



Draft Determination and interim authorisation

Application for revocation of AA60295 and the substitution of
authorisation AA1000580

lodged by

Singapore Airlines Limited and Deutsche Lufthansa AG
in respect of cooperation on services on certain routes

Authorisation number: AA1000580

Date: 2 December 2021

Commissioners: Keogh
Rickard
Brakey
Ridgeway

Summary

The ACCC proposes to grant re-authorisation to enable Singapore Airlines Limited and Deutsche Lufthansa AG to coordinate on the provision of scheduled air passenger services on routes between Singapore Home Markets and Lufthansa Home Markets. This conduct has been previously authorised under authorisation AA60295 since 10 December 2016. This authorisation is due to expire on 10 December 2021.

The current application seeks to expand the Singapore Home Markets to include an additional 3 countries, and to expand the Lufthansa Home Markets to include an additional 30 countries.

The ACCC considers that the coordination is likely to result in public benefits in the form of an enhanced product and service offering and cost savings and efficiencies. The ACCC also considers that the coordination may result in some small public benefits in the form of increased competition in international air passenger transport markets, and stimulation of tourism.

The ACCC considers that the coordination is unlikely to result in public detriment due to the lack of overlap in services offered by Singapore Airlines and Lufthansa, Lufthansa's limited presence on routes to Australia and the strength of competition for passengers between airlines on routes between Australia and Europe.

The ACCC proposes to grant re-authorisation for 5 years.

The ACCC has also granted interim authorisation to enable Singapore Airlines and Lufthansa to continue to coordinate on the provision of services while the ACCC is considering the substantive application.

The ACCC invites submissions in relation to this draft determination by 17 December 2021 before making its final decision.

1. The application for revocation and substitution

- 1.1. On 23 September 2021, Singapore Airlines Limited (**Singapore Airlines**) and Deutsche Lufthansa AG (**Lufthansa**) (together, the **Applicants**) lodged an application to revoke authorisation AA60295 and substitute authorisation AA1000580 for the one revoked (referred to as re-authorisation) with the Australian Competition and Consumer Commission (the **ACCC**). The Applicants are seeking re-authorisation to continue to coordinate their operations between Lufthansa home markets in Europe and Singapore Airlines home markets in Asia/Oceania for 5 years.
- 1.2. This application for re-authorisation AA1000580 was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.3. The ACCC may grant authorisation, which provides businesses with protection from legal action under the competition provisions in Part IV of the Act for arrangements that may otherwise risk breaching those provisions in the Act, but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.4. The Applicants also requested interim authorisation to enable them to continue to coordinate while the ACCC is considering the substantive application. The request for interim authorisation is discussed further in section 6.

The Conduct

- 1.5. The Applicants are seeking authorisation to continue to coordinate on the provision of scheduled air passenger services pursuant to a Joint Venture framework Agreement (the **JVF Agreement**). The JV Agreement covers scheduled air passenger services on routes between 34 countries in Europe (the **Lufthansa Home Markets**) and 7 countries in Asia/Oceania (the **Singapore Home Markets**) (the **Joint Venture Routes**). These countries are listed at Attachment A.¹
- 1.6. In particular, the Applicants are seeking authorisation for the following:
- on all routes within the joint venture scope:
 - pricing cooperation and inventory management on services that are entirely operated by the Applicants and include a Revenue Share Route (as defined below), and
 - sales and marketing
 - on Revenue Share Routes, network and schedule coordination, capacity management and revenue sharing.

(the **Conduct**).

- 1.7. **Revenue Share Routes** are defined as routes involving non-stop or direct services operated under the Lufthansa or Singapore Airlines designator code between the Singapore Home Markets and Lufthansa Home Markets.
- 1.8. The Applicants submit that at the time of the current application there were three Revenue Share Routes:
- Singapore – Frankfurt (operated by Singapore Airlines and Lufthansa)
 - Singapore – Zurich (operated by Singapore Airlines and Swiss), and
 - Singapore – Munich (will be operated by Singapore Airlines and Lufthansa)².
- 1.9. The Applicants also seek authorisation for an additional 9 routes to be included as Revenue Share Routes within the scope of the re-authorisation. These are routes which Singapore Airlines or its subsidiary Scoot Tiger Air Pte Ltd (**Scoot**) operate, but Lufthansa does not:
- Singapore – Amsterdam (operated by Singapore Airlines)
 - Singapore – Athens (operated by Scoot)
 - Singapore – Berlin (operated by Scoot)
 - Singapore – Barcelona (operated by Singapore Airlines)
 - Singapore – London (operated by Singapore Airlines)

¹ The authorisation granted by the ACCC in 2016 was in relation to coordination between 4 Lufthansa home markets and 4 Singapore Airlines home markets. The list of home markets included within the scope of the current application at Attachment A identifies those home markets which were included in the 2016 arrangements and those that the Applicants are seeking to add through the current application for re-authorisation.

