



Appendix B - Section 87B Undertakings

DAVIDS LIMITED

UNDERTAKINGS GIVEN TO THE TRADE PRACTICES COMMISSION

These undertakings are given to the Trade Practices Commission (the "Commission") by Davids Limited ("Davids") under section 87B of the Trade Practices Act 1974.

PURPOSE OF UNDERTAKINGS

If Davids controls CBL, these undertakings are intended to ensure the following outcomes and are given for the following purposes and shall be interpreted accordingly:

- to limit the effects on customers of Davids and CBL and on consumers of any lessening of competition
- to provide for improvement in rebates of at least 0.5% to the members of banner groups listed in Schedule 3
- to provide, in addition to all of the rights and remedies of the Commission to enforce these undertakings, mechanisms to review Davids' compliance with these undertakings
- to establish a system for resolution of complaints
- to ensure that there is no reduction in the nature, quality or level of services currently provided by Davids and CBL to their customers
- to ensure that there is no unreasonable discrimination between members of banner groups

INTERPRETATION

AAW means Australian Asia/Pacific Wholesalers Pty Limited, A.C.N. 602 743 044 and its related companies within the meaning of the Corporations Law.

AIW means Australian Independent Wholesalers Pty Ltd, A.C.N. 060 951 733 and its related companies within the meaning of the Corporations Law.

A reference to a person who controls CBL means a person who is:

- (a) the holder of shares which entitle the person to cast or control 50% or more of the votes which may be cast at an Annual General Meeting or an Extraordinary General Meeting of CBL;

or

- (b) in a position to control the appointment or removal of a majority of the directors of CBL.

CBL means Composite Buyers Limited, A.C.N. 004 201 543 and its related companies within the meaning of the Corporations Law.

Dauids means Davids Limited, A.C.N. 000 031 569 and its related companies within the meaning of the Corporations Law.

Determination Date means the date of the Commission's determination of Davids' application for authorisation A30165.

Effective Date means the first date on which Davids controls CBL.

Independent Industry Ombudsman means an independent person with substantial knowledge of the grocery industry, of grocery wholesaling or of grocery distribution appointed in accordance with clause 12.1(b).

Review Date means 1 July in each year following the year in which Davids first controls CBL.

Services has the meaning ascribed by the Trade Practices Act and includes those services listed in Schedule 1.

Wholesale prices means wholesale prices and trading terms including all the elements on both the credit and debit side of both the direct and indirect cost of supply determined by having regard, among other things, to the matters listed in Schedule 2.

Where the context permits:

- a reference to the doing of or refraining to do any thing by a body corporate shall include the doing of or refraining to do that thing by a body corporate which is a related body corporate of the body corporate referred to. Where these undertakings require Davids to do or refrain from doing a certain thing, Davids shall use its best endeavours to procure that a relevant related body corporate shall do or refrain from doing that thing so as to ensure that thing is done or not done, as the case may be.
- a reference to the singular includes the plural, and vice versa, and a reference to a person includes a body corporate.

UNDERTAKINGS

Davids undertakes as set out below:

1. Provision of Wholesale Prices and Services to Davids' Customers

Davids undertakes to continue to provide both wholesale prices and services to each of its customers that are no less favourable than those provided by Davids to such customers on the Determination Date.

2. Provision of Wholesale Prices and Services to CBL Customers

Davids undertakes to ensure that each of CBL's customers will continue to receive both wholesale prices and services that are no less favourable than those provided by CBL to its customers on the Determination Date.

3. Increased Rebates

Davids undertakes that, within 12 months after the Effective Date, it will increase or procure the increase of the rebate provided to members of the banner groups listed in Schedule 3 by at least 0.5% and will thereafter maintain that increased rebate, such that these members will enjoy at all subsequent times a net improvement of at least that degree in their trading terms with Davids, as measured against their trading terms as at the Determination Date. The increased rebate shall be provided by an increase of at least 0.25% within 6 months of the Effective Date and a further increase of at least 0.25% within 12 months of the Effective Date.

4. Transfer to Davids System

Davids undertakes to provide to any CBL customer which so requests in writing, or to any CBL banner group, the Committee of which so requests in writing, both wholesale prices and services that are no less favourable than those it provides to an equivalent customer (or banner group) of Davids and Davids shall not thereafter be obliged to comply with clauses 2 and 3 in relation to that customer (or banner group).

5. Transfer to CBL System

Dauids undertakes to ensure that any Davids' customer which so requests in writing, or any Davids' banner group, the Committee of which so requests in writing, will receive both wholesale prices and services that are no less favourable than those provided to an equivalent CBL customer (or CBL banner group) and Davids shall not thereafter be obliged to comply with clauses 1 and 4 in relation to that customer (or banner group).

