



## PUBLIC REGISTER VERSION

19 April 2021

Mr Gavin Jones  
Director – Competition Exemptions  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
Canberra ACT 2601

By Email: [gavin.jones@accc.gov.au](mailto:gavin.jones@accc.gov.au)

Dear Gavin

### Qantas-JAL: Response To Submission From Virgin Australia

We refer to the application (**Application**) for authorisation lodged with the Commission on 18 December 2020 by Qantas Airways Limited (**Qantas**) and Japan Airlines Co Ltd (**JAL**) (together, the **Applicants**) in relation to a proposed Joint Business Agreement (**JBA**) (**Proposed Conduct**).

The Applicants wish to respond to certain points made by Virgin Australia (**VA**) in its submission dated 31 March 2021 (**VA Submission**). The Applicants note that the VA Submission was accessible on the Commission's public register from 13 April 2021 and was lodged two months after the indicative deadline for public comment.

The Applicants consider that much of the VA Submission is either not relevant to, or should have no significant bearing on, the Commission's consideration of the Application. However, the Applicants reserve their right to make further submissions in respect of the VA Submission insofar as any aspect of its content is relied on by the Commission in its interim and draft determinations.

The Applicants' preliminary response to the points raised by VA are set out below:

- **VA refers to the operations and combined share of the Applicants, as they existed pre-Pandemic.** While pre-Pandemic share data was provided to the Commission as part of the Application, both VA and the Commission are well aware that the market conditions in which the Proposed Conduct would be implemented are going to be substantially different in the short to medium term. The impact of travel restrictions, consistent and on-going uncertainty regarding the resumption of international travel and the related impact on consumer confidence / demand for services must be appropriately accounted for in any analysis of net public benefits.
- Since March 2020, the Commission has explicitly identified these unique Pandemic circumstances in its general approach to COVID-19 related authorisations<sup>1</sup> and more specifically, in a number of aviation authorisations, including most recently in the context of regional Australian air travel:<sup>2</sup>

*"Although regional air travel is experiencing some recovery in passenger numbers, the timing, pace*

<sup>1</sup> See [COVID-19 related authorisations](#) (ACCC Report, April 2021)

<sup>2</sup> See [Commission Determination in respect of Virgin Australia and Alliance Airlines](#) AA1000533 (8 April 2021) at 4.10



*and extent of the recovery in demand is uncertain and likely to be non-linear. This impacts the assessment of both the public benefits and public detriments likely to result from the Proposed Conduct over the period for which authorisation is sought.”*

- The uncertainty generated by the Pandemic continues unabated for the travel sector when it comes to international air travel and tourism. Indeed, the need for the Applicants to cooperate has become even more acute given the ongoing uncertainty regarding vaccination rollout and border re-openings, with further developments even in the last week regarding timing for the Australian population to be vaccinated and additional significant outbreaks of the virus in Japan.
- In this environment, the Applicants’ submission that the Proposed Conduct maximises the likelihood of air links being sustainably restored across a wide range of routes between Australasia and Japan as demand recovers and borders open should be given significant weight. Put simply, the Proposed Conduct will facilitate key consumer benefits that would not otherwise occur in an unprecedented time of planning uncertainty. This is made clear in the Application.
- **VA states that JAL already codes on Jetstar’s Australia-Japan services.** This is confirmed in the Application. JAL codes on limited services operated by Jetstar from Queensland to Japan. JAL does not, and without the Proposed Conduct will not, code on Qantas’ services between Australia and Japan. Moreover, an expansion of the existing limited Jetstar and Qantas codeshare routes within Australia/New Zealand will not occur without the Proposed Conduct, as set out in the Application.
- **VA suggests that the oneworld alliance already makes frequent flyer benefits available to Qantas and JAL customers, such that the Proposed Conduct would not deliver anything beyond this.** As set out in the Application, this is not the case. Frequent flyer benefits will only be improved and expanded with the Proposed Conduct, as demonstrated by the Qantas-American Airlines joint business which has already significantly expanded upon existing oneworld benefits.<sup>3</sup>
- **VA implies that the Proposed Conduct could adversely impact the state of competition in the domestic aviation market.** There is no basis for this argument. Competition in the domestic aviation market would remain unchanged if the Proposed Conduct was approved. By way of illustrating this robust competition, VA has just announced its revised fast-tracked plans to acquire new aircraft, create more frontline jobs and grow its network to further support domestic tourism.<sup>4</sup> In any event, **[REDACTED – CONFIDENTIAL]**
- **VA indicates that it is ‘actively assessing its ability to commence [Brisbane-Haneda] services once international borders reopen and demand returns.’<sup>5</sup>** This supports the Applicants’ argument that VA represents an actual or potential competitive constraint. As set out in the Application, the Applicants submit there are no material regulatory, commercial, or operational barriers to entry or expansion on services between Australia and Japan, and this position will not change as a result of the Proposed Conduct.
  - VA makes several references to the likely impact of the International Air Services Commission (**IASC**) not granting VA an extension to utilise slots at Haneda Airport. The IASC has since granted VA an extension until 31 October 2021 to use those slots, which is consistent with the extension granted to Qantas.<sup>6</sup> Any claims regarding a failure of the IASC to grant such a determination are now irrelevant and should therefore be disregarded.
  - VA suggests that the Commission should consider whether the Proposed Conduct would impede the successful launch of VA’s Brisbane-Haneda services. The Applicants submit that the Commission should conduct such analysis with care in the current circumstances. In the Applicants’ experience, airline alliances are likely to inspire pro-competitive

<sup>3</sup> The Commission acknowledged that Qantas and American Airlines’ frequent flyer programs will be enhanced as a result of the joint business. See ACCC [Final Determination](#) in relation to Application for revocation of A91502 and A91503 and substitution of authorisation AA100532 lodged by Qantas Airways Limited and American Airlines Inc in respect of a Restated Joint Business Agreement, Authorisation Number AA100532 dated 25 March 2021 para 4.49.

<sup>4</sup> See VA Media Release [Virgin Australia Group outlines growth plans to support tourism recovery](#) (15 April 2021)

<sup>5</sup> VA Submission, page 2.

<sup>6</sup> See [IASC Resolution](#) [2021] IASC R03 in respect of the Japan Route.

responses from rivals to the benefit of consumers. Moreover, the Applicants firmly believe that any failure or further delay in VA's plans to launch the services would be more likely attributable to the ongoing impacts of the Pandemic and VA's fleet planning, rather than to the Proposed Conduct.

The VA Submission sets out some of the considerations that the Commission should take into account in assessing the Proposed Conduct. These issues were addressed in the Application, with detailed information about the projected public benefits and a comparison with the counterfactual scenario provided to the Commission on a confidential basis. The Applicants have also provided the Commission with extensive further information and documents regarding the Australia-Japan routes and the critical role of the Proposed Conduct in helping Australia recover from the economic impact of the Pandemic.

If you have any questions about the matters referred to above, please contact me on 

Yours sincerely



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