



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 19<sup>th</sup> day of July, 2019

**Joint Application of**

**AMERICAN AIRLINES, INC.; and  
QANTAS AIRWAYS LIMITED**

**Under 49 U.S.C. §§ 41308 and 41309 for  
Approval of and Antitrust Immunity for  
Alliance Agreements**

**Docket DOT-OST-2018-0030**

**FINAL ORDER**

**I. SUMMARY**

By this Order, the Department of Transportation (the “Department”) grants final approval of, and antitrust immunity (“ATI”) for, the proposed alliance agreements submitted by American Airlines, Inc. (“American”) and Qantas Airways Limited (“Qantas”) (collectively, the “Joint Applicants”), with conditions.<sup>1, 2</sup>

The Joint Applicants have requested a grant of immunity from the U.S. antitrust laws in order to allow American and Qantas to operate a joint business agreement (“JBA”) between North America and Australasia. We have concluded that, overall, the alliance and JBA will be procompetitive and are likely to generate substantial benefits for the traveling public.

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<sup>1</sup> The common names of the carriers are used throughout this Final Order.

<sup>2</sup> See Joint Application for Approval and Antitrust Immunity for Proposed Alliance, February 26, 2018, DOT-OST-2018-0030-001, Appendix 1, for the following exhibits, representing the agreements detailed above: Amended and Restated Alliance Agreement; the Amended and Restated Alliance Settlement Agreement; the Amendment No. 1 to the Codeshare Agreement; and the Amended and Restated Joint Business Agreement; see also Joint Reply of American Airlines, Inc. and Qantas Airways Limited, DOT-OST-2018-0135 for the following implementing agreements: Codeshare Agreement (Appendix 1.1), a Frequent Flyer Agreement (Appendix 1.2), and a Lounge Access Agreement (Appendix 1.3). All documents are confidential pursuant to Rule 12 of the Department’s procedural regulations (14 C.F.R. 302.12).

## II. SUMMARY OF THE RECORD

On February 26, 2018, the Joint Applicants submitted their application seeking approval of, and a grant of antitrust immunity for, their joint business agreement. This application represents the second attempt by American and Qantas to obtain antitrust immunity. In the application, the Joint Applicants have included detailed plans showing their intent to bring about substantial public benefits, such as increased capacity and access to lower fares, enabled by technological investments and the alignment of economic incentives that the Joint Applicants claim “. . . can only be implemented with a grant of ATI under section 41308.”<sup>3</sup>

The Department issued Show Cause Order 2019-05-23 on May 31, 2019, tentatively approving and providing antitrust immunity for the Applicants’ joint venture agreements, subject to conditions. As part of its conditions, the Department tentatively directed the Joint Applicants to submit a self-assessment and review to demonstrate the benefits of their joint business in seven years following the approval of the application. The proposed period will allow the Joint Applicants sufficient time to implement the joint venture, while also providing for accountability and oversight. The review would align with the Australian Competition and Consumer Commission’s re-authorization review and thus reduce the regulatory burden on the Joint Applicants. The review would focus on the “Four Key Areas,” as described in Appendix A to this Order, based on the proposed benefits and investments identified by the Joint Applicants in their application. In addition to the self-assessment, the Department also tentatively imposed conditions requiring that the Joint Applicants provide interline access for new entrants in the U.S. – Australasia market for feeder flights, submit origination and destination (“O&D Survey”) information for all passenger itineraries that contain a U.S. point, undertake annual reporting on the progress of their joint venture, and withdraw from IATA tariff coordination.

## III. SUMMARY OF RESPONSIVE PLEADINGS

The Department invited public comment on the Show Cause Order. The comment period closed on June 26, 2019, and the Department received comments from various stakeholders. Those comments are summarized below.

### A. JetBlue

JetBlue filed a comment in which it states that it “. . . takes no position on whether the Department should grant ATI to American-Qantas.”<sup>4</sup> JetBlue believes that in addition to potentially granting ATI to members of alliance groupings such as American and Qantas, that the Department should also protect and promote competition from carriers such as JetBlue that are not part of the larger airline alliances. JetBlue also believes that the Department should adopt the following three conditions for all ATI immunity grants to ensure that these agreements continue to deliver the promised public benefits: 1) limit grants to five years and subject them to *de novo* reviews for renewal at that time; 2) bar exclusivity provisions and exclusionary practices, with an

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<sup>3</sup> See Joint Application for Approval and Antitrust Immunity for Proposed Alliance, February 26, 2018, DOT-OST-2018-0030-001 at 77-78.

