



Draft Determination and interim authorisation decision

Application for authorisation AA1000540
lodged by
Qantas Airways Limited and Japan Airlines Co. Ltd.
in respect of
a Joint Business Agreement
Authorisation number: AA1000540

Date: 6 May 2021

Commissioners: Sims
Keogh
Rickard
Brakey
Court
Crone
Ridgeway

Summary

The ACCC has decided not to grant interim authorisation, and proposes to deny authorisation, for a Joint Business Agreement between Qantas Airways Limited and Japan Airlines Co Ltd for the coordination of their operations between Australia/New Zealand and Japan.

The ACCC considers that by eliminating competition between Qantas and Japan Airlines on routes between Australia and Japan, the proposed coordination is likely to result in significant public detriments. Prior to the COVID-19 pandemic, Qantas and Japan Airlines were the only two airlines operating direct flights on the Melbourne – Tokyo route. On the Sydney – Tokyo route they were two of only three airlines operating direct flights, the other being All Nippon Airways.

The ACCC considers that the proposed coordination is likely to give Qantas and Japan Airlines an increased ability and incentive to unilaterally reduce capacity, or limit growth in capacity, relative to that which would occur in the absence of the arrangements, thereby allowing them to increase airfares on the Melbourne – Tokyo and/or Sydney – Tokyo routes. The ACCC notes that due to international flight restrictions resulting from the COVID-19 pandemic, demand for travel between Australia and Japan is significantly lower than historical levels and the timing, pace, and extent of a recovery in demand is uncertain. However, as passenger numbers return to pre COVID-19 levels the elimination of competition between Qantas and Japan Airlines is likely to result in significant public detriment.

It is difficult to predict with any certainty the timing and extent of the likely recovery in travel between Australia and Japan. However, the ACCC considers that the most likely outcome is that over the three years for which authorisation is sought, that is until mid-2024, there will be a material recovery in passenger numbers between Australia and Japan. Accordingly, the ACCC considers that the anti-competitive detriment resulting from the proposed coordination is likely to increase over time as demand recovers, and is likely to be significant by the later stages of the three year period for which authorisation is sought.

The ACCC considers that the arrangements are also likely to result in some public benefits. In the context of the significant disruption to international travel resulting from the COVID-19 pandemic, the ACCC considers that coordination between Qantas and Japan Airlines is likely to result in a faster reinstatement of capacity between Australia and Japan, and potentially a wider range of routes. The coordination is also likely to result in public benefits in the form of better connectivity, shorter journey times, a better spread of scheduled flights, and loyalty program benefits. The proposed coordination may result in some very limited additional stimulation of inbound tourism (in the short term as travel restrictions ease) as compared to the likely more gradual return of capacity under open competition.

The ACCC is not satisfied that the public benefit likely to result from proposed coordination will outweigh the likely public detriment.

In these circumstances, the ACCC also does not consider it appropriate to grant interim authorisation.

The ACCC invites submissions in relation to this draft determination, by 27 May 2021, before making its final decision.

1. The application for authorisation

- 1.1. On 18 December 2020, Qantas Airways Limited (**Qantas**) and Japan Airlines Co Ltd (**JAL**) (together, the **Applicants**) lodged application for authorisation AA1000540 with the Australian Competition and Consumer Commission (the **ACCC**). The Applicants are seeking authorisation for a Joint Business Agreement in relation to their operations across a range of routes between Australia/New Zealand and Japan for three years. This application for authorisation AA1000540 was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.2. The ACCC may grant authorisation, which provides businesses with legal protection for arrangements that may otherwise risk breaching the competition provisions in Part IV of the Act but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.3. The Applicants also requested interim authorisation to enable them to engage in conduct while the ACCC is considering the substantive application. The application for interim authorisation is discussed further at paragraphs 1.16 and 1.17.

The Applicants

Qantas Airways Limited

- 1.4. Qantas was incorporated in Australia in 1920 and is Australia's largest domestic and international airline.
- 1.5. Prior to the COVID-19 pandemic, the Qantas Group operated 4,500 domestic and 730 international flights each week using two airlines: Qantas, a full service carrier offering domestic and international services; and Jetstar, a low cost carrier offering domestic and international services, predominantly focussed on servicing price sensitive consumers.
- 1.6. The Qantas Group is currently a party to the following airline alliances:
 - an alliance with Emirates, which was re-authorised by the ACCC for five years on 23 March 2018
 - an alliance with American Airlines pursuant to a Joint Business Agreement which was re-authorised by the ACCC for five years on 25 March 2021, and
 - an alliance with China Eastern Airlines pursuant to a Joint Coordination Agreement which was reauthorised by the ACCC on 29 January 2021 until 31 March 2023.
- 1.7. Qantas also has an extensive network of codeshare partners.
- 1.8. Qantas established Jetstar Japan in 2012 as a joint venture with JAL in relation to domestic and short haul international services from Japan. The Applicants submit that Jetstar Japan is not included in the scope of the application as it will not be involved in coordination on long haul international routes between Australasia and Japan.

Japan Airlines Co Ltd

- 1.9. JAL is a full-service airline and is Japan's second largest airline. Its main hubs are at Tokyo's Haneda International (**Haneda**) and Narita International (**Narita**) airports, with secondary hubs at Osaka's Kansai International and Itami airports.

- 1.10. JAL was incorporated in Tokyo, Japan in 1951, and was a state owned carrier from 1953 until privatisation in 1987. JAL Group has several wholly and partially owned domestic focussed subsidiary airlines, and in 2018 established ZIPAIR as an international focussed low-cost subsidiary. ZIPAIR commenced operations June 2020, and has not announced plans to offer Japan-Australia flights.
- 1.11. Prior to the COVID-19 pandemic, JAL operated 6,000 flights in Japan and 1000 international flights per week with a fleet of 241 aircraft.
- 1.12. JAL has a domestic and international network through East Asia, Southeast Asia, Europe and North America, and is engaged in joint businesses with American Airlines, British Airways, Finnair, Iberia and Malaysia Airlines.

The Proposed Conduct

- 1.13. The Applicants are seeking authorisation for themselves and their relevant related bodies corporate to give effect to a Joint Business Agreement (**JBA**) and associated agreements. The JBA provides for coordination of their operations between Australia/New Zealand and Japan. The proposed coordination between the Applicants is in respect of:

- marketing and sales
- pricing
- scheduling
- distribution strategies and agency arrangements
- yield and inventory management
- frequent flyer programs
- lounges
- joint procurement
- product and service standards
- cargo.

(the **Proposed Conduct**)¹

- 1.14. The Applicants have sought authorisation for three years.²
- 1.15. The Applicants submit that a founding principle of the JBA is that it is metal neutral.³ This is a particularly close form of cooperation under which Qantas and JAL will effectively form a joint business. They will have no incentive to compete with each other and will instead be indifferent as to which joint flight a customer chooses on services between Australasia and Japan. This incentivises the Applicants to allow

¹ The Applicants submit that the precise scope of the Proposed Conduct will evolve over its term and may be altered from time to time.

² Although the Applicants have only sought authorisation for 3 years, Qantas has announced that that the proposed agreement's duration is for 5 years. <https://www.qantasnewsroom.com.au/media-releases/qantas-and-japan-airlines-to-form-joint-business-to-drive-tourism-recovery/>

³ In an alliance, metal neutrality occurs when a member airline is indifferent commercially between a passenger flying on their own or their partner's airline (metal), such that member airlines become neutral in their marketing, pricing and capacity decisions as to which airline their customers' fly on.

each other access to the full inventory of available seats whether the customer is seeking to book a journey on either or both carriers.

- 1.16. The Applicants also requested interim authorisation to enable them to engage in the Proposed Conduct while the ACCC is considering the substantive application. The Applicants submit that they must commence working together immediately to plan for recovery from COVID-19 and that without interim authorisation there will be ongoing uncertainty.
- 1.17. In light of the ACCC's proposal to deny authorisation to the substantive application and the reasons outlined in this draft determination, the ACCC does not consider it appropriate to grant interim authorisation.

