

# **Application for Declaration**

## **Part IIIA of the COMPETITION AND CONSUMER ACT 2010**

**Jet Fuel Supply Infrastructure to Sydney Airport:**

**Service No 1: provided by the  
SYDNEY JUHI FACILITY**

Board of Airline Representatives of Australia

26 September 2011

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# 1. Executive Summary

## Sydney Airport and jet fuel demand

The number of passengers served by Sydney Airport is expected to more than double by 2029, from about 35 million to 80 million. The direct value of this trade is currently estimated at about \$8 billion per year, or some 6% of NSW's gross state product.<sup>1</sup>

To support this growth, the supply of jet fuel at Sydney Airport will also need to almost double from a current demand of about 2.9 GL per year to over 5.6 GL per year by 2029. Anticipated further improvements in aircraft fuel efficiency mean that the growth in jet fuel demand is expected to be lower than total passenger growth.

Since about 2009, the total demand for jet fuel at Sydney Airport has begun to consistently exceed local refinery production (provided by Caltex and Shell). This means that imports of jet fuel will be necessary to meet the forecast growth in demand. Shell also recently announced its decision to convert its Clyde Refinery into a fuel import terminal.<sup>2</sup> The majority of Sydney Airport's long-term jet fuel requirements will, therefore, be met through imports.

## Current market conditions

The provision of jet fuel at Sydney Airport is currently characterised by:

- Limited competition between incumbent oil company fuel suppliers;
- Some of the highest 'differential rates' in the world (the difference between the price for jet fuel paid by the airlines over and above the international market price); and
- Poor reliability.

The suppliers of jet fuel at Sydney Airport are currently limited to three of the four main oil companies (namely Caltex, Shell and BP; the Applicant understands that ExxonMobil withdrew from the market in 2010), with Qantas undertaking a limited amount of 'self supply'. The market is highly concentrated, with an estimated Herfindahl-Hirschman Index (HHI) of about 4,000. A score above 2,000 is typically interpreted as indicating high levels of industry concentration.

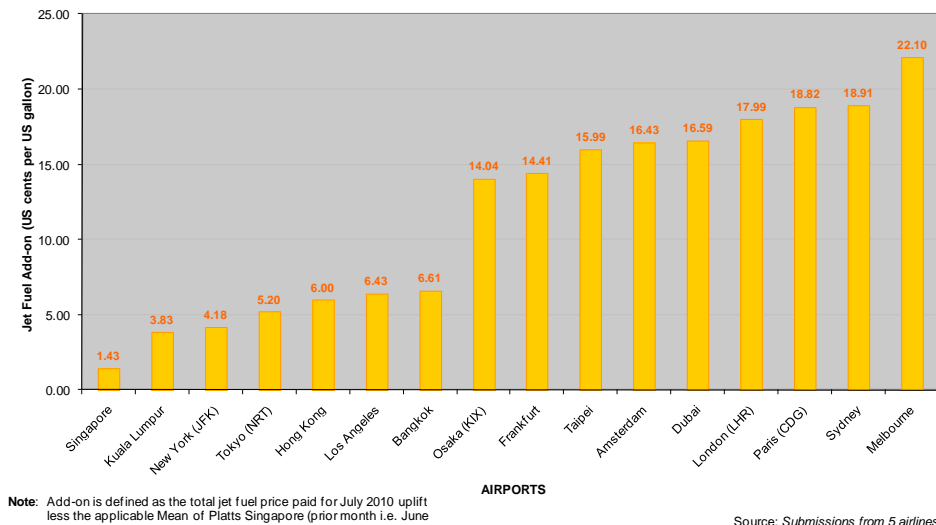
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<sup>1</sup> See *Sydney Airport Master Plan – Annexure 2*.

<sup>2</sup> See Shell (12 April 2011) Proposal on future of Clyde Refinery, Press Release – Annexure 3.

Figure 1 shows some representative fuel differentials for July 2010 as provided by the International Air Transport Association (IATA). Sydney (and Melbourne) Airports are characterised by the highest fuel differentials in the world.

Figure 1 **Jet fuel differentials, US cents per US gallon, July 2010**



Source: IATA.

The provision of jet fuel at Sydney Airport has been characterised by poor reliability. In response to the disruptions in the supply of jet fuel to Sydney Airport in 2003, a National Operating Committee (NOC) was established by the then four major fuel suppliers to monitor and advise on potential jet fuel supply disruptions and manage supply disruptions. This means that rather than allowing competition and more diversity in supply to improve reliability and pricing, it is administered by the existing oil companies, with the costs ultimately passed onto airlines and passengers.

### Access to jet fuel supply infrastructure

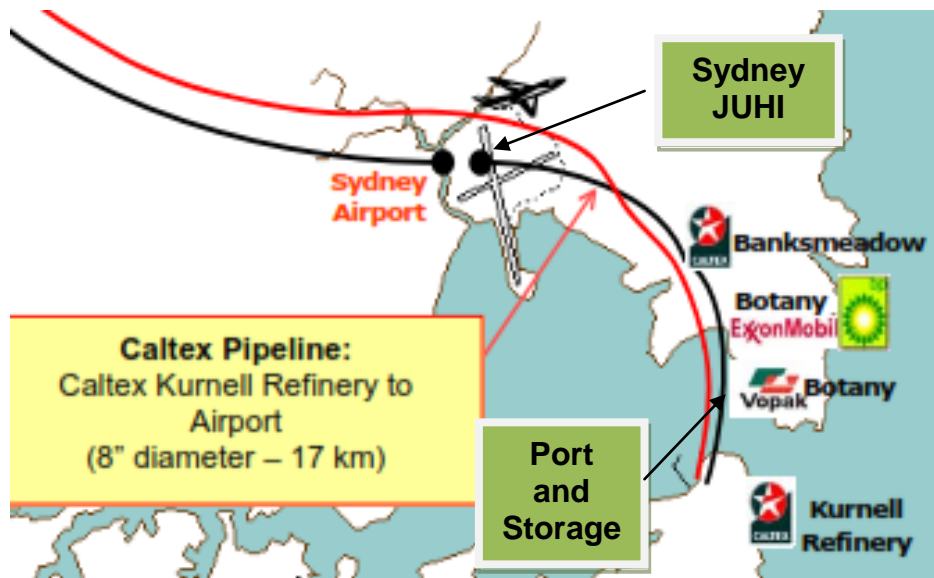
The current excessive pricing and poor reliability problems can be directly addressed through greater competition between the suppliers of jet fuel, especially through new entrants. There is considerable potential to increase the number of jet fuel suppliers beyond the three incumbent oil companies. Many overseas airports are supplied by six or more providers and such competitive arrangements could also be achieved in Sydney.

To create an environment that promotes effective competition between jet fuel suppliers, it will be necessary for new suppliers (importers) to gain access to the jet fuel supply infrastructure on reasonable terms and conditions. Potential suppliers will need access to:

1. the common-user bulk liquids berth at Botany, currently provided by Sydney Ports Corporation;
2. off-airport storage facilities at Botany, currently provided by Vopak (and possibly other facilities located nearby);
3. the pipeline from the point of interconnection between Vopak's storage facilities and Sydney Airport, currently provided by Caltex (the Caltex Pipeline); and
4. the Sydney Airport Joint User Hydrant Installation (the Sydney JUHI), which stores and distributes jet fuel, currently a joint venture between the major oil companies, with Qantas as an additional Participant.

A map showing the jet fuel supply infrastructure is provided in Figure 2 below.

Figure 2 **Map of supply infrastructure for imported jet fuel**



Source: Sydney Jet Fuel Infrastructure Working Group Report (2010).

