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## Submission

16 June 2016

# Wolgan Valley - Notification of exclusive dealing - Response to ACCC

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## Submission

This submission is provided to the ACCC in relation to Notification N98611 – Emirates One&Only Wolgan Valley Resort (**Wolgan Valley**).

We refer to your letter of 20 May 2016 regarding the above listed notification filed by Wolgan Valley on 6 October 2015.

This submission responds to confidential submissions made to the ACCC about the notified conduct as contained in the letter of 20 May 2016. Adopting the structure of the letter:

### 1 Public benefits

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#### 1.1 Reducing logistical complexity and increasing public safety

It is asserted that the notified conduct will not *enhance public safety by reducing logistical complexity in the air space*. The basis for this statement is the “*small volume of air traffic*” in the area and the absence of reported incidents prior to the commencement of the notified conduct.

Wolgan Valley refutes the above assertion and considers that the notified conduct has demonstrably enhanced and will continue to enhance public safety as follows:

(a)



(b)

The notified arrangements reduce administrative and logistical complexity for Resort staff who are not aviation experts. Having a single helicopter operator has facilitated the development of an efficient and effective communication protocol. In particular, the Sydney Helitours Chief Pilot has trained, at no cost to the Resort, a dedicated Resort staff member to act as Ground Safety Officer in accordance with CASA regulations CAO20.11 and the Sydney Helitours Operation Manual. The Resort Ground Safety Officer has also been trained with loading and unloading passengers from all Sydney Helitours machines. Protocols have been developed for Sydney Helitours and the Resort to broadcast on pre-programmed digital radio frequencies, allowing Sydney Helitours helicopter pilots and the Resort to be in contact in the absence of mobile telephone reception. There is no mobile phone coverage available in the valley. The notified arrangements have allowed Sydney Helitours and the Resort to improve safety and guest experience.



If individual guests were responsible for contacting the helicopter operator of their choice and managing transfer bookings (as suggested in the summarised submissions) the risk of miscommunication and non-familiarity of operating procedures (between the Resort, the guest and the chosen operator) increases. Miscommunication and confusion increases the risk of incident either in the air or on the ground.

- (c) The safety of the Resort's guests is of paramount importance to Wolgan Valley. The "*small volume of air traffic*" and the absence of reported incidents do not provide a rationale to deviate from an arrangement which reduces the chances of the occurrence of a safety incident. A safety event could have a serious negative effect on the Resort.

## 1.2 The quality of Resort guest experiences

The notified conduct has enhanced the experiences of guests (with continued effect) in the following ways:

- (a) The Resort seeks to offer its guests consistently high quality transfer services which are safe, seamless and professionally coordinated in accordance with its brand standards and in compliance with CASA requirements. The appointment of an exclusive provider of helicopter services allows the Resort to arrange air transfers and accommodation reservations for its guests and to ensure that the service offering is consistent with guest expectations. Whereas if guests make their own booking and multiple operators are involved there are likely to be variances in guest experiences and services standards that the Resort would have no control or ability to manage.
- (b) Further, the appointment of an exclusive provider means that staff have a single point of contact with a service provider that they have developed an effective relationship. The notified arrangements permit the Resort to manage the entirety of the transfer process and carefully monitor the quality and timeliness of transfer services on behalf of guests. All Resort helicopter transfer reservations are now processed through the Resort's Guest Services Staff or the Emirates One&Only Reservations Team and, to further streamline the process, Sydney Helitours has provided the Resort with access to its airline-quality bookings system. The dual-visibility of the bookings system ensures that the Resort has visibility across all Sydney Helitours flights, passenger numbers and helicopter availability.

## 1.3 Cost savings attributable to the notified conduct

The appointment of a single operator means that Resort staff have only to deal with single operator and a single system. This means that less Resort time is taken up considering the logistics and other issues surrounding helicopter transfers. It is the case that there is not a high volume of helicopter landings at the Resort. Nevertheless, having a number of operators landing at the Resort would inevitably increase complexity and staff time dedicated to transfers. This will increase costs, safety issues and reduce service levels for guests.

# 2 Public detriment

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## 2.1 Substitutes for Wolgan Valley Resort in the Blue Mountains luxury hotel market

The Resort competes with a number of Sydney and Blue Mountains hotels and resorts in the luxury accommodation and spa services market. The bald assertion that there is "no other resort destination of its type or calibre" in the "Sydney and Blue Mountains Areas" is





incapable of substantiation. The amenities and activities provided at the Resort (wedding ceremony and reception facilities, conference facilities, day hiking, spa treatments) are widely available at other accommodation destinations.

In any event, the extent of to which the Resort is “unique” is not relevant to the assessment of public detriment. Clearly the notified conduct does not have any impact on competition in any accommodation services market.

It would also be inconsistent with prior ACCC practice to consider public detriment from the perspective of a market to provide “helicopter charter services to guests of the Resort”. This is the market which appears to be implied by the submissions to the ACCC. There is no such market. Rather, the relevant market is the Sydney and Blue Mountains area helicopter charter services market. There can be no argument that the notified arrangements have any anti-competitive effects in the broader market which could result in a public detriment.

Sydney Helitours have informed Wolgan Valley that providing helicopter transfer services to and from the Resort constitutes a small percentage of its total turnover. Accordingly, transfers to and from the Resort would account for a negligible percentage of the chartered Sydney and area helicopter charter services market. Indeed, the *small volume of air traffic* as submitted infers that the route plays neither a significant or material role for the other operators.

## 2.2 Constraint of choice

Wolgan Valley accepts that the notified conduct means that guests cannot choose to use a different helicopter for transfers to the Resort. The experience of the Resort to date is that very few guests have sought to make alternative helicopter transfer arrangements.

Sydney Helitours, as the exclusive helicopter transfer provider, has agreed to provide a service at a rate which is a discount to its standard per hour charter rate. Given that Sydney Helitours competes with other commercial helicopter operators in the Greater Sydney area, Wolgan Valley expects that the standard rate is set under competitive conditions.

In this respect the notified conduct means that guests are offered a quality service from a provider vetted by the Resort at a price which the Resort considers reflective of, or below, a market rate. In such circumstances, the public detriment associated with any lack of choice is marginal to the point of being non-existent.

A single instance where a guest was unable to obtain a helicopter transfer does not form a basis for finding public detriment resulting from the notified conduct. Wolgan Valley acknowledges that on the weekend of 13 – 14 February 2016 a guest at the Resort wished to transfer to Sydney. Sydney Helitours was unable to transfer the guest at short notice at the guest's preferred time on Valentine's Day weekend (a particularly busy time for Sydney Helitours and the Resort) due to the unavailability of a helicopter at the particular time requested. Alternate times were provided to the guest by the Resort, however the guest was not flexible and declined these times. The guest was transferred by road later that day. This occurrence was an isolated incident. Sydney Helitours has been capable of servicing demand from the Resort and expects to continue to be able to service all Resort demand for transfers.