



4 May 2020

Tessa Cramond  
Senior Analyst, Adjudication  
ACCC

Via email: [Tessa.Cramond@accc.gov.au](mailto:Tessa.Cramond@accc.gov.au)

Dear Ms Cramond

**Re: Virgin Australia's Application for Interim Authorisation for the COVID-19 Crisis**

Thank you for the opportunity to comment on Virgin Australia's (VA) Application for Interim Authorisation (the Application) to coordinate flight schedules, routes and cargo capacity with other airlines.

**Introduction**

The aviation industry, including airlines, airports and other suppliers, is facing significant challenges due to the COVID-19 pandemic, and the related impacts on travel. Sydney Airport is actively engaged with airlines and other stakeholders to support them through this period, with the goal of ensuring that everyone in the industry survives the COVID-19 crisis and are there to build a path to recovery. This includes all our airline partners, and specifically VA which has an important role in the Australian aviation market. Sydney Airport believes that a viable second domestic carrier is essential for competition and the welfare of Australian consumers and the economy in the future.

Sydney Airport believes that the Application is concerning because the conduct described in it will significantly lessen competition, with negative consequences for consumers, airports, other suppliers and international airlines. Its impacts may well go beyond the immediate COVID-19 crisis, impairing the ability of the aviation industry to recover after the crisis. For these reasons, Sydney Airport recommends that either the ACCC dismiss the Interim Authorisation outright or provide it for a maximum initial period of 3 months only.

We note that since the Application was made by VA the following has occurred:

- On 21 April 2020, VA entered voluntary administration with the intention to recapitalise to help ensure it emerges in a stronger financial position on the other side of the COVID-19 crisis.<sup>1</sup> Voluntary administration provides its own pathway to ensure the emergence of a strong and viable VA, independent of the Interim

---

<sup>1</sup> VA media release dated 21 April 2020 <<https://newsroom.virginaustralia.com/release/virgin-australia-enters-voluntary-administration>>

Authorisation.

- On 22 April 2020, VA withdrew its request for authorisation in relation to collectively bargaining with Australian airports. Collective bargaining with airports is not necessary as airlines have sufficient power to negotiate with airports independently, as demonstrated by the fact that many airlines have significant overdue aeronautical and property charges (some dating back to before the COVID-19 crisis commenced) while they continue to use Sydney Airport's services and facilities.

### **Sydney Airport's concerns with the Application**

#### **1. Length of authorisation sought is unreasonable and unjustified**

The authorisation sought is until 30 June 2021, which is inappropriately long given that the purpose of the authorisation is to assist with short-term issues caused by COVID-19.

As we set out below, we recommend against the granting of the Interim Authorisation. However, if the ACCC is minded to grant the authorisation, and noting that there is some uncertainty as to how long the COVID-19 related travel restrictions will remain in place, we suggest that the ACCC consider granting a shorter authorisation and review and extend the authorisation for further short defined periods if necessary. We suggest a maximum 3 month period be considered after which it be reconsidered in the context of changes in market conditions and in consultation with industry stakeholders.

#### **2. Revenue-sharing on routes may delay recommencement of services**

There is some merit in authorising the coordination of schedules to distribute capacity efficiently for a short period of time. This is particularly the case where the only substantive passenger traffic is being underwritten by the Australian Government.

However, allowing for revenue sharing on commercial flights is likely to delay the recommencement of competitive aeronautical services once the impact of the COVID-19 crisis has reduced, as it would be more profitable for the airlines to collude on limiting capacity and increasing prices to consumers. VA notes in its Application that this authorisation would not permit coordination on price, however, we consider that the ability to coordinate schedules and routes will in practice have the same effect. This would negatively impact consumers (due to higher prices for air travel), the broader aviation industry including airports (due to a lower number of travellers) and would slow the Australian economy's recovery from the COVID-19 crisis.

Sydney Airport considers that the duration and severity of these negative impacts depend on the timeframe for which the Interim Authorisation is granted, and therefore recommends that if the ACCC is minded to authorise the conduct detailed in the Application, that this be for a maximum initial period of 3 months.

#### **3. Inefficient use of Sydney Airport's slots**

Sydney Airport's slot regime is unique and is governed by the *Sydney Airport Demand Management Act 1997* (Cth) (Act), and the *Sydney Airport Slot Management Scheme 2013* (Cth) (Scheme).

Prior to COVID-19, the most significant barrier Sydney Airport faced in

encouraging new international services was the unavailability of consistent slots during peak operating periods due to demand, inefficient slot use by airlines and constraints in the Act. International airlines have a strong preference for operating in the peak as this assists in providing connectivity with key global hub airports and passenger demand.