<sup>4</sup> See Comments of JetBlue Airways Corporation, DOT-OST-2018-0030-0141 at 1.

obligation to provide interline access; and 3) assure airport gate and slot access at commercially viable times for new entrants and other carriers seeking to compete with immunized joint ventures. JetBlue believes that the Department's grant of ATI to Delta-Aeromexico with a five-year time limit and *de novo* review requirement should be the "model" for all future approvals; the Department's seven year review in this case represents a "step in the right direction," but JetBlue does not believe it is appropriate for all subsequent applications, particularly for joint ventures at congested airports.<sup>5</sup> JetBlue supports the Department's inclusion of a requirement regarding interline connectivity for new entrants, and urges the Department to include this condition in any final order.

#### **B. Travel Fairness Now**

Travel Fairness Now ("TFN"), a coalition representing travelers and online travel agents, submitted a comment asking the Department to ensure that the Joint Applicants' alliance agreements do not allow either party to restrict the display of fare, schedule, or availability information to third party online travel sites.<sup>6</sup> The organization contends that agreements restricting the display of inventory availability on online travel agent and metasearch sites could limit consumers' ability to compare fare and schedule information and to see multi-carrier itineraries. TFN contends that they are aware of other cases where ATI-immunized airlines have restricted the full display of this information, thereby limiting consumer choice.

#### **C. Mr. John C. Adams<sup>7</sup>**

Mr. John C. Adams submitted a comment detailing his status in the American Airlines frequent flyer program and his unsuccessful attempts to use his accrued miles or cash to purchase a flight from Washington, DC to Queenstown and Auckland, New Zealand via American Airlines and Qantas. He supports the Department granting ATI to the Joint Applicants to the extent that ATI provides for more seamless ticketing ability; he opposes the Department's tentative award should ATI further complicate his attempts at purchasing these tickets.

#### **D. Joint Applicants**

In the Joint Applicants' Answer, they state their agreement with the Department's findings in the Show Cause Order, reiterate the proposed benefits that their tentative grant of ATI will allow them to deliver, and state that they "look forward to a Final Order approving the Proposed JBA and granting ATI so that the Parties can begin delivering these promised benefits to the traveling public."<sup>8</sup> In their Joint Reply, the Joint Applicants state that, due to the stated benefits of their

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<sup>5</sup> *Id.* at 3.

<sup>6</sup> *See also* Comment from Air Travel Fairness Re: Docket DOT-OST-2018-0030, Joint Application of American Airlines, Inc. and Qantas Airways Limited under 49 U.S.C. §§41308 and 41309 for approval and antitrust immunity for alliance agreements, DOT-OST-2018-0030-0132, November 21, 2018.

<sup>7</sup> This comment does not properly constitute a pleading in this proceeding because it was not served on the parties as required by Rule 7. We have included it here because the Joint Applicants responded to it in their Joint Reply.

<sup>8</sup> *See* Answer of American Airlines, Inc. and Qantas Airways Limited, DOT-OST-2018-0030-0142, June 17, 2019, at 3.

Proposed JBA, they believe that Mr. John C. Adams supports their Proposed JBA.<sup>9</sup> The Joint Applicants state that the issues raised by TFN are fully answered by the “large volume of specific evidence” that the Joint Applications submitted to the record, and that TFN does not cite any evidence in support of the assertions they make.<sup>10</sup> The Joint Applicants believe that the Department’s proposed seven-year self-assessment satisfies JetBlue’s demands for a review process and do not believe that JetBlue’s claims warrant any changes to the Department’s proposal.<sup>11</sup> Finally, the Joint Applicants ask the Department to confirm its tentative conclusions in a Final Order so that the Joint Applicants may move to implement their Proposed JBA.

#### IV. DECISION

The Department has decided to grant the Joint Applicants’ request for approval of, and a grant of antitrust immunity for, alliance agreements covering air transportation between North America and Australasia, with conditions. The Department reached its final decision by applying the decisional standards set forth in 49 U.S.C. §§ 41308 and 41309 to the facts of this case.

