# Public Competition Assessment

***1 March 2007***

***Airline Partners Australia Limited - proposed acquisition of Qantas Airways Limited***

## Introduction

1. On 1 March 2007, the Australian Competition and Consumer Commission (**ACCC**) announced its decision not to oppose the proposed acquisition of Qantas Airways Limited by Airline Partners Australia Limited, a consortium including Macquarie Bank Limited (**proposed acquisition**). The ACCC was of the view that the proposed acquisition would be unlikely to have the effect of substantially lessening competition in any relevant market in contravention of section 50 of the *Trade Practices Act 1974* (the **Act**).

2. The ACCC formed its view on the basis of the information provided by the merger parties and information arising from extensive market inquiries. This Public Competition Assessment outlines the basis on which the ACCC has reached its decision on the proposed acquisition, subject to confidentiality considerations.

## Public Competition Assessment

3. To provide an enhanced level of transparency and procedural fairness in its decision making process, the ACCC issues a Public Competition Assessment for all transaction proposals where:

   - a merger is rejected;
   - a merger is subject to enforceable undertakings;
   - the merger parties seek such disclosure; or
   - a merger is approved but raises important issues that the ACCC considers should be made public.

4. This Public Competition Assessment has been issued because the proposed acquisition is considered to raise issues of interest to the public. In particular, the proposed acquisition generated significant public interest with respect to the impact of Macquarie Bank Limited's partial interests in Qantas Airways Limited and Sydney Airport.

5. In addition to addressing the range of competition issues arising from the proposed acquisition, this Public Competition Assessment sets out in detail the ACCC's analysis of the impact of Macquarie Bank Limited's partial interests on competition.

6. By issuing Public Competition Assessments, the ACCC aims to provide the market with a better understanding of the ACCC's analysis of various markets and the associated merger and competition issues. It also alerts the market to the circumstances where the ACCC's assessment of the competition conditions in particular markets is changing, or likely to change, because of developments.

7. Each Public Competition Assessment is specific to the particular transaction under review by the ACCC. While some transaction proposals may involve the same or related markets, it should not be assumed that the analysis and decision outlined in one Public Competition Assessment will be conclusive of the ACCC's view in respect of other transaction proposals, as each matter will be considered on its own merits.

8. Many of the ACCC's decisions will involve consideration of both non-confidential and confidential information provided by the merger parties and market participants. In order to maintain the confidentiality of particular information, Public Competition Assessments do not contain any confidential information or its sources. While the ACCC aims to provide an appropriately detailed explanation of the basis for the ACCC decision, where this is not possible, maintaining confidentiality will be the ACCC's paramount concern, and accordingly a Public Competition Assessment may not definitively explain all issues and the ACCC's analysis of such issues.

## The parties

*The acquirer: Airline Partners Australia Limited*

9. Airline Partners Australia Limited (**APA**) was incorporated in Australia on 8 December 2006 for the purpose of making the proposed acquisition. The investors which own APA, through their interests in APA or units in the Airline Partners Australia Fund (**APA Fund**) include:

- Macquarie Bank Limited (**MBL**) – a majority Australian-owned and based diversified international provider of financial and investment banking services. MBL's aviation interests include an aircraft leasing business and a shareholding in, and the management of[1], a listed airport investment fund, Macquarie Airports (**MAp**) that has a significant interest in Sydney Airport;
- Allco Finance Group Limited (**AFG**) – an Australian based global financial services business specialising in structured asset finance, specialised funds management and debt funding. AFG operations include an aircraft leasing business;

[1] Through a wholly owned subsidiary as discussed below.

- Allco Equity Partners Limited (**AEP**) – an Australian based investment company which provides private equity and public market investment opportunities;
- TPG Partners V, L.P. and Newbridge Asia IV, L.P (**TPG**) – US based private investment firms which provide private equity investment opportunities and investment management services. TPG's aviation interests include an indirect minority interest in an Asia Pacific region air passenger service provider, Tiger Airways, a partial interest in a provider of global distribution system (**GDS**) services, Sabre Holdings, and a minority interest in an international airline catering company, Gate Gourmet; and
- Onex Partners II LP. (**Onex**) – a limited partnership which includes Onex Corporation. Onex Corporation's aviation interests include a majority shareholding in an aircraft parts manufacturer, Spirit AeroSystems Inc. (**Spirit**).

