

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: TONY IRELAND
ABN: EYECARE OPERATIONS PTY LTD
77125 366225
PRACTICE NAME: TONY IRELAND EYECARE OPTOMETRISTS
PRIMARY PRACTICE ADDRESS: SHOP 13, PHILLIP CENTRE, PRINCES HWY
ULLADULLA, NSW, 2539

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

TONY IRELAND
EYECARE OPTOMETRISTS [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature: [Signature]
(As an authorised representative for and behalf of [name of optometry practice])
Name: RAYMOND FORTESCUE
Title: DIRECTOR
Date: 10 NOVEMBER 2012

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)

Tony Ireland
N96320 Eyecare Operations Pty Ltd dba Tony Ireland EyeQ Optometrists
Shop 13, Phillip Centre, Princes Hwy
Ulladulla, NSW 2539 (the **Participant**).

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

VSP Global, Inc (ARBN 161 014 651) (**VSP**) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 23 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellios

(Full Name)

Allens

(Organisation)

Partner

(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME:

SUZANNE EFRON

ABN:

CYECARE OPERATIONS PTY LTD
77 125 366 225

PRACTICE NAME:

WOODS & EFRON EYE OPTOMETRISTS

PRIMARY PRACTICE ADDRESS:

SHOP 3A, 2431 GOLD COAST HWY
MERMAID BEACH QLD 4218

TO:

VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Australia

Coverage:

WOODS & EFRON
EYE OPTOMETRISTS

[Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

(As an authorised representative for and behalf of [name of optometry practice])

Name

RAYMOND FORTESCUE

Title

DIRECTOR

Date

1 NOVEMBER 2012

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)

Suzanne Efron
N96321 Eyecare Operations Pty Ltd dba Woods & Efron EyeQ Optometrists
Shop 3A, 2431 Gold Coast Hwy
Mermaid Beach, QLD 4218 (the **Participant**).

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

VSP Global, Inc (ARBN 161 014 651) (**VSP**) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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- (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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellos
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 23 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellos
(Full Name)

Allens
(Organisation)

Partner
(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.

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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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IEC members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECs easy for health fund members. This will increase the volume of customers for IECs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECs will join the network. Some IECs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME:

Andrew Lehmann

ABN:

PRACTICE NAME:

Eyecare Plus Bribie Island

PRIMARY PRACTICE ADDRESS:

Shop 4 Bribie Island S.C.

Bribie Island 4507.

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

Eyecare Plus Bribie Island [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

(As an authorised representative for and behalf of [name of optometry practice])

Name

Title

Date

Andrew Lehmann
Optometrist
14-11-12

Eyecare Plus Bribie Island

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)

Andrew Lehmann
N96322 A & J Lehmann Pty Ltd ATF A & J Lehmann Family Trust
Doing business as Eyecare Plus Bribrie Island
Shop 4 Bribrie Island S.C.
Bribrie Island QLD 4507
(the ***Participant***).

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

VSP Global, Inc (ARBN 161 014 651) (***VSP***) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, ***IECPs***) within Australia, which will assist the Participant and other IECs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

5. Market definition

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(Refer to direction 8)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Kon Stellios', written over a horizontal line.

(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

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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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM 11.2 OF THE PROVIDER AGREEMENT.

PROVIDER NAME:

Faye Leone Woods

ABN:

36 563 886 849

PRACTICE NAME:

Eggarodus handlee

PRIMARY PRACTICE ADDRESS:

Shop 3 handlee Shopping Village
Chewer 4306

TIN:

VSP Global Inc.
1334 County Drive
Rochester, NY 14620
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to ongoing immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct:

Discounted optometric services and optical products for members of participating health funds

Coverage:

Australia

Eggarodus handlee

(Name of optometry practice) authorises VSP Global Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global Inc. to deal with any queries from the ACCC on its behalf.

Signature:

Faye Woods

(As an authorised representative for and behalf of (name of optometry practice))

Name:

Faye Woods

Title:

Owner

Date:

5/11/13

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)

N96323 Faye Woods
(Individual/Sole Trader, ABN 36 563 826 849)
Trading as Eyecare Plus Karalee
Shop 3, Karalee Shopping Village
Chuwar, QLD 4306
(the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other IECs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Kon Stellios', written over a horizontal line.

