Determination

Applications for revocation and substitution of authorisations

lodged by

Qantas Airways Limited & Jetstar Airways Pty Ltd

in respect of

The Jetstar Pan-Asia Strategy

Date: 16 February 2018

Authorisation numbers: A91600 & A91601

Commissioners: Rickard
Schaper
Cifuentes
Featherston
Keogh

Summary

The ACCC has decided to grant authorisation to Qantas Airways Limited and Jetstar Airways Pty Ltd for coordination involving Qantas and three Jetstar joint venture airlines (Jetstar Asia, Jetstar Pacific and Jetstar Japan) and, in certain circumstances, the full service airline shareholders of Jetstar Pacific and Jetstar Japan (Vietnam Airlines and Japan Airlines).

The ACCC grants authorisation for five years until 31 March 2023.

On 12 September 2017 Qantas Airways Limited on its own behalf and on behalf of its related bodies corporate including its wholly owned subsidiary Jetstar Airways Pty Ltd (together **the Applicants**) applied for revocation of existing authorisations A91314 & A91315 and substitution of new authorisations A91600 & A91601 under section 91C(1) of *the Competition and Consumer Act* 2010 (**CCA**).

The international aviation regulatory environment prevents the Qantas Group from wholly or majority owning these overseas airlines. In order to expand its offerings into the Asia Pacific region over the last decade, Qantas has entered into arrangements to create Jetstar branded low cost carriers (LCCs) in a number of Asian jurisdictions.

The Applicants are seeking reauthorisation to continue coordination involving Qantas and the LCCs (Jetstar Asia, Jetstar Pacific and Jetstar Japan) and, in certain circumstances, the full service airline shareholders of Jetstar Pacific and Jetstar Japan (Vietnam Airlines and Japan Airlines). These arrangements were first authorised by the ACCC in March 2013 (A91314 & A91315), for five years (ending on 31 March 2018). Re-authorisation has been sought for a period of ten years.

The proposed conduct for which re-authorisation is sought allows the relevant airlines to integrate their services in a variety of ways, including by coordinating schedules, accessing shared business services, and revenue sharing on certain routes, with both each other and Full Service Airlines (FSA) partners to the Joint Venture Coordination Agreement (JVCA).

The proposed conduct does not include:

- the creation or continuation of the Jetstar Joint Venture Airlines
- coordination between any full service airlines: Qantas Airways; Japan Airlines or Vietnam Airlines
- coordination between a Jetstar joint venture airline and a full service airline that is not an owner or significant shareholder of that Jetstar joint venture airline (except in multiple overlap situations)
- future unspecified Jetstar branded joint venture airlines.

The ACCC considers that the proposed conduct is likely to result in public benefits in the form of enhanced products and services, cost savings and economic efficiencies, and increased competition.

The ACCC considers that the proposed conduct is likely to result in little, if any, detriment because in the future without the proposed conduct there is unlikely to be meaningful rivalry between FSAs and Jetstar entities they have an ownership interest in. Further, on routes where Jetstar entities coordinate with an unrelated FSA, the ACCC considers that the parties face strong competitive constraints from other airlines.

The ACCC is satisfied that the proposed conduct is likely to result in a net public benefit and has decided to grant a new authorisation in respect of the arrangements.

The Applicants sought re-authorisation for a period of 10 years. However, in light of the rapidly changing market for airlines services in Asia, the ACCC considers it appropriate to review developments in the market earlier than requested and therefore grants authorisation for five years until 31 March 2023.

Abbreviations

ACCC	Australian Competition and Consumer Commission
ASA	Air Services Agreement
BSA	Business Services Agreement
CCA	*Competition and Consumer Act 2010* (Cth)
FSA	Full Service Airline
JAL	Japan Airlines
JBA	Jetstar Airways, Jetstar Asia, Jetstar Pacific, and Jetstar Japan
Jetstar Airways	Jetstar Airways Pty Ltd
Jetstar Joint Ventures	Jetstar Airways, Jetstar Asia, Jetstar Pacific, and Jetstar Japan
JFTC	Japan Fair Trade Commission
JVA	Jetstar Joint Venture Airline
JVCA	Joint Venture Coordination Agreement
LCC	Low Cost Carrier
Orangestar	Orangestar Investment Holdings Pte
Parties	Qantas, Jetstar Airways, Jetstar Asia, Jetstar Pacific, Jetstar Japan, Japan Airlines, Vietnam Airlines
Qantas	Qantas Airways Limited
The Tribunal	The Australian Competition Tribunal

The applications for revocation and substitution

1. On 12 September 2017 Qantas Airways Limited on its own behalf and on behalf of its related bodies corporate including its wholly owned subsidiary Jetstar Airways Pty Ltd (together **the Applicants**) lodged applications (A91600 & A91601) under section 91C(1) of the CCA seeking revocation and substitution of a new authorisation for coordination between Qantas, Jetstar, the Jetstar Joint Venture Airlines (JVA) and, in certain circumstances, the full service airline shareholders of Jetstar Pacific and Jetstar Japan (Vietnam Airlines and Japan Airlines).

2. The ACCC previously authorised this conduct in 2013 for a period of five years, expiring on 31 March 2018 (A91314 & A91315)(the 2013 determination).

3. On 24 November 2017 the ACCC issued a draft determination proposing to grant authorisation for five years. A conference was not requested following the draft determination.

The proposed conduct

4. The Applicants seek re-authorisation for the continuation of coordination involving Qantas, the Jetstar Low Cost Carriers (**LCCs**) and, in certain circumstances, the full service airline shareholders of Jetstar Pacific and Jetstar Japan (Vietnam Airlines and Japan Airlines).

5. The Applicants are Australian Airlines. Qantas is an FSA and Jetstar is its wholly owned LCC subsidiary.

6. There are three limbs of coordination (together, **the proposed conduct**):

    a. implementation of a joint venture coordination agreement which facilitates coordination between Qantas, Jetstar Airways, Jetstar Asia, Jetstar Pacific, and Jetstar Japan

    b. coordination between Jetstar Japan and Japan Airlines on routes where their operations actually or potentially overlap

    c. multiple overlap coordination of operations and activities (passenger and cargo) between a Jetstar Joint Venture, its FSA shareholder and another Jetstar LCC on routes where all three overlap (or potentially overlap), including pricing, capacity and scheduling as set out in the BSAs.[1]

7. A key aspect of the coordination is the centralisation of business administration services, via a number of Business Service Agreements (**BSA**). This principally involves the central operation of IT services and administration by a single entity.

[1] For example, on the Taipei – Osaka route, Jetstar Asia, Jetstar Pacific and Vietnam Airlines all operate. Under the proposed conduct, all three airlines would coordinate on pricing and scheduling decisions, despite Vietnam Airlines not being a shareholder of Jetstar Asia. The proposed conduct only includes coordination between a FSA and an unrelated JVA in such circumstances.

8. The proposed conduct may contain a cartel provision or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the CCA.

9. The proposed conduct does not extend to collaboration between FSAs, or between FSAs and unrelated joint venture airlines. Revenue sharing is only part of the proposed conduct where two of the JVA overlap on the same route.

10. Re-authorisation is sought for a period of 10 years.

Background

Qantas & Jetstar

11. Qantas was incorporated in Queensland, Australia in 1920 and is Australia's largest domestic and international airline. The Qantas Group employs approximately 30,000 people worldwide and operates more than 4,500 domestic and 570 international flights each week using two complementary airlines: Qantas – a full service airline offering domestic and international services; and Jetstar Airways – a low cost carrier offering domestic and international services predominately focused on servicing price sensitive consumers. Qantas also operates airline related businesses including airport support services, catering, freight operations, loyalty programs and engineering.

12. The two airlines operate to the following international destinations.

Table 1: Qantas International Destinations[2]

Region	Destinations
Pacific	Auckland, Christchurch, Wellington, Queenstown, Noumea, Port Moresby
Asia	Bangkok, Beijing, Denpasar, Hong Kong, Jakarta, Manila, Shanghai, Singapore, Tokyo
Asia (seasonal)	Osaka
Europe	London
Middle East	Dubai
Americas	Dallas/Fort Worth, New York, Los Angeles, San Francisco, Santiago, Honolulu
Americas (seasonal)	Vancouver
Africa	Johannesburg

Table 2: Jetstar Airways International Destinations

Region	Destinations
Pacific	Auckland, Christchurch, Wellington, Queenstown, Nadi, Rarotonga (from New Zealand)
Asia	Bangkok, Ho Chi Minh City, Phuket, Denpasar, Singapore, Osaka, Tokyo
Americas	Honolulu

2 Qantas Limited and Jetstar Airways, Submission to the ACCC re: A91600 & A91601, p. 6.

The LCC business model

13. The Applicants submit that the LCC business model relies on maintaining a low cost base, by using measures such as optimised scheduling decisions, utilising high density seating configurations, and connecting with other airlines to integrate baggage systems.

