



Australian
Competition &
Consumer
Commission

Draft Determination

Applications for authorisation

lodged by

Virgin Australia and Singapore Airlines

in respect of

an airline alliance between the applicants

Date: 13 October 2011

Authorisation no.: A91267 &
A91268

Public Register no.: C2011/536

Commissioners: Sims
Kell
Schaper
Court
Dimasi
Walker

Summary

The ACCC proposes to grant authorisation for Virgin Australia and Singapore Airlines to enter into an integrated network alliance for five years.

On 20 June 2011, Virgin Australia and Singapore Airlines lodged applications for authorisation to establish an integrated network alliance in relation to international air passenger transport services (the Alliance).

Under the Alliance, Virgin Australia and Singapore Airlines will fully cooperate on all aspects of their Australia – Singapore services and any international and domestic connecting routes, including joint pricing and scheduling and joint marketing and sales. The airlines will cooperate in relation to the marketing of services to corporate and government accounts, including joint bidding and joint pricing. They will also cooperate in relation to frequent flyer and lounge access to improve the Alliance's overall offering.

Virgin Australia and Singapore Airlines do not intend to share revenue at this stage and the current applications do not extend to cover revenue sharing.

The ACCC considers that the Alliance is likely to result in material public benefits in the form of:

- enhanced products and services, including increased online connection options, enhanced value added services and potential new routes and frequencies. In particular, the Alliance provides passengers with the ability to purchase journeys across the international and Australian domestic networks offered by the airlines. This will immediately increase the number of online connection options for passengers.
- increased competition in international air passenger transport services market(s). The ACCC considers that the enhanced product and service offering, which includes reciprocal frequent flyer programs and lounge access, is likely to trigger a competitive response from other airlines (particularly Qantas).

In addition, the ACCC considers that the Alliance may result in some public benefits in the form of:

- cost savings and other efficiencies and
- potentially, the stimulation of tourism.

The ACCC considers that the Alliance is unlikely to result in any significant public detriment in the market(s) for international air passenger transport services or the market for domestic air passenger transport services in Australia.

The ACCC notes that the services currently operated by Virgin Australia and Singapore Airlines overlap on routes between Perth and Phuket in Thailand, and Australia and Denpasar in Indonesia (Bali). On these routes, Singapore Airlines' services operate via Singapore, making them indirect (one-stop), while Virgin Australia operates a direct (non-stop) service. The ACCC considers that passengers are less likely to regard Singapore Airlines' indirect service as a close substitute for Virgin Australia's non-stop service on these routes. Importantly, there are a number of competitor airlines offering direct services on these routes that are in a position to constrain the Alliance's price and service decisions.

The ACCC considers that, while the Alliance will direct domestic on-carriage or feeder traffic to Virgin Australia rather than other domestic carriers, this is unlikely to undermine the competitive position of other domestic carriers.

The ACCC notes Singapore Airlines' shareholding in Tiger Airways Holdings and has examined the potential for the Alliance to impact Tiger Airways Australia's price and service decisions in the Australian domestic air passenger transport services market. The ACCC considers that the Alliance is unlikely to lessen Tiger Airways Australia's incentive to compete in the domestic market, or to significantly increase the likelihood of Virgin Australia and Tiger Airways Australia's coordinating their pricing, output or related commercial decisions in this market.

Therefore, the ACCC proposes to grant authorisation to the applicants for the Alliance for five years.

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

1. THE APPLICATION FOR AUTHORISATION..... 1

2. BACKGROUND TO THE APPLICATION 3

THE APPLICANTS 3

THE APPLICANTS’ OTHER ALLIANCES AND AIRLINE INTERESTS 7

THE ALLIANCE 9

THE AVIATION INDUSTRY 10

3. SUBMISSIONS RECEIVED BY THE ACCC 12

4. ACCC EVALUATION 15

THE MARKET..... 15

THE COUNTERFACTUAL..... 19

PUBLIC BENEFIT..... 20

Enhanced products and services 20

Increased competition in international air passenger transport services
markets 23

Cost savings and other efficiencies 24

Tourism benefits 27

ACCC conclusion on public benefits 28

PUBLIC DETRIMENT..... 28

ACCC conclusion on public detriments..... 37

BALANCE OF PUBLIC BENEFIT AND DETRIMENT 37

LENGTH OF AUTHORISATION..... 38

VARIATIONS TO THE ALLIANCE 39

5. DRAFT DETERMINATION..... 40

THE APPLICATION 40

THE NET PUBLIC BENEFIT TEST..... 40

CONDUCT FOR WHICH THE ACCC PROPOSES TO GRANT AUTHORISATION..... 41

FURTHER SUBMISSIONS 41

ATTACHMENT A — THE AUTHORISATION PROCESS 42

ATTACHMENT B — CHRONOLOGY OF ACCC ASSESSMENT FOR APPLICATIONS A91267 &
A19128 43

ATTACHMENT C — THE TESTS FOR AUTHORISATION AND OTHER RELEVANT PROVISIONS
OF THE ACT 44

ATTACHMENT D — OVERLAP ROUTES 49

List of abbreviations and terms

ACCC	Australian Competition and Consumer Commission
The Act	The Competition and Consumer Act 2010
ASA	Air services agreement is a bilateral agreement between governments under which international air transport is authorised
The applicants	Virgin Australia and Singapore Airlines
BITRE	Bureau of Infrastructure, Transport and Regional Economics
Codeshare	Code sharing refers to arrangements involving the assignment of one airline's designator code to a flight operated by another airline.
Free sale	A type of codeshare where the marketing carrier effectively only pays for the seats it sells
Interline agreement	Interlining involves the carriage of passengers and/or freight between two points using more than one airline under an arrangement which typically involves baggage check through and the honouring of tickets between airlines
Load factor	Load factors measure the percentage of seats filled on an aircraft on any given route. This is derived from dividing the number of passengers travelled by the number of seats available
LCC	Low cost carrier (also known as a no-frills, discount or budget carrier or airline) is an airline that generally has lower fares and fewer comforts. To make up for revenue lost in decreased ticket prices, the airline may charge for extras like food, priority boarding, seat allocating, and baggage etc
NWC	New world carrier is a low cost, high value airline model that aims to attract a broader cross section of passengers than the traditional LCC model, through leveraging the airline's low cost foundations and adding valuable new products which appeal to higher yielding passengers
Online connection	A passenger itinerary of two or more flight segments where connections are made between flights of the same airline or its codeshare partners
Sector	A sector is a non-stop flight leg between two points (excluding technical stops where no passengers or cargo are picked up or dropped off)
SSNIP	Small but significant non-transitory increase in price
The Tribunal	The Australian Competition Tribunal

1. The application for authorisation

- 1.1. On 20 June 2011 Virgin Australia Airlines Pty Ltd, Virgin Australia International Airlines Pty Ltd, Pacific Blue Airlines (NZ) Limited, Pacific Blue Airlines (Aust) Pty Ltd, and Velocity Rewards Pty Ltd (together **Virgin Australia**); and Singapore Airlines Limited and SilkAir (Singapore) Private Limited (together **Singapore Airlines**) lodged applications for authorisation A91267 and A91268 with the ACCC.
- 1.2. Authorisation is a transparent process where the ACCC may grant statutory protection from legal action for conduct that might otherwise breach the *Competition and Consumer Act 2010* (the Act). The ACCC may ‘authorise’ businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment. The ACCC conducts a public consultation process when it receives an application for authorisation, inviting interested parties to lodge submissions outlining whether they support the application or not. Further information about the authorisation process is contained in Attachment A. A chronology of the significant dates in the ACCC’s consideration of these applications is contained in Attachment B.
- 1.3. Application A91267 was made under subsections 88(1) and 88(1A) 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
 - make and give effect to a provision of a contract, arrangement or understanding, a provision of which is, or may be, a cartel provision and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- 1.4. Application A91268 was made under subsections 88(1) and 88(1A) 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
 - make and give effect to a contract or arrangement, or arrive at an understanding a provision of which would be, or might be, a cartel provision (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- 1.5. Virgin Australia and Singapore Airlines have applied for authorisation to make and give effect to an Alliance Framework Agreement, associated codeshare agreements and proposed related agreements which are contemplated by the Alliance Framework Agreement (Alliance).
- 1.6. Under the Alliance, Virgin Australia and Singapore Airlines will fully cooperate on all aspects of their Australia – Singapore services and any international and domestic connecting routes, including joint pricing and scheduling and joint marketing and sales.

- 1.7. The airlines will cooperate in relation to the marketing of services to corporate and government accounts, including joint bidding and joint pricing. They will also cooperate in relation to frequent flyer and lounge access to improve the Alliance's overall offering.
- 1.8. The Alliance will provide Virgin Australia with access to Asian destinations currently unavailable to it, for example through coded flights to and in China, India, Japan and Hong Kong. Singapore Airlines will be able to offer and promote Singapore Airlines coded flights to a wider range of destinations throughout Australia.
- 1.9. The applicants seek authorisation for a period ending no earlier than five years from the date of authorisation or for ten years from 6 June 2011 (the Initial Term of the Alliance Framework Agreement).

2. Background to the application

The applicants

Virgin Australia¹

- 2.1. Virgin Australia Airlines commenced operations in Australia as Virgin Blue in August 2000 and is listed on the Australian Stock Exchange.
- 2.2. Virgin Australia currently operates 91 aircraft on approximately 3000 flights per week, to 48 Australian and international destinations. It serves 17 additional international destinations and seven additional destinations within Western Australia through codeshare agreements with partner airlines.

Table 2.1 Virgin Blue destinations²

Adelaide	Darwin	Launceston	Port Moresby
Albury	Denpasar	Los Angeles	Port Vila
Auckland	Dunedin	Mackay	Queenstown
Ballina	Fraser Coast	Melbourne	Rarotonga
Brisbane	Gold Coast	Mildura	Rockhampton
Broome	Hamilton	Nadi	Sunshine Coast
Cairns	Hamilton Island	Newcastle	Sydney
Canberra	Hobart	Newman	Townsville
Christchurch	Honiara	Nuku'Alofa	Uluru
Christmas Island	Kalgoorlie	Perth	Wellington
Cocos (Keeling) Island	Karratha	Phuket	Whitsundays
Coffs Coast	Kununurra	Port Macquarie	

- 2.3. On 4 May 2011, the Virgin Blue Group relaunched under a single Virgin Australia brand, replacing the following domestic and international brands:
- Virgin Blue;
 - Pacific Blue; and
 - V Australia.
- 2.4. These brands will be phased out by Virgin Australia over the coming year and all flying will take place under the Virgin Australia brand.
- 2.5. Virgin Australia also operates Pacific Island services through Polynesian Blue, which is a joint venture with the Samoan Government. The rebranding of this carrier will depend on agreement by the Samoan Government.
- 2.6. The airline commenced operations in Australia in 2000 as a Low Cost Carrier (LCC) serving a small number of domestic Australian routes. Since that time the airline has made a number of changes to its business model in order to take account of changing conditions in the Australian aviation industry and to pursue opportunities to increase its share of passengers and its profitability.

¹ The majority of the information under this sub-heading is sourced from:

- Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011
- Virgin Blue Holdings, *Annual Report 2010-2011*

² <http://www.virginaustralia.com/Personal/Flightinfo/WhereWeFly>

- 2.7. In 2005, Virgin Australia (then Virgin Blue) announced its move away from a LCC business model and towards becoming a New World Carrier (NWC).
- 2.8. Since his appointment in May 2010, Virgin Australia's CEO, John Borghetti, has pursued the company's 'Game Change' strategy, designed to attract higher yield corporate and business passengers while remaining attractive to leisure passengers.
- 2.9. Virgin Australia advises that its 'Game Change' strategy is to improve its network and product in order to expand its passenger base and challenge its closest competitor, Qantas, across more market segments, providing enhanced choice and competition for all Australian passengers. Virgin Australia's strategy is to retain its competitive position for leisure and visiting friends and relatives travel in domestic Australia while reducing its exposure to fluctuations in demand for leisure travel by diversifying its passenger base and attracting a higher proportion of Australian corporate, government and international travellers.
- 2.10. As part of Virgin Australia's 'Game Change' strategy, it is seeking to complete its virtual international network by forming international alliances and maintaining a small fleet of aircraft.³
- 2.11. For the financial year ending 30 June 2010, Virgin Australia Group reported revenue of A\$2981.8 million and a net profit before tax of A\$34.3 million.

Singapore Airlines⁴

- 2.12. Singapore Airlines is the flag carrier of Singapore, operating passenger services with a fleet of over 100 aircraft across an extensive international network. Singapore Airlines offers services to around 101 scheduled destinations in 40 countries, including through alliances, with a particularly strong presence in Asia:
- 27 destinations in Asia, including Singapore, Hong Kong, Tokyo, Seoul and Delhi;
 - 14 destinations in Europe, including London, Manchester, Athens, Frankfurt; Istanbul, Milan and Paris;
 - routes to the USA (including Los Angeles, New York and San Francisco) and South America (Sao Paulo); and
 - other destinations in the Middle East, South West Pacific and Africa.
- 2.13. Singapore Airlines is a full service airline and it currently operates 92 return services per week to and from five gateways in Australia: Adelaide, Brisbane, Melbourne, Perth and Sydney.

³ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011

⁴ The majority of the information under this sub-heading is sourced from:

- Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011
- Singapore Airlines *Annual Report 2010-2011*

Table 2.2 Singapore Airlines destinations

Abu Dhabi (AUH)	Frankfurt (FRA)	Moscow (DME)
Adelaide (ADL)	Fukuoka (FUK)	Mumbai (BOM)
Ahmedabad (AMD)	Guangzhou (CAN)	Munich (MUC)
Amsterdam (SPL)	Hanoi (HAN)	Nagoya (NGO)
Athens (ATH)	Ho Chi Minh City (SGN)	New Delhi (DEL)
Auckland (AKL)	Hong Kong SAR (HKG)	New York (EWR)
Bandar Seri Begawan (BWN)	Houston (IAH)	New York (JFK)
Bangalore (BLR)	Istanbul (IST)	Osaka (KIX)
Bangkok (BKK)	Jakarta (CGK)	Paris (CDG)
Barcelona (BCN)	Jeddah (JED)	Perth (PER)
Beijing (PEK)	Johannesburg (JNB)	Riyadh (RUH)
Brisbane (BRN)	Kolkata (CCU)	Rome (FCO)
Cairo (CAI)	Kuala Lumpur (KUL)	San Francisco (SFO)
Cape Town (CPT)	Kuwait City (KWI)	Sao Paulo (GRU)
Chennai (MAA)	London (LHR)	Seoul (ICN)
Christchurch (CHC)	Los Angeles (LAX)	Shanghai (PVG)
Colombo (CMB)	Male (MLE)	Sydney (SYD)
Copenhagen (CPH)	Manchester (MAN)	Taipei (TPE)
Dhaka (DAC)	Manila (MNL)	Tokyo (HND)
Denpasar (DPS)	Melbourne (MEL)	Tokyo (NRT)
Dubai (DXB)	Milan (MXP)	Zurich (ZRH)

- 2.14. Singapore Airlines is majority government owned and is listed on the Singapore Stock Exchange. In 2010, the International Air Transport Association (IATA) recognised Singapore Airlines as the world's second largest airline by market capitalisation (USD14 billion).
- 2.15. Singapore Airlines recently announced for the 2010/2011 financial year a group net profit of SGD1.09 billion and operating profits of SGD851 million and SGD121 million respectively for Singapore Airlines and SilkAir.

SilkAir

- 2.16. SilkAir is a wholly owned subsidiary of Singapore Airlines. Singapore Airlines and SilkAir have a codeshare agreement under which Singapore Airlines places its code on services offered to all SilkAir destinations.⁵
- 2.17. SilkAir is positioned as a premium, short to medium haul regional carrier. It extends Singapore Airlines' footprint in Asia and links Singapore to a multitude of destinations across Asia.
- 2.18. SilkAir operates as a premier regional Asian airline and offers over 400 flights a week to 34 destinations across 11 countries, with a fleet of 19 Airbus aircrafts (13 Airbus 320s and 6 Airbus 319s).

Table 2.3 SilkAir destinations⁶

Balikpapan (BPN)	Kathmandu (KTM)	Palembang (PLM)
Bangalore (BLR)	Kochi (COK)	Pekanbaru (PKU)
Bandung (BDO)	Kota Kinabalu (BKI)	Penang (PEN)
Cebu (CEB)	Kuala Lumpur (KUL)	Phnom Penh (PNH)
Changsha (CSX)	Kolkata (CCU)	Phuket (HKT)
Chengdu (CTU)	Koh Samui (USM)	Shenzhen (SZX)
Chennai (MAA)	Kuching (KCH)	Siem Reap (REP)
Chiang Mai (CNX)	Kunming (KMG)	Singapore (SIN)
Chongqing (CKG)	Langkawi (LGK)	Solo (SOC)
Coimbatore (CJB)	Lombok (AMI)	Surabaya (SUB)
Da Nang (DAD)	Manado (MDC)	Thiruvananthapuram (TRV)
Davao (DVO)	Medan (MES)	Xiamen (XMN)
Hyderabad (HYD)	Macau (MFM)	Yangon (RGN)

⁵ see http://www.singaporeair.com/en_UK/about-us/psh-codeshare-psh-codeshare-dest/

⁶ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, pp. 74-76

The applicants' other alliances and airline interests

Virgin Australia

- 2.19. Virgin Australia has entered into a range of codeshare and interline arrangements with partners, to allow it to offer a global airline network to its passengers. These partners include its strategic Alliance partners Air New Zealand, Delta Air Lines, Etihad and Skywest⁷. The ACCC has authorised Virgin Australia alliances with Etihad, Air New Zealand and Delta Air Lines.
- 2.20. Virgin Australia also has interline arrangements with the following carriers for inbound traffic into Australia: Aerolíneas Argentinas, Aircalin, Air Austral, Air Mauritius, Air Tahiti Nui, Airlines PNG, Cathay Pacific/Dragon Air, China Southern, Emirates, Garuda Indonesia, Hawaiian Airlines, Malaysia Airlines, Qatar Airways, Royal Brunei, South African Airways, Thai Airways, Vietnam Airlines and Virgin Atlantic.
- 2.21. The carrier also has a domestic interline agreement with Regional Express (Rex) through Virgin Blue. The agreement covers passengers flying on Rex from regional centres to Adelaide, Melbourne and Sydney and then on to other Virgin Blue serviced terminals within Australia.⁸ Virgin Australia passengers can connect in Sydney, Melbourne, Brisbane, Adelaide or Townsville onto REX services across regional Australia. The interline agreement covers interlining of baggage between flights.⁹
- 2.22. The applicants submit that the Alliance will have no effect on Virgin Australia's existing alliances with Etihad, Air New Zealand or Delta. Rather, it is complementary to the existing alliances and fills the gaps in Virgin Australia's current offer.¹⁰
- 2.23. The Alliance provides for Virgin Australia placing its code on any Singapore Airlines/SilkAir services. However, Virgin Australia submits that it does not intend to codeshare on Singapore Airlines routes where it has codeshare coverage with Etihad. This position is based on the commercial rationale that it may result in inconsistent product and service for Virgin Australia passengers on the same routes.¹¹
- 2.24. Virgin Australia Group also has arrangements with Alaska Airlines (in Los Angeles) to provide international lounge facilities to its international business class and Gold Velocity frequent flyer members.

⁷ Skywest Airlines Ltd, a subsidiary of Skywest, is a primarily Australian owned company, with its shares listed on the alternate market of the London Stock Exchange (AIM) and dually quoted and tradable on the Australian Stock Exchange. Skywest is a major regional airline in Western Australia, providing scheduled services from Perth to Albany, Esperance, Geraldton, Carnarvon, Exmouth, Broome, Kalbarri, Kalgoorlie, Kununurra, Monkey Mia, Port Hedland, Darwin, Karratha and between Broome/Port Hedland and Bali. The airline flies over 90 services a week – see <http://www.skywest.com.au/InvestorRelations.aspx>

⁸ Rex Interline agreements, at <http://www.rex.com.au/flightinfo/InterlineAgreements.aspx>

⁹ Virgin Australia, Airline Partners at <http://www.virginaustralia.com/Personal/Flightinfo/AirlinePartners/More/index.htm> (accessed on 1 September 2011)

¹⁰ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p. 29

¹¹ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, pp.14 and 29

Singapore Airlines

- 2.25. Singapore Airlines is a member of the Star Alliance. Its codeshare partners include SilkAir, Virgin Atlantic, Air New Zealand, Malaysia Airlines, Lufthansa, Scandinavian Airlines, Swiss International Air Lines, and US Airways.
- 2.26. Singapore Airlines has a 49% shareholding in Virgin Atlantic, which offers flights to the USA, Africa, Caribbean, Asia and to Australia from its hubs in the UK. The only service to Australia operated by Virgin Atlantic is London – Hong Kong – Sydney.
- 2.27. Singapore Airlines and Virgin Atlantic have a codeshare agreement which is part of a series of commercial arrangements between the two airlines that include a reciprocal frequent flyer relationship, a joint lounge access agreement and round-the-world-fares.¹²

Tiger Airways

- 2.28. Singapore Airlines also has a 32.84% interest in Tiger Airways Holdings Limited (Tiger Holdings).¹³ Tiger Holdings is a holding company for two wholly-owned subsidiaries: Tiger Airways Australia Pty Ltd and Tiger Airways Singapore Pte Ltd.¹⁴
- 2.29. Tiger Holdings, through its two subsidiaries, is a low-cost carrier servicing routes throughout Asia and within Australia.
- 2.30. Tiger Airways Singapore flies out of Singapore to 26 destinations throughout Asia. Its services overlap with SilkAir services on 12 routes.
- 2.31. Tiger Airways Australia, prior to its operations being suspended by the Australian Civil Aviation Safety Authority (CASA) on 2 July 2011 flew between Melbourne and 15 destinations in Australia. Virgin Australia offered direct services on 11 of these routes and indirect (one stop) services via Brisbane on the remaining three routes.
- 2.32. The applicants submit that the Tiger Airways Australia's model and brand is entirely separate from that of Singapore Airlines. Singapore Airlines does not have a codeshare or interline relationship with Tiger Airways Australia or Tiger Airways Singapore.¹⁵
- 2.33. The applicants further submit that until the recent grounding of Tiger Airways Australia by CASA Singapore Airlines did not have any management control over Tiger Airways Australia. Following the recent suspension of its operations by CASA, Tiger Airways Australia has made changes to its executive team. In particular, Mr Chin Yau Seng has been appointed as Executive Director and Acting CEO of Tiger Airways Holdings. Prior to this appointment, Mr Chin was the Divisional Vice President Cabin

¹² http://www.singaporeair.com/en_UK/about-us/psh-codeshare-psh/psh-other-airlines/

¹³ Singapore Airlines has the opportunity to acquire up to 49.1% shareholding in Tiger Holdings following a Rights Issue by Tiger Holdings – see Clayton Utz, Letter regarding Singapore Airlines shareholding in Tiger Airways, 26 August 2011

¹⁴ Clayton Utz, *Letter regarding Singapore Airlines shareholding in Tiger Airways*, 26 August 2011

¹⁵ Virgin Australia and Singapore Airlines, *Submission providing information in relation to Singapore Airlines and Tiger Airways*, 21 July 2011, p.10

Crew Operations at Singapore Airlines. Prior to that, he was Chief Executive, SilkAir and occupied a range of management positions within Singapore Airlines.¹⁶ The applicants submit that Singapore Airlines cannot direct or influence Mr Chin or any other executive of Tiger Airways Holdings and therefore, continues to have no management control over Tiger Airways Australia.¹⁷

The Alliance

- 2.34. The applicants are seeking authorisation to establish an integrated network alliance under which they will:
- codeshare on a freesale basis on each other's regular air passenger transport networks; and
 - cooperate in relation to check-in, airport operations, frequent flyer programs, lounge access, scheduling, pricing, sales and marketing, bids for corporate and government accounts, service policies, innovation and other associated activities in order to enhance efficiency and improve the overall quality of services offered to passengers.
- 2.35. The applicants seek to realise the benefits of the Alliance through an Alliance Framework Agreement which they executed on 6 June 2011 and a number of interrelated agreements namely:
- freesale codeshare agreements
 - a special prorated agreement
 - reciprocal frequent flyer and lounge agreements and
 - a reciprocal staff duty travel agreement.
- 2.36. The Alliance also covers activities that do not require authorisation and some limited cooperation may be implemented prior to any authorisation. Commencing on 1 August 2011 the applicants have launched the first phase of the Alliance putting into effect an initial interline agreement and offering reciprocal lounge access to eligible customers of each airline.¹⁸
- 2.37. The applicants submit that all aspects of the Alliance are interdependent and it is only with an integrated Alliance that includes the elements for which authorisation is sought that the applicants will be able to achieve the commercial objectives and anticipated benefits of the proposed Alliance.

¹⁶ Virgin Australia and Singapore Airlines, *Submission providing information in relation to Singapore Airlines and Tiger Airways*, 21 July 2011

¹⁷ Virgin Australia and Singapore Airlines, *Submission providing information in relation to Singapore Airlines and Tiger Airways*, 21 July 2011

¹⁸ Virgin Australia, *News and Press Release: Singapore Airlines and Virgin Australia Launch Initial Interline and Lounge Agreements*, 1 August published at: http://www.virginaustralia.com/AboutUs/Media/NewsandPressReleases/U_029673.html (accessed 11 August 2011)

- 2.38. The applicants have not sought authorisation for revenue sharing as part of the current applications for authorisation and submit that it is unnecessary as they do not currently operate materially overlapping services. However, the Alliance Framework Agreement contemplates the possible future implementation of metal neutral¹⁹ policies in the event that the airlines begin operating any overlapping routes in the future or agree to jointly deploy new services. If revenue sharing is implemented, the applicants will need to seek authorisation for that arrangement.
- 2.39. The applicants note that the Alliance will provide Virgin Australia with access to Asian destinations currently unavailable to it, for example through coded flights to and in China, India, Japan and Hong Kong. Singapore Airlines will be able to offer and promote Singapore Airlines (SQ) coded flights to a wider range of destinations throughout Australia. The applicants submit that the Alliance will increase passenger numbers on the services of each Alliance partner. One of the products that the applicants note they will develop together will be an Air Pass product for incoming international tourists in order to promote travel to Australia internationally.
- 2.40. The applicants also submit that the Alliance will enable them to offer a comprehensive international and domestic network for Australia, in competition with Qantas which is currently the only airline with this offering.

