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FORM G

Regulation 9

[Front of Form]

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 – Sub-section 93(1)

EXCLUSIVE DEALING NOTIFICATION

To the Australian Competition and 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 that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice
Pacific Optical Pty Limited (POPL)
- (b) Short description of business carried on by that person
POPL will own and operate four Eyecare Centres which are involved in providing optometry and optical dispensing services.
- (c) Address in Australia for service of documents on that person
**c/- Michael Gray
Freehills
Level 32, MLC Centre
Martin Place
Sydney NSW 2000**
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
(i) Retail eye care products including spectacles, contact lens and sunglasses.
(ii) Health insurance
- (b) Description of the conduct or proposed conduct
POPL proposes to supply retail eye care products at a discount (which may be a percentage discount, cash back offer or discount if more than one product is purchased) to customers on condition that customers are members of NIB (ie acquire private health insurance from NIB). This has been partly reduced to writing in clause 2.7 of schedule 3 of the Relationship and Marketing Agreement between POPL and NIB. A copy of this clause is attached.
3. (a) Class or classes of persons to which the conduct relates
Persons who have private health insurance cover with NIB (NIB members)
- (b) Number of those persons-
 - (i) At present time
Approximately 622,000
 - (ii) Estimated within the next year
An additional 20,000
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses
The number of persons is greater than 50

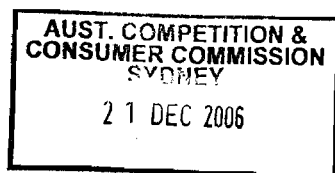
AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY

21 DEC 2006

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice

Michael Gray
Freehills
Level 32, MLC Centre
Martin Place
Sydney NSW 2000

Dated..... 20 December, 2006



Signed by/on behalf of the applicant giving notice

.....
(Signature)

..... Michael Gray

(Full Name)

..... Partner, Freehills

(Description)

[Back of Form]

DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice
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. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) 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. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act* 1974 ("the Act"), it comes into force at the end of the period prescribed for the purposes of sub-section 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under sub-section 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

Pacific Optical Exclusive dealing notification Submission

1 Notification

This submission accompanies the Form G Exclusive Dealing notification given by Pacific Optical Pty Limited (POPL) to the Australian Competition and Consumer Commission (ACCC).

This submission has been prepared to assist the ACCC in its consideration of the notification. POPL can provide any further information the ACCC requires.

2 Background to POPL

POPL is entering into a business purchase agreement to acquire four eye care centres from NIB Health Care Services Pty Ltd, a subsidiary of NIB Health Funds Ltd (a registered organization under the *National Health Act 1953* (Cth)).

After completion of the acquisition, POPL will own and operate these four eye care centres as "NIB Eyecare Centres" using NIB's trade mark and business name. At a later date, POPL and NIB may establish additional eye care centres to be owned and operated by POPL but branded under the NIB trade mark and business name.

3 Proposed conduct

POPL proposes to supply retail eye care products at a discount (which may be a percentage discount, cash back offer or discount if more than one product is purchased) to customers at the NIB branded eyecare centres on condition that those customers are members of NIB (ie acquire private health insurance from NIB).

4 Benefit and detriment

POPL considers that the proposed conduct will result in the following benefits to the public:

- the conduct will enhance competition in the retail eye care product market by providing a price discount which would not be otherwise available; and
- consumers will have a greater choice in discounted products and because of the discount potentially access to a greater range of products.

POPL considers that the proposed conduct is unlikely to result in any detriment to the public.

Clause 25 of the Relationship and Marketing Agreement

25.1 Acknowledgement

- (a) The parties acknowledge that the following provisions of this agreement may amount to an “exclusive dealing” under section 47(6) and/or 47(7) of the TP Act:
- (1) clause 9 of schedule 2;
 - (2) clauses 2.7(a) and 2.7(b) of schedule 3; and
 - (3) clause 5 of schedule 4.
- (b) Until such time as the parties have the protection afforded by notification under clauses 25.2(a), 25.3(a) and 25.4(a), the parties must not comply with the provisions the subject of the notifications.