² The Applicants submit that both Singapore Airlines and Lufthansa operated services on this route prior to the COVID-19 pandemic. Lufthansa has suspended services on this route, but intends to recommence once market conditions allow.

- Singapore – Manchester (operated by Singapore Airlines)
- Singapore – Milan (operated by Singapore Airlines)
- Singapore – Paris (operated by Singapore Airlines)
- Singapore – Rome (operated by Singapore Airlines)

1.10. It is intended that these routes be captured by the expansion of the geographic scope of the joint venture as discussed below.

1.11. A route involving a stopover is not a Revenue Share Route, irrespective of whether the origin and destination are points within the respective Home Markets. For example, routes between Australia and the Lufthansa Home Markets will not be Revenue Share Routes, since they are not direct, non-stop routes. However, a Revenue Share Route may form part of a route with an origin or destination in Australia. For example, the Sydney – Singapore – Frankfurt route will not be a Revenue Share Route, but part of that route (the Singapore – Frankfurt service) will be a Revenue Share Route.

1.12. The JVF Agreement provides that the Applicants will coordinate their networks, schedules and capacity management on the Revenue Share Routes, and coordinate connections for feeder routes where practical. However, the Applicants will unilaterally decide on the scheduling of their own feeder routes.

Conduct that falls outside the scope of the application for re-authorisation

1.13. In addition to the Conduct described above, the Applicants also intend to pursue additional cooperation, where practicable, in relation to codeshare, frequent flyer and harmonisation arrangements both within and beyond the joint venture scope. The Applicants do not seek authorisation for these arrangements.

1.14. The Applicants also do not seek authorisation to coordinate on other, non-passenger services in the airline industry (such as air cargo), and services that operate within one of the home markets. For example, neither Singapore – Sydney nor Munich – Brussels services are included in the Conduct as these services' origin and destination cities would both be within the Singapore or Lufthansa Home Markets respectively.

2. Background

2.1. On 18 November 2016, the ACCC granted authorisation to Singapore Airlines and Lufthansa to coordinate their operations between Germany, Austria, Belgium and Switzerland (the original Lufthansa Home Markets) and Singapore, Australia, Indonesia and Malaysia (the original Singapore Home Markets), pursuant to a Joint Venture Framework Agreement. Authorisation was granted until 10 December 2021. On 27 September 2018, the ACCC varied this authorisation to include Scoot in the alliance.

The Applicants

Singapore Airlines

2.2. Singapore Airlines is the flag carrier of Singapore. As of December 2019 (i.e. prior to the COVID-19 pandemic), Singapore Airlines operated 906 services weekly across 66 destinations in 32 countries, with a fleet of 124 aircraft.

