



Australian
Competition &
Consumer
Commission

Draft Determination

Applications for authorisation

lodged by

**Singapore Airlines Limited
on behalf of the members of the Star Alliance**

in respect of

**The Star Alliance Corporate Plus Program and
the Star Alliance Conventions Plus Program**

Date: 20 June 2007

Authorisation no.: A91036,
A91037, A91038, A91039 and
A91040

Public Register no.: C2007/728

Commissioners: Samuel
McNeill
Martin
King
Smith
Willett

Summary

The ACCC proposes to grant authorisation to the Star Alliance Corporate Plus and Conventions Plus programs for a period of five years.

The authorisation process

The Australian Competition and Consumer Commission (ACCC) can grant immunity from the application of the competition provisions of the *Trade Practices Act 1974* (the Act) if it is satisfied that the benefit to the public from the conduct outweighs any public detriment. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

The applications for authorisation

The Star Alliance applied for authorisation of the Corporate Plus Program and the Conventions Plus Program.

The Corporate Plus application was for the proposed continuation of an arrangement essentially identical to the current authorised (A30209-A30210) and implemented arrangement, pursuant to which Star Alliance members enter into *Star Alliance Corporate Plus Agreements* with corporate customers.

The Conventions Plus application was for an arrangement essentially identical to the current authorised (A30211-A3213), but not locally implemented arrangement, pursuant to which Star Alliance members make joint bids for appointment as the official airline alliance for international conventions and enter into *Star Alliance Conventions Plus Official Airline Network Long-Term Agreements* with convention organisers.

Public detriment

The ACCC considers that the anti-competitive detriment flowing from the arrangements will be limited by the following:

- the networks of the Star Alliance members are largely complementary;
- competition will remain from non-Star Alliance carriers, particularly Qantas;
- the Star Alliance members continue to compete on their underlying fares;
- the arrangements are voluntary for both the customer and the Star Alliance members;
- agreements between participating airlines to not compete with a joint bid are temporal and expire once a bid is rejected;
- there are strict protocols on the sharing of information in developing a joint bid;
- the programs have a limited target audience; and
- the arrangements are unlikely to act to exclude travel agents from the sale of relevant fares.

Public benefit

The ACCC is satisfied that the arrangements are likely to generate public benefit mainly from the potential for:

- increased competition through the availability of lower fares for business and convention passengers across the Star Alliance network; and
- some transaction cost savings for customers and airlines.

Balance of public benefit and detriment

Overall, the ACCC considers that in all the circumstances, the public benefit is likely to outweigh the public detriment.

Length of authorisation

The ACCC generally considers it appropriate to grant authorisation for a limited period of time, so as to allow an authorisation to be reviewed in the light of any changed circumstances.

In this instance, the ACCC proposes to grant authorisation for a period of five years.

The next steps

The ACCC will now seek further submissions from the applicant and interested parties in relation to this draft determination prior to making a final decision. The applicant and interested parties may also request that a conference be held to make oral submissions on the draft determination.

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1. Introduction

Authorisation

- 1.1 The Australian Competition and Consumer Commission (the ACCC) is the independent Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.
- 1.2 The Act, however, allows the ACCC to grant immunity from legal action in certain circumstances for conduct that might otherwise raise concerns under the competition provisions of the Act. One way in which parties may obtain immunity is to apply to the ACCC for what is known as an ‘authorisation’. The ACCC may ‘authorise’ businesses to engage in such conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.
- 1.3 The ACCC conducts a public consultation process when it receives an application for authorisation. The ACCC invites interested parties to lodge submissions outlining whether they support the application or not, and their reasons for this.
- 1.4 After considering submissions, the ACCC issues a draft determination proposing to either grant the application or deny the application.
- 1.5 Once a draft determination is released, the applicant or any interested party may request that the ACCC hold a conference. A conference provides all parties with the opportunity to put oral submissions to the ACCC in response to the draft determination. The ACCC will also invite the applicant and interested parties to lodge written submissions commenting on the draft.
- 1.6 The ACCC then reconsiders the application taking into account the comments made at the conference (if one is requested) and any further submissions received and issues a final determination. Should the public benefit outweigh the public detriment, the ACCC may grant authorisation. If not, authorisation may be denied. However, in some cases it may still be possible to grant authorisation where conditions can be imposed which sufficiently increase the benefit to the public or reduce the public detriment.

The application for authorisation

- 1.7 On 16 March 2007, Singapore Airlines Ltd lodged, on behalf of the members of the Star Alliance, applications for authorisation A91036-A91040 with the ACCC. Throughout this draft determination, the applicant has been referred to as the “Star Alliance”.
- 1.8 The Star Alliance applied for authorisation of the Corporate Plus Program and the Conventions Plus Program.
- 1.9 The Corporate Plus application was for the proposed continuation of an arrangement essentially identical to the current authorised (A30209-A30210) and implemented

arrangement, pursuant to which Star Alliance members enter into *Star Alliance Corporate Plus Agreements* with corporate customers.

1.10 The Conventions Plus application was for an arrangement essentially identical to the current authorised (A30211-A3213), but not locally implemented arrangement, pursuant to which Star Alliance members make joint bids for appointment as the official airline alliance for international conventions and enter into *Star Alliance Conventions Plus Official Airline Network Long-Term Agreements* with convention organisers.¹

1.11 The Star Alliance seeks authorisation of these arrangements for five years.

Chronology

1.12 Table 1.1 provides a chronology of significant dates in the consideration of this application.

Table 1.1: Chronology of application for authorisation A91036-A91040

DATE	ACTION
16 March 2007	Application for authorisation lodged with the ACCC.
21 March 2007	ACCC wrote to interested parties seeking submissions in relation to the application for authorisation.
4 April 2007	ACCC requested further information from the applicant.
16 April 2007	Closing date for submissions from interested parties in relation to the substantive application for authorisation. A late submission was received on 1 May 2007.
27 April 2007	Submission received from the Star Alliance, providing the additional information requested by the ACCC.
3 May 2007	Submission received from the Star Alliance in response to interested party submissions.
11 May 2007	Submission received from the Star Alliance in response to additional interested party submissions.
20 June 2007	Draft determination issued.

¹ Applicant Submission 16 March 2007

2. Background to the application

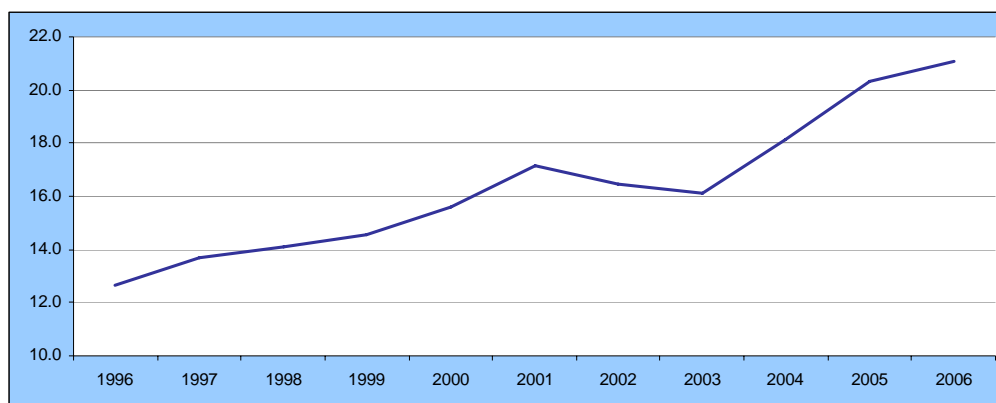
The international aviation industry

- 2.1 The international airline industry is highly regulated, based on the principle that each country has exclusive sovereignty over its airspace.² International air travel can not take place without specific authorisation through a bilateral government ‘air services agreement’ (ASA).
- 2.2 ASAs are usually negotiated bilaterally according to the principle of ‘bilateral reciprocity’, where countries exchange rights on the basis of ‘equality of opportunity’.³ An ASA specifies the terms and conditions of airline activity between two countries. The ASAs generally provide for the destinations that can be served in a particular country, any ‘beyond’ rights and the permitted frequencies per week.⁴ Typically, the rights granted under an ASA can only be exercised by the ‘designated carriers’ of the countries that are parties to them.

