



**The University of Adelaide & Ors –
Application for authorisation AA1000585
Interim authorisation decision
5 November 2021**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of application for authorisation AA1000585, lodged by The University of Adelaide, University of South Australia and Flinders University (together, the **Applicants**) on 15 October 2021.
2. Interim authorisation is granted to enable the Applicants as listed at paragraph 5 below, and any other party as described at paragraph 6 below, to jointly establish and effect travel and quarantine accommodation arrangements to facilitate the return of international students to study at on-site campus premises in South Australia (the **Project**) as described at paragraph 9 below.
3. The ACCC grants interim authorisation in relation to Division 1 of Part IV, and sections 45 and 47 of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
4. Interim authorisation commences immediately and remains in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn, or until the ACCC decides to revoke interim authorisation.

The application for authorisation

5. The application for authorisation has been lodged by the Applicants, being:
 - The University of Adelaide,
 - University of South Australia, and
 - Flinders University.
6. The Applicants request that any authorisation granted also applies to:
 - service providers appointed to give effect to the Project, including any travel management services provider and quarantine accommodation provider; and
 - any other universities or education providers that have campuses in South Australia and who may in future choose to participate in the Project. This could include, for example, pathway providers, private higher education providers, English Language Intensive Courses for Overseas Students providers and Vocational Education and Training providers (together with the Applicants, **Participating Providers**).
7. The Applicants advise that The University of Adelaide College, Torrens University, Kaplan Business School and Flight Training Adelaide will participate in the Project.
8. The Applicants are seeking authorisation for the Proposed Conduct until the end of December 2022. The Applicants submit that this term accounts for present uncertainty with respect to the ongoing impacts of the COVID-19 pandemic.

The Proposed Conduct

9. The Applicants seek authorisation to discuss, enter into and/or give effect to any contract, arrangement or understanding, and to engage in conduct, in each case to the extent necessary to implement the Project. The proposed conduct will involve:
- (a) jointly appointing travel management service providers and any other service providers required to undertake the Project (including the quarantine accommodation provider).
 - (b) collaboration between the Applicants (including the establishment of a working group and/or steering committee) to identify, discuss and implement solutions for the establishment of an international travel corridor to bring international students into South Australia via commercial or charter flights, including making and managing aircraft, airline and seat bookings.
 - (c) implementing a seat allocation arrangement to address the requirements of the restrictions on international arrivals into South Australia as a result of the COVID-19 pandemic (the **Restrictions**), including a process for 'reallocation' of any unused seats so as to ensure that, as far as possible, all available seat bookings are used.
 - (d) collaborating to facilitate compliance with Government quarantine requirements for students, including transport to the quarantine location, accommodation for the duration of the quarantine period, and security and health services and wellbeing initiatives and support during quarantine. This includes any agreement between the Applicants to absorb or bear some or all of the costs of these services and to accept the quarantine accommodation costs and commercial terms offered by the quarantine site provider.
 - (e) exchanging information that is reasonably necessary for the purposes of paragraphs (a) to (d) above, including information required to implement the seat allocation arrangements, and discussing any impact of changes to restrictions on the Project.
 - (f) communicating independently and collectively, directly and via third party travel service providers, with students seeking to take up the opportunity to return to Australia through the mechanisms of the Project
- (the **Proposed Conduct**).
10. In broad terms, competition laws require businesses to operate independently of their competitors when making decisions about the prices they charge or are willing to pay, which businesses they deal with, and the terms and conditions on which they do business. Because the Applicants and Participating Providers are in competition with each other to attract students, without the legal protection provided by authorisation an agreement between them about the matters described at paragraph 9 may be a risk of breaching competition laws.

Background

11. The Applicants submit that the COVID-19 pandemic has severely impacted the tertiary education sector as international students were prevented from coming to Australia to commence or continue study. While some courses have successfully shifted to online formats, there remains a need for many international students to return to Australia so that they can complete the practical components of their studies which cannot be offered remotely.
12. The Australian Government has developed protocols and preconditions for international student arrivals to assist steps taken by State and Territory Governments and education institutions to re-open the education sector to international students (the **Protocols**). The Protocols set out the steps for States, Territories and educational institutions to take

in order to prepare for international student arrivals at scale, and requires them to work together to design a detailed “International Student Arrivals Plan” that aligns with the Commonwealth’s preconditions for international student arrivals and is approved by the State/Territory Chief Health Officer.¹

