



06 November 2020  
Gavin Jones, Director Competition Exemptions  
Australian Competition and Consumer Commission

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*Virgin Australia and Alliance Airlines application for authorisation AA1000533*

Dear Mr Jones,

Rex will be putting in a full submission on this matter in due course. However, we provide the following high-level response on the specific issue of interim authorisation.

The nature of the cooperation the parties want authorised is extremely broad, and includes “sharing information, including in relation to costs, willingness to operate ... and pricing” and agreeing “which carrier will operate” the relevant routes identified in the application.

It is important to consider that the application does not just seek to allow this broad information sharing and coordination on the one route on which both parties currently operate (for which there is therefore a baseline as to how both parties allocate capacity and price in the absence of authorised cooperation). It also seeks to allow it on another 40 domestic routes, of which 23 are routes that neither of the parties operate (10 of these being routes that neither of them operated pre-COVID19) and 3 routes where one of the parties is currently sole operator.

Interim authorisation would allow the parties immediately to start sharing cost information, strategic entry plans and future pricing. It will allow them to discuss matters such as agreeing not to enter each other’s sole operator routes or agreeing that only one will enter routes neither currently operates.

Because there is no baseline (other than for the one overlapping route), there is no ability to impose any pricing control of the kind used in the Rex authorisation. Furthermore, there is no proposal for any reporting obligations, as have been included in all COVID-related authorisations, including the Rex authorisation.

The applicants argue that the conduct is “entirely reversible” and therefore there is “no risk associated with the grant of interim authorisation”. However, they are explicitly seeking to share highly sensitive non-public information (e.g. costs, entry plans and future prices) that has longer-term strategic significance. And they are seeking to do so without any transparency or monitoring as to exactly what information has been shared, how

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shared information has been or might be used to inform decision-making, and whether decisions about route entry, capacity and pricing are being made jointly or independently.

Allowing competitors to share such sensitive information under an interim authorisation carries significant risk as knowledge is not reversible; the parties simply cannot stop knowing what they know if final authorisation is denied. Put simply, the egg cannot be unscrambled.

Regards,



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