14. The Applicants submit that LCCs also typically offer 'unbundled fares' which separate the cost of a seat from the costs of services available (meals, seat selection, baggage check) and don't offer loyalty reward programs equivalent to FSAs. They also use lower cost distribution systems, relying on more direct ticket sales and use cheaper infrastructure (secondary airports, lower cost terminals) where available. This means that LCCs tend to compete on the cost of travel rather than service.

15. The Applicants submit that LCCs' ability to offer low fares materially stimulates passenger demand by encouraging new passengers to use air travel and allowing existing passengers to travel more often. LCCs are also able to take advantage of increases in passenger demand, as their low cost base reduces the risks involved in increasing capacity ahead of demand.

16. The Applicants submit that Jetstar deviates from the traditional LCC business model by offering longer haul flights and baggage services more akin to a FSA. Such deviations from the standard LCC business model have become more common, with long haul flights and differing levels of service now commonplace in the industry.

17. Jetstar and Qantas operate on a dual brand strategy, which separates the group's FSA and LCC components. This strategy aims to allow the businesses the flexibility to make network and capacity decisions that meet customer demands.

18. The number of flights operated by LCCs has grown significantly in recent years, particularly in Asia, where the overall air travel market has experienced strong growth. [3]

19. As a result, many LCCs operating in this area have also experienced rapid growth in the last five years, including the businesses which are the subject of this authorisation.

The Regulatory Environment

20. The 1944 Chicago Convention on Civil Aviation governs the management of sovereign airspace around the globe. However, the agreement provides states with the flexibility to liberalise their airspace to varying degrees. The Chicago Convention breaks up the use of airspace into nine categories, referred to as the nine freedoms of the air.[4] International air travel remains highly regulated, and can essentially not take place without specific authorisation through a bilateral government agreement, known as an air services agreement (**ASA**).

21. These agreements vary substantially in their approach to the first to fifth freedoms. Because of this regulation, airlines are restricted in the number of flights they can operate to overseas destinations and whether flights can on-board

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3 International Air Transport Authority, Another Strong Year for Air Travel Demand in 2016, 2 February 2017, Available: <http://www.iata.org/pressroom/pr/Pages/2017-02-02-01.aspx>

4 For more information please see: Qantas Limited & Jetstar Airways Pty Ltd, Submission to the ACCC re: A91600 & A19601, Annexure B.

passengers on their way to a third destination. For example, Australia has a type of ASA with Singapore known as an ‘open skies agreement’ (**OSA**) which allows Australian carriers unlimited access to Singaporean airspace. In contrast, Australia’s ASA with Vietnam allows carriers to operate 21 flights a week.[5]

22. Regulations in each of the relevant countries prevent Qantas from owning (or majority owning) airlines. These regulatory factors together have the effect of limiting access to routes and flight frequency for operators like Qantas.

Table 3: Airline ownership limits in countries where Jetstar branded LCCs are based

Country	Foreign Ownership Total Limit	Single Foreign Entity Limit
Vietnam	49%	30%
Singapore	49%	49%
Japan	33%	33%

23. Additionally in 2016 the ASEAN Single Aviation Market (**ASEAN-SAM**), also known as the ASEAN Open Sky Agreement, was ratified by all member nations. This agreement liberalises the airspace agreements between ASEAN members. The agreement removed restrictions on the frequency and capacity of flights between signatories. The Applicants submit that this increases the advantages enjoyed by airlines based in the relevant countries. This includes all the JVAs other than Jetstar Japan.

24. The reforms do not include liberalization of ‘fifth freedom’ rights. This refers to the right to depart from a destination, land at a second destination to pick up/drop off some passengers and proceed to a third destination. The ASEAN SAM agreement is a significant regulatory change since the previous authorisation. Industry participants expect that the agreement will lead to significant growth and change in the market, though it is worth noting that liberalization “is a necessary but not sufficient condition for growth.”[6]

The Joint Venture Airlines

25. Airlines in the Asia Pacific region carry the largest number of passengers of any region in the world, making up 32.9% of global traffic in 2016.[7]

26. Because of regulatory restrictions three Jetstar branded LCC airlines have been created, in which the Qantas Group is the minority owner, and local partners

5 There are some caveats to this, if the flight does not originate from Sydney, Melbourne, Brisbane or Perth, there is unlimited capacity. There are also seven additional flights a week available for flights that originate from those destinations but stop somewhere else in Australia. The agreement also provides for expanded capacity for those in codeshare arrangements.

6 International Air Transport Association, The Impact of International Air Service Liberalisation on Vietnam, Available: https://www.iata.org/policy/promoting-aviation/liberalization/agenda-freedom/Documents/vietnam-report.pdf 16.

7 International Air Transport Authority, Another Strong Year for Air Travel Demand in 2016, 2 February 2017, Available: <http://www.iata.org/pressroom/pr/Pages/2017-02-02-01.aspx>

(including local FSAs) operate airlines under the Jetstar brand and LCC business model. The three joint ventures are:

a. Jetstar Asia (based in Singapore)

b. Jetstar Pacific (based in Vietnam)

c. Jetstar Japan.

27. Jetstar Asia Airways Private Limited is incorporated in Singapore and owned by Qantas (49%) and Newstar Investment Holdings Pte Ltd (51%), a Singaporean company. It operates flights from Singapore, the Philippines and Taiwan to a variety of destinations in Australia and Asia. Jetstar Asia does not have a FSA partner.

Table 4: Jetstar Asia Destinations[8]

Region	Destinations
Pacific	Perth, Darwin
South East Asia	Bangkok, Phuket, Bali (Denpasar), Jakarta, Medan, Palembang, Pekanbaru, Surabaya, Da Nang, Ho Chi Minh City, Kuala Lumpur, Penang, Siem Reap, Phnom Penh, Manila, Yangon
North East Asia	Haikou, Shantou, Hong Kong, Taipei
Charter Services	Guiyang, Sanya
Planned to commence prior to end of 2017	Hat Yai, Okinawa, Clark

28. Jetstar Pacific Airlines Aviation Joint Stock Company is incorporated in Vietnam and owned by Qantas (30%), Vietnam Airlines Company Limited (68.5%), Saigon Tourist Holding Company and Mr Nam (1.15% combined).

Table 5: Jetstar Pacific Domestic Destinations[9]

Origin	Destinations
Ho Chi Minh City	Hanoi, Buon Ma Thuot, Nha Trang, Dong Hoi, Vinh, Da Lat, Phu Quoc, Pleiku, Tuy Hoa, Quy Nhon, Hue, Thanh Hoa, Tam Ky, Da Nang, Hai Phong
Hanoi	Buon Ma Thuot, Da Lat, Phu Quoc, Pleiku, Tuy Hoa, Quy Nhon, Da Nang, Nha Trang, Ho Chi Minh City
Vinh	Nha Trang, Ho Chi Minh City
Hai Phong	Dong Hoi, Ho Chi Minh City
Da Lat	Hue, Ho Chi Minh City, Hanoi

8 Qantas Limited and Jetstar Airways, Submission to the ACCC re: A91600 & A91601, p. 14.
9 Qantas Limited and Jetstar Airways, Submission to the ACCC re: A91600 & A91601, p. 15.

Table 6: Jetstar Pacific International Destinations[10]

Origin	Destinations
Ho Chi Minh City	Bangkok, Guangzhou, Singapore
Hanoi	Guangzhou, Hong Kong
Da Nang	Hong Kong, Taipei, Osaka

29. Jetstar Japan is owned by an incorporated joint venture in Japan, owned by the following entities:

- Jetstar International Group Holdings Co. Ltd, a wholly owned subsidiary of Qantas, which holds a 33.33% shareholding
- Japan Airlines Co. Ltd (JAL) which holds a 33.33% shareholding
- Mitsubishi Corporation which holds a 16.65% shareholding
- Century Tokyo Leasing Corporation, which holds a 16.65% shareholding.

30. Jetstar Japan operates flights both domestically in Japan and internationally, to China and Singapore.

Table 7: Jetstar Japan Domestic Destinations[11]

Origin	Destinations
Tokyo	Sapporo, Fukuoka, Kagoshima, Okinawa, Osaka, Kumamoto, Matsuyama, Oita, Takamatsu
Osaka	Sapporo, Fukoka, Okinawa, Tokyo (Narita)
Nagoya	Sapporo, Fukuoka, Kagoshima, Okinawa

31. The creation or continuation of these joint ventures is not the subject of the authorisation application. This application also does not extend to coordination between the FSA partners.

32. Rather, the authorisation application concerns the way in which the JVAs will coordinate with each other, how their owners will support and expand each joint venture business, and how each FSA shareholder relates its Jetstar joint venture to its own business.

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[10] Qantas Limited and Jetstar Airways, Submission to the ACCC re: A91600 & A91601, p. 16.
[11] Qantas Limited and Jetstar Airways, Submission to the ACCC re: A91600 & A91601, p. 17.