(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME:

Harry Melides

ABN:

62 082 671 976

PRACTICE NAME:

EYEDEAL VISION

PRIMARY PRACTICE ADDRESS:

138 BEAUDESERT RD

MODROONA LOT

BRISBANE QLD

AUSTRALIA

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds

Coverage: Australia

EYEDEAL VISION (Name of optometry practice) authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

Harry Melides

(As an authorised representative for and behalf of (name of optometry practice))

Name

HARRY MELIDES

Title

M.A.

Date

26.10.12

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)

Harry Melides
N96324 Eyedea Vision Pty Ltd
138 Beaudesert Road
Moorooka, QLD 4105 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other *IECPs* to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network *IECPs* as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 23 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellios

(Full Name)

Allens

(Organisation)

Partner

(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: JASON TAT MING LEONG
ABN: 32 904 674 281
PRACTICE NAME: EYEDESIGN EYEWEAR
PRIMARY PRACTICE ADDRESS: Shop 27 Bridgepoint Shopping Centre
1-3 Brady St, Mosman NSW 2088

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA


Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

EYEDESIGN EYEWEAR [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature: 
(As an authorised representative for and behalf of [name of optometry practice])
Name: JASON LEONG
Title: OPTOMETRIST / OWNER
Date: 8/11/12

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)

N96325 Jason Leong
(Individual/Sole Trader, ABN 32 904 674 281)
Eyedesign Eyewear
Shop 27 Bridgepoint Shopping Centre
1-3 Bradey Street
Mosman, NSW 2088 (the **Participant**).

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

VSP Global, Inc (ARBN 161 014 651) (**VSP**) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Kon Stellios', written over a horizontal line.

(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: NATASHA BRINSAEN
ABN: EYEQ PTY LTD
40 009 524 430
PRACTICE NAME: EYEQ OPTOMETRISTS KARRINYUP
PRIMARY PRACTICE ADDRESS: SHOP 144, LEVEL 1, KARRINYUP SHOPPING CENTRE
KARRINYUP RD, KARRINYUP.

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds

Coverage: Australia

EYEQ OPTOMETRISTS
KARRINYUP

[Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

(As an authorised representative for and behalf of [name of optometry practice])

Name

RAYMONA FORTESCUE

Title

DIRECTOR

Date

1 NOVEMBER 2012

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)

N96326 Natasha Brinsden
EyeQ Pty Ltd dba EyeQ Optometrists Karrinyup
Shop 144, Level 1, Karrin Yup Shopping Centre
Karrinyup Road
Karrinyup WA 6018 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other *IECPs* to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network *IECPs* as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 23 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellios

(Full Name)

Allens

(Organisation)

Partner

(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: John Talawicki
ABN: 5200 627 4820
PRACTICE NAME: Eyes On Westond
PRIMARY PRACTICE ADDRESS: 8/600 Collins St
Melbourne Vic 3006

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

Eyes on Westond [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

(As an authorised representative for and behalf of [name of optometry practice])

Name

Title

Date

Matthew Smith
Manager
21/11/14

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)

John Jalowicki
N96327 Westend Optical Services Pty Ltd.
Trading as Eyes on Westend
8/600 Collins St
Melbourne, VIC 3000 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Kon Stellios', written over a horizontal line.

(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME EYEWORLD CONSULTANTS P/L
ABN: 25 103 097 098
PRACTICE NAME KADINERL OPTICAL
PRIMARY PRACTICE ADDRESS 39/330 CRANBURY RD
FRANKSTON VIC 3199

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

KADINERL OPTICAL [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network; and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

(As an authorised representative for and behalf of (name of optometry practice))

Name

DAVID GLENNE

Title

MANAGER

Date

12-11-12

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)

David Glennie
N96328 Eyewear Consultants Pty Ltd dba Karingal Optical
39/330 Cranbourne Road
Frankston, VIC 3199 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other IECs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Kon Stellios', written over a horizontal line.

