

TRADE PRACTICES ACT 1974

**UNDERTAKING TO THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION GIVEN FOR THE PURPOSES OF SECTION 87B**

BY

**TPG INTERNET PTY LTD
ACN 068 383 737**

PERSON GIVING THIS UNDERTAKING

1. This Undertaking is given by TPG Internet Pty Ltd ACN 068 383 737 (**TPG**) of 65 Waterloo Road, Macquarie Park, New South Wales to the Australian Competition and Consumer Commission (**ACCC**) under section 87B of the *Trade Practices Act 1974* (**TPA**).

BACKGROUND

2. TPG is incorporated under the *Corporations Act 2001* and registered in New South Wales.
3. TPG is a provider of mobile telephone and internet and network services to residential and business customers in Australia (**TPG Business**). TPG was founded in 1986 and commenced offering mobile telephone services in August 2008.
4. TPG launched its Unlimited Cap Saver mobile telephone plan (**Unlimited Cap Saver Plan**) on 16 September 2008.
5. Between about 10 September and at least 12 December 2008, TPG advertised the Unlimited Cap Saver Plan through various media (**TPG Campaign**). Examples of the TPG Campaign include advertisements published:
 - a. on trams in Melbourne during the period 10 November to at least 12 December 2008 (**Tram Advertisement**);
 - b. on buses in New South Wales, Queensland, South Australia, Western Australia and Victoria during the period 10 November to at least 12 December 2008 (**Bus Advertisement**);
 - c. at eight train stations in Sydney between 16 September and at least 12 December 2008 (**Train Station Advertisement**);
 - d. on the Tullamarine Freeway, Moonee Ponds (at the Wilson Street and Victoria Street overpass) and the exit overpass at Melbourne Airport, Victoria between 10 November and at least 10 December 2008 (**Tullamarine Advertisement**);
 - e. on Channel 9 during the period 10 September to at least 12 December 2008 (**TV Advertisement**);

- f. on the M4 Motorway, North Strathfield, New South Wales between 10 November and at least 11 December 2008 (**Motorway Advertisement**);
 - g. in The Age Newspaper on 2 December 2008 (**Newspaper Advertisement**); and
 - h. on TPG's website at URL www.tpg.com.au on at least 1 December 2008 (**Website Advertisement**),
(together, the **TPG Advertisements**) (**Annexure A**).
6. By publishing the TPG Advertisements, TPG represented that:
- a. for \$59.99 per month the Unlimited Cap Saver Plan provides unlimited calls and text with no additional charge (**Unlimited Representation**). In fact, certain calls and text are excluded from the plan (such as calls to 1800, 13 and 1300 numbers, directory assistance, international calls and SMS, calls to MobileSAT, premium SMS, and calls to operator assistance) and incur additional charges; and
 - b. the Unlimited Cap Saver Plan is available for a purchase price of only \$59.99 per month (**Price Representation**). In fact, the minimum charge for the Unlimited Cap Saver Plan is \$79.99 for the first month due to an additional \$20 SIM card fee payable on registration.
7. The Tram Advertisement, Train Station Advertisement, Tullamarine Advertisement, Motorway Advertisement and, for a short period of time, the Website Advertisement did not state that the advertised offer was subject to exclusions or additional charges. While these advertisements directed consumers to the TPG website for full terms and conditions, the direction was in print that was too small for most consumers to be able to read.
8. The TV Advertisement and Newspaper Advertisement displayed some of the exclusions, terms and conditions applicable to the Unlimited Cap Saver. However, the ACCC contends that the exclusions, terms and conditions were not stated prominently enough to fully inform consumers. These advertisements directed consumers to the TPG website for full product information.
9. The TPG website provided the following further details about the Unlimited Cap Saver Plan:
- a. certain calls and text are excluded from the Unlimited Cap Saver Plan, such as calls to 1800, 13 and 1300 numbers, directory assistance, international calls and SMS, calls to MobileSAT, premium SMS and calls to operator assistance;
 - b. in order to purchase the Unlimited Cap Saver Plan for \$59.99 per month, customers are required to purchase a \$20 SIM card.
10. The ACCC contends that TPG has engaged in false, misleading and deceptive conduct in contravention of sections 52, 53(aa), 53(c) and 53(e) of the TPA by

making the Unlimited Representation and the Price Representation in the TPG Advertisements.

