



Aitken Walker & Strachan

LAWYERS, ACCOUNTANTS
& FINANCIAL PLANNERS

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AUST. COMPETITION & CONSUMER COMMISSION MELBOURNE
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Mr Scott Gregson
General Manager - Adjudication
Australian Competition and Consumer
Commission
GPO 520J
MELBOURNE VIC 3001

Contact
Your Reference
Direct Email
Direct Line
Document No
Date

Michael O'Brien
mo'brien@aitken.com.au
8600 6018
00143606.DOC
13 October, 2005

BY HAND DELIVERY

Dear Sir

Section 93 Notification - Medibank Private Limited

We act for Medibank Private Limited and enclose the following on behalf of our client:

1. Form G Exclusive Dealing Notification (with 'Attachment A'); and
2. Cheque in the sum of \$200 as payment of the required fee for an additional notification.

The enclosed Notification relates to Notification N40843, which was lodged by our client on 24 March 2005. It also relates to Notification 50163, lodged by ETI Australia Pty Ltd on 31 March 2005. If you have any questions in relation to the Notification please contact Michael O'Brien of our office.

Yours faithfully
Aitken Walker & Strachan

Michael O'Brien
Partner

Encl.

Form G

Commonwealth of Australia

Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING:

NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-sections 47(6) and 47(7) of that Act in which the person giving notice engaged or proposes to engage.

1. (a) Name of person giving notice:
Medibank Private Limited
ABN 47 080 890 259 (MPL)
- (b) Short description of business carried on by that person:
Supply of private health insurance services.
- (c) Address in Australia for service of documents on that person:
Medibank Private
Level 17
700 Collins Street
DOCKLANDS VIC 3008
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
The notification relates to the supply of health insurance services by MPL as more fully described in Attachment A.
- (b) Description of the conduct or proposed conduct:
See Attachment A.
3. (a) Class or classes of persons to which the conduct relates:
MPL members.
- (b) Number of those persons:
 - (i) At the present time:
Substantially in excess of 50.

(ii) Estimated within the next year:

Substantially in excess of 50.

(c) Where the number of persons stated in item 3(b)(i) is less than 50, their names and addresses:

Not applicable

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

*c/o Gladys Hu
Medibank Private
Level 17
700 Collins Street
DOCKLANDS VIC 3008*

DATED *13 October*, 2005

SIGNED by/on behalf of the applicant

Gladys Hu

(Signature)

GLADYS HU

(Full Name)

SENIOR LEGAL COUNSEL

(Description)



ATTACHMENT A

1. Background

- 1.1. Medibank Private Limited (ABN 47 080 890 259)(MPL) is a registered health benefits organisation. It provides a range of health insurance products, including bundled packages of hospital and ancillary (extras) covers, stand-alone hospital covers, stand-alone extras covers, overseas student health cover, overseas visitor cover and ambulance cover.
- 1.2. On 24 March 2005 MPL lodged a notification with the Australian Competition and Consumer Commission pursuant to sub-section 93 of the *Trade Practices Act 1974* (Notification No. N40843). Notification N40843 was made by MPL in respect of travel insurance products and services offered by ETI Australia Pty Ltd (ABN 52 097 227 177), trading as Mondial Assistance ("Mondial Assistance"), to retail customers in Western Australia for a nine month pilot period commencing in April 2005. Immunity was provided to MPL in respect of Notification N40843 commencing on 7 April 2005.
- 1.3. MPL and Mondial Assistance propose to extend the product offering detailed in Notification No. N40843 as follows:
 - a. MPL will be authorised by Mondial Assistance to arrange for the issue of general insurance products, being travel insurance products and services ("the products and services"), and provide general insurance product advice in respect of such products and services, as a corporate authorised representative of Mondial Assistance. In this regard, MPL employees will be authorised representatives of Mondial Assistance.
 - b. MPL will promote and issue the products and services in accordance with the terms of an agreement between MPL and Mondial Assistance. MPL will promote and/or offer the products and services under MPL's brand name to:
 - o MPL members in Australia;
 - o other retail customers in Australia who are not MPL members ("non-MPL members"); and
 - o MPL employees.
 - c. Although the products and services will be offered to both MPL members and non-MPL members, discounts on the retail price of the products and services will be offered as follows:¹
 - o MPL members will receive a ten percent (10%) discount on the retail price of the products and services; and
 - o MPL employees (whether or not they are MPL members) will receive a ten percent (10%) discount on the retail price of the products and services other than for Medibank Private Frequent Traveller insurance plans, in which case MPL employees will receive a discount of approximately fifty-five per cent (55%).²

¹ The stated discounts on some of the products and services may be varied at a later time.

² The 55% discount will not be offered to MPL employees with a pre-existing medical condition.

2. The products and services

2.1. The products and services will be offered under a choice of the following four travel insurance plans:

- 'Medibank Private Comprehensive';
- 'Medibank Private Australia Only';
- 'Medibank Private Budget Cover'; and
- 'Medibank Private Frequent Traveller'.

