



Determination

Application for revocation of AA1000400 and the substitution of
authorisation AA1000625

lodged by

Qantas Airways Limited and Emirates

in respect of a Restated Master Coordination Agreement

Authorisation number: AA1000625

Date: 17 August 2023

Commissioners: Keogh
Brakey
Carver
Lowe

Summary

The ACCC has decided to re-authorise Qantas and Emirates (the Applicants) and their related bodies corporate to continue to coordinate their operations by giving effect to a Restated Master Coordination Agreement until 8 September 2028.

This conduct has been authorised since 2013 and has not materially changed in the current application.

The ACCC considers that the conduct would be likely to result in public benefits, in the form of: increased connectivity and convenience; facilitating capacity restoration and expansion; and, better frequent flyer program benefits. The ACCC also considers the conduct is likely to result in limited public benefits through stimulation of tourism and trade.

The ACCC considers the conduct would be likely to raise competition concerns in relation to the Sydney-Christchurch route. On this route, the ACCC considers the conduct would be likely to result in a public detriment by enhancing the Applicants' ability or incentive to unilaterally increase price or reduce services on the route.

To address this public detriment, the ACCC considers that it is appropriate for it to monitor the Applicants' price and capacity decisions on the Sydney-Christchurch route. The ACCC requires as a condition of authorisation that the Applicants report data to the ACCC regarding the number of seats operated and passengers flown, passenger revenue and operating costs on the route over the period of authorisation. This would allow the ACCC to monitor the competitive dynamics on the route and identify whether and to what extent the public detriment (as a result of the unilateral effects noted above) may be emerging. With the condition (set out in Annexure B), the ACCC considers that the Conduct would be likely to result in a public benefit and that this public benefit would outweigh any likely public detriment.

On 23 March 2023, the ACCC granted interim authorisation to enable the Applicants' coordination to continue while the ACCC is considering the substantive application. Interim authorisation remains in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn, or until it is revoked.

1. The application for revocation and substitution

- 1.1. On 7 November 2022, Qantas Airways Limited (**Qantas**) and Emirates (together, the **Applicants**) lodged with the Australian Competition and Consumer Commission (**ACCC**) an application to revoke authorisation AA1000400 and substitute it with authorisation AA1000625 (referred to as **re-authorisation**). The Applicants are seeking re-authorisation for themselves and certain of their related bodies corporate, being those listed in **Annexure A**, to continue to coordinate their operations pursuant to a Restated Master Coordination Agreement (**Agreement**¹) for a period of at least 5 years.
- 1.2. This application for re-authorisation AA1000625 was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). If granted, an

¹ Qantas and Emirates first entered into a Master Coordination Agreement in September 2012. This agreement was restated in October 2017 and subsequently extended without any material changes to the commercial terms. Qantas and Emirates are now seeking re-authorisation for themselves and their related bodies corporate under these terms of the Agreement.

authorisation provides businesses with protection from legal action under the competition provisions in Part IV of the Act. The ACCC has discretion to grant authorisation (s 88(1) of the Act) but must not do so unless it is satisfied in all the circumstances that the conduct would result in benefit to the public that would outweigh any likely public detriment (s 90(7) of the Act (the **authorisation test**)).

- 1.3. On 23 March 2023, the ACCC suspended the operation of authorisation AA1000400 and granted interim authorisation in substitution to enable the Applicants to continue their coordination while the ACCC assesses their substantive application for re-authorisation.² Interim authorisation will remain in place until the date the ACCC's final determination comes into effect, the application for authorisation is withdrawn, or until it is revoked.

The Applicants

Qantas Airways Limited

- 1.4. Qantas is Australia's largest domestic and international airline.
- 1.5. Prior to the COVID-19 pandemic, the Qantas Group operated over 4,500 flights domestically and over 730 flights internationally each week. Qantas also operates airline-related businesses including freight operations and loyalty programs, and various airline subsidiaries, including Jetstar, QantasLink and Network Aviation.
- 1.6. The international destinations to which Qantas currently operates are set out in Figure 1 below.

Figure 1: Qantas International Destinations (ex Australia)³

Region	Destinations
Pacific	Apia, Auckland, Christchurch, Dili, Nadi, Norfolk Island, Noumea, Nuku'alofa, Port Moresby, Queenstown, Wellington
Asia	Bangkok, Bengaluru, Delhi, Denpasar, Hong Kong, Jakarta, Manila, Seoul, Shanghai (from October 2023), Singapore, Tokyo Haneda
Europe	London Heathrow, Rome
Americas	Dallas/Fort Worth, Honolulu, Los Angeles, New York JFK, San Francisco, Santiago, Vancouver
Africa	Johannesburg

- 1.7. In addition to its alliance with Emirates, the Qantas Group is currently a party to the following airline alliances:
- an alliance with China Eastern Airlines, which was re-authorised by the ACCC until 31 March 2023.⁴ On 9 November 2022, Qantas and China Eastern Airlines lodged an application for re-authorisation to continue the alliance for a further 12 months. This application is currently being considered by the ACCC.⁵

² The ACCC's interim authorisation decision is made pursuant to subsection 91(2)(f) of the Act. A copy of the decision is available on the ACCC's [public register](#).

³ As at 9 August 2023.

⁴ See the ACCC's final determination (dated 29 January 2021) granting re-authorisation to Qantas and China Eastern Airlines [here](#).

⁵ On 30 March 2023, the ACCC granted interim authorisation to enable Qantas the China Eastern Airlines to continue their coordination on operations between Australia and mainland China while the ACCC assesses their substantive application for re-authorisation. The parties' application for re-authorisation and the ACCC's interim authorisation decision are available on the ACCC's [public register](#).

- an alliance with American Airlines, which was re-authorised by the ACCC until 16 April 2026.⁶
 - oneworld Alliance involving 15 international airlines.⁷
- 1.8. Qantas also has codeshare and interline arrangements with several other international airlines.
- 1.9. Jetstar Airways, a part of the Qantas Group, offers low-cost domestic and international flight services between Australia, the Pacific and New Zealand. The international destinations to which Jetstar currently operates are set out in Figure 2.

Figure 2: Jetstar International Destinations⁸

Region	Destinations
Pacific	Auckland, Christchurch, Dunedin, Nadi, Queenstown, Rarotonga, Wellington
South East Asia	Bangkok, Denpasar, Ho Chi Minh City, Phuket, Singapore
North East Asia	Osaka, Seoul, Tokyo-Narita,
Americas	Honolulu

- 1.10. Qantas is related to 2 other Jetstar-branded joint ventures in Asia:
- Jetstar Asia Airways Pte Limited (**Jetstar Asia**), in which the Qantas Group has a 49 per cent interest, is incorporated in Singapore and operates flights between Singapore and various destinations in Asia.
 - Jetstar Japan Co Ltd (**Jetstar Japan**), in which the Qantas Group has a 33.32 per cent shareholding, is incorporated in Japan and operates flights within Japan and internationally.
- 1.11. The ACCC re-authorised coordination between Qantas, Jetstar Airways and the Jetstar-branded joint ventures in February 2018⁹ and again in April 2023 (until 11 May 2028).¹⁰

Emirates

- 1.12. Emirates is a Dubai corporation ultimately wholly owned by the Government of Dubai. Emirates is the world's largest international carrier by revenue passenger kilometres. It operates more than 2,700 flights per week across 6 continents from Dubai.
- 1.13. Emirates is not a member of any global marketing alliance. It has codeshare arrangements with China Southern Airlines, United Airlines and some smaller airlines. The destinations to which Emirates currently operates from Dubai are set out in Figure 3.

Figure 3: Emirates Destinations¹¹

Region	Destinations
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⁶ See the ACCC's final determination (dated 25 March 2021) granting re-authorisation to Qantas and American Airlines [here](#).

⁷ See oneworld Alliance: <https://www.oneworld.com/>

⁸ As at 9 August 2023.

⁹ See ACCC final determination granting re-authorisation to Qantas and Jetstar [here](#).

¹⁰ The Qantas and Jetstar Asia application for re-authorisation and the ACCC's determination are available on the ACCC's [public register](#).

¹¹ As at 9 August 2023.

Pacific	Adelaide (temporarily suspended), Auckland, Brisbane, Christchurch, Melbourne, Perth, Sydney
Asia	Ahmedabad, Bali, Bangkok, Beijing, Bengaluru, Cebu, Chennai, Clark, Cochin, Colombo, Delhi, Dhaka, Guangzhou, Hanoi, Ho Chi Minh, Hong Kong, Hyderabad, Islamabad, Jakarta, Kabul (temporarily suspended), Karachi, Kolkata, Kuala Lumpur, Lahore, Male, Manila, Mumbai, Osaka, Peshawar, Phnom Penh (temporarily suspended), Phuket, Seoul, Shanghai, Sialkot, Singapore, Taipei, Thiruvananthapuram, Tokyo-Haneda, Tokyo-Narita, Yangon (temporarily suspended)
Europe	Amsterdam, Athens, Barcelona, Birmingham, Bologna, Brussels, Budapest, Copenhagen, Dublin, Dusseldorf, Edinburgh (temporarily suspended), Frankfurt, Geneva, Glasgow, Hamburg, Istanbul, Larnaca, Lisbon, London-Gatwick, London-Heathrow, London-Stansted, Lyon, Madrid, Malta, Manchester, Milan, Moscow, Munich, Newcastle, Nice, Oslo, Paris, Porto (temporarily suspended), Prague, Rome, St. Petersburg, Stockholm, Venice, Vienna, Warsaw, Zurich
Americas	Boston, Buenos Aires, Chicago, Dallas/Fort Worth, Houston, Los Angeles, Mexico City, Mexico City, Miami, New York, Newark, Orlando, Rio De Janeiro, San Francisco, Sao Paulo, Seattle, Toronto, Washington
Africa	Abidjan, Abuja, Accra, Addis Ababa, Algiers, Cairo, Cape Town, Casablanca, Conakry, Dakar, Dar Es Salaam, Durban, Entebbe, Harare, Johannesburg, Khartoum, Lagos (temporarily suspended), Luanda, Lusaka, Mauritius, Nairobi, Seychelles, Tunis
Middle East	Amman, Baghdad, Bahrain, Basra, Beirut, Dammam, Doha (temporarily suspended), Erbil (temporarily suspended), Jeddah, Kuwait, Medinah, Muscat, Riyadh, Tehran

The Conduct

1.14. The Applicants seek re-authorisation for the following conduct under the terms of the Agreement and other associated agreements:

- planning, scheduling, operating and capacity
- sales, marketing, advertising, promotion, distribution strategies, reservation priority and pricing (including fares, rebates, incentives and discounts) for passengers, freight customers and agents
- connectivity and integration of certain routes with the objective of offering customers a true global network using Qantas and Emirates' networks
- codeshare and interline arrangements for passenger services and cargo on passenger flight services
- control of inventories and yield management functions
- frequent flyer programs with the objective of optimising earning and redemption opportunities for customers
- all passenger-related aspects to provide a superior, consistent level of service to customers including ground services and lounge access
- harmonising service and product standards in order to provide a seamless product to passengers
- harmonising IT systems
- joint airport facilities

- joint offices for sales activities
- potentially other aspects of operations including ground handling, carriage of cargo on dedicated freighter flight services, engineering services, joint procurement and flight operations
- where appropriate and mutually agreed, making joint submissions to authorities on operational matters
- services and activities that are required to facilitate any of the matters referred to above.¹²

(collectively, the **Conduct**).

