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28 July 2014

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 Pty Limited & Dr Hayden Morse
(ABN 74 367 833 513)**

Bupa Australia Pty Ltd ABN 81 000 057 590 (“**Bupa**”) has negotiated an arrangement with Dr Hayden Morse (ABN 74 367 833 513) (“**The Provider**”).

Under this arrangement, the Provider offers a discount on certain purchases of goods or services for Bupa private health insurance members.

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 the Provider;
- (2) a submission made by Bupa on behalf of the Provider 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 the Provider consenting to Bupa lodging the Form G notification on the Provider’s behalf.

We would appreciate it if you would copy us in on any response you provide to the Provider.

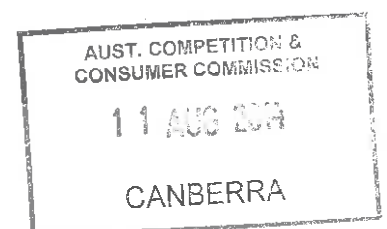
If you have any questions in relation to this notification, please feel free to contact me.

Yours sincerely,



Emma Zipper
General Counsel & Company Secretary
Bupa Australia Group

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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.

1. Applicant

(a) Name of person giving notice:

N97675 Dr Hayden Morse (ABN 74 367 833 513) (“**The Provider**”).

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

Dr Hayden Morse (ABN 74 367 833 513) (“**The Provider**”) provide dental services

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

Dr Hayden Morse, Robina Town Dental Centre, Suite 5004, Level 5, Robina Town Shopping Centre, 27 Arbour Lane, Robina, Queensland 4230

2. Notified arrangement

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

Dental services.

(b) Description of the conduct or proposed conduct:

The Provider proposes to offer private health insurance members of Bupa Australia Pty Ltd ABN 81 000 057 590, discounts on its regular price from time to time. Please refer to the attached submission for further details.

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:

Consumers who are private health insurance members of Bupa.

(b) Number of those persons:

(i) At present time:

Approximately up to 1.6 million memberships

(ii) Estimated within the next year:

Approximately up to 5000 memberships

(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:

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

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

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

5. Market definition

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

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:**

Please refer to the attached submission

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

Please refer to the attached submission

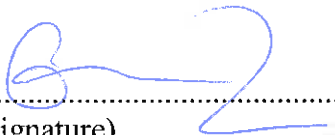
7. Further information

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

Dr Hayden Morse
Robina Town Dental Centre
Suite 5004, Level 5
Robina Town Shopping Centre
27 Arbour Lane
Robina, Queensland 4230

Dated.....6/8/2014.....

Signed on behalf of the applicant


.....
(Signature)

Emma Zipper
General Counsel & Company Secretary
Bupa Australia Group

**SUBMISSION
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 trading as Bupa (“**Bupa**”) on behalf of the Provider and supports the Form G notification attached.

1. Overview of proposed conduct

- 1.1 Bupa provides private health insurance to its members.
- 1.2 Dr Hayden Morse (ABN 74 367 833 513) (“**The Provider**”) is a dental practitioner.
- 1.3 Bupa has negotiated an arrangement with the Provider. Under this arrangement, the Provider offers certain discounts to Bupa private health insurance members.
- 1.4 This conduct by the Provider is arguably a contravention of sections 47(6) and (7) of the *Competition and Consumer Act 2010 (Cth)* if the Provider **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 goods or services to consumers on the condition that those consumers are Bupa private health insurance members; 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 private health insurance from Bupa.

2. Details of offer

The table below sets out the details of the offer.

Business/Product	Description of offer
Provision of dental services	<p>From time to time, the Provider may make the following offers available to Bupa health insurance members:</p> <p style="text-align: center;">1. No Gap introductory offer</p> <p>This offer is available for comprehensive dental assessments and oral hygiene appointments. This offer is only available on the following item numbers: 011 (Comprehensive Assessment), 022 (Check up and x-rays (x2)), 037 (Full Mouth Panoramic X-ray), 072 (Digital Imaging), Treatment Planning, 114 (Professional Clean and Polish), 221 (Periodontal Charting), 121 (Fluoride Application), 141 (Oral Hygiene Instruction).</p> <p>Terms of the offer:</p> <ul style="list-style-type: none"> • Available to any Bupa health insurance member with appropriate level of extras cover • Patient must mention the discount voucher when booking the appointment. • Patient must present a valid discount voucher. • Offer valid for new & existing patients to the practice. • Discount can't be used in conjunction with any other

offer.

- Patient is responsible for any outstanding payments at the time of appointment.

2. No Gap First Visit

This offer provides a no gap experience on the first visit by new patient for the following: Consultation, Two bite-wing x-rays, OPG (if necessary), scale and clean, cancer check and treatment plan as required.

Terms of the offer:

- Available to any Bupa health insurance member with appropriate level of extras cover who is visiting the practice for the first time
- Patient must mention the discount voucher when booking the appointment.
- Patient must present a valid discount voucher.
- Offer valid for new patients to the practice.
- Discount can't be used in conjunction with any other offer.
- Patient is responsible for any outstanding payments at the time of appointment.

3. 10% Discount

This offer provides a 10% discount on a patient's first visit.

Terms of the offer:

- Available to any Bupa health insurance member with appropriate level of extras cover who is visiting the practice for the first time
- Patient must mention the discount voucher when booking the appointment.
- Patient must present a valid discount voucher.
- Offer valid only for new patients.
- Discount applies to the initial appointment only which includes a consultation, clean and polish, fluoride treatment and (if required two x-rays).
- Discount can't be used in conjunction with any other offer.
- Patient is responsible for any outstanding payments at the time of appointment.

4. \$50 discount

This offer provides a \$50 discount for new and existing patients.

Terms of the offer:

	<ul style="list-style-type: none"> • Available to any Bupa health insurance member with appropriate level of extras cover • Patient must mention the discount voucher when booking the appointment. • Patient must present a valid discount voucher. • Offer valid for both new & existing patients to the practice. • Discount can't be used in conjunction with any other offer. • Patient is responsible for any outstanding payments at the time of appointment. <p>The Provider may also make other offers available from time to time.</p>
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3. **Products and services**

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

- Dental services; and
- Private health insurance.

4. **Public Benefit**

The proposed conduct of the Providers offer significant benefits to the public because:

- the discount makes the services more affordable and better value for consumers; and
- the conduct motivates competitors to offer similar benefits and discounts and therefore increases competition in these services.

5. **Competitive effects**

5.1.1 The proposed conduct will have no detrimental effects on competition. Competition for these types of services exists as similar businesses offer similar types of services.

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

- the Provider will continue to offer their services to consumers at the regular prices, regardless of whether or not the consumers are Bupa private health insurance 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.

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 & Dr Hayden Morse
(ABN 74 367 833 513)**

I acknowledge that an arrangement between Bupa Australia Pty Ltd ABN 81 000 057 590 (“**Bupa**”) and Dr Hayden Morse (ABN 74 367 833 513) (“**The Provider**”) may be considered a contravention of section 47 of the *Competition and Consumer Act 2010 (Cth)*.

In particular, the arrangement involves Dr Hayden Morse (ABN 74 367 833 513) offering discounts to Bupa health insurance members.¹

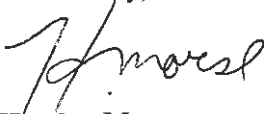
As a result, I consent to Bupa lodging with the ACCC, on my behalf:

- (1) a Form G notification; and
- (2) a submission made by Bupa on behalf of the Provider 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.

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

Yours sincerely,



Dr Hayden Morse
ABN 74 367 833 513

Dated:

30/7/14