

ANNEXURE "B"

TRADE PRACTICES ACT 1974 - SECTION 87B

UNDERTAKING

PERSON GIVING UNDERTAKING

This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Mobil Oil Australia Limited (ACN 004 052 984) ("Mobil") under section 87B of the *Trade Practices Act 1974* ("the Act").

BACKGROUND

On 20 December 1995 the Commission formed the view that the proposed acquisition by Mobil of the petroleum products retailing and wholesaling businesses of Amgas Pty Ltd ("Amgas") and Coodax Pty Ltd ("Coodax") ("the acquisition") would be likely to have the effect of substantially lessening competition in the supply of petroleum products in a number of markets for petroleum products in Western Australia in contravention of section 50 of the Act.

In addition to the acquisition Mobil has negotiated a terminal hosting agreement with Amtank Pty Ltd ("Amtank") and Coogee Chemicals Pty Ltd ("Coogee") in respect of those petroleum products terminalling facilities owned by Amtank and Coogee at Kwinana, Western Australia identified in Annexure "A" ("the Kwinana terminal") whereby:

- (a) Mobil has exclusive rights to use the Kwinana terminal for years;
- (b) Mobil has the right to extend the term of the terminal hosting agreement up to years; and

- (c) Mobil may terminate the terminal hosting agreement on months' notice at anytime during the first years and on months' notice at anytime thereafter.

The Commission is concerned that the acquisition may restrict the opportunity for the distribution and sale of petroleum products in Western Australia by companies independent of established major oil companies, which the Commission considers to be an important element in keeping prices to consumers down.

While denying that the acquisition would be likely to have or has the effect of substantially lessening competition in any market, Mobil agreed, prior to completing the acquisition on 20 December 1995, to enter into good faith discussions with the Commission, with a view to reaching agreement on the terms of an undertaking under section 87B of the Act, to address the Commission's concerns in relation to the acquisition.

The Commission has agreed to accept the Mobil undertaking under section 87B of the Act and will provide a letter to Mobil upon acceptance of the undertaking stating that it will take no further action against Mobil under the Act in respect of the acquisition.

DEFINITIONS

Independent means and includes:

- (a) an owner or proposing owner of, or a person who conducts or proposes to conduct, an import, wholesale or retail business selling petrol in which no Major Oil Company has an equity interest and in respect of which at least one of the following factors applies:
- (i) the premises from which the business is conducted are not owned or leased by a Major Oil Company;
 - (ii) petrol is not supplied under an exclusive arrangement with a Major Oil Company;

- (iii) the business does not operate under a brand owned or licensed by a Major Oil Company;
- (b) an owner of, or a person who conducts, a retail business which purchases petrol from any supplier and sells it from premises owned or leased by that person under brands which are not owned or licensed by a Major Oil Company; and
- (c) an owner of, or a person who conducts, a wholesale business which purchases petrol from any supplier and who uses depot and distribution facilities which that person owns or leases to supply petrol to retail businesses, without any exclusive supply arrangements with a Major Oil Company or equity interests held by a Major Oil Company;

but does not include:

- (d) a wholesaler or distributor with exclusive supply arrangements with a Major Oil Company;
- (e) a person who conducts a retail business with exclusive supply arrangements under a franchise agreement with a Major Oil Company in accordance with the Petroleum Retailing Marketing Franchise Act (1980);
- (f) a person who conducts a business for the sale of petrol which is owned or operated by a Major Oil Company or in which a Major Oil Company has an ownership interest;
- (g) a Major Oil Company or a body corporate in which a Major Oil Company has an equity or other beneficial interest.

Major Oil Company means a body corporate, or group of bodies corporate, operating refineries for the production of petrol, and/or marketing petrol by retail, generating petroleum fuel sales turnover in excess of \$A1000 million per annum, anywhere in the world and includes any related body corporate, associate, affiliate, partner or joint venturer of such a body corporate.

COMMENCEMENT OF UNDERTAKING

1. This Undertaking comes into effect on the execution of this undertaking by Mobil and the acceptance of the undertaking by the Commission.

USE OF TERMINAL

6. In the event that Mobil does not require the Kwinana terminal for the storage of petroleum products in the conduct of its own petroleum products supply business and in the event that Mobil either owns the Kwinana terminal or there are current contractual terminalling agreements between Mobil and Amtank and Coogee, Mobil will make the Kwinana terminal available for use by Independents on reasonable commercial terms including at least the following terms:

- (a) any Independent will be required to indemnify Mobil for and against any loss, damage or expense that Mobil may incur or any

claim, action, proceeding, judgment or order brought or made against Mobil arising from or in any way connected with the Independent's use of the Kwinana terminal;

- (b) any use by any Independent of the Kwinana terminal will only be for a period of no more than the period for which Mobil's obligations under this undertaking continue and during which Mobil either owns the Kwinana terminal or has rights to use the terminal pursuant to then current contractual terminalling agreements between Mobil and Coogee and Amtank.

7. Where Mobil is required to make the Kwinana terminal available for use by Independents pursuant to clause 6 above:-

- (a) Mobil will advertise the availability of the Kwinana terminal in "The West Australian" and "The Australian" and any interested Independent will have 30 days from the date of the advertisement to submit an offer for the use of the Kwinana terminal to Mobil, failing which Mobil may use the Kwinana terminal for whatever purposes it thinks fit;
- (b) Mobil will provide a copy of each such advertisement to the Commission within 3 days of publication; and
- (c) Mobil will promptly notify the Commission in writing of the name and address of each Independent who submits an offer for the use of the Kwinana terminal in response to any such advertisement.

