DETERMINATION
and
REASONS
on
Authorisation Application
by
Air Niugini Limited
in respect of a
Freight Code-Share Agreement with Qantas Airways Limited for the Port Moresby-Brisbane Route

Date of Application : 23 April 2013
Date of Registration : 25 April 2013
Public Register Number : A2013/16
Date of Release : 28 February 2014
# Table of Contents

1.0 INTRODUCTION .................................................................................................................. 3  
2.0 BACKGROUND ..................................................................................................................... 4  
  Parties to the code-share agreement ......................................................................................... 4  
  Air Niugini Limited (Air Niugini) ........................................................................................... 4  
  Qantas Airways Limited (Qantas) .......................................................................................... 5  
3.0 THE APPLICATION .............................................................................................................. 5  
4.0 APPLICANT’S ARGUMENTS IN SUPPORT OF THE APPLICATION ..................................... 5  
  Rationale for the freight code-share arrangement ..................................................................... 5  
  Wide-body aircraft-freight-carrying ability and other advantages ........................................ 5  
  Future with and without the freight code-share arrangement .................................................. 6  
  If authorisation is granted ........................................................................................................ 7  
  If authorisation is not granted .................................................................................................. 7  
5.0 PUBLIC CONSULTATION ..................................................................................................... 8  
  Submissions by stakeholders before the release of draft determination .................................. 8  
    The Department of Infrastructure & Transport (DIT) of Australia - subsequently renamed as  
    Department of Infrastructure and Regional Development (DIRD) ........................................ 8  
    Qantas Airways Limited (Qantas) ........................................................................................ 8  
    National Research Institute (NRI) ....................................................................................... 9  
    PNG Tourism Promotion Authority (PNGTPA) ................................................................... 10  
6.0 PRELIMINARY COMMENTS ............................................................................................... 10  
7.0 COMPETITION ASSESSMENT ............................................................................................ 11  
  Relevant market ..................................................................................................................... 11  
  Consideration of merger factors in Section 69(5) .................................................................... 13  
  Concentration - Market share and load factors ....................................................................... 13  
  Revenue Yields and Freight Rates .......................................................................................... 15  
  Barriers to entry .................................................................................................................... 15  
8.0 ASSESSMENT OF EFFICIENCIES ....................................................................................... 17  
  Assessment of effect on competition .................................................................................... 19  
9.0 ASSESSMENT OF PUBLIC BENEFIT CLAIMS ................................................................ 20  
  Freight revenues to PNG ....................................................................................................... 20  
  Effects on air freight services and related effects .................................................................... 21  
  Other public benefits ............................................................................................................. 23  
10.0 ISSUES ARISING FROM THE DRAFT DETERMINATION .................................................. 23  
11.0 ISSUES ARISING FROM CHANGES IN MARKET CIRCUMSTANCES ................................. 28  
12.0 THE STATUTORY TEST FOR AUTHORISATION ................................................................. 33  
13.0 SUMMARY OF ARGUMENTS, WEIGHING PROCESS AND OUTCOMES ....................... 34  
14.0 DETERMINATION .............................................................................................................. 35  
ANNEXURE 1 ........................................................................................................................... 38  
ANNEXURE 2 ........................................................................................................................... 38
1.0 INTRODUCTION

1.1. This Determination (A 2013/16) relates to an application by Air Niugini Limited (“Air Niugini” or “the applicant” or “operating carrier”) to the Independent Consumer and Competition Commission (the “Commission” or “ICCC”) for authorisation to enter into and give effect to a freight code-share agreement with Qantas Airways Limited (“Qantas” or “marketing carrier”) on flights operated by Air Niugini between Port Moresby and Brisbane.

1.2. Authorisation is a transparent process under the Independent Consumer and Competition Commission Act 2002 (the “ICCC Act”) where the Commission may grant immunity from legal action by the Commission or by third parties for various types of prohibited conduct, apart from taking advantage of market power, that might otherwise breach the ICCC Act if it is satisfied that the public benefits resulting from engaging in the conduct would, or would be likely to outweigh the public detriment (including the anti-competitive effects).

1.3. In reviewing an application, the Commission conducts public consultation by publicising the application and inviting submissions from persons whom it considers may have an interest in the application. The submission should outline whether or not the submitter supports the application for grant of an authorisation and the reasons for its support. That process is followed by the issue of a draft determination and, under the provisions of the ICCC Act, if requested by an interested party, or if the Commission decides of its own volition to call one, a conference is held prior to a (final) determination being made.

1.4. The Commission does not grant authorisation for restrictive trade practices lightly. It gives due consideration to all factors that would have an impact on competition, hence it is the applicant’s duty to provide all the relevant information in its submission to the Commission so that the assessment can be done in a timely manner. Furthermore, in ensuring that a well informed decision is made, interested parties who wish to submit comments must do so within the specified time frame so the comments can be assessed properly and a well informed decision is reached.

1.5. With regard to this application, a draft determination was issued on 28 August 2013. Copies were sent to interested parties from whom the Commission initially sought submissions, for their perusal and further submissions. Besides the invitation for comments on the draft determination, the interested parties as well as the applicant were given the opportunity to request a conference. The Commission did not receive a request for a conference from any interested party or the applicant. The Commission also did not consider it necessary to call a conference of its own volition, as it did not consider there was a need to do so.

1.6. The Commission received some responses on its draft determination. The issues raised in the submissions are further discussed under Section 10 of this Determination.

1.7. Since the issue of the draft determination, the Commission became aware of certain developments in the air-freight market between the two countries and their implications are discussed principally in Section 11 of this determination, but also referred to elsewhere as relevant.
2.0 BACKGROUND.

2.1. On 28 September 2012, the Commission granted a conditional authorisation to Air Niugini to enter into and give effect to a code-share agreement with Qantas on all the flights operated by Air Niugini on the Port Moresby-Brisbane and Port Moresby-Sydney routes under Determination A2012/13. The authorisation was granted in two parts as outlined below.

a) The air passenger component of the arrangement was authorised for three years, expiring on 01 October 2015; and

b) The freight component of the arrangement was authorised for eight months from the date of that Determination as the parties were still negotiating the terms of this aspect of the agreement, and that was to expire on 28 May 2013.

2.2. The replacement freight code-share agreement has now been finalised between the parties and Air Niugini has applied for authorisation to enter into and to give effect to it until 01 October 2015, to coincide with the expiry of the passenger component of the arrangement authorised under Determination A2012/13.

2.3. This Determination relates to the freight arrangements on the Port Moresby-Brisbane route. The Sydney leg has been excluded in the amended freight code-share agreement. Air Niugini has withdrawn the services of the B767 on the Port Moresby-Sydney route and has replaced it with B737 services.

2.4. Relevant to this matter, on 21 May 2013, Air Niugini also made a request to the Commission to vary the freight component of Determination A2012/13 citing a “material change in circumstances” since the authorisation was granted in September 2012. The material change in circumstances for which the request for variation was made was that there had been an excision of the Sydney leg from the freight code-share arrangements with the replacement of Air Niugini’s B767 services with B737 services on that route. Air Niugini also requested a time extension of the freight component of the previous authorisation.

2.5. The Commission accepted that the excision of the Sydney leg from the freight code-sharing arrangements constituted a ‘material change of circumstances’ within the meaning of Section 80(2) of the ICCC Act and noted that the excision of the Sydney leg would reduce losses on that route and was, therefore, a benefit to the public. In addition, the withdrawal of B767 services on the Sydney leg would reduce the anti-competitive effects. The Commission therefore amended its Determination A2012/13 to limit the authorisation of the freight code-share to the Port Moresby-Brisbane route only, with the excision of Sydney leg; and extended the expiry of the amended freight components of the authorised code-share agreement until a determination was made on this authorisation application.

Parties to the code-share agreement

Air Niugini Limited (Air Niugini)

2.6. Air Niugini is the largest PNG-domiciled airline, solely owned by the Government of Papua New Guinea (“GoPNG”). Its main business is the provision of domestic and international air passenger and airfreight services. Air Niugini has a large domestic network that covers a large proportion of the geographic area and serves 21 domestic
airports and 11 international airports including Singapore, Hong Kong, Tokyo, Sydney, Brisbane, Cairns and Manila.

Qantas Airways Limited (Qantas)

2.7. Qantas is the world’s second oldest airline and is Australia’s largest domestic and international airline. It is also the wholly owning parent of JetStar, a discount operator, formed to compete with discount operators on international and domestic routes. Qantas was originally owned by the Australian government but was privatised, first partially and then wholly, some years ago. It is now entirely a private sector company and is listed on the Australian Securities Exchange.

3.0 THE APPLICATION

3.1. On 25 April 2013, Air Niugini made an authorisation application pursuant to Section 70 (1) and (2) of the ICCC Act to enter into and give effect to an amended freight code-share agreement between itself and Qantas on the Port Moresby-Brisbane route for a period up until 01 October 2015 to coincide with the current passenger component authorisation. As discussed above, the amended freight code-share, to which this Determination relates, excluded the Sydney leg. However, according to the applicant, the parties would seek to vary this freight code-share agreement to include freight allocations on the Sydney route in the event there is sufficient future demand for Air Niugini to recommence wide body operations on the Sydney route. The applicant has not indicated whether amendment of the authorisation would be sought from the Commission for such a variation in respect of the Sydney route addition, at the time that occurs.

3.2. The terms of the amended freight code-share agreement (the “freight code-share agreement”) to which this Determination relates are similar to the existing overall (passenger-cum-freight) code-share agreement with amendments done only to the freight component of the agreement. On the current freight arrangement, Air Niugini has advised that capacity allocated to Qantas is split in terms of pallets and containers. The terms of the freight code-share agreement are summarised below;

(a) Air Niugini is the operating carrier and Qantas is the marketing carrier;

(b) Air Niugini operates freight code-share services with Qantas on the Port Moresby – Brisbane vv route (“Brisbane”); and

(c) The capacity allocation for freight services would be all on a hard block basis to create a strong incentive for vigorous competition between Air Niugini and Qantas, with an additional soft block component if sought by Qantas. Again, the applicant has not indicated whether amendment of the authorisation would be sought from the Commission for such a variation in respect of any proposed soft block arrangement.

4.0 APPLICANT’S ARGUMENTS IN SUPPORT OF THE APPLICATION

Rationale for the freight code-share arrangement

Wide-body aircraft-freight-carrying ability and other advantages

4.1. As this application is linked to authorisation Determination A2012/13, Air Niugini stated that all arguments, particularly the arguments relating to the freight arrangements, indicated in its application to which the above determination relates, are also relevant to this application.
4.2. From past authorisation applications, Air Niugini argued that it has traditionally used the wide body aircraft in the provision of services to international destinations. It expressed the view that the use of wide body aircraft was critical in loading and offloading freight from an aircraft quickly and efficiently as opposed to the use of a narrow body aircraft which is time consuming and inefficient. Apart from the ability to carry commercial air freight, there are other advantages of using the wide body aircraft such as the aircraft offers a greater range compared to a narrow body aircraft in providing services to distant international destinations. The wide body aircraft also provides greater passenger comfort and higher passenger loads resulting in a more efficient operation with lower costs. In stating these advantages, Air Niugini added that the sustainability of the use of the wide body aircraft is crucial to Air Niugini and PNG as a nation. This is because if Air Niugini was unable to offer the services of the wide body aircraft, it could not provide the air freight services upon which many of the sectors of the PNG economy rely.

4.3. In previous submissions, Air Niugini stated that the size of a wide body aircraft provides the advantage of range and ability to carry freight; however this also means that more passengers have to be carried for the aircraft to be economically viable. Air Niugini stated that the PNG – Australian route is thin and it has been unable to achieve sufficient loads on its own on this route to make wide body operations financially viable. In support of this argument Air Niugini stated that the operation of the wide body aircraft without the code-share arrangement is unsustainable.

4.4. In its submission for this application, Air Niugini argued that a wide body passenger aircraft can carry a significant volume of containerised and palletised freight in addition to passenger luggage compared to a narrow body aircraft which carries a relatively small volume of additional loose freight. Air Niugini indicated that the wide body B767 aircraft can carry up to 18 tonnes of freight while the narrow body B737 aircraft carries only 12 tonnes of freight. Apart from the advantage of transporting freight in the belly hold of wide passenger air craft, it also has the following advantage over dedicated “freight only” narrow body aircraft.

a) Freight carried in the belly hold of passenger aircraft can be provided at a significantly lower cost than is possible with dedicated freight only services because the cost of each flight can be allocated across passenger services as well as freight services.

b) PNG air freight flows are unidirectional with significantly higher volumes of freight carried North from Australia to PNG than in the opposite direction. In so far as a dedicated freighter is concerned, it must price its freight at a level to make up for having a lower load factor on the South bound leg of each service. Air Niugini argued that this problem does not affect a wide body passenger based service because the cost of the service is underwritten by passenger revenue which is much less directional.

c) A dedicated freighter operates a much lower frequency of service because unlike the passenger based service, for efficient operation a dedicated freighter must wait to fly until it anticipates its hold will be close to full.

