Tiger Airways Australia Pty Limited
ABN 52 124 369 008

Mailing Address:

P.O. Box 2101
Gladstone Park
Melbourne, Victoria 3043
Australia

7 August 2009

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601

By Facsimile: (02) 6243 1211

Dear Sir,

Re: Proposed Application for Authorisation by Virgin Blue Airlines Pty Ltd, Virgin Blue International Airlines Pty Ltd, Pacific Blue Airlines (Aust) Pty Ltd and Pacific Blue Airlines (NZ) Ltd (collectively "Virgin Blue") and Delta Air Lines ("Delta") (the "Applicants")

We refer to the Application filed in this matter on 9 July 2009 and the 'Joint Venture Agreements' referred to therein ("**the Application**").

Introduction

This submission is filed by Tiger Airways Australia Pty Limited ("**Tiger Airways**") to object to the Application.

Tiger Airways is the youngest and fastest growing airline in Australia, having commenced operations in November 2007. Tiger Airways is the third largest airline operator in Australia after the Qantas Group and the Virgin Blue Group.

By way of introduction, Tiger Airways notes the following:

1) We are the only true low-cost airline model in Australia, consistently providing the lowest airfares for interstate travel and efficient service for our customers;
2) Tiger Airways operates as an entirely independent company. We have never sought exemption from any competition laws in any country and we do not codeshare or co-ordinate our activities with any other airline;
3) Since inception in Australia in November 2007, more than 2 million passengers have flown with us;
4) We operate the youngest fleet of aircraft in Australia, with 6 brand new A320 aircraft with a further arrival in October 2009;
5) We are a major employer in Australia including cabin crew and pilots in both Victoria (Melbourne) and South Australia (Adelaide); and
6) We fly to a total of 17 routes from our bases in Melbourne and Adelaide, including the more recent additions of services between Melbourne and Sydney and Adelaide to Sydney.

Background

The Application and the ultimate decision of the ACCC will have a major impact on the competitive landscape of the airline industry in Australia. If approved, the Application has the potential to distort competition both on international services and on domestic services within Australia by providing Virgin Blue with an unwarranted and unjustified increase in profitability resulting from a lack of competition in a key international market. Tiger Airways contends in this submission that the Application should not be authorised.

The Application essentially outlines an anti-competitive, anti-consumer pact by the Applicants to increase their profitability on an unjustified basis at the expense of consumers, through limiting competition between the Applicants and the other 2 incumbents on the Trans-Pacific Route (the "Route") being Qantas and United Airlines.

At present Virgin Blue and Delta are actual competitors on the Route. Virgin Blue through its carrier, V Australia, commenced service on the Route in February 2009 with Delta following with commencement of services on the Route in July 2009. Reports indicate that by year end the share between the airlines now flying Australia-mainland to the United States will be Qantas - 50%, United Airlines - 21%, V Australia - 21% and Delta - 8%. A combined market share of almost 30% would make the Applicants the second largest operator on the route and numerous studies have demonstrated that a market share of around 30% would enable the Applicants to exercise excessive market power.

The Application seeks authorisation for the Applicants to co-ordinate schedules, capacity, routes and pricing, and to share revenues on the Route. These are market sharing arrangements by which Virgin Blue and Delta may carve out capacity, frequency and segments of the market to allocate to each other.

Tiger Airways submits that should the Joint Venture Agreement be authorised, it would provide for, amongst other things, full price coordination and market sharing between the two companies. Tiger Airways asserts that the Joint Venture Agreement will reduce competition and cause fare prices to increase. The Applicants if allowed to combine their activities, have the ability to eventually reduce flights and seat numbers, and could utilize their increased combined market power to raise prices and prevent potential new entrants from entering the market.

Further, any weakness that resulted from errors in the initial Virgin Blue business plan to operate the Route effectively and attract sufficient travellers should not be remedied by immunity from competition laws that the Applicants are now seeking in the Application.

The Applicants

The Virgin Blue Group as indicated in the Application currently has "a fleet of 81 aircraft with annual revenues of $2.4 billion in 2008-09". It has a very strong market presence in Australia and is comprised of domestic and international brands. Virgin Blue is "the flagship carrier of the Virgin Blue Group" and is Australia's second largest airline.

Delta is even more established as a major global airline and key member of the Skyteam Airline Alliance. In October 2008, Delta Airlines acquired 100 percent ownership in Northwest Airlines.

Industry analysts state that this acquisition has made Delta effectively the largest airline in the world. Reports indicate that the merger between Delta and Northwest Airlines has resulted in a mainline fleet of nearly 800 aircraft with nearly 75,000 employees worldwide.

The Market

It is generally accepted that operations over the Route have historically been very profitable. Given Virgin Blue and Delta are actual competitors on the Route; an alliance between the 2 companies would distort current market conditions.

