

27 May 2011

**By email**

Richard Chadwick, General Manager, Adjudication Branch  
Australian Competition & Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601  
AUSTRALIA

Copies to: Darrell Channing and Clare McGinness

**Public register version**

Dear Dr Chadwick

**Qantas Airways Limited & American Airlines Inc: Authorisations - A91265 & A91266  
Submission in response to application for interim authorisation**

Thank you for your letter of 17 May 2011 seeking submissions by 27 May in relation to the application for interim authorisation made by Qantas Airways and American Airlines (**the Applicants**). I note that submissions in relation to the substantive application for authorisation are not required to be lodged until 8 June. This letter responds only to the Applicants' application for interim authorisation.

Virgin Australia considers that integrated alliances between airlines can bring significant benefits to passengers and to airlines by creating synergies and efficiencies, enabling improved services and stimulating passenger demand, which in turn benefits the tourism industry.

As the ACCC is aware, interim authorisation can be granted in exceptional circumstances on the basis of compelling reasons demonstrating:

- urgency and/or necessity;
- the market status quo will be maintained;
- there is possible harm to the Applicants if interim authorisation is denied;
- benefits from the grant of interim authorisation or that a refusal to grant interim authorisation will result in potential public benefits being lost.<sup>1</sup>

In the case of Virgin Australia's alliance with Etihad, interim authorisation was required to support the introduction of V Australia-operated Sydney-Abu Dhabi services, which were possible only under the Alliance. In order to commence these services, V Australia required access to slots being utilised by Etihad, necessitating implementation of the joint scheduling aspect of the Alliance, which required authorisation as the parties would become competitors by virtue of the launch of the new services. Further, the services would only be viable with the ability to offer onwards connections to

<sup>1</sup> ACCC, *Guide to Authorisation*, 2010, p 43; ACCC, *Virgin Blue Airlines Pty Ltd & Ors and Etihad Airways- applications for authorisation A91247 and A91248 – request for interim authorisation: Reasons*, 23 September 2010, Attachment A.

Europe and other international destinations. Without the Alliance, Etihad would not provide favourable code share on these services.<sup>2</sup>

As the ACCC acknowledged in its reasons for granting interim authorisation, significant lead time is required to market and sell tickets before the commencement of long-haul services. As such, Virgin Australia would have suffered significant detriment if it was unable to jointly schedule and commence selling services in advance of the grant of final authorisation. The Applicants made it clear that without authorisation of the alliance, V Australia would not operate the service to Abu Dhabi and details regarding route protection plans to cover that contingency were provided to the ACCC.

The ACCC recognised these commercial imperatives and acknowledged that they created urgency warranting interim authorisation and would provide the Applicants with an opportunity to deliver public benefits, without significant risk of detriment.<sup>3</sup>

Virgin Australia considers that all applications for interim authorisation should be similarly substantiated before interim authorisation is granted. We believe there are a number of aspects of the Applicants' submission which require further clarification and substantiation.

In particular we note that the Applicants have submitted that interim authorisation is required to facilitate the introduction of Qantas' new Dallas/Fort Worth services. They have said:

*In light of the urgent commercial imperatives and the long lead times associated with airline scheduling, in order to successfully commence the Dallas/Fort Worth services on 16 May 2011, and provide a platform for the expansion to daily flights, the Applicants need to immediately begin to coordinate schedules and commence marketing and selling. ... The ability to conduct a coordinated strategic campaign in both countries is the only way to enable a viable launch for this important new service....*

*Without the ability to cooperate with AA in the lead up to the sales and operational launch:*

- *the launch of the Dallas/Fort Worth services would be less effective and more high risk because Qantas would not be able to take advantage of AA's established US distribution channels; and*
- *the services offered would be less attractive, as Qantas and AA would be unable to coordinate schedules to provide better connectivity or provide competitively priced multi-destination itineraries.*

Qantas commenced operating services to DFW on 16 May 2011 and has been selling and marketing the services for some months. American Airlines currently sells these services under its own code and provides frequent flyer benefits to AAdvantage members who book on this service. American Airlines also currently has the ability to promote the services through its established US distribution channels.

This would appear to raise the following questions:

- Whether the commercial imperatives on which the application for interim authorisation was based are still applicable.

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<sup>2</sup> See: *Proposed Alliance between Virgin Blue and Etihad Airways: confidential submission in support of Application for Authorisation*, 27 August 2010, pp 14-16.

<sup>3</sup> ACCC, *Virgin Blue Airlines Pty Ltd & Ors and Etihad Airways- applications for authorisation A91247 and A91248 – request for interim authorisation: Reasons*, 23 September 2010.



- Whether Qantas would continue to offer the DFW services even if it did not obtain authorisation for the alliance; and
- How the Applicants would unwind the alliance if final authorisation were not granted.

As noted above, compelling reasons are required to justify the grant of interim authorisation, particularly given that this would allow the Applicants to completely implement the Joint Business Agreement without the benefits and detriments being tested by the ACCC.

Please do not hesitate to contact me if you have any queries or require any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read "MMcA", written over a light grey circular stamp.

**Merren McArthur**  
**General Counsel**  
**Virgin Australia Airlines**