



# Draft Determination and interim authorisation

Application for revocation of AA1000395 and the substitution of  
authorisation AA1000626

lodged by

Qantas Airways Limited and Jetstar Airways Pty Ltd

in respect of

the Jetstar Pan-Asia Strategy

Authorisation number: AA1000626

3 March 2023

Commissioners: Keogh

Lowe

Brakey

Carver

## Summary

The ACCC proposes to re-authorise Qantas Airways Limited (Qantas) and Jetstar Airways Pty Ltd (Jetstar) for coordination involving Qantas and two Jetstar joint venture airlines (Jetstar Asia and Jetstar Japan) and, in certain circumstances, coordination between Jetstar Japan and its full-service airline shareholder, Japan Airlines.

The proposed conduct for which re-authorisation is sought allows the relevant airlines to integrate their services in a variety of ways, including by coordinating schedules, accessing shared business services, and revenue sharing on certain routes, with both each other and Full Service Airlines partners to the Joint Venture Coordination Agreement.

The Conduct does not include coordination between:

- Qantas and Japan Airlines
- the Jetstar Group and Japan Airlines except as between Jetstar Japan and Japan Airlines on overlapping or potentially overlapping routes.

The ACCC considers that the proposed conduct is likely to result in public benefits in the form of enhanced products and services, cost savings and economic efficiencies and increased competition.

The ACCC proposes to grant authorisation for 5 years, not the 10 years sought by the Applicants.

The ACCC has also granted interim authorisation to enable Qantas and Jetstar to continue to engage in the Conduct while the ACCC is considering the substantive application.

The ACCC invites submissions in relation to this draft determination before making its final decision.

## The application for authorisation revocation and substitution

- 1.1. On 14 November 2022, Qantas Airways Limited (**Qantas**) and Jetstar Airways Pty Ltd (**Jetstar**) (together, the **Applicants**) lodged with the Australian Competition and Consumer Commission (the **ACCC**) an application to revoke authorisation AA1000395 and substitute authorisation AA1000626 for the one revoked (referred to as **re-authorisation**). Re-authorisation is sought for a period of 10 years.
- 1.2. This application for re-authorisation AA1000626 was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). The ACCC may grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in the Act but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.3. The Applicants also requested the ACCC grant urgent interim authorisation to facilitate the seamless planning and coordination of services that will be operated after 31 March 2023, when authorisation AA1000395 is due to expire. Granting interim authorisation prior to the expiry of the current authorisation will have the effect of suspending its operation and substituting it with the interim authorisation such that the

ACCC can consider the application for revocation and substitution. The request for interim authorisation is discussed further in section 6.

## The Applicants and other protected parties

### Qantas Airways Limited

- 1.4. Qantas was incorporated in 1920 and is Australia's largest domestic and international airline.
- 1.5. Prior to the COVID-19 pandemic, Qantas operated over 4,500 flights domestically and over 730 flights internationally per week.
- 1.6. Qantas also operates related businesses including freight operations, loyalty programs and various airlines subsidiaries, including Jetstar, QantasLink and Network Aviation.
- 1.7. The Qantas Group is currently a party to the following airline alliances:
  - an alliance with Emirates, which was re-authorised by the ACCC until 23 March 2023<sup>1</sup>
  - an alliance with China Eastern, which was re-authorised by the ACCC until 31 March 2023<sup>2</sup>
  - an alliance with American Airlines, which was re-authorised by the ACCC until 25 March 2026.<sup>3</sup>
- 1.8. Qantas has an extensive network of codeshare and interline partners. Qantas is also one of the founding members of the oneworld alliance.

### Jetstar Airways

- 1.9. Jetstar is incorporated in Australia. Qantas established Jetstar in 2004 to operate low-cost, value-based services in domestic Australia.
- 1.10. Since the launch of Jetstar Airways, the Applicants have implemented a 'dual brand strategy' in Australia involving collaborating and coordinating capacity and pricing activities between themselves. The Applicants submit that the strategy seeks to ensure that network and capacity decisions meet customer demand to maximise profitability for the Qantas Group as a whole while maintaining a clear profit focus for the separate businesses.

### Jetstar Asia

- 1.11. Jetstar Asia was established in December 2004 and is effectively owned by Qantas and a Singapore citizen through the following structure:
  - Jetstar Asia is wholly owned by Orangestar Investment Holding Pte Ltd (**Orangestar**)
  - Orangestar is wholly owned by Newstar Investment Holdings Pte Ltd (**Newstar**)

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<sup>1</sup> An application for re-authorisation of this alliance for a further period of 5 years is currently being considered by the ACCC. Further information is available on the [ACCC's public register](#).

<sup>2</sup> An application for re-authorisation of this alliance for a further period of 12 months is currently being considered by the ACCC. Further information is available on the [ACCC's public register](#).

<sup>3</sup> Further information is available on the [ACCC's public register](#).

- Newstar is owned by the following two shareholders:
  - a Singapore company, Westbrook Investments Pte Ltd which is wholly owned by a Singapore citizen and has 51% of the voting shares in Newstar
  - Qantas, via its wholly-owned subsidiary Jetstar Asia Holdings Pty Limited which has 49% of the voting shares in Newstar.

1.12. From its base in Singapore, Jetstar Asia currently<sup>4</sup> operates over 180 weekly flights to 11 destinations across 6 countries and territories in the Asia-Pacific region.

## Jetstar Japan

1.13. Jetstar Japan was established in 2011 and is wholly owned by an incorporated joint venture in Japan which in turn is owned by the following entities:

- Jetstar International Group Holdings Co. Ltd, a wholly owned subsidiary of Qantas which holds a 33.32% voting shareholding
- Japan Airlines Co Ltd, which holds a 50% voting shareholding
- Tokyo Century Corporation (formerly known as Century Tokyo Leasing Corporation), which acquired a 16.66% voting shareholding from Mitsubishi Corporation on 27 March 2012.

1.14. From its base in Japan, Jetstar Japan currently<sup>5</sup> operates 550 flights per week to domestic and international destinations.

1.15. Jetstar Asia and Jetstar Japan are referred to by the Applicants as a Jetstar Joint Venture airline.

## The Conduct

1.16. Re-authorisation is sought to allow for the continuation of coordination involving Qantas, Jetstar and Jetstar low-cost carriers (**Jetstar Asia** and **Jetstar Japan** and collectively referred to as the **Jetstar Group**) and, in certain circumstances between Jetstar Japan and its full-service airline shareholder, Japan Airlines Co. Limited (**Japan Airlines**), in the Asia-Pacific region. The conduct is part of what the Applicants refer to as the **Jetstar Pan-Asia Strategy**.