13. Consistent with the Protocols, the South Australian Government has been working with industry participants to develop a plan for the return of international students to South Australia, and has encouraged and supported the Applicants to find and implement solutions for establishing an international student ‘corridor’ for the return of international students into South Australia.
14. The South Australian Government has developed an international students arrival plan, which currently requires international student arrivals to South Australia to undertake 14 days quarantine at an approved quarantine site. Such quarantine facilities have limited capacity. The South Australian Government has advised that the full costs associated with operating the quarantine site, including nursing, logistics, hospitality and security, will be the responsibility of the Applicants, other participating providers and the students.
15. The Applicants intend to negotiate a travel management services agreement with a potential travel management provider (**Travel Agreement**), under which it is intended that the appointed travel management provider would be responsible for:
 - procuring seats on commercial flights or arranging charter flights,
 - managing student bookings via a custom-built online booking system, and
 - ticketing, invoicing and accepting payment from students in relation to flights and also in respect of any student contributions to quarantine arrangements under the Travel Agreement.
16. The Applicants will appoint a lead partner who will take primary responsibility for entering into the Travel Agreement with the travel management provider and any contractual agreements required to effect the quarantine arrangements on behalf of the Applicants.
17. The Applicants propose to allocate available seats on applicable incoming international flights proportionally between participating education providers based on enrolled continuing students currently located outside of Australia. The Applicants submit that this approach is designed to ensure a transparent, fair and equitable distribution of available seats across the sector, and an outcome which proportionally reflects current enrolment patterns for students currently located outside of Australia and which cannot be manipulated by any participant in the arrangements.
18. Once seats are allocated, each Participating Provider will decide which of its students will be prioritised within their respective allocation. If there are any unwanted seats after this first stage allocation, these will be proportionally reallocated between the Participating Providers.
19. The Protocols stipulate that student arrival plans must include students from a diverse range of source countries. The logistics of the arrangements are yet to be finally determined, but it is presently intended to use a mix of commercial and charter flights from regions determined to meet the public health requirements of SA Health.
20. Returning students will be required to pay a "Student Contribution" which will encompass the cost of their flight(s) (at the price able to be secured by the travel management provider), the travel management provider's booking fees, and a contribution towards the costs associated with the quarantine arrangements. The final details of the Student Contribution have not yet been determined.

¹ Australian Government Protocols and preconditions for international student arrivals, 3 May 2021, <https://www.dese.gov.au/covid-19/resources/protocols-and-preconditions-international-student-arrivals>.

21. The Applicants and Participating Providers will bear the remaining portion of the costs of those quarantine services after deducting the Student Contribution (i.e., the full cost will not be passed to students).
22. Participation in the Project will be voluntary for returning students, and students may independently obtain a travel exemption from the Department of Home Affairs and make their own arrangements to return to Australia, including organising their own airline seats and undertaking medi-hotel quarantine.

Rationale for the Proposed Conduct

23. The Applicants submit that the Proposed Conduct will:
 - minimise the ongoing impact of the COVID-19 pandemic and Australian Government restrictions on overseas arrivals on international students and the education sector (and by extension the businesses which rely on international student trade) in South Australia by maximising and fairly allocating the number of international students who can come to the Universities,
 - ensure these students can return to Australia in a timely fashion and a more cost-effective manner than if the students were responsible for the entirety of their travel arrangements, and
 - help ensure that competitive airfares remain available to continuing students as all ticket purchases will be facilitated and managed by the travel management provider engaged by the participating universities, and this combined purchasing power is likely to lead to lower airfares for returning students.
24. The Applicants also submit that without collaboration between Participating Providers in relation to the Proposed Conduct, the Project is unachievable, as:
 - the Australian Government and State Governments have clearly expressed an expectation that the sector work together to facilitate these arrangements,
 - the South Australian Government requirements that the Project be conducted in accordance with SA Health's quarantine requirements and outside of the current international arrival caps mean that there is no prospect of any competitive tender in relation to those arrangements,
 - students from all participating education providers must travel to South Australia on flights arranged exclusively for their use which necessitates a single contractual arrangement across those providers, and
 - there will, without the Proposed Conduct, be very limited certainty about the availability of seats for continuing students and that this will have a significant impact on the ability for each education provider to communicate clearly with students and to facilitate their return to Australia, and to plan the delivery of its courses and provide resources for continuing students.

The authorisation process

25. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions contained in Part IV of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

26. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation prior to the ACCC's final determination. This allows the Applicants to

engage in the Proposed Conduct while the ACCC is considering the substantive application.

27. The Applicants seek interim authorisation so they can take immediate action to mitigate the ongoing adverse impacts of the Restrictions on international students, the international education sector in South Australia, other industries, and the economy.
28. The Applicants submit that there is a need to act promptly to progress planning for the implementation of the Project, engage travel management service providers to undertake the Travel Agreement and confirm the arrangements with respect to providers of services associated with the quarantine arrangements.
29. Interim authorisation would prioritise continuing students, and enable the first tranche of international students to return to South Australia for the 2022 academic year.
30. In support of their request for interim authorisation, the Applicants submit that:
 - the Proposed Conduct inherently benefits continuing international students, and will help to re-enliven the higher education sector (which continues to be intensely competitive notwithstanding the impacts of the pandemic, with universities and other education providers continuing to actively compete for new enrolments),
 - the Applicants need to finalise commercial agreements setting out how they will work together to arrange flights and manage bookings for students as soon as possible,
 - without interim authorisation, there will be ongoing uncertainty and financial harm, given delays in the ability for the Applicants and participating providers to plan and arrange flights and allocation of available seats among their students, and
 - interim authorisation will not give rise to permanent changes which would prevent the market returning to its pre-authorisation state if final authorisation is not granted, particularly in circumstances where the sector remains in a state of disruption.