International aviation travel

- 2.3 There were 49 international airlines operating scheduled passenger services to and from Australia in 2005-06, with international passenger traffic of 21.097 million on 117 790 flights, compared to 20.310 million on 116 087 flights in 2004-05.⁵ Figure 2.1 below shows total passenger traffic for the years 1995-96 to 2005-06. Table 2.2 also shows the total passenger traffic and the number of scheduled international flights from 2002-03 to 2005-06.

Figure 2.1: Total International Passengers Carried (millions) – Years ended June 1996 to 2006



Source: Department of Transport and Regional Services

² This principle was established by the *Convention on International Civil Aviation* (4 April 1947)

³ Productivity Commission, *International Air Services Inquiry Report*, Report No.2, 11 September 1998 at p40

⁴ Productivity Commission, *International Air Services Inquiry Report*, Report No.2, 11 September 1998 at p41

⁵ Department of Transport and Regional Services – *International Scheduled Air Transport 2005-06* at viii

Table 2.2 – Total International Passengers Carried and Number of International Flights – Years ended June 2003-June 2006

Year Ended 30 June	Passengers Carried	% Change	Flights	% Change
2003	16 108 417		89 374	
2004	18 131 286	12.56	100 336	12.27
2005	20 309 733	12.01	116 087	15.70
2006	21 096 951	3.88	117 790	1.47

Source: Department of Transport and Regional Services

- 2.4 Following the two years of negative growth, each month since September 2003 has recorded the highest level of passenger traffic when compared to the same month in any previous year with the exception of March 2006. As a result, 2003-04 and 2004-05 were record years and 2005-06 has recorded the highest level of passenger traffic ever carried in a financial year.⁶

Travel for the purpose of business or convention

- 2.5 According to the Australian Bureau of Statistics, over the period 2002-2006, travel for business purposes and travel for the purpose of attending a convention have made up approximately 16% and 4% of all travel respectively. Table 2.3 demonstrates the growth in travel for business or convention over this period of time.

Table 2.3 – Short term visitor arrivals and short term resident departures – business or convention – years ended June 2003-June 2006

Year	Convention				Business			
	Visitors Arriving	% change	Residents Departing	% change	Visitors Arriving	% change	Residents Departing	% change
2002-03	125 993		123 129		429 653		531 931	
2003-04	148 292	17.7	164 168	33.3	487 476	13.5	615 292	15.7
2004-05	161 022	8.6	184 245	12.2	518 374	6.3	679 259	10.4
2005-06	169 788	5.4	187 201	1.6	595 997	15.0	719 544	5.9

Source: Australian Bureau of Statistics

- 2.6 Table 2.4 below, setting out data from the Department of Immigration and Citizenship, demonstrates the passenger share (of short term resident departures from Australia) of the major carriers operating services to and from Australia that are members of either the Star Alliance or oneworld by reason of journey. Of particular note is:

- all of these airlines have recorded increases in the total passengers carried over the period, demonstrating the expansion of international air travel;

⁶ Department of Transport and Regional Services – International Scheduled Air Transport 2005-06

- Qantas' reduced passenger share from 36% to 30%, although this is only accompanied by moderate falls in passenger share of business/convention travel. Qantas maintains a far greater share of business passengers compared to its overall passenger share;
- Singapore Airlines' slightly increased overall passenger share, and a proportionate increase in business travellers (11% to 13%);
- the increased prominence of other carriers, notably Emirates.

Table 2.4 Resident short term departures by reason of journey

Reason for Journey	Business/Convention				All purposes			
	2002/2003	%	2005/2006	%	2002/2003	%	2005/2006	%
Airline								
Qantas	329417	50	431285	48	1198779	36	1470112	30
British Airways	22509	3	21165	2	92743	3	111181	2
Cathay Pacific	34267	5	51667	6	120685	4	213032	4
Other oneworld	1564	0	2070	0	7594	0	15536	0
Singapore Airlines	68926	11	114387	13	362878	11	572780	12
Air New Zealand	39182	6	43656	5	240635	7	289540	6
Thai Airways	18778	3	20541	2	158040	5	194152	4
United Airlines	18443	3	23589	3	62625	2	102093	2
Other Star Alliance	16459	3	14289	2	117900	4	114248	2
Star Alliance total	161788	25	216463	24	942078	29	1272812	26
Other carriers	105161	16	184005	20	927065	28	1743416	36
Grand total	654706		906655		3288943		4826090	

Source: Department of Immigration and Citizenship

Airline Alliances

- 2.7 The proliferation of airline alliances has been a feature of the development of the international aviation industry over the last decade.
- 2.8 There are effectively two styles of alliances – marketing alliances and integrated alliances. Integrated alliances, such as the Restated Joint Services Agreement between Qantas and British Airways,⁷ typically involve a high degree of integration of the airlines concerned, including coordination of fares, schedules, service level and yield and capacity management. Marketing Alliances offer the consumer the benefits of broader networks, more seamless travel and expanded loyalty programs. Generally, the airlines in a marketing alliance continue to offer fares, schedules and services independently. Codesharing is another form of alliance behaviour that can occur within integrated alliances and marketing alliances, as well as outside of such alliances.

⁷ Refer to Authorisation A30226 and A30227

2.9 The Star Alliance is one of the three major marketing alliances in operation along with **oneworld** and SkyTeam. Of these three alliances, only **oneworld** has a domestic airline operating in Australia, through Qantas. The current members of these alliances are set out in table 2.1 below.

Table 2.1 – Current members of Star Alliance, oneworld and SkyTeam

Star Alliance	oneworld	SkyTeam
Air Canada	American Airlines	Aeroflot
Air New Zealand	British Airways	Aeroméxico
All Nippon Airways	Cathay Pacific	Air France
Asiana Airlines	Finnair	Alitalia
Austrian Airlines	Iberia	Continental Airlines
bmi	Japan Airlines	Czech Airlines
LOT Polish Airlines	LAN	Delta Air Lines
Lufthansa	Malev Hungarian Airlines	KLM
Scandinavian Airlines	Qantas	Korean Air
Singapore Airlines	Royal Jordanian	Northwest Airlines
South African Airways		
Spanair		
Swiss		
TAP Portugal		
Thai Airways International		
United Airlines		
US Airways		

Source: www.staralliance.com, www.oneworld.com, and www.skyteam.com June 2007

The sale of air travel

- 2.10 Travel agents act as distributors to both leisure and corporate markets for a range of domestic and international travel products including air, land and sea travel, accommodation, tours and admissions and travel insurance.
- 2.11 A person or company must have a travel agent licence and be admitted as a participant of the Travel Compensation Fund (TCF) before they can trade as a travel agent, except in the Northern Territory. The TCF provides a system of compensation to consumers who lose money when a travel agent ceases trading due to financial collapse and to support the licensing system by promoting financial viability in the travel industry.⁸
- 2.12 Airline tickets are sold to consumers either by an airline, through a retail travel agent or through online travel agents. Retail travel agents and online travel agents may or may not be accredited by the International Air Transport Association (IATA).
- 2.13 All licensed travel agents are permitted to make bookings, however only IATA accredited agents are authorised to issue tickets to consumers on behalf of airlines. Non-accredited agents are able to make bookings but have to go through an accredited agent to have tickets issued.

