

Partner Louise Klamka  
Contact Rebecca Dollisson  
T [REDACTED]  
Ourref LXX:RMD:1045879



L 35, Tower Two, International Towers Sydney  
200 Barangaroo Avenue,  
Barangaroo NSW 2000 AUS  
T +61 2 9263 4000 F +61 2 9263 4111  
www.gtlaw.com.au

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By email: [jaime.martin@accg.gov.au](mailto:jaime.martin@accg.gov.au)

Ms Jaime Martin  
A/g Director – Competition Exemptions  
Australian Competition and Consumer Commission  
Level 17, 2 Lonsdale Street  
Melbourne VIC 3000

**Confidential – restriction of publication claimed in relation to part**

Dear Ms Martin

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

We refer to your request for information from Virgin Australia, dated 17 August 2021. Virgin Australia welcomes the opportunity to provide its response in this second submission in relation to 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**), taking into account the ACCC's draft determination and interim authorisation decision issued on 6 May 2021 (**Draft Determination**).

As noted in Virgin Australia's submission dated 31 March 2021, 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.

The impact of the Covid 19 crisis on all airlines has and continues to be severe, especially for those reliant on Australian travel. Domestic and international travel bans, quarantine rules, and reduced and volatile demand mean that many airlines are struggling financially and have had to make difficult decisions about the routes they operate, staffing, and service levels. The continuing impact of Covid 19 brings uncertainty as to when international air travel can resume in a business as usual way.

In this environment, it is more important than ever to ensure that airlines have access to an equal playing field in which they can work towards recovery. The challenges posed by Covid 19 do not lessen the importance of competition in airline markets in the long-term interests of consumers. Any short-term benefits associated with the Proposed Conduct must be weighed against the medium to long term impacts on competition within the market, its effect on barriers to entry and expansion, and the likelihood of recovery for other smaller airlines. This is the case regardless of the length of time for authorisation.

In these circumstances, the Application raises a number of issues for close consideration.

## **Effects of Proposed Conduct would extend beyond term of authorisation**

### **[REDACTED – CONFIDENTIAL TO VIRGIN AUSTRALIA]**

In markets where there is not a significant overlap between the Applicants' services and there are sufficient alternative competitors and low barriers to entry, the impact of cooperation is unlikely to extend beyond the term of authorisation. In a competitive environment, following a period of authorisation, airlines will need to respond to evolving market dynamics and new competitive threats and will be unable to maintain cooperation or conduct alignment and respond to this environment. However, this is a market in which the Applicants operated 90% of direct capacity between Australia and Japan, with the only constraint from a much smaller rival, ANA, and potential competition from a likely entrant, Virgin Australia. There is not sufficient competition to disrupt the long-term effects of the Proposed Conduct and the high barriers to entry in the market (in the form of bilateral capacity restrictions and constrained airport slot access) mean that this is unlikely to change in the future. In this environment, the impact of coordination is likely to continue post-authorisation.

Long-term effects following the initial period of authorisation could include a continuation of the aligned schedules that authorisation would bring about. In addition, authorisation would allow the Applicants to integrate their systems and become familiar with each other's pricing practices. Even if authorisation is only temporary, any learnings from this cannot be reversed. Given the market structure identified above, there is a real risk that the state of competition following any authorisation period would not return to the state of competition prior to any authorisation period, regardless of the length of the authorisation period.

In addition, the Applicants likely would seek reauthorisation after any initial authorisation period. The Applicants would point to investments made and could potentially argue that capacity cannot be maintained without reauthorisation. Therefore, even if only a short period of authorisation is initially granted, there is a real risk that authorisation would be extended at the end of the initial period of authorisation. If the ACCC considers that the conduct may have anti-competitive impacts over a longer period, then it follows that those effects would also be felt over a shorter period.

It is understandable that the Applicants argue for a short-term authorisation given the challenges associated with Covid. However, those challenges are being experienced by all airlines. To give the airlines already in the strongest position an additional boost by enabling them to cooperate with their closest competitor, will only serve to put ANA and Virgin Australia at a greater disadvantage as they too work for Covid recovery.

