



Determination and Interim Authorisation

Applications for revocation and substitution
of authorisation

lodged by

Qantas Airways Limited and Emirates

in respect of

a Restated Master Coordination Agreement
to continue to coordinate their air
passenger and cargo transport and other
related services

Date: 23 March 2018

Authorisation numbers: AA1000400

Commissioners: Rickard
Schaper
Court
Featherston
Keogh

Summary

The ACCC has decided to grant conditional authorisation to Qantas Airways Limited and Emirates to continue to coordinate their air passenger and cargo transport and other related services. The ACCC grants conditional authorisation for five years, until 31 March 2023.

The ACCC originally authorised this conduct in 2013 for a period of five years until 31 March 2018.

The ACCC has also decided to grant interim authorisation, with effect from 31 March 2018, until the re-authorisation comes into force.

On 11 October 2017, Qantas Airways Limited (**Qantas**) and its related bodies corporate and Emirates (together the **Applicants**) lodged an application with the Australian Competition and Consumer Commission (**ACCC**) under section 91C(1) of the Competition and Consumer Act (2010) (**the Act**) to revoke authorisations A91332 and A91333 and to substitute a new authorisation (AA1000400) (referred to as **re-authorisation**).

The airline alliance between Qantas and Emirates was first authorised by the ACCC, subject to a condition, in March 2013, for five years. These original authorisations are subject to a condition to address competition concerns on several routes between Australia and New Zealand, and are due to expire on 31 March 2018.

The Applicants seek re-authorisation to continue to coordinate their air passenger and cargo transport operations and other related services across their respective networks, including in relation to planning, scheduling, operating and capacity, sales, marketing, advertising, promotion, and pricing for passengers, freight customers and agents, connectivity and integration of certain routes, codeshare and interline arrangements, frequent flyer programs and all aspects of customer service, including ground services and lounge access, pursuant to a Restated Master Coordination Agreement (**Restated MCA**).

The Applicants have made a number of changes to their operations since authorisations A91332 and A91333 were granted in 2013, including:

- from 24 March 2018, Qantas will:
 - replace its Melbourne - Dubai - London services with Melbourne - Perth - London services and
 - replace its Sydney - Dubai - London services with Sydney - Singapore - London services.
- Emirates has and/or plans to implement network changes, including:
 - commencing a non-stop Auckland - Dubai service in March 2016, and commencing a second service between Dubai and Auckland, via Bali, from 14 June 2018.
 - terminating its Sydney - Auckland services in July 2017 and its Brisbane - Auckland and Melbourne - Auckland services in March 2018 and
 - launching an additional daily Brisbane - Dubai service in December 2017, an additional Sydney - Dubai service in March 2018 and increasing the gauge (aircraft size) on one of its three Melbourne - Dubai services.

- Qantas proposes to backfill some, but not all, of the capacity vacated by Emirates ceasing its Australia - Auckland services.

Post implementation of these changes the Applicants will only overlap with direct services operated by their own aircraft on four routes: Melbourne - Singapore, Brisbane - Singapore, Sydney - Bangkok and Sydney - Christchurch.¹

Therefore, in terms of network coverage the networks of Qantas and Emirates are largely complementary. Qantas has an extensive domestic network in Australia where Emirates has no presence. Internationally, there is limited overlap between their operations. Qantas operates an extensive network of services between Australia and New Zealand where, post April 2018, Emirates will only operate on one route, Sydney - Christchurch. Conversely, between Australia and Europe, Emirates operates an extensive network of services while Qantas only operates services between Sydney and London, via Singapore and Melbourne and London, via Perth.

The ACCC considers that the alliance is likely to result in a range of public benefits.

In particular, the ACCC considers that the alliance is likely to result in significant public benefits through increasing the number of flights and destinations available to Qantas and Emirates customers through their combined networks. Particularly, through combining Qantas' extensive domestic network with Emirates' extensive international network, for those customers travelling between regional Australian centres and international destinations.

Increasing the number of flights and destinations available to Qantas and Emirates customers also provides Qantas customers with greater choice and flexibility of schedules with a Qantas ticket which provides a benefit to customers who value this flexibility and have a strong loyalty to Qantas.

The ACCC also considers that the alliance is likely to result in public benefits through improved connectivity and convenience for customers with itineraries involving flights with both airlines. These benefits include removal of the risk of forfeiting non-refundable fares if the first flight is delayed, increased convenience in not having to collect and bear baggage mid journey and time savings associated with through check.

The alliance will also provide improved loyalty program benefits for Qantas Frequent Flyer (**QFF**) and Emirates Skywards program members, including opportunities to earn and redeem points on each of the airlines' networks, reciprocal lounge access and other reciprocal benefits. Given the large number of QFF and Skywards members, and the range of benefits likely to accrue to them, the ACCC considers that reciprocal access to the Applicant's frequent flyer programs under the alliance is likely to result in public benefits.

The ACCC also considers that the alliance is likely to result in some, smaller, level of public benefit through:

- scheduling optimisation, enabling better scheduling choice for passengers – however opportunities for scheduling optimisation will be limited to routes where both airlines operate services on their own aircraft, of which post March 2018 there will only be four
- avoidance of duplicated fixed costs – however, again, these opportunities are primarily limited to the small number of routes where both airlines operate services on their own aircraft and
- stimulation of tourism, particularly through facilitating ease of travel to regional areas and between major gateway cities in Australia for international tourists.

¹ The Applicants will also both operate services between Australia and London, via different mid-points.

The ACCC considers that the potential for coordination between the Applicants to generate significant competitive detriment on most routes in their combined networks is limited. Specifically, on the following routes where the Applicants have, or will continue to overlap with direct services operated by their own aircraft the ACCC considers that:

- Sydney/Melbourne - London: the alliance will be constrained by strong competition from other airlines.
- Australia - Dubai: Qantas would have exited these routes for commercial reasons with or without the alliance in place.
- Melbourne/Brisbane - Singapore: the alliance will be constrained to a large extent by competition from Singapore Airlines and by strong competition from various airlines for passengers travelling beyond Singapore to other points in Asia or to the UK/Europe.
- Sydney - Bangkok: the alliance will be constrained to a large extent by competition from Thai Airways and by competition from various airlines for passengers travelling beyond Bangkok to other points in Asia or to the UK/Europe.

On the Sydney/Melbourne/Brisbane - Auckland routes, where the ACCC had significant concerns in 2013 about the alliance limiting competition, which led it to impose a condition of authorisation, the ACCC now considers that following the commencement of its direct service between Dubai and Auckland, Emirates would have withdrawn from these routes for commercial reasons both with and without the alliance in place. As such, Qantas and Emirates would no longer overlap on these routes in the future with or without the alliance and therefore the alliance is unlikely to materially impact the level of competition on the Australia - Auckland routes.

On the one remaining overlap route, Sydney - Christchurch, the ACCC considers that the alliance is likely to significantly impact competition. This route was the subject of a condition in the 2013 authorisation to address competition concerns. On this route the alliance reduces the number of independently operated services from three to two (Qantas/Emirates/Jetstar and the Virgin/Air New Zealand alliance) with the alliance having around a 68 per cent share of seats flown.

The ACCC considers that the Virgin Australia/Air New Zealand alliance is unlikely to sufficiently constrain the alliance on that route in the event that the alliance decided to reduce or limit growth in capacity on this route in order to raise airfares. While it is likely that Virgin Australia/Air New Zealand would increase capacity in the event the alliance limited its capacity, it is unlikely that this would be sufficient to prevent an increase in airfares. Rather, given their substantial share of seats flown on these routes, it would most likely be in Virgin Australia/Air New Zealand's joint interest to allow airfares to increase rather than to seek to take a significant share away from the alliance by increasing capacity and lowering airfares.

The other potential competitive constraint on the alliance is the likelihood of timely entry on the route. However, the ACCC does not consider that there is a likelihood of timely, sufficient, entry on the Sydney - Christchurch route that would provide a competitive constraint to Qantas and Emirates.

Therefore, as in 2013, the ACCC considers that the alliance is likely to result in significant public detriments in the form of an increased ability and incentive for the Applicants to unilaterally reduce or limit growth in capacity on the Sydney - Christchurch route in order to raise airfares. The ACCC does not consider that there are sufficient competitive constraints to prevent such an outcome.

The ACCC considers overall that, across all the routes covered by the alliance, there are likely to be public benefits that would outweigh the likely public detriments, including any public detriments in respect of any lessening of competition. Accordingly, the ACCC is satisfied that the relevant net public benefit test is met.

However, most of the public detriments identified relate to the Sydney-Christchurch route, and the ACCC remains concerned as it was in 2013 that the alliance provides Qantas and Emirates with the incentive and ability to reduce capacity and raise airfares on that route, and that the constraint from other current or potential competitors is insufficient to prevent this. The ACCC has therefore imposed a condition in the authorisation, with the objective of reducing this likely public detriment, as discussed below.

The ACCC has considered whether imposing a capacity constraint in respect of the Sydney-Christchurch route, with effect from commencement of the authorisation, would address its concerns in respect of likely public detriments on that route. In 2013, there was a capacity condition that applied across the four Australia- New Zealand routes on which concerns arose.

The ACCC considers that a capacity commitment (a requirement for the Applicants to maintain a set level of capacity, or grow capacity) could, if appropriately set, limit the identified competitive harm on the Sydney - Christchurch route by limiting the ability of the Applicants to unilaterally reduce or limit growth in capacity in order to raise airfares. However, the ACCC is also conscious that a capacity commitment set too high risks the Applicants having excess capacity on the route potentially crowding out other operators and raising barriers to entry. It could also result in an inefficient allocation of capacity which could artificially restrict growth on other routes and limit the Applicants' flexibility to best match capacity with demand and overinflate growth on the route where capacity is required to be maintained.

That is, while the ACCC considered in 2013 that a capacity condition applying to four routes was an appropriate means of limiting detriment, in the present case where there is only one route of concern, the ACCC's view is that such a condition risks unintended consequences and is no longer the best way to address competition concerns.

Therefore, the ACCC will not require the Applicants to maintain a set level of capacity on the Sydney - Christchurch route from the outset of the authorisation period. Rather, the ACCC has imposed a condition providing the ACCC with the ability to monitor the Applicants' operations on this route and, at any time during the term of the authorisation, to impose a Sydney – Christchurch route specific capacity requirement (to maintain or grow capacity).

The condition provides that, before deciding to impose a capacity requirement the ACCC must conduct a review, including consulting with the Applicants and undertaking any other consultation the ACCC considers necessary. Factors the ACCC must have regard to in conducting a review include current market conditions, airlines' current and planned future capacity growth on the Sydney - Christchurch route, available forecasts of passenger demand on trans-Tasman Routes and the impact of the requirement on profitability on the Sydney - Christchurch route.

The ACCC has also included in the condition a requirement that the Applicants report each scheduling season on seats and passengers flown, route specific costs and revenues and average fares on the Auckland - Australia and Sydney - Christchurch routes. This is a similar reporting condition to that imposed by the ACCC on the original authorisation in 2013.

The revenue, cost and load factor information (seats flown versus passengers flown) will assist the ACCC to gauge during the term of the authorisation whether the Applicants are reducing or limiting growth in capacity on the Sydney - Christchurch route to raise airfares.

Further, the requirement to report to the ACCC, coupled with the ability for the ACCC to review whether to impose a capacity requirement on the Sydney – Christchurch route at any time, is likely in itself to act as a constraint on the Applicants in setting prices and allocating capacity on the Sydney - Christchurch route, therefore ensuring that the likely public detriments are limited.

Application for authorisation

1. On 11 October 2017, Qantas and its related bodies corporate² and Emirates lodged an application with the ACCC under section 91C(1) of the *Competition and Consumer Act (2010)* (**the Act**) seeking revocation of existing authorisations A91332 and A9133, and substitution of a new authorisation (AA1000400). The original authorisation is due to expire on 31 March 2018.
2. Re-authorisation is sought for continued coordination by the Applicants of their air passenger and cargo transport operations and other related services across their respective networks, pursuant to a Restated MCA (**the Proposed Conduct**).
3. Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the Act. Applicants may seek authorisation where they wish to engage in conduct which is at risk of breaching the Act but nonetheless consider there is an offsetting public benefit from the conduct (or, for certain conduct, that it would not be likely to substantially lessen competition).
4. In this case, the Applicants have sought re-authorisation for their continued coordination across their respective networks because the conduct might be a cartel provision or might have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act.
5. The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment. The ACCC conducts a public consultation process when it receives an application for authorisation, inviting interested parties to lodge submissions outlining whether they support the application or not.³
6. On the 16 February 2017, the ACCC issued a draft determination proposing to grant conditional re-authorisation for five years. A conference was not requested following the draft determination.

The Applicants

Qantas Airways Limited⁴

7. Qantas was incorporated in 1920 and is Australia's largest domestic and international airline. Qantas operates over 4,500 flights per week in Australia and over 570 flights internationally. Qantas also operates airline related businesses including airport support services, catering, freight operations, loyalty programs and engineering.
8. The international destinations to which the Qantas currently operates are set out in Table 1.

² Relevant Qantas entities include Jetstar Airways Pty Limited and Jetstar Asia Airways Private Limited, but exclude other Jetstar branded airlines.

³ Detailed information about the authorisation process is contained in the ACCC's *Authorisation Guidelines*.

⁴ The information in this section is taken from the Applicants' supporting submission, p5-6.

Table 1 Qantas International Destinations (ex Australia)

Region	Destination
Pacific	Auckland, Christchurch, Wellington, Queenstown, Noumea, Port Moresby
Asia	Beijing, Bangkok, Hong Kong, Jakarta, Manila, Shanghai, Singapore, Tokyo Haneda, Tokyo, Narita, Denpasar, Osaka ⁵
Europe	London
Middle East	Dubai ⁵
Americas	Dallas/Fort Worth, New York, Los Angeles, Honolulu, Santiago, Vancouver, San Francisco
Africa	Johannesburg

9. The Qantas Group (including the subsidiary Jetstar) operates a total passenger fleet of over 280 aircraft, comprising Boeing 787s, 747s, 737s and 717s, Airbus A380s, A330s and A320s, Bombardier Dash 8s and Bombardier Q400s.
10. In addition to the Restated MCA, the Qantas Group is currently a party to the following alliances:
- an alliance with American Airlines, which was re-authorised by the ACCC for five years on 25 February 2016⁶
 - an alliance with China Eastern, which was authorised by the ACCC for five years, subject to a condition, on 21 August 2015 and
 - the OneWorld marketing alliance.
11. Jetstar, part of the Qantas Group's domestic and international operations, operates low-cost services in domestic Australia and to the international destinations set out in Table 2.

Table 2 Jetstar International Destinations (Ex Australia)

Region	Destination
Pacific	Auckland, Christchurch, Queenstown, Wellington, Nadi
South East Asia	Bangkok, Ho Chi Minh, Phuket, Bali (Denpasar), Singapore
North East Asia	Osaka, Tokyo - Narita
Americas	Honolulu

12. The Jetstar Group was established in 2004 and currently operates:
- domestic Australia and New Zealand services (operated by Jetstar Airways)
 - international services from Australia to destinations in Asia, the Pacific and New Zealand (operated by Jetstar Airways⁷) and

⁵ Qantas will cease operating services to Dubai in March 2018.

⁶ As a result of a negative Show Cause Order issued by the United States Department of Transport (USDOT) in November 2016, Qantas and American Airlines withdrew their application for anti-trust immunity in the US and scaled back aspects of the alliance that were not viable without anti-trust immunity.

⁷ Jetstar Asia operates a limited number of services from Australia.

- services within and between various countries in Asia under the Jetstar business model, operated by the following joint ventures:
 - Jetstar Asia Airways Pte Limited (Jetstar Asia), in which the Qantas Group has a 49 per cent interest, which is incorporated in Singapore and operates flights from Singapore to various destinations in Asia
 - Jetstar Pacific Airlines Joint Stock Aviation Company (Jetstar Pacific) of which the Qantas Group has a 30 per cent shareholding. Jetstar Pacific is incorporated in Vietnam and operates flights within Vietnam and internationally and
 - Jetstar Japan Co Ltd (Jetstar Japan) in which the Qantas Group has a 33.32 per cent shareholding. Jetstar Japan is incorporated in Japan and operates flights within Japan and internationally.
13. The ACCC authorised coordination between the Qantas Group and the various Jetstar branded joint ventures in March 2013. The Qantas Group is currently seeking re-authorisation of those arrangements. The Jetstar Group operates over 4,000 weekly flights to 75 destinations in 17 countries or territories.
14. The alliance covers coordination between Qantas, Emirates, Jetstar and Jetstar Asia but does not cover coordination between Emirates and Jetstar Pacific or Jetstar Japan.

Emirates⁸

15. Emirates is a Dubai corporation established by Decree No 2 of 1985 (as amended) and is wholly owned by the Investment Corporation of Dubai, which is ultimately wholly owned by the Government of Dubai. Emirates is the world's largest international carrier by revenue passenger kilometres (RPKs). It operates more than 1,000 flights per week across six continents from Dubai.
16. The destinations to which Emirates currently operates are set out in Table 3.

Table 3 Emirates Destinations

Region	Destination
Pacific	Perth, Brisbane, Adelaide, Melbourne, Sydney, Auckland, Christchurch
Asia	Bangkok, Phuket, Kuala Lumpur, Singapore, Jakarta, Ho Chi Minh City, Manila, Hong Kong, Guangzhou, Shanghai, Beijing, Seoul, Osaka, Tokyo, Dhaka, Kolkata, Hyderabad, Chennai, Colombo, Malé, Thiruvananthapuram, Kochi, Bengaluru, Mumbai, Ahmedabad, Delhi, Lahore, Islamabad, Karachi, Peshawar, Phnom Penh, Hanoi, Yangon, Zhengzhou, Yinchuan, Cebu, Clark, Bali, Multan, Mashhad, Taipei, Kabul, Sialkot
Europe	Glasgow, Dublin, Birmingham, London, Manchester, Newcastle, Lisbon, Madrid, Barcelona, Paris, Lyon, Nice, Zürich, Geneva, Milan, Venice, Munich, Vienna, Prague, Warsaw, Frankfurt, Düsseldorf, Amsterdam, Hamburg, Copenhagen, St. Petersburg, Moscow, Rome, Malta, Athens, Istanbul, Larnaca, Zagreb, Bologna, Budapest, Brussels, Oslo, Stockholm

⁸ The information in this section is taken from the Applicants' supporting submission, p7.