**Future with and without the freight code-share agreement**

4.5. Air Niugini stated that, when assessing the competition effects and public benefits associated with the code-share agreement, it is necessary to compare the likely outcome that the freight code-share agreement will have if authorisation is granted to that if authorisation is not granted.
If authorisation is granted

4.6. The applicant indicated that if authorisation is granted, it will:

a) Continue to incentivise Air Niugini and Qantas to aggressively compete for the provision of freight services on Air Niugini’s high frequency wide body services on the Brisbane route which will result in lower prices and better services;

b) Facilitate the continued operation of the wide body aircraft by Air Niugini which provides for significantly higher volumes and lower cost airfreight movement. In the absence of wide body operations, Air Niugini would lose a substantial proportion of the commercial air freight services and revenue to the PNG economy; and;

c) Allow the parties to continue to face a competitive constraint from a number of actual and potential competitors such as Virgin, Airlines of PNG, Pacific Air Express, Skyforce and Heavylift.

If authorisation is not granted

4.7. Air Niugini argued that there is a material risk involved with this freight code-share agreement in that Qantas may withdraw from the 2012 passenger code-share if authorisation is not granted for this freight arrangement.

4.8. Air Niugini submitted that a decision not to grant authorisation would have a significant detrimental effect on competition in the Australian air freight market. Qantas could either substantially withdraw from the Australian airfreight market (except for a very small volume of loose cargo it carries on the Port Moresby-Cairns route) or enter the Australian airfreight market with its own dedicated narrow body freighter services.

4.9. If Qantas withdrew from the Australian air freight market, freight prices would increase due to the upward pressure on price. There would also be a reduction in customer choice. Air Niugini, considers that Qantas would re-route a proportionate volume of freight for on-forwarding to international destinations via PNG through its substantial networks resulting in a loss in potential freight volume to Air Niugini and PNG as a whole.

4.10. In the short term, Air Niugini stated that it may continue to offer wide body air freight services to minimise losses under the current aircraft lease arrangement. However the frequency of those services and total air freight capacity available in the Australian air freight market would be substantially reduced compared to the situation that would prevail if the renewed freight code-share agreement were authorised.

4.11. In the medium to long term, Air Niugini stated that if a decision is made not to grant authorisation, this would result in the abandonment of the 2012 passenger code-share; thus PNG would be forced to rely on the entry of dedicated air freighter services for PNG’s air freight needs. Furthermore it would not be viable for Air Niugini to continue its wide body operations. Given the high cost associated with carriage of freight on narrow body freighters compared to freight carriage on wide body aircraft, air freight prices in the Australian air freight market would rise. Accordingly, this would result in not only a substantial lessening of competition in the Australian air freight market with customers facing reduced freight services and substantially higher freight prices but also substantially lessening competition in the Asian air freight market and the Australian and Asian air passenger market since the removal of the wide body operations on the Australian routes would mean that wide body operations on other profitable routes would no longer be viable.
4.12. Air Niugini argued that if Qantas entered the Australian airfreight market with its own dedicated narrow body freighter services, Qantas would incur significantly higher cost and lower frequency in the operation of its narrow body dedicated air freight services than wide body passenger services resulting in a lesser competitive constraint by Qantas in the Australian air freight market leading to higher freight prices.

4.13. Air Niugini stated that in both scenarios, PNG freight customers would be worse off and face higher freight charges if this authorisation is not granted.

5.0 PUBLIC CONSULTATION

Submissions by stakeholders before the release of draft determination

5.1. In accordance with the authorisation process under the ICCC Act, the Commission conducted a wide consultation process by inviting comments and views from the public through the print media and by written invitations to nineteen (19) stakeholders from various organisations and agencies regarding the authorisation application by Air Niugini. However, only four (4) stakeholders reverted with comments. The Commission received comments and views from the Australian Department of Infrastructure & Transport, Qantas, the National Research Institute (NRI) and Tourism Promotion Authority (TPA).

The Department of Infrastructure & Transport (DIT) of Australia - subsequently renamed as Department of Infrastructure and Regional Development (DIRD)

5.2. DIT submitted that passengers and cargoes (freight) services on passenger flights should be treated as a single service when seeking regulatory approvals. DIT also commented that it is the Australian Government’s policy to allow open freight and code-share arrangements so as to enable airlines to respond quickly to changing market demands for freight services. In its concluding remarks, the DIT added that [presumably hard] blocked space code-sharing arrangement between airline operators adds competition to the market.

Qantas Airways Limited (Qantas)

5.3. Qantas provided its comments detailing the brief history of the initial passenger code-sharing agreement with Air Niugini from Port Moresby-Brisbane and Port Moresby–Sydney routes. Qantas also provided a general overview of the freight market by other airline freight operators with flights into and out of Australia and the competition generated by those operating airlines.

5.4. Qantas submitted that freight customers of both Qantas and Air Niugini benefit from frequent scheduled wide body passenger services on the Port Moresby-Brisbane route which have the capability to transport both palletised and containerised freight which provides choice and certainty to consumers as compared to narrow body passenger services which carry loose freight only and dedicated freight services are generally less frequent than passenger services and are operated on a subject to loading basis. Qantas further added that the freight code-sharing arrangements promote competition in the freight market as each airline independently sets prices, operates its own yield management system and sells its product through its respective sales networks. This results in competitive pricing between the two carriers as they both vie to secure business on Air Niugini’s operation.

5.5. Qantas submitted that the freight sharing arrangements enable Air Niugini to receive a fixed stream of revenue as a set price is paid for the weekly allotment of freight capacity, regardless of the amount of capacity actually sold by Qantas thus contributing to supporting the viability of Air Niugini’s wide body services on the route which benefits the public by supporting the sustainability of a state owned enterprise.
5.6. In relation to a more internal relationship, Qantas stated that Air Niugini has access to Qantas’ established international and domestic (within Australia) sales network which provides significant selling opportunities for indirect transport of freight into PNG. Qantas noted that Air Niugini did not have a dedicated sales force in Australia and in the absence of a freight code-sharing arrangement, Air Niugini would need to establish relationships with carriers in key international markets in order to benefit from direct international freight flows.

5.7. Furthermore Qantas argued that in the absence of the freight code-sharing arrangement, the public benefits stated above could not be realised and that would be a detriment to the public.

5.8. Qantas commented that without the freight arrangements, its freight customers would have less choice in services and frequencies and be reliant on less regular dedicated freight services and Air Niugini would have the burden of selling its available freight capacity for flights into Australia; hence Air Niugini would no longer benefit from a fixed stream of freight revenue. Qantas added that in the absence of freight sharing arrangements it would reassess its customer proposition and commercial position in the PNG market in relation to the transport of passengers and cargo.

5.9. In concluding, Qantas commented that apart from competition, freight sharing arrangements would enhance customer choice and contribute to the overall viability of Air Niugini’s operations which maximises public benefit and will have a positive impact on the wider economy of PNG.

National Research Institute (NRI)

5.10. Comments by NRI also showed support for the authorisation application concluding that the perceived public benefits are more than the perceived detriments.

5.11. In its submission, the NRI highlighted what it considered were some critical issues arising from the matter. These include Air Niugini’s argument that Qantas may opt out of the passenger code-sharing agreement should this freight code-share authorisation application be declined by the Commission. NRI noted that if that was the case then a submission should be made by Qantas to verify its position. In its conclusion on this issue, the NRI stated that the current application is supplementary to the passenger component of the existing code-share agreement and the argument by Air Niugini may not hold weight.

5.12. Furthermore, NRI observed that the freight market (between Port Moresby-Brisbane) has current high competition from various other operating airline companies, and the freight authorisation application, if granted, would result in maximising welfare gains for freight consumers and passengers.

5.13. It also added that the freight code-share agreement will boost Air Niugini’s revenue potential and make more revenue for its operations and perhaps payment of dividends to the GoPNG.

5.14. Despite being in support of the freight code share, NRI expressed its view that it is not in the spirit of authorisation Determination A2012/13 that different types of aircraft be used on the Port Moresby-Brisbane and Port Moresby-Sydney routes in particular the exclusion of the B767 aircraft on the Port Moresby – Sydney route.

5.15. NRI submitted that in granting authorisation, certain conditions must be imposed by ICCC. NRI recommended that ICCC ensure each party set its own pricing, freight tracking and
yielding management system and sale of its products through independent sales networks including websites. NRI also submitted that the ICCC ensure that Air Niugini uses the services of the wide body aircraft on the Port Moresby - Sydney route.

PNG Tourism Promotion Authority (PNGTPA)

5.16. PNGTPA, in acknowledging the invitation to comment stated that it had no objection to the request by Air Niugini as it relates only to the freight component.

6.0 PRELIMINARY COMMENTS

6.1. Generally all four submissions received have been positive and in support of this authorisation application. The Commission notes NRI’s concern regarding the validity of Air Niugini’s claim that Qantas may opt out of the existing passenger code-share should authorisation of this freight arrangement be rejected. In response to NRI’s comments, the Commission is of the view that there is no certainty about Qantas opting out of the passenger code-share, and in its submission to the Commission, has only indicated its stance in reviewing its position with Air Niugini should the freight code-sharing arrangement not be authorised by the Commission. Hence, no direct claims have been made in relation either to the withdrawal by Qantas from the existing passenger code-share agreement or its continuance of participation. However, the ability of one party to withdraw from code-sharing arrangements and enter the market in its own right is always a possibility and as such decisions are made in the context of market circumstances prevailing at the relevant time, it would be unreasonable for the Commission to demand a decision by Qantas in relation to a hypothetical outcome of this application, in advance of the Commission’s determination.

6.2. Furthermore, the Commission does not accept NRI’s view that Air Niugini should use the services of the wide body aircraft on the Port Moresby-Sydney route, nor that the Commission should make any authorisation determination conditional on the applicant doing so. In its previous Determination A2012/13, the Commission had, in effect, emphasised that strategies causing losses to an SoE are a significant public detriment as the cost is borne by the citizens of PNG. The use of the wide body aircraft on the Port Moresby-Sydney route was generally accepted as leading to losses and Air Niugini’s replacement of the wide-body aircraft with a narrow-body one is clearly aimed at eliminating losses on that route.

6.3. The Commission takes a holistic view of public benefit, rather than a narrow approach which would specify use of wide-body aircraft to provide capacity for cargo on a particular route, when that leads to losses to be borne by the general public. A benefit to cargo-shippers needs to be considered in the context of costs to ‘grass roots’ citizens in the way of financial resources foregone which could be used for improvements to their quality of life such as health and education facilities, on which such resources could be spent. Continuation of wide-body operations on the Port Moresby-Sydney route, as mentioned earlier, is generally accepted as loss-making and, therefore, a cost to the public.

6.4. There appear to be inconsistencies in the terms of the application itself. On the one hand, the ‘material change of circumstances’ claimed to justify variation of the original code-sharing arrangement was said to be the excising of the Sydney leg from the freight arrangements. Yet, the applicant seeks an authorisation which provides for future freight code-sharing arrangements on that leg, if a wide-body aircraft is re-introduced depending on demand, which the Commission also takes into consideration in determining this application. Such perceptions could, arguably, be reconciled on the basis that, in future, wide-body operations on that leg could be profitable. Such matters are more appropriately assessed in the context of circumstances prevailing at the time of the possible re-
introduction of wide-body services and any proposed amendment to the code-sharing arrangements for freight, which would need to form the subject of a new application or a variation application for amendment. It would be inappropriate to grant such an open-ended authorisation in advance for such possible changes which may well be significant, without a public consultation process at the relevant time, which takes account of the circumstances prevailing at that time.

6.5. The original authorisation allowed a maximum of 50 per cent capacity to be offered to the marketing carrier on a hard block basis. In this application, the proportion is not specified, but stated to be on a hard block basis. However, the option of granting further capacity on a soft block basis is said to be provided for.

7.0 COMPETITION ASSESSMENT

Relevant market

7.1. Prior to analysing competition effects of the conduct under consideration, it is necessary to define the relevant market(s) for the purposes of establishing actual and/or potential competition effects and for the purpose of assessing and testing the public benefit claims of the applicant and other parties, if any. Section 45 (2) of the ICCC Act defines ‘market’ as follows:

“A reference in this Part to the term “market” is a reference to a market in the whole of Papua New Guinea for goods and services as well as other goods and services that, as a matter of fact and commercial common sense are substitutable for them including imports”.

7.2. In order to identify the relevant market(s) for the purposes of assessing the actual and potential competition effects of the conduct under consideration, it would be relevant to identify the good(s) or service(s) relevant to the issue at hand and where the trade would take place.

7.3. The Commission is aware that Air Niugini and Qantas operate joint regular air services between PNG (Port Moresby) and Australia (Brisbane and Sydney). Qantas has, for some time, operated independent passenger services on the Port Moresby-Cairns route as well.