6. Davids' Banner Groups

Dauids undertakes to continue to maintain each of its banner groups other than a banner group in respect of which a majority of the stores in that banner group otherwise agrees in a ballot in which one vote may be cast in respect of each store in the banner group.

7. CBL Banner Groups

Dauids undertakes to procure the continued maintenance of each of CBL's banner groups other than a banner group in respect of which a majority of the stores in that banner group otherwise agrees in a ballot in which one vote may be cast in respect of each store in the banner group.

8. Incentives

If Davids offers any benefit or incentive to any member of a banner group to agree to the discontinuance of that banner group or to act or vote in a certain way in relation to that banner group, then Davids undertakes to offer the same or an equivalent benefit or incentive to all other members of that banner group.

9. Discrimination between Members of Banner Groups

Dauids undertakes not to unreasonably discriminate, in terms of wholesale prices, services or otherwise, between members of any particular banner group.

10. Maintenance of AAW

Dauids undertakes to use its best endeavours to ensure that Black and Gold generic products and terms negotiated through AAW continue to be made available to existing members of AAW on the same, or a more favourable, basis as on the Determination Date and that supply of Black and Gold generic products and terms negotiated through AAW are offered to AAW members on a non-discriminatory basis.

11. Supply to AIW

Dauids undertakes to ensure continued supply of Payless generic products to AIW on terms which are no less favourable to AIW than are provided by CBL to AIW on the Determination Date unless AIW otherwise agrees in writing.

12. Independent Review of Undertakings

- 12.1 (a) Davids undertakes to initiate arrangements for the appointment of an Independent Industry Ombudsman answering the description in the interpretation section of these undertakings within 30 days of the Effective Date.
- (b) Davids undertakes that the Independent Industry Ombudsman will be appointed through the agreement of Davids and at least a majority by number of the Committees of the banner groups specified in Schedule 3 or, in the absence of such agreement being reached within 60 days of the Effective Date, appointed for the purposes of these undertakings by the President for the time being of the Institute of Chartered Accountants. The appointment of the Independent Industry Ombudsman shall be effected as soon as practicable.
- 12.2 In the event that, from time to time, an Independent Industry Ombudsman so appointed is unable or unwilling to continue, or if a majority of the Committees of the banner groups so request in writing, Davids undertakes to arrange for the replacement of the Independent Industry Ombudsman forthwith. The provisions of these undertakings shall apply, as if the necessary changes have been made, to the selection, appointment and replacement of the new Independent Industry Ombudsman.
- 12.3 Davids undertakes to cooperate fully with the Independent Industry Ombudsman on and from each Review Date and to assist the Independent Industry Ombudsman to prepare a report in relation to Davids' compliance with these undertakings during the period prior to the Review Date.
- 12.4 Davids undertakes to create, maintain and at all times have available, such books, accounts or other records as are necessary to enable the Independent Industry Ombudsman to accurately and conveniently assess Davids' compliance with these undertakings and to facilitate that assessment.
- 12.5 Davids undertakes to provide full and free access to the Independent Industry Ombudsman to such books, accounts and other records of Davids as are requested by the Independent Industry Ombudsman to enable the Independent Industry Ombudsman to prepare the report.
- 12.6 Davids undertakes to procure the Independent Industry Ombudsman to provide a copy of the report to Davids and to the Commission promptly following completion of the report.
- 12.7 Davids undertakes to bear all reasonable costs of the Independent Industry Ombudsman in relation to the report and to comply promptly and fully with any directions given by the Independent Industry Ombudsman in the report.

13. Report on Compliance to Banner Groups

- 13.1 Davids undertakes to procure the Independent Industry Ombudsman to prepare a report for a banner group if the Committee of that banner group requests the Independent Industry Ombudsman in writing to prepare a report regarding Davids' compliance with these undertakings in relation to the members of that banner group and provides a copy of its request to Davids, provided that Davids shall not be obliged by this sub-clause to procure more than 2 reports in any calendar year in respect of any particular banner group.
- 13.2 Davids undertakes to procure the Independent Industry Ombudsman to provide in the report such information as the Independent Industry Ombudsman considers necessary or appropriate from the books, accounts and other records referred to in Clause 12.4 in order to provide verification of Davids' compliance or non-compliance, but if the Independent Industry Ombudsman considers it more convenient or appropriate (particularly in the case of confidential information), the Independent Industry Ombudsman may provide such information separately to the Committee of the banner group in such manner as the Independent Industry Ombudsman considers appropriate.
- 13.3 The provisions of Clause 12 shall apply in relation to such a report as if it were a report prepared for the purposes of Clause 12.3.