- 1.15. The Conduct includes coordination between Qantas, Emirates, Jetstar Airways and Jetstar Asia but does not include coordination between Emirates and Jetstar Japan.¹³

Rationale for the Conduct

- 1.16. The Applicants submit that the Conduct remains an important strategic imperative for both Emirates and Qantas, enabling both airlines to leverage each other's network strengths to deliver premium customer service, while also growing sustainably as demand returns post-pandemic.¹⁴

2. Background

Previous authorisations in respect of the alliance

- 2.1. On 27 March 2013, the ACCC granted authorisations A91332 and A91333 with a condition (**2013** authorisations) for Qantas and its related bodies corporate and Emirates and its subsidiaries to coordinate their operations pursuant to a Master Coordination Agreement for 5 years.¹⁵
- 2.2. At that time, the ACCC considered the Conduct was likely to result in a number of public benefits. While most of the routes covered by the alliance did not raise any significant competition concerns, the ACCC had concerns in relation to 4 trans-Tasman routes on which Qantas and Emirates operated overlapping services (Sydney-Auckland, Melbourne-Auckland, Brisbane-Auckland and Sydney-Christchurch). The ACCC was concerned that Qantas and Emirates would have the incentive and ability to reduce capacity and raise prices (airfares) on those routes.
- 2.3. Consequently, the ACCC imposed a condition requiring the parties report on their operation and maintain at least their pre-alliance capacity on those routes, subject to a mid-point review by the ACCC to consider whether an increase to the minimum required capacity was warranted.¹⁶ Following that review in May 2016, the ACCC considered it was not necessary to impose a requirement on Qantas and Emirates to increase capacity flown on the 4 trans-Tasman routes.
- 2.4. On 23 March 2018, the ACCC granted authorisation AA1000400 (**2018 re-authorisation**) to enable the Applicants to engage in the Conduct under the Agreement for 5 years until 31 March 2023.¹⁷

¹² Applicants' supporting submission, 5 November 2022, [3.3].

¹³ Applicants' supporting submission, 5 November 2022, [2.8].

¹⁴ Applicants' supporting submission, 5 November 2022, [3.12].

¹⁵ See the ACCC's final determination in respect of authorisations A91332 and A91333, available [here](#).

¹⁶ The Applicants provided the information to the ACCC in accordance with the reporting obligation.

¹⁷ See the ACCC's final determination in respect of authorisation AA1000400, available [here](#).

- 2.5. The ACCC considered that the Conduct would be likely to continue to result in a number of public benefits. However, the ACCC remained concerned about its impact on the Sydney-Christchurch route. This was the only overlapping trans-Tasman route operated by the Applicants at that time, as Emirates had ceased operating on Australia-Auckland routes due to its commencement of direct Dubai-Auckland services. The ACCC imposed a condition requiring the Applicants to report on their operations on the Sydney-Christchurch route as well as the Australia-Auckland routes during the period of authorisation.¹⁸ The ACCC also imposed a condition enabling it to conduct a review of capacity on the Sydney–Christchurch route at any time during the period of authorisation. This included the ability, following a review, to impose an obligation on the Applicants to add capacity on the Sydney-Christchurch route. The ACCC did not conduct such a review during the period of authorisation.
- 2.6. The Applicants’ networks are largely complementary, with direct operating overlaps between them reducing over time since the Conduct was first authorised in 2013.
- 2.7. Qantas has an extensive domestic network in Australia, where Emirates does not operate.¹⁹ Emirates has an extensive network in Europe and the Middle East/North Africa to locations where Qantas does not fly. Under the Agreement, there are 9 overlapping routes:
- a) Melbourne-Singapore (direct)
 - b) Sydney-Christchurch (direct)
 - c) Sydney/Melbourne/Brisbane/Adelaide/Perth to London Heathrow (one-stop via different mid-points)
 - d) Sydney/Perth to Rome (one-stop via different mid-points).
- 2.8. While both operate services between Sydney and Johannesburg, Qantas’ service is non-stop whereas Emirates is one-stop via Dubai and requires significantly longer travel time.
- 2.9. The international routes to/from Australia where Qantas and Jetstar fly but Emirates does not are: Apia, Auckland, Bengaluru, Dili, Dunedin, Honolulu, Nadi, Norfolk Island, Noumea, Nuku’ alofa, Port Moresby, Queenstown, Rarotonga, Santiago, Vancouver and Wellington.

3. Consultation

- 3.1. A public consultation process informs the ACCC’s assessment of the likely public benefits and detriments from the Conduct.
- 3.2. Prior to the draft determination, the Australian Federation of Travel Agents (**AFTA**), Helloworld Travel Limited and Axis Travel Centre made public submissions and another party made a confidential submission in response to the ACCC’s invitation to make submissions on the application.
- 3.3. AFTA is the peak body for Australia’s travel agents.²⁰ AFTA submitted that:
- The Applicants’ claimed public benefit would occur with or without the Conduct, as the Applicants would be likely to continue flying to their respective destinations and offer combined journeys under a codeshare arrangement. The Conduct would be likely to result in a public detriment by entrenching the Applicants’

¹⁸ The Applicants provided the information to the ACCC in accordance with the reporting obligation.

¹⁹ Emirates only operates to/from Australian international gateways.

²⁰ As part of this role, AFTA aims to stimulate, encourage and promote travel and uphold the interests of travel agents. It also administers the Australian Travel Accreditation Scheme, which accredits members for their operational standards.

market power on routes between Australia and the UK/Europe²¹ and not leading to capacity increases by the Applicants (or other airline carriers, due to these airlines' inability to access the Applicants' slots at major airports). AFTA submits that, while demand for airfares has recovered, the Qantas Group has reduced its forecast 2023 international capacity. AFTA submits that to ensure the Conduct leads to capacity increases not price increases, the ACCC should impose a condition in the authorisation requiring the Applicants to report on their coordination of routes and pricing.²²

- If the Conduct is re-authorised, the Applicants are likely to use their ability to coordinate to grow their direct sales channel to the detriment of the travel agents' ability to distribute airfares, resulting in higher prices for consumers.²³ AFTA submits the ACCC should impose a condition in the authorisation requiring the Applicants to make all fare types and schedules made possible by the Conduct available to travel agents through all distribution channels.
 - The ACCC should impose a condition requiring the Applicants to provide full and equal rights to travel agents for customer refunds and cancellations that occur under the Conduct, so that they cannot discriminate against travel agents by disabling access to the refund system for their customers as they did during the pandemic.²⁴
- 3.4. AFTA also submitted that the current regulatory environment is very one-sided – that is, AFTA members cannot have joint discussions with airlines (as AFTA members are competitors), but airlines that are in an alliance could coordinate their commercial arrangements with respect to travel agents.²⁵
- 3.5. In response to AFTA's submission, the Applicants submitted that AFTA makes a range of contentions which are inaccurate and/or irrelevant to the Conduct. The Applicants submit that:
- The Conduct will continue to result in real and substantial public benefits and will not result in any competitive detriment, particularly in circumstances where:
 - It will allow 2 highly complementary networks to continue to deliver significant public benefits which would not be possible in the counterfactual (as without authorisation of the Conduct, there would be no commercial agreement between Qantas and Emirates or, at best, a vastly diminished arms-length codeshare).²⁶
 - The Applicants face rivalry from multiple competitors on all relevant international routes (e.g. at least 32 carriers operated UK/Europe-Australia flights during CY17-May 2022).²⁷ With respect to the domestic market, the Applicants submit that Qantas faces intense competition from Virgin Australia and Rex and additional competition from Bonza.²⁸
 - The Applicants are not artificially withholding or delaying capacity but are dealing with aircraft and crew supply shortages.²⁹ Nonetheless, Qantas' capacity to the

²¹ AFTA's submission, 27 January 2023, p.3.

²² AFTA's record of oral submission, 13 February 2023, [15].

²³ AFTA's submission, 27 January 2023, pp.5-6; AFTA's record of oral submission, 13 February 2023, [13].

²⁴ AFTA's submission, 27 January 2023, pp.1 and 6.

²⁵ AFTA's record of oral submission, 13 February 2023, [5].

²⁶ Applicants' submission, 15 February 2023, [1.1(a)].

²⁷ Applicants' submission, 15 February 2023, [1.1(b)] and [2.4].

²⁸ Applicants' submission, 15 February 2023, [3.1].

²⁹ Applicants' submission, 15 February 2023, [6.3].

UK has returned to pre-pandemic levels since July 2022, and Emirates has resumed services to Australia as a result of the alliance.³⁰

- The Applicants do not control or jointly control slots at airports, as slots are managed by each airline independently rather than in a coordinated way. Existing slots regulation does not hinder other airlines' ability to increase supply; as shown by recent increases in capacity by other airlines at Sydney Airport.³¹
 - AFTA's proposed conditions are not necessary or appropriate, because:
 - The proposed route and price reporting condition is vague, onerous, and unnecessary. The Applicants already publish fares on their websites and submit pricing information to distribution systems accessible by travel agents.³²
 - The proposed condition allowing agents access to all fare inventories and schedules through all distribution systems is not relevant to the Conduct. Travel agents already have access to the vast majority of fare inventory. The ACCC has not imposed a similar condition on any other airline authorisations to that requested by AFTA.³³
 - AFTA has not stated why the proposed condition allowing agents full and equal rights for refunds and cancellations that occur under the Conduct is warranted or appropriate in the context of the alliance. The ACCC has not imposed conditions on any other airline alliance authorisation relating to refund and cancellation rights.³⁴
- 3.6. Axis Travel Centre submitted that the Conduct would detract from the choices and availability of fares, routes and quality services by restricting other airlines' routes with both Applicants consolidating to monopolise their joint routes, in particular routes to Dubai and to Europe.³⁵ Axis Travel Centre submits that the Applicants should be required to address shortcomings in their staff training and services to/communication with consumers, provide adequate compensation to consumers within a pre-set time limit set by the ACCC when they make mistakes, work alongside (rather than against) travel agents and provide adequate recognition and commission for the services agents provide to consumers on behalf of the Applicants.³⁶
- 3.7. Helloworld, a listed travel distribution company, submitted that the alliance will enable consumers to benefit from the increased connectivity provided by the combined network of the Applicants and earn frequent flyer points.
- 3.8. On 22 June 2023, the ACCC issued a draft determination proposing to grant re-authorisation for a period of 5 years. The ACCC received two submissions in response to the draft determination.
- 3.9. Following the draft determination, Axis Travel Centre submitted that:
- The ACCC's draft determination lacks any enforceable requirement, financial or otherwise, against either Applicants if they do not comply, do not deliver, or erode the current quality services, technological synchronisation, ground services,

³⁰ Applicants' submission, 15 February 2023, [6.2].