### **Proposed Conduct would raise barriers to entry for new entrants including Virgin Australia**

In addition to the longer-term impacts identified above, Virgin Australia is particularly concerned about the impact of the Proposed Conduct in the short-term in a difficult market environment characterised by the impact of Covid 19. The short-term will involve a subdued, uncertain, and volatile demand environment. It will be more difficult for Virgin Australia to enter the Australia – Japan route in this environment if it is required to compete with the Applicants acting jointly rather than as individual, competing airlines.

Virgin Australia has strong intentions to re-establish a long-haul international network. However, this is subject to a lifting of government restrictions on overseas travel which will be necessary before any recovery of demand will be possible. In turn, this will depend on factors including rates of vaccination and the Covid-19 caseload.

**[REDACTED – CONFIDENTIAL TO VIRGIN AUSTRALIA]**

The Proposed Conduct would make it more difficult for Virgin Australia to successfully commence services on the Australia – Japan route for the reasons discussed above and for the following reasons:

- it would be more difficult for a new entrant to compete with the Applicants who, through cooperation, would be able to offer more choice of services, connections, and flight times, enhancing the advantages they already experience as incumbents;
- the Applicants will be able to leverage their strengths in marketing to their respective consumer bases (i.e. Qantas to Australian travellers and JAL to Japanese travellers), which will make it more difficult for a new entrant to capture consumers;
- the Proposed Conduct would allow the Applicants to lower the risk and share the costs of responding to a new entrant, for example by temporarily increasing capacity or decreasing prices in response to new entrants or expansion by existing rivals. Together, they can more effectively and efficiently respond to entry and raise the costs for a new entrant;
- the new proposed Cairns service would likely divert traffic from Virgin Australia's proposed Brisbane – Tokyo (Haneda) route, making viability of these services more challenging;
- the Proposed Conduct has an effect beyond the Australia-Japan routes as it directly impacts traffic feed on domestic and short haul international services, with an impact on competition between Virgin Australia and Qantas network-wide;
- the Proposed Conduct would lead to ingrained consumer behaviour e.g. consumers travelling regularly between Japan and Australia may become used to using the Applicants' services, which would make it more difficult for a new entrant to capture these travellers.

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Virgin Australia considers that the effects above would compound already high barriers to entry on the Australia – Japan route. In particular, there is limited capacity of 6 flights per day between Australia and Haneda (3 flights for Australian carriers and 3 flights for Japanese carriers). This capacity has been fully allocated, with Virgin Australia currently holding 1 of the 3 capacity allocations for Australian carriers. In addition, a new entrant would need to obtain slots to take off and land at the origin and destination airports. A new entrant will already have difficulty obtaining slots at its preferred times at Haneda Airport. Without slots to take off or land at times that would be convenient for consumers, it would be difficult for a new entrant to introduce services on the Australia – Japan route in competition with the Applicants' services, which benefit not only from incumbency but the ability to coordinate and allocate slots, aircraft, schedules, and access to constrained airport facilities. Virgin Australia is already at a disadvantage as a new entrant – it would have significant adverse effects on competition to give the dominant carriers on those routes a further competitive edge through cooperation.

**Remedies would need to address increased barriers to entry**

Virgin Australia submits that the remedies proposed by the Applicants in their submission dated 1 June 2021 would not do anything to mitigate the increased barriers to entry or other decreases in competition that would result from the Proposed Conduct. It is questionable whether any remedies are available that could counter these competition impacts.

Virgin Australia considers that the only remedies that could address the increased barriers to entry that would stem from the Proposed Conduct are:

- slot divestments at Haneda airport by the Applicants; and/or
- divestment of allocated Haneda capacity by the Applicants. As noted in Virgin Australia's submission dated 31 March 2021, the Applicants currently have 50% of available Haneda capacity between them.

Slot divestments would allow a new entrant such as Virgin Australia to commence Australia – Japan services by guaranteeing that new entrant that they can schedule services at times that would be convenient for consumers in Australia and Japan. As stated above, the Proposed Conduct will give the Applicants an advantage in the form of increased schedule options.

Additional Haneda capacity would give a new entrant greater certainty to introduce or expand services between Australia and Japan because services to Haneda will be more attractive for consumers valuing Haneda's location, which is closer to Tokyo's centre than Narita. In addition, most domestic connections within Japan depart from Haneda which will enable a new entrant to capture connecting traffic on Australia – Japan services which are able to take-off from or land in Haneda as opposed to Narita. A new entrant would therefore consider services to or from Haneda to be more likely to be viable and would therefore be more likely to introduce new services if they hold Haneda capacity.

