



# Determination

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: 13 September 2021

Commissioners:     Sims  
                             Keogh  
                             Rickard  
                             Brakey  
                             Crone  
                             Ridgeway

## Summary

The ACCC has decided to **deny authorisation** for a Joint Business Agreement (**JBA**) between Qantas Airways Limited (**Qantas**) and Japan Airlines Co Ltd (**JAL**) and their relevant related bodies corporate (together, the **Applicants**) for the coordination of their operations between Australia/New Zealand and Japan. The proposed JBA is a 'metal neutral' alliance between Qantas and JAL, which means the airlines are indifferent as to which joint flight a customer chooses on services between Australasia and Japan and allows the airlines to fully coordinate their operations and service delivery.

The Applicants sought authorisation of the JBA for 3 years. They submit it would help restore international air passenger services across a wide range of routes between Australasia and Japan once borders reopen and demand for international passenger services starts recovering from the disruptions caused by the COVID-19 pandemic.

Recent government announcements about transitioning Australia's National COVID-19 Response into post vaccination settings, and forecasts for vaccination rates to reach critical thresholds by the end of 2021, indicate that changes to travel restrictions are likely to be introduced in the near future. While there is still uncertainty about the timing and rate of recovery of demand once travel restrictions are eased, on the current information, the ACCC considers that there is likely to be significant recovery of passenger demand between Australia and Japan during the period of authorisation sought.

In the year prior to the COVID-19 pandemic, Qantas and JAL together accounted for between 83% and 92% of total passenger capacity and passengers travelling between Australia and Japan each month. They were close competitors on the largest route, Sydney – Tokyo, and the only airlines operating on the second largest route, Melbourne – Tokyo. These two routes accounted for nearly half of all passenger capacity and passengers travelling between Australia and Japan at that time.

The ACCC considers that by eliminating all service and price competition between Qantas and JAL on routes between Australia and Japan, the proposed coordination would be likely to result in significant public detriments over the 3 year period for which authorisation is sought.

Passenger demand would not need to fully recover to pre COVID-19 levels for this anti-competitive detriment to be realised. The ACCC is concerned that once there is a relaxing of government imposed restrictions on supply of international passenger services and a material recovery in demand, the proposed coordination would give the Applicants an increased ability and incentive to unilaterally limit growth in capacity relative to the future without the arrangements. This would allow the airlines to achieve higher fares on the 2 largest routes. This anti-competitive detriment would likely increase over the duration of the 3 year authorisation period sought.

The ACCC considers the Proposed Conduct by Qantas and JAL is likely to materially increase the risk of coordinated effects between the Applicants and other airlines operating direct services between Australia and Japan.

The ACCC also considers that the JBA is likely to increase strategic barriers to entry in the Australia – Japan air passenger transport services market by increasing the Applicants' ability and incentive to engage in entry deterring behaviour or threatening to do so. Virgin Australia's planned entry on the Brisbane – Tokyo route is particularly vulnerable to this behaviour and threat.

As travel restrictions ease, the ACCC considers the JBA is likely to result in some public benefits in the form of:

- earlier reinstatement of Qantas and JAL's capacity
- enhancement of the Applicants' product and service offering in the form of better connectivity of services, improved journey times, increased schedule spread, loyalty program benefits and improved customer service, and
- stimulation of tourism and trade to and within Australia as a result of joint sales and marketing by the Applicants.

The ACCC has considered whether conditions of authorisation proposed by the Qantas and JAL could reduce the ACCC's public detriment concerns or enhance the likely public benefits from the proposed coordination. In particular, the Applicants offered to provide monthly reports about operations on the Sydney and Melbourne routes for the duration of authorisation, commitments to grow capacity on these routes (if certain load factors and demand thresholds were reached), and the commencement of a Qantas operated Cairns – Tokyo service (also contingent on certain demand thresholds).

The ACCC considers the conditions suggested by the Applicants would not sufficiently alter the ACCC's assessment of the JBA for the following reasons:

- imposing a condition requiring the alliance to grow capacity (including for Qantas to start a Cairns service) is unlikely to be effective in preventing public detriment - the strong rate of growth in passenger demand for travel between Australia and Japan pre COVID-19, combined with the uncertainty about the pace and timing of the recovery in demand, makes it very difficult to design an effective capacity condition capable of ensuring that the Applicants add similar capacity to what they would add in the future without the JBA.
- a regular reporting obligation provides transparency about the impact of the JBA, but would not effectively limit the ability and incentive of the Applicants to unilaterally limit growth in capacity relative to the future without the JBA.

Further, the ACCC notes that the proposed 'Cairns condition' would not guarantee a Qantas operated service between Cairns and Tokyo commencing once borders reopen (given the proposed demand trigger). Qantas' subsidiary, Jetstar, which is included in the JBA, already operated services between Cairns and Tokyo before the pandemic, and the Qantas Group has announced plans to reinstate services on this route in the future without the JBA.

In summary, the ACCC is not satisfied, in all the circumstances, that the public benefits likely to result from the proposed coordination would outweigh the likely detriments from the elimination of competition between Qantas and JAL.

## 1. The application for authorisation

- 1.1. On 18 December 2020, Qantas Airways Limited (**Qantas**) and Japan Airlines Co Ltd (**JAL**) and their relevant related bodies corporate<sup>1</sup> (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 3 years.<sup>2</sup> This application for authorisation AA1000540 was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.2. On 2 June 2021, the statutory timeframe for the ACCC to make a determination in relation to the application was extended pursuant to s 90(10A) of the Act until 17 September 2021.
- 1.3. The ACCC may grant authorisation, which provides businesses with legal protection for arrangements that may otherwise risk breaching specified competition provisions in Part IV of the Act, but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.4. The Applicants sought 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 includes coordination 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 and
  - cargo(the **Proposed Conduct**).<sup>3</sup>

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<sup>1</sup> See Annexure A of The application for authorisation AA1000540, 18 December 2021.

<sup>2</sup> 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/>

<sup>3</sup> The Applicants submit that the precise scope of the Proposed Conduct will evolve over its term and may be altered from time to time.

- 1.5. The Applicants submit that a founding principle of the JBA is that it is 'metal neutral'.<sup>4</sup> This is a particularly close form of cooperation under which Qantas and JAL would effectively form a joint business. The joint business would be constituted by Qantas' and Jetstar Australia's domestic networks and Australia/Japan business, and JAL's domestic Japanese networks and Australia/Japan business.
- 1.6. Operating as a single business 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. This means neither Qantas nor JAL would have an incentive to compete with each other, and would be indifferent about which joint flight a customer chooses on all services between Australasia and Japan.

## Rationale for the Proposed Conduct

- 1.7. The Applicants submit that the Proposed Conduct is critical to sustainably restoring air links across a wide range of routes between Australasia and Japan once borders reopen and demand for international passenger services starts recovering from the disruptions caused by the COVID-19 pandemic. The Applicants submit that without the Proposed Conduct, there would be a concentration of reinstated services by them on the major route between Australia and Japan (Sydney – Tokyo), with overlapping flying. The Applicants submit that the Proposed Conduct would deliver improved scheduling choice and more destinations for consumers.
- 1.8. The Applicants also submit that the Proposed Conduct would enable them to better integrate their businesses and domestic networks and expand their existing codeshare relationship (see paragraphs 2.6 – 2.7), and enhance other aspects of their service and product offerings. The Applicants further submit that the Proposed Conduct would help to support the reinstatement of capacity across other parts of Qantas' international network.

## The Applicants

### Qantas Airways Limited

- 1.9. Qantas was incorporated in Australia in 1920 and is Australia's largest domestic and international airline.
- 1.10. 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.
- 1.11. The Qantas Group is currently a party to the following airline alliances that have been previously authorised by the ACCC:
  - an [alliance with Emirates](#), which was reauthorised by the ACCC for five years on 23 March 2018
  - an [alliance with American Airlines](#) pursuant to a Joint Business Agreement which was reauthorised by the ACCC for five years on 25 March 2021, and

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<sup>4</sup> 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.

- 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.
- 1.12. Qantas also has an extensive network of codeshare and Oneworld Alliance partners including: Cathay Pacific, British Airways, Air New Zealand, Aircalin, Air France-KLM Airnorth, Air Tahiti Nui, Air Vanuatu, Alaska Airlines, Asiana Airlines, Bangkok Airways, China Airlines, China Southern, El AL, Fiji Airways, Finnair, LATAM, Solomon Airlines, South African Airways, Sri Lankan Airlines and Westjet.
  - 1.13. 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 for authorisation as it would not be involved in coordination on long haul international routes between Australasia and Japan.

### Japan Airlines Co Ltd

- 1.14. 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.
- 1.15. 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 but has not announced plans to offer Japan – Australia flights.
- 1.16. 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.
- 1.17. 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.

## 2. Background

### Travel between Australia and Japan

- 2.1. The Applicants submit that, prior to the imposition of COVID-19 related travel restrictions, Japan was Australia's fifth largest inbound market in 2019, with an increase in short-term arrivals of 6.3% on the previous year.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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<sup>5</sup> The application for authorisation AA1000540, 18 December 2021, p. 7.

<sup>6</sup> The application for authorisation AA1000540, 18 December 2021, p. 8.

<sup>7</sup> The application for authorisation AA1000540, 18 December 2021, p. 8.

- 2.2. Annual passenger numbers between Australia – Japan grew from 1,038,736 to 1,556,022, an average of 10.65% per year from February 2015 to January 2020 (inclusive).<sup>8</sup>
- 2.3. Table 1 illustrates different airlines’ operations on routes between Australia –Japan as of January 2020, and also the proportion of capacity accounted for by each route.

**Table 1 - Operations on direct routes between Australia and Japan as of January 2020<sup>9</sup>**

		Qantas	Jetstar	JAL	ANA	Virgin	Route % of Total <sup>10</sup>
Tokyo -	Sydney	•		•	•		31%
	Melbourne	•		•			18%
	Perth				• - from September 2019		3%
	Brisbane	•				Planned from March 2020	11%
	Cairns		•				10%
	Gold Coast		•				9%
Osaka -	Sydney	•					6%
	Cairns		•				10%
Sapporo -	Sydney	• <i>Seasonal</i>					1%

## The Applicants’ operations between Australia and Japan

- 2.4. Prior to the COVID-19 pandemic, the Applicants operated the following direct services between Australia and Japan:
- **Qantas** operated:
    - daily services to Tokyo from each of Sydney, Melbourne and Brisbane
    - 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.
- 2.5. In the year prior to the COVID-19 pandemic, Qantas and JAL together accounted for between 83% and 92% of total passenger capacity and passengers travelling between Australia and Japan each month.<sup>11</sup> They were close competitors on the

<sup>8</sup> ACCC compound annual growth rate calculations based on the Bureau of Infrastructure and Transport Research Economics’ *City pairs data – passengers, freight and mail – 2009 to current*, [https://www.bitre.gov.au/publications/ongoing/international\\_airline\\_activity-time\\_series](https://www.bitre.gov.au/publications/ongoing/international_airline_activity-time_series), Accessed 23/08/2021.

<sup>9</sup> Table 1 compiled by the ACCC using the Bureau of Infrastructure and Transport Research Economics’ *Airline Capacity Data for February 2019 – January 2020 from International scheduled passenger flights and seats by airline, route and city pairs*, [https://www.bitre.gov.au/publications/ongoing/international\\_airlines-operated\\_flights\\_seats](https://www.bitre.gov.au/publications/ongoing/international_airlines-operated_flights_seats), Accessed 23/08/2021

<sup>10</sup> Due to rounding, percentages add to 99%.

<sup>11</sup> ACCC Calculations based on information provided by the Bureau of Infrastructure and Transport Research Economics.



largest route, Sydney – Tokyo, and the only airlines operating on the second largest route, Melbourne – Tokyo.

- 2.6. The Applicants advise 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. The Applicants do not currently codeshare with each other on any other routes between Australia and Japan, the Tasman, or on any domestic Australia/New Zealand or Japan services.
- 2.7. The Applicants submit that absent the Proposed Conduct they would likely continue with this codeshare agreement.

## Other airlines operating between Australia and Japan

- 2.8. The other main airlines that were (or were planning on) operating direct services between Australia and Japan before the COVID-19 pandemic included:
  - 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** did not operate services between Australia and Japan prior to the COVID-19 pandemic, however it was scheduled to commence a Brisbane – Tokyo service in March 2020. There is a limited capacity of 6 flights per day between Australia and Tokyo's Haneda Airport (3 flights for Australian carriers, including one overnight slot, and 3 flights for Japanese carriers). Virgin Australia currently holds 1 of the 3 capacity allocations for Australian carriers.<sup>12</sup> Due to the ongoing COVID-19 travel restrictions, Virgin Australia was unable to start using its allocated capacity. On 6 April 2021, the International Air Services Commission (**IASC**) made a resolution that the capacity allocated to Virgin Australia could be utilised 'from no later than 31 October 2021, or such other date approved by the Commission [IASC].<sup>13</sup>
  - The Applicants note that in January 2020, ANA and Virgin Australia announced a codeshare arrangement which enabled ANA passengers to codeshare on some Virgin Australia domestic routes with plans, at the time, to expand the codeshare to international and domestic Japan routes. The Applicants also note ANA is still currently codesharing on Virgin Australia's domestic services through to Northern Summer 2022.
- 2.9. In addition, the Applicants advise 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

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<sup>12</sup> Virgin Australia submission, 26 August 2021, p. 3.

<sup>13</sup> Under Resolution [2021] IASC R03 and Determination [2019] IASC 119, available at <https://www.iasc.gov.au/sites/default/files/documents/2021iascr03-va-haneda-japan-signed.pdf>, Accessed 24/08/21.



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 on international travel and recent developments

- 2.10. The COVID-19 pandemic has led to significant disruptions to international air passenger services. In the early stages of the COVID-19 pandemic, the Australian Government imposed restrictions on both entering and leaving Australia.<sup>14</sup> Travel restrictions have largely remained in place, although a New Zealand safe travel zone was introduced in April 2021 to allow quarantine-free travel between Australia and New Zealand (the 'trans-Tasman border bubble') without the need to apply for a travel exemption. The trans-Tasman border bubble has since been suspended several times.<sup>15</sup>
- 2.11. The Applicants submit that the airline industry remains in crisis as a result of the COVID-19 pandemic. For the 2021 financial year, the Qantas Group announced a pre-tax loss of \$1.83 billion.<sup>16</sup>
- 2.12. The **Qantas Group** suspended all international passenger operations and its planes remained largely grounded for the 2021 financial year. The trans-Tasman border bubble saw some flying return, but ongoing outbreaks restricted operations on this route at various **stages**. Qantas reported that capacity reached an average of 40% of pre COVID-19 levels on the trans-Tasman in April – June 2021.<sup>17</sup> Qantas Freight reported a record profit due to a surge in demand for air cargo services during the pandemic.<sup>18</sup>

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<sup>14</sup> Department of Home Affairs, *Travel restrictions and exemptions*, <https://COVID19.homeaffairs.gov.au/travel-restrictions>. Accessed 8/09/21.

<sup>15</sup> On 20 August 2021 a pause on quarantine-free travel was extended. All passengers on flights originating in New Zealand up until 11.59pm (AEST) on 24 August 2021 will need to go into 14 days of supervised hotel quarantine on arrival in Australia and adhere to the requirements of the State and Territory in which they enter. Department of Home Affairs, *New Zealand safe travel zone*, <https://covid19.homeaffairs.gov.au/new-zealand-safe-travel-zone>, Accessed 8/09/21.

<sup>16</sup> Qantas Group Media Release: *Qantas Group Posts Significant Loss from Full Year of COVID*. <https://www.qantasnewsroom.com.au/media-releases/qantas-group-posts-significant-loss-from-full-year-of-COVID/> Accessed 26/08/21.

<sup>17</sup> Qantas Group Media Release: *Qantas Group Posts Significant Loss from Full Year of COVID*. <https://www.qantasnewsroom.com.au/media-releases/qantas-group-posts-significant-loss-from-full-year-of-COVID/>, Accessed 26/08/21.

<sup>18</sup> Qantas Group Media Release: *Qantas Group Posts Significant Loss from Full Year of COVID*. <https://www.qantasnewsroom.com.au/media-releases/qantas-group-posts-significant-loss-from-full-year-of-COVID/>, Accessed 26/08.21.

- 2.13. **JAL** currently has a twice weekly passenger service operating from Tokyo to Melbourne (suspended from October 2021).<sup>19</sup>
- 2.14. Under the government supported International Freight Assistance Mechanism program JAL operates a weekly Sydney to Tokyo, 4 flights per week from Melbourne to Tokyo, and a weekly Brisbane – Tokyo.<sup>20</sup> Under the same program Qantas operates two flights per week Sydney – Tokyo and a weekly Brisbane – Tokyo service.
- 2.15. In **respect** of other operators or potential operators on direct Australia – Japan routes:
- i) **ANA** has continued to operate a Tokyo – Sydney service (as at September 2021, around 3 return services per week).<sup>21</sup> ANA’s Tokyo – Perth service is suspended, as at August 2021, due to government border restrictions.
  - ii) **Virgin Australia** has said that it is actively assessing its ability to offer a Brisbane – Tokyo (Haneda) service once international borders reopen and customer demand recovers.<sup>22</sup>

*The Australian Government roadmap - vaccination targets and modelling*

- 2.16. On 30 July 2021, the Australian Government announced its ‘National Plan to Transition Australia’s National COVID-19 Response’ (**the National COVID-19 Response Plan**)<sup>23</sup>, which states that new regional travel bubbles may be pursued once national vaccination rates reach 80% of the eligible population. Doherty Institute modelling for the National Cabinet suggests that this vaccination rate may be reached by the end of 2021.<sup>24</sup>
- 2.17. On 3 August 2021, Trade Minister, the Hon Dan Tehan listed Japan, Singapore and South Korea as travel bubble candidates.<sup>25</sup> These arrangements are subject to ongoing discussions by governments.
- 2.18. Under the National COVID-19 Response Plan, once vaccination rates reach 80%, international travel transition measures may include:
- gradual reopening of inward and outward international travel with safe countries and proportionate quarantine and reduced requirements for fully vaccinated inbound travellers, and
  - abolishing caps on returning vaccinated Australians.

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<sup>19</sup> JAL announcements: *Changes on the Oceania Route Network for Departure between September 1 and 30, 2021*, Available at [https://www.jal.co.jp/jp/en/info/2021/inter/210901\\_05/](https://www.jal.co.jp/jp/en/info/2021/inter/210901_05/), Accessed 10/09/21. *Changes on the Oceania Route Network for Departure between October 1 and 30, 2021*, Available at [https://www.jal.co.jp/jp/en/info/2021/inter/211001\\_05/](https://www.jal.co.jp/jp/en/info/2021/inter/211001_05/), Accessed 4/09/21.

<sup>20</sup> See <https://www.austrade.gov.au/news/news/international-freight-assistance-mechanism>. Accessed 8/09/21.

<sup>21</sup> See [https://www.anacargo.jp/en/news/upload/2021/0908/Sep\\_Passenger%20Flight%20Schedule%20List\\_08Sep.pdf](https://www.anacargo.jp/en/news/upload/2021/0908/Sep_Passenger%20Flight%20Schedule%20List_08Sep.pdf), Accessed 8/09/2021.

<sup>22</sup> Virgin Australia submission, 31 March 2021, p. 2.

<sup>23</sup> See <https://www.pm.gov.au/sites/default/files/media/national-plan-to-transition-australias-national-COVID-19-response-30-july-2021.pdf>. Accessed 8/09/21.

<sup>24</sup> See <https://www.doherty.edu.au/news-events/news/doherty-institute-modelling-report-for-national-cabinet>. Accessed 8/09/21

<sup>25</sup> See <https://www.cbc.com/2021/08/04/australia-trade-minister-on-vaccination-rates-and-travel-bubbles.html>. Accessed 8/09/21

*Qantas Group – announced plans to gradually restart international flights*

- 2.19. On 26 August 2021, the Qantas Group announced its strategy for restarting international flights based on the National COVID-19 Response Plan.<sup>26</sup> Contingent on impending government decisions, including quarantine requirements, and based on current vaccination rates, Qantas intends to gradually resume international services from mid-December 2021, initially to countries with high vaccination rates (namely, Japan, North America, UK and Singapore).
- 2.20. For travel between Australia and Japan, Qantas will initially focus on only reinstating services on the Sydney – Tokyo route in 2021, with additional services from Melbourne and Brisbane commencing in the first quarter of 2022. Jetstar services are currently planned to commence from February 2022.<sup>27</sup>
- 2.21. An overview of the Qantas Group’s recently announced plans follows:<sup>28</sup>
- Qantas intends to:
    - operate 4 services per week between **Sydney and Tokyo** from 19 December 2021, moving up to 7 services per week from 27 March 2022
    - operate 3 services per week between **Melbourne and Tokyo** from 15 February 2022, moving up to 4 services per week from 27 March 2022
    - operate 3 services per week between **Brisbane and Tokyo** from 29 March 2022
    - continue to defer plans to publish and sell any services between **Sydney and Osaka**, and
    - continue to defer plans to publish and sell any services between **Sydney and Sapporo**.
  - Jetstar<sup>29</sup> intends to:
    - operate 4 services per week between **Cairns and Tokyo** from 1 February 2022, moving up to 6 services per week from 1 May 2022 and 7 services per week from 1 July 2022
    - operate 3 services per week from **Gold Coast (Coolangatta) and Tokyo** from 2 March 2022, moving up to 4 services per week from 2 April 2022 and 7 services per week from 1 July 2022, and
    - operate 3 services per week between **Cairns and Osaka** from 2 February 2022, moving up to 4 services per week from 2 April 2022, 5 services per week from 1 May 2022 and 7 services per week from 1 July 2022.

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<sup>26</sup> Qantas media release: *Qantas Group outlines strategy for restarting international flights*, 27 August 2021, <https://www.qantasnewsroom.com.au/media-releases/qantas-group-outlines-strategy-for-restarting-international-flights/>. Accessed 27/8/21.

<sup>27</sup> The Applicants’ submission, 27 August 2021, p. 7.

<sup>28</sup> The Applicants’ submission, 27 August 2021, p. 7.

<sup>29</sup> Qantas advises that Jetstar cannot resume services prior to February 2022 due to operational/aircraft constraints.

## *Japan – recent developments and vaccination targets*

- 2.22. Japan is still subject to its fourth state of emergency, in effect until at least 12 September 2021.<sup>30</sup> Japan has also suspended inbound international travel since 14 January 2021, subject to exemptions. As of July 2021, Japan has begun to offer vaccine passports to enable vaccinated Japanese residents to travel internationally to several countries<sup>31</sup>, however these arrangements are not reciprocal. Australia has not yet entered into such an arrangement with Japan.
- 2.23. Reports in June suggested that the Japanese Government aims to vaccinate all willing citizens by November 2021.<sup>32</sup> As at the end of August 2021, it is reported that 40% of the population in Japan will have had the required two doses of the vaccine.<sup>33</sup>

## *International Air Transport Association (IATA) COVID-19 forecasts*

- 2.24. The ACCC notes that at the time of lodging the application, the Applicants cited International Air Transport Association (**IATA**) forecasts that it will be at least 2024 before global passenger traffic recovers to pre COVID-19 levels.<sup>34</sup>
- 2.25. Subsequently, however, in May 2021 IATA released new forecasts:<sup>35</sup>
- 2022 - global passenger numbers are expected to recover to 88% of pre COVID-19 levels.
  - 2023 - global passenger numbers are expected to surpass pre COVID-19 levels (105%).

## 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.<sup>36</sup>
- 3.3. An overview of the Applicants' and interested party submissions received by the ACCC throughout the authorisation process is outlined below.

## Prior to the draft determination

- 3.4. The ACCC received 7 public submissions from interested parties, submissions from the Applicants and several confidential submissions.

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<sup>30</sup> The Applicants' submission 27 August 2021, p 5.

<sup>31</sup> See [https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/vaccine\\_certificate.html](https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/vaccine_certificate.html). Accessed 8/09/21.

<sup>32</sup> See <https://apnews.com/article/japan-coronavirus-vaccine-coronavirus-pandemic-olympic-games-business-e96163aadba182bf39c26a4c12fa68b4>. Accessed 8/09/21.

<sup>33</sup> See [https://www3.nhk.or.jp/nhkworld/en/news/20210823\\_15/](https://www3.nhk.or.jp/nhkworld/en/news/20210823_15/). Accessed 8/09/21.

<sup>34</sup> IATA media release No. 63, 28 July 2020, 'Recovery delayed as international travel remains locked down,' <https://www.iata.org/en/pressroom/pr/2020-07-28-02/>. Accessed 8/09/21.

<sup>35</sup> IATA media release No. 33, 26 May 2021, 'Optimism When Borders Open,' <https://www.iata.org/en/pressroom/pr/2021-05-26-01/>. Accessed 8/09/21.

<sup>36</sup> A list of the public submissions received is available from [the ACCC's public register](#).

3.5. **Virgin Australia** submitted 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 would 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
- the Proposed Conduct would make it more difficult for other airlines to establish commercially sustainable operations on routes between Australia and Japan.

3.6. The ACCC received two confidential submissions opposing the Proposed Conduct on competition grounds.

3.7. In response, the **Applicants** submitted that:

- while pre COVID-19 passenger share data was provided with the Application, the market conditions in which the JBA would be implemented are going to be substantially different in the short term
- frequent flyer benefits would be improved and expanded on by the JBA, and
- competition in domestic markets would remain unchanged if the Proposed Conduct was implemented.

3.8. The Applicants restated 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.

3.9. The Premier of South Australia, the Victorian Department of Jobs, Precincts and Regions, Tourism Tropical North Queensland (**TTNQ**) and **North Queensland Airports (NQA)** made submissions in favour of authorisation.

3.10. Submissions by the South Australian Premier and a Victorian Department emphasised 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. They considered that the Proposed Conduct would result in sustainable growth and accelerated reinstatement of services. The **South Australian Premier** submitted 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.

- 3.11. **TTNQ** notes the impact of COVID-19 on Cairns' economy and emphasised the tourism benefits that would flow from a potential new Qantas and JAL operated Cairns – Tokyo route.
- 3.12. **NQA** submitted 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 and JAL Cairns – Tokyo route would enable greater economic benefits through greater inbound tourism and freight opportunities than would be possible under current Jetstar operations.
- 3.13. One confidential submission also supported the application for authorisation.
- 3.14. **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 would be treated under the JBA.
- 3.15. In response, the **Applicants** submitted that if the Proposed Conduct is approved that there would 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 would not be adversely impacted is made clear in the confidential terms of the JBA.
- 3.16. The **IASC** provided a submission with background information about air services arrangements between Australia and Japan but did not express a view on the application.

## Following the draft determination

- 3.17. On 6 May 2021 the ACCC issued a draft determination proposing to deny authorisation, and deciding not to grant interim authorisation. A pre-decision conference was not requested following the draft determination. In response to the draft determination, the ACCC received 11 public and 3 confidential submissions from interested parties, and further submissions from the Applicants.
- 3.18. The **Applicants** submit that the ACCC's draft determination incorrectly concluded that the likely public detriments outweighed the likely public benefits from the Proposed Conduct. In particular, the Applicants submit that:
  - recovery in demand over the 3 years for which authorisation is sought is likely to be slower and weaker than assumed by the ACCC in the draft determination. As a result the ACCC's theory of potential competitive detriment would not manifest in practice.
  - the public benefits of the Proposed Conduct were given insufficient weight in the draft determination, and should be given greater weight consistent with recent ACCC authorisations in the aviation industry and the Applicants' submissions regarding weak demand recovery.

- 3.19. To address the ACCC's public detriment concerns in the draft determination, the Applicants also put forward possible conditions that the ACCC could impose on the grant of authorisation. The suggested conditions would require the Applicants to provide monthly reporting of performance of the JBA on the Sydney and Melbourne routes, and a capacity condition requiring the Applicants to grow capacity on these routes and for Qantas to start a new Cairns – Tokyo service (when certain forecast demand thresholds were met).<sup>37</sup>
- 3.20. The Applicants suggested the proposed conditions to achieve regulatory certainty, and submitted that they did not consider the conditions necessary or appropriate given the highly variable and the current weak demand environment. The Applicants' proposed conditions are discussed in Section 4 of the Determination.
- 3.21. JAL also provided 2 separate confidential submissions addressing why the Proposed Conduct should be authorised.
- 3.22. On 27 August 2021, the **Applicants** also responded to an ACCC request for information on specific issues, including the impact of the Australian Government's National COVID-19 Response Plan on their forecasts of future passenger demand for services between Australia and Japan, and their plans to reinstate capacity on routes between Australia and Japan with and without the Proposed Conduct.
- 3.23. The Applicants maintain that the environment for forecasting demand remains difficult and uncertain, and is contingent upon government decisions in the coming months. The willingness for consumers to travel will be influenced by the nature of quarantine controls that exist when travel restrictions ease. Qantas also advised that under its plans to gradually reinstate international flights announced on 26 August 2021, it identified Japan as a likely COVID-safe destination in consultation with the Australian Government. Qantas submits that irrespective of whether the ACCC grants authorisation of the Proposed Conduct, its current plans are to gradually reinstate services between Australia and Japan, with Qantas commencing in Sydney in December 2021, Brisbane and Melbourne by March 2022, and Jetstar commencing services from Cairns and the Gold Coast in February and March 2022 (a complete overview of Qantas' gradual restart plans are provided at paragraph 2.21).<sup>38</sup>
- 3.24. The Applicants submit that the current COVID-19 situation in Japan, and associated dampened traveller confidence, means there will be a greater reliance on point of sale Australian demand to sustain Qantas' planned reinstated services, and Qantas' services would be more sustainable with the selling support of JAL under the Proposed Conduct.<sup>39</sup>
- 3.25. Without authorisation, the Applicants submit that Qantas will still not be in a position to spread and grow the capacity reinstatement across a broader range of routes (instead concentrating on Sydney services), nor will it be able to bring forward the reinstatement of capacity on more marginal routes to and from Japan (Sydney – Osaka or Sydney – Sapporo, currently not included in Qantas' gradual restart plan). Further, Qantas submits that without the Proposed Conduct it will not commence any operations on Cairns – Tokyo (as per its submission of 1 June 2021 in response to the draft determination).<sup>40</sup>

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<sup>37</sup> The Applicants' submission, 1 June 2021, p. 2.

<sup>38</sup> The Applicants' submission, 27 August 2021, p. 7.

<sup>39</sup> The Applicants' submission, 27 August 2021, p. 7.

<sup>40</sup> The Applicants' submission, 27 August 2021, p. 8.



- 3.26. The ACCC also received submissions supporting authorisation of the Proposed Conduct from a number of interested parties following the draft determination. These included:
- **Tourism Australia** - submits that the Proposed Conduct may deliver benefits for customers and help accelerate the recovery of tourism and travel links between Australia and Japan. Any coordination or increase in the marketing of Australia in Japan would assist in re-establishing Australia as a premium destination for Japanese travellers.
  - **Queensland Tourism Industry Council** - submits that the proposed Cairns – Tokyo route would deliver significant benefits to the North Queensland economy, and that the JBA’s benefits and impacts should be assessed both regionally and on an overall capacity and frequency basis, and
  - The **Victorian Department of Jobs, Precincts and Regions** - its submission reiterated its support of the application.
- 3.27. Submissions were also received from the **Australian Tourism Industry Council**, the **Australian Tourism Export Council**, the **Australian Chamber of Commerce and Industry – Tourism**, and **Accor**. They each made similar submissions in support of authorisation of the Proposed Conduct, which included the following points:
- inbound tourism has been significantly impacted by COVID-19 and it is unlikely to recover in a linear way
  - Japan is a significant market for Australia that has experienced strong growth in recent years
  - the Proposed Conduct would help accelerate the rebuild of this market post COVID-19 through reducing the risks for the Applicants in relaunching their routes, and incentivising both airlines to leverage their assets in stimulating demand
  - consumers are likely to be hesitant to travel post COVID-19, noting the longer recovery tail that occurred for Japan and similar markets following the SARS outbreak, and
  - the Qantas operated Cairns – Tokyo service would be well suited for Japanese business customers, and would not work without a broader JBA.
- 3.28. In addition, **Advance Cairns**, **TTNQ** and **NQA** all reiterated the importance of the Japanese market to Cairns’ tourism sector’s recovery post COVID-19, and considered that the proposed Qantas service on the Cairns – Tokyo route would deliver significant economic benefits through stimulating inbound Japanese demand. They also submitted that these benefits are unlikely to be achieved without a full-service airline on the route, and that the Qantas operated service is unlikely to proceed without the Proposed Conduct. **Advance Cairns** and **NQA** also submitted that the proposed Qantas service on the Cairns – Tokyo route would open up options for air freight export.
- 3.29. The ACCC received a submission from **Virgin Australia** following the draft determination expressing opposition to authorisation of the Proposed Conduct. It submits that in the current COVID-19 environment, it is important for airlines to have access to an equal playing field. The challenges posed by COVID-19 do not lessen the importance of competition in airline markets in the long-term interests of

consumers. It considers that any short-term benefits associated with the Proposed Conduct must be weighed against the medium to long term impacts on competition within the market, its effect on barriers to entry and expansion, and the likelihood of recovery for other smaller airlines.

3.30. In response, the Applicants submitted:

- the effects of the Proposed Conduct would not extend beyond the term of authorisation as the Applicants take compliance with competition laws seriously, and have experience in unwinding alliances in the past
- the Proposed Conduct would not raise barriers to entry on Australia – Japan routes, as air services arrangements between the countries enable the entry of multiple airlines and have unrestricted capacity between the two countries. Although some restrictions exist on Tokyo (Haneda), entry through Tokyo (Narita), Osaka, or Sapporo remains easy
- the public benefits arising from the Proposed Conduct cannot be achieved through a codeshare alone, and
- the public benefits previously outlined will be passed on to consumers.

3.31. The ACCC received 3 confidential submissions opposing the application for authorisation on competition grounds.

3.32. All public submissions by the Applicants and interested parties are available from the ACCC's website on the [Authorisations public register](#) for this matter.

3.33. The ACCC has taken into account all submissions and information provided by the Applicants and interested parties. The view of the Applicants and interested parties are discussed where relevant in this Determination.

## 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 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 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 identifies the relevant areas of competition likely to be impacted.

4.4. The Applicants 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,<sup>41</sup> and
  - international air cargo transport services between Australia and Japan.
- 4.6. In relation to international air passenger transport services between Australia and Japan, the ACCC considers that it is also appropriate to examine the likely effects of the Proposed Conduct on competition and rivalry on individual city-pair routes, particularly overlap routes and routes where the Proposed Conduct may increase barriers to entry. The ACCC notes that the two routes on which the Applicants overlapped (Sydney – Tokyo and Melbourne – Tokyo) accounted for around 50% of passenger capacity between Australia and Japan prior to the COVID-19 pandemic. The Brisbane – Tokyo route has the greatest potential for new entry.
- 4.7. Following the draft determination, **Virgin Australia** submitted that the Proposed Conduct also has an impact beyond the Australia and Japan routes. It submits that the Proposed Conduct ‘directly impacts traffic feed on domestic and short haul international services, with an impact on competition between Virgin Australia and Qantas network-wide.’<sup>42</sup>
- 4.8. The ACCC acknowledges Virgin Australia’s submission and recognises the potential for the Proposed Conduct to impact competition in the domestic market and/or short haul international markets through loss of feeder traffic. However, the ACCC considers that this impact is unlikely to be material, given the low incidence of behind and beyond traffic.

## Future with and without the Proposed Conduct

- 4.9. 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.
- 4.10. In the draft determination, the ACCC recognised that with or without the Proposed Conduct, 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, the ACCC considered that demand for international travel was likely to be significantly lower than historical levels over the initial stages of the period for which authorisation was sought, and that the timing, pace and extent of the recovery in demand when travel restrictions ease was uncertain.
- 4.11. Nonetheless, the ACCC considered that after travel restrictions are lifted there would likely be a recovery in demand over the three years for which authorisation is sought, although the extent of the recovery in demand compared to pre COVID-19 levels was uncertain.

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<sup>41</sup> 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.

<sup>42</sup> Virgin Australia submission, 26 August 2021, p. 3.

### *Submissions following the draft determination*

- 4.12. In their initial response to the draft determination, **the Applicants** expressed concerns about the ACCC's assessment of the likely future without the Proposed Conduct, and submitted that the recovery in demand for services between Australia and Japan will be slower and more variable than assumed by the ACCC in the draft determination. At that time, the Applicants noted that, based on Australian Government budget estimates, the Government's anticipated timeline for significantly reopening international borders appeared to be mid-2022.<sup>43</sup> They also noted restrictions on Japan's international borders and increasing COVID-19 infection rates.
- 4.13. Even once vaccination programs have been sufficiently rolled out in Australia to permit border openings, and even if other travel bubbles commenced during 2021-2022, the Applicants submitted that there will be outbreaks, potential border shutdowns and ongoing adjustment of entry conditions such that consumer confidence will continue to be shaken and subdued.
- 4.14. The Applicants submitted that international travel demand recovery will be slower and even more sensitive to external shocks than domestic demand recovery. They pointed to the trans-Tasman border bubble experience as an illustration of the unpredictable nature of border reopenings. Since publishing its original schedule when the bubble with New Zealand was announced on 6 April 2021, Qantas has cancelled over 800 flights and had difficulty stimulating demand.
- 4.15. The Applicants submitted that in the context of Japan, the level of demand is expected to be even weaker than it has been on the trans-Tasman routes as there is a comparatively lower level of leisure travel for the purpose of visiting friends and relatives.<sup>44</sup>
- 4.16. While Australian travellers may take up the opportunity to visit Japan once borders are lifted and local COVID-19 outbreaks in Japan are managed, the Applicants submitted the likelihood of Japanese consumer demand rebounding quickly is very low. They submitted that Japanese travellers are likely to be reluctant to fly overseas in the short and medium term. They referred to a tendency for Japanese demand to be particularly soft in the wake of a crisis (for example, the SARS outbreak in early 2003) and the results of a survey of Japanese consumers undertaken by the Japan Travel Bureau Foundation (**JTBF**) in May/June 2020.<sup>45</sup>
- 4.17. Subsequently, the Applicants provided extracts from a more recent JTBF survey from July 2021, which recorded the following overall figures in relation to Japanese consumers' intentions regarding overseas travel: some respondents to the survey were planning or considering overseas travel in either 2021 (5%), 2022 (6.6%) or 2023 onwards (6.6%); others used to travel overseas but no longer plan to do so (7.1%); 33.6% are unsure; and 41.2% did not travel in the first place.<sup>46</sup>
- 4.18. Following the release of the National COVID-19 Response Plan, on 26 August 2021, the Qantas Group announced its plans to gradually restart international services between Australia and Japan from mid-December 2021 (these plans are outlined at paragraphs 2.19 to 2.21). While these plans are contingent upon government

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<sup>43</sup> The Applicants' submission in response to the ACCC's draft determination, 1 June 2021, p 2. The ACCC notes the subsequent release of the National COVID-19 Response Plan and Qantas' updated submissions below.

<sup>44</sup> The Applicants' submission, 1 June 2021, pp. 6-7

<sup>45</sup> The survey was conducted 20 May to 5 June 2020, with a total of 1,472 respondents. The Applicants submission, 1 June 2021, p. 8.

<sup>46</sup> The survey was conducted 16-23 July 2021, with a total of 6,482 respondents. The Applicants submission, 27 August 2021, p. 3.

decisions in the coming months and vaccination targets being met, Qantas submits that it plans to commence these services irrespective of whether the Proposed Conduct is authorised by the ACCC.

- 4.19. The Applicants submit, however, that specific details of the National COVID-19 Response Plan are not yet available and the nature of controls and requirements for international travel will impact the public's willingness to travel. The current situation in Japan and associated dampened traveller confidence means there will be a greater reliance on point of sale Australian demand to sustain Qantas' planned reinstated services.<sup>47</sup>
- 4.20. **Virgin Australia** considers uncertainty remains under the National COVID-19 Response Plan about when government restrictions on international travel will ultimately be lifted, and accordingly, when demand for international travel will recover. Virgin Australia submits that even if a travel bubble is established between Australia and Japan, the level of passenger demand will depend on several factors, including the extent to which consumers can have certainty that the bubble arrangements will remain in place – for example, demand was lower than anticipated under the trans-Tasman border bubble. Having said this, Virgin Australia considers that based on anecdotal evidence from overseas, there is likely to be pent up demand for international travel generally once government restrictions are lifted. In addition, demand for international travel is likely to increase as vaccination rates increase, as this will provide increasing confidence to consumers.<sup>48</sup>

#### *ACCC view*

- 4.21. There is uncertainty surrounding the timing and pace of the recovery in demand for international air passenger services between Australia and Japan. It is not entirely clear when international border restrictions in both countries will ease and it is likely that demand for services will be impacted by the decisions of governments on matters such as quarantine requirements.
- 4.22. However, since the ACCC's draft determination, the Australian Government has announced the National COVID-19 Response Plan (discussed at 2.16 – 2.18 above), which indicates a clearer intention and planning for the reopening of Australia's international borders. It envisages travel bubbles will be established with candidate countries once vaccination rates are sufficiently high. Vaccination rates are currently increasing and predicted to meet relevant thresholds for reopening by the end of 2021. Further, although specific details of how Australia will transition its National COVID-19 Response Plan into post vaccination settings are not yet available, the Qantas Group has announced that it has started preparing to gradually restart flights to 'COVID-safe destinations' from as early as mid-December 2021. Japan was recently named by both the Australian Trade Minister and Qantas as a candidate destination.<sup>49</sup>
- 4.23. The ACCC accepts that some travellers will be cautious about undertaking international travel. However, the ACCC also notes that there was strong demand for travel between Australia and Japan before the COVID-19 pandemic (as noted at paragraph 2.2, an average 10.65% per annum growth in passenger numbers from February 2015 to January 2020 inclusive). Further, the ACCC does not consider that

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<sup>47</sup> The Applicants' submission, 27 August 2021, p. 8.

<sup>48</sup> Virgin Australia submission, 26 August 2021, pp. 5-6.

<sup>49</sup> Qantas media release: *Qantas Group outlines strategy for restarting international flights*, 27 August 2021. <https://www.qantasnewsroom.com.au/media-releases/qantas-group-outlines-strategy-for-restarting-international-flights/> Accessed 27/8/21.

Qantas' and other airlines' experience with the trans-Tasman border bubble during 2021 is a reliable indicator of the likely progress of future travel between Australia and Japan. Such travel will occur in a different context, with (amongst other things) higher vaccination rates and different government policies.

- 4.24. On current information, the ACCC considers that, while it is unclear when passenger demand will recover to pre COVID-19 levels, it is likely that there will be a significant recovery of passenger demand between Australia and Japan during the 3 year authorisation period.
- 4.25. In that context, the ACCC considers that in the future with the Proposed Conduct, Qantas and JAL would closely coordinate their operations between Australia and Japan for the period of the authorisation and to the extent permitted by border and travel restrictions.
- 4.26. In the future without the Proposed Conduct, the ACCC considers that 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, and would not engage in the close coordination required to operate a 'metal neutral' alliance.

## Public detriments

- 4.27. 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>50</sup>*

- 4.28. The ACCC considers that the Proposed Conduct is likely to lead to a range of anti-competitive effects in the supply of international air passenger transport services between Australia and Japan.
- 4.29. The range of anti-competitive effects that the ACCC has considered include the potential:
- for competitive harm resulting from the Applicants jointly setting their price and making service decisions (described as 'unilateral effects')
  - to weaken competition with third parties (described as 'coordinated effects')
  - to increase barriers to entry and expansion, and
  - for enduring anti-competitive detriment beyond the term of authorisation.
- 4.30. The ACCC considers that it is appropriate to examine the likely effects of the Proposed Conduct on competition and rivalry at the aggregate Australia – Japan level and on individual city-pair routes, particularly overlap routes and routes where the Proposed Conduct may impact entry and expansion decisions by rivals or potential rivals.
- 4.31. The ACCC notes that the two routes on which the Applicants overlap (Sydney – Tokyo and Melbourne – Tokyo) accounted for around 50% of passenger traffic between Australia and Japan prior to the COVID-19 pandemic. The ACCC considers the Brisbane – Tokyo route, which accounted for a further 11% of passenger traffic

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<sup>50</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

between Australia and Japan has the greatest potential for new entry, based on Virgin Australia's public announcements.

- 4.32. In assessing the likely impact on competition of the Proposed Conduct the ACCC has had regard to confidential information provided by the Applicants about their future plans and anticipated timeframes for recommencing services on routes between Australia and Japan. The ACCC has also had regard to confidential information provided by interested parties.
- 4.33. The ACCC's assessment of the likely public detriments from the Proposed Conduct follows.

### **Unilateral effects**

- 4.34. There are two ways in which airlines or alliances may act unilaterally to 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 with rival airlines, it is less likely 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.
- 4.35. The second is to reduce capacity (or, not grow capacity as quickly as would otherwise be the case). To the extent this makes seats on the route more scarce, the airlines in the alliance could achieve higher average airfares and profits.
- 4.36. The ACCC's draft determination assessed the impact of the removal of incentives for Qantas and JAL to compete with each other on the two city pair routes on which their operations currently overlap: Sydney – Tokyo and Melbourne – Tokyo. On both routes, the ACCC considered that the reduction in the number of independently determined direct flight price/service offerings is likely to lessen competition for the provision of services on these routes. The ACCC considered that the Proposed Conduct was likely to result in a significant public detriment by providing the Applicants with an increased ability to and incentive to reduce capacity, or limit its growth, relative to the future without the Proposed Conduct. This would facilitate higher average airfares and profits relative to the future without.

### **Submissions following the draft determination**

- 4.37. In response to the draft determination, the **Applicants** submitted that the recovery in demand over the three years for which authorisation is sought is likely to be slower and weaker than assumed by the ACCC in the draft determination. As a result, the ACCC's theory of potential competitive detriment would not manifest in practice.
- 4.38. The Applicants' submissions regarding the weakness of demand in the Australia – Japan market during the period of authorisation have been discussed above (at paragraphs 4.12 to 4.19) under the ACCC's consideration of the future with and without the Proposed Conduct. In summary, the Applicants' submissions in this regard primarily rely on there being ongoing depressed demand in Japan for international travel, and Qantas' experiences with the trans-Tasman travel bubble.
- 4.39. The Applicants also note the competition by ANA and indirect operators (in particular Singapore Airlines and Cathay Pacific) in the Australia – Japan market. The Applicants submit this indicates that indirect operators, in concert with ANA, would continue to provide sufficient constraint on the actions of the Applicants under the Proposed Conduct and after it ends.



4.40. Finally, the Applicants note the general world-wide trend towards recommencing international travel services. The Applicants submit that key markets such as the UK, North America and parts of Asia have high and increasing levels of vaccination. This makes them highly likely to be classed as low risk countries for vaccinated travellers to visit and return from under reduced quarantine requirements, pending decisions by the Australian Government.<sup>51</sup> The Applicants have submitted that, as well as by switching to alternative carriers, passengers would also constrain the Applicants' actions in the Australia – Japan market by their capacity to switch to alternative leisure destinations.<sup>52</sup>

#### *ACCC view*

- 4.41. The metal neutrality of the Proposed Conduct under the Proposed Conduct would eliminate competition between JAL and the Qantas Group (including Jetstar) in the Australia – Japan market.
- 4.42. Under the proposed metal neutral alliance, Qantas and JAL would be indifferent as to which joint flight a customer chooses on services between Australia and Japan. They would allow each other to access the full inventory of available seats whether the customer is seeking to book a journey on either or both carriers.
- 4.43. In the year prior to the COVID-19 pandemic, Qantas and JAL together accounted for between 83% and 92% of total passenger capacity and passengers travelling between Australia and Japan each month. In the absence of sufficient constraint from existing airlines in the market or from the threat of new entry, the ACCC is concerned that the JBA is likely to allow the Applicants to restrict capacity (or limit its growth) and lead to higher prices across the Australia – /Japan market than would otherwise be the case.
- 4.44. The Applicants' submission opposing the ACCC's view of the potential for unilateral effects from the Proposed Conduct relies on their alternative view of the likely future with and without the Proposed Conduct. In particular, the Applicants submit that underlying demand in the Australia – Japan market will be weak in the post COVID-19 environment and that competition would remain high in the future with the Proposed Conduct. As a result of the weak demand and high competition, the Applicants submit that they would have no ability nor incentive during the period of the authorisation to raise prices or artificially slow down the addition of or limit capacity in the Australia – Japan market. If they attempted to do so, the Applicants submit that passengers would either switch to competitive alternatives (including ANA, indirect operators or new entrants), choose a different leisure destination or not fly at all.
- 4.45. As discussed above, the ACCC considers that, while it is unclear when passenger demand will recover to pre COVID-19 levels, there will likely be a significant recovery of passenger demand between Australia and Japan during the 3 year authorisation period.
- 4.46. The ACCC notes the Applicants' only rival currently operating between Australia and Japan, ANA, has limited operations on the east coast of Australia. ANA's operations pre COVID-19 were limited to Sydney – Tokyo and Perth – Tokyo. ANA has not announced plans to expand its service offering to new locations in Australia and the ACCC considers that, given its other international priorities, it is not likely to enter on other city pair routes on which the Applicants operate if they were to raise

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<sup>51</sup> The Applicants' submission, 27 August 2021, p. 7.

<sup>52</sup> The Applicants' submission, 1 June 2021, p. 9.

price/restrict capacity. The ACCC considers that this limits the degree of competitive constraint on the Applicants' Australia – Japan services. The degree of constraint posed by ANA's services on the Sydney – Tokyo and Melbourne – Tokyo city pair routes is considered further below.

- 4.47. If ANA recommences its Perth – Tokyo operations, for reasons of remoteness from the east coast direct Australia – Japan services operated by the Applicants, the ACCC does not consider that services on this city pair would constrain the unilateral actions of Qantas and JAL under the Proposed Conduct. Conversely, the ACCC also does not consider that services on this city pair are likely to be significantly affected by unilateral actions by Qantas and JAL under the Proposed Conduct. Accordingly, this city pair has not been considered further.
- 4.48. The ACCC does not consider that indirect passenger services between Australia and Japan are likely to meaningfully constrain the Applicants' unilateral price and service decisions in relation to their direct services under the Proposed Conduct. The ACCC notes the additional time and/or cost of indirect services means that they are generally less preferred by travellers.
- 4.49. Similarly, the ACCC does not consider that services between Japan and countries other than Australia, or between Australia and countries other than Japan, compete strongly with Australia – Japan services. As previously discussed, the ACCC considers that the relevant market is confined to Australia – Japan air passenger services.
- 4.50. The ACCC's assessment of the loss of competition between Qantas and JAL on the two routes on which they overlapped immediately prior to the pandemic (Sydney – Tokyo and Melbourne – Tokyo) follows.

#### *Sydney – Tokyo*

- 4.51. Prior to the COVID-19 pandemic, Qantas and JAL were 2 of the 3 airlines operating direct services on the Sydney – Tokyo route, the other being ANA. Accordingly, the Proposed Conduct would reduce the number of independently determined direct flight price/service offerings on the Sydney – Tokyo route from 3 to 2.
- 4.52. The Applicants submit that if the Proposed Conduct does not proceed they would each 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 the strong competition between the Applicants that is likely to result from both airlines focusing on this route would be lost with the Proposed Conduct.
- 4.53. The International Air Transport Association Direct Data Solutions (**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%. The Sydney – Tokyo route accounts for 31% of direct passenger capacity between Australia and Japan.<sup>53</sup>
- 4.54. 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

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<sup>53</sup> ACCC calculations based on the Bureau of Infrastructure and Transport Research Economics' Airline Capacity Data for February 2019 – January 2020 from *International scheduled passenger flights and seats by airline, route and city pairs*, [https://www.bitre.gov.au/publications/ongoing/international\\_airlines-operated\\_flights\\_seats](https://www.bitre.gov.au/publications/ongoing/international_airlines-operated_flights_seats), Accessed 23/08/2021.

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, but it was postponed as a result of the COVID-19 pandemic. The Applicants submit that this second daily service is now scheduled for the Northern Winter 2021 scheduling season (commencing in late October).

- 4.55. In addition, 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 may provide a degree of competitive constraint to Qantas and JAL on the Sydney – Tokyo route. But in the event the Applicants increase fares/limit capacity growth, it is not clear that ANA would find it profitable to add significant additional capacity and compete aggressively to win market share. It may be more profitable for ANA to follow the Applicants price leadership. This is discussed further at paragraphs 4.78 to 4.85,
- 4.57. The Applicants submit that indirect carriers are critical to competition on the Sydney – Tokyo route. The Applicants estimate, based on International IATA DDS data, that indirect carriers had around a 19.4% passenger share on the Sydney – Tokyo route in the 2019 calendar year. This figure included Jetstar with a 4.3% passenger share and the next largest passenger share being Cathay Pacific with 3.7%, with an indirect service via Hong Kong.
- 4.58. The ACCC accepts that the Applicants do consider and respond to the offers of airlines operating indirect flights on the Sydney – Tokyo route. The ACCC considers that each of these airlines competes to some degree with the direct service offering of Qantas and JAL, with the exception of Jetstar which is part of the Qantas Group.
- 4.59. However, the relevant question for the ACCC to consider in the context of the Proposed Conduct is the degree of the competitive constraint that indirect services by other airlines, as well as potential new entrants on the route, are likely to place on the product and service offerings of the Applicants on the Sydney – Tokyo route if the Proposed Conduct does proceed.
- 4.60. The ACCC notes that 80% of passenger traffic on the Sydney – Tokyo route is point to point traffic. The ACCC does not consider that the option to fly Sydney – Tokyo via locations such as Hong Kong or Singapore is likely to place a meaningful competitive constraint on the Applicants. While the availability of indirect flights may have some influence on the extent to which the Applicants could profitably raise price/limit capacity, the degree of influence is limited by the added inconvenience and/or cost associated with indirect services for customers.
- 4.61. In summary, the ACCC considers that while ANA may impose a degree of competitive constraint on the Applicants on the Sydney – Tokyo route, the reduction in the number of independently determined direct flight price/service offerings on the route amounts to a lessening of competition. The ACCC considers that the Applicants would have an increased ability and incentive to unilaterally raise price/limit capacity on the route under the Proposed Conduct compared to the future without. This is a significant public detriment. As demand for Sydney – Tokyo services recovers during the requested period of authorisation, the detriment is likely to increase.

- 4.62. In response to the draft determination, the Applicants proposed that any public detriment concerns could be addressed through the imposition of a capacity condition of authorisation. The condition would require the Applicants to grow capacity once certain demand thresholds are reached, and would impose regular monthly reporting obligations on the Applicants for the Sydney route. As discussed below under 'Conditions suggested by the Applicants' (from paragraph 4.183), the ACCC does not consider that the conditions of authorisation proposed by the Applicants would remedy this public detriment.

#### *Melbourne – Tokyo*

- 4.63. Prior to the COVID-19 pandemic Qantas and JAL were the only 2 airlines operating direct services on the Melbourne – Tokyo route. Qantas commenced operating services in December 2016 and JAL in September 2017. JAL currently has a twice weekly passenger service operating from Tokyo to Melbourne (suspended from October 2021).<sup>54</sup> Qantas announced plans to reinstate services from Melbourne to Tokyo from February 2022.
- 4.64. In its draft determination, the ACCC considered that without the Proposed Conduct Qantas and JAL would 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. Competition between Qantas and JAL for these customers, which would benefit all customers through lower fares or better services, would be lost if the Proposed Conduct proceeds.
- 4.65. The Applicants submitted that indirect carriers are critical to competition on the Melbourne – Tokyo route. The Applicants estimate, based on IATA DDS 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%.
- 4.66. The ACCC noted in the draft determination that the IATA DDS data suggests that Philippines Airlines has the largest passenger share among airlines providing indirect flights, with its indirect service via Manila (4.5% of total passengers) while the combined share of Qantas Group and JAL, inclusive of indirect flights, is 80.2%.<sup>55</sup>
- 4.67. For the same reasons discussed at paragraphs 4.58 to 4.60 above in relation to the Sydney – Tokyo route, the ACCC considers that airlines offering indirect flights between Melbourne and Tokyo, or flights on alternative routes between Australia and Japan, do not impose a similar degree of constraint on the Applicants as direct flights on the Melbourne – Tokyo route.
- 4.68. The ACCC notes that JAL has not announced when or whether it will reinstate its suspended direct Melbourne – Tokyo services absent the Proposed Conduct. If JAL does announce its intention to resume these services absent the JBA, the Proposed Conduct would remove direct competition between the Applicants on the route. Even if JAL does not announce that it will reinstate its direct Melbourne – Tokyo service in the future without the Proposed Conduct, the possibility that it would do so, acts as constraint on Qantas' price and service decisions. That is, Qantas would understand that a decision to raise price/limit capacity growth may trigger reinstatement of JAL's

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<sup>54</sup> JAL announcement: *Changes on the Oceania Route Network for Departure between October 1 and 30, 2021*, Available at [https://www.jal.co.jp/en/info/2021/inter/211001\\_05/](https://www.jal.co.jp/en/info/2021/inter/211001_05/), Accessed 4/09/21.

<sup>55</sup> Qantas 50.6%, JAL 24.6% and Jetstar (indirect flights) 5.0%.

direct service between Melbourne and Tokyo. This constraint is forfeited under the Proposed Conduct.

- 4.69. The ACCC acknowledges that the Applicants have proposed a condition that would require both Qantas and JAL to maintain a daily Melbourne – Tokyo service and work toward a twice daily service as demand recovered further. The ACCC is not satisfied that this addresses the competition concerns on this route. The ACCC also considers that, in the absence of the Proposed Conduct, actual or potential competition between Qantas and JAL is likely to be sufficient to spur the allocation of capacity to meet demand as it recovers. The Applicants proposed capacity condition is discussed in further detail under ‘Conditions suggested by the Applicants’ (from paragraph 4.183.
- 4.70. In summary, the ACCC considers that the removal of actual or potential competition between the Applicants on the Melbourne – Tokyo route as a result of Proposed Conduct is likely to result in a material public detriment by increasing the Applicants’ ability and incentive to limit capacity reinstatement and/or increase fares.

#### *Conclusion on unilateral effects*

- 4.71. The Proposed Conduct eliminates all price and service competition between the Applicants (together comprising between 83% and 92% of total passenger capacity and passengers travelling between Australia and Japan each month, in the year prior to the COVID-19 pandemic), which is likely to result in significant public detriment. In particular, under the Proposed Conduct the Applicants are likely to have an increased ability and incentive to unilaterally limit growth in capacity relative to the future without the arrangements. This would allow them to achieve higher fares on the two largest routes between Australia and Japan within the proposed 3 year term of authorisation. The ACCC considers that passenger demand does not need to fully recover to pre COVID-19 levels for this anti-competitive detriment to be realised. The ACCC also considers the anti-competitive detriment is likely increase over time as the recovery of demand for international air passenger services between Australia and Japan gains momentum.

#### **Coordinated effects**

- 4.72. In an authorisation context, unilateral effects refers to the effects of coordination between the authorised firms. Coordinated effects refer to the effects of coordination between the firms that are authorised to coordinate and other firms in the same market.
- 4.73. In assessing whether the likelihood of coordinated effects is increased by the Proposed Conduct, the ACCC has taken into account factors that potentially facilitate coordination across firms in the market and factors that potentially constrain coordination. Generally, coordinated conduct in airlines markets can be facilitated by:
- a high level of concentration, in the market or on particular city pair routes
  - repeated interactions and understanding of each other operations in a market (in times of more normal demand)
  - limited likelihood of other carriers entering and/or substantially increasing capacity in the market, and
  - transparency of price and capacity.

- 4.74. The ACCC also notes that coordination need not be constant and fully effective to raise competition concerns. To the extent that authorised conduct is likely to make coordination more stable or more effective for the coordinating firms, this raises coordinated conduct concerns. Coordinated effects may occur in addition to unilateral effects, enabling the authorised firms to achieve even higher prices than they would unilaterally.
- 4.75. In its draft determination, the ACCC considered whether the Proposed Conduct would increase the incentive or ability for the Applicants and other airline operators to coordinate their business decisions to improve profits. The ACCC considered that conditions to facilitate coordination are likely to exist and, to some extent be exacerbated by the Proposed Conduct.
- 4.76. In particular, the ACCC noted that pre COVID-19, the Sydney – Tokyo route was highly concentrated without the Proposed Conduct. The ACCC concluded that the Proposed Conduct would 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.

#### *Submissions following the draft determination*

- 4.77. In response to the ACCC's draft determination, the Applicants rejected the ACCC's views regarding the potential for the Proposed Conduct to facilitate coordinated effects. The Applicants submitted they would not have an ability or incentive to artificially restrict capacity or increase prices, whether together or via any form of coordinated conduct with a competitor. The submission also noted that the Applicants each take compliance with competition law extremely seriously.<sup>56</sup>

#### *ACCC view*

- 4.78. The ACCC considers that the increased market concentration as a result of the Proposed Conduct could potentially enhance the ability and incentive of airlines operating in the Australia – Japan air passenger transport services market to engage in coordinated conduct by:
- allowing the Applicants to achieve a dominant position in the Australia – Japan market. From this position of strength there is an increased likelihood of the Applicants being acknowledged as the price leader and other airlines following the Applicants' price leadership.
  - reducing the size of the coordination task by effectively reducing the number of airlines contesting the market. As a result of the Proposed Conduct, the Sydney – Tokyo route, accounting for 31% of total Australia – Japan capacity pre COVID-19, is contested by only the Applicants and ANA.
- 4.79. The ACCC does not suggest that the Applicants (and their rivals) do not take compliance with competition law seriously. However, the ACCC considers that the Proposed Conduct could facilitate coordinated effects in the market by:
- reducing the already small number of independent offerings in the Australia – Japan market from 3 (JAL, Qantas Group, ANA) to 2 (Qantas Group/JAL and ANA), or from 4 to 3 if Virgin Australia enters on the Brisbane – Tokyo route as planned.

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<sup>56</sup> The Applicants' submission, 1 June 2021, p. 9.

- removing JAL's competitively priced service offering from the market. Based on our analysis, the ACCC considers that without the Proposed Conduct, JAL wields price influence that is disproportionate to its market share.
- 4.80. These coordinated effects may not breach competition law, but they can nonetheless result in public detriment by enabling the coordinating firms to mutually increase their profits by recognising their common interest and each deciding not to compete vigorously.<sup>57</sup>
- 4.81. The ACCC has particular concern that the Proposed Conduct materially increases the likelihood of coordinated effects on the Sydney – Tokyo route, as that is currently the only city pair route on which the Applicants face a rival offering direct services.
- 4.82. As previously discussed, 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%. The Proposed Conduct, by removing competition between Qantas and JAL, significantly increases the concentration on this route.
- 4.83. The ACCC considers that with the Proposed Conduct, the likelihood of another airline adding significant capacity on the Sydney – Tokyo route over the three year period for which authorisation is sought, thereby disrupting any consensus, is low. The strength of competition from indirect flights is limited and it is doubtful that it would disturb any consensus among the 3 airlines currently operating direct services on the route.
- 4.84. Both ANA and an authorised Qantas/JAL alliance would be able to quickly observe each other's pricing and capacity decisions on the route and respond.
- 4.85. The ACCC considers that any coordination, were it to occur, would likely be through each adopting a strategy to limit growth in capacity on the route as underlying demand recovers, thereby providing opportunity for the airlines to earn higher fares and profits. The ACCC considers that this would be a significant public detriment.

#### *Conclusion on coordinated effects*

- 4.86. The ACCC considers that the Proposed Conduct is likely to materially increase the risk of coordinated effects among airlines operating direct services between Australia and Japan. The ACCC considers this materially increased risk of coordinated effects is a likely public detriment. As discussed below under 'Conditions suggested by the Applicants' (from paragraph 4.183) the ACCC does not consider that the conditions of authorisation proposed by the Applicants would mitigate this public detriment.

#### **Increased barriers to entry and expansion**

- 4.87. Generally speaking, in aviation markets, the main barriers faced by airlines contemplating entry to a market and/or on new routes include:
- i) regulatory **restrictions** on route participation and capacity
  - ii) access to airport slots and airside services, and

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<sup>57</sup> This type of behaviour reduces competition but is more limited than and may be contrasted with the types of anti-competitive agreements, concerted practices and cartel behaviour which would breach the *Competition and Consumer Act 2010*.



- iii) the lead times and sunk costs to commence services on new routes at minimum efficient scale including non-recoverable aircraft, costs to meet regulatory approvals, negotiate access to feeder networks, and marketing expenses.

### *Submissions*

- 4.88. The Applicants submitted in their application for authorisation that there are no material regulatory, commercial or operational barriers to entry or expansion on services between Australia and Japan. The Australia – Japan air services arrangements permit the entry of multiple Australian and Japanese air passenger and freight carriers on the route between Australia and Japan.<sup>58</sup>
- 4.89. The Applicants submitted that the open skies agreement between Australia and Japan, signed in 2011, provides for unrestricted capacity to operate international air services between the two countries (except to or from Tokyo’s Haneda Airport).
- 4.90. In contrast to the Applicants’ submission, Virgin Australia submits that there are substantial practical barriers to new entry into the Australia – Japan market. In particular, the slots at Haneda Airport that are available for flights servicing the Australia – Japan market are fully allocated and without a slot at Haneda Airport it would be very difficult to enter the Australia – Japan market.
- 4.91. While landing slots at Narita Airport would be available, Virgin Australia submits it is unlikely to be commercially feasible as an entry point for a new competitor due to the greater distance from Tokyo’s centre and fewer domestic connections (and therefore feeder traffic) compared to Haneda Airport.<sup>59</sup> Virgin Australia also cited the International Air Services Commission’s (**IASC**) decision which accepted Virgin Australia’s submissions in this regard in its decision to allocate Virgin Australia one of the most recent two slots made available at Haneda Airport for Australian airlines.<sup>60</sup>
- 4.92. In this regard, Virgin Australia advised that it has strong intentions of re-establishing an international long haul network. However, the Proposed Conduct would compound the existing barriers to entry in the Australia – Japan market and make it more difficult for Virgin Australia to successfully commence services in this market, including because:<sup>61</sup>
- the Applicants would be able to leverage their strengths in marketing to their respective consumer bases (that is, Qantas to Australian travellers and JAL to Japanese travellers), which would make it more difficult for a new entrant to capture consumers
  - the Proposed Conduct would allow the Applicants to lower the risk and share the costs of responding to a new entrant, for example by temporarily increasing capacity or decreasing prices in response to new entrants or expansion by existing rivals. Together, they can more effectively and efficiently respond to entry and raise the costs for a new entrant, and
  - the new proposed Cairns service (proposed by the Applicants as part of the conditions of authorisation) would likely divert traffic from Virgin Australia’s

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<sup>58</sup> The application for authorisation AA1000540, 18 December 2021, p 34.

<sup>59</sup> Virgin Australia submission, 31 March 2021, p. 3.

<sup>60</sup> IASC Determination [2019] IASC 119, available at [https://www.iasc.gov.au/sites/default/files/2019iasc118\\_and\\_2019iasc119\\_Japan\\_allocation.pdf](https://www.iasc.gov.au/sites/default/files/2019iasc118_and_2019iasc119_Japan_allocation.pdf), Accessed 6/09/2021.

<sup>61</sup> Virgin Australia submission, 26 August 2021, p. 3.

proposed Brisbane – Tokyo (Haneda) route, making viability of these services more challenging.

- 4.93. In response, the Applicants note that the IASC has most recently granted Virgin Australia an extension until 31 October 2021 to use its Haneda airport slot, which is consistent with the extension granted to Qantas. This waiver, or the ability for the IASC to grant a further waiver if deemed necessary, is not impacted by the Proposed Conduct. In addition, the Applicants submit that any failure or further delay in Virgin Australia's plans to launch Brisbane – Tokyo services would be more likely attributable to the ongoing impacts of the pandemic and Virgin Australia's fleet planning, rather than to the Proposed Conduct.<sup>62</sup>

#### *ACCC view*

- 4.94. The ACCC considers that there are barriers to entry and expansion in the Australia – Japan air passenger transport services market, including due to regulatory delays, lack of access to slots at Haneda Airport sufficient to form the basis of an effective new entry strategy, and sunk costs required to operate at minimum efficient scale.
- 4.95. The ACCC understands from the Register of Available Capacity maintained by the Australian Government Department of Infrastructure, Transport, Regional Development and Communications that unlimited frequencies and slots are available to Australian carriers for both passenger and/or all-cargo services between any points in Australia and any points in Japan with the exception of slots at Tokyo (Haneda) and fifth freedom rights at Tokyo (Narita).<sup>63</sup>
- 4.96. The ACCC accepts Virgin Australia's submission that slots at Haneda Airport are both highly desirable and very limited. The 3 slots currently allocated to Australian airline operators are currently held by Qantas (2) and Virgin Australia (1). The ACCC accepts that Narita Airport is an alternative Tokyo airport, but its substitutability with Haneda is somewhat limited by its distance from the city centre and poorer interconnection with Japanese domestic airline networks.
- 4.97. The ACCC notes Virgin Australia's submission, that the Proposed Conduct is likely to make it more difficult to successfully commence services between Australia and Japan because the Applicants '... through cooperation, would be able to offer more choice of services, connections, and flight times, enhancing the advantages they already experience as incumbents.'<sup>64</sup> However, the ACCC considers that this describes how the Proposed Conduct is likely to improve the Applicants competitive advantage by enhancing their product and service offering. The ACCC has recognised this as a likely source of public benefit.
- 4.98. The ACCC is concerned that the Proposed Conduct would materially increase barriers to entry in the Australia – Japan air passenger transport services market, and on specific routes, by providing Qantas and JAL with the ability and incentive to develop and coordinate actions to deter or delay competitive new entry, which threatens their joint profit.
- 4.99. One way that the Applicants could deter entry under the Proposed Conduct is by committing, or at least threatening, to fly capacity that is significantly above the level that would be commercial to meet market demand. This may be at the Australia –

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<sup>62</sup> The Applicants' submission, 2 September 2021, p. 2.

<sup>63</sup> Department of Infrastructure, Transport, Regional Development and Communications, *Register of Available Capacity*, [https://www.infrastructure.gov.au/aviation/international/files/register\\_available\\_capacity\\_210721.pdf](https://www.infrastructure.gov.au/aviation/international/files/register_available_capacity_210721.pdf). Accessed 8/09/21

<sup>64</sup> Virgin Australia submission, 26 August 2021, p. 3

Japan level and/or on individual routes. While such action would be costly (if implemented), the scope of the Proposed Conduct would allow the Applicants to share those costs. The ACCC also considers that even threat of such action could deter entry without the Applicants having to incur significant cost engaging in acts of deterrence.

- 4.100. On current information, the ACCC considers that Virgin Australia's planned entry on the Brisbane – Tokyo route is particularly vulnerable to strategic entry deterrence. As noted previously, Virgin Australia has delayed the launch of its Brisbane – Tokyo (Haneda) service, which was originally due to commence March 2020. Virgin Australia has maintained its access to the necessary slot allocation at Haneda Airport and submits that it is actively considering commencing this service when borders reopen.

#### *Conclusion on barriers to entry*

- 4.101. In summary, the ACCC considers that the Proposed Conduct is likely to increase strategic barriers to entry in the Australia – Japan air passenger transport services market by increasing the Applicants' ability and incentive to engage in entry deterring behaviour in response to attempted entry or threatened entry.

#### **Residual anti-competitive detriment beyond the term of authorisation**

- 4.102. In the draft determination, the ACCC expressed its concern that should the Proposed Conduct be implemented for any length of time, competition 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.

#### *Submissions following the draft determination*

- 4.103. Virgin Australia submits that there is potential that any anti-competitive market structure that developed during the authorisation period, as a result of the Proposed Conduct, would persist beyond the term of any authorisation period. In particular, Virgin Australia observed that the Applicants have a very significant share of historical capacity operated on direct city pairs between Australia – Japan, with the only future constraint from a much smaller rival (in terms of operations in the Australia – Japan market), ANA, and potential competition from a likely entrant, Virgin Australia.
- 4.104. Virgin Australia submits that in a competitive environment, following a period of authorisation, airlines will need to respond to evolving market dynamics and new competitive threats and will be unable to maintain cooperation or conduct alignment and respond to this environment. However, in the Australia – Japan market there is not sufficient competition to disrupt the long-term effects of the Proposed Conduct and the high barriers to entry in the market (in the form of bilateral capacity restrictions and constrained airport slot access) mean that this is unlikely to change in the future. In this environment, the impact of coordination is likely to continue post-authorisation.
- 4.105. Virgin Australia submits that the long-term effects following the initial period of authorisation could include a continuation of the aligned schedules that authorisation would bring about. In addition, authorisation would allow the Applicants to integrate their systems and become familiar with each other's pricing practices.

4.106. The Applicants submit that they take compliance with competition laws extremely seriously, and that they would not engage in anti-competitive behaviour after any authorisation ceased.<sup>65</sup> The Applicants submit that any suggestion about inappropriate future coordination is unwarranted. Qantas has had experience of unwinding alliances in the past (such as when the Qantas - British Airways joint business ceased in 2012).<sup>66</sup>

#### *ACCC view*

4.107. The ACCC considers that Qantas and JAL already know a lot about each other's operations and that they are unlikely to discover significant new information about each other under the Proposed Conduct. The ACCC also does not dispute that the Applicants take compliance with competition laws seriously. However, the Proposed Conduct provides them with an opportunity to develop and entrench cooperative practices during the term of authorisation that are mutually beneficial. Because they are mutually beneficial, the Applicants would have an incentive to continue to engage in these practices while the other behaves similarly, for a short term beyond the period of authorisation or until their cooperative arrangement is disrupted by a material change in market conditions.

4.108. Accordingly, through inertia, the ACCC considers there is potential for the public detriments arising from unilateral and coordinated effects to endure beyond the period of authorisation for a short period of time.

#### **International air cargo transport services between Australia and Japan**

4.109. 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 would continue to impose a competitive constraint on the Applicants.

4.110. No interested party raised concerns about potential detrimental impacts of the Proposed Conduct on international air cargo transport services. However, **Advance Cairns** and **NQA** submitted that the proposed Qantas service on the Cairns – Tokyo route would open up options for air freight export.

4.111. The ACCC notes that freight and mail is carried in the holds of aircraft used for passenger services as well as by dedicated freighters.

4.112. The ACCC has generally defined markets for air freight and air mail services more broadly than for passenger services by 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.

4.113. Given the greater competitive constraint provided by indirect flights, the ACCC considers that the Proposed Conduct is unlikely to raise competition concerns in the Australia – Japan air cargo transport services market generally or specific routes between Australia and Japan. For similar reasons, the ACCC also considers there is

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<sup>65</sup> The Applicants' submission, 1 June 2021, p. 9.

<sup>66</sup> The Applicants' submission, 2 September 2021, p. 1.

unlikely to be a public benefit arising from the Proposed Conduct in relation to international air cargo services.

## Conclusion on public detriments

- 4.114. The ACCC considers that the Proposed Conduct is likely to result in anti-competitive unilateral and coordinated effects in the supply of international air passenger transport services between Australia and Japan. Of particular concern are the impacts on competition to supply passenger air transport services between Sydney – Tokyo, and Melbourne – Tokyo. The ACCC also considers further anti-competitive detriment is likely to arise from increasing barriers to entry.
- 4.115. In addition, the ACCC considers that there is potential that the anti-competitive unilateral and coordinated effects may extend beyond the period of authorisation. However, the ACCC has not given weight to this potential concern in its balancing of public detriments and benefits.
- 4.116. As discussed below (from paragraph 4.183 under ‘Conditions suggested by the Applicants’) the ACCC does not consider that these anti-competitive effects would be mitigated by the conditions of authorisation proposed by the Applicants.

## Public benefits

- 4.117. 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.*<sup>67</sup>

- 4.118. Qantas has submitted that the following public benefits are likely 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.

- 4.119. The ACCC considers the Proposed Conduct is likely to result in the following public benefits:

- earlier reinstatement of the Applicants’ capacity

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<sup>67</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.

- enhancement of the Applicants' product and service offering through the offer of better connectivity, shorter journey times, increased schedule spread, loyalty program benefits, and improved customer service, and
- stimulation of tourism and trade to and within Australia as a result of joint sales and marketing by the Applicants.

## **Earlier reinstatement of capacity between Australia and Japan**

### *Submissions prior to the draft determination*

- 4.120. Prior to the draft determination, the Applicants submitted that the Proposed Conduct would enable more sustained and diverse reinstatement, and ultimately growth, of their Australia – Japan services.
- 4.121. The Applicants submitted that the Proposed Conduct had 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 submitted that the resumption of Qantas operated services from Sydney to Osaka and Sapporo would be markedly faster with the Proposed Conduct.
- 4.122. The Applicants submitted that without authorisation they would 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 submitted 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 submitted that without the Proposed Conduct, they would crowd the Sydney – Tokyo route, with Melbourne and Brisbane services a second preference for either carrier to reinstate, and Qantas being slower to reinstate options to Osaka and Sapporo.
- 4.123. The Applicants also submitted that the Proposed Conduct would facilitate the potential introduction of new routes between Australia and Japan – namely, a Qantas operated service between Cairns and Tokyo. 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 were supplied to the ACCC on a confidential basis.
- 4.124. The Applicants submitted that Qantas would not contemplate offering the new Cairns service without the support of JAL as passenger demand for this service is expected to be highly driven by Japanese travellers with approximately 84% of passenger demand on this route sourced from Japan.
- 4.125. As discussed at paragraph 4.141, the Applicants submitted that the Proposed Conduct would also facilitate an increase in codeshare destinations. The Applicants submitted that this would also support the reinstatement of Australasia – Japan capacity as the inclusion of behind and beyond routes in the Proposed Conduct would promote greater traffic on point-to-point routes, and thereby support the viability of capacity on those routes.
- 4.126. In the draft determination, the ACCC considered that the Proposed Conduct was 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. Additionally, the ACCC considered that although the introduction of

new routes is more likely under the Proposed Conduct, there was insufficient evidence at that time to conclude that Qantas would introduce a Cairns – Tokyo service even with the Proposed Conduct.