³¹ Applicants' submission, 15 February 2023, [5.5].

³² Applicants' submission, 15 February 2023, [8.2(a)].

³³ Applicants' submission, 15 February 2023, [8.2(b)].

³⁴ Applicants' submission, 15 February 2023, [8.2(c)].

³⁵ Axis Travel Centre's submission, 27 March 2023, pp.1-2.

³⁶ Axis Travel Centre's submission, 27 March 2023, pp.1-3.

frequent flyer mutual recognitions, consumer pricing or travel agency support mechanisms.³⁷

- New Zealand should not be the crux of what needs to be considered by the ACCC on behalf of the more financially important worldwide impact that the other Applicants' routes cover. The revenue, the services, the impact in terms of schedules, competition, financial benefits and liaison is far greater on the Applicants other long-haul world routes and not New Zealand.³⁸
- The Conduct would enable the Applicants to have a large slice of the international markets, with secured airports slots, increased seat availability on more routes which will sway consumers to request the Applicants' services and result in travel agents being "forced", due to strong marketing strategies from the Applicants, to offer the Applicants' services rather than those of their competitors. Axis Travel Centre submitted that in those circumstances it is unfair for the Applicants to expect travel agents to resolve issues emanating from Applicants-initiated problems and errors for no revenue.
- Axis Travel Centre raised concerns about fees and other commercial arrangements imposed on travel agents by the Applicants.
- Axis Travel Centre also submitted that the Applicants' partnership should be based on strong ACCC monitoring, listening to the travel industry with consumer monitoring of what is expected and what has been promised. Axis Travel Centre submits that the ACCC should mandate that the Applicants should communicate transparently and honestly to their consumers and the mutual clients of travel agents.³⁹

3.10. In response to the draft determination, Sydney Airport submitted:

- Sydney Airport does not object to the continued alliance between the Applicants as it has offered, and (if authorisation is granted) will likely continue to offer, benefits to passengers in the form of increased connectivity and convenience between Australia and destinations abroad.⁴⁰
- However, when assessing the competitiveness of the supply of international air passenger transport services between Australia and international destinations, Sydney Airport encourages the ACCC to consider that the ability of rival airlines to compete effectively may be limited in light of:
 - restrictions contained in bilateral air services agreements on the number of flights and number of passengers on international services. Sydney Airport submitted that the bilateral air services agreement between Australia and the United Arab Emirates is far less restrictive than the one between Australia and Qatar. Qatar Airways is limited to a maximum of 28 services per week to Australia's major ports and this allocation is fully utilised. In contrast, the agreement between Australia and the United Arab Emirates allows for up to 168 services per week to major Australian ports and a significant portion of this allocation remains unutilised.
 - The impact of the COVID-19 pandemic on airlines' networks and capacity utilisation. Sydney Airport submitted that the ACCC should carefully consider not only the availability of alternative routes, but also the ability and likelihood of other airlines to fully utilise alternative routes to facilitate capacity

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Sydney Airport's submission, 19 July 2023, p.1.

restoration and expansion following the COVID-19 pandemic.⁴¹ Sydney Airport submitted that many carriers have emerged from the pandemic as much smaller airlines with substantially smaller global footprints and as these carriers continue to restore their global network, they may have limited ability to respond to their competitors' price and service decisions on certain routes.⁴²

- Sydney Airport also noted that:
 - There are no longer any Australian airlines that operate services from Sydney to Europe via the Middle East.
 - Historically, alliances between airlines have, at times, led to airlines consolidating capacity on routes, rather than maintaining or growing capacity and routes. Where this has occurred, this has resulted in less choice and connectivity for passengers, and often higher airfares.⁴³

3.11. The Applicants did not provide any further submissions in response to Axis Travel Centre and Sydney Airports submissions in response to the ACCC's draft determination.

3.12. Public submissions by the Applicants and interested parties are on the ACCC's [public register](#).

4. ACCC assessment

4.1. The ACCC's assessment of the Conduct is carried out in accordance with the relevant authorisation test contained in the Act.

4.2. The Applicants have sought authorisation for Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act, and/or may have the purpose, effect or likely effect of substantially lessening competition within the meaning of subsections 45(1)(a)-(c) of the Act.⁴⁴ Consistent with subsection 90(7) and 90(8) of the Act⁴⁵, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result in benefit to the public that would outweigh any likely public detriment.

Relevant areas of competition

4.3. To assess the likely effect of the Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.

4.4. The ACCC considers that the areas of competition relevant to its assessment are likely to be:⁴⁶

- international air passenger services on routes between Australia and:
 - New Zealand
 - countries in Asia including Singapore
 - the UK/Europe

⁴¹ Sydney Airport's submission, 19 July 2023, p.1-2.

⁴² Sydney Airport's submission, 19 July 2023, p.1.

⁴³ Sydney Airport's submission, 19 July 2023, p.1.

⁴⁴ The Applicants initially also sought authorisation in respect of section 47 of the Act, but subsequently clarified that section 47 need not be included within the scope of the ACCC's determination. This clarification is available on the [public register](#).

⁴⁵ See subsection 91C(7).

⁴⁶ However, the ACCC does not consider it necessary to precisely define the boundaries of relevant market/s.

- international air cargo transport services between Australia and New Zealand, Australia and countries in Asia, and Australia and the UK/Europe
 - the Australian domestic air transport services market, in view of the significant Emirates feeder traffic to secondary Australian cities and regions.
- 4.5. The ACCC notes that the Conduct also extends to the Applicants coordinating and potentially jointly procuring products and services in relation to fuel, ground handling services, aircraft maintenance, inflight catering and aircraft cleaning. No interested party raised any concerns about the Applicants coordinating or undertaking joint procurement in these areas in the ACCC's 2013 authorisation process or the 2018 re-authorisation process, nor during the ACCC's consideration of the current application for re-authorisation. The ACCC considers that, generally, there are a large number of other acquirers of these products and services, and many of the inputs are acquired on an international basis. Accordingly, the ACCC considers that the Applicants' joint procurement of various goods and services is likely to have minimal, if any, impact on competition in any relevant market/area of competition and is therefore not likely to result in any material public detriment.

Future with and without the Conduct

- 4.6. To identify the public benefits and detriments that are likely to result from the Conduct, in the sense that they have a causal connection to the Conduct, and to make an evaluative judgment of the likely measure of those benefits and detriments, the ACCC compares the future in which the Conduct occurs (the **future with or factual**), as against the future in which the Conduct does not occur (the **future(s) without** or counterfactual(s)). As the Tribunal has said,

[c]onsideration of a future without the proposal in effect assists the public benefit and anti-competitive detriment assessment in at least three ways:

- (i) If the claimed public benefits are unlikely to exist without the proposal they can be described as benefits flowing from the proposal.*
- (ii) If the claimed public benefits exist, in part, in a future without the proposal the weight accorded to them may be reduced appropriately.*
- (iii) If, in a future without the proposal, there are public detriments which are removed or mitigated in the future with the proposal that may be considered as an element of the claimed public benefit flowing from the proposal.⁴⁷*

- 4.7. The Applicants submit that, in the future without the Conduct:

- There would be no commercial agreement between them or, at best, a vastly diminished arms-length codeshare agreement which would reduce the incentives of both parties to provide access to each other's network, thereby reducing connectivity and other consumer benefits.⁴⁸
- Emirates would be likely to downgrade the aircraft it operates on the Sydney-Christchurch route or eliminate the extension to Christchurch.
- Qantas would be disadvantaged on Australia-UK/Europe routes as an end-of-line carrier compared to mid-point carriers in hubs in the Middle East or Asia.

- 4.8. During consultation, AFTA was the only interested party which provided views on the likely futures with and without the Conduct. In its submission, AFTA queries whether absent the Conduct there would be a difference in the number of services or routes flown by the Applicants, including on routes not served by the other carrier. AFTA

⁴⁷ *Re Medicines Australia Inc* [2007] ACompT 4, [119].

⁴⁸ Applicants' supporting submission, 5 November 2022, [3.14] and [3.16].

submits that the same outcomes could be realised if market forces were allowed to play as per normal competition law and if the members of AFTA were allowed to compete fairly and equally for the overall sale of air services.⁴⁹

- 4.9. The ACCC considers that, in the future without the Conduct, it is uncertain whether Qantas and Emirates would enter into an alternative commercial agreement. However, the ACCC considers that if they were to do so, absent any regulatory approval, any such agreement would be likely to be, at best, an arms-length codeshare agreement. Such an agreement would not provide for the degree of coordination between Qantas and Emirates provided for in the Agreement, as outlined at paragraph 1.14.
- 4.10. The ACCC considers that, in the future without the Conduct, it is uncertain whether Emirates would be likely to reduce capacity or cease operating on the Sydney-Christchurch route. This would depend on various factors including: the profitability of this extension; the contribution that Christchurch traffic makes to the profitability of Dubai-Sydney route; and the terms of any alternative commercial agreement between Qantas and Emirates in the future without the Conduct.
- 4.11. The ACCC also considers that, as an end-of-line carrier, Qantas may be competitively disadvantaged in its operations between Australia and UK/Europe compared to mid-point carriers based in the Middle East and Asia, due to those carriers' ability to aggregate passenger traffic to and from Europe, North Africa and Asia. However, Qantas' international operations also have structural advantages including the strength of Qantas' domestic network and customer loyalty through corporate contracts and frequent flyers which are likely to offset these disadvantages.

Public benefits

- 4.12. The Act does not define what constitutes a public benefit. The ACCC adopts the broad approach taken by the Australian Competition Tribunal (the **Tribunal**), which has stated that, in considering public benefits,

*we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*⁵⁰

- 4.13. The ACCC has considered the public benefit claims of the Applicants in the following broad categories:
- enhanced products and services
 - cost savings and efficiencies
 - triggering a pro-competitive response from rivals
 - stimulation of tourism and trade.

Enhanced products and services

- 4.14. The ACCC has considered whether the Conduct is likely to result in public benefits through enhanced products and services in the following categories:
- increased connectivity and convenience
 - facilitating capacity restoration expansion

⁴⁹ AFTA's record of oral submission, 13 February 2023, [3]-[4].

⁵⁰ *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.

- better frequent flyer program benefits.