7.4. Most recently, Qantas has been granted additional capacity by the International Air Services Commission (IASC) of Australia to operate dedicated freight services between PNG and Australia2.

7.5. For the purposes of this application, the relevant service is the provision of air freight services; and the relevant geographic locations between which the cargo is carried are PNG and Australia.

7.6. While the demand for passenger services are more linked to particular airports, in the sense of convenience, particularly for business travellers, who have a lower price cross elasticity of demand in terms of alternative routing e.g. with an intermediate change of carrier or airport, freight will ‘find the lowest level’ generally, except for very high value or extremely urgent cargo. In that sense, alternative routes including various airports in the two relevant countries, with the requisite price incentive to participate, would be included in the ‘country-pair’ market, whereas for business travellers in the passenger market, consideration could include appropriate weighting in favour of airport pairs in relevant

---

circumstances, due to the discontinuities in demand substitution possibilities for such travellers.

7.7. The types of cargo carried are usually high value, highly perishable and light goods or those which have an urgent dimension justifying the higher cost vis-à-vis ocean freight.

7.8. To identify the relevant market(s), it is also vital to consider substitution possibilities between various modes of transport. Given the relevant service identified above, on the demand side substitution possibilities, the relevant service alternative would be limited to sea transport between the two countries as land transport is not possible due to the geographical constraint. The decision to use ocean liners for the provision of freight services depends on a range of factors, amongst others, the time factor - urgency with which the consignee wants his/her goods; the type of freight being transported, that is whether perishable or non-perishable and the value of the cargo. Taking into consideration these factors, the Commission considers that even if there is a small but significant and non-transitory increase in price (‘SSNIP’), in air freight rates, by 5 per cent to 10 per cent, it would be unlikely that consumers would react quickly and switch to ocean transport as consumers would take into consideration the time requirements for delivery of freight.

7.9. In terms of geographic substitution possibilities, though there are other services into PNG from Asia and other Pacific countries, the Commission considers that the PNG-Australia route is not economically substitutable by other routes into or out of PNG, with Australia as their ultimate destination or origin. If there is a SSNIP by 5 per cent to 10 per cent in air freight rates between the two countries, consumers would not easily switch to other services from either Asia or Pacific, as the goods carried need to be sourced from those alternative countries and the price/service/quality offering of goods from those countries need to be substitutable for those from/to Australia. Prices changes would need to be much greater than 5-10% to induce customers to re-route their cargo via Asian airports if the goods originate from, or are destined for, Australia. However, there is the possibility for price sensitive consumers switching from freight services between Port Moresby-Brisbane to/from other PNG and Australian ports, provided other freight services are available which transport the goods to their ultimate destinations or from originating points at competitive freight rates. Hence the geographic dimension should include such alternative airports in Australia and PNG, provided regulatory constraints on capacity and port landing rights restrictions do not restrict such geographic substitution.

7.10. DIT submitted that passengers and freight should be treated as a single service when seeking regulatory approvals. It is not clear whether the approvals envisaged by DIT relate to capacity under ASAs, landing rights, or public benefit/competition-related approvals.

7.11. Qantas argued, in effect, that the market should be treated as a single passenger and freight market.

7.12. In industrial organisation analysis, such a ‘joint service market’ definition poses problems. Clearly on the demand side, the two services are not substitutable. On the supply side, a SSNIP in one or the other, or in both, appears unlikely to result in ‘joint service entry’, as the factors influencing decisions on each service are different. For example, entry by Airlines of PNG on the Cairns route some 8 years ago, was by Dash-8 aircraft, a predominantly passenger service. Similarly, entry by Virgin on the Brisbane route was by B-737, a predominantly passenger service. Qantas’s entry into the freighter service related entirely to cargo, as does the PAE service. The behaviour of entrants is a clear indicator of market definition.

7.13. Finally, the code-share agreement the subject of this authorisation application is for cargo, with a separate agreement in place for passengers. The agreement is an appropriate starting
point for market definition, with appropriate widening depending on identified substitution possibilities. Examination of such substitution possibilities, either in demand or supply, do not suggest expansion of the definition of the market to include both passengers and air cargo.

7.14. For the purposes of this application, therefore the Commission considers the relevant service to be the provision of air freight services; and the relevant geographic dimension consists of routes between PNG and Australia. Hence the Commission considers the relevant market for the purposes of assessing this application to be the market for the provision of air freight services between PNG and Australia.

**Consideration of merger factors in Section 69(5)**

**Concentration - Market share and load factors**

7.15. The Commission understands from available information that, excluding Virgin Australia, whose main focus is on carrying passengers but also carries loose cargo between Port Moresby and Brisbane, there are currently four players operating freight services between Australia and PNG. Amongst the four, Air Niugini is the only PNG carrier providing the service in competition with three Australian carriers, namely, Virgin, and two dedicated carriers, being Pionair Australia Pty Ltd trading as Skyforce Aviation (‘Skyforce’), and Pacific Air Express (‘PAE’) . As mentioned, for three months, from mid-July to mid-October 2013, Qantas entered the market directly with a weekly dedicated freighter service. Air Niugini provides freight services using the belly space of its B767 services; hence it is not a dedicated freight service provider on the route, although, on the limited information provided, it appears to carry more freight on that route than dedicated carriers. A key recent development, discussed in section 11, is the provision by Qantas of a dedicated freighter service between Cairns and Port Moresby, for a period of some three months, which has since been suspended indefinitely.

7.16. Air Niugini submitted that apart from competition from Qantas in the PNG/Australian market, competition in freight services is continuously constrained by existing competitors such as Virgin on the Port Moresby-Brisbane route as well as dedicated freight service providers such as Pacific Air Express and Skyforce who offer freight services on ad hoc basis. Virgin, however, operates a narrow-body aircraft on its passenger services with limited belly hold space for both passenger baggage and loose freight. It is difficult, therefore, to see Virgin competing vigorously. The very low degree of competitive constraint offered by others can be gauged from the fact that Air Niugini’s wide-body passenger aircraft carries far more freight than all other carriers combined. The share of freight carried by dedicated freight operators, except for PAE, is not known and their market shares therefore, are not known.

7.17. With the current boom in the resource sector and an increase in seafood exports, there has been a growing demand for air freight capacity. Qantas, through its subsidiary, Express Freighters Australia, and Skyforce Aviation have both applied to the IASC for a total of 53 tonnes of freight capacity per week each way between Australia and PNG. With the proposed increase in capacity, competition would be enhanced but only to a limited extent as Air Niugini’s international freight service is offered on a much greater frequency, for which dedicated freighter services which offer main deck capabilities able to haul large equipment for the resources industry, are not a perfect substitute, being largely a specialised large equipment offering. Charter services are provided only on sufficient cargo inducement, and hence are offered on an irregular basis. The available data do not

---

4 Ibid
show the market share of Skyforce and it is not clear whether it is currently operating or has operated at all in the market. The Qantas regular freighter service was, of course, commenced but suspended indefinitely. The available dedicated freighter service offerings, therefore, are not, and in the foreseeable future are unlikely to be, directly comparable with Air Niugini’s frequent and regular wide-body cargo carrying operations, until dedicated freighter services reach such volumes as to justify the provision of frequent and regular services.

7.18. Air Freight traffic growth for the PNG /Australian route has been increasing in the last five years. Data obtained from the Bureau of Infrastructure, Transport and Regional Economics (BITRE) of Australia, showed that since 2008, freight volumes airlifted by Air Niugini and Qantas has been increasing every year until 2011, where there was a decline due to commencement of freight services by PAE. In addition, the data obtained from BITRE have also indicated a higher freight volume on the Port-Moresby – Brisbane route compared to the Port Moresby-Cairns and Port Moresby-Sydney routes.

7.19. While there are no data available to separately measure freight carried by Air Niugini from that carried by Qantas, Chart 1 below from BITRE’s data analysis, the Commission notes that the combined market share of the Air Niugini/Qantas alliance for the provision of freight services for year ended December 2012 was 77 per cent of the total freight movement between the two countries, which was mostly attributed to the volume of freight uplifted on the Port Moresby – Brisbane route. The remaining 23 per cent was shared between Virgin, Airlines PNG and PAE. While there has been some minor fluctuation in the market shares of the Air Niugini/ Qantas alliance, the broad proportions have been steady over the last five years, as shown below. APNG’s individual market share has decreased from 7 per cent in 2008 to 1 per cent in 2012. Virgin on the other hand has increased its share since 2008 and has been maintaining a market share of 4 per cent since 2011. Information from BITRE shows that PAE accounted for 18% of the market in both 2011 and 2012.

```
Table: 1 Annual market shares and growth

<table>
<thead>
<tr>
<th>Annual Market Share of Freight uplifted by each carrier between PNG and Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td>200%</td>
</tr>
<tr>
<td>2008</td>
</tr>
<tr>
<td>Virgin Australia</td>
</tr>
<tr>
<td>Qantas Airways</td>
</tr>
<tr>
<td>Pacific Blue</td>
</tr>
<tr>
<td>Pacific Air Express</td>
</tr>
<tr>
<td>Airlines PNG</td>
</tr>
<tr>
<td>Air Niugini/Qantas</td>
</tr>
</tbody>
</table>
```

Source: BITRE website – www.bitre.gov.au

7.20. Furthermore, with regards to load factors, the Port Moresby-Brisbane route has seen a moderate increase between the years 2008 to 2012 compared to slight increases and

---

constant fluctuations in the freight load factors on the Port Moresby-Cairns and Port Moresby-Sydney routes. It was also noted that freight load factors north bound on the Port Moresby-Brisbane route has been constantly growing while freight load factors on the south bound route is declining. Freight carried north bound is high due to the boom in the resource sector in particular the PNG LNG Project.

Revenue yields and freight rates in the market

7.21. In Determination A2012/13, the Commission noted that information on freight rates were not available for the Commission to assess. However based on confidential information on aggregated revenue for both mail and cargo, Air Niugini’s average freight yields for freight movement from PNG to Australia have been decreasing whilst freight yields on the Australia to PNG direction have seen increases. Air Niugini has stated that the main contributing factor that led to these increases has been the recovery of the mining sector and consequent demand for delivery of equipment into PNG.

Barriers to entry

7.22. In its submission to the Commission, Air Niugini claimed that barriers to entry by existing air freight operators into the Australian-PNG air freight market are relatively low. Air Niugini claimed that there are no regulatory barriers as there is an adequate amount of freight capacity available under the air services agreement between PNG and Australia to allow either a new Australian or Papua New Guinean carrier to enter any or all of the code-share routes. Furthermore Air Niugini stated that there are no slot constraints at any of Port Moresby, Brisbane or Sydney airports that would be likely to hinder entry of any new carrier on any of the code-share routes. Air Niugini also submitted that freight ground handling facilities are available at all airports relevant to any of the code-share routes. Besides these reasons, there is also an active international market for the purchase or lease of appropriate aircraft. According to Air Niugini this means that a new entrant could acquire a new aircraft at competitive prices. In addition to that, the associated sunk costs are minimal as aircraft can be resold.

7.23. Air Niugini argued that a range of companies would be readily available to enter the Australian air freight market or expand their existing freight operations between Australia and PNG if there is an increase in freight rates. This claim conflicts with the applicant’s claim outlined in paras 4.11; 4.12; and 4.13 above that cessation of the freight code-share because of non-authorisation, would see capacity decline and prices rise. The applicant appears to tailor its argument to the immediate point it seeks to make, without considering the consistency of its approach.

7.24. Air Niugini argues, in effect that there are no regulatory barriers to entry and that there is a freight demand profile which allows new entrants into the market. Presumably that argument suggests that demand is expanding and customers form a contestable volume base, so as to make entry viable in terms of securing a sizable market share and a low risk of retaliatory action by the two largest incumbents who are parties to the agreement under examination.

7.25. The Commission does not accept that argument. Besides other barriers to entry such as high sunk costs of establishment; securing customers; and structural barriers; the Commission is of the view that regulatory barriers are a great concern. The Commission has identified them in its various past code-share determinations. Briefly, the Commission has identified and expressed concerns that discriminatory requirements for aircraft availability before designation of, and/or capacity allocation to, a carrier and discriminatory grant of capacity under air services agreements on the PNG side create an almost insuperable regulatory barrier to entry and should be dealt with promptly by relevant
Furthermore, it is of substantial concern to the Commission that the Air Services Agreement (ASA) between PNG and Australia contains restrictions on cargo capacity when there are no restrictions on the carriage of goods by ocean carriers. The Commission understands from the submission by the Australian Department of Infrastructure and Transport that the Australian Government is committed to freeing up such anti-competitive restrictions. However, there is no information from the PNG side; and the inference can be drawn that the PNG side is the party that is responsible for imposing such restrictions on air cargo capacity.

7.26. On the basis of the above analysis, therefore, the Commission considers that barriers to entry are high.

7.27. As mentioned above, for a brief period of some three months, Qantas entered the freight market in its own right with a dedicated freighter service between Cairns and Port Moresby. That service was offered on a weekly basis, with a volume of some 12 tonnes. That means that the two largest incumbents, who are also parties to the freight code-share, enjoyed a market share of 76% (62.5% + 13.5%) if the entire Qantas capacity was used.