1.17. The Applicants seek authorisation for the conduct as follows:

- coordination between each and all of the following airlines under a Joint Venture Coordination Agreement to operate as a single, fully integrated organisation:
  - Qantas
  - Jetstar
  - Jetstar Asia
  - Jetstar Japan
- coordination of operations and activities, both passenger and cargo, between Jetstar Japan and Japan Airlines in relation to overlapping or potentially

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<sup>4</sup> As at 1 October 2022.

<sup>5</sup> As at 1 October 2022.

overlapping services, including pricing, capacity and scheduling as set out in the Jetstar Japan Shareholders Agreement and the Business Services Agreement

- coordination of operations and activities, both passenger and cargo, between a Jetstar Joint Venture, its full service airline shareholder and another Jetstar low-cost carrier on routes where all three overlap (or potentially overlap), including pricing, capacity and scheduling as set out in the Business Service Agreements.

(collectively, the **Conduct**).

1.18. The Conduct does not include coordination between:

- Qantas and Japan Airlines
- the Jetstar Group and Japan Airlines except as between Jetstar Japan and Japan Airlines on overlapping or potentially overlapping routes.

## 2. Background

2.1. The Joint Venture Coordination Agreement was first entered into on 22 June 2012 and was conditional on antitrust immunity being obtained in all relevant jurisdictions. Qantas and the Jetstar low-cost carriers were parties to the Joint Venture Coordination Agreement.

2.2. The Joint Venture Coordination Agreement provides for the parties to operate as a single, fully-integrated organisation by coordinating their operations and activities in the Asia region including:

- network and scheduling decisions including routing, frequencies, aircraft types, product specifications, aircraft configurations, connection requirements and range of times for any services
- sales and marketing initiatives including the offering of customer rebates, incentives and discounts
- holiday products and joint promotions
- pricing and inventory decisions including agreeing fares and new fare products
- product distribution channels
- frequent flyers and other loyalty programs
- in-flight products or services
- information technology
- joint purchasing and procurement including but not limited to back-office functions, fleet acquisitions and engineering services
- customer service activities and initiatives
- sharing of experience and learning including the secondment of personnel.

2.3. The Joint Venture Coordination Agreement also provides for revenue sharing by Jetstar low-cost carriers in those circumstances where a particular route is operated by two Jetstar carriers.<sup>6</sup>

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<sup>6</sup> The Applicants note that while there are currently no routes operated by two Jetstar low-cost carriers, there may potentially be routes in the future which overlap.

- 2.4. Each Jetstar Joint Venture is established and operates pursuant to a Shareholders' Agreement and a Business Services Agreement.
- 2.5. The Applicants submit that there are significant numbers of rival airlines competing with the Jetstar low-cost carriers in the low-cost segment across the Asia-Pacific region.<sup>7</sup> The Applicants submit that, since their last authorisation application, there has been further entry and/or expansion by low-cost carriers in the Asia-Pacific, including:
- the launch of low-cost long-haul routes by Bamboo (including Hanoi / Ho Chi Minh City to Melbourne and Ho Chi Minh City to Sydney), T'Way Air (including Sydney to Seoul from December 2022), Vietjet Air (including Ho Chi Minh City to Melbourne)<sup>8</sup> and others
  - the launch of ZipAir by Japan Airlines
  - plans for All Nippon Airways (which is Japan's largest carrier) to launch a new airline called AirJapan between October 2023 and March 2024.<sup>9</sup>
- 2.6. The Applicants submit that, like the Qantas / Jetstar dual brand strategy, a number of other airlines in the Asia-Pacific region have sought to implement a dual brand strategy in competition with the Jetstar low-cost carriers, such as Scoot / Singapore Airlines and the Lion Air Group. In addition to this, the Applicants submit that there are also a number of independent low-cost carriers or low-cost carrier groups that vigorously compete with the Jetstar Group, such as AirAsia and AirAsia X Groups, Cebu Pacific, Cebgo, VietJet and Bamboo Airways.

## Previous authorisations

- 2.7. The ACCC first authorised coordination between Qantas and Jetstar for 5 years on 26 March 2013 (the **2013 authorisation**).<sup>10</sup> The ACCC considered that the conduct would be likely to result in public benefits and would not be likely to result in public detriments as the conduct would not be likely to have a significant impact on competition, even on the many routes on which they would potentially overlap. The ACCC granted authorisation for 5 years, not the 10 years requested by the Applicants, due to the dynamic and evolving nature of the Asian aviation market/s.
- 2.8. The ACCC last authorised this conduct in 2018 for a further 5 years until 31 March 2023 (the **2018 authorisation**).<sup>11</sup>

## Need for regulatory approval

- 2.9. The Applicants have sought re-authorisation to continue the Conduct because they do not have the option to establish the Jetstar Joint Ventures as majority (or wholly) owned subsidiary airlines outside Australia on their own accord given the regulatory environment in which airlines are required to operate.

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<sup>7</sup> See Qantas' application for re-authorisation dated 14 November 2022 at [4.4.1].

<sup>8</sup> See <https://www.vietjetair.com/en/news/news-1600227436778/vietjet-leader-and-minister-of-victoria-australia-jointly-announce-to-operate-direct-flights-from-hcmc-to-melbourne-australia-since-march-31st-2023-1673433222810>.

<sup>9</sup> The Applicants submit that AirJapan is reported to be positioned to provide a 'new kind of travel experience' as a hybrid full-service airline and low-cost carrier model, focusing on the growth of Asian markets and targeting the demand for low-cost, medium-distance flights to destinations in South East Asia and Oceania: see Qantas' application for re-authorisation dated 14 November 2022 at [4.4.2].

<sup>10</sup> The 2013 authorisation included Jetstar Pacific and the proposed Jetstar Hong Kong, however these entities have been excluded from the re-authorisation application.

<sup>11</sup> Authorisation AA1000395 is available from the ACCC's [public register](#).

- 2.10. Regulations in each of the relevant countries prevent Qantas from owning (or majority owning) airlines. These regulatory factors together have the effect of limiting access to routes and flight frequency for carriers outside their 'home' jurisdiction like Qantas.<sup>12</sup>
- 2.11. As such, the Applicants submit that the scope of the Conduct is necessarily limited and is sought to ensure the Applicants can implement the Jetstar Pan-Asia strategy.

