22 January 2007

The Secretary
Rural and Regional Affairs and Transport Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Radcliffe

I refer to your letter of 22 December 2006 to our Chief Executive Officer, Brett Godfrey, inviting Virgin Blue to make submission on the *Airports Amendment Bill 2006* to the Senate Standing Committee on Rural and Regional Affairs and Transport.

Virgin Blue is pleased to be able to participate in this process and has prepared a written submission to the Committee. Please find enclosed find a copy of our submission on this Bill.

Representatives of Virgin Blue are happy to appear before the Committee should that be deemed appropriate or necessary. Should the Committee require any further information or clarification regarding our submission or wish to arrange for representatives of Virgin Blue to appear before it, then please do not hesitate to contact me on (07) 32955079.

Yours sincerely

Mike Thomas
Government Relations Advisor

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SUBMISSION TO THE SENATE STANDING COMMITTEE ON RURAL AND REGIONAL AFFAIRS AND TRANSPORT

AIRPORTS AMENDMENT BILL 2006

Executive Summary

While being broadly supportive, Virgin Blue does have a number of reservations regarding various provisions contained within this Bill.

The Bill aims to:

(a) improve the land-use planning system for leased federal airports;
(b) implements recommendations of the June 2000 Senate Committee inquiry into the Brisbane Airport Corporation Master Plan;
(c) align planning arrangements for Canberra Airport with those of other federal airports; and
(d) provide greater flexibility for future updates of on-airport activities, including changes to ACCC monitoring and airline ownership of non-core airports.

It is primarily those provisions regarding changes to the ACCC monitoring arrangements and the removal of the 5% restriction on airline ownership of non-core regulated airports that is of most concern to Virgin Blue.

Virgin Blue qualifies it support for the amendments contained in Items 17-21 (inclusive), that seek to remove the 5% restriction on airline ownership of airport-operating companies of non-core regulated airports, on the understanding that these provision will only apply to those airports listed within Part 2.01A of the *Airports Regulations 1997*.

As a general principal Virgin Blue does not broadly support vertical integration within the aviation industry, especially within the context of cross-ownership between airlines and airport-operator companies. Virgin Blue's objection to vertical integration is based on two (2) principles:

1. There exists the potential for a competitive impact on aviation services as an airport-operator company would have an economic incentive to favour the airline in which it has ownership in respect of pricing and conditions of access; and
2. There exists the potential for the airline in which the airport-operator company has ownership to be less likely to oppose higher airport charging or oppose regulation of those charges as a significant proportion of the airport charges would flow back to the airport-operator company.

However, Virgin Blue does not object to airlines having absolute or significant ownership of specific infrastructure at airports, such as terminal space. Direct ownership of this nature is unlikely to have the same competitive disadvantages that would arise from cross-ownership of the whole airport.

The other issue of concern for Virgin Blue within this Bill relates to the proposed changes to Part 8 – Division 2 – Section 151(1) of the *Airports Act 1996* that subject core regulated airports to the monitoring, evaluation and reporting regime for the quality of airport services and facilities undertaken by the ACCC.

The existing provisions of the Act requires the ACCC to subject core regulated airports to regular monitoring, evaluation and reporting of the quality of airport services and facilities.

However, Virgin Blue contends that the provisions contained in Item 152 of the Bill may be used to exclude core regulated airports from future ACCC monitoring and reporting by failing to nominate such airports in the subsequent Regulation.

While Virgin Blue is broadly supportive of this Bill, we are opposed to the proposed changes to Part 8 – Division 2 – Section 151(1) of the Act that could potentially lead to core regulated airports being excluded from the ACCC's monitoring, evaluation and reporting regime for the quality of airport services and facilities.

Provisions of the Bill

Virgin Blue offers its qualified support for the amendments contained in Items 17-21 (inclusive) of this Bill and is opposed to the amendments contained in Items 151-151 (inclusive).

Items 17-21 – 5% Airline Ownership in Airport-Operator Companies

The amendments contained in Items 17-21 (inclusive) of the *Airports Amendment Bill 2006*, seek to remove the restriction on airline ownership of airport-operating companies for non-core regulated airports. Sections 38 and 44 of the *Airports Act 1996* currently limit an airline ownership in an airport-operator company to no more than 5% and clearly define an *unacceptable airline-ownership situation*.

Section 44 of the Act describes that:

> *"an **unacceptable airline-ownership situation** exists in relation to an airport-operator company and in relation to a particular airline if the airline holds a particular type of stake in the company of more than 5%."*

Given that under the Act an airport-operator company is defined as:

> *"an **airport-lessee company** or an **airport-management company**."*

and that an airport-management company is defined as:

> *"a company that is a party to an airport-management agreement with an **airport-lessee company**"*

and that an airport-lessee company is defined as:

> *"a company that holds an **airport lease** and that an airport lease"*

and an airport lease is defined as:

> *a **lease** of the whole or a part of an airport site, where the Commonwealth is the lessor*

the 5% airline ownership restriction has limited application to only those airports that are leased from the Commonwealth.

The application of the proposal amendment to relax the 5% airline ownership in airport-operator companies is further restricted by Item 21 of the Bill which seeks to limit the 5% airline ownership relation to specified airports that are not core regulated airports.

Again Part 1 – Section 7 of the Act lists those airports that for the purposes of the Act are to be considered core regulated airports, while Part 2.01A of the *Airports Regulations 1997* lists those airports that for the purposes of the Act are considered as non-core regulated airports.

