



Tiger Airways Australia Pty Limited
ABN 52 124 369 008

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

7 June 2010

Darrell Channing
Director
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

By Facsimile: (02) 6243 1211

Dear Sir,

**Re: Application for Authorisation A91127 & 191128 by the
Virgin Blue Group ("Virgin Blue") and Air New Zealand (collectively the "Applicants")**

We refer to the Application filed in this matter on 4 May 2010 and the "Alliance" referred to therein in respect to the Trans-Tasman Route.

Introduction

This submission is filed by Tiger Airways Australia Pty Limited ("Tiger Airways") to object to the Application. The application being made by the applicants is not in the public interest, will result in less competition and as a result lead to increased fares and reduced services.

By way of background, Tiger Airways is the only successful, significant, national domestic airline to have been established in Australia during the last 10 years, having commenced operations in November 2007. Tiger Airways is the third largest domestic operator in Australia after the Qantas Group and Virgin Blue.

We also note the following:

- 1) We have a well established low-fare, low-cost airline model, consistently providing the lowest airfares for both interstate travel and recently intrastate services, 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 code share or co-ordinate our activities with any other airline;
- 3) Since inception in Australia in November 2007, more than 3.5 million passengers have flown us;
- 4) We operate the youngest fleet of aircraft in Australia, with nine brand new A320 aircraft and with further new aircraft arrivals scheduled from September 2010;
- 5) We are a major employer in Australia which includes cabin crew and pilots in Victoria and South Australia;
- 6) We fly a total of 19 routes from our bases in Melbourne and Adelaide; and
- 7) Based on the prevailing legislation, it is unlikely that Tiger Airways or any other established airline in Australia or New Zealand will be in a position to provide additional services on Trans Tasman Routes necessary to remedy the negative consumer impact of the proposed Application.

Background

The Application and the final determination of the ACCC will have a significant impact on the airline industry in Australia. This determination follows the recent approval by the ACCC on the co-ordination between Virgin Blue and Delta Air Lines on Trans-Pacific Routes, which Tiger Airways also believes is anti-competitive and against the public interest.



Tiger Airways Australia Pty Limited
ABN 52 124 369 008

If approved, the Application has the potential to further distort competition both on international services and on domestic services within Australia by providing Virgin Blue with an un-warranted and un-justified increase in profitability. If approved, Virgin Blue would effectively have reduced competitive pressures on both Trans-Pacific Routes and Trans-Tasman Routes. Therefore, as a matter of principle, Tiger Airways contends in this submission that the Application should not be authorised and is in the alternative premature.

We contend that the Application seeks authorisation for the Applicants to co-ordinate schedules, capacity, routes, and pricing and to share revenues on the Routes. These are market sharing arrangements by which Virgin Blue and Air New Zealand may carve out capacity, frequency and segments of the market to allocate to each other. Tiger Airways submits that should the Alliance be authorised, it would provide for, amongst other things, full price coordination and market sharing between the two companies.

Whilst general statistics have been provided, Tiger Airways contends that further empirical evidence is required in respect to the assertion that the "removal of direct competition between Pacific Blue and Air New Zealand" is "unlikely to have a material adverse effect on competition, given the presence of other strong competitors in the market and the low barriers to expansion and entry".

The Applicants if allowed to combine their activities, have the ability to eventually reduce flights and seat numbers, reduced frequencies or services on marginal routes and could utilize their increased combined market power to raise prices and prevent potential new entrants from entering the market.

Policy Considerations

There has been recent precedent set in this matter given proposed alliances in 2002/2003 and in 2006 between Air New Zealand and Qantas, did not receive regulatory approvals.

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 against in the interests of consumers.

As you are aware, travel between Australia and New Zealand is governed by the 2002 Open Skies Agreement (the "Agreement"), which sought to establish a single Australian and New Zealand aviation market. Given the foreign ownership restrictions contained in the Agreement, Tiger Airways does not currently satisfy the requirements for automatic designation under the Agreement. As a result, despite the fact that our aircraft and operational procedures could successfully mount competitive services on Trans Tasman routes, it is unlikely that without a change to the prevailing Agreement between Australia and New Zealand to allow for airline designation based on "Principal Place of Business" criteria, that Tiger Airways would enter the market.

The regulatory environment in Australia, in particular relating to international services, is not therefore fully liberalised. Tiger Airways would view any proposed authorisation of the proposed transaction, as a further step towards full liberalisation under the Open Skies Agreement. Indeed, if the authorisation is allowed by the ACCC, Tiger Airways would expect that as a matter of policy, there will be greater liberalisation allowing for its entry on the Trans-Tasman Route based on its 'Principal Place of Business' being in Australia.

Tiger Airways therefore contends that the Application is premature, given legislative measures are still required to ensure that the Alliance operates in an environment where there are credible competitors able to provide competition on the Trans-Tasman Routes and that lower barriers to expansion and entry are created.



Tiger Airways Australia Pty Limited
ABN 52 124 369 008

Conclusion

Both Virgin Blue and Air New Zealand 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 not benefit consumers. The Application is not in the public benefit or interest, and will result in reduced competition and increased prices to consumers.

Finally, Tiger Airways submits that no airline operating the Trans Tasman Routes should be granted Anti-Trust immunity unless there is a full and comprehensive Open Skies Agreement in place. Furthermore, governmental policies should be enacted in order to ensure that unlimited market access by credible new entrants based on their 'Principal Place of Business' being in Australia or New Zealand, rather than the outdated foreign ownership restrictions currently in place.

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 require any additional information, please do not hesitate to contact me.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Crawford Rix', written over the typed name.

Crawford Rix
Managing Director
Tiger Airways Australia Pty Limited