⁸ Travel Compensation Fund Annual Report 2005.

- 2.14 In June 2004, there were 2396 retail travel agencies operating within Australia, as well as 119 travel wholesalers, 16 ticket consolidators and 109 inbound tour operators. Of these, 306 travel agencies specialised in corporate travel, and 70 specialised in conference travel.⁹ This is demonstrated in Table 2.5 below.
- 2.15 Qantas has confirmed the importance of travel agents for international travel and that a large proportion of sales of Qantas international airfares occur through travel agents. Qantas also indicated that the percentage mix of direct sales versus agent sales has remained fairly static, but the mix of online/offline within each of these channels has varied.¹⁰

Table 2.5 – Licensed travel agencies by type of business, June 2004

Type of business		Businesses at end of June 2004
Retailers	Corporate	306
	Conference	70
	Leisure	1987
	General sales agents	33
<i>Total retailers</i>		2396
Wholesalers		119
Ticket Consolidators		16
Inbound Tour Operators		109
Total		2640

Source: Australian Bureau of Statistics, Travel Agency Services, 2003-04

⁹ Australian Bureau of Statistics, Travel Agency Services, 2003-04

¹⁰ Record of meeting between ACCC and Qantas, 1 March 2007, regarding A91020-A91022.

The applicant¹¹

2.16 The Star Alliance was formed in 1997 with the aim of integrating certain marketing and limited operational functions of its members, to provide a range of improved services and facilities for the international air passenger market. The general purpose of the Star Alliance is to develop a global competitive passenger airline transportation system through the networks and services of members, while maintaining each member's unique identity and culture.

2.17 The objectives of the Star Alliance are:

- improved coordination of members' timetables providing more and better coordinated connections between members' flights, and resulting in higher load factors (and lower unit costs) on members' flights;
- capacity sharing arrangements (codesharing and blocked space) that enable the Star carriers to:
 - inaugurate services on non stop routes; and
 - maintain service on routes that none of the carriers, acting alone, can presently serve on a commercially viable basis;
- integration of certain customer support functions such as access to airport lounges (and including close cooperation in the area of frequent flyer programs); and
- cooperative marketing activities promoting the Star Alliance network-wide service to customers whose travel needs cannot be efficiently satisfied by individual airlines.

Current membership

2.18 The current members of the Star Alliance are set out in table 2.1 above. The Star Alliance has also indicated that Air China and Shanghai Airlines are expected to become members by the end of 2007. Turkish Airlines is expected to join the Star Alliance in late 2008.¹²

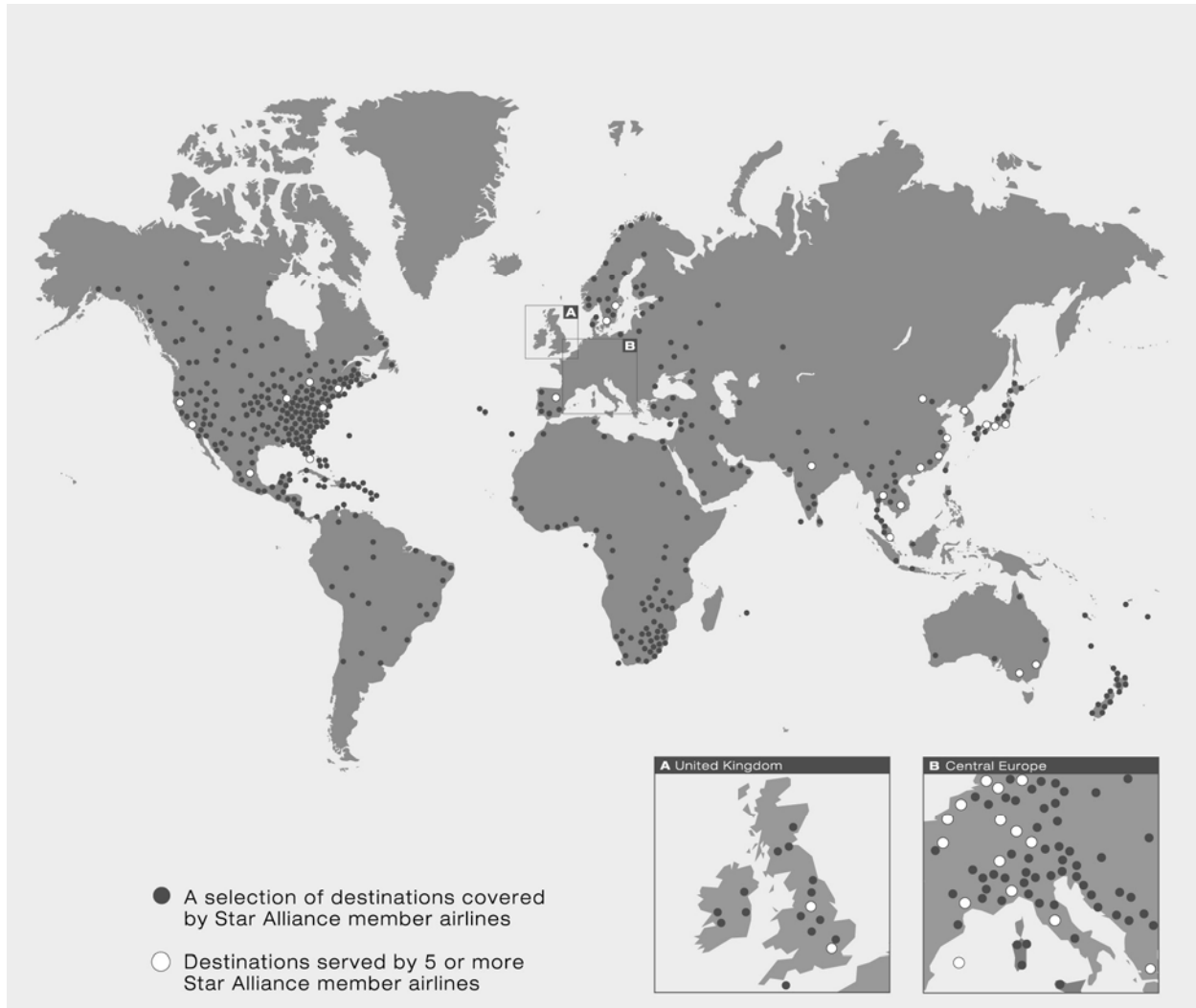
The Star Alliance network

2.19 As shown in figure 2.8, the Star Alliance network covers 855 destinations in 155 countries. Australia is currently served by seven members of the Star Alliance (Air Canada, Air New Zealand, Asiana, Singapore Airlines, South African Airways, Thai Airways and United Airways) with only three of these (Air New Zealand, Singapore Airlines and Thai Airways) operating more than two flights from Australia per day. Other Star Alliance members utilise code-share arrangements.

¹¹ Except where otherwise sourced, the information in this chapter is taken from the applicant's initial submission of 16 March 2007

¹² "Turkish Airlines to join Star Alliance", Star Alliance media release, 9 December 2006, "Air China Limited to become a Star Alliance member carrier", Star Alliance media release, 22 May 2006 and Shanghai Airlines invited to become member of Star Alliance", Star Alliance media release, 10 May 2006.

Figure 2.2 – The Star Alliance network¹³



This map is for visual representation only and is not to scale. Destinations subject to change without notice.

¹³ From www.staralliance.com

3. The application and ACCC consultation

- 3.1 The Star Alliance seeks authorisation to implement the guidelines for the Corporate Plus Program and the Conventions Plus Program, under which, its members will enter into agreements with corporate customers, and convention organisers, respectively.