Americas	Seattle, Los Angeles, San Francisco, Dallas, Houston, Toronto, New York, Washington DC, Buenos Aires, Rio de Janeiro, São Paulo, Newark, Fort Lauderdale, Orlando, Chicago, Boston
Africa	Cairo, Khartoum, Addis Ababa, Entebbe, Nairobi, Dar Es Salaam, Lusaka, Harare, Johannesburg, Durban, Seychelles, Mauritius, Cape Town, Luanda, Lagos, Accra, Abidjan, Dakar, Casablanca, Tunis Conakry
Middle East	Muscat, Jeddah, Madinah, Beirut, Amman, Riyadh, Dammam, Kuwait City, Basra, Bahrain, Doha, Erbil, Baghdad, Tehran

17. Emirates is not a member of any global marketing alliance.
18. Emirates has entered into a cooperation agreement with flyDubai, a low cost carrier based in Dubai. This cooperation agreement was authorised by the ACCC on 25 July 2012 for a period of 10 years.

Background

The previous authorisation

19. On 27 March 2013, the ACCC granted conditional authorisation to Qantas and Emirates to coordinate their operations pursuant to a Master Coordination Agreement (**MCA**) (the **2013 Determination**). Authorisation was granted for five years, until 31 March 2018.
20. The alliance involved coordination of air passenger operations, cargo transport operations (including line maintenance engineering services and flight training for air crew and cabin crew), and the joint procurement of goods and services (such as aviation fuel).
21. At the time it was originally authorised by the ACCC in 2013 the MCA defined two types of routes, trunk routes and non-trunk routes. For trunk routes, a benefit transfer model applied (not a revenue sharing model). The benefit transfer model was designed to:
 - ensure an equitable transfer of incremental profits over and above each party's profit prior to the partnership
 - create a 'metal-neutral'⁹ outcome where there were no incentives for either party to prioritise its own metal (aircraft) over the other and
 - allow the Applicants to effectively work together to manage yield and inventory as incentives were aligned.
22. Trunk routes included Qantas' services via and to Dubai (eg Sydney - Dubai - London, Melbourne - Dubai - London) and Emirates' services from Dubai via and to Australia (eg Dubai - Sydney - Auckland, Dubai - Singapore - Melbourne).
23. On non-trunk routes (eg, Dubai - Amsterdam) commission codeshare terms applied (i.e. the non-operating ticketing carrier received a commission payment based on a percentage of passenger revenue).¹⁰
24. The ACCC considered that the alliance was likely to result in public benefits including enhanced products and services (by increasing access to a large number of existing frequencies for Qantas and Emirates customers, by increasing connectivity and improving scheduling, and by providing greater loyalty program benefits) and cost savings and other efficiencies (by improving operating efficiency and by avoiding duplicated costs). The ACCC also noted that there were *potential* public benefits in the form of new frequencies and destinations, a competitive response from rivals (mainly on Australia - UK/Europe routes), stimulation of tourism and trade, and an enhanced crisis management response.
25. The alliance is a global alliance covering a large number of routes, the majority of which did not raise competition concerns. On four routes between Australia and New Zealand, however, the ACCC was concerned that the alliance would give Qantas and Emirates the ability and incentive to unilaterally reduce or limit growth in capacity in order to raise airfares. These routes were:
 - Sydney - Auckland
 - Melbourne - Auckland

⁹ In an alliance, metal neutrality occurs when a member airline is indifferent commercially between a passenger flying on their own or their partner's airline (metal), such that member airlines become neutral in their marketing, pricing and capacity decisions as to which airline their customers' fly on.

¹⁰ Applicants' submission, 13 February 2013, p1.

- Brisbane - Auckland and
 - Sydney - Christchurch
- (together, the **Relevant Routes**).
26. These routes accounted for around 65 per cent of total trans-Tasman passenger capacity in the financial year ending 30 June 2012.
 27. The ACCC had concerns that the alliance may increase Qantas' and Emirates' ability and incentive to unilaterally reduce or limit growth in capacity on these four trans-Tasman routes to cause higher airfares, due to the following considerations:
 - The alliance had a high capacity share on each route.
 - In 2013, the main competitor on these four routes (and the only competitor on two routes) was the Virgin/Air New Zealand alliance, which had a 30-50 per cent share of seats flown. The ACCC considered that any competitive reaction from the Virgin/Air New Zealand alliance was unlikely to be sufficient to make a unilateral limitation in growth of capacity on the four routes unprofitable for the Qantas/Emirates alliance.
 - The other competitors operating on two of the four routes in 2013 were China Airlines (Brisbane - Auckland and Sydney - Auckland) and LAN Airlines (Sydney - Auckland only). However, these competitors were fifth freedom carriers, which meant they had the right to fly between Australia and New Zealand as a continuation of a flight originating or ending in their home countries. As such, they had relatively limited trans-Tasman flights that were influenced by their broader network considerations. Given their small market shares and operating constraints, the ACCC did not consider that these competitors were likely to have the ability to respond to any attempt by the alliance to reduce or limit growth in capacity on the Relevant Routes.
 - There was a low likelihood of timely and sufficient new entry on the routes to constrain the proposed alliance.
 28. The ACCC imposed a condition to address these concerns. The condition required the Applicants to maintain at least their pre-alliance aggregated capacity on the Relevant Routes, subject to a mid-point review by the ACCC to consider whether an increase to the minimum required capacity was warranted. The condition also require the Applicants to report each scheduling season on seats and passengers flown, revenue and route profitability.
 29. The mid-point review was completed in May 2016. The ACCC's decision was to not require the Applicants to increase capacity flown on the Relevant Routes over the remaining term of the authorisation.

The application for re-authorisation

30. The Applicants seek re-authorisation to coordinate their air passenger and cargo transport operations and other related services across their respective networks, pursuant to the Restated MCA.
31. The Applicants seek re-authorisation for the continuation of coordination, including in relation to:
- planning, scheduling, operating and capacity
 - sales, marketing, advertising, promotion, distribution strategies, reservation priority and pricing for passengers, freight customers and agents
 - connectivity and integration of certain routes
 - codeshare and interline arrangements
 - control of inventories and yield management functions
 - frequent flyer programs
 - all aspects of customer service, including ground services and lounge access
 - harmonising service and product standards in order to provide a seamless product to passengers
 - harmonising IT systems
 - joint airport facilities
 - joint offices for sales activities
 - potentially other aspects of operations including ground handling, joint procurement and flight operations and
 - where appropriate and mutually agreed, making joint submissions to authorities on operational matters.
32. The Applicants have made a number of changes to their operations since authorisation was granted in 2013 as summarised below.

Network changes

33. From 24 March 2018, Qantas will:
- replace its Melbourne - Dubai - London services with Melbourne - Perth - London services on a 236 seat Boeing 789 Dreamliner aircraft¹¹ and
 - replace its Sydney - Dubai - London services with Sydney - Singapore - London services.¹²
34. Emirates has and/or plans to implement network changes, such as:
- commencing a non-stop Auckland - Dubai service in March 2016¹³ and a second daily service between Dubai and Auckland, via Bali, from 14 June 2018¹⁴

¹¹ Applicants' supporting submission, p2.

¹² Applicants' supporting submission, p2.

¹³ Applicants' supporting submission, p23.

¹⁴ Emirates 2018, www.emirates.com/media-centre/emirates-to-launch-a-new-service-to-auckland-via-bali-from-14-june-2018.

- terminating its Sydney - Auckland services in July 2017.¹⁵ Emirates will also cease its Brisbane - Auckland and Melbourne - Auckland services in March 2018¹⁶ and
 - launching an additional daily non - stop Brisbane - Dubai service in December 2017, an additional Sydney - Dubai service in March 2018 and increasing the gauge (aircraft size) on one of its three Melbourne - Dubai services to an A380 (the other two Melbourne services are already A380 operations).¹⁷
35. Qantas proposes to partially backfill the capacity vacated by Emirates ceasing its Australia - Auckland services. In particular:
- to backfill Emirates' daily Sydney - Auckland service, Qantas has added five new Sydney - Auckland services per week¹⁸
 - to backfill Emirates' daily Melbourne - Auckland service, to be withdrawn in March 2018, Qantas will up-gauge all of its morning Auckland - Melbourne services and six of its evening Auckland - Melbourne flights per week from a B737 to a wide-body A330.¹⁹ Qantas will also add a new daily Melbourne-Auckland service and²⁰
 - to backfill some of the capacity lost as a result of Emirates' Brisbane - Auckland service being withdrawn in March 2018, Qantas will up-gauge its daily morning and late afternoon Brisbane - Auckland services to a wide-body A330.²¹ Qantas will also add an extra two return services per week between Brisbane and Auckland.²²
36. The Applicants submit that in entering into the MCA in 2012, they anticipated that the exact scope of the Proposed Conduct may be altered from time to time on the basis that alliances need to evolve to reflect opportunities created by new aircraft technology, shifting traffic flows and consumer demand. The Restated MCA includes a revised financial model which the Applicants submit reflects the network adjustments made by the carriers and incentivises them to continue to be commercially aligned and integrated in their operations so as to provide the greatest benefits to passengers in terms of product and seamless service.

Rationale for the alliance

37. The Applicants submit that the alliance is strategically important to enable each of them to be competitive across their global networks by allowing Qantas to leverage Emirates' international network and by allowing Emirates to leverage off Qantas' Australian network. Qantas submits that an alliance with Emirates assists the sustainable growth of its international business.²³
38. Emirates submits that an alliance with Qantas will provide Emirates with access to strategically important Australian consumers.²⁴ Although Australia currently is one of Emirates' three largest markets worldwide by passengers and by revenue, the Applicants submit that it would not be commercially viable for Emirates to establish its own domestic operations in Australia.²⁵

¹⁵ Applicants' supporting submission, p23.

¹⁶ Applicants' supporting submission, p 26.

¹⁷ Applicants' supporting submission, p3.

¹⁸ Qantas submission to the ACCC dated 1 December 2017 (public register version), p5.

¹⁹ Qantas submission 1 December 2017, p7.

²⁰ Qantas submission 1 December 2017, p6.

²¹ Qantas submission 1 December 2017, p8.

²² Qantas submission 1 December 2017, p7.

²³ Applicants' supporting submission, p9.

²⁴ Applicants' supporting submission, p8.

²⁵ Applicants' supporting submission, p8.

39. The Applicants further submit that the proposed alliance is necessary for Qantas to remain competitive in light of the recent capacity expansion in the Asia Pacific region by Chinese and Middle Eastern airlines,²⁶ particularly as Qantas is competitively disadvantaged as an end-of-line carrier with comparatively high labour costs.²⁷
40. For example, the Applicants note that Middle Eastern airlines have doubled in size in Australia and New Zealand in the past five years.²⁸
41. Moreover, Qantas and British Airways are currently the only remaining end-of-line carriers on routes between Australia and the UK, and are competing against over 15 mid-point carriers.²⁹ The Applicants submit that Qantas as an end-of-line carrier continues to be competitively disadvantaged on the Australia-UK/Europe routes compared to mid-point carriers based in the Middle East and Asia, as a result of its inability to achieve the same economies and comparatively higher labour costs.³⁰ They submit that this is evidenced by the decline in Qantas' share of seat capacity from Australia from just over 20 per cent in 2009 to around 17 per cent in 2017.³¹

Related Authorisation

The Air New Zealand/Virgin Australia alliance

42. On 3 September 2013, the ACCC granted conditional re-authorisation to an alliance between Virgin Australia and Air New Zealand. The alliance was first authorised in December 2010 and the current authorisation expires on 31 October 2018.
43. The Virgin Australia and Air New Zealand alliance involves coordination of their international air passenger transport operations and related services between Australia and New Zealand. The alliance is metal neutral. The airlines' freight operations are outside the scope of the alliance as are the alliance's domestic networks, except to the extent that a particular domestic service is part of a connecting service across the trans-Tasman.
44. In re-authorising the alliance the ACCC considered that absent the alliance Virgin Australia's trans-Tasman offering would be significantly more limited than its key competitors and therefore it was unlikely to be a strong rival to the offerings of the Qantas/Emirates alliance and Air New Zealand (particularly on the business orientated routes which Virgin Australia had indicated are most likely to be negatively impacted absent the alliance). In light of this, the ACCC considered that the alliance was unlikely to result in significant public detriment through its effect on competition on major trans-Tasman routes.³²
45. On most of the minor trans-Tasman routes the ACCC considered that there were factors (such as the competitive constraint posed by the Qantas Group and/or the likely presence of only one alliance partner on a thin route in the future without the Proposed Conduct) which meant that the alliance was unlikely to result in significant public detriment.

²⁶ Applicants' supporting submission, p10.

²⁷ Applicants' supporting submission, p11.

²⁸ Applicants' supporting submission, p10.

²⁹ Applicants' supporting submission, p11.

³⁰ Applicants' supporting submission, p11.

³¹ Applicants' supporting submission, p11, Figure 2.

³² The six major trans-Tasman routes are Auckland - Sydney/Melbourne/Brisbane, Wellington - Sydney/Melbourne and Christchurch - Sydney.

46. On the remaining minor trans-Tasman routes the ACCC considered that the alliance would give Virgin Australia and Air New Zealand the ability and incentive to unilaterally reduce or limit growth in capacity in order to raise airfares. These routes were Christchurch - Brisbane; Christchurch - Melbourne; Dunedin - Brisbane; Wellington - Brisbane; Queenstown - Brisbane; and Auckland - Gold Coast.
47. Authorisation was granted subject to a condition requiring the alliance to maintain at least their pre-alliance aggregated capacity on these routes, subject to a review at the mid-point of the five year authorisation to consider whether increases in the minimum required capacity were warranted. This mid-point review was conducted in conjunction with the Qantas/Emirates midpoint review discussed at paragraph 30. Like Qantas and Emirates, the ACCC's decision was to not require Virgin Australia and Air New Zealand to increase capacity flown on the routes of concern over the remaining term of their authorisation.
48. Authorisation was also granted subject to a reporting condition similar to those imposed on Qantas and Emirates.

Consultation

49. The ACCC tests the claims made by Applicants in support of applications for re-authorisation through an open and transparent public consultation process.

Prior to the draft determination

Submissions from the Applicants

50. In the future without re-authorisation of the alliance, the Applicants submit that any commercial agreement between Qantas and Emirates would be, at best, limited to an arm's length codeshare.³³ This means that the two airlines would not have the ability or incentive to work together to share access to each other's networks, schedules, inventory or frequent flyer programs.³⁴
51. The Applicants submit that the current alliance has delivered significant public benefits which will continue to be realised under the proposed alliance. These include:
- improving connectivity and schedule choice over an expanded network³⁵
 - increasing frequent flyer earning and redemption opportunities for Qantas and Emirates customers³⁶
 - enabling sustainable operation of Qantas' international network to Europe³⁷
 - facilitating Emirates' capacity expansion by increasing access to Australian customers³⁸
 - world-class customer experiences and product innovation³⁹
 - provoking a pro-competitive response from rival carriers, including more competitive fares and improved services⁴⁰ and
 - increasing tourism and promoting international trade and business by promoting Australia as a destination in Europe and the Middle East where Emirates has a much stronger presence than Qantas.⁴¹
52. The Applicants further submit that the Proposed Conduct will not result in competitive detriment because:
- There is only limited overlap across Qantas' and Emirates' global networks.⁴²
 - On the few routes where there is overlap, the alliance will be competitively constrained by
 - vigorous and effective competitors and
 - the threat of new entry or expansion.⁴³

³³ Applicants' supporting submission, p12.

³⁴ Applicants' supporting submission, p12.

³⁵ Applicants' supporting submission, p35-39.

³⁶ Applicants' supporting submission, p39-42.

³⁷ Applicants' supporting submission, p42-43.

³⁸ Applicants' supporting submission, p43.

³⁹ Applicants' supporting submission, p43-44.

⁴⁰ Applicants' supporting submission, p44-45.

⁴¹ Applicants' supporting submission, p45.

⁴² Applicants' supporting submission, p13-14.

⁴³ Applicants' supporting submission, p14-18.

53. The Applicants submit that the alliance is likely to result in pro-competitive responses from rivals.⁴⁴

Submissions from interested parties

54. The ACCC sought submissions from a range of potentially interested parties including competitors, airports, regulators, relevant government agencies, industry groups, service suppliers and consumer groups.
55. In response to the application, the ACCC received five submissions from interested parties, four of which supported the application for re-authorisation and one which opposed the application.

Adelaide Airport

56. Adelaide Airport⁴⁵ submits that the direct Emirates flights from Adelaide generate public benefits to Adelaide consumers and the broader community, but these flights may not be commercially viable for Emirates without access to customers who wish to fly on the Qantas Frequent Flyer program.

Australian Federation of Travel Agents

57. The Australian Federation of Travel Agents (**AFTA**) submits that airline alliances benefit consumers as well as the travel industry by providing increased capacity, options and services for consumers, including increased consumer choice for stop over options in Dubai, Singapore and Perth when travelling to Europe.⁴⁶ AFTA also considers that the proposed alliance will simplify the consolidation of information for travel agents, ensure continued investment in Qantas' and Emirates' fleets, and support the success of the airline industry in Australia. AFTA submits that the alliance has delivered significant public benefits by decreasing airfares, increasing frequencies and customer choice, and increasing the quality of airport and flight services.

Department of Infrastructure and Regional Development

58. The Department of Infrastructure and Regional Development (**DIRD**)⁴⁷ submits that since the existing Qantas/Emirates alliance was authorised in 2013, there has been robust competition in the market for international passengers travelling to and from Australia. In this context, re-authorisation is likely to result in public benefits such as enhancing consumer choice, sustaining strong competition in the Europe/UK market, and broadening Qantas' international network. The proposed re-authorisation is also compatible with the Australian Government's aviation policy objective of helping the aviation industry grow in a safe, competitive and productive environment. DIRD also submits that it has also negotiated liberal arrangements with foreign economies such that there is ample capacity to support strong competition in all relevant markets.

