



Australian  
Competition &  
Consumer  
Commission

# **Determination**

## **Applications for authorisation**

**lodged by**

**Virgin Australia and Skywest Airlines**

**in respect of**

**a Corporate Alliance between the applicants**

**Date: 10 May 2012**

**Commissioners:** Sims  
Schaper  
Court  
Dimasi  
Walker  
Willett

**Authorisation no.:** A91287 & A91288

**Public Register no.:** C2011/1020

## Summary

The ACCC grants authorisation for a Corporate Alliance between Virgin Australia and Skywest Airlines until 1 June 2017.

On 8 December 2011, Virgin Australia and Skywest Airlines applied for authorisation to make, and give effect to, their Corporate Alliance Framework Agreement, Frequent Flyer and Lounge Agreement and Joint Sales Agreement (together the 'Corporate Alliance'). The Corporate Alliance will enable the applicants to jointly offer and supply an integrated air travel offer to corporate customers, comprising charter services, domestic (i.e. intra-state and inter-state) regular public transport (RPT) services, international RPT services, the use of Virgin Australia's airport lounges and the ability to accrue Virgin Velocity status credits on Skywest flights. The Corporate Alliance does not extend to air cargo services.

The applicants propose to coordinate tendering, contracting, pricing, flight scheduling and ground services, such as check-in and airport operations, to the extent they form part of the integrated service offering to corporate customers.

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.

The ACCC considers that the Corporate Alliance is likely to result in public benefits, specifically to large corporate customers with fly-in-fly-out workforces (for example, mining companies). The ACCC considers that the Corporate Alliance will promote competition by enabling the applicants to match the extensive integrated service package offered to corporate customers by Qantas.

Given the limited overlap between the applicants' services, the ACCC considers that the Corporate Alliance is unlikely to result in any significant anti-competitive detriment. Moreover, the price and service decisions of the applicants are likely to be constrained by the presence of Qantas in all relevant markets.

On balance, the ACCC considers that the public benefits likely to result from the Corporate Alliance outweigh the likely public detriment.

Accordingly, the ACCC grants authorisation to Virgin Australia and Skywest for the Corporate Alliance for five years until 1 June 2017.

The interim authorisation granted by the ACCC on 25 January 2012 will remain in place until the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

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# 1. The applications for authorisation

- 1.1. On 8 December 2011, Virgin Australia<sup>1</sup> and Skywest Airlines (Australia) Pty Ltd (Skywest) ('the applicants') lodged applications for authorisation A91287 & A91288 with the Australian Competition and Consumer Commission (the ACCC).
- 1.2. Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the *Competition and Consumer Act 2010* (the Act). The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.

## The Corporate Alliance

- 1.3. Virgin Australia and Skywest have sought authorisation of a 'Corporate Alliance' to jointly market to, tender for, and contract with, corporate customers.
- 1.4. The applicants propose to jointly provide an integrated travel offer to corporate customers comprising of a full suite of charter air transport services and domestic and international regular public transport (RPT) services<sup>2</sup>, the use of Virgin Australia's airport lounges and the ability to accrue Virgin Velocity status credits on Skywest flights.
- 1.5. Specifically, the applicants propose to coordinate:
- joint tendering and contracting (including joint bidding);
  - joint pricing and flight scheduling;
  - joint sales and marketing;
  - frequent flyer program and lounge access;
  - ground services (check-in, airport operations and airport handling); and
  - service quality policies.
- 1.6. Virgin Australia and Skywest will not cooperate in relation to their RPT services except in situations where they form part of an integrated service offer to corporate customers. The applicants will continue to independently offer and operate their RPT services to the general public and to corporate customers who prefer to contract with them individually.
- 1.7. The applicants seek authorisation for a period of no less than five years.

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

<sup>2</sup> RPT services are advertised, scheduled and available to the general public. By comparison, charter services may be scheduled but are not available to the general public.

### **Interim authorisation**

- 1.8. Virgin Australia and Skywest sought interim authorisation for the Corporate Alliance in order to begin marketing the integrated offer and be ready to respond to corporate tenders by early 2012. The ACCC decided to grant interim authorisation on 25 January 2012. Interim authorisation took effect on 25 January 2012 and will remain in place until the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

### **Draft determination**

- 1.9. Section 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.
- 1.10. On 22 March 2012, the ACCC issued a draft determination proposing to grant authorisation to Virgin Australia and Skywest for five years.
- 1.11. A conference was not requested in relation to the draft determination.

## 2. Background to the application

### The applicants

#### Virgin Australia

- 2.1. The Virgin Blue Group commenced operations in Australia in August 2000 and was listed on the Australian Stock Exchange. On 4 May 2011, the Virgin Blue Group relaunched under the Virgin Australia brand, replacing its domestic brand, Virgin Blue and its international brands Pacific Blue and V Australia.
- 2.2. Virgin Australia also operates Pacific Island services through Polynesian Blue, which is a joint venture with the Samoan Government.
- 2.3. Virgin Australia currently operates 93 aircraft<sup>3</sup> on approximately 3000 flights per week to 48 Australian and international destinations.<sup>4</sup> Virgin Australia has significantly expanded its international air service network in recent years through alliances with Delta Airlines, Etihad Airways, Air New Zealand and Singapore Airlines. See Figure 1 for an image of Virgin Australia's entire international air services network.
- 2.4. As set out in further detail below, Virgin Australia places its code on a number of Skywest's services and wet leases<sup>5</sup> some aircraft from Skywest to operate services to various regional destinations.
- 2.5. In regards to inter-state services operated to and from WA, Virgin Australia operates services between Perth and Melbourne, Sydney, Brisbane and Darwin, as well as services between Brome and Adelaide. Intra-state services operated by Virgin Australia within WA include services between Perth and Broome, Port Hedland, Karratha and Newman.

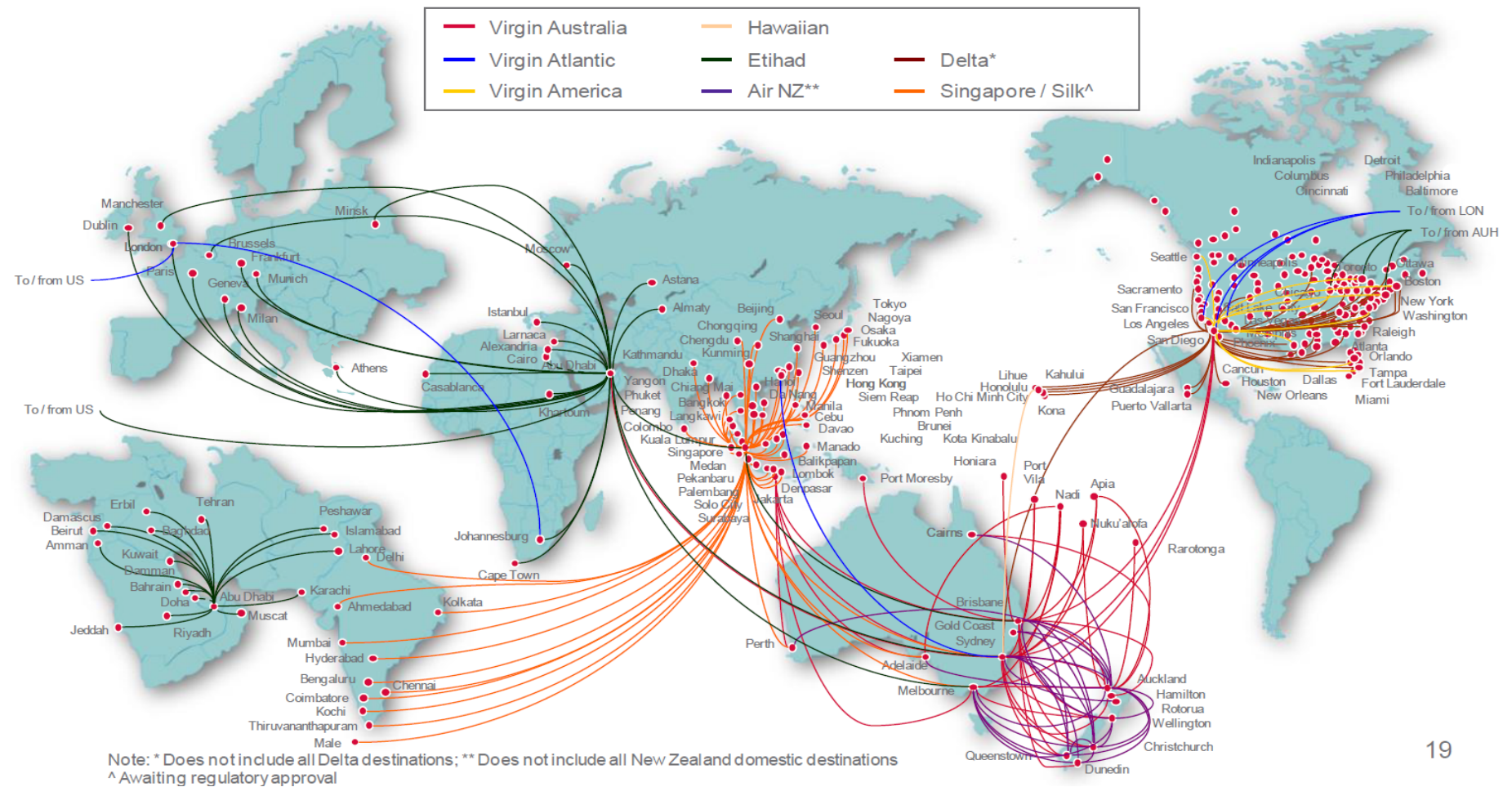
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<sup>3</sup> Excluding aircraft wet-leased from Skywest.

