Australian Government

International Air Services Commission

DRAFT DECISION

Determination:	**[2016] IASC 220d, [2016] IASC 221d and [2016] IASC 222d**
Variation of:	**[2011] IASC 132 as varied, [2014] IASC 105 and [2016] IASC 110**
The route:	**Papua New Guinea (PNG)**
The applicant	**Qantas Airways Limited (ACN 009 661 901) (Qantas)**
Public Register File:	**IASC/APP/201633, 201634 and 201635**

1 The application and submissions

1.1 On 25 August 2016 Qantas applied for a variation of capacity allocations on the PNG route to enable reciprocal code sharing with Air Niugini, planned from 30 October 2016. Qantas states that under new free sale arrangements, it plans to code share on Air Niugini operated passenger services between Port Moresby and Brisbane, Port Moresby and Sydney and Port Moresby and Cairns, while Air Niugini plans to code share on Qantas operated passenger services between Port Moresby and Brisbane[1]. Qantas and Air Niugini also have an agreement in place in relation to belly-hold freight on the route.

1.2 The existing IASC determinations allocate to Qantas 1888 seats per week in each direction on the Papua New Guinea route. Of these 1888 seats:

- 1000 seats have been allocated until 30 June 2017 ([2011] IASC 132) and are currently used by Qantas to code share on Air Niugini ([2012] IASC 215) on services on the Brisbane and Sydney sectors; and

- 888 seats have been allocated until 23 March 2020 ([2014] IASC 105) and cannot currently be used for code share purposes.

1.3 Earlier this year, the IASC renewed the allocation of 1000 seats to Qantas from 1 July 2017 to 1 July 2022 ([2016] IASC 110), but there is currently no approval for Qantas to use these 1000 seats to code share with Air Niugini.

1.4 Qantas has requested variations to Determinations [2011] IASC 132 as varied, [2014] IASC 105 and [2016] IASC 110, which allocate a total of 1,888 seats per week on the PNG route, to permit the capacity to be used to code share with Air Niugini.

[1] For ease of reference, the PNG-Australia city pair sectors on which the airlines operate and market services will be referred to as the Brisbane, Sydney and Cairns sectors.

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1.5 In its application Qantas stated that the application should be considered against the general criteria for assessing the benefit to the public in paragraph 4 of the Minister's policy statement[2].

1.6 On 26 August 2016, the Commission published a notice, in accordance with section 22 of the *International Air Services Commission Act 1992* (the Act), inviting submissions about the application for a variation.

1.7 On 30 August 2016, the Commission advised Qantas by letter that Virgin Australia and the Australian Competition and Consumer Commission (ACCC) had indicated their intention to make submissions. The Commission advised Qantas that, in assessing Qantas' application, it would apply the criteria in paragraph 5 of the Minister's policy statement. The Commission stated that this would better enable it to assess the benefit to the public of the application and its impact on competition. It would also be consistent with the approach taken by previous Commissions in assessing code share applications by Qantas on the PNG route.

1.8 On 6 September 2016 Mr Murphy of Morely, Western Australia, made a submission and on 8 September 2016 Air Niugini made a submission (with a confidential and a public version). On 9 September 2016 Virgin Australia wrote advising that it intended to lodge a submission in response to the supplementary application the Commission had invited Qantas to make.

1.9 On 14 September 2016 Qantas provided a supplementary application addressing the criteria in paragraph 5 of the Minister's policy statement. In response to this application, Virgin Australia and the ACCC made submissions on 30 September 2016 and 6 October 2016 respectively.

1.10 All public material supplied by the applicant and submitters is filed on the Register of Public Documents. Confidential material supplied by Qantas, Virgin Australia and Air Niugini is filed on the Commission's confidential register.

1.11 A summary of Qantas' application of 14 September 2016 is at **Attachment A**.

1.12 A summary of the submissions and Qantas' response to those submissions is at **Attachment B**. The Commission has considered all submissions and will refer to them where relevant.

1.13 The Commission has analysed a considerable amount of data to assess any changes to the competitive environment and public benefit situation on the route since its 2012 review. The data includes information held by government agencies such as the Australian Bureau of Statistics and the Bureau of Infrastructure, Transport and Regional Economics; commercial-in-confidence material provided by Qantas and Virgin Australia; and fare information available on web sites.

2 Relevant provisions in the bilateral air services arrangements

Under the terms of the bilateral air services arrangements between Australia and Papua New Guinea, the relevant capacity entitlement set out in these arrangements is for

[2] Minister's Policy Statement (No.5) of 19 May 2004

operations between Australia and Papua New Guinea. There are no capacity sub-limits applying to individual city pairs.[3]

3 Requirements under the Act and the Minister's policy statement

3.1 Qantas' application seeks to vary Determinations to include a condition of a kind referred to in paragraph 15(2)(e) of the Act. In view of this, the application is a transfer application as so defined in subsection 4(1) of the Act and has been assessed in accordance with section 25.

3.2 Subsection 25(1) provides that the Commission must make a decision varying the determination in a way that gives effect to the variation requested, subject to subsection 25(2). Subsection 25(2) states that the Commission must not make a decision varying the determination in a way that varies, or has the effect of varying an allocation of capacity if the Commission is satisfied that the allocation, as so varied, would not be of benefit to the public.

3.3 Under section 26 of the Act, in assessing the benefit to the public of a variation of an allocation of capacity, the Commission is required to apply the criteria set out in any policy statement issued by the Minister under section 11.

3.4 Paragraph 6.3 of the Minister's policy statement provides that, subject to paragraph 6.4, where a carrier requests a variation of a determination to allow it flexibility in operating its capacity, including to use the Australian capacity in a code share arrangement with a foreign carrier, and no submission is received about the application, only the criteria in paragraph 4 of the policy statement are applicable.

3.5 Under paragraph 4 of the Minister's policy statement, the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and of implementing their proposals.

3.6 The Commission notes that Qantas is an established international carrier capable of obtaining the necessary approvals to operate on the route and of implementing its proposals.

3.7 Paragraph 6.4 provides, in part, that the Commission may apply the criteria in paragraph 5 in the circumstances set out in paragraph 3.6 of the policy statement.

3.8 Under paragraph 3.6, where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications for use of capacity to code share. However, if the Commission has serious concerns that a code share application (or other joint service proposal) may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission (the ACCC).

[3] Department of Infrastructure and Regional Development.

3.9 As outlined below, on previous occasions when the Commission has considered applications for Qantas to code share on Air Niugini, it has had concerns about the impact of the code share on competition on the route. At the same time, it has considered the implications for competition if the code share were not approved. The Commission has again decided to assess the application against the paragraph 5 criteria.

