



4 November 2015

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 & Emirates**

Bupa Australia Pty Ltd ABN 81 000 057 590 trading as Bupa (“**Bupa**”) has negotiated an arrangement with Emirates (**Emirates**).

Under this arrangement, Emirates offers discounts on certain fares from time to time for Bupa private health insurance members and any companions travelling with them.

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

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

If you have any questions in relation to this notification, please feel free to contact Dianne Seneviratne on (03) 9937 4791 or [Dianne.seneviratne@bupa.com.au](mailto:Dianne.seneviratne@bupa.com.au).

Yours sincerely,

*D. Seneviratne*

PP

Emma Zipper  
General Counsel & Company Secretary  
Bupa Australia Group

Bupa  
PO Box 14639  
MELBOURNE VIC 8001  
[bupa.com.au](http://bupa.com.au)

## 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:**

N98691

Emirates (ARBN 073 569 696)

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

Emirates is an international airline whose main business is the provision of commercial air transportation and related services.

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

Level 17, 1 York Street, Sydney NSW 2000

#### 2. Notified arrangement

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

Travel / airline operator and private health insurance services.

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

Emirates proposes to offer private health insurance members of Bupa Australia Pty Ltd (trading as Bupa) ABN 81 000 057 590 discounts 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 1, 800, 000 memberships

**(ii) Estimated within the next year:**

Approximately 1,830,000 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 airline travel and operation and the market for the provision of private health insurance. Competition in each of these markets is strong and 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:**

Morrie De Robertis  
Business Relationship Manager  
Emirates  
Level 17, 1 York Street, Sydney NSW, 2000  
Tel + 61 466 415 877

Dated..... 5/11/2015 .....

Signed by/on behalf of the applicant

*A Senevalle*  
.....  
(Signature)

pp

Emma Zipper  
General Counsel & Company Secretary  
Bupa Australia Group

**SUBMISSION BY BUPA AUSTRALIA  
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 Emirates (ARBN 073 569 696) (Emirates) and supports the Form G notification attached.

**1. Overview of proposed conduct**

- 1.1 Bupa Australia Pty Ltd provides private health insurance to its members.
- 1.2 Emirates is an international airline headquartered in Dubai whose main business is the provision of commercial air transportation and related services.
- 1.3 Bupa Australia Pty Ltd has negotiated an arrangement with Emirates. Under this arrangement, Emirates offers certain discounts to Bupa private health insurance members.
- 1.4 This conduct by Emirates is arguably a contravention of sections 47(6) and (7) of the *Competition and Consumer Act 2010 (Cth)* if Emirates 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 Australia Pty Ltd.

**2. Details of offer**

The table below sets out the details of the offer.

<b>Business/Product</b>	<b>Description of offer</b>
Emirates	<p>Under the arrangement with Bupa, Emirates will participate in periodic offers. Such offers will include up to 20% discounts on Emirates operated services originating in Adelaide, Brisbane, Melbourne, Perth or Sydney:</p> <p>The conditions associated with these offers are:</p> <ul style="list-style-type: none"> <li>• Fares are valid for one-way and return travel on Emirates operated services originating in Adelaide, Brisbane, Melbourne, Perth or Sydney only and not on flights operated by partner airlines.</li> <li>• Bookings can only be made online up to 11 months in advance.</li> <li>• Airfares are subject to the applicable government and airport taxes quoted at the time of booking.</li> <li>• This offer is permitted on Emirates flights only. It is subject to seat availability at the time of booking and may be withdrawn without prior notice.</li> <li>• Payments must be made online during the booking</li> </ul>

	<p>process.</p> <ul style="list-style-type: none"><li>• Amendments and cancellation penalties may apply for date changes/rerouting and will vary depending on destination and class of travel.</li></ul>
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**3. Products and services**

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

- Travel/airline operation.
- Private health insurance

**4. Public Benefit**

The proposed conduct of Emirates offers significant benefits to the public because:

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

**5. Competitive effects**

5.1 The proposed conduct will have no detrimental effects on competition. Competition is strong and there are other companies competing for business on an equal footing.

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

- Emirates will continue to offer its products 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  
Level 16, 33 Exhibition Street  
Melbourne, VIC 3000

Dear Emma

**Consent to notification of third line forcing – Bupa Australia Pty Ltd & Emirates**

We acknowledge that an arrangement between Bupa Australia Pty Ltd ABN 81 000 057 590 trading as Bupa (“**Bupa**”) and Emirates (**Emirates**) may be considered a contravention of section 47 of the *Competition and Consumer Act 2010 (Cth)*.

In particular, the arrangement involves Emirates offering discounts to Bupa health insurance members and any companions travelling with them.

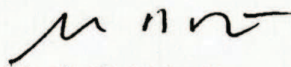
As a result, we consent to Bupa lodging with the ACCC, on our behalf:

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

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

Yours sincerely,



Morrie De Robertis  
Business Relationship Manager  
Emirates  
Level 17, 1 York Street  
Sydney, NSW 2000  
Australia

The International Airline of the United Arab Emirates

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Tel: +612 9290 9700, Fax: +612 9290 9750  
ABN 81 073 569 696

