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Notification Unit
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

29 September 2005

Dear Sir

Eyecare Plus Limited - Exclusive Dealing Notification

We act on behalf of Eyecare Plus Limited ("EPL") and attach the following:

- Notification under section 93(1) of the *Trade Practices Act 1974* ("TPA"); and
- A cheque for \$1000 in payment of the required lodgement fee.

We request the Australian Competition and Consumer Commission ("ACCC") treat as confidential and exclude from the public register annexure "A" and "B" of the notification.

The basis for our client claiming confidentiality over annexure "A" is that it contains information on the calculation of licence fees and customer details.

The basis for our client claiming confidentiality over annexure "B" is that it represents a significant amount of intellectual property and took a considerable amount of time to prepare.

If the ACCC refuses our client's request for confidentiality we ask that annexure "A" and "B" be returned to our office and not be placed on the public register.

1. Background

- 1.1 EPL is a licensee company which is owned by independent optometry practices across Australia. To become a member of EPL an independent optometry practice must enter into a licence agreement with EPL and pay an annual licence fee. Members of EPL must

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comply with a Code of Membership (“**The Membership Code**”). The Membership Code is attached as annexure “B” and marked confidential.

1.2 EPL’s business is primarily concerned with providing the following services to its members:

- The licence of its registered business name and trade mark;
- Group negotiated discounts;
- Co-operative advertising resources and marketing; and
- Training

(Collectively referred to as “**Services**”).

1.3 The Membership Code contains a clause which provides for an annual rebate (in the form of a credit to the annual Licence Fee) for any member who supports nominated suppliers at the level of 75% (or greater) of all optical purchases. A list of the nominated suppliers is set out in the attached Notification.

1.4 There is no clause under the Membership Code which provides that members must only purchase optical supplies from nominated suppliers.

1.5 Members are still entitled to group negotiated discounts regardless of whether they support nominated suppliers at a level of 75% (or greater) of all optical purchases.

2. **Notified Conduct**

2.1 The notified conduct may be formulated as:

- EPL offering to provide, or providing, a discount, allowance, rebate or credit in relation to the supply of its Services on the condition that a member of EPL acquire optical supplies from nominated suppliers; and
- EPL refusing to offer to provide, or refusing to provide, a discount, allowance, rebate or credit in relation to the supply of its Services, for the reason that a member of EPL has not acquired optical supplies from nominated suppliers.

Our clients is concerned that the notified conduct could be characterised in a way which could amount to contraventions of section 47(6) and (7) of the TPA. However, we do not believe that the notified conduct could have any adverse affect on competition in any of the relevant markets.

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The proposed conduct will be of benefit to the public as it will:

- Reduce Licence Fees which will reduce members costs and these saving can be passed on to consumers.
- Will have the effect of promoting competition in the relevant markets by encouraging competitors to offer similar value added services, which will result in benefits for Members and consumers.

The notified conduct will not result in any public detriment and will be pro-competitive as:

- Members are free to acquire optical suppliers from any supplier of their choice on the competitive terms offered by those suppliers and would be doing so because it is commercially beneficial for them to obtain optical supplies from other suppliers.
- Competition in the relevant markets is vigorous and there are many competitors

We consider that the likely benefits from the notified conduct will outweigh any possible detriment.

If you have any questions in relation to this notification or require any further information, please contact Michael Daniel on 8266 6618 or Gemma Saville on 8266 6935 of our office.



Michael Daniel/Gemma Saville
Partner/Solicitor
PricewaterhouseCoopers Legal

FORM G

Commonwealth of Australia

Trade Practices Act 1974 - Subsection 93(1)

**EXCLUSIVE DEALING
NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974* of particulars of conduct or of proposed conduct of a kind referred to in subsection 47 (2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) of (d), of that Act in which the person giving notice engages or proposes to engage.

1. (a) **Name of person giving notice.**

Eyecare Plus Limited ABN 88 095 148 431
("EPL")

(b) **Short description of business carried on by that person.**

EPL is a licensee company owned by a group of independent optometry practices across Australia.

In return for an annual licence fee ("Licence Fee") EPL supplies to its members:

- The use and benefit of its registered business name and trade mark;
- Group negotiated discounts;
- Co-operative advertising resources and marketing; and
- Training.

(c) **Address in Australia for service of documents on that person.**

C/- Michael Francis Paul Daniel
PricewaterhouseCoopers Legal
Darling Park Tower 2
201 Sussex Street
SYDNEY NSW 2000

**EXCLUDED FROM
PUBLIC REGISTER**

Annexure A

**EXCLUDED FROM
PUBLIC REGISTER**

**EXCLUDED FROM
PUBLIC REGISTER**

Annexure B

**EXCLUDED FROM
PUBLIC REGISTER**