3.10 The paragraph 5 criteria comprise competition, tourism, consumer, trade, and aviation industry benefits and any other criteria that the Commission may consider relevant. The Minister’s policy statement states that the Commission is not obliged to apply all the paragraph 5 criteria, and that in applying the criteria it should take as the preeminent consideration the competition benefits of the application.

3.11 The Commission notes that Qantas, at the Commission’s request, has addressed all the paragraph 5 criteria and the Commission will therefore assess its application against all the criteria.

4 Previous decisions by the IASC

4.1 On previous occasions when the Commission has considered applications for Qantas to code share on Air Niugini, it has had concerns about the impact of the code share on competition on the route. At the same time, the Commission has considered the implications for competition, and for Air Niugini, if the code share were not approved.

4.2 In its original decision in August 2002, the Commission commented that, at first glance, the code share would be of detriment to the public because it would mean a loss of Qantas’ services, and with no third country carriers on the route, Qantas and Air Niugini would be under little pressure to price aggressively. More importantly, however, the Commission considered that the code share should ensure the continuation of Air Niugini’s services, the loss of which would be likely to lead to a far greater loss of public benefit than under the code share arrangement.

4.3 In both the November 2007 and December 2009 decisions, the Commission commented that the code share favoured Qantas through its ability to match the supply of seats to daily demand variations, leaving Air Niugini to sell a higher number of seats on days of weak demand. This placed Air Niugini under more pressure to price competitively to sell its seats than Qantas. The decisions also criticised the soft block element of the arrangements that gave Qantas the option of buying or not buying extra seats, depending on whether the hard block was likely to be fully sold. The Commission considered that the ability to match supply to day to day demand enabled Qantas to generate strong returns without the need to discount significantly. The Commission said that the arrangements would be more competitive if the Qantas hard block seat numbers were larger and more uniform across flights, with smaller or no soft block components.

4.4 In its 2007 decision the Commission said that if the approval were not continued, Qantas would almost certainly re-enter the Sydney and Brisbane sectors. It concluded that, in the short term, there could be higher public benefits as Qantas re-entered the market in its own right, with air fares falling as carriers fought for market share. However, within a relatively short time, there would probably be a rationalisation of services, with small carriers exiting and Air Niugini reducing its frequencies, leading to higher fares. The Commission noted that the code share had played an important role in maintaining wide bodied B767 services on the route, with the capacity to move large freight items in containers and on pallets.

4.5 In its 2009 decision the Commission commented that the entry of Pacific Blue (Virgin Australia), in 2008, had provided an important competitive presence and that there was scope for it to establish itself more strongly in the market and to deliver a product that would better appeal to the key business market. The 2009 decision reiterated comments in the 2007 decision about the importance of maintaining B767 services for freight and the risks associated with Qantas re-entering the market in its own right if the code share were not approved. The Commission said that at the time of the next review it would expect to see a much better match between the volume of seat purchased by Qantas across the week and in both directions in order to improve the competitive situation. It said it would regard this as a significant factor in its decision making at the next review.

4.6 In its 2012 decision the Commission noted that the competitive environment had improved with first Airlines of PNG and later Pacific Blue (Virgin Australia) entering the route, as well as Air Niugini nearly doubling its capacity since 2002. While it found little evidence that this increased competition had put downward pressure on fares, the potential was there, in particular if Virgin Australia continued to expand and began to make inroads into the business market. In any event, the Commission considered that price was perhaps less important for most passengers on this route than on other routes which did not have the same levels of business traffic.

4.7 Above all the Commission was concerned that rejection of the code share could result in less competition. In the short-term, there could be higher public benefits if, as likely, Qantas re-entered the market in its own right, increasing choice of carrier and frequency on the route and lowering fares. However, the Commission considered that within a relatively short time there would probably be a rationalisation of operations, with some of Qantas' competitors, including Air Niugini, reducing services and possibly leaving the route.

5 Proposed changes to services and the code share arrangements

5.1 Despite the scenario outlined in paragraph 4.7, Qantas has decided to re-enter the Brisbane market in its own right. The proposed changes involve Qantas withdrawing its services and code sharing with Air Niugini on the Cairns sector, introducing services on the Brisbane sector, code sharing with Air Niugini on each other's flights on the Brisbane sector and moving to a free sale structure on all sectors. The Qantas schedule change has been announced prior to the application for free sale codeshare with Air Niugini.

Current services[4]

Cairns sector:
- Qantas 12 DHC-8 services per week.
- Air Niugini 11 F70/F100 services per week.
- No code sharing.

Brisbane sector:
- Air Niugini 8 B767 and 6 B737 services per week.
- Virgin Australia 6 B737 services per week.
- Qantas hard block code share on Air Niugini's services.

Sydney sector:
- Air Niugini 2 B737 services per week.
- Qantas hard block code share on Air Niugini's services.

Planned services after 30 October 2016 (by Qantas and Air Niugini)

Cairns sector:
- Air Niugini at least 14 F70/F100 services per week.
- Qantas free sale code share on those services.

Brisbane sector:
- Air Niugini 7 B767 services per week.
- Qantas 7 B737 services per week.
- Air Niugini and Qantas reciprocal free sale code on each other's services.
- (Virgin Australia 6 B737 services per week, assuming no change).

Sydney sector:
- Air Niugini 3 B737 services per week.
- Qantas free sale code share on Air Niugini's services.

Decision by the PNG Independent Consumer and Competition Commission (ICCC)

5.2 On 22 April 2016 the ICCC authorised Air Niugini and Qantas to code share on the Brisbane and Sydney sectors for three years under a "hard block" arrangement. On 19 August 2016 the ICCC varied that authorisation to allow Air Niugini and Qantas to code share, on a free sale basis, on each other's aircraft on the Brisbane sector and Qantas to code share on Air Niugini on the Sydney sector.

5.3 While the ICCC took the view that the free sale arrangement would produce a less competitive outcome than the hard block arrangement, it considered that Qantas' entry would have some balancing effect, especially on the Brisbane sector. It concluded that this would intensify competition and greatly benefit travellers as the three carriers competed to gain and retain customers.

