

## **Gilbert Jewel**

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**From:** Grimwade Tim  
**Sent:** Monday, 12 May 2003 1:55 PM  
**To:** 'barry.humphreys@fly.virgin.com'  
**Cc:** Dadd, Amanda; Outzen Gregory; Gilbert Jewel  
**Subject:** Qantas/British Airways Joint Services Agreement

Dear Mr Humphreys

### **Authorisation applications lodged by Qantas Airways Limited and British Airways Plc (A30226 and A30227)**

On 6 May 2003 the Australian Competition and Consumer Commission (the Commission) received applications for authorisation (A30226 and A30227) from Qantas Airways Limited (Qantas) and British Airways Plc (BA). The applications have been made pursuant to subsection 88(1) of the *Trade Practices Act 1974* (the Act) for conduct which may constitute an exclusionary provision within the meaning of the Act and conduct which may substantially lessen competition.

The applications seek re-authorisation of a "Restated Joint Services Agreement" (RJSA) dated 3 April 2000 (as amended) and the related and consequential coordination of schedules and pricing between Qantas and BA.

By way of background, the Commission is the Commonwealth agency responsible for administering the Act. A key objective of the Act is to prevent anticompetitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The Act, however, recognises that the public interest may not always be met by the operation of competitive markets. Authorisation is a process whereby the Commission, in response to an application, has the power to grant immunity from court action for arrangements or conduct which might otherwise be in breach of the Act. In order to grant authorisation the Commission must be satisfied the public benefit arising from the arrangements or conduct outweighs any anticompetitive detriment.

#### **Qantas/BA RJSA**

In May 2000, the Commission considered an application for authorisation lodged by Qantas and BA for an RJSA. The Commission's consideration of the RJSA followed authorisation of a similar, but not identical, Joint Services Agreement which provided for the coordination of various key aspects of their Australia/Europe, Australia/South East Asia, and South East Asia/Europe services between 1995 and 2000.

The RJSA provided for the coordination of airline services between Qantas and BA on nominated routes. The coordination arrangements included coordination on freight, scheduling, marketing, sales, pricing and customer service activities. The RJSA extended to the full networks of both airlines.

The Commission granted authorisation in respect of the RJSA for a period of three years. Authorisation is due to expire on 21 July 2003.

The current applications for re-authorisation of the RJSA are in the same terms as that authorised by the Commission in 2000.

#### **Application for interim authorisation**

Qantas and BA have requested that the Commission consider granting interim authorisation under section

91(2) of the Act if it considers that it will not have sufficient time to issue a final decision in respect of this application prior to the expiry of the existing authorisation on 21 July 2003.

Interim authorisation allows the applicant to engage in the arrangements to which the application for authorisation relates as if it had authorisation while the substance of the merits of the application are considered by the Commission.

The Commission endeavours to deal with requests for interim authorisation expeditiously and usually within four weeks of the date of lodgement of the application for authorisation.

- In making an assessment as to whether it is appropriate to grant interim authorisation, the Commission is not required to undertake a full assessment of the benefit and detriment likely to arise as a result of the proposed conduct.

Qantas and BA have submitted to the Commission that the granting of interim authorisation to the RJSA would be appropriate in these circumstances because:

- the RJSA has already been in operation for seven years and is an arrangement with which the Commission is familiar;
- any interim authorisation is likely to be in operation for a relatively short period of time;
- interim authorisation would preserve the status quo pending a final decision by the Commission; and
- separating functions that are currently operated jointly at short notice to avoid any breach of the Act (if interim authorisation is not granted) would create substantial disruption to both Qantas and BA's businesses, could potentially impact upon the provision of services to consumers and result in significant expense.

You may wish to comment on the above claims or any other issue which may be relevant to the Commission's assessment of whether it is appropriate to grant interim authorisation. If you wish to make a submission in relation to the Commission's consideration of interim authorisation, please do so by **coB Tuesday 20 May 2003**. The Commission's contact details for making such a submission are below.

### **Application for re-authorisation**

As a potentially interested party you are invited to make a written submission to the Commission regarding the likely public benefits and effects on competition of the arrangements for which re-authorisation is sought.

Copies of the Executive Summary of the Qantas/BA supporting submission and an outline of the key provisions of the Restated Joint Services Agreement provided by the applicants are attached for your information. The full application and supporting submission will be available on the Commission's website shortly and can be viewed by following the "Adjudication" and "Authorisations" links on the Commission's website at <http://www.accc.gov.au>.

### **Public benefits**

In their supporting submission, the applicants suggest that the primary sources of public benefits likely to flow from the proposed conduct are:

*Product and service benefits:* Including more destinations, broader schedule choices, more flexible fare products and higher levels of consumer support.

