



**UniProjects Pty Limited & Ors –
Application for authorisation AA1000554
Interim authorisation decision
17 June 2021**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of application for authorisation AA1000554, lodged by UniProjects Pty Limited (**UniProjects**) on behalf of itself and its 14 member universities in New South Wales and the Australian Capital Territory (**the Applicants**) on 26 May 2021.¹
2. Interim authorisation is granted to enable the Applicants as listed at paragraph 5 below, and any other party as described at paragraph 6 below, 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**) as described at paragraph 7 below.
3. The ACCC grants interim authorisation in relation to Division 1 of Part IV and section 45 of the *Competition and Consumer Act 2010* (Cth) (**the Act**)
4. Interim authorisation commences immediately and remains in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn, or until the ACCC decides to revoke interim authorisation.

The application for authorisation

5. 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

¹ The Application was amended on 10 June 2021 to include the conduct described at paragraph 7(d) of this decision document.

- xi. The University of Sydney
- xii. University of Technology Sydney
- xiii. Western Sydney University
- xiv. University of Wollongong

(together, the **Applicants**).

6. 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

7. The Applicants seek 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**).

8. 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 7 may be a risk of breaching competition laws.

Background

9. The Applicants submit that due to the COVID-19 pandemic the tertiary education sector has been severely impacted by 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 remains a need for many international students to return to Australia so that they can complete practical components of their studies which cannot be offered remotely.
10. The Commonwealth Government has developed Protocols and preconditions for international student arrivals to assist steps taken by State and Territory Governments and education institutions to re-open the education 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 Commonwealth’s preconditions for international student arrivals and is approved by the State/Territory Chief Health Officer.²
11. Consistent with the Protocols, the NSW Government has asked the universities to work together to find and implement solutions for establishing an international student ‘corridor’ for the return on 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 students per fortnight. This will be evaluated before scaling to larger intakes.
12. At the time of lodging the application UniProjects was negotiating a travel management services agreement with a potential travel management provider (**Travel Agreement**).
13. Under the travel agreement it is intended that the travel management provider(s) will be responsible for procuring seats on commercial flights, managing student bookings (through a custom-build online booking system), ticketing, invoicing and accepting payment from students.
14. 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.
15. UniProjects will also enter into contracts with each participating university which will, among others things, set out how the universities will:
 - (a) contribute to the travel management fees payable by the universities through UniProjects to the travel management providers
 - (b) share the costs of the Project, and
 - (c) manage the process for allocating available seats on incoming commercial and charter flights, and the process for re-allocating or swapping unused seats between participating universities.
16. The Applicants submit that the 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 (2019) student enrolments at the participating universities. This is designed to produce an outcome that is proportionally closely aligned to the overall pattern of enrolments

² 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>.

from the source jurisdictions at the universities involved. The historical student enrolment data that will be used to allocate seats to each universities returning students is publicly available via the Commonwealth Department of Education's website.

17. Once seats are allocated to each university, the university will decide which of their students will 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. If there are any unused seats 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.
18. The Proposed Conduct will initially prioritise continuing (i.e. current) international students who are required to return to NSW or the ACT to complete on-site or practical components of their studies in Australia.
19. Returning students will be required to pay for the cost of their flight, at the price the travel management provider(s) has secured from the airline, and pay a booking fee to the travel management provider(s). The details of the booking fee were provided to the ACCC by the Applicants on a confidential basis.
20. 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.
21. In relation to quarantine arrangements, the Applicants have agreed to absorb – and not pass on – the costs of the quarantine services for the initial cohort of students.

Rationale for the Proposed Conduct

22. The Applicants submit that collaboration between the universities is critical to give effect to the 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.
23. The Applicants submit that the Proposed Conduct will:
 - minimise the ongoing impact of the COVID-19 pandemic and the Commonwealth 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 in 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 that 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.
24. 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.

The authorisation process

25. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions contained in Part IV of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is

satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

26. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation prior to the ACCC's final determination. This allows the Applicants to engage in the Proposed Conduct while the ACCC is considering the substantive application.
27. The Applicants seek interim authorisation so they can take immediate action to mitigate the ongoing adverse impacts of travel restrictions on international students, the tertiary sector and the flow on effects of these impacts on the broader NSW, ACT and Australian economies.
28. The Applicants submit that they need to progress detailed planning for the implementation of the Project, engage one or more travel management services providers, and begin 'unblocking' the pipeline of international students returning to NSW and ACT universities. The Applicants submit that interim authorisation will 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).
29. In support of their application for interim authorisation the Applicants submit that:
 - the Proposed Conduct inherently benefits continuing international students, and will help to re-enliven the tertiary sector
 - the Applicants need to finalise commercial agreements setting out how they will work together to arrange flights and manage bookings for students as soon as possible
 - without interim authorisation, there will be ongoing uncertainty and financial harm, given delays in the ability for the Applicants to plan the chartering of flights and allocation of available seats among their students, and
 - interim authorisation will not give rise to permanent changes which would prevent the market returning to its pre-authorisation state if final authorisation is not granted, particularly in circumstances where the sector remains in a state of disruption and there are very limited numbers of international arrivals in NSW and the ACT.

Consultation

30. The ACCC invited submissions from a range of potentially interested parties including 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
31. The ACCC received two submissions in relation to the request for interim authorisation.
32. MyStay International, which is a business that manages hosted accommodation for international students, submitted that it supports the application for authorisation.
33. The Department of Education, Skills and Employment (**DESE**) provided background information about the Commonwealth Government's Protocols and preconditions for international student arrivals and DESE's role in assisting the States/Territories to develop these plans.

³ Public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

34. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

35. The ACCC grants interim authorisation for the Proposed Conduct described at paragraphs 7 to 8 of this decision document.
36. The ACCC notes that the Proposed Conduct is a short-term arrangement intended to assist the universities, and their international student cohort, in managing the unique challenges that ongoing travel restrictions as a result of the COVID-19 pandemic present in returning these students to Australia to continue their studies.
37. In these circumstances, the ACCC considers that there is some urgency about the request for interim authorisation so that the Applicants can begin to return continuing international students to NSW and the ACT for the second semester of 2021.
38. The ACCC's preliminary view is that the Proposed Conduct is likely to result in a range of public benefits including:
- Providing 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, and
 - facilitating and managing the return of international students who have been allocated a seat. Given the complexities involved in managing the entry into Australia of international travellers at the present time there are likely to be efficiencies and transaction cost savings in collaboration between the universities and using a common travel management provider for the universities and students, as well as for the NSW Government agencies that handle international arrivals and quarantine arrangements.
 - Lower cost flights for returning students. The expertise of the travel management provider(s) in sourcing flights and the ability to purchase blocks of seats in a single transaction, including potentially through charter flights, is likely to result in lower airfares than if each student sought to purchase an airfare individually. The Applicants have provided indicative fares which support this assessment to the ACCC on a confidential basis.
 - Assisting the tertiary education sector to recover from the economic impacts that have resulted from the restrictions on international students traveling to Australia.
39. The ACCC considers that interim authorisation will not materially alter the competitive dynamics in any market, and markets will be able to return to substantially their pre-authorisation state in the event that final authorisation is not granted. In particular:
- The limit on returning students under the Program 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 will initially prioritise continuing international students who have already made their choice of university. Further, the Proposed Conduct will not restrict international students switching or transferring 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.

- 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.

Reconsideration of interim authorisation

40. The ACCC may review the interim authorisation at any time, including in response to feedback raised following interim authorisation.
41. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.