

Partner Luke Woodward
Contact Louise Klamka
T +61 2 9263 4371
lklamka@gtlaw.com.au
Our ref LXW:LXK:1013987



L A W Y E R S

Sydney

2 Park Street Sydney NSW 2000 Australia
GPO Box 3810 Sydney NSW 2001
T +61 2 9263 4000 F +61 2 9263 4111
www.gtlaw.com.au

10 April 2012

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

Dear Dr Chadwick,

Virgin Australia and Skywest Airlines – Applications for Authorisation

We refer to the Applications for Authorisation made by Virgin Australia and Skywest Airlines in relation to their proposed Corporate Alliance and to the ACCC's Draft Determination of 22 March 2012, proposing to grant authorisation for a period of five years.

Virgin Australia, through VB Investco Pty Ltd (a wholly-owned subsidiary of Virgin Australia Holdings), and Skywest Airlines have today entered into a Convertible Loan Agreement.

Convertible Loan Agreement

Under the Agreement, Virgin Australia will make available to Skywest a loan of eight million dollars. The loan is convertible by Virgin Australia into ordinary shares in Skywest. In addition, Skywest has agreed to grant Virgin Australia warrants, which give Virgin Australia the right to purchase equity in Skywest.

Both the convertible loan and the warrants mature after three years. However, Virgin Australia may convert the loan on notice at any time during the term.

If the convertible loan and all warrants are converted by Virgin Australia, it will hold an equity stake of approximately 10% in Skywest.

The Agreement results in commercial benefits for both Virgin Australia and Skywest, by providing Skywest with access to debt and by facilitating Virgin Australia's investment in the Australian regional aviation market.

Virgin Australia and Skywest have an existing commercial relationship through the Corporate Alliance, and preceding codeshare, Velocity and wet-lease agreements. Virgin Australia considers that this transaction provides an opportunity to strengthen its alliance with Skywest and to increase its presence in the Australian regional aviation market.

No effect on competition

In the event that Virgin Australia holds an equity stake of 10% in Skywest, it will not have any ability to control Skywest.

This equity holding will not result in a lessening of competition in any market. As the ACCC concluded in its Draft Determination in relation to the Corporate Alliance, "Virgin Australia and Skywest operate


largely complementary networks, with Virgin Australia mostly operating inter-state domestic and international RPT services, and Skywest for the most part operating intra-state RPT services and charter services within WA.”¹ Further, the ACCC found that, given the minimal network overlap and the presence of competitive constraints, the Corporate Alliance would be unlikely to lessen competition in the markets for charter services, domestic RPT services, and international RPT services.

No impact on assessment of the Corporate Alliance

We consider that the transaction should not change the ACCC’s assessment of the public benefits of the Corporate Alliance.

Please contact us if you would have any questions or would like to discuss this letter.

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

¹ ACCC, *Draft Determination: Applications for authorisation lodged by Virgin Australia and Skywest Airlines in respect of a Corporate Alliance between the applicants*, 22 March 2012, i.