

7 February 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 & Heart Shop

BUPA Australia Health Pty Ltd ABN 50 003 098 655 (“**BUPA Australia**”) has negotiated an arrangement with Heart Shop Pty Ltd ABN 96 104 077 938 (“**Heart Shop**”). Under this arrangement, Heart Shop 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 Heart Shop;
- (2) a submission made by BUPA Australia on behalf of Heart Shop 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 Heart Shop consenting to BUPA Australia lodging the Form G notification on Heart Shop’s behalf.

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

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

Yours sincerely,


for: 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:**
Heart Shop Pty Ltd ABN 96 104 077 938 (“**Heart Shop**”)
- (b) **Short description of business carried on by that person**
Heart Shop offers cardiac health products and resources
- (c) **Address in Australia for service of documents on that person**
C/- Barbara Deed
Owner
Heart Shop Pty Ltd
309 Pulteney Street
Adelaide SA 5000
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates**
Cardiac health products and resources
- (b) **Description of the conduct or proposed conduct**
Heart Shop 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, New South Wales, Queensland, South Australia, Tasmania, Western Australia and Northern Territory
- (b) **Number of those persons**
 - (i) At the present time – approximately 461,000 memberships; and

(ii) It is estimated that up to 2,500 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/- Barbara Deed
Owner
Heart Shop Pty Ltd
309 Pulteney Street
Adelaide SA 5000

**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 Heart Shop 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 Heart Shop is a specialist retail concept, providing products and resources which assist in addressing and monitoring the known risk factors in cardiac health.
- 1.3 BUPA Australia has negotiated an arrangement with Heart Shop. Under this arrangement, Heart Shop offers a discount when supplying products to BUPA Australia members (ie those who have health insurance with BUPA Australia).
- 1.4 This conduct by Heart Shop is arguably a contravention of sections 47(6) and (7) of the Trade Practices Act 1974 (Cth) if Heart Shop 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 cardiac health products and resources	Members in Victoria, New South Wales, Queensland, South Australia, Tasmania, Western Australia and Northern Territory will receive a 10% discount off any Heart Shop product.

3. Products and services

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

- cardiac health products and resources; and
- private health insurance.

4. Public Benefit

The proposed conduct of Heart Shop 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. Heart Shop does not have a substantial degree of market power.

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

- Heart Shop 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.



the heart shop

www.heartshop.com.au

2 February 2006

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 & Heart Shop Pty Ltd

We acknowledge that an arrangement between BUPA Australia Health Pty Ltd ABN 50 003 098 655 (“**BUPA Australia**”) and Heart Shop Pty Ltd ABN 96 104 077 938 (“**Heart Shop**”) may be considered a contravention of section 47 of the *Trade Practices Act 1974 (Cth)*.

In particular, the arrangement involves Heart Shop 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 Heart Shop 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 Heart Shop’s consent to BUPA Australia lodging the Form G notification on Heart Shop’s behalf.

Yours sincerely,

Barbara Deed
Owner
Heart Shop Pty Ltd