

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

Zodiac Motor Company Limited

Nezam Anwer

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

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) Zodiac Motor Company Limited, a company incorporated in New Zealand having its registered office at 298 Great South Road, Manurewa, Auckland (**Zodiac**); and
- (b) Nezam Anwer, of 20 Hilltop Road, Clover Park, Auckland (**Mr Anwer**).

1.2 In these Undertakings **Undertaking Parties** means Zodiac and Mr Anwer.

2 Background

2.1 Zodiac is a registered motor vehicle dealer that sells used imported vehicles from a car yard located in Manurewa, Auckland.

2.2 Mr Anwer is the owner and sole director of Zodiac. Mr Anwer had visibility of, and ultimate responsibility for, everything in Zodiac's business.

2.3 Between 18 December 2014 and 5 March 2015 Zodiac and Mr Anwer made various representations, on Zodiac's website and within its car yard, that Zodiac was an AA Appraised Used Vehicle Dealer. This was not correct, as Zodiac had ceased to be an AA Appraised Used Vehicle Dealer no later than 12 November 2014.

2.4 Between January 2015 and 29 June 2015 Zodiac and Mr Anwer made various representations in radio advertisements, on Zodiac's website and on the website trademe.co.nz that cars Zodiac was selling were AA appraised when they were not.

2.5 On 29 January 2016 the Commission laid charges against Zodiac and Mr Anwer under the Fair Trading Act 1986 (the **FTA**) as follows:

- (a) Breaches of section 13(e) of the Fair Trading Act 1986; namely that Zodiac and Mr Anwer being in trade, in connection with the supply or possible supply of goods or with the promotion by any means of the supply of goods, made a false or misleading representation that goods have any benefits.
- (b) Breaches of section 13(f) of the Fair Trading Act 1986; namely that Zodiac and Mr Anwer being in trade, in connection with the supply or possible supply of goods or with the promotion by any means of the supply of goods, made a false or misleading representation that a person has any affiliation.

2.6 The details relating to these charges are set out in the Summary of Facts.

2.7 Zodiac, Mr Anwer and the Commission have agreed that:

- (a) The Commission will consolidate the 11 representative charges against Zodiac to six representative charges, being one charge for each type of conduct.



- (b) Zodiac will plead guilty to the consolidated charges.
- (c) The Commission and Zodiac agree that the appropriate fine in this case is \$105,000, and will submit to the Court accordingly.
- (d) Zodiac agrees to pay the fine imposed by the Court (the **Fine**) and will make payments as follows:
 - (i) \$60,000 immediately upon entry of the convictions; and
 - (ii) the balance within six months of sentencing, as six monthly payments due on or before the 25th day of the month, with the final payment due on or before 25 May 2017.
- (e) At sentencing the Commission will withdraw the charges against Mr Anwer.
- (f) Mr Anwer provides a personal enforceable undertaking to pay any part of the Fine that Zodiac fails to pay.

3 Purpose of the Undertakings

- 3.1 These Undertakings are given by the Undertaking Parties in order to:
- (a) record Zodiac's guarantee to pay the Fine;
 - (b) record Mr Anwer's personal guarantee to pay any part of the Fine that Zodiac fails to pay; and
 - (c) provide the Commission with a means to enforce Mr Anwer's personal guarantee.

4 Undertakings

- 4.1 The Undertaking Parties undertake to the Commission that:
- (a) Zodiac will pay the Fine in accordance with paragraph 2.7(d) above; and
 - (b) In the event that Zodiac fails to make payment of:
 - (i) the first payment of \$60,000 described in paragraph 2.7(d)(i); or
 - (ii) any of the monthly payments described in paragraph 2.7 (d)(ii); or
 - (iii) any other amounts owing by Zodiac pursuant to the sentencing order of the Court;

(the **Outstanding Amount**);

Mr Anwer will make payment of the Outstanding Amount within five working days of the date on which was Zodiac was required to make payment of the Outstanding Amount.

5 Effect of the Undertakings



5.1 The Undertakings are Court enforceable undertakings in terms of s 46A of the FTA.

6 Commencement of Undertakings

6.1 The Undertakings come into effect when:

- (a) executed by the Undertaking Parties; and
- (b) the Commission confirms its acceptance of the Undertakings.

7 Duration of the Undertakings

7.1 These Undertakings will continue to have effect until the earlier of:

- (a) full payment of the Fine by either Zodiac or Mr Anwer; or
- (b) the Commission agrees to discharge the Undertaking Parties from the Undertakings.

8 Compliance with the Undertakings

8.1 If either of the Undertaking Parties becomes aware of a breach of these Undertakings, whether advertent or inadvertent, they will notify the Commission within seven days of becoming aware, giving full particulars of the breach.

8.2 For the avoidance of doubt, nothing in paragraph 8.1 above prevents the Commission from directly seeking any information from the Undertaking Parties at any time during the course of any criminal and/or civil proceedings for the purpose of checking compliance with the undertakings.

9 Miscellaneous

9.1 No amendment to the Undertakings will be effective unless it is in writing, executed by the Undertaking Parties, and signed as accepted by the Commission.

9.2 These Undertakings are properly executed if each Undertaking Party signs the same copy, or separate identical copies of the execution page. Where separate copies are signed by the Undertaking Parties or the Commission, the signed copy can be the original document, or a faxed or emailed copy.

9.3 The Undertaking Parties acknowledge that:

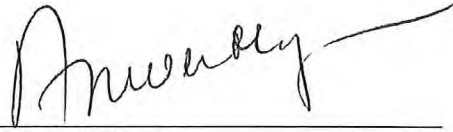
- (a) The Commission may make the Undertakings publicly available including by publishing them on the Commission's enforcement response register on its website.
- (b) The Commission may, from time to time, make public reference to the Undertakings including in news media statements and in the Commission's publications.

- (c) Nothing in the Undertakings is intended to restrict the right of the Commission, or the right of any other person, to take action under the FTA or under any other statute or law.



Execution

Signed by and on behalf of **Zodiac Motor Company Limited**



Authorised signatory

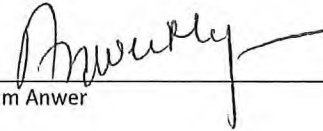
NEZAM ANWER
Name

In the presence of:

Witness Name: *Mosleh Anwar*
Witness Address: *10 Somerset Pl, London*
Witness Occupation: *Self employed*

Date: *5/12/16*

Signed by **Nezam Anwer**



Nezam Anwer

In the presence of:

Witness Name:
Witness Address:
Witness Occupation:

Date: *5/12/16*



Acceptance

Accepted by the Commerce Commission by

Mark Newman Berry
Authorised signatory

MARK NEWMAN BERRY
Name

Authorised signatory

Name

In the presence of:
Witness Name: RACHEL PINNY
Witness Address: WELLINGTON
Witness Occupation: SOLICITOR

Date: 8/12/2016