7.28. The relevant shares before and after Qantas’ direct entry are as follows:

Table 2: Market Share and growth before Qantas Entry: Jan – Jun 2013

<table>
<thead>
<tr>
<th>Scheduled Operators</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>TOTAL</th>
<th>%</th>
<th>CR3</th>
<th>HHI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Niugini</td>
<td>343.8</td>
<td>381.7</td>
<td>451.6</td>
<td>361.5</td>
<td>405.6</td>
<td>317.1</td>
<td>2261.3</td>
<td>73.50</td>
<td>99.40</td>
<td>5402.25</td>
</tr>
<tr>
<td>Airlines PNG</td>
<td>2.6</td>
<td>1.2</td>
<td>4.3</td>
<td>2.4</td>
<td>3.5</td>
<td>2.9</td>
<td>16.9</td>
<td>0.60</td>
<td>0.36</td>
<td></td>
</tr>
<tr>
<td>Pacific Air Express</td>
<td>88.5</td>
<td>111.6</td>
<td>103.8</td>
<td>103.8</td>
<td>102.9</td>
<td>150.2</td>
<td>660.8</td>
<td>21.50</td>
<td>462.25</td>
<td></td>
</tr>
<tr>
<td>Qantas Airways</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0</td>
<td>0.00</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Virgin Australia</td>
<td>18.6</td>
<td>26.1</td>
<td>27</td>
<td>22.9</td>
<td>22.4</td>
<td>19.3</td>
<td>136.3</td>
<td>4.40</td>
<td></td>
<td>19.36</td>
</tr>
<tr>
<td>TOTAL</td>
<td>453.4</td>
<td>520.5</td>
<td>586.8</td>
<td>490.6</td>
<td>534.4</td>
<td>489.5</td>
<td>3075.3</td>
<td>100.00</td>
<td>5884.22</td>
<td></td>
</tr>
</tbody>
</table>

Source: BITRE – www.bitre.gov.au

Table 3: Market Share and Growth after Qantas Entry: Jul – Sep 2013

<table>
<thead>
<tr>
<th>Scheduled Operators</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>TOTAL</th>
<th>%</th>
<th>CR3</th>
<th>HHI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Niugini</td>
<td>318.8</td>
<td>343.7</td>
<td>356.8</td>
<td>1019.3</td>
<td>62.5</td>
<td>95%</td>
<td>3906.25</td>
</tr>
<tr>
<td>Airlines PNG</td>
<td>2.9</td>
<td>3.2</td>
<td>1.9</td>
<td>8</td>
<td>0.5</td>
<td></td>
<td>0.25</td>
</tr>
<tr>
<td>Pacific Air Express</td>
<td>144</td>
<td>76.8</td>
<td>88.9</td>
<td>309.7</td>
<td>19</td>
<td></td>
<td>361</td>
</tr>
<tr>
<td>Qantas Airways</td>
<td>50.7</td>
<td>96.2</td>
<td>73.3</td>
<td>220.2</td>
<td>13.5</td>
<td></td>
<td>182.25</td>
</tr>
<tr>
<td>Virgin Australia</td>
<td>25.1</td>
<td>20.1</td>
<td>27.6</td>
<td>72.8</td>
<td>4.5</td>
<td></td>
<td>20.25</td>
</tr>
<tr>
<td>TOTAL</td>
<td>541.5</td>
<td>540</td>
<td>548.5</td>
<td>1630</td>
<td>100</td>
<td></td>
<td>4470</td>
</tr>
</tbody>
</table>

Source: BITRE – www.bitre.gov.au

7.29. According to the tables above, the combined market share for Air Niugini and Qantas was about 73.5% before the independent entry of Qantas in the market in July 2013. With the independent operations by Qantas the Air Niugini share decreased to 62.5% but the combined share of both carriers (i.e of Air Niugini and Qantas, including its share from its independent operation) increased to 76% (62.5%+13.5%). Concentration ratios (CR3) indicate that the three top freight operators hold 95% of the market, decreasing from 99.40%; however, the higher figure includes the Qantas share from its participation in the code-share arrangement. In the calculation of the CR3, the Qantas share has been excluded from the Air Niugini share where it was a direct competitor for the brief period, but included where it was not a direct competitor, but a code-share marketing partner only.

7.30. Qantas argues that its share should not be combined with Air Niugini’s share (presumably even when it was a direct competitor for the period of its operation of the dedicated

---

6 ICCC Authorisation Determinations A2012/13, pp31
freighter service). A significant collaboration between carriers such as a code-share arrangement, in which the operating carrier effectively sets the ‘floor’ for pricing, in the Commission’s view, provides a basis in industrial organisation analysis to aggregate their shares in circumstances where neither operates completely independently of the other e.g. by offering freight services that not part of the code-share operation.

7.31. According to internationally accepted standards, such a very high level of concentration in the joint hands of Air Niugini and Qantas is likely to result in a substantial lessening of competition in relevant circumstances e.g. where barriers to entry are high. An HHI value of 5884.22 and 4470 respectively for the before and after scenarios of Qantas independent entry still indicates a very high level of concentration. 

7.32. The Commission’s assessment is that concentration is extremely high.

8. **ASSESSMENT OF EFFICIENCIES**

8.1. Section 46 of the ICCC Act requires the Commission, in making a determination whether or not, or the extent to which, conduct will result, or will be likely to result, in a benefit to the public, to have regard to any efficiencies that it considers will result, or will be likely to result, from that conduct.

8.2. The Commission considers that this freight code-share agreement is likely to lead to some productive efficiencies arising from scale. However, such benefits need to be put in proper perspective in terms of their durability and the direction of the flow of their benefits. The chart overleaf outlines the well-known ‘Williamson’s Trade-off Model’.

---

7 The Herfindal-Herschman Index is calculated by aggregating the squares of the market shares of all participants. It indicates both aggregate and relative concentration.
8 Concentration classification attached in appendix 2.
Figure 1. Williamson’s Trade-off Model

<table>
<thead>
<tr>
<th>PRICE</th>
<th>DEMAND</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pm, Pc</td>
<td>Qm, Qc</td>
</tr>
</tbody>
</table>

Redistributional effect - transfer of economic value from customers to suppliers by increase of prices

Deadweight Loss

Efficiency Gain; usually transitory and dissipated among management and labour especially in SOEs, which have little incentive for maintaining efficiency and delivering the benefits to the public

Demand reduction due to price increase; or supply reduction as a strategy to increase prices by creating scarcity – “output restriction strategy”

\[
\begin{align*}
\text{Pm} &= \text{Price under monopoly (or highly concentrated market structure)} \\
\text{Pc} &= \text{Price under competition} \\
\text{Qm} &= \text{Quantity of output under monopoly (or highly concentrated market structure)} \\
\text{Qc} &= \text{Quantity of output under competitive conditions} \\
\text{ACm} &= \text{Average cost under monopoly (or highly concentrated market structure)} \\
\text{ACc} &= \text{Average cost under competitive conditions}
\end{align*}
\]

Note: Comments on the model are those of the Commission, although based on the economic literature.

8.3. From the above, it can be seen that such productive efficiencies are transient\(^9\); often benefit management and labour and are, therefore, quickly dissipated. Any resulting market power dissuades entry and chills dynamic competition, which is more durable and self-reinforcing.

---

than productive efficiencies, leading to positive spin-off effects. Arguments putting forward rationalisation benefits, therefore, need to be carefully scrutinised for transience and where any benefits go, while recognising the possibility of industry structure inhibiting entry and competition.

8.4. A further consideration is the weight to be given to productive efficiencies arising from scale, in the context of GoPNG owning the operating carrier. If code-share routes generate such productive efficiencies, the question is whether they lead to profitable operation. Even if they reduce costs, but such cost reductions are insufficient to avoid losses, then the public bears the cost of such losses through opportunity costs of lost resources that would have otherwise been available for social programmes such as health and education.

8.5. Hence, the analysis of efficiencies, in this case, requires a more profound consideration of effects. Currently, there is no suggestion that losses are incurred on the Brisbane route. However, the ‘interdependence’ of Asian routes on the operation of wide-body aircraft on the Brisbane route requires consideration of whether the ‘package’ of routes as a whole results in losses or profits - this is because the viability of the Asian routes is claimed to depend on the code-share route. To arrive at such a result, it is necessary to analyse the profitability of each route, disaggregated by passenger and freight and the combined financial outcomes of the ‘package’ of routes.

8.6. Recent financial information on the package of routes submitted by Air Niugini indicates that there are rationalisation benefits associated with the code-share. Air Niugini’s overall international operation is profitable but has been fluctuating in the past three years. The Commission does not wish to provide detail of its conclusions on the financials provided to it, to which it has granted confidentiality. Broad assessments, however, are provided. In 2012, Air Niugini was able to maintain tighter control of its costs on the ‘package of routes’ leading to a decline in the operating costs. This suggests that Air Niugini has achieved some cost saving through the operation of the code-share. The financial performance on these routes collectively, however, have exhibited significant fluctuation. Nevertheless, the Commission considers that there is a sufficient basis to expect rationalisation savings to be translated into profitability on these routes collectively, for the duration of code-share agreement on freight and passengers.

**Assessment of effect on competition**

8.7. For the duration of the operation by Qantas of its dedicated freighter service, the competition scenario consisted of the two largest incumbent carriers collaborating in a code-share. With a collective 76% of the market, the arrangement between the two parties raises significant competition concerns, in the sense of the two largest players collaborating in the context of high concentration, with common incentives. The incentives on either carrier to ‘undercut’ prices would be limited, as it would provoke retaliatory action by the other and reduce the profits of both.

8.8. Elsewhere, it has been pointed out that the effective average ‘floor’ price set by the operating carrier limits price competition. The possibility of Qantas entering the market cannot be ignored, as it has done so once. Hence, the future emergence of the scenario whereby the two largest operators collaborate in a code-share, with common incentives, must be considered by the Commission.

8.9. In previous code-share determinations, the Commission has expressed its view, in effect, that ‘hard block’ arrangements are superior to ‘soft block’ arrangements, in competitive terms, because they create a stronger incentive on the code-share partners to compete, particularly the marketing carrier, as it needs to ‘use or pay’ for the block. The operating carrier is, therefore, usually forced to compete with the marketing carrier’s offering, albeit
the degree of competition is substantially muted by the fact that the operating carrier sets the ‘floor’ for pricing through the wholesale block charge. The Commission, therefore, maintains the view that the possible addition of a soft block component would reduce the incentive to compete above the wholesale ‘floor’ price.

8.10. Overall, in light of the height of the barriers to entry, particularly but not exclusively in the context of the almost insurmountable regulatory barriers; and the very high combined market share of the code-share partners, the lessening of competition in the air-freight market from the code-share is considered to be significant and would be greater if a soft block component were added.

9.0 ASSESSMENT OF PUBLIC BENEFIT CLAIMS

9.1. In supporting its application, Air Niugini claimed that public benefits or benefits to the community would be generated. All such claims by applicants and any other claims by any interested parties, if any, need to be considered under the general test for authorisation. If the Commission is satisfied that the conduct, the subject of the application, would result, or be likely to result in benefits to the community which would, or would be likely to, outweigh the detriments to the public as a result of engaging in the conduct, the conduct would be authorised; otherwise not.

9.2. Air Niugini’s public benefit claims and the Commission’s analysis of these claims are discussed below.

Freight revenues to PNG

9.3. Air Niugini submits that if this freight code-share agreement is not authorised, it would result in the loss of air freight code-share revenue to Air Niugini. Since Air Niugini is a national carrier, such losses to Air Niugini represent a direct loss of Government funds that would otherwise be available for welfare infrastructure or other spending for the benefit of the nation. In support of this claim, Air Niugini states that a decision not to authorise this freight code-share agreement will result in the withdrawal of the passenger component of the code-share agreement which will then result in significant losses of additional freight revenue for PNG since Air Niugini would likely need to discontinue the use of wide body services on the Brisbane route as well as the profitable Asian routes. This is because if wide body services are not sustainable on the Australian routes, Air Niugini considers that there is insufficient demand for it to justify a wide body service for Asian routes.

9.4. The Commission’s view on this claim as indicated in previous determinations is that the main reason for the code-share between Air Niugini and Qantas since 2002 was to ensure the financial viability of Air Niugini. At that time, the arrangement was supported by the Governments of the respective carriers since Air Niugini’s financial position was exerting a significant financial strain on GoPNG. That suggests that code-shares on passenger and freight services should be profitable to justify their continuance.