Perth Airport

59. Perth Airport⁴⁸ agrees with the Applicants that the proposed alliance will result in public benefits from an expanded network with greater schedule choice, reciprocal frequent flyer benefits, enabling sustainable operations of Qantas' international network to Europe, and increased tourism and international trade.

⁴⁴ Applicants' supporting submission, p14.

⁴⁵ Submission from Adelaide Airport received 9 November 2017.

⁴⁶ Submission from the Australian Federation of Travel Agents received 14 November 2017.

⁴⁷ Submission from the Department of Infrastructure and Regional Development received 27 November 2017.

⁴⁸ Submission from Perth Airport received 13 November 2017.

Perth Airport states that the alliance has placed Qantas in a stronger position now than before the alliance and notes that competition in the Perth - Europe markets has intensified since the alliance formed.

Jumpjet Airlines

60. Jumpjet Airlines⁴⁹ submits that aviation industry development is only possible where significant market share is held by national carriers with national interest rules of engagement. Jumpjet Airlines argues that alliances have delivered significant market shares in Australia to foreign airlines, saturating the market and adversely impacting national investment.

After draft determination

61. The Applicants provided a submission in response to the draft determination. No other interested party provided a submission.
62. The Applicants support the ACCC's conclusions about the public benefits likely to result from the Proposed Conduct.⁵⁰
63. However, the Applicants submit that the alliance will not significantly impact competition on the Sydney - Christchurch route, as concluded by the ACCC in the draft determination, because they submit that this route is characterised by intense competition and the Applicants will be constrained by the threat of new entry.
64. The Applicants also submit that the condition proposed in the draft determination, which would require them to report on route profitability on the Sydney - Christchurch route, as well as the Melbourne/Sydney/Brisbane-Auckland routes, goes beyond what is necessary to address any perceived competitive detriments on the Sydney - Christchurch route.
65. In particular, the Applicants submit that the information the ACCC proposes them to report in respect of the Auckland routes will not inform the ACCC's monitoring of the impact on competition of the alliance on the Sydney - Christchurch route because the Auckland routes have different dynamics that are not analogous to the Sydney - Christchurch route. The Applicants suggest as an alternative that they provide information about the Sydney - Christchurch city pair only and that the ACCC can seek information about the other routes in the future should any particular concerns arise.
66. The Applicants also submit that the requirement for them to report average fares by cabin class for the Sydney - Christchurch route and Melbourne/Sydney/Brisbane-Auckland routes, as would be required by the condition proposed in the draft determination, is not necessary. The Applicants note that the reporting condition imposed when the alliance was authorised in 2013 did not require reporting of average fares and submit that the ACCC has not demonstrated a need to require it now. The Applicants consider that the utility of this information is limited, as it is inappropriate to attempt to compare different city pairs in circumstances where each has different market dynamics and pricing is determined by those dynamics and the interplay between supply and demand on that particular route. The Applicants further submit that if such reporting is required, it should only be required for the Sydney - Christchurch route.

⁴⁹ Submission from Jumpjet Airlines received 24 November 2017.

⁵⁰ Submission from Applicants in response to ACCC' draft determination received 16 February 2018.

67. The Applicants also note the proposed condition, as proposed in the draft determination allows the ACCC to impose a requirement for the Applicants to grow capacity on the Sydney – Christchurch route in line with GDP (using a blend of Australian and New Zealand GDP). The Applicants consider that it is reductive to simply apply GDP growth to measure growth on a specific city pair and submit that the ACCC should have regard to other factors, including market conditions and airline capacity, when setting the level of any such capacity requirement.
68. Finally, the Applicants note that the proposed condition includes a provision that allows it to be varied in certain circumstance similar to those set out in the condition currently in place (including if there is a material change in market conditions on trans-Tasman routes). The Applicants submit that when considering a variation to the condition on the basis of a material change in market conditions, the ACCC should also be expressly required to take into account the impact of services operated by Emirates between Dubai and New Zealand which bypass Australia.
69. All public submissions from interested parties and the Applicants are available on the [ACCC public register](#) and, where relevant, arguments put forward in the submissions are addressed in the ACCC Assessment that follows.

ACCC assessment

70. On 6 November 2017, a number of amendments to the Act came into effect, including changes to the authorisation provisions in Division 1 of Part VII of the Act. This application for re-authorisation is assessed by the ACCC in accordance with the Act as amended.
71. The ACCC's assessment of the Proposed Conduct is carried out in accordance with the relevant authorisation tests⁵¹ contained in the Act. In broad terms, the ACCC may only grant an application for revocation and substitution if it is satisfied that the proposed substitute authorisation satisfies the relevant authorisation test.
72. In this case, pursuant to subsections 90(7) and 90(8) of the Act, the ACCC must not make a determination granting the substitute authorisation in relation to conduct unless it is satisfied in all the circumstances that the conduct would result, or be likely to result, in a benefit to the public, and that benefit would outweigh the detriment to the public that would result, or be likely to result, from the conduct, including any public detriment constituted by a lessening of competition.
73. To assist the ACCC's assessment of conduct against the authorisation test, the ACCC identifies the relevant area(s) of competition and compares the benefits and detriments likely to arise in the future with the conduct for which authorisation is sought against those in the future if the conduct did not occur.

Relevant area of competition

74. The ACCC considers that the primary areas of competition for the purpose of assessing the Proposed Conduct are international air passenger transport services between Australia and each of New Zealand, Asia and the United Kingdom and Europe.
75. Within these areas of competition, the ACCC has examined the likely effects of the alliance on competition and rivalry on particular routes where necessary. Specifically, routes on which the Applicants overlap, currently or in the recent past, with direct flights, or in the case of routes to the United Kingdom and Europe, with one-stop services. These routes are:
 - Sydney/Melbourne/Brisbane - Auckland
 - Sydney - Christchurch
 - Sydney/Melbourne - Dubai
 - Melbourne/Brisbane - Singapore
 - Sydney/Melbourne/Adelaide/Brisbane/Perth – London and
 - Sydney - Bangkok.
76. The ACCC also considers international cargo services to be a relevant area of competition as these services form part of the Proposed Conduct.
77. The ACCC considers that the product and geographic scope of the supply of these services is generally likely to be broader than the supply of international air passenger transport services discussed above. In this regard, the ACCC notes:

⁵¹ Subsections 91C(7), 90(7) and 90(8) of the Act. As a cartel provision applies to the Proposed Conduct, section 90(7)(a) does not apply: section 90(8).

- Customers can arrange to move cargo internationally from location A to location B (say, from Sydney to London) either in the holds of aircraft used for international passenger transport services or in the holds of dedicated freighter aircraft. Therefore, services offered by international passenger airlines and dedicated freighter airlines are likely to be relevant.
 - Cargo transport customers are more likely (than passenger transport customers) to regard the direct and indirect service offerings of alternative service providers as close substitutes, since the 'inconvenience' of one or multi stop journeys is generally less of an issue for cargo than it is for passengers. Therefore all routes between origin and destination, including via intermediate points in other regions are included in the geographic scope.
78. The Proposed Conduct also extends to the Applicants potentially jointly procuring products and services. No interested party has raised any concerns about the Applicants undertaking joint procurement, either in 2012/13 when the ACCC considered the original application for authorisation, or during the ACCC's consideration of the current application for re-authorisation.
79. The ACCC has had regard to the likely impact of the Proposed Conduct on the acquisition of various goods and services that form inputs to the supply of passenger and air cargo transport services (for example, inflight catering, corporate services, ground handling service) should the Applicants undertake joint procurement in the future.
80. The ACCC has also had regard to:
- the relatively large number of alternative acquirers of these products and
 - the fact that many of the inputs are acquired on an international basis.
81. The ACCC, taking into account the information, evidence and submissions before it, considers that the Applicants' joint procurement of various goods and services is likely to have minimal, if any, impact on competition in any relevant market/area of competition and is not therefore likely to result in any material public detriment. Accordingly, joint procurement is not considered further in this determination.

Future with and without

82. 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.
83. The Applicants submit that absent the alliance there would be no commercial agreement between Qantas and Emirates or, at best, a vastly diminished arm's length codeshare.⁵²
84. The ACCC considers that without the alliance it is uncertain whether Qantas and Emirates would enter into an alternative commercial agreement. However, if they were to do so, absent regulatory approval any such agreement would be likely, at best, to be an arm's length codeshare agreement that did not provide for coordination between the Qantas and Emirates of the type provided for in the Restated MCA, as outlined at paragraph 31.
85. The ACCC also notes that whether, without the alliance in place, Emirates and Qantas would have made the network changes summarised at paragraphs 33 to 35 is also a relevant consideration in assessing the impact on competition of the

⁵² Applicants' supporting submission, p 12

alliance on those routes where the network changes have been made. This is discussed below in the ACCC's assessment of the likely public detriments from the alliance.

Public benefits

86. Public benefit is not defined in the Act. However, the Australian Competition Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:⁵³

...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.

Public benefits arising from airline alliances

87. The ACCC has authorised a number of airline alliances in recent years and recognised a range of public benefits arising from them, including enhanced products and services for consumers and efficiency improvements.
88. The ACCC considers that the realisation of potential public benefits from airline alliances depends on:
- how complementary the product and service offerings of the airlines concerned are. That is, the extent to which an alliance allows each airline in the partnership to access a greater number of geographic or product markets than they have access to absent that alliance. The degree of complementarity is determined by the number of destinations common to both networks. A high proportion of common destinations in the combined networks of alliance partners usually indicates a low degree of complementarity and vice versa
 - how strongly an alliance aligns the incentives of the parties so that they are driven to act in the interests of the alliance as a whole, rather than themselves. In alliances where the parties' incentives are fully aligned - to a point where each carrier is not concerned with making sure that a passenger flies on their airline (metal neutrality) - they tend to be very focused on synchronising their operations and activities and sharing the financial rewards and risks so as to make their products and services as appealing as possible to passengers and
 - whether the alliance triggers a procompetitive response from rival carriers or facilitates spill-over benefits to other areas of the economy (e.g. tourism).
89. In terms of network coverage and geography, the ACCC considers that, generally, the networks of Qantas and Emirates are complementary. Qantas has an extensive domestic network in Australia where Emirates has no presence. Internationally, there is limited overlap between their operations. Qantas operates an extensive network of services between Australia and New Zealand where, post April 2018, Emirates will only operate on one route, Sydney - Christchurch. Conversely, between Australia and Europe, Emirates operates an extensive network of services while Qantas only operates services between Sydney and London and Melbourne - Perth - London.
90. The ACCC has had regard to the airlines' complementarity in assessing the public benefits (and public detriments) of the Proposed Conduct below.

⁵³ *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.

91. In relation to how strongly aligned Qantas and Emirates incentives are, the alliance is not metal neutral, however the alliance partners' incentives are still closely aligned.
92. Whether the alliance is likely to trigger a procompetitive response from rival carriers or facilitate spill-over benefits will vary depending on the level of competition on the Relevant Routes. This is discussed in considering the public benefits and detriments of the Proposed Conduct below.
93. The ACCC's assessment of the likely public benefits from the Proposed Conduct is set out below.

Enhanced products and services

94. When airlines that provide complementary services act independently or less cooperatively, the effect that each airline has on the demand for the other airline's services is not taken into account by either party in planning products and services. The consequence of this 'externality'⁵⁴ can include less convenient connections for passengers, higher fares/cargo charges due to each airline charging a price that includes a mark-up to cover its costs but does not take account of the impact on the other airline's profit (double marginalisation), less attractive customer reward programs and/or lower levels of provision of ground services such as airport lounges and check-in services.
95. Cooperation agreements can provide a means to address this externality or inefficiency by enabling airlines to coordinate across complementary segments. Typically, this coordination occurs in areas including joint setting of schedules and fares/cargo charges and reciprocal access to value added services (frequent flyer schemes, frequent shipper schemes and airport lounges) between the airlines.
96. The ACCC considers that the Applicants are likely to have a greater ability and incentive under the alliance than, for example, under an arm's length codeshare agreement, to optimise their joint service offering and that this has the potential to result in some public benefits.
97. Specifically, the alliance has the potential to enhance the product and service offering of the Applicants in ways that are valued by consumers by facilitating:
 - increased access to each other's frequencies and destinations
 - increased connectivity and better schedule spread
 - improved loyalty program benefits, and
 - new frequencies and destinations.

Increased access to each other's frequencies and destinations

98. The Applicants submit the Proposed Conduct will provide Qantas and Emirates customers with access to each other's schedules, increasing the number of flights and destinations available to these customers. Under the alliance:
 - Emirates customers gain better access to 60 destinations in Australia (including Canberra, Hobart and regional centres) and 6 international

⁵⁴ An externality is an economic term referring to a cost or benefit that affects a third party (a party who did not agree to the action causing the cost or benefit) and is not reflected in market prices. In the presence of an externality, market prices do not reflect the full costs and benefits of producing or consuming a product or service. This results in an economic inefficiency or market failure.

destinations that are served by Qantas but not Emirates (including Wellington and Honolulu)⁵⁵ and

- Qantas customers gain better access to 56 destinations served by Emirates but not Qantas (primarily in Europe, Africa, the Middle East and parts of Asia).⁵⁶

99. Tables 1, 2 and 3 at paragraphs 8, 11 and 16 set out the destinations currently served by Qantas and Emirates.
100. The ACCC considers that combining the networks of the Applicants does not enable the airlines to achieve a large number of additional city-pair offerings relative to their standalone offerings. This is because Emirates already flies to/from the largest five Australian gateway cities. Therefore, most city-pairs offered would also be available without the alliance in place. That is, passengers travelling from Australia gateway cities are able to access Emirates' extensive international network without the alliance in place by choosing to fly with Emirates from these gateway cities.
101. The opportunities for new city pair offerings under the alliance are therefore confined to city pair journeys involving a point of origin (or destination) in Australia that Emirates does not fly to/from, and a point of destination (or origin) overseas that Qantas does not fly. That is, itineraries that require flights with both airlines. For example, from a regional centre in Australia, to an overseas destination that Emirates operates services to (on its own metal), but that Qantas does not. The ACCC considers that the alliance does provide a significant public benefit for this category of passenger. In this respect, between July 2014 and April 2017, over 527,000 Emirates passengers flew on Qantas domestic services within Australia.⁵⁷ Qantas submits that many of these passengers travelled beyond the capital city gateways to other destinations.
102. More generally, the ACCC also accepts that the alliance provides Qantas customers with greater choice and flexibility of schedules with a Qantas ticket. Under the alliance, a person who holds a Qantas ticket has the option of switching to an Emirates flight, subject to seat availability, on similar terms as they would face to switch to an alternate Qantas flight (and vice versa). However, other than the class of customers considered in the preceding paragraph, any public benefits conferred by increased access to frequencies under the alliance are likely to accrue only to customers who value the increased flexibility associated with the greater number of frequencies and have a strong loyalty to either Qantas or Emirates brands.
103. The ACCC therefore consider that increased access to frequencies and destinations resulting from the alliance is likely to represent a benefit for both:
- passengers whose itineraries require flights with both airlines and
 - passengers with a strong loyalty to Qantas who wish to access Emirates frequencies and destinations (or vice versa).

Improved connectivity and better scheduling

104. The Applicants submit the Proposed Conduct is likely to result in improved connectivity and better scheduling through increased online connections and synchronising of schedules. The Applicants submit that more than 2,000

⁵⁵ Applicants' supporting submission, p35.

⁵⁶ Applicants' supporting submission, p35.

⁵⁶ Applicants' supporting submission, p35.

⁵⁷ Applicants' supporting submission, p45.

origin/destination combinations are offered over the combined networks of Qantas and Emirates, and that the alliance provides opportunities for customers to travel under a single airline code between origins and destinations that would be unavailable on either party's code.

105. The ACCC has previously recognised that to the extent that an airline alliance (or codeshare arrangement) replaces interline connection options (connection between two different codes) with online connections options (passenger itineraries of two or more flight segments where connections are made between flights of the same airline, or its codeshare partners) this may benefit consumers. These benefits may take several forms, including:
 - removal of the risk of forfeiting non-refundable fares if the first flight in a journey is delayed
 - increased convenience in not having to collect and bear baggage mid journey (where applicable) and
 - time savings associated with through check (i.e. passengers do not need to allow time for a second check-in, where applicable) and better transit times due to coordination of the timing of connecting flights.
106. The ACCC accepts that there are a greater number of online connection options available with the Proposed Conduct, and that this is likely to result in public benefits.
107. The Applicants also submit that under the alliance, passengers flying between Melbourne and Singapore will benefit from increased spread of schedule choice as a result of Qantas and Emirates working together to make schedules more complementary by eliminating wingtip flying.
108. The ACCC considers that the alliance will likely facilitate some schedule optimisation, enabling greater schedule choice for passengers. However, these opportunities will be confined to the overlap routes of which, as explained above, post March 2018 there will only be four (Sydney - Christchurch, Melbourne/Brisbane - Singapore and Sydney - Bangkok).

Improved loyalty program benefits

109. The Applicants submit that reciprocal access to each other's frequent flyer programs with the Proposed Conduct will likely result in better loyalty benefits for Qantas Frequent Flyers (QFF) and Skywards members.
110. The Applicants submit that in addition to the ability to earn and redeem frequent flyer points on the other carrier's network, QFF and Emirates Skywards members also receive reciprocal benefits including (depending on membership tier) access to airport lounges, aligned additional baggage allowances, priority check-in, priority boarding and fast tracked immigration processing (where applicable). Members of both programs will also receive preferential access to new future benefits such as seat selection and on-board Wi-Fi.⁵⁸ Qantas estimates that there are currently around 11.8 million members of the QFF program and approximately 18.2 million members of the Skywards program, of whom 1.65 million reside or are based in Australia.⁵⁹
111. The ACCC understands that the attractiveness of loyalty programs is defined by the ability to earn and redeem points on a wide range of network options (frequencies and destinations). The ACCC also understands that passengers

⁵⁸ Applicants' supporting submission, p39.

