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SHS:CXB:1006827



9 July 2009

By hand

Richard Chadwick
General Manager, Adjudication
Australian Competition and Consumer Commission
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123 Pitt Street
Sydney NSW 2000

Gilbert + Tobin

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Sydney NSW 2000
Australia

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Dear Mr Chadwick,

Virgin Blue Airlines Pty Ltd and Delta Air Lines, Inc. – Applications for Authorisation

We act for Virgin Blue Airlines Pty Ltd (ACN 125 580 823), Virgin Blue International Airlines Pty Ltd (ACN 125 580 823), Pacific Blue Airlines (Aust) Pty Ltd (ACN 097 892 389) and Pacific Blue Airlines (NZ) Ltd (together the **Virgin Blue Group**). We have been instructed to submit an application for authorisation on behalf of the Virgin Blue Group and Delta Air Lines, Inc. (**Delta**).

The Virgin Blue Group and Delta (the **Applicants**) apply for authorisation pursuant to section 88(1) of the *Trade Practices Act 1974* (Cth) (**TPA**) in respect of proposed arrangements between the Applicants.

These arrangements are contained in the Coordination Agreement, the Cooperation Agreement and the Joint Venture Agreement (copies of which are provided in a confidential annexure to the supporting submission described below).

We enclose:

- (a) Forms A and B, being the Application forms prescribed by regulation for authorisation of exclusionary provisions and agreements affecting competition;
- (b) a confidential supporting submission to the Commission (**Submission**); and
- (c) a cheque for the appropriate filing fee of \$9,000.

We refer to the telephone conversation of this afternoon between Darrell Channing and Charlie Beasley and confirm our request that the enclosed version of the Submission be excluded from the Commission's Public Register. The Applicants make this request on the basis that this version of the Submission (including annexures) contains information that is commercially confidential to the Applicants. The disclosure of this information would unreasonably and adversely affect the Applicants in respect of their lawful business, commercial and financial affairs. We note that we will shortly be providing the Commission with a public version of the Submission (with confidential information redacted) which may be placed on the Commission's Public Register.

We also refer to the telephone conversation of this morning between Richard Chadwick and Simon Snow and confirm that we will submit an additional form seeking authorisation in relation to the new cartel provisions as soon as a form becomes available.

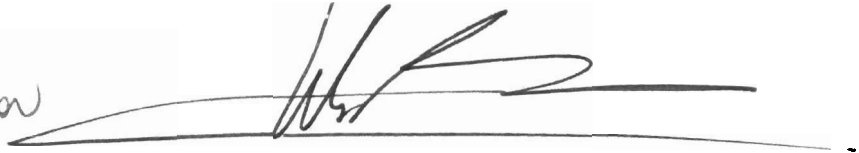
Should you have any questions, please do not hesitate to contact either of us.

Yours faithfully

Gilbert + Tobin



Simon Snow
Partner
T +61 2 9263 4246
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Charlie Beasley
Lawyer
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FORM A

Commonwealth of Australia

Trade Practices Act 1974 - subsection 88 (1)

EXCLUSIONARY PROVISIONS: APPLICATION FOR AUTHORISATION

(regulation 70)

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

1 Applicant

(a) Name of Applicants:

Virgin Blue Airlines Pty Ltd (ACN 090 670 965);
Virgin Blue International Airlines Pty Ltd (ACN 125 580 823);
Pacific Blue Airlines (Aust) Pty Ltd (ACN 097 892 389); and
Pacific Blue Airlines (NZ) Ltd (together **the Virgin Blue Group**)

Delta Air Lines, Inc. (**Delta Air Lines**)

This application is to be read and determined together with the application in Form B (together the **Application**).

A copy of the submission made in support of the Application is attached (the **Submission**).

(b) Description of business carried on by applicants:

The provision of domestic and international air transportation services.

(c) Address in Australia for service of documents on the applicants:

Gilbert + Tobin
Level 37, 2 Park Street
SYDNEY NSW 2000

Attention: Simon Snow
Tel: 02 9236 4246
Fax: 02 9263 4111
ssnow@gtlaw.com.au

and Charlie Beasley
Tel: 02 9263 4349
Fax: 02 9263 4111
cbeasley@gtlaw.com.au

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2 Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

The Virgin Blue Group and Delta Air Lines seek authorisation to make, and give effect to the following agreements: a Cooperation Agreement, a Coordination Agreement and a Joint Venture Agreement, together establishing a joint venture between the Applicants (collectively, the **JV Agreements**).

Confidential copies of the JV Agreements are attached.

(b) Description of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions:

See attached Submission.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Commercial passenger airline services.

(d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation of the JV Agreements is being sought for a period of at least 5 years.

The grounds supporting this period of authorisation are set out in the attached Submission.

3 Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Not applicable.

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

Not applicable.

4 Public benefit claims

(a) Arguments in support of application for authorisation:

See attached Submission.

(b) Facts and evidence relied upon in support of these claims:

See attached Submission.

