



**Etihad and Air Berlin
applications for authorisation A91307 and A91308
– request for interim authorisation**

REASONS

16 May 2012

DECISION

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation in respect of the applications for authorisation lodged by Etihad Airways PJSC (Etihad) and Air Berlin Plc & Co. Luftverkehrs KG (Air Berlin) on 26 April 2012.

Interim authorisation commences immediately, and will remain in place until the date the ACCC's final determination comes into effect or interim authorisation is revoked.

THE APPLICATION

Etihad and Air Berlin (the applicants) are seeking authorisation for a proposed Commercial Co-operation Agreement and Codeshare Agreement (together the Alliance). The Alliance will cover air passenger services between Germany and Australia via Abu Dhabi.

The airlines seek authorisation to cooperate in relation to joint pricing, joint route and schedule coordination and joint marketing, distribution and sales representation as well as a range of other cooperative arrangements. The Alliance will not involve revenue sharing between the applicants.

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

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

THE AUTHORISATION PROCESS

Authorisation provides protection from legal action in relation to certain conduct that may otherwise breach the competition provisions of the Competition and Consumer Act 2010 (the Act). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs the public detriment. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

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. No submissions were received.

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;
- the networks of the two airlines are largely complementary; and
- denying interim authorisation could delay any public benefits the Alliance offers.

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.