Increased connectivity and convenience

- 4.15. The Applicants submit that the Conduct delivers real and substantial benefits to Australian consumers through enhanced connectivity, combinability and schedule choice over an expanded combined global network, allowing passengers to seamlessly travel on a checked through boarding pass from and between Australia and New Zealand to Asia, the UK/Europe and the Middle East and North Africa region and vice versa.⁵¹
- 4.16. The Applicants submit that the Conduct has enabled⁵²:
- Emirates customers to access 62 destinations in Australia and 12 international destinations that are served by Qantas but not Emirates.
 - Qantas customers to access 67 destinations in the UK/Europe and the Middle East/North Africa regions that are served by Emirates but not Qantas.
- 4.17. The Applicants also submit that the Conduct has enabled them to improve schedule spread on overlap routes.⁵³ For example, the Applicants submit that on the Melbourne-Singapore route they, acting together, are likely to offer choices of morning and evening departures out of both ports in both directions once Emirates' services resume.⁵⁴ Similarly, once Emirates resumes Sydney-Christchurch services, the Applicants submit the Conduct will provide for increased spread of schedule choice on this route for customers.⁵⁵
- 4.18. AFTA submits that the Applicants' claimed public benefit would occur with or without the Conduct, as the Applicants could/would be likely to continue flying to their respective destinations and offer combined journeys under a codeshare arrangement.⁵⁶
- 4.19. The ACCC considers that the opportunity for new city pair offerings under the Conduct are confined to itineraries that require flights with both airlines. That is, journeys between a point of origin (or destination) in Australia that Emirates does not fly to/from and a point of destination (or origin) overseas that Qantas does not fly to.
- 4.20. The ACCC considers that the Conduct has conferred and is likely to continue to confer public benefits by enabling the Applicants to coordinate to synchronise their schedules to improve connectivity and provide a more seamless customer experience for passengers travelling on multi-sector journeys involving both airlines.
- 4.21. The ACCC also considers that the Conduct is likely to confer public benefits by providing customers with greater schedule choice and flexibility when travelling on routes where the Applicants' operations overlap by providing:
- greater incentive for the Applicants to spread their arrival/departure times⁵⁷ in order to offer customers a greater choice of arrival/departure times on overlap routes
 - passengers holding a Qantas (Emirates) ticket with the option of switching to an Emirates (Qantas) operated flight on the same route, subject to seat availability,

⁵¹ Applicants' submission, 5 November 2022, [1.8(a)].

⁵² Applicants' submission, 5 November 2022, [1.14] and [4.10].

⁵³ Applicants' submission, 5 November 2022, [1.13].

⁵⁴ Applicants' submission, 5 November 2022, [1.17].

⁵⁵ Applicant's submission, 5 November 2022, [4.19].

⁵⁶ AFTA's record of oral submission, 13 February 2023, [8].

⁵⁷ This avoids the need for the Applicants to fly on the same route at the same time of day (i.e. elimination of wingtip flying).

on similar terms as they would face to switch to an alternative Qantas (Emirates) flight.

- 4.22. The ACCC considers that the public benefits described in paragraphs 4.20 and 4.21 are likely because the Conduct enables closer and more effective coordination between the Applicants than would be likely in the future without the Conduct, including under an arms-length code share arrangement.

Facilitating capacity restoration and expansion

- 4.23. The Applicants submit that the Conduct has facilitated capacity expansion by Emirates pre-pandemic and will assist with capacity restoration (especially in relation to Australian ports).⁵⁸
- 4.24. The Applicants submit that Emirates views the alliance as supporting its intended resumption of non-stop frequencies from Dubai to Brisbane, Melbourne, Perth and Sydney to the same levels of capacity as were held in 2019 on aircraft of a similar gauge. Emirates also considers that the alliance has supported its anticipated resumption of services between Sydney and Christchurch in March 2023, direct Dubai-Auckland services from December 2022 and Melbourne-Singapore services in 2023.⁵⁹
- 4.25. The Applicants also submit that the Conduct has facilitated additional expansion by Qantas. For example, Qantas now operates the Brisbane-Queenstown and Melbourne-Queenstown sectors year-round rather than seasonally during the ski season.⁶⁰
- 4.26. The Applicants submit that the Conduct will also support potential capacity expansion over the longer term, as has been the case since the Conduct was first authorised.⁶¹ The Applicants submit that they have been working together to increase more capacity between Australia and the Middle East, with the intention of Emirates adding a third daily frequency between Dubai and Sydney before the end of the Northern Winter 2022/23 IATA season.⁶²
- 4.27. The Applicants' November 2022 submission states that the aviation industry continues to suffer from other flow-on effects from the pandemic and other global events such as the ongoing war in Ukraine. They submit that operationally all airlines have been experiencing disruption and delays as a result of staff/labour shortages (including crew availability and re-training), delays in aircraft manufacture and delivery, supply chain constraints, as well as significantly increasing fuel prices. In this context, the Applicants consider the Conduct is important both to supporting the ongoing rebuild of international operations by Qantas and Emirates going forward, and as that occurs and demand recovers, to enabling Qantas and Emirates to deliver the real and substantial benefits going forward as they have delivered pre-pandemic through the alliance. The Applicants submit that the Conduct will thereby continue to deliver important public benefits that could not otherwise be achieved to the same extent absent the Conduct.⁶³
- 4.28. The ACCC accepts that the Conduct has supported the Applicants to restore capacity while passenger demand, and their own operations, recovered from the disruptive effects of the pandemic and other global events.

⁵⁸ Applicants' submission, 5 November 2022, [1.8(d)].

⁵⁹ Applicants' submission, 5 November 2022, [1.11].

⁶⁰ Applicants' submission, 5 November 2022, [4.17].

⁶¹ Applicants' submission, 5 November 2022, [1.12].

⁶² Ibid.

⁶³ Applicants' submission, 5 November 2022, [4.14]-[4.15].

- 4.29. In future, the ACCC considers that the Conduct is likely to continue to confer public benefits by supporting the addition of new frequencies, increase in capacity and commencement of services to new destinations, by aggregating more feeder traffic than each airline would likely access in the future without the Conduct.

Better frequent flyer program benefits

- 4.30. The Applicants submit that the Conduct delivers benefits to consumers by offering reciprocal access to both parties' frequent flyer programs, including significant earning and redemption opportunities across the combined network, as well as reciprocal airport lounge access and 'top tier' frequent flyer member benefits (e.g. priority check-in, additional baggage allowance and preferential seating).⁶⁴
- 4.31. The Applicants submit that, as at 1 September 2022, there were approximately 14 million Qantas Frequent Flyers members and approximately 29.7 million Emirates Skywards members (of whom 2.1 million are resident or based in Australia).⁶⁵ The Applicants submit that the Conduct enables their respective frequent flyer program members to earn and redeem points on the other carrier's network and, depending on membership tiers, receive a range of reciprocal benefits such as access to domestic and international airport lounges, aligned additional baggage allowances, priority check-in and boarding, fast-tracked immigration processing (where applicable) and preferential access to seat selection and onboard Wi-Fi.
- 4.32. The Applicants submit that the benefits of the Conduct for Qantas Frequent Flyers and Skywards members are demonstrated by the (significant) proportion of redemption activities and frequent flyer points accruals on flights of the other carrier since the Conduct was first authorised in 2013.⁶⁶
- 4.33. AFTA submits that the claimed public benefit is overstated, because Qantas passengers with oneworld Sapphire status (gold Qantas) already have access to a variety of oneworld lounges in 15 of the 17 locations where Emirates has a lounge.⁶⁷
- 4.34. The Applicants submit that AFTA's contention is incorrect. The Applicants submit that a oneworld Sapphire/Qantas Gold member would only be able to access Emirates' lounges through the alliance (but not otherwise under a codeshare arrangement between Qantas and Emirates).⁶⁸ Further, the Applicants submit as a result of the Conduct, 26 Qantas lounges are made available to Emirates passengers where Emirates does not have a lounge, and 17 Emirates lounges are made available to Qantas passengers where Qantas does not have a lounge.⁶⁹
- 4.35. The ACCC considers that the Conduct would enhance the value of the Applicants' frequent flyer programs for members by providing increased opportunities to earn and redeem frequent flyer points as well as access to more airport lounges and 'top tier' member services on journeys that involve travel on both airline networks.
- 4.36. Given the large number of Qantas Frequent Flyers and Skywards members and the increased benefits likely to accrue to them as a result of the Conduct, the ACCC considers that reciprocal access to the Applicants' frequent flyer programs and related member services would be likely to result in a public benefit compared to the future without the Conduct.

⁶⁴ Applicants' submission, 5 November 2022, [1,8(b)].

⁶⁵ Applicants' submission, 5 November 2022, [4.36].

⁶⁶ Applicants' submission, 5 November 2022, [4.31]-[4.33].

⁶⁷ AFTA's submission, 27 January 2023, p.4.

⁶⁸ Applicants' submission, 15 February 2023, [4.2].

⁶⁹ Applicants' submission, 5 November 2022, [4.26].

Cost savings and other efficiencies

- 4.37. The Applicants make no claim as to whether the Conduct has enabled them to realise cost savings (e.g. by avoiding duplication of fixed costs) or other efficiencies (e.g. better utilisation of fixed assets) or likely to do so in the future.
- 4.38. The ACCC notes that while the alliance is not metal neutral⁷⁰, the Conduct would enable them to continue to coordinate in relation to:⁷¹
- joint airport facilities
 - joint offices for sale activities
 - harmonisation of IT systems
 - other aspects of operations, including ground handling, carriage of cargo on dedicated freighter flight services, engineering services, joint procurement and flight operations.
- 4.39. The ACCC considers it is possible that coordination between the Applicants in these areas could result in cost savings or other efficiencies. However, the Applicants have not provided information to enable the ACCC to reach the view that such benefits are likely and material.

Triggering a pro-competitive response from rivals

- 4.40. The Applicants submit that the Conduct has provided, and will continue to provide, Qantas and Emirates with the ability to offer a compelling customer proposition in competition with many other international carriers who have invested, and will in future continue to invest, in Australia.⁷²
- 4.41. The Applicants submit that competitors, particularly Qatar Airways, Etihad Airways and Singapore Airlines, have adopted pro-competitive initiatives in response to the Conduct since 2013 and will continue to do so. They submit that such initiatives include Virgin Australia's recent strategic partnership with Qatar Airways, providing Virgin Australia customers with access to Qatar Airways' global network of destinations via Doha.⁷³ The Applicants also refer to significant annual growth in capacity (pre-covid) operated to/from Australia by Etihad Airways, Qatar Airways and Singapore airlines to meet demand since the Conduct was first authorised by the ACCC in 2013.⁷⁴
- 4.42. As discussed in paragraphs 4.20-4.22 above, the ACCC considers that the Conduct enhances the Applicants' products and services. The ACCC recognises the potential for these enhanced products and services to trigger a pro-competitive response from rival airlines.
- 4.43. However, the ACCC considers that in the future without the Conduct there would be strong rivalry between airlines on most routes covered by the alliance (except the Sydney-Christchurch route). The ACCC does not consider that the Conduct would have a material incremental effect on competition on those routes. With respect to the Sydney-Christchurch route, the ACCC does not consider the Conduct would be likely to trigger a pro-competitive response from rivals (see paragraphs 4.62-4.74 below).

⁷⁰ Metal neutrality refers to a situation where the alliance partners' commercial incentives are fully aligned – to a point where each airline carrier is not concerned with whose plane the passenger flies on.

⁷¹ Applicants' submission, 5 November 2022, [3.3(i)-(l)].

⁷² Applicants' submission, 5 November 2022, [3.8].

