



AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION

# Draft Determination

Application for authorisation AA1000554

lodged by

UniProjects Pty Limited

in respect of

engaging in coordinated activities with the purpose of establishing a program to facilitate the return of international students to NSW and ACT-based universities

Authorisation number: AA1000554

Date: 5 August 2021

Commissioners: Keogh

Rickard

Brakey

Ridgeway

## Summary

The ACCC proposes to grant authorisation to enable UniProjects Pty Limited and its 14 member NSW and ACT-based universities to engage in coordinated activities with the purpose of establishing a program to facilitate the return of continuing international students.

The universities have developed this program due to the COVID-19 pandemic, in line with the Australian Government's *Protocols and preconditions for international student arrivals* to re-open the tertiary education sector to international students.

Authorisation would provide an exemption from competition law for the universities to collaborate to facilitate implementation of the program by, among other things, allocating seats on flights under the NSW Government cap in proportion to their 2019 international student enrolments. The universities will also jointly appoint a travel management provider to source flights and organise travel for returning students. Students will be responsible for booking and paying for their own flights, using a platform established by the travel provider.

The ACCC considers that the arrangements are likely to result in public benefits by providing an efficient way of facilitating returns and of allocating seats, returning international students to Australia at a lower cost, and assisting the economic recovery of the tertiary sector.

The ACCC considers that the arrangements are unlikely to result in significant public detriment in the form of a reduction in competition between the participating universities for international students. In particular, the ACCC notes that the cap on international student arrivals is set independently of the universities, that the arrangements are limited to continuing international students, and that participation is voluntary for universities.

The ACCC proposes to grant authorisation until 30 June 2022.

On 21 June 2021, the ACCC also granted interim authorisation to enable the proposed arrangements to commence while the ACCC is considering the substantive application.

The ACCC invites submissions in relation to this draft determination by 19 August 2022 before making its final decision.

### 1. The application for authorisation

- 1.1. On 26 May 2021,<sup>1</sup> UniProjects Pty Limited, on behalf of itself and 14 member universities (the **Applicants**) lodged application for authorisation A1000554 with the Australian Competition and Consumer Commission (the **ACCC**). The Applicants are seeking authorisation to engage in coordinated activities with the purpose of establishing a program to facilitate the return of international students to NSW and ACT-based universities (the **Project**) until June 2022 (the **Proposed Conduct**). This application for authorisation A1000554 was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

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<sup>1</sup> On 10 June 2021, the Applicants made a minor amendment to the application for authorisation to include item (d) of the Proposed Conduct outlined at paragraph 1.6 of this draft determination.

- 1.2. The ACCC may grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in the Act, but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.3. The Applicants requested, and on 17 June 2021 the ACCC granted under subsection 91(2) of the Act, interim authorisation to enable them to engage in the Proposed Conduct while the ACCC is considering the substantive application. At that time, the Applicants advised that interim authorisation would enable the first tranche of international students to return to Australia in time for the second semester of 2021, with other students returning as soon as practicable after that (subject to the restrictions on foreign arrivals and scheduling requirements). Given the current public health situation in NSW, the ACCC sought an update and the Applicants advise that:<sup>2</sup>

The universities continue to work closely and constructively with both the State and Federal Governments regarding the plan for the safe return of international students to Australia. Noting of course that the current priority for the State Government is navigating out of the current COVID19 Delta outbreak.

## The Applicants

- 1.4. UniProjects has lodged the application for authorisation on behalf of:
  - (a) itself
  - (b) participating universities in NSW and the ACT which may include:
    - i. Australian Catholic University
    - ii. Australian National University
    - iii. Charles Sturt University
    - iv. Southern Cross University
    - v. Macquarie University
    - vi. University of Canberra
    - vii. University of Newcastle
    - viii. University of New England
    - ix. University of New South Wales
    - x. University of Notre Dame
    - xi. The University of Sydney
    - xii. University of Technology Sydney
    - xiii. Western Sydney University
    - xiv. University of Wollongong

(together, the **Applicants**).

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<sup>2</sup> Media statement: Convener of the NSW Vice-Chancellors' Committee (NSWVCC), Professor Barney Glover AO, 2 July 2021, available at <https://www.nswvcc.edu.au/index.php/2021/07/26/media-statement/>.