11. Section 52 of the TPA prohibits a company from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive.
12. Section 53(aa) of the TPA prohibits a company from, in connexion with the supply of goods or services or in connexion with the promotion of the supply or use of goods or services, falsely representing that services are of a particular standard, quality, value or grade.
13. Section 53(c) of the TPA prohibits a company from, in connexion with the supply of goods or services or in connexion with the promotion of the supply or use of goods or services, falsely representing that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have.
14. Section 53(e) of the TPA prohibits a company from, in connexion with the supply of goods or services or in connexion with the promotion of the supply or use of goods or services, making a false or misleading representation with respect to the price of goods or services.
15. TPG admits the TPG Advertisements contained representations about the price and the unlimited nature of the Unlimited Cap Saver Plan that may amount to contraventions of sections 52, 53(aa), 53(c) and 53(e) the TPA.
16. In order to address the concerns of the ACCC, TPG has:
 - a. removed or amended all TPG Advertisements that may be in contravention of the TPA;
 - b. amended all current advertisements to put beyond doubt the types of calls covered under the Unlimited Cap Saver Plan, to provide greater detail of the terms and conditions that apply, and to clearly direct consumers to those terms and conditions on the TPG website; and
 - c. consented to an undertaking to the ACCC in form set out below.

COMMENCEMENT OF UNDERTAKINGS

17. This Undertaking comes into effect when:
 - a. the Undertaking is executed by TPG; and
 - b. the ACCC accepts the Undertaking so executed.
18. Upon the commencement of this Undertaking, TPG undertakes to assume the obligations set out in paragraphs 19, 20, 21 and 22.

UNDERTAKINGS

19. TPG undertakes to the ACCC for the purposes of section 87B of the TPA that for a period of three years it will not, in trade or commerce, in the course of carrying on the TPG Business:
- a. engage in conduct that is misleading or deceptive or is likely to mislead or deceive;
 - b. in connexion with the supply or possible supply of goods or services or in connexion with the promotion by any means of the supply or use of goods or services falsely represent that services are of a particular standard, quality, value or grade;
 - c. in connexion with the supply or possible supply of goods or services or in connexion with the promotion by any means of the supply or use of goods or services represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;
 - d. in connexion with the supply or possible supply of goods or services or in connexion with the promotion by any means of the supply or use of goods or services make a false or misleading representation with respect to the price of goods or services;
 - e. publish, in any manner whatsoever, an advertisement for a mobile telephone plan which states that for a specified price there will be unlimited calls and text when:
 - (i) certain calls and text are excluded from the mobile telephone plan; or
 - (ii) additional charges will apply for some calls and text;where the advertisement does not include an appropriately prominent disclaimer to the effect that exceptions, terms and conditions apply to the mobile telephone plan.
20. TPG undertakes to the ACCC for the purposes of section 87B of the TPA that, at its own expense, it will, within 28 days of the date of this Undertaking, cause to be published on the internet at the home page of all websites which are owned, operated, controlled or maintained by or on behalf of TPG, including the website accessible via uniform resource locator address (**URL**) www.tpg.com.au (or if any such URL is replaced or changed, the internet home page of the corresponding website) for a continuous period of 90 days, a notice in terms of "**Annexure B**" and ensure that:
- a. such notice shall be viewable by clicking a 'click-through' icon located on the homepage of the website www.tpg.com.au;
 - b. the 'click-through' icon referred to in the previous sub-paragraph is located on the principal navigation menu on the left hand side of the homepage directly below the 'click-through' icon labelled 'Home' and is the same size as the "Mobile / Unlimited* \$59.99^{PM}," 'click-through' icon which was included at that location on the homepage as at 1 December 2008;

