

**PUBLIC VERSION**

**Application to the Minister of Transport  
pursuant to  
Part 9 of the Civil Aviation Act 1990**



**Restated Joint Business Agreement and  
associated agreements**

**12 June 2015**

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## 1 EXECUTIVE SUMMARY

Qantas Airways Limited (**Qantas**) and American Airlines Inc (**American**) and their related bodies corporate<sup>1</sup> (together, the **Applicants**) seek authorisation from the Minister of Transport under section 88 of the *Civil Aviation Act 1990* (**CAA**) to continue to coordinate their operations between and within Australia/New Zealand and the United States (**US**), Canada and Mexico (**Trans-Pacific Routes**) pursuant to a Restated Joint Business Agreement (**Restated JBA**) and associated agreements<sup>2</sup> (the **Proposed Conduct**).

Qantas and American entered into a Joint Business Agreement on 6 May 2011 (**Original JBA**) in respect of coordination on the Trans-Pacific Routes. The Original JBA was authorised by the Minister of Transport on 26 September 2011 and the Australian Competition and Consumer Commission on 29 September 2011<sup>3</sup> and was approved by the US Department of Transportation (**US DOT**) on 9 November 2011.<sup>4</sup>

The Original JBA has not resulted in any adverse impact on consumers and has delivered significant public benefits including:

- expanded capacity and increased connectivity;
- improved product and services including expanded reciprocal lounge access and improved check-in processes;
- new fare products;
- an enhanced frequent flyer proposition; and
- stimulation of tourism through joint sales and marketing.

There have been a number of significant developments since the Original JBA was authorised. In September 2011, Qantas began offering services to Dallas/Fort Worth and subsequently increased and up-gauged those services. From 6 May 2012 Qantas ceased providing direct services between Auckland and Los Angeles. American went into and emerged from Chapter 11 Bankruptcy. In 2013, American and US Airways merged. In 2014, Qantas introduced seasonal services between Sydney and Vancouver.

From December 2015, in partnership with Qantas, American intends to commence daily services between Sydney and Los Angeles. In conjunction with the new American services, Qantas will re-deploy aircraft from its Los Angeles services<sup>5</sup> and re-commence operations between Sydney and San Francisco with six services per week. Qantas has not operated to San Francisco since April 2011 and the route is currently only served by United Airlines. The new capacity will result in:

- an increase in weekly Sydney-Los Angeles services from 14 to 17;
- 6 new services a week to San Francisco; and

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<sup>1</sup> See Annexure A which is a list of the related bodies corporate of each of Qantas and American covered by this Application.

<sup>2</sup> See Confidential Annexure B. The Restated JBA should be read in conjunction with Amendment No 5 to the Joint Business Agreement, Alliance Agreement, Alliance Settlement Agreement and the Codeshare Agreement (all in Confidential Annexure B).

<sup>3</sup> See Authorisations A91265 and A91266.

<sup>4</sup> See US Department of Transportation Docket DOT-OFT-2011-0111, Joint Application of American Airlines Inc and Qantas Airways Limited under 49 USC 41309 for approval of Joint Business Agreement, Final Order dated 9 November 2011. US DOT approval was (among other things) subject to annual reporting by the Applicants in respect of the public benefits being generated by the Original JBA.

<sup>5</sup> [CONFIDENTIAL]

- a 49% increase in the Applicants' total joint capacity between Sydney and the west coast of the US, including a 12% increase in the Applicants' total joint capacity between Sydney and Los Angeles.

The Proposed Conduct will provide the basis for opportunities for the Applicants to expand the shared network to other ports on both sides of the Pacific that neither carrier currently serve, including New Zealand. **[CONFIDENTIAL]**

These changes will materially increase capacity and consumer choice on the Trans-Pacific Routes and are material public benefits that have been facilitated by coordination between the Applicants under the Original JBA. The Restated JBA and other associated agreements are a re-design of the Original JBA to reflect these developments.

Neither Applicant can effectively and efficiently serve the Trans-Pacific Routes alone. The success of Qantas' Trans-Pacific services remains dependent on accessing the breadth, depth and efficiency of the American network and sales and distribution channels in the US, Canada and Mexico. The success of American's services will similarly be dependent on utilising Qantas' sales and distribution channels and domestic networks in Australia and New Zealand.

Authorisation of the Proposed Conduct will enable the Applicants to continue to deliver and expand significant public benefits through:

- facilitating the addition of significant new capacity, including on routes currently served by a single carrier;
- expediting future increased frequencies on Trans-Pacific Routes;
- improving connectivity and increasing schedule choice for passengers flying from Australia/New Zealand to destinations within the US, Canada and Mexico;
- improving products and services for customers including lounge facilities and coordinated customer service;
- enhancing benefits for members of each Applicants' frequent flyer programs, particularly through reciprocal earning and redemption opportunities;
- eliciting a pro-competitive response from rivals on the Trans-Pacific Routes;
- offering a greater availability and variety of price points for consumers through coordinated inventory management; and
- promoting tourism in Australia and New Zealand and enhanced international trade opportunities for Australian and New Zealand businesses.

These benefits will be achieved without any adverse impact on consumers in circumstances where the Proposed Conduct:

- involves two highly complementary networks with limited overlap;
- will increase competition through capacity expansion to New Zealand which would otherwise not occur; and
- will continue to be disciplined by a number of rivals who are already acting as effective constraints including Air New Zealand, Virgin Australia, Delta, United and Hawaiian Airlines and who are expected to react swiftly and aggressively to the Proposed Conduct.

The Minister should exercise his discretion to authorise the Proposed Conduct because:

- the Proposed Conduct is capable of authorisation by the Minister under section 88 of the CAA;

- the Proposed Conduct will result in significant and substantiated public benefits to New Zealand;
- there will be no adverse impact on consumers from the Proposed Conduct – to the contrary, the Proposed Conduct will have pro-competitive effects and will be beneficial for New Zealand consumers; and
- the Proposed Conduct does not breach any of the specific provisions in section 88(4)(a)-(f) of the CAA.

## 2 THE APPLICANTS

### 2.1 Qantas

Qantas was incorporated in 1920 and is Australia’s largest domestic and international airline. The Qantas Group operates more than 6,600 domestic and 870 international flights each week<sup>6</sup> using two complementary airlines: Qantas – a full service airline offering domestic and international services; and Jetstar – a low cost carrier offering domestic and international services, predominantly focussed on servicing price sensitive consumers. Qantas also operates airline related businesses including airport support services, catering, freight operations, loyalty programs and engineering.

The international destinations to which Qantas currently operates are set out in Table 1 and in the route map Annexure C to this submission.

**Table 1: Qantas International Destinations (Ex Australia), May 2015**

Region	Destinations
Pacific	Auckland, Christchurch, Wellington, Queenstown, Noumea, Port Moresby
Asia	Bangkok, Hong Kong, Jakarta, Manila, Shanghai, Singapore, Tokyo
Europe	London
Middle East	Dubai
Americas	Dallas/Fort Worth, New York, Los Angeles, Honolulu, Santiago, Vancouver
Africa	Johannesburg

As at May 2015, the Qantas Group operated a total passenger fleet of 281 aircraft, comprising Boeing 787s, 747s, 737s and 717s, Airbus A380s, A330s and A320s, Bombardier Dash 8s and Bombardier Q400s.<sup>7</sup>

In addition to the Original JBA, the Qantas Group is currently a party to the following alliances:

- an alliance with Emirates, which was authorised by the Commission on 27 March 2013;<sup>8</sup> and
- the **oneworld** marketing alliance, to which American is also a party.

A list of Qantas’ current codeshare partners is included in Annexure D.

<sup>6</sup> Qantas, *The Australian Way*, May 2015.

<sup>7</sup> Ibid.

<sup>8</sup> ACCC Determination in relation to Application for Authorisation lodged by Qantas Airways Limited and Emirates in respect of a Master Coordination Agreement to coordinate air passenger and cargo transport operations and other related services (A91332-A91333), 27 March 2013.

Jetstar is a vital part of the Qantas Group's domestic and international operations. It operates low-cost, value based services in domestic Australia and to the following international destinations from a number of cities in Australia:

**Table 2: Jetstar International Destinations (Ex Australia), May 2015**

Region	Destinations
Pacific	Auckland, Christchurch, Queenstown, Wellington, Nadi
South East Asia	Bangkok, Phuket, Bali (Denpasar), Jakarta, Manila, Singapore
North East Asia	Osaka, Tokyo, Wuhan
Americas	Honolulu

Since its establishment in 2004, the Jetstar Group has evolved into a mature and successful low cost carrier with an expanded brand presence as follows:

- domestic Australia and New Zealand services (operated by Jetstar Airways);
- international services from Australia to New Zealand and destinations in Asia and the Pacific a (operated by Jetstar Airways); and
- services within and between various countries in Asia under the Jetstar business model, operated by the following joint ventures:
  - Jetstar Asia Airways Private Limited (**Jetstar Asia**) of which the Qantas Group has a 49% shareholding through its shareholding of Jetstar Asia's parent company, Newstar Investment Holdings Pte Ltd (a Singapore company) (Newstar), which is incorporated in Singapore and operates flights from Singapore to various destinations in Asia;<sup>9</sup>
  - Jetstar Pacific Airlines Joint Stock Aviation Company (**Jetstar Pacific**) of which the Qantas Group has a 30% shareholding. Jetstar Pacific is incorporated in Vietnam and operates flights within Vietnam and to Singapore and Bangkok;
  - Jetstar Japan Co Ltd (**Jetstar Japan**) in which the Qantas Group has a 33% shareholding. Jetstar Japan is incorporated in Japan and began operating flights within Japan from 3 July 2012 and internationally in early 2015; and
  - Jetstar Hong Kong Limited (**Jetstar Hong Kong**) in which the Qantas Group and China Eastern each have a 33⅓% shareholding. Jetstar Hong Kong proposes to operate flights from Hong Kong to China and various destinations in Asia, subject to regulatory approvals.

The Australian Competition and Consumer Commission authorised coordination between the Qantas Group and the various Jetstar branded joint ventures in December 2012.

The Jetstar Group operates over 3,500 weekly flights to more than 60 destinations in 16 countries or territories with a combined operating fleet of around 125 aircraft.<sup>10</sup> A route map of the services currently provided by the Jetstar Group is set out in Annexure E.

<sup>9</sup> References to Jetstar Asia include Valuir, a Singapore-based LCC that is wholly owned by Newstar and operates flights between Singapore and destinations in Indonesia.

<sup>10</sup> Jetstar Network – Jetstar Group: <http://www.jetstar.com/mediacentre/facts-and-stats/jetstar-network>

More information about the Qantas Group is available at [www.qantas.com](http://www.qantas.com).

## 2.2 American Airlines

American Airlines Group (**AAG**, formerly known as AMR Corporation) is a holding company, whose primary business is the operation of two major network carriers through its principal, wholly-owned mainline operating subsidiaries, American and US Airways. Together with regional partners, operating as American Eagle and US Airways Express, Piedmont Airlines, Inc, and PSA Airlines, Inc., the airlines operate an average of nearly 6,700 flights per day to nearly 350 destinations in more than 50 countries.<sup>11</sup>

American and US Airways maintain hubs in Charlotte, Chicago, Dallas/Fort Worth, Los Angeles, Miami, New York, Philadelphia, Phoenix and Washington D.C. In 2014, the airlines had approximately 197 million passengers boarding mainline and regional flights. As at December 2014, the airlines operated 983 mainline jets and were supported by the regional airline subsidiaries and other third-party regional carriers, which operated an additional 566 regional aircraft. American and US Airways are members of the **oneworld** alliance. American's cargo division provides a wide range of freight and mail services, with facilities and interline connections available across the globe.

