



Qantas Airways Limited & American Airlines Inc. applications for authorisation A91265 & A91266

Interim authorisation decision 9 June 2011

DECISION

The Australian Competition and Consumer Commission (the ACCC) has decided to grant interim authorisation in respect of the applications for authorisation lodged by Qantas Airways Limited (Qantas) and American Airlines Inc. (American Airlines) on 12 May 2011.

Interim authorisation commences immediately, and will remain in place until the date the ACCC's final determination comes into effect or interim authorisation is revoked.

THE APPLICATION

Qantas and American Airlines are seeking authorisation for a proposed Joint Business Agreement (JBA). Under the proposed JBA, the airlines will coordinate operations on services between Australia/New Zealand and the United States of America (the trans-Pacific routes), and on extensive Qantas and American Airlines services which support the trans-Pacific routes. The applicants propose to coordinate:

- flying operations
- scheduling
- cargo
- pricing and revenue management
- sales and marketing
- procurement.

Qantas will operate trans-Pacific services and connecting services in Australia and on the trans-Tasman on behalf of the airlines. American Airlines will operate connecting services in the United States, Canada and Mexico.

THE AUTHORISATION PROCESS

The ACCC can grant immunity from the application of the competition provisions of the *Competition and Consumer Act 2010* (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.

INTERIM AUTHORISATION

Section 91 of the Act allows the ACCC to grant interim authorisation without making a decision on the merits of the application.

The ACCC will only grant interim authorisation in appropriate circumstances. In many circumstances it is not appropriate to do so because interim authorisation allows an applicant, for a limited period, to engage in conduct before the ACCC has been able to fully assess whether the conduct satisfies the authorisation test.

CONSULTATION

Upon receipt of the application for authorisation, the ACCC invited submissions from approximately 90 interested parties in order to consider the request for interim authorisation.

The ACCC received a submission from Virgin Australia, which queried whether the commercial imperatives on which the application for interim authorisation was based are still applicable; whether Qantas would still continue to offer the Dallas/Fort Worth services even if it did not obtain authorisation for the alliance; and how the applicants would unwind the alliance if final authorisation were not granted.

REASONS FOR DECISION

In granting interim authorisation the ACCC has taken into account that:

- the ability to undertake a coordinated sales and marketing campaign in both Australia and the United States is likely to be necessary to generate the sustained level of demand required to ensure the viability of the Sydney-Dallas/Fort Worth services
- without the ability to cooperate, the current frequency of these services may not be sustainable and expansion to daily services may not be possible. In addition, the enhanced connectivity, lower fares and new fare products envisaged under the JBA would not be available to passengers
- the applicants do not currently compete directly on any routes, and are unlikely to do so absent the JBA.

The ACCC considers it reasonable for the applicants to implement the JBA at this stage, and have the opportunity to deliver the claimed public benefits.

The ACCC considers it unlikely that granting interim authorisation will result in permanent changes to the relevant markets.

RECONSIDERATION OF DECISION

The ACCC may review its decision on interim authorisation at any time. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.