



Australian  
Competition &  
Consumer  
Commission

Our Ref: 41875

17 December 2013

Luke Woodward  
Partner  
Gilbert + Tobin

GPO Box 3131  
Canberra ACT 2601

23 Marcus Clarke Street  
Canberra ACT 2601

tel: (02) 6243 1111  
fax: (02) 6243 1199

[www.accc.gov.au](http://www.accc.gov.au)

**By email:** [lwoodward@gtlaw.com.au](mailto:lwoodward@gtlaw.com.au)

Dear Mr Woodward

**Re: Virgin Australia & Air New Zealand authorisation A91227 & A91228**

I refer to:

- your letter of 15 November 2013 to the Australian Competition and Consumer Commission (ACCC) seeking, on behalf of Virgin Australia and Air New Zealand (the **applicants**), a variation to the obligation to comply with the Northern Summer (**NS13**) capacity requirement for Brisbane-Wellington (**BNE-WLG**) (**the variation request**); and
- the audit report dated 11 December 2013 prepared by Pitcher Partners pursuant to clause 3.5 of the conditions of Authorisations A91227 & A91228 (**the audit report**).

This letter addresses these matters.

**The variation request**

The ACCC has decided not to grant the variation. Please find attached a statement of reasons which the ACCC will publish which addresses the reasons for the ACCC's decision.

In deciding not to grant the variation sought by the applicants, the ACCC has also decided that, in the circumstances, the ACCC will not take any action in respect of the non-compliance with the capacity condition for NS13 on BNE-WLG, given:

1. The relatively minor extent of the non-compliance; and
2. The unusual circumstances outside the applicants' control which were at least a major factor in the non-compliance, being cancellations to flights caused by weather conditions.

The ACCC will continue to closely monitor the future compliance with the conditions by the applicants. The ACCC's decision to not take any action in the current circumstances should not be taken as indicative of the ACCC's likely view in respect of any future non-compliance.

In addition, the ACCC strongly encourages the applicants to consider the need for any variations to conditions as early as possible and to raise the possibility of variation requests with the ACCC at an early stage.

## The audit report

The ACCC considers the substance of the audit report meets the requirements in clause 3.5(b) of the conditions of Authorisations A91227 & A91228 (**the conditions**).

With the exception of BNE-WLG, based on the information provided in the audit report, the ACCC accepts that Virgin Australia and Air New Zealand have complied with clause 1(a) and 1(b) of the Condition for NS13. As noted above, in respect of BNE-WLG, the ACCC will not take any action in respect of the non-compliance with the capacity condition for NS13.

This letter and the audit report prepared by Pitcher Partners dated 11 December 2013 will be placed on the ACCC's public register.

If you wish to discuss any aspect of this matter, please do not hesitate to contact me on (02) 6243 1132.

Yours sincerely



Dr Richard Chadwick  
General Manager  
Adjudication Branch