AIPA 1

MALLESONS STEPHEN JAQUES

Deed of Undertaking to the Treasurer of the Commonwealth of Australia and the Minister for Transport and Regional Services, representing the Commonwealth of Australia

Dated 6 March 2007

Airline Partners Australia Limited (ACN 123 058 917) ("**APA**")
Aurora Holdco Pty Limited (ACN 123 058 891) ("**TrusteeCo**")

Mallesons Stephen Jaques
Level 60
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com

Deed of Undertaking to the Treasurer of the Commonwealth of Australia and the Minister for Transport and Regional Services, representing the Commonwealth of Australia

Contents

Deed of Undertaking to the Treasurer of the Commonwealth of Australia and the Minister for Transport and Regional Services, representing the Commonwealth of Australia

Details

Parties	**APA and TrusteeCo**	
APA	Name	**Airline Partners Australia Limited**
	ACN	123 058 917
	Address	Level 60, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000
	Fax	+61 2 9296 3999
	Attention	Greg Golding
TrusteeCo	Name	**Aurora Holdco Pty Limited**
	ACN	123 058 891
	Address	Level 60, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000
	Fax	+61 2 9296 3999
	Attention	Greg Golding
Governing law	New South Wales	
Date of deed	See Signing page	

Deed of Undertaking to the Treasurer of the Commonwealth of Australia and the Minister for Transport and Regional Services, representing the Commonwealth of Australia
General terms

1 Interpretation

1.1 QSA definitions

Terms used in this deed that have a defined meaning in the QSA have a corresponding meaning in this deed.

1.2 Defined terms

Unless the context otherwise requires, the following meanings apply to the interpretation of this deed:

ASIC means the Australian Securities and Investments Commission.

Corporations Act means the *Corporation Act 2001* (Cth).

DOTARS means the Department of Transport and Regional Services.

Effective Date means the date this deed commences under clause 4.1.

Jetstar Airways means Jetstar Airways Pty Limited (ABN 33 069 720 243).

Macquarie Airports means the listed stapled group comprising Macquarie Airports Trust (1), Macquarie Airports Trust (2) and Macquarie Airports Holdings (Bermuda) Limited which trades on the Australian Stock Exchange under the code "MAp".

Qantas means Qantas Airways Limited (ABN 16 009 661 901).

Qantas Group means Qantas and each Qantas subsidiary.

QSA means the *Qantas Sale Act 1992* (Cth).

SACL means Sydney Airport Corporation Limited (ABN 62 082 578 809).

Sydney Airport means Sydney (Kingsford Smith) Airport.

Transaction means the proposed acquisition described in clause 2.1.

Transaction Documents means the agreements and constitutions listed in Division 4 of the notice dated 5 February 2007 given by APA to the Treasurer under section 25 of the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

Trust means the Airline Partners Australia Fund.

2 Background

2.1 APA has offered to acquire all of the share capital of Qantas. The proposed acquisition will be implemented by a takeover bid in accordance with the Corporations Act.

2.2 Upon completion of the Transaction, TrusteeCo, as trustee of the Trust, will hold approximately 99% of the ordinary shares in APA.

2.3 APA has publicly stated that:

- it plans to keep the Qantas and Jetstar brands and has no intention to break up the airline;
- it has no intention to reduce regional services;
- its capital structure will facilitate a capital investment programme of $10 billion over the next five years. More than 70 new planes are planned to be introduced by 2014 which will increase capacity by around 40%, deliver improved customer service, greater customer choice and create new employment opportunities;
- it supports Qantas' existing strategy as it relates to continuation of maintenance operations in Australia; and
- the Transaction will not result in any loss of Frequent Flyer Points for members of the Qantas Frequent Flyer program.

2.4 Qantas is subject to provisions of the QSA, which is administered by DOTARS.

2.5 In addition to the requirements of the QSA, investment in Qantas, being a company operating within the civil aviation sector, is subject to examination under Australia's foreign investment policy and the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

2.6 The *Airports Act 1996* (Cth) sets restrictions on airline ownership of leased Federal airports.

2.7 In the context of the aforementioned regulation of the Transaction, the Parties provide the undertakings set out in this deed. APA and TrusteeCo undertake to put in place arrangements to ensure they meet the obligations under this deed.

2.8 APA and TrusteeCo undertake to ensure that the amendments to the Transaction Documents described in the letter of 7 February 2007 from Mallesons Stephen Jaques on behalf of APA are made on or before the Effective Date.

3 Benefit of deed poll

This deed is entered into as a deed poll for the benefit of the Treasurer of the Commonwealth of Australia and the Minister for Transport and Regional Services, as representatives of the Commonwealth of Australia.

4 Term

4.1 Commencement

This deed commences when each of APA and TrusteeCo has a controlling interest (for the purposes of section 608(3)(b) of the Corporations Act) in Qantas.

4.2 Termination

This deed will terminate when neither APA or TrusteeCo has a controlling interest (for the purposes of section 608(3)(b) of the Corporations Act) in Qantas.

This deed (other than clause 5.1) will terminate if Qantas, APA, TrusteeCo or a parent entity of one of those companies has undertaken an initial public offering of equity securities in relation to all or substantially all of its airline business and is listed on the Australian securities exchange.

For the avoidance of doubt, this deed may not be terminated or revoked by APA or TrusteeCo in any other circumstances.

5 Undertaking

5.1 Support for Qantas Sale Act and Airports Act

Each of APA and TrusteeCo undertakes that their respective constituent documents must on and from the Effective Date:

(a) impose restrictions on the issue and ownership (including joint ownership) of shares in APA and TrusteeCo so as to prevent foreign persons having:

(i) relevant interests in shares in Qantas that represent, in total, more than 49% of the total value of the issued share capital of Qantas; or

(ii) relevant interests in shares in APA or TrusteeCo that represent, in total, more than 49% of the total value of the issued share capital of APA or TrusteeCo; and

(aa) impose restrictions on the issue and ownership (including joint ownership) of shares in APA and TrusteeCo so as to prevent foreign airlines having:

(iii) relevant interests in shares in Qantas that represent, in total, more than 35% of the total value of the issued share capital of Qantas; or

(iv) relevant interests in shares in APA or TrusteeCo that represent, in total, more than 35% of the total value of the issued share capital of APA or TrusteeCo; and

(b) impose restrictions on the issue and ownership (including joint ownership) of shares in APA and TrusteeCo so as to prevent any one foreign person having:

(i) relevant interests in shares in Qantas that represent more than 25% of the total value of the issued share capital of Qantas; or

(ii) relevant interests in shares in APA or TrusteeCo that represent, in total, more than 25% of the total value of the issued share capital of APA or TrusteeCo; and

(c) impose restrictions on the counting of votes in respect of the appointment, replacement and removal of a director of Qantas so as to prevent the votes attaching to all substantial foreign shareholdings being counted in respect of the appointment, replacement and removal of more than one third of the directors of Qantas who hold office, at any particular time; and

(ca) impose restrictions on the counting of votes in respect of the appointment, replacement and removal of a director of Qantas, APA and TrusteeCo so that the number of directors that foreign persons have the power to appoint, replace or remove does not exceed one third of the directors of Qantas, APA and TrusteeCo. For the avoidance of doubt this restriction shall not apply to arrangements relating to the appointment of independent directors and senior management directors provided that foreign persons in aggregate are not able through those arrangements to carry or veto a vote to appoint, replace or remove those directors; and

(d) confer the following powers on the directors of APA and TrusteeCo to enable the directors to enforce the restrictions referred to in paragraphs (a), (aa), (b), (c), (ca), (i) and (j);

(i) the power to do anything necessary to effect the transfer of shares held by a person;

(ii) the power to remove or limit the right of a person to exercise voting rights attached to voting shares;

(iii) the power to end the appointment of a person to the office of director of Qantas, APA or TrusteeCo (as applicable); and

(e) prohibit Qantas from taking any action to bring about a change of its company name to a name that does not include the expression "Qantas"; and

(f) prohibit Qantas from conducting scheduled international air transport passenger services under a name other than:

(i) its company name; or

(ii) a registered business name that includes the expression "Qantas"; and

(g) require that the head office of Qantas always be located in Australia; and

(h) require that of the facilities, taken in aggregate, which are used by the Qantas Group (including Qantas and Jetstar Airways) in the provision of scheduled international air transport services (for example, facilities for the maintenance and housing of aircraft, catering, flight operations, training and administration), the facilities located in Australia, when compared with those located in any other country, must represent the principal operational centre for the Qantas Group (including Qantas and Jetstar Airways); and

(i) require that, at all times, at least two thirds of the directors of APA, TrusteeCo and Qantas are to be Australian citizens; and

(j) require that, at a meeting of the board of directors of APA, TrusteeCo and Qantas, the director presiding at the meeting (however described) must be an Australian citizen; and

(k) prohibit APA, TrusteeCo and Qantas, at all times, from taking any action to become incorporated outside Australia; and

(l) ensure that in addition to the limitations and conflict of interest arrangements in the Transaction Documents of APA, prohibit directors of Qantas, APA or TrusteeCo who have been appointed by Macquarie Bank Limited or any related entity (within the meaning of the Corporations Act) of Macquarie Bank Limited ("**Macquarie Director**") from voting on any specific decision relating to:

(i) terminals or other facilities at, or access to, Sydney Airport;

(ii) the relocation of international services conducted by Qantas or its subsidiaries from other airports to Sydney Airport; or

(iii) the relocation of facilities operated by Qantas or its subsidiaries from other Australian airports to Sydney Airport.

The prohibition in this paragraph (l) ceases to apply if any of the following occurs:

(iv) Macquarie Airports ceases to be managed by Macquarie Bank Limited or a related entity of Macquarie Bank Limited and SACL continues not to be managed by Macquarie Bank Limited or a related entity of Macquarie Bank Limited; or

(v) funds managed by Macquarie Bank Limited or a related entity of Macquarie Bank Limited cease to:

(A) hold a majority of the shares in SACL; and

(B) have the right to appoint a majority of the directors of SACL; and

(C) control (as defined in section 50AA of the Corporations Act) SACL.

(m) provide that the Commonwealth is entitled to bring proceedings to restrain or compel an act or omission in breach of a provision required to be included in APA or TrusteeCo's constituent documents by this clause 5.1.

For the purposes of clauses 5.1(a)(ii), (aa)(ii) and (b)(ii) of this deed, a person shall not be considered to have a relevant interest in shares merely because of the operation of the Transaction Documents (as those documents may be amended from time to time) for so long as the person does not, by virtue of the Transaction Documents acquire ownership or effective control of the relevant shares.