⁵⁹ Applicants' supporting submission, p42.

value the ability to travel for leisure using points earned while travelling for business with their employer's preferred airline.

112. The ACCC considers that the attractiveness of the Applicants' loyalty programs is likely to be enhanced under the alliance, primarily because the Proposed Conduct will enhance the ability for members of each carrier's loyalty program to earn and redeem frequent flyer points on the other carrier's network. The Applicants submit that there has been a 22 per cent increase in the number of points earned by QFF members on Emirates flights between financial year 2013/2014 and financial year 2016/2017 and an 89 per cent increase in the number of QFF members redeeming points on Emirates flight over the same period.⁶⁰
113. Given the large number of QFF and Skywards members, and the range of benefits likely to accrue to them, the ACCC considers that reciprocal access to the Applicants' frequent flyer programs under the alliance is likely to result in public benefits.

New frequencies and destinations

114. The Applicants submit that additional passenger traffic stimulated by the alliance may lead to (and/or continue to support) increased frequencies of flights and the introduction of new direct services or new destination by Emirates, which give rise to public benefits through increased choice and convenience for consumers.
115. The Applicants submit that as a result of increased Australian feeder traffic from Qantas and customer demand, Emirates expedited capacity expansion on a number of Australia services by up-gauging to A380 operations (including Singapore - Melbourne and Bangkok - Sydney), and by adding additional non-stop capacity on Brisbane - Dubai services.⁶¹ The Applicants also submit that increased Australian feeder traffic enabled Emirates to expedite the commencement of additional frequencies to destinations in Europe and the Balkans, and that Emirates' decision to launch flights to Zagreb was made under the expectation that the service would be supported to a significant degree by the sizeable Croatian diaspora in Australia.⁶² Further, to backfill Qantas' Sydney - Dubai service following Qantas March 2018 network changes, Emirates plans to launch an additional daily non-stop frequency on this route.⁶³
116. The ACCC notes the Applicants' submission regarding Australian feeder traffic from Qantas contributing to expansion of services by Emirates. The ACCC considers that additional passenger traffic stimulated by an alliance can lead to the introduction of new frequencies and/or destinations which give rise to public benefits. However, the ACCC has generally not accepted that alliances are likely to result in new frequencies and destinations without substantiation of claims that it is the alliance, as opposed to underlying market conditions, that is driving demand for these services.
117. In respect of the examples noted by the Applicants, the ACCC considers it possible that some or all of these network modifications could have been made by the parties irrespective of the alliance. For example, while the Croatian diaspora in Australia might value being able to purchase a Qantas ticket on an Emirates operated service, this is not likely to significantly drive demand for the service. If these passengers did not have the option of purchasing a Qantas code ticket they

⁶⁰ Applicants' supporting submission, p40.

⁶¹ Applicants' supporting submission, p43.

⁶² Applicants' supporting submission, p43.

⁶³ Applicants' supporting submission, p35.

would be likely to purchase the same itinerary on an Emirates code ticket. It is this underlying demand that is likely to sustain the service.

118. Consequently, the ACCC considers that there is the potential for some new frequencies, direct services and destinations in the future with the Proposed Conduct, which would be a public benefit. However, the ACCC does not have sufficient evidence before it to conclude that the Proposed Conduct is likely to lead to (and/or continue to support) increased frequencies of flights and the introduction of new direct services.

Cost Savings

119. In the original application for authorisation in 2013, the Applicants submitted that they expected to achieve cost savings under the alliance including, amongst other things, through:
- joint procurement contracting with local service providers in relation to fuel, catering and ground handling in destinations where both carriers operate
 - joint purchasing of high value IT software, hardware and support services with a view to securing greater discounts and procuring technical efficiencies
 - co-location of offices as rents come up for renewal and
 - combining tender responses and back office functions (e.g. agent support call centres).
120. In its 2013 determination, the ACCC accepted that cost savings from avoiding duplicated fixed costs were likely to result in a public benefit, though concluded that the magnitude of that benefit was likely to be small. These cost savings largely accrued as a result of the alliance's synchronisation of services on overlapping routes.
121. Under the Restated MCA, the Applicants are able to continue to cooperate across their global networks, including (among other things) in relation to:
- joint airport facilities
 - joint offices for sales activities and
 - harmonisation of IT systems.⁶⁴
122. The ACCC considers it is possible that this continued coordination could result in some cost savings for the alliance, achieved through the removal of duplicated fixed costs. However the Applicants did not provide any evidence to suggest that any cost savings have been over the last five years, or would be in the future, significant.
123. Further, as explained above, as of March 2018, overlap between the Qantas and Emirates networks will be limited to four routes. Therefore cost savings under the restated MCA are likely to be less significant than cost savings previously recognised by the ACCC in relation to the original application. Consequently, the ACCC considers any public benefit conferred from the avoidance of duplicated fixed costs is likely to be small.

⁶⁴ Applicants' supporting submission, p8.

Pro-competitive response from rivals

124. The Applicants submit that their integrated service offering has elicited a competitive response from rival airlines, including more competitive fares and improved product/service offerings for consumers. In particular, the Applicants note that competition on routes between Australia and UK/Europe appears to have intensified over the five year life of the alliance, primarily driven by Middle East, and more recently Chinese, carriers.
125. The ACCC notes that the examples provided by the Applicants of competition provided by other airlines, particularly on routes between Australia and Europe, and Australia and Asia. However, the ACCC considers that these examples are consistent with the growth in demand for and supply of airline services on these routes in recent years, a trend which pre-dates the alliance.
126. While the ACCC considers that the alliance enhances the Applicants' product and service offering, and thereby their ability to compete with rival airlines, the ACCC does not consider that there is sufficient evidence to conclude that a public benefit, in the form of triggering a competitive response from rivals, is likely to arise. Rather, the ACCC considers that rival airlines will continue to strongly compete for passengers on these routes whether or not Qantas and Emirates operated services on these routes through the alliance or independently of each other and the alliance does not appear to be an integral driver of this competition.

Stimulation of tourism and trade

Tourism

127. The Applicants submit the Proposed Conduct will result in tourism related public benefits by facilitating increased effective investment in the promotion of Australia as a destination in countries where Qantas does not have a strong presence (primarily in Europe and the Middle East and North Africa Region), and by making it easier for foreign leisure travellers to visit non-gateway destinations in Australia.
128. The ACCC considers that the level of tourism-related public benefits attributable to the alliance depends on the likely impact of the alliance on demand for tourism in Australia and on expenditure by tourists on Australian goods and services once they arrive.
129. In this respect, there are a wide range of factors that 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. With respect to travel to and from Australia for the purpose of tourism, as noted, the ACCC considers that competition between airlines for inbound tourists from Europe and Asia would be strong with or without the alliance in place.
131. However, the ACCC does consider that the increased connectivity and convenience of the Applicants' services, including combining Qantas' extensive domestic network with Emirates' extensive international network, is likely to promote greater inbound tourism, particularly to regional Australia and for international tourists who wish to travel between cities in Australia.
132. In this respect, the Applicants submit that in the first year of the alliance passengers connecting beyond Emirates Dubai - Australia flights to secondary cities in Australia and the region increased 61 per cent and by the second year of

the alliance passengers connecting to cities such as Canberra, Cairns, Hobart and Launceston had doubled compared to the 12 months prior to the alliance.⁶⁵

133. The Applicants also submit that in the last three years, around 15,000 Emirates passengers per month have travelled on Qantas domestic services within Australia.⁶⁶ Many of these would have travelled to regional areas using online connection options. Without the alliance in place these passengers would have likely had to have booked interline connection (separate bookings with two airlines). Accordingly, the ACCC considers that the alliance makes travel to these regions a more attractive option.
134. Similarly, without the alliance in place passengers travelling between major Australian cities on arrival in Australia from an overseas destination serviced by Emirates but not Qantas (or Virgin Australia) are also able to use online connections rather than interline connections as a result of the alliance. Accordingly, the ACCC considers that the alliance makes travel for this class of passenger a more attractive option.
135. In summary, the alliance is likely to have stimulated some tourism, particularly through facilitating ease of travel to regional areas and between major Australian gateway cities for international tourists, which the ACCC considers to be a public benefit.

Trade

136. The Applicants submit that the Proposed Conduct is likely to result in (non-tourism) trade related public benefits by making it easier for foreign businesses to access non-gateway destination in Australia and by making it easier for Australian exporters/importers to access destinations that are not directly served by Qantas, thereby improving access to customers/suppliers in those locations.
137. In particular, the Applicants submit that the alliance makes it easier for Australian exporters and importers to access the Middle East and North Africa region and destinations in Europe not directly services by Qantas, particularly now that Qantas is no longer flying to Dubai.
138. The ACCC considers that the level of trade-related public benefits attributable to the alliance depends on the likely impact of the Proposed Conduct on the volume and value of (non-tourism) trade between Australia and the relevant regions.
139. However, the key drivers of the volume and value of (non-tourism) trade between Australia and these regions are largely outside the influence of the alliance. They include, for example, purchasing power in source countries, the relative prices of goods and services, consumer tastes and preferences, 'ease of doing business', and sustainability of government.
140. The ACCC considers that the alliance may positively impact one of these drivers, that is, 'ease of doing business', to some limited extent by providing a more seamless service between international destinations and Australian destinations beyond major gateways.
141. However, the ACCC considers that any net positive impact on trade as a result of the alliance is likely to be small.

⁶⁵ Applicants' supporting submission, p45.

⁶⁶ Applicants' supporting submission, p45.

Customer experience and product innovation

142. The Applicants submit that absent the Proposed Conduct, there would be no incentive for Qantas and Emirates to collaborate on product innovations and customer service improvements.
143. The Applicants state that as a result of the alliance, Qantas and Emirates passengers will continue to share aligned benefits such as:
- complimentary chauffer drive for business and first class passengers on selected flights
 - ‘Dubai Connect’, which offers complimentary accommodation to both carriers’ passengers travelling through Dubai with an onward connection that leads to a transit time of more than 6 hours for business class passengers and 8 hours for economy class passengers and
 - improved handling processes that apply when there is a disruption to a flight schedule.⁶⁷
144. The ACCC has previously recognised that product innovation and customer service improvements which enhance the customer experience can result in public benefits. The ACCC considers that Qantas and Emirates would not continue to collaborate on these products and service offering absent the alliance. However, the ACCC also considers that, to the extent that customers value the services identified by the Applicants as examples of product innovation and customer service improvements, it is not clear that the alliance partners would not continue to offer these types of services independently of each other absent coordination under the alliance. That is, it is not clear that the Applicants’ ability to offer these services is dependent on the alliance.

Sustainable operation of Qantas’ international network to Europe

145. The Applicants submit that the alliance is an integral part of Qantas’ international strategy. The Applicants state that the relationship with Emirates has assisted and will continue to assist Qantas’ international business to grow in a sustainable way, in a global market where Qantas is disadvantaged as an end-of-line carrier relative to full service carriers based at mid-point hubs such as Singapore, Hong Kong, the Middle East or China.⁶⁸
146. The ACCC accepts that as an end-of-line carrier Qantas is likely to be at a competitive disadvantage in its operations between Australia and UK/Europe, compared to mid-point carriers based in the Middle East and Asia, as a result of its inability to achieve the same economies of scale and density and comparatively higher labour costs.
147. However, Qantas’ international operations also have a number of structural advantages including the strength of Qantas’ domestic network and customer loyalty through corporate contracts and frequent flyers which may, to an extent, offset these structural disadvantages.
148. The ACCC considers that absent the alliance Qantas would not carry as many Emirates ticketed passenger on its international services, with an associated loss of revenue. However, absent to ability to fly on a Qantas operated service as an Emirates ticketed passenger, some of these passengers may choose instead to be ticketed directly by Qantas. Further, absent the alliance some Qantas ticket

⁶⁷ Applicants’ supporting submission, p43-44.

⁶⁸ Applicants’ supporting submission, p42.

passengers on services operated by Emirates would choose to switch back to Qantas operated services.

149. Having assessed the evidence, including submissions, documents and information before it, the ACCC considers that the alliance may assist Qantas' international operations. However, based on the information provided, the extent to which the alliance does assist the sustainability of Qantas' international operations is unclear and the ACCC does not have sufficient evidence to conclude that the alliance is necessary for the sustainability of these operations.

Public detriments

150. Public detriment is not defined in the Act but the Australian Competition 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.⁶⁹

151. As noted, the Applicants' own metal services only overlap on a limited number of routes. The ACCC considers that the alliance is likely to significantly impact competition on one of these routes, Sydney - Christchurch.
152. On the other routes where Qantas and Emirates have and/or will continue to overlap the ACCC considers that:
- Sydney/Melbourne - London: the alliance will be constrained by strong competition from other airlines.
 - Australia - Dubai: Qantas would have exited these routes for commercial reasons with or without the alliance in place.
 - Melbourne/Brisbane - Singapore: the alliance will be constrained to a large extent by competition from Singapore Airlines and by strong competition from various airlines for passengers travelling beyond Singapore to other points in Asia or to the UK/Europe.
 - Sydney - Bangkok: the alliance will be constrained to a large extent by competition from Thai Airways and by competition from various airlines for passengers travelling beyond Bangkok to other points in Asia or to the UK/Europe.
 - Sydney/Melbourne/Brisbane - Auckland: Emirates would have withdrawn from these routes both for commercial reasons with and without the alliance in place. As such, Qantas and Emirates will no longer overlap on these routes in the future with or without the alliance and therefore the alliance is unlikely to materially impact the level of competition on these routes.
153. On the Sydney - Christchurch route the ACCC considers that the competitive constraint Qantas and Emirates would otherwise impose on each other as the major carriers on the route is likely to be lost with the alliance in place.
154. The ACCC's assessment of the likely public detriments of the Proposed Conduct on each of these routes is set out below.

⁶⁹ See *7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

Effect on competition for the supply of international air passenger transport services between Australia and New Zealand

Sydney - Christchurch

Unilateral effects

155. There are two ways in which airlines or alliances may raise prices. The first is to raise airfares without varying capacity. Unless there is excess demand this is not ideal for the airline as it is likely to mean the alliance will operate with lower load factors (percentage of seats occupied). Further, if there is excess capacity available to rival airlines, there is a lesser likelihood that an alliance could profitably increase fares unless they were to reduce or limit growth in capacity due to the commercial imperative for airlines to fill empty seats.
156. The second is to reduce capacity (or to not grow capacity as quickly as would otherwise be the case). To the extent this makes seats on the route more scarce, airfares will likely rise.
157. The ACCC considers that the alliance is likely to provide Qantas and Emirates with an increased ability and incentive to unilaterally reduce or limit growth in capacity on the Sydney - Christchurch route.
158. Seats flown on the Sydney - Christchurch route comprised 8.4 per cent of the trans-Tasman total for the year ended 30 June 2017. The shares of capacity on the Sydney - Christchurch route are shown in the table below.

Table 4 Sydney - Christchurch route seats flown from FY11/12 to FY16/17⁷⁰

Seats	FY12	FY13	FY14	FY15	FY16	FY17
Qantas Group (incl Jetstar)	230,919	234,547	235,990	240,012	223,620	246,547
Emirates	257,712	257,004	258,420	257,712	259,128	335,354
Air New Zealand	154,392	161,940	148,823	154,178	148,584	134,489
Virgin Australia	47,500	41,730	56,340	63,682	86,642	97,954
China Airways				26,402	40,524	38,682
Total	690523	695,221	699573	741,986	758,498	853,026

159. Services offered by Emirates on the route are a leg of its Dubai-Sydney-Christchurch route.
160. China Airlines commenced seasonal services on the route (Northern Winter scheduling season - November through March) in 2014. Services operated by China Airlines operated as a leg of their Taipei - Sydney - Christchurch route. In July 2017 China Airlines announced that it was withdrawing from the Sydney -

⁷⁰ ACCC calculations. Source data from https://bitre.gov.au/publications/ongoing/international_airlines-operated_flights_seats.aspx

Christchurch route, leaving just the Qantas/Emirates alliance and the Virgin Australia/Air New Zealand alliance operating services on the route.

161. Accordingly, the alliance reduces the number of independently operated services from three to two (Qantas/Emirates/Jetstar and the Virgin/Air New Zealand alliance) with the alliance having around a 68 per cent share of seats flown (when China Airlines was still operating on the route).
162. The ACCC considers that Virgin Australia/Air New Zealand is unlikely to sufficiently constrain the alliance in the event that the alliance decided to reduce or limit growth in capacity. Given that Virgin Australia/Air New Zealand are the only alternative to the alliance, any competitive reaction by Virgin Australia/Air New Zealand is unlikely to be sufficient to make a unilateral reduction or limitation in growth of capacity unprofitable for the alliance (albeit a competitive reaction would likely make the unilateral action less profitable).
163. As noted above, Virgin Australia/Air New Zealand accounted for around 27 per cent of the seats flown on the route (when China Airlines was still operating on the route). While it is likely that Virgin Australia/Air New Zealand would increase capacity in the event the alliance limited its capacity, it is unlikely that this would be sufficient to prevent an increase in airfares. Rather, given their substantial share of seats flown on these routes, it would most likely be in Virgin Australia/Air New Zealand's joint interest to allow airfares to increase rather than to take a significant share away from the alliance.
164. The ACCC therefore considers that there is a risk that the alliance is likely to result in capacity levels that are below what would otherwise occur on these routes absent the Proposed Conduct. In turn this is likely to result in air fares being higher than otherwise would be the case.
165. The other potential competitive constraint on the alliance is the likelihood of timely entry on the route. The trans-Tasman operates as a Single Aviation Market, with Australian and New Zealand designated airlines able to set their own capacities and frequencies. However, other than the currently operating carriers, the ACCC is not aware of any other Australian or New Zealand designated airlines which would be able to enter in a timeframe and on a scale necessary to provide a competitive constraint on Qantas and Emirates on the Sydney - Christchurch route.
166. While there are international carriers with unexercised fifth freedom carrier rights that could participate on the trans-Tasman, including on the Sydney - Christchurch route, Sydney - Christchurch is a short haul route the optimal scheduling profile for which is smaller, more frequent services with cabins configured primarily for economy class passengers. Fifth freedom carriers on this route are limited to operating the aircraft they operate between their hubs and Australia. These aircraft are configured for long-haul flying and are more expensive than other aircraft to operate on short-haul routes due to higher fuel and operating costs per seat. Their seating is also configured to long-haul flying with larger premium cabins for which there is less demand on trans-Tasman routes. These aircraft are also able to be deployed less frequently with scheduling decisions primarily driven by the long haul component of the service (international to and from Australia).
167. Further, the decision for entry by an international carrier is unlikely to be determined by the existence of economic profits resulting from the exercise of market power by the alliance on the Sydney - Christchurch route. In addition to the factors discussed regarding fifth freedom carriers above, a carrier in this position would also need to examine the viability of the long haul component of its service (international into Australia) before deciding whether to extend that

service into New Zealand. In addition, its entry onto the route may see a competitive response from the incumbents, resulting in a price war which could see economic profits disappear on the route. Further, as also discussed above, many of these airlines are increasingly focused on providing direct services to New Zealand which would limit demand for, and their ability to operate, trans-Tasman services.

