

1. Introduction

- 1.1 WorldVentures is an international direct selling company which offers travel club memberships, known as “DreamTrips” memberships, to customers. WorldVentures conducts business in 29 international markets. A full list of those markets is set out in **Annexure A** to this submission. WorldVentures launched its direct selling travel club business in 2005.
- 1.2 WorldVentures is the only significant direct selling company in the travel sector. The DreamTrips products or packages offered to its DreamTrips Members are fulfilled by Rovia (a related corporate group to WorldVentures). Aside from DreamTrips products or packages, Rovia also offers other travel services.
- 1.3 In Australia, the business operation is conducted through WorldVentures Marketing Pty Ltd (“WV”). WV launched in Australia on 2 June 2014.
- 1.4 WorldVentures welcomes the opportunity to lodge a submission in response to the *Australian Consumer Law Review Issues Paper* (March 2016).
- 1.5 WorldVentures’ submission will focus on the unsolicited consumer agreement provisions contained in the Australian Consumer Law.

2. WV’s Business in Australia

- 2.1 In Australia, WV offers two (2) levels of DreamTrips Memberships (the “Products”) to customers:
- (a) DreamTrips Gold; and
 - (b) DreamTrips Platinum.
- 2.2 Each customer becomes a DreamTrips Member upon purchase of a DreamTrips Membership.
- 2.3 Whilst DreamTrips Platinum offers a wider suite of membership benefits, the benefits common to both categories of DreamTrips Memberships are:
- (a) access to DreamTrips, which are curated holiday trips;
 - (b) DreamTrips extras, like airport transfers, welcome receptions, hosts, excursions, small gifts, and the like;
 - (c) a 24/7 concierge service (operated from one of WorldVentures’ call centres), which are personal concierge services DreamTrips Members can make use of whether at home or travelling. Concierge services include special requests (such as wake-up calls, arranging house-sitting, language translations and household errands); information requests (such as traffic reports, weather updates, flight status and exchange rates), emergency requests (such as towing and repairs, roadside assistance and lost ticket replacement) and reservations, bookings and travel requests (such as bookings for shows, sporting events, airport transfers, restaurant reservations etc);
 - (d) the DreamTrips Rewards program;

- (e) the RateShrinker, when booked through Rovia, WorldVentures' travel partner;
- (f) exclusive travel deals;
- (g) commission-free hotel rates when booked through Rovia;
- (h) flight accident insurance, when booked through Rovia;
- (i) dining and entertainment discounts;
- (j) a personal website featuring the Member's travel arrangements and benefits, including online customer support, as well as an entitlement to book hotel accommodation at commission free rates; and
- (k) airport parking and limousine service discounts.

3. Australian Holidays and Tourism

3.1 WorldVentures offers a range of Australian-based DreamTrips to its DreamTrips Members. These DreamTrips are available to Australian Members and Members in any of the other markets in which WorldVentures operates. As at May 2016, there are approximately 68 Australian-based DreamTrips which are scheduled for the remainder of 2016. DreamTrips ordinarily are for three to five nights and include destinations such as:

- (a) Capital city stays for example Sydney, Melbourne, Perth and Adelaide;
- (b) Holidays to regional destinations, such as:
 - (i) Hamilton Island, Hayman Island, Cairns, the Great Barrier Reef and the Gold Coast;
 - (ii) Rottnest Island;
 - (iii) Byron Bay;
 - (iv) the wine regions in South Australia; and
 - (v) Phillip Island.
- (c) Local operators are used to provide tours for DreamTrips Members and local tourist attractions are visited.

4. Business Model

4.1 The foundation of the WV sales strategy is network or multi-level marketing. Generally, prospective customers become aware of WV through a network of independent self-employed sales representatives ("**Representatives**") who are remunerated on a commission only basis through a multi-level marketing compensation plan. Commissions are payable to Representatives by reference to the sales of DreamTrips memberships by Representatives to customers (who become DreamTrips Members – see above).

4.2 Representatives have the opportunity to build a sales team (or "downline") by introducing other Representatives. As is the case in respect of direct sales of DreamTrips memberships by Representatives to customers, commissions are payable in respect of the sale of DreamTrips memberships made by those Representatives in their downline to customers. Only Representatives are entitled to build a team. No compensation is given for the recruitment of other Representatives.

4.3 As at May 2016, there are approximately 9,000 Australian-based independent WV Representatives.

5. Unsolicited Consumer Agreements

5.1 WV's direct selling business model involves network marketing. As a result, some of the circumstances in which customers enter into DreamTrips membership agreements give rise to the agreement being an "unsolicited consumer agreement" ("UCA") which is required to comply with the requirements for UCAs set out in the *Australian Consumer Law* ("ACL"). This is because negotiations are commenced generally by Representatives away from any business or trade premises of WV.

