

**Australian Competition
&
Consumer Commission**

PRE-DETERMINATION CONFERENCE

Minutes

**Authorisation A91227 & A91228
lodged by Virgin Blue Airlines Pty Ltd and Others**

18 October 2010

The information and submissions contained in this minute are not intended to be a verbatim record of the pre-determination conference but a summary of the matters raised. A copy of this document will be placed on the ACCC's public register.

**Pre-Determination Conference: Authorisation A91227 & A91228 lodged by Virgin
Blue Airlines Pty Ltd and Others**

18 October 2010
ACCC Sydney Office
Level 7, Angel Place, 123 Pitt Street, Sydney

Attendees:

Australian Competition and Consumer Commission

Peter Kell, Deputy Chair
Richard Chadwick, General Manager, Adjudication Branch
Jennifer Orr, Economic Adviser, Competition and Consumer Protection
Prudence Smith, Principal Lawyer, Trade Practices and Litigation Unit
Darrell Channing, Director, Adjudication Branch
Teresa Nowak, Assistant Director, Adjudication Branch
Jessica Buik, Project Officer, Adjudication Branch

Wellington International Airport

Steven Fitzgerald, CEO
Matt Clarke, General Manager - Business Development

Virgin Blue

Merren McArthur, General Executive, Corporate Advisory
William Owens, General Manager, Revenue
Matthew Yarrow, Manager, Network Planning

Air New Zealand

John Whittaker, General Manager, Australasian Strategy Projects
John Blair, General Counsel
Stephen Jones, General Manager, Strategy

Gilbert + Tobin (lawyers for the applicants)

Luke Woodward, Partner
Louise Klamka, Lawyer

Bell Gully (lawyers for the applicants)

Torrin Crowther, Partner

Auckland Airport

Matthew Findlay, Aeronautical Business Manager
Jan Frazer, Legal Counsel
Oliver Lamb, Pacific Aviation Consulting Pty Limited

New Zealand Ministry of Transport

Sonya van de Geer, Principal Adviser
Richard Cross, Adviser (Aviation and Security)

Department of Infrastructure and Transport
Samuel Lucas, Director, Air Services Negotiations
Ilona Balint, A/g Assistant Director - Trade and Aviation Market Policy

VIPA

Simon O'Hara, Executive Director

Qantas

Jon Eide, Manager Alliances Team

Maxine Jelks, Head of Alliances

Conference commenced: 11 am

Deputy Chair Peter Kell welcomed attendees, made some introductory remarks outlining the purpose of the conference, declared the pre-decision conference open and invited the party that called the conference, Mr Steven Fitzgerald and Mr Matt Clarke, on behalf of Wellington International Airport (WIAL), to make an opening statement.

Mr Steven Fitzgerald, CEO, Wellington International Airport, made the following points:

- There is a material change to the facts of the application with the release of the applicants' response. WIAL is pleased that response now includes a proposed authorisation condition as to capacity and growth, and subject to seeing the details of the proposed conditions, WIAL is no longer opposed to the proposed alliance.
- WIAL recognised that there were connection benefits, and potential benefits to frequency and schedules. However, at the time of the applicants' original submission, WIAL did not consider that the benefits were sufficient to outweigh the detriments. WIAL considers that the commitment to capacity now proposed by the applicants provides a substantial protection against unilateral price increases.

WIAL considers that the issue of capacity and prices are linked and, provided that the numbers outlined on a confidential basis to the Key Wellington Stakeholder Group are accurate, WIAL is happy with the proposal. WIAL is interested in how the ACCC would approach the implementation of any such conditions.

Deputy Chair Peter Kell asked the applicants if they wished to address the conference.

Ms Merren McArthur, General Executive, Corporate Advisory, Virgin Blue, on behalf of the applicants, stated that there are three points that underline the alliance and commented as follows:

- Virgin Blue is seeking to bring much needed competition to the corporate travel market in Australia, a sector in which Qantas currently has a stranglehold.

- The Tasman is a critical piece of Virgin Blue's product offering and international network. New Zealand may be seen as an extension of the offering for the Australian domestic business traveller.
- The alliance enables 6¹ times more flights and opportunities to earn and burn. The alliance provides opportunities for passengers to book through a single ticket, with seamless baggage, check-in and connections. With increased frequency and schedules, Pacific Blue would be able to offer passengers more choice and more convenient itineraries, including same day journeys for meetings, on routes where passengers would previously have had to stay overnight.
- The leisure traveller is still a key area of the market for Virgin Blue.
- The Tasman is a highly competitive market. The applicants have no intention of conceding the market to Jetstar by increasing fares under the alliance. History indicates that Jetstar is quick to respond and has filled the gap left by Pacific Blue. Jetstar has publicly stated that they do not want to concede market share to Virgin Blue.
- The alliance will enhance competition and choice for consumers.

Deputy Chair Peter Kell opened the conference for discussion and invited additional questions in relation to the issues raised.

