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HANNAFORD**
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OUR REF: HADYN ORITI 122381

9 November 2012

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

Dear Sir

**PEAK CARE EQUIPMENT PTY LTD - PROPOSED AGREEMENT WITH CARERS
QUEENSLAND INC**

We act for Peak Care Equipment Pty Ltd.

We attach, on behalf of our client:

- a form G notification in respect of an agreement with Carers Queensland
- the proposed deed of agreement
- our cheque for the filing fee of \$100

Yours faithfully
DONOVAN OATES HANNAFORD



Hadyn Oriti
Direct: 6583 0449
E-mail: horiti@dohlaw.com.au



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)

N96266

Peak Care Equipment Pty Ltd ACN 121 552 672.

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

(Refer to direction 3)

Co-ordination and administration of a co-operative not-for-profit organisation for an Australia wide network of local distributors of medical rehabilitation equipment and services. Essentially, Peak Care Equipment is a buying group for independent retailers.

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

3/10 Tannery Street, Unanderra NSW 2526

2. Notified arrangement

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

Medical Rehabilitation Equipment Sales and Service

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

Promotion and marketing agreement to refer members of Carers Queensland to members of Peak Care Equipment for discounted equipment and services.

A copy of the proposed agreement between Peak Care Equipment and Carers Queensland is annexed. Peak Care Equipment requests the terms of the agreement are kept confidential.

(Refer to direction 4)

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)

The class of persons to whom the conduct relates is those that have a disability or impairment requiring special assistance, for example, mobility aids, adjustable beds, showers stools, over bed tables, compression bandages, slings and overhead lifts.

The potential consumers range across all demographics from adolescent to the elderly.

- (b) Number of those persons:

- (i) At present time:

500,000

- (ii) Estimated within the next year:

(Refer to direction 6)

500,000

- (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 relevant retail market is characterised by high cost and low margins for retail suppliers. Discounting of consumer prices is not prevalent within the market given the low margins.

The agreement with Carers Queensland would entail members of that organisation having access to goods from Peak Care Equipment members with a minimum discount on all products. This results in savings to those consumers, with ongoing access to further monthly promotions and discounts. The aim is to grow the market share of Peak Care Equipment members and then increase the bargaining power of Peak Care Equipment members with their wholesale suppliers. The objective is the reduction or downward pressure on wholesale prices. If successful, this will result in further discounts and benefits to Carers Queensland members.

Ultimately, the whole of this growing consumer market would benefit from the pressure on the wholesale suppliers of these products to provide them at competitive pricing. That pressure can be achieved by increasing sales through independent local retail suppliers who make up the membership of Peak Care Equipment.

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

Peak Care Equipment has conducted its own market research within its membership.

Discounts have not been a feature of retailing in this market previously. The ability to provide the discount is dependent on the volume of anticipated referrals from Carers Queensland leading to an increase in volumes sold through the Peak Care Equipment membership.

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 agreement is specifically targeted to benefit the individual unpaid Carer market and their patients. This is a growing market having regard to demographic changes and the aging population in Australia. The market does not include the sales of such products to hospitals, aged care homes and the like.

The individual carer consumer and their patients will benefit as a result of the agreement.

There is no independently obtained or verifiable evidence, statistical or otherwise, as to the size of this consumer market or the market share of the various entities within it.

Peak Care Equipment believes the retail market for the products its members offer is approximately \$300m annually based on anecdotal evidence it has from its members. In Queensland, it assumes the market is about \$48m. Peak Care Equipment members have approximately 25% of the national market. Aidacare probably has a similar market share. The balance of the market is with independent retailers who are not aligned with any known buying group, other than certain retailers who are associated with the Bretheren religious group.

Peak Care Equipment deals with 55 suppliers and estimates that there are approximately 150-200 wholesale suppliers of relevant products nationally.

The agreement provides a degree of exclusivity on the marketing of Peak Care Equipment members providing medical rehabilitation products. However, the agreement does not restrict other companies from providing discounts to the same market. In this sense the agreement does not affect competition. Further, all Peak Care Equipment members are in competition against each other as well. This agreement does not affect that competition.

Peak Care Equipment members hold stock and have access to all major brands and products available from their competitors. Peak Care also has a large range of exclusively distributed products, including its own brand of products. Such products are not available elsewhere. Due to the volume of sales of the “exclusive products” and “Peak Care Equipment branded products”, the agreement with Carers Queensland and the arrangements under it add value to the consumer by bring competitive pressure to bear on the supplies of alternative products to also make them available at reduced prices.

The agreement covers the whole of Queensland as it is with Carers Queensland; however, the agreement is not limited in any geographic sense.

In due course, it would be hoped to extend the arrangement with other similar bodies in other states and territories.

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)

Peak Care Equipment cannot identify any detriments to the public. Discounts within this market were not previously available. The only effect it will have is to eventually force the competitors to reduce their pricing on products and services to match the offering. Peak Care Equipment sees this agreement as increasing competitive pressures within the marketplace.

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

7. Further information

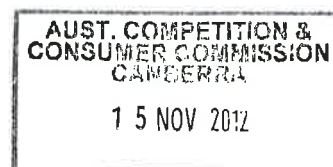
- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Joe Cohen
Chief Executive Officer
3/10 Tannery Street, Unanderra NSW 2526
jcohen@peak-care.com.au
02 4272 2688.

Dated: 9 November 2012

Signed on behalf of the applicant

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Hadyn Oriti
Donovan Oates Hannaford Lawyers
Partner



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.