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VIRGIN BLUE AIRLINES PTY LTD & ORS - APPLICATIONS FOR AUTHORISATION A91127 & A91128

1. I refer to the ACCC's Draft Determination and letter of 10 September 2010.
2. Auckland Airport's submission in connection with the Draft Determination is attached to this letter. The submission contains no confidential information.
3. At this stage our view is that it will not be necessary for us to present our submission orally at a pre-decision conference. However if such a conference is scheduled, as a result of a request of any other party involved in this process, we would appreciate being afforded the opportunity to attend it (by teleconference)

Yours faithfully,

Jan Frazer
Legal Counsel

**SUBMISSION TO THE
AUSTRALIAN COMPETITION AND CONSUMER COMMISSION ON
THE DRAFT DETERMINATION OF
THE APPLICATIONS FOR AUTHORISATION OF
THE VIRGIN BLUE AND AIR NEW ZEALAND AUSTRALASIAN AIRLINE ALLIANCE
22 SEPTEMBER 2010**

1. SUMMARY

- 1.1 On 10 September 2010, the Australian Competition and Consumer Commission ("**ACCC**") released its Draft Determination in connection with this matter ("**Draft Determination**"). Auckland Airport provides this submission in order to address elements of the Draft Determination, and some recent market developments.
- 1.2 In summary, Auckland Airport supports the ACCC's proposal to deny authorisation to the applications at this stage. We consider that the applicants have not yet adduced sufficient evidence to dispel the conclusion that their Alliance would have a significant detrimental impact on a number of routes, or to substantiate their claimed public benefits.
- 1.3 In the remainder of this submission, we comment on a small number of discrete points arising from the Draft Determination.

2. RELEVANT MARKETS

- 2.1 We are not entirely convinced that it is right to define an overall Trans Tasman passenger market for any purpose in this context, but in any event we agree with the ACCC that it is very important to assess the likely impact of the Alliance on individual Trans Tasman routes, given that both demand-side and supply-side substitution in this area are very limited (Draft Determination, para 5.37).

3. EFFECTS OF ALLIANCE ON COMPETITION

- 3.1 We agree with the ACCC that it is likely that the Alliance would lessen competition on the five Trans Tasman routes identified by the ACCC (Draft Determination, para 5.332). In our view, other routes would also be negatively affected:
- (a) Category 2 Routes: On some routes where the Alliance would compete against Jetstar but not Qantas (Draft Determination, para 5.262), the Alliance would still have a sufficiently large market share to be able to exercise significant market power. For instance, on Brisbane-Christchurch the Alliance would have 71% of available capacity (Draft Determination, Table 4.2). That market share would usually be thought in other contexts to give rise to a position of dominance.

- (b) Category 3 Routes: On some routes where the Alliance would compete against both Jetstar and Qantas (Draft Determination, para 5.262), the Alliance would still have a very large market share. For instance, on Sydney-Auckland the Alliance would have 37% of available capacity (Draft Determination, Table 4.2). On such a major route, such aggregation must be viewed with suspicion (especially given that the Qantas/Jetstar group would have 40% of the remaining capacity, which gives rise to obvious concerns about coordinated conduct).
- (c) Melbourne-Wellington: We consider that Pacific Blue could well be expected to enter this route absent the Alliance (Draft Determination, para 5.290), and play an important role as a "maverick" competitor (Draft Determination, para 5.340).
- (d) Cairns-Auckland: Although the entry of Jetstar onto this route is good news for consumers, we have doubts that Jetstar would offer as much competition as would exist in the absence of the Alliance given that there would then be three airlines competing vigorously for price-sensitive leisure travellers rather than two (Draft Determination, para 5.308). It is interesting to note that Jetstar announced its entry without knowing if the Alliance would be approved, indicating that it believed that the route can support three operators.
- (e) Currently monopolised routes: In relation to a number of routes, the ACCC has observed that the key current source of constraint is from potential competition (Adelaide-Auckland, Perth-Auckland, Brisbane-Hamilton, Sydney-Hamilton and Sydney-Rotorua). The ACCC expresses doubt that, for instance, Air New Zealand would have entered the Brisbane-Hamilton or Sydney-Hamilton routes absent the Alliance (Draft Determination, paras 5.324 and 5.327). We suggest that similar scepticism be applied to any claim that Jetstar or other airlines provide equivalent potential competition on other routes.

3.2 We also agree with the ACCC that there are increased risks of coordinated conduct under the Alliance (Draft Determination, para 5.345). The removal of Pacific Blue as a "maverick" is particularly significant (Draft Determination, para 5.341), especially given that its rapid growth on Trans Tasman routes between 2006 and 2010 occurred despite the presence of Jetstar (Draft Determination, para 4.17).

3.3 We ask that the ACCC give further consideration to the effect of the Alliance on Australian domestic routes (Draft Determination, paras 5.354-5.355). In particular, we ask that more attention be given to the potential "spillover" effects of the Alliance on non-Alliance routes within Australia, if only to confirm the potential impact on online connections (Draft Determination, para 5.355).

4. PUBLIC BENEFITS

4.1 We support the ACCC's request that the Applicants provide firm evidence that the claimed benefits will accrue in sufficient magnitude to outweigh any competitive detriment (Draft Determination, para 5.360). It will obviously also be important for the Applicants to demonstrate not only that substantial benefits will accrue, but that they will be passed on to consumers (rather than simply divided amongst themselves).

4.2 We make two other specific points.

- (a) We support the ACCC's request that the Applicants provide further information identifying the specific new routes and frequencies which they plan to introduce under the Alliance (Draft Determination, para 5.131). Given that the Applicants have elsewhere indicated that they intend to optimise schedules and realise cost savings, it is important to confirm that capacity will in fact increase under the Alliance as it currently stands.

- (b) We are not entirely convinced by the Applicants' argument that they would have limited commercial incentives to enter into codeshare or other commercial arrangements in the absence of the Alliance (Draft Determination, para 5.62). Air New Zealand's Star Alliance partnership shows that airlines can, and will, enter into such arrangements in the absence of the more anti-competitive features of the Alliance (such as the ability to coordinate on fares and seat supply).