



Our reference Michael Bradley 09392
Phone 8216 3006
Email michaelb@marquelawyers.com.au

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Dr. Richard Chadwick
General Manager
Adjudication Branch
Australian Competition & Consumer Commission

Dear Sir

Virgin Blue Group and Delta Airlines Inc applications for authorisation A91151 and A91152

We act for United Air Lines, Inc. (**United**). We refer to the Commission's invitation to United to comment on the above applications (**applications**). We are instructed to provide to the Commission the comments set out below on United's behalf.

United wishes to provide limited commentary on some specific aspects of the applications in order to assist the Commission's deliberations. In relation to aspects of the applications not discussed in this letter, United's silence should not be taken as agreement with any of the factual assertions or submissions made in the applications.

United does not intend to make a specific submission in support of or in opposition to the applications. ~~United does, however, consider that there are some factual matters and general issues that it can~~ usefully bring to the Commission's attention for consideration. These are raised below in no particular order.

A thorough review is warranted.

In general, United believes that some integrated, revenue-sharing airline joint ventures can generate substantial benefits for consumers and valuable operating efficiencies for the airlines involved. This is particularly true when the joint venture is structured to achieve "metal neutrality" or the incentive for each airline to sell the services of the joint venture without any preference for the flights that the airline itself operates over those operated by its joint-venture partner(s). Onerous legal restrictions such as ownership-and-control laws, cabotage laws and other restrictions contained in international . . . agreements give airlines no option but to form joint ventures (alliances) in order to develop integrated global networks and manage the challenges that are inherent in maintaining service in international markets.

In the United States, the U.S. Department of Transportation, (**US DOT**), recognizing these restrictions and the potential benefits of integrated alliances, has exercised its legal authority to grant immunity from U.S. antitrust laws for airline alliances and integrated joint ventures, but only after having

conducted an extensive and highly rigorous review to ascertain whether a particular proposed joint venture is in the public interest. In this case, the Commission should conduct a thorough review, with careful scrutiny of all of the applicants' claims including the claimed public benefits, as well as the factual basis for each of those claims, before deciding whether to approve the applications.

All market participants must be afforded a fair and equal opportunity to compete on a level playing field.

The Commission historically has been unwilling to authorise joint ventures between airlines that are participants in markets between Australia and North America. Earlier this year, the Commission denied an application by Air New Zealand and Air Canada, which are partners of United in the Star Alliance, to implement a joint venture, even though Air New Zealand does not operate any nonstop service between Australia and Canada.

While United does not take a position on whether the applications should be approved, United strongly believes that it is important for the Commission to approach all cases in a consistent and fair manner. It is essential that the rules and policies apply consistently to participants in the market so that those participants are able to compete on a level playing field. If the Commission ultimately decides to grant the Delta/Virgin Blue application, the Commission should do so on the basis that it also is willing to approve similar joint ventures proposed by other market participants, including United and its Star Alliance partners. This would ensure a level competitive playing field in which all market participants would be afforded fair and equal treatment.

The market for Australia-U.S. air services is highly competitive.

Delta/Virgin, in seeking authorisation of the agreements, assert that Qantas and United have a "virtual duopoly" in Australia-U.S. services (applications, pp1-2 and p27). This is demonstrably false. Rather, Qantas continues to be the leading carrier in the market with a 50% share, while V Australia and United have similar shares (measured by seat capacity).¹ According to the applicants' projections of nonstop flight capacity share, by December 2009, United and V Australia each will have a 21% seat-share. If Delta/Virgin Blue implement their proposed joint venture, they (not United) will be the second largest competitor in the market, with a combined 29% seat-share (applications, p30.)

Aircraft

The applications (p2) assert that trans-Pacific routes necessitate the use of specialised long-range and large-gauge aircraft not easily redeployed on other routes. In fact, the aircraft required for these routes are not "specialised", rather, these routes require long-haul aircraft such as the B747, B777-300, B777200LR or A380. These are standard long-haul aircraft used on routes all over the world. For each of Qantas, United and Delta, as well as other carriers, such aircraft can be and are used on

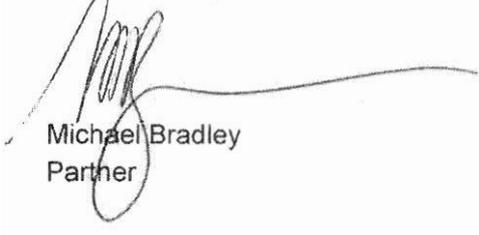
¹ In addition, other carriers offering indirect services between Australia and the United States hold a significant share of the market (by some measures, as much as 25-30%). Air New Zealand alone accounts for 7.7% of the market even though it only offers indirect service via Auckland. United disagrees with the assertion that the carriers who fly via Asian gateways have only a *de minimis* influence on the market.

various routes and can be substituted. While Delta is using an aircraft, the B777-200LR, specifically designed for ultra-long haul service on the relevant routes, it can use and has used this aircraft on other routes on its extensive global network, such as ATL-BOM, JFK-BOM, and ATL-JNB.

Conclusion

United supports opportunities for airlines to implement integrated joint ventures that will generate important public benefits. United takes no position as to whether the proposed Delta/Virgin Blue combination satisfies the standards necessary for approval. United, however, urges the Commission to conduct a careful and rigorous review of the Delta/Virgin Blue application and to apply the same scrutiny to this application that it has exercised in previous cases involving proposed alliances and joint ventures between airline competitors.

Yours faithfully



Michael Bradley
Partner