### *Successful Reorganisation and Merger of American and US Airways*

In November 2011, AMR Corporation filed voluntary petitions for relief under Chapter 11 of the US Bankruptcy Code. In October 2013, the Bankruptcy Court entered an order approving and confirming the Debtor's plan of reorganisation. Upon closing of the merger and emergence from Chapter 11, AMR changed its name to AAG. The plan of reorganisation resulted in the merger of American and US Airways in December 2013.

The combination of the airlines brought together two highly complementary domestic networks giving travellers access to more destinations with greater ease. The company's emergence from bankruptcy through the merger also allowed American to successfully make substantial new investments in fleet, equipment, facilities and other improvements. The merger also enabled the company to negotiate new agreements with the company's labour groups, including its pilots, which facilitated new flying.

Since the time of the merger, the airlines have been making steady integration progress, including merging separate frequent flyer programs into the single AAdvantage program and receiving a single operating certificate from the FAA. One major component of the integration is the move to a single reservations system platform, which is expected to occur in 2015. After that stage of the integration is completed the US Airways code and brand will be discontinued.

### *International Joint Businesses and Antitrust Immunities*

American has been granted antitrust immunity by the US DOT for its integrated joint business with British Airways, Iberia and Finnair.<sup>12</sup> This joint business has also been approved by the European Commission's Directorate General Competition with respect to operations to/from the EU and North America. Additionally, Japan's Civil Aviation Bureau and Ministry of Land, Infrastructure, Transport and Tourism and the US DOT have approved an integrated alliance between American and Japan Airlines covering services between North America and Asia.<sup>13</sup> American also has received antitrust immunity from the US DOT for alliances with LAN (Chile)/LAN Peru and Royal Jordanian.

A list of American's current codeshare partners is included in Annexure D. Route maps showing American destinations are included in Figure 3 below and in Annexure F. More information about American is available at [www.aa.com](http://www.aa.com)

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<sup>11</sup> As at year end 2014.

<sup>12</sup> US DOT, Application by American Airlines Inc, British Airways PLC, Finnair OYJ, Iberia Lineas Aereas de Espana, SA, Royal Jordanian Airlines, 20 July 2010.

<sup>13</sup> US DOT Application by American Airlines, Inc. and Japan Airlines International Co., Ltd., 10 November 2010.

### 3 THE PROPOSED CONDUCT

#### 3.1 Original JBA

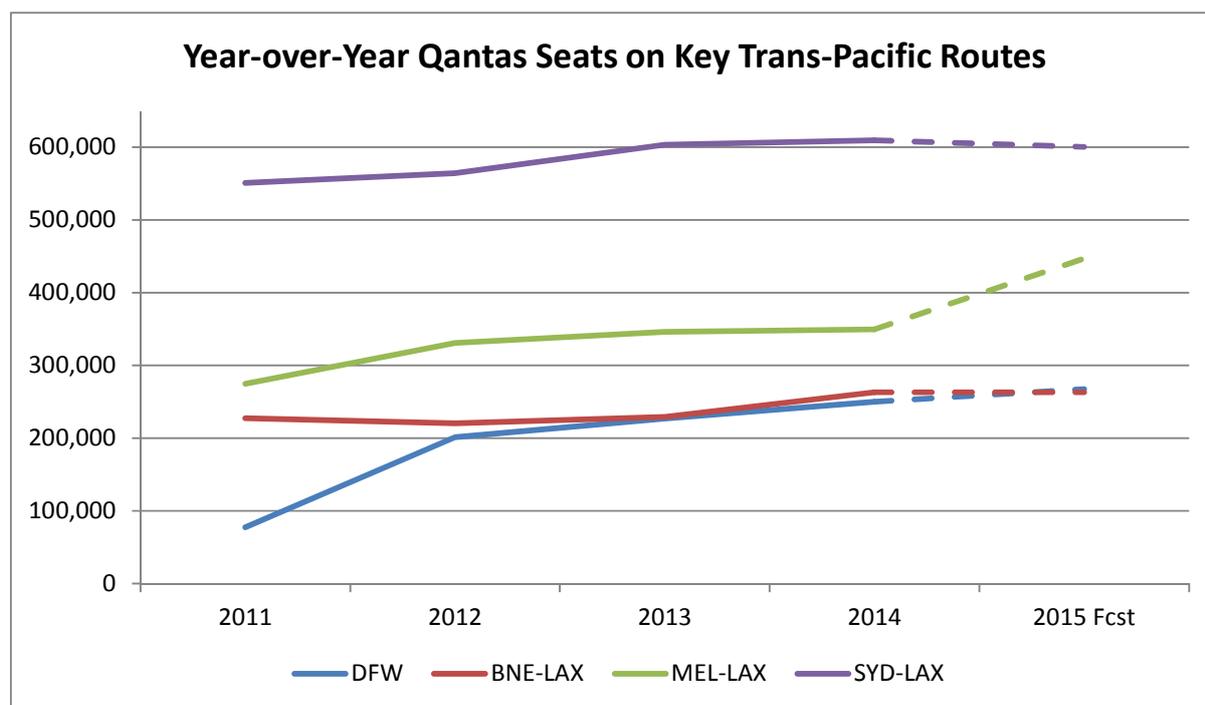
Qantas and American entered into the Original JBA on 6 May 2011. The joint business and its associated governance structure have provided the opportunity for the delivery of significant public benefits as set out below.

##### *Expanded Capacity and Increased Connectivity*

The Original JBA has facilitated an expansion of Qantas operated services and frequencies as well as improvements to scheduling and connectivity behind and beyond the Trans-Pacific gateways. 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 in 2011, Qantas and American have expanded their codeshare by over 1,200 flights on over 50 city pairs servicing 40 more destinations.

Figure 1 below shows the increase in Qantas capacity operated on key Trans-Pacific Routes since the Original JBA was implemented in 2011.

**Figure 1: Year Over Year Qantas Seats on Key Trans-Pacific Routes**



Source: BITRE (2011-2014); WorldNet (2015 Fcst)

The Original JBA supported the successful launch and subsequent expansion of Qantas' Sydney-Dallas/Fort Worth services. Commencing in May 2011 with an initial four services per week (including an inbound leg via Brisbane), these services have given passengers unprecedented access to destinations across the US.<sup>14</sup> 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.

<sup>14</sup> Qantas, Media Release, 14 January 2011.

Dallas/Fort Worth is one of the major hub airports in the US, the fourth-largest and fastest-growing metropolitan area in the US and an important centre of business and tourism. Dallas/Fort Worth is also American's primary hub. From here, American and its regional partner, American Eagle, operate to 200 destinations worldwide and across the US, Canada and Mexico (including Boston, Orlando, Houston, Las Vegas, Miami, Nashville, Calgary, Toronto and Vancouver).

Previously, accessing many of these codeshare destinations using the Los Angeles gateway involved three or more stops for New Zealand based passengers. Today, passengers have better connectivity and streamlined journeys with reduced travelling time. Long connection times to reach high-demand destinations such as Chicago, Houston and Orlando, have been reduced by the better coordination of schedules to and from Dallas/Fort Worth. For example, transit times from Auckland to Houston and Austin have improved by almost three hours. Similarly, there has been a one hour improvement on connections to Chicago. Operating to Dallas/Fort Worth has also facilitated new connections to many more destinations such as Montreal, Philadelphia and Charlotte which were previously unavailable on the American network from Los Angeles.

The Original JBA has provided a platform for the Applicants to ensure the growth and viability of the Dallas/Fort Worth service. In July 2012, Qantas increased the frequency of the Sydney-Dallas/Fort Worth service to daily in response to increased demand. In September 2014, Qantas up-gauged the B747 service to its flagship A380 product. Although the frequency was reduced from daily to six per week, the change of gauge resulted in a 10% increase in capacity on the route by adding nearly 50,000 additional seats and introduced first class as a new product proposition.

In addition to the introduction and expansion of the Dallas/Fort Worth service, there are also other examples of increased frequencies, aircraft up-gauging and capacity expansion that have been facilitated by the Original JBA. For example:

- from December 2013, Qantas increased the frequency of its six per week Brisbane-Los Angeles service to daily, resulting in a 15% increase in capacity on the route;
- in September 2014, Qantas announced that it would introduce seasonal services between Sydney and Vancouver. Qantas operated six direct return services per week between Sydney and Vancouver during December 2014/January 2015. In February 2015, Qantas announced that it would operate a further extended seasonal schedule to Vancouver in June/July 2015 and in December 2015/January 2016, with 33 return services between Sydney and Vancouver (13 return services in June/July, and 20 return services from mid-December to late January 2016, operated by a three-cabin, 364-seat refurbished B747 aircraft);
- in November 2014, Qantas expanded its codeshare agreement with American (including flights operated by US Airways affiliates) to include nine new city pairs (for example, Los Angeles-Atlanta) and four new destinations, primarily in Hawaii;
- from December 2014, Qantas increased services to Honolulu from three to four per week on a year-round basis following an up-gauge from a B767 aircraft to a larger A330 aircraft. Honolulu is proving to be an increasingly popular stopover on journeys between Australia/New Zealand and the US;
- from January 2015, Qantas increased services on the Melbourne-Los Angeles route from daily to 10 per week, enabled through increased utilisation of its B747 fleet. A new evening service complements the Melbourne-Los Angeles daily A380 morning departure, offering customers greater choice and a different suite of connections to American's network upon arrival in Los Angeles; and
- in January 2015, Qantas amended its Sydney-US schedule to become the only carrier offering morning, afternoon and evening departures to the US. This increased customer choice by offering greater connectivity through American's Dallas/Fort Worth and Los Angeles hubs, with over 130 destinations available within four hours.

In turn, Qantas' expansion of capacity and traffic through Los Angeles has supported the growth of American at this major hub. American's flights out of Los Angeles expanded from 42 destinations in 2011 to 51 by the end of 2014.

#### *Sales, Marketing and Tourism*

The Original JBA has successfully stimulated inbound tourism to the Australasian region through coordinated joint marketing campaigns. The Applicants have conducted joint marketing programs, generating more traffic for the joint network and stimulating inbound tourism. Co-branded marketing initiatives have led to better utilisation of the respective home market sales and distribution networks of each carrier. As described further below, the ability to drive feeder traffic from American's domestic network onto Qantas' Trans-Pacific services has incentivised Qantas to support major events and activities, including sponsoring high profile celebrity visits, to promote Australia and New Zealand as destinations for US tourists.

The addition of the Dallas/Fort Worth service has opened new inbound markets for the Australian and New Zealand tourism industries, with American's connections to nearly 200 destinations from its hub. American supported the marketing launch for Qantas' Sydney-Dallas/Fort Worth services in 2011 with the objective of raising awareness about the network, frequency and product benefits becoming available. This marketing was done via various channels including American's newsletter, dot com placements and social media.

In addition to the initiatives targeting Frequent Flyer members, the Applicants have engaged in major joint marketing activities to more generally promote the combined network. For example, Qantas and American held a joint social sweepstakes to promote tourism to Australia and New Zealand at the US point of sale. The Applicants leveraged each other's customer bases and distribution channels and invited people to 'Plan the perfect vacation to Australia and enter to win a trip Down Under.' Through interactive maps, customers learned about American's network out of Qantas' US gateways as well as Qantas' domestic network.

Qantas invests heavily in promoting Australia as an inbound tourism destination for international tourists and this has a positive flow-on effect for inbound New Zealand tourism. Qantas invests significant marketing dollars in promoting 'Destination Australia' in the US. It is the founding airline partner of the annual 'G'day USA' event held in Los Angeles which it continues to support. The G'Day USA event, supported by the Australian Department of Foreign Affairs and Trade and the Australian Trade Commission, brings together industry leaders and key influencers in government, business, tourism, academia and the arts to successfully cultivate and enhance the long term and deep relationship between Australia and the US.

