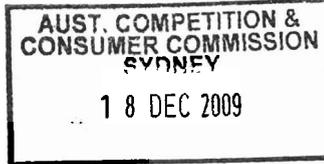


Level 8 Angel Place  
123 Pitt Street Sydney NSW 2000  
GPO Box 983 Sydney NSW 2001  
DX 101 Sydney  
T 61 2 8233 9500  
F 61 2 8233 9555  
[www.dibbsbarker.com](http://www.dibbsbarker.com)

~~CONFIDENTIAL COMMUNICATION~~

18 December 2009



Dr Richard Chadwick  
General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
C/- Level 7, 123 Pitt Street  
SYDNEY NSW 2000

FILE No:	
DOC:	
MARS/PRISM:	

By Email: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

Dear Dr Chadwick

**Notification of Exclusive Dealing – Third Line Forcing**  
Our Ref: 3499342.LEH.ICS

We act for American Express Limited (**American Express**).

We enclose a Notification of Exclusive Dealing by American Express under section 93(1) of the Trade Practices Act 1974 (**Notification**). The Notification is lodged in respect of conduct which may constitute third line forcing as defined by sub-sections 47(6) and 47(7) of the Act.

We also enclose a cheque made payable to the Australian Competition and Consumer Commission in the sum of \$100 for the prescribed lodgement fee.

The proposed conduct is conduct related to that which is described in the exclusive dealing notification lodged by Travelscene Pty Ltd (ABN 61 001 763 819) (**Travelscene**). The proposed conduct involves American Express offering to supply a licence to use American Express' intellectual property, associated goods and services and American Express products to persons who choose to be a member of the Travelscene American Express travel agency network, thereby allowing those persons to conduct travel agency businesses which are co-branded as "Travelscene American Express" travel agencies.

As set out in the Notification, American Express believes that the proposed conduct will enhance competition in the travel industry, provide more choice for consumers, provide consumers with access to a reliable and consistent travel product and encourage competition among travel service providers to offer benefits to customers.

American Express respectfully submits that the proposed conduct will result in a net public benefit.

13781001 v2 Sydney 18 12 09

**Brisbane**  
T 61 7 3100 5000 F 61 7 3100 5001

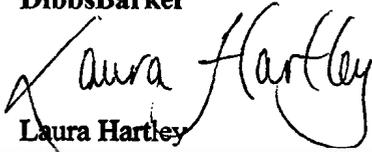
**Canberra**  
T 61 2 6201 7222 F 61 2 6257 4011

**Perth**  
T 61 8 9265 6000 F 61 8 9265 6099

American Express respectfully requests that confidentiality be maintained over the documents attached to the Notification, noted as Confidential Attachment 1 and Confidential Attachment 2, and that the Commission excludes those documents from the Public Register on the basis that they contain commercially sensitive information.

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

Yours sincerely  
**DibbsBarker**

A handwritten signature in black ink that reads "Laura Hartley". The signature is written in a cursive style with a large, looping "L" and "H".

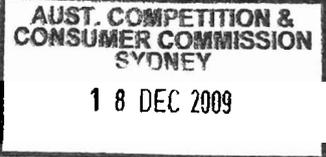
**Laura Hartley**  
Partner  
Email: [laura.hartley@dibbsbarker.com](mailto:laura.hartley@dibbsbarker.com)  
Direct Line: 61 2 8233 9560  
Mobile: 0417 428 861

Encl

**FORM G**

Commonwealth of Australia  
*Trade Practices Act 1974 - Sub-section 93(1)*

**EXCLUSIVE DEALING NOTIFICATION**



To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in 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**

**(a) Name of persons giving notice (Refer to direction 2)**

N94391

American Express Limited of American Express Tower, World Financial Center 200 Versey Street New York, NY 10285 USA (**American Express**)

**(b) Short description of businesses carried on by those persons (Refer to direction 3)**

American Express is a global payments, network and travel company incorporated in the United States. American Express carries on business in Australia in financial services, insurance and travel.

In respect of its travel business, American Express supplies travel products to consumers including tours, foreign exchange, flight packages and accommodation packages (**American Express Products**). American Express operates a web-based travel service at [www.americanexpress.com/australia/](http://www.americanexpress.com/australia/) allowing customers to access a wide range of travel services including domestic and international flights, hotel accommodation, travel insurance, car hire, foreign exchange and other travel related services.

**(c) Address in Australia for service of documents on those persons**

Laura Hartley  
Partner  
DibbsBarker  
Level 8  
123 Pitt Street  
SYDNEY NSW 2000

Email: [laura.hartley@dibbsbarker.com](mailto:laura.hartley@dibbsbarker.com)  
Telephone: (02) 8233 9560  
Fax: (02) 8233 9555

**2. Notified arrangement**

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

The goods or services related to this notification include (but are not limited to) the following:

- (i) A licence to use American Express's intellectual property and the right to distribute American Express's products and associated goods and services.
- (ii) A licence granted by Travelscene Pty Ltd (**Travelscene**) to use Travelscene's intellectual property, know how, training and associated goods and services and the right to be a member of the Travelscene American Express travel agency network (**Network**).

