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9 May 2022

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Mr Darrell Channing
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Ms Connie Wu
Assistant Director, Mergers, Exemptions and Digital
Australian Competition and Consumer Commission
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Restriction of publication claimed in relation to part

Dear Mr Channing and Ms Wu

Proposed application for Authorisation by Virgin Australia – Virgin Australia response to Interested Party submissions

We refer to Virgin Australia's application for Authorisation of the Proposed Conduct (**Application**) and supporting submission received by the ACCC on 14 April 2022 (**Submission**), and submissions received by the ACCC in response to the Submission from interested parties.

Virgin Australia notes that submissions received by the ACCC from North Queensland Airports, Department of Industry, Tourism and Trade, Northern Territory, and Queensland Airports have been overwhelmingly in support of the Proposed Conduct.

Virgin Australia notes that the ACCC has also received a submission from Qantas Airways Limited (**Qantas**). Virgin Australia takes this opportunity to briefly respond to the points raised in the submission made by Qantas to the ACCC dated 3 May 2022. In responding, Virgin Australia has adopted the numbering in the Qantas submission.

Qantas submission

- 1 Qantas submission: Proposed Conduct must only apply in certain circumstances and within the regulatory framework for capacity allocation

Virgin Australia rejects Qantas' submission that the Application should be conditional in any way. The Proposed Conduct is very narrow and impacts only the commercial arrangements between Virgin Australia and its codeshare partners and their customers. However, we consider each of Qantas' concerns in turn below.

- **Identification of Partner Carriers.** Qantas' characterisation of potential Partner Carriers as "potentially large and unidentified" is misleading in the context of the large number of airlines that are already in codeshare arrangements with Qantas where Qantas sells the partner's operated services under the Qantas code, including: Air Caledonie International, Air France, Air



New Zealand, Air Tahiti Nui, Air Vanuatu, Alaska Airlines, American Airlines, Bangkok Airways, British Airways, Cathay Pacific, China Airlines, China Eastern Airlines, China Southern Airlines, El Al, Emirates, Fiji Airways, Finnair, Japan Airlines, KLM, LATAM Airlines Group, SriLankan Airlines, and WestJet. In Virgin Australia's view, it is generally commercially unlikely that an international airline would pursue a codeshare relationship with both Qantas and Virgin Australia in parallel. Some of these international airlines may also be subject to exclusivity obligations in their commercial arrangements with Qantas, although Virgin Australia does not have visibility of such terms. This means the range of potential Partner Carriers available to Virgin Australia is naturally limited.

Virgin Australia is not currently placing its code on any international services. It has historical relationships with a number of airlines it hopes to renew and it is also currently negotiating new codeshare agreements. As outlined in the Application at 2, United Airlines will be the first airline to become a Partner Carrier.

There is no reason why the Proposed Conduct should be restricted to future codeshare partners of Virgin Australia and exclude historical codeshare partners, as Qantas suggests. Rather, enabling Virgin Australia to engage in the Proposed Conduct with any relevant codeshare partner will ensure that Australian consumers will be provided access to the broadest possible range of destinations and fares.

- **Overlapping services.** Virgin Australia has already proposed that the Proposed Conduct will only apply where there is no overlap with those operated or priced by Virgin Australia and the Proposed Conduct does not require any further conditional provision. Virgin Australia does not consider that the Proposed Conduct is a substitute for its own operated services where these are assessed as being sustainable. However, at this stage Virgin Australia is not in a position to launch its own long-haul services.
- **Regulatory compliance.** It is unclear why Qantas considers that any authorisation should be subject to a condition of continuing compliance with regulatory requirements, including the IASC's framework. It goes without saying that Virgin Australia will continue to comply with all of its regulatory obligations. Any suggestion to the contrary is rejected and Virgin Australia does not consider that the Proposed Conduct must be conditional on this basis.
- **Timing of overlap.** Virgin Australia anticipates that the Proposed Conduct would cease to apply on a route from the date on which Virgin Australia has made a final, binding decision to commence operating or pricing services. In respect of the timing of any overlap, Virgin Australia is again content to provide further assurances to the ACCC in respect of the definition of overlapping services but does not consider that the Proposed Conduct must be conditional in respect of the timing of any overlap.
- **Pricing insights.** The Qantas submission asserts that, by virtue of the Proposed Conduct, Virgin Australia would "*necessarily*" be given "*close insight of a competitor's price patterns*". Virgin Australia rejects this submission. The Proposed Conduct does not give Virgin Australia insight into the pricing practices of its Partner Carriers for their filed fares, nor are they permitted to jointly price or share pricing information. Virgin Australia will only replicate a Partner Carrier's pricing and will not have access to any additional pricing information regarding the Partner Carrier's filed fares as a result of the Proposed Conduct. As part of the Proposed Conduct, Virgin Australia would not receive any pricing information regarding the Partner Carrier's files fares that would not also be available to other market participants, including Qantas.

