



**UNDERTAKING TO THE
AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
GIVEN UNDER SECTION 87B OF THE TRADE PRACTICES ACT 1974**

BY

The Johnstone Shire Council

AND

**Giandomenico Holdings Pty Ltd, Francesco Giandomenico and Remo
Giandomenico;**

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by the Johnstone Shire Council ("the Council") of 70 Rankin Street, Innisfail, in the State of Queensland, Francesco Giandomenico, Remo Giandomenico and Giandomenico Holdings Pty Ltd, of 32 Challands Street, Ingham, in the State of Queensland under *section 87B* of the *Trade Practices Act 1974* ("the Act").

Background

1. The Johnstone Shire Council is a body corporate pursuant to section 35(a) of the *Local Government Act 1993* (Qld).
2. Giandomenico Holdings Pty Ltd, Francesco Giandomenico and Remo Giandomenico, trading as IQC Quarries carries on the business of providing hard rock quarry product in North Queensland with quarries at Innisfail, Tully and Mount Cordelia. Giandomenico Holdings Pty Ltd, Francesco Giandomenico and Remo Giandomenico are hereafter referred to as IQC.
3. The Council is the owner of one of two quarry sites in the Innisfail area. The Council owned quarry site is located at Pin Gin Hill, Innisfail. Under an agreement dated 29 March 1995 ("the Lease Agreement"), the Council has a contractual agreement with IQC. The Lease Agreement between the Council and IQC is for a period of twenty years. The second sentence of clause 11.2 of that agreement includes a stipulation that:

"...The Lessor further agrees that all contracts let by the Lessor and requiring use of quarry products of a quality able to be supplied by the Lessee will require the purchase of such product from the Lessee provided that such product can be supplied by the Lessee promptly and at the prices detailed in the Second Schedule to this Lease and adjusted as provided for in Clause 11.1."

4. The Council from time to time offers contracts to third parties for the provision of road maintenance services, road construction services and road resealing services ("roadworks"). These contracts are often offered by way of tender. Between 1995 and 2000 in documentation seeking tenders and within the roadworks contracts themselves, the Council included clauses requiring the purchase of hard rock quarry product for the completion of the project from IQC ("the contractor requirement").
5. The Lease Agreement and the contractor requirements were brought to the attention of the North Queensland office of the Commission. The Commission formed the view that Clause 11.2 of the Lease Agreement and the contractor requirements may constitute the practice of third line forcing in breach of section 47(6) of the Act.
6. Section 47(6) of the Act prohibits the supply of goods or services on the condition that the purchaser acquire goods or services from a particular third party or a refusal to supply because the purchaser will not agree to that condition.
7. In March 2000 the Commission wrote to the Council and IQC alerting them to the Commission's concerns with respect to the contractor requirements and Clause 11.2 of the Lease Agreement.
8. In response to the Commission's concerns, the Council advised the Commission on 24 March 2000 that it would refrain from enforcing the contractor requirements and that it would refrain from making further contractor requirements. The Council and IQC further provided additional information and data for Commission consideration of the matters raised.

Admissions

9. The Council and IQC admit that clause 11.2 of the Lease Agreement provides that all contracts let by the Council requiring use of certain quarry products will require the purchase of such quarry product from IQC on certain conditions.
10. The Council and IQC admit compliance with the second sentence of clause 11.2 by meeting requirements within tender documents and contracts requiring contractors to purchase quarry products from IQC may contravene section 47(6) of the Act.

Commencement of Undertaking

11. This undertaking comes into effect when;
 - a) the undertaking is executed by the Johnstone Shire Council, Francesco Giandomenico, Remo Giandomenico and Giandomenico Holdings Pty Ltd, and;
 - b) the Commission accepts the undertaking so executed.

Undertaking

The Council

12. The Council gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*:-
13. The Council and IQC will, in agreement with one another, delete the second sentence of clause 11.2 of the Lease Agreement and within thirty (30) days of receipt from the Commission of notification of its acceptance of this undertaking cause a variation, to give effect to that deletion, of the registered lease to be lodged with the Registrar of Titles for registration and thereafter to comply with such requirements or requisitions of the Registrar of Titles to enable registration to proceed.
14. The Council will refrain from making a requirement within tender documents and contracts that contractors purchase quarry products from any specific supplier, including IQC, other than the Council itself.
15. The Council will implement a Trade Practices Compliance Program; the Council will make best endeavours to ensure that the program complies with AS 3806-1998 tailored to be appropriate for its particular size and responsibilities as a local authority. The Council will submit details of that program and its implementation to the Commission upon implementation and will make any reasonable amendments requested by the Commission within one month of that request.

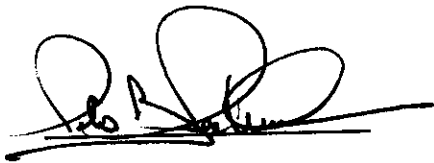
IQC

16. IQC gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*, together with the undertaking contained in paragraph 14:-
17. IQC will refrain from making a requirement in lease agreements that the lessor require third parties to purchase their quarry requirements from IQC.
18. IQC will take no steps against the Council to enforce any rights arising under the second sentence of clause 11.2 of the Lease Agreement in respect of any actions by the Council prior to the variation of the lease.
19. IQC will implement a Trade Practices Compliance Program; IQC will make best endeavours to ensure that the program complies with AS 3806-1998 but amended in such way to be appropriate for their business. IQC will submit details of that program and its implementation to the Commission upon implementation and will make any reasonable amendments requested by the Commission within one month of that request.

Acknowledgments

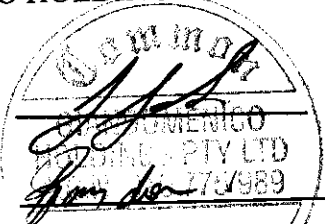

- 20. The Council and IQC acknowledge the Commission will make this undertaking available for public inspection.
- 21. The Council and IQC further acknowledge that the Commission will, from time to time, publicly refer to this undertaking.
- 22. The Council and IQC acknowledge and accept that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct of the Council and IQC.
- 23. The Council and IQC further acknowledge that the compliance program(s) as in force from time to time will be held with this undertaking on the public register.

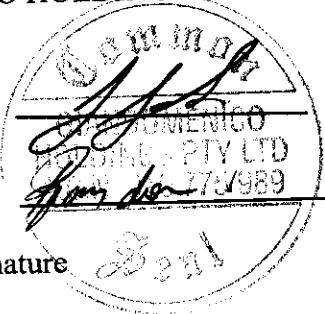
Signed on behalf of the JOHNSTONE SHIRE COUNCIL by

PETER BRUCE ROBERTS  27 June 2001
Print Name (General Manager) Signature Date

Company Seal Date

Signed on behalf of the GIANDOMENICO HOLDINGS PTY LTD by

GIUSEPPANTONIO GIANDOMENICO (DIRECTOR)  19/07/2001
CATINA GIANDOMENICO  19/07/2001
Print Name (Director) Signature Date



Company Seal

Date

FRANCESCO GIANDOMENICO

F. Giandomenico

17/7/01

Francesco Giandomenico

Signature

Date

REMO GIANDOMENICO

RGB

17/07/2001

Remo Giandomenico

Signature

Date

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

Allan Fels

(Professor Allan Fels)

Chairperson

This

7

day of

August

2001