

19 November 2020

Mr Andrew Mahony
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra
ACT 2601

Dear Mr Mahony,

Subject: Virgin Australia and Alliance Airlines application for authorisation AA1000533 – interested party consultation

Our letter dated the 9 November 2020 addressed to your office on the subject matter refers. As outlined in the paragraph 2 of this letter we now provide a more detailed submission on the Virgin Australia and Alliance Airline ('the Applicants') application for authorisation AA1000533 to be considered by the Australian Competition and Consumer Commission ('ACCC').

1. Application form: Non merger authorisation

In sub section 3.1 the Applicants seek authorisation, including interim authorisation, to cooperate in relation to the provision of services from origin Brisbane to destination Honiara as listed in sub section 4.2, table 2, of their Submission, in order to efficiently manage capacity and quickly respond to changes in demand due to the COVID-19 pandemic.

In sub section 3.4 the Applicants seek authorisation on the proposed conduct for a minimum two year period, until 30 October 2022, to allow the Applicants to continue providing essential airline services to regional communities in Australia and minimise costs and risk exposure in the face of the COVID-19 pandemic and its severe effect on the Australian Aviation industry.

In section 5 the Applicants state that they provide regular passenger services (RPT) within Australia.

2. Essential airline services to regional Australia

We recognise that Australian airlines may still be facing significant challenges domestically, including exceptionally low demand, due to the ongoing impacts of the COVID-19 pandemic and therefore have no interest in the Applicants proposed conduct to continue providing essential airline services to regional communities in Australia.

However, we do submit an objection to the Applicant including the destination point Honiara, which is located in the Solomon Islands, in its submission made to the ACCC.

3. Australian Government Support

The Applicants currently receive financial support from the Australian Government's Regional Airline Network Support (RANS) program. The RANS program aims to ensure regional communities continue to receive essential air services such as freight, medical testing / supplies and travel for essential workers. The RANS program makes \$198 million available to domestic commercial airlines operating RPT services to regional ports in Australia. Under the RANS program, Virgin Australia has received \$11,343,466 and Alliance Airlines has received \$419,184.

The Applicants currently receive financial support from the Australian Government's Domestic Aviation Network Support (DANS) program, which underwrites the cost of supplying a minimum domestic and regional network comprising the 50 domestic routes with the most passenger traffic. Under the DANS program Virgin Australia received \$112 million of funding to operate a minimum domestic network servicing.

In addition to the RANS and DANS programs, the Australian Airline Financial Relief Package has waived \$715 million in various taxes and government charges applicable to eligible airlines. Virgin Australia has received \$67 million in relief and Alliance Airlines has received \$4.4 million in relief.

A further \$1.6 million in cash flow assistance available to regional airlines under the Regional Airlines Funding Assistance Program was provided to Alliance Airlines.

Total government support provided to the applicants to date for the domestic network amounts to \$196,762,650.

We recognise the significant contribution that government has provided to the Applicants for the provision of Australia's domestic air services. The benefit of this contribution is that the Applicants are in a far better financial position than they would be without it. It may be argued that by the applicants enjoying the benefit of the Australian government support that they will have a significant unfair advantage when targeting an international route like Honiara as included in the applicant's submission, sub section 4.2, made to the ACCC. Surely it is not the intention of the Australian government nor the ACCC to allow the taxpayer to cross subsidize and international air services route, like Honiara.

4. Australia (Brisbane) – Solomon Islands (Honiara) route

Currently, Virgin Australia is the only Australian carrier allocated capacity on the Australia Brisbane – Honiara route.

On 10 August 2018, Virgin Australia Airlines (SE Asia) Pty Ltd (VAASEA) applied to the IASC to transfer to Virgin Australia International Airlines Pty Ltd (VAIA) the capacity entitlements originally allocated to VAASEA in the following determinations on the Solomon Islands route:

- (a) [2013] IASC 133 which allocates 180 seats of capacity per week in each direction; and
- (b) [2016] IASC 114 which allocates 360 seats of capacity per week in each direction.

In accordance with section 25 of the International Air Services Commission Act 1992 Act, the IASC varied determinations [2013] IASC 133 and [2016] IASC 114 by transferring the capacity entitlements allocated in these determinations to Virgin Australia International Airlines Pty Ltd (VAIA) in accordance with the Australia-Solomon Islands air services arrangements. All references to VAASEA in the determinations were changed to VAIA.

