

**APPLICATION FOR REVOCATION OF AN AUTHORISATION FOR PROPOSED
CONDUCT AND SUBSTITUTION OF A REPLACEMENT**

APPLICANTS

1. Provide details of the applicants for revocation and substitution, including:

1.1 name, address (registered office), telephone number, and ACN

Singapore Airlines Limited (**Singapore Airlines**) and Deutsche Lufthansa AG (**Lufthansa**) (collectively, the **Applicants**) apply for revocation and substitution of an authorisation. Their respective contact details are as follows:

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Tel: +65 6541 6006

Deutsche Lufthansa AG

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Lufthansa Aviation Center
Airportring
60546 Frankfurt
Germany
Tel: +49 69 696 91498

As the Applicants are not Australian-registered companies, they do not hold ACNs.

1.2 contact person's name, position, telephone number, and email address

Alyssa Phillips, Partner
Ashurst
123 Eagle Street
Brisbane QLD 4055
Australia
Tel: [REDACTED]
Email: [REDACTED]

1.3 a description of business activities

The Applicants provide domestic and international air transportation services. For further details please refer to Section 2 of the supporting submission **attached** as **Annexure A** to this application (**Submission**).

1.4 email address for service of documents in Australia.

[REDACTED]

AUTHORISATION TO BE REVOKED (THE EXISTING AUTHORISATION)

2. Provide details of the authorisation sought to be revoked including:

2.1 the registration number and date of the authorisation which is to be revoked

Authorisations A91542 and A91543 dated 18 November 2016 (as varied on 27 September 2018).

2.2 other persons and/or classes of persons who are a party to the authorisation which is to be revoked

Not applicable.

2.3 the basis for seeking revocation, for example because the conduct has changed or because the existing authorisation is due to expire.

The current authorisations are due to expire on 10 December 2021. The Applicants wish to continue to have the benefit of ACCC authorisation in respect of their joint venture arrangements going forward.

AUTHORISATION TO BE SUBSTITUTED (THE NEW AUTHORISATION)

3. If applicable, provide details of any other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:

3.1 name, address (registered office), telephone number, and ACN

Not applicable.

3.2 contact person's name, telephone number, and email address

Not applicable.

3.3 a description of business activities.

Not applicable.

THE PROPOSED CONDUCT

4. Provide details of the proposed conduct, including:

4.1 a description of the proposed conduct and any documents that detail the terms of the proposed conduct

The Applicants seek interim and final authorisation to continue coordinating operations covered by their Joint Venture as per their Joint Venture Framework Agreement (**Proposed Conduct**). For more details on the Proposed Conduct, please see Section 3 of the Submission as well as the Joint Venture Framework Agreement (**Attachment 1** to the Submission). The Applicants also seek final authorisation (and, if the ACCC is minded, interim authorisation) to coordinate their operations in an expanded manner, as outlined in section 4.2 below.

4.2 **an outline of any changes to the conduct between the existing authorisation and the new authorisation**

The Applicants seek to expand the definition of "Singapore Home Markets" and "Lufthansa Home Markets" by adding some geographic locations to the lists of home markets.

For further details on these amendments, please see Section 3 of the Submission.

4.3 **the relevant provisions of the *Competition and Consumer Act 2010 (Cth) (the Act)* which might apply to the proposed conduct, ie:**

- **cartel conduct (Division 1 of Part IV)**
- **contracts, arrangements or understandings that restrict dealings or affect competition (s. 45)**
- **concerted practices (s. 45)**
- **secondary boycotts (sections 45D, 45DA, 45DB, 45E, 45EA)**
- **misuse of market power (s. 46)**
- **exclusive dealing (s.47)**
- **resale price maintenance (s. 48) and/or**
- **a dual listed company arrangement (s. 49)**

The provisions of the Act that might apply to the Proposed Conduct are Division 1 of Part IV, section 45 and section 47.

4.4 **the rationale for the proposed conduct**

Please refer to Section 3.3 of the Submission.

4.5 **the term of authorisation sought and reasons for seeking this period.**

The Applicants seek authorisation for a period of five years. Please refer to Section 3.8 of the Submission for the basis on which the Applicants consider this time period is appropriate.

5. **Provide the name of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant goods or services) and detail how or why they might be impacted.**

Please refer to the attached Submission.

MARKET INFORMATION AND CONCENTRATION

6. **Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).**

Please refer to Section 4 of the Submission.

7. **Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.**

Please refer to Section 4 of the Submission.

8. **In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.**

Please refer to Section 4 of the Submission.

9. **In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:**

9.1 **existing competitors**

9.2 **likely entry by new competitors**

9.3 **any countervailing power of customers and/or suppliers**

9.4 **any other relevant factors.**

Please refer to Section 7 of the Submission.

PUBLIC BENEFIT

10. **Describe the benefits to the public that are likely to result from the proposed conduct. Refer to the public benefit that resulted under the authorisation previously granted. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.**

Please refer to Section 6 of the Submission.

PUBLIC DETRIMENT INCLUDING ANY COMPETITION EFFECTS

11. **Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Refer to the public detriment that may have resulted under the authorisation previously granted. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.**

The Proposed Conduct will not result in any public detriment. Please refer to Section 7 of the Submission for further information.

CONTACT DETAILS OF RELEVANT MARKET PARTICIPANTS

12. **Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.**

The Applicants have not identified any likely interested parties. The Applicants note that there were no submissions made in relation to the original authorisation application.

ADDITIONAL INFORMATION

13. **Provide any other information or documents you consider relevant to the ACCC's assessment of the proposed application.**

A detailed Submission in support of the Applicants' application for interim and final authorisation is attached as **Annexure A**.

Declaration by Applicant(s)

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Signature of authorised person

Partner, Ashurst – authorised to act on behalf of the Applicants in this matter

Office held

Alyssa Phillips

Name of authorised person

This 23rd day of September 2021

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

ashurst

Submission in support of an application for revocation and substitution

Singapore Airlines Limited

Deutsche Lufthansa AG

23 September 2021



Lufthansa

**SINGAPORE
AIRLINES**



CONTENTS

| SECTION | PAGE |
|---|------|
| 1. EXECUTIVE SUMMARY | 3 |
| 2. THE APPLICANTS | 5 |
| 2.1 Singapore Airlines..... | 5 |
| 2.2 Singapore Airlines' operations with respect to Australia..... | 6 |
| 2.3 Lufthansa..... | 8 |
| 2.4 Lufthansa's operations with respect to Australia..... | 9 |
| 3. SCOPE OF THE AUTHORISATION..... | 11 |
| 3.1 Joint Venture Framework Agreement..... | 11 |
| 3.2 Scope of the joint venture..... | 12 |
| 3.3 Purpose of the joint venture | 15 |
| 3.4 Proposed Conduct regarding Revenue Share Routes | 15 |
| 3.5 Proposed Conduct regarding all routes within the joint venture scope | 17 |
| 3.6 Sales and marketing cooperation | 18 |
| 3.7 Why authorisation is being sought..... | 19 |
| 3.8 Duration of the joint venture | 19 |
| 4. RELEVANT MARKETS | 19 |
| 4.1 Overlap of the Applicants' current services | 19 |
| 4.2 International aviation industry | 20 |
| 4.3 The relevant areas of competition | 21 |
| 5. COUNTERFACTUAL | 23 |
| 6. PUBLIC BENEFITS FROM THE PROPOSED CONDUCT | 24 |
| 6.1 Analytical framework..... | 24 |
| 6.2 Outline of public benefits | 25 |
| 6.3 Enhanced products and services | 25 |
| 7. NO PUBLIC DETRIMENT BY REASON OF ANY LESSENING OF COMPETITION | 35 |
| 7.1 Outline | 35 |
| 7.2 No overlap, and no likely future overlap, in services <u>operated</u> to Australia..... | 36 |
| 7.3 Reduction in marketing overlap has limited effect | 36 |
| 7.4 Existing competition in relation to services between Australia and Europe | 37 |
| 7.5 No competition concerns even if considered on alternative, narrower basis | 40 |
| 7.6 Conclusion | 45 |
| 8. COMPARISON OF PUBLIC BENEFITS AND PUBLIC DETRIMENTS | 45 |
| 9. LENGTH OF AUTHORISATION | 46 |

1. EXECUTIVE SUMMARY

Singapore Airlines Limited (**Singapore Airlines**) and Deutsche Lufthansa AG (**Lufthansa**) (collectively, the **Applicants**) are major international airlines. The Applicants seek revocation of authorisations A91542 and A91543, as granted on 18 November 2016¹ and varied on 27 September 2018² (**2016 Authorisation**) and substitution with authorisation of the continued joint venture between the Applicants pursuant to the "Joint Venture Framework Agreement" between the Applicants dated 11 November 2015 (**Framework Agreement**).

Under the Framework Agreement, the Applicants will continue to coordinate certain operations in relation to pricing, sales, marketing, networks, scheduling and capacity in respect of specified routes and markets, as described in greater detail in section 3 below (**Proposed Conduct**). The Applicants have also agreed to include a number of additional "home markets" for each of Singapore Airlines and Lufthansa within the scope of the joint venture. The inclusion of each of these new home markets is subject to relevant regulatory approvals (including competition law approvals), but the Applicants respectfully request that the ACCC proceed on the basis that all of the jurisdictions will ultimately be included.

In summary, the Proposed Conduct involves:

- coordinating pricing, sales, marketing and inventory management for all routes between one of the "home markets" of Lufthansa (being Germany, Austria, Belgium and Switzerland (which were the Lufthansa home markets originally approved under the 2016 Authorisation) and also Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Greece, Hungary, Iceland, Republic of Ireland, Italy, Kosovo, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, North Macedonia, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, and United Kingdom (together, the **Lufthansa Home Markets**)³ and one of the "home markets" of Singapore Airlines (being Singapore, Australia, Indonesia⁴ and Malaysia (which were the Singapore Airlines home markets originally approved under the 2016 Authorisation) and [Country A], [Country B] and [Country C] (together, the **Singapore Home Markets**)); and
- coordinating networks, scheduling and capacity management, and sharing revenue, on direct non-stop routes between the Lufthansa and Singapore Home Markets identified above. These routes are referred to as **Revenue Share Routes**. Currently the only Revenue Share Routes are those between Singapore and each of Munich, Frankfurt and Zurich, but as explained further in the submission this may expand in due course.⁵

Authorisation (or, in effect, re-authorisation) is sought for a period of five years.

It is widely known that the aviation industry has been one of the hardest hit by the COVID-19 pandemic (**COVID-19**). The International Civil Aviation Organisation estimates that in

¹ ACCC Determination in relation to Applications for authorisation lodged by Singapore Airlines Limited and Deutsche Lufthansa AG in respect of a Joint Venture Framework Agreement, 18 November 2016 (A91542 and A91543) (**2016 Authorisation**).

² ACCC Determination in relation to Application for minor variation of authorisations A91542 & A91543 lodged by Singapore Airlines Limited & Deutsche Lufthansa AG, 27 September 2018.

³ For completeness, the Applicants note that the list of Lufthansa Home Markets also includes Andorra, Liechtenstein, Monaco, San Marino and the Vatican City. However, as these Home Markets do not have public airports, it is unlikely that routes will exist to these Home Markets under the JV, subject to a public airport being built.

⁴ For completeness, the Applicants note that they have not yet implemented the joint venture in Indonesia for regulatory reasons.

⁵ Dusseldorf was previously also a "revenue share route" under the joint venture, but Singapore Airlines has permanently suspended its flights on this route, and has no current plan to reinstate them.

2020, airline revenue for the Asia-Pacific region decreased by US\$120 billion, representing the most significant decline of any region globally.⁶ In February 2021, 56,613 international passengers were scheduled to arrive in or depart from Australia. This is a 98.2% decrease from the 2.81 million international arrivals and departures in February 2019.⁷ There is no immediate end in sight to these challenges faced by the aviation industry, as it is currently projected by the Federal Government that unrestricted international flights to and from Australia will not resume until at least 2022.⁸

Recovering from the impacts of COVID-19 will be a long and difficult process. The Proposed Conduct will aid the post-COVID-19 recovery process, ensuring efficient scheduling, use of resources, networking etc. It will assist to ensure that consumers gain access to the widest network of travel options as soon as is allowable. However, for the avoidance of doubt, the Applicants are not seeking authorisation for emergency measures to deal with the impact of COVID-19. Rather, the authorisation relates to the same conduct that the ACCC authorised in 2016, and which now requires re-authorisation due to the upcoming expiry of the 2016 Authorisation on 10 December 2021. Further, the request for authorisation to expand the scope of the joint venture to additional home markets reflects the ongoing strengthening and deepening of the joint venture relationship between the Applicants, and is a reflection of the many benefits that the Applicants, their customers and the public have received as a result of the joint venture since 2016.

The Proposed Conduct will result in various public benefits, including:

- (a) greater capacity due to deployment of larger aircraft;
- (b) a broader range of destinations offered to customers;
- (c) more flights allowing customers more options; and
- (d) better offerings for corporate accounts through joint contracts.

The Applicants anticipate that by continuing their joint venture, and expanding collaboration to other European and Asia-Pacific destinations, consumers will continue to reap benefits. The public benefits arising from the joint venture are described further in section 6.

The Applicants consider that the Proposed Conduct is unlikely to result in any lessening of competition for the reasons outlined in section 7, but even if that conclusion was not correct, the public benefits associated with the Proposed Conduct would outweigh any such lessening of competition, particularly as regular air travel resumes and the relevant routes affected by the joint venture return to high levels of competition after COVID-19.

The Applicants are also seeking interim authorisation for the Proposed Conduct. The request for interim authorisation applies to the whole authorisation application, and if the ACCC is minded to grant interim authorisation in respect of the expanded scope of the joint venture so that the Applicants can proceed to take steps to start putting those arrangements in place, that would be greatly appreciated by the Applicants. The Applicants respectfully request, however, that at the least the ACCC grants interim authorisation in respect of the conduct which was authorised in the 2016 Authorisation and is currently in effect, so that they can continue to operate their current joint venture arrangements while the ACCC considers their application for authorisation in respect of the broader geographic scope of

⁶ ICAO, *Effects of Novel Coronavirus (COVID-19) on Civil Aviation: Economic Impact Analysis*, 4 May 2021, Page 10, https://www.icao.int/sustainability/Documents/COVID-19/ICAO_Coronavirus_Econ_Impact.pdf.

⁷ Department of Infrastructure, Transport, Regional Development and Communication, *International Airline Activity*, February 2021, <https://www.bitre.gov.au/statistics/aviation/international>.

⁸ ABC, *Australians coming off income support despite end of JobKeeper*, Josh Frydenberg says, 9 May 2021, <https://www.abc.net.au/news/2021-05-09/australians-coming-off-income-support-despite-end-of-jobkeeper/100126786>.

the joint venture outlined in this application. The priority for the Applicants is to ensure that there is no "gap" in the authorisation protection in respect of the current joint venture scope while the ACCC completes its review.

Finally, please note that where applicable, the Applicants have provided data relevant to both the period shortly before the emergence of COVID-19 as well as the current, COVID-19 impacted circumstances, so that the ACCC can assess the Proposed Conduct against pre-COVID-19 conditions, as more closely approximating "normal" levels of competition in the relevant markets.

This submission contains information that is confidential to each of the Applicants separately and cannot be viewed by the other airline. Information that is highlighted in **blue** is confidential to Singapore Airlines and should not be disclosed to Lufthansa. Conversely, information that is highlighted in **green** is confidential to Lufthansa and should not be disclosed to Singapore Airlines. Information that can be viewed by the Applicants but is confidential vis-à-vis the public is highlighted in **grey**.

2. THE APPLICANTS

Singapore Airlines and Lufthansa apply jointly for revocation of the 2016 Authorisation and substitution of a new authorisation, together with interim authorisation for the Proposed Conduct. Background information on each of the Applicants is set out below.

2.1 Singapore Airlines

The principal activities of Singapore Airlines consist (through itself or its subsidiaries) of passenger and cargo air transportation, engineering services, training of pilots, air charters and tour wholesaling and related activities.

Singapore Airlines (**SQ**) is the flag carrier of Singapore. As at December 2019, SQ was operating 906 services weekly across 66 destinations in 32 different countries, with a fleet of 124 aircraft. SQ is a full service airline with a strong reputation for excellence in customer service in both its leisure and business offerings. An interactive map showing all of SQ's destinations can be accessed at: https://www.singaporeair.com/en_UK/sq/plan-travel/destinations/where-we-fly/.