Corporate Plus Program

- 3.2 The Star Alliance submitted that this arrangement provides a structure in which members, or any subset of members, may jointly offer to multinational corporate clients a discounted travel and incentive program, which they could not offer individually. Members will agree to offer discounts off business and other fares on some or all of the routes covered by the Star Alliance that are travelled by employees of the corporation. The corporate client will also receive incentives and bonuses, provided they meet certain performance requirements set out in the agreement.
- 3.3 To establish an agreement with a potential corporate client, the members of the Star Alliance nominate a carrier to be the “lead carrier”. The lead carrier seeks a request for tender from a prospective client and, if one is received, proceeds to coordinate with the other participating members to put together the joint bid’s routes, discounts and incentives.
- 3.4 While a joint bid is being considered by a potential corporate client, the participating members agree not to put forward a competing bid. Members are free to choose whether to participate in a joint bid and, if they choose to not participate, are free to put forward a competing bid.
- 3.5 Once an agreement has been entered into, the lead carrier has access to all reports to manage the relationship with the customer. However, the lead carrier implements internal safeguards to strictly limit internal access to these reports.
- 3.6 The co-operation between Star Alliance members is limited to members providing the lead carrier with independent discounts or incentives applicable to each airline’s respective fares, and receiving overall performance reports regarding the client. The arrangements contain protocols which limit the exchange of information between members to that which is necessary for the development of the joint bid. Once a contract is in place, other than the lead carrier, airlines will only have access to their own individual data and the aggregate data for the Star Alliance.

Conventions Plus Program

- 3.7 The Star Alliance submitted that this arrangement provides a structure in which members may jointly submit proposals for discounted global travel services to organisers of major events. Similar to Corporate Plus, participating members nominate a “lead carrier” to seek a request for tender from a convention organiser and, if one is received, to coordinate the joint bid.

- 3.8 While a joint bid is being considered by a convention organiser, the participating members agree not to put forward a competing bid. Members are free to choose whether to participate in a joint bid and, if they choose to not participate, are free to put forward a competing bid.
- 3.9 The organiser of the event and the lead carrier enter into an agreement which names Star Alliance as the official airline network for specified events. This provides convention delegates (and their companions) with access to global special convention fare discounts on participating airlines.
- 3.10 Convention delegates remain free to choose which airline they would prefer to travel with. As with the Corporate Plus Program, information sharing between members is restricted, with similar safeguards in place.
- 3.11 For the purposes of this program, “conventions” are defined as meetings, conventions, conferences or exhibitions with the following requirements:
- the initiator is an international association or corporate customer;
 - it should be an event with pre-registration of delegates;
 - it should be an event where delegate travel is arranged locally (individually or via sponsor/co-ordinator); and
 - it must not be a music event, incentive travel or a sports event.

Submissions received by the ACCC

- 3.12 The Star Alliance provided a supporting submission with its application for authorisation and has since provided further information in response to queries by the ACCC, and interested party submissions.
- 3.13 The ACCC also sought submissions from interested parties potentially affected by the application. The ACCC received public submissions from the following parties:
- *Qantas* indicated that it does not oppose the application for authorisation, provided that there is a level playing field in the event that **oneworld** sought a similar authorisation.
 - *The Australian Federation of Travel Agents (AFTA)* raised concerns about the potential for travel agents to be excluded from the sale of fares under the programs.
 - *The South Australian Tourism Commission* indicated that it supported the application for authorisation.
- 3.14 The views of the Star Alliance and the interested parties are outlined in the ACCC’s evaluation of the arrangements in Chapter 5 of this draft determination. Copies of public submissions are available from the ACCC website (www.accc.gov.au) by following the ‘Public Registers’ and ‘Authorisations Public Register’ links.

4. The net public benefit test

- 4.1 The ACCC may only grant authorisation where the relevant test in section 90 of the Act is satisfied.

Applications A91036 and A91038

- 4.2 The Star Alliance lodged applications for authorisation A91036 and A91038 under section 88(1) of the Act to make and give effect to a contract, arrangement or understanding, a provision of which is or may be an exclusionary provision within the meaning of section 45 of the Act. The relevant test is found in section 90(8) of the Act.
- 4.3 Section 90(8) states that the ACCC shall not authorise a proposed exclusionary provision of a contract, arrangement or understanding, unless it is satisfied in all the circumstances that the proposed provision would result or be likely to result in such a benefit to the public that the proposed contract, arrangement or understanding should be authorised.

Applications A91037 and A91039

- 4.4 The Star Alliance lodged applications for authorisation A91037 and A91039 under section 88(1) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act. The relevant tests for this application are found in sections 90(6) and 90(7) of the Act.
- 4.5 In respect of the making of and giving effect to the arrangements, sections 90(6) and 90(7) of the Act state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:
- the provision of the proposed contract, arrangement or understanding would result, or be likely to result, in a benefit to the public and
 - this benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision concerned was given effect to.

Application A91040

- 4.6 The Star Alliance lodged application A91040 under section 88(8) of the Act to engage in conduct that constitutes or may constitute, exclusive dealing. The relevant test for this application is found in section 90(8) of the Act.
- 4.7 Section 90(8) states that the ACCC shall not authorise the proposed exclusive dealing conduct unless it is satisfied in all the circumstances that such conduct would result or be likely to result in such a benefit to the public that the proposed conduct should be authorised.

Application of the tests

- 4.8 There is some variation in the language in the Act, particularly between the tests in sections 90(6) and 90(8).
- 4.9 The Australian Competition Tribunal (the Tribunal) has found that the tests are not precisely the same. The Tribunal has stated that the test under section 90(6) is limited to a consideration of those detriments arising from a lessening of competition but the test under section 90(8) is not so limited.¹⁴
- 4.10 However, the Tribunal has previously stated that regarding the test under section 90(6):
- [the] fact that the only public detriment to be taken into account is lessening of competition does not mean that other detriments are not to be weighed in the balance when a judgment is being made. Something relied upon as a benefit may have a beneficial, and also a detrimental, effect on society. Such detrimental effect as it has must be considered in order to determine the extent of its beneficial effect.¹⁵
- 4.11 Consequently, when applying either test, the ACCC can take most, if not all, public detriments likely to result from the relevant conduct into account either by looking at the detriment side of the equation or when assessing the extent of the benefits.
- 4.12 Given the similarity in wording between sections 90(6) and 90(7), the ACCC considers the approach described above in relation to section 90(6) is also applicable to section 90(7).

Definition of public benefit and public detriment

- 4.13 Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:
- ...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.¹⁶
- 4.14 Public detriment is also not defined in the Act but the Tribunal has given the concept a wide ambit, including:
- ...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.¹⁷

¹⁴ *Australian Association of Pathology Practices Incorporated* [2004] ACompT 4; 7 April 2004. This view was supported in *VFF Chicken Meat Growers' Boycott Authorisation* [2006] AcompT9 at paragraph 67.

¹⁵ *Re Association of Consulting Engineers, Australia* (1981) ATPR 40-2-2 at 42788. See also: *Media Council case* (1978) ATPR 40-058 at 17606; and *Application of Southern Cross Beverages Pty. Ltd., Cadbury Schweppes Pty Ltd and Amatil Ltd for review* (1981) ATPR 40-200 at 42,763, 42766.

¹⁶ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

¹⁷ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

Future with-and-without test

- 4.15 The ACCC applies the ‘future with-and-without test’ established by the Tribunal to identify and weigh the public benefit and public detriment generated by arrangements for which authorisation has been sought.¹⁸
- 4.16 Under this test, the ACCC compares the public benefit and anti-competitive detriment generated by arrangements in the future if the authorisation is granted with those generated if the authorisation is not granted. This requires the ACCC to predict how the relevant markets will react if authorisation is not granted. This prediction is referred to as the ‘counterfactual’.

