



**Regional Express –  
Application for authorisation AA1000478  
Interim authorisation decision  
26 March 2020**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted conditional interim authorisation in respect of the application for authorisation AA1000478, lodged by Regional Express (**Rex**) on 23 March 2020.
2. Rex has applied for authorisation to coordinate flight schedules with Qantas Airways Limited (**QantasLink**) and Virgin Australia Holdings Limited (**Virgin Australia**) (as necessary) to reduce capacity on ten regional routes (the **Relevant Routes**, outlined below) as a result of the COVID-19 pandemic.
3. The ACCC has granted interim authorisation to enable Rex, QantasLink and Virgin to coordinate flight schedules and enter into agreements to share revenue on the Relevant Routes (the **Proposed Conduct**).
4. Interim authorisation is granted subject to the condition that if any of the participating airlines agree to coordinate flight schedules and/or share revenue on a Relevant Route while interim authorisation is in effect (**Coordinated Flights**), the participating airlines must not set a fare for a Coordinated Flight that is higher than the equivalent fare specified in their respective fare schedules in place as at 1 February 2020.
5. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

**The application for authorisation**

6. The Relevant Routes, and the current operators on these routes, are:

New South Wales

- Sydney – Wagga (Rex and QantasLink)
- Sydney – Dubbo (Rex and QantasLink)
- Sydney – Albury (Rex, QantasLink and Virgin, noting Virgin has announced it will suspend services from 27 March to 14 June 2020)<sup>1</sup>
- Sydney – Armidale (Rex and QantasLink, noting Rex has announced it is suspending services from 6 April 2020)

Victoria

- Melbourne – Mildura (Rex, QantasLink and Virgin Australia, noting Virgin has announced it will suspend services from 27 March to 14 June 2020)<sup>2</sup>

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<sup>1</sup> <https://newsroom.virginaustralia.com/release/virgin-australia-group-revised-domestic-schedule-0>

<sup>2</sup> <https://newsroom.virginaustralia.com/release/virgin-australia-group-revised-domestic-schedule-0>

## South Australia

- Adelaide – Port Lincoln (Rex and QantasLink)
- Adelaide – Whyalla (Rex and QantasLink)
- Adelaide – Kangaroo Island (Rex and QantasLink, Rex has announced an exit in July 2020)

## Queensland

- Cairns –Townsville (Rex and QantasLink)
  - Townsville – Mount Isa (Rex and QantasLink)<sup>3</sup>
7. Rex submits schedule coordination may involve, for example:
    - Each carrier on a Relevant Route flying one service per day, with the total revenue generated on that route shared between carriers.
    - A carrier suspending operation on a Relevant Route, leaving the remaining carrier with sustainable load factors.
  8. Rex submits that the domestic aviation sector in Australia is experiencing an unprecedented downturn as a result of the COVID-19 pandemic. Rex submits that since mid-March, in line with heightened measures taken by the Australian Government to combat the spread of COVID-19, it has experienced a significant and sharp decline in passenger numbers on the Relevant Routes. It expects passenger numbers will continue to decline. Rex submits that coordinating flight schedules will enable carriers to reduce capacity in a way that seeks to achieve sustainable load factors on regional routes, without compromising schedule offerings to passengers.
  9. Rex proposes that any cooperation between carriers is based on the fare schedule that was in place on 1 February 2020. Rex submits that authorisation should be granted subject to a condition that gives effect to this proposal.
  10. Rex is seeking authorisation until 30 June 2021.

## **The authorisation process**

11. 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 proposed conduct results in a net public benefit.

## **Interim authorisation**

12. The ACCC may, where it considers it appropriate, grant an interim authorisation which allows parties to engage in proposed conduct while the ACCC is considering the substantive application.
13. Rex requested urgent interim authorisation in light of the unprecedented impact of the COVID-19 on domestic aviation in Australia and the need for lead time in planning rosters.

## **Consultation**

14. The ACCC has not conducted a public consultation process in respect of the request for interim authorisation in light of the scale of the impact of the COVID-19 pandemic on the aviation industry and the urgency of the request for interim authorisation.

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<sup>3</sup> Rex originally sought authorisation to coordinate flight schedules on nine routes. On 24 March 2020 Rex amended the application to include the Townsville – Mount Isa route.

15. The ACCC will conduct a public consultation process on the substantive application for authorisation in the coming days, and details regarding how to make a submission will be available on the [ACCC's authorisations public register](#).
16. The ACCC did seek the views of Virgin Australia and Qantas about the Proposed Conduct:
  - Virgin Australia indicated that it supports the Proposed Conduct.
  - Qantas provided a statement stating that was not a party to the application and was not given an opportunity to review the draft application. In the current circumstances, Qantas considers that any coordination between industry participants should be proposed by the Government. Qantas states its priority is to continue to urgently engage in discussions with the Government on the provision of network operations during this time.

### **Reasons for decision**

17. In granting interim authorisation, the ACCC recognises the urgency of the request for interim authorisation in light of the significant challenges that airlines are facing due to the COVID-19 pandemic.
18. The ACCC notes that:
  - the Proposed Conduct, and interim authorisation, is a temporary measure. Authorisation is only sought until 30 June 2021
  - the Proposed Conduct will be implemented as necessary. Airlines are able to continue to make scheduling decision independently
  - the Proposed Conduct applies in relation to a small number of routes where the airlines offer services,
  - the ACCC may review its decision to grant interim authorisation at any time, including in response to feedback as the Proposed Conduct is engaged in.
19. The ACCC considers that the Proposed Conduct is likely to result in a public benefit in the current unprecedented circumstances. The ACCC notes that there has been a very significant drop in demand for airline passenger services as a result of the COVID-19 pandemic and there is also significant uncertainty about demand for these services in the short term. The ACCC also notes the most recent Federal Government advice that Australian's should reconsider the need for unnecessary domestic travel.<sup>4</sup>
20. This significantly short term reduction in demand could potentially threaten the viability of operating on the Relevant Routes for some airlines notwithstanding that, in the longer term, demand for these services may be sufficient to otherwise sustain their operations. In these circumstances the ACCC considers that the Proposed Conduct is likely to result in a public benefit by assisting in providing certainty to support necessary travel to and from regional communities during the COVID-19 pandemic.
21. The Proposed Conduct, to the extent that it assists in maintaining the viability of airlines on the Relevant Routes during the COVID-19 pandemic, is also likely to result in a public benefit by supporting their ability to increase services on the Relevant Routes post the pandemic as demand increases.
22. The ACCC does note that the Proposed Conduct involves coordination of schedules by all operators on the Relevant Routes. This potentially provides opportunities for the participating airlines to limit capacity flown on the Relevant Routes in order to raise airfares. To address this concern the ACCC has granted interim authorisation subject to a condition that ensures the fares that the participating airlines can charge while

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<sup>4</sup> See: <https://www.pm.gov.au/media/update-coronavirus-measures-0>

coordinating their schedules are no higher than those that applied in their respective schedules on 1 February 2020.

23. The ACCC also considers that there is some potential that the participating airlines coordinating schedules while managing the effects of the COVID-19 pandemic could facilitate longer term understandings between them about scheduling services on the Relevant Routes. The ACCC will examine this issue further in its ongoing consideration of the application for authorisation.

#### **Reconsideration of interim authorisation**

24. The ACCC may review a decision on interim authorisation at any time, including in response to feedback raised following interim authorisation. 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.