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Our ref LXW:LXK: 1008793



LAWYERS



4 May 2010

By courier

Richard Chadwick
General Manager, Adjudication
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Gilbert + Tobin

2 Park Street
Sydney NSW 2000
Australia

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Sydney NSW 2001

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Dear Mr Chadwick,

Virgin Blue and Air New Zealand – 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 **Virgin Blue**) and for Air New Zealand Limited (ABN 70 000 3112 685) (**Air New Zealand**).

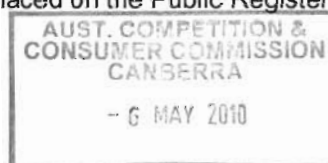
Virgin Blue and Air New Zealand (the **Applicants**) apply for authorisation pursuant to section 88(1) of the *Trade Practices Act 1974* (Cth) (**TPA**) in relation to their proposed Alliance in relation to their Tasman services. The Alliance comprises the following:

- Australasian Airline Alliance Agreement (**Alliance Agreement**)
- Code Share Agreement (**Code Share Agreement**); and
- related agreements contemplated in the Alliance Agreement.

We enclose:

- Application Forms A and B;
- a confidential supporting submission to the ACCC made on behalf of both Virgin Blue and Air New Zealand (**Submission**); and
- a cheque for the appropriate filing fee of \$9,000.

We request that the enclosed version of the Submission be excluded from the ACCC'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 will shortly provide a public version of the Submission (with confidential information redacted) which may be placed on the Public Register.

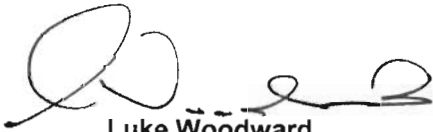


Further, the information separately provided in the Virgin Blue Confidential Annexures and Air New Zealand Confidential Annexures is confidential as between the Applicants and has not been shared between them. As such, we request that the ACCC take this into account when communicating with the Applicants.

Please contact us if you would like to discuss this letter or the enclosed submission. The Applicants would be happy to meet with the ACCC and to provide further information to assist in its consideration of their Application for Authorisation.

Yours faithfully

Gilbert + Tobin



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Louise Klamka
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Form A

Commonwealth of Australia

Trade Practices Act 1974 — subsections 88 (1A) and (1)

EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

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

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also 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 that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- 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.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1 Applicant

(a) Name of Applicant:

(Refer to direction 2)

Virgin Blue Airlines Pty Ltd (ACN 090 670 965);
Pacific Blue Airlines (Aust) Pty Ltd (ACN 097 892 389);
Pacific Blue Airlines (NZ) Limited (together **Virgin Blue**);

Air New Zealand Limited (ABN 70 000 3112 685) (**Air New Zealand**)

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

(b) Description of business carried on by applicant:

(Refer to direction 3)

The provision of domestic and international air transportation services.

For more detail please refer to section 1 of the Submission.

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

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

Attention:	Luke Woodward	and	Louise Klamka
	Tel: 02 9236 4014		Tel: 02 9263 4371
	Fax: 02 9263 4111		Fax: 02 9263 4111
	lwoodward@qtlaw.com.au		klamka@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:

(Refer to direction 4)

Virgin Blue and Air New Zealand seek authorisation to make, and to give effect to, the Australasian Airline Alliance Agreement (**Alliance Agreement**), an associated Code Share Agreement (**Code Share Agreement**) and proposed related agreements which are contemplated by the Alliance Agreement (together, **the Alliance**).

Copies of the Alliance Agreement and Code Share Agreement are set out in Confidential Annexure A to the Submission.

(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:

(Refer to direction 4)

See section 2 and Confidential Annexure A of the 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 Alliance is being sought for the term of the Alliance and, in any event, for a period ending no earlier than 5 years from the date of implementation of the Alliance (that is the Operational Date as defined in the Alliance Agreement).

The grounds supporting this period of authorisation are set out in section 2 of the 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:

(Refer to direction 5)

Not applicable.

4 Public benefit claims

(a) Arguments in support of application for authorisation:

(Refer to direction 6)

See the Submission.

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

See the Submission, including in particular sections 2 and 5.

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):

(Refer to direction 7)

See the Submission, including in particular section 3.

