

TRADE PRACTICES ACT 1974 - SECTION 87B

UNDERTAKING

PERSON GIVING UNDERTAKING

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Gasgo Pty Ltd (ACN 009 627 801) ("Gasgo") under Section 87B of the Trade Practices Act 1974 ("the Act").

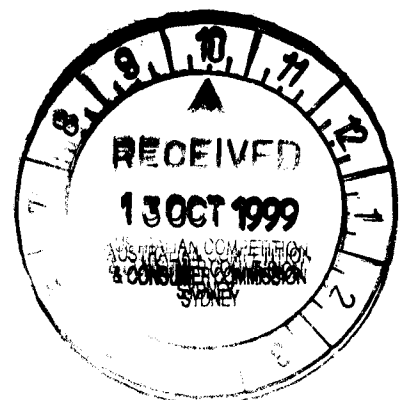
BACKGROUND

On 2 December 1997 the Mereenie Producers lodged applications for authorisation in relation to the Gasgo sales agreement. This agreement is a long-term "take or pay" contract entered into by Gasgo at the direction of the Northern Territory Government for the supply of natural gas by the Mereenie Producers to Gasgo, a subsidiary of the Northern Territory Power and Water Authority ("PAWA"). PAWA is a statutory authority established by the Northern Territory. The Mereenie Producers are parties to the Mereenie joint venture and owners of the gas in the Mereenie gas field in the Northern Territory.

The Gasgo agreement was the third in a series of contracts between the Mereenie Producers and Gasgo for the supply of gas. The gas is ultimately sold to PAWA for the generation of electricity in the Northern Territory. Authorisation had not been sought for the first two contracts, one of which is still current.

The original gas purchase agreement ("GPA"), signed in 1985, between the Mereenie Producers and Gasgo contained at Clause 2.26 a pre-emptive right. The pre-emptive right requires the Mereenie Producers, prior to selling gas to third parties, to first offer that gas to Gasgo at the same price and for the same quantity. Gasgo has a limited time in which it may choose to accept the offer, or it may decline or waive its rights with respect to that gas, in which case the Mereenie Producers may then sell the gas to the third party. Clause 2.26 is attached as confidential annexure "A".

D99/12101



The Commission granted authorisation to the 1997 agreement on 7 April 1999. In the Determination the Commission said:

“Notwithstanding that the pre-emptive right has not been exercised to date, the Commission is concerned that the very existence of the pre-emptive right is anti-competitive. The pre-emptive right requires the disclosure to Gasgo of the terms and conditions, including price, of any potential agreement for the supply of gas between the applicants and a third party. The Commission considers this in itself to be a barrier to entry to the gas market and to electricity generation. In the Commission’s view, it is also contrary to the public interest in developing the competitive markets envisaged by the CoAG reforms.

From the information available to it, the Commission considers that the existence and/or bringing into effect of the pre-emptive right contained in the original GPA may well be a breach of Part IV of the Act. The Commission has recently brought this concern directly to the notice of Gasgo and is actively considering legal action against Gasgo.”

On 4 May 1999, the Commission instituted injunction proceedings against Gasgo in the Northern Territory registry of the Federal Court (D8 of 1999). The Commission in these proceedings alleged that Gasgo had given or threatened to give effect to the pre-emptive right clause in breach of section 45 of the Act and sought declarations and injunctions.

Gasgo has defended these proceedings.

In order to settle D8 of 1999, Gasgo has, without making admissions, agreed to give the undertaking contained herein to the Commission under Section 87B of the Act for the limited purpose of achieving a settlement of these proceedings.

The Commission is aware that the Northern Territory has invested substantial resources in infrastructure assets and arrangements including gas field development, gas transportation and gas fired electricity generation to support domestic and commercial activities in the Northern Territory and that the Northern Territory has legitimate concerns with respect to ongoing availability of gas for electricity generation and the Northern Territory’s related commitments concerning existing infrastructure for electricity generation (including the Armadeus Basin to Darwin gas pipeline). In this context the Commission has agreed to accept the undertaking from Gasgo under Section 87B of the Act.

COMMENCEMENT OF THE UNDERTAKING

This undertaking comes into effect when:

- a) the undertaking is executed by Gasgo; and
- b) the undertaking so executed is accepted by the Commission.

TERM OF THE UNDERTAKING

- 1 The Commission may consent to the withdrawal or variation of the undertaking at any time.
- 2 This undertaking terminates when 6 months notice to that effect has been given by Gasgo to the Commission or at the expiry of the GPA, or as otherwise agreed by Gasgo and the Commission.
- 3 Gasgo will not give a notice to the Commission under paragraph 2 unless:
 - a) Gasgo believes that there has been a change in circumstances materially affecting the ongoing availability of gas for electricity generation and the Northern Territory's related commitments concerning existing infrastructure for electricity generation (including the Armadeus Basin to Darwin gas pipeline);
 - b) Gasgo has given notice to the Commission of the change in circumstances it believes satisfies paragraph (a) and the effect of that change in circumstances on Gasgo and the Northern Territory and has met with the Commission and discussed the circumstances and their effect on Gasgo and the Northern Territory; and
 - c) if agreed by Gasgo and the Commission at the time as necessary a process, to be completed within an agreed time, whereby the change in circumstances and the effect of such change in circumstances on Gasgo and the Northern Territory are considered by an independent person appointed jointly by the Commission and Gasgo and confirmed by such person having regard to any contentions made by Gasgo including its response to any contentions made by the Commission or anyone else. If there is no agreement as to this process then this paragraph (c) does not apply.

