Determination

Applications for authorisation

lodged by

Qantas Airways Limited and
Jetstar Airways Pty Ltd

in respect of

a joint venture coordination agreement

Date: 26 March 2013

Authorisation numbers: A91314 & A91315

Commissioners:
Sims
Rickard
Schaper
Court
Dimasi
Walker
Willett

Summary

The ACCC has decided to grant authorisation until 31 March 2018 to Qantas Airways Limited and Jetstar Airways Pty Ltd for coordination involving four Jetstar branded joint venture airlines (Jetstar Asia, Jetstar Pacific, Jetstar Japan and Jetstar Hong Kong), and their respective full service airline shareholders.

On 28 June 2012 Qantas and Jetstar applied for authorisation for coordination involving four Jetstar branded low cost carrier joint ventures based in Asia (Jetstar Asia, Jetstar Pacific, Jetstar Japan and Jetstar Hong Kong), and their respective full service airline shareholders.

The creation or continuation of these Jetstar joint venture airlines is not the subject of the authorisation application.

Rather, the authorisation application concerns the way in which the Asian Jetstar joint venture airlines will coordinate with each other, how their owners will support and expand each joint venture business, and how each full service airline shareholder relates their Jetstar joint venture to their own business.

The applicants have applied for authorisation for three limbs of coordination:

a. implementation of a joint venture coordination agreement which facilitates coordination between Qantas, Jetstar Airways, Jetstar Asia, Jetstar Pacific, Jetstar Japan and Jetstar Hong Kong;

b. coordination between a Jetstar joint venture airline and its full service airline shareholder on routes where their operations actually or potentially overlap; and

c. multiple overlap coordination which facilitates coordination in situations where two or more Jetstar low cost carriers (including Jetstar Airways) operate on overlapping routes.

Each limb of coordination comprises coordination of operations and activities (passenger and cargo), including pricing, capacity and scheduling on overlap routes. Any revenue sharing is confined to Jetstar low cost carriers on overlap routes.

The proposed conduct does not extend to:

a. coordination between any of the following full service airlines: Qantas Airways; Japan Airlines, China Eastern Airlines or Vietnam Airlines;

b. coordination between a Jetstar joint venture airline and a full service airline that is not an owner or significant shareholder of that Jetstar joint venture airline, except in multiple overlap situations as described above;

c. Jetstar Airways and Japan Airlines to coordinate on services operated between Australia and Japan; and

d. future unspecified Jetstar branded joint venture airlines.

The ACCC considers that the proposed conduct is likely to result in public benefits by enhancing the parties' product and service offering to consumers, particularly leisure travellers, travelling between Australia and Asia. It also has the potential to confer public benefits by triggering a competitive response from rival airlines and stimulating tourism.

The ACCC considers that the proposed conduct is likely to result in little, if any, public detriments because it is not likely to have a significant impact on competition. While the parties engaging in the proposed conduct potentially overlap on 227 routes, on all or nearly all of these routes they are either not likely to compete to any significant extent in the future without the conduct for which authorisation is sought or they face significant competition from other airlines.

On balance, the ACCC considers that the benefits of the proposed conduct are likely to outweigh the detriments, at least for the next five years.

The ACCC considers that changes in the aviation industry in the future may alter the balance of benefits and detriments over time. For this reason the ACCC has decided to grant authorisation to the proposed conduct for five years, until 31 March 2018, rather than for ten years as requested by the applicants.

Contents

Abbreviations

ACCC	Australian Competition and Consumer Commission
ASA	Air Services Agreement
BSA	Business Services Agreement
CEA	China Eastern Airlines
FSA	Full Service Airline
JAL	Japan Airlines
Jetstar Airways	Jetstar Airways Pty Ltd
Jetstar LCCs	Jetstar Airways, Jetstar Asia, Jetstar Pacific, Jetstar Japan and Jetstar Hong Kong
Jetstar Joint Ventures	Jetstar Asia, Jetstar Pacific, Jetstar Japan and Jetstar Hong Kong
JTFC	Japan Fair Trade Commission
JV	Joint Venture
JVCA	Joint Venture Coordination Agreement
LCC	Low Cost Carrier
Orangestar	Orangestar Investment Holdings Pte
Parties	Qantas, Jetstar Airways, Jetstar Asia, Jetstar Pacific, Jetstar Japan, Jetstar Hong Kong, Japan Airlines, China Eastern Airlines, Vietnam Airlines
Qantas	Qantas Airways Limited
The Act	*Competition and Consumer Act 2010* (Cth)
The Tribunal	The Australian Competition Tribunal

The applications for authorisation

1. On 28 June 2012 Qantas Airways Limited (**Qantas**) and Jetstar Airways Pty Ltd (**Jetstar Airways**) (together **the applicants**) lodged applications for authorisation A91314 & A91315 with the Australian Competition and Consumer Commission (**ACCC**).

2. Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the *Competition and Consumer Act 2010 (Cth)* (**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.

3. On 14 December 2012, the ACCC issued a draft determination[1] proposing to grant authorisation for five years. A conference was not requested in relation to the draft determination.

Background to the proposed conduct

4. The Qantas Group has sought to expand its network offering in the Asia Pacific region by entering into arrangements to create Jetstar branded low cost carriers (**LCCs**) in a number of Asian jurisdictions. The international aviation regulatory environment prevents the Qantas Group from wholly or majority owning these airlines.

5. As a result four Jetstar branded LCC airlines have been created, in which the Qantas Group is the minority owner, and local partners (including local full service airlines (**FSAs**)) operate airlines under the Jetstar brand and LCC business model. The four joint ventures are:

    a. Jetstar Asia (based in Singapore)

    b. Jetstar Pacific (based in Vietnam)

    c. Jetstar Japan

    d. Jetstar Hong Kong

6. The creation or continuation of these joint ventures is not the subject of the authorisation application.

7. Rather, the authorisation application concerns the way in which the Jetstar joint venture airlines will coordinate with each other, how their owners will support and expand each joint ventures business, and how each full service airline shareholder relates their Jetstar joint venture to their own business.

[1] Subsection 90A(1) requires that before determining an application for authorisation the ACCC must prepare a draft determination.

The proposed conduct

8. The applicants provided a letter on 1 November 2012 which clarified the conduct described in their authorisation application lodged on 28 June 2012. In this letter the applicants made clear that they are applying for authorisation for three areas or limbs of coordination:

    a. implementation of a joint venture coordination agreement (**JVCA**) which facilitates coordination between each and all of Qantas Airways and the five Jetstar entities (Jetstar Airways, Jetstar Asia, Jetstar Pacific, Jetstar Japan and Jetstar Hong Kong);

    b. coordination between a Jetstar joint venture airline and its FSA shareholder on actual or potential overlap routes (**FSA/related JV coordination**); and

    c. coordination between a Jetstar joint venture airline, its full service airline shareholder and another Jetstar LCC on routes where all three overlap (**multiple overlap coordination**).

    (**together the proposed conduct**)

9. Each element of this conduct is described in more detail below.

10. The applicants originally sought authorisation for unspecified Jetstar branded joint venture airlines to engage in the conduct described at paragraph 8 above.[2] However, they subsequently clarified that the scope of authorisation sought does not include future unspecified Jetstar branded joint venture airlines.[3] The parties to the proposed conduct therefore are confined to the five Jetstar entities identified at paragraph 8.a, Qantas, Japan Airlines (**JAL**), China Eastern Airlines (**CEA**) and Vietnam Airlines.

11. The applicants submit that it is impossible to specifically attribute public benefits to each type of coordination, as all of the proposed conduct is essential in realising the public benefits for Australia.

12. The applicants sought authorisation for the proposed conduct for ten years.

a) Joint Venture Coordination Agreement

13. JVCA involves coordination between each and all of the following entities:

    a. Qantas;

    b. Jetstar Airways;

    c. Jetstar Asia;

    d. Jetstar Pacific;

    e. Jetstar Japan; and

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[2] Applicants submission dated 28 June 2012.
[3] Applicants letter dated 1 November 2012.

f. Jetstar Hong Kong

14. JVCA coordination comprises coordination of operations and activities (passenger and cargo) including:

- network and scheduling decisions including routing, frequencies, aircraft types, product specifications, aircraft configurations, connection requirements and range of times for any services;
- sales and marketing initiatives including the offering of customer rebates, incentives and discounts;
- holiday products and joint promotions;
- pricing and inventory decisions including agreeing fares and new products;
- product distribution channels;
- frequent flyer and other loyalty programs;
- in-flight products or services;
- information technology;
- joint purchasing and procurement including but not limited to back office functions, fleet acquisitions and engineering services;
- customer service activities and initiatives; and
- sharing of experience and learning including the secondment of personnel.

15. The JVCA provides for revenue sharing by Jetstar LCCs on overlap routes based on capacity.

16. The applicants submit that the JVCA was entered into on 22 June 2012 and is conditional on antitrust immunity being obtained in all relevant jurisdictions.

b) Coordination between a Jetstar joint venture airline and its full service airline shareholder

17. FSA/related JV coordination involves coordination between a Jetstar joint venture airline and its FSA shareholder on actual or potential routes that they overlap. This applies to:

a. Jetstar Japan and JAL; and

b. Jetstar Hong Kong and CEA.

18. The applicants submit that authorisation for coordination between Jetstar Pacific and Vietnam Airlines is not required as these airlines are related bodies corporate for the purposes of the Act.

19. FSA/related JV coordination comprises coordination of operations and activities (passenger and cargo), including pricing, capacity and scheduling on actual or

potential routes as set out in the respective shareholders agreements and Business Service Agreements (**BSAs**). The proposed coordination between FSAs and related JVs does not include revenue sharing on overlap routes.

20. The applicants submit that FSA/related JV coordination is part of the conduct that is being analysed, examined and approved by overseas regulators (where relevant to their jurisdictions) or which has been the subject of independent legal advice that there is no breach of the relevant overseas law.

21. In relation to coordination between Jetstar Japan and JAL, the applicants submit that this will, or is likely to, take place on 16 routes, and that none of these services operate to or from a port in Australia.

22. In relation to coordination between Jetstar Hong Kong and CEA, the applicants submit that this will, or is likely to, take place on five routes, and that none of these services operate to or from a port in Australia.

c) Multiple overlap coordination

23. The multiple overlap coordination involves coordination between a Jetstar joint venture airline, its local FSA shareholder and another Jetstar LCC on routes where all three airlines operate (overlapping routes). Multiple overlap coordination comprises coordination of operations and activities (passenger and cargo), including pricing, capacity and scheduling as set out in the BSAs.

24. The multiple overlap coordination involves the following coordination on overlapping routes:

    a. Jetstar Airways will determine pricing, capacity and scheduling as between the two Jetstar LCCs; and

    b. The relevant Jetstar LCC will coordinate operations with its full service airline shareholder.

25. The proposed multiple overlap coordination does not include revenue sharing on overlap routes with the FSA shareholder, but does include revenue sharing between two Jetstar LCCs as noted in paragraph 15 above.

26. The applicants submit that under the proposed conduct this will or is likely to take place on four routes, which the applicants have confidentially disclosed to the ACCC.

Authorisation not sought

27. The applicants have not sought authorisation for coordination between a Jetstar LCC and a FSA that is not an owner or significant shareholder of that Jetstar LCC, except in a multiple overlap situation as described at paragraph 8.c above in which case there may be coordination of the type described at paragraph 23above.

28. The applicants have not sought authorisation for coordination between any two full service airlines. This includes coordination as between any of the following full service airlines:

a. Qantas;

b. JAL;

c. Vietnam Airlines; and

d. China Eastern Airlines.

29. The applicants have not sought authorisation for Jetstar Airways and JAL to coordinate in any way on services operated between Australia and Japan. The ACCC notes that Jetstar Airways and JAL code share on services between Australia and Japan.

The applicants

Qantas

30. Qantas was incorporated in Queensland in 1920 and is Australia's largest international and domestic airline. Qantas is a FSA offering domestic and international passenger and cargo services. Qantas services 21 international destinations from Australia.

31. In the Asia/Pacific region Qantas operates flights from Australia to:

Origin	Destination Country	Destination Cities
Sydney	China	Hong Kong, Shanghai
	Indonesia	Jakarta
	Japan	Tokyo
	New Caledonia	Noumea
	New Zealand	Auckland, Wellington, Christchurch, Queenstown
	Singapore	Singapore
	Thailand	Bangkok
Melbourne	China	Hong Kong
	New Zealand	Auckland, Wellington
	Philippines	Manila
	Singapore	Singapore
Brisbane	China	Hong Kong
	New Caledonia	Noumea
	New Zealand	Auckland
	Philippines	Manila
	Singapore	Singapore
Adelaide	Singapore	Singapore
Perth	China	Hong Kong
	Singapore	Singapore
Cairns	Papua New Guinea	Port Moresby

Source: Qantas website, accessed 7 December 2012.

Jetstar Airways

32. Jetstar Airways is a fully owned subsidiary of Qantas established in 2004, and is a low cost carrier offering domestic and international services predominately focused on servicing price sensitive customers.

33. In the Asia Pacific region Jetstar Airways operates the following international services:

Origin	Destination Country	Destination Cities
Sydney	Fiji	Nadi
	Indonesia	Bali (Denpasar)
	New Zealand	Auckland, Christchurch
	Thailand	Phuket
Melbourne	Indonesia	Bali (Denpasar)
	New Zealand	Auckland, Queenstown, Christchurch
	Singapore	Singapore
	Thailand	Bangkok
Brisbane	New Zealand	Christchurch
Gold Coast	Japan	Osaka, Tokyo
	New Zealand	Auckland, Queenstown, Christchurch
Cairns	Japan	Osaka, Tokyo
Darwin	Indonesia	Bali (Denpasar)
	Philippines	Manila
	Singapore	Singapore
Perth	Indonesia	Bali (Denpasar)
Auckland	Singapore	Singapore
Singapore	China	Beijing
Manila	Japan	Tokyo

Source: Jetstar Airways website, accessed 7 December 2012

34. Jetstar Airways fleet make up as of 30 June 2012 is comprised of 47 A320-200s, 11 A330-200s and six A321-200s.

The Jetstar joint venture airlines

35. The applicants submit that the international aviation regulatory environment makes it impossible for the Qantas Group to wholly or majority own airlines outside Australia. The applicants note that some counties impose strict foreign ownership limits on their airlines, for example the maximum foreign ownership of Japanese airlines is 33% and of Vietnamese airlines (by a single foreign person) is 30%.

36. The applicants submit in response to these restrictions they have developed the Jetstar Pan-Asia strategy, which aims to deepen the Qantas Group presence in the Asia-Pacific region by expanding the Jetstar network.

37. They submit that this strategy involves:

    a. the establishment of joint ventures in a number of Asia jurisdictions by the applicants (generally the minority owner) and local partners (including local FSAs) to operate LCCs under the Jetstar brand and business model;

    b. coordination between each Jetstar LCC and its airline shareholders; and

    c. the coordination of each of the Jetstar LCCs with each other and with each of Qantas and Jetstar Airlines

38. The applicants submit that in partnership with the local investor (where it is another airline) they can combine their expertise and know-how to operate the Jetstar Joint Venture. They submit that the local airline partner will have unique knowledge of the local aviation environment, access to established infrastructure and established relationships in local markets. The applicants submit that they have unique experience in developing and successfully executing a two brand full service/low cost strategy.