2. Background

The Applicants' operations between Australia and Japan

- 2.1. The Applicants submit that Japan was Australia's fifth largest inbound market in 2019, with an increase in short-term arrivals of 6.3% on the previous year. Passenger air traffic from Japan to Australia grew by 40% from 2014-2018 inclusive and, prior to the COVID-19 pandemic, it was estimated that Japanese tourists would contribute \$3.7 billion to the Australian economy by 2026-2027. Between 2015 and the start of the COVID-19 pandemic, there had been a 10% average annual increase in Japanese visitor numbers to Australia and a 16% annual increase since 2015 in Australian residents departing for short term stays in Japan.
- 2.2. Prior to the COVID-19 pandemic, the Applicants operated the following direct services between Japan and Australia:
 - Qantas operated daily services to Tokyo from each of Sydney, Melbourne and Brisbane in addition to Sydney – Osaka four times a week and Sydney – Sapporo on a seasonal basis.
 - Jetstar operated daily services between Cairns – Tokyo, Cairns – Osaka and Gold Coast – Tokyo.
 - JAL operated daily services between Tokyo – Sydney and Tokyo – Melbourne.
- 2.3. The Applicants submit that they currently have a limited arms-length codeshare agreement. Under the agreement, Qantas codes on certain JAL operated services from Singapore to Tokyo. JAL codes on certain Qantas operated services from Australia to Singapore, Qantas' Sydney-Auckland service, and Jetstar services from the Gold Coast and Cairns to Japan. There is currently no other codeshare on routes between Australia and Japan, the Tasman, or on any domestic Australia/New Zealand or Japan services.
- 2.4. The Applicants submit that absent the proposed alliance they would likely continue with this codeshare agreement.

Other airlines operating between Australia and Japan

- 2.5. The Applicants submit that other than themselves the main carriers that were (or were planning on) operating direct services between Australia and Japan before the COVID-19 pandemic include:

- All Nippon Airways (**ANA**), which is Japan's largest airline by passenger and revenue numbers, one of the leading airline groups in Asia, and a member of the Star Alliance. ANA has operated daily Sydney-Tokyo services since 2015, and prior to the COVID-19 pandemic, planned on launching a second daily service in March 2020. ANA also commenced daily services between Perth and Tokyo in September 2019.
- Virgin Australia (**Virgin**) did not operate services between Australia and Japan prior to the COVID-19 pandemic, however it planned to commence a Brisbane – Tokyo service in March 2020. Due to COVID-19 travel restrictions it was unable to do so.
- The Applicants note that in January 2020 ANA and Virgin announced a codeshare arrangement which enabled ANA passengers to codeshare on some Virgin domestic routes with plans, at the time, to expand the codeshare to international and domestic Japan routes.

2.6. In addition, the Applicants submit that the Australia – Japan routes were serviced by the following indirect operators prior to the COVID-19 pandemic:

- Singapore Airlines, which is the flag carrier of Singapore with its main hub based at Singapore Changi Airport. Singapore Airlines and its subsidiary SilkAir operated the third highest number of international flights to Australia (servicing Cairns and all capital cities excluding Hobart and Canberra) offering daily services with onward connections to six destinations in Japan
- Cathay Pacific, which is the flag carrier of Hong Kong and based at the Hong Kong International Airport. Cathay Pacific operated 76 weekly services to 5 destinations in Australia, and 118 weekly return services to nine destinations in Japan in conjunction with its subsidiary Cathay Dragon
- Air New Zealand, operating services via Auckland
- Philippine Airlines, operating services via Manila
- China Airlines, operating services via Taipei
- Thai Airways, operating services via Bangkok, and
- Malaysia Airlines, operating services via Kuala Lumpur.

Impact of COVID-19

2.7. The COVID-19 pandemic has led to significant disruptions to air passenger services. In the early stages of the COVID-19 pandemic the Australian Government imposed restrictions on both entering and leaving Australia.⁴ These restrictions remain in place, however as of 18 April 2021, the Australian Government has introduced a New Zealand safe travel zone, allowing quarantine free travel between Australia and New Zealand without the need to apply for a travel exemption.⁵

⁴ <https://covid19.homeaffairs.gov.au/travel-restrictions>

⁵ <https://covid19.homeaffairs.gov.au/new-zealand-safe-travel-zone>

- 2.8. The Applicants submit that the airline industry remains in crisis as a result of the COVID-19 Pandemic. They note that IATA forecasts it will be at least 2024 by the time global passenger traffic recovers to pre COVID-19 levels.⁶
- 2.9. The Qantas Group has been forced to suspend all passenger operations to Japan and JAL is currently operating only a limited three passenger services per week between Tokyo and Sydney. In respect of freight operations, Qantas operates a once weekly freighter service from Brisbane to Narita under the government supported International Freight Assistance Mechanism program, and JAL was, at the time the application was lodged, operating a limited freight service to Melbourne and Brisbane through to February 2021.

Rationale for the Proposed Conduct

- 2.10. Qantas and JAL submit that the Proposed Conduct is critical to sustainably restoring air links across a wide range of routes between Australasia and Japan post COVID-19, and that without the Proposed Conduct there would be a concentration of reinstated services by them on the key Sydney – Tokyo route with overlapping flying. The Applicants submit that the Proposed Conduct will deliver improved scheduling choice and more destinations through:
- on Sydney to Tokyo, a more certain and sustainable reinstatement of services operated by both carriers
 - on Melbourne to Tokyo, an accelerated reinstatement of daily services operated by both carriers with the ability to offer complementary schedules
 - on Brisbane to Tokyo, two additional weekly frequencies operated by Qantas
 - on Sydney to Osaka and Sydney to Sapporo, a faster return of Qantas services
 - potentially increased frequencies and/or gauge operated by Qantas on the Tasman, if the additional codeshare services generate higher loads of passengers transiting from New Zealand onto Japan via Australia, and
 - the possible introduction of new services between Australia and Japan, being a new Cairns to Tokyo service which may commence during 2022.
- 2.11. The Applicants advised the ACCC of their future plans and anticipated timeframes for re-commencing services on these routes with and without the JBA in place on a confidential basis.
- 2.12. The Applicants submit that, in addition, the Proposed Conduct will enable them to:
- expand their existing codeshare relationship, giving consumers increased connectivity and schedule choice on routes between Australia and Japan as well as through access to more destinations 'behind and beyond' the major city gateways
 - offer enhanced frequent flyer benefits for Qantas and JAL customers, including improving earn for members of the other carrier's frequent flyer program on joint business routes

⁶ International Air Transport Association media release 'Recovery delayed as international travel remains locked down,' 28 July 2020. Available: <https://www.iata.org/en/pressroom/pr/2020-07-28-02/>.