5.2 Accordingly, WV considers it is well placed to comment on the UCA provisions contained in the ACL. WV considers that some of the UCA provisions are unnecessary, overly restrictive, unfair and anti-competitive.

Section 86 - Prohibition on Supply and Accepting Payment

5.3 The UCA provisions in the ACL include a prohibition on supply and payment during the 10 business day cooling off period. During the 10 business day cooling off agreement, if a Membership agreement is a UCA, then the following restrictions will apply:

- (a) Services cannot be supplied.
- (b) Goods, on the other hand, may be supplied if the value of the sale is less than \$500.
- (c) Payment must **not** be accepted (or demanded), regardless of whether the UCA relates to the supply of goods or services.

5.4 WV considers that the restrictions during the 10 business day cooling period on the supply of services and on accepting or demanding payment is unnecessary, unfairly restrictive and anti-competitive.

5.5 Under section 84 of the ACL, if a UCA is terminated by a consumer during the cooling-off period, the supplier must immediately (upon being notified of the termination) return or refund any consideration the consumer has provided under the UCA. Failure to comply with the immediate refund or return of consideration requirement is a strict liability offence under section 178, which includes a pecuniary penalty of \$50,000 (for a company). Given the refund requirement under section 84 and the offence provision under section 178, WV questions why the section 86 prohibition on accepting payment during the cooling-off period is required.

- 5.6 Further, WV has a DreamTrips Refund Policy. When a DreamTrips Member cancels their membership within 30 days of joining, WV refunds their membership fee, which is well above and beyond the 10 business day cooling-off period required under the ACL. This 30 day refund policy applies to all new Members regardless of the circumstances in which they become a Member (ie regardless of whether the sale is a UCA or not). Generally refund requests are processed promptly by WV within 5 business days of receiving the refund request.
- 5.7 Refund requests outside the initial 30 day period are assessed on a case-by-case basis.
- 5.8 Assistance can be drawn from overseas as to how these issues have been addressed.

New Zealand

- 5.9 New Zealand regulates UCAs (or “uninvited direct sale” agreements, as they are known) under the *Fair Trading Act 1986*. The requirements regarding uninvited direct sale agreements were inserted into the *Fair Trading Act* (the **FTA**) in 2014, a number of years after the Australian UCA requirements took effect.
- 5.10 Under the FTA, the scope of when a sale agreement will be an uninvited direct sale agreement is much clearer. In New Zealand, under section 36K of the FTA, agreements will only be uninvited direct sale agreements if they are negotiated:
- (a) in the presence of the supplier and consumer in either the consumer’s workplace or home; or
 - (b) by phone.
- 5.11 As in the case of Australia, the value of the agreement must exceed \$100.
- 5.12 Unlike the ACL, however, the FTA does not restrict a supplier accepting or requiring payment during the cooling-off period, which is 5 business days, as opposed to 10 business days. Should a consumer cancel the uninvited direct sale agreement within the 5 business day cooling off period, the supplier is required to immediately repay the consumer all money paid to the supplier under the agreement: section 36P. If the supplier has supplied services during the cooling-off period, the supplier is not entitled to any compensation for the supply of the services: section 36R(3)(a). This is a risk that is carried by the supplier.

United Kingdom

- 5.13 United Kingdom law permits the supply of services and the acceptance of payments during the cooling-off period.
- 5.14 Under *The Consumer Contracts (information, Cancellation and Additional Charges) Regulations 2013*, when a contract is cancelled during the cooling-off period, the trader is required to reimburse the payment “without undue delay” and “in any event not later than” the end of 14 days after the date on which the trader was informed that the consumer had exercised their right to cancel the agreement: section 35(4) and (6). Services are permitted to be supplied during the cooling-off period when a consumer has made an express request for the supply: section 36(1).

- 5.15 The United Kingdom position differs slightly from the New Zealand position in that, where the consumer has requested the supply of services during the cooling-off period, the consumer is required to pay for any services that have been delivered until the point at which the services were cancelled. Consumers are required to be informed of this obligation before entering the agreement.