The aviation industry

International aviation regulation

- 2.41. The international airline industry is highly regulated. The 1944 *Convention on International Civil Aviation* established the principle that each country has exclusive sovereignty over its airspace. This principle continues to guide the regulatory framework today.
- 2.42. International air transport cannot occur unless it is specifically authorised pursuant to a government to government bilateral air services agreement (ASA).
- 2.43. An ASA specifies the terms and conditions of airline activity between two countries. An ASA may indicate the destinations that can be served in a particular country, the permitted frequencies per week and any rights to operate via or beyond to third countries. Typically, the rights granted under an ASA can only be exercised by designated carriers of the countries that are parties to them.
- 2.44. Australia and Singapore have an ASA, which entered into force for Australia on 3 November 1967.²⁰ The Australia-Singapore ASA does not impose any restrictions on Australian-designated airlines operating services beyond Singapore to Europe and

¹⁹ Metal neutrality refers to revenue allocation arrangements that make it irrelevant, from the perspective of either applicant, which applicant's aircraft a passenger travels on. See ACCC, Determination for applications A91151-2 & A91172-3 lodged by Virgin Blue & Delta Air Lines (2009)

²⁰ Department of Foreign Affairs and Trade, "Agreement between the Government of the Commonwealth of Australia and the Government of The Republic of Singapore relating to Air Services", <http://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/D4A7BB3E7468E6E2CA256AFD001A8109> (accessed 11 August 2011).

places limited restrictions on destinations beyond Singapore to a number of points in Asia.²¹

²¹ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011

3. Submissions received by the ACCC

- 3.1. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process. To this end the ACCC aims to consult extensively with interested parties that may be affected by the proposed conduct to provide them with the opportunity to comment on the application.

The applicants' supporting submission

- 3.2. Broadly, Virgin Australia and Singapore Airlines submit that the Alliance will fill significant gaps in each of the airlines' networks. It will provide Singapore Airlines with an Australian partner while giving Virgin Australia greater access to destinations and customers in Asia. Under the Alliance, Virgin Australia will be able to offer an international network and attractive frequent flyer program that closely matches that of Qantas while continuing to provide a range of domestic Australian services.

Interested party submissions

- 3.3. The ACCC sought submissions from 90 interested parties potentially affected by the application, including competitors, airports, travel agents, government departments, regulators and tourism and industry groups. The ACCC received submissions from Air New Zealand, Qantas, Malaysia Airlines, the Queensland Government Aviation Committee, Tourism WA, Gold Airways, Tourism NT, Northern Territory Airports and the Department of Infrastructure and Transport (the Department of Infrastructure).

Submissions in support of the Alliance

- 3.4. Air New Zealand supports the applications for authorisation noting that in the context of foreign ownership restrictions airline alliances can improve overall service offerings and enhance competition when structured correctly. It submits that the proposed Alliance is likely to result in public benefits such as more effective competition in the corporate/government sector, assisting with the growth of the Tasman market and will not negatively impact competition on Australia-Asia services.²²
- 3.5. Qantas does not object to the applications for authorisation and submits that airline alliances are necessary in the complex and restrictive regulatory environment under which international airlines operate. It refers to the heavy government regulation, government ownership or support of virtually all international carriers, extremely high fixed costs and very low marginal costs as well as the importance of geographical location as necessitating cooperative arrangements to provide passengers with a broader network offering and more efficient range of services. Qantas also notes that a range of public benefits such as lower fares, enhanced networks and more seamless travel can result from aviation alliances.²³

²² Air New Zealand, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 14 July 2011 – Air New Zealand also disclosed that it holds an equity interest of 14.99% of the issued share capital in Virgin Australia and is in the process of implementing an authorised alliance with Virgin Australia. Further it noted it has a codeshare arrangement with Singapore Airlines

²³ Qantas, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 15 July 2011

- 3.6. The submission from the Queensland Government Aviation Committee is supportive of the Alliance and specifically, the ability of Singapore Airlines to sell and promote destinations beyond its current entry point into Australia leading to increased tourism from Asia. It submits that the proposed Air Pass product for international passengers, codeshare agreement and reciprocal frequent flyer programs will all have benefits for Queensland's tourism industry.²⁴
- 3.7. Tourism WA strongly supports the Alliance noting that the resulting closer business partnership will generate greater access for travellers into Australian domestic ports via Virgin Australia for global passengers travelling on Singapore Airlines. Tourism WA considers that the Alliance is likely to provide Australian residents with greater access to global destinations and a more seamless travel experience.²⁵
- 3.8. Tourism NT supports the Alliance and notes that the Alliance has the potential to increase passenger travel to and from Darwin, including via Singapore. Tourism NT submits that the applicants could potentially expand the applicants' networks to include direct international flights to Darwin. In this context, the submission notes the current economic growth that Darwin is experiencing. Further, Tourism NT submits that the Alliance may allow Singapore Airlines to provide "open-jaw"²⁶ itineraries, connectivity to new Australian tourism destinations for Singapore Airlines such as Uluru and Kakadu, and feeder traffic to support growth in domestic air links by Virgin Australia to and within the Northern Territory.²⁷
- 3.9. Northern Territory Airports supports the Alliance and submits that it is likely to result in increased feeder traffic domestically and increase Virgin Australia's ability to compete domestically, particularly in the corporate market. Northern Territory Airports also submits that the Alliance will provide Singapore Airlines with considerable incentive to further promote and market Australian destinations beyond their Australian gateways, including facilitating selling Darwin as a destination. Finally, Northern Territory Airports notes that the Alliance is consistent with the Australian Government's aviation and tourism policies.²⁸
- 3.10. The Department of Infrastructure's submission provides contextual information on Australia's air services arrangements and the Australian aviation policy settings. The Department submits that the Alliance is permitted under and consistent with the rights granted to airlines under the Australia-Singapore ASA. The Department of Infrastructure also notes that the Alliance is consistent with the Government's policy

²⁴ Queensland Government Aviation Committee, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 15 July 2011

²⁵ Tourism WA, *Email submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 6 July 2011

²⁶ Defined as a round-trip ticket that allows a passenger to leave from city 'A' to city 'B' but return to city 'A' from city 'C' - the passenger has to make his or her own arrangement to go from city 'B' to city 'C.' It gets its name from the diagram of this itinerary drawn on a paper which looks like an open angle or jaw – see <http://www.businessdictionary.com/definition/open-jaw-ticket.html>

²⁷ Tourism NT, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 1 September 2011

²⁸ Northern Territory Airports, *Submission in support of the Virgin Australia – Singapore Airlines Alliance*, 2 September 2011

position of encouraging a second Australian international airline capable of competing effectively with other international carriers.²⁹

- 3.11. In commenting on the substantive elements of the Alliance, the Department of Infrastructure submits that the Alliance is likely to result in lower prices, improvements in service offerings and an increase in the number of city pairs available for consumers. It supports the applicants' claimed public benefit of providing more effective competition against international competitors for business traffic, and thereby providing increased choice for the business segment of the market through cooperation in relation to frequent flyer programs and lounge access.³⁰

Submissions opposing the Alliance

- 3.12. Gold Airways³¹, an aspiring Australian domestic and international airline venture, highlights the applicants' shareholdings in other airlines, notably Virgin Atlantic and Tiger Airways Holdings. It submits that an independent airline can deliver higher frequency, route variations and higher levels of service than alliance carriers can deliver. Gold Airways also raises concerns about the impact of the Alliance on the likelihood of Tiger Airways Australia entering into an independent alliance (with it) or competing as vigorously or effectively post Alliance. It concludes that the Alliance is likely to "grossly unbalance alliance choice in the region", raise fares and limit seat availabilities for LCC resulting in a substantial decrease in competition.
- 3.13. In its response to Gold Airways, Virgin Australia submits that the Alliance has no bearing on Tiger Airways Australia's ability or incentive to compete in the domestic Australian market or on Tiger Airways Australia's ability to pursue a strategic alliance should it choose to do so. It notes that Tiger Airways Australia is not a part of and will not benefit from the Alliance. It further submits that the Alliance does not change Tiger Airways Australia's incentive to maximise the profitability of its own operations by competing with low fare carriers serving the leisure market (including Jetstar, Strategic and Virgin Australia).³²

Submissions that neither support nor oppose the Alliance

- 3.14. Malaysia Airlines indicates that it is neutral in relation to the applications and has no objections to the proposed Alliance. It submits that it wants to ensure a level playing field but will leave the market analysis to the ACCC.³³
- 3.15. The views of the applicants and interested parties are outlined in the ACCC's evaluation of the Alliance in Chapter 4 of this draft determination. Copies of public submissions may be obtained from the ACCC's website (www.accc.gov.au/AuthorisationsRegister) and following the links to this matter.

²⁹ Department of Infrastructure and Transport, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 5 September 2011

³⁰ Department of Infrastructure and Transport, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 5 September 2011

³¹ Gold Airways Limited, *Submission in relation to the Virgin Australia-Singapore Airlines Applications for Authorisation A91267 & A91268*, 15 August 2011

³² Virgin Australia and Singapore Airlines, *Response to Gold Airways submission*, 1 September 2011

³³ Malaysia Airlines, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 15 July 2011

4. ACCC evaluation

- 4.1. The ACCC's evaluation of the Alliance is in accordance with tests found in:
- section 90(8) of the Act which 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.
 - sections 90(6) and 90(7) of the Act which 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 in the case of section 90(6) would result, or be likely to result, or in the case of section 90(7) has resulted or is likely to result, in a benefit to the public and
 - that benefit, in the case of section 90(6) 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 was given effect to, or in the case of section 90(7) has resulted or is likely to result from giving effect to the provision.
 - sections 90(5A) and 90(5B) of the Act which state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:
 - the provision, in the case of section 90(5A) would result, or be likely to result, or in the case of section 90(5B) has resulted or is likely to result, in a benefit to the public and
 - that benefit, in the case of section 90(5A) 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 were made or given effect to, or in the case of section 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.
- 4.2. For more information about the tests for authorisation and relevant provisions of the Act, please see [Attachment C](#).

The market

- 4.3. The first step in assessing the effect of the conduct for which authorisation is sought is to consider the relevant markets affected by that conduct.
- 4.4. Previously, the ACCC has considered the impact of aviation alliance agreements on competition in the following markets:

- international air passenger transport services, with regard to particular geographic and product segments
- international air freight transport services
- the sale of air passenger transport services and
- Australian domestic air passenger transport services.

International air passenger transport services

- 4.5. Under the Alliance, Virgin Australia and Singapore Airlines will fully cooperate on all aspects of their Australia – Singapore services and any international and domestic connecting routes.

Product dimension

- 4.6. The ACCC has previously distinguished between leisure and business passenger services on long haul routes, including in its 2010 determination in relation to the Qantas and British Airways Joint Services Agreement (JSA determination).³⁴
- 4.7. This approach is based on the view that there are limitations in demand and supply side substitutability which make it appropriate to distinguish between more price sensitive (leisure) passengers and more time sensitive (business) passengers, in particular on long haul routes.
- 4.8. The ACCC understands that leisure travellers are relatively more price sensitive and relatively less concerned about factors such as travel time, flexibility, connectivity, convenience and comfort when compared to business passengers. The ACCC considers that, particularly on long haul routes, these sensitivities generally apply regardless of which cabin a business or leisure passenger chooses to travel in.
- 4.9. The applicants note the ACCC's previous consideration of the product dimension and do not seek to add to or depart from this analysis.
- 4.10. The applicants submit that the ACCC should consider the Alliance in the context of the supply of air passenger transport services to Australian corporate and government customers on the basis that it has distinct distribution channels and pricing. However, they consider that the analysis of public benefits will apply equally irrespective of whether the ACCC considers that corporate and government services are a separate market.³⁵
- 4.11. The ACCC considers that the distinguishing features of leisure and business passenger services may warrant their treatment as separate product markets. However, the ACCC considers that the assessment of public benefits and detriments in this matter is not

³⁴ ACCC, Determination for applications A91195 & A91196 lodged by Qantas & British Airways (2010); ACCC, Determination for applications A91227 & A91228 lodged by Virgin Blue & Air New Zealand (2010); ACCC, Determination for applications A91151-2 & A91172-3 lodged by Virgin Blue & Delta Air Lines (2009); ACCC, Determination for applications A91097 & A91098 lodged by Air New Zealand and Air Canada (2009).

³⁵ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p. 51

affected by whether a single market or separate markets for business and leisure services is adopted.

