Partner Contact

Our ref

Luke Woodward Louise Klamka T +61 2 9263 4371 Iklamka@gtlaw.com.au LXW:LXK: 1010633



LAWYERS

20 June 2011

Richard Chadwick General Manager, Adjudication Australian Competition and Consumer Commission 23 Marcus Clarke Street Canberra ACT 2601

Dear Dr Chadwick,

Gilbert + Tobin

2 Park Street Sydney NSW 2000 Australia

GPO Box 3810 Sydney NSW 2001

T +61 2 9263 4000 F +61 2 9263 4111

DX 10348 SSF

www.gtlaw.com.au

Virgin Australia and Singapore Airlines – Applications for Authorisation

We act for Virgin Australia Airlines Pty Ltd (ABN 36 090 670 965), Virgin Australia International Airlines Pty Ltd (ABN 63 125 580 823), Pacific Blue Airlines (NZ) Limited (ABN 107 549 851), Pacific Blue Airlines (Aust) Pty Ltd (ABN 79 097 892 389), and Velocity Rewards Pty Ltd (ABN 98 116 089 448)(together **Virgin Australia**) and Singapore Airlines Limited (ABN 52 001 056 195) and SilkAir (Singapore) Private Limited (together **Singapore Airlines**).

Virgin Australia and Singapore Airlines (the **Applicants**) apply for authorisation pursuant to section 88(1) of the *Competition and Consumer Act 2010* (Cth) in relation to their proposed Alliance in relation to the provision of international passenger transport services. The Alliance comprises the Alliance Framework Agreement and associated agreements contemplated by the Alliance Framework Agreement, including:

- codeshare agreements between Singapore Airlines, SilkAir, Virgin Australia Airlines and Pacific Blue Airlines, and between Singapore Airlines, SilkAir and Virgin Australia International (Codeshare Agreements);
- a Special Prorate Agreement between Singapore Airlines, SilkAir, Virgin Australia Airlines, Virgin Australia International Airlines and Pacific Blue Airlines (**Special Prorate Agreement**);
- · a Frequent Flyer and Lounge Agreement (FFP and Lounge Agreement); and
- a Reciprocal Staff Duty Travel Agreement.

We enclose:

- Application Forms A and B;
- a confidential supporting submission to the ACCC made on behalf of both Virgin Blue and Etihad (**Submission**); and
- a cheque for the appropriate filing fee of \$9,000.





LAWYERS

We request that the enclosed version of the Submission be excluded from the ACCC's Public Register. The Applicants make this request on the basis that this version of the Submission (including annexures) contains information that is commercially confidential to the Applicants. The disclosure of this information would unreasonably and adversely affect the Applicants in respect of their lawful business, commercial and financial affairs. Further, the Submission contains information which is confidential as between the parties and has consequently not been shared between the Applicants.

We will shortly provide a public version of the Submission (with confidential information redacted) which may be placed on the Public Register.

Please contact us if you would like to discuss this letter or the enclosed submission. The Applicants would be happy to meet with the ACCC and to provide further information to assist in its consideration of their Applications for Authorisation.

Yours faithfully

Gilbert + Tobin

Luke Woodward

Partner

T +61 2 9263 4014

lwoodward@gtlaw.com.au

Louise Klamka

Lawyer

T +61 2 9263 4371

Iklamka@gtlaw.com.au

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Form A

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the Competition and Consumer Act 2010 for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a
 cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or
 may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

1. Applicant

(a) Name of Applicant:

(Refer to direction 2)

A91267

Virgin Australia Airlines Pty Ltd (ABN 36 090 670 965)

Virgin Australia International Airlines Pty Ltd (ABN 63 125 580 823)

Pacific Blue Airlines (NZ) Limited (ABN 107 549 851)

Pacific Blue Airlines (Aust) Pty Ltd (ABN 79 097 892 389)

Velocity Rewards Pty Ltd (ABN 98 116 089 448)

(together the Virgin Australia Group); and

Singapore Airlines Limited (ABN 52 001 056 195).

SilkAir (Singapore) Private Limited, a company incorporated in Singapore and having its registered office at 25 Airline Road, Airline House, Singapore 819829, Singapore company registration number 197500236D

(together the SIA Group).