39. Pursuant to bilateral agreements between Jetstar Airways and each Jetstar LCC joint venture, Jetstar Airways provides business advisory services to each joint venture in relation to:

    a. networking, scheduling and fleet strategy;

    b. product;

    c. pricing and distribution; and

    d. sales, marketing and customer service activities.

40. The applicants submit to maximise the total profitability of the airline group, where relevant, the local partner full service airline will coordinate its operations with the local Jetstar Joint Venture for the benefit of the Jetstar network as a whole.

41. There are four Jetstar branded joint ventures: Jetstar Asia, Jetstar Pacific, Jetstar Japan and Jetstar Hong Kong (together the **Jetstar joint venture airlines**).

Jetstar Asia

42. Jetstar Asia is a LCC operating out of Singapore. It was established in December 2004 and its ownership structure is as follows:

Owner	Percentage
A Singapore Citizen	51%
Qantas Group	49%

43. Jetstar Asia operates flights to and from Singapore to the following destinations:

Origin	Destination Country	Destination Cities
Singapore	Australia	Perth
	Burma	Yangon
	Cambodia	Siem Reap, Phnom Penh
	China	Guangzhou, Haikou, Hangzhou, Ningbo, Shantou
	Hong Kong	Hong Kong
	Indonesia	Bali, Jakarta, Medan, Surabaya
	Japan	Osaka, Tokyo
	Malaysia	Kuala Lumpur, Penang
	New Zealand	Auckland
	Philippines	Manila
	Taiwan	Taipei
	Thailand	Bangkok, Phuket
	Vietnam	Hanoi, Ho Chi Minh

Source: Applicants submission dated 28 June 2012

44. In 2005 Jetstar Asia acquired Valuair, a Singapore based LCC. Valuair operates Jetstar Asia's scheduled services to Indonesia.

45. The applicants submit that Jetstar Asia is a rapidly growing and profitable member of the Qantas Group and is focused on the development of its Singapore hub and the

expansion of services from Singapore to a range of key Asian destinations, including new services to Ningbo, China and Hanoi, Vietnam.

46. Jetstar Asia's fleet make up as at 30 June 2012 is comprised of 16 A320-200s and one A330-300.

Jetstar Pacific

47. Jetstar Pacific is a low cost carrier established in 2008 and is owned by:

Owner	Percentage
Vietnam Airlines	67%
Qantas Group	30%
Saigon Tourist and Mr Nam	3%

48. Jetstar Pacific operates the following domestic services:

Source	Destination
Ho Chi Minh	Da Nang
	Hai Phuong
	Hanoi
	Hue
	Vinh
Hanoi	Da Nang
	Nha Trang
	Ho Chi Minh

Source: Applicants submission dated 28 June 2012

49. The applicants submit that subject to receiving regulatory approvals Jetstar Pacific proposes to commence international services to North-East Asia and South-East Asia in the future.

50. Jetstar Pacific's fleet make up as at 30 June 2012 is comprised of two A320s and five B734s.

51. The applicants have confirmed that Jetstar Pacific is a related body corporate of Vietnam Airlines for the purposes of Australian competition law.

Jetstar Japan

52. Jetstar Japan is a low cost carrier established in August 2011. Its ownership structure is as follows:

Owner	Percentage
Qantas	33.33%
Japan Airlines	33.33%
Mitsubishi Corporation	16.67%
Century Tokyo Leasing Corporation	16.67%

53. Jetstar Japan currently operates the following domestic Japanese routes:

Source	Destination
Narita	Fukuoka
	Okinawa
	Osaka
	Sapporo
Osaka	Sapporo
	Fukuoka

Source: Applicants submission dated 28 June 2012

54. Jetstar Japan has announced that it will commence short haul international services in 2013, but has not announced which destinations it will service.

55. The applicants submit that in 2011 Qantas and JAL consulted with the mergers and acquisitions division of the Japan Fair Trade Commission (**JFTC**) in relation to their respective investments in Jetstar Japan. Qantas and JAL obtained the approval of the JFTC Consultation and Guidance Office in relation to ongoing coordination and cooperation between JAL and Jetstar Japan in relation to domestic Japanese services and short-haul international services; and between the Jetstar Group and Jetstar Japan in relation to short haul international services.

56. Jetstar Japan's fleet (as at 30 June 2012) is comprised of three A320s.

Jetstar Hong Kong

57. Jetstar Hong Kong has not yet commenced operations. On 23 March 2012 Jetstar Airways and CEA entered a memorandum of understanding to establish Jetstar Hong Kong as a LCC. Jetstar Hong Kong ownership structure is as follows:

Owner	Percentage
Qantas Group	50%
China Eastern Airlines	50%

Other relevant parties

Vietnam Airlines

58. Vietnam Airlines operates domestic and international air services to 46 destinations in 18 countries.

59. In addition to its 67% ownership of Jetstar Pacific, Vietnam Airlines owns 100% of the Vietnam Air Service Company and 49% of Cambodia Angkor Air.

60. Vietnam Airlines is wholly owned by the Vietnamese Government.

61. Vietnam Airlines operates services from Vietnam to the following destinations:

Country	Cities
Australia	Sydney, Melbourne [4]
Burma	Yangon
Cambodia	Phnom Penh, Siam Reap
China	Beijing, Chengdu, Guangzhou, Hangzhou, Shanghai, Hong Kong
France	Paris
Germany	Frankfurt
Indonesia	Jakarta
Japan	Fukuoka, Nagoya, Osaka, Tokyo
Laos	Luang Prabang, Vientiane
Macau	Macau

[4] The two routes Vietnam Airlines operates between Australia and Vietnam are: Sydney – Ho Chi Minh and Melbourne – Ho Chi Minh.

Malaysia	Kuala Lumpur
Russia	Moscow
Singapore	Singapore
South Korea	Bussan, Seoul
Taiwan	Kaoshiung, Taipei
Thailand	Bangkok
United Kingdom	London

Source: Vietnam Airlines website, accessed 7 December 2012

62. Vietnam Airlines is part of the Skyteam marketing alliance.

Japan Airlines

63. JAL was established in 1951 and operates domestic and international air services.

64. In addition to its 33% ownership of Jetstar Japan, JAL has four subsidiary airlines: J-Air, JAL Express, JALways, and Japan Transocean Air. Together they operate flights to more than 70 destinations across 20 countries.

65. JAL operates the following international services:

Origin	Destination Country	Destination Cities
Narita	Australia	Sydney
	Canada	Vancouver
	China	Beijing, Dalian, Shanghai, Guangzhou, Hong Kong
	France	Paris
	Germany	Frankfurt
	Guam	Guam
	India	Delhi
	Indonesia	Jakarta
	Malaysia	Kuala Lumpur
	Philippines	Manila
	Russia	Moscow

	Singapore	Singapore
	South Korea	Seoul (Incheon), Busan
	Finland	Helsinki
	Taiwan	Taipei, Kaohsiung
	Thailand	Bangkok
	United Kingdom	London
	USA	Los Angeles, San Diego, Vancouver, Chicago, Boston, New York, Honolulu
	Vietnam	Hanoi, Ho Chi Minh
Haneda	Canada	Vancouver
	China	Beijing, Shanghai
	France	Paris
	Korea	Seoul (Gimpo)
	Singapore	Singapore
	Taiwan	Taipei
	Thailand	Bangkok
	USA	San Francisco, Honolulu
Chubu	USA	Honolulu
	Chubu	Taipei
	China	Tianjin, Shanghai
Kansai	USA	Honolulu
	Thailand	Bangkok
	Taiwan	Taipei
	China	Shanghai
	South Korea	Seoul (Gimpo)

Source: JAL timetable, accessed 7 December 2012

66. JAL has major hubs at Tokyo, Osaka, Nagoya and Okinawa. JAL is 96.5% owned by the Enterprise Turnaround Initiative Corporation of Japan and has announced that it intends to list on the Tokyo Stock Exchange.

67. JAL is part of the oneworld marketing alliance.

China Eastern Airlines

68. CEA is a full service carrier and operates domestic and international air services to 182 domestic and foreign cities in 30 countries.

69. CEA is listed on the Hong Kong, New York and Shanghai stock exchanges and is majority owned by the Chinese Government.

70. CEA operates the following services from China to the following international destinations:

Origin	Destination Country	Destination Cities
Shanghai	Australia	Sydney, Melbourne, Brisbane
	Japan	Okinawa, Kagoshima, Nagasaki, Fukuoka, Matsuyama, Hiroshima, Okayama, Kansai, Nagoya, Komatsu, Tokyo, Niigata, Fukushima, Sapporo
	South Korea	Jeju, Ginahe, Daegu, Cheongiu, Seoul (Gimpo), Seoul (Incheon)
	Singapore	Singapore
	Malaysia	Subang
	Thailand	Phuket, Bangkok
	Cambodia	Phnom Penh
	Laos	Vientiane
	India	Delhi
	Taiwan	Taipei
	France	Paris
	Germany	Frankfurt, Hamburg
	Italy	Rome

Origin	Destination Country	Destination Cities
	Russia	Moscow
	USA	New York, Los Angeles
	United Kingdom	London
	Canada	Vancouver
Kumming	Singapore	Singapore
	Thailand	Bangkok
	Laos	Vientiane
	Burma	Mandalay
	Bangladesh	Dhaka
	India	Calcutta
	South Korea	Seoul (Incheon)
Nanning	Cambodia	Phnom Penh
Yantai Laishan	South Korea	Ginahe, Seoul (Incheon)
	Japan	Kansai
Changsha	South Korea	Seoul (Incheon)
Nanchang	South Korea	Seoul (Incheon)
Guilin	South Korea	Seoul (Incheon)
Ningbo	South Korea	Seoul (Incheon)
Beijing	South Korea	Seoul (Incheon)
	Japan	Nagasaki
Sanya	South Korea	Seoul (Incheon)
Qingdao	South Korea	Seoul (Incheon)
	Japan	Fukuoka, Kansai, Nagoya
Weihai	South Korea	Seoul (Incheon)
Yancheng	South Korea	Seoul (Incheon)
Dalian	Japan	Okayama

Origin	Destination Country	Destination Cities
Nanjing	Japan	Kansai, Tokyo

Source: China Eastern Airlines route map, accessed 7 December 2012

71. CEA is part of the Skyteam marketing alliance.

Background

The emergence of low cost carriers

72. The past ten years has seen the emergence of a number of LCCs in the Asia Pacific region. A number of these LCCs are owned or partially owned by FSAs. These FSAs have sought to develop a dual brand strategy, where the LCC offers a complementary service to the FSA.

73. These include:

- Qantas' ownership interests in Jetstar Airways, Jetstar Asia, Jetstar Pacific, Jetstar Japan and Jetstar Hong Kong.

- Singapore Airlines ownership interests in:

    - Tiger Airways, which is a Singapore based LCC that operates services to 27 destinations ex Singapore; and

    - Scoot, which is a Singapore based LCC that has recently commenced operations to Australia, and has announced plans to commence routes to China, Japan and Thailand.

- Cathay Pacific's ownership of Dragonair, which is a Hong Kong based LCC which services 33 destinations ex Hong Kong in the Asia region.

- All Nippon Airlines ownership interests in:

    - ANA Wings, which is a LCC which hubs out of Tokyo and serves 33 domestic destinations in Japan and three services ex Japan to China;

    - Peach, which operates Japanese domestic services; and

    - AirAsia Japan which hubs out of Tokyo, and operates Japanese domestic services and plans to commence international services to Hong Kong and Taipei.

- Malaysia Airlines ownership of Firefly; which hubs out of Kuala Lumpur and operates services to 22 destinations in Malaysia, Indonesia, Singapore and Thailand.

- Hong Kong Airlines ownership of Hong Kong express which hubs out of Hong Kong and serves destinations in China, Japan, South Korea, Indonesia and the Philippines.

- Thai Airways ownership interest in:
    - Thai Smile, which hubs out of Bangkok to destinations in Asia; and
    - Nok Air, which operates to 25 Thai domestic destinations.

74. In the case of Qantas, the dual brand strategy operates on the basis that Qantas and Jetstar Airways collaborate and coordinate on capacity and pricing activities between their respective operations, with Jetstar Airways targeting price sensitive leisure passengers.

75. Separately, the last ten years has seen the emergence of a number of independent low cost airlines. These include:

    a. AirAsia Group which includes the following airlines:

        i. AirAsia which hubs out of Kuala Lumpur and serves 78 destinations in Asia.

        ii. AirAsia X which serves long haul destinations, ex Kuala Lumpur

        iii. Air Asia Japan (which is co-owned by All Nippon Airways) and hubs out of Tokyo

        iv. Indonesia AirAsia which hubs out of Jakarta

        v. AirAsia Philippines which hubs out of Central Luzon; and

        vi. Thai AirAsia which hubs out of Bangkok

    b. Skymark which hubs out of Tokyo and operates domestic Japanese services. It has also announced that it plans to commence long haul international flights.

    c. VietJet Air which operates domestic Vietnamese services, and proposes to commence operations on short haul international routes.

    d. Lion Air which hubs out of Jakarta and operates domestic Indonesian services.

    e. Spring Airlines which operates Chinese domestic services as well as short haul international flights to Hong Kong, Macau and Japan.

76. Asia Pacific LCC passenger traffic has increased significantly in the past five years, doubling from 78 to 157 million from 2006 to 2010.[5] The applicants submit that this growth is likely to continue, and that and that the industry has forecast that total air traffic in the Asian region will grow at 6.7% per annum over the next 20 years.[6]

[5] Boston Consulting Group, Surviving the Squeeze – Winning strategies for a changing airline industry, October 2012, pg 4.
[6] Applicants submission dated 28 June 2012, citing Boeing Current Market Outlook 2011 – 2030, p 15.

Previous Authorisation

77. On 26 April 2006, Qantas lodged applications for authorisation A40107, A40108 and A40109 to enter into a cooperation agreement with Orangestar Investment Holdings Pte (**Orangestar**). Orangestar is the holding company of Jetstar Asia. The application covered arrangements similar to the current proposed conduct. Qantas sought authorisation for ten years.

78. The ACCC granted authorisation for five years, concluding that public benefits in the form of increased efficiency in the operation of the Qantas and Jetstar Asia businesses and the ability to offer more cost effective, multi destination packages to consumers would arise. The ACCC accepted that limited public detriments were likely to arise from the conduct due to the limited overlap on the routes operated by the applicants. At the time of the decision Qantas owned 44.5% of Jetstar Asia and held four of nine board seats.

79. The authorisation expired on 13 September 2011.

International aviation regulation

80. 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.

81. International air transport cannot occur unless it is specifically authorised pursuant to a government to government bilateral air services agreement (**ASA**).

82. 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.

83. An Open Skies Agreement is one form of ASA between two countries. In essence, it is an agreement which provides minimal (or no) restrictions on the ability of the airlines of two countries to operate services between countries.