- c. the 'click-through' icon shall contain the words "Corrective Notice Regarding TPG Advertising" prominently in yellow and the words "click here"; and
 - d. the notice accessed via the above mentioned 'click-through' icon shall:
 - (i) have a bold type heading in at least 16 point type and the body of the notice shall be in a type not less than 11 point, Times New Roman font and centred on the webpage;
 - (ii) include the business logo of TPG at the top as appearing on TPG letterhead;
 - (iii) include the ACCC logo and Commonwealth coat of arms; and
 - (iv) occupy the entire webpage which is accessed via the 'click-through' icon referred to above.
21. In relation to paragraph 20 of this Undertaking, TPG will notify the ACCC within 7 days of satisfying its obligation and provide information and documentation verifying that it has carried out its obligation.
22. TPG undertakes to the ACCC for the purposes of section 87B of the TPA that it will:
- a. within two months of the date of this Undertaking coming into effect, establish and implement a trade practices compliance program in accordance with the requirements set out in "Annexure C" for the directors, officers, employees or other persons involved in TPG's business, being a program designed to minimise TPG's risk of future breaches of sections 52 and 53 of the TPA and to ensure awareness of its responsibilities and obligations in relation to the requirements of sections 52 and 53 of the TPA; and
 - b. maintain and continue to implement the trade practices compliance program for a period of three years from the date of this Undertaking coming into effect.

ACKNOWLEDGEMENTS

19. TPG acknowledges that:
- a. the ACCC will make this Undertaking available for public inspection;
 - b. the ACCC will from time to time publicly refer to this Undertaking;
 - c. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
 - d. a summary of the ACCC Compliance Program Review reports referred to in Annexure C of this Undertaking may be held with this Undertaking on the public register.

EXECUTED by **TPG INTERNET PTY LTD (ACN 068 383 737)** by its authorised officer pursuant to section 127(1) of the *Corporations Act 2001*

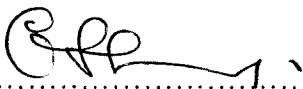
~~.....~~
Signature of Director/Secretary

..... **DAVID TEOH**

Name (printed)

This **29th** day of **January** 2009

ACCEPTED by the **AUSTRALIAN COMPETITION & CONSUMER COMMISSION** pursuant to section 87B of the *Trade Practices Act 1974*


.....
Chairperson (Graeme Julian Samuel)

This **6th** day of **February** 2009

MOBILE

NO CONTRACT

UNLIMITED
CALLS & TEXT

\$59⁹⁹
per month

 tpg.com.au

TRG

MOBILE

NO CONTRACT

UNLIMITED

CALLS & TEXT

\$59⁹⁹
per month

TRG

For full terms and conditions and fair use policy visit trg.com.

MOBILE

NO CONTRACT

**UNLIMITED
CALLS & TEXT**

\$59⁹⁹
per month

tpg.com.au

+

**2GB
DATA**

**& UNLIMITED
VOICEMAIL**

FOR per month

\$20



ADSL₂₊

UP TO 20Mbps

50GB \$49⁹⁹

TRG

MOBILE

NO CONTRACT

UNLIMITED \$59⁹⁹
CALLS & TEXT

TRG



Call us : 1300 360 855

HOME

- ADSL2+ Broadband
- ADSL Broadband
- Dialup Internet
- Mobile
- VoIP Telephone Service
- IPTV Service
- Additional Services
- ADSL2+ Rollout Progress
- ADSL2+ Coverage/Speed Map

BUSINESS

- ADSL2+ Broadband
- ADSL Broadband
- Premium Business SHDSL
- Domain Name Hosting
- Website Hosting

YOUR ACCOUNT

- Update Credit Card
- Change Plan
- Account Maintenance
- Email
- Username
- Password
- or

IPTV REGISTRATION

CUSTOMER FEEDBACK

[Register Online Broadband](#)

[TPG Forum Discussion & Support](#)

[Business SHDSL Premium Network Solutions](#)

MOBILE

UNLIMITED CALLS & TEXT \$59⁹⁹

NO CONTRACT

MOBILE CAP SPECIAL OFFER

when you purchase an Ultimate ADSL2+ plan:

