



**Australian
Competition &
Consumer
Commission**

Our ref: 58418
Contact officer: Gavin Jones
Contact phone: 03 9290 1475

GPO Box 3131
Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

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Dear Sir/Madam

Notification N98611 – Emirates One&Only Wolgan Valley Resort (Wolgan Valley)

I refer to your submission in relation to the above listed notification. The Australian Competition and Consumer Commission (ACCC) has decided not to take any further action in relation to the notification at this time. The purpose of this letter is to advise you of the reasons for this decision.

Wolgan Valley has lodged a notification in relation to a form of exclusive dealing conduct referred to as third line forcing. Third line forcing involves the supply of goods or services on condition that the purchaser acquires goods or services from a particular third party. In this instance, the supply of accommodation and spa services by Wolgan Valley to guests is made on condition that if the guest wishes to acquire helicopter transfer services, these services must be acquired from Sydney Helitours.

Although third line forcing conduct is a breach of the *Competition and Consumer Act 2010* (the Act), businesses can obtain immunity from legal action under the Act for third line forcing conduct by lodging a notification. Businesses that lodge a third line forcing notification automatically have immunity from legal action under the Act to engage in the conduct 14 days after the notification is lodged. The ACCC can revoke a third line forcing notification (in effect, removing the immunity) only if it is satisfied that the likely public benefit will not outweigh the likely public detriment from the conduct.

In considering the Wolgan Valley's notification, the ACCC has had regard to the fact that the notified conduct relates to only a single resort with 40 suites. As the number of guests requiring helicopter transfers to Wolgan Valley is likely to be only a small proportion of those who acquire helicopter charter services more broadly, the ACCC considered that the notified conduct would be likely to have minimal if any impact on competition.

While the notified conduct restricts a guest's choice of helicopter charter service, the restriction only applies in respect of their travel to or from a single 40 suite resort. There is no restriction on their use of helicopter charter services supplied by other operators for other travel. Also, guests who do not wish to use Wolgan Valley's nominated helicopter transfer provider are free to choose alternative means of transport to Wolgan Valley (or alternative accommodation).

As the number of helicopter transfers affected by the arrangements is very small, the ACCC considered that the notified conduct is likely to result in minimal if any public detriment. The ACCC, however, also considered that the notified conduct is likely to result in minimal if any public benefit.

With minimal if any public benefit and public detriment, the ACCC was not satisfied that the public benefit would not outweigh the public detriment. Accordingly, the ACCC does not propose to take any further action in relation to the notification at this time, which means that the immunity stands.

I note that your submission questions the public benefit claims made by Wolgan Valley. In this respect, a decision by the ACCC not to take any further action in relation to a notification does not mean that the ACCC has necessarily accepted or agrees with the public benefit and/or public detriment claims made by the notifying party.

Should you have any questions in relation to this matter please contact Gavin Jones on 03 9290 1475 or at adjudication@accc.gov.au.

Yours sincerely

A handwritten signature in grey ink, appearing to read 'Baethan Mullen', is positioned above the printed name.

Baethan Mullen
A/g General Manager
Adjudication