

FILE No:

DOC:

MARS/PRISM:

medibank
P R I V A T E

Medibank Private Limited
ABN 47 080 890 259
is a registered health
benefits organisation

GPO Box 9999
in your capital city
Telephone 132 331
medibank.com.au

22 December 2005

BY COURIER

Mr Scott Gregson
General Manager – Adjudication Branch
Australian Competition and Consumer Commission
470 Northbourne Avenue
Dickson ACT 2602

Dear Mr Gregson

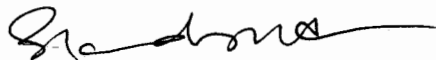
Notification - Medibank Private Limited

We enclose the following:

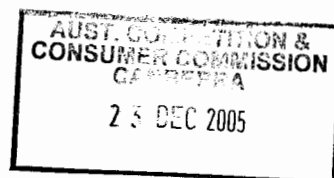
1. notification under section 93(1) of the *Trade Practices Act 1974* (Cth); and
2. a cheque in the sum of \$1,000 as payment of the required lodgement fee.

If you have any questions in relation to the Notification, please contact me on (03) 8622 5003.

Yours faithfully



Gladys Hu
Acting General Counsel



FORM G

COMMONWEALTH OF AUSTRALIA

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

EXCLUSIVE DEALING:

APPLICATION FOR AUTHORISATION

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-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or 9(a), (b), (c) or (d) of that Act in which the person giving notice engages or proposes to engage.

1. (a) Name of person giving notice:
Medibank Private Limited
ACN 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/- Ms Gladys Hu
Medibank Private
Level 17
700 Collins Street
Docklands Victoria 3008*

DATED *22 December, 2005*

SIGNED by/on behalf of the applicant

[Handwritten Signature]

(Signature)

GLADYS HU

(Full Name)

Acting General Counsel

(Description)

DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act 1974* ('the Act'), it comes into force at the end of the period prescribed for the purposes of sub-section 93(7A) of the Act ('the prescribed period') unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under sub-section 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

Attachment A

1. Background

- 1.1 Medibank Private Limited (**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 visitors cover and ambulance cover.
- 1.2 MPL currently offers a loyalty programme to eligible customers. The loyalty programme is the subject of existing notifications under sub-section 93 of the *Trade Practices Act 1974* (Cth) (**TPA**).
- 1.3 In order to expand its existing loyalty programme, MPL has negotiated additional individual arrangements with the following list of further suppliers of goods and services to offer certain goods or services (or discounts) to all MPL members:
- (a) Anthony & Sons Pty Ltd ABN 46 009 144 861 trading as 'Oceanic Cruises' (**Oceanic Cruises**);
 - (b) Australian Football League ABN 97 489 912 318 (**AFL**);
 - (c) Australian Red Cross Society ABN 50 169 561 394 (**Red Cross**);
 - (d) Belgravia Leisure Pty Ltd ACN 005 087 463 trading as 'Genesis Fitness Clubs' (**Genesis**);
 - (e) Blitz Publications Pty Ltd ABN 33 083 149 286 (**Blitz**);
 - (f) Bolle Australia Pty Ltd ABN 77 005 741 300 (**Bolle**);
 - (g) G R Franklin & T W Moore ABN 76 688 506 279 trading as 'All Aerobics' (**All Aerobics**);
 - (h) Great Aussie Holidays Pty Ltd ABN 47 009 116 947 (**GA Holidays**);
 - (i) Green Valley Nutrition Pty Ltd ABN 85 112 070 014 trading as 'GNC LiveWell' (**GNC**);
 - (j) Lonely Planet Publications Pty Ltd ABN 36 005 607 983 (**Lonely Planet**);
 - (k) National Heart Foundation of Australia (N.S.W. Division) ABN 95 000 253 289 (**Heart Foundation**);
 - (l) Neverfail Springwater Limited ABN 43 003 559 519 (**Neverfail**);
 - (m) One on One Personal Trainers Pty Ltd ABN 24 059 830 545 (**One on One**);
 - (n) Primus Telecommunications Pty Ltd ABN 69 071 191 396 (**Primus**);
 - (o) Rottnest Express Pty Ltd ACN 064 723 315 trading as 'Rottnest Express – Boat Torque Cruises' (**Rottnest Express**); and
 - (p) The Trustee for A Molloy Family Trust ABN 57 037 510 182 trading as 'Savoy Baths & Day Spa' (**Savoy**),
- (the **Suppliers**).
- 1.4 The arrangements are proposed to support joint limited term promotions by MPL and the individual Suppliers of their goods and services. The Suppliers have been selected by MPL in order to provide attractive lifestyle and cost benefits to MPL members.

