



## **Australian Government**

### **International Air Services Commission**

#### **DETERMINATIONS**

**Determination:** [2019] IASC 118  
**The Route:** Japan  
**The Applicant:** Qantas Airways Limited  
(ABN 16 009 661 901)  
**Public Register:** IASC/APP/201921

**Determination:** [2019] IASC 119  
**The Route:** Japan  
**The Applicant:** Virgin Australia International Airlines Pty Ltd  
(ABN 63 125 580 823)  
**Public Register:** IASC/APP/201925

**The Commission makes a determination allocating to Qantas Airways Limited one daily frequency in each direction to operate passenger services on the Japan route to service Tokyo-Haneda. The determination is valid for five years from 28 October 2019.**

**The Commission further makes a determination allocating to Virgin Australia International Airlines Pty Ltd one daily frequency in each direction to operate passenger services on the Australia-Japan route to service Tokyo-Haneda. The capacity may be used by Virgin Australia International Airlines Pty Ltd for the provision of code share services on the Australia-Japan route with All Nippon Airways, subject to certain conditions. The determination is valid for five years from 28 October 2019.**

## **1 The applications**

1.1 On 16 September 2019, Qantas Airways Limited (Qantas) applied to the International Air Services Commission (the Commission), for the allocation of two frequencies per day in each direction, to operate passenger services between Australia and Tokyo-Haneda Airport (Haneda). Qantas submitted two versions of its application. The public version was notified to the public and the other treated on a confidential basis.

1.2 On 17 September 2019, the Commission invited other applications for the capacity in accordance with section 12 of the *International Air Services Commission Act 1992* (the Act). On 24 September 2019, Virgin Australia International Airlines Pty Ltd

(Virgin Australia) applied for one frequency to operate a daily service between Australia and Haneda Airport. Virgin Australia also submitted two versions of its application - a public version and a confidential version.

1.3 In accordance with section 12 of the Act and regulation 7 of the International Air Services Commission Regulations 2018 (the Regulations), on 25 September 2019 the Commission invited submissions about the applications.

1.4 The Commission received a total of 13 submissions.<sup>1</sup> Eleven submissions were publicly released while two submissions were received on a confidential basis. The Commission considered all submissions received.

1.5 The Commission wrote to the Department of Infrastructure, Transport, Cities and Regional Development (the Department) pursuant to section 28 of the Act asking for certain information. The Department provided advice to the Commission in two letters dated 9 October 2019.

1.6 All non-confidential materials received by the Commission are available on its website ([www.iasc.gov.au](http://www.iasc.gov.au)), as well as the Commission's letters to the Department and to the Australian Competition and Consumer Commission (ACCC).

1.7 In order for the slots to be allocated to enable services to Haneda Airport for the 2020 Northern Summer IATA scheduling period, it has been necessary for the Commission to decide on the airlines' applications for capacity allocation within an expedited timeframe.

1.8 The Commission is required to have regard to competition effects in its Determination. In assessing competition, the Commission is aware that market definition provides a useful tool. In describing possible markets that might assist the analysis of competition for the provision of air passenger services between Australia and Japan, the Commission has relied on the term 'route' as described in the agreement between the Commonwealth of Australia and Japan for air services and the Policy Statement (as defined in paragraph 4.4 below). In this Determination, the route is referred to as the Australia-Japan route.

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<sup>1</sup> Submissions were received from: (1) Brisbane Airport Corporation, which provided two versions of its submission, one confidential and the other which was publicly released, both dated 30 September 2019; (2) Mr Toru Adachi dated 1 October 2019; (3) the Australian Competition and Consumer Commission dated 2 October 2019; (4) Qantas, which provided two versions of its submission, a public version and a confidential version, both dated 2 October 2019; (5) the Queensland Government's Department of Innovation and Tourism Industry Development dated 2 October 2019; (6) Tourism Australia dated 2 October 2019; (7) Mr Phillip Emmanuel dated 8 October 2019; (8) the Hon. Kate Jones MP (Queensland Minister for Innovation and Tourism Industry Development) dated 10 October 2019; (9) Destination NSW which was undated but received on 15 October 2019; (10) the Hon. Stuart Ayers MP (NSW Minister for Jobs, Investment, Tourism and Western Sydney) which was undated but received on 15 October 2019 (11) Tourism Australia (a supplementary submission) on 11 October 2019. Confidential submissions were given by the Department of Infrastructure, Transport, Cities and Regional Development and by the Victorian Government's Department of Jobs, Precincts and Regions.

## Qantas' application

1.9 In its application of 16 September 2019, Qantas stated that it plans to introduce the following new services between Australia and Haneda airport:<sup>2</sup>

- one daily frequency (return) between Melbourne and Haneda, which would replace the current Qantas Melbourne to Tokyo-Narita service;<sup>3</sup>
- one additional daily frequency (return) between Sydney and Haneda, which would be incremental capacity (ie an increase in overall capacity on the Australia-Japan route), and would provide an alternative timing to Qantas' current evening departure on this sector.<sup>4</sup>

**Table 1: Qantas' stated plans for new services**

City pairs/ sector	Frequency	Aircraft type
Melbourne-Haneda	One frequency per day	A330
Sydney-Haneda	One frequency per day	A330/B789

1.10 Qantas stated that it will commence these proposed services on 29 March 2020, to coincide with the 2020 Northern Summer IATA scheduling period, immediately as the slots become available, and in accordance with the terms of the updated Australia-Japan air services arrangements.<sup>5</sup>

1.11 Qantas requested the issue of a new determination allocating two frequencies to/from Haneda per day to enable the implementation of the above plans. The new determination was requested on the following basis:

- the determination is for a period of five years from the date of issue;
- the capacity will be fully utilised by 29 March 2020; and
- the capacity may be utilised by Qantas.<sup>6</sup>

## Virgin Australia's application

1.12 In its application of 24 September 2019, Virgin Australia requested an allocation of one frequency per day for passenger services during daytime hours to/from Haneda Airport. The allocation was requested on the following basis:

- the capacity will be utilised by Virgin Australia;
- the capacity will be utilised for joint services with All Nippon Airways (ANA);
- the allocation is granted for a period of five years from the date of the determination; and
- the allocation will be fully utilised by 29 March 2020.<sup>7</sup>

<sup>2</sup> Qantas application dated 16 September 2019, page 3.

<sup>3</sup> Qantas application dated 16 September 2019, page 7.

<sup>4</sup> Qantas application dated 16 September 2019, pages 7, 12.

<sup>5</sup> Qantas application dated 16 September 2019, page 3.

<sup>6</sup> Qantas application dated 16 September 2019, page 3.

<sup>7</sup> Virgin Australia application dated 24 September 2019, covering letter.

1.13 Virgin Australia stated that it plans to operate a daily service between Brisbane and Haneda, using an Airbus 330-200 aircraft configured with 20 seats in business class and 255 seats in economy class (including eight economy X class).<sup>8</sup>

1.14 As part of its application, Virgin Australia has also sought authorisation for the use of the capacity for the provision of code share services with ANA.<sup>9</sup>

#### Draft Determinations and submissions

1.15 On 21 October 2019, the Commission issued Draft Determinations [2019] IASC 118d and [2019] IASC 119d allocating one daily frequency in each direction to Qantas and one daily frequency in each direction to Virgin Australia with authorisation for Virgin Australia to utilise the capacity for code sharing with ANA, subject to certain conditions. The Commission invited submissions to the Draft Determinations.

1.16 On 23 October 2019, a member of the public, Amy Tomoe, lodged a submission which outlines her views on why Virgin Australia should not be allocated any Haneda slots at this time. Ms Tomoe further suggested alternative options as to how the Commission should make its determination, including a suggestion to impose a condition to the effect that any capacity allocation made to Virgin Australia would “automatically revert to Qantas should Virgin not meet certain service targets”.

1.17 In its response (of 24 October 2019) to Ms Tomoe’s submission, Virgin Australia stated that Ms Tomoe’s submission does not provide any new argument and “fails to adequately address the criteria in the Minister’s Policy Statement. In particular, the submission does not seem to give any regard to competition matters.”

1.18 The Commission agrees with Virgin Australia’s view that the matters raised by Ms Tomoe in her submission about the ability of Virgin Australia to serve the Tokyo-Haneda route are not new and that the Commission addressed this issue in chapter 5 of the Draft Determinations and in this document—see paragraphs 5.1 to 5.11 below.

1.19 The Commission further agrees with Virgin Australia’s comment that Ms Tomoe’s submission does not address the additional criteria in section 9 of the Policy Statement, particularly the competition criteria. For this reason, the Commission rejects Ms Tomoe’s proposal to allocate all frequencies to Qantas. The Commission’s reasoning is found in paragraphs 6.1 to 6.71 of the Draft Determinations and in this document.

1.20 Ms Tomoe’s suggestion to “[a]ward the slot and include a clause where the slot will automatically revert to Qantas should Virgin not meet certain targets”, is, in the Commission’s view, misconceived. The Commission allocates capacity under a process provided under the Act. The process involves the making of a determination which allocates capacity entitlements to enable a carrier to operate services on a route. Such determination must include a condition that the capacity be fully used, except in certain circumstances.<sup>10</sup> Should an Australian carrier not fully use its capacity allocation, it is

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<sup>8</sup> Virgin Australia application dated 24 September 2019, paragraph 4.1 page 5.

<sup>9</sup> Virgin Australia application dated 24 September 2019, paragraph 4.3 page 5.

<sup>10</sup> Refer to paragraph 15(2)(c), International Air Services Commission Act 1992.

required to return the capacity. Once the capacity is returned, another carrier (or carriers) may apply for the allocation of that capacity and a new slot application will have to be made with the Japanese civil aviation authority. The Commission observes that any reconsideration of the allocation of slots at Haneda at some future time will allow it to consider the competition consequences of any allocation at that time, as it is required to do.

1.21 On 24 October 2019, the Commission received a submission to the Draft Determinations from Canberra Airport which effectively agrees with the Commission's proposed decision. The Commission notes the submission made by Canberra Airport that "granting one slot each to Qantas and Virgin opens up the opportunity for three Australian cities to connect with Haneda, as opposed to just Sydney and Melbourne as Qantas proposes". Neither Virgin Australia or Qantas opted to comment on Canberra Airport's submission to the Commission regarding the Draft Determinations.

1.22 All submissions to the Draft Determinations and the response from Virgin Australia are published on the Commission's website.

## **2 Relevant provisions of the air services arrangements**

2.1 The Australia-Japan air services arrangements permit the entry of multiple Australian and Japanese air passenger and freight carriers on the route between Australia and Japan. The open skies agreement between Australia and Japan, signed in 2011, provides for unrestricted capacity to operate international air services between the two countries, except to or from Haneda. The air services arrangements provided for one frequency per day for an airline of each country to operate a passenger service between Australia and Haneda during prescribed late night and early morning hours (between 2200 and 0655 hours).

2.2 In September 2019, the air services arrangements were revised, following a limited expansion of capacity at Haneda. Two new return flights per day for Australian airlines and two for Japanese airlines to operate passenger services between Australia and Haneda were made available. Unlike the earlier capacity to Haneda, the two new frequencies available for Australian carriers can be used during daytime hours to provide air passenger services between Australia and Haneda.

2.3 Additionally, designated carriers of Australia may enter into code share services on the specified routes with a designated airline(s) of Australia, with a designated airline(s) of Japan or with an airline(s) of third countries, subject to approvals of the aeronautical authorities of both countries.

## **3 Overview of services operating on the Australia–Japan route**

3.1 International air passenger and freight services (operated by foreign and Japanese carriers) in and out of Tokyo are operated from either Narita or Haneda. As previously mentioned, Australian carriers have access to unlimited capacity to Narita Airport, and a single daily 'night time' service to Haneda. The Haneda capacity was allocated by the Commission in December 2014 to Qantas ([2014] IASC 120, renewed by [2019] IASC 102).

3.2 Ahead of the 2020 Tokyo Olympic Games, the Japanese Government announced the release of 100 additional aircraft arrivals and departures per day at Haneda (50 return flight slots), with the new slots allocated solely for international flights. Of the 50 daily slots created, 25 were assigned to Japanese carriers and 25 were assigned to foreign carriers.

3.3 Of the additional capacity entitlements to operate services to Haneda, the Australian and Japanese Governments have agreed to allow for two new return flights per day for use by Australian carriers and two for Japanese carriers.

3.4 Australia is one of only nine countries awarded the limited additional slots to Haneda, with the largest number going to the United States. There is no certainty of any further capacity allocation for Australia at Haneda in the foreseeable future.

3.5 Haneda is located within 25 kilometres of the Tokyo central business district, making it an attractive point of entry for carriers who are seeking to appeal to a higher proportion of business travellers into the Tokyo area. Haneda also has a larger number of domestic connections in comparison to Tokyo-Narita Airport. This makes Haneda attractive to airlines seeking to offer domestic connectivity within Japan.

3.6 The aviation data in Table 2 below, prepared by the Commission based on aviation data sourced from the Bureau of Infrastructure, Transport and Regional Economics (BITRE) illustrates that the market for passenger services between Australia and Japan has grown strongly since 2015. Passenger numbers reflect the restructure of Japan Airlines (JAL) in 2011-12, and the return of All Nippon Airways (ANA) in December 2015. Until the year to June 2017, Jetstar was the largest operator of direct air passenger services between Australia and Japan, linking Cairns and the Gold Coast with Tokyo-Narita and Osaka-Kansai airports. While Jetstar passenger loads remained static over the period from 2010 to 2019, Qantas trebled its passengers carried, predominantly through Narita Airport.

**Table 2: One way passenger numbers – year to June (Source: BITRE)**

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
All Nippon Airways							35745	65788	69817	66645
Japan Airlines	145832	86389	71593	74343	75748	78504	77642	72883	100234	109017
Jetstar	227999	243807	226728	240378	225510	259946	285707	277627	248022	228477
Qantas Airways	101126	111319	93269	103744	109812	112765	189391	240112	304288	339227
	<b>476967</b>	<b>443526</b>	<b>393602</b>	<b>420478</b>	<b>413084</b>	<b>453230</b>	<b>590501</b>	<b>658427</b>	<b>724379</b>	<b>745385</b>

### Japanese carrier operations

3.7 ANA introduced a daily service between Haneda and Sydney in December 2015 and commenced its daily services between Narita and Perth in September 2019.

3.8 JAL restructured its operations in 2011/12. Currently, JAL operates a daily service between Narita and Sydney which the airline supplemented with a daily service to Melbourne from September 2017. JAL codeshares on Jetstar services on the Cairns-

Kansai, Cairns-Narita and Gold Coast-Narita sectors.<sup>11</sup>

#### Qantas and Jetstar operations

3.9 Qantas operates 5 to 7 weekly services in each direction from Brisbane and Melbourne Airports to Narita; a daily service from Sydney to Haneda; and 3 to 4 weekly flights in each direction between Sydney and Kansai.<sup>12</sup>

3.10 Qantas code shares on flights operated by the following airlines:

- Cathay Pacific/Cathay Dragon from Hong Kong to various cities in Japan [Fukuoka, Osaka, Chitose (Sapporo) and Nagoya];
- JAL for its services between Narita and Haneda, and Singapore;
- Jetstar between Cairns and Kansai and Narita, and between the Gold Coast and Narita; and
- Jetstar Asia between Singapore and Osaka.

3.11 Jetstar operates direct services from Cairns and the Gold Coast to Narita and from Cairns to Kansai, and vice versa. As indicated previously, JAL code shares on all services operated by Jetstar.<sup>13</sup>

#### Virgin Australia operations

3.12 Virgin Australia does not currently operate services to Japan, but offers codeshare flight numbers on Singapore Airlines services via Singapore.

#### Summary of airline operations

3.13 Table 3 summarises the operations of international carriers operating non-stop from points in Australia to points in Japan.

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<sup>11</sup> International airlines timetable summary, Northern Summer 2019 (31 March-26 October 2019), available at: <https://www.infrastructure.gov.au/aviation/international/timetable.aspx>

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

**Table 3: Non-stop carrier operations between Australia and Japan**

<b>Carriers</b>	<b>Frequencies/ city-pairs/ aircraft used</b>
All Nippon Airways	daily service: Haneda-Sydney, B787-900 daily service: Narita-Perth (from 1 September 2019)
Japan Airlines	daily service Narita- Melbourne, B787-800 daily service: Narita-Sydney, B787-800/ B787-900
Jetstar Airways	5-7 services per week: Cairns-Narita, B787-800 4-7 services per week: Gold Coast-Narita, B787-800 4-7 services per week: Cairns-Kansai, B787-800
Qantas	5-7 services per week: Brisbane-Narita, A330-300 5-7 services per week: Melbourne-Narita, A330-300 daily service: Sydney-Haneda, B747-400 3-4 services per week: Sydney-Kansai, A330-200/300

Source: International Airlines Timetable Summary, Northern Summer IATA scheduling period (31 March 2019-26 October 2019)

## **4 Legislative requirements**

4.1 Sub-section 7(1) of the Act provides that the Commission may make a determination allocating available capacity. Sub-section 7(2) provides that the determination: (a) must not allocate available capacity unless the Commission is satisfied that the allocation would be of benefit to the public; and (b) must not allocate capacity contrary to any restrictions on capacity contained in a bilateral arrangement, or a combination of bilateral arrangements, permitting the carriage to which the capacity relates; and (c) if more than one application was made under Division 1 of Part 3 relating to the allocation (as in this case), must make the allocation that the Commission is satisfied, having regard to the applications made, would be of the greatest benefit to the public.

4.2 Available capacity is defined in section 5 of the Act, which relevantly provides that capacity is taken to be ‘available capacity’ for the purposes of the Act if operational decisions are not in force in relation to that capacity. An ‘operational decision’ is defined in section 4 of the Act as, in relation to particular capacity, a decision (including the granting of any approval) under the *Air Navigation Act 1920*, or the regulations made under that Act, that must be made if an Australian carrier is to be permitted to operate an international airline service using that capacity.

4.3 Sub-section 7(3) of the Act further provides that in assessing the benefit of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statements made by the Minister under section 11.

4.4 In March 2018, the Minister issued, in accordance with section 11 of the Act, the International Air Services Commission Policy Statement 2018 (the Policy Statement), which came into effect on 28 March 2018.

4.5 Section 13 of the Policy Statement provides that where the Commission proposes to make a determination allocating available capacity, when there are two or



more applicants and there is insufficient capacity to meet both applications, in assessing the benefit to the public of an allocation of capacity under a proposed determination, the Commission is to have regard to: (a) the reasonable capability criterion; and (b) any of the additional criteria that it considers to be relevant.

4.6 Additionally, section 6 of the Policy Statement provides that the “Commission is to perform its functions in a way that will achieve the object of the Act (that is, to promote economic efficiency through competition in the provision of international air services) by fostering, encouraging and supporting competition in the provision of international air services by Australian carriers”.

## **5 Commission’s assessment against section 8 of the Policy Statement**

### Reasonable capability criterion

5.1 In assessing the benefit to the public of an allocation of capacity, section 8 and section 13 of the Policy Statement require the Commission to assess the extent to which all Australian carriers that are, or would be, permitted to use the capacity allocated under a determination are reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination.

5.2 Qantas stated in its application of 16 September 2019 that it is an established carrier that has maintained uninterrupted operations between Australia and Japan for over 70 years. Qantas further indicated that given “its long-standing services between Australia and Japan, including operations to Haneda since 2015, Qantas is reasonably capable of obtaining the necessary regulatory approvals required by the relevant authorities in both countries to commence two additional daily Haneda services.”<sup>14</sup>

5.3 The Commission notes that Qantas has operated a daily direct service between Sydney and Haneda since 2015 and that the Commission has no information to indicate that it has failed to service the route effectively.

5.4 The Commission finds that Qantas is reasonably capable of obtaining any licences, permits or other approvals required to operate on and service the Haneda route and of using the capacity that may be allocated under the determination.

5.5 In its application of 24 September 2019, Virgin Australia stated that the Virgin Australia Group has been operating international flights since 2004, when Pacific Blue commenced services between Brisbane and Christchurch. It further stated, among other things, that it has “expertise and extensive experience in securing economic and operational licences, permits and approvals from aeronautical authorities across the world to support both own aircraft operations as well as code share services.” The airline also stated that it has “the commercial capability to ensure such capacity is effectively used”.<sup>15</sup>

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<sup>14</sup> Qantas application dated 16 September 2019, pages 2 and 4.

<sup>15</sup> Virgin Australia application dated 24 September 2019, paragraph 5.2 page 5.

5.6 Qantas, in its submission of 2 October 2019, expressed the view “that Virgin Australia has not demonstrated that its application will meet the reasonable capability criterion considering the unique circumstances relevant to the availability of additional access of Haneda Airport for Australian carriers”. In light of this, Qantas urged “the Commission to rigorously examine the extent to which Virgin Australia is reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination”. Qantas further stated that it is “incumbent on the Commission to consider both the implementation and ongoing use of the capacity”.<sup>16</sup>

5.7 Qantas further stated that the “[a]llocation of two frequencies per day to Qantas, as requested, will deliver the greatest benefit to the public and is the only **no risk** option to launch and utilise scarce and strategically valuable slots to/from Haneda Airport.”<sup>17</sup>

5.8 Virgin Australia is a prospective new operator of air services between Australia and Haneda. In line with its normal practice for potential new entrant carriers on a route or in a market, the Commission sought advice from the Department as to whether Virgin Australia is reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the Australia-Japan route (and Australia-Tokyo (Haneda) services in particular) to which the determination relates; and (b) using the capacity allocated under the determination.

5.9 On 9 October 2019, the Department advised the Commission that based on current information, it considers that Virgin Australia International Airlines (VAIA) “is reasonably capable of obtaining the relevant licences, permits and other approvals required to operate on and service the Australia-Tokyo (Haneda) route and using the capacity that VAIA has sought in its application”.

5.10 Virgin Australia is an established airline which holds an International Airline Licence issued by the Department. Virgin Australia has also been designated as an Australian international airline under the Australia-Japan air services arrangements.<sup>18</sup> Additionally, Virgin Australia already holds a Permission Certificate/ business licence issued by the Japanese Minister of Land, Infrastructure, Transport and Tourism in February 2013. Virgin Australia states that this is the principal approval required to support the commercial activities of an airline in Japan.<sup>19</sup> Virgin Australia also stated in its application that its air operator’s certificate (AOC) “already permits [it] to conduct operations to Japan and [its] flight crew already meet the qualification requirements to operate there”.<sup>20</sup>

5.11 The Commission further notes that in Virgin Australia’s commercial-in-confidence version of its application dated 24 September 2019, the airline provided the Commission information on the scope of work the airline has undertaken to ensure all

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<sup>16</sup> Qantas submission dated 2 October 2019, page 2.

<sup>17</sup> Ibid.

<sup>18</sup> Virgin Australia application dated 24 September 2019, paragraph 5.6 page 6; confirmed by the Department of Infrastructure, Transport, Cities and Regional Development.

<sup>19</sup> Virgin Australia application dated 24 September 2019, paragraph 5.11 page 6.

<sup>20</sup> Virgin Australia application dated 24 September 2019, paragraph 5.8 page 6.

operational and regulatory processes are met to enable the airline to successfully obtain Haneda slots and deliver a new international long haul route launch within tight timeframes. Virgin Australia also provided confidential information as to how it will operate and sustain air passenger services between Brisbane and Haneda.

5.12 In its submission of 02 October 2019, Qantas called on the Commission to rigorously examine the extent to which Virgin is reasonably capable of operating the capacity for which they have applied. Having considered all information received by the Commission on the matter, the Commission is of the view there is no regulatory impediment for Virgin Australia to apply for a slot allocation from the Japanese civil aviation authorities in order to operate services between Brisbane and Haneda. In relation to Qantas' claim that their proposal is the only "no risk" option, the Commission notes that all international aviation carries some commercial risk, but the Commission finds that Virgin Australia has taken the necessary steps for commercial operation into the future, addressing handling, promotion, and commercial partnerships. Further, information received by the Commission indicates that there is no rule preventing new carriers entering the Australia-Japan route (as in the case of Virgin Australia) from operating services to and from Haneda. The Commission finds that Virgin Australia is reasonably capable of (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination.

## **6 Commission's assessment against section 9 of the Policy Statement**

### **Competition criteria**

#### **Subsection 9(a): desirability of fostering an environment in which Australian carriers can effectively compete with each other and with foreign carriers on the route in question**

##### ***Route in Question***

6.1 Section 9(a) of the Minister's Policy Statement requires the Commission to consider the desirability of fostering an environment in which Australian carriers can compete with each other and with foreign carriers on the route in question. Section 4 of the Policy Statement defines a 'route' as relating to:

"the full set of entitlements available to Australian carriers under a particular bilateral arrangement. All combinations of origin, destination, and intermediate and beyond points available to Australian carriers under the bilateral arrangement constitute a single route."

6.2 The route in question is the Australia-Japan route. The Commission notes that the Australia-Japan air service arrangements provide for unlimited frequencies and slots for both passenger and all-cargo services between any points in Australia and any points in Japan, with the exception of services to and from Haneda Airport. The air services arrangements provide for only three frequencies (return flights) per day that can be used by a designated carrier of Australia to operate passenger services to and from Haneda. One daily frequency has already been allocated to Qantas in 2014 and is currently being

utilised by the airline to operate a daily service between Sydney and Haneda on a late night and early morning slot. The remaining two frequencies, which allow for daytime operations, are the subject of the current applications by Qantas and Virgin Australia.

6.3 As discussed earlier, there are four carriers currently providing direct services between Australia and Japan: Jetstar, Qantas, JAL and ANA. All four carriers serve Tokyo but only Qantas and ANA operate direct flights to Haneda. Qantas and Jetstar also serve Osaka (Kansai Airport). Qantas has also announced that it will offer a three times weekly seasonal service between Sydney and Sapporo New Chitose Airport between 16 December 2019 and 28 March 2020.<sup>21</sup> Virgin Australia does not currently operate any service between Australia and Japan.

6.4 Qantas is seeking the allocation of two frequencies. The allocation of two additional frequencies, if granted, would see Qantas transfer its current Melbourne-Narita service to Haneda and provide one additional daily service between Sydney and Haneda. Qantas indicated in its application that its plans would provide direct access between Melbourne and Haneda for the first time, and would promote inter-gateway competition. Qantas launched the Melbourne-Narita service in December 2016.<sup>22</sup>

6.5 Qantas further stated that a “new Qantas Melbourne-Haneda service provides a more geographically diverse and competitive market structure between Australia and Haneda, reaching a broad catchment area across Australia with greater connectivity for regional Victoria, Tasmania and South Australia”.<sup>23</sup>

6.6 Under its proposal, Qantas plans incremental capacity for a “new daily Sydney-Haneda service, the largest Australia-Tokyo route.” Qantas stated that an additional daily service between Sydney and Haneda, “at an alternative timing, would provide more choice and greater convenience for travellers heading directly to downtown Tokyo”.<sup>24</sup>

6.7 Qantas claims that its “plans to utilise the daytime Haneda frequencies do not deny competition from other Australian carriers. There are no constraints at Narita or any other point (with the exception of Haneda) under the air services arrangements between Australia and Japan, where capacity is unrestricted”.<sup>25</sup> Virgin Australia in its application of 24 September 2019 also submitted that “[a]part from Haneda, there are no capacity restrictions to Narita or other points in Japan under the Australia-Japan air services arrangements. The Qantas Group will therefore not be prevented from expanding its operations to Japan if it is awarded only one of the two daily frequencies to Haneda that it has applied for”.<sup>26</sup>

6.8 Qantas also stated in its submission of 2 October 2019, that “many of the claimed benefits of [Virgin’s] proposal would be available immediately and without limitation to be taken up and offered to consumers if Virgin Australia commenced

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<sup>21</sup> <https://www.qantasnewsroom.com.au/media-releases/qantas-to-launch-seasonal-flights-to-sapporo/>

<sup>22</sup> Qantas application dated 16 September 2019, page 7.

<sup>23</sup> Ibid.

<sup>24</sup> Qantas application dated 16 September 2019, page 7.

<sup>25</sup> Ibid.

<sup>26</sup> Virgin Australia application dated 24 September 2019, paragraph 6.2.7 page 9.

services between Brisbane and Tokyo, serving Narita Airport.” Qantas further stated that “if Virgin Australia was not allocated capacity to/from Haneda Airport by the Commission, there would be no impediment to commencing services and delivering the public benefits outlined in its application. For example, offering a new choice of airline, additional frequency between the two cities, and product differentiation (paragraph 6.2.18) may be instead taken up immediately and offered to consumers between Brisbane and Tokyo Narita Airport.”<sup>27</sup>

6.9 In its application of 24 September 2019, Virgin Australia stated that “Virgin Australia would not be prepared to commence services to Japan if our only option to serve Tokyo was through operations to Narita, as we would not have the ability to leverage our partnership with ANA (ANA offers 38 domestic code share connections to/from Haneda, compared to only five at Narita)”.<sup>28</sup>

6.10 In addressing the competition criteria, Virgin Australia stated:

“For the Commission to foster an environment in which Virgin Australia can **effectively** compete with the Qantas Group, it is imperative for the airline to gain access to Haneda to support its entry into the Australia-Japan market. The Qantas Group and its oneworld partner Japan Airlines currently enjoy a collective passenger share and seat capacity share of 91% and 90% respectively for non-stop services on the route. This dominance highlights the challenges a new entrant faces in establishing commercially sustainable operations between Australia and Japan. The new capacity to Haneda provides an excellent opportunity for a new entrant to successfully break into the market and establish a strong position for itself, given the advantages that Haneda enjoys over Narita in terms of convenience and proximity to the Tokyo central business district. An allocation of capacity to Virgin Australia will therefore enable us not just to compete with the Qantas Group and Japan Airlines but to **effectively** compete”.<sup>29</sup> (emphasis in original)

6.11 Virgin Australia further stated that

“[a]llocating all the new capacity to the Qantas Group—especially considering that the Qantas Group already holds an allocation of one daily frequency to Haneda – would place us at significant competitive disadvantage and remove any possibility of us competing effectively on the route in the future. With no additional capacity to Haneda in prospect, it is therefore critical to the interests of fostering increased competition over the longer term that Virgin Australia is awarded the allocation of capacity we have applied for. Notably, we have only applied for one of the two daily frequencies, which would mean that if our application was successful, the Qantas Group would still enjoy two of the three daily frequencies available to Australian carriers to Haneda under the air services arrangements.”<sup>30</sup>

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<sup>27</sup> Qantas submission dated 2 October 2019, pages 2-3.

<sup>28</sup> Virgin Australia application dated 24 September 2019, paragraph 6.2.5 page 9.

<sup>29</sup> Virgin Australia application dated 24 September 2019, paragraph 6.2.2 page 8.

<sup>30</sup> Virgin Australia application dated 24 September 2019, paragraph 6.2.4 page 9.

6.12 Virgin Australia further stated that the extra capacity that it “would inject into the market is likely to place downward pressure on airfares on the route, particularly on the Brisbane-Tokyo vv<sup>31</sup> sector. Our services also have the potential to increase the availability of airfares in the lower-priced booking classes relative to the Qantas Group’s proposal, given that we will bring more capacity on the route”<sup>32</sup> and that this will be positive for consumers.

6.13 In view of the competing applications for the restricted capacity at Haneda, the Commission wrote to the ACCC inviting a submission. In response to the Commission’s request, the ACCC expressed the view that “allocating one frequency to each of Virgin Australia and Qantas would facilitate greater competition between Virgin Australia and Qantas, and other foreign carriers, on routes between Australia and Japan (including Brisbane and Tokyo). Virgin Australia does not currently operate flights to Japan in its own right, so Virgin Australia commencing flights on any route to Japan would naturally enable it to be more effective competitor than at present”.<sup>33</sup>

6.14 The ACCC further stated that “[i]n the ACCC’s experience, introducing more players into a market generally leads to greater competition and better outcomes to consumers”.<sup>34</sup>

6.15 The Commission agrees with the view expressed by the ACCC that more carriers operating on a route will generally lead to greater competition and better outcomes for the public. The Commission considers that providing consumers with more options, such as a greater number of service providers, more flight schedule options and more city-pairs to choose from, generally provide consumers (members of the public) with greater benefit.

6.16 The Commission finds, consistently with the ACCC’s submission, that the entry of another Australian carrier (Virgin Australia in this instance) on the Australia-Japan route would likely stimulate competition in the market or markets for air services between Australia and Japan as all airlines offering services between Australia and Japan would be incentivised to compete on price and/or services to attract customers. The entry of another carrier on the Australia-Japan route would likely elicit a competitive response from other airlines operating on the Australia-Japan route and would likely lead to improved services and airfare competition, providing greater benefit to the public.

6.17 Although there is unrestricted capacity to operate air transport services to and from Narita, the Commission accepts that there are other challenges for new entrants to the Australia-Japan route to make their services commercially sustainable if operated from Narita. The Commission accepts Virgin’s submission to the effect that the close proximity of Haneda to the Tokyo CBD and the larger number of domestic connections from Haneda including with its partner ANA make its operations to and from Haneda more commercially viable than from Narita. The Commission further finds that it is

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<sup>31</sup> ‘vv’ means vice versa.

<sup>32</sup> Virgin Australia application dated 24 September 2019, paragraphs 6.2.16 page 11.

<sup>33</sup> ACCC submission dated 2 October 2019, page 2.

<sup>34</sup> Ibid.

unlikely that Virgin Australia will enter the Australia-Japan route via Narita if its application for one frequency to Haneda was unsuccessful.

6.18 Qantas has not publicly disclosed how it would utilise the additional frequency if it were granted only one frequency rather than the two it seeks. If the Commission allocated one frequency each to Qantas and Virgin Australia, two options exist within Qantas application, either to shift its Melbourne-Narita service to Melbourne-Haneda, or to add an additional frequency to its Sydney to Haneda service. The Melbourne-Haneda option would see three Australian cities (Sydney, Melbourne, Brisbane) linked to Haneda by Australian carriers, but the only incremental capacity would come from the service operated by Virgin Australia from Brisbane. The Sydney-Haneda option would see two frequencies added to the Australia-Japan route (one from Virgin Australia's Brisbane service, the other by the additional Qantas service from Sydney), but with Haneda service expanded at Sydney, and with Melbourne retaining its link to Narita.

6.19 If the Commission granted both frequencies to Qantas, and refused Virgin Australia's application, the Australia-Japan route would be likely, in the sense of a real chance, to gain only one incremental frequency from Sydney (already served by three airlines), Qantas would be unlikely to gain a competitor on the route to and from Brisbane, and only two Australian cities (Sydney and Melbourne) would be likely linked to Haneda.

6.20 The approval of the Virgin Australia application is likely to provide increased competition irrespective of how Qantas applies its one additional frequency. Should Qantas elect to apply its one additional Haneda frequency to an existing Melbourne-Narita service, all three east coast capitals will be linked to Haneda. Should Qantas choose to apply its one additional Haneda frequency to operate an additional Sydney-Haneda service, there will be two additional frequencies operating between Australia and Haneda. The approval of the Qantas application requesting the allocation in its favour of both the new frequencies would foreclose the real chance that competition will be enhanced by the additional services that Virgin Australia could operate.

6.21 For the reasons stated above, the Commission finds that the allocation of capacity most likely to foster an environment in which Australian carriers can effectively compete with each other and with foreign carriers on the Australia-Japan route is to allocate one frequency to Qantas and one frequency to Virgin Australia. The allocation of one daily frequency to Virgin Australia would enable the airline to operate, as outlined in its application, between Brisbane and Haneda, facilitating its entry to the Australia-Japan route. Granting Qantas an additional frequency from Australia to Haneda would give Qantas two frequencies per day. This additional Qantas frequency will extend Qantas' operations to Japan, enabling it to compete more effectively with foreign airlines on the Australia-Japan route.

**Subsection 9(b): the number of carriers operating on the route in question and the existing distribution of capacity among Australian carriers (including through code sharing and other joint international services)**

6.22 Virgin Australia seeks one frequency to Haneda on the Australia-Japan route

by introducing a service from Brisbane to Haneda, using an Airbus 330-200 aircraft. Currently Qantas operates between Brisbane and Narita, and Jetstar between the Gold Coast and Narita. No carrier currently serves Haneda from Brisbane.

6.23 Qantas seeks two frequencies. The airline stated that it plans an additional service between Sydney and Haneda, using either an Airbus 330-300 or a Boeing 787-900 and the transfer of its daily Airbus 330 service from Melbourne to Haneda rather than Narita airport. Submissions from both carriers included comparisons of seats offered on the route under their competing applications. The Commission accepts that longer term fleet changes will be made regardless of the allocation of capacity in this Determination. The Commission notes that if Qantas elects to change the destination airport in Tokyo for an existing service from Australia, this would add no additional capacity on the Australia-Japan route.

6.24 The Commission notes that if Qantas were allocated the two frequencies it seeks, the airline would only add a single additional frequency on the route. This additional frequency would operate from Sydney, a city which is already served by two airlines to Haneda (Qantas and ANA) and by JAL to Narita. Qantas has stated that the other frequency would be applied to moving an existing Melbourne service from Narita to Haneda.

6.25 On the other hand, if Virgin Australia is allocated the daily frequency it has applied for, the opportunity would remain for Qantas to add incremental capacity via another airport within Japan.

6.26 While Qantas and its wholly owned subsidiary Jetstar, operate the largest capacity shares on the Australia-Japan route, all carriers currently operating on the Japan route (including JAL and ANA) have extensive international and domestic networks, are members of major global alliances, and have high levels of brand recognition and market presence. Table 3 at paragraph 3.13 summarises operations on the Australia-Japan route.

6.27 In its application of 16 September 2019, in addressing this criterion, Qantas expressed the view that the “Australia-Japan route is characterised by intense competition and is served extensively by both direct and mid-point carriers”.<sup>35</sup> Qantas then discussed the operations of each of the carriers (Qantas, Jetstar, ANA, JAL) operating direct services between Australia and Japan and services offered by Singapore Airlines via Singapore. Qantas stated that the “extensive and growing operations between Australia and Singapore create a competitive one-stop proposition between Australia and Japan with seamless connectivity from Singapore to seven destinations in Japan (Haneda, Narita, Fukuoka, Osaka, Nagoya, Hiroshima and Sapporo)”.<sup>36</sup>

6.28 Virgin Australia stated in its application of 24 September 2019 that “Brisbane is underserved and the introduction of flights by Virgin Australia would bring competition to the market”.<sup>37</sup>

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<sup>35</sup> Qantas application dated 16 September 2019, page 8.

<sup>36</sup> Qantas application dated 16 September 2019, page 9.

<sup>37</sup> Virgin Australia application dated 24 September 2019, paragraphs 6.2.12 page 10.



6.29 In their (separate) submissions to the Commission, Tourism Australia, the Queensland Government’s Department of Innovation and Tourism Industry Development, Brisbane Airport and the Queensland Minister for Innovation and Tourism Industry Development and Minister for Cross River Rail, the Hon Kate Jones MP, supported the proposed Virgin Australia service between Brisbane and Haneda. Tourism Australia expressed the view that “this opportunity will enable a fourth [sic] airline<sup>38</sup> to enter the Japan route, bringing a new source of competition which would deliver significant benefits for travellers, boosting tourism flows between the two countries”.<sup>39</sup> The Commission notes Tourism Australia’s supplemental submission of 11 October 2019 attaching a copy of a public statement it released on 3 October 2019. Tourism Australia stated, in part, that it “supports the independence of the IASC process in ultimately determining the allocation of these slots [sic] and given the additional slots available, welcomes the fact that any allocation decision will provide valuable access into Australia”.<sup>40</sup>

6.30 One member of the public (Mr Toru Adachi from Tokyo) lodged a submission supporting Virgin Australia’s application.<sup>41</sup> Another member of the public (Mr Phillip Emmanuel from Victoria) expressed support for Qantas’ application expressing the view that the Melbourne-Haneda service should be prioritised over a second Sydney to Haneda service. Mr Emmanuel also expressed his opinion on why all capacity entitlements to Haneda should be allocated to Qantas.<sup>42</sup>

6.31 Having considered the likely effect of allocating both frequencies to Qantas and the likely effect of allocating one frequency each to Qantas and Virgin Australia, the Commission finds that allocating one frequency to Virgin Australia rather than both to Qantas will likely see five rather than four carriers operating direct services to Japan. The Commission finds that the allocation of one frequency to Virgin Australia would result in a broader distribution of capacity among Australian carriers.

**Subsection 9(c): the likely impact on consumers of the proposed allocation, including on costs of airfares, customer choice, product differentiation, stimulation of innovation by incumbent carriers and frequency of service**

6.32 In its application of 16 September 2019, Qantas made the following claims:

- it “will continue to provide increased choice and frequency of service and innovative, product differentiation on the route. Qantas’ plans to grow non-stop services on the route, along with enhanced frequency and schedule choice between Australia and Japan, will bring benefits for business travellers and Australian exporters. This is particularly pertinent following the conclusion of

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<sup>38</sup> There are currently four airlines operating between Australia and Japan: ANA, Japan Airlines, Jetstar and Qantas.

<sup>39</sup> Tourism Australia submission dated 2 October 2019.

<sup>40</sup> Tourism Australia supplementary submission dated 11 October 2019 attaching a copy of its Statement dated 3 October 2019.

<sup>41</sup> Submission from Mr Toru Adachi dated 1 October 2019.

<sup>42</sup> Submission from Mr Phillip Emmanuel dated 8 October 2019.

the Japan-Australia Economic Partnership between the two countries in 2014.”<sup>43</sup>

- “[b]y actively stimulating the market with lower airfares and unique distribution strength, Qantas has maintained seat factors during periods of typically low demand (April to July) compared to other carriers. The strong presence of the Qantas brand in Japan and Australia, investment in marketing, along with established relationships with the travel industry and tourism authorities, support increased capacity and enhance customer choice.”
- “[t]he proposed Qantas services to Haneda would continue to offer a range of pricing options and price competition in the market, for both sales in Japan and Australia.”
- “Qantas’ planned Melbourne-Haneda service”... enables Qantas to “operate a currently unserved point-to-point route and provide greater variety of one-stop options for Haneda access from Australia. For those passengers travelling beyond Haneda to domestic Japan, a Melbourne-Haneda provides new or improved same-day connectivity to 18 cities from NS20.”
- “[t]he addition of a second daily Qantas Sydney-Haneda flight will provide even more options for the strong demand between the two cities, particularly for the large proportion of travellers, by offering Haneda service at different times of the day. The new slots provide for greater choice for consumers with a daytime travel option to Haneda... in addition to Qantas’ current overnight service.”

6.33 In terms of product differentiation, Qantas stated that the proposed Melbourne-Haneda service will be operated by Qantas’ reconfigured Airbus 330 aircraft and it is planned the additional Sydney-Haneda service will utilise Airbus 330 or new Boeing 787-9 Dreamliner aircraft. Qantas further stated that in addition to enhanced connectivity, a number of benefits are available to consumers under the oneworld alliance when connecting to/from a Qantas or JAL service including lounge access priority check-in and boarding, priority baggage, increased baggage allowances and tier status recognition.

6.34 The Commission observes that, as Qantas and JAL are airline partners under the oneworld alliance, their respective frequent flyer customers can earn frequent flyer points and rewards when flying with either airline, even without a code share arrangement in place between them.<sup>44</sup>

6.35 In addressing the subsection 9(c) criterion, Virgin Australia claimed in its application of 24 September 2019 that the “extra capacity that Virgin Australia would inject into the market is likely to place downward pressure on airfares on the route, particularly on the Brisbane-Tokyo vv sector”. Virgin Australia further claimed that its proposed services will “have the potential to increase the availability of airfares in the lower-priced booking classes relative to the Qantas Airways’ average load factor on the

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<sup>43</sup> Qantas application dated 16 September 2019 page 10.

<sup>44</sup> <https://www.qantas.com/fflyer/dyn/flying/earning-points-partner-airlines>

Brisbane-Tokyo vv sector was 83.3% in FY19.”<sup>45</sup>

6.36 Virgin Australia further claimed that since “Queensland [is] attracting the largest number of inbound Japanese visitor arrivals, Brisbane is the ideal port for the introduction of flights to Haneda and dispersal of visitors to both regional and South East Queensland.”<sup>46</sup> Virgin Australia also discussed in its application the product and service differentiation that the airline would bring to the route.<sup>47</sup>

6.37 The Commission acknowledges the long-standing commitment of the Qantas Group on the Australia-Japan route and its operations on the route for nearly 72 years. If the Commission allocated the two available frequencies to Qantas, the airline would likely continue to be the only Australian carrier operating direct services to Haneda. In that situation, four carriers would likely continue to operate services on the Japan-Australia route, three of which provide direct access to Haneda.

6.38 If the Commission allocated one frequency each to Qantas and Virgin Australia, there will likely be five carriers providing direct services on the Australia-Japan route, four of which would be able to provide services to Haneda.

6.39 In weighing up the impacts on airfares, product choice, innovation and market stimulation, the Commission finds that allocating one frequency per day to Virgin Australia to operate a daily service between Brisbane and Haneda would likely broaden product choice and introduce greater competition on the Australia-Japan route. The choice of two Tokyo airports between Brisbane and Japan, and the increase in capacity operated on that city pair, will most likely increase price competition and market stimulation.

**Subsection 9(d): the desirability of fostering own aircraft operations by Australian carriers over code share or other joint international air services involving the marketing, by an Australian carrier, of seats on flights operated by foreign carriers**

6.40 The Commission does not consider that this criterion has any impact on the present determination given that both Qantas and Virgin Australia propose to operate their own services on the route. Qantas will use either an Airbus 330-300 or a B787-900 aircraft while Virgin Australia plans to use an A330-200 aircraft.

**Subsection 9(e): the benefits of allocating the capacity to a given applicant over other competing applicants, having regard to any commercial arrangements that may be in place with other carriers.**

6.41 Qantas is a member of the oneworld alliance. Japan Airlines is also a oneworld member. The Qantas Group (Qantas and Jetstar) have a strong presence on the Australia-Japan route. Codeshares by the Qantas Group with partner airlines are outlined in paragraphs 3.10 to 3.11. The Commission, in this Determination, allocates one frequency per day to Qantas bringing its total allocation to two daily frequencies to

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<sup>45</sup> Virgin Australia application dated 24 September 2019, paragraph 6.2.16 page 11.

<sup>46</sup> Virgin Australia application dated 24 September 2019, paragraph 6.2.19 page 12.

<sup>47</sup> Virgin Australia application dated 24 September 2019, see paragraph 6.2.16 to 6.2.24 page 12.

Haneda.

6.42 Virgin Australia's application includes both the introduction of a new service to Haneda, and a codeshare arrangement with ANA, both on the trunk route and on domestic services in Japan and Australia.

6.43 Having regard to the commercial arrangements that are in place between the applicants and other carriers, the Commission notes that both carriers have existing codeshare relationships for travel to Japan, including codeshares via Hong Kong and Singapore. The Commission considers that the codeshare relationship between Virgin Australia and ANA will provide enhanced competition on the Australia-Japan route, and will support Virgin Australia's capability to serve the route.

**Subsection 9(f): any determinations, decisions or notifications made by the ACCC, or any determinations made by the Australian Competition Tribunal, in relation to an Australian carrier using capacity in all or part of the route.**

6.44 As mentioned, the Commission has received a submission from the ACCC which the Commission has considered and referred to in this Determination.

6.45 The Commission notes that the ACCC has issued the following authorisations relating to the Australia-Japan route:<sup>48</sup>

- Authorisation numbers A91600 and A91601: Qantas and Jetstar Airways for coordination involving Qantas and three Jetstar joint venture airlines (Jetstar Asia, Jetstar Pacific and Jetstar Japan) and, in certain circumstances, the full-service airline shareholders of Jetstar Pacific and Jetstar Japan (Vietnam Airlines and Japan Airlines), authorised until 31 March 2023;
- Authorisation numbers A91539 and A91540: Virgin Australia and Singapore Airlines international airline alliance, including services operated by SilkAir, authorised for a further five years until 14 October 2021.

6.46 These authorisations do not materially impact on the Commission's assessment of the benefit to the public of the competing applications of Qantas and Virgin Australia.

**Subsection 9(g): any determinations, decisions or notifications made by a foreign agency that performs a comparable function to the ACCC or the Australian Competition Tribunal, or by a foreign aeronautical authority, in relation to a carrier using entitlements under a bilateral arrangement on all or part of the route.**

6.47 The Commission is not aware of any determinations, decisions or notifications made by a foreign agency performing a comparable function to the ACCC or the Australian Competition Tribunal.

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<sup>48</sup> Qantas application dated 16 September 2019, page 13, as confirmed by the ACCC.

6.48 The Commission has been informed that Virgin Australia, as a new entrant on the Australia-Japan route, already holds a Permission Certificate/ business licence issued by the Japanese Minister of Land, Infrastructure, Transport and Tourism in February 2013. Virgin Australia has also been designated as an Australian international airline under the Australia-Japan air services arrangements. As previously indicated, the Commission considers that there is no regulatory impediment for Virgin Australia to commence services between Brisbane and Haneda under the Australia-Japan air services arrangements. The Commission considered this in assessing Virgin Australia's application against the reasonable capability criterion (see above).

### **Tourism and trade criteria**

#### **Subsection 9(h): the level of promotion, market development and investment proposed by each of the applicants**

6.49 Qantas stated in its application of 16 September 2019 that its “[c]ontinued focus on and investment in the Japan route, including the addition of three new routes, has seen Qantas average 30 per cent growth” over the five-year period. Qantas further stated that its capacity growth (and investment) on the Japan route has “successfully stimulated market competition, demonstrated by the addition of services from both ANA and JAL over the same period. Japanese travellers now have access to more choice than at any time in the last decade”.<sup>49</sup>

6.50 Qantas further stated that “[b]y actively stimulating the market with lower airfares and unique distribution strength, Qantas has maintained seat factors during periods of typically low demand (April to July) compared to other carriers... The strong presence of the Qantas brand in Japan and Australia, investment in marketing, along with established relationships with the travel industry and tourism authorities, support increased capacity and enhance customer choice.”<sup>50</sup>

6.51 The Commission recognises the investment made by Qantas that has enabled it to strengthen its presence on the Australia-Japan route.

6.52 Destination NSW and the NSW Minister for Jobs, Investment, Tourism and Western Sydney (the Hon Stuart Ayres MP) expressed support for Qantas' application to enable the airline to add another service between Sydney and Haneda. Minister Ayers indicated that “Japan is one of NSW's key priority international tourism markets. In fact, in the year ending June 2019, Japan recorded strong growth in visitation and surpassed Korea in our State's top five source markets. Japanese visitors to NSW grew by 19.8 per cent compared to the previous year. These visitors stayed 16.8 per cent more nights and spent 9.2 per cent more than the previous year.”<sup>51</sup> Destination NSW expressed a similar view and further stated that “[t]he additional service will build on the strong partnership between Destination NSW and Qantas which have had a very successful Memorandum of Understanding since 2013 and provide a platform for

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<sup>49</sup> Qantas application dated 16 September 2019, page 10.

<sup>50</sup> Qantas application dated 16 September 2019, page 10.

<sup>51</sup> Minister Stuart Ayres MP submission received by the Commission on 15 October 2019.

further growth from this important inbound market.”<sup>52</sup>

6.53 Virgin Australia stated in its application of 24 September 2019 that the airline will engage in a range of promotional, market development and sale activities, to ensure commercial success for its proposed services. Virgin Australia also stated that it “will seek to leverage the substantial awareness of the Virgin brand that already exists in the market through Sir Richard Branson’s business ventures, including Virgin Atlantic.” It also stated that the launch of Virgin Orbit in Japan, in partnership with ANA, will likely boost its brand awareness campaign.<sup>53</sup>

6.54 Virgin Australia also indicated that with the support from the Queensland Government’s Attracting Aviation Investment Fund, the airline will undertake cooperative marketing activities targeting Japanese visitors in partnership with Tourism and Events Queensland and Brisbane Airport. Virgin Australia estimates that its proposed flights to Japan will deliver economic benefit to the State of Queensland of more than \$250 million over three years.<sup>54</sup>

6.55 Brisbane Airport stated in its submission that “[t]he importance of Queensland as a drawcard for Japan tourism visitation and trade cannot be overstated”.<sup>55</sup> The airport further stated that Queensland accounts for 208,000 Japanese visitors per annum (as per the International Visitor Survey Data, March 2019) and 47% of visitation from Japan.<sup>56</sup> The Queensland Government’s Department of Innovation and Tourism Industry Development expressed a similar view and further stated in their submission that Japan is Queensland’s second largest export destination with \$11.87 billion in financial year 2017-18 and third largest import source (\$4.7 billion). The Queensland Government stated that Queensland “has received a disproportionately low share of new air route capacity in recent years”. The Queensland Government submission further stated that “Brisbane has had no new capacity from Japan since Qantas commenced daily services from Tokyo-Narita in July 2015. Since then, Sydney’s capacity from Japan has been boosted by a new daily ANA Tokyo-Narita service, and a new daily Qantas Osaka service. Similarly, Melbourne capacity has increased through new daily Tokyo-Narita services from both Qantas and Japan Airlines.<sup>57</sup> The Queensland Minister for Innovation and Tourism Industry Development and Minister for Cross River Rail, Hon Kate Jones MP expressed a similar view in her submission of 10 October 2019.

6.56 Virgin Australia further stated that its proposed Brisbane-Haneda services will connect to flights across its domestic network, including several regional destinations. The airline stated that this “will provide scope for increased domestic dispersal of visitors from Japan, with benefits for Australian tourism”.<sup>58</sup>

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<sup>52</sup> Destination NSW submission received by the Commission on 15 October 2019.

<sup>53</sup> Virgin Australia application dated 24 September 2019, paragraphs 6.3.5 & 6.3.6 page 14.

<sup>54</sup> Virgin Australia application dated 24 September 2019, paragraphs 6.3.9 page 14.

<sup>55</sup> Brisbane Airport submission dated 30 September 2019, page 1.

<sup>56</sup> *Ibid*, page 2.

<sup>57</sup> Queensland Government’s Department of Innovation and Tourism Industry Development dated 2 October 2019, pages 1-2.

<sup>58</sup> Virgin Australia application dated 24 September 2019, paragraphs 6.3.16 page 15.

6.57 The Commission has considered the information placed before it by the applicants and by various bodies promoting tourism. The Commission considers that allocating one frequency to each carrier is likely to see broader promotion of trade and tourism to Australia, with the carriers promoting tourism to a wider area within Australia than would be the case if all frequencies were awarded to Qantas alone.

**Subsection 9(i): route service possibilities to and from points beyond Australia or foreign gateways**

6.58 Qantas and Virgin Australia in their respective applications have outlined how their proposed services (Melbourne-Haneda and Sydney-Haneda for Qantas; Brisbane-Haneda for Virgin Australia) provide various route service possibilities to/from points beyond the city-pairs they propose to service.

6.59 On the Melbourne-Haneda service, Qantas stated in its application that this will “immediately open connections to as many as 18 new points in Japan and Korea using partner airlines from NS20”<sup>59</sup>. Qantas provided a list of new connecting destinations from Haneda which would be readily available under the oneworld agreement already in place between Qantas and JAL. Qantas also discussed how access to Haneda will provide “unique and improved connectivity to/from regional Victoria, Tasmania, and South Australia”.<sup>60</sup>

6.60 On the additional Sydney-Haneda service, Qantas stated that the daytime access schedule of services will provide new or improved connectivity to 16 destinations across Australia and the South Pacific. Qantas also stated that more importantly, the daytime service will enhance connectivity for regional Australia.<sup>61</sup>

6.61 Virgin Australia’s Brisbane-Haneda proposal identified connections to flights across its domestic network, including several regional destinations. Virgin Australia further identified that its proposal differed from that of Qantas by connecting to destinations in Virgin Australia short-haul international network including points in the South West Pacific, where Japan has significant interests. Virgin Australia also stated that its partnership with ANA will enable Virgin passengers to access over 1,300 return flights per week in Haneda to 38 points in Japan.<sup>62</sup>

6.62 The Commission recognises the both Qantas and Virgin Australia bring various opportunities for connections with their respective airline partners. The Commission considers that if all frequencies were allocated to Qantas, consumers would not have the benefit of the added routes and connectivities which Virgin Australia is likely to be able to bring to the Australia-Japan route via Haneda. The Commission therefore finds that allocating one frequency to each carrier would provide enhanced route possibilities to and from points beyond Australia and foreign gateways.

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<sup>59</sup> Qantas application dated 16 September 2019, page 14.

<sup>60</sup> Qantas application dated 16 September 2019, page 15.

<sup>61</sup> Qantas application dated 16 September 2019, page 15.

<sup>62</sup> Virgin Australia application dated 24 September 2019, paragraphs 6.3.16-18 page 15.

### **Subsection 9(j): the availability of frequent, low cost, reliable air freight movements for Australian importers and exporters**

6.63 The Commission notes that the applications from both carriers do not increase dedicated freight services between Australia and Japan. However, allocating one frequency to each carrier provides an opportunity for up to two A330 frequencies to be added to the route with up to 12 tonnes of belly space available for air freight. The applications from both airlines outline an intention to carry air freight.<sup>63</sup>

6.64 Virgin Australia stated in its application that, currently, the only non-stop option for transporting airfreight between Brisbane and Tokyo is Qantas' service to Narita. Virgin Australia further stated that the demand for freight on the Brisbane-Tokyo vv sector has increased significantly in recent years. Virgin Australia argued that "competition is required to place downward pressure on airfreight rates. Virgin Australia's entry to the market has the potential to deliver this outcome and provide Australian importers and exporters with more competitive airfreight options."<sup>64</sup> Qantas in its submission of 2 October 2019 stated "[w]e disagree with Virgin Australia's claim. Qantas operates this city pair with widebody Airbus 330-300 aircraft that have a capability to uplift 12 tonnes of freight per flight. The market and rates are already competitive, with a multitude of operators and infrastructure options at both Narita and Haneda Airports offering reliable, low cost air freight movements".<sup>65</sup>

6.65 The Commission notes that there are currently at least three carriers providing combined passenger and freight services between Sydney and Tokyo (ANA and Qantas operate services Haneda while JAL flies to Narita). Melbourne is also served by two carriers (Qantas and JAL operate direct services to Narita) while Brisbane is served only by a Qantas flight into Narita.

6.66 The allocation of one frequency to Virgin Australia to operate a daily service from Brisbane to Haneda vv will add to the number of combined passenger and freight services to Brisbane and the Northern Australia area. If Qantas was to be allocated all of the two frequencies available, Sydney and Melbourne would likely remain being served by multiple carriers while the service to Brisbane would likely remain static. The Commission considers that the allocation of one frequency to each carrier will enable the dispersal of air transport services to a wider area within Australia.

### **Relevant information obtained from Government Agencies**

#### **Subsection 9(k): any information that the Commission has obtained from Australian Government agencies or statutory authorities that the Commission considers to be relevant**

6.67 The Commission has had regard to information obtained from BITRE in relation to the Australia-Japan route, to which it has referred where relevant throughout

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<sup>63</sup> Qantas application dated 16 September 2019, page 16; Virgin Australia application dated 24 September 2019, paragraphs 6.3.20-23 page 15-16.

<sup>64</sup> Virgin Australia application dated 24 September 2019, paragraphs 6.3.21-22 page 16.

<sup>65</sup> Qantas submission dated 2 October 2019, page 5.



this Determination. It has also considered the confidential submission of the Department outlining in greater detail the nature of the air services arrangements with Japan. The Commission also considered the letters of 9 October 2019 from the Department in relation the reasonable capability criterion concerning Virgin Australia and what would happen if a carrier failed to utilise its capacity allocation.

**Subsection 9(1): any other matter or consideration that the Commission considers to be relevant**

6.68 The Commission does not consider any other matter or consideration to be relevant.

**Commission’s findings under sections 8 and 9 of the Policy Statement**

6.69 Paragraph 7(2)(b) of the Act relevantly provides that if more than one application was made relating to the allocation of capacity (as in the case before us), the Commission, must make the allocation, having regard to the applications made, that the Commission is satisfied ‘would be of the greatest benefit to the public’.

6.70 The Commission’s key findings for the purposes of sections 8 and 9 of the Policy Statement are that:

- Both Qantas and Virgin were reasonably capable of (a) obtaining any licences, permits or other approvals required to operate on and service the Japan-Haneda route to which the determination relates; and (b) using the capacity allocated under the determination.
- Competition on the Australia-Japan route will more likely be fostered by the allocation of one frequency to Qantas and one to Virgin Australia.
- With the commencement of operations by Virgin Australia there likely will be an increase in the number of carriers serving the Australia-Japan route.
- The capacity allocated to Virgin Australia will allow the airline to operate services between Brisbane and Haneda, and the operation of services by Qantas and Virgin Australia between Brisbane and the two Tokyo airports will likely foster competition on those sectors.
- The addition of Virgin Australia’s operations on the Australia-Japan route is likely to broaden product choice.
- Allocating one frequency to each carrier is likely to see a broader promotion of trade and tourism, with the carriers promoting tourism to a wider area within Australia.
- The allocation of one frequency to each of Qantas and Virgin Australia will enable the dispersal of air transport services to a wider area within Australia.

6.71 Therefore, after carefully assessing the applications and submissions against

the various criteria, the Commission is of the view that the greatest benefit to the public comes from the allocation of one frequency to Qantas and one frequency to Virgin Australia.

### **Proposed code share between Virgin Australia and ANA**

6.72 In its application Virgin Australia advised that it plans close collaboration with ANA, including domestic codeshares in Australia and Japan, and parallel codeshares on the route between Japan and Australia. To support its application, Virgin Australia provided, on a confidential basis, a copy of its code share agreement with ANA dated 24 September 2019 including the confidential annex which lists the city pairs proposed in the code share arrangement.

6.73 In its application, Virgin Australia proposed that ANA code share on the proposed flights between Brisbane and Haneda to be operated by Virgin Australia. The Commission notes that ANA currently only operates daily services between Sydney-Haneda and Perth-Narita. The Commission considers that the proposed code share will have minimal impact on competition on the Australia-Japan route and has decided to approve the code share on the basis that the code share arrangement does not include parallel services on any city-pairs.

6.74 The Commission is not aware which Australian city ANA would operate its additional frequency to and from Haneda. The Commission has decided that should Virgin Australia and ANA propose to code share on city pairs (sectors) where they operate parallel services, Virgin Australia is required to seek approval from the Commission before such arrangement is implemented.

### **Terms and conditions**

6.75 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(e) of the Act requires the inclusion of a condition stating the extent (if any) to which the carrier may use that capacity in joint services with another carrier. Consistently with section 23 of the Policy Statement, where the Commission authorises a carrier to utilise the allocated capacity to provide joint or code share services with another carrier, the Commission should include a condition requiring the Australian carrier concerned to take all reasonable steps to ensure that passengers are informed at the time of booking a passenger air service that one or more other carriers may operate the flight.

6.76 Nothing in this decision should be taken as indicating either approval or disapproval by the ACCC. This decision is made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

## **7 Determination allocating capacity on the Japan route to Qantas Airways Limited ([2019] IASC 118)**

7.1 The Commission allocates to Qantas Airways Limited, pursuant to section 7 of the Act, one frequency per day in each direction on the Japan route to serve Haneda Airport in accordance with the terms of the Australia – Japan air services arrangements.

7.2 The determination is valid for five years from 28 October 2019.

7.3 The determination is subject to the following conditions:

- a) Qantas is required to fully utilise the capacity from no later than 29 March 2020 or such other date approved by the Commission.
- b) The capacity must only be utilised by Qantas, except to the extent permitted by condition (c).
- c) Qantas is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person unless approved in writing by the Commission.
- d) Changes in relation to the ownership and control of Qantas are permitted except to the extent that any change:
  - results in the designation of Qantas as an Australian carrier under the Australia – Japan air services arrangements being withdrawn; or
  - has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Qantas or be in a position to exercise effective control of the airline, without the prior consent of the Commission.

## **8 Determination allocating capacity on the Japan route to Virgin Australia International Airlines Pty Ltd ([2019] IASC 119)**

8.1 The Commission allocates to Virgin Australia International Airlines Pty Ltd, pursuant to section 7 of the Act, one frequency per day in each direction on the Japan route to serve Haneda Airport in accordance with the terms of the Australia – Japan air services arrangements.

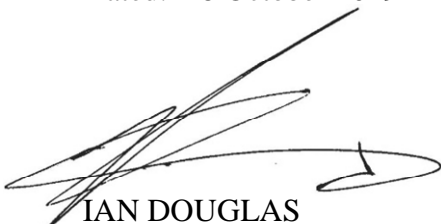
8.2 The determination is valid for five years from 28 October 2019.

8.3 The determination is subject to the following conditions:

- a) Virgin Australia is required to fully utilise the capacity from no later than 29 March 2020 or such other date approved by the Commission.

- b) The capacity must only be utilised by Virgin Australia, except to the extent permitted by condition (c).
- c) Virgin Australia is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person unless approved in writing by the Commission, or in accordance with condition (d).
- d) Virgin Australia is permitted to utilise the capacity to provide code share services with ANA in accordance with the code share arrangement between the airlines dated 24 September 2019 and any variations, subject to conditions (e) and (f).
- e) Virgin Australia must obtain the Commission's written approval before implementing any variation to the code share arrangement which would change the relevant commercial aspects of the code share arrangement from a free sale code share arrangement to a block space, or vice versa, or which would add new sectors (city-pairs) on which the airlines will code share where Australian capacity will be used for services on that route.
- f) Should Virgin Australia and ANA propose to code share on city pairs (sectors) where they operate parallel services, Virgin Australia is required to obtain written approval from the Commission before such an arrangement is implemented.
- g) To the extent that the capacity is used to provide code share services on the route, the airlines must take all reasonable steps to ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law.
- h) Changes in relation to the ownership and control of Virgin Australia are permitted except to the extent that any change:
  - results in the designation of Virgin Australia as an Australian carrier under the Australia – Japan air services arrangements being withdrawn; or
  - has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Virgin Australia or be in a position to exercise effective control of the airline, without the prior consent of the Commission.

Dated: 28 October 2019

  
IAN DOUGLAS  
Chairperson

  
KAREN GOSLING  
Commissioner