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Infrastructure & Transport – Access & Pricing Branch, Infrastructure Division
Australian Competition and Consumer Commission

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Dear Mr Barrett

Re: Revised Draft Price Notification provided by Airservices Australia dated 10 July 2024

Virgin Australia values the ACCC's role in regulating national infrastructure to support transparency in charges and protecting the interests of passengers and end-users.

Following Airservices Australia (**ASA**) resubmission to the ACCC of their revised Draft Price Notification on 10 July 2024, ASA representatives met, for the first time, with Virgin Australia on 25 July 2024 to provide an overview of the revised proposal. With limited avenue to provide prior input to ASA's revised proposal, Virgin Australia welcomes the opportunity to make a submission to the ACCC regarding the above referenced revised Draft Price Notification.

1. Executive Summary

Virgin Australia's firmly held view remains unchanged that the revised Draft Price Notification lacks transparency and appropriate consultation, it fails to create certainty of a new long-term price agreement and still does not include service performance commitments.

In this submission I address Virgin Australia's position in relation to each of the following:

- (a) Absence of actionable performance measures to hold ASA accountable for the delivery of its services;
- (b) The appropriateness of the price increase justification;
- (c) The duration and magnitude of the revised price change; and
- (d) Ongoing lack of consultation.

2. Service Performance Levels and Monitoring

ASA continues to consistently fail in providing acceptable levels of performance in the delivery of services to its airline customers, as demonstrated by its own recent operational performance reports.¹ Airlines, including Virgin Australia, experience significant downstream impacts without any means of even partial cost recovery or cost sharing when avoidable cancellations and disruptions occur.

Despite the degradation in ASA's performance², and the significant costs it has caused to Virgin Australia, ASA has not itself experienced any direct financial impact as a result of its degraded performance. As a government owned organisation providing a monopolistic service, its pricing structure is without reference to any service level requirements. As a result, it is not sufficiently incentivised to improve that performance.

Recruitment of additional air traffic controllers and emergency services personnel is referenced by ASA as the main reason for its revised Draft Price Notification to restore its service performance to levels comparable to its performance pre-COVID-19. Virgin Australia submits that any price proposal should include a service level mechanism pursuant to which ASA's airline customers are entitled to price reductions or rebates if ASA continues to consistently fail to meet acceptable levels of performance.

Virgin Australia, therefore, reiterates that service level agreements should be co-developed between ASA and its airline customers, including Virgin Australia, in the context of genuine, open, and transparent consultations related to any price proposal and to evidence a commitment to improved service.

3. Pricing Model Inputs

ASA resubmission to the ACCC unfortunately shows no evidence of consideration of Virgin Australia's previously raised concerns. Virgin Australia wishes to re-emphasise its views made in our previous submission:

- ASA has not been transparent or accountable with regards to their cost management efforts (e.g. recent EBA negotiations). ASA's argument of reduced revenue, increased costs and COVID-19 related losses is not unique and is a challenge that every organisation is confronted with.
- Like ASA, airlines depend on a positive air traffic recovery trend post COVID-19. We appreciate that ASA's revised proposal takes a less conservative view of expected traffic recovery. Virgin Australia stresses however the appropriateness of an annual 'true-up' mechanism to be

¹ Airservices Australia Draft Price Notification dated 13 November 2023, Attachment 1.

² ASA's lack of reliable service ultimately impacts customers who rely on services to be on time. ASA recent staffing issues have caused flight disruptions in and out of Sydney Airport which has cascading effects on other airports. For example, On 30 June 2023, 25 flights were cancelled due to single runway operations as well as Airservices staffing issues at Sydney Airport. A similar occurrence on 16 August 2024 resulted in an increased number of complaints by customers seeking to return home to their families, the delays all caused by ASA service reliability issues.

included in the price proposal which ensures that a further positive recovery of aviation traffic forecast and associated benefits are shared with end-users.