10. The ownership structure of APA upon completion of the proposed acquisition will be as follows:[2]

| Investor | Voting Interest | Economic Interest |
|---|---|---|
| AFG | 11.1% | 8.4% |
| AEP | 35.4% | 26.9% |
| MBL | 14.7% | 14.7% |
| TPG | 14.9% | 25.0% |
| Onex | 9.0% | 12.5% |
| Other foreign investors | 14.9% | 11.5% |
| Qantas management | Nil | 1.0% |
| TOTAL | 100% | 100% |

11. 100% of the ordinary shares in APA are to be held by the APA Fund, through the Airline Partners Australia Trustee (**APA Trustee**). Units in the APA Fund will be stapled to the shares of the APA Trustee and at financial close will be held by the consortium members in the proportions of the voting interest in the table above.[3] The APA Trustee will be responsible for decisions made in relation to assets of the APA Fund. At financial close, the Board of APA and the APA Trustee will comprise 12 directors including:

- one director nominated by each of MBL, AFG and Onex;
- two directors appointed by AEP;
- three directors appointed by TPG;
- three independent directors; and
- one Qantas senior management director.

2 APA Bidders Statement, 2 February 2007, p35. The ACCC also considered the possibility that partners of APA investors may take an interest in APA through the issuing of special warrants by APA investors.

3 Economic interests differ from voting interests. Economic interests in APA include special warrants issued by APA to certain investors. See APA Bidders Statement, 2 February 2007, p.35

*The target: Qantas Airways Limited*

12. The main business of Qantas Airways Limited (**Qantas**) is the international and domestic transportation of passengers by air (**air passenger services**). Qantas also operates subsidiaries which include:

- QantasLink regional airlines which operates throughout Australia;
- Qantas Flight Catering Holdings which operates the Qantas Flight Catering Limited and Caterair Airport Services catering businesses;
- Qantas Freight which provides domestic freight services through a joint venture with Australia Post and international freight services;
- Express Ground Handling which provides ground handling services to Jetstar and regional airlines;
- Qantas Holidays which provides wholesale and retail travel services; and
- Jetstar which provides domestic and Asia-Pacific air passenger services.

## The proposed acquisition

13. On 14 December 2006, APA announced its intention to acquire Qantas and provided the ACCC with a submission.

## Timing

14. The following table outlines the timeline of key events in this matter.

| Date | Event |
|---|---|
| 14-Dec-2006 | ACCC commenced review under the Merger Review Process Guidelines. Market inquiries commenced. |
| 22-Dec-2006 | ACCC requested further information from the parties. |
| 10-Jan-2007 | ACCC received further information from the parties. |
| 29-Jan-2007 | Closing date for submissions from market participants. |
| 02-Feb-2007 | ACCC requested further information from the parties. |
| 9-Feb-2007 | ACCC received further information from the parties. |
| 1-Mar-2007 | Announcement of ACCC decision. |

## Market inquiries

15. The ACCC conducted extensive market inquiries in relation to potential competition issues with a range of industry participants, including competitors, industry bodies, regulatory agencies and other market participants. Market inquiries identified the following areas of interest:

- The supply of aeronautical services to airlines at Sydney Airport;
- The supply of domestic air passenger services;
- The supply of international air passenger services;

- The supply of aircraft leasing services;
- The supply of airline catering services;
- The supply of air passenger global distribution services;
- The manufacture and supply of aircraft parts; and
- The Qantas Frequent Flyer Program.

### The supply of aeronautical services to airlines at Sydney Airport

*Vertical competition issues*

16. MBL's post-acquisition partial interest in both Qantas and Sydney Airport could raise vertical integration issues relating to the provision of aeronautical services at Sydney Airport and the provision of domestic and international air passenger services.[4]

17. The concern expressed by some market participants was that MBL would have the incentive and ability to influence decisions of the management of Sydney Airport with respect to the supply of aeronautical services in a manner that would provide Qantas with a competitive advantage over rival airlines in downstream markets for domestic and international air passenger services.

18. These concerns were based on a view that it is likely Sydney Airport management, Sydney Airport Corporation Limited (**SACL**), would recognise an interest in acting in favour of Qantas in circumstances where MBL is an investor in and manager of[5], a significant shareholder in SACL as well as being a significant shareholder in Qantas.

19. Some market participants made submissions that there would be limited practical constraints operating on SACL to prevent it from pursuing its incentives to discriminate in favour of Qantas.

20. Some market participants also made submissions that there would be strong incentives for SACL to discriminate in favour of Qantas and that this discrimination could be achieved without having a material detrimental impact on the financial position of SACL or materially reducing traffic flow through Sydney Airport.

