

Application Form: Non-merger authorisation

Parties to the proposed conduct

1. Provide details of the applicants for authorisation, including:

1.1. name, address (registered office), telephone number and ACN

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South Brisbane, QLD 4101
(07) 3295 3000

Virgin Australia Regional Airlines Pty Ltd (**VARA**)
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South Brisbane, QLD 4101
(07) 3295 3000

Virgin Australia Airlines (SE Asia) Pty Ltd
ACN 097 892 389
Level 11, 275 Grey Street
South Brisbane, QLD 4101
(07) 3295 3000

Virgin Australia International Airlines Pty Ltd
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(collectively, the Virgin Australia entities are referred to as **Virgin Australia**)

Alliance Aviation Services Limited
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81 Pandanus Avenue
Eagle Farm, QLD 4009
(07) 3212 1212

Alliance Airlines Pty Limited
ACN 153 361 525
81 Pandanus Avenue
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(collectively, the Alliance Airlines entities are referred to as **Alliance Airlines**)

(together, the **Applicants**)

This Application is to be read and determined together with the submission supporting the Application (the **Submission**), which is lodged with this form.

1.2. contact person's name, position, telephone number and email address

Louise Klamka
Special Counsel
Gilbert + Tobin (solicitors for the Applicants)

T [REDACTED]

1.3. a description of business activities

Virgin Australia is an Australian airline founded in 2000 and is listed on the Australian Stock Exchange (**ASX**). Virgin Australia operates a network of domestic and international services from its main hub at Brisbane Airport in Queensland. These services are operated by a range of entities in the Virgin Australia group of companies, including VARA, Virgin Australia International Airlines Pty Ltd and Virgin Australia Airlines (SE Asia) Pty Ltd. Currently, Virgin Australia operates approximately 37 routes around Australia from 28 ports.

Alliance Airlines is a supplier of contract, charter and regular passenger transport (RPT) services and is listed on the ASX. It has regional bases in Brisbane, Townsville, Cairns, Adelaide, Perth, Melbourne, Darwin and Rockhampton.

1.4. email address for service of documents in Australia.

[REDACTED]

2. If applicable, provide details of the other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:

2.1. name, address (registered office), telephone number and CAN

N/A

2.2. contact person's name, telephone number and email address

N/A

2.3. a description of business activities.

N/A

The proposed conduct

3. Provide details of the proposed conduct, including:

3.1. a description of the proposed conduct and any documents that detail the terms of the proposed conduct

The Applicants seek authorisation, including interim authorisation, to cooperate in relation to the provision of services on the specified routes (**Relevant Routes**), listed in section 4.2 of the Submission, in order to efficiently manage capacity and quickly respond to changes in demand due to the COVID-19 pandemic, including by:

- sharing information (including in relation to costs, willingness to operate, capacity, anticipated demand and pricing) about Relevant Routes;
- agreeing capacity, flight schedules and aircraft type, including whether a carrier will suspend or continue operations, which carrier will operate Relevant Routes and under what arrangements (eg, wet lease or codeshare etc.); and
- putting in place temporary commercial agreements that are most suitable for the Relevant Route considering demand and risk profile in the

exceptional current market conditions; and

- potentially, risk and revenue sharing mechanisms and agreements as to price (together, the **Proposed Conduct**)

The Proposed Conduct may also include revenue sharing mechanisms and agreements as to price.

See Section 4.1 of the Submission for further details about the Proposed Conduct.

3.2. the relevant provisions of the *Competition and Consumer Act 2010* (Cth) (the Act) which might apply to the proposed conduct.

The below provisions of the Act may apply to the Proposed Conduct.

- cartel conduct (Division 1 of Part IV);
- contracts, arrangements or understandings that restrict dealings or affect competition (s. 45); and
- concerted practices (s. 45)

3.3. the rationale for the proposed conduct

See section 4.4 of the Submission.

3.4. the term of authorisation sought and reasons for seeking this period. By default, the ACCC will assume you are seeking authorisation for five years. If a different period is being sought, please specify and explain why.

The Applicants seek final authorisation for a minimum two years, ie until 30 October 2022. In addition, the Applicants seek interim authorisation by 15 October 2020.

A minimum authorisation period of two years is appropriate given the Proposed Conduct is a temporary measure to allow the Applicants to continue providing essential airline services to regional communities in Australia and minimise costs and risk exposure in the face of the COVID-19 pandemic and its severe effect on the Australian Aviation industry.

4. Provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted.

Not applicable.

Market information and concentration

5. Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

Virgin Australia provides RPT aviation services and operates approximately 37 routes around Australia from 28 ports, including important regional ports such as Alice Springs, Newcastle and Mount Isa.

Alliance Airlines is a provider of contract, charter and allied aviation in regional Australia. It

has a large customer base in the mining, energy, tourism and government sectors, with regional charter bases in Brisbane, Townsville, Cairns, Adelaide, Perth, Melbourne, Darwin and Rockhampton. Alliance Airlines also conducts commercial flights in between Gladstone, Bundaberg and Port Macquarie, as well as RPT services from Brisbane and Western Australia to regional airports within each respective state.

Of the Relevant Routes, the Applicants currently provide overlapping RPT aviation services on the Brisbane – Proserpine route.

For more information, please see section 2 and 4.2 of the submission.

6. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.

The relevant industry is the Australian aviation industry, about which the ACCC has extensive experience. Please see section 3.1 for details about how the COVID-19 pandemic has affected the Australian aviation industry.

7. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

Market share data is not readily available, particularly since passenger volumes have significantly dropped and fluctuated due to travel restrictions in response to the COVID-19 pandemic. However, in addition to the Applicants, Jetstar and Qantas currently operate on the Brisbane – Proserpine route.

8. In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously.

Existing suppliers of RPT aviation services on the Relevant Routes include:

- Qantas
- Jetstar
- REX
- Solomon Airlines
- Air Niugini
- Airnorth
- Link Airways
- Qatar (via codeshare with Qantas)

For further detail, please see section 4.2 of the Submission.

See section 7 of the Submission, which sets out the competitive effects of the Proposed Conduct.

Public benefit

9. Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to

the ACCC's assessment of the public benefits.

See section 6 of the Submission.

Public detriment (including likely competitive effects)

- 10. Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.**

See section 7 of the Submission.

Contact details of relevant market participants

- 11. Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers, trade or industry associations and regulators.**

The conduct is of general relevance to participants in the Australian aviation and tourism industries (including airlines, regional tourism bodies, and airports), as well as customers for these services (including businesses reliant on air transport to regional destinations, regional communities, and the broader travelling public.

Additional information

- 12. Provide any other information or documents you consider relevant to the ACCC's assessment of the application.**

Please refer to Submission.

Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Signature of authorised person

Solicitor for Virgin Australia and Alliance Airlines, authorised to sign declaration

Office held

Louise Klamka

This 23rd day of October 2020

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

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Proposed coordination of regional flights in response to the COVID-19 pandemic

Submission to ACCC supporting application for authorisation

Final

23 October 2020

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1 Executive Summary

Proposed Conduct Virgin Australia Airlines Pty Ltd, Virgin Australia Regional Airlines Pty Ltd (**VARA**), Virgin Australia International Airlines Pty Ltd, and Virgin Australia Airlines (SE Asia) Pty Ltd (together, **Virgin Australia**) and Alliance Aviation Services Limited and Alliance Airlines Pty Limited (together, **Alliance Airlines**) (together, **the Applicants**) seek authorisation, including urgent interim authorisation, to cooperate in relation to the provision of services on the specified regional and two short-haul international routes (**Relevant Routes**) in order to efficiently manage capacity and quickly respond to changes in demand due to the COVID-19 pandemic (the **Proposed Conduct**), including by:

- Sharing information, including in relation to costs, willingness to operate, capacity, utilisation, anticipated demand and pricing about Relevant Routes;
- Agreeing capacity, flight schedules and aircraft type, including whether a carrier will suspend or continue operations, which carrier will operate the Relevant Routes and under what commercial arrangements (e.g., wet lease or codeshare, or a revenue - sharing model);
- Putting in place temporary commercial agreements that are most suitable for the Relevant Route considering demand and risk profile in the exceptional current market conditions; and
- Potentially, entering risk and revenue sharing mechanisms and agreements as to price.

Rationale for proposed conduct

As ACCC Chair Rod Sims has recently noted, “COVID-19 has created some of the most difficult market conditions in Australian aviation history.”¹ The impact on Virgin Australia has been exacerbated by the challenges associated with its administration.

As Australia begins to slowly, and inconsistently, move towards a resumption of normal air travel, airlines will need to assess how they can efficiently and effectively supply airline services and respond quickly to changes in regulations, including border closures and openings, while demand remains low and volatile. It is imperative that Virgin Australia begins to build its business again, regain customer confidence and demonstrate its commitment and ability to service the Australian domestic air travel market.

Regional services are an important part of Virgin Australia’s network and it remains committed to serving regional destinations in support of communities and businesses. However, they cannot efficiently

¹ ACCC media release, Airline competition critical for consumers and economy, 17 September 2020 ([link](#)).

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operate regional services alone – this was always the case but COVID-19 has accelerated the need for the aviation sector, and Virgin Australia, to cut costs and simplify its fleet. By cooperating on the Relevant Routes, the Applicants can efficiently offer a more compelling product, providing choice and convenience for consumers and competition for Qantas.

The Applicants' existing commercial arrangements do not provide the flexibility required to deal with the unique market circumstances that result from the COVID-19 pandemic. The Proposed Conduct provides an opportunity to more flexibly respond to these challenges. The Proposed Conduct will:

- Enable the Applicants to efficiently provide airline services to regional communities and businesses as demand fluctuates;
- Minimise costs and risk exposure in supplying those services;
- Assist in ensuring the long-term survival of an efficient and vigorous competitor for Qantas;
- Enable the Applicants to develop new, innovative ways to respond to a non-linear recovery path, post COVID-19; and
- Maximise aircraft utilisation, access a broader range of aircraft and fleet types, and appropriately manage capacity on regional routes to meet the nature and volume of demand.

Coordination of flights will create significant public benefits

The Proposed Conduct will result in significant public benefits for the Australian travelling public, regional communities, and businesses. The benefits will materially assist in the recovery of the Australian economy, and the airline industry more specifically, in the post-COVID-19 period and include:

- Supporting regional air services and regional communities;
- Enabling airlines to better service essential travel during the crisis and its recovery;
- Increasing the opportunity to retain staff or provide employment opportunities;
- Promoting efficient operations;
- Allowing customers better connectivity and improved choice of services, routes and fares;
- Facilitating increased competition on regional routes; and

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- Ensuring Virgin Australia can continue to be a viable, vigorous and effective competitor for passengers travelling within and in and out of Australia in the longer term.

The direct impact will be more services to a greater range of routes, operated more sustainably, and providing real competition for Qantas. For example:

- Virgin Australia will have the ability to explore fleet optionality and consider how it can, through cooperation with Alliance Airlines, re-enter cancelled regional routes including flights to **[Confidential: restriction of publication claimed]** in a financially viable way, whether that be via a codeshare, wet lease or some other co-sharing arrangement.
- The suspension of Virgin Australia wetlease services from Brisbane to Emerald at the end of March 2020 led to several corporate customers chartering aircraft as an alternative. However, these charter flights were not available to the general public, resulting in less competition and increased prices on remaining services with Qantas. The Proposed Conduct will enable the Applicants to resume Regular Public Transport (RPT) services to support the whole community and consider how best to service such routes in the long term, whether using wet lease, codeshare or other risk sharing arrangements.
- the Proposed Conduct will provide the opportunity to implement more efficient patterning of aircraft between existing Alliance Airlines charter flights and Virgin Australia RPT flights which will allow aircrafts to be redeployed onto other routes, or increased frequencies to be provided on existing routes (such as **[Confidential: restriction of publication claimed]**).
- **[Confidential: restriction of publication claimed]**.

These are real and immediate benefits that will be beneficial to both travellers on the Relevant Routes and, through assisting Virgin Australia to rebuild its network, travellers will benefit from increased competition in the Australian aviation markets.

No material competitive detriment

The Proposed Conduct will have no material adverse effect on competition and will instead have pro-competitive effects on the Relevant Routes and the broader Australian domestic aviation market. In particular:

- There is limited overlap between the services offered by Virgin Australia and Alliance Airlines, which are largely complementary, and there is significant competition on these routes. The Applicants only directly overlap in the provision of scheduled or RPT services on one of the Relevant Routes,

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being the Brisbane - Proserpine route.² Both Qantas (via codeshare with Jetstar) and Jetstar provides robust competing scheduled services on this route. Virgin Australia markets and codeshares on Alliance Airlines flights on three Relevant Routes Brisbane - Gladstone, Brisbane - Port Macquarie and Brisbane - Bundaberg; of these routes, Brisbane - Gladstone and Brisbane - Bundaberg are also serviced by Qantas, and Qantas has recently announced its intention to service the Brisbane - Port Macquarie route.³

- The Applicants will have no ability to increase prices on any routes as a result of Proposed Conduct as low demand and competing services will constrain them, with competitors like Jetstar lowering fares to stimulate and capture demand, as it has already done on Sydney - Adelaide services following the announcement that South Australia would open its borders to New South Wales residents.
- The Proposed Conduct will enhance competition by enabling the Applicants to offer services that would be unviable acting individually, combining Alliance Airlines' regional fleet and bases with Virgin Australia's broader mainline network and access to its loyalty program. Together, the Applicants can provide meaningful competition for Qantas and real choice for consumers.

Urgent interim authorisation is sought by 30 October 2020

The Applicants request the ACCC grant interim authorisation on an urgent basis by 30 October 2020 to facilitate the immediate planning and coordination of services on the Relevant Routes. In particular:

- Given the uncertainty in the market, the Applicants must forward plan so that they can be ready to respond to changes like the opening of state borders, to meet and stimulate demand; and
- The Applicants intend to recommence or expand regional flying early in the Northern Winter scheduling season (25 October 2020), to coincide with the relaunch of Virgin Australia under its new owners, and must immediately commence planning to do so.

The urgency of this application (the **Application**) is as a result of the unprecedented and ongoing market conditions associated with the COVID-19 pandemic and the voluntary administration and subsequent sale of Virgin Australia Holdings Limited (**Virgin Australia Holdings**), the parent company of Virgin Australia, to BC Hart Investments, L.P. (together with BC Hart Aggregator, L.P., referred to herein as **Bain Capital**), which is expected to be concluded in November 2020.