Geographic dimension

- 4.12. The applicants submit that the Alliance facilitates Virgin Australia's "entry" into the Australia-Asia market as well as enhancing its existing presence in the Australia-UK/Europe market.³⁶
- 4.13. They further submit that there is potential overlap in their existing air transport services in respect of:
- the Australia-UK/Europe market, via different intermediate points. Virgin Australia, through its alliance with Etihad, offers services between Australia and UK/Europe via Etihad's hub in Abu Dhabi, while Singapore Airlines operates services between Australia and UK/Europe via its hub in Singapore; and
 - the Australia-Asia market, in relation to:
 - the Brisbane-Singapore route: Virgin Australia, through its alliance with Etihad, offers three times per week coded services operated by Etihad, while Singapore Airlines offers 19 weekly frequencies;
 - services to Denpasar: Virgin Australia operates a total of 36 weekly frequencies to/from Sydney, Melbourne, Brisbane, Adelaide and Perth, while Singapore Airlines operates three weekly one-stop frequencies from Singapore; and
 - services to Phuket: Virgin Australia operates four weekly frequencies to/from Perth, while SilkAir operates 28 services per week from Singapore.
- 4.14. Air New Zealand refers in its submission to the air travel market between Australia and Asia, but makes no further submission as to the geographic or product elements of this market.³⁷
- 4.15. The ACCC has previously distinguished between short haul and long haul international air passenger transport services, having regard to the country/continental region encapsulating the set of relevant origin and destination points for short haul and long haul operations. For example, when assessing the effects of airline alliances between Qantas and British Airways³⁸ and Virgin Australia and Etihad Airways³⁹, the ACCC distinguished between international air passenger transport services between Australia and UK/Europe (long haul) and services between Australia and Asia (short haul).
- 4.16. In assessing the public benefits and detriments of the Alliance, the ACCC has had regard to the impact of the Alliance on Australia-UK/Europe services and on Australia-Asia services. The ACCC considers that its assessment of the Alliance is not materially

³⁶ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p. 46

³⁷ Air New Zealand, *Submission*, pp. 2-3

³⁸ ACCC, Determination for applications A91195 & A91196 lodged by Qantas & British Airways (2010)

³⁹ ACCC, Determination for applications A91247 & A91248 lodged by Virgin Blue & Etihad Airways (2011)

influenced by whether Australia-UK/Europe services and Australia-Asia services are classified as separate (geographic) markets or different segments of the same (geographic) market.

Conclusion on international air passenger transport services

- 4.17. The ACCC considers that the relevant market(s) are likely to include:
- international air passenger transport services between Australia and UK/Europe and
 - international air passenger transport services between Australia and Asia.

International air freight transport services

- 4.18. The applicants note that the Alliance does not extend to the carriage of freight.
- 4.19. The ACCC accepts that the Alliance, as comprised under the Alliance Framework Agreement and covered agreements, does not extend to freight services. As the Alliance is unlikely to have a direct impact upon this market, the ACCC does not propose to consider it further.

The sale of air passenger transport services

- 4.20. In previous determinations in respect of aviation alliances, the ACCC has recognised a separate market for the sale of air passenger transport services, which includes tickets sold directly by airlines to travellers as well as those sold through indirect channels such as travel agents.
- 4.21. The ACCC has not received any submissions from either the applicants or interested parties which suggest the ACCC should consider the effect of the Alliance on the sale of air passenger transport.
- 4.22. The ACCC considers that the Alliance is likely to have minimal, if any, impact on the market for the sale of air passenger transport services. The ACCC notes there are a range of competitors in this market including travel agencies (online and in shop fronts), direct distribution by other airlines as well as the increasing presence of global internet portals such as Zuji, Expedia and Webjet.
- 4.23. Given the negligible nature of any likely impact, the ACCC proposes not to consider the impact of the Alliance on the sale of air passenger transport services.

Australian domestic air passenger transport services

- 4.24. The ACCC has previously recognised that an international aviation alliance could affect competition in the market for domestic air passenger transport services by directing domestic on-carriage or feeder traffic to a particular carrier, at the expense of the competitive position of other domestic carriers.
- 4.25. The ACCC notes that the Alliance could have such an effect, by directing Singapore Airlines international passengers travelling to/from Australia to Virgin Australia within Australia.

- 4.26. The ACCC also notes that Singapore Airlines has a significant shareholder interest in Tiger Airways Holdings, which is the holding company for Tiger Airways Australia. Tiger Airways Australia competes with Virgin Australia in the Australian domestic air passenger transport services market.
- 4.27. The ACCC considers that the Alliance could affect competition in the market for domestic air passenger transport services if it were to reduce Tiger Airways Australia's incentives to compete with Virgin Australia in Australia.
- 4.28. The ACCC therefore considers it is relevant to consider the impact of the Alliance on the market for domestic air transport services in Australia.

Conclusion on relevant markets

- 4.29. The ACCC considers the relevant areas of competition for the purpose of assessing the impact of the Alliance are:
- international air passenger transport services, notably services between (i) Australia and UK/Europe and (ii) Australia and Asia and
 - domestic air passenger transport services in Australia.

The counterfactual

- 4.30. 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 conduct for which authorisation has been sought.⁴⁰
- 4.31. 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'.
- 4.32. The applicants submit that in the counterfactual:
- they will both continue offering their present services, with their limitations for competing against Qantas for international travel to and from Australia and for corporate and government accounts
 - Virgin Australia would continue to have a gap in its international network and be unable to match the demand for travel to and from Asia
 - they may implement some form of limited cooperation, including interline arrangements and limited codeshare arrangements.
- 4.33. The ACCC considers that without authorisation:

⁴⁰ *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.

- Virgin Australia and Singapore Airlines would be likely to continue to offer their present services
- Virgin Australia would be unlikely to commence operating stand-alone services to Singapore and other destinations serviced by Singapore Airlines on the basis that such services would not be viable without access to behind and beyond connections on favourable terms and feeder traffic
- Singapore Airlines would be unlikely to itself enter the Australian domestic air passenger transport services market and
- Singapore Airlines would be unlikely to enter into an interline, codeshare or other form of partnership with Tiger Airways Australia, given its LCC business model. This is consistent with Singapore Airlines/SilkAir's relationship with Tiger Airways Singapore.

Public benefit

4.34. 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.⁴¹

4.35. Virgin Australia and Singapore Airlines submit the Alliance will deliver public benefits, including:

- enhanced existing products and services, including new online journeys, reciprocal loyalty programs and reciprocal lounge access
- potential new services and frequencies
- building the Virgin Australia international network and promotion of closer competition with Qantas
- stimulation of tourism to Australia, particularly to destinations beyond Australia's main international gateways
- cost savings and efficiencies.

4.36. The ACCC's assessment of the likely public benefits from the proposed conduct follows.

Enhanced products and services

4.37. The public benefits claimed by the applicants under this heading fall into three categories – online connection options, enhanced value added services and potential new routes and frequencies.

⁴¹ *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.

Increased online connection options

- 4.38. The applicants state that the Alliance will provide passengers with the ability to purchase journeys across the entire international and Australia domestic networks offered by the airlines. As such, this will immediately increase the choice of online journey options for passengers.
- 4.39. For Australian consumers, the applicants submit that the Alliance will create new online journeys on either the Virgin Australia or Singapore Airlines code. In some instances, it will create online journeys that were previously unavailable on either of the applicants' code.
- 4.40. Virgin Australia submits that the Alliance will result in increased online journeys for Australian customers to Asian destinations from a range of Australian destinations. Examples of online journeys to Asia on a single code enabled by the Alliance include:
- Canberra – Beijing
 - Gold Coast – Tokyo
 - Hobart – Hanoi
 - Darwin – Singapore
 - Coffs Harbour – Colombo
 - Canberra – Kolkata or Channai or Bangalore
- 4.41. The Alliance will also provide opportunities for Australian customers to book online journeys on Singapore Airlines' code and potentially Virgin Australia's code to destinations in UK/Europe that were previously unavailable on either party's code. Examples of such online journeys include:
- Canberra-Zurich
 - Port Hedland-Copenhagen
- 4.42. The applicants note that the ACCC has previously recognised that the opportunities for online connection are a significant benefit that is valued by consumers.⁴² They further submit that both business and leisure customers value online connections for a number of reasons, including:
- increased convenience
 - likelihood of making a connecting flight if the previous journey sector is delayed and

⁴² Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p. 34 referencing ACCC, Determination for applications A91227 & A91228 lodged by Virgin Blue & Air New Zealand (2010)

- reduced likelihood of luggage being lost.
- 4.43. The ACCC recognises that there are important benefits to consumers from online connections, and notes the significant amount of economic literature that supports this notion.⁴³
- 4.44. The ACCC considers that increased online connection options for consumers are a source of public benefit under the Alliance. These benefits take the form of increased convenience from not having to collect and transfer/hold baggage mid journey, time savings associated with checking into connecting flights and removal of the risk of forfeiting non-refundable fares if the first flight in their journey is delayed.

Enhanced value added services

- 4.45. The applicants submit that customers will benefit from reciprocal frequent flyer and status credits programmes and reciprocal lounge access across the networks of the two Alliance partners.
- 4.46. The applicants state that consumer surveys consistently show that airline satisfaction for consumers is highly tied to the additional services offered by the airlines. These other value added factors have been shown to have a significant impact on consumer satisfaction and preferences when choosing which airline to fly with.
- 4.47. In addition the applicants submit that the ability to earn and burn frequent flyer points and to access lounges are key drivers for corporate and government accounts.
- 4.48. The Department of Infrastructure submits that the cooperation between the applicants in relation to frequent flyer and lounge access should allow Virgin Australia to compete more effectively against its international competitors for business traffic and increase the choice available for the market.⁴⁴
- 4.49. Further, the Queensland Government Aviation Committee considers that the ability of Singapore Airlines passengers to use their frequent flyer points through the Alliance in Australia will benefit tourism in Queensland.⁴⁵
- 4.50. The ACCC acknowledges that aviation alliances that cover reciprocal lounge and loyalty program access can result in public benefits through the increased capacity of passengers of either alliance partner to earn and burn frequent flyer points on each other's flights. The ACCC also accepts that access to the lounges of each partner can increase the airlines' attractiveness to business passengers and that this access can, in certain circumstances, amount to a public benefit.
- 4.51. In this case, the ACCC considers that the public benefits from reciprocal access to loyalty programs are likely to accrue to passengers who prefer to fly with Virgin

⁴³ See for example: Carlton, D, Landes, W and Posner, R 1980, *Benefits and costs of airline mergers: a case study*, Bell Journal of Economics, Vol. 11, pp. 65-83.

⁴⁴ Department of Infrastructure, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 5 September 2011

⁴⁵ Queensland Government Aviation Committee, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 15 July 2011

Australia or Singapore Airlines, who are members of an alliance loyalty program and who value the ability to earn or use frequent flyer points.

- 4.52. The ACCC considers that the Alliance is likely to result in public benefits as a result of the enhanced value added services offered by each airline to passengers.

Potential new routes and frequencies

- 4.53. The applicants expect the Alliance to lead to the introduction of new frequencies and new routes. These benefits would arise from the Alliance increasing traffic feed from the networks of both applicants and opportunities for joint promotion.
- 4.54. The applicants submit that they have not investigated in detail the new routes that may be offered under the Alliance. However, they consider that there may be potential for the introduction of new services,⁴⁶ operated by one of the alliance partners and promoted by both. Further, the Alliance Framework Agreement specifically contemplates that the applicants will jointly examine and commence or expand services, particularly new or direct services.⁴⁷
- 4.55. The ACCC notes that Virgin Australia's Chief Executive Officer recently announced that under the Alliance the airlines may look at "new international routes from northern Australia."⁴⁸
- 4.56. The ACCC has had regard to the information provided by the applicants and considers that the Alliance has the potential to stimulate traffic and thereby increases the likelihood of the applicants introducing new routes and frequencies. This would directly benefit Alliance passengers.

Increased competition in international air passenger transport services markets

- 4.57. The applicants submit that the Alliance will promote competition with Qantas and also other airlines. The applicants consider that the Alliance will enable them to offer a product to corporate and government customers that addresses the key drivers for customer choice in this sector and closely matches Qantas' offer. This will provide more choice for Australian passengers and will stimulate further competition with Qantas.
- 4.58. Air New Zealand considers that Virgin Australia's current network and the absence of sufficient connections to and from Asia mean that it cannot effectively compete with the Qantas/Jetstar Group. Air New Zealand submits that the Alliance would result in Virgin Australia achieving network coverage to and from Asia. Combined with its other alliances, this Alliance would enable Virgin Australia to effectively compete with the Qantas Group for corporate/government clients.⁴⁹

⁴⁶ The applicants have claimed confidentiality over routes considered at the time of submission of the applications for authorisation, see Submission in support of applications for authorisation p. 35

⁴⁷ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p. 35

⁴⁸ *Virgin to take on regional market*, Herald Sun, 24 September 2011, p.77.