At 1(c) of its submission, Qantas submits that the ACCC must satisfy itself of any extension of the Proposed Conduct on a case-by-case basis. Virgin Australia rejects this submission and does not consider that the Proposed Conduct should be conditional so as to operate on a case-by-case basis – this would make the Proposed Conduct commercially impractical and costly and negate any benefit that Virgin Australia and its passengers would derive from the conduct. The ACCC is permitted to authorise conduct on behalf of an applicant and a class of parties and, given the narrow scope of the Proposed Conduct, this is an appropriate case for it to do so.

In addition to Virgin Australia's responses to Qantas' submission above, and for the reasons that follow, Virgin Australia does not consider that the ACCC must satisfy itself on a case-by-case basis of the potential for an extension of the Proposed Conduct to stall, delay or prevent the restoration of its independent operations on any route and/or contaminate competition on related (but not overlapping) routes.

- **The Proposed Conduct is a genuine stepping-stone.** The Proposed Conduct is a stepping stone in Virgin Australia's long term strategy to return to international services and absent the Proposed Conduct, Virgin Australia will be constrained in its ability to market these services as it does not have the fleet capability to commence long-haul international services. As considered further at 2.5 of the Submission, the Proposed Conduct will allow Virgin Australia to remain a viable option for domestic and international flight services in consumers' mind until it is able to re-establish long-haul international capacity.

Virgin Australia has provided assurances to the ACCC at 1.3 of the Submission (that are subject to confidentiality) that the Proposed Conduct will facilitate and complement the restoration of its international services, rather than delay or prevent this restoration.

- **'Contamination' of future competition.** There is no risk that the Proposed Conduct would contaminate future competition. Virgin Australia aims to launch its own operated services where it assesses they are commercially sustainable and at a time when it has access to the necessary aircraft. The Proposed Conduct does not provide significant revenue to Virgin Australia, it simply prevents international codeshare from being loss-making or unsustainable for Virgin Australia. As such, it will not delay Virgin Australia's incentives to restore its international services. To use the example provided by Qantas, if Virgin Australia was to commence operations between Sydney and Los Angeles, [**Confidential: restriction of publication claimed**].

Virgin Australia is content to provide further assurances to the ACCC in respect of the definition of overlapping services if it requires.

2 Arms-length codeshare arrangements

Virgin Australia's submission that arms-length codeshares are not commercially sustainable is not, contrary to the Qantas submission, that *all* traditional arms-length codeshare pricing arrangements are not commercially sustainable. Rather, in every instance, Virgin Australia has sought to clarify that it is Virgin Australia's experience that it is commercially unsustainable for Virgin Australia to continue to sell long-haul international fares via arms-length codeshare agreements with traditional pricing arrangements, as the operator of only short-haul connecting services. As outlined in detail at 2.6 and 2.7 of the Submission, Virgin Australia considers that traditional pricing in arm's length codeshare agreements works well where there are evenly matched partners who each operate significant services, as Qantas does with many of its partner airlines. Virgin Australia has explained in detail why in its case it does not have the ability to compete on the merits on price for codeshare services in a traditional pricing model.

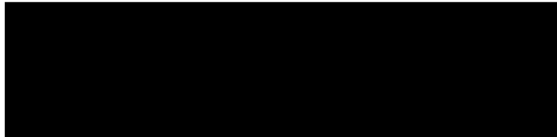


3 International competition

Qantas Group has the largest share of international services to and from Australia in a highly competitive industry. This strong position in international services support the continuation of Qantas' dominance within Australian airline markets more broadly, including through access to traffic feed, the strength of its FFP proposition, and its unrivalled position for corporate travel. Given this position, Virgin Australia submits that the motivation for Qantas' submissions should be taken into consideration by the ACCC in considering Virgin Australia's application for interim authorisation.

Please let us know if you would like to discuss any aspect of this letter.

Yours faithfully
Gilbert + Tobin



Louise Klamka
Partner

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Lawyer

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