

Summary of Sigma's undertaking to the Australian Competition & Consumer Commission

(under section 87B of the *Competition and Consumer Act 2010* (Cth))

Background and Objective

On 7 November 2024, the Australian Competition & Consumer Commission (**ACCC**) announced that it would not oppose the acquisition by Sigma Healthcare Limited (**Sigma**) of CW Group Holdings Limited (**Transaction**) subject to an undertaking accepted by the ACCC under section 87B of the *Competition and Consumer Act 2010* (Cth) (**Undertaking**).

The Undertaking requires Sigma to publish a plain English summary of Clauses 5 and 6 which contain commitments from Sigma for a period of three years to:

1. Not enforce restraints on certain existing franchisees, buying group customers and wholesale customers exiting their arrangements with Sigma – **Clause 5**.
2. Delete or de-identify certain confidential data and information of wholesale customers, buying group customers and franchisees who terminate their arrangements with Sigma, subject to specific exclusions – **Clause 6**.

The Undertaking is a publicly available document which is published on the ACCC's website. The full Undertaking can be accessed at: <https://www.accc.gov.au/public-registers/undertakings-registers/sigma-healthcare-limited>, as well as via Sigma's website.

1. No restraint on termination for certain existing franchisees, buying group customers and wholesale customers – Clause 5

Sigma has committed to not prevent or hinder any existing Sigma franchisee, buying group customer or wholesale customer (collectively referred to as **franchisee/customer**) who **signed or agreed to their** franchise agreement, wholesaling supply agreement, PriceSave agreement and/or buying group agreement with Sigma **prior to 1 July 2024** from terminating their franchise agreement, supply agreement or any other arrangement they may have with Sigma (**agreement**) for a period of three years from completion of the Transaction. Completion occurred on 12 February 2025. This means that Sigma will not restrict an existing franchisee/customer from terminating an agreement that was signed or agreed to prior to 1 July 2024 (i.e. up to and including 30 June 2024, but excluding 1 July 2024) if notice is given in accordance with the undertaking up to and including 12 February 2028.

A franchisee/customer may choose to terminate one agreement but may retain their other agreements with Sigma such as a wholesale supply agreement, MPS agreement or Sigma Trading Terms.

Sigma Franchisees

A Sigma franchisee means a franchisee operating under the Amcal, Discount Drug Store or PharmaSave banner brands. It does not include any franchisee operating under the Chemist Warehouse or MyChemist banner brand.

Termination of an agreement with Sigma

If an existing franchisee/customer wishes to terminate an agreement in accordance with the undertaking up to and including 12 February 2028:

- they should notify Sigma in writing of the agreement they wish to terminate;
- Sigma may require the franchisee/customer give **two (2) months' notice** before the termination will take effect. However, if their agreement provides for a shorter notice period, the shorter notice period will apply; and

- the franchisee/customer needs to settle any **Outstanding Monies** to Sigma under the agreement prior to the Termination Date (being the date on which the agreement comes to an end). Outstanding Monies means any of the following:
 - franchise fee, monthly operations fee, monthly catalogue fee or any other fees or charges incurred for services provided to a Sigma franchisee under the terms of a franchise agreement or any other agreement or arrangement up to the Termination Date;
 - any fees or charges accrued in relation to any products or services supplied to a buying group customer or wholesale customer under a supply agreement or any other agreement or arrangement up to the Termination Date;
 - any interest on outstanding amounts (if applicable) calculated in accordance with the terms of a franchise agreement, supply agreement or any other agreement or arrangement up to the Termination Date;
 - any debt (plus interest, if applicable) payable to Sigma pursuant to any loan arrangement between Sigma and any franchisee/customer;
 - any amount payable on termination of a supply agreement between Sigma and a third party entered into in conjunction with the sale of shares by Sigma to the third party where a wholesaling term commitment was provided as part of consideration for the sale.

No reimbursement of Contributions paid by Sigma prior to termination

If a franchisee/customer who signed or agreed to their agreement with Sigma prior to 1 July 2024 (i.e by 30 June 2024) elects to terminate their agreement according to the process outlined above, Sigma will not prevent the franchisee/customer from terminating nor will it require the franchisee/customer to reimburse or repay to Sigma any **Contributions** that would otherwise be required to be repaid to Sigma, nor shall it be liable for any future contributions or fees that would otherwise be owed to Sigma under the terminated agreement from the Termination Date. Contributions mean monetary contributions or incentives that have been paid to a franchisee/customer by Sigma under the agreement. Contributions include but are not limited to any incentives, fee relief, rebates, cash payments or any other financial contributions. However, Contributions excludes Outstanding Monies, which need to be paid on termination (explained **above**).

No enforcement of obligations to pay future franchise fees or any other fees

If an existing Sigma franchisee who signed or agreed to their agreement with Sigma prior to 1 July 2024 elects to terminate their franchise agreement according to the process above, Sigma will not enforce any clause in their franchise agreement which requires the franchisee to pay annual franchise fees or any other fees after the Termination Date for the remainder of the original term.

A franchisee is still required to pay Sigma any franchise fees or other fees incurred or accrued up to the Termination Date.

No further services or contributions by Sigma beyond termination

Where a franchisee/customer elects to terminate their agreement according to the process above, Sigma is not required to provide any services, rebates, discounts and contributions from the Termination Date in relation to the terminated agreement, unless they were validly accrued and payable up to the Termination Date of the relevant agreement.

Dispute resolution

Sigma has committed to comply with a dispute resolution process if a franchisee/customer has a dispute in relation to the termination of their agreement under the Undertaking.