Alliances and Codeshares

33. There are a large number of partnerships in the international aviation industry. For example Qantas is a member of the oneworld alliance, which involves 14 of the world's largest FSAs. Codeshare agreements are widespread in the industry, which allow airlines to jointly market flights to consumers. Recently, two of the FSA partners (Vietnam Airlines and JAL) of JVAs have entered a codeshare arrangement. These Alliances and Codeshares are not the subject of this authorisation.

Related Authorisations

34. In 2012 the ACCC received an application for authorisation of the conduct for which revocation and substitution of a new authorisation is now sought. Following a consultative process and Commission consideration, authorisation was granted until 31 March 2018 (A91314 and A91315).

35. A planned joint venture, Jetstar Hong Kong, undertaken in partnership with China Eastern Airlines, was also included in authorisations A91314 and A91315. In 2015 Hong Kong's Air Transport Licensing Authority denied the venture's application for an operating licence, on the basis that the structure of the proposed joint venture would render Jetstar Hong Kong's principal place of business outside of Hong Kong.[12] The venture did not proceed following this finding (and is not part of the current application for a new authorisation).

36. In 2012, the ACCC received an application for authorisation of coordination between Qantas and Emirates on passenger and freight operations, including fares, routes, and inventory control. Authorisation was sought for ten years. The ACCC decided to grant authorisation for a period of five years, on condition that the Applicants maintained their pre-alliance capacity on Trans-Tasman routes. The ACCC considered that the conduct was likely to result in public benefits through enhanced product and service offerings and improved operating efficiency that would outweigh any public detriment, and granted authorisation subject to several conditions. On 11 October 2017, Qantas and Emirates applied for re-authorisation to continue the conduct. The ACCC is currently assessing that application.

37. In 2014, the ACCC received an application from Qantas for authorisation of coordination between Qantas and China Eastern Airlines. The coordination proposed did not extend to fare coordination, but did include schedules, connection times, new fare products and provision of information to agents. The ACCC granted authorisation for five years on condition that the Applicants grow their capacity on the Sydney – Shanghai route.

38. On 25 February 2016, the ACCC granted re-authorisation to Qantas and American Airlines to continue coordinating their operations for a further five years.

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[12] Hong Kong Air Transport Licensing Authority, Public Inquiry with regard to the application for License by Jetstar Hong Kong Airways Limited, Available: **http://www.thb.gov.hk/eng/boards/transport/air/Summary%20of%20decision%20(Eng)%2025062015.pdf**.

The Applicants' submissions

39. Broadly, Qantas and Jetstar submit that the proposed conduct is necessary to allow them to compete vigorously with LCCs in Asia.

40. The Applicants submit that the conduct has delivered the following benefits:

- enhanced products and services
- cost savings, economic efficiencies, lower fares and product innovations
- increased competition
- increased tourism to Australia
- increased competitiveness of a key Australian business.

41. The applicants submit that these benefits will continue to be delivered if the proposed conduct is re-authorised.

42. The Applicants submit that the proposed conduct will not have any anti-competitive detriments in any market because their activities will continue to elicit competitive responses from existing airlines, including rival LCCs.

43. The Applicants submit that this sector is fast growing and as such will continue to provide opportunities for new entry and expansion.

Interested party submissions

44. The ACCC wrote to 81 interested parties and received one submission.

45. The Department of Infrastructure and Regional Development submitted that the international aviation industry has been profitable in recent years, with significant growth in passenger volume in Asia contributing to this profitability. The Department considers that both the Australian and inter-Asian markets are strongly competitive, with the ASEAN open skies agreement leading to relatively few capacity restrictions in the region's ASAs. The submission highlighted the Jetstar Pan Asia Strategy as a measure that delivers significant value to Australian consumers and complements Australia's commitment to open aviation policy. The Department submits that the JVAs have not been consistently profitable, with only Jetstar Asia listed as profitable in recent company reports, demonstrating the competitiveness of the market and the necessity of the proposed conduct to continuing the operation of the JVAs.

46. No submissions were received following the draft determination and a conference was not requested.

47. The views of the Applicants and interested parties are considered in the ACCC assessment section of this determination. Copies of public submissions may be obtained from the ACCC's website **www.accc.gov.au/authorisationsregister.**

ACCC assessment

48. The ACCC's assessment of the proposed arrangements is in accordance with the relevant net public benefit test contained in the CCA.[13] Broadly, the ACCC must not make a determination to grant authorisation unless it is satisfied in all the circumstances that the proposed conduct would result or 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.[14]

49. In order to assess the proposed arrangement and the public benefits and detriments likely to result, the ACCC identifies the relevant areas of competition and the likely future should authorisation not be granted.

The relevant areas of competition

The 2013 determination

50. In its 2013 determination the ACCC considered that the relevant areas of competition included:

- routes between Australia and each relevant Asian country
- routes between points in Asia that may form sectors of a multi-stop journey to or from Australia.

51. The ACCC considered that it was not necessary to reach a definitive view on whether there was a single market for Asian air travel, or multiple regional/route based markets, as this distinction did not affect the outcome of the assessment.

52. The ACCC also considered the relevant international air cargo transport services and found the market included direct and indirect services between points in Australia and points in Asia and adjacent regions, including intermediate points outside Australia and Asia.

The Applicants' submission

53. The Applicants submit that it is not necessary to define the relevant market or markets with precision but that the proposed conduct will primarily affect markets for air travel services in Asia. To the extent that a market in Australia is affected by the proposed conduct, the Applicants submit that the relevant market is likely to be the market for air travel services between destinations in Australia and Asia by leisure passengers.

54. The Applicants submit that FSAs and LCCs operate in the same market, competing often for the same passengers based on similar factors, such as price and level of service.

[13] On 6 November 2017, a number of amendments to the CCA came into effect, including changes to the authorisation provisions in Division 1 of Part VII of the CCA. This application for re-authorisation is assessed by the ACCC in accordance with the CCA as amended.

[14] Section 90(7)(b). As a cartel provision applies to the proposed conduct, section 90(7)(a) does not apply: section 90(8).

ACCC assessment

55. The ACCC considers the relevant areas of competition include:

- market/s for international air passenger transport services, on routes between Australia and each relevant Asian country being Singapore, Vietnam, and Japan, (e.g. Sydney to Singapore)
- routes between points in Asia that may form sectors of a multi-stop journey to or from Australia (e.g. Sydney-Singapore-Tokyo)
- air cargo services, as these services form part of the proposed conduct. However, given the competitive constraints from other airlines engaged in the freight business are similar to those for passenger services, with the additional constraint of dedicated freight businesses, it is likely that the results of the analysis will be similar.

56. Nonetheless, the ACCC accepts the Applicants' view that the market does not need to be defined with precision. While there may be a variety of different markets and submarkets, their individual circumstances do not substantially affect the outcome of the analysis.

57. These views are consistent with the view formed by the ACCC in the 2013 determination.

The future with and without

58. To assist in its assessment of the proposed conduct the ACCC compares the public benefits and detriments likely to arise in the future where the proposed conduct occurs against the future in which the conduct does not occur.

Applicants' submissions

59. The Applicants submit that (in line with the ACCC's 2013 determination) in the future without the proposed conduct:[15]

- the existing JVAs would continue to operate as LCCs
- the JVAs would continue to access Jetstar Airways support in relation to network, scheduling and fleet strategy; products; pricing and distribution; and sales, marketing and customer service activities as provided for in the BSAs
- the ownership structure and board composition of each Jetstar joint venture airline would remain the same
- as a result of the common influence of Jetstar Airways and the local FSA shareholder airlines on the activities and operations of the JVAs there would be no significant rivalry between:
    - Qantas, Jetstar Airways, and any Jetstar joint venture airline,

[15] Qantas Limited and Jetstar Airways, Submission to the ACCC re: A91600 & A91601, p. 26.

    - each local FSA shareholder airline and any Jetstar entity that they established, or have a significant shareholding in,
    - Jetstar joint venture airlines.

60. In addition the Applicants submit that without the proposed conduct they would be unable to:

    - make certain international network and capacity decisions, or
    - make certain pricing and scheduling decisions.

ACCC assessment

61. The Applicants' submissions largely accord with the ACCC's view of the likely future without the proposed conduct. In the future without the proposed conduct, it is unlikely that any currently operating joint venture airline would cease to operate as an LCC, or begin competing with its FSA partner.

62. The Department of Industry submitted that it was possible in the future without the proposed conduct that the JVAs may not be able to compete, given that some of the JVAs are not profitable even with the proposed conduct.

63. The ACCC considers it likely that in the future without the proposed conduct, the JVAs would continue to operate. The ACCC considers it likely that each member of the group contributes to profit, by raising the value of the group's offerings. Therefore, the profits of individual airlines are not necessarily reflective of either their value to the group or their ability to compete in the future without the proposed conduct. Even if the airlines were unable to engage in the proposed conduct, the impact on profitability may be limited given the incremental gains offered by the proposed conduct.

64. The ACCC considers it likely that in the future without the proposed conduct the joint venture airlines would still access business support services from Jetstar in much the same way as they do under the current BSAs.

