PUBLIC REGISTER VERSION

QANTAS AIRWAYS LIMITED AND AMERICAN AIRLINES

RESPONSE TO THIRD PARTY SUBMISSIONS IN RELATION TO APPLICATION FOR AUTHORISATION OF THE RESTATED JOINT BUSINESS AGREEMENT AND RELATED DOCUMENTS, AUTHORISATION NUMBERS A91502 AND A91503

The Commission requested third party submissions on the substantive Application for reauthorisation by 3 July 2015. The significant majority of the submissions made support reauthorisation and recognise the substantial public benefits that have flowed from the joint business since its authorisation in 2011. The objections of Hawaiian Airlines fail to address the substantial evidence for reauthorisation set out in the Application and should be rejected.

Endorsement of the Proposed Conduct

The fundamentally pro-competitive nature of the Proposed Conduct, as detailed in the Application for reauthorisation, has been acknowledged and endorsed by third parties including Tourism Australia, the Australian Federation of Travel Agents (AFTA), Sydney Airport Corporation Limited and Brisbane Airport Pty Corporation Limited.

Subsequent submissions are also strongly supportive. For example:

- the South Australian Tourism Commission (SATC) stated that the current joint business agreement between the Applicants has delivered significant benefits for customers travelling between Australia and the US and fostered growth in trade and tourism through significantly improved air services links. The SATC believes that the Proposed Conduct will deliver increased network benefits such as increased codeshare opportunities and the new services to San Francisco[1];

- the Department of Infrastructure and Regional Development submitted that the Proposed Conduct was compatible with the objectives of increasing competition and choice for travellers to and from Australia. It stated that since 2011 the alliance has benefitted Australian consumers by allowing Qantas to provide better access to destinations within the US whilst boosting the Australian tourism industry by increasing the ability for both carriers to market and sell tickets to Australian destinations. The Department provided data that showed that since 2011 capacity growth has outstripped demand. The Department also acknowledged that the Proposed Conduct gives the Applicants the ability to compete against the Virgin/Delta alliance, United Airlines and Air New Zealand[2]; and

- Adelaide Airport supported the Proposed Conduct, noting that the greatest potential benefit is for inbound travel, tourism and business from Canada, Mexico and in particular the US.[3]

Competitive Effects of the Proposed Conduct

On 3 and 17 July 2015, Hawaiian Airlines lodged submissions objecting to the Proposed Conduct and urging the Commission to make any potential authorisation conditional and time-limited. The submissions fundamentally mischaracterise the Proposed Conduct and its impact on competition on the Trans-Pacific, fail to address the substantial public benefits of the existing joint business between the Applicants, provide inherently misleading information about the effect of aviation alliances generally,

[1] See SATC submission dated 3 July 2015.
[2] See Department submission dated 2 July 2015.
[3] See Adelaide Airport submission dated 1 July 2015.

including American's Trans-Atlantic partnership, and inaccurately portray previous commercial interaction between the Qantas Group and Hawaiian Airlines.

Hawaiian Airlines alleges that the Proposed Conduct will result in Qantas 'withdrawing from the market' to initiate services to San Francisco, 'eliminating the potential competition' with American on Sydney-Los Angeles routes. Hawaiian Airlines also suggests that other airline alliances not related to Australia and the US do not generally fulfil promises to deliver increased capacity and lead to an increase in average fares. Both points are demonstrably incorrect and fail to address the evidence in the Application that the benefits to consumers of the existing joint business between the Applicants will be enhanced by the expanded joint business that is the subject of the Application.

The Applicants have been operating a joint business since their coordination was authorised in 2011. Since that time, the alliance has delivered considerable expansion of capacity as well as improvements to scheduling and connectivity behind and beyond the Trans-Pacific gateways. Hawaiian Airlines' objections do not, and cannot, dispute these substantial public benefits.

In particular, the Original JBA supported the successful launch and subsequent expansion of Qantas' Sydney-Dallas/Fort Worth services. Commencing in May 2011, these services have given Australians unprecedented access to destinations across the US. Operating directly into Dallas/Fort Worth and enhancing Qantas' long term partnership with American has given Qantas a much stronger and more balanced network footprint in the Americas, delivering choice and convenience for its customers.

Today, American codes on 26 Qantas routes, including all Trans-Pacific routes. Qantas codes on 120 American routes (including 107 US routes, 8 Canadian routes and 5 in Latin America/Caribbean) and has access to 76 more through interline connections. Since the Original JBA was implemented, the Applicants have expanded their codeshare by over 1,200 flights on over 50 city pairs servicing 40 more destinations.

The introduction of the new services operated by American between Sydney and Los Angeles and the re-introduction of Qantas operated services between Sydney and San Francisco have been facilitated and made possible pursuant to coordination under the Original JBA and the Proposed Conduct.

Qantas is not withdrawing from the Sydney-Los Angeles route. Overall, the Proposed Conduct will result in the Applicants together increasing Sydney-Los Angeles capacity by 12%. Passengers will be able to access 45 services offered by the Applicants per week across the Pacific to mainland North America, including an increase from 14 to 17 weekly services from Sydney to Los Angeles.