Singapore Airlines also has two wholly-owned subsidiaries that are also carriers.

- (a) **SilkAir.** SilkAir (Singapore) Private Limited (**MI**) was historically the regional carrier within the Singapore Airlines Group. MI was positioned as a premium, short-to-medium haul regional carrier. As at December 2019, the full service airline was operating 387 weekly flights to 39 destinations in 15 countries with a fleet of 26 aircraft. The 2016 Authorisation applied to the conduct of MI as well as SQ.

Importantly, however, Singapore Airlines has recently completed an internal restructure, pursuant to which MI's activities are being transferred to SQ, and MI will cease to operate as a separate carrier. Accordingly, by the time the ACCC makes its final determination in respect of this application, MI will not be part of the joint venture arrangements, and authorisation is not sought for MI to engage in the Proposed Conduct.⁹ For the purpose of this submission, any flights operated by MI have been treated as being operated by SQ (or Scoot, as applicable), in order to reflect Singapore Airlines' arrangements going forward.

- (b) **Scoot.** Scoot Tiger Air Pte Ltd (**TR**) positions itself as a low cost carrier. As at December 2019, Scoot operated 591 weekly flights across 68 destinations in 16

countries, with a fleet of 48 aircraft. Scoot operates services between Singapore and the following Australian cities: Melbourne, Perth, Sydney and Gold Coast.

The original Joint Venture Framework Agreement did not apply to TR, but in 2018 the Applicants decided to extend the joint venture to encompass TR as well. The Applicants sought and obtained from the ACCC a minor variation to the 2016 Authorisation to include TR. [REDACTED]

The Applicants do intend to include TR in the joint venture arrangements in the future, and accordingly seek authorisation for TR to engage in the Proposed Conduct.¹⁰

Singapore Airlines is listed on the Singapore Stock Exchange.

SQ is a member of the Star Alliance, which coordinates customer service initiatives and harmonisation of passenger and baggage policies to provide customers with a seamless travel experience on participating member airlines. The Star Alliance has over 25 member airlines. The Star Alliance was granted authorisation by the ACCC on 23 April 2012, which allowed Star Alliance members to jointly offer advantageous fares (including rebates and discounts) to corporate customers and conference organisers within Australia.¹¹

2.2 Singapore Airlines' operations with respect to Australia

Table 1 below summarises the services that Singapore Airlines operates to Australia, under its SQ and TR carriers. In Table 1, and all equivalent tables in this submission, flights which are highlighted in red are currently suspended due to COVID-19, but have not been cancelled (ie, the services are still likely to be available to customers once the travel restrictions have been lifted).

Table 1: Singapore Airlines' routes to Australia, by operating airline

| SQ direct services to Australia | |
|--|----------------------|
| 1. | Singapore-Adelaide |
| 2. | Singapore-Brisbane |
| 3. | Singapore-Melbourne |
| 4. | Singapore-Perth |
| 5. | Singapore-Sydney |
| 6. | Singapore-Cairns |
| 7. | Singapore-Darwin |
| TR direct services to Australia | |
| 8. | Singapore-Gold Coast |

Singapore Airlines also has the following codeshare arrangements with airlines that operate services to/from/within Australia:

- SQ codeshares on all domestic Virgin Australia flights within Australia (except for Brisbane-Launceston).

¹⁰ [REDACTED]

¹¹ ACCC Determination in relation to Application for Authorisation lodged by Air New Zealand on behalf of the members of the Star Alliance in respect of Star Alliance's Corporate Plus, Conventions Plus and Meetings Plus Programs (A91300-A91306), 25 July 2012 (**Star Alliance Authorisation, (25 July 2012)**). This authorisation expired in August 2020.

- SQ codeshares on Air New Zealand flights between New Zealand and all SQ Australian destinations (except for Brisbane-Wellington and Brisbane-Queenstown).

Table 2 below summarises the services within Australia on which Singapore Airlines codeshares with Virgin Australia.

Table 2: Services within Australia on which Singapore Airlines codeshares, by Virgin Australia destination¹²

| Code | Virgin Australia destination in domestic Australia* | SQ/TR gateway from which there is an SQ codeshare |
|-------------|--|--|
| ASP | Alice Springs (ASP) | DRW , ADL |
| BME | Broome (BME) | PER |
| BNK | Ballina (BNK) | SYD |
| CBR | Canberra (CBR) | ADL, BNE, MEL, SYD |
| EMD | Emerald (EMD) | BNE |
| GET | Geraldton (GET) | PER |
| GLT | Gladstone (GLT) | BNE |
| HBA | Hobart (HBA) | BNE, MEL, SYD |
| HTI | Hamilton Island (HTI) | BNE, SYD, MEL |
| ISA | Mt Isa (ISA) | BNE |
| KGI | Kalgoorlie (KGI) | MEL , PER |
| KNX | Kununurra (KNX) | PER |
| KTA | Karratha (KTA) | PER |
| LST | Launceston (LST) | MEL, SYD |
| MCY | Sunshine Coast (MCY) | MEL, SYD |
| MKY | Mackay (MKY) | BNE, SYD |
| MOV | Moranbah (MOV) | BNE |
| NTL | Newcastle (NTL) | BNE, MEL |
| OOL | Gold Coast (OOL) | ADL, MEL, SYD, CBR** |
| PBO | Paraburdoo (PBO) | PER |
| PHE | Port Hedland (PHE) | PER |
| PPP | Proserpine (PPP) | BNE |
| ROK | Rockhampton (ROK) | BNE |
| TSV | Townsville (TSV) | BNE, SYD |
| XCH | Christmas Island (XCH) | PER |
| ZNE | Newman (ZNE) | PER |

*excludes SQ/MI point

** SQ code share remains on CBR-OOL route, however flights on this route no longer operate.

There are a number of other airlines that codeshare on sectors of SQ's Singapore-Australia services. The details of these arrangements are listed in the below table.

Table 3: Airlines codesharing on services to Australia operated by SQ, by city pair

| SQ sector | Airlines codesharing |
|---------------------|--|
| Singapore-Adelaide | Ethiopian Airlines (ET), Lufthansa (LH), SAS Scandinavian Airlines (SK), Swiss (LX), Turkish Airlines (TK), Virgin Australia (VA), LOT Polish Airlines (LO), Vistara (UK) |
| Singapore-Brisbane | Ethiopian Airlines (ET), Lufthansa (LH), SAS Scandinavian Airlines (SK), Swiss (LX), Turkish Airlines (TK), Virgin Australia (VA), LOT Polish Airlines (LO), Vistara (UK) |
| Singapore-Melbourne | Aegean Airlines (A3), Ethiopian Airlines (ET), Lufthansa (LH), SAS Scandinavian Airlines (SK), Swiss (LX), Turkish Airlines (TK), Virgin Australia (VA), LOT Polish Airlines (LO), Vistara (UK), Air France (AF), Air New Zealand (NZ) |
| Singapore-Perth | Ethiopian Airlines (ET), Lufthansa (LH), Asiana Airlines (OZ), SAS Scandinavian Airlines (SK), Swiss (LX), Turkish Airlines (TK), Virgin Australia (VA), LOT Polish Airlines (LO), Vistara (UK), Air Mauritius (MK) |
| Singapore-Sydney | Aegean Airlines (A3), Ethiopian Airlines (ET), Lufthansa (LH), SAS Scandinavian Airlines (SK), Swiss (LX), Turkish Airlines (TK), Virgin Australia (VA), LOT Polish Airlines (LO), Vistara (UK), Air Mauritius (MK), Air France (AF) |

In terms of flights between Australia and Europe, prior to COVID-19 these were either:

- (a) operated wholly by SQ (ie SQ operates the aircraft on both the flight with an origin/destination in Australia and any connecting flight forming part of the service); or
- (b) operated partly by SQ and partly by an airline with which SQ has a codeshare agreement – including, for example, Lufthansa (see below), 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 Australia domestic flight within Australia).

In addition, Singapore Airlines and Lufthansa, like other airlines, have access to standard interline arrangements allowing them to sell seats on services operated and marketed by other carriers.¹³

2.3 Lufthansa

The Lufthansa Group is a global aviation group which is comprised of three operating segments: Network Airlines, Eurowings and Aviation Services. The latter comprises: Logistics, MRO, Catering and Additional Businesses and Group Functions as well as Lufthansa AirPlus, Lufthansa Aviation Training and IT companies.

There are a number of wholly-owned carriers that form part of the Lufthansa Group. Those which are involved in the joint venture conduct are as follows:

- (a) **Lufthansa.** Lufthansa German Airlines (**LH**) is the largest airline in Germany. It operates from the two biggest German hubs in Frankfurt and Munich. As at May 2019, LH operated a global route network of over 7,200 flights per week across 203 destinations with a fleet of more than 280 international aircraft plus an additional 60

¹³ For example, Lufthansa may sell a ticket from Australia to Europe in which the first segment (eg Australia to Singapore) is operated by Qantas and has a Qantas (QF) flight code.

regional aircraft. An interactive map showing all of Lufthansa’s destinations can be accessed at: <https://www.lufthansa.com/xx/en/current-destinations>.

- (b) **Swiss.** Swiss International Airlines Ltd (**LX**) is the national airline of Switzerland. Its hubs are in Zurich and Geneva. As at May 2019, LX operated over 2,000 flights per week across 96 destinations, with a fleet of 88 aircraft.
- (c) **Austrian Airlines.** Austrian Airlines AG (**OS**) is Austria’s largest carrier and, as at May 2019, operated a global route network of over 90 destinations. OS operated over 1,900 flights per week with a fleet of 82 aircraft.

Lufthansa seeks authorisation for each of the above airlines to engage in the Proposed Conduct.

The Lufthansa Group also includes a number of other carriers, including Eurowings and Air Dolomiti, but they do not form part of the joint venture arrangements, and authorisation is not sought for them to engage in the Proposed Conduct.

Lufthansa is listed on the Frankfurt Stock Exchange, and forms a component of the MDAX, a stock market index consisting of 60 major German companies trading on the Frankfurt Stock Exchange.

The Lufthansa Group is also a part of the Star Alliance.

2.4 Lufthansa's operations with respect to Australia

Lufthansa does not directly operate any services landing in or departing from Australia.

Lufthansa does, however, have in place codeshare arrangements with Singapore Airlines, Thai Airways, United Airlines and Cathay Pacific under which Lufthansa acts as marketing carrier (meaning the Lufthansa code (ie LH, LX or OS) is shown on the flight) on flights operated by SQ, Thai Airways, United Airlines and Cathay Pacific. Lufthansa's codeshare routes to Australia are listed in **Table 4** below. For each route, at least the Australia-Asia/US leg is operated by the codeshare partner.

Table 4: Lufthansa's codeshare routes to Australia, by codeshare partner

| Singapore Airlines (SQ) | |
|--------------------------------|---|
| 1. | Adelaide-Frankfurt (Singapore stopover) |
| 2. | Brisbane – Frankfurt (Singapore stopover) |
| 3. | Melbourne–Frankfurt (Singapore stopover) |
| 4. | Perth – Frankfurt (Singapore stopover) |
| 5. | Sydney – Frankfurt (Singapore stopover) |
| 6. | Adelaide- Munich (Singapore stopover) |
| 7. | Brisbane - Munich (Singapore stopover) |
| 8. | Melbourne Munich (Singapore stopover) |
| 9. | Perth - Munich (Singapore stopover) |
| 10. | Sydney - Munich (Singapore stopover) |
| 11. | Adelaide-Zurich (Singapore stopover) |
| 12. | Brisbane–Zurich (Singapore stopover) |
| 13. | Melbourne-Zurich (Singapore stopover) |
| 14. | Perth– Zurich (Singapore stopover) |
| 15. | Sydney– Zurich (Singapore stopover) |
| Thai Airways (TG) | |
| 16. | Sydney – Frankfurt (Bangkok stopover) |

| | |
|-----------------------------|--|
| 17. | Brisbane – Frankfurt (Bangkok stopover) |
| 18. | Melbourne – Frankfurt (Bangkok stopover) |
| 19. | Perth – Frankfurt (Bangkok stopover) |
| United Airlines (UA) | |
| 20. | Sydney – Frankfurt (Los Angeles stopover) |
| 21. | Sydney – Munich (Los Angeles stopover) |
| 22. | Melbourne – Frankfurt (Los Angeles stopover) |
| 23. | Melbourne – Munich (Los Angeles stopover) |
| 24. | Sydney – Frankfurt (San Francisco stopover) |
| 25. | Sydney – Munich (San Francisco stopover) |
| Cathay Pacific (CX) | |
| 26. | Sydney – Frankfurt (Hong Kong stopover) |
| 27. | Cairns – Frankfurt (Bangkok stopover) |
| 28. | Melbourne – Frankfurt (Bangkok stopover) |
| 29. | Sydney – Zurich (Hong Kong stopover) |
| 30. | Cairns – Zurich (Hong Kong stopover) |
| 31. | Melbourne – Zurich (Hong Kong stopover) |

As noted above, LH has a codeshare arrangement with Singapore Airlines to codeshare on the following flights which are operated by SQ. Since entering the joint venture, LX also codeshares on SQ flights to Adelaide, Brisbane, Melbourne, Perth and Sydney.

Table 5: Lufthansa's codeshare routes to Australia, where Singapore Airlines is the operating carrier

| SQ direct services to Australia | |
|--|---------------------|
| 1. | Singapore-Adelaide |
| 2. | Singapore-Brisbane |
| 3. | Singapore-Melbourne |
| 4. | Singapore-Perth |
| 5. | Singapore-Sydney |
| 6. | Singapore-Cairns |
| 7. | Singapore-Darwin |

Lufthansa does not anticipate any changes to the above arrangements as a result of the Proposed Conduct.

It is important to note the following points regarding the services marketed by Lufthansa that may be relevant to customers arriving in or departing from Australia:

- (a) The services offered between Australia and Europe are never entirely operated by Lufthansa (since Lufthansa does not operate any aircraft on a flight with an origin or destination in Australia). Rather, they are operated either by an airline with which LH has a code share agreement, or partly by Lufthansa and partly by the code share partner.
- (b) Lufthansa does not market the codeshare sectors of these flights on a standalone basis. For example, Lufthansa only markets services between Sydney and Singapore operated by SQ as an online connection or stopover as part of an Australia-Europe service.

- (c) Further, Lufthansa does not operate or market any services between Australia and Asia/South East Asia. Lufthansa does offer, as the marketing carrier, services on these routes as *sectors* of a service between Australia and the Lufthansa Home Markets (ie, not as a standalone flight).

3. SCOPE OF THE AUTHORISATION

3.1 Joint Venture Framework Agreement

The Proposed Conduct arises pursuant to the Framework Agreement between Singapore Airlines and Lufthansa. [REDACTED]

As at the date of this application, the Framework Agreement remains in the same form as it was at the time of the 2016 Authorisation, save that the Applicants have agreed to one amendment to provide for [REDACTED]

There are, however, a number of additional changes proposed to the Framework Agreement:

- (a) [REDACTED]

- (b) As described in section 2.1 above, the Applicants have also prepared amendment agreements in relation to the application of the joint venture to each of MI and TR, but those agreements have not yet been executed.

- (c) Finally, the Applicants are in the process of negotiating amendments to the Framework Agreement to expand the Lufthansa Home Markets to include: Albania; Bosnia and Herzegovina; Bulgaria; Croatia; Cyprus; Czech Republic; Estonia; France; Greece; Hungary; Iceland; Republic of Ireland; Italy; Kosovo; Latvia; Lithuania; Luxembourg; Malta; Republic of Moldova; Montenegro; Netherlands; North Macedonia; Poland; Portugal; Romania; Serbia; Slovakia; Slovenia; Spain; and United Kingdom, and to expand the Singapore Home Markets to include [Country A], [Country B] and [Country C], and to address the treatment of specific routes as Revenue Share Routes (discussed further below). [REDACTED]

14 [REDACTED]

[REDACTED]

15 [REDACTED]

[REDACTED]

For the purpose of this application, unless otherwise stated, references to Singapore Airlines or SQ should be read as including both SQ and TR, and references to Lufthansa should be read as including each of LH, LX and OS.

Key elements of the Framework Agreement and the Proposed Conduct are summarised below.

