



INDEPENDENT CONSUMER & COMPETITION COMMISSION
Competitive Market & Fair Trade Division

PUBLIC CONFERENCE – PRE DECISION SUMMARY

**ICCC Conference on Airlines PNG/Pacific Blue
Codesharing Arrangement**

Background

Following release of the ICCC Draft Determination on the Codesharing application by Airlines PNG on 20 October 2008, Air Niugini called for a conference pursuant to section 78 (5) of the ICCC Act 2002. The Commission invited relevant parties to attend the Conference Pursuant to section 79. The conference was convened to allow parties to discuss the Draft Determination and to provide comments; so as to assist the Commission's weighing of these issues and its interpretation of the information. This paper provides a summary of the main issues raised and discussed at the Conference

Conference date : 6 November 2008
Venue : ICCC Conference Room
Time : 9:30 – 12:30 pm

The Conference was chaired by Mr Thomas Abe- Commissioner/CEO and attended by nominated Commission staff and interested stakeholders, listed in the table below.

ORGANISATION	REPRESENTATIVE
ICCC	Mr. Thomas Abe (Commissioner/CEO) Mr. Avi Hubert (Executive Manager - CMFTD) Ms. Nancy Ebbes (Chief Market & Trade Analyst) Mr. Bob Lowi (Senior Market and Trade Analyst)
Air Niugini	Mr. Wasantha Kumarasiri (CEO) Mr. Colin Lyttle (GM Marketing)
Airlines PNG	Mr. John Fitzgerald (CEO) Mr. Steven O'Brien (Company Secretary)
Pacific Blue (Australia) Pty Ltd	Mr. Tony Wheelens (Manager, Government Relations)
Department of Treasury	Ms. Amanda Robins (Advisor-SPID), Ms. Roddie Wada (Assistant Secretary – SPID)
Department of Transport	Mr. William Vate (FAS ATS&R)
Tourism Promotion Authority	Mr. Leith Issac (Senior Marketing Officer)
Institute of National Affairs	Ms. Wallace Yakam (Program Officer)

Below are the main points expressed and discussed by the parties at the conference. These are summarised into three main headings, (1) Effective competition amongst Competitors; (2) Level Playing field for all Parties; and (3) Anticompetitive Practices.

Introduction

Chairman -Mr Thomas Abe;

- Made few opening remarks, thanking the represented organisations for showing keen support to the Commission's work, and for their submissions and comments on the Codesharing application and Draft Determination.
- Provided a brief background on the subject matter canvassing the initial application made by Airlines PNG to the Commission, submissions received on the application, and release of the ICCC Draft Determination and consequently the Conference.
- Pointed out that following the release of the Draft Determination on 20 October 2008, Air Niugini requested for a conference pursuant to s.78 of the ICCC Act. Consequently, the conference is to allow the parties having an interest in the application to meet in person with the Commission and discuss their respective comments, amongst other relevant matters relating to the Commission's Draft Determination of the APNG Codeshare application.
- Made reference to Air Niugini's letter of 20 October 2008 and its proposed conditions and comments therein. The Chair opened the discussion by requesting Air Niugini to elaborate on its comments.

1. Effective Competition amongst Competitors

1.1 Air Niugini's Views

Mr. Wasantha Kumarasiri - CEO

- For the record, Air Niugini supports the code share between Airlines PNG and Pacific Blue. Because APNG services certain remote areas of PNG currently not serviced by Air Niugini due to its Aircraft Operating Certificate requirements. The services to these rural areas are vital and needed to be sustained.
- APNG has sustained losses and the purpose of the codeshare, as per its application, is to stem these losses.
- The aviation industry is affected by the global financial turmoil. Airlines' operations are not shielded from these external shocks. Thus, Air Niugini would like the Commission to give due consideration and weight on this important global economic development when approving the code share.

1.2 Pacific Blues (Aust) Views

Mr. Tony Wheelens - Manager, Government Relations

- The entry of Virgin Blue into other Pacific Island nations such as Samoa has resulted in positive public benefits. The three main positive changes brought about by Pacific Blue include; (1) generation of increased capacity and traffic volume; (2) growth of tourism; and (3) boost of tourism related and other infrastructure services, leading to increased employment.
- Pacific Blue's entry has fundamentally changed the behaviour of incumbent airlines, to their benefit and the consumers. Pacific Blue wishes to bring this culture, change and experience and expertise into the PNG/Australia market.
- Pacific Blue considers that PNG market has the potential to grow, and that its entry will cause positive increase in traffic flow on the route.

2. Level Playing Field for All Parties

2.1 Air Niugini's Views

- Air Niugini commented that the concerns raised in its letter of 28 October 2008, is to request the Commission to consider and allow a level and fair playing field for all the parties in the market. Air Niugini expressed that it would like the Commission to apply appropriate conditions to the Airlines PNG code share to ensure that there is a level playing field in the market.
- It considers that some of the conditions applying to the Air Niugini/Qantas code share arrangement should be applied to the Airlines PNG/Pacific Blue code share arrangement.
- Air Niugini expresses that in its Final Determination, the Commission should consider that conditions such as the six-monthly reporting attached with the Air Niugini/Qantas Codeshare arrangement be added to APNG/Pacific Blue codeshare so as to ensure uniformity.
- It argues that the proposed code share arrangement appears to have elements of cross-subsidisation between the parties and is potentially anticompetitive.