- 2.3. Singapore Airlines operates direct services between Singapore and the following Australian cities: Adelaide, Brisbane, Melbourne, Perth and Sydney. Singapore Airlines has suspended flights between Singapore and Cairns and Darwin due to the COVID-19 pandemic, however the Applicants submit that these have not been cancelled and are likely to be available to consumers once travel restrictions have been lifted.
- 2.4. The services offered by Singapore Airlines between Australia and Europe prior to the COVID-19 pandemic were either:
- operated wholly by Singapore Airlines (as in Singapore Airlines operates the aircraft on both the flight with an origin/destination in Australia and any connecting flight forming part of the service); or
 - operated partly by Singapore Airlines and partly by an airline with which Singapore Airlines has a codeshare agreement.
- 2.5. In addition to its codeshare with Lufthansa, Singapore Airlines has codeshare agreements with airlines including, Aegean Airlines, Asiana Airlines, Ethiopian Airlines, Air France, LOT Polish Airlines, Air Mauritius, SAS Scandinavian Airlines, Swiss, Turkish Airlines, Virgin Australia, Vistara, and Air New Zealand. Singapore Airlines is also member of the Star Alliance, which has over 25 member airlines.
- 2.6. Singapore Airlines has two wholly owned subsidiaries that are also carriers:
- Scoot Tiger Air Pte Ltd (**Scoot**) which the Applicants submit positions itself as a low cost carrier. As of December 2019, Scoot operated 591 weekly flights across 68 destinations in 16 countries and territories, with a fleet of 48 aircraft. Scoot operates services between Singapore and the following Australian cities: Melbourne, Perth, Sydney and Gold Coast. As noted above, on 27 September 2018, the ACCC varied Singapore Airlines and Lufthansa's original authorisation to include Scoot in the alliance.
 - SilkAir (Singapore) Private Limited (**SilkAir**), which operated as the regional carrier within the Singapore Airlines Group. Following an internal restructure, SilkAir will cease to operate as a separate carrier, and flights previously operated by SilkAir are being operated by Singapore Airlines and Scoot. SilkAir was included within the scope of the authorisation granted in 2016. However, re-authorisation is not sought for SilkAir to engage in the Conduct.

Deutsche Lufthansa

- 2.7. The Lufthansa Group is a global aviation group comprised of a number of carriers. Those that are involved in the Conduct, and for who re-authorisation is sought, are:
- Lufthansa German Airlines, which is the largest airline in Germany, operating from the two largest German hubs in Frankfurt and Munich. As of May 2019, it operated a global route network of over 7,200 flights per week across 203 destinations with a fleet of more than 280 international aircraft and 60 regional aircraft.
 - Swiss International Airlines (**Swiss**), the national airline of Switzerland with hubs in Zurich and Geneva. As at May 2019 Swiss operated over 2,000 flights per week across 98 destinations with a fleet of 88 aircraft.
 - Austrian Airlines, Austria's largest carrier which, as at May 2019, operated a global route network of over 90 destinations with 1,900 flights per from a fleet of 82 aircraft.

- 2.8. Lufthansa does not operate any aircraft on a flight with an origin or destination in Australia, and did not do so prior to the COVID-19 pandemic. Therefore, services offered by Lufthansa between Australia and Europe are never entirely operated by Lufthansa. Rather, they are operated either by an airline with which Lufthansa has a codeshare agreement, or partly by Lufthansa and partly by the codeshare partner.
- 2.9. Lufthansa also does not market the codeshare sectors of these flights on a standalone basis. For example, Lufthansa only markets Singapore Airlines services between Sydney and Singapore as an online connection or stopover as part of an Australia – Europe service.
- 2.10. Lufthansa offers flights to Australia marketed under codeshare arrangements with Singapore Airlines, Thai Airways, United Airlines, and Cathay Pacific. The Lufthansa Group is also part of the Star Alliance.
- 2.11. The Lufthansa Group also includes several other carriers, including Eurowings and Air Dolomiti. These airlines do not form part of the joint venture arrangements, and authorisation is not sought for them to engage in the Conduct.

Rationale for the Conduct

- 2.12. The Applicants submit that the objective of the joint venture is to enhance scheduled air passenger services between the Lufthansa Home Markets and the Singapore Home Markets. The joint venture is designed to give rise, and they submit has already given rise, to significant benefits to the travelling public with regard to increased travelling options, the expansion of services and products available to passengers, increased network connectivity, better scheduling of services, and harmonised service offerings. The joint venture also allows for better capacity utilisation and inventory management.
- 2.13. The Applicants submit that Gulf carriers (specifically Emirates, Etihad and Qatar Airways) have expanded services in the last 10 years, and more recently (since the 2016 Authorisation) North-East Asian carriers (including Sichuan Airlines, EVA Air and Hainan Airlines) have started servicing, or increased their servicing of, the Australia – Europe routes. They submit that the joint venture allows the Applicants to better compete with these carriers, as well as other carriers and results in the ongoing growth and development of competition.
- 2.14. The Applicants submit that their networks are largely complementary. Singapore Airlines, having its hub in Singapore, provides services to South East Asia and Australia. Similarly, Lufthansa, having European hubs in Frankfurt, Munich, Zurich and Vienna, provides services to European destinations. Accordingly, both airlines have access to different feeder networks, resulting in great potential to increase network coverage and connectivity through the joint venture.
- 2.15. The Applicants state that the proposed increase in geographical scope of the Conduct, from 4 Lufthansa Home Markets to 34 and 4 Singapore Home Markets to 7, reflects the ongoing strengthening and deepening of the joint venture relationship and is a reflection of the many benefits that have been realised as a result of the joint venture since 2016.
- 2.16. The Applicants also submit that although authorisation is not being sought as an emergency measure due to the COVID-19 pandemic there will likely be ancillary benefits of the Conduct for the recovery of the aviation industry. The Applicants submit that the coordination of the joint venture will reduce the risks of restoring capacity in the current operating environment, allowing them to reinstate capacity without incurring