(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: FIRST CENTRE PTY LTD

ABN: 481 382 52 838

PRACTICE NAME: MERRINGTON OPTOMETRY

PRIMARY PRACTICE ADDRESS: 424 KEILOR RD

MIDDLEBURY, VIC, 3842

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds

Coverage: Australia

FIRST CENTRE PTY LTD [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

(As an authorised representative for and behalf of [name of optometry practice])

Name

JAMES MERRINGTON

Title

DR

Date

17.10.12

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)

N96329 James Merrington
First Centre Pty Ltd
Merrington Optometry
429 Keilor Rd
Niddrie, VIC 3042 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other *IECPs* to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network *IECPs* as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellos
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 23 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellos

(Full Name)

Allens

(Organisation)

Partner

(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: GREGORY JOHN ROWE
ABN: 35881392065
PRACTICE NAME: FOCAL POINT EYECARE
PRIMARY PRACTICE ADDRESS: SHOP 3, 1376 ANZAC AVE
KALLANGUR.

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

FOCAL POINT EYECARE (Name of optometry practice) authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

GREGORY JOHN ROWE
(As an authorised representative for and behalf of [name of optometry practice])

Name

GREGORY JOHN ROWE

Title

OWNER / DIRECTOR

Date

3/11/12

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)

Gregory John Rowe
N96330 Parmist Pty Ltd ATF The GJ Rowe Family Trust
(ABN 35 881 392 065)
Focal Point Eyecare
Shop 3; 1376 Anzac Avenue
Kallangur, QLD 4503 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other IECs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Kon Stellios', written over a horizontal line.

(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: LISA PICCOLO
FOCUS OPTICS PTY LTD
ABN: 29 075 755 163
PRACTICE NAME: EYEC OPTOMETRISTS SPRINGHILL
PRIMARY PRACTICE ADDRESS: 113 WICKHAM TCE
SPRING HILL QLD

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

EYEC OPTOMETRISTS
SPRING HILL [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

Name

Title

Date

[Signature]
(As an authorised representative for and behalf of [name of optometry practice])

RAYMOND PORTESCUE

DIRECTOR

10 NOVEMBER 2012

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)

Lisa Piccolo
N96331 Focus Optics Pty Ltd dba EyeQ Optometrists Springhill
113 Wickham Terrace
Springhill, QLD 4000 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other IECs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 23 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellios

(Full Name)

Allens

(Organisation)

Partner

(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME:

JOY ENGLISH

ABN:

74 272 508 786

PRACTICE NAME:

FOCUS OPTOMETRY

PRIMARY PRACTICE ADDRESS:

575 DEAN ST

ALBURY 2640

TO: VSP Global, Inc.
3393 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds

Coverage: Australia

FOCUS OPTOMETRY [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

[Signature]
(As an authorised representative for and behalf of [name of optometry practice])

Name

JOY ENGLISH

Title

DIRECTOR

Date

16/11/12

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)

Joy English
N96332 Focus Optometry Pty Ltd.
575 Dean Street
Albury NSW 2640
(the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other IECs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Kon Stellios', written over a horizontal line.

(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

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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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: Paul Salloum
ABN: 20 105 662 799
PRACTICE NAME: Invision Essendon
PRIMARY PRACTICE ADDRESS: 259A Kellor Rd, Essendon, VIC 3040

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

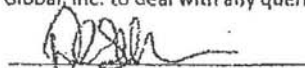
In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

Invision Essendon [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature



(As an authorised representative for and behalf of. (name of optometry practice))

Name

Paul Salloum

Title

Director/Owner-Optometrist

Date

31/10/12

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)

Paul Salloum
N96333 Foresight Enterprises P/L T/A Invision Essendon
259A Keilor Road
Essendon, VIC 3040 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other *IECPs* to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network *IECPs* as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellos
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 23 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellos

(Full Name)

Allens

(Organisation)

Partner

(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia. This will assist IECs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IEC members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECs easy for health fund members. This will increase the volume of customers for IECs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECs will join the network. Some IECs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: Freshbay Pty Ltd
ABN: 22098962095
PRACTICE NAME: Medioptics
PRIMARY PRACTICE ADDRESS: N18 Centre Toormina
Toormina 2452

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

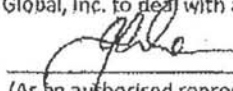
In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

Medioptics [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature


(As an authorised representative for and behalf of [name of optometry practice])

Name

Greg Luke

Title

Director

Date

03/11/12

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)

N96334 Greg Luke
Freshbay Pty Ltd
Medioptics
N18 Centro Toormina
Toormina, NSW 2452 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other *IECPs* to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network *IECPs* as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 23 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellios

(Full Name)

Allens

(Organisation)

