Public Competition Assessment

31 July 2013

Virgin Australia Holdings Limited - proposed acquisition of 60% of Tiger Airways Australia Pty Ltd

Introduction

1. On 23 April 2013, the Australian Competition and Consumer Commission (**ACCC**) announced its decision not to oppose Virgin Australia Holdings Limited's (**Virgin Australia**) proposed acquisition of 60% of Tiger Airways Australia Pty Ltd (**Tiger Australia**) (the **proposed acquisition**).
2. The ACCC decided that the proposed acquisition would be unlikely to have the effect of substantially lessening competition in any market in contravention of section 50 of the *Competition* and *Consumer Act 2010* (**the Act**).
3. The ACCC made its decision on the basis of the information provided by the parties to the acquisition (the **parties**) and information arising from its market inquiries. This Public Competition Assessment outlines (subject to confidentiality considerations) the basis on which the ACCC has reached its decision on the proposed acquisition.

Public Competition Assessment

4. To provide an enhanced level of transparency in its decision making process, the ACCC issues a Public Competition Assessment for all transactions reviewed by the ACCC where:
   - an acquisition is opposed;
   - an acquisition is subject to enforceable undertakings;
   - the parties to the acquisition seek such disclosure; or
   - an acquisition is not opposed but raises important issues that the ACCC considers should be made public.
5. This Public Competition Assessment has been issued because the proposed acquisition is considered to raise issues of interest to the public.
6. By issuing Public Competition Assessments, the ACCC aims to provide the public with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. Public Competition Assessments can also alert the public to circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change.

7. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on a case-by-case basis.
8. Public Competition Assessments outline the ACCC's principal reasons for forming views on a proposed acquisition at the time the decision was made. As such Public Competition Assessments may not definitively identify and explain all issues that the ACCC considers arise from a proposed acquisition. Further, the ACCC's decisions generally involve consideration of both non-confidential and confidential information provided by the parties and market participants. In order to maintain confidentiality, Public Competition Assessments do not contain any confidential information nor identify its sources.

The parties

The acquirer: Virgin Australia Holdings Limited

9. Virgin Australia is a domestic and international airline that commenced its domestic operations in Australia in August 2000 as a low cost carrier[1] under the 'Virgin Blue' brand.
10. In November 2005, Virgin Australia (then known as Virgin Blue) re-defined its business model and announced its move towards becoming a New World Carrier (**NWC**). A NWC is a low cost, high value airline that aims to attract a broader cross-section of passengers than the traditional low cost carrier model, through leveraging the airline's low cost foundations and adding new products which appeal to higher yielding passengers. As part of the NWC strategy, Virgin Australia introduced additional initiatives to enhance its product offering including a frequent flyer program (Velocity), airport lounges, self-check-in kiosks, premium economy, and Corporate Plus fares and Blue Holidays.
11. In 2010, Virgin Australia announced a new 'Game Change' strategy, with a stated intention to diversify its customer base and therefore revenue sources by targeting higher yield (higher fare) corporate and business customers in addition to leisure customers. Implementation of this strategy has meant that the services offered by Virgin Australia have become more similar to those offered by Qantas.
12. As part of this strategy, in May 2011 Virgin Australia replaced and consolidated its 'Virgin Blue', 'Pacific Blue' and 'V Australia' brands under the 'Virgin Australia' brand.
13. On 11 April 2013, Virgin Australia announced that it had completed the acquisition of 100% of the issued share capital in Skywest Airlines Ltd (**Skywest**), a regional airline based in Western Australia.
14. In recent years, Virgin Australia has also entered into a number of alliances with international airlines including Delta Air Lines, Etihad Airways, Singapore Airlines and Air New Zealand which involve varying degrees of cooperation and coordination of operations.

[1] Generally speaking a 'low cost carrier' is an airline with a low operating cost structure (e.g. operating a limited number of aircraft on a point-to-point basis and offering a 'no frills' level of service), which enables it to charge a low fare for a standard ticket. Typically a low cost carrier will offer additional services, such as choice of seat, meals and beverage, and a checked-in baggage allowance for an additional charge.

