ICCC AUTHORISES PREVIOUS CODE-SHARE AGREEMENT BETWEEN AIRLINES PNG AND VIRGIN AUSTRALIA AIRLINES

The Independent Consumer and Competition Commission (‘ICCC’) has authorised a code-share agreement between Airlines of PNG (APNG) and Virgin Australia Airlines (SE Asia) Pty Ltd (“Virgin”) on flights operated by Virgin between Port Moresby and Brisbane for the 12 month period from 14th April 2012 to 14th April 2013.

It may seem strange that the authorisation has been granted for a period that has already elapsed, but the application was made on 29th November 2013, well after the commencement date of the agreement and, during the assessment, the applicant amended its application for the authorisation to run for a longer period, then changed its mind, leaving it for the original period.

The law allows for retrospective authorisation, to give protection for the entire period.

The applicant is responsible for the delay in finalisation of this determination because of the changes it sought at different times for the duration of the agreement, which meant that further submissions had to be sought from interested parties, in addition to the normal consultative process.

The Commission assessed the application and was satisfied that the net public benefits resulting from the code-share agreement outweighed the public detriments; and decided that authorisation should be granted.

In releasing the Determination, Commissioner and CEO of ICCC, Dr Billy Manoka said, “Authorisation is a transparent and consultative process under the Independent Consumer and Competition Act 2002 (hereafter “ICCC Act”). Parties who wish to enter into agreements and give effect to conduct that might breach the Act, may seek protection from potential legal action by the ICCC or other third parties by authorisation.”

Air Niugini argued that the same condition imposed on it by the Commission relating to the block booking volume of between 30% and 50% on each flight and cabin class in its authorisation of a code share agreement between Air Niugini and Qantas for the Port Moresby/Brisbane and Port Moresby/Sydney routes, should also be imposed in this authorisation for Airlines PNG and Virgin, on the basis that State assistance was stopped more than five years ago and current Government...
policy was to refrain from assisting SoEs financially.

Dr Manoka said: “The Commission did not accept that argument, in effect, for two reasons:

• first, the economic and competitive advantage to SoEs of State capital contributions are perpetuated, unless dissipated by inefficiency; and

• secondly, Airlines of PNG and Virgin are private sector companies, which are driven by market incentives to maximise efficiency and profit, with the losses from any inefficiency being borne, not by the citizens, through State ownership, but by private shareholders.”

Dr Manoka also requested applicants to lodge applications at least three months before the date they want the authorisation to apply from, as the Commission’s resources are inadequate for it to fulfil its wide-ranging mandate promptly, and, therefore, sufficient time is required to assess applications.

All queries relating to this matter should be directed to Mr. Steven Sugl, Acting Executive Manager, Competitive Markets & Fair Trade Division or Ms. Grace Misina, Legal Officer, on telephone 325-2144 or electronic mail: ssugl@iccc.gov.pg or gmisina@iccc.gov.pg or by contacting the ICCC at the address below:

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Authorised by:

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Dr Billy Manoka, PhD
Commissioner/CEO

Comment [WR1]: Commissioner, you may wish to think about whether this sentence should be included.

**Backgrounder**

The ICCC may authorise parties to engage in potentially anti-competitive conduct or to acquire the shares of assets of a business if it is satisfied that the public benefits resulting from the conduct would outweigh the public detriments, including the anti-competitive effects. In reviewing an authorisation application, the Commission consults widely by inviting submissions from interested parties and the general public. This is followed by the issue of a draft determination and, under the
provisions of the Act, if requested by an interested party, or if the Commission decides to call one, a conference is held prior to a determination being made.

In the case of this determination, a conference was not held as no one requested one; and the Commission did not exercise its statutory power of calling one itself.

The Commissioner stressed that ICCC does not grant authorization lightly. It gives due consideration to net benefits to the society from the conduct (and not just to the parties to the application); and whether such benefits outweigh any anti-competitive detriments. It is the applicant’s duty to demonstrate that it has satisfied the relevant provisions of the Act and, therefore, that its application should be authorized.