5.4 The ICCC considered that a discontinuation of the code share would limit travellers' choice and time flexibility on both the Brisbane and Sydney sectors and create a monopoly on the Sydney sector. The ICCC also considered that the code share would

[4] Pacific Air Express has an allocation of 52.5 tonnes of freight capacity and currently operates 2 B737 freighter services per week, utilising 35 tonnes of capacity, between Brisbane and Port Moresby. Qantas holds an allocation of 17.5 tonnes of freight capacity which is not currently utilised.

enable the continuation of wide body freight services and, in turn, put competitive pressure on freight rates offered by dedicated freighters.

5.5 The ICCC also considered that Air Niugini's ability to code on Qantas' domestic services would benefit its customers by giving them greater choice and convenient connections across Qantas' broader network.

5.6 The ICCC noted from Air Niugini's confidential submission, that if approval was not granted, it would be detrimental to Air Niugini, to the competitive dynamics of the market and potentially to consumers. While the ICCC did not see the free sale arrangement as producing a strong competitive outcome, it concluded that it was equally important to ensure that Air Niugini was generating sufficient revenue to sustain its operations, which in turn gave choice to consumers and maintained some level of competition.

6 Traffic on the route

Characteristics of the route

6.1 PNG is Australia's 23rd largest international route. In the year ending June 2016 (2016) 281,861 origin/destination passengers (an average of 2,710 each way each week) travelled between the two countries.

6.2 After seven years of strong growth between 2006 and 2013, growth has slowed in recent years and traffic fell by 8.5% in 2016.

6.3 Brisbane, with 54.8%, and Cairns, with 33.7%, are by far the largest ports of clearance for origin/destination traffic, with 9% travelling to and from Sydney.

6.4 In 2016 Australian residents made up 57.8% of the two-way traffic. Most Australian residents visiting PNG did so for business (33%) and 32.8% gave employment as their reason for travel. As employment is linked to business activity, this means that business related travel accounted for some 66% of all travel undertaken by Australian residents. Holiday traffic accounted for 16.1% of Australians visiting PNG. 12.8% of PNG residents travelling to Australia did so for business, with 43.4% travelling for holiday and 21.1% to visit friends and relatives. Other reasons for travel included education and conventions.

6.5 In 2016 the airline share of Australia-PNG origin/destination traffic was Air Niugini 57.7% (which includes Qantas code share passengers), Qantas 16.5% and Virgin Australia 14.1%.

7 The Commission's assessment against the paragraph 5 criteria

Competition Benefits

7.1 In terms of competition benefits, paragraph 5 of the Minister's policy statement provides:

"In assessing the extent to which applications will contribute to the development of a competitive environment for the provision of international air services, the Commission should have regard to:

- the need for Australian carriers to be able to compete effectively with one another and the carriers of foreign countries;
- the number of carriers on a particular route and the existing distribution of capacity between Australian carriers;
- prospects for lower tariffs, increased choice and frequency of service and innovative product differentiation;
- the extent to which applicants are proposing to provide capacity on aircraft they will operate themselves;
- the provisions of any commercial agreements between an applicant and another carrier affecting services on the route but only to the extent of determining comparative benefits between competing applications;
- any determinations made by the Australian Competition and Consumer Commission or the Australian Competition Tribunal in relation to a carrier using Australian entitlements under a bilateral arrangement on all or part of the route; and
- any decisions or notifications made by the Australian Competition and Consumer Commission in relation to a carrier using Australian entitlements under a bilateral arrangement on all or part of the route."

7.2 In its 2012 Decision the Commission noted that since the code share was first approved in 2002 the competitive environment had improved. While initially four Qantas B767 Port Moresby-Brisbane-Sydney services were discontinued, since 2002 Air Niugini had introduced direct Port Moresby-Sydney services for the first time and nearly doubled the number of seats and frequencies it operated on the Sydney and Brisbane sectors. Airlines of PNG (now PNG Air) entered the route in 2005 and Qantas began services between Cairns and Port Moresby in 2010. In 2008 Pacific Blue (now Virgin Australia) began services on the Brisbane sector. Moreover, Virgin Australia had increased its B737-800 services from four to five per week. This, in the Commission's view at the time, suggested that the code share was not acting as an impediment to new entry or expansion.

7.3 Since 2012, on the Brisbane sector, Virgin Australia has increased its services to six per week and Air Niugini has added six B737 services per week, bringing its services to 14 per week. Air Niugini has replaced its wide body B767 aircraft with smaller B737 aircraft on its twice weekly Sydney services. In December 2013 PNG Air withdrew its twice weekly Dash 8 services on the Cairns sector. PNG Air had been code sharing on Virgin Australia's Brisbane services and ceased doing so in October 2013.

7.4 There have never been any third country carriers operating on the route, and given the close geographic proximity of the two countries, indirect (sixth freedom) services by third country airlines seem unlikely. The Commission is not aware of what, if any, fifth freedom rights third countries may have with PNG which would enable their airlines to fly direct services between Australia and PNG. The Commission understands that the only international airline other than PNG and Australian carriers that flies to Port Moresby is

Philippine Airlines. Overall, the Commission considers that prospects for third country airline entry, which would provide more competition on the route, are low.

7.5 In its submission Qantas claims that there is sufficient capacity for Australian or PNG airlines either to enter the market or expand existing services, a claim refuted by Virgin Australia which points out that there are only 400 seats per week available to Australian carriers. The Commission notes that when Qantas commences daily operations and ceases the hard block code share arrangements it will be using, according to the Commission's calculations, 1218 seats, leaving some 670 seats of its allocated capacity unused. The Commission would expect Qantas to return this unused capacity, which when added to the 400 seats already available, would amount to the equivalent of 6 B737-800 services per week.

7.6 Confidential data provided by Qantas in 2012 showed that it obtains high passenger revenue yields on the Brisbane and Sydney sectors of the PNG route. The Commission concluded that this likely reflected the unusually high proportion of business and employment related traffic on the route, upwards of 70% of all Australian origin traffic. This pattern has not changed significantly since 2012. In 2016 some 66% of Australian origin passengers travelled for business and employment reasons. While most of these passengers would not travel business class, given the time sensitive nature of their travel needs, and the fact that companies and not individuals are paying, it seems likely that fares paid for non-business class passengers would generally be at the higher end of the economy class range.

7.7 The Commission has undertaken a brief study of pricing from Australia to PNG. From fare information available on on-line web sites, it appears that on the Brisbane sector there are only small differences between the lowest economy fares offered by Qantas, Air Niugini and Virgin Australia. Qantas' and Virgin Australia's business class fares are almost identical, while Air Niugini's business class fares are some 15% lower than the other two airlines, even though it offers flat beds on the B767-300 aircraft.