9.5. The Commission notes that Air Niugini’s financial position continued to be sound since 2005 although its profit levels fell in 2008; picked up in 2009; but fell again in 2010. Profit levels picked up in 2012 and with the applicant operating on a sound financial footing, the limited public funds available to the GoPNG could be used in priority areas such as health, education and infrastructure development. The Commission is unclear about Air Niugini’s claim that disapproval of the code-share would lead to losses to the airline that translates into a direct loss of the Government’s funds. This raises the question how the

---

10 ICCC Authorisation Determination A2012/13, pp34
11 Information obtained from confidential financial information submitted by Air Niugini
code-share avoids losses if one or more routes that depend on the code-share route make losses. The Commission considers that if rationalisation benefits are shown to avoid the losses then it is in itself a public benefit; however in contrast, if the rationalisation benefits are insufficient to avoid losses as a result of the continuation of the freight code-share then it is not a benefit to the public. There is also the question whether the freight code-share with Qantas, on the POM Brisbane vv route, which is said to depend the Asian services, leads to profits or losses on the latter services, which the applicant describes as profitable; or on the combination of freight services to Asia and Australia, as discussed under ‘Efficiencies’ above. According to information available to the Commission, the sustainability of the code-share lies with the operations of the more profitable Asian routes. It is seen that the only way that Air Niugini can achieve these rationalisation benefits is to continue operating the Asia routes for the duration of the code-share agreement With regards to the withdrawal of the wide body aircraft in the event that the freight code-share is not authorised, the Commission accepts that it is a possibility that the services of the wide body aircraft could be withdrawn from services on both the Port Moresby-Brisbane and Port Moresby - Asian ports as the operation of the aircraft requires sufficient passenger and freight loads to make services economically viable. The Commission also notes that the refusal of authorisation of the freight code-share could result in Qantas entering the Port Moresby-Brisbane route in its own right as it obtains high revenue yields on this route due to the high proportion of business and employment-related traffic on the route. The Commission also takes into consideration the possibility of Air Niugini investing in dedicated freight services and operating narrow body aircraft for air passenger services if Qantas terminates the code-share agreement and notes that such restructure and reallocation of resources may be costly to the airline. Whether such restructuring is profitable in the long term is also relevant. Clearly, the current and potential revenue stream from the code-share arrangement would cease, if the code-share is discontinued as a result of this application not being authorised or if Qantas decides to terminate the arrangement. On the other hand, continued losses on the route or on the ‘package of routes’ which depend on the use of the wide-body aircraft on the code-share route, leads to considerable cost to the nation and, in particular, to detriments to its ‘grass roots’ citizens, as discussed above; hence the significance of the profitability question for the relevant routes.

Effects on air freight rates and related effects

9.6. Air Niugini argues that authorisation of this application is likely to significantly lower freight rates and potentially lead to higher frequency of services on the route the subject of this application, but provides no evidence for that. The route has been operated for some time as a code-share route and nothing new appears to have occurred to suggest that costs or freight charges are likely to fall as a result of continued code-sharing operations if authorisation is granted. Air Niugini further argues that the economy of PNG is highly dependent on air freight services. Air freight is the main mode of transporting most of the country’s fresh dairy product, fruits and vegetables, seafood and other exports. With the growth in the resource sector the demand for air freight services will rise. In that respect, it argues, the availability of efficient and frequent air freight services is critical to the growth of PNG’s economy and the welfare of its people. Accordingly, Air Niugini states that the charges for air freight are important for the growth of the economy; higher cost and lower frequency air freight services will lead to higher import costs in PNG including on staple foods such as fresh diary, fruits and vegetables. According to Air Niugini, this would result in consumers spending more on basic food than on other products or would push them to demand higher wages. The end result of this is a corresponding multiplier effect on the economy and makes PNG less competitive in the international market.

9.7. On the other hand, Air Niugini stated that if authorisation is granted, low cost air freight services will prevail which makes local PNG products more competitive in international markets and increases the profitability of PNG industry.
9.8. In response to this claim, the Commission acknowledges that air freight services are important for the import and export of perishable and high value commodities, especially fisheries products. From information before the Commission, the freight market is a growing market and has been recently attracting new entrants into the market. Indeed, because of the significance of air freight for export competitiveness and import costs for the population at large, careful assessment needs to be made of possible anti-competitive effect and consequent air-freight rate increases.

9.9. The Commission notes that while the PNG-Australia air freight market has been largely serviced by the Air Niugini/Qantas alliance, there are other service providers such as Virgin, Airlines PNG and freight-only carriers such as Pacific Air Express that service the market. Skyforce Aviation has only recently entered the market. The Commission considers that authorisation of the amended freight code-share will continue to allow Air Niugini and Qantas to continue to enjoy the overwhelming joint share of the total freight uplifted between Port Moresby and Brisbane (and more broadly, Australia). The Air Niugini/Qantas alliance recorded an average of about 90 per cent of total air freight movement between PNG and Australia in the last five years.\(^\text{12}\) This has been largely attributed to the air freight movement between the ports of Port Moresby and Brisbane. Air freight movement between PNG and other Australian ports such as Sydney have not contributed much. According to statistics obtained from BITRE, Air Niugini and Qantas continue to face competition from Virgin, PAE and now Skyforce; however, the alliance is still overwhelmingly dominant in terms of total freight uploaded as well as the frequency of services provided.

9.10. In the event of this authorisation being declined, the Commission considers that, in the short term, the demand for freight services on the Port Moresby-Brisbane sector and the Asian air freight market may exceed supply if Air Niugini suspends operation of wide-body aircraft on the route, resulting in a rise in freight rates. The Commission envisages that if, due to switching of aircraft type, freight rate rises materialise in the short term, existing dedicated freighters would be prompted to apply for additional freight capacity, a part of which could be transferred to them if not fully utilised by incumbent carriers, and vary their frequency to meet market demand. Sustained imbalance between demand and supply of cargo space would lead to additional capacity entering the market either in the form of increased dedicated freighter services, offering a more comparable frequency to combined passenger/freight operations and, therefore, a greater degree of substitutability. It is also possible, in such circumstances, that Virgin, or a new entrant, would introduce wide-body operations to offer a combined passenger/freight service, or freight-only operations. Without limitation by regulatory barriers, therefore, increased freight capacity and frequency of freight services would lead to competitive freight rates as competition intensifies.

9.11. Under the assessment of competition above, the conclusion has been reached that the anti-competitive effect of the code-share is significant, hence the argument mounted under public benefit by Air Niugini that continuation of the code-share would lead to lower freight rates cannot be accepted.

9.12. As will be discussed in greater detail in section 11 below, subsequent to the application being lodged, Qantas independently entered the freight market in July 2013 after it secured capacity rights of 35 tonnes per week on the Australian Port Moresby route. The service was indefinitely terminated in mid-October 2013. That development needs to be considered in the public benefit and competition context. The action by Qantas to independently operate freight services on the route posed some important considerations to which the Commission has been giving consideration. While there is no indication that Qantas will
recommence its dedicated freighter service as it was suspended indefinitely, it indicates the possibility that it could re-enter and, in that scenario, the two largest players in the market with an overwhelming combined market share could collaborate to influence the freight rates. In normal competition analysis, this situation would have resulted in a conclusion of a substantial lessening of competition, due to the very high level of concentration and high barriers to entry creating powerful incentives for the two carriers to engage in tacit collusion. If Qantas decides to re-introduce the freighter service, the public benefit arguably may not be sufficient to outweigh the anti-competitive effect. In those circumstances absent the code-share, the parties would compete vigorously for freight and the benefits from competition could outweigh the rationalisation benefits. It is appropriate, therefore, for the Commission to consider the possibility of re-entry by Qantas during the term of this arrangement. In such a situation, the public benefit and anti-competitive effects of the code-share arrangement would need to be re-assessed. Hence the Commission considers that it is necessary to impose a condition that was not included in the draft determination namely “that if Qantas re-enters the freight market in its own right as a carrier then this authorisation will cease forthwith”

9.13. Overall, the Commission acknowledges that the freight capacity offered by the services of the B767 aircraft supports PNG businesses and exports. If the wide body B767 aircraft is replaced with the narrow body aircraft, this would result in the loss of freight capacity in the short term. The Commission considers that the increase in freight services and frequencies by the existing dedicated freight carriers may, but will not necessarily, fall short of replacing the lost capacity for the short term but, in any case, is likely to be corrected in the medium to long term.13

9.14. The benefits claimed, however, need to be contextualised. If the code-share service, either by itself, or by reason of unprofitable services which depend on the wide-body aircraft used to operate the code-share service, leads to losses, the public bears the cost. The fact that some sectors of the community, such as the businesses that export the products which depend on the service, benefit from it, is likely to be outweighed by the fact that ordinary citizens, least able to do so, bear the losses, if that is the case.

9.15. Furthermore, in relation to the provision of the agreement allowing a soft block addition to the marketing carrier’s code share capacity entitlement and Qantas’s argument that the code-share provides Air Niugini with a fixed stream of revenue, the surety of that revenue would be undermined by the volume of ‘soft block’ booking, if that were added to the hard block arrangement, thereby reducing the public benefit of the code-share arrangements, in the sense of avoiding losses to be ultimately borne by the public, to the extent any soft block allocation entitlement were not taken up, thus passing the cost of unutilised capacity on to Air Niugini.

Other public benefits

9.16. The applicant also claims that this application has similar public benefits arguments to the previous application to which the Commission granted authorisation under Determination A2012/13. The Commission’s position in light of those benefits has been highlighted in Determination A2012/13. Therefore the Commission sees no reason for restating its views on those benefits.

10.0 ISSUES ARISING FROM THE DRAFT DETERMINATION

10.1. The Commission received responses from the PNGTPA, the IPA, the IPBC and the PNG Chamber of Commerce and Industry stating that they had no objections to the
Commission’s draft determination. Air Niugini also responded in a letter dated 18 September 2013 stating that it accepts the Commission’s proposed decision; but did not make any submissions on the draft determination. Qantas, although having no objections to the proposed decision to grant authorisation, made a detailed submission on parts of the draft determination it had concerns with, and sought further clarification from the Commission.

10.2. First, Qantas clarified its position in relation to the Commission’s comments with regard to para 5.2.4. of the Draft Determination (para 5.6 in this determination) which states “... in relation to a more internal relationship, ... Air Niugini has access to Qantas established ... sales network...” that the commercial arrangements between the two carriers do not provide Air Niugini with direct access to Qantas’ sales network. Rather, the freight arrangement, as with other types of code-sharing arrangements, broaden the opportunities for the inventory of the operating carrier to be sold by making a portion of this inventory available to a marketing carrier. Qantas further stated that Air Niugini does not currently have a dedicated sales force in Australia and noting that significantly higher volumes of freight are carried North bound into PNG than on the South bound direction to Australia, without the freight code-share arrangements currently in place with Qantas, Air Niugini’s prospects of selling freight capacity on its (passenger) services would be dependent on the airlines’ own sales capability.

10.3. The clarification is significant in that it removes ambiguity about the nature of the access in question and, thereby, permits a proper evaluation of the claimed public benefit, with respect to the weight it should be accorded. Clearly, an indirect access to the Qantas sales force and network should be given less weight than a direct access arrangement.

10.4. Qantas also pointed out that dedicated freighters Pacific Air Express and HeavyLift Cargo started operations over the period 2008-2012 which the Commission failed to recognise in its draft determination. Furthermore, Qantas does not agree with Commission’s description of the relevant geographical locations between which the trade occurs and stated that “... due to Qantas’ domestic and international sales force and own freighter network, northbound freight to PNG in fact originates across Australia and around the world.”

10.5. Regarding the comments on para 7.1.4. of the draft determination (contained in para 7.5 of this determination) about the Commission’s consideration of relevant geographical locations, the Commission maintains the view that regardless of the origin of northbound freight, the geographic dimensions of the relevant markets are PNG and Australia with a particular focus on the Port Moresby –Brisbane route as this route is the subject of the application and the respective locations within each country in which the code-share services operate. Other airports within each country which may constrain the parties are also relevant, hence the alternative dimensions considered are both, the specific route the subject of the agreement, and the country-wide dimensions in each country, which offer potential constraints, were the freight charges to rise by a non-trivial and non-transitory amount. Many products originate in third countries, but relevant to market definition is the proximity of circumstances. There must be good economic reasons why flights to PNG do not originate from the countries in which the goods originate - possibly (a) the lack of volume of finished goods, which requires ‘consolidation’ to be carried out in Australia to achieve the necessary scale, (b) need for transformation of the goods from a third country into final products or intermediate products for use in PNG industry; (c) other factors which necessitate origin within one of the two countries to which the code-share relates. The mere fact of inputs originating in third countries does not justify them being included in the market definition. Clearly, those countries are not substitutable in the sense of the definition of ‘market’ in section 45 (2) of the ICCC Act ‘...for goods or services as well as...'

---

14 Qantas submission on Draft Determination A2013/16 dated 25 September 2013.
other goods and services that, as a matter of fact and commercial common sense are substitutable for them.’