Length of authorisation

- 4.17 The ACCC can grant authorisation for a limited period of time.¹⁹

Conditions

- 4.18 The Act also allows the ACCC to grant authorisation subject to conditions which the ACCC considers necessary in order to satisfy the net public benefit test.²⁰

Future and other parties

- 4.19 Applications to make or give effect to contracts, arrangements or understandings that might substantially lessen competition or constitute exclusionary provisions may be expressed to extend to:
- persons who become party to the contract, arrangement or understanding at some time in the future²¹; and
 - persons named in the authorisation as being a party or a proposed party to the contract, arrangement or understanding.²²

¹⁸ Australian Performing Rights Association (1999) ATPR 41-701 at 42,936. See also for example: Australian Association of Pathology Practices Incorporated (2004) ATPR 41-985 at 48,556; Re Media Council of Australia (No.2) (1987) ATPR 40-774 at 48,419.

¹⁹ Section 91(1).

²⁰ Section 91(3).

²¹ Section 88(10).

²² Section 88(6).

5. ACCC evaluation

- 5.1 The ACCC's evaluation of the Star Alliance Corporate Plus Program and the Star Alliance Conventions Plus Program is in accordance with the net public benefit test outlined in Chapter 4 of this draft determination. As required by the test, it is necessary for the ACCC to assess the likely public benefits and detriments flowing from the Corporate Plus and Conventions Plus programs.

The market

- 5.2 The first step in assessing the effect of the conduct for which authorisation is sought is to consider the relevant market(s) affected by that conduct. However, depending on the circumstances, the ACCC may not need to precisely define the relevant market in order to determine if authorisation should be granted using the test set out in Chapter 4.
- 5.3 The Star Alliance submitted that the relevant area of competition is the international aviation travel market. The Australian Federation of Travel Agents (AFTA) considers that the market for the sale of air travel is also relevant to the applications.

International aviation travel

- 5.4 The ACCC identifies separate markets for domestic aviation travel and international aviation travel, largely for the reason of the different regulatory arrangements that apply for international travel (as discussed in Chapter 2).
- 5.5 The applicant submits that the ACCC should apply the same market definition as was used in the previous authorisation of the Corporate Plus and Conventions Plus Programs (A30209-A30213), with a regional geographic market and a single product market (incorporating leisure and business travellers).²³
- 5.6 Since the previous authorisation, the ACCC has considered in detail the area of business travel, particularly in its Determination A30226 & A30227 in relation to the Qantas and British Airways restated joint services agreement (JSA), and in its Draft Determination A91001-A91003 in relation to a proposed Tasman Networks Agreement between Qantas and Air New Zealand.
- 5.7 The JSA relates to services between Australia and Europe and intermediate points such as Bangkok and Singapore. In this particular case, the ACCC considered there was likely to be separate product markets for business travellers and leisure travellers due to their differing needs. The ACCC noted that the demand of leisure travellers was price sensitive and these travellers were less concerned than business travellers regarding time, connectivity and comfort, particularly on long haul routes. Business travellers were considered to be more time sensitive, requiring comfort and flexibility in fares.
- 5.8 The ACCC also considered that the relevant geographic market definition for consideration for business travellers is a point to point market, based on the view that

²³ The ACCC noted in that determination that it was increasingly of the view that there was a separate product market for business travel, although it was not necessary to determine in that case.

business travellers are less price sensitive and more inclined to only accept direct flights to their destination, and are less likely to substitute their destination (which is determined by work demands) for another destination in the region as prices increase.

- 5.9 In its consideration of Qantas and Air New Zealand's applications A91001-3, the ACCC noted that passengers travelling for business purpose on the trans-Tasman place a higher priority, in particular, on the frequency and schedule of a particular airline. The ACCC considered that taking into account the different characteristics of price-sensitive passengers (mostly leisure passengers) and time-sensitive passengers (mostly business passengers), as well individual trans-Tasman routes, was important for assessing the competition impacts of the arrangements. However, the ACCC formed the view that all trans-Tasman passengers should be considered broadly in the same market.
- 5.10 In relation to the present applications, the relevant area of competition for assessing the applications relates to time-sensitive/business passengers, as the potential customers of the Corporate Plus Program are corporate travellers. The ACCC also considers that convention travellers, the potential customers of the Conventions Plus Program, have similar characteristics of business travellers, as they are more likely to be time sensitive passengers, who wish to travel direct to their destination and are more likely to travel for business.²⁴
- 5.11 Whether time-sensitive/business passengers represent a separate market or a separate segment in a broader market would depend on specific characteristics of particular routes or geographical areas. The ACCC does not consider it necessary to precisely define the market in the present circumstances, as the outcome of the analysis of the application would not be affected.
- 5.12 The relevant geographical area for the applications is very broad as it potentially involves the entire Star Alliance network. The applicant submits that the relevant market segments are broad geographic regions, with point to point market segments to apply on several key routes. The ACCC has noted the preference of time-sensitive/business passengers to travel direct to their destinations. However, the ACCC does not consider it necessary to precisely define the geographic markets for the purpose of its analysis.

The sale of air travel

- 5.13 The ACCC has previously recognised that the sale of air travel market embraces not only those organisations able to sell tickets directly to the public (ie. airlines and IATA accredited agents) but also licensed agents who are not IATA accredited. The ACCC notes that licensed travel agents comprise both online booking agencies with no shop front, as well as traditional 'bricks and mortar' travel agencies, some of which also have an online presence.²⁵

²⁴ See Draft Determination of 3 November 2006 in relation to A91001-A91003 regarding the Tasman Network Agreement between Air New Zealand and Qantas.

²⁵ see for example, Determinations A91020-22 (IATA Passenger Agency Program), of 2 May 2007 and Draft Determination A91001-3 (Qantas Airways Limited, Air New Zealand Limited) of 3 November 2006.

- 5.14 The ACCC notes the number of specialised business and convention travel agents that are currently operating within Australia as outlined in Chapter 2. These travel agents serving the business segment are becoming more specialised, with travel management companies appearing to provide additional services such as travel reporting and monitoring compliance with corporate travel policies.
- 5.15 The ACCC does not consider it necessary to precisely define the market for the purposes of assessing the applications for authorisation, as the outcome of its analysis of the application would not be affected.

The counterfactual

- 5.16 As noted in Chapter 4 of this draft determination, in order to identify and measure the public benefit and public detriment generated by conduct, the ACCC applies the ‘future with-and-without test’.
- 5.17 The applicant submitted that the relevant counterfactual for the Corporate Plus Program involves the Star Alliance no longer offering joint bids for corporate clients in Australia. They consider that, without authorisation, the member airlines would not be able to offer the same packages (in terms of routes and destinations) and fares as are offered by Qantas (and the **oneworld** alliance).
- 5.18 As the Convention Plus Program has not been implemented in Australia, the applicant submitted that the relevant counterfactual is the status quo. They consider that, if authorisation is granted, they would be better able to compete with Qantas (and the **oneworld** alliance) for convention travellers.
- 5.19 None of the interested parties put forward a view regarding the counterfactual that should be applied by the ACCC.
- 5.20 The ACCC considers that the relevant counterfactual for the Corporate Plus Program involves the members of the Star Alliance being unable to continue to offer joint bids to corporate clients, and potentially needing to unwind the agreements with their current Corporate Plus clients.
- 5.21 The ACCC considers that the relevant counterfactual for the Conventions Plus Program is the status quo, with the program being unavailable for conventions occurring in Australia, or for delegates travelling to conferences in Australia.