The Applicant considers that open, non-discriminatory access is currently available through Sydney Ports Corporation and the off-site storage facilities provided by Vopak. The Applicant, however, considers that gaining access to the Caltex Pipeline and the Sydney JUHI on reasonable terms and conditions represent major barriers to new suppliers of jet fuel.

### Vertically integrated supply, the Sydney JUHI

The Sydney JUHI represents monopoly supply infrastructure to any potential importer of jet fuel. The ownership of the infrastructure is also characterised by vertical integration. Caltex is vertically integrated throughout the supply chain. It produces and imports jet fuel, owns and controls the main jet fuel pipeline to Sydney Airport (the Caltex Pipeline), is a member of the Sydney JUHI and, finally, provides 'into-plane' services. Shell and BP also produce or import jet fuel, are members of the Sydney JUHI and provide 'into-plane' services. ExxonMobil exited the market for the supply of jet fuel at Sydney in 2010, but remains a JUHI Participant and a shareholder in Airport Fuel Services Pty Ltd (an into-plane service provider).

Once jet fuel arrives at Sydney Airport, it enters the jet fuel infrastructure network on-site, owned and managed by the Sydney JUHI. This jet fuel initially enters the JUHI Jet Fuel Storage Facility. Following the storage facility, the fuel is transported through the JUHI Jet Fuel Hydrant Pipeline Network Facility or via refuelling trucks to the aircraft refuelling points. Finally, into-plane services (using qualified personnel) oversee the transfer of the jet fuel from the hydrant network (or refuelling truck) into the aircraft.

As in any production process, every stage is critical to ensure the delivery of the final product. However, there are several key features in this market that are essential in terms of this application for Declaration. First, wherever it is sourced, be it imported or locally refined, once the jet fuel arrives at the airport it must enter the JUHI infrastructure network – there is no alternative route to the aircraft.

The Sydney JUHI is a natural monopoly. The least cost way of providing the network infrastructure for any foreseeable demand for jet fuel is with the existing JUHI; the extra

cost of any extension or augmentation to the current JUHI is categorically less than building a new network at the airport.

It is inconceivable a second stand-alone network will be built at Sydney Airport; it would cause major disruption to the workings of the airport and the possibility is not even allowed for in the *Sydney Airport Master Plan*. The Sydney JUHI has also stated that, subject to reaching an acceptable outcome with Sydney Airports Corporation Limited (SACL) over its longer-term tenure, it will be in a position to invest in the marginal additional storage capacity required.<sup>3</sup> It is also not considered practically feasible to duplicate the hydrant infrastructure from the storage tanks to the aircraft refuelling points at the aircraft aprons.

The Oil Company JUHI Participants are the suppliers of jet fuel to the airlines. That is, the oil companies are the owners of an essential element in the supply process – the Sydney JUHI that distributes the jet fuel at Sydney Airport – are also the suppliers of jet fuel. These companies, by limiting access to the network, can prevent entry into the jet fuel market by potential rivals.

The Applicant understands that the Sydney JUHI has full discretion to refuse access to any potential jet fuel supply competitor. The Sydney JUHI has advised the Applicant that for a third party to throughput jet fuel, it is necessary for the supplier to take an equity stake in the Sydney JUHI, should the JUHI Participants decide to allow another supplier of jet fuel to supply at Sydney Airport. Access to the Sydney JUHI is particularly restrictive when compared with arrangements that are in place overseas. For example, at Los Angeles Airport, open access arrangements are in place where suppliers (including airlines) can choose whether or not to become a member of the JUHI.

Given the high HHI value combined with the substantial barriers to entry associated with the Sydney JUHI (and the Caltex Pipeline, subject to a separate but related application for Declaration), the Applicant submits that it must be concluded that the incumbent suppliers of jet fuel at Sydney Airport have considerable market power.

### **This application for declaration**

The Applicant represents the interests of international airlines operating to and from Australia. The Applicant's membership currently comprises 30 scheduled airlines, which presently provide over 90% of the international flights to and from Sydney.

The Applicant's members have a keen interest in access, service delivery and pricing issues at Australia's capital city and major regional airports. The Applicant has authorisation from the Australian Competition and Consumer Commission (ACCC) to undertake collective negotiations on a voluntary basis with major international airports, Gold Coast Airport, Airservices Australia and the Bureau of Meteorology.<sup>4</sup>

A number of jet fuel providers outside the incumbent oil companies have expressed an interest to the Applicant in having the opportunity to supply jet fuel at Sydney Airport. However, without declaration, it is likely that the jet fuel supply at Sydney Airport will be limited to the incumbent suppliers, despite the potential opportunities given the forecast growth in demand and reliance on imported jet fuel.

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<sup>3</sup> See SJFIWG, pp. 40-41.

<sup>4</sup> Authorisation number A91200.

This application seeks declaration of the Sydney JUHI (both the storage and hydrant facilities). Providing access to alternative suppliers to the JUHI will increase competition in the market for the supply of jet fuel at Sydney Airport. Any increase in competition with its potential to decrease prices and improve reliability, could significantly improve overall social wellbeing given the importance to the Australian economy of international and domestic passenger and freight services to and from Sydney Airport.

The Applicant, therefore, seeks declaration of the services provided by the Sydney JUHI for a period of 15 years. The Applicant intends to make a separate but related application with respect to the Caltex Pipeline. Through declaration, access to arbitrated outcomes with the ACCC would be available to any potential supplier of jet fuel if commercially acceptable terms and conditions cannot be reached. A declaration period of 15 years is considered suitable, given the initial investments and costs that will be incurred by new suppliers of jet fuel at Sydney Airport and the ability of the Sydney JUHI to expand capacity to meet foreseeable demand.

### **Enhanced competition in three separate markets**

Declaration of the services provided by the Sydney JUHI will promote competition for the supply of jet fuel, into-plane services, and for airline and other jet services at Sydney Airport. If the current arrangements are allowed to continue, it is likely that the projected growth in jet fuel demand will be met from the incumbent suppliers and the potential increases in competition will be lost.

With the growing demand for jet fuel that can only be met through imports, opportunities will become increasingly available for new suppliers to enter and compete for the provision of jet fuel at Sydney Airport. Increasing the level of competition will promote cost competitiveness and greater reliability of supply.

New jet fuel suppliers may also seek to provide 'end-to-end' services to airlines and other jet operators (supply to final delivery into aircraft) and, hence, compete in the market for into-plane services to airlines at Sydney Airport.

Finally, the improvements in competitive conditions in the markets for jet fuel supply and into-plane services will improve the commercial opportunities for domestic and international passenger and freight services from Sydney Airport. As these downstream markets are already competitive, the improvement in commercial conditions will result in a greater service offering and/or lower prices to passengers and freight customers.

## 2. Definitions

### 2.1 The following words have these meanings in this Application:

“**ACCC**” means Australian Competition and Consumer Commission.

“**Caltex Pipeline**” means the pipeline owned and controlled by Caltex, which transports jet fuel from Caltex’s Kurnell Refinery and from interconnection points with off-site storage facilities to the Sydney JUHI, shown in page 22 of **Annexure 1**.

“**Council**” means National Competition Council.

“**GL**” means one gigalitre, or one billion litres.

“**IATA**” means International Air Transport Association.

“**Jet Fuel Hydrant Pipeline Network Facility**” or “**Hydrant Network**” means the underground pipelines from the Jet Fuel Storage Facility to apron hydrant outlets located adjacent to aircraft gates at the international and domestic terminals at Sydney Airport, owned by the JUHI JV, shown in page 52 of **Annexure 1**.

