

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission
given for the purposes of section 87B

by

Woolworths Limited (ACN 004 089 936) (**Undertaking**)

Persons giving this undertaking

- (1) This Undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by Woolworths Limited (ACN 000 014 675) (**Woolworths**) of 1 Woolworths Way, Bella Vista, NSW, for the purposes of section 87B of the *Competition and Consumer Act 2010* (**the Act**).

Background

- (2) Woolworths carries on business throughout Australia as a retailer of groceries and other goods and services from supermarkets operating under the "Woolworths" and "Safeway" brand names (**Woolworths supermarkets**).
- (3) Woolworth also carries on business throughout Australia as a retailer of fuel (being regular and premium unleaded petrol and ethanol-blended petrol (**petrol**), diesel and liquefied petroleum gas (**LPG**) from petrol stations operating under "Woolworths", "Safeway", "Caltex-Woolworths" and "Caltex-Safeway" business and brand names (**Woolworths petrol stations**).
- (4) Since approximately 1996, Woolworths has offered fuel savings at Woolworths petrol stations to customers of Woolworths supermarkets who acquired a qualifying value of products or particular qualifying products, in one transaction.
- (5) The ACCC has been conducting an inquiry into the offering of fuel savings offers that has focussed on the 8 cents per litre and higher fuel savings offers.
- (6) Woolworths understands that the ACCC is concerned about the funding of fuel discount offers, and fuel discount offers above 4 cents per litre which are contingent on the purchase of goods or services (other than purchases at the petrol station).
- (7) While Woolworths does not accept that any of its fuel savings offers have adversely affected competition, Woolworths has voluntarily and without admissions offered to provide this Undertaking to address the matters raised by the ACCC.

Commencement of Undertaking

- (8) This Undertaking comes into effect when (**Commencement Date**):
 - (a) the Undertaking is executed by Woolworths; and

- (b) the ACCC accepts the Undertaking so executed.
- (9) Upon the Commencement Date, Woolworths undertakes to assume the obligations set out in paragraph (10) below, subject to the transitional arrangements in (11) and the exception in (12).

Undertaking

- (10) Woolworths undertakes for the purposes of section 87B of the Act, that from the Commencement Date, it will not, and will ensure that its subsidiaries do not:
 - (a) make any offer pursuant to which a person may obtain a discount on their acquisition at retail of petrol, diesel or LPG; or
 - (b) allow any discount to a customer on their acquisition at retail of petrol, diesel or LPG,
where the discount is:
 - (c) funded in whole or in part (and whether by way of cents per litre or product contribution) by any division or subsidiary of Woolworths other than Woolworths Petrol Division; or
 - (d) on any single acquisition greater than 4 cents per litre (or the equivalent of greater than 4 cents per litre) and contingent on the past or future acquisition of other goods or services (except goods or services acquired from a petrol station operated by Woolworths Petrol Division, or from a petrol station from which Woolworths Petrol Division sells fuel, or from a business physically located and operated in conjunction with the petrol station (such as a convenience store, car wash, or fast food outlet)).

Transitional Arrangements

- (11) Notwithstanding the Undertaking in paragraph (10) above, Woolworths or any of its subsidiaries may make an offer up to and including 31 December 2013, pursuant to which a person may obtain a discount on their acquisition at retail of petrol, diesel or LPG where the discount:
 - (a) is not wholly funded by Woolworths Petrol Division; or
 - (b) exceeds 4 cents per litre and is contingent on the acquisition of other goods or services,

and Woolworths may allow a customer such a discount no later than 28 days after the date on which the customer became entitled to the discount.