15. At the time of the ACCC's decision (and prior to integration of Skywest into Virgin Australia's fleet having been completed), Virgin Australia operated approximately 100 aircraft in a fleet of five aircraft types to supply approximately 3200 flights per week to 50 domestic and international destinations.
16. Virgin Australia Holdings Limited is listed on the Australian Securities Exchange (ASX).
17. At the time of the ACCC's decision, Virgin Australia's largest shareholders were: Vieco 2 Limited (a subsidiary of Virgin Group Holdings Ltd), with an interest of approximately 23%; Air New Zealand (19.9 %); Singapore Airlines (10%); and Etihad Airways (8.58%).[2]

The target: Tiger Airways Australia Pty Limited

18. Tiger Australia is a domestic airline that commenced operations in Australia in November 2007. It is owned by the Singapore-based Tiger Airways Holdings Limited (**Tiger Airways**) which is described in more detail below. Tiger Australia operates under a low cost carrier business model which primarily focuses on price sensitive domestic leisure travellers in Australia.
19. On 3 July 2013 (after the ACCC had announced its decision), Tiger Australia was rebranded Tigerair Australia.[3]
20. At the time of the ACCC's review, Tiger Australia had around 400 staff and operated 11 Airbus A320-200 aircraft, the same aircraft type used throughout all of Tiger Airways Holdings' operations in Asia but not an aircraft type currently used by Virgin Australia. Tiger Australia operated on 16 domestic routes, namely:
    - Melbourne – Adelaide;
    - Melbourne – Alice Springs;
    - Melbourne – Brisbane;
    - Melbourne – Cairns;
    - Melbourne – Hobart;
    - Melbourne – Gold Coast (Coolangatta);
    - Melbourne – Perth;
    - Melbourne – Mackay;

[2] Since the ACCC has announced its decision:

- Singapore Airlines announced that it has agreed to acquire an additional 9.9% stake in Virgin Australia from Virgin Group. This transaction would increase Singapore Airlines' total stake to 19.9%, and reduce Virgin Group's interest to approximately 13.3%;
- Etihad has acquired additional shares to increase its interest to approximately 10%, and has obtained Foreign Investment Review Board (FIRB) approval to further increase its interest to 19.9%; and
- Air New Zealand has entered into an agreement to acquire a further 3%, which would take its interest to 22.99%. Air NZ has also announced it will consider acquiring up to a further 3% of the shares in Virgin Australia to the extent it is permitted to do so under the *Corporations Act 2001* (Cth) (which would increase Air New Zealand's interest in Virgin Australia to a maximum of 25.99%). Air New Zealand has sought ACCC clearance and FIRB approval for these acquisitions.

[3] Other airlines in which Tiger Airways holds an interest were also rebranded at the same time - Tiger Airways Singapore was rebranded as Tigerair, SEAir was rebranded as Tigerair Philippines and Mandala Airlines was rebranded as Tigerair Mandala.

- Melbourne – Sunshine Coast;
- Sydney – Alice Springs;
- Sydney – Brisbane;
- Sydney – Cairns;
- Sydney – Coffs Harbour;
- Sydney – Gold Coast (Coolangatta);
- Sydney – Mackay; and
- Sydney – Melbourne.

21. Tiger Australia does not fly international routes.

22. On 2 July 2011 Tiger Australia's operations were suspended by the Civil Aviation Safety Authority (**CASA**) on the basis that it posed a serious and imminent risk to aviation safety. On 10 August 2011, CASA gave Tiger Australia conditional clearance to resume flying. These conditions included restrictions on the number of sectors that could be flown by Tiger Australia (initially capped at 18 daily sectors, subsequently increased in a staged manner). On 19 October 2012, Tiger Australia received a new Air Operators Certificate from CASA which removed the restrictions associated with the 2011 grounding.

Vendor - Tiger Airways

23. At the time of the ACCC's review, Tiger Australia was a wholly owned subsidiary of Tiger Airways.

24. Tiger Airways also:
    - owns Tiger Airways Singapore, a low cost carrier operating in the Asia Pacific region out of Singapore. As at 30 September 2012 Tiger Airways Singapore operated a fleet of 19 Airbus A320-200 aircraft;
    - has a 40% shareholding in Southeast Asian Airlines Inc (SEAir), a low cost airline offering domestic and international flights from the Philippines; and
    - has a 33% shareholding in Mandala Airlines, a low cost Indonesian airline that operates under the 'Tiger' brand.[4]

25. At the time of the ACCC's decision, Tiger Airways' largest shareholders were Singapore Airlines[5] (46.5%) and Temasek Holdings (Private) Limited (5.6%, excluding its interest held through its shareholding in Singapore Airlines).[6]

Other industry participants

26. At the time of the ACCC's decision, Australia had three airline groups providing scheduled domestic air passenger transport services, with national (or close to national) networks: Virgin Australia, Qantas Group (including Qantas and Jetstar) and Tiger Australia.

