



**Australian
Competition &
Consumer
Commission**

Our Ref: A91227 & A91228
Contact Officer: Clare McGinness
Contact Phone: (02) 6243 1049

GPO Box 3131
Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

16 December 2010

Mr Luke Woodward
Partner
Gilbert + Tobin
GPO Box 3810
SYDNEY NSW 2001

Via e-mail: lwoodward@gtlaw.com.au

cc: Ms Louise Klamka, Lawyer, Gilbert + Tobin Lawyers

Dear Mr Woodward

**Virgin Blue Airlines Ltd & Ors applications for authorisation A91227 & A91228
– final determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a determination in respect of the applications for authorisation lodged by Virgin Blue Airlines Pty Ltd, Pacific Blue Airlines (Aus) Pty Ltd, Pacific Blue Airlines (NZ) Limited (together Virgin Blue) and Air New Zealand Limited (Air New Zealand) on 6 May 2010.

A copy of the ACCC's determination is attached, including a summary of its reasons. For the reasons set out in its determination, the ACCC has decided to grant conditional authorisation until 31 December 2013. The ACCC's assessment is set out in Chapter 5 of its determination.

Application for review

Pursuant to section 101 of the *Trade Practices Act 1974*, a person dissatisfied with this determination may apply to the Australian Competition Tribunal for its review. An application for review must be made within 21 days of the date of this determination; that is, on or before 6 January 2011. If no application to review is lodged by this date, the ACCC's determination will come into force on 7 January 2011.

An application for review of the ACCC's determination should be lodged directly with the Australian Competition Tribunal. The Australian Competition Tribunal is a separate body from the ACCC and is located within the Federal Court of Australia.

For further information about the process involved in reviewing decisions in the Australian Competition Tribunal please refer to the tribunal's website located at <http://www.competitiontribunal.gov.au/>.

When authorisations expire

Towards the end of the period of authorisation, the holders of an authorisation may either:

- apply for a new authorisation for the conduct or apply to revoke and substitute the existing authorisation or
- stop the conduct (unless they consider that the conduct no longer risks breaching the Act).

Upon receipt of an application for 'reauthorisation', the ACCC will assess the arrangements afresh – namely, it conducts a public consultation process to help assess the public benefits and public detriments that are likely to result from the arrangements.

While the ACCC will consider any application for 'reauthorisation' based on the circumstances at that time, in many cases, this assessment can be informed by whether the proposed public benefits and potential detriments were realised during the previous term of authorisation.

Should Virgin Blue and Air New Zealand seek 'reauthorisation' of the Alliance in the future, the ACCC expects Virgin Blue and Air New Zealand to collect evidence of the public benefit and detriment outcomes produced by the Alliance during the period of authorisation.

Such information should then be provided to the ACCC in support of any future application for 'reauthorisation'.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Clare McGinness on (02) 6243 1049.

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch