

Form FC

Commonwealth of Australia

Trade Practices Act 1974 — subsection 91C (1)

**APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND
SUBSTITUTION OF A NEW AUTHORISATION**

To the Australian Competition and Consumer Commission (the *Commission*):

Application is hereby made under subsection 91C (1) of the *Trade Practices Act 1974* (the *Act*) for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

1. Applicant

(a) Name of applicant:

A91195 Qantas Airways Limited (ACN 009 661 901) and its related bodies corporate (*Qantas*); and

A91196 British Airways plc (No 1777777) and its related bodies corporate (*British Airways*)

(together the *Applicants*)

(b) Description of business carried on by applicant:

Domestic and international airline passenger and cargo services.

(c) Address in Australia for service of documents on the applicant:

Qantas Airways Limited
Building A, Level 9
203 Coward Street
MASCOT NSW 2020

Attention:
Mr Brett Johnson
General Counsel

British Airways Plc
C/- Mallesons Stephen Jaques
Level 60, Governor Philip Tower
1 Farrer Place
Sydney NSW 2000
Attention:
Ms Sharon Henrick
Partner

2. Revocation of authorisation

(a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

Authorisations with registration numbers A30226 and A30227 in relation to the Restated Joint Services Agreement dated 3 April 2000 (as amended) and related and consequential coordination of schedules and pricing between the Applicants (the *Current Authorisations*). The Current Authorisations were granted in a Final Determination of the Commission dated 8 February 2005.

Specifically, the Current Authorisations are:

- An authorisation under subsection 88(1) of the Act (A30226):
 - to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of the Act;
 - to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of the Act;
- An authorisation under subsection 88(1) of the Act (A30227):
 - to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act; and
 - to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of the Act.

(b) Provide details of the basis upon which revocation is sought:

The Current Authorisations were granted for a period of five years and came into effect on 1 March 2005. The Applicants seek revocation of the Current Authorisations and substitution of authorisations for a period of time ending upon revocation by the Commission pursuant to the section 87B undertaking to be provided to the Commission and section 91B(4) of the Act.

3. Substitution of authorisation

(a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:

The Restated Joint Services Agreement dated 3 April 2000 (as amended) and related and consequential coordination of schedules and pricing between the Applicants. A copy of the Restated Joint Services Agreement is attached to the Parties submission.

Specifically, and noting the passage of the *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009*, the Applicants seek substitution of the Current Authorisations with:

- An authorisation under subsection 88(1A)/88(1) of the Act:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of the Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of the Act;
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of the Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of the Act;
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of the Act; and
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of the Act; and
- An authorisation under subsection 88(1A)/88(1) of the Act:
 - to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of the Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of the Act);
 - to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of the Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act);
 - to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act; and
 - to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of the Act.

(b) Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:

The Joint Services Agreement provides for a joint venture service in the form of air transportation, primarily on services between Australia and Europe.

(c) The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:

The Applicants seek substitute authorisations for a period of time ending upon revocation by the Commission pursuant to the section 87B undertaking to be

provided to the Commission and section 91B(4) of the Act. The grounds supporting this period of authorisation are set out in the attached submission.

4. Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:**

Not applicable.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:**

Not applicable.

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:**

Not applicable.

5. Public benefit claims

- (a) Arguments in support of application for substitution of authorisation:**

Please refer to the attached submission

- (b) Facts and evidence relied upon in support of these claims:**

Please refer to the attached submission

6. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

Please refer to the attached submission

7. Public detriments

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:**

Please refer to the attached submission.

- (b) Facts and evidence relevant to these detriments:**

Please refer to the attached submission.

8. Contracts, arrangements or understandings in similar terms

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) that are, or will be, in similar terms to the abovementioned contract, arrangement or understanding

(a) Is this application to be so expressed?

No

(b) If so, the following information is to be furnished:

(i) description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:

Not applicable.

(ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:

Not applicable.

(iii) Where the parties to the similar term contract, arrangement or understanding(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

9. Joint Ventures

(a) Does this application deal with a matter relating to a joint venture (See section 4J of the Trade Practices Act 1974)?

Yes

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

No

(c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

10. Further information

- (a) *Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:*

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Attention:
Ms Sharon Henrick
Partner

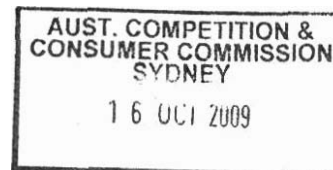
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Dated 16 October 2009

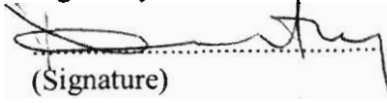
Signed by/on behalf of **Qantas Airways Limited**



Brett Johnson
Qantas Airways Limited
General Counsel



Signed by/on behalf of **British Airways plc**


.....
(Signature)

..Niamh McCarthy.....
(Full Name)

..British Airways.....
(Organisation)

..Lawyer.....
(Position in Organisation)

