



Virgin Australia & Air New Zealand – request to further vary compliance with condition 1(b) of authorisations A91227 & A91228

31 May 2012

DECISION

The Australian Competition and Consumer Commission (the ACCC) has decided to vary the requirement on Virgin Australia (formerly Virgin Blue) and Air New Zealand (the applicants) to comply fully with condition 1(b) of authorisations A91227 & A91228 for the Northern Summer 2012 (NS12)¹ and Northern Winter 2012 (NW12)² scheduling seasons, subject to the applicants notifying the ACCC as soon as practicable of any material changes in demand conditions so that the variation can be amended accordingly.

BACKGROUND

On 6 May 2010, the applicants sought authorisation for an alliance between the airlines involving coordination and agreement in respect of trans-Tasman passenger services (the Alliance). On 16 December 2010, the ACCC issued a determination granting conditional authorisation to the Alliance for three years. The conditions of authorisation require the applicants to meet certain seat capacity requirements (see Attachment A of the ACCC's Determination).

The ACCC has previously varied the requirement for the applicants to comply fully with the conditions of authorisations A91227 & A91228 in July and August 2011. Specifically, in July 2011, the ACCC varied the obligation to comply for two scheduling seasons, NS11 and NW11, as a result of the February 2011 earthquake in Christchurch, New Zealand. The ACCC's decision in August 2011 to vary the requirement for the applicants to comply fully with conditions 1(a) and 1(b) of authorisations A91227 & A91228 for NS11 was as a result of the impact of the Chilean volcanic ash cloud on scheduled services.

THE REQUEST TO VARY COMPLIANCE WITH CONDITIONS

On 21 March 2012, Virgin Australia and Air New Zealand submitted a request to further vary their compliance with condition 1(b) of authorisations A91227 & A91228 as a result of the

¹ 1 April 2012-31 October 2012.

² 1 November 2012-31 March 2013.

continued impact of the February 2011 earthquake in Christchurch and subsequent aftershocks and January 2012 earthquake in Christchurch.

The earthquakes have impacted upon the demand for flights to and from Christchurch, leading to depressed demand. As a consequence, the applicants seek a variation to the requirement to comply fully with the seat capacity obligations on trans-Tasman routes in condition 1(b) of authorisations A91227 & A91228 for the NS12 and NW12 scheduling seasons only.

Specifically, the applicants seek to vary the requirement to fly not less than 100% of the Base Year Alliance Seat Capacity³ by:

- 100,041 seats (or a 4.2% reduction in seat capacity) for the NS12 season and
- 72,470 seats (or a 4.2% reduction in seat capacity) for the NW12 season.

In the absence of any further request for a variation during the term of authorisation, other than for the NS12 and NW12 scheduling seasons, the applicants will continue to comply with the requirement in condition 1(b) to fly no less than 100% of the trans-Tasman Base Year Alliance Seat Capacity, as specified in the conditions of authorisations A91227 & A91228.

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

THE VARIATION PROCESS

Pursuant to condition 2(g) of authorisations A91227 & A91228 the ACCC may vary the requirement to comply with the conditions either permanently or on a temporary basis.

A request to the ACCC for a variation must indicate the nature of the variation applied for and be accompanied by such information required for the ACCC to assess the application. The ACCC will consult in good faith with the applicant and may also undertake public consultation, including inviting submissions from any interested person within a specified period of time.

CONSULTATION

The ACCC undertook interested party consultations in order to consider the request for variation and received three submissions from interested parties, none of which opposed the variation.

³ Defined as the seat capacity specified in respect of a Nominated Route or the Trans-Tasman as set out in Schedule A to the conditions – see Attachment A – Conditions of Authorisations 91227 & A91228 in *Determination: Applications for authorisation lodged by Virgin Blue & Ors in respect of an airline alliance between the applicants*, 16 December 2010 at p. 95 at [5.473] – [5.479] published at: <http://www.accc.gov.au/content/index.phtml/itemId/927433/fromItemId/401858/display/acccDecision>

REASONS FOR DECISION

The ACCC considers that:

- the proposed variation does not materially alter the balance between public benefit and detriment identified in the ACCC's determination of 16 December 2010, particularly given that in making that decision the ACCC identified no concerns on Christchurch routes
- the ongoing impacts of the Christchurch earthquakes in February 2011 and January 2012 continue to constitute Exceptional Circumstances under the conditions of authorisation
- the expected reduction in demand for airline travel to and from Christchurch resulting from the earthquakes provides a reasonable basis for allowing the requested variation to the compliance obligations of the Applicants for the NS12 and NW12 scheduling seasons.

Accordingly, the ACCC has decided to vary the requirement on the applicants to comply fully with condition 1(b) of authorisations A91227 & A91228 for the NS12 and NW12 scheduling seasons, subject to the applicants notifying the ACCC as soon as practicable of any material changes in demand conditions so that the variation may be amended accordingly.

As a result of this variation, the obligations on the applicants under condition 1(b) will be as follows:

- For NS12, in respect of the trans-Tasman, the Applicants must fly not less than 95.8% of the trans-Tasman Base Year Alliance Seat Capacity (2,260,209 seats).
- For NW12, in respect of the trans-Tasman, the Applicants must fly not less than 95.8% of the trans-Tasman Base Year Alliance Seat Capacity (1,652,735 seats).

In the absence of any further request for a variation during the term of authorisation, other than for the NS12 and NW12 scheduling seasons, the applicants will continue to comply with the requirement in condition 1(b) to fly not less than 100% of the trans-Tasman Base Year Alliance Seat Capacity, as specified in authorisations A91227 & A91228.

The applicants' compliance with the varied trans-Tasman Base Year Alliance Seat Capacity for NS12 and NW12 will be subject to compliance audits in accordance with clause 3.5 of the conditions of authorisations A91227 & A91228.