168. Accordingly, the ACCC does not consider that there is a likelihood of timely, sufficient, entry on the Sydney - Christchurch route that would provide a competitive constraint to Qantas and Emirates.
169. In conclusion, the ACCC considers that the alliance is likely to result in significant public detriments in the form of an increased ability and incentive for the applicants to unilaterally reduce or limit growth in capacity on the Sydney - Christchurch route in order to raise airfares. The ACCC does not consider that there are sufficient competitive constraints to prevent such an outcome.

Coordinated effects

170. As noted, Qantas (including Jetstar) and Emirates and Virgin Australia/Air New Zealand are the only airlines on the Sydney - Christchurch route. It is arguable that this creates a strong incentive for Qantas/Jetstar Airways and Virgin Australia/Air New Zealand to co-ordinate their conduct. To the extent that coordination is likely, the ACCC considers that it would occur through a common strategy to limit growth in capacity.
171. There are a number of factors which make the route conducive to coordination, including:
 - a small number of airlines operating on the route
 - interaction between Qantas/Jetstar Airways and Virgin Australia/Air New Zealand on a large number of trans-Tasman routes (which may facilitate the learning of behaviours and create the scope for retaliation)
 - limited likelihood of fifth freedom carriers entering and/or substantially increasing capacity on the route and
 - transparency of price and capacity.
172. However, the key issue is whether the Proposed Conduct increases the likelihood of coordinated conduct. To the extent that Emirates would otherwise act to impede successful coordination between Qantas/Jetstar Airways and Virgin Australia/Air New Zealand, the Proposed Conduct, by removing that impediment, will increase the likelihood of successful coordination.
173. In considering the original application for authorisation in 2013, the ACCC concluded that in the likely future without the Proposed Conduct, Emirates would be unlikely to have the ability and incentive to materially disrupt an attempt by Qantas/Jetstar Airways and Virgin Australia/Air New Zealand to reduce or limit growth in capacity on trans-Tasman routes (including Sydney - Christchurch). This was because in order for Emirates to materially disrupt any coordination between Qantas/Jetstar Airways and Virgin Australia/Air New Zealand, Emirates would need to credibly threaten to significantly increase capacity dedicated to origin-destination traffic on trans-Tasman routes either by increasing its total capacity deployed on trans-Tasman routes or by maintaining existing capacity but increasing the number of seats available to Australia - New Zealand origin-destination traffic (and reducing seats available for, for example, Dubai - New Zealand traffic).

174. However, as discussed earlier, like other fifth freedom carriers, Emirates' scheduling and frequency decisions on trans-Tasman routes are driven by broader network considerations. Specifically, Emirates' capacity decisions on trans-Tasman routes (including decisions about whether to increase total capacity or change the proportion of seats available to Australia - New Zealand origin-destination traffic) were primarily driven by the profitability of Dubai - Australia services. Therefore, the ACCC concluded that in the likely future without the Proposed Conduct, it was unlikely that Emirates would significantly increase the number of seats available on the trans-Tasman routes to take advantage of a profit opportunity on the trans-Tasman.
175. The ACCC notes that as a result of other network changes Emirates, is now likely to be less constrained in deciding how much capacity to operate on the Sydney - Christchurch route than has been the case in the past. Because Emirates' flights between Dubai and Sydney no longer continue on to Auckland, some of this capacity could, in the future, be available to Emirates to operate on the Sydney - Christchurch route.
176. However, Emirates' scheduling decisions on the Sydney - Christchurch route would still be primarily driven by the operation of its Dubai - Sydney services.
177. Further, as discussed earlier, the larger capacity A380s that Emirates operate on the Dubai - Sydney route are not well suited to market conditions on trans-Tasman routes. This means that the imbalance in supply and demand driven by the Qantas and Virgin Australia/Air New Zealand reducing or limiting growth in capacity necessary to create a profitable opportunity for Emirates would need to be greater than would be the case for an airline with a similar cost structure to Qantas and Virgin/Air New Zealand.
178. Accordingly, while having regard to Emirates' other network changes there may now be some greater prospect of Emirates acting to impede successful coordination between Qantas/Jetstar Airways and Virgin Australia/Air New Zealand without the alliance in place, the ACCC remains of the view that Emirates would be unlikely to have the ability and incentive to materially disrupt an attempt by Qantas/Jetstar Airways and Virgin Australia/Air New Zealand to reduce or limit growth in capacity on the Sydney - Christchurch route. Therefore, the ACCC does not consider that the alliance is likely to materially increase the likelihood of coordinated effects on the Sydney - Christchurch route.

Australia - Auckland

179. Between Australia and Auckland, the Qantas and Emirates networks overlapped on the following routes:⁷¹
 - Sydney - Auckland (Emirates stopped this service in July 2017)
 - Melbourne - Auckland (Emirates will stop this service in March 2018) and
 - Brisbane - Auckland (Emirates will stop this service in March 2018).
180. In addition the Qantas/Emirates and Virgin/Air NZ alliances, the Sydney-Auckland route is also operated by LATAM Airlines (formerly LAN Airlines S.A.) as an extension of its Santiago - Auckland services.
181. This route was also operated by China Airlines as an extension of its Taipei-Sydney service commencing in October 2012, although China Airlines has since discontinued its Sydney - Auckland services in July 2017.

⁷¹ Applicants' supporting submission, p22-23.

Table 5 Sydney - Auckland route seats flown from FY11/12 to FY16/17⁷²

Seats	FY12	FY13	FY14	FY15	FY16	FY17
Qantas Group (inc Jetstar)	746,345	718,403	734,358	664,219	673,583	720,291
Emirates	354,780	350,892	355,266	354,780	355,020	356,836
Air NZ	702,761	717,725	732,224	733,745	771,180	799,711
Virgin	111,220	102,150	125,452	128,380	128,872	178,612
China Airlines		83,476	119,116	114,204	119,116	114,204
LATAM	164,364	142,384	137,230	178,871	212,607	213,729
Total seats	2,151,594 ⁷³	2,115,030	2,203,646	2,174,199	2,260,378	2,383,383

182. The Melbourne Auckland route is only operated by airlines in the two alliances: Qantas, Jetstar, Emirates, Air New Zealand, and Virgin Australia. These airlines flew a combined 798,666 seats in the year ended 30 June 2017. The alliance airlines flew 435,547 (54.7 per cent) of these seats.

Table 6 Melbourne - Auckland route seats flown from FY11/12 to FY16/17⁷⁴

Seats	FY12	FY13	FY14	FY15	FY16	FY17
Qantas Group (inc Jetstar)	474,540	489,911	492,774	497,224	553,185	516,452
Emirates	259,126	328,905	354,849	356,322	357,048	356,811
Air NZ	400,312	418,493	444,694	472,924	514,435	559,751
Virgin	132,786	128,940	130,124	129,808	128,434	164,490
Total seats	1,266,764	1,366,249	1,422,441	1,456,278	1,553,102	1,597,504

183. China Airlines is the only other airline operating the Brisbane-Auckland route in addition to the two alliances. As noted above, China Airlines operates on this route as a fifth freedom carrier as an extension of its international services to Australia.

184. Together, the airlines on the Brisbane - Auckland route flew 672,383 seats in the year ended 30 June 2017, of which 295,755 seats (44.0 per cent) were operated by the alliance airlines.

⁷² ACCC calculations. Source data from https://bitre.gov.au/publications/ongoing/international_airlines-operated_flights_seats.aspx

⁷³ Aerolineas Argentinas also operated 72,124 seats on this route in FY12.

⁷⁴ ACCC calculations. Source data from https://bitre.gov.au/publications/ongoing/international_airlines-operated_flights_seats.aspx

Table 7 Brisbane - Auckland route seats flown from FY11/12 to FY16/17⁷⁵

Seats	FY12	FY13	FY14	FY15	FY16	FY17
Qantas Group (inc Jetstar)	233,592	243,248	241,436	234,887	235,604	235,511
Emirates	259,128	258,426	329,322	356,200	356,861	355,999
Air NZ	397,131	365,307	365,186	366,318	381,634	389,294
Virgin	165,084	217,134	232,948	238,356	241,908	236,892
China Airlines	95,784	94,556	101,566	113,790	113,728	127,070
Total seats	1,150,719	1,178,671	1,270,458	1,309,551	1,329,735	1,344,766

185. In 2013 the ACCC concluded that the alliance was likely to result in public detriments in the form of an increased ability and incentive for the applicants to unilaterally reduce or limit growth in capacity on these three routes in order to raise airfares. The ACCC did not consider that there were sufficient competitive constraints to prevent such an outcome.
186. The structure of these routes has not changed materially since the alliance was first authorised, other than the network changes implemented and proposed to be implemented by the Applicants (Emirates withdrawing and Qantas replacing some of this capacity). Therefore, the key consideration in assessing whether the previously held concerns about the impact of the alliance on competition on these routes continue to apply, is whether Emirates would have withdrawn from the routes if the alliance was not in place.
187. Given the extent of Emirates' operations on these routes, if Emirates would continue to operate on the routes without the alliance in place then its withdrawal from the routes as a result of the alliance is likely to have a material impact on competition on these routes.
188. However, if it is likely that Emirates would have withdrawn from these routes with or without the alliance in place, then the alliance is unlikely to adversely affect competition on these routes in the future. The competitive constraint imposed by Emirates as an independently determined price and service offering would be lost regardless of whether the alliance was in place.

ACCC consideration of Emirates' decision to withdraw from the Australia - Auckland routes

Applicants' submission

189. The Applicants submit that without the alliance, Emirates would have accelerated the withdrawal of its services between Australia and Auckland.⁷⁶
190. The Applicants submit that, since the original authorisation in 2013, consumer demand has shifted to direct services to New Zealand. This has led to airlines

⁷⁵ ACCC calculations. Source data from https://bitre.gov.au/publications/ongoing/international_airlines-operated_flights_seats.aspx

⁷⁶ Applicants' supporting submission, p12.

adding new direct services between New Zealand and the Middle East and Asia, which, 'have collectively reduced the volume of connecting passengers travelling between Australia and New Zealand.'⁷⁷

191. The Applicants submit that to meet this demand for direct services, Emirates launched non-stop services between Auckland and Dubai in March 2016.
192. The Applicants submit that these new direct services have resulted in a 13 per cent reduction in connecting passengers travelling between Australia and New Zealand and a 20 per cent reduction in connecting passengers travelling between Australia and Auckland.⁷⁸
193. The Applicants cite the increase in direct flights to Auckland and the resulting decline in demand for connecting services between Australia and New Zealand as reasons for the termination of Emirates' Sydney - Auckland services from 13 July 2017 and the planned cessation of Emirates' Melbourne - Auckland and Brisbane - Auckland services from March 2018.⁷⁹

ACCC Assessment

194. The ACCC accepts the Applicants' submission that the introduction of more direct flights to New Zealand from Asia and the Middle East have decreased demand from these passengers for Australia - Auckland flights. Although, notwithstanding this, the ACCC notes that total passenger numbers between Auckland and Sydney/Melbourne/Brisbane continued to grow, albeit modestly in the 2017 financial year.
195. However, Emirates commencing direct Dubai - Auckland service is likely to materially impact demand for its own connecting services, more so than it would impact demand for the connecting services offered by other airlines. In particular, some passengers on Emirates' Australia - Auckland services were/are travelling between Europe, Dubai or other destinations in the Emirates' network, and Auckland. These passengers are now likely to favour the Dubai - Auckland direct service.
196. More generally, the ACCC notes that as a fifth freedom carrier, Emirates has limited flexibility in relation to the type of aircraft it is able to operate on trans-Tasman routes and scheduling frequencies. On these routes Emirates operates the long-haul A380 aircraft it uses for services between Dubai and Australia. These aircraft are configured for long-haul flying and are more expensive than other aircraft to operate on short-haul routes due to higher fuel and operating costs per seat. Their seating is also configured to long-haul flying with larger premium cabins for which there is less demand on trans-Tasman routes.
197. Further, as high volume traffic routes, the optimal scheduling profile on these routes is smaller, more frequent aircraft as operated by Qantas, Air New Zealand and Virgin Australia. Again, Emirates has limited discretion in this regard, only being able to deploy larger aircraft on a less frequent basis.
198. The ACCC also notes that to the extent that Emirates derives broader network benefits in operating services to Auckland, with the introduction of direct services between Dubai and Auckland some of these network benefits are able to be realised without having to operate services between Australia and Auckland.
199. In assessing the Applicants' argument that Emirates would have withdrawn from the Australia - Auckland routes both with and without the authorisation in place,

⁷⁷ Applicants' supporting submission, p23.

⁷⁸ Applicants' supporting submission, p23.

⁷⁹ Applicants' supporting submission, p26.

the ACCC has also had access to a range of confidential information about Emirates' operations on these routes. This includes:

- route profitability information required to be reported to the ACCC as a condition of the authorisation granted in 2013
- aviation statistic provided by the Bureau of Infrastructure, Transport and Regional Economics (BITRE) including statistics about seats and passengers flown (provided with the consent of the Applicants) and
- presentations, papers and reports prepared by or for, or provided to, members of the Emirates Group Senior Management Team (provided by Emirates in response to ACCC information requests).

200. Having regard to the market conditions outlined above and this information, the ACCC considers that Emirates is likely to have ceased its Australia - Auckland services regardless of any involvement in the alliance.
201. The ACCC does note that the alliance with Qantas is likely to have made it easier for Emirates to withdraw from these routes. To the extent that there are broader benefits to Emirates in operating these routes (as opposed to operating direct services between its Dubai hub and Auckland) as part of its network, the alliance allows Emirates to continue to receive some of these benefits. Further, without the alliance in place, Emirates withdrawing its Australia - Auckland services would have only allowed it to offer one service between Dubai and Auckland each day (its direct service). This would not be a convenient option for some passengers seeking to connect to an Auckland flight in Dubai for elsewhere in the Emirates network.
202. With the alliance in place Emirates is able to continue to offer multiple connections between Dubai and Auckland. Under the alliance Emirates can offer one direct service as well as the option of an Emirates service to Australia and a connecting Qantas service to Auckland, and thereby offer more convenient connections between Auckland and other parts of its network without having to operate Australia - Auckland services itself.
203. However, notwithstanding this, the ACCC is satisfied that Emirates is likely to withdraw from the Australia - Auckland routes with or without the alliance in place.
204. As such, the ACCC considers that Qantas and Emirates will no longer overlap on these routes in both the future with and without the alliance. The Proposed Conduct is therefore unlikely to result in material public detriment through its effect on competition on the Australia - Auckland routes.

Australia - UK/Europe

205. Following the changes to Qantas' network from March 2018, the Qantas and Emirates networks will overlap (via different mid-points) on the following routes between Australia and the UK/Europe:
- Sydney - London
 - Melbourne - London
 - Adelaide - London
 - Brisbane - London and
 - Perth - London.

206. The Applicants submit that the Proposed Conduct will not raise any competition concerns on these routes because Qantas and Emirates will remain constrained by other airlines operating services on the routes.
207. The Applicants provided the following estimates of market shares on Australia/UK routes.

Table 8 Market share by carrier AUSTRALIA - UK calendar year 2014 - May 2017⁸⁰

Carrier	CY14	CY15	CY16	Jan-May 17
Emirates	32.0 %	31.0 %	28.2 %	27.3 %
Etihad	7.2 %	10.7 %	12.8 %	14.9 %
Qantas	15.5 %	14.5 %	14.0 %	14.2 %
Qatar Airways	4.8 %	5.3 %	8.4 %	10.2 %
Singapore Airlines	10.5 %	10.8 %	10.9 %	10.0 %
Cathay Pacific	6.3 %	6.7 %	6.3 %	5.8 %
British Airways	5.8 %	5.5 %	4.9 %	5.6 %
Malaysia Airlines	6.6 %	6.8 %	3.6 %	3.1 %
Thai Airways	1.1 %	0.8 %	2.5 %	2.3 %
China Southern	1.6 %	1.4 %	1.7 %	1.8 %
Royal Brunei Airlines	2.4 %	2.5 %	2.1 %	1.6 %
Total	100.0 %	100.0 %	100.0 %	100.0 %

208. In addition to the airlines noted in the table above there are around 15 other airlines selling seats between Australia and the UK, each with market shares of less than 1 per cent.⁸¹ These include prominent European airlines and large Chinese airlines who are competing aggressively for a market share.
209. The ACCC considers that the Applicants' services on their overlap routes between Australia and the UK/Europe will continue to face strong competition from other carriers servicing these routes. The ACCC considers that many of these established carriers have the ability and incentive to expand their operations in response to any attempt by the alliance to reduce or limit growth in capacity on their overlap routes between Australia and the UK/Europe.

⁸⁰ Applicants' supporting submission, Annexure G, Table 1.

⁸¹ Applicants' supporting submission, Annexure G, Table 1.

210. Accordingly, the ACCC considers that the alliance is unlikely to result in material public detriment through its effect on competition on international air passenger transport services on these routes.