<sup>4</sup> Virgin Australia and Skywest, *Submission in support of applications for authorisation*, 7 December 2011, p.6.

<sup>5</sup> Wet leasing refers to a lease arrangement whereby one airline (lessor – in this case Skywest) provides aircraft, crew, maintenance and insurance to an airline (lessee – in this case Virgin Australia) which pays by hours operated. More details about this particular arrangement are provided at paragraph 2.16.

**Figure 1: Virgin Australia's domestic and international RPT services, including codeshares and connections<sup>6</sup>**



<sup>6</sup> Virgin Australia and Skywest, *Submission in support of applications for authorisation*, 7 December 2011, p. 37.  
DETERMINATION 4 A91287 & A91288

## Skywest Airlines

- 2.6. Skywest Airlines is incorporated in Singapore and is listed on the Australian Stock Exchange and the London Stock Exchange. Skywest is a Perth-based regional airline providing charter, regional RPT and freight transport services within and from WA, and one international service to Bali.
- 2.7. Skywest currently offers approximately 350 services per week with a fleet of 22 aircraft consisting of predominately short-haul aircraft designed for servicing regional sectors. Skywest operates mostly Fokker 50, 46-seat twin turbo prop aircraft and Fokker 100, 100-seat jet aircraft. Skywest recently acquired its first Airbus A320, a short to medium-range narrow body aircraft fitted with 162 seats, which is currently used to service mining charter operations.<sup>7</sup>
- 2.8. Most of Skywest's RPT services are on routes that comprise an origin and destination in WA, with the exception of services from Broome and Kununurra to Darwin, and Kalgoorlie–Melbourne. Skywest's offers one international RPT service between Port Hedland and Bali. Skywest currently operates two frequencies a week on this service, Saturdays and Sundays. All of Skywest's charter services have an origin and destination in WA, except for services to The Granites which is located in the Northern Territory.
- 2.9. Figure 2 maps all of Skywest's RPT and charter services. The ACCC notes that from 20 February 2012, Skywest has also operated services between Perth and Derby. This is not displayed in Figure 2 which was provided by the applicants with their applications for authorisation on 8 December 2011.

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<sup>7</sup> Virgin Australia and Skywest, *Submission in support of applications for authorisation*, 7 December 2011, p. 37 and p. 39. Skywest website, *About us* <<http://www.skywest.com.au/AboutUs.aspx>> and *Skywest Fleet* <<http://www.skywest.com.au/FlightInfo/Fleet.aspx>>



**Figure 2: Skywest's RPT services and charter services<sup>8</sup>**



## Cooperative arrangements in the aviation industry

- 2.10. There are different types of co-operative arrangements between airlines.
- 2.11. **Marketing alliances** offer the consumer the benefits of broader networks, more seamless travel and expanded loyalty programs. However, the airlines in a marketing alliance generally continue to offer fares, schedules and services independently. Further, airlines within the same marketing alliance may compete with each other on the same route. Examples of marketing alliances include the major airline alliances of oneworld, Star Alliance and SkyTeam.
- 2.12. **Integrated alliances** typically involve a high degree of integration of the airlines concerned, including coordination of fares, schedules, service levels and yield and capacity management.

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<sup>8</sup> Virgin Australia and Skywest, *Submission in support of applications for authorisation*, 7 December 2011, p. 37. The ACCC notes that Skywest's services to Derby are not shown here, as they only commenced

- 2.13. **Codesharing** is another form of coordinated behaviour that can occur within both integrated alliances and marketing alliances, as well as outside such alliances. Codesharing allows carriers to use their brand to sell tickets on flights that are operated by a different carrier. Although the individual flight is maintained, staffed and scheduled entirely by the carrier that owns and operates the aircraft, the flight is listed on the schedules of multiple carriers. This allows multiple carriers to sell seats on the same flight through their own ticketing system, with each carrier using its own designer code and flight number to refer to the same flight.
- 2.14. **Interline agreements** are arrangements between carriers designed to facilitate passengers travelling on itineraries that involve multiple carriers. Interlining operates through the reservation or ticketing system of the carriers in the agreement. Interline agreements allow a customer to purchase separate flights from multiple carriers in one transaction and with one ticket.

### Current commercial arrangements between Virgin Australia and Skywest

- 2.15. Virgin Australia and Skywest have been strategic partners since 2007. Under existing arrangements, passengers earn and redeem Velocity points on Skywest-operated RPT services. They do not yet earn status credits, but this is proposed to change under the Corporate Alliance. Virgin Australia and Skywest also have a codeshare agreement whereby Virgin Australia places its code on a number of services operated by Skywest (set out in Table 1).

**Table 1: Skywest routes on which Virgin Australia currently codeshares<sup>9</sup>**

Origin	Destination
Perth (PER)	Kalgoorlie (KGI) Albany (ALH) Esperance (EPR) Geraldton (GET) Kununurra (KNX) Learmonth (LEA) Busselton (BQB) Port Hedland (PHE) via Geraldton (GET)
Broome (BME)	Kununurra (KNX) Learmonth (LEA) Perth (PER) Port Hedland (PHE)
Albany (ALH)	Busselton (BQB)
Kalgoorlie (KGI)	Melbourne (MEL)
Darwin (DRW)	Broome (BME ) Kununurra (KNX)

- 2.16. In January 2011, the applicants entered into an agreement whereby Virgin Australia wet leases up to 18 ATR-72 500 short-haul aircraft (68 seats) from Skywest to operate

<sup>9</sup> Virgin Australia and Skywest, *Submission in support of applications for authorisation*, 7 December 2011, p. 9.

regional RPT services. Under the agreement, Skywest operates the services including providing the aircraft, crew, maintenance and insurance. The aircraft are painted in Virgin Australia livery, flights are sold as Virgin Australia services, and Virgin Australia directs the deployment on these services, including specifying destinations, capacity and schedule.<sup>10</sup>

- 2.17. Virgin Australia is currently operating 4 turbo prop aircraft wet leased from Skywest on the following routes: Sydney–Port Macquarie, Sydney–Canberra, Brisbane–Gladstone, Brisbane–Port Macquarie, Brisbane–Emerald and Brisbane–Rockhampton.
- 2.18. On 10 April 2012, Virgin Australia advised that, through VB Investco Pty Ltd (a wholly-owned subsidiary of Virgin Australia Holdings), it had entered into a Convertible Loan Agreement with Skywest. Under the Agreement, Virgin Australia will make available to Skywest a loan of \$8 million. 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.<sup>11</sup>

## Aviation in Western Australia

- 2.19. WA is geographically the largest state in Australia. Perth, which serves as a hub for intra-state and inter-state aviation is in the south west of the State and the major regional centres are separated from it and each other by long distances. The geographic isolation and extreme environmental conditions faced by many communities in the northwest of WA has meant that these communities rely heavily on air transport. Regional towns often depend on access to large regional centres and to Perth for the provision of essential services such as health and education.<sup>12</sup>
- 2.20. The WA Minister for Transport is empowered to regulate air services within WA through the *Transport Coordination Act 1966* (WA) and the *Transport Coordination Regulations 1985* (WA). All aircraft owners operating commercial passenger services within WA are required to hold a WA Aircraft Licence. Different licenses are issued to airlines for regulated RPT services, deregulated RPT services and charter services.

## RPT services

- 2.21. Table 2 sets out all commercial passenger airlines operating intra-state RPT services in WA.

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<sup>10</sup> *ibid*, p. 9.