1.5. The Applicants request that any authorisation granted also applies to:

- (a) any travel management services provider or providers appointed by UniProjects, and
- (b) any other universities that have campuses in NSW and/or the ACT and who may in future choose to participate in the collaboration with UniProjects and therefore potentially become party to, or engage in the Proposed Conduct (for example, Torrens University, La Trobe University, Victoria University and/or University of Tasmania).

## The Proposed Conduct

1.6. The Applicants are seeking authorisation, until June 2022, to discuss, enter into and/or give effect to any contract, arrangement or understanding, and to engage in conduct, in each case to the extent necessary to implement the Project. Specifically, the proposed conduct involves, and is limited to, the participating universities:

- (a) jointly appointing one or more travel management services providers for the Project
- (b) collaborating with each other (including establishing a working and/or operations group) to identify and implement solutions to establish an international student travel corridor – and make and manage aircraft, airline and seat bookings – to bring international students into NSW and the ACT, either via commercial or charter flights
- (c) implementing an arrangement to allocate available seats for international students on commercial or charter flights between participating universities in response to government restrictions. This includes the process for ‘re-allocating’ or swapping unused seats between participating universities to ensure, to the maximum extent possible, that all available seats are used
- (d) collaborating with each other to facilitate compliance with Government quarantine requirements for students (including transport to and from the quarantine location) and any student well-being initiatives while in quarantine. This includes any agreement by some or all of the participating universities to absorb, and not to pass on, some or all of the costs of these services to students (e.g. quarantine fees)
- (e) exchanging any information that is reasonably necessary for the purposes of paragraphs (b) and to (d) above, including discussing any impact of changes to government restrictions on the Project, and
- (f) communicating independently and collectively, directly and via third party providers of the travel services, with students seeking to avail themselves of the opportunity to return to Australia in accordance with the Project

(the **Proposed Conduct**).

1.7. In broad terms, competition laws require businesses to operate independently of their competitors when making decisions about the prices they charge or are willing to pay, which businesses they deal with, and the terms and conditions on which they do business. Because universities are in competition with each other to attract students, without the legal protection provided by authorisation an agreement between them about the matters described at paragraph 1.6 may be a risk of breaching competition laws.

## 2. Background

- 2.1. The Applicants submit that due to the COVID-19 pandemic, Australia's tertiary education sector has been severely impacted due to the lack of international students studying in Australia, as has the ability of many students to complete their courses. While some courses have successfully shifted to online formats, there nevertheless remains a need for many international students to return to Australia so that they can complete practical components of their studies that cannot be offered remotely.
- 2.2. The Australian Government has developed Protocols for international student arrivals to assist steps proposed or taken by State and Territory Governments and education institutions to re-open the tertiary sector to international students. The Protocols set out the steps for States, Territories and educational institutions to prepare for international student arrivals at scale, and requires them to work together to design a detailed 'International Student Arrivals Plan' that aligns with the Australia Government's preconditions for international student arrivals and is approved by the State/Territory Chief Health Officer.<sup>3</sup>
- 2.3. The NSW Government, consistent with the Protocols, has asked the universities to work together to find and implement solutions to establish an international student 'corridor' for the return of international students into NSW. The NSW Government has set a cap on the number of international student arrivals into NSW. This cap will initially be 250 returning students per fortnight. This will be evaluated before scaling to larger intakes.
- 2.4. The Applicants submit that the Proposed Conduct will initially prioritise continuing (that is, current) international students who are required to return to a university in NSW or the ACT to complete on-site or practical components of their studies in Australia.
- 2.5. At the time of lodging, UniProjects was negotiating a travel management services agreement with a potential travel management provider (**Travel Agreement**), under which it is intended that the travel management provider(s) would be responsible for:
  - procuring seats on commercial flights
  - managing student bookings via a custom-built online booking system, and
  - ticketing, invoicing and accepting payment from students
- 2.6. UniProjects is also negotiating a charter agreement with a supplier (**Charter Agreement**) under which the supplier will be responsible for chartering any flights that may be requested by UniProjects if required for student bookings, and the implementation and delivery of those travel management services to UniProjects as charterer.
- 2.7. UniProjects will also enter into Back-to-Back Contracts with each university to set out, amongst other things, how the universities will:
  - contribute to the travel management fees payable by the universities through UniProjects to the travel management providers
  - share the costs of the project, and

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<sup>3</sup> Australian Government Protocols and preconditions for international student arrivals, 3 May 2021, <https://www.dese.gov.au/covid-19/resources/protocols-and-preconditions-international-student-arrivals> .