3.2 Scope of the joint venture

Once the amendments to the Framework Agreement described above are finalised, the joint venture will relate to the provision of scheduled air passenger services between:

- Germany, Austria, Belgium, Switzerland, Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Greece, Hungary, Iceland, Republic of Ireland, Italy, Kosovo, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, North Macedonia, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia; Spain and United Kingdom (the Lufthansa Home Markets)¹⁶; and
- Singapore, Australia, Indonesia, Malaysia, [Country A], [Country B] and [Country C] (the Singapore Home Markets).

The joint venture does not extend to:

- (a) Other, non-passenger services in the airline industry (such as air cargo);
- (b) Services which do not operate between the Lufthansa Home Markets and the Singapore Home Markets, and but rather operate within one of the home markets. By way of example, Singapore–Sydney is not included (since this would have both its origin and destination in the Singapore Home Markets) and Munich–Brussels is not included (since this would have an origin in the Lufthansa Home Markets but no destination in the Singapore Home Markets); and
- (c) Co-ordination in relation to services offered pursuant to codeshare arrangements Singapore Airlines or Lufthansa have in place with third parties. The joint venture has no effect on these existing alliances/codeshare arrangements (which are effectively "grandfathered" under the Framework Agreement and will remain on foot), and all decisions in relation to them will be made independently by Singapore Airlines or Lufthansa.

In addition, the Framework Agreement 

The Applicants will continue to make decisions in respect of each of the above categories of services independently of each other.

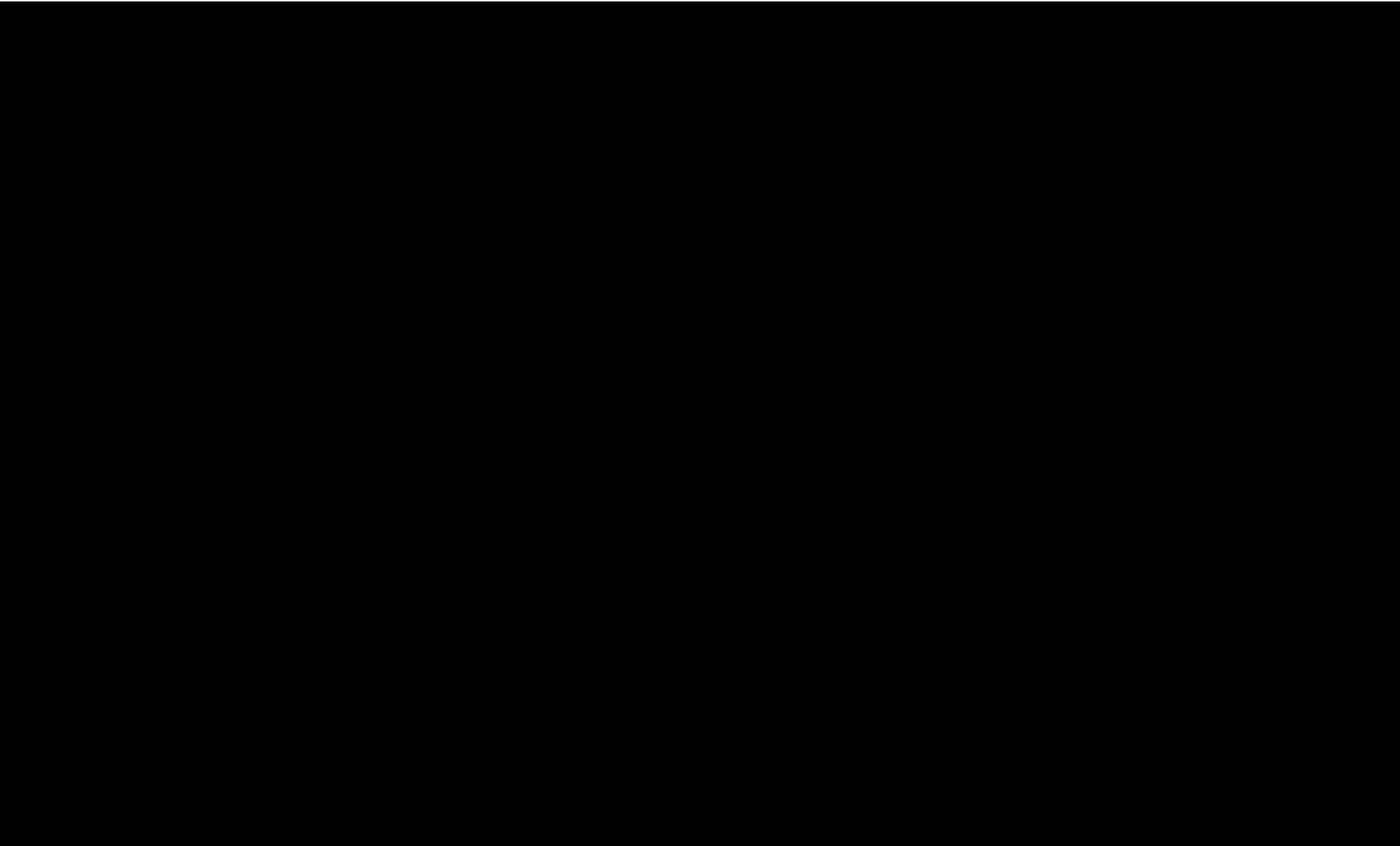
As Figure 1 illustrates, the Framework Agreement provides for cooperation in relation to the following conduct, which is referred to in this application as the Proposed Conduct:

¹⁶ For completeness, the Applicants note that the list of Lufthansa Home Markets also includes Andorra, Liechtenstein, Monaco, San Marino and the Vatican City. However, as these Home Markets do not have public airports, it is unlikely that routes will exist to these Home Markets under the JV, subject to a public airport being built.

- (a) On all routes within the joint venture scope:
 - (i) pricing cooperation and inventory management on services that are entirely operated by the Applicants and include a Revenue Share Route; and
 - (ii) sales and marketing; and
- (b) On Revenue Share Routes: network and schedule coordination, capacity management and revenue sharing.

In addition to the Proposed Conduct, the Applicants will also seek to pursue additional cooperation, where practicable, in relation to codeshare, frequent flyer and harmonisation arrangements both within and beyond the joint venture scope. This conduct is not within the scope of the Proposed Conduct, and authorisation is not sought for this conduct, but it is noted here for completeness.

Figure 1: The scope of the Proposed JV, as relevant to Australia

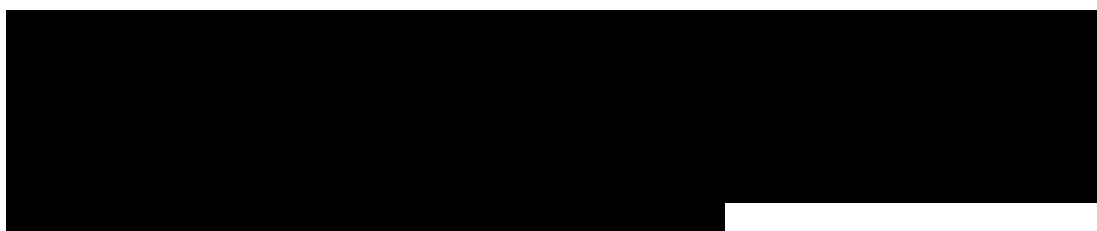


3.3 Purpose of the joint venture

The objective of the joint venture, including the Proposed Conduct, is to enhance scheduled air passenger services between the Lufthansa Home Markets and the Singapore Home Markets. The joint venture is designed to give rise, and has already given rise, to significant benefits to the travelling public with regard to increased travelling options, the expansion of services and products available to passengers, increased network connectivity, better scheduling of services, and harmonised service offerings. The joint venture also allows for better capacity utilisation and inventory management.

The Gulf carriers (specifically Emirates, Etihad and Qatar Airways) have expanded services in the last 10 years, and more recently (since the 2016 Authorisation) North-East Asian carriers (including Sichuan Airlines, EVA Air and Hainan Airlines) have started servicing, or increased their servicing of, the Australia-Europe routes. The joint venture allows the Applicants to better compete with these carriers, as well as other carriers and results in the ongoing growth and development of competition.

The networks of the Applicants are largely complementary. Singapore Airlines, having its hub in Singapore, provides comprehensive services to South East Asia and Australia. Similarly, Lufthansa, having European hubs in Frankfurt, Munich, Zurich and Vienna, provides comprehensive services to European destinations. Accordingly, both airlines have access to different feeder networks, resulting in great potential to increase network coverage and connectivity through the joint venture.



3.4 Proposed Conduct regarding Revenue Share Routes

The Revenue Share Routes are defined as routes involving non-stop or direct services operated under the LH/LX/OS and/or SQ designator code between the Singapore Home Markets and the Lufthansa Home Markets.

There are three Revenue Share Routes at present, being the routes between:

- (a) Singapore and Munich (**SIN-MUC**),¹⁷ on which SQ and LH operate services;
- (b) Singapore and Frankfurt (**SIN-FRA**), on which SQ and LH operate services; and
- (c) Singapore and Zurich (**SIN-ZRH**), on which SQ and LX operate services,

As noted earlier, the route between Singapore and Dusseldorf was previously a Revenue Share Route on which SQ (but not LH) operated services, but the SQ flights have been permanently suspended and there are no current plans to reinstate them. Accordingly, this has not been treated as a Revenue Share Route for the purpose of this application.

A route involving a stopover is not a Revenue Share Route, irrespective of whether the origin and destination are points within the respective Home Markets. For example, routes between Australia and the Lufthansa Home Markets will not be Revenue Share Routes, since they are not direct, non-stop routes. However, a Revenue Share Route may form part of a

¹⁷ Singapore Airlines and Lufthansa both operated SIN-MUC prior to COVID-19. Lufthansa has currently suspended services on this route, but intends to recommence those services once market conditions allow.

route with an origin or destination in Australia. For example, the Sydney-Singapore-Frankfurt route will not be a Revenue Share Route, but part of that route (the Singapore-Frankfurt service) will be a Revenue Share Route.

The Framework Agreement¹⁸ provides that the Applicants will coordinate their networks, schedules and capacity management on the Revenue Share Routes, and coordinate connections for feeder routes where practical. However the Applicants will unilaterally decide on the scheduling of their own feeder routes. The objective of these arrangements is to enhance travel options and increase passenger traffic on the Revenue Share Routes, while ensuring fair and equal growth opportunities for the Applicants.

This revenue sharing model is designed for both Applicants to fairly share risks and rewards based on their network and sales contribution to the joint venture, with the express objective of achieving metal neutrality between the Applicants such that, on the Revenue Share Routes, the Applicants are indifferent as to which Applicant's service a passenger travels on.

Specifically, clause 4.1 of the Framework Agreement provides:

[REDACTED]

Exhibit A of the Framework Agreement establishes the proposed revenue sharing model between the Applicants. Clause 4 of Exhibit A provides that:

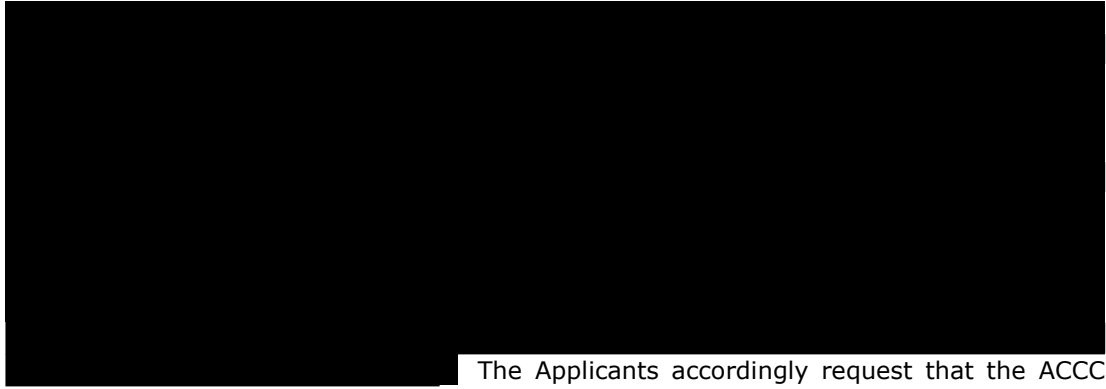
[REDACTED]

The data exchange between the Applicants is limited to what is necessary to practically implement the revenue share model. The revenue share model is an integral part of the joint venture, and provides each Applicant with the necessary incentives to support the effective implementation of the joint venture.

The proposed expanded geographic scope of the joint venture does not result in any new direct, non-stop routes between Singapore Home Markets and Lufthansa Home Markets on which both parties operate flights, nor any such routes where Lufthansa operates flights. There are, however, nine routes on which either SQ or TR currently operates direct flights from Singapore to the relevant European destination but Lufthansa does not operate. These are as follows (unless otherwise stated, the flight is operated by SQ):

- a. Singapore - Amsterdam
- b. Singapore - Athens (operated by TR)
- c. Singapore - Berlin (operated by TR)
- d. Singapore - Barcelona
- e. Singapore - London
- f. Singapore - Manchester
- g. Singapore - Milan
- h. Singapore - Paris; and
- i. Singapore - Rome.

¹⁸ See clause 6.1.1 of the Framework Agreement.



The Applicants accordingly request that the ACCC authorise the proposed expanded joint venture arrangements on the basis that the routes above are, or may become, in effect Revenue Share Routes, and may be operated as such during the term of the authorisation.

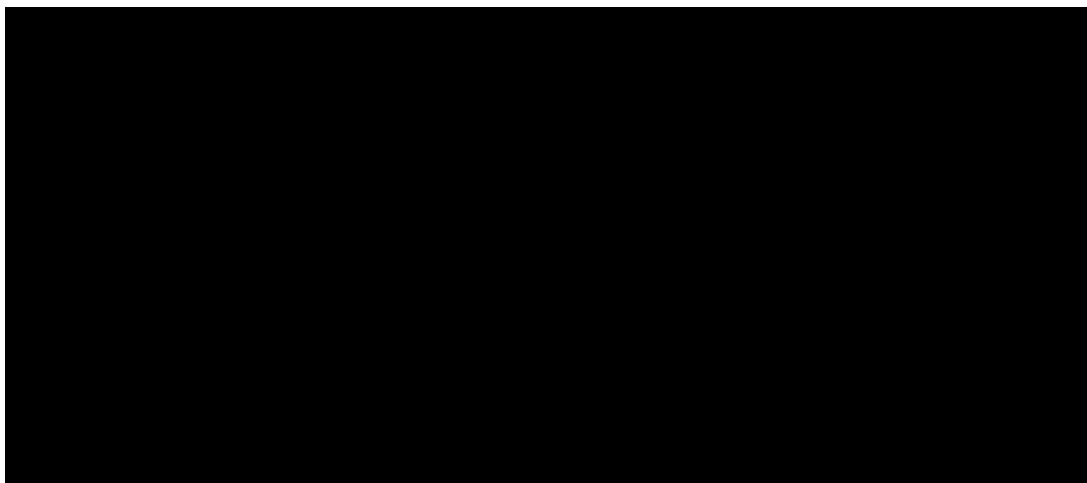
For completeness, the Applicants also note that the expansion of the list of Singapore Home Markets will not have any competitive effects in any market in Australia. This is because neither Singapore Airlines nor Lufthansa currently operate any flights into Australia from any of [Country A], [Country B] or [Country C], nor out of Australia to those destinations.¹⁹ Even if they did commence doing so in the future, the only relevance of the joint arrangements to such flights would be where the flight formed part of a leg of a longer journey which included a Revenue Share Route (for example, from [City in Country A] to Sydney to Singapore to Munich), and the competitive analysis and public benefits otherwise outlined in this submission will apply equally to such routes.