the risk in over-investing in capacity. The Applicants submit that this would allow them to service Australian destinations, and continue to service routes from Australia to Europe, as doing so would require less resources and expenditure than if each of the Applicants were to service these routes alone.

- 2.17. The Applicants submit that there is no overlap on direct city pair services operated by the Applicants between points in Australia and points in Asia, or indirect city pair services between points in Australia or points in Europe.

3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Conduct.
- 3.2. The ACCC invited submissions from 80 potentially interested parties including airlines, airports, state and federal government and regulatory bodies.³ The ACCC received no submissions from interested parties in relation to this application.

4. ACCC assessment

- 4.1. The ACCC's assessment of the Conduct is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. The Applicants have sought authorisation for Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may substantially lessen competition within the meaning of section 45 and 47 of the Act. Consistent with subsections 90(7) and 90(8) of the Act,⁴ the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (authorisation test).

Relevant areas of Competition

- 4.3. To assess the likely effect of the Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.4. The ACCC considers that the relevant areas of competition are likely to be international air passenger transport services between Australia and Europe (including the United Kingdom).
- 4.5. Within this area of competition, the ACCC considers that it is also appropriate to examine the likely effects of the Conduct on competition and rivalry on individual city-pair routes where necessary. In particular, routes between Australia and the Lufthansa Home Markets.
- 4.6. The ACCC notes that most air transport services between Australia and the Lufthansa Home Markets are on routes transitioning through hubs in either Asia or the Middle East. In turn, this means there are many routes and combination of route segments between Australia and the Lufthansa Home Markets that can be chosen by consumers of air passenger transport services.

³ A list of the parties consulted is available from the ACCC's public register at [Singapore Airlines Limited and Deutsche Lufthansa AG](#).

⁴ See subsection 91C(7).

Future with and without the Conduct

4.7. In applying the authorisation test, the ACCC compares the likely future with the Conduct that is the subject of the authorisation to the likely future in which the Conduct does not occur.

4.8. The ACCC considers that without the Conduct:

- Singapore Airlines and Lufthansa would be likely to continue to operate their present (i.e pre COVID-19 pandemic) networks of flights
- Lufthansa would continue its existing operations from the Lufthansa Home Markets and would be unlikely to commence standalone flights to Australia
- Lufthansa would continue to codeshare on some Singapore Airlines routes between Singapore and Australia, and
- Lufthansa and Singapore's existing codeshare agreements with other airlines would continue.

Public benefits

4.9. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

*we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*⁵

4.10. The ACCC has considered the following public benefits:

- Enhanced product and service offering
- Cost savings and efficiencies
- Increased competition
- Stimulation of tourism

Enhanced product and service offering

4.11. The Applicants submit that the Conduct has, and will continue to benefit customers through:

- enhancing post COVID-19 recovery for the airline industry
- increases in frequency of services and capacity; citing the increased frequency of Singapore Airlines' Singapore – Düsseldorf service in 2018 (since suspended due to COVID-19), an increase in Singapore Airlines' capacity between Singapore and Germany, an increase in Singapore Airlines' capacity on its Singapore – Melbourne and Singapore – Brisbane routes, and an overall increase in capacity between Australia and the Lufthansa Home Markets since the joint venture commenced in 2016