7.8 Higher fares do not seem to have been an impediment to Qantas capturing a substantial portion of the business market, as evidenced by its high yields and its profits on the route. This could be due to several factors, including, under the current hard block arrangement, Qantas' ability to match supply to forecast demand, corporate travel contracts and connectivity to its large domestic and international networks, which underpin this result. Whatever the reason, while business passengers generally are not as price sensitive as leisure passengers and frequency and convenience of schedule are more important, they currently at least have the choice of somewhat cheaper fares on Air Niugini for what is effectively the same product.

7.9 With the predominance of business related traffic on the route, high fares do not appear to have been an impediment to growth – growth is very much linked to the strength of the PNG economy and lower fares are unlikely to generate more traffic. Having said that, high fares do add to business costs and it is in the interests of those Australian companies doing business in PNG that fares do not rise as a result of a lessening of competition on the route. The Commission notes that more convenient schedules that reduce time can also reduce business costs.

7.10 Historically, this has been a highly profitable route for Qantas and from confidential data provided by Qantas on this occasion this appears to continue to be the case. In its 2012 decision the Commission stated that were the code share application to be rejected, it had no reason to doubt that Qantas would re-enter the route, in direct competition with Air Niugini and Virgin Australia, a view shared at the time by Air Niugini. While in the short term this would be likely to result in lower fares as airlines competed for market share, the Commission considered that Qantas would be likely to emerge as the strongest competitor. It concluded that in such a situation Air Niugini would be forced to reduce services and possibly leave the route, resulting in a reduction in competition.

7.11 As Virgin Australia points out in its submission, it now seems that this counterfactual scenario is set to emerge, even with the code share, with Qantas announcing its return to the Brisbane sector.

7.12 Of itself, the Commission views the return of Qantas to the Brisbane sector as a positive development as it will mean that there are now three carriers operating on the sector and competing for traffic. In the Commission's view, Qantas is likely to be the strongest of the three carriers on the sector, with its extensive domestic and international network, the largest loyalty program of the three airlines and contracts with companies whose employees undertake large amounts of travel to PNG throughout the year.

7.13 In relation to the other two carriers on the Brisbane sector, the question for the Commission is whether code sharing on parallel services by Qantas and Air Niugini will swing the balance in favour of Air Niugini at the expense of Virgin Australia. Were Air Niugini to be forced to reduce its services (beyond what it is proposing in place of the services being introduced by Qantas) or to leave the sector, this would be a concern for the Commission because it would mean a substantial lessening of competition. From an industry perspective, however, the Commission's responsibility under the Act and the Minister's policy statement is towards Australian carriers and their ability to compete in international markets, and it is required to assess the impact of applications on the Australian aviation industry.

7.14 In this regard the Commission notes that, due to the absence of a provision for third country code sharing in the Australia-PNG air services arrangements, Virgin Australia does not have the same opportunities, in practical terms, for code sharing as Qantas and Air Niugini.

7.15 Qantas' decision to leave the Cairns sector, with or without code sharing on Air Niugini, will, in the Commission's view, result in a lessening of competition. The Commission shares Virgin Australia's doubts about a new entrant replacing Qantas on the sector, at least in the near term. With regard to the Sydney sector, Air Niugini has indicated its intention to introduce a third weekly service. The Commission sees this as a positive development and does not see the switch from a hard block to a free sale code share making a material difference, given the size of the sector compared to the other city pairs.

Other Benefits

7.16 In terms of tourism benefits, paragraph 5 of the Minister's policy statement provides:

> "In assessing the extent to which applications will promote tourism to and within Australia, the Commission should have regard to:
>
> - the level of promotion, market development and investment proposed by each of the applicants; and
> - route service possibilities to and from points beyond the Australian gateway(s) or beyond the foreign gateway(s)."

7.17 PNG's small population and low average incomes mean that PNG's potential as a tourism market for Australia is limited and is unlikely to grow significantly in the foreseeable future. However, to the extent that the code share keeps Air Niugini in the market and provides some price competition, it is likely to be a positive factor in the development of the small market that does exist. This benefit would be negated if as a result of the Qantas-Air Niugini partnership, Virgin Australia were to reduce its services or vacate the route. Overall, the Commission considers that in the case of PNG the tourism criterion is not a significant factor in assessing the application.

7.18 In terms of consumer benefits, paragraph 5 of the Minister's policy statement provides:

> "In assessing the extent to which the applications will maximise benefits to Australian consumers, the Commission should have regard to:
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> - the degree of choice (including, for example, choice of airport(s), seat availability, range of product);
> - efficiencies achieved as reflected in lower tariffs and improved standards of service;
> - the stimulation of innovation on the part of incumbent carriers; and
> - route service possibilities to and from points beyond the Australian gateway(s) or beyond the foreign gateway(s)."

7.19 The ACCC has suggested that the Commission investigate whether consumers are likely to benefit from lower fares or greater frequencies and choice of service as a result of the code share, adding that it will also be relevant to consider potential consumer benefits from better online connections for passengers travelling behind and beyond Brisbane and Port Moresby.

7.20 There is little evidence that consumers have benefited from lower fares as a result of the code share. Qantas' yields on both the Brisbane and Sydney sectors have been consistently high. On a route with such a high proportion of business related traffic, however, frequency and convenience of schedule are arguably more important for most passengers, and although high fares do add to the cost of doing business, better connectivity can reduce overall travel cost and travel time.

7.21 The Commission notes that Brisbane-Port Moresby flights are clustered into a narrow time band. The proposed code share, however, does extend the possibility of better connectivity, both to and from southern cities through Brisbane.

7.22 Travellers, and business travellers in particular, are likely to welcome the increased competition and choice of service that the return of Qantas to the Brisbane sector will bring. They will now have the choice of three differing on board products, and as price is less important on this sector than most, quality of service will be an important factor in determining which carriers are the most successful.

7.23 The consumer benefits on the Brisbane sector will be partially offset by Qantas' decision to withdraw from the Cairns sector.

7.24 In terms of trade benefits, the Minister's policy statement provides:

> "In assessing the extent to which applications will promote international trade, the Commission should have regard to the availability of frequent, low cost, reliable freight movement for Australian exporters and importers."

7.25 Qantas says that regular B767 services on the Brisbane sector are vital to the carriage of commercial volumes of palletised and containerised freight, not available on narrow body services, and that the frequency of Air Niugini's services are vital for the regular export of fresh produce, express products, pharmaceuticals, mining equipment and aviation parts and machinery from Australia.