“**Jet Fuel Storage Facility**” or “**Storage Facility**” means the jet fuel storage facility, including facilities for dispensing fuel to refuelling trucks, owned by the JUHI JV, at Sydney Airport, shown in page 51 of **Annexure 1**.

“**JUHI JV**” means the joint venture between the JUHI Participants.

“**JUHI Participants**” means:

- Shell
- Caltex
- BP
- ExxonMobil
- Qantas

as further defined in paragraph 6.6.

“**Oil Company JUHI Participants**” means the JUHI Participants, other than Qantas, and noting that ExxonMobil no longer supplies the Sydney Airport market, but to the knowledge of the Applicant remains a JUHI Participant.

“**Operator**” means Shell, which operates the Sydney JUHI on behalf of the JUHI Participants.

“**Qantas**” means Qantas Airways.

“**SACL**” means Sydney Airport Corporation Limited.

“**Service**” means the services set out in paragraph 4.1.

“**Shell Pipeline**” means the pipeline owned and controlled by Shell, which transports jet fuel from Shell’s Clyde Refinery to the Sydney JUHI.



“**SJFIWG Report**” means the Sydney Jet Fuel Infrastructure Working Group Report dated 30 April 2010, attached at **Annexure 1**.

“**Sydney Airport**” means Sydney Kingsford Smith Airport.

“**Sydney Airport Master Plan**” means the *Sydney Airport Master Plan 2009*, the relevant parts of which are contained in “**Annexure 2**”.

“**Sydney JUHI**” means the Sydney Airport Joint User Hydrant Installation, owned by the JUHI JV and operated by the Operator, including the Jet Fuel Storage Facility and the Jet Fuel Hydrant Pipeline Network Facility.

### 3. Applicant Details

#### 3.1 Who is the Applicant?

The Board of Airline Representatives of Australia Inc (BARA), on its own behalf and on behalf of its current members as set out in **Schedule "A"** (the **Applicant**).

BARA is the industry representative organisation representing the interests of international airlines operating to and from Australia. BARA has been established as an incorporated body for 21 years. Prior to that BARA operated for many years as an unincorporated body.

BARA aims to establish a recognised means of communication between member airlines and statutory and other organisations whose interests and actions influence or affect member airlines and the aviation industry. Its purpose is to act on issues affecting the aviation industry in Australia and to provide a single concerted voice on policy and other matters.

BARA represents most of the airline carriers using Sydney Airport. BARA members presently provide over 90% of the international flights to and from Sydney.

BARA has authorisation from the ACCC to collectively negotiate on behalf of its members for the provision and pricing of international aeronautical services and facilities at major international airports, including the provision of refuelling infrastructure (authorisation number A91200). BARA's activities are voluntary for all parties. Each airline may choose to negotiate different terms and conditions from those negotiated through BARA. Airport operators or aircraft refuelling infrastructure providers are also not required to negotiate with BARA.

#### 3.2 Who is the Applicant's representative?

Mr Richard Davis  
 C/- HWLE Ebsworth Lawyers  
 Level 11-14  
 264-278 George St  
 SYDNEY NSW 2000  
 Telephone: 02 9334 8707  
 Facsimile: 02 1300 369 656  
 Email: richard.davis@hwlebsworth.com .au

#### 3.3 Contact details as above.

As above.

## **4. Service for which access (or increased access) is sought**

### **4.1 The Service**

The services provided by the Jet Fuel Storage Facility (including facilities for refuelling trucks) and Jet Fuel Hydrant Pipeline Network Facility provided by the Sydney JUHI.

On page 51 of **Annexure 1** is a diagram setting out the location of the Sydney JUHI at Sydney Airport. On page 52 of **Annexure 1** is a diagram showing the Jet Fuel Hydrant Pipeline Network.

### **4.2 Describe how, and for what purpose, the Applicant intends to use the service?**

Provide jet fuel to international passenger and freight aircraft operating to or from Sydney Airport.

The Applicant's members do not negotiate access to the Sydney JUHI directly. Instead, the airlines enter into contracts with the suppliers of jet fuel. The jet fuel suppliers, in turn, negotiate access to the Sydney JUHI. However, the Applicant has sought to negotiate open access arrangements directly with the Sydney JUHI.

This declaration will be available to any airline or jet fuel supplier providing passenger and freight services to or from Sydney Airport.

### **4.3 What are the reasons for seeking access to the Service?**

The Applicant seeks increased access so that its members have an enhanced ability to source jet fuel from existing and new suppliers and to ensure the declared services are provided on fair and reasonable terms.

The demand for jet fuel is expected to almost double from a current demand of about 2.9 GL per year to over 5.6 GL per year by 2029.

Since about 2009, the total demand for jet fuel at Sydney Airport has begun to consistently exceed local refinery production (by Caltex and Shell). This means that imports of jet fuel will be necessary to meet the forecast growth in demand. Shell also recently announced its decision to convert its Clyde Refinery into a fuel import terminal. The majority of Sydney Airport's long-term jet fuel requirements will, therefore, be met through imports.

The suppliers of jet fuel at Sydney Airport are currently limited to three of the four main oil companies (namely Caltex, BP and Shell; the Applicant understands that ExxonMobil withdrew from the market in 2010), with Qantas undertaking a limited amount of 'self supply'. By separating the provision of the Service from the final product itself via declaration, there is considerable potential to increase the number of jet fuel suppliers. Many overseas airports are supplied by 6 or more providers and the Applicant considers that the market for jet fuel at Sydney Airport can sustain more than the incumbent providers.

The Sydney JUHI is characterised by 'limited' access arrangements. The Applicant understands that the Sydney JUHI has full discretion to refuse access to any potential jet fuel supply competitor. The Sydney JUHI has advised the Applicant that for a third party to throughput jet fuel, it is necessary for the

supplier to take an equity stake in the Sydney JUHI, should the JUHI Participants decide to allow another supplier of jet fuel at Sydney Airport.

Access to the Sydney JUHI is particularly restrictive when compared with arrangements that are in place overseas. For example, at Los Angeles Airport, open access arrangements are in place where suppliers (including airlines) can choose whether or not to become a member of the JUHI.

With access being granted, there will be greater scope for the Applicant's members to source jet fuel at Sydney Airport beyond the incumbent oil companies. Increasing the level of competition between jet fuel suppliers will promote cost competitiveness and greater reliability of supply. Granting access will also enhance the competition for 'into-plane' services (the delivery of fuel from the hydrants into aircraft). The improvements in competitive conditions in the market for jet fuel and into-plane services will improve the commercial opportunities not only for the Applicant's members to provide international passenger and freight services from Sydney Airport, but also for all other operators of domestic and international jet aircraft services at Sydney Airport, whether scheduled or unscheduled, including all general aviation services provided by jet aircraft.

#### **4.4 What activities would the Applicant undertake if access was provided – what products and/or services would it produce?**

International passenger and freight jet aircraft services to and from Sydney Airport.

#### **4.5 What would be the consequences for the Applicant and others if access was not obtained?**

If access was not obtained, the Applicant's member airlines would continue to face the current market conditions, namely limited competition for a necessary input, jet fuel. The Applicant's members can currently obtain jet fuel through their contracts with providers (which in turn obtain access from the Sydney JUHI). To the extent this vertically-integrated supply chain has resulted in higher prices for jet fuel, failure to obtain access will severely impede the Applicant's members from more competitively conducting their business by restricting the opportunity for a competitive market for jet fuel developing.

IATA states that jet fuel costs represent about one third of total airline costs.<sup>5</sup> Any improvement in the pricing and reliability of supply of this major cost item will ultimately improve the commercial opportunities for international and domestic airlines to provide passenger and freight services to customers. The current monopoly position of the Sydney JUHI is, therefore, reducing the commercial opportunities for international and domestic passenger and freight services to and from Sydney Airport.