The Department has reviewed the comments submitted and determined that no changes in the tentative decision are necessary to address the issues raised. No commenters opposed any particular aspect of the tentative decision; rather, commenters supported the decision, or were neutral, or sought clarification on certain matters. JetBlue stated that the proposed seven-year review condition was a “step in the right direction,” but also that the airline believes it is essential that the Department’s granting of ATI be matched with a commitment to protect competition by smaller carriers. We note that the proposed interline conditions that we are making final here largely address JetBlue’s concerns based upon the facts and circumstances of the case. John Adams supports the application as long as the carriers are able to deliver seamless ticketing on itineraries involving the two carriers, a challenge he has described when trying to purchase tickets using either cash or frequent flier miles. We have every expectation that the carriers will devote resources to improve the customer experience, and we will monitor the issue going forward as part of the yearly reporting process. Finally, TFN asks us to identify whether there are any specific provisions in the alliance agreements directing either party to suppress availability information to third party online travel agents. We have reviewed the agreements and found no such provisions.

The Department adopts the findings and conclusions of Show Cause Order 2019-05-23 without modification.

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<sup>9</sup> See Joint Reply of American Airlines, Inc. and Qantas Airways Limited, DOT-OST-2018-0030-0143, June 24, 2019, at 1.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.*

## ACCORDINGLY:

1. We approve and make a grant of antitrust immunity to American Airlines, Inc. and Qantas Airways Limited to implement the amended alliance agreements insofar as they relate to foreign air transportation. The approval and grant of antitrust immunity will be limited as follows:<sup>12</sup>
  - a. Must Implement within Six Months The approval and grant of immunity will expire within six (6) months of the date of this Final Order unless the Joint Applicants have, prior to that six-month expiration date, submitted in the docket verified statements by officers of American Airlines, Inc. and Qantas Airways Limited, attesting that the Amended JBA and related agreements have been implemented pursuant to the terms described in the Joint Application, and unless the Joint Applicants have submitted to the Director of the Office of Aviation Analysis a complete and unredacted copy of the most recent agreements and any appendices;
  - b. Self-Assessment and Review Required Prior to Seven Years: Six years and six months from the date of this Final Order, the Joint Applicants are directed to submit a detailed Self-Assessment to the Director of the Office of Aviation Analysis, consistent with the guidance provided in this Order, including specifically the Four Key Areas described in Appendix A to this Order;
2. We direct the Joint Applicants to submit annual progress reports as described in this Order, including with respect to the Four Key Areas noted in Appendix A, to the Director of the Office of Aviation Analysis, beginning one year from the effective date of ATI, and continuing each year thereafter while the alliance agreements are effective;<sup>13</sup>
3. We direct Qantas Airways Limited to report full-itinerary Origin-Destination (“O&D”) Survey of Airline Passenger Traffic for all itineraries that include a U.S. point;<sup>14</sup>
4. We direct the Joint Applicants to submit for prior approval subsequent subsidiary agreements implementing the amended alliance agreements identified in Appendix 1 of the Joint Agreement and in Footnote 2 of this Order;<sup>15</sup>

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<sup>12</sup> The alliance agreements shall mean those referred to in footnote 2 of this Order.

<sup>13</sup> We expect the Joint Applicants to deliver the progress report by the close of business on the anniversary date of the effective date of ATI. If that date falls on a weekend or Federal holiday, the Joint Applicants may deliver the report by the close of business on the following business day.

<sup>14</sup> We expect Qantas to report the O&D data beginning with the first full quarter following the date of the issuance of this Final Order. Detailed instructions are available from the Department’s Office of Airline Information at the Bureau of Transportation Statistics. We treat the foreign airlines’ O&D data as confidential, do not allow U.S. airlines any access to the data, and do not allow any foreign airlines any access to U.S. airline O&D Survey data. We use these data only for internal analytical purposes.

