

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

N99478 - N99494 (a) **Name of person giving notice:**
(Refer to direction 2)

The parties listed at Annexure A (collectively, **Friendlies Pharmacies**) in relation to conduct also notified by HBF Health Limited ABN 11 126 884 786 (**HBF**) (N97452) and other members of HBF's related network of Friendlies pharmacies.

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

HBF Health Limited

HBF is a Western Australian not for profit health fund that offers consumer a range of insurance products and services including private health insurance, home and contents, car, travel and life insurance, as well as other non-insurance products and services such as health and wellness services (**HBF Members**).

HBF Members are eligible for a range of exclusive benefits including free fitness training sessions, discounts on health community events, and HBF home, car and travel insurance discounts.

HBF Pharmacy Pty Ltd is a related entity of HBF. HBF Pharmacy Pty Ltd owns the Friendlies pharmacy brand and provides various systems and support services to the Friendly pharmacies network. Pursuant to a franchise agreement with HBF Pharmacy Pty Ltd, each Friendlies pharmacy is granted the right to operate using the "Friendlies" pharmacy brand and associated intellectual property, subject to the terms of the franchise agreement. HBF Pharmacy Pty Ltd was established to provide a not for profit retail pharmacy alternative for Western Australia consumers, and extend the range of services available to HBF members into pharmacy goods and services.

Friendlies Pharmacies

Friendlies pharmacies are independently owned pharmacies operating in Western Australia under a common brand. Friendlies pharmacies carry on the business of providing pharmaceutical goods and services to consumers, including supplying, compounding and dispensing drugs and medicines on order or prescription and other over-the-counter medications. Additionally, Friendlies pharmacies offer

consumers retail health, health management, beauty, gift and confectionary and a range of other non-pharmaceutical goods and services.

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

Wayne Stone
HBF Health Limited
570 Wellington Street
PERTH WA 6000

2. Notified arrangement

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

HBF Pharmacy Pty Ltd, a related entity of HBF, is the franchisor of the Friendlies pharmacy network. HBF Pharmacy wishes to provide additional benefits to the members of the Friendlies pharmacy network, and seeks that HBF and HBF Pharmacy promote the Friendlies pharmacy network to HBF's insurance members as an alternative retail pharmacy option.

HBF wishes to make additional benefits available to its eligible HBF Members, and to give them access to a retail pharmacy that operates under similar values and principles to HBF.

HBF intends to enter into promotional arrangements with Friendlies pharmacies from time to time, offering eligible HBF Members with discounts, rebates and other benefits on the supply of goods and services from Friendlies pharmacies.

The proposed promotions may apply to pharmaceutical goods and services as well as retail health, health management, beauty, gifts, confectionary and a range of other non-pharmaceutical goods and services offered at Friendlies pharmacies.

The promotions will not apply to any medications supplied by Friendlies pharmacies that fall within the Pharmaceutical Benefits Scheme.

The promotions may comprise offers redeemable by HBF Members such as:

- (i) buy one get one free promotions on a selected range of goods and services offered at Friendlies pharmacies;
- (ii) buy two get one free promotions on a selected range of goods and services offered at Friendlies pharmacies;
- (iii) various percentage discounts on the recommended retail price of a selected range of goods and services offered at Friendlies pharmacies;
- (iv) various fixed dollar amount discounts on the total spend by HBF Members in one transaction on a selected range of goods and services (including health and health management services) offered at Friendlies pharmacies;
- (v) the provision of goods and services offered at Friendlies pharmacies to HBF Members at no cost;
- (vi) entry into various competitions offered by Friendlies pharmacies following which HBF Members may win goods and services offered at Friendlies pharmacies;
- (vii) various exclusive or increased health insurance benefits for selected health and health management services or products offered at Friendlies pharmacies; and/or

(viii) free or discounted membership to Friendlies pharmacies.

(collectively, the **Promotions**).

HBF Members are not compelled to participate in the Promotions, but are free to elect whether or not they wish to participate.

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

HBF Members will be eligible to receive various discounts, rebates and benefits offered by the Promotions.