84. The ACCC notes that the applicants operate across a number of countries, regulated by a number of different ASAs. The applicants have noted that in many Asian jurisdictions the ASAs provide for a strict regulatory environment, including the imposition of strict foreign ownership limits for airlines.

Submissions received by the ACCC

85. The ACCC tests the claims made by the applicants in support of an application for authorisation through an open and transparent public consultation process.

86. The ACCC sought submissions from over 50 interested parties potentially affected by the applications, including other airlines, travel agents, government departments,

consumer groups and tourism and aviation industry associations. A summary of the public submissions received from the applicants and interested parties follow.

The applicants

87. Broadly, the applicants submit that the purpose of the proposed conduct is to deepen the Qantas Group's presence in the Asia region by expanding the Jetstar network. They submit that the international aviation regulatory environment makes it impossible for the Qantas Group to wholly or majority own airlines outside Australia, and that this has necessitated the creation of the joint ventures.

88. The applicants submit that the proposed conduct will facilitate Jetstar's Asian growth and, as a result, it is pro-competitive and efficiency enhancing and will deliver significant benefits to Australian consumers. These benefits take the form of more choice and greater access to lower fares and more destinations through the integrated Jetstar network. The applicants submit that this will continue to elicit competitive responses from existing airlines and rival LCCs and also stimulate tourism. The public benefit claims of the applicants are discussed in more detail under the heading public benefits.

89. The applicants submit that the proposed conduct will not have the effect or likely effect of lessening competition for air travel services in any relevant market.

Interested parties

90. The Department of Infrastructure and Transport submits that the regulatory framework governing international air services is complex, and that given the range of countries in which the relevant airlines are based, the air services agreements between Australia and the relevant countries may need to be considered. The Department of Infrastructure and Transport submits that the restrictive regulatory framework creates incentives for airlines to pursue cooperation agreements. The Department of Infrastructure and Transport also notes that there is possibility of further liberalisation in the Asian aviation market.

91. The Department of Infrastructure and Transport submits that the development of commercial arrangements such as the proposed conduct are generally consistent with Australia's aviation policy settings and Australia's bilateral air service arrangements, subject to such agreements being consistent with relevant competition laws.

92. Malaysia Airlines submits that it has no objection to the applications so long as it is in the interests of consumers, and that all airlines are granted an equal playing field.

93. Tourism Queensland submits that the coordination could provide better connections for residents of Asian countries to travel to Queensland. On that basis Tourism Queensland supports the application.

94. Dr Ian Douglas, senior lecturer, School of Aviation, University of NSW submits that the Asia-Pacific region is heavily regulated in comparison to the European or Trans-Atlantic markets, and notes the trend of the establishment of low cost carriers. Dr Douglas submits that the prospect of the broader liberalisation of aviation regulation is remote, and therefore supports coordination between the applicants.

95. Cathay Pacific notes that the applicants have applied for authorisation for future joint ventures, as well as joint ventures that are yet to obtain regulatory approval in the countries in which they intend to operate. Cathay Pacific refer to both unspecified future joint ventures and to Jetstar Hong Kong. Cathay Pacific submits that it is preferable for the ACCC to consider each joint venture after it is formed and has received regulatory approval.[7]

96. Cathay Pacific also submits that the applicants have not provided an adequate basis for a number of claims. Cathay Pacific notes that the applicants have not provided a submission in relation to future potential overlapping routes, and that claims made in relation to fleet composition do not take into account the applicants' ability to lease or acquire new aircraft.

97. Virgin Australia submits that the scope of the authorisation sought is unnecessarily broad and potentially uncertain, and note that the applicants' seek authorisation for unspecified future joint ventures. Virgin Australia submits that it is unclear from the application the areas of actual and potential overlap between the applicants, and notes that the services of Jetstar Japan and Jetstar Hong Kong are unknown.

98. Virgin Australia also submits that there is not a clear link between the identified public benefits and the conduct as described by the applicants. Virgin Australia further submits that there is no evidentiary support for the claimed public benefits.

The applicants' response to interested party submissions

99. The applicants submit in response to the interested party submissions that:

- Qantas' role in the proposed conduct is that it will be involved in coordination (pricing and capacity) decisions relating to Jetstar Airways which will affect the network operations of the Jetstar carriers;
- the proposed conduct does not involve any of Jetstar Japan, Jetstar Pacific or Jetstar Hong Kong coordinating on any route from Australia;
- there is sufficient certainty regarding Jetstar Hong Kong and that they will commence operations in 2013;
- the proposed conduct will result in public benefits;
- increased inbound tourism will be a direct and real public benefit arising from the proposed conduct;
- the proposed conduct will result in a competitive response from rivals; and
- absent the proposed conduct, the public benefits would not arise.

100. The views of the applicants and interested parties are considered in the evaluation chapter of this draft determination. Copies of public submissions may be obtained from the ACCC's website **www.accc.gov.au/authorisationsregister.**

[7] The ACCC notes that the applicants have since clarified that the scope of authorisation does not include future unspecified Jetstar branded joint venture airlines.

Following the draft determination

101. The ACCC received a further submission in response to the draft determination from the applicants. Broadly the applicants claim that the proposed conduct contributes to the claimed cost savings and efficiencies, the proposed conduct will not increase the ability or incentive of FSAs to coordinate outside the scope of authorisation, in future routes will become highly competitive, and that the proposed conduct will not result in coordinated effects. The applicants submissions are set out and assessed in more detail under the relevant headings below.

102. No other interested party made a submission following the draft determination.

ACCC evaluation

103. The ACCC's evaluation of the proposed conduct is in accordance with the relevant net public benefit tests[8] contained in the Act. While there is some variation in the language of the tests, in broad terms, the ACCC is required to identify and assess the likely public benefits and detriments, including those constituted by any lessening of competition and weigh the two. In broad terms, the ACCC may grant authorisation if it is satisfied that the benefit to the public would outweigh the public detriments.

104. In order to measure and assess the effect of the proposed conduct and the public benefits and detriments likely to result the ACCC identifies the relevant areas of competition and the likely future should authorisation not be granted.

The relevant areas of competition

105. The applicants submit that the proposed conduct will primarily affect markets for air travel services in Asia but, to the extent that a market in Australia is affected, the relevant market is likely to be the market for air travel services between Australia and Asia by leisure passengers.

106. The ACCC notes that the applicants also sought authorisation to coordinate their air cargo operations and activities.

107. The ACCC considers that the areas of competition relevant to the assessment of the impact of the conduct for which authorisation is sought envelops routes to/from Australia (e.g. Sydney to Singapore) as well as routes between points in Asia that may form sectors of a multi-stop journey to/from Australia (e.g. Sydney-Singapore-Tokyo). Accordingly, the ACCC considers that the relevant areas of competition include:

- International air passenger transport services between Australia and Asia, including services between:
    - Australia and Singapore
    - Australia and Vietnam

[8] Subsections 90(6) 90(7), 90(5A), 90(5B) and 90(8). The relevant tests are set out in Attachment A.

    - Australia and Japan
    - Australia and Hong Kong
    - Australia and China
    - Australia and points in Asia via Singapore,
    - Australia and points in Asia via Vietnam,
    - Australia and points in Asia via Japan,
    - Australia and points in Asia via Hong Kong

- International air cargo transport services between Australia and Asia

108. The ACCC considers that there may be a single Australia-Asia international air passenger transport services market or multiple markets that distinguish, for example, the different countries or regions within Asia or different customer types (such leisure or business passengers). The ACCC considers that it is not necessary to reach a definitive view on whether these areas of competition are separate markets or part of same relevant market, as the outcome of the competition assessment in this matter is not impacted by this distinction.

109. The ACCC further considers that the relevant international air cargo transport services market includes direct and indirect services between points in Australia and points in Asia and adjacent regions, including intermediate points outside Australia and Asia.

The future with and without

110. The ACCC considers the likely 'future with-and-without' to identify and weigh the public benefit and public detriment generated by the conduct for which authorisation has been sought.

111. The applicants originally submitted that without the proposed conduct, they would not continue to establish or support Jetstar LCCs in Asia or be in a position to achieve the objectives of the pan-Asia strategy.

112. The applicants subsequently submitted that if the ACCC does not authorise the proposed conduct, the Jetstar Pan-Asia strategy will continue to be implemented, but the services that are the subject of the proposed conduct operated by those Jetstar LCCs which are not related bodies corporate will not be available to Australian consumers.

113. The ACCC considers that the applicants are bodies corporate incorporated or carrying on business within Australia, and are therefore subject to the Act, whether the proposed conduct occurs within or outside Australia. Accordingly, the ACCC considers it is appropriate to assess the public benefits and detriments associated with the conduct for which the applicants have sought authorisation.

114. The ACCC considers that in the likely future without the proposed conduct:

- the existing Jetstar joint venture airlines will continue to operate as LCCs;

- the Jetstar joint venture airlines will continue to access Jetstar Airways support in relation to network, scheduling and fleet strategy; products; pricing and distribution; and sales, marketing and customer service activities as provided for in the BSAs.

- the ownership structure and board composition of each Jetstar joint venture airline will remain the same and is as described at paragraphs 42, 47, 52 and 57; and

- as a result of the common influence of Jetstar Airways and the local FSA shareholder airlines on the activities and operations of the Jetstar joint venture airlines there is no significant rivalry between:

  i. Qantas Airways, Jetstar Airways and any Jetstar joint venture airline.

  ii. Each local FSA shareholder airline and any Jetstar entity that they established, have a significant shareholding and board representation commensurate with that shareholding.

  iii. Jetstar joint venture airlines.

Public benefit

115. 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.[9]

Public benefits claimed by the applicants

116. The applicants submit that the proposed conduct will deliver public benefits in the form of:

- lower fares as a result of cost savings;
- more consumer choice and an enhanced consumer experience;
- an expanded network and more destinations;
- enhanced economic efficiencies;
- increased competition and innovation;
- increased tourism and employment; and
- promotion of the international competitiveness of Australian business (i.e. a stronger Qantas).

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[9] *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.

Lower fares as a result of cost savings

117. The applicants submit that the emergence of LCCs including Jetstar Airways has given consumers unprecedented access to low fares which in turn has made air travel accessible for a larger number of Australians than would otherwise be the case.

118. The applicants note that the existing Jetstar joint venture airlines have a lower cost base than traditional FSAs. This enables them to consistently offer everyday low fares to Australian consumers as well as offering further heavily discounted fares well in advance of departure or during a special promotional period.

119. The applicants submit that consistent with this business philosophy, the proposed conduct will enable the Jetstar LCCs to achieve the scale necessary to generate cost savings and efficiencies to offer even lower fares to Australian consumers. The applicants submit that these cost savings will be achieved across the spectrum of business activities including:

    a. higher utilisation of significant fixed costs (including aircraft, crew and airport facilities) due to flexibility to operate routes using assets at either end;

    b. common network planning and pricing/revenue management; and

    c. single go to market approach including common advertising, promotions and distribution platforms.

120. The applicants provide the example that because the Jetstar LCCs share key IT services and other reporting and operational systems, the costs of these functions are reduced for each airline. The applicants submit that without the proposed conduct, these costs would be higher for each airline which would likely result in higher prices for consumers.

121. The applicants submit that other cost savings would be possible in respect of engineering, airport and ground handling charges as a result of increased volumes.

More consumer choice and an enhanced consumer experience

122. The applicants submit that the proposed conduct will enable the Jetstar Joint venture airlines to stimulate demand on new or existing routes and continue to grow the network to meet demand. As a result, Australian consumers will have increased options in respect of air travel in Asia because they will have access to a network of Jetstar LCCs which would not exist if the proposed conduct were not permitted.

123. The applicants submit that the Jetstar business model prioritises choice, and that the model is built on an unbundled product offering which allows consumers to mix and match services and decide which ancillary services they want.

124. The applicants also submit that the proposed conduct will provide Australian consumers with a new and convenient one stop shop to book itineraries across the Jetstar network, as there will be one website for all Jetstar flights.

125. The applicants further submit that coordination of operations and activities will provide Australian consumers with a consistent Jetstar experience.

An expanded network and more destinations

126. The applicants submit that the proposed conduct will enable Qantas and the Jetstar businesses to offer a greater variety of schedule options to Australian consumers via the cost savings described above, the pooling of revenue and the coordination of prices and schedules.

127. The applicants submit in circumstances where more than one independent airline operates on a route, each of those airlines has the incentive to fly at the time of day that is most profitable. This often means that all airlines on the route are likely to operate at the same time or have the economic incentive to do so. The applicants submit that pursuant to the proposed conduct, the Jetstar LCCs will share revenue based on capacity so that there would be the incentive to maximise combined revenue by making the schedules complementary where possible.

128. The applicants submit, by way of example, that the Hong Kong – Japan route is illustrative. The applicants submit that in order for Jetstar Japan to offer an early morning Hong Kong – Japan flight it would require an overnight stay of aircraft and crew in Hong Kong. Given Jetstar's LCC model this would be uneconomic. However by Jetstar Hong Kong and Jetstar Japan cooperating, Jetstar Hong Kong can offer a morning flight using an aircraft based in Hong Kong.

129. The applicants also submit that schedule and price coordination allows the integrated Jetstar network to offer connecting fares to consumers and compete on routes that cannot otherwise be serviced direct. For example, Singapore-Dailan is not serviced by Jetstar Asia (and cannot be serviced due to the range limitations of the A320 aircraft, and it being uneconomic for A330 aircraft) but pursuant to schedule and pricing coordination, the Jetstar brand could offer a connection from Singapore to Hong Kong on Jetstar Asia and Hong Kong to Dailan on Jetstar Hong Kong.

Enhanced economic efficiencies

130. The applicants submit that the proposed conduct will result in significant and enduring economic efficiencies in that it will enable the scale necessary to enhance productive, allocative, and dynamic efficiencies.

131. The applicants submit that the proposed conduct will allow the Jetstar LCCs to reduce costs and quickly and efficiently establish an integrated airline network in Asia.

132. The applicants also submit that the proposed conduct will deliver improved aircraft utilisation across the network by determining which Jetstar LCC would most efficiently service a particular route and by optimising schedules.

133. The applicants also submit that there are significant efficiencies and direct cost savings associated with joint purchasing and joint sales and marketing. The proposed conduct will grant the Jetstar LCCs the scale necessary to obtain lower costs across the entire spectrum of operations including in relation to airport, engineering and ground handling services and the acquisition of aircraft.

134. The ACCC notes there is some duplication of the applicants claims under this category and the first category dealing with cost savings.

135. The applicants submit that there would be significant efficiencies through the sharing of knowledge and expertise including in relating to revenue management systems and ancillary revenue. This cross fertilisation will allow the Jetstar LCCs to learn from each other in developing and investing in more sophisticated systems for the delivery of services to consumers.

Increased competition and innovation

136. The applicants submit that under the proposed conduct there will be an increased ability and incentive to enhance innovation across their networks where it is consistent with the low cost model. The applicants submit that given the likelihood of strong competition from other LCCs over the short to medium term, innovations in technology, the flying experience and brand (as well as ancillary offerings) are likely to become attractive to Australian consumers and pursued by the Jetstar Group. The applicants submit that all innovative products introduced by the Jetstar Group in respect of its operations will usually elicit a competitive response from competing LCCs.