Australia - Dubai

211. The Qantas and Emirates networks currently directly overlap in respect of services between Sydney/Melbourne and Dubai, which is one leg of Qantas' services between Sydney and London and Melbourne and London. However, as outlined above, from March 2018 network changes will remove this operating overlap and Qantas will instead reroute its Sydney - London service via Singapore, and its Melbourne - London service via Perth.
212. The ACCC considers that absent the alliance, Qantas is unlikely to operate services between Australia and Dubai. Even with the alliance in place, Qantas no longer intends to use Dubai as its midway point on services between Australia and London.
213. In this respect Qantas' A380 operating between the east coast of Australia and London appear better suited to using Singapore as a mid-point as this allows the aircraft to operate two legs of similar distance rather than one longer and one shorter leg, which (in net) involves greater fuel consumption. This also opens up more options for onward travel by passengers in Asia.
214. Replacing the Melbourne - Dubai - London service with a Melbourne - Perth - London service is consistent with Qantas' broader strategy of developing non-stop services to London.
215. Therefore, the ACCC considers that in both a future with and without the alliance Qantas would be unlikely to operate services between Australia and Dubai and accordingly the Proposed Conduct is unlikely to result in material public detriment through its effect on competition on international air passenger transport services between Australia and Dubai.

Australia - Singapore

216. The Qantas and Emirates networks overlap on two routes between Australia and Singapore: Melbourne-Singapore and Brisbane- Singapore.
217. Singapore Airlines and its related entities Scoot/Tigerair and SilkAir (**Singapore Group**) have a significant presence on these routes. The Singapore Group has a combined share of seats of approximately 62 per cent on the Melbourne - Singapore route, while the alliance has approximately a 38 per cent share of seats (see Table 5). On the Brisbane-Singapore route, the Singapore Group has a combined share of seats of approximately 71 per cent, and the alliance has approximately 29 per cent (see Table 6).

Table 9 Share of seats by carrier, Melbourne - Singapore calendar year⁸²

Carrier	CY14	CY15	CY16	Jan-May 17
Singapore Airlines	66.7 %	63.3 %	53.8 %	51.2 %
Qantas	14.3 %	14.5 %	16.2 %	16.8 %
Jetstar	11.3 %	12.4 %	11.9 %	11.0 %
Scoot/Tigerair	0.0 %	2.1 %	10.5 %	11.0 %
Emirates	7.7 %	7.7 %	7.6 %	9.9 %
Total	100.0 %	100.0 %	100.0 %	100.0 %

Table 10 Share of seats by carrier, Brisbane - Singapore calendar year⁸³

Carrier	CY14	CY15	CY16	Jan-May 17
Singapore Airlines	55.7 %	64.8 %	71.6 %	71.2 %
Qantas	24.9 %	23.7 %	21.9 %	22.3 %
Emirates	13.3 %	8.5 %	6.5 %	6.5 %
Etihad	6.1 %	3.0 %	0.0 %	0.0 %
Total	100.0 %	100.0 %	100.0 %	100.0 %

218. Singapore Airlines is the key competitive constraint on the alliance on these routes. Since Singapore Airlines is the only alternative to the alliance on these routes, the ACCC has considered whether it is likely that any competitive response by Singapore Airlines would be sufficient to make a unilateral limitation on capacity unprofitable for the alliance. This depends on Singapore Airline's ability and incentive to compete with the alliance.

219. The ACCC considers that the Applicants are likely to face strong competition from Singapore Airlines on these routes. Singapore Airlines has the ability and incentive to compete aggressively with the alliance and as the major airline operating on the route a competitive response from Singapore Airlines is likely to be sufficient to make a unilateral reduction or limitation in growth of capacity unprofitable for the alliance.

220. The ACCC considers that Singapore Airlines has the ability and incentive to compete aggressively with the alliance in order to maximise passenger traffic to Singapore as a travel destination and ensure Singapore's continued viability as a key aviation hub in the region. Limiting capacity on routes between Australia and Singapore to raise prices would be counter to those objectives.

⁸² Applicants' supporting submission, Annexure E, Table 4.

⁸³ Applicants' supporting submission, Annexure E, Table 5.

221. Further, for the alliance partners and for Singapore Airlines, any reduction or limitation of growth in capacity on Australia - Singapore routes would likely affect their ability to compete for passengers travelling beyond Singapore to other points in Asia or to UK/Europe. For example, Qantas limiting capacity between Brisbane and Singapore also limits its capacity between Brisbane and London where it faces strong competition from numerous other airlines. The ACCC considers that competition for these passengers will constrain the alliance's capacity decisions on the Melbourne - Singapore and Brisbane - Singapore routes. This makes it less likely that unilaterally reducing or limiting growth in capacity on the route will be profitable for the alliance partners.
222. The ACCC also considers that Singapore Airlines' strong incentives to compete aggressively to secure more Singapore destination traffic, and traffic travelling beyond Singapore, is a key source of disruption to any potential coordination between the Applicants' and Singapore Airlines on these routes.
223. For these reasons, the ACCC considers that the Proposed Conduct is unlikely to result in material public detriment through its effect on competition on international air passenger transport services between Australia and Singapore.

Australia - Bangkok

224. The Qantas and Emirates networks directly overlap on one route between Australia and Thailand, Sydney - Bangkok.
225. On the Sydney - Bangkok route the Applicants estimate that Qantas has around a 29 per cent share of seats and Emirates has roughly 17 per cent, giving the alliance a combined share of seats of 46 per cent. Thai Airways has 53 per cent share of seats on this route (see Table 7).

Table 11 Share of seats by carrier, Sydney - Bangkok calendar year⁸⁴

Carrier	CY14	CY15	CY16	Jan-May 17
Thai Airways	55.6%	55.4%	56.2%	53.2%
Qantas	32.6%	33.4%	31.9%	29.3%
Emirates	11.1%	11.2%	11.8%	17.4%
Total	100.0%	100.0%	100.0%	100.0%

226. On the Sydney - Bangkok route the alliance reduces the number of independently determined price/service offerings from three to two (the alliance and Thai Airways).
227. Thai Airways is the key competitive constraint on the alliance on this route. Since Thai Airways is the only alternative to the alliance on these routes, the ACCC has considered whether it is likely that any competitive response by Thai Airways would be sufficient to make a unilateral limitation on capacity unprofitable for the alliance. This depends on Thai Airways' ability and incentive to compete with the alliance.
228. In this respect the ACCC considers that Thai Airways has the ability and incentive to compete aggressively with the alliance and as the major airline operating on

⁸⁴ Applicants' supporting submission, Annexure E, Table 9.

the route, a competitive response from Thai Airways is likely to be sufficient to make a unilateral reduction or limitation in growth of capacity unprofitable for the alliance.

229. Further, any reduction or limitation of growth in capacity on the Sydney - Bangkok routes will likely affect their ability to compete for passengers travelling beyond Bangkok to other points in Asia or to UK/Europe.
230. The ACCC also considers that Thai Airways' strong incentives to compete against the alliance is a key source of disruption to any potential coordination between the Applicants and Thai Airlines.
231. For these reasons, the ACCC considers that the Proposed Conduct is unlikely to result in material public detriment through its effect on competition on international air passenger transport services between Australia and Thailand.

Effect on competition for the supply of international cargo transport services

232. The Proposed Conduct extends to the coordination of air cargo transport services offered by the Applicants.
233. As noted, the ACCC considers that the relevant air cargo transport services market includes cargo carried in the holds of aircraft used for passenger services as well as cargo carried by dedicated freighters. It includes not only direct services between Australia and the international destinations serviced by the Applicants, but also indirect services. The indirect services of international airlines and dedicated freighters may act as a further source of constraint on the alliance.
234. Given this, and that the ACCC has found in relation to air passenger transport services other than on the Sydney - Christchurch route the Proposed Conduct is likely to result in minimal public detriment, the ACCC considers that the alliance is also likely to result in minimal public detriment in the supply of international cargo transport services other than between Sydney and Christchurch.
235. However, the ACCC has found that the Proposed Conduct is likely to result in significant public detriments in relation to international air passenger transport services between Sydney and Christchurch. Given this, the ACCC has examined the effects of the Proposed Conduct on competition for the supply of cargo transport services between Sydney and Christchurch.
236. Other than the Applicants and Air New Zealand, no airline operates regularly scheduled air cargo transport services between Sydney and Christchurch. A number of other airlines, including dedicated freighters operate services between Australia and New Zealand. For these dedicated freighters barriers to entry are unlikely to be as high as for fifth freedom carriers whose decisions to operate on the route would primarily be driven by broader network considerations as discussed above.
237. However, more broadly, the ACCC considers that, as is the case with international air passenger transport services, the alliance is likely to increase the ability and incentives of the Applicants to unilaterally reduce or limit growth in air cargo transport capacity between Sydney and Christchurch as there may not be sufficient competitive constraints to prevent such an outcome. As a result, the ACCC considers that the Proposed Conduct is likely to result in competitive detriment in the market for international air cargo transport services, although the extent of such detriment may be less than in the relevant trans-Tasman passenger market given the potential for entry and/or expansion by dedicated freighters.

Balance of public benefit and detriment

238. In general, the ACCC may grant authorisation if 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, including any lessening of competition.
239. The ACCC considers that the Proposed Conduct is likely to result in a range of public benefits.
240. In particular, the ACCC considers that the alliance is likely to result in significant public benefits through:
- increasing the number of flights and destinations available to Qantas and Emirates customers through their combined networks, particularly those customers in regional Australian centres, and customers who have a strong loyalty to the Qantas or Emirates brands
 - improved connectivity and convenience for customers with itineraries involving flights with both airlines and
 - improved loyalty program benefits including opportunities to earn and redeem points on each airline's network, reciprocal lounge access and other reciprocal benefits.
241. The ACCC also considers that the alliance is likely to result in some, smaller, level of public benefit through:
- scheduling optimisation, enabling better scheduling choices for passengers – however opportunities for scheduling optimisation will be limited to routes where both airlines operate services, of which post March 2018 there will only be four
 - avoidance of duplicated fixed costs – however, again, these opportunities are primarily limited to the small number of routes where both airlines operate services, and
 - stimulation of tourism, particularly through facilitating ease of travel to regional areas and between major gateway cities in Australia for international tourists.
242. The ACCC considers that the operational overlap between Qantas and Emirates in relation to the majority of their networks, and the associated potential for coordination between them to generate significant competitive detriment, is limited. However, on the Sydney - Christchurch route the ACCC considers that Qantas and Emirates are the major carriers and the likely competitive detriment generated by the alliance in respect of that route is likely to be significant.
243. The alliance reduces the number of independently operated services from three to two (Qantas/Emirates/Jetstar and the Virgin/Air New Zealand alliance) with the alliance having around a 68 per cent share of seats flown.
244. The ACCC considers that Virgin Australia/Air New Zealand is unlikely to sufficiently constrain the alliance in the event that the alliance decided to reduce or limit growth in capacity. The other potential constraint on the alliance is the likelihood of timely entry on the route. However, the ACCC does not consider that there is a likelihood of timely, sufficient, entry on the Sydney- Christchurch route that would provide a competitive constraint to Qantas and Emirates.
245. Therefore, the ACCC considers that the Proposed Conduct is likely to result in significant public detriments in the form of an increased ability and incentive for

the parties to unilaterally reduce or limit growth in capacity on the Sydney - Christchurch route in order to raise airfares. The ACCC does not consider that there are sufficient competitive constraints to prevent such an outcome.

246. The ACCC considers overall that, across all the routes covered by the alliance, there are likely to be public benefits that would outweigh the likely public detriments, including any public detriments in respect of any lessening of competition. Accordingly, the ACCC is satisfied that the relevant net public benefit test is met.
247. However, most of the public detriments identified relate to the Sydney-Christchurch route, and the ACCC remains concerned that the alliance provides Qantas and Emirates with the incentive and ability to reduce capacity and raise airfares on that route, and that the constraint from other current or potential competitors is insufficient to prevent this. The ACCC therefore has imposed a condition of authorisation, with the objective of reducing this likely public detriment, as discussed below.

Condition of authorisation

248. The power conferred upon the ACCC to authorise conduct is discretionary.⁸⁵ In exercising that discretion, the ACCC may have regard to considerations relevant to the objectives of the Act.⁸⁶
249. The ACCC may specify conditions in an authorisation.⁸⁷ The legal protection provided by the authorisation does not apply if any of the conditions are not complied with.⁸⁸
250. The ACCC may specify conditions in circumstances where, although the relevant public benefit test is met, without the conditions the ACCC would not be prepared to exercise its discretion in favour of authorisation.⁸⁹ In this instance, the ACCC considers it necessary to specify a condition to address public detriments arising in connection with the Sydney to Christchurch route.
251. As outlined above, the ACCC considers that, across all the routes covered by the alliance, there are likely to be public benefits that would outweigh the likely public detriments arising. However, most of the likely public detriments arise in connection with a single route, the Sydney-Christchurch route. The ACCC is concerned that the Proposed Conduct provides Qantas and Emirates with the incentive and ability to reduce capacity and raise airfares on that route.
252. The condition imposed by the ACCC has the objective of reducing this likely public detriment.

Form of condition

253. The ACCC has considered whether imposing a capacity constraint in respect of the Sydney-Christchurch route, with effect from commencement of the authorisation, would address its concerns in respect of likely public detriments on that route.
254. The ACCC considers that a capacity commitment could, if appropriately set, limit the identified competitive harm on the Sydney - Christchurch route by limiting the

⁸⁵ *Application by Medicines Australia Inc* (2007) ATPR 42-164 at [106].

⁸⁶ *Application by Medicines Australia Inc* (2007) ATPR 42-164 at [126].

⁸⁷ Section 88(3).

⁸⁸ Section 88(3).

⁸⁹ *Application by Medicines Australia Inc* (2007) ATPR 42-164 at [133].

ability of the Applicants to unilaterally reduce or limit growth in capacity. However, the ACCC is conscious that a capacity commitment set too high risks the Applicants having excess capacity on the route, potentially crowding out other operators and raising barriers to entry. It could result in an inefficient allocation of capacity which could artificially restrict growth on other routes and limit the Applicants' flexibility to best match capacity with demand.

255. A further issue in setting a route specific capacity condition is determining the level of capacity that must be operated. While the Sydney - Christchurch route is a mature and stable route, passenger demand has fluctuated in recent years. In this respect, market conditions on the route over the next five years would be difficult to forecast with precision and difficult to accommodate in any mechanism for growing or maintaining capacity levels during the term of the authorisation.
256. Further, a route specific capacity condition could confer significant market power to relevant airports with the Applicants having little alternative but to maintain the level of capacity set on the Sydney – Christchurch route in response to a rise in airport fees. Any increase in airport fees is likely to be reflected in higher airfares offered to passengers and/or absorbed by Qantas and Emirates, impacting their ability to effectively compete on the route.
257. In contrast, the capacity conditions imposed by the ACCC on the original authorisations applied in aggregate across the four routes where the ACCC had competition concerns at that time (Sydney/Melbourne/Brisbane - Auckland and Sydney - Christchurch). This provided the Applicants with flexibility about how they allocated capacity on individual routes allowing the Applicants to adjust capacity across the routes in response to changes in market conditions. As the ACCC no longer has concerns in respect of the other three routes, due to a change in the Applicants' network services, it does not consider it appropriate to impose capacity requirements in aggregate across all four routes to address its concerns in respect of the Sydney - Christchurch route.
258. For these reasons, the ACCC does not propose to require the Applicants to maintain a set level of capacity on the Sydney - Christchurch route from the outset of the authorisation period. Rather, the ACCC has imposed a condition providing the ACCC with the ability to monitor the Applicants' operations on this route and, at any time during the term of the authorisation, to impose a Sydney - Christchurch route specific capacity requirement (to maintain or grow capacity).
259. The condition provides that, before deciding to impose a capacity requirement, the ACCC must conduct a review, including consulting with the Applicants and undertaking any other consultation the ACCC considers necessary.
260. The condition proposed in the draft determination proposed to set an upper limit on the capacity requirement the ACCC could impose based on capacity flown in the twelve month period from 1 April 2017 to 31 March 2018 and growth in Australian and New Zealand GDP between April 2018 and the time when the capacity requirement is imposed.
261. The Applicants submit that GDP is a blunt metric by which to measure growth in demand and that the ACCC should have regard to other factors, such as market conditions and airline capacity, when setting the level of any capacity requirement.⁹⁰
262. The ACCC does not propose that any capacity requirement be based solely on GDP growth. Rather, the condition proposed in the draft determination used GDP growth to set an upper limit on any capacity requirement that can be imposed.

⁹⁰ Submission from Applicants in response to ACCC' draft determination received 16 February 2018.

That is, the effect of the clause relating to GDP is actually to limit the ACCC's discretion when setting any capacity requirement. The ACCC also intends that regard also be had to other factors, not just GDP, when imposing any capacity requirement.