Each of APA and TrusteeCo undertake to ensure that the provisions required by this clause 5.1 to be included in their constituent documents are complied with.

5.2 Information and assistance

Each of APA and TrusteeCo undertakes to advise DOTARS and Treasury of:

(a) any transfer of shares in the capital of TrusteeCo, units in the Trust, shares in the capital of APA, special warrants issued by APA or shares in the capital of Qantas, including full details of any such transaction;

(b) any issue of shares in the capital of TrusteeCo, units in the Trust, shares in the capital of APA, special warrants issued by APA or shares in the capital of Qantas, including full details of any such transaction;

(c) any conversion of special warrants issued by APA, including full details of any such transaction;

(d) any Deed of Accession executed under the Transaction Documents;

(e) any changes to the identity and nationality of the directors of APA, TrusteeCo or Qantas, including full details of any such changes;

(f) any material amendments to the Transaction Documents, including full details of any such amendments;

(g) the entry of any material agreements relating to the board governance arrangements and shareholder approval arrangements for APA, TrusteeCo and the Qantas Group , including full details of any such agreements;

(h) information as set out in Annexure A of this deed; and

(i) final decisions to implement any material changes to the APA, TrusteeCo or Qantas company strategies as outlined in APA's Bidder's Statement dated 2 February 2007, relating to the undertakings made under clause 5.5 of this deed; and

(j) any other material change to the identity of the investors in, or the ownership or effective control of APA, TrusteeCo, the Trust or the Qantas Group.

Each of APA and TrusteeCo undertake to provide advice on matters listed in this clause within five working days of the relevant event.

5.3 Reporting ownership matters

Each of APA and TrusteeCo undertake to provide to DOTARS and Treasury, by the last week of July and January each year, reports of the following as at 30 June and 31 December (respectively):

(a) ownership of APA, TrusteeCo, the Trust and Qantas, including the identity and voting and economic interests of each investor in APA, TrusteeCo, the Trust and Qantas;

(b) any changes, since the last report, to levels of foreign ownership of Qantas, APA and TrusteeCo or the units in the Trust;

(c) in respect of each meeting of directors of Qantas, APA and TrusteeCo, the record of attendance of directors, the number of Special Director Resolutions considered at the meeting and the identity of the director presiding over each such meeting; and

(d) any breach of any of the provisions required to be included in the constituent documents of APA and TrusteeCo under clause 5.1, or any of the mandatory articles required by the QSA.

5.4 Annual reports and half yearly financial statements

In addition to other information concerning Qantas released by any publicly listed investor in TrusteeCo, the Trust or APA:

(a) APA and TrusteeCo will provide DOTARS and Treasury with copies of all annual reports or half-year reports required to be lodged by APA, TrusteeCo or Qantas pursuant to Chapter 2M of the Corporations Act (or any replacement provision), together with the consolidated reports for the relevant economic group which includes Qantas, within 14 days of the due date for lodgement with ASIC; and

(b) if a half yearly report is not required to be provided to ASIC, APA and TrusteeCo will provide to DOTARS and Treasury half yearly financial statements including balance sheets and profit and loss statements for Qantas, together with the consolidated reports for the relevant economic group which includes Qantas, as soon as possible and in any event within 75 days after the end of the half-year.

5.5 Additional undertakings

Each of APA and TrusteeCo confirm and undertake that its plans and strategies for Qantas are that:

(a) the Qantas and Jetstar Airways brands will be maintained both locally and internationally;

(b) the Qantas Group's historical commitment to the safety of its operations will remain unchanged;

(c) the Qantas Group will undertake substantial capital investment to introduce new aircraft to increase capacity and improve product offerings in line with market needs ;

(d) Qantas and Jetstar Airways will expand internationally and within Australia to provide a sustainable mix of full service and value based offerings in line with market needs;

(e) the Qantas Group will offer an integrated network of international, domestic and regional air transport services;

(f) the Qantas Group will support regional capacity growth and regional network improvement in line with market needs;

(g) the current review of Qantas Engineering's maintenance, repair and overhaul (MRO) operations (as outlined in section 4.2 of APA's Bidder's Statement dated 2 February 2007) will continue, with a view to building on existing capabilities for wide and narrow body maintenance to create an onshore, globally competitive in-house MRO;

(h) the Qantas Group's track record of offering competitive conditions, jobs growth, career opportunities and extensive apprenticeship training will continue in line with market conditions;

(i) Qantas customers will continue to have access to a competitive loyalty program and the Transaction will not result in any loss of frequent flyer points for members of the Qantas Frequent Flyer Program; and

(j) Qantas' practical assistance to Australians in times of emergency will continue.

5.6 Confidentiality

With the exception of information that is publicly available, for the purposes of the *Freedom of Information Act 1982* (Cth), APA and TrusteeCo claim that any information or assistance given by APA or TrusteeCo under this deed is given confidentially to DOTARS and Treasury, and accordingly that the information and assistance is exempt from disclosure under the Act.

6 Breach

In the event of a threatened or actual breach of this deed by APA or TrusteeCo, or any of the provisions required by clause 5.1 to be included in their respective constituent documents, the Commonwealth is entitled to seek an injunction or order for specific performance to restrain or compel the relevant act or omission, and APA and TrusteeCo must not oppose the granting of such an injunction or order for specific performance on the basis that no actual loss or damage has been or will be sustained by the Commonwealth or that damages are or might be an adequate remedy. APA

and TrusteeCo agree that if a person has engaged, is engaging or is proposing to engage in a contravention of the mandatory articles referred to in clause 5.1 of this deed, the Commonwealth of Australia is entitled to enforce those provisions.

The provisions of this deed are enforceable by the Commonwealth of Australia but are not enforceable by any other person other than a party to this deed.

Annexure A

For the purposes of clause 5.2(h) of this deed, the following information applies (to the extent not previously disclosed in accordance with clause 5.4):

- the appointment of a receiver, manager, liquidator, controller or administrator in respect of any material loan, trade credit, trade debt, borrowing or securities held by APA, TrusteeCo, the Trust, the Qantas Group, or any Qantas subsidiary;
- the disposal or acquisition of assets that will result in a variation of the consolidated assets of the Qantas Group, APA, the Trust or TrusteeCo that exceeds 5% of the consolidated assets at that time;
- a change in the control of the responsible entity of the Trust;
- payment of a dividend or distribution by APA, TrusteeCo or the Qantas Group to an entity that is not APA, TrusteeCo or an entity in the Qantas Group
- a copy of an announcement, document or financial statement that APA, TrusteeCo, Qantas or a Qantas subsidiary lodges with an overseas stock exchange or other regulator which is available to the public. If that document, or any part of it, is not in the English language, an English language translation should be provided;
- any rating applied by a rating agency to APA, TrusteeCo, the Trust, the Qantas Group or a Qantas subsidiary, or securities of any of these entities, and any change to such a rating in each case that is publicly available;
- the board resolves to appoint a receiver, manager or controller to all of the assets of TrusteeCo, APA or Qantas or any Qantas subsidiary, to appoint an administrator of TrusteeCo, APA or Qantas or any Qantas subsidiary or to make application for an order that TrusteeCo, APA or Qantas or a material Qantas subsidiary be wound up; and
- a creditor under any material loan, trade credit, trade debt, borrowing or securities held by APA, TrusteeCo, the Trust, the Qantas Group, or any Qantas subsidiary accelerates the due date for payment of that material liability following the occurrence of an event of default which action in the reasonable opinion of the board is likely to result in the appointment of a receiver, manager, liquidator, controller or administrator.

Deed of Undertaking to the Treasurer of the Commonwealth of Australia and the Minister for Transport and Regional Services, representing the Commonwealth of Australia

Signing page

DATED: 6 MARCH 2007

SIGNED, SEALED AND DELIVERED by **GREG GOLDING** as attorney for **AIRLINE PARTNERS AUSTRALIA LIMITED** under power of attorney dated 30 January 2007 in the presence of:

.....
Signature of witness

GEOFF JOYCE
.....
Name of witness (block letters)

.....

By executing this deed the attorney states that the attorney has received no notice of revocation of the power of attorney

SIGNED, SEALED AND DELIVERED by **GREG GOLDING** as attorney for **AURORA HOLDCO PTY LIMITED** under power of attorney dated 30 January 2007 in the presence of:

.....
Signature of witness

GEOFF JOYCE
.....
Name of witness (block letters)

.....

By executing this deed the attorney states that the attorney has received no notice of revocation of the power of attorney

AIPA 2

4 Airline Partners Australia's intentions

4.1 General

Subject to the more specific disclosure in this section 4 and the basis of intentions described in section 4.8, Airline Partners Australia intends to:

(a) continue the business of Qantas in accordance with Qantas' existing strategy;

(b) not make any major changes to the business of Qantas or to redeploy fixed assets of Qantas, other than in accordance with Qantas' existing strategy; and

(c) continue the employment of the present employees of Qantas where this is consistent with Qantas' existing strategies for efficiency improvements.

Assuming Airline Partners Australia acquires at least 90% of Qantas Shares and is entitled to proceed to compulsorily acquire the outstanding Qantas Shares, Airline Partners Australia's intentions are set out as follows:

Business	section 4.3
Employees	section 4.4
Arrangements with senior management	section 4.5
Other corporate matters	section 4.6

4.2 Qantas' existing strategy

The Qantas Board's and senior management's existing strategies for Qantas were outlined to investors in a presentation by senior management on 17 August 2006, in Qantas' 2006 Annual Report and in other public statements and announcements ("**Qantas Existing Strategy**"). These materials are available at http://www.qantas.com.au

Qantas Existing Strategy represents the Qantas Board's and senior management's current plans to manage the businesses of the Qantas Group in the volatile and highly competitive aviation environment.

