

Form G

Commonwealth of Australia
Trade Practices Act 1974 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N93749 ProVision Eye Care Pty Limited ACN 081 840 324 ('ProVision')

- (b) Short description of business carried on by that person:
(Refer to direction 3)

ProVision operates a range of membership programs to support independent optometrists in carrying on their optometry practices, including the proposed Comprehensive Program.

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

C/- Guild Lawyers
5 Burwood Road
HAWTHORN VIC 3122

2. Notified arrangement

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

This notification relates to the acquisition of eye wear, eye care, healthcare and other products, including without limitation:

- frames (including prescription and non-prescription sunglasses);
- contact lenses; and
- laboratory services,

by members of ProVision's Comprehensive Program and the supply of those goods and/or services by members of ProVision's Comprehensive Program to their customers ('Products and/or Services').

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

ProVision proposes to require each member of its Comprehensive Program to purchase from ProVision's Preferred Suppliers not less than 75% of the member's requirements for eye care and healthcare products.

See Annexure A for details.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

Members of ProVision's Comprehensive Program and customers of those members.

- (b) Number of those persons:

- (i) At present time:

There are currently no members of the Comprehensive Program.

- (ii) Estimated within the next year:
(Refer to direction 6)

ProVision estimates that within the next year there will be between 100 and 150 members of the Comprehensive Program.

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable

4. Public benefit claims

- (a) Arguments in support of notification:

See Annexure A.

- (b) Facts and evidence relied upon in support of these claims:

See Annexure A.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2(a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 8)

See Annexure A.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:
(Refer to direction 9)

See Annexure A.

- (b) Facts and evidence relevant to these detriments:

See Annexure A.

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Mr Mark Fitzgerald
Solicitor Director
Guild Lawyers
5 Burwood Road
HAWTHORN VIC 3122

Dated 12th January 2009

Signed by/on behalf of the applicant

[Handwritten Signature]

(Signature)

MARK ANDREW FITZGERALD

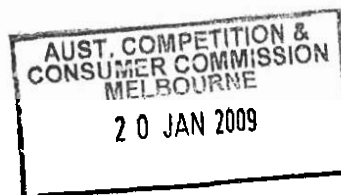
(Full Name)

GUILD LAWYERS

(Organisation)

SOLICITOR DIRECTOR

(Position in Organisation)



DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

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. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 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. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

ANNEXURE A

1. Description of Proposed Conduct

(Refer to Section 2(b) of Form G)

- 1.1 ProVision proposes to invite its current members to apply to join a new membership program which will be known as the '**Comprehensive Program**'. Under the proposed Comprehensive Program, ProVision intends to supply to Comprehensive Program Members access to rates negotiated by ProVision with Preferred Suppliers for the provision of eye care and health care products and advice, assistance and support, in return for a joining fee and monthly service fees. The joining fee will be waived by ProVision if members apply to join before 31 January 2009.
- 1.2 Members of the Comprehensive Program ('**Comprehensive Program Members**') will be required to comply with the Terms and Conditions of the Comprehensive program ('**Membership Terms and Conditions**'). ProVision proposes that under the Membership Terms and Conditions, Comprehensive Program Members will be required to purchase at least 75% of their requirements of eye care and health care products and services from ProVision's Preferred Suppliers.
- 1.3 The Membership Terms and Conditions would include the following clause:

2. OUR PREFERRED SUPPLIER ARRANGEMENTS

- 2.1 *We will negotiate with the Preferred Suppliers for the supply of Products to you. You must purchase from Preferred Suppliers not less than the Minimum Percentage of all your requirements for eye care and healthcare products by placing orders with, and buying Products from, Preferred Suppliers in accordance with this Agreement.*
- 2.2 *We will use reasonable endeavours to improve the range of Products available to you through Preferred Suppliers. We reserve the right at any time to remove any Preferred Supplier, or to introduce any new supplier as a Preferred Supplier. If we introduce a new Preferred Supplier, we will give you notice of the range of Products available from the new Preferred Supplier.*
- 2.3 *We will, or will procure each Preferred Supplier to, give you the current price list for the Products of the Preferred Supplier. You are bound by changes to the price list after you have received notice of the change.*
- 2.4 *You must disclose to us all information concerning Products acquired by you from Preferred Suppliers, sales of those Products, and the acquisition and sale of any other products at the Practice.*
- 2.5 *You must authorise each Preferred Supplier to provide us with all information concerning Products acquired by you from the Preferred Supplier.*
- 2.6 *You acknowledge and agree that the availability, continuity of supply, timely delivery, quality and fitness for purpose, of each Product is the sole responsibility of the Preferred Supplier of the Product, and that we do not give any warranties or make any representations in relation to, and are in no way responsible for, these matters.*
- 2.7 *You must display and replenish your stock of Products to ensure that you are able to comply with the terms of this Agreement.*

- 1.4 A member of the ProVison Comprehensive Program will be able to purchase the remaining 25% of its requirements for eye care and health care products from suppliers of its choice.
- 1.5 As ProVison operates a number of membership programs which currently do not have minimum buying requirements, it already has Preferred Suppliers. ProVison intends on providing Comprehensive Program Members with access to those Preferred Suppliers as well as any other Preferred Suppliers that it may have from time to time.
- 1.6 ProVison's selects its Preferred Suppliers on the basis of a range of criteria including:
- the requests of its membership in relation to the range of products they would like access from Preferred Suppliers for their optometry practices;
 - the ability of a supplier to ensure efficient supply of the relevant products to Comprehensive Program Members; and
 - the ability of the supplier to supply products at competitive rates.
- 1.7 Biannually, ProVisions sends a survey to its members asking for feedback on members' experiences with Preferred Suppliers and also asking for feedback in relation to any Products and/or Services in relation to which they would like ProVison to source new Preferred Suppliers. ProVison uses the results of these surveys to inform its future activities in relation to Preferred Suppliers.

2. Public benefits Claims
(Refer to Section 4 of Form G)

- 2.1 ProVison believes that the notified conduct has significant public benefit. Small independent businesses generally do not have the advantages that larger businesses have such as buying power and group marketing. This puts small independent businesses at a distinct competitive disadvantage as compared to larger organisations.
- 2.2 ProVison Comprehensive Program members will be able to access a number of benefits from being members of the Comprehensive Program:
- (a) *Improved Productivity*. Members of the Comprehensive Program will receive from ProVison the following benefits:
- advice, guidance and support on marketing and distribution techniques, advertising for any promotion program, and client relationship management;
 - provision of regular newsletters;
 - education and learning support;
 - training and assistance in methods and procedures for the sale of Products and the provision of services, and for the introduction of new products and services;
 - telephone support on general operating procedures for the Practice;
 - summary benchmark reports and analysis of the performance of the members of the Program; and

- payment services, whereby ProVision pays Preferred Suppliers for purchases made by each member on behalf of the member once that member has paid ProVision for those purchases.

These benefits promote, within the businesses of ProVision members, more efficient retail, management, administrative and general operating practices, which in turn can increase their competitiveness and productivity within the identified retail market.

- (b) *Better Buying Power:* ProVision believes that members of ProVision's Comprehensive Program, independently, would have little (if any) capacity to negotiate for the type of prices which ProVision is able to negotiate with Preferred Suppliers. ProVision believes that if its members were left to negotiate with Preferred Suppliers for the Products and/or Services on their own, it would be likely that they would be required to pay a higher price for those Products and/or Services because of their smaller requirements of Products and/or Services.
- (c) *Increased Profitability:* ProVision believes that its members are generally able to acquire Products and/or Services from Preferred Suppliers at more competitive prices than if they negotiated with suppliers on their own. Access to better pricing is likely to lead to improvements in the profitability of members' businesses and is also likely to help members achieve economies of scale that may not otherwise be available to them and which are normally associated with larger organisations.
- 2.3 ProVision believes that consumers in the relevant retail markets are likely to benefit because of the benefits that ProVision will provide to members of the Comprehensive Program. ProVision believes that the improved competitiveness and profitability of members of the Comprehensive Program will better equip members to compete with larger organisations, leading to greater competition at a retail level, improved service and better prices for consumers. If independent businesses such as those operated by members of ProVision's Comprehensive Program were to exit the market, the major competitors would in all likelihood have greater market share which could place them in a position where they can increase the prices of their products and services to consumers.
- 2.4 ProVision also believes that the proposed conduct has advantages for Preferred Suppliers. Preferred Suppliers will have some degree of certainty as to volumes of the Goods and/or Services required as a result of becoming Preferred Suppliers. This may lead to greater economies of scale and efficiencies within the businesses of Preferred Suppliers. This in turn should allow Preferred Suppliers to supply the Products and/or Services to members of ProVision's Comprehensive Program at cheaper prices. This in turn would allow members to provide those Products and Services to consumers at a lower price.