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[4] The ACCC also considered this issue in the context of domestic and international air freight services. Market inquiries did not reveal concerns in this regard and the ACCC's analysis set out in this Public Competition Assessment is limited to the impact of MBL's partial interests on competition in the provision of air passenger services. In addition, the ACCC considered vertical competition issues in relation to competition between Australian airports in the event that MBL sought to facilitate discrimination by Qantas in favour of Sydney Airport. Market inquiries indicated this was not a substantive competition issue.

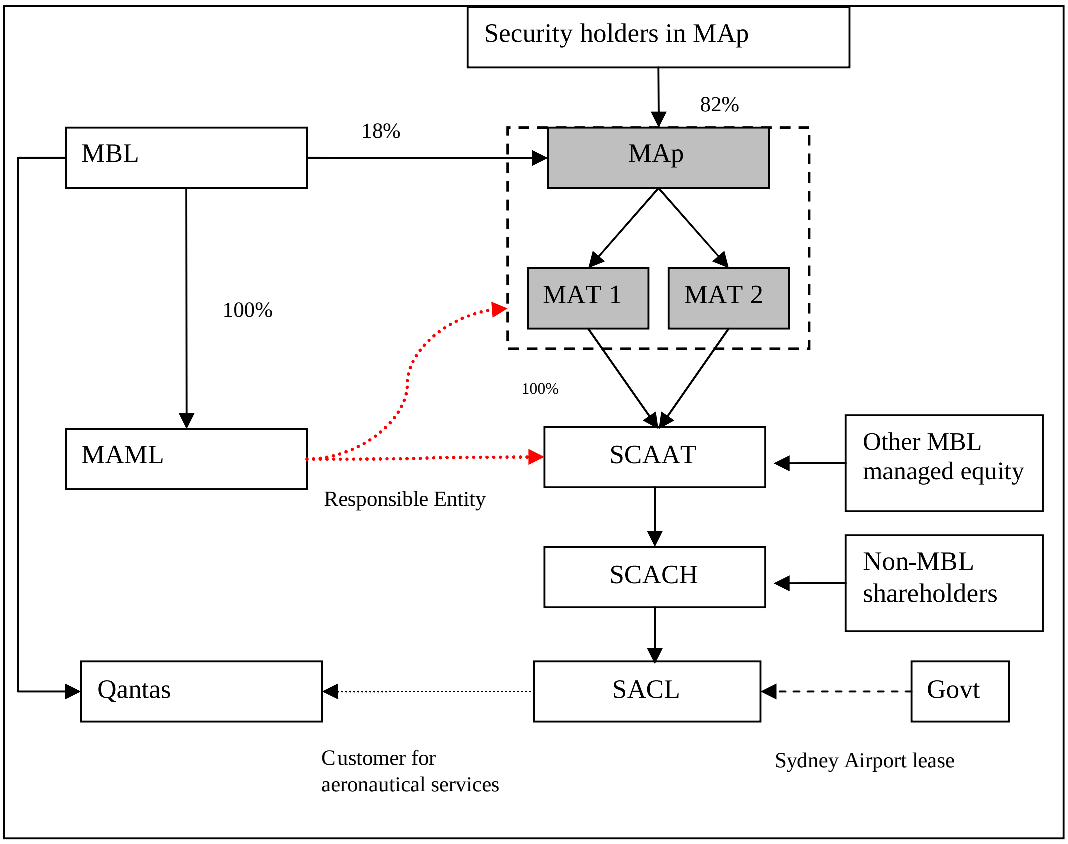
[5] Through a wholly owned subsidiary as discussed below.

*Ability of MBL to facilitate discrimination in favour of Qantas*

21. MBL's ability to facilitate discrimination in favour of Qantas will be determined by MBL's ability to influence the decisions of APA[6] and, more importantly, MBL's ability to influence the decisions of SACL.

22. MBL will have a 14.7% voting interest in APA and the APA Fund and a right to appoint one director out of twelve to the Board of APA and the APA Trustee. As a result, MBL has limited control over the Board of APA and the APA Trustee. In addition, consortium agreements governing investments in APA provide that where the APA Board considers a proposal involving a member of the APA group (including Qantas) entering into or varying an arrangement with an investor in APA or their affiliate (including MBL), that investor's nominee director on the board of APA or the APA Trustee would not be entitled to vote on the proposal. This 'related party proposal' condition would apply broadly to preclude MBL's nominee director voting on any material agreement entered into between Qantas and SACL.

