



Determination

Application for minor variation of authorisations A91542 & A91543

lodged by

Singapore Airlines Limited & Deutsche Lufthansa AG

to include Scoot Tigerair Pte Ltd, a low cost carrier which is a wholly owned subsidiary of Singapore Airlines, in the alliance

Authorisation number: AA60295-3 (formerly A91542 & A91543)

Date: 27 September 2018

Commissioners: Sims
Featherston

Summary

The ACCC has decided to vary authorisations A91542 & A91543 granted to Singapore Airlines Limited and Deutsche Lufthansa AG in relation to their alliance.

The variation (Authorisation AA60295-3) is to include Scoot Tigerair Pte Ltd, a low cost carrier which is a wholly owned subsidiary of Singapore Airlines, in the alliance.

Authorisation AA60295-3 will remain in effect until 10 December 2021.

1. The application for minor variation

- 1.1. On 16 August 2018, Singapore Airlines Limited and Deutsche Lufthansa AG (the **Applicants**) applied for a minor variation to authorisations A91542 & A91543 granted by the Australian Competition and Consumer Commission (the **ACCC**).
- 1.2. The ACCC granted authorisations A91542 & A91543 on 18 November 2016 until 10 December 2021. The authorisations enable Singapore Airlines Limited and Deutsche Lufthansa AG and some of their respective passenger airline subsidiaries, to coordinate their operations between Germany, Austria, Belgium and Switzerland (the Lufthansa home markets) and Singapore, Australia, Indonesia and Malaysia (the Singapore home markets), pursuant to a Joint Venture Framework Agreement (**the JVF Agreement**) and related agreements contemplated by the JVF Agreement (**the alliance**).¹
- 1.3. The Applicants are seeking a variation to the authorisations to include Scoot Tigerair Pte Ltd (**Scoot**) in the alliance (Authorisation AA60295-3). At the time authorisation was granted Scoot was not operating any flights between the Lufthansa home markets and the Singapore home markets and therefore, was not included in the alliance. Scoot commenced services between Singapore and Berlin in June 2018, a route within the geographic scope of the JVF Agreement. The Applicants would like to have the benefit of authorisation extended to include Scoot so that in the future they can explore the potential for coordination of pricing, sales, marketing and inventory management, and revenue sharing between them in a way that includes Scoot.
- 1.4. This application for a minor variation was made under subsection 91A of the *Competition and Consumer Act 2010* (the **CCA**).
- 1.5. The ACCC can grant authorisation which provides businesses with an exemption from competition law for arrangements that may otherwise risk breaching the law but are not harmful to competition and/or are likely to result in overall public benefits.

2. Background – the Applicants

Singapore Airlines

- 2.1. Singapore Airlines, the flag carrier of Singapore, operates air passenger services across an international network of 62 destinations in 32 countries with a fleet of 111 aircraft.
- 2.2. Singapore Airlines operates direct services between Singapore and the following Australian cities: Adelaide, Brisbane, Melbourne, Perth, Sydney and Canberra

¹ See ACCC Final determination A91542 & A91543 for further details about the alliance.

(Canberra services continue to, and return from, Wellington, New Zealand). From its hub in Singapore, Singapore Airlines operates services to many destinations in Europe.

- 2.3. The services offered by Singapore Airlines between Australia and Europe are either:
- operated wholly by Singapore Airlines (i.e. Singapore Airlines operates the aircraft on both the flight with an origin/destination in Australia and the connecting flight forming part of the service); or
 - operated partly by Singapore Airlines and partly by an airline with which Singapore Airlines has a codeshare agreement including for example, Lufthansa, Air New Zealand (where the codeshare relates to flights to/from New Zealand), or Virgin Australia (where the codeshare relates to services that include a Virgin domestic flight within Australia).
- 2.4. SilkAir (Singapore) Private Limited (SilkAir), a wholly owned subsidiary of Singapore Airlines, is also included in the JV Agreement. SilkAir is the regional wing of the Singapore Airlines Group. It positions itself as a premium, short-to-medium haul regional carrier. SilkAir operates more than 350 weekly flights to 49 destinations in 13 countries from its hub in Singapore.
- 2.5. Scoot is a wholly owned subsidiary of Singapore Airlines . Scoot positions itself as a low cost carrier. As of 1 July 2018, Scoot operates across 67 destinations in 18 countries and territories, with a fleet of 40 aircraft.
- 2.6. Scoot operates services between Singapore and the following Australian cities: Melbourne, Perth, Sydney and Coolangatta (Gold Coast).