Ms Jan Frazer, Legal Counsel, Auckland Airport indicated that Auckland Airport's position accorded with WIAL's position. Ms Frazer indicated that while Auckland Airport had not seen the submission from WIAL provided today, and with the caveat that it had not seen the specific figures of the applicants' proposed commitments, Auckland Airport was pleased to see that the applicants had invited the ACCC to impose conditions. Ms Frazer further noted that, while the applicants have not couched commitments as to frequency as a condition, Auckland Airport was also pleased to see such commitments being made. Ms Frazer indicated that it is for the ACCC to satisfy itself as to whether the conditions are adequate. Ms Frazer stated that Auckland Airport does not wish to stand in the way of the alliance proceeding.

Mr Samuel Lucas, Director, Air Services Negotiations, Department of Infrastructure and Transport (the Department), made the following points:

- The alliance is broadly consistent with recent patterns in the aviation market.

¹ The applicants subsequently corrected this figure to '3 times more flights and opportunities to earn and burn', and provided updated slides reflecting this change:
<http://www.accc.gov.au/content/index.phtml/itemId/927433/fromItemId/278039/display/preDecisionConference>

- The trans-Tasman is one of the most liberal markets in the world. As a general statement of the government's aviation policy – the Department would like to see balance between a competitive market with access for international carriers, and a strong Australian aviation industry with long term sustainable competition in aviation markets.

The Department sees the development of a second major Australian international airline group as a positive step and notes that, at present, this is challenged by the proposed denial of the alliance.

- The Department supports the comment that it is difficult to believe that the Qantas Group would not respond in a very competitive manner to preserve their market share on a profitable and sustainable basis.

Deputy Chair Peter Kell invited any other comments or questions from the conference participants, and also sought the applicants' comments regarding the origin of the growth forecasts adopted by the applicants in relation to their proposed conditions.

Mr Stephen Jones, General Manager, Strategy, Air New Zealand indicated that the growth forecasts of 3% per year were generally in line with economic forecasts and GDP growth.

Deputy Chair Peter Kell invited comments about the impact of the proposed condition on factors other than price.

Mr Stephen Jones explained that the proposed conditions address 5 sectors being 22% of the market. Mr Jones indicated that the capacity conditions proposed will not shape service propositions, which will be based on what is appropriate across the entire market - this is an issue that is determined by what is valued by customers. Mr Jones commented that capacity sits in parallel with, but does not shape, service.

Ms Merren McArthur stated that capacity will drive price and service quality as the applicants will be driven to provide a competitive offering to fill their planes.

Deputy Chair Peter Kell asked the applicants on the extent to which their capacity base or starting point could be considered representative.

Mr Stephen Jones explained that the base year has been adjusted as if the Air New Zealand seating capacity changes associated with the removal of premium cabin had already happened.

Mr Steven Fitzgerald indicated that he was comfortable with the last 12 months being adopted as the relevant period for the base year.

Mr Matthew Findlay, Aeronautical Business Manager, Auckland Airport asked whether the last 12 -24 months have been typical given the global financial crisis. Mr Findlay noted that there has been commentary about competitors coming off the markets over this period. Mr Findlay indicated that it is important that the ACCC assess whether the last 12 months is an appropriate period.

Deputy Chair Peter Kell stated that the ACCC welcomes any comments on this issue and asked the applicants whether they wished to add anything about the extent to which Jetstar would provide a competitive constraint.

Ms Merren McArthur, referred the ACCC to Jetstar's behaviour in the last 12 months, where it particularly targeted the routes on which both applicants operate. Ms McArthur noted that Jetstar will move quickly to fill market opportunities.

Mr Steven Fitzgerald indicated that on a route by route perspective, Qantas manages a group strategy. Mr Fitzgerald noted that where Qantas is not present, Jetstar is a strong player. Mr Fitzgerald indicated that WIAL's specific concern was in relation to the WLG-SYD and WLG-MEL which are covered by the proposed conditions.

Deputy Chair Peter Kell invited written submissions on this issue and sought comments on the public benefits likely to flow to flow from the alliance. In particular Deputy Chair Peter Kell, invited comments on the issue of how improved competition for corporate accounts would deliver public benefits.

Ms Merren McArthur, indicated that the corporate traveller represents a significant proportion of the travelling public and so increased competition in this sector is a significant public benefit in itself. In addition corporate accounts are an important part of the travel market and are essential for an effective frequent flyer program. Ms Merren McArthur commented that frequent flyer programs direct the decisions of corporate customers when they fly leisure to use points accumulated. Ms Merren McArthur indicated that this issue forms part of the broad picture public benefit of a stronger competitor in the Australasian market.

Mr Stephen Jones noted that allowing Qantas to continue to grow its dominant market share would give rise to inefficiencies.

Deputy Chair Peter Kell confirmed that no party wished to make any further comments. The Deputy Chair closed the conference by noting that parties could provide further submissions to the ACCC by Friday 29 October 2010 and that the ACCC would provide participants with a summary of the conference.

Conference closed: 12.00pm