*Submissions following the draft determination*

- 4.127. In response to the draft determination, the Applicants submit that the ACCC failed to give sufficient weight to the public benefits resulting from the faster, more sustainable and diversified capacity reinstatement that would occur under the Proposed Conduct, compared to what would occur absent authorisation. For instance, the Applicants submitted that the Proposed Conduct would allow for earlier reinstatement of a daily Melbourne – Tokyo service when borders reopen and demand recovers, with both airlines growing towards a double daily service on the route.<sup>68</sup>
- 4.128. Further, as noted at paragraph 3.19, the Applicants also suggested that as a condition of authorisation Qantas would commit to commencing 4 services per week between Cairns and Tokyo, once borders reopen and subject to certain demand thresholds being met.
- 4.129. The Applicants also provided detailed confidential plans about the number of flights proposed to be operated by each airline under the Proposed Conduct, including on the major Sydney and Melbourne – Tokyo routes, and Sydney – Osaka, and Sydney – Sapporo routes. On 27 August 2021 the Applicants subsequently provided updated information regarding their individual and proposed joint network plans, including confidential information relating to the timing of reinstated capacity on Melbourne and Sydney routes under the Proposed Conduct.
- 4.130. Irrespective of authorisation, the Qantas Group advises that its current plans are to gradually restart flying from mid-December 2021 with:
- Qantas commencing in Sydney (December), Melbourne (February 2022) and Brisbane (March 2022), and
  - Jetstar commencing Tokyo services from Cairns (February 2022), the Gold Coast (March 2022), and an Osaka service from Cairns (February 2022).<sup>69</sup>
- 4.131. Qantas advises that it has currently deferred plans to sell any services to Sapporo or Osaka from Sydney, and without authorisation of the Proposed Conduct, it is unlikely to bring forward those plans.<sup>70</sup>
- 4.132. Submissions from **Tourism Australia**, the **Australian Tourism Industry Council**, the **Australian Tourism Export Council**, the **Australian Chamber of Commerce and Industry – Tourism**, and **Accor (Hotel Group)** made submissions that the Proposed Conduct is likely to assist in the recovery and relaunching of routes between Australia and Japan.
- 4.133. In contrast, **Virgin Australia** submits that the Proposed Conduct would allow the Applicants to reduce the risks and costs associated with a ramp up of services as international travel recommences. However, given the loss of competition between the Applicants (who are each other's closest competitors) it is unclear how the Applicants would use these reduced risks and costs, and whether benefits would be passed on to consumers in the long term. Virgin Australia submits it is unlikely that

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<sup>68</sup> The Applicants' submission, 1 June 2021, p. 2.

<sup>69</sup> The Applicants' submission, 27 August 2021, p. 7.

<sup>70</sup> The Applicants' submission, 27 August 2021, p. 7.

additional capacity is likely to result from the Proposed Conduct that would not have been made available by the Applicants acting in competition with each other. Virgin Australia considers the Applicants are likely to rationalise capacity on pre-existing routes, remove overlaps between their services, and move to reduce costs to insulate against demand fluctuations.<sup>71</sup>

#### *ACCC view*

- 4.134. The ACCC considers that passenger demand and the state of competition are important determinants of the amount of capacity operated by airlines and the timing of capacity additions. Under normal conditions, the ACCC generally expects that competition, not the removal of competition, is likely to spur airlines to add capacity sooner. However, the ACCC acknowledges that these are not normal times. As previously discussed, the ACCC considers that the most likely scenario is that there will be a significant recovery of passenger demand between Australia and Japan during the 3 year authorisation period.
- 4.135. The ACCC considers that the Proposed Conduct, by removing competition between the Applicants, would be likely to lessen the commercial risk for the Applicants in restoring capacity compared to the future in which they make capacity decisions independently.
- 4.136. Based on the confidential information received from the Applicants, the ACCC considers that as passenger demand starts to recover, the Applicants are likely to reinstate capacity earlier under the Proposed Conduct on at least some of the routes that one or both of them operated. By aggregating bookings, the Applicants would be able to achieve a more efficient and commercially viable utilisation of aircraft capacity. The ACCC considers this earlier reinstatement of capacity represents a benefit to consumers seeking to travel between Australia and Japan once travel restrictions ease.
- 4.137. Absent authorisation, each airline would make independent commercial decisions as to the amount and timing of capacity reinstatement on routes between Australia and Japan. The ACCC considers it is likely that the Applicants would each prioritise their allocation of capacity to routes where passenger demand and profit opportunity is strongest. The ACCC notes that the Applicants submit that they would each focus their capacity additions on the Sydney – Tokyo route. The ACCC also notes the Qantas' Group has since announced plans to reinstate services on four other routes between Australia and Japan: Melbourne – Tokyo; Brisbane – Tokyo, Cairns – Tokyo and the Gold Coast – Tokyo. The ACCC understands these plans are not dependent on ACCC authorisation of the Proposed Conduct.
- 4.138. The ACCC accepts that in the early stages of the COVID-19 recovery, the Proposed Conduct is likely to provide public benefits by facilitating earlier reinstatement of the Applicants' capacity. However, the extent of public benefit is likely to diminish as the recovery of demand gains momentum during the proposed 3 year authorisation period.
- 4.139. The ACCC notes the proposed condition of authorisation offered by the Applicants for Qantas to commence a Cairns –Tokyo service (4 services a week), once demand thresholds are triggered. The ACCC notes this condition proposed by Qantas does not guarantee a Qantas operated service between Cairns and Tokyo commencing once borders reopen (given the proposed demand trigger). The ACCC also notes that Jetstar operated services between Cairns and Tokyo before the pandemic, and

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<sup>71</sup> Virgin Australia submission, 26 August 2021, p. 5.



the Qantas Group has announced plans to reinstate services on this route in the future without the Proposed Conduct. The proposed condition is discussed further at paragraph 4.183.

### **Enhancement of the Applicants' product and service offering through the offering of better connectivity, shorter journey times, increased schedule spread, loyalty program benefits, and improved customer service**

#### *Submissions prior to the draft determination*

4.140. Prior to the draft determination, the Applicants submitted that the Proposed Conduct would result in the following public benefits:

- expanded range of destinations on a single ticket leading to increased connectivity, improved journey times and better spread of scheduled flights
- loyalty program benefits
- stimulate more passengers transiting from New Zealand to Japan, via Australia
- improved products and customer service, and
- better options for corporate travellers.

4.141. In particular, the Applicants submitted that the Proposed Conduct would enable them to coordinate their networks and inventory in ways that enhance their product and service offering. The Applicants submitted that this coordination would facilitate an increase in codeshare destinations on routes between Australia and Japan, and on domestic routes within the countries.<sup>72</sup>

4.142. The Applicants further submitted 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 would 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).

4.143. The Applicants also submitted that the metal-neutral selling of the Applicants' joint services under the Proposed Conduct would enable them to offer a greater variety of fare products and price points to consumers, as they are incentivised to offer the full inventory of seats regardless of who the customer books through. The Applicants submitted that they would also offer a greater spread of schedule options between Australia and Japan, with more flights available in a single fare product than Qantas or JAL provide alone. For example, Qantas and JAL customers seeking to avoid day flights would be able to fly Melbourne – Tokyo overnight on JAL and return Tokyo – Melbourne overnight on Qantas. The Applicants submit that they would both investigate schedule and connectivity improvements, particularly on the Melbourne – Tokyo and Sydney – Tokyo routes where both carriers aim to return to daily operations.

4.144. Regarding loyalty program benefits, the Applicants submitted that they would offer improved frequent flyer benefits for customers of Qantas and JAL, including offering

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<sup>72</sup> The Applicants provide details of these routes with their application, available [here](#).

passengers enhanced earn on joint business routes, and the ability to use points or miles to request cabin upgrades marketed by the other carrier.

- 4.145. The Applicants submitted that through cooperation they would offer customer service improvements such as streamlined processes for customer reaccommodation following flight disruption and improved inflight product and on-ground customer service. The Applicants submitted that they would cooperate to make multi-sector travel easier for passengers with disabilities, those travelling with infants, and children travelling alone. There would also be opportunities for sharing best practices, including COVID-19 testing and vaccine verification processes.
- 4.146. Regarding corporate customers, the Applicants submitted 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 would 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.
- 4.147. In the draft determination, the ACCC considered that the Proposed Conduct is likely to result in some benefits in the form of an expanded range of destinations on a single ticket leading to increased connectivity, shorter journey times and a better spread of scheduled flights. The ACCC also concluded that loyalty program benefits for frequent flyer members would likely be enhanced under the Proposed Conduct.

*Submission received following the draft determination*

- 4.148. In response to the draft determination the **Applicants** submitted that the ACCC gave insufficient weight to the public benefits likely to result from enhancing the airlines product offerings under the Proposed Conduct. In particular, the Applicants submit metal neutrality is a key feature of the Proposed Conduct, and incentivises the Applicants to enhance their product and service offerings. For instance:
- without the Proposed Conduct, the Applicants submit they would have no incentive to expand their current limited codeshare, and would not do so. The Applicants submit that arms-length codeshare partners who do not pool revenue are only incentivised to fill seats on flights that they operate themselves, which limits codeshare partners' willingness to share capacity and fails to capture the efficiencies achieved with metal neutrality.<sup>73</sup>
  - the Proposed Conduct would provide seamless connectivity and increased schedule choice on routes between Australia and Japan, and to more destinations 'behind and beyond' the major city gateways. Qantas customers would have access to 14 new codeshare ports in Japan, and JAL customers would gain 15 new codeshare ports in Australia and New Zealand. This would include expanded codesharing on the Tasman, facilitating new routings between New Zealand and Japan, via Australia. This would provide passengers with significant access, booking convenience and expanded frequent flyer entitlements.<sup>74</sup>
  - the benefits from Frequent Flyer enhancements should be given greater weight, as airlines are not incentivised to offer greater benefits to codeshare passengers unless under a metal neutral alliance (that is, they would offer the same (highest) value to members). The Applicants note following regulatory approval of the

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<sup>73</sup> The Applicants submission, 1 June 2021, p. 16.

<sup>74</sup> The Applicants submission, 1 June 2021, pp. 15-16.

Qantas – American Airlines Alliance, the airlines immediately moved to extend entitlements beyond their existing oneworld arrangements.<sup>75</sup>

- under a metal neutral alliance they are incentivised to share and attract the same passenger base with a high level of service consistent across both brands. The Applicants also submit that working with a local partner would assist in ensuring in-flight product is tailored to appeal to certain cultural preferences, which would be critical to assist Qantas attract passengers from Japan.<sup>76</sup>
- the coordination proposed under the Proposed Conduct allows streamlined processes to reaccommodate passengers onto the other airline's flights in the event of flight cancellations or disruptions.<sup>77</sup>
- under the Proposed Conduct they would be able to offer corporate customers a combined proposition. For instance, they would be able offer seats and discounted prices to Qantas corporate customers on JAL operated flights.<sup>78</sup>

#### *ACCC view*

- 4.149. The ACCC has previously accepted that the coordination between airlines under metal neutral arrangements can result in public benefits by enhancing the product and service offering to consumers in the market.
- 4.150. In this instance, the ACCC considers that close coordination between the Applicants under the Proposed Conduct is likely to result in some public benefits by enabling them to enhance their product and service offering to passengers in the form of better connectivity of services, improved journey times, increased schedule spread, loyalty program benefits and improved customer service.
- 4.151. The ACCC notes that both Qantas and JAL have extensive domestic networks in their home countries that would be more easily accessed by passengers under the Proposed Conduct. The ACCC considers that the Proposed Conduct is likely to provide passengers with an increased number of online connection options (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).<sup>79</sup> This can lead to improved journey times for passengers who utilise the new online connection options. The ACCC also considers that the Proposed Conduct is likely to provide for a greater spread 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.
- 4.152. In relation to loyalty program benefits, the ACCC considers that the value that customers derive from the Applicants' loyalty programs is likely to be enhanced under the Proposed Conduct, as it gives them the option of earning and using loyalty points and miles on flights operated by the other airline.
- 4.153. The ACCC accepts that the Proposed Conduct is likely to result in improved customer service by aligning their incentives to assist passengers who fly with the

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<sup>75</sup> The Applicants' submission, 1 June 2021, p. 17.

<sup>76</sup> The Applicants' submission, 1 June 2021, p. 18.

<sup>77</sup> The Applicants' submission, 1 June 2021, p. 18.

<sup>78</sup> The Applicants' submission, 1 June 2021, p. 18.

<sup>79</sup> Online connections refer to passenger itineraries with two or more flight segments where connections are made between flights of the same airline or a codeshare partner, while interline connections refer to connections between different codes.

other airline in situations where that other airline does not have staff available to assist (for example, in situations where connections are missed or delayed). It also provides an opportunity for the Applicants to tailor their customer service offering to better suit the needs and preferences of different types of passengers.

4.154. The ACCC considers that coordination between the Applicants under the Proposed Conduct is not likely to result in the following public benefits, as claimed by the Applicants:

- stimulation of trans-Tasman passenger traffic. The ACCC considers it is not clear that the Proposed Conduct would result in a material increase in more passengers transiting from New Zealand to Japan via Australia compared to the future without the Proposed Conduct.
- better offering for Qantas corporate customers. The ACCC notes that in the future without the Proposed Conduct, Qantas corporate customers can access JAL business class seats by flying with JAL. The ACCC considers that the joint marketing and selling to corporate customers under the Proposed Conduct would be done so as to maximise the Applicants' joint profits. The Proposed Conduct would remove the price and non-price rivalry between Qantas JAL to attract corporate customers.