<sup>11</sup> Virgin Australia and Skywest, *Submission in relation to Convertible Loan Agreement*, 10 April 2012.

<sup>12</sup> Department of Transport (WA) website, *Air services*: <[www.transport.wa.gov.au/aviation/1346.asp](http://www.transport.wa.gov.au/aviation/1346.asp)>

**Table 2: Domestic RPT services in Western Australia<sup>13</sup>**

<b>Operator</b>	<b>Cities and towns served</b>
Airnorth	Perth, Broome, Karratha, Kununurra and Port Hedland
Cobham Aviation	Perth and Kambalda
Golden Eagle Airlines	Broome, Derby, Fitzroy Crossing and Halls Creek
Qantas	Perth, Broome, Exmouth, (Learmonth), Kalgoorlie, Karratha, Kununurra, Exmouth, Newman, Paraburdoo and Port Hedland
Skippers Aviation	Perth, Carnarvon, Kalbarri, Laverton, Leinster, Leonora, Meekatharra, Monkey Mia, Mt Magnet and Wiluna
Skywest	Perth, Albany, Broome, Busselton, Esperance, Exmouth (Learmonth), Geraldton, Kalgoorlie, Karratha, Kununurra, Newman, Paraburdoo and Port Hedland. Perth and Derby (see paragraph 2.25)
Virgin Australia	Perth, Broome, Kalgoorlie, Karratha, Kununurra, Newman and Port Hedland (also provides services to the Indian Ocean Territories of Christmas Island and Cocos Island)

- 2.22. As noted above, the WA Minister for Transport is empowered to regulate RPT services within WA. Regulated routes are approved by the Minister and consist of routes where it is considered that there are insufficient passengers to support more than one airline.<sup>14</sup> Competition is limited on regulated routes, whereas full competition is permitted on deregulated RPT routes.
- 2.23. Following a review of intra-state air services by the Department of Transport (WA) (DoT) in 2009, some previously regulated RPT routes were deregulated and/or limited competition introduced. There are now a total of 11 deregulated RPT routes in WA that connect Perth with Broome, Busselton, Geraldton, Kalgoorlie, Kambalda, Karratha, Kununurra, Paraburdoo, Port Hedland, Newman and Ravensthorpe.<sup>15</sup>
- 2.24. There are deeds awarded to four airlines to operate different regulated RPT services to 17 regional destinations.<sup>16</sup> Figure 3 illustrates all regulated RPT services in WA and which operators serve the routes. These deeds have a five year initial term with a mid-term review at three years to determine whether the option to extend for up to another five years will be executed. The airlines are required to provide comprehensive statistics to the DoT each month so that service levels may be monitored.<sup>17</sup>
- 2.25. The Perth–Derby service is a protected route, and was awarded to Air Australia (previously known as Strategic Airlines) which held the major resource company contracts in the Derby region.<sup>18</sup> On 17 February 2012, the Director of the Air Australia

<sup>13</sup> The information in this table is based on information on the Department of Transport (WA) website, *Air services – Review of air services (since 28 February 2011)*, <<http://www.transport.wa.gov.au/aviation/1346.asp>>

<sup>14</sup> Department of Transport (WA), *Air services*, <[www.transport.wa.gov.au/aviation/1346.asp](http://www.transport.wa.gov.au/aviation/1346.asp)>

<sup>15</sup> *ibid*

<sup>16</sup> *ibid*

<sup>17</sup> *ibid*

<sup>18</sup> Department of Transport (WA), *Intrastate air services*, <<http://www.transport.wa.gov.au/aviation/15829.asp>>

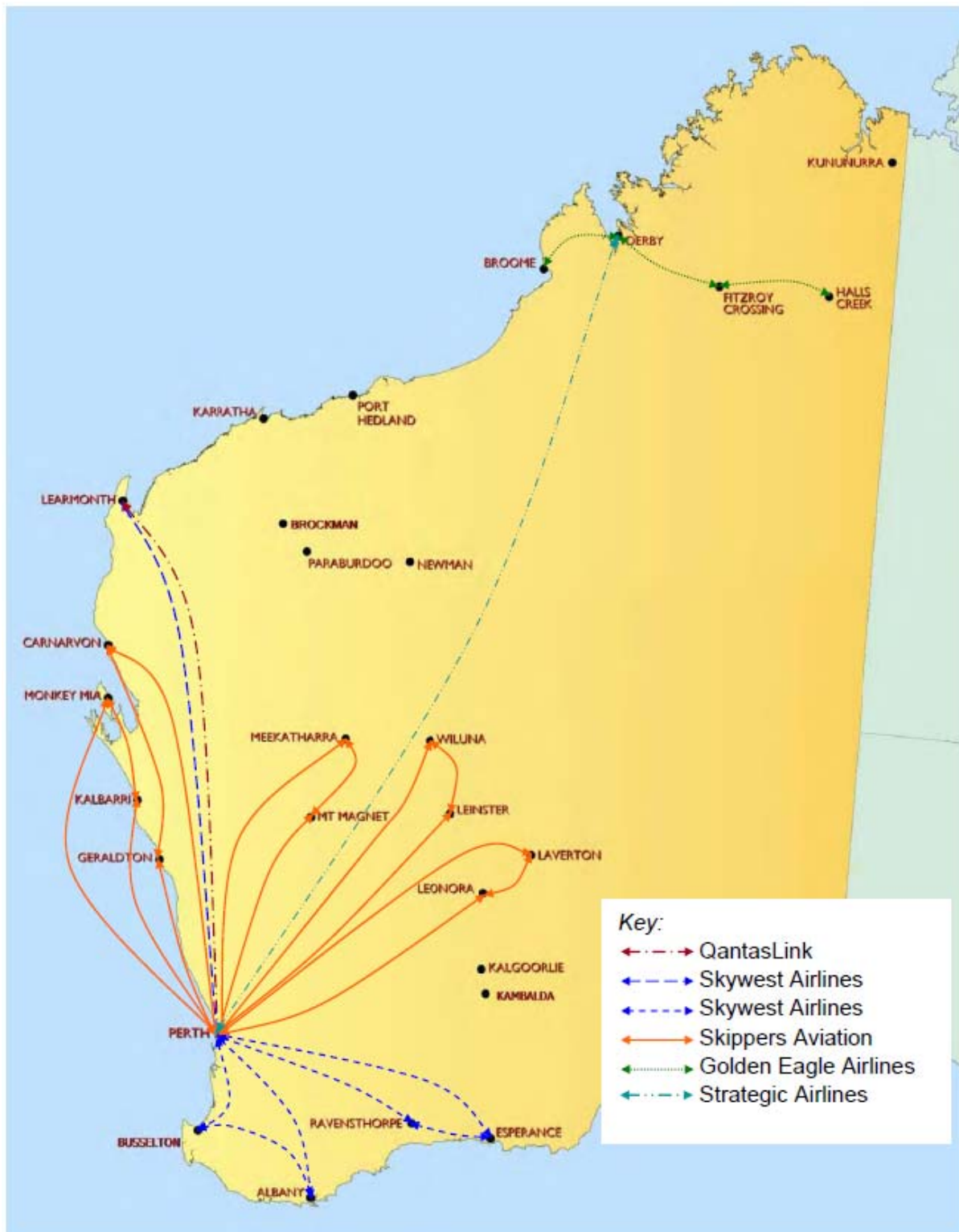
group of companies appointed voluntary administrators. Air Australia's fleet is currently grounded and it appears highly unlikely there will be any flights in the short to medium term.<sup>19</sup> Skywest was awarded the right to operate the Perth-Derby route on 18 February 2012 - the Department of Transport (WA) has confirmed an initial term of three months with the provision of five return services per week.<sup>20</sup>

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<sup>19</sup> Air Australia website, *Frequently asked questions*,  
<<http://www.airaustralia.com/~media/Files/Air%20Australia%20FAQs%20210212.ashx>>

<sup>20</sup> Skywest website, *Important service update*, <<http://www.skywest.com.au/AboutUs/ServiceUpdate.aspx>>

Figure 3: Map of regulated air services in Western Australia from 28 February 2011<sup>21</sup>



<sup>21</sup> Department of Transport WA, *Intrastate air services* <[www.transport.wa.gov.au/mediaFiles/aviation\\_map\\_regulated\\_RPTroutes.pdf](http://www.transport.wa.gov.au/mediaFiles/aviation_map_regulated_RPTroutes.pdf)>. The ACCC notes that this map does not reflect the exit of Air Australia (Strategic Airlines). Skywest is now operating Perth–Derby services.