3.5 **Proposed Conduct regarding all routes within the joint venture scope**

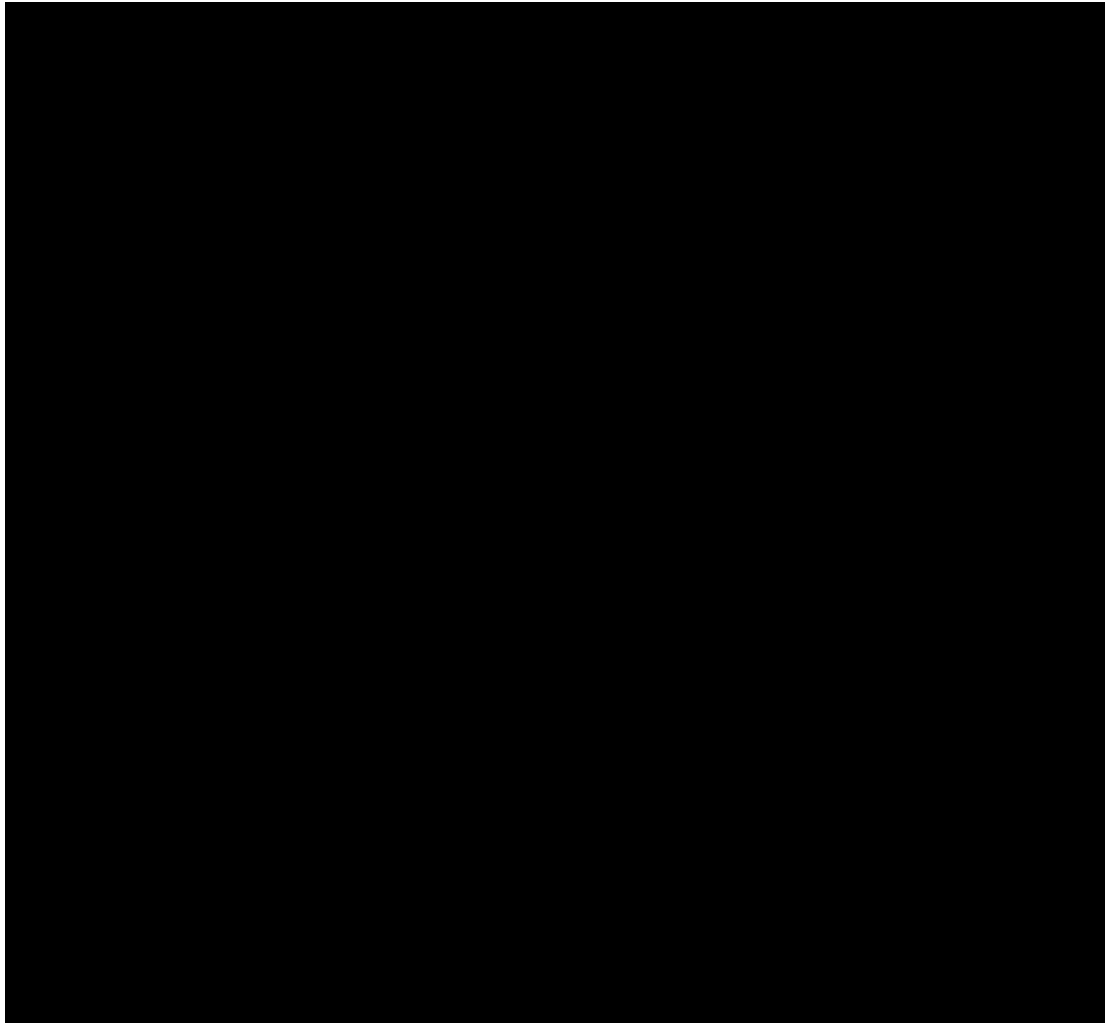
For all routes within the joint venture scope which are entirely operated by the Applicants and include a Revenue Share Route, the Framework Agreement provides that the Applicants will:

- (a) cooperate to align and coordinate their fares with the objective of providing consumers with the flexibility and convenience of using any flight within the joint venture scope; and
- (b) jointly manage their inventory with the objective of achieving efficiencies on routes within the joint venture scope.

Specifically, clause 6.1.2 of the Framework Agreement provides:



¹⁹ For completeness, the Applicants note that SQ previously operated flights from [City in Country A] to Melbourne prior to the COVID-19 pandemic, but that route has been permanently suspended.



Clause 6.1.2 would apply to:

- (a) Revenue Share Routes (currently being SIN-MUC, SIN-FRA, SIN-ZRH, and to include the additional Revenue Share Routes in the future); and
- (b) indirect services between the Lufthansa Home Markets and Singapore Home Markets (in either direction) which contain a Revenue Share Route, and on which all sectors are operated by Lufthansa or Singapore Airlines.

3.6 **Sales and marketing cooperation**

Under the joint venture,²⁰ the Applicants will continue to coordinate their sales activities, both for agency and corporate sales programs, including the development of a set of "Sales Guiding Principles". The goal of this cooperation is to increase customer choice and support an approach of "sales without preference" – ie, essentially a "metal-neutral" approach to sales to support the metal neutrality sought to be achieved in relation to the Revenue Share Routes.

²⁰ See clause 6.1.3 of the Framework Agreement.

The Applicants will continue to maintain their separate brand identities, but will also coordinate their marketing of services under the joint venture, including the use of joint advertisements and promotional activities on various media channels.

3.7 **Why authorisation is being sought**

The Applicants may be considered to be competitors in the supply of air passenger transport services between Australia and Europe (which for the purpose of this application includes the United Kingdom) under the *Competition and Consumer Act 2010 (CCA)*. Accordingly, the Proposed Conduct might on one view be challenged on the grounds that it involves giving effect to provisions that may contravene the prohibitions on cartel conduct, or on agreements, arrangements or understandings that have the effect of substantially lessening competition, contained in the CCA.

The Applicants do not concede that, absent authorisation, the Proposed Conduct would involve any breach of the CCA, or make any concession regarding the application of any applicable defences or exceptions under the CCA. Nevertheless, the Applicants wish to have the certainty afforded by authorisation that the Proposed Conduct does not breach the relevant provisions of the CCA.

3.8 **Duration of the joint venture**

The Applicants executed the Framework Agreement on 11 November 2015, for a period of



The Applicants seek authorisation to engage in the Proposed Conduct for a period of a further five years, which they consider to be an appropriate time period on which the anticipated benefits arising from the joint venture can be assessed.

4. **RELEVANT MARKETS**

4.1 **Overlap of the Applicants' current services**

The networks of the Applicants are largely complementary.

Currently, Lufthansa does not *operate* flights on any routes into or out of Australia, but operates flights (relevantly) between Lufthansa Home Markets and Singapore. Singapore Airlines operates flights between Australia and Singapore and between Singapore and the Lufthansa Home Markets. Therefore, there is no overlap on direct city pair services operated by the Applicants between points in Australia and points in Asia, or indirect city pair services between points in Australia or points in Europe. The only overlap in direct city pair services operated by the Applicants are flights between:

- Singapore and Frankfurt (SQ and LH);
- Singapore and Zurich (SQ and LX); and
- once the COVID-19 travel restrictions start to relax, Singapore and Munich (SQ and LH).

Both Singapore Airlines and Lufthansa *market* flights between the Singapore Home Markets and the Lufthansa Home Markets.²¹ Lufthansa offers flights to Australia marketed under

²¹ "Marketing carrier" means carrier whose code is shown on the flight (ie, SQ, MI, LH or LX).

codeshare arrangements (including itineraries entirely operated by codeshare partners Thai Airways, United Airlines and Cathay Pacific - and itineraries partly operated by Lufthansa). As described above LH and LX codeshare on direct SQ routes between Australia and Singapore. However, these codeshare flights are not marketed by LH or LX on a standalone basis, but only as part of an Australia–Lufthansa Home Markets/Lufthansa Home Markets - Australia itinerary. Further, as noted above, a number of the codeshare flights into Australia are currently suspended as a result of COVID-19. Thai Airways and Cathay Pacific are not operating any services into Australia at this point.

Given the limited overlap between the networks operated by the Applicants, the JV has allowed the Applicants to increase network coverage and connectivity, generally enhance air passenger services between Lufthansa Home Markets and Singapore Home Markets and increase competition with Gulf and other carriers.

4.2 International aviation industry

The ACCC has recognised that cooperation between airlines can be beneficial and necessary in order for airlines to remain viable in the face of rising costs and intense global competition. In particular, it has authorised a number of alliances and cooperative arrangements on this basis including:

- (a) a joint venture between the Virgin Blue Group and Delta covering trans-Pacific routes in 2009 (reauthorised in 2015);²²
- (b) an alliance between Virgin Blue and Etihad in 2011 (reauthorised in 2015);²³
- (c) a Joint Business Agreement between Qantas and American Airlines (Inc) in relation to transpacific routes in 2011 (reauthorised in 2016 and 2021);²⁴
- (d) an alliance between Virgin Australia and Singapore Airlines in relation to Australia-Singapore services in 2011 (reauthorised 2016);²⁵
- (e) a commercial cooperation agreement between Etihad and Air Berlin PLC in 2012;²⁶

²² ACCC Determination in relation to a Applications for Authorisation lodged by Virgin Blue Group and Delta Air Lines Inc in respect of a joint venture between the applicants (A91151, A91152, A91172 & A191173), 10 December 2009 (**Virgin/Delta Authorisation, (10 December 2009)**); ACCC Determination in relation to Applications for Revocation and Substitution lodged by Virgin Australia Airlines Pty Ltd and Others in respect of an alliance between the applicants (A91475, A91476, A91477 & A91478), 14 August 2015 (**Virgin/Delta Authorisation, (14 August 2015)**).

²³ ACCC Determination in relation to Applications for Authorisation lodged by Virgin Blue Airlines Pty Ltd and Others in respect of an alliance between the applicants (A91247 & A91248), 3 February 2011 (**Virgin/Etihad Authorisation, (3 February 2011)**); ACCC Determination in relation to Applications for Revocation and Substitution lodged by Virgin Australia Airlines Pty Ltd and Etihad Airways in relation to an alliance between the applicants (A91510 – A91511), 4 December 2015 (**Virgin/Etihad Authorisation, (4 December 2015)**).

²⁴ ACCC Determination in relation to Applications for Authorisation lodged by Qantas and American Airlines in respect of a Joint Business Agreement between the applicants (91265 & A91266), 29 September 2011 (**Qantas/American Authorisation, (29 September 2011)**); ACCC Determination in relation to Applications for Authorisation lodged by Qantas and American Airlines in respect of a Joint Business Agreement between the applicants (A91502 – A91503), 25 February 2016(**Qantas/American Authorisation, (25 February 2016)**); ACCC Determination in relation to Applications for Revocation and Substitution lodged by Qantas and American Airlines in respect of a Joint Business Agreement between the applicants (AA1000532), 25 March 2021 (**Qantas/American Authorisation, (25 March 2021)**).

²⁵ ACCC Determination in relation to Applications for Authorisation lodged by Virgin Blue Airlines Pty Ltd and Singapore Airlines in respect of an alliance between the applicants (A91267 and A91268), 1 December 2011 (**Virgin/Singapore Authorisation, (1 December 2011)**); ACCC Determination in relation to Applications for Revocation and Substitution lodged Qantas and American Airlines in respect of a Joint Business Agreement between the applicants (A91539 and A91540), 23 September 2016 (**Virgin/Singapore Authorisation, (23 September 2016)**).

²⁶ ACCC Determination in relation to Applications for Authorisation lodged by Etihad Airways and Air Berlin in respect of a commercial alliance (A91307 and A91308), 25 July 2012 (**Etihad/Air Berlin Authorisation, (25 July 2012)**).

- (f) an affiliation agreement between Emirates and Flydubai in 2012;²⁷
- (g) the Master Coordination Agreement between Qantas and Emirates in 2013 (reauthorised 2018);²⁸
- (h) a joint venture coordination agreement between Qantas and Jetstar entities operating in Asia in 2013 (reauthorised 2018);²⁹
- (i) a Joint Coordination Agreement between Qantas and China Eastern Airlines in 2015 (reauthorised 2021);³⁰
- (j) a Cooperation Agreement between Etihad and Alitalia in 2015; and³¹
- (k) a cooperation agreement between Virgin Australia and Virgin Atlantic in 2019.³²

4.3 The relevant areas of competition

As described further below in section 7, the Proposed Conduct will not result in a lessening of competition in any market, however defined, given the competitive dynamics and economic realities of the global aviation industry. However, for the purposes of this submission, the appropriate area of competition in which to assess the Proposed Conduct having regard to the overlap between the Applicants' services, the activities of the Applicants under the joint venture, and the ACCC's consideration in previous authorisation matters, is "international air passenger transport services between Australia and Europe".³³ For completeness, the Applicants have also addressed the effect of the Proposed Conduct

²⁷ ACCC Determination in relation to Applications for Authorisation lodged by Emirates and Flydubai in respect of an affiliation agreement (A91298 and A91299), 25 July 2012 (**Emirates/Flydubai Authorisation, (25 July 2012)**).

²⁸ ACCC Determination in relation to Application for Authorisation lodged by Qantas Airways Limited and Emirates in respect of a Master Coordination Agreement to coordinate air passenger and cargo transport operations and other related services (A91332-A91333), 27 March 2013 (**Qantas/Emirates Authorisation, (27 March 2013)**); ACCC Determination in relation to Applications for Revocation and Substitution lodged Qantas and Emirates in respect of a Master Coordination Agreement between the applicants (AA1000400), 23 March 2018 (**Qantas/Emirates Authorisation, (23 March 2018)**).

²⁹ ACCC Determination in relation to Applications for Authorisation lodged by Qantas Airways Limited and Jetstar Airways Limited in respect of a joint venture coordination agreement (A91314 & A91315), 26 March 2013 (**Qantas/Jetstar Authorisation, (26 March 2013)**); ACCC Determination in relation to Applications for Revocation and Substitution lodged Qantas and Jetstar Airways Limited in respect of a Joint Coordination Agreement between the applicants (AA1000395), 16 February 2018 (**Qantas/Jetstar Authorisation, (16 February 2018)**).

³⁰ ACCC Determination in relation to an Application for Authorisation lodged by Qantas Airways Limited and China Eastern Airlines Corporation Limited in respect of a Joint Coordination Agreement (A91470 & A91471), 21 August 2015 (**Qantas/China Eastern Authorisation, (21 August 2015)**); ACCC Determination in relation to Applications for Revocation and Substitution lodged Qantas and China Eastern Airlines Corporation Limited in respect of a Joint Coordination Agreement between the applicants (AA1000526), 29 January 2021 (**Qantas/China Eastern Authorisation, (29 January 2021)**).

³¹ ACCC Determination in relation to Applications for Authorisation lodged by Etihad Airways and Alitalia in respect of a Cooperation Agreement implementing a commercial partnership (A91468 & A91469), 30 January 2015 (**Etihad/Alitalia Authorisation, (30 January 2015)**).

³² ACCC Determination in relation to Application for Authorisation lodged by Virgin Australia Airlines Pty Ltd, Virgin Australia Airlines (SE Asia) Pty Ltd, Virgin Australia Cargo Pty Ltd, Virgin Australia International Airlines Pty Ltd, Virgin Australia Regional Airlines Pty Ltd, Virgin Atlantic Airways Ltd, and Virgin Atlantic International Limited in respect of cooperation on services between Australia and the UK/Ireland (AA1000443), 8 November 2019 (**Virgin Australia/Virgin Atlantic Authorisation, (8 November 2019)**).

³³ The ACCC has previously considered similar "relevant areas of competition": Virgin/Etihad Authorisation, (4 December 2015): "International air transport services for passengers travelling between Australia and the UK/Europe"; Etihad/Air Berlin Authorisation, (25 July 2012): "International air passenger transport services between (i) Australia and Middle East/South East Asia and (ii) Australia and Europe"; Virgin/Singapore Authorisation, (1 December 2011): "International air passenger transport services, notably services between (i) Australia and UK/Europe and (ii) Australia and Asia"; Virgin/Etihad Authorisation, (3 February 2011): "International air transport services for passengers travelling between Australia and the Middle East, and between Australia and the UK/Europe".

on the sale of international travel services, since the ACCC has previously considered this market to be relevant to its analysis.³⁴

(a) **Air passenger transport services between Australia and Europe**

The appropriate area of activity for consideration of the Proposed Conduct is the market for international air passenger transport services between Australia and Europe. This assessment will most usefully illustrate the impact of the Proposed Conduct on competition regarding passengers travelling to and from Australia, having regard to the Applicants' activities, substitutable services, customer behaviour and other aspects of competition.

As outlined above, the Proposed Conduct relates to certain services between Australia and the Lufthansa Home Markets, with the most intensive coordination occurring on the routes between Singapore and each of Zurich, Frankfurt and (in the short to medium term) Munich where the Applicants overlap in the *operation* of air services. In some cases, these overlapping services will form part of a service to or from Australia.

While both Applicants *market* services between Australia and the Lufthansa Home Markets, in Lufthansa's case the Australian component of those services is always operated by another carrier, whether Singapore Airlines or another codeshare partner.