⁴⁹ Air New Zealand, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 14 July 2011, p.2

- 4.59. Similarly, Northern Territory Airports submits that the Alliance will give Virgin Australia access to a comprehensive international network that will strengthen it as a domestic competitor. Northern Territory Airports considers that this will be particularly the case in relation to corporate passengers.⁵⁰
- 4.60. The Department of Infrastructure advises that the Alliance is consistent with the Australian Government's aviation policy objectives which are designed to encourage the development of a second Australian international airline capable of competing effectively with other international carriers.⁵¹
- 4.61. Generally the ACCC considers that aviation alliances can stimulate competitive responses amongst rivals in the international air passenger transport services market(s) where the alliance enhances the alliance partners' products and results in lower fares (to the extent that the cost savings and other efficiencies considered below are passed through to customers).
- 4.62. As discussed above, the ACCC accepts that the Alliance is likely to enhance the applicants' product and service offering, particularly through providing Virgin Australia with an ability to offer increased online connections to Asia and providing Singapore Airlines with access to online connections to destinations beyond Australian gateways.
- 4.63. The ACCC recognises that the ability to offer a comprehensive international and domestic network, along with enhanced frequent flyer and lounge products is likely to be attractive to corporate and government passengers. As such, the ACCC considers that the Alliance has the potential to enhance the applicants' prospects of attracting additional corporate and government customers who might otherwise have signed with Qantas.
- 4.64. The ACCC considers that this has the potential to trigger a competitive reaction from Qantas. This may lead to better price and service offerings for Qantas passengers. In turn, Qantas' reaction to the Alliance could stimulate a second round competitive response from the Alliance.
- 4.65. The ACCC concludes that the Alliance has the potential to result in public benefits by stimulating competition between the applicants and Qantas, including in respect of corporate and government passengers.

Cost savings and other efficiencies

- 4.66. The public benefits claimed by the applicants under this heading fall into three categories – cost savings through removal of duplication of services and facilities; improved efficiency through higher load factors; and more competitive fares through the reduction or removal of double marginalisation (see paragraph 4.77).

⁵⁰ Northern Territory Airports,, *Submission in support of the Virgin Australia – Singapore Airlines Alliance*, 2 September 2011, p.2

⁵¹ Department of Infrastructure, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 5 September 2011, p.2

Cost savings through removal of duplication of services and facilities

- 4.67. Virgin Australia submits that through the Alliance it will be able to expand its network without the requirement to undertake large capital expenditure and without the risk of operating stand alone services. It argues that this factor means the Alliance will be more efficient and cost effective.⁵²
- 4.68. The applicants consider that the Alliance creates opportunities to realise efficiencies flowing from joint marketing and distribution arrangements and potential joint airport operations, although they have not yet quantified these efficiencies.⁵³
- 4.69. The ACCC notes that services and facilities which may be shared under an aviation alliance include passenger lounges and ground handling, aircraft operations and support services, IT development and operations (including yield management, reservations and other systems), offices, sales staff and sales distribution.
- 4.70. The ACCC considers that the availability of public benefits in the form of cost savings from removal of duplication of services and facilities will depend on the extent to which costs are duplicated absent the Alliance and avoided under the Alliance.
- 4.71. It is not clear from the information provided by the applicants what, if any, of the proposed shared services and facilities would be duplicated absent the Alliance – bearing in mind that the relevant counterfactual is a world in which the applicants continue offering their present services, not a world in which the applicants proceed to duplicate each other’s networks.
- 4.72. On this basis, the ACCC recognises the potential for public benefits from any removal of duplicated services or facilities under the Alliance but, without further information from the applicants, is unable to conclude that the magnitude of such benefits are likely to be non-trivial.

⁵² Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p.44

⁵³ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, pp.44-45

Improved efficiency through higher load factors⁵⁴

- 4.73. The applicants submit that the enhanced service offerings under the Alliance will result in more passengers on each route.⁵⁵ They refer to their report commissioned from InterVistas, which anticipates a strong passenger response to the improved service available under the Alliance leading to increased traffic for the Alliance and competitors.⁵⁶ This in turn, they submit, will lead to increased load factors and lower operating costs for the Alliance.
- 4.74. The ACCC accepts that efficiencies may be delivered by an aviation alliance where it results in higher load factors which lower the cost per seat sold.
- 4.75. The ACCC has had regard to the information provided by the applicants in support of this claimed public benefit and considers that it may be material, depending on the additional traffic that the Alliance actually stimulates.

Lower fares through the reduction or removal of double marginalisation

- 4.76. The applicants consider that joint fare setting and favourable prorates will enable them to offer more competitive fares and avoid “double profit mark ups” on connecting services.
- 4.77. The ACCC recognises that arrangements between competing airlines (such as code sharing) can involve ‘double marginalisation’, which is a situation that occurs where suppliers of vertically related or complementary products independently charge a price which includes a mark-up over their costs to maximise their individual profits and do not take account of the impact of these prices on demand for the other airline’s services. The net result is higher prices on connecting routes than if the two firms were to coordinate their pricing, for example, through an alliance.⁵⁷
- 4.78. The ACCC considers that prorate agreements of the kind proposed by the applicants can provide airlines with an incentive to offer fares on complementary flights that incorporate a lower margin than the margin embedded in fares under less cooperative agreements. The extent of public benefit arising as a result of a prorate agreement is likely to depend on the proportion of passengers expected under an alliance to purchase onward (complementary) flights, the degree of market power held by the firms in the relevant markets, and the extent to which the parties expect these mark ups will be reduced under an alliance.
- 4.79. In this case, the ACCC considers that the codeshare arrangement under the Alliance is likely to result in a public benefit by reducing or removing double marginalisation. This may result in lower fares on complementary flights.

⁵⁴ Load factors measure the percentage of seats filled on an aircraft on any given route. This is derived from dividing the number of passengers travelled by the number of seats available

⁵⁵ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p.44

⁵⁶ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, pp.34 and 44

⁵⁷ ACCC, Determination for applications A91265 & A91266 lodged by Qantas & American Airlines (2011)

Tourism benefits

- 4.80. The applicants submit that the improved product offered by the Alliance; increased competition in the Australian markets for international travel to and from Australia; and the ability to leverage each others' distribution and marketing strengths in promoting the Alliance's services, will increase overall passenger numbers to Australia.⁵⁸
- 4.81. The applicants submit that the Alliance will enable increased services between destinations throughout Australia and Singapore Airlines' international networks. They submit that in particular the Alliance will increase the ease with which passengers can travel from source markets throughout Asia to destinations within Australia. The applicants contend that this will improve the attractiveness of travel in Australia beyond the major international gateways, having a direct and beneficial impact on Australian tourism.⁵⁹
- 4.82. Further, under the Alliance the applicants state that they will work together to promote travel to Australia internationally, including through the development of an Air Pass product for incoming international tourists. The applicants consider that this will stimulate international travel to Australia.⁶⁰
- 4.83. The Queensland Government Aviation Committee notes the importance of tourism to Queensland's economy, and considers that the Alliance could have a significant benefit to the Queensland tourism industry. The Committee also notes the importance of the Asia market, a market that provides 40.5% of total international expenditure in Queensland. It submits that the Alliance will provide improved access into Queensland and Australia for some of Queensland's major source markets (namely Asia).⁶¹
- 4.84. Tourism WA submits that the Alliance:
- "...will generate greater access for travellers into Australia domestic ports via Virgin Australia for global passengers travelling on Singapore Airlines. Likewise, Australian residents will now have greater and seamless access to global destinations through services on DJ and SQ, via an alliance."⁶²
- 4.85. Both Tourism NT and Northern Territory Airports submit that the Alliance may result in increased tourism to the Northern Territory.⁶³
- 4.86. The ACCC has noted previously that there are a wide range of factors which influence tourism demand and expenditure, including general purchasing power in source

⁵⁸ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p.41

⁵⁹ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p.43

⁶⁰ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p.2

⁶¹ Queensland Government Aviation Committee, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 15 July 2011

⁶² Tourism WA, *Email submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 6 July 2011

⁶³ Northern Territory Airports, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 2 September 2011; and Tourism NT, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 1 September 2011

countries, the relative cost of other destinations, the total cost of visiting Australia and the perceived quality of Australia as a destination.⁶⁴

- 4.87. The ACCC accepts that stimulation of tourism is a potential source of public benefit under the Alliance. The ACCC considers that the Alliance is likely to stimulate tourism by making it easier for travellers to access destinations in Australia beyond the main international gateways.
- 4.88. The ACCC also recognises that the Alliance may stimulate tourism through the synergies of joint rather than separate tourism promotion activity. The ACCC notes Singapore's extensive international presence and its incentive to promote the Alliance's increased network coverage. The ACCC also notes Virgin Australia's incentive to promote any new services, in particular its ability to offer services between Australia and Asia to a range of destinations beyond its current offerings. The ACCC therefore considers the promotion of the increased coverage of both partners' networks may act to stimulate tourism.

ACCC conclusion on public benefits

- 4.89. The ACCC considers that the Alliance is likely to result in material public benefits in the form of:
- enhanced products and services, including increased online connection options, enhanced value added services and potential new routes and frequencies
 - increased competition in international air passenger transport services market(s)
- 4.90. In addition, the ACCC considers that the Alliance may result in some public benefits in the form of:
- cost savings and other efficiencies and
 - potentially, the stimulation of tourism.

Public detriment

- 4.91. 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.⁶⁵
- 4.92. Virgin Australia and Singapore Airlines submit that the Alliance will have significant public benefits and no material detriment.⁶⁶

⁶⁴ ACCC Determination for applications A91097 and A91098 lodged by Air New Zealand Limited and Air Canada, January 2009, page 23.

⁶⁵ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

International air passenger transport services

- 4.93. The applicants submit that they are not close competitors in any of the international air passenger transport services market(s) and that there is minimal overlap between the services operated by Virgin Australia and Singapore Airlines. Further, they submit that, where there is overlap, there is sufficient competition from other carriers such that there will be no substantial lessening of competition following the Alliance.
- 4.94. In assessing whether there is likely to be any public detriment flowing from the Alliance in the market(s) for international air passenger transport services, the ACCC has examined whether the parties have an enhanced ability or incentive to raise fares or reduce capacity or service quality under the Alliance.

Australia – UK/Europe (long-haul) services

- 4.95. The distance between Australia and the UK/Europe require most carriers to stop at an intermediate point to refuel, change crew and service the aircraft. Typically, flights will stop at intermediate points such as Asia or the Middle East. For the year ending December 2010, the highest percentage of traffic between Europe and Australia was via South East Asia (39% of operated seats), followed by New Zealand (22%), North East Asia (17% of operated seats), North America (8% of operated seats), the Pacific Islands (6% of operated seats), the Middle East (6% of operated seats) and Africa and South America (combined 2% of operated seats).⁶⁷
- 4.96. Virgin Australia and Singapore Airlines submit that two or more stop services are unlikely to provide a strong constraint on one stop services.⁶⁸
- 4.97. The applicants submit that they supply services between Australia and the UK/Europe via Abu Dhabi (for Virgin Australia/Etihad) and via Singapore (for Singapore Airlines).
- 4.98. The applicants submit that the Australia-UK/Europe market/segment is characterised by strong competition between a large number of competitors, including:
- end-point carriers⁶⁹ including Qantas/British Airways JSA operating daily flights to London and Frankfurt from over 58 points of origin in Australia; Virgin Atlantic operating daily services between Sydney and London via Hong Kong; Air Austral operating services between Sydney and Paris via Saint Denis Roland Garros airport, Reunion Island

⁶⁶ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p.11

⁶⁷ Estimated share of passengers is based on data for travel from Australia to a particular country destination, rather than a city. In some cases, this will represent all or most of the international traffic from Australia, for example, passenger share for travel to Greece should equate to passenger share for travel to Athens. This data is sourced from Virgin Australia and Singapore Airlines, *Submission in support of applications for authorisation*, p. 94 referencing the Department of Infrastructure, Transport, Regional Development and Local Government, “Statistical Report, Aviation – International Airline Activity 2009-10”, p.15

⁶⁸ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p.50

⁶⁹ End-point carriers are designated carriers of either Australia or the UK/Europe.

