

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

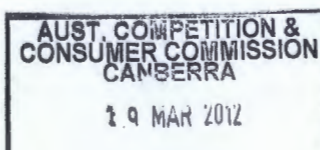
PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) **Name of person giving notice:**
- N95761 Virgin Australia Airlines Pty Ltd (ABN 36 090 670 965) (VAH); and
- N95762 Virgin Australia International Airlines Pty Ltd (ABN 63 125 580 823)
- N95763 Pacific Blue Airlines (NZ) Limited (ARBN 107 549 851)
- N95764 Pacific Blue Airlines (Aust) Pty Ltd (ABN 79 097 892 389)
(together, VAIH).
- (b) **Short description of business carried on by that person:**
VAH and VAIH supply commercial air passenger transport services and related products and services.
- (c) **Address in Australia for service of documents on that person:**
Gilbert + Tobin
Level 37, 2 Park Street
SYDNEY NSW 2000
Attention: Luke Woodward and Louise Klamka
Tel: 02 9236 4014 Tel: 02 9263 4371
Fax: 02 9263 4111 Fax: 02 9263 4111
lwoodward@gtlaw.com.au lklamka@gtlaw.com.au

2. Notified arrangement

- (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**
The provision of commercial air passenger transport services and related products and services, including airport lounges supplied by VAH in various airport locations (the **Virgin Australia Lounge**) and airport lounges of alliance partners, made available to eligible passengers under agreements between alliance partners and VAH and/or VAIH (together, the **Lounge**).
- (b) **Description of the conduct or proposed conduct:**
VAH will provide eligible passengers the opportunity to enter the Lounge, on condition that they acquire air passenger transport services from VAIH.



VAIH will provide eligible passengers the opportunity to enter the Lounge on condition that they acquire air passenger transport services from VAH.

3. **Persons, or classes of persons, affected or likely to be affected by the notified conduct**
 - (a) **Class or classes of persons to which the conduct relates:**

Eligible customers and potential customers of VAIH or VAH who wish to acquire air passenger transport services.
 - (b) **Number of those persons:**
 - (i) **At present time:** Unable to quantify; greater than 50.
 - (ii) **Estimated within the next year:** Same as above.
 - (c) **Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:**

Not applicable.
4. **Public benefit claims**
 - (a) **Arguments in support of notification:**

The proposed conduct offers benefits to eligible passengers travelling on air passenger transport services provided by VAIH or VAH by giving them the opportunity to obtain entry to the Lounge.
 - (b) **Facts and evidence relied upon in support of these claims:**

The proposed conduct will result in eligible passengers receiving entry to the Lounge when they purchase certain air passenger transport services.

The proposed conduct will enable VAIH and VAH to provide an enhanced service offering to customers. Many passengers, particularly business travellers, value the convenience and amenity of having lounge access.

The proposed conduct will therefore provide increased customer choice and will promote competition by improving the ability of VAIH and/or VAH to offer a lounge product competitive with that offered by many other airlines, including the Qantas Group.
5. **Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (a) 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):

The market for the provision of air passenger transport services and related products and services is highly competitive.

For domestic air travel, the Qantas Group is Australia's largest domestic carrier and the closest competitor to Virgin Australia, Australia's second largest domestic carrier. There are also a number of other carriers which provide domestic air passenger transport services including Tiger Airways and REX.

For international air travel, 53 international scheduled airlines operated services to/from Australia during December 2011.¹ The Qantas Group is Australia's largest international airline, with 26% share of international passengers for the year ended December 2011.² Virgin Australia offers Australian travellers the choice of a second international Australian-based airline, including through its alliances with partner airlines. Virgin Australia had a 6.7% share of international passengers during the same period.³ In addition, there is competition from a large number of other international carriers, such as Emirates (7.9%) and Cathay Pacific (5.1%).⁴

The Qantas Group currently offers a comprehensive frequent flyer program and access to an extensive network of airport lounges to its passengers, as do other international airlines operating in Australia.

6. Public detriments

- (a) **Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:**

There will be no likely detriments to the public arising from the proposed conduct as it does not limit customers' choice of airline in any way. The proposed conduct simply allows eligible passengers the opportunity to enter the Lounge when travelling on air passenger transport services supplied by VAIH or VAH.

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

The proposed conduct will not lessen competition in markets for the supply of air passenger transport services and related products and services. Eligible passengers will be able to access an enhanced product offering but will be under no obligation to enter the Lounge when travelling on air passenger transport services.

¹ BITRE, *International airline activity* (2011) <<http://www.bitre.gov.au/statistics/aviation/International.aspx>>.

² BITRE, *Statistical Report: Aviation – International airline activity December 2011* (2012) 8. Market share refers to operated services only.

³ *Ibid.*

⁴ *Ibid.*

7. Further information

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

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

Attention: Luke Woodward
Tel: 02 9236 4014
Fax: 02 9263 4111
woodward@gtlaw.com.au

and Louise Klamka
Tel: 02 9263 4371
Fax: 02 9263 4111
lklamka@gtlaw.com.au

Dated..... *19/3/2012*

Signed by/on behalf of the applicant

per



.....
(Signature)

.....
Luke Woodward
Gilbert + Tobin
Partner



DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.