Qantas has been heavily involved in other major events in Australia designed specifically to attract US tourists to the region, including by sponsoring Oprah Winfrey and Ellen DeGeneres' visits to Australia in 2012 and 2013 respectively. In March 2014, Qantas sponsored a baseball series held in Sydney, including by flying two Major League Baseball teams (Los Angeles Dodgers and the Arizona Diamondbacks) from the US to Australia for the game. This generated significant brand exposure for Qantas and Australia in the US through television coverage to millions of US viewers.

Qantas also sponsored the visit of the cast and crew of the television show Modern Family and, in April 2015, the live broadcast from Sydney of the NBC Today show to an estimated 5.6 million viewers in the US. These initiatives capture the attention of the US market and have contributed to an increase in US visitors:

*'Australia is back in favour with United States tourists, with record numbers heading down under and an annual growth rate of 6.5 per cent.'*

*Improved flight options and bringing Oprah Winfrey and Modern Family television shows to Australia in recent years have been cited as possible reasons for the jump. More than 555,000 US tourists are coming to Australia each year, up from 271,000 in 1991.<sup>15</sup>*

American has also played an important role in stimulating inbound tourism to Australia and New Zealand, with its US domestic network supporting Qantas' campaigns to drive increased passenger volumes sourced from within the US, Canada and Mexico. As set out earlier, American supported the marketing launch for Qantas' Sydney-Dallas/Fort Worth services in 2011 with the objective of raising awareness through various media channel about the network, frequency and product awareness for the Qantas services.

#### *New Fare Products*

The Original JBA has enabled the development of new fare products for consumers travelling between Australia/ New Zealand and the US and allowed the Applicants to more effectively distribute promotional fares. On implementation of the Original JBA, the Applicants simplified the zonal fare structure used to determine fares to destinations within the US (reducing the previous six zones to three). This refined structure has been simpler to manage and communicate to consumers and to travel agents. The Applicants also created a new 'Walkabout Pass' fare product, which has enabled more effective marketing of beyond gateway multi-sector itineraries under which fares are based on mileage and tiered accordingly.

#### *Enhanced Frequent Flyer Proposition*

Over the course of the Original JBA, the Applicants have implemented comprehensive, reciprocal privileges for each other's frequent flyers when traveling on the other airline. The carriers now offer what are effectively full reciprocal, earn-and-burn programs on all domestic and international flights. This is of direct benefit to the [CONFIDENTIAL] Qantas Frequent Flyers resident in New Zealand.

The Applicants have extended privileges for each other's frequent flyers when travelling on the other airline (including the ability to earn points and status credits on all commercial tickets and points bonuses for tiered frequent flyers). For example, from 1 February 2013, Qantas Gold Frequent Flyers received an improved Status Bonus for flying on American marketed flights (an increase from 50 to 75% in terms of status points earned).

The Dallas/Fort Worth service, and the onward connections facilitated by it, enabled Qantas Frequent Flyer members to earn (or redeem) additional points because they can fly with Qantas and then onwards with American and still earn (or redeem) points, rather than switching to an alternative carrier and foregoing the ability to earn (or redeem) points for the onward journey. This has resulted in more benefits to customers and made both airlines' loyalty programs more competitive.

Since August 2013, members of the Applicants' loyalty programs have had the ability to earn points in all fare classes on both airlines' marketed services. [CONFIDENTIAL]

The Applicants have engaged in several marketing initiatives aimed at encouraging frequent flyer members to travel to the US and beyond on the American network. For example, in 2012 Qantas ran a promotion with American associated with the 'G'day USA' campaign, which was designed to promote travel from Australia to the US (and vice versa). 7,000 Qantas frequent flyers entered this competition. In April 2012, the Applicants launched a joint frequent flyer promotion offering AAdvantage bonus miles/Qantas Frequent Flyer points for travel between Australia and the US. The Applicants leveraged each other's marketing assets as well as Qantas' relationship with Tourism Australia to maximise reach. Similarly, in February 2015, Qantas ran a promotion, supported by American, offering Frequent Flyer members the chance to win a business class trip to Las Vegas, flying with Qantas and American. 41,000 Qantas Frequent Flyer members entered this competition.

#### *Joint Corporate Dealing*

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<sup>15</sup> 'Oprah's exposure boosts US tourism' in *The Australian* 2 June 2015.

The Applicants have worked together to simplify corporate fare offers and streamline the procurement process for corporate customers. This has meant that the Applicants can now better meet the demands of corporate customers for alliance based deals by drawing on their respective experience and relationships.

The Original JBA has enabled the Applicants to develop joint fare products for large corporate customers as well as small-to-medium enterprises (**SME**) and leverage their respective home point-of-sale strengths to promote and distribute these products. **[CONFIDENTIAL]**

In February 2013, American enhanced its SME program (Business ExtrAA) to add Australia as part of the network, giving SME customers the opportunity to earn benefits by flying on Qantas flights. To coincide with this expansion, American ran a double-points promotion which has resulted in additional opportunities for SME customers to accrue points as part of this SME program while travelling to Australia. 4,900 passengers annually earn points flying on the American code on flights operated by Qantas to/from Australia. Prior to the Original JBA, these passengers would not have qualified for any such benefits.

#### *Improved Distribution Arrangements*

The Applicants have been able to develop agency business and marketing plans under a new sales model. Qantas involves American in its staff training and development programs and representatives from both airlines attend meetings with agents to ensure the codeshare and network offerings are appropriately promoted. Qantas promotes American on the Qantas Industry Sales Site and through the Qantas Industry Centre, including by advising travel agents of updates to American's schedule and product as well as providing sales, servicing and operational support. This ensures that joint customers are provided streamlined and informed assistance by travel agents. The Applicants have also held joint agency partner events to actively showcase the joint network.

American has been able to provide additional benefits to certain agencies by providing a new upfront commission program for American bookings on Qantas-operated flights. These commissions were not provided prior to the Original JBA; now these agencies benefit when booking either carrier. The joint distribution of wholesale fares to contracted customers on behalf of both carriers has delivered efficiencies.

#### *Airport Services*

The Applicants collaborate on airport operations and management through the Joint Business Airport Working Group. Coordination and information sharing between the Applicants has enabled various product and service improvements. The teams collaborated to successfully launch the Qantas services between Sydney and Dallas/Fort Worth in 2011 and more recently in respect of bus access to terminals and the construction of new gate areas in Los Angeles.

Given the large volume of passengers transferring between Qantas and American operated flights in Los Angeles, the operational teams have also worked together to improve the transfer experience. Monthly local management meetings are held at both Los Angeles and Dallas/Fort Worth airports. Teams collaborate and review through-check systems and baggage transfer systems. The Applicants are also progressing ground handling arrangements which would involve one of the parties providing dedicated 'bag runners' to the other during evening departure times in Los Angeles. This would enable late transfer bags to be taken between terminals and reduce delayed baggage.

#### *Cargo*

The Applicants offered each other competitive pricing through commercial agreements to encourage traffic on the joint network. Joint sales and marketing meetings have identified further opportunities for joint promotions and the more effective movement of freight beyond major gateways.

The Proposed Conduct will enable these benefits to immediately and seamlessly continue and expand. By contrast, in the absence of the Proposed Conduct, these public benefits would dissipate.

### 3.2 Proposed Conduct

The Applicants entered into the Restated JBA and other associated commercial agreements on 9 June 2015 (see Confidential Annexure B) to continue to coordinate their operations on the Trans-Pacific Routes. This will include 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 exact scope of the Proposed Conduct will evolve over its term and may be altered from time to time.

[CONFIDENTIAL]

### 3.3 Rationale for the Proposed Conduct

Neither Applicant can effectively and efficiently serve the Trans-Pacific Routes alone. The Trans-Pacific Routes feature high volumes of passengers connecting beyond the gateway hubs, making streamlined connectivity and the ability to sell competitively to 'behind and beyond' destinations crucial. In its recent Draft Determination in respect of the Virgin Australia/Delta Alliance, the Australian Competition and Consumer Commission acknowledged that the ability to offer a combined network is likely to be valued by travellers, since the majority of passengers connect from and/or to destinations behind and beyond the key gateway points.<sup>16</sup>

As set out in Table 3, a significant percentage of Qantas' passengers on Trans-Pacific services travel beyond the gateways of Los Angeles and Dallas/Fort Worth.

**Table 3: Percentage of Qantas Passengers Travelling From Australia/New Zealand to Destinations Beyond Los Angeles or Dallas/Fort Worth**

QF Trans-Pacific Routes	2014
SYD-LAX	52%
MEL-LAX	48%
BNE-LAX	46%
SYD-DFW	67%
Average	52%

*Source: WorldNet (same day transit and 1 night stopover passengers)*

Under the Australia-US Air Transport Agreement, the carriage of domestic traffic is reserved for national carriers – stand-alone cabotage is not permitted. However, the carriage of international own-stopover passengers and freight by an Australian carrier between cities in the US is permitted (such as Qantas' carriage of own-stopover traffic between Los Angeles and New York, as an extension of its operations from Australia to Los Angeles). These restrictions mean international airlines depend on commercial arrangements with domestic carriers to effectively serve domestic destinations beyond international gateways. Without a strong relationship with a major US domestic carrier, the Trans-Pacific Routes would be marginal for an Australian airline.

The Proposed Conduct allows the Applicants to continue to bring together two complementary networks. For example, Qantas and American passengers connecting at either end of a Sydney-Los

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<sup>16</sup> ACCC Draft Determination in relation to Application for revocation of authorisations A91151, A91152, A91172 & A91173 and the substitution of new authorisations A91475, A91476, A91477 & A91478 lodged by Virgin Australia Airlines Pty Ltd, Delta Air Lines & Ors in respect of an Alliance between the applicants, dated 4 June 2015, p iii. (ACCC Draft Determination on Virgin/Delta Alliance).

Angeles flight have access to a total of 291 destinations (230 beyond the US gateway and 61 beyond the Australian gateway). Similarly, Qantas and American passengers connecting at either end of a Sydney-Dallas flight have access to a total of 305 destinations (244 beyond the US gateway and 61 beyond the Australian gateway).

The global complementarity of the Applicants' networks is depicted in Figure 2 below.

**Figure 2: Global Complementarity of Qantas and American Networks**



American operated service

Qantas operated service

Source: OAG Schedules & Diio

The success of Qantas' services on the Trans-Pacific Routes remains dependent on the breadth, depth and efficiency of the American network in the US. Likewise, the successful launch of new joint flights operated by American depends on access to Qantas' sales and distribution channels and domestic networks in Australia and New Zealand.

As detailed below, the Proposed Conduct will enable the Applicants to continue to deliver and expand significant public benefits through:

- facilitating the addition of significant new capacity, including on routes currently operated by only one carrier;
- expediting future increased frequencies on Trans-Pacific Routes;
- improving connectivity and increasing schedule choice for passengers flying from Australia/ New Zealand to destinations within the US, Canada and Mexico;
- improving products and services for customers including lounge facilities and coordinated customer service;
- enhancing benefits for members of each Applicants' frequent flyer programs, particularly through reciprocal earning and redemption opportunities;
- eliciting a pro-competitive response from rivals on the Trans-Pacific Routes;
- offering a greater availability and variety of price points for consumers through coordinated inventory management; and

- promoting tourism in Australia and New Zealand and enhancing international trade opportunities for Australian and New Zealand businesses.

### 3.4 Counterfactual

Absent the Proposed Conduct, the Applicants would not have any ability to work together to grow on the Trans-Pacific Routes nor the incentive to provide each other with access to inventory on their respective domestic networks in order to maximise connectivity and customer choice.

The public benefits which have been achieved under the Original JBA and which will be enhanced and extended by the Proposed Conduct will be significantly eroded, if not eliminated entirely, in the counterfactual scenario.

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Such an outcome would be highly detrimental to consumers, who today benefit significantly from the cooperation between Qantas and American across their complementary networks.

## 4 THE SUPPLY OF TRANS-PACIFIC AIR PASSENGER SERVICES

### 4.1 Market Overview

Air services between Australia/New Zealand and each of the US, Canada and Mexico are a critical element of the maintenance of strong economic ties between the countries. The New Zealand Ministry of Foreign Affairs and Trade views New Zealand's relationship with the US as one of the most important, diverse and cooperative that New Zealand maintains<sup>17</sup>.

Air passenger services are also important for developing tourism links between the two countries:

*'The United States is New Zealand's third-largest international tourism market in terms of visitor arrivals, and it is a market where there are real opportunities for growth in the long-term.'*<sup>18</sup>

Similarly the Australian Government has acknowledged:

*'Today, the USA is the largest investor in Australia, and Australia is the twelfth largest provider of foreign direct investment (FDI) in the United States. The United States is one of the top five source countries for visitors to Australia in terms of numbers and expenditure.'*<sup>19</sup>

Since 2011 there has been an increase in passenger numbers on the Trans-Pacific Routes. Data measuring the number of US visitors to New Zealand reflect the growth of this market, as set out in Figure 3 below.

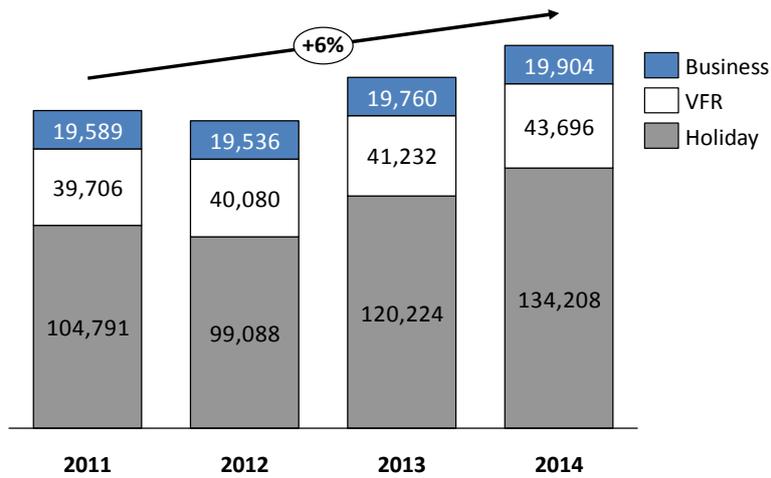
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<sup>17</sup> New Zealand Embassy Washington, United States of America: <http://www.nzembassy.com/usa-washington/relationship-between-new-zealand-and-the-usa/new-zealand-and-the-usa>

<sup>18</sup> Tourism New Zealand: <http://www.tourismnewzealand.com/markets-and-stats/north-america/united-states/>

<sup>19</sup> Hon Minister for Trade Andrew Robb speech 'US-Australia – the alliance in an emerging Asia' (18 June 2014) Available: [http://trademinister.gov.au/speeches/Pages/2014/ar\\_sp\\_140618.aspx](http://trademinister.gov.au/speeches/Pages/2014/ar_sp_140618.aspx)

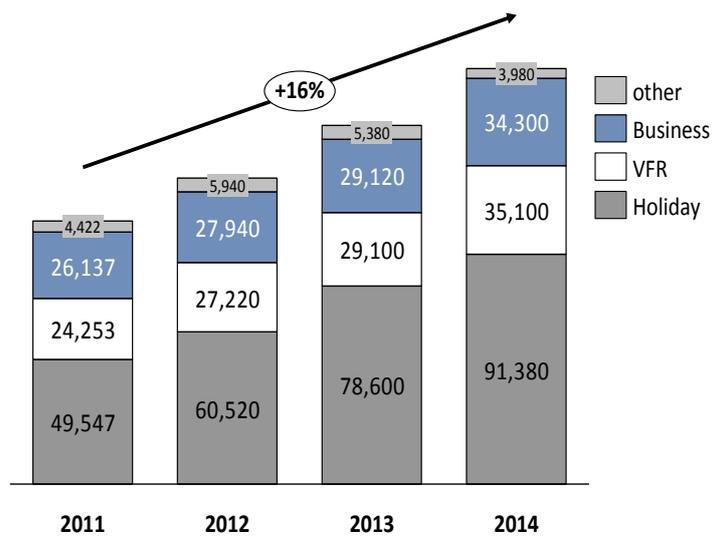
**Figure 3: US Visitor Arrival Movements – Year on Year**



Source: Statistics New Zealand (Infoshare)

The growth in US visitor arrivals (up to December 2014) represents a 6% average annual increase since 2011. Similar trends are evident in respect to the numbers of New Zealand residents departing for short term stays in the US, as set out in Figure 4 below.

**Figure 4: New Zealand Resident Departures to the US – Year on Year**



Source: Statistics New Zealand (Infoshare)

The growth in numbers of New Zealand residents departing for short term stays to the US (up to December 2014) reflect a 16% average annual increase since 2011.

Travel between Australia/New Zealand and the US, Canada and Mexico generally involves non-stop flight segments of over 10,000 kilometres, about 12 hours travelling time and specialised, capital intensive long-haul aircraft.

There are currently three direct city-pairs offered between New Zealand cities and the US:

- Auckland-Los Angeles;
- Auckland-San Francisco; and
- Auckland-Honolulu.

In addition to these direct routes, there are a number of indirect one-stop routes from Auckland. These services include:

- Auckland-Sydney/Melbourne/Brisbane-Los Angeles, San Francisco, Dallas, New York;
- Auckland-Nadi-Los Angeles;
- Auckland-Papeete-Los Angeles;
- Auckland-Vancouver-US;
- Auckland-Buenos Aires-US; and
- Auckland-Santiago-US.

#### **4.2 Qantas Group services**

Qantas no longer provides direct services from New Zealand to the US. The Qantas Group currently operates 51 return services per week between Australia and the US, being:

- 31 weekly return services to Los Angeles:
  - 14 non-stop services from Sydney;
  - 10 non-stop services from Melbourne; and
  - 7 non-stop services from Brisbane.
- daily return services from Los Angeles to New York (JFK);
- 6 weekly return services from Sydney to Dallas/Fort Worth;
- 4 weekly return services between Sydney and Honolulu (Qantas);
- 5 weekly return services between Sydney and Honolulu (Jetstar);
- 3 weekly return services between Melbourne and Honolulu (Jetstar); and
- 2 weekly return services between Brisbane and Honolulu (Jetstar).

Qantas will also operate seasonal services between Sydney and Vancouver 3 times a week (in June, July and December 2015 and in January 2016).

In July 2015, the Qantas Group is scheduled to operate 158 return services per week between New Zealand and Australia, being:

- 84 weekly return services to Auckland:
  - 34 non-stop services from Sydney (26 Qantas; 8 Jetstar);
  - 30 non-stop services from Melbourne (21 Qantas; 9 Jetstar);
  - 13 non-stop services from Brisbane (Qantas); and
  - 7 non-stop services from Coolangatta (Jetstar).
- 20 weekly return services to Christchurch;

- 11 non-stop services from Sydney (7 Qantas; 4 Jetstar);
- 6 non-stop services from Melbourne (Jetstar); and
- 3 non-stop services from Coolangatta (Jetstar).
- 28 weekly return services to Wellington;
  - 14 non-stop services from Sydney (Qantas);
  - 11 non-stop services from Melbourne (7 Qantas; 4 Jetstar); and
  - 3 non-stop services from Coolangatta (Jetstar).
- 26 weekly return services to Queenstown
  - 14 non-stop services from Sydney (7 Qantas; 7 Jetstar);
  - 7 non-stop services from Melbourne (Jetstar);
  - 2 non-stop services from Brisbane (Qantas); and
  - 3 non-stop services from Coolangatta (Jetstar).

In January 2016, this is scheduled to increase to 177 return services per week between New Zealand and Australia. In addition to the routes above, Qantas will add 2 non-stop services per week between Perth and Auckland.

#### **4.3 Other Carriers Providing Services on Trans-Pacific Routes**

Air New Zealand is the only carrier offering directed services between New Zealand and the United States. United Airlines, Air Canada and Lufthansa codeshare on Air New Zealand flights. As set out above, passengers can also travel between New Zealand and the US via Australia and Canada as well as via Hawaii, Fiji, Tahiti, South America and various points in Asia and the Middle East.

Apart from Qantas, services are provided by:

- Air New Zealand with 32 return frequencies via Auckland. In April 2015, Air New Zealand announced that it will commence new direct services between Auckland and Houston from December 2015;
- Virgin Australia with 14 return frequencies;
- Delta with 7 return frequencies;
- United Airlines with 21 return frequencies;
- Hawaiian Airlines with 11 return frequencies;
- Air Canada with 7 return frequencies via Vancouver;
- Cathay Pacific with 74 return frequencies via Hong Kong;
- Fiji Airways with 9 return frequencies via Nadi; and
- Air Tahiti Nui with 10 return frequencies via Auckland and Papeete.

Market share data in respect of air passenger services to the US and Canada is included in Annexures G and H respectively.<sup>20</sup>

As set out in Annexure G, data indicates that **[CONFIDENTIAL]**

The presence of Virgin Australia/Delta and United in the market share data in Appendix G shows that New Zealanders can and do take advantage of indirect flights to the US, particularly via Australia.

Further information about key competitors is set out below.

#### *Air New Zealand*

The principal activity of the Air New Zealand Group is the operation of domestic and international passenger transport and cargo with a fleet of 107 aircraft.<sup>21</sup> Air New Zealand is a member of the Star Alliance network and, in association with its Star Alliance partners, offers services to destinations across New Zealand, Australia, the Pacific Islands, the US, United Kingdom, Europe and the Middle East.<sup>22</sup>

Air New Zealand is the sole operator of services between New Zealand the US and Canada. Air New Zealand offers 25 return services each week between New Zealand and the mainland US, 17 direct between Auckland and Los Angeles, one indirect via the Cook Islands and 7 direct between Auckland and San Francisco. Air New Zealand also offers direct flights between Auckland and Vancouver. Air New Zealand also codeshares on United Airlines' direct flights between Australia and the US and on Air Canada's direct flights between Sydney and Vancouver.

The Applicants regard Air New Zealand as a significant competitive constraint on Trans-Pacific Routes. Air New Zealand attracts a large number of passengers who fly across the Tasman from Australia to join services to the US from Auckland. For example, data indicates that approximately 225 passengers per day fly with Air New Zealand from Australia to connect to services to the US from Auckland.<sup>23</sup> Similarly, approximately 127 passengers per day transfer from Australia to New Zealand to fly onwards to San Francisco.<sup>24</sup>

In April 2015, Air New Zealand announced the introduction of direct flights between Auckland and Houston, commencing in December 2015, using the carrier's refitted B777-200 aircraft. In May 2015, Air New Zealand announced additional services between Auckland and Perth to connect to its US and Canadian services from December 2015.<sup>25</sup> Air New Zealand has also recently concluded a new \$20 million agreement with Tourism New Zealand designed to attract increased tourists to New Zealand, including from the Americas.<sup>26</sup>

#### *Virgin Australia*

The Virgin Blue Group commenced operations in Australia in 2000. Virgin Australia and its subsidiaries operate a fleet of 137 aircraft on approximately 3000 flights per week to over 450 Australian and international destinations through its brands, Virgin Australia and Virgin Samoa, and through its codeshare partners.

On 4 May 2011, the Virgin Blue Group was rebranded the Virgin Australia Group. It undertook a major network review, with the aim of repositioning and refocusing its subsidiary airlines to improve performance and better penetrate core markets, including the US, operated by (the carrier then branded) V Australia. According to Virgin Australia:

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<sup>20</sup> NZ-Mexico data is not available.

<sup>21</sup> 'Air New Zealand Operating Fleet' available on Air New Zealand website at: <http://www.airnewzealand.com.au/fleet/>

<sup>22</sup> 'Where We Fly' available on Air New Zealand website at: <http://www.airnewzealand.com/where-we-fly>

<sup>23</sup> Financial Year 2014, PAXIS data.

<sup>24</sup> Financial Year 2014, PAXIS data.

<sup>25</sup> 'Air NZ adds flights to Perth,' The Press, Christchurch, 18 May 2015.

<sup>26</sup> 'Air NZ extends TNZ pact' in Travel Daily 18 May 2015.

*‘Over the past four years, Virgin Australia's key business strategies have been aimed at transforming Virgin Australia from a low cost carrier to a premium carrier and capitalizing on the resulting competitive advantages, underpinned by its key alliances and partnerships with some of the world's leading airlines. These strategies have been achieved through the successful implementation of the Game Change Program, including the Game On initiative. Virgin Australia is now focused on Virgin Vision 2017, with the aim of becoming Australia's favourite airline group by 2018.’<sup>27</sup>*

On 10 December 2009, the Commission granted authorisation for the Virgin Blue Group<sup>28</sup> and Delta to coordinate in relation to air passenger and freight services between the US and Australia (**Virgin/Delta Alliance**). The Commission considered that this would allow Virgin and Delta to compete more vigorously and effectively.<sup>29</sup> On 4 June 2015, the Australian Competition and Consumer Commission proposed to grant re-authorisation of the Virgin/Delta Alliance, through which the carriers will continue coordinate their operations on routes between Australia and the US.

As part of their ongoing Alliance, the carriers will offer a total of 191 codeshare and interline destinations in the US, Mexico and Canada, 59 codeshare and interline destinations in Australasia and two codeshare and interline destinations in Asia, totalling 252 destinations. In addition, Virgin and Delta intend to continue to offer reciprocal frequent flyer benefits, including lounge access, to business and leisure travellers. As Virgin and Delta have acknowledged, their Alliance has allowed them to provide real and vigorous competition to Qantas.<sup>30</sup> By enabling the sharing of commercial risks and providing access to additional passenger traffic, Virgin and Delta have stated that their Alliance:

*‘facilitates services which Virgin Australia and Delta would not alone be able to offer either in the short term, or at all. As the integration and benefits of the Alliance deepen, new trunk routes are also more likely to become viable. The Alliance will continue to investigate the viability for new trans-Pacific services, such as direct services between [RESTRICTION OF PUBLICATION CLAIMED].’<sup>31</sup>*

In its submission in support of the Virgin/Delta Alliance, the Department of Infrastructure and Regional Development observed that:

*‘Clearly, there are strong competitive forces in the Australia-US market and we would expect those forces to continue to prevent any potential anti-competitive conduct.’<sup>32</sup>*

In its Draft Determination in respect of the Virgin/Delta Alliance, the Australian Competition and Consumer Commission observed that Virgin and Delta have grown and maintained their capacity on the Trans-Pacific<sup>33</sup> and noted Delta’s submission that the Alliance has allowed it and Virgin to provide a ‘compelling offering’ to their customers on the Trans-Pacific in competition with Qantas and United.<sup>34</sup>

In addition to Delta, Virgin Australia has strategic alliances with Air New Zealand (launched in 2011 and re-authorised by the Commission in 2013), Etihad Airways (launched in 2011) and Singapore Airlines (also launched in 2011). In October 2011, Virgin Australia launched codeshare services on Hawaiian Airlines’ daily flight services between Sydney and Honolulu and on connecting services to the neighbouring islands of Maui, Kauai and Hawaii. In July 2012, Virgin Australia commenced codesharing on Virgin America’s services from Los Angeles to eight destinations across the US. In

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<sup>27</sup> Virgin Australia/Delta submission to Commission, p 42.

<sup>28</sup> The Application was made before Virgin Blue was rebranded Virgin Australia on 4 May 2011.

<sup>29</sup> Commission Determination of Applications for Authorisation by Virgin Blue and Delta Airlines, 10 December 2009, pii.

<sup>30</sup> , Submission in support of application for revocation and substitution of Virgin/Delta Alliance, 30 December 2014, p 3.

Available: <http://registers.accc.gov.au/content/index.phtml/itemId/1184018/fromItemId/278039/display/application>

<sup>31</sup> Ibid, p 24.

<sup>32</sup> Department of Infrastructure and Regional Development submission to the Commission in support of the Delta/Virgin Alliance dated 9 February 2015. Available:

<http://registers.accc.gov.au/content/index.phtml/itemId/1184018/fromItemId/278039/display/submission>

<sup>33</sup> ACCC Draft Determination on Virgin/Delta Alliance para 36.

<sup>34</sup> ACCC Draft Determination on Virgin/Delta Alliance, para 77.

addition to its strategic alliances and key partnerships, Virgin Australia also has interline arrangements with approximately 40 carriers for inbound and outbound traffic to or from Australia and New Zealand.

Virgin Australia International has been granted unlimited capacity between Australia and the US by the IASC.<sup>35</sup> It currently offers daily flights to Los Angeles from each of Sydney and Brisbane.

### *Delta*

Delta was founded in 1928 and employs nearly 80,000 employees worldwide, operating a fleet of more than 700 aircraft.<sup>36</sup> Delta merged with Northwest Airlines in 2008, creating an airline with major operations in every region in the world. Delta provides air transportation for passengers and cargo throughout the US and globally, offering services to 326 destinations in nearly 59 countries on six continents, and serves more than 170 million customers each year.<sup>37</sup>

Delta's global route network gives the airline a presence in every major domestic and international market. Its route network is centred around the hub system operating at airports in Atlanta, Detroit, Minneapolis/St. Paul, New York-JFK, New York La Guardia, Salt Lake City, Seattle, Paris-Charles de Gaulle, Amsterdam and Tokyo-Narita. Each of these hub operations includes flights that gather and distribute traffic from markets in the geographic region surrounding the hub to domestic and international cities.

Delta is a founding member of the SkyTeam global alliance, which includes (amongst others) Air France, Alitalia, KLM, China Southern, Korean Air and Vietnam Airlines.

Delta began direct services between Sydney and Los Angeles on 1 July 2009 and currently operates 7 flights a week on the route using B777-200LR aircraft.

### *United Airlines*

Following its merger with Continental, United claims to have the most comprehensive global network.<sup>38</sup> It currently operates to 373 domestic and international destinations and carried 138 million passengers in 2014.<sup>39</sup>

United (along with Air New Zealand and Air Canada) is a member of the Star Alliance and the company offers services to Asia, Europe, Latin America, Africa and the Middle East from well-placed hubs on the east coast, west coast and southern and midwestern regions of the US. The Star Alliance has been granted antitrust immunity by the Commission and the US DOT in relation to corporate dealing.

The key competitive strength of United's Trans-Pacific offering is the connections it provides customers from Los Angeles and San Francisco to its extensive domestic US network. United has more domestic flights from San Francisco airport than any other international carrier and also has significant connectivity from Los Angeles.

United currently operates 21 return services between Australia and the US a week consisting of daily flights between Sydney and San Francisco and Sydney and Melbourne and Los Angeles. United also codeshares on Air New Zealand's flights between Auckland and Sydney, Brisbane and Melbourne and Air New Zealand's flights to Los Angeles and San Francisco. Through these arrangements, United, together with Air New Zealand and Air Canada, is able to offer services through 12 Trans-

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<sup>35</sup> IASC Determination [2008] IASC 110), as varied, available at:

[http://www.iasc.gov.au/determinations\\_decisions/files/2008/2008iasc103.pdf](http://www.iasc.gov.au/determinations_decisions/files/2008/2008iasc103.pdf)

<sup>36</sup> Delta website: 'Stats and Facts (updated March 2015)' available (<http://news.delta.com/index.php?s=20306>)

<sup>37</sup> Ibid.

<sup>38</sup> 'About United', available on United website at:

<http://www.united.com/page/middlepage/0,6998,1276,00.html?jumpLink=%2Faboutunited>

<sup>39</sup> Ibid.

Pacific city pairs between the North American gateways of Los Angeles, San Francisco and Vancouver and Sydney, Melbourne, Brisbane and Auckland.

The importance of the Trans-Pacific Routes to United was expressed by its senior staff in 2009:

*'We know how to hold our own and we are certainly going to fight for our position in the Australian market... we are going to hold our shares in this market, make no mistake about that.'*<sup>40</sup>

This sentiment was repeated in June this year, in swift reaction to the Commission's Draft Determination to reauthorise the Virgin/Delta Alliance. United's Managing Director Japan and Pacific Sales stated that the Australian market was of 'significant importance' to United and that the airline was very happy with its performance in Australia.<sup>41</sup> United said the following about Australia:

*"We're used to change, we're used to competition....In terms of the US, it's still a very attractive destination. Its good value and it'll continue to be so and Australians still love to travel.*

*We're fortunate, we're a global business so we have customers travelling from the US and other parts of the world, and we have a very solid base of customers down here too. So from our perspective, I think this year is going to be a very good year, a strong year down here.'*<sup>42</sup>

In respect of the low fares offered on Trans-Pacific Routes, United has commented that remaining competitive was 'absolutely paramount for us, we're really good at that.'<sup>43</sup> Part of this strategy includes having high visibility among travel agents and corporate customers and making it easy to book on United.

To increase its appeal to Australian consumers, United has engaged in a series of pricing initiatives as well as product and service enhancements. It recently relaunched a program designed to attract SMEs and upgraded its services on the Trans-Pacific Routes by introducing B777s on its Sydney-Los Angeles services and a daily B787 Dreamliner on its Melbourne-Los Angeles services. United also revised its Sydney-Los Angeles schedules to allow for earlier departures and better onward connections.

In May 2015, United announced an upgrade of its facilities at Los Angeles airport, including a new lounge, self-service check in and a refresh of all customer facing spaces, designed to ensure that Los Angeles remains 'one of the country's premier global gateways.'<sup>44</sup> United also recently upgraded its website and applications, including the introduction of passenger connectivity and data storage enhancements. From June 2015, United will also upgrade its on-board product by offering on-demand entertainment and upgraded catering to economy passengers.

#### *Air Canada*

Air Canada is Canada's largest full-service airline and the largest provider of scheduled passenger services in Canada. Air Canada, together with its regional partner, carries approximately 35 million customers per year and provides direct passenger service and cargo services to over 175 destinations on five continents.<sup>45</sup> Air Canada, like United and Air New Zealand, is also a member of Star Alliance.

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<sup>40</sup> 'Battle over the Pacific Hots Up - United vows to fight as V Australia starts LA Flights', in *The Australian*, 27 February 2009.

<sup>41</sup> 'United lifts in a battle for the Pacific' in *The Australian* 5 June 2015.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> 'UA plans LAX upgrade' in *Travel Daily* 18 May 2015.

<sup>45</sup> Air Canada website Available <http://www.aircanada.com/en/about/index.html>

Air Canada has an extensive global network, with hubs in four Canadian cities (Toronto, Montreal, Vancouver and Calgary), providing scheduled passenger service directly to cities in Europe, Asia, Australia, the Caribbean, Mexico and South America.

Air Canada offers an indirect service from Sydney to Los Angeles and San Francisco, with one stop in Vancouver. In May 2015, Air Canada indicated that it may introduce new direct services between Australia and Canada, most likely between Brisbane and Vancouver in 2016.<sup>46</sup>

#### *Hawaiian Airlines*

Hawaiian Airlines is based in Honolulu and operates from its main hub at Honolulu International Airport. It carries approximately 8 million passengers annually and operates domestic flights between the US mainland and the islands of Hawaii, as well as international routes (including to Sydney) in the Pacific region.<sup>47</sup>

Hawaiian Airlines offers an indirect service from Sydney to Los Angeles via Honolulu and is increasingly targeting stopover passengers en route between Australia/New Zealand and mainland US.