- invest in customer service and product improvements over the longer term, including through streamlined processes for customer re-accommodation in the event of flight disruption or delays, and improving in-flight product and on-ground service
 - provide a better proposition for corporate travellers between Australia and Japan, which would otherwise be limited by the fact that Qantas' available fleet has restricted business class seats and no premium economy seats
 - offer a variety of fare products and price points to consumers, made possible through coordinated inventory management, and
 - re-stimulate tourism and trade to and within Australia through joint sales and marketing with a particular focus on campaigns in Japan showcasing Australia.
- 2.13. The Applicants further submit that the proposed alliance will help to support the reinstatement of capacity across other parts of Qantas' international network

3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including other airlines, airports, suppliers, state and federal government and regulatory bodies.⁷
- 3.3. The ACCC received 7 public submissions from interested parties and several confidential submissions.
- 3.4. Virgin Australia submits that:
- there are only two airlines outside of the Qantas group that currently provide direct services between Australia and Japan, JAL and ANA
 - based on 2019 figures the Applicants have around a 90% passenger share for non-stop services and an 68% share when indirect routes are included
 - prior to the COVID-19 pandemic, only the Applicants operated a direct Melbourne - Tokyo (Narita) service, and only the Applicants and ANA operated a direct Sydney - Tokyo service
 - Qantas and JAL, as members of the Oneworld alliance, already have mutual frequent flyer benefits
 - Qantas/Jetstar is the only Australian carrier to service Australia-Japan, and the Proposed Conduct will further entrench the Applicants' already dominant position not only in relation to international travel, but also Qantas' domestic position and particularly in relation to Australian corporate and government travel both domestically and internationally. International services facilitate the acquisition and retention of corporate clients who wish to bundle domestic and international travel, and attract frequent flier members who wish to earn and redeem points on long haul services, and

⁷ A list of the public submissions received is available from the ACCC's public register www.accc.gov.au/authorisationsregister.

- the Proposed Conduct will make it more difficult for other airlines to establish commercially sustainable operations on routes between Australia and Japan.
- 3.5. The ACCC received two confidential submissions opposing the alliance on competition grounds.
- 3.6. In response, the Applicants submit that:
- while pre COVID-19 passenger share data was provided with the Application the market conditions in which the JBA will be implemented are going to be substantially different in the short term
 - frequent flyer benefits will be improved and expanded on by the JBA, and
 - competition in domestic markets would remain unchanged if the Proposed Conduct was implemented.
- 3.7. The Applicants restate their submission that the Proposed Conduct maximises the likelihood of air links between Australia and Japan being sustainably restored across a wide range of routes. The Applicants submit that the need for cooperation between them has become more acute given ongoing uncertainty regarding vaccination rollout and border restrictions.
- 3.8. The Premier of South Australia, the Victorian Department of Jobs, Precincts and Regions, Tourism Tropical North Queensland and North Queensland Airports made submissions in favour of authorisation.
- 3.9. The South Australian and Victorian submissions emphasise the impact of COVID-19 on the airline industry and the benefits that increased tourism and trade would have on the Victorian and South Australian economies, and consider that the proposed JBA would result in sustainable growth and accelerated reinstatement of services. The South Australian Premier submits that the cooperation may allow the possibility for new routes between Australia and Japan (such as Adelaide – Tokyo), increase the number of codeshare routes between the airlines and offer better connectivity to South Australia, and deliver new and improved travel products through the coordination of pricing, schedules, sales, and tourism marketing. The Victorian Department of Jobs, Precincts and Regions states that it encourages the Applicants to consider resuming twice daily air services between Tokyo and Melbourne.
- 3.10. Tourism Tropical North Queensland notes the impact of COVID-19 on Cairns' economy and emphasised the tourism benefits that would flow from a potential Qantas/JAL operated Cairns – Tokyo route. North Queensland Airports submits that the number of visitors from Japan have decreased since 2008, partly due to services being operated by Jetstar, a brand that it submits is not well recognised in the Japanese market and that a Qantas/JAL Cairns – Tokyo route would enable greater economic benefits through greater inbound tourism and freight opportunities than would be possible under current Jetstar operations.
- 3.11. One confidential submission also supported the Application.
- 3.12. Queensland Airports Limited provided a submission that did not express a view on the application, but submitted that greater clarity should be provided by the Applicants about how low cost carriers will be treated under the JBA.
- 3.13. The Applicants submit in response that if the Proposed Conduct is approved that there will be potential over the long term for an expansion in codeshare opportunities between JAL and Jetstar beyond what is already in place, and the fact that Jetstar's

Australia – Japan services will not be adversely impacted is made clear in the confidential terms of the JBA.

- 3.14. An International Air Services Commission's submission provided background information about air services arrangements between Australia and Japan but did not express a view on the application.
- 3.15. Public submissions by the Applicants and interested parties are on the Public Register for this matter.
- 3.16. The ACCC's assessment has also had regard to confidential information provided by the Applicants with their application, and in response to information requests from the ACCC.

4. ACCC assessment

- 4.1. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. The Applicants have sought authorisation for Proposed 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. Consistent with subsection 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 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).

Relevant areas of Competition

- 4.3. To assess the likely effect of the Proposed Conduct, the ACCC will identify the relevant areas of competition likely to be impacted.
- 4.4. The Applicants' submission in support of their application did not directly comment on the relevant areas of competition.
- 4.5. The ACCC considers that the following areas of competition are relevant to considering the application for authorisation:
 - international air passenger transport services between Australia and Japan,⁸ and
 - international air cargo transport services between Australia and Japan.
- 4.6. Within these areas of competition, the ACCC considers that it is also appropriate to examine the likely effects of the alliance on competition and rivalry on particular routes where necessary. In this instance, specifically the Melbourne – Tokyo and Sydney – Tokyo routes, being the two routes on which the Applicants overlapped with direct flights prior to the COVID-19 pandemic.

⁸ Qantas and JAL also both operate international air passenger transport services between Australia and the United Kingdom and Europe. Given the range of other options for air passenger transport services between Australia and the United Kingdom and Europe the ACCC considers that the Proposed Conduct is unlikely to materially affect competition for the provision of these services and has not considered this area of competition further in its assessment.

Future with and without the Proposed Conduct

- 4.7. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.
- 4.8. The Applicants submit that it is likely that Qantas and JAL would continue their existing limited, arms-length codeshare on non-overlapping routes, and the codeshare would not expand to include direct services between Australia and Japan, or any domestic services in Australia or Japan, or additional routes across the Tasman. JAL would continue to codeshare on Jetstar' services from Cairns and Gold Coast to Japan and on Qantas' services from Sydney to Auckland, but otherwise the codeshare would not expand beyond these limited operations.
- 4.9. The ACCC considers that absent the Proposed Conduct the Applicants would likely maintain a more limited codeshare agreement as is currently the case. The Applicants would operate in direct competition with each other in relation to price, service, scheduling and all other aspects of their offer, and would not share or jointly develop competitively sensitive information and strategies. They would not engage in any of the broader coordination contemplated in the JBA in relation to marketing and sales, pricing, scheduling, distribution strategies and agency arrangements, yield and inventory management, frequent flyer programs, lounges, joint procurement, product and service standards and cargo.

Impact of COVID-19

- 4.10. The ACCC recognises that due to travel restrictions, the market conditions in which the Applicants will operate, at least in the short term, will be substantially different to that which existed prior to the COVID-19 pandemic. In particular, demand for international travel is likely to be significantly lower than historical levels over the next 12 to 24 months.⁹ The timing, pace and extent of the recovery in demand when travel restrictions do ease is uncertain and likely to be non-linear.
- 4.11. It is expected that after travel restrictions are lifted there will be a recovery in demand over the three years for which authorisation is sought (until mid 2024), although the extent of the recovery in demand compared to pre COVID-19 levels is uncertain.
- 4.12. The ACCC also notes the possibility of 'travel bubbles' being established, in addition to the New Zealand travel bubble, with some other countries, ahead of a broader opening of Australia's borders for international travel. Japan has been identified by Qantas CEO Alan Joyce as one country where such an opportunity could arise.¹⁰
- 4.13. The ACCC notes that while there is likely to be a reluctance on the part of some people to travel internationally in the short term, there is significant pent up demand for international travel particularly to countries to which travel may be allowed ahead of a more general lifting of travel restrictions. Accordingly, the ACCC expects that if such travel bubbles are established, demand for travel to these countries will likely be strong.

⁹ Under current international travel arrangements, the dominant barrier to international travel is not a lack consumer demand, but rather an inability for airlines to provide services to meet consumer demand due to international travel restrictions.