5 Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

- better scheduling and resulting benefits to customers; citing as examples of what has been achieved since the joint venture commenced in 2016, reduced travel times on multi-legged journeys from Brisbane to Brussels by 5 hours and 10 mins and from Vienna to Darwin by 1 hour and 45 minutes
 - introduction of new routes and services; such as, since 2016, Singapore Airlines' (now suspended) Singapore – Düsseldorf route, Lufthansa's Singapore – Munich route, and the restructuring of Singapore Airlines' Singapore – Munich – Manchester route into the direct Singapore – Munich and Singapore – Manchester routes, and
 - improvement of existing services.
- 4.12. The ACCC has previously accepted that joint coordination agreements between airlines can help address the significant uncertainty about market conditions and passenger demand in the initial post COVID-19 recovery phase. In this context, these agreements may allow for a more efficient and commercially viable utilisation of aircraft capacity by enabling airlines to aggregate bookings. This may help reduce the risks for airlines in reinstating capacity thereby facilitating earlier reinstatement of capacity. However, the ACCC considers that decisions about capacity operated, including adding additional capacity, are primarily driven by market conditions and passenger demand. As market conditions and passenger demand recover over the proposed term of the authorisation, the extent of this benefit is likely to diminish.
- 4.13. More generally, the ACCC considers that coordination between the Applicants under the Conduct has, and is likely to continue to, result in public benefits by assisting the Applicants to increase service frequencies and capacity on some routes, reduce multi-leg journey times through aligning schedules, and support, to some extent, the introduction of new routes and services.
- 4.14. The ACCC notes that both Singapore Airlines and Lufthansa have extensive networks in Asia and Europe respectively that are more easily accessed by passengers under the Conduct. The ACCC also considers that the Conduct has, and will likely continue to provide passengers with an expanded range of online connections (passenger itineraries with two or more flight segments where connections are made between flights of the same airline, or its codeshare partners) for itineraries where passengers would be otherwise required to use interline connection options (connection between two different codes). This can lead to improved journey times and convenience for passengers who utilise the new online connection options.
- 4.15. The ACCC considers that a public benefit in the form of enhanced products and services is likely.

Cost savings and efficiencies

- 4.16. In its consideration of similar airline alliances, the ACCC has previously accepted that improved operating efficiencies and/or the avoidance of duplicated fixed costs through alliances are likely to result in a public benefit. However, the ACCC has generally not placed a significant weight on this as a public benefit absent strong evidence about how such savings will be achieved.
- 4.17. The Applicants submit that they have achieved certain efficiencies as a result of the Conduct. The Applicants submit that the Conduct has driven higher traffic on the Singapore – Munich and Singapore – Dusseldorf routes, resulting in better load factors and scale effects in operations as fixed costs are allocated to more flights, and spread over more passengers. Additionally, the Applicants submit that on the Singapore –

Munich, Singapore – Frankfurt, and Singapore – Zurich routes, they have been able to reduce excess costs and maximise load factors by deploying more appropriately sized aircraft. The Applicants also submit that the Conduct helps to reduce the likelihood of individual carriers adding a mark-up on their respective legs of the journey, and potentially result in reduced fare offerings.

- 4.18. The ACCC considers that the Conduct is likely to facilitate public benefits through:
- the realisation of efficiencies associated with improved load factors and scale effects, and
 - more efficient (cost reflective) pricing of service to the extent that the price and revenue coordination contemplated under the Conduct results in each airline factoring in the impact of the margins that they apply to their own fares on the other airline's profits and, hence, incentive to sell seats.
- 4.19. The ACCC considers that efficiencies are a public benefit in and of themselves. However, the ACCC gives greater weight to the realisation of efficiencies where they are likely to be passed through to consumers in the form of lower fares or better services.
- 4.20. The ACCC considers that the likelihood of efficiencies achieved by the Conduct being passed through to passengers will depend on competitive conditions year to year, but accepts there is likely to be some pass through of realised cost savings and efficiencies in the form of lower fares or better services.

Increased competition

- 4.21. The Applicants submit that the Conduct has, and will continue to, place them in a better position to compete with the services operated by other carriers. The Applicants also submit that their joint venture will continue to encourage a pro-competitive response from the other carriers.
- 4.22. The ACCC considers that, as discussed above, it is likely that the Proposed Conduct will enable the Applicants to provide enhanced products and services to consumers. This may make the Applicants more effective competitors if consumers consider the enhanced products and services are desirable.
- 4.23. However, the ACCC does not consider that there is currently sufficient evidence to conclude that a substantial public benefit in the form of triggering a competitive response from rivals is likely to arise. Rather, notwithstanding the current market disruptions from COVID-19, the ACCC considers that rival airlines will continue to strongly compete for passengers between Australia and Europe (including the United Kingdom), and the Conduct is unlikely to be an integral driver of this competition.
- 4.24. For these reasons the ACCC considers that any public benefit arising from increased competition is likely to be small.