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:

(Refer to direction 8)

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

(b) Facts and evidence relevant to these detriments:

See the Submission, including in particular section 6.

7 Contracts, arrangements or understandings in similar terms

(a) 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:

(b) Is this application to be so expressed?

No.

(c) 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:**

(Refer to direction 9)

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:**

(Refer to direction 10)

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, as defined by section 4J of the *Trade Practices Act 1974*.

- (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?**

Virgin Blue and Air New Zealand.

9 Further information

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

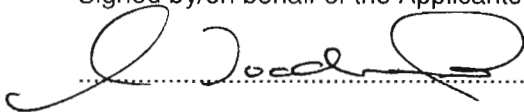
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Fax: 02 9263 4111
woodward@qtlaw.com.au

Louise Klamka
Tel: 02 9263 4371
Fax: 02 9263 4111
lklamka@qtlaw.com.au

Dated 4 May 2010

Signed by/on behalf of the Applicants



(Signature)

LUKE WOODWARD

(Full Name)

GILBERT + TOBIN

(Organisation)

Partner

(Position in organisation)

DIRECTIONS

- 1 Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

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. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel 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 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

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

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also 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 that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would 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.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1 Applicant

(a) Name of Applicant:

(Refer to direction 2)

Virgin Blue Airlines Pty Ltd (ACN 090 670 965);
Pacific Blue Airlines (Aust) Pty Ltd (ACN 097 892 389);
Pacific Blue Airlines (NZ) Limited (together **Virgin Blue**);

Air New Zealand Limited (ABN 70 000 3112 685) (**Air New Zealand**)

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

(b) Short description of business carried on by applicant:

(Refer to direction 3)

The provision of domestic and international air transportation services.

For more detail please refer to section 1 of the Submission.

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

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

Attention:	Luke Woodward	and	Louise Klamka
	Tel: 02 9236 4014		Tel: 02 9263 4371
	Fax: 02 9263 4111		Fax: 02 9263 4111
	lwoodward@gtlaw.com.au		lklamka@gtlaw.com.au

2 Contract, arrangement or understanding

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

(Refer to direction 4)

Virgin Blue and Air New Zealand seek authorisation to make, and to give effect to, the Australasian Airline Alliance Agreement (**Alliance Agreement**), an associated Code Share Agreement (**Code Share Agreement**) and proposed related agreements which are contemplated by the Alliance Agreement (together, **the Alliance**).

Copies of the Alliance Agreement and Code Share Agreement are set out in Confidential Annexure A to the Submission.

(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:

(Refer to direction 4)

See section 2 and Confidential Annexure A of the 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 Alliance is being sought for the term of the Alliance and, in any event, for a period ending no earlier than 5 years from the date of implementation of the Alliance (that is the Operational Date as defined in the Alliance Agreement).

The grounds supporting this period of authorisation are set out in section 2 of the 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:

(Refer to direction 5)

Not applicable.

4 Public benefit claims

(a) Arguments in support of authorisation:

(Refer to direction 6)

See the Submission.

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

See the Submission, including in particular sections 2 and 5.

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):

(Refer to direction 7)

See the Submission, including in particular section 3.

6 Public detriments

(a) Detriments to the public resulting or likely to result from the authorisation, 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:

(Refer to direction 8)

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

(b) Facts and evidence relevant to these detriments:

See the Submission, including in particular section 6.

7 Contract, 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.

(a) Is this application to be so expressed?

No.

(b) 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:**

(Refer to direction 9)

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, as defined by section 4J of the *Trade Practices Act 1974*.

- (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?**

Virgin Blue and Air New Zealand.

9 Further information

(a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

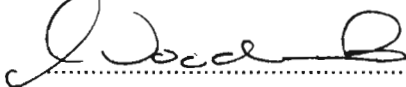
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lklamka@qtlaw.com.au

Dated 4 May 2010

Signed by/on behalf of the Applicants



.....

(Signature)

LUKE WOODWARD
.....

(Full Name)

GILBERT + TOBIN
.....

(Organisation)

PARTNER
.....

(Position in organisation)

DIRECTIONS

- 1 Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

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.

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- 3 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.
- 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, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

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 authorisation.
- 8 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.
- 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.