

Undertakings to the Commerce Commission under s 46A of the Fair Trading Act 1986

Mira Singh

Lalita Wati Singh

Aero Fire (NZ) Sales & Service Limited

1 Persons giving undertakings

1.1 These undertakings are given to the Commerce Commission (**Commission**) for the purposes of s 46A of the Fair Trading Act 1986 (**FTA**) by:

- (a) Mira Singh [REDACTED]
- (b) Lalita Wati Singh [REDACTED]
- (c) Aero Fire (NZ) Sales & Service Limited (**Aero Fire**), (Company No. 1268092), a company incorporated in New Zealand on 13 January 2003.

(together, the **Defendants**).

2 Background

2.1 Mira and Lalita Singh (together, the **Singhs**) control and operate Aero Fire, in that:

- (a) Mira Singh is Aero Fire's sole director and shareholder; and
- (b) Lalita Singh has assisted Mr Singh in the day-to-day operation of Aero Fire's business.

2.2 In the course of Aero Fire's business, the Singhs approached small businesses and purported to carry out, for a fee, services relating to the testing and maintenance of that business' fire extinguishers. In reality, these services were either not performed as described by the Singhs, or were not performed at all.

2.3 The Commission filed a total of 13 charges against the Defendants (CRI-2018-092-9842) under the Crimes Act 1961 (**Crimes Act**) and the Fair Trading Act 1986 (**FTA**) (together, the **charges**). Those charges related to false representations made by the Defendants that:

- (a) businesses' fire extinguishers had a particular maintenance history, when they did not (charges for which were laid against all three defendants under s 13(a) of the FTA);
- (b) Aero Fire had installed fire extinguishers in accordance with the New Zealand Standard for Hand Operated Fire-fighting Equipment, AS/NZS 4503:2005 (the **Standard**), when it had not (charges for which were laid against all three defendants under s 13(b) of the FTA);
- (c) Aero Fire had serviced fire extinguishers in accordance with the Standard, when it had not (charges for which were laid against the Singhs under s 240(1)(a) of the Crimes Act, and against all three defendants under s 13(b) of the FTA); and
- (d) it was necessary for a business to have its extinguishers serviced to comply with insurance and regulatory requirements, when it was not (charges for which were laid against Mira Singh and Aero Fire under s 13(h) of the FTA).

2.4 The Crown has since assumed responsibility for prosecuting the charges.

2.5 Since filing the charges, the Commission has become aware of circumstances which suggest that Aero Fire may be continuing to make similar representations to small businesses. The Commission has given consideration as to whether this conduct warrants further enforcement action.

- 2.6 The Defendants have confirmed that they will enter guilty pleas to the FTA charges in CRI-2018-092-9842.
- 2.7 The Defendants have since agreed to provide appropriate enforcement undertakings to the Commission in the form set out in this document (**Undertakings**) to address the Commission's concerns regarding the circumstances outlined in paragraph [2.5] above.

3 Purpose of Undertakings

- 3.1 The Undertakings are given by the Defendants in order to satisfy the Commission that the Defendants will no longer provide, or offer to provide, services to the public relating to fire extinguishers or other fire safety equipment.
- 3.2 The Defendants confirm their intention to cease conducting or being involved in any way in any business involved in the supply or maintenance of fire safety equipment, as reflected in the Undertakings given in Part 4 below.

4 Undertakings

- 4.1 The Defendants each separately undertake to the Commission:
- (a) that they will not in any way, directly or indirectly, be knowingly involved in the supply of any fire safety equipment, including fire extinguishers; and
 - (b) that they will not in any way, directly or indirectly, be knowingly involved in the offering of any services connected in any way with fire safety equipment (including, for the avoidance of doubt, by purporting to service or pressure test fire extinguishers).
- 4.2 Mira and Lalita Singh each also separately undertake to the Commission that they will take all steps necessary to remove Aero Fire from the Companies Register after the FTA charges have been finally determined.

5 Effect of the Undertakings

- 5.1 The Undertakings:
- (a) are court enforceable undertakings in terms of s 46A of the FTA;
 - (b) are made without prejudice to the Commission's ability to bring proceedings:
 - (i) in the event that either of the Defendants engage in conduct which amounts to a breach of any enactment (including the FTA or the Crimes Act) after these Undertakings come into effect; and/or
 - (ii) in respect of any breaches of any enactment (including the FTA or the Crimes Act) alleged to have occurred prior to the date these Undertakings come into effect, but which the Commission is not aware of as of the date it confirms its acceptance of the Undertakings; and
 - (c) for the avoidance of doubt, are enforceable against each of the Defendants individually, and against the Defendants jointly.

6 Commencement of the Undertakings

6.1 The Undertakings come into effect when:

- (a) The Undertakings are executed the Defendants; and
- (b) The Commission confirms its acceptance of the Undertakings.

7 Variation of the Undertakings

7.1 The Defendants (individually or jointly) and the Commission may agree at any time to vary the Undertakings.

7.2 No variation of the Undertakings will be effective unless in writing, executed by Aero Fire, Mr Singh and/or Mrs Singh (as applicable) and signed as accepted by the Commission.

8 Duration of the Undertakings

8.1 The Undertakings will continue to have effect:

- (a) in the case of Aero Fire, until it is removed from the Companies Register (in accordance with the Undertaking given at paragraph [4.2] above; and
- (b) in the case of the Singhs, until the Commission, for any reason, discharges the Singhs from the Undertakings.

9 Compliance with the Undertakings

9.1 If either of the Defendants become aware of a breach of these Undertakings, whether intentional or inadvertent, they will notify the Commission within seven (7) days of becoming so aware, giving full particulars of the breach to the extent known to them.

9.2 For the avoidance of doubt, nothing in clause 9.1 above prevents the Commission from seeking any information directly from any of the Defendants at any time for the purpose of checking their compliance with the Undertakings.

10 Miscellaneous

10.1 These Undertakings may be executed and accepted in counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of the Undertakings.

10.2 The Defendants acknowledge that:

- (a) The Commission may make the Undertakings publicly available by publishing them on the Commission's enforcement responses register on its website;
- (b) The Commission may, from time to time, make public reference to the Undertakings including in news media statements and in the Commission's publications; and
- (c) Nothing in the Undertakings is intended to restrict the right of the Commission, or any other person, to take action under the FTA or under any other statute or law.

Execution page

SIGNED BY MIRA SINGH:

Signature

MIRA SINGH

Name

Witness signature

MARENDRA GOURI

Name of witness

SIGNED BY LALITA WATI SINGH:

Signature

LALITA WATI SINGH

Name

Witness signature

MARENDRA GOURI

Name of witness

SIGNED BY AND ON BEHALF OF AERO FIRE by:

Signature

MIRA SINGH / LALITA SINGH

Name

Witness signature

MARENDRA GOURI

Name of witness

ACCEPTED BY THE COMMERCE COMMISSION by:

Signature of authorised signatory

ANNA RAWLINGS

Name of authorised signatory

