



Virgin Australia and Skywest Airlines - applications for authorisation A91287 & A91288 – request for interim authorisation

REASONS

DECISION

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation with respect to applications for authorisation A91287 & A91288 lodged by Virgin Australia¹ and Skywest Airlines (Australia) Pty Ltd on 8 December 2011.

THE APPLICATION

Virgin Australia and Skywest Airlines are seeking authorisation for a proposed Corporate Alliance for the provision of commercial passenger airline services to corporate customers. The alliance will comprise a Corporate Alliance Framework Agreement, Frequent Flyer and Lounge Agreement and Joint Sales Agreement (together the 'Corporate Alliance'). The Corporate Alliance will be limited to offering corporate customers a suite of charter and regular public transport air services (both domestic and international).

The applicants are seeking authorisation for a period of five years.

Further information regarding the application is available on the ACCC's public register at www.accc.gov.au/AuthorisationsRegister.

THE AUTHORISATION PROCESS

The ACCC can grant immunity from the application of the competition provisions of the *Competition and Consumer Act 2010* (the Act) if it is satisfied that the benefit to the public from the conduct outweighs any public detriment. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

¹ Including: Virgin Australia Airlines Pty Ltd, Virgin Australia International Airlines Pty Ltd, Pacific Blue Airlines (Aust) Pty Ltd and Velocity Rewards Pty Ltd

INTERIM AUTHORISATION

Section 91 of the Act allows the ACCC to grant interim authorisation without making a decision on the merits of the application.

The ACCC will only grant interim authorisation in appropriate circumstances. In many circumstances it is not appropriate to do so because interim authorisation allows an applicant, for a limited period, to engage in conduct before the ACCC has been able to fully assess whether the conduct satisfies the authorisation test.

CONSULTATION

The ACCC undertook interested party consultation in its consideration of the request for interim authorisation. The ACCC received a submission from Air Australia opposing the Corporate Alliance and the granting of interim authorisation on the basis that it will restrict other carriers' ability to compete for charter services in Western Australia. The ACCC also received a confidential submission supporting the alliance and the grant of interim authorisation.

The ACCC notes that it has received two submissions indicating general support for the grant of substantive authorisation.

REASONS FOR DECISION

In granting interim authorisation, the ACCC considers:

- it is unlikely that granting interim authorisation will result in permanent changes to the relevant markets;
- both applicants have a strong commercial interest in bidding for any upcoming corporate customer tenders for integrated air services, and interim authorisation will allow the applicants and these customers to benefit from this;
- it is reasonable for the applicants to implement the Corporate Alliance at this stage, and have the opportunity to deliver the claimed public benefits;
- the Corporate Alliance will only affect corporate customers who have the option not to acquire the integrated air services package from Virgin and Skywest if they do not consider there is any benefit to them; and
- the applicants operate primarily complementary air service networks and they are unlikely to offer services in competition with each other absent the alliance.

RECONSIDERATION OF DECISION

The ACCC may review its decision on interim authorisation at any time. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.