Further, given the regulatory environment in Australia is not fully liberalised, Tiger Airways contend that any authorisation of the Application would cause other potential competitors to be dissuaded from entering the market. Therefore, an alliance between Delta and Virgin Blue would ultimately create barriers to entry by other prospective competitors or new entrants.

Tiger Airways deny that the mere entry of the Applicants on the Route has promoted the objectives of the Open Skies Agreement between Australia and the United States. Tiger Airways submit that the Application for Authorisation is premature at best and should be denied. The performance of V Australia and Delta on the Route can only be judged at a later time in conjunction with the bona fides of the current Application.

At the time V Australia entered the Trans-Pacific market in February 2009, economic considerations were well known throughout the airline industry and forecasting was quite capable. Indeed in recent weeks many commentators have suggested that global economic conditions, and in particular the conditions in Australia – which has avoided a technical recession – and the United States, are improving at a significantly faster rate than initially anticipated.

Tiger Airways asserts that such entrance into the market was approved on the understanding that V Australia would be required to stand on its own feet and be supported, if necessary, by the Virgin Blue Group. It was not on the understanding that the entrance was a forerunner to a 'cosy arrangement' with competitors. The Virgin Blue Group would have been well aware it was susceptible to changes in demand on the inception of flights on the Route similar to all airlines on entrance into a new market.

Consumer Impact

The Application states that consumers will be provided greater choice and convenience through the arrangement. It does not guarantee the level of service that would be provided to those American/Canadian destinations beyond the 'Gateway Ports', nor does it provide details to interested parties on the level of savings that could be forecast to the customer (with 'restriction of publication claimed').

There is no doubt the aviation industry needs to continue to benefit consumers, promote competition and create of more jobs. However, the proposed Application is merely an application structured at protecting the interests of the Applicants. Indeed, the Applicants admit that as "new entrants to the Trans-Pacific" market, such a union would allow it to "weather the current volatile financial conditions".

Policy Considerations

There has been recent precedent set in this matter given the ACCC decision earlier this year to deny the proposed Cooperation Agreement between Air New Zealand and Air Canada. That decision, made in an even more liberal regulatory climate was based, inter alia, on the ACCC concerns in respect to reduced competition for flights between Australia and Canada given Air New Zealand and Air Canada were two of the four main carriers concerned on that route.

The current Application includes a similar scenario whereby the Application involves two of the four main carriers on the Route. Should the Joint Venture be approved, there would be a disproportionate advantage afforded to the Virgin Blue Group (through V Australia) and Delta. If combined, it would hold at least 29% of the traffic on the Route, compared to United Airlines which would remain at 21%.

The Application should also be judged on a competition policy where the consumer is best served. There is no assurance that consumers will be provided a more affordable price or better quality service through the Joint Venture. That is, "where the Applicants have agreed that they will price these codeshare segments in a way so as to maximise the overall revenue for the Joint Venture", this does not guarantee the consumer lower prices relative to other competing airlines.

Further, the market is not constrained in respect of the Route and there is no monopoly in existence. Any benefits from the Joint Venture are illusory and such a grant of immunity by the ACCC would provide protection to corporations well aware of the playing field prior to entrance.

In May 2009, the Chairman of the Virgin Group (Sir Richard Branson) raised grave concerns and filed an Objection with the United States' authorities in relation to the proposed merger between British Airways and American Airlines. The constant lobbying by the Virgin Group and the subsequent Objection was conducted in a region where there is a 'full and comprehensive open skies agreement' in effect between the whole of Europe (EU member States) and the United States.

In contrast, this Application is being made against a regulatory landscape whereby the limited Open Skies Agreement entered between Australia and the United States, allows only specific Australian and US airlines to be granted services between the two countries. Other potential competitors, including 5th freedom operators, remain prohibited from operating services on the routes.

Conclusion

Both Virgin Blue and Delta are experiencing the economic reality facing the whole airline industry and should therefore look to their own internal processes instead of seeking to form a union, which will adversely affect consumers and the operations of other airlines.

The Application should not be approved for the reasons stated herein. The Application is not in the public benefit or interest, and will result in reduced competition and increased prices to consumers. If approved, such authorisation will also act as a barrier to the entry of other potential competitors.

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Finally, Tiger Airways submits that no airline operating the Route should be granted Anti-Trust immunity unless there is a full and comprehensive Open Skies Agreement and governmental policies in place in order to allow unlimited market access.

Tiger Airways is unable to spend the necessary resources and time to supplement this submission; however we are amenable to attending any pre-determination conference in respect of the Application.

Should you have any queries, please do not hesitate to contact me on the details above.

Yours Faithfully

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Shelley Roberts
Managing Director
Tiger Airways Australia Pty Limited