- 1.5 The types of goods and services proposed to be offered to MPL members by the Suppliers are discounted and/or complimentary health, recreational and consumer goods and services.

2. Supply offers

- 2.1 MPL hopes to enter into a number of promotional arrangements with the Suppliers going forward. Examples of the types of offers that the Suppliers propose to make to MPL members, are as follows:

Oceanic Cruises

- (a) Oceanic Cruises operates cruises and full day packages departing from Perth and Fremantle in Western Australia, including to Rottnest Island, Carnac Island and the Swan Valley, as well as along the Swan River between Perth and Fremantle. The offer proposed to be made by Oceanic Cruises is as follows:

- (i) MPL members who book any cruise departing from Perth or Fremantle will receive a 15% discount off the RRP.

The offer is valid from 1 February 2006 to 31 December 2006.

AFL

- (b) The AFL is the body responsible for running the elite Australian Rules football competition in Australia. As part of this the AFL retails a number of goods and services both itself and under licence. The offer proposed to be made by the AFL is as follows:

- (i) MPL members who purchase a 2006 AFL Silver Membership before 30 April 2006 will be entitled to receive a 50% discount off the joining fee (a saving of \$145 on adult memberships).

This offer is valid from 1 February 2006 to 30 April 2006.

Red Cross

- (c) The Red Cross is an independent, non-political and non-religious organisation which forms part of the International Red Cross and Red Crescent Movement, the world's largest humanitarian organisation. The primary activities of the Red Cross include charitable and other humanitarian activities, including fundraising via the retailing of assorted products and services. The offer proposed to be made to MPL members by the Red Cross is as follows:

- (i) MPL members who book into any Red Cross first aid course will receive a 12.5% discount off the RRP; and
- (ii) MPL members who purchase the Motorist or 4WD/Camping first aid kits will receive a 12.5% discount off the RRP.

The above offers are valid from 1 February 2006 to 30 April 2006.

Genesis

- (d) Genesis operates fitness clubs in Victoria and Queensland, offering a range of gymnasium, fitness, personal training and associated services. The offer proposed to be made by Genesis is as follows:

- (i) MPL members who take out Genesis membership will receive a free starter pack (which includes backpack, water bottle and towel) and will not be required to pay the joining fee (normally \$165).

The offer is valid from 1 February 2006 to 30 April 2006.

Other terms and conditions:

The offer is only valid at Genesis' Victorian locations.

Blitz

(e) Blitz primarily operates a magazine publishing business in Australia, including the publication of a number of sports magazines. To a lesser extent, Blitz also retails books, accessories, videos and sporting equipment. The offer proposed to be made to MPL members by Blitz is as follows:

(i) MPL members who subscribe to the following magazines receive the listed discount plus the other listed complimentary products:

Magazine	RRP	MPL member price	Complimentary product(s)
Golf Magazine – 12 issues.	\$71.00	\$49.70	Free Golf Magazine Polo T Shirt 3 Free Golf Balls Membership to "The Golf Club"
Womens Fitness & Health Magazine – 12 issues.	\$78.00	\$54.60	Free ¾ Sleeve length T Shirt with logo plus a Women's Fitness and Health Discount card which entitles members to the following: - 10% off All Direct Nutritional Supplies Products; - 15% off selected Bio Nutrics products; - 10% off Exite Sport clothing; - 10% off Black and Blue clothing; - 10% off Thexton.com.au products (excludes specials and discounted items); - 25% off books in the WF& H bookshop; and - 10% off already reduced prices at Evelyn Faye Nutrition.
Natural Health Magazine – 12 issues.	\$20.00	\$14.00	Nil.
Triathlon & Multi Sport Magazine – 10 issues.	\$60.00	\$42.00	Nil.
Australian Ironman Magazine – 12 issues.	\$88.00	\$58.00	Free Short Sleeve length T Shirt with logo.
International Soccer Magazine – 12 issues.	\$79.00	\$55.30	Free ¾ Sleeve length T Shirt with logo.
Blitz Martial Arts Magazine – 12 issues.	\$83.00	\$58.00	Free Short Sleeve T Shirt with logo.