Qantas Existing Strategy includes:

- an intention to grow the domestic flying businesses by continuing the existing Qantas and Jetstar brand strategy, as outlined below:
  - Qantas continuing to service and wherever possible expand in the premium segment (full service) and to provide a service and product which attracts a yield premium to lower cost operators;
  - Jetstar continuing to operate in growing markets as a low cost operator; and
  - continuing to support regional capacity growth and regional network improvements, including QantasLink servicing regional centres and providing network connectivity to the Qantas Group;
- growing the international flying business in both core and developing markets. This is intended to include:
  - continuation of two brands for international markets with Jetstar flying on routes that suit its brand strategy;
  - continuing investment in product and service enhancements in the premium segment (full service); and
  - the expansion of alliance, codeshare and, potentially, joint venture relationships, where appropriate to complement the two brand strategy;
- investing in new generation aircraft and product, including the intended acquisition of new aircraft to renew and expand the fleet (including A380, A330-200, B787, B737-800 and Q400 aircraft) to provide:
  - new generation product to enhance customer experience; and
  - greater fuel, operational and environmental efficiencies;
- seeking ongoing portfolio business improvements and opportunities, including:
  - growing the freight operations and focusing on diversifying and strengthening those businesses;
  - continuing to grow and enhance the Qantas Frequent Flyer Program; and
  - repositioning Qantas Holidays by increasing direct channel sales, such as on-line, and evaluating expansion in emerging markets;
- maintaining maintenance operations on Australian shores by developing Qantas' engineering and maintenance operations consistent with the statements made by Qantas in its release of the October 2006 traffic and capacity statistics on 1 December 2006. This will see continued workplace change at all Qantas engineering and maintenance bases in Australia based on:
  - continuing all current onshore narrow body and wide body maintenance work;
  - working with Qantas employees and unions to create a globally competitive maintenance, repair and overhaul ("**MRO**") operation that, if achieved, could allow new wide body A330, B787 and A380 heavy maintenance work to be undertaken in Australia;
  - building an MRO operation that can competitively tender for offshore third party work; and
  - maintaining Qantas Engineering's commitment to training and building skills;
- improving other service businesses, including:
  - continued productivity improvements in catering; and
  - continued transformation process in airports to reduce waiting times and improve customer service; and
- achieving cost reductions and efficiencies through the previously announced "Sustainable Future Program". That program includes a number of initiatives to achieve $1.5 billion in savings over the next 2 years. For example:
  - the previously announced (on 17 August 2006) reduction of management and administrative positions;
  - the continued expansion of Jetstar internationally;
  - streamlining distribution and simplifying fares;
  - greater use of on-line channels, as well as automation and self-service kiosks in airports; and
  - establishing the right business models for Qantas' various markets.

18

4.3 Airline Partners Australia's intentions – business

Airline Partners Australia is fully supportive of the Qantas senior management team and the Qantas Existing Strategy (as described in section 4.2) and no material changes to the Qantas Existing Strategy are anticipated (recognising that such strategies need to be responsive to changes in business, industry and regulatory conditions).

Consistent with the Qantas Existing Strategy, Airline Partners Australia intends to:

- maintain Qantas' "safety first" approach;
- maintain Qantas' high product quality standards;
- support a capital investment program of over $10 billion over the next 5 years. More than 70 new aircraft will be introduced by 2014 to increase capacity by around 40% and deliver improved customer service;
- support Qantas in expanding its airline services, both domestically and internationally;
- keep the Qantas and Jetstar brands and their international, domestic and regional services fully operational. Consequently, Airline Partners Australia has no intention to break up the airline;
- support the Qantas Existing Strategy of regional capacity growth and regional network improvements. Consequently, Airline Partners Australia has no intention to reduce regional services;
- support Qantas Existing Strategy in respect of continuing maintenance operations in Australia, as outlined in section 4.2;
- continue Qantas' practical assistance to Australians in times of emergency; and
- work with the existing Qantas senior management team.

Airline Partners Australia understands that Qantas senior management continually assess the strategic merit of Qantas continuing to own and operate various non-airline businesses. Airline Partners Australia has not made any decision in relation to the non-airline businesses owned by Qantas. Further, the terms of Airline Partners Australia's financing arrangements do not require or anticipate the sale of any of Qantas' assets or businesses.

In respect of loyalty programs specifically, Airline Partners Australia recognises that the Qantas Frequent Flyer Program is a strong and viable program prized by Qantas' most valued customers and a critical contributor to the company's success. The Airline Partners Australia transaction will have no impact on the Qantas Frequent Flyer Program and the transaction will not result in any loss of Frequent Flyer points for members of the program. Like all areas of the Qantas Group, Airline Partners Australia expects that the program will continue to be reviewed by Qantas senior management (as it has been previously) to make sure it is providing benefits that Qantas customers want and is operating well. It is clearly in Airline Partners Australia's interests to ensure that the Qantas Frequent Flyer Program is as strong as it can be.

4.4 Airline Partners Australia's intentions – employees

Airline Partners Australia is supportive of continuing Qantas' track record of offering competitive conditions, jobs growth and career opportunities.

Airline Partners Australia is supportive of Qantas' substantial training program and Qantas' status as one of Australia's largest employers of apprentices.

Airline Partners Australia is supportive of, and does not intend to make any changes to, the Qantas Existing Strategy in relation to efficiency improvements. Airline Partners Australia is committed to supporting the growth of Qantas and maintaining its ability to remain competitive.

Qantas operates in a highly competitive industry. A number of Qantas' competitors are aggressively restructuring their businesses and transforming their cost structures.

Accordingly, Qantas must continually improve its business to ensure it can continue to provide cost competitive services to customers. Qantas Existing Strategy includes an ongoing program of improvements, including workplace efficiencies, in support of Qantas' growth and maintenance of its competitiveness in its domestic and international operations.

4.5 Airline Partners Australia's intentions – arrangements with senior management

Airline Partners Australia intends that the existing Qantas senior management team will remain with Qantas after completion of the Offer.

4.5.1 Terms of employment

Airline Partners Australia intends that the terms of employment of the members of the senior management team who remain with Qantas after completion of the Offer will remain substantially the same as their existing employment terms. However, a new Short Term Incentive Plan ("STIP") and Long Term Incentive Plan ("LTIP") would be introduced to replace senior management's existing rights to participate in the existing Qantas employee share incentive schemes.

See section 7.3 for further details of these plans.

4.5.2 Potential Management Rollover Offer

If the Offer is successful, then, after completion of the Offer, but prior to commencing compulsory acquisition, Airline Partners Australia intends to make a separate offer to acquire certain Qantas Shares that are held by senior members of Qantas management ("Management Rollover Offer").

If the Management Rollover Offer is made, the consideration for the Qantas Shares held by the relevant members of senior management will be 5.6 ordinary shares in Airline Partners Australia for each Qantas Share (subject to adjustment for any dividend or other payment received), representing consideration per Qantas Share of no more than the Offer price.

Airline Partners Australia has not yet finally determined whether the Management Rollover Offer will be made or, if it is made, which members of Qantas senior management will receive the Management Rollover Offer.

See section 7.3 of this Bidder's Statement for further details of senior management arrangements.

16.

4 Airline Partners Australia's intentions

4.6 Airline Partners Australia's intentions – other corporate matters

4.6.1 Compulsory acquisition

If it becomes entitled to do so under the Corporations Act, Airline Partners Australia will:

(a) give notices to compulsorily acquire any outstanding Qantas Shares in accordance with section 661B of the Corporations Act; and

(b) if necessary, give notices to compulsorily acquire any outstanding Qantas Entitlements in accordance with section 664C of the Corporations Act.

If it is required to do so under section 662A and section 663A of the Corporations Act, Airline Partners Australia intends to give notices to Qantas Shareholders and holders of Qantas Entitlements offering to acquire their Qantas Shares and Qantas Entitlements respectively in accordance with section 662B and section 663C of the Corporations Act.

Refer to section 7.7 for further details on compulsory acquisition.

4.6.2 Qantas Board

Following completion of the Offer, Airline Partners Australia will replace the existing directors of Qantas with new directors. Geoff Dixon will be invited to join the Airline Partners Australia Board and the Board of APA Trustee and will be asked to continue as a director of Qantas.

Please see section 2.3 for details of the Airline Partners Australia Board.

4.6.3 ASX listing

As part of the compulsory acquisition process, Airline Partners Australia will arrange for Qantas to be removed from the official list of ASX in accordance with the requirements of ASX.

4.7 Intentions upon acquisition of less than 90% of Qantas Shares

The Offer is conditional on Airline Partners Australia acquiring a relevant interest in at least 90% of Qantas Shares (**"90% Minimum Acceptance Condition"**) so as to allow Airline Partners Australia to proceed to compulsorily acquire the remaining Qantas Shares and thereby acquire 100% of those shares.

Airline Partners Australia does, however, reserve the right to waive the 90% Minimum Acceptance Condition, in accordance with the Corporations Act and any conditions to its debt financing arrangements.

Where a bidder reserves the right to waive a 90% minimum acceptance condition, the law requires that bidder to set out its intentions in regard to the target for the circumstance where it obtains control of the target but less than 100% ownership of the target. Accordingly, set out below are Airline Partners Australia's current intentions if it were to declare the Offer free from the 90% Minimum Acceptance Condition and close the Offer with effective control (but less than 90%) of Qantas.

4.7.1 Operational matters

Airline Partners Australia, through its nominees on the Qantas Board, will propose that Qantas implement a similar strategy as outlined in section 4.3, with the aim of pursuing, to the maximum extent possible and appropriate, the types of opportunities which might have been available to Airline Partners Australia if Airline Partners Australia had acquired 100% of Qantas Shares (subject to an assessment of the relevant benefit to each of Airline Partners Australia and Qantas).

Given Airline Partners Australia's intention to support Qantas senior management in the implementation of their existing strategy, it is unlikely there would be a material change to the operations of Qantas.

4.7.2 Employees

Again, Airline Partners Australia, through its nominees on the Qantas Board, will propose that Qantas continue to implement the Qantas Existing Strategy which includes an ongoing program of improvements, including workplace efficiencies, in support of Qantas' growth and maintenance of its competitiveness in its domestic and international operations, and otherwise implement a similar strategy as outlined in section 4.4, with the aim of pursuing, to the maximum extent possible and appropriate, the types of opportunities which might have been available to Airline Partners Australia if Airline Partners Australia had acquired 100% of Qantas Shares (subject to an assessment of the relevant benefit to each of Airline Partners Australia and Qantas).

4.7.3 Arrangements with senior management

The senior management arrangements described in section 4.5 have been formulated on the basis that Airline Partners Australia is successful in acquiring a relevant interest in at least 90% of Qantas Shares. Those arrangements will not be appropriate in the event that Qantas does not become a wholly owned subsidiary of Airline Partners Australia. In that event, the Investor Group and the relevant senior management would need to agree on appropriate alternative arrangements. No discussions have occurred as to what those alternative arrangements in such a circumstance might be.

4.7.4 Corporate matters

If Airline Partners Australia becomes entitled at some later time to exercise general compulsory acquisition rights under the Corporations Act, it may exercise those rights.