### Impact of the COVID-19 pandemic

- 2.12. The COVID-19 pandemic has caused significant disruptions to air passenger services globally. While the aviation industry has begun to recover, the Applicants submit that the operational and financial challenges the Group face are immense. The ACCC considers that it will likely be well into 2023 before workforce levels in the domestic Australian aviation industry are where they need to be (to meet demand) across the aviation supply chain. The ACCC notes that as of December 2022, Australian airlines are expecting a profitable 2022-23, as demand for air travel remains strong while airlines continued to hold back adding capacity to the market to manage resource challenges.
- 2.13. The ACCC considers that many of these issues are also faced in the international air passenger services markets, including strong demand, reduced airline operating capacity, high jet fuel prices and workforce shortages.
- 2.14. The Applicants submit that recovery from the COVID-19 pandemic underpins the commercial rationale for re-authorising the Conduct. The ability of the Jetstar low-cost carriers to act as a single, fully integrated organisation enabled the business to survive the COVID-19 pandemic more effectively.
- 2.15. The Applicants submit the Conduct has allowed Jetstar Group to manage the impacts of the COVID-19 pandemic through:
- managing the costs and efficiencies across the Jetstar group, including through the temporary lease of 6 aircraft from Jetstar Japan to Jetstar Airways and the reduction of 11 aircraft from Jetstar Asia
  - minimising passenger disruptions, including through shared customer management and call centre resources and offering customer vouchers available for use on any Jetstar low-cost carriers, regardless of the original booking.
- 2.16. The Applicants submit that while international travel recovers, the aviation industry remains challenging and evolving. The Applicants submit that re-authorisation will support Jetstar Group's recovery over the medium to long term by enabling the Jetstar Group to respond to this environment and consumer demand to position themselves most effectively to compete with other low-cost carriers. The Applicants submit the Conduct is necessary to provide continued scale across revenue and cost fronts and flexibility within the Jetstar Group (including the use of aircraft across the airlines).

## 3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties.

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<sup>12</sup> See Qantas' application for re-authorisation dated 14 November 2022 at [4.3.3] – [4.3.8].

- 3.3. The ACCC received 1 submission from an interested party in relation to the application.
- 3.4. On 27 January 2023, the Australian Federation of Travel Agents (**AFTA**) made a submission to the ACCC. AFTA is the peak body for Australia's travel agents. As part of this role, it aims to stimulate, encourage and promote travel, uphold the interests of travel agents, and administers the Australian Travel Accreditation Scheme, which accredits members for their operational standards.
- 3.5. AFTA submits that, if authorisation is granted, an authorisation period beyond 5 years would be presumptive in circumstances where massive transformations are occurring across the travel industry in a rapidly evolving post-pandemic landscape.
- 3.6. AFTA submits that any authorisation granted should be conditional to incentivise passenger capacity increases and to protect the competitive distribution of airfares. Specifically, AFTA submits that any authorisation should be subject to the following conditions:
- Qantas Group reporting on the coordination of routes and pricing managed under the Conduct
  - Qantas Group undertaking that they will make all fare types and schedules made possible by the Conduct available to travel agents through all distribution systems, not just the New Distribution Capability<sup>13</sup>
  - Qantas Group providing full and equal rights to travel agents for customer refunds and cancellations that occur under the Conduct, so that airlines cannot discriminate against travel agents by disabling access to the refund system for their customers.
- 3.7. AFTA submits that the above conditions are appropriate given the Conduct will allow Qantas Group to collude on distribution in a way that others in the industry cannot. In this regard, AFTA submits that the Conduct would provide Qantas Group with additional levels of control on routes in the Asia-Pacific area and routes that are part of a multi-stop journey to or from Australia. As a result, AFTA submits that the Conduct has the potential to increase coordination on domestic legs of multi-stop codeshare journeys where Qantas Group already maintains a significant market share, for example the Singapore – Sydney – Hobart route. AFTA submits that careful consideration of detriments that may arise from the Conduct is warranted in these circumstances.
- 3.8. AFTA further submits that despite ongoing complexities and operational challenges, major airline carriers including Qantas Group are experiencing significant profitability as the result of an inflationary dynamic that has led to all-time high prices for consumers.<sup>14</sup> AFTA submits that, while demand for airfares has completely recovered in Australia, Qantas Group has downgraded its forecasts to foreshadow it is likely to have a smaller international capacity by the end of FY2023 than previously expected. AFTA submits that the Conduct is unlikely to contribute to a willingness to accelerate

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<sup>13</sup> New Distribution Capability is a data exchange format based on Offer and Order management processes for airlines to create and distribute relevant offers to the customer regardless of the distribution channel. It was launched by the International Air Transport Association for the development and market adoption of a new transmission standard which enhances the capability of communications between airlines and travel agents and is open to any third party to implement and use: <https://www.iata.org/en/programs/airline-distribution/retailing/ndc/>.

<sup>14</sup> In support of this submission, AFTA referred to the ACCC report Airline competition in Australia dated December 2022. This report and the other reports presenting the ACCC's analysis arising from its role monitoring the Australian domestic air passenger transport services are available [here](#).



additional capacity upgrades, and that the ACCC must ensure the Conduct does not enable further increases to prices over capacity.

- 3.9. In response to AFTA's submission, the Applicants submit that AFTA makes a range of contentions which are inaccurate and / or irrelevant to the Conduct. The Applicants submit that the Conduct will continue to result in real and substantial public benefits and will not result in any competitive detriment, particularly in circumstances where:
- the Conduct gives rise to no competitive detriment. The networks of the Jetstar low-cost carriers are highly complementary, with historically little overlap (and no overlap presently)
  - they operate in highly competitive markets and will continue to be disciplined by a wide range of strong competitors, such the AirAsia Group, Scoot, VietJet, Peach, Lion Air Group, Bamboo and Cebu Pacific.
- 3.10. The Applicants submit that re-authorisation of the Conduct would enable the Jetstar low-cost carriers to continue to coordinate and act as a single, integrated business as they seek to recover post pandemic including rebuilding and/or adding new services and frequencies in response to demand, facilitating coordinated investment following the pandemic disruption and efficiently allocating fleet orders across the combined group. This will, in turn, support the re-connection of Australian tourism markets (including in secondary cities and regional centres) to visitors from the Asia-Pacific region, including from Japan.
- 3.11. In response to AFTA's submission that the Conduct will provide the Qantas Group with additional control on the Asia-Pacific routes and routes that are part of a multi-stop journey to or from Australia, the Applicants submit that this claim is unsubstantiated and inaccurate. The coordination under the Conduct does not presently, and could not plausibly in the future, provide such control given the existence of strong competitive constraints from competitors on all routes and multi-stop options.
- 3.12. The Applicants further submit that there would be no impact on the domestic market, and there is no basis for AFTA's claim that the prior authorisations of the Conduct have facilitated an entrenchment of Qantas Group's market power in Australia. The Applicants submit that, as part of the same corporate group, Qantas and Jetstar Airways coordinate on domestic Australia routes irrespective of the Conduct and such coordination would not be increased by the Conduct.
- 3.13. In response to AFTA's queries as to the public benefits derived from the Conduct, the Applicants submit that in their 2017 application for re-authorisation, the Applicants provided comprehensive evidence of public benefits that had arisen over the preceding 5 years through the involvement of Jetstar Asia, Jetstar Japan and Jetstar Pacific in the Jetstar Pan Asia strategy, with quantification wherever possible. The Applicants submit that the only difference since that re-authorisation is the exit of Jetstar Pacific and the current Application provides detailed evidence of past and expected public benefits arising irrespective of that exit, with quantification wherever possible, including one-stop-shop bookings, quantified cost savings from centralised negotiation with suppliers, and quantified contribution to domestic travel.
- 3.14. In response to AFTA's submission that Qantas and Jetstar may be artificially withholding or delaying capacity which it would otherwise make available, the Applicants reject this claim. The Applicants submit that AFTA's submissions on capacity reinstatement do not accurately reflect the difficult and variable operating conditions and constraints faced by the industry, nor that the position of airlines will differ. The Applicants submit that airlines have been and continue to be subject to unavoidable, exogenous capacity constraints such as aircraft and crew supply shortages, and other supply chain issues.