Furthermore, the IASC varied determinations [2016] IASC 114 and [2013] IASC 133 by deleting the conditions in these determinations, except the conditions added by Decision [2016] IASC 204, and replacing the deleted conditions with the following:

- (a) VAIA is required to fully utilise the capacity from 30 December 2018 or such other date approved by the Commission.
- (b) the capacity may be utilised by:
 - i. VAIA; or
 - ii. Tiger International Number1 Pty Ltd, as long as it remains a wholly owned subsidiary of VAIA; or
 - iii. such other wholly owned subsidiary of VAIA that the Commission approves in writing, as long as it remains a wholly owned subsidiary of VAIA.
- (c) VAIA is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person without the approval of the Commission.
- (d) changes in relation to the ownership and control of the airlines authorised to utilise the capacity are permitted except to the extent that any change:
 - i. results in the designation of the airline(s) as an Australian carrier under the Australia-Cook Islands air services arrangements being withdrawn; or
 - ii. has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of the airline(s) or be in a position to exercise effective control of the airline(s), without the prior consent of the Commission.

The IASC varied Determinations [2016] IASC 114 and [2013] IASC 133 to transfer the capacity allocated in these determinations to Virgin Australia International Airlines Pty Ltd (VAIA) and permitted the capacity to be used by either VAIA or its wholly owned subsidiary, Tiger International Number1 Pty Ltd. The permission issued is valid for the duration of the determinations commencing from 1 December 2018. Determinations are generally made for a period of five years for routes where capacity or route entitlements are restricted.

5. Use of Australian capacity in joint services

The Applicants seeks ACCC authorisation of the proposed conduct that includes:

- (a) sharing information (including in relation to costs, willingness to operate, capacity, anticipated demand and pricing) about Relevant Routes;
- (b) agreeing capacity, flight schedules and aircraft type, including whether a carrier will suspend or continue operations, which carrier will operate Relevant Routes and under what arrangements (e.g., wet lease or codeshare etc.);
- (c) putting in place temporary commercial agreements that are most suitable for the Relevant route considering demand and risk profile in the exceptional current market conditions; and
- (d) potentially, risk and revenue sharing mechanisms and agreements as to price.

Australian carriers cannot use the capacity allocated to them by the International Air Services Commission (IASC) in joint services with other airlines without prior approval from the IASC. The IASC considers joint services applications in accordance with the International Air Services Commission Act 1992 (the Act) and criteria as set out in Australia's Minister for Infrastructure and Transport Policy Statement of March 2018. There are two main sets of criteria that the IASC is to have regard to in assessing the benefit to the public: the 'reasonable capability criterion' and the 'additional criteria'.

Section 7 of the Policy Statement explains that in deciding whether to vary a determination, the Commission is to have regard to the 'reasonable capability criterion' set out in section 8 of the Policy Statement and any of the additional criteria set out in section 9 that the Commission thinks to be relevant.

Reasonable capability criterion means the extent to which all Australian carriers that are, or would be, permitted to use the capacity allocated under a determination are reasonably capable of:

- (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and
- (b) using the capacity allocated under the determination.

Additional criteria include amongst others:

- (a) the desirability of fostering an environment in which Australian carriers can effectively compete with each other and with foreign carriers on the route in question.
- (b) the number of carriers operating on the route in question and the existing distribution of capacity among Australian carriers

- (including through code sharing and other joint international air services).
- (c) the benefits presented by allocating the capacity to a given applicant over other competing applicants, having regard to any commercial arrangements that may be in place with other carriers.
 - (d) any determinations, decisions or notifications made by the ACCC, or any determinations made by the Australian Competition Tribunal, in relation to an Australian carrier using capacity in all or part of the route.
 - (e) any determinations, decisions or notifications made by a foreign agency that performs a comparable function to the ACCC or the Australian Competition Tribunal, or by a foreign aeronautical authority, in relation to a carrier using entitlements under a bilateral arrangement on all or part of the route.

In our humble opinion, we submit that the IASC would need to take careful account of the ACCC's assessment of the proposed conduct arrangements sought by the Applicants in considering any future application made to the IASC to use allocated capacity in joint services.

The IASC may have done so in previous cases in similar circumstances. In those cases, the IASC has approved airline applications on terms consistent with those of ACCC authorisations and the IASC approval has been contingent on continuing ACCC authorisation. Nevertheless, the requirement for the IASC to consider applications in terms of the public benefit and other criteria contained within its Act mean that the IASC's conclusions in those previous cases involving ACCC authorisations cannot be taken to infer a particular outcome in respect of any future application by the Applicants to operate joint services on the Honiara route.

6. Solomon Airlines Objection and Remedy

We humbly request that the ACCC in its deliberations on the Virgin Australia and Alliance Airlines application for authorisation AA1000533 consider our objection and reasons submitted; and request that the ACCC not include the destination Honiara in its approval to the Applicants to continue providing essential airline services to regional communities in Australia.

Should you wish to discuss this submission, we are happy to meet with you at a mutually convenient time. Alternatively, should you have any queries, my email address is bgebers@flysolomons.com. My phone number is +614 9977 2199

Yours sincerely,



Brett Gebers
CEO