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<sup>5</sup> See <http://www.iata.org/ps/consulting/Pages/fuel-consulting.aspx>

#### **4.6 What alternative ways could the Applicant produce or deliver its products or services? Or would it choose not to produce or deliver those products or services if access were not granted?**

If access were not granted, the status quo would remain. In this case the Applicant's members will continue to source jet fuel from the Oil Company JUHI Participants, through what is essentially a vertically-integrated monopoly.

The current arrangements result in higher jet fuel prices and less reliability of supply. Theoretically, airlines might resort to 'alternative' and very costly techniques to shift their purchases of jet fuel from Sydney to other locations. For example, international airlines could rely on a combination of 'tankering' and 'technical stops' to be able to provide a greatly reduced range of international passenger and freight services.

Tankering is the practice of uplifting extra fuel on planes at an alternative airport to remove or reduce the need for uplifting fuel at another airport. Tankering, when used, is generally only for flights that are less than about three hours duration (depending on the type of aircraft used).

Technical stops involve landing at another airport for the additional uplift of fuel between a flight's origin and destination. Technical stops increase flight times, increasing total aircraft operating costs, including:

- Fuel
- Crew
- Aircraft maintenance
- Airport fees
- Air navigation fees.

The Applicant does not consider that either tankering or technical stops represent viable options for the long-term provision of international passenger and freight air transport services from Sydney Airport. Rather, they represent expensive, 'stop gap' measures employed during short-term disruptions to available jet fuel supply at particular airports. Indeed, given the cost of jet fuel, airlines seek to minimise the total weight of aircraft to minimise necessary fuel burn.

If jet fuel was not available from Sydney Airport, the likely outcome would be a substantial reduction in the destinations and frequency of services available through Sydney Airport. It is likely that many international flights to the east coast of Australia would only be offered between Melbourne and Brisbane. It would then be necessary for passengers to board domestic flights, where tankering could be more possible, to travel to Sydney.

Note, all of these options involve considerable cost to airlines and, as a consequence, to the final consumers of air services. On this, it is worth noting two points. First, the alternative methods of sourcing jet fuel are very costly, which gives a monopoly supplier of jet fuel considerable scope to raise its price (considerable market power). Second, these alternative methods of sourcing jet fuel are a significantly higher cost alternative compared to granting access to the Sydney JUHI.

**4.7 If the Applicant is seeking access to multiple services, describe how these services interrelate?**

The services provided by the Jet Fuel Storage Facility and Jet Fuel Hydrant Pipeline Network Facility are both essential elements of the jet fuel supply infrastructure chain; they are strictly complementary assets in the network of delivery of jet fuel at the airport to the airline customers. Given the current infrastructure arrangement at Sydney Airport, access to one is of no value without access to the other asset. Specifically, jet fuel cannot be supplied to international aircraft (or any other jet aircraft) at Sydney Airport without it first being transferred to the storage tanks of the Sydney JUHI. The jet fuel is then transferred from the storage tanks to the hydrant pipeline infrastructure or to refuelling trucks so the jet fuel can be delivered into aircraft through 'into-plane' services.

**4.8 Why is access to all of these services necessary?**

See 4.7. Both the Jet Fuel Storage Facility and Jet Fuel Hydrant Pipeline Network Facility are essential for aircraft refuelling at Sydney Airport. They represent integrated elements of the jet fuel infrastructure supply chain.

**4.9 What are the consequences of not obtaining access to each of the services?**

See 4.6.

**5. Facility used to provide the service**

**5.1 Describe the facility(ies) used to provide the service?**

The Sydney JUHI comprises:

- (a) The Jet Fuel Storage Facility (including facilities for dispensing fuel to refuelling trucks); and
- (b) The Jet Fuel Hydrant Pipeline Network Facility.

The Jet Fuel Storage Facility is usefully defined by the assets within the land allocated by SACL for the Sydney JUHI at Sydney Airport.

**5.2 Where is the facility(ies) located?**

Sydney Airport.

**5.3 What is the minimum bundle of assets that must be declared to provide the service?**

Both the Jet Fuel Storage Facility and Jet Fuel Hydrant Pipeline Network Facility (see 4.7).

**5.4 Why do all of these assets form the minimum bundle necessary to provide the service?**

See 4.7.

## **5.5 How are/would the facility(ies) be used to provide the service?**

To supply jet fuel to aircraft at Sydney Airport.

## **5.6 How would using the facility(ies) to provide the service affect the provision of other services?**

N/A. No other service is supplied by the Sydney JUHI.

## **5.7 Is the owner or operator of the facility(ies) vertically integrated or associated with other entities operating in other parts of the production or distribution chain? If so, describe the nature of its relationship with the associated entities.**

Yes.

The Sydney JUHI is an unincorporated joint venture, with one joint venture agreement covering the storage facilities and international and domestic hydrant facilities. Shell operates and manages the facilities on behalf of the JUHI Participants.

Caltex is vertically integrated throughout the supply chain. It produces jet fuel from its refinery at Kurnell, owns and controls the main jet fuel pipeline to Sydney Airport, is a member of the Sydney JUHI and, finally, provides 'into-plane' services.

Shell and BP also produce or import jet fuel, are members of the Sydney JUHI and provide 'into-plane' services. ExxonMobil exited the market for the supply of jet fuel at Sydney in 2010, but remains a JUHI Participant and a shareholder in Airport Fuel Services Pty Limited.

The Applicant understands that the shareholders of Airport Fuel Services Pty Ltd are:

- Caltex
- BP
- ExxonMobil
- Qantas

See section 11.10 for an assessment of the potentially negative impact of this vertically-integrated relationship.

## **6. The service provider**

### **6.1 Identify the service provider**

The Sydney JUHI is owned by the JUHI JV, the partners of which are the JUHI Participants.

### **6.2 Provide contact details for the service provider**

Julieanne Mamo

Sydney JUHI Manager

Gate 2, Link Road, Mascot NSW 2020

**6.3 Which entity is the operator of the facility (if different from 6.1 above)?**

Shell.

**6.4 Which entity is the owner of the facility (if different from 6.1 above)?**

See 6.1 above.

**6.5 Are any of the above entities a partnership or joint venture? If so, who are the parties to that partnership or joint venture?**

Yes – the JUHI JV.

**6.6 Provide name and contact details, including details of the registered office for all of the entities identified above.**

**Caltex:** Mr Ken James  
GM Supply & Distribution  
Caltex Australia Petroleum Pty Ltd  
2 Market Street  
Sydney NSW 2000

**Shell:** Ms Margaret Kennedy  
Operations and Technical Manager Asia Pacific  
The Shell Company of Australia Limited  
8 Redfern Road  
Hawthorn East VIC 3123

**ExxonMobil:** Mr Stephen Del Monaco  
Regional Aviation Operations Manager – Asia Pacific  
Mobil Oil Australia Pty Ltd  
12 Riverside Quay  
Southbank VIC 3006

**BP:** Mr Geoff Dunne  
Commercial Operations Manager Australia – Air BP  
BP Australia Pty Ltd  
L28, Melbourne Central  
360 Elizabeth Street  
Melbourne VIC 3000

**Qantas:** Ms Jean Elverton  
 Head of Procurement Fuel & Aviation Charges  
 Qantas Airways Limited  
 203 Coward Street  
 Mascot NSW 2020

**6.7 Is the provider of the service owned by a state or territory government? If so, which government(s) owns the provider?**

No.