¹⁰ <https://www.news.com.au/travel/travel-advice/flights/qantas-boss-alan-joyce-reveals-next-potential-travel-bubbles-for-australians/news-story/3d855db9a47bc010958cdf3d733060f8>

- 4.14. These impacts of the COVID-19 pandemic on international travel are relevant to the ACCC's assessment of both the public benefits and public detriments likely to result from the Proposed Conduct.

Public detriments

- 4.15. 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.¹¹

- 4.16. As noted, the Applicants competed directly on two routes, Melbourne – Tokyo and Sydney – Tokyo, prior to the COVID-19 pandemic. Based on the information available, the ACCC considers it unlikely that both airlines would commence operating services that compete with each other on any other route between Australia and Japan over the next three years without the Proposed Conduct.
- 4.17. Accordingly, in assessing the likely public detriments of the Proposed Conduct the ACCC has focussed primarily on these two routes and the potential competitive harm resulting from the Applicants coordinating their price and service decisions on these routes (described for the purposes of this analysis as 'unilateral effects').
- 4.18. The analysis below also considers whether the Proposed Conduct may weaken competition with third parties on the Sydney – Tokyo route¹² (described for the purposes of this analysis as 'coordinated effects'), and the impact on competition to supply air cargo transport services between Australia and Japan.
- 4.19. The ACCC does not consider that the Proposed Conduct will have a significant impact on any area of competition other than air passenger services on the Melbourne – Tokyo and Sydney – Tokyo routes.
- 4.20. In assessing the likely impact on competition of the Proposed Conduct the ACCC has had regard to confidential information provided by the Applicants, as noted at paragraph 2.11, about their future plans and anticipated timeframes for re-commencing services on routes between Australia and Japan with and without the Proposed Conduct in place.
- 4.21. The ACCC has also had regard to confidential information provided by the Applicants in response to ACCC information requests about their operations on these routes.
- 4.22. The ACCC's assessment of the likely public detriments from the Proposed Conduct follows.

Unilateral effects

- 4.23. There are two ways in which airlines or alliances may raise prices. The first is to raise airfares without varying capacity. This is likely to lead to lower load factors. Further, if there is excess capacity available to rival airlines, there is a lesser likelihood that an alliance could profitably increase fares unless they were to reduce or limit growth in capacity due to the commercial imperative for airlines to fill empty seats.

¹¹ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

¹² As Qantas and JAL were the only two airlines operating direct services on the Melbourne – Tokyo route prior to the COVID-19 pandemic the ACCC has not considered coordinated effects on this route.

- 4.24. The second is to reduce capacity (or to not grow capacity as quickly as would otherwise be the case). To the extent this makes seats on the route more scarce, airfares will likely rise.
- 4.25. As noted, one of the founding principles of the JBA is metal neutrality. As submitted by the Applicants, this means Qantas and JAL will be indifferent as to which joint flight a customer chooses on services between Australia and Japan. This incentivises the Applicants to allow each other access to the full inventory of available seats whether the customer is seeking to book a journey on either or both carriers.
- 4.26. The ACCC notes that while metal neutrality incentivises airlines to act in their collective, rather than individual, best interest, contributing to the realisation of some of the benefits of coordination identified above, it also removes any incentives for the Applicants to compete with each other on routes covered by the alliance.
- 4.27. The Applicants submit that they will not have any ability or incentive to artificially restrict capacity or increase prices because of the constraints which will continue to be imposed by other direct and indirect operators on routes between Australia and Japan and the real prospect of lost sales and revenue. They submit that any attempt to engage in such conduct would be futile as passengers would exercise choice to fly with other airlines or, particularly in the case of leisure passengers, simply fly elsewhere or not at all. The Applicants submit that, in practice, they will remain constrained by ANA and indirect operators such as Cathay Pacific and Singapore Airlines as competition to attract and re-stimulate demand intensifies in coming months.
- 4.28. The ACCC's assessment of the impact on competition of the removal of incentives for Qantas and JAL to compete with each other on the Melbourne – Tokyo and Sydney – Tokyo routes is below.

Melbourne – Tokyo

- 4.29. Prior to the COVID-19 pandemic Qantas and JAL were the only two airlines operating direct services on the Melbourne – Tokyo route. Qantas commenced operating services in December 2016 and JAL in September 2017.
- 4.30. Without the Proposed Conduct the ACCC considers that Qantas and JAL will be each other's closest competitors on the route. Some passengers may have a preference for one airline over the other but a considerable group of passengers are likely to be prepared to fly with either, choosing between them mainly on price. Competition between Qantas and JAL for these customers, which will benefit all customers through lower fares, will be lost if the Proposed Conduct proceeds.
- 4.31. In the future with the Proposed Conduct, the Applicants submit that indirect carriers will impose a competitive constraint. The Applicants submit that indirect carriers such as Cathay Pacific (via Hong Kong) and Singapore Airlines (via Singapore) are critical to competition on routes between Australia and Japan. The Applicants submit that these airlines are increasing their focus on the Australian market and that their price and network offerings are an active constraint on non-stop carriers.
- 4.32. The Applicants submit that there is a high volume of leisure travellers between Australia and Japan who are more price sensitive. The Applicants also submit that in order to sustain substantial networks and frequencies to Australia, Asian hub carriers must continue to attract and compete for Australia – Japan traffic.

- 4.33. The Applicants also submit that price trends further demonstrate that the Australia – Japan market is highly contestable in practice. They submit that tactical pricing has been a constant competitive dynamic on routes between Australia and Japan, indicating the focus of direct and indirect operators in responding swiftly to competitor activity. They submit that all competitors have been active in both initiating and responding to price and sale activity.
- 4.34. The Applicants estimate, based on International Air Transport Association Direct Data Solutions (**IATA DDS**) data that indirect carriers had around a 25% passenger share on the Melbourne – Tokyo route in the 2019 calendar year. They estimate that Qantas had a 50.6% passenger share, JAL 24.6% with the remaining 24.8% split amongst a range of indirect carriers with no carrier having a passenger share of more than 5%.
- 4.35. The ACCC does not consider that airlines offering indirect flights between Melbourne and Tokyo, or travel on alternative routes, will impose a similar degree of competitive constraint on the Applicants as direct flights on the route would, or that this constraint would be sufficient to prevent fare increases as a result of coordination between the only two operators of direct flights on the route.
- 4.36. The ACCC notes that, as a generalisation, leisure travellers are relatively more price sensitive and relatively less concerned about other factors such as travel time compared to business travellers. The more price sensitive, and less time sensitive a passenger, the more likely they are to consider indirect flights between Melbourne and Tokyo, such as with Cathay Pacific through its Hong Kong hub, Singapore Airlines through its Singapore hub and Philippine Airlines through its Manila hub, to be substitutes for the services of the Applicants.
- 4.37. The IATA DDS data suggests that indirect flights account for around 25% of all travel between Melbourne and Tokyo. Philippine Airlines has the largest share among airlines providing indirect flights (4.5% based on IATA DDS data) while the combined share of Qantas Group and JAL, inclusive of indirect flights, is 80.2% (based on IATA DDS data).¹³
- 4.38. The ACCC accepts that the Applicants do actively consider and respond to the offers of airlines operating indirect flights on the Melbourne – Tokyo route. The ACCC considers that each of these airlines competes to some degree with Qantas and JAL. However, the relevant question for the ACCC to consider in the context of the Proposed Conduct is the degree of the competitive constraint that other airlines are likely to place on the product and service offerings of the Applicants if the Proposed Conduct does proceed.
- 4.39. While the availability of indirect flights is likely to limit to some degree the extent to which Qantas and JAL could reduce or limit capacity growth to raise their airfares, indirect flights are likely to be a significantly weaker competitive constraint than Qantas and JAL are to each other on flights between Melbourne and Tokyo, for point to point passengers.
- 4.40. The limited competitive constraint on the Applicants by indirect flights is likely to provide them with the incentive and ability to raise fares on the Melbourne – Tokyo point to point route.