The Applicants' services between Australia and the Lufthansa Home Markets compete with a number of other types of services between Australia and Europe. Given the distance and time associated with travelling between Australia and the Lufthansa Home Markets, it is appropriate to consider the full range of options available to passengers travelling between Australia and the Lufthansa Home Markets. Such passengers can choose:

- (i) To depart/arrive on an international service operated directly from/to their point of origin/departure in Australia, or on a service that connects to an international service via a different Australian city. For example, passengers travelling to the Lufthansa Home Markets from Melbourne could readily connect to an international flight in Sydney. Given the small distances between Australian cities relative to total travel time, there is a high degree of substitutability between services directly and indirectly departing from/arriving in a particular Australian city.
- (ii) To make a number of different stopovers. For example, while the Applicants' services between Australia and the Lufthansa Home Markets stopover in Singapore, a passenger travelling from Australia to the Lufthansa Home Markets could as readily choose a service with a stopover elsewhere in Asia, or in another region, such as the Middle East. They could also choose a flight with more than one stopover. Passengers' willingness to travel via alternative midpoints is demonstrated by the rapid growth in Gulf carriers on routes between Australia and Europe as recognised by the ACCC.³⁵
- (iii) To depart/arrive on an international service from or arriving in their particular point of origin/departure in the Lufthansa Home Markets, or on a service that connects via another European city. For example, cities such as London and Frankfurt are commonly used as local hubs or gateways, and direct flights to other European cities are readily substitutable with indirect flights via such

³⁴ Qantas/American Authorisation, (25 March 2021); Virgin/Delta Authorisation, (14 August 2015); Qantas/Emirates Authorisation, (27 March 2013).

³⁵ Virgin/Etihad Authorisation, (4 December 2015) para 48.

gateways. The successful introduction of European hubs by commercial airlines to service other cities demonstrates that passengers consider these services to be substitutable with direct services. The potential for substitution between particular European destinations is further increased given the multiple modes of transport available between many European cities. This is consistent with the ACCC's previous approach in considering coordination of services between Australia and Germany.³⁶

This approach is also consistent with recent aviation alliance authorisation determinations by the ACCC, in which the ACCC considered international air passenger transport services between Australia and Europe or UK/Europe as a relevant area of competition for assessment.³⁷

The joint venture does not separately require consideration of air passenger transport services between Australia and Asia, since:

- o Lufthansa does not operate or market flights on these routes and will not commence doing so as a result of the joint venture; and
- o flights between Australia and Asia are not within the scope of the joint venture as described above (ie, there will be no coordination in relation to flights with an origin in Australia and a destination in Asia and vice versa).

The competition analysis of the Proposed Conduct is addressed in section 7.4, below.

(b) Sale of international travel services

In previous aviation alliance authorisation determinations, the ACCC has identified a separate market for the sale of international travel services which includes tickets sold directly by airlines and through indirect channels such as travel agents.

The Applicants submit that the joint venture will continue to have minimal, if any, impact on competition in this market. As the ACCC has previously found, there are a range of competitors in this market including travel agencies (online and in shop fronts), direct distribution by airlines as well as global internet portals such as Expedia and Webjet.³⁸ Therefore, consistent with previous determinations, the Applicants submit that the ACCC is not required to consider further the effect of the joint venture on the sale of international travel services.³⁹

5. COUNTERFACTUAL

Absent authorisation, the Applicants would cease the Proposed Conduct.



³⁶ In Etihad/Air Berlin Authorisation, (25 July 2012), the ACCC considered "International air passenger transport services between (i) Australia and Middle East/South East Asia and (ii) Australia and Europe".

³⁷ For example, in Virgin/Etihad Authorisation, (4 December 2015), the ACCC considered "International air transport services for passengers travelling between Australia and the UK/Europe"; in Etihad/Air Berlin Authorisation, (25 July 2012), the ACCC considered "International air passenger transport services between (i) Australia and Middle East/South East Asia and (ii) Australia and Europe"; in Virgin/Singapore Authorisation, (1 December 2011), the ACCC considered "International air passenger transport services, notably services between (i) Australia and UK/Europe and (ii) Australia and Asia"; in Virgin/Etihad Authorisation, (3 February 2011), the ACCC considered "International air transport services for passengers travelling between Australia and the Middle East, and between Australia and the UK/Europe".

³⁸ Virgin/Delta Authorisation, (14 August 2015), para 98; Qantas/American Authorisation, (25 February 2016), para 73; Qantas/American Authorisation, (25 March 2021), para 4.12.

³⁹ See, for example, Qantas/American Authorisation, (25 March 2021), para 4.12.

[REDACTED]

[REDACTED]

If the joint venture does not proceed, this may also affect the possibility that the Applicants will enter into future codeshares to Australia.

6. PUBLIC BENEFITS FROM THE PROPOSED CONDUCT

6.1 Analytical framework

The term "public benefit" is not defined in the CCA. It has however been interpreted broadly and includes:

*"...anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress. Plainly the assessment of efficiency and progress must be from the perspective of society as a whole: the best use of society's resources. We bear in mind that (in the language of economics today) efficiency is a concept that is usually taken to encompass "progress"; and that commonly efficiency is said to encompass allocative efficiency, production efficiency and dynamic efficiency."*⁴⁰

The ACCC has previously observed that the realisation of potential public benefits from airline alliances depends on the following:⁴¹

- Network complementarities or, in other words, the extent to which the product and service offerings of the airlines concerned are complementary, and to which an alliance allows each airline to increase access to a greater number of geographic, product or functional markets than they would have access to in the future without the alliance. A higher proportion of common destinations and products usually indicates a lower degree of complementarity (and vice versa).
- How strongly the 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 (ie, 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.
- Whether the alliance triggers a pro-competitive response from rival carriers or facilitates spill-over benefits to other areas of the economy (eg, tourism).

In relation to each of these factors, the Proposed Conduct has delivered, and will continue to deliver, public benefits. The Applicants' networks are largely complementary. By virtue of the Proposed Conduct regarding the Revenue Share Routes, the Applicants' incentives have become more fully aligned, to the point of achieving metal neutrality. While the Revenue Share Routes are few in number (currently only three but expected to expand

⁴⁰ *Re 7-Eleven* (1994), ATPR 41-357 at [42,777]. See also *Queensland Co-operative Milling Association Ltd* (1976), ATPR 40-012, at 17,242 and *VFF Chicken Meat Growers' Boycott Authorisation* (2006) AcompT 9 at [75].

⁴¹ Virgin/Delta Authorisation, (14 August 2015), para 124.

under the expanded joint venture arrangements⁴²), they are the critical means to align the Applicants' interests, since they represent the area of principal overlap between the Applicants, and the key means of connecting the Lufthansa Home Markets and Singapore Home Markets, and hence providing each Applicant with access to the other's complementary network.

The Proposed Conduct has resulted and will continue to result in significant public benefits to the travelling public. Due to the coordination efforts allowed by the joint venture, customers have benefited (prior to COVID-19) from increased weekly capacity on flights as well as increased frequency of flights. This gives customers more options, and flexibility and allows for more competitive fares. These benefits would not be feasible to achieve outside the joint venture framework. These public benefits will be explained in further detail below.

6.2 **Outline of public benefits**

The Applicants submit that the joint venture (of which the Proposed Conduct is an integral and necessary part) has already, and is highly likely continue to, lead to public benefits in the following areas:

- (a) Enhanced products and services, including:
 - (i) enhancing post-COVID-19 recovery for the airline and tourism industry;
 - (ii) increases in frequency of services and capacity;
 - (iii) better scheduling and resulting benefits to customers;
 - (iv) introduction of new routes and services;
 - (v) expanded virtual networks for both of the airlines through the alignment of networks that are largely complementary;
 - (vi) improvement of existing services;
 - (vii) more flexibility and choice through metal neutrality;
 - (viii) better offerings for corporate accounts;
- (b) more competitive fares;
- (c) promotion of competition;
- (d) additional cost savings and other efficiencies; and
- (e) stimulation of tourism.

The existing and likely future public benefits of the joint venture are described further below.

6.3 **Enhanced products and services**

(a) **Post Covid-19 recovery**

This authorisation is not sought as an emergency measure due to COVID-19, but there will likely be ancillary benefits of the Proposed Conduct for the recovery of the aviation industry. The ACCC has previously considered the detriments suffered by

⁴² Currently being the routes between Singapore and each of Munich, Frankfurt and Zurich. Of these, the applicants currently operate overlapping services on the routes between Singapore and each of Frankfurt and Zurich, only.

the civil aviation industry due to COVID-19 in the context of determinations for airline authorisations.⁴³

Currently and for the immediate future, international airlines operating routes with an origin or destination in Australia can no longer rely on tourism to stimulate their business, but rather have to rely on repatriation. This is evident in the fact that for March 2021, of the 32,900 international arrivals, only 6,900 (21%) were temporary visa holders, the rest were all Australia citizens or residents or New Zealand citizens. Conversely, of the 32,400 departures, 15,700 (49%) were temporary visa holders.⁴⁴ This is further emphasised by the estimates that demand for international tourism will not return to 2019 levels until 2025.⁴⁵ Repatriation is inherently a finite source of income for international airlines, and coordination between airlines is necessary to ensure that services continue to be economically viable to operate. Although not the primary goal of the Proposed Conduct, it will help ensure the long term survival of activity and competition in the air-travel industry.

The continuation of the joint venture will reduce the risks for the Applicants in restoring capacity in the current operating environment. It will allow the Applicants to reinstate capacity in a sustainable manner without incurring the risk of over-investing in capacity. It will allow Singapore Airlines and Lufthansa to continue to service Australian destinations and continue to service routes from Australia to Europe as doing so will require less resources and expenditure than if each of the Applicants were to service these routes alone.

(b) Increases in frequency of services and capacity

The joint venture (of which the Proposed Conduct is an integral and necessary part) has resulted in a greater frequency of services and increased capacity on the relevant routes. For example:

- (i) In order to increase capacity between Singapore and Germany, Singapore Airlines introduced a new route from Singapore-Dusseldorf. This was introduced in 2016 on a three-times weekly basis. In March 2018 this was then increased to four times per week. This resulted in greater choice for consumers as Lufthansa did not (and still does not) operate the SIN-DUS route. This route has been permanently suspended following a review of Singapore Airlines' network amid COVID-19, but it remains an excellent example of the sorts of opportunities and benefits that can arise from the joint venture.

This new direct service was facilitated by the joint venture due to the Applicants' ability to leverage off each other's respective strengths in Asia and Europe. The viability of new service offerings largely depends on the ability to drive demand at both origin and destination points, and to provide convenient connection options for potential travellers. The close coordination of connection options, coordination of fares, the availability of potentially more competitive fares (compared to the situation without the joint venture) and other variables are required to ensure that the services can generate increased demand, and thus foster their longevity. Such coordination, and

⁴³ Qantas/American Authorisation, (25 March 2021).

⁴⁴ Australian Bureau of Statistics, Overseas Travel Statistics, Provisional, March 2021 <<https://www.abs.gov.au/statistics/industry/tourism-and-transport/overseas-travel-statistics-provisional/latest-release>>.

⁴⁵ Deloitte, 'COVID-19 recovery for the tourism sector: How are we tracking?' (January 2021), page 6 <<https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-covid-19-recovery-tourism-sector-090221.pdf>>.

the resulting benefits, would not be possible under a plain vanilla code-sharing arrangement, or with arms'-length coordination.

The joint venture also inherently reduces the risks involved in such network expansions, which in the absence of the joint venture would be solely borne by one airline (and thus would act as a disincentive to the introduction of such new routes).

- (ii) In addition to the introduction of the SIN-DUS route described above, capacity between Singapore and Germany increased as a result of the joint venture via changes to and new services on the SIN-MUC route. In January 2016, Singapore Airlines was operating a B77W aircraft on the SIN-MUC-MAN route (to Manchester) daily. The capacity on SIN-MUC leg of the flights was [REDACTED]. This service was decreased in favour of additional direct services to MUC and MAN separately. Due to this restructure, as at December 2019, Singapore Airlines was operating SIN-MUC flights seven times per week with a total capacity of [REDACTED]. This is more than a [REDACTED] increase in capacity on SIN-MUC services, which is [REDACTED] greater than the Applicants had originally anticipated in their 2016 Authorisation submissions.
- (iii) In the 2016 Authorisation submission, Singapore Airlines anticipated an increase in capacity on its SIN-MEL and SIN-BNE routes. This was achieved, as reflected in the table below:

| Route | June 2016 | December 2019 |
|----------------|---------------------------|---------------------------|
| SIN-MEL | [REDACTED] seats per week | [REDACTED] seats per week |
| SIN-BNE | [REDACTED] seats per week | [REDACTED] seats per week |

This provided Australian customers with greater choice and flexibility for travel between Australia and the Lufthansa Home Markets.

- (iv) In general, the frequency of flights between Australia and the Lufthansa Home Markets via Singapore and the variety of Australian destination/origin points has increased significantly since the commencement of the joint venture. As at September 2016, the Applicants offered 203 flights per week between Australia and Singapore (comprising 98 flights from Singapore-Australia and 105 flights from Australia-Singapore) and these flights were to/from five different Australian airports. As at September 2019, the Applicants were running 397 flights per week to/from eight different Australian airports (comprising 211 flights from Singapore-Australia and 186 flights from Australia-Singapore). All of these flights are code share flights operated by Singapore Airlines.

This 95% increase in flight frequency and 60% increase in Australia destination/origin options would not have been possible if not for the joint venture (including the Proposed Conduct).

Under the joint venture, Lufthansa has taken steps to increase capacity and services available, including the introduction of a MUC-SIN service in addition to that already offered by Singapore Airlines. This meant that the Applicants were offering two services daily between SIN and MUC.

- (v) In summary, as established by the examples above, the implementation of the joint venture since 2016 has had a notable impact on capacity for seat bookings between Australia and Lufthansa Home Markets. In June 2016, between LH, LX and SQ, the weekly capacity for seat bookings between Australia and Singapore was [REDACTED] and Singapore to the Lufthansa Home Markets was [REDACTED] (as existed in 2016). As at December 2019 this capacity had increased to [REDACTED] seats per week between Australia and Singapore and [REDACTED] seats per week between Singapore and the Lufthansa Home Markets. This is a [REDACTED] and [REDACTED] increase in seat booking capacity respectively in just three and a half years. This would not have been possible if not for the joint venture, and regaining this capacity post-COVID will not be possible if joint venture is not re-authorized by the ACCC.

(c) **Better scheduling and resulting benefits to customers**

The joint venture has incentivised the Applicants to consider how best to support services operated on the Revenue Share Routes. This has led each of the Applicants to decide how services that connect to the Revenue Share Routes are best scheduled. This has resulted in, and will continue to result in, benefits with respect to passenger convenience and decreased waiting times. Two examples are provided in **Tables 6 and 7** below to exemplify how waiting times have decreased as a result of the joint venture.

Table 6: Example route BNE-SIN-ZRH-BRU

| Pre-Joint Venture (September 2016) | | | | | Post-Joint Venture (September 2019) | | | | |
|------------------------------------|------------------|-------|-------|-----------|-------------------------------------|------------------|-------|-------|----------|
| Leg | Flight | Dep | Arr | Time | Leg | Flight | Dep | Arr | Time |
| BNE to SIN | SQ236 | 14:30 | 20:50 | 8H 20MIN | BNE to SIN | SQ236 | 14:45 | 20:45 | 8H |
| Layover time | 4H 45MIN | | | | Layover time | 2H 25MIN | | | |
| SIN to ZRH | SQ346 | 01:35 | 08:30 | 12H 55MIN | SIN to ZRH | SQ2929 | 23:10 | 06:10 | 13H |
| Layover time | 4H | | | | Layover time | 1H 25MIN | | | |
| ZRH to BRU | LX780 | 12:30 | 13:45 | 1H 15MIN | ZRH to BRU | LX786 | 07:35 | 08:55 | 1H 20MIN |
| Total Elapsed Time | 31H 15MIN | | | | Total Elapsed Time | 26H 05MIN | | | |

Table 7: Example route VIE-FRA-SIN-DRW

| Pre-Joint Venture (September 2016) | | | | | Post-Joint Venture (September 2019) | | | | |
|------------------------------------|--------|-------|-------|----------|-------------------------------------|--------|-------|-------|----------|
| Leg | Flight | Dep | Arr | Time | Leg | Flight | Dep | Arr | Time |
| VIE to FRA | LH1243 | 19:10 | 20:35 | 1H 25MIN | VIE to FRA | LH1243 | 19:10 | 20:35 | 1H 25MIN |

| Pre-Joint Venture (September 2016) | | | | | Post-Joint Venture (September 2019) | | | | |
|------------------------------------|------------------|-------|-------|-----------|-------------------------------------|------------------|-------|-------|-----------|
| Layover time | 1H 25MIN | | | | Layover time | 1H 20MIN | | | |
| FRA to SIN | SQ325 | 22:00 | 16:25 | 12H 25MIN | FRA to SIN | SQ2007 | 21:55 | 16:15 | 12H 20MIN |
| Layover time | 3H 30MIN | | | | Layover time | 2H 15MIN | | | |
| SIN to DRW | MI803 | 19:55 | 02:05 | 4H 40MIN | SIN to DRW | MI831 | 18:30 | 00:40 | 4H 40MIN |
| Total Elapsed Time | 23H 25MIN | | | | Total Elapsed Time | 21H 40MIN | | | |

In the example set out in Table 6, passengers have saved 5 hours and 10 minutes in travel time due to better scheduling and coordination, whereas in the example set out in Table 7, passengers have saved 1 hour and 15 minutes in travel time. These time savings due to better coordination have only been possible as a result of the joint venture (including the Proposed Conduct). In addition, increased codeshares and flight frequencies have created more customer travelling options. These increased options are clear from the data set out above in respect of increased seat booking capacity, and increased flight route options for passengers – such as providing the additional options of SIN-DUS (pre-COVID), greater frequency and capacity on SIN-MUC as well as numerous new travel options from other points across Germany, Austria and Switzerland with more frequent departures (for example Cologne-MUC-SIN). Now that both LH and SQ operate SIN-MUC (other than during COVID-19 circumstances) customers also have greater flexibility as to departure and arrival times. As set out above, this has also been reflected in additional services on the Australia-Singapore legs as seen in the MEL-SIN and BNE-SIN routes. The increased options available to customers for flights from Singapore Home Markets to Lufthansa Home Markets is set out in **Table 8** below.