Public detriment

- 5.22 The Star Alliance submits that the public detriment resulting from the Corporate Plus and Conventions Plus programs will, if any at all, be small. The applicant also submits that any detriments are likely to be mitigated by the following features of the programs:
- participation in the joint bid process by Star Alliance members is voluntary;
 - the customer invites the bid;
 - for the Corporate Plus Program, while the participating carriers offer discounts, the level of discount varies between airlines;

- the carriers compete on the underlying fares;
- there are strict protocols to limit information sharing (discussed above); and
- customers are not compelled to purchase the programs' fares, and may purchase any other fare available.

5.23 An assessment of the public detriment generated by the Corporate Plus and Conventions Plus programs follows.

Market for international aviation travel

5.24 Agreements between competitors which influence the pricing decisions of market participants have the potential to result in allocative inefficiencies. That is, they can move prices away from levels that would be set in a competitive market. This can result in higher prices for consumers and send market signals which direct resources away from their most efficient use.

5.25 In the Corporate Plus Program, the Star Alliance members participating in a joint bid will agree to offer discounts (and incentive programs) off business and other fares. In the Conventions Plus program, the Star Alliance members participating in a joint bid will offer a set discount on all published fares in particular fare classes by each participating member, that will apply to all participating member's fares.

5.26 Agreements between competitors which impose restrictions on their decisions as to what they deal in, or with whom they deal, can result in allocative inefficiencies. Such agreements can distort market signals and can suppress competitive dynamics that would exist in a competitive market. In this instance, in the Corporate Plus and Conventions Plus programs, the members of the Star Alliance who are participating in a joint bid agree not to put forward a competing individual bid while the bid is outstanding. This could result in less competition and choice for corporate customers, convention organisers and convention delegates.

5.27 Third line forcing conduct involves the supply, or offer to supply, of goods or services on condition that the buyer acquires a second product from another supplier. Public detriment can arise where demand for the second product is distorted when customers are denied the opportunity to choose whether to purchase on a normal commercial basis. In the case of the Conventions Plus Program, participating members will be offering discounts on the condition that a person has acquired a position at a conference.

Limited reduction in competition

5.28 As discussed in Chapter 2, there are currently seven members of the Star Alliance serving Australia. For the majority of major destinations from Australia, the networks of the individual Star Alliance members are largely complementary, with limited overlap, as shown in table 5.1 below, based on data from the Department of Immigration and Citizenship. Singapore Airlines and Thai Airways both service the Australia-Europe route and both operate to South East Asia, but with limited direct competition. Singapore Airlines also provides indirect service via Singapore to Africa, in competition with South African Airways.

Table 5.1: Australian resident short term departures 2005-06 for the purpose of business/convention travel

Airline/Region	South East Asia		India and the Middle East		Europe		Africa		North/South America		Singapore		Thailand		United Kingdom	
Singapore Airlines	54100	30%	12167	33%	15822	12%	2671	13%	2544	2%	26478	41%	560	3%	1337	4%
Thai Airways	10623	6%	1086	3%	6223	5%	4	-	410	-	-	-	8893	43%	310	1%
United Airways	88	-	105	-	1454	1%	51	-	21794	16%	14	-	-	-	2	-
Air New Zealand	67	-	51	-	255	-	1	-	2407	2%	-	-	-	-	-	-
South African Airways	10	-	-	-	69	-	5067	24%	325	-	10	-	-	-	-	-
Other Star Alliance Carrier	387	-	150	-	3833	3%	54	-	156	-	87	-	-	-	22	-
Total Star Alliance Carriers	65275	37%	13559	37%	27657	21%	7848	37%	27636	21%	26589	41%	9453	46%	1671	6%
Qantas	59724	34%	7073	19%	64947	49%	7502	35%	93199	70%	32432	50%	6810	33%	20589	68%
Other Non-Star Alliance Carrier	52691	30%	16087	44%	40909	31%	5928	28%	12831	10%	5588	9%	4457	22%	7943	26%
Total	177690		36719		133514		21278		133666		64609		20720		30203	

Source: Department of Immigration and Citizenship

5.29 The ACCC notes that competition to carries for business/convention travellers would remain from Qantas and other non-Star Alliance carriers. Qantas's passenger share of business/convention travellers is 34% in South East Asia, 70% in North/South America, 35% in Africa and 49% in Europe.

5.30 The ACCC considers that the anti-competitive public detriment is further mitigated by specific features of the programs.

Competition on underlying fares and discounts

5.31 The ACCC notes that participating airlines do not agree on the fares that are subject to discounts under both programs. In particular, when two carriers participating in a bid operate on the same route (for example, Thai Airways and Singapore Airlines to Europe and indirectly to South East Asia, and Singapore Airlines and South African Airways to Africa) the carriers remain free to compete on the underlying fares.

5.32 In addition, for the Corporate Plus Program, the participating members decide individually the discounts that they are prepared to offer when developing the joint bid for consideration by the potential corporate client.

5.33 The ACCC considers that these features of the arrangements act to reduce the potential anti-competitive public detriment.

Voluntary nature of arrangements

5.34 The ACCC notes that Star Alliance members can elect whether or not they wish to participate in a joint bid and, if they are not participating, are not restricted from putting forward a competing bid to the potential client. The ACCC considers that this feature of

the arrangements acts to ensure that the participating members are subject to competition when deciding whether to take part in the joint bid, and to maintain the custom of the client.

- 5.35 In relation to agreements between participating airlines to not compete while the Star Alliance tender is current, this agreement is temporal and expires once the bid is rejected. All airlines are able to compete for that potential client's travel business at that time.
- 5.36 In addition, the corporate client is free to not request that a joint bid be made by member airlines and, if a joint agreement is entered into, the client is not required to travel with the member airlines, and is free to seek more competitive fares from other airlines to meet its travel needs.
- 5.37 The ACCC considers that these features of the arrangements act to reduce the potential anti-competitive detriment.

Information sharing protocols

- 5.38 The ACCC considers that arrangements that enable a corporation to have access to pricing and performance information regarding their competitors, which is not otherwise publicly available, is likely to result in public detriment by reducing competition between the competitors. This is especially the case where future prices, or future size of operations are concerned.
- 5.39 The Corporations Plus and Conventions Plus programs contain different provisions for the sharing of information. The Corporations Plus Program involves the members of the Star Alliance disclosing fare information (both existing, publicly available fares and fares developed for the purposes of the joint bid)²⁶ with the lead airline having access to the performance information of all participating members. The program has strict protocols regarding the sharing of the information, so that members do not discuss potential future action if the joint bid is rejected, or future alterations to a carriers' fares or capacity levels. The lead airline must also ensure that only the staff responsible for managing the joint arrangement have access to the performance information.
- 5.40 The Conventions Plus Program has similar protocols in place, although the information sharing is much more limited. In this program the participating members agree on a consistent discount to all fares, so there is no need to discuss fares in the same manner. Also, as the lead airline has lower underlying management obligations than for the Corporate Plus program, each participating member, including the lead airline, only has access to its own performance information.
- 5.41 The ACCC considers that the protocols that the Star Alliance has put in place to limit the sharing of information limits the anti-competitive public detriment that such conduct may otherwise cause.

²⁶ Star Alliance supplementary submission of 27 April 2007

Limited target audience of programs

- 5.42 The ACCC notes that the Corporate Plus and Conventions Plus programs are not available, respectively, to all corporations or convention organisers. Corporate Plus is designed for multinational companies that seek frequent international travel. The Conventions Plus Program is available for conventions which are sufficiently global in attendance that multiple airlines will necessarily be used by convention delegates and many delegates will require interline connections to travel to the convention.
- 5.43 The ACCC considers that the public detriment flowing from these arrangements is also reduced by them not being broadly available to all business travellers.