⁷³ Applicants' submission, 5 November 2022, [5.2].

⁷⁴ Applicants' submission, 5 November 2022, [3.9]-[3.11]

- 4.44. On balance, the ACCC considers that there is insufficient evidence for the ACCC to reach a view that the Conduct is likely to confer public benefits by triggering a pro-competitive response from rivals.

Stimulation of tourism and trade

- 4.45. The Applicants submit that the Conduct has and will continue to increase tourism and promote international trade and business with respect to Australia.
- 4.46. The Applicants submit that, through the Conduct, Emirates' worldwide sales force has better access to sell journeys to Australia, particularly by being able to offer more seamless travel to secondary and regional cities served by Qantas and Jetstar.⁷⁵ They submit that since 2013 Emirates has promoted travel to Australia, including secondary cities within Australia, particularly in the Middle East and North Africa region where Qantas has limited reach, to keep Australia as a front-of-mind destination. For example, in 2022 Emirates ran a campaign with the Brisbane Economic Development Agency that targeted passengers throughout the UK, United Arab Emirates and the Republic of Ireland.⁷⁶
- 4.47. The Applicants submit that:
- Between 2014 and 2019, the number of passengers connecting beyond Emirates' Dubai-Australia flights to secondary cities in Australia (including Canberra, Cairns, Hobart, Townsville and Launceston) through Qantas and Jetstar were on average 400 per cent higher than in 2012 (prior to the alliance).⁷⁷
 - Since 2013, over 1.1 million Emirates passengers have flown on Qantas' domestic services and many of these customers travelled beyond the gateway cities to secondary cities and regional destinations such as Canberra, Townsville, Hobart, Cairns, Alice Springs and Launceston.⁷⁸
 - In 2019, 6 out of the top 9 Qantas domestic routes sold by Emirates were to regional cities specifically Adelaide, Hobart, Cairns, Canberra and Townsville.⁷⁹
- 4.48. The Applicants also submit that the Conduct has and will continue to promote (non-tourism) trade benefits by making it easier for foreign businesses to access non-gateway destinations in Australia and Australian exporters and imports to access the UK/Europe and Middle East/North Africa regions that Qantas does not directly service. They submit that, for example, Qantas and Emirates have been able to collaborate on sales and marketing and deliver a more effective carriage of freight and mail into/from Australia (including during the pandemic when Qantas planes travelling out of Australia had limited belly space capacity).⁸⁰
- 4.49. The ACCC recognises the potential for airline alliances to stimulate tourism by making Australia more accessible or convenient as a tourist destination through enhancement of the alliance's product and service offering and by allowing the parties to exploit synergies through joint rather than separate tourism promotion activity. This benefits parties who sell products and services to tourists.
- 4.50. The ACCC notes the Applicants' submission that the number of passengers connecting beyond Emirates flights to secondary cities and regional areas in Australia has increased markedly since the Conduct was first authorised. The ACCC considers it is difficult to assess how much of this increase is attributable to the Conduct as

⁷⁵ Applicants' submission, 5 November 2022, [4.52].

⁷⁶ Applicants' submission, 5 November 2022, [4.53].

⁷⁷ Applicants' submission, 5 November 2022, [4.54].

⁷⁸ Applicants' submission, 5 November 2022, [4.45].

⁷⁹ Applicants' submission, 5 November 2022, [4.55].

⁸⁰ Applicants' submission, 5 November 2022, [4.59].

opposed to other factors that influence inbound 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.

- 4.51. The ACCC also notes there are alternative suppliers of domestic air passenger services competing with Qantas to supply services to potential tourists wishing to visit Australia and travel beyond or between the gateway cities.
- 4.52. On balance, the ACCC considers that the Conduct is likely to stimulate tourism to Australia by improving international passengers' awareness of and connectivity to locations in Australia beyond the gateway cities that Emirates flies to. This is likely to deliver limited public benefits.
- 4.53. With respect to trade, the ACCC considers that the key drivers of the volume and value of (goods and service) trade between Australia and international destinations are largely outside the influence of the Conduct, including: purchasing power in source countries; the relative prices of goods and services; consumer tastes and preference; 'ease of doing business'; and stability of government. Nevertheless, the ACCC considers the Conduct may result in limited (non-tourism) trade-related public benefits, by making it easier for foreign businesses and Australian exporters/importers to access locations in Australia beyond the major international gateway cities.

ACCC conclusion on public benefits

- 4.54. The ACCC considers that the Conduct is likely to result in public benefits from enhanced products and services, in the form of:
 - increased connectivity and convenience
 - facilitating capacity restoration and expansion
 - better frequent flyer program benefits.
- 4.55. The ACCC also considers the Conduct is likely to result in limited public benefits through stimulation of tourism and trade.

Public detriments

- 4.56. The Act does not define what constitutes a public detriment. The ACCC adopts the broad approach taken by the Tribunal, which has described public detriment 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.*⁸¹
- 4.57. A number of the matters considered by interested parties (including the concerns raised by Axis Travel Centre's submission in response to the draft determination) as potential public detriments would not be, in the ACCC's assessment, causally connected to the Conduct in that they would be likely to exist or not be materially different in the future with as against the future without the Conduct:
 - the availability of airport slots for use by airlines (or air services capacity under bilateral air service agreements negotiated between Australia and other countries)⁸²

⁸¹ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

⁸² AFTA's record of oral submission, 13 February 2023, [7].

- the distribution systems for airfares.⁸³ The ACCC understands AFTA is referring to a broader industry practice in relation to distribution of airfares by airlines that is not specific to the Applicants.
 - travel agents' inability to assist consumers to access refunds and flights credits.⁸⁴ The ACCC recognises the harm to consumers that can arise when they are unable to claim or experience difficulty in claiming refunds and flight credits due to flight cancellations.
 - alleged or reported shortcomings in the Applicants' staff training and customer services, lack of compensation to consumers and lack of timeframe for resolution of consumer complaints when the Applicants make mistakes or do not deliver on the level of services promised by them, not working alongside and being unfair in commercial dealings with travel agents, lack of support to agents and leaving agents to be the messenger of "bad news" to consumers, and lack of recognition or commission to agents for their work in addressing Applicants-initiated mistakes and providing other services to consumers on their behalf.⁸⁵
- 4.58. The ACCC considers that, because these potential public detriments lack a causal connection to the Conduct, they are unlikely to materially affect whether the ACCC is satisfied of the test in section 90(7) of the Act.
- 4.59. The ACCC has considered the likely public detriments from the Conduct with respect to:
- the supply of international air passenger transport services between Australia and
 - New Zealand
 - countries in Asia including Singapore
 - the UK/Europe
 - the supply of domestic air passenger transport services
 - the supply of international cargo transport services.
- 4.60. These public detriments are considered in turn below.
- 4.61. The ACCC considers that the potential for public detriment is greatest in situations where the Conduct replaces rivalry between the Applicants with cooperation. This potential is greatest on routes on which the Applicants operate overlapping services.

The supply of international air passenger transport services between Australia and New Zealand

- 4.62. The Applicants account for the largest share of scheduled weekly return seats on the trans-Tasman (45.1% as at the week commencing 7 August 2023), followed by Air New Zealand (39.9%). Virgin Australia has a small trans-Tasman presence (4.8% as at the week commencing 7 August 2023). China Airlines, AirAsia X, Qatar Airways and LATAM Airlines each accounted for 1.8 to 3% of scheduled weekly return seats as at the week commencing 7 August 2023 with their services to/from Auckland.⁸⁶
- 4.63. The Applicants submit that the Conduct will not result in any competitive detriment on the trans-Tasman routes and the reporting condition in respect of those routes (imposed in the 2013 and 2018 authorisations) is not warranted and should be

⁸³ AFTA's submission, January 2023, pp.5-6.

⁸⁴ AFTA's submission, January 2023, pp.1 and 6.

⁸⁵ Axis Travel Centre's submissions, 27 March 2023 and 5 July 2023.

⁸⁶ Information derived from [Centre for Aviation](#), accessed 9 August 2023.

removed from consideration of the current application.⁸⁷ The Applicants submit that, in particular:

- The Tasman remains Australia's busiest (international) route in terms of direct capacity and frequency of service.⁸⁸
 - The Applicants will remain constrained by strong competitors on the trans-Tasman routes, particularly Air New Zealand. Virgin Australia has historically been and will likely be a strong constraint in the future. Qatar Airways also operates services between Adelaide and Auckland.⁸⁹
 - There are low barriers to entry and expansion due to the 'Open Skies' agreements between Australia and New Zealand.⁹⁰
 - The Applicants have not overlapped on the Australia-Auckland routes since Emirates ceased operating on those routes and commenced direct Dubai-Auckland services in 2018.⁹¹
 - Irrespective of the Conduct, the nature of passenger demand on the Tasman means that the Qantas Group will be naturally incentivised to provide high frequency services to meet, rather than in any way restrict, demand.⁹² Qantas is incentivised to maintain or grow connectivity to/from New Zealand (including Christchurch) to feed its expanding international network from Australia.⁹³
 - Absent the Conduct, there would be no commercial agreement between the Applicants or, at best, a vastly diminished codeshare which would reduce the incentives of both parties to provide access to each other's network.⁹⁴ Emirates would be likely to downgrade the aircraft it operates on the Sydney-Christchurch route or eliminate the extension to Christchurch.⁹⁵
 - The Conduct does not make coordinated effects between the Applicants and other competitors on the Tasman, including Air New Zealand and Virgin Australia (if and when it recommences services) any more likely to occur. The various carriers have different cost bases and business models, characteristics and geopolitical interests, which means they are less likely to have aligned interests.⁹⁶
- 4.64. The ACCC notes that the only remaining trans-Tasman route on which the Applicants' operations overlap is the Sydney-Christchurch route, following Emirates' commencement of direct services between Dubai and Auckland and cessation of services between Australia and Auckland.
- 4.65. The ACCC notes that the Sydney-Christchurch route is the 7th largest trans-Tasman route, accounting for 5% of total capacity (seats flown) between Australia and New Zealand in 2019.⁹⁷ In the week commencing 7 August 2023, there were 3 carriers operating passenger services on the route. Emirates flew 7,196 return seats per week on the route (51.6%), Qantas flew 3,828 return seats per week (27.5%) and Air New

⁸⁷ Applicants' submission, 5 November 2022, [7.8]-[7.24].

⁸⁸ Applicants' submission, 5 November 2022, [7.2].

⁸⁹ Applicants' submission, 5 November 2022, [7.13].

⁹⁰ Applicants' submission, 5 November 2022, [7.14] and [7.17].

⁹¹ Emirates' direct Dubai-Auckland services were paused during the pandemic but have resumed from December 2022.

⁹² Applicants' submission, 5 November 2022, [7.22].

⁹³ Applicants' submission, 5 November 2022, [7.22].

⁹⁴ Applicants' submission, 5 November 2022, [3.14] and [3.16].

⁹⁵ Emirates' submission dated 7 March 2022, [2.2].

⁹⁶ Applicants' submission, 5 November 2022, [7.16]-[7.17].