Consultation

31. The ACCC invited submissions from a range of potentially interested parties including state and federal government departments, universities and other education providers with campuses in South Australia, industry associations, education agents, airlines and student organisations and advocacy groups.
32. The ACCC received three submissions in relation to the request for interim authorisation.
33. Council of International Students Australia (**CISA**) supports authorisation, noting the hardship faced by international students currently unable to return or come to Australia.
34. Carnegie Mellon University Australia (**CMU-A**) seeks that the Applicants provide greater involvement and transparency for small higher education providers, and that the ACCC postpone its decision on interim authorisation pending such action. CMU-A asks that the Applicants revise the Project to provide a differentiated approach to the costs for small higher education providers and seeks discussions with the South Australian Government regarding potential Government contributions to the Project. CMU-A is concerned that small educational providers will not be able to participate in the Project and this will be harmful to those institutions and the broader education sector.
35. The Applicants note CISA's full support of authorisation, and responded to the concerns raised by CMU-A. The Applicants note:
 - The South Australian Government has determined the location of the quarantine to be used and mandated the manner in which the quarantine site must operate from a clinical and compliance perspective. The Applicants note that the South

Australian Government has required the commercial arrangements which must be organised with those requirements are to be arranged and borne by the education sector.

- The majority of the costs for quarantine are non-negotiable and the mandated nature of a number of components of the arrangements limits the ability to affect these costs.
- They have taken steps to formulate a proposed model by which the Project can proceed, to take an inclusive, transparent and fair approach. It would be unreasonable and inequitable to require an approach where larger providers subsidise the involvement of smaller participants
- The Project is voluntary and there is no impediment to education providers encouraging students to independently seek exemptions and undertake medi-hotel quarantine.

36. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's [Authorisation public register](#).

Reasons for decision

37. The ACCC grants interim authorisation for the Proposed Conduct described at paragraph 9 of this decision document.

38. The ACCC notes that the Proposed Conduct is a short-term arrangement, with authorisation being sought until the end of December 2022, intended to assist the Applicants and Participating Providers, and their international student cohort, in managing the unique challenges presented by returning these students to Australia to continue their studies in light of the ongoing travel restrictions as a result of the COVID-19 pandemic.

39. In these circumstances, the ACCC considers that there is some urgency about the request for interim authorisation so that the Applicants and Participating Providers can begin to return continuing international students to South Australia for the 2022 academic year.

40. The ACCC's preliminary view is that the Proposed Conduct is likely to result in a range of public benefits including:

- Providing an efficient way of:
 - allocating, and in circumstances where an Applicant or Participating Provider does not use its full allocation, reallocating airline seats available to other international students, and
 - facilitating and managing the return of international students who have been allocated a seat. Given the complexities involved in managing the entry into Australia of international travellers at the present time there are likely to be efficiencies and transaction cost savings in enabling collaboration between the Applicants and Participating Providers and using a common travel management provider, as well as for the South Australian Government agencies that handle international arrivals and quarantine arrangements.
- Lower costs for returning students because the expertise of the travel management provider(s) in sourcing flights and the ability to purchase blocks of seats in a single transaction, including potentially through charter flights, is likely to result in lower airfares than if each student sought to purchase an airfare individually, and

- Assisting the tertiary education sector to recover from the economic effects that have resulted from the restrictions on international students traveling to Australia.
41. The ACCC considers that interim authorisation will not materially alter the competitive dynamics in any market, and markets will be able to return to substantially their pre-authorisation state in the event that final authorisation is not granted. In particular:
- The Proposed Conduct only relates to how the return of students will be managed and seats and quarantine availability allocated.
 - The Proposed Conduct is unlikely to materially change the Applicants and Participating Providers' incentives to compete for international students either during or after the period of interim authorisation. This is particularly the case as the Proposed Conduct will initially prioritise continuing international students who have already enrolled with an education provider. Further, the Proposed Conduct will not restrict international students switching or transferring between education providers once they have returned to Australia. Additionally, the Proposed Conduct is not likely to affect how the Applicants and Participating Providers compete for international students once travel restrictions ease.
 - Any education providers with a campus in South Australia can elect to participate or to not participate in the arrangements. Further, it is open to international students to seek a travel exemption from the Department of Home Affairs and make their own travel arrangements if they do not wish to use the Project arrangements.
 - Various elements of the arrangements relevant to the Project are being mandated, required or arranged by the State and/or Australian Government and the Applicants and Participating Providers may have limited capacity to compete in relation to those elements.
42. The ACCC acknowledges CMU-A's submissions that the costs involved in the Project, including contributions to be made by education providers, may limit small higher education providers' and international students' ability to participate. The ACCC notes the Applicants' submissions that most quarantine costs under the Project are non-negotiable and result from the extent of mandated clinical and compliance obligations and the site approved by the South Australian Government. Further, costs are on an equal per-student basis for all Participating Providers. Decisions about whether to subsidise Participating Providers' or students' costs are for Government and/or the Applicants to make and those decisions would not affect the balance of the ACCC's assessment of likely public benefits and detriments from the proposed conduct.

Reconsideration of interim authorisation

43. The ACCC may review the interim authorisation at any time, including in response to feedback raised following interim authorisation.
44. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.