BRISBANE AIRPORT CORPORATION

Wednesday, 15 April 2020

Mr McCraken-Hewson
General Manager, Adjudication
Australian Competition and Consumer Commission
Level 17, 2 Londsdale St
MELBOURNE VIC 3000

Via email: Tessa.Cramond@accc.gov.au

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Dear Mr McCraken-Hewson

I write in relation to Virgin Australia's (Virgin) application for authorisation of a range of conduct is response to the COVID emergency. We do this in the knowledge and support of the submission of the Australian Airports Association has made to the Commission in relation to this matter.

As the Commission will be aware, Brisbane Airport is the home base of Virgin. Since its establishment as Virgin Blue in August 2000, we have enjoyed a highly cordial and mutual benefial relationship which has allowed both of our of businesses to grow and provide a growing range of value-for-money services to Queensland and Queenslanders. The presence of Virgin at Brisbane Airport has been a substantial contributor to the development of Queensland's aviation industry.

At a national level, the emergence of Virgin after the collapse of Ansett in late 2001 as low cost carrier, and in later years a full service domestic carrier with a network of international partnerships to complement its own international network has provided vital choice and competition leading to lower airfares, greater frequency, more destinations (especially in regional areas) and product innovation. It is our view, having experienced the entirety of the Virgin journey and the collapse of Ansett, that the best outcome available to Australian consumers and businesses dependent on domestic aviation in these troubled times is the ongoing operation of Virgin.

Broadly, we see the application in two parts:

- Authorisation of certain conduct that would enable Virgin to cooperate (in terms of capacity, fares, revenue sharing and other matters) with other airlines, and presumably the Australian and possibly State governments, to ensure that a minimum level of service is provided across the domestic aviation network linking capital and other major cities.

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Subject to the observations below, we support such an authorisation for while ever government support of these services is required and potentially a limited period beyond that. Such authorisation should be granted immediately on an interim basis.

- Authorisation for Virgin to bargain collectively with other airlines about the use and pricing of unspecified infrastructure at unspecified airports. Beyond the fact that the application is extraordinarily vague (including apparently allowing for boycotts by the collective bargaining parties), the application fails to identify any public benefits whilst allowing longer-term anticompetitive risks to emerge.

Given the longer term nature of the potential competitive harm and the absence of any urgency on this matter (as airlines already have access to the infrastructure apparently in question on a variable cost basis) if the Commission is not inclined to deny interim and final authorisation in the first instance, it should defer making any decision for a sufficient period of time to enable it to release an issues paper and enable interested parties a reasonable opportunity to make considered submissions.

The remainder of this submission addressed these two issues. Given the very short time available to respond to Virgin's initial application, and also the limited evidence provided in it, we expect that whatever authorisation the Commission provides is of an interim nature so that we and other interested parties, including governments, can provide further information to enable the Commission to give these important matters an appropriate level degree of consideration.

Co-ordination with other airlines

It is not necessary to recount in any detail the impact that the impact of COVID19 has had on the aviation industry in Australia regionally and nationally, and indeed globally. We understand the impact this event is having on airlines and the travelling public. It is clear that under the current domestic travel restrictions, which we expect will persist for some time, that operating competing profitable domestic airline networks is not possible and further, the absence of some form of skeleton network is contrary to the public interest.

The Australian Government has put in place measures to support regional services and we understand is considering measures (including potentially subsidies) to maintain limited services between major Australian cities. It is desirable that these arrangements involve both Qantas and Virgin and it will be necessary for co-ordination to occur. Thus, we support the granting of an interim authorisation to 1 November 2020, the commencement of the Northern Winter schedule period.

That said, we note that the authorisation provided to Regional Express (AA1000478) included a requirement that fares on co-ordinated flights should not exceed those in place on 1 February 2020. Whilst we appreciate that the pricing algorithms of major network carriers may be much more complicated than those of Regional Express we believe it would be appropriate for some restriction to be placed on co-ordinated services offered under this authorisation, at least until such time as a final authorisation is provided. We would suggest that a reasonable approach would be to require economy fares to be no more than the lowest full economy fare offered by the co-ordinating airlines on the route in question on 1 February 2020.

We are sure that the Commission would share our view that the co-ordination arrangements such as those contemplated by this authorisation application are antithetical to competition and the interests of consumers in normal circumstances. As such, the authorisation should exist only for the minimum length of time necessary. Accepting the uncertainty associated with the wider industry's operating environment, we would ask the Commission to give consideration to the proposed length of the authorisation, namely fourteen months, and perhaps it should give clear guidance as to the circumstances where it might review the authorisation, particularly in the event that the government were to remove fiscal assistance for the direct provision of

services.

