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Australian Competition & Consumer Commission

Level 17/2 Lonsdale Street Melbourne 3000

Via Email: Tessa.Cramond@acc.gov.au

Dear Madam

North Queensland Airport Group's Submission to ACCC - Virgin Australia Application for Interim Authorisation

North Queensland Airports (**NQA**) operates Cairns and Mackay Airports in Queensland.

NQA endorses the submission made by the Australian Airports Association (**AAA**) in relation to Virgin Australia's application for authorisation. Accordingly NQA will not repeat the substance of the AAA submission but will highlight matters specific to Cairns and Mackay airports.

Impacts upon Cairns and Mackay Airports

The Covid-19 pandemic, and the resulting reductions in air travel, have resulted in a dramatic drop in passenger numbers through Cairns and Mackay airports. There are effectively no international passengers, and domestic passengers have fallen to less than 10% of pre-pandemic numbers. These developments have caused our revenues to collapse – along with those of all the small businesses at the airports that rely upon the numbers of passengers and volumes of freight that flow through the facilities for their livelihoods. As a result NQA, and the businesses that rely upon its viability, are now under extreme financial pressure.

While our revenues have fallen dramatically, most of our operating costs do not vary with traffic. While we have limited capacity to curtail these, we have imposed every restraint possible on operating expenditures - consistent with our obligations. We have also curtailed all discretionary capital expenditure, limiting new spending to those items critical to ensuring that the airport is able to operate safely.

Closing the airports is not an option. Besides the vital connectivity Cairns and Mackay airports provide to Far North Queensland communities and the Bowen Basin respectively, our airport lease from the State of Queensland obliges us to provide access for interstate and intrastate air travel and services relating to an airport and to related airport infrastructure and amenities including lounges, hangars, and leased offices.

NQA's approach to managing this crisis rests on four principles:

1. ensuring the health, safety and welfare of airport workers and passengers;
2. maintaining operations at Cairns and Mackay airports as critical national infrastructure;
3. supporting the airport and broader communities by acting reasonably towards customers and suppliers, and preserving jobs through the crisis so that we are positioned for recovery; and
4. maintaining the financial health of our business.

At present, all our energies are directed towards defining and executing a plan for recovery of our business that is based on these principles. This plan should enable us to continue to trade through these challenging conditions and position the company to play a critical role in the eventual recovery of the North Queensland regional economy. We believe that this plan is likely to lead to a better outcome than the alternatives available to us.

We are working with tenants at our airports to provide rent relief and deferrals, and have urged them to continue trading and hold onto their employees wherever possible. They have to make their own business decisions, however, and sadly some have already suspended operations and stood down their employees.

Accordingly it is not just airlines that are being impacted by the travel restrictions. It is the entire aviation sector, including airports, which are facing the exact same massive decline in passengers. After all the demand for airport services is derived from the demand for airline services by the travelling public. Accordingly, airports are experiencing the exact same fall in demand as the airlines, are equally trying to preserve jobs and maintain their businesses in the best possible position to quickly resume operations when conditions allow.

Therefore, the ACCC must not view the issues faced by Virgin as being limited to it. Cairns and Mackay airports, as are all airports, are facing the exact same financial issues.

Airport fees

Virgin appears to categorise all fees payable to airports as fixed costs. Nothing could be further from the truth.

Unlike other infrastructure businesses or 'utilities', airports principally derive aeronautical revenue from per-passenger charges levied to airlines for the use of the aeronautical infrastructure and related services required to operate an RPT or freight aviation service without any 'take-or-pay' volume commitments from airlines, or revenue true-up arrangements as are found in the National Electricity Rules. This means that airports generally bear 100% demand risk and the risk of the asset being stranded in the event that there is significant decline in volume.

Accordingly, the majority of the fees payable by Virgin and other airlines are in fact variable costs to Virgin. We estimate that only 5% of the total fees payable to Cairns Airport are fixed and not calculated by reference to the number of Virgin Passengers. Therefore, it is unclear what fixed fees to which Virgin is referring to, and how material this issue is. NQA's charges to Virgin have fallen almost completely proportionally to the fall in the number of Virgin's passengers at Cairns and Mackay airports.

Uncertain scope of the conduct

For the ACCC to grant authorisation the conduct must be clearly defined and sufficiently certain to allow the ACCC to assess the detriments and detriments that likely flow from the conduct. However, the conduct sought to be authorised is "joint negotiations (including collective bargaining) with airports in relation to (but not limited to) infrastructure use and fee relief".

This not clearly defined and limited conduct. It is inclusive of negotiations in relation to infrastructure, but not limited to such issues. Accordingly, what else is Virgin seeking to negotiate with NQA? Furthermore, there is no detail provided on what "fees" it is seeking relief from.

As the scope of the conduct is uncertain the ACCC cannot properly apply the statutory test and therefore cannot grant authorisation.

Claimed benefits unlikely to arise

As the ACCC is aware Cairns Airport has made extensive submissions to the ACCC in relation to the car rental companies' application for authorisation to collectively negotiate at Cairns Airport.

In these submissions Cairns Airport has set out why the ACCC's conclusion that collective negotiations, which Cairns Airport refuses to participate in, will likely result in a public benefit are illogical and contrary to the well established jurisprudence. NQA refers the ACCC to paragraphs 2.1 to 2.30 of the Cairns Airport submission dated 15 April 2020 and accordingly NQA does not propose to repeat those submissions but expects that the ACCC will take those submissions into account in this matter.

NQA does not propose to collectively negotiate with Virgin and other airlines. Accordingly, the claimed benefits are unlikely to arise and are theoretical and at best speculative. Therefore the benefits do not rise to the level of a real chance and accordingly this is a sufficient basis alone to deny authorisation.

Furthermore, as the ACCC has already determined in the *ACCC Objection Notice in respect of a collective bargaining notification lodged by Hertz Australia Pty Ltd on behalf of a group of car rental companies operating at Cairns Airport (16 July 2010) (Perth Airport Notification matter)* there is no likelihood that NQA will collectively negotiate unless there is clear and unambiguous benefit to it doing so.

The Applicant has not put forward any basis which rises to an unambiguous benefit to NQA from collectively negotiating with Virgin and its competitors.

As there is no basis for the ACCC to conclude otherwise there can be no benefits flowing from the proposed conduct.

NQA is already in discussions with airlines


The claimed benefits of fee relief from collective negotiations already exist. That is NQA is already in discussions with its customers and suppliers, including airlines, about fair and proportionate changes with respect to fees and payment terms. So the claimed benefits from the conduct do not exclusively flow from authorisation. Accordingly these claimed benefits must be given little weight.

Unfair timeline

NQA is disappointed that it was not formally notified by the ACCC of the application for urgent interim authorisation. Clearly as an affected party NQA should have been notified and been provided an adequate opportunity to respond.

NQA understands from other airports that the ACCC is proposing to make a decision on Friday, 17 April. If this is the case then NQA has not been provided a reasonable opportunity to comment upon the material issues raised by this application and the potential prejudice to its business. In such circumstances NQA has been denied procedural fairness and natural justice.

Yours sincerely



Norris Carter

Chief Executive Officer

NORTH QUEENSLAND AIRPORTS