

MELBOURNE AIRPORT

16 April 2020

Tessa Cramond
Merger and Authorisation Review Division
Australian Competition & Consumer Commission
Level 17/2 Lonsdale Street Melbourne 3000

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

Dear Tessa

Re: Application for interim authorisation by Virgin Australia (CONFIDENTIAL)

Thank you for the opportunity to respond to the Virgin Australia application for interim authorisation on a range of matters including “joint negotiation (including collective bargaining) with airports in relation to (but not limited to) infrastructure use and fee relief”.

Melbourne Airport is owned by Australia Pacific Airports Corporation Limited (APAC), which also owns Launceston Airport. In providing this response, we acknowledge and support the comprehensive submission from the Australian Airports Association of behalf of its members, which include our airports.

We understand that subject to a decision on this interim authorisation application, a more comprehensive consultation with more appropriate response times will be undertaken with impacted parties. Notwithstanding, there are elements of this application which we object strongly to and as such we oppose authorisation, even on an interim basis.

Aspects of the application

1. Schedule Coordination

We support the first three elements of the application relating to coordination of routes and sharing of associated revenues between participating carriers:

- Agreeing the routes, scheduling and/or capacity of RPT services
- Jointly determining which carrier is best placed to operate a particular route or service
- Discussing and agreeing the split or share of revenue generated by services but not extending to agreements relating to the price of fares.

We understand this to mimic the arrangements successfully applied for by Rex in relation to regional aviation services in late March.

At the time of writing the Australian Government was expected to announce a plan to underwrite a skeleton schedule of domestic services. To support the most efficient use of taxpayer funds in this way, coordination to avoid duplication and maximise efficiency makes sense and ensures that the maximum number of ports can maintain access to aviation services at the lowest cost.

It should be noted that our support for these three elements of the application is in the context of the extraordinary shock and destruction of demand brought about as a result of COVID-19.

2. Coordination on freight

In our view the case to “discuss and agree on the allocation of cargo space with freight providers and operators” is marginal, but we will not oppose it. We acknowledge there may be some efficiency gains achievable through such coordination, even though it may curtail the recent growth in freighter traffic to Melbourne Airport.

3. Collective bargaining

We strongly oppose the final element of the application, that being the request for authorisation to collectively bargain with Australian airports in relation to infrastructure use and fee relief.

Access to infrastructure is already well established in existing commercial agreements and, as a result of highly prescriptive airport lease provisions, sit firmly in airlines’ favour in relation to certainty of access.

The negotiation of these agreements is robust and has resulted in good outcomes for participants and the broader community. These matters were recently and comprehensively tested through the Productivity Commission inquiry into the economic regulation of airports. While the impact of COVID-19 on the aviation sector is unprecedented, it is difficult to see how replacing the existing framework with a collective bargaining approach, even temporarily, could create greater community benefit.

We note that one of the recommendations of the Productivity Commission inquiry, accepted by the Australian Government in December 2019, was the removal of “terms no less favourable” clauses in aviation agreements. We supported this decision on the basis that such clauses were anti-competitive and moved to remove them from our agreements immediately. The inclusion of the collective bargaining element in this application appears to be a poorly constructed attempt to reintroduce such anti-competitive clauses by stealth. The manner in which such an anti-competitive measure has been included in this interim authorisation is disappointing.

Specifically, in relation to fee relief, our airports engaged proactively and early with airports including Virgin on relief measures to assist through COVID-19.

As the vast majority of airport fees charged to airlines are based on per passenger charges, relief in a scenario such as COVID-19 is already built-in to commercial agreements. As a result of travel restrictions, the destruction of demand and drastically reduced schedules, our passenger numbers are down by approximately 98%.

Due to the fact that airports assume passenger risk in commercial agreements, we have virtually zero aviation revenue coming in until the recovery commences. Still, as operators of essential infrastructure we are required to stay open (as per the conditions of our leases) and absorb a level of unavoidable fixed costs (utilities and cleaning, for example).

Even so, we have moved to provide relief or reductions on fixed costs such as rents for lounges and office space, all of which has been accepted. It is therefore difficult to see the need for, or benefit of, collective bargaining in relation to fee relief.

In our view, even the interim authorisation of this element of the application is entirely unnecessary, is likely to cause detriment and is unlikely to create any discernible community benefit. As such, we urge the ACCC to reject this element of the application.

Term

We note the application is for authorisation until the 30 June 2021. Given the uncertainty that exists as to the duration of the COVID-19 pandemic and its impacts on Australia's domestic aviation industry, this period appears unnecessarily long. We would strongly recommend that any authorisation would be made effective until the end of September 2020 only, with the provision for extension subject to review and further consultation as required.

Yours sincerely



Jai McDermott
EXECUTIVE CORPORATE AND PUBLIC AFFAIRS