

20 December 2006

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

BUPA Australia Health Pty Ltd
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FILE No:

DOC:

MARS/PRISM:

Dear Sir or Madam

Notification of third line forcing –BUPA Australia & Laser Sight

BUPA Australia Health Pty Ltd ABN 50 003 098 655 (“**BUPA Australia**”) has negotiated an arrangement with Laser Sight Centres Australasia Pty Ltd ABN 82 071 212 498 (“**Laser Sight**”). Under this arrangement, Laser Sight 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:

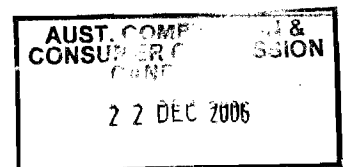
- (1) a Form G notification on behalf of Laser Sight;
- (2) a submission made by BUPA Australia on behalf of Laser Sight supporting the Form G notification - highlighting the public benefit associated with the proposal and the absence of any misuse of market power;
- (3) a cheque for \$100 as payment for lodging fees; and
- (4) a written consent from Laser Sight consenting to BUPA Australia lodging the Form G notification on Laser Sight's behalf.

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

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**

N92747

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:

Laser Sight Centres Australasia Pty Ltd ABN 82 071 212 498 (“**Laser Sight**”)

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

Laser Sight offers laser vision corrective surgery

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

C/- Dr William J Ardrey
President
Laser Sight Centres Australasia Pty Ltd
Level 1, Corner Esplanade & Second Ave,
Maroochydore QLD 4558

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates

Laser vision corrective surgery

(b) Description of the conduct or proposed conduct

Laser Sight proposes to offer members of BUPA Australia Health Pty Ltd (ABN 50 003 098 655) (“**BUPA Australia**”) discounts off its products 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 (excluding members on Ultimate Health Cover)

(b) Number of those persons

(i) At the present time – approximately 487,686 memberships; and

(ii) It is estimated that up to 4876 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/- Dr William J Ardrey
President
Laser Sight Centres Australasia Pty Ltd
Level 1, Corner Esplanade & Second Ave,
Maroochydore QLD 4558

**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 Laser Sight 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 Laser Sight offers laser vision corrective surgery designed to eliminate or reduce the need for glasses or contact lenses.
- 1.3 BUPA Australia has negotiated an arrangement with Laser Sight. Under this arrangement, Laser Sight offers a discount when supplying products to BUPA Australia members (ie those who have health insurance with BUPA Australia).
- 1.4 This conduct by Laser Sight is arguably a contravention of sections 47(6) and (7) of the Trade Practices Act 1974 (Cth) if Laser Sight 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 laser vision corrective surgery	Members will be entitled to receive a \$250 discount per eye on the cost of laser eye correction surgery. This offer is not available to members on Ultimate Health Cover.

3. Products and services

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

- laser vision corrective surgery; and
- private health insurance.

4. Public Benefit

The proposed conduct of Laser Sight offers significant benefits to the public because:

- the discount make the services and products 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; and
- the offer provides 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 are other companies competing for business on an equal footing. Laser Sight does not have a substantial degree of market power.

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

- Laser Sight 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.

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.

LaserSight Memorandum

18 December 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 & Laser Sight Centres Australasia

We acknowledge that an arrangement between BUPA Australia Health Pty Ltd ABN 50 003 098 655 (“**BUPA Australia**”) and Laser Sight Centres Australasia Pty Ltd ABN 82 071 212 498 (“**Laser Sight**”) may be considered a contravention of section 47 of the *Trade Practices Act 1974 (Cth)*.

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

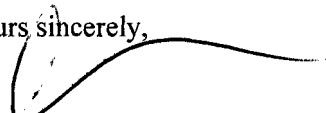
As a result, we consent to BUPA Australia lodging with the ACCC, on our behalf:

- (1) a Form G notification; and
- (2) a submission made by BUPA Australia on behalf of Laser Sight 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 Laser Sight's consent to BUPA Australia lodging the Form G notification on Laser Sight's behalf.

Yours sincerely,



Dr William J Ardrey
President
Laser Sight Centres Australasia Pty Ltd