

## 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

(a) **Name of person giving notice:**

*(Refer to direction 2)*

N99235 italktravel Pty Ltd ACN 145 355 960 (ITT).

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

*(Refer to direction 3)*

ITT is a franchisor for a network of franchisees (**ITT Franchisees**) involved in the business of providing travel products and travel services online and through fixed retail premises across Australia.

ITT grants to ITT Franchisees the right to operate an ITT branded business using the ITT system and processes pursuant to a written franchise agreement (**Membership Agreement**).

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

c/- Toby Norgate  
Norgate McLean Dolphin  
Level 6, Rialto Towers  
525 Collins Street  
MELBOURNE VIC 3000

Correspondence to:  
Norgate McLean Dolphin  
PO Box 16156  
Collins Street West VIC 8007

#### 2. Notified arrangement

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

Pursuant to the Membership Agreement between ITT and the ITT Franchisees, ITT Franchisees will be required to become members of the

Australian Federation of Travel Agents (**AFTA**) and obtain accreditation through the AFTA Travel Accreditation Scheme (**ATAS**).

The AFTA is the peak industry body representing the interests of travel agents Australia wide. The AFTA was founded in 1957 and seeks to enhance the professionalism of the travel agent industry including representing the industry in public policy and government affairs. The AFTA administers the ATAS which is designed to set the standards and criteria for service in the travel industry.

The introduction of the ATAS followed the de-regulation of the licencing requirements imposed on travel agents under state and territory legislation which was repealed in 2014. Therefore, aside from industry self-regulation such as through the AFTA and ATAS, the travel industry is currently only regulated by generic consumer protection legislation.

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

*(Refer to direction 4)*

The conduct the subject of this notification relates to ITT's supply of its franchise system, processes and services to ITT Franchisees on the proposed condition that ITT Franchisees become members of the AFTA and obtain accreditation through the ATAS (**Notified Conduct**).

The Notified Conduct potentially falls within the definition of exclusive dealing in sections 47(6) and 47(7) of the *Competition and Consumer Act 2010* (Cth) as ITT will be supplying services to persons (i.e. ITT Franchisees) on the condition they acquire services from a third party (i.e. the AFTA).

By engaging in this Notified Conduct, ITT seeks to make ITT Franchisees aware of the travel agent industry standards and ensure these standards are met and maintained by all ITT Franchisees.

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)*

All existing and future ITT Franchisees entering into the Membership Agreement with ITT.

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

(i) **At present time:**

There are currently 26 ITT Franchisees operating across 33 locations in Australia.

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

*(Refer to direction 6)*

ITT estimates that there will be approximately 10 new ITT Franchisees within the next year.

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

No.	Name of ITT Franchisees	Business Premises Address
1.	Marragata Pty Ltd ATF the J Gott Family Trust	3/291A Spring Street, Reservoir VIC
2.	The Trustee for Kanga Travel Unit Trust	180 Bellair Street, Kensington VIC
3.	Lyleta Pty Ltd	124 Lava Street, Warrnambool VIC
4.	The Sandlyne Family Trust	Shop 1.38 Centro The Glen, Glen Waverley VIC
5.	Waverly Gardens International Travel Pty Ltd	Shop 2022, Westfield Fountain Gate, Narre Warren VIC
6.	Acqua Enterprises Pty Ltd	Shop 2086, Westfield Fountain Gate, Narre Warren VIC & 45 Tunstall Square, East Doncaster VIC
7.	John A Russell & Susan A Saville	Shop 2, 79 Hamilton Place, Mount Waverley VIC
8.	Southern Cross Travel Bendigo Pty Ltd	90 Wood Street, Bendigo VIC
9.	Top Tours and Travel Pty Ltd	4 Eaton Mall, Oakleigh VIC
10.	Horsham Travel Centre Pty Ltd	Cnr Pynsent Street and Darlot Street, Horsham VIC
11.	Hunter Global Travel Services Pty Ltd	409 High Street, Maitland NSW & Rutherford Marketplace, Rutherford NSW & Shop 9, Marketown S/C, Newcastle West NSW & Cnr Kenrick Street & Union Street NSW
12.	Kiannya Pty Ltd	Shop TP12 Belmont Central, Belmont NSW
13.	Warners Bay Travel Pty Ltd	Shop 2, 25 John Street Warners Bay NSW
14.	Fine Travel Pty Ltd	Shop 1011 Westfield Hornsby, Pacific Highway NSW & Shop 1A, 21 Hunter Street NSW & Shop 243, 6 - 14 Old Castle Hill Road, Castle Hill NSW
15.	Gemtrip Pty Ltd	127 George Street, Bathurst NSW
16.	S & S Travel Pty Ltd	Shop 1062A Westfield Shopping Town, Tuggerah NSW
17.	Matt Strange Pty Ltd	31c Hutchinson Street, Mount Barker SA
18.	Sea Air World Travel Pty Ltd	485 Payneham Road, Felixstowe, Glynde SA
19.	G J Hegarty & L Ledgard	Shop 13, Mitcham Square, Mitcham SA
20.	Idyllic Travel Pty Ltd	Shop 4, 180 Grange Road, Flinders Park SA
21.	The Trustee for Namarillup Trust	7/191 - 199 Bulwer Street, Perth WA & Suite 1/11 Fortune Street, Narrogin WA
22.	Travel Money Group Pty Ltd ATF the Campbell Family Trust	Shop 143, Whitford City Shopping Centre, Hillarys WA