If HBF was the franchisor of the Friendlies pharmacy network rather than HBF Pharmacy, the proposed arrangements would not infringe the *Competition and Consumer Act 2010* (Cth) (**Act**). However, as there are separate HBF entities involved, and separate contractual arrangements between HBF and its members on the one hand, and HBF Pharmacy and Friendlies pharmacies on the other, the proposed conduct may fall within the definition of exclusive dealing in sections 47(6) and (7) of the Act.

Whilst the primary intention of the Promotions is not to promote the sale of HBF insurance products and services (discussed further at paragraph 4(b)), an indirect consequence of the Promotions may be that Friendlies pharmacies:

- (i) give a discount, rebate or other benefit in relation to the supply of goods and services that are the subject of the Promotions to consumers on the condition that the consumer acquires; and
- (ii) refuse to give a discount, rebate or other benefit in relation to the supply goods or services that are the subject of the Promotions to consumers if the consumer does not acquire (or has not agreed to acquire);

insurance membership (including private health, life and general insurance) from HBF or otherwise becomes a HBF health and wellness customer.

HBF may also be engaging in conduct that falls within the definition of exclusive dealing in sections 47(6) and (7) of the Act by:

- (i) giving a discount, rebate or benefit in relation to the supply of goods and services that are the subject of the Promotions to HBF Members on the condition that HBF Members acquire; and
- (ii) refusing to give a discount, rebate or other benefit in relation to the supply of goods or services that are the subject of the Promotions to HBF Members if HBF Members do not acquire (or have not agreed to acquire);

the goods or services that are the subject of the Promotions from a Friendlies pharmacy. Please note that HBF's conduct has been separately notified in notification number N97452.

The relevant conduct described in this paragraph 2(b) and applicable to each Promotion will depend on the structure of each Promotion run from time to time. It is expected that all Promotions will fall within one or both of categories of conduct described in this paragraph 2(b).

HBF and Friendlies pharmacies maintain that the public benefits resulting from this conduct outweigh any public detriment, which would be negligible or non-existent. The retail pharmacy sector is highly competitive, with many retail alternatives for customers. Many of the products sold in pharmacies are also available in

supermarkets, department stores and on-line, and some are available in convenience stores. Supermarkets and convenience stores in particular have bundled offers that link their products with petrol sales and pose competitive challenges for retail pharmacies and other small business.

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)

The proposed conduct relates to:

- (i) HBF Members eligible for participation in the Promotions; and
- (ii) current and future customers of Friendlies pharmacies.

(b) Number of those persons:

(i) At present time:

At the present time, there are approximately 1,000,000 HBF Members eligible for participation in the Promotions.

At the present time, the number of current Friendlies pharmacy customers is unknown. However, a total of 15 - 30 Friendlies pharmacies have indicating they wish to participate in the Promotions.

(ii) Estimated within the next year:

(Refer to direction 6)

The estimate number of future HBF members is 1,025, 000.

The estimate number of future Friendlies pharmacy customers is unknown. However, a total of 15 - 30 Friendlies pharmacies have indicated they wish to participate in the Promotions.

(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)

Refer to paragraph 4(b).

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

Increased competition

Both of the relevant markets for the goods and services that are the subject of this notification are characterised by a large numbers of competitors and very intense competition.

The notified conduct may encourage competition in the relevant markets by:

- (i) encouraging other health insurance providers to offer similar discounts, rebates and/or other benefits to private health insurance members, thereby

- stimulating competition for both existing and new private health insurance memberships; and
- (ii) encouraging retail suppliers of pharmaceutical, retail health, health management, beauty, gift and confectionary and other non-pharmaceutical goods and services typically offered by pharmacies, to offer similar benefits, rebates and/or discounts on goods and services to consumers (whether or not those consumers are members of a private health insurance fund), which would be for the benefit of consumers generally.

The Promotions will also benefit Friendlies pharmacies by:

- (i) generating in store traffic;
- (ii) increasing and broadening the customer base of Friendlies pharmacies;
- (iii) creating customer loyalty; and
- (iv) providing Friendlies pharmacies with the benefit of various marketing campaigns promoting the Promotions.