Level playing field

- 5.44 Qantas submitted that it did not oppose the applications for authorisation, provided that there is a level playing field, in the event that **oneworld** sought authorisation for similar arrangements.
- 5.45 The ACCC notes that any application for authorisation is considered in accordance with the statutory test set out in chapter 4. Any future application would be considered on its own merits, including the ACCC undertaking public consultation with potentially interested parties.

The sale of air travel

Submissions

- 5.46 The Australian Federation of Travel Agents, referring to its submission to the previous authorisations of the Corporate Plus and Conventions Plus programs of 18 June 2002, submitted that the arrangements would lessen competition in this market by excluding travel agents from offering similar airfares and travel arrangements. AFTA considers that the proposed arrangements reinforce the airlines' involvement in direct sales by offering fares to consumers which are not made available through travel agents and undercutting the fares that the airlines make available to travel agents in the same market.
- 5.47 In response, the Star Alliance submitted²⁷ that the programs would not reinforce direct sales by airlines and were not designed to exclude travel agents, as fares under the programs would be made available for ticketing through travel agents. While the initial request for a joint bid must come from a company or convention organiser, following the execution of a Star Alliance Corporate or Conventions agreement, a company could still appoint a travel agent to manage its travel, and the convention fares will be available to delegates through travel agents.

ACCC's view

- 5.48 As noted in Chapter 2, travel agents continue to play an important role, particularly in international travel, in assisting their corporate clients in managing their travel policy,

²⁷ Star Alliance supplementary submission of 3 May 2007

and providing the specialist product knowledge. The ACCC notes the Star Alliance submission that fares under these programs will be available through travel agents.

- 5.49 As noted in the previous authorisation of the Corporate Plus and Conventions Plus programs, the ACCC considers that travel agents will continue to play a significant role in the booking of flights for both customers of the Corporate Plus program and convention delegates. The ACCC considers that the Corporate Plus and Conventions Plus programs are unlikely to result in public detriments in the market for the sale of air travel.

ACCC conclusion on public detriments

- 5.50 The ACCC considers that any anti-competitive detriment from the Corporate Plus and Conventions Plus Programs will be limited as:
- the networks of the Star Alliance members are largely complementary;
 - competition will remain from non-Star Alliance carriers, particularly Qantas;
 - the Star Alliance members continue to compete on their underlying fares;
 - the arrangements are voluntary for both the customer and the Star Alliance members;
 - agreements between participating airlines to not compete with a joint bid are temporal and expire once a bid is rejected;
 - there are strict protocols on the sharing of information in developing a joint bid;
 - the programs have a limited target audience; and
 - the arrangements are unlikely to act to exclude travel agents from the sale of relevant fares.

Public benefit

- 5.51 The Star Alliance submits the Corporate Plus and Conventions Plus programs will both deliver public benefits, including:
- increased competition;
 - cost savings and increased efficiencies for Star Alliance members;
 - lower fares;
 - more route options;
 - service benefits;
 - cost savings for customers;
 - alliance competition; and

- benefits to Australian trade, tourism and international competitiveness.

5.52 An assessment of the public benefits claimed by the Star Alliance follows.

Lower fares and increased competition

Submissions

- 5.53 The applicant submitted that the authorisation of the Corporate Plus and Conventions Plus programs would enable the member airlines to provide increased competition to Qantas and oneworld. The applicants acknowledge that all airlines already compete strongly in providing discounted fares to corporate and convention travellers. However, the applicants submit that the Corporate Plus and Convention Plus programs will provide incentive for members to offer discounts and improve services across their combined network which, in the absence of the programs, the members would have no incentive to offer.
- 5.54 Qantas submitted²⁸ that the oneworld carriers in Australia do not currently coordinate prices, discounts or bids in a similar fashion to Corporate Plus or Conventions Plus and compete with each other for corporate and convention passengers (other than provided for under the Restated Joint Services Agreement between Qantas and British Airways).

ACCC's view

- 5.55 The ACCC notes that Qantas has a strong market presence in all aviation travel to and from Australia. Qantas's share of business travel is markedly greater than its share of overall passengers. Qantas, being based in Australia, has a much larger network centred on Australia than any individual Star Alliance member.
- 5.56 The Qantas network currently serves the main business destinations out of Australia and, through the Restated Joint Services Agreement with British Airways, Qantas has connections from London, and utilises code share arrangements to provide further services beyond the reach of its own network.
- 5.57 With its position in the domestic market, Qantas is able to offer attractive incentives to business travellers that combine the volume of travel undertaken domestically and internationally.
- 5.58 The Corporate Plus and Conventions Plus programs enable the Star Alliance members to better match Qantas's offer to large corporate customers and convention organisers by providing discounts and incentives across the combined Star Alliance network.
- 5.59 The ACCC considers that there will be public benefit as the arrangements may see discounts and incentives offered to business/convention travellers that, in the absence of the arrangements, may not be available, resulting in increased competition for business/convention travellers.
- 5.60 The ACCC notes that members of the Star Alliance already offer discount fares and incentives to corporate customers based on volume. However, the Star Alliance

²⁸ *Submission of Qantas Airways Limited 1 May 2007*

commented that each airline is only able to offer discounts and incentives on its own network, meaning a particular customer may not be able to obtain the same discounts as are available under the programs.

- 5.61 The ACCC considers that, in the counterfactual, it is unlikely that a corporate client or convention organiser would seek discounts with all members of the Star Alliance. Rather, the corporate client or convention organiser is more likely to seek an agreement with one or possibly two members of the Star Alliance which service their key travel destinations, or use another airline, for example, Qantas. Accordingly, a package with discounts across the breadth of destinations serviced by the combined Star Alliance network would not be available to corporate clients or convention delegates without these arrangements.

Cost savings for Star Alliance members and customers

Submissions

- 5.62 The applicant submitted that the arrangements will inherently lead to efficiencies and integrated services for Star Alliance members as they share facilities in providing services to all customers, including corporate customers and convention organisers.
- 5.63 The applicant submits that an integrated service would only otherwise be available by an airline entering multiple and complex arrangements with other airlines. In the absence of authorisation, airlines could choose to supply transport only on routes within its own network and refer customers to alternative airlines, resulting in greater direct and indirect costs.
- 5.64 The applicant also submits that, as corporate customers and convention organisers, or their travel agent, will only need to deal with the lead airline, the programs will result in transaction cost savings.

ACCC's view

- 5.65 The ACCC notes that many of the shared customer support functions²⁹ that exist between the members of the Star Alliance, are a result of the formation of the Star Alliance. Efficiencies from sharing of those functions will continue in the absence of these arrangements.
- 5.66 However, the ACCC accepts that the arrangements will lead to further efficiencies from the development and maintenance of joint bids, and greater convenience for customers.
- 5.67 The ACCC considers that the arrangements, by enabling corporate customers and convention organisers to deal with a single lead airline, rather than negotiating and administering agreements with multiple airlines, will result in a reduction in transaction costs for both customers and the airlines.
- 5.68 However, the ACCC considers it unlikely in the counterfactual that a customer would enter into agreements with all Star Alliance members, in particular for Corporate Plus. It seems more likely that customers would enter into an agreement with one or possibly

²⁹ Refer to para 2.12 of this draft determination

two Star Alliance members servicing their most travelled routes, or enter into an agreement with an airline that had a broader cross-region network, such as Qantas. Therefore, transaction cost savings may be more limited in practice.

5.69 The ACCC considers the Corporate Plus and Conventions Plus programs are likely to result in public benefit in the form of transaction cost savings.

More route options

Submissions

5.70 The applicant submits that consumers will have the option of travelling with a Star Alliance carrier from Australia and then through arrangements with other carriers, have a greater range of connecting flight options combined with high quality ‘seamless’ services.