Table 8: Route permutations available to passengers before and after the implementation of the joint venture

| Routes | Pre-Joint Venture (September 2016) | Post-Joint Venture (September 2019) | Change |
|--|---|--|---------------|
| AU-SIN (Operated by SQ/MI) | 21 options | 23 options | +9.5% |
| SIN-Lufthansa Home Markets (Operated by SQ/LH/LX) | 7 options | 8 options | +12.5% |
| Intra-Lufthansa Home Markets (Operated by LH/LX/OS) | 626 options | 670 options | +7.0% |
| Total Permutations | 92,022 | 123,280 | +34.0% |

The Applicants consider that this increased choice would not have been achievable in the absence of the joint venture. Options such as deploying larger aircraft, establishing new routes and increasing route frequency can result in significant business risks with great costs attached, and are more readily achievable through

the support of a joint venture such as this – particularly when the industry is facing such uncertain times. The Applicants note that there is an interrelationship, and some network effects, between flight frequency, better flight connections and increased demand for services. As demand increases, increased flight frequency and better connections become feasible; similarly, where increased weekly frequencies and better connections result, this in turn will foster increased demand for those services. The Applicants consider that all of these effects will be simultaneously reinforced and supported by the joint venture.

(d) **Introduction of new routes and services**

As described above, new routes have already been established since the 2016 Authorisation, including SQ's SIN-DUS (now suspended), LH's SIN-MUC and the restructuring of SQ's SIN-MUC. Further, as described above, the Proposed Conduct incentivises the Applicants to better support services operated on the Revenue Share Routes. This has been evidenced in the scheduling of the additional BNE-SIN and MEL-SIN flights. As the joint venture continues and the Applicants recover from impacts of COVID-19, greater coordination on scheduling will be possible.

Similarly, clause 6.2.2 of the Framework Agreement provides:

[REDACTED]

Since entering the Framework Agreement, SQ and LX have entered into a new codeshare agreement which provides for LX to codeshare on SQ operated flights to Australia and for SQ to codeshare on certain LX flights. This codeshare was facilitated by the joint venture. [REDACTED]

Further, prior to the joint venture, the Air Services Agreement between Singapore and Switzerland only permitted LX to codeshare to Australia with a third party carrier up to three times per week. However, in the context of the joint venture Lufthansa obtained approval for LX to offer daily codeshares to Australia.

The expanded codeshare cooperation between and beyond the Singapore Home Markets and Lufthansa Home Markets which arises as a result of the joint venture (including the Proposed Conduct) allows the Applicants to offer passengers greater access to more destinations with added convenience and potential reductions in transit time through improved scheduling as outlined above.

The expanded codeshare ties have provided Singapore Airlines' customers with more convenient access to and from points in Austria, Belgium, Germany and Switzerland, via new transfer hubs of Munich, Zurich and, previously, Dusseldorf, in addition to the existing transfer hub Frankfurt, with more than 20 new codeshare routes introduced as a result of the joint venture. LH and LX have in turn codeshared with SQ on more routes serving destinations in south east Asia and the south west Pacific.

[REDACTED]

Codeshare cooperation may be expanded to even more destinations in future (subject always to the availability of bilateral traffic rights). While such extended codeshare cooperation may be possible in the absence of the joint venture, it would be commercially unlikely.

(e) **Expanded virtual networks for both Applicants through the alignment of largely complementary networks**

The Applicants' networks are largely complementary, with Singapore Airlines' Singapore hub and network well placed to service south east Asia and Australia, whereas Lufthansa's European hubs are well placed to service European destinations. The joint venture has and will continue to increase the virtual networks of both airlines, and enable more travelling options to be presented to travellers, including travellers to and from Australia. The joint venture has added a wide network of offline points for both Applicants, allowed the Applicants to expand their reach through joint marketing, and provided support for high demand flights into and out of Australia. This has resulted in decreased search time, greater options and lower costs for travellers.

(f) **Improvement of existing services**

As outlined above, with the deeper level of cooperation provided under the joint venture (of which the Proposed Conduct is an integral part), the Applicants have been, and are incentivised to continue, investing in systems and products to enhance the joint service they will offer, including operations interfaces and IT and accounting systems to achieve a more seamless experience for passengers.

The Applicants have already harmonised certain passenger and baggage service policies which will help to enhance customer convenience by creating seamless connectivity and bag through-check. This will continue in accordance with clause 6.2.4 of the Framework Agreement. They have also implemented reciprocal frequent-flyer programmes. As noted above, there is an interrelationship, and some network effects, between increased flight frequency (that is, increased capacity), better connections and increased demand for services. Similarly, service improvement naturally increases demand and therefore increase incentives to further expand capacity.

(g) **More flexibility and choice through metal neutrality**

'Metal neutrality' is an important concept of the joint venture - in relation to the Revenue Share Routes, Singapore Airlines and Lufthansa treat each other's services as their own. Further, in Australia, Singapore Airlines and Lufthansa promote SQ, LH and LX services as one, providing customers with significantly more choice - this requires SQ, LH and LX to coordinate fares and inventory management to ensure greater availability of seats. As a result, of the combined marketing, together with the increased frequencies, new routes and services, better scheduling and expanded networks, passengers are able to choose from more schedules, routings, inflight products and fares to better suit their needs. This has been evidenced in the additional routes and increased capacity described above.

(h) **Better coordinated offerings for corporate accounts**

Coordinated corporate deals have allowed Singapore Airlines and Lufthansa to offer corporate travellers a single contract for travel on all three airlines' flights, allowing them to enjoy the benefit of multiple flights under the contract. As an example, before the implementation of the joint venture, if there was high demand for an SQ flight (meaning that only higher fares were available on that flight), the corporate traveller would have to purchase a higher fare in order to take advantage of the

negotiated corporate deal with Singapore Airlines. However, under the joint venture, the corporate traveller has access to negotiated deals on LH flights, increasing their options under the same corporate deal. Similarly, Lufthansa corporate travellers have enhanced benefits by being able to choose SQ flights under Lufthansa's corporate scheme.

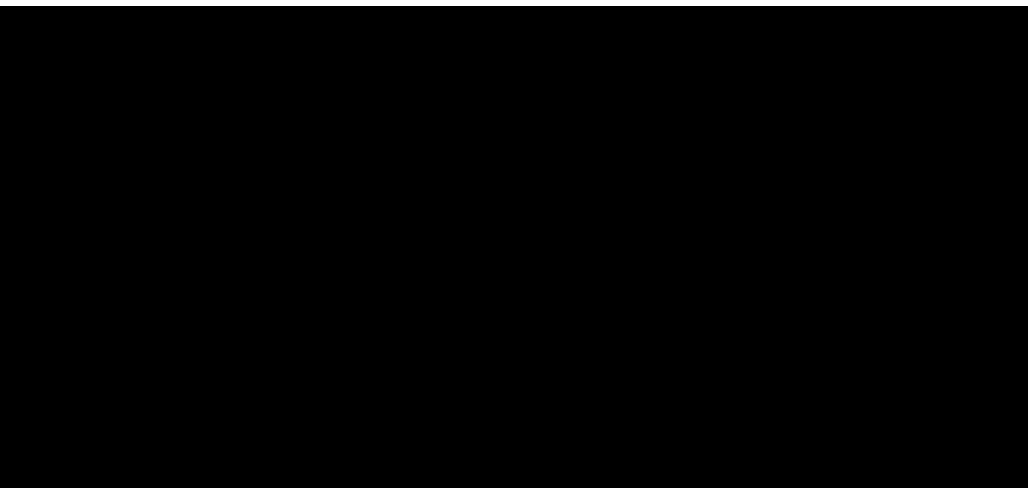
In particular, increased flight frequency, better connections, and more competitive fares (see below) has allowed the Applicants to better position themselves in bids for corporate accounts vis-a-vis other airlines.

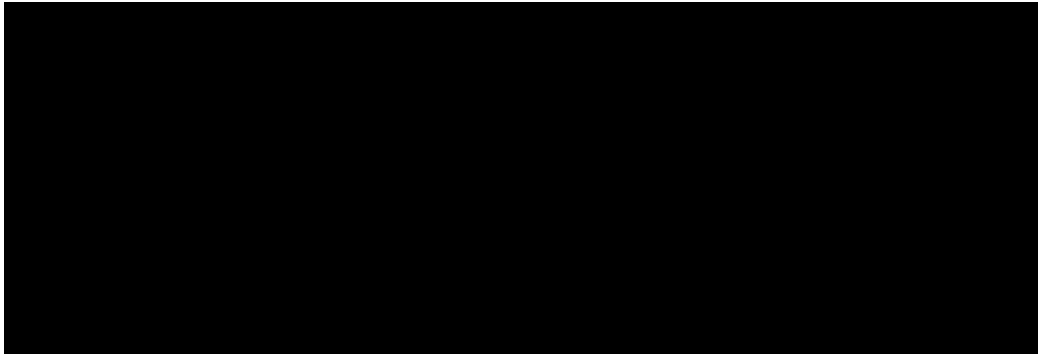


(i) **Potentially more competitive fares**

The Framework Agreement also provides for the Applicants to cooperate under additional agreements, namely a Special Prorate Agreement (**SPA**), Codeshare Agreement (expanding cooperation beyond the Lufthansa Home Markets and Singapore Home Markets), and potentially an enhanced Frequent Flyer agreement. Authorisation is not sought in relation to the extended cooperation under the Framework Agreement.


However, these additional areas of cooperation arise out of the opportunity created by the Proposed Conduct. For example, the implementation of the SPA between Singapore Airlines (including SQ, and TR) and Lufthansa (including LH, LX and OS) provides for





Further, the joint venture, and in relation to Australia, the Proposed Conduct, allows for a reduction in double marginalisation that connecting passengers are typically exposed to.⁴⁷ In particular, coordination helps to reduce the likelihood of individual carriers adding a mark-up on their respective services, and potentially result in reduced fare offerings. In the absence of authorisation, the inability for Singapore Airlines and Lufthansa to harmonise their fares would mean that each of the Applicants would need to impose mark-ups on their respective legs of the journey, as they seek to maximise their individual margins.

However, under the joint venture, with the interests and risks of both Singapore Airlines and Lufthansa more closely aligned (including as a result of the metal neutrality achieved through the revenue sharing arrangements), the airlines have the incentive to consider the overall price (and therefore revenue) of the service. This provides greater flexibility to the airlines in the fares that they offer. These types of benefits, including the elimination of double marginalisation arising from airline alliances, have been well documented by many empirical studies.⁴⁸ As a result, the Applicants will increase their ability to offer more competitive fares than would have been the case absent the joint venture. The Applicants also have the incentive to do so, given the level of competition from other major carriers, in particular Gulf carriers such as Emirates, Etihad and Qatar.

These factors, along with fare combinability and a  will likely provide customers with a wider selection of fares including low end fares. In addition, the Applicants will be better placed to compete for corporate accounts, which may have resulting benefits as described above.

Such benefits can only fully be obtained where the Applicants have the ability to jointly price and harmonise airfares, which derives from the ability to share revenue. Accordingly, such benefits can only be realised if the Applicants are able to implement the joint venture, including the Proposed Conduct.

Further, the expansion of codeshare arrangements between the Applicants (which is underpinned by the joint venture) will increase the ability of customers to access the Lufthansa-Singapore Airlines codeshare flights in searches on global distribution systems (GDS). Ultimately this improvement also provides potential customers a further benefit of being able to better compare fares between the Applicants and third party offerings.

(j) The promotion of competition in international air passenger transport services between Australia and Europe

⁴⁷ ACCC found that the removal of double marginalisation was likely to result in some public benefit in Virgin/Delta Authorisation, (14 August 2015), para 175.

⁴⁸ For example, Jan Brueckner, International Airfares in the Age of Alliances: The Effects of Codesharing and Antitrust Immunity, 85 REV. ECON. & STAT. 105 (2003).

In recent years (and disregarding the COVID-19 pandemic period), competition on routes between Australia and Europe has increased rapidly with the growth of the Gulf carriers on these routes. The traffic between Australia and Europe, as at December 2019, was dominated by Emirates (approximately 27% share, or 31% share if combined with Qantas).

The ACCC has acknowledged the significant competition between Singapore Airlines and other airlines such as Qantas/Emirates, and just as the ACCC has previously concluded that Singapore Airlines was likely to respond competitively to the Qantas/Emirates alliance, so too will the Lufthansa/Singapore Airlines alliance continue to encourage a pro-competitive response from the other carriers.⁴⁹

The Applicants note that, interestingly, Emirates' and Qantas' respective shares were even higher prior to the advent of the joint venture – as at June 2016, Emirates had a share of traffic between Australia and Europe of approximately 30%, and 39% if combined with Qantas. Some element of the decreased share may be the result of more effective competition by Singapore Airlines and Lufthansa through the joint venture. More detail about competition on the relevant routes is included in section 7.4 below.

Given the level of competition from other carriers, the Applicants have a significant incentive to improve their product offering. The Applicants consider that the joint venture has put them in a better position to compete with the services operated by other carriers, and that the continuation of the Proposed Conduct will continue to position them well to compete with services operated by other carriers on routes between Australia and the Lufthansa Home Markets.

(k) **Additional cost savings and other efficiencies**

The intention of the joint venture was to expand services and frequencies on the relevant routes compared to the situation without the joint venture. The Proposed Conduct has driven higher traffic on routes such as SIN-MUC (and pre-COVID, SIN-DUS) and resulted in better load factors and scale effects in operations as fixed costs are allocated to more flights and spread over more passengers.

For example, the Applicants made voluntary commitments under the joint venture that they would

[REDACTED]

Additionally, the Applicants committed to increase capacity on SIN-ZRH by

[REDACTED].

The primary objective of the joint venture is not to reduce costs, but to improve service offerings between the Singapore Home Markets and the Lufthansa Home Markets, and to compete more effectively by tapping into each other's expertise in their relevant home markets.

[REDACTED]

⁴⁹ Qantas/Emirates Authorisation (23 March 2018), paras 218-223.

[REDACTED]

In particular, the Applicants have been able to reduce excess costs through an increased ability to deploy appropriate sized aircraft on routes from SIN to MUC, FRA and ZRH, taking into account combined demand on the relevant routes, in order to maximise load factors.

(I) **Stimulation of tourism**

The stimulation of tourism will become a necessary priority for Australia once the international borders start to open.

The benefits to customers brought about by the joint venture will assist in meeting and increasing demand for travel between Europe and Australia in both directions. Australian Bureau of Statistics figures indicate that annual visitors to Australia from Germany, Austria, Belgium and Switzerland increased by 17.4% during the 4 year period⁵⁰ from 2015-2019.⁵¹ During the same period, travel by Australian residents to Germany, Austria, and Switzerland increased by 26.4%.⁵² This increase in travellers between Australia and the Lufthansa Home Markets illustrates an increasing demand for passenger air services. It is anticipated that once borders start to reopen, the joint venture will allow the Applicants to operate at the optimal capacity the market will allow, thereby facilitating any further such growth in the future.