- 3.15. With regards to the conditions suggest by AFTA, the Applicants submit that these conditions are not necessary or appropriate. The Applicants submit that, in addition to there being no sound basis underpinning such conditions, the conditions would also be disproportionate, administratively unworkable and unduly onerous.
- 3.16. Further, with respect to each of AFTA's proposed conditions, the Applicants submit that:
- The route and price reporting condition is vague, onerous, and unnecessary, having regard to the Conduct sought to be authorised in the Application. The published fares of Qantas and Jetstar low-cost carriers are publicly available. Additional reporting on routes and price points serves no purpose and would be unduly onerous.
  - The condition allowing agents access to all fare inventories and schedules through all distribution systems is unnecessary and inappropriate, having regard to the specific conduct sought to be authorised in the Application. AFTA's submission provides no evidence to support why this condition is necessary or relevant to the proposed conduct. The ACCC has not imposed conditions on any other airline authorisation under which airlines are obliged to make fare types/schedules available to travel agents.
  - No reasoning has been provided as to why the condition allowing agents full and equal rights for refunds and cancellations that occur under the Conduct is warranted or appropriate in the context of the alliance. The ACCC has not imposed conditions on any other airline alliance authorisation relating to refund and cancellation rights.
- 3.17. Regarding AFTA's submission that the period of re-authorisation should be limited to five years, the Applicants maintain that an authorisation period of ten years is appropriate given the nature of the joint venture and the absence of any detriments.
- 3.18. Public submissions by the Applicants and interested parties are on the ACCC's [public register](#).

## 4. ACCC assessment

- 4.1. The ACCC's assessment of the Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. The Applicants have sought authorisation for Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 of the Act.<sup>15</sup> Consistent with subsections 90(7) and 90(8) of the Act,<sup>16</sup> the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (authorisation test).

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<sup>15</sup> The ACCC note that while the Applicants initially also sought authorisation in respect of s 47 of the Act, the Applicants subsequently provided clarification that they are comfortable with s 47 not being included within the scope of the ACCC's determination. This clarification is available on the [public register](#).

<sup>16</sup> See subsection 91C(7).

## Relevant areas of Competition

- 4.3. To assess the likely effect of the Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.4. The Applicants submit that, while it is not necessary to precisely define the relevant market/s for the purposes of this assessment, the relevant area of competition in Australia is likely to be the market for air travel services between destinations in Australia and Asia by leisure passengers.
- 4.5. The ACCC accepts that it is not necessary to precisely define the boundaries of relevant market/s as it will not substantially alter the competition assessment. The ACCC considers that the relevant areas of competition are likely to be:
  - international air passenger transport services on routes between Australia and each of Singapore and Japan
  - international air passenger transport services on routes between points in Asia that may form sectors of a multi-stop journey to or from Australia
  - international air cargo services.
- 4.6. In relation to international air cargo services, the ACCC notes that there are a substantial number of other passenger airlines and dedicated air freighters that compete with the Applicants to supply air cargo services between Australia and Singapore, Australia and Japan and within Asia. The ACCC is satisfied that the Conduct is not likely to result in public detriment in these markets and therefore does not consider them further.

## Future with and without the Conduct

- 4.7. In applying the authorisation test, the ACCC compares the likely future with the Conduct that is the subject of the authorisation to the likely future in which the Conduct does not occur.
- 4.8. The Applicants consider that if re-authorisation was not granted, Jetstar Airways would be required to significantly curtail the way in which it provided services to the Jetstar Joint Ventures. This would include Jetstar Airways being unable to make certain international network, capacity, pricing and scheduling decisions. The Applicants submit that without the Conduct, the Applicants would be hampered in their ability to implement the Jetstar Pan-Asia strategy and work as a single wholly integrated network. Long term, the Applicants submit that this could impact investment in the Jetstar low-cost-carriers by the Applicants and the full service airline shareholders.
- 4.9. The ACCC considers that, in the likely future without the conduct:
  - The existing Joint Venture airlines would continue to operate as low-cost carriers.
  - The Joint Venture airlines would continue to access Jetstar Airways support in relation to:
    - network, scheduling and fleet strategy
    - products, pricing and distribution,
    - sales, marketing and customer service activities as provided for in the Business Services Agreements.
  - However, the benefits from coordination between Joint Venture airlines in each of these areas would not be realised.

- The ownership structure and board composition of each Joint Venture Airline would remain the same.
- As a result of the common influence of Jetstar Airways and the local full services airline shareholder on the activities and operations of the Joint Venture airlines there would be no significant rivalry between:
  - Qantas, Jetstar Airways, and any Joint Venture airline
  - each local full services airline shareholder and any Jetstar entity that they established, or have a significant shareholding in
  - any of the Joint Venture airlines.
- Revenue sharing and schedule coordination on routes where Joint Venture airlines overlap would likely be prohibited by the Act.
- Revenue sharing and schedule coordination between a Joint Venture airline and an unrelated full services airline partner would likely be prohibited by the Act.
- Unrelated full services airline partners would be prohibited from or limited in their ability to share knowledge about the local aviation environment with Joint Venture Airlines.

4.10. The ACCC considers that in the likely future without authorisation the Applicants would be somewhat constrained in their ability to efficiently implement their Jetstar Pan-Asia strategy and realise the full potential of a single wholly integrated network. There would be added complexity in the provision of services under the Business Services Agreement by Jetstar Airways to the Jetstar Joint Ventures.

## Public benefits

4.11. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

*...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.<sup>17</sup>*

4.12. The ACCC has considered the public benefit claims of the applicants in the following broad categories:

- enhanced products and services
- cost savings and economic efficiencies
- promotion of competition,
- increased tourism to Australia.

4.13. To identify the public benefits and detriments that are likely to result from the Conduct (in the sense that they have a causal connection to the Conduct) and to weigh those benefits against the likely detriments, the ACCC compares the future in which the Conduct occurs (the factual), as against the future in which the Conduct does not

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<sup>17</sup> Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

occur (the counterfactual). As part of its assessment, the ACCC has considered all factual and counterfactual benefits and detriments that have a non-trivial prospect of occurring. To the extent that the Applicants or interested parties have raised issues that would occur with or without the Conduct, the ACCC has not included this in its assessment.

