



**Virgin Australia and Alliance Airlines  
Application for authorisation AA1000615  
Interim authorisation decision  
8 June 2022**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation AA1000615, lodged by Virgin Australia Regional Airlines Pty Ltd (**VARA**), Virgin Australia Airlines Pty Ltd (**Virgin Australia**), Alliance Airlines Pty Limited and Alliance Aviation Services Limited (**Alliance Airlines**) (together, the **Applicants**) on 27 May 2022.
2. Interim authorisation is granted to enable the Applicants to enter into and give effect to an extension of the Charter Alliance Agreement (the **Charter Alliance**) described in paragraph 5 below as the Conduct. This agreement provides for the joint tender and supply of services to corporate customers, principally for fly-in fly-out (**FIFO**) employees.
3. The ACCC has decided to grant interim authorisation in relation to the Conduct described in paragraph 5 in relation to Division 1 of Part IV, sections 45 and 47 of the Competition and Consumer Act 2010 (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remains in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn, or until it is revoked.

**The application for authorisation**

5. The Applicants seek authorisation for five years to enter into and give effect to an extension of the Charter Alliance Agreement. Under this agreement, the Applicants:
  - jointly bid for, and contract with, corporate customers, including joint pricing and scheduling of services for those customers
  - offer eligible passengers of those customers access to the Velocity frequent flyer program
  - offer eligible passengers of those customers access to Virgin Australia's airport lounges as part of an integrated corporate offering
  - cooperate in relation to check-in, airport operations, airport handling, service policies and other matters to improve the overall quality of service offered to corporate customers, and
  - jointly optimise operations, including procurement and deployment of aircraft engines and spare parts, and maintenance and ground-handling services, to achieve cost savings and efficiencies.(the **Conduct**)
6. The Applicants submit that without authorisation the Conduct may constitute cartel conduct, as described in Division 1, Part IV of the Competition and Consider Act 2010 (Cth) (the Act), section 45(1)(a),(b),(c) and section 47 of the Act.

## **The authorisation process**

7. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions 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.

## **Interim authorisation**

8. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the proposed conduct while the ACCC is considering the substantive application.
9. The Applicants have requested interim authorisation prior to the expiry of existing authorisations A91552 & A91553 for the same conduct on 9 June 2022. In support of this request, the Applicants submit the following:
  - Interim authorisation is very unlikely to permanently alter the competitive dynamics of the industry or inhibit the industry from returning to its pre-interim authorisation state if authorisation is later denied. Further, a decision not to grant interim authorisation, and let the Charter Alliance lapse as of 9 June 2022, will change the status quo, pre-empting the ACCC's consideration of Qantas' application for informal merger review of its proposed acquisition of the remaining shares it does not already own in Alliance Airlines.
  - There is an urgent need for interim authorisation to prevent unnecessary delay and ensure continuity of business operations, which would occur if the existing authorisation is allowed to lapse. The delay in lodging the application for authorisation arises from the unusual circumstances which firstly saw the Applicants dealing with ongoing management of the COVID-19 crisis, and then by uncertainties created by Qantas' acquisition bid.
  - If interim authorisation is denied and final authorisation is ultimately granted, this will cause significant disruption to the joint operations of the Applicants and to their corporate customers. Business certainty and continuity is vital, particularly given the challenges faced by the aviation sector during COVID-19.

## **Consultation**

10. Due to the short time between lodgement of this application and expiry of the existing authorisation, the ACCC has not consulted with interested parties prior to issuing the interim authorisation.
11. The ACCC will seek submissions from interested parties on the substantive application for authorisation. Further information is available on the ACCC's website [www.accc.gov.au/authorisations](http://www.accc.gov.au/authorisations)

## **Reasons for decision**

12. The ACCC has decided to grant interim authorisation under section 91(2) of the Act. In granting interim authorisation, the ACCC considers that:
  - Granting interim authorisation would not permanently alter the competitive dynamics of the market but will maintain the status quo of the existing authorisations while the ACCC considers the substantive application for authorisation.
  - There is some urgency to the request for interim authorisation, given the imminent expiry of existing authorisations A91552 & A91553. The ACCC notes the circumstances leading to the delay in lodging this application for authorisation.
  - In authorisations A91552 & A91553, the ACCC considered that:

- the same type of conduct was likely to result in public benefits in the form of operational efficiencies, enhanced products and services, and promoting competition in the supply of FIFO services; and
- while the public detriments that may result from the Charter Alliance could be significant, there were a number of factors that reduce the likelihood that the public detriments would be realised.

**Reconsideration of interim authorisation**

13. The ACCC may review the interim authorisation at any time, including in response to feedback received after the granting of this interim authorisation.
14. 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.