- mid-point carriers⁷⁰ such as Emirates, Qatar Airways, Cathay Pacific, Malaysia Airlines, Thai International, AirAsia X, Philippine Airlines, Vietnam Airlines, China Airlines, China Eastern, China Southern and EVA Air.
- 4.99. Interested party submissions did not identify any potential public detriments arising from the Alliance in the Australia-UK/Europe market/segment.
- 4.100. The ACCC notes that Virgin Australia does not offer services between Australia and the UK/Europe on its own aircraft. It is only through its alliance with Etihad that Virgin Australia is able to offer online services to UK/Europe. The ACCC further notes that there is currently minimal overlap⁷¹ and no revenue sharing between Virgin Australia and Etihad. In effect, Virgin Australia is a reseller of Etihad capacity (and vice versa). In this situation, Virgin Australia would likely have relatively limited influence over the price of services delivered on its behalf by Etihad.
- 4.101. Etihad and Singapore Airlines operate overlapping services from Australia to six European destinations (Athens, Frankfurt, London, Moscow, Paris, Munich). Importantly, on each of these six routes there are a number of rival airlines providing a one stop service to/from Australia⁷² (see Attachment D). For example:
- Thai International and Emirates operate a rival one-stop service between Australia and Athens
 - Qantas/British Airways, Thai International, Malaysian Airlines, Emirates, Air China and Cathay Pacific operate a rival one-stop service between Australia and Frankfurt and between Australia and London
 - Thai International, Emirates, Air China and Cathay Pacific operate a rival one-stop service between Australia and Moscow
 - Thai International, Malaysian Airlines, Emirates, Air China, Cathay Pacific, Japan Airlines and China Eastern operate a rival one-stop service between Australia and Paris
 - Thai International, Emirates, Air China and Qatar Airlines operate a rival one-stop service between Australia and Munich.
- 4.102. The ACCC considers that these rival airlines are likely to constrain the ability of the applicants (or Singapore Airlines/SilkAir/Virgin Australia/Etihad under the two alliances) to raise price or reduce service on these routes.

⁷⁰ Mid-points carriers are not designated carriers of either Australia or the UK but offer services under sixth freedom rights from centrally located hubs. Typically, these are Asian or Middle Eastern carriers.

⁷¹ Virgin Australia currently offers Sydney-Abu Dhabi services using its own aircraft three times per week. It also places its code on Etihad flights from Sydney to Abu Dhabi which are operated on a multiple daily basis – see Virgin Australia and Singapore Airlines, *Submission in support of applications for authorisation*, p.60.

⁷² See Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011, Annexure A.

- 4.103. On this basis, the ACCC considers that the Alliance is unlikely to result in any significant anti-competitive detriment in relation to Australia-UK/Europe (long haul) services.

Australia – Asia (short haul) services

- 4.104. The applicants submit the Australia-Asia market is dynamic and characterised by strong competition between a large number of full service carriers as well as budget airlines. They note that there have been recent announcements of intentions by existing carriers to service routes from Australia to South East Asia. For example, Qantas has announced it may develop a full service carrier to be based in Singapore and Malaysia Airlines has announced it will enter the oneworld alliance and is in talks with Qantas about cooperation possibilities in South East Asia.⁷³
- 4.105. The applicants further submit that Asia is an important and growing region for Australian travel, with approximately 45% of all Australian international travel being to Asia.⁷⁴
- 4.106. Air New Zealand submits that there is significant and robust competition in the Australia-Asia market. In its view there are a large number of competitors currently operating daily routes between Australia and Asia. It also considers that new entrants are likely. Air New Zealand concludes that the applicants are unlikely to have any ability to exercise any market power through raising fares or reducing/withholding capacity.⁷⁵
- 4.107. The Department of Infrastructure submits that the Australia – Asia market, specifically between Australia and Singapore, is highly competitive with a range of third country airlines active in the market. The Department’s view is that given the depth of competition on the routes between Australia and Singapore and in light of the policy settings and ASA framework there will not be any anti-competitive impact from the Alliance.⁷⁶
- 4.108. Northern Territory Airports also consider that the Alliance is unlikely to impede effective competition due to the large number of carriers operating between Australia and Asia.⁷⁷
- 4.109. Tourism WA submits that on the basis of the open-skies ASA between Australia and Singapore and the consequent low barriers to entry the Alliance is unlikely to be detrimental to competition on the Australia-Singapore routes.⁷⁸

⁷³ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p. 83

⁷⁴ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p. 83

⁷⁵ Air New Zealand, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 14 July 2011

⁷⁶ Department of Infrastructure and Transport, *Submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 5 September 2011, p.3

⁷⁷ Northern Territory Airports, *Submission in support of the Virgin Australia – Singapore Airlines Alliance*, 2 September 2011, p.2

⁷⁸ Tourism WA, *Email submission in relation to the Virgin Australia – Singapore Airlines Applications for Authorisation A9267 & A91268*, 6 July 2011

- 4.110. The ACCC has examined the likely effects of the Alliance on competition for Australia-Asia (short haul) services having regard to the very limited overlap of the applicants in this market/segment.
- 4.111. The applicants submit that their services will overlap on routes between Australia and three destinations under the Alliance:
- Sydney/Melbourne/Perth/Brisbane/Adelaide – Singapore
 - Sydney/Melbourne/Perth/Brisbane/Adelaide – Denpasar
 - Perth – Phuket

Australia – Singapore

- 4.112. Singapore Airways operates a minimum of 92 non-stop services per week, with an estimated 48% of the passenger share on routes between Australia and Singapore.⁷⁹
- 4.113. There is no overlap between the applicants on routes between Australia and Singapore. The ‘overlap’ arises through online connections by virtue of Virgin Australia’s alliance with Etihad. Under this alliance Virgin Australia is effectively a reseller of Etihad capacity. Etihad operates a minimum of three non-stop services between Australia and Singapore per week, with an estimated 1% of the passenger share on routes between Australia and Singapore.
- 4.114. Other competitors on routes between Australia and Singapore include Qantas/British Airways (28% passenger share), Emirates (7% passenger share), Jetstar (6% passenger share), Tiger Airways Singapore (4% passenger share) and Malaysia Airlines (1% passenger share).
- 4.115. The ACCC considers that these rival airlines are likely to constrain the ability of the Alliance applicants (or Singapore Airlines/SilkAir/Virgin Australia/Etihad under the two alliances) to raise price or reduce service on these routes.
- 4.116. On this basis, the ACCC considers that the Alliance is unlikely to result in any significant anti-competitive detriment in relation to services between Australia and Singapore.

Perth – Phuket

- 4.117. Virgin Australia offers four weekly non-stop frequencies to/from Perth using its own aircraft.
- 4.118. Singapore Airlines/Silk Air operates a minimum of 17 one-stop flights per week with an estimated passenger share of 9%.⁸⁰

⁷⁹ Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011 at Annexure A

⁸⁰ Services to Phuket will comprise only a portion of travel from Australia to Thailand. In the case of travel to Phuket, frequencies for indirect routings via Bangkok have not been included. For example, while Thai Airways offers 4 weekly direct services from Perth to Phuket, travel via Bangkok would be substitutable for many

- 4.119. The ACCC notes that the Singapore Airlines/SilkAir services operate via Singapore. Accordingly, Australian passengers are unlikely to regard Singapore Airlines/SilkAir services as a close substitute to Virgin Australia's non-stop flight between Perth and Phuket, given the difference in travel time and convenience.
- 4.120. Other airlines providing services between Perth and Phuket are:
- Thai International has 38% of passenger share and offers 4 non-stop frequencies per week between Perth and Phuket
 - Jetstar/Jetstar Asia have a combined 15% of passenger share and offer 6 two stop frequencies per week between Perth and Phuket
 - Air Asia/X has 7% of passenger share and offers 7 one stop services between Perth and Phuket
 - Malaysia Airlines has 4% of passenger share and offers 3 one-stop frequencies per week between Perth and Phuket.
- 4.121. On the information before it, the ACCC considers that the Alliance is unlikely to provide the applicants with an ability or incentive to raise fares or reduce capacity or service quality on the route on the grounds that:
- the services offered by Singapore Airlines are one stop and therefore less likely to be considered close substitutes for Virgin Australia's non-stop services between Perth and Phuket
 - there are a number of airlines offering services in competition with the Alliance partners who are likely to constrain the applicants' price and service decisions on the route, particularly Thai International.

Australia – Denpasar

- 4.122. Virgin Australia operates a total of 36 weekly non-stop frequencies from Australia to Denpasar, with an estimated 19% of passenger share.⁸¹
- 4.123. Singapore Airlines/Silk Air operates a minimum of 21 one-stop flights per week via Singapore, to Denpasar with an estimated 6% passenger share.
- 4.124. Other airlines providing services between Australia and Denpasar are:
- Garuda has 24% of passenger share
 - Jetstar has 23% of passenger share and

passengers – see Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011 at Annexure A

⁸¹ Similarly to Phuket, services to Denpasar will comprise only a portion of travel from Australia to Indonesia. In the case of travel to Denpasar, frequencies for indirect routings via Jakarta have not been included – see Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011 at Annexure A

- Air Asia/X has 16% of passenger share.
- 4.125. On the information before it, the ACCC considers that the Alliance is unlikely to provide the applicants with an ability or incentive to raise fares or reduce capacity or service quality on routes between Australia and Denpasar on the grounds that:
- the services offered by Singapore Airlines are one-stop and therefore less likely to be considered by passengers to be close substitutes for Virgin Australia's non-stop services between Australia and Denpasar and
 - there are a number of airlines offering services in competition with the Alliance partners who are likely to constrain the applicant's price and service decisions on routes between Australia and Denpasar.

Conclusion on public detriment in relation to Australia-Asia services

- 4.126. The ACCC considers that on each of the routes of overlap in this market/segment there are competitors who would be able to constrain the Alliance partners (or Singapore Airlines /Silk Air/Virgin Australia/Etihad under the two alliances) in the event that they sought to raise fares or reduce capacity or quality. As such, the ACCC considers that the Alliance is unlikely to result in anti-competitive detriment in the Australia-Asia market/segment.

Domestic air passenger transport services

- 4.127. The applicants submit that under the Alliance, Virgin Australia and Singapore Airlines would not have the ability or incentive to exercise market power in the Australian domestic market given the strong competitive constraint from Qantas/Jetstar.⁸²
- 4.128. The applicants further submit that the competitive effect in this market is positive. They argue that the Alliance will enhance competition between Virgin Australia and the Qantas-Jetstar Group as it will give Virgin Australia the opportunity to match Qantas' network, feeder traffic and distribution strength.
- 4.129. Conversely Gold Airways submits that, as a result of the Alliance, Singapore Airlines may seek to influence Tiger Airways Australia by preventing it from joining an independent alliance or by compelling it not to compete aggressively on particular routes.⁸³
- 4.130. The ACCC notes that Singapore Airlines has a partial ownership stake of 32.84% in Tiger Airways Holdings and has the potential to increase that to 49.1% following a recent Rights Issue. Further, the ACCC notes that three Non-Executive Directors of the Tiger Airways Holdings Board have been nominated by Singapore Airlines.⁸⁴

⁸² Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p. 55

⁸³ Gold Airways, Limited, *Submission in relation to the Virgin Australia-Singapore Airlines Applications for Authorisation A91267 & A91268*, 15 August 2011

⁸⁴ Tiger Airways Holdings, *Annual Report 2011*, pp. 10-11

- 4.131. The ACCC also notes that, following the recent grounding of the Tiger Airways Australia fleet by CASA, a Singapore Airlines' executive (Mr Chin) was appointed to the executive team of Tiger Airways Holdings.
- 4.132. In response to Gold Airways submission and in correspondence explaining the appointment of Mr Chin, the applicants submit that:
- the executive and board of Tiger Airways Holdings are and remain independent of the management of Singapore Airlines and Singapore Airlines' shareholding in Tiger Airways Holdings does not give it any control or influence over Tiger Airways Australia's operations.
 - Singapore Airlines has no management influence over Tiger Airways Australia or Singapore. Further, Singapore Airlines does not have any codeshare, interline or other partnership arrangements with either of the Tiger Airways airlines.⁸⁵
 - the Alliance has no bearing on Tiger Airways Australia's ability or incentive to compete in the domestic Australian market or on its ability to itself pursue a strategic alliance should it choose to do so. The applicants note that Tiger Airways Australia is not a part of and will not benefit from the Alliance. The Alliance does not change Tiger Airways Australia's incentive to maximise the profitability of its own operations by competing with low fare carriers serving the leisure market (including Jetstar, Strategic and Virgin Australia).⁸⁶
- 4.133. Virgin Australia explains that under the Alliance the scope of its information sharing with Singapore Airlines will be limited to the following circumstances and this sharing will not, in its view, pose a risk to its business:
- Virgin Australia and Singapore Airlines will share information to the extent necessary to enable cooperation in relation to the areas of authorised conduct, including: corporate accounts, pricing and scheduling of services, new services, frequent flyer and lounge services, joint purchasing and any other areas of cooperation contemplated by under the Alliance.
 - The extent of information sharing will be similar to the type of information shared between Virgin Australia and its other alliance partners: Delta, Etihad Airways and Air New Zealand. Virgin Australia submits that information sharing is necessary in order to achieve cooperation and the alliance objectives.
 - However, Virgin Australia submits that it is in its commercial interest to ensure that information shared under any alliance agreement is treated carefully and quarantined from any competitors of Virgin Australia, via confidentiality and other information sharing protocols. Virgin Australia will take the necessary steps to ensure that information shared with Singapore Airlines is treated appropriately.⁸⁷

⁸⁵ Virgin Australia and Singapore Airlines, *Submission in support of the Application for Authorisation of the Alliance between Virgin Australia Group and Singapore Airlines*, 20 June 2011, p. 55

⁸⁶ Virgin Australia and Singapore Airlines, *Further supplementary submission in relation to applications for authorisation responding to Gold Airways and Tiger Airways rights issue*, 1 September 2011, p. 1 accessible at <http://www.accc.gov.au/content/index.phtml/itemId/993958/fromItemId/278039/display/submission>

