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21 October 2010

By Hand

Dr Richard Chadwick
General Manager - Adjudication Branch
Australian Competition and Consumer Commission
Level 35
360 Elizabeth Street
MELBOURNE VIC 3000

FILE No:
DOC:
MARS/11101.



Our reference: 187/14538/80060864

Dear Dr Chadwick

Notification of Third Line Forcing Conduct

We act for GMHBA Limited (ACN 004 417 092) (GMHBA).

We enclose on behalf of GMHBA:

1. A completed Form G: Notification of Exclusive Dealing; and
2. A cheque in the amount of \$100 in payment of the required lodgement fee.

If you have any questions in relation to this notification or require any further information, please do not hesitate to contact us.

Yours faithfully



Michael Corrigan, Partner
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Enclosures

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.

1. Applicant

(a) Name of person giving notice:

N95071 GMHBA Limited (GMHBA) (ACN 004 417 092).

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

GMHBA is a registered health benefits organization under the National Health Act 1953 (Cth) and provides private health insurance services.

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

C/- Ms Robyn Baker
Partner
Clayton Utz
Level 18
333 Collins Street
MELBOURNE VIC 3000

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 supply of a new sports health insurance product by GMHBA (**Product**). Whilst the Product will be offered generally to anyone in the

community, it is specifically designed to meet the needs of people who participate in fitness and sport activities.

GMHBA believes that participation in fitness and sport activities improves an individual's general state of health and has well recognised benefits in reducing risk factors for chronic diseases (and, therefore, reducing overall health benefit outlays).

By function of age (and income levels) many active participants in fitness and sports activities do not have health insurance. This is believed to be due both to attitudinal issues (with many younger people believing that health is not a significant concern at their age) and affordability issues.

The Product is intended to encourage an increase in health insurance participation and, by doing so, will relieve pressure from the public elective surgery waiting lists due to injuries resulting from fitness and sports activities.

Further, by facilitating timely access to care, recovery to full capacity should be accelerated and lost productivity through inability to participate in work minimised.

(b) Description of the conduct or proposed conduct:

As a component of the terms of the Product, GMHBA will provide additional benefits to customers of its Product (**Members**) who consult a Sports Titled or Sports Specialist Member of the Australian Physiotherapy Association (**Preferred Extras Providers**), a member of the AFL Medical Officers Association or a fellow of the Australasian College of Sports Physicians (**Preferred Medical Providers**). Specifically, the proposed conduct is:

- GMHBA will provide to its Members a higher level of reimbursement on consultation fees if the Member consults a member of a Preferred Extras Provider (it is currently proposed that this level of reimbursement will be 10% higher than the level of reimbursement paid to Members who are treated by any other provider); and
- GMHBA will provide to its Members a higher level of reimbursement on the medical costs associated with a surgical procedure if the Member is referred to their surgeon by a Preferred Medical Provider (it is currently proposed that this level of reimbursement will be 10% higher than the reimbursement paid to Members who are referred to their surgeon by any other provider).

- 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:**
Customers of GMHBA's sports health insurance product.
- (b) Number of those persons:**
- (i) At present time:**
Nil. The product has not yet been introduced into the market.
- (ii) Estimated within the next year:**
Approximately 4,000
- (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:**

Background

In November 2009, the Hon Nicola Roxon MP, Minister for Health and Ageing, announced that the Australasian College of Sports Physicians had been successful in achieving recognition of Sport and Exercise Medicine as a new medical specialty in Australia. As a result, Sport and Exercise Medicine is now included in the Australian Medical Council's List of Australian Recognised Medical Specialties.

The Preferred Extras Providers and Preferred Medical Providers

Members of the Preferred Extras Providers and Preferred Medical Providers offer a particular expertise ideally suited to customers of GMHBA's new product offering. In particular, as outlined below, members of the Preferred Extras Providers and Preferred Medical Providers must attain certain qualifications or be recognised as an expert in their field before being admitted.

Australasian College of Sports Physicians (ACSP)

The ACSP is the professional body representing sports physicians in both Australia and New Zealand. To qualify as a Fellow of the ACSP, the member must complete a 4-year post-graduate training program and an exam (which is assessed by the College)

at the conclusion of the program. To qualify for the training program, the potential member must complete a medical undergraduate degree and hospital training and a qualification exam.

For further information please refer to the ACSP's website at <http://www.acsp.org.au/>

AFL Medical Officers Association (AFLMOA)

The AFLMOA is comprised of a selection of doctors in each Australian state who are recognised by professional sporting clubs as experts. They also have a commercial interest in ensuring that their club's players are in peak physical condition. To qualify as a member of the AFLMOA, the member must complete a medical degree. Some members are sports physicians or have other degrees.

The Australian Physiotherapy Association (APA)

The APA is the peak body representing the interests of Australian physiotherapists and their patients. The APA has approximately 12 000 physiotherapist members around Australia, of which 288 are Sports Titled or Sports Specialists.

To qualify from the APA, a Sports Titled Physiotherapist must complete a suitable degree to qualify as a physiotherapist and then either two years of clinical experience and a recognised post-graduate Masters degree or five years of clinical experience and completion of an exam administered by the Australian College of Physiotherapists which tests for the knowledge and skills of a Masters graduate. A Sports Specialist Physiotherapist must also complete a further two-year training program consisting of a facilitated program of professional development (including regular study groups, formal case presentations, audit reports and trial examinations) and a number of exams administered by the Australian College of Physiotherapists. These physiotherapists must also participate in ongoing education, known as Continuing Professional Development.