Increased tourism and employment

137. The applicants submit that the proposed conduct will provide significant economic benefits to the Australian economy in the form of increased tourism and employment by increasing the potential for a very significant number of residents of Asian countries to come to Australia via the integrated Jetstar network.

138. Qantas also submits that the Jetstar LCC network would also feed additional traffic to the existing Australian operations of Qantas and that this would increase employment in Australia.

Promotion of a stronger Qantas

139. The applicants submit that by engaging in the proposed conduct, Qantas is increasing its international competitiveness by capitalising on growth in demand for air travel services in Asia for its own benefit, which ultimately benefits Australians.

ACCC consideration of public benefits

140. The ACCC has had regard to the public benefit claims of the applicants and considers that the proposed conduct may give rise to material public benefits in the following four broad categories:

- enhanced products and services;
- cost savings and efficiencies;
- promotion of competition; and
- stimulation of tourism in Australia.

141. In considering the public benefits, the ACCC has had regard to the extent that the proposed conduct allows or enhances the applicants' ability to engage in further coordination beyond what occurs in the world without authorisation.

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

Enhanced products and services

143. The ACCC considers that the Jetstar LCCs products and services are likely to be enhanced under the proposed conduct through: increased likelihood of new Jetstar frequencies and destinations; increased online connectivity; and better scheduling spread. These are discussed below.

Increased likelihood of new Jetstar frequencies and destinations

144. The ACCC considers that the proposed conduct increases the likelihood, or brings forward the timing of, new Jetstar frequencies and destinations in three situations.

145. Firstly, the proposed conduct is likely to allow the Jetstar LCCs, working together, to offer additional frequencies to destinations not currently served by a Jetstar LCC. These destinations may currently have insufficient passenger traffic to sustain such a service. For example, if Jetstar Japan and Jetstar Asia were to coordinate on services between Japan and Singapore, the increased feeder traffic may render services that are uncommercial for either Jetstar Asia or Jetstar Japan (i.e. on a standalone basis) commercially attractive.

146. Secondly, there are likely to be city pairs where additional frequencies are only possible where two Jetstar LCCs (and possibly a local FSA shareholder) coordinate their operations from each end. For example, the applicants submit that on Hong Kong – Japan routes, for Jetstar Japan to operate an early morning Hong Kong – Japan flight would require an overnight stay of aircraft and crew in Hong Kong. They submit that this would be uneconomic, given Jetstar's LCC model. The ACCC accepts that in these situations, the proposed conduct may allow the parties to arrange for Jetstar Hong Kong to operate the early morning Hong Kong – Japan flight, and Jetstar Japan (or JAL) to operate the early morning Japan – Hong Kong flight without requiring an overnight stay for crew and aircraft in either city.

147. Thirdly, there are likely to be some routes where absent the ability to coordinate to resolve conflict, one or both of the Jetstar joint ventures would not enter the route so as to avoid the conflict.

Increased online connectivity

148. The applicants submit that the proposed conduct will result in a new and convenient 'one stop' shop to book itineraries across the Jetstar network through the Jetstar website. As such, this will immediately increase the choice of online journey options for passengers.

149. The ACCC recognises that consumers value online connections much more than interline connection options, generally because they are more convenient. This increased convenience may be in the form of not having to collect and bear baggage

mid journey, time savings associated with through check and the removal of the risk of forfeiting non-refundable fares if the first flight in their journey is delayed.

150. The ACCC considers that there are clear benefits to consumers from the additional online connections options for customers under the proposed conduct. For example, where Jetstar Japan operates domestic services in Japan these may be combined with services between Australia and Japan operated by Jetstar Airways on one itinerary. This will result in Australian consumers having better access to Japanese cities such as Fukuoka, Okinawa and Sapporo.

151. In several situations the additional online connection options created for Australian consumers under the proposed conduct are unique to Jetstar and not otherwise offered in the marketplace. For example, the applicants submit that Jetstar Japan may operate services to Korea and that these may be combined on a single itinerary with Jetstar Airways services from the Gold Coast or Cairns to Tokyo. Similarly, the applicants note that no airline currently operates services on the Singapore – Fuzhou route. However, under the proposed conduct, Jetstar Asia and Jetstar Hong Kong may coordinate timing of services on the Singapore - Hong Kong route (operated by Jetstar Asia) with connecting services on the Hong Kong – Fuzhou route (proposed to be operated by Jetstar Hong Kong) so as to provide consumers with one itinerary.

152. Better connections are also likely to arise as a result of coordination between Jetstar joint ventures and their FSA owners. For example, Jetstar Japan and JAL may be able to coordinate their scheduling to enable better connections between Australia and points in Japan served by JAL.

Better schedule spread

153. The applicants submit that in circumstances where more than one independent airline operates on a route, each of those airlines has the incentive to fly at the time of day that is most profitable. The applicants submit that under the proposed conduct the Jetstar LCCs will share revenue on overlap routes based on capacity so there would be an incentive to maximise the combined revenue by making the schedules complementary where possible".

154. The ACCC has previously accepted that coordination between airlines which provide services on overlapping routes may result in public benefits in the form of increased choice of flight times for consumers through increased scheduling spread.

155. In this instance the ACCC notes that there are 13 routes on which the Jetstar LCCs currently or potentially overlap and engage in revenue sharing. The ACCC considers that these parties will have a strong incentive to review their current schedules on these overlap routes with a view to optimising them and considers that this is likely to result in public benefit. The ACCC also notes that the parties intend to engage in schedule coordination on other overlap routes and considers that they would be able to coordinate to achieve a better schedule spread on these routes, even though they do not propose to share revenue (e.g. by sharing the allocation of preferred timeslots across routes).

Cost savings and efficiencies

156. The applicants submit that the proposed conduct will enable the Jetstar LCCs to achieve the scale necessary to generate cost savings and efficiencies to offer even lower fares. These cost savings will be achieved across the spectrum of business activities including:

    - higher utilisation of significant fixed costs including aircraft, crew and airport facilities;
    - common network planning and pricing/revenue management;
    - single marketing approach including common advertising, promotions and distribution platforms; and
    - shared IT services and other reporting and operational systems.

157. The ACCC has previously accepted that efficiencies may be delivered by an aviation alliance to the extent that it facilitates cost savings and efficiencies through, for example, rationalisation of duplicated fixed costs, better capacity utilisation, exploitation of synergies through joint marketing and investment (e.g. in IT systems).

158. In the draft determination the ACCC commented that it was not clear to what extent the proposed conduct contributed to the claimed efficiencies. The draft determination noted that it was likely that the establishment of the joint ventures and Jetstar Airways supporting role in these businesses (rather than the proposed conduct) gave rise to many of the efficiencies claimed by the applicants. The ACCC invited the applicants to make further submissions on this issue.

159. In response, the applicants state that the proposed conduct is essential and indispensable to achieving the claimed cost savings and efficiencies. While the establishment of the joint ventures and the operation of each of the BSAs enable each Jetstar joint venture airline to operate pursuant to the Jetstar Group's low cost base model, the proposed conduct ensures that all of the Jetstar joint venture airlines together can achieve the scale that is necessary to generate those cost savings and efficiencies. The applicants make three points to support this claim.

160. Firstly, the applicants submit that the JVCA will enable the Jetstar joint ventures to:

    a. combine complementary assets to achieve a higher utilisation of fixed costs and to optimise allocation of production;

    b. eliminate duplication through common pricing and network management, a single marketing platform, centralised ticketing and unified operational systems (including IT services and ground handling); and

    c. achieve economies of scale through schedule optimisation, joint negotiation with service providers and bulk purchasing, increased managerial efficiency and specialisation, sharing facilities, assets and expertise and unifying operational systems.

161. The applicants submit that these "heads of efficiencies" cannot be solely attributed to Jetstar Airways' supporting role in these businesses pursuant to the BSAs because each BSA operates as an individual vertical relationship and the efficiencies can only be derived and consolidated through "horizontal" coordination

across Jetstar joint ventures. The applicants also submit that some operational aspects of coordination are likely to take place between Jetstar joint venture airlines without the involvement of Jetstar Airways. For instance, if any two Jetstar joint venture airlines commence operating to a new destination and airport, they may potentially at some point in the future seek to coordinate on ground handling and airport services.

162. Secondly, the applicants submit that without FSA/related JV coordination , the relevant Jetstar joint venture airline would not be established in the first place – that is, the local FSA partner would not have the economic incentive to invest in or establish the Jetstar joint venture if it were not able to integrate the joint venture's functions into its own operations. On this basis the applicants claim that FSA/related JV coordination materially contributes to the claimed cost savings and efficiencies.

163. Thirdly, the applicants consider that as multiple overlap coordination is a combination of coordination under the JVCA and FSA/related JV coordination, this contributes to the claimed cost savings and efficiencies for the reasons above.

164. The ACCC remains of the view that a significant proportion of the cost savings and efficiencies claimed by the applicants can be achieved in the likely future without the proposed conduct. As described at paragraph 114, the ACCC considers that in the future without the proposed conduct each Jetstar joint venture airline continues to operate and access Jetstar Airways support in relation to most aspects of their operations, including network and fleet strategy, scheduling, pricing, marketing and customer service.

165. Nevertheless, the ACCC considers that in the future with the proposed conduct the applicants are likely to achieve cost savings and efficiencies that are incremental to those likely in the future without the proposed conduct as a result of more effective network/ fleet planning, schedule optimisation, pricing/revenue management and marketing. These incremental cost savings and efficiencies are likely to take the form of:

a. higher utilisation of fixed network facilities and assets, including aircraft, airport facilities and crew;

b. further savings through joint negotiations with service providers and bulk purchasing, including the acquisition of aircraft; and

c. further removal of duplicated costs including IT services, sales and marketing and ground handling services.

166. On this basis, the ACCC considers that the proposed conduct is likely to result in public benefits through cost savings and efficiencies.

Promotion of competition

167. The ACCC has previously accepted that aviation alliances can stimulate competitive responses amongst rivals in international air passenger transport services markets where the alliance enhances the alliance partners' passenger service offering and/or results in lower fares.

168. As discussed above, the ACCC considers that the proposed conduct will assist the applicants to offer an integrated service, and that it is likely to enhance the Jetstar

product and service offering. The ACCC considers that this integrated offering may trigger a competitive response (i.e. better price or service offerings) from rivals operating in the relevant market(s).

169. The ACCC considers that a competitive response in the short to medium term is most likely to come from rival FSAs and LCCs incumbent on the 227 routes on which the parties' operations and activities overlap. These include Singapore Airlines, Tiger Airways, Scoot, AirAsia, Lion Airlines, Cathay Pacific, Dragon Air, All Nippon Airways, Air China, China Southern, Shanghai Airlines and Philippine Airlines.

170. The ACCC considers that the proposed conduct may confer public benefits by stimulating a competitive response from rivals, resulting in lower prices and higher levels of service being offered to customers in the future.

Increased tourism in Australia

171. The applicants submit that the proposed conduct will result in economic benefits by increasing the potential for residents of Asian countries to come to Australia via the Jetstar network.

172. The ACCC notes that the applicants claim that the proposed conduct will result in "the potential for a very significant number of residents of Asian countries to come to Australia", but provide no forecasts or estimate of the additional visitors it expects will come to Australia as a result of the proposed conduct. However, they cite a Tourism Australia media release that the Jetstar Japan launch will deliver more seamless Japan – Australia access.[10]

173. Tourism Queensland supports this claim. In its submission, it states that coordination of scheduling could provide better connections for residents of Asian counties to travel to Queensland, particularly in the secondary cities. For example, Jetstar Japan enables residents in Fukuoka to travel to Tokyo or Osaka and connect to Queensland via the Jetstar network. Similarly, Jetstar Asia enables residents in Hangzhou to travel to Singapore and connect to Queensland via the Jetstar network.

174. Tourism Queensland also notes that visitors from Asian counties accounted for 41.7% of total international spending in Queensland during the year ending March 2012.

175. In previous decisions the ACCC has recognised that airline alliances can stimulate passenger traffic by (i) enhancing the product and service offering of the alliance partners and (ii) allowing them to exploit synergies through joint rather than separate tourism promotion activity. The level of tourism-related public benefits depends on the likely impact of the proposed conduct on demand for tourism in Australia and on the expenditure by tourists once they get here.

176. As the ACCC has noted previously, there are a wide range of factors which influence tourism demand and expenditure, including general purchasing power in source countries, the relative cost of other destinations, the total cost of visiting Australia and the perceived quality of Australia as a destination.

[10] Tourism Australia, 'Tourism Australia welcome Jetstar Japan launch network set to deliver more seamless Japan – Australia access', 17 April 2012.

177. The ACCC accepts that that stimulation of tourism is a potential source of public benefit under the proposed conduct. However, the extent of benefit is dependent on the level of additional passenger traffic as a result of the proposed conduct. Consistent with the discussion above, the ACCC accepts that a key way in which the proposed conduct is likely to stimulate additional traffic is through increased online connections, i.e. the proposed conduct will make it easier for residents of Asian countries to holiday in Australia and for Australians to holiday in Asia.

178. To the extent that the proposed conduct generates a net increase in passenger traffic from points in Asia to Australia, the ACCC accepts that the proposed conduct is likely to benefit Australian businesses and individuals involved in Australia's tourism industry. However, in the absence of further information from the applicants, the ACCC cannot come to any conclusions about the magnitude of this benefit.

ACCC conclusion on public benefits

179. The ACCC considers that the proposed conduct is likely to result in public benefits, principally in the form of:

- enhanced products and services to consumers as a result of the increased likelihood of additional Jetstar frequencies and destinations, increased online connections for consumers and better schedule spread; and
- cost savings and efficiencies.

180. The ACCC also considers that the proposed conduct has the potential to confer public benefits by triggering a competitive response from rival airlines and stimulating tourism in Australia.

181. For these reasons the ACCC considers that the proposed conduct is likely to result in public benefits.

Public detriment

182. 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.[11]

183. The applicants submit that the proposed conduct will result in no anti-competitive detriment due to the limited overlap between the various Jetstar entities. The ACCC's assessment of the likely public detriments from the proposed conduct follows.

184. The ACCC considers that any public detriment resulting from the proposed conduct is likely to arise from its effect on competition in the relevant market(s). The ACCC has considered the extent to which the proposed conduct has potential to harm competition by:

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

a. enhancing the ability or incentive of one or more of the airlines engaging in the proposed conduct to *unilaterally* raise price or reduce service on routes where they overlap;

b. weakening existing constraints on successful coordination[12] of price, capacity or related commercial decisions by airlines operating in the relevant market(s), or on particular routes.

185. In assessing the likely competitive effects of the proposed conduct, the ACCC has had regard to:

- the extent of current and likely future overlap in the operations of the applicants, the Jetstar joint venture airlines and their local FSA shareholders (together, **the parties**) in the relevant market(s);

- the likely degree of rivalry between the parties on overlap routes without the proposed conduct;

- the competitive constraint from rival airlines currently operating on overlap routes; and

- the likelihood of timely entry onto the route if the parties were to raise price or reduce service levels under the proposed conduct.

