



3 May 2022

Mr Darrell Channing
Director – Competition Exemptions
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

By Email: darrell.channing@accc.gov.au / connie.wu@accc.gov.au

Dear Darrell and Connie,

Virgin Australia Airlines Pty Ltd Application for Authorisation AA1000608

Thank you for the opportunity to comment on the above Application lodged by Virgin Australia.

The Qantas Group has the following concerns in respect of the Proposed Conduct (as defined in the Application) and would urge the Commission to take these into account in considering the Application for interim or final authorisation.

1. Proposed Conduct must only apply in certain circumstances and within the regulatory framework for capacity allocation

The Qantas Group accepts that regulatory flexibility to allow future evolution of commercial arrangements can be appropriate in certain circumstances.

However, given this Application includes a potentially large and unidentified set of Partner Carriers (with the exception of United Airlines), authorisation should be conditional on the following:

- (a) that the Proposed Conduct only applies prospectively to Virgin Australia's arrangements with future codeshare partners, rather than to any existing codeshare partners of Virgin Australia (as the form accompanying the Application states, but which is not referred to in the body of the submission);
- (b) that the Proposed Conduct only occurs where there is no actual or imminent operational overlap with the codeshare partner (as Virgin Australia's submission states);
- (c) that the Commission is satisfied on a case by case basis that any extension of the Proposed Conduct does not:
 - (i) stall, delay or prevent the restoration of Virgin Australia's independent operations on any route; and/or
 - (ii) contaminate competition on related (but not overlapping) routes; and
- (d) Virgin Australia (and its Partner Carriers, as applicable) continue to comply with all regulatory requirements, including Australia's air services arrangements and with the International Air Services Commission's framework, where applicable.



Virgin Australia has characterised the Proposed Conduct as a 'stepping-stone' to facilitate restoration of its international services. However, the Commission would need to be clearly satisfied that the benefits and convenience claimed to arise from the Proposed Conduct would not be such to delay or prevent the restoration of Virgin Australia's independent operations on any route, restricting longer term competition between Virgin Australia and each Partner Carrier.

To the extent Virgin Australia is able to demonstrate that the Proposed Conduct facilitates its operational return, the Commission would further need to be satisfied that the Proposed Conduct does not give rise to inappropriate 'contamination' of future competition. For example, if Virgin Australia was to recommence operations between Sydney and Los Angeles in overlap with United Airlines it appears that the Proposed Conduct would cease in respect of that route but continue in respect of, say, Melbourne-Los Angeles and Brisbane-Los Angeles. In such circumstances, the Commission would need to satisfy itself the relevant parties could maintain appropriate ring-fencing such that price competition on the overlap route(s) was maintained and not 'contaminated' by: firstly, the existence of the Proposed Conduct on that route in the first place (which necessarily would have given close insight of a competitor's price patterns) or secondly by the continuation of the Proposed Conduct on other routes.

While the Qantas Group understands the Proposed Conduct would cease to apply to a particular route when it becomes one of overlap between Virgin Australia and the relevant Partner Carrier, the timing for this 'ceasing' should be clearly articulated to be at the point at which Virgin Australia decides to operate the route, not the point of commencement of that operation, which may be some time later.

2. Arms-Length Codeshare Arrangements

Virgin Australia contends that traditional arms-length codeshares generate only 'artificial' or 'theoretical' price competition between operating and marketing carriers. While the Qantas Group agrees that revenue sharing joint business arrangements are optimal because of the alignment of commercial incentives to sell on a metal neutral basis, there are occasions where an arms-length codeshare is a pro-competitive alternative to not selling at all and can generate genuine price competition.

The Commission should carefully interrogate Virgin Australia's claims that arms-length codeshares are not commercially sustainable.

3. International Competition

The Qantas Group rejects any contention by Virgin Australia that it has a 'dominant position' with respect to international services but agrees with the submission to the extent it demonstrates that international routes to and from Australia are highly competitive.

If you have any questions about the matters referred to above, please contact me.

Yours sincerely



Nicole Malone
Head of Legal – Competition
Qantas Airways Limited