



17 April 2015

Adjudication Branch
Australian Competition and Consumer Commission
Level 20, 175 Pitt Street
SYDNEY NSW 2000
By Email: adjudication@accc.gov.au
cc: Warwick Renton-Gibb

OUR REF: 201288

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FORM G

NOTIFICATION OF THIRD LINE FORCING

Dear Sir or Madam

Enclosed with this letter is the Form G - Notification of Exclusive Dealing prepared by us on behalf of Virgin Internal Pilots Association (**VIPA**).

VIPA is an organization established under the Fair Work Act 2009 (Cth). VIPA is comprised of members who are pilots employed by the Virgin Australia Group of companies (including Tigerair). The purpose of VIPA is to provide representation to members in relation to enterprise bargaining negotiations with Virgin and associated legal representation.

Other benefits offered by VIPA or its related companies include loss of licence benefits (including for accidental death, temporary or total disablement and other events which lead to loss of a pilot's licence). VIPA also offers access to financial planning services specifically income protection insurance through CommInsure.

As part of its mandate to provide benefits to members and to understand and focus on the professional and industrial needs of pilots who are members, VIPA offers discounts on VIPA membership fees when its members take up offers of services from other companies within the VIPA group and affiliated organisation.

VIPA does not believe that the offer of discounts on the condition that services or products are taken from other VIPA companies would constitute third line forcing. However, for abundant caution VIPA has instructed us to lodge a notification on its behalf with the Commission.



We will arrange for payment of \$100 fee to be made by credit card today.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Charmian Holmes', is located below the 'Yours sincerely' text.

Charmian Holmes
SOLICITOR DIRECTOR

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)

N98230

Virgin Internal Pilots Association (VIPA) a registered organisation under the *Fair Work Act 2009* (Cth) with ABN 81 242 166 461

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

VIPA is an organisation owned by pilots who are employed by the Virgin Group of companies and it primarily assists members with enterprise bargaining negotiations and legal representation in disputes with their employer. VIPA also has related companies within the group (including VLF Limited (VLF) and VIPA IP Pty Ltd (VIPA IP)) that offer associated protection and financial services to members including loss of licence benefits and income protection.

VLF Limited is a company limited by guarantee and VIPA is one of the members along with a majority of VIPA pilot members. VIPA IP is a wholly-owned subsidiary of VIPA.

VIPA IP acts as a representative for members seeking income protection insurance. It has a commercial relationship with Income Solutions Pty Ltd which acts as a financial adviser and authorised representative to provide advisory services and access to risk insurance products. VIPA IP facilitates income protection insurance by assisting pilots to apply for insurance underwritten by Comminsure. VIPA IP has an employee who works in conjunction with Income Solutions Pty Ltd to provide this service and Income Solutions is an authorised representative of Garvan.

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

The Fold Legal Pty Ltd
Level 3, 231 George Street
Brisbane QLD 4000

2. Notified arrangement

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

Provision of member benefits including income protection insurance.

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

VIPA will from time to time give a discount, allowance, rebate or credit to certain VIPA members and the discount will apply to VIPA membership fees paid. In the first year the discount is 15% off membership fees, in the second year 20% off membership fees and in the third and any subsequent years 25% off membership fees. This discount is provided on the condition a VIPA member maintains its membership of VLF (the provider of loss of licence benefits) and hold a CommInsure Income Protection policy facilitated through VIPA IP.

VIPA takes the view that the services provided by VIPA IP are provided by a company related to VIPA because VIPA IP facilitates the insurance application. However to do this VIPA IP works with Income Solutions and currently the only insurance benefit available to Australian pilots for income protection insurance is a policy underwritten by CommInsure.

Therefore, there is the potential for this arrangement to constitute exclusive dealing.

If in the future more than one insurer is willing to insure pilots for income protection events then VIPA IP would seek to enter into an arrangement with those insurers in order to seek quotes and place insurance for its members and provide members with access to more than one insurance product.

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)**

VIPA members

(b) Number of those persons:

(i) At present time:

520

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

Likely to be more than 530.

