

FILE No:
DOC:
MARS/PRISM:

BUPA
Australia

17 October 2007

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

BUPA Australia Health Pty Ltd
National Head Office
PO Box 14639
Melbourne Victoria 3001

Tel +613 9937 4307
Fax +613 9937 4162
www.bupa.com.au

Dear Sir or Madam

Notification of third line forcing –BUPA Australia & Endota

BUPA Australia Health Pty Ltd ABN 50 003 098 655 (“**BUPA Australia**”) has negotiated an arrangement with Endota (No 1) Pty Ltd ABN 89 107 095 983 (“**Endota**”). Under this arrangement, Endota 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 Endota;
- (2) a submission made by BUPA Australia on behalf of Endota 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 Endota consenting to BUPA Australia lodging the Form G notification on Endota’s behalf.

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

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**

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:

Endota (No 1) Pty Ltd ABN 89 107 095 983 (“Endota”). *N93181*

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

Endota offers spa and relaxation services.

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

C/- Annie Glasson
Marketing Manager
Endota (No 1) Pty Ltd
32 Bells Blvd
Bells Beach 3228

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

Spa and relaxation services

(b) Description of the conduct or proposed conduct

Endota 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 South Australia, Queensland, New South Wales, Australian Capital Territory, Victoria and Tasmania

(b) Number of those persons

- (i) At the present time – approximately 497,000 memberships; and
- (ii) It is estimated that up to 1000 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. 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 spa and relaxation services and the market for provision of private health insurance. 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. Endota is one of many suppliers of spa and relaxation service. Further, Endota 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:

C/- Annie Glasson
Marketing Manager
Endota (No 1) Pty Ltd
32 Bells Blvd
Bells Beach 3228

Phone: (03) 5261 3666

Dated: 9-10-07

Signed by/on behalf on the applicant:

Signature: 

Full name: Annie Glasson
Organisation: Endota (No 1) Pty Ltd
Position: Marketing Manager

**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 Endota and supports the Form G notification attached.

1. Overview of proposed conduct

- 1.1 BUPA Australia is a private health insurer under the *Private Health Insurance Act 2007 (Cth)*.
- 1.2 Endota is a spa network which provides massage, body and face treatments.
- 1.3 BUPA Australia has negotiated an arrangement with Endota. Under this arrangement, Endota offers a discount when supplying products to BUPA Australia members (ie those who have health insurance with BUPA Australia).
- 1.4 This conduct by Endota is arguably a contravention of sections 47(6) and (7) of the Trade Practices Act 1974 (Cth) if Endota 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
A spa network which provides massage, body and face treatments	Members in South Australia, Queensland, New South Wales, Australian Capital Territory, Victoria and Tasmania who purchase an Endota spa treatment will be entitled to receive complimentary footbath valued at \$40. This offer is available from Monday to Fridays and is not available with any waxing treatment. Members must make bookings in advance and present their membership card upon arrival.

3. Products and services

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

- spa and relaxation services; and
- private health insurance.

4. Public Benefit

The proposed conduct of Endota 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. Endota does not have a substantial degree of market power.

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

- Endota 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.

9 October 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 & Endota

We acknowledge that an arrangement between BUPA Australia Health Pty Ltd ABN 50 003 098 655 (“**BUPA Australia**”) and Endota (No 1) Pty Ltd ABN 89 107 095 983 (“**Endota**”) may be considered a contravention of section 47 of the *Trade Practices Act 1974 (Cth)*.

In particular, the arrangement involves Endota 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 Endota 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 Endota’s consent to BUPA Australia lodging the Form G notification on Endota’s behalf.

Yours sincerely,



Annie Glasson
Marketing Manager
Endota (No 1) Pty Ltd