PAY \$9.99

FOR \$300

OF CALLS, TEXT & DATA

Google

Web www.tpg.com.au

| | | | |
|---------------|-------------------|--------------|------------|
| NEWS | SHOP | FIND | FUN |
| Current News | TPG Trader | HotJobs | Kids |
| Weather | Shopping | Everyday | Movies |
| Business | Auctions | Personals | TV |
| Finance | Travel | Transport | Games |
| Stock Markets | Auto | Places To Go | Greetings |
| Sport | Computers | Wine & Dine | Chat |
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ILLUSTRATION: FRANK MAORANA

PERSPECTIVES GRAEME PHILIPSON

All aboard the freedom ride

The information troglodytes are back on the attack.

WHEN ARE witnessing a continuing battle between those who believe that information should be free, and freely available, and those who wish to limit or constrain its availability.

Security has assumed a local flavour, as the Australian Government tries to restrict what we can access on the Internet, and as Bin companies bring legal action against an ISP for carrying material that has not gone through their toll booths.

These are attempts by information troglodytes to return us to a time before the Internet when access to information could be controlled, rationed, and sold at monopolistic prices.

Australian bloggers have been harassed recently by the Inspector of Communications

Minister Stephen Conroy that his Government will proceed with a plan to block access at the ISP level, so any website the Government doesn't want us to see. I assume its actions are to prevent us viewing such things as child pornography but Senator Conroy has told Parliament that the restrictions will also include access to unspecified "unwanted content".

When the Rudd Government was elected a year ago, many in the information industry rejoiced at the ousting of the regime of troglodytic communications ministers and censorship laws. The new lot promised a new world.

Clearly they have proved no better. Senator Conroy's insistence on internet censorship files in the face of common sense and technological advancement, and puts us in the same league as China, Burma, Iran and Saudi Arabia.

The Government is establishing a blacklist currently containing more than

thousand sites that can be blocked, and within 18 months will be legally obliged to block. Preliminary tests have shown the impossibility of doing this, but the Government is pressing on, and has now announced a large-scale test to demonstrate its effectiveness.

Only one ISP has announced it will participate in these tests, and is doing so only to illustrate what a stupid idea it is. That ISP is iNet, and managing director Michael Malone has said that he hopes the "hard numbers" will show that it will not work, and will degrade Internet speed and increase costs.

"They're not listening to experts, they're not listening to industry, they're not listening to consumers," he says, ignorance is bliss.

Meanwhile, a group of "several leading film companies and their affiliates" launched legal action against an ISP alleging that it has "infringed copyright by failing to take reasonable steps including

with extensive monitoring, does the job, still using humans, but faster and more cheaply. It takes words unrecognised by the software and orders those to be solved.

took 100,000 hours, which have been proven to be hard for computers to solve. It takes a useful human to do the job. A site that

serve 25 million pictures, images per day getting a million worth translated. The number of computers attempting to defeat the system accounts for the building

back to square one, as the team spent resting on their laurels. "We have a guy whose job is to try to break us," he says. "It's a very frustrated man."

QUESTION TIME GEORGE SKARBEK

HOW that we've hit summer, I want to give some advice that may save time, money and frustration.

With the reader days here, I have received reports of two Intel CPUs being "cooked", and needing to be replaced. Although this is rare, in one case I was able to examine the heatink on the CPU and found it caked with dust.

This was a four-year-old computer that had always operated soundly, and it failed without warning. The symptoms? After switching it on there was nothing on the monitor - no BIOS, nothing. When I opened the case and measured the voltages, both the 12-volt and the 5-volt supplies were correct.

Only when I looked at the fan on the CPU was I able to guess what the problem was. There was no sign of the aluminium heatink and cooling ribs. Everything was blanketed by a thick layer of dust.

Using a vacuum cleaner and a very fine spray of water to remove the coating, the heatink was cleaned, but by then it was too late for the CPU.