It is Virgin Blue's interpretation of the legislation that the non-core regulated airports to which Items 20 and 21 of this Bill are applicable, is limited to:

(i) Archerfield;
(ii) Bankstown;
(iii) Camden;
(iv) Essendon;
(v) Hoxton Park;
(vi) Jandakot;
(vii) Moorabbin;
(viii) Mt Isa;
(ix) Parafield; and
(x) Tennant Creek airports.

In summary, Virgin Blue, as a general rule, does not support cross-ownership of airports between airlines and airport-operator companies for the reasons outlined earlier in this submission.

However, based on our interpretation of the proposed amendment, Virgin Blue believes that the RPT operations, if any, from the airports listed above are not significant and therefore there is limited potential for the competitive effects that would be expected from vertical integration to arise.

Item 152 – Airports to which Part 8 – Division 2 Applies

The amendments contained in Item 151-155 of the *Airports Amendment Bill 2006*, seek to facilitate the timely introduction of any changes flowing from the current Productivity Commission Review into Airport Pricing, by amending the *Airports Act 1996* so that future monitoring arrangement can be addressed through amendment to the *Airport Regulations 1997*.

However, Virgin Blue contends that the provisions contained in Item 152 of the Bill could effectively exclude core regulated airports, by amending the Act and then subsequently not listing them in the Regulation, from the scrutiny of the ACCC on matters of quality of airport services and facilities.

The current Part 8 – Division 2 - Section 151(1) of the Act states that the airport to which this Part applies are the core regulated airports or airport specified in the Regulations if there is an airport lease for the airport. Therefore this subjects each of these core regulated

airports or non-core regulated airports specified in the Regulations to the monitoring, evaluation and reporting regime of the ACCC.

It could be argued that the repealing of the current 151(1) of the Act and substituting it with the Section articulated in Item 152 of the Bill is designed to exclude all core and non-core regulated airports (except for those that are listed in future Regulation) from the scrutiny of the ACCC's monitoring and reporting regime.

This argument is further reinforced by the fact that the Government has not proposed any amendments to Part 1 – Section 7 of the Act and the definition of core regulated airports. It is difficult to see why such a proposed amendment, as that being proposed in Item 152 of the Bill, is necessary unless the Government intends to deliberately exclude core regulated airports, by amending the Act and then subsequently not listing them in the Regulation, from the scrutiny of the ACCC.

Should this be the policy objective of the Government, then Virgin Blue strenuously opposes such a move on the grounds that it reduces transparency in accessing airport performance, removes the burden from airport operators from providing quality services and facilities and disadvantages airport users in their commercial negotiations with airport operators.

Clearly Part 8 of the current Regulations *'requires the ACCC to monitor and evaluate the quality of airport services and facilities against certain indicators that are prescribed by regulations made under Section 153 of the Airports Act and by such other criteria as the ACCC determines in writing'*. [1]

The rationale for the introduction of a monitoring and reporting regime for quality of airport services and facilities was clearly articulated by the Productivity Commission in its January 2002 *Price regulation of Airport Services - Inquiry Report No.* 19, in which it was stated:

> *"Quality of service monitoring, together with the provision of airport company accounts to the ACCC, is intended to assist in improving the transparency of airport performance. In this capacity, monitoring is intended to: discourage airport operators from providing unsatisfactory service quality; encourage them to provide information as a basis for improved negotiation between them and airport users; and to assist the Government to address other public interest matters relating to the regulation of airports."*[2]

This importance of maintaining the regime of monitoring and reporting of quality of service and facilities for core and non-core regulated airports has been reinforced further by the ACCC. In its latest *Quality of Service Report*, the ACCC states that the:

> *"quality of service monitoring is now considered an important complement to price monitoring; it continues to provide an incentive (in addition to commercial incentives) to airports to maintain appropriate service standards and adds a level of transparency and comparability (between airports) that would not otherwise exist. It may provide information to airport users that will help them in their commercial negotiations with airports, and assist the*

[1] ACCC, *Quality of Service Report 2005-2006*, pp. 1
[2] Productivity Commission, *Price Regulation of Airport Services – Inquiry Report No.19*, 2002, pp. 56

> *government to address public interest matters relating to the regulation of airports."* [3]

Therefore any move on behalf of the Government to exclude core and non-core airports from the scrutiny of the ACCC's quality of service regime would reduce the incentive for airports to maintain their service standards, while also significantly impacting on the capacity of airport users to utilise this information in their commercial negotiations with airport-operating companies.

Clearly, Virgin Blue believes in the need and continuation of the quality monitoring and reporting of airport services and facilities and strenuously opposes any move that would deliberately exclude core and non-core regulated airports from being subject to ACCC scrutiny.

While the Government has indicated that the amendments contained in Item 151-155 of the Bill are being put forward at this point in time to facilitate the timely introduction of any changes flowing from the current Productivity Commission Review into Airport Pricing, Virgin Blue is concerned that this action may pre-empt the recommendations of the review.

Industry have actively engaged and assisted the Productivity Commission in its current inquiry into airport pricing. This has included the preparation of detailed submissions, appearances before the inquiry and the provision of additional information as and when requested by the Commission. It would therefore be extremely disappointing if the effort and goodwill demonstrated by industry participants was adversely affected due to any premature action on behalf of the Government in amending the existing legislative framework.

Virgin Blue is broadly supportive of this Bill, but we are opposed to the proposed changes to Part 8 – Division 2 – Section 151(1) of the Act, as we believe that this amendment could potentially lead to core regulated airports being excluded from the ACCC's monitoring, evaluation and reporting regime for the quality of airport services and facilities.

[3] ACCC, *Quality of Service Report 2005-2006*, pp. 1