



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

17 December 2013

DECISION

The Australian Competition and Consumer Commission (the **ACCC**) has decided not to vary the requirement on Virgin Australia (formerly Virgin Blue) and Air New Zealand (the **applicants**) to comply fully with condition 1(a) to authorisations A91227 & A91228 for the Northern Summer 2013 (**NS13**) in respect of the Brisbane-Wellington (**BNE-WLG**) route.

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 with the conditions of authorisations A91227 & A91228:

- 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.
- In August 2011 the ACCC varied the requirement for the applicants to comply fully with conditions 1(a) and 1(b) of authorisations A91227 & A91228 for NS11 as a result of the impact of the Chilean volcanic ash cloud on scheduled services.
- In May 2012 the ACCC varied the requirement on the applicants to comply fully with condition 1(b) of authorisations A91227 & A91228 for the NS12 and NW12 scheduling seasons as a result of the continued impact of the February 2011 earthquake in Christchurch and subsequent aftershocks and January 2012 earthquake in Christchurch.

THE REQUEST TO VARY CONDITIONS

On 15 November 2013, the applicants sought a variation to condition 1(a) of authorisations A91227 & A91228 as it relates to BNE-WLG in NS13.

Specifically, the applicants seek to vary the requirement to fly not less than 100% of the Scheduling Season Alliance Seat Capacity¹ on BNE-WLG by reducing the Scheduling Season Alliance Seat Capacity on BNE-WLG by 360 seats from 156,842 to 156,482.

The applicants submitted that an unusual level of operational cancellations on BNE-WLG had occurred late in NS13 caused by extreme weather events. These cancellations caused the applicants to fall approximately 300 seats short of the required NS13 capacity.

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 concerning whether or not such variations to the conditions are necessary.

REASONS FOR DECISION

The ACCC considers that a variation to the 1(a) BNE-WLG capacity condition for NS13 is not appropriate or necessary in the circumstances.

In particular, whereas in previous requests for variation (which were granted by the ACCC), the effect of granting the variation was to enable the applicants to comply with the relevant conditions, in the current circumstances, as the NS13 reporting season has concluded and the requisite capacity was not flown, compliance with the condition cannot be achieved.

Accordingly, the ACCC has decided not to vary the requirement on the applicants to comply fully with condition 1(a) to authorisations A91227 & A91228 for NS13.

The ACCC notes that the capacity shortfall on BNE-WLG was minor and largely due to circumstances outside of the applicants' control and, given those circumstances, the ACCC has decided that it will not take any action with respect to the non-compliance with the capacity condition on BNE-WLG at this time.

¹ 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