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By email: gavin.jones@accg.gov.au

Mr Gavin Jones
Director – Competition Exemptions
Australian Competition and Consumer Commission
Level 17, 2 Lonsdale Street
Melbourne VIC 3000

Dear Mr Jones

Qantas Airways Limited and Japan Airlines Co Ltd – Submission from Virgin Australia in relation to the Application for Authorisation AA1000540

Virgin Australia welcomes the opportunity to provide this submission on the application for authorisation made on 18 December 2020 by Qantas Airways Limited (**Qantas**) and Japan Airlines Co Ltd (**JAL**) (together, the **Applicants**) (the **Application**).

As outlined in the Applicants' submission (the **Submission**), the Applicants seek authorisation of the Joint Business Agreement (**JBA**) and associated agreements in relation to their operations across a range of routes between Australia/New Zealand and Japan. This includes coordination in respect of marketing and sales, pricing, scheduling, distribution strategies and agency arrangements, yield and inventory management, frequent flyer programs, lounges, joint procurement, product and service standards and cargo (**Proposed Conduct**).

Virgin Australia supports airline alliance proposals that will deliver substantiated benefits to consumers which outweigh any anti-competitive impacts. In particular, Virgin Australia:

- recognises the potential for certain coordination to result in public benefits including enabling airlines to offer extended networks and services that would not otherwise be possible; and
- has demonstrated the delivery of substantial net public benefits to consumers through its own airline alliances.

However, the circumstances of this Application require particular attention in that:

- There are only two carriers outside of the Qantas Group that currently provide direct services between Australia and Japan - the Applicant JAL and ANA.
- Based on 2019 figures, the Applicants' have around 90% of the passenger share for non-stop services on the route.
- Even when indirect services are included, the Applicants hold a majority of the passenger share at 68% with JAL having the next highest passenger share on the Australia-Japan route after Qantas/Jetstar.

- Prior to the COVID-19 pandemic, only the Applicants operated a direct Melbourne-Narita service and only the Applicants and ANA operated a direct Sydney-Tokyo service.
- JAL already codeshares on Jetstar services between Australia and Japan.
- Qantas and JAL are airline partners under the Oneworld alliance. Their respective frequent flyer customers can already earn frequent flyer points and rewards when flying with either airline and even without a code share arrangement in place.
- Qantas/Jetstar is the only Australian carrier to service Australia-Japan. The Proposed Conduct will further entrench the Applicants' already dominant position not only in markets for international travel, but also Qantas' position within domestic Australia and particularly in relation to Australian corporate/government travel both domestically and internationally due to the feeder traffic provided from these routes and the large business presence of each of the Applicants. In particular, international services:
 - facilitate the acquisition or retention of corporate clients that may have a preference for bundling domestic and international travel with a single provider;
 - attract frequent flyer members due to the attractiveness of earning and/or redeeming points on long haul services; and
 - allow frequent flyer members to more quickly reach higher membership tiers, which encourages high value customers to continue to book with the airline, including domestically, in order to enjoy the benefits of higher membership tiers.
- The Proposed Conduct will make it more difficult for other airlines to establish commercially sustainable operations on routes between Australia and Japan. In the post-COVID-19 environment, it is particularly important that the foundations for longer term competition are not displaced and the potential for new entry is not foreclosed. It would be a perverse outcome if this were to occur as a result of the authorisation of cooperation between the strongest carriers on the routes. Virgin Australia currently holds capacity allocation to enable it to operate services between Australia and Haneda and had intended to launch services between Brisbane and Haneda. COVID-19 disrupted these plans but Virgin Australia is actively assessing its ability to commence these services once international borders reopen and consumer demand returns. Virgin Australia submits that the ACCC should consider whether the Proposed Conduct would have the effect of impeding the successful launch of these services.