#### *Cathay Pacific*

Cathay Pacific is the flag carrier of Hong Kong, with its main hub at Hong Kong International Airport. Cathay Pacific serves 189 destinations in 51 countries. Cathay Pacific offers one-stop indirect flights from Australia to the US via Hong Kong. It flies from Sydney, Melbourne, Brisbane, Adelaide and Perth to Hong Kong and operates long-haul Trans-Pacific flights from Hong Kong to Los Angeles, New York, Boston, Chicago and San Francisco.

#### *Fiji Airways*

Formerly known as Air Pacific Limited, Fiji Airways is Fiji's international carrier and has its hub in Nadi. It operates international and domestic services around the Pacific and to North America.<sup>48</sup> Air Pacific operates indirect services from Brisbane, Melbourne and Sydney to Los Angeles via Nadi.

## **5 THE SUPPLY OF TRANS-PACIFIC AIR FREIGHT SERVICES**

### **5.1 Freight Services**

Air freight is carried between New Zealand and the US in the cargo holds of passenger aircraft and on dedicated freighter services. Freight markets are generally defined more widely than passenger markets given that indirect services are more likely to be regarded as close substitutes for direct services than would be the case for passenger services. Having said this, the majority of freight to and from Australia, New Zealand and the US is carried on passenger flights and, as such, the level of competition is affected by many of the same factors as for passenger services.

Like other freight markets, there is typically more freight into New Zealand than out of New Zealand. Freight markets are characterised by substantial excess capacity, meaning that consignments are vigorously contested and prices are driven down. Providers of air freight services are generally price takers in the market. This will not change as a result of the continued coordination of freight operations by the Applicants.

In addition to freight carried in belly space in passenger operations, Qantas operates the following dedicated freighter services:

- Sydney-Bangkok-Shanghai-Anchorage-Chicago on a twice weekly basis;

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<sup>46</sup> 'Air Canada BNE progress' in Travel Daily 26 May 2015.

<sup>47</sup> Hawaiian Airlines, 'About Us' available at: <http://www.hawaiianair.com/Aboutus>

<sup>48</sup> Fiji Airways website available: <http://www.fijairways.com/flight-information/route-map/>

- Sydney-Chongqing-Shanghai-Anchorage-New York on a weekly basis;
- Sydney-Shanghai-Anchorage-New York on a weekly basis;
- Chicago-Los Angeles-Honolulu-Sydney on a weekly basis;
- Chicago-Honolulu-Auckland-Sydney on a weekly basis; and
- New York-Chicago-Honolulu-Sydney on a twice weekly basis.

Qantas' freighter services operate in one direction only (i.e., from the US to New Zealand). American does not provide any bellyspace services or freighter services on the Trans-Pacific Routes. Qantas and American have an interline agreement in respect of the carriage of freight on the Trans-Pacific Routes. Qantas primarily uses American services ex Dallas/Fort Worth to connect with Qantas and Jetstar services ex Honolulu. American does not currently interline with Qantas on freighter services.

Market share data is set out in Annexure I. It indicates that Qantas has a share of 17% of freight traffic from the US to New Zealand and a share of 0% of freight traffic from New Zealand to the US. American has 0% share of freight traffic in both directions.

Although it does not operate any dedicated freighter services, Air New Zealand is the dominant player. In calendar year 2014 (January-November), Air New Zealand carried approximately 67% of all freight and mail between New Zealand and the US, all on bellyspace on passenger flights. Air New Zealand's passenger market share was 94% and its freighter market share was 0%.<sup>49</sup>

Virgin Australia Freight is the designated freight group for Virgin Australia and offers both domestic and international freight services. In the 2014 calendar year Virgin Australia carried 16% of freight between Australia and the US.<sup>50</sup> Through its alliance with Delta, Virgin Australia has since increased their combined market share between Australia and the US from 9% in 2009 to 24% in 2014.

In the 2014 calendar year, Delta carried approximately 8% of freight between Australia and the US.<sup>51</sup> United also operates a cargo business, trading as United Cargo. United Cargo provides both intra-US and international freight services, as well as small package delivery services within the US. In the 2014 calendar year, United carried approximately 5% of freight between Australia and the US.

Hawaiian Airlines and China Airlines signed codeshare agreements (covering both passenger and freight services) effective from 27 October 2013, connecting New Zealand to Honolulu via Brisbane/Sydney. In addition, FedEx operates weekly freighter services between the US and New Zealand.

## **6 PUBLIC BENEFITS**

### **6.1 Overview**

The Proposed Conduct will enable the Applicants to continue to deliver and expand significant public benefits already being delivered under the Original JBA. It will:

- facilitate the addition of significant new capacity, including on routes currently operated by only one carrier;
- expedite future increased frequencies on Trans-Pacific Routes;

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<sup>49</sup> Source: USTranStats.

<sup>50</sup> Source: BITRE.

<sup>51</sup> Source: BITRE.

- improve connectivity and increase schedule choice for passengers flying from Australia/New Zealand to destinations within the US, Canada and Mexico;
- improve products and services for customers including lounge facilities and coordinated customer service;
- enhance benefits for members of each Applicants' frequent flyer programs, particularly through reciprocal earning and redemption opportunities;
- elicit a pro-competitive response from rivals on the Trans-Pacific Routes;
- offer a greater availability and variety of price points for consumers through coordinated inventory management; and
- promote tourism in Australia and New Zealand and provide enhanced international trade opportunities for Australian businesses.

Such benefits will not occur without the Proposed Conduct.

## 6.2 Facilitation of Capacity Increases

The Original JBA has enabled the Applicants to offer new and expanded services (including but not limited to increased frequencies) that would otherwise not have been offered or not offered as quickly (such as Qantas' services to Dallas/Fort Worth, described earlier). The Australian Competition and Consumer Commission has previously acknowledged that the introduction of new direct services gives rise to public benefits through increased choice and convenience arising out of reduced travel time and that new routes may stimulate market growth.<sup>52</sup>

The Proposed Conduct will provide the basis for the Applicants to commence the new American-operated joint service between Sydney and Los Angeles. **[CONFIDENTIAL]**

American intends to operate the new Sydney-Los Angeles service using its flagship B777-300 aircraft which offers a premium customer experience. This aircraft features a three-class cabin configuration with fully lie-flat seats in First and Business Class, international Wi-Fi, and more customer and cargo capacity than any other aircraft currently in American's fleet. The additional service will not only add capacity, but introduce new choice of carrier and product for consumers.

The Proposed Conduct will also enable Qantas to re-commence services between Sydney and San Francisco. Qantas has not operated on the Sydney-San Francisco route since April 2011. San Francisco is the most popular onward destination for Qantas' customers travelling to the US. There is a strong demand for direct flights, particularly from corporate customers who will save about four hours each way by not having to connect through Los Angeles. Qantas will operate the service using its reconfigured B747-400 aircraft; featuring the same product found on the airline's A380s, including Marc Newson's fully-flat Skybed in Business, award winning Economy cabin and large -seat-back screens in each cabin with over 1500 entertainment options.

The re-introduction of Qantas services will immediately introduce competition onto a route otherwise only served by United Airlines and is a significant expansion of Qantas' international network that would not otherwise be possible.

As a result of these new joint services on Trans-Pacific Routes, the Applicants anticipate an estimated increase in their seat capacity of 49% on flights between Sydney and the west coast of the US and a 12% increase in their seat capacity on flights between Sydney and Los Angeles. This means that passengers will be able to access 45 services offered by the Applicants per week across the Pacific to

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<sup>52</sup> See for example: Singapore Airlines/Virgin Australia Determination, paras 4.37-4.44; Etihad/Virgin Australia Determination, paras 4.27-4.46.

mainland North America, including an increase from 14 to 17 weekly services from Sydney to Los Angeles.

A summary of the network changes is set out in Table 4 below.

**Table 4: Summary of Network and Frequency Changes on Trans-Pacific Routes**

Route	Current	Future (effective end of January 2016)
SYD-LAX	QF A380 – 7 per week QF B747 – 7 per week	QF A380 – 7 per week QF B747 – 3 per week AA B777 – 7 per week
MEL-LAX	QF A380 – 7 per week QF B747 – 3 per week	QF A380 – 7 per week QF B747 – 2 per week
BNE-LAX	QF B747 – 7 per week	QF B747 – 7 per week
LAX-JFK	QF B747 – 7 per week	QF B747 – 7 per week
SYD-DFW	QF A380 – 6 per week	QF A380 – 6 per week
SYD-SFO		QF B747 – 6 per week*

*\*New services will be phased in from 20 December 2015.*

Importantly, the Proposed Conduct will also provide the basis for opportunities for the Applicants to expand the shared network to other ports on both sides of the Pacific that neither currently serve, such as New Zealand. **[CONFIDENTIAL]**

With the introduction of these new joint services, consumers will be able to benefit from increased frequencies, connectivity and product choice.

### **6.3 Improved Product and Services**

In addition to the new on-board product choice available to passengers travelling on Trans-Pacific Routes, through the Proposed Conduct the Applicants will continue to improve and expand on-ground service offerings. In particular, the Applicants will continue to share enhanced lounge facilities (including the newly upgraded First Class lounge in Los Angeles), providing customers with a consistent, high standard of product. This will enable more effective management of customers who transfer between Qantas and American operations.

**[CONFIDENTIAL]**

Elsewhere across the joint network, customer experience will continue to be consistent in respect of ground handling, including flight check-in, gate arrival and departure services, transfer counters, customer service counters and catering and ramp services. The Applicants will continue to provide more timely and effective customer servicing, with use of centralised support desks and transfer counters. The Applicants will also continue to offer joint lounge access including in domestic US ports serviced by US Airways, where there is currently no American or Qantas lounge.

In respect of coordinated freight services, the Proposed Conduct will also facilitate the continuation of existing streamlined customs duty processes and remove the need for repackaging and relabelling of freight as it will be transported via one combined network.

#### **6.4 Enhanced Frequent Flyer Benefits**

The Proposed Conduct will result in members of both Applicants' frequent flyer programs – including the [CONFIDENTIAL] Qantas Frequent Flyers resident in New Zealand – continuing to have increased opportunities to earn and redeem points on the respective networks.

Qantas will continue to offer privileges, such as Status Bonus Miles, to American passengers who travel on Qantas marketed services.

The Proposed Conduct provides the commercial incentive to continue and improve this proposition, particularly in respect of the introduction of the new joint service operated by American between Sydney and Los Angeles. The Proposed Conduct incentivises the Applicants to engage in cross promotion across their respective frequent flyer member databases (for example, making bonus points offers) and other initiatives such as on-board recognition of top tier frequent flyers. [CONFIDENTIAL]

#### **6.5 Coordinated Inventory Management and Increased Inventory Access**

The ability to coordinate inventory has meant that the Applicants have been able to support each other's sales and marketing activities, by ensuring that sufficient seats are available to be offered as part of a sale to multiple destinations. This is not possible under normal codeshare arrangements.

[CONFIDENTIAL]

#### **6.6 Competitive Response From Rivals**

The Proposed Conduct will elicit a competitive reaction from rival carriers, including more competitive fares and product/service offerings, particularly as new routes are offered. [CONFIDENTIAL].

The Applicants expect a strong and swift reaction to the Proposed Conduct from competitors, particularly Air New Zealand, Virgin Australia/Delta Airlines and United who will fight to retain and gain passenger share that might otherwise be gained by the Applicants' ability to offer improved services across a wider network and with a new choice of product offered by American.

American operated flights on the Trans-Pacific Routes will create an entirely new competitive dynamic by incentivising American to sharpen its strategic focus on Australia and New Zealand in order to make the new joint services a success. In turn, this will stimulate responses from Air New Zealand and fierce US-based counterparts who will view this as a challenge to their international network offerings.

New Zealand and Australian consumers will be the direct beneficiaries of this intensified competition. It will result in more efficient, better quality services and competitive pricing.

#### **6.7 Increased Tourism**

The Proposed Conduct, as well as the pro-competitive response it will elicit from rival carriers (particularly in the context of broader competition between the US-based carriers), will enhance existing growth in US visitor numbers.

The number of visitors from the Americas to New Zealand has been increasing. Data from Tourism New Zealand shows that there were 229,776 visitors from the US in the year ended April 2015 compared to 207,664 visitors in the year ended March 2014 (representing a 9.8% increase).<sup>53</sup> The Ministry of Business, Innovation and Employment tourism forecasts 2015-2021 suggest visitor arrivals from the US will increase at an annual compound growth rate of 4.9% until 2021.<sup>54</sup> As set out earlier, the Applicants have engaged in major marketing campaigns designed to stimulate inbound tourism to

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<sup>53</sup> <http://www.tourismnewzealand.com/markets-and-stats/north-america/united-states/>

<sup>54</sup> <http://www.med.govt.nz/sectors-industries/tourism/tourism-research-data/forecasts/2015-2021-forecasts>

Australia which has a flow on effect for New Zealand, particularly through events such as 'G'day USA' and the sponsoring of celebrity visits to Australia. The Proposed Conduct will incentivise further publicity and pro-active marketing opportunities.

By continuing to engage in joint advertising campaigns to leverage Qantas' overseas profile and American's significant sales and marketing presence in the US, Canada and Mexico, the Applicants expect inbound tourism to Australia to increase further as a direct result of the Proposed Conduct. This will have important spill over effects within the wider Australian and New Zealand economies, particularly by generating more employment within the tourism sector.

The introduction of American operated services will provide a refreshed opportunity to implement a comprehensive, collective strategy to promote the Trans-Pacific services and a better chance of successfully stimulating tourism to Australia and New Zealand. American will have increased commercial incentives to actively promote Australia and New Zealand as a holiday destinations to residents of the US.

At the same time, Qantas' marketing campaigns in the US will assume even more importance to drive passengers to choose Qantas or American to fly to Australia and New Zealand. A significant volume of Qantas' passengers on Trans-Pacific Routes are sourced from interior parts of the US, Canada and Mexico and, [CONFIDENTIAL]

## 6.8 Promotion Of International Trade And Business

The Proposed Conduct will strengthen the bilateral relationships between Australia and New Zealand and the US. The US is New Zealand's third largest export market worth NZ \$6.7B and two way trade between the two countries was worth NZ \$13.3B in 2014.<sup>55</sup> The New Zealand Government acknowledges that:

*'The US is New Zealand's third largest individual export destination, source of imports, and individual trading partner overall. The US remains a major market for agricultural products. It is New Zealand's largest market for frozen beef and casein. Although the US is already a significant trading partner for New Zealand, much scope remains to expand the relationship.'*<sup>56</sup>

The Australian Government has similarly acknowledged:

*'The US of course remains one of Australia's key partners across trade, investment and innovation. Two-way trade between our nations is at an all-time high, having increased by over 38 per cent since our historic free trade agreement was signed in 2005. We have enjoyed a very close and very strong relationship with the United States for over 70 years.'*<sup>57</sup>

Australia's travel services trade with the US increased in 2013, with travel services imports increasing by 14.3% to \$6.3 billion and travel services exports increasing by 9.5% to \$3.5 billion.<sup>58</sup> The Australian, New Zealand and US Governments are participating in the ongoing negotiation of a Trans-Pacific Partnership (TPP), through which a high-standard regional trade agreement is being designed to promote economic growth.<sup>59</sup> The TPP will provide new opportunities for Australian goods to be used in manufacturing and production processes in the region and provides an opportunity to benefit Australia's significant services sector, through enhanced access for service suppliers involved in education, legal, financial, mining and agricultural services.<sup>60</sup>

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<sup>55</sup> New Zealand Trade and Enterprise: <https://www.nzte.govt.nz/en/export/export-markets/north-america/united-states/>

<sup>56</sup> New Zealand Ministry of Foreign Affairs and Trade: <http://www.mfat.govt.nz/Countries/North-America/United-States.php#us>

<sup>57</sup> Hon Minister Andrew Robb speech 'Innovation and the Digital Economy' (17 January 2014) Available: <http://www.andrewrobb.com.au/Media/Speeches/tabid/73/articleType/ArticleView/articleId/1589/Speech--INNOVATION-AND-THE-DIGITAL-ECONOMY-GDAY-USA-SCHEDULED-EVENTS.aspx>

<sup>58</sup> 'Australia's trade with the Americas 2013,' Department of Foreign Affairs and Trade, October 2014, Available: <http://dfat.gov.au/about-us/publications/Documents/australia-trade-with-the-americas-2013.pdf> page 3

<sup>59</sup> See further: <https://ustr.gov/countries-regions/southeast-asia-pacific/australia>

<sup>60</sup> See further: <http://dfat.gov.au/trade/agreements/tpp/Pages/trans-pacific-partnership-agreement-tpp.aspx>

In turn, the economic and trade relationship between Australia and New Zealand is shaped by the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA). Since its adoption in 1983, two-way trade between Australia and New Zealand has increased at an average annual rate of around 8%. New Zealand was Australia's sixth largest trading partner. In 2013-14, the total Trans-Tasman goods and services trade was worth \$22.6 billion and was comprised of \$7.6 billion in Australian exports to New Zealand, \$7.8 billion in imports from New Zealand and \$7.1 billion in trade in services.<sup>61</sup>

The Proposed Conduct will enable Australian and New Zealand exporters to more readily access the Applicants' combined network. These ties will be strengthened as a result of American commencing operations to Australia and New Zealand. The Applicants' respective freight teams have identified areas for further collaboration, including joint sales and marketing and the more effective carriage of freight to markets beyond the major gateways in both the US and Australia and New Zealand.

Australian and New Zealand businesses will directly benefit from the Proposed Conduct due to improved and increased services between Australia and New Zealand and the US. By continuing to grant Australian and New Zealand exporters improved access to American's expansive network, and by facilitating the re-commencement of direct Sydney-San Francisco services, the Proposed Conduct will deliver a significant increase in international trade opportunities together with increased supply chain certainty. In addition, as a result of the Proposed Conduct, American will actively promote secondary cities within Australia and New Zealand, particularly in domestic US, Canada and Mexico, where Qantas has limited reach today. This additional capability will be key for developing corporate business opportunities for secondary cities in Australia and New Zealand.

## **7 NO ADVERSE IMPACT ON CONSUMERS**

### **7.1 The Proposed Conduct is inherently pro-competitive**

In addition to delivering significant public benefits, the Proposed Conduct will not give rise to adverse price or quality impacts on consumers. To the contrary, the Proposed Conduct will promote competition by creating an improved product offering that is likely to stimulate further product innovation and fare competition on the Trans-Pacific, increasing the overall level of competition in the market.

In assessing the competitive effect of the Proposed Conduct on the Trans-Pacific Routes, the Minister must consider the benefits offered by the Proposed Conduct and the effect of the removal of the current, very marginal, level of competition between Qantas and American.

The Proposed Conduct will not result in any public detriment in any relevant market. It is inherently pro-competitive because:

- it will allow two complementary networks and business models to continue to deliver the significant public benefits that have already eventuated as a result of the Original JBA;
- it will increase competition through capacity expansion; and
- it will not give the Applicants any ability or incentive to restrict capacity growth or increase airfares because the Applicants will continue to be disciplined by a number of rivals (particularly Air New Zealand, Virgin Australia, Delta, United Airlines and Hawaiian Airlines) who are already acting as effective constraints on highly competitive routes and who are likely to respond swiftly and aggressively to the Proposed Conduct, to the benefit of consumers.

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<sup>61</sup> See <http://dfat.gov.au/geo/new-zealand/pages/new-zealand-country-brief.aspx> and <http://dfat.gov.au/trade/resources/Documents/nz.pdf>

The Proposed Conduct will not remove or weaken competitive constraints in any way. It will not enable the Applicants to profitably raise prices or restrict output without regard for the loss of sales to competitors.

The Applicants are incentivised to expand rather than restrict capacity [CONFIDENTIAL] In any event, the Applicants will not have any ability or incentive to artificially increase prices because of the constraints imposed by other direct and indirect operators on the Trans-Pacific Routes and the real prospect of lost sales and revenue.

## 7.2 Strong competition on the Trans-Pacific Routes

As set out above, the Trans-Pacific Routes are highly competitive. American's lack of operating presence on the Trans-Pacific Routes means the Proposed Conduct will have no effect on market concentration. As set out in Annexure G, [CONFIDENTIAL]

The Proposed Conduct will enable Qantas and American to better compete against Air New Zealand. Joint sales and marketing efforts in New Zealand will increase, with American able to leverage Qantas' existing sales and distribution base. This will lead to greater customer choice for New Zealand consumers and businesses particularly through the facilitation of capacity additions on new routes to/from New Zealand to the US that are either currently not served at all or only served by Air New Zealand.

As set out in Annexure I, in 2014 Qantas carried 17% of the freight transported from the US to New Zealand and 0% of the freight from New Zealand to the US.<sup>62</sup> Air freight markets are typically even more competitive than air passenger markets because of the additional discipline imposed by the possibility of indirect routing and inter-modal substitution (e.g. sea, road, rail) for many classes of freight.

## 7.3 No material barriers to entry and expansion

There are no material regulatory, commercial or operational barriers to entry or expansion on the Trans-Pacific Routes.

The Multilateral Agreement on the Liberalization of Air Transport (**MALIAT**), to which New Zealand and the US are parties, permits designated carriers of New Zealand and the US to provide unlimited direct services between the two countries. Air New Zealand is able to provide unlimited direct services between New Zealand and the US via Australia by combining rights established under the open aviation arrangements between Australia and New Zealand and the MALIAT. The air services arrangements New Zealand has in place with Canada also provide opportunities for growth.<sup>63</sup>

The New Zealand Government has committed to pursuing an open skies approach<sup>64</sup> and has indicated that its policy objective is to facilitate connectivity through air services:

*'The objective of New Zealand's international air transport policy is to help grow the economy and deliver greater prosperity, security and opportunities for New Zealanders. This will be achieved by seeking opportunities for New Zealand-based and foreign airlines to provide their customers with improved connectivity to the rest of the world, and to facilitate increased trade in goods and services (including tourism).'*<sup>65</sup>

Similarly, the Air Transport Agreement between Australia and the US provides for continued growth opportunities for Australian and US carriers. The ANZCERTA was an important consideration in the negotiation of an open skies agreement between the two countries. The key policy rationale of the

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<sup>62</sup> As noted above, Qantas' freighter services operate in one direction only (i.e., US-New Zealand).

<sup>63</sup> See further: <https://www.otc-cta.gc.ca/eng/new-zealand>

<sup>64</sup> See: <http://www.transport.govt.nz/air/iatrpolycystatement/> Further detail about the elements of air services arrangements that will be pursued can be found at the referenced link.

