

FILE NO.
DATE
MANUSCRIPT NO.

BUPA
Australia

BUPA Australia Health Pty Ltd
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Melbourne Victoria 3001

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13 January 2006

General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Sir or Madam

Notification of third line forcing –BUPA Australia & Agama Yoga Centre

BUPA Australia Health Pty Ltd ABN 50 003 098 655 (“**BUPA Australia**”) has negotiated an arrangement with Barbara Brian Middle Park Yoga (trading as Agama Yoga Centre) ABN 79 608 430 206 (“**Agama Yoga Centre**”). Under this arrangement, Agama Yoga Centre offers a discount when supplying products to customers who have taken out health insurance with BUPA Australia.

It is arguable that this may involve a contravention of section 47 of the *Trade Practices Act 1974 (Cth)*. As a result, we enclose for your consideration:

- (1) a Form G notification on behalf of the Agama Yoga Centre;
- (2) a submission made by BUPA Australia on behalf of Agama Yoga Centre supporting the Form G notification - highlighting the public benefit associated with the proposal and the absence of any misuse of market power;
- (3) a cheque for \$100 as payment for lodging fees (on the basis that the person lodging this notification is an individual); and
- (4) a written consent from Agama Yoga Centre consenting to BUPA Australia lodging the Form G notification on Agama Yoga Centre’s behalf.

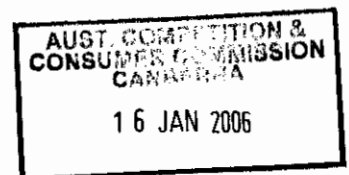
We would appreciate it if you would copy us in on any response you provide to Agama Yoga Centre.

If you have any questions in relation to this notification, please feel free to contact me.

Yours sincerely,

Emma Zipper

Emma Zipper
Head of Legal
BUPA Australia



FORM G**COMMONWEALTH OF AUSTRALIA**

Trade Practices Act 1974 – Subsection 93(1)

**EXCLUSIVE DEALING
NOTIFICATION**

To the Australian Competition & 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 the Act in which the person giving notice engaged or proposes to engage.

1. (a) **Name of person giving notice:**
Barbara Brian Middle Park Yoga (trading as Agama Yoga Centre) ABN 79 608 430 206 (“**Agama Yoga Centre**”).
- (b) **Short description of business carried on by that person**
Agama Yoga Centre offers yoga services
- (c) **Address in Australia for service of documents on that person**
C/- Barbara Brian
Director
Agama Yoga Centre
216 Richardson Street
Middle Park VIC 3206
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates**
Yoga services
- (b) **Description of the conduct or proposed conduct**
Agama Yoga Centre proposes to offer members of BUPA Australia Health Pty Ltd (ABN 50 003 098 655) (“**BUPA Australia**”) discounts off various products and services from time to time. Please refer to the attached submission for further details.
3. (a) **Class or classes of persons to which the conduct relates**
Consumers who are members of BUPA Australia in Victoria.
- (b) **Number of those persons**
 - (i) At the present time – approximately 250,000 memberships; and
 - (ii) It is estimated that up to 2500 memberships could take advantage of the offer within the next year.

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

Not applicable as the number of persons stated in item 3(b)(i) is greater than 50

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

C/- Barbara Brian
Director
Agama Yoga Centre
216 Richardson Street
Middle Park VIC 3206

**SUBMISSION BY BUPA AUSTRALIA HEALTH PTY LTD
("BUPA AUSTRALIA")
IN SUPPORT OF NOTIFICATION UNDER SECTION 93
OF THE TRADE PRACTICES ACT 1974**

This submission is made by BUPA Australia on behalf of Agama Yoga Centre and supports the Form G notification attached.

1. Overview of proposed conduct

- 1.1 BUPA Australia is a registered health benefits organisation, conducting a health insurance business in Australia under the National Health Act 1953 (Cth).
- 1.2 Agama Yoga Centre is a centre dedicated to teaching yoga in its holistic sense. Individual needs and abilities are respected and a wide range of classes are offered, both in groups and individually for promoting health and well being of body, mind and spirit.
- 1.3 BUPA Australia has negotiated an arrangement with Agama Yoga Centre. Under this arrangement, Agama Yoga Centre offers a discount when supplying products to BUPA Australia members (ie those who have health insurance with BUPA Australia).
- 1.4 This conduct by Agama Yoga Centre is arguably a contravention of sections 47(6) and (7) of the Trade Practices Act 1974 (Cth) if Agama Yoga Centre is considered to be:
- (a) giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of good or services to consumers on the condition that those consumers take out private health insurance with BUPA Australia; 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 those consumers have not acquired or have not agreed to acquire private health insurance from BUPA Australia.

2. Details of offer

The table below sets out the details of the offer.

Business/Product	Description of offer
Offers yoga services	Members in Victoria will receive a personalised yoga practice of 3 sessions for \$60 (usually \$120).

3. Products and services

We consider the relevant products and services to which this notification relates are:

- yoga services; and
- private health insurance.

4. Public Benefit

The proposed conduct of Agama Yoga Centre offers significant benefits to the public because:

- the discount make the services more affordable and better value for consumers;
- the conduct motivates competitors to offer similar benefits and discounts and therefore increases competition in the products and services. In many cases, similar bundled offers are already being made available by competitors; and
- the offers provide appealing lifestyle choices to consumers.

5. Competitive effects

5.1 The proposed conduct will have no detrimental effects on competition. Competition for each of the product and services is strong and there is a wide range of companies competing for business on an equal footing. Agama Yoga Centre does not have a substantial degree of market power.

5.2 The offer in no way limits the choice of consumers because:

- Agama Yoga Centre will continue to offer its products and services to consumers at the regular price, regardless of whether or not the consumers become BUPA Australia members; and
- consumers are free to purchase retail products from other competing suppliers under similarly competitive offers.

6. Conclusion

For the reasons set out above, we believe the Commission should not serve a notice under section 93 of the TPA in respect of the attached notifications. This is because the conduct will cause no detriment and will generate tangible public benefits.

5 December 2005

Emma Zipper
Head of Legal
BUPA Australia Health Pty Ltd
600 Glenferrie Road
HAWTHORN VIC 3122

Dear Emma

Consent to notification of third line forcing – BUPA Australia & Agama Yoga Centre

We acknowledge that an arrangement between BUPA Australia Health Pty Ltd ABN 50 003 098 655 (“**BUPA Australia**”) and Barbara Brian Middle Park Yoga (trading as Agama Yoga Centre) ABN 79 608 430 206 (“**Agama Yoga Centre**”) may be considered a contravention of section 47 of the *Trade Practices Act 1974 (Cth)*.

In particular, the arrangement involves Agama Yoga Centre offering a discount when supplying products to customers who have taken out private health insurance with BUPA Australia.

As a result, we consent to BUPA Australia lodging with the ACCC, on our behalf:

- (1) a Form G notification; and
- (2) a submission made by BUPA Australia on behalf of Agama Yoga Centre supporting the Form G notification - highlighting the public benefit associated with the proposal and the absence of any misuse of market power,

in the form attached.

We also agree to BUPA Australia providing a copy of this letter to the ACCC as evidence Agama Yoga Centre’s consent to BUPA Australia lodging the Form G notification on Agama Yoga Centre’s behalf.

Yours sincerely,



Barbara Brian
Director
Agama Yoga Centre