

18 January 2006

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

FILE No:

DOC:

MARS/PRISM:

Dear Sir or Madam

**Notification of third line forcing –BUPA Australia & Yogababy Pty Ltd**

BUPA Australia Health Pty Ltd ABN 50 003 098 655 (“**BUPA Australia**”) has negotiated an arrangement with Yogababy Pty Ltd ABN 39 106 683 863 (“**Yogababy**”). Under this arrangement, Yogababy offers a discount when supplying products to customers who have taken out health insurance with BUPA Australia.

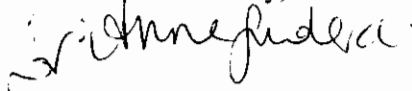
It is arguable that this may involve a contravention of section 47 of the *Trade Practices Act 1974 (Cth)*. As a result, we enclose for your consideration:

- (1) a Form G notification on behalf of the Yogababy;
- (2) a submission made by BUPA Australia on behalf of Yogababy 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; and
- (4) a written consent from Yogababy consenting to BUPA Australia lodging the Form G notification on Yogababy’s behalf.

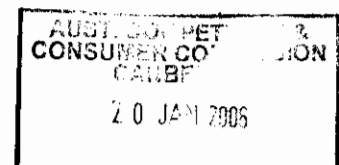
We would appreciate it if you would copy us in on any response you provide to Yogababy.

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

Yours sincerely,



Emma Zipper  
Head of Legal  
BUPA Australia



N92323

**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:**

Yogababy Pty Ltd ABN 39 106 683 863 (“Yogababy”)

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

Yogababy offers yoga services

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

C/- Suzanne Swan  
Director  
Yogababy Pty Ltd  
PO Box 617  
Toowong QLD 4066

**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**

Yogababy 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 Queensland.

**(b) Number of those persons**

- (i) At the present time – approximately 18,000 memberships; and
- (ii) It is estimated that up to 500 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/- Suzanne Swan  
Director  
Yogababy Pty Ltd  
PO Box 617  
Toowong QLD 4066

**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 Yogababy 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 Yogababy is a provider of pre-natal and post-natal yoga classes as well as child birth education and parenting workshops.
- 1.3 BUPA Australia has negotiated an arrangement with Yogababy. Under this arrangement, Yogababy offers a discount when supplying products to BUPA Australia members (ie those who have health insurance with BUPA Australia).
- 1.4 This conduct by Yogababy is arguably a contravention of sections 47(6) and (7) of the Trade Practices Act 1974 (Cth) if Yogababy 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.

<b>Business/Product</b>	<b>Description of offer</b>
Offers yoga services	Members in Queensland will receive a 10% discount off any class or workshop (members will need to book online via the Yogababy website to take advantage of the offer).

**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 Yogababy 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. Yogababy does not have a substantial degree of market power.

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

- Yogababy 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.

613 9937 4308

16 November 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 & Yogababy Pty Ltd**

We acknowledge that an arrangement between BUPA Australia Health Pty Ltd (ABN 50 003 098 655) ("BUPA Australia") and Yogababy Pty Ltd (ABN 39 106 683 863) ("Yogababy") may be considered a contravention of section 47 of the *Trade Practices Act 1974 (Cth)*.

In particular, the arrangement involves Yogababy 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 Yogababy 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 of Yogababy's consent to BUPA Australia lodging the Form G notification on Yogababy's behalf.

Yours sincerely,

 (DAINA ADAM, ADMINISTRATION OFFICER)

<sup>cc</sup> Suzanne Swan  
Director  
Yogababy Pty Ltd