<sup>65</sup> See: <http://www.transport.govt.nz/air/iatrpolycystatement/>

Australian Government in negotiating the Australia-US arrangements was a desire to introduce further and sustained competition on what it considers to be one of Australia's most important set of air routes. The Department of Infrastructure and Regional Development in its submission to the Australian Competition and Consumer Commission in respect of the Virgin/Delta Alliance stated that:

*'We also note that there are no economic regulatory barriers preventing other Australian or United States carriers entering the Australia-US market. As outlined in our advice on the original application in September 2009, an airline of either country (or carriers of some other third party countries) could immediately commence or increase Australia-US services should they choose to do so.'*<sup>66</sup>

The Applicants consider expansion by existing carriers, particularly Air New Zealand, to become immediately more likely in response to the announcement that American will commence operations to Australia and New Zealand. This was confirmed by recent statements from United in respect of the Trans-Pacific Routes and the fact that:

*"Our planners and schedulers are always looking at opportunities to add capacity or to add new routes but we don't have anything at this point in time that we can share,"*<sup>67</sup>

From a freight perspective, the barriers to entry and expansion on the Trans-Pacific Routes are also low. The Air Transport Agreement provides for unlimited dedicated freighter capacity for both Australian and US carriers, with the ability for Australian airlines to operate cargo services between the territory of the US and a third country without needing to serve a point in Australia and vice versa for US carriers (depending on such services being permitted under the arrangements with third countries). The Applicants will remain constrained by the prospect of new entrants and the expansion of existing Australian and US carriers. Freight capacity, particularly dedicated freight capacity, tends to quickly and closely follow demand. This means that freight services are often either introduced or cancelled on a week to week or day to day basis depending on load factors. Given that most dedicated freight services operate at non-peak time slots, obtaining landing rights is generally not an issue for new or returning operators.

#### **7.4 Applicants will be constrained from increasing prices or offering diminished service**

The Proposed Conduct will not give Qantas or American the ability or incentive to increase prices or offer diminished service. As set out above, the Applicants are constrained by the other carriers operating on the Trans-Pacific Routes as well as the threat of entry (or re-entry) afforded by the MALIAT.

## **8 NO LEGAL REASONS FOR THE MINISTER REFUSING TO AUTHORISE THE PROPOSED CONDUCT**

### **8.1 Introduction**

The Ministers' discretion to authorise the Proposed Conduct is provided in section 88(2) of the CAA. The Proposed Conduct meets the test for authorisation and the Minister should exercise his discretion to grant authorisation.

Sections 88(3) and (4) of the CAA provide specific reasons for the Minister to decline to authorise, although they are subject to an override in section 88(5) if the Minister believes that to decline authorisation would have an undesirable effect on international comity. For the reasons discussed below:

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<sup>66</sup> Department of Infrastructure and Regional Development submission to the Commission in support of the Virgin/Delta Alliance, 9 February 2015, p 2. Available:

<http://registers.accc.gov.au/content/index.phtml/itemId/1184018/fromItemId/278039/display/submission>

<sup>67</sup> United lifts in a battle for the Pacific' in *The Australian* 5 June 2015.

- none of the reasons set out in sections 88(3) and (4) apply in respect of the Proposed Conduct; and
- declining authorisation would have an undesirable effect on international comity between New Zealand and Australia, Australia and the United States and New Zealand and the United States and accordingly, section 88(5) provides a distinct reason for the Minister to exercise his discretion in favour of authorising the Proposed Conduct.

## **8.2 No infringement of section 88(3)**

In considering whether to grant authorisation under subsection (2) of this section, the Minister must ensure that granting authorisation will not prejudice compliance with any relevant international convention, agreement or arrangement to which the Government of New Zealand is a party.

The Minister's authorisation of the Proposed Conduct will not prejudice New Zealand's compliance with any relevant international conventions, agreements or arrangements. Conventions and agreements which may be relevant include:

- the Open Skies Air Service Agreement between New Zealand and Australia (as negotiated by the Ministry) dated 8 August 2002 (the **ASA**);
- the Single Aviation Market Arrangements between New Zealand and Australia dated 19 November 1996 (the **SAM**);
- the MALIAT that came into force on 21 December 2001; and
- bilateral agreements between New Zealand and other countries.

The ASA expressly contemplates authorisations of the type sought in this Application and therefore any authorisation cannot be said to prejudice compliance with that agreement. Specifically, Article 14 provides that:

*The competition laws of each Party, as amended from time to time, shall apply to the operation of the airlines of both Applicants. Where permitted under those laws, a Party or its competition authority may, however, unilaterally exempt commercial agreements between airlines (including block-space, code share and other joint service agreements) from the application of its domestic competition law.*

The SAM arrangements reflect a desire on the part of the Australian and New Zealand Governments to achieve an efficient, integrated Australasian aviation market. The Proposed Conduct will generate substantial benefits for consumers will deliver economic efficiencies to the benefit of the airlines themselves and New Zealand and Australia. This will deliver a better value proposition for consumers in both countries and be mutually beneficial to each country's economy.

Clause 15 (1) provides:

*All aviation activities (including terminal access) under these arrangements will take place in a manner consistent with competition law as it applies in the relevant jurisdiction.*

Therefore, an authorisation of the Proposed Conduct which is consistent with the CAA regime (and therefore the Commerce Act) and the *Australian Competition and Consumer Act 2010* (Cth) will not prejudice compliance with the SAM.

Additionally, nothing in the Proposed Conduct will prejudice compliance with the MALIAT or any bilateral agreements between New Zealand and other countries.

## **8.3 No infringement of section 88(4)**

The Minister cannot decline the Proposed Conduct under section 88(4) as the Proposed Conduct includes no provision that would infringe section 88(4)(a)-(f).

*No infringement of section 88(4)(a)*

Authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that provides that any party to it may directly or indirectly enforce it through any form of action by way of fines or market pressures against any person, whether or not that person is a party to the contract, arrangement, or understanding.

The Proposed Conduct makes no provision for either Party to directly or indirectly enforce the Proposed Conduct or any associated agreement through any form of action by way of fines or market pressures against any person.

*No infringement of section 88(4)(b)*

Authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that has the purpose or effect of breaching the terms of a commission regime issued under section 89 of this Act.

The Applicants understand the only commission regimes issued by the Minister which are currently in force under section 89 of the CAA are the Civil Aviation (Passenger Agents' Commission Regime) Notice 1983 and the Civil Aviation (Cargo Agents' Commission Regime) Notice 1983.

The Proposed Conduct does not have the purpose or effect of breaching the terms of either of these commission regimes.

*No infringement of section 88(4)(c)*

Authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that unjustifiably discriminates between consumers of international air services in the access they have to competitive tariffs.

The Proposed Conduct does not contain any provision which discriminates between consumers in the access they have to tariffs. In fact, the Proposed Conduct is likely to enhance the availability of competitive fares on the Trans-Pacific. For reasons set out above, the Original JBA has provided and the Proposed Conduct will continue to provide improved options for consumers of international air services including the 'Walkabout Pass' and provision for preferential availability ensuring more availability for discounted fares across a broader travel period.

Currently consumers have wide access to competitive fares from Air New Zealand and other competitors offering indirect Trans-Pacific services. Each of the Applicants set fares having regard to existing and potential competition from other carriers on all routes on which they operate, i.e., they set 'competitive fares' and makes those fares widely available. The Applicants will continue to face competitive pressure from other competitors and will continue to offer competitive fares. The Applicants will have no greater ability (or incentive) to discriminate between consumers in the access those consumers have to competitive tariffs. To the contrary, consumers are more likely to have greater access as a result of the Proposed Conduct because:

- the Applicants will continue to set fares having regard to existing and potential competition from other carriers on all routes on which they operate, i.e., they will continue to set 'competitive fares';
- the Applicants will continue to make those fares widely available – their distribution strategy will be determined having regard to existing and potential competition and the costs and benefits of various distribution channels. Indeed, rather than restricting access, the Proposed Conduct will enhance the availability of fares for travel on the Trans-Pacific as the Applicants will coordinate their marketing and sales activities; and
- a larger inventory of seats in the lower booking classes will be made available under the Proposed Conduct.

Accordingly, neither the Proposed Conduct viewed as a whole nor any provision of the underlying commercial agreements will undermine consumers' wide access to competitive fares either from the Applicants or their competitors on the Trans-Pacific Routes. Indeed, the opposite is the case.

*No infringement of section 88(4)(d)*

Authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that so far as it relates to tariffs, has the effect of excluding any supplier of international carriage by air from participating in the market to which it relates.

Section 88(4)(d) sets a high threshold – it requires that the provision has the effect of excluding a supplier from participating in the market. The Proposed Conduct will have no impact on the ability of any supplier of international carriage by air from participating in the provision of services on the Trans-Pacific Routes.

The continued entry and expansion of carriers on the Trans-Pacific indicates that tariffs are not today, and have not been in the past, set in a way so as to exclude any airline from operating on the Trans-Pacific Routes.

The Proposed Conduct's tariff provisions will not have the effect of excluding any airline from operating on the Trans-Pacific Routes because:

- the Applicants will continue to set tariffs having regard to existing and potential competition from other carriers on all routes on which they operate. Authorisation will not have any flow-on impact in terms of ASAs or other regulatory conditions that would impact another airline's access to the Trans-Pacific; and
- given the low barriers to entry and expansion on the Trans-Pacific and the existence of strong international competitors such as Air New Zealand, United and Virgin Australia/Delta, the Applicants will have no incentive to set tariffs so as to exclude any person from providing international air services on any of the Trans-Pacific routes (or any other routes).

*No infringement of section 88(4)(e)*

Authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that has the purpose or effect of preventing any party from seeking approval, in terms of section 90 of this Act, for the purpose of selling international carriage by air at any other tariff so approved.

The ASAs remove any requirement that tariffs be filed with the aeronautical authorities of either Australia or New Zealand. The Australia-US Open Skies Agreement removes any requirement that tariffs be filed with the aeronautical authorities of Australia or the US.

In any event, the Proposed Conduct does not prevent any party from seeking the Minister's approval of any tariff under section 90 of the CAA.

*No infringement of section 88(4)(f)*

Authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that prevents any party from withdrawing without penalty on reasonable notice from the contract, arrangement, or understanding.

**[CONFIDENTIAL]**

#### **8.4 International Comity**

If the Minister considers, contrary to the Applicants' view, that the Proposed Conduct does not comply with any of section 88(4)(a)-(f), he can nevertheless authorise the Proposed Conduct under section 88(5) if declining authorisation would have an undesirable effect on international comity between New Zealand and another state.

Declining authorisation would have an undesirable effect on international comity between New Zealand and Australia and between New Zealand and the United States. Accordingly, international comity provides a distinct reason for the Minister to exercise his discretion in favour of authorising the Proposed Conduct.

As discussed above, arrangements between carriers are consistent with the SAM Agreements and the ASA. The Applicants have applied to the Australian Competition and Consumer Commission for reauthorisation of the Proposed Conduct and believe authorisation should be granted in that jurisdiction on the basis that it creates net public benefits for the Australian economy and consumers. The Applicants are also seeking antitrust immunity from the US DOT.

In those circumstances, declining authorisation for the Proposed Conduct would prevent Australia from realising these net public benefits from an arrangement that is expressly contemplated in the ASA between New Zealand and Australia and the Australia-United States Open Skies Agreement.

## **8.5 Confidentiality**

The Applicants claim confidentiality over Confidential Annexure B to this Application and also the information in this Application enclosed in square brackets (the Confidential Information) pursuant to section 9(2)(b) of the *Official Information Act 1982*. A public version with Confidential Information redacted will be provided separately. The Confidential Information is commercially sensitive and valuable to the Applicants and disclosure would be likely unreasonably to prejudice the commercial position of one, or both, of the Applicants.

The Applicants request they be notified of any request made under the *Official Information Act* for release of the Confidential Information, and that the Minister seeks their views as to whether the Confidential Information remains confidential and commercially sensitive at the time responses to such requests are being considered.

This request for confidentiality is not intended to constrain the Minister and the Ministry of Transport from disclosing information to other Government departments for the purposes of seeking relevant expert advice. However, the Applicants request that the Minister ensure any such Departments maintain the same full confidentiality as requested above.