

**Australian Competition & Consumer Commission**

PO Box 1199  
Dickson ACT 2602  
470 Northbourne Ave  
Dickson ACT 2602  
Australia


Ph (02) 6243 1111  
Fax (02) 6243 1199

Our Ref: C2003/535  
Contact Officer: Amanda Dadd  
Contact Phone: 02 6243 1391

12 May 2003

Mr Paul Golland  
Activair  
PO Box 82  
MASCOT 1460

Letter sent to attached  
list of interested parties.

  
12/5/03.

Dear Mr Golland

**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 enclosed 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>. If you do not have internet access, please contact Amanda Dadd on 02 6243 1391 to arrange for a copy of the full submission to be forwarded to you.

### 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 Australian 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 is available 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@acc.gov.au](mailto:adjudication@acc.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 Greg Outzen on 02 6243 1227 or Amanda Dadd on 02 6243 1391.

Yours sincerely

Tim Grimwade  
General Manager  
Adjudication Branch

## GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation applications. Applicants and interested parties can request that a submission, or a part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or processes;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words “**Restriction of Publication Claimed**” should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words “**Restriction of Publication of Part Claimed**” should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the *Trade Practices Act 1974*.

## **Letter to interested parties – Qantas/British Airways Joint Services Agreement**

Mr Paul Golland  
Activair

Mr Greg Combet  
Secretary  
Australian Council of Trade Unions

Mr Phil Baker  
Managing Director  
Adelaide Airport

Manager  
Aerolineas Argentinas (Australian  
Office)

Mr Kevin Stephens  
AFS Projects and Logistics

Ms Marie Varnier  
Regional Director, Australia and New  
Zealand  
Aircalin

Mr Nick Belyea  
Director, Aviation  
Western Australia Department of  
Transport

Mrs Jeannie Foster  
General manager – Australia  
Air Canada

Manager (Australia)  
Air China

Mr Peter Langdon  
Executive Officer  
Air Freight Council of Queensland Ltd

Mr Warren G. Evans  
Executive Officer  
Air Freight Export Council (WA) Inc

Mr Malcolm Bush  
Executive Officer  
Air Freight Export Council of NSW  
Inc

Manager  
Air Nauru

Manager (Australia)  
Air Niugini

Mr Peter Ferris  
Executive Officer  
Air Transport Council

Mr Stephen Eyre  
Manager (Australia)  
Air Vanuatu

Mr William Gottlieb  
Chairman  
Airfreight Institute

Managing Director  
Ambassador Cargo Management Pty  
Ltd

Mr Colm Lorigan  
Group Counsel  
American Express International Inc.

Mr Stuart Jarvis  
Asian Express Airlines Ltd

Mr Young Pil Kim  
Manager  
Asiana Cargo

Ms Kristen Thompson  
Branch Secretary  
ASU Airlines Branch

Ms Christine Telfer  
Chairperson  
Australasian Business Travel  
Association



Managing Director  
Australian Air Express

Mr Kevin Smith  
Sales and Marketing  
Asiana Airlines

Mr Rod Cork  
Chairman of Regulatory Affairs  
Committee  
Australian and International Pilots  
Association

Mr Mark Bethwaite  
Managing Director  
Australian Business Limited

Mr Peter Hendy  
Chief Executive  
Australian Chamber of Commerce and  
Industry

Ms Louise Sylvan  
Chief Executive Officer  
Australian Consumers Association

Mr Stephen Swift  
Secretary  
Australian Exporters and Importers  
Association

Mr Terry O'Connell  
Executive Director  
Australian Federation of Air Pilots

Mr Brian Lovell  
Chief Executive Officer  
Australian Federation of International  
Forwarders Ltd

Mr Mike Hatton  
Chief Executive  
Australian Federation of Travel Agents

Mr Bob Herbert  
Chief Executive  
Australian Industry Group

Mr Rob Durie  
Executive Director  
Australian Information Industry  
Association

Mr Ken Boundy  
Managing Director  
Australian Tourism Commission

Mr Peter Shelley  
Managing Director  
Australian Tourism Export Council

Mr Koen Rooijmans  
Managing Director and Chief  
Executive Officer  
Brisbane Airport Corporation Ltd

