

# NORTON WHITE

LAWYERS & NOTARIES

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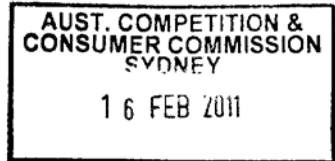
Our Ref: 114467

16 February 2011

**By hand**

Australian Competition and Consumer Commission  
Level 7, Angel Place  
123 Pitt Street  
SYDNEY NSW 2000

**Attention: General Manager, Adjudication Branch**



FILE No.
DOC:
MARS/PRISM:

Dear Sir

**Notification under section 93(1) of the Australian Competition and Consumer Act 2010  
Sunglass World Holdings Pty Limited - Medibank Private Promotion**

Please find enclosed a Form G Exclusive Dealing Notification in relation to potential third line forcing conduct by Sunglass World Holdings Pty Limited, and a cheque for \$100.00 in respect of the filing fee for the Notice.

Sunglass World Holdings Pty Ltd trading as Sunglass Hut ('Sunglass Hut'), a retailer of sunglasses, is proposing to enter into a promotional arrangement with Medibank Private Limited, a company which supplies private health insurance. As part of that promotion, Sunglass Hut will offer customers who are members of Medibank Private a \$50.00 discount on sunglasses purchased during the limited promotional period.

The promotion will result in substantial benefits to the public, allowing consumers who are members of Medibank Private to purchase sunglasses at a discounted price and may increase competition within the sunglasses market by encouraging competitors to offer consumers similar discounts. There will be no detriment to the public as a result of the promotion because consumers who are not members of Medibank Private will be free to purchase the same sunglasses from Sunglass Hut or the same or similar sunglasses from a competitor, at their usual retail price.

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If you have any questions about the promotion, please do not hesitate to contact us.

Yours faithfully

Norton White

**NORTON WHITE**

## Form G

Commonwealth of Australia

Competition and Consumer Act 2010 -- 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 Competition and Consumer Act 2010, 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:**

N95274 Sunglass World Holdings Pty Limited ACN 066 329 931

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

Sunglass World Holdings Pty Limited trading as Sunglass Hut has 217 retail outlets throughout Australia. Those outlets supply sunglasses to consumers.

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

c/- David Fox  
Norton White  
Level 4, 66 Hunter Street  
Sydney NSW 2000

#### 2. Notified arrangement

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

The proposed arrangement relates to a selection of sunglasses offered for sale by Sunglass Hut retail outlets in Australia.

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

Sunglass World Holdings Pty Limited will offer a discount of \$50.00 on the sunglasses described above on condition that the purchaser has acquired insurance services from Medibank Private. The discount will be available to a consumer

who, at the time of purchasing provides evidence, in the form of a Medibank Private card issued to them by Medibank Private, showing they are a current member of Medibank Private.

The proposed arrangement will run from 1 March 2011 to 17 April 2011, but will be extended to 15 May 2011 to accommodate new members of Medibank Private who become members during the Promotional Period but too late during that period to obtain the discount (“the Promotional Period”).

A discount will not be offered to consumers during the Promotional Period who are not Medibank Private members.

**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:**

All consumers who would potentially purchase sunglasses of the kind described in paragraph 2(a) above from a Sunglass Hut store during the Promotional Period.

**(b) Number of those persons:**

**(i) At present time:**

Unknown

**(ii) Estimated within the next year:**

All consumers who would potentially purchase sunglasses of the kind described in paragraph 2(a) above from a Sunglass Hut store during the Promotional Period. An accurate estimate is unable to be made, however the number is expected to be significantly greater than 50 people.

**(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:**

The proposed arrangement will:

- i. Allow customers who take advantage of the promotion to obtain sunglasses at a price lower than the price the sunglasses could otherwise be obtained for at Sunglass Hut stores;

- ii. Increase competition in the sunglasses market by encouraging competitors to offer similar discounts (whether or not in connection with the acquisition of a third party's goods or services) in order to compete with the Sunglass Hut promotion.

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

The \$50.00 discount will apply to the majority of sunglass products available for purchase in Sunglass Hut stores during the Promotional Period.

Competitors in the sunglasses market described at 5(a) below may be encouraged to offer discounts to attract customers to their stores in lieu of Sunglass Hut stores during the Promotional Period.

**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):**

Sunglass World Holdings Pty Ltd considers that Sunglass Hut outlets compete with all retailers of sunglasses, including but not limited to optometrists and optical dispensers, department stores, specialist sunglass retailers, duty free stores, pharmacies, fashion stores, surf and snow stores, kiosks in shopping precincts, service stations and markets.

There are no relevant substitutes for the goods and no significant restrictions on the supply or acquisition of the goods.

**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:**

There is no detriment to the public as a result of the proposed arrangement because:

- i. Consumers can elect not to take advantage of the offer and can instead purchase the sunglasses at their normal retail price;
- ii. There are alternative suppliers of the same or similar products available; and
- iii. The proposed arrangement will run for a limited time.

Any public detriment is likely to be outweighed by the public benefit of the proposed arrangement.

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

- i. The relevant sunglasses continue to be available at Sunglass Hut to all consumers at their normal retail price;
- ii. The market for sunglasses in Australia is large and members of the public are free to purchase sunglasses from a wide variety of competitors who might also be running discounts and sales during the Promotional Period; and
- iii. The arrangement will likely have little or no effect on the prices of sunglasses in Australia generally. However the promotion may increase competition in the supply of sunglasses, making a visit to Sunglass Hut more competitive during the Promotional Period.

For a list of alternate suppliers see paragraph 5(a) above.

The benefits associated with the promotion are likely to outweigh any public detriment and Applicant submits that the Commission should allow the notification to stand.


**7. Further information**

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

c/- David Fox  
Norton White  
Level 4, 66 Hunter Street  
Sydney NSW 2000  
(02) 9230 9409

Dated 16 February 2011

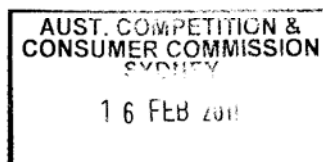
Signed by/on behalf of the applicant

  
.....  
(Signature)

DAVID R FOX  
.....

(Full Name)  
NORTON WHITE  
.....

(Organisation)



PARTNER

(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 *Competition and Consumer Act 2010* 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