

the  
optical  
company NSW



14 October 2011

Address: Sent by email to: adjudication@accc.gov.au

FILE No.	
DOC:	
MARS/PRISM:	

Dear Sir / Madam

**Re: The Optical Company NSW Pty Ltd**

The Optical Company (NSW) Pty Ltd "TOC" (ACN 153 741 970 ) has reached an in principle agreement to purchase the business assets of Pacific Optical Pty Ltd "POPL" incorporating four optical centres trading under nib Eyecare, located in Charlestown, Newcastle, Rutherford and Sydney CBD.

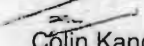
As part of the Relationship Marketing Agreement "RMA" agreed between TOC and nib Health Funds Ltd "nib", the stores will be offering a discount to customers who are members of nib. It is important to note that the current offer is materially the same as that offered by POPL under its existing arrangement with nib which was presented to the ACCC. The notification number (N92746) has been placed on the ACCC public register.

In order to ensure that the agreement between TOC and nib does not involve a contravention under section 47 of the Trade Practices Act we enclose the following:

1. Exclusive Dealing Notification (Form G) which has been prepared for Australian Competition and Consumer Commission "ACCC" by The Optical Company (NSW) Pty Ltd. Based on the reasons set out in this form we believe the conduct will be of no detriment but will generate significant public benefits.
2. Clauses from the RMA confirming the discount offered and the associated ACCC notifications
3. Bank Receipt confirming payment of the \$100.00 lodgement fee

Please will you use your best efforts to expedite the approval process as we are aiming for completion on October 30<sup>th</sup>, 2011?

Yours Sincerely

  
Colin Kangisser  
Chief Executive Officer  
The Optical Company (NSW) Pty Ltd

**The Optical Company NSW Pty Ltd**

a: Level 7, Tower B, Centennial Plaza, 280 Elizabeth Street SURRY HILLS NSW 2010

t: +61 2 9212 4871

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ACN: 153 741 970

## 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:

The Optical Company (NSW) Pty Ltd (ACN:153741970) "TOC"

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

TOC will own and operate four Eyecare Centres, located in Charlestown, Newcastle, Rutherford and Sydney CBD, which are involved in the provision of optometry and optical dispensing (eyewear sales) services. These business are to be purchased from Pacific Optical Pty Ltd (POPL) who have previously received notification number n92746

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

c/o Colin Kangisser

The Optical Company (NSW) Pty Ltd

Level 7, Centennial Plaza

280 Elizabeth Street

Surry Hills

2010

### 2. Notified arrangement

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

Retail Supply of Eyecare products including Frames, Lenses, Contact lenses, and sunglasses and providing optometry services

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

TOC proposes to supply retail eyecare products ( Frames, Lenses, Sunglasses, Contact Lenses) at a discount which may be as a percentage, voucher discount or multiple pair discount) to nib customers as long as they

are members of nib health fund. This price has been partly reduced to writing in schedule 1 clause 2.7 of the Relationship and Marketing Agreement between TOC and nib Health Fund.

**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:  
Individuals who have private insurance cover with nib
- (b) Number of those persons:
  - (i) At present time:  
Approximately 839,000
  - (ii) Estimated within the next year:  
An additional 20,000
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:  
The number of persons is greater than 50

**4. Public benefit claims**

The proposed conduct by TOC will result in significant benefits to the public due to:

- a) The discount will make service and products more affordable
- b) The consumers by virtue of the discount will have a greater choice in products and range
- c) The discount offered by TOC will encourage competitors to make similar offer which in turn will increase the competition in the products and services
- d) The conduct will enhance competition in the retail supply of eyecare products by providing a discount which would not have been otherwise available

**5. Market definition**

The relevant markets for this proposal are those for the provision of retail eyecare and eyewear services and the market for the provision of health insurance. TOC, which does not have a significant share of the optical market, is one of many providers of this service in Australia in what is a highly competitive market where all incumbents operate in an open market

**6. Public detriments**

The proposed conduct will not have any detrimental effect on the public as there is strong competition for each of the products and services in the

marketplace and therefore TOC operates on an even playing field. In addition TOC does not have a substantial market presence.

The consumers are free to purchase the products listed in this submission from competing suppliers and TOC will continue to offer the products and services at regular prices to consumers regardless of whether or not they are members of nib.

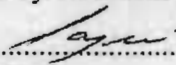
**7. Further information**

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

Colin Kangisser  
The Optical Company ( NSW ) Pty Ltd  
Level 7, Centennial Plaza  
280 Elizabeth Street  
Surry Hills  
2010  
Phone: 0292124871 (office)  
04111759995 (mobile)  
Fax: 0292813393

Dated 15/10/2011

Signed by/on behalf of the applicant

  
(Signature)

COLIN KANGISSER  
(Full Name)

THE OPTICAL COMPANY (NSW) PTY LTD  
(Organisation)

CHIEF EXECUTIVE OFFICER  
(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.

## 24 Notifications

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### 24.1 Acknowledgement

- (a) The parties acknowledge that clauses 2.7(a) and 2.7(b) of Schedule 1 may amount to an "exclusive dealing" under section 47(6) and/or 47(7) of the Competition and Consumer Act 2010 (Cth) (**CC Act**).
- (b) Unless the parties have the protection afforded by notification under clause (a), the parties must not comply with the provisions the subject of the notifications.

### 24.2 TOC's notification

- (a) TOC warrants that it has, in accordance with section 93 of the CC Act, given notice to the Australian Competition and Consumer Commission (**ACCC**) of the proposed conduct as described in 2.7(a) and 2.7(b) of Schedule 1.
- (b) If the ACCC withdraws the protection afforded by notification under clause 24.2(a) by giving a notice under section 93(3A) of the CC Act, 2.7(a) and 2.7(b) of Schedule 1 will be deemed immediately to be amended or deleted (as the case may be) and the parties will use their best endeavours to promptly agree alternative arrangements and notify these to the ACCC.
- (c) TOC will give to nib a copy of each notice provided to and received from the ACCC by TOC under this clause 24.2 within 5 Business Days after the relevant notice is provided or received by TOC.
- (d) nib will use its best endeavours to assist TOC to obtain notification protection for 2.7(a) and 2.7(b) of Schedule 1 to which section 47(6) and/or 47(7) of the CC Act may apply including providing reasonable assistance to TOC in preparing and arguing any submissions made or to be made at any conference held under the CC Act and/or any review held under the CC Act or any other communications to be made with the ACCC.

### 2.7 Benefits for nib Employees and nib Customers

- (a) Subject to clause 24 of the agreement and clause 2.7(c) of this schedule, during the Term, TOC must provide to nib Employees a 20% discount off the list price for the Retail Products.
- (b) Subject to clause 24 of the agreement and clause 2.7(c) of this schedule, during the Term, TOC must provide to nib Customers with ancillary cover a 20% discount off the list price for the Retail Products.
- (c) The parties agree that the discounts to be offered by TOC under clauses 2.7(a) and 2.7(b) of this schedule do not apply:
  - (1) in conjunction with any other offers or discounts offered by TOC from time to time; or
  - (2) to require TOC to provide any nib Employee who is also a nib Customer with a discount in excess of 20%.

**TOC- Refers to the Optical Company (NSW) Pty Ltd**