14. Complaint Resolution

- 14.1 If a dispute arises between Davids and a banner group, a wholesaler or retailer customer (the other party to the dispute) about Davids' compliance with these undertakings, including a dispute concerning any ballot referred to in these undertakings, which is not otherwise resolved within 21 days after the other party to the dispute first makes a complaint to Davids, Davids undertakes, if so requested by the other party to the dispute, to immediately refer details of the complaint in writing to the Independent Industry Ombudsman and to provide a copy of the referral to the other party to the dispute.
- 14.2 Davids and the other party to the dispute may make written or oral submissions in respect of the complaint to the Independent Industry Ombudsman within any time limit prescribed by the Independent Industry Ombudsman.

- 14.3 To enable the Independent Industry Ombudsman to determine a complaint, Davids undertakes to cooperate fully with the Independent Industry Ombudsman and to provide full and free access to the Independent Industry Ombudsman to such books, accounts and other records of Davids as are requested by the Independent Industry Ombudsman, including those specified in clause 12.4, and Davids undertakes to use its best endeavours to ensure that its officers cooperate fully with the Independent Industry Ombudsman.
- 14.4 Davids undertakes to be bound by the decision of the Independent Industry Ombudsman in relation to the complaint and undertakes to comply promptly and fully with any direction given or determination made (including a direction given or determination made by the Independent Industry Ombudsman pursuant to the instructions referred to in clause 15.1) by the Independent Industry Ombudsman in relation to the complaint
- 14.5 Davids undertakes to pay the reasonable fees and expenses of the Independent Industry Ombudsman in connection with the determination of any complaints, including any other reasonable fees or expenses incurred by the Independent Industry Ombudsman that are reasonably incidental to the performance of his or her duties under these undertakings.

15. Terms of Reference and Determinations of Independent Industry Ombudsman

- 15.1 The terms of reference of the Independent Industry Ombudsman shall provide that the Independent Industry Ombudsman:
- (a) must interpret these undertakings and Davids obligations under them in order to achieve the outcomes and advance the purposes for which these undertakings are given;
 - (b) must act fairly and expeditiously and must apply these undertakings in a practical fashion;
 - (c) shall make determinations within the absolute discretion of the Independent Industry Ombudsman as an expert and not as an arbitrator;
 - (d) may, in the absolute discretion of the Independent Industry Ombudsman, prescribe any procedures and time limits considered appropriate by the Independent Industry Ombudsman for the purposes of any particular complaint and may deal with any complaint in the manner considered most appropriate by the Independent Industry Ombudsman;
 - (e) may, in the absolute discretion of the Independent Industry Ombudsman, summarily dispose of any complaint if the Independent Industry Ombudsman considers that the complaint is frivolous, vexatious, repetitive, lacking in substantial merit or that it has been substantially previously dealt with;

- (f) may, in the absolute discretion of the Independent Industry Ombudsman, summarily dispose of any request for a report pursuant to clause 13 if the Independent Industry Ombudsman considers that the request is frivolous or vexatious;
- (g) must, as soon as practicable, notify the Commission in writing of any occurrence which, in the view of the Independent Industry Ombudsman, constitutes a breach by Davids of these undertakings, providing particulars of same;
- (h) shall, unless the complainant so requests or consents in writing, direct that neither party shall be entitled to be legally represented before the Independent Industry Ombudsman; and
- (i) may make such determinations as the Independent Industry Ombudsman considers appropriate including determinations that:
 - (A) any contract or any part of any contract between Davids and any customer or group of customers shall not be enforceable by Davids, either ab initio or from a date specified in the decision;
 - (B) the terms of any such contract shall be varied in a manner specified in the decision, either ab initio or from a date specified in the decision;
 - (C) Davids refund money, return property, allow a credit or rebate or other benefit or pay a sum of money to compensate a customer or group of customers for any loss that has been or may be suffered by it or them;
 - (D) Davids supply services and or goods to a customer or group of customers; or
 - (E) Davids do or refrain from doing any act or thing.

15.2 Nothing in these undertakings shall be interpreted so as to limit or restrict any right or remedy a customer or group of customers may have against Davids other than the rights and remedies provided in these undertakings.

16. Notification of Non-Compliance

If Davids does not comply with any undertaking contained herein, it undertakes to promptly so notify the Commission and the Independent Industry Ombudsman in writing setting out the reasons for its failure to comply.

