



**Australian
Competition &
Consumer
Commission**

Our Ref: C2001/1563
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11 August 2005

Mr Sam Lim
Solicitor, Legislative and Compliance Adviser
Swinburne Legal
PO Box 218
Hawthorn VIC 3122

Dear Mr Lim

**Re: Third line forcing notification (N40466) lodged by Swinburne University of
Technology**

Thank you for your letter of 11 March 2005 providing further information to the Australian Competition and Consumer Commission (ACCC) in relation to the above mentioned notification.

Following a review of concerns raised by interested parties, the ACCC does not intend to take any action in relation to notification N40466 at this stage.

The notification from Swinburne University of Technology (Swinburne) relates to Swinburne requiring all students enrolled in its Bachelor of Technology (Aviation) and Diploma of Technology (Aviation) courses to undertake practical flight training with General Flying Services Pty Ltd (GFS), any other training school approved by Swinburne or with a training school wholly owned and operated by Swinburne. I understand that since lodgement of notification N40466, Swinburne had decided not to establish its own flying school, due to low numbers enrolled in the relevant courses.

Background

As you are aware, the competition provisions of the *Trade Practices Act 1974* (the TPA) prohibit third line forcing conduct. Third line forcing conduct occurs when one business supplies goods or services, or discounts, allowances, rebates or credits on the condition that the purchaser acquires goods or services from another business.



The TPA however recognises that in some circumstances third line forcing conduct may be of benefit to the public. Businesses seeking to engage in third line forcing conduct may notify the ACCC under section 93 of the TPA and statutory immunity against action under section 47 will arise after 14 days. The ACCC may issue a notice revoking the immunity if it is satisfied that the likely benefit to the public from the notified conduct would not outweigh the likely detriment to the public resulting from the conduct.

ACCC's consideration

As you are aware, concerns were raised with the ACCC that the exclusive dealing arrangement does not generate the public benefits claimed by Swinburne, particularly as all licensed flying schools are required to provide training to a Civil Aviation Authority (CASA) minimum standard. Concerns were also raised that Swinburne students are financially disadvantaged as a result of their restriction of choice of flying school.

I have now had the opportunity to consider the matters raised by certain interested parties and the information provided by Swinburne.

I consider that the current exclusive arrangement between GFS and Swinburne is likely to result in some public benefit in the form of administrative efficiencies to Swinburne. In addition, there is likely to be a small public benefit by enabling Swinburne to ensure that a consistent quality of flight training, above minimum standards, is provided to its students.

I also consider the exclusive arrangement between Swinburne and GFS is likely to have limited overall impact on competition in the broader market for the provision of aviation education and training, of which tertiary aviation education is only part.

I note there is scope under notification N40466 for other flying schools to be approved as Swinburne flight schools. I understand that Swinburne will regularly review whether there are other flying schools in Victoria which it considers provide flight training services to a comparable standard to GFS. I note that while Swinburne does not currently have formal procedures in place, it would welcome applications or enquiries for the provision of flight training services for Swinburne aviation courses from other flight training schools.

Therefore, based on currently available information I do not intend to take any action in relation to notification N40466 at this stage.

Finally, as you would recall a concern was also raised with the ACCC that Swinburne may have provided advice at university open days that students wishing to be employed by Qantas must complete Swinburne's degree program. I note your response that students attending Swinburne open days are not advised that to be eligible for Qantas employment they must undertake the Swinburne degree program. I would like to take this opportunity to remind Swinburne of its obligation under Part V of the TPA not to engage in conduct that could be misleading or deceptive.

As with any notification, please note that the ACCC may act to remove the immunity afforded by this notification at a later stage if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

If you have any further questions about this matter please do not hesitate to contact Ms Jaime Norton on (03) 9290 1885.

I intend to place a copy of this letter, along with our previous letter seeking additional information of 21 February 2005 and your response of 11 March 2005, on the public register.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Gregson', with a long, sweeping horizontal stroke extending to the right.

Scott Gregson
A/g General Manager
Adjudication Branch