

Competition law is a regulatory risk which airlines operating in Australia need to manage. The legal changes identified below present both opportunities and risks. DLA Piper has significant experience in the aviation industry and can assist in any area of competition law, from reviewing agency agreements and advertisements to advising on online booking systems and dealings with competitors. The below table summaries key competition cases and legislative change in the aviation industry, to see further details, please click 'Read more'.



High Court hearing set down for appeal of Flight Centre case

The High Court appeal of the Flight Centre case has been set down for hearing on 27 July 2016. This case could provide welcome clarity around the application of the competition provisions in the context of agency. IATA has sought leave to appear as *amicus curiae* impartial adviser to the court.

The appeal arises from the Full Federal Court's decision in July 2015 that Flight Centre had not engaged in attempted price fixing. The Full Court found that Flight Centre was not in competition with SQ but was distributing tickets as agent for SQ. [Read more](#)



Singapore Airlines Limited and Deutsche Lufthansa AG seek authorisation

On 20 June 2016, Singapore Airlines Limited (SQ) and Deutsche Lufthansa AG (LH) lodged an application for ACCC authorisation to coordinate operations on routes between LH's 'home markets' (Germany, Austria, Belgium and Switzerland) and SQ's 'home markets' (Singapore, Australia, Indonesia and Malaysia). [Read more](#)



Singapore Airlines Limited and Virgin Australia seek re-authorisation for a further 10 year period

On 19 May 2016, SQ and Virgin Australia lodged an application to the ACCC for substitution of their existing authorisation, due to expire on 23 December this year, for a proposed new alliance set for a further 10 year period. [Read more](#)



Australian Competition and Consumer Commission (ACCC) re-authorises Qantas and American Airlines alliance

On 25 February 2016, the ACCC re-authorised an existing international alliance between Qantas and American Airlines on trans-Pacific routes. The authorisation was only granted for five years and is thus valid until 18 March 2021. [Read more](#)



ACCC report finds that lack of competitive pressure facilitates high profit margins at some Australian airports

On 23 March 2016, the ACCC published the results of its price, financial reporting and service quality review of aeronautical services and car parking at key Australian airports. The ACCC report concluded that a lack of competitive pressure facilitates high profit margins. [Read more](#)



2016 Budget provides for planning and preparation work on Sydney's second international airport

The Australian Government has committed AUD\$115 million to fund planning and preparation work on Sydney's second international airport. [Read more](#)



High Court hearing set down for appeal of Flight Centre case

The High Court is set to hear the ACCC's appeal of a decision by the Full Court in relation to price fixing allegations against Flight Centre. The case could provide welcome clarity around the application of the competition provisions in the context of agency.

The appeal arises from the Full Court's decision in July 2015 that Flight Centre had not engaged in attempted price fixing. It found that even though both Flight Centre and Singapore Airlines (SQ) sold tickets directly to travellers, Flight Centre was not relevantly in competition with SQ for reasons including that it was distributing tickets as agent for SQ.

The ACCC's High Court submissions contend that:

- Flight Centre and SQ should be characterised as competitors in either of its two alternative market definitions, being:
 - a market to supply booking services; or
 - a market to supply flights to customers.
- Flight Centre's agency arrangement with SQ does not preclude those two entities being in competition in any relevant sense;
- on either market definition, it follows that Flight Centre engaged in conduct to induce a competitor to make a price-fixing contract, arrangement or understanding in contravention of the relevant competition laws.

Flight Centre's submissions contend:

- the Full Court was correct in concluding that Flight Centre was not, in the relevant sense, a competitor of SQ.

- SQ provided international air travel services, but Flight Centre did not.
- in respect of booking services, although Flight Centre supplied such services, it did so on behalf of SQ as its agent (and not as a competitor).

The High Court's decision will be relevant to the application of Australia's competition laws to participants in the aviation sector and is likely to clarify the status of agency distribution models in a competition law context.



Singapore Airlines Limited and Deutsche Lufthansa AG seek authorisation

On 20 June 2016, Singapore Airlines Limited and Deutsche Lufthansa AG lodged an application to the ACCC seeking authorisation to coordinate operations on routes between LH's 'home markets' (Germany, Austria, Belgium and Switzerland) and SQ's 'home markets' (Singapore, Australia, Indonesia and Malaysia).