65. Therefore in the likely future without the conduct the ACCC considers that:

    - the existing JVAs would continue to operate as LCCs
    - the JVAs would continue to access Jetstar Airways support in relation to network, scheduling and fleet strategy; products; pricing and distribution; and sales, marketing and customer service activities as provided for in the BSAs
    - the ownership structure and board composition of each JVA would remain the same
    - as a result of the common influence of Jetstar Airways and the local FSA shareholder airlines on the activities and operations of the JVAs there would be no significant rivalry between:
        - Qantas, Jetstar Airways, and any JVA

- each local FSA shareholder airline and any Jetstar entity that they established, or have a significant shareholding in
- JVAs.

- revenue sharing and schedule coordination on routes where JVAs overlap would likely be prohibited by the CCA
- revenue sharing and schedule coordination between a JVA and unrelated FSA partner would likely be prohibited by the CCA.

Public Benefits

66. Public benefit is not defined in the CCA. However, the Australian Competition Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

> …anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements … the achievement of the economic goals of efficiency and progress.[16]

67. The Applicants submit that the proposed conduct will deliver various public benefits, including:

- Enhanced products and services
- Cost savings, economic efficiencies, lower fares and product innovations
- Increased competition
- Increased tourism to Australia
- Increased competitiveness of a key Australian business.

68. The ACCC's assessment of the likely public benefits from the proposed conduct follows.

Enhanced products and services

69. Public benefits may arise from enhanced products and services. This may include increased frequencies and better connections, enhanced online offerings, new destinations and new services.

Increased frequencies, better schedule spread and improved connections

Applicants' submissions

70. The Applicants submit that the Jetstar LCCs have increased frequencies on a number of routes since the 2013 Authorisation. Their submission provides four examples, where both the number of flights and overall capacity had increased:

[16] *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

- **Singapore – Ho Chi Minh City:** Jetstar Asia and Jetstar Pacific operate on this route, offering 27 flights per week with a combined seat capacity of 524,800 seats, up from the 300,000 seats offered by Jetstar Asia in 2011. The Applicants submit that they also offer an early morning flight from Ho Chi Minh, which would not be economical without the proposed conduct.

- **Osaka – Taipei**: Jetstar Japan and Jetstar Asia now operate on this route, with a combined seat capacity of 277,290, up from the 130,000 seats Jetstar Asia offered in 2011. The Applicants submit that without the proposed conduct there would only be one JVA operating on the route, leading to fewer seats and inferior schedules.

- **Osaka – Manila**: This route was not operated by any JVA at the time of the 2013 authorisation, and is now operated by Jetstar Asia and Jetstar Japan with a combined capacity of 111,780 seats. The Applicants submit that by coordinating their operations they are able to offer a better schedule spread.

- **Singapore – Bali**: Capacity increased from 140,000 seats in 2011 to 272,160 seats in 2017. The Applicants also submit that the coordination allows them to provide an improved schedule spread on the route.

71. The Applicants submit that more frequencies can also result in better connections for customers, citing the example of Melbourne-Singapore-Da Nang services, where Jetstar Airways and Jetstar Asia are able to coordinate their schedules to synergise and create convenience for customers. The Applicants submit other examples of routes where this is the case:

    - Manila-Osaka-Fukuoka
    - Manila-Osaka-Various Destinations
    - Gold Coast-Tokyo-Shanghai
    - Gold Coast-Tokyo-Sapporo
    - Cairns-Tokyo-Shanghai
    - Cairns-Tokyo-Manila and
    - Darwin-Singapore-Ho Chi Minh City.

72. The Applicants submit that Japan Airlines and Jetstar Japan are also able to offer better services connecting their American flights to Japanese domestic destinations.

73. The Applicants submit that many of these connections would not be viable without the proposed conduct.

ACCC assessment

74. The ACCC considers that in the future without the proposed conduct JVAs would not be likely to enter routes where another JVA was already operating, unless

they considered that they would be able to be independently profitable on the route.

75. However, in the future with the proposed conduct, JVAs are able to share their profits on the route. As a result, the ACCC notes that the JVAs would not need to be independently profitable to enter a new route. Rather, decisions on whether to enter a new route would be based on factors such as whether the service was desirable to consumers and whether the entry would be profitable overall, taking into account the ability to share revenues.

76. The early morning flights on the Singapore-Ho Chi Minh City route provided by the Applicants indicate that the proposed conduct results in increased frequencies. The proposed conduct enables them to provide an extra flight, which the Applicants may not provide in the future without the proposed conduct. The extent to which this could be a relevant public benefit depends on the extent to which these flights might be used by Australian consumers, or by other travellers to access Australian destinations.

77. The ACCC considers the example provided of the Osaka-Manila route indicates that the Applicants are able to improve schedule spread by sharing revenue.

78. Similarly, the ACCC considers that the Applicants are able to provide better connections, by coordinating schedules to provide multiple options for outbound flights in a way that might not be possible in the future without the proposed conduct.

79. In summary, the ACCC considers that in the future with the proposed conduct the Applicants are likely to be able to offer more flights, at a greater variety of times which in turn will provide consumers with better connections.

80. The ACCC therefore considers that the proposed conduct is likely to result in public benefits in the form of increased frequencies, better schedule spread and improved connections.

Enhanced online offerings

Applicants' submissions

81. The Applicants submit that their improved connections have been augmented with increased online connectivity[17], which has provided consumers with a 'one-stop shop' to a greater number of routes.[18]

82. The applicants submit that offering a greater number of destinations through a single online platform allows customers to access multiple stop-routes, such as Okinawa-Osaka-Manila, Singapore-Ho Chi Minh City-Phu Quoc among others that customers would not be able to access via a single ticket otherwise.

[17] The Applicants submit that this increased connectivity allows customers to book a single ticket and check baggage through to their ultimate destination, meaning that they can more conveniently access destinations from/to Australia.

[18] Qantas Limited and Jetstar Airways Pty Ltd, Submission re: A91600 & A91601, 12 September 2017, p. 31.

ACCC assessment

83. As it found in the 2013 determination, the ACCC considers that the proposed conduct would allow the Applicants to offer a superior online service, in the form of a 'one stop shop', that would offer benefits to Australian consumers by giving them better access to some Japanese cities.

84. The ACCC recognises that consumers value online connections much more than interline connection options, generally because they are more convenient.[19] This increased convenience may be in the form of not having to collect and bear baggage mid journey, time savings associated with through check-in and the removal of the risk of forfeiting non-refundable fares if the first flight in their journey is delayed.

85. The ACCC considers that the proposed conduct is likely to result in public benefits in the form of a more convenient service for consumers, providing online connections to a greater variety of destinations through one online portal.

New destinations

Applicants' submissions

86. The Applicants submit that allowing the proposed conduct has, and will continue to, allow them to expand their network to offer new routes, and expand the available offerings on their existing routes. The Applicants submit that this benefits customers by expanding the options they have to reach their chosen destination.

87. The Applicants submit that the joint venture airlines now cumulatively service (or will soon service) 25 more destinations than at the time of the 2013 authorisation. These destinations are outlined in the table below.

Table 8: New destinations now serviced by Jetstar Branded Airlines[20]

Airline	New Destinations
Jetstar Airways	*Domestic (Australia)*: Uluru (Ayers Rock) *Domestic (New Zealand):* Napier, New Plymouth, Nelson, Palmerston North
	International: Rarotonga, Ho Chi Minh City
Jetstar Asia	*International:* Da Nang, Darwin, Pekanbaru, Palembang, Haikou, Okinawa, Hat Yai and Clark
Jetstar Japan	*Domestic:* Kumamoto, Kagoshima, Matsuyama, Takamatsu, Oita, Nagoya
	International: Hong Kong, Manila, Shanghai, Taipei
Jetstar Pacific	*Domestic:* Buon Ma Thuot, Dong Hoi, Da Lat, Phu Quoc, Pleiku, Tuy Hoa, Quy Nhon, Thanh Hoa, Tam Ky
	International: Bangkok, Guangzhou, Singapore, Hong Kong, Taipei, Osaka

[19] Interline connection options, often booked through 3rd party aggregator websites, allow consumers to access multi-stop routes through multiple of airlines. The ACCC has recognised that intraline connection options are generally preferred by consumers, as the single airlines manages baggage through the entire trip and will assist customers in the event that a delay causes them to miss a connecting flight.

[20] Qantas Limited and Jetstar Airways, Submission to the ACCC re: A91600 & A91601, p. 28.

ACCC assessment

88. In its 2013 determination, the ACCC considered that the proposed conduct would increase the likelihood of Jetstar offering new frequencies and destinations in three situations:

- where a destination not currently served by a Jetstar LCC has insufficient passenger traffic to sustain a service
- where increased frequencies between a city pair will become uneconomic without coordination
- where the JVA entering the route would create unacceptable commercial conflict.

89. The ACCC considers that in the future without the proposed conduct the JVAs would continue to offer new routes when they were commercially viable, regardless of their ability to coordinate.

90. The ACCC considers that the proposed conduct is unlikely to affect these decisions, as it does not make it more or less attractive for the parties to enter routes where they do not currently operate.

