

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.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

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

N95618

nib health funds limited ACN 000 124 381 (*nib*)

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

nib is a private health insurer registered under the *Private Health Insurance Act 2007* (Cth) and provides private health insurance to the public.

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

nib health funds limited
22 Honeysuckle Drive
Newcastle NSW 2300

2. Notified arrangement

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

nib's private health insurance products which provide benefits to its customers to claim for optical products and services provided to its customers.

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

On and from 1 November 2011 nib branded eye care centres will be owned and operated by The Optical Company (NSW) Pty Limited ACN 153 741 970 (**TOC**).

Customers of nib branded eye care centres include customers of nib and other private health insurers, together with customers who are not privately insured. nib branded eye care centres are currently located at Newcastle, Charlestown, Sydney and Rutherford.

TOC wishes to offer budget priced contact lenses at the nib branded eye care centres which customers can acquire at a price which may result in privately insured customers (both of nib and other insurers alike) incurring no out-of-pocket costs (**Budget Products**). The Budget Products are single vision correcting only and may not be suitable to correct all vision impairment conditions.

The offers available from TOC will be:

- 6 months worth of fortnightly contact lenses to the value of \$150.00
- 12 months worth of fortnightly contact lenses to the value of \$300.00,

(the **Budget Product Ranges**).

The range of private health insurance products offered by nib to its customers includes current products (open for any new customer to join) and closed products (open for existing customers but not for new customers) (**Health Insurance Products**).

Each Health Insurance Product offered by nib has a different range of optical benefits available for nib customers to claim. For example:

- nib's closed products include annual (calendar year) benefit limits at a per person level – e.g. a person may be entitled to claim up to \$170 worth of contact lenses in any single claim, with an annual limit per person of \$225 per calendar year.
- nib's current products permit benefits to be claimed on a percentage basis with per person annual limits – e.g. a person may be entitled to claim 50% of the cost of a claim for contact lenses up to an annual limit of \$200 per person per calendar year. Per policy limits may also apply (so the total amounts claimed do not exceed an amount capped at four times the per person annual limit).

Although each product has different annual limits for nib customers there will be a Budget Product Range option available for all customers depending on their Health Insurance Product.

nib wishes to promote to its customers the Budget Products offered by TOC through the nib branded eye care centres.

To do this, nib proposes to give its customers access to a specific Budget Product Range based on the applicable limits in customers' Health Insurance Products.

nib proposes to issue promotional material to its customers promoting the Budget Products. The promotional material for each customer will specify

which Budget Product Range the customer's Health Insurance Product gives the customer access to.

If a customer has available annual optical benefit limits (**Eligible Customer**) and purchases a Budget Product which the customer's Health Insurance Product gives the customer access to from TOC, nib will permit the Eligible Customer to claim available per person benefits despite any sub-limits which would otherwise apply (**Promotion**). For example, if an Eligible Customer would, under the terms of their Health Insurance Product, ordinarily only be able to claim 50% of the cost of a Budget Product (or Budget Products) up to an annual limit of \$200, nib will permit them to claim 100% of the cost of the Budget Product back up to their annual limit.

The Budget Product Range available to an Eligible Customer is dependant on the Eligible Customer's level of private health insurance cover. For example:

- an Eligible Customer on a low level of cover such as Basic Saver will only be entitled to 6 months worth of contact lenses valued at \$150 which will result in their total annual optical benefit limit of \$200 being reduced by \$150.
- An Eligible Customer on a mid level of cover such as Mid Plus will be entitled to 6 months worth of contact lenses valued at \$150 which will result in their total annual optical benefit limit of \$250 being reduced by \$150.
- An Eligible Customer on the highest level of cover such as Top Cover will be entitled to 6 months worth of contact lenses valued at \$150 or 12 months worth of contact lenses valued at \$300 which will result in their total annual optical benefit limit of \$300 being reduced by \$150 or \$300, depending on the value of the Budget Product chosen.

If an nib customer's annual optical benefit limit does not fully cover the cost of any Budget Product, the customer will not be able to purchase the Budget Products and incur no out-of-pocket-costs but the customer will still be able to purchase the Budget Product subject to the standard terms and conditions of their Health Insurance Products (which would include any relevant sub-limit claims requirements).

This promotion is proposed to commence on 7 November 2011 and will run from time to time.

The proposed conduct by nib could be characterised as contravening sections 47(6) and 47(7) of the *Competition and Consumer Act 2010* (Cth).

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)

Existing or prospective customers of nib wishing to acquire prescription contact lenses.

- (b) Number of those persons:

- (i) At present time:

Unknown

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

Substantially in excess of 50.

- (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:
(Refer to direction 7)

The proposed conduct will be of benefit to the public as it will:

- a. Enable each Eligible Customer to purchase budget contact lenses from nib branded eye care centres without incurring any out-of-pocket-expenses and with the total cost of the contact lenses being completely covered by the Eligible Customer's annual optical benefit limit;
- b. Potentially encourage other private health insurance providers to offer similar benefits to their customers in the supply of their private health insurance products; and
- c. Not restrict customers of other private health insurers from accessing the Budget Products at no out-of-pocket costs (subject to the claims and other sub-limits applicable to the optical benefits limits available under their policies).

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

There are many alternative suppliers in the markets for private health insurance and optical products and services, and these markets are both highly competitive. It is not considered that the Promotion would diminish this level of competition. Other private health insurers have had for some

time preferred supplier arrangements with optical suppliers offering various discounts and benefits. Additionally, competitors in these markets have, from time to time, engaged in conduct similar to the proposed Promotion (depending on the structure of claims and other sub-limits applicable to the optical benefits limits available under the private health insurance policies of other private health insurers).

There is no obligation on nib customers (or Eligible Customers) to purchase the Budget Products from nib branded eye care centres or for nib customers to only purchase optical products from nib branded eye care centres. nib customers will still be able to access a wide range of differently priced products from any optical supplier in accordance with their standard claims and benefits limitations.

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)*

The relevant markets in which the Promotion is to be offered include:

- a. The Australian market for the supply of private health insurance; and
- b. The NSW market for the supply of optical products and services.

There are many private health insurers supplying private health insurance products to the Australian market and this market is highly competitive. Competitors in the private health insurance market frequently promote competitive offers and incentives similar to the Promotion.

There are many suppliers of optical products and services throughout Australia that vigorously compete with nib branded eye care centres in the supply of optical products and 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: *(Refer to direction 9)*

nib considers that little, if any, public detriment would be likely to result from the proposed conduct.

(b) Facts and evidence relevant to these detriments:

The proposed conduct will have little, if any, public detriment because:

- a. The relevant markets are highly competitive and there are numerous competitors and incentives promoted in these markets from time to time;
- b. nib customers are under no obligation to acquire the Budget Products from nib branded eye care centres;
- c. nib customers are under no obligation to acquire any optical products from nib branded eye care centres;
- d. nib customers can utilise their available annual benefit limits to purchase any optical products at competitive prices from any optical products provider;
- e. nib customers are likely to take into consideration a range of factors before they select an optical products and services provider.

nib considers that the proposed conduct will not have an anti-competitive effect in the relevant markets and that the benefits of the proposed conduct will outweigh any possible detriment potentially arising from the proposed conduct.

7. Further information

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

Mrs Michelle McPherson
Company Secretary
nib health funds limited
Locked Bag 2010
NEWCASTLE NSW 2300

Dated: 25 OCTOBER 2011

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to read 'm mcperson', written in a cursive style.

Mrs Michelle McPherson
Company Secretary
nib health funds limited
Locked Bag 2010
NEWCASTLE NSW 2300

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.