186. The ACCC considers that there are 227 routes on which the parties' operations either currently or potentially overlap. The overlap routes include routes to/from Australia (e.g. Sydney-Tokyo, Sydney-Shanghai) as well as routes between points in Asia (e.g. Tokyo-Shanghai, Tokyo-Hanoi) that may form sectors of a multi-stop journey to/from Australia.

187. However, the ACCC does not consider that the parties are likely to be close competitors in all overlap scenarios. In this regard, the ACCC notes:

- FSA's ownership interest in the Jetstar joint venture airlines affect their *ability* to influence or control the capacity, price and scheduling decisions of the Jetstar joint venture airlines in both with and without worlds. It also affects each FSA's *incentive* to compete (or not) with its joint venture airline, since if the FSA were to raise price and lose customers to the Jetstar joint venture airline, they are in a position to recoup some or all of their foregone profits by sharing the joint venture's profits on the FSA's lost customers.

- In a similar way, Jetstar Airways ownership interests and advisory role in the joint venture airlines affect both its ability to influence or control the capacity, price and scheduling decisions of the Jetstar joint venture airlines and its incentive to compete with Jetstar joint venture airlines.

188. As a result of the common influence of Jetstar Airways and the local FSA shareholder on the activities and operations of the Jetstar joint venture airlines and their own incentives to compete, the ACCC considers that in both the with and without worlds it is likely that there will be no significant rivalry between:

[12] Successful coordination requires airlines to tacitly or explicitly reach an understanding on a common strategy (e.g. not compete aggressively) in relation to a market or route, effectively monitor each other's adherence to the common strategy and effectively punish airlines that deviate from the common strategy.

a. Qantas Airways and/or Jetstar Airways and any Jetstar joint venture airline. This accounts for four of the parties' 227 overlap routes.

b. Each local FSA shareholder (JAL, CEA, Vietnam Airlines) and any Jetstar joint venture airline that they established (jointly with a Qantas Group entity), have a significant shareholding and board representation commensurate with that shareholding. This accounts for 195 of the parties' 227 overlap routes.

c. Jetstar joint venture airlines. This accounts for six of the parties' 227 overlap routes.

189. Setting aside the 205 routes where the parties overlap but are not likely to engage in significant rivalry with or without the proposed conduct, there are 22 remaining overlap routes that may give rise to competition concerns. The composition of overlap varies across these 22 routes. In particular:

- Ten entail overlap between two FSAs that are party to the proposed conduct (Qantas Airways, JAL, CEA or Vietnam Airlines);
- Eight entail overlap between a FSA shareholder (JAL, CEA or Vietnam Airlines) and an unrelated Jetstar joint venture airline; and
- Four entail overlap between Jetstar Airways and a FSA shareholder.

190. The ACCC's assessment of competition effects in the relevant markets is structured according to the composition of the overlap.

International air passenger transport services

Impact of the proposed conduct on competition on routes where two FSAs overlap

191. The applicants submit that the proposed conduct does not involve coordination as between any of Qantas Airways, JAL, CEA or Vietnam Airlines.

192. The ACCC considers that these FSAs are close competitors and that any coordination between them would be subject to applicable competition law in the with and without worlds. However, the ACCC does not rule out the potential for the proposed conduct to change airline behaviour on FSA overlap routes. Accordingly, the ACCC has considered whether the proposed conduct increases the likelihood of coordination between the parties and/or other airlines.

193. There are ten routes on which the FSAs that are party to the proposed conduct overlap. These are:

- Sydney to Tokyo (Narita) – overlap involves Qantas Airways and JAL;
- Sydney to Shanghai (Pudong) – overlap involves Qantas Airways and CEA;
- Tokyo (Narita) to Shanghai (Pudong) – overlap involves CEA and JAL;
- Tokyo (Haneda) to Shanghai (Hongqiao) – overlap involves CEA and JAL;

- Osaka (Kansai) to Shanghai (Pudong) – overlap involves CEA and JAL;
- Nagoya to Shanghai (Pudong) – overlap involves CEA and JAL;
- Hanoi to Tokyo (Narita) – overlap involves Vietnam Airlines and JAL;
- Ho Chi Minh to Tokyo (Narita) – overlap involves Vietnam Airlines and JAL;
- Hanoi to Shanghai (Pudong) – overlap involves Vietnam Airlines and CEA; and
- Ho Chi Minh to Shanghai (Pudong) – overlap involves Vietnam Airlines and CEA

Third party competition

194. The parties face third party competition on eight of these ten overlap routes. Generally, the larger the route (in terms of capacity), the more third party competitors. For example:

- On the Osaka (Kansai) to Shanghai (Pudong) route the parties compete with three other airlines: All Nippon Airways (24%), Air China (18%) and Shanghai Airlines (8% of the total 1,303,634 seats scheduled to be flown on the route in 2011).
- On the Tokyo (Narita) to Shanghai (Pudong) route the parties compete with three other airlines: All Nippon Airways (24%); Air China (18%) and Delta (11% of the total 1,101,432 seats scheduled to be flown on the route in 2011). Following the draft determination, the applicants submit that Spring Airlines has announced its intension to commence services on this route from March 2013.[13]
- On the Tokyo (Haneda) to Shanghai (Hongqiao) route the parties compete with two other airlines: All Nippon Airways (24%) and Shanghai Airlines (20% of the total 884,026 seats scheduled to be flown on the route in 2011).
- On the Nagoya to Shanghai (Pudong) route the parties compete with three other airlines: China Southern (18%), Air China (14%) and All Nippon Airways (7% of the total 755,298 seats scheduled to be flown on the route in 2011).
- On the Ho Chi Minh to Tokyo (Narita) route the parties compete with All Nippon Airways which accounted for 25% of the total 623,696 seats scheduled to be flown on the route in 2011.
- On the Ho Chi Minh to Shanghai (Pudong) route the parties compete with Shanghai Airlines which accounted for 28% of the total 259,080 seats scheduled to be flown on the route in 2011.

[13] Centre for Aviation, Spring Airlines embarks on pan-Asia strategy, **http://centreforaviation.com/analysis/spring-airlines-embarks-on-pan-asian-strategy-with-establishment-of-japanese-subsidiary-82518**, accessed 7 March 2013.

- On the Sydney to Shanghai (Pudong) route the parties compete with Air China which accounted for 20% of the total 257,624 seats scheduled to be flown on the route in 2011.
- On the Hanoi to Shanghai (Pudong) route the parties compete with route the parties compete with Shanghai Airlines which accounted for 17% of the total 184,806 seats scheduled to be flown on the route in 2011).

195. However, the parties are route duopolists on the Sydney-Tokyo (Narita) route and on the Hanoi-Tokyo (Narita) route. These routes are among the thinnest of the ten FSA overlap routes. In 2011 there were 274,019 seats scheduled to be flown on the Sydney-Tokyo (Narita) route and 369,428 seats scheduled to be flown on the Hanoi-Tokyo (Narita) route in 2011.

196. On the Sydney-Tokyo (Narita) route the parties may be constrained to some extent by indirect services offered by Korean Air (via Seoul 13hrs 45), Garuda (via Denpasar 15hrs) and Singapore Airlines (via Singapore 15hrs 30) although there is a time penalty in comparison to the direct services offered by Qantas and JAL (10hrs).

197. On the Hanoi-Tokyo (Narita) route the parties may be constrained to a limited extent by indirect services offered by Korean Air (via Seoul 7hrs), China Airlines (via Taipei 7hrs 10) and Cathay Pacific (7hrs 30) although there is a time penalty in comparison to the direct services offered by JAL and Vietnam Airlines (4hrs 45).

198. In response to the draft determination the applicants submitted that the ACCC's analysis of third party competition is static, based on historical data, and that the ACCC has not considered the nature and extent of competition on these routes over the next 12-24 months or the announcements about proposed services that have been made by FSAs and LCCs in respect of these routes.

199. The ACCC has had regard to all information provided by the applicants, including information about recent and announced entry/expansion by airlines onto routes (for example paragraph 194 above) and has taken this into account in making this assessment. In some instances the applicants have made unsupported assertions that routes will become highly competitive or that the mere presence of other LCCs in Asia will constrain the parties. In these instances, the ACCC has been unable to give significant weight to the possibility of further entry and/or expansion by other airlines to create an even more competitive dynamic in the future, when at this point such entry/expansion is only speculative and may not be timely.

Likelihood of entry

200. The ACCC has considered the likelihood of entry on the Sydney-Tokyo (Narita) route and the Hanoi-Tokyo (Narita) route in the event that the parties were to raise price or reduce service under the proposed conduct.

201. The ACCC notes that Australia has an 'open skies' style ASA with Japan (see Attachment E). The ACCC understands that Australian and Japanese designated airlines are able to determine their own capacity and frequencies at all airports, except for the two Tokyo airports. The ACCC notes that Haneda airport is restricted to seven weekly frequencies (in addition to restrictions on flight departure and arrival times). In relation to Narita airport, the ACCC understands that from 2013 all capacity restrictions will be removed. The ACCC therefore considers that Japanese

designated carriers such as All Nippon Airways likely would not face significant regulatory barriers to entering the Sydney-Tokyo route in future if they assessed such entry to be commercially attractive.

202. The ACCC also understands that Australia and Japan both have an 'open skies' style Air Service Agreement with the United States. This means that US designated carriers that currently fly to Japan can utilise fifth freedom traffic rights to operate between Japan and Australia if they found it commercially attractive.

203. However, while a prospective new entrant may not face regulatory barriers to entry, the ACCC considers that the combination of the thinness of the route and the minimum efficient scale of entry do not make the prospect of entry likely.

204. In relation to the Hanoi-Tokyo (Narita) route, the ACCC notes that All Nippon Airways currently operates between Ho Chi Minh and Tokyo (Narita). The ACCC considers that All Nippon Airways is likely to be well placed to enter the Hanoi-Tokyo (Narita) route if the parties were to raise price or remove capacity under the proposed conduct. However, it is not clear that it would find this a commercially attractive proposition given the size of the route and the minimum efficient scale of entry.

Conclusion

205. In the draft determination, the ACCC considered that the proposed conduct did not materially increase the likelihood of unilateral or coordinated conduct to raise price or reduce service on routes where FSAs overlap on the grounds that:

a. While FSA's ability to coordinate may be increased as a result of their common involvement in a Jetstar joint venture airline, that ability is not materially increased by the additional coordination that would result from the proposed conduct.

b. There is no cross ownership between FSAs so their incentives to compete are the same in the future with and without the proposed conduct.

c. In any event, on eight of the ten overlap routes, the parties' ability and incentive to increase fares or reduce service without authorisation is constrained by the presence of other carriers on the route. The rival third party competitors include Shanghai Airlines, All Nippon Airways and Air China.

d. On the remaining two overlap routes (Sydney-Tokyo and Hanoi-Tokyo) the ACCC considers that if the parties were to raise price or reduce service with authorisation it is not clear that carriers already operating services to/from Japan would find it commercially attractive to enter the route. However, this is a moot point because the ACCC considers that the proposed conduct does not alter the FSA's incentives to compete and does not significantly impact their ability to compete (or not) on these routes.

206. On that basis the ACCC considered that the proposed conduct was not likely to give rise to significant public detriment on FSA overlap routes. Coordination between FSAs falls outside the scope of the proposed conduct and, hence, authorisation.

207. In response to the ACCC's statement in the draft determination that the FSAs ability to coordinate may be increased as a result of their common investment in a Jetstar

joint venture airline (see above at paragraph 205.a) the applicants submitted that the ACCC had mischaracterised the role of the FSA shareholders in the Jetstar Pan-Asia Strategy.

208. The applicants submit that a FSA shareholder will not:

a. Be able to obtain increased access to information about other FSAs operating on the same route;

b. Have additional opportunities to meet representatives of other FSAs or discuss overlapping routes with those representatives; and

c. Otherwise have any increased ability or incentives to coordinate with another FSA on an overlapping route.

209. The ACCC notes that its discussion of this issue in the draft determination concluded that whilst the proposed conduct *may* give rise to an increased ability to co-ordinate, this ability is not materially increased by the proposed conduct, and that the FSA's incentives to compete (or not) with each other are the same regardless of whether the conduct for which authorisation has been sought takes place. The ACCC remains of this view. Since any ring-fencing protocols put in place by the applicants are only capable of covering a limited sub-set of the ways in which co-ordination between the FSAs could occur, the ACCC considers that the applicants' proposed ring fencing protocols do not alter its assessment of the benefits and detriments of the conduct for which authorisation has been sought. In addition, the ACCC notes it is possible for the applicants to amend the ring fencing protocols at any time in the future.

210. The ACCC remains of the view that it cannot rule out the potential for the proposed conduct to change airline behaviour in respect of FSA overlap routes. However, in this instance the ACCC does not consider that the proposed conduct is likely to give rise to significant public detriment on FSA overlap routes for the reasons articulated in the draft decision (and repeated above at paragraphs 205 and 206). For the avoidance of any doubt the ACCC considers that any FSA coordination falls outside the scope of authorisation.

Impact of the proposed conduct on competition on routes where one FSA and an unrelated Jetstar joint venture airline overlap

211. While the ACCC has accepted that a local FSA shareholder and its (related) Jetstar joint venture airline are not likely to compete in either the with or without worlds, the ACCC does not accept this for unrelated Jetstar entities. That is, in the world without the proposed conduct the ACCC considers that each local FSA shareholder competes with any unrelated Jetstar entity that operates or potentially operates on the same route as the FSA. In particular:

- JAL competes with Jetstar Asia, Jetstar Hong Kong and Jetstar Pacific
- CEA competes with Jetstar Asia, Jetstar Japan and Jetstar Pacific
- Vietnam Airlines competes with Jetstar Asia, Jetstar Japan and Jetstar Asia

212. As noted previously, the third limb of the proposed conduct provides for coordination between (i) a Jetstar joint venture airline, (ii) its local FSA shareholder, and (iii)

another Jetstar LCC, on routes where three such parties overlap. In these situations, Jetstar Airways will determine price, capacity and scheduling as between the two Jetstar entities. The relevant Jetstar entity will then coordinate operations with its full service airline. In other words, there is indirect but not direct coordination between an FSA and an unrelated Jetstar LCC.

213. This section considers the impact of the proposed conduct on competition in situations where the Jetstar entities described at (i) and (iii) above are both Jetstar joint venture airlines (i.e. Jetstar Asia, Jetstar Pacific, Jetstar Japan or Jetstar Hong Kong). The next section considers the impact on competition in situations where the Jetstar entity described at (iii) above is Jetstar Airways.

