



Qantas Airways Limited and American Airlines Inc – applications for authorisation A91502 – A91503 Interim authorisation decision 9 July 2015

Decision

The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of the applications for reauthorisation lodged by Qantas Airways Limited (**Qantas**) and American Airlines Inc (**American Airlines**)(together, the **Applicants**) on 10 June 2015.

Interim authorisation is granted to facilitate the introduction of a new service between Sydney and Los Angeles operated by American Airlines and a new joint service between Sydney and San Francisco operated by Qantas under an expansion of their existing authorised alliance.

Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for reauthorisation

The Applicants seek reauthorisation for 10 years to continue to coordinate their operations between and within Australia/New Zealand and the US, Canada and Mexico pursuant to a Restated Joint Business Agreement (Restated JBA) and associated agreements (the **Proposed Conduct**). The Proposed Conduct includes coordination in respect of:

- marketing and sales
- freight
- pricing
- scheduling
- distribution strategies including agency arrangements
- yield and inventory management
- frequent flyer programs
- lounges
- joint procurement and product and service standards.

The ACCC previously granted authorisation for similar arrangements in September 2011 for a period of 5 years. However, reauthorisation has been sought for the Restated JBA and associated agreements, which have been redesigned to take account of recent

developments, including the planned commencement of services by American Airlines between Los Angeles and Sydney from December 2015.

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the Act). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

Section 91 of the Act allows the ACCC to grant interim authorisation where the ACCC considers it appropriate to allow the parties to engage in the conduct while the ACCC is considering the substantive application for reauthorisation.

The Applicants sought interim authorisation to facilitate the introduction of a new joint service between Sydney and Los Angeles operated by American Airlines and a new joint service between Sydney and San Francisco operated by Qantas.

The Applicants state that:

- 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. Until then, the Original Joint Business Agreement as previously authorised by the ACCC in 2011 will continue to temporarily govern the relationship between the parties, but with an amendment to incorporate the new joint services
- 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.

The Applicants requested interim authorisation on the basis that:

- interim authorisation will expedite the delivery of public benefits as joint selling will ensure that the services are launched with the best prospect of success
- interim authorisation will not give rise to permanent changes to the relevant market dynamics nor prevent the market returning to its pre-authorisation state in the event final authorisation is not granted
- interim authorisation would materially facilitate implementation of the Proposed Conduct. They submit that the Proposed Conduct is pro-competitive, will not cause competitive harm and that it will produce public benefits. They submit that they will remain constrained by significant and aggressive competitors on all relevant routes.

Consultation

The ACCC sought submissions from around 90 interested parties potentially affected by this these applications. A summary of the public submissions received from interested parties and a response from the Applicants follows.

Submissions in support of the application were received from several airports, industry associations and government bodies. In general, these submissions highlighted the significance of the US to Australian travellers as a destination and as a source of tourism in Australia.

The ACCC also received submissions from Jumpjet Airlines and Air New Zealand that were opposed to interim authorisation. In particular, Air New Zealand submits that:

- Interim authorisation is neither necessary nor required urgently – the Applicants can already cooperate on Sydney to Los Angeles under their existing authorisation and Qantas could commence operations on Sydney to San Francisco in its own right or with more limited codeshare arrangements until authorisation for deeper cooperation is obtained.
- The Applicants have not provided compelling evidence that the Proposed Conduct will not cause competitive harm.
- Interim authorisation is not provided in any other jurisdiction.

In response, the Applicants submit the following:

- Interim authorisation is a mechanism that is both necessary and entirely appropriate in the circumstances. It would enable the continuation of existing conduct, and the seamless pro-competitive expansion of that conduct, whilst the substantive application is assessed.
- It would not be commercially feasible to launch the 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.
- 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.
- 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.

Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

In granting interim authorisation, the ACCC considers that:

- granting interim authorisation is unlikely to have a permanent impact on the market. The ACCC notes the Applicants' submission that interim authorisation will not give rise to permanent changes to the relevant market dynamics nor prevent the market returning to its pre-authorisation state in the event final authorisation is not granted.
- the Applicants have articulated genuine commercial reasons to support urgent interim authorisation. In particular, that December 2015 is considered the optimal time for the launch of the new joint services between Sydney and Los Angeles and Sydney and San Francisco as it coincides with peak season for trans-Pacific travel and is also when the relevant aircraft become available to American Airlines. The ACCC accepts that launching at this time will enable the Applicants to capitalise on capturing increased traffic flows and minimising the financial losses that would result from having available aircraft underutilised or idle.
- the ACCC considers that granting interim authorisation is likely to result in increased capacity on the Sydney to Los Angeles route and increase capacity and competition on the Sydney to San Francisco route. The ACCC also considers that this is likely to result in benefits to passengers wishing to utilise the relevant services.

- on the basis of its preliminary consideration, the extent of any public detriments is likely to be limited by competition from other airlines operating on the trans-Pacific. The ACCC will however give further consideration to likely benefits and detriments as part of its consideration of the substantive application for re-authorisation.

Reconsideration of interim authorisation

The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.