As at the date of this notification, 15 - 30 Friendlies pharmacies have indicated their desire to participate in the Promotions and to be listed as notifying parties in this notification. This clearly shows the perceived benefit of the notified conduct among the Friendly pharmacy network.

By increasing Friendlies pharmacies brand awareness via the Promotions, Friendlies pharmacies will be better placed to compete in the highly competitive pharmaceutical and other non-pharmaceutical goods and services market, as described above. Consumers will benefit from better prices and discounts and rebates on a range of goods and services stimulated by the increase in competition.

Customer loyalty is particularly important in the context of the supply of pharmaceutical products and other retail health and health management goods and services. Consumers in this market seek a high level of trust and confidence in their suppliers and expect a high level of customer service. Again, the Promotions will stimulate a general increase in competition resulting in an increase in customer service levels and general customer satisfaction in the relevant market.

Provision of an "add on" benefit to HBF members

In practical terms, the Promotions offer HBF Members with "add on" benefits that flow from their existing insurance memberships and health and wellness relationship with HBF, when they make discretionary purchases of goods and services that are the subject of the Promotions from a Friendlies pharmacy.

That is:

- (i) HBF Members are not required to participate in the Promotions, and can choose to purchase the full range of goods and services available from Friendlies pharmacies without participating in the Promotions; and
- (ii) HBF Members are not required to purchase goods and services from a specific Friendlies pharmacy (but rather, any Friendlies pharmacy participating in the Promotions and listed as a notifying party in the notification) in order to receive a benefit from the Promotions.

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 most relevant markets likely to be affected by the proposed conduct are:

- (i) the market for the provision of private health, life and general insurance and health and wellness services to consumers in Western Australia; and
- (ii) the market for the retail sale of pharmaceutical, retail health, health management, beauty, gift and confectionary and other non-pharmaceutical goods and services typically offered by pharmacies in Western 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)

Refer to paragraph 6(b).

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

HBF and Friendlies pharmacies submit that any public detriment associated with the notified conduct is negligible, if such detriment exists at all. Although non-member consumers that seek to purchase promoted goods or service from Friendlies pharmacies will be unable to access the specific discount or promotional opportunity, they are free to access other offers and deal with other pharmacies. The retail pharmacy market is so competitive that it is hard to see how they will suffer any material prejudice.

There is no anticipated impact on the price of goods or services in either market. Indeed the arrangement is intended to provide consumers that are eligible members of HBF with access to reduced prices, and to increase competition in the retail pharmacy market by promoting the relatively small Friendlies pharmacy network to consumers and HBF Members.

No limitation of choice for consumers

The Promotions do not limit the genuine choice of consumers who wish to:

- (i) purchase pharmaceutical, retail health, health management, beauty, gift and confectionary and other non-pharmaceutical goods and services typically offered by pharmacies from Friendlies pharmacies, or another retailer or supplier of those goods and services; or
- (ii) purchase private health, life and general insurance and health and wellness services from HBF or any other private health insurance provider.

No obligation to participate

There is no obligation on HBF Members to participate in the Promotions. HBF Members may elect to purchase goods and services from Friendlies pharmacies independently of the Promotions, if the terms of the Promotions do not appeal to those HBF Members. Similarly they are free to purchase the same or equivalent goods or services from other pharmacies.

Consumers who are not HBF Members:

- (i) are not limited in their choice to purchase goods and services from Friendlies pharmacies notwithstanding their ineligibility to participate in the Promotions; and
- (ii) are not compelled to take up any form of insurance membership or health and wellness services with HBF as a consequence of the Promotions.

There are many bundled offers of goods and services offered by retailers to consumers, and many retail discount arrangements and other benefits offered to members of various clubs, organisations or networks. The proposed conduct is consistent with the principles that have allowed those offers to be made available to consumers. The fact that HBF and HBF Pharmacy Pty Ltd are related entities operating essentially under the same broad brand means that consumers will expect there to be commercial links between the two organisations, and connected offers for those that deal with them.