Where, alternatively, additional funds are used to accelerate ASA projects, to deliver further performance efficiencies and positively impact future long-term price agreement, ASA must be held to account on delivery of such improvement programs. If this cannot be guaranteed, ASA is most likely to over-recover costs at the detriment of airlines and passengers.

- ASA failed to explain how the efficiency gains from its transformation efforts have positively affected its operating costs and how additional efficiency gains over time will either be shared with end-users or improve ASA service performance without further price increases.
- ASA did not comment in its revised proposal on its Weighted Average Cost of Capital (**WACC**) and Virgin Australia still believes that the rate does not reflect a rate of return which is commensurate with the regulatory and commercial risks involved in the delivery of services by ASA. Based on recent data, Bloomberg estimates ASA WACC as 6.3%.³

Supporting Bloomberg's estimates, Auckland Airport is identified as utilising a similar WACC to ASA, which was also recently called out by the New Zealand Commerce Commission as being excessive.⁴

- ASA's high operating costs appear to be driven by a heavy reliance on external contracting labour (supplier costs have increased 51% in FY23)⁵ with minimal incentive for ASA to manage this cost moving forward.
- Virgin Australia remains of the view that costs associated with new airspace users (e.g. drones) should not be funded by airlines and similarly, remediation costs due to PFAS use should also be funded by other sources such as insurance, rather than airlines.

4. Magnitude and Duration

Virgin Australia understands that ASA desires a price change to continue funding its prioritised and critical projects, and to grow labour resources targeted at addressing service deficiencies. However, the magnitude and reasoning for such price change again lacks sufficient consultation and transparency.

In Virgin Australia's meeting with ASA, it could not confirm if the proposed 6% price increase is solely used to fund an increase in operational FTE to improve their service levels. Neither could ASA confirm when they would incur increased FTE costs given the time it takes to recruit and train personnel. It is Virgin Australia's view that price increases are only applied once the benefits can be realised by airline customers.

³ Source: Virgin Australia subscription to financial data from Bloomberg.com on 21 Aug-24.

⁴ Source: Review of Auckland Airport's 2022-2027 Price Setting Event, Consultation Paper, published 17 July 2024 (Project no. 18.08 / 0046831).

⁵ Review of Airservices Australia financial statements.

ASA, and the Australian Government as its sole shareholder, should ensure that ASA manages its operating costs and investments efficiently and with a long-term focus. Virgin Australia is concerned about the absence of a long-term price agreement and the pending additional review of ASA's price charges to be implemented from June 2026. Our preference is for all parties involved to have price certainty over a much longer horizon.

5. Lack of Consultation

During the meeting with ASA on 25 July 2024, Virgin Australia was only given an opportunity to comment on the revised Draft Price Notification (after it had been submitted to the ACCC) and to seek further information. ASA failed to explain how they have arrived at the revised Draft Price Notification and, for example, why a further increase in operational staff compared to their prior notification, is now required. Again, ASA failed to properly consult with end-users.

Virgin Australia was pleased to hear that ASA is committed to re-establish the Pricing Consultative Committee. This committee of industry participants would be the ideal forum to:

- discuss Draft Price Notifications;
- monitor implementation of ASA change programs and the associated benefits expected to be delivered to airlines; and
- agree and monitor appropriate performance-based pricing mechanisms, with a proportion of fees at risk to ASA for persistent non-performance.

In addition to the Pricing Consultative Committee, Virgin Australia is seeking genuine and detailed consultation from ASA for future pricing proposals, to ensure future models are a true representation of the industry environment at the time and provide the level of transparency and accountability that is appropriate for a government agency.

Virgin Australia is grateful for the opportunity to provide this submission to the revised Draft Pricing Notification. ASA's services have a material impact on Virgin Australia's operation performance, and ultimately our customers. As such Virgin Australia remains focused on ensuring this process delivers a fair and transparent cost increase, which achieves acceptable and reliable services from ASA.

We would welcome the opportunity to meet with you to discuss our submission in further detail.

Yours sincerely



Race Strauss
Chief Financial Officer
Virgin Australia Group