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Our ref [REDACTED]
LXX:RMD:155229

15 April 2024

Mr Anthony Hilton
Director
Competition Exemptions
Australian Competition and Consumer Commission
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Dear Mr Hilton

AA1000653-1 - Virgin Australia & Air New Zealand – Proposed Conduct Clarification

We refer to:

- the joint application for authorisation by Virgin Australia Airlines Pty Ltd and its related bodies corporate and Virgin Australia International Airlines Pty Ltd and its related bodies corporate (together, **Virgin Australia**) and Air New Zealand Limited (together, the **Applicants**), lodged with the Australian Competition and Consumer Commission (**ACCC**) on 17 November 2023 and the submission in support of that application; and
- the meetings between Gilbert + Tobin and the ACCC on 6 March 2024, 21 March 2024 and 26 March 2024 (**the Meetings**).

During the Meetings, the ACCC noted that it would be beneficial, including for interested parties, to clarify the precise scope of the proposed conduct and provide any further detail that may be available.

As requested, for clarity we provide the description of the proposed conduct at **Attachment A**.

Please contact us if there is any further information that could be provided to assist the ACCC in its consideration of this matter.

Yours faithfully
Gilbert + Tobin

[REDACTED]

Louise Klamka
Partner

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Rebecca Dollisson
Special Counsel

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Attachment A

1 The Proposed Conduct

The Applicants seek authorisation to engage in the following proposed conduct, which is provided for in the Commercial Framework Agreement (**CFA**) and various related, inter-conditional agreements (**Implementing Agreements**) (the **Proposed Conduct**). The Applicants note that not all elements of the Proposed Conduct have the potential to contravene the *Competition and Consumer Act 2010* (Cth). However, as all the elements are conditional on the proposed codeshare arrangements which require authorisation, the Applicants have included these in the description of the Proposed Conduct.

Under the Proposed Conduct:

- (a) Virgin Australia will place its code on a free sale basis on Air New Zealand operated Trans-Tasman services on routes where Virgin Australia does not operate (the **VA*NZ Trans-Tasman Services**). Virgin Australia will market and resupply these VA*NZ Trans-Tasman Services only for itineraries sold in Australia and originating in Australia (including one-way services from Australia and return services from Australia).
- (b) These codeshare rights are provided on the condition that Air New Zealand specifies the public fares at which Virgin Australia may market and resupply itineraries involving VA*NZ Trans-Tasman Services. This includes Trans-Tasman itineraries involving only VA coded Air New Zealand operated services (e.g., SYD-AKL) and Trans-Tasman itineraries that include connecting Australian domestic services operated by Virgin Australia and a VA coded Air-New Zealand operated Trans-Tasman service (e.g., CBR-SYD-AKL) (**VA*NZ Trans-Tasman Itineraries**).
- (c) Virgin Australia and Air New Zealand can jointly discuss and agree upon fare rules and conditions associated with VA*NZ Trans-Tasman Itineraries.
- (d) Virgin Australia and Air New Zealand may jointly identify corporate and SME customers to provide discounts in respect of services that can be provided by Virgin Australia, for VA*NZ Trans-Tasman Itineraries¹.

While the Applicants have not commenced discussing the scope of this cooperation as they are waiting for authorisation before doing so, this may include:

- (i) Joint pricing and discounting of private fares, based on factors such as travel spend and volume.²
- (ii) Discussing and determining additional discounts or offers in order to win or retain additional or particular customers; and
- (iii) Jointly allocating or determining a pipeline of target customers and tailoring discounts and offers to win the business of those target customers.

The proposed corporate and SME contracting would not include:

- (i) discussion of commercial terms relating to Virgin Australia or Air New Zealand Agency Agreements or Travel Management Company partners;

¹ As a practical matter, customers most likely to be identified will be those businesses looking for services that include Australian Domestic and Trans-Tasman operations.

² Practically, joint pricing and discounting will most likely take the form of an agreed matrix of discounts based on spend which can be applied by Virgin Australia when approaching, or being approached by, a customer for a corporate offer.

- (ii) joint pricing and discounting of private fares on routes on which Virgin Australia and Air New Zealand both operate, including the routes between Sydney/Melbourne/Brisbane-Queenstown; or
 - (iii) joint pricing and discounting of private fares on Virgin Australia or Air New Zealand operated routes other than the relevant VA*NZ Trans-Tasman Itineraries.
- (e) Eligible Velocity Frequent Flyer members can access Air New Zealand's international lounges when travelling on VA*NZ Trans-Tasman Services.
 - (f) Velocity Frequent Flyer members can earn Velocity Points and accrue status credits when travelling on VA*NZ Trans-Tasman Services.
 - (g) Velocity Frequent Flyer members can redeem their Velocity Points for travel on VA*NZ Trans-Tasman Services.
 - (h) Virgin Australia and Air New Zealand already provide each other with reciprocal network-wide standby travel for staff leisure in the economy cabin, as well as reciprocal duty travel in the economy cabin. The CFA contemplates an extension of these arrangements. While this is yet to be discussed by the Applicants, it may include the extension of staff leisure and duty travel entitlements to the business cabin.
 - (i) Virgin Australia and Air New Zealand can share information to the extent necessary to facilitate any of the matters referred to above.

The Proposed Conduct does not involve Air New Zealand placing its code on any services operated by Virgin Australia, including domestic services in Australia.

The Implementing Agreements are conditional on the codeshare agreement between Air New Zealand and Virgin Australia.

2 Scope of the Proposed Conduct

The Proposed Conduct will not apply on routes where Virgin Australia operates its own Trans-Tasman services i.e.:

- (a) Melbourne (MEL) – Queenstown (ZQN);
- (b) Sydney (SYD) – Queenstown (ZQN); or
- (c) Brisbane (BNE) – Queenstown (ZQN).

The Proposed Conduct would cease to apply in relation to a Trans-Tasman route if Virgin Australia commences:

- (d) operating its own services in competition with Air New Zealand on that route; or
- (e) marketing VA coded services in competition with Air New Zealand where Virgin Australia has pricing control on that route.