10.6. Qantas had concerns on proposed condition 10.0.4. c) of the draft determination reproduced here. “Air Niugini operates the code-share route and any interdependent route profitably and is to submit six monthly separate passenger and freight code-share profit and loss reports to the Commission for each of the Sydney and Brisbane routes and each of the Asian Routes which depend on the operation of the wide body aircraft which operates the Brisbane route.” Qantas submitted that it had significant concerns with the implications of the proposed condition due to the commercial uncertainty that it will create for both carriers as profitability of a route is influenced by a number of factors – including but not limited to the type of aircraft operated, pricing and yield factors, demand and seasonality and other dynamics such as the circumstances of both the national and international economy. With regards to the proposed condition requiring profitability of interdependent routes, the operation of these above mentioned factors are very separate to the existence of code-share operations on the Brisbane route. Qantas further submitted that the proposed condition attributes a significant amount of weight to the code-share arrangements on the Brisbane route and fails to recognise the operation of these external factors, which all have some bearing on route profitability and are outside of Qantas control and, to some extent, the control of Air Niugini. Qantas also indicated that it did not have access to the financials of Air Niugini other than publicly available information and it would come as a surprise to Qantas if Air Niugini was to fail to meet the profitability criteria required by the condition in any six monthly period. Qantas states that the proposed condition exposes the arrangement to becoming unauthorised on a bi-annual basis and compromises the anticipated period of authorisation (subject to other conditions) for business continuity to 01 October 2015. The effect of such a condition is also detrimental to the long term development of the Brisbane route. Qantas stated that it is clear how itself and Air Niugini would approach reauthorisation, however if the proposed condition is triggered it is anticipated that this would terminate the freight arrangements indefinitely. Finally, Qantas refuted the Commission’s comments in paragraph 9.4. that ‘code-shares should be profitable to justify their continuance’ and added that code-share arrangements may still be financially beneficial to an operating carrier on an underperforming route by preventing greater losses being incurred than in a situation without the arrangements in place. Qantas concluded that the above condition does not allow for recognition of this aspect of code-share arrangements.

10.7. The Commission would like to point out that the most important aspect of the code-share relates to the issue of public benefits. Air Niugini is a State owned entity; hence losses mean direct losses to the State and, consequently, to the people of PNG. Even if operating on an underperforming route attracts a better payoff and would be beneficial for the operating carrier, any loss is regarded as a loss in public benefit. As to the submissions relating to loss avoidance by the code-share and its contribution to earnings, the point has been made abundantly clear in the Draft Determination and Determination A2012/13 that losses arising from the operation of the code-share route, whether ameliorated by the code-share or not, are still losses to the public arising from the code-share, due to the State ownership of Air Niugini. It has been submitted by the applicant that without the code-share the route would be uneconomic to operate. If the route is uneconomic with the code-share that raises the question why the public should bear the losses in circumstances where competition is likely to be lessened and prices and service quality likely to decline. Therefore, to minimise public detriment (as a result of the loss it may incur), the condition was proposed. Moreover, the six-monthly reports will also assist the Commission in assessing the performance of code-share services in terms of profitability of the arrangement in the context of public benefit. However, the point made by Qantas is a valid one in that the condition requiring profitable operation of the subject route and interdependent routes creates uncertainty. In light of that submission, the condition is now
amended to require submission of six-monthly profitability data and is limited to just that obligation - information provision. It is not a condition that the code-share route and ‘interdependent routes’ remain profitable during the period of authorisation. As the duration of this authorisation is co-extensive with that for the passenger code-sharing arrangements, which expire on 1 October 2015, the parties will now have certainty during the period of authorisation that it will not be revoked for reason of unprofitability alone.

10.8. In relation to condition 10.0.4. f) of the draft determination which states “all freight space booking arrangements are to be on a ‘hard block’ basis only without any ‘soft block’ component”, Qantas expressed concerns that the freight movement between Australia and PNG overall is typically ‘one directional’ with significantly higher volumes moving northbound into PNG than in the southbound direction to Australia, and the current arrangements reflect the directionality of the Australia-PNG freight market and the significant imbalance in sized block arrangements on each of the South bound and North bound sectors. Qantas interprets that condition as permitting these differently sized blocks as the arrangements would be commercially unviable for Qantas if that were not the case. Qantas also argued that the condition limits the scope and flexibility of the arrangements by prescribing that freight bookings by the marketing carrier must be on a hard block basis only; and concluded that it does not support the imposition of limitations that limit the commercial flexibility of the arrangements and therefore does not support the excision of the soft block component.

10.9. While appreciating the one directional nature of the movement of freight, the Commission decided to impose this condition to limit the code-share arrangement to hard block only, as it believes that Air Niugini’s commercial planning would lack certainty and its financial performance would be prejudiced if the soft block arrangements are permitted, as Qantas would be able to vary its requirements to maximise its profits at the expense of the operating carrier by ‘cherry picking’ according to the demand profile (a) by day of the week; (b) direction; and (c) not utilising, or not fully utilising, soft block bookings on the code-share flights after satisfying its load factor requirements. This would be exacerbated if it re-entered the freight market, either through its own freighter operations via Cairns or from another Australian airport. This condition, therefore, will encourage vigorous competition by Qantas to sell its allocated capacity at competitive prices. The consequences for competition and public benefit of the code-share if a soft block component were introduced have already been dealt with above, in this determination.

10.10. Qantas has concerns about Condition 10.0.4. g) of the draft determination which is reproduced here “Freight space allocated to the marketing carrier does not exceed 50 per cent of the proportion of overall aircraft capacity for freight on every flight, in each direction, on every day of the week, throughout the year, on which the service operates” and para 6.5. which states that “the original authorisation allowed a maximum of 50 per cent of capacity to be offered to the marketing carrier on a hard block basis”. Qantas submitted that it is not aware of any conditions in previous determinations which limited the freight capacity that can be offered to Qantas as the marketing carrier to a maximum of 50 per cent. Qantas is also concerned that the proposed condition (10.0.4. g) of the draft determination) limits the commercial flexibility of the arrangements particularly if soft block arrangements were not to be permitted by the Commission. Qantas stated that it does not support the imposition of limitations that restrict the commercial flexibility of the arrangements and therefore does not support the imposition of a 50 per cent capacity limit as proposed by the condition.

10.11. The whole of para 6.5. is reproduced here for clarity. “The original authorisation allowed a maximum of 50 per cent capacity to be offered to the marketing carrier on a hard block basis. In this application, the proportion is not specified, but stated to be on a hard block basis. However, the option of granting further capacity on a soft block basis is said to be
provided for.” The Commission agrees with Qantas that the previous determination did not stipulate conditions about (lower and/or upper) limits on freight capacity allocated to Qantas. With regard to the imposition of limits as one of the conditions of the draft determination, the previous arrangement had been authorised for a period of eight months (to allow the codes-share parties to finalise the freight agreement), which was a short period; hence no such condition was considered necessary for such a relatively brief transitional period. It was, however, imposed on the passenger component of the arrangement as that was for a much longer duration. Now that the terms of the agreement for the longer period have been settled and authorisation applied for, it is appropriate to consider limits. To maximise competitive sales and to avoid ‘cherry picking’ on peak times, the condition was proposed in the draft determination.

10.12. The arguments about ‘cherry picking’ which have been articulated above relating to hard vs soft block booking proposals apply equally to capacity. Unlimited capacity arrangements could, theoretically, be used by a party with relatively stronger bargaining power to maximise its profits at the expense of the party in a relatively weaker bargaining position. The operating carrier, which bears all the sunk costs, is in a weaker bargaining position where the marketing carrier is able to mount a credible threat of entry. Qantas has recently trialled freighter-only operations on the Brisbane-Cairns-Port Moresby route and its bargaining position is made much stronger by the threat of re-entering the freight market. That possibility, in the Commission’s view, places the operating carrier in a significantly less favourable bargaining position vis-à-vis the marketing carrier. To reduce the likelihood of exploitation of the marketing carrier’s bargaining position, the maximum of 50% capacity booking on any individual flight has been imposed. Coupled with the hard block booking requirement, the operating carrier would be assisted with a degree of certainty for the duration of the contract, unless it is terminable by the marketing carrier. The public benefit of loss avoidance to the citizens of PNG requires that the operating carrier have equal opportunity of access to traffic volume. Consideration was also given to imposing a minimum proportion, but the Commission refrained from including that element in the condition, preferring on this occasion to allowing the parties to negotiate flexibly on volumes below the maximum. In any subsequent freight code-share authorisation, the behaviour of the parties during this period of authorisation and the financial consequences for Air Niugini and the citizens of PNG on such arrangements in the code-share will be taken into consideration.

10.13. The only response in opposition to the agreement was from Mr. Edin Corhodzic of HeavyLift. Via an e-mail dated 05 September 2013, Mr. Corhodzic, “… as an intending participant in this industry,” opposed the proposed decision to grant authorisation stating that currently Qantas and Air Niugini both provide separate cargo services “… and the only other independent operator is PAE …”; and if Air Niugini and Qantas are allowed to codeshare, this would diminish the competitive nature of the route. He also had concerns that with their combined strength, they would force participants like PAE out of the market, giving them monopoly on the route. At the moment they are unable to sit and discuss rates, however by code-sharing they would be quite within the legal framework as partners to collude and set rates which could be as high as they see fit.

10.14. The Commission acknowledges and accepts Mr. Corhodzic’s comments about the codeshare partners’ combined strength that may force small players out of the market and deter potential entrants. While it would be illegal for the parties to collude on fares in relation to their separate services, the Commission acknowledges the practical difficulty of detection, but also, the real possibility of tacit collusion, which is not illegal. The purpose of assessing likely competition effects is to realistically consider the possibilities of overt or tacit collusion and to include them in assessing anti-competitive effects, which, in turn, are to be ‘put in the balance’ against public benefits. The public benefits have been extensively discussed above. The Commission is very aware of the potential anti-
competitive consequences of the kind contemplated by Mr Corhodzic. To make the arrangement more competitive, the Commission has proposed that the block allocation should be all on a hard block basis, with a maximum volume available to the marketing carrier. The Commission has also imposed other conditions to minimise the possibility of collusion. If collusion occurs, and evidence is available to the Commission, it will not hesitate to consider legal action. It is also relevant to note that Hevylift has been granted capacity under the Australia-PNG ASA but has not yet used any part of it. The historical duration of such entitlement is not known but presumably, any ‘warehousing’ of capacity is, presumably, not condoned by the ASA parties, as that prevents other potential entrants making entry in the context of capacity limitations.

11.0 ISSUES ARISING FROM CHANGES IN MARKET CIRCUMSTANCES

11.1. As stated above, after the release of the draft determination the Commission became aware that Qantas had entered the PNG – Australia freight market in its own right as a freight operator after securing capacity rights from IASC and, after operating for some three months between Cairns, Brisbane and Port Moresby terminated this service indefinitely. The Commission considers that the independent entry of Qantas into the freight market is a significant development and should be taken into account in determining the authorisation application. At the time of issuing the draft determination, the Commission was not aware of the entry by Qantas. Neither Air Niugini nor Qantas informed the Commission of this development. The IASC did not inform the Commission about the grant of capacity to Qantas, but the Commission acknowledges that it is not obliged to do so. The statutory period for convening a conference under sub-sections (5) and (6) of section 78 had expired when the Commission became aware of the development. In keeping with its ethos of transparency and consultation, however, the Commission considered that it was appropriate that the views of interested parties should be obtained before it took this development into account in its determination. Those circumstances prompted the Commission to issue a discussion paper which raised for consideration certain aspects of the entry by Qantas into the market.

11.2. Essentially, the paper discussed competition issues such as the level of concentration in the freight market with and without the independent entry of Qantas’s dedicated freighter service as well as focusing on market dynamics which could change incentives for competition substantially should Qantas decide to re-enter the market. The discussion paper provided data that indicated that the combined market share of Qantas and Air Niugini under the code-share was about 73.5% before Qantas entered the market independently. After the independent entry of Qantas the combined code-share decreased to about 62.5%. Combining both carriers’ share of the market (including the Qantas independent share) brought it to 76%. Data compiled by the Commission also indicated that the top three players in the market, Air Niugini, Qantas and Pacific Air Express hold 99.5% of the market, an indication of an extremely highly concentrated market. A very high level of concentration in the hands of Air Niugini and Qantas, approximating 76%, in normal competition analysis would result in an assessment of a substantial lessening of competition, where other relevant factors, such as low barriers to entry did not mitigate the anti-competitive effect.

11.3. The discussion paper was issued to all interested parties on the 17th of December 2013 providing an opportunity for all interested parties to comment on the changes that had taken place in the market and is accessible on the Commission’s website at: http://www.iccc.gov.pg/images/13_December_2013_Discussion_Paper_-_Air_Niugini_Code-share_Discussion_Paper.pdf. The Commission received submissions from Air Niugini, Qantas, Australian Department of Infrastructure and Regional Development (DIRD), Airlines PNG and TPA PNG; all expressing views that they had no
issues with this particular market development. IPA on the other hand, while in support of the authorisation raised some important issues for consideration which will be discussed below. Both Air Niugini and Qantas made lengthy submissions in support of the freight code-share agreement which are discussed in detail below.

