



RESPONSE TO
THE COMMISSION'S DRAFT DETERMINATION DATED 16 FEBRUARY 2018 IN RELATION TO
AUTHORISATION REQUEST AA1000400

Qantas and Emirates welcome the Commission's Draft Determination dated 16 February 2018 in which the Commission finds that the continuation of the alliance between them will generate significant public benefits that outweigh any competitive detriment. The Applicants agree with the Commission that the alliance is likely to increase the number of flights and destinations available to Qantas and Emirates customers through their combined networks, as well as deliver a range of other benefits including improved connectivity, enhanced customer convenience and valuable frequent flyer entitlements. The Applicants also endorse the Commission's view that the likelihood of any competitive detriment occurring as a result of the Applicants' coordination across the majority of their combined networks is limited.

It is also pleasing that the Commission has recognised that imposing a mandatory capacity condition on the Applicants' operations on any of the Tasman routes is unnecessary.

The Commission has, however, suggested that the alliance will 'significantly impact competition' on the Sydney-Christchurch route. The Applicants do not agree with this view and maintain that this route, like the Tasman as a whole, is characterised by intense competition notwithstanding the limited number of direct operators. Air New Zealand/Virgin Australia do, and will continue to, aggressively compete to attract passengers onto their services on this route – the continuation of the alliance will not have any impact on this. In addition, contrary to the Commission's view, the threat of new entry imposes a significant competitive constraint on the Applicants in practice.

Moreover, the Applicants do not have the ability or incentive to artificially increase airfares or restrict capacity on the Tasman, including on the Sydney-Christchurch route. The Tasman is core to the Qantas Group's network and is a key component of its corporate and leisure proposition for customers. Qantas and Jetstar are inherently incentivised to invest in this market, treating it as a virtual extension of the Australian domestic network and seeking to ensure it is serviced sustainably over the longer term, particularly given the importance of providing feeder traffic between domestic networks in Australia and New Zealand. Emirates also has a keen interest to incentivise passengers to travel on EK coded trans-Tasman services to provide feeder traffic on its services to Dubai and beyond points in Europe, the Middle East and Africa.

If, despite these facts, the Commission is still minded to impose route reporting requirements on the Applicants (**Proposed Condition**), it is important that the requirements do not go beyond what is necessary and relevant to address any perceived competitive detriment. Whereas the mandatory capacity condition imposed on the Applicants in 2013 required specific monitoring and reporting in respect of only the routes on which the Applicants overlapped at the time (Sydney-Auckland, Melbourne-Auckland, Brisbane-Auckland and Sydney-Christchurch), the Proposed Condition imposes reporting requirements across all these routes again, notwithstanding that the only remaining overlapping route will now be Sydney-Christchurch.

The Commission has indicated that information in respect of the Auckland routes might inform its assessment of the relative performance of the Sydney-Christchurch route. However, the Auckland routes are not analogous to the Sydney-Christchurch route. The Auckland routes have different dynamics, with capacity, pricing and cost decisions influenced by variable and route-specific traffic flows and passenger types. In the Applicants' view, a more reasonable and relevant approach would be for the Applicants to provide information about the Sydney-Christchurch city pair only. If, in future, the

Commission had particular concerns or the Applicants wished to seek a variation of the requirements, information about other Tasman routes could be provided and considered at that time. In any event, the Commission has access to publicly available information in respect to all routes – such that ongoing reporting by the Applicants on the Auckland routes is an unnecessary burden that does not achieve a relevant aim.

The Proposed Condition also requires the Applicants to report ‘average fares by cabin class’, not only for the Sydney-Christchurch route, but also on the Sydney/Melbourne/Brisbane-Auckland routes on which the Applicants will no longer overlap. Average fare reporting was not previously required of the Applicants and the Commission has demonstrated no need to add it now.

In any event, the utility of this information is limited. 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, demand on that particular route. Distortions also occur because ‘average’ fares are determined by market conditions, strategic balancing of Tasman and connecting network traffic, point of sale contribution, currency fluctuations and seasonal demand by booking country. For example, Qantas has a significant amount of traffic connecting across the Tasman from key markets such as North America, Europe and Asia. The average amount collected on any Tasman service can be significantly impacted (up and down) by changes in these flows, often triggered by new or lost schedule connections. Average point to point fares are also difficult to compare over time given airlines’ complex tariff structures and inventory controls which result in dynamic traffic mix changes.

If the Commission insists on this requirement, the Applicants suggest that average fare data should only be provided as part of regular reporting on the Sydney-Christchurch route, with the Commission having the ability to subsequently request this information in relation to other routes if it would then be relevant to a particular enquiry or purpose.

As currently drafted the Proposed Condition allows the Commission to impose a requirement to grow capacity in line with GDP (using a blend of AUS/NZ GDP). While this blunt metric appears convenient and has been used by the Commission in the past, it is reductive to simply apply GDP growth to specific city pairs. For example, just because GDP increases by 5%, it does not mean that growth on a specific city pair should increase to the same level. While Clause 1(d) requires that the Commission consider market conditions, airline capacity and other factors when determining whether to impose a Capacity Requirement, it doesn’t require the consideration of the same factors when setting the level of the Capacity Requirement.

Finally, the Applicants note that the Proposed Condition includes provisions that allow for it to be varied in certain circumstances that are similar to those which are set out in the condition that is currently in force. However, when considering a variation on the basis of a Material Change in Market Conditions, the Commission is no longer under an express obligation to consider the impact of services operated by Emirates from Dubai to New Zealand which bypass Australia. In the Draft Determination the Commission accepts that the introduction of direct flights to New Zealand have decreased demand for some Tasman services. Therefore, it follows that the provision of new or additional direct services from Dubai to New Zealand remain an important consideration impacting traffic flows on the Tasman and should remain an express consideration when determining whether to vary the Proposed Condition.

The Applicants would be happy to discuss these comments further with the Commission and prepare revised drafting of the Proposed Condition for consideration if that would assist.

7 March 2018