25.2 POPL’s notification

- (a) Subject to POPL obtaining the prior written consent of the NIB Parties (which must not be unreasonably withheld or delayed) to the form of notice to be given under this clause, POPL must, in accordance with section 93 of the TP Act, give notice to the ACCC of the proposed conduct as described in clauses 2.7(a) and 2.7(b) of schedule 3.
- (b) If the ACCC withdraws the protection afforded by notification under clause 25.2(a) by giving a notice under section 93(3A) of the TP Act, clauses 2.7(a) and 2.7(b) of schedule 3 will be deemed immediately to be amended or deleted (as the case may be).
- (c) POPL will give to the NIB Parties a copy of each notice provided to and received from the ACCC by POPL under this clause 25.2 within 5 Business Days after the relevant notice is provided or received by POPL, as the case may be.
- (d) The NIB Parties will use their best endeavours to assist POPL to obtain notification protection for clauses 2.7(a) and 2.7(b) of schedule 3 to which section 47(6) and/or 47(7) of the TP Act may apply including providing reasonable assistance to POPL in preparing and arguing any submissions made or to be made at any conference held under the TP Act and/or any review held under the TP Act or any other communications to be made with the ACCC.
- (e) POPL will not be liable to the NIB Parties in any manner whatsoever if:
- (1) any notification given under clause 25.2(a) by POPL is held by the ACCC, the Australian Competition Tribunal or any Court to be invalid or improperly given; or
 - (2) clauses 2.7(a) and 2.7(b) of schedule 3 do not acquire protection following notification by POPL under clause 25.2(a).

25.3 PSG’s notification

- (a) Subject to PSG obtaining the prior written consent of NIB (which must not be unreasonably withheld or delayed) to the form of notice to be given under this clause,

PSG must, in accordance with section 93 of the TP Act, give notice to the ACCC of the proposed conduct as described in clause 9 of schedule 2 and clause 5 of schedule 4.

- (b) If the ACCC withdraws the protection afforded by notification under clause 25.3(a) by giving a notice under section 93(3A) of the TP Act:
 - (1) clause 9 of schedule 2 will be deemed to be immediately amended or deleted (as the case may be); and
 - (2) clause 5 of schedule 4 will be deemed to be immediately amended or deleted (as the case may be).
- (c) PSG will give to NIB a copy of each notice provided to and received from the ACCC by PSG under this clause 25.3 within 5 Business Days after the relevant notice is provided or received by NIB, as the case may be.
- (d) NIB will use its best endeavours to assist PSG to obtain notification protection for clause 9 of schedule 2 and clause 5 of schedule 4 to which section 47(6) and/or 47(7) of the TP Act may apply including providing reasonable assistance to NIB in preparing and arguing any submissions made or to be made at any conference held under the TP Act and/or any review held under the TP Act or any other communications to be made with the ACCC.
- (e) PSG will not be liable to NIB in any manner whatsoever if:
 - (1) any notification given under clause 25.3(a) by PSG is held by the ACCC, the Australian Competition Tribunal or any Court to be invalid or improperly given; or
 - (2) clause 9 of schedule 2 and clause 5 of schedule 4 do not acquire protection following notification by PSG under clause 25.3(a).

25.4 NIB's notification

- (a) Subject to NIB obtaining the prior written consent of the PSG Parties (which must not be unreasonably withheld or delayed) to the form of notice to be given under this clause, NIB must, in accordance with section 93 of the TP Act, give notice to the ACCC of the proposed conduct as described in clause 9 of schedule 2 and clause 5 of schedule 4.
- (b) If the ACCC withdraws the protection afforded by notification under clause 25.4(a) by giving a notice under section 93(3A) of the TP Act:
 - (1) clause 9 of schedule 2 will be deemed to be immediately amended or deleted (as the case may be); and
 - (2) clause 5 of schedule 4 will be deemed to be immediately amended or deleted (as the case may be).
- (c) NIB will give to the PSG Parties a copy of each notice provided to and received from the ACCC by NIB under this clause 25.4 within 5 Business Days after the relevant notice is provided or received by NIB, as the case may be.
- (d) The PSG Parties will use their best endeavours to assist NIB to obtain notification protection for clause 9 of schedule 2 and clause 5 of schedule 4 to which section 47(6) and/or 47(7) of the TP Act may apply including providing reasonable assistance to NIB in preparing and arguing any submissions made or to be made at any conference held under the TP Act and/or any review held under the TP Act or any other communications to be made with the ACCC.
- (e) NIB will not be liable to the PSG Parties in any manner whatsoever if:
 - (1) any notification given under clause 25.4(a) by NIB is held by the ACCC, the Australian Competition Tribunal or any Court to be invalid or improperly given; or

clause 9 of schedule 2 and clause 5 of schedule 4 do not acquire protection following notification by NIB under clause 25.4(a).

Clause 2.7 of schedule 3

2.7 Benefits for NIB Employees and NIB Members

- (a) Subject to clause 25 of the agreement and clause 2.7(c) of this schedule, during the Term, POPL must provide to NIB Employees a 20% discount off the list price for the Retail Products.
- (b) Subject to clause 25 of the agreement and clause 2.7(c) of this schedule, during the Term, POPL must provide to NIB Members with ancillary cover a 20% discount off the list price for the Retail Products.
- (c) The parties agree that the discounts to be offered by POPL under clauses 2.7(a) and 2.7(b) of this schedule do not apply in conjunction with any other offers or discounts offered by POPL from time to time.