



**Virgin Australia and Virgin Atlantic –  
Application for authorisation AA1000443  
Interim authorisation decision  
4 July 2019**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation AA1000443, lodged by Virgin Australia<sup>1</sup> and Virgin Atlantic<sup>2</sup> on 3 June 2019. Virgin Australia and Virgin Atlantic are separate businesses.
2. Interim authorisation is granted to enable Virgin Australia and Virgin Atlantic to cooperate in relation to services between Australia and the United Kingdom and Ireland via mutual mid-points in Hong Kong, Los Angeles and any other future mutual connection point.
3. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

**The application for authorisation**

4. The Applicants seek authorisation for five years to negotiate, enter into and give effect to a long term cooperation agreement in relation to services between Australia and the UK and Ireland, via Hong Kong, Los Angeles and any future connecting points that may be operated by the Applicants. The Applicant's coordination agreement would address and facilitate:
  - a. joint pricing and inventory management on services between Australia and the United Kingdom and Ireland;
  - b. joint scheduling on services that include each airline operating one sector each between Australia and the United Kingdom/Ireland;
  - c. joint network planning including in relation to capacity and aircraft changes,
  - d. frequencies and potential new services through mutual connecting points to drive traffic between UK-Australia;
  - e. joint marketing, distribution, sales representation and cooperation, including joint bidding for corporate and industry contracts and small to medium enterprise (SME) customers;

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<sup>1</sup> **'Virgin Australia'** means, collectively: Virgin Australia Airlines Pty Ltd, Virgin Australia International Airlines Pty Ltd, Virgin Australia Regional Airlines Pty Ltd, Virgin Australia Airlines (SE Asia) Pty Ltd and Virgin Australia Cargo Pty Ltd.

<sup>2</sup> **'Virgin Atlantic'** means, collectively: Virgin Atlantic Airways Limited, and Virgin Atlantic International Limited.

- f. joint discussions and agreement between the Applicants' brand and product teams to enhance the 'Virgin to Virgin' customer experience, including scope for product innovation, and an enhanced Premium Customer Handling Agreement;
- g. enhanced frequent flyer and lounge cooperation;
- h. alignment of compatible customer service policies, for example in relation to disrupt management;
- i. joint procurement opportunities;
- j. enhanced cooperation in relation to cargo operations;
- k. joint operational synergies at airports in Hong Kong, Los Angeles and any further connecting points that may be contemplated in the future (e.g. consistency between Virgin Australia and Virgin Atlantic in baggage entitlements, meal inclusions, seat selection and other service elements and co-located members lounges, where possible), and
- l. metal neutral<sup>3</sup> policies for routes operated by the Applicants, including the exploration of revenue sharing opportunities to achieve this.

(together, the **Proposed Conduct**).

- 5. Without authorisation, the Proposed Conduct may constitute cartel conduct, as described in Division 1, Part IV of the *Competition and Consumer Act 2010 (Cth)* (the **Act**) and/or section 45 of the Act.

### **The authorisation process**

- 6. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

### **Interim authorisation**

- 7. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.
- 8. The Applicants requested interim authorisation on the basis that:
  - a) the Proposed Conduct results in no anti-competitive detriment and is anticipated to deliver material public benefits
  - b) Virgin Australia will suffer potential detriment if it is delayed in its ability to increase passenger traffic, load factors and profitability on these routes
    - i) Virgin Australia submits that it is the only competitor to Qantas and Cathay Pacific (the dominant carriers) and lacks their network connections, home carrier strength and incumbency.

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<sup>3</sup> 'Metal neutral' means that the airlines would be neutral as to which carrier operates or owns the aircraft used for a particular flight.

- ii) Virgin Australia submits that it has less than 10% market share on the Hong Kong route and load factor<sup>4</sup> around 66% (Qantas and Cathay Pacific have load factors above 80%).
- c) it is in the public interest for Virgin Australia to take steps to improve the sustainability of these routes

## Consultation

- 9. The ACCC invited submissions from a range of potentially interested parties including major competitors, related service providers, relevant industry associations, airports, state and federal government agencies and relevant regulatory bodies.<sup>5</sup> Air Mauritius, Tourism Australia and Qantas provided submissions supporting the application for authorisation. The ACCC also received confidential submissions.
- 10. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website [www.accc.gov.au/authorisations](http://www.accc.gov.au/authorisations).

## Reasons for decision

- 11. In granting interim authorisation, the ACCC considers that:
  - a) It is unlikely that the market dynamics in any of the relevant areas of competition will change if interim authorisation is granted. Any changes that result from the Notified Conduct (such as increased load factors for Virgin Australia and/or Virgin Atlantic) would be likely to return to their pre-interim state if the final authorisation was subsequently denied.
  - b) The Proposed Conduct is unlikely to substantially lessen competition while due consideration is given to the application for authorisation. It also appears likely that the enhanced coordination will result in some public benefits for consumers.
  - c) It is unlikely that any interested party would be harmed if interim authorisation is granted.
  - d) While the Applicants requested urgent interim authorisation, the ACCC considers that there is no particular urgency to the coordination beyond the Applicants' profitability and load factors. However, the ACCC's preliminary view is that the Proposed Conduct is likely to result in a net public benefit, the ACCC has decided to allow the Proposed Conduct to commence immediately.

## Reconsideration of interim authorisation

- 12. The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.

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<sup>4</sup> 'Load factor' measures the capacity utilisation, reflecting the number of seats booked compared to the number of seats available.

<sup>5</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/virgin-australia-virgin-atlantic>.