refusing to:
 - i. amend its online prices as requested by Nero and
 - ii. accept the new reduction of its discount rate on the purchase price of Nero products.

ACCC concerns

5. The ACCC considers that by engaging in the conduct expressed in paragraphs 3 and 4 above, Nero engaged, or is likely to have engaged, in Resale Price Maintenance in contravention of section 48 of the CCA by:
 - a. making it known to the Retailer that Nero would not supply Nero Products to the Retailer unless the Retailer agreed not to sell Nero Products at a price less than the price specified by Nero
 - b. inducing or attempting to induce the Retailer not to sell Nero Products supplied by Nero at a price less than a price specified by Nero
 - c. withholding supply of Nero Products to the Retailer for the reason that the Retailer has not agreed to sell those products at a price specified by Nero, and
 - d. making a statement of price in relation to Nero Products it supplied or might supply to the Retailer that was likely to be understood by the Retailer as the price by which those products are not to be sold.

Acknowledgements and resolution

6. In response to the ACCC's concerns, Nero:
 - a. acknowledges that its conduct, as described at paragraphs 3 and 4 above was likely to have contravened section 48 of the CCA for the reasons outlined at paragraph 5 above and
 - b. Has offered this undertaking to the ACCC.

Commencement and terms of this Undertaking

7. This Undertaking comes into effect when:
 - a. this Undertaking is executed by Nero, and
 - b. this Undertaking so executed is accepted by the ACCC (the **Commencement Date**).
8. This Undertaking has effect for three (3) years after the Commencement Date (the **Term**).
9. Upon the commencement of this Undertaking Nero undertakes to assume the obligations set out in paragraphs 10 to 14 below for the Term of the Undertaking for the purposes of section 87B of the CCA.

Undertaking

10. Nero undertakes that it will not, in trade or commerce, for a period of three years from the Commencement Date, engage in Resale Price Maintenance as per section 96(3) of the CCA.

Compliance program

11. Nero undertakes that it will:
 - a. within 3 months of the Commencement Date, establish and implement a Competition and Consumer Compliance Program (**Compliance Program**) in accordance with the requirements set out in "Annexure A" to this Undertaking, being a program designed to minimise Nero's risk of future breaches of section 48 of the CCA and to ensure its awareness of the responsibilities and obligations in relation to the requirements of section 48.
 - b. maintain and continue to implement the Compliance Program for a period of 3 years from the Commencement Date.
 - c. provide, at its own expense, a copy of any documents required by the ACCC in accordance with Annexure A.

Written correspondence to Nero Retailers

12. Nero undertakes to issue a new electronic price list to all Nero Retailers within one calendar month of the Commencement Date, bearing the following statement in the third row of the price list page in at least 10 point font:

"The recommended retail prices (RRP) contained in this price list are a guide only. Resellers are free to resell products at prices above or below RRP."
13. The price list at 12., above, will be issued under a cover email in the form prescribed in Annexure B to this Undertaking.
14. Nero will advise the ACCC, in writing, within 7 days of sending this price list, at 12., above, to all Nero Retailers.
15. Nero undertakes that in every subsequent electronic price list that it issues to Nero Retailers for the Term of this Undertaking, it will include the following statement in the third row of the price list page in at least 10 point font:

"The recommended retail prices (RRP) contained in this price list are a guide only. Resellers are free to resell products at prices above or below RRP."
16. Nero undertakes that in every hard copy price list that it issues to Nero Retailers for the Term of this Undertaking, it will include the following statement at the foot of every page that specifies prices for Nero Products, in at least 10 point font:

"The recommended retail prices (RRP) contained in this price list are a guide only. Resellers are free to resell products at prices above or below RRP."

ACCC enquiries

17. For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with Nero and Nero will respond to such enquiries within a reasonable period of time.
18. If requested by the ACCC during the Term of this Undertaking, Nero will, at its own expense, cause to be produced and provided to the ACCC copies of such documents (excluding any legally privileged documents) in its power, possession or control evidencing Nero's compliance with the

obligations set out in this Undertaking.

Acknowledgments

19. Nero acknowledges that:

- a. the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website
- b. the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications and
- c. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an Undertaking

Executed by Nero Bathrooms International Pty Ltd ACN 148 833 989 pursuant to section 127(1) of the *Corporations Act 2001* by:

 A9E5C832ED27493...
Signature of director
CAOCAO CHENG
Name of director (print)
7/9/2021
Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

8 September 2021

Date

and signed on behalf of the Commission:



Chair

Annexure A

COMPETITION AND CONSUMER COMPLIANCE PROGRAM

Nero will establish a Competition and Consumer Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Training

1. Within 3 months of the Commencement Date, and thereafter at least once a year for 3 years, Mr Caocao Cheng (also known as Kevin Cheng), sole Director and Secretary of Nero, will attend practical training focusing on sections 48 and 96 of the CCA.
2. Nero will ensure that the training referred to in paragraph 1 above is administered by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law (**the Trainer**).
3. Nero will cause all employees of Nero whose duties could result in them being concerned with conduct that may contravene section 48 of the CCA to receive regular (at least once a year for the Term of this Undertaking) training administered by the Trainer, that focuses on sections 48 and 96 of the CCA.

Complaints handling

4. Within 3 months of the Commencement Date, Nero will develop procedures for recording, storing and responding to competition and consumer law complaints.

Provision of Compliance Program documents to the ACCC

5. Nero will maintain a record of and store all documents relating to and constituting the Compliance Program for a period not less than 5 years from the Commencement Date.
6. If requested by the ACCC Nero will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:
 - a. a written statement or certificate from the Trainer who conducts the training referred to in paragraphs 1 and 3 above, verifying that such training has occurred and
 - b. an outline of the complaints handling system referred to in paragraph 4 above.

Annexure B

WRITTEN CORRESPONDENCE TO NERO RETAILERS

Subject: Pricing of Nero products

Due to the continuing Covid situation, we have made some changes to our product portfolio, which is detailed in the attached price list. We have not changed our cost price, standard discount or RRP for the Nero products that remain in our product range.

I want to remind all Nero resellers that pursuant to the *Competition and Consumer Act 2010* (CCA), the recommended retail price (RRP) is a guide only. Products may be sold above or below the RRP and pricing decisions by each retailer are a matter of their own discretion.

These are difficult times for retail, particularly in states affected by lockdowns. However you need to understand that if another Nero retailer is selling Nero products below Nero's RRP, that retailer is free to do so. If you attempt to induce another retailer to increase its prices, you or your company may be at risk of breaching the CCA.

Nero takes its obligations under the CCA very seriously and is committed to working with its retailers in a manner that is compliant with the CCA.

Nero Bathrooms International Pty Ltd