

CLAYTON UTZ

UNDERTAKING

DATED 2000

By OzTam Pty Limited

To

Australian Competition & Consumer Commission

Concerning

Agreement with ATR Australia Pty Limited

CLAYTON UTZ

Lawyers

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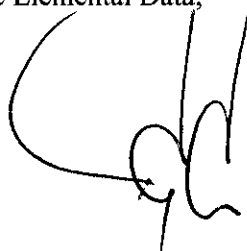
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UNDERTAKING

THIS UNDERTAKING is given to the **AUSTRALIAN COMPETITION & CONSUMER COMMISSION ("ACCC")** by **OZTAM PTY LIMITED ACN 089 146 396**, of 1 Saunders Street, Pyrmont, NSW, 2009 ("**OzTam**")

WHEREAS:

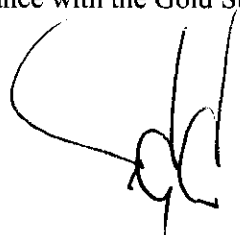
- A. OzTam is a party to an agreement dated 14 March 2000 ("**ATR Agreement**") with ATR Australia Pty Limited (formerly AGB Australia Pty Limited) (ACN 089 686 500) of 357 Military Road, Mosman, NSW, ("**ATR**") for the provision of television audience measurement services in accordance with the Specification contained in Schedule 1 to the ATR Agreement;
- B. The surveys to be conducted by ATR in the performance of the ATR Agreement will provide ATR with respondent level data after editing and validation ("**Elemental Data**"), necessary for the provision of Reports as required by the ATR Agreement;
- C. All intellectual property rights in Elemental Data created or coming into existence in the performance of the ATR Agreement will at all times be and will remain the property of OzTam;
- D. Certain limitations are imposed upon the use and disclosure of Elemental Data in clause 16 of the ATR Agreement including ensuring that the form of the Elemental Data complies with the Gold Standard referred to in the ATR Agreement;
- E. Compliance with the Gold Standard in respect of Elemental Data is intended to ensure that consistent forms of analysis of such Data are adopted by all users for comparative purposes, to avoid any misleading or deceptive use of the Elemental Data;

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- F. The ACCC has expressed its concern to OzTam that if access to Elemental Data on reasonable commercial terms is denied to persons intending to use that Elemental Data in the course of and for the purposes of their businesses such denial might contravene certain provisions of the *Trade Practices Act, 1974*;
- G. Without conceding the need for such concern OzTam hereby gives this undertaking to the ACCC in consideration of which the ACCC has decided not to raise any objection to and not to commence any proceedings against OzTam in respect of the making of the ATR Agreement or giving effect thereto, provided that the ACCC will monitor compliance with the Undertaking and, in the event that it considers a breach of the Undertaking has occurred, it reserves the right to raise an objection thereto and/or commence proceedings against OzTam in respect thereof.
- H. The ACCC intends to review the operation of this Undertaking if there has been a material change in circumstances since the commencement of the Undertaking and may seek amendments to the Undertaking and reserves the right to take any other appropriate action if it is not satisfied with the operation of the Undertaking.

OZTAM NOW UNDERTAKES that, in consideration of the ACCC agreeing not to intervene in or to commence any proceedings against OzTam in respect of the making of the ATR Agreement or giving effect thereto, as evidenced by the ACCC's acceptance of this undertaking, endorsed at the foot hereof:

1. For the duration of the ATR Agreement and until the Agreement is terminated or expires, OzTam will supply Elemental Data on reasonable commercial terms to any third party so requesting who OzTam is satisfied:
- (a) is financially able to meet the cost of supply of the Elemental Data;
 - (b) gives a bona fide assurance of compliance with the Gold Standard in respect of the Elemental Data;

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(c) complies at all times with the Gold Standard;

and who

(d) acknowledges that ownership of copyright in the Elemental Data remains at all times with OzTam.

For the purpose of this undertaking, compliance with the Gold Standard means compliance in all material respects with the requirements of the Gold Standard.

2. OzTam further undertakes that it will during the period of this Undertaking:

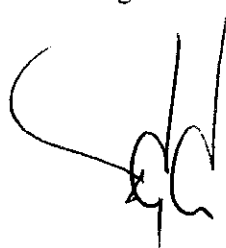
(a) promptly notify the ACCC in the event that it is not satisfied with the financial standing or bona fides of a third party as required by condition 1(a) or (b) of this Undertaking; and

(b) give reasons within 21 days to the party concerned where OzTam:-

(i) refuses to supply Elemental Data to a third party, or

(ii) imposes conditions on the supply of Elemental Data which are not acceptable to the person seeking the Elemental Data.

3. Words and expressions used in this Undertaking which are defined in the ATR Agreement have the same meanings as prescribed in the ATR Agreement.

A handwritten signature in black ink, appearing to be 'GC' with a large flourish above it.

DATED:

2000

~~CREATED ON BEHALF~~

~~THE COMMON SEAL of OZTAM PTY
LIMITED AC 089 146 396 was herunto affixed
by the authority of the Board of Directors in the
presence of:~~



(Signature of Secretary/Director)

STEPHEN MARTIN
(Name of Secretary/Director in Full)



(Signature of Director)

(Signature of Director)

GRANT BACKLEY
(Name of Director in Full)

ACCEPTED by the AUSTRALIAN COMPETITION AND CONSUMER COMMISSION.

Dated: 22 November 2000


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PROFESSOR ALLAN FELS
CHAIRMAN