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29 May 2015

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

By email: adjudication@accc.gov.au

Dear Dr Chadwick

Exclusive Dealing Notification by Medical Defence Association of South Australia Limited and Medical Insurance Australia Pty Limited

Our Ref: MDL:4216173

We act for Medical Defence Association of South Australia Limited and Medical Insurance Australia Pty Limited (trading as *miga*).

We enclose a Notification of third line forcing exclusive dealing by *miga* under s93(1) of the *Competition and Consumer Act 2010* (**the Notification**).

The Notification is lodged as a matter of abundant caution in respect of conduct which may constitute exclusive dealing as defined by s47 of the Act, but which does not appear likely to substantially lessen competition.

The prescribed lodgement fee of \$100 has been paid by EFT.

Please do not hesitate to contact us should you require any further information in relation to the Notification.

Yours sincerely
DibbsBarker



Mark Lindfield
Partner
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mark.lindfield@dibbsbarker.com

Encl

4 June 2015

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

By email: adjudication@accc.gov.au

Dear Dr Chadwick

Exclusive Dealing Notification by Medical Defence Association of South Australia Limited and Medical Insurance Australia Pty Limited (*miga*)

Our Ref: MDL:4216173

We refer to our letter attaching Form G dated 29 May 2015 and to our telephone conversation with a representative of your office this afternoon.

We write to provide clarification of the source of the benefits and discounts that are notified in Form G and a further \$100 lodgement fee.

With respect to paragraph 1 of Form G, *miga* is the trading name of two separate entities:

1. Medical Defence Association of South Australia Limited (MDASA); and
2. Medical Insurance Australia Pty Limited (MIA).

The benefits and discounts *miga* intends to provide to its NHDS members as outlined in Form G are as follows:

1. discounts on insurance premiums (to be provided by MIA); and
2. discounts on membership fees and additional benefits (to be provided by MDASA).

As such, please consider the Form G to be submitted on behalf of both MDASA and MIA. We understand from our telephone conversation today that the ACCC does not require lodgement of an additional Form G.

An additional lodgement fee of \$100 has been paid by EFT and we **attach** proof of payment.

Please do not hesitate to contact us should you require any further information in relation to the Notification.

Yours sincerely
DibbsBarker



Mark Lindfield
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Encl

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:
(Refer to direction 2)

N98302 & N98303 Medical Defence Association of South Australia Limited and Medical Insurance Australia Pty Limited (trading as *miga*)

- (b) Short description of business carried on by that person:
(Refer to direction 3)
miga is a provider of medical indemnity insurance and associated services.

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

DibbsBarker
Level 9, Angel Place
123 Pitt Street
Sydney NSW 2000
Attention: Mark Lindfield

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 provided by the applicants, being medical indemnity insurance and associated services (such as educational seminars, risk management workshops and reporting) for non-procedural general practitioners across Australia.

(b) Description of the conduct or proposed conduct:

miga is a medical defence organisation formed to protect the interests of its medical professional members. Members of *miga* are entitled to benefits including assistance when dealing with medico-legal claims, educational activities which assist members managing risks inherent in medical practice and access to *miga* publications.

miga notifies the ACCC of a proposed offer to non-procedural general practitioners who work with the National Home Doctor Service (NHDS doctors).

When a NHDS doctor purchases medical indemnity insurance with *miga* they will receive:

- (i) access to preferential premiums, including a guaranteed 5% reduction of their next total renewal cost or, if not already insured, a guaranteed 5% reduction on *miga*'s standard rates;
- (ii) an additional 10% premium discount on their renewal with *miga* and annually thereafter provided they continue to work with NHDS and complete *miga*'s Risk Management Program; and
- (iii) additional benefits such as access to exclusive risk management workshops, access to on-line resources and reference material, as well as industry-recognised broad Policy cover.

This offer will provide NHDS the opportunity to work in collaboration with *miga* on the development of general practitioner-specific risk management initiatives aimed at supporting NHDS doctors in their day to day practice, and helping them reduce their medico-legal risks and achieve better outcomes for patients.

(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)

Non-procedural general practitioners who work with the NHDS.

- (b) Number of those persons:

- (i) At present time:

Approximately 500

- (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.

4. Public benefit claims

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

miga submits that the public benefits are as follows:

- (i). NHDS will work in collaboration with *miga* on the development of general practitioner specific risk management initiatives aimed at supporting NHDS doctors in their day to day practice, helping them reduce their medico-legal risks and achieve better patient positive outcomes;

- (ii) NHDS doctors are automatically covered for their treatment of public patients, in situations where a doctor is not otherwise indemnified. This will assure public patients who are treated by NHDS doctors insured by *miga* that their doctor is adequately covered.

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

- (i) In 2006, the Commonwealth Government Medical Indemnity Policy Review Panel prepared a report entitled 'Achieving stability and premium affordability in the Australian medical indemnity marketplace'. One of the findings as a result of that study was that the community is better protected by doctors maintaining appropriate medical indemnity cover.

The preferred partnership between *miga* and NHDS expands on this principle by providing its doctors with affordable premiums as well as ongoing access to further professional training and development.

(ii) Section 129 (1) of the Health Practitioner Regulation 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’

miga submits that a NHDS doctor falls within the definition of registered health practitioner as set out in the Health Practitioner Regulation Law as it is a requirement of membership. Accordingly, NHDS doctors are required by the Health Practitioner Regulation Law as adopted in each state and territory of Australia to hold professional indemnity insurance.

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 market for medical indemnity insurance provided to non-procedural general practitioners 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)

miga submits that there is no discernible public detriment in the proposed conduct. NHDS doctors are freely able to purchase medical indemnity insurance from medical indemnity insurers other than *miga*.

- (b) Facts and evidence relevant to these detriments:
Not applicable.

¹ *Health Practitioner Regulation National Law Act 2009 (Qld); Health Practitioner Regulation National Law (NSW) No 86a (NSW); Health Practitioner Regulation National Law (Victoria) Act 2009 (VIC); Health Practitioner Regulation National Law (ACT) Act 2010 (ACT); Health Practitioner Regulation (National Uniform Legislation) Act 2010 (NT); Health Practitioner Regulation National Law (Tasmania) Act 2010 (TAS); Health Practitioner Regulation National Law (South Australia) Act 2010 (SA); Health Practitioner Regulation National Law (WA) Act 2010 (WA).*

7. Further information

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

Mark Lindfield, Partner

DibbsBarker

GPO Box 983

Sydney NSW 2001

Tel: 02 82339632

Dated..... 29 MAY 2015

Signed by/on behalf of the applicant

.....
(Signature)

Mark Lindfield.....
(Full Name)

DibbsBarker.....
(Organisation)

Partner.....
(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.