**(b) Description of the conduct or proposed conduct (Refer to direction 4)**

The proposed conduct is related conduct to that notified by Travelscene in respect of the Network. Travel agents who choose to become members of the Network will be able to co-brand their travel agency businesses as "Travelscene American Express". The proposed conduct will involve American Express offering to supply, and supplying, the goods and services described above in paragraph 2(a)(i) to persons who wish to be a member of the Network on the condition that those persons agree to acquire, and acquire, the goods and services described above in paragraph 2(a)(ii) from Travelscene.

American Express may refuse to supply the goods and services described above in paragraph 2(a)(i) to persons who wish to be a member of the Network for the reason that the person will not agree to acquire, or will not acquire, the goods and services described in paragraph 2(a)(ii) above from Travelscene.

A copy of the confidential Travelscene/American Express Network Membership Agreement and a copy of the confidential Travelscene/American Express Network Licence Agreement are attached to this notification as **Confidential Attachment 1** and **Confidential Attachment 2**.

*American Express respectfully requests that confidentiality be maintained over Confidential Attachment 1 and Confidential Attachment 2, and that the Commission excludes those documents from the Public Register on the basis that they contain commercially sensitive information*

**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)**

Persons who wish to be a member of the Network

**(b) Number of those persons**

**(i) At present time**

Approximately 370

**(ii) Estimated within the next year (Refer to direction 6)**

Approximately 370

- (c) **Where the number of persons stated in items 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*)

The proposed conduct will provide the following public benefits:

- (i) Travel agent members of the Network, who are likely to be small businesses, will be able to compete more effectively with internet-based travel service providers including airlines, hotels and on-line travel agencies;
- (ii) Where the Network members are more competitive, they will in turn be able to provide more choice for consumers;
- (iii) A robust and reliable Network will provide consumers with access to reliable, good value and consistent travel products; and
- (iv) A highly competitive Network will encourage competition among travel service providers to offer similar or competitive benefits to consumers.

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

- (i) *Effective Competition*

Traditional smaller independent travel agencies experience considerable competitive pressure from internet-based travel services providers including major airlines and travel agencies with low overheads. While intense price competition has recently had a beneficial effect for prices of travel products to consumers, the ongoing pressure on bricks and mortar travel agencies will ultimately erode the viability of those traditional travel agencies or perhaps remove them as a competitive constraint on the larger participants and remove consumer choice.

Being a member of the Network will enable smaller individual travel agencies to use the recognised brands of Travelscene and American Express, which will attract customers without significant costs required to establish a brand with the reputation enjoyed by Travelscene and American Express.

Network members will also be able to access training, advice, information and support at a level not readily accessible by small individual agencies. The economies of scale of a large network create an efficiency benefit in this regard. The Network members will also be able to access American Express preferred merchant rates and the preferred rates given by third party suppliers to American Express and Travelscene.

- (ii) *Consumer Choice*

Following on from the effective competition elements, the Network members will be able to access significant benefits that enable them to present more diverse, innovative and competitive

products to consumers. The Network members will be able to provide a range of travel products at a highly competitive price.

*(iii) Consumer Access*

In addition to choice, the Network members will be able to provide consistent and reliable travel products, having access to competitive packages available to American Express and Travelscene and having the support and backing of established brands. Network members will also be able to offer consumers the option to redeem membership reward points earned through the American Express Membership Rewards Program.

*(iv) Increased Competition*

The ability of Network members to offer more diverse, innovative and competitive products will act as a strong competitive force encouraging other market participants to offer competitive alternatives to the products offered by Network members, ultimately adding value to products offered to consumers.

**5. Market definition (Refer to direction 8)**

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)

The market affected by the notified conduct is the market for the supply of travel services.

**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)**

American Express considers that there would be very few, if any, public detriments likely to arise from the conduct.

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

- (i)** The market for the supply of travel services is highly competitive; and
- (ii)** Prospective travel agencies can choose to be a Network member or can alternatively choose any other network offered by market participants such as Escape Travel.

**7. Further information**

**(a) Name and address of persons authorised by the person giving this notice to provide additional information in relation to this notice**

Laura Hartley  
Partner  
DibbsBarker  
Level 8  
123 Pitt Street  
SYDNEY NSW 2000

Email: [laura.hartley@dibbsbarker.com](mailto:laura.hartley@dibbsbarker.com)  
Telephone: (02) 8233 9560  
Fax: (02) 8233 9555

Signed by/on behalf of the applicant

*Laura Hartley*  
.....  
(Signature)

LAURA ELIZABETH HARTLEY  
.....  
(Full Name)

DIBBS BARKER  
.....  
(Organisation)

PARTNER  
.....  
(Position in Organisation)

Dated: 18 December 2009



## **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 *Trade Practices Act 1974* 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.