Partner

(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT

PROVIDER NAME: _____

ABN: _____

PRACTICE NAME: _____

PRIMARY PRACTICE ADDRESS: _____

James M Brown
Optometrist
Future Vision
145 Canning Hwy
South Perth 6151 WA
Phone/Fax 08 9367 4726
226897JB

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds

Coverage: Australia

Future Vision
James M Brown Optometrist (Name of optometry practice) authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature _____

(As an authorised representative for and behalf of [name of optometry practice])

Name _____

Title _____

Date _____

James Brown
Optometrist
3/11/2012

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)

James M. Brown, Optometrist
N96335 Future Vision Unit Trust ITF
Future Vision
(ABN 95480681414)
145 Canning Hwy
South Perth 6151 WA (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Kon Stellios', written over a horizontal line.

(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: GREG BOWYER optometrist
ABN: 78675 095 683
PRACTICE NAME: GREG BOWYER Eyewear Boutique
PRIMARY PRACTICE ADDRESS: Shop 32 KENMORE Shopping Village
Moggill Rd. KENMORE BRISBANE 4069

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek Immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds

Coverage: Australia

GREG BOWYER - Eyewear Boutique [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

[Signature]

(As an authorised representative for and behalf of [name of optometry practice])

Name

GREG BOWYER

Title

Principal

Date

20/10/12

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)

N96336 Bowyer Family Trust ATF
Greg Bowyer, Optometrist
doing business as Greg Bowyer Eyewear Boutique
(ABN 98 675 095 683)
Shop 32 Kenmore Shopping Village
Moggill Road
Kenmore Brisbane 4069 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Kon Stellios', written over a horizontal line.

(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: GT Conwell Pty Ltd
ABN: 61 010 648 227
PRACTICE NAME: Eyecare Plus Jindalee
PRIMARY PRACTICE ADDRESS: Shop 3, Windermere Village
21 Goggs Road, Jindalee, QLD 4074

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA


Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

Eyecare Plus Jindalee [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature 
(As an authorised representative for and behalf of [name of optometry practice])
Name Geoffrey Thomas Conwell
Title Director
Date 14.11.2012

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)

Geoffrey Conwell
N96337 GT Conwell Pty Ltd dba Eyecare Plus Jindalee
Shop 3, Windermere Village
21 Goggs Road
Jindalee, QLD 4074
(the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other *IECPs* to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network *IECPs* as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Kon Stellios', written over a horizontal line.

(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: DANH Kim HA
ABN: 72 105 725 844
PRACTICE NAME: HP7 VISION CENTRE
PRIMARY PRACTICE ADDRESS: 14 MAIN STREET
BLACKTOWN

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of
Coverage: participating health funds
Australia

HP7 VISION CENTRE (Name of optometry practice) authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature: [Signature]
(As an authorised representative for and behalf of (name of optometry practice))
Name: DANH Kim HA
Title: Manager
Date: 9/11/12

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)

N96338 Oanh Kim Ha
Ha Developments Pty Ltd.
doing business as H7 Vision Centre
14 Main Street
Blacktown, NSW 2148 (the **Participant**).

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

VSP Global, Inc (ARBN 161 014 651) (**VSP**) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Kon Stellios', written over a horizontal line.

(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: HERBERT TJIONG
ABN: 49 619 710 802
PRACTICE NAME: HERBERT TJIONG OPTOM
PRIMARY PRACTICE ADDRESS: G07 / 10 EDGEWORTH DAVID AVE
HORNSBY NSW 2077

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

HERBERT TJIONG [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature [Signature] an authorised representative for and behalf of [name of optometry practice])

Name HERBERT TJIONG
Title MR
Date 05 NOV 2012

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)

Herbert Tjiong
N96339 Herbert Tjiong Optometrist
(Individual/Sole Trader, ANB 48 619 710 802)
G07 / 10 Edgeworth David Ave.
Hornsby, NSW 2077 (the **Participant**).