² Virgin Australia currently supplies RPT services from Brisbane - Proserpine. Alliance Airlines commenced RPT services on the Brisbane - Proserpine route after the COVID-19 pandemic. See further information at section 4.2.

³ Qantas, 'Qantas to boost regional flights with new Brisbane-Port Macquarie service' (11 September 2020) ([here](#)).

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Obtaining interim authorisation in this timeframe will be important for Virgin Australia's ability to relaunch a network of services in a cost efficient and flexible way that includes regional services. This is crucial as Virgin Australia exits external administration and seeks to re-establish itself as Australia's second national carrier. If Virgin Australia is not ready to recommence flying in response to increases in demand and changes in border closures, it will cede more competitive advantage to Qantas, entrenching Qantas' position and weakening Virgin Australia as a sustainable competitor.

This Application is being made now as the deeds of company arrangement proposed by Bain Capital (**DOCAs**) to effect the sale of Virgin Australia to Bain Capital was only approved by creditors on 4 September 2020 and the DOCAs were signed on 25 September 2020.⁴ In addition, on 15 October, Virgin Australia announced the resignation of CEO and Managing Director Paul Scurrah and the anticipated appointment of new CEO Jayne Hrdlicka, to take effect from DOCA completion. With greater certainty about Virgin Australia's ownership and future direction the Applicants are now planning their future regional operations and discussing opportunities for broader cooperation, which requires ACCC authorisation.

As the Proposed Conduct is entirely reversable, will have a very limited impact on competition, and is expected to result in significant public benefits, there can be no risk associated with the grant of interim authorisation.

Authorisation sought for 2 years

The Applicants seek authorisation to engage in the Proposed Conduct for a period of 2 years from the grant of final authorisation. The Proposed Conduct is temporary and intended to enable the Applicants to better manage the supply of services during the COVID-19 pandemic and in its recovery period. This period is necessary given expectations that it will be a minimum of 3 years before domestic air travel returns to pre-COVID levels of demand.

2 The Applicants

2.1 Virgin Australia

Virgin Australia commenced operations in Australia in August 2000 and operates a network of domestic and international services from its main hub at Brisbane Airport in Queensland. These services are operated by a range of subsidiaries including Virgin Australia Airlines Pty Ltd, Virgin Australia Regional Airlines Pty Ltd (**VARA**), Virgin

⁴ Virgin Australia ASX release: "Virgin Australia Holdings Limited (Administrators Appointed) (ASX:VAH): Deeds of Company Arrangement Executed" (25 September 2020) ([here](#)).

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Australia International Airlines Pty Ltd, and Virgin Australia Airlines (SE Asia) Pty Ltd (collectively referred to in this submission as, **Virgin Australia**). Currently, Virgin Australia operates services on 37 routes around Australia from 28 ports, including important regional ports such as Alice Springs, Newcastle and Mount Isa.

In addition to its mainline services, Virgin Australia operates regional services in Western Australia through VARA (formerly SkyWest), according to a wet lease agreement. VARA operates a fleet of 11 Fokker 100 aircraft (capacity of approximately 100 seats) and five Airbus A320 aircraft (capacity of approximately 150 to 180 seats) providing charter services between Perth and other regional ports in Western Australia. VARA's only operational base is located in Perth at the dedicated charter terminal, Terminal 2. VARA's primary focus is on closed charter services to mining and resources companies within Western Australia to support fly in and fly out (**FIFO**) workforces.

Virgin Australia's parent company, Virgin Australia Holdings, is listed on the Australian Stock Exchange (**ASX**) and is currently subject to deed of company arrangement and accordingly in external administration. Virgin Australia Holdings securities are currently suspended.

In June 2020, the administrators of Virgin Australia Holdings reached an agreement for the sale of Virgin Australia Holdings to Bain Capital. The sale process is expected to be completed in November 2020. Administration has seen Virgin Australia take steps to cut its cost base and streamline its operations so that it can remain as a viable competitor within the Australian aviation market. Post administration, Virgin Australia plans to move to a single mainline fleet type of Boeing 737s (with a capacity of approximately 176 passengers each) for domestic operations.⁵ The focus will be on ensuring that all services operated by Virgin Australia in the future make a return. This will involve reassessing its network and ceasing to operate on routes that were loss-making. Virgin Australia's voluntary administration, the impact of the COVID-19 pandemic on Virgin Australia's services and its future plans are discussed further at section 3.1(b).

2.2 Alliance Airlines

Alliance Airlines is an Australian airline that provides contract, charter and RPT services and is listed on the ASX. Its customer base includes companies in the mining, energy, tourism and government sectors, and it has regional bases in Brisbane, Townsville, Cairns, Adelaide, Perth, Melbourne, Darwin and Rockhampton.⁶ Alliance Airlines operates services from Brisbane to Gladstone, Bundaberg and Port Macquarie, which are marketed under Virgin Australia's code according to a codeshare arrangement discussed at section 2.3(c). Alliance Airlines also offers RPT services within Queensland and within Western Australia.⁷ Alliance Airlines' current fleet consists of:

- 24 Fokker 100 jet aircraft (capacity of 100 passengers each);

⁵ Virgin Australia ASX release: "Virgin Australia Group announces plan to focus on core strengths, re-establishing itself as an iconic Australian Airline" (5 August 2020) ([here](#)).

⁶ Alliance Aviation Services (AQZ) ASX release, "Trading update regarding impact of Virgin Australia Holdings Ltd (ASX code: VAH) Voluntary Administration" (21 April 2020) ([here](#)).

⁷ Alliance Aviation Services (AQZ) ASX release: "Trading update and COVID-19 response no. 3" (20 May 2020) ([here](#)).

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- 13 Fokker 70 jet aircraft (capacity 80 passengers each); and
- 5 Fokker 50 Turbo props (capacity of 50 passengers each);

Alliance Airlines also has 5 additional aircraft in storage and available for entry into Alliance Airlines' fleet.⁸ In addition, it purchased 14 Embraer E190 aircraft, and extra engines, to be delivered progressively over eight months from September 2020.⁹

The effect of the COVID-19 pandemic on Alliance Airlines' services is discussed at section 3.1(c).

2.3 The Applicants' current commercial arrangements

As the ACCC is aware, Virgin Australia and Alliance Airlines have a number of existing commercial arrangements:¹⁰

(a) Wet Lease Agreement.¹¹

Pursuant to this agreement (the **Wet Lease Agreement**):

- Virgin Australia acquired wet lease services from Alliance Airlines for various RPT services such as Brisbane to Alice Springs, Cloncurry, Emerald, Mount Isa, Port Moresby, Rockhampton;
- Alliance Airlines operated the services by providing the aircraft, crew maintenance and insurance of the aircraft, with Virgin Australia retaining responsibility for all other inputs; and
- the aircraft remained in Alliance Airlines' fleet with aircraft and crew in Alliance Airlines' livery; however, flights were sold as Virgin Australia services on the Virgin Australia code through Virgin Australia's distribution channels, and Virgin Australia made scheduling and pricing decisions about the services.

Under this arrangement, Virgin Australia bore the risk associated with the provision of services, paying Alliance Airlines for its services on a block hours basis, regardless of the load factors and consumer prices.

On 24 March 2020, the Wet Lease Agreement was temporarily suspended by the Applicants, at the request of Virgin Australia.¹² **[Confidential: restriction of publication]**

⁸ Alliance Aviation Services (AQZ) ASX release, "Investor Presentation – Capital Raising" (11 June 2020) ([here](#)) p15; Alliance Aviation Services (AQZ) ASX release: "Trading update and COVID-19 response no. 3" (20 May 2020) ([here](#)); Alliance "Our fleet" ([here](#)).

⁹ Alliance Aviation Services (AQZ) ASX release (11 June 2020) ([here](#)).

¹⁰ Alliance Aviation Services (AQZ) ASX release, "Trading update regarding impact of Virgin Australia Holdings Ltd (ASX code: VAH) Voluntary Administration" (21 April 2020) ([here](#)).

¹¹ A wet lease is a leasing arrangement whereby one airline (the lessor) provides an aircraft, crew, maintenance, and insurance (**ACMI**) to another airline (the lessee), which pays by hours operated.

¹² Alliance Aviation Services (AQZ) ASX release: "Trading update and COVID-19 response" (20 March 2020) ([here](#)).

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claimed]. If authorisation is granted, the Applicants intend to discuss and agree which other Relevant Routes are best serviced by a wet lease arrangement in the future.

(b) Charter Alliance Agreement

In May 2017, the ACCC authorised a charter alliance agreement between Virgin Australia Airlines Pty Ltd, VARA and Alliance Airlines (the **Charter Alliance Agreement**). The Charter Alliance Agreement enables Virgin Australia Airlines Pty Ltd, VARA and Alliance Airlines to jointly tender for and supply charter air services to corporate customers, principally for FIFO employees. This agreement is currently active, and the Authorisation remains on foot until June 2022.¹³

Under the Charter Alliance Agreement, Virgin Australia Airlines Pty Ltd, VARA and Alliance Airlines are able to share risks and rewards associated with charter services and cooperate to respond to opportunities as they arise. The agreement and associated Authorisation explicitly exclude cooperation in relation to RPT services.

(c) Marketing & Distribution Agreement (MDA)

Pursuant to the MDA, Alliance Airlines currently operates flights between Brisbane – Bundaberg, Gladstone – Bundaberg, Brisbane – Gladstone and Brisbane – Port Macquarie in its own right and at its own risk. Virgin Australia places its code on these services and markets them through its own distribution channels. These routes were formerly operated by Virgin Australia however, when it withdrew from those services as they were uneconomic for it to operate, Alliance Airlines decided to operate services on those routes. Due to the COVID-19 pandemic, Alliance Airlines has reduced its schedule on the Brisbane – Gladstone route and has suspended services on Brisbane – Port Macquarie and Brisbane – Bundaberg. **[Confidential: restriction of publication claimed].** In the absence of ACCC authorisation, it would not be possible for Virgin Australia and Alliance Airlines to jointly determine routes that would be better served under an MDA arrangement than by either airline acting independently.

The existing commercial arrangements are insufficient to enable Virgin Australia and Alliance Airlines to efficiently supply regional RPT services in the context of the current unprecedented market conditions. The Applicants require the flexibility that they have in relation to charter services for the supply of regional RPT services to enable them to jointly determine the best carrier to service a route, match frequency and capacity to demand as it fluctuates, and share risk and revenue. Without this ability to cooperate, the airlines will be hindered in their capacity to meet the fluctuating demand for essential regional RPT services, providing essential services for Australians, while achieving the imperative of covering their costs and earning revenue. Post-administration, Virgin Australia cannot and will not continue to operate loss-making services. Cooperation with Alliance Airlines will enable the Applicants to determine the most efficient way of supplying services and allocate costs and, potentially, revenue as appropriate.

¹³ ACCC, Authorisation Determination in respect of Virgin Australia and Alliance Airlines Charter Alliance, 18 May 2017 ([link](#)).

3 Industry Context

3.1 The effect of COVID-19 on the Australian aviation industry

(a) The effect of COVID-19 on the Australian aviation industry

The COVID-19 pandemic has had a devastating effect on the Australian aviation industry, including regional RPT airline services. As the ACCC is aware, the Australian aviation industry has been one of the sectors most significantly affected by the COVID-19 pandemic given its exposure to travel bans and a reduction in consumer demand and sentiment. There is currently an international travel ban on visitors entering Australia unless exempt under very limited circumstances.¹⁴ In addition, state governments are also enforcing an interstate travel ban and / or advising people to avoid interstate travel, requiring mandatory quarantine upon return from interstate travel, enforcing border closures or requiring government pre-approval for interstate travel.¹⁵ While intrastate travel is currently permitted in all states other than Victoria, the loss of feeder traffic from domestic and international services has made many intrastate routes unviable.

Since the outbreak of COVID-19 in or around January 2020, all RPT services in Australia (including regional RPT services) have suffered a very sharp decline in passenger traffic and airlines have suffered a very sharp decline in cash flow, a weakening of liquidity and significantly higher leverage. As noted by the ACCC in its “Airline competition in Australia” report, released on 17 September 2020, domestic air passenger numbers and seating capacity during April 2020 were down around 95%, relative to April 2019.¹⁶ Many Australian airports are recording passenger numbers that are less than 3% of those experienced last year.¹⁷

In June 2020, it appeared that the domestic aviation industry may return more quickly to regular operations following the perceived short-term effects of the COVID-19 pandemic within Australia. However, as noted by the ACCC, “[s]ubsequent infection spikes in some states and tightening of border restrictions have delayed such a return”.¹⁸ In particular, Victoria’s second wave of COVID-19 in or around August 2020 has shown that the severity and duration of the COVID-19 pandemic is likely to be prolonged and has forced airlines to re-evaluate their recovery strategies and projections. For example, the Qantas Group (**Qantas**) had planned to return to 40% of its pre-crisis domestic capacity during July 2020. However, as at August 2020, Qantas had only scheduled 20% of pre-crisis capacity.¹⁹ The recovery of passenger volumes, for both local and regional airline travel, is unlikely to take place in a gradual and linear way, as the Australian aviation industry had predicted in March 2020. Instead, airlines are experiencing small windows of

¹⁴ See Department of Home Affairs webpage on Travel Restrictions, visited on 10 September 2020 ([link](#)).

¹⁵ ACT travel advice ([link](#)), NSW travel advice ([link](#)), NT travel advice ([link](#)), Queensland travel advice ([link](#)), South Australian travel advice ([link](#)), Tasmanian travel advice ([link](#)), Victorian travel advice ([link](#)), Western Australia travel advice ([link](#)).

¹⁶ ACCC, Airline Competition in Australia Report, 17 September 2020, page 1 ([link](#)).

¹⁷ Virgin Australia Group announces plan to focus on core strengths, re-establishing itself as an iconic Australian Airline” (5 August 2020) ([here](#)).

¹⁸ ACCC, Airline Competition in Australia Report, 17 September 2020, page 1 ([link](#)).

¹⁹ ACCC, Airline Competition in Australia Report, 17 September 2020, page 4 ([link](#)).