This computer had sat on a carpeted floor under a desk for a few years and the dust build-up was enough to block the entire heatink. Unfortunately it was not possible to replace the superseded



cleaner and a bit of soaking with a compressed air, the heatink is now clean.

I enjoy creating slide shows from my holiday snaps, but is there a way to "insert" a number of photos simultaneously on to consecutive PowerPoint slides? At the moment I can create only one slide at a time and this can take as long as the holiday itself.

A There are many much better options for slide shows than PowerPoint. The free Google software Picasa not only organises your photos but has an easy way to create and share slideshows.

The excellent free program IrfanView for viewing images (from Irfanview.com), has an easy-to-use slideshow feature. Your recipient will also need IrfanView. Another possibility is to use Microsoft's free software Photo Story. This is also easy to use, has many features and shows you to add your narrations or music. All of these programs allow you to insert groups of photos in one hit.

George Skarbek's book, Computer Guide, based on these collating is now available from skarbek.com.au.

radio stations, including dozens of terrestrial radio stations across Australia.

Put to the test in the Upgrade Research Lab, the Sonos gear performed admirably. As very simple to set up and is one of those rare products that "just works". The combination of the Sonos gear and the Rhapsody music service gives you an incredible feeling of freedom and will forever change the way you enjoy music. The ZonePlayer 120 (\$1099) features spring binding posts for connecting stereo speakers, offering 55 watts per channel RMS. The smaller ZonePlayer 90 (\$799) requires an external amplifier and offers analog and digital audio outputs. Each ZonePlayer features a two-port 10/100 Ethernet switch, letting you provide Internet access to other devices. The \$2199 starter bundle includes a ZP120, ZP90 and a wireless controller. By now you've probably discovered the Sonos Digital Music System's key weakness - it's expensive.

You can cobble together similar functionality using iTunes, AirPort Express base stations and a VPN service to trick Rhapsody into thinking you're in California. It still won't match the elegance, ease of use and advanced functionality of the Sonos gear.

Well, say the Sonos Digital Music System is probably the best product we've ever reviewed. If money is no object, Sonos is the object for you.

The Sonos Digital Music System starter bundle retails for \$2199. For more details call (03) 8885 5888 or visit playfreak.com.au

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M BILE **NO CONTRACT**

UNLIMITED \$59⁹⁹

STANDARD AUSTRALIAN CALLS & TEXT

Mobile Unlimited offer applies only to standard national mobile voice calls, standard national SMS/MMS, PTT. Standard rates apply to other calls and services. For full plan exclusions visit website. Not for commercial use. Plan fee payable monthly in advance. Mobile Fair Go policy applies. Minimum cost for \$59.99 Unlimited Cap Saver Plan = \$79.00. Book, 0400 820 818 (charge), no national term; \$50 deposit required for any excluded call type usage. Deposit automatically topped up if it falls below \$5. Service barred if deposit topped up payment fails. For full terms and conditions visit theage.com.au

ARG

Annexure B

Corrective notice: advertising by TPG Internet Pty Ltd for \$59.99 Unlimited Cap Saver Plan may have been misleading and deceptive

Following an investigation by the Australian Competition and Consumer Commission (ACCC), TPG Internet Pty Ltd (TPG) acknowledges that it may have contravened the *Trade Practices Act 1974* (the Act) in advertisements for its \$59.99 Unlimited Cap Saver mobile telephone plan.

The relevant advertisements appeared on TPG's website at www.tpg.com.au, in newspapers, on television, and on billboards on buses, trams, train stations and major roads across Australia between September and December 2008.

The ACCC is of the view that TPG is likely to have made false representations and misled some consumers because the advertisements contained unqualified representations to the effect that the Unlimited Cap Saver Plan provides unlimited calls and text for \$59.99 with no additional charge and is available for a purchase price of only \$59.99 per month, when that is not the case.

