

General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601



8 December 2015

Dear Sir or Madam

Notification of third line forcing – Bupa Optical Pty Limited

Bupa Optical Pty Ltd ABN 24 126 819 154 trading as Bupa Optical (“**Bupa Optical**”) is offering certain discounts to customers who have private health insurance with optical cover with any private health insurer except Bupa Australia Pty Ltd (ABN 81 000 057 590) (“**Bupa Australia**”).

In particular, Bupa Optical will provide to customers with private health insurance with optical cover (with any private health insurer other than Bupa Australia) an additional \$50 discount in respect of any rebate to which that customer is entitled through the customer’s private health insurance cover to be applied to that particular transaction.

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;
- (2) a submission made by Bupa Optical in support of the Form G notification – highlighting the public benefit associated with the proposal and the absence of any misuse of market power; and
- (3) a cheque for \$100 as payment for lodging fees.

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.

Yours sincerely,

pp. Emma Zipper
General Counsel & Company Secretary
Bupa Australia Group

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:**

N98798

Bupa Optical Pty Ltd ABN 24 126 819 154 t

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

Bupa Optical is a provider of eyecare and optometry services and offers for sale products including corrective glasses, frames, sunglasses and contact lenses.

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

133 Exhibition Street, Melbourne VIC 3000

2. Notified arrangement

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

Optical products and private health insurance services.

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

Bupa Optical proposes to offer a discount to private health insurance members of funds other than the fund operated by Bupa Australia Pty Ltd (trading as Bupa) ABN 81 000 057 590. 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 have private health insurance with optical cover with any private health insurer other than Bupa.

(b) Number of those persons:

Approximately 100-200 customers per month.

(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 corrective optical lenses 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:**

Dianne Seneviratne
Legal Manager – Marketing & IP
Bupa Australia Pty Ltd
Level 16, 133 Exhibition Street, Melbourne VIC, 3000
Tel + 61 3 9937 4791

Dated.....8/12/2015.....

Signed by/on behalf of the applicant

D. Seneviratne
.....
(Signature)

p.p

Emma Zipper
General Counsel & Company Secretary
Bupa Australia Group

**SUBMISSION BY BUPA OPTICAL PTY LTD
IN SUPPORT OF NOTIFICATION UNDER SECTION 93
OF THE COMPETITION AND CONSUMER ACT 2010**

This submission is made by Bupa Optical Pty Ltd ABN 24 126 819 154 trading as Bupa Optical ("**Bupa Optical**") and supports the Form G notification attached.

1. Overview of proposed conduct

- 1.1 Bupa Optical provides eye care and optometry services and offers for sale products including corrective glasses and frames, sunglasses and contact lenses.
- 1.2 Bupa Optical will run a marketing campaign under which Bupa Optical will offer a discount to customers who have private health insurance with any insurer other than Bupa Australia Pty Ltd ("**Bupa Australia**").
- 1.3 In particular, Bupa Optical will provide to customers with private health insurance with optical cover (with any private health insurer other than Bupa Australia) an additional \$50 discount in respect of any rebate to which that customer is entitled through the customer's private health insurance cover to be applied to that particular transaction.
- 1.4 This conduct by Bupa Optical is arguably a contravention of sections 47(6) and (7) of the *Competition and Consumer Act 2010 (Cth)* if Bupa Optical 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 both:
 - (i) members of a private health insurance fund; and
 - (ii) not members of Bupa Australia's private health insurance fund; 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:
 - (i) not acquired private health insurance; or
 - (ii) private health insurance from Bupa Australia.

2. Details of offer

The table below sets out the details of the offer.

Business/Product	Description of offer
Bupa Optical	<p>Bupa Optical will provide to customers with private health insurance with optical cover (with any private health insurer other than Bupa Australia) an additional \$50 discount in respect of any rebate to which that customer is entitled through the customer's private health insurance cover to be applied to that particular transaction.</p> <p>The conditions associated with this offers are:</p> <ul style="list-style-type: none">the discount will only be provided to customers with optical cover included in their health insurance policy and who receive a rebate in respect of a claim

	made in a particular transaction.
--	-----------------------------------

3. **Products and services**

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

- optical products.
- Private health insurance.

4. **Public Benefit**

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

- the discount makes 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:

- Bupa Optical will continue to offer its products to consumers at the regular prices, regardless of whether or not the consumers do not have private health insurance or 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.