

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

Travellers Autobarn Limited

3446024.5

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

## 1 Person giving Undertakings

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- 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 Travellers Autobarn Limited (**Travellers Autobarn**), a company incorporated in New Zealand having its registered office at 238 Roydale Ave, Burnside, Christchurch, 8053, New Zealand.
- 1.2 Travellers Autobarn operates a vehicle and campervan hire business in New Zealand.

## 2 Investigation background

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- 2.1 This matter concerns the investigation by the Commission into representations made by Travellers Autobarn on its website regarding the effect of its optional limitations of liability offered when consumers rented a vehicle from Travellers Autobarn.
- 2.2 Since Travellers Autobarn began operating in New Zealand on 1 September 2016, it described its options for capping liability in the event of a damage to a hired vehicle as "\$2500 Liability", "\$1200 Liability", and "\$0 Liability" (the **cover options**). Describing the cover options in this way represented to consumers that their liability would be capped at \$2,500, \$1,200, and \$0 respectively, in the event of damage to a hired vehicle.
- 2.3 Clause 28 of the rental contract purported to exclude the costs for damage caused in several situations from the protection provided by the cover options. In these situations, consumers could be held liable for more than the contractual capped amount.
- 2.4 The Commission's investigation discovered several occasions where Travellers Autobarn used the exclusions to void consumers' cover option contracts and hold consumers liable for significant costs, in excess of the capped amount, resulting from damage to the hired vehicle.
- 2.5 In the Commission's view, describing the cover options as "\$2500 Liability", "\$1200 Liability", and "\$0 Liability", when the operation of the exclusions can result in consumers paying more than these amounts, is likely to have misled consumers as to the liability protection provided in breach of s 13(i) of the FTA.
- 2.6 Travellers Autobarn acknowledges the Commission's view set out in paragraph 2.5 above.
- 2.7 Travellers Autobarn has cooperated with the Commission's investigation. Travellers Autobarn has taken steps to address the Commission's concerns by providing greater transparency about the exclusions that apply to the cover.
- 2.8 The Commission has concluded, after following the practices and criteria outlined in the Commission's Competition and Consumer Investigation Guidelines and Enforcement Response Guidelines, that it is in the public interest to resolve this investigation by way of undertakings provided by Travellers Autobarn.



### 3 Purpose of the Undertakings

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- 3.1 These Undertakings are given by Travellers Autobarn to:
- (a) ensure that the exclusions and effects of its cover options are accurately represented to consumers;
  - (b) refund consumers who have previously paid for damage to a hired vehicle due to the application of the exclusions to the cover options. These customers are identified by their 'RA#' in **Attachment A**; and
  - (c) resolve the Commission's concerns arising from the investigation.

### 4 Undertakings

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- 4.1 Travellers Autobarn undertakes to the Commission, from the effective date of the Undertakings, that it will:
- (a) ensure that its New Zealand website:
    - (i) clearly identifies any qualifications operating to cap consumers' liability under the cover options; and
    - (ii) provides transparency with respect to the three cover options, and the exclusions that apply, by setting out the exclusions in a prominent place;
  - (b) update its training process and all training materials used for training TAL staff and international agents to clearly and prominently set out the information staff and agents are required to provide to customers in relation to the cover options and the applicable exclusions; and
  - (c) having made reasonable enquiries to locate the relevant customers referred to in the table at **Attachment A**, refund the full amounts paid by customers to Travellers Autobarn in respect of damage excluded from the protections provided by the cover options under clause 28 of its terms and conditions (or clause 27 prior to 24 July 2018), since it began operating in New Zealand on 1 September 2016.

### 5 Effect of the Undertakings

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- 5.1 The Undertakings are:
- (a) Court enforceable undertakings in terms of s 46A of the FTA; and
  - (b) made with the acknowledgment of the Commission's view set out in paragraph 2.5 above.

