



**Australian
Competition &
Consumer
Commission**

Our Ref: C2007/37
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25 January 2007

Mr James Stevenson
Partner
Sparke Helmore
PO Box 812
NEWCASTLE NSW 2300

Dear Mr Stevenson

**Third line forcing notifications lodged by The Athlete's Foot Australia Pty
Limited (N92742) and NIB Health Funds Limited (N92743)**

I refer to the above third line forcing notifications lodged with the Australian Competition and Consumer Commission (the ACCC) on 21 December 2006. The notifications have been placed on the ACCC's public register.

The notifying parties have described the conduct as follows:

N92742

The Athlete's Foot proposes to offer to new NIB members who join any combined hospital and extras package a \$100 credit on the purchase of footwear & accessories at The Athlete's Foot upon presentation of the \$100 Gift Card supplied to the new member from NIB. The offer is valid from 3 January 2007 to 31 January 2007.

N92743

NIB proposes to offer new members who join any combined hospital and extras package a \$100 credit on the purchase of footwear & accessories at The Athlete's Foot upon presentation of the \$100 Gift Card supplied to the new member from NIB. The offer is valid from 3 January 2007 to 31 January 2007.

Legal immunity conferred by the notifications came into force on 4 January 2007.

On the basis of the information that you have provided, it is not intended that further action be taken in this matter at this stage.



Whilst I have decided not to make further inquiries concerning the notified conduct, I would like to bring to your attention an issue arising from notification N92743 lodged by NIB.

As you are aware, Section 93(1) of the *Trade Practices Act 1974* provides that a corporation that engages, or proposes to engage, in conduct of a kind referred to in the relevant subsections of section 47 of the Act – in this case subsections 47(6) and 47(7) also known as third line forcing – may give notice to the ACCC setting out particular of the conduct.

The ACCC considers that there is some doubt whether NIB's conduct described in notification N92743 is conduct of a kind referred to in subsection 47(6) or 47(7) of the Act. In particular, it is unclear whether NIB is offering to supply services (or offering to give a discount in relation to the supply of those services) to new members on condition that they acquire products from The Athlete's Foot.

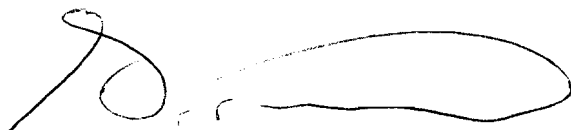
While I do not intend to consider this issue further on this occasion, should NIB propose to lodge similar notifications in the future, I encourage further clarification of the basis on which NIB may be engaging in conduct of a kind referred to in section 47.

As with any notification, please note that the ACCC may act to remove the immunity afforded by the notifications at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public.

A copy of this letter has been placed on the ACCC's public register.

If you wish to discuss any aspect of this matter, please feel free to contact Isabelle Arnaud on 02 6243 1049.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a long horizontal flourish extending to the right.

Scott Gregson
General Manager
Adjudication Branch