



18 February 2013

Dr Richard Chadwick  
The General Manager  
Adjudication Branch  
Australian Competition and  
Consumer Commission  
Melbourne Central  
Level 35  
360 Elizabeth Street  
Melbourne VIC 3000

File No.
DOC:
MARS/PRISM:

**By Courier**

Dear Dr Chadwick:

**Form G Notification of Exclusive Dealing Conduct**

We refer to the Notifications recently submitted in respect of the Vision Service Plan (VSP) network of independent eyecare practitioners in Australia.

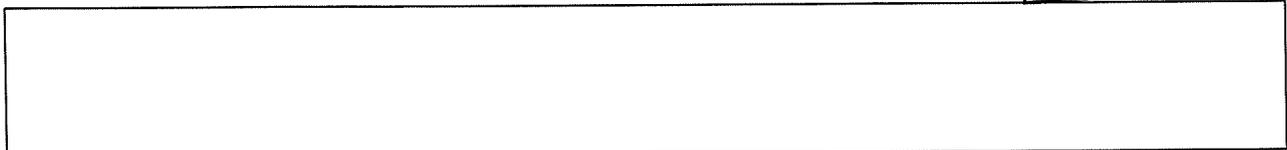
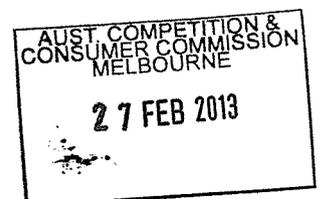
On November 23, 2012, you received a letter from Kon Stellios on behalf of VSP. As Mr. Stellios indicated in his letter, our network of independent eyecare practitioners is growing. Due to this fact and because the ACCC requires that separate notifications are lodged in respect of each participating specialist, we hereby enclose 1 Form G Notification filed by VSP on behalf of the enclosed participating eyecare specialist, corresponding consent letter authorizing VSP to make such notification on his behalf and a check in the sum of \$100.

For your convenience, we set out in the attached Schedule a list of persons for whom notifications are enclosed.

Please do not hesitate to contact me if you would like to discuss this matter further.

Very truly yours,

Peter N. Lewis  
Director





## Schedule: Notifying Optometrists

ALEXANDER SHIFMAN

ENTITY NAME: JS OPTICAL PTY LTD (ABN: 56104724085)

TRADING NAME: MILLENNIUM OPTICAL



MARCHON



VSP.....  
Optics  
GROUP

## 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)

ALEXANDER SHIFMAN  
ENTITY NAME: JS OPTICAL PTY LTD (ABN: 56104724085)  
TRADING NAME: MILLENNIUM OPTICAL  
250A NEPEAN HWY  
EDITHVALE VIC 3196

N96626

(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:

Peter N. Lewis  
110 Dalmeny Ave.  
Rosebery NSW 2018  
Sydney

**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:

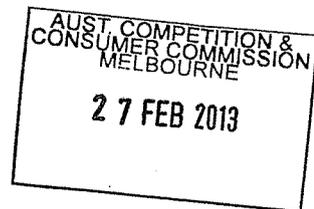
Peter N. Lewis  
110 Dalmeny Ave.  
Rosebery NSW 2018  
Sydney  
Phone 61-2 9697-8080

Dated..... 19/02/2013 .....

Signed by/on behalf of the applicant .....

(Signature) .....

Peter N. Lewis  
(Full Name)



VSP Global, Inc., ARBN 161 014 651  
(Organisation)

Director  
(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 350 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: ALEXANDER SHIRMAN  
ABN: 561 04724085  
PRACTICE NAME: MILLENNIUM OPTICAL  
PRIMARY PRACTICE ADDRESS: 250A NEPEAN HWY  
EDITHVALE VIC 3196

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

millennium 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 Shirman  
(As an authorised representative for and behalf of [name of optometry practice])  
Name Alexander Shirman  
Title Director  
Date 10-2-2013