ASX listing

Subject to maintaining a sufficient spread of Qantas Shareholders, Airline Partners Australia will retain the listing of Qantas on ASX. However, if a sufficient spread of Qantas Shareholders is not achieved, Airline Partners Australia may seek to terminate Qantas' listing on ASX (or ASX may initiate a termination of that listing).

Qantas Board

Airline Partners Australia will replace some of the members of the Qantas Board with nominees of Airline Partners Australia so that the number of Airline Partners Australia nominees will be approximately proportionate to Airline Partners Australia's holding of Qantas Shares.

4.7.5 Limitations on intentions

To the extent that Qantas is not a wholly owned subsidiary of Airline Partners Australia, and there are minority Qantas Shareholders, Airline Partners Australia intends that the directors of Qantas appointed by it will act at all times in accordance with their fiduciary duties as required by law and that all legal requirements are complied with in pursuing any of the intentions outlined above.

Those requirements may, in some circumstances, require the approval of minority Qantas Shareholders in order to effect the implementation of any particular objective.

The requirement to have regard to those fiduciary duties in the context of a partly owned company and the possible requirements of obtaining minority Qantas Shareholder approval may prevent the particular objective being achieved.

Any transactions between members of Airline Partners Australia and the Qantas Group required to effect those steps will be entered into on arm's length terms.

4.8 Basis of intentions

The intentions described in this section are based on the facts and information concerning Qantas, and the existing circumstances affecting the business of Qantas, which are known to Airline Partners Australia.

Airline Partners Australia and its advisers have reviewed information that has been publicly released in relation to Qantas, its current activities and its plans for the future, have had limited discussions with Qantas and have undertaken some due diligence in relation to its businesses (see section 7.4). The intentions of Airline Partners Australia outlined in this section are based on this information.

Airline Partners Australia does not currently have knowledge of all material information, facts and circumstances that are necessary to assess the operational, commercial, taxation and financial implications of its current intentions.

As such, statements set out in this section 4 are statements of current intention only which may change as new information becomes available or circumstances change.

It should also be noted that the aviation industry is dynamic, highly competitive and faces a number of key business risks. Airlines therefore have to be able to react to changed circumstances quickly, for example to fuel price increases, regulatory change or material one-off events such as terrorism, health epidemics and domestic and international economic conditions. While, as stated in this section, it is Airline Partners Australia's intention to implement Qantas senior management's existing strategy for the Qantas Group businesses, that strategy must be responsive to changes in the business, industry and regulatory conditions facing Qantas, and any changes to such conditions may impact Qantas' and Airline Partners Australia's future activities and strategies.

Disclaimer

AIRLINE PARTNERS AUSTRALIA

This document has been prepared by Airline Partners Australia ("APA") solely for information purposes in relation to APA's proposed acquisition of Qantas Airways Limited ("the Proposal").

Notwithstanding the care taken in its preparation, this document does not purport to be all-inclusive or to contain all the information that may be required in an evaluation the Proposal. The information given, the analysis set out and the assertions made or implied in this document are based upon changing market conditions, varying investor sentiment, subjective interpretation of facts and third party opinions. Accordingly, no representation, warranty or assurance (express or implied) is or will be made in relation to the accuracy, completeness or reliability of this document, any material, opinion or assertion contained in it or any other written or oral information made available to you. To the maximum extent permitted by law, APA, its related bodies corporate, shareholders and affiliates, and each of their respective directors, officers, employees, advisers and agents (together, the "APA Group") disclaim all responsibility and liability (including, without limitation, any liability arising from fault or negligence of any member of the APA Group) in relation to this document or any part of its contents.

AIPA 3

Any forward looking statement (including any statement as to intentions) included in this document involves subjective judgment and analysis and is subject to significant uncertainties, risks and contingencies, many of which are outside the control of, and are unknown to, the APA Group. No representation, warranty or assurance (express or implied) is given or made in relation to any forward looking statement by any person. In particular, no representation, warranty or assurance (express or implied) is given in relation to any underlying assumption or that any forward looking statement will be achieved. Actual future events may vary materially from the forward looking statements and the assumptions on which those statements are based. Given these uncertainties, you are cautioned not to place undue reliance on such forward looking statements.

1 9

Nothing contained in this document constitutes investment, legal, tax, financial or other advice.

This document is provided on a strictly confidential basis. Its contents should not be disclosed to any person nor should it be reproduced without the prior written consent of APA.

Freedom of Information

This presentation, the information in it and the disclosed documentation is confidential and not to be disclosed to third parties without APA's prior written consent. This presentation is exempt from disclosure under the *Freedom of Information Act 1982*.

AIPA 4

The PGE Papers: The Secret Documents Texas Pacific Doesn't Want Oregonians to See

Nigel Jaquiss, Willamette Week

For more than a year, the Texans who want to buy Portland General Electric have said, "Trust us."

This is no slash-and-burn corporate takeover, they've insisted. Sure, they plan to profit, but not at the expense of customers. Yes, there could be some belt-tightening, they've admitted, but no specific jobs have been targeted. And, of course, they'll sell the utility at some point, but that's a long way off, and when they do, they support the idea of keeping local control.

Rather than provide details of how they'll do all this, however, Texas Pacific Group and its Oregon representatives have insisted that their specific plans be kept secret.

Although Texas Pacific announced its proposed purchase of PGE more than a year ago, the acquisition of a regulated monopoly requires several layers of approval, the most important of which comes from Oregon's Public Utility Commission, which began its review in March.

Last spring, PUC staff asked to see Texas Pacific's internal analysis of the $2.35 billion deal. Texas Pacific was leery about complying because, it said, such information would reveal "detailed descriptions of [Texas Pacific]'s most commercially sensitive and proprietary investment strategies."

After protracted legal wrangling, Texas Pacific agreed to hand over the documents--which describe what it has called "Project Tahoe"--only if state regulators agreed to keep the documents out of the public eye.

The PUC promised it would give copies of the Tahoe documents only to "intervenors," parties who have standing in the approval process. Those include the Citizens' Utility Board of Oregon, Associated Oregon Industries, Industrial Customers of Northwest Utilities, Portland Metropolitan Association of Building Owners and Managers, the City of Portland and several utilities.

To get their hands on the documents, the intervenors had to pledge not to share them with anyone. Their copies of the Tahoe report were printed on watermarked paper to discourage reproduction and placed in envelopes sealed with the warning that sharing the contents with people other than "qualified persons" is prohibited.

Last month, *WW* obtained a copy of those documents.

It's clear why Texas Pacific wanted to keep them under wraps. Crucial elements in the nearly 400 pages of the Project Tahoe papers directly contradict statements that the firm and its representatives have made before the PUC, which will decide later this month whether to approve Texas Pacific's bid.

For example, the Tahoe documents show that Texas Pacific plans wholesale layoffs and dramatic cuts in maintenance. The firm plans to sell the utility in five years for a huge profit. The records also show that Texas Pacific's exit strategy makes it highly unlikely PGE will continue as a locally headquartered, stand-alone utility.

All of that is at odds with the public pronouncements Texas Pacific and its Oregon representatives have made.

A lawyer who represents one of the intervenors has read the documents and argues that they paint a different picture than the one presented publicly by Texas Pacific.

Texas Pacific and its representatives "have placed advertisements and made public statements...that are inconsistent with material contained within the [confidential] material," wrote Ann Fisher, an attorney for the Association of Building Owners and Managers, in a motion filed on Dec. 23, 2004, with the PUC.

Fisher argued that because of those contradictions, the documents should be made public. "The truthfulness, the hidden or undisclosed intentions, and future plans for the utility are all part of the public interest," she wrote. "The public has a right to know."

Early in 2003, the Project Tahoe team, led by Texas Pacific partner Kelvin Davis, began assessing the risks and rewards of buying PGE from the electric company's parent, Enron (which it code-named "Everest"), which had filed bankruptcy in 2001.

Davis and a small army of consultants, lawyers and Texas Pacific staffers visited each of the utility's power plants, analyzed dozens of utility-industry takeovers, scrutinized PGE's staff and books and seemingly counted every paper clip in the utility's downtown headquarters.

Much of the information they compiled is mundane--economic forecasts, utility-industry statistics and studies of power-generation trends. But buried amid the reams of data, there are startling revelations about Texas Pacific's conclusions and its plans.

The substantial differences between its public pronouncements and Texas Pacific's private analysis may explain why the firm has labeled the Project Tahoe documents "Extremely Confidential Trade Secret Information."

Here's what Texas Pacific does not want PGE customers to find out:

PGE IS POORLY MANAGED.

Three months ago, Tom Walsh sat in a Public Utility Commission hearing room in Salem answering questions about the proposed sale of PGE.

Walsh is the former TriMet general manager whom Texas Pacific originally chose, along with former Gov. Neil Goldschmidt and Delta Airlines CEO Gerald Grinstein, to oversee PGE. While none of the three has any utility experience, their influence would increase the chance of regulatory approval.

In his testimony Walsh, who is investing $750,000 of his own money in the deal, described PGE as "extraordinarily well-run."

That assessment contradicts the findings in the Project Tahoe documents.

Those reports include an evaluation by Jack Fusco, a utility-restructuring expert Texas Pacific hired. He concluded that PGE is anything but "well-run."

"Generally, PGE's organization appears to be top heavy and misaligned at the corporate level," Fusco wrote in an Aug. 20, 2003, memo. "PGE is typical of a "traditional, vertically integrated utility of the 1980s," he added. "There is little evidence of organizational restructuring and/or productivity enhancement initiatives undertaken by many other utilities in the past decade."

Was Walsh intentionally misleading the public? He says he believes he and Texas Pacific share the same view of the "heroic" job PGE management has done. "Texas Pacific does not have a different view from mine," Walsh told *WW* earlier this week--though he admits he has not read the Tahoe documents.

TEXAS PACIFIC PLANS BIG CUTS.

In a deposition taken last July, Texas Pacific's Davis said this about his firm's plans for the utility: "We do not have, nor have we represented that we have, specific plans to improve the financial performance of PGE."

Ten months *prior* to making that statement however, Davis had helped complete the final draft of the Project Tahoe reports, which include remarkably detailed plans for cost savings.

The report shows that Texas Pacific expects to slash PGE's operations and maintenance budget (see chart, page 22), which will pump up the utility's earnings.

The documents also suggest that more efficient operations could result in "a reduction of officers and high-level managers" (which may not bode well for PGE chief executive Peggy Fowler and her team) and that PGE could save money by slashing information-technology and human-resources spending by as much as $10 million annually.