91. The exception to this is circumstances where the route is already served by a JVA, and a party to the coordination who is a potential entrant perceives it would not be economic to compete. However, in the context of coordination, it may be economic for the Joint Ventures as a whole to coordinate, to provide flights to the destination at uneconomic times of the day, with revenue sharing effectively subsidising the cost.

92. In the future without the proposed conduct the parties would still be able to advertise all their destinations via an integrated online portal, so there would be little benefit to customers from multiple JVAs serving the same destination absent coordination.

93. Therefore, the ACCC considers that there is likely to be minimal public benefits from JVAs flying to new destinations, as customers will likely have access to that destination through the Jetstar network with or without the proposed conduct. Any other likely public benefits related to airlines offering new destinations (such as increased frequencies or increased competition) are discussed separately.

New services

Applicants' Submissions

94. The Applicants submit that the development of a charter service, which allows for the flexible scheduling of flights (and is primarily used for group travel), increases the range of options available to consumers travelling overseas.

ACCC assessment

95. The ACCC considers that expanding the range of services offered to customers is a potential public benefit. However, it is not clear to the ACCC how the proposed conduct enables, or would enable in the future with the conduct, the offering of a

charter service. Therefore, the ACCC is not satisfied that the proposed conduct is likely to result in public benefits from the development of a new charter service.

Cost savings, economic efficiencies, lower fares

Applicants' submissions

96. The Applicants submit that the proposed conduct has, and will continue to, allow them to save costs by realising efficiencies in resource allocation, and economies of scale in the deployment of management resources. They submit that this will benefit customers by reducing the cost of airline services.

97. The savings principally arise from the sharing of business infrastructure such as IT systems and administrative staff.

ACCC assessment

98. The ACCC has previously accepted that efficiencies may be delivered by an aviation alliance to the extent that it facilitates cost savings and efficiencies through, for example, rationalisation of duplicated fixed costs, better capacity utilisation, exploitation of synergies through joint marketing and investment (e.g. in IT systems).[21]

99. The ACCC considers, in line with the Applicants' submissions, that in the future without the proposed conduct each JVA would continue to operate and access Jetstar Airways support in relation to most aspects of their operations, including network and fleet strategy, scheduling, pricing, marketing and customer service. The ACCC considers that a significant proportion of the cost savings and efficiencies claimed by the Applicants would be realised in this likely future without the proposed conduct.

100. Nevertheless, the ACCC considers that in the future with the proposed conduct the Applicants are likely to achieve cost savings and efficiencies that are incremental to those likely in the future without the proposed conduct as a result of more effective network/ fleet planning, schedule optimisation, pricing/revenue management and marketing. The ACCC considers these incremental cost savings and efficiencies are likely to take the form of:

- higher utilisation of fixed network facilities and assets, including aircraft, airport facilities and crew
- further savings through joint negotiations with service providers and bulk purchasing, including the acquisition of aircraft[22]
- further removal of duplicated costs including IT services, sales and marketing and ground handling services.

[21] A91575 & A91576, Virgin Australia Pty Ltd & Ors, 10 August 2017, p. 8.

[22] The ACCC notes that this is only a public benefit in so far as it is not simply a transfer between the parties but reduces the costs of negotiating and executing service and purchasing agreements.

101. The ACCC also considers that, given the level of competition in this market, and the fact that the business models of many market participants target price sensitive travellers, it is likely that at least a large portion these cost savings will be passed on to consumers in the form of lower fares.

102. On this basis, the ACCC considers that the proposed conduct is likely to result in public benefits through cost savings and efficiencies.

Product innovations

Applicants' submissions

103. The Applicants submit that the proposed conduct has allowed them to expand fare options, through their FareShare and FlexiBiz products. FareShare allows groups to hold fare prices and split payments across the group. The Applicants submit that this provides increased convenience and allows groups to more effectively take advantage of price promotions. Rival Tigerair Australia launched a similar service in the month after the introduction of FareShare. Flexibiz fares offer more features (such as seat selection and baggage allowance) targeted at cost-conscious business travellers.

104. The Applicants submit that this program has elicited a response from AirAsia and Peach, who have bolstered their offerings to business travellers.

ACCC Consideration

105. The ACCC considers that the Fareshare and Flexibiz services expand consumer choice, by allowing customers to choose fares with options that are suited to their needs.

106. The ACCC accepts that the provision of 'innovative' services, in the form of group payment options, and flexible fares for business class travellers is likely to be valued by travellers. However, the innovative services described by the Applicants are likely to result with or without the proposed conduct.

107. Nevertheless, the ACCC considers that there will be some benefit from travellers having access to improved services throughout the Jetstar Network.

108. The ACCC also considers that these innovative services may prompt a competitive response from other airlines.

Increased competition

Applicants' submission

109. The Applicants submit that the coordination allows them to compete in the 'highly contested market for airline services', and thereby provoke competitive responses.

110. The Applicants submit that when a LCC enters a market all existing market actors (both FSA and LCC) innovate in order to remain competitive.

111. The Applicants submit the following examples of where their activity has prompted a competitive response:

- **Hong Kong-Ho Chi Minh City:** Since Jetstar Pacific entered the route in July 2016 total route capacity has grown from 188,854 to 275,847 in June 2017, an increase in capacity of 46%. Based on the data provided by the Applicants the largest increase in market share has gone to VietJet Air, who also entered the route in this period, growing to 13.31%. Market Share has predominantly gone from United Airlines, who exited the route in this period.

- **The Value Alliance:** The Applicants submit that a pan-regional alliance of LCCs, the Value Alliance has been formed in response to the Applicants' business model. The alliance consists of Cebu Pacific, Jeju Air, Nok, NokScoot, Scoot (a wholly-owned subsidiary of Singapore Airlines), Tigerair Australia, and Vanilla Air. This alliance allows consumers to book flights across 160 destinations in the Asia-Pacific region on any of the member airlines respective websites. The Applicants submit that the alliance is not permitted to coordinate in the same way as the Applicants, meaning that it cannot deliver many of the benefits claimed by the Applicants. However the alliance is able to offer integrated online offerings, though this is still being rolled out.

112. The Applicants submit that by engaging in the proposed conduct, they are increasing the international competitiveness of a key Australian business by seeking to capitalise on the growth in demand for air travel services in Asia, both for their own benefit and ultimately the benefit of Australians.

ACCC assessment

113. The ACCC has previously accepted that aviation alliances can stimulate competitive responses amongst rivals in international air passenger transport services markets where the alliance enhances the alliance partners' passenger service offering and/or results in lower fares.

114. In its 2013 determination the ACCC considered that the alliance would assist the Applicants to offer an integrated service, and that it was likely to enhance the Jetstar product and service offering.

115. The ACCC considered that the proposed conduct might produce public benefits by stimulating a competitive response from rivals, resulting in lower prices and higher levels of service being offered to customers in the future.

116. The ACCC considered that the response in the short to medium term was likely to come from rival FSAs and LCCs on the routes on which the parties operations overlap.

117. In relation to the current applications for revocation and substitution, the Applicants provided several examples of the competitive responses on individual routes. While the examples cited by the Applicants appear to show increases in activity from rival airlines following the Applicants' activity on the route, it is not clear that the activity was caused by the Applicants' activity. That is, the ACCC considers that these examples may not necessarily be evidence of a competitive response to the arrangements.

118. In the future without the proposed conduct the Applicants would be able to offer many of the same services as they would in the future with the proposed conduct. Much of the response to that activity by rivals is also likely to exist with or without the proposed conduct. For instance, the ACCC considers it likely that the proposed conduct is only one of many factors that influenced the Value Alliance. The primary purpose of the Value Alliance appears to be to integrate the online offerings of the member airlines. The Applicants would still be likely to provide a similar service in the future without the proposed conduct, thereby creating the incentive for competitors to respond.

119. However, the future with the proposed conduct, where the Applicants are able to fully integrate the beneficial aspects of their offerings, including destinations, frequencies, and product innovations they are likely to provoke a competitive response from rivals to this overall package. Other airlines may be prompted to respond to the increased frequencies and schedule spread the Applicants are able to offer, increasing the benefit to consumers.

120. Therefore, the ACCC considers that the proposed conduct is likely to result in some public benefits in the form of increased competition.

Increased tourism to Australia

Applicants' Submission

121. The Applicants submit that by offering low cost flights to Australia from Asia, they have encouraged more tourists from Asia to travel to Australia.

122. The Applicants submit that tourism from Asia is particularly beneficial to economic growth because of the growing size and wealth in the region.

123. The Applicants also submit that Australia is a central feature in many pieces of marketing, implying a strong link between Australia as a brand and the Applicants' prospects for success in overseas markets.

124. The Applicants submit that in the period since the 2013 Authorisation, passenger traffic from the countries serviced by Jetstar LCCs increased at 12% per year. The Applicants submit that because the Jetstar passenger base consists of a high proportion of leisure passengers, a substantial portion of this overall growth should be attributed to the conduct.