⁸⁷ Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011

- 4.134. The ACCC considers that Virgin Australia is in the best position to assess and manage the risk to its business associated with information sharing under the Alliance.
- 4.135. Accordingly, the central issue for the ACCC is whether the applicants (directly or by virtue of their ownership interest in another airline) have an enhanced ability or incentive to raise fares or reduce service in the Australian domestic air passenger transport services market under the Alliance.
- 4.136. One way that an international airline alliance could lessen competition for domestic air passenger services is if it directs domestic on-carriage or feeder traffic to a particular carrier (in this case Virgin Australia) at the expense of the competitive position of other domestic carriers.
- 4.137. On the basis of information currently available, the ACCC considers that the Alliance is unlikely to significantly undermine the competitive position of other domestic carriers. In particular, the ACCC notes:
- the volume of passengers that would constitute additional feeder traffic for Virgin Australia would be limited to passengers travelling as part of an online connection on an international Alliance flight.
 - international Alliance passengers travelling to/beyond Australian gateways may opt to purchase the domestic leg of their journey separately from a domestic carrier other than Virgin Australia (e.g. Qantas/Jetstar, Strategic Airlines, Tiger Airways Australia)
 - Qantas/Jetstar is present on the majority (55) of the 63 domestic routes served by Virgin Australia and has a similar feeder traffic arrangement under its joint service agreement with British Airways.
- 4.138. Another way that an international airline alliance could lessen competition for domestic air passenger services is if it were to increase the payoff to one of the alliance partners (in this case Singapore Airlines) from leveraging its shareholder interest in another airline (in this case Tiger Airways Holdings) to influence the price and ensure that its domestic carrier (Tiger Airways Australia) competes less vigorously with the alliance partner.
- 4.139. The ACCC considers that the Alliance is unlikely to lessen Tiger Airways Australia's incentive to vigorously compete in the Australian domestic air passenger transport services market on the grounds that:
- Tiger Airways Australia operates under a low-fare, low-cost business model and does not have an interline, codeshare or other form of partnership with Singapore Airlines. The ACCC accepts that this situation is likely to continue, with or without the Alliance.
 - Consistent with this business model, Tiger Airways Australia primarily targets price sensitive domestic leisure travellers.

- The proportion of Tiger Airways Australia passengers that connect to/from an international flight, let alone a Singapore Airways international flight, is likely very low.
 - When Tiger Airways Australia offers discounted fares it is more likely to attract Qantas/Jetstar and Virgin Australia domestic (rather than Alliance) passengers.
 - Under these conditions it is unlikely to be profit maximising for either Tiger Airways Australia or Singapore Airlines (its largest shareholder) to have Tiger Airways Australia competing less vigorously in the domestic market under the Alliance.
- 4.140. The ACCC also notes that at this stage, the applicants do not intend to share revenue. Without revenue sharing it is less likely that the alliance would materially alter the payoff to Singapore Airlines from influencing Tiger Airways Australia to compete less vigorously in the domestic market.
- 4.141. The ACCC also considers that it is unlikely that the Alliance would enhance the likelihood of Virgin Australia, Tiger Airways Australia and other domestic carriers coordinating their pricing, output or related commercial decisions in the domestic market. The ACCC considers that asymmetries in the competitive position of the various carriers (e.g. different market shares, product offering and cost structures) tend to undermine or constrain coordination in this market with or without the Alliance.
- 4.142. On this basis, the ACCC considers that the Alliance is unlikely to result in anti-competitive detriment in the domestic air passenger transport services market.

ACCC conclusion on public detriments

- 4.143. The ACCC considers that the Alliance is unlikely to result in any significant anti-competitive detriments in the market(s) for international air passenger transport services, in light of the limited overlap between the airlines and the presence of a number of major competitors on the overlap routes.
- 4.144. The ACCC also considers that the Alliance is unlikely to result in any significant anti-competitive detriments in the market for domestic air passenger transport services in Australia, in the absence of any clear evidence that the Alliance would undermine the competitive position of other carriers or lessen the incentives of Tiger Airways Australia to compete vigorously in that market.

Balance of public benefit and detriment

- 4.145. In general, the ACCC may only grant authorisation if it is satisfied that, in all the circumstances, the Alliance is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment.

4.146. In the context of applying the net public benefit test in section 90(8)⁸⁸ of the Act, the Tribunal commented that:

... something more than a negligible benefit is required before the power to grant authorisation can be exercised.⁸⁹

4.147. For the reasons outlined in this chapter the ACCC considers that the Alliance is likely to result material public benefits in the form of:

- enhanced products and services, including increased online connection options, enhanced value added services and potential new routes and frequencies
- increased competition in international air passenger transport services market(s)

and some public benefits in the form of:

- cost savings and other efficiencies and
- potentially, the stimulation of tourism.

4.148. The ACCC considers that the Alliance is unlikely to result in any significant anti-competitive detriments in the market(s) for international air passenger transport services or domestic air passenger transport services.

4.149. Accordingly, the ACCC considers the public benefit that is likely to result from the conduct is likely to outweigh the public detriment. The ACCC is therefore satisfied that the tests in sections 90(6), 90(7), 90(5A) and 90(5B) are met.

Length of authorisation

4.150. The Act allows the ACCC to grant authorisation for a limited period of time.⁹⁰ 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.

4.151. In this instance, Virgin Australia and Singapore Airlines seek authorisation for the Initial Term of the Alliance Framework Agreement (which is 10 years from 6 June 2011) or no less than five years from the granting of the authorisation.

4.152. None of the interested party submissions dealt specifically with the length of authorisation requested.

4.153. As set out above, the ACCC considers that the Alliance is likely to result in a number of public benefits and little public detriment. On this basis, the ACCC considers it appropriate to grant authorisation for the Alliance for five years.

⁸⁸ 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.

⁸⁹ *Re Application by Michael Jools, President of the NSW Taxi Drivers Association* [2006] ACompT 5 at paragraph 22.

⁹⁰ Section 91(1).

Variations to the Alliance

- 4.154. The ACCC notes that any amendments to the Alliance during the proposed term of this authorisation would not be covered by the proposed authorisation.

5. Draft determination

The application

- 5.1. On 20 June 2011 Virgin Australia and Singapore Airlines lodged applications for authorisation A91267 & A91268 with the Australian Competition and Consumer Commission (the ACCC).
- 5.2. Applications A91267 was made using Form A, Schedule 1, of the Competition and Consumer Regulations 2010. The application was made under subsection 88(1A) 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.
 - make and give effect to a provision of a contact, arrangement or understanding, a provision of which is, or may be, a cartel provision and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- 5.3. Application A91268 was made using Form B, Schedule 1, of the Competition and Consumer Regulations 2010. The application was made under subsections 88(1A) and 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.
 - make and give effect to a contract or arrangement, or arrive at an understanding a provision of which would be, or might be, a cartel provision (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- 5.4. In particular, Virgin Australia and Singapore Airlines seek authorisation for an integrated network alliance.
- 5.5. Section 90A(1) requires that before determining an application for authorisation the ACCC shall prepare a draft determination.

The net public benefit test

- 5.6. For the reasons outlined in Chapter 4 of this draft determination, the ACCC considers that the relevant statutory tests have been met. Particularly,
- in all the circumstances the conduct for which authorisation is sought is likely to result in a public benefit and that benefit would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct.

- the conduct for which authorisation is sought is likely to result in such a benefit to the public that the conduct should be allowed.

5.7. The ACCC therefore **proposes to grant** authorisation to applications A91267 and A91268.

Conduct for which the ACCC proposes to grant authorisation

- 5.8. The ACCC proposes to grant authorisation to Virgin Australia and Singapore Airlines to make and give effect to the Alliance Framework Agreement and associated agreements, including the codeshare agreements, reciprocal frequent flyer and lounge agreements and a special prorated agreement for five years.
- 5.9. Further, the proposed authorisation is in respect of the Alliance Framework Agreement and the related agreements as they stand at the time authorisation is granted. Any changes to these agreements during the term of the proposed authorisation would not be covered by the proposed authorisation.
- 5.10. This draft determination is made on 13 October 2011.
- 5.11. The attachments to this determination are part of the draft determination.

Conduct not authorised

- 5.12. The authorisation does not extend to Virgin Australia and Singapore Airlines to revenue share under the Alliance.

Further submissions

- 5.13. 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.

Attachment A — the authorisation process

The Australian Competition and Consumer Commission (the ACCC) is the independent Australian Government agency responsible for administering the *Competition and Consumer Act 2010* (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.

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 anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.

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.

After considering submissions, the ACCC issues a draft determination proposing to either grant the application or deny the application.

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.

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.

Attachment B — chronology of ACCC assessment for applications A91267 & A19128

The following table provides a chronology of significant dates in the consideration of the application by Virgin Australia and Singapore Airlines.

DATE	ACTION
20 June 2011	Application for authorisation lodged with the ACCC.
24 June 2011	Applicant provides revised public register version of supporting submission
24 June 2011	Public consultation begins
15 July 2011	Closing date for submissions from interested parties in relation to the substantive application for authorisation.
13 October 2011	Draft determination issued.

Attachment C — the tests for authorisation and other relevant provisions of the Act

Competition and Consumer Act 2010

Section 90—Determination of applications for authorisations

- (1) The Commission shall, in respect of an application for an authorization:
 - (a) make a determination in writing granting such authorization as it considers appropriate; or
 - (b) make a determination in writing dismissing the application.
- (2) The Commission shall take into account any submissions in relation to the application made to it by the applicant, by the Commonwealth, by a State or by any other person.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.
- (4) The Commission shall state in writing its reasons for a determination made by it.
- (5) Before making a determination in respect of an application for an authorization the Commission shall comply with the requirements of section 90A.

Note: Alternatively, the Commission may rely on consultations undertaken by the AEMC: see section 90B.
- (5A) The Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a proposed contract, arrangement or understanding that would be, or might be, a cartel provision, unless the Commission is satisfied in all the circumstances:
 - (a) that the provision would result, or be likely to result, in a benefit to the public; and
 - (b) that the benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:
 - (i) the proposed contract or arrangement were made, or the proposed understanding were arrived at; and
 - (ii) the provision were given effect to.
- (5B) The Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a contract, arrangement or understanding that is or may be a cartel provision, unless the Commission is satisfied in all the circumstances:
 - (a) that the provision has resulted, or is likely to result, in a benefit to the public; and
 - (b) that the benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision.
- (6) The Commission shall not make a determination granting an authorization under subsection 88(1), (5) or (8) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct (other than conduct to which subsection 47(6) or (7) applies), unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to

the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:

- (a) the proposed contract or arrangement were made, or the proposed understanding were arrived at, and the provision concerned were given effect to;
- (b) the proposed covenant were given, and were complied with; or
- (c) the proposed conduct were engaged in;

as the case may be.

(7) The Commission shall not make a determination granting an authorization under subsection 88(1) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant.

(8) The Commission shall not:

- (a) make a determination granting:
 - (i) an authorization under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
 - (ii) an authorization under subsection 88(7) or (7A) in respect of proposed conduct; or
 - (iii) an authorization under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
 - (iv) an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- (b) make a determination granting an authorization under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.

(9) The Commission shall not make a determination granting an authorization under subsection 88(9) in respect of a proposed acquisition of shares in the capital of a body corporate or of assets of a person or in respect of the acquisition of a controlling interest in a body corporate within the meaning of section 50A unless it is satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to take place.

(9A) In determining what amounts to a benefit to the public for the purposes of subsection (9):

- (a) the Commission must regard the following as benefits to the public (in addition to any other benefits to the public that may exist apart from this paragraph):
 - (i) a significant increase in the real value of exports;

- (ii) a significant substitution of domestic products for imported goods; and
- (b) without limiting the matters that may be taken into account, the Commission must take into account all other relevant matters that relate to the international competitiveness of any Australian industry.

Variation in the language of the tests

There is some variation in the language in the Act, particularly between the tests in sections 90(6) and 90(8).

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.⁹¹

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.⁹²

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.

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). Further, as the wording in sections 90(5A) and 90(5B) is similar, this approach will also be applied in the test for conduct that may be a cartel provision.

Conditions

The Act allows the ACCC to grant authorisation subject to conditions.⁹³

Future and other parties

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 future⁹⁴

⁹¹ *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.

⁹² *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.

⁹³ Section 91(3).

- persons named in the authorisation as being a party or a proposed party to the contract, arrangement or understanding.⁹⁵

Six- month time limit

A six-month time limit applies to the ACCC's consideration of new applications for authorisation⁹⁶. It does not apply to applications for revocation, revocation and substitution, or minor variation. The six-month period can be extended by up to a further six months in certain circumstances.

Minor variation

A person to whom an authorisation has been granted (or a person on their behalf) may apply to the ACCC for a minor variation to the authorisation.⁹⁷ The Act limits applications for minor variation to applications for:

... a single variation that does not involve a material change in the effect of the authorisation.⁹⁸

When assessing applications for minor variation, the ACCC must be satisfied that:

- the proposed variation satisfies the definition of a 'minor variation' and
- if the proposed variation is minor, the ACCC must assess whether it results in any reduction to the net benefit of the conduct.

Revocation; revocation and substitution

A person to whom an authorisation has been granted may request that the ACCC revoke the authorisation.⁹⁹ The ACCC may also review an authorisation with a view to revoking it in certain circumstances.¹⁰⁰

⁹⁴ Section 88(10).

⁹⁵ Section 88(6).

⁹⁶ Section 90(10A)

⁹⁷ Subsection 91A(1)

⁹⁸ Subsection 87ZD(1).

⁹⁹ Subsection 91B(1)

¹⁰⁰ Subsection 91B(3)

The holder of an authorisation may apply to the ACCC to revoke the authorisation and substitute a new authorisation in its place.¹⁰¹ The ACCC may also review an authorisation with a view to revoking it and substituting a new authorisation in its place in certain circumstances.¹⁰²

¹⁰¹ Subsection 91C(1)

¹⁰² Subsection 91C(3)

Attachment D — overlap routes

Australia to Athens

There are five major operating carriers on this route. Table D1 below shows the number of flights operated by the major competitors and their estimated share of passengers.¹⁰³

Table D1 Operating carriers and frequency on the route¹⁰⁴

City pairs	Operating carrier	Route			Frequencies (pw)	Estimated share of Pax on route (country level)
		Non-stop	1 stop	2 stop	Min freq	
SYD/MEL /BNE/PER /ADL- ATH	Qantas/BA	-	-	AU-SIN-LHR-ATH	28	6%
		-	-	AU-BKK-LHR-ATH	13	
		-	-	AU-HKG-LHR-ATH	21	
	Thai International	-	AU-BKK-ATH	AU-HKT-BKK-ATH	3	13%
	Emirates	-	AU-DXB-ATH	AU-SIN-DXB-ATH	7	27%
		-	-	AU-KUL-DXB-ATH	7	
		-	-	AU-BKK-DXB-ATH	7	
	Etihad	-	AU-AUH-ATH	AU-SIN-AUH-ATH	7	19%
	Singapore Airlines	-	AU-SIN-ATH	-	3	21%

¹⁰³ Estimated share of passengers is based on data for travel from Australia to a particular country destination, rather than a city. In some cases, this will represent all or most of the international traffic from Australia, for example, passenger share for travel to Greece should equate to passenger share for travel to Athens. This data is sourced from Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011 at Annexure A

¹⁰⁴ Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011 at Annexure A

Australia to Frankfurt

There are eight major operating carriers on this route. Table D2 below shows the number of flights operated by the major competitors and their estimated share of passengers.¹⁰⁵

Table D2 Operating carriers and frequency on the route¹⁰⁶

City pairs	Operating carrier	Route			Frequencies (pw)	Estimated share of Pax on route (country level)
		Non-stop	1 stop	2 stop	Min freq	
SYD/MEL /BNE/PER /ADL-FRA	Qantas/BA	-	AU-SIN-FRA	AU-SIN-LHR-FRA	7	31%
		-	-	AU-BKK-LHR-FRA	12	
		-	-	AU-HKG-LHR-FRA	21	
	Thai International	-	AU-BKK-FRA	AU-HKT-BKK-FRA	14	5%
	Malaysia Airlines	-	AU-KUL-FRA	-	5	4%
	Emirates	-	AU-DXB-FRA	AU-SIN-DXB-FRA	14	19%
		-	-	AU-KUL-DXB-FRA	7	
		-	-	AU-BKK-DXB-FRA	7	
	Etihad	-	AU-AUH-FRA	AU-SIN-AUH-FRA	14	4%
	Singapore Airlines	-	AU-SIN-FRA	-	14	12%
	Air China	-	AU-PVG-FRA	AU-PVG-PEK-FRA	7	1%
	Cathay Pacific	-	AU-HKG-FRA	AU-CNS-HKG-FRA	7	4%
-		-	AU-ADL-HKG-FRA	7		

¹⁰⁵ See note 103 above

¹⁰⁶ Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011 at Annexure A.

Australia to London

There are eight major operating carriers on this route. Table D3 below shows the number of flights operated by the major competitors and their estimated share of passengers.¹⁰⁷

Table D3 Operating carriers and frequency on the route¹⁰⁸

City pairs	Operating carrier	Route			Frequencies (pw)	Estimated share of Pax on route (country level)
		Non-stop	1 stop	2 stop	Min freq	
SYD/MEL /BNE/PER /ADL- LHR	Qantas/BA	-	AU-SIN-LHR	-	28	32%
		-	AU-BKK-LHR	-	13	
		-	AU-HKG-LHR	-	21	
	Thai International	-	AU-BKK-LHR	AU-HKT-BKK-LHR	14	2%
	Malaysia Airlines	-	AU-KUL-LHR	-	14	6%
	Emirates	-	AU-DXB-LHR	AU-SIN-DXB-LHR	35	19%
		-	-	AU-KUL-DXB-LHR	7	
		-	-	AU-BKK-DXB-LHR	7	
	Etihad	-	AU-AUH-LHR	AU-SIN-AUH-LHR	18	4%
	Singapore Airlines	-	AU-SIN-LHR	-	21	12%
	Air China	-	AU-PEK-LHR	AU-PVG-PEK-LHR	5	0.3%
	Cathay Pacific	-	AU-HKG-LHR	AU-CNS-HKG-LHR	28	6%
-		-	AU-ADL-HKG-LHR	7		

¹⁰⁷ See note 103 above

¹⁰⁸ Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011 at Annexure A.

Australia to Moscow

There are eight major operating carriers on this route. Table D4 below shows the number of flights operated by the major competitors and their estimated share of passengers.¹⁰⁹

Table D4 Operating carriers and frequency on the route¹¹⁰

City pairs	Operating carrier	Route			Frequencies (pw)	Estimated share of Pax on route (country level)
		Non-stop	1 stop	2 stop	Min freq	
SYD/MEL /BNE/PER /ADL- DME	Thai International	-	AU-BKK-DME	AU-HKT-BKK-DME	3	4%
	Emirates	-	AU-DXB-DME	AU-SIN-DXB-DME	14	20%
		-	-	AU-KUL-DXB-DME	7	
		-	-	AU-BKK-DXB-DME	7	
	Etihad	-	AU-AUH-DME	AU-SIN-AUH-DME	7	9%
	Singapore Airlines	-	AU-SIN-DME	-	7	15%
	Air China	-	Nil DME flights	-	0	6%
	Cathay Pacific	-	AU-HKG-DME	AU-CNS-HKG-DME	3	10%
-		-	AU-ADL-HKG-DME	3		

Australia to Paris

There are eight major operating carriers on this route. Table D5 below shows the number of flights operated by the major competitors and their estimated share of passengers.¹¹¹

Table D5 Operating carriers and frequency on the route¹¹²

City pairs	Operating carrier	Route			Frequencies (pw)	Estimated share of Pax on route (country level)
		Non-stop	1 stop	2 stop	Min freq	
SYD/MEL /BNE/PER /ADL- CDG	Qantas/BA	-	-	AU-SIN-LHR-CDG	28	27%
		-	-	AU-BKK-LHR-CDG	13	
		-	-	AU-HKG-LHR-CDG	21	

¹⁰⁹ See note 103 above

¹¹⁰ Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011 at Annexure A

¹¹¹ See note 103 above

¹¹² Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011 at Annexure A

	Thai International	-	AU-BKK-CDG	AU-HKT-BKK-CDG	10	3%
	Malaysia Airlines	-	AU-KUL-CDG	-	7	6%
	Emirates	-	AU-DXB-CDG	AU-SIN-DXB-CDG	14	19%
		-	-	AU-KUL-DXB-CDG	7	
		-	-	AU-BKK-DXB-CDG	7	
	Etihad	-	AU-AUH-CDG	AU-SIN-AUH-CDG	14	5%
	Singapore Airlines	-	AU-SIN-CDG	-	7	12%
	Air China	-	AU-PEK-CDG	AU-PVG-PEK-CDG	7	0.7%
	Cathay Pacific	-	AU-HKG-CDG	AU-CNS-HKG-CDG	10	7%
		-	-	AU-ADL-HKG-CDG	7	
		-	-	AU-HKG-AMS-CDG	10	
	Japan Airlines	-	AU-NRT-CDG	-	7	0.2%
	China Eastern	-	AU-PVG-CDG	-	10	0.6%

Australia to Munich

There are eight major operating carriers on this route. Table D6 below shows the number of flights operated by the major competitors and their estimated share of passengers.¹¹³

Table D6 Operating carriers and frequency on the route¹¹⁴

City pairs	Operating carrier	Route			Frequencies (pw)	Estimated share of Pax on route (country level)
		Non-stop	1 stop	2 stop	Min freq	
SYD/MEL /BNE/PER /ADL-MUC	Qantas/BA	-	-	AU-SIN-LHR-MUC	28	31%
		-	-	AU-BKK-LHR-MUC	13	
		-	-	AU-HKG-LHR-MUC	21	
	Thai International	-	AU-BKK-MUC	AU-HKT-BKK-MUC	7	5%

¹¹³ See note 103 above

¹¹⁴ Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011 at Annexure A

	Emirates	-	AU-DXB-MUC	AU-SIN-DXB-MUC	14	19%
		-	-	AU-KUL-DXB-MUC	7	
		-	-	AU-BKK-DXB-MUC	7	
	Etihad	-	AU-AUH-MUC	AU-SIN-AUH-MUC	7	4%
	Singapore Airlines	-	AU-SIN-MUC	-	7	12%
	Air China	-	AU-PEK-MUC	AU-PVG-PEK-MUC	5	1%
	Qatar	-	AU-DOH-MUC	-	7	2%
	Lufthansa	-	-	-	-	0%

Australia to Singapore

There are seven operating carriers on this route. Table D7 below shows the number of flights operated these carriers and their estimated share of passengers.¹¹⁵

Table D7 Operating carriers and frequency on the route¹¹⁶

City pairs	Operating carrier	Route			Frequencies (pw)	Estimated share of Pax on route (country level)
		Non-stop	1 stop	2 stop	Min freq	
SYD/MEL /BNE/PER /ADL- SIN	Qantas/BA	AU-SIN	-	-	51	28%
	Malaysia Airlines	-	AU-KUL-SIN	-	47	1%
	Emirates	AU-SIN	-	-	14	7%
	Etihad	AU-SIN	-	-	3	1%
	Singapore Airlines	AU-SIN	-	-	92	48%
	Tiger Airways Singapore	AU-SIN	-	-	7	4%
	Jetstar	AU-SIN	AU-CGK-SIN	-	7	6%
	-	AU-DPS-SIN	-	4		

¹¹⁵ See note 103 above

¹¹⁶ Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011 at Annexure A

Perth – Phuket

There are seven operating carriers on this route. Table D8 below shows the number of flights operated these carriers and their estimated share of passengers ¹¹⁷

Table D8 Operating carriers and frequency on the route¹¹⁸

City pairs	Operating carrier	Route			Frequencies (pw)	Estimated share of Pax on route (country level)
		Non-stop	1 stop	2 stop	Min freq	
PER-HKT	Pacific Blue	PER-HKT	-	-	4	3%
	Thai International	PER-HKT	PER-BKK-HKT	-	4	38%
	Malaysia Airlines	-	PER-KUL-HKT	-	3	4%
	Singapore Airlines/Silk	-	PER-SIN-HKT	-	17	9%
	Tiger Airways Singapore	-	PER-SIN-HKT	-	7	1%
	Jetstar / Jetstar Asia	-	-	PER-CGK-SIN-HKT	2	15%
		-	-	PER-DPS-SIN-HKT	4	
Air Asia / X	-	PER-KUL-HKT	-	7	7%	

¹¹⁷ Services to Denpasar and to Phuket will comprise only a portion of travel from Australia to Indonesia and Thailand respectively. In the case of travel to Phuket and to Denpasar, frequencies for indirect routings via Bangkok and Jakarta have not been included. For example, while Thai Airways offers 4 weekly direct services from Perth to Phuket, travel via Bangkok would be substitutable for many passengers – see Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011 at Annexure A

¹¹⁸ Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011 at Annexure A

Australia – Denpasar

There are five operating carriers on this route. Table D9 below shows the number of flights operated these carriers and their estimated share of passengers.¹¹⁹

Table D9 Operating carriers and frequency on the route¹²⁰

City pairs	Operating carrier	Route			Frequencies (pw)	Estimated share of Pax on route (country level)
		Non-stop	1 stop	2 stop	Min freq	
SYD/MEL /BNE/PER /ADL – DPS	Pacific Blue	AU-DPS	-	-	36	19%
	Jetstar	AU-DPS	-	-	19	23%
	Garuda	AU-DPS	-	-	31	24%
	Air Asia / X	AU-DPS	-	-	28	16%
	Singapore Airlines/Silk	-	AU-SIN-DPS	-	21	6%

¹¹⁹ See note 117 above

¹²⁰ Virgin Australia and Singapore Airlines, *Response to request for information*, 13 September 2011 at Annexure A