23. In terms of MBL's ability to influence SACL, any control over SACL arises from MBL's ability to control MAML as MAML's parent company in conjunction with any ability of MAML to control SACL. The corporate relationship between MBL, MAML and SACL is summarised in the diagram below.




6 The ACCC notes that APA may have limited incentives to prevent discrimination by SACL in favour of Qantas.

24. The ultimate parent company of SACL is Southern Cross Airports Corporation Holdings Limited (**SCACH**). Shareholders in SCACH currently include MAp (in its own right), Southern Cross Australian Airports Trust (**SCAAT**) through which a number of MBL managed investment funds including MAp hold interests, Ferrovial Aeropuertos Australia Management Pty Limited (**Ferrovial**), Hochtief Airport/HTAC (**Hochtief**) and Ontario Teachers Pension Plan (**Ontario**). MAp will acquire Ferrovial's share in SCACH by 20 March 2007 such that the interests in SCACH are likely to be:

- MAp, 72.1%
- other MBL managed investments, 9.6%; and
- non-MBL interests including Hochtief and Ontario 18.3%.

25. MAp is a listed triple stapled entity comprising Macquarie Airports Trust 1 (**MAT 1**), Macquarie Airports Trust 2 (**MAT 2**), and Macquarie Airports Limited. The Australian and New Zealand airport interests of MAp are held by MAT 1 and MAT 2 and these trusts are managed by Macquarie Airports Management Limited (**MAML**), a wholly owned subsidiary of MBL[7]. MAML is the responsible entity of MAT 1 and MAT 2.

26. MBL has an approximately 18% interest in MAp corresponding to an indirect equity interest in SACL of approximately 13.0% (post March 2007). The remaining approximately 82% security holding in MAp is diverse and includes large institutional shareholders. Security holders in MAp hold units in MAT 1 and MAT 2 which reflect their investment in MAp.

27. MAML is a wholly owned subsidiary of MBL. The Board of MAML comprises two MBL appointed directors and three independent directors. One of the MBL appointed directors is the Chairperson of MAML in addition to being the Chairperson of SACL. In addition, MAML is the investment manager of MAp which has a majority interest in SACL. These factors indicate that MBL may have some ability to influence SACL or that SACL may recognise its own interest in acting in the interests of MBL.

28. However, regulatory constraints apply to restrict the ability of MBL to control MAML. MAML and its officers and employees are under an obligation to act in the interests of all security holders of MAT 1 and MAT 2. These interests, approximately 82% of which are non-MBL entities, will be different from the interests of MBL as they will be limited to the performance of SACL. MAML's obligations in this regard arise from statutory duties as responsible entity[8] of MAT 1 and MAT 2 under the Corporations Act, duties under the ASX Listing Rules and statutory duties as a holder of an Australian Financial Services Licence (**AFSL**).

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7 MAML actively manages and performs administrative functions in relation to MAT 1 and MAT 2 investments. Management fees include a base fee and a performance fee calculated on the basis of the performance of the MAp fund relative to other similar investments internationally. Since listing in April 2002, performance fees paid to MAML have been highly variable and aggregate performance fees have exceeded aggregate base fees.

8 MAML is also the responsible entity of SCAAT.

29. These obligations address circumstances involving conflicts of interest and the use of information by MAML, its directors and employees, and impose significant consequences for non-compliance including civil or criminal proceedings, the revocation of MAML's AFSL and potentially the removal of MAML as the responsible entity of the MAT 1 and MAT 2 trusts. Similarly, SACL officers have a responsibility under the Corporations Act to act in the interests of its shareholders, including non-MBL managed equity shareholders such as Ontario.

30. The ACCC considers MBL may have a greater level of influence over SACL than the corporate structures (and particularly MBL's 18% interest in MAp) would suggest, flowing from the role of MBL's wholly owned subsidiary, MAML, as manager of MAp and MAp's significant interest in SACL. As a result, MBL has some ability to influence SACL. However, there are certain regulatory and corporate constraints that will restrict SACL's ability to act in MBL's interests.

*Financial incentives for MBL to seek to facilitate discrimination in favour of Qantas*

31. Even if MBL has the ability to facilitate discrimination in favour of Qantas, the ACCC separately considered whether the incentives faced by MBL as a result of the proposed acquisition are likely to make such discrimination more likely.

32. MBL's direct financial incentive[9] to seek to facilitate discrimination in favour of Qantas will depend on MBL's economic interests in Qantas and SACL and how the discrimination will affect those economic interests. Economic interests include any shares, options contracts or arrangements MBL has, the value of which vary with the profitability or value of Qantas and SACL.