214. The ACCC considers that there are eight routes where the operations of a local FSA shareholder is likely to overlap with those of an unrelated Jetstar joint venture airline. These are:

- Singapore to Ho Chi Minh – overlap involves Vietnam Airlines and Jetstar Asia;
- Singapore to Hanoi – overlap involves Vietnam Airlines and Jetstar Asia;
- Osaka to Taipei – overlap involves JAL and Jetstar Asia;
- Hanoi to Osaka (Kansai) – potential overlap involves Vietnam Airlines and Jetstar Japan[14];
- Singapore to Tokyo (Narita) – potential overlap involves JAL and Jetstar Asia[15];
- Tokyo (Narita)-Hong Kong – potential overlap involves JAL and Jetstar Hong Kong[16];
- Singapore to Shanghai (Pudong) – overlap involves CEA and Jetstar Asia[17]; and
- A route involving Vietnam Airlines and potentially an unspecified joint venture which the applicants have confidentially identified to the ACCC.

[14] The applicants identify that Jetstar Japan may operate services between Hanoi and Osaka, Page 3, applicants' submission 22 August 2012.
[15] Jetstar Asia has applied for rights to commence a Singapore – Tokyo service, http://www.flightglobal.com/news/articles/jetstar-asia-applies-for-tokyo-narita-rights-337713/, accessed 7 December 2012.
[16] The applicants identify that Jetstar Japan and Jetstar Hong Kong may operate services between Tokyo and Hong Kong, Page 26, applicants' submission 28 June 2012.
[17] Jetstar Asia operates a Singapore – Hangzhou service which they advertise as a Singapore to Hangzhou (Shanghai) service, http://www.jetstar.com/id/en//~/_media/Jetstar%20Singapore/Files/PDF/News/2011/January/20110118.pdf, accessed 7 December 2012.

Rivalry between the parties

215. In the world without the proposed conduct, the ACCC considers that these parties are competitors, although their rivalry may be limited to some extent by their different service models (FSA versus LCC).

216. In the world with the proposed conduct, price and service competition between these entities on any of these routes may be removed in situations where there is three way overlap between (i) a Jetstar joint venture airline, (ii) its local FSA shareholder, and (iii) another Jetstar entity, consistent with the third limb of the proposed conduct.

217. The ACCC notes that under the proposed conduct there is to be no coordination until such time as all three parties are present on the route. In other words, the indirect coordination between a FSA shareholder and an unrelated Jetstar joint venture airline under the proposed conduct will not occur in situations where the Jetstar joint venture airline in which the FSA has an ownership interest potentially could enter the route but has not done so.

Third party competition

218. On six of the eight routes on which FSA and unrelated Jetstar joint venture airlines overlap, the parties face competition from between two and six rival airlines. Generally, the larger the route, the more third party competitors. For example:

- On the Singapore to Ho Chi Minh route the parties (Vietnam Airlines and Jetstar Asia) compete with three other airlines: Tiger Airways (29%), Singapore Airways (27%) and Lion Airlines (9% of the total 782,533 seats scheduled to be flown on the route in 2011).

- On the Tokyo (Narita)-Hong Kong route the parties (JAL and potentially Jetstar Hong Kong) face competition from six other airlines: Cathay Pacific (47%), All Nippon Airways (21%), Delta (14%), Hong Kong Airlines (9%), and Continental[18] (1% of the total 767,506 seats scheduled to be flown on the route in 2011).

- On the Singapore to Tokyo (Narita) route the parties (JAL and potentially Jetstar Asia) face competition from four other airlines: Singapore Airlines (38%), All Nippon Airways (22%), United Airlines (15%) and Delta (13% of the total 706,307 seats scheduled to be flown on the route in 2011).

- On the Osaka to Taipei route the parties (JAL and Jetstar Asia) compete with three other airlines: China Airlines (29%), Cathay Pacific (23%) and Eva Airways (16% of the total 609,508 seats scheduled to be flown on the route in 2011). In October 2012 Peach commenced services on the Taipei – Osaka route, which is not reflected in this data.

- On the Singapore to Hanoi route the parties (Vietnam Airlines and Jetstar Asia) compete with two other airlines: Singapore Airways (39%) and Tiger Airways (20% of the total 268,410 seats scheduled to be flown on the route in 2011). In June 2012 SilkAir commenced services on this route, which is not reflected in this data.

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[18] Continental ceased operating on the route in March 2011. United Airlines commenced services on the route in April 2012.

- Vietnam Airlines and potentially an unspecified Jetstar joint venture airline may overlap in the future on a route which three other airlines operate.

219. On the Singapore to Shanghai (Pudong) route the parties (CEA and Jetstar Asia) currently face direct competition from one airline – Singapore Airlines. However Singapore Airlines accounts for a substantial share of operating capacity on this route. For example, Singapore Airlines accounted for 63% of the 782,612 seats scheduled to be flown on this route in 2011- i.e. prior to Jetstar Asia commencing services on the route. The ACCC considers that Singapore Airlines is well placed to discipline the price and service decisions of CEA and Jetstar Asia on this route under the proposed conduct, given its strong position of incumbency and its ability and incentive to compete aggressively to maximise passenger traffic to Singapore to ensure Singapore's continued viability as a key aviation hub in the region.

220. The Hanoi-Osaka (Kansai) route is, by a considerable margin, the thinnest of the overlap routes involving a local FSA and an unrelated Jetstar joint venture airline. The ACCC notes that in 2011 Vietnam Airlines accounted for all of the 66,760 seats scheduled to be flown. Given the thinness of the route, the ACCC considers that it is likely that Vietnam Airlines and Jetstar Japan, assuming it enters the route in the near future, would be route duopolists. It may be some time before there is sufficient passenger demand on this route for entry by Jetstar Pacific to be commercially viable. As noted previously, this is a pre-condition for any (indirect) coordination between Vietnam Airlines and Jetstar Japan on this route under the proposed conduct.

221. Notwithstanding this, the ACCC considers that at some point in the future underlying passenger demand may be sufficient to sustain Vietnam Airlines, Jetstar Pacific and Jetstar Japan operations on the route. It is presently unclear whether, in the event that Jetstar Pacific was to enter the Hanoi-Osaka route, there are third party airlines[19] that would be likely to enter route if the parties were to raise price or reduce service. This will depend on the rate of growth in underlying passenger demand on the route. Given the thinness of the route, the ACCC considers it is likely to be some time before there is sufficient underlying demand to sustain four carriers.

Likelihood of entry

222. In response to the draft determination, the applicants submitted that new entry by LCCs on these routes is likely to occur and is likely to increase competition. The applicants note that LCCs (in particular) can, due to their low cost base, grow the market by stimulating demand through low fares and commence services on routes which may not otherwise be economically viable for FSAs.

223. The ACCC considers that the likelihood of new entry by LCCs in the future is speculative, and uncertain. For this reason the ACCC has not relied on such developments in making this assessment.

Conclusion

224. On balance, the ACCC considers that the proposed conduct does not materially increase the likelihood of one of the local FSAs and/or an unrelated Jetstar entity

[19] For example, All Nippon Airways currently operates services between Vietnam (Hanoi) and Japan (Tokyo).

raising price or reducing capacity on seven of the eight likely overlap routes on the grounds that:

a. under the proposed conduct, there would be no coordination between a local FSA shareholder and an unrelated Jetstar joint venture airline unless the Jetstar entity in which the FSA airline is shareholder also operates on the route.

b. the parties' ability and incentive to unilaterally increase fares or reduce capacity likely is constrained by the presence of other carriers that are incumbent on the route. The number and identity of rival third party competitors vary across overlap routes, but include Singapore Airways, Tiger Airways, Cathay Pacific, China Airlines, All Nippon Airways, United Airlines, Delta Airlines, Continental Airlines, Eva Airways and Lion Airlines.

225. However, in the draft determination, the ACCC considered that in the future with the proposed conduct there is potentially an increased likelihood of the parties raising price or reducing capacity on the Hanoi-Osaka (Kansai) route. This outcome depends on whether Jetstar Pacific enters the route and, if it does, whether at that time it is likely that one or more rivals (e.g. All Nippon Airways) would enter the route if the parties were to increase fares or reduce service . On this basis the ACCC considered that the proposed conduct is not likely to give rise to significant public detriment on routes where FSAs and unrelated Jetstar joint venture airlines overlap. Direct coordination (outside of multiple overlap coordination discussed at paragraph 23) between FSAs and unrelated Jetstar joint venture airlines falls outside the scope of the proposed conduct and, hence, authorisation.

226. Following the draft determination, the applicants submitted that the ACCC analysis that "in the future with the proposed conduct there is potentially an increased likelihood of the parties raising prices or reducing capacity on the Hanoi – Osaka route" appears to misunderstand the premise of the Jetstar business model. The applicants submit that the model requires the Jetstar Group to achieve and maintain a low cost base by generating efficiencies and savings through the economies of scale realised by coordination. This is turn allows the Jetstar joint venture airlines to stimulate demand by offering low fares.

227. The applicants submit that the economic viability of the Jetstar joint venture airlines is firmly based upon this model. That is, pursuant to that model, the Jetstar joint venture airlines have no economic incentive to increase price, or reduce service on any route regardless of the level of competition. Rather, the Jetstar Group's profitability is driven by growing demand through everyday low fares and capturing that growth.

228. The applicants submit for this reason, even if there were no actual or potential third party competitors to an incumbent FSA and Jetstar joint venture airlines on a particular route, there would be no economic incentive on the part of the Jetstar entities to raise price or reduce service given it would be entirely inconsistent with the business model pursuant to which they were established. Accordingly, the FSA operator would need to ensure that it remained competitive with the LCCs on the route.

229. While the ACCC accepts that LCCs may have an incentive to offer low fares to stimulate demand, this does not preclude a LCC from reducing capacity or service levels where it is profitable to do so.

230. The ACCC remains of the view that in the future with the proposed conduct there is potentially an increased likelihood of the parties raising price or reducing capacity on the Hanoi-Osaka (Kansai) route. As the ACCC noted in its draft determination, this outcome depends on whether Jetstar Pacific enters the route and, if it does, whether at that time it is likely that one or more rivals (e.g. All Nippon Airways) would enter the route if the parties were to increase fares or reduce service. It is therefore not certain that the parties would be in a position to raise price or reduce service on this route.

231. Given the uncertainty surrounding the parties' ability and incentive to raise price or reduce service on the Hanoi-Osaka (Kansai) route, together with the thinness of the Hanoi-Osaka (Kansai) route, the ACCC remains of the view that the proposed conduct is not likely to give rise to significant public detriment on routes where FSAs and unrelated Jetstar joint venture airlines overlap.

232. The ACCC notes that direct coordination (outside of multiple overlap coordination discussed at paragraph 23) between FSAs and unrelated Jetstar joint venture airlines falls outside the scope of the proposed conduct and, hence, authorisation.

Impact of the proposed conduct on competition on routes where Jetstar Airways and a local FSA shareholder overlap

233. Jetstar Airways currently operates a number of services between Australia and points in Asia (e.g. Australia and Japan) and between points in Asia (e.g. Japan-Philippines and Singapore-China). Until recently Jetstar Airways also operated services between Australia and Vietnam.[20]

234. In relation to Australia-Japan services, the ACCC notes that Jetstar Airways and JAL both operate between Australia and Japan, although currently not on the same routes. JAL operates services between Sydney and Tokyo. Jetstar Airways operates services between Gold Coast and Tokyo, Gold Coast and Osaka, Cairns and Tokyo, and Cairns and Osaka. JAL code shares on these Jetstar Airways services.

235. The ACCC considers that it is unlikely that Jetstar Airways or JAL would commence overlapping services between Australia and Japan in the near future. The ACCC notes that Jetstar Airways has applied to the IASC to renew its current code share agreement with Jetstar Japan, which expires at the end of 2012, through to June 2017.

236. The applicants submit that Jetstar Airways and JAL will not coordinate, in any way, any services between Australia and Japan and clarified that they had not sought authorisation in relation to such conduct.

237. However, the ACCC notes that the applicants have sought authorisation in relation to potential coordination between Jetstar Airways and JAL on the Tokyo-Manila route in the event that Jetstar Japan also commences services on the route.

238. In relation to Australia-Vietnam services, the ACCC notes that Vietnam Airways is the sole operator of direct services between Australia and Vietnam. It operates services between Ho Chi Minh and Sydney as well as Melbourne. Jetstar Airways

[20] In March 2012 Jetstar Airways ceased its Australia-Vietnam services and relocated the operating aircraft to allow it to commence Japan-Philippines services.

(and Qantas Airways) currently code share on these Vietnam Airways flights. Prior to March 2012 Jetstar Airways operated services between Darwin and Ho Chi Minh. The applicants submit that in the future Jetstar Airways may recommence indirect Sydney-Ho Chi Minh (via Darwin) services and Melbourne-Ho Chi Minh (via Darwin) services.

239. In relation to Singapore-China services, the ACCC notes that Jetstar Airways operates services between Singapore and Beijing, while CEA operates services between Singapore and Shanghai (Pudong). The ACCC understands that CEA operates international services from its Shanghai hub. On this basis, the ACCC considers it is not likely that CEA would commence Beijing to Singapore services in the future without the proposed conduct. However, at this point the ACCC is unable to rule out the possibility of Jetstar Airways entering the Singapore-Shanghai (Pudong) route in the future without the proposed conduct.

240. On this basis, the ACCC considers that there are four routes on which Jetstar Airways is likely to offer services that directly or indirectly overlap with one of the local FSA shareholders which may impact competition. These are:

- Sydney to Ho Chi Minh – overlap involves Jetstar Airways and Vietnam Airways;
- Melbourne to Ho Chi Minh – overlap involves Jetstar Airways and Vietnam Airways;
- Tokyo (Narita) to Manila – overlap involves Jetstar Airways and JAL; and
- Singapore to Shanghai – potential overlap involving Jetstar Airways[21] and CEA.

Rivalry between the parties

241. On the Sydney/Melbourne to Ho Chi Minh routes, the ACCC considers that in the world without the proposed conduct the rivalry between Jetstar Airways and Vietnam Airlines is likely to be limited to some extent by:

a. Jetstar Airways being in a position only to operate an indirect (one stop) service between Sydney/Melbourne and Ho Chi Minh (via Darwin) in contrast to Vietnam Airlines direct services. The indirect services are unlikely to be preferred by time sensitive Sydney/Melbourne passengers.

b. Their different service models – Vietnam Airways being a full service carrier and Jetstar Airways being a low cost carrier.

242. Notwithstanding this, the ACCC considers that Jetstar Airways and Vietnam Airlines services both offer one stop services between Vietnam and points in Australia other than Sydney or Melbourne to the extent that they are able to join/leave the Jetstar Airways service at Darwin and arrange a separate connecting domestic flight.

243. On the Tokyo (Narita) to Manila route, the ACCC considers that in the world without the proposed conduct the rivalry between JAL and Jetstar Airways is likely to be

[21] The applicants have not identified Shanghai – Singapore as a potential route for Jetstar Airways to enter, but in light of the fact that Jetstar Airways operates a Singapore – Beijing service, the ACCC considers it possible that they may commence operations on this route.

limited to some extent by their different service models – JAL being a full service carrier and Jetstar Airways being a low cost carrier.