## Charter services

- 2.26. Typically, charter services require different aircraft to RPT services, specifically suited to customer and destination requirements including short runways and closed/private air strips. There are many charter service operators in WA offering services between points of RPT service origin/destination (for example, Perth) and short runways and airstrips (for example, at a mine site such as Argyle in the Kimberley region of WA).
- 2.27. In WA, charter services are subject to different regulatory controls to RPT services. For example, charter operators are not permitted to operate to an advertised published schedule, sell tickets individually, or fly with any great frequency to specified airports, and they have less stringent reporting requirements than RPT operators.<sup>22</sup> Charter services on RPT routes in WA are limited to one service per week (additional charter services require approval from the Minister).<sup>23</sup>
- 2.28. In Australia, many charter flights are purchased by companies in the resources sector for transportation of rotational staff to remote locations on a fly-in-fly-out basis.

## *The resources sector*

- 2.29. There has been strong growth on routes servicing the resources sector, particularly in WA. In 2011, there was “unprecedented growth in the WA resources industry with record exports (rising above \$100 billion for the first time) and resources sector employment reaching above 100 000 for the first time - almost 70 000 more than ten years ago.”<sup>24</sup> The Chamber of Minerals and Energy (WA) reports that as at the end of October 2011, 40 projects worth an estimated \$147.5 billion at the advanced stage of development in the state.<sup>25</sup>
- 2.30. There are over 1050 operating mine sites and close to 70 operating oil and gas fields in WA.<sup>26</sup> The Chamber of Minerals and Energy (WA) reports that the resources industry in WA employs around 90,000 people, 52% of whom are employed on a fly-in-fly-out basis. By 2015 these numbers are expected to increase to 110,000 people with 57% employed on fly-in-fly-out rosters.<sup>27</sup>
- 2.31. A new \$120 million regional domestic terminal catering for up to 36 aircraft at Perth airport is being built to meet the needs of regional airlines servicing WA, particularly the resources sector.<sup>28</sup>

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<sup>22</sup> *Transport Coordination Regulations 1985* (WA)

<sup>23</sup> Department of Transport WA, *Intrastate air services*

<[www.transport.wa.gov.au/mediaFiles/aviation\\_map\\_regulated\\_RPTroutes.pdf](http://www.transport.wa.gov.au/mediaFiles/aviation_map_regulated_RPTroutes.pdf)>

<sup>24</sup> Chamber of Minerals and Energy of Western Australia, *WA Resources and Economics Report December 2011*, p.i, <<http://www.cmewa.com.au/UserDir/CMEPublications/1201-ET-Resources%20and%20Economics%20Report%20December%202011-v1347.pdf>>

<sup>25</sup> *ibid*

<sup>26</sup> Chamber of Minerals and Energy of Western Australia, *About us*, <[http://www.cmewa.com.au/About\\_Us](http://www.cmewa.com.au/About_Us)>

<sup>27</sup> Amanda O'Brien, *FIFO flights growing at breakneck speed*, *The Australian*, 15 November 2011

<sup>28</sup> Perth Airport, *Construction of new terminal to commence this month*, Media release, 24 August 2011

## **Qantas and its affiliates**

- 2.32. Qantas operates RPT services in Australia under a number of brands:
- Qantas: a full-service domestic and international airline;
  - Jetstar: low fare domestic and international airline aimed at the leisure and budget segment (commenced domestic operations in New Zealand in 2009); and
  - Qantaslink: a full-service regional airline servicing 56 metropolitan and country destinations across all states and territories in Australia (commenced serviced to its first international destination, Port Moresby, in 2010).
- 2.33. In this determination the ACCC uses ‘Qantas’, to refer to all three of these Qantas brands as well as its recently acquired Perth-based charter service operator, Network Aviation (acquired by Qantas in December 2010).
- 2.34. Network Aviation provides corporate charter services to organisations in the resource sector, mining industry support, routine and emergency freight and aircraft management. It works with many mining and resources companies to transport their personnel and support fly-in-fly-out operations to sealed and unsealed airstrips.<sup>29</sup>
- 2.35. Network Aviation can operate charter flight services from Perth to the following WA destinations:
- the Pilbara and Kimberley regions;
  - Goldfields region, including Leonora and Leinster;
  - mid-west region, including Cue and Mileura Station; and
  - Karratha, Newman, Port Hedland, Exmouth and Broome.<sup>30</sup>
- 2.36. Network Aviation operates a fleet of seven Embraer Brasilia, 30-seat turbo-prop aircraft and two Fokker 100, 100-seat jet aircraft.<sup>31</sup>
- 2.37. In addition, Qantas also has commercial relationships with both Airnorth and Cobham Aviation.
- 2.38. Airnorth is a major aviation operator in Northern Australia servicing 16 destinations in the Northern Territory, Queensland and WA. In addition to scheduled departures, Airnorth operates contract and ad-hoc charter services for a wide variety of companies undertaking mining, defence and government activity.<sup>32</sup>

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<sup>29</sup> Network Aviation website, *Charter flights - Perth Western Australia*,  
<<http://www.networkaviation.com.au/perth-western-australia/charter-flights.html>>

<sup>30</sup> *ibid*

<sup>31</sup> Virgin Australia and Skywest, *Submission in support of applications for authorisation*, 7 December 2011, p. 54

<sup>32</sup> *ibid*



- 2.39. Qantas and Airnorth have a corporate alliance under which Airnorth hosts all flights in the Amadeus global distribution system<sup>33</sup>, Airnorth is included in the Qantas Frequent Flyer program and the airlines coordinate ticketing, baggage as well as marketing activities.<sup>34</sup>
- 2.40. Cobham Aviation provides contracted air passenger and freight services to large civil and government organisations in Australia and Papua New Guinea. Cobham provides fly-in fly-out services for major mining clients in WA and also provides RPT services to Kambalda in the WA Goldfields.<sup>35</sup>
- 2.41. Cobham Aviation operates 11 Boeing B717 aircraft on behalf of QantasLink. The company flies more than one million passengers for QantasLink each year, across 300 sectors per week. Other than the physical supply of the actual aircraft by Qantas, Cobham Aviation provides all the necessary resources and infrastructure required to deliver this service. This includes crew, engineering and maintenance support and maintaining QantasLink's branding strategy and standards. Cobham Aviation is the only third party operator carrying the Qantas brand.

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<sup>33</sup> Amadeus is a world wide transaction processor for the travel and tourism industry. The company connects travel providers and travel agencies through a processing platform to assist the distribution of travel products and services, and provides IT solutions automating things such as reservations and inventory management. [Amadeus website, *About us*, < <http://www.amadeus.com/amadeus/x5034.xml>>]

<sup>34</sup> Airnorth website, *Corporate profile*, <<http://www.airnorth.com.au/about-airnorth>>

<sup>35</sup> Cobham Aviation website, <<http://www.nationaljet.com.au/charters.htm>>

### **3. Submissions received by the ACCC**

- 3.1. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process. To this end the ACCC aims to consult extensively with interested parties that may be affected by the conduct to provide them with the opportunity to comment on the application.

#### **Prior to the draft determination**

#### **The applicants' supporting submission**

- 3.2. Broadly, Virgin Australia and Skywest submit that entering into the Corporate Alliance is a joint response to meet the growing demand for corporate travel in Australia. The resources boom in Australia, in particular in WA, has resulted in increased demand for charter services especially tailored to meet the needs of expanding fly-in-fly-out workforces.
- 3.3. The applicants claim that the Corporate Alliance will enable them to combine their strengths in order to provide an improved and competitively priced integrated package of services to corporate customers who require both charter and RPT services. They submit that the integrated package will include:
- charter air services;
  - RPT services, including regional, domestic and international services;
  - better connections between charter and RPT services to minimise travel time and maximise amenity to employees; and
  - value-added products and high quality services for employees, such as access to a comprehensive frequent flyer program and member lounges.
- 3.4. The applicants consider the integrated package will be highly valuable to corporate customers and their employees and they expect that they will be able to win a higher proportion of corporate accounts as a result.
- 3.5. The applicants expect that the Corporate Alliance will promote competition for corporate contracts between them and Qantas as Qantas is the only airline that currently has the ability to offer the full suite of services to corporate customers. "In addition to its comprehensive domestic and international RPT network and its frequent flyer and lounge products, Qantas now has a significant charter capability following its acquisition of Network Aviation in December 2010 and has announced further expansions to its charter fleet."<sup>36</sup>
- 3.6. The applicants submit that the Corporate Alliance will result in more choice and a higher level of service and convenience for corporate customers and their employees.

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<sup>36</sup> Virgin Australia and Skywest, *Submission in support of applications for authorisation*, 7 December 2011.