In order to address the concerns of the ACCC, TPG:

- clarifies that certain calls and text are excluded from the Unlimited Cap Saver Plan (such as calls to 1800, 13 and 1300 numbers, directory assistance, international calls and SMS, calls to MobileSAT, premium SMS, and calls to operator assistance) and incur additional charges;
- clarifies that customers must purchase a \$20 SIM card in order to sign up to the Unlimited Cap Saver Plan so the minimum charge is \$79.99 for the first month;
- has provided the ACCC with court-enforceable undertakings obliging TPG to cease the advertising of concern and refrain from making similar representations that may contravene the Act for a period of three years; and
- will implement a trade practices compliance program in order to ensure TPG's compliance with the Act in future, and all relevant staff and management will participate in training to better understand the requirements of the Act.

TPG further reminds its current and prospective customers of the following:

- precise details concerning the pricing of the Unlimited Cap Saver Plan, as well as the Terms and Conditions of this plan, can be found on our website at www.tpg.com.au; and
- customers who sign up to the Unlimited Cap Saver Plan are not committed to a contract and can terminate the service without penalty.

Annexure C

TRADE PRACTICES COMPLIANCE PROGRAM

TPG Pty Ltd (ACN 068 383 737) (**TPG**) will establish a trade practices compliance program (**the Compliance Program**) that complies with each of the following requirements:

1. Appointments

- 1.1. Within 28 days of the date of the Undertaking coming into effect the SP Telemedia Limited Group General Legal Counsel will be appointed to be responsible for the development, implementation and maintenance of the Compliance Program (**Compliance Officer**).
- 1.2. After the appointment of the Compliance Officer, TPG will ensure that for the duration of the Undertaking a director or senior manager of the business continues to be appointed as Compliance Officer.
- 1.3. TPG shall appoint a qualified external compliance professional with expertise in trade practices issues (**Compliance Advisor**) within 2 months of the Undertaking coming into effect, for the purposes set out in paragraph 2.

2. Risk Assessment

- 2.1. TPG shall instruct the Compliance Advisor to conduct a *Trade Practices Act 1974* (**TPA**) risk assessment (**Risk Assessment**) in accordance with 2.1.1 – 2.1.4 below:
 - 2.1.1. identify the areas where TPG is at risk of breaching sections 52 and 53 of the TPA (**Relevant Provisions**);
 - 2.1.2. assess the likelihood of these risks occurring and the consequences of the risks to the business operations of TPG should they occur;
 - 2.1.3. identify where there may be gaps in TPG's existing procedures for managing these risks; and
 - 2.1.4. provide recommendations for action having regard to the assessment.
- 2.2. TPG shall instruct the Compliance Advisor to set out the findings and recommendations of the Risk Assessment in a written report (**Risk Assessment Report**), to be provided to TPG's board of directors (**Board**) within 2 months of his or her appointment.
- 2.3. The Compliance Officer shall, from time to time when the business of TPG changes or there is a change in the law, review the areas where TPG is at risk of breaching the Relevant Provisions and, if there is a change in the risks, advise the Board and modify the Compliance Program accordingly.

3. Compliance Policy

3.1 Within 28 days of the date of the Undertaking coming into effect, TPG will adopt and implement the following Compliance Policy Statement and will cause it to be communicated in writing to all employees and other persons involved in TPG's business and to remain published on the TPG Intranet for the duration of the Undertaking.

TPG is committed to complying with the Trade Practices Act 1974 (TPA).

The TPA applies to the business activities of TPG – particularly in connection with its sales and marketing activities.

TPG has implemented a comprehensive, company-wide Trade Practices Compliance Program, including:

- *the appointment of a Compliance Officer;*
- *the development of a Trade Practices Act manual;*
- *the provision of regular compliance training to, and assessment of, its employees and agents;*
- *Complaints Handling policies and procedures.*

As an employee, agent or representative of TPG, you are required to be familiar with the TPA. You should ensure that you do not engage in any conduct in breach of, or allow or ignore a breach of, the TPA. Any knowing or reckless involvement in a contravention of the TPA will cause you to be subject to disciplinary action and TPG will not indemnify you.

If you believe that your conduct or the conduct of another may be at risk of breaching the TPA, please contact TPG's Compliance Officer [insert contact details here] before taking any action. Whistleblowers will not be prosecuted or disadvantaged in any way by raising concerns. Reports of whistleblowers will be kept confidential and secure.