While any person qualified as a physiotherapist may become an APA member, they cannot attain the above-listed titles without undertaking the further training. Further information is available at the APA's website: <http://www.physiotherapy.asn.au/>.

Therefore, as outlined above, members of the Preferred Extras Providers and Preferred Medical Providers are specialists in sports medicine (and physiotherapy). They have undertaken further study and training and/or been considered specialists in the field of sports medicine (or physiotherapy).

Public Benefits of the proposed conduct

In GMHBA's opinion, the proposed conduct will benefit the public because someone who is treated by a sports specialist is more likely to receive effective and efficacious care for a sports related injury than someone who is treated by a generalist.

Treatment by healthcare professionals specialising in sports has a range of cost and efficiency benefits, including the following:

For GMHBA Members:

- increased affordability in accessing treatment from practitioners with further qualifications in sports and exercise medicine;
- treatment by such practitioners, given their extra training or recognised expertise, is likely to result in more efficient and effective diagnosis and treatment, thereby minimising the extent of the relevant injury and pain, hastening recovery to full capacity, minimising lost productivity and the hastening the speed with which Members can begin participating in fitness and sports activities; and
- treatment by such practitioners is also likely to result in receiving up-to-date treatments, lower rates of hospitalisation and better referrals in cases where surgery is required.

For the healthcare system:

- improved efficiency and lower costs as a consequence of utilising highly and appropriately skilled resources for treatment and thereby reducing the likelihood of mistreatment and resulting unnecessary repeat visits or rehabilitation costs; and
- improved efficiency and lower costs in relation to referrals to surgeons. Members of the Preferred Extras Providers and Preferred Medical Providers, as a result of their further training, are more likely to better understand and diagnose sports injuries and thus are more likely to effectively refer to other specialists, lowering overall costs in the healthcare system.

For members of the Preferred Extras Providers and Preferred Medical Providers:

- increased treatment of patients with sports injuries, thereby reinforcing of the members' specialised skills and encouraging more efficient resource allocations;
- the opportunity for earlier involvement in patient care, rather than as a referral when non-specialist care has not been successful or effective; and
- the opportunity to contribute to grass roots sports and fitness through reduced financial barriers to access.

For GMHBA:

- care by practitioners with further qualifications in sports and exercise medicine is likely to result in quicker recovery by patients with sports and exercise injuries, thereby reducing ongoing care and rehabilitation benefit outlays;
- care by more practitioners with further qualifications is likely to result in less hospitalisation and therefore lower benefit outlays;
- where hospitalisation does occur, referral to and surgery by surgeons well regarded for expertise in sports related surgery will generally improve the chances of a quick and fully recovery to full capacity, thereby reducing ongoing care and rehabilitation benefit outlays and reducing costs to the overall healthcare system; and
- the inclusion of a marketable product benefit that is aligned specifically to those participating in sports and fitness activities, thus creating differentiation to standard products.

GMHBA believes that the wide range of public benefits resulting from the proposed conduct will outweigh any possible detriment which may arise.

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

Please see response to section 4(a) above.

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):

GMHBA considers that the relevant market is the market for the supply of health insurance services.

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:**

GMHBA does not believe that the proposed conduct will result in any significant public detriments.

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

The proposed conduct will not substantially lessen competition in the markets for the relevant services as:

- the Preferred Provider associations are large and well known. There will be over 400 medical practitioners across Australia who are members of the Preferred Extra Providers and Preferred Medical Providers and who are accessible by fund Members;
- the selection of Preferred Providers, who require members to undertake specific training and activities, provides an efficient way of nominating to customers those with appropriate expertise to treat sports and fitness related injuries;
- there are a wide range of alternative suppliers of private health insurance. Competition in the private health insurance market is vigorous and there are many competitors¹; and

¹ For example, Australian Health Management, Australian Unity Health Ltd, BUPA Australia Health, CBHS Health Fund Ltd, GMF Health, GU Health, HBA, , HBF Health Funds Inc, HCF, Manchester Unity Australia Ltd, MBF Australia Ltd, Medibank Private Ltd, NIB Health Funds Ltd, NRMA Health Insurance and SGIO Health Insurance.

- health care providers potentially affected by the proposed conduct may qualify as a Preferred Extras Provider or Preferred Medical Provider by undertaking the above-listed training and activities required to qualify.

7. Further information

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

Ms Robyn Baker

Partner

Clayton Utz

Level 18

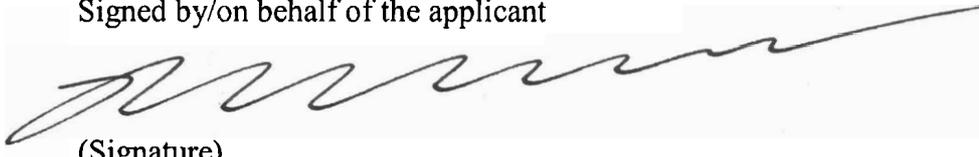
333 Collins Street

MELBOURNE VIC 3000

Telephone: (03) 9286 6338

Dated 21 October 2010

Signed by/on behalf of the applicant



(Signature)

Clayton Utz

(Full Name)

Clayton Utz

(Organisation)

Partner

(Position in Organisation)