3. MARKET DEFINITION

(Refer to Section 5 of Form G)

- 3.1 ProVision submits that the relevant market is:
- (a) the wholesale market for the supply of the Products and/or the Services; and
 - (b) the retail market for the supply of the Products and/or Services in Australia.

3.2 Based on ProVision's investigations, these markets are highly competitive. Currently, there are a number of participants in both the retail and wholesale markets. In the retail market for the supply of the Products and/or Services participants currently include the Luxottica Group (OPSM, Budget Eyewear, Laubman & Pank and Sunglass Hut), Eyecare Plus and SpecSavers. In the wholesale markets there are also currently numerous participants that are not Preferred Suppliers including, to name a few, CIBA, Zeiss, Johnson & Johnson, Noo, the Luxottica Group and Rodenstock.

4. PUBLIC DETRIMENTS

(Refer to Section 6 of Form G)

4.1 ProVision does not believe that there will be any public detriment resulting from the notified conduct as it does not believe that the notified conduct will lessen competition in either the wholesale or retail markets for the Products and/or Services.

4.2 At a wholesale level:

- (a) in each category of Preferred Supplier, members of ProVision's Comprehensive Program are able to choose from a number of Preferred Suppliers (see the Preferred Supplier Directory at annexure "B" which sets out ProVision's Preferred Suppliers as at the date of this Notification);
- (b) with the exception of the Private Label of contact lenses which are provided exclusively to members of ProVision's Comprehensive and Essentials Programs, Preferred Suppliers are able to contract with competitors of ProVision's members for the supply of the Products and/or Services as the agreements entered into by ProVision and Preferred Suppliers do not require Preferred Suppliers to exclusively supply Products or Services to members of the ProVision Comprehensive Program;
- (c) the Private Label of contact lenses represent a small portion of the Products and/or Services (approximately 2%) and based on investigations by ProVision, equivalent Products are available to competitors of ProVision's members;
- (d) ProVision will not be restrained from dealing with competitors of Preferred Suppliers since the agreements entered into by ProVision and Preferred Suppliers will not grant exclusive rights to those suppliers for the ongoing supply of Products and Services to members of the ProVision Comprehensive Program;
- (d) it is expected that members of ProVision's Comprehensive Program will face strong competition from other optometrists and providers of eye care products and accordingly, there is a very large part of the market that is available to be accessed by suppliers who are not Preferred Suppliers of ProVision; and
- (e) members of the ProVision Comprehensive Program will be able to purchase the remaining 25% of its requirements for eye care and health care products from suppliers of their choice.

4.3 At a retail level:

- (a) consumers may acquire the Products and Services from a number of businesses (that is, other optometrists for prescription eye products and other optometrists, pharmacies and retail outlets for non-prescription eye products), not just members of the ProVision Comprehensive Program; and**
- (b) it is expected that members of ProVision's Comprehensive Program will face strong competition from other optometrists and providers of eye care products (including, for example, the Luxxottica Group (OPSM, Budget Eyewear, Laubman & Pank and Sunglass Hut), Eyecare Plus and SpecSavers).**

4.4 Consequently, ProVision believes that the notified conduct would increase competition in the wholesale and retail markets and result in a number of public benefits.

ANNEXURE "B"

EXCLUDED FROM PUBLIC REGISTER