Mr Fred Parakh  
Chief Executive Officer  
Bti Logistics

Mr Tony Slatyer  
Executive Director  
Bureau of Transport Economics

Dr John Schubert  
President  
Business Council of Australia

Mr Stephen Byron  
Managing Director  
Canberra International Airport

Mr Peter Harbison  
Managing Director  
Centre for Asia Pacific Aviation

Manager (Australia)  
Cargolux Airlines International SA

Mr Richard Cater  
Regional Manager, SW Pacific  
Cathay Pacific Airways

Managing Director  
China Airlines Cargo

Mr Wu Yan  
Manager (Australia)  
China Eastern Airlines

Mr Marc Van de Perre  
Policy Adviser  
CLECAT  
European Organisation for Forwarding  
and Logistics

Mr Eddy Baldacchino  
Chairman  
Concorde International Travel

Mr Dennis Alysandratos  
Deputy Group General Manager  
Consolidated Travel (VIC) Pty Ltd

Ms Cindy Bakewell  
Manager, Airport Services  
Continental Micronesia

Mr Anthony Boll  
Chief Executive – South Pacific  
Danzas

Mr Mark Paterson  
Secretary  
Department of Industry, Tourism and  
Resources

Mr Sean Walsh  
Chief of Staff  
Department of Premier and Cabinet

Mr Warren McCann  
Chief Executive  
Department of Premier and Cabinet

Mr Terry Moran  
Secretary  
Department of the Premier and Cabinet

Ms Linda Hornsey  
Department of the Premier and Cabinet

Mr Paul Maguire  
Department of the Premier and Cabinet

Dr Ken Henry  
Secretary  
Department of the Treasury

Mr Ken Matthews  
Secretary  
Department of Transport and Regional  
Services

Manager (Australia)  
EgyptAir

Mr Edward Lim  
Area Manager  
Emirates

Mr David Johnson  
Vice President of Sales, South Pacific  
Evergreen International Airlines

Managing Director  
Federal Express Corporation

Mr John Walker  
Federal Secretary  
Flight Attendants Association of  
Australia

Mr Shane Flynn  
Chief Executive Officer  
Flight Centre

Mr Bob Gosling  
Managing Director  
Freight Plan International Pty Ltd

Manager  
Garuda Indonesia

Mr Thomas Corcoran  
President and Chief Executive Officer  
Gemini Air Cargo

Mr David Hagley  
Area Manager – Australia and South  
Pacific  
Gulf Air

Mr Barry Mayo  
Managing Director  
Harvey World Travel

Mr Robert Noga  
General Counsel  
Hobart Airport

Mr Malcolm Campbell  
General Manager  
Horizon Airlines Pty Ltd

Mr Michael Bird  
Executive Director  
International Air Services Commission

Mr Nick Skelding  
Regional Manager  
International Air Transport Association

Mr Kunio Hashimoto  
Vice President and Regional Manager,  
Australia  
Japan Airlines Company Ltd

Ms Bronwyn Twigden  
General Manager  
Menzies Aviation Group (Australia)  
Pty Ltd

Mr Roeland van Klaveren  
General Manager, Australia/New  
Zealand  
KLM Royal Dutch Airlines

Manager (Australia)  
Korean Air

Manager (Australia)  
Lauda Air

Mr Kevin Chinnery  
The Editor  
Lloyds List DCN

Manager (Australia)  
Lufthansa German Airlines

Mr Steve Thorogood  
Branch Manager  
Mainfreight Distribution Pty Limited

Manager (Australia)  
Malaysia Airlines Cargo

The Manager  
Martinair Holland

Dr Warren Mundy  
Manager  
Strategy  
Melbourne Airport

Mr Mal Wauchope  
Director-General  
Ministry of the Premier and Cabinet

Mr Ian Kew  
General Manager  
Northern Territory Airports Pty

Mr Tony Mayell  
Managing Director  
Northern Territory Tourist  
Commission

Mr Rob Whiddon  
Chief of Staff  
Office of the Premier

Dr Col Gellatly  
Director General  
NSW Premier's Department

Mr George Angelopolous  
Manager – Australia and New Zealand  
Olympic Airways SA

