



CORPORATE OFFICE

Level 2  
630 Church Street  
Richmond, VIC 3121  
Australia

T +61 3 9413 6200  
F +61 3 9429 3992

[www.delawarenorth.com.au](http://www.delawarenorth.com.au)

A Global Leader in Hospitality & Food Service

FILE No:

DOC:

MARS/PRISM:

14 December 2010

Sent via Mail

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

To Whom It May Concern:

**RE: Third Line Forcing Notification**

Please find enclosed:

1. a notification under section 93(1) of the Trade Practices Act 1974 (Cth) prepared on behalf of:
  - a. Delaware North Companies Australia Pty Ltd; and
  - b. Delaware North Parks and Resorts Pty Ltd; (together **Delaware North**); and
2. a cheque in the amount of \$200 representing the lodgement fee.

If you have any questions concerning this notification, please do not hesitate to contact me.

Yours sincerely,

Dennis Tuan-Mu  
Legal Manager  
LEGAL AND COMPLIANCE DIVISION

AUSTRALIA  
NEW ZEALAND



# Form G

Commonwealth of Australia  
*Trade Practices Act 1974 — 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 *Trade Practices Act 1974*, 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

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

N9522 3 Delaware North Companies Australia Pty Ltd and Delaware North Australia  
N9522 4 Parks and Resorts Pty Ltd (together **Delaware North**).

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

Delaware North is a hospitality company that operates in a number of venues and holiday resorts nationally.

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

Level 2, 630 Church St  
Richmond VIC 3121

### 2. Notified arrangement

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

The Services to which this notice relates are:

- a) the review and approval of supply side trading partners (suppliers, vendors, subcontractors etc); and
- b) the provision of web-based business portal services for the storage, sharing, management and communication of compliance and other information between trading partners.

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

Delaware North proposes to require supply side trading partners to become members of International Compliance Information Exchange (iCIX) Pty Ltd and to establish their own business site with iCIX (**Conduct**). iCIX is a

web-based business portal which allows members to store, share and manage documentation, information and other related communication.

*(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)*

Suppliers and potential suppliers of goods and services to Delaware North.

**(b) Number of those persons:**

**(i) At present time:**

Approximately 2,500.

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

*(Refer to direction 6)*

Approximately 2,500.

**(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

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.....  
.....  
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**4. Public benefit claims**

**(a) Arguments in support of notification:**

*(Refer to direction 7)*

The main benefit in having suppliers of goods and services as members of iCIX is that it enables a more robust register of compliance documents, including but not limited to insurance, product safety, food safety and trade licences. This has the effect of:

- fostering business efficiency through the industry wide exchange of compliance information using iCIX;
- improving product quality through the use of iCIX product Withdrawal and Corrective Action modules; and
- promoting competition by allowing a buyer to check the real time compliance of a supplier or prospective supplier.

iCIX enables Delaware North to check that suppliers have current public liability, workers compensation, professional indemnity and other relevant

insurances. The expected benefits arising out of the Conduct are passed on to consumers, employees and stakeholders.

The public benefits which will flow from the Contract include the following.

- Enhanced consumer safety through facilitation and management of compliance in relation to product safety, quality assurance and other certifications achieved by real time access to the most appropriate and up to date information stored on the site.
  - Eg: As the ‘controller of a premises’ (under a range of state based legislation), the Conduct assists Delaware North risk management approach to protect employees, tenants and visitors to Delaware North buildings. This ultimately benefits employees, visitors, shareholders and investors across Australia.
- Reduction in transaction time and costs across the industry for both Delaware North and its suppliers arising from the ability to access and place documents for common use on the iCIX site. Once a supplier joins iCIX, they can elect to share their information with all their customers, not just Delaware North.
  - Eg: Suppliers are commonly obliged to obtain or facilitate an assessment of the same matters for multiple parties through audit reports. By placing a report on the site, reference may be made to that report by other parties, potentially avoiding the need to obtain duplicate or additional reports.
- The promotion of efficiencies and certainty for parties to a transaction. Such certainty arises from the ability to exchange and execute agreements electronically, the iCIX system’s ability to archive documents for future reference and retrieval and access to product specifications and other compliance requirements.
- Security of information, arising from use of an independent third party site to store and record documentation. The parties have the ability to maintain the confidentiality of material placed on the site through restricting access to nominated individuals.

The Conduct will encourage competition amongst suppliers to improve and maintain standards of compliance.

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

None in addition to the facts described above.

## 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 relevant markets in which the services described at 2(a) are supplied or acquired are:

- a) the worldwide market for the supply and acquisition of procurements services; and
- b) the worldwide market for the supply and acquisition of web-based business portal services.

In respect of the market referred to in (a) above, procurement services are supplied and acquired by a vast and diverse number of parties, including those who supply and acquire the goods and services which are the subject of the procurements as well as third party procurers. Similarly, in respect of the market referred to in (b) above, there is a vast and diverse number of providers and acquirers of web-based business portal services, including businesses which host their own business portal services.

At this time, Delaware North. considers that there are no substitutions available for the comprehensive service provided by iCIX.

## 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)*

Delaware North does not consider there to be any public detriments flowing from the Conduct. The public benefits described in 4(a) above outweigh any perceived public detriments. A supplier who does not wish to be a member of iCIX is free to supply goods and services to other organisations through other means including other web-based business portals. There will continue to be vigorous and effective competition in the relevant markets. The Conduct will have negligence, if any, impact in those markets.

In addition, the minimal cost of membership to iCIX (currently \$330 pa) is likely to be recouped in the transaction and compliance cost savings which

can be achieved though use of the system. Also, the numbers of supplier and distributors participating in the Conduct will be very small relative to the overall size of the markets affected by the Conduct. Accordingly, Delaware North. believes that competition in those markets will not be affected to any material extent by the Conduct.

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

None in addition to the facts described above.

**7. Further information**

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

Dennis Tuan-Mu

Legal Manager

Delaware North Companies, Inc.

Level 2, 630 Church St

Richmond VIC 3121

(03) 9413 6225

Dated.....09/12/10.....

Signed by/on behalf of the applicant

.....  
(Signature)

.....  
Dennis Tuan-Mu

.....  
Delaware North

COMPANY

.....  
Secretary

## 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.