7.26 Air Niugini says that as cargo is carried as supplementary revenue, passenger carriers can offer lower freight rates than dedicated freight providers. According to Air Niugini, wide body services will promote trade between Australia and PNG through increased availability of lower cost, high frequency and reliable freight movement for Australian exporters and importers. Air Niugini states that "...it would need to substantially withdraw these wide body services if the Proposed Code Sharing is not implemented," which would mean PNG losing a substantial proportion of freight services and higher prices for air freight. The Commission notes that the B767-300 aircraft has significantly higher block hour costs than the B737-800 used on the sector by Qantas and Virgin Australia. As configured by Air Niugini, this aircraft has a relatively low seat count, and requires a substantial freight load to meet the additional operating cost.

7.27 Virgin Australia questions the importance of wide bodied aircraft on the Brisbane sector, pointing out that there are other operators providing dedicated freighter capacity that could satisfy demand and suggesting that a substantial fall in freight volumes may indicate that a wide bodied capability is no longer required.

7.28 The Commission considers that the loss of the B767 aircraft as a result of the code share being rejected would be significant, both for Australian exporters and for trade between the two countries generally. While there is some dedicated freight capacity on the route, passenger carriers have the ability to offer freight services at a lower cost and at a higher frequency. Because of its ability to carry containerised and palletised cargo, the B767 is much more competitive with dedicated freight aircraft than the B737 and is therefore more likely to place downward pressure on freight rates, as well as provide substantial additional freight capacity. The Commission notes from BITRE data that Air Niugini carried some 3200 tonnes of freight in FY 2016, which equates to 61 tonnes per week, which is well beyond the small bulk loaded capability of daily narrow body weekly services.

7.29 The Commission agrees with Virgin Australia, that were the wide body services to cease other carriers might fill the void, but whether this would be with comparable aircraft capacity, frequency and price is unclear.

7.30 Overall, the Commission concludes that the continuation of wide body B767 services is important to maintaining frequent, low cost and substantial freight capacity between the two countries.

7.31 In terms of industry structure, the Minister's policy statement provides:

> "The Commission should assess the extent to which applications will impact positively on the Australian aviation industry."

7.32 Qantas has taken a commercial decision to withdraw from the Cairns sector, re-enter the Brisbane sector and enter into a free sale code share arrangement with Air Niugini across the whole PNG route. Presumably Qantas believes that these changes to its route structure and code share arrangements will increase the profitability of the route, and to the extent that they do this will have a positive impact on the Australian aviation industry. This benefit, however, needs to be weighed against the impact on Virgin Australia, of having to compete with a new airline coming onto the Brisbane sector in partnership with Air Niugini.

7.33 The Commission does not feel able to come to a conclusion on the likely net impact on Australian airline profitability in advance of the proposed new arrangements coming into effect, but notes the reduction of Air Niugini capacity on the Brisbane sector as Qantas mounts services.

8 Conclusion

8.1 In all previous decisions the Commission has approved the code share on the basis that it was a block space arrangement and thereby placed some pressure on the marketing carrier to sell seats for which it had already paid. Also, in previous cases the two carriers were not operating parallel services on the same sector.

8.2 Generally, the Commission has taken the view that block space as opposed to free sale arrangements provide a greater incentive for the marketing carrier to compete on price. In the case of PNG, however, the Commission has long had concerns that the block space arrangement was weighted in Qantas' favour, involving a relatively small number of seats overall and designed to enable it to match the supply to daily demand variations, leaving Air Niugini with a high number of seats to sell on days of weak demand. This effectively meant that Qantas could charge higher prices for the same product and achieve a better seat factor than Air Niugini at times of peak demand.

8.3 While the Commission does not consider that a free sale arrangement will put significant pressure on the airlines to sell more seats, the decision by Qantas to return to the Brisbane sector will increase competition as there will now be a three carriers operating in their own right and competing for passengers on the sector. The question is, however, whether there is sufficient traffic to sustain three operating carriers over the longer term. In its 2012 decision the Commission expressed concern that if the code share were not approved Qantas would re-enter the sector and that this would compel Air Niugini to reduce its services, and over the longer term, possibly withdraw altogether. Air

Niugini has stated that it will reduce its services as a result of Qantas re-entering the sector, but this adjustment simply reflects the increase in capacity on the sector as a result of the introduction of daily services by Qantas. There will be little change in the total amount of capacity operated.

8.4 In 2007 and 2009 the code share arrangements were approved for shorter periods than those requested by Qantas. In 2012, with the code share having been in place for ten years with no apparent lessening of competition and the removal of the soft block component, the Commission approved the variation for the full period requested by Qantas.

8.5 The Commission would normally consider the counterfactual: that is comparing the likely future with and without the code share. In this instance, however, the new arrangements represent a significant departure from those currently in place, with Qantas returning to the Brisbane sector, abandoning the hard block code share and proposing to enter into a reciprocal free sale code share with Air Niugini on parallel operated services. It is unclear how much revenue will flow to Air Niugini from a free sale code share, as opposed to the hard block, and what impact this may have on the competitive dynamics of the route.

8.6 Another concern the Commission has is that currently the code share is only marketed on the Port Moresby-Sydney and Port Moresby-Brisbane sectors. The Commission is now being asked to expand the approval to include services between Port Moresby and Cairns, in the process of the airlines shifting from a block space to a free sale arrangement.

8.7 Against the background of this uncertainty, the Commission has found it difficult to come to conclusions about likely outcomes with and without the code share. The Commission, therefore, would like to have the opportunity to see how the new arrangements work in practice on those city pairs on which the airlines are currently code sharing. In particular, the Commission is concerned that Virgin Australia, without the ability for its alliance partners to code share on its Brisbane services, will be competing with the combined marketing power of Qantas and Air Niugini code sharing on each other's flights.

8.8 Accordingly, the Commission proposes to approve the free sale code share arrangement for a trial period on the Brisbane and Sydney sectors. This will allow the Commission to thoroughly assess the competitive impact of the code share on the city pair sectors that are of most concern to Virgin Australia, before deciding whether to approve the code share for a longer period and to broaden the approval to include the Port Moresby-Cairns sector.

8.9 The Commission proposes to approve the Qantas application for a variation to its Determinations until 30 June 2018. Prior to that, when 12 months of traffic and financial data up to 31 December 2017 is available, the Commission proposes to conduct a review to assess the impact of the code share arrangements on Virgin Australia's Brisbane services and on competition on the route in general. The outcome of the review will determine whether the approval is extended beyond 30 June 2018. As part of this trial process the Commission proposes to limit the code share authorisation to the Brisbane and Sydney sectors.