*Cost savings and efficiencies:* Including significant savings in overheads such as information technology and shared facilities.

*Lower fares:* The applicants claim that the RJSA is likely to result in greater availability of discount fares to consumers due to the higher level of capacity made available by the RJSA. In addition, the applicants claim that cost savings and joint inventory management allow reductions in fares.

*Greater net exports:* The applicants claim, should the Commission not re-authorise the RJSA, there would be a reduction in foreign nationals carried by Qantas and a loss of export earnings for Australia. Additionally, the applicants claim that many Australians who would have previously travelled with Qantas will be forced to use other airlines and that there may be an increase in effective importation of services as Australian consumer expenditure is diverted from Qantas to foreign-owned airlines.

*Higher employment:* The applicants claim that the services supported by the RJSA directly employ over 950 Australians. The applicants submit that if the RJSA is not authorised, a significant proportion of these jobs will be lost.

*Higher levels of tourism:* The applicants claim that higher levels of capacity, lower fares, wider ranges of schedule choices and promotional expenditure associated with Qantas operating the RJSA on overseas routes result in tourist numbers to Australia that are higher than without the RJSA.

*International competitiveness of the Australian airline industry:* The applicants claim that the RJSA has a positive effect on the success of Qantas as an international flag carrier.

You may wish to comment on any of the above claimed public benefits or any other benefits arising from the proposed conduct. Fuller detail on the claimed benefits is available in the supporting submission provided by the applicants.

#### Anti-competitive effects and public detriment

The Commission would also welcome comments on the likely competitive effects of the proposed conduct. In particular, you may wish to comment on the following issues.

*Market definition:* In assessing detriment, the Commission will examine whether the proposed conduct will, or is likely to, result in a lessening of competition in relevant markets. The applicants have suggested that the relevant markets are the markets for the provision of passenger air services between Australia – South East Asia; and Australia – Europe; and the markets for the provision of freight services between Australia – South East Asia; and Australia – Europe. The applicants also suggest that it may be relevant to assess the impact of the RJSA on the Australian domestic market. The applicants have also submitted that there is no relevant distinction between business and leisure passengers. You may wish to comment on the appropriateness of the Commission undertaking an analysis of the effects on competition in these markets.

*Barriers to entry:* Barriers to entry are those factors that may discourage a party from establishing itself as a competitor in the market. You may wish to comment on, for example, the ease (or difficulty) with which a new entrant or established airline could establish itself as a competitor to Qantas and BA in the relevant market(s).

*Current levels of competition:* You may wish to comment on the extent to which Qantas and BA face vigorous and effective competitors in markets covered by the authorisation application.

*Price and quality:* You may wish to comment on the possible impact of the proposed alliance on the price and/or quality of products and/or services that Qantas and BA provide.

*Australian domestic market:* You may wish to comment on the extent to which re-authorisation of the RJSA would be likely to impact on competition in the Australian domestic market, including the ability of

airlines to enter the market.

*Availability of substitutes:* You may wish to comment on the degree to which products and/or services provided by Qantas and BA are substitutable with other products and services in the relevant market(s).

*Market power:* You may wish to comment on the degree of market power and the potential impact of the power that would flow to Qantas and BA if the Restated Joint Services Agreement were re-authorised by the Commission.

#### Other matters

The submission provided by the applicants in support of their applications for authorisation includes a report prepared by the Network Economics Consulting Group Pty Ltd (NECG). The report will be available shortly on the Commission's website. The Commission would welcome comments on the NECG modelling and outcomes as well as premises, assumptions and data used in the assessment.

The Commission would also welcome comments on any other relevant aspect or the likely outcome(s) should the arrangements be granted re-authorisation.

#### Submissions

The Commission asks for submissions to be in writing so that they can be made publicly available. Submissions are placed on a public register and may also be placed on the Commission's website. The Commission may, where appropriate, supplement written submissions with discussions with relevant parties on a mutually convenient basis.

Should you lodge a submission with the Commission you may request that information included in the submission be treated as confidential and not placed on the public register or the Commission's website. In such circumstances you must justify why the Commission should treat such information as confidential, otherwise it would be expected to be made public. The Commission may take confidential information into account during its assessment of an authorisation application. Guidelines for seeking confidentiality are attached for your information.

If you wish to lodge a submission, please address it to:

The General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Submissions can also be lodged by email to [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au), or by facsimile on 02 6243 1211.

If you intend to provide a submission in relation to the Qantas/BA application for re-authorisation, please do so by **cob Friday 6 June 2003**.

Should you have any queries or if you wish to discuss any aspect of this matter further please contact me on 02 6243 1226 or by return email.

Yours sincerely

Tim Grimwade  
General Manager  
Adjudication Branch



Guidelines for  
Confidentiality...



Submission Qantas  
British Airw...