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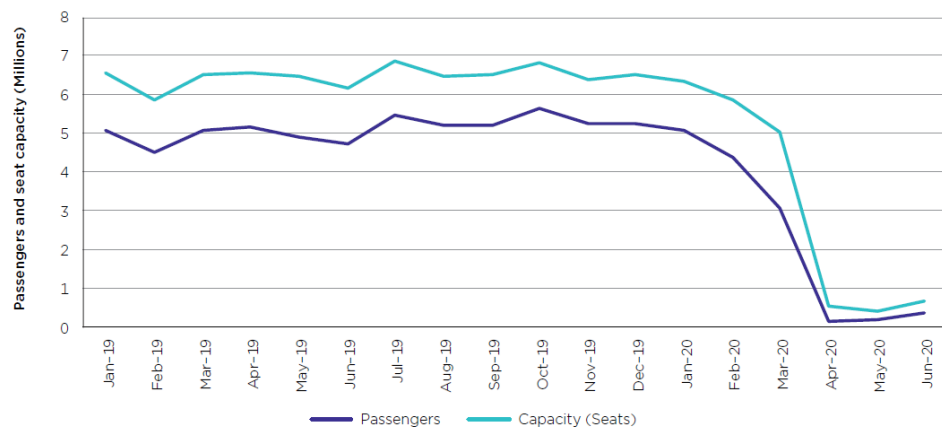
opportunity to offer services and need to react quickly to opening and closing of borders as COVID-19 breakouts and new hot spots are declared.

At the same time, passengers booking behaviour is changing. Passengers are booking flights closer to the date of their travel and “forward bookings” are decreasing, creating even greater uncertainty and delayed cashflow for airlines. In May 2020, bookings for 20 or more days in the future were down by 49% from 2019.²⁰

The below figure shows the significant drop in passenger numbers and capacity on domestic flights from January 2019 to June 2020.

Figure 1: Australian domestic air services—January 2019 to June 2020²¹

Figure 2 Australian domestic air services—January 2019 to June 2020



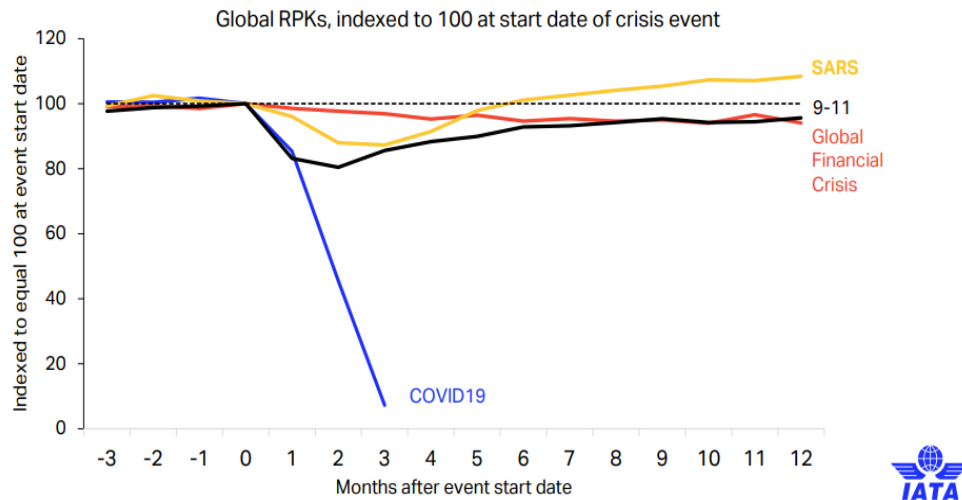
Source: Bureau of Infrastructure, Transport and Regional Economics; Australian domestic airline activity.
 Note: Data is for regular public transport (i.e. commercial flight operations on fixed schedules and specific routes available to the general public) and does not include charter operations.

²⁰ IATA, Continue Government Relief Measures Needed to get Airlines through the Winter, 16 June 2020 ([link](#)).

²¹ ACCC, Airline Competition in Australia Report, 17 September 2020, page 4 ([link](#)).

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Figure 2 Depth of COVID19 impact far exceeds previous crises²²



Note: RPK refers to Revenue Passenger Kilometres, which shows actual passenger traffic by measuring the number of kilometres travelled by revenue paying passengers.

(b) The effect of COVID-19 on Virgin Australia

As the ACCC is aware, Virgin Australia posted a \$349 million loss in FY19, entering the COVID-19 period with a high level of debt. It reduced its domestic capacity by 90% in response to government travel restrictions announced as a result of the COVID-19 pandemic and stood down 8,000 employees. In April 2020, Virgin Australia Holdings entered voluntary administration, unable to service its debts and pay operating costs in the face of the loss of almost all its revenue from March 2020.

This has affected all of its services, including RPT services on the Relevant Routes.

Table 1 below sets out examples of routes where Virgin Australia’s load factors have fallen since COVID-19.

Table 1: Load factors on VA routes in 2019 vs August 2020

Route	Load factor – August 2019	Load factor – Aug 2020
Adelaide – Alice Springs	76.9%	22.1%
Brisbane – Mount Isa	82.1%	19.2%
Coffs Harbour – Sydney	71.8%	18.7%
Brisbane – Newcastle	67.6%	24.8%
Perth to Port Hedland	70.3%	37.0%
Newman to Perth	57.6%	27.6%

²² IATA, COVID-19 – Flexibility will be critical to success in first year of restate, 16 June 2020 ([link](#)).

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Prior to March 2020, Virgin Australia operated approximately 2,850 domestic flights per week covering approximately 72 routes from 41 ports around Australia.²³ However, in response to COVID-19, Virgin Australia has had to cease operations on a significant number of domestic services and drastically reduce the frequency of other services.²⁴ Currently, Virgin Australia operates approximately 37 routes in Australia from 28 ports.

The below chronology sets out key events since March 2020, when Virgin Australia first experienced significant disruption from the COVID-19 pandemic.

- **In March 2020**, the Virgin Australia Group progressively reduced its services in response to COVID-19. On 18 March 2020, the Virgin Australia Group suspended all international flights, reduced its domestic capacity to 50% of normal operations and grounded 53 aircraft.²⁵ On 25 March 2020, it reduced domestic capacity to 10% of normal operations, ceased all Tigerair flights, grounded a further 72 aircraft and stood down 8,000 of its 10,000 employees.²⁶
- **From March 2020 to May 2020**, Virgin Australia Holdings' credit rating from Moody's, S&P Global and Fitch was downgraded, largely due to the effects of COVID-19 pandemic and Virgin Australia Group's administration.²⁷
- **On 20 April 2020**, Virgin Australia Holdings entered voluntary administration. Virgin Australia Holdings' administrators were Vaughan Strawbridge, Richard Hughes, John Greig and Salvatore Algeri of Deloitte.²⁸
- **In June 2020**, the administrators of Virgin Australia Holdings entered into a sale agreement to sell Virgin Australia Holdings to Bain Capital.
- **On 5 August 2020**, Bain Capital and Virgin Australia Holdings announced a business recovery plan to move to an all-Boeing 737 mainline fleet (capacity of approximately 176 passengers each) for Virgin Australia's domestic operations and short haul flights, resulting in the removal of ATR, Boeing 777, Airbus A330 and Airbus A320, and the discontinuation of the Tigerair brand.²⁹ However, Bain Capital's business recovery plan was contingent on creditors of Virgin Australia approving the DOCAs proposed by Bain Capital at the second meeting of creditors (discussed below).

²³ Virgin Australia ASX release: "Virgin Australia enters Voluntary Administration" (21 April 2020) ([here](#)).

²⁴ Virgin Newsroom, "Virgin Australia Group revised domestic schedule" (19 March 2020) ([here](#)).

²⁵ Virgin Australia ASX release: "Virgin Australia Group Update on Response to COVID-19" (18 March 2020) ([here](#)).

²⁶ Virgin Australia ASX release: "Virgin Australia Group makes further capacity reductions in response to COVID-19" (25 March 2020) ([here](#)).

²⁷ Virgin Australia ASX release regarding Moody's ratings on 23 March 2020 ([here](#)), 19 May 2020 ([here](#)) and 20 April 2020 ([here](#)); Virgin Australia ASX release regarding S&P Global ratings on 17 March 2020 ([here](#)), 27 March 2020 ([here](#)), 22 April 2020 ([here](#)) and 1 May 2020 ([here](#)); Virgin Australia ASX release regarding Finch ratings on 27 March 2020 ([here](#)) and 22 April 2020 ([here](#)).

²⁸ Deloitte., "Virgin Australia Holdings Limited and subsidiaries: insolvency case information" ([here](#)); Virgin Australia ASX release: "Virgin Australia Holdings Limited – VAH (Administrators Appointed): Outcome of second meeting of creditors" (4 September 2020) ([here](#)).

²⁹ Virgin Australia ASX release: "Virgin Australia Group announces plan to focus on core strengths, re-establishing itself as an iconic Australian Airline" (5 August 2020) ([here](#)).

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- **On 4 September 2020**, Virgin Australia Holdings' administrators held the second creditors' meeting. Virgin Australia Holdings' creditors voted to approve the DOCAs proposed by Bain Capital.
- **On 9 September 2020**, It was announced that Virgin Australia had decided to cancel a range of services, including regional services such as Sydney-Port Macquarie, Brisbane-Cloncurry, Cloncurry-Mount Isa, Sydney-Tamworth, Sydney-Albury, Melbourne-Mildura and Sydney-Hervey Bay.³⁰ Virgin Australia has cancelled these services due to depressed demand, historically unsustainable revenue per flight which have been exacerbated by the COVID-19 pandemic, and the unsuitability of a number of these routes for services using Virgin Australia's Boeing 737 fleet. Post administration, Virgin Australia is very likely to cancel loss-making routes. Virgin Australia remains committed to servicing these routes in the future, even though it may be unable to operate them itself. The Proposed Conduct is designed to address this issue.
- **On 25 September 2020**, The DOCAs were signed and the Virgin Australia companies exited voluntary administration and entered a deed of company arrangement. The deed administrators are Vaughan Strawbridge, Richard Hughes, John Greig and Salvatore Algeri of Deloitte.³¹
- **On 15 October 2020**, Virgin Australia announced the resignation of CEO and Managing Director Paul Scurrah and the anticipated appointment of new CEO Jayne Hrdlicka, to take effect from DOCA completion.³²
- **Currently**. Now that the DOCAs have been signed, the deed administrators of Virgin Australia Holdings will make an application to the Federal Court to obtain an order for the purposes of section 444GA(1) of the Corporations Act to allow for the transfer of the shares in Virgin Australia Holdings to Bain Capital. When the Federal Court grants the order, and provided all other conditions precedent to the completion of the DOCAs have been either satisfied or waived by Bain Capital, the DOCAs can be completed. The final transfer of shares in Virgin Australia Holdings to Bain Capital is expected to occur in November 2020,³³ however this is still uncertain. Uncertainty created by Virgin Australia's external administration has disrupted Virgin Australia's ability to plan its regional network.

(c) The effect of COVID-19 on Alliance Airlines

While not to the same extent as Virgin Australia, Alliance Airlines services have also been disrupted by COVID-19. In response to COVID-19, Alliance Airlines has:

³⁰ For further detail, see ABC News, Virgin Australia walks away from 10 flight routes with regional centres affected across the country, 9 September 2020 ([link](#)).

³¹ Virgin Australia ASX release: "Virgin Australia Holdings Limited (Administrators Appointed) (ASX:VAH): Deeds of Company Arrangement Executed" (25 September 2020) ([here](#)).

³² Virgin Australia ASX release: "Virgin Australia Holdings Limited (Administrators Appointed) (ASX:VAH): Virgin Australia Group CEO Paul Scurrah to Step Down" (15 October 2020) ([here](#)).

³³ Virgin Australia ASX release: "Virgin Australia Holdings Limited (Administrators Appointed) (ASX:VAH): Virgin Australia Group CEO Paul Scurrah to Step Down" (15 October 2020) ([here](#)).

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- frozen new recruitment, reduced hours, encouraged leave, frozen non-essential expenditure, cancelled an interim dividend,³⁴ and reduced staff by 37 (6%);³⁵
- upon the request of Virgin Australia, suspended its wet lease arrangements with Virgin Australia (under which it operated its own aircraft for Virgin Australia) from 24 March 2020 onwards, which involved the suspension of services from Brisbane to Alice Springs, Cloncurry, Emerald, Mt Isa, Port Moresby and Rockhampton;³⁶ and
- operated a reduced schedule for its RPT services on the Brisbane - Gladstone route (primarily under a Virgin Australia codeshare agreement) including the suspension of Brisbane - Port Macquarie and Brisbane – Bundaberg.³⁷ In addition, **[Confidential: restriction of publication claimed]**.

Nonetheless, revenue from Alliance Airline’s charter business increased during the COVID-19 pandemic.³⁸ In June and July 2020, Alliance Airlines successfully undertook a capital raising.³⁹ This increase in charter and contract revenue reflects the continuing need for travel for essential work, including to mine sites. The lack of RPT services, and employers’ concerns about social distancing and the potential COVID-19 impact on employees, have meant that companies have been more dependent on charter services than pre-pandemic. As regional RPT services are gradually increased, the Applicants expect that this heightened demand for charter services will return to normal levels.

3.2 Government assistance to the airline industry

The Applicants currently receive limited government funding which supports a minimum domestic network, including to regional locations. Under the funding programs discussed below, the Federal Government covers the cost of, and receives all revenues from, operating particular flights.

(a) RANS program

The Applicants are currently receiving financial support from the Federal Government’s Regional Airline Network Support (**RANS**) program. The RANS program aims to ensure regional communities continue to receive essential air services such as freight, medical testing / supplies and travel for essential workers. The RANS program makes \$198 million available to domestic commercial airlines operating RPT services to regional ports in Australia.⁴⁰ The RANS program has been extended from 30 September 2020 to 31

³⁴ Alliance Aviation Services (AQZ) ASX release: “Investor Presentation – Capital Raising” (11 June 2020) ([here](#)), p12.

³⁵ Alliance Aviation Services (AQZ) ASX release: “Trading update and COVID-19 response” (20 March 2020) ([here](#)).

³⁶ Alliance Aviation Services (AQZ) ASX release: “Trading update and COVID-19 response no. 2” (23 March 2020) ([here](#)).

³⁷ *Note: the Brisbane to Port Headland RPT service was suspended as the border between Queensland and New South Wales was closed.* Alliance Aviation Services (AQZ) ASX release, “Investor Presentation – Capital Raising” (11 June 2020) ([here](#)) p13; Alliance Aviation Services (AQZ) ASX release, “Trading update regarding impact of Virgin Australia Holdings Ltd (ASX code: VAH) Voluntary Administration” (21 April 2020) ([here](#)).

³⁸ Alliance Aviation Services (AQZ) ASX release: “Investor Presentation – Capital Raising” (11 June 2020) ([here](#)), p20.