The applicants consider the Corporate Alliance and the greater share of corporate contracts they obtain will create opportunities to expand their services, adding more frequencies and potentially new routes. For instance, Virgin Australia and Skywest submit that the Corporate Alliance will provide them with more opportunities to expand charter services beyond WA to meet increasing demand in other states, particularly Queensland.

- 3.7. Further, Virgin Australia and Skywest submit that the alliance could lead to lower prices for corporate customers, as the airlines will have the incentive to offer discounts for bundled services as they both share the benefit of winning more corporate contracts. The applicants consider that the Corporate Alliance will result in some cost savings by creating opportunities to realise synergies and efficiencies.

### **Interested party submissions**

- 3.8. The ACCC sought submissions from approximately 50 interested parties potentially affected by the application, including competing airlines, mining and resource companies, regulators and other aviation stakeholders.
- 3.9. The ACCC received submissions supporting authorisation from the Northern Territory Tourism, Northern Territory Airports, the Department of Transport (WA) (the DoT) and one anonymous interested party. The ACCC received one submission opposing authorisation, from Air Australia.
- 3.10. Submissions from the Northern Territory Tourism and Northern Territory Airports both outlined general support for the Corporate Alliance, with Northern Territory Airports submitting that it will facilitate a significant increase in competition in the Australian corporate travel market.
- 3.11. The DoT considers the alliance will have obvious benefits to corporate customers, as well as some flow on effects to RPT passengers using services underpinned by corporate customers. The DoT considers the alliance will allow Virgin Australia and Skywest to compete with Qantas, but notes that any authorisation decision should take into consideration the ability of other airlines in WA to compete for corporate customers.
- 3.12. Air Australia did not support the Corporate Alliance, submitting it will limit its ability to compete for charter services in WA and restrict other carriers from expanding their presence in this market. The ACCC notes that Air Australia has since gone into administration for reasons unconnected to the Corporate Alliance.

### **Following the draft determination**

- 3.13. Following the draft determination, the ACCC received one submission from an interested party, Gold Airways, opposing the alliance. Gold Airways submits that while the Corporate Alliance will result in some benefits to corporate travellers generally, it has the potential to lessen competition for fly-in fly-out bidding.
- 3.14. Gold Airways submits that Virgin Australia should offer a non-exclusive alliance arrangement to other fly-in fly-out carriers throughout the region.

- 3.15. In its response to Gold Airways, Virgin Australia notes that smaller stand-alone regional and charter operators are currently able to operate profitably despite competing with a party (Qantas) with an integrated offer and the Corporate Alliance will not change this.
- 3.16. Virgin Australia further submits that if it or Skywest sought to enter into a similar arrangement with another party, they would be required to seek authorisation from the ACCC.
- 3.17. The views of the applicants and interested parties are outlined in the ACCC's evaluation of the Corporate Alliance in Chapter 4 of this determination. Copies of public submissions may be obtained from the ACCC's website ([www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister)) and by following the links to this matter.

## 4. ACCC evaluation

- 4.1. The ACCC's evaluation of the Corporate Alliance is in accordance with the relevant net public benefit tests<sup>37</sup> contained in the Act. While there is some variation in the language of the tests, in broad terms, the ACCC is required to identify and assess the likely public benefits and detriments, including those constituted by any lessening of competition. The ACCC may grant authorisation if it is satisfied that the benefit to the public would outweigh the public detriments.

### The market

- 4.2. The first step in assessing the effect of the conduct for which authorisation is sought is to consider the relevant market(s) affected by that conduct.
- 4.3. The Corporate Alliance contemplates cooperation between the applicants with respect to the supply of air transport services and ancillary products to corporate customers under tender or contract. The applicants will offer a 'total solution' to corporate customers which will include a range of air passenger transport services, including charter services, domestic RPT services and international RPT services.
- 4.4. Therefore, Virgin Australia and Skywest submit that the relevant markets for assessing the competition effects arising from the Corporate Alliance should be limited to corporate customers, being a segment in the markets for the supply of:
- regular domestic air passenger transport services within Australia;
  - regular international air passenger transport services to and from Australia; and
  - charter services within Australia.<sup>38</sup>
- 4.5. The ACCC accepts that there are important differences between the provision of RPT and charter services, and that firms with expertise and capital well suited to the provision of RPT services may not be able to readily translate this into an ability to provide charter services. This is consistent with Qantas and Virgin Australia both choosing to offer charter services via partnerships and/or acquisitions with specialist providers rather than doing so by expanding their existing operations without a partnership or acquisition.
- 4.6. Key factors that distinguish charter from RPT services include the different traffic densities, lower frequencies, different regulatory requirements, more difficult landing conditions and other destination-specific factors that require different aircraft, different approaches to maintenance and staffing, and the need to invest in a close, cooperative relationships with corporate customers in order to execute services. Charter services also require different management of assets (different aircraft have different maintenance requirements) and a different approach to staffing.

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<sup>37</sup> Sections 90(8), (6), (7), (5A) and (5B)

<sup>38</sup> Virgin Australia and Skywest, *Submission in support of applications for authorisation*, 7 December 2011, p. 29

- 4.7. The applicants note that air freight services are explicitly carved-out of the Corporate Alliance, as are RPT services (except to the extent they form part of a contract with a corporate customer).
- 4.8. No interested party submissions specifically addressed issues relevant to identifying the markets affected by the Corporate Alliance. Air Australia submitted that it had concerns the alliance would limit its ability to compete for charter services in WA and considered the Corporate Alliance could lessen competition in the 'market for corporate contracts'. This suggests that Air Australia considered corporate customers to be a separate market.
- 4.9. In determining the dimensions of the relevant markets in this matter, the ACCC has considered the likely extent of supply and demand side substitutability of air passenger transport services to corporate customers.
- 4.10. The ACCC recognises that, in general, a broad distinction may be drawn between corporate customers and the general public (comprising business and leisure customers). Public customers take the regular service offerings by airlines as given, and choose the price, timing and service offer that best meets their needs. Corporate customers often require a more tailored solution to meet their business needs, for example, large traffic volumes, negotiation of volume discounts, access to a large number of origin/destination points, high frequency of services on select routes, etc.
- 4.11. However, the ACCC considers there is generally a high degree of supply side substitutability with regard to the provision of service offerings for corporate customers and the general public. For example, carriers generally are able to serve both corporate customers and the general public on the same flight and cater for both when supplying airport lounge services and frequent flyer schemes. This suggests it would be appropriate to consider corporate customers and the general public broadly in the same product market.
- 4.12. Nevertheless, the ACCC considers it important to take into account the differences between the corporate and public customer segments of the market for the purposes of assessing the Corporate Alliance.
- 4.13. The Corporate Alliance is somewhat different to previous alliances considered by the ACCC, which have involved cooperation between international airlines in their provision of services to the general public as well as corporate customers. The Corporate Alliance relates to the offer of integrated charter services and domestic and international RPT services to corporate customers only.
- 4.14. The ACCC considers that, to the extent that certain domestic and international RPT services form part of an integrated service package offered to corporate customers, decisions may be made by the applicants that affect members of the general public (comprising business and leisure travellers). For example, Virgin Australia may make changes to its domestic and/or international RPT schedules to better match Skywest's RPT or charter services. This could affect members of the general public who utilise these services.

- 4.15. The ACCC notes that freight services are explicitly carved out of the Corporate Alliance and are therefore not relevant to its assessment.
- 4.16. In conclusion, the ACCC considers the relevant areas of competition for the purpose of assessing the impact of the Corporate Alliance are:
- charter services within Australia (particularly in WA);
  - domestic RPT services (including intra-WA services); and
  - international RPT services to and from Australia.

## **The counterfactual**

- 4.17. The ACCC applies the ‘future with-and-without test’ (or ‘counterfactual’) established by the Tribunal to identify and weigh the public benefit and public detriment generated by conduct for which authorisation has been sought.<sup>39</sup>
- 4.18. Under this test, the ACCC compares the public benefit and anti-competitive detriment generated by arrangements in the future if the authorisation is granted with those generated if the authorisation is not granted.
- 4.19. The applicants submit that without authorisation, each of Virgin Australia and Skywest would continue to offer their present services and would have a limited ability to provide corporate customers with an integrated offer. They consider that in the counterfactual, they would not have the incentive to cooperate, invest and implement all of the elements of the Corporate Alliance.
- Virgin Australia does not have dedicated charter operations and submits that it has limited management experience in this area. Virgin Australia submits that while its smaller aircraft such as the Embraer E190 or the aircraft it leases from Skywest could in theory be used for dedicated charter operations, it considers “this would be an inferior offer compared with the Corporate Alliance and would compromise Virgin Australia’s RPT services...”<sup>40</sup>
- 4.20. Absent the Corporate Alliance, the applicants submit that:
- ...Skywest is unlikely to be a competitor with Virgin Australia for broader domestic or international network services or for frequent flyer services. In order to enter this market [sic], Skywest would need to make significant investments in aircraft, airport facilities, management and staff. It would also be inconsistent with Skywest’s business model.<sup>41</sup>
- 4.21. No issues directly relevant to the ACCC’s counterfactual assessment were raised in interested party submissions.

