

WOOLWORTHS LIMITED

ABN 88 000 014 675

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New South Wales 2153 Australia
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14 May 2012

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY

18 MAY 2012

Dr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition and Consumer Commission
Level 7, Angel Place
123 Pitt Street
Sydney NSW 2000

FILE No:

DOC:

MARS/PRISM:

Dear Dr Chadwick

Woolworths Limited: Third Line Forcing Notification

Woolworths Limited ABN 88 000 014 675 (trading as BIG W) (**BIG W**) intends to make available from time to time discounts on goods and services such as frames and lenses, contact lenses and sunglasses to customers who have current optical health insurance cover from Bupa Australia Pty Ltd ABN 81 000 057 590, trading as Bupa (**Bupa**).

Such health insurance cover relates to private health insurance with optical cover.

It is possible that the provision of those discounts by BIG W to persons who have current optical health insurance cover from Bupa might involve conduct that falls within the definition of exclusive dealing in section 47(6) of the *Competition and Consumer Act 2010 (CCA)*.

It is similarly possible that the conduct might fall within the definition of exclusive dealing in section 47(7) of the CCA if those discounts are not available to persons who have not acquired health insurance services from Bupa.

To obtain immunity from potential breaches of sections 47(6) and 47(7) of the CCA, we enclose:

- a Notification of Exclusive Dealing (Form G) by BIG W relating to the above conduct; and
- the applicable lodgement fee of \$100.

Yours sincerely

Peter Horton
Group General Counsel & Company Secretary



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)

N95865 This notification is made by Woolworths Limited ABN 88 000 014 675
(trading as BIG W) (**BIG W**).

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

BIG W is the discount general merchandise department store division of Woolworths Limited. Woolworths Limited is an Australian retail company listed on the ASX which conducts a number of businesses including the operation of retail outlets for food and groceries, liquor, petrol, general merchandise, consumer electronics, home improvement and hardware, the operation of online businesses and the provision of financial services.

BIG W Vision is a full service optometry store within selected BIG W stores, offering professional eye testing and quality eye care products for less. A detailed description of BIG W Vision can be found at:
<http://www.bigw.com.au/help/Optical/Opticalmain-content>

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

Woolworths Limited
1 Woolworths Way
Bella Vista NSW 2153.

2. Notified arrangement

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

The proposed arrangement relates to:

- (i) optical goods and services purchased by BIG W customers who are health insurance members of Bupa Australia Pty Ltd ABN 81 000 057 590, trading as Bupa (**Bupa**); and
(ii) health insurance services provided by Bupa.

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

It is proposed that, from time to time, BIG W will make available discounts to BIG W customers who acquire health insurance services from Bupa.

The notified conduct is as follows:

- (i) BIG W will offer to supply, and supply, discounts to persons on condition that such persons have current optical health insurance cover from Bupa.
- (ii) BIG W will not supply discounts to persons who does not have current optical health insurance cover from Bupa.

Specifically, BIG W will offer the following discounts to Bupa members:

Business/Product	Description of offer
Up to 15% discount off frames and lenses and contact lenses	Available to all Bupa health insurance customers with optical cover. Bupa health insurance customers receive up to 15% discount on frames and lenses and contact lenses.
10% discount off sunglasses	Bupa health insurance customers receive 10% discount off sunglasses. Discount cannot be used in conjunction with any other offer.

(Refer to direction 4)

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) *Class or classes of persons to which the conduct relates:*
(Refer to direction 5)

Current and prospective health insurance members of Bupa.

- (b) *Number of those persons:*

- (i) *At present time:*

Approximately 1,800,000 memberships.

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

Unknown

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

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

4. Public benefit claims

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

The proposed conduct offers significant benefits to the public including:

- (i) the availability of discounts makes products more affordable and better value for consumers;
- (ii) the promotion of competition in the pricing for products and services provided by competitors of BIG W by encouraging them to make value-added offers to their customers; and
- (iii) the promotion of competition among health insurance providers, for example by prompting competitors of Bupa to provide value added benefits to their customers.

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

Discounts from BIG W are associated with valuable products to many retail customers and the ability to choose to acquire them may benefit the individual customer.

The discounts and any terms and conditions applying to the discounts will be clearly disclosed to customers. Any change in the discounts offered or any additional discount or other benefit will be notified to customers at the time any particular discount or other benefit is made available to those customers.

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 are:

- (i) national or more localised retail market(s) for optical goods and services; and
- (ii) the national market(s) for the provision of health insurance services including private health insurance.

Competition in each of these markets is strong and there are numerous other suppliers in both of these markets.

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)

The proposed conduct will have no detrimental effects on competition.

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

The proposed conduct will not substantially lessen competition in the relevant markets for the following reasons:

- (i) BIG W will continue to offer its products to consumers at regularly competitive prices, regardless of whether consumers are Bupa members;
- (ii) consumers are free to purchase from other competing suppliers.

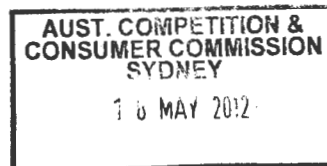
7. Further information

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

Rod Bordignon
Group Legal Manager, Corporate and Commercial
Woolworths Limited
1 Woolworths Way
Bella Vista NSW 2153

Dated..... 15 May 2012

Signed by/on behalf of the applicant
.....
(Signature)



.....
(Full Name)

.....
(Organisation)

.....
(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.