³⁹ Alliance Aviation Services (AQZ) ASX release: “Capital raising” (11 June 2020) ([here](#)); Alliance Aviation Services (AQZ) ASX release: “Completion of share purchase plan” (14 July 2020) ([here](#)).

⁴⁰ Australian Government – GrantConnect, “Current Grant Opportunity View - GO3880: COVID-19 Regional Airline Network Support Program” ([here](#)).

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March 2021.⁴¹ Under the RANS program, Virgin Australia has received \$11,343,466.64,⁴² and Alliance Airlines has received \$419,184.⁴³ Qantas, Rex and several small carriers have also received funding from RANS.

Of the Relevant Routes, Virgin Australia currently receives RANS funding on its Coffs Harbour – Sydney and Kununurra – Perth routes. Alliance Airlines is currently not receiving any RANS funding.

(b) DANS program

The Applicants are currently receiving financial support from the Federal Government's Domestic Aviation Network Support (**DANS**) program, which underwrites the cost of supplying a minimum domestic and regional network comprising the 50 domestic routes with the most passenger traffic. Under the DANS program, Qantas has received \$206 million and Virgin Australia received \$112 million of funding to operate a minimum domestic network servicing.⁴⁴ The DANS program was scheduled to finish on 30 September 2020 but has been extended to 31 January 2021.

Virgin Australia currently receives DANS funding on the following Relevant Routes: Brisbane – Proserpine, Brisbane – Mount Isa, Brisbane – Newcastle and Adelaide – Alice Springs. Alliance Airlines has not received any DANS funding.

(c) Australian Airline Financial Relief Package

In addition to the RANS and DANS programs, the Australian Airline Financial Relief Package (**AAFRP**) has waived \$715 million in various taxes and government charges applicable to eligible airlines.⁴⁵ Virgin Australia has received \$67 million in relief⁴⁶ and Alliance Airlines has received \$4.4 million in relief.⁴⁷

A further \$100 million in cash flow assistance is available to regional airlines under the Regional Airlines Funding Assistance Program (**RAFAP**). Virgin Australia has not received funding under the RAFAP. As at 30 June 2020, Alliance Airlines had received \$1.6m in RAFAP funding.

(d) The importance of ongoing government support

The DANS and RANS programs by themselves are insufficient to ensure the short-term survival or longer-term viability of the Australian aviation industry. The financial support may cease prior to a return to pre-COVID-19 market conditions. In addition, the Proposed Conduct relates to Relevant Routes that currently do not receive any direct funding under the DANS or RANS programs. The Applicants consider a market-led recovery by the Australian aviation industry is unlikely without further government support. ACCC

⁴¹ Minister for Infrastructure, Transport and Regional Development, "Media releases: Government support continues for Australia's aviation industry" (7 June 2020) ([here](#)).

⁴² Australian Government – GrantConnect, "Grant Award Published: Search Results "GO3880" and "Virgin"" ([here](#)).

⁴³ Australian Government – GrantConnect, "Grant Award Published: Search Results "GO3880" and "Alliance"" ([here](#)).

⁴⁴ Minister for Infrastructure, Transport and Regional Development, "Media releases: Federal Government guarantees domestic aviation network" (16 April 2020) ([here](#)).

⁴⁵ Minister for Infrastructure, Transport and Regional Development, "Media releases: Federal Government guarantees domestic aviation network" (16 April 2020) ([here](#)).

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authorisation of the Proposed Conduct, and similar forms of proposed cooperation by airlines, is essential to enable airlines to continue to offer services and to cover their costs in doing so.

4 The Proposed Conduct

4.1 Scope of Proposed Conduct

The Proposed Conduct provides an opportunity for the Applicants to coordinate flights in relation to the specified routes (the **Relevant Routes**) set out in section 4.2 below in order to enable the Applicants to most efficiently service these routes while the market conditions associated with COVID-19 continue. The Applicants intend that the Proposed Conduct will enable them to respond quickly to changing circumstances, including the opening and closing of borders, to meet demand for regional RPT services and generate much-needed revenue. The Applicants propose to coordinate by:

- Sharing information (including in relation to costs, willingness to operate a route, capacity, utilisation, anticipated demand and pricing) about Relevant Routes;
- Agreeing capacity, flight schedules and aircraft type, including whether an Applicant will suspend operation on a Relevant Route to leave the remaining Applicant with sustainable load factors;
- Agreeing which Applicant will operate the Relevant Route and under what arrangements (e.g., wet lease, codeshare, revenue-share arrangements) and putting in place commercial agreements that are most suitable for the route considering the nature and levels of demand and risk profile of a route;
- Discussing and agreeing to new and innovative ways of providing services on the Relevant Routes in a post COVID-19 environment, including new forms of commercial arrangements other than wet leases and codeshare agreements; and
- Potentially, risk and revenue sharing mechanisms and agreements as to price.

4.2 Relevant Routes

The Applicants seek authorisation to make and give effect to the Proposed Conduct in relation to the Relevant Routes set out in table 2 below. The vast majority of the Relevant Routes are domestic routes.

Of these Relevant Routes, the only route in relation to which the Applicants currently operate competing RPT services are Brisbane – Proserpine.⁴⁸ Alliance Airlines commenced RPT services on the Brisbane – Proserpine route after the COVID-19 pandemic began. Jetstar operates services on this route, while Qantas also codeshares on Jetstar’s services from Brisbane - Proserpine.

In addition, Virgin Australia markets under its own code Alliance Airlines flights on three Relevant Routes, being Brisbane - Gladstone, Brisbane - Port Macquarie and Brisbane -

⁴⁸ For completeness, Virgin Australia and Alliance Airlines both currently sell tickets to the general public for the PER - ZNE and PER – PHE routes. However, each flight is a joint charter flight, and not an RPT service, with seats made available to the public for community benefit due to the COVID-19 pandemic.

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Bundaberg. Due to COVID-19, Alliance Airlines has temporarily suspended flights from Brisbane - Bundaberg and is flying a reduced schedule on Brisbane - Port Macquarie and Brisbane – Gladstone routes. Out of these Relevant Routes, Brisbane - Gladstone and Brisbane - Bundaberg are also serviced by Qantas, and Qantas has recently announced its intention to operate 5 flights per week on the Brisbane - Port Macquarie route, subject to state border restrictions relaxing.⁴⁹

The remaining Relevant Routes are either:

- Operated by Virgin Australia;
- Operated by Alliance Airlines;
- Operated by Alliance Airlines under a Wet Lease Agreement on behalf of Virgin Australia and have been suspended due to COVID-19. **[Confidential: restriction of publication claimed]**; or
- Currently neither operated by Virgin Australia nor Alliance Airlines and unlikely to be in the future if authorisation of the Proposed Conduct is not granted.

In addition, two Relevant Routes (Sydney – Albury and Melbourne – Mildura) are the subject of the ACCC's determination to grant REX authorisation to co-ordinate operations with Qantas and Virgin Australia on specified routes.⁵⁰ Virgin Australia expressed support for REX's application, recognising the need to realise efficiencies to provide services during the COVID-19 crisis. However, Virgin Australia does not plan to coordinate flights with REX on these Relevant Routes. It has a long-standing commercial relationship with Alliance Airlines and their businesses are largely complementary, making a partnership between Virgin Australia and Alliance Airlines a clear choice.

Table 2: Relevant Routes

Key:

- **VA:** operated by Virgin Australia
- **QQ:** operated by Alliance Airlines
- **VA / QQ:** operated by both Virgin Airlines and Alliance Airlines
- **CS:** operated by Alliance Airlines under codeshare, some of which are flying on a rescheduled or suspended schedule due to COVID-19
- **WL:** previously operated by Alliance Airlines under a Wet Lease Agreement on behalf of Virgin Australia. For the time being, the wet lease and services on these routes are suspended. **[Confidential: restriction of publication claimed]**.
- **(-):** Currently neither operated by Virgin Australia nor Alliance Airlines and unlikely to be in the future if authorisation of the Proposed Conduct is not granted.

⁴⁹ Qantas, 'Qantas to boost regional flights with new Brisbane-Port Macquarie service' (11 September 2020) ([here](#)).

⁵⁰ ACCC, Regional Express –Authorisation Decision, 11 September 2020 ([link](#)).

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Origin	Destination	Origin	Destination	
Brisbane	Proserpine (VA / QQ)	Alice Springs	Darwin (-)	
	Mackay (VA)		Ayers Rock (-)	
	Emerald (WL)			
	Mount Isa (WL)			
	Cloncurry (WL)			
	Port Moresby (WL)			
	Rockhampton (WL)	Perth	Newman (VA)	
	Moranbah (QQ)		Karratha (VA)	
	Newcastle (VA)		Onslow (VA)	
	Gladstone (CS) (Reduced schedule)		Kalgoorlie - Boulder (VA)	
	Port Macquarie (CS) (Temporarily suspended)		Kununurra (VA)	
	Bundaberg (CS) (Temporarily suspended)		Port Hedland (VA)	
	Weipa (-)		Cairns	Darwin (-)
Tamworth (-)	Maroochydore (-)			
Honiara (-)	Ayers Rock (-)			
Alice Springs (WL)				
Ayers Rock (-)				
Cloncurry	Mt Isa (WL)	Canberra	Maroochydore (-)	
Sydney	Canberra (-)	Melbourne	Canberra (VA)	
	Coffs Harbour (VA)		Kununurra (-)	
	Port Macquarie (-)		Newcastle (-)	
	Albury (-)		Mildura (-)	
	Tamworth (-)			
Ayers Rock (-)				
Adelaide	Canberra (VA)			
	Olympic Dam (QQ)			
	Alice Springs (VA)			

4.3 Why the Proposed Conduct is necessary

As ACCC Chair Rod Sims has recently noted, “COVID-19 has created some of the most difficult market conditions in Australian aviation history”.⁵¹

The current market circumstances faced by all airlines supplying passenger air transport services, and Virgin Australia in particular, are unprecedented. The COVID-19 pandemic

⁵¹ ACCC media release, Airline competition critical for consumers and economy, 17 September 2020 ([link](#)).

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has effectively grounded airlines in Australia and around the world as the pandemic, restrictions on movement, and border closures have resulted in very low levels of demand for air travel. At the same time, airlines have kept supplying essential airline services to meet the need for permitted essential travel, including for work, medical care, repatriation, and compassionate reasons. Federal Government support has made it possible for airlines to provide these services by underwriting their costs (see section 3.2). However, most airlines have been unable to earn a return during this period and are struggling to maintain staff and meet the high fixed costs associated with the aviation industry.

As Australia begins to slowly move towards a resumption of normal air travel, airlines will be required to assess how they can efficiently and effectively supply airline services and respond quickly to uncertain changes in travel restrictions, while demand remains low and volatile. Virgin Australia's position as it exits voluntary administration makes achieving this balance even more crucial. It is imperative that Virgin Australia begins to build its business again, regain customer confidence and demonstrate its commitment and ability to service the Australian air travel market.

Regional routes are always subject to more limited demand and, in order for airlines to service them profitably, require careful network management, including matching of aircraft-type and capacity to the level and nature of demand, utilising traffic feed from other network services, and making available services required to support regional businesses, including the mining, construction and energy sectors, as well as regional communities and tourism.

These challenges are the reason why Virgin Australia and Alliance Airlines already have strong commercial arrangements in place. As the ACCC is aware, and has accepted, Alliance Airlines benefits from access to Virgin Australia's broader network, supply channels and association with its loyalty program, while Virgin Australia benefits from access to Alliance Airlines' operated services using smaller, more efficient aircraft and operating from a number of regional bases.⁵² Together, they can efficiently offer a more compelling product, providing choice for consumers and competition for Qantas.

The Applicants are looking for opportunities to more flexibly respond to these challenges in the current market conditions.

4.4 Commercial rationale for Proposed Conduct

The Applicants' commercial rationale for the Proposed Conduct is set out below.

- **Providing airline services to regional communities and businesses.** The Applicants wish to cooperate to ensure airline services are provided to Australian consumers, particularly regional communities and businesses, during the COVID-19 pandemic and recovery period. In the immediate future, these services will primarily relate to essential travel, including for work, access to healthcare, repatriation and compassionate reasons. As more border restrictions are relaxed and, assuming that COVID-19 hotspots are brought under control and remain controlled, the Applicants will look to provide broader services which meet and stimulate demand for tourism and other non-essential travel. Specially, the Proposed Conduct will allow the Applicants to innovate and to offer consumers

⁵² ACCC, Authorisation Determination in respect of Virgin Australia and Alliance Airlines Charter Alliance, 18 May 2017 ([link](#)).

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competitive airfares, more favourable terms and conditions, increased flight options and higher quality in-flight services.

- **Minimising costs and risk exposure.** The Proposed Conduct will provide increased flexibility to provide regional airline services that may otherwise be uneconomic to provide while controlling costs and the level of risk exposure for the Applicants. The existing arrangements between the Applicants are insufficient to achieve this in the current environment as they do not permit the Applicants to jointly make decisions about who can and will service an RPT route and how those services are best supplied. Minimising costs and risk exposure will assist Virgin Australia in particular to have a greater chance of emerging from external administration and the COVID-19 crisis as a viable business, and remain as the second Australian carrier, promoting sustainable competition in the long term.
- **Ensuring the long-term survival of an efficient and vigorous competitor.** Virgin Australia has already announced that it will cancel a number of regional services for the foreseeable future due to depressed demand, unsustainable load factors, and the unsuitability of Virgin Australia's proposed Boeing 737 fleet for routes with limited demand and which cannot be serviced using VARA's Western Australia-based F100 fleet.⁵³ Virgin Australia sees the Proposed Conduct as the most effective way to service the Relevant Routes and continue to serve these cancelled routes, in partnership with Alliance Airlines. In the short term, state border restrictions limit the impact of route withdrawals undertaken by Virgin Australia and the competitiveness of Virgin Australia's network. However, once travel restrictions relax, if Virgin Australia does not have a presence or retain its slots on these routes, it will be increasingly more difficult for it to re-enter in the future, strengthening the position of the remaining competitors and ceding market share and reach to Qantas. This may result in more expensive airfares, less favourable terms and conditions, reduction in quality of in-flight services and a reduction in the number of flight options (routes and frequency) available to consumers. The ability for Virgin Australia to offer a full network of services, but to do so without sustaining operational losses, is crucial to its ability to restore confidence in its services and brand as it comes out of voluntary administration.
- **Matching aircraft to routes to meet nature and volume of demand.** The Proposed Conduct will enable Virgin Australia and Alliance Airlines to match appropriate and efficient aircraft to routes, providing access to each party's fleet. As noted in section 3.1(b), Virgin Australia plans to move to an all-Boeing 737 mainline fleet for domestic operations and short haul flights. Boeing 737s have a capacity of approximately 176 passengers and are not appropriate or cost efficient to operate a number of the Relevant Routes. For example, Queensland ports such as Emerald, Moranbah, Weipa and Cloncurry cannot be serviced with a Boeing 737 aircraft due to runway limitations, while regional New South Wales routes between Sydney and Port Macquarie, Tamworth and Albury have insufficient demand to be viably serviced with a Boeing 737 aircraft and are well-suited to Alliance Airlines' Fokker and E190 fleet.