The airlines are seeking to coordinate on pricing, sales, marketing, inventory management, scheduling, capacity management and revenue sharing on certain routes between the countries listed above.

The airlines' application to the ACCC identifies certain public benefits that will likely result from the proposed alliance, including:

- enhanced products and service, including increased frequency, the introduction of new routes, and better offerings to corporate account holders;
- the potential for more competitive fares;
- the promotion of competition;
- cost savings and efficiencies; and
- the stimulation of tourism.



The application also states that the proposed conduct under the alliance will not cause any public detriment, submitting that the alliance airlines will continue to be constrained by strong rival carriers operating on relevant routes.

The application seeks authorisation for a period of 5 years.



Singapore Airlines Limited and Virgin Australia seek re-authorisation for a further 10 year period

On 19 May 2016, Singapore Airlines and Virgin Australia lodged an application with the ACCC for re-authorisation of their existing alliance for a further 10 year period.

In their application to the ACCC, the airlines have submitted that the proposed new alliance will, among other things:

- result in frequent flyer, lounge and elite member benefits;
- enhance products and services offered by the airlines including by introducing new routes;
- promote cost savings and efficiencies;
- stimulate tourism; and
- ensure that the airlines will continue to be better placed to challenge Qantas in the international travel market, which may trigger a pro-competitive reaction from Qantas.

The application also contends that the proposed alliance cannot adversely impact competition in any market, not least because there is no relevant competitive overlap between the services run by the alliance airlines.

In a submission to the ACCC in June, Brisbane Airport Corporation Pty Ltd has indicated its support for the alliance.



ACCC re-authorises Qantas and American Airlines alliance

In March 2016, the ACCC published its final determination to re-authorise Qantas' and American Airlines' coordination of operations on trans-Pacific routes for a further five years (half of the 10 year authorisation sought).

Authorisation provides Qantas and American Airlines with limited immunity from prosecution for conduct under their alliance that might otherwise contravene Australia's competition laws. Through their alliance, the airlines will continue to coordinate on matters including: marketing; pricing; scheduling; distribution strategies and agency arrangements; frequent flyer programs and lounges; and product and service standards.

In satisfying itself that the public benefits outweighed the public detriment, the ACCC identified:

- material public benefit arising from enhanced services including facilitating new routes and frequencies, increased number of online connections to other destinations within Australia and the US, better schedule optimisation, greater loyalty program benefits and improved lounge access;
- material public benefit arising from an enhanced ability to compete with rival trans-pacific providers, namely Virgin/Delta and United/Air New Zealand;
- small public benefits arising from cost savings and other efficiencies such as the removal of duplicated functions and double marginalisation; and
- potential public benefits arising from stimulation of tourism and trade.

Against this, the ACCC concluded the alliance was unlikely to result in any significant public detriment (although it noted a potential increased risk of co-ordinated conduct on the Trans-Pacific route between different alliances).

The authorisation is valid until 18 March 2021.



ACCC report finds that lack of competitive pressure facilitates high profit margins at some Australian airports

On 23 March 2016, the ACCC published the results of its price, financial reporting and service quality review of aeronautical services and car parking at key Australian airports. The ACCC report concluded that a lack of competitive pressure facilitates high profit margins at monitored airports in Brisbane, Melbourne, Perth and Sydney.

The report found that profits earned from \$1 of aeronautical revenue ranged from 40.2 cents (Perth Airport) to 50.1 cents (Sydney Airport). Melbourne Airport recorded the highest level of aeronautical capital investment. Quality of service was assessed as being higher in Brisbane and Perth than in Melbourne and Sydney.

In relation to issues of policy, the report states that Australia's four major airports have market power and control access to monopoly infrastructure and that although those airports are subject to a price monitoring regime, that regime does not restrict the airports from exercising their market power and is limited in its scope to provide information about the airports' performance. This policy issue is topical as a result of privatisations occurring in Australia in other industries (including shipping ports). A copy of the report and supporting infographs can be found [here](#).



2016 Budget provides for planning and preparation work on Sydney's second international airport

Western Sydney's new international airport at Badgerys Creek is set to receive a total of AUD\$115 million to fund planning and preparation work; this includes AUD\$89 million for preparation works to the airport site along with AUD\$26 million for the design of rail access.

Detailed planning and preparations are still underway following a period of community consultation on the draft Environmental Impact Statement conducted in late 2015. The airport is projected to open in around 2025.

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