



**Virgin Australia and Alliance Airlines
Application for authorisation AA1000533
Interim authorisation decision
19 November 2020**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of application for authorisation AA1000533, lodged by Virgin Australia and Alliance Airlines (together, **the Applicants**) on 23 October 2020.
2. Interim authorisation is granted to enable the Applicants to cooperate in relation to the provision of services on 41 regional routes and two short-haul international routes (the **Relevant Routes**) as listed at **Attachment A** to this interim authorisation decision.
3. Interim authorisation commences immediately and remains in place until it is revoked, the application for authorisation is withdrawn, or the date the ACCC's final determination comes into effect.

The application for authorisation

4. Virgin Australia is an airline that operates a network of domestic and international services from its main hub at Brisbane Airport in Queensland. These services are operated by a range of entities in the Virgin Australia group of companies including Virgin Australia Airlines Pty Ltd, Virgin Australia Regional Airlines Pty Ltd (VARA), Virgin Australia International Airlines Pty Ltd, and Virgin Australia Airlines (SE Asia) Pty Ltd (collectively, **Virgin Australia**).
5. Alliance Airlines is an Australian airline that provides contract, charter and Regular Public Transport (**RPT**) services.
6. The Applicants seek authorisation for two years to cooperate in relation to the provision of services on the Relevant Routes by:
 - (a) sharing information (including in relation to costs, willingness to operate a route, capacity, utilisation, anticipated demand and pricing) about Relevant Routes
 - (b) agreeing capacity, flight schedules and aircraft type, including whether an Applicant will suspend operation on a Relevant Route
 - (c) agreeing which Applicant will operate the Relevant Route and under what arrangements (e.g., wet lease, codeshare, revenue-share arrangements) and putting in place commercial agreements for the route considering the nature and levels of demand and risk profile of a route
 - (d) discussing and agreeing ways of providing services on the Relevant Routes in a post COVID-19 environment, including new forms of commercial arrangements other than wet leases and codeshare agreements, and
 - (e) potentially, risk and revenue sharing mechanisms and agreements as to price

(the **Proposed Conduct**).

7. The Applicants submit that regional services are an important part of Virgin Australia's network and it remains committed to serving regional destinations. However, they submit, Virgin Australia cannot efficiently operate regional services alone – this was always the case but COVID-19 has accelerated the need for the aviation sector, and Virgin Australia, to cut costs and simplify its fleet. The Applicants submit that by cooperating on the Relevant Routes, they can efficiently offer a more compelling product, providing choice and convenience for consumers and competition to Qantas.

The authorisation process

8. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions 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

9. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.
10. The Applicants request interim authorisation to facilitate the immediate coordination of services on the Relevant Routes. The Applicants submit that obtaining interim authorisation quickly will be important for Virgin Australia's ability to relaunch a network of services in a cost efficient and flexible way that includes regional services. The Applicants submit that this is crucial as Virgin Australia exits external administration and seeks to re-establish itself as Australia's second national carrier. If Virgin Australia is not ready to recommence flying in response to increases in demand and changes in border closures, it will cede more competitive advantage to Qantas, entrenching Qantas' position and weakening Virgin Australia as a sustainable competitor.
11. Specifically, the Applicants submit the following:
 - Traditionally, airlines publish their flying schedule to coincide with the commencement of the Northern Winter scheduling season commencing on 25 October 2020. The Applicants intend to mirror this as closely as possible, recommencing or expanding flying on the Relevant Routes from soon after the start of the Northern Winter scheduling season.
 - Bain Capital's acquisition of Virgin Australia is expected to be completed in November 2020, and Virgin Australia must be ready to relaunch services and rebuild its network to coincide with demand returning following the finalisation of the sale process.
 - In relation to the opening of the Queensland and New South Wales border, the Applicants anticipate that the border restrictions may be lifted at any time, and without much notice, following the Queensland election on 31 October 2020. The Applicants need to commence planning for these restrictions lifting as soon as possible, so they are able to quickly respond to any changes in market conditions and market services.
 - There is ordinarily significant lead time required to roster and arrange flight schedules. Under the current market conditions, the Applicants need to be ready to quickly schedule services in response to changes in border closures and fluctuations

in demand. This necessitates immediate planning as deployment decisions will need to be quickly made.

- If Virgin Australia is not able to resume certain flying regional routes from 28 March 2021, it will be required to hand back valuable slots at airports. Many of these slots, especially at Sydney Airport are in high demand, such as the Sydney-Port Macquarie peak regional slots.