2.2 Airlines PNG's Views

Mr. John Fitzgerald - CEO

- There is a fundamental difference in the code share arrangement between Air Niugini/Qantas and APNG/Pacific Blue in that APNG and Pacific Blue code share only on 'Hard Block', whereas Air Niugini/Qantas code share on both a 'Hard' and 'Soft Block'. Thus, the suggested conditions to ensure level playing field for the code share arrangements have to be considered on its own merit.
- Certain conditions proposed by Air Niugini are not necessary because they apply to the concerns the ICCC had on the soft block allocation that applied to the Air Niugini/Qantas code share.
- Airlines PNG/Pacific Blue code share does not have the soft block option and therefore the conditions proposed by Air Niugini should not apply.
- Some of the conditions suggested by Air Niugini do not currently apply to it and therefore it would not be fair for these to be applied to the Airlines PNG code share arrangement with Pacific Blue.

- There is no arrangement of cross subsidisation between Airlines PNG and Pacific Blue. Most services provided to Pacific Blue are at cost. APNG and Pacific Blues have undergone very intense and difficult negotiation regarding the arrangements, such as ground handling, counters check-in etc, and that no services is provided by either party at zero cost.
- Airlines PNG notes Government subsidy paid to Air Niugini to assist its sustainability in the market and is concern that such cross – subsidisation is at the detriment of smaller operator such as Airlines PNG.

2.3 Pacific Blues (Aust) Views

- Virgin made the offer to APNG to code share with it on the POM/BNE route and not the other way round. Virgin sought this option following a careful thorough assessment of the options available to it.
- If the code share is not approved by the Commission, Pacific Blue will enter the market regardless in its own right as it is entitled to under the PNG-Australia Air Services Agreement.
- In the event Pacific Blue exercised its right to enter the PNG/Australia market without code sharing, this would be detrimental for the domestic PNG airlines - it could result in the demise of APNG on the Brisbane - Port Moresby route and place Air Niugini under considerable commercial pressure. Such an outcome is not in the best interests of itself or APNG and/or Air Niugini and the consumers, competition and the economy and for Virgin as a good corporate citizen, and the relationship with Australia and PNG.
- Virgin has moral obligation to its stakeholders. It understands very well the implication of any damage to its reputation and upholds its integrity and quality brand image in the markets.
- Its decision to enter the PNG market has been carefully considered so as to minimise any negative outcome that may lead to a lesser competitive outcome.

3. Anticompetitive Practices

3.1 Air Niugini's Views

- The code share arrangement between the parties brings in Pacific Blue's Market Power which would be potentially used to stifle Air Niugini's ability to effectively compete in the BNE/POM sector and ensure its ongoing Community Services Obligations in the domestic market.
- Pacific Blue is a big player in the region. Its actions under the proposed code share arrangement, such as the cross-subsidisation arrangement appears is to be in breach of section 58 of the ICC Act; where the arrangement is likely to prevent and deter a person from engaging in competitive conduct in that or any other market; or eliminating a person from that or any other market.
- Where the new entry results in the parties' pricing below cost, it would be anticompetitive and in contravention of section 58 of the ICC Act.
- Air Niugini expressed that the inaugural POM/BNE flight fare offered by APNG and Pacific Blue amounts to "price fixing" and contravenes s.53 of the ICC Act. Air Niugini has sought to review

the matter and take appropriate action. The Commission could easily calculate and deduce from the data that would be provided, whether the fare charged is sustainable or not.

- The three fundamental matters for the Commission to take into account are that the arrangement must demonstrate (1) a sustainable competition (2) Public benefits that would accrue to the consumers and economy as a whole and (3) that there is a fair and effective competition between the parties and within the market.

3.2 Airlines PNG's Views

- APNG denies any price fixing as asserted by Air Niugini regarding the similarity of fares by APNG and Pacific Blue, of K499 on the POM/BNE inaugural flight. The price offered by each party is independent of any discussions. Code share partners, including competitors observe each others behaviour in the market and determine their fares accordingly. APNG's fare structure for the different classes is quite different to other code share partners. While APNG's fares may be similar to Pacific Blue in this particular instance, it strongly denies any collusion with Pacific Blue to fix price.
- APNG is happy to submit its price range and fare classes to the Commission for consideration.

3.3 Pacific Blues Airlines (Aust) Pty Views

- Virgin strives to maintain its quality brand name and image and ensure to continue to be a good corporate citizen. In all markets Virgin Blue operates in, it ensures to abide by all relevant rules and regulations. In Australia for instance, Virgin has a trust-relationship with the government.
- In all discussions with APNG, Pacific Blue has never at any time raised the issue of pricing (fares) on the route.
- Pacific Blue operates a bucket of seat on its flights which have different conditions and fares attached to them.
- Pacific Blue categorically denies any price fixing as asserted by Air Niugini.

3.4 ICC's Views

- The Commission notes that Air Niugini provided information showing that Airlines PNG and Pacific Blue are offering identical prices instead of competing on price. The Commission notes the assertion by Air Niugini that this amounts to price fixing and is in breach of section 53 of the ICC Act.
- Price fixing between competitors has the effect of lessening competition in the market and therefore is an anti-competitive conduct prohibited under the ICC Act.
- The Commission understands that Air Niugini will be making a formal complaint to the ICC in due course on this matter. The Commission is prepared to look into this complaint separately under the

relevant provision of the ICC Act. Any evidence and information of justification provided by all parties is welcome.

4. Other Comments

4.1 Tourism Promotion Authority

- TPA is content with the Commission's Draft Determination. There is a need to see competitive airline services translating into better service and lower airfares. This would inevitably benefit the PNG tourism industry.
- The code share should be permitted.

4.2 Department of Transport

- The Department is mindful of encouraging competition in the aviation industry.
- It has had discussion with Pacific Blue on a number of reporting and due diligence matters.
- It has also been in contact with Pacific Blue regarding the applicable tariff.

4.3 Department of Treasury

- Consistent with Government Policy aimed at introducing competition into the aviation sector, as echoed by its open sky policy, Treasury supports the code share between Airlines PNG and Pacific Blue.

CLOSE OF DISCUSSIONS