**7. History of access negotiations**

**7.1 Outline any history of previous access negotiations with the service provider**

The Applicant has authorisation from the ACCC to negotiate the terms and conditions of access to the Sydney JUHI on behalf of its members on a voluntary basis. The negotiations are voluntary and the Sydney JUHI is not obligated to negotiate with the Applicant.

The Applicant wrote to the Sydney JUHI operator on 14 June 2011 seeking to explore opportunities for international airlines, either individually or jointly, to establish a 'throughput' arrangement with the Sydney JUHI. The intention is to create a set of open access arrangements to the Sydney JUHI consistent with arrangements available at overseas airports.

**7.2 What were the services under negotiation?**

The services provided by the Jet Fuel Storage Facility and Jet Fuel Hydrant Pipeline Network Facility.

**7.3 When did the negotiations take place and how long did they last?**

On 21 July 2011 the Manager of the Sydney JUHI responded verbally to the Applicant's letter dated 14 June 2011. The Applicant met with the Manager of the Sydney JUHI and the Shell Aviation Operations and JV Manager, Major Airports on 31 August 2011.

**7.4 What was the response of the service provider to the Applicant's attempt to negotiate access?**

The Manager of the Sydney JUHI advised verbally on 21 July 2011 that the JUHI JV agreement does not permit throughput arrangements. Participation in the JUHI JV, under the terms of the agreement, has to be via equity participation.

At the meeting of the Applicant and the Sydney JUHI representatives on 31 August 2011 the Sydney JUHI representatives further advised:

- (a) The only way for another party to join the JUHI was via equity participation,
- (b) The JUHI JV agreement was silent on the matter of accessing the JUHI via a throughput agreement,



- (c) There was no thought by the JUHI Participants of changing the JV agreement to allow throughput arrangements, and
- (d) The resolution and finalisation of an application to join the JUHI via the equity participation process 'can take years'.

## **7.5 What were the outcomes of the negotiations for the Applicant?**

### **(a) What matters could not be agreed?**

- The proposal for establishing third party throughput arrangements with the JUHI JV.

### **(b) Why did the Applicant consider that the service provider's offer (if any) was unreasonable?**

- The Applicant does not consider it reasonable that a new supplier of jet fuel should have to become an equity participant in the Sydney JUHI, should the JUHI Participants actually allow the new supplier access to the Sydney JUHI.

The Applicant does not agree that the Sydney JUHI should have the right to refuse access to new suppliers of jet fuel who have demonstrated experience, appropriate insurances and meet other reasonable requirements in competing to provide jet fuel to airlines at Sydney Airport. The only reason for doing so is to limit the level of competition between suppliers.

The equity requirement increases both the 'upfront' costs incurred by a new supplier and the time taken to secure access to the Sydney JUHI. This has the effect of limiting the potential market available to new suppliers. For example, a new supplier may seek to initially supply airlines with a limited presence at Sydney Airport. The upfront equity costs mean the supplier must make an investment in fixed infrastructure at Sydney Airport, which could be large relative to the potential revenue and profits of the jet fuel sales to the airlines. Without knowing the extent of any 'entry' or 'exit' fees, the costs of securing equity participation are likely to substantially increase the average cost of providing a relatively small volume of jet fuel.

The ability of airlines with a limited presence to guarantee fuel sales to a new supplier some years into the future (when access to the Sydney JUHI is finally gained) is also questionable. The lack of certainty over whether the airlines will be still operating to Sydney Airport some years into the future limits the ability for contracts to be agreed with new fuel suppliers.

Agreed throughput arrangements allow new suppliers to more easily obtain an initial entry into the jet fuel market at Sydney Airport by limiting the costs and time of securing relatively small volumes of jet fuel demand. This initial small market share can then form the basis of expanded supply and market share as the supplier gains more experience and reputation in supplying jet fuel to airlines at Sydney Airport.

- No other terms or conditions were discussed.

## **8. Other interested parties**

### **8.1 Identify and provide contact details for other parties likely to be interested in the application.**

The Applicant has identified the following parties that are likely to be interested in the application:

#### **(a) Sydney Airport Corporation Limited (SACL)**

Contact: Ms Kerrie Mather  
Chief Executive Officer  
Sydney Airport Corporation Limited  
Locked Bag 5000  
Sydney International Airport NSW 2020

#### **(b) The International Air Transport Association (IATA)**

Contact: Mr Malvyn Tan  
Assistant Director Industry Charges, Fuel and Taxation  
International Air Transport Association  
111 Somerset Road, #14-05  
Singapore 238164

#### **(c) Regional Airlines Association of Australia (RAAA)**

Contact: Mr Paul Tyrell  
Chief Executive Officer  
Regional Airlines Association of Australia  
Unit 11, 26-28 Winchcombe Court  
Mitchell ACT 2911

#### **(d) Australian Business Aircraft Association (ABAA)**

Contact: Mr David Bell  
Executive Director  
9 Guthrie Avenue  
Cremorne NSW 2090

**(e) Tiger Airways Australia Pty Limited** (as the only other domestic jet RPT operator not being a member of the Applicant):

**Contact:** Tony Davis  
Chief Executive Officer  
PO Box 2101  
Gladstone Park  
Victoria 3043

**(f) International Airlines - not being members of the Applicant:**

Adagold Aviation  
Aerolineas Argentinas  
Air Austral  
Air China  
Air France  
Air Niugini  
Asiana Airlines  
British Airways  
China Airlines  
China Eastern Airlines  
Hainan Airlines  
Hawaiian Airlines  
Iberia Airlines  
Kenya Airways  
KLM Royal Dutch Airlines  
Lan Airlines  
Norfolk Air  
Scandinavian Airlines

**(g) International and Domestic Freight Operators - not being members of the Applicant:**

Atlas Air  
Federal Express  
Polar Air  
Tasman Cargo Airlines  
Toll Priority  
United Parcel Service Company

**(h) Other jet fuel suppliers (non-exhaustive):**

Contacts:

Mr Julian Amesbury  
Business Development Manager  
**Q8 Aviation**  
PO Locked Bag Q800, QVB Post Office  
Sydney NSW 1230

Mr Ong Sing lim  
Director  
**Vitol Aviation Company Pte. Ltd.**  
260 Orchard Road, The Heeren #13-01  
Singapore 238855

The Business Development Manager  
**World Fuel Services**  
#17-03 Novena Square Tower A  
238A Thomson Road  
Singapore 307684

The Business Development Manager  
**Sinopec (Hong Kong) Limited**  
Office Tower, Convention Plaza  
1 Harbour Road  
Wanchai  
Hong Kong

The Business Development Manager  
**PetroFina**  
52 rue de le-Industrie  
B-1040 Brussels  
Belgium

**(i) Other into-plane service providers:**

- **Airport Fuel Services Pty Limited**  
Peter Klok  
Manager Operations  
GPO Box 3916  
Sydney NSW 2001
  
- **ZIP Airport Services Pty Ltd**  
Margaret Kennedy  
Operations and Technical Manager Asia Pacific  
The Shell Company of Australia Limited  
8 Redfern Rd  
Hawthorn East VIC 3123
  
- **BP Air Refuelling Services**  
Geoff Dunne  
Commercial and Operations Manager – Air BP  
BP Australia Limited  
L28, Melbourne Central  
360 Elizabeth St  
Melbourne VIC 3000

**9. Jurisdiction**

**9.1 Does the service include:**

- **the supply of goods;**  
No.
  
- **the use of intellectual property; or**  
No.
  
- **the use of a production process?**  
No.

**9.2 If yes, is this activity an integral but subsidiary part of the infrastructure service?**

N/A.

**9.3 Is the service potentially subject to the access regimes applying to telecommunications or postal services?**

No.