263. To this end, the condition proposed in the draft determination specified the factors the ACCC must have regard to in determining whether to impose a capacity requirement. These factors include, but are not limited to, current market conditions, airlines' current and planned future capacity growth on the Sydney - Christchurch route, available forecasts of passenger demand on trans-Tasman Routes and the impact of the requirement on profitability on the Sydney - Christchurch route.
264. To remove any ambiguity about this issue, the condition imposed has been amended from that proposed in the draft determination to explicitly reflect that the ACCC must have regard to these factors both in determining whether to impose a capacity requirement *and* in determining the level at which any capacity requirement is set.
265. The condition proposed in the draft determination also included a requirement that the Applicants report each scheduling season on seats and passengers flown, route specific costs and revenues and average fares on the Auckland - Australia and Sydney - Christchurch routes. This is a similar reporting condition to that imposed by the ACCC on the original authorisation in 2013.
266. The revenue, cost and load factor information (seats flown versus passengers flown) will assist the ACCC to gauge during the term of the authorisation whether the Applicants are reducing or limiting growth in capacity on the Sydney - Christchurch route to raise airfares. It will also provide an indication of whether fares on the Sydney - Christchurch route are rising relative to costs, both in absolute terms and compared to other routes flown by the Applicants.
267. The condition allows the ACCC to decide to conduct a review and impose a capacity requirements at any time for Sydney - Christchurch where the data indicates that the alliance has been exercising its market power with airfare increases or capacity changes that do not match changes in demand.
268. Further, the requirement to report to the ACCC, coupled with the ability for the ACCC to review whether to impose a capacity requirement on the Sydney - Christchurch route at any time, is likely in itself to act as a constraint on the Applicants in setting prices and allocating capacity on the Sydney - Christchurch route, therefore ensuring that the likely public detriments are limited.
269. In response to the draft determination the Applicants submit that the reporting requirements in the condition, in requiring them to report on their operations on the Australia - Auckland routes as well as the Sydney - Christchurch route, go beyond what is necessary to address any perceived competitive detriments on the Sydney - Christchurch route, because the Applicants submit that the Auckland routes are not analogous to the Sydney - Christchurch route. The Applicants submit that the reporting requirements should be limited only to the route of concern, Sydney - Christchurch.⁹¹
270. The ACCC agrees that the Sydney - Christchurch route is not directly analogous to the Australia - Auckland routes. Information about the Australia - Auckland routes needs to be considered accordingly. However, in the absence of a perfectly analogous route, the ACCC considers that information about the Australia - Auckland routes is necessary for the ACCC in any consideration of a

⁹¹ Submission from Applicants in response to ACCC' draft determination received 16 February 2018.

capacity requirement as a point of comparison to the Sydney - Christchurch route. Specifically, as noted, this information provides a direct point of comparison with the Sydney - Christchurch route in assessing whether fares are rising relative to costs. Further, reporting about the Australia - Auckland routes provides information about market conditions on trans-Tasman routes more broadly, which will also assist the ACCC in any future consideration about whether the Applicants are reducing or limiting growth in capacity on the Sydney - Christchurch route to raise airfares.

271. While it is the case that in 2013 the ACCC only required reporting about routes where competition concerns arose, this was in the context where there were a number of such routes. Therefore, in gauging during the term of that authorisation whether the Applicants were reducing or limiting growth in capacity on a particular route, the reporting condition gave the ACCC access to information about other relevant routes. Requiring reporting about the Australia - Auckland routes will similarly provide such information in the current context. Such information would not be available if the reporting requirement was limited to routes where the ACCC continues to have competition concerns, given that there is now only one such route.
272. Further, in this context the ACCC does not consider that continued reporting about these routes, as the Applicants have been doing since 2013, is unduly burdensome.
273. Accordingly, the condition imposed maintains the requirement to report information for both the Sydney - Christchurch and Australia - Auckland routes.
274. The Applicants also submit that they should not be required to report on average fares by cabin class on the Sydney - Christchurch and Australia - Auckland routes as proposed in the draft determination, noting that such reporting was not required when the alliance was authorised in 2013.⁹²
275. The ACCC considers that information about average fares will assist in gauging during the term of the authorisation whether the Applicants are reducing or limiting growth in capacity on the Sydney - Christchurch route to raise airfares. The ACCC also notes that reporting requirements about fares have been imposed in authorisations granted more recently to assist the ACCC in monitoring whether alliances are reducing or limiting growth in capacity to raise airfares. For example, the Qantas - China Eastern alliance is required to report this information on routes between Shanghai and Australia. Accordingly, the condition imposed in this determination maintains the requirement (as proposed in the draft determination) for the Applicants to report average fares by cabin class on the Sydney - Christchurch and Australia - Auckland routes.
276. The condition of authorisation proposed in the draft determination also included a provision that would allow the Applicants to apply for a variation to the condition in certain circumstance, including if there is a material change in market conditions on trans-Tasman routes.
277. The Applicants submit that when considering an application for a variation to the condition on the basis of a material change in market conditions, the ACCC should also be required to have regard to the impact of services operated by Emirates from Dubai to New Zealand which bypass Australia.⁹³
278. Given the recent changes to Emirates' operations, including the commencement of direct services between Dubai and Auckland and the withdrawal from operating

⁹² Submission from Applicants in response to ACCC' draft determination received 16 February 2018.

⁹³ Submission from Applicants in response to ACCC' draft determination received 16 February 2018.

services on routes between Australia and Auckland, the ACCC agrees that it is appropriate to have regard to the impact of these services when considering any application for variation to the condition. The ACCC has amended the condition of authorisation to reflect this.

279. The condition is set out in full at **Attachment A**.

Length of authorisation

280. The Act allows the ACCC to grant authorisation for a limited period of time.⁹⁴ 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.

281. In this instance, the Applicants seek authorisation for five years which aligns with the term of the Restated MCA.

282. As noted above, the ACCC has significant concerns about the impact on competition of the Proposed Conduct on the Sydney - Christchurch route. The condition imposed by the ACCC is designed to mitigate the resultant public detriment. The ACCC also considers that the Proposed Conduct is likely to result in significant public benefits.

283. Having regard to the ACCC's conclusions about the public benefits and public detriments likely to result from the Proposed Conduct, and the dynamic and evolving nature of the aviation industry, as demonstrated by the significant network changes the Applicants have made since the alliance was first authorised in 2013, the ACCC grants authorisation for the Proposed Conduct for five years.

⁹⁴ Subsection 91(1) of the CCA.

Determination

The application

284. On 11 October 2017, Qantas Airways Limited and its related bodies corporate and Emirates lodged application AA1000400 with the ACCC under section 91C(1) of the *Competition and Consumer Act (2010)* seeking revocation of existing authorisations A91332 and A9133, and substitution of a new authorisation (AA1000400).⁹⁵
285. The Applicants seek re-authorisation to continue to coordinate their air passenger and cargo transport operations and other related services across their respective networks, including in relation to planning, scheduling, operating and capacity, sales, marketing, advertising, promotion, and pricing for passengers, freight customers and agents, connectivity and integration of certain routes, codeshare and interline arrangements, frequent flyer programs and all aspects of customer service, including ground services and lounge access, pursuant to the Restated MCA.
286. The Applicants seek authorisation for a period of five years.

The net public benefit test

287. For the reasons outlined in this determination, the ACCC is satisfied, pursuant to sections 90(7) and 90(8) of the Act, 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.⁹⁶
288. Notwithstanding the above, the ACCC has decided to specify a condition upon the exercise of its discretion to authorise the alliance in order to address its concerns about the public detriment likely to result in relation to the Sydney-Christchurch route.
289. Accordingly, the ACCC grants conditional authorisation to application AA1000400.

Conduct for which the ACCC grants authorisation

290. The ACCC revokes authorisations A91332 and A9133 and grants a new conditional authorisation (AA1000400) to the Applicants to give effect to the Restated MCA under which they will coordinate air passenger and cargo transport operations and other related services across their respective networks, subject to the conditions set out in Attachment A.
291. The 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 Act.⁹⁷

⁹⁵ On 6 November 2017, a number of amendments to the Act came into effect, including changes to the authorisation provisions in Division 1 of Part VII of the Act. This application for authorisation is assessed by the ACCC in accordance with the Act as amended.

⁹⁶ As a cartel provision applies to the Proposed Conduct, section 90(7)(a) does not apply: section 90(8).

⁹⁷ The reference to “within the meaning of section 45 of the Act” 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. As former s4D of the Act on exclusionary provisions has been repealed

292. The ACCC grants conditional authorisation for five years.
293. This determination is made on 23 March 2018. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 14 April 2018.

Interim authorisation

294. The existing authorisations (A91332 and A9133) are due to expire on 31 March 2018.
295. As this authorisation will not come into force until after the expiry of the existing authorisations, the ACCC has decided to suspend the operation of authorisations A91332 and A9133, with effect from 31 March 2018, and grant interim authorisation in substitution for the authorisations suspended. Interim authorisation is granted for the Applicants to coordinate their air passenger and cargo transport operations and other related services across their respective networks, including in relation to planning, scheduling, operating and capacity, sales, marketing, advertising, promotion, and pricing for passengers, freight customers and agents, connectivity and integration of certain routes, codeshare and interline arrangements, frequent flyer programs and all aspects of customer service, including ground services and lounge access, pursuant to the Restated MCA.
296. Interim authorisation will remain in effect until it is revoked or until the date this re-authorisation comes into effect.

pursuant to the amendments referenced above, references to exclusionary provisions have been excluded from the description of the Proposed Conduct.

Attachment A – Condition of Authorisation

APPLICATION FOR AUTHORISATION AA1000400 – CONDITION

OBJECTIVE

The Condition provides that the ACCC may over the term of the authorisation decide, following a review, to require the Applicants to maintain a set level of capacity on the Sydney – Christchurch city pair.

The Condition also requires the Applicants to provide information to the ACCC on an ongoing basis in relation to the Alliance.

The ACCC may vary the Condition in exceptional circumstances, or where there is a material change in market conditions or financial performance.

1. CAPACITY REVIEW AND REQUIREMENTS

- (a) Initially, the Applicants are not required to maintain a particular level of capacity on the Sydney – Christchurch city pair.
- (b) The ACCC may, at any time in the Term and in its absolute discretion, conduct a review of capacity on the Sydney – Christchurch city pair and decide:
 - (i) to impose a Capacity Requirement; and
 - (ii) the level of any such Capacity Requirement.
- (c) When conducting a review pursuant to clause 1(b), the ACCC:
 - (i) must consult with the Applicants and allow the Applicants an opportunity to make submissions within a specified period;
 - (ii) may undertake such further consultation as it considers necessary, including inviting submissions within a specified period from the Applicants and interested parties; and
 - (iii) may publish or otherwise make publicly available the Applicants or third parties' submissions in relation to the review.
- (d) Without limiting the matters the ACCC may take into account for the purpose of determining whether to impose a Capacity Requirement, and the level at which the capacity requirement is set, the ACCC must have regard to the following matters:
 - (i) current market conditions on trans-Tasman Routes;
 - (ii) airlines' current and planned future capacity growth on the Sydney – Christchurch City Pair;
 - (iii) available forecasts of passenger demand on trans-Tasman Routes;

- (iv) the size and type of aircraft operated by the Applicants;
 - (v) regulatory constraints on either of the Applicants' ability to operate on the Sydney – Christchurch City Pair;
 - (vi) the Applicants' ability to obtain relevant airport slots; and
 - (vii) the impact on Route Profitability on the Sydney – Christchurch City Pair.
- (e) The ACCC must not impose a Capacity Requirement that is more than:
- (i) 100 per cent of the applicable Sydney – Christchurch City Pair Scheduling Season Base Year Seat Capacity, plus
 - (ii) 100 per cent of the applicable Sydney – Christchurch City Pair Scheduling Season Base Year Seat Capacity multiplied by the Sydney – Christchurch Growth Rate Cap.
- (f) On completion of its review, the ACCC will advise the Applicants in writing of any Capacity Requirement to be imposed in accordance with clause 1(b).
- (g) The Applicants must implement the Capacity Requirement from an effective date to be determined by the ACCC.
- (h) The reporting requirement in clause 2 continues irrespective of whether the ACCC is conducting a review or has imposed a Capacity Requirement under this clause 1.

2. REPORTING OBLIGATIONS

- (a) Within three months of the end of each Scheduling Season (or such longer period as is agreed with the ACCC) during the Term, the Applicants must provide, for each month of the previous Scheduling Season, the following information to the ACCC:
- (i) for each Applicant separately, the total number of seats flown by the Applicants by cabin class on each Relevant Route;
 - (ii) for each Applicant separately, the total number of passengers identifying separately
 - (a) Point to Point Passengers and
 - (b) Connecting Passengers, identified by the destination or origin travelled to and/or from
 flown by the Applicants by cabin class on each Relevant Route;

- (iii) for each Applicant separately, total passenger revenue on each Relevant Route broken down between Point to Point and Connecting passengers
- (iv) for each Applicant separately, and for the Alliance, by cabin class, total passenger and cargo revenue on each Relevant Route, average revenue per available seat kilometre (RASK) and revenue passenger kilometres (RPK), in accordance with the information that is retained in their financial accounting system;
- (v) if the revenue figures provided in accordance with clause 2(a)(iii) do not include all ancillary charges (including but not limited to in-flight food and entertainment purchases and excess or additional baggage purchases), the total amount of ancillary charges for each Relevant Route, where that information is available to the Applicant in accordance with the relevant Applicant's financial accounting systems;
- (vi) for each Applicant separately, operating cost on each Relevant Route and average cost per available seat kilometre (CASK) both in total and disaggregated by fixed and variable costs as is reported in the relevant Applicant's financial accounting systems, including but not limited to:
 - (a) all direct costs;
 - (b) fixed operating costs; and
 - (c) an allocation of overheads.

- (b) Within three months of the end of each Scheduling Season during the Term, each of the Applicants must separately provide to the ACCC, for each month of the previous Scheduling Season, the average fare by cabin class for each Service, for each Relevant Route.
- (c) The Applicants must provide a written description of the methodology used to calculate the revenue and cost figures provided in accordance with clauses 2(a)(iii) and (iv), and the ancillary charge figures provided in accordance with clause 2(a)(v) which description must include particulars of:
 - (i) all inclusions (e.g., any taxes or surcharges) and exclusions; and
 - (ii) any changes to the Applicants' methodology compared to the methodology used for reporting under this clause 2 for the previous Scheduling Season.
- (d) The information in this clause 2 must be provided to the ACCC in an accessible spreadsheet format.
- (e) The information in this clause 2 must be provided to the following email address: adjudication@acc.gov.au

3. ADJUSTMENT TO SCHEDULING SEASON BASE YEAR CAPACITY

3.1 Northern Winter Season

- (a) On or before 30 June 2018 (or such other date as is agreed with the ACCC), the Applicants must provide the ACCC with:
 - (i) **confirmed** Sydney – Christchurch City Pair Scheduling Season Base Year Seat Capacity figures from BITRE for the NW Season ending 31 March 2018, for those figures in Schedule A to this Condition which are identified as being **provisional**; and
 - (ii) for each Applicant, the Route Profitability Information for each Relevant Route for each month of the Base Year.
- (b) In relation to clause 3.1(a)(i), the ACCC may undertake any consultation it considers necessary in relation to the confirmed figures provided by the Applicants.
- (c) After considering the information provided by the Applicants in accordance with clause 3.1(a)(i), the outcome of any consultation undertaken in accordance with clause 3.1(b), and any other information the ACCC considers relevant, the ACCC may decide to adjust the provisional figures in Schedule A to the Condition.
- (d) The ACCC will give notice in writing to the Applicants of its decision on whether to adjust the provisional figures in Schedule A to the Condition in accordance with clause 3.1(c) above.

- (e) Any such adjustment will come into effect from the next NW Season after the date of the ACCC decision or such other date as determined by the ACCC, and the figures in Schedule A so adjusted will apply for the remainder of the Term, unless subject to further adjustment pursuant to clause 3.2.
- (f) If the ACCC decides not to adjust the provisional figures in Schedule A in accordance with clause 3.1(c), the provisional figures in Schedule A will be taken as confirmed and will apply for the remainder of the Term, unless subject to further adjustment pursuant to clause 3.2.

3.2 Changes to BITRE's methodology for reporting the number of seats flown

- (a) If BITRE changes its methodology for reporting the number of seats flown on the Relevant Routes from that which was used to calculate the Sydney – Christchurch City Pair Scheduling Season Base Year Seat Capacity figures in Schedule A, then the ACCC may adjust the Sydney – Christchurch City Pair Scheduling Season Base Year Seat Capacity figures in Schedule A to reflect BITRE's new methodology.
- (b) In relation to clause 3.2(a), the ACCC will consult with the Applicants prior to making any adjustment.
- (c) The ACCC will give notice in writing to the Applicants of its decision on whether to adjust the figures in Schedule A in accordance with clause 3.2(a).
- (d) Any adjustment made under clause 3.2(a) will come into effect on a date that is determined by the ACCC.

4. VARIATIONS TO THE CONDITION

4.1 Applications to vary the Condition

- (a) The Applicants may apply in writing to the ACCC for a variation to the Condition, in the following circumstances:
 - (i) Exceptional Circumstances;
 - (ii) Material Change in Market Conditions; or
 - (iii) Material Adverse Financial Performance.
- (b) Any application by the Applicants to the ACCC for a variation to the Condition must state the nature of the variation sought and the circumstances claimed by the Applicants and must be accompanied by evidence supporting the application.

- (c) The ACCC will consult with the Applicants in relation to the application for variation to the Condition and allow the Applicants an opportunity to make submissions within a specified period.
- (d) The ACCC may request from the Applicants any additional information required by the ACCC to assess the application for a variation of the Condition.
- (e) The ACCC may undertake any further consultation as it considers necessary to consider any such request for a variation to the Condition, including inviting submissions from interested parties.
- (f) In undertaking an assessment of an application to vary the Condition, the ACCC may publish or otherwise make publicly available the Applicants' submissions in support of their request for variation and to any submissions made by the interested parties.
- (g) Without limiting the matters to which the ACCC may have regard for the purpose of determining whether to vary the Condition (including whether a Material Change in Market Conditions has occurred), the ACCC must have regard to any entry or expansion by airlines or capacity conditions applying to airlines in an Alliance other than the Applicants on any Relevant Route and any commencement of services by the Applicants on any trans-Tasman Route that neither of the Applicants serviced at the commencement of the Term.
- (h) After considering an application to vary the Condition and any submissions received in respect of such an application, the ACCC may, in its absolute discretion, determine to vary the Condition or dismiss the application for variation.
- (i) The ACCC may vary the Condition subject to any conditions as the ACCC sees fit.
- (j) The ACCC will advise the Applicants in writing of its decision in respect of an application for variation made under clause 4.1(a).
- (k) If the ACCC determines to vary the Condition, the variation will be effective from the date determined by the ACCC.

4.2 ACCC may make minor variations

- (a) Notwithstanding clause 4.1 above, the ACCC may vary the Condition at any time, provided that:
 - (i) the variation does not involve a material change in the effect of the Condition; and
 - (ii) prior to making the variation, the ACCC has obtained the Applicants' consent, in writing, to the variation.

