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15 April 2024

Mr Anthony Hilton
Director
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Australian Competition and Consumer Commission
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Public register version – restriction of publication claimed in relation to part

Dear Mr Hilton

AA1000653-1 - Virgin Australia & Air New Zealand – Proposed Conduct and authorisation length

We refer to:

- the joint application for authorisation by Virgin Australia Airlines Pty Ltd and its related bodies corporate and Virgin Australia International Airlines Pty Ltd and its related bodies corporate (together, **Virgin Australia**) and Air New Zealand Limited (**Air NZ**) (together, the **Applicants**), lodged with the Australian Competition and Consumer Commission (**ACCC**) on 17 November 2023 and the submission in support of that application (**Authorisation Application**); and
- the meeting between Gilbert + Tobin and the ACCC on 6 March 2024 (**the meeting**) in which the ACCC noted that certain interested parties had raised whether a shorter authorisation period of three years should be considered.

The Applicants submit that a five-year authorisation term is appropriate and risk free in relation to the Proposed Conduct and third party submissions that suggest a shorter term do so based on inaccurate and uninformed assessments of Virgin Australia's likely future actions and incentives.

1 Incorrect assumptions about the likelihood of Virgin Australia's entry on the Tasman

Two interested parties that were supportive of the authorisation and the public benefits it would bring raised whether a three-year authorisation period should be considered – Canberra Airport and Brisbane Airport. In these submissions, consideration of a shorter authorisation term was raised based on the incorrect assumption that Virgin Australia would necessarily re-commence its pre-COVID trans-Tasman services after three years, including because it would have the fleet to do so.

Such assumptions about Virgin Australia's future network and operations do not take into account:

- The commercial reality of the underlying challenges Virgin Australia faces in sustainably attracting leisure and corporate travellers on the trans-Tasman. These challenges include Virgin Australia's:

    - lack of a New Zealand based point of sale advantage and relative lack of sales and marketing presence on the Tasman;
    - inability to compete with the strength of the Qantas Group or Air New Zealand and their network scope and frequency, including their breadth and depth of trans-Tasman services, their long haul network and their domestic New Zealand network which provide traffic feed for trans-Tasman services; and
    - lack of the international points of sale and wider body aircraft that allows for cargo revenue and which makes fifth freedom operations successful on the trans-Tasman; or
- the confidential information provided to the ACCC regarding Virgin Australia's financial performance on trans-Tasman services and how network and deployment decisions are made.

The reality is that very few of Virgin Australia's previously operated trans-Tasman services were viable pre-COVID.

As noted in Virgin Australia's internal strategy documents provided to the ACCC **[CONFIDENTIAL: RESTRICTION OF PUBLICATION CLAIMED]**

In the short term, Virgin Australia has no spare aircraft capacity to commence broader trans-Tasman flying. **[CONFIDENTIAL: RESTRICTION OF PUBLICATION CLAIMED]**

2 Further delays in aircraft delivery [CONFIDENTIAL: RESTRICTION OF PUBLICATION CLAIMED]

The availability of aircraft alone does not determine network strategy and route entry. Aircraft deliveries come at a high fixed cost and need to be utilised in a way that can best recover costs and allow resilient, sustainable and commercially viable operations. Some aircraft are also used as replacements for fleet retirements (including to maintain an appropriate average fleet age) and to replace flying currently operated by wet-lease providers.

As in any business decision, anticipated financial performance is key to network decisions and providing safe and sustainable services. Demand and the ability to fill the aircraft informs network decisions and where any additional capacity should be deployed.

[CONFIDENTIAL: RESTRICTION OF PUBLICATION CLAIMED]

3 The Proposed Conduct does not change Virgin Australia's incentives on the Tasman

The Proposed Conduct does not change Virgin Australia's incentive or ability to enter the trans-Tasman on its own aircraft, if it assessed entry on its own aircraft to be commercially sound. As previously noted, **[CONFIDENTIAL: RESTRICTION OF PUBLICATION CLAIMED]**

Under the Proposed Conduct, any future overlapping routes would be carved out.

All else being equal, there are greater revenue opportunities available when operating a route compared with marketing codeshare services. Entry on Virgin Australia's own metal would potentially enable Virgin Australia to:

- earn more per passenger;
- control the schedule and service offered to its passengers;
- better align operations to its broader network; and
- determine the capacity, price and pricing strategy for those services.

Rather than delaying or disincentivising entry, the Proposed Conduct improves the conditions for entry. It allows Virgin Australia to begin building its presence as a marketing option for trans-Tasman services beyond Queenstown (building both brand awareness and Virgin Australia's loyalty proposition). It also allows access to greater opportunities for the higher yielding corporate and SME traffic to support future entry **[CONFIDENTIAL: RESTRICTION OF PUBLICATION CLAIMED]**

Significant implementation time and investment required make a 3-year authorisation inefficient

In order to implement the Proposed Conduct, the Applicants need to engage in a process of system design and alignment, IT deployment, and implementation of sales channels and content. Before this can start, the Applicants need to reach agreement on the details of deployment. They will not commence these discussions until they have obtained interim authorisation. Once a plan is agreed, a test-environment needs to be set up to:

- configure reservation systems;
- configure website and internet booking engine; and
- prepare fare construction and fare filing.

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In addition to the above configuration, preparation and testing steps, a period of intensive activity across a number of areas of the business, including alliances, IT, distribution, sales and Velocity, is required to establish the following elements of the Proposed Conduct:

- VA Tariff – Fare filing services handover and training with Air New Zealand;
- Sales platform development and configuration;
- Virgin Australia Business Flyer platform development and configuration;
- Marketing and PR activity development and planning;
- Frequent flyer points earn/redemption system configuration;
- Financial settlement system configuration; and
- Customer-facing team training and process updates (e.g. guest contact centre, customer-facing airport staff).

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Given this significant investment in resources, it would be inefficient to provide authorisation for less than a five year term.

Further, a five year authorisation period would increase the incentive for corporate and SME customers to engage with the Applicants, as opposed to other airlines, and utilise the offers available pursuant to the Proposed Conduct given the greater certainty that a longer authorisation term provides.

4 If the market materially changes, the ACCC can revisit its authorisation decision

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If a material change in circumstances arises during the authorisation period having a significant impact upon either the public benefits or detriments, it is open to the ACCC to initiate a review of the authorisation. In appropriate circumstances, the ACCC may then revoke or vary the authorisation. **[CONFIDENTIAL: RESTRICTION OF PUBLICATION CLAIMED]**

Please contact us if there is any further information that could be provided to assist the ACCC in its consideration of this matter.

Yours faithfully
Gilbert + Tobin

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