Sigma has also committed to provide a franchisee/customer with a copy of the dispute resolution process in the Undertaking (at Schedule 3) within 7 Business Days of receiving their notice of termination.

Franchisees/customers are required to raise any dispute with Sigma with respect to clause 5 of the Undertaking within 6 months of providing notice of termination of the relevant agreement, by providing written notice to Sigma in accordance with Schedule 3 of the Undertaking. A dispute notice must include details of:

- the nature of the dispute;
- the outcome sought by the franchisee/customer; and
- the action(s) on the part of Sigma which the franchisee/customer believes will resolve the dispute.

If a dispute is not resolved by negotiation between Sigma and the franchisee/customer within 21 Business Days, the dispute will be referred for determination by an **Approved Independent Auditor** appointed by Sigma with the ACCC's approval.

2. Non-retention of Confidential Information for exiting customers – Clause 6

For a period of three years from completion of the Transaction, namely up to and including 12 February 2028, Sigma has committed to certain protections in relation to Confidential Information provided by franchisees/customers who elect to terminate their arrangements with Sigma if they signed or agreed to their franchise and/or wholesale supply and/or buying group agreement prior to 1 July 2024 (i.e., up to and including 30 June 2024, but excluding 1 July 2024) (referred to as an '**Exiting Customer**').

What is and isn't Confidential Information?

Confidential Information means information or data **provided by** an Exiting Customer to Sigma in relation to the business of that Exiting Customer:

- obtained from the Exiting Customer's Point of Sale system;
- individualised store promotional plans and pricing, but excluding promotions proposed by Sigma for all franchisees, franchisees within specific franchise banner groups or particular customer groups or franchisees);
- wholesale product orders and pricing;
- order volumes and order history;
- franchise agreement terms;
- any information that could identify an Exiting Customer in connection with information which the customer reasonably considers to be commercially sensitive information;
- credit or other information obtained to establish an account;

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- financial information including but not limited to: account payment history, payment terms/methods (including credit lines), credit history, and information relating to the value of a pharmacy (including purchase price, valuations, and loan amounts);
- loyalty program data; and
- terms relating to agreements with third-party manufacturers as they relate to the Exiting Customer.

Confidential information **does not include:**

- information which has been aggregated with other information of a similar nature such that it is not competitively sensitive including because it relates to a sufficiently broad time period or cannot reasonably be, and is not reasonably capable of being, identified with, attributed to or used to identify any specific Exiting Customer;
- “De-identified Data” which is Confidential Information that has been de-identified such that the data is anonymised and no Sigma personnel other than Approved Sigma Personnel may have access to data that identifies the Exiting Customer.

Sigma's commitments in relation to Confidential Information

(a) Commitments on receiving notice of termination

If an Exiting Customer gives notice of termination of their agreement up to and including 12 February 2028, Sigma will ensure that within 2 Business Days of receipt of that notice:

- No Sigma personnel except Approved Sigma Personnel will have access to the Exiting Customer's Confidential Information. For the avoidance of doubt, Ring-Fenced Personnel will not have access to an Exiting Customer's Confidential Information.
- Sigma will not use the Exiting Customer's Confidential Information for any purpose, except:
 - as is necessary to effect the exit process for the Exiting Customer including for any disputes;
 - where Sigma is required to retain the Confidential Information by law, or
 - as is reasonably necessary for Sigma to meet its CSO or other legal reporting requirements.

Approved Sigma Personnel will be approved by the Approved Independent Auditor (who is appointed by Sigma with the ACCC's approval) and will not include any **Ring-Fenced Personnel**. **Ring-Fenced Personnel** are directors or employees of Sigma who:

- hold a direct or indirect ownership interest in a Chemist Warehouse or MyChemist Franchisee; or
- who have any involvement in the day-to-day management of Sigma's relationship with Chemist Warehouse or MyChemist Franchisees.

(b) Commitments following termination

Within 10 Business Days of the Termination Date of the relevant agreement, Sigma has committed to:

- Delete an Exiting Customer's Confidential Information related to the agreement being terminated, unless the data is required for one of the purposes set out above; or
- De-identify any Confidential Information relating to an Exiting Customer so that it is anonymised and not attributable to the Exiting Customer.

Exceptions: Sigma is permitted to retain Confidential Information as is necessary to:

- effect the exit process for the Exiting Customer (including for any legal disputes), or
- if Sigma is required to retain the data by law, or
- if it is reasonably necessary for Sigma to meet its CSO or other legal reporting requirements.

To the extent any Confidential Information is retained that identifies the Exiting Customer, Sigma must restrict access to the relevant Confidential Information so that only Approved Sigma Personnel may have access.

Exiting Customers who wish to retain a Sigma trading account

If an Exiting Customer wishes to continue to purchase products from Sigma, then Sigma is permitted to receive and access Confidential Information that is reasonably necessary to maintain an ongoing Sigma trading account, subject to:

- obtaining the consent of the Exiting Customer; and
- not allowing Sigma Ring-Fenced Personnel to access the Confidential Information.

Protection of Confidential Information

Sigma is required to appoint a **Sigma Information Compliance Officer** to:

- monitor Sigma's compliance with its confidential data and information obligations; and
- maintain a register of Ring-Fenced Personnel and Approved Sigma Personnel.

Sigma will also be subject to quarterly compliance audits from the Approved Independent Auditor (who is approved by the ACCC).

IT Security Measures

Sigma is required to establish and maintain effective IT systems and security measures to safeguard Exiting Customer's Confidential Information from unauthorised access, use, copying or disclosure. This will include individual usernames, passwords and access keys to any Approved Sigma Personnel who have access to the Confidential Information of Exiting Customers.