125. The Applicants submit that the commencement of Cairns-Tokyo/Osaka services dramatically increased Japanese visitors to Far North Queensland.

126. The Applicants submit that there was a 20% increase in visitors from Vietnam to Australia last year. The Applicants submit that the introduction of a non-stop Ho Chi Minh City service to Melbourne and Sydney was expected to continue this trend.

127. The Applicants also cite opinions from tourism bodies that the Jetstar Pan-Asia Strategy will increase inbound tourism to Australia.

ACCC assessment

128. The ACCC has previously recognised that promotion of Australia as a tourist destination has public good characteristics. Investments in promoting Australia as a tourist destination can not only benefit the party undertaking that investment, but also other parties that offer services to tourists (such as hotels, tour operators and other airlines).

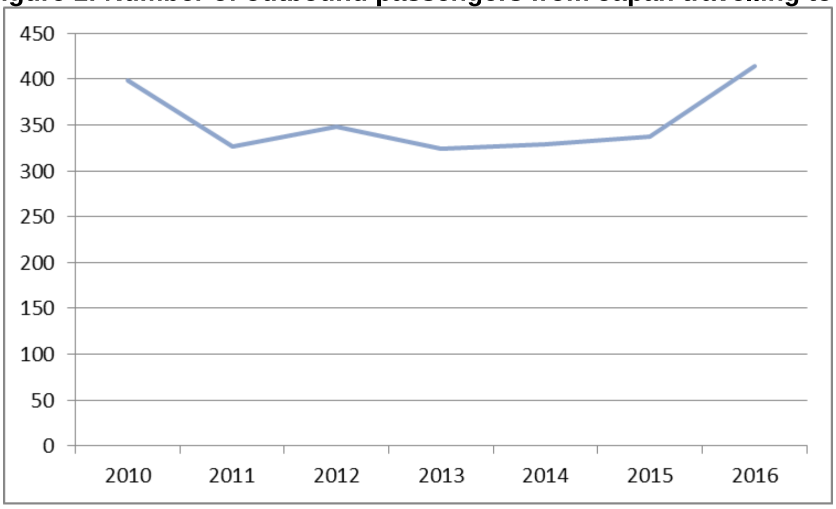
129. However, as the ACCC has previously noted, there are a wide range of factors which influence tourism demand and expenditure, including general purchasing power in source countries, the relative cost of other destinations, the total cost of visiting Australia and the perceived quality of Australia as a destination.

130. In its 2013 determination the ACCC accepted that the stimulation of tourism was a potential source of public benefit.

131. The ACCC considered that, to the extent that the proposed conduct generated a net increase in passenger traffic from points in Asia to Australia, the proposed conduct was likely to benefit Australian businesses and individuals involved in Australia's tourism industry. However, the ACCC determined that there was insufficient information available to come to a conclusion regarding the magnitude of these benefits.

132. The Applicants' submission in respect of their current application for authorisation contained data to support their claim that the conduct has led to increased tourism. The data shows that between 2013-16 the number of passengers travelling to Australia from Japan was approximately 1% higher than in the preceding three years. However as the chart below illustrates, this largely stems from a one year spike in 2016, which only resulted in passenger numbers returning to slightly above the levels seen in 2010.

Figure 1: Number of outbound passengers from Japan travelling to Australia (000s)



133. The ACCC notes the distinction between the Jetstar Pan-Asia Strategy as a whole, and the components of that strategy that are the subject of this authorisation. For instance, the example presented by the Applicants regarding the direct services from Japan to Cairns is not affected by the proposed conduct. In the future without the proposed conduct, the ACCC considers that the Applicants would likely continue to service this route, and enter other similar routes. Likewise, the ACCC considers that the marketing operations submitted by the Applicants would likely continue in the future without the proposed conduct.

134. The ACCC considers that the Applicants' improved product and service offering under the proposed conduct has the potential to promote tourism to Australia to an extent. However, having regard to the range of other factors that are likely to be more significant determinants of inbound tourism numbers, and the alternative options available to many potential tourists wishing to visit Australia (in the form of services provided by other airlines) the ACCC is not satisfied that the proposed conduct is likely to result in a public benefit in the form of increased Australian tourism.

ACCC conclusion on public benefits

135. The ACCC considers that the proposed conduct is likely to produce public benefits by allowing the Applicants to provide enhanced products and services, in the form of increased frequencies on already served routes, better schedule spread and more convenient connections for consumers.

136. The ACCC considers that the proposed conduct is also likely to produce public benefits in the form of economic efficiencies and cost savings by allowing the parties to the JVCA to reduce costs and realise economic efficiencies.

137. The ACCC considers that the provision of innovative services, in the form of group payment options, and flexible fares for business travellers is likely to produce some public benefit. However, these benefits are likely to be small.

138. The ACCC considers that the arrangements are likely to result in some public benefits in the form of increased competition by provoking a competitive response from other airlines operating in the relevant markets.

139. The ACCC is not satisfied that the proposed conduct is likely to result in a public benefit in the form of increased tourism to Australia, because a range of factors, of which the Applicants' conduct is only potentially one, affects tourism.

Public detriment

140. Public detriment is also not defined in the CCA but the Tribunal has given the concept a wide ambit, including:

> …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.[23]

141. Qantas submits that the proposed conduct will not lead to any substantial public detriments.

142. The ACCC's assessment of the likely public detriments from the proposed conduct follows.

Public detriments considered in 2013 determination

143. In the previous authorisation, the ACCC concluded that the proposed conduct was not likely to result in any significant public detriments. In coming to this

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

conclusion, the ACCC considered the likely impact of two possible outcomes from a loosening of competitive constraints - unilateral and coordinated effects.

144. In the 2013 determination the ACCC considered that the proposed conduct did not materially increase the likelihood of unilateral or coordinated conduct to raise price or reduce service on routes where FSAs overlap on the grounds that:

- while FSAs' ability to coordinate may be increased as a result of their common involvement in a JVA, that ability is not materially increased by the additional coordination that would result from the proposed conduct

- there was no cross ownership between FSAs so their incentives to compete were the same in the future with and without the proposed conduct

- in any event, on a majority of the overlap routes, the parties' ability and incentive to increase fares or reduce service without authorisation were constrained by the presence of other carriers on the route

- on the remaining overlap routes the ACCC considered that if the parties were to raise price or reduce service with authorisation, it is not clear that carriers not already operating services to and from Japan would find it commercially attractive to enter the route. However, this was a moot point because the ACCC considered that the proposed conduct did not alter the FSAs' incentives to compete and does not significantly impact their ability to compete (or not) on these routes.

Applicants' submission

145. The Applicants submit that the proposed conduct would not result in any detriments in any market.

146. The Applicants submit that in the future without the proposed conduct there will be no significant rivalry between:

- Qantas, Jetstar Airways and any JVA

- Jetstar Japan and Japan Airlines

- any of the JVAs.

147. The Applicants submit that on all the routes where they propose to coordinate under the proposed conduct they are constrained by vigorous competitors, including both FSA and LCC airlines.

148. The Applicants submit that on routes where they do not propose to coordinate pursuant to the proposed conduct there is no lessening of competition, as there is no change to the incentives for airlines to compete and rigorous ring fencing procedures prevent the sharing of unauthorised information.

ACCC assessment

149. The ACCC considers that the proposed conduct may result in public detriment by affecting competition in the relevant market(s) in two ways:

- enhancing the ability or incentive of one or more of the airlines engaging in the proposed conduct to *unilaterally* raise price or reduce service on routes where they overlap
- making it easier for airlines operating in the relevant market(s), or on particular routes to successfully *coordinate* on price, capacity or related commercial decisions.

Unilateral effects

150. By permitting the Applicants to revenue share and coordinate schedules on certain routes, the JVCA may reduce the competitive constraints on the Applicants, allowing them to raise prices or reduce service without affecting their ability to attract customers. This could create public detriment, as it would result in increased prices and degraded services.

151. To understand the impact of the proposed conduct the ACCC assesses the proposed conduct on three kinds of routes:

    - Routes where JVAs coordinate with each other
    - routes where a JVA coordinates with an unrelated FSA
    - routes where a JVA coordinates with their related FSA.

Routes where JVAs coordinate with each other

152. The JVCA provides that where the operations of two Jetstar Branded Airlines overlap, they are able to coordinate on schedules and price, as well as share revenue.

153. The Applicants submit that in such instances, the airlines operate under a common brand and 'go to market strategy' to offer additional frequencies at better times.

154. These instances are set out in the table below.

Table 9: Routes where JVAs Coordinate[24]

Route	JVCA Airlines operating	Number of non-party competitors	Combined JVA Market share
Singapore – Bali (Denpasar)	Jetstar Asia and Jetstar Airways	6	10.9%
Manila - Osaka	Jetstar Asia and Jetstar Japan.	2	29.25%
Perth - Singapore	Qantas, Jetstar Asia, Jetstar Airways (temporary replacement for Asia)	2	27.89%
Taipei - Osaka	Jetstar Asia, Jetstar Japan, Japan Airlines	9	14.96 %
Singapore – Ho Chi Minh City	Vietnam Airlines, Jetstar Asia, Jetstar Pacific.	3	44.16%

155. The ACCC considers that two of these routes, Singapore-Bali and Taipei – Osaka, are highly contested, with a significant number of competitors with larger market share operating. These competitors include a variety of kinds of airline, both FSA and LCC, indicating that there is little opportunity for the Applicants to increase prices or decrease service without competitive constraint on these routes as a result of the authorisation.