Stimulation of tourism

- 4.25. The Applicants submit that from 2015 to 2019 there was a 17.4% increase in travellers from Germany, Austria, Belgium and Switzerland to Australia. The Applicants submit that stimulation of tourism will become a necessary priority for Australia following the opening of international borders, and that once borders start to reopen the Conduct will allow the Applicants to operate at the optimal capacity the market will allow thereby facilitating any future growth in demand.

- 4.26. The ACCC considers that airline alliances can stimulate tourism by
- i) making Australia more accessible or convenient as a tourist destination by enhancing the alliance's product and service offering, and
 - ii) allowing the parties to exploit synergies through joint rather than separate tourism promotion activity.
- 4.27. In this instance, the ACCC considers that by offering an increased connectivity and expanded frequencies of the Applicants' services the Conduct has the potential to promote greater levels of inbound tourism to Australia.
- 4.28. However, the ACCC considers that there are a wide range of factors which influence tourism demand and expenditure, including general purchasing power in source countries, the relative cost of other destinations, the total cost of visiting Australia and the perceived quality of Australia as a destination. The ACCC considers that these factors are likely to be more significant determinants of inbound tourist numbers.
- 4.29. For these reasons the ACCC considers that any public benefit arising from stimulation of tourism as a result of joint sales by the alliance is likely to be small.

Public detriments

- 4.30. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.⁶

- 4.31. The Applicants submit that the Conduct is not likely to lessen competition in any market, and therefore does not give rise to any public detriment. In particular:
- the Applicants do not operate overlapping services to Australia and are not likely to do so in the future
 - while the Applicants each currently market services to Australia, the extent of competition between them in this respect is limited by the fact that Lufthansa operates all such services via codeshares (including with Singapore Airlines) and does not itself operate services landing in or departing from Australia, and
 - the Applicants will face close competitive constraints in relation to all elements of the Conduct from the strong competition faced on routes between Australia and Europe from a large number of established carriers via multiple hubs including Dubai, Bangkok, Singapore, Hong Kong and Abu Dhabi, As such, the Conduct is unlikely to significantly increase the ability and incentive of the Applicants to reduce or limit their growth in capacity, or to increase prices, on services between Australia and Europe.
- 4.32. The ACCC notes that Lufthansa does not directly operate flights on any routes into or out of Australia. Based on the available information, the ACCC considers that it is unlikely that Lufthansa would commence operating services to Australia over the 5 year term for which authorisation is sought.
- 4.33. In terms of indirect flights to Australia, the Applicants only currently operate overlapping services on two routes, the Singapore – Frankfurt and the Singapore –

6 Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

Zurich routes, with plans to also overlap on the Singapore – Munich route once COVID-19 travel restrictions ease. These services will, in some cases, form a segment of a service to or from Australia. The ACCC notes that there are likely to be many other options available to travellers between Australia and these destinations, including services with a comparable travel time to that offered by the Applicants by Etihad Airways, Emirates, Cathay Pacific, Qatar Airways and Thai Airways.

- 4.34. While Lufthansa does not directly operate flights on routes to or from Australia, it does market services between Europe and Australia pursuant to its codeshare agreements. Absent the JVF Agreement, Lufthansa may be more likely to also consider other options for providing flights between Europe and Australia such as through existing and potentially new codeshare agreements with other airlines. Therefore, there is potentially some loss of competitive rivalry for air passenger transport services on some routes between Australia and Europe as a result of the JVF Agreement.
- 4.35. However, the ACCC considers that the Australia to Europe (including the United Kingdom) routes, while currently significantly impacted by the COVID-19 pandemic, are likely to continue to be highly competitive over the 5 year term of the re-authorisation sought. The ACCC also notes that Lufthansa does not have a significant presence on these routes.
- 4.36. The ACCC considers that the presence of numerous vigorous competitors will limit the possibility of competitive harm flowing from the Applicants' coordination on these routes. These competitors are likely to continue competing strongly between themselves and the Applicants if the Conduct continues to be authorised.
- 4.37. On this basis, the ACCC considers that the Conduct is unlikely to result in public detriment.