Slots at Sydney Airport are allocated by an independent government-appointed coordinator (currently Airport Coordination Australia) on the basis of priority rules set out in the Scheme. The highest priority is given to airlines that have previously operated a slot and have established 'historical precedence' to it, if used at least 80% of the time. Due to the impact of COVID-19, airlines sought (and received) a Minister's Direction providing them with an exemption from the 'historical precedence' rule. This exemption means they continue to retain all of their existing slots throughout the Northern Summer 2020 scheduling season, which ends on 24 October 2020.

While the Minister's Direction is a positive outcome for the industry in providing necessary short-term stability for airline schedules, if combined with the authorisation requested here, it is likely to result in the following negative consequences.

#### *Reduced incentive for airlines to restart services quickly after the COVID-19 crisis*

Due to the Minister's Direction, there is no imperative for airlines to use the slots that they have been allocated, reducing the incentive for airlines to restart services as soon as possible after the COVID-19 crisis. This issue would be exacerbated if the ACCC were to grant authorisation allowing for coordination in scheduling because this would create an incentive for the airlines to collectively limit capacity.

Due to the slot allocation system and complex regulation at Sydney Airport, new and existing airlines would not be able to add services to replace the competition lost by the authorisation. This would have the circular effect of further reducing the incentive of the authorised airlines to increase operations during the recovery. The impacts of this could last far beyond the end of the authorisation period.

#### *Reduced new services to Sydney Airport*

Sydney Airport is concerned that if authorisation is granted by the ACCC, this would bolster the airlines' argument to extend the Minister's Direction for additional scheduling seasons. The impact of this would further exacerbate Sydney Airport's already significant capacity constraints as the unused slots could not be reallocated. This would cause additional long-term inefficiencies at the airport, lessen competition and impact Australia's ability to economically recover after COVID-19.

This extension would mean that a new entrant or expanding airline would be unable to establish historical precedence. Without that, any new entry or expansion at Sydney Airport would be unlikely to occur, given the investment required and the lack of certainty of being able to continue operations once the historic user of the slot decides to resume operations.

The inability to establish historical precedence to slots used over a season is likely to be a deterrent for both new entrants and new services by existing international carriers until the end of the relevant scheduling season (which may go beyond the authorisation) if authorisation were to be granted.

Sydney Airport believes that the Minister's Direction will, by itself, lessen competition and slow economic recovery as it allows airlines to hold on to their current slots without any pressure to use them.

A further concession reducing competition by the ACCC will only compound this issue:

- Firstly, it would allow a coordinated reduction of competition on routes by the authorised Australian airlines; and
- Secondly, in the absence of slots being handed back, it would prevent any competition from a foreign airline being able to gain access to the market.

We also note that if VA emerges successfully from voluntary administration there is the prospect it may operate a smaller fleet and a different network. In this scenario, the combination of this authorisation (if granted) and a further Ministerial Direction waiving the historical precedence rule for the coming Northern Winter 2020/2021 season would result in unused VA slots, potentially further lessening competition at Sydney Airport as slots that would otherwise have been available for airlines seeking to operate to Sydney would not be able to be operated in a manner that would allow them to be grandfathered thereby limiting the commercial basis on which airlines may choose to operate services.

This issues above would impact recovery after the COVID-19 crisis, and would have negative consequences for the travelling public and the Australian economy, noting that international tourism provided a \$40 billion annual benefit to the Australian economy in 2019.

#### **4. Cargo issues**

While it is not clear from the Application how cooperation between airlines would work in relation to cargo, the ACCC should carefully consider whether such cooperation would have the effect of limiting cargo capacity. It is unclear why the COVID-19 crisis should result in reduced capacity for cargo as idle passenger aircraft can be redeployed for freight, as is being done now by some international carriers at Sydney Airport. Sydney Airport has capacity to accommodate increased freight operations to facilitate the import of much-needed medical supplies and to support Australian exporters.

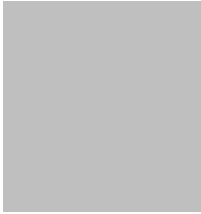
### **Conclusion**

There is much debate in the public domain about the need for VA to survive this crisis, most of which is centred on the notion that we need two viable airlines to compete in the domestic market. This Application seeks permission for airlines to behave in a way that will lessen competition. VA's ability to continue trading can be achieved by the means currently being considered by VA's administrators. The benefit of granting this authorisation is far outweighed by the material impact on competition and the radical resetting of rules that have historically served the market effectively.

Sydney Airport does not support the Application, it considers that if authorisation were granted per the Application it would result in a substantial lessening of competition, significant economic harm to the aviation industry for years to come and slow the economic recovery from the COVID-19 crisis. As the duration and severity of these negative impacts depend on the timeframe for which the Interim Authorisation is granted, we recommend that if the ACCC is minded to authorise the conduct, that this be for a maximum initial period of 3 months.

Thank you for considering this submission. Sydney Airport is willing and able to assist the ACCC with your inquiries in relation to this matter. If you have any questions, please contact Narita Nagin on [REDACTED] or [REDACTED].

Yours sincerely,



Rob Wood  
General Manager, Aviation