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

VSP Global, Inc (ARBN 161 014 651) (**VSP**) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: JASON TEH
ABN: 16080140190
PRACTICE NAME: IN2EYES OPTOMETRY
PRIMARY PRACTICE ADDRESS: 511 WHITEHORSE ROAD
SURREY HILLS 3127

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

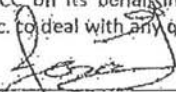
Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds.
Coverage: Australia

IN2EYES OPTOMETRY [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature: 
(As an authorised representative for and behalf of [name of optometry practice])
Name: JASON TEH
Title: MR
Date: 16/11/2012

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)

Jason Teh
N96340 In2Eyes Pty Ltd.
doing business as In2Eyes Optometry
51 Whitehorse Road
Surrey Hills 3127
(the **Participant**).

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

VSP Global, Inc (ARBN 161 014 651) (**VSP**) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

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3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
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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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: Kien Wong
ABN: 84806174027
PRACTICE NAME: Wink Eye Care
PRIMARY PRACTICE ADDRESS: 217 HIGH ST
Barnockburn Vic 3331

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

Wink Eye Care [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

[Signature]
(As an authorised representative for and behalf of [name of optometry practice])

Name

Title

Date

Kien Wong
MR
8/11/12

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)

Kien Wong
N96341 Insight Optical P/L dba Winks Eyecare
2/7 High Street
Bonnockburn, VIC 3331 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 23 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellios

(Full Name)

Allens

(Organisation)

Partner

(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME:

GORDON KENNEDY

ABN:

17461608247

PRACTICE NAME:

1SYTE OPTOMETRISTS

PRIMARY PRACTICE ADDRESS:

BUILDING 6, ECU
270 JOONDALUP DRIVE
JOONDALUP, WA 6027

TO:

VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds

Coverage: Australia

1SYTE OPTOMETRISTS [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

[Signature]
(As an authorised representative for and behalf of (name of optometry practice))

Name

KAREN WICKBURY

Title

DIRECTOR

Date

07/11/2012

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)

N96342 Gordon Kennedy
The Woodfield Unit Trust ITF
iSyte Optometrists
(ABN 17 461 608 247)
Building G, ECU
270 Joondalup Drive
Joondalup, WA 6027 (the **Participant**).

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

VSP Global, Inc (ARBN 161 014 651) (**VSP**) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME:

JIM GARZALONIS

ADDR:

85 006 479 285

PRACTICE NAME:

J. GARZALONIS PTY LTD (NORTHCOSTE OPTICAL)

PRIMARY PRACTICE ADDRESS:

276 HIGH ST

NORTHCOSTE 7070

TO:

VSP Global, Inc.
3333 Flamingo Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

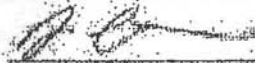
We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyeglass products for members of participating health funds

Coverage: Australia

J. GARZALONIS PTY LTD (name of optometry practice) authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature



(as an authorised representative for and behalf of (name of optometry practice))

Name

Jim Garzalonis

Title

MD, DR

Date

17/01/12

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)

N96343 Jim Gargalionis
J. Gargalionis Pty Ltd dba Northcote Optical
276 High Street
Northcote, VIC 3070 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 23 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellios

(Full Name)

Allens

(Organisation)

Partner

(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia. This will assist IECs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IEC members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECs easy for health fund members. This will increase the volume of customers for IECs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECs will join the network. Some IECs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 100% Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: PAUL HARVEY
ABN: 34 741 609 566
PRACTICE NAME: PAUL HARVEY OPTOMETRY
PRIMARY PRACTICE ADDRESS: Shop 20 Tamworth Shoppingworld
Denne St Tamworth NSW 2340

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

PAUL HARVEY OPTOMETRY [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature: Paul Harvey
(As an authorised representative for and behalf of [name of optometry practice])
Name: PAUL HARVEY
Title: DIRECTOR
Date: 29/10/12

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)

N96344 Paul Harvey
Jalage Pty Ltd as Trustee for PMH Optical Discretionary Trust dba Paul
Harvey Optometry
Shop 20 Tamworth Shopping World
Denne St.
Tamworth, NSW 2340 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other *IECPs* to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network *IECPs* as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 23 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellios

(Full Name)

Allens

(Organisation)

Partner

(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia. This will assist IECs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IEC members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECs easy for health fund members. This will increase the volume of customers for IECs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECs will join the network. Some IECs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

Confidential

[Letterhead of Independent optometrist]

VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA
Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Business details: 20% off frames and lenses 15% off contact lenses
Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

EYECARE Plus authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature:

(As an authorised representative for and behalf of

EYECARE Plus, Indo-Pak
Name of Optometry Practice

Name:
Title:
Date:

Jan Coetzee
Optometrist
18/10/2012

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)

N96345 Jan Coetzee
Jalamec Pty Ltd ATF The Jalamec Trust dba EyeCare Plus Indooroopilly
80 Stamford Road
Indooroopilly, QLD 4068 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

5. Market definition

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(Refer to direction 8)

Please refer to the attached submission.

