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22 November 2012

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



Dear Sir or Madam

**Notification of third line forcing – Bupa Australia & Next Media**

Bupa Australia Pty Ltd ABN 81 000 057 590 trading as Bupa (“**Bupa Australia**”) has negotiated an arrangement with Next Media Pty Ltd ABN 84 128 805 970 (“**Next Media**”).

Under this arrangement, Next Media offers a standing discount on a 12 month subscription to *Healthy Food Guide* magazine to customers who have taken out health insurance with Bupa. In addition, from time to time Next Media may also offer an added incentive to take up a *Healthy Food Guide* subscription.

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

- (1) a Form G notification on behalf of Next Media;
- (2) a submission made by Bupa Australia on behalf of Next Media supporting the Form G notification – highlighting the public benefit associated with the proposal and the absence of any misuse of market power;
- (3) a cheque for \$100 as payment for lodging fees; and
- (4) a written consent from Next Media consenting to Bupa Australia lodging the Form G notification on Next Media’s behalf.

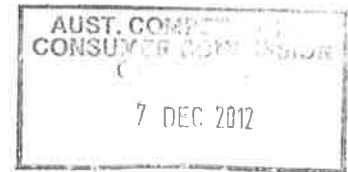
We would appreciate it if you would copy us in on any response you provide to Next Media.

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

Yours sincerely,

Emma Zipper  
General Counsel & Company Secretary  
Bupa Australia Group

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



**FORM G**

**COMMONWEALTH OF AUSTRALIA**

Competition and Consumer Act 2010 – Subsection 93(1)

**EXCLUSIVE DEALING  
NOTIFICATION**

To the Australian Competition & Consumer Commission

Notice is hereby given, in accordance with sub-section 93(1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or (9)(a), (b), (c) or (d) of the Act in which the person giving notice engaged or proposes to engage.

**1. (a) Name of person giving notice:**

N96465 Next Media Pty Ltd ABN 84 128 805 970 (“Next Media”).

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

*Healthy Food Guide* magazine is published under license in Australia by Next Media Pty Limited.

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

David Gardiner  
CEO  
Next Media Pty Ltd  
Level 6,  
Building A,  
207 Pacific Hwy,  
St Leonards,  
NSW 2065

**2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates**

Leisure services and private health insurance.

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

Next Media proposes to offer members of Bupa Australia Pty Ltd ABN 81 000 057 590 trading as Bupa, discounts on its regular *Healthy Food Guide* magazine subscription prices and promotional offers from time to time. Please refer to the attached submission for further details.

**3. (a) Class or classes of persons to which the conduct relates**

Consumers who are health insurance members of Bupa.

**(b) Number of those persons**

The offer will be available to all Bupa health insurance customers. At the present time Bupa covers around 3,329,000 lives on 1,593,922 memberships.

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

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

**4. Public benefit claims**

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

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

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

**6. Public detriments**

Please refer to the attached submission.

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

Emma Zipper  
General Counsel & company Secretary  
Bupa Australia Group  
600 Glenferrie Road  
Hawthorn VIC 3122

Dated:

5-12-2012

**Signed by/on behalf on the applicant:**

Signature:



Full name:

EMMA ZIPPER

Organisation: Bupa Australia Pty Ltd ABN 81 000 057 590

Position:

GENERAL COUNSEL & COMPANY SECRETARY



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

This submission is made by Bupa Australia Pty Ltd ABN 81 000 057 590 and trading as Bupa (“**Bupa Australia**”) on behalf of Next Media and supports the Form G notification attached.

**1. Overview of proposed conduct**

- 1.1 Bupa Australia is a private health insurer under the *Private Health Insurance Act 2007 (Cth)*.
- 1.2 *Healthy Food Guide* magazine is published under license in Australia by Next Media Pty Limited. Bupa Australia has negotiated an arrangement with Next Media. Under this arrangement, Next Media offers a discount on a 12 month subscription to *Healthy Good Guide* magazine to Bupa Australia members (that is, those who have health insurance with Bupa).
- 1.3 This conduct by Next Media is arguably a contravention of sections 47(6) and (7) of the *Competition and Consumer Act 2010 (Cth)* if Next Media is considered to be:
- (a) giving or allowing or offering to give or allow, a discount, allowance, rebate or credit in relation to the supply of good or services to consumers on the condition that those consumers take out private health insurance with Bupa; or
  - (b) refusing to give or allow a discount, allowance, rebate or credit in relation to the supply of goods or services to consumers for the reason that those consumers have not acquired or have not agreed to acquire private health insurance from Bupa.

**2. Details of offer**

The table below sets out the details of the offer.

| <b>Business/Product</b> | <b>Description of offer</b>  |
|-------------------------|--|
| Magazine subscription   | <p>Available to all Bupa health insurance customers.</p> <p>Bupa health insurance customers receive a standing 10% discount on a 12 month subscription to <i>Healthy Food Guide</i> magazine.</p> <p>In addition, from time to time Next Media may also offer an added incentive to take up a <i>Healthy Food Guide</i> subscription. For example, Bupa members who subscribe during a promotional period will receive a free gift and/or go in the draw to win an additional prize.</p> |

**3. Products and services**

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

- leisure services; and
- private health insurance.

#### **4. Public Benefit**

The proposed conduct of Next Media offers significant benefits to the public because:

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

#### **5. Competitive effects**

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

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

- Next Media will continue to offer its products to consumers at the regular prices, regardless of whether or not the consumers are Bupa Australia members; and
- consumers are free to purchase from other competing suppliers.

#### **6. Conclusion**

For the reasons set out above, we believe the Commission should not serve a notice under section 93 of the CCA in respect of the attached notifications. This is because the conduct will cause no detriment and will generate tangible public benefits.

# nextmedia

Emma Zipper  
General Counsel & Company Secretary  
Bupa Australia Group  
600 Glenferrie Road  
HAWTHORN VIC 3122

Dear Emma

## **Consent to notification of third line forcing – Bupa Australia Pty Ltd & Next Media Pty Ltd**

We acknowledge that an arrangement between Bupa Australia Pty Ltd ABN 81 000 057 590 (“**Bupa**”) and Next Media Pty Ltd ABN 84 128 805 970 (“**Next Media**”) may be considered a contravention of section 47 of the Competition and Consumer Act 2010 (Cth).

In particular, the arrangement involves Next Media offering discounts to Bupa health insurance members.

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

- (1) a Form G notification; and
- (2) a submission made by Bupa on behalf of Next Media supporting the Form G notification – highlighting the public benefit associated with the proposal and the absence of any misuse of market power,

in the form attached.

We also agree to Bupa providing a copy of this letter to the ACCC as evidence of Next Media’s consent to Bupa lodging the Form G notification on Next Media’s behalf.

Yours sincerely,



David Gardiner  
Chief Executive Officer  
Next Media Pty Ltd

7/11/12

NEXTMEDIA PTY LIMITED  
ACN 128 805 970

Level 6, Building A 207 Pacific Highway, St Leonards NSW 2065, Australia  
Telephone +61 2 9901 6100 Fax +61 2 9901 6116