## **Enhanced products and services**

- 4.14. Conduct that enhances the products or services available in a market can confer public benefit in situations where the enhancements are valued by consumers.
- 4.15. The Applicants submit that the Conduct has provided, and will continue to provide, a public benefit by enhancing products and services through new frequencies and destinations, more online connections, better schedule spread, greater convenience for consumers to book travel, greater choice through destination and connection options, and greater access to lower fares to more destinations.
- 4.16. The Applicants submit that these benefits are demonstrated by:
- operations in new destinations. Jetstar low-cost carriers commenced operations to more than 40 new destinations between the 2013 and 2018 authorisations, and six new destinations since the 2018 reauthorisation. Post-pandemic, the Jetstar Group currently services 11 destinations not served in 2013
  - improved frequencies and schedules on a number of routes by Jetstar low-cost carriers since the 2013 authorisation (prior to the pandemic)
  - an increased number of passengers travelling on connecting flights across the Jetstar low-cost carrier network between the 2013 authorisation and 2019 (until the pandemic), demonstrating consumers are benefiting from booking a journey in a single itinerary, online connections (i.e., simplifying the journey through reducing the need for bookings, baggage collection, and check-ins), and centralised contact centres
  - improved connections for consumers through coordinating flight schedules on a number of routes, for example Melbourne-Singapore-Phuket, Melbourne-Singapore-Jakarta, and services through Osaka
  - better schedule spread on overlapping routes prior to the pandemic, such as coordination on the Osaka-Taipei and Singapore-Perth routes.
- 4.17. The Applicants refer to the Osaka-Manila route which, together with other routes such as Osaka-Taipei played an important role in providing feeder traffic to other parts of the Jetstar low-cost carrier network. The Applicants submit that feeder traffic from Jetstar Airways flights from Australia to Singapore are important to support the commercial viability and level of frequencies on Jetstar Asia services.
- 4.18. The ACCC accepts that Conduct has enabled the Applicants to put on extra frequencies, spread their flight schedules on overlapping routes and better coordinate flight schedules of the parties to improve customer connections on a number of routes since the 2013 Authorisation (prior to the pandemic). The extent of public benefit conferred by this depends on the extent to which these additional frequencies and scheduling changes are valued by consumers in Australia.
- 4.19. The ACCC also accepts that consumers value online connections more than interline connections<sup>18</sup> since they are more convenient. Online connections can mean not

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<sup>18</sup> Interline connections are flight connections between two different codes.

having to collect and recheck baggage mid journey and a reduced risk of forfeiting non-refundable fares if the first flight of a multi-flight journey is delayed. The ACCC considers there are clear benefits to consumers from the additional online connection options for customers as a result of the Conduct.

4.20. The ACCC considers the Conduct is likely to result in public benefits by enhancing products and services for consumers through:

- increased frequencies, spread of schedules on overlapping routes and better customer connections through coordination of flight schedules.
- online connections to a variety of destinations in Asia through one portal.

4.21. The ACCC accepts that the Conduct has contributed to Joint Venture airlines' decisions to fly to new destinations but does not accept that this will result in material public benefits, as consumers likely will have access to each new destination absent the Conduct by flying with the Jetstar network<sup>19</sup> or a rival airline.

### **Cost savings and economic efficiencies**

4.22. Coordination between airlines can facilitate cost savings and economic efficiencies through rationalisation of duplicated fixed costs, better capacity utilisation, and exploitation of synergies through joint marketing and investment (e.g. in IT systems). Cost savings and efficiencies can confer public benefits when they are shared with consumers, for example as lower prices or better services, or release resources for use elsewhere in the economy.

4.23. The Applicants submit that benefits have arisen in the form of cost savings and economic efficiencies, which have resulted in lower fares and innovations. Examples include through:

- centralised negotiations with suppliers in the form of volume discounts from suppliers, and administration and negotiation cost savings
- centralisation of some Group operations
- IT, such as the development of the Jetstar app, centralised customer support, and central management of charter services
- central management of customer service, complaints and feedback.

4.24. The Applicants submit that cost savings and economic efficiencies have flowed through to enable the Jetstar Group to offer innovative services such as:

- Club Jetstar membership program
- 'pay in your own currency' offering Flex Bundle package, allowing customers greater flexibility such as flight changes
- Fare Credit product, enabling customers to cancel bookings and get a credit voucher
- Voucher scheme and balance checker program, allowing customers to check their voucher credit balance
- Qantas frequent flyer point redemption across the Jetstar Group

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<sup>19</sup> The ACCC considers that in the future without the Conduct each Jetstar joint venture airline would continue to operate and access Jetstar Airways support (see paragraph 4.9).

- Jetstar Trips updated Jetstar app.
- 4.25. The ACCC considers that a significant proportion of the cost savings and efficiencies claimed by the Applicants would be realised with or without the Conduct. The ACCC notes that in the future without the Conduct, each Jetstar Joint Venture airline would continue to access Jetstar Airways support in relation to most aspects of their operation, including network and fleet strategy, scheduling, pricing, IT, marketing and customer service.
- 4.26. Nevertheless, the ACCC considers the conduct would likely allow the Applicants to achieve cost savings and efficiencies that are incremental to those likely in the future without the Conduct, as a result of more effective network/fleet planning, schedule optimisation, pricing/revenue management and joint marketing initiatives.
- 4.27. The ACCC considers it is likely that a significant proportion of these cost savings and efficiencies would be passed on to consumers in the form of lower airfares and better service, given the level of competition the Applicants face in the relevant market/s (or will face following further recovery from the pandemic).

### **Promotion of competition**

- 4.28. The ACCC has previously accepted that aviation alliances can trigger a competitive response from rivals when they substantially enhance the alliance's product and service offering and/or results in lower fares.
- 4.29. The Applicants submit that the arrangements have elicited competitive responses to the Jetstar Group's conduct under the current authorisation, including:
- AirAsia's introduction of a new baggage product allowing additional carry-on baggage (two years after Jetstar launched a similar product)
  - Virgin Australia's 'unbundling' of checked baggage from its base fare, similar to Jetstar's 'choice model'
  - Scoot's launch of a-la-carte flexibility products, similar to Jetstar's Fare Credit product, offering customers the ability to purchase additional flexibility
  - Scoot and Singapore Airline's decisions towards a dual brand strategy, following the successful development of the Applicants' dual brand strategy.
- 4.30. The ACCC notes the Australian Federation of Travel Agents' submission that the Conduct may entrench Qantas Group's market power in Australia and provide the Qantas Group with additional control on Asia-Pacific routes and routes that are part of a multi-stop journey to or from Australia.
- 4.31. The ACCC also notes the Applicants' response that, as part of the same corporate group, Qantas and Jetstar Airways coordinate on domestic Australia routes regardless of the Conduct and Qantas Group faces strong competitive constraints from competitors on routes to/from and within the Asia-Pacific region, including multi-stop options.
- 4.32. The ACCC considers that Qantas Group's power in the Australian domestic aviation market is not materially altered by the Conduct. While the competitive constraints that Qantas Group faces on routes between Australia and Asia and within Asia may be weaker presently due to the pandemic, it is not clear that the Conduct materially enhances Qantas Group's market power in these market/s. The ACCC notes that absent the Conduct, the existing Jetstar entities would continue to operate as low-cost carriers and receive Jetstar Airways support and there would be no significant rivalry between Qantas, Jetstar Airways and any Joint Venture airline (see paragraph 4.9).