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- (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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellos
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 23 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellos

(Full Name)

Allens

(Organisation)

Partner

(Position in Organisation)



DIRECTIONS

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Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

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VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: JOHN BYRNES
ABN: 69 092 309 290
PRACTICE NAME: JOHN & CARMEN BYRNES OPTOMETRISTS
PRIMARY PRACTICE ADDRESS: 6 ARMUZ AVENUE
CALOUNDRA, 4551

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds.
Coverage: Australia

JOHN BYRNES OPTOMETRISTS PTY LTD (name of optometry practice) authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

(As an authorised representative for and behalf of [name of optometry practice])

Name

Title

Date

JOHN BYRNES
OWNER / DIRECTOR
7/11/12

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)

John Byrnes
N96346 John Byrnes Optometrist Pty Ltd.
Trading as John & Carmen Byrnes Optometrists
6 Ormuz Avenue
Caloundra, Brisbane 4551 (the **Participant**).

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

VSP Global, Inc (ARBN 161 014 651) (**VSP**) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles

and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME:

John Halpin

ABN:

PRACTICE NAME:

John Halpin (Eyecare Plus)

PRIMARY PRACTICE ADDRESS:

5 President AvenueCaringbah 2229

TO:

VSP Global, Inc.
3993 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds

Coverage: Australia

John Halpin (Eyecare Plus) [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

(As an authorised representative for and behalf of [name of optometry practice])

Name

John Halpin

Title

Mr.

Date

16.11.2012

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)

N96347 John Halpin
(Individual/Sole Trader, ABN 45 413 376 831)
Trading as Eyecare Plus
5 President Avenue
Caringbah NSW 2229
(the **Participant**).

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

VSP Global, Inc (ARBN 161 014 651) (**VSP**) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia, which will assist the Participant and other IECs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: Mr. Stacey Pedler

ABN: 45 506 404 318

PRACTICE NAME: Kalamunda Optical

PRIMARY PRACTICE ADDRESS: 3C Barberry Square, Kalamunda WA 6076

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

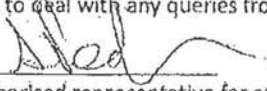
We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds

Coverage: Australia

Kalamunda Optical [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature


(As an authorised representative for and behalf of [name of optometry practice])

Name: Stacey Pedler

Title: Owner

Date: 31/10/2012

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)

Mr. Stacey Pedler
N96348 Kazac Pty Ltd. ATF Kazac Family Trust
Trading as Kalamunda Optical
3C Barberry Square
Kalamunda, WA 6076 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other IECs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Kon Stellios', written over a horizontal line.

(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: STUART M^CJNNE
ABN: 93129 831401
PRACTICE NAME: LAKE EYEWEAR PTY LTD
PRIMARY PRACTICE ADDRESS: 1217 HOWITT ST
WENDOOREE, VIC, 3355

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

LAKE EYEWEAR PTY LTD [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

[Signature]

(As an authorised representative for and behalf of [name of optometry practice])

Name

STUART M^CJNNE

Title

DIRECTOR

Date

26-10-12

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)

Stuart McInnes
N96349 Lake Eyewear Pty Ltd.
1217 Howitt St
Wendouree, VIC 3355 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellos
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 23 November 2012

Signed by/on behalf of the applicant



(Signature)

Kon Stellos

(Full Name)

Allens

(Organisation)

Partner

(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: Loan Quach
ABN: 55 083 219 407
PRACTICE NAME: Loan Quach Optometrist
PRIMARY PRACTICE ADDRESS: 22 Windsor Ave
Springvale 3171 VIC

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

LOAN QUACH OPTOMETRIST (Name of optometry practice) authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

[Signature]

(As an authorised representative for and behalf of [name of optometry practice])

Name

Ms LOAN QUACH

Title

Optometrist

Date

8/4/12

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)

N96350 Loan Quach Pty Ltd.
Trading as Loan Quach Optometrist
22 Windsor Ave
Springvale, VIC 3171 (the *Participant*).