Consultation

12. The ACCC invited submissions from a range of potentially interested parties including competitors, industry associations and regulatory bodies. The ACCC received three public submissions, and a number of confidential submission in relation to the application for interim authorisation, with the public submissions summarised below.
13. Rex submits that the proposed cooperation is very broad, as it includes sharing cost information, strategic entry plans and information about future pricing, and agreeing matters such as which airline will operate on certain routes. Rex submits that once such information is shared, any resultant competitive harm cannot be undone.
14. Sydney Airport submits that insofar as the proposed cooperation relates to Virgin Australia's peak slots at Sydney Airport it appears from the Application that Virgin Australia intends to retain the slots by allowing Alliance Airlines to use them temporarily. Sydney Airport submits that this is inconsistent with its slot regime. Sydney Airport submits that slots that an airline is not able to efficiently use should be returned to the slot pool to allow other airlines to use them.
15. Queensland Airports Limited supports the application, submitting that the arrangements are an example of the innovative solutions needed to deal with the altered operating environment, and will assist to foster competition on routes supported by Queensland Airports, generating public benefit through increased capacity and price competition.
16. Some of the confidential submissions submit that the proposed cooperation could make it more challenging for other, smaller, airlines seeking to establish or re-establish services on some routes.
17. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, is accessible on the ACCC's [public register](#).

Reasons for decision

18. In granting interim authorisation, the ACCC considers that there is some urgency for the Applicants to be able to commence cooperating in relation to the provision of services on the Relevant Routes. The proposed cooperation is part of Virgin Australia's strategy to re-establish a network of services as a national carrier post the COVID-19 pandemic and exiting voluntary administration. The ACCC considers that the Proposed Conduct is likely to result in a public benefit by assisting in the re-establishment of this network, thereby promoting ongoing competition in the provision of airline services to Australian travellers.
19. The ACCC also considers that any delay in Virgin Australia re-establishing its network, while other airlines are likely to be increasing services in response to increases in demand following the easing of travel restrictions, is likely to make it more difficult for Virgin Australia to re-establish itself as a national carrier, and, in particular, on the Relevant Routes on which it proposes to cooperate with Alliance Airlines.
20. The ACCC's preliminary view is that the proposed cooperation is also likely to result in a range of associated public benefits, including more efficient and sustainable operation of

services by the Applicants, better connectivity and facilitating increased competition on some regional routes.

21. The ACCC considers that the proposed cooperation could result in some public detriment by eliminating competition between Virgin Australia and Alliance Airlines in providing services on the Relevant Routes. However, the ACCC's preliminary view is that any public detriment resulting from a lessening of competition is likely to be limited because:
- Alliance Airlines' RPT network is limited, the Applicants have not historically both operated flights on the same Relevant Routes and may not do so, to any significant extent, if the proposed cooperation does not proceed, and
 - other airlines, including Qantas/Jetstar, are likely to provide a strong competitive constraint on the Applicants on many of the Relevant Routes.
22. The ACCC notes that the proposed cooperation could make it more challenging for other, smaller, airlines seeking to establish or re-establish services on some routes because of Virgin Australia's more comprehensive service offering. The ACCC will consider this issue further in its assessment of the substantive application for authorisation. However, the ACCC's preliminary view is that any potential impact of the proposed cooperation on competition on this limited number of routes is likely to be outweighed by the broader pro-competitive effects likely to result from the proposed cooperation assisting Virgin Australia to re-establish itself as a national carrier.
23. In relation to Sydney Airport's submission about slots at Sydney Airport, the ACCC notes that interim authorisation does not remove or alter any of the Applicants' obligations under applicable legislation in relation to those slots, including the *Sydney Airport Demand Management Act 1997* requirements and any Ministerial Directions relating to Sydney Airport and Sydney Airport slots.

Reconsideration of interim authorisation

24. The ACCC may review the interim authorisation at any time. 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.

ATTACHMENT A – Relevant Routes

International routes	
Brisbane	Honiara
Brisbane	Port Moresby
Domestic routes	
Brisbane	Proserpine
Brisbane	Mackay
Brisbane	Emerald
Brisbane	Mount Isa
Brisbane	Newcastle
Brisbane	Cloncurry
Brisbane	Alice Springs
Brisbane	Rockhampton
Brisbane	Moranbah
Brisbane	Gladstone
Brisbane	Port Macquarie
Brisbane	Bundaberg
Brisbane	Weipa
Brisbane	Ayers Rock
Brisbane	Tamworth
Cairns	Ayers Rock
Cairns	Darwin
Cairns	Maroochydore
Canberra	Maroochydore
Alice Springs	Darwin
Alice Springs	Ayers Rock
Melbourne	Kununurra
Melbourne	Newcastle
Melbourne	Canberra
Melbourne	Mildura
Adelaide	Olympic Dam
Adelaide	Canberra
Adelaide	Alice Springs
Sydney	Canberra
Sydney	Coffs Harbour
Sydney	Port Macquarie
Sydney	Tamworth
Sydney	Albury
Sydney	Ayers Rock
Cloncurry	Mount Isa
Perth	Kalgoorlie – Boulder
Perth	Kununurra
Perth	Port Hedland
Perth	Newman
Perth	Karratha
Perth	Onslow