

**TRADE PRACTICES ACT 1974****UNDERTAKING TO THE AUSTRALIAN COMPETITION AND  
CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF  
SECTION 87B****BY****UNDERTAKING GIVEN BY MEGATOY PLAY SYSTEMS PTY.  
LIMITED  
(ACN 054 503 908)****1. PURPOSE**

- 1.1 Megatoy Play Systems (Megatoy) Pty Limited, ACN 054 503 908, has engaged in conduct, which has raised competition issues under part IV of the Trade Practices Act 1974 ("the Act."). The purpose of this undertaking is to ensure that Megatoy implements specific measures as well as a general program to ensure compliance with the Act.

**2. PERSON GIVING THE UNDERTAKING**

- 2.1 This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Megatoy Play Systems pursuant to s.87B of the Act.

**3. BACKGROUND**

- 3.1 Megatoy is a privately owned family company engaged in the manufacture and sale of play ground equipment to individuals, councils, schools and child care centres. Megatoy's principle place of business is 26 Production Street, Bundaberg, in the state of Queensland.
- 3.2 During October 1997, the Commission became aware of allegations that Megatoy and Moduplay had formed and implemented an anti-competitive agreement, pursuant to which both companies would refuse to compete against the other for the supply of playground equipment in New South Wales. The allegations were made in response to comments made by officers of Megatoy and Moduplay, following Blacktown Council's request for PAL Systems, Megatoy and Moduplay to quote for equipment for Reserves, 14, 222 and 370 of ward 5, which includes the Mt Druitt catchment area.

- 3.3 The Commission subsequently wrote to the relevant officers of both companies requesting a detailed response to the allegation. Both Megatoy and Moduplay confirmed that the companies have agreed not to compete against each other in New South Wales. However, the directors of both companies insist that they were unaware that such an arrangement would potentially breach the provisions of the Trade Practices Act. Megatoy has provided the Commission with copies of correspondence which clearly outlines the arrangement.
- 3.5 The Commission has formed the view that the agreement between Megatoy and Moduplay constitutes an anti-competitive market sharing arrangement, in contravention of section 45(2) of the Act.
- 3.6 Megatoy has assured the Commission that the arrangement between the companies has now ceased. Megatoy has offered to implement a program to ensure future compliance with the letter and spirit of the Act. In addition, Megatoy has offered to donate playground equipment to the value of \$18,000 to a council of the Commission's choice after consultation with Megatoy.
- 3.7 Megatoy has agreed to be bound by the following undertaking given to the Commission pursuant to section 87B of the Act.

#### 4. COMMENCEMENT OF UNDERTAKING

- 4.1 This undertaking comes into effect when:
- (a) Executed by Megatoy; and
  - (b) Being so executed, is accepted by the Commission.

#### 5. UNDERTAKING FOR THE PURPOSE OF SECTION 87B

- 5.1 Megatoy will not enter into any agreement, arrangement or understanding with any other supplier of playground equipment which contains an exclusionary provision, in breach of s.45 (s.4D) of the Act.
- 5.2 Within two months of the commencement of this undertaking, Megatoy will develop for consideration by the Commission, a trade practices compliance program, incorporating the following characteristics:
- (a) Aim:
    - to create a culture of compliance within Megatoy, and prevent so far as reasonably possible, any contravention of the Act by Megatoy, its directors, employees or agents.

- (b) Policy:  
the formal adoption, or re-affirmation, by Megatoy of a policy of strict compliance with both the letter and spirit of the Act within Megatoy and the adoption, or re-affirmation and enforcement of sanctions against any director, employee or agent who is knowingly or recklessly concerned in a contravention of the Act.
- (c) Compliance Infrastructure:  
the appointment of an appropriately qualified named director as the Megatoy compliance officer with overall responsibility for trade practices compliance.
- (d) the compliance program is to cover all directors, employees and agents of Megatoy whose duties could result in them being concerned in conduct that might breach the Act ("relevant staff").
- (e) Education:  
development and implementation of an education program calculated to have the relevant staff conversant with the provisions of the Act to a level where:
- (i) general staff can avoid obvious contraventions and can identify more complex trade practices problems for referral to the most appropriate person in the Megatoy compliance infrastructure;
  - (ii) persons with responsibility within the Megatoy compliance infrastructure can effectively carry out these responsibilities; and
  - (iii) the Megatoy Compliance Officer can address more complex trade practices issues and (if that person is not legally qualified and able to give the relevant advice), identify issues which require referral to Megatoy's solicitors.

- (f) Megatoy will make whatever changes to the draft program that the Commission may reasonably require and will then prepare and submit to the Commission a trade practices compliance program which shall be a document comprising the draft program with all changes reasonably required by the Commission incorporated therein.
- (g) Megatoy will implement the trade practices compliance program within three (3) months of the Commission advising of the changes it requires to the draft program and that the trade practices compliance program will remain in force for a minimum period of one (1) year from the commencement of this undertaking.

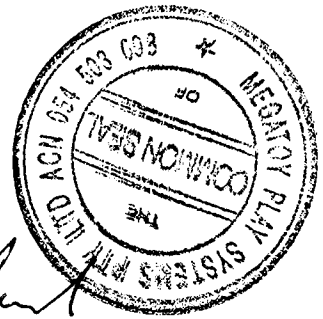
5.3 Megatoy undertakes to donate playground equipment to the value of \$18,000 to a Council of the Commission's choice. The Commission agrees to consult Megatoy before nominating the recipient Council. Megatoy undertakes to install the playground equipment it has offered to donate within three (3) months of receiving advice from the Commission of the nominated Council's acceptance of the equipment.

## 6. ACKNOWLEDGMENTS

- 6.1 Megatoy acknowledges that the Commission will make this undertaking available for public inspection.
- 6.2 Megatoy further acknowledges that the Commission will from time to time publish and publicly refer to this undertaking at its discretion.
- 6.3 Megatoy further acknowledges that this undertaking in no way derogates from the rights and remedies available to any person arising from the alleged conduct.
- 6.4 Megatoy further acknowledges that reports arising from the undertakings referred to in paragraph (2) above, will be held with this on the Commission public register.

THE COMMON SEAL of MEGATOY  
PTY LTD is affixed in accordance with its  
articles of association in the presence of:  
ANTHONY PAUL Rowland

)  
)  
)  
*Anthony Paul Rowland*  
.....



Director

*RR*  
.....  
Secretary

this *28th* day of *July* 1998

SIGNED, SEALED AND DELIVERED )

by the said <sup>ANTHONY</sup> PAUL Rowland this *28th* )

day of *July* 1998 )

*Anthony Paul Rowland*  
.....

*[Signature]*  
.....  
Witness

Accepted by the Australian Competition and Consumer Commission

*Allen Carter*  
.....  
Acting  
Chairperson

This *30* day of *October* 1998