ACCC’s view

5.71 The ACCC considers that this benefit is a result of the co-ordination of members’ flight schedules that occurred as a result of the formation of the Star Alliance, rather than the Corporate Plus and Conventions Plus programs. Accordingly, the ACCC does not place any weight on this public benefit raised by the applicant.

Australian trade, tourism and international competitiveness

Submissions

5.72 The applicant submits that the Corporate Plus program will enhance the international competitiveness of business located in Australia by reducing their costs. The applicant also submits that the Conventions Plus program will result in public benefits because:

- the program already operates in other countries, its implementation in Australia will further enhance Australia as a convention location (as far as costs are an issue);
- convention delegates usually spend more on goods and services than other travellers; and
- an increase in tourism, particularly to the extent that convention delegates choose to holiday in Australia before or after their convention, or choose to return to Australia for a holiday at another time.

ACCC’s view

5.73 With regard to enhanced international competitiveness, these benefits claimed by the applicant do not occur as a direct result of the implementation of the programs, but as a flow on effect from other public benefits that the ACCC has already identified, most notably, the potential for increased competition, lower fares and cost savings for customers. The ACCC considers that these flow-on effects are less certain to occur as a result of the programs and only applies limited weight to these benefits.

5.74 With respect to the Conventions Plus Program, the ACCC notes information collected by the Sydney Convention and Visitors Bureau which supports the applicants claim that convention delegates usually spend almost seven times the amount on goods and services than the average holiday maker³⁰. The ACCC also notes that the conventions program is already in operation outside of Australia, and agrees that its implementation has the potential to enhance the attractiveness of Australia as a convention location. For these reasons, the Conventions Plus Program may result in limited public benefits associated with Australian trade and tourism.

ACCC conclusion on public benefits

5.75 The ACCC is satisfied that the Corporate Plus and Convention Plus programs are likely to generate public benefit mainly from the potential for:

- increased competition through the availability of lower fares for business and convention passengers across the Star Alliance network; and
- some transaction cost savings for customers and airlines.

Balance of public benefit and detriment

5.76 The ACCC may only grant authorisation if it is satisfied that, in all the circumstances, the Corporate Plus and Conventions Plus programs are likely to result in a public benefit that will outweigh any public detriment.

5.77 In the context of applying the net public benefit test at section 90(8)³¹ of the Act, the Tribunal commented that:

... something more than a negligible benefit is required before the power to grant authorisation can be exercised.³²

5.78 The ACCC considers that the anti-competitive detriment flowing from the arrangements will be limited by the following:

- the networks of the Star Alliance members are largely complementary;
- competition will remain from non-Star Alliance carriers, particularly Qantas;
- the Star Alliance members continue to compete on their underlying fares;
- the arrangements are voluntary for both the customer and the Star Alliance members;
- agreements between participating airlines to not compete with a joint bid are temporal and expire once a bid is rejected;

³⁰ International Delegate Study, published by the Sydney Convention and Visitors Bureau, referenced in Travel Today on 18 May 2007

³¹ The test at 90(8) of the Act is in essence that conduct is likely to result in such a benefit to the public that it should be allowed to take place.

³² Re Application by Michael Jools, President of the NSW Taxi Drivers Association [2006] ACompT 5 at paragraph 22.

- there are strict protocols on the sharing of information in developing a joint bid;
 - the programs have a limited target audience; and
 - the arrangements are unlikely to act to exclude travel agents from the sale of relevant fares.
- 5.79 The ACCC is satisfied that the arrangements are likely to generate public benefit mainly from the potential for:
- increased competition through the availability of lower fares for business and convention passengers across the Star Alliance network; and
 - some transaction cost savings for customers and airlines.
- 5.80 On balance, the ACCC considers the public benefit is likely to outweigh the public detriment.

Conditions

- 5.81 The Australian Federation of Travel Agents submits that if the ACCC decides to grant authorisation to the Star Alliance, that it should impose conditions to require the Star Alliance members to ensure that agents are able to request and manage bids for corporate clients and convention organisers, and manage ongoing travel arrangements for corporate clients and convention delegates.
- 5.82 In this instance, the ACCC considers that the Corporate Plus and Conventions Plus programs are each likely to result in a net public benefit and it is not necessary to assess the merit of the conditions proposed by AFTA.

Length of authorisation

- 5.83 The ACCC generally considers it appropriate to grant authorisation for a limited period of time, to allow an authorisation to be reviewed if circumstances change.
- 5.84 In this instance, Star Alliance seeks authorisation for five years. The Star Alliance pointed to:
- the lead time required to sign up corporate clients to the Coporate Plus program;
 - the time and money required be invested in attracting corporate customers and convention organisers to the programs and maintaining these relationships; and
 - the lead time to bid for conventions, which are organised 1 to 3 year in advance.
- 5.85 The Australian Federation of Travel Agents (AFTA) submitted that authorisation for a period no longer than three years was more appropriate due to the ongoing changes in the business of international airlines, with value based airlines expanding into business traditionally held by full service airlines.
- 5.86 The ACCC notes AFTA's concerns. However, as discussed above, the ACCC considers that there are a number of features of the arrangements that will minimise the

detriments. The ACCC also notes the Star Alliance's comments regarding the lead time required to develop bids for both programs.

5.87 As such, the ACCC proposes to grant authorisation to the implementation of the Corporate Plus and Conventions Plus programs for five years.

6. Draft determination

The application

- 6.1 On 15 March 2007, Singapore Airlines Ltd, on behalf of the members of the Star Alliance, lodged applications for authorisation A91036-A91040 with the Australian Competition and Consumer Commission (the ACCC).
- 6.2 Applications A91036 and A91038 were made using Form A, Schedule 1, of the Trade Practices Regulations 1974. The applications were made under subsection 88 (1) of the Act to make and give effect to a contract, arrangement or understanding, a provision of which is or may be an exclusionary provision within the meaning of section 45 of the Act.
- 6.3 Applications A91037 and A91039 were made using Form B, Schedule 1, of the Trade Practices Regulations 1974. The applications were made under subsection 88(1) of the Act to make and give effect to a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act.
- 6.4 Application A91040 was made using Form E, Schedule 1, of the Trade Practices Regulations 1974. The application was made under subsection 88(8) of the Act to engage in conduct that constitutes or may constitute, exclusive dealing within the meaning of section 47 of the Act.
- 6.5 In particular, the applicant seeks authorisation for the:
- Corporate Plus Program, pursuant to which Star Alliance members enter into *Star Alliance Corporate Plus Agreements* with corporate customers; and
 - Conventions Plus Program, pursuant to which Star Alliance members make joint bids for appointment as the official airline alliance for international conventions and enter into *Star Alliance Conventions Plus Official Airline Network Long-Term Agreements* with convention organisers.

The net public benefit test

- 6.6 For the reasons outlined in Chapter 5 of this draft determination, the ACCC is satisfied that the arrangements for which applications A91036, A91038 and A91040 seek authorisation are likely to result in such a benefit to the public that the arrangements should be allowed to take place.
- 6.7 The ACCC also considers that in all the circumstances the arrangements for which applications A91037 and A91039 seek authorisation are likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the arrangements.
- 6.8 The ACCC therefore **proposes to grant** authorisation to applications A91036-A91040.

Conduct for which the ACCC proposes to grant authorisation

- 6.9 The ACCC proposes to grant authorisation to the applicant to implement the Corporate Plus Program and Conventions Plus Program as described in application A91036-A91040 and in supporting submissions, for a period of **five years**.
- 6.10 This draft determination is made on 20 June 2007.

Further submissions

- 6.11 The ACCC will now seek further submissions from interested parties. In addition, the applicant or any interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the Act.