33. MBL have advised the ACCC that it will not have any direct and immediate economic interest in Qantas other than a 14.7% share of APA. MBL will also have an indirect economic interest in SACL corresponding to:

    - 13.0% of the equity in SACL (through MBL's interest in MAP), and
    - MAML's management fees which in part depend on the financial performance of Sydney Airport.

    Taking in account both MBL's interest in MAp and MAML's performance fees, MBL's economic interest in Sydney Airport is significantly greater than its economic interest in Qantas. Information considered by the ACCC suggests that in order for discrimination to be profitable to MBL, MBL would have to identify an opportunity that would provide Qantas with approximately twice the financial benefit than any financial detriment to SACL.

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9 Direct financial incentives do not include the potentially adverse effects the discriminatory conduct may have on MBL's reputation as a provider of financial and investment banking services.

34. Market inquiries did not identify circumstances arising from the management of Sydney Airport which would provide such clear financial incentives to MBL. However, some market participants did put forward scenarios in which discrimination in favour of Qantas could lead to a significant increase in Qantas' financial position without decreasing (or significantly decreasing) SACL's financial position. These scenarios are addressed below.

*Scenarios put forward as likely to give rise to a substantial lessening of competition*

35. It is important to note that the ACCC considered all scenarios that had the potential to give rise to a substantial lessening of competition in the context of the ongoing management of Sydney Airport. As a major customer of SACL's, Qantas currently exerts influence over the management decisions of SACL. As a result, SACL may have the incentive for commercial reasons to act in ways that favour Qantas, irrespective of the proposed acquisition.[10]

36. In order for the ACCC to establish a substantial lessening of competition in breach of s 50 of the Act, the ACCC needs to focus on the detriment that arises as a direct result of an acquisition only. As a result, the focus of the ACCC's review was the effect of the proposed acquisition on competition and not a general inquiry into the conduct of SACL.

37. In this context, the key scenarios put to the ACCC in which SACL would be likely to discriminate in favour of Qantas, as a result of the proposed acquisition, on a costless or close to costless basis were that SACL would:

- impose new charges or increase existing charges to Qantas' rivals or their suppliers;
- act to prevent or otherwise delay the entry of new domestic airlines operating out of Sydney Airport;
- favour Qantas in capacity constrained facilities such as access to space on the airport;
- delay or withhold consent to the upgrading of facilities for airlines other than Qantas;
- degrade service quality including at common user terminals which are relied upon significantly by Qantas' rivals; and
- fail to ensure the protection of confidential information provided to SACL by Qantas' competitors.

38. In terms of the imposition of new or increased charges on Qantas' rivals, it was submitted that SACL was not currently charging profit maximising prices and that by increasing prices either generally or to Qantas' rivals only, SACL would:

- enhance the financial position of SACL in the short term; and

[10] The ACCC notes the findings of the Australian Competition Tribunal in *Virgin Blue Airlines Pty Limited* [2005] ACompT 5 at 527 regarding SACL's reasons for introducing certain aeronautical services charges based on the number of passengers on board an aircraft. The ACCC understands these findings are disputed by SACL.

- not adversely impact the financial position of SACL in the medium to long term as any reduction in aircraft and passenger traffic through Sydney Airport that may result from discrimination in favour of Qantas would be offset by an expansion in capacity by Qantas.

39. However, market inquiries indicated that SACL is currently acting and would continue to act to maximise its profits within the regulatory structure that applies to Sydney Airport (including that certain aeronautical services are the subject of an access declaration under Part IIIA of the Act)[11]. In addition, it is by no means likely that if SACL discriminated in favour of Qantas, SACL could expect Qantas to put SACL in the same position as if SACL had not engaged in this discrimination, such as by expanding Qantas' capacity in order to maintain maximised traffic flows through Sydney Airport. For instance, Qantas would be likely to use its *existing* capacity to take advantage of any air passenger demand that was no longer being met by rival airlines and may choose not to meet *all* of this demand for practical or economic reasons.

40. In terms of SACL acting to prevent or otherwise delay the entry of new domestic airlines operating out of Sydney Airport, market inquiries indicated that this could result in a significant cost to SACL in terms of forgone growth in SACL aeronautical revenues. Market inquiries indicated SACL's objective of maximising profits could best be achieved through the existence of competition between airlines as a means to drive demand for aeronautical and non-aeronautical services. This is despite any perceived increase in bargaining power SACL may have through limiting the number of customers of aeronautical services at Sydney Airport.