While VARA has access to F100s which have a capacity of approximately 100 passengers, these are located in Western Australia and for operational and network reasons could not be deployed on the East Coast – F100s are not capable of trans-continental services. Despite not having suitable aircraft to operate these

⁵³ For further detail, see ABC News, Virgin Australia walks away from 10 flight routes with regional centres affected across the country, 9 September 2020 ([link](#)).

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routes independently, Virgin Australia remains committed to servicing these routes, and can do so in partnership with Alliance Airlines.

In contrast, Alliance Airlines is equipped with a large fleet of cost-efficient F100s, F70s and F50s, as well as bases in Brisbane, Townsville, Cairns, Adelaide, Perth, Melbourne, Darwin and Rockhampton. In addition, Alliance Airline has recently acquired 14 E190 aircrafts, which will be delivered progressively over eight months from September 2020.⁵⁴ E190 aircrafts are single-aisle aircrafts with a capacity of approximately 100 passengers which, together with Alliance Airline's existing F100 fleet, provide the flexibility required to service a range of regional routes. The combination of Alliance Airlines' operations with access to passenger feed from Virgin Australia's broader network, as well as the ability to offer enhanced services such a frequent flyer rewards, enables the Applicants to offer much more attractive and cost-effective regional services than they could acting alone.

- **Retention of valuable airport slots.** If Virgin Australia is not able to resume certain flying regional routes from 28 March 2021, it will be required to hand back valuable slots at airports. Many of these slots, especially at Sydney Airport are in high demand, such as the Sydney-Port Macquarie peak regional slots. If Virgin Australia were required to return these slots to the slot pool, they would likely be acquired by the Qantas Group, further entrenching its dominant market position and foreclosing Virgin Australia's ability to offer these services in the future.
- **Developing new, innovative ways to respond to a non-linear path to recovery, post COVID-19.** The competitive landscape of the domestic aviation industry has changed significantly and is constantly being reshaped in light of the unpredictable impacts of the COVID-19 pandemic. Given the uncertain customer demand, the recovery to pre-COVID demand levels is likely to be non-linear, subject to setbacks as hotspots re-emerge, and with a different trajectory in different states and regions. This requires the Applicants to innovate and reinvent how they run their businesses in real time. The Proposed Conduct is intended to enable the Applicants to quickly, efficiently and innovatively respond to fluctuations in demand and flying opportunities in the COVID-19 and post-COVID-19 recovery period. The second wave of COVID-19 in Victoria and greater Sydney has shown that airlines cannot rely on short term government support to weather the impact of the pandemic. Nor can they rely on traditional forms of co-operation, codeshares and wet leases. These arrangements require a commercial deal to be negotiated and locked in, and do not allow parties to share information to enhance decision making, or to share risks and rewards to make services more sustainable. The Applicants consider innovation and flexible forms of collaboration are crucial to the survival of the Australian aviation industry.

4.5 How the Proposed Conduct will enable the Applicants to cooperate more effectively

The Proposed Conduct will enable the Applicants to coordinate services on the Relevant Routes in various ways. Importantly, it will give them the ability to share information and discuss the best solution for each Relevant Route, providing flexibility to respond to changing demand and operational considerations and enabling the Applicants to share risk and reward to make operating routes more sustainable at this time. The effect of this will be that the Applicants will be able to support more regional routes, providing

⁵⁴ Alliance Aviation Services (AQZ) ASX release (11 June 2020) ([here](#)).

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consumers with more choice, serving regional communities and businesses, and enabling the Applicants to effectively utilise opportunities to earn revenue and re-establish their RPT networks.

(a) The Proposed Conduct increases the likelihood that the Applicants can service routes on which they currently have no presence

Virgin Australia has identified a number of regional routes on which it previously operated services but will not be able to operate in the future.

[Confidential: restriction of publication claimed].

The Proposed Conduct will enable the Applicants to share information to determine whether Alliance Airlines would be able to operate the Relevant Routes and, if so, the best model for doing so (e.g. under a wetlease arrangement on behalf of Virgin Australia or in its own right with Virgin Australia's codeshare). If these models do not enable the Applicants to adequately plan for changes in demand or to share risk associated with these operations, then they have the opportunity to reach agreements that involve revenue and risk sharing where considered beneficial. This will increase the likelihood that these routes are able to be serviced.

There are also regional routes on which Alliance Airlines currently offers services, but Virgin Australia does not. For example, Adelaide - Olympic Dam and Brisbane - Moranbah. Although incorporating these services into Virgin Australia's network would be valuable to the airline and to consumers, it would not be operationally viable for Virgin Australia to do so alone given runway limitations at these ports which would preclude Boeing 737 operations.

The Proposed Conduct will enable the Applicants to discuss capacity and demand on these Relevant Routes and the ability for Virgin Australia to maintain or expand its presence (potentially through codeshare or other arrangement) in cooperation with Alliance Airlines. The likelihood and speed of any negotiation of a codeshare or other arrangement will be significantly enhanced under the Proposed Conduct.

The Proposed Conduct will enable the Applicants to discuss capacity and demand with a view to introducing new services that neither operates alone. The Applicants see potential for new services between, for example, **[Confidential: restriction of publication claimed]**.

(b) The Proposed Conduct will enable the Applicants to more efficiently service existing routes through better capacity allocation and aircraft utilisation

Currently, both the Applicants operate services on the Brisbane – Proserpine route. The Proposed Conduct will allow the Applicants to coordinate in relation to capacity and scheduling decisions in order to utilise each airline's strengths and avoid overlapping or duplicative services. **[Confidential: restriction of publication claimed]**. As demand increases it may also mean coordinating to provide a better schedule spread for consumers (instead of Virgin Australia and Alliance Airlines flying partially empty aircrafts at the same time).

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The Proposed Conduct will also allow the Applicants to consider their existing commercial arrangements and whether they appropriately assign risk between the parties to best achieve efficient and sustainable operations.

For example, as discussed at section 2.3, prior to COVID-19, Alliance Airlines operated Brisbane to Alice Springs, Cloncurry, Emerald, Mount Isa, Port Moresby, Rockhampton routes on behalf of Virgin Australia under a wet lease arrangement and allows Virgin Australia to codeshare on other Alliance Airlines operated services such as Brisbane – Port Macquarie, Brisbane – Gladstone and Brisbane – Bundaberg. The Proposed Conduct will enable the Applicants to explore risk share models and choose the model best suited to providing efficient and sustainable service in the current demand context (whether that be more traditional commercial arrangements such as codeshares and wet lease arrangements or other more innovative models).

5 Request for authorisation

5.1 Scope and timing of authorisation

The Applicants request authorisation to engage in the Proposed Conduct described in section 4.1, in relation to the Relevant Routes set out in section 4.2, for a period of 2 years from the date of final authorisation.

5.2 Urgent interim authorisation

The Applicants request the ACCC grant interim authorisation on an urgent basis by 30 October 2020 to facilitate the immediate planning and coordination of services on the Relevant Routes. There are a number of deadlines driving this urgency:

- The Northern Winter scheduling season commences on 25 October 2020. Traditionally, airlines publish their flying schedule to coincide with the commencement of these seasons. While current market conditions will make this more difficult, the Applicants intend to mirror this as closely as possible, recommencing or expanding flying on the Relevant Routes from soon after the start of the Northern Winter scheduling season.
- Bain Capital's acquisition of Virgin Australia is expected to be completed in November 2020. Virgin Australia must be ready to relaunch services and rebuild its network to coincide with demand returning following the finalisation of the sale process.
- The Queensland Government has announced that, contingent on public health advice, it may reopen the border with NSW on 1 November 2020. Whether or not this occurs on that date, the Applicants anticipate that these border restrictions may be lifted at any time, and without much notice, following the Queensland election on 31 October 2020. The Applicants need to commence planning for these restrictions lifting as soon as possible, so they are able to quickly respond to any changes in market conditions and market services.
- There is ordinarily significant lead time required to roster and arrange flight schedules. Under the current market conditions, the Applicants need to be ready to quickly schedule services in response to changes in border closures and

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fluctuations in demand. This necessitates immediate planning as deployment decisions will need to be quickly made.

If the Applicants are unable to commence this planning in early November 2020, they will be impeded in their ability to respond to market conditions and provide services to meet increased demand. Delays in granting authorisation would likely lead to Qantas growing its own capacity on routes no longer serviced by Virgin Australia, making it more challenging for Virgin Australia and Alliance Airlines to regain a foothold at a future date.

(a) Interim authorisation is urgently required to enable the Applicants to quickly respond to current market challenges and re-commence regional RPT services following Virgin Australia’s relaunch in November 2020

The urgency of this Application is set against the backdrop of the unprecedented and continuing impact of the COVID-19 on the Australian aviation industry and Virgin Australia’s transition out of voluntary administration, with the airline planning to commence services under Bain Capital’s ownership in November 2020.

Obtaining interim authorisation in this timeframe will be important for Virgin Australia’s ability to relaunch a network of services in a cost efficient and flexible way that includes regional routes. This is particularly so given it has moved to a mainline fleet of only Boeing 737s, which are unsuitable for several regional routes, and given the very limited and volatile demand on regional routes in the current market environment. The ability for Virgin Australia to supply a wider range of services as it exits external administration is crucial to its ability to re-establish itself as the second national carrier, restore confidence with customers, and take advantage of important opportunities to earn revenue.

This Application is being made now as Virgin Australia’s sale to Bain Capital by way of deed of company arrangement was only approved by creditors on 4 September 2020 and the DOCAs were only signed on 25 September 2020. With greater certainty about Virgin Australia’s ownership and future direction the Applicants are now planning for their future regional operations and discussing opportunities for broader cooperation which requires ACCC authorisation.

Further detail on the urgency of the Application for interim authorisation is set out below:

- **Urgency due to the COVID-19 pandemic.** The Proposed Conduct is an urgent and necessary response to the severe impacts the COVID-19 pandemic has had on the Australian aviation industry. When granting interim authorisation, the ACCC has previously recognised “*the urgency of the request for interim authorisation[s] in light of the significant challenges that airlines are facing due to the COVID-19 pandemic.*”⁵⁵ The urgency associated with the COVID-19 pandemic today is as relevant today as it was in March 2020. As the ACCC has noted, the anticipated recovery of airline markets has not occurred, and airlines remain unable to return to normal operations.⁵⁶ In order to meet the rapidly changing market conditions, which require forward planning to be ready to respond to changes such as borders reopening, the Applicants require urgent interim authorisation.
- **End of DANS government funding.** Virgin Australia will stop receiving financial support on 31 January 2021 under the DANS program. Virgin Australia is eligible to

⁵⁵ ACCC, Regional Express – Interim Authorisation Decision, 26 March 2020, paragraph 17 ([link](#)).

⁵⁶ ACCC, Airline Competition in Australia Report, 17 September 2020, page 1 ([link](#)).

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receive DANS funding on approximately 34% of the Relevant Routes. It is unclear whether the Federal Government will extend or replace DANS funding with any other support. Given recovery of the aviation industry is expected to take at least 3 years and the Federal Government has currently only undertaken to provide funding support until early 2021, it will become even more crucial for the Applicants to ensure that they can independently and efficiently cover the cost of operating the Relevant Routes and adjust services to meet limited and fluctuating demand.

- **Virgin Australia's voluntary administration.** In June 2020, the administrators of Virgin Australia entered into a sale agreement with Bain Capital. On 4 September 2020, Virgin Australia's administrators held the second creditor's meeting and creditors voted to approve the DOCAs proposed by Bain Capital which, among other things, provide for the transfer of ownership of Virgin Australia to Bain Capital.⁵⁷ The DOCAs were signed on 25 September 2020 and the deed administrators of Virgin Australia will now make an application to the Federal Court for an order for the purposes of section 444GA(1) of the Corporations Act to effect the transfer of the shares in Virgin Australia to Bain Capital. Assuming the Federal Court makes the order, and that all other conditions precedent under the DOCA are satisfied or waived by Bain Capital, Virgin Australia expects the final transfer of shares in Virgin Australia to Bain Capital to occur in November 2020. Uncertainty created by Virgin Australia's external administration has disrupted the Applicants' ability to plan a regional network, including lodging an application for authorisation of the Proposed Conduct. As Virgin Australia emerges from external administration, it needs to be prepared to rebuild its network and market position.
- **Forward planning is required to respond to changes in market conditions and to launch services or increase frequencies.** To be in a position to provide the Relevant Routes, the Applicants require time to forward plan and coordinate flights in a cost-efficient matter. Changes to market conditions are occurring unpredictably and the Applicants will not have the opportunity to plan once borders open or other significant market changes occur. The Qantas Group has shown itself capable of responding quickly and the Applicants need to be able to match this to remain competitive. If the Applicants are required to wait until final authorisation is granted to coordinate services on the Relevant Routes, they will be unable to continue to properly plan for recovery of the regional services post the COVID-19 pandemic. This will create confusion, uncertainty and delay in developing a competitive and sustainable regional network, which is essential for remote communities in Australia.⁵⁸ In addition, if the Applicants are not able to quickly provide services on the Relevant Routes, they will cede market share to Qantas and further entrench its dominant position.
- **Delays in granting authorisation would cede market advantage to Qantas and REX.** When demand for air travel increases, Virgin Australia's limited network and schedule will become obvious to consumers. If Virgin Australia is not able to quickly launch services in response to new demand, it will cede competitive advantages to Qantas and REX. The longer Virgin Australia stays out of markets, the harder it will be to re-enter. For example, in response to the South Australian Government's announcement on 24 September 2020 that it will reopen its borders

⁵⁷ At the second creditors' meeting, creditors also had the option to vote to return Virgin Australia to the control of its directors or to put the Virgin Australia group into liquidation.

⁵⁸ A similar position was taken by the applicants in the Qantas Airways Limited & China Eastern Airlines Corporation Limited Interim Decision, 7 September 2020, paragraph 11 ([link](#)).