4.33. The ACCC accepts that the Conduct will assist the Applicants to offer an integrated service. The ACCC considers that this integrated service offering is likely to trigger a competitive response from rivals seeking to match or beat the Applicant's offering in the same market/s, increasing the benefit to consumers. This is likely to result in some public benefit.

### **Increased tourism to Australia**

4.34. In previous decisions the ACCC has recognised the potential for airline alliances to confer public benefits by increasing demand for tourism in Australia and increased spending by tourists when they get here. Airline alliances can boost tourism in Australia by enhancing the product and service offering of the alliance partners and allowing them to engage in joint rather than individual tourism promotion activity.

4.35. The Applicants submit that, while it is difficult to calculate the proportion of the growth in inbound tourism to Australia directly attributable to the conduct, it is likely that a substantial portion of the growth in leisure passenger traffic to Australia from China, Japan, New Zealand and Singapore from 2012 until the pandemic is attributable to passengers coming to Australia on Jetstar low-cost carrier flights. The Applicants also submit that connections between Jetstar low-cost carrier services will have made many of these passenger journeys more affordable and accessible to tourists from key markets.

4.36. The Applicants submit that, whilst the ACCC has noted there are several factors driving inbound tourism and expenditure within Australia, the ACCC has, in the context of other authorisations, recognised that increased connectivity and convenience of combined networks like the Jetstar Group is likely to promote greater inbound tourism. The Applicants submit this is applicable to the Jetstar Group since it connects a significant number of destinations to Australia into gateway cities, secondary cities, and regional destinations. The Applicants also cite a number of examples and statements from tourism bodies that the Jetstar Pan-Asia Strategy will increase inbound tourism to Australia.

4.37. The ACCC accepts that stimulation of tourism is a potential source of public benefit from the Conduct. However, the extent of benefit is dependent on the level of additional passenger traffic as a result of the proposed conduct.

4.38. The ACCC considers that the main way in which the Conduct is likely to stimulate additional passenger traffic is through increased online connections making it easier for residents of Asian countries to holiday in Australia and for Australians to holiday in Asia. If this generates a net increase in passenger traffic from points in Asia to Australia (compared to the future without the Conduct), the ACCC accepts that the Conduct would be likely to benefit Australian businesses and individuals involved in Australia's tourism industry.

As noted at paragraph 4.9, the ACCC considers that, in the likely future without the Conduct, the two Joint Venture airlines would continue to operate as low-cost carriers and continue to access Jetstar Airways support in relation to:

- network, scheduling and fleet strategy
- products, pricing and distribution
- sales, marketing and customer service activities as provided for in the Business Services Agreements.

4.39. The ACCC therefore considers that a large portion of any increased passenger traffic that may be stimulated by the Applicant's Jetstar Pan-Asia Strategy is likely to be realised in the future without the Conduct.



4.40. The ACCC also notes the alternative air passenger service offerings of other airlines competing to supply services to potential tourists wishing to visit Australia and has had regard to a number of other factors that are likely to be more significant determinants of inbound tourism numbers and spend, including: general purchasing power in source countries; the relative cost of other destinations; the total cost of visiting Australia; and the perceived quality of Australia as a destination.

4.41. On balance, the ACCC is not satisfied that there is sufficient evidence that would establish the Conduct is likely to result in a public benefit in the form of increased tourism in Australia.

### **ACCC conclusion on public benefit**

4.42. The ACCC considers that the Conduct is likely to result in public benefits from:

- enhanced products and services, in the form of increased frequencies, better schedule spread, better connection options through coordination of schedules, and online connections to destinations in Asia through one portal
- economic efficiencies and cost savings by allowing the parties to the Joint Venture Coordination Agreement to reduce costs and realise economic efficiencies and pass them through to consumers in the form of lower airfares or better services
- increased competition by stimulating a competitive response from other airlines operating in the relevant market/s.

### **Public detriments**

4.43. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.<sup>20</sup>*

4.44. The Applicants submit the Conduct will not have the effect or likely effect of lessening competition in the market for air travel services between destinations in Australia and Asia by leisure passengers or in any other relevant market because:

- the constraint provided by vigorous and effective competitor airlines operating on the relevant routes
- there is no significant rivalry between:
  - Qantas, Jetstar Airways and any Jetstar Joint Venture
  - Jetstar Japan and Japan Airline
  - the Jetstar Joint Venture airlines
- the Conduct does not extend to coordination between full service airlines or between a full service airline and an unrelated Joint Venture airline and therefore does not alter the relevant airlines' incentives and ability to compete.

4.45. The ACCC has considered the following public detriments:

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<sup>20</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

- unilateral effects, through enhancing the ability or incentive of one or more of the airlines engaging in the Conduct to unilaterally raise price or reduce service on routes where they overlap
  - coordinated effects, through making it easier for airlines operating in the relevant market(s), or on particular routes, to successfully coordinate on price, capacity, or related commercial decisions.
- 4.46. The ACCC notes the submission made by Australian Federation of Travel Agents that the Conduct has the potential to generate less competition on the distribution of airfares because the Applicants are likely to use their ability to coordinate to grow their direct sales channel to the detriment of the travel agents' ability to distribute airfares.
- 4.47. The ACCC understands that Australian Federation of Travel Agents, in making this submission, is referring to a broader industry practice regarding the distribution of airfares by airlines that is not confined or unique to the Applicants and does not differ as between the future with or without the Conduct. Accordingly, the ACCC considers that further consideration of an industry-wide practice relating to distribution of airfares is not necessary for assessment of the potential public detriments of the Conduct.

### **Unilateral effects**

- 4.48. The ACCC has considered whether, by permitting the Applicants to share revenue and coordinate schedules on certain routes, the Joint Venture Coordination Agreement may reduce the competitive constraints on the Applicants, allowing them to raise prices or reduce service without affecting their ability to attract customers. If so, this could create public detriment through increased prices and degraded services.
- 4.49. To understand the impact of the Conduct, the ACCC assesses the Conduct on three kinds of routes:
- routes where Joint Venture airlines coordinate with each other
  - routes where a Joint Venture airline coordinates with an unrelated full services airline
  - routes where a Joint Venture airline coordinates with their related full services airline.

