

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)

N95722 **David Stuart John Bailey ABN 85007802251 (DB Dental)**

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

DB Dental owns and operates 14 dental centres throughout Western Australia (**DB Dental Centres**)

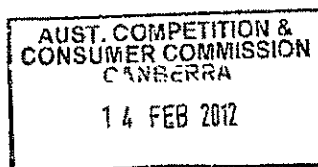
- (c) Address in Australia for service of documents on that person:

**NorthStar On The Swan,
Unit 20, 2-4 Pensioner Guard Road
North Fremantle WA 6159**

2. Notified arrangement

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

DB Dental to provide dental services to its customers. Customers of DB Dental include customers of nib and other private health insurers, together with customers who are not privately insured



(b) Description of the conduct or proposed conduct

Dr David Stuart John Bailey (DB Dental) proposes to enter into a preferred provider agreement (PPA) with nib Health Funds Limited ACN 000124381

nib is a private health insurer registered under the Private Health Insurance Act 2007 (Cth) and provides private health insurance to the public

DB Dental wishes to offer nib customers discounted dental services at DB Dental Centres which may result in nib customers incurring no or little 'out-of-pocket' costs. The offers available for nib customers from DB Dental will be:

- a discounted rate on dental services (**Discounted Services**); and
- as part of the Discounted Services, a range of 'no-gap' dental services, as defined by the following six Australia Dental Association (ADA) item numbers:
 - 111;
 - 114;
 - 121;
 - 011;
 - 013; and
 - 012,

(together, the **No Gap Services**).

The range of private health insurance products offered by nib to its customers includes current products (open for any new customer to join) and closed products (open for existing customers but not for new customers) (**Health Insurance Products**).

Each Health Insurance Product offered by nib has a different range of benefits available for nib customers to claim. For example:

- nib's closed product range offers 'set benefits' with 'service limits' whereby a service would attract a \$ figure for treatments, but may be limited to the number of services allowed annually. nib's closed products also include annual (calendar year) benefit limits at a per person level - e.g. a person may be entitled to claim up to \$29 for a Dental Consultation (012) on two occasions in one calendar year. Where a service limits does not apply, "set benefits" may be capped at an annual amount per person per calendar year - e.g. a person may be

entitled to claim up to \$68 per dental extraction up to an annual limit of \$450 for dental extractions with a general dentist.

- nib's current products permit benefits to be claimed on a percentage basis with per person annual limits – e.g. a person may be entitled to claim 50% - 90% of the cost of a claim (depending on the policy) for dental services up to an annual limit per person per calendar year which is varied across each product. Per policy limits may also apply (so the total amounts claimed do not exceed an amount capped at four times the per person annual limit).

Although each product has different annual limits, there will be a Discounted Service option available for all nib customers on their Health Insurance Product.

nib wishes to promote to its customers the Discounted Services (including the No Gap Services) offered by DB Dental through the DB Dental Centres.

To do this, nib proposes to give its customer access to the No Gap Services based on the applicable limits in the customers Health Insurance Products.

nib proposes to issue promotional material to its customers promoting the No Gap Services. All nib customers with an Extras component in their cover can access the No Gap Services. These customers will receive promotional material. The No Gap Services may also be promoted through acquisition marketing channels as a benefit of nib health insurance.

If a customer has available general dental benefits limits (Eligible Customer) and acquires a No Gap Service which the customer's Health Insurance Product gives the customer access to from a DB Dental Centre, nib will permit the Eligible Customer to claim available per person benefits despite any sub-limits which would otherwise apply (Promotion). For example, if an Eligible Customer would, under the terms of their Health Insurance Product, ordinarily only be able to claim 50% of the cost of a No Gap Service (or No Gap Services) up to an annual limit of \$450, nib will permit them to claim 100% of the cost of the No Gap Service back up to their annual limit.