¹³ Qantas 50.6%, JAL 24.6% and Jetstar (indirect flights) 5.0%.

- 4.41. The ACCC does not consider that the option, particularly for leisure passengers, to fly to alternative destinations or not at all is an option that is likely to be exercised to an extent that would place any meaningful competitive constraint on the Applicants.
- 4.42. The ACCC has also considered whether the threat of entry onto the Melbourne – Tokyo route by other airlines operating direct services would be likely to impose a competitive constraint on the Applicants during the three year period for which authorisation is sought. In this respect, the ACCC considers that timely entry or expansion on a scale sufficient to provide a competitive constraint is unlikely.
- 4.43. Due to the COVID-19 pandemic international travel restrictions, the ability for airlines to offer services is significantly lower than historical levels and the timing, pace and extent of a recovery in demand once restrictions are lifted is uncertain. This is likely to lessen the likelihood, at least in the short term, of an airline that has not historically operated direct flights on the Melbourne – Tokyo route seeking to do so.
- 4.44. In Australia, in line with its previously stated intentions, Virgin Australia’s focus, if it were to decide to operate services between Australia and Japan, is likely to be the Brisbane – Tokyo route. Virgin Australia’s submission about the JBA explains that it is seeking to extend the date of utilisation for its currently allocated one daily frequency in each direction to operate passenger services between Australia and Tokyo – Haneda and that without an extension to the date by which this capacity must be used it would be unable to commence services between Brisbane and Haneda.¹⁴
- 4.45. In Japan, the Applicants note that ANA continued to operate three services a week between Sydney and Tokyo between April and September 2020, which grew to five services a week in October 2020, and commenced daily Perth – Tokyo services in September 2019. The ACCC would expect ANA’s focus to be on these routes in the short term during the COVID-19 recovery period once travel restrictions between Australia and Japan are eased, particularly as another Japanese airline, JAL, previously had a strong presence on the Melbourne – Tokyo route.
- 4.46. Therefore, the ACCC considers that it is unlikely that another carrier will commence operating direct flights on the Melbourne – Tokyo route in the short to medium term generally, or in response to an increase in airfares or reduction in service levels by the Applicants.
- 4.47. The uncertainty around the recovery in demand after restrictions are lifted is also likely to impact airlines’ decisions about the extent to which they re-establish services on routes on which they have historically operated, such as the Applicants on the Melbourne – Tokyo route.
- 4.48. The ACCC considers that, at least initially after travel restrictions are lifted, demand for services between Melbourne and Tokyo is likely to be significantly lower than has been the case historically. Japan has been flagged, including by Qantas CEO, as a candidate for a possible travel bubble with Australia which, if it eventuated, would likely see a recovery in passenger numbers and services earlier than many other destinations. Further, the lack of other international travel options would, if a travel bubble with Japan was established, also fuel demand, particularly for leisure travel. However, whether such a travel bubble eventuates is currently highly uncertain.

¹⁴ On 6 April 2021 the International Air Services Commission issued a determination extending the date of utilisation for Virgin Australia’s allocated frequency until 31 October 2021.

- 4.49. The ACCC also considers that should the Proposed Conduct be implemented for any length of time, competition on the Melbourne – Tokyo route would remain impacted after the Proposed Conduct had ceased. The coordination and information sharing that would occur under the Agreement would provide Qantas and JAL with a deeper understanding of each other’s operations that would persist after the period of authorisation. This would likely reduce the extent to which Qantas and JAL competed vigorously with each other on the route in the future.
- 4.50. In summary, the ACCC considers that between Melbourne and Tokyo, the lessening in competition between the Applicants as a result of Proposed Conduct is likely to result in a significant public detriment. The Proposed Conduct is likely to provide the Applicants with the opportunity to profitably limit growth in capacity and/or increase airfares.
- 4.51. The ACCC considers there is likely to be an ongoing impact on the level of competition between the Applicants on the Melbourne – Tokyo route even after the Proposed Conduct, and implementation of the Agreement would likely reduce the extent to which Qantas and JAL competed vigorously with each other on the route in the future.

Sydney – Tokyo

- 4.52. Prior to the COVID-19 pandemic Qantas and JAL were two of the three airlines operating direct services on the Sydney – Tokyo route, the other being ANA. Accordingly, the Proposed Conduct will reduce the number of independently determined direct flight price/service offerings on the Sydney – Tokyo route from three to two.
- 4.53. The Applicants submit that if the Proposed Conduct does not proceed they will both focus heavily on the Sydney – Tokyo route, due to that route offering superior local demand and network connectivity relative to others. The ACCC considers that this predicted strong competition between the Applicants on this route would be lost with the Proposed Conduct in place.
- 4.54. The IATA DDS data provided by the Applicants indicates that during the 2019 calendar year Qantas had a 53.5% passenger share on the Sydney – Tokyo route (direct flights), ANA 25% and JAL 21.4%.
- 4.55. The Applicants submit that they regard ANA as a particularly aggressive and effective competitor. They submit that ANA has continued to operate through the COVID-19 pandemic, with three services per week between Sydney and Tokyo (Haneda) between April and September 2020 which grew to five services per week from October 2020. The Applicants submit that they expect ANA to grow its services to Australia in coming months and years. The Applicants submit that ANA commenced daily services between Perth and Tokyo in September 2019 and had been operating daily Sydney – Tokyo services since December 2015 and was about to launch a second daily Sydney – Tokyo service in March 2020, which was postponed as a result of the Pandemic. The Applicants submit that this second daily service is now scheduled for the Northern Winter 2021 scheduling season (commencing in late October). The Applicants submit that prior to the COVID-19 pandemic, Virgin Australia and ANA announced a new codeshare arrangement and reciprocal frequent flyer benefits which, the Applicants submit, is a further sign of ANA’s commitment to Australia.
- 4.56. The ACCC considers that in the future with the Proposed Conduct, ANA would be likely to provide a degree of competitive constraint to Qantas and JAL in the event

that the Applicants decided to reduce or limit growth in capacity and/or increase airfares, given its historic operations on the route and potential ability to increase capacity beyond the capacity it operated pre COVID-19. But as discussed further at paragraphs 4.64 to 4.65, it is not clear that in the event of a fare increase / capacity reduction by the Applicants, ANA would compete aggressively to win market share rather than maintaining or increasing its own fares and profit margins in response to any increase in price/reduced capacity by Qantas and JAL. The effective reduction from 3 to 2 competitors on the route would significantly increase the risk that fare increases could be implemented and sustained.

- 4.57. As with the Melbourne – Tokyo route the Applicants submit that indirect carriers are critical to competition. The Applicants estimate, based on IATA DDS data, that indirect carriers had around a 19.4% passenger share on the Sydney – Tokyo route in the 2019 calendar year with Jetstar having a 4.3% passenger share and the next largest passenger share being Cathay Pacific with 3.7%.
- 4.58. For the reasons discussed at paragraphs 4.35 to 4.41 in relation to the Melbourne – Tokyo route, the ACCC does not consider that airlines offering indirect flights between Sydney and Tokyo, or travel on alternative routes, will impose as significant a competitive constraint on the Applicants as direct flights on the route would.
- 4.59. Similarly, as is the case with the Melbourne – Tokyo route, the ACCC considers that entry by another airline, such as Virgin Australia, onto the Sydney – Tokyo route on a scale sufficient to provide a competitive constraint is unlikely.
- 4.60. As with the Melbourne – Tokyo route and discussed at paragraph 4.49, the ACCC considers that if the Proposed Conduct was implemented for any period of time (for example, even for a two-year period as recovery takes place) it is likely to reduce the extent to which Qantas and JAL compete vigorously with each other on the route in the future.
- 4.61. In summary, the ACCC considers that while ANA is likely to impose a degree of competitive constraint on Qantas and JAL, the reduction in the number of independently determined direct flight price/service offerings on the Sydney – Tokyo from three to two is likely to lessen competition for the provision of services on the Sydney – Tokyo route. This reduction in competition as a result of Proposed Conduct is likely to result in a significant public detriment.