## **Stimulation of tourism and trade**

### *Submissions prior to the draft determination*

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

4.156. The Applicants submitted that the Proposed Conduct would 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.

4.157. The Applicants submitted 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 submitted that the potential to integrate IT systems over time would also provide an enhanced end to end customer experience.

### *Submissions following the draft determination*

4.158. The **Applicants** submitted that the Commission placed insufficient value on the ability for the Proposed Conduct to stimulate inbound tourism. The Applicants agree that although there are broader dynamics affecting inbound tourism, it is clear that there would be important benefits for the tourism industry that would not happen, or would not happen as quickly without the Proposed Conduct. The Applicants submit that there are strategic benefits for having tourism and consumer confidence across a wide range of routes, compared to a situation where each struggles to make capacity profitable and all efforts are concentrated on a single route only (Sydney – Tokyo).

4.159. **Advance Cairns, TTNQ, NQA**, and the **Queensland Tourism Industry Council** provided submissions in support of authorisation, submitting that the introduction of a Qantas Tokyo – Cairns route is likely to have a significant economic impact on the recovery of tourism in Tropical North Queensland.

*ACCC View*

4.160. 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.

4.161. 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 initially promote greater levels of inbound tourism to Australia as travel restrictions ease. In particular, the larger number of routes covered by the Proposed Conduct compared to the Applicants' current codeshare arrangement provides greater connectivity for JAL passengers to a wider range of Qantas domestic services.

4.162. However, the ACCC considers that 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.

4.163. The ACCC accepts that joint tourism promotion campaigns by alliances have the capacity to generate additional consumer awareness and increase demand, particularly to new destinations or where passenger numbers are low. In this instance, the ACCC recognises that joint marketing is likely to raise awareness and generate an appetite for travel between Australia and Japan as borders reopen and travel restrictions are eased in a global pandemic.

4.164. The ACCC notes that Australia – Japan routes currently are experiencing depressed passenger demand due to the COVID-19 pandemic and government imposed travel restrictions.

4.165. However, the ACCC also notes that prior to COVID-19, the Australia – Japan market was experiencing strong and sustained annual growth in passenger traffic. As noted at paragraph 2.2, the number of passengers travelling between Australia and Japan increased by 10.65% per annum over the period February 2015 to January 2020, inclusive.

4.166. The ACCC expects underlying demand for tourism in Australia to rebound as COVID-19 related travel restrictions are eased. Joint tourism promotion by the Applicants is unlikely to have a significant impact in stimulating tourism between the two countries. The ACCC considers a more significant factor impacting tourism will be quarantine requirements in each country.

4.167. As previously discussed, ACCC considers that the loss of rivalry between Qantas and JAL (together comprising between 83% and 92% of total passenger capacity and passengers travelling between Australia and Japan each month in the year prior to the COVID-19 pandemic), is likely to allow the Applicants to limit capacity and achieve higher airfares during the term of Authorisation. 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.

4.168. For the reasons set out at paragraphs 4.161 – 4.167, the ACCC considers that any public benefit arising from stimulation of tourism and trade as a result of joint sales and marketing by the alliance is likely to be small.

4.169. 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.

### **Conclusion on public benefits**

4.170. The ACCC considers that as travel restrictions ease following the COVID-19 pandemic, the Proposed Conduct is likely to result in some public benefits in the form of:

- earlier reinstatement of the Applicants' capacity
- enhancement of the Applicants' product and service offering in the form of better connectivity of services, improved journey times, increased schedule spread, loyalty program benefits and improved customer service, and
- stimulation of tourism and trade to and within Australia as a result of joint sales and marketing by the Applicants.

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

4.171. The ACCC notes there is still uncertainty surrounding the timing and pace of the recovery in demand and supply of passenger air travel between Australia and Japan. The resumption and recovery of international air passenger services will be impacted by upcoming decisions of governments, including about quarantine requirements.

4.172. As restrictions are lifted and passenger services between Australia and Japan resume, the elimination of all price and service competition between Qantas and JAL (together comprising between 83% and 92% of total passenger capacity and passengers travelling between Australia and Japan each month, in the year prior to the COVID-19 pandemic) is likely to result in significant public detriment.

4.173. In particular, under the Proposed Conduct the Applicants would have an increased ability and incentive to unilaterally limit growth in capacity relative to the future without the arrangements. This would allow them to achieve higher fares on the two largest routes between Australia and Japan within the proposed 3 year term of authorisation. The ACCC considers that passenger demand does not need to fully recover to pre-COVID-19 levels for this anti-competitive detriment to be realised. The ACCC also considers the anti-competitive detriment is likely increase as the demand for international air passenger services between Australia and Japan recovers.

4.174. The Proposed Conduct is also likely to materially increase the risk of coordinated effects among airlines operating direct services between Australia and Japan. This risk is greatest on the Sydney to Tokyo route, which accounted for nearly one third of all capacity flown between Australia and Japan in the year to January 2020.

- 4.175. The ACCC also considers that the Proposed Conduct is likely to increase strategic barriers to entry in the Australia – Japan air passenger transport services market by increasing the Applicants ability and incentive to engage in entry deterring behaviour in response to attempted entry or threatened entry.
- 4.176. In addition, the ACCC considers there is potential for the unilateral and coordinated effects public detriments to endure beyond the period of authorisation for a short period of time due to inertia. However, the ACCC has not attributed weight to this potential detriment.
- 4.177. As discussed further from paragraph 4.183 below, the ACCC considered the capacity conditions and regular reporting obligations suggested by the Applicants to address the ACCC’s public detriment concerns in the draft determination. The ACCC considers it is very difficult to design an effective capacity condition to address the likely public detriments from the lost rivalry between the Applicants, in view of the strong rate of growth in passenger demand for travel between Australia and Japan pre COVID-19, and the uncertainty about the timing and pace of recovery in that demand. In these circumstances, there is a risk that the condition would not prevent or substantially limit the public detriment or, alternatively, would impose an inefficient obligation on the Applicants. In the circumstances, the ACCC does not consider that an obligation to grow services as particular demand thresholds are reached on the Sydney to Tokyo and Melbourne to Tokyo routes (as proposed by the Applicants) would adequately address the likely public detriments associated with the loss of competition under the Proposed Conduct.
- 4.178. In addition, the ACCC considers that a regular reporting condition alone would be insufficient to mitigate the likely public detriments resulting from the Proposed Conduct.
- 4.179. The ACCC considers that the arrangements are likely to result in some public benefits in the form of:
- earlier reinstatement of the Applicants’ capacity
  - enhancement of the Applicants’ product and service offering in the form of better connectivity of services, improved journey times, increased schedule spread, loyalty program benefits and improved customer service
  - stimulation of tourism and trade to and within Australia as a result of joint sales and marketing by the Alliance.
- 4.180. The ACCC considers that the likely public benefits are less than the likely public detriments arising from the loss of competition under the Proposed Conduct.
- 4.181. The ACCC also considered the Applicants’ suggested condition of authorisation requiring Qantas to commence a Cairns – Tokyo service once certain demand thresholds were reached. The ACCC notes this condition does not guarantee commencement of a Qantas service between Cairns and Tokyo once borders reopen (given that commencement is linked to a minimum demand threshold). The ACCC also notes that Jetstar already operates services between Cairns and Tokyo and the Qantas Group has announced plans to reinstate services on this route in the future without the Proposed Conduct. The ACCC considers that this proposed condition also risks placing an inefficient obligation on Qantas, and does not consider it would have a material impact on the likely public benefits from the Proposed Conduct.

4.182. For the reasons outlined in this 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.

## Conditions suggested by the Applicants

4.183. The Applicants suggested that the ACCC consider imposing the following reporting and capacity reinstatement obligations as conditions of authorisation to address the ACCC's concerns about potential public detriments for the duration of any authorisation:<sup>80</sup>

- monthly reporting of performance on the Sydney and Melbourne routes including data on operated seats, passenger numbers, load factors, revenue, route profitability and average fares by cabin; and
- when borders for two-way international travel reopen for leisure and corporate travel, and demand returns to *sufficient projected thresholds*:
  - growing Sydney – Tokyo and Melbourne – Tokyo services by a further weekly frequency if load factors and route profitability reach certain thresholds until capacity reaches pre COVID-19 levels; and
  - commencing a Qantas operated Cairns – Tokyo service (4 services per week).

4.184. The Applicants submitted that these conditions are offered to achieve regulatory certainty, and that they do not consider the conditions necessary or appropriate given the highly variable and the current weak demand environment.

4.185. The ACCC's assessment of the conditions proposed by the Applicants follows.

### Monthly reporting

4.186. The ACCC has considered whether a condition requiring monitoring and reporting to enhance transparency could mitigate the risk of anti-competitive harm. While monthly reporting is possible, the ACCC considers that such a condition alone would be insufficient to mitigate the likely public detriments from authorising the Proposed Conduct.

4.187. The ACCC considers that, primarily, a reporting obligation would allow the ACCC to monitor whether significant harm is occurring. It would not prevent the Applicants from raising prices or restricting capacity.

### Capacity conditions

4.188. Capacity conditions requiring airline alliances to operate at minimum levels of capacity have been used by the ACCC in the past to mitigate public detriments from alliances reducing capacity (or not growing capacity as quickly). With the easing of travel restrictions ahead and the subsequent resumption of services between Australia and Japan, the ACCC would be particularly concerned that airlines move to reinstate capacity to keep pace with the recovery of underlying consumer demand. Where effective competition exists, it provides the appropriate incentives for businesses to efficiently respond to market dynamics, including anticipated consumer demand.

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<sup>80</sup> The Applicants' submission, 1 June 2021, p. 2.



4.189. In the absence of effective competition, as is sometimes the concern when airlines seek to coordinate their services, the purpose of a capacity condition is to act as a proxy for the incentives provided naturally by competition.

### ***i. Growing Sydney & Melbourne to Tokyo in response to profit and load factors***

4.190. The ACCC considers that the strong rate of growth in passenger demand for travel between Australia and Japan pre COVID-19, combined with the uncertainty about the pace and timing of the recovery in demand, makes it very difficult to design a capacity condition capable of ensuring that the Alliance adds similar capacity to what they would add in the future without the Proposed Conduct. For example, if the capacity condition underestimates the recovery of underlying demand, it would not limit the airlines' ability to raise prices. Conversely, if demand recovers much more slowly than expected, the condition would require the applicants to operate significant excess capacity. Either scenario causes inefficiency.

4.191. In addition, there is a significant lead time required for airlines to schedule and operate international passenger services. Such lead times further reduce the extent to which capacity conditions or triggers replicate the incentives present in a market where competition is effective. This is particularly the case in the present circumstances where the level of consumer demand in response to the easing of travel restrictions is uncertain and there are a disparate forecasts about the pace at which international services will recover.

4.192. In the circumstances, the ACCC does not consider that an obligation to grow services on the Sydney to Tokyo and Melbourne to Tokyo routes would adequately address the likely public detriments associated with the loss of competition from the Proposed Conduct.

### ***ii. New Cairns – Tokyo service***

4.193. The ACCC understands that while Jetstar currently plans to restart services between Cairns and Tokyo in February 2021 (with or without the Proposed Conduct), the Applicants and some interested parties have submitted that consumers and businesses would value additional services being offered by Qantas as a full service airline. However, the ACCC notes a number of concerns with the condition proposed by Qantas requiring it to provide a Cairns to Tokyo service if projected demand thresholds, linked to pre COVID-19 demand levels, were met.

4.194. The ACCC considers that imposing such a condition may cause inefficiency. If Qantas was required to provide a service before it was commercially viable, it could prevent Qantas from recovering route specific costs. Conversely, if the service was commercially viable, the condition would not be required or offer any benefit as a condition of authorisation. The ACCC also notes that the existence of such a condition may deter new entry by other airlines on the route.

4.195. The ACCC also notes that requiring Qantas to establish a service between Cairns and Tokyo would not address the ACCC's concerns about likely public detriments from the loss of competition as a result of the Proposed Conduct.

## **Conclusion**

4.196. The ACCC does not consider that the conditions proposed by the Applicants are likely to significantly reduce the extent of public detriments arising from the Proposed Conduct. The ACCC also considers that the conditions are unlikely to materially increase the public benefits arising from the Proposed Conduct. As such, the ACCC

considers that the conditions proposed do not sufficiently alter the ACCC's assessment of the Proposed Conduct.

## 5. Determination

### The application

- 5.1. On 18 December 2021, Qantas Airways Limited (**Qantas**) and Japan Airlines Co Ltd (**JAL**) and their relevant related bodies corporate<sup>81</sup> (together, the **Applicants**) lodged application for authorisation AA1000540 with the ACCC. The Applicants sought authorisation under subsection 88(1) of the Act for a Joint Business Agreement in relation to their operations across a range of routes between Australia/New Zealand and Japan.

### The authorisation test

- 5.2. 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.
- 5.3. For the reasons outlined in this determination, the ACCC is not satisfied, in all the circumstances, that the Proposed Conduct (as defined in paragraph 1.4) 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.
- 5.4. Therefore, the ACCC has decided to **deny** authorisation to application AA1000540. In accordance with subsection 90(1)(b), the application is dismissed.
- 5.5. This determination is made on 13 September 2021. Any application to the Australian Competition Tribunal for review of the determination must be made on or before 5 October 2021.

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<sup>81</sup> See Annexure A of the application for authorisation AA1000540.