



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2006/35
Contact Officer: Gavin Jones
Contact Phone: 03 9290 1475

6 February 2006

Ms Gladys Hu
Acting General Counsel
Medibank Private
GPO Box 9999
MELBOURNE VIC 3000

Dear Ms Hu

Re: Third line forcing notification N92308 lodged by Medibank Private Limited (MPL)

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 23 December 2005. The notification has been placed on the ACCC's public register.

MPL's has described the conduct as follows:

The proposed conduct by the suppliers (and MPL as a party knowingly concerned) could be characterised as contravening section 47(6) and (7) of the TPA in so far as the respective suppliers could be said to be:

- 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
- 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.

The Suppliers are: Anthony & Sons Pty Ltd trading as Oceanic Cruises; the Australian Football League; the Australian Red Cross Society; Belgravia Leisure Pty Ltd trading as Genesis Fitness Clubs; Blitz Publications Pty Ltd; Bolle Australia Pty Ltd; G R Franklin & T W Moore trading as All Aerobics; Great Aussie Holidays Pty Ltd; Green Valley Nutrition Pty Ltd; Lonely Planet Publications Pty Ltd; the National Heart Foundation of Australia; Neverfail Springwater Limited; One on One Personal



Trainers Pty Ltd; Primus Telecommunications Pty Ltd; Rottnest Express Pty Ltd; and the Trustee for a Molloy Family Trust trading as Savoy Baths and Day Spa.

Legal immunity conferred by the notification commenced on 6 January 2006.

On the basis of the information that you have provided, it is not intended that further action be taken in this matter at this stage.

Whilst it is not intended that further inquiries be made concerning the notified conduct, I would like to bring to your attention an issue arising from your notification.

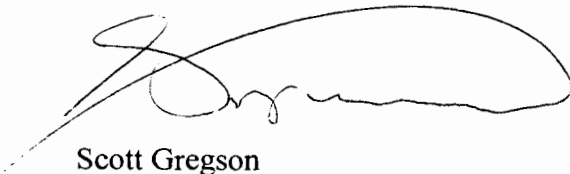
As you are aware, notification has the effect of affording immunity to the person notifying the conduct. On the basis of the information contained in your submission dated 23 December 2005, it would appear that the suppliers are actually engaging in conduct that may constitute third line forcing.

On the basis that the suppliers have not specifically notified under section 93 of the TPA, in my view there is some legal doubt as to whether the immunity afforded by the notification extends to the suppliers. The suppliers may therefore wish to consider whether they need to lodge separate notifications. I would request that you advise the suppliers of this.

As with any notification, please note that the ACCC may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Gavin Jones on 03 9290 1475.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', written over a horizontal line.

Scott Gregson
General Manager
Adjudication Branch