This application is to be read and determined together with the application in Form B (together the **Application**) and the submission supporting the Application (the **Submission**), which are lodged with this form.

(b) Description of business carried on by applicant:

(Refer to direction 3)

The provision of domestic and international air transportation services.

For more detail please refer to the Submission.

(c) Address in Australia for service of documents on the applicant:

Gilbert + Tobin Level 37, 2 Park Street SYDNEY NSW 2000

Attention:

Luke Woodward

Tel: 02 9236 4014 Fax: 02 9263 4111

lwoodward@gtlaw,com.au

and Louise Klamka

Tel: 02 9263 4371 Fax: 02 9263 4111 lklamka@gtlaw.com.au

2. Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

(Refer to direction 4)

Virgin Australia Group and SIA Group seek authorisation to make, and to give effect to, the Alliance Framework Agreement (Alliance Agreement) and any other agreements contemplated under the Alliance Agreement, including:

- reciprocal codeshare agreements between Singapore Airlines, SilkAir, Virgin
 Australia Airlines and Pacific Blue Airlines, and between Singapore Airlines, SilkAir
 and Virgin Australia International (Codeshare Agreements);
- a Special Prorate Agreement between Singapore Airlines, SilkAir, Virgin Australia Airlines, Virgin Australia International Airlines and Pacific Blue Airlines (Special Prorate Agreement);
- · a Frequent Flyer and Lounge Agreement (FFP and Lounge Agreement); and
- a Reciprocal Staff Duty Travel Agreement

(together the Alliance).

Copies of the Alliance Agreement and executed term sheets in relation to the Codeshare Agreements, Special Prorate Agreement and FFP and Lounge Agreement are set out in Confidential Annexure A to the Submission.

(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:

(Refer to direction 4)

See the Submission.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Commercial passenger airline services.

(d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation of the Alliance is being sought for the term of the Alliance and, in any event, for a period ending no earlier than five years from the Commencement Date as defined in the Alliance Agreement.

The grounds supporting this period of authorisation are set out in the Submission.

3. Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Not applicable.

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

(Refer to direction 5)

Not applicable.

4. Public benefit claims

(a) Arguments in support of application for authorisation:

(Refer to direction 6)

See the Submission.

(b) Facts and evidence relied upon in support of these claims:

See the Submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant

suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 7)

See the Submission.

6. Public detriments

(a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

(Refer to direction 8)

See the Submission.

(b) Facts and evidence relevant to these detriments:

See the Submission.

- 7. Contracts, arrangements or understandings in similar terms
 - (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:
 - (b) Is this application to be so expressed?

No.

- (c) If so, the following information is to be furnished:
 - (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

Not applicable.

(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

(Refer to direction 10)

Not applicable.



(iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

8. Joint Ventures

(a) Does this application deal with a matter relating to a joint venture (See section 4J of the Competition and Consumer Act 2010)?

Yes, as defined by section 4J of the Competition and Consumer Act 2010.

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Yes (being the attached Form B).

(c) If so, by whom or on whose behalf are those other applications being made?

Virgin Australia Group and SIA Group.

9. Further information

(a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Gilbert + Tobin Level 37, 2 Park Street SYDNEY NSW 2000

Attention:

Luke Woodward

Tel: 02 9236 4014 Fax: 02 9263 4111

lwoodward@gtlaw,com.au

and

Louise Klamka Tel: 02 9263 4371 Fax: 02 9263 4111

lklamka@gtlaw.com.au

| Dated | 20/6/2011 | |
|------------|----------------------------|--|
| Signed by/ | on behalf of the applicant | |

(Signature)

Luke Woodward Gilbert + Tobin Partner

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

- 2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
- 3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
- 4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
- (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
- 5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
- 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
- 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
- 8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.

- 9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.
- 10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.



Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the Competition and Consumer Act 2010 for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

1. Applicant

(a) Name of Applicant:

(Refer to direction 2)

A91268

Virgin Australia Airlines Ptv Ltd (ABN 36 090 670 965)

Virgin Australia International Airlines Pty Ltd (ABN 63 125 580 823)

Pacific Blue Airlines (NZ) Limited (ABN 107 549 851)

Pacific Blue Airlines (Aust) Pty Ltd (ABN 79 097 892 389)

Velocity Rewards Pty Ltd (ABN 98 116 089 448)

(together the Virgin Australia Group); and

Singapore Airlines Limited (Singapore Airlines) (ABN 52 001 056 195).

SilkAir (Singapore) Private Limited, a company incorporated in Singapore and having its registered office at 25 Airline Road, Airline House, Singapore 819829, Singapore company registration number 197500236D

(together the SIA Group).

This application is to be read and determined together with the application in Form A (together the **Application**) and the submission supporting the Application (the **Submission**), which are lodged with this form.

(b) Short description of business carried on by applicant:

(Refer to direction 3)

The provision of domestic and international air transportation services.

For more detail please refer to the Submission.

(c) Address in Australia for service of documents on the applicant:

Gilbert + Tobin Level 37, 2 Park Street SYDNEY NSW 2000

Attention:

Luke Woodward

Tel: 02 9236 4014 Fax: 02 9263 4111 lwoodward@gtlaw.com.au and Louise Klamka

Tel: 02 9263 4371 Fax: 02 9263 4111 lklamka@qtlaw.com.au

2. Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

(Refer to direction 4)

Virgin Australia Group and SIA Group seek authorisation to make, and to give effect to, the Alliance Framework Agreement (Alliance Agreement) and any other agreements contemplated under the Alliance Agreement, including

- reciprocal codeshare agreements between Singapore Airlines, SilkAir, Virgin
 Australia Airlines and Pacific Blue Airlines, and between Singapore Airlines, SilkAir
 and Virgin Australia International (Codeshare Agreements);
- a Special Prorate Agreement between Singapore Airlines, SilkAir, Virgin Australia Airlines, Virgin Australia International Airlines and Pacific Blue Airlines (Special Prorate Agreement);
- a Frequent Flyer and Lounge Agreement (FFP and Lounge Agreement); and
- a Reciprocal Staff Duty Travel Agreement

(together the Alliance).

Copies of the Alliance Agreement and executed term sheets in relation to the Codeshare Agreements, Special Prorate Agreement and FFP and Lounge Agreement are set out in Confidential Annexure A to the Submission.

(b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:

(Refer to direction 4)

See the Submission.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Commercial passenger airline services.

(d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

Authorisation of the Alliance is being sought for the term of the Alliance and, in any event, for a period ending no earlier than five years the Commencement Date as defined in the Alliance Agreement.

The grounds supporting this period of authorisation are set out in the Submission.

3. Parties to the proposed arrangement

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Not applicable.

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

(Refer to direction 5)

Not applicable.

4. Public benefit claims

(a) Arguments in support of authorisation:

(Refer to direction 6)

See the Submission.

(b) Facts and evidence relied upon in support of these claims:

See the Submission.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 7)

See the Submission.

6. Public detriments

(a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

(Refer to direction 8)

See the Submission.

(b) Facts and evidence relevant to these detriments:

See the Submission.

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

(a) Is this application to be so expressed?

No.

- (b) If so, the following information is to be furnished:
 - (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

Not applicable.

(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not applicable.

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(iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

8. Joint Ventures

(a) Does this application deal with a matter relating to a joint venture (See section 4J of the Competition and Consumer Act 2010)?

Yes, as defined by section 4J of the Competition and Consumer Act 2010.

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Yes (being the attached Form A).

(c) If so, by whom or on whose behalf are those other applications being made?

Virgin Australia Group and SIA Group.

9. Further information

(a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Gilbert + Tobin Level 37, 2 Park Street SYDNEY NSW 2000

Attention:

Luke Woodward

Tel: 02 9236 4014 Fax: 02 9263 4111

lwoodward@gtlaw.com.au

and

Louise Klamka Tel: 02 9263 4371

Fax: 02 9263 4111 lklamka@gtlaw.com.au

Dated

Signed by/on behalf of the applicant

20/6/2011

Luke Woodward

Gilbert + Tobin

Partner

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

- 2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
- 3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
- 4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
- (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
- 5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
- 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
- 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
- 8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
- 9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or

understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.