The above offers are valid from 1 February 2006 to 30 April 2006.

Other terms and conditions:

The offer is not valid in conjunction with any other offer. Limit of one subscription to each magazine, each year for every MPL member.

Bolle

- (f) Bolle is the authorised Australian distributor of Bolle sunglasses, distributing several hundred different makes and models. 'Bolle' branded sunglasses are manufactured by Bushnell Performance Optics, an American based company. The offer proposed to be made to MPL members by Bolle is as follows:

- (i) MPL members who purchase from a selected range of Bolle sunglasses receive a 50% discount off the RRP.

The above offer is valid from 1 February 2006 to 30 April 2006.

Other terms and conditions:

Offer is subject to availability of stock. Payment must be made by credit card and orders must be paid in full at time of purchase. A \$4.95 postage and handling fee must also be paid per each order.

All Aerobics

- (g) All Aerobics operates a gymnasium and health club in Hobart, Tasmania. The offer proposed to be made to MPL members by All Aerobics is as follows:

- (i) MPL members who take out any All Aerobics membership will pay a discounted enrolment fee (\$100 instead of RRP \$175) and receive a free lifestyle evaluation.

The above offer is valid from 1 February 2006 to 30 December 2006.

Other terms and conditions:

Normal All Aerobics membership terms and conditions apply, including that membership must be for an agreed minimum term and membership is not transferable.

GA Holidays

- (h) GA Holidays is a Western Australian based company operating as one of Australia's largest independently owned tour wholesalers, offering holiday packages across Australia. As part of its business it operates Skywest Holidays under contract for Skywest Airlines Pty Ltd. Skywest Holidays offers a range of holiday packages in Western Australia and the Northern Territory. The offer proposed to be made to MPL members by GA Holidays is as follows:

- (i) MPL members who book a Skywest Holidays Western Australia or Northern Territory holiday package receive a 10% discount.

The above offer is valid from 1 February 2006 to 30 December 2006.

Other terms and conditions:

Travel must be between 1 February 2006 and 30 December 2006. Discount applies on package only and does not apply to any additional taxes, levies, charges and surcharges. A 1% surcharge applies to payments made by Visa or MasterCard and a 3% surcharge applies for payments made by American Express or Diners.

GNC

(i) GNC is the Australian subsidiary of one of the world's largest health product retailers, specialising in herb, vitamin, weight management and sports nutrition supplements. The offer proposed to be made to MPL members by GNC is as follows:

(i) MPL members who purchase the following mineral and vitamin product packages receive the listed discount:

WOMENS ESSENTIALS PACK

GNC WOMENS ULTRA MEGA 90T

GNC SALMON OIL 1000MG 180C

GNC CALCIUM 1000 MAGNESIUM 400

RRP \$88.85 - MPL member price \$66.65

MENS ESSENTIALS PACK

GNC MEGA MEN 90T

GNC SALMON OIL 1000MG 180C

GNC ZINC 30MG 100T

RRP \$78.85 - MPL member price \$59.15

ENERGY ESSENTIALS

GNC BIG B 50 COMPLEX

GG TRIPLE GINSENG 90C

GNC HPF SPIRULINA 90VCAP

RRP \$84.85 - MPL member price \$63.65

DETOX ESSENTIALS

GNC MAXIMUM GREENS 251G

GNC HPS MILK THISTLE 100C

RRP \$114.45 - MPL member price \$85.85

WOMENS WEIGHT LOSS ESSENTIALS

GNC WOMENS ULTRA MEGA 90T

GNC OPTIDRENE 60C

NXT SLIM WHEY VANILLA 340G

RRP \$130.85 - MPL member price \$98.15

MENS WEIGHT LOSS ESSENTIALS

GNC MEGA MEN 90T

GNC OPTIDRENE 60C

NXT SLIM WHEY VANILLA 340G

RRP \$130.85 - MPL member price \$98.15

CARDIO CARE ESSENTIALS

PN COQ10 50MG 120C

GNC SALMON OIL 1000MG 180C

GNC VITAMIN E 400IU MIXED TOC 90C

RRP \$128.40 - MPL member price \$96.30

STRESS ESSENTIALS

GNC BIG B 50 COMPLEX

GNC MAGNESIUM 250MG 90T

GNC HPS ST JOHNS WORT 90C

RRP \$74.85 - MPL member price \$56.15

HAYFEVER ESSENTIALS

GNC NB TRIPLE GARLIC 100T

GNC BETACAROTENE

GNC FENUGREEK 90C

RRP \$72.85 - MPL member price \$54.65

JOINT CARE ESSENTIALS

GNC GLUCOSAMINE 750 CHONDROITIN 600
120T

GNC SALMON OIL 1000MG 180C

RRP \$89.90 - MPL member price \$67.40

ADVANCED SPORTS COMBO

PP MEGA WHEY 908G

PP MEGA CREATINE

GNC MEGA MEN 90T

RRP \$225.85 - MPL member price \$169.40

BEGINNERS SPORTS COMBO

GNC MEGA MEN 90T

PP 100% WHEY PROTEIN 3LB

GNC PP L-GLUTAMINE 454G

RRP \$206.85 - MPL member price \$155.15

The above offers are valid from 1 February 2006 to 30 April 2006.

Lonely Planet

- (j) Lonely Planet is an Australian based publisher of travel related guidebooks, offering over 600 titles in English and guidebooks in a number of other languages including French, Italian, Spanish, Korean and Japanese. Lonely Planet also offers a range of other travel related products and services including newsletters, phone cards, images and B2B opportunities. The offer proposed to be made to MPL members by Lonely Planet is as follows:

- (i) MPL members who purchase any products from <http://www.lonelyplanet.com> or <http://shop.lonelyplanet.com> will receive a 20% discount.

The above offer is valid from 1 February 2006 to 30 April 2006.

Other terms and conditions:

Not available in conjunction with any other offers. Discount does not apply to delivery charges. Excludes gift certificates and product alerts.

Heart Foundation

- (k) Heart Foundation is the New South Wales division of the independent, Australia-wide, non-profit health organisation funded almost entirely by Australians. The Heart Foundation's purpose is to improve the heart health of Australians and to reduce disability and death from heart, stroke and blood vessel disease. As part of its fundraising, the Heart Foundation retail a number of products. The offer proposed to be made to MPL members by Heart Foundation is as follows:

- (i) MPL members who purchase a Heart Foundation branded pedometer will receive a discount off the normal price (\$39.95 including postage instead of RRP \$49.95 excluding postage).

The above offer is valid from 1 February 2006 to 31 May 2006.

Other terms and conditions:

Payments can only be made by credit card.

Neverfail

- (l) Neverfail is a subsidiary of Coca-Cola Amatil, which retails a wide range of spring water products and accessories, for both personal and corporate use. The offer proposed to be made to MPL members by Neverfail is as follows:

- (i) MPL members who rent a Neverfail water cooler will receive \$30 off their annual rental, plus 3 bottles of spring water free on their first delivery (normally \$10.40 each).

The above offer is valid from 1 February 2006 to 31 December 2006.

Other terms and conditions:

Offer is for new cooler clients only. Minimum rental period is for 1 year. Coolers come in white freestanding, stainless steel freestanding and grey freestanding and white bench top only. Not available in the ACT, Tasmania and the Northern Territory.

One on One

- (m) One on One is a small, independently owned Melbourne based personal training business offering both individual and group training options. The offer proposed to be made to MPL members by One on One is as follows:

- (i) MPL members who purchase two personal training sessions receive a third session free.

The above offer is valid from 1 February 2006 to 30 April 2006.

Other terms and conditions:

Offer only available to new clients of One on One and are valid only for individual training sessions. Each MPL member can only redeem the offer once. Offer cannot be used in conjunction with any other offer.

Primus

- (n) Primus is a telecommunications carrier that provides a range of telecommunications services and related services in Australia including fixed line telephony services (local,

national and international), mobile telephony services and internet services. The offer proposed to be made to MPL members by Primus is as follows:

- (i) MPL members who commit to at least a 12 month contract on one of Primus' plans and remain MPL members during that time, receive a:
 - (A) 2.5% discount each month for the Primus One Broadband Plan or the Primus One Plan; and
 - (B) 5% discount each month for any other services provided by Primus, excluding any services which are available under the Primus One product range.

MPL members who are new Primus customers will also receive a one off initial \$25 credit on their account.

The above offers are valid from 1 February 2006 to 30 April 2006.