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[4] As described at footnote 3 above, each of these airlines has been rebranded since the ACCC's decision.

[5] Temasek Holdings (Private) Limited is the majority shareholder of Singapore Airlines.

[6] Per an announcement by Tiger Airways to the Singapore Exchange (SGX) on 22 April 2013. These figures assume the exercise of a conversion right attached to convertible securities issued by Tiger Airways in its recent capital raising.

27. There are also a number of regional and charter service operators in Australia, the largest of which are Alliance Airlines, Skywest (acquired by Virgin Australia in April 2013), Network Aviation (acquired by Qantas in February 2011), Cobham, Skippers, Pel-Air (Regional Express) and SkyTrans. There are also over 280 smaller air charter companies operating within Australia which provide a range of dedicated charter operations (fly-in/fly/out services).

Qantas Group

28. Qantas Group has a range of subsidiary businesses including domestic and international passenger airlines, freight, and catering. As at August 2012, Qantas Group operated a total passenger fleet of 286 aircraft. For the purposes of this document, the main businesses of interest are the domestic operations of Qantas Group's two main airlines – Qantas Airlines (**Qantas**) and Jetstar Airways (**Jetstar**). Other subsidiaries of Qantas Group include the regional airline Qantaslink and the charter service provider Network Aviation.

29. Qantas was incorporated in 1920 and is Australia's largest domestic and international airline. Qantas is a full service airline[7] with an extensive domestic network. It has a combined domestic and international fleet of approximately 140 aircraft.

30. Jetstar, established in 2004, is Australia's largest low cost airline. Its Australian and New Zealand based fleet comprises around 60 aircraft and it operates around 800 domestic return services per week to 17 Australian destinations.

31. Since the launch of Jetstar, Qantas Group has implemented a 'dual brand strategy' in Australia that involves collaboration and coordination of capacity (network and schedule) and pricing activities between Qantas and Jetstar's operations. The dual brand strategy seeks to ensure that all network and capacity decisions maximise profitability for the Qantas Group as a whole.[8]

The proposed transaction

32. Virgin Australia proposed to acquire 60% of the issued shares in Tiger Australia from Tiger Airways. As part of the transaction, Virgin Australia and Tiger Holdings proposed to enter into a Shareholders Agreement, Brand Licensing Agreement and Services Agreement.

33. The proposed acquisition was publicly announced on 30 October 2012 and was subject to ACCC approval, among other conditions.

34. Virgin Australia publicly stated that the commercial rationale for the proposed acquisition was that it "enables Virgin Australia to access the budget market and enables Tiger Australia to expedite its growth."[9]

[7] By 'full service airline' the ACCC means broadly that it includes a number of additional services in its standard service offer (e.g. checked baggage allowance, choice of seat, a meal or snack and some beverages) without additional charge and a broader range of add-on services than offered by low cost carriers (e.g. loyalty reward program, airport lounge access, etc).

[8] 28 June 2012 application for authorisation lodged by Qantas Airways Limited and Jetstar Airways Pty Limited in respect of proposed coordination between the applicants and existing and future Jetstar branded airlines (Authorisation numbers: A91314 & A91315) at [2.13].

[9] Virgin Australia ASX release dated 30 October 2012 "*Virgin Australia announces agreement to acquire 60% stake in Tiger Australia to bring strong competition to the budget market.*"

Review timeline

35. The following table outlines the timeline of key events in this matter.

Date	Event
2 November 2012	ACCC commenced review under the Merger Review Process Guidelines.
28 November 2012	Closing date for submissions from interested parties.
11January 2013	ACCC timeline suspended pending receipt of information requested from the merger parties.
16 January 2013	ACCC received further information from the merger parties. ACCC timeline recommenced. Former proposed decision date of 31 January 2013 postponed to allow the ACCC time to consider the further information.
7 February 2013	ACCC published a Statement of Issues outlining preliminary competition concerns.
22 February 2013	Closing date for submissions relating to Statement of Issues.
8 March 2013	ACCC requested further information from Virgin Australia and Tiger Australia. ACCC timeline suspended. Former proposed decision date of 14 March 2013 delayed to allow provision of requested information.
11 April 2013	ACCC received further information from Virgin Australia and Tiger Australia. ACCC timeline recommenced.
23 April 2013	ACCC announced it would not oppose the proposed acquisition.