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<sup>39</sup> *Australian Performing Rights Association* (1999) ATPR 41-701 at 42,936. See also for example: *Australian Association of Pathology Practices Incorporated* (2004) ATPR 41-985 at 48,556; *Re Media Council of Australia* (No.2) (1987) ATPR 40-774 at 48,419.

<sup>40</sup> Virgin Australia and Skywest, *Submission in support of applications for authorisation*, 7 December 2011, p. 17

<sup>41</sup> Virgin Australia and Skywest, *Submission in support of applications for authorisation*, 7 December 2011, p. 30

- 4.22. The ACCC understands that large corporations in the resources sector are expressing a preference for a single provider of air passenger transport services to support their growing fly-in-fly-out operations. The ACCC acknowledges the desire of Virgin Australia and Skywest to provide an integrated air services package to corporate customers in competition with the only other provider of such integrated services, the Qantas Group and its affiliates. The ACCC notes that the skills and assets relevant to the provision of RPT services, while related to those necessary for charter operation, also differ in important ways as outlined at paragraphs 4.5 – 4.6 above. The Corporate Alliance enables both Virgin Australia and Skywest to offer corporate customers both dedicated charter services and RPT without having to significantly modifying their business models.
- 4.23. The ACCC considers that without authorisation, Virgin Australia and Skywest would be likely to continue to offer their present services. In particular:
- Virgin Australia would be unlikely to significantly increase its provision of charter services. Virgin Australia would also be unlikely to increase the number of RPT service destinations in regional WA using its own aircraft in preference to its codeshare arrangement with Skywest; and
  - Skywest would be unlikely to expand its inter-state and international service offerings to match the network scale and density of Virgin Australia.
- 4.24. Without authorisation, the ACCC considers that Virgin Australia and Skywest would continue their current commercial relationship. As noted previously, under this agreement Virgin Australia wet leases some smaller aircraft from Skywest to provide regional services, Virgin Australia codeshares on many of Skywest's RPT services, and customers can earn and redeem Velocity reward points on both airlines' networks (but not status credits).

## Public benefit

- 4.25. Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.<sup>42</sup>

- 4.26. Broadly, Virgin Australia and Skywest submit that the Corporate Alliance will:

- result in enhanced products and services;
- promote competition in the supply of air services to corporate customers;
- meet the requirements of the rapidly expanding resources sector; and

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<sup>42</sup> *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.



- achieve some cost savings and efficiencies.
- 4.27. The ACCC's assessment of the likely public benefits from the Corporate Alliance follows.

### **Enhanced products and services**

- 4.28. Virgin Australia and Skywest submit that the Corporate Alliance will enable them to integrate their charter and RPT networks, thus providing a higher level of service and convenience to corporate customers and passengers travelling on their services.
- 4.29. The applicants submit that the ability to coordinate schedules will ensure better connections as they aim to efficiently connect charter services with RPT services. This will minimise travel time for passengers. In addition, passengers travelling with Skywest will benefit from being able to access Virgin Australia's lounges and/or earn Velocity status credits or points required to make them eligible for lounge access and other benefits, such as advanced seat selection, priority boarding and fare credit for personal travel.
- 4.30. Virgin Australia and Skywest consider these value added benefits are valued highly by corporate customers because they assist in attracting and retaining skilled workers, particularly those on fly-in-fly-out rosters. This view was consistent with interested party submissions.
- 4.31. The applicants consider the integrated air and ground service package will be highly valuable to corporate customers and their employees, and they expect they will be able to win a higher proportion of corporate accounts as a result. The applicants consider the greater share of corporate contracts they will obtain, and the resulting higher load factors on their RPT and charter services, will create opportunities to expand their services by adding more frequencies and potentially new routes. For instance, Virgin Australia and Skywest submit that the Corporate Alliance will provide them with more opportunities to expand charter services beyond WA to meet increasing demand in other states, particularly Queensland.
- 4.32. Northern Territory Airports submits that the Corporate Alliance will result in improved service offerings for fly-in-fly-out workers, such as better international and domestic connectivity and improved loyalty programs.
- 4.33. Under the Corporate Alliance, Virgin Australia will have the incentive to offer the same frequent flyer benefits and lounge access to eligible passengers (corporate customer employees) travelling on Skywest's services as it offers to its own passengers. The ACCC considers that benefits such as airport lounge access and frequent flyer benefits are likely to be of value to passengers, particularly fly-in-fly-out employees who are required to travel often and over long distances and sometimes with multiple connections.
- 4.34. The ACCC notes the applicants' and interested party submissions that these value-added benefits are becoming standard in the resources sector, and fly-in-fly-out workers now expect these types of benefits. The ACCC therefore accepts the

importance to corporate customers with large fly-in-fly-out workforces of acquiring integrated charter and RPT service packages that incorporate these benefits, to assist them in attracting and retaining skilled personnel.

- 4.35. Therefore, the ACCC acknowledges that the Corporate Alliance is likely to lead to public benefits such as enhanced value-added benefits and better flight connectivity, which will directly accrue to corporate customers and their fly-in-fly-out employees.

### **Promoting competition**

- 4.36. Qantas is the only airline that currently has the ability to offer a full suite of integrated charter and RPT services to corporate customers in Australia. Qantas offers extensive domestic and international RPT services. As set out in Chapter 2, Qantas has recently acquired Network Aviation, an established Perth-based charter operator. In addition to this, Qantas has commercial relationships with Airnorth and Cobham Aviation ('its affiliates'), which together offer extensive charter service operations as well as intra-WA RPT services.
- 4.37. Virgin Australia and Skywest expect that the Corporate Alliance will allow them to compete head-to-head with Qantas in services offered to corporate customers. The applicants consider this will stimulate competition and is likely to result in lower prices and improvements to product and service quality (such as frequent flyer program and airport lounge enhancements).
- 4.38. Northern Territory Airports submits that the Corporate Alliance will facilitate a significant increase in competition in the Australian corporate travel market.
- 4.39. The ACCC accepts that the Corporate Alliance will assist Virgin Australia and Skywest to match the integrated charter and RPT service offered to corporate customers by Qantas and its affiliates, increasing the choice of service providers available to corporate customers who require or prefer an integrated air service package. The ACCC considers that this has the potential to trigger a competitive response from Qantas, resulting in public benefits such as lower prices and higher levels of service being offered to corporate customers in Australia in the future.

### **Meeting the requirements of the resources sector**

- 4.40. Virgin Australia and Skywest submit that the Corporate Alliance is a joint response to meet the growing demand for corporate travel in Australia. As outlined in Chapter 2, the resources boom in Australia, particularly in WA, has resulted in increased demand for charter services for the rapidly expanding fly-in-fly-out workforce.
- 4.41. The applicants submit that over the past year, customers, especially mining companies, have increasingly expressed a preference for a full suite of services, which not only include air services so that employees can travel to and from capital cities anywhere in Australia (or even from New Zealand) through to mine sites, but also a comprehensive frequent flyer program and lounge access. Under the Corporate Alliance, the applicants consider they can better meet the changing needs of the resources sector through their ability to offer a competitive integrated package to mining companies.

- 4.42. Northern Territory Airports submits that the Corporate Alliance will allow both carriers to offer all the services that the resources sector and associated industries require.
- 4.43. The ACCC considers that, while the Corporate Alliance is likely to confer benefits to the resources sector, many of these benefits are recognised under the other public benefit categories claimed by the applicants. Notwithstanding this, it is possible that the Corporate Alliance could confer further public benefits to the extent that it assists the resources sector to maintain or improve workforce productivity and, hence, international competitiveness (for example, by offering services that Qantas is unable to supply to corporate customers or by stimulating a competitive response from Qantas).