41. In terms of SACL delaying or withholding consent to the upgrading of facilities and/or favouring Qantas in the allocation of capacity constrained facilities, market inquiries indicated that this conduct would not impose an immediate and significant cost on SACL. However, such discrimination may interfere in the efficient operation of Sydney Airport and consequently, diminish SACL profits. To the extent such discrimination had an impact on competition between airlines, it could also reduce demand for aeronautical services.

42. In terms of degrading service quality at Sydney Airport, market inquiries indicated that this conduct would not impose an immediate and significant cost on SACL. However, any failure by SACL to make investments necessary to maintain the efficient operation of Sydney Airport would be likely to impose a cost on SACL. While SACL's decision to make or not make investments may effect Qantas' rivals, this effect would be likely to result from factors other than the proposed acquisition.

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[11] Declaration enables airlines to seek to have the ACCC arbitrate the prices of such services. Further, if an airline is of the view that it is being unfairly treated by Sydney Airport in respect of the provision or charges for other services, it can seek a declaration of the service under Part IIIA. The threat of such regulation is likely to reduce the incentive for SACL to discriminate in favour of Qantas.

43. For example, the ACCC understands that differences currently exist in terms of service quality at the common user terminal (**T2**) and the terminal exclusively leased by Qantas (**T3**) at Sydney Airport. These differences would appear to be a result of normal commercial conduct by SACL and Qantas (in particular, decisions made by Qantas to invest in service quality at T3). While there is some possibility that SACL could allow the difference in service quality between T2 and T3 to increase in the future, it appears unlikely this would happen as a result of the proposed acquisition. This is not only because Qantas (Jetstar) also uses T2, but a failure on behalf of SACL to make necessary investments may interfere in the efficient operation of Sydney Airport and consequently, diminish SACL profits.

44. In terms of SACL failing to ensure the protection of confidential information, market inquiries indicated that this conduct may not impose an immediate and significant cost on SACL. However, market inquiries also indicated that it is necessary for SACL to obtain confidential information from aeronautical services customers in order to efficiently operate Sydney Airport and that this would not change as a result of the proposed acquisition.

45. Accordingly, the ACCC considers that the likelihood that any of the scenarios put forward by market participants will arise in the future is not significantly increased by the proposed acquisition.

*Conclusion*

46. Given Qantas' status as a large (and potentially dominant) customer of Sydney Airport, SACL already has significant incentives to act in favour of Qantas in a variety of commercial activities. The analysis set out above indicates that both MBL's ability and incentives, as a result of the proposed acquisition, to facilitate activities by SACL that would further favour Qantas and substantially lessen competition are constrained by a variety of factors. MBL's ability to influence SACL to undertake activities that would further benefit Qantas but harm SACL's profit is limited by its minority interest in SACL. MBL's incentive to influence SACL to undertake such activities is limited by its asymmetric financial interest in Sydney Airport and Qantas, and by the harm that such activities may create to MBL's reputation as a fund manager.

47. As such, the ability and incentive of MBL to influence SACL to undertake activities that further benefit Qantas, to the detriment of competition, are likely to be limited to those activities that have a relatively low cost, or no cost, to SACL. While a number of these types of activities have been analysed by the ACCC, the ACCC notes the commercial incentive SACL has to undertake these activities with or without the proposed acquisition. The ACCC concludes that both individually and together these activities do not give rise to a likelihood of a substantial lessening of competition as a result of the proposed acquisition.

48. Based on this analysis, the ACCC does not consider MBL's post-acquisition partial interests in Qantas and Sydney Airport resulting from the proposed acquisition is likely to give rise to a substantial lessening of competition in markets for the supply of aeronautical services at Sydney Airport or in markets for the supply of domestic and international air passenger services.

**The supply of air passenger services**

49. The ACCC considered the impact of APA investors' interests on competition for the supply of air passenger services, including between Darwin and Singapore and between Perth and Singapore.

50. Following the proposed acquisition, TPG will own 25.0% of APA and have a voting interest of 14.9%. TPG currently holds an indirect minority interest in a Singapore based supplier of air passenger services, Tiger Airways Pte Ltd (**Tiger**). TPG is not represented on the Tiger Board.

