

4 November 2016

Ms Marlene Tucker  
Executive Director  
International Air Services Commission  
GPO Box 630  
Canberra ACT 2601

Via email: [Marlene.Tucker@infrastructure.gov.au](mailto:Marlene.Tucker@infrastructure.gov.au)

Dear Ms ~~Tucker~~, *Marlene*

**Draft Decisions regarding Qantas and Air Niugini Code Share – Papua New Guinea**

I refer to Draft Decisions [2016] IASC 220d, [2016] IASC 221d and [2016] IASC 222d issued on 20 October 2016 (the Draft Decisions), which propose to permit Qantas to provide services jointly with Air Niugini, between Port Moresby and Brisbane (Brisbane sector) and between Port Moresby and Sydney (Sydney sector) until 30 June 2018.

The Qantas and Air Niugini proposal is predicated on a whole of market, package proposition which reflects the circumstances and reality of this market and is premised on the proposal being approved in its entirety. It is not practicable to segment the market in the manner proposed in the Draft Decisions.

Code share is a universally accepted form of international transportation, operating in hundreds of markets across the globe, allowing carriers to broaden their networks beyond what is both practically and commercially feasible on their own-metal operations.

While Qantas welcomes the proposal to approve the Brisbane and Sydney sectors, there are a number of aspects of the Draft Decisions which are concerning and we request the Commission review the Draft Decisions and authorise the code share in its entirety, including Cairns-Port Moresby (Cairns sector) for the duration of the relevant Determinations for the reasons set out in the Attachment to this letter.

Yours sincerely,



**Tony Wheelens**  
Executive Manager, Industry and International Affairs



The approval of the Brisbane and Sydney sectors for a "trial" period

The Commission's proposal to approve the Brisbane and Sydney sectors must emanate from a finding that Qantas has met the Paragraph 5 criteria and the use of the capacity to provide services jointly with Air Niugini would be of benefit to the public. Otherwise, the Commission would not have a foundation on which to consider approving the proposed code share on these sectors.

In these circumstances, Qantas disagrees with the Commission's Draft Decisions proposing to approve the code share on the Brisbane and Sydney sectors for a "trial" period. Where Qantas has met the paragraph 5 criteria and the use of the capacity in question is deemed to be of benefit to the public, the approval should not be for a "trial period".

We are also extremely disappointed the Commission's Draft Determinations disclose commercially sensitive material provided by Qantas (7.10) while affording appropriate confidentiality to information we understand has also been provided by our competitors.

The basis for denying authorisation of the Cairns sector

The Minister's Policy Statement expects authorisation of code share proposals consistent with the provisions of air services arrangements, unless there are "serious concerns". Further, subsection 25(2) of the *International Air Services Commission Act 1992* requires the Commission to satisfy itself that a requested variation to an allocation of capacity "would not be of benefit to the public" before making a decision denying the variation.

The Commission's Draft Decisions do not, in our view, establish a case for "serious concerns" as described by the Policy Statement. Importantly, the Commission has not demonstrated that it has satisfied itself that the requested variation would not be of benefit to the public. Instead it proposes to deny the implementation of code sharing on the Cairns sector due to "uncertainty" and difficulty "to come to conclusions about likely outcomes with and without the code share" (8.7). Such a scenario is hardly unusual for new code share propositions and is not sufficient or available grounds under the IASC framework for denying the code share proposal.

We note that the Independent Consumer and Competition Commission (ICCC) of Papua New Guinea issued a Draft Determination on 30 September 2016 proposing to approve the Qantas code share on the Cairns sector for a period of five years from the date of release of the Final Determination.

The IASC Draft Decisions support a puzzling proposition whereby a monopoly provider on the Cairns sector presents a better public benefit outcome than the addition of Qantas' presence as a fully independent code share partner. The Commission then proposes to base a future assessment of whether to approve code sharing on the Cairns sector on the performance of two different routes (the Sydney and Brisbane sectors) which have their own specific dynamics, route economics, operators and competitors. This approach is illogical and inconsistent with the IASC framework which provides for criteria for the Commission to make a decision.

Virgin Australia's objections to Qantas' proposal do not establish a case for "serious concern" nor denial of public benefit on the part of the Commission and should be dismissed. The Virgin Australia submission is speculative, with unsupported statements throughout, on matters where it has little or no standing, knowledge, or expertise.

We would like to highlight that the Commission also has not addressed our concern about the confidential Attachment provided by Virgin Australia which purported to reflect views of certain members of the business community. In the interest of a transparent process, we again request access to this Attachment, and if that is not possible, seek confirmation that the Attachment has been withdrawn and will not form part of the Commission's deliberations.

