



Form G

Commonwealth of Australia
Trade Practices Act 1974 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) **Name of person giving notice:**
(Refer to direction 2)

N92858

The Athlete's Foot Australia Pty Limited ACN 001 777 582 of Unit 7, 29-31 Bridge Road, Stanmore NSW 2048 (**The Athlete's Foot**)

- (b) **Short description of business carried on by that person:**
(Refer to direction 3)

The Athlete's Foot is a retail supplier of sporting footwear and accessories from outlets located in Australia and New Zealand.

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

The Athlete's Foot Australia Pty Limited, Unit 7, 29-31 Bridge Road, Stanmore NSW 2048.

2. Notified arrangement

- (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

Retail sporting footwear and accessories.
Private health insurance.

- (b) **Description of the conduct or proposed conduct:**
(Refer to direction 4)

NIB Health Funds Limited (**NIB**) is a registered health benefits organisation under the *National Health Act 1953* (Cth) and provides private health insurance services.

The Athlete's Foot proposes to offer to new NIB members who join any combined hospital and extras package a \$100 discount on the purchase of footwear and accessories at The Athlete's Foot upon presentation of the \$100 gift card supplied to the new member from NIB (**Promotion**). The offer will be made from time to time from 1 April 2007 to 31 December 2007.

Example of the proposed conduct

If a consumer wishes to participate in the Promotion, the consumer must acquire a combined hospital and extras health insurance cover from NIB within the time frame of the terms of the Promotion from time to time. Only then will the consumer receive, as a once only new membership benefit, a \$100 discount on footwear and accessories from The Athlete's Foot in the form of a \$100 Gift Card that has been supplied by NIB.

The proposed conduct by The Athlete's Foot could be characterised as contravening sections 46(6) and 46(7) of the *Trade Practices Act 1974* (Cth) as The Athlete's Foot could be said to be:

- (1) giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of retail sporting footwear and accessories to consumers by The Athlete's Foot on the condition that the consumers acquire private health insurance from NIB; and/or
- (2) refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of retail sporting footwear and accessories to consumers for the reason that the consumers have not acquired or have not agreed to acquire private health insurance from NIB.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) Class or classes of persons to which the conduct relates: (Refer to direction 5)

Consumers wishing to acquire retail sporting footwear and accessories.

Consumers wishing to acquire health insurance.

(b) Number of those persons:

(i) At present time:

Substantially in excess of 50.

(ii) Estimated within the next year: (Refer to direction 6)

Substantially in excess of 50.

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

Not applicable

4. Public benefit claims

(a) Arguments in support of notification:
(Refer to direction 7)

The proposed conduct will benefit the public as it will:

- (1) reduce costs for persons seeking to purchase quality sporting footwear and/or accessories;
- (2) promote competition in the sports clothing, footwear and accessories market(s) by encouraging suppliers of sports clothing, footwear and accessories to offer similar discounted goods or services; and
- (3) promote competition in the health insurance market by encouraging other health insurance providers to offer similar benefits to consumers in the supply of their health insurance products.

(b) Facts and evidence relied upon in support of these claims:

There are a number of alternative suppliers in the markets for retail sporting footwear and accessories, and health insurance. Both markets are highly competitive and the Promotion will not diminish this. There is no obligation on NIB health insurance customers to shop at The Athlete's Foot. There is no effect on the level of health cover which consumers may obtain under the Promotion.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 8)

The relevant markets in which the Promotion is offered are:

- (1) State and Territory based markets for the supply of retail sporting footwear and accessories; and
- (2) the Australian market for the supply of private health insurance.

Both of the markets referred to above are highly competitive. This is because suppliers in those markets compete vigorously and frequently for customers in their respective markets, including by competitive offers, incentives and promotions from time to time. The Promotion is an example of such conduct.

In relation to Athlete's Foot, there are a large number of suppliers of sporting footwear and accessories that offer vigorous competition to The Athlete's Foot in relation to the supply of sporting footwear and accessories.

It is also arguable that broader market definitions may be applicable in the case of both the above markets, thereby diminishing the potential effect of anti-competitive conduct in those markets.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:**
(Refer to direction 9)

The proposed conduct will have little, if any, public detriment as:

- (1) competition in the relevant markets is vigorous and there are many competitors;
- (2) new NIB members are under no obligation to acquire selected sporting footwear and accessories at a discounted price from The Athlete's Foot and the level of health cover is not affected by a member's decision whether or not to obtain sporting footwear and/or accessories from The Athlete's Foot; and
- (3) consumers are free to purchase sporting footwear and accessories from The Athlete's Foot at regular competitive prices, irrespective of whether the consumer chooses to acquire private health insurance from NIB.

Therefore, The Athlete's Foot considers that the proposed conduct will not have an anti-competitive effect in the relevant markets.

- (b) Facts and evidence relevant to these detriments:**

A consumer will assess a range of other factors before they determine what products are suitable for them. Consumers can choose to obtain retail sporting footwear and accessories or health insurance from the number of other suppliers in the market.

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:**

Lea Collins
Promotions Manager
The Athlete's Foot
Unit 7, 29 Bridge Road
Stanmore NSW 2048
Phone: [insert] 0404 629 014

Dated... 15/3/07
Signed by/on behalf of the applicant



Lea Collins
The Athlete's Foot
Promotions Manager

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.

3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.

4. If particulars of a condition or of a reason of the type referred to in section 47 of the Trade Practices Act 1974 have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.

5. Describe the business or consumers likely to be affected by the conduct.

6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.

8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.

9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.