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

VSP Global, Inc (ARBN 161 014 651) (*VSP*) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia, which will assist the Participant and other IECs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Kon Stellios', written over a horizontal line.

(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

0362243989

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: LOOK OF AUSTRALIA.
ABN: 76597803225
PRACTICE NAME: LOOK OF AUSTRALIA.
PRIMARY PRACTICE ADDRESS: 160 COLLINS ST
HOBART TAS 7000

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

LOOK OF AUSTRALIA (Name of optometry practice) authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature

(As an authorised representative for and behalf of (name of optometry practice))

Name

BARRIE GISHMAN

Title

MANAGING OWNER

Date

1/11/12

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)

Barrie Eshman
N96351 Peyper Family Trust & Eshman Family Trust
Trading as Look of Australia (Tasmania)
(ABN 76597803225)
160 Collins St
Hobart TAS 7000
(the **Participant**).

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

VSP Global, Inc (ARBN 161 014 651) (**VSP**) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

The Participant within the VSP network will offer a discount on the supply of optometry services and related products (such as completed spectacles and contact lenses) to customers who are members of participating health funds, or the employees of the participating health funds.

- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

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)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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

Please refer to the attached submission.

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)

Please refer to the attached submission.

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)

There are no public detriments from the notification - 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:

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to be 'Kon Stellios', written over a horizontal line.

(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(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.

Submission

Background

VSP is a vision benefits company based in the United States, which was founded by a group of optometrists in 1955. It offers a range of products and services to eyecare professionals, employers and more than 56 million members.

VSP proposes to expand into Australia, to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, *IECPs*) within Australia. This will assist IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. VSP proposes to enter into arrangements with major Australian health funds for IECPs who are part of the VSP network to be promoted as Members' Choice providers, and for health fund members to receive discounts from these IECPs.

Notified Conduct

In order to establish the VSP network, VSP will enter into arrangements with participating health funds, who will agree to promote the VSP network (and IECP members within the network) to their members as preferred Members' Choice providers. At the current time, other optometry chains such as Specsavers and Luxxotica are promoted by health funds in a similar manner. No fees or other payments will be payable between VSP and the health funds.

The Participant and other IECPs in the VSP network will provide a discount on the prices that they offer to members of participating health funds. The discount will also be offered to employees of the participating health fund, and immediate family members of those employees.

The Participant and other IECPs will also stock several ranges of 'no-gap' spectacles, which will allow health fund members to acquire spectacles without any 'out of pocket' expenses under their health plans. Claims for the costs of these spectacles and services will be processed through the HICAPS system, which will make claims from VSP network IECPs easy for health fund members. This will increase the volume of customers for IECPs in the VSP network.

VSP has already entered into the arrangements described above with Medibank, which has about 3.8 million members. Those members will receive the benefit of the VSP proposal. VSP may enter into similar arrangements with other health funds in future.

VSP expects that approximately 250 IECPs will, from time to time, be part of the VSP network. Initially, VSP anticipates that participating IECPs will comprise approximately 4 % of the optometry services and eyecare products market by volume and 5.6% by number of outlets. VSP expects that over time, as the VSP network gains traction within Australia, more IECPs will join the network. Some IECPs may

also choose to leave the network at or before the expiry of their arrangements with VSP.

Competition Issues

In Australia, the main suppliers of optometry services and the supply of spectacles to consumers are Specsavers and Luxxotica, which VSP estimates have a national share of supply of around 50% by volume and 30% by number of locations. There are also other small-to-medium sized chains such as The Optical Superstore, Big W Vision, Blink Optical and 1001 Optical. These participants are generally vertically integrated, operating as both retail suppliers as well as engaging in the wholesale manufacture and supply of lenses, frames and lens finishing services. This provides these chains with substantial cost savings through economies of scale.

In addition, the major health funds in Australia (BUPA, Medibank and NIB) promote and actively encourage its members to use the main suppliers, including Specsavers and/or Luxxotica, as preferred outlets. In the optometry industry, health fund members' annual entitlements under their extras cover drive a significant proportion of demand.