Collective bargaining for airport infrastructure

Virgin seeks authorisation to negotiate collectively with other airlines (presumably predominantly but not exclusively Qantas and its affiliates) in relation to the provision of airport infrastructure use and pricing. We note that nature of this infrastructure is not defined nor are the relevant airports. We assume therefore that the application relates to all services provided to airlines at Brisbane Airport.

In several places Virgin suggests that the costs airlines incur at airports are largely "fixed and not dependent on passenger numbers". This is not our understanding. The Commission's 2018-19 Monitoring Report (p19) shows that aeronautical revenues, which are almost entirely passenger based, constituted some 48% of our total revenue. Because the majority of our non-aeronautical revenue is derived from non-airline sources, the variable component of our revenue that we derive from airlines is much higher. For example, we estimate that we typically derive around 90% of our revenue from Virgin from aeronautical charges – at the moment we are deriving none.

As the Commission is aware, aeronautical charges are the subject of typically long-term agreements that set out a broad range of price and non-price terms and conditions. It is important to note these agreements establish at a high level the operating arrangements at the airport and create processes for the development of, and decision making under subsidiary agreements. These agreements give affect to well established industry practice and relevant safety, security and environmental law and provide dispute resolution mechanisms. They contain no anti-competitive provisions and we are confident would not contravene competition law. There is no practical or legal need for the Commission to provide any authorisation to facilitate operations at Brisbane Airport, or as the application puts it "the use of infrastructure".

The Commission should be aware that Virgin currently enjoys access to Brisbane Airport under a number of terminal and airfield agreements. These expire after the proposed expiration of the proposed authorisation. Given these agreements provide full coverage of all price and non-price terms of all the aeronautical services required by Virgin at Brisbane Airport, collective bargaining as proposed provides no private benefit to Virgin, let alone any public benefit. Notwithstanding this, BAC has provided relief to Virgin in the form of free aircraft parking of which BAC was not obliged to do and which Virgin would have otherwise been contractually obliged to pay for.

The application proceeds on the basis that airports are not commensurately impacted by the COVID emergency and are somehow exercising power in the circumstances that requires counterbalancing, a case for which no evidence is offered by Virgin and is refuted.

The charges which could be characterised as fixed largely relate to rents for exclusive occupancy facilities such as lounges, offices, hangars and freight facilities. As we note above, these may constitute as little as 10% of the revenue we receive from Virgin and similarly from other airlines and most of these facilities are subject to long term leases which will last beyond the authorisation period being proposed. Some of these facilities, especially lounges, are often bespoke to the airline concerned. Further others, such as hangars and heavy maintenance facilities, are provided in competition with other airports, or more local sites off-airport as can be the case with flight catering and freight handling facilities. It is difficult to see how collective bargaining would work practically in these cases and indeed may adversely impact on the efficient allocation of land, especially in cases where alternative non-airline users may be seeking access to similar sites.

The Commission will be aware of media reports of Qantas unilaterally determining, on a take it

or leave it basis, what airport charges and rents it will pay at over what period. Whilst these matters are confidential, the Commission can be assured we are working with all our airline customers to provide what support we can whilst maintaining our obligations to our staff, lenders and shareholders. In such circumstances it is difficult to see what benefit Virgin or the public can gain from the authorisation. But more so, it is clear evidence of a lack of need for the urgent authorisation of collective bargaining as proposed and the need for proper consideration of the issue by the Commission.

There appears to be no effective limit on the information that the authorisation would allow airlines to share. Contractual arrangements have in good faith been entered into by airports and airlines on strict terms of confidentiality, more often than not at the insistence of airlines. Absent a robust information sharing protocol, these arrangements could be compromised and thereby changing the information balance between airports and airlines. This could be harmful to downstream competition in circumstances where airlines in negotiations with an airport could gain access to information about agreements already concluded.

In sum, it is our view there are no benefits likely to flow from the authorising collective bargain, and certainly none demonstrated in the application. But in any event, the absence of any urgency and the risk of potential long-term anticompetitive harm means if the Commission finds some merit in authorising competitive bargaining it should not do so until it conducts a proper consultative process that affords all parties natural justice and ensure a proper basis for evidence based decision making.

If you require further information please contact me on [redacted] or [redacted].

Yours sincerely

[redacted]

Jim Parashos

Executive General Manager

Aviation Development and Partnerships