

**Application for declaration of the JUHI and
Caltex Pipeline**

**Qantas Group Submission in response to the
National Competition Council's Draft
Determination**

13 February 2012



1. The Qantas Group (**Qantas**) appreciates the opportunity to provide comments on the National Competition Council (**NCC**)'s draft determination on 16 December 2011 in relation to both the Joint User Hydrant Installation (**JUHI**) Service and the Caltex Pipeline Service (as defined by the NCC) (**Draft Determination**).
2. Qantas strongly supports the NCC's view that neither the JUHI Service nor the Caltex Pipeline Service should be declared at this time.
3. Qantas agrees with the NCC's assessment that declaration would not result in any material increase in competition in either the market for the supply of jet fuel to Sydney Airport or the market for the supply of into-plane services.
4. Qantas also agrees that there are no other public interest reasons to justify declaration. The problem with jet fuel reliability at Sydney Airport is one of capacity, not access - as the NCC acknowledged (Draft Determination, paragraphs 4.62 and 4.63).
5. Qantas endorses the NCC's observations that the access regime in Part IIIA of the *Competition and Consumer Act 2010* is designed to ensure "infrastructure owners receive a commercial return on investment and that incentives for efficient investment are not adversely affected" (Draft Determination, paragraph 3.2). Qantas also agrees that the market is likely to experience opportunities for increased, or at least enhanced, competition that are not dependent on declaration (Draft Determination, paragraph 4.76) including through the increase in capacity on the Caltex Pipeline and new suppliers becoming equity participants in the JUHI. Qantas reiterates the importance of not declaring infrastructure when market forces are already resulting in capacity expansion. Declaration would interfere with these plans and could suppress the incentive to invest. With declaration, the markets will be less competitive than without declaration.
6. The NCC has identified three critical issues raised in the applications and submissions (Draft Determination, paragraph 4.16). These are:
 - a. the relevance of information relating to jet fuel price differentials provided in the applications;
 - b. the scope for additional parties to join the JUHI joint venture; and
 - c. the use of trucks as a substitute for pipeline delivery of jet fuel.
7. In relation to issue (a), Qantas agrees with the NCC's determination that jet fuel differentials provided by BARA are of very limited, if any, value in establishing a case of either excessive pricing of jet fuel or an alleged abuse of market power (Draft Determination, paragraph 4.24).
8. In relation to issue (b), the NCC expressed concern that an aspect of the JUHI joining criteria (specifically, clause 15.3(viii)) was open-ended and could raise difficulties if the criteria became critical to an assessment about whether declaration would promote competition (Draft Determination, paragraph 4.31). The NCC also suggested there is no meaningful ability for a new entrant to enforce a contractual right to access the JUHI (Draft Determination, paragraphs 4.35 and 4.70). In Qantas' view, any concern about the reasonableness of JUHI entry criteria or the ability to enforce contractual rights is hypothetical and unfounded. Access to the JUHI is

available on commercially reasonable terms and these have been applied on a non-discriminatory basis.

9. In relation to issue (c), the NCC took the view that trucking jet fuel to Sydney Airport is best viewed as complementary to the use of pipelines rather than as a competitive substitute or alternative (Draft Determination, paragraph 4.43). Qantas agrees that trucking is of limited value in terms of the product volumes required to supply Sydney Airport.
10. Qantas would also like to clarify two other points made in the Draft Determination. Firstly, Qantas notes that the NCC referred to the submission by Caltex which stated that Qantas sources its jet fuel through national, rather than international, tenders (Draft Determination, paragraph 4.64). This is not the case – Qantas’ strategy for fuel tendering is flexible, in that fuel can be sourced on a national basis or at individual locations depending on the commercial environment.
11. Secondly, the NCC suggested that there may be some conflict between the explanations given by Qantas and AFS for why the into-plane services market is characterised by low barriers to entry (Draft Determination, paragraph 4.82). In this respect, Qantas notes that whilst AFS does not currently contract directly with the airlines purchasing jet fuel, Qantas is not aware of anything preventing AFS from doing so in the future. Therefore AFS remains a viable competitive alternative supplier of into-plane services at Sydney Airport.
12. In its supplementary submission to the NCC, the Board of Airlines Representatives (**BARA**) highlighted several comments made by Qantas in 2008 in the context of The Senate Select Committee Fuel and Energy Inquiry (**Inquiry**). The Inquiry investigated and reported on the impact of higher petroleum, diesel and gas prices and several related matters. The terms of reference were broad but the committee focussed on energy and fuel security, along with the impact of an emissions trading scheme and other taxation matters relating to fuel and energy.
13. The comments made to the Inquiry were not specifically directed at the reasonableness of the JUHI’s entry criteria or any other aspect of the test for determining declaration. Although Qantas maintains that it may be complex for new suppliers to enter the market due to the need to engage with different levels of the supply chain, it is still possible (as demonstrated by the experience of Qantas). The JUHI in Sydney has never refused a genuine application for equity participation and is currently in the process of negotiating access with multiple other parties.
14. Qantas confirms that it considers the equity participation model used by Sydney JUHI is valid and reasonable for the long term, having regard to the investment required to operate JUHI. The equity participation model accounts for environmental and other liabilities associated with the operation of the JUHI, which an interim throughput model may not. As such, the investment required for entry to the JUHI may not be able to be justified by airlines that have less volume over which to distribute the upfront costs. However, Qantas believes that suppliers with multiple airline customers would still have a strong business case to enable the initial and ongoing investment.

15. An important focus should be on the technical requirements of JUHI participation that are outlined in the entry criteria and endorsed by Qantas' first submission to the NCC. The JUHI entry criteria require that users have appropriate technical qualifications and capabilities for supplying jet fuel, although these could be supplied by a third party on a cost basis. If this was not a requirement, then this might expose Sydney Airport to quality and supply reliability issues through unskilled operators being involved in the supply chain. It is true that airlines with smaller volume requirements may not have the local resources, skills and experience to fulfil these requirements. However, as above, suppliers that have multiple airline customers over many international locations should have no problems in meeting these requirements. Therefore, the JUHI entry criteria are considered by Qantas to be necessary, objective and reasonable.

16. In its supplementary submission to the NCC, BARA stated at page 3:

“Given Qantas is now able to undertake a level of self supply through Q8 Aviation, it is reasonable to assume Qantas achieves far more competitive outcomes for jet fuel at Sydney Airport compared to other airlines. However, this outcome is limited to Qantas. As stated by Qantas, it is cost prohibitive for smaller airlines to become a member of the Sydney JUHI.”

17. BARA has assumed that Qantas achieves “far more competitive outcomes for jet fuel” compared to other airlines. Qantas has no knowledge about other airlines' fuel prices. However, Qantas has invested a substantial amount of expertise in trying to reduce costs as much as possible and achieve secure supply reliability. The cost of entry to the JUHI is not unreasonable for the infrastructure expenditure that is required and is not a barrier to entry.

18. In conclusion, Qantas strongly supports the NCC's Draft Determination not to recommend declaration of either the JUHI Service or the Caltex Pipeline Service.