#### **Cost savings and efficiencies**

- 4.44. Virgin Australia and Skywest submit that the Corporate Alliance could lead to lower prices for corporate customers, as they will have the incentive to offer discounts for bundled services as they both share the benefit of winning more corporate contracts and will also benefit from economies of scale. The applicants anticipate that they will be able to offer a bundled product at a more competitive price than would be available if contracting separately with each party.
- 4.45. Although not the primary objective of the Corporate Alliance, the applicants consider they will achieve some cost savings through synergies captured by sharing resources, airport facilities and contracting costs.
- 4.46. Northern Territory Airports considers there will be cost savings and synergies for both Corporate Alliance partners, as well as likely reduced costs to corporate customers where RPT and charter services can be rolled in to the one contact.
- 4.47. As discussed in more detail below, Virgin Australia and Skywest operate largely complementary networks, with Virgin Australia operating mostly inter-state domestic and international RPT services, and Skywest for the most-part operating intra-state RPT services and charter services within WA.
- 4.48. The ACCC considers that the Corporate Alliance may result in lower fares for corporate customers by removing or reducing double marginalisation. Double marginalisation occurs where suppliers of complementary products, such as Virgin Australia and Skywest, independently charge a price which includes a mark-up over their costs to maximise their individual profits and do not take account of the impact of these prices on demand for the other airlines' services. The net result is higher prices on connecting routes than if the two firms were to coordinate their pricing, for example, through a cooperation agreement or alliance such as the Corporate Alliance. The applicants do not coordinate their prices under their current commercial agreement.
- 4.49. A cooperation agreement between suppliers of complementary services can generate economic benefits in the form of economies of scope, such as reduced risks and operational costs, increased investment and innovation, reduced transaction and contracting costs. The ACCC considers that some of these benefits may be realised by the applicants under the Corporate Alliance.

- 4.50. Further, the ACCC considers that some transactional cost savings might also be achieved by corporate customers who choose to contract with Virgin Australia and Skywest under the Corporate Alliance, to the extent it enables them to move away from contracting with multiple airlines to contracting with one party.
- 4.51. The ACCC therefore accepts that cost savings for the applicants and corporate customers are a public benefit likely to arise from the Corporate Alliance.

### **ACCC conclusion on public benefits**

- 4.52. The ACCC considers that the Corporate Alliance is likely to result in public benefits in the form of:
- enhanced products and services, including better flight connectivity for corporate customers and their fly-in-fly-out workers and enhanced value-added benefits (such as frequent flyer benefits and airport lounge access);
  - promotion of competition with Qantas and its affiliates in the provision of integrated charter and RPT services to corporate customers; and
  - cost savings and other efficiencies achieved by the applicants and corporate customers.

### **Public detriment**

- 4.53. Public detriment is also not defined in the Act but the Tribunal has given the concept a wide ambit, including:
- ...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.<sup>43</sup>
- 4.54. Agreements between competitors which influence the pricing decisions of market participants have the potential to result in allocative inefficiencies. That is, they can move prices away from levels that would be set in a competitive market. This can result in higher prices for consumers and send market signals which direct resources away from their most efficient use.
- 4.55. Further, the exchange of certain information among competitors, particularly in relation to prices, fees and costs, may facilitate collusion or otherwise reduce competition, resulting in increased prices or reduced quality and availability of goods or services. Outcomes of this nature are associated with significant public detriment.
- 4.56. The applicants submit that the Corporate Alliance is unlikely to substantially lessen competition in any relevant market.

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<sup>43</sup> *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

### *Charter services*

- 4.57. In respect of the market for charter services, the applicants note that Virgin Australia does not currently operate in this market and absent the Corporate Alliance is unlikely to commence charter services in competition with Skywest. Further, the applicants submit that there are a number of charter operators in WA that compete vigorously with Skywest, such as Qantas/Network Aviation, Alliance Airlines, Cobham Aviation and Skippers. The applicants consider these airlines will continue to compete with Skywest under the Corporate Alliance.
- 4.58. Northern Territory Airports submits that as Skywest is the only alliance partner with a significant charter capability, there is no risk of reduced competition in the charter air services market as a result of the alliance.
- 4.59. The DoT submits that in granting authorisation, the ACCC should take into consideration the ability of other airlines in WA to compete in tender processes for corporate customers.
- 4.60. Air Australia submitted that the Corporate Alliance would limit its ability to compete for charter services in WA, and potentially preclude other players from expanding their presence. Air Australia considered that the alliance would strengthen the bidding power of Virgin Australia and Skywest and result in a lessening of competition in 'the market for corporate contracts'. The ACCC notes that since making its submission, Air Australia entered voluntary administration and is no longer operating air services.
- 4.61. Gold Airways submitted that the Corporate Alliance has the potential to lessen competition for fly-in-fly-out bidding which could result in the collapse of smaller but important fly-in-fly-out carriers. In response, Virgin Australia noted the Corporate Alliance will not alter the ability for smaller carriers to continue operating profitably, as they already have done in competition with a carrier (Qantas) with an integrated offer.
- 4.62. The ACCC has considered whether the Corporate Alliance might lessen competition in the market for charter services by eroding the ability of charter service operators not affiliated with a national carrier to compete in the market.
- 4.63. The ACCC understands that the preference for one service provider to provide all a company's air service requirements is becoming widespread amongst large resource companies with expanding fly-in-fly-out requirements. This was reaffirmed by interested party submissions.
- 4.64. While acknowledging that this is the preference of many firms, it is evident that a number of charter operators continue to operate profitably in providing services to customers including large resource companies, suggesting that this preference is not an absolute preference, but rather it is one of a number of factors taken into account by corporate customers when acquiring air transport services. Interested parties consider there will still be a role for smaller regional players and charter carriers after the Corporate Alliance is implemented. There is no evidence before the ACCC that would support a conclusion that this will not continue to be the case.

- 4.65. Without authorisation of the Corporate Alliance, the ACCC considers that Qantas and its affiliates will continue to be the only service provider able to provide integrated charter and RPT services. The ACCC considers the applicants' rationale for entering into the Corporate Alliance is to compete more closely with Qantas and its affiliates in the provision of integrated charter and RPT services to corporate customers, rather than drive out smaller players in the charter services market in order to later raise price or reduce service. The ACCC notes that the exit of non-integrated charter service providers would not be in the commercial interests of resource companies, as major customers of charter services whose procurement decisions have a large bearing upon competition in this market.
- 4.66. The ACCC acknowledges that smaller stand-alone charter operators (and integrated charter and intra-state RPT service operators with no affiliation with national or international carriers) may be unable to meet the requirement of any corporate customers who have a strong preference for an integrated charter and RPT service package. However, as outlined above, the ACCC expects that non-integrated charter operators are likely to be able to continue profitably. To the extent that corporate customers develop a very strong preference to obtain all of their air transport services from a single provider, the ACCC does not consider that would be as a consequence of the Corporate Alliance. Rather, it would be a consequence of dynamic changes in the resources sector, and not confined to WA.
- 4.67. The ACCC considers that even where corporate customers have a strong preference to contract with a single provider to meet their charter and RPT service requirements, they may still choose to supplement these arrangements with stand alone charter services to support their operations. In procuring such services they may give less weight to affiliation with a national or international carrier relative to other dimensions of service, such as price, reliability and flexibility.
- 4.68. On balance, the ACCC considers that the Corporate Alliance is unlikely to lessen competition in the charter services market.

***Domestic RPT services (including intra-WA services)***

- 4.69. In respect of the market(s) for domestic RPT services, the applicants submit that their operations have very limited competitive overlap. Skywest does not operate a national network; its operations are mostly confined to WA. The applicants submit that, absent the Corporate Alliance, Skywest is highly unlikely to offer significant inter-state domestic services in competition with Virgin Australia.
- 4.70. The only routes which the applicants both serve in the domestic RPT market are Perth–Broome and Perth–Darwin. The applicants submit that:
- on the Perth–Broome route, Virgin Australia's services are largely directed at public travel (including leisure passengers), while Skywest's services principally support and are contracted to corporate customers. With or without the Corporate Alliance, the applicants consider that there will remain competition for corporate customers on this route between Skywest and Qantas.