Coordinated effects

- 4.62. The ACCC has also considered whether the alliance could increase the risk of coordinated conduct between the Applicants and ANA on the Sydney – Tokyo route.
- 4.63. The high level of concentration on the Sydney – Tokyo route would create a structure more conducive to coordinated conduct, whether explicit or tacit, by reducing the number of independent service offerings on the route from three to two. For example, there would be an incentive for the Applicants and ANA to coordinate their conduct through each adopting a strategy to limit growth in capacity.
- 4.64. There are a number of factors which make this route conducive to coordination, including:
 - a small number of airlines operating on the route and their repeated interactions and understanding of each other operations on the routes (in times of more normal demand)

- limited likelihood of other carriers entering and/or substantially increasing capacity on the route, and
 - transparency of price and capacity.
- 4.65. Over time, the ACCC considers that a reduction in the number of independent competitors on the Sydney – Tokyo route is likely to make the route more conducive to coordination. In particular:
- the smaller the number of firms the more easily coordination can be established and the less likely a firm will deviate from any consensus
 - as discussed at paragraph 4.60, the likelihood of another airline adding significant capacity to the route over the three year period for which authorisation is sought, thereby disrupting any consensus, is low
 - the Applicants and ANA are able to quickly observe each other’s activities and general market conditions – pricing and scheduling information is readily publicly available, and
 - each airline is likely to have the capacity to quickly respond to any deviation from any consensus (explicit or tacit) reached, reducing incentives for either airline to return to a more competitive strategy.
- 4.66. The ACCC considers that such coordination, were it to occur, would likely be through each adopting a strategy to limit growth in capacity below market demand thereby proving opportunities to increase fares. The ACCC considers that this would be a significant public detriment.
- 4.67. The ACCC notes that pre COVID-19 the Sydney – Tokyo route was concentrated without the Proposed Conduct in place. The Proposed Conduct will further increase the already high level of concentration on the route and in doing so result in a public detriment by increasing the likelihood of a lessening of competition in the form of coordinated conduct.

International air cargo transport services between Australia and Japan

- 4.68. The Applicants submit that freight routes between Australia and Japan are highly competitive, with multiple operators providing direct and indirect services. These competitors include ANA Cargo, Cathay Pacific, Singapore Airlines, Malaysia Airlines, China Southern Airlines and Polar Air Cargo. The Applicants submit that barriers to entry are low, meaning that the threat of new entry and expansion of existing operators will continue to impose a competitive constraint on the Applicants.
- 4.69. No interested party commented on the effect of the Proposed Conduct on international air cargo transport services.
- 4.70. The ACCC notes that freight and mail is carried in the holds of aircraft used for passenger services as well as by dedicated freighters.
- 4.71. The ACCC has generally defined markets for air freight and air mail services more broadly than for passenger services as including indirect as well as direct services between points. Indirect flights are generally considered to be effective substitutes for direct flights in the delivery of mail and freight, as travel time and convenience are often not as valued as for passenger services.

4.72. Given the greater competitive constraint provided by indirect flights, the ACCC considers that the Proposed Conduct is unlikely to raise the same competition concerns on the Melbourne – Tokyo and Sydney – Tokyo routes as in relation to passenger services.

Public benefits

4.73. 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 the term should be given its widest possible meaning, and includes:

*...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.*¹⁵

4.74. The ACCC has considered the potential for the following public benefits to arise:

- post COVID-19 pandemic capacity reinstatement on existing routes and expansion onto new routes
- expanded range of destinations on a single ticket leading to increased connectivity, improved journey times and better spread of scheduled flights
- loyalty program benefits
- improved products and customer service
- better options for corporate travellers, and
- tourism and trade benefits.

Post COVID-19 pandemic capacity reinstatement on existing routes and expansion onto new routes

4.75. The Applicants submit that the Proposed Conduct will enable more sustained and diverse reinstatement, and ultimately growth, of their Australia – Japan services.

4.76. The Applicants submit that the Proposed Conduct has been designed to support, diversify and accelerate capacity reinstatement on a wide range of city pairs between Australia and Japan. This includes the resumption of services operated by both carriers between Sydney, Melbourne and Brisbane to Tokyo, with two additional weekly frequencies between Brisbane and Tokyo. The Applicants submit that the resumption of Qantas operated services from Sydney to Osaka and Sapporo would be markedly faster.

4.77. The Applicants submit that without authorisation they will both focus heavily on the key Sydney – Tokyo route as it offers superior local demand and, relative to other routes, greater network connectivity to Australian domestic locations and New Zealand. The Applicants submit that in calendar year 2019, Sydney accounted for 32% of Australia – Japan origin and destination traffic, compared to Melbourne at 20% and Brisbane at 13%. The Applicants submit that without the Proposed Conduct they would crowd the Sydney – Tokyo route, with Melbourne and Brisbane services a

15 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.

second preference for either carrier to reinstate and Qantas being slower to reinstate options to Osaka and Sapporo.

- 4.78. The Applicants also submit that the Proposed Conduct will facilitate the potential introduction of new routes between Australia and Japan. The Applicants initially provided details of potential new services to the ACCC confidentially, and subsequently provided a public submission that the Proposed Conduct would support the potential introduction of a Qantas operated service between Cairns and Tokyo instead of the route previously identified on a confidential basis. The Applicants submit that planning of the proposed Cairns – Tokyo route is at a preliminary stage, and if it proceeded Qantas submits it would offer three services per week from 2022 onwards. The Applicants consider that a Cairns – Tokyo route would strengthen business cases for new international routes supporting a Cairns ‘mini hub’, the details of which have been supplied to the ACCC on a confidential basis.
- 4.79. The Applicants submit that Qantas would not contemplate offering the new service without the support of JAL as passenger demand for this service is expected to be highly driven by Japanese travellers with approximately 84 percent of passenger demand on this route sourced from Japan.
- 4.80. As discussed at paragraph 4.92, the Applicants submit that the Proposed Conduct will also facilitate an increase in codeshare destinations. The Applicants submit that this will also support the reinstatement of Australasia – Japan capacity as the inclusion of behind and beyond routes in the Proposed Conduct will promote greater traffic on point-to-point routes, and thereby support the viability of capacity on those routes.
- 4.81. The ACCC considers that decisions about the amount of capacity operated, including adding additional capacity, are primarily driven by market conditions, competition, and passenger demand. For example, in 2015 and 2016 Jetstar was the only carrier operating direct services on the Melbourne – Tokyo route. In the space of 10 months, both Qantas and JAL separately commenced operating services on this route, Qantas in December 2016 (Jetstar subsequently withdrew from the route) and JAL in September 2017.
- 4.82. The ACCC accepts that in the initial post COVID-19 recovery phase, once international travel resumes, there will be significant uncertainty about market conditions and passenger demand. This may make airlines more reluctant to commit to reinstating and growing capacity in the short term than would otherwise be the case.
- 4.83. The ACCC considers that under the Proposed Conduct, the Applicants would be likely to reinstate capacity more quickly, at least on some routes, than would be the case if they continued to operate as separate competitors, because it would allow the Applicants to combine load volumes.
- 4.84. The payment terms of the JBA, by removing incentives for competition between them, lessen the commercial risk for the Applicants in restoring capacity relative to them each individually undertaking such expansion in competition with each other. As noted, at paragraph 1.15, the JBA is based on metal-neutral selling of the Applicants’ joint services.
- 4.85. Further, the increase in behind and beyond routes covered by the Proposed Conduct would also tend to increase traffic on point-to-point routes between Australia and Japan.