Of perhaps greater interest to people who receive a PGE bill each month, Texas Pacific believes that its largest savings would come where ratepayers will feel it most--in customer service.

Charts and figures in the Tahoe documents show that Texas Pacific has targeted as many as 120 of the company's 467 customer-service staff for layoff. "Greatest potential for cost reduction appears to be in customer service," states the caption for one chart.

In addition, Texas Pacific anticipates cutting overhead--mostly in the form of employees--at the company's largest power plant, a gas-fired facility in Columbia County, by 50 percent. It also plans to shave $15 million off PGE's $180 million annual budget for routine capital expenditures on plants and equipment.

TEXAS PACIFIC WILL SCORE BIG.

In November 2003, when Texas Pacific announced its intention to purchase PGE, Texas Pacific founder David Bonderman acknowledged that a utility might seem an unusual investment for his firm.

Bonderman, a high-roller who hired the Rolling Stones and John Cougar Mellencamp to perform at his 60th birthday bash in 2002, has prospered by taking high risks. Texas Pacific buys beaten-down companies such as Continental Airlines, Burger King and J. Crew and reaps hefty rewards from fixing them.

PGE, in contrast, operates in one of the dullest, most predictable business environments imaginable--and its annual profit rarely exceeds 10 percent. That's peanuts compared to Texas Pacific's historical returns, which the firm says have averaged more than 50 percent annually.

Bonderman explained this anomaly when Texas Pacific came to town in November 2003. He said the gains from the utility might be significantly less than Texas Pacific normally seeks but it should provide a "reasonable rate of return given the [low] risks."

That statement was made more than two months after Bonderman received the Project Tahoe documents, which revealed that--Bonderman's public comments notwithstanding--Texas Pacific thinks it can reap a windfall from PGE.

Part of the Texans' confidence stems from PGE's price tag: They think the $2.35 billion they'd be paying is a steal.

In business jargon, the Tahoe team summarized the opportunity as follows: "Unprecedented confluence of dislocating events presents 'once in a franchise' opportunity to purchase regulated opportunity at compelling valuation."

That's an awkward way of saying PGE is dirt-cheap, and as a consequence it will be virtually *impossible*, according Texas Pacific's analysis, for the firm and its investors to lose money. "Very low probability downside case still returns $251 [million] in profits," states one of the Tahoe reports.

A far more likely outcome, according to four dozen scenarios assembled by Texas Pacific's number-crunchers, is that the firm will make somewhere between $800 million and $1.2 billion profit in just five years.

If things go according to plan, the projections show, Texas Pacific will generate annual returns of between 20 and 30 percent.

Part of that return will come from cost-cutting and other efficiencies; the rest of it will come from the profit generated by buying PGE cheap and selling it at a price more in line with other recent utility takeovers.

In addition to Texas Pacific partners such as Davis and Bonderman, the beneficiaries of the anticipated bonanza will be its other investors, which include the Bill & Melinda Gates Foundation, the Oregon Investment Council, and local businessmen,

including Walsh, Oregon Health & Science University President Dr. Peter Kohler and former Fred Meyer CEO Bob Miller.

Nobody begrudges Texas Pacific's need to make money, but a utility is different from a burger joint or sweater shop.

"Returns of 30 percent for a regulated monopoly that supplies electricity to schools, churches, governments and other nonprofits is unconscionable," says Portland financial advisor Bill Parish, who has tracked Texas Pacific's activities in Oregon closely.

PGE WILL BE SOLD AGAIN SOON.

In pitching the virtues of their ownership of PGE to Oregonians, Texas Pacific and its representatives have focused on what they claim will be a return to local control and stability for the 115-year-old utility.

Kohler promoted the idea that Texas Pacific is in Portland for the long haul last October. "Most of us have believed this is not a short-term project, this is something that will take a considerable number of years," he said in testimony before the PUC. "The time frame TPG has had historically built into their investment policy is 12 years."

Yet all of the four dozen exit scenarios presented in the Tahoe reports assume Texas Pacific will sell the utility in five years.

"That's a very short holding period," says Parish. "Texas Pacific will focus on short-term cost-cutting and budget moves which will have negative long-term consequences for ratepayers."

Regardless of when Texas Pacific sells the utility, its local representatives have said publicly they hope the sale will take the form of an initial public offering. In that case, Texas Pacific would sell stock to a wide range of investors and PGE's headquarters would remain in Portland.

"I think it's the best long-term both option and assurance that would bring PGE back to what it historically was, which is a locally controlled, investor-owned utility," Walsh told the PUC in October.

The scenario Walsh describes is completely different, however, from the information in the Tahoe papers--which Walsh had access to for more than six months prior to his testimony.

Those documents explicitly state that selling PGE to another utility is far and away the most likely and preferable outcome. "Intuitively, we strongly believe...we will sell the company to a strategic buyer," stated an Aug. 31, 2003, Project Tahoe memo.

The Tahoe documents even list 13 "potential strategic acquirors" that might buy PGE. All are large utilities.

The probability of Texas Pacific selling PGE to an out-of-town buyer may be even greater today than when the firm prepared the Tahoe reports. That's because the November 2004 presidential and congressional election increased the likelihood that federal regulations restricting utility ownership (specifically, the Public Utility Holding Company Act) will be repealed.

"The odds of repeal are definitely higher now," says Ron Eachus, a former chairman of the Oregon PUC.

Repeal would increase PGE's value because it would enlarge the pool of potential buyers. "The real upside in this transaction would be a sale to a strategic buyer--particularly in the instance of PUHCA repeal," stated an Aug. 31, 2003, Project Tahoe report.

For more than a year, ratepayer advocates have expressed concerns about the PGE deal, such as whether the local board is a sham and whether Texas Pacific will continue Enron's practice of pocketing Oregonians' tax payments. Those are legitimate questions and have been part of an open public debate.

But until now, the public has had no access to the secrets contained in the Project Tahoe documents--and no idea that Texas Pacific's plans bear little resemblance to its public statements.

Texas Pacific spokesman Owen Blicksilver says the company trusts that the PUC staff will be able to sort through all the information, and he thinks it unlikely the legal effort to make the Tahoe records public will prevail.

"We remain confident that the Public Utility Commission will weigh all the evidence, and we are optimistic this will lead to a finding that our transaction will benefit customers," Blicksilver says. "We are similarly confident that BOMA's motion is baseless and will be dismissed."

The Public Utility Commission, in whose hands PGE's future ultimately resides, exists to safeguard customer interests and to act in a transparent fashion. "We operate through an open decision-making process and encourage public involvement in those decisions," states the PUC website.

Brian Conway, the PUC staffer overseeing the regulatory decision, says the differences critics cite between Texas Pacific's private plans and its public statements are "a matter of interpretation."

"The confidential information includes a lot of facts, and so people are drawing inferences from them," Conway says. "Where their inferences don't match public statements they may see contradictions, but I'm not sure there are any statements that are directly contradictory."

Conway notes that the public is well-represented in the approval process by various interest groups, who have seen the documents. "There are more intervenors in this case than any I've ever seen," he says.

It may be no coincidence that all of the intervenors who represent customers strongly oppose Texas Pacific's deal--although they are prohibited by the confidentiality agreements from citing the Project Tahoe reports in their arguments.

"What Texas Pacific has said and what they really think are inconsistent," says the attorney for one of those intervenors, Jason Eisdorfer of the Citizens' Utility Board.

"That ought to make the commission pause before it approves this deal."

AIPA 5

Peter,

As requested I have reviewed the deed of undertaking provided by APA for the benefit of the Commonwealth of Australia, dated 6 March 2007.

My comments following our discussion are as follows:

1. Repeat of statutory obligations

The deed generally relates to APA committing to meet its statutory obligations under the various relevant Acts (QSA, FATA and Airports Act) and as such does little more than confirm APA will conduct the ownership and decision making processes of Qantas in accordance with the law. On this basis, the deed does not provide any additional assurances to the Commonwealth (in excess of what it already has under the statutory law).

2. Enforceable against APA only by Commonwealth

The deed is only enforceable against APA (and the associated trustee company) and in the event the shareholding in Qantas is sold down to the extent that APA no longer holders over 20% interest in Qantas the deed lapses (although given the deed has no material obligations in excess of the relevant Acts anyway, this is not a major point). The deed will also lapse in the event of an IPO of all or substantially all of the underlying shares (whether in APA or Qantas). Also, the deed is only in favour of the Commonwealth and cannot be enforced by any other party.

3. Intention to break up Group

The Background (at clause 2.3) notes that APA has publicly stated that it has (a) plans to keep the Qantas and Jetstar brands; and (b) no intention to break up the airline. However in the undertakings given in the deed, although APA confirms its plan to keep the brands, there is no reference at all to not breaking up the airline. This may have been an oversight by the drafter or it may have been a deliberate exclusion for the purpose of facilitating the adoption of this strategy in due course.

4. Statutory undertakings

The undertakings in clause 5.1 relate to the QSA and Airports Act obligations and merely reflect the statutory obligations. Nevertheless, at clause 5.1(f) (at p 5), the undertaking is to not allow Qantas to operate international passenger services under a name not including "Qantas". **This undertaking does not extend to the Jetstar subsidiary** and reinforces the current position taken by Qantas (and the Transport Minister) that the QSA only applies to Qantas and not to its subsidiaries. I note that AIPA is presently contesting this view through formal proceedings in the Federal Court.

5. Australia based facilities

The undertaking at clause 5.1(h) (at p6) requires the Australian located Group facilities for international services **taken in aggregate** to represent the principal operational centre for the Qantas Group. Although this is the central cause of concern for employees and service providers to Qantas, this clause is extremely vague as to its actual application. Firstly it means APA is permitted to send offshore up to half of its facilities for international services and perhaps even more if you consider the wording to mean **the principal operation centre compared to any other specific operations in any other specific country.** All it really means is that what remains in Australia must outweigh those performed in any other particular country (rather than outweigh all those performed overseas taken in aggregate).

6. Potential to transfer assets to Jetstar

Furthermore, the undertakings in clause 5.1 relate solely to Qantas (with the exception of 5.1(h) referred to above) and do not prevent Qantas from transferring assets to a subsidiary company or from subsequently selling off the subsidiary company or the subsidiary's business. There is nothing in the deed to prevent this type of strategy from being effected and there are certainly no undertakings that this strategy will not be pursued in the future.