⁹⁷ Bureau of Infrastructure and Transport Research Economics, [International scheduled passenger flights and seats by airline, route and city pairs, December 2022](#).

Zealand flew 2,910 seats per week (20.9%).⁹⁸ Emirates is operating a similar number of return seats as it did before the pandemic, using Airbus A380 aircraft. Qantas, Jetstar and Air New Zealand use smaller aircraft.

4.66. The ACCC considers that in the future without the Conduct it is possible that Emirates would downsize or even cease operating Sydney-Christchurch services. However, the ACCC considers that it is likely that Emirates would maintain a significant presence on the route given:

- The international appeal of the South Island of New Zealand as a destination, including among passengers who prefer to fly with Emirates. The ACCC notes that prior to the pandemic (in calendar year 2019), around one quarter of passengers who flew the Sydney-Christchurch route travelled on a ticket sold by Emirates.
- The large proportion of passengers on Emirates' Sydney-Christchurch services that are origin-destination passengers on the route. The ACCC considers that Emirates would be able to readily market these services to customers via its website and other distribution channels in the future without the Conduct.

4.67. The ACCC considers that, even if Emirates were to downsize or cease Sydney-Christchurch services in the future without the Conduct, it would likely be in a position to credibly threaten to re-enter the route if other airlines operating on the route were to raise prices or reduce services.

4.68. The ACCC is concerned that the Conduct would be likely to result in a public detriment by enabling the Applicants to unilaterally raise prices or reduce services on the Sydney-Christchurch route. The ACCC considers:

- In the future without the Conduct, if Qantas were to unilaterally raise fares on the route, it would likely lose customers to Emirates (and vice versa) as well as other airlines operating on the route. The Conduct allows Qantas and Emirates to internalise the effect of the loss of customers to each other, which could make a strategy to raise fares profitable for the Applicants.
- It is unlikely that any other Australian or New Zealand designated airlines would enter the route in a timeframe and on a scale sufficient to provide a meaningful competitive constraint on the Applicants.
- For the foreseeable future, it is likely that Air New Zealand will provide the only major competitive constraint on the Applicants, following Virgin's exit from the route in 2020. The ACCC considers this constraint is unlikely to be sufficient to make any unilateral reduction in capacity (or restriction of capacity growth) unprofitable for the Applicants.
- There is little prospect of other international carriers (with unexercised fifth freedom carrier rights⁹⁹) entering the route in the future with the Conduct. Qatar Airways only operates from Australia to Auckland and is unlikely to enter the Sydney-Christchurch route. Fifth freedom carriers' assessment of whether it is commercially viable to commence Sydney-Christchurch services would take into account various factors including (but not limited to): the incremental impact of this extension on the viability of their long-haul international services to/from Australia; the risk that their entry might trigger a competitive response from Emirates; and the availability of suitable airport slots.

⁹⁸ Information derived from [Centre for Aviation](#), accessed 9 August 2023.

⁹⁹ A fifth freedom carrier is a carrier that operates services between two foreign countries on flights which commence or end in the carrier's home country.

- 4.69. In view of this concern, the ACCC considers it is appropriate to monitor the Applicants' price and capacity decisions on the Sydney-Christchurch route for the period of authorisation (see paragraph 4.112 and Annexure B).
- 4.70. The ACCC has also considered the possibility that the Conduct may increase the likelihood of the Applicants and Air New Zealand deciding to not compete as aggressively as they otherwise would by adopting a common strategy to reduce or limit growth in capacity on the Sydney-Christchurch route.
- 4.71. The ACCC considers that public detriment would only be likely to arise if the Conduct increases the likelihood of coordinated conduct as compared to the likely future without the Conduct. To the extent that Emirates would act to impede successful coordination between Qantas Group and Air New Zealand in the future without the Conduct, the Conduct, by removing that impediment, will increase the likelihood of successful coordination.
- 4.72. The ACCC considers that there are several factors that make coordinated conduct more likely on the Sydney-Christchurch route:
- the limited number of airlines operating on the route (following the withdrawal of Virgin in 2020 and China Airways in 2017)
 - the symmetry between Qantas Group and Air New Zealand each operating similar capacity on the overlap route
 - repeated interactions between Qantas Group and Air New Zealand on trans-Tasman routes, which may facilitate learning of behaviours and create scope for retaliation
 - limited likelihood of other fifth freedom carriers entering and/or substantially increasing capacity on the route (as discussed in paragraph 4.68 above)
 - transparency of price and capacity.
- 4.73. However, the ACCC notes that as a fifth freedom carrier¹⁰⁰, Emirates' capacity, scheduling and frequency decisions on the Sydney-Christchurch route are likely to be driven by broader network considerations, including the profitability and operational requirements of its Dubai to Sydney services. The large A380 aircraft that Emirates currently flies on the Sydney-Christchurch route are more costly to operate than the aircraft operated by Qantas Group and Air New Zealand.
- 4.74. The ACCC considers that, while there is some prospect of Emirates acting to impede successful coordination on the Sydney-Christchurch route in the future without the Conduct, it is unlikely that Emirates would have the ability and incentive to materially disrupt coordinated conduct on the route. The ACCC therefore does not consider that the Conduct is likely to result in public detriment by materially increasing the likelihood of coordinated effects on the Sydney-Christchurch route.

The supply of international air passenger transport services between Australia and countries in Asia including Singapore

- 4.75. The Applicants submit that the Conduct will not result in any competitive detriment on routes between Australia and Asia (including Singapore) because there are multiple carriers on those routes to constrain the alliance. In particular, the Applicants submit that:
- The Australia-Singapore market is highly competitive. Singapore Airlines is the market leader in flights between Australia and Singapore and, together with its

¹⁰⁰ A fifth freedom carrier is a carrier that operates services between two foreign countries on flights which commence or end in the carrier's home country.

related business Scoot, will continue to compete vigorously and effectively against the Applicants. On the Melbourne-Singapore route, which is the only route between Australia and Asia on which the Applicants' operations overlap, Singapore Airlines and Scoot have rapidly restored capacity since the pandemic and have published an 8% increase in scheduled capacity on the route for FY2023 relative to 2019 levels.¹⁰¹

- The Australia-Thailand market is also highly competitive, and the Applicants will continue to face significant competitive constraints from Thai Airways.¹⁰²
 - Direct operators who provide services on routes between Australia and Singapore and Australia and Thailand are not only constrained by each other, but also by carriers operating indirect services, for example, Malaysia Airlines or Cathay Pacific or third country carriers such as Etihad Airways, Qatar Airways, the Chinese carriers and low-cost carriers operating in Asia.¹⁰³
- 4.76. The ACCC notes that, in the week commencing 7 August 2023, Singapore Airlines and its related business Scoot accounted for the largest share (combined 71.8%) of scheduled weekly return seats between Australia and Singapore, followed by Qantas Group (21.8%), Emirates (4%) and British Airways (2.3%).¹⁰⁴
- 4.77. The ACCC acknowledges that the Melbourne-Singapore route is the only route between Australia and Asia on which the Applicants' operations overlap. Emirates resumed its services on this route from the end of March 2023.
- 4.78. The ACCC notes that Singapore Airlines and its related entity Scoot have a significant presence and are the main source of competitive constraint on the Applicants on the Melbourne-Singapore route. Prior to the pandemic (in calendar year 2019) around 42% of passengers who flew between Melbourne and Singapore travelled on a ticket booked with Singapore Airlines or Scoot, compared to 56.5% with the Applicants.¹⁰⁵
- 4.79. A number of airlines including Malaysia Airlines and Royal Brunei Airlines operate indirect (one-stop) services between Melbourne and Singapore. Since 2017 these airlines collectively accounted for less than 2.5% of total passenger bookings on the route.¹⁰⁶ The ACCC considers that these carriers are not in a position to materially constrain the Applicants on the Melbourne-Singapore route.
- 4.80. The ACCC considers that Singapore Airlines and its related entity Scoot are likely to provide strong competition to the Applicants on the Melbourne-Singapore route. The ACCC considers that they have the ability and incentive to compete aggressively with the Applicants for passengers travelling to Singapore as a destination and ensure Singapore's continued viability as a key aviation hub in the Asia region. In view of this competitive constraint, it is unlikely that the Applicants would find it profitable to unilaterally raise airfares or reduce services on the Melbourne-Singapore route.
- 4.81. The ACCC does not consider that the Conduct materially increases the likelihood of coordinated effects on this route, given Singapore Airlines' incentives to compete aggressively to secure more Singapore destination traffic as well as traffic via Singapore to UK/Europe.

¹⁰¹ Applicants' submission, 5 November 2022, [8.8].

¹⁰² Applicants' submission, 5 November 2022, [8.14].

¹⁰³ Applicants' submission, 5 November 2022, [8.11] and [8.18].

¹⁰⁴ Information derived from [Centre for Aviation](#), accessed 9 August 2023.

¹⁰⁵ Applicants' submission, 5 November 2022, [8.7].

¹⁰⁶ Applicants' submission, 5 November 2022, Table 1, Annexure G.

4.82. The ACCC therefore considers that the Conduct would be unlikely to result in any material public detriment in relation to international air passenger transport services between Australia and countries in Asia, including Singapore.

The supply of international air passenger transport services between Australia and the UK/Europe

4.83. The Applicants submit that the Conduct would not result in any competitive detriment on Australia-UK/Europe routes because there is a broad range of carriers operating on those routes (via different mid-points) to constrain the alliance.¹⁰⁷

4.84. The ACCC notes that the Applicants' operations overlap (via different mid-points) on the following routes between Australia and the UK/Europe:

- Sydney/Melbourne/Adelaide/Brisbane/Perth-London
- Sydney/Perth-Rome.

4.85. As mentioned in paragraphs 3.3 and 3.6 above, AFTA and Axis Travel Centre have raised concerns that the Conduct would enable the Applicants to have significant market power in relation to air passenger transport services on routes between Australia and the UK/Europe. The AFTA has also submitted that the ACCC should impose a condition to require the Applicants to report on routes and pricing for their services between Australia-UK/Europe to provide transparency and address the harm from any attempt by the Applicants to reduce capacity.

4.86. The Applicants submit that, contrary to AFTA's submission, they do not have any market power on those routes, because market shares are not representative of market power. The Applicants also submit that the Conduct would not result in competitive harm because all relevant markets from Australia to the UK/Europe, New Zealand and Asia are characterised by intensely rivalrous behaviour that will not in any way be diminished or restricted as a result of the Conduct.¹⁰⁸

4.87. Sydney Airport has submitted that significant restrictions contained in the current bilateral ASA between Australia and Qatar limit the ability for Qatar Airways to operate additional services into Sydney and other key Australian gateways. Sydney Airport also submitted that carriers such as Etihad Airways have yet to fully restore pre-pandemic capacity and services between Australia and Europe via the Middle East.¹⁰⁹

4.88. The ACCC notes there are a number of carriers currently operating one or 2-stop services in competition with the Applicants' services between Australia and the UK/Europe, including Qatar Airways, British Airways, Singapore Airlines, Etihad Airways, Malaysia Airlines, Cathay Pacific, Thai Airways, China Eastern Airlines and China Southern Airlines.

