QANTAS AIRWAYS LIMITED AND AMERICAN AIRLINES

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

On 10 June 2015, the Applicants sought urgent interim authorisation of the Proposed Conduct. Full implementation of the Proposed Conduct is subject to antitrust immunity being granted by relevant regulators and the fully recalibrated arrangements will not come into effect until that occurs.

If the Commission grants interim authorisation, the Original Joint Business Agreement will continue to temporarily govern the relationship between the parties, but with an amendment to incorporate the new joint services between Sydney and Los Angeles and Sydney and San Francisco until final antitrust immunity is received.

Interim authorisation would materially facilitate implementation and continuation of public benefits, without creating regulatory risk or detriment to consumers. It would enable the Applicants to activate joint selling of new joint services between Australia and the US and give those services the best prospect of success. In turn, this will expedite further public benefits including up-gauging and increased frequencies of the two new services, as well as additional capacity increases on other Trans-Pacific routes.

The Commission requested third party submissions on interim authorisation by 26 July 2015 and on the substantive application for authorisation by 3 July 2015. Comments on the Proposed Conduct have been overwhelmingly positive and clearly recognise the need for the Applicants to continue to have the ability to deliver and continue to enhance substantial public benefits.

Of the submissions made, only Air New Zealand raises an objection to interim authorisation. Air New Zealand's stated concerns must be viewed in the context of the strategic advantage it would enjoy from delaying or diluting the success of the introduction of the Applicant's new joint services. Air New Zealand's contentions are addressed below.

Process, timing and content for consideration

Air New Zealand suggests that the Commission requires more time to fully consider the Proposed Conduct before a decision can be made on interim authorisation. Air New Zealand also suggests that third parties ought to be provided with further information in order to comment on the application.

Neither are valid objections to the application. The *Competition and Consumer Act* provides a mechanism for interim authorisation. The Applicants have provided the Commission with full details about the nature of the request and the reasons for the timing. Contrary to Air New Zealand's contention, the Applicants' application did not have a 'considerable amount' of redactions. Redactions were limited and applied only to commercially sensitive information, as is appropriate and usual in these types of application.

The Applicants have not delayed the lodgement of the application nor devised any plan to rush the regulatory process or avoid full and proper consideration of the application. Information about the relevant markets, including route specific information where relevant, has been provided to the Commission. Moreover, the Commission is already very familiar with the competitive dynamics of the Trans-Pacific Routes having previously examined the market in 2011 and again in detail more recently as part of its Draft Determination proposing to approve the continuation of Virgin/Delta's alliance on the Trans-Pacific.

Interim authorisation is necessary and urgent

Air New Zealand has suggested that interim authorisation is neither necessary nor urgent. This reflects a misunderstanding of the nature of the Proposed Conduct.

As the Commission is aware, the Restated Joint Business Agreement and other associated agreements are a redesign of the Original Joint Business Agreement to reflect developments that have occurred since the current conduct was authorised in 2011. Accordingly, because this re-design represents a material change to existing commercial agreements, it is necessary to revoke and substitute the existing authorisations. This is the case notwithstanding that the new services operated by American between Sydney and Los Angeles and by Qantas between Sydney and San Francisco have only been made possible as a result of the current conduct.

In other words, although the essence of the coordination remains the same, there is a risk that coordinating in respect of the new routes would technically not be covered by the existing agreements or, therefore, the existing authorisations.

Interim authorisation is a mechanism that is both necessary and entirely appropriate in such circumstances. It would enable the continuation of existing conduct, and the seamless pro-competitive expansion of that conduct, whilst the substantive application is assessed. This is the kind of scenario that interim authorisation is precisely designed to address, to allow regulatory flexibility to facilitate due process, the delivery of public benefits and a degree of commercial certainty.

In the current circumstances, interim authorisation is necessary to facilitate the introduction of the new joint service between Sydney and Los Angeles operated by American and the new joint service between Sydney and San Francisco operated by Qantas. The ability to conduct a coordinated strategic campaign is the only way to enable a viable launch for these important new services. In particular, American needs to leverage Qantas' established Australian distribution channels and branding to support its new service being viewed favourably by Australians. Launching the new services without the support and involvement of the other carrier would also be problematic commercially and confusing for consumers and travel agents. Any lost momentum or inability to maximise selling opportunities can mean that loads are affected and revenue is impacted.

