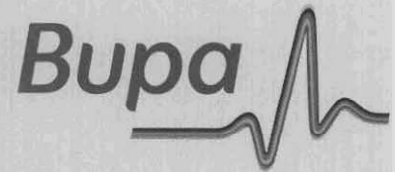


FILE No:

DOC: 029/25/24

MARS/PRISM:



6 March 2009

General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 3131
CANBERRA ACT 2601

Dear Sir or Madam

Notification of third line forcing –MBF Australia & Health Eyewear

MBF Australia Pty Ltd ABN 81 000 057 590 (“**MBF Australia**”) has negotiated an arrangement with Health Eyewear Pty Ltd ABN 24 126 819 154 trading as Blink Optical (“**Health Eyewear**”). Under this arrangement, Health Eyewear offers a discount when supplying products to customers who have taken out health insurance with MBF 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:

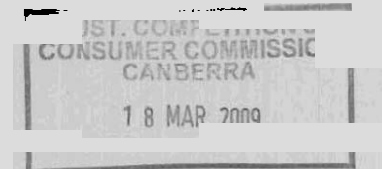
- (1) a Form G notification on behalf of Health Eyewear;
- (2) a submission made by MBF Australia on behalf of Health Eyewear supporting the Form G notification - highlighting the public benefit associated with the proposal and the absence of any misuse of market power;
- (3) a cheque for \$100 as payment for lodging fees; and
- (4) a written consent from Health Eyewear consenting to MBF Australia lodging the Form G notification on Health Eyewear’s behalf.

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

If you have any questions in relation to this notification, please feel free to contact me.

Yours sincerely,

Emma Zipper
General Counsel & Company Secretary
Bupa Australia Group
(comprising Bupa Australia Health Pty Ltd and MBF Australia Pty Ltd)



Sydney
Tel: (02) 9323 9500
GPO Box 9809 Sydney NSW 2001
MBF Australia Pty Ltd ABN 81 000 057 590

Melbourne
Tel: (03) 9937 3333
PO Box 14639 Melbourne VIC 8001
Bupa Australia Health Pty Ltd
ABN 50 003 098 655
Trading as HBA and Mutual Community

Printed on 100% recycled paper. 07794-07-085
MBFG 0432 07/08



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:**

Health Eyewear Pty Ltd ABN 24 126 819 154 (“Health Eyewear”).

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

Health Eyewear offers optical products and services.

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

Colin Kangisser
Chief Executive Officer
Health Eyewear Pty Ltd
Suite 4/16-18 Malvern Ave
Chatswood NSW 2067

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

Prescription glasses.

(b) **Description of the conduct or proposed conduct**

Health Eyewear proposes to offer customers of MBF Australia Pty Ltd ABN 81 000 057 590 (“MBF 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 customers of MBF Australia in NSW and reside within the Figtree or Paramatta area and in Victoria and reside within the Wantirna area.

(b) **Number of those persons**

(i) At the present time – approximately 35,000 customers.

(ii) It is estimated that up to 3,500 customers could take advantage of the offer before 31 June 2009.

N93892

(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 provision of optical services and the market for the 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 that compete for business on an equal footing. Health Eyewear is one of many providers of optical services. Further, Health Eyewear does not have a substantial degree of market power.

6. Public detriments

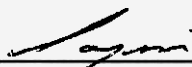
Please refer to the attached submission.

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

Colin Kangisser
Chief Executive Officer
Health Eyewear Pty Ltd
Suite 4/16-18 Malvern Ave
Chatswood NSW 2067
Ph: (02) 9411 4712
Fax: (02) 9411 4717

Dated:

Signed by/on behalf on the applicant:

Signature: 

Full name: COLIN KANGISSER

Organisation: Health Eyewear Pty Ltd ABN 24 126 819 154

Position: DIRECTOR

**SUBMISSION BY MBF AUSTRALIA PTY LTD
 (“MBF AUSTRALIA”)
 IN SUPPORT OF NOTIFICATION UNDER SECTION 93
 OF THE TRADE PRACTICES ACT 1974**

This submission is made by MBF Australia on behalf of Health Eyewear and supports the Form G notification attached.

