

General Counsel
Brett Johnson



9 September 2010

Dr Richard Chadwick
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Adjudication Branch
Australian Competition & Consumer Commission
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Dear Richard

Virgin Blue Airlines and Etihad Airways Applications for Authorisation A91247 & A91248

Thank you for your letter of 1 September 2010 and for the opportunity to comment on the request for interim authorisation made by Virgin Blue and Etihad (the **Applicants**) in relation to their proposed alliance between Australia, Abu Dhabi and Europe (**Proposed Alliance**).

Given the antiquated bilateral aviation regulatory regime under which international airlines are forced to operate and the huge capital investment required to commence and operate services on any international route, Qantas believes that immunised international alliances, which demonstrate real public benefits, need to be positively encouraged by antitrust regulators. It is only with a network of such alliances that an international airline can hope to deliver a sustainable return on its capital investment.

Nevertheless, Qantas has a number of concerns about granting interim authorisation for the Proposed Alliance.

The Commission's *Guide to Authorisation* (March 2007) states that the Commission will only grant interim authorisation in "special circumstances". For the reasons set out below, Qantas does not consider the Proposed Alliance warrants interim authorisation.

The Proposed Alliance appears to have two key elements:

- the coordination of prices and scheduling between Australia and Abu Dhabi; and
- code sharing on a free-sale basis on each other's networks.

Interestingly, the Application makes no mention of the coordination of prices between Australia and UK/Europe. It is not possible that the applicants will not also be coordinating prices between Australia and Europe when they are price fixing on the Australia-Abu Dhabi route and most passengers will then be connecting to Etihad services to Europe.

The Applicants submit that the Proposed Alliance will "provide Virgin Blue with a platform to grow its international network", provide "extensive reach into the important international markets" and "strengthen Etihad's ability to compete in travel between Australia and the Middle East and beyond". In that respect the Alliance represents a significant change to the dynamics of the relevant markets which would not be easily corrected if final authorisation was denied.

Since Abu Dhabi attracts only a small volume of point to point travel, the true value of the Proposed Alliance rests in access to international networks, and for Virgin Blue, the ability to offer services from Australia to UK/Europe.

While the Proposed Alliance seeks authorisation only in respect of pricing coordination from Australia to Abu Dhabi, Qantas is particularly concerned about the granting of interim authorisation in circumstances where there will be more widespread price coordination across the broad codeshare network, including the Australia to Europe routes (which interim authorisation will permit to occur immediately on an interline basis). The consequences of such coordination should be fully analysed before the Applicants begin any cooperation.

Qantas does not consider the Applicants' mere assertion of their commercial desire to implement the Proposed Alliance as soon as possible amounts to an urgent need for interim authorisation. The Applicants have not expressed in any detail the specific activities to be undertaken and the scope of cooperation required to implement each of these stages. Without this information it is very hard to test the merits of the claim of commercial urgency. In any event, the number of applications for authorisation lodged by Virgin Blue recently should have provided it with the requisite experience to enable making the application sufficiently early to make interim authorisation unnecessary.

Finally, while the Applicants have not established that they will suffer harm if interim authorisation is not granted, Qantas considers passengers will suffer considerable harm and inconvenience if tickets are booked on a new service during the interim period but final authorisation is ultimately denied. This is particularly unnecessary where a high degree of competition already exists on the Australia to UK/Europe route.

Given these risks, and absent compelling reasons to effectively circumvent an established statutory process, Qantas considers it would be more appropriate to consider the Proposed Alliance in totality, including the implications of Australia to UK/Europe price coordination, before the Applicants begin any cooperation. Qantas strongly urges the Commission to take these concerns into account in determining whether to grant interim authorisation.

If you have any further questions regarding this matter or would like to arrange a meeting to discuss our response, please contact me or Anna Pritchard, Head of Legal - Competition on (02) 9691 5515.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brett Johnson', with a long horizontal flourish extending to the right.

Brett Johnson
General Counsel