In these circumstances, the Proposed Conduct cannot be characterised as an elimination or reduction of actual or potential competition between the Applicants. Rather, it reflects the continuation and enhancement of the alliance which has delivered pro-competitive benefits that would not occur absent the alliance.

Hawaiian Airlines does not present any evidence in respect of the Trans-Pacific routes to justify concerns in respect of increased airfares. The Proposed Conduct does not give the Applicants any increased ability or incentive to increase fares, given the effectiveness of competitive constraints imposed by other carriers. Reference is made to changes in passenger traffic (misstated by Hawaiian Airlines as changes in capacity) and average fares on Trans-Atlantic routes since 2000, a base period pre-dating the precipitous decline in international air travel following the tragic events of September 11 2001 and spanning a global economic recession. Notwithstanding that this data is wholly irrelevant to the Commission's current consideration, it shows that there has been nearly 20% growth in Trans-Atlantic traffic from 2004 (excluding the period surrounding September 11). Moreover, American's Trans-Atlantic joint business has increased capacity by over 35%[4].

Hawaiian Airlines also alleges that, if authorised, the Proposed Conduct will put it at a competitive disadvantage because it will mean that the 'most significant' carriers on the Trans-Pacific routes (Delta, Virgin, Qantas and American) are all operating within authorised joint business relationships.

[4] ESKs 2010 vs 2014.

This is again misconceived. Hawaiian Airlines fails to include United and Air New Zealand in its assessment of the 'most significant' carriers. Hawaiian Airlines also implies that authorisation of the Proposed Conduct would result in a dramatic change to market structure when this is, again, not the case given that the Applicants, like Delta and Virgin, have been operating under authorised joint business relationships for considerable time. In granting interim authorisation for the Proposed Conduct, the Commission found that there will be no material change to market structure as a result of the Proposed Conduct.[5] In addition, as Hawaiian Airlines points out, it has been able to expand its services between Australia and Hawaii during the time both alliances have been operating including, for example, introducing Brisbane-Honolulu services in 2012.

Competition laws protect competition, not competitors. Instead of offering any evidence regarding the Proposed Conduct or the Applicants' record of expanding capacity and benefitting consumers, Hawaiian Airlines only protests the potential that the alliance will foreclose codeshare opportunities for itself. It is beyond question that the Proposed Conduct will increase capacity between Sydney and Los Angeles and inject fresh competition between Sydney and San Francisco. These capacity additions are only possible because of the Proposed Conduct.

Nature of Authorisation

Hawaiian Airlines and JetBlue[6] suggest that time limited authorisations are necessary to ensure that public benefits of alliances are being delivered. The Applicants agree and this is what section 91(1) of the *Competition and Consumer Act 2010 (Cth)* (the Act) permits.

In circumstances where the Proposed Conduct represents inherently pro-competitive conduct that expands consumer choice, a ten year term of authorisation for the Proposed Conduct is entirely appropriate to provide business certainty and justify long term investment decisions and is not without precedent in respect of authorisations of aviation alliances in Australia.

The Commission is well placed to grant a long term authorisation in circumstances where there is clear evidence of substantial public benefits that have been, and will continue to be, delivered as a result of coordination. The Commission is familiar with the Trans-Pacific routes, given that it is in the process of reviewing the relevant market as part of this application and given that it has recently completed a detailed review in determining to re-authorise the Virgin/Delta alliance.

In any event, a long term authorisation does not preclude the Commission from subsequent review. The Act enables the Commission to review (and revoke) an authorisation at any time, particularly if there are any material change in circumstances.[7] This mechanism provides an appropriate opportunity for the Commission to monitor and measure public benefits.

Hawaiian Airlines also suggests that the Commission should consider only authorising the Proposed Conduct on the condition that Qantas should be required to enter into 'a reasonable commercial relationship granting access to behind gateway traffic in Australia to competitive carriers like Hawaiian.' In its 17 July submission, Hawaiian Airlines suggests that Qantas should be required to assure a level of reasonable access to inventory as part of such a condition.

Such a condition is unnecessary, inappropriate and without any precedent in respect of authorisations in Australia. Independent carriers such as Hawaiian Airlines will not be 'locked out' as a result of the Proposed Conduct. Qantas has a number of commercial relationships which give other carriers' (including those with which it does not have an 'alliance' relationship) the ability to sell services within domestic Australia. There are legitimate commercial reasons why Qantas has not previously entered into a commercial codeshare relationship with Hawaiian Airlines.

Qantas has an interline agreement with Hawaiian Airlines, under which Hawaiian Airlines can sell any Qantas services in Australia or across the Tasman. Qantas offers similar interline access to Air Canada and United. **[REDACTED – COMMERCIAL IN CONFIDENCE]**

29 July 2015

[5] Commission determination on interim authorisation dated 9 July 2015, p 3.
[6] See JetBlue submission dated 19 June 2015.
[7] See section 91B(3)(c) of the *Competition and Consumer Act 2010 (Cth)*.