1. Overview of proposed conduct

- 1.1 MBF Australia is a private health insurer under the Private Health Insurance Act 2007 (Cth).
- 1.2 Health Eyewear operates optical stores throughout Australia.
- 1.3 MBF Australia has negotiated an arrangement with Health Eyewear. Under this arrangement, Health Eyewear offers a discount when supplying products to MBF Australia customers (ie those who have health insurance with MBF Australia).
- 1.4 This conduct by Health Eyewear is arguably a contravention of sections 47(6) and (7) of the Trade Practices Act 1974 (Cth) if Health Eyewear 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 MBF 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 MBF Australia.

2. Details of offer

The table below sets out the details of the offer.

Business/Product	Description of offer
Prescription glasses	<p>When MBF customers:</p> <ul style="list-style-type: none"> • in New South Wales who reside in the Figtree or Paramatta areas; and • in Victoria who reside in the Wantirna area, <p>purchase any set of frames with prescription lenses they will be entitled to receive \$100 off the regular retail price. Offer is not available with any other offer or discount or redeemable for cash or credit.</p> <p>Offers must be redeemed a</p> <ul style="list-style-type: none"> • for Paramatta area customers, the Blink Optical store located at Shop 3085 Westfield Parramatta, Church St, Parramatta NSW;

Business/Product	Description of offer
	<ul style="list-style-type: none"> • for Figtree area customers, the Blink Optical store located at Shop 107 Westfield, Figtree; and • for Wantirna area customers, the Blink Optical store located at Wantirna South, Shop 1032 Knox City Shopping Centre, 425 Burwood Hwy, Wantirna South. <p>Offer does not apply to purchases of sunglasses. Offer expires 31 June 2009.</p>
Prescription glasses	<p>MBF customers:</p> <ul style="list-style-type: none"> • in New South Wales who reside in the Figtree or Paramatta area; and • in Victoria who reside in the Wantirna area, <p>will be entitled to receive two pairs of selected prescription glasses for \$180. Offer applies to the purchase of a set of selected frames with single vision hard coat lenses only. The two pairs of glasses must be purchased in the one transaction. Offer is not available with any other offer or discount or redeemable for cash or credit.</p> <p>Offer must be redeemed at:</p> <ul style="list-style-type: none"> • for Paramatta area customers, the Blink Optical store located at Shop 3085 Westfield Parramatta, Church St, Parramatta NSW; • for Figtree area customers, the Blink Optical store located at Shop 107 Westfield, Figtree; and • for Wantirna area customers, the Blink Optical store located at Wantirna South, Shop 1032 Knox City Shopping Centre, 425 Burwood Hwy, Wantirna South. <p>Offer does not apply to purchases of sunglasses. Offer expires 31 June 2009.</p>

3. Products and services

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

- prescription glasses; and
- private health insurance.

4. Public Benefit

The proposed conduct of Health Eyewear offers significant benefits to the public because:

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

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. Health Eyewear does not have a substantial degree of market power.

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

- Health Eyewear will continue to offer its products and services to consumers at the regular price, regardless of whether or not the consumers are MBF Australia customers; 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.

6 February 2009

Emma Zipper
General Counsel & Company Secretary
Bupa Australia Group
600 Glenferrie Road
HAWTHORN VIC 3122

Dear Emma

Consent to notification of third line forcing – MBF Australia & Health Eyewear

We acknowledge that an arrangement between MBF Australia Pty Ltd ABN 81 000 057 590 (“**MBF Australia**”) and Health Eyewear Pty Ltd ABN 24 126 819 154 trading as Blink Optical (“**Health Eyewear**”) may be considered a contravention of section 47 of the *Trade Practices Act 1974 (Cth)*.

In particular, the arrangement involves Health Eyewear offering a discount when supplying products to customers who have taken out private health insurance with MBF Australia.

As a result, we consent to MBF Australia lodging with the ACCC, on our behalf:

- (1) a Form G notification; and
- (2) a submission made by MBF Australia on behalf of Health Eyewear 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 MBF Australia providing a copy of this letter to the ACCC as evidence of Health Eyewear’s consent to MBF Australia lodging the Form G notification on Health Eyewear’s behalf.

Yours sincerely,



Colin Kangisser
Chief Executive Officer
Health Eyewear Pty Ltd