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to New South Wales residents and the Queensland Government's announcement on 23 September 2020 that it will reopen its borders to residents of parts of regional New South Wales, Qantas and Jetstar immediately boosted capacity and offered sale fares to stimulate demand, announcing it would triple the number of flights on some routes.⁵⁹ Virgin Australia requires the Proposed Conduct to enable it to also respond quickly to these opportunities.

(b) There is no risk associated with the grant of interim authorisation

As the Proposed Conduct can easily be terminated and unwound, will have no detrimental impact on competition, and is expected to result in significant public benefits, there can be no risk associated with the grant of interim authorisation.

Further, the ACCC is very familiar with these markets (having authorised the Charter Alliance and given its ongoing review into Qantas' completed acquisition of a 19.9% shareholding in Alliance Airlines), and the current challenges facing the aviation sector. Most recently, the ACCC has issued its first Airline Competition in Australia report in September 2020. Given this, the ACCC likely has adequate information and experience to urgently assess the request for interim authorisation.

Further detail on the absence of risk associated with the application for urgent interim authorisation is set out below:

- **Temporary Measure.** Consistent with the ACCC's decision to grant REX interim authorisation in March 2020 (**REX Interim Authorisation**), the Proposed Conduct, and application for interim authorisation, is a temporary measure. Authorisation is sought for only 2 years, until 31 October 2022.⁶⁰ This length of time is considerably shorter than current predictions of the likely timeframe for a return to normal airline operations in Australia. For example, at the beginning of the COVID-19 crisis in March 2020, the International Air Transport Association (**IATA**) predicted there would be a gradual U-shaped recovery of the global airline industry and noted that the average recovery time for historical pandemics was around 6 - 7 months.⁶¹ Since then, the IATA has indicated that it may take 5 years to return to pre-pandemic levels of customer demand and that even this forecast was uncertain.⁶² Current Virgin Australia Group CEO and Managing Director, Paul Scurrah, has noted that "*demand for [Australian] domestic and short-haul international travel is likely to take at least three years to return to pre-COVID-19 levels, with the real chance it could be longer*".⁶³ Similarly Qantas, which has stood down more than 20,000 employees since April 2020,⁶⁴ has implemented a 3 year COVID-19 recovery plan and describes the pandemic as "*the biggest challenge ever faced by global aviation*"⁶⁵.

⁵⁹ The Guardian, 'Qantas and Jetstar slash fares and boost flights as border restrictions ease across Australia', 23 September 2020 ([link](#)).

⁶⁰ ACCC, Regional Express – Interim Authorisation Decision, 26 March 2020, paragraph 18 ([link](#)).

⁶¹ IATA, COVID-19 delivers unprecedented shock, 27 March 2020 ([link](#)).

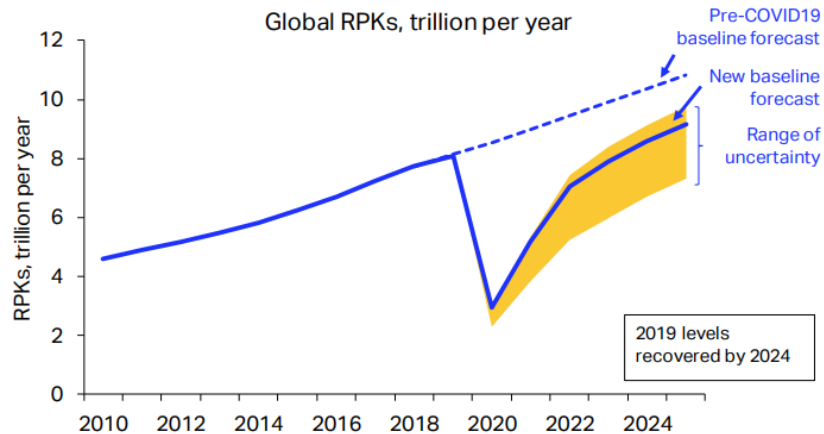
⁶² IATA, Five years to return to the pre-pandemic level of passenger demand, 30 July 2020 ([link](#)).

⁶³ Virgin Australia, Virgin Australia Group announces plan to focus on core strengths, re-establishing itself as an iconic Australian airline, 5 August 2020 ([link](#)).

⁶⁴ Qantas, Qantas to boost regional flights with new Brisbane-Port Macquarie service, 10 September 2020 ([link](#)).

⁶⁵ Qantas, Qantas group announces post-COVID recovery plan and equity raising for a stronger future, 25 June 2020 ([link](#)).

Figure 3: 5 years to return to the pre-pandemic level of passenger demand⁶⁶



Source: IATA. RPK refers to Revenue Passenger Kilometres, which shows actual passenger traffic by measuring the number of kilometres travelled by revenue paying passengers.

- The Proposed Conduct is limited to the Relevant Routes.** The Proposed Conduct applies in relation to specified routes and will not have industry-wide implications. Further, the Applicants already participate in commercial arrangements in relation to a number of these routes, as well as charter services, without any anti-competitive consequences. The cooperation between the Applicants to date has instead resulted in enhanced competition, improved services to regional destinations, more choice for consumers, and increased efficiency.⁶⁷
- The Proposed Conduct is limited to coordination by Virgin Australia and Alliance Airlines.** In contrast to the REX Interim Authorisation, the Proposed Conduct does not involve coordination of schedules by all operators on the Relevant Routes.⁶⁸ There will remain other independently competing airlines on all but two of the Relevant Routes, including Qantas, Jetstar, REX and a number of smaller regional airlines. As a result, the Proposed Conduct will not have the effect of limiting all capacity or controlling all prices on the Relevant Routes.
- The Proposed Conduct is voluntary; it does not mandate coordination.** Consistent with the REX Interim Authorisation, the Proposed Conduct will be implemented only as necessary.⁶⁹ The Applicants are still able to continue to make scheduling decisions independently. Interim authorisation of the Proposed Conduct allows the Applicants to consider whether it is commercially feasible to coordinate flights on the Relevant Routes and share information to enable a decision about coordination to be made.
- Interim authorisation is likely to result in net public benefits.** Interim authorisation of the Proposed Conduct will help provide certainty to support essential travel to and from regional communities during the COVID-19 pandemic

⁶⁶ IATA, Five years to return to the pre-pandemic level of passenger demand, 30 July 2020 ([link](#)).

⁶⁷ ACCC, Authorisation Determination in respect of Virgin Australia and Alliance Airlines Charter Alliance, 18 May 2017 ([link](#)).

⁶⁸ ACCC, Regional Express – Interim Authorisation Decision, 26 March 2020, paragraph 22 ([link](#)).

⁶⁹ ACCC, Regional Express – Interim Authorisation Decision, 26 March 2020, paragraph 18 ([link](#)).

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in circumstances where the current reduction in demand could potentially threaten the viability of operating on the Relevant Routes.⁷⁰

The Proposed Conduct is likely to give rise to significant public benefits, including the expansion of frequencies and destinations flown to and from regional Australia, efficiencies, and strengthening Virgin Australia as a competitor in the Australian aviation market. The ACCC has previously considered the likelihood of public benefits in assessing the risk of granting interim authorisation, including most recently in relation to its decision to grant interim authorisation to Qantas Airways Limited & China Eastern Airlines Corporation Limited on 7 September 2020 (**Qantas / CEA Interim Authorisation**).⁷¹ In addition, interim authorisation of the Proposed Conduct will help maintain the viability of airlines on the Relevant Routes during the COVID-19 pandemic by supporting the Applicants' ability to maintain services on the Relevant Routes post the COVID-19 pandemic as demand increases.⁷²

- **The Proposed Conduct can be unwound.** There is no risk in granting urgent interim authorisation at this time as the Proposed Conduct can easily be ceased if the ACCC later determines not to grant authorisation.

5.3 Timing of urgent interim authorisation

The Applicants request that the ACCC grant urgent interim authorisation by 30 October 2020. The ACCC has previously granted interim authorisation within several days of applicants filing an application for interim authorisation, where it has recognised that the impacts of the COVID-19 pandemic necessitate urgent action.⁷³

For example, the ACCC granted REX interim authorisation within 3 days of REX's application for interim authorisation due to "*the significant challenges that airlines are facing due to the COVID-19 pandemic.*"⁷⁴

⁷⁰ ACCC, Regional Express – Interim Authorisation Decision, 26 March 2020, paragraph 20-21 ([link](#)).

⁷¹ ACCC, Qantas Airways Limited & China Eastern Airlines Corporation Limited, 7 September 2020, paragraph 22 ([link](#)).

⁷² ACCC, Regional Express – Interim Authorisation Decision, 26 March 2020, paragraph 20-21 ([link](#)).

⁷³ ACCC, Regional Express – Interim Authorisation Decision, 26 March 2020, paragraph 17 ([link](#)); ACCC, Australian Banking Association – Interim Authorisation Decision, 30 March 2020, paragraph 27 ([link](#)) – interim authorisation was granted on the day that the application was lodged; ACCC, Ingham's Group Ltd, other chicken processors and the Australian Chicken Meat Federation – Interim Authorisation Decision, 7 August 2020, paragraph 37 ([link](#)) – interim authorisation was granted one day after the application was lodged; ACCC, Western Australia – Interim Authorisation Decision, 29 April 2020, paragraph 25 ([link](#)) – interim authorisation was granted one day after the application was lodged; ACCC, Minerals Council of Australia – Interim Authorisation Decision, 24 April 2020, paragraph 32 ([link](#)) – interim authorisation was granted one day after the application was lodged.

⁷⁴ ACCC, Regional Express – Interim Authorisation Decision, 26 March 2020, paragraph 17 ([link](#)).

6 Significant public benefits

6.1 The relevant market

Consistent with the ACCC's analysis in relation to the REX Authorisation,⁷⁵ the Applicants consider that the area of competition likely to be affected by the authorisation is the supply of air passenger transport services on the Relevant Routes.

The Proposed Conduct should also be considered in a broader domestic aviation market in which, as the ACCC has stated, airline competition is critical for consumers and the economy, especially for a large country as geographically dispersed as Australia.⁷⁶ Any measures which enhance Virgin Australia's ability to offer services on the Relevant Routes will also have an impact on the competitiveness of its broader network and customer offer, increasing the viability of its services in the immediate term and its role as a sustainable competitor for Qantas in the long term.

The Applicants consider that freight services on the Relevant Routes are unlikely to be affected by the authorisation because there is very limited freight capacity on the Applicants' aircrafts that currently service the Relevant Routes. However, to the extent of the freight capacity on aircraft used to service the Relevant Routes, the Proposed Conduct is likely to provide increased opportunities for freight through the opening up of new routes or increasing competition on existing routes.

Overall, the Applicants consider that the assessment of competitive effects and public benefits arising from the Proposed Conduct do not turn on any particular market definition being adopted.

6.2 Significant public benefits

The Proposed Conduct will result in significant public benefits, including:

- Supporting regional air services and regional communities;
- Enabling airlines to better service essential travel during the COVID-19 crisis and its recovery;
- Increasing the opportunity to retain staff or provide employment opportunities;
- Promoting efficient operations;
- Allowing customers better connectivity and improved choice of services, routes and fares;
- Facilitating increased competition on regional routes; and

⁷⁵ ACCC, Final Determination dated 11 September 2020, paragraph 4.6 ([link](#))

⁷⁶ For completeness, two of the Relevant Routes are short haul international flights (Brisbane – Port Moresby and Brisbane – Honiara). Also see, ACCC, Airline competition in Australia, September 2020, p 1 ([link](#)).

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- Increasing the likelihood of Virgin Australia being able to sustain viability as a vigorous and effective competitor for passengers travelling within and in and out of Australia in the longer term.

Without the Proposed Conduct, these public benefits would either not be realised at all, would not be able to be achieved to the same degree or would not be achieved in the same time frame.

6.3 Supporting regional air services and regional communities

The Proposed Conduct relates to RPT services on the Relevant Routes. Many of the regional communities serviced by these routes rely on air services not only for essential services but for connectivity, tourism, employment and other economic activity. Further, for many of these communities, the impacts of COVID-19 are in addition to the devastating economic impacts of the drought and severe bushfires experienced earlier in the year.

Regional air services are not always profitable on an individual route basis given lower demand and significant overhead and operating costs. Lower overall demand for air services, combined with uncertainty around when normal travel will resume, has further impacted the commercial viability of regional services. Pre-COVID-19, some regional services were operated by airlines on a loss-making basis for network or connectivity reasons despite not being profitable on a standalone basis. In a post-COVID-19 world, with airlines sustaining significant losses, they will no longer be able to sustain loss-making services.

As announced on 9 September 2020, with the simplification of its fleet and ongoing subdued customer demand, Virgin Australia has been required to make some adjustments to its network including cancelling several regional routes across NSW, VIC, QLD and NT.⁷⁷

The Proposed Conduct offers an ability to reduce the cost and risk of providing and continuing to provide regional services in the current environment that the Applicants cannot achieve alone or under existing commercial arrangements.

For example, under the Proposed Conduct, Virgin Australia will have the ability to explore and consider whether and how it can, through cooperation with Alliance Airlines, re-enter cancelled regional routes including flights to Ayers Rock, Port Macquarie, Albury, Cloncurry, Mildura and Tamworth in a financially viable way, whether that be via a codeshare, wet lease or some other risk sharing arrangement.

In some circumstances, e.g., travel for the provision of essential services, the reduced availability of RPT services in the current environment has resulted in an increased reliance on charter flights by corporate customers. The Proposed Conduct will enable regional communities to have broader access to flights (e.g., not just corporates customers) at a lower cost, further supporting regional communities and economies.

As an example, the suspension of Virgin Australia wetlease services from Brisbane to Emerald at the end of March 2020 led to several corporate customers charting aircraft as

⁷⁷ ABC News, Virgin Australia walks away from 10 flight routes with regional centres affected across the country, 9 September 2020 ([link](#)).

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an alternative. However, these charter flights were not available to the general public, resulting in less competition and increased prices on remaining services with Qantas.

The Proposed Conduct will enable better access to RPT services and the economic activity that fosters will support both faster regional and national economic recovery.

6.4 Enabling airlines to better service essential travel during the crisis and its recovery

While the COVID-19 crisis, together with government restrictions on travel, has resulted in a reduction in most air travel demand, connectivity and passenger air travel services are required to meet the essential travel needs of Australians. These needs include supporting essential services such as energy generation and distribution, mining and food production, logistics and supply chain support, government operations, and to enable Australians to access healthcare or to travel for compassionate and family reasons.