7. Additional undertakings re present plans

In clause 5.5, APA purports to provide additional undertakings. However these undertakings are not about future conduct but about APA's present plans and strategies for Qantas (that is, excluding Jetstar). The only right the Commonwealth gains from the undertakings in clause 5.5 is the right to claim that APA did not have those plans or strategies at the time it entered into the deed (that is, yesterday). If APA chooses to change its plans or strategies for Qantas in the future (for example tomorrow) the Commonwealth has no grounds to allege breach of the deed.

8. Right to change strategies

In fact under clause 5.2(i) (at p 7), APA foreshadows that it may well change its Qantas strategies and, in such case, undertakes to advise the Transport Minister of any such final decision. It is under no obligation to tell the Minister that it is considering a change of strategy. The obligation is only to tell the Minister after the event - and for good reason, since the Minister has no power to stop the APA from changing its strategy (under this deed or elsewhere).

9. Conclusion

For the reasons set out above, the deed does not provide any additional recourse for the Commonwealth to protect the ongoing status quo of the Qantas Group. Once it gains control of Qantas, APA will be at liberty to change the operating structure of the Group and will only be restrained by the ownership/control provisions in the relevant Acts. **The additional undertakings are effectively worthless.**

regards

Philip McLeod
partner

hortonrhodes tel: +612 9299 4147 fax: +612 9299 5256 Level 8, 275 George Street Sydney, NSW 2000 www.hortonrhodes.com

AIPA 6

AUSTRALIAN & INTERNATIONAL PILOTS ASSOCIATION
RE JETSTAR AND SALE OF QANTAS

JOINT OPINION

A J Macken & Co
Solicitors
11th Floor
53 Queen Street
Melbourne VIC 3000

29

AUSTRALIAN & INTERNATIONAL PILOTS ASSOCIATION

RE JETSTAR AND SALE OF QANTAS

JOINT OPINION

1. Our instructing solicitors act for the Australian & International Pilots Association (**AIPA**). AIPA is a professional organisation of pilots and flight engineers employed by Qantas Airways Limited (**Qantas**) and its subsidiaries (Australian Airlines Limited, Jetstar Airways Pty Limited (**Jetstar**), Eastern Australia Airlines Pty Limited and Sunstate Airlines (QLD) Pty Limited).

2. AIPA is concerned about the operation of international flights under the name "Jetstar". More specifically, AIPA is concerned that Jetstar may increase its international flights at the expense of conventional Qantas flights. AIPA is concerned about these matters because pilots and flight engineers flying for Jetstar are employed on significantly less attractive conditions than pilots and flight engineers flying on conventional Qantas flights.

3. Further, AIPA is concerned about the takeover offer from Airline Partners Australia Limited (**APA**), and wishes to either prevent this takeover from proceeding or ensure that it proceeds subject to certain conditions. The reason for the concern is that, because APA is paying a substantial premium for ownership of Qantas, it is thought that it is likely that APA will have a greater need to increase the low-cost Jetstar operations at the expense of the high-cost Qantas operations. Further, under APA control Qantas is more likely to sell off Jetstar, which would most likely result in Jetstar growing at the expense of Qantas.

4. We have been asked to address the following questions:

   (a) Does the operation of international flights under the name "Jetstar" contravene section 7 of the *Qantas Sale Act* 1992 (**Qantas Sale Act**), or an equivalent provision of the articles of association of Qantas?

   (b) If so, what remedies may be available to AIPA or its members?

Background facts

5. In the beginning of 1992, Qantas was owned by the Commonwealth Government. Qantas operated international flights under the name "Qantas". Qantas also operated flights to Taiwan under the name "Australia-Asia Airlines". It appears that the reason for the existence of "Australia-Asia Airlines" was political, concerning China's unwillingness to allow the same carrier to serve both China and Taiwan.

6. In 2002, a wholly owned subsidiary of Qantas (Australian Airlines Limited) launched international services under the name "Australian Airlines". This was a low-cost airline which offered all-economy cabins and flew to what are described as "leisure destinations" (i.e. on routes dominated by tourist traffic rather than business traffic). The current Qantas website describes the launch of Australian Airlines in the following terms[1]:

> *Qantas' [sic] launches new international subsidiary airline under the historical name of 'Australian Airlines'.*

7. In 2004, Qantas formed a new airline "Jetstar", which was operated at least in part through a wholly owned subsidiary Jetstar Airways Pty Limited. The Qantas website describes this event in the following way[2]:

> *Qantas launches new domestic low cost carrier 'Jetstar'.*

8. In December 2005, Jetstar began to fly to New Zealand.

9. In 2006, Jetstar began to fly to various other international destinations, being Honolulu, Denpasar, Phuket, Osaka, Bangkok and Ho Chi Minh City. Also in 2006, Australian Airlines ceased its operations.

10. AIPA is not privy to the details of the contracts and other arrangements between Qantas and Jetstar. However, a consideration of matters know to AIPA and matters in the public domain suggests that there is a considerable degree of integration between Qantas and the Jetstar operations. For example:

    (a) In a Qantas media release of 14 December 2005, it is stated that the "Qantas Board" had selected the Boeing 787 as the cornerstone of its domestic and international fleet renewal, with 65 of the aircraft "for Qantas mainline and Jetstar" for delivery from 2008. Mr Dixon is quoted as saying that "One of our

---

[1] About Qantas - Our company – History – Qantas through the years

[2] Ditto

clear priorities is for Jetstar to be ready for international operations by early 2007, with the fastest possible transition to new technology, more efficient aircraft". The release quotes Mr Dixon as making various other comments about the plans for Jetstar.

(b) A separate flyer from Jetstar, picturing the B787, states that: "As a member of the Qantas Group, Jetstar yesterday chose the 787 Dreamliner... as the cornerstone of its future international operation. This decision further underpins the commitment to safety, quality and innovation that has marked the Qantas Group story over the past 85 years".

(c) A speech by Mr Joyce, CEO of Jetstar, on 4 November 2004 (a copy of which was released by Jetstar) sets out some of the history of the formation of Jetstar. He says: "In August 2003 the concept of a new LCC [low cost carrier] was being promoted around Qantas where we pulled together a project team to... see if it could make sense. The decision to go with the former Impulse Airlines... as the base to enable a business plan and model to be brought together – took dramatic steps before being put to the Qantas Board. The Board approved the process and signed off on a billion dollar A320 fleet decision although internal management debate about the model and the potential direction of Jetstar was fascinating... Just under a year ago, on 1 December 2003, Qantas CEO Geoff Dixon outlined our name and proposed livery. From there things have moved awfully quickly". He later referred to Jetstar unveiling its latest operating plans for Cairns "in unison with the overall Qantas Group. Qantas announced the new Cairns-Sydney and Cairns-Melbourne direct flights by Jetstar, offering more than 350 additional seats per week into Cairns on these routes from January 2005". He then went on to state the commitment of the "Qantas Group" to Cairns, and refers to Jetstar services as part of the overall investment which the Qantas Group provides to the Cairns community. He later refers to "We at Qantas...". He concludes by observing that "Jetstar was established by Qantas, and done so by seeking to adapt the best features of some of the world's leading low fare carriers, so that Qantas could seek to sustainably grow or further enter existing or indeed new markets within Australia to stimulate VFR or leisure travel".

(d) In a speech given on 7 April 2005 to the American Chamber of Commerce (a copy of which was released by Jetstar), Mr Joyce, CEO of Jetstar, referred to Mr Dixon as "our Qantas Group chief". He refers to the "Qantas Group through Jetstar" having a sustainable airline operation to the Gold Coast. He later refers to the introduction of the ability of Jetstar passengers to earn Qantas frequent flyer points, and states: "We have now adopted a cost

effective and practical approach through the successful Qantas rewards program to further improve the Qantas Group's overall pitch to an important customer segment". He refers to Jestar's profit as a "central plank of Qantas Group's continuing domestic and regional aviation strategy to deliver appropriate product, service and economics in each market segment". He records that Jetstar is part of "Qantas Group's treasury program which maintains a level of hedging on aviation fuel...". He states that "Any future decisions on an expansion of Jetstar's network... will be made within the coming months and is subject to approval by Qantas".

(e) The last matter in the previous paragraph was confirmed by the Qantas media release of 8 December 2005, which said that the Board of Qantas had approved the establishment of a new long haul value based airline under the Jetstar brand, and that the Qantas Board had called a special meeting to further consider its long term fleet plan and to discuss purchases, including the new aircraft for Jetstar's international operations. Mr Dixon said that "Our aim for the Group is to expand in our traditional markets with Qantas and to expand in new markets with the most suitable product, be it Qantas or Jetstar". The balance of the release contains comments by Mr Dixon and Mr Joyce about both Qantas and Jetstar.

11. In the Target's Statement by Qantas to APA dated 12 February 2007, Jetstar is discussed on numerous occasions, including the following:

(a) On page 9, in the section headed "Profile of Qantas", it is stated that:

> *Qantas has two major flying businesses and a diverse range of airline-related businesses... The flying businesses are split into two major brands: Qantas, the full service brand, and Jetstar, the value-based brand...*
>
> *Jetstar was formed to offer lower cost services...*

(b) In the expert's report, included by Qantas as part of the Target's Statement, the following appears (at page 47 of the document):

> *Qantas has a number of operating divisions but the reality is that it is largely operated as a single integrated business.*

(c) Also in the expert's report, there is reference on page 63 to Qantas having a "two brand strategy", being Qantas and Jetstar.

(d) In the expert's report, there is discussion on page 92 of Jetstar being likely to "absorb routes from Qantas full service domestic where Qantas finds it difficult to generate a sufficient return".

12. In the Qantas 2006 Annual Report, Jetstar is discussed on numerous occasions, including the following:

(a) On page 4, in the report of the CEO and Chairman, there is reference to the "company's fundamentals" being strong, "with... a new airline in Jetstar that has driven strong revenue growth and industry benchmark cost containment".

(b) On page 5, in the same report, there is reference to Qantas ordering 4 new aircraft, "two for Jetstar and two for Qantas", and "the first 12 of our new B787s are earmarked for Jetstar's new international service".

(c) On page 8, in the same report, it is stated: "We have announced that we will employ staff on Australian Workplace Agreements where that is the right approach. This has already happened in two of our businesses – Jetstar, with its long haul international cabin crew, and Express Freighters Australia with its pilots".

(d) On page 12, under the heading "Qantas International – Network Developments", it is stated that Qantas has operated services to Bali which "will progressively transition to Jetstar after it begins international services in December 2006".