- 4.86. The ACCC considers that where future passenger demand is uncertain and likely to be variable, it is more likely that Qantas and JAL acting independently of each other, would both focus to a large extent, in the early stages of recovery, on competing strongly on the key Sydney – Tokyo route. While both airlines would also make independent commercial decisions as to what other routes to offer between Australia and Japan, the ACCC considers that in the initial stages of the recovery in international travel, a greater spread of flights across routes between Australia and Japan is more likely with the Proposed Conduct in place.
- 4.87. With respect to the potential introduction of new routes between Australia and Japan, the Applicants have only provided general submissions about the potential for the Proposed Conduct to facilitate this. While the ACCC accepts that the introduction of new routes is more likely with the Proposed Conduct than without, there remains considerable uncertainty about whether new routes will be introduced even with the JBA in place.
- 4.88. Specifically with respect to the Cairns – Tokyo route, the ACCC notes that pre COVID-19, Jetstar was operating services on this route and JAL codeshared on these services. The Proposed Conduct is likely to improve the prospects of Qantas, as a full service carrier, being able to viably offer flights on this route as the majority of the additional passenger demand for these full service carrier services would likely come from Japanese passengers, some of whom would likely be more attracted to the Qantas service if it was offered in partnership with JAL. However, with planning at such a preliminary stage the ACCC does not currently have sufficient evidence to conclude that Qantas will launch a Cairns – Tokyo service even with the Proposed Conduct.
- 4.89. More generally however, the ACCC considers that if international travel restrictions ease and demand materially recovers, and there is greater certainty about longer term demand, capacity reinstatement is likely irrespective of the JBA. That is, the higher the level of demand, and the greater the certainty about levels of demand, the greater the likelihood of sustainable reinstatement and growth in capacity without the Proposed Conduct. In this respect, the Applicants' apparent appetite for the introduction of new routes with the Proposed Conduct suggests some optimism on their part about a strong recovery in demand for travel between Australia and Japan once restrictions are lifted, which would limit the extent of the benefits arising from the conduct.
- 4.90. Notwithstanding this limitation, the ACCC considers that uncertainty about market conditions and passenger demand once travel restrictions are lifted mean that the Applicants are likely to be better placed to reinstate and grow capacity more quickly on a greater spread of routes, with than without the Proposed Conduct. The ACCC considers this represents a benefit to consumers seeking to travel between Australia and Japan as travel restrictions ease.

Expanded range of destinations on a single ticket leading to increased connectivity, improved journey times and better spread of scheduled flights

- 4.91. The Applicants submit that the Proposed Conduct would facilitate an increase in codeshare destinations. For example, in addition to the codeshare being expanded onto trunk routes between Australia and Japan, Qantas customers will also have access to 14 new codeshare ports in Japan and JAL customers will have access to 15 new codeshare ports in Australia and New Zealand.¹⁶

¹⁶ The Applicants provide details of these routes with their application, available [here](#).

- 4.92. The Applicants further submit that the Proposed Conduct also provides the platform to potentially increase frequencies and/or gauge operated by Qantas on trans-Tasman routes. The Applicants submit that their expanded codeshare will attract more passengers transiting from New Zealand to Japan via Australia, travelling on the new codeshare services to and from each of Christchurch, Wellington and Queenstown (as well as the existing codeshare on Sydney-Auckland services).
- 4.93. With the Proposed Conduct, the Applicants submit that they will offer a variety of fare products and price points to consumers. They submit that the ability to coordinate inventory would mean that the Applicants can support each other's sales and marketing activities, by ensuring that sufficient seats are available to be offered as part of a sale to multiple destinations, which is not possible under normal codeshare arrangements. The Applicants submit that as the JBA is based on metal-neutral selling of the Applicants' joint services it provides the incentive for the Applicants to allow each other access to the full inventory of available seats regardless of whether the customer is seeking to book a journey between Australia and Japan using either or both carriers.
- 4.94. The Applicants also submit that the Proposed Conduct will provide a greater spread of schedule options between Australia and Japan, with more flights available in a single fare product than Qantas or JAL could provide alone. For example, Qantas and JAL customers seeking to avoid day flights will be able to fly Melbourne – Tokyo overnight on JAL and return Tokyo – Melbourne overnight on Qantas. The Applicants submit that they will both investigate schedule and connectivity improvements, particularly on the Melbourne – Tokyo and Sydney – Tokyo routes where both carriers aim to return to daily operations.
- 4.95. The ACCC notes that both Qantas and JAL have extensive domestic networks in their home countries that will be more easily accessed by passengers under the Proposed Conduct. The ACCC considers that the Proposed Conduct is likely to provide passengers with an expanded range of online connections (passenger itineraries with two or more flight segments where connections are made between flights of the same airline, or its codeshare partners) for itineraries where passengers would be otherwise required to use interline connection options (connection between two different codes).
- 4.96. The ACCC considers that the number of routes with online rather than interline connections is likely to be greater with the Proposed Conduct than without because the structure of the payments between the Applicants better aligns their incentives, allows them to sell the full range of inventory of each other's flights. In addition, the broader range of cooperation and coordination the Proposed Conduct provides incentives for online connections in relation to areas such as pricing, capacity, sales and marketing.
- 4.97. The ACCC also considers that the Proposed Conduct is likely to provide for a greater range of scheduling options on a single ticket for passengers travelling on routes where both airlines operate services. Before the COVID-19 pandemic these routes were Melbourne – Tokyo and Sydney – Tokyo. While this greater range of scheduling options is likely to be valued by some passengers, these improved travel time options are likely to be limited to passengers traveling on these routes.
- 4.98. The ACCC notes the Applicants' submission that the Proposed Conduct will facilitate more codeshare options in Australia and Japan. However, the ACCC considers that, with or without the Proposed Conduct, Qantas and JAL have the ability to expand their codeshare arrangement should future circumstances make this commercially attractive.

Loyalty program benefits

- 4.99. The Applicants submit that they will offer improved frequent flyer benefits for customers of Qantas and JAL, including by offering enhanced earn on joint business routes marketed by the other carrier (i.e. Qantas frequent flyer members earn on JAL marketed flights and JAL mileage bank members earn on Qantas marketed flights) and by prioritising all necessary work to offer customers the ability to request cabin upgrades on the other carrier's operated flights by using points/miles.
- 4.100. The ACCC considers that the attractiveness of the Applicants' loyalty programs are likely to be enhanced under the alliance, primarily by increased access to each airline's existing frequencies and destinations. Given the large number of frequent flyer members, this is likely to result in some public benefit.

Improved products and customer service

- 4.101. The Applicants submit that they will work closely together and invest over the longer term in customer service improvements such as streamlined processes for customer re-accommodation following flight disruption or delays, as well as improvements in inflight product and on-ground customer service. The Applicants submit that they will also work together to make multi-sector travel easier for passengers with disabilities or those travelling with infants/children travelling alone. There will also be opportunities for sharing best practice in relation to on-board products such as meals that cater to particular passenger preferences.
- 4.102. In addition, the Applicants submit that they will closely cooperate in relation to COVID-19 testing and vaccine verification processes.
- 4.103. The ACCC expects that airlines, acting unilaterally, would invest in their products and customer service to meet passenger demand. Competition between airlines is one of the key drivers of such investment. Accordingly, the ACCC considers that such investment by Qantas and JAL is likely to take place, possibly to a greater extent in respect of some products and services, without the Proposed Conduct.
- 4.104. In this respect, the Applicants have not identified how or why the Proposed Conduct would incentivise them to undertake greater investment in customer service in areas such as re-accommodation in the event of flight disruption or delays and improvements in inflight product and on-ground customer service. While implementation of the Proposed Conduct would likely necessitate additional investment in these areas with respect to customers of one airline flying with the other, it is to address the additional complexities that this generates that creates the need for such investment. The ACCC expects that without the Proposed Conduct each airline would continue to invest in these aspects of customer service for their own customers as part of the competition between them.
- 4.105. With respect to sharing best practices, the ACCC notes that both Applicants are large, well established and very experienced airlines with considerable expertise in these areas. Further, Qantas has existing deep cooperation arrangements with other airlines such as Emirates and China Eastern that afford similar opportunities. JAL also engages in joint business with American Airlines, British Airways, Finnair, Iberia and Malaysian Airlines. Accordingly, the ACCC considers that any public benefit likely to result from the Proposed Conduct providing opportunities for Qantas and JAL to share best practice experiences is likely to be small.

