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MARS/PRISM:

7 June 2007

General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Sir or Madam

Notification of third line forcing –BUPA Australia & Atkinson & Associates

BUPA Australia Health Pty Ltd ABN 50 003 098 655 (“**BUPA Australia**”) has negotiated an arrangement with Atkinson, Stephen A. ABN 44 254 549 099 trading as Atkinson & Associates (“**Atkinson & Associates**”). Under this arrangement, Atkinson & Associates offers a discount when supplying products to providers of ancillary services (namely dentists, physiotherapists and chiropractors) who are part of BUPA Australia’s Members First provider network.


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 Atkinson & Associates;
- (2) a submission made by BUPA Australia on behalf of Atkinson & Associates 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 Atkinson & Associates consenting to BUPA Australia lodging the Form G notification on Atkinson & Associates’ behalf.

We would appreciate it if you would copy us in on any response you provide to Atkinson & Associates.

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

**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 Atkinson & Associates and supports the Form G notification attached.

1. Overview of proposed conduct

- 1.1 BUPA Australia is a private health insurer, conducting a health insurance business in Australia under the Private Health Insurance Act 2007 (Cth).
- 1.2 Atkinson & Associates is a financial advisory business.
- 1.3 BUPA Australia has negotiated an arrangement with Atkinson & Associates. Under this arrangement, Atkinson & Associates offers a discount when supplying products to providers of ancillary services (namely dentists, physiotherapists and chiropractors) who are part of BUPA Australia’s Members First provider network.
- 1.4 This conduct by Atkinson & Associates is arguably a contravention of sections 47(6) and (7) of the Trade Practices Act 1974 (Cth) if Atkinson & Associates 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 providers of ancillary services on the condition that those providers of ancillary services are part of BUPA Australia’s Members First provider network; or
 - (b) refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of goods or services to providers of ancillary services for the reason that those providers of ancillary services have not agreed be are part of BUPA Australia’s Members First provider network.

2. Details of offer

The table below sets out the details of the offer.

Business/Product	Description of offer
Financial advisory services	Providers of ancillary services (namely dentists, physiotherapists and chiropractors) who are part of BUPA Australia’s Members First provider network will be entitled to receive: <ul style="list-style-type: none"> • a full risk insurance review for \$220 (including GST) instead of the standard price of \$660 (including GST); and • the first hour of consultation to discuss other financial planning aspects free instead of the standard price of \$165 (including GST) per hour.

3. Products and services

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

- financial advisory services; and
- private health insurance for ancillary services.

4. Public Benefit

The proposed conduct of Atkinson & Associates offers significant benefits to the public because:

- the discount make the financial advisory services more affordable and better value for providers of ancillary services; and
- the conduct motivates competitors to offer similar benefits and discounts and therefore increases competition in the products and services.

5. Detrimental / 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. Atkinson & Associates does not have a substantial degree of market power.

5.2 The offer in no way limits the choice of providers of ancillary services because:

- Atkinson & Associates will continue to offer its products and services to providers of ancillary services at the regular price, regardless of whether or not the providers of ancillary services become part of BUPA Australia's Members First provider network; and
- providers of ancillary services 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.

N92952

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:

Atkinson, Stephen A. ABN 44 254 549 099 trading as Atkinson & Associates (“**Atkinson & Associates**”)

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

Atkinson & Associates offers financial advisory services.

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

Mr Stephen Atkinson
Principal
Atkinson & Associates
1094 Doncaster Road
Doncaster East, Victoria

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

Financial advisory services

(b) Description of the conduct or proposed conduct

Atkinson & Associates proposes to offer providers of ancillary services (namely dentists, physiotherapists and chiropractors) who become part of BUPA Australia Health Pty Ltd’s (ABN 50 003 098 655) (“**BUPA Australia**”) Member’s First provider network 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

Providers of ancillary services (namely dentists, physiotherapists and chiropractors) who are part of BUPA Australia’s Members First provider network in Queensland, New South Wales, Victoria, South Australia, Western Australia and Northern Territory who purchase financial advisory services from Atkinson & Associates

(b) Number of those persons

- (i) At the present time – approximately 6000 providers of ancillary services are part of BUPA Australia’s Members First provider network; and
- (ii) It is estimated that up to 100 providers of ancillary services that are part of BUPA Australia’s Members First provider network 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. Public benefit claims

Please refer to the attached submission for arguments in support of notification.

5. Market definition – description of markets in which the relevant goods are supplied or acquired and other affected markets (including significant suppliers and acquirers, substitutes available, restrictions on the supply or acquisition of the relevant goods and services eg geographic or legal restrictions)

The relevant markets are the markets for the supply of financial advisory services and the market for provision of ancillary services (namely dentists, physiotherapists and chiropractors).

Competition in each of these markets is strong and competitive and there are other suppliers in both of these markets which compete for business on an equal footing. Atkinson & Associates is one of many suppliers of financial advisory services. Further, Atkinson & Associates does not have a substantial degree of market power.

6. Public detriments

Please refer to the attached submission.

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

Mr Stephen Atkinson
Principal
Atkinson & Associates
1094 Doncaster Road
Doncaster East, Victoria
Phone: (03) 9841 7751

Dated:

Signed by/on behalf on the applicant:

Signature:



Full name: Mr Stephen Atkinson
Organisation: Atkinson & Associates
Position: Principal



7 June 2007

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 and Atkinson & Associates

We acknowledge that an arrangement between BUPA Australia Health Pty Ltd ABN 50 003 098 655 (“**BUPA Australia**”) and Atkinson, Stephen A. ABN 44 254 549 099 trading as Atkinson & Associates (“**Atkinson & Associates**”) may be considered a contravention of section 47 of the *Trade Practices Act 1974 (Cth)*.

In particular, the arrangement involves Atkinson & Associates offering a discount when supplying products to providers of ancillary services (namely dentists, physiotherapists and chiropractors) whom are part of BUPA Australia’s Members First provider network.

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 Atkinson & Associates 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 Atkinson & Associates’ consent to BUPA Australia lodging the Form G notification on Atkinson & Associates’ behalf.

Yours sincerely,

Mr Stephen Atkinson
Principal/Financial Planner
Atkinson & Associates