However, as noted above, the cost and risk of supplying these services to some locations with reduced (albeit essential) demand and therefore revenue has made it unsustainable for Virgin Australia to provide or continue to provide these services or the same frequency of services on a stand-alone basis.

The Proposed Conduct will enable the Applicants to discuss, allocate and implement their resources to reduce risk and costs. This will allow greater and more efficient provision of air services than could be achieved without the Proposed Conduct including for essential travel by:

- Maximising the number of communities that it is commercially viable to provide services to and ensuring the most efficient aircraft are deployed for those services under the most efficient commercial arrangements;
- Avoiding duplication of services and costs where there is insufficient demand and reducing or removing unnecessary costs where another risk share model or reduced cost cooperative solution can be discussed, tested and provided;
- Enabling cooperation on schedules in order to reach the maximum number of passengers and provide better services to travellers and shippers; and
- Providing the potential for services on routes for which there is essential demand for passenger travel, that would not be commercially viable on a stand-alone basis.

Australians who must travel at this time will directly benefit from this cooperation and the continuation of services, as will airlines which will be able to realise efficiencies and maintain some revenue whilst facilitating the movement of essential services around the country.

6.5 Increasing the opportunity to retain staff or provide employment opportunities

The Proposed Conduct enables the provision of services at a reduced cost and lower level of revenue risk. It also allows the potential to provide services that would not be contemplated or commercially viable on a stand-alone basis.

This more efficient allocation of resources not only alleviates cash burn but will also improve the airlines' ability to retain remaining staff during the crisis and the recovery in a

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context where there is much uncertainty around when the crisis will end, when state border restrictions will be lifted, when broader network restrictions will be lifted, how demand for air services will be impacted and for how long. Since the outbreak of the COVID-19 pandemic, Virgin Australia has stood down 8,000 employees, Alliance has frozen new recruitment and reduced staff numbers by 6%,⁷⁸ and Qantas has stood down 20,000 employees.⁷⁹

The potential continuation or provision of services that would be considered commercially unviable on a stand-alone basis will not only impact the Applicants' own flight and cabin crew but ground handlers, caterers, cleaners and other staff at airports. It will also impact employment in businesses reliant on air services or tourism and the recovery of regional communities and economies.

6.6 Promoting efficient operations

The promotion of efficient operations and allocation of resources is in itself a public benefit. Moreover, in a scenario where airline services are not commercially / financially viable or are barely viable, providing those services as efficiently as possible is key to their continuity.

The Proposed Conduct will enable the Applicants to better match aircraft type and capacity to the nature and characteristics of each Relevant Route and in response to fluctuations in demand during the COVID-19 recovery process without the need for substantial and inefficient capital investment. After transitioning to an all-Boeing 737 fleet allowing operational simplification and savings, Virgin Australia will have to look to other methods of maintaining a presence on the Relevant Routes that cannot be serviced by this aircraft type or are not efficiently serviced by this aircraft type such as by negotiating codeshare or wet lease arrangements with Alliance Airlines. There are a number of airports that cannot be serviced by Boeing 737s due to runway limitations such as Weipa, Emerald, Cloncurry and Moranbah and a number of routes that can be more efficiently serviced using a different aircraft type due to their distance, nature and demand characteristics. For example, Virgin Australia previously operated the following routes under a turboprop operation, in part due to the suitability of this aircraft type: Canberra – Sydney; Canberra – Melbourne; Sydney – Port Macquarie; Sydney – Albury; and Sydney – Tamworth.

[Confidential: restriction of publication claimed]. Under the Proposed Conduct, those more appropriate and efficient options could be quickly deployed in a way that would not be possible absent the authorisation, for example, on routes such as **[Confidential: restriction of publication claimed]**.

As another example, on Western Australian routes, the ability under the Proposed Conduct to implement more efficient patterning of aircraft between existing Alliance Airlines charter flights and Virgin Australia RPT flights will allow aircraft to be redeployed onto other routes, or increased frequencies to be provided on existing routes (such as **[Confidential: restriction of publication claimed]**), offering a greater range of options to customers.

⁷⁸ Alliance Aviation Services (AQZ) ASX release: "Trading update and COVID-19 response" (20 March 2020) ([here](#)).

⁷⁹ Qantas, Qantas to boost regional flights with new Brisbane-Port Macquarie service, 10 September 2020 ([link](#))

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On the Relevant Routes where both an Applicant from the Virgin Australia Group and Alliance Airlines currently operate services, the Proposed Conduct would allow capacity and schedule co-ordination to best match demand and utilise resources as described in section 4.5(b).

More generally, the Proposed Conduct will optimise the Applicants' regional services and therefore increase their sustainability. For example, the Applicants will be able to better understand and implement an arrangement that will most efficiently and sustainably service a particular regional centre during the COVID-19 crisis and its recovery (whether that be by wet lease, codeshare or some other risk share arrangement), being able to deploy better matched or more efficient aircraft without the financial risk of significant capital expenditure and achieving operational efficiencies in making sure the right airline is operating the services to best match demand and the strengths of each airline.

Now more than ever, given the upheaval in the aviation sector and the drastic impact of COVID-19 on demand for air travel, which is not expected to return to pre-COVID-19 levels for a minimum of 3 years, efficient spend and allocation of resources is crucial to the sustainability of competition in the longer term.

6.7 Allowing better connectivity and improved choice of services, routes and fares

With the ability to explore and implement the best ways to reduce risk and cost-effectively service routes or regional centres, the Proposed Conduct will allow for better connectivity and scheduling options, improved choice of routes and service type, and improved choice of fare.

For example, the Proposed Conduct would allow the Applicants to consider collaboration to:

- **Launch services on new routes.** There are certain Relevant Routes on which neither Applicant currently provides RPT services such as **[Confidential: restriction of publication claimed]**. Neither Applicant would on its own launch RPT services on these routes in the foreseeable future, especially as demand fluctuates towards recovery. Alliance Airlines does not have the sales distribution capability or feed from capital city origin or destinations to make this feasible and Virgin Australia does not have access to suitably sized aircraft.⁸⁰ The Proposed Conduct would allow a risk-sharing approach, minimising cost by utilising each airline's strengths and resources and the collaboration required to optimise schedules and maximise connectivity onto these routes such that their provision becomes feasible.

This could also include the potential to service routes such as **[Confidential: restriction of publication claimed]**.⁸¹

- **Provide more competitive options on routes allowing more fare options for customers.** Not only will the Proposed Conduct allow the launch of services on routes on which neither Applicant currently operate, it will also allow for:

⁸⁰ Boeing 737 aircrafts cannot physically operate services into Weipa and this aircraft is not efficient or effective in the provision of services on Cairns-Darwin.

⁸¹ **[Confidential: restriction of publication claimed]**.

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- the provision of more competitive services on routes that Virgin Australia had to exit or did not have a presence on, whether that be through codeshare or wetlease or some other commercial arrangement; and
- the potential for services or increased services where only charter services or limited RPT services would otherwise be viable.

For example, under the Proposed Conduct, Virgin Australia will have the ability to explore and consider whether and how it can re-enter cancelled regional routes including flights to [Confidential: restriction of publication claimed] in a financially viable way. It will also allow the potential to incorporate other routes currently operated by Alliance Airlines into the Virgin Australia's network such as [Confidential: restriction of publication claimed] via codeshare or other arrangement (with the likelihood and speed of such arrangements being reached vastly, and more cost effectively, improved under the Proposed Conduct).

- **Provide better frequency and scheduling options.** As a result of the Proposed Conduct, the Applicants will be able to provide better frequency and scheduling options for customers than would otherwise be the case.

For example, Virgin Australia currently operates [Confidential: restriction of publication claimed].⁸² Under the Proposed Conduct, the Applicants can better match the most efficient aircraft to demand whether that means transferring charter customers onto existing RPT services to better utilise those aircrafts, providing a different number of services with more suitable aircraft or converting charter services into additional RPT services all of which could result in increased frequencies that would provide a better schedule spread and range of customer options.

[Confidential: restriction of publication claimed] appealing to a broader spectrum of customers, including higher yield corporate customers where the broader spread of frequencies would also provide greater competition against Qantas.

Further, under the Proposed Conduct, instead of the Applicants flying wingtip to wingtip on the same days of week, the ability to better co-ordinate schedules and align frequencies to the times of day or days of week more suited to their respective aircraft sizes will allow the Applicants to provide greater competition with Jetstar, better utilisation of aircraft and more options for customers on [Confidential: restriction of publication claimed].

These examples of aircraft optimisation and scheduling (especially with uncertain and fluctuating demand) could simply not be achieved to provide viable services without the collaboration made possible by the authorisation.

- **Allow efficiencies that lead to better pricing.** The Proposed Conduct will allow improved operational efficiencies and cost savings. This is likely to result in better pricing for customers. The most obvious example of improved operational efficiencies is the ability to deploy the right aircraft at a lower cost than could otherwise be commercially negotiated given Virgin Australia's simplified fleet.

⁸² [Confidential: restriction of publication claimed].

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- **Allow solutions providing substitute route competition for regional centres or substitute travelling options.**
- **Enable less downtime and service disruption.** Under the Proposed Conduct, these public benefits can be derived due to the Applicants' combined access to spare parts and fleet which would not be available to the same degree or at the same cost without authorisation.
- **Provide additional lounge benefits and Velocity frequent flyer program benefits for customers.** For example, the Proposed Conduct may lead to the availability of benefits such as priority check-in, priority baggage, priority boarding and additional baggage allowance increasing the convenience and competitiveness of flight offerings.

6.8 Promoting costs savings

The Proposed Conduct is likely to deliver public benefits in the form of significant cost savings such as those listed below.

- **Improvement of work practices.** [Confidential: restriction of publication claimed].
- **Reduction of aircraft components, inventory and maintenance costs.** [Confidential: restriction of publication claimed].
- **Reduction in passenger taxes.** The Applicants may incur a reduction in passenger taxes under a new codeshare or other partnership arrangements.
- **General airport costs (including catering and fuel costs).** The Applicants may incur a reduction in catering and fuel costs under a new codeshare or other partnership arrangements due to combined spending.

6.9 Facilitating increased competition on regional routes

With unusually low demand, the viability and sustainability of flight services that were operated pre-COVID-19 has come into question.

As noted by the ACCC Chair Rod Sims, "*Alliance Airlines is a close, important and growing competitor to Qantas, including through its partnership with Virgin. It provides consumers and companies with a crucial alternative to Qantas in markets that are already highly concentrated*".⁸³

Without the Proposed Conduct, the ability of both Virgin Australia and Alliance Airlines to compete effectively with Qantas and other operators during and post the crisis will be hampered.

With competition or potential competition comes better price-service outcomes for customers and increased choice and flexibility. The vast majority of the Relevant Routes are serviced by Qantas / Jetstar. Where Qantas has a monopoly on the provision of scheduled services for particular routes or to particular regional centres, the Applicants will not be in a position to readily and effectively challenge that monopoly, absent the

⁸³ ACCC, Qantas stake in Alliance Airlines raises concerns, 1 August 2019 ([link](#)).

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Proposed Conduct. As an example, Qantas is currently the only provider of scheduled services on **[Confidential: restriction of publication claimed]**, a route that could become feasible for service by the Applicants under the Proposed Conduct but on which neither Applicant is likely to provide services absent the authorisation.

The longer Qantas has the monopoly on the provision of scheduled services, particularly given the fluctuating demand and the anticipated long wait for 'normal demand' to be reinstated, the more entrenched that monopoly position could become. This may impact both route specific competition and broader competition for corporate travel or domestic and international travel where network coverage (and the depth and breadth of services) as well as loyalty programs inform customer behaviour and airline preferences.

As an example, Qantas is currently the only provider of scheduled services between **[Confidential: restriction of publication claimed]**.⁸⁴ Virgin Australia no longer has the aircraft type capable of servicing this route and Alliance Airlines currently only operates charter services on **[Confidential: restriction of publication claimed]**. Alliance Airlines will continue to operate charter services, but under the Proposed Conduct there is an increased likelihood that RPT service competition will resume and an alternative scheduled service provider to Qantas will become available to customers.

Another example of how the Proposed Conduct can facilitate increased competition on regional routes is in relation to services between **[Confidential: restriction of publication claimed]**. Alliance Airlines currently operates **[Confidential: restriction of publication claimed]**. These services are not covered by the existing Virgin-Alliance Airlines Charter Alliance authorisation. Virgin Australia ceased operations on this route in September 2017. Having these flights form part of the broader Virgin Australia network, will enable on-carriage for passengers, a better corporate offering for Virgin Australia and efficiencies through access to Virgin Australia's distribution platform.

[Confidential: restriction of publication claimed].

The Proposed Conduct will allow a greater potential to increase competition or competitive services on routes in a quicker and more effective fashion - not only in terms of the way routes are or could be serviced, and the sustainability of those services, but whether and when they will be serviced at all.

6.10 Increasing the likelihood of long-term competition for passengers travelling within and in and out of Australia

The ACCC has recently noted that:⁸⁵

"A competitive air passenger transport services industry is vital to meet the needs of consumers and the economy more broadly, especially for a large country as geographically dispersed as Australia. Rivalry between airlines can encourage cheaper airfares, more favourable terms and conditions, better quality in-flight services, more frequent services and a broader network reach."

The Proposed Conduct will increase the likelihood of both Alliance Airlines and Virgin Australia continuing to maintain competitive tension with competing carriers, providing a

⁸⁴ **[Confidential: restriction of publication claimed].**

⁸⁵ ACCC, Airline Competition in Australia Report, 17 September 2020, page 1 ([link](#)).

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greater level of service through the COVID-19 crisis, and being able to rebuild and grow post-crisis. This is especially true once the government funding that has been provided to support continued air services into regional centres is reduced or removed.

The ability to ensure that services are appropriately matched to demand during the COVID-19 crisis and recovery will limit cost inefficiencies for an industry that has been severely impacted by the COVID-19 crisis and make it more likely that each airline will continue to vigorously compete on routes in the future to the benefit of the Australian travelling public.

It is not in the interests of Australian travellers or businesses to allow a return to a monopoly in Australian air travel. Moves by Virgin Australia to right-size its network, simplify its fleet and compete through partnerships such as the Proposed Conduct in a time of uncertainty and unusually low demand (particularly on services which pre-COVID-19 were not, or were only barely profitable) rather than expose itself to much greater financial risk will allow it to maintain a presence and commitment to regional flying whilst rebuilding its financial position. This will enable Virgin Australia to be in a much better position to grow and compete across regional, domestic and international routes as demand recovers.