The No Gap Service available to an Eligible Customer is dependant on the Eligible Customer's level of private health insurance cover. For example:

- an Eligible Customer on a low level of cover such as Basic Saver will only be entitled to No Gap Services up to their total annual general dental benefit limit of \$450;
- an Eligible Customer on a mid level of cover such as Mid Plus will only be entitled to No Gap Services up to their total annual general dental benefit limit of \$500;
- an Eligible Customer on the highest level of cover such as Top Cover will only be entitled to No Gap Services up to their total annual general dental benefit limit of \$600.

If a nib customer's annual general dental benefit limit does not fully cover the cost of any No Gap Services, the customer will still be able to obtain the Discounted Services (including the No Gap Services), however may incur out-of-pocket costs, subject to the standard terms and conditions of their Health Insurance Products (which would include any relevant sub-limit claims requirements).

This promotion is proposed to commence on 27 February 2012 and will run from time to time.

The proposed conduct by nib could be characterised as contravening sections 47(6) and 47(7) of the Competition and Consumer Act 2010 (Cth).

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)
Existing or prospective customers of nib wishing to acquire dental services.
- (b) Number of those persons:
 - (i) At present time:
Substantially in excess of 50.
 - (ii) Estimated within the next year:
(Refer to direction 6)
Substantially in excess of 50.
- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:
Not applicable.

4. Public benefit claims

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

The proposed conduct will be of benefit to the public as it will:

- a. Enable each Eligible Customer to access certain dental services (the No-Gap Services) from DB Dental Centres without incurring any out-of-pocket-expenses and with the total cost of the No-Gap Services being completely covered by the Eligible Customer's annual dental benefit limit;
- b. Potentially encourage other private health insurance providers to offer similar benefits to their customers in the supply of their private health insurance products; and
- c. Not restrict customers of other private health insurers from accessing the services of DB Dental Centres at no out-of-pocket costs (subject to the claim and other sub-limits applicable to dental benefits limits available under their policies).

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

There are many alternative suppliers in the markets for private health insurance and dental products and services, and these markets are both highly competitive. It is not considered that the Promotion would diminish this level of competition. Other private health insurers have had for some time preferred provider arrangements with dental suppliers offering various discounts and benefits. Additionally, competitors in these markets have, from time to time, engaged in conduct similar to the proposed Promotion (depending on the structure of claims and other sub-limits applicable to the dental benefits limits available under the private health insurance policies of other private health insurers).

There is no obligation on nib customers (or Eligible Customers) to use the services of DB Dental Centres. nib customers will still be able to access a wide range of dental service providers in accordance with their standard claims and benefits limitations.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 8)

The relevant markets in which the Promotion is to be offered include:

- a. The Australian market for the supply of private health insurance;
and
- b. The WA market for the supply of dental services.

There are many private health insurers supplying private health insurance products to the Australian market and this market is highly competitive. Competitors in the private health insurance market frequently promote competitive offers and incentives similar to the Promotion.

There are many suppliers of dental services throughout Australia that vigorously compete with DB Dental Centres in the supply of dental products and services.

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)

DB Dental considers that little, if any, public detriment would be likely to result from the proposed conduct.

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

The proposed conduct will have little, if any, public detriment because:

- a. The relevant markets are highly competitive and there are numerous competitors and incentives promoted in these markets from time to time;
- b. nib customers are under no obligation to use the services of DB Dental Centres;
- c. nib customers can utilise their available annual benefit limits to purchase any dental products and services from any recognised dental service provider;

- d. nib customers are likely to take into consideration a range of factors before they select a dental services provider.

DB Dental considers that the proposed conduct will not have an anti-competitive effect in the relevant markets and that the benefits of the proposed conduct will outweigh any possible detriment potentially arising from the proposed conduct.

7. Further information

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

Dr David Stuart Bailey CEO/ Principal

PO Box 192

North Fremantle WA 6159

Dated: *12. 2. 12.*

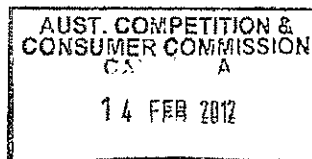
Signed by/on behalf of the applicant



Dr David Stuart Bailey CEO/ Principal

PO Box 192

North Fremantle WA 6159



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 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.