51. TPG's indirect interest in Tiger is owned by an affiliated investment fund that is separately and independently managed from the investment funds that form part of APA. The interest in Tiger is held as passive minority interest in a limited partnership which is managed by Indigo Partners LLC (**Indigo**) and which holds a 24% equity interest in Tiger. Indigo has the ability to appoint two of the eight directors on the Tiger Board. The other shareholders in Tiger include Singapore Airlines Limited (**Singapore Airlines**), Ryanasia Limited (**Ryanasia**) and Temasek Holdings Pte (**Temasek**)[12].

52. Tiger and Qantas (through Jetstar) currently supply air passenger services between Darwin and Singapore. Tiger has announced its intention to commence services between Perth and Singapore from 23 March 2007[13] and to compete in the supply of domestic air passenger services in Australia.[14]

53. The partial interests of TPG in Tiger and Qantas may raise competition issues to the extent that TPG could be in a position to facilitate coordinated conduct between Tiger and Qantas (Jetstar).

54. TPG/Indigo would have significant influence over Tiger holding approximately 24% of the equity in Tiger and two out of eight directors on the Tiger Board. However, it is likely that significant shareholders in such as Singapore Airlines, Ryanasia and Temasek would be in a position to prevent TPG and/or Indigo facilitating market sharing conduct between Tiger and Qantas (Jetstar). Even if TPG/Indigo had some ability to facilitate coordinated conduct between Tiger and Qantas (Jetstar), it is likely that Tiger and Qantas (Jetstar) would face significant competition from existing and potential suppliers of air passenger services.

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12 Temasek is a Singaporean Government Investment Company which has major interests in many Singapore-based companies including Singapore Airlines.

13 Tiger Airways press release - 19 Janurary 2007.

14 Tiger Airways press release – 8 February 2007.

55. Direct air passenger services between Darwin and Singapore are offered by Tiger and Qantas (Jetstar) only, with both Royal Brunei and Garuda offering indirect services. Both Singapore Airlines and Qantas currently offer direct services between Perth and Singapore with indirect services offered by other airlines such as Malaysia Airlines and Royal Brunei.

56. It is likely that Qantas (Jetstar) and Tiger will be constrained by the direct and indirect services offered by competing airlines on the Darwin to Singapore and Perth to Singapore routes. Market inquiries indicated that due to the absence of regulatory constraints, there are relatively low barriers to entry for existing airlines operating services between Australia and Singapore with airlines such as Virgin Blue and Air Asia in a position to offer services between Darwin and Singapore and Perth and Singapore.

57. In addition, Tiger's intention to expand into the domestic air passenger services in Australia suggests that Tiger is likely to be an aggressive competitor to Qantas notwithstanding the partial interests that will result post-acquisition.

58. Accordingly, the ACCC does not consider the partial interests of TPG in Tiger and Qantas are likely to give rise to a substantial lessening of competition in air passenger services markets.

**The supply of aircraft leasing services**

59. MBL and AFG's existing separate aircraft leasing interests give rise to:

- a potential horizontal competition issue, in the event that MBL and AFG were to jointly pursue aircraft leasing opportunities; and
- a potential vertical competition issue, in the event that MBL and/or AFG were to take advantage of any strong position in aircraft leasing markets to discriminate in favour of Qantas, or Qantas was to take advantage of any strong position as a procurer of aircraft leasing services to discriminate in favour of MBL and/or AFG, to the detriment of competition.

60. It appears unlikely that MBL and AFG jointly pursuing aircraft leasing opportunities in the future would give rise to horizontal competition issues. Post acquisition, there would be a number of large aircraft leasing companies operating in Australia and internationally including ILFC, BAE Systems and Singapore Aircraft Leasing Enterprise.

61. To the extent that Qantas could be considered to have a strong position as a procurer of aircraft leasing services in Australia, it is likely that the structure of the consortium would limit the incentives and ability of MBL and AFG to seek to facilitate any discrimination by Qantas in favour of the MBL/AFG aircraft leasing businesses. In particular, the related party proposal condition under the consortium structure[15] would ensure that material agreements with aircraft leasing providers, including MBL and AFG, are conducted on an arms-length basis.

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[15] See paragraph 22.

62. Accordingly, the ACCC considers it unlikely that the proposed acquisition would give rise to a substantial lessening of competition in aircraft leasing markets.

### The supply of airline catering services

63. Gate Gourmet is an international airline catering business with operations in Australia at Sydney Airport and Darwin Airport. Qantas obtains airline catering services from Gate Gourmet's Darwin Airport operations. TPG has a minority interest in Gate Gourmet[16] and the ability to appoint three out of seven directors on the Gate Gourmet Board.