- manage the process for booking students on incoming commercial and charter flights, and the process for re-allocating or swapping unused seats between universities.

2.8. In relation to seat allocation, the Applicants submit that:

- Seat allocation under the arrivals cap set by the NSW Government will be determined by a process which will assign available seats proportionally based on the schedule of flights from source jurisdictions, and historical pre-pandemic (2019) student enrolments at participating universities. A well-established algorithm (iterative proportional fitting) will be used for these allocations.
- Once seats are allocated to universities, universities decide which students are to be prioritised. This internal prioritisation may take account of factors including course requirements (including the need to complete practical components on campus), graduation schedules and the readiness of students within the relevant courses to return to Australia.
- Should any seats be left unused as a result of a university being unable to fill their allocation, these will be re-allocated amongst the other participating universities using the same proportional allocation system.

2.9. Returning students will be required to pay the cost of their flight at the price the travel management provider(s) has secured from an airline, and to pay an International Booking Fee to the travel management provider(s). The International Booking Fee is payable per ticket and will cover additional services provided by the travel management provider(s), such as ticketing, itinerary and invoice documentation; unlimited inbound email and telephone inquiries; and liaising with Australian and overseas government authorities to facilitate travel (e.g. travel exemptions). The details of the International Booking Fee were provided to the ACCC by the Applicants on a confidential basis.

2.10. If a student has obtained a travel restriction exemption from the Department of Home Affairs, they are not required to book through the travel management provider(s) and are free to attempt to obtain airline seats through any other available channel.

2.11. In relation to quarantine arrangements, the Applicants note that the NSW Government is currently conducting a tender process in relation to managing quarantine, transport logistics and any student wellbeing requirements during students' initial quarantine period. They submit that each participating university may be asked to sign an agreement with the NSW Government in relation to these issues. The Applicants also note that they have agreed to absorb, rather than pass on, the cost of quarantine services for the initial cohort of students.

## Rationale for the Proposed Conduct

2.12. The Applicants submit that collaboration between the universities is critical to give effect to the Australian Government's policy for returning international students, particularly as the NSW Government has set an initial cap on the number of international student arrivals into NSW.

2.13. The Applicants submit that the Proposed Conduct will:

- minimise the ongoing impact of the COVID-19 pandemic and Australian Government restrictions on overseas arrivals on international students and the

education sector (and by extension the businesses which rely on international student trade) by maximising and fairly allocating the number of international students that can come to NSW and ACT universities under the cap

- ensure these students can return to Australia in a timely fashion and a more cost-effective manner than if the students were responsible for the entirety of their travel arrangements, and
- help ensure that competitive airfares remain available to continuing students as all ticket purchases will be facilitated and managed by the travel management provider engaged by the participating universities. The Applicants submit that this combined purchasing power is likely to lead to lower airfares for returning students.

2.14. The Applicants also submit that the appointment by them of the same travel management provider as used by the NSW Government will help to ensure, from a logistical perspective, that students transition smoothly through the various government agencies that handle international arrivals.

### 3. Consultation

3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.

3.2. The ACCC invited submissions from a range of potentially interested parties including major state and federal government departments, universities with campuses in NSW or the ACT, industry associations, education agents, airlines and student organisations and advocacy groups.

3.3. The ACCC has received four submissions from interested parties in relation to the application, all of which support granting authorisation.

3.4. Three submissions were received prior to the ACCC granting interim authorisation:

- **MyStay International**, a business which manages hosted accommodation for international students, submitted that it supports the application for authorisation.
- **Investment NSW and NSW Treasury** submitted that they support the application for authorisation, describing it as 'imperative to support the recovery of the NSW economy.'
- **The Department of Education, Skills and Employment (DESE)** provided background information about the Australian Government's Protocols and preconditions for international student arrivals and DESE's role in assisting the States and Territories to develop these plans.