Balance of public benefit and detriment

- 4.38. The ACCC considers that the Conduct is likely to result in public benefits in the form of an enhanced product and service offering and cost savings and efficiencies. The ACCC considers that the Conduct may result in some small public benefits in the form of increased competition in international air passenger transport markets, and stimulation of tourism.
- 4.39. The ACCC considers that the Conduct is unlikely to result in public detriment due to the lack of overlap in services offered by the Applicants, Lufthansa's limited presence on routes to Australia, and the strength of competitors on relevant routes.
- 4.40. Therefore, for the reasons outlined in this draft determination, the ACCC is satisfied that the Conduct is likely to result in public benefits and that these public benefits would outweigh any likely detriment to the public from the Conduct.

Length of authorisation

- 4.41. The Act allows the ACCC to grant authorisation for a limited period of time.⁷ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

⁷ Subsection 91(1)

- 4.42. In this instance, the Applicants seek re-authorisation for 5 years, submitting that such a period is appropriate given the long term nature of the proposed arrangements. The Applicants submit that certain public benefits will depend upon the Applicants implementing operational changes to incorporate new frequencies and destinations, which would be difficult to realise with an authorisation of a shorter term.
- 4.43. The ACCC recognises that there continues to be significant uncertainty about the recovery of the global aviation industry from the effects of the COVID-19 pandemic. In this context, and having regard to the current and past assessments that the Conduct is likely to deliver a net public benefit, the ACCC proposes to reauthorise the Conduct for 5 years.

5. Draft determination

The application

- 5.1. On 23 September 2021, the Applicants lodged an application to revoke authorisation AA60295 and substitute authorisation AA1000580 for the one revoked (referred to as re-authorisation). This application for re-authorisation AA1000580 was made under subsection 91C(1) of the Act.
- 5.2. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

- 5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Conduct.
- 5.4. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 5.5. Accordingly, the ACCC proposes to grant re-authorisation.

Conduct which the ACCC proposes to authorise

- 5.6. The ACCC proposes to revoke authorisation AA60295 and grant authorisation AA1000580 in substitution. Authorisation AA1000580 is to enable the Applicants to coordinate on the provision of scheduled air passenger services on routes between the Singapore Home Markets and the Lufthansa Home Markets, as described at paragraphs 1.5 to 1.12.
- 5.7. The Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 and 47 of the Act.
- 5.8. The ACCC proposes to grant authorisation AA1000580 for 5 years.
- 5.9. This draft determination is made on 2 December 2021.

6. Interim authorisation

- 6.1. The ACCC has decided to suspend the operation of authorisation AA60295 and has granted interim authorisation in substitution for the authorisation suspended.
- 6.2. The Applicants requested interim authorisation to engage in the Conduct while the ACCC assesses their application for reauthorisation as the current authorisation is due to expire on 10 December 2021.
- 6.3. The ACCC has decided to grant interim authorisation for the following reasons:
 - interim authorisation will allow the applicants to continue to coordinate on services between the Singapore and Lufthansa Home Markets in the period until the ACCC makes a final decision about the request for re-authorisation, and
 - for the reasons set out in this draft determination, the ACCC considers the Conduct is likely to result in public benefits, which would outweigh any likely public detriments.
- 6.4. The ACCC grants interim authorisation for the Conduct as described at paragraphs 1.5 to 1.12.
- 6.5. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect or when the application for re-authorisation is withdrawn.

7. Next steps

- 7.1. The ACCC invites submissions in response to this draft determination by 17 December 2021. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination.

Attachment A – The Lufthansa and Singapore Home Markets

	Lufthansa Home Markets	Singapore Home Markets
As authorised in 2016	<ul style="list-style-type: none"> • Germany • Austria • Belgium • Switzerland 	<ul style="list-style-type: none"> • Singapore • Australia • Indonesia • Malaysia
Additional home markets included in the current application	<ul style="list-style-type: none"> • Albania • Bosnia and Herzegovina • Bulgaria • Croatia • Cyprus • Czech Republic • Estonia • France • Greece • Hungary • Iceland • Republic of Ireland • Italy • Kosovo • Latvia • Lithuania • Luxembourg • Malta • Republic of Moldova • Montenegro • Netherlands • North Macedonia • Poland • Portugal • Romania • Serbia • Slovakia • Slovenia • Spain • United Kingdom 	Three additional countries, the details of which have been provided to the ACCC on a confidential basis.