Mr Nouman Munin  
Area Manager – Australia, New  
Zealand and Fiji  
Pakistan International Airlines

The Manager (Australia)  
Philippine Airlines  
Sydney Cargo Office

Ms Stephane Parrenin  
Country Manager  
Polar Air Cargo

The Manager  
Polynesian Airlines  
Melbourne GSA-ASA

Mr Gary Banks  
Chairman  
Productivity Commission

Mr Bob Mason  
Chief Executive Officer  
Regional Aviation Association  
Australia

Mr Michael Jones  
Chief Executive Officer  
Regional Express Airlines

The Manager  
Republic Freight Systems

The Manager  
Royal Brunei Airlines

The Manager  
SDV Australia Pty Ltd

The Manager  
Seawings Shipping Pty Ltd

Ms Liz Siboni  
General Manager  
Seldrum Corporation (Australia) Pty  
Ltd

Mr Mak Swee Wah  
Singapore Airlines Limited

Mr Scott Henderson  
Chief Executive Officer  
Skywest Airlines

Mr Peter Schaap  
Manager – Australia  
Solomon Airlines

Mr Hennie van der Vyver  
Regional Manager, South East Asia,  
India, New Zealand and Australia  
South African Airways

Mr Bill Spurr  
Chief Executive  
South Australian Tourism Commission

Mr Nicholas Leach  
Managing Director  
South Pacific GHS

Ms Sue Smith  
Managing Director  
STA Travel

Mr Max Moore-Wilton  
Chief Executive Officer  
Sydney Airports Corporation Limited

Ms Judy Williams  
Thai Airways International

Mr Roger Wilkins  
Director-General  
The New South Wales Cabinet Office

Chairman  
The Tourism Task Force Limited

Mr Tony Thirlwell  
Chief Executive Officer and General  
Manager  
Tourism New South Wales

Mr Stephen Gregg  
Chief Executive Officer  
Tourism Queensland

Mr Rob Gason  
Chief Executive  
Tourism Tasmania

Ms Lois Appleby  
Chief Executive  
Tourism Victoria

Ms Catherine Rule  
Chief Executive Officer  
Australian Airports (Townsville) Pty  
Limited

Mr Mik Milln  
Transport SA

Mr Glen Wells  
Chief Executive  
Travel Compensation Fund

Mr Mike Heard  
Travel Daily

Ms Jane Read  
Travel Week

Ms Carole Murphy  
Travelsearch Australasia Pty Ltd

The Manager  
United Parcel Service

Mr Mike Thompson  
General Manager  
Travelscene Limited

Mr John Goodwin  
Chief Executive Officer  
Victorian Air Freight Council

Mr Le Thanh Dzung  
General Manager (Australia)  
Vietnam Airlines

Mr Barry Vining  
Executive Director  
VIP Logistics

Mr Brett Godfrey  
Chief Executive Officer  
Virgin Blue

Mr John Warren  
Managing Director  
WDM International

Mr Graham Muir  
Chief Executive Officer  
Westralia Airports Corporation

Dr David Cousins  
Director  
Consumer Affairs Victoria

Mr Doug Cameron  
National Secretary  
Australian Manufacturing Workers  
Union

Mr Bernie Riordan  
General Secretary  
Electrical Trades Union

Ms Helen Creed  
National President  
Liquor, Hospitality and Miscellaneous  
Workers Union

Mr Adrian O'Connell  
National Secretary  
Community and Public Sector Union

Mr Barry Humphreys  
Director of External Affairs and Route  
Development  
Virgin Atlantic Airways Ltd

The Hon Mark Vaile MP  
Minister for Trade

The Hon John Anderson MP  
Minister for Transport and Regional  
Services

The Hon Ian Macfarlane MP  
Minister for Industry, Tourism and  
Resources

Mr Simon Warrender  
Executive Chairman  
Australia World Airways

Ms Sue Davis  
Finance Manager  
Brisbane Airport

Mr Gavin Richardson  
Director, Aviation Development  
West Australian Tourism Commission