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Caroline Coops
Partner
King & Wood Mallesons

Louise Klamka
Partner
Gilbert and Tobin

By email

Dear Ms Coops and Ms Klamka

Virgin Australia & Alliance Airlines application for authorisation AA1000615 – market inquiries

I refer to the abovementioned application for authorisation lodged with the Australian Competition and Consumer Commission (**the ACCC**) by Virgin Australia and Alliance Airlines on 27 May 2022.

The ACCC has consulted with a range of interested parties in relation to authorisation application AA1000615. All public submissions received are on the ACCC's [public register](#). The ACCC has also received information which has been excluded from the public register on the basis that it is confidential.

In order to preserve the confidentiality of the information provided whilst at the same time balancing competing considerations to afford the applicants an opportunity to respond to the issues raised on a confidential basis, the ACCC has prepared a summary of the issues raised (in a de-identified form). This summary is set out in **Attachment A** to this letter.

We note that the views of market participants were not uniform, so we have tried to capture alternative views where they arose. In an effort to protect confidentiality, the issues have been raised at a necessary higher level of generality. However, we consider the summary provides the applicants with sufficient information to enable them to understand, and prepare a response to, each issue.

A copy of this letter, including **Attachment A**, will be placed on the public register.

Making a response

If the Applicants wish to respond to any of the issues raised in Attachment A please do so by **COB Monday 6 February 2023**. The response may be provided by email to exemptions@acc.gov.au.

Under section 89 of the Competition and Consumer Act 2010, the ACCC is able to exclude documents (or parts of documents) from its public register because they are confidential. If you wish to request exclusion from the public register for any documents (or parts of documents) provided in response to this letter, please clearly indicate this when providing the documents.

Subject to our consideration of any request for exclusion from the public register, a public version of your response to this letter with confidential information redacted will be placed on the ACCC's public register.

Next steps

Having reviewed any further information provided by the Applicants, the ACCC may have some final requests for information.

The ACCC expects to issue a final determination in relation to this application for authorisation in March 2023.

If you have any queries relating to this letter, please contact Anna Pound on (03) 9290 6920 or Andrew Ng on (03) 9290 1414.

Yours sincerely



Lyn Camilleri
General Manager
Competition Exemptions

Attachment A – Summary of views put to the ACCC

Demand for charter services

- Some of the key factors considered when conducting a tender process for charter and/or RPT services include the safety and reliability (including on time performance) of the provider, availability of suitable aircraft type/capacity to meet operational demands, and overall cost of the service.
- Access to frequent flyer points and airport lounges are valued by fly-in fly-out (**FIFO**) workers and are a positive factor for some market participants in terms of employee retention and recruitment. However, some parties are not willing to pay for these services and do not consider them an important factor when conducting tenders.
- Better scheduling and access to charter flights during peak times is important, but access to airport slots at Perth and pilot/crew availability are the key factors in determining service levels regardless of airline (or alliance).
- The availability of an integrated charter and/or RPT service offering is not generally an important factor for parties. Feedback received by the ACCC from a number of parties indicate a willingness to split out charter and/or RPT services between different service providers to reduce business continuity risk or if it presented the best commercial outcome.
- The ACCC has received feedback indicating that generally parties that do not tender for RPT services would not see any benefits from the Charter Alliance Agreement (**CAA**) providing improved connections for their operations. However, the close proximity of Virgin Australia's and Alliance Airlines' terminals at Perth Airport may reduce overall journey time for some passengers (compared to connections between other airlines) for those resource companies with RPT needs.

Benefits and detriments arising from the Charter Alliance

- Some feedback indicates that market participants which operate within a single State or Territory will not see any benefits from the CAA providing a national, integrated service (comparable to Qantas) or improved connectivity across States or Territories.
- Feedback indicates that it is not apparent that Virgin Australia and Alliance Airlines have leveraged each other's additional fleet capacities under the Charter Alliance to provide continuity of service (through ad-hoc flights) during times of disruption or capacity constraints.
- It is difficult for Alliance Airlines to submit compliant bids for tenders that require larger sized aircraft. While the CAA will provide Alliance Airlines with access to Virgin Australia's larger sized aircraft, the same outcome could be achieved by contracting with Virgin Australia alone.
- The CAA, by making available a complementary fleet of aircraft, will promote competition on the East Coast by creating a viable competitor to Qantas at regional airports.
- Where Alliance is unable to provide services, there may be a benefit from Virgin and Alliance jointly bidding as this may elicit a stronger competitive response from Qantas.
- One party was not aware of the Charter Alliance nor had they seen any evidence of the benefits being claimed by the Applicants over the authorised period.
- Some parties indicated that it would be preferable to have Virgin Australia and Alliance Airlines bidding separately (against each other) for tenders, rather than have two of them jointly bid under the CAA, with one noting that both Virgin Australia and

Alliance Airlines have the independent capacity to submit complying bids for charter routes.

Alternative suppliers of charter services

- Some parties indicated that Cobham and Skippers do not (at the present time) have a comparable fleet capacity to Qantas, Virgin Australia or Alliance Airlines, and so may be excluded from tender processes as a result, though they are able to provide ad hoc charter services. As a result, the number of airlines with sufficient scale and fleet composition to effectively compete for regular, contracted charter services is quite limited.

Bargaining power

- The Applicants' claim that many of the parties they deal with have bargaining power is not correct. Customers which demand fewer weekly flights will usually possess less bargaining power than those customers with more flight demands.

Barriers to entry

- There are high barriers to entry for new and smaller FIFO operators due to difficulties in accessing planes, pilots and crew. Some parties indicated that there are also challenges in obtaining necessary permits and slots at relevant airports. Even with a significant upturn in activity in the mining sector recently, there is still a limited number of airlines providing FIFO services.