3.5. Following the grant of interim authorisation, the ACCC received a submission from the **National Union of Students (NUS)**. NUS submitted that it broadly supports the application, but recommended that students be provided with increased support with regards to covering the costs of flights and quarantine, their mental health while in quarantine, and in finding subsequent employment and accommodation. NUS's submission is discussed further in paragraphs 4.17 to 4.20 below.

3.6. Public submissions by the Applicants and interested parties are on the [Public Register](#) for this matter.

## 4. ACCC assessment

- 4.1. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. The Applicants have sought authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 of the Act. Consistent with subsection 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (**authorisation test**).

### Relevant areas of Competition

- 4.3. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.4. The Applicants submit that the universities compete for the students (international and Australian) to undertake their respective tertiary courses. The Applicants also submit that the Proposed Conduct will initially prioritise continuing international students for whom competition has already taken place, and for which there is very limited (if any) continuing competition between universities.
- 4.5. The ACCC considers that the relevant area of competition is likely to be the supply of tertiary education services to international students by universities within Australia.

### Future with and without the Proposed Conduct

- 4.6. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.
- 4.7. The Applicants submit that without collaboration between participating universities in relation to the Proposed Conduct, the Project is unachievable. The Applicants submit that without collaboration between participating universities, there will be very limited certainty about the availability of seats for continuing students. They submit that this will have a very significant impact on the ability for each university to communicate clearly with students and to facilitate their return to Australia, and to plan the delivery of its courses and provide resources for continuing students.
- 4.8. Similarly, Investment NSW and NSW Treasury submit that without the collaboration, the steady return of international students in an orderly manner would be unachievable while border restrictions remain in place.
- 4.9. The ACCC considers that without the Proposed Conduct, it is likely that the universities would still seek to return international students to Australia, given the ongoing impact on university incomes and the Government policy encouraging returns. However, the ACCC considers that without being able to engage in coordinated activities under the Proposed Conduct, it is likely that the universities would facilitate such returns in a less efficient, more costly, and less timely manner, as discussed in paragraphs 4.13 to 4.20 below.
- 4.10. Further, the ACCC notes that in both the future with and the future without the Proposed Conduct, international students would still have the ability to seek a travel



restriction exemption from the Department of Home Affairs and make their own arrangements to return to Australia, as they do currently.

## Public benefits

4.11. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*<sup>4</sup>

4.12. The ACCC has considered the following public benefits:

- Providing a fair and efficient way of allocating seats and facilitating and managing the return of international students who have been allocated a seat.
- Lower costs for returning international students.
- Assisting the tertiary sector to recover from the economic impacts caused by the lack of international students travelling to Australia.

## Efficient and fair way of allocating seats and of facilitating returns

4.13. The Applicants submit that the Proposed Conduct will:

- minimise the ongoing impact of the COVID-19 pandemic and associated restrictions on international students and the education sector by maximising and fairly allocating the number of international students that can come to NSW and ACT universities under the cap
- ensure these students can return to Australia in a timely fashion in a more cost-effective manner than if the students were responsible for the entirety of their travel arrangements, and
- help ensure that students transition smoothly through the various government agencies, due to the Applicants' appointment of the same travel management provider as the NSW Government.

4.14. The ACCC considers that the Proposed Conduct, via the allocation mechanism outlined in paragraph 2.8 above, will provide an efficient and fair way of allocating (and in circumstances where a university does not use its full allocation, reallocating) seats available under the cap to participating universities.

4.15. The ACCC also considers that the Proposed Conduct will result in a fair and efficient way of facilitating and managing the return of international students who have been allocated a seat. Given the complexities involved in managing the entry of international travellers into Australia at present, there are likely to be efficiencies and transaction cost savings as a result of this collaboration between universities. The appointment of a common travel provider for universities and students, and for the NSW Government agencies responsible for handling quarantine arrangements and international arrivals,

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<sup>4</sup> Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

is also likely to create efficiencies and transaction cost savings, as well as facilitate more timely outcomes.