244. On the Shanghai (Pudong) to Singapore route, the ACCC considers that in the world without the proposed conduct the potential rivalry between Jetstar Airways and CEA would likely be limited to some extent by their different service models – CEA being a full service carrier and Jetstar Airways being a low cost carrier.

245. In the world with the proposed conduct, price and service competition between Jetstar Airways and these FSAs may be removed if the Jetstar joint venture entity in which the FSA has a significant shareholding also enters the route, consistent with the third limb of the proposed conduct.

Third party competition

246. On the Tokyo (Narita) to Manila route, the parties face competition from three rival airlines: Delta (28%), Philippine Airlines (27%) and All Nippon Airways (13% of the total 514,323 seats scheduled to be flown on the route in 2011 – i.e. prior to Jetstar Airways commencing services in March 2012. However, Jetstar Airways is the only low cost carrier on the route.

247. On the Shanghai (Pudong) to Singapore route, if Jetstar Airways was to enter, the parties would face competition from Singapore Airlines, which accounted for 63% of the total 782,612 seats scheduled to be flown on the route in 2011.

248. On both the Sydney and Melbourne routes to Ho Chi Minh, there is no rival airline operating direct services. However, there are a number of airlines offering single (one stop) itineraries between Sydney or Melbourne and Vietnam, including Cathay, Singapore Airlines, and Thai Airways (see Table 1 below).

249. The time penalty associated with some of these indirect options likely limits the extent to which they constrain the price and service decisions of direct services. For example:

- on journeys from Sydney to Ho Chi Minh, the most timely indirect service (Cathay Pacific via Hong Kong) takes more than four hours longer than Vietnam Airlines direct service.

- on journeys from Melbourne to Ho Chi Minh, the most timely indirect service (Singapore Airlines via Singapore) takes 2.5 hours longer than Vietnam Airlines direct service.

250. However, relative to an indirect Jetstar Airways service via Darwin, these alternative indirect options entail much less time penalty.

Table 1: Airlines operating Sydney – Ho Chi Minh and Melbourne – Ho Chi Minh services

Route	Airline	Midpoint	Time
Sydney – Ho Chi Minh	Vietnam Airlines	Direct	8hrs 55
	Jetstar Airways*	Via Darwin	11hrs 35
	Cathay Pacific	Via Hong Kong	13hrs 25
	Singapore Airlines	Via Singapore	13hrs 40
	Thai Airways	Via Bangkok	13hrs 55
	Cathay Pacific	Via Hong Kong	13hrs 15
Melbourne – Ho Chi Minh	Vietnam Airlines	Direct	8hrs 40
	Jetstar Airways*	Via Darwin	12hrs 5
	Singapore Airlines	Via Singapore	11hrs 10
	Thai Airways	Via Bangkok	12hrs 45
	Malaysia Airlines	Via Kuala Lumpur	13hrs 15
	Cathay Pacific	Via Hong Kong	13hrs 15

* based on services operated by Jetstar Airways in 2011.

Source: Expedia.com.au; Flights departing 30 November 2012 and Jetstar media release 'Jetstar launches sale fares for new South East Asia flights', 16 June 2008.

251. The ACCC also has considered the likelihood of entry on the Sydney-Ho Chi Minh and Melbourne-Ho Chi Minh routes in the event that the parties were to raise price unilaterally or in concert with other airlines under the proposed conduct.

252. The ACCC notes that under the ASA between Australia and Vietnam (see Attachment E) there is considerable unallocated capacity available for new entrant Vietnamese or Australian carriers. Vietnam Airlines currently operates 14 frequencies per week to major gateways out of 28 available to Vietnamese carriers (in addition there are a further seven frequencies available to major gateways if triangulated with a regional gateway). Australian airlines are permitted to operate 28 frequencies from major gateways to Vietnam. Currently, four frequencies are allocated to Air Australia but are not used.[22] The remaining 24 are unallocated.

253. However, based on current demand and capacity on the route, it is not clear that other airlines would find it commercially attractive to enter in response to a unilateral

[22] Strategic Airlines Pty Ltd trading as Air Australia ceased trading on 17 February 2012.

price rise or capacity reduction by the parties. The ACCC notes that in the year to June 2012:

- 532,163 passengers travelled between Australia and Vietnam using direct and indirect services. Of this number, 200,012 (38%) travelled to/from Melbourne and 171,206 (32%) travelled to/from Sydney. Around 30% of passenger traffic travelled between Australia and Vietnam from a port other than Sydney or Melbourne.

- there were 432,635 seats flown directly between Australia and Vietnam.[23] Vietnam Airlines accounted for 89% of this capacity, which was evenly split between its Sydney and Melbourne services.[24]

Conclusion

254. On the Tokyo (Narita)-Manila route, the ACCC considers that the proposed conduct is not likely to materially increase the parties' ability and incentive to raise price or reduce service on the grounds that:

    a. under the proposed conduct, there would be no coordination between Jetstar Airways and JAL on overlap routes, unless Jetstar Japan also operated on the route.

    b. the three competitors that the parties face on this route - Delta, Philippine Airline and All Nippon Airways – have a strong presence in the region and collectively accounted for 67% of route capacity in 2011, i.e. prior to Jetstar Airways commencement on the route.

255. On the Shanghai (Pudong) to Singapore route, the ACCC considers that the proposed conduct is not likely to materially increase the parties' ability and incentive to raise price or reduce service on the grounds that:

    a. it is not clear that Jetstar Airways would enter this route in the world without the proposed conduct. However, even if it did, there would be no coordination between Jetstar Airways and CEA on this route, Jetstar Hong Kong would also need to enter on the route before the scope of authorisation would allow direct coordination between the parties. On current information the ACCC does not consider this likely.

    b. the parties would face third party competition from Singapore Airlines, which has a significant presence on this route.

256. On the Sydney/Melbourne to Ho Chi Minh routes, the ACCC considers that the proposed conduct does not materially increase the likelihood of Jetstar Airways and Vietnam Airways unilaterally raising price on the grounds that:

    a. under the proposed conduct, there would be no coordination between Vietnam Airlines and Jetstar Airways on overlap routes, unless Jetstar Pacific also operated on the route too. For this situation to occur Vietnam Airlines would need to commence services between Darwin and Ho Chi Min City or Jetstar Pacific would need to commence services to/from Sydney and Melbourne via Darwin.

[23] Data provided by BITRE.
[24] Based on data submitted by the applicants.

b. the parties' ability and incentive to unilaterally increase fares or reduce service without authorisation is likely to be constrained to some degree by other carriers offering indirect (one stop) services between Australia and Vietnam, including Cathay, Singapore Airlines and Thai Airways.

257. The ACCC also considers that the proposed conduct does not materially increase the likelihood of coordinated conduct on these four overlap routes because it does not appear to significantly weaken existing constraints on successful coordination by airlines on these routes.

258. On this basis the ACCC considers that the proposed conduct is not likely to give rise to significant public detriment on routes where the operations of Jetstar Airways and local FSA shareholders overlap. Coordination between Jetstar Airways and JAL on services between Australia and Japan falls outside the scope of the proposed conduct and, hence, authorisation.

Conclusion on public detriment in the relevant international air passenger transport services market

259. In sum, the ACCC considers that the proposed conduct is likely to result in little, if any, public detriment in the relevant international air passenger transport services market(s).

260. For the purposes of this assessment, the ACCC has not considered potential coordination that falls outside the scope of the conduct for which authorisation is sought, such as:

- coordination between JAL and Jetstar Airways in relation to services between Australia and Japan;
- coordination between a FSA and an unrelated Jetstar joint venture airline except in a multiple overlap situation (described at paragraph 8), in which case there may be coordination of a type described at paragraph 23above;
- coordination between two or more FSAs that are party to the arrangement.

International air cargo transport services

261. The ACCC considers that the competition assessment in relation to the international air passenger services market is also relevant to the assessment of potential public detriment in the relevant air cargo market, given that a number of international airlines provide air cargo transport services in the relevant air cargo market by carrying cargo in the holds of their aircraft.

262. However, the ACCC notes that there are a number of dedicated air freighters that also compete in this market and are a further source of constraint on the parties' air cargo price and service offering.

263. Given that the ACCC has found that there are little, if any, public detriments in the relevant passenger market, it is satisfied that the proposed conduct is likely to result in little, if any, public detriments in the relevant air cargo market.

Balance of public benefit and detriment

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

265. In the context of applying the net public benefit test in section 90(8)[25] of the Act, the Tribunal commented that:

> … something more than a negligible benefit is required before the power to grant authorisation can be exercised.[26]

266. For the reasons outlined in this determination the ACCC considers that the proposed conduct is likely to result in public benefits in the form of enhanced products and services, cost savings and efficiencies.

267. The ACCC also considers that the proposed conduct may result in stimulation of a competitive response from rival airlines in the relevant market(s) and some stimulation of tourism.

268. The ACCC considers that the proposed conduct is likely to result in little, if any, public detriment.

269. On balance the ACCC considers that the likely benefit to the public would outweigh the likely detriment to the public including the detriment constituted by any lessening of competition. The ACCC also considers that the proposed conduct is likely to result in such a benefit to the public that it should be allowed.

270. Accordingly, the ACCC is satisfied that the relevant net public benefit tests in ss90(5A), 90(5B), 90(6), 90(7), and 90(8) are met.

Length of authorisation

271. The Act allows the ACCC to grant authorisation for a limited period of time.[27] 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.

272. In this instance, the applicants have sought authorisation for ten years. The applicants note that the ACCC has previously indicated a reluctance to authorise airline alliances for a period of time in excess of five years due to the fact that the aviation industry is volatile and dynamic such that the public benefits derived from an alliance may be outweighed by anti-competitive detriments as market circumstances change.

273. The applicants further submit that their proposed conduct should be distinguished on the basis that the proposed conduct involves the development and growth of a pro-

[25] 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.

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

[27] Section 91(1).

competitive greenfields network of LCCs which would not otherwise exist. The applicants submit that unravelling the joint ventures would be difficult and would result in the loss of public benefits derived from the conduct.

274. The applicants also submit that the markets likely to be affected by the proposed conduct will experience rapid growth and the new entry and expansion of LCCs will meet that growth.

275. Virgin Australia submits that as the market and competitive dynamics can change rapidly in the Asian aviation market, it is appropriate that the competitive effects and public benefits of the alliance be tested after a shorter period of implementation.

276. As set out in the likely future with or without section above, the ACCC considers that the joint ventures will exist with or without the proposed conduct. On this basis the ACCC does not consider that the proposed conduct results in the development of a greenfields network, nor would authorisation expiring result in the unravelling of the joint ventures.

277. For the reasons set out in this determination, at this time the ACCC considers that the likely benefits to the public as a result of the proposed conduct outweigh the detriments. The ACCC maintains the view that the aviation industry is volatile, dynamic and continues to evolve. The ACCC considers that changes in the industry may alter the balance of benefits and detriments over time.

278. On this basis, the ACCC grants authorisation for the proposed conduct until 31 March 2018.

Determination

279. On 28 June 2012 Qantas Airways Limited and Jetstar Airways Pty Ltd lodged applications for authorisation A91314 & A91315 with the ACCC. Application A9314 was made using Form A, Schedule 1, of the Competition and Consumer Regulations 2010*.* The application was made under subsection 88 (1A) and 88(1), of the Act to:

- make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.

- give effect to a provision of a contact, arrangement or understanding that 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.

280. Application A91315 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 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).

- give effect to a provision of a contract, arrangement or understanding that is, or may 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).

The net public benefit test

281. For the reasons outlined in this determination, the ACCC considers that in all the circumstances the conduct for which authorisation is sought is likely to satisfy the relevant net public benefit tests, namely:

- is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct

- is likely to result in such a benefit to the public that the conduct should be allowed to take place.

282. The ACCC therefore **grants** authorisation to applications A91314 & A91315.

Conduct for which the ACCC grants authorisation

283. The ACCC grants authorisation to the applicants to give effect[28] to a joint venture coordination agreement between each and all of the following entities:

    a. Qantas;

    b. Jetstar Airways;

    c. Jetstar Asia;

    d. Jetstar Pacific;

    e. Jetstar Japan; and

    f. Jetstar Hong Kong

284. The ACCC also grants authorisation for making and giving effect to coordination agreements, arrangements and understandings between a Jetstar low cost carrier (**LCC**) and its full service airline (**FSA**) shareholder on actual or potential routes that the Jetstar LCC and its FSA shareholder may overlap. This applies to:

    a. Jetstar Japan and Japan Airlines; and

    b. Jetstar Hong Kong and CEA.

285. The ACCC also grants authorisation for making and giving effect to coordination agreements, arrangements and understandings between a Jetstar LCC, its local FSA shareholder and another Jetstar LCC on routes where all three airlines operate on overlapping routes.

286. The ACCC grants authorisation until 31 March 2018.

287. Further, the authorisation is in respect of the conduct as it stands at the time authorisation is granted. Any changes to the proposed conduct during the term of the authorisation are not covered by the authorisation.

288. This determination is made on 26 March 2013.

Conduct not authorised

289. The authorisation does not extend to:

    a. Coordination between any of the following airlines: Qantas, Japan Airlines, CEA and Vietnam Airlines;

    b. Coordination between a Jetstar LCC and a FSA that is not a shareholder;

[28] The applicants applied for authorisation to both “make” and “give effect to” the contract. Since the authorisation application was lodged (on 28 June 2012) after the agreement that is the subject of the authorisation was executed (on 22 June 2012), the ACCC cannot authorise the making of the agreement (see section 88(12)) of the Act.

c. Coordination between Jetstar Australia and Japan Airlines in relation to services operated between Australia and Japan; and

d. Coordination involving any future Jetstar Joint Ventures.

Date authorisation comes into effect

This determination is made on 21 March 2013. If no application for review of the determination is made to the Australian Competition Tribunal (the Tribunal), it will come into force on 17 April 2013.

Attachment A - Summary of relevant statutory tests

Subsections 90(5A) and 90(5B) provide 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 subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and

- that benefit, in the case of subsection 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 subsection 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.

Subsections 90(6) and 90(7) 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 subsection 90(6) would result, or be likely to result, or in the case of subsection 90(7) has resulted or is likely to result, in a benefit to the public; and

- that benefit, in the case of subsection 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 subsection 90(7) has resulted or is likely to result from giving effect to the provision.

Section 90(8) states, relevantly, that the ACCC shall not:

- 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

    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

- 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.

Attachment B: Current and potential overlap between FSAs

All data is capacity by seats scheduled to be flown for calendar year 2011 based on Diio Mi data supplied by the applicants.