Other terms and conditions:

Primus' standard plan terms and conditions apply.

Rottnest Express

- (o) Rottnest Express operates ferry cruises and package tours to Rottenest Island departing from Perth and Fremantle. The offer proposed to be made to MPL members by Rottnest Express is as follows:

- (i) MPL members who book with Rottnest Express will receive 15% off adult same day return fares to Rottnest Island (departing from Perth or Fremantle).

The above offer is valid from 1 February 2006 to 30 November 2006.

Other terms and conditions:

Discount excludes Rottnest Island landing fee. Maximum of 2 tickets per booking. Offer is subject to availability and cannot be used in conjunction with any other offer.

Savoy

- (p) Savoy operates a health and day spa facility in Hobart, offering a number of therapeutic and recreational health services. The offer proposed to be made to MPL members by Savoy is as follows:

- (i) MPL members who purchase any remedial massage receive one complimentary 'Float Bubble & Steam' therapeutic baths entry.

The above offer is valid from 1 February 2006 to 31 December 2006.

Other terms and conditions:

Remedial massage cannot be purchased with gift voucher or any other coupon. Offer cannot be redeemed in conjunction with any other offer.

3. Characterisation of the proposed conduct

- 3.1 The proposed conduct by the Suppliers (and MPL as a party knowingly concerned) could be characterised as contravening sections 47(6) and (7) of the TPA in so far as the respective Suppliers 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 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 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

4.1 In broad terms, it is submitted that the markets primarily relevant to the assessment of this notification are the Supplier markets set out as follows:

- (a) Geographically localised markets on the south west coast of Western Australia for the supply of cruise and other tour package services.
- (b) The Victorian market for the supply of attendance based sporting and other entertainment events memberships.
- (c) The Australian and/or State and Territory based markets for the supply of first aid related training services and first aid products to consumers.
- (d) The Victorian, Queensland and Tasmanian markets for the supply of gymnasium and fitness club membership.
- (e) The Australian and/or State and Territory based markets for the supply of magazines.
- (f) The Australian and/or State and Territory based markets for the supply of sunglasses.
- (g) The Australian market for the supply of tour and holiday packages.
- (h) The Australian and/or State and Territory based markets for the supply of health product supplements.
- (i) The Australian and/or State and Territory based markets for the supply of travel related literature and associated products.
- (j) The Australian and/or State and Territory based markets for the supply of pedometers and other health activity related measuring devices.
- (k) The Australian and/or State and Territory based markets for the supply of non-alcoholic beverages.
- (l) The market for the supply of personal training services in Melbourne.
- (m) The Australian and/or State and Territory based markets for the supply of telecommunication services.
- (n) The market for the supply of health and therapeutic services in Hobart.

4.2 Also relevant is the Australian market for the supply of private health insurance services to consumers (as the third party supply upon which the discount, allowance, rebate or credit offered by the Suppliers is conditional).

4.3 Each of the markets referred to in paragraph 4.1 are very competitive and the Suppliers compete vigorously for customers in their respective markets. The proposed conduct provides typical examples of competitive offers made by the Suppliers in all of their respective markets. In relation to MPL, there are a large number of registered health benefits organisations in Australia that offer vigorous competition to MPL in relation to the range of health insurance products offered by MPL.

- 4.4 It is also arguable that broader market definitions may be applicable in the case of some of the above markets, thereby further diminishing the potential effect of anti-competitive conduct in those markets.

Public detriment

- 4.5 The notified conduct will have little, if any, public detriment because consumers will be free to purchase the Suppliers' products and/or services at regular competitive prices, irrespective of whether the consumer chooses to acquire goods or services from MPL. The full terms and conditions of the proposed offers will be made available to MPL members prior to or at the time of sale of the goods and/or 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 on the relevant markets.

Public benefit

- 4.7 The proposed conduct is pro-competitive and offers significant benefits to the public for the following reasons:
- (a) Consumers will be offered a benefit in the form of complimentary or discounted goods or services supplied by the Suppliers;
 - (b) The Supplier offers will encourage competitors of the Suppliers to offer similar complimentary or discounted goods or services to consumers, thereby promoting competition in their respective markets;
 - (c) The Supplier offers will encourage competitors of MPL to offer similar benefits to the public in relation to the supply of their health insurance products; and
 - (d) The offers will offer attractive lifestyle benefits to consumers.

5. Conclusion

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