### 6 Commencement of Undertakings

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- 6.1 The Undertakings come into effect when:
- (a) executed by Travellers Autobarn; and

- (b) the Commission confirms its acceptance of the Undertakings.

## **7 Variation of the Undertakings**

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- 7.1 The Commission and Travellers Autobarn can agree at any time to vary the Undertakings.
- 7.2 No variation to the Undertakings will be effective unless it is in writing, executed by Travellers Autobarn, and signed as accepted by the Commission.

## **8 Duration of the Undertakings**

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- 8.1 These Undertakings will continue to have effect until the earlier of:
- (a) five years from the date of acceptance; or
- (b) the Commission agrees to discharge Travellers Autobarn from the Undertakings.

## **9 Compliance with the Undertakings**

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- 9.1 If Travellers Autobarn becomes aware of a breach of these Undertakings, whether advertent or inadvertent, it will notify the Commission within seven (7) days of becoming aware, giving full particulars of the breach.
- 9.2 Travellers Autobarn is to comply with all reasonable requests of the Commission in establishing whether there is compliance with the Undertakings.
- 9.3 For the avoidance of doubt, nothing in paragraph 9.1 and 9.2 above prevents the Commission from directly seeking any information from Travellers Autobarn at any time during the course of any criminal and/or civil proceedings for the purpose of checking compliance with the Undertakings.

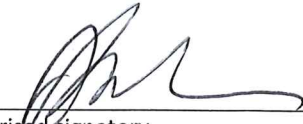
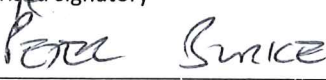
## **10 Miscellaneous**


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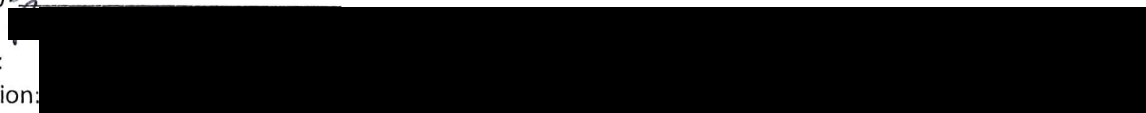
- 10.1 These Undertakings are properly executed if Travellers Autobarn signs the same copy, or separate identical copies, of the execution page. Where separate copies are signed on behalf of Travellers Autobarn and the Commission, the signed copy can be the original document, or a faxed or emailed copy.
- 10.2 Travellers Autobarn acknowledges 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 **Travellers Autobarn Limited**

  
\_\_\_\_\_  
Authorised signatory  
  
\_\_\_\_\_  
Name



  
In the presence of:  
Witness Name:  
Witness Address:  
Witness Occupation:




Date: 28/11/2019

**Acceptance**

Accepted by the **Commerce Commission** by

  
\_\_\_\_\_  
Authorised signatory  
  
\_\_\_\_\_  
Name

  
In the presence of:  
Witness Name:  
Witness Address:  
Witness Occupation:



Date: 16/12/19



**Attachment A: Refunds to be made by Travellers Autobarn**

Ticket #	Accident date	Cover option selected by customer	Registration #	RA#	Reason for applying clause 28	Paid	To be refunded
16059	13/12/2017	\$2500 Liability – Standard Protection	KBB799	1943	Single vehicle accident (rollover)	\$10,000	<b>\$7,500</b> (\$10,000 - \$2500)
19003	27/01/2018	\$0 Liability – Protection Plus	KYY455	2514	Roof damage	\$3,000	<b>\$3,000</b>
22024	11/03/2018	\$0 Liability – Protection Plus	JKR722	2794	Single vehicle accident – written off	\$20,000	<b>\$20,000</b>
26354	28/05/2018	\$0 Liability – Protection Plus	LBE142	3757	Single vehicle accident (rollover)	\$10,000	<b>\$10,000</b>
<b>Total</b>							<b>\$40,500</b>