4. Complaints Handling System

4.1. Within 2 months of the date of the Undertaking, TPG will establish a trade practices complaints handling system (**Complaints Handling System**) capable of identifying, classifying, storing and where necessary, referring internal and external trade practices complaints, which TPG will maintain and administer as part of the Compliance Program. TPG must ensure the Complaints Handling System is in accordance with "AS/ISO 10002:2006 Customer satisfaction – Guidelines for complaints handling in organizations", though tailored to its own circumstances.

5. Training

5.1. TPG will ensure that the Compliance Program includes a requirement for regular (at least once a year) and practical trade practices training for all directors, officers employees, representatives and agents of TPG whose duties could result in them being concerned with conduct that may contravene the Relevant Provisions (**Training**). TPG must ensure that the training is conducted by a suitably qualified

external compliance professional or legal practitioner with expertise in trade practices law (**Compliance Trainer**).

5.2. TPG will use its best endeavours to ensure that the Training is designed and conducted by the Compliance Trainer so that the persons at the Training are made aware of:

5.2.1. the responsibilities and obligations in relation to the Relevant Provisions;

5.2.2. the potential consequences of contravening the Relevant Provisions;

5.2.3. the areas of TPG's business where it is at risk of contravening the Relevant Provisions, as identified in the Risk Assessment Report; and

5.2.4. the content of the Compliance Program.

5.3. TPG will ensure that the Compliance Program includes a requirement that awareness of trade practices compliance issues forms part of the induction of all new directors, officers, employees, representatives and agents of TPG whose duties could result in them being concerned with conduct that may contravene the Relevant Provisions.

6. Reports to Senior Management

6.1 TPG will ensure that the Compliance Officer reports in writing to the Board and/or senior management meetings every 6 months on the continuing effectiveness of the Compliance Program.

7. Management System

7.1. The Compliance Officer shall introduce a management system for the management of marketing material publication. The system will involve relevant staff and agents signing off on a checklist designed to trigger consideration of the area where TPG may potentially breach sections 52 or 53 of the TPA (**Compliance Checklist**). If a Compliance Checklist is unable to be signed off by relevant staff members or agents, the marketing material must also be signed off by the Compliance Officer before publication of the material or implementation of the system.

7.2. No marketing material may be published without the signing off of the Compliance Checklist by the relevant staff member or agent or, if necessary, the Compliance Officer.

7.3. The signed off Compliance Checklists (with each item of marketing material) must be retained in electronic form.

7.4. The Compliance Officer must update the Compliance Checklist in the event that there is a change in the risks identified in paragraph 2 above.

8. Supply of Compliance Program Documents to the ACCC

8.1. TPG shall, at its own expense, within 14 months of the date of the Undertaking coming into effect, cause to be produced and provided to the ACCC copies of each of the documents constituting the Compliance Program, including:

8.1.1. documents evidencing the appointment of the Compliance Officer and Compliance Adviser;

8.1.2. the Risk Assessment Report;

8.1.3. an outline of the Complaints Handling System and documents evidencing its implementation; and

8.1.4. documents evidencing the provision of Training, including all materials used in the Training.

9. Review

9.1. TPG shall, at its own expense, cause annual reviews of the Compliance Program (**Reviews**) to be carried out in accordance with each of the following requirements:

9.1.1. the Reviews should be broad and rigorous enough to provide TPG and the ACCC with supportable verification that TPG has in place a compliance program that complies with each of the requirements detailed in paragraphs 1-7 above and to provide the Review reports and opinions detailed at paragraph 9 below.

9.1.2. TPG shall ensure that the Reviews are carried out by a suitably qualified, independent compliance professional with expertise in trade practices law (**Reviewer**). The Reviewer will qualify as independent on the basis that he or she:

9.1.2.1. did not design or implement the Compliance Program;

9.1.2.2. is not a present or past staff member or director of TPG;

9.1.2.3. has not acted and does not act for TPG in any trade practices related matters;

9.1.2.4. has not and does not act for or consult to TPG or provide other services on trade practices related matters other than Compliance Program reviewing; and

9.1.2.5. has no significant shareholding or other interests in TPG.