4.89. The ACCC has assessed the impact of the Conduct on competition for the supply of international air passenger transport services between Australia and the UK/Europe, having regard to the effect of the Conduct on the number of independently determined price/service offerings on overlap routes. The Conduct involves the loss of an alternative one-stop service on each of the overlap routes.

4.90. The ACCC considers that on each overlap route, the Applicants will face competition from a number of established carriers with the ability and incentive to expand their operations in response to any attempt by the Applicants to unilaterally raise prices or reduce services. The ACCC notes Sydney Airport's concern that Qatar Airways is not

¹⁰⁷ Applicants' submission, 5 November 2022, [6.1].

¹⁰⁸ Applicants' submission, 15 February 2023, [2.3].

¹⁰⁹ Sydney Airport's submission, 19 July 2023, pp.1-2.

able to expand its services to/from Australia under the current bilateral air services agreement between Australia and Qatar. The ACCC also notes that most of the other airlines listed in paragraph 4.88 above face either no limit to the capacity they can fly to/from Australia or significant available capacity.¹¹⁰ The ACCC considers that in the short to medium term there is likely to be available capacity (and available airport slots) for a number of foreign designated carriers to expand services between Australia and UK/Europe via various mid-points.

- 4.91. The ACCC also notes Sydney Airport's concern that some carriers who have emerged from the pandemic much smaller and with substantially smaller global footprints may have more limited ability to respond to their competitors' price and service decisions. To the extent that their competitive constraint was diminished during the period of the COVID-19 pandemic, the ACCC considers those carriers' ability to provide a greater competitive constraint on Australia-UK/Europe routes may be greater in the future.
- 4.92. Overall, given the strong competition the Applicants face on overlap routes, the ACCC considers it would be unlikely that the Applicants would find it profitable to unilaterally raise airfares or reduce services on any overlap route as rival airlines are likely to continue competing for market share and exert a strong competitive constraint on the Applicants' price and service decisions.
- 4.93. The ACCC considers that the Conduct would not materially impact on the likelihood of coordinated conduct by airlines on the overlap routes, given the number of airlines operating on the routes and their varying cost structures.
- 4.94. Accordingly, the ACCC considers that the Conduct would be unlikely to result in material public detriment through its effect on competition on international air passenger transport services on these routes and that a condition along the lines suggested by AFTA is not necessary.

The supply of domestic air passenger transport services

- 4.95. AFTA submits that the Conduct increases the barriers for other carriers seeking to operate only in the Australian domestic market by entrenching high frequency corporate travellers to dominant airlines.¹¹¹
- 4.96. In response, the Applicants submit that the domestic market is highly competitive, and Qantas faces rivalry from Virgin Australia and Rex (both of which have significant expansion plans) and additional competition from Bonza. The Applicants also submit that Virgin Australia has partnership agreements with other airlines, which includes frequent flyer programs.¹¹²
- 4.97. The ACCC has considered whether the Conduct has the potential to reduce competition in the Australian domestic air passenger services market by:
 - enabling Qantas and Emirates to bundle international and domestic services to corporate customers in a way that prevents domestic carriers from competing for those customers on their merits, and/or
 - directing Emirates feeder traffic to Qantas Group domestic services.
- 4.98. On the first point, the ACCC considers that, while the Conduct will enhance the appeal of Qantas' domestic offers to corporate and government travellers (through

¹¹⁰ See Australian Department of Infrastructure, Transport, Regional Development, Communications and the Arts, Growth Potential for Foreign Airlines, April 2023, available at: <https://www.infrastructure.gov.au/sites/default/files/documents/growth-potential-foreign-airlines-northern-summer2023-april2023.pdf>

¹¹¹ AFTA's submission, 27 January 2023, p.3.

¹¹² Applicants' submission, 15 February 2023, [3.1].

increased connectivity with Emirates' international services and reciprocal frequent flyer benefits), it is not likely to prevent or limit the ability of Virgin Australia to compete on its merits to attract corporate customers. The ACCC notes that Virgin Australia receives feeder traffic from its network of international partners, including: Qatar Airways, Singapore Airlines, United Airlines, Hawaiian Airlines, All Nippon Airways and Air Canada (and vice versa).

- 4.99. On the second point, the ACCC considers that the Conduct is not likely to distort competition in the domestic air passenger transport services market by steering Emirates feeder traffic to Qantas Group's domestic services since:
- International feeder traffic accounts for a very small proportion of the domestic air passenger transport services supplied in Australia each year since the Conduct was first authorised in 2013.
 - Confidential data provided by the Applicants indicates that the Conduct makes a minimal contribution to Qantas Group domestic sales. The vast majority of Qantas Group domestic sales are not to passengers connecting to/from an international flight operated by Emirates.
- 4.100. The ACCC therefore considers that the Conduct is not likely to result in any significant public detriment in the supply of domestic air passenger transport service.

The supply of international air cargo transport services

- 4.101. The Applicants submit that the markets for air freight services between Australia and each of Asia, New Zealand and the UK/Europe are highly competitive with numerous operators and routing options and low barriers to entry.¹¹³
- 4.102. In relation to Australia-New Zealand air freight services, the Applicants submit that in 2019 (pre-pandemic), they (combined) accounted for 25.4% of air freight services, while Air New Zealand had a 49.3% share. They submit that other suppliers included Tasman Cargo Airlines (12.6%) and Singapore Airlines (7.6%), with other carriers such as Virgin Australia and China Airlines also competing for market share.¹¹⁴
- 4.103. The Applicants submit that the potential concern raised by the ACCC in 2018 regarding freight services on the Sydney-Christchurch route will not arise going forward, because:¹¹⁵
- Indirect routes are generally substitutable for direct cargo services (for example, indirect routes to Christchurch from other cities in Australia, and to other cities in New Zealand with road/sea connections to Christchurch).
 - Entry and expansion of dedicated freighters can take place rapidly. For example, Tasman Cargo Airlines has grown its market share of Australia-New Zealand freight services to 28.6% in January-May 2022, and Airworks (operated on behalf of FedEx) entered the trans-Tasman freight market in the last 12 months.
- 4.104. No interested parties have provided submissions in relation to the impact of the Conduct on the supply of international cargo transport services.
- 4.105. The ACCC considers that there are numerous other passenger airlines and dedicated air freighters that compete with the Applicants to supply air cargo services between Australia and the UK/Europe and between Australia and countries in Asia including Singapore. As such, the ACCC considers the Conduct would be unlikely to result in

¹¹³ Applicants' submission, 5 November 2022, [9.1].

¹¹⁴ Applicants' submission, 5 November 2022, [9.11].

¹¹⁵ Applicants' submission, 5 November 2022, [9.12].

any significant public detriment in relation to international cargo transport services in these areas of competition.

- 4.106. With respect to Australia-New Zealand air cargo services, the ACCC considers that there are a number of other passenger airlines and dedicated air freighters competing with the Applicants to supply air cargo services. The ACCC notes that the Applicants accounted for 12-28% of total air freight each month during 2019 (pre-pandemic), compared to Air New Zealand's 45-55%.¹¹⁶ Other suppliers of air cargo services between Australia and New Zealand include Singapore Airlines, China Airways, LATAM Airlines, Virgin Australia and Tasman Cargo Services. The latter provides dedicated air freight services from various cities in Australia to Auckland and Christchurch (via Auckland).
- 4.107. The ACCC considers that the competitive constraint from international airlines and dedicated freighters would be likely be sufficient to make any attempt to unilaterally increase prices or reduce services unprofitable for the Applicants.
- 4.108. The ACCC therefore considers that the Conduct is not likely to result in public detriment in the supply of international air cargo transport services on routes covered by the Conduct.

ACCC conclusion on public detriments

- 4.109. The ACCC considers that the Conduct would be likely to result in a public detriment in the form of enhancing the ability or incentive of the Applicants to engage in conduct to unilaterally increase prices or reduce services on the Sydney-Christchurch route (see paragraphs 4.64 above).

Balance of public benefit and detriment

- 4.110. The ACCC's assessment of whether it is satisfied that the likely public benefits of the Conduct would outweigh the likely public detriments requires a balancing exercise.¹¹⁷
- 4.111. The ACCC considers that the Conduct is likely to result in public benefits from:
- enhanced products and services, in the form of increased connectivity and convenience, facilitating capacity restoration and expansion, and better frequent flyer program benefits, and
 - stimulation of tourism and trade.
- 4.112. Despite these public benefits, the ACCC is concerned about the potential for unilateral effects on the Sydney-Christchurch route, as discussed at paragraphs 4.64- above. The ACCC considers that it is important for it to monitor the Applicants' price and capacity decisions on the Sydney-Christchurch route to identify whether and to what extent those effects may be emerging. The ACCC has decided to specify a condition, set out at Annexure B to this determination, that would require that, for the duration of the authorisation, Qantas, Jetstar and Emirates each provide on a half-yearly basis their:
- total number of seats flown by cabin class on the route
 - total number of passengers flown on the route by cabin class, with a breakdown of the number who are Sydney-Christchurch point to point passengers versus connecting passengers

¹¹⁶ Bureau of Infrastructure and Transport Research Economics, [Airline by country of port data—passengers, freight and mail—2009 to current](#).

¹¹⁷ *Australian Competition and Consumer Commission v Australian Competition Tribunal* (2017) 254 FCR 341, at [7] (Besanko, Perram and Robertson JJ).

- total passenger revenue (AUD) realised for services operated that month by cabin class, with a breakdown for point to point versus connecting passengers
- total operating cost (AUD) on the route (before tax) as reported in the airline's financial accounting system.

4.113. The ACCC considers that it can be satisfied that the Conduct, with the condition specified at Annexure B, would be likely to result in a public benefit and that this public benefit would outweigh the likely detriment to the public from the Conduct.

Length of authorisation

4.114. The Applicants seek re-authorisation for a period of at least 5 years through to at least 31 March 2028. This is broadly consistent with the period for which authorisation was granted in 2013 and 2018. The Applicants submit that this term is necessary to provide certainty for investment decisions which can only be justified with a long-term view to stimulate and guide recovery and growth in changed yet still highly competitive markets post-pandemic. The Applicants submit that any lesser period would not facilitate public benefits and will instead inject regulatory uncertainty and significant competitive disadvantage for the Applicants and ultimately reduced choice for consumers.¹¹⁸

4.115. AFTA submits that authorisation, if granted, should be for no more than 5 years, given massive transformations are occurring across the aviation industry in a rapidly evolving post-pandemic landscape.¹¹⁹

4.116. The ACCC has decided to grant authorisation for 5 years. Given the dynamic nature of the aviation industry, the extent of public benefits conferred by the Conduct and the potential for public detriment on the Sydney-Christchurch route, the ACCC considers that it would not be appropriate to grant authorisation for a longer term.