### Joint Venture airline coordination

- 4.50. The Joint Venture Coordination Agreement provides that where the operations of two Jetstar Branded Airlines overlap, they are able to coordinate on schedules and price, as well as share revenue. The Applicants advise that there are currently no routes operated by two Jetstar low-cost carriers. Prior to the pandemic, during the 2018/19 financial year, two or more Jetstar low-cost carriers operated on Singapore-Bali, Manila-Osaka, and Taipei-Osaka routes.
- 4.51. As air passenger demand recovers in the region following the COVID-19 pandemic, it can be expected that there may again be routes on which two Jetstar low-cost carriers operate (or would operate, but for the Conduct).
- 4.52. The Applicants submit that if and where two Jetstar low-cost carriers operated on the same route, the airlines would operate under a common brand and 'go to market strategy' to offer additional frequencies at better times.
- 4.53. These instances are set out in the table below.

**Table 1: Routes where Joint Venture airlines coordinate, FY 2018/19<sup>21</sup>**

<b>Route</b>	<b>Joint venture airlines operating</b>	<b>Number of non-party competitors</b>	<b>Combined Joint Venture airlines market share</b>
Singapore – Bali (Denpasar)	Jetstar Asia and Jetstar Airways	6	15.3%
Manila - Osaka	Jetstar Asia and Jetstar Japan	2	22.38%
Taipei - Osaka	Jetstar Asia, Jetstar Japan, Japan Airlines	8	14.18%

4.54. The ACCC notes that prior to the COVID-19 pandemic there was strong demand and a significant number of competitors operating within Asia, including on routes on routes on which the Joint Venture airlines overlapped. These competitors included both full service airlines and low-cost carriers.

4.55. The Applicants have not provided current market information. In the absence of this information, the ACCC considers it is possible that it may take some time before the state of competition to supply air passenger services within Asia is as competitive as it was prior to the pandemic.

4.56. Nevertheless, the ACCC considers that the parties of the Joint Venture Coordination Agreement are likely to be constrained in their ability to act unilaterally to raise prices or reduce services without losing customers, by other carriers operating within Asia and the threat of new entry.

4.57. Therefore, the ACCC considers that the Conduct is likely to result in minimal, if any, public detriment stemming from unilateral conduct on routes operated by two Jetstar low-cost carriers.

Coordination with unrelated full service airlines

4.58. The ACCC considers that it is also necessary to assess the impact of the Conduct in instances of multiple overlap coordination. These are routes where two Joint Venture airlines are operating alongside the related full service airline of one Joint Venture airline. This is the only situation in which coordination between an full service airline and an unrelated Joint Venture airline is permitted under the Conduct.

4.59. In the past there was multiple overlap coordination on the Taipei-Osaka route. However, the ACCC understand there are no longer any routes where a Jetstar Joint Venture airline, its local full service airline shareholder and another Jetstar low-cost carrier all operate or potentially operate.

4.60. Accordingly, the ACCC considers that the Conduct is likely to result in minimal, if any, public detriment stemming from unilateral conduct in instances of multiple overlap coordination.

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<sup>21</sup> Qantas' application for re-authorisation dated 14 November 2022 at Annexure B provides the data utilised as at FY2018/19.

### Coordination with related full service airlines

- 4.61. The only full service airline and related Joint Venture airline pair for which the Applicants have sought authorisation for coordination is Jetstar Japan and Japan Airlines.
- 4.62. The Conduct would allow Jetstar Japan and Japan Airlines to coordinate on the following domestic routes (within Japan) on which Jetstar Japan and Japan Airlines overlap: Sapporo–Osaka; Sapporo–Nagoya; Sapporo-Tokyo; Fukuoka-Tokyo; Osaka-Naha; Nagoya-Osaka.
- 4.63. There are currently no overlaps between Jetstar Japan and Japan Airlines’ services on international routes to/from Japan because international travel restrictions in Japan and China have only recently been eased. However, pre-pandemic, there was overlap on the following international routes: Tokyo-Hong Kong; Tokyo-Manila; Taipei-Tokyo; Nagoya-Taipei; Shanghai-Tokyo.
- 4.64. In the future without the Conduct, the ACCC considers there is unlikely to be significant competition between Japan Airlines and Jetstar Japan, due to Japan Airlines ownership interest in Jetstar Japan. As explained at paragraph 4.9, the ACCC considers that the ownership structure and board composition of each Joint Venture airline would remain the same in the likely future without the Conduct.
- 4.65. The ACCC also considers that the Joint Venture Coordination Agreement airlines are likely to be subject to robust competition on each of these routes as the industry recovers from the COVID-19 pandemic. This is likely to constrain the Joint Venture Coordination Agreement airlines’ ability to raise prices or decrease service without repercussions.
- 4.66. Therefore, the ACCC considers that the Conduct is likely to result in little, if any, public detriment on these routes.

### Pricing

- 4.67. The ACCC has considered the Australian Federation of Travel Agents’ submission that Qantas Group has increased prices without increasing capacity.
- 4.68. The ACCC considers that current high prices, which are influenced by pandemic-induced market conditions, may continue for a time with or without the Conduct. The ACCC therefore considers that the Conduct is likely to result in minimal, if any, public detriment while international air travel services continue to recover from the pandemic.<sup>22</sup>

### **Coordinated effects**

- 4.69. In addition to unilateral effects, airline alliances can lessen competition by assisting airlines (not only the alliance partners) to implicitly or explicitly coordinate their pricing, capacity, scheduling or quality of service decisions. They can do this by removing or significantly weakening competitive constraints or otherwise altering market conditions to make coordination among airlines more likely. This is referred to as coordinated effects and can have a significant negative impact on consumers.
- 4.70. By authorising the Conduct and therefore allowing the parties to coordinate under the Joint Venture Coordination Agreement, there may be a risk that barriers to broader coordination, beyond the scope of the agreement, are reduced or removed.

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<sup>22</sup> See section 2.3 of the ACCC report Airline competition in Australia dated December 2022.

- 4.71. The ACCC notes that the Conduct for which reauthorisation is sought does not include coordination between Qantas and Japan Airlines, or between Jetstar low-cost carriers and Japan Airlines (except as between Jetstar Japan and Japan Airlines on overlapping or potentially overlapping routes, and in multiple overlap coordination). The Conduct does not permit information sharing beyond the scope of the Joint Venture Coordination Agreement.
- 4.72. The Applicants advise that they provide regular compliance training to all Jetstar Group executives and relevant commercial employees, to ensure that executives and employees know not to provide confidential information outside the scope of the authorisation.
- 4.73. The ACCC considers that the Conduct does not meaningfully increase the likelihood that parties will more broadly coordinate or share information (in breach of Australian and overseas competition laws) beyond the risk that would exist in a future without the Conduct. Therefore, the ACCC considers that the Conduct is not likely to cause any public detriment from increased risk of coordinated effects.