156. Fewer competitors contest the remaining three routes and the Applicants have relatively larger market shares on these routes. This may create more opportunities for them to profitably raise prices or decrease service.

157. However, the ACCC considers that other carriers are likely to constrain the ability of the parties to the JVCA to act unilaterally to raise prices or reduce services without losing customers.

158. The ACCC also notes that there has been rapid growth in passenger travel in Asia in recent years, and that the region has the largest number of air travel passengers in the world. This indicates the region is likely to be subject to competitive constraints, and attempts by individual entities to raise prices or lower quality of service may attract more entry and expansion. This broader trend is likely to limit the ability of the JVCA airlines to profitably reduce service or increase prices.

159. Therefore, the ACCC considers that the proposed conduct is likely to result in minimal, if any, public detriment stemming from unilateral conduct on these routes.

Routes where JVAs coordinate with an unrelated FSA

160. The ACCC considers that it is also necessary to assess the impact of the conduct in instances of multiple overlap coordination. These are routes where two JVAs are operating alongside the related FSA of one JVA. This is the only situation in

[24] Qantas Limited and Jetstar Airways Pty Ltd, Submission to the ACCC Re: A91600 & A91601, 12 September 2017, Annexure D.

which coordination between a FSA and an unrelated JVA is permitted under the proposed conduct.

161. The two routes where this situation exists are Singapore – Ho Chi Minh City and Taipei – Osaka.

Taipei - Osaka

162. In the future without the proposed conduct, it is possible that Japan Airlines would seek to direct Jetstar Japan to compete more vigorously with Jetstar Asia, in order to gain revenue available in the LCC segment of the market.

163. However, the proposed conduct is likely to result in small if any detriments, given the highly competitive nature of the route, with multiple LCC and FSA competitors operating to push prices in both segments, and the market as a whole, towards competitive levels. The table below lists the various operators on the route and their respective market shares.

Table 10: Capacity and market share on Taipei-Osaka[25]

Carrier	Capacity	Market Share
China Airlines	954,265	27.49%
EVA Air	674,186	19.42%
Peach	372,600	10.73%
Tiger Air Taiwan	268,560	7.74%
Japan Airlines	241,180	6.95%
Cathay Pacific	229,144	6.60%
Jetstar Asia	212,760	6.13%
Trans Asia Airways	155,340	4.48%
Philippine Airways	132,392	3.81%
Vanilla Air	131,220	3.78%
Jetstar Japan	65,160	1.88%
V Air	34,216	0.99%
Total	3,471,023	100.00%

164. The ACCC considers that the large numbers of airlines operating on this route, combined with the route's relatively high number of passengers indicates that there is strong competition on the route, and that this competition is likely to continue into the future. While two competitors (V Air and TransAsia) recently ceased operating on the route, indicating that there may be other constraints, the ACCC considers that the route still contains a number of competing providers.

165. As mentioned above, the ACCC considers that the broader growth in the market is likely to reduce the ability of the JVCA airlines to reduce service or increase prices without competitive restraint.

166. In the absence of the proposed conduct, the differing business models of Japan Airlines and Jetstar Asia would likely also reduce their incentive to compete as Japan Airlines will continue to market itself as an FSA and Jetstar Asia as an

[25] Qantas Limited and Jetstar Airways Pty Ltd, Submission to the ACCC Re: A91600 & A91601, 12 September 2017, Annexure D.

LCC, meaning that they appeal to different segments of the market based on different factors.

167. Therefore, the ACCC considers that the proposed conduct is likely to result in little, if any, detriments on this route.

Singapore – Ho Chi Minh City

168. Fewer airlines contest this route than Taipei-Osaka, with only three non-party carriers operating. The market share between the parties to the strategy is large, at over 44%. This increases the potential detriments from the proposed conduct, as there may be less constraint on the parties' ability to coordinate to raise prices without losing customers. The table below sets out the market shares of all participants on the route.

Table 11: Capacity and Market share on Singapore-Ho Chi Minh City[26]

Carrier	Capacity	Market Share
Singapore Airlines	521,094	24.80%
Vietnam Airlines	402,960	19.18%
Jetstar Asia	393,480	18.73%
Tigerair	389,520	18.54%
VietJet	262,800	12.51%
Jetstar Pacific	131,400	6.25%
Totals	2,101,254	100%

169. The ACCC notes that Singapore and Vietnam have liberalised their ASA because of the ASEAN open skies agreement, and as such no longer restrict the volume of flights between their countries. However, as they have not liberalised fifth freedom rights,[27] there may be other incentives for Jetstar Pacific to raise flight numbers to take advantage of its home location in providing connecting flights.

170. Despite these factors, there is substantial competition on this route, in respect of both the FSAs and LCCs. Singapore Airlines, an FSA, has the largest market share on the route, along with a strong LCC competitor in Tigerair.

171. As mentioned above, the ACCC considers that the broader growth in the market is likely to reduce the ability of the JVCA airlines to profitably reduce service or increase prices.

172. The ACCC considers that Vietnam Airlines and Jetstar Asia's differing business models also reduce the likelihood of competition between the two airlines in the future without the proposed conduct.

173. Therefore, on balance, the ACCC considers that the proposed conduct is likely to result in little public detriment on this route.

[26] Qantas Limited and Jetstar Airways Pty Ltd, Submission to the ACCC Re: A91600 & A91601, 12 September 2017, Annexure D.

[27] Qantas Limited and Jetstar Airways Pty Ltd, Submission to the ACCC Re: A91600 & A91601, 12 September 2017, Annexure D.

Routes where an FSA coordinates with JVA

174. The only FSA and related JVA pair for which the Applicants have sought authorisation for coordination is Jetstar Japan and Japan Airlines.

175. The table below lists the routes where the proposed conduct would allow Jetstar Japan and Japan Airlines to coordinate. Jetstar Japan and Japan Airlines are the only airlines party to the JVCA operating on these routes.

Table 12: Routes requiring authorisation where FSA coordinates with JVA[28]

Route	Number of non-party competitors	Combined Market share
Tokyo – Hong Kong	6	9.68%
Tokyo - Manila	4	29.64%
Taipei - Tokyo	8	11.49%
Nagoya – Taipei	3	20.54%
Shanghai – Tokyo	4	21.56%
Sapporo – Osaka	4	42.52%
Sapporo – Nagoya	4	36.24%
Sapporo – Tokyo	5	47.85%

176. Jetstar Japan was a new entrant on all the above routes following the 2013 authorisation.

177. In the future without the proposed conduct there is unlikely to be significant competition between Japan Airlines and Jetstar Japan, due to Japan Airlines ownership interest in Jetstar Japan.

178. The ACCC also considers that the JVCA airlines are also subject to robust competition on each of these routes, with multiple LCC and FSA airlines operating on each route. This constrains the JVCA airlines ability to raise prices or decrease service without repercussions.

179. Therefore the ACCC considers that allowing the proposed conduct is likely to result in little, if any, public detriment on these routes.

Coordinated effects

180. If competitors coordinate there can be significant public detriments arising from the loss of competition. Competitors might collude on price (explicitly or tacitly), scheduling decisions or quality of service, all of which can negatively impact consumers. This is referred to as coordinated effects.

181. By authorising the proposed conduct and therefore allowing the parties to coordinate under the JVCA, there may be a risk that barriers to broader coordination, beyond the scope of the agreement, are reduced or removed. The proposed conduct for which authorisation is sought does not include any such coordination.

182. The ACCC considers that any risk of coordinated effects will be greatest on routes where the parties' operations overlap. These are considered below.

[28] Qantas Limited and Jetstar Airways Pty Ltd, Submission to the ACCC Re: A91600 & A91601, 12 September 2017, Annexure E.

Overlap between FSAs who are party to the JVCA

183. The table below lists routes where two FSA parties to the JVCA overlap. Many of these routes are only lightly contested, with the parties possessing a substantial majority of market share on all of these routes.

Table 13: Routes where FSAs overlap[29]

Route	JVCA Airlines Operating	Number of non-party competitors
Hanoi - Tokyo	Vietnam Airlines, Japan Airlines	1
Tokyo-Ho Chi Minh City	Vietnam Airlines, Japan Airlines	1
Sydney-Tokyo	Qantas, Japan Airlines	1
Melbourne-Tokyo	Qantas, Japan Airlines	0

184. The proposed conduct does not include or permit any coordination on any of the above routes and does not permit information sharing beyond the scope of the JVCA.