**10. Criterion (b) - uneconomical to develop another facility**

**Summary**

The Applicant notes that there are various ways of interpreting the criteria of it being 'uneconomical' to develop another facility. Both the Council and Australian Competition Tribunal have consistently interpreted the word 'uneconomical' in a social cost benefit test, rather than in terms of private commercial interests. The Applicant notes, however, that the Full Federal Court recently construed the question of 'uneconomical' to relate to financial profitability rather than the costs and benefits of development for society as a whole (see Federal Court of Australia – *Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* [2011]). The Council has also stated that it respectfully disagrees with the Full Federal Court's interpretation (see National Competition Council, 'Accessible', Issue 13, June 2011).

In this case, it is uneconomical to develop an alternative facility to the Sydney JUHI according to either test.

The Sydney JUHI is a natural monopoly. That is, it is less costly in this market to deliver the required jet fuel at Sydney Airport for the foreseeable future using one network. Consequently, according to a social benefit test, there should only be one fuel network infrastructure at Sydney Airport. This assessment takes into account the predicted increase in demand for jet fuel. Given current projections, the extra cost of augmenting the Sydney JUHI's current network is substantially less than building a new network - the Applicant has also estimated the incremental cost of expanding JUHI compared to new competing facilities. The cost of the competing facilities is likely to be at least three times the incremental cost of the Sydney JUHI expanding its capacity to meet foreseeable demand.<sup>6</sup>

It would be financially unprofitable to build a competing Sydney JUHI. A second facility would ensure excess capacity, resulting in strong competition between two providers with high sunk costs, but low marginal costs. The excess capacity would likely lead to prices that would be too low to recover the sunk costs (i.e. prices close to the low marginal cost) of building the infrastructure. Anticipating this outcome, no new provider could reasonably expect to earn its cost of capital on the investment it would make in the competing facility.

Building a second facility is also uneconomic because it cannot occur given the current plans of SACL – the possibility of a second jet-fuel supply infrastructure is not mentioned in the *Sydney Airport Master Plan*. A facility that cannot conceivably be built cannot be a profitable proposition.

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<sup>6</sup> This is due to the sunk investments already made in Sydney JUHI and the far lower incremental cost of expanding capacity.

### 10.1 Identify and describe any other facility(ies) that could provide the same service as the service for which access is sought.

There is no other Jet Fuel Storage Facility or Jet Fuel Hydrant Pipeline Network Facility available at Sydney Airport.

### 10.2 Demand for Service

(a) **What is the current level of demand for the service:**

- **by the service provider**

Nil.

However, the Sydney JUHI is characterised by vertical integration. The Oil Company JUHI Participants are also the providers of jet fuel.

- **by any existing access users (including the Applicant); and**

The only existing direct access users are the JUHI Participants.

The Applicant's members do not acquire jet fuel directly from the Sydney JUHI, but rather through contractual arrangements with the Oil Company JUHI Participants individually as fuel suppliers.

Information on the current level of demand at the Sydney JUHI is available from the SJFIWG Report. Based on a simple linear extrapolation of the stated demand levels at 2009 and forecast for 2014, total current annual demand for jet fuel at Sydney Airport is estimated to be about 2.9 GL per year.

- **by users of other facilities that provide the same service?**

There are no other facilities providing the same services.

(b) **Are there existing contractual arrangements that reserve capacity for particular parties? If so, what is the duration of these arrangements? Can third parties enter into commercial arrangements to use any reserved capacity?**

No, other than for exclusive arrangements as between the Sydney JUHI Participants for use of the Sydney JUHI facility for their respective requirements from time to time, details of which are unknown to the Applicant.

There are no provisions for third party access to the JUHI Facility, as far as the Applicant is aware.

(c) **If access was granted, what would be the expected level of demand over the period for which declaration is sought:**

The demand for jet fuel at Sydney Airport is forecast to increase from about 2.9 GL to 5.6 GL per year by 2029 under (implicitly) *status quo* arrangements. The Applicant considers that if access was granted, total jet fuel demand will be higher. This is because of the improved commercial conditions for the Applicant's members in conducting international passenger and freight services and for other operators of jet

aircraft in conducting their services at Sydney Airport. The Applicant cannot quantify the extent of the increases at this stage. However, if prices for jet fuel are lower and supply is more reliable as a result of declaration, the demand for jet fuel will be higher. This would occur through previously abandoned loss-making or marginal routes becoming profitable and, generally, airlines and other jet aircraft service providers expanding business at Sydney Airport through additional services. Further, airlines or other operators could shift some of their fuel purchases to Sydney, where such a substitution is possible (although likely to be very limited, see comments under 4.6).

- **by the service provider**

The service provider, namely the JUHI JV, does not acquire, but rather supplies to the JUHI Participants individually.

- **by the Applicant**

The Applicant's member airlines (with Qantas undertaking a level of self supply) obtain the jet fuel they require through contracts with jet fuel suppliers. These suppliers in turn have access to the Sydney JUHI (as the Participants). Given an improvement in the competitive conditions for the supply of jet fuel and into-plane services, the Applicant's member airlines will have enhanced commercial opportunities in providing international passenger and freight services at Sydney Airport. This in turn will generate increased demand for jet fuel compared to the existing arrangements.

- **by any other existing users**

With access granted, it can be expected that the existing three oil companies (Caltex, Shell and BP) would likely lose market share to new entrant suppliers. However, while potentially losing market share as a proportion of total volume supplied, the actual jet fuel volumes of each supplier may increase given the forecast increase in overall jet fuel demand.

- **by any other new parties taking up access; and**

The Applicant considers that, with access granted, there is considerable potential for new suppliers to enter the Sydney Airport jet fuel market. The Applicant's member airlines have identified the following suppliers whose entry into the market could be facilitated through declaration:

- Kuwait Petroleum Aviation (Australia) Limited
- PetroFina Company Limited
- Sinopec (Hong Kong) Limited
- Vitol Asia Pte. Ltd.
- World Fuel Services.



It is not possible at this stage to forecast the level of demand that could be met from these new suppliers with access granted as the strategic response of the existing suppliers is unknown. For example, it may be that by reducing the barriers to entry into the market for jet fuel at Sydney Airport, the existing suppliers are compelled to improve the cost and reliability of their supply to maintain their respective market shares. However, the Applicant considers that given the interest from alternative suppliers, the more likely outcome is for the existing suppliers to lose proportionate market share as new suppliers enter the market.

- **by users of other facilities that provide the same service?**

There are no other facilities providing the same services.

(d) **If access was not granted, what would be the expected level of demand over the period for which declaration is sought:**

- **by the service provider**

Nil, as explained above.

- **by the Applicant**

The Applicant's member airlines (with Qantas undertaking a level of self supply) obtain the jet fuel they require through contracts with jet fuel suppliers all of whom must be equity participant members of JUHI.

Demand for jet fuel by the domestic and international airlines (through their contracts with fuel suppliers) could be expected to almost double from a current demand of about 2.9 GL per year to over 5.6 GL per year by 2029, consistent with the status quo assumptions implicitly assumed in the SJFIWG Report.

- **by any other existing users**

See above.

- **by any other new parties taking up access, and by users of other facilities that provide the same service?**

If access was not granted, there are unlikely to be any new entrants into the market for the supply of jet fuel at Sydney Airport. Given the current arrangements, access to the JUHI requires an equity stake in the JUHI JV, which in turn requires the support of the Participants. The incentive to allow for new entrants to participate in the JUHI depends on the expected impact on the profitability of the present equity holders, rather than an assessment of the potential net social benefits from increased access. Given that allowing access increases the number of competitors that the incumbent Participants must face in the jet fuel market, there seems to be little, if any, incentive for existing partners to allow the entry of a new partner. It is not in the financial or strategic interest of the existing oil companies to allow increased participation in the Sydney JUHI. There are no other facilities providing the same services.