### **Public benefits can be achieved through codeshare**

A range of the public benefits argued by the Applicants can be achieved through codeshare, frequent flyer agreements and other arm's length commercial arrangements rather than the Proposed Conduct. Virgin Australia agrees with the ACCC's view at [4.98] of its Draft Determination that Qantas and JAL have the ability to expand their codeshare arrangement should future circumstances make this commercially attractive. An expanded codeshare arrangement instead of authorisation of the Proposed Conduct would allow competition between the Applicants to continue. For example, the Applicants have the ability to improve flight connections, networks and frequent flyer earning and redemption benefits on each other's metal through codeshare arrangements.

Virgin Australia does not consider that the incremental benefits that would be available from the Proposed Conduct compared to a codeshare would be sufficient to outweigh the significant detriments that would arise from the Proposed Conduct. As noted in Virgin Australia's submission dated 31 March 2021, the Applicants have around 90% of the passenger share for non-stop services between Australia and Japan and are each other's closest competitors. This competition would be lost under the Proposed Conduct. In particular, we note that there is no direct connection between the proposed Cairns services and the Proposed Conduct. These services are already operated by Jetstar and Virgin Australia considers that the Applicants would individually be likely to introduce these services where they see demand for them, with or without Authorisation.

### **Benefits of authorisation for the Applicants**

The Proposed Conduct would allow the Applicants to reduce the risks and costs associated with a ramp up of services as international travel recommences. However, given the loss of competition between the Applicants (who are each other's closest competitors) it is unclear how the Applicants would use these reduced risks and costs and whether benefits will be passed on to consumers in the long term. It is unlikely that the result of authorisation would be additional capacity that would not have been made available by the Applicants acting in competition with each other. Virgin Australia considers the Applicants are likely to rationalise capacity on pre-existing routes, remove overlaps

between their services, and move to reduce costs to insulate against demand fluctuations. Other than the foreshadowed Cairns service, the Applicants have not demonstrated how the authorisation would result in additional capacity being made available.

### **Post Covid-19 recovery outlook**

In relation to the outlook for international travel to and from Australia, Virgin Australia notes that this will depend on the Australian Government's 4 phase plan which provides for the resumption of international travel in stages. A staged approach is also planned in Japan, which has 'Phased Measures for Resuming Cross-Border Travel'.<sup>1</sup>

In relation to the Australian Government's plan, under the third, 'Consolidation' phase, which will come into force once 80% of the eligible Australian population has been fully vaccinated, measures may include:

- an abolition of caps on returning vaccinated travellers;
- increased capped entry of student, economic, and humanitarian visa holders;
- a lifting of all restrictions on outbound travel for vaccinated persons; and
- an extension of travel bubble for unrestricted travel to new candidate countries (e.g. Singapore, Pacific).

Under the fourth and final phase, measures may include:

- uncapped inbound arrivals for all vaccinated persons, without quarantine; and
- uncapped arrivals of non-vaccinated travellers subject to pre-flight and on arrival testing.

However, it is unclear when the third and fourth phases will be reached. It is also unclear whether the above measures will actually be implemented at each phase. Therefore, there remains significant uncertainty as to when government restrictions on international travel will be lifted and accordingly, when demand for international travel, including between Australia and Japan, will have the opportunity to recover.

In the event that a travel bubble is enacted between Australia and Japan, it is unclear what level of demand could be expected and this will depend on factors including the extent to which consumers can have certainty that the bubble arrangement will remain in place. Virgin Australia notes that when a travel bubble was in place between Australia and New Zealand, demand was lower than anticipated.

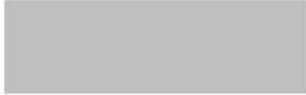
Virgin Australia considers that, based on anecdotal evidence from overseas, there is likely to be pent up demand for international travel generally once government restrictions are lifted. In addition, demand for international travel is likely to increase as vaccination rates increase, as this will provide increasing confidence to consumers.

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

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<sup>1</sup> [https://www.mofa.go.jp/ca/cp/page22e\\_000925.html](https://www.mofa.go.jp/ca/cp/page22e_000925.html).

Yours sincerely  
**Gilbert + Tobin**



**Louise Klamka**  
Partner



**Rebecca Dollisson**  
Special Counsel