The Applicants expect therefore that the volume of tourism from Germany, Austria, Switzerland and Belgium, and countries that use those countries as hubs or connection points, to Australia will have the opportunity to bounce back rapidly as a result of the joint venture.

7. NO PUBLIC DETRIMENT BY REASON OF ANY LESSENING OF COMPETITION

7.1 Outline

As the ACCC has previously noted, the supply of international air passenger services between Australia and Europe is highly competitive:

- (a) There is competition on routes via multiple hubs including Dubai, Bangkok, Singapore, Hong Kong and Abu Dhabi.⁵³
- (b) There is a large number of established carriers with the ability and incentive to expand their operations, including a number of Chinese airlines which have recently expanded services to Australia, such as China Southern Airlines, China Eastern Airlines and Air China, and a number of other carriers, such as Malaysia Airlines, Thai Airways and Qatar Airways, who have the ability to expand capacity between Australia and Europe.⁵⁴

⁵⁰ This period was chosen to exclude COVID-19 affected period.

⁵¹ Data sourced from Australian Bureau of Statistics, Overseas Arrivals and Departures – Table 5, 3401.0, <<https://www.abs.gov.au/statistics/industry/tourism-and-transport/overseas-arrivals-and-departures-australia/dec-2019#data-download>>, (accessed 11 May 2021).

⁵² Data sourced from Australian Bureau of Statistics, Overseas Arrivals and Departures – Table 9, 3401.0, <<https://www.abs.gov.au/statistics/industry/tourism-and-transport/overseas-arrivals-and-departures-australia/dec-2019#data-download>>, (accessed 11 May 2021). Data shows main destination of Australian residents. Data not available for Belgium for that time period. .

⁵³ Qantas/Emirates Authorisation, (27 March 2013), para 380.

⁵⁴ Qantas/Emirates Authorisation, (27 March 2013), paras 383-384.

- (c) There is available capacity in the short to medium term for an Australian designated airline to enter an Australia-Europe route or enter via codeshare, and there is available capacity for a number of foreign designated carriers to likewise expand services.

Accordingly, the joint venture is not likely to have the effect of lessening competition in any relevant market. In particular:

- (d) the Applicants do not *operate* overlapping services to Australia and are not likely to do so in the future – the joint venture will not involve consolidation or reduction in the supply of physical flights to or from Australia;
- (e) while the Applicants each currently *market* services to Australia, the extent of competition between them in this respect is limited by the fact that Lufthansa operates all such services via codeshares (including with Singapore Airlines) and does not itself operate services landing in or departing from Australia; and
- (f) the Applicants will face close competitive constraint in relation to all elements of the Proposed Conduct from the strong competition faced on routes between Australia and Europe, such that the joint venture is unlikely to significantly increase the ability and incentive of the Applicants to reduce or limit their growth in capacity, or to increase prices, on services between Australia and Europe.

7.2 **No overlap, and no likely future overlap, in services operated to Australia**

Lufthansa does not operate flights landing in or departing from Australia. Therefore, there is no physical overlap on direct/one-stop city pair services operated by the Applicants between points in Australia and points in or outside Australia.

As the ACCC has noted previously, in the past, Australia-Europe was serviced by European carriers such as Lufthansa, Air France, KLM, Aeroflot and Alitalia. However, Austrian Airlines was the last continental European carrier to operate on routes between Australia and the Europe, via the eastern hemisphere, and ceased services in 2007.⁵⁵ Today, the only overlap in direct city pair services operated by the Applicants are flights between Singapore and Frankfurt (SQ and LH) and Singapore and Zurich (SQ and LX), with the overlap on flights between Singapore and Munich (SQ and LH) likely to recommence in the near future.

Therefore, the joint venture does not result in consolidation or reduction in competition to supply physical flights to or from Australia.

7.3 **Reduction in marketing overlap has limited effect**

Both of the Applicants currently market services between Australia and Europe.

Prior to the joint venture, Lufthansa already marketed services to Australia via its codeshare arrangements with other airlines, including Singapore Airlines.⁵⁶

However the scope for Lufthansa to be an independent source of competition in offering services under these arrangements is restricted. Where Lufthansa markets a segment operated by Singapore Airlines, there is limited difference in the service offering of the two carriers. While the marketing carrier determines the fare level, as the ACCC has recognised previously, in this situation, the marketing carrier (here, Lufthansa) may likely have relatively limited influence over the price of services delivered on its behalf by the operating

⁵⁵ Qantas/Emirates Authorisation, (27 March 2013), page 72 [361].

⁵⁶ Lufthansa currently has codeshare arrangements on Australia – Frankfurt services (with Thai Airways); and Melb/Syd – Frankfurt/Munich (with United Airlines). No changes to these arrangements are planned.

carrier (for example, the Singapore Airlines operated flights between Singapore and Australia).⁵⁷

Therefore, in light of the current arrangements between the Applicants, and the fact that Lufthansa is not operating any flights to/from Australia, the current level of rivalry between the Applicants is low and any reduction is likely to be minimal. In fact, the ACCC has previously had regard to the current coordination between the Applicants in relation to passenger travel to Europe in its analysis of the Etihad and Alitalia alliance in 2015, and has not treated the parties as competitors in relation to those services.⁵⁸

Further, any existing competition between the Applicants in relation to services they offer between Australia and Europe in combination with third party airlines under codeshare arrangements will continue unaffected following implementation of the Proposed Conduct.

Accordingly, coordination between the Applicants under the Proposed Conduct is likely to have minimal, if any, impact based on the reduction of competition between the Applicants in relation to marketing services between Australia and Europe.

7.4 **Existing competition in relation to services between Australia and Europe**

The key competitive constraint on the Applicants in relation to services between Australia and the Lufthansa Home Markets is and will continue to be the close competition they face from competing airlines offering services between Australia and Europe. Given the level of competition on routes between Australia and Europe (particularly during non-COVID times), the joint venture has not, and is unlikely to, significantly increase the ability and incentive of the Applicants to reduce or limit growth in capacity, or increase prices, on those routes.

The ACCC has considered competition in the Australia-Europe market on a number of occasions and previously noted that there is "strong competition between a large number of airlines" in relation to that market.⁵⁹ As noted above, there is competition via multiple hubs including Dubai, Bangkok, Singapore, Hong Kong and Abu Dhabi.

In addition to the end-point carriers, Qantas and British Airways, the following mid-point carriers operate services between Australia and Europe (as at May 2021).

⁵⁷ In the Virgin/Etihad Authorisation, (4 December 2015), pg 14 [74], the ACCC noted that "In effect, Virgin Australia is a reseller of Etihad capacity (and vice versa). In this situation, Virgin Australia would likely have relatively limited influence over the price of services delivered on its behalf by Etihad".

⁵⁸ In the Virgin/Etihad Authorisation, (4 December 2015), the ACCC noted that "there are many other options available to travellers between Australia and Rome, including services with a comparable travel time to that offered by the Applicants by Qatar Airways, Qantas/Emirates, Thai Airways, Cathay Pacific and Singapore Airlines/Lufthansa."

⁵⁹ Virgin/Etihad Authorisation, (4 December 2015), pg 14 [74].

Table 10 – Carriers operating services between Australia and Europe

| South East Asian Carriers | North East Asian Carriers | Middle Eastern Carriers |
|---|--|--------------------------------|
| Garuda Indonesia (via Jakarta) | Air China (via Beijing) | Emirates (via Dubai) |
| Malaysia Airlines (via Kuala Lumpur) | Air India (via Delhi) | Etihad Airways (via Abu Dhabi) |
| Thai Airways International (via Bangkok) | Cathay Pacific (via Hong Kong) | Qatar Airways (via Doha) |
| Vietnam Airlines (via Ho Chi Minh City) | China Airlines (via Taipei) | |
| Royal Brunei Airlines (via Bandar Seri Begawan) | China Southern Airlines (via Guangzhou and Changsha) | |
| | China Eastern (via Shanghai) | |
| | Japan Airlines (via Tokyo) | |
| | Korean Air (via Seoul) | |
| | All Nippon Airways (via Tokyo) | |
| | Asiana Airlines (via Seoul) | |
| | Philippine Airlines (via Manila) | |
| | Xiamen Airlines (via Xiamen) | |
| | Sichuan Airlines (via Chengdu) | |
| | EVA Air (via Taipei) | |
| | Tian Jin Airlines (via Chongqing) | |
| | Hainan Airlines (via Shenzhen) | |
| | Beijing Capital Airlines (via Qingdao) | |
| | Sri Lankan Airlines (via Colombo) | |

Since submitting the 2016 Application, the number of airlines listed in Table 5 above has grown by seven airlines. This is an increase of almost 40%.

The increased competition on the routes between Australia and Europe is also evident in the market shares of the various airlines. **Table 11** below sets out market share estimates based on Marketing Information Data Transfer (**MIDT**) data for the 12 months to December 2019 based on operating carrier data.⁶⁰

Table 11: Airline share of total passengers travelling between Australia and Europe (including the UK) in 2019, based on operating carrier data

| Airline | Market share |
|---------------|--------------|
| Emirates | 26.7% |
| Qatar Airways | 18.3% |
| Etihad | 14.3% |

⁶⁰ The Applicants note that the MIDT data records booking data as at the time of departure from all major reservation systems. Data on passengers travelling between Australia and Europe includes passengers travelling to/from the UK and Ireland. In the case of interline connections, the market share reflects the carrier flying the longest sector in the itinerary. For this reason, Lufthansa appears as "operating carrier" despite not operating any flight on the Asia-Australia route. This data does not include: go-shows and no-shows (that is, passengers who purchase a ticket at the airport before boarding and ticket holders who do not take the flight) or bookings through airlines own systems (such as some online and group bookings). Also, the Applicants note that airline passenger data from different sources is not always compatible due to different conventions in recording the data. For example, in addition to the qualifications noted above, different data collectors may impose different "trip break rules". These rules determine when a journey is broken into separate Origin/Destination routes. A trip from SYD-SIN-MUC may be recorded as a SYD-MUC trip or as separate trips from SYD-SIN and SIN-MUC depending on the duration of the "stopover" in Singapore – the trip break rule deems a stopover longer than a certain duration as "breaking the trip" [REDACTED]

| Airline | Market share |
|---|---------------------|
| Singapore Airlines | 12.1% |
| Cathay Pacific | 5.4% |
| Qantas | 4.4% |
| Lufthansa (including Swiss International Airline) | 2.7% |
| British Airways | 2.5% |
| Thai Airways | 2.0% |
| Royal Brunei Airlines | 1.4% |
| China Southern Airlines | 1.4% |
| Malaysia Airlines | 1.1% |
| Turkish Airlines | 0.9% |
| Finnair | 0.9% |
| China Eastern Airlines | 0.8% |
| China Airlines | 0.6% |
| Air France | 0.6% |
| Air China | 0.6% |
| KLM | 0.5% |
| Korean Air | 0.5% |
| Others (each with less than 0.5%) | 2.2% |

The Applicants consider that the following points are important to note in the market share estimates:

- Based on 2019 data, if the authorisation is granted, the Applicants will have a combined market share of less than 15% (with the increment to Singapore Airlines' share arising from the combination with Lufthansa being very limited). This is similar to the market share it was estimated that the Applicants would have in the 2016 Authorisation Application.
- In line with the predictions set out in the 2016 Authorisation Application, Emirates has retained its position as market leader (although with approximately 3% less market share) and Etihad has retained a similar market share to that of the Applicants combined. Further, the Qantas/Emirates alliance, which was reauthorised by the ACCC in 2018, has by far the largest share of travellers between Australia and Europe at 31.1%. All of these carriers will continue to be a major constraint on the Applicants' conduct on the relevant routes, and the Applicants will have no ability to increase their prices or decrease their service levels on any of the routes without the risk of losing customers to these strong competing airlines.
- By comparison to the 2015 data provided in the 2016 Authorisation, Qatar Airways' market share increased from 6% to a sizeable 18.3% in the space of just four years, bringing it into second position. Qatar Airways' sudden uptake of a material market share is further proof of the importance of the Framework Agreement (including the Proposed Conduct) in allowing the Applicants to adequately compete with Gulf carriers. This position has been further reinforced by the fact that in the period from April 2020 – March 2021, Qatar has obtained a 55.8% market share, with Singapore Airlines having the second largest share at a mere 12.9%. Although this data is reflective of an unstable and unprecedented market, it still illustrates the importance of the Framework Agreement for ensuring adequate competition for the Gulf carriers. As shown in Table 11, there is a wide distribution of small market shares with 17 airlines with market shares between 0.5-5% and a further 13 airlines each holding less than 0.5% of market

share (accounted for in the 'Other' category). Any of these airlines could readily expand their footprint, and many of them can be expected to continue to grow once the instability of the COVID-19 pandemic starts to resolve.

- In addition to the strong presence of rival carriers demonstrated above, the Applicants submit, subject to any requirements in Air Services Agreements and consistent with the ACCC's previous findings, that in the short to medium term there is available capacity for foreign designated carriers to expand services between Australia and Europe.⁶¹

Therefore, the Applicants submit that the rival airlines, including Gulf airlines (and particularly the Qantas/Emirates alliance), will continue to constrain the ability of the Applicants to raise price or reduce service on flights between Australia and Europe.

7.5 No competition concerns even if considered on alternative, narrower basis

For the reasons outlined above, it is appropriate to consider the Proposed Conduct in the context of competition in relation to the supply of services between Australia and Europe. To consider it on a more narrow basis – for example, to look more narrowly at competition to supply services solely between Australia and the Lufthansa Home Markets – would be unrealistic. In particular, as it would disregard the existence, and the competition the Applicants face as a result, of the many options passengers use to travel between the Lufthansa Home Markets and Australia, including those involving transit through other European cities. Travel between Australia and the Lufthansa Home Markets is a material, but not the major, component of travel between Australia and Europe more broadly: of the passengers travelling between Australia and Europe in 2019, approximately 13.7% travelled to/from the Lufthansa Home Markets, regardless of carrier.⁶²

Although the Applicants do not consider this to be the appropriate area of competition to assess the Proposed Conduct, they provide the following data and analysis to demonstrate that even if the Proposed Conduct was assessed having regard to this narrower view, the outcome of the competition analysis is the same – ie, the Applicants face and will continue to face close and effective competitive constraint on the relevant routes.

In particular, even on this narrower basis, as at 2019, Emirates remained the leading operator, with approximately 26-28% of the share of passengers between Australia and each of Germany, Switzerland and Austria, and approximately 32% of the share of passengers between Australia and Belgium.

Table 12: Airline shares of total passengers travelling between Australia and Lufthansa's Home Markets in 2019, based on operating carrier data⁶³

| Airline | Market Share |
|--------------------------------------|---------------------|
| Emirates | 27.2% |
| Qatar Airways | 17.1% |
| Etihad | 14.9% |
| Singapore Airlines (including Scoot) | 12.2% |

⁶¹ In Qantas/Emirates Authorisation, (27 March 2013), para 385, the ACCC noted at the time that "One exception to this is Hong Kong designated carriers who currently utilise all the available frequencies between Australia and UK/Europe". The applicants are not aware of other restrictions in Air Services Agreements which may limit the potential to expand services.

⁶² Data sourced from MIDT which records booking data as at the time of departure from all major reservation systems, for the period Jan-Dec 2019. In the case of interline connections, the market share reflects the carrier flying the longest sector in the itinerary. Other limitations on this data are described in section 7.4, above.

⁶³ Data sourced from MIDT which records booking data as at the time of departure from all major reservation systems, for the period Jan-Dec 2019. In the case of interline connections, the market share reflects the carrier flying the longest sector in the itinerary. Other limitations on this data are described in section 7.4, above.

| Airline | Market Share |
|--|--------------|
| Cathay Pacific | 5.8% |
| Qantas | 4.7% |
| Lufthansa (including Austrian Airlines and Swiss International Airlines) | 3% |
| British Airways | 2.7% |
| Thai Airways | 1.8% |
| Royal Brunei Airlines | 1.5% |
| China Southern Airlines | 1.4% |
| Malaysia Airlines | 1.1% |
| China Eastern Airlines | 0.8% |
| China Airlines | 0.7% |
| Air France | 0.6% |
| Turkish Airlines | 0.6% |
| Air China | 0.5% |
| KLM Royal Dutch Airlines | 0.5% |
| Korean Air | 0.5% |
| Others (each with less than 0.5%) | 2.8% |

Based on this 2019 data, the Applicants had a combined share of approximately 15.2% of all passengers travelling between Australia and Lufthansa's Home Markets in 2019 under the joint venture (based on the proposed list of Lufthansa Home Markets as outlined in this application). Importantly, Emirates remains by far the largest competitor on the relevant routes, with Qatar Airways and Etihad also having material shares.