64. Market inquiries did not indicate concerns regarding coordinated conduct between Qantas Catering and Gate Gourmet. Even if TPG was able to facilitate such coordinated conduct, it is likely that Qantas Catering and Gate Gourmet would be constrained by other airline catering businesses operating in a number of locations in Australia including Alpha Flight Services and Inflight Logisitics Services.

65. However, some market participants did indicate a concern that given TPG's partial interest in Gate Gourmet and Qantas, TPG may seek to foreclose access to Qantas airline catering contracts for competing airline catering businesses. While TPG may have some incentive to facilitate discrimination by Qantas in favour of Gate Gourmet, the remaining APA investors would not have the same interest. The ACCC considers that the consortium structure[17] would ensure the remaining investors in APA would prevent TPG from facilitating such discrimination and that rival airline catering businesses are unlikely to be foreclosed from competing to supply Qantas as a result of the proposed acquisition.

66. Accordingly, the ACCC considers it unlikely that the proposed acquisition would give rise to a substantial lessening of competition in airline catering services markets.

### The supply of air passenger global distribution services

67. Sabre Holdings (**Sabre**) is a provider of global distribution services for the booking and purchase of air passenger tickets (**GDS**). Galileo, Sabre, Amadeus and Worldspan are the four GDS providers operating globally. In Australia, Galileo and Sabre are the major GDS providers with Amadeus having significant GDS operations and Worldspan having limited GDS operations. TPG V and US private equity firm, Silver Lake Partners, are in the process of jointly acquiring Sabre.

[16] A TPG fund that is separately and independently managed from the TPG funds that form part of the APA owns approximately 10% of the outstanding units in Gate Gourmet.

[17] In particular the related party proposal conditions referred to in paragraph 22.

68. Some market participants indicated a concern that TPG's partial interest in Sabre and Qantas may provide TPG with an incentive to seek to facilitate discrimination by Sabre in favour of Qantas' direct air passenger distribution channels and that this would be likely to lessen competition in air passenger services retail markets. Such discrimination could involve preferential pricing and/or preferential display relative to third party air passenger retailers.

69. Any incentive TPG may have to facilitate such discrimination would not be shared by Silver Lake Partners. Discrimination in favour of Qantas would be likely to limit the ability of Sabre to compete effectively with GDS providers operating in Australia, including Galileo.

70. Accordingly, the ACCC considers it unlikely that the proposed acquisition would give rise to a substantial lessening of competition in air passenger services retail markets.

**The manufacture and supply of aircraft parts**

71. Spirit is a leading global manufacturer and supplier of aerostructures[18] which supplies aircraft parts to commercial aircraft manufacturers such as Boeing and Airbus. These manufacturers supply aircraft to air passenger service providers including Qantas. Onex has a 90% interest in Spirit.

72. Onex's partial interest in Spirit and Qantas may give rise to vertical competition issues in relation to the supply of aircraft parts in the event that Onex was to seek to facilitate discrimination by Qantas in favour of Spirit.

73. However, market inquiries indicated that Spirit is not involved in commercial negotiations with airlines and that airlines are not involved with the aerostructure procurement decisions of aircraft manufacturers. In addition, it is most likely that the structure of the APA consortium would prevent Onex from facilitating discrimination by Qantas in favour of Spirit.[19]

74. Accordingly, the ACCC considers it unlikely that the proposed acquisition would give rise to a substantial lessening of competition in markets for the supply and manufacture of aircraft parts.

**Frequent flyer points**

75. The ACCC notes speculation that the proposed acquisition could result in either the sale of the Qantas Frequent Flyer Program (**Qantas FFP**) or a reduction in the quality or value of the Qantas FFP. APA has stated publicly that the proposed acquisition will have no impact on the Qantas FFP and the transaction will not result in any loss of frequent flyer points for members of the program.[20]

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[18] Aerostructures manufactured by Spirit include aircraft parts such as fuselage systems, propulsion systems and wing systems.

[19] In particular the related party proposal conditions referred to in paragraph 22.

[20] Letter to Qantas shareholders dated 22 December 2006, page 3.

76. Regardless of whether the Qantas FFP is retained by APA or sold to another firm with no competing airline loyalty program, the ACCC does not consider the proposed acquisition gives rise to any competition issues with respect to the Qantas FFP.

**Conclusion**

77. On the basis of the above, the ACCC formed the view that the proposed acquisition of Qantas by APA would not be likely to result in a substantial lessening of competition in any relevant market in contravention of section 50 of the Act.