Market inquiries

36. The ACCC conducted market inquiries with a range of industry participants and interested parties, including airlines, domestic airports, federal and state governments, business associations, travel agent groups and private consumers.

Statement of Issues

37. The ACCC published a Statement of Issues on 7 February 2013. In the Statement of Issues the ACCC expressed a preliminary view that the proposed acquisition may raise competition concerns in the market for Australian domestic air passenger transport services. In particular, the ACCC expressed concern that the proposed acquisition:

    - may increase the likelihood of coordinated conduct in the relevant market; and
    - would remove all competition between Virgin Australia and Tiger Australia.

38. The ACCC also stated that in the event that it were to ultimately conclude that Tiger Australia would exit the market in the absence of the proposed acquisition, this would be highly relevant to its assessment as to whether the proposed acquisition would be likely to result in a substantial lessening of competition as compared to the situation if the proposed acquisition did not proceed.

Areas of overlap

39. Virgin Australia and Tiger Australia both provide domestic air passenger transport services.

40. Paragraph 20 above identifies the 16 domestic routes that Tiger Australia operated services on at the time of the ACCC's decision. The parties overlapped on 13 of these routes. The three routes serviced by Tiger Australia on which Virgin Australia did not also provide services were:
    - Melbourne – Mackay;
    - Melbourne – Alice Springs; and
    - Sydney – Alice Springs.
41. At its peak, prior to its grounding by CASA in July 2011, Tiger Australia operated services on 21 routes across Australia. At that time Virgin Australia and Tiger Australia had a greater overlap in terms of number of domestic routes serviced than they did at the time of the ACCC's review. Since the grounding by CASA, Tiger Australia had not resumed a number of services that it operated in the past.

Market definition

42. The ACCC assessed the impact of the proposed acquisition in the context of a national market for Australian domestic air passenger transport services.
43. However, given the degree of product and geographic differentiation and imperfect substitution between the services provided by the parties, the ACCC focussed its assessment on the effect of the proposed acquisition on particular aspects of competition within this market. In particular, the ACCC focused on:
    - competition between scheduled air passenger transport service offerings aimed primarily at leisure travellers, particularly price sensitive leisure travellers; and
    - competition on the particular routes serviced by both Virgin Australia and Tiger Australia.

With/without test

44. Section 50 of the Act prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in any market. In assessing a proposed acquisition pursuant to section 50 of the Act, the ACCC considers the effects of the acquisition by comparing the likely future competitive environment post-acquisition if the acquisition proceeds (the "with" position) to the likely future competitive environment if the acquisition does not proceed (the "without" position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.

The viability of Tiger Australia

45. Tiger Airways submitted evidence to the effect that, in the absence of the proposed acquisition, Tiger Australia would cease operations in Australia.
46. The ACCC conducted market inquiries and carefully considered publicly available information, as well as extensive confidential information provided by the parties and by other interested parties to test this submission.
47. The ACCC formed the view that Tiger Airways would be highly likely to cease operating Tiger Australia if the proposed acquisition did not proceed.
48. This conclusion was critical to the ACCC's assessment of this matter. Having reached this conclusion, the relevant test was whether the future with the proposed acquisition would constitute a substantial lessening of competition when compared

with the likely future without the proposed acquisition (in which Tiger Australia would be highly likely to exit the market).

49. As stated in the ACCC's Merger Guidelines, mere speculation that a target firm is failing and will exit the market in the near future, or evidence of a recent decline in a target firm's profitability, is not sufficient to establish that parties to an acquisition would not continue to be competitors in the future without the acquisition.

50. Further, the ACCC will critically examine claims that, absent the acquisition, a firm is likely to fail and therefore exit the relevant market. By way of example the ACCC is unlikely to accept claims that a firm will exit the relevant market simply based on documents created since the relevant acquisition has been in contemplation. This is particularly so where the financial performance of the firm has been sound having regard to the particular circumstances prevailing at the time of the review.

51. In general, to demonstrate that an acquisition would not substantially lessen competition due to the prospective failure of one of the parties, it is necessary to show that:

    - the relevant firm is in imminent danger of failure and is unlikely to be successfully restructured without the acquisition; and
    - in the absence of the acquisition, the assets associated with the relevant firm, including its brands, would leave the relevant market.