9.1.3. TPG shall use its best endeavors to ensure that the Reviews are conducted on the basis that the Reviewer has access to all relevant sources of information in TPG's possession or control, including without limitation:

9.1.3.1. enquiries of any officers, employees, representatives, agents and stakeholders of TPG;

9.1.3.2. TPG's records, including the company's complaints register/reports and any documents relevant to TPG's Training or induction program; and

9.1.3.3. documents created by TPG's consultants and legal practitioners for use in TPG's Compliance Program.

9.2. TPG shall ensure that the first Review is completed within 13 months of this Undertaking coming into effect and that each subsequent Review is completed within 1 year thereafter.

10. Reporting

10.1. TPG shall use its best endeavours to ensure that the Reviewer sets out the findings of the Review in two separate reports as outlined below:

10.1.1. the **Company Compliance Program Review Report**, which is to be provided to TPG and will supply particular and specific information regarding the performance of the Compliance Program including:

10.1.1.1. if, and to what extent, the Compliance Program of TPG includes all the elements detailed in paragraphs 1-7 above;

10.1.1.2. if, and to what extent, the Compliance Program adequately covers the parties and areas identified in the initial Risk Assessment;

10.1.1.3. if, and to what extent, the Training is effective;

10.1.1.4. if, and to what extent, TPG's Complaints Handling System is effective;

10.1.1.5. recommendations for rectifying deficiencies in paragraphs 9.1.1.3 – 9.1.1.4. that the Reviewer thinks are reasonably necessary to ensure that TPG maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.

10.1.2. the **ACCC Compliance Program Review Report**, which will be provided to the ACCC and will supply particular and specific information regarding the scope of the Review and the effectiveness of the Compliance Program including:

10.1.2.1. details of the evidence gathered and examined during the Review;

10.1.2.2. the name and relevant experience of the person appointed as the Compliance Officer;

- 10.1.2.3. the Reviewer's opinion on whether TPG has in place an effective Compliance Program that complies with the requirements detailed in paragraphs 1 – 7 above;
 - 10.1.2.4. actions recommended by the Reviewer to ensure the continuing effectiveness of TPG's Compliance Program;
 - 10.1.2.5. confirmation that any actual and potential inadequacies in TPG's Compliance Program have been brought to the attention of the Compliance Officer and the governing body;
 - 10.1.2.6. confirmation that the Reviewer has revisited any actual and potential inadequacies in TPG's Compliance Program identified in the previous Company Compliance Program Review Report, and assessed how they have been addressed by TPG;
 - 10.1.2.7. any reservations that the Reviewer might have about the reliability and completeness of the information to which the Reviewer had access in the conduct and reporting of the Review; and
 - 10.1.2.8. any comments or qualifications concerning the Review process that the Reviewer, in his or her professional opinion, considers necessary.
- 10.2. TPG will ensure that the Company Compliance Program Review Report and the ACCC Compliance Program review Report are completed and provided to TPG within 2 months of each Review.
 - 10.3. TPG will retain the Company Compliance Program Review Report and cause the ACCC Compliance Program Review Report to be provided to the ACCC within 14 days of its receipt from the Reviewer.
 - 10.4. In the event the ACCC has sufficient reason to suspect that the Compliance Program is not being implemented effectively, TPG shall, at its own expense, and if requested by the ACCC, cause an interim or additional Review to be conducted and cause the resulting Review report to be provided to the Commission.

11. Recommendations

- 11.1. TPG shall implement promptly and with due diligence any recommendations made by the Reviewer or required by the ACCC that are reasonably necessary to ensure that TPG maintains and continues to implement the Compliance Program in accordance with the requirements of the Undertaking.
- 11.2. TPG shall, at its own expense, if requested by the ACCC, provide copies of documents and information in respect of matters which are the subject of the Compliance Program.