185. The ACCC considers that the proposed conduct for which authorisation is sought does not meaningfully increase the likelihood that parties will more broadly coordinate or share information (in breach of Australian and overseas competition laws) beyond the risk that would exist in a future without the proposed conduct. Therefore, the ACCC considers that the proposed conduct is not likely to cause any public detriment stemming from increased risk of coordinated effects on these routes.

Overlap between an FSA party to the JVCA and an unrelated Jetstar Airline

186. The table below contains routes where the operations of a FSA and an unrelated Jetstar Joint Venture overlap.

Table 14: Routes where FSAs overlap with non-related Jetstar Joint Venture[30]

Route	JVCA Airlines Operating	Number of non-party competitors
Melbourne - Ho Chi Minh City	Vietnam Airlines, Jetstar Airways	0
Sydney – Ho Chi Minh City	Vietnam Airlines, Jetstar Airways	0

29 Qantas Limited and Jetstar Airways Pty Ltd, Submission to the ACCC Re: A91600 & A91601, 12 September 2017, Annexure F.

30 Qantas Limited and Jetstar Airways Pty Ltd, Submission to the ACCC Re: A91600 & A91601, 12 September 2017, Annexure G.

187. Jetstar Airways is a new entrant on both these routes since the 2013 authorisation, and has a market share below 10% on both routes. The proposed conduct does not include any coordination or revenue sharing on this route.

188. The likelihood of new entry may be relatively low, given the number of passengers and length of these routes. Nonetheless, the ACCC considers that the threat of new entry, is likely to somewhat constrain the ability of the parties to raise prices.

189. The ACCC also notes the Applicants' submission that with or without the proposed conduct, the parties' incentives to compete with each other on this route would remain somewhat lessened by their differing business models, with Vietnam Airlines being a FSA and Jetstar Airways operating as an LCC, although the fact remains that they are the only competitors on these routes.

190. In any case, authorisation of the proposed conduct does not include coordination on routes where FSA partners overlap with unrelated joint venture airlines. The ACCC considers that this should mean that the proposed conduct has little or no impact on competition on these routes. The proposed conduct does not increase the incentive to coordinate on these routes, or the ability of the parties to share information about their activities on these routes (beyond the fact that it increases the level of interaction between the parties generally).

191. While there may be some risk that information shared as part of the proposed conduct could affect decisions made on these routes, the Applicants submit that their staff are regularly trained to ensure this does not occur. While the ACCC cannot rule out the possibility that information will be shared beyond what is proposed (in breach of competition laws), the proposed conduct does not appear to materially increase the likelihood of this occurring.

192. Therefore the ACCC considers that the proposed conduct is likely to result in little, if any, public detriment on these routes.

Air Cargo

193. As discussed above, the ACCC considers that the international cargo services are relevant to the proposed conduct.

194. However, the ACCC notes that there are a number of dedicated air freighters that also compete in this market, alongside the passenger competitors who also carry freight. The ACCC considers that this is likely to provide additional constraints, above what was found in relation to passenger travel.

195. Therefore, the ACCC does not consider that it is necessary to examine the air cargo market in detail. The analysis of the air passenger market has satisfied the ACCC that the routes in question are subject to competition and that in the future with the conduct the Applicants will likely not be able to profitably raise prices or decrease service, or be materially more likely to coordinate with other parties beyond the scope of the proposed conduct.

196. The proposed conduct is therefore likely to result in limited, if any, public detriments in the air cargo market.

ACCC conclusion on public detriments

197. The ACCC considers that in the future without the proposed conduct there is unlikely to be meaningful rivalry between FSAs and Jetstar entities they have an ownership interest in. On routes where Jetstar entities coordinate with an unrelated FSA, the ACCC considers that the parties face strong competitive constraints from other airlines.

198. On routes where the coordination is not included in the proposed conduct for which authorisation is sought, but where the airlines might have incentives to coordinate beyond the scope of the agreement, the ACCC considers that the proposed conduct does not meaningfully affect these incentives, or otherwise make it more attractive or significantly easier for the parties to coordinate.

199. As a result, the ACCC considers that the proposed conduct is likely to result in little, if any, public detriments in the passenger transport market.

200. As discussed above, the ACCC considers that the international air cargo market carries additional competitors to the air passenger market. As a result, the ACCC considers that the proposed conduct is likely to result in little, if any, public detriments in the relevant air cargo market.

Balance of public benefit and detriment

201. Broadly, the ACCC must not grant authorisation for the proposed conduct unless it is satisfied that, in all the circumstances, the proposed conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment.

202. For the reasons set out in this determination, the ACCC considers that the proposed conduct is likely to result in public benefits in the form of enhanced products and services, cost savings and economic efficiencies, and increased competition.

203. The ACCC considers that the proposed conduct is likely to result in little, if any, public detriments because it is unlikely to weaken, to any meaningful extent, competitive constraints on the Applicants' ability to raise prices or decrease service, or increase the likelihood of coordinated effects.

204. For the reasons outlined in this determination the ACCC is satisfied that the likely benefit to the public would outweigh the detriment to the public including the detriment constituted by any lessening of competition that would be likely to result.

205. Accordingly, the ACCC is satisfied that the relevant net public benefit test is met.

Determination

The application

206. On 12 September 2017 Qantas Airways Limited and Jetstar Airways Pty Ltd lodged application for revocation and substitution A91600 & A91601 with the ACCC. Applications A91600 & A91601 were made under section 91C(1) of the

CCA seeking authorisation for conduct to which certain provisions of Part IV of the CCA would or might apply.[31]

207. The proposed conduct for which a new authorisation is sought involves continuation of coordination involving Qantas, the Jetstar branded low cost carriers (Jetstar LCCs – Jetstar Airways, Jetstar Asia, Jetstar Pacific and Jetstar Japan) and, as applicable, the full service airline shareholders (FSA shareholders – Vietnam Airlines and Japan Airlines), in the Asia-Pacific region.

208. Authorisation is sought for a period of 10 years.

The net public benefit test

209. For the reasons outlined in this determination, the ACCC is satisfied, pursuant to sections 90(7) and 90(8) of the CCA, that in all the circumstances the proposed conduct for which authorisation is sought is likely to result in a benefit to the public that would outweigh the detriment to the public, including any public detriment constituted by any lessening of competition, that is likely to result from the proposed conduct.[32]

Conduct for which the ACCC grants authorisation

210. The ACCC grants authorisation to Qantas Airways Limited and Jetstar Airways Pty Ltd to continue coordination involving Qantas, the Jetstar branded low cost carriers (Jetstar LCCs – Jetstar Airways, Jetstar Asia, Jetstar Pacific and Jetstar Japan) and, in certain circumstances, the full service airline shareholders of Jetstar Pacific and Jetstar Japan (Vietnam Airlines and Japan Airlines) (as described in paragraphs 4 to 9).

211. Authorisation applies to the proposed conduct in so far as it contains a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the CCA.[33]

212. The ACCC grants authorisation for five years until 31 March 2023.

Conduct not authorised

213. The proposed conduct for which authorisation is sought does not extend to:

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[31] On 6 November 2017, a number of amendments to the CCA came into effect, including changes to the authorisation provisions in Division 1 of Part VII of the CCA. These applications for authorisation are assessed by the ACCC in accordance with the CCA as amended.

[32] As a cartel provision applies to the proposed conduct, section 90(7)(a) does not apply: section 90(8).

[33] The reference to “within the meaning of section 45 of the CCA” includes the making and/or giving effect to a contract, arrangement or understanding or to engage in a concerted practice, any or all of which may have the purpose or effect of substantially lessening competition.

- coordination of any kind between any FSA partners
- coordination between any FSA partner and an unrelated JVA, except where a related JVA operates on the relevant route
- coordination between Jetstar Airways and Vietnam Airlines in relation to services operated between Australia and Vietnam
- coordination between Jetstar Airways and Japan Airlines in relation to services operated between Australia and Japan
- coordination involving any future Jetstar Joint Ventures.

Length of authorisation

214. The CCA allows the ACCC to grant authorisation for a limited period of time.[34] This allows the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

215. In this instance, the Applicants seeks authorisation for 10 years.

216. The Applicants submit that this longer period will:

    - provide them and their business partners with greater certainty
    - reduce costs
    - allow them to compete more vigorously
    - acknowledge that the international regulatory environment prevents Qantas from majority owning overseas airlines
    - allow the benefits of the proposed conduct to be realised over a ten year term.

217. The Applicants submit that certainty is important to their business concerns because it allows them to develop new overseas destinations with longer lead times, accord with cultural norms from overseas countries and engage in group projects (such as digital and IT projects) that require longer lead times.

218. The ACCC considers that the dynamic and evolving nature of the Asian aviation market, demonstrated by the fast growth rates and significant regulatory shifts since the previous authorisation, mean that review should take place sooner than proposed by the Applicants.

219. The ACCC therefore grants authorisation for the proposed conduct for five years.

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[34] Section 91(1).

Date authorisation comes into effect

220. This determination is made on 16 February 2018. If no application for review of the determination is made to the Australian Competition Tribunal it will come into force on determination 10 March 2018.