17. Effect of Undertakings

These undertakings will have no effect:

- (a) until the Effective Date;
- (b) if Davids ceases, by reason beyond Davids' control to control CBL, until it again controls CBL; or
- (c) in relation to a retail customer or wholesaler, who has notified Davids and the Independent Industry Ombudsman in writing that these undertakings are no longer to have effect in relation to that customer or wholesaler (as the case may be).

18. General

- 18.1 Davids undertakes that it will not at any time after the Effective Date divest itself of any part of its interest in any or all of its shares in CBL unless it first has the written consent of the Commission so to do.
- 18.2 Davids further undertakes to use its best endeavours to ensure that the purposes for which these undertakings are given and the outcomes intended to be achieved are not frustrated or impaired by any act or thing it does or omits to do.
- 18.3 Without limiting the generality of the foregoing, Davids undertakes not to do nor cause nor permit to be done any act or thing whatsoever that will diminish the value to customers of Davids or CBL of the undertaking given in clause 3.
- 18.4 Insofar as Davids' and CBL's trading terms with their suppliers influence wholesale prices and services to customers of Davids or CBL, Davids undertakes to use its best endeavours to obtain the best possible trading terms from those suppliers and in determining wholesale prices and services, regard shall be had to the prices and services provided to Davids and CBL by their suppliers.
- 18.5 Davids undertakes to supply any assignee or successor of any Davids or CBL customer on the same basis as that customer and to offer to supply any other new customer on the same basis as any other member of a banner group which the new customer joins or would be eligible to join.
- 18.6 Davids undertakes to advise the Commission in writing of the Effective Date and each occurrence of an event referred to in clause 17 within seven days of its occurrence.
- 18.7 Davids undertakes to provide a copy of these undertakings to all customers of Davids and CBL within seven days of the Effective Date.
- 18.8 Davids acknowledges that nothing in these undertakings is intended or is to be taken to in any way fetter or diminish the rights and remedies available to the Commission to enforce these undertakings, nor to fetter or constrain any order the Court may make on any application to it by the Commission.

SCHEDULE I

WHOLESALE SERVICES

Price Lists
Shelf Labels
Case Labels
Store Plans
Store Layout Assistance
Shelf Management Program
Host Support Services
Prize Zone and Competitor Price Monitoring Services
Training Programs
Retail Systems
Order Books
Micro Fiche
Retail Merchandising Services
Stock Range (including liquor)
Stock Levels
Field Counsellor calls
Advice on Equipment and Layouts
Deli and Produce Specialists
Meat Specialist
Banner Group: Handbills
 Television
 Radio activity
 Press

New Store support:

Re-ticketing

Housebrand Relay

External Signage

P.O.S. Material

Computer and Register conversions

Fresh Food Training

P.D.E. Maintenance

P.D.E. Stocktake Service

Order, pick up and delivery arrangements

Shrink Wrapping of Pallets

Retail Accounting

Provincial promotional price zones

Delivery Rosters

Order Rosters

Demographics

Site Potential

Independent freight access to Davids' warehouses

SCHEDULE 2

WHOLESALE PRICES

A. Supplier Terms

1. Prices at and terms on which suppliers supply goods and services to Davids or CBL (as the case may be)
2. All discounts, allowances, rebates or credits in relation to goods or services supplied to Davids or CBL (as the case may be), including:

- Distribution Allowances
- Warehouse Allowances
- Supplier Settlement Discount
- Ullage
- Co-operative moneys
- Case Deals

B. Davids and CBL Terms

- Freight/Delivery fees
- Service Fees
- Rebates and Allowances
- Application of Bonus Stocks
- Wholesale Loadings
- Direct Charge through fees
- Retailer Settlement Terms/Finance fees
- Money into Price
- Franchise fees
- Advertising fees
- Refrigeration fees
- Banner Membership fees
- Minimum order fees
- Pallet fees

SCHEDULE 3

BANNER GROUPS

Dauids (New South Wales, Victoria and Australian Capital Territory)

Rainbow
Festival
Foodtown
Cheapa
Welcome Mart
Clancy's


CBL (New South Wales, Victoria and Tasmania)

Maxi
Tuckerbag
Payless
Riteway
Goodfellows
Budget Rite
MFC
Tiger Barn
Tasmanian Island Food Mart

EXECUTED ON 29 MAY 1995



THE COMMON SEAL of)
DAVIDS LIMITED was duly affixed in)
the presence of:)



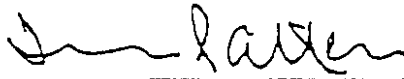
Signature

JEFFREY J. DAVID

Print name

DIRECTOR

Office held



Signature


JOHN M. PATTEN

Print name

DIRECTOR

Office held

ACCEPTED BY THE TRADE PRACTICES COMMISSION



Deputy Chairman

Date: 29th May 1995