11.4 In its submission Air Niugini argued that the Commission’s analysis of HHI in Table 1 (table 2 in para 7.28. of this determination) of the discussion paper provided a distorted picture of market concentration as the Commission did not consider the market share of Qantas. Air Niugini’s view is that Qantas has slightly over 1/3 of the market.

11.5 Air Niugini also stated that the two key players (PAE and Qantas) have a comparative advantage of “Main Deck” and “Cargo Aircraft Only” Capability and the ability to offer a greater choice compared to Air Niugini which can only offer “Lower Deck” cargo carriage.

11.6 Air Niugini further stated that it competes with Qantas and PAE in the Australia and PNG markets. Customers in both these markets view all three carriers as having different product offerings on the scheduled services and that no two companies are seen as a “single firm” in the market.

11.7 Air Niugini also stated that should Qantas re-enter the freight market with its B737 freighter or should PAE decide to increase operations of its B737F, the market would be viewed by Air Niugini customers as multiple choices to transport goods to and from Papua New Guinea hence influencing freight rates due to directional imbalance of freight movement. Air Niugini commented that its market share would also be reduced if competition increased due to freighter operations. According to Air Niugini this would in turn lead to an increase in Air Niugini’s dependency on the existing code-share arrangement.

11.8 In concluding, Air Niugini stated that it is of the view that continuation of the current code-share arrangement supports Papua New Guinea’s business and free trade.

11.9 While Qantas and Air Niugini question the aggregation of their market shares, the Commission’s position is explained earlier in this determination, namely, that where collaboration occurs between parties, creating joint incentives to raise price, it is reasonable to aggregate their market shares, treating them as a single economic player. For example, if instead of a code-share, this were a merger between the parties, or acquisition of one party by the other, their market shares would be aggregated to assess potential anti-competitive effect.

11.10 The Commission’s analysis of market shares on the basis of freight carried by each carrier between PNG and Australia do not show the market share of Qantas under the code-share separately because Qantas’s share of the market is concealed by the 73.5% freight uplifted by Air Niugini. The 73.5% shareholding constitutes the combined shares of Air Niugini and Qantas in the market. This was clearly indicated by footnote 1 on page 4 of the discussion paper which clearly stated that Qantas provided this service via the code-share arrangement with Air Niugini. The Commission also notes Air Niugini’s comments pertaining to the product offerings of the B737F compared to Air Niugini’s B767 aircraft and agrees that the capacity capability of the aircraft are not directly comparable as the freight offerings of the dedicated freighters are not a perfect substitute for the freight offerings of the B767 wide body aircraft because they do not also operate on a frequent and regular basis. The Commission acknowledges the fact that the dedicated freighters have the ability to offer an alternative to what Air Niugini can offer in terms of uplifting larger equipment. A number of points need to be made in this context. While PAE (and Qantas through its B737 freighter) offers ‘main deck’ capability, both can compete for cargo that Air Niugini carries (supply side substitutability). Furthermore, while PAE is a charter
operator, the Qantas operation was a scheduled one, which is directly comparable to, and competitive with, Air Niugini’s scheduled operation. If PAE’s operation were to be excluded from the analysis, the market would be even more concentrated.

11.11. The Commission agrees with Air Niugini that its market share would be reduced if competition increased due to the Qantas freighter operation, however, the Commission did indicate that if Qantas re-entered the market on a long term basis it is possible that Air Niugini could regain some proportion of its previous shares, thus potentially resulting in the enhancement of the joint share of the code share partners and market concentration. On the one hand, the joint dominance of Air Niugini and Qantas is very significant and the independent entry of Qantas strengthens this dominance and as a result the continuation of collaboration between them would influence freight rates as lesser dominant players would have little or no power to influence freight rates. Incentives for entry by others would also be considerably weakened due to the fear of retaliation for aggressively competitive conduct by new entrants. On the other hand, the increasing market share of Qantas arising from its independent entry reduces the revenue and could lead to losses to Air Niugini, thus eroding the public benefit claimed to arise from the code-share arrangement.

11.12. Qantas submission was detailed and while reiterating points highlighted in the first submission stated that on 13th July 2013 it commenced a weekly dedicated freighter service between Australia and PNG (operating Cairns-Brisbane-Port Moresby-Cairns) using B737-300F aircraft with a capacity of 17 tonnes from the fleet of Express Freighters Australia Pty Ltd a wholly owned subsidiary company of Qantas and subsequently suspended the dedicated freighter service indefinitely due to a decrease in demand and a change in the market condition. Qantas further commented that it had indicated to the Commission in its initial submission of its intention to operate a dedicated freighter service in parallel to the existing code-share arrangement with Air Niugini. Qantas argued that the Air Services arrangements between Australia and PNG provide for 130 tonnes per week of dedicated freight capacity for each country. According to the DIRD’s Register of Available Capacity, there are currently 24.5 tonnes per week of dedicated freight capacity available for Australian carriers. Therefore there is scope for additional designated carriers from both Australia and PNG to enter the dedicated freight services market.

In a submission dated 13th May 2013, Qantas made the following comments;

“in the event that freight codes-share arrangements were not reauthorised or were reauthorised with commercially unviable conditions, Qantas would need to re-assess its customer proposition and commercial position in the Papua New Guinea market in relation to the transport of passenger and cargo.”

11.13. The above submission on independent entry by Qantas can be seen to be conditional on the outcome of the authorisation process; referred to both passenger and freight; and, on an objective reading, cannot be taken to be a submission of its intention to operate a dedicated freighter service in parallel to the existing code-share arrangement.

11.14. Moreover, Qantas rejected the suggestions that a code share may result in any anti-competitive conduct in providing air freight services on the PNG route and is actually pro-competitive. Qantas submits that the Discussion Paper incorrectly conflates Qantas and Air Niugini capacity and analyses that incorrectly calculated capacity using Herfindah-Herchman Index (HHI). Qantas and Air Niugini will independently set prices, operate separate yield managements and sell services through their own respective sales network. This will lead to competitive pricing between the two carriers as they both vie to secure business on Air Niugini’s wide –body operation. As explained earlier, close collaboration, tacit incentives for profit maximisation combined with the ‘floor’ pricing effect of the wholesale freight rates justify aggregation of market shares to assess competitive effects of the arrangement, where neither party operates independent cargo services. These factors
were taken into account in the draft determination, without consideration of Qantas’ independent entry. It is the latter fact that is being dealt with in the present context.

11.15. The basis of the discussion paper was to obtain the views of the public in relation to the independent entry of Qantas in the market which poses certain important considerations that could potentially harm competition. The issue of concern here is that with Qantas operating its own freight service, Air Niugini’s market share would decline as Qantas may possibly use its freighter to carry a large proportion of its cargoes currently carried on Air Niugini aircraft. Concentration analysis of freight data from the BITRE website suggests that the entry of Qantas increases the dominance of the two largest firms in the market with possible implications of colluding to influence prices.

11.16. Qantas added that the Block code share arrangements are pro-competitive and provide a fixed revenue stream to Air Niugini as a set price is paid for the block of freight capacity, irrespective of quantum of freight sold by Qantas. As pointed out above, the submission that soft block booking should also be authorised conflicts with this submission. Nevertheless, as only hard block bookings are permitted, the pro-competitive effect of that condition assists the balance of public benefit over anti-competitive detriment. However, should independent freight operations by either carrier occur, the Commission takes the view that the anti-competitive detriment increases, with the public benefit being eroded, for reasons discussed elsewhere in this determination.

11.17. The Commission notes the submission by DIRD that new developments in the market such as Qantas owned-operated freight service on the Cairns-Brisbane-POM has not altered the Department’s initial view on the merits of the proposal. DIRD stressed that Australia’s policy approach does not require airlines to obtain specific economic regulatory approval to carry freight on passenger flights and notes the competitive benefits of a blocked space code-share arrangements as well as Australia’s policy of looking to negotiate open freight entitlements as far as possible through air services discussion with bilateral partners. The Commission repeats its comments in an earlier code-share determination relating to the Port Moresby - Cairns route, that regulators in different jurisdictions may come to different conclusions on the same set of facts, especially taking into account the likelihood that the public benefits and anti-competitive effects applying in each jurisdiction may well be different from the same arrangement, including for reasons of public ownership in one country of the operating carrier.

11.18 Generally, the Investment Promotion Authority (“IPA”) supported the Commission’s draft determination. While supporting the authorisation of the freight code-share, however, IPA made the following comments; “IPA is inclined to support granting of the authorisation in principle subject to:” the inclusion of a clause in the freight code-share agreement that obligates Qantas to disclose to the ICCC its intentions to independently enter the POM-Brisbane freight market. This will enable the Commission to assess competition and public benefit effects that would ensue”

11.19 The Commission is going further than this and is including a condition that if either party enter the PNG-Australian air freight market, as a cargo carrier in its own right and outside the code-share agreement authorised by the Commission apart from the existing services on the Port Moresby-Cairns and Port Moresby –Sydney route without an amendment to the code sharing arrangement, this authorisation is to cease forthwith.

11.20. The Commission notes IPA’s comments regarding an analysis of Air Niugini’s financial information on the package of routes and would like to advise that Air Niugini has provided that information which the commission has analysed and discussed in section 8 of this determination. However the detailed analysis of the financial statements sought by IPA
cannot be openly discussed as Air Niugini has requested confidentiality which the Commission has granted due to the commercial sensitivity of the information.

11.21 IPA also made the following statement regarding the reason for Qantas independent entry into the market;

“The Commission determines the reasoning behind Qantas suspension of its independent freight operations. This could allow the Commission to predict/foresee circumstances under which Qantas may seek to independently re-enter the freight market.”

11.22. The Commission considers that it is the obligation of parties to provide complete information. It would be inappropriate and unduly intrusive for the Commission to demand detailed information from the parties as to the reasons for particular commercial actions, which are presumably taken in the light of market conditions prevailing at the time. The Commission, however, makes all efforts in obtaining accurate information that will assist with its determination. The condition regarding independent entry by either party adequately deals with this issue.

Commission’s assessment of Efficiency and Public Benefits should Qantas Re-enter the market

11.23. As indicated in para 8.2, the code-share is likely to lead to some efficiencies arising from rationalisation and consequent cost savings and would be a benefit to the public if it results in profitable operations. The Commission considers that if Qantas re-enters the freight market independently then the rationalisation benefits to Air Niugini in terms of the unit cost of its operations are likely to reduce as a result of reduced volume due to the reduction of Qantas share of freight uplifted during that time. It is possible that Qantas may use its own freighter to transport large volumes of its cargoes and only use the code-share to carry a small proportion of its cargoes either beyond its dedicated freighter or for exceptional cargoes of an urgent nature not fitting in well with its weekly freighter service. As a result of this, Air Niugini load factors are likely to reduce on the combined code-share services thus it may become too costly for Air Niugini to continue providing freight service on the POM-Brisbane route if the joint revenue from the passenger and freight does not cover the total cost of the provision of passenger and freight service. The implication of this is that the services of the wide body aircraft may no longer be economically viable on the POM-Brisbane route.

11.24. Financial information before the Commission suggests, and the applicant has argued, that the viability of Air Niugini’s wide-body operations on the POM-BNE route is linked to the code-share in terms of the cost of operations as both Air Niugini and Qantas bear the cost of operating the wide body aircraft through a constant revenue flow from the blocked space arrangements. In the event that Qantas re-enters the market, the efficiency benefits from cost rationalisation are likely to reduce as volume carried on the Air Niugini aircraft is most likely to be cannibalised by the Qantas independent freighter operation.

Counterfactual to “No authorisation” and ‘re-entry by Qantas via dedicated freighter”

11.25. Air Niugini has submitted arguments on competition and public benefit in the context of the counterfactual ‘No authorisation’ scenario. In the Commission’s view, should Qantas not re-introduce its freight service then the current market dynamics and incentives would suffice to justify authorisation in terms of the balance of public benefit over anti-competitive detriment, in the context of the conditions imposed by the Commission. The issue of public benefit in terms of the profitability of the code-share would be maintained
as Air Niugini would be earning a fixed stream of income from the current blocked space arrangements that it has with Qantas. Without the Qantas independent freighter service, the freight code-share arrangement would hold weight in terms of public benefit as a result of the cost rationalisation and efficiency gains associated with it.

11.26. On the other hand, should Qantas re-enter the market through a dedicated freighter operation, the analysis above relating to continuation of the code-share are markedly changed in relation to the balance of public benefit and anti-competitive detriment, as outlined in detail in earlier sections of this determination.

11.27 The Commission is aware that both parties operate relatively small aircraft on the Port Moresby - Cairns route, and that Air Niugini operates a B-737 service on the Port Moresby-Sydney route, primarily as passenger services, but where small consignments of loose cargo may be carried. With the exception of such limited cargo services on those routes, there has been no suggestion that Air Niugini is considering, or is likely to, enter the PNG-Australia freight market independently of the code-sharing agreement. Under the precautionary principle, however, it is prudent for the Commission to consider such a possibility, unlikely though that may be. If, therefore, Air Niugini does make such independent market entry, the competition, public benefit and efficiency issues discussed in this section in relation to the independent entry by Qantas would apply in large part to such potential independent entry by Air Niugini.