## Australia – Papua New Guinea Air services arrangements

The Australia-Papua New Guinea air services arrangements provide for bilateral code sharing whereby capacity for such arrangements is counted against the marketing carrier. It is only because capacity is counted against the marketing carrier that conditions permitting the code share are required to be approved by the Commission with regards to Qantas code share on Air Niugini's services. Were the arrangements to be updated and capacity was not counted against the marketing carrier, the Commission would not have jurisdiction over this component of the commercial arrangements therefore removing the need for authorisation on the Brisbane, Sydney and Cairns sectors. It would only be Air Niugini code share on Qantas' own operated services on the Brisbane sector which would require approval.

Following from the above, in relation to capacity being counted against the marketing carrier, Qantas requires an allocation of capacity to support freesale code sharing with Air Niugini on the Papua New Guinea route as has been required for previous block code sharing. Qantas is therefore confused by the Commission's expectation of Qantas in 7.5 and 8.11 of the Draft Decisions to hand back 670 seats of unused capacity when the hard block arrangements cease. In the event that free sale code sharing arrangements are implemented, Qantas would monitor its usage of seats, factoring in any deficit created by Air Niugini's sale of code share seats on Qantas' services, as has been the practice of the Department of Infrastructure and Regional Development to date in counting seats on the route. Should any adjustment in capacity be required, Qantas would address this after experience of the code share in the market.

The Virgin Australia submission makes clear it is seeking to leverage the re-entry of Qantas to promote the interests of itself and a partner airline in securing third country code share access to the Australia – Papua New Guinea market. It is totally inappropriate for the Commission to be drawn into outstanding issues between the Governments of Australian and Papua New Guinea and their third country bilateral partners.

Qantas supports the addition of third country code share to the air services arrangements and the removal of capacity restrictions for marketing carriers. However, there is no substance to any suggestion that bilateral code share available to Qantas with its partner Air Niugini must be off-set by third country code share for Virgin Australia. Qantas is also denied the benefit of third country code sharing and bilateral code sharing is available to Virgin Australia. The absence of third country code sharing under the arrangements does not deny public benefit in relation to Qantas' application, nor does it create the serious circumstances required by the Policy Statement to reject or condition Qantas' application.

## The Australia-Papua New Guinea market

Qantas recommenced own aircraft operations on the Brisbane sector on 30 October 2016. Despite commentary in the draft and in various submissions, there have been three competitors on this route since Pacific Blue's entry in 2008 – Air Niugini, Qantas as its code share partner and Pacific Blue (now Virgin Australia). There has never been a suggestion that Qantas in its code share arrangements with Air Niugini has been anything other than an independent and genuine price competitor.

At the time of Pacific Blue's entry, Determinations of the Commission and the ICCC speculated about the benefits of a new entrant. Few materialised and the Virgin Group has grown from only four frequencies to six over an eight year period, leaving 400 seats on the shelf for possible expansion. Virgin Australia's pricing has broadly mirrored that of Qantas and Air Niugini and it has not developed under-performing sectors of the market.

The Commission's Decision needs to recognise that this market has few of the characteristics of traditional markets. It has a heavy emphasis on business traffic, very low levels of tourism, backpacker, VFR and leisure traffic, volatile freight demand, and little or no high volume mid-week traffic, with no immediate prospect of change to these circumstances – all of which frame the market

and determine competitive responses. The issues affecting the market have nothing to do with code share. Far more relevant are the externalities of global markets impacting Papua New Guinea commodities and consequently the demand for air services. No secret is made by Virgin Australia that its principal concern is its vulnerability to competition on the main Brisbane sector. Even absent the code share, Virgin Australia states it will be operating in an extremely challenging environment, against the own-operated services of both Qantas and Air Niugini on the Brisbane sector.

Virgin Australia in its submission, speculates about the effect of its exit from the market. The Commission cannot predetermine if this is a reality or not and cannot pre-condition the market against the possibility the market would not work rationally. It is not for the Commission to impose conditions to ensure weak players stay in the market. In the event that players ultimately leave the market, it would be entirely appropriate for the Commission to examine the circumstance and impose conditions if necessary, but not beforehand.

Virgin Australia claims Qantas' significant investment in our loyalty program and our international and domestic networks disadvantages it in the Papua New Guinea market. That investment goes to the heart of public benefits for consumers and must be considered by the Commission. Certainty in the decisions of the Commission is essential to our fleet and broader investment strategy. This is not assisted by the apparent desire of the Commission to move away from its guidelines and conduct an experimental workshop which contradicts the intent in the Minister's Policy Statement. It would be counterintuitive for the Commission to disadvantage Qantas on the basis of its investments which deliver strong and enduring public benefit.

The absence of code sharing forced Qantas' exit from the Cairns sector because the efficiencies which flow from such arrangements could not be accessed, much like the experience of Airlines PNG (now PNG Air). Virgin Australia does not operate on the Cairns sector so cannot speak from its own experience, nor does it have first-hand knowledge of the operation of block space on the Brisbane or Sydney sectors and it misleads in its description of the circumstances of the market.