

Responses to Oral Submissions from an anonymous party

Restriction of publication claimed in relation to part

- 1 Will 'Partner Carriers' include international airlines that are not members of Board of Airline Representatives of Australia (BARA)? If so, how will Virgin Australia ensure that confidential pricing information (e.g. airport fees and charges) is not deliberately/inadvertently disclosed between itself and Partner Carriers who are non-BARA members as a result of the Proposed Conduct?**

Partner Carriers may include international airlines that are not members of BARA. **[Confidential: restriction of publication claimed]**.

However, this question is based on a misunderstanding of the Proposed Conduct. Virgin Australia will not share any information with Partner Carriers or engage in any joint conduct with them as part of the Proposed Conduct – whether or not they are members of BARA. Virgin Australia is only seeking authorisation to give effect to pricing structures that constitute resale price maintenance – i.e. the Partner Carrier will supply inventory to Virgin Australia and specify the price at which its inventory can be resupplied by Virgin Australia under its code. Virgin Australia will then distribute the inventory at the specified price. There are no other elements to the Proposed Conduct.

- 2 If the Proposed Conduct is authorised, will Virgin Australia seek to transfer, trade or swap its slots (including peak hour slots) at airports with its Partner Carriers? Any unused slots that Virgin Australia does not intend to operate should be released back to the slot pool.**

The Proposed Conduct does not relate to slots in any way or extend beyond the pricing provisions described above. **[Confidential: restriction of publication claimed]**. Like any airline, Virgin Australia may negotiate the transfer, trade or swap of slots with any other airline, or choose to return slots to the slot pool, in compliance with regulatory requirements. However, this is not relevant to the Proposed Conduct.

- 3 Please address the submission that the requested 5-year authorisation period is too long, particularly given the dynamic nature of the airlines industry and the lack of specificity about the identity of potential Partner Carriers. The requested authorisation period may act as a disincentive for Virgin Australia to recommence its own international long-haul flights.**

An authorisation period of 5 years is a reasonable period of time given the significant investment and lead time involved in establishing and implementing codeshare arrangements with partners. Virgin Australia needs sufficient time to enable it to realise the benefits associated with the Proposed Conduct, especially in circumstances where international travel is still recovering. Further, the fact that there is no material anti-competitive detriment associated with the Proposed Conduct means that there is no risk associated with this authorisation time frame. If the ACCC is concerned about the potential for significant changes in market conditions, it always has the ability to monitor and assess the Proposed Conduct and revisit the authorisation if market conditions change such that the balance of benefit and detriment is materially altered. In these circumstances there can be no basis for a shorter period of authorisation.

We note that the ACCC commonly authorises conduct for a period of 5 years in the airline industry (and economy-wide), including in the following applications:

- reauthorisation of Singapore airlines and Deutsche Lufthansa AG's coordination of operations in the airlines' respective home markets¹;
- reauthorisation of Qantas and American Airlines' Restated Joint Business Agreement allowing coordination on the airlines' trans-Pacific operations²;
- authorisation of the alliance between Qantas and Emirates in relation to international air travel;
- authorisation for Virgin Australia and Virgin Atlantic to cooperate in relation to services between Australia and the United Kingdom³;
- authorisation and/or reauthorisation for Virgin Australia to cooperate in relation to international services in joint ventures with Singapore Airlines, Etihad, Delta, and HNA Group; and
- authorisation of Virgin Australia's Charter Alliance with Alliance Airways.

In all of these cases, the relevant markets were dynamic airline markets.

Virgin Australia has previously responded to the ACCC's questions to assist the ACCC's analysis of Virgin Australia's incentives to recommence its international long-haul flights in its response dated 16 June 2022 and restates that response.

¹ Final Determination, AA1000580, 11 February 2022 ([link](#)).

² Final Determination, AA1000532, 25 March 2021 ([link](#)).

³ Final Determination, AA1000443-1, 8 November 2019 ([link](#)).