11.28 As a result of the considerations above, the Commission has decided to include a condition in its authorisation as follows:

“If either party enters the PNG-Australia air freight market, as a cargo carrier, in its own right and outside the code-share agreement authorised by the Commission, apart from existing passenger-cum-freight services on the Port Moresby-Cairns route and the Port Moresby-Sydney route, without an amendment to the code-sharing arrangement that reflects such entry and which is authorised by the Commission prior to such entry, this authorisation will cease forthwith.”

12.0 THE STATUTORY TEST FOR AUTHORISATION

12.1. In order for the Commission to grant authorisation in respect of an application made under Section 70 of the ICCC Act, it has to be satisfied that the conduct, the subject of the application, would result, or would be likely to result in a benefit to the community which would outweigh the detriments to the public as a result of engaging in the conduct. Where the Commission is of the view that the conduct for which authorisation was sought does not result in a public benefit sufficient to outweigh anti-competitive detriment, it may either decline to grant authorisation or choose to impose conditions to increase the benefit or reduce the detriment, thereby generating a sufficient net public benefit.

12.2. Air Niugini’s public benefit claims and the Commission’s analysis of these claims are discussed below.

12.3. The decision to grant or decline to grant an authorisation is governed by the authorisation test under Section 77(6) of the ICCC Act. Section 77(6) states the following:

“The Commission shall not make a determination granting an authorisation pursuant to an application under Section 70(1), (2), (3) or (4) unless it is satisfied that:

a) the entering into of the contract or the arrangement or the arriving at the understanding; or
b) the giving effect to the provision of the contract, arrangement or understanding; or
c) the giving or the requiring of the giving of the covenant; or

d) The carrying out or enforcing of the terms of the covenant, as the case may be, to which
the application relates, will in the circumstances result, or be likely to result, in a
benefit to the public which would outweigh the lessening in competition that would
result, or would be likely to result or is deemed to result, from it.”

12.4 For the Commission to grant authorisation, it has to be satisfied that the code-sharing
agreement would produce benefits to the public that would outweigh the detriments to the
public resulting from the lessening of competition.

13.0 SUMMARY OF ARGUMENTS, WEIGHING PROCESS AND
OUTCOMES

13.1. In terms of competitive detriment, the main barriers to entry and expansion are represented
by restrictions on both freight and passengers contained in the bilateral ASA between PNG
and Australia. In the consultation process, the Australian DIT submitted that Australia has
a policy that is committed to freeing up anti-competitive restrictions on market access. The
only inference available to be drawn is that the capacity restrictions emanate from the PNG
side. Air Niugini has argued that there is unutilised capacity on the Australian side which
has been allocated to Heavylift Cargo Airlines, which is no longer operating services
between PNG and Australia and that the demise of the airline in 2012 has left 77 tonnes of
the freight capacity unused. Whether that capacity is reallocated is a matter for the
Australian Government but the complete removal of capacity restrictions on either side
would obviate such problems. The Commission is aware of the argument that the smaller
scale of Papua New Guinean industries suggests that they should be protected until they
have reached sufficient size to compete on equal terms with international competitors and
is often heard in the context of both, State-owned enterprises needing time to “become
efficient” before competition can be introduced into the monopoly markets they control,
and in the discussion on tariffs to protect domestic industry, as the so called “infant
industry argument”. The Commission considers that so long as “infant industries” are
protected there is little, if any, incentive for them to “grow up” and become efficient
especially if they are owned by the State, because of the lack of real commercial incentives
on management, particularly in the case of SoEs.

13.2. To the extent that Sydney has been excised from the freight arrangement, because that has
been a loss-making route, the anti-competitive effect arising from continuous losses
incurred on the Sydney sector which has probably prevented “competition on the merits”,
will not continue, thus eliminating the “below-economic-cost” element of the anti-
competitive conduct. The change from wide-body operations on that route to narrow body
operations opens up the possibility of new entry as the “excess capacity overhang” which
would also have previously contributed to deterring entry, will have been removed. The
overall anti-competitive detriment to be put into the balance, therefore, is reduced, as the
code-share partners jointly dominated the Sydney route. The Brisbane route is subject to
some limited competition from Virgin and others, although, as the concentration data
appear to show, the code-share partners overwhelmingly dominate the carriage of freight
between the two countries.

13.3. As the Brisbane freight leg is now the only leg for which authorisation is being applied for,
lesser public benefit needs to be put in the balance to outweigh the reduced anti-
competitive detriment, as explained in the preceding paragraph.

15 http://centreforaviation.com/analysis/air-niugini-expands-in-growing-economy-despite-service-challenges-and-weak-
balance-sheet-102047
13.4. Besides the likelihood of cost reduction, the Commission is satisfied that authorisation of this freight code-share agreement will result in greater benefits to society than detriments, subject to profitability of the ‘package’ of routes dependent on the wide-body aircraft. These increased benefits are seen in terms of the profitability that the freight code-share is likely to bring to Air Niugini and the economy as a whole. The continuation of the freight code-share suggests that the use of the wide body services on the Port Moresby-Brisbane route and Port Moresby-Asian routes will be likely to result in profit for Air Niugini, which is demonstrated by the positive profits on the code-share supported routes. Incidentally, the use of the narrow body aircraft on the Sydney route means that there is a greater likelihood that the previously unprofitable operations on that route will now become profitable, but that is not the subject of this application and, therefore, not relevant for consideration.

13.5. The applicant’s submission that the use of the wide-body aircraft on the Brisbane route allows its use on Asian routes as well, suggests to the Commission that the demonstration of the likelihood of profitability of all such ‘interdependent’ routes using wide-body aircraft is necessary to ensure the public benefit claimed is actually delivered.

13.6. The argument, in essence, is that the interdependence of some Asian routes which use the wide-body aircraft with the Brisbane route substantiates Air Niugini’s claim of delivering public benefits. From financial information available to the Commission, the use of the B767 aircraft on the Asian routes has contributed substantially to the profitability of the total package of routes as it is more economical on a cost-per-seat basis, resulting in benefits to the public. The profitability clearly depends on utilisation of seat capacity, which, in conjunction with freight, results in overall profit. Furthermore, to the extent that unprofitable routes can be rendered profitable by the use of more appropriate aircraft, then such options need to be explored, as has been done in respect of the Sydney route, by replacing the wide-body aircraft with a narrow-body one.

13.7. The applicant has provided financial reports for the last three years for each of the Australian routes and the collective grouping Asian routes, forming the ‘package’ of interdependent routes and for all of them collectively, disaggregated by passenger and cargo businesses which allowed the Commission to assess the degree of public benefit or detriment. On the basis of the information provided, authorisation is granted, subject to certain conditions shown below.

14.0 DETERMINATION

14.1. The applicant applied to enter into and give effect to the amended freight code-share agreement pursuant to Section 70(1) and (2) of the ICCC Act.

14.2. Taking into account the above analysis, based on information provided by the applicant and submissions from interested persons, and consistent with Section 77(6) of the ICCC Act, the Commission is satisfied that, among other factors, the financial viability of the route the subject of the application and those stated to be dependent on it, is likely to be sound and can be sustained; therefore, this freight code-share agreement will result, or will be likely to result, in benefits to the public and that the detriments associated with it would be outweighed by such benefits, and that authorisation should be granted.

14.3. Based on the above analysis and the reasons discussed using the information available to the Commission, it considers it appropriate to grant authorisation to Air Niugini to enter into and give effect to the amended freight code-share agreement with Qantas, subject to the conditions stipulated below and, therefore, does so.
14.4. Since the code-share agreement has been entered into, in accordance with Section 74(1)(a), the Commission also considers it appropriate to grant retrospective authorisation under Section 70(1), subject to conditions.

14.5. In granting this conditional and limited authorisation pursuant to Section 77(1)(a) of the ICCC Act, the Commission determines that:

a) This authorisation expires on 01 October 2015 concurrently with Determination A2012/13; and

b) This determination supersedes Variation Determination V1/A2012/13.

14.6. To minimise anti-competitive effects of the arrangement, the Commission also considers it appropriate to impose some conditions pursuant to Section 77(2). The authorisation ceases to have effect forthwith, in the event the conditions are not complied with. The conditions for authorisation are as follows:

a) Within six months from the date this determination is issued, or prior to that date, if the parties agree, the freight space booking arrangements are to be revised to be all on a ‘hard block’ basis, without any ‘soft block’ component; and the relevant parties advise the Commission of the implementation of such change, immediately after implementation or after agreement on the date of implementation, if sooner than the latest date stipulated in this condition of this determination;

b) Air Niugini is to submit six monthly separate passenger and freight code-share profit/loss reports to the Commission, for the Port Moresby Brisbane vv route and each of the Asian routes which depend on the operation of the wide-body aircraft which operates the Brisbane route with code-share revenue shown separately for passengers and cargo;

c) Freight space allocated to the marketing carrier does not exceed 50 per cent of the proportion of overall aircraft capacity for freight on every flight, in each direction, on every day of the week, throughout the year, on which the service operates;

d) The future introduction of wide-body services on the Sydney leg and freight code-sharing on that route, sought by the application, is not authorised by this authorisation. Any such proposal would need to form the subject of a separate application at the relevant time.

e) Air Niugini must price and sell its code-share services independently of Qantas;

f) Air Niugini must not share or pool its code-share revenue with Qantas;

g) The parties must not collude on end-prices to be charged to customers under the code-share arrangements, nor on the capacity or frequency of services not covered by the code-share arrangements, as that would be illegal under the ICCC Act; and

h) If either party enters the PNG-Australia air freight market, as a cargo carrier, in its own right and outside the code-share agreement authorised by the Commission, apart from existing passenger-cum-freight services on the Port Moresby-Cairns route and the Port Moresby-Sydney route, without an amendment to the code-sharing arrangement that reflects such entry and which is authorised by the Commission prior to such entry, this authorisation will cease forthwith.
<table>
<thead>
<tr>
<th><strong>Agreed / Not-Agreed / Abstained</strong></th>
<th><strong>Agreed / Not-Agreed / Abstained</strong></th>
<th><strong>Agreed / Not-Agreed / Abstained</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Chairman’s casting vote exercised/not exercised</strong></td>
<td><strong>Cross out whichever is not applicable</strong></td>
<td><strong>Cross out whichever is not applicable</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Agreed</strong></th>
<th><strong>Not-Agreed</strong></th>
<th><strong>Abstained</strong></th>
</tr>
</thead>
</table>

| **DR BILLY MANOKA, PhD**  
Commissioner/CEO | **DR ERIC OMURU, PhD**  
Associate Commissioner (Resident) | **MR. DAVID DAWSON**  
Associate Commissioner (Non-Resident) |

Dated the 28th Day of February 2014
ANNEXURE 1

List of Interested Parties the Commission invited comments from

1. Qantas Airways Limited
2. National Research Institute
3. Australian Department of Infrastructure and Transport
4. PNG Department of Treasury
5. PNG Department of Commerce, Trade and Industry
6. PNG Department of Transport
7. PNG Investment Promotion Authority
8. Airlines of PNG Limited
9. PNG Civil Aviation Safety Authority
10. PNG Department of Foreign Affairs and Immigration
11. Hevilift Limited
12. Independent Public Business Corporation
13. Investment Promotion Authority
15. Hon. Rimbink Pato, MP – Minister for Foreign Affairs and Immigration
16. Hon. Ben Micah, MP – Minister for State and Public Enterprise
17. Hon. Don Polye, MP – Minister for Treasury
18. PNG Chamber of Commerce and Industry
19. PNG Institute of National Affairs
20. PNG Tourism Promotion Authority
ANNEXURE 2

Concentration classification: US Department of Justice and the Fair Trade Commission’s Horizontal merger guidelines, August 19, 2010, pg.19

- Unconcentrated Markets: HHI below 1500
- Moderately Concentrated Markets: HHI between 1500 and 2500
- Highly Concentrated Markets: HHI above 2500
- Small change in concentration: Mergers involving an increase in the HHI of less than 100 points are unlikely to have adverse competitive effects and ordinarily require no further analysis.
- Unconcentrated markets: Mergers resulting in unconcentrated markets are unlikely to have adverse competitive effects and ordinarily require no further analysis.
- Moderately Concentrated Markets: Mergers resulting in moderately concentrated markets that involve an increase in the HHI of more than 100 points potentially raise significant competitive concerns and often warrant scrutiny.
- Highly Concentrated Markets: Mergers resulting in highly concentrated markets between 100 points and 200 points potentially raise significant competitive concerns and often warrant scrutiny. Mergers resulting in highly concentrated markets that involve an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power. The pre-assumption may be rebutted by persuasive evidence showing that the merger is unlikely to enhance market power.