(c) Where number of persons stated in item 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 main benefit of the notified conduct is to provide long term discounts to VIPA members to reduce the overall cost of their insurances and other membership benefits including the cost of their membership fees. This, in turn, will assist VIPA to continue to invest in identifying and offering new membership benefits to members. It also prevents

a situation where members may be underinsured or unable to affordably access insurance and other products which protect them and their family from the financial pressures of injury, sickness, death or disability which affect their ability to work.

Other competitor pilot unions and associations (including the Australian Federation of Air Pilots) may view the offer of these discounts as an incentive to offer similar discounted services to their members and in turn all pilots are likely to benefit because of the operation of the VIPA member loyalty program. Improved benefits increases competition and may encourage other associations and Virgin to improve availability and access to a range of similar products which benefit pilots and their families and offer increased financial protection and services to them.

VIPA wishes to encourage its members to use the full range of VIPA services as this will increase its buying power when partnering with other financial services providers in the future. This may result in improved and enhanced benefits for members and better pricing.

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

There are many alternative financial services providers including loss of licence insurers and financial advisers who can offer similar or competing products to VIPA members and other pilots. This includes their employer, Virgin and a competitor pilot association called the Australian Federation of Air Pilots. The market for life insurance and loss of licence benefits is very competitive even though the target market is very distinct.

There are a number of factors that members will consider before deciding whether to acquire services from VIPA affiliated companies. Income protection insurance is only one component and VIPA does not believe that pilots will decide on the basis of price alone.

VIPA members will continue to receive a range of financial services and products, including employment advice and legal representation that suits their needs. If pilots have engaged a financial adviser to provide personal advice on insurance requirements, VIPA considers those pilots will most likely continue to seek that advice because they consider it is necessary for their proper financial protection. For those pilots who do not consider it necessary to seek advice on life insurance, the VIPA IP offering through CommInsure along with discounted membership fees will appeal.

The proposed arrangement to discount membership fees is likely to promote competition and focus other providers on acting in the best interests of pilots and seeking where possible to deliver more benefits and better service for pilots in order to compete with VIPA.

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 markets for the provision of life insurance, income protection and trauma products and advisory services to consumers in Australia. The markets for the provision of enterprise bargaining and contract negotiation services to pilots.

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)**

Whilst there are limited insurance markets for income protection for pilots, there are highly competitive alternative products for loss of licence and other membership benefits including legal representation and contract negotiation. The market for financial planning services is also very competitive.

Pilots are still open to deciding to engage their financial adviser to place their insurance with CommInsure but if they do so there is no net financial benefit for VIPA and its other members and this would not support and subsidise the benefits which VIPA offers to its membership base.

Otherwise VIPA considers there to be little or no public detriment arising from a loyalty arrangement which promotes the interest of pilots as many other employment and industry groups target and specialise in the offer of products and services to their industry group.

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

Pilots who are VIPA members are not obliged to acquire products or services from VIPA affiliated companies in order to access their VIPA membership benefits and are free to acquire income protection insurance through a financial adviser of their choice and/or loss of licence benefits and other services from competitor pilot associations (eg the Australian Federation of Air Pilots- www.afap.org.au).

Pilots who are VIPA members will continue to receive their standard membership benefits (without discount).

Pilots can still access the CommInsure income protection product at regular prices without being a VIPA member. The discount is only provided in relation to VIPA membership fees and not the cost of the insurance or other financial products offered through companies affiliated with VIPA.

Pilots are under no obligation to join or continue to remain a VIPA member.

The conduct is unlikely to substantially affect competition in the Australian market amongst the providers of life insurance, financial planning services and/or loss of licence benefits to pilots.

7. Further information

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

Charmian Holmes
Solicitor Director
The Fold Legal Pty Ltd
Level 3, 231 George Street
Brisbane QLD 4000

Telephone: 07 3854 4202
Email: charmianh@thefoldlegal.com.au

Dated **17 April 2015**

Signed on behalf of the applicant



.....
(Signature)

Charmian Holmes

.....
(Full Name)

The Fold Legal

.....
(Organisation)

Solicitor Director

.....
(Position in Organisation)

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.