Table 1: Sydney – Tokyo (Narita)

Carrier	Capacity	Share of route capacity
JAL	**141,888**	**51.78**
Qantas Airways	**132,131**	**48.22**
Total	274,019	100

Table 2: Sydney – Shanghai (Pudong)

Carrier	capacity	Share of route capacity
Qantas Airways	**105,246**	**40.85**
China Eastern Airlines	**100,128**	**38.87**
Air China	52,250	20.28
Total	257,624	100

Table 3: Tokyo (Narita) –Shanghai (Pudong) route

Carrier	capacity	Share of route capacity
China Eastern Airlines	**296,188**	**26.89**
All Nippon Airways	265,016	24.04
JAL	**220,436**	**20.01**
Air China	202,560	18.39
Delta	117,232	10.64
Total	1,101,432	100

Table 4: Tokyo (Haneda) –Shanghai (Hongqiao) route

Carrier	capacity	Share of route capacity
JAL	**283,970**	**32.12**
China Eastern Airlines	**216,944**	**24.54**
All Nippon Airways	209,510	23.70
Shanghai Airlines	173,602	19.64
Total	884,026	100

Table 5: Osaka (Kansai) – Shanghai (Pudong)

Carrier	Capacity	Share of route capacity
China Eastern Airlines	**406,636**	**31.19**
All Nippon Airways	313,900	24.08
JAL	**239,684**	**18.39**
Air China	237,854	18.25
Shanghai Airlines	105,560	8.10
Total	1,303,634	100

Table 6: Nagoya - Shanghai (Pudong)

Carrier	Capacity	Share of route capacity
China Eastern Airlines	**342,054**	**45.29**
China Southern	133,970	17.74
JAL	**120,752**	**15.99**
Air China	106,166	14.06
All Nippon Airways	52,356	6.93

Total	755,298	100

Table 7: Hanoi – Tokyo (Narita)

Carrier	Capacity	Share of route capacity
Vietnam Airlines	**201,528**	**54.55**
JAL	**167,900**	**45.45**
Total	369,428	100

Table 8: Ho Chi Minh – Tokyo (Narita)

Carrier	Capacity	Share of route capacity
Vietnam Airlines	**298,846**	**49.92**
JAL	**167,900**	**26.92**
All Nippon Airways	156,950	25.16
Total	623,696	100

Table 9: Ho Chi Minh – Shanghai (Pudong)

Carrier	Capacity	Share of route capacity
Vietnam Airlines	**133,840**	**51.66**
Shanghai Airlines	71,520	27.61
China Eastern Airlines	**53,720**	**20.73**
Total	259,080	100

Table 10: Hanoi – Shanghai (Pudong)

Carrier	Capacity	Share of route capacity
Vietnam Airlines	**131,066**	**70.92**
Shanghai Airlines	30,356	16.43
China Eastern Airlines	**23,384**	**12.65**
Total	184,806	100

Attachment C: Current and potential overlap between FSAs and unrelated JV

All data is capacity by seats scheduled to be flown for calendar year 2011 based on Diio Mi data supplied by the applicants.

Table 1: Singapore – Ho Chi Minh

Carrier	capacity	Share of route capacity
Tiger	223,200	28.52
Singapore	209,376	26.76
Jetstar Asia	**147,060**	**18.79**
Vietnam Airlines	**136,102**	**17.39**
Lion Airlines	66,795	8.54
Total	782,533	100

Table 2: Singapore – Hanoi

Carrier	Capacity	Share of route capacity
Vietnam Airlines	**109,110**	**40.65**
Singapore Airlines	105,120	39.16
Tiger	52,380	19.51
Jetstar Asia	**1,800**	**0.67**
Total	268,410	100

Table 3: Osaka (Kansai) – Taipei

Carrier	Capacity	Share of route capacity
China Airlines	175,445	28.78
Cathay Pacific	138,436	22.71
JAL	**133,211**	**21.86**
Eva Airways	96,716	15.87
Jetstar Asia	**65,700**	**10.78**
Total	609,508	100

Table 4: Singapore – Tokyo (Narita)[29]

Carrier	capacity	Share of route capacity
Singapore Airlines	265,363	37.57
All Nippon Airways	157,022	22.23
United Airlines	104,588	14.81
JAL	**85,063**	**12.04**
Delta	94,271	13.35
Total	706,307	100

Table 5: Hanoi - Osaka (Kansai)[30]

Carrier	Capacity	Share of route capacity
Vietnam Airlines	**66,760**	**100**
Total	66,760	100

[29] Jetstar Asia has applied for rights to commence a Singapore – Tokyo service, http://www.flightglobal.com/news/articles/jetstar-asia-applies-for-tokyo-narita-rights-337713/, accessed 7 December 2012.
[30] The applicants identify that Jetstar Japan may operate services between Hanoi and Osaka, Page 3, applicants' submission 22 August 2012.

Table 6: Tokyo (Narita) – Hong Kong[31]

Carrier	Capacity	Share of route capacity
Cathay Pacific	359,129	46.79
All Nippon Airways	157,382	20.51
Delta	104,682	13.64
Japan Airlines	**69,545**	**9.06**
Hong Kong Airlines	67,819	8.84
Continental[32]	8,949	1.17
United[33]	0	0
Total	767,506	100

[31] The applicants identify that Jetstar Japan and Jetstar Hong Kong may operate services between Hong Kong and Tokyo, page 26, applicants' submission 28 June 2012.
[32] Continental operated services on this route from October 2011 to March 2011.
[33] United commenced services in April 2012.

Attachment D: Current and potential overlap between FSAs and Jetstar Airways

Table 1: Tokyo (Narita) – Manila

Carrier	Capacity	Share of route capacity
JAL	**167,900**	**32.64**
Delta	143,468	27.89
Philippine Airlines	136,735	26.59
All Nippon Airways	66,220	12.88
Jetstar Airways[34]	**0**	**0**
Total	514,323	100

Airline share (seats scheduled to be flown), calendar year 2011 based on Diio Mi data supplied by the applicants.

Table 2: Melbourne – Ho Chi Minh

Carrier	Capacity	Share of route capacity
Vietnam Airlines	**187,432**	**100**
Total	187,432	100

Airline share (seats scheduled to be flown), financial year ending June 2012, sourced from BITRE

Table 3:Sydney – Ho Chi Minh

Carrier	Capacity	Share of route capacity
Vietnam Airlines	**196,398**	**100**
Total	196,398	100

Airline share (seats scheduled to be flown), financial year ending June 2012, sourced from BITRE

[34] Jetstar Airways commenced operations on this route in March 2012, so is not captured under the 2011 share data.

Table 4: Singapore – Shanghai (Pudong)[35]

Carrier	Capacity	Share of route capacity
Singapore Airlines	495,634	63.33
China Eastern Airlines	**286,978**	**36.67**
Total	782,612	100

[35] Jetstar Asia operates a Singapore – Hangzhou service which they advertise as a Singapore to Hangzhou (Shanghai) service, http://www.jetstar.com/id/en//~/_media/Jetstar%20Singapore/Files/PDF/News/2011/January/20110118.pdf, accessed 7 December 2012.

Attachment E: Regulatory barriers to entry and expansion

Singapore

1. Australia has an open skies Air Service Agreement with Singapore. Australian and Singaporean designated airlines are able to determine their own capacity and frequencies, subject to acquiring acceptable landing slots at relevant airports. Singapore and Australia both have liberal air service agreements with other Asian counties, which allow entry on Australia-Singapore routes by third country carriers such as Etihad, Qatar, and the Chinese carriers.

2. The ACCC understands that there are not significant impediments to acquiring airport slots at Singapore airport.

Vietnam

3. Under the Air Service Agreement between Australia and Vietnam, the following capacity is available to designated carriers of each country:

   a. 28 frequencies weekly in total for passenger services with any aircraft type to and from Sydney, Melbourne (including Avalon), Brisbane and Perth.

   b. unrestricted capacity, frequency and aircraft type to and from all points in Australia other than Sydney, Melbourne (including Avalon), Brisbane and Perth; and

   c. In addition to the capacity entitlements above, seven (7) services per week in total maybe operated between points in Vietnam and Sydney, Melbourne (including Avalon), Brisbane and Perth, provided that such services operate via or beyond to a point in Australia that is not Sydney, Melbourne (including Avalon), Brisbane and Perth.

   d. Fifth-freedom traffic rights for combination passenger/cargo services are exercisable at certain intermediate and beyond points. In exercising these traffic rights, designated airlines of Australia are restricted to fourteen (14) weekly frequencies per beyond or intermediate point. There are some exceptions to this frequency limitation.

   e. A designated airline of Australia may enter into code sharing arrangements, as the marketing and/or operating airline, with another Australian airline or airlines, with a Vietnamese airline or airlines or with an airline or airlines of a third country.

   f. A designated airline of Australia may code share on domestic flights within the territory of Vietnam as part of a through international journey are limited to a maximum of fourteen (14) weekly frequencies per domestic sector (city pair).

4. Vietnam Airlines currently operates 14 frequencies per week to major gateways out of 28 available to Vietnamese carriers (in addition there are a further seven frequencies available to major gateways if triangulated with a regional gateway). There is also unrestricted access for Vietnamese carriers to regional gateways.

5. Australian airlines are permitted to operate 28 frequencies from major gateways to Vietnam. Currently, 4 frequencies are allocated to the Air Australia but are not used. The remaining 24 are unallocated. This leaves considerable unallocated capacity available for new entrant Vietnamese or Australian carriers.

6. While the Air Service Agreement provides for entry by another Australian or Vietnamese designated carrier on to Australia – Vietnam routes, that carrier must also be able to access airport slots at either end to commence operations. The ACCC understands that there are not significant impediments to acquiring airport slots at Vietnamese airports.

Japan

7. Australia has an 'open skies' style Air Service Agreement with Japan. Australian and Japanese designated airlines are able to determine their own capacity and frequencies at all airports, except for the two Tokyo airports. The ACCC notes that Haneda airport is restricted to seven weekly frequencies (in addition to restrictions on flight departure and arrival times). In relation to Narita airport, the ACCC understands that from 2013 all capacity restrictions will be removed.[36] Currently Japanese carriers are using 10.5 units of 79 available from Narita to Australia.

8. While the Air Service Agreement from 2013 will not prevent or constrain entry by another Australian or Japanese designated carrier on the Sydney-Tokyo route, that carrier must also be able to access landing slots at either of the two Tokyo airports (Haneda and Narita) in order to commence services on this route.

9. The ACCC understands that historically it has been difficult for long haul international carriers to access slots at these airports. However, this may be changing. Airlines including Jetstar Japan, Japan AirAsia and Peach have recently acquired slots at both Tokyo airports. The ACCC notes that Japan Airlines expects departure and landing slots to significantly increase in the Tokyo metropolitan area (Haneda and Narita) during financial years 2012 to 2016.[37]

10. The ACCC also understands that Japan has also entered into open skies style Air Services Agreements with the United States, the United Kingdom, Korea, Taiwan, Sweden, Denmark and Norway. Japan also has entered into a limited open skies agreement with China, which includes all airports except Narita, Haneda, Beijing and Shanghai. These agreements facilitate designated carriers of these countries operating services between Australia and Japan by using fifth freedom traffic rights.

[36] http://www.minister.infrastructure.gov.au/aa/releases/2011/september/aa176_2011.aspx
[37] JAL Group Mid-Term Management Plan Fiscal Years 2012-2016, page 4, http://www.jal.co.jp/en/info/other/pdf/120215_02.pdf, accessed 7 December 2012.

Hong Kong

11. The current bilateral Air Services Agreement between Australia and Hong Kong makes available the following to designated carriers of each country:

    a. Passenger services between Sydney, Melbourne, Brisbane and Perth and Hong Kong – 70 services per week

    b. Passenger services between all points in Australia other than Sydney, Melbourne, Brisbane and Perth and Hong Kong – no limit on the number of frequencies

    c. All-cargo services between Sydney, Melbourne, Brisbane and Perth and Hong Kong – two services per week

    d. All-cargo services between all points in Australia other than Sydney, Melbourne, Brisbane and Perth and Hong Kong – no limit

    e. Fifth freedom rights are available for a maximum of 50% of the capacity of the aircraft operated, or up to 200 passengers per flight, whichever is higher.

    f. Capacity may be used via points in Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand to Hong Kong on up to seven round trip frequencies per week on each city pair.

    g. Capacity may be used beyond Hong Kong to points in Thailand, Singapore, Japan, Republic of Korea and one point in Europe and one point in the United Kingdom on up to 15 round trip frequencies in total per week.

    h. Of these, if a European point is selected, up to three round trip frequencies per week may be operated. The European point may be selected from points in Germany, France, Scandinavia, Italy, the Netherlands or Switzerland. If a point in the United Kingdom is selected, with immediate effect, up to seven round trip frequencies per week may be operated

    i. A designated airline of Australia may, subject to conditions, enter into code-share arrangements, whether as the operating or marketing airline, in respect of passenger and freighter air services with: a designated airline(s) of Australia; an airline(s) of Hong Kong; and an airline(s) of a third country or countries.

12. Qantas currently has approval to operate 25 frequencies per week for passenger services and the capacity may be used by Qantas to provide services jointly with Air France. Hong Kong carriers are currently using 70 out of 70 frequencies from Hong Kong to major gateways in Australia.

13. The ACCC considers that the ASA may prevent entry or expansion by Hong Kong designated carriers, but that there is considerable unallocated capacity available for Australian designated carriers.

14. While the Air Service Agreement provides for entry by another Australian designated carrier on to Australia – Hong Kong routes, that carrier must also be able to access landing slots at either end to commence operations. The ACCC considers that access to landing slots at Hong Kong airport may constrain carriers wishing to enter Australia – Hong Kong routes.

China

15. Australia's Air Services Agreement with China makes the following capacity available to Australian carriers:

    a. a total of 22,500 seats each way per week to and from Sydney, Melbourne (including Avalon), Brisbane and Perth

    b. unrestricted capacity, frequency and aircraft type to and from all points in Australia other than Sydney, Melbourne (including Avalon), Brisbane and Perth, and

    c. in addition to the capacity set out above, an additional 2,500 weekly seats may be operated in any direction provided such services operate via or beyond to a point in Australia other than Sydney, Melbourne (including Avalon), Brisbane and Perth.

16. Currently Qantas has an allocation of 4,471 seats per week and Strategic Airlines (which has since ceased operations) was granted an allocation of 1,911 seats per week in August 2011.

17. There are 22,500 seats available to Chinese carriers to the major ports of Sydney, Melbourne, Brisbane and Perth (+2,500 seats if services are triangulated with a regional gateway). Currently Chinese carriers are utilising 18,700 of these seats. to the major gateways (Sydney, Melbourne, Brisbane and Perth). There is unrestricted access for Chinese carriers to regional points in Australia.

18. Any Australian designated airline (which includes Virgin Australia) may apply for (unallocated) capacity between Australia and China. Similarly Chinese designated carriers such as Air China, China Southern or China Eastern may apply for unallocated capacity to operate between Australia and China.

19. The ACCC considers that in the short to medium term regulatory barriers will not constrain further entry or expansion by Australian or Chinese designated carriers on routes between Australia and China. This may change in the longer term if the ASA between Australia and China is renegotiated in the future to provide for additional seats.

20. In order to enter or expand specific city pair services, for example Sydney-Shanghai, a carrier must be able to access airport slots at either end to commence operations. On the information currently before the ACCC, it appears that access to airport slots is not likely to be problematic, given the propensity in China to upgrade airport capacity when it becomes congested. For example, Shanghai has two airports, Pudong and Hongqiao. In November 2011 Pudong airport commenced expansion to build a fifth runway to increase the capacity of the airport.