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Our Ref: BML:RZW:7148655
Contact: Rachel Webber

28 June 2013

General Manager
Adjudication Branch
Australian Competition & Consumer Commission
Third Floor, East Point Plaza
233 Adelaide Terrace
PERTH WA 6000

By Hand

Dear Sir

Exclusive Dealing Notification – MDA National Insurance Pty Ltd


We act for MDA National Insurance Pty Ltd.

We **enclose** a Notification of Exclusive Dealing prepared in accordance with section 93(1) of the *Competition & Consumer Act 2010* (Cth), lodged on behalf of MDA National Insurance Pty Ltd.

We also **enclose** cheque for \$100 in payment of the prescribed lodgement fee.

Should you have any queries in relation to the enclosed, please contact Rachel Webber on (08) 9426 6843.

Yours faithfully



Jackson McDonald

Enc.

CCC
28 JUN 2013
PERTH

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)

ACCC

28 JUN 2013

NOTIFICATION OF EXCLUSIVE DEALING

PERTH

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.

1. Applicant

- (a) **Name of person giving notice:**
(Refer to direction 2)

N96833

MDA National Insurance Pty Ltd ABN 56 058 271 417 (**MDANI**) of Level 3, 88 Colin Street, West Perth in the State of Western Australia.

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

Provision of medical and dental indemnity insurance.

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

Jackson McDonald
Attention: Rachel Webber
Level 25, 140 St Georges Terrace
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2. Notified arrangement

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

This notice relates to products and services supplied by MDANI being insurance services and products, in particular, offering medical indemnity, legal expenses and medical malpractice insurance.

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

MDANI is an authorised general insurer and a provider of certain professional indemnity insurance policies to certain medical and healthcare professionals within Australia who include members of the Australian Society of Ophthalmologists Inc. (**ASO**).

By this notification, MDANI notifies the ACCC of its proposal to offer a discounted professional indemnity insurance premium to specific medical health professionals, being persons qualified as ophthalmologists or ophthalmology registrars within Australia (**Ophthalmologists**) if the Ophthalmologists are members of ASO. The ASO is the peak medico-political organisation representing Ophthalmologists in Australia. Membership of the ASO is voluntary and approximately 60% of all Ophthalmologists in Australia are members of the ASO.

MDANI will offer a 7% discount on its standard professional indemnity insurance premium to Ophthalmologists who are members of ASO (**Proposed Conduct**). Whilst the ASO will promote MDANI as a 'preferred provider' of professional indemnity insurance to its members, ASO members will not be required to obtain professional indemnity insurance from MDANI as a condition of their membership.

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)

Persons affected, or likely to be affected by the Proposed Conduct are medical health professionals in Australia, including Ophthalmologists who are members of ASO.

(b) **Number of those persons:**

- (ii) At present time: approximately 500-600 persons.
- (iii) Estimated within the next year: Approximately the same number of persons at the present time.

(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 likely public benefits of the Proposed Conduct include the following:

- (i) increased range of member benefits offered by the ASO, which may in turn lead to increased or retained membership of the ASO due, in part, to the incentive of a discounted professional indemnity insurance premium available through membership;
- (ii) any increased or retained membership of the ASO may in turn lead to:
 - A. increased opportunity for an improvement of the professional standards of medical health in Australia and specifically, assisting in facilitating best practice in ophthalmology with the aim to heighten patient care and reduce potential risks to patients as a result of access to the services provided by the ASO, which include:
 - a. member access to a variety of literature/journals and publications;

- b. the IRIS (Indigenous and Remote Eye Health Service) programme;
 - c. lobbying to government on behalf of the ophthalmology profession; and
 - d. benefits gained from the ASO's affiliation with other professions.
- B. a minimisation of the adverse incidents occurring in the medical health industry and in turn reduce the likelihood of claims under an insurance policy;
- (iii) increased competitiveness on the medical indemnity and insurance market; and
 - (iv) provision of a discount on professional indemnity insurance premiums for Ophthalmologists who are members of ASO and who are required to hold professional indemnity insurance in accordance with the Health Practitioner Regulation National Law as adopted within the jurisdiction in which they are registered to practice as a registered health practitioner;
 - (v) the holding by Ophthalmologists of professional indemnity insurance is in itself a public benefit.

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

MDANI submits that the Proposed Conduct will not have any anticompetitive effect and will not result in any public detriment. In any event, if there was any public detriment, it would be far outweighed by the benefits to the public as set out below.

(i) Provision of discounted premiums

Section 129(1) of the Health Practitioner Regulation National Law¹ provides that:

A registered health practitioner must not practise the health profession in which the practitioner is registered unless appropriate professional indemnity insurance arrangements are in force in relation to the practitioner's practice of the profession.

Ophthalmologists fall within the definition of 'health practitioner' as for the purposes of the Health Practitioner Regulation National Law, and accordingly are required by the Health Practitioner Regulation National Law as adopted in the jurisdiction in which they practice to hold professional indemnity insurance. Discounted premiums will reduce the general overhead costs

¹ The Health Practitioner Regulation National Law has been adopted throughout the States and Territories of Australia pursuant to the Health Practitioner Regulation National Law (NSW) No 86a, the Health Practitioner Regulation National Law (Victoria) Act 2009; the Health Practitioner Regulation National Law (ACT) Act 2010; the Northern Territory Health Practitioner Regulation National Law (National Uniform Legislation) Act 2010, the Health Practitioner Regulation National Law (Tasmania) Act 2010, the Health Practitioner Regulation National Law (South Australia) Act 2010, and the Health Practitioner Regulation National Law (WA) Act 2010.

associated with the provision of professional services by the Ophthalmologists, potentially allowing these services to be provided to the public at a cost that is less than would otherwise be the case.

- (ii) Access to services and benefits offered as part of membership of the ASO

The services which are provided by the ASO, as well as MDANI, are a means of improving the quality of patient care and improving service quality and delivery, and accordingly, members having access to these services and benefits will potentially benefit the public at large.

- (iii) Incentive to membership with ASO

Providing a discount on professional indemnity insurance premiums to Ophthalmologists who are members of the ASO acts as an incentive to become or remain a member of the ASO, and as a result increases the number of medical professionals who have access to the services provided to ASO members. The member services and benefits offered by the ASO have the ultimate aims of improving professional standards within the medical industry and the quality of care provided to patients.

- (iv) Public benefit from professional indemnity insurance

Professional indemnity insurance in itself is a benefit to the public as it ensures that in a situation where there has been some malpractice by a medical professional, the member of the public who has suffered will be duly compensated.

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)

MDANI submits that the market affected by the Proposed Conduct would be the market for medical professional indemnity insurance in Australia.

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)

MDANI submits that there will be no public detriment resulting from the Proposed Conduct.

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

Please refer to 4(a) and (b) above.

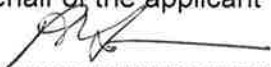
7. Further information

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

Jackson McDonald
Attention: Rachel Webber
Level 25, 140 St Georges Terrace
PERTH WA 6000

Dated 28th June 2013

Signed by/on behalf of the applicant



(Signature)

PETER MICHAEL FORBES

(Full Name)

MDA NATIONAL INSURANCE PTY LTD

(Organisation)

MANAGING DIRECTOR

(Position in Organisation)