Virgin Australia agrees with Qantas that the significance of the Australia-Japan route is an important factor for the ACCC to consider in its assessment. As the ACCC would be aware, international travel between Australia and Japan may be possible ahead of international travel with other countries. Prior to the COVID-19 pandemic, Japan was Australia's fifth largest inbound market and seventh largest outbound market. Over the five financial years to June 2019, the Japan route recorded a compound annual growth rate for passengers of 11.2% per annum. Strong demand on the Japan route will also likely be supported by the relative success of both Australia and Japan in managing the COVID-19 pandemic. This has implications not only for the size of the potential public benefits but also the extent of the likely public detriments. This includes the impact through feeder traffic of the Proposed Conduct on the viability and effectiveness of domestic competition for air passenger services in the longer term and competition for corporate/government accounts.

Under Determination [2019] IASC 119 and Resolution [2020] IASC R09, Virgin Australia was allocated one daily frequency in each direction to operate passenger services between Australia and Tokyo-Haneda subject to the requirement that the capacity be utilised from no later than 31 March 2021, or such other date approved by the IASC. Due to international travel restrictions put in place by the Australian Government and the continuing impact of COVID-19 this requirement will not be met and a request has been made to the IASC to extend the date of utilisation to keep this capacity allocation. If the extension is not granted, Virgin Australia would be unable to commence services between Brisbane and Haneda. If this capacity was instead used by Qantas to expand its already extensive services in partnership with JAL, Virgin Australia's long term ability to launch viable services between Australia and Japan would be materially affected. As noted in Determination [2019] IASC 119, there is no certainty of any further capacity allocation for Australia at Haneda in the foreseeable future. Currently, Qantas hold two of the three Haneda capacity allocations for Australian carriers and JAL has one of the three capacity allocations for Japanese carriers. The majority of connecting travel from Japan's domestic network is serviced in and out of Haneda airport resulting in significant passenger volumes connecting to and from Japanese destinations. Haneda's proximity to the Tokyo central business district also makes it an attractive point of entry for carriers seeking to appeal to a higher proportion of business travellers.

The Submission refers to the potential for Virgin Australia to enter Brisbane-Tokyo as a competitive constraint on the Applicants. Virgin Australia agrees that increased competition would be provided by Virgin Australia's entry on the Brisbane – Haneda route, assuming that it receives from the IASC an extension for the use of that capacity. In contrast, if an extension is not received, Qantas will likely be allocated the Haneda capacity and will enjoy a presumption in favour of renewal of the capacity in the future, making it very difficult for Virgin Australia to regain Haneda capacity and commence Japan services in the future. While capacity to Narita would be available, it is unlikely to be commercially feasible for Virgin Australia to commence services to Narita, due to its distance from Tokyo's centre and fewer domestic connections (and therefore feeder traffic) compared to Haneda. Virgin Australia notes that in Determination [2019] IASC 119, the IASC accepted that it is unlikely that Virgin Australia will enter the Australia – Japan route via Narita. However, if the Proposed Conduct has the effect of further entrenching the position of Qantas on routes between Australia and Japan, there is a high risk it will have the effect of raising barriers to Virgin Australia's ability to viably operate services and offer a real and effective competitive constraint on the Applicants.

In light of the above and consistent with its usual practice, Virgin Australia anticipates that the ACCC will carefully review the Proposed Conduct, and thoroughly test the various claims of public benefit made by the Applicants with particular regard to the following:

- 1 What is the competitive impact of the Proposed Conduct in the relevant markets? What is the size of the anti-competitive detriment? Is there sufficient competitive constraint to prevent the Applicants artificially increasing prices or reducing services or capacity particularly if the IASC does not extend the time limit for utilisation of the Haneda capacity allocation to Virgin Australia?
- 2 What are the public benefits that flow from the Proposed Conduct which would not flow in the counterfactual, and do these benefits outweigh the reduction in competition arising from the Proposed Conduct (including the loss of competition between the Qantas Group and JAL) in a context where the Applicants are the two largest participants on the Australia-Japan route and their combined shares are so high?

Please let us know if you would like further information or have any queries in relation to this letter.

Yours sincerely
Gilbert + Tobin

Gilbert + Tobin

Louise Klamka
Partner



Rebecca Dollisson
Lawyer