It would not be commercially feasible to launch these new services separately to the existing coordination, as Air New Zealand suggests. Together the Applicants manage Trans-Pacific Routes as a whole rather than on a route-by-route basis. Pricing, sales, marketing and revenue management systems and strategies are inter-related. It would be commercially impractical to 'carve out' a single route such as Sydney-San Francisco from other Trans-Pacific routes and strategies, even temporarily. 'Carving out' one service on Sydney-Los Angeles in circumstances where coordination on the other Sydney-Los Angeles services is permitted is similarly unworkable.

Air New Zealand claims that there is no compelling case for the launch of the new services in December 2015. December is the optimal time for the launch of the new joint services between Sydney and each of Los Angeles and San Francisco as it coincides with peak season for Trans-Pacific travel and is also when the relevant aircraft become available to American. Launching at this time will mean that the Applicants can capitalise on capturing increased traffic flows around this time of year, while also minimising the financial losses that would result from having available aircraft underutilised or idle. Air New Zealand would be a major beneficiary of any delay or dilution of success of the new services.

Interim authorisation will not cause competitive harm

The Proposed Conduct will not cause competitive harm, particularly given the intensity of competition on the Trans-Pacific Routes.

The fundamentally pro-competitive nature of the Proposed Conduct has been acknowledged and strongly endorsed by third parties commenting on the substantive application, including Tourism Australia, the Australian Federation of Travel Agents (AFTA), Sydney Airport Corporation Limited and Brisbane Airport Pty Corporation Limited. For example:

- Tourism Australia[1] has commented that significant and sustainable growth in aviation capacity between the United States and Australia is critical to realising tourism objectives and Tourism Australia supports the addition of new services between the two countries that will result from the Proposed Conduct;

- AFTA[2] believes that the Proposed Conduct will deliver additional network benefits that are only possible through deep partnerships with antitrust immunity. Such benefits include increased capacity to Los Angeles, Qantas' return to San Francisco and expanded codesharing in North America;

- Sydney Airport[3] stated that the Proposed Conduct would see an expansion of capacity and new services to San Francisco (a key gateway airport) and would lead to Sydney-Los Angeles becoming Sydney's most competitive direct long haul international route with 5 carriers operating daily services; and

- Brisbane Airport[4] submitted that the strong performance of the Trans-Pacific Routes has been a 'bedrock' of the Australian visitor economy and that arrangements such as the Proposed Conduct should be supported.

The Applicants will remain constrained by significant and aggressive competitors on all relevant routes. Further, the Applicants commit to ensuring that to the extent passenger fares and any frequent flyer entitlements are offered, they would be honoured, and booked travel re-accommodated (if necessary), in the event that final authorisation is not granted.

Other jurisdictions

Air New Zealand has correctly noted that there is no equivalent mechanism for obtaining interim authorisation in jurisdictions such as New Zealand and the United States. Applications have been made in both these jurisdictions. Given the pro-competitive nature of the current conduct and the Proposed Conduct, the Applicants are working through the regulatory processes to enable implementation in accordance with requirements in each jurisdiction.

Conclusion

Given that the Proposed Conduct represents an extension of existing, authorised conduct that is delivering public benefits in a market with which the Commission is very familiar, it is entirely appropriate to seek interim authorisation. The grant of interim authorisation will expedite further public benefits and avoid the significant detriments (to the public, industry partners and the Applicants) of unwinding or pausing current arrangements or artificially delaying pro-competitive expansion of the partnership.

3 July 2015

[1] Tourism Australia submission to the Commission dated 30 June 2015.
[2] AFTA submission to the Commission dated 22 June 2015.
[3] Sydney Airport submission to the Commission dated 1 July 2015.
[4] Brisbane Airport submission to the Commission dated 16 June 2015.