### **Lower costs for returning students**

- 4.16. The Applicants submit that the Proposed Conduct will help ensure that competitive airfares remain available to continuing students, given the increased volume of air ticket purchases that will be facilitated and managed by the travel management services provider(s) engaged by the participating universities. They submit that without this combine volume, it is likely that airfares would be higher for returning students (that is, if air tickets are purchased individually by returning students).
- 4.17. The NUS submits that despite the commitment from the NSW and ACT universities to provide cheaper and competitively priced flights to Australia, the cost of quarantine and flights will not be accessible for all students (for example, under Charles Darwin University's 2020 pilot program to return international students, each student had to pay \$2500 for flights and quarantine<sup>5</sup>). The NUS recommends that the Federal Government and NSW/ACT universities support students who need financial help with these costs.
- 4.18. The ACCC notes that under the Proposed Conduct, the total cost that students must pay comprises the market price of the flight (as secured by the travel management services provider(s) from the airline) and an International Booking Fee (payable per ticket). The ACCC considers that the expertise of the travel management provider(s) in sourcing flights and its ability to purchase blocks of seats in a single transaction, including potentially through charter flights, is likely to result in lower cost airfares than if each student purchased their airfare individually. The Applicants have provided indicative fares supporting this assessment to the ACCC on a confidential basis. The ACCC notes that by participating in the program, returning international students may have less choice in selecting an airline than they would if they made independent arrangements. This issue is discussed further in the public detriments section.
- 4.19. The ACCC also notes that the Applicants have agreed to absorb – and not pass on – the costs of the quarantine services for the initial cohort of students. The ACCC notes in response to NUS's submission, however, that this, and other decisions about whether to subsidise students' costs, are decisions for Government and/or the universities to make and those decisions would not affect the balance of the ACCC's assessment of likely public benefits and detriments from the Proposed Conduct.
- 4.20. In light of these factors, the ACCC considers that without the Proposed Conduct, the cost to international students would be higher without the Proposed Conduct (that is, if students were to individually purchase tickets and make their own arrangements to return). To the extent the Proposed Conduct would result in lower cost flights for returning students, this will constitute a public benefit.

### **Assisting economic recovery of the tertiary sector**

- 4.21. The Applicants submit that at least three semesters' worth of student intakes have been compromised or missed due to the pandemic, and based on the number of new applications, there is unlikely to be three semesters' worth of international students arriving if/when restrictions are lifted. Therefore, as currently enrolled international students finish their courses, the number of enrolled international students will

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<sup>5</sup> Bang Xiao, 'International Students to Arrive in Australia for First Time in Nine Months under Pilot Program', ABC News (29 November 2020), available: <https://www.abc.net.au/news/2020-11-29/first-charter-flight-international-student-darwin-pilot-program/12928626>.

continue to decline. The Applicants submit that the Proposed Conduct will help to re-establish the 'pipeline' of international students to Australia and help mitigate to some extent the estimated cumulative loss of \$10 - \$19 billion to the university sector between 2020 and 2023.<sup>6</sup>

4.22. The ACCC considers that to the extent the Proposed Conduct, in enabling the more timely return of international students to Australia to continue their studies, assists the tertiary sector to recover from the impact of the COVID-19 pandemic, this will constitute a public benefit.

## Public detriments

4.23. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...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>7</sup>

4.24. The ACCC notes that international students who choose to return to Australia under the Applicants' program will be required to use the online booking system developed by the travel management provider to book seats on the flights – and at the prices secured by – the travel management provider. As such, students may be more limited in their choice of flights, compared to if they were to source their flights independently. The ACCC notes that arrangements that reduce consumers' choice of products or services may have the potential to result in a public detriment.

4.25. However, the ACCC considers that the risk the Proposed Conduct will result in a public detriment in this form, or in any meaningful reduction in competition between the participating universities in providing tertiary services to international students, is low.

4.26. In particular, the ACCC notes that:

- It is open to international students to seek a travel restriction exemption from the Department of Home Affairs and make their own travel arrangements if they do not wish to use the Applicants' program.
- The limit on returning student numbers under the Project is set independently of the universities. The Proposed Conduct only relates to how the return of students will be managed and seats allocated.
- The Proposed Conduct is unlikely to materially change the universities' incentives to compete for international students either during or after the period of interim authorisation. This is particularly the case as the Proposed Conduct seeks to prioritise those continuing students who have already chosen, and commenced studies at, an Australian university. Further, the Proposed Conduct does not restrict the ability of any students to transfer between universities once they have returned to Australia. Additionally, the Proposed Conduct is not likely to impact how the participating universities compete for international students once travel restrictions ease.
- The Proposed Conduct will not involve collective decisions relating to:

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<sup>6</sup> Peter Hurley and Nina Van Dyke, 'Australian Investment in Education: Higher Education', Mitchell Institute, p. 18 available: <https://www.vu.edu.au/sites/default/files/australian-investment-in-education-higher-education-mitchellinstitute.pdf>.

