



Australian Government

Department of Infrastructure and Regional Development

File Reference: F16/723-13

Mr David Hatfield
Director, Adjudication
Australian Competition and Consumer Commission
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Dear Mr Hatfield

Subject: A91600 & A91601 – Qantas Limited and Jetstar Pty Ltd– submission

Thank you for your letter of 20 September 2017. The Department of Infrastructure and Regional Development (the Department) appreciates the opportunity to provide a submission to the ACCC on the application from Qantas and Jetstar for re-authorisation of the “Jetstar Pan Asia Strategy”.

The Department recognises that it is a matter for the ACCC to determine the relative merits of arguments presented by the applicants on the public benefits and the effect on competition of the continuation of this arrangement. To assist the ACCC in coming to a determination in relation to such competition impacts, this submission provides contextual information on the relevant aviation markets, the air service arrangements which underpin it and the Australian Government’s aviation policy.

Regulatory framework and Australian Government policy

The regulatory framework governing international air services is complex. While most sectors of international trade operate on the assumption that markets are open unless governments intervene to restrict access, international aviation cannot occur unless governments act to open the market. This action occurs in the form of at least two governments negotiating and signing an air services agreement, specifying that international air travel can occur between their respective territories. Air services are contrary to most other internationally traded services, as without the cooperation of at least two governments, the service cannot be traded and the market would not exist.

As you would be aware, the Department is responsible for negotiating air services agreements with foreign governments. These bilateral agreements typically set out the number of flights that airlines of the two countries can operate, cities they can serve in the other country, rights to operate via or beyond to third countries, and rights to provide services by means of cooperative arrangements such as code share and/or joint ventures. The agreements typically also include provisions related to such matters as airline ownership and control, competition law, safety and security.

The ownership and control provisions are important as they determine which airlines are able to access the rights negotiated under the agreement.

The International Air Services Commission is responsible for allocating the available capacity negotiated under air services agreements to the Australian airlines that apply to operate internationally.

Air services arrangements

Given the range of countries in which the relevant airlines are based, the air services arrangements between Australia and the relevant countries may need to be considered. Arrangements between the home countries of the various Jetstar franchises and third countries are also relevant, but due to the (generally) confidential nature of these arrangements the Department does not have exposure to them.

An overview of our arrangements with Singapore, Japan and Vietnam is outlined below. I would be happy to provide further information on the detail of these arrangements should you require it.

Singapore

Air services arrangements with Singapore are governed by the draft *Agreement between the Government of Australia and the Government of the Republic of Singapore Relating to Air Services* at Attachment A to the Confidential Memorandum of Understanding signed in Singapore on 23 September 2003 (CMU), and given operational effect by paragraph 2 of the CMU.

The arrangements with Singapore provide for unrestricted capacity for own-operated and code share operations for Australian and Singaporean carriers between the two countries. However, there are some limitations on the traffic rights which can be exercised between and beyond the two countries.

Vietnam

Air services arrangements with Vietnam are governed by the *Agreement between the Government of Australia and the Government of the Socialist Republic of Vietnam relating to Air Services*, done at Canberra on 31 March 1995 [1995] ATS 26 as amended and the Memorandum of Understanding between the aeronautical authorities of Australia and Vietnam signed on 11 September 2012.

The arrangements with Vietnam provide for restricted capacity for Australian and Vietnamese carriers between the two countries. There are also limitations on the traffic rights which can be exercised between and beyond the two countries. The arrangements include open code sharing provisions, including traffic rights.

Japan

Air Services arrangements with Japan are governed by the *Agreement between the Commonwealth of Australia and Japan for Air Services*, done at Tokyo on 19 January 1956 [1956] ATS 6 as amended and various instruments of less-than-treaty status.

The arrangements with Japan provide for unrestricted capacity for Australian and Japanese carriers between the two countries, with the exception of the Tokyo airports, to which restrictions apply. There are limitations on the traffic rights which can be exercised between and beyond the two countries.

Status of the Market

As noted in the applicants' submission, the Asia-Pacific is a fast growing market sector that is expected to maintain significant growth over the coming decades. This large and rapidly growing market has attracted a large pool of competitors, vying for long-term market share.

Internationally, the aviation industry has enjoyed a (relatively rare) period of profitability in recent years, with IATA reporting increased profits in the Asia Pacific between 2012 and 2017¹.