The remainder of the industry is made up of IECPs, who are independent optometrists and eyecare professionals, most of whom provide both optometry services and have a small retail optical dispensing business. IECPs occupy about 54% of the outlets in the optometry market, but only comprise 43% of the volume of sales. In addition to having less public exposure than the retail chains (due to the lack of promotion by health funds), these independent operators do not have vertically integrated operations, and operate with higher costs. Some IECPs participate in buying groups for upstream goods and services, which partially offsets their cost disadvantage.

Public Benefits

The VSP network will increase the exposure of IECPs to the public, assisting them to compete with major players like Specsavers and Luxxotica. This will increase the effectiveness of competition in the retail supply of optometry services and eye care products.

Health fund members will receive:

- easier access to alternative optometry services and spectacle providers from the big chains;
- discounts for optometry services and spectacles from IECPs within the VSP network;
- a greater range of spectacles that are 'no-gap' under their health plans.

This gives greater consumer choice to health fund members.

Public Detriments

There are no public detriments from the conduct. Health fund members are free to choose to take up the discount offer from VSP network IECPs, or from the other retail

outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.

ANNEXURE A

INSTRUCTIONS: PLEASE COMPLETE ANNEXURE A BELOW AS OUTLINED IN ITEM #12 OF THE PROVIDER AGREEMENT.

PROVIDER NAME: MARK GIBSON
ABN: 93 445 561 009
PRACTICE NAME: MARK GIBSON OPTOMETRIST
PRIMARY PRACTICE ADDRESS: 8/667 OXLEY RD
CORINDA QLD 4075

TO: VSP Global, Inc.
3333 Quality Drive
Rancho Cordova, CA 95670
USA

Attention: VSP Australia Network Administration

In relation to our confirmation to participate in the VSP Australia network of Independent optometrists, we understand that VSP Global, Inc. will be notifying the Australian Competition and Consumer Commission (ACCC) on our behalf to seek immunity in relation to potential third line forcing conduct.

We further acknowledge and agree that the VSP Australia network and our participation in it is subject to gaining immunity from prosecution for third line forcing. As part of the submission to the ACCC for this purpose, we confirm the following details:

Proposed conduct: Discounted optometry services and eyecare products for members of participating health funds
Coverage: Australia

MARK GIBSON OPTOMETRIST [Name of optometry practice] authorises VSP Global, Inc. to lodge a notification with the ACCC on its behalf in respect of its participation in the VSP Australia network, and authorises VSP Global, Inc. to deal with any queries from the ACCC on its behalf.

Signature: m gibson
(As an authorised representative for and behalf of [name of optometry practice])
Name: MARK GIBSON
Title: OWNER
Date: 7/11/12

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

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PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

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

N96352 Mark Gibson
(Individual/Sole Trader, ABN 93 445 561 009)
Mark Gibson Optometrist
8/667 Oxley Road
Corinda, QLD 4075 (the **Participant**).

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

VSP Global, Inc (ARBN 161 014 651) (**VSP**) plans to establish, maintain and promote a network of independent optometrists and eyecare professionals (together, **IECPs**) within Australia, which will assist the Participant and other IECPs to compete against the major optometry services chains such as Specsavers and Luxxotica. This will include arrangements with major Australian health funds to promote VSP network IECPs as Members' Choice providers.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

2. Notified arrangement

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

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- (b) Description of the conduct or proposed conduct:
(Refer to direction 4)

Please refer to attached submission.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

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(Refer to direction 5)

Members of participating health funds. Employees of participating health funds and immediate family members of those employees.

- (b) Number of those persons:

- (i) At present time:

VSP has entered into an agreement with Medibank, which has approximately 3.8 million members.

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

Approximately 3.8 million.

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

N/A

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission.

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Please refer to the attached submission.

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(Refer to direction 9)

There are no public detriments from the notification - please refer to the attached submission.

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

Please refer to the attached submission.

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

Allens
Attention: Kon Stellios
Level 28, Deutsche Bank Place
126 Phillip Street
Sydney NSW 2000

Dated 28 November 2012

Signed by/on behalf of the applicant

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(Signature)

Kon Stellios
(Full Name)

Allens
(Organisation)

Partner
(Position in Organisation)

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outlets, including those with which health funds have other relationships. Members are free to go to any optometrist and retail optical dispensing outlet that they choose.

Conclusion

For the reasons set out above, we submit that the Commission should not serve a notice under section 93(3A) of the Competition and Consumer Act in respect of the attached notification.