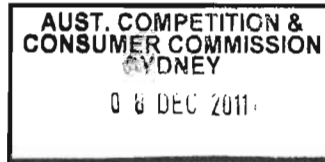


Partner Luke Woodward  
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lklamka@gtlaw.com.au  
Our ref LXW:LXK:1013987



7 December 2011

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Dr Richard Chadwick  
General Manager, Adjudication Branch  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
Canberra ACT 2601

FILE No:
DOC:
MARS/PRISM:

Dear Dr Chadwick,

**Virgin Australia and Skywest Airlines – Applications for Interim Authorisation, Full Authorisation and Notification under section 93(1) of the Competition and Consumer Act 2010**

We act for Virgin Australia Airlines Pty Ltd (ABN 36 090 670 965), Virgin Australia International Airlines Pty Ltd (ABN 63 125 580 823), Pacific Blue Airlines (NZ) Limited (ARBN 107 549 851), Pacific Blue Airlines (Aust) Pty Ltd (ABN 79 097 892 389) and Velocity Rewards Pty Ltd (ABN 98 116 089 448) (together **Virgin Australia**) and Skywest Airlines (Australia) Pty Ltd (ACN 76 008 997 662) (**Skywest**)).

We enclose:

- Forms A, B and G;
- a confidential supporting submission to the ACCC made on behalf of both Virgin Australia and Skywest (**Submission**); and
- a cheque for the appropriate filing fee of \$9,200.

Virgin Australia and Skywest (the **Applicants**) apply for authorisation pursuant to section 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**) in relation to their proposed Corporate Alliance. The Corporate Alliance comprises the following:

- Corporate Alliance Framework Agreement;
- Frequent Flyer and Lounge Agreement; and
- Joint Sales Agreement.

The Applicants also apply for interim authorisation for the Corporate Alliance pursuant to section 91(2) of the Act. The Submission, in particular section 3.4, provides supporting material for the application for interim authorisation.

In addition, the Applicants have provided a notification of exclusive dealing under section 93(1) of the Act in relation to proposed conduct contemplated under the Corporate Alliance.

We request that the enclosed version of the Submission be excluded from the ACCC's Public Register. The Applicants make this request on the basis that this version of the Submission (including annexures) contains information that is commercially confidential to the Applicants, including some

information which is confidential as between the Applicants. The disclosure of this information would unreasonably and adversely affect the Applicants in respect of their lawful business, commercial and financial affairs. We will shortly provide a public version of the Submission (with confidential information redacted) which may be placed on the Public Register.

Please contact us if you would like to discuss this letter or the enclosed submission. The Applicants would be happy to meet with the ACCC and to provide further information to assist in its consideration of their Applications for Interim Authorisation and Full Authorisation and Notification of exclusive dealing.

Yours sincerely  
**Gilbert + Tobin**



**Luke Woodward**  
Partner  
T +61 2 9263 4014  
lwoodward@gtlaw.com.au



**Louise Klamka**  
Lawyer  
T +61 2 9263 4371  
lklamka@gtlaw.com.au

**Form A**

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)***EXCLUSIONARY PROVISIONS AND  
ASSOCIATED CARTEL PROVISIONS:  
APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

**1. Applicant****(a) Name of Applicant:**

A91287

Virgin Australia Airlines Pty Ltd (ABN 36 090 670 965)  
Virgin Australia International Airlines Pty Ltd (ABN 63 125 580 823)  
Pacific Blue Airlines (NZ) Limited (ARBN 107 549 851)  
Pacific Blue Airlines (Aust) Pty Ltd (ABN 79 097 892 389)  
Velocity Rewards Pty Ltd (ABN 98 116 089 448)  
(together **Virgin Australia**); and

Skywest Airlines (Australia) Pty Ltd (ACN 76 008 997 662) (**Skywest**).

This application is to be read and determined together with the application in Form B (together the **Application**) and the submission supporting the Application (the **Submission**), which are lodged with this form.

**(b) Description of business carried on by applicant:**

The provision of domestic and international regular public transport (RPT) air services, charter services, frequent flyer programs and related services and products.

For more detail please refer to the Submission.

**(c) Address in Australia for service of documents on the applicant:**

Gilbert + Tobin  
Level 37, 2 Park Street  
SYDNEY NSW 2000

Attention: Luke Woodward  
Tel: 02 9236 4014  
Fax: 02 9263 4111  
[lwoodward@gtlaw.com.au](mailto:lwoodward@gtlaw.com.au)

and Louise Klamka  
Tel: 02 9263 4371  
Fax: 02 9263 4111  
[lklamka@gtlaw.com.au](mailto:lklamka@gtlaw.com.au)

**2. Contract, arrangement or understanding**

**(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:**

Virgin Australia and Skywest seek authorisation to make, and to give effect to the Corporate Alliance Framework Agreement, Frequent Flyer and Lounge Agreement and Joint Sales Agreement (together the **Corporate Alliance**).

Copies of the Corporate Alliance Framework Agreement and executed term sheets in relation to the Frequent Flyer and Lounge Agreement and Joint Sales Agreement are set out in Confidential Annexure A to the Submission.

**(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:**

See the Submission.

**(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:**

Commercial passenger airline services.

**(d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:**

Authorisation of the Corporate Alliance is being sought for the term of the Corporate Alliance and, in any event, for a period ending no earlier than five years from the Commencement Date as defined in the Corporate Alliance Framework Agreement.

The grounds supporting this period of authorisation are set out in the Submission.