8.10 If prior to 30 June 2018, a provision is included in the air services arrangements between Australia and PNG which allows third country code sharing, this would be viewed by the Commission as a positive development and would be taken into account in deciding whether to extend the duration and scope of the approvals.

8.11 Finally, as noted in paragraph 7.5, Qantas will have unused capacity when the hard block code share arrangements cease and it commences services on the Brisbane sector on 30 October 2016. The Commission would ask that Qantas return its unused capacity by 30 November 2016.

9 Role of the ACCC

9.1 The Commission invited and received a submission from the ACCC and its submission was fully considered in the Commission's deliberations.

9.2 The Minister's Policy Statement and its associated Explanatory Memorandum make it clear that the ACCC retains primary responsibility for competition policy matters. Nothing in the Commission's decisions should be taken as indicating either approval or disapproval by the ACCC. The Commission's decisions are made without prejudicing, in any way, possible future consideration of code share operations by the ACCC.

10 Draft Decisions ([2016] IASC 220d, [2016] IASC 221d and [2016] IASC 222d)

10.1 In accordance with section 24(1) of the Act, the Commission proposes to vary Determinations [2011] IASC 132, [2014] IASC 105 and [2016] IASC 110 by adding the following conditions:

- the capacity may be used by Qantas to provide services jointly with Air Niugini, between Port Moresby and Brisbane and between Port Moresby and Sydney, until 30 June 2018 in accordance with:
  - the code share agreement dated 30 August 2002, as amended;
  - or any subsequent code share agreement between Qantas and Air Niugini for operations on the Australia – PNG route with the prior approval of the Commission;
- under any code share agreement with Air Niugini:
  - Qantas must price and sell its services on the sector independently of Air Niugini; and
  - Qantas must not share or pool revenues on the sector with Air Niugini; and
- nothing in this decision exempts Qantas from complying with the Australian Consumer Law. The airlines are required to take all reasonable steps to

ensure that passengers are informed, at the time of booking, of the carrier actually operating the flight.

Dated: 20 October 2016

IAN DOUGLAS
Chairperson

JOHN KING
Commissioner

Attachment A

Summary of the application

Qantas has made the following claims in support of its application in its public submission on 14 September 2016:

- The code share has delivered increased competition, efficiencies and lower operating costs, which have meant a wider range of services and choice for consumers than each carrier operating alone.

- Following Qantas' independent decision to operate a daily Brisbane service from 30 October 2016, in lieu of Cairns' services, the two airlines have changed the structure of the code share to a more sustainable model.

- The PNG market has historically accommodated 3-4 carriers operating under code share arrangements, including between Virgin Australia and Airlines PNG.

- The daily Brisbane services and withdrawal from the Cairns sector will result in Qantas operating 37% more capacity in the PNG market. The code share will maintain a Qantas presence on Cairns and offer additional options and fares.

- Air Niugini is to increase its Sydney services to 3 B737's per week, operate daily B767 services on the Brisbane sector and operate at least 2 daily F70/F100 services on the Cairns sector. Air Niugini proposes to code share on Qantas' Brisbane services.

- The two airlines independently price and sell with separate yield management systems, creating a genuinely competitive dynamic. Under the free sale code share the marketing carrier has an incentive to price competitively with the operating carrier and vice versa.

- The presence of other competitors, coupled with the potential for new entry, continues to act as a real competitive constraint. Cairns could become more attractive with the withdrawal of Qantas.

- Air Niugini says that absent the contributions to operating costs earned from Qantas as a marketing carrier it would have to review its Cairns services, potentially withdraw from Sydney and reduce its Brisbane services, including risking its wide body operations which provide critical freight capability.

- Absent the code share, Air Niugini will be the only selling carrier on the Sydney and Cairns sectors, without the competitive tension of the code share.

- Under the code share, Air Niugini will code share on Qantas domestic services, which will provide it with more “destination Australia” options.

- Code sharing arrangements have supported the on-going viability of Air Niugini and as such are of vital importance to the PNG economy.

- The efficiencies of combined passenger/cargo services are evidenced through more competitive cargo rates and regular frequency than dedicated cargo providers.

- Regular B767 services are vital to the carriage of commercial volumes of palletised and containerised freight, not available on narrow body services. Frequency of services are vital for the regular export of fresh produce, express products, pharmaceuticals, mining equipment and aviation parts and machinery.

- Absent the code share, Air Niugini has said that in the medium to long term it would be forced to substantially withdraw from wide body operations.

- The proposed code share will benefit the Australian aviation industry through increased competition, efficiencies and lower operating costs.

- Qantas is only in a position to code share with Air Niugini on a free sale basis and the current code share arrangements will not apply from 30 October 2016.

Attachment B

Summary of submissions

Mr Murphy of Morely, Western Australia (6 September 2016)

- As a frequent traveller between Australia and PNG, Mr Murphy submits that this application should be approved.
- On the Cairns sector, the proposed cessation of Qantas' services will mean that Air Niugini is the only airline offering services on this route.
- The proposed code share is desirable for this sector as it will result in a choice of either Air Niugini or Qantas ticketing and provide some incentive for price competitiveness.

Air Niugini (8 September 2016) non-confidential version

- With the proposed code sharing:
    - Cairns – following Qantas' withdrawal, Air Niugini intends to increase F70/F100 flights from 11 to at least 14 per week.
    - Sydney – Air Niugini will increase B737 services from 2 to 3 per week.
    - Brisbane – with Qantas introducing daily flights, it will not be sustainable for Air Niugini to maintain 13 services per week. It will continue wide body services because Qantas' support (by selling seats through its extensive customer network and base) is critical to Air Niugini achieving sufficient loads for viable wide body operations.
- Without the proposed code sharing:
    - Cairns - Air Niugini would initially seek to operate 15 services per week and there will only be one marketing carrier. It would, however, need to review these services in the absence of contributions to operating costs from Qantas as marketing carrier.
    - Sydney - the immediate impact would be the loss of Qantas as a competing marketing carrier, leaving Air Niugini as the only operating and marketing carrier. There is a risk that, without the contribution of revenue from Qantas seat sales, Air Niugini will withdraw as there is insufficient demand for an independent operation.
    - Brisbane – with Qantas' daily services it will not be sustainable to maintain its 13 services per week. In the medium to long term Air Niugini would likely be forced to substantially withdraw from wide body operations. Also, there will be a loss of customer choice and competition as the two carriers will not be able to offer seats on each other.
- With the code share, there will be more carriers offering seats: one operating and two marketing carriers on Cairns, three operating and marketing carriers on Brisbane and one operating and two marketing carriers on Sydney.
- The code share will generate fare competition between Air Niugini and Qantas on all three sectors, which will likely result in greater customer choice and lower fares.
- Each carrier will continue to price independently, operate its own independent yield management systems and sell through its own sales networks.