OBLIGATIONS UNDER THE UNDERTAKING

- 1 From the date of this undertaking, Gasgo will not exercise its pre-emptive right under section 2.26 of the GPA in respect of gas sales by the Mereenie Producers to any third party where:
 - (a) such gas is to be used for the commercial generation in the Northern Territory of electricity for the supply to customers in areas currently connected to or to be connected to the existing Darwin and Katherine electricity grids and/or connected to or to be connected to the Darwin/Katherine transmission line other than any future single customer with a peak demand in excess of 10MW; and
 - (b) Gasgo is reasonably satisfied, before waiving its pre-emptive right in respect of any particular supply proposal, that the third party satisfies the conditions in paragraph (a).

- 2 From the date of this undertaking, Gasgo will release the Mereenie Producers from their obligations to notify Gasgo under clause 2.26 where:
 - (a) such gas is to be used for the commercial generation in the Northern Territory of electricity for the supply to customers in areas currently connected to or to be connected to the existing Darwin and Katherine electricity grids and/or connected to or to be connected to the Darwin/Katherine transmission line other than any future single customer with a peak demand in excess of 10MW; and
 - (b) Gasgo is reasonably satisfied, before waiving its pre-emptive right in respect of any particular supply proposal, that the third party satisfies the conditions in paragraph (a).

The effect of this release shall not be taken to release the Mereenie Producers from any obligation under clause 2.26 to notify Gasgo of the quantity and term of gas sales to any third party.

- 3 Within 5 working days of this undertaking coming into effect Gasgo will cause to be sent to the Mereenie Producers a letter in terms annexed hereto at "B".

- 4 From the date of the undertaking coming into effect, Gasgo will without unreasonable delay notify the Commission of all or any notifications given pursuant to section 2.26 of the GPA by the Mereenie Producers.
- 5 Gasgo agrees to pay the Commission's costs as agreed.
- 6 Within 5 working days of this undertaking coming into effect:
 - (a) the parties will exchange mutual releases (containing no admissions of liability) in the agreed form in respect of the matters respectively alleged by them in proceeding D8 of 1999.
 - (b) The Commission and Gasgo will discontinue proceeding D8 of 1999 with no order as to costs.
- 7 Gasgo notes that the Commission may make public the fact or terms of this undertaking after it comes into effect, provided that the Commission will provide to Gasgo a copy of any proposed announcement not less than 2 business days before the publication of the announcement.
- 8 The Commission notes that Gasgo may make public the fact or terms of the undertaking after it comes into effect, provided that Gasgo will provide to the Commission a copy of any proposed announcement not less than 2 business days before the publication of the announcement.

Executed on the 11 day of *October*, 1999.

THE COMMON SEAL of GASGO)
 PTY LTD is duly affixed by authority)
 of its directors in the presence of:)



.....
 Signature of authorised person

.....
 Signature of authorised person

DIRECTOR

DIRECTOR

Office held

Office held


DENNIS PATRICK BREE

 Name of authorised person (block letters)

PETER JOHN CALDWELL

 Name of authorised person (block letters)

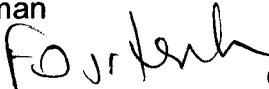
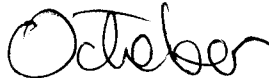
ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974.

.....

~~(Professor Allan Fels)~~ ALLAN JAMES ASHER

Acting

Chairman

This  day of  199# 9

“B”

[Gasgo letterhead]

To: The Mereenie Producers

[date]

Dear Sirs

Gasgo Sales Agreement dated [] (“GPA”)

As you are aware in May 1999 the Australia Competition and Consumer Commission instituted injunction proceedings against Gasgo in the Northern Territory registry of the Federal Court (D8 of 1999) in relation to certain aspects of the GPA.

In order to settle D8 of 1999 Gasgo has, without making any admissions, given an undertaking to the Commission under section 87B of the Act which the Commission accepted on [] October 1999. The undertaking will terminate when the GPA terminates or potentially may terminate following the giving of notice by Gasgo where there has been a material change in the circumstances affecting the availability of gas for electricity generation and the Northern Territory’s related commitments concerning existing infrastructure for electricity generation (including the Armadeus Basin to Darwin gas pipeline) (or such earlier time as agreed by Gasgo and the Commission).

Pursuant to the undertaking Gasgo advises the Mereenie Producers that Gasgo will not exercise its pre-emptive rights under section 2.26 of the GPA in respect of gas sales by the Mereenie Producers to any third party where:

- (a) such gas is to be used by the third party for the commercial generation in the Northern Territory of electricity for the supply to customers in areas currently connected to or to be connected to the existing Darwin and Katherine electricity grids and/or connected to or to be connected to the Darwin/Katherine transmission line other than any future single customer with a peak demand in excess of 10MW; and
- (b) Gasgo is reasonably satisfied, before waiving its pre-emptive right in respect of any particular supply proposal, that the third party will use the gas for the purpose specified in paragraph (a).

In addition Gasgo has agreed to release the Mereenie Producers from their obligation to notify Gasgo under section 2.26 of the GPA in respect of gas sales where the conditions in paragraphs (a) and (b) of the preceding paragraph are met.

However, the undertaking also provides that the effect of the release shall not be taken to release the Mereenie Producers from any obligation under clause 2.26 of the GPA to notify Gasgo of the quantity and the term of any proposed gas contract with any third party.

Yours faithfully

Director
Gasgo Pty Ltd