Deutsche Lufthansa

- 2.7. Lufthansa is the parent company and largest single operating company in the Lufthansa Group. Apart from Lufthansa Passenger Airlines (which is the passenger airline business of Lufthansa), the Lufthansa Group's passenger airline service includes Austrian Airlines AG (Austrian Airlines), Swiss International Airlines Ltd (Swiss International) and low-cost airline Germanwings GmbH (Germanwings). Austrian Airlines and Swiss International are included in the alliance, but Germanwings is not.
- 2.8. Lufthansa Passenger Airlines is the largest airline in Germany. It operates from the two biggest German hubs in Frankfurt and Munich and also operates long-haul flights from Dusseldorf. Lufthansa Passenger Airlines operates a global network of 205 destinations in 74 countries with a fleet of 357 aircraft.
- 2.9. Lufthansa does not operate any aircraft on a flight with an origin or destination in Australia. Therefore, services offered by Lufthansa between Australia and Europe are never entirely operated by Lufthansa. Rather, Lufthansa offers flights to Australia marketed under codeshare arrangements (including itineraries entirely operated by codeshare partners Thai Airways and United Airlines and itineraries partly operated by Lufthansa). Pursuant to a codeshare agreement with Singapore Airlines, Lufthansa codeshares on direct Singapore Airlines routes between Australia and Singapore. However, these codeshare flights are not marketed by Lufthansa on a standalone basis. They are only marketed as part of an Australia – Frankfurt itinerary.
- 2.10. Swiss International is the national airline of Switzerland and services 142 destinations in 54 countries from its hubs in Zurich and Geneva. Austrian Airlines is Austria's

largest carrier and operates a global network of around 116 destinations in 46 countries from its hub in Vienna.

3. Consultation

- 3.1. For the purpose of consultation, the ACCC made an initial assessment that the application is capable of being a 'minor' variation consistent with the definition of a minor variation in the CCA.²
- 3.2. The ACCC then invited submissions from a range of potentially interested parties including major competitors, relevant industry associations and state and federal government stakeholders. No submissions were received.

4. ACCC assessment

- 4.1. Under section 91A, the ACCC may grant an application for minor variation of an authorisation if it is satisfied that:
 - the proposed variation is minor, and
 - the variation would not be likely to reduce the extent to which the benefit to the public from the authorisation outweighs any anti-competitive detriment caused by the authorisation (the minor variation test).

The proposed variation is minor

- 4.2. The ACCC is satisfied that the proposed variation is minor. The ACCC considers that the proposed variation will not involve a material change in the effect of the authorisations that were originally granted. The ACCC considers it unlikely that Lufthansa will commence standalone services to Australia over the period covered by the authorisation (until December 2021) and the only route on which Scoot operates flights that Singapore does not also operate flights on is Coolangatta – Singapore. Therefore the ACCC considers that the addition of Scoot to the alliance does not change the nature of the coordination between Singapore and Lufthansa in a meaningful way.

No reduction in the net public benefit of the arrangements

- 4.3. In its 2016 determination, the ACCC concluded that the arrangements were likely to result in a net public benefit. In particular, the ACCC considered that the arrangements would be likely to result in public benefits arising from:
 - Enhanced products and services as a result of coordination between the relevant airlines
 - Operational and other efficiencies
 - Increased competition in international air passenger transport markets.
- 4.4. To the extent that the proposed minor variation to include Scoot in the alliance has any impact on public benefits, the ACCC considers that it is likely to increase them. In particular, the ACCC considers that the inclusion of Scoot may further enhance the products and services offered to some consumers.

² Section 87ZP(1) of the CCA

- 4.5. In its 2016 determination, the ACCC also considered that the alliance was likely to result in little, if any, public detriment. This assessment was informed by the following:
- Lufthansa did not directly operate flights on any routes into or out of Australia and that it was unlikely to commence doing so during the period of authorisation.
 - With respect to indirect flights to Australia, the Applicants only operated overlapping services on two routes (Singapore – Frankfurt and Singapore – Zurich) which in some cases will form a segment of a service to or from Australia. The ACCC observed that there are many other options for travellers between Australia and each of these destinations.
- 4.6. Given the limited presence of Lufthansa in Australia, and the competitive discipline imposed by other international airlines on relevant routes, the ACCC considered that any reduction in competition from the arrangements was likely to be very limited.
- 4.7. The ACCC considers that the inclusion of Scoot in the alliance will not impact the likelihood of Lufthansa directly operating flights into and out of Australia, nor the extent of competitive discipline imposed by other international airlines. On this basis, the ACCC considers that the proposed minor variation is unlikely to result in any increase in likely public detriments.
- 4.8. For the reasons outlined, the ACCC considers that the proposed minor variation will not result in any reduction in the net public benefits of the alliance.

5. Determination

- 5.1. The ACCC is satisfied that the variation is minor as defined by section 87ZP of the CCA.
- 5.2. The ACCC is also satisfied that the public benefit test under section 91A(4)(b) of the CCA is met. That is, the variation would not result, or would be likely not to result, in a reduction in the extent to which the benefit to the public of the authorisations A91542 & A91543 outweighs any detriment to the public caused by the authorisations.
- 5.3. Pursuant to section 91A(3) of the CCA, the ACCC makes this determination varying authorisations A91542 & A91543 to include Scoot in the JVF Agreement (Authorisation AA60295-3) as described at paragraph 1.3 of this determination.
- 5.4. This determination is made on 27 September 2018. If no application for a review of the determination is made with the Australian Competition Tribunal, the determination will come into force on 19 October 2018.