7 No material competitive detriment

7.1 Overview

The Proposed Conduct will not result in any material competitive detriment for the reasons outlined below.

In any event, any potential lessening of competition posed by the Proposed Conduct will be offset by the significant public benefits described in section 6 above. These include benefits that will result quickly and have great impact in the short-term, such as better servicing of essential travel to and from regional communities during and after the COVID-19 pandemic, and the broader benefits of supporting ongoing competition in the Australian aviation industry over the longer-term.

7.2 Limited competitive overlap between the Applicants

There is limited overlap between the operations of the Applicants. Of the Relevant Routes:

- Currently, the Applicants only directly overlap in the provision of scheduled or RPT services on Brisbane - Proserpine. Both Qantas (under a codeshare agreement with Jetstar) and Jetstar provide competing scheduled services on this route.
- Virgin Australia only codeshares on Alliance Airlines flights on three Relevant Routes, Brisbane – Gladstone (reduced schedule), Brisbane - Port Macquarie (currently suspended) and Brisbane – Bundaberg (currently suspended), and these routes are also serviced by Qantas.⁸⁶

⁸⁶ Noting that Qantas will provide Brisbane - Port Macquarie flights on reopening of the border: see [here](#).

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The Applicants currently provide complementary operations and, rather than removing or reducing existing competition, their cooperation under the Proposed Conduct will provide stronger competition to Qantas and other carriers and better outcomes for Australian travellers.

7.3 Vigorous and effective competitors

(a) Qantas

The vast majority of the Relevant Routes are serviced by Qantas, Jetstar or, in some cases, both. There are also several routes on which Qantas is the sole scheduled service provider. Prior to the COVID-19 pandemic (and Virgin Australia's voluntary administration), Qantas accounted for approximately 60% of the Australian domestic passenger sector across its Qantas and Jetstar brands.⁸⁷ Qantas anticipates that this will increase to 70% following Virgin Australia's voluntary administration and the discontinuation of the Tigerair brand.⁸⁸

In response to the COVID-19 pandemic, Qantas is competing vigorously to maintain its leading market position and has the resources to respond quickly to volatile demand in the recovery process. For example, in June 2020, in an effort to encourage latent travel demand in response to easing of travel restrictions by various state governments, Jetstar ran a promotional sale offering extremely competitive intra-state and inter-state flights. Jetstar sold 10,000 tickets at \$19 each and offered triple loyalty points for tickets purchased during the sale.⁸⁹ Reflecting latent consumer travel demand, Jetstar reported that this promotion was one of its fastest selling sales ever, with consumers buying nearly 150,000 tickets in 3 days and tickets being purchased at a rate of 220 tickets per minute, 40 times higher than its general rate of its bookings.⁹⁰ Jetstar was also able to immediately announce slashed fares on Sydney to Adelaide following announcements that South Australia would reopen its border to NSW. With an extensive network depth and breadth and popular loyalty program, Qantas also dominates the higher yielding business travel and the routes on which airlines derive their core profitability in order to allow the provision of other less profitable or unprofitable routes (including some regional services).

(b) REX

Despite COVID-19, REX is currently planning to expand its operations. REX's Deputy Chairman, John Sharp, recently noted that:⁹¹

REX has the biggest regional network in Australia, and we are the only carrier in Australia that has been able to successfully navigate the turmoil and shocks over the last two decades with uninterrupted operational profits since 2003.

Historically, REX has been a regional airline and does not operate between Australia's major cities. REX's focus on intra-state routes has helped protect it from the negative

⁸⁷ ACCC, Airline Competition in Australia Report, September 2020, page 3 ([link](#)).

⁸⁸ Qantas ASX release: "Qantas Group FY20 Results ASX and Media Release", 20 August 2020 ([here](#)).

⁸⁹ Qantas, Australians Snap up Domestic Fare Sales, 19 June 2020 ([link](#)).

⁹⁰ Qantas, Australians Snap up Domestic Fare Sales, 19 June 2020 ([link](#)).

⁹¹ REX, Rex Board has approved plans for domestic operations, 29 June 2020 ([link](#))

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effects of federal and state border closures.⁹² Demand for REX’s intra-state regional routes in Queensland and Western Australia are showing steady recovery.⁹³ Demand for REX’s intra-state regional routes in South Australia are also showing positive signs of recovery. COVID-19 has created expansion opportunities for REX who intend to start providing Sydney-Melbourne-Brisbane ‘Golden Triangle’ routes using an initial fleet of 10-15 narrow body jet crafts.⁹⁴ REX is currently finalising a \$30 million capital raising to fund its entry into the interstate operations and is expected to commence flying in March 2021.⁹⁵

This emphasises the need for Virgin Australia to pursue partnerships such as the Proposed Conduct to provide services, rather than engage in higher risk, higher cost options, particularly as it emerges from external administration and deals with the slow, non-linear and volatile recovery in demand.

Airnorth also provide regional services along with several other charter service providers. As shown in the table below, Airnorth relevantly supplies the Cairns – Darwin route.

Table 3: Relevant Routes noting current operators of RPT services and pre-COVID-19 providers (given current operations limited by travel restrictions etc)

Origin	Destination	Airlines operating services pre-COVID-19	Airlines currently operating
Brisbane	Honiara	Virgin Australia, Solomon Air	None
Brisbane	Proserpine	Jetstar, Virgin Australia	Jetstar, Virgin Australia, Alliance Airlines, Qantas
Brisbane	Mackay	Qantas, Jetstar, Virgin Australia	Qantas, Jetstar, Virgin Australia
Brisbane	Emerald	Qantas, Virgin Australia	Qantas
Brisbane	Mount Isa	Qantas, Virgin Australia	Qantas, Virgin Australia
Brisbane	Newcastle	Qantas, Virgin Australia, Jetstar	Virgin Australia, Qantas, Jetstar
Brisbane	Cloncurry	Virgin Australia	None
Brisbane	Port Moresby	Air Niugini, Qantas, Virgin Australia	None
Brisbane	Alice Springs	Qantas, Virgin Australia	Qantas
Brisbane	Rockhampton	Qantas, Virgin Australia	Qantas, Virgin Australia
Brisbane	Moranbah	Qantas	Qantas, Alliance Airlines

⁹² ACCC, Airline Competition in Australia Report, September 2020, page 7 ([link](#)).

⁹³ ACCC, Airline Competition in Australia Report, September 2020, page 7 ([link](#)).

⁹⁴ REX, Rex Board has approved plans for domestic operations, 29 June 2020 ([link](#))

⁹⁵ ACCC, Airline Competition in Australia Report, September 2020, page 7 ([link](#)).

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Origin	Destination	Airlines operating services pre-COVID-19	Airlines currently operating
Brisbane	Gladstone	Qantas, Alliance Airlines	Qantas, Alliance Airlines
Brisbane	Port Macquarie	Alliance Airlines	None
Brisbane	Bundaberg	Qantas, Alliance Airlines	Qantas
Brisbane	Weipa	Qantas	Qantas
Brisbane	Ayers Rock	Jetstar	Jetstar
Brisbane	Tamworth	Qantas, Fly Corporate (now Link Airways)	Link Airways
Cairns	Ayers Rock	Qantas	Jetstar, Qantas
Cairns	Darwin	Jetstar, Airnorth	Airnorth
Cairns	Maroochydore	None	Alliance Airlines
Canberra	Maroochydore	None	None
Alice Springs	Darwin	Qantas	Qantas, Airnorth
Alice Springs	Ayers Rock	Qantas	None
Melbourne	Kununurra	None	None
Melbourne	Newcastle	Jetstar, Virgin Australia	None
Melbourne	Canberra	Qantas, Virgin Australia, Tigerair	Qantas, Virgin Australia
Melbourne	Mildura	Qantas, Virgin Australia, REX	Qantas, Rex
Adelaide	Olympic Dam	Alliance Airlines	Alliance Airlines
Adelaide	Canberra	Qantas, Virgin Australia	Qantas, Virgin Australia ⁹⁶
Adelaide	Alice Springs	Qantas, Virgin Australia	Qantas, Virgin Australia
Sydney	Canberra	Qantas, Virgin Australia	Qantas
Sydney	Coffs Harbour	Qantas, Virgin Australia, Tigerair	Qantas, Virgin Australia
Sydney	Port Macquarie	Qantas, Virgin Australia	Qantas
Sydney	Tamworth	Qantas, Virgin Australia	Qantas
Sydney	Albury	Qantas, Virgin Australia, REX	Qantas, REX

⁹⁶ From 12 October 2020 onwards.

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Origin	Destination	Airlines operating services pre-COVID-19	Airlines currently operating
Sydney	Ayers Rock	Jetstar, Virgin Australia	None
Cloncurry	Mount Isa	Virgin Australia	Qantas
Perth	Kalgoorlie – Boulder	Qantas, Virgin Australia	Qantas, Virgin Australia
Perth	Kununurra	Virgin Australia, Airnorth	Virgin Australia, Airnorth
Perth	Port Hedland	Qantas, Virgin Australia	Qantas, Virgin Australia
Perth	Newman	Qantas, Virgin Australia	Qantas, Virgin Australia
Perth	Karratha	Qantas, Virgin Australia	Qantas, Virgin Australia
Perth	Onslow	Virgin Australia	Virgin Australia

This table does not include those competitors that have announced new services on the Relevant Routes once borders reopen as they did not provide those services pre-COVID-19 and are not currently providing them. For example, Qantas has announced that it will provide Brisbane-Port Macquarie services following the QLD- NSW border reopening.

7.4 The Applicants will be constrained from anti-competitively increasing price

The Applicants will not have the ability or incentive to raise prices for flights on the Relevant Routes in an anti-competitive fashion. Along with competition and potential competition from alternate providers, the Applicants are battling uncertainty and record low levels of customer demand and consumer confidence. These levels are unlikely to recover to their pre-COVID-19 state within the 2-year authorisation period. As noted by the ACCC in its Airline Competition in Australia Report released in September 2020, overall, domestic air passenger numbers and seating capacity during April 2020 were down around 95% relative to April 2019.⁹⁷ Customer demand is susceptible to travel restrictions and fear of getting caught by open borders re-closing if there is a sudden outbreak of COVID-19. Airlines will be trying to incentivise a public that will be wary of travel and travel by air. Raising prices in an anti-competitive fashion simply will not achieve that goal.

Now and as borders continue to reopen, airlines such as Qantas will compete vigorously on price in order to attract customers, maintain and increase market share and recover the costs of grounded planes and unprofitable flights. For example, immediately after South Australia announced it would reopen its border with NSW, Jetstar announced it would slash 5,000 fares from Sydney to Adelaide to \$59.

7.5 Promoting competition in the domestic aviation industry post COVID-19

The significant and swift reduction in demand for air passenger services resulting from COVID-19 and travel restrictions threatens the viability of operating on the Relevant

⁹⁷ ACCC, Airline Competition in Australia Report, 17 September 2020, page 1 ([link](#)).

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Routes. This is notwithstanding that, in the longer term, demand for these services may return and be enough to otherwise sustain the Applicants' operations.

Rather than reducing competition, the Proposed Conduct allows the Applicants to:

- Provide competitive services that would not otherwise take place; and
- Provide the services that would take place more efficiently (e.g., by better matching the aircraft type to demand) or with better scheduling outcomes for customers.

This will result in increased competition for regional services both in the short and long run. The Proposed Conduct, through its ability to enable lower risk and lower cost or more cost-efficient service provision, will increase the likelihood that those services and that level of competition can be sustained, allowing stronger regional providers to survive and emerge post crisis and continue to promote competition in the long run.

Without authorisation of the Proposed Conduct, there will likely be fewer services and fewer competitors on the Relevant Routes for a longer period of time. For example, on 9 September 2020, Virgin Australia announced it would be withdrawing from Sydney-Tamworth as it was not commercially viable.⁹⁸ Currently, only Qantas provides RPT services on this route. Under the authorisation, the Applicants can discover whether through appropriate risk sharing a competing service can be provided on this route.

7.6 Significant bargaining power of customers

Some Relevant Routes have a significant number of corporate customers who are predominantly large, well-resourced resource companies, with sophisticated procurement expertise.

For example, the number one customer on the Adelaide – Olympic Dam route, a Relevant Route operated by Alliance Airlines as an RPT service, is BHP Billiton (**BHP**). BHP owns and operates Olympic Dam, one of the world's most significant deposits of copper, gold, silver and uranium.⁹⁹ BHP is also one of South Australia's largest employers, with approximately 4,000 staff in 2019.¹⁰⁰ As of March 2020, BHP charters approximately 42 flights from Adelaide to Olympic Dam every week.¹⁰¹ In addition to these charter services, BHP flies many passengers using RPT airline services from Adelaide to Olympic Dam. From BHP's perspective, charter flights and RPT flights from Adelaide to Olympic Dam are generally substitutable. Given the volume of RPT tickets BHP regularly purchases on the Adelaide to Olympic Dam route and BHP's ability to substitute between RPT and charter flights from Adelaide to Olympic Dam, BHP has significant bargaining power in negotiations with airlines for flights from Adelaide to Olympic Dam, for both RPT and charter services.

⁹⁸ ABC News, Virgin Australia walks away from 10 flight routes with regional centres affected across the country, 9 September 2020 ([link](#)).

⁹⁹ BHP Billiton, Olympic Dam, accessed 18 September 2020 ([link](#)).

¹⁰⁰ BHP Billiton, Olympic Dam's mine school growing jobs and skills in SA, 30 August 2019 ([link](#)).

¹⁰¹ BHP Billiton, BHP begins thermal screening at Adelaide Airport, 26 March 2020 ([link](#)).

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7.7 The Proposed Conduct is a low-risk temporary measure

The Proposed Conduct is a temporary measure that is necessary for the Applicants to get through the COVID-19 crisis and to recover from the crisis as quickly and efficiently as possible by allowing better access and connectivity in a quicker and more sustainable fashion to regional communities and economies as they recover and rebuild.

The proposed authorisation is limited in scope and duration, applying only to the Relevant Routes and only for 2 years such that the public benefits of the authorisation will vastly outweigh any potential detriment.

8 Conclusion

For the reasons set out above, the Applicants submit that the ACCC ought to:

- Grant urgent interim authorisation of the Proposed Conduct by 30 October 2020 to enable the Applicants to commence cooperation and be in the best position to provide the resulting public benefits as soon as possible; and
- Grant authorisation of the Proposed Conduct for a period of 2 years.

The Proposed Conduct will create significant public benefits without any material competitive detriments and the sooner authorisation is granted the more likely competitive regional service offerings can be put in place and sustained in the longer term.