Increasing profitability is consistent with the increasing load factors apparent on routes between Australia and Asia:

International Scheduled Air Transport Traffic - On board passengers

Country	Year ended June 2012				Year ended June 2017				Growth	
	Flights	Passengers	Seats	Seat Util %	Flights	Passengers	Seats	Seat Util %	Passengers	Seats
Japan	3,620	795,145	1,086,203	73.2%	5,349	1,307,434	1,607,929	81.3%	64.40%	48.0%
Singapore	20,281	5,097,331	6,338,259	80.4%	24,297	5,672,753	7,082,413	80.1%	11.30%	11.7%
Vietnam	1,661	299,169	432,635	69.2%	1,580	357,414	463,889	77.0%	19.50%	7.2%
Asia (aggregate) ²	79,191	16,858,121	22,119,078	76.2%	98,181	22,063,144	27,406,422	80.5%	30.90%	23.9%

Source: BITRE

Nevertheless, these figures must be viewed in the context of a cyclical industry and the extensive range of aviation businesses seeking to profit from the projected growth that is outlined in the applicants' submission.

The Department continues to generally view Australian-Asian aviation markets as strongly competitive, noting the significant capacity available under our Asian air services arrangements (currently only the Hong Kong arrangements prevent additional flights, and only on some routes for Hong Kong carriers). The vast majority of routes currently operated between Australia and the Asia-Pacific are served by multiple carriers.

Similarly, the Department generally considers intra-Asian markets also benefit from strong levels of competition, with ongoing pressure likely to be supported through ongoing efforts to further liberalise intra-Asian regulatory arrangements through the proposed ASEAN open skies agreement.

BITRE would be pleased to make data available to the ACCC in respect of any specific markets on request.

¹ See <http://www.iata.org/pressroom/pr/Pages/2012-12-13-01.aspx> and <http://www.iata.org/pressroom/pr/Pages/2016-12-08-01.aspx>

² Comprising Brunei, China, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Mauritius, Philippines, Singapore, Taiwan, Thailand and Vietnam

The “Jetstar Pan Asia Strategy”

The Department considers the Jetstar Pan Asia Strategy has delivered significant value for Australian consumers and the market more broadly.

The strategy has enabled the applicants to grow into markets that would otherwise not have occurred. As noted in paragraph 1.1.6 of the application, the bilateral system and associated restrictions on ownership and control of airlines limit the ability of Qantas and/or Jetstar from building network reach across Asia. The Jetstar Pan Asia Strategy of establishing immunised partnerships with local businesses provides a means for Qantas and Jetstar to support growth in the broader Asian market, including routes serving Australia.

As a result, the Strategy has significantly increased connectivity between Australia and Asian markets and delivered a range of benefits, particularly in the context of Australia’s tourism industry, as highlighted by the applicants.

Despite the broader upswing in profitability in the global aviation industry, the Department notes the strategy appears to have generated limited commercial success for the Asian based businesses to date. On 25 August 2017, Qantas released its annual results which noted losses (unquantified) for Jetstar Pacific and improving earnings for Jetstar Japan with only Jetstar Asia stated to be “profitable”. Qantas’ own international network only returned to profitability in 2015 after several years of significant losses.

The Department considers these results further highlight the strong competition in these markets, as well as the ongoing importance of coordinated activity (as anticipated in the application) to ensure the ongoing viability of the Asian Jetstar businesses.

Aviation Policy

The Australian Government aims to support an open and competitive international aviation market which serves the national interest by benefiting tourism, trade and consumers, allows Australian and overseas airlines to expand, and maintains a vibrant Australian-based aviation industry. This includes providing improved opportunities for Australian carriers to access international markets and increasing competition and choice for Australian foreign travellers on international routes to and from Australia.

The development of commercial arrangements such as the proposed alliance is generally consistent with Australia’s aviation policy settings and our bilateral air services arrangements, subject to such alliances being consistent with relevant competition laws.

Thank you again for inviting the Department to provide a submission. I can be contacted on 02 6274 7242 should you wish to discuss this matter further or require any additional information.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ann Redmond', written in a cursive style.

Ann Redmond
A/g General Manager
Aviation Industry Policy, Aviation and Airports

10 October 2017