

Our Ref: 30701:SW:L1  
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3 July 2015

Dr Richard Chadwick  
General Manager - Adjudication Branch  
Australian Competition & Consumer Commission  
GPO Box 3131  
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By Email: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

Dear Sir

**Hawaiian Airlines Inc re Qantas Airways Limited and American Airlines Application for Revocation of New Authorisations - Consultation**

We act for Hawaiian Airlines, Inc. (**Hawaiian**).

Our client's general counsel had forwarded to him on 30 June 2015, a copy of your letter dated 12 June 2015 by a Washington lawyer who became aware of the letter.

As an airline providing air services between the USA and Australia, our client was extremely surprised not to have been included in the interested party list and sent your letter directly.

On behalf of our client, we request that it be permitted the same time period as accorded to other interested parties in which to file a detailed submission i.e. 18 days, which in their case would mean 17 July 2015. As you would appreciate, it has not been possible or realistic for our client to consider the authorisation application in detail, and to provide a full submission to the Commission before 3 July 2015 as stipulated in your timetable. However, our client requests the Commission to consider the following comments as a preliminary submission by our client.

Hawaiian is clearly an interested party that will be impacted by the ACCC's consideration of the authorisation application. In 2004, Hawaiian proudly initiated service from its hub in Honolulu, Hawaii to Sydney, and expanded its network to include Honolulu-Brisbane service in 2012. Hawaiian's entry into the Australian market has enhanced travel options between the United States and Australia and increased competition in the markets Hawaiian serves. Often times, however, Hawaiian finds itself competing with much larger airlines. It does not back away from any competitive challenge, but its experience has demonstrated that joint ventures between major air carriers, such as the applicants for this authorisation, can distort the playing field and reduce the competitive vigour that might otherwise thrive on international routes.

Joint ventures like the one proposed by Qantas Airways Limited (**Qantas**) and American Airlines, Inc. (**American**) have the capacity to limit competition in a number of ways. As a threshold matter, the joint venture limits the competition that might otherwise exist between the parties. Indeed, Qantas and American already have agreed to coordinate rather than compete. Although American proposes to reintroduce service between the United States and Australia by initiating Los Angeles to Sydney service, Qantas is simultaneously withdrawing from the market to initiate service to San Francisco, eliminating the potential competition between them even before the proposed conduct has been authorised by the ACCC.

Joint ventures also can tilt the playing field against smaller carriers like Hawaiian. First, Hawaiian has found that when a government has authorised coordination between major U.S. carriers and their international joint venture partners, (such as immunity from the US antitrust laws with respect to the international operations of the joint venture partners granted by the United States Department of Transportation), it is more difficult for Hawaiian to reach arm's-length, procompetitive codeshare agreements with the international carrier. Often, the alliance partners are constrained by exclusivity clauses, either express or implied, that prevent Hawaiian from reaching a codeshare agreement. As a result, the joint venture has access to behind-gateway domestic traffic flows at both ends of the network, while smaller competitive carriers are locked out. Without the ability to aggregate traffic from an international codeshare partner's domestic network, Hawaiian has a smaller revenue opportunity on the overseas and domestic sectors it serves. This limitation increases the risk associated with Hawaiian's international expansion and, at the margin, can prevent Hawaiian from expanding its capacity on a particular route, reducing competition and causing public detriment. In addition, the joint ventures prevent a competitive choice that might otherwise exist for behind-gateway passengers.

Second, the joint ventures become dominant on major international routes, making it even more difficult for independent carriers to provide competitive, innovative services. Even when Hawaiian has a cost advantage over a competitor, Hawaiian still must overcome the advantages of incumbency that result from an alliance with a major national carrier. In Australia, Qantas has a robust domestic network, superior access to facilities, brand awareness and a loyalty program that, other factors being equal, will cause local customers to book on the national airline. While Hawaiian does not shy away from competitive challenges, the authorised coordination makes the task more difficult. Limiting competition from smaller carriers denies the public the benefit not only of the price competition they provide but also the service innovation that pushes incumbent carriers to improve. For example, because Hawaiian has configured the seating in its aircraft to provide a comfortable experience while limiting premium seating, Hawaiian frequently is the low cost provider on the routes it serves in competition with larger network carriers, enabling it to offer more value to more customers.

Hawaiian is particularly concerned about the Qantas-American joint venture due to its impact on the market structure between the United States and Australia. If the ACCC authorises the proposed conduct and the U.S. Department of Transportation grants antitrust immunity, the most significant carriers in the region all will have immunized alliances with a major U.S. carrier: Qantas-American and Virgin Australia-Delta. This structure will put smaller carriers, including Hawaiian, at an unfair competitive disadvantage.

Given the likely public detriment that will result from the proposed conduct if it is authorised, Hawaiian respectfully submits that the ACCC's approval should be conditional. The ACCC should require Qantas to enter into a reasonable commercial relationship granting access to behind gateway traffic in Australia to competitive carriers like Hawaiian. Such a condition would ameliorate the anticompetitive effects that would otherwise result.

Hawaiian commends the ACCC for having the foresight to limit the duration of its authorisation of the 2011 American-Qantas joint venture to only five years. Hawaiian believes that periodic review of the grant of such authorisation is essential to ensure that the authorised conduct actually benefits the public. Accordingly, the ACCC should follow past precedent and reject the parties' request to authorise the new proposed conduct for a full ten years.

If our client decides that it will not be proceeding to lodge a further submission, we will inform you. In either case, we and our client would like to be informed of the progress of the applications at the draft and final determination stages. For this purpose, the relevant contact details are as follows:

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Yours faithfully

**EMIL FORD LAWYERS**

Per: 