    Even if it is considered likely that the firm would exit the market if it is not acquired, the acquisition of that firm may still result in a substantial lessening of competition if, in the absence of the acquisition, the remaining market participants would be more likely to compete to win the failed firm's customers.

52. The ACCC formed the view that Tiger Airways would be highly likely to cease operating Tiger Australia and transfer its mobile assets (such as aircraft) to its overseas operations if the proposed acquisition did not proceed. As noted above in paragraph 20, Tiger Australia uses the same aircraft as Tiger Airways uses in its Asian operations. In forming this view, the ACCC had particular regard to:

    - Tiger Australia's previous and forecast financial performance;
    - the impact of Tiger Australia's financial performance on Tiger Airways' financial position; and
    - the ACCC's assessment that a turnaround of Tiger Australia by means of an alternate sale or joint venture appeared unlikely.

Tiger Australia has sustained large losses throughout its operation and has never made an operating profit

53. Tiger Australia has sustained large losses throughout its operation and has never made an operating profit since it commenced operations in Australia in 2007. Table 1 below contains information about Tiger Australia's historical financial performance that was available at the time of the ACCC's review.

Table 1: Tiger Australia's financial performance 2007-2012

AUD(m)	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
Revenue	28.1	95.4	170.1	220.2	116.4
Operating Profit (Loss)	(12.2)	(50.1)	(1.5)	(6.8)	(57.1)
Net Profit (Loss)	(20.1)	(50.1)	2.8[10]	(6.8)	(66.2)
Accumulated Profits (Losses)	(20.1)	(70.2)	(67.4)	(74.1)	(140.3)

Source: Annual reports lodged with ASIC by Tiger Australia. Tiger Australia's financial year runs from April to March.

54. Further, Tiger Airways had publicly announced interim results for the first three quarters of Tiger Australia's 2012-13 financial year (up to and including December 2012).[11] These results are set out in Table 2 below.

Table 2: Tiger Australia's interim reported financial performance April 2012 – December 2012

Result	Reported by Tiger Airways (SGD(m))	Approximate AUD(m) equivalent
Revenue	176	137.3
Operating Profit (Loss)	(54)	(42.1)

Source: Tiger Airways FY 2012-13 third quarter results presentation slides, dated 24 January 2013

55. These results brought Tiger Australia's accumulated operating losses since November 2007 to approximately $182m AUD (approximately $234m SGD) as at December 2012.

56. Based upon the evidence available to it, the ACCC was satisfied that Tiger Australia's previous financial results reflected a number of factors that were unlikely to be all resolved absent the proposed acquisition. These factors included:

- safety concerns which culminated in the CASA enforced grounding;
- the subsequent effect of those safety concerns on Tiger Australia's brand; and
- Tiger Australia operating below efficient scale.

Tiger Australia's losses were causing significant harm to Tiger Airways

57. Tiger Australia's ongoing operation was dependent on the continued willingness of Tiger Airways to provide financial support to cover Tiger Australia's losses.

58. Tiger Airways' Statement of Financial Position as at 31 December 2012 showed accumulated losses of $184.7m SGD for the Tiger Group (comprising Tiger Airways and its subsidiaries, including Tiger Australia). These accumulated losses equated to approximately 45% of the total share capital of Tiger Airways at 31 December

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[10] Relates to recognition of deferred tax (accounting treatment).

[11] Tiger Airways publicly reports its results in Singapore Dollars (SGD). At the time of the ACCC's decision the exchange was approximately $1 SGD = $0.78 Australian Dollars (AUD).

2012 ($408m SGD). As outlined above at paragraph 55, the accumulated losses at 31 December 2012 for Tiger Australia alone were approximately $234m SGD.[12]

59. Given the extent of Tiger Australia's accumulated losses, and given the size of those accumulated losses relative to Tiger Airways' total share capital, and taking into account confidential material available to it, the ACCC accepted that Tiger Australia's losses were causing significant harm to Tiger Airways' ongoing financial position.

60. In these circumstances, the ACCC concluded that it was highly likely that in the absence of the proposed acquisition Tiger Airways would cease providing the financial support necessary for Tiger Australia's continued operation.

61. During the course of the ACCC's review Tiger Airways announced that it expected to raise approximately $297m SGD through a capital raising. The ACCC thoroughly examined the circumstances surrounding this capital raising and considered the possibility that these funds could be used by Tiger Airways to continue to support Tiger Australia. The ACCC concluded that there was no evidence to suggest that Tiger Airways intended to use the capital raising funds to continue to support Tiger Australia.