<sup>15</sup> Regarding this requirement, we do not expect the Joint Applicants to provide the Department with minor technical understandings that are necessary to implement fully their day-to-day operations but that have no additional substantive significance. We do, however, expect and direct them to provide the

5. We direct the Joint Applicants to obtain prior approval if they choose to hold out service under a common name or use common brands;
6. We direct the Joint Applicants, upon written request from any new entrant operating its own aircraft on a nonstop basis in the U.S. to Australia and/or U.S. to New Zealand market, to provide support for feeder flights on an interline basis. The Joint Applicants must offer a new entrant inventory access and/or interline code-share on terms that are comparable to those offered to the Joint Applicants' non-immunized partners, including non-immunized codeshare partners, and the financial terms must be no less favorable than IATA prorate agreement(s) in effect for non-immunized partners at the time;
7. We direct American Airlines, Inc. and Qantas Airways Limited to withdraw, or remain withdrawn, from participation in any International Air Transportation Association tariff coordination activities that discuss any proposed through fares, rates, or charges applicable between the United States and any countries whose airlines have been or are subsequently granted antitrust immunity, or renewal of, to participate in similar alliance activities with a U.S. airline(s). We delegate to the Director of the Office of International Aviation the authority to determine the applicability of the directive set forth in this paragraph as to specific prices, markets, and tariff coordination activities, consistent with the scope and purpose of the condition, as previously described;
8. We may amend, modify, or revoke this authority at any time, without hearing;
9. We defer action on all motions for confidential treatment submitted in this docket to date;
10. The Department will not entertain petitions for reconsideration of this Order; and
11. We will serve this Order on all parties on the service list for this docket.

By:

**JOEL SZABAT**  
Assistant Secretary  
Aviation and International Affairs

(Seal)

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Department with all unredacted contractual instruments that implement or materially alter, modify, or amend the cooperation agreements, joint ventures, or confidentiality/antitrust guidelines. Any appropriate documents shall be submitted to the Director of the Office of Aviation Analysis.

## SEVEN-YEAR SELF ASSESSMENT REQUIREMENTS

As a condition of this grant of ATI, the Department requires that the Joint Applicants submit a self-assessment that includes, at a minimum, detailed assessments in the following key areas (“the Four Key Areas”) as described in their application:

- Market Capacity – The Joint Applicants will provide seat and departure numbers per distinct nonstop O/D market served on a quarterly basis during the evaluation period. The carriers will indicate any new or incremental city pairs added. The Department will be particularly interested in the extent to which American and Qantas will have fulfilled the capacity plans they included in their application and subsequent filings;<sup>16</sup>
- Technological Investment – The Joint Applicants will report the status of their efforts to implement the revenue management and pricing systems that allow greater availability for passengers traveling on interline itineraries involving both American and Qantas. In particular, the carriers will document the extent to which these tools have been installed and the quarterly number of interline passengers generated by their use;
- Market Stimulation – Measured against the Joint Applicants’ estimate of up to 180,000 new passengers annually in the U.S.–Australasian market,<sup>17</sup> the Joint Applicants will quantify the total market size in U.S.–Australasia on a quarterly basis, with particular focus on the incremental passengers their cooperation has added to the total market size. The assessment will include a qualitative discussion of the challenges and successes the carriers have experienced in realizing their goals; and
- Non-exclusivity – The Joint Applicants will detail the third-party cooperation undertaken by either American or Qantas at their gateways in the U.S. and Australasia (e.g., Qantas and Alaska at San Francisco and Los Angeles). The carriers will further detail all the inquiries they receive for access to their networks that would flow traffic in the U.S.–Australasia market, the name of the carriers with whom they cooperated, the quarterly number of passengers exchanged at the gateway, and the number of codeshare or interline destinations the relationship served. The Joint Applicants would also describe the level and terms of cooperation with potential third parties to the Department.

The assessment will be supported by a variety of data sources and market analyses that are disclosed and produced by the Joint Applicants to the Department.

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<sup>16</sup> See Joint Application of American Airlines and Qantas Airways for Approval of and Antitrust Immunity for Proposed Joint Business Agreement, February 26, 2018, DOT-OST-2018-0030-001, at 44; *see also* Qantas Confidential Response to Order Requesting Additional Information – Question 6 (1) at 2 and Appendices 1-3 (QF 409-418); American Confidential Response to Order Requesting Additional Information, Appendix 6.1, AA-QF 002305-002306.

<sup>17</sup> See Joint Application of American Airlines and Qantas Airways for Approval of and Antitrust Immunity for Proposed Joint Business Agreement, February 26, 2018, DOT-OST-2018-0030-001, at 6-8.

The Joint Applicants must also provide yearly updates on these Four Key Areas as part of their required Annual Reporting.