7. Further information

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

Wayne Stone
Head of Pharmacy
HBF Health Limited
570 Wellington Street
PERTH WA 6000
Direct line: 089265 8827
Email: wayne.stone@hbf.com.au

Dated: 24 November 2016

Signed by/on behalf of the applicant



.....
Wayne Stone
Head of Pharmacy
HBF Health Limited

Annexure A

N99478	Business name: Proprietor Business address:	Friendlies Aveley Dodhia Pty Ltd as trustee for the R & M Trust Cnr Egerton Drive & Swanleigh Parade, Aveley WA 6069
N99479	Business name: Proprietor Business address:	Friendlies Baldivis Pentapharm Ventures Pty Ltd Lot 26 Safety Bay Road, Baldivis WA 6171
N99480	Business name: Proprietor Business address:	Friendlies Bunbury Geojen Pty Ltd as trustee for Geojen Discretionary Trust 12-16 Vasse Street, Bunbury WA 6320
N99481	Business name: Proprietor Business address:	Friendlies Busselton S & L Braddock Pty Ltd as trustee for the Scott Braddock Family Trust, David Williams as trustee for the Epicurus Trust Shop 5, Busselton Central Shopping Centre, 5 Prince Street, Busselton WA 6280
N99482	Business name: Proprietor Business address:	Friendlies Clarkson Roger Van Der Kroon as trustee for The Connolly Trust 36 Ocean Keys Boulevard, Clarkson WA 6030
N99483	Business name: Proprietor Business address:	Friendlies Dianella Dianella Medical Centre Pharmacy Pty Ltd ATF DMCP Trust 2/294 Grand Promenade, Dianella WA 6059
N99484	Business name: Proprietor Business address:	Friendlies East Victoria Park Perth Diabetes Care Pty Ltd 968B Albany Highway, East Victoria Park WA 6101
N99485	Business name: Proprietor Business address:	Friendlies Forrestfield Kim Miew Su 76 Hale Road, Forrestfield WA 6058
N99486	Business name: Proprietor Business address:	Friendlies Geraldton Mount Tarcoola Pharmacy Pty Ltd 1 Irene Street Geraldton Mount Tarcoola WA 6530
N99487	Business name: Proprietor Business address:	Friendlies Greenfields Donna Pearson, Ian Hamilton, Chong Shin Bong 1-3 Paraguay Avenue, Greenfields WA 6210

N99488 Business name: **Friendlies Lynwood**
Proprietor Natalie Willis
Business address: 6 Lynwood Avenue Lynwood WA 6147

N99489 Business name: **Friendlies Morley**
Proprietor Fosbery Morley Pty Ltd as trustee for the Fosbery Morley
Trust
Business address: 8 Progress Avenue, Morley WA 6062

N99490 Business name: **Friendlies Mosman Park**
Proprietor Dianne Armstrong
Business address: Shop 11/50 Harvey Street, Mosman Park WA 6012

N99491 Business name: **Friendlies Perth – Hay Street**
Proprietor FBG WA Pty Ltd as The Trustee for Banksia Grove Trust
Business address: 849 Hay Street WA 6168

N99492 Business name: **Friendlies Rockingham – Elanora Drive**
Proprietor Anthony Maguire, Natalie Willis
Business address: 37 Elanora Drive, Rockingham WA 6168

N99493 Business name: **Friendlies Rockingham – Grange Drive**
Proprietor Jane Riley
Business address: 7-9 Grange Drive, Rockingham WA 6168

N99494 Business name: **Friendlies Wangara**
Proprietor WA Country Chemist Pty Ltd
Business address: 2 Prindiville Drive Wangara WA 6065

The above listed pharmacies comprise the Friendlies pharmacies currently operating within the Friendlies pharmacy network in Western Australia that have indicated their desire to be involved with the Promotions. Formal consents the above listed pharmacies have also been enclosed with this notification. A number of other Friendlies pharmacies have already had notification made on their behalf.

If, following the date of this notification, new Friendlies pharmacies join the Friendlies pharmacy network and wish to participate in the Promotions, HBF will obtain and make available to the ACCC on request a signed consent from the new pharmacy confirming that the new pharmacy should be listed as a notifying party under this notification, together with any applicable lodgement fees.

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.