- Separate operations on Brisbane means Air Niugini and Qantas will have a strong incentive to compete vigorously to sell seats. Free sale will enable the operating carrier to more efficiently manage capacity, and allow the respective marketing carrier uncapped access to the full inventory. Both airlines will continue to be competitively constrained by strong competition from Virgin.
- The code share will enable Air Niugini to operate more efficiently on all sectors as it will allow it to achieve higher load factors as seats can be sold through Qantas' wider network and marketing channels.
- Being able to code share on Qantas' domestic services will enable Air Niugini to market a range of Australian destinations beyond Brisbane and Sydney.
- The code share will enable Air Niugini to continue to operate wide body services which can carry significant volumes of containerised and palletised freight, whereas narrow body aircraft can only carry a small volume of loose freight.
- As cargo is carried as supplementary revenue, passenger carriers can offer lower freight rates than dedicated freight providers. Accordingly, wide body services will promote trade through lower cost, high frequency and reliable freight movement for Australian exporters and importers. Air Niugini would substantially withdraw wide body services if the code share were not implemented, which would mean a substantially fewer freight services and significantly higher prices for air freight.

Virgin Australia (30 September 2016) non-confidential version

- Qantas' applications have the potential to significantly erode competition on the route, to the detriment of the travelling public and the export sector.
- Passenger numbers on the PNG route have fallen in recent years and aggregate load factors have also weakened.
- In 2016 (FY) Qantas and Air Niugini carried more than 80% of passengers on the route, with the remainder carried by Virgin Australia.
- The route continues to be dominated by business travellers with the result that price discounting has limited effect in generating bookings.
- Such routes are generally characterised by strong reliance by airlines on committed revenue earned under contracts with companies. Airline loyalty program affiliation is also a key factor in competing for business travel.
- Air Niugini's subtraction of Qantas' code share seats from its use of PNG capacity entitlements has removed the incentive for PNG to negotiate more capacity.
- Virgin Australia wants a third country code share provision in the arrangements so its alliance partners can code share on its Brisbane services.
- In its 2012 decision the Commission's overriding concern was that rejection would result in Qantas re-introducing Brisbane services and competitors reducing services and possibly withdrawing.
- It would seem this counterfactual scenario is set to emerge, even with the code share, with Qantas re-entering Brisbane sector and Air Niugini reducing services.
- Previously, Qantas has emphasised the hard block incentives to compete strongly with Air Niugini.
- Virgin Australia disputes the route is historically challenging. The IASC has noted that Qantas has achieved high yields, suggesting the route has performed strongly for Qantas.
- Qantas says it can only code share on a free sale basis, but has not explained why.

- The code share arrangements are the single most significant characteristic of the route, representing a material influence on its competitiveness. They also represent a substantial barrier to entry as they consolidate and entrench the combined market power of the strongest carriers. The dominance of the partnership creates a significant deterrent for any competitor to enter or expand on the route.
- Such a powerful presence limits Virgin's ability to compete effectively, and increased cooperation would represent an even greater threat.
- The absence of attractive routes via third countries, particularly for business travellers, means the potential for third country carriers to provide competitive constraint is extremely limited.
- Qantas assertion that under the free sale code share the two carriers are incentivised to price competitively is not substantiated and contradicts Qantas' previous assertions regarding price competition driven by a hard block arrangement.
- The scope for code share arrangements to lead to lower tariffs and increased choice depends on the combined market power of the code sharing airlines.
- Expected recovery of the PNG economy could increase the scope of the code share partners to take advantage of limited competition.
- Brisbane:
    - Virgin's services would not necessarily reduce the combined presence of Qantas and Air Niugini under parallel code share, given they will collectively provide more than 80% of seat capacity.
    - As a market dominated by business traffic, the loyalty element of the code share is likely to restrict Virgin's ability to attract more passengers, given the size of the Qantas Frequent Flyer program relative to Virgin's'
    - Qantas and Air Niugini will be able to offer double dailies, compared with 6 services per week by Virgin. This could be expected to erode the commercial performance and threaten the viability of Virgin's flights.
    - Virgin's withdrawal would leave the two airlines free of any competitive constraint. Fares would likely rise and service options be reduced.
    - Virgin Australia refutes Air Niugini's assertion that free sale would enable it to continue wide bodied services. Under free sale Qantas can sell as few seats on Air Niugini as it wants, in contrast to the hard block which ensures Air Niugini receives guaranteed revenue from Qantas, regardless of the number of seats it sells.
    - As third country code sharing is not allowed, Virgin's partners cannot offer code share services on Virgin Australia flights to support their sustainability.
    - The Commission has previously expressed concerns about code sharing in markets dominated by two carriers and has never allowed such carriers to code share on routes they operate in parallel (except as part of integrated alliances granted ACCC authorisation).
- Cairns:
    - It would be difficult for a new entrant, given the prospect of competing with Air Niugini and Qantas in combination. The challenge would be even greater if the arrangements include frequent flyer cooperation, particularly on a route dominated by business traffic.
    - Even without code share arrangements in effect, PNG Air could not compete and exited the route.