(e) Pages 18 – 21 of the report concern Jetstar.

(f) On page 39, Mr Joyce is listed in the "Executive Team", and appears again on page 62 in the table of remuneration for "key management executives".

13. From this material, it appears that whilst it may be the case that Jetstar is to some extent an independent operation, it was established by Qantas to enable the Qantas Group to conduct low cost operations, its services are operated in a manner which is complementary to ordinary Qantas services, and major strategic decisions as to the operation of Jetstar, including the purchase of aircraft and the routes that it will fly, are taken by the Qantas Board rather than the board of Jetstar.

14. In this regard, the material set out above is unsurprising. It simply reflects the commercial reality that corporate groups of wholly owned subsidiaries frequently will act in a unified manner under the control of the parent company, with all significant decisions made by the parent company.

15. We are instructed as to the following additional matters relevant to the integration of Qantas and Jetstar:

(a) Jetstar utilises numerous Qantas-employed pilots on leave of absence;

(b) Qantas frequent flyers can redeem their points on Jetstar flights, and earn points on some Jetstar tickets;

(c) Jetstar uses various Qantas services, including Qantas maintenance, Qantas catering and Qantas fuel supplies;

(d) the three directors of Jetstar, Messrs Dixon, Gregg and Johnson, are all executives of Qantas. Mr Dixon is the Qantas CEO, Mr Gregg is the Qantas CFO, and Mr Johnson is the Qantas General Counsel. Mr Dixon and Mr Gregg are also directors of Qantas; and

(e) Mr Joyce, the CEO of Jetstar, was a former executive of Qantas. His title was Group General Manager Network (responsible for Network Strategy, Network Analysis, Schedules Planning and Schedules Variation), before he was promoted in 2003 to a position within Qantas known as "Executive General Manager Low Cost Carrier". This was the role he occupied for the period of the formation of Jetstar.

Analysis

16. Section 7(1)(f) of the Qantas Sale Act relevantly provides that:

> *The articles of association of Qantas must, on and from the day on which Qantas first becomes aware that a person, other than the Commonwealth or a nominee of the Commonwealth, has acquired voting shares in Qantas:*
>
> ...
>
> *(f) prohibit Qantas from conducting scheduled international air transport passenger services under a name other than:*
>
> *(i) its company name; or*
>
> *(ii) a registered business name that includes the expression "Qantas"...*

17. "Qantas" is defined in section 3(1) of the Qantas Sale Act as "Qantas Airways Limited, as the company exists from time to time (even if its name is later changed)". There is no definition of "scheduled international air transport passenger services".

However, the ordinary meaning of this term is reasonably clear. What is less clear is what is meant by "Qantas… conducting" such services.

18. Section 7(1)(f) of the Qantas Sale Act does not take effect as a prohibition on conducting specified services. Rather, it takes effect as an obligation on Qantas to include a prohibition in its articles of association. Thus any issue of statutory construction arises in an unusual context.

19. However, regard must also be had to section 8 of the Qantas Sale Act. Section 8 relevantly provides:

> *(1) A special resolution of Qantas that would, apart from this subsection, have the effect of altering Qantas' articles of association so that the articles would not comply with section 7 is to have no effect.*
>
> *(2) A special resolution or resolution of Qantas that:*
>
> *(a) would, if acted on and apart from this subsection, result in a contravention of the mandatory articles; or*
>
> *(b) would, apart from this subsection, ratify an act or omission that contravenes the mandatory articles;*
>
> *is to have no effect.*

20. Section 10 of the Qantas Sale Act provides for the granting of injunctions by the Federal Court of Australia at the suit of the Minister restraining a contravention, attempted contravention, or involvement in a contravention, of the mandatory articles (i.e. those specified in section 7).

21. It is reasonably clear that the relevant statutory obligation (being the obligation to include certain provisions in the articles of association) is an obligation on Qantas alone, rather than on Qantas and its subsidiaries. We say this for the following reasons:

(a) Qantas is defined as "Qantas Airways Limited", rather than Qantas Airways Limited and its subsidiaries. The term "Qantas subsidiary" is separately defined in section 3(1) to mean:

> *a body corporate that is a subsidiary of Qantas.*

(Section 3(2) further provides that the question of whether a body corporate is a subsidiary of another body corporate is to be determined in the same manner as that question is determined under the *Corporations Act* 2001). The term

"Qantas subsidiary" is used in many sections of the Qantas Sale Act, but not in section 7.

(b) The phrase "the articles of association of Qantas" appears in the opening words of section 7(1), being a subsection which applies on and from the day on which Qantas becomes aware that a person other than the Commonwealth has acquired voting shares in Qantas. The Commonwealth owned shares in Qantas, rather than its subsidiaries.

(c) Other sub-paragraphs of sub-section 7(1) contain provisions that are clearly directed to Qantas, rather than its subsidiaries, such as restrictions on ownership of shares in "Qantas" and a restriction on Qantas changing "its company name to a name that does not include the expression 'Qantas'".

22. However, this does not resolve the issue for determination in this opinion.

23. The relevant articles of association of Qantas are found in the Qantas Constitution (**the Constitution**). The first paragraph of the Constitution provides as follows:

> *1.1 Name*
>
> *(a) The name of the company is 'Qantas Airways Limited'.*
>
> *(b) The name of the company must contain the expression 'Qantas', and for so long as Qantas conducts scheduled international air transport passenger services it must do so under its company name or under a registered business name that includes the expression 'Qantas'.*

24. The first question which we have been asked requires us to consider whether this paragraph complies with the obligation under section 7(1)(f) of the Qantas Sale Act. Paragraph 1.1(b) of the Constitution is framed as an obligation, whereas section 7(1)(f) requires the Constitution to contain a prohibition. We do not think that this, of itself, prevents the Constitution from complying with the requirements of the Act. An obligation to conduct a service under a given name is equivalent to a prohibition on conducting the service under any different name.

25. Otherwise, paragraph 1.1(b) uses equivalent language to the statutory language in s.7(1)(f). This does not determine the question of whether the Constitution complies with the Qantas Sale Act. If a particular term in the statute has a wide meaning, but the same term in the Constitution has a narrow meaning, then it may be that Constitution does not comply with the statute. However, we are also of the view that the interpretation of the Constitution should be approached on the basis that it was intended to give effect to the statutory requirements and should, unless the contrary

intention is clearly evident, be interpreted in a manner consistent with the meaning of the statutory obligation. The is reinforced by notations in the Constitution referring to the relevant parts of the Qantas Sale Act.

26. The precise meaning of the phrase "Qantas... conducting scheduled international air transport passenger services" in s.7(1)(f) is ambiguous. In particular, it is not entirely clear whether the phrase is limited to activities carried on by Qantas itself, or whether it would, for example, extend to activities organised, procured, directed and supervised by Qantas but also carried out by some other person, such as a subsidiary of Qantas. In these circumstances, reference may be had to extraneous material to ascertain the purpose of the Act (in order to construe the section in a manner consistent with that purpose)[3], to confirm the ordinary meaning[4], or to determine the meaning[5].

27. The Explanatory Memorandum for the original Bill says the following about Part 3, in which section 7 is located:

> *The purpose of Part 3 is to require that the articles of association of Qantas contain certain restrictions or requirements, predominantly related to maintaining the Australian identity of Qantas and ensuring that the requirements of Australia's bilateral air service agreements (under which most of Qantas' international air services are operated) are complied with. These air service agreements require that Qantas remain substantially owned and effectively controlled by Australians. The part also provides a mechanism for the relevant portfolio Minister (currently the Minister for Transport and Communications) to monitor compliance with these provisions and, if necessary, to seek their enforcement by the Federal Court.*

28. This summary of the requirements of the air service agreements ("that Qantas remain substantially owned and effectively controlled by Australians") appears to relate to other provisions of section 7, rather than s.7(1)(f). Likewise, the object of "maintaining the Australian identity of Qantas" does not appear to relate to s.7(1)(f), but rather to other provisions of s.7(1) concerning ownership of shares, location of Qantas facilities, and the like.

---

[3] *Acts Interpretation Act* s.15AA

[4] *Acts Interpretation Act* s.15AB(1)(a)

[5] *Acts Interpretation Act* s.15AB(1)(b)

29. We have not been briefed with all of the bilateral air service agreements that were current at the time that the Qantas Sale Act was enacted. It is possible that a consideration of those agreements might explain the concern with the name "Qantas". For example, if the agreements conferred landing rights or other rights upon "Qantas", then it might be in the national interest to ensure that the airline called "Qantas" continued to operate international services. A non-exhaustive examination of some agreements suggests that this is an important topic which requires further investigation. For example, the agreement between Australia and the United States of 10 January 1980[6] makes specific reference to "Qantas". An example is provided by the following clause:

> *(C) Neither partly shall challenge, before 1 November 1979, the existing combination service frequency levels for QANTAS and Pan American Airways, and the proposed levels for Continental Airlines, that is, QANTAS - 7, Pan American - 9, Continental - 4, weekly round trips.*

30. Other agreements refer only to a "designated airline", and identify this as:

> *an airline or airlines which one Contracting Party has designated by written notification to the other Contracting Party for the operation of air services on the route or routes specified in such notification, and to which the appropriate operating permission has been given by that other Contracting Party.*[7]

31. In each case, it is possible that the maintenance of the "Qantas" name is of some significance to Australia.

32. Of section 7, the Explanatory Memorandum states:

> *This clause requires that the following national interest safeguards be incorporated into Qantas' articles of association:*
>
> ...
>
> *(e) Qantas' company name must not be changed to a name that does not include the expression "Qantas".*

---

[6] http://www.austlii.edu.au/au/other/dfat/treaties/1980/2.html

[7] See http://www.austlii.edu.au/au/other/dfat/treaties/1956/6.html (the Japanese agreement) as amended by http://www.austlii.edu.au/au/other/dfat/treaties/1989/17.html.

(f) *Qantas must only conduct scheduled international air transport passenger services under its company name or under a registered business name that includes the expression "Qantas".*

33. Apart from the possible accrual of rights under international agreements (discussed above), it is not immediately apparent how the requirement that Qantas must only conduct scheduled international air transport passenger services under its company name or under a registered business name that includes the expression "Qantas" is a "national interest safeguard", unless it was thought that the Qantas brand was so important to Australia that it was in the national interest that it be preserved.