- (e) **Explain how current and expected demand — with and without access being granted — have been calculated and the assumptions made in that calculation. Provide evidence to support the estimates and the sources of that evidence.**

Current and forecast levels of demand are sourced from the SJFIWG Report. As stated in the Report, the forecasts are based on:

- Aircraft type and destination ports for a typical busy day for each 5 year period, in accordance with the *Sydney Airport Master Plan* projections;
- Fuel consumption efficiency improvements based on estimates for new aircraft technology (calculations based on manufacturer's base data for different aircraft types);
- Qantas experience of tankering;
- Uplift figures for international flights to European destinations calculated using average midpoint assumptions; and
- Jet fuel consumption pattern/profile (low, average, busy day ranges) for the full year in 2014, 2019, 2024 and 2029 derived by applying the 2007 actual consumption pattern/profile.

These forecasts, at least implicitly, assume a continuation of the *status quo* arrangements for the provision and pricing of jet fuel. The Applicant has not sought to quantify the likely increase in total demand flowing from the granting of access.

### 10.3 Capacity of the facility

- (a) **What is the total current capacity of the facility?**

Based on the information provided in the SJFIWG Report, the Applicant understands that the maximum operational (useable) capacity of the Jet Fuel Storage Facility is 21.2 ML, with optimal operating capacity between 18 ML and 19 ML (SJFIWG Report, p.26).

The existing Jet Fuel Hydrant Pipeline Network Facility includes 10 hydrant pumps with each having a maximum throughput capacity of 3,800 litres per minute.

- (b) **Is some of the facility's current capacity required for provision of services other than those for which declaration is sought or for other purposes?**

No.

- (c) **Does available capacity vary between peak and off peak, seasonally, or based on any similar factors. If so, how does available capacity vary?**

Yes. The SJFIWG Report has forecast that 'normal' day demand is about 9.5 ML, increasing to some 10.5 ML on a 'busy' day in 2014 (SJFIWG Report, p. 7). This means that the available capacity of the Jet Fuel Storage Facility, as measured by the number of available days of

capacity, varies given the projected level of demand over consecutive days.

The demand on the Jet Fuel Hydrant Network Facility also varies over the course of the day, consistent with the peak arrivals and departures of aircraft.

- (d) **Are there any proposals or plans for alterations to the capacity of the facility. What changes in capacity are needed to meet expected demand?**

Yes. As described in the SJFIWG Report, the 'target' level of capacity at the Sydney JUHI is a minimum of two days daily demand. Two days of daily demand by 2014 is expected to equal just over 19 ML. This amount exceeds the maximum optimal operating capacity of the facility.

Table 1 below, sourced from the SJFIWG Report (p. 34), shows the likely storage capacity required at the Sydney JUHI assuming a minimum of two days holdings. As noted earlier, the current optimal capacity of Sydney JUHI is about 19 ML, with a maximum capacity of 21.2 ML.

Table 1 **Forecast storage capacity for the Sydney JUHI**

	2014	2019	2024	2029
'Normal' day	19.02	21.51	26.58	30.92
'Typical' day	20.15	22.79	27.73	31.93

Source: Sydney Jet Fuel Infrastructure Working Group Report (2010), p. 34.

In recognition of this issue, the SJFIWG Report recommended that the Sydney JUHI immediately commence discussions with SACL regarding site requirements for future on-airport jet fuel storage. Initially, an additional 10 ML storage tank could be built at the Sydney JUHI.

Given demand projections, the Storage Facility will need to be augmented. However, effectively there is no scope for an alternative provider. There is no mention in the *Sydney Airport Master Plan* of the possibility of a second provider of jet fuel storage. Moreover, as noted above, the lowest cost method of delivery of the required quantity of jet fuel is to use one hydrant pipeline network and that this network is the currently installed Sydney JUHI Jet Fuel Hydrant Pipeline Network Facility.

The Sydney JUHI considers that the Jet Fuel Hydrant Network Facility is sufficient to meet current customer demand. The Network will need to expand in line with the expected growth of airport aprons available for jet aircraft at Sydney Airport, but augmentation of the current Network to meet this growth is a lower cost method than duplicating the Network.

- (e) **Explain how capacity was calculated and the assumptions made in that calculation. Provide evidence to support the estimates and the sources of that evidence.**

The Applicant relies on the information and data contained in the SJFIWG Report. The SJFIWG Report draws on various sources of information, including the *Sydney Airport Master Plan*.

#### 10.4 Estimate any expected increase in capital or operating costs if access was provided to the existing facility(ies).

- (a) **Would it be necessary to expand the existing facility(ies) to meet reasonably foreseeable demand?**

Yes. As detailed in the SJFIWG Report, both the Jet Fuel Storage Facility and Jet Fuel Hydrant Pipeline Network Facility will need to be expanded to meet reasonably foreseeable demand.

- (b) **Could the capacity of the existing facility(ies) be expanded to meet reasonably foreseeable demand? If so, how would it be expanded and at what cost?**

Yes. According to the SJFIWG Report there is sufficient space at Sydney Airport to expand the capacity of the Jet Fuel Storage Facility to meet projected demand. In the first instance, the Applicant understands that an additional 10 ML storage tank can be accommodated without altering the location of existing facilities (e.g. administrative buildings). As more storage capacity is required, the Applicant understands that non-essential facilities can be relocated at Sydney Airport, freeing available land for additional storage facilities. The Sydney JUHI and SACL would be best placed to provide detailed information on the ability to further expand the storage capacity of the Sydney JUHI.

The Applicant does not have detailed information on the cost of expanding the Storage Facility. However, in discussions with its member airlines, the Applicant considers that a cost of about \$1 million per ML of storage capacity represents a reasonable basis for assessing the cost of expanding (incremental capital cost) the storage capacity of the Sydney JUHI. The Applicant, therefore, estimates the cost of expanding the Storage Facility at about \$10 million. The Applicant would expect that the Sydney JUHI has access to more detailed (and possibly confidential) cost estimates.

The *Sydney Airport Master Plan* (p. 80) states that the expansion of the apron areas and additional and modified aircraft gates may require augmentation of the on-airport hydrant distribution pipelines. This may extend to the provision of fuel to some of the international stands, particularly in the Southwest sector and at the Northern Ponds, to enable fuelling of aircraft operating from remote gates. The existing apron hydrant systems are proposed to be extended incrementally to serve the expanded Terminal 2 and Terminal 3 gates.

The Applicant does not have information on the cost of expanding the Jet Fuel Hydrant Pipeline Network. It is evident, however, that the least cost way of providing extra capacity on the hydrant pipeline network is to augment the current network rather than duplicate the existing network. This indicates that it is socially optimal to have just one fuel hydrant pipeline network.

- (c) **Would access affect the cost of operating the existing facility(ies). If so, how would it affect operating costs and what would be the size of the cost change?**

No, or at least it would be minimal, as there are already (limited) third party access arrangements and all necessary third party interconnection

facilities are in place. However, if access led to increased cost this presumably would be met by throughput charges levied on new access seekers. Also, see (a) above.

- (d) **Explain how the expected increase in capital and operating costs was calculated and the assumptions made in that calculation. Provide evidence to support the estimates and the sources of that evidence.**

See (b) above.

## **10.5 Estimate the capital and operating costs of developing another facility(ies) to provide the service subject to the application**

- (a) **What are the costs of building and operating another facility(ies) to provide the service?**

### Jet Fuel Hydrant Pipeline Network Facility

The Applicant does not consider it practically feasible to duplicate the Jet Fuel Hydrant Pipeline Network Facility. As shown on page 52 of Annexure 1, the Network traverses around the aircraft aprons of the domestic and international terminals.

