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12 December 2011

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

Dear Sir or Madam

Notification of third line forcing – Bupa Australia & Roses Only, Hampers Only and Fruit Only

Bupa Australia Pty Ltd ABN 81 000 057 590 trading as Bupa, MBF, HBA and Mutual Community (“**Bupa Australia**”) has negotiated an arrangement with Roses Only & Lush Flowers Pty Ltd ABN 60 065 255 692 trading as Roses Only, Hampers Only and Fruit Only (“**Roses Only & Lush Flowers**”).

Under this arrangement, Roses Only & Lush Flowers offers a discount on purchases of its product range including Roses Only, Hampers Only and Fruit Only to customers who have taken out health insurance with Bupa, MBF, HBA or Mutual Community.

It is arguable that this may involve a contravention of section 47 of the *Competition and Consumer Act 2010 (Cth)*. As a result, we enclose for your consideration:

- (1) a Form G notification on behalf of Roses Only & Lush Flowers;
- (2) a submission made by Bupa Australia on behalf of Roses Only & Lush Flowers 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 Roses Only & Lush Flowers consenting to Bupa Australia lodging the Form G notification on Roses Only & Lush Flowers’ behalf.

We would appreciate it if you would copy us in on any response you provide to Roses Only & Lush Flowers.

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

Yours sincerely,


Emma Zipper
General Counsel & Company Secretary
Bupa Australia Group



Bupa
PO Box 14639
MELBOURNE VIC 8001
bupa.com.au

**SUBMISSION BY BUPA AUSTRALIA
IN SUPPORT OF NOTIFICATION UNDER SECTION 93
OF THE COMPETITION AND CONSUMER ACT 2010**

This submission is made by Bupa Australia Pty Ltd ABN 81 000 057 590 and trading as Bupa, MBF, HBA and Mutual Community (“**Bupa Australia**”) on behalf of Roses Only & Lush Flowers 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 Roses Only & Lush Flowers, trading as Roses Only, Hampers Only and Fruit Only are providers of online flowers, fruit and hampers.
- 1.3 Bupa Australia has negotiated an arrangement with Roses Only & Lush Flowers. Under this arrangement, Roses Only & Lush Flowers offers a discount on its entire product range, to Bupa Australia members (that is, those who have health insurance with Bupa, MBF, HBA or Mutual Community).
- 1.4 This conduct by Roses Only & Lush Flowers is arguably a contravention of sections 47(6) and (7) of the *Competition and Consumer Act 2010 (Cth)* if Roses only & Lush Flowers 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, MBF, HBA or Mutual Community; 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, MBF, HBA or Mutual Community.

2. Details of offer

The table below sets out the details of the offer.

Business/Product	Description of offer
10% discount on online purchases	Available to all Bupa, MBF, HBA and Mutual Community customers. Bupa, MBF, HBA and Mutual Community customers receive a 10% discount on online purchases at Roses Only, Hampers Only and Fruit Only when they purchase products online at Bupa Australia’s website located at bupa.com.au.

3. Products and services

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

- leisure services; and

- private health insurance.

4. Public Benefit

The proposed conduct of Roses Only & Lush Flowers offers significant benefits to the public because:

- the discount make the products more affordable and better value for consumers; and
- the conduct motivates competitors to offer similar benefits and discounts and therefore increases competition in the products.

5. Competitive effects

5.1 The proposed conduct will have no detrimental effects on competition. Competition is strong and there are other companies competing for business on an equal footing.

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

- Roses Only & Lush Flowers will continue to offer its products to consumers at the regular prices, regardless of whether or not the consumers are Bupa Australia members; and
- consumers are free to purchase 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 CCA in respect of the attached notifications. This is because the conduct will cause no detriment and will generate tangible public benefits.

FORM G

COMMONWEALTH OF AUSTRALIA

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

N95658 Roses Only & Lush Flowers Pty Ltd ABN 60 065 255 692 (“**Roses Only & Lush Flowers**”).

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

 Roses Only & Lush Flowers, trading as Roses Only, Hampers Only and Fruit Only, are providers of online flowers, fruit and hampers.

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

 James Stevens
 CEO
 Roses Only & Lush Flowers
 57-59 Dunning Avenue
 Rosenberry
 NSW 2018
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates**

 Leisure services and private health insurance.

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

 Roses Only & Lush Flowers proposes to offer members of Bupa Australia Pty Ltd ABN 81 000 057 590 trading as Bupa, MBF, HBA and Mutual Community discounts on its regular prices 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, MBF, HBA or Mutual Community.

 (b) **Number of those persons**

The offer will be available to all Bupa, MBF, HBA and Mutual Community customers. At the present time Bupa, MBF, HBA and Mutual Community together cover around 3,250,592 lives on 1,548,417 memberships.

(c) Where number of persons state in item 3(b)(i) is less than 50, their names and addresses

Not applicable as the number of persons stated in item 3(b)(i) is greater than 50.

4. Public benefit claims

Please refer to the attached submission for arguments in support of notification.

5. Market definition – description of markets in which the relevant goods are supplied or acquired and other affected markets (including significant suppliers and acquirers, substitutes available, restrictions on the supply or acquisition of the relevant goods and services eg geographic or legal restrictions)

The relevant markets are the markets for the provision of leisure services and the market for the provision of private health insurance. Competition in each of these markets is strong and competitive and there are other suppliers in both of these markets that compete for business on an equal footing.

6. Public detriments

Please refer to the attached submission.

7. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice is:

James Stevens
CEO
Roses Only & Lush Flowers Pty Ltd

Dated:

Signed by/on behalf on the applicant:

Signature: _____

Full name: _____

JAMES STEVENS

Organisation: Roses Only & Lush Flowers Pty Ltd ABN 60 065 255 692 (“**Roses Only & Lush Flowers**”)

Position: CEO + FOUNDER