### **ACCC conclusion on public detriment**

- 4.74. The ACCC considers that the Conduct is unlikely to result in public detriments in the form of:
- unilateral effects, through enhancing the ability or incentive of one or more of the airlines engaging in the Conduct to unilaterally raise price or reduce service on routes where they overlap given the competition they face from other airlines on relevant routes.
  - coordinated effects, through making it easier for airlines operating in the relevant market(s), including on particular routes, to successfully coordinate on price, capacity, or related commercial decisions.

### **Balance of public benefit and detriment**

- 4.75. The ACCC considers that the Conduct is likely to result in public benefits in the form of:
- enhanced products and services
  - cost savings and economic efficiencies
  - promotion of competition.
- 4.76. The ACCC considers that the Conduct is unlikely to result in public detriment in the form of:
- unilateral effects
  - coordinated effects.
- 4.77. Therefore, for the reasons outlined in this draft determination, the ACCC is satisfied that the Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Conduct.
- 4.78. The ACCC has considered the conditions proposed by the Australian Federation of Travel Agents as outlined in paragraph 3.6 above; however, the ACCC does not consider that the conditions are necessary for the ACCC to be satisfied that the authorisation test is met.

## Length of authorisation

- 4.79. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>23</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 4.80. In this instance, the Applicants seek re-authorisation for 10 years. The Applicants submit that this term is appropriate because:
- The Asia-Pacific region has historically been (prior to the pandemic) and continues to be, characterised by vigorous competition in airline passenger services, including within the low cost-segment.
  - The term will provide regulatory certainty over the medium to long term, supporting flexibly managing the deployment of capital across the Jetstar Group and enabling long-term investments to be made.
  - The Conduct has not and would not result in any anti-competitive detriments and would result in substantial public benefits over a 10-year period.
  - Under the existing authorisation, the Jetstar low-cost carrier network has grown in response to growth in airline passenger services in the Asia-Pacific region, with expected continued growth over the next 20 years.
  - Aviation markets in the Asia-Pacific region have been characterised by new entry and expansion, including many low-cost carriers.
  - The Conduct has not resulted in any anti-competitive detriment over the 10-year period of the current and previous authorisation.
  - The significant public benefits which have arisen and will continue to arise.
  - The international aviation regulatory environment makes it impossible for the Qantas Group to wholly or majority own airlines in almost all Asian jurisdictions.
  - A 10-year term will reduce transaction costs and help with cost efficiencies.
- 4.81. The ACCC notes the Australian Federation of Travel Agents' submission that an authorisation period beyond 5 years would be presumptive in circumstances where massive transformations are occurring across the travel industry in a rapidly evolving post-pandemic landscape.
- 4.82. The ACCC acknowledges that the travel industry is dynamic and rapidly evolving as it continues to recover and respond to the impacts of COVID-19. The Applicants also acknowledge that while international travel is recovering, the path to recovery is challenging and evolving.<sup>24</sup>
- 4.83. The ACCC considers that the risk of public detriments is low in circumstances where Qantas and the Jetstar low-cost carriers offer complementary services and face competition from a number of other airlines. However, the challenging and evolving nature of the relevant market means that review of the Conduct should take place sooner than proposed by the Applicants.

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<sup>23</sup> Subsection 91(1) of the Act.

<sup>24</sup> See Qantas' application for re-authorisation dated 14 November 2022 at [5.7.4]

4.84. The ACCC therefore proposes to grant re-authorisation for a period of 5 years.

## 5. Draft determination

### The application

- 5.1. On 14 November 2022 the Applicants lodged an application to revoke authorisation AA1000395 and substitute authorisation AA1000626 for the ones revoked (referred to as re-authorisation). This application for re-authorisation AA1000626 was made under subsection 91C(1) of the Act.
- 5.2. The Applicants seek authorisation for Conduct as described in paragraph 1.17. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

### The authorisation test

- 5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Conduct.
- 5.4. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Conduct, including any lessening of competition.
- 5.5. Accordingly, the ACCC proposes to grant re-authorisation.

### Conduct which the ACCC proposes to authorise

- 5.6. The ACCC proposes to revoke authorisation AA1000395 and grant authorisation AA1000626 in substitution. Authorisation AA1000626 is proposed to enable the Applicants to engage in the Conduct as described in paragraph 1.17.
- 5.7. The Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act, may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
- 5.8. The ACCC proposes to grant authorisation AA1000626 for 5 years.
- 5.9. This draft determination is made on 3 March 2023.

## 6. Interim authorisation

- 6.1. The ACCC has decided to suspend the operation of authorisation AA1000395 and has granted interim authorisation in substitution for the authorisation suspended.
- 6.2. At the time of lodging the application, the Applicants requested interim authorisation to facilitate immediate discussions and planning so that a network rebuild plan can continue to be developed and supported seamlessly while the ACCC considers the substantive application.
- 6.3. The Applicants believe that interim authorisation should be granted on the basis that:
  - The Conduct is inherently pro-competitive, and will be implemented in an increasingly competitive market as consumer demand recovers.

- The Conduct continues existing coordination which has delivered substantiated public benefits.
- Interim authorisation will allow the opportunity to continue to work together seamlessly while also minimising financial harm, uncertainty, and disruption.
- Interim authorisation will not cause detriment to others.
- Interim authorisation will not give rise to permanent changes to the market because the parties have already been coordinating under the existing 2018 reauthorisation.
- In the current circumstances, the Jetstar Group needs to move quickly and be responsive to any changes in market dynamics in a post-pandemic environment.

6.4. The ACCC has decided to grant interim authorisation for the Conduct as defined at 1.17. In granting interim authorisation, the ACCC has taken into account:

- It is unlikely that interim authorisation would have any significant impact on the status quo. Noting that the Applicants are authorised to engage in the Conduct until 31 March 2023, and the application for authorisation does not expand ways in which the Parties can coordinate, interim authorisation effectively allows the Applicants to continue with the Conduct while the ACCC considers the application for reauthorisation.
- With the Existing Authorisation due to expire on 31 March 2023, there is some urgency for the Applicants to have certainty that they will be able to continue planning how they would cooperate, and to then coordinate, their operations beyond that date.
- The Conduct is unlikely to cause significant harm due to its limited impact on competition, even on routes on which Qantas and the Jetstar entities would potentially overlap.

6.5. Interim authorisation commences immediately and remains in place until it is revoked, the application is withdrawn, or the date the ACCC's final determination comes into effect.

## 7. Next steps

7.1. The ACCC now invites submissions in response to this draft determination. In addition, consistent with section 90A of the Act, the Applicants or an interested party may request that the ACCC hold a conference to discuss the draft determination.