**3. Parties to the proposed arrangement**

**(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:**

Not applicable.

**(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

Not applicable.

**4. Public benefit claims**

**(a) Arguments in support of application for authorisation:**

See the Submission.

**(b) Facts and evidence relied upon in support of these claims:**

See the Submission.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

See the Submission.

**6. Public detriments**

**(a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:**

See the Submission.

**(b) Facts and evidence relevant to these detriments:**

See the Submission.

**7. Contracts, arrangements or understandings in similar terms**

**(a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:**

**(b) Is this application to be so expressed?**

No.

**(c) If so, the following information is to be furnished:**

**(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:**

Not applicable.

- (ii) **Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:**

Not applicable.

- (iii) **Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:**

Not applicable.

**8. Joint Ventures**

- (a) **Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?**

Yes, as defined by section 4J of the *Competition and Consumer Act 2010*.

- (b) **If so, are any other applications being made simultaneously with this application in relation to that joint venture?**

Yes (being the attached Form B).

- (c) **If so, by whom or on whose behalf are those other applications being made?**

Virgin Australia and Skywest.

9. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

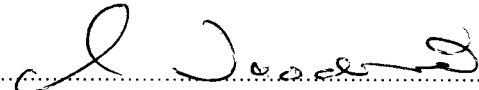
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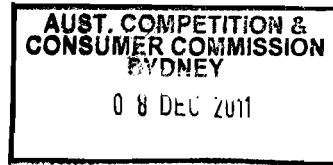
and Louise Klamka  
Tel: 02 9263 4371  
Fax: 02 9263 4111  
[lklamka@gtlaw.com.au](mailto:lklamka@gtlaw.com.au)

Dated..... 7 DECEMBER 2011 .....

Signed by/on behalf of the applicant

  
.....  
(Signature)

.....  
Luke Woodward  
Gilbert + Tobin  
Partner



**Form B**

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsections 88 (1A) and (1)*

**AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL  
PROVISIONS: APPLICATION FOR AUTHORISATION**

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

**1. Applicant**

**(a) Name of Applicant:**

A91288

Virgin Australia Airlines Pty Ltd (ABN 36 090 670 965)  
Virgin Australia International Airlines Pty Ltd (ABN 63 125 580 823)  
Pacific Blue Airlines (NZ) Limited (ARBN 107 549 851)  
Pacific Blue Airlines (Aust) Pty Ltd (ABN 79 097 892 389)  
Velocity Rewards Pty Ltd (ABN 98 116 089 448)  
(together **Virgin Australia**); and

Skywest Airlines (Australia) Pty Ltd (ACN 76 008 997 662) (**Skywest**).

This application is to be read and determined together with the application in Form A (together the **Application**) and the submission supporting the Application (the **Submission**), which are lodged with this form.

**(b) Short description of business carried on by applicant:**

The provision of domestic and international regular public transport (RPT) air services, charter services, frequent flyer programs and related services and products.

For more detail please refer to the Submission.



**(c) Address in Australia for service of documents on the applicant:**

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Attention: Luke Woodward  
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and Louise Klamka  
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Fax: 02 9263 4111  
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**2. Contract, arrangement or understanding**

**(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:**

Virgin Australia and Skywest seek authorisation to make, and to give effect to the Corporate Alliance Framework Agreement, Frequent Flyer and Lounge Agreement and Joint Sales Agreement (together the **Corporate Alliance**).

Copies of the Corporate Alliance Framework Agreement and executed term sheets in relation to the Frequent Flyer and Lounge Agreement and Joint Sales Agreement are set out in Confidential Annexure A to the Submission.

**(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:**

See the Submission.

**(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:**

Commercial passenger airline services.

**(d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:**

Authorisation of the Corporate Alliance is being sought for the term of the Corporate Alliance and, in any event, for a period ending no earlier than five years from the Commencement Date as defined in the Corporate Alliance Framework Agreement.

The grounds supporting this period of authorisation are set out in the Submission.

**3. Parties to the proposed arrangement**

**(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:**

Not applicable.

- (b) **Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

Not applicable.

**4. Public benefit claims**

- (a) Arguments in support of authorisation:

See the Submission.

- (b) Facts and evidence relied upon in support of these claims:

See the Submission.

**5. Market definition**

**Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):**

See the Submission.

**6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

See the Submission.

- (b) Facts and evidence relevant to these detriments:

See the Submission.

**7. Contracts, arrangements or understandings in similar terms**

- (a) **This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:**

- (b) **Is this application to be so expressed?**

No.

**(c) If so, the following information is to be furnished:**

**(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:**

Not applicable.

**(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:**

Not applicable.

**(iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:**

Not applicable.

#### **8. Joint Ventures**

**(a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?**

Yes, as defined by section 4J of the *Competition and Consumer Act 2010*.

**(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?**

Yes (being the attached Form A).

**(c) If so, by whom or on whose behalf are those other applications being made?**

Virgin Australia and Skywest.

9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

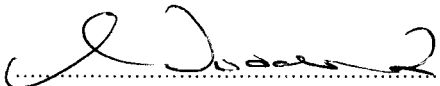
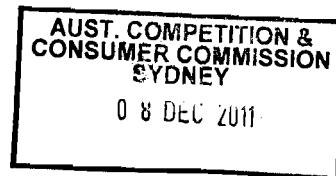
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[klamka@gtlaw.com.au](mailto:klamka@gtlaw.com.au)

Dated 7 DECEMBER 2011

Signed by/on behalf of the applicant



Luke Woodward

Gilbert + Tobin

Partner