Table 13 below sets out market shares on the Revenue Share Routes as they existed at January-December 2019 (noting that AUS-DUS is no longer a Revenue Share Route).

Table 13: Airline share of total passengers travelling on Revenue Share Routes (with connecting flight to or from Australia) (Jan-Dec 2019)⁶⁴

| Airline | AUS-MUC | AUS-FRA | AUS-ZRH | AUS-DUS | All Revenue Share Routes |
|--|---------|---------|---------|---------|--------------------------|
| Emirates | 27.3% | 22.1% | 23.7% | 45.9% | 26.4% |
| Etihad | 25.4% | 18.6% | 10.1% | 24.9% | 18.6% |
| Singapore Airlines | 13.1% | 15.4% | 28.7% | 19.8% | 18.9% |
| Qatar | 16.1% | 13.7% | 11.0% | 0.6% | 12.1% |
| Lufthansa (including Austrian Airlines and Swiss International Airlines) | 9.5% | 7.6% | 11.4% | 2.1% | 8.5% |
| Cathay Pacific | 0.2% | 6.7% | 9.3% | 0.6% | 5.2% |

⁶⁴ Data sourced from MIDT which records booking data as at the time of departure from all major reservation systems, for the period Jan-Dec 2019. In the case of interline connections, the market share reflects the carrier flying the longest sector in the itinerary. Other limitations on this data are described in section 7.4, above.

| Airline | AUS-MUC | AUS-FRA | AUS-ZRH | AUS-DUS | All Revenue Share Routes |
|---|----------------|----------------|----------------|----------------|---------------------------------|
| Thai Airways | 4.2% | 3.5% | 3.1% | 0.1% | 3.2% |
| China Eastern Airlines | 0.1% | 2.2% | 0.0% | 0.1% | 0.9% |
| Air China | 0.8% | 1.5% | 0.3% | 0.2% | 0.9% |
| China Airlines | 0.0% | 2.1% | 0.0% | 0.0% | 0.8% |
| Qantas | 0.9% | 0.7% | 0.6% | 1.5% | 0.8% |
| China Southern Airlines | 0.4% | 1.4% | 0.2% | 0.7% | 0.7% |
| British Airways | 0.5% | 0.4% | 0.4% | 1.4% | 0.5% |
| Others (each with less than 0.5% across all routes) | 1.3% | 4.0% | 1.1% | 2.0% | 2.6% |

As per the table above, as at 2019, Emirates remained the leading operator on three of the four revenue share routes as starting in Australia (AUS-MUC, AUS-FRA and AUS-DUS) with market shares of 27.3%, 22.1% and 45.9% on that routes respectively. On the AUS-ZRH route, Singapore Airlines had the highest market share with 28.7%, but was closely followed by Emirates with 23.7%. Etihad and Cathay Pacific also had substantial shares on that route.

Under the joint venture, the Applicants would have a combined market share of around 27.4% on these routes, which would be approximately equal to that of Emirates and Qantas combined (in accordance with the Qantas/Emirates alliance).⁶⁵ Etihad and Qatar Airways are both large players on these routes, and Cathay Pacific also has a solid market share, with plenty of competition also arising from the Chinese airlines.

Accordingly, the Applicants submit that they will continue to be constrained from raising price or reducing service on these routes by both the wide variety of alternative services to Europe, by the strong rival airlines operating on these routes, and particularly the Qantas/Emirates alliance.

The extent of competition that the Applicants face, and will continue to face, on routes between Australia and the Lufthansa Home Markets is illustrated by considering the wide range of airlines with which they already compete on the routes on which they operate direct, non-stop overlapping services – ie between each of the Revenue Share Routes.

⁶⁵ This analysis is based on the assumption that post-COVID-19 recovery, market shares will return a state that is relatively reflective of what they were pre-COVID-19.

Table 14: Rival one-stop services on each of the current Revenue Share Routes

| Australia to Zurich | Australia to Frankfurt | Australia to Munich |
|--------------------------------|---|--------------------------------|
| Cathay Pacific (via Hong Kong) | Air China (via Beijing) | Air China (via Beijing) |
| Emirates (via Dubai) | Air India (via Delhi) | Emirates (via Dubai) |
| Etihad (via Abu Dhabi) | All Nippon Airways (via Tokyo) | Etihad (via Abu Dhabi) |
| Korean Air (via Seoul) | Asiana Airlines (via Seoul) | All Nippon Airways (via Tokyo) |
| Qatar Airways (via Doha) | Cathay Pacific (via Hong Kong) | Qatar Airways (via Doha) |
| Thai Airways (via Bangkok) | China Airlines (via Taipei) | Thai Airways (via Bangkok) |
| Hainan Airlines (via Shenzhen) | China Eastern (via Shanghai) | |
| | China Southern (via Changsha and Guangzhou) | |
| | Emirates (via Dubai) | |
| | Etihad (via Abu Dhabi) | |
| | Japan Airlines (via Tokyo) | |
| | Korean Air (via Seoul) | |
| | Qatar Airways (via Doha) | |
| | Thai Airways (via Bangkok) | |
| | United Airlines (via San Francisco) | |
| | Vietnam Airlines (via Ho Chi Minh City) | |

Flight times vary between these carriers, as can transit times and services. In some cases, the rival carriers' services may be faster than the Applicants'. In addition to the above, passengers can purchase and combine tickets on multiple airlines.

Again, the Applicants submit that they will be constrained from raising price or reducing service on these routes by both the wide variety of alternative services to Europe, and by the rival airlines operating on these routes.

Further, the Applicants are confident that the strong competitive constraints described above will continue to apply to the joint venture as the proposed expanded scope takes effect. Table 15 below sets out market shares of the various airlines operating on the new expanded Revenue Share Routes which will arise from the expansion to the Lufthansa Home Markets (based on 2019 data as the most representative of what the competitive dynamics are likely to look like as the COVID-19 pandemic conditions start to ease). Again, it is apparent from these shares that Lufthansa's very limited market share on each of the relevant routes other than on flights into Berlin means that the coordination between the Applicants will have no material effect on competition on the routes. The Applicants will also continue to be constrained by multiple alternative airlines on each of the routes, including in particular Emirates, Etihad, Qatar, Qantas, Cathay Pacific and British Airways.

Even in respect of routes between Australia and Berlin, on which the Applicants have a combined share of just over 30% (based on 2019 data), material competitive constraints exist from a number of alternative airlines, including Qatar (28.9%), Etihad (11.6%) and Qantas (9.2%). The Applicants will have no ability to increase prices or decrease service levels through their coordinated activities without customers promptly switching to alternative airlines, and accordingly there is no risk of any substantial lessening of competition on this or any of the other routes.

Table 15: Airline share of total passengers travelling on Expanded Revenue Share Routes (with connecting flight to or from Australia) (Jan-Dec 2019)⁶⁶

| Airline | AUS-AMS vv | AUS-ATH vv | AUS-TXL⁶⁷ vv | AUS-BCN vv | AUS-MXP vv | AUS-CDG vv | AUS-FCO vv | AUS-MAN vv | AUS-LHR vv | All Expanded Revenue Share Routes |
|--|-----------------------|-----------------------|------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|--|
| Emirates | 27.0% | 27.5% | 3.9% | 36.5% | 34.8% | 21.7% | 33.6% | 30.5% | 10.9% | 20.3% |
| Etihad | 16.6% | 27.9% | 11.6% | 16.3% | 14.0% | 18.3% | 19.2% | 23.7% | 12.6% | 16.4% |
| Singapore Airlines (including Scoot) | 15.8% | 9.8% | 21.0% | 10.0% | 14.9% | 12.7% | 8.1% | 14.0% | 18.9% | 15.5% |
| Qatar | 8.5% | 31.3% | 28.9% | 23.4% | 19.7% | 15.2% | 19.7% | 18.8% | 8.0% | 13.9% |
| Qantas | 0.9% | 0.3% | 9.2% | 0.8% | 0.5% | 1.5% | 0.5% | 0.7% | 14.3% | 7.2% |
| Cathay Pacific | 9.8% | 0.1% | 2.6% | 5.0% | 5.3% | 7.4% | 6.5% | 7.6% | 8.0% | 7.1% |
| British Airways | 1.1% | 0.2% | 3.8% | 1.2% | 0.3% | 0.6% | 0.5% | 1.3% | 6.3% | 3.4% |
| Royal Brunei Airlines | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 5.7% | 2.6% |
| Thai Airways | 0.4% | 0.1% | 0.6% | 0.4% | 5.0% | 3.8% | 3.4% | 0.1% | 2.5% | 2.1% |
| China Southern Airlines | 5.9% | 0.1% | 2.6% | 0.6% | 0.2% | 3.1% | 1.9% | 0.4% | 1.8% | 1.9% |
| Malaysia Airlines | 0.2% | 0.6% | 0.2% | 0.1% | 1.1% | 0.4% | 0.0% | 0.4% | 3.7% | 1.9% |
| Lufthansa (including Austrian Airlines and Swiss International Airlines) | 1.5% | 1.1% | 9.5% | 2.3% | 1.3% | 1.5% | 1.6% | 1.3% | 0.5% | 1.2% |
| China Eastern | 1.1% | 0.0% | 0.2% | 0.1% | 0.0% | 3.3% | 0.8% | 0.0% | 0.5% | 0.8% |
| Virgin Atlantic | 0.0% | - | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 0.0% | 1.4% | 0.7% |
| Air France | 0.2% | 0.1% | 1.1% | 0.5% | 0.2% | 4.5% | 0.1% | 0.2% | 0.1% | 0.6% |
| Air China | 0.1% | 0.2% | 0.3% | 0.6% | 0.6% | 1.2% | 0.7% | 0.0% | 0.7% | 0.6% |
| KLM Royal Dutch Airlines | 5.8% | 0.0% | 0.7% | 0.3% | 0.0% | 0.1% | 0.1% | 0.1% | 0.0% | 0.5% |
| Korean Air | 1.0% | 0.0% | 0.0% | 0.7% | 0.5% | 0.7% | 0.9% | 0.0% | 0.5% | 0.5% |

⁶⁶ Data sourced from MIDT which records booking data as at the time of departure from all major reservation systems, for the period Jan-Dec 2019. In the case of interline connections, the market share reflects the carrier flying the longest sector in the itinerary. Other limitations on this data are described in section 7.4, above.

⁶⁷ Prior to late 2020 flights operated by Singapore Airlines into Berlin only arrived at TXL.

Further, as shown in Table 16 below, on each of the Expanded Revenue Share Routes, there are rival one-stop services between the relevant city pairs, and no prospect of the expanded joint venture scope restricting the supply of air services or resulting in any increase in price or decreased service levels.

Table 16: Rival one-stop services on each of the current Expanded Revenue Share Routes

| AUS-AMS | AUS-ATH | AUS-TXL & BER | AUS-BCN | AUS-MXP | AUS-CDG | AUS-FCO | AUS- MAN | AUS-LHR |
|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Qatar Emirates | Qatar Emirates | Qatar Emirates | Qatar Emirates | Qatar Emirates | Qatar Emirates | Qatar Emirates | Qatar Emirates | Qatar Emirates |
| Etihad | Etihad | Etihad | Etihad | Etihad | Etihad | Etihad | Etihad | Etihad |
| Cathay | All Nippon | Cathay | Cathay | Cathay | Cathay | Cathay | Cathay | Cathay |
| Pacific | Airways | Pacific | Pacific | Pacific | Pacific | Pacific | Pacific | Pacific |
| Garuda | United | Garuda | British | British | British | British | British | British |
| Indonesia | Airlines | Indonesia | Airways | Airways | Airways | Airways | Airways | Airways |
| British | Malaysia | British | All Nippon | KLM Dutch | All Nippon | United | KLM Dutch | All Nippon |
| Airways | Airlines | Airways | Airways | Royal | Airways | Airlines | Royal | Airways |
| KLM Dutch | | KLM Dutch | Japan | Airlines | China | Sri Lankan | Airlines | China |
| Royal | | Royal | Airlines | All Nippon | Airlines | Airlines | All Nippon | Airlines |
| Airlines | | Airlines | United | Airways | Japan | | Airways | Japan |
| All Nippon | | All Nippon | Airlines | Japan | Airlines | | Japan | Airlines |
| Airways | | Airways | | Airlines | China | | Airlines | United |
| China | | Japan | | Malaysia | Southern | | Malaysia | Airlines |
| Airlines | | Airlines | | Airlines | Airlines | | Airlines | Malaysia |
| Japan | | United | | Turkish | United | | Turkish | Airlines |
| Airlines | | Airlines | | Airlines | Airlines | | Airlines | Delta |
| China | | Turkish | | Korean Air | Delta | | Qantas | Airlines |
| Southern | | Airlines | | Sri Lankan | Airlines | | | Korean Air |
| Airlines | | Sri Lankan | | Airlines | | | | Sri Lankan |
| United | | Airlines | | Oman Air | | | | Airlines |
| Airlines | | Qantas | | | | | | Qantas |
| Malaysia | | Finnair | | | | | | Virgin |
| Airlines | | | | | | | | Atlantic |
| Turkish | | | | | | | | |
| Airlines | | | | | | | | |

7.6 Conclusion

Continuation of the Proposed Conduct, including on an expanded geographic basis, will not result in any reduction in competition in international air passenger transport services between Australia and Europe, or any other public detriment.

However, even if the Applicants are incorrect in this conclusion, any such lessening is likely to be extremely minimal, in light of the limited reduction in competition between the Applicants brought about by the Proposed Conduct, and the close and effective constraints the Applicants face and continue to face in relation to services between Australia and Europe.

8. COMPARISON OF PUBLIC BENEFITS AND PUBLIC DETRIMENTS

The Proposed Conduct will result in the public benefits described in part 6, comprising:

- (a) enhanced products and services, including increases in frequency of services and capacity, better scheduling, introduction of new routes and services, expanded virtual networks, improved services and better offerings for corporate accounts;
- (b) potentially more competitive fares;
- (c) promotion of competition in international air passenger transport services between Australia and Europe;

- (d) additional cost savings and other efficiencies; and
- (e) stimulation of tourism.

For the reasons outlined in part 7, the Applicants submit that the Proposed Conduct is not likely to lessen competition in any market, and therefore does not give rise to any public detriment. However, even if the Applicants are incorrect in this conclusion, any such lessening is likely to be extremely minimal, and clearly outweighed by the public benefits from the Proposed Conduct.

9. **LENGTH OF AUTHORISATION**

The Applicants seek authorisation of the Proposed Conduct for a period of 5 years.

A period of 5 years is appropriate in this circumstance given the long term nature of the proposed arrangements. While some public benefits will flow immediately as a result of the Proposed Conduct (and are already flowing under the current arrangements), the accrual of other public benefits will depend on the Applicants implementing operational changes if authorisation is granted. For example, benefits associated with introducing new frequencies and destinations and better scheduling and the promotion of tourism will be difficult to realise with an authorisation to coordinate operations that is shorter than 5 years. The Applicants note that the ACCC has previously accepted in previous airline alliances that 5 years is an appropriate period of authorisation to allow longer-term public benefits to be realised.⁶⁸

⁶⁸ See, for example, Qantas/Emirates Authorisation, (27 March 2013), para 677. The Applicants note that the ACCC has granted a five year authorisation to the following alliances: Qantas/American Authorisation, (25 February 2016); Virgin/Etihad Authorisation, (4 December 2015); Qantas/China Eastern Authorisation, (21 August 2015); Virgin/Delta Authorisation, (14 August 2015); Virgin/Air New Zealand Authorisation, (3 September 2013); Qantas/Emirates Authorisation, (27 March 2013); Qantas/Jetstar Authorisation, (26 March 2013); Virgin/Singapore Authorisation, (1 December 2011); Qantas/American Authorisation, (29 September 2011); Virgin/Etihad Authorisation, (3 February 2011); Qantas/BA Authorisation, (31 March 2010).