Conclusion

- 5.16 In our view, section 86 should be amended so that the following prohibitions are removed:
- (a) the prohibition on the supply of services during the cooling-off period (up to the value of \$500); and
 - (b) the prohibition on requesting or requiring payment during the cooling-off period.
- 5.17 WV considers that the New Zealand and United Kingdom approaches of allowing the supply of services and accepting payment during the cooling-off period is a preferable approach to the current prohibition under section 86.
- 5.18 Strong arguments can be made that the prohibition is discriminatory and anti-competitive.
- 5.19 WV considers that a ban on accepting payment is not necessary given that suppliers are required to refund payments immediately if a UCA is cancelled within the cooling-off period.
- 5.20 The ban also puts direct seller service providers at a distinct disadvantage as compared to:
- (a) direct sellers that supply goods, who are able to supply those goods during the cooling off period; and
 - (b) retailers (with retail stores and/or online stores) who are immediately able to provide both goods and/or services when contracted to do so.
- 5.21 The ban on accepting or requiring payment during the cooling-off period puts all direct sellers caught by the UCA provisions at a distinct disadvantage against retailers, regardless of whether they operate from retailer premises or online stores, as they are able to accept payment immediately when the sale agreement is made (whether instore or online).
- 5.22 Under the terms of the standard agreement between retailers and payment processors, credit card payments must be processed within a short period after the order has been placed and the storage of customer credit card details, such as the CCV or security number pending the expiry of the cooling-off period is not permitted. In practice, this requires direct selling companies to make a further approach to the customer to obtain credit card details once the cooling-off period has expired.
- 5.23 In this regard, WV considers that the prohibitions imposed on direct selling companies under the UGA provisions are unduly cumbersome, discriminatory and fundamentally inconsistent with the realities of conducting business in Australia.

UCA Information Requirements

5.24 When a sale is a UCA, the ACL contains detailed requirements for the content of UCAs including but not limited to the following:

- (a) The front page of the agreement must conspicuously and prominently inform the consumer of the consumer's right to terminate the agreement in the following terms:

Important Notice to Consumer

You have a right to cancel this agreement within 10 business days from and including the day after you signed or received this agreement.

Details about your additional rights to cancel this agreement are set out in the information attached to this agreement.

- (b) The above "Important Notice to Consumer" is required to be the most prominent text in the document other than the text setting out the dealer's or supplier's name.
- (c) The information about a consumer's additional rights to cancel is also required to be attached to the agreement. In certain circumstances, the cooling-off period is extended from 10 business days to three or six months.
- (d) The agreement **must** also be accompanied by a notice that a consumer **may** use to terminate the agreement. The form of the notice is prescribed.

5.25 We consider that the documentation requirements are unnecessary and onerous. If a sale is a UCA, the sale agreement comprises three pages as follows:

- (a) the front page, which displays various matters, including the "Important Notice to Consumers";
- (b) the second page, which sets out the circumstances in which the 10 business day cooling off period will be extended; and
- (c) the prescribed cancellation notice.

5.26 Consumers may exercise their right to cancel a UCA by oral or written notice. There is no mandatory requirement that notice be written. On this basis, WV considers that the attachment of a prescribed cancellation notice to a UCA is not necessary and an administrative burden. This is particularly the case given that consumers are not required to provide any written notice (in whatever form) to cancel a UCA.

5.27 WV submits that there should be no mandatory requirement to provide the cancellation notice. In our view, the approach adopted by New Zealand in the FTA is preferable. Under section 36M of the FTA, a consumer may cancel an uninvited direct sale agreement in any form (oral or written). There is no requirement for a prescribed cancellation notice to be provided to a consumer with the uninvited direct sale agreement.

Regulation 81 - Exemptions

- 5.28 Regulation 81 of the *Competition and Consumer Regulations 2010* (the **Regulations**) sets out a number of agreements which are not UCAs for the purposes of the ACL. These agreements are:
- (a) business contracts;
 - (b) discontinued negotiation agreements;
 - (c) agreements made during the course of a party plan event;
 - (d) a renewable agreement of the same kind previously entered; and
 - (e) a subsequent agreement of the same kind previously entered.
- 5.29 We consider that it is appropriate to have a further exception to the UCA requirements which is similar to the party plan exception. There should also be an exception available where a consumer is notified, prior to attending a meeting or presentation by a representative, that
- (a) the purpose of the meeting or presentation is to promote goods or services; and
 - (b) at the meeting or presentation, the consumer will be asked to consider whether to acquire the goods or services.
- 5.30 If the consumer is informed of the above matters prior to the meeting or presentation, the consumer may decide not to attend. If the consumer chooses voluntarily to attend the meeting or presentation after being so informed (ie they attend with an expectation that goods and/or services will be promoted to them), why should the agreement be a UCA? We consider this situation is, in effect, no different to a party plan event as defined in the Regulations.
- 5.31 In circumstances where a consumer is informed in the manner outlined above, an exception to the UCA requirements should apply. WV considers that it is appropriate for an exception of this nature to replace the party plan event exception. Such an exception would clearly not apply to activities such as, for example, traditional door-to-door selling, (which is not a sales technique utilised by WV Representatives), which would require compliance with the UCA requirements.

Annexure A - WorldVentures Countries of Operation

Austria

Australia

Botswana

Canada (Ontario and British Columbia only)

Cyprus

Germany

Greece

Hong Kong

Hungary

Iceland

Ireland

Israel

Kenya

Malaysia

Malta

Netherlands

Norway

Poland

Puerto Rico

Russia

Serbia

Singapore

Slovenia

South Africa

Sweden

Taiwan

United Kingdom

United States (including Puerto Rico)

Zimbabwe