To duplicate this infrastructure would involve considerable disruption to the operations at the airport as duplicate pipes and hydrants were constructed around the airport terminals. The *Sydney Airport Master Plan* does not contemplate duplication of the Jet Fuel Hydrant Pipeline Network. The Applicant cannot foresee any circumstances over which SACL would permit the duplication of the existing infrastructure.

This means that any competing facilities would, at best, be limited to the Jet Fuel Storage Facilities and the provider of the competing storage facilities would require access to the Sydney JUHI's Jet Fuel Hydrant Pipeline Network.

### Jet Fuel Storage Facility

There are two potential options for building and operating competing Jet Fuel Storage Facilities – at Sydney Airport or an off-airport site, as set out below.

The Applicant does not have detailed information on the capital and operating costs of building and operating competing jet fuel storage facilities. However, the best estimates available to the Applicant are provided below, which give an indication of the order of magnitude of the difference in the cost of building competing facilities compared to the incremental cost of the Sydney JUHI expanding its capacity.

Much of the existing jet fuel storage capacity at Sydney Airport is essentially a sunk cost; this should be taken into account when considering expanding the current Network compared with building new infrastructure.

i) *At Sydney Airport*

The Applicant considers that the costs of constructing competing facilities at Sydney Airport are likely to far exceed the incremental cost of the Sydney JUHI expanding its capacity.

Assuming the cost of the 10 ML storage facility is equal for both parties (at about \$10 million), the additional costs incurred by the new entrant in constructing competing storage facilities would include:

- land at Sydney airport;
- administrative facilities;
- interconnection point with the Caltex Pipeline;
- an interconnection into the Jet Fuel Hydrant Pipeline Network; and
- co-ordination of activities with the Sydney JUHI.

The cost of the additional airport land, even if available, would be expensive. This is because SACL is likely to have little or no incentive for competing storage facilities at Sydney Airport. SACL has made no allowance for competing facilities in its currently approved *Sydney Airport Master Plan*. The Applicant understands that SACL would first require a variation approved by the designated Australian Government Minister to allow competing facilities, as required under the *Airports Act 1996*. It is uncertain whether such a variation would be granted.

If land was made available by SACL, the competing storage facilities would need to occupy land that could otherwise be used to expand aeronautical activities (e.g. larger and/or new terminals to accommodate additional flights and passengers) and/or non-aeronautical activities at the Airport (e.g. car parks).

SACL has advised the Applicant that the Sydney JUHI currently occupies about 2.55 hectares of land at Sydney Airport. Assuming the competing facilities would need about half this amount for 10 ML of storage capacity, it would be necessary to lease about 1.3 hectares from SACL.

The Applicant is well aware that SACL values its land at Sydney Airport highly. The issue of land valuation has been a contentious issue between the Applicant and SACL (see for example, the submissions by the Applicant and SACL to the Productivity Commission 2006 review of the Regulation of Airport Services).

The Applicant has assumed that SACL would demand a cost of \$700 per square metre for land at Sydney Airport. For comparison purposes, assuming purchase rather than lease, the cost of the land at Sydney Airport would be about \$9 million.

The competing storage facilities will also need interconnections and pipelines to obtain jet fuel from either or both of the Caltex Pipeline and Shell Pipeline (most likely the Caltex Pipeline, due to its capacity and proximity) and a further pipeline and

interconnection point to distribute the jet fuel from its storage facility to the Sydney JUHI's Jet Fuel Hydrant Pipeline Network.

The SJFIWG Report has costed pipeline infrastructure at some \$50 million to \$60 million (SJFIWG Report, p. 41) for about 10 kms of pipeline, or \$5 million to \$6 million per km. Assuming at the least 1 km of pipeline (to the Caltex Pipeline, more if two pipelines) with two interconnection points, the estimated capital cost is at least another \$10 million, given the costs published in the SJFIWG Report.

In total, the estimated capital cost of the land, storage facility, pipelines and interconnection points is about \$30 million, or three times the likely cost for the Sydney JUHI to expand its capacity. These costs still exclude administrative office space (either a new building or leasing of office space from SACL).

#### *Operating costs*

In discussions with its member airlines, the Applicant understands that JUHI's require about 15 full time equivalent (FTE) staff. The Sydney JUHI is a special case due to the application of the airport curfew, so the number of required FTE may be lower. Assuming 10 FTE staff at an average cost (including on-costs) of \$160,000 per year, the estimated staffing costs are about \$1.6 million per year.

There would also be additional costs incurred by the Sydney JUHI and the new entrant in co-ordinating the input of jet fuel from two separate storage facilities into the Jet Fuel Hydrant Pipeline Network. The Applicant does not have information on the likely costs of this co-ordination activity.

#### ii) *Off-airport storage facilities*

The other option is to locate the storage facilities off-airport. It should be noted that there is already substantial off airport storage capacity available. In particular, Vopak has some 350 ML of storage facilities, of which about 91 ML is used for jet fuel (see SJFIWG Report, p. 24). The problem is that this storage capacity does not constitute competition with the Sydney JUHI. The reason for this is that the jet fuel from these off-site storage facilities is first transferred to the Sydney JUHI's Storage Facility (via the Caltex Pipeline) before being transferred into the Jet Fuel Hydrant Pipeline Network.

The capital and operating costs of an off-site storage facility close to Sydney Airport are likely to be similar to those for on-site facilities. The facilities would again need an interconnection point and spur line from the existing Caltex Pipeline and a pipeline and interconnection point with the Sydney JUHI's Jet Fuel Hydrant Pipeline Network.

(b) **What would be the capacity and route/location of the new facility(ies)?**

Capacity: The Applicant assumes that any competing facilities would seek sufficient capacity to cater for the anticipated growth in jet fuel volumes and, perhaps, some share of the existing demand.

Location: As the *Sydney Airport Master Plan* does not currently provide for competing storage facilities, it is unclear if, or where, competing jet fuel storage facilities could be located at Sydney Airport. The Applicant has also not sought to identify potential off-airport storage facility sites.

(c) **How would the capital costs of building another facility(ies) compare with the cost of expanding the existing facility(ies)?**

As described under 10.5(a), the Applicant does not consider it practically feasible to construct a competing Jet Fuel Hydrant Pipeline Network given the disruption it would cause at Sydney Airport. The cost of the competing network is, therefore, prohibitive compared to the Sydney JUHI expanding its network to new aircraft aprons.

Assuming the competing storage facility was located either on or close to Sydney Airport, the capital costs of building a competing Jet Fuel Storage Facility are estimated to be at least three times the Sydney JUHI's incremental capital costs.

(d) **How would the operating costs of the new facility(ies) compare with the operating costs of the existing facility(ies) with access?**

The incremental operating costs of the Sydney JUHI are likely to be very low given the fixed cost of running the existing facility, as it is not expected that the additional storage capacity will require additional staffing. The estimated \$1.6 million in annual staffing costs are, therefore, additional costs of the new entrant compared to the Sydney JUHI's incremental operating costs.

(e) **Explain how the expected capital and operating costs were calculated and the assumptions made in those calculations. Provide evidence to support the estimates and the sources of that evidence.**

As stated earlier, the Applicant is in a position to provide only a general best estimate.

The estimated cost of a 10 ML storage tank was obtained from internal discussions with the Applicant's members. The Sydney JUHI should have more accurate estimates of its incremental capital costs.

The land costs at Sydney Airport are based on assumed 50% land space of the existing JUHI and a value of \$700 per square metre. SACL may be prepared to