

General Counsel
Brett Johnson



13 August 2009

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Dear Dr Chadwick

Virgin Blue Group and Delta Airlines Inc – A91151 & 91152

Thank you for the opportunity for the Qantas Group to comment on the application for authorisations lodged by the Virgin Blue Group (Virgin Blue) and Delta Airlines Inc (Delta) (together the JV Parties) (Application).

Nature of the Australia-US Market

Qantas has been operating from Australia to the US for over 50 years and is currently the largest airline operator between Australia and the US.

Qantas agrees that the Australia-US route has unique features which make it efficient for an Australian airline to partner with a US airline to offer a "network-to-network" proposition. In fact, without a strong relationship with a major US domestic carrier, the route may be marginal for an Australian airline.

For example, whilst Qantas has direct services into Los Angeles (with a daily extension to New York City) and San Francisco, approximately 65% of passengers carried by Qantas travel beyond the gateway cities of Los Angeles and San Francisco. Individually, the markets between Australia and other US cities are not large enough to support direct services and, Qantas (like all foreign carriers) is prohibited from operating domestic US services. Qantas therefore relies on its ongoing commercial relationship with American Airlines to service the Australia-US route. Without this type of relationship, Qantas could not offer its Australian passengers a commercially acceptable option to travel to their destinations beyond Los Angeles, San Francisco or New York.

While Qantas and American Airlines have a strong commercial arrangement, each makes independent decisions in relation to routes, capacity and pricing on codeshare routes. There is no agreement that Qantas will "operate all Trans-Pacific sectors and American operate all domestic United States sectors" (see page 23).

Given the geographic distance between Australia and the US and the lack of feasible mid points, only ultra long range aircraft are suited to fly between Australia and the US.

The Application quotes a number of media articles which comment on Qantas' deployment of further A380 capacity on the Australia-US route. The inference left by the submission is that Qantas' recent increase of A380 capacity was purely defensive.

Qantas' deployment of its new A380 on the US route was a profit maximising decision. Even with the addition of further A380 capacity (which is most suited to ultra long haul routes where there is a mixture of premium and leisure demand and has a lower cost per seat than other aircraft) Qantas' net capacity (based on available seat kilometres or ASKs) has declined in 2009.

Qantas also notes that other carriers on the Australia-US route have upgraded their fleet or improved their product offering. For example, United has now introduced lie flat first and business class seats across the Pacific. Consumers have benefited from these product enhancements.

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Strength of Delta

Delta is one of the largest airlines in the world. Through its hubs in Atlanta, Cincinnati, Detroit, Memphis, Minneapolis-St Paul and New York (JFK), and in conjunction with its subsidiary Northwest Airlines, Delta provides extensive services throughout the United States and connectivity for trans-Pacific passengers.

Qantas had a pro-rate agreement with Delta that allowed Qantas to sell seats on Delta's services from Los Angeles and San Francisco to various ports in the United States, Canada, Mexico and Central America. The pro-rate agreement also allowed Delta to sell seats on Qantas services in Australia, New Zealand and Asia.

However, in anticipation of entering the Australia-US route Delta cancelled its long standing special prorate agreement with Qantas on 30 June 2009 and took steps to limit Qantas' ability to sell single tickets or through fares that include both Qantas and Delta sectors. Qantas' reduced access to Delta fares has already limited Qantas' ability to offer competitive fares and service levels to Delta's hub in the US.

'No Detriment' Claim

Qantas assumes that the JV Parties made independent decisions to commence services on the Australia-US route on the basis that they would operate as stand-alone competitors. The Joint Venture, if approved, will result in co-ordination between these two new entrants, both of whom are individually regarded by Qantas as vigorous and effective competitors who state they are committed to the route on a long term basis.

On a factual compared to counterfactual analysis, where two independent operators on a route form a Joint Venture (reducing four competitors to three), one must analyse whether there is a lessening of competition unless the JV Parties can clearly demonstrate they continue to be sufficiently constrained. Whether or not any lessening is substantial is a risk the JV Parties have decided to mitigate by seeking authorisation.

The JV Parties have stated that it is not their intention to reduce capacity. However, Qantas queries whether the claimed efficiencies will be possible through the joint venture without capacity being reduced on the Sydney-Los Angeles route.

New Treatment of JVs

As the details of the JV are confidential, Qantas cannot comment on whether the JV should be considered to be a JV within section 4J of the Trade Practices Act 1974 (TPA) but, based on the information included in the Application, assumes that it is a JV for the purposes of the TPA.

If the parties truly believed there is likely to be no detriment from their JV, Qantas questions why the JV Parties did not rely upon the recent amendments to the TPA which now exempt bona fide JVs from being deemed to be 'per se' breaches of the TPA. These changes operate in addition to the existing JV defence in section 76C.

In any event, Qantas encourages the ACCC when reviewing the application to undertake a robust analysis of the JV's likely impact on competition, rather than continuing to deem the JV conduct as anti-competitive.

If you have any further questions please contact Jill Henderson on (02) 9691 5799

Yours sincerely



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