    - Under a free sale code share, Air Niugini cannot expect a guaranteed revenue stream from Qantas, so it is highly unlikely that the sustainability of its services would depend on seats sold by Qantas.
    - Any decision by Air Niugini to increase services is more likely the result of Qantas withdrawing than made possible only through the code share.
- Sydney:
    - If the code share is approved, it will be even more difficult than under the current arrangements for another airline to mount a competitive and sustainable operation on the Sydney sector.
    - Termination of the code share could facilitate competition and greater benefits would be delivered through the entry of a new operator compared with code sharing, as recognised in para 3.3 of the Policy Statement.
    - Air Niugini's assertion that without revenue from Qantas seat sales there is a risk it will withdraw is overstated as there would be no guarantee of particular levels of revenue under fee sale arrangements. It is reasonable to expect that one or more other operators would introduce services if Air Niugini withdrew.
- The absence of the proposed code share would reduce the combined market power of Qantas and Air Niugini, creating conditions to support services by new entrants or potential expansion by Virgin.
- The business community has expressed concern about Qantas' withdrawal from the Cairns sector.
- In 2015 Air Niugini presented a $A8m dividend to the PNG Government and the Board Chairman indicated that restructuring measures had helped ensure that the airline remained financially sound.
- Given this, suggestions that the code share is necessary to ensure the ongoing viability of the airline are tenuous.
- Were Air Niugini to withdraw wide bodied aircraft from the Brisbane sector, others would look to satisfy unmet demand.
- Also, freight volumes have fallen by 30% between FY13 and FY16, which may indicate that a wide bodied capability is no longer required.
- Subsidising the continued operation of an aircraft that may be too large for the route cannot be justification for permitting Qantas and Air Niugini to code share on each other, to the detriment of Virgin Australia and the travelling public.
- Furthermore, in contrast to the current hard block, Air Niugini will not receive a guaranteed revenue stream from Qantas to support its wide bodied operations.
- Virgin Australia does not agree that there is sufficient available capacity for a new entrant. 400 seats per week would only support a twice weekly B737-800, which is unlikely to be competitive against the frequencies offered by Qantas, Air Niugini and Virgin; nor is it adequate to allow for expansion.
- Virgin Australia expects it to be extremely challenging against the own aircraft operations of both Qantas and Air Niugini on the Brisbane sector, even absent the code share.
- Allowing the two airlines to increase their market power through expanded code sharing will make it very difficult for Virgin Australia to win, or even retain, corporate business, which is critical on this route. Such an impact could be expected to threaten the viability of Virgin's continued operations.
- Qantas fails to recognise that previous approvals were entirely dependent on the existence of the hard block, as forcefully argued in its own previous submissions.

- The code share arrangements, current and proposed, are the single most significant barrier to entry on the PNG route. They are restricting competition, which is negative for consumers and businesses, as well as tourism and trade.
- Approval of the code share would directly and detrimentally impact Virgin's presence on the route, which has provided much needed competition.
- Based on the above, and consistent with the object of the Act, the Commission should reject Qantas' application.

<u>The Australian Competition and Consumer Commission</u> (6 October 2016)

- The ACCC has publicly stated that from a competition perspective, a hard block code share is preferable to free sale since each carrier has an incentive to market their allocated seats independently. Under free sale there is little incentive to compete on price because the marketing carrier only pays for the seats it sells.
- Since 2012 Airlines PNG has exited the route and passenger traffic has remained relatively stable between 2011 and June 2016, in contrast to strong growth during the five years preceding the 2012 Decision.
- <u>Without the code share</u>, it seems likely that Brisbane services would be independently operated and marketed by Qantas, Air Niugini and Virgin.
- If Air Niugini, as the sole carrier on the Cairns and Sydney sectors, were to raise prices or reduce services significantly, there would be a real chance that either Virgin Australia or Qantas would enter and contest services on these sectors.
- <u>With the code share</u>, on the Brisbane sector Qantas and Air Niugini would be able to market each other's services, meaning less competition.
- On the Cairns and Sydney sectors, Qantas would be able to market Air Niugini capacity, which makes it less likely that Qantas would commence services should Air Niugini significantly raise price or reduce service.
- In the absence load factor and profitability data, it is difficult for the ACCC to form a clear view of the likely effect of the variation on competition. It will be important for the IASC to have regard to this information in reaching its decision.
- The proposed free sale arrangement has the potential to lessen competition between Qantas and Air Niugini.
- The ACCC anticipates that the IASC will examine Air Niugini's load factors and profitability to verify Air Niugini's claims about the impact on the sustainability of its services without the revenue earned from Qantas as marketing carrier.
- There are no regulatory barriers to Air Niugini pursuing an alternative code share arrangement with Virgin Australia which also has a domestic and international network and has previously had code share arrangements with Airlines PNG.
- Given the high degree of complementarity between the Qantas and Air Niugini networks, potential consumer benefits associated with better online connections for travelling behind and beyond Brisbane and Port Moresby should be considered.
- The ACCC encourages the IASC to re-examine the extent to which the code share underpins Air Niugini's wide body services.
- The IASC should consider the likely impact of the code share on the number and sustainability of operating carries serving the PNG route.

- Given the significant number of changes occurring in conjunction with the application – operational changes by Qantas, change from hard block to free sale and uncertainty about the likely effect on competition - it is open to the IASC to grant any approval for a shorter duration than requested.
- If the IASC is minded to authorise the code share, it may wish to consider whether conditions are appropriate to address any concerns about the free sale arrangement diluting the competitive dynamic between code share partners.
- The code share has the potential to lessen competition, but without the opportunity to examine load factors and profitability on the route or consider the extent of the competitive constraint that Virgin Australia is likely to provide, the ACCC is not in a position to form a clear view on the likely effect on competition.

Qantas – response to Virgin Australia's submission (14 October 2016)

- The Commission has continuously approved the code share with Air Niugini, as it did with Pacific Blue Australia's code share with Airlines of PNG in 2008.
- Determinations by the Commission over 14 years have been made under the overarching mandate in the Australia-PNG Air Services Agreement, reflecting the intention of both governments that code share services be permitted.
- At no time has the Commission dealt with an application by ignoring the intent of the Air Services Treaty or Arrangement.
- Ignoring the desire of both Governments by denying the code share would contradict previous Determinations and the principle applied by the Commission of accommodating both the intent of the treaties and of the policy statement.
- Virgin Australia's references to decisions on South Africa and Japan should not form a precedent and or be part of the Commission's consideration, because the circumstances are sufficiently remote from those in the PNG market.
- Qantas' decision to enter the Brisbane sector is not dependent on the code share and the code share simply allows the capacity to be used more efficiently.
- The entry of Qantas and the consumer benefits derived from the code share outweigh concerns Virgin Australia may have about facing new competition.
- The hard block has led to market distortions as services on the route do not attract an even distribution of demand across the week and lack depth (tourism, VFR, leisure), meaning the hard block requires the purchase of capacity the code share partner cannot use.
- The Commission has previously accepted Air Niugini's potential vulnerability absent a code share with an Australian partner airline.
- There is little or no comparison between the structural challenges faced by Air Niugini and those faced by Virgin Australia in a more competitive market.
- The Commission may want to consult more broadly on this matter, including with Air Niugini.
- The absence of regulatory approval for code sharing when Qantas and Air Niugini operated on the Cairns sector contributed to Qantas' withdrawal from that sector.
- Virgin Australia has included a Confidential Attachment purporting to reflect views of members of the business community. It should be made available to Qantas, or be withdrawn and not form any part of the Commission's deliberations.

- The imposition of commercially restrictive and administratively burdensome conditions are not appropriate and have contributed to the market distortions on the route.