5. Determination

The application

5.1. On 7 November 2022, the Applicants lodged an application to revoke authorisation AA1000400 and substitute authorisation AA1000625 for the one revoked (referred to as re-authorisation). The Applicants seek authorisation for Conduct as described in paragraph 1.14 above. This application for re-authorisation AA1000625 was made under subsection 91C(1) of the Act.

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 Conduct would result in benefit to the public that would outweigh any likely public detriment that would result from the Conduct.

5.3. The Act permits the ACCC to specify conditions in an authorisation.¹²⁰ The ACCC determines the nature, form and scope of any conditions imposed and, while there is no express limit on the types of conditions which may be imposed on the grant of an authorisation, the power to impose conditions is constrained by the subject matter, scope and purposes of the Act.¹²¹

¹¹⁸ Applicants' submission, 5 November 2022, [1.24].

¹¹⁹ AFTA's submission, 27 January 2023, pp.1 and 6.

¹²⁰ Section 88(3) of the Act.

¹²¹ See *Re Medicines Australia Inc* [2007] ACompT 4 at [131].

- 5.4. The legal protection provided by the authorisation does not apply if any of the conditions are not complied with.¹²²
- 5.5. The ACCC has decided to grant authorisation on the condition, pursuant to section 88(3) of the Act, that the Applicants comply with the condition specified at Annexure B to this determination.
- 5.6. For the reasons outlined in this determination, the ACCC is satisfied that the Conduct, with the condition specified at Annexure B, would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Conduct, including any lessening of competition.
- 5.7. Accordingly, the ACCC has decided to grant re-authorisation with the condition specified at Annexure B of this determination.

Conduct which the ACCC has decided to authorise

- 5.8. The ACCC has decided to revoke authorisation AA1000400 and grant authorisation AA1000625 in substitution to enable the Applicants to engage in the Conduct described in paragraph 1.14. The ACCC has decided to grant authorisation with the condition, pursuant to section 88(3) of the Act, specified at Annexure B to this determination.
- 5.9. The ACCC's decision to grant authorisation AA1000625 until 8 September 2028 with the condition specified at Annexure B is made in respect of Division 1 of Part IV of the Act and section 45 of the Act.

6. Date authorisation comes into effect

- 6.1. This determination is made on 17 August 2023. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 8 September 2023.

¹²² Section 88(3) of the Act.

Annexure A – Related bodies corporate to be covered by authorisation

Qantas entities

Entity	Country of Incorporation
AAL Aviation Limited	Australia
Airlink Pty Limited	Australia
Australian Air Express Pty Ltd	Australia
Australian Airlines Limited	Australia
Australian Regional Airlines Pty. Ltd.	Australia
Eastern Australia Airlines Pty. Limited	Australia
Express Freighters Australia (Operations) Pty Limited	Australia
Express Freighters Australia Pty Limited	Australia
H Travel Sdn Bhd	Malaysia
Hangda Ticket Agent (Shanghai) Co. Ltd	China
Holiday Tours & Travel (Korea) Limited	Korea
Holiday Tours & Travel (Singapore) Pte. Ltd.	Singapore
Holiday Tours & Travel Limited	Hong Kong
Holiday Tours & Travel Ltd	Taiwan
Holiday Tours & Travel Pte. Ltd.	Singapore
HTT Travel Vietnam Limited Liability Company	Vietnam
Impulse Airlines Holdings Proprietary Limited	Australia
Jetabout Japan, Inc.	Japan
Jetconnect Limited	New Zealand
Jetstar Airways Limited	New Zealand
Jetstar Airways Pty Limited	Australia
Jetstar Asia Airways Pte Limited	Singapore
Jetstar Asia Holdings Pty Limited	Australia
Jetstar Group Pty Limited	Australia
Jetstar Holidays Co. Ltd.	Japan
Jetstar International Group Australia Pty Limited	Australia
Jetstar International Group Japan Co., Ltd	Japan
Jetstar NZ Regional Limited	New Zealand
Jetstar Regional Services Pte. Ltd.	Singapore
Jetstar Services Pty Limited	Australia
National Jet Operations Services Pty Ltd	Australia
National Jet Systems Pty Ltd	Australia
Network Aviation Holdings Pty Ltd	Australia
Network Aviation Pty Ltd	Australia
Network Holding Investments Pty Ltd	Australia
Network Turbine Solutions Pty Ltd	Australia
Osnet Jets Pty Ltd	Australia
Phone A Flight Pty Ltd	Australia
Q H Tours Ltd	Australia
Qantas Airways Domestic Pty Limited	Australia
Qantas Asia Investment Company (Singapore) Pte. Ltd.	Singapore
Qantas Asia Investment Company Pty Ltd	Australia
Qantas Cabin Crew (UK) Limited	United Kingdom
Qantas Courier Limited	Australia
Qantas Domestic Pty Limited	Australia

Entity	Country of Incorporation
Qantas Freight Enterprises Limited	Australia
Qantas Frequent Flyer Limited	Australia
Qantas Frequent Flyer Operations Pty Limited	Australia
Qantas Ground Services Pty Limited	Australia
Qantas Group Accommodation Pty Limited	Australia
Qantas Group Flight Training (Australia) Pty Limited	Australia
Qantas Group Flight Training Pty Limited	Australia
Qantas Information Technology Ltd	Australia
Qantas Road Express Pty Limited	Australia
Qantas Superannuation Limited	Australia
Qantas Ventures Pty Ltd	Australia
QF A332 Leasing 1 Pty Limited	Australia
QF A332 Leasing 2 Pty Limited	Australia
QF BOC 2008-1 Pty Limited	Australia
QF BOC 2008-2 Pty Limited	Australia
QF Cabin Crew Australia Pty Limited	Australia
QF Dash 8 Leasing No. 4 Pty Limited	Australia
QF Dash 8 Leasing No. 5 Pty Limited	Australia
QF Dash 8 Leasing No. 6 Pty Limited	Australia
QF ECA 2008-1 Pty Limited	Australia
QF ECA 2008-2 Pty Limited	Australia
QF ECA A380 2010 No.1 Pty Limited	Australia
QF ECA A380 2010 No.2 Pty Limited	Australia
QF ECA A380 2010 No.3 Pty Limited	Australia
QF ECA A380 2010 No.4 Pty Limited	Australia
QF ECA A380 2011 No.1 Pty Limited	Australia
QF ECA A380 2011 No.2 Pty Limited	Australia
QF EXIM B787 No.1 Pty Limited	Australia
QF EXIM B787 No.2 Pty Limited	Australia
QH International Co. Limited.	Japan
Regional Airlines Charter Pty Limited	Australia
Southern Cross Insurances Pte Limited	Singapore
Sunstate Airlines (Qld) Pty. Limited	Australia
TAD Holdco Pty Ltd	Australia
Taylor Fry Holdings Pty Limited	Australia
Taylor Fry Pty Limited	Australia
The Network Holding Trust	N/A
The Network Trust	N/A
Trip A Deal Holdings Pty Ltd	Australia
Trip A Deal Pty Limited	Australia
Trip A Deal (NZ) Ltd	New Zealand
Vii Pty Limited	Australia

Emirates entities

Entity	Country of Incorporation
CAE Middle East Pilot Services LLC	UAE
Community Club Management FZE	Jebel Ali Free Zone, UAE
Duty Free Dubai Ports FZE	Jebel Ali Free Zone, UAE
ELRA Properties Pty Ltd	Australia
Emirates	Dubai, UAE
Emirates Airline Limited	England
Emirates CAE Flight Training LLC	Dubai, UAE
Emirates Canada Limited	Canada
Emirates Engine Overhaul Centre LLC	Dubai, UAE
Emirates Flight Catering Co. (LLC)	Dubai, UAE
Emirates Holidays (U.K.) Limited	UK
Emirates Hotel LLC	Fujairah, UAE
Emirates Hotels (Australia) Pty Ltd	Victoria, Australia
Emirates Land Development Services LLC	Dubai, UAE
Emirates Leisure Retail (Australia) Pty Ltd	Victoria, Australia
Emirates Leisure Retail (Holding) LLC	Dubai, UAE
Emirates Leisure Retail (Singapore) Pte Ltd	Singapore
Emirates Leisure Retail LLC	Dubai, UAE
Harts International LLC	Ras Al Khaimah, UAE
Harts International Retailers (M.E.) Ltd	Ajman Free Zone, UAE
Hudsons Adelaide Airport Pty Ltd	Australia
Hudsons Bendigo Pty Ltd	Australia
Hudsons Hospital Australia Pty Ltd	Australia
Maritime and Mercantile International (Holding) LLC	Dubai, UAE
Maritime and Mercantile International FZE	Jebel Ali Free Zone, UAE
Maritime and Mercantile International LLC	Dubai, UAE
Maritime and Mercantile International Maldives Pvt Ltd	Maldives
MMI International (Singapore) PTE Ltd	Singapore
Prembev International FZE	Jebel Ali Free Zone, UAE
Premier Inn Hotels LLC	Dubai, UAE
Queen OS Trading FZE	Jebel Ali Free Zone, UAE
Seyvine Ltd	Seychelles
The High Street LLC	Dubai, UAE

Annexure B

Condition of authorisation AA1000625

1. REPORTING OBLIGATIONS

- (a) By 1 September of each year during the term of authorisation AA1000625, the Applicants must provide to the ACCC, for each month in the 6-month period ending 30 June of that year the following information:
 - (i) for each Applicant separately, the total number of seats flown by cabin class on the Sydney-Christchurch route;
 - (ii) for each Applicant separately, the total number of passengers flown on the Sydney-Christchurch route by cabin class, broken down by
 - (a) point-to-point passengers and
 - (b) connecting passengers, identified by the destination or origin travelled to and/or from;
 - (iii) total passenger revenue (AUD) realised from Sydney-Christchurch services operated that month by cabin class, broken down by point to point versus connecting passengers;
 - (iv) for each Applicant separately, total operating cost (AUD) on the Sydney-Christchurch route (before tax), as reported in the airline's financial accounting system; and
 - (v) description of any material changes to the calculation of total operating cost (as referred to in 1(a)(iv) above) compared to previous months.
- (b) By 1 March of each year during the term of authorisation AA1000625, the Applicants must provide to the ACCC, for each month in the 6-month period ending 31 December of the previous year the information set out in 1(a)(i) to (v) above.
- (c) The information referred to in this clause must be provided to the ACCC in an accessible spreadsheet format.
- (d) The information referred to in this clause must be provided to the following email address: exemptions@accc.gov.au

2. DEFINITIONS AND INTERPRETATION

ACCC means the Australian Competition and Consumer Commission.

Applicants means Qantas Airways Limited (Qantas), Emirates and their related bodies corporate.

Connecting Passenger means any passenger carried by an Applicant on the Sydney-Christchurch route (whether the route started in Australia and ended in New Zealand, or vice versa), who before or after that route, as part of the same journey, travels from or to another destination (domestic or international) operated by Qantas or Emirates.

Point to Point Passenger means any passenger carried by an Applicant on the Sydney-Christchurch route (whether the route started in Australia and ended in New Zealand, or vice versa).