- (b) The ACCC will advise the Applicants in writing of any variation made in accordance with 4.2(a).
- (c) Any variation to the Condition made under this clause 4.2 will be effective from the date notified to the Applicants by the ACCC.

5. INFORMATION

- (a) The Applicants must respond as soon as practicable to any queries or requests for information or documents made by the ACCC pursuant to or in relation to the Condition.
- (b) The ACCC may direct the Applicants in respect of their compliance with the Condition to, and the Applicants must:
 - (i) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (ii) produce documents to the ACCC within the Applicants' custody, power or control in the time and in the form requested by the ACCC; and/or
 - (iii) attend the ACCC at a reasonable time and place appointed by the ACCC to answer any questions the ACCC (including its Commissioners, its staff or its agents) may have.
- (c) Information furnished, documents produced or information given in response to any request or direction from the ACCC under the Condition may be used by the ACCC for any purpose consistent with the exercise of its statutory duties and functions.
- (d) Nothing in the Condition requires the provision of information or documents in respect of which either of the Applicants claim legal professional or other privilege.

6. AUDIT OF COMPLIANCE

6.1 Requirement for audit of compliance

- (a) Notwithstanding clause 6.2 below, the Applicants are required to comply with this clause 6 only if the ACCC imposes a Capacity Requirement in accordance with clause 1(b).

6.2 Obligation to appoint an independent auditor

- (a) The Applicants must appoint and maintain an independent auditor to audit and report to the ACCC with respect to the compliance by the Applicants with any Capacity Requirement imposed pursuant to clause 1 of the Condition.

6.3 Proposed Auditor

- (a) By a date determined by the ACCC, the Applicants must identify a prospective independent auditor (**Proposed Independent Auditor**) and

provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule B to the Condition (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.

- (b) The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- (c) Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
 - (i) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
 - (ii) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of the Applicants;
 - (iii) draft terms of appointment and the draft audit plan are consistent with the Condition; and
 - (iv) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

6.4 Appointment of the Approved Independent Auditor

After receiving a written notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, the Applicants must, within five Business Days:

- (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
- (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

6.5 Failure to appoint

If the Approved Independent Auditor has not been appointed:

- (a) by the date determined by the ACCC;
- (b) within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clauses 6.10(a) or 6.10(b) or 6.10(c); or
- (c) if the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 6.3(a);

then, the ACCC at its absolute discretion may:

- (d) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
- (e) direct the Applicants to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

6.6 Obligations and powers of the Approved Independent Auditor

The applicants must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:

- (a) maintain his or her independence from the Applicants, apart from appointment to the role of Approved Independent Auditor, including not form any relationship of the types described in paragraph 2(c) of Schedule B to the Condition with the Applicants for the period of his or her appointment;
- (b) conduct compliance auditing according to the Approved Audit Plan;
- (c) provide the following reports directly to the ACCC:
 - (i) a scheduled written Audit Report as described in clause 6.7(c); and
 - (ii) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with the Condition by any person named in these Condition; and
- (d) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under the Condition.

The Applicants must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:

- (e) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
- (f) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

6.7 Compliance audit

- (a) The Approved Independent Auditor must within three months of the end of a Scheduling Season (or such longer period as is agreed with the ACCC), provide to the ACCC a written Audit Report as set out in clauses 6.7(b) and (c) in relation to the Applicants' compliance with any Capacity Requirement imposed pursuant clause 1.
- (b) The Audit Report must be conducted to a Reasonable Assurance standard.

- (c) The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) that includes:
- (i) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
 - (ii) a full audit of the Applicants' compliance with the Condition;
 - (iii) identification of any areas of uncertainty or ambiguity in the Approved Independent Auditor's interpretation of any obligations contained in the Condition;
 - (iv) all of the reasons for the conclusions reached in the Audit Report;
 - (v) any qualifications made by the Approved Independent Auditor in forming his or her views;
 - (vi) any recommendations by the Approved Independent Auditor to improve:
 - (1) the Approved Audit Plan;
 - (2) the integrity of the auditing process;
 - (3) the Applicants' processes or reporting systems in relation to compliance with the Condition; and
 - (4) the Applicants' compliance with the Condition; and
 - (5) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- (d) The Approved Independent Auditor must provide the Applicants with a draft Auditor's Report prior to it being provided to the ACCC, for the sole purpose of the Applicants having the opportunity to identify any factual errors. The Approved Independent Auditor retains complete discretion as to whether to accept or reject any corrections of factual errors proposed by the Applicants. Where corrections are accepted by the Approved Independent Auditor, the Approved Independent Auditor will provide the ACCC with details of the corrections proposed by the Applicants and accepted by the Approved Independent Auditor.
- (e) The Applicants must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period agreed as agreed in writing with the ACCC.
- (f) The Applicants must comply with any direction of the ACCC in relation to the matters arising from any Audit Report, within 10 Business Days of being so directed to do so (or such longer period as is agreed with the ACCC).

6.8 Information requests

- (a) In respect of the Applicants' compliance with any Capacity Requirement imposed pursuant to clause 1 of the Condition or the Approved Independent Auditor's compliance with its Approved Terms of Appointment, the ACCC may request the Approved Independent Auditor to:
 - (i) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (ii) produce documents to the ACCC within the Approved Independent Auditor's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (iii) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- (b) The Applicants will use their best endeavours to ensure that the Approved Independent Auditor complies with any request from the ACCC in accordance with clause 6.8(a).
- (c) The ACCC may in its discretion to be exercised in good faith:
 - (i) advise the Approved Independent Auditor of any request made by it under this clause 5; and/or
 - (ii) provide copies to the Independent Auditor of any information furnished, documents produced or information given to it under clause 5.

6.9 Applicant's obligations in relation to the Approved Independent Auditor

Without limiting its obligations in the Condition, the Applicants must:

- (a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
- (b) maintain and fund the Approved Independent Auditor to carry out his or her functions including:
 - (i) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor; and

- (c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:
 - (i) directing the Applicants' personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 6.9;
 - (ii) providing access to the facilities, sites or operations of the Applicants' businesses as required by the Approved Independent Auditor;
 - (iii) providing to the Approved Independent Auditor any information or documents he or she considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
 - (iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
 - (v) not appointing the Approved Independent Auditor, or have any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

6.10 Resignation, revocation or termination of the Approved Independent Auditor

- (a) The Applicants must immediately notify the ACCC in writing in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor before the termination of this Authorisation.
- (b) The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- (c) The ACCC may approve any proposal by, or alternatively may direct, the Applicants to terminate the appointment of the Approved Independent Auditor if in the ACCC's view the Approved Independent Auditor acts inconsistently with the provisions of the Condition or the Approved Terms of Appointment.

7. DEFINITIONS AND INTERPRETATION

ACCC means the Australian Competition and Consumer Commission.

Alliance means the alliance between the Applicants pursuant to the Restated Master Coordination Agreement dated 11 October 2017.

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

Approved Audit Plan means the plan approved by the ACCC in accordance with the terms of the Condition, by which the Approved Independent Auditor will audit and report upon compliance with any Capacity Requirement imposed pursuant to clause 1 of the Condition.

Approved Independent Auditor means the person approved by the ACCC and appointed under clause 6 of the Condition.

Approved Terms of Appointment means the terms of appointment for the Approved Independent Auditor as approved by the ACCC in accordance with the terms of the Condition.

Associated Entity has the meaning given by section 50AAA of the Corporations Act.

Audit Report has the meaning given to it in clause 6.7(c) of the Condition.

Authorisation means the determination by the ACCC regarding application for authorisation AA1000400.

Base Year means the 12 month period from 1 April 2017 to 31 March 2018.

BITRE means the Bureau of Infrastructure, Transport, and Regional Economics.

Business Day means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory, New South Wales or Dubai.

Capacity Requirement means a requirement for the Applicants to operate a stipulated number of seats annually on the Sydney – Christchurch city pair.

Conditions mean the condition (including Schedule A) subject to which the Authorisation is granted.

Connecting Passenger means any passenger carried by an Applicant on a single Relevant Route starting in Australia and ending in New Zealand, or vice versa, who before or after that Relevant Route, as part of the same journey, travels from or to another destination (domestic or international) operated by Qantas or Emirates.

Corporations Act means the *Corporations Act 2001* (Cth)

Entities Connected has the meaning given by section 64B of the Corporations Act.

Exceptional Circumstances include:

- (a) force majeure events, including natural disasters, national emergency, insurrection, riot, war, pandemic; or
- (b) events or factors outside of the control of the Applicants:
 - (i) such that the Applicants cannot, or on reasonable grounds anticipate that they cannot, practically comply with the Condition; or
 - (ii) which have or are reasonably anticipated to have a material adverse impact on the demand for travel on the Applicants'

services or the Applicants' service operating costs, or affecting operations on the Relevant Routes.

Material Adverse Financial Performance means an actual decline in Route Profitability (whether the result is a profit or a loss) for the one or both of the Applicants which the ACCC agrees in writing is material on:

- (a) a Relevant Route;
- (b) more than one Relevant Route; or
- (c) all Relevant Routes;

when compared to the Relevant Route Profitability of each of or both of (as applicable) the Applicants in the Base Year.

Material Change in Market Conditions means a change to the market conditions which the ACCC agrees in writing to be material on:

- (a) a Relevant Route;
- (b) more than one Relevant Route;
- (c) all Relevant Routes; or
- (d) any city pair between Dubai and New Zealand.

NS Season means the northern summer season from 1 April to 31 October.

NW Season means the northern winter season from 1 November to 31 March.

Point to Point Passenger means any passenger carried by an Applicant on a single Relevant Route starting in Australia and ending in New Zealand, or vice versa.

Proposed Independent Auditor means a person named in a Proposed Independent Auditor Notice.

Proposed Independent Auditor Notice has the meaning given to it in clause 6.3(a) of the Condition.

Reasonable Assurance audit means an audit conducted pursuant to a 'reasonable assurance' engagement in accordance with the Australian Auditing Standards, and in particular ASAE3000 'Assurance Engagements other than Audits or Reviews of Historical Financial Information'.

Related Entities has the meaning given to it by section 9 of the *Corporations Act 2001* (Cth).

Related Parties has the meaning given to it by section 228 of the *Corporations Act 2001* (Cth).

Relevant Route means any of the following city pairs:

- (a) Sydney – Auckland;

- (b) Melbourne – Auckland;
- (c) Brisbane – Auckland; and
- (d) Sydney – Christchurch.

Route Profitability: means the profit (or loss) on a Relevant Route (which may be represented in terms of a net margin, that is, net route profit expressed as a percentage of total route revenue) determined in accordance with the relevant Applicant’s usual management accounting methodology (that is, the same methodology that Applicant uses to determine route profitability on all other Relevant Routes).

Route Profitability Information: means information regarding the profit (or loss) on a Relevant Route accompanied by reports including categorised details of revenues and costs and an explanation of the relevant revenue and cost categories, determined in accordance with the relevant Applicant’s usual management accounting methodology (that is, the same methodology that Applicant uses to determine route profitability on all other Relevant Routes).

Scheduling Season: means either the NS Season or the NW Season.

Service means any itinerary offered by Qantas or Emirates:

- (a) starting in Australia and ending in New Zealand, or vice versa;
- (b) starting and ending in Australia and including at least one destination in New Zealand; or
- (c) starting and ending in New Zealand and including at least one destination in Australia

comprising one or more flight segments (including domestic flight segments) available on a single ticket.

Sydney – Christchurch City Pair Scheduling Season Base Year Seat

Capacity: means the Applicants’ combined total number of seats flown on the Sydney – Christchurch city pair in, as applicable, the NS Season or the NW Season in the Base Year as set out in Schedule A of the Condition, and as adjusted in accordance with clause 3 of the Condition.

Sydney – Christchurch Growth Rate Cap: is $((AUSPAXSS / TOTALPAXSS) \times AUSGDP) + ((NZPAXSS / TOTALPAXSS) \times NZGDP)$ where:

AUSPAXSS means the total number of flight segments sold by the Applicants in Australia for travel on the Sydney – Christchurch city pair between 1 November 2017 and the end of the later of the NS Season or NW Season which finishes immediately prior to the ACCC commencing a review under clause 1.

NZPAXSS means the total number of flight segments sold by the Applicants in New Zealand for travel on the Sydney – Christchurch city pair between 1 November 2017 and the end of the later of the NS Season or NW Season which finishes immediately prior to the ACCC commencing a review under clause 1.

TOTALPAXSS means the total number of Australian originated tickets sold by the Applicants and New Zealand originated tickets sold by the Applicants for

travel on the Sydney – Christchurch city pair between 1 November 2017 and the end of the later of the NS Season or NW Season which finishes immediately prior to the ACCC commencing a review under clause 1.

AUSGDP means the sum of quarterly changes in Australia’s Trend Chain Volume GDP, as published by the Australian Bureau of Statistics in Catalogue No 5206.0, data series A2298668K, commencing from the April-June 2017 quarterly change.

NZ GDP means the sum of quarterly changes in New Zealand’s GDP as published by Stats NZ, commencing from the April-June 2017 quarterly change.

Term: means the term of the Authorisation.

trans-Tasman Route means any city pair between a city in Australia and a city in New Zealand.

Interpretation

In the interpretation of the Condition, the following apply unless the context otherwise requires:

- (a) a reference to the Condition includes its schedules;
- (b) headings are inserted for convenience only and do not affect the interpretation of the Condition;
- (c) if the day on which any act, matter or thing is to be done under the Condition is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (d) a reference in the Condition to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (e) a reference in the Condition to any company includes its Related Bodies Corporate;
- (f) a reference in the Condition to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to the Condition;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;

- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Condition (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of the Condition may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Condition and the ACCC's Determination A1000400; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Condition and the purpose or object underlying the Condition, leads to a result that does not promote the purpose or object underlying the Condition;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Condition and whether that meaning promotes the purpose or object of the Condition).
- (o) the ACCC may authorise the ACCC Adjudication Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under the Condition on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under the Condition, the Applicants will do everything reasonably within their power to ensure that their performance of those obligations is done in a manner which is consistent with promoting the purpose and object of the Condition;
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.

SCHEDULE A – SCHEDULING SEASON BASE YEAR SEAT CAPACITY⁹⁸

The **Scheduling Season Base Year Seat Capacity** means the Applicants' combined total number of seats flown on the Relevant Routes in, as applicable, the NS Season or the NW Season in the Base Year as set out in this Schedule A. In the below tables, references to seat capacity figures for a particular Relevant Route are for information purposes only.

Scheduling Season Base Year Seat Capacity for NS Season:

<u>Sydney-Christchurch</u>	<u>Seat Capacity for NS Season</u>
Qantas	73,766
Jetstar	48,960
Emirates	219,850
TOTAL SCHEDULING SEASON BASE YEAR SEAT CAPACITY FOR NS SEASON	342,576

Scheduling Season Base Year Seat Capacity for NW Season:

<u>Sydney-Christchurch</u>	<u>Seat Capacity for NW Season</u>
Qantas	52,543 (provisional)
Jetstar	40,140 (provisional)
Emirates	155,406 (provisional)
TOTAL SCHEDULING SEASON BASE YEAR SEAT CAPACITY FOR NW SEASON	248,089 (provisional)

⁹⁸ Note: For the avoidance of doubt, the above figures include both inbound and outbound seat capacity for each Relevant Route. This data includes all seats flown on the Relevant Route. It therefore includes seats occupied by uplift/discharge passengers, seats occupied by transit passengers and unoccupied seats.

SCHEDULE B – PROPOSED INDEPENDENT AUDITOR APPOINTMENT

This form sets out the information required by the ACCC in relation to proposed appointment of an independent auditor.

Please note in relation to information given pursuant to this form, giving false or misleading information is a serious offence.

Method of Delivery to the ACCC

The completed Proposed Independent Auditor Appointment form, along with the additional requested information is to be provided to the ACCC to the below email addresses:

1) **adjudication@acc.gov.au**

Attention: Executive General Manager
Merger and Authorisation Review Division

2) **With a copy sent to:**

mergersucu@acc.gov.au

Attention: Director
Undertakings Compliance Unit
Coordination and Strategy Branch
Merger and Authorisation Review Division

Information Required

The ACCC requires the following information in order to assess a Proposed Independent Auditor.

1) Proposed Independent Auditor Details:

- (a) the name of the Proposed Independent Auditor; and
- (b) the name of the Proposed Independent Auditor's employer and contact details including:
 - Address;
 - Contact name;
 - Telephone number;
 - Other contact details.

2) A submission containing the following information:

- (a) details of the Proposed Independent Auditor's qualifications and experience relevant to his or her proposed role pursuant to the Undertaking.

- (b) the names of the owner/s and the directors of [the Proposed Independent Auditor's employer.
- (c) details of any of the following types of relationships between the Applicants and the Proposed Independent Auditor or the Proposed Independent Auditor's employer or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) an Applicant and the Proposed Independent Auditor's employer are Associated Entities.
 - (ii) an Applicant is an Entity Connected with the Proposed Independent Auditor's employer.
 - (iii) the Proposed Independent Auditor's employer is an Entity Connected with an Applicant.
 - (iv) an Applicant and the Proposed Independent Auditor's employer are Related Entities.
 - (v) an Applicant and the Proposed Independent Auditor's employer are Related Parties.
 - (vi) any Related Party, Related Entity or Entity Connected with an Applicant is a Related Party, Related Entity or Entity Connected with the Proposed Independent Auditor.
 - (vii) an Applicant and the Proposed Independent Auditor or the Proposed Independent Auditor's employer have a contractual relationship or had one within the past three years, other than those attached to this form.
 - (viii) the Proposed Independent Auditor's employer is a supplier of an Applicant or has been in the past three years.
 - (ix) an Applicant is a supplier of the Proposed Independent Auditor's employer or has been in the past three years.
 - (x) any other relationship between an Applicant and the Proposed Independent Auditor or the Proposed Independent Auditor's employer that allows one to affect the business decisions of the other.
- 3) A document outlining the terms of appointment for the Proposed Independent Auditor.
- 4) A finalised draft audit plan, drafted by the Proposed Independent Auditor and outlining (to the extent possible) the Proposed Independent Auditor's plans in regard to the establishment audit and the Audit Report.