4.106. The public benefit likely to result from cooperation between the airlines making multi-sector travel easier, for all classes of travellers, is discussed at paragraphs 4.96 to 4.98.

Better options for corporate travellers

4.107. The Applicants submit that together they can provide a better proposition for corporate travellers between Australia and Japan, which would otherwise be limited by the fact that Qantas' available fleet has restricted business class seats. Specifically, Qantas will be able to market and sell 16 additional business class seats per flight through access to JAL inventory compared to if it were restricted to selling its own operated services.

4.108. The ACCC considers that Qantas being able to market and sell business class seats on JAL sites would provide more inventory for Qantas customers, and would also provide customers with corporate accounts with Qantas access to more business class seats than they would otherwise have through existing Qantas corporate accounts. However, customers can already access this inventory by booking directly with JAL and under the Proposed Conduct the marketing and selling of the business class seats would be done jointly in a way which maximises the profits of both Qantas and JAL. Without the Proposed Conduct, Qantas and JAL would be competing to sell these seats to corporate travellers. As a result, the ACCC does not accept the Proposed Conduct is likely to result in a better offering for corporate travellers.

Tourism and trade benefits

4.109. The Applicants submit that increased and faster capacity restoration across multiple city pairs between Australia and Japan will assist with restoring tourism levels and provide greater capacity to facilitate the trade of goods between Australia and Japan.

4.110. The Applicants submit that the Proposed Conduct will achieve this through enabling them to offer a wider variety of products and price points, and coordinated joint marketing campaigns in conjunction with tourism bodies.

4.111. The Applicants submit that trading relationships between Australasia and Japan would also be strengthened as a result of the Proposed Conduct, which also envisages the Applicants cooperating in respect to freight services. The Applicants state that where a revenue sharing joint business is in place to cover freight operations, carriers are able to provide confirmed uplift of bookings (whereas normally bookings would be only confirmed on an ad hoc 'space available' basis and as such accorded lowest priority by the operating carrier). In addition, there would be improved connectivity between freight networks with the ability to open up new origin-destination shipments. The Applicants submit that the potential to integrate IT systems over time would also provide an enhanced end to end customer experience.

4.112. The ACCC considers that airline alliances can stimulate tourism by (i) making Australia more accessible or convenient as a tourist destination by enhancing the alliance's product and service offering, and (ii) allowing the parties to exploit synergies through joint rather than separate tourism promotion activity.

4.113. In this case, the ACCC considers that by increasing the connectivity and expanding the frequencies of the Applicants' services, the Proposed Conduct has the potential to promote greater levels of inbound tourism to Australia as travel restrictions ease (at least in the short term). In particular, the larger number of routes covered by the

JBA compared to the Applicants' current codeshare arrangement provides greater connectivity for JAL passengers to a wider range of Qantas domestic services.

- 4.114. However, there are a wide range of factors which influence tourism demand and expenditure, 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. The ACCC considers that these factors are likely to be more significant determinants of inbound tourist numbers.
- 4.115. In addition, as discussed in the Public Detriments section at paragraph 4.49 and 4.61, the ACCC is concerned that the Proposed Conduct is likely to enable Qantas and JAL to limit capacity and raise airfares on both the Melbourne-Tokyo and Sydney-Tokyo routes. The ACCC considers this would have a detrimental impact on the level of inbound tourism in Australia, and would likely outweigh any short term boost in inbound tourism arising from implementation of the Proposed Conduct.
- 4.116. The ACCC considers that while aspects of the Proposed Conduct may have a positive impact on tourism (in the short term as international travel restrictions are lifted), the other factors identified above are likely to be the primary determinants of inbound tourism numbers to Australia. The ACCC considers that any public benefit arising from the impact of the Proposed Conduct on inbound tourism is likely to be very small.
- 4.117. With respect to trade, the key drivers of the volume and value of (non-tourism) trade between Australia and Japan are largely outside the influence of airlines. They include, for example, purchasing power in source countries, the relative prices of goods and services, consumer tastes and preference, ease of doing business, and stability of government. Therefore, the ACCC considers that any net positive impact on trade as a result of the Proposed Conduct is likely to be very small.

Balance of public benefit and detriment

- 4.118. The ACCC considers that the Proposed Conduct is likely to result in significant public detriment. Competition between Qantas and JAL will be eliminated on the Melbourne – Tokyo route where pre COVID-19 they were the only two airlines operating direct services, and on the Sydney – Tokyo route where they were two of only three airlines operating direct services.
- 4.119. As demand recovers once international travel restrictions are lifted, the elimination of competition between Qantas and JAL is likely to result in significant public detriment. The Proposed Conduct is likely to give Qantas and JAL an increased ability and incentive to unilaterally reduce capacity, or limit growth in capacity, relative to that which would occur in the absence of the arrangements, thereby allowing them to increase airfares on the Melbourne – Tokyo and/or Sydney – Tokyo routes. The Proposed Conduct is also likely to provide Qantas and JAL with a deeper understanding of each other's operations that would persist after the period of authorisation, through coordination and information sharing under the Agreement. This would likely reduce the extent to which Qantas and JAL competed vigorously with each other in the future.
- 4.120. The Proposed Conduct is also likely to further increase the already high level of concentration on the Sydney – Tokyo route and in doing so result in a public detriment by increasing the likelihood of a lessening of competition in the form of coordinated conduct.

- 4.121. The ACCC also considers that the Proposed Conduct is likely to result in some public benefits in the form of faster reinstatement of capacity between Australia and Japan on a wider range of routes (in the short term as travel restrictions ease), availability of an expanded range of destinations on a single ticket leading to increased connectivity, shorter journey times and a better spread of scheduled flights, and there may be some loyalty program benefits.
- 4.122. The ACCC considers that although some aspects of the Proposed Conduct may stimulate tourism to Australia, other factors outside of the Proposed Conduct are more likely to impact tourism to Australia. The ACCC considers in the medium to longer term that the increased incentive and ability for Qantas and JAL to limit capacity and increase airfares is likely to undermine any possible public benefits which arise as a result of any increased inbound tourism under the Proposed Conduct.
- 4.123. Further, the ACCC is concerned that if the Proposed Conduct was implemented, it would reduce the incentives for Qantas and JAL to compete vigorously with each other and that in the longer term this would have a negative impact on inbound tourism.
- 4.124. For the reasons outlined in this draft determination, the ACCC is not satisfied that the Proposed Conduct is likely to result in a public benefit that would outweigh any likely detriment to the public from the Proposed Conduct.

5. Draft determination

The application

- 5.1. On 18 December 2021, The Applicants lodged application AA1000540 with the ACCC, seeking authorisation under subsection 88(1) of the Act.
- 5.2. 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 Proposed 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 Proposed Conduct.
- 5.4. For the reasons outlined in this draft determination, the ACCC is not satisfied, in all the circumstances, that the Proposed Conduct as described at paragraph 1.13 would be likely to result in a benefit to the public that would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 5.5. Accordingly, the ACCC proposes to deny authorisation.
- 5.6. This draft determination is made on 6 May 2021.

6. Next steps

- 6.1. The ACCC now invites submissions in response to this draft determination, by 27 May 2021. In addition, consistent with section 90A of the Act, the applicant or an

interested party may request that the ACCC hold a conference to discuss the draft determination.