A turnaround of Tiger Australia's performance via an alternative sale appeared unlikely

62. Having concluded that Tiger Airways was unlikely to continue to support Tiger Australia, the ACCC considered whether Tiger Airways, absent the proposed acquisition would be likely to:

- sell part or all of Tiger Australia to another buyer, or
- shut Tiger Australia down and transfer some of its assets (such as aircraft) to its overseas operations.

63. The ACCC examined whether, absent the proposed acquisition, another party would be likely to acquire Tiger Australia (or its key operating assets) such that it would continue to operate it as a domestic airline in Australia (whether in its present form or a different form), thus providing a continuing or even an expanded competitive constraint in the market. Based upon its assessment of all the relevant information the ACCC concluded that this was not likely.

64. As mentioned at paragraphs 20 and 24 above, Tiger Airways also has interests in airline operations in Singapore, the Philippines and Indonesia, each of which use the same aircraft type as Tiger Australia (Airbus A320-200). The ACCC concluded that in the absence of the proposed acquisition, Tiger Airways would have had a credible commercial rationale for redeploying Tiger Australia's fleet to these overseas operations, which are expected to have a growing demand for aircraft over the coming few years.

Conclusion on Tiger Australia's future without the proposed acquisition

65. The ACCC concluded that in the absence of the proposed acquisition, it was likely that Tiger Australia and its key assets would leave the market and Tiger Airways would transfer Tiger Australia's mobile assets (such as its aircraft) to its overseas operations in Singapore, the Philippines and/or Indonesia.

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[12] This implies that accumulated losses from Tiger Australia have been mitigated to some extent by accumulated profits from other aspects of Tiger Group's operations (such as Tiger Airways Singapore).

Competition Assessment

66. As noted in the Statement of Issues, absent a conclusion that Tiger Australia would be likely to exit the relevant market without the proposed acquisition (i.e. if the ACCC concluded instead that Tiger Australia would continue operating in the absence of the proposed acquisition), the ACCC considered that the proposed acquisition raised significant competition concerns.

67. In particular, the ACCC held concerns that the proposed acquisition may increase the likelihood of airlines coordinating their pricing, capacity or related commercial decisions (i.e. give rise to "coordinated effects") by:

    - reducing the number of airline groups within Australia from three to two (excluding regional airlines), and making those groups more similar (in that each would be comprised of a full service and a low cost domestic carrier);
    - removing Tiger Australia as an independent low cost carrier, and instead aligning its incentives with those of Virgin Australia; and
    - reducing the threat of further entry by a new airline.

68. The ACCC also held concerns associated with the elimination of direct competition between Tiger Australia and Virgin Australia (i.e. unilateral effects). While post acquisition Tiger Australia would remain a separate brand in the market, it would be under the control of Virgin Australia and would therefore take into account - and act in the interests of - Virgin Australia. Accordingly it would not compete with Virgin Australia. This would be likely to affect Virgin Australia's and/or Tiger Australia's decisions as to fares, service quality, capacity and/or network.

69. On the other hand, in the Statement of Issues the ACCC also acknowledged the possibility that the proposed acquisition may result in Tiger Australia expanding its fleet, adding new routes and becoming a more effective competitor to Jetstar under its new owners.

70. However, the ACCC concluded that there was considerable uncertainty surrounding both the likelihood and extent of any possible pro-competitive effects arising from the proposed acquisition.

71. Therefore the likely exit of Tiger Australia in the event the proposed acquisition did not proceed was the critical factor in the ACCC's overall analysis.

72. Having formed the view that it was highly likely that Tiger Australia would leave the market if the proposed acquisition did not proceed, the ACCC did not consider the future with the proposed acquisition to be substantially less competitive than a scenario in which Tiger Australia had failed and left the market. Accordingly, opposing the proposed acquisition would not serve to protect competition.

Conclusion

73. On the basis that Tiger Australia would have been highly likely to exit the relevant market if the proposed acquisition did not proceed, the ACCC formed the view that the proposed acquisition of Tiger Australia by Virgin Australia would not be likely to result in a substantial lessening of competition in the market for Australian domestic air passenger transport services in contravention of section 50 of the Act. The ACCC therefore did not oppose the proposed acquisition.