23.	Silver Ocean Pty Ltd	Shop 11, Kununurra Shopping Centre, Kununurra WA
24.	Jetset Midland Unit Trust	Shop 16, 274 Great Eastern Hwy, Midland WA
25.	John Layton Travel Pty Ltd	Shop 3, 229 Goodwin Drive, Bribie Island QLD
26.	The Trustee for The Hardie Family Trust	Shop 11, Highfields Village Shopping Centre Highfields QLD

#### 4. Public benefit claims

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

*(Refer to direction 7)*

The Notified Conduct will have the following benefits for ITT Franchisees and consumers:

##### (i) Create uniformity and enhance professionalism in the travel industry

It will ensure that ITT Franchisees operate their travel agent business to the national standards and criteria established by the AFTA which, as mentioned above, is the peak industry body representing travel agents in Australia.

By adopting these standards and codes of conduct set by the AFTA, ITT Franchisees will have a clear set of guidelines for operating within the travel industry and a framework for dealing with consumers and handling matters such as complaints, disputes and minimum standards of behaviour.

The above will also have a flow on benefit for consumers who should receive a professional and quality service from ITT Franchisees that meet recognised industry standards.

##### (ii) Affords ITT Franchisees representation in industry and government affairs

By ITT engaging in the Notified Conduct the ITT Franchisees will be supporting a recognised industry body that promotes their interests and ensures that as a collective group their interests are represented in policy issues and in travel and tourism industry affairs.

##### (iii) Allows ITT Franchisees access to resources, tools and expert advice

ITT Franchisees as members of AFTA will have access to a wide range of business support tools including access to an industrial relations hotline, skills forums and seminars, training modules for Certificate III in Travel and a mediation service.

By engaging in the Notified Conduct, ITT is ensuring that ITT Franchisees are equipped with the skills and have the resources to offer an informed and qualified service to consumers.

Further, the Notified Conduct does not prohibit or restrict ITT Franchisees from accessing further resources, tools and advice from other competitors within the industry.

**(iv) Ensures quality control and credibility in the travel industry**

Once ITT Franchisees obtain accreditation through the ATAS, they have the right to display their ATAS certificate in their retail store and use the ATAS symbol in marketing their business. The use of the ATAS symbol allows ITT Franchisees the ability to gain a competitive advantage by raising awareness to consumers that their business has met the industry standard and criteria for a travel agent business in Australia. Further, despite the de-regulation of the travel agent industry, consumers can still trust they are receiving a professional, informed and quality service.

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

ITT refers to the facts and information contained on the AFTA website in support of the above claims (<http://www.afta.com.au/>).

**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 that may be effected by this Notified Conduct is the travel agent industry market in Australia. Competition in this market is vigorous.

**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)*

The Notified Conduct will have the following detriment on ITT Franchisees:

- (i) impose a financial burden on ITT Franchisees by requiring them to pay annual AFTA membership fees and ATAS participant fees.

However, the ITT Franchisees' benefits from the Notified Conduct outweigh the above detriment as they will have access to advice and support from a peak industry body, guidelines and rules outlining the national standards of professional service and representation of their interests in government and public policy matters.

We consider that the Notified Conduct will have no detrimental effects on consumers.

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

Not applicable.

**7. Further information**

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

c/- Toby Norgate  
Norgate McLean Dolphin  
PO Box 16156  
Collins Street West VIC 8007

Telephone: 03 9629 4696

Email: [toby@nmdlawyers.com.au](mailto:toby@nmdlawyers.com.au)

Dated: 8 August 2016

Signed on behalf of the applicant

  
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Toby Norgate  
Norgate McLean Dolphin Lawyers  
for italktravel Pty Ltd ACN 145 355 960

## 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.