- on the Perth–Darwin route, Virgin Australia offers a direct service, while Skywest offers a one-stop service via Broome on a seasonal basis.
- 4.71. The applicants submit that the minimal competition between them will be unaffected because the Corporate Alliance does not extend to the supply of RPT services to general, non-corporate customers. While domestic services will be provided to corporate customers as part of an integrated offer, the applicants note that their pricing for corporate customers is separate from those made publicly available and does not influence publicly available pricing. As such, the applicants consider that the Corporate Alliance and the joint pricing of RPT services for corporate accounts will not have a flow-on effect on services supplied to the general public.
- 4.72. Northern Territory Airports submits that the Corporate Alliance will have no impact on competition in regional, domestic or international RPT service markets, as Virgin Australia and Skywest have complementary scheduled networks with potential competition at the margins.
- 4.73. The ACCC does not consider that the Corporate Alliance is likely to enhance the applicants' ability to raise price or reduce service in the domestic RPT services market as the applicants supply, and are likely to continue to supply, largely complementary services. Also, the applicants' price and service decisions are likely to continue to be constrained by the presence of Qantas.
- 4.74. On the two routes where they currently overlap and could potentially compete for corporate customers:
- the applicants will continue to compete for non-corporate customers;
  - Skywest's indirect Perth–Darwin service (via Broome) is likely to be regarded as a less attractive substitute for the direct services offered by Virgin Australia and Qantas, such that competition between them on this route is, and will remain, minimal.
  - the applicants' price and service decisions are likely to continue to be constrained by the presence of Qantas in the market on both these routes.
- 4.75. As outlined in the counterfactual section, the ACCC does not consider that Skywest is likely to significantly expand its inter-state network or that Virgin Australia is likely to significantly expand its intra-WA network in preference to its code share arrangement with Skywest. On this basis, the ACCC considers it is unlikely that there would be a significant increase in the number of overlapping services (on which there is competition between the applicants) absent the Corporate Alliance.
- 4.76. Given the minimal network overlap between the applicants, and the constraints noted above, the ACCC does not consider the Corporate Alliance is likely to result in any significant public detriment in the market for domestic RPT services.

### ***International air passenger transport services***

- 4.77. In respect of the market for international RPT services, the applicants submit that their operations have very limited competitive overlap. Skywest does not operate any international RPT services, apart from two Port Hedland–Bali services a week (Saturdays and Sundays). The applicants submit that, absent the Corporate Alliance, Skywest is highly unlikely to offer broader international services in competition with Virgin Australia.
- 4.78. The only route on which the applicants overlap to some extent is Perth–Bali, with Virgin Australia operating direct services and Skywest operating indirect services via Port Hedland. The ACCC considers this indirect service is likely to be regarded as a less attractive substitute for the direct service.
- 4.79. Similarly to domestic RPT services, the applicants submit that the minimal competition between them will be unaffected because the Corporate Alliance does not extend to the provision of RPT services to general, non-corporate customers. The applicants consider that the joint pricing of RPT services in the context of corporate accounts will not have a flow-on effect on services supplied to the general public.
- 4.80. The ACCC considers that, based on currently available information, the applicants are unlikely to offer directly competing services in the future. In this regard, the ACCC notes the applicants’ submission that Skywest has no intention to change its business model to offer more extensive international RPT services.
- 4.81. Given that the applicants do not compete on any direct international RPT services, and the low frequency of Skywest’s Port Hedland–Bali service, the ACCC considers the Corporate Alliance is unlikely to result in any significant public detriment in this market.

### **ACCC conclusion on public detriments**

- 4.82. The ACCC considers that the Corporate Alliance is unlikely to result in any significant anti-competitive detriment in any of the relevant markets, given that the applicants operate largely complementary networks.
- 4.83. In the market for charter services, the ACCC acknowledged that some stand alone charter service operators will be unable to offer integrated air services packages similar to those of Virgin Australia/ Skywest and Qantas/affiliates. However, the ACCC notes that standalone charter services presently operate profitably within WA despite competing with a party (Qantas) with an integrated offer, and it is in the commercial interests of major resource companies for this competition to continue. To the extent that changing customer preferences give an advantage to operators able to offer an integrated service, the ACCC considers that this is not caused by the Corporate Alliance, which seeks to meet this preference and enhance the applicants’ ability to compete with Qantas on this aspect of their offer.
- 4.84. The Corporate Alliance does not extend to joint pricing and scheduling decisions on RPT services. In any case, on two of the three overlapping RPT services (Perth–Darwin and Perth–Bali), the applicants compete only indirectly. On all three overlap routes



(including the directly overlapping Perth – Broome route) the applicants' price and service decisions are likely to be constrained by competition from Qantas.

## **Balance of public benefit and detriment**

- 4.85. In general, the ACCC may grant authorisation if it is satisfied that, in all the circumstances, the Corporate Alliance is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment.
- 4.86. In the context of applying the net public benefit test in section 90(8)<sup>44</sup> of the Act, the Tribunal commented that:
- ... something more than a negligible benefit is required before the power to grant authorisation can be exercised.<sup>45</sup>
- 4.87. For the reasons outlined in this chapter, the ACCC considers the Corporate Alliance is likely to result in public benefits, specifically to large corporate customers with fly-in-fly-out workforces (for example, mining companies). The ACCC considers that the Corporate Alliance will promote competition by enabling the applicants to match the extensive integrated service package currently offered to corporate customers by Qantas.
- 4.88. The ACCC considers that the Corporate Alliance is unlikely to result in any significant anti-competitive detriment. 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. Moreover, the price and service decisions of the applicants are likely to be constrained by the presence of Qantas in all relevant markets.
- 4.89. Accordingly, the ACCC considers the public benefit that is likely to result from the conduct is likely to outweigh the public detriment. The ACCC is therefore satisfied that the relevant tests in the Act are met.

## **Length of authorisation**

- 4.90. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>46</sup> The ACCC generally considers it appropriate to grant authorisation for a limited period of time, so as to allow an authorisation to be reviewed in the light of any changed circumstances. In this instance, the applicant seeks authorisation for five years.
- 4.91. None of the interested party submissions dealt specifically with the length of authorisation requested.

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<sup>44</sup> The test at 90(8) of the Act is in essence that conduct is likely to result in such a benefit to the public that it should be allowed to take place.

<sup>45</sup> *Re Application by Michael Jools, President of the NSW Taxi Drivers Association* [2006] ACompT 5 at paragraph 22.

<sup>46</sup> Section 91(1).

- 4.92. As set out above, the ACCC considers that the Corporate Alliance is likely to result in a number of public benefits and little public detriment. On this basis, the ACCC grants authorisation for the Corporate Alliance for five years.

### **Variations to the Corporate Alliance**

- 4.93. The ACCC notes that any amendments to the Corporate Alliance during the term of this authorisation would not be covered by the authorisation.

## 5. Determination

### The applications

- 5.1. On 8 December 2011, Virgin Australia and Skywest Airlines lodged applications for authorisation A91287 & A91288 with ACCC.
- 5.2. Application A91287 was made using Form A, Schedule 1, of the Competition and Consumer Regulations 2010. The application was made under subsections 88 (1) and 88(1A) of the Act to:
- make and give effect to a contract, arrangement or understanding, a provision of which is or may be an exclusionary provision within the meaning of section 45 of the Act; and
  - make and give effect to a provision of a contact, arrangement or understanding, a provision of which is, or may be, a cartel provision and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- 5.3. Application A91288 was made using Form B, Schedule 1, of the Competition and Consumer Regulations 2010. The application was made under subsections 88 (1) and 88(1A) of the Act to:
- make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act; and
  - make and give effect to a contract or arrangement, or arrive at an understanding a provision of which would be, or might be, a cartel provision (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- 5.4. In particular, the applicant seeks authorisation for a Corporate Alliance to coordinate for the purpose of bidding for joint tenders and contracts and offering a bundled service to corporate customers specifically within WA for intra-state, RPT and international flights insofar as they are for corporate customers and not the wider public.

### The net public benefit tests

- 5.5. For the reasons outlined in Chapter 4 of this determination, the ACCC considers that in all the circumstances the Corporate Alliance is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition. Further, the ACCC is satisfied that the Corporate Alliance is likely to result in such a benefit to the public that it should be allowed to take place.
- 5.6. The ACCC therefore **grants** authorisation to applications A91287 & A91288.

## **Conduct for which the ACCC grants authorisation**

- 5.7. Authorisation is granted to Virgin Australia and Skywest for their Corporate Alliance until 1 June 2017.
- 5.8. Further, the authorisation is in respect of the Corporate Alliance as it stands at the time authorisation is granted. Any changes to the Corporate Alliance during the term of the authorisation would not be covered by the authorisation.
- 5.9. This determination is made on 10 May 2012.

## **Conduct not authorised**

- 5.10. The authorisation does not extend to Virgin Australia and Skywest to cooperate in relation to services supplied to the general public.

## **Interim authorisation**

- 5.11. At the time of lodging the application, Virgin Australia and Skywest requested interim authorisation to commence marketing and offering services under the Corporate Alliance and participate in tenders from early 2012. The ACCC granted interim authorisation on 25 January 2012.
- 5.12. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

## **Date authorisation comes into effect**

- 5.13. This determination is made on 10 May 2012. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 1 June 2012.