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

- the price at which the Applicants acquire or supply goods or services, such as university course fees (except in relation to agreements to absorb the costs of quarantine services to students)
  - the arrangements between the Applicants and their suppliers (except for the joint appointment of a travel management services provider and potentially of other suppliers necessary to facilitate quarantine arrangements such as transport providers), or
  - the arrangements between the universities and their respective students/customers in relation to courses.
- Any university can elect not to participate in the arrangements and any university based in NSW or the ACT not currently participating in the arrangements can elect to join.
  - The Proposed Conduct is a temporary measure. Authorisation is sought until June 2022. The Applicants submit that they only intend to engage in the Proposed Conduct for as long as is necessary to respond to the challenges created by the Restrictions (that is, until Australia's borders reopen to all international travellers).

## Balance of public benefit and detriment

- 4.27. The ACCC considers that the Proposed Conduct is likely to result in public benefits by providing an efficient and fair way of allocating seats and facilitating returns, returning international students to Australia at a lower cost than if they were to book flights independently. The Proposed Conduct is also likely to assist the economic recovery of the tertiary sector.
- 4.28. The ACCC considers that the Proposed Conduct is unlikely to result in significant public detriment in the form of a reduction in competition between the participating universities for international students due to the factors outlined in paragraph 4.25 above. Therefore, for the reasons outlined in this draft determination, the ACCC is satisfied that the Proposed Conduct is likely to result in a public benefit, and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

## Length of authorisation

- 4.29. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>8</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 4.30. In this instance, the Applicants seek authorisation until June 2022. The Applicants submit that this term reflects the uncertainty surrounding the ongoing impacts of the COVID-19 pandemic (including the length of the border restrictions) and the need for the Applicants to make decisions about and plan for student enrolments over the coming semesters. The Applicants advise that the typical planning cycle for preparation of teaching staff / course work is 12 months in advance of the relevant semester. The Applicants also submit that they only intend to engage in the Proposed

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<sup>8</sup> Subsection 91(1)

Conduct until border restrictions are lifted and there is no longer a cap on international arrivals. Once this occurs, international students will be free of travel restrictions and able to travel to Australia under their own arrangements.

- 4.31. The ACCC considers this timeframe is appropriate, and proposes to grant authorisation to the Applicants until 30 June 2022.

## 5. Draft determination

### The application

- 5.1. On 26 May 2021,<sup>9</sup> the Applicants lodged application AA1000546 with the ACCC, seeking authorisation under subsection 88(1) of the Act.
- 5.2. The Applicants seek authorisation for Proposed Conduct. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

### The authorisation test

- 5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.
- 5.4. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public, and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 5.5. Accordingly, the ACCC proposes to grant authorisation.

### Conduct which the ACCC proposes to authorise

- 5.6. The ACCC proposes to grant authorisation AA1000546 to enable the Applicants to engage in coordinated activities with the purpose of establishing a program to facilitate the return of international students to NSW and ACT-based universities, as described in paragraph 1.6 and defined as the Proposed Conduct.
- 5.7. In addition, the ACCC proposes to grant authorisation to:
- (a) any travel management services provider or providers appointed by UniProjects, and
  - (b) any other universities that have campuses in NSW and/or the ACT and who may in future choose to participate in the collaboration with UniProjects and therefore potentially become party to, or engage in the Proposed Conduct<sup>10</sup> (for example, Torrens University, La Trobe University, Victoria University and/or University of Tasmania).

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<sup>9</sup> On 10 June 2021, the Applicants made a minor amendment to the application for authorisation to include item (d) of the Proposed Conduct outlined at paragraph 1.6 of this draft determination.

<sup>10</sup> Section 88(2) CCA.

- 5.8. The Proposed Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
- 5.9. The ACCC proposes to grant authorisation AA1000546 until 30 June 2022.
- 5.10. This draft determination is made on 5 August 2021.

## Next steps

- 5.11. The ACCC now invites submissions in response to this draft determination by 19 August 2021. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.