Exception to Meet Competition

- (12) Notwithstanding the Undertaking in paragraph (10) above, if a fuel retailer or grocery supplier which operates or has arrangements with more than 25 petrol stations in a State or Territory or more than 75 petrol stations nationally or has annual Australian revenue of greater than \$500 million (**Rival Retailer**), were to offer or allow a fuel discount at a petrol station on any single acquisition greater than 4 cents per litre or the equivalent of 4 cents per litre and contingent on the acquisition of other goods or services (except goods or services acquired from the petrol station or a business physically located and operated in conjunction with the petrol station) (**Rival Discount**), Woolworths may meet that competition by offering and allowing a discount up to and not exceeding

the amount of, and only for the duration of, the Rival Discount, and only in the geographic areas in which the Rival Discount is being respectively offered and allowed. Woolworths, however, must provide the ACCC with notice in writing (with particulars) that it has relied, or intends to rely, on this exception:

- (a) if the Rival Retailer has not given an undertaking to the ACCC in similar terms to the Undertaking in paragraph (10) above, within two business days of having commenced to do so; and
- (b) if the Rival Retailer has given an undertaking to the ACCC in similar terms to the Undertaking in (10) above, at least 5 business days before commencing to do so.

Review of Undertaking

(13) If:

- (a) Woolworths is unable to comply with its obligations under this Undertaking; or
- (b) legislative provisions are enacted, such as amendments to the *Competition and Consumer (Industry Codes – Oilcode) Regulation 2006* (Oilcode), in the form of, or substantially in the form of, Attachment A, that prohibit cross - subsidisation of fuel savings offers from supermarket businesses and prohibit fuel savings offers in amounts greater on any single acquisition than 4 cents per litre, to the same effect as the provisions of this Undertaking; or
- (c) Woolworths or the ACCC believes that it is necessary to seek some variation due to changed circumstances (including any material change in the markets in which groceries or fuel are retailed),

then Woolworths and the ACCC agree that they will review the Undertaking and negotiate in good faith the variation or withdrawal of all or any of the terms of the Undertaking in light of such circumstances having regard to the need to avoid any substantial lessening of competition in any relevant market.

Withdrawal of Undertaking

- (14) At any time after five years from the commencement of this Undertaking, Woolworths may give notice of intention to withdraw this Undertaking. The notice should show cause why it is appropriate for the Undertaking to be withdrawn. The ACCC shall have up to one month within which to consider the notice and accompanying grounds, and, if it considers appropriate, to negotiate with Woolworths. The ACCC and Woolworths agree that they will conduct any such negotiations in good faith. If after a period of one month, the parties have not agreed to retain or to vary the Undertaking, Woolworths may withdraw the Undertaking (with or without the ACCC's consent).

Information

- (15) For the purposes of confirming compliance with this Undertaking, the ACCC may make reasonable inquiries of Woolworths in respect of its compliance with this Undertaking, including without limitation, to produce information and documents, and Woolworths will respond in a timely manner to any such inquiry, including without limitation by production of the requested information

and documents.

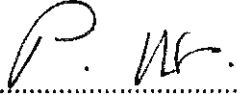
Acknowledgments

(16) Woolworths acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of s. 87B undertakings on its website; and
- (b) the ACCC will, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications.

Executed by

Woolworths Limited by its authorised signatory



.....
Peter Horton, Group General Counsel and Company Secretary

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION PURSUANT TO SECTION 87B OF THE *COMPETITION AND
CONSUMER ACT 2010*.


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Rod Sims

Chairman

This.....^{5th} day of ^{December}.....2013

Attachment A – Draft amendments to Oilcode

Inserted new Part 2A Retail Pricing and related arrangements

A retailer must not, and will ensure that any agent that retails fuel on its behalf does not:

- (i) make any offer pursuant to which an end-user customer may obtain a discount on their acquisition at retail of a declared petroleum product; or
- (ii) allow any discount to an end-user customer on its acquisition at retail of a declared petroleum product,

where the discount is:

- (iii) funded in whole or in part (and whether by way of cents per litre or product contribution) by a related body corporate of the retailer that is not a supplier, distributor or retailer in the petroleum marketing industry or by a business unit or division within the retailer or within a related body corporate of the retailer that retails products or services other than declared petroleum products, including without limitation a supermarket business; or
- (iv) on any single acquisition greater than 4 cents per litre or the equivalent of 4 cents per litre and contingent on the acquisition of other goods or services (except goods or services acquired from a retail site operated by the retailer (such as a convenience store, car wash, or fast food outlet)).