

# 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:

N96216 Robert Smithies, as a member of the Sydney Uni Sport and Fitness, Management Committee. The Management Committee is the body under the Sydney Uni Sport and Fitness constitution which controls the association. Sydney University Sport ABN 96 121 520 371 (which trades as Sydney Uni Sport & Fitness) is an unincorporated association (“**Sydney Uni Sport & Fitness**”)

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

Sydney University Sport ABN 96 121 520 371 (trading as Sydney Uni Sport & Fitness) is a sport, recreation and fitness facility provider.

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

Rob Smithies  
Executive Director  
Sydney University Sport  
Sydney Uni Sports and Aquatic Centre Building G09  
University of Sydney NSW 2006

## 2. Notified arrangement

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

Fitness, sport and leisure and private health insurance services.

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

Sydney Uni Sport & Fitness proposes to offer private health insurance members of Bupa Australia Pty Ltd (trading as Bupa) ABN 81 000 057 590 who are staff or students at Sydney University and are members of the Sydney Uni Sport & Fitness Club a waiver of the annual Sydney Uni Sport &

Fitness annual membership fee. Please refer to the attached submission for further details.

**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:**

Bupa health insurance members who are staff or students at Sydney University, or members of the general community and are also pass holders at the Sydney Uni Sport & Fitness Centre.

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

**(i) At present time:**

Approximately 350 memberships

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

Approximately 200 memberships

**(c) Where number of persons stated 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**

**(a) Arguments in support of notification:**

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

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

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

**5. Market definition**

The relevant markets are the markets for the provision of fitness, sport and 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**

- (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:**

Please refer to the attached submission

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

Please refer to the attached submission

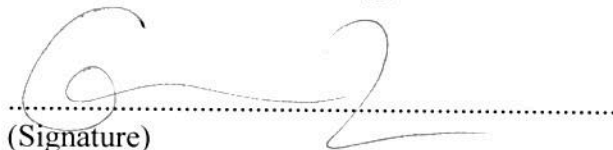
**7. Further information**

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

Rob Smithies  
Executive Director  
Sydney University Sport  
Sydney Uni Sports and Aquatic Centre Building G09  
University of Sydney NSW 2006  
Ph: 02 9351 4970

Dated..... 24 October 2012 .....

Signed by/on behalf of the applicant

  
.....  
(Signature)

Emma Zipper  
General Counsel & Company Secretary  
Bupa Australia Group

**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 trading as Bupa (“**Bupa**”) on behalf of Sydney Uni Sport & Fitness and supports the Form G notification attached.

**1. Overview of proposed conduct**

- 1.1 Bupa Australia Pty Ltd provides private health insurance to its members.
- 1.2 Sydney University Sport ABN 96 121 520 371 (trading as Sydney Uni Sport & Fitness) (“**Sydney Uni Sport & Fitness**”) is a university in Sydney founded in 1850 with approximately 50,206 student enrolments.
- 1.3 Bupa Australia Pty Ltd has negotiated an arrangement with Sydney Uni Sport & Fitness. Under this arrangement, Sydney Uni Sport & Fitness offers certain waivers/discounts to Bupa private health insurance members.
- 1.4 This conduct by Sydney Uni Sport & Fitness is arguably a contravention of sections 47(6) and (7) of the *Competition and Consumer Act 2010 (Cth)* if Sydney Uni Sport & Fitness 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 goods or services to consumers on the condition that those consumers are Bupa private health insurance members; 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 private health insurance from Bupa Australia Pty Ltd.

**2. Details of offer**

The table below sets out the details of the offer.

<b>Business/Product</b>	<b>Description of offer</b>
Fitness, sport and leisure	<p>Under the Bupa Sydney Uni Sport &amp; Fitness Corporate Health Plan, Bupa members who are staff or students at Sydney University, or members of the general community and who are pass holders at the Sydney Uni Sport &amp; Fitness Centre will be entitled to a waiver of the annual Sydney Uni Sport &amp; Fitness annual membership fee, valued at \$55.</p> <p>The conditions associated with this offer are:</p> <ul style="list-style-type: none"> <li>• only one annual membership waiver per person</li> <li>• proof of Bupa health insurance membership required</li> </ul>

### **3. Products and services**

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

- Fitness and leisure; and
- Private health insurance.

### **4. Public Benefit**

The proposed conduct of Sydney Uni Sport & Fitness 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**

5.1.1 The proposed conduct will have no detrimental effects on competition. Competition for fitness, sport and leisure services is strong and there are other many other companies competing for business on an equal footing. Within a 5km radius of it's facility Sydney Uni Sport & Fitness competes with the following gymnasiums:

- University of Technology Sydney
- Fitness First-Newtown
- Camperdown Fitness
- Broadway Gym
- Ian Thorpe Aquatic Centre
- Anytime Fitness Glebe
- Enmore Aquatic Centre and Gym
- National Centre for Indigenous Excellence Redfern

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

- Sydney Uni Sport & Fitness will continue to offer its products to others at the regular price with the regular membership fee, regardless of whether or not the consumers are Bupa private health insurance members; and
- consumers are free to purchase fitness, sport and leisure services 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.

3 October 2012

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 & Sydney University Sport**

We acknowledge that an arrangement between Bupa Australia Pty Ltd ABN 81 000 057 590 trading as Bupa (“**Bupa**”) and Sydney University Sport ABN 96 121 520 371 (trading as Sydney Uni Sport & Fitness) (“**Sydney Uni Sport & Fitness**”) may be considered a contravention of section 47 of the Competition and Consumer Act 2010 (Cth).

In particular, the arrangement involves Sydney Uni Sport & Fitness offering discounts to Bupa health insurance members.

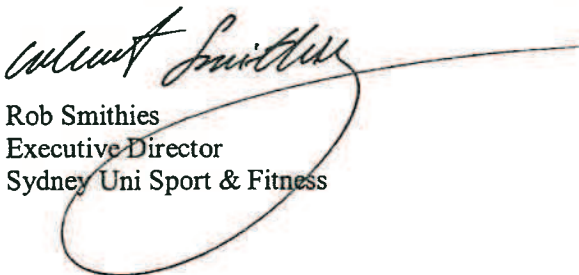
As a result, we consent to Bupa lodging with the ACCC, on our behalf:

- (1) a Form G notification; and
- (2) a submission made by Bupa on behalf of Sydney Uni Sport & Fitness 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 providing a copy of this letter to the ACCC as evidence of Sydney Uni Sport & Fitness’ consent to Bupa lodging the Form G notification on Sydney Uni Sport & Fitness’ behalf.

Yours sincerely,



Rob Smithies  
Executive Director  
Sydney Uni Sport & Fitness

SYDNEY UNI SPORT & FITNESS WOULD LIKE TO THANK ITS SPONSORS & PARTNERS



STRATEGIC PARTNERS