5 Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services;

any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

See attached Submission.

6 Public detriments

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:**

No detriments to the public will result or be likely to result from the JV Agreements.

- (b) Facts and evidence relevant to these detriments:**

See attached Submission.

7 Contracts, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

Is this application to be so expressed?

No.

- (a) If so, the following Information is to be furnished:**

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:**

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known - names, addresses and descriptions of business carried on by those other parties:**

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known - description of the class of business carried on by those possible parties:**

Not applicable.

8 Joint ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?**

Yes.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?**

Yes (being the attached Form B).

(c) If so, by whom or on whose behalf are those other applications being made?

The Virgin Blue Group and Delta Air Lines.

9 Further information

(a) Name, postal address and telephone contact details of the person authorised by the applicants seeking authorisation to provide additional information in relation to this application:

Gilbert + Tobin
Level 37, 2 Park Street
SYDNEY NSW 2000

Attention: Simon Snow
Tel: 02 9236 4246
Fax: 02 9263 4111
ssnow@qtlaw.com.au

and Charlie Beasley
Tel: 02 9263 4349
Fax: 02 9263 4111
cbeasley@qtlaw.com.au

Dated 9 July 2009

Signed by/on behalf of the applicants



(Signature)

SIMON HUGH SNOW
(Full Name)

GILBERT + TOBIN
(Organisation)

PARTNER
(Position in Organisation)

Directions

- 1 In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
- 2 Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
- 3 Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
- 4 Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions.

In providing these details:
 - (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
- 5 Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
- 6 Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
- 7 Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
- 8 Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.
- 9 Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
- 10 Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

FORM B

Commonwealth of Australia

Trade Practices Act 1974 - subsection 88 (1)

AGREEMENTS AFFECTING COMPETITION: APPLICATION FOR AUTHORISATION

(regulation 70)

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to make a contact or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

1 Applicant

(a) Name of Applicants:

Virgin Blue Airlines Pty Ltd (ACN 090 670 965);
Virgin Blue International Airlines Pty Ltd (ACN 125 580 823);
Pacific Blue Airlines (Aust) Pty Ltd (ACN 097 892 389); and
Pacific Blue Airlines (NZ) Ltd (**together the Virgin Blue Group**)

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Delta Air Lines, Inc. (**Delta Air Lines**)

This application is to be read and determined together with the application in Form B (together the **Application**).

A copy of the submission made in support of the Application is attached (the **Submission**).

(b) Description of business carried on by applicants:

The provision of domestic and international air transportation services.

(c) Address in Australia for service of documents on the applicants:

Gilbert + Tobin
Level 37, 2 Park Street
SYDNEY NSW 2000

Attention: Simon Snow and Charlie Beasley
Tel: 02 9236 4246 Tel: 02 9263 4349
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ssnow@qtlaw.com.au cbeasley@qtlaw.com.au

2 Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

The Virgin Blue Group and Delta Air Lines seek authorisation to make, and give effect to the following agreements: a Cooperation Agreement, a Coordination Agreement and a Joint Venture Agreement, together establishing a joint venture between the Applicants (collectively, the **JV Agreements**).

Confidential copies of the JV Agreements are attached.

(b) Description of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition:

See attached Submission.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Commercial passenger airline services.

(d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation of the JV Agreements is being sought for a period of at least 5 years.

The grounds supporting this period of authorisation are set out in the attached Submission.

3 Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Not applicable.

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

Not applicable.

4 Public benefit claims

(a) Arguments in support of application for authorisation:

See attached Submission.

(b) Facts and evidence relied upon in support of these claims:

See attached Submission.

5 Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

See attached Submission.

6 Public detriments

(a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

No detriments to the public will result or be likely to result from the JV Agreements.

(b) Facts and evidence relevant to these detriments:

See attached Submission.

7 Contracts, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

Is this application to be so expressed?

No.

(a) If so, the following information is to be furnished:

(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

Not applicable.

(ii) Where the parties to the similar term contract(s) are known - names, addresses and descriptions of business carried on by those other parties:

Not applicable.

(iii) Where the parties to the similar term contract(s) are not known - description of the class of business carried on by those possible parties:

Not applicable.

8 Joint ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

Yes.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Yes (being the attached Form A).

- (c) If so, by whom or on whose behalf are those other applications being made?

The Virgin Blue Group and Delta Air Lines.

9 Further information

- (a) Name, postal address and telephone contact details of the person authorised by the applicants seeking authorisation to provide additional information in relation to this application:

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and Charlie Beasley
Tel: 02 9263 4349
Fax: 02 9263 4111
cbeasley@gtlaw.com.au

Dated 9 July 2009

Signed by/on behalf of the applicants



.....
(Signature)

SIMON HUGH SNOW
.....
(Full Name)

GILBERT + TOBIN
.....
(Organisation)

PARTNER
.....
(Position in Organisation)

Directions

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.

Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.

Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition.

In providing these details:

1. to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
2. to the extent that of any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.

Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

- 16 Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
- 17 Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
- 18 Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
- 19 Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.