2.2. The four travel insurance plans referred to above include some or all of the following products and services:

- *Cancellation fees and lost deposits*

Cover for lost deposits and cancellation fees for pre-paid travel arrangements due to unforeseen circumstances neither expected nor intended or which are outside customer control, such as: - Sickness - Accidents – Strikes -Collisions - Retrenchment - Natural Disasters

- *Overseas emergency medical assistance*

Cover for emergency medical assistance including:

- 24 Hour Emergency Medical Assistance
- Ambulance - Medical Evacuations
- Funeral Arrangements - Messages to family
- Hospital Guarantees

- *Overseas medical/hospital expenses*

Cover for overseas medical treatment if a customer is injured or becomes sick overseas, including:

- Medical
- Hospital
- Surgical
- Nursing

- *Overseas emergency dental expenses*

Cover for overseas dental treatment for:

- Pain relief
- Restoration of dental functions to sound & natural teeth

- *Additional accommodation & travel expenses*

Cover for additional accommodation and travel expenses caused by health problems or someone else's resulting from: - Sickness - Accidental injury – Death

- *Other peoples' additional expenses*

Cover for a travelling companion or relatives' accommodation and travel expenses to travel to, stay near or escort a customer resulting from: - Hospitalisation - Medical Evacuation

- *Hospital cash allowance*

An allowance of \$50 per day if a customer is hospitalised whilst overseas for more than 48 continuous hours

- *Accidental death*

A Death Benefit is payable if a customer dies because of accidental bodily injury sustained during journey within 12 months of that injury

- *Permanent disability*

A Permanent Disability Benefit is payable for total loss of sight in one or both eyes or loss of use of a hand or foot within 12 months of, and because of, an injury sustained during a journey

- *Loss of income*

A weekly Loss of Income benefit is payable if, due to an injury sustained during journey, customer is unable to work after return to Australia for more than 30 days

- *Travel documents, credit cards & travellers cheques*

Cover to replace costs of travel documents lost or stolen during journey, such as:

- Passports - Credit Cards
- Travel Documents - Travellers Cheques

- *Theft of cash*

Cover for the following items stolen, up to \$250 for all claims combined:

- Bank Notes - Cash - Currency Notes
- Postal Orders - Money Orders

- *Luggage/personal effects (additional cover options available)*

Cover for replacing luggage stolen or reimbursing repair cost for accidentally damaged items, including:

- Luggage – Spectacles
- Personal Effects - Personal Computers – Cameras
- *Luggage/personal effects delay allowance*
An allowance to purchase essential items of clothing and other personal items following luggage delayed, misdirected or misplaced by carrier for more than 12 hours
- *Travel delay – disruption of journey*
Cover for additional travel and accommodation expenses if journey is disrupted by events such as:
 - Strikes - Riots - Natural Disasters – Hijack
 - Carrier Accidents - Rental Car Accidents
 - Loss of Passport/Travel Documents
- *Alternative travel expenses*
Cover for additional travel expenses following transport delays to reach events such as:
 - Wedding - Funeral – Conference
 - Sporting Event - Pre-paid travel/tour arrangements
- *Personal liability*
Cover for legal liability including legal expenses for bodily injuries or damage to property of other persons as a result of a claim made against a customer
- *Rental vehicle*
Cover for car excess payable on Motor Vehicle Insurance resulting from rental vehicle being:
 - Stolen - Crashed – Damaged and/or cost of returning rental vehicle due to customer being unfit

2.3. Full details of the products and services available under the four travel insurance plans, including printed promotional material and the policy terms and conditions, will be available to customers at MPL retail outlets. MPL staff will also be trained to provide information and answer questions on the products and services.

3. **Characterisation of the proposed conduct**

3.1. The proposed conduct by MPL could be characterised as contravening sections 47(6) and (7) of the Trade Practices Act 1974 (Cth) in so far as MPL could be said to be:

- (a) giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of goods or services (being the products or services) to consumers on condition that the consumers acquire health insurance services from MPL; and/or

- (b) refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of goods or services (being the products or services) to consumers for the reason that the consumers have not acquired or have not agreed to acquire health insurance services from MPL.

4. **Anti-competitive effect**

Relevant markets

- 4.1. In broad terms, it is submitted that the markets primarily relevant to the assessment of this notification are as follows:
- (a) the market for the supply of travel insurance products and services to consumers in Australia; and
 - (b) the market for the supply of private health insurance services to consumers in Australia.
- 4.2. There are many registered health benefits organisations in Australia that offer vigorous competition to MPL in the range of health insurance products offered by MPL. In relation to travel insurance, there are also many insurers and/or insurer's authorised representatives in Australia in competition to supply travel insurance products and services to retail customers. Accordingly, the markets referred to in paragraph 4.1 are both very competitive.
- 4.3. The notified conduct is similar to other 'loyalty programs', in the broader market for the supply of retail goods and services in Australia, that have been recognised as not having an anti-competitive effect.
- 4.4. In the event that narrower (eg. State based) market definitions are applicable, the potential effect of the notified conduct would still not be anti-competitive for the same reasons set out in paragraph 4.2 above.

Public detriment

- 4.5. The notified conduct will have little, if any, public detriment because non-MPL members are free to purchase the products and services at regular competitive prices, irrespective of whether the consumer chooses to purchase MPL health insurance services.
- 4.6. Thus, although the conduct described in this notification application may constitute exclusive dealing, MPL considers that the proposed conduct will not have an anti-competitive effect in the relevant markets.

Public benefit

- 4.7. The proposed conduct is pro-competitive and offer benefits to the public for the following reasons:
- (a) MPL members in Australia will be offered a benefit in the form of discounted travel insurance;
 - (b) the conduct will encourage competitors of MPL to offer similar discounted goods or services, or other benefits, to consumers thereby promoting competition in relation to the supply of health insurance products generally; and

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- (c) the conduct will encourage those engaged in the supply of travel insurance products and services to retail customers to offer similar discounts, directly or as a part of 'loyalty programs', thereby promoting competition in relation to travel insurance products and services.

5. Conclusion

For the reasons set out above, the Commission should not serve a notice under section 93(3A) of the TPA in respect of the attached notification.