34. In his second reading speech (4 November 1992, House Hansard p 2588) the Minister said:

> *National Interest Safeguards*
>
> *The fundamentals of the national interest safeguards, referred to earlier, need to be enshrined in legislation.*
>
> *These safeguards are important to maintain the basic Australian character of Qantas,* ***as well as to ensure that Qantas's operating rights under Australia's various bilateral air service agreements and arrangements with other countries are not put under threat.*** *Once in legislation, these safeguards will not be subject to the whim of the Government of the day.*
>
> *Thus, the Bill requires that Qantas's Articles of Association must contain provisions which will ensure that: Qantas's main operational base and headquarters remain in Australia; that the name of Qantas is preserved for the company's scheduled international passenger services; that the company be incorporated in Australia; that at least two-thirds of the board of Qantas be Australian citizens; that the chairman of the board also be an Australian citizen; and, in particular, that total foreign ownership is not to exceed 35 per cent.* [emphasis added]

35. The passage in bold is consistent with the observations above concerning the possible accrual of rights in the name of "Qantas" under the bilateral air service agreements, but does not identify this consideration in terms.

36. During the debate following the second reading speech (11 November 1992, Hansard p 3168), Mr Beale said:

> *I suggest to the Minister for Finance that the Government should amend the Bill in the Senate in two other ways. It should be amended to make it clear that*

the Government can at any time use the Qantas organisation or assets for national security or defence purposes. The second thing that I suggest to the Minister is in the context of clause 7(1)(f). ***There should be some modification to that clause. As I understand it, Qantas flies to Taiwan under the name Australia-Asia Airlines. If it continued to do that, it would be demonstrably in breach of clause 7(1)(f), so some modification needs to be made to the Bill to ensure that Qantas' interests are protected in that way.*** [emphasis added]

37. Mr Jull then said (11 November 1992, Hansard p 3174):

> *The honourable member for Bruce also mentioned the Australia-Asia airline that operates into Taipei. He referred to the Qantas Sale Bill. I refer to clause 7 (e) and (f) under part 3 of that Bill. Under section (e) the explanatory memorandum says:*
>
> > *Qantas' company name must not be changed to a name that does not include the expression "Qantas".*
>
> *I think we need some clarification of that because that Taipei market is an expanding market and there are some tremendous opportunities there. I would hate to see any access to that market diminished purely because of an oversight in that Bill.*

38. The relevant text of the Bill's second reading speech in the Senate (12 November 1992, Hansard p 2851) is materially identical to that in the House.

39. During debate in the Senate (7 December 1992, Hansard p 4256), Senator MacGibbon said:

> *When I was preparing the material for this speech, I was very interested to talk to two advisers from the Department. ...*
>
> *Part 3 deals with the requirement for the airline to trade under the name of Qantas when operating international services.* ***I did raise the matter of Australia Asia Airlines with the advisers and I am assured that that will not be in any conflict with the provisions of the Act. Australia Asia Airlines is the subcompany set up by Qantas to trade with Taiwan.*** [emphasis added]

40. There is no further reference to what became section 7(1)(f).

41. The Explanatory Memorandum and the parliamentary debates do not provide any clear guidance as to the purpose of section 7(1)(f). However, the reference in the

Explanatory Memorandum to Qantas's operating rights under Australia's various bilateral air service agreements is consistent with a concern to preserve rights accrued to Australia, via Qantas, under those agreements.

42. The statements by Mr Beale, Mr Jull and Senator MacGibbon suggest a desire to ensure that the Act did not prohibit the existing arrangements in relation to Australia-Asia Airlines, but as these are all statements by the opposition they do not shed much light on the intention of the framers of the legislation.

43. However, the fact that the Act was passed at a time when a subsidiary of Qantas was operating an international air transport passenger service under a name which did not include the expression "Qantas", particularly in circumstances where the issue was raised on more than one occasion in the parliamentary debate referable to the Bill, suggests that s.7(1)(f) should be given a construction which would avoid the immediate prohibition of the existing state of affairs.

44. On the other hand, if s.7(1)(f) of the Act was construed such that it did not touch any operations of subsidiaries of Qantas, then it would be absurdly easy to avoid the constraint imposed by the sub-paragraph. Qantas could simply migrate any or all of its flights to a subsidiary (such as Jetstar). This would be inconsistent with the evident purpose of the provision to safeguard the national interest, including through the preservation of rights which Australia (through Qantas) has pursuant to international agreements. A construction which would permit Qantas to sidestep with ease the statutory restriction should be avoided if possible.

45. The factors referred to in the previous two paragraphs may, in a given case, point in opposite directions. It is necessary to construe section 7(1)(f) having regard to the ordinary meaning of the language, the evident purpose of the provision, and the possibly contradictory considerations discussed above.

46. In our view, the mere fact that an international air transport passenger service was carried out by a Qantas subsidiary would not, of itself, mean that Qantas was conducting such a service. For example, if Qantas was to purchase a majority shareholding in an existing international airline in circumstances where the existing airline continued to operate its services completely independently of Qantas, without any involvement of Qantas management or the Qantas board, then it is difficult to see how Qantas would be "conducting" the services in any relevant sense. This view is consistent with the evident purpose of the Qantas Sale Act. The Act is not concerned with limiting the investment activities of Qantas.

47. The position may be different if Qantas is directing, managing or supervising the conduct of the services operated in part by a subsidiary. In those circumstances,

Qantas may be seen to be "conducting" the services within the ordinary meaning of that term. Such an approach is consistent with the need to ensure that Qantas cannot, by the mere device of establishing a subsidiary, have the conduct in a practical sense of services which fall outside the ambit of the statute (and consequently the Qantas Constitution).

48. In the present case, the limited facts which we have strongly suggest that Jetstar is not an independent operation. The board of Qantas makes significant decisions as to the operation of Jetstar, including the determination of routes and the purchase of aircraft. These two matters alone are so significant to the overall operation of an airline, that Qantas may be seen to be "conducting" the services otherwise operated by Jetstar. However, the material available to us goes further. It indicates that Qantas approaches Jetstar not as an investment, but as a means by which Qantas can operate low cost services and increase those services, including at the expense of existing Qantas operations. The conduct of Jetstar is part of the strategy of Qantas to extract the maximum benefit from different market segments (what Qantas refers to as the "two brand strategy") and is an integral part of Qantas' approach to conducting business in both the domestic and international arenas.

49. Close to conclusive evidence in this regard may be produced by an examination of Qantas board papers, because they may reveal a crossing of the line between the Qantas board receiving information about a subsidiary, and making decisions for the operation of that subsidiary. We note that some of the media releases issued by Qantas are strongly suggestive that this line has been crossed – for example, the media release of 14 December 2005 stating that the Qantas board had decided to purchase certain aircraft for Jetstar.

50. A useful comparison, by way of analogy, may be made with cases considering whether a holding company owes a duty of care to employees of its subsidiary. In *CSR Limited v Wren*[8], the Court of Appeal concluded that CSR Limited owed a duty of care to employees of its wholly owned subsidiary Asbestos Products Pty Limited. Factors which were relied upon in support of this conclusion included:

    (a) that CSR, through some of its employees, in fact controlled and supervised the factory operations of Asbestos Products;

    (b) that Asbestos Products' board of directors were all staff members of CSR;

[8] (1998) 44 NSWLR 463

(c) that it appeared from CSR's annual report and newsletters that it adopted a patriarchal attitude towards its subsidiaries. For example, in an annual report it was stated that: "Production in all the factories of *our* Building Materials Division has been maintained..."; and

(d) that CSR had approved the purchase of certain equipment used by Asbestos Products.

Analogous factors are present in the case of the Qantas/Jetstar relationship. For example, all of the Jetstar directors are executives employed by Qantas, Qantas adopts a similarly patriarchal attitude towards Jetstar (in the Qantas materials set out above), and it appears that the Qantas board has made decisions concerning the purchase of aircraft for Jetstar.

51. In our view, Qantas is "conducting" the services offered under the Jetstar brand within the meaning of both section 7(1)(f) of the Qantas Sale Act and paragraph 1.1(b) of the Qantas Constitution.

Remedies

52. The right conferred by the Qantas Sale Act to seek an injunction against conduct constituting a contravention of the Qantas Constitution[9] is a right given to the Minister alone.

53. There is no reason why a member of Qantas would not be able to bring an action to enforce the Qantas Constitution as a contract between the member and Qantas. Section 140(1)(a) of the *Corporations Act* 2001 provides that a company's constitution has effect as a contract between the company and each member. The Constitution is enforceable in the same way as any other contract. We understand that many of the members of AIPA are also members of Qantas.

54. It is possible that declarations might also be available. The power of the Court to grant declarations is undoubtedly very wide. However, we would consider it inappropriate to seek bare declarations. A Court may well consider that a bare declaration that Qantas was in breach of its Constitution, without any associated injunctive relief, would not be sufficient to quell the controversy between the parties because it would not bring the conduct to an end or otherwise resolve the dispute. This may be sufficient grounds for a Court to exercise its discretion to decline to grant any

[9] Section 10, Qantas Sale Act

declaration[10]. Further, we would query the point of seeking a declaration in the present case, where an injunction would be the operative remedy.

55. An injunction in the present case may have very serious consequences. The practical effect would be to prevent the operation of the Jetstar international business under its present name, being a major business with many employees which has been operating for over a year. Nevertheless, given that the relevant member would be seeking to enforce what is effectively a negative covenant of the Qantas Constitution, the injunction should prima facie be granted whatever the inconvenience[11]. Although the famous passage in *Doherty* should not be applied without qualification as to the possible application of equitable defences such as laches or acquiescence[12], the prima facie position is that the injunction should be granted[13].

56. However, we note that the obvious commercial and industrial consequences of closing down Jetstar's international operations (including the consequences for members of AIPA employed by Jetstar) mean that any litigation seeking to enforce the Qantas constitution involves a problematical step.

Chambers

Bret Walker

Cameron Moore

26 February 2007

---

[10] cf. *Forster v Jododex* (1972) 127 CLR 421

[11] *Doherty v Allman* (1878) 3 App Cas 709 at 719-20

[12] Meagher, Gummow and Lehane, *Equity: Doctrines and Remedies*, 4th ed. at [21-195]

[13] *J C Williamson Ltd v Lukey and Mulholland* (1931) 45 CLR 282 at 299; *Dalgety Wine Estates Pty Ltd v Rizzon* (1979) 141 CLR 552 at 576; *BHP v Hapag-Lloyd Aktiengesellschaft* [1980] 2 NSWLR 572 at 581-582; *Maggbury Pty Ltd v Hafele Australia Pty Ltd* (2002) 210 CLR 181 at [74], [102]