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Mark Basile
Australian Competition and Consumer Commission
By email - Mark.Basile@accc.gov.au

Dear Mr Basile

QANTAS AIRWAYS LIMITED AND JETSTAR AIRWAYS PTY LTD - APPLICATIONS FOR AUTHORISATION A91314 & A91315

We refer to the letter from the Australian Competition and Consumer Commission (ACCC) dated 5 July 2012. This letter invited Cathay Pacific Airways Limited (**Cathay**) to make a submission in order to assist the ACCC to assess the application by Qantas Airways Limited (**Qantas**) and Jetstar Airways Pty Ltd (**Jetstar**) for authorisation (**Application**).

In response to the ACCC's invitation and in order to assist the ACCC, Cathay suggests below a number of questions and issues that may be useful to consider when assessing the Application.

Parties to the proposed conduct

- 1 What are the reasons for including Qantas as a party to the Application? The supporting submission to the Application suggests any anti-competitive effects of the proposed conduct are compensated for by the stimulatory effect of Low Cost Carriers (LCCs), including the competitive reaction they may elicit from Full Service Airlines (FSAs). Given this, Cathay is uncertain of the reasons for including Qantas in the proposed conduct, what anticompetitive conduct is to be engaged in, and what benefit Australian consumers obtain from including Qantas in the proposed conduct.

The proposed conduct

- 2 Are further details available about what exactly the proposed conduct involves and who the parties are to the proposed conduct? To make a reasonably certain decision, the ACCC needs to be certain of the parties and conduct involved. In this regard, there are a number of matters which would benefit from further clarity, including:

- 2.1 *The parties to the proposed conduct* - The identity of the relevant parties, and the terms of their relationship, are clear in relation to the Jetstar Asia, Jetstar Pacific and Jetstar Japan entities. However, there are currently no details on the identity of the future FSA joint venture partners in other countries. Further, the terms of the partnership between Jetstar and China Eastern Airlines in Hong Kong are not yet finalised. Given this, is it preferable for the ACCC to

consider each joint venture after it is formed, when precise details are available regarding the identity of the parties to the proposed conduct and the terms of the relationship between those parties?

- 2.2 *What the proposed conduct involves* - The Application contains broad statements about what the proposed conduct involves. However, could further details be provided, including the planned routes of each Jetstar joint venture entity, what overlap of services would be expected both with and without the conduct and how the coordination would occur in practice? Such details would assist in assessing the likely effect of the proposed conduct.
- 2.3 *The relevant regulatory arrangements* - A number of regulatory arrangements relevant to the proposed conduct are not yet finalised. For example, Jetstar Hong Kong does not yet have regulatory approval to operate in Hong Kong and it is unlikely that a decision will be available until some way through 2013. This is well after the period in which the ACCC expects to deliver its final determination in this matter. It is also possible that conditions may be imposed on any approval given in Hong Kong. Accordingly, it may be difficult for the ACCC to authorise the proposed conduct in relation to Hong Kong if it is unclear whether Jetstar will be granted approval to operate flights within Hong Kong and, if it is granted approval, what the conditions of that approval may be. This is equally applicable to the future Jetstar joint venture entities. Given this, is it preferable for the ACCC to consider each joint venture after the regulatory arrangements relevant to each country have been finalised?

The extent of overlapping services

- 3 Are further details available regarding the overlapping of services that would be expected with and without the proposed conduct? In explaining the need for regulatory approval in paragraph 5.18 of the supporting submission, the applicants state that there will be some actual or potential overlapping routes between some of the relevant parties. However, few further details are provided in the submission, including in relation to actual and potential overlapping on routes to and from Australia. In particular:
- 3.1 The applicants appear to provide details on only some of the current / actual overlapping routes. The applicants state in paragraph 6.7 of the supporting submission that there is no actual overlap between the services offered by Jetstar Japan and Jetstar Hong Kong and each of Qantas, Jetstar Airways and Jetstar Asia. However, the applicants do not discuss whether there is overlap between the routes of Jetstar Pacific and the other parties to the proposed conduct. Also, the extent of current / actual overlap with the FSAs that may partner with Jetstar in future in other countries cannot be ascertained because the identity of those FSAs is presently unknown. This makes it difficult to comment on the lessening of competition, if any, that results from the proposed conduct (and, in turn, to comment on whether the proposed conduct should be authorised).
- 3.2 The applicants do not discuss the potential for overlapping routes between the parties. For example, the applicants state that there is no current overlap

between the services offered by Jetstar Japan and Jetstar Hong Kong and each of Qantas, Jetstar Airways and Jetstar Asia. However, the applicants do not appear to consider the potential for overlap between these parties in the future. For example, could Jetstar Japan and Jetstar Hong Kong buy or lease planes that could reach Australia? Does the Jetstar Group have, or have on order, aircraft capable of reaching Australia that could be allocated to Jetstar Japan or Jetstar Hong Kong? If so, how long would it take them to do this? Also, the applicants do not specify the potential overlaps in schedules that are or will be removed due to the proposed conduct.

- 3.3 The nature of the applicants' statement at paragraph 6.7 of the supporting submission that Jetstar Hong Kong's and Jetstar Japan's aircrafts will not have the range capability to reach Australia is unclear. If this assertion is material to the consideration of the Application, then what certainty does the ACCC have that this position will occur and will remain the position into the future? Do the applicants intend to provide this to the ACCC as an undertaking?

Public Benefits

- 4 Have the applicants provided sufficient bases for their claimed public benefits? In particular, have they presented a sufficiently vigorous analysis of whether the public benefits are a consequence of the proposed conduct? For example, the applicants claim in paragraphs 7.35 to 7.39 of their supporting submission to the ACCC that the proposed conduct will result in more tourists from Asia visiting Australia. However, it is unclear what basis there is for this contention, and how it results from the proposed conduct, given earlier statements at paragraphs 6.7 to 6.11 that the Jetstar entities in Asia do not have capacity to fly to Australia and, therefore, there is no overlap between those entities and Qantas and Jetstar. If that is the case, it is difficult to see how the proposed conduct is likely to result in more tourists flying to Australia.
- 5 What new (direct or indirect) services will be created on the routes between Australia and Asia? And what collaboration will occur on these routes? If there are no new routes created by the proposed conduct, how will Australian consumers benefit from the proposed conduct? The Application and supporting submission do not provide details about the new services that will operate on the routes between Australia and Asia directly, aside from the one example of new services between Australia and Korea via Japan (see paragraph 7.15 of the supporting submission). The supporting submission also provides only some details of the overlapping schedules and collaboration in Asia, such as the overlapping of services between Narita, Japan and Hong Kong, and between Narita, Japan and Korea.
- 6 In paragraph 6.4 of the supporting submission, the applicants state that without the proposed conduct they would not continue to establish or support Jetstar LCCs in Asia. It is unclear whether this means that the applicants would cease their currently established operations in Asia (e.g. Jetstar Japan, Jetstar Asia) or whether they would simply not establish any further operations in the near future.

We trust that these questions may be of use to the Commission in its deliberations.

Yours sincerely,



Dane Cheng

General Manager South West Pacific

Cathay Pacific Airways