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FILE NO:



22 December 2010

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

Dear Sir or Madam

**Notification of third line forcing –Bupa Australia & FSMA**

Bupa Australia Pty Ltd ABN 81 000 057 590 trading as MBF, HBA and Mutual Community (“**Bupa Australia**”) has negotiated an arrangement with Friendly Society Medical Association Limited (trading as National Pharmacies Optical) ABN 69 088 347 602 (“**FSMA**”). Under this arrangement, FSMA 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 FSMA;
- (2) a submission made by Bupa Australia on behalf of FSMA 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 FSMA consenting to Bupa Australia lodging the Form G notification on FSMA’s behalf.

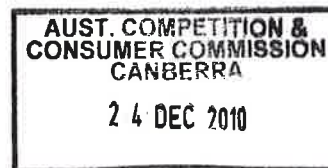
We would appreciate it if you would copy us in on any response you provide to FSMA.

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

Yours sincerely,

*for: Emma Zipper*

Emma Zipper  
 General Counsel & Company Secretary  
 Bupa Australia



Sydney  
 GPO Box 9809 Sydney NSW 2001  
 Bupa Australia Pty Ltd ABN 81 000 057 590  
 Trading as MBF

Melbourne  
 PO Box 14639 Melbourne VIC 8001  
 Bupa Australia Health Pty Ltd  
 ABN 50 003 098 655  
 Trading as HBA and Mutual Community

07794-03-10S  
 MBFG 0432 03-10



20/12/2010

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

Dear Emma

**Consent to notification of third line forcing –Bupa Australia Pty Ltd & Friendly Society Medical Association Limited (trading as National Pharmacies Optical)**

We acknowledge that the arrangement between Bupa Australia Pty Ltd ABN 81 000 057 590 trading as MBF, HBA and Mutual Community (“**Bupa Australia**”) and Friendly Society Medical Association Limited (trading as National Pharmacies Optical) ABN 69 088 347 602 (“**FSMA**”) may be considered a contravention of section 47 of the *Trade Practices Act 1974 (Cth)*.

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

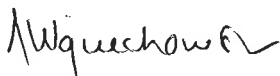
As a result, we consent to Bupa Australia lodging with the ACCC, on our behalf:

- (1) a Form G notification; and
- (2) a submission made by Bupa Australia on behalf of FSMA 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 FSMA’s consent to Bupa Australia lodging the Form G notification on FSMA’s behalf.

Yours sincerely,



Tony Wojciechowski  
General Manager – Retail Operations  
Friendly Society Medical Association Limited

## 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:**

N95227 Friendly Society Medical Association Limited (trading as National Pharmacies Optical) ABN 69 088 347 602 (“FSMA”)

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

FSMA (trading as National Pharmacies Optical) offers customers professional services and no-obligation advice, eye consultations, frames, prescription lenses and contact lenses

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

Tony Wojciechowski  
General Manager – Retail Operations  
Friendly Society Medical Association Limited  
52 Gawler Place  
Adelaide, SA, 5000

Ph: 08 8223 0300

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

Eyewear

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

FSMA proposes to offer members of Bupa Australia Pty Ltd (ABN 81 000 057 590) (“**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 all Australian states and territories.



**SUBMISSION BY BUPA AUSTRALIA 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 FSMA 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 FSMA (trading as National Pharmacies Optical) offers customers professional services and no-obligation advice, eye consultations, frames, prescription lenses and contact lenses.
- 1.3 Bupa Australia has negotiated an arrangement with FSMA. Under this arrangement, FSMA offers a discount when supplying products to Bupa Australia members (ie those who have health insurance with Bupa Australia).
- 1.4 This conduct by FSMA is arguably a contravention of sections 47(6) and (7) of the Trade Practices Act 1974 (Cth) if FSMA 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.

<b>Business/Product</b>	<b>Description of offer</b>
Eyewear	<p>Bupa Australia members throughout Australia (under the HBA, Mutual Community and MBF brands) will be entitled to receive a 20% discount on all full price sunglasses purchased in National Pharmacies Optical stores.</p> <p>The offer is not valid in conjunction with any other offer or discount.</p>

**3. Products and services**

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

- Eyewear; and
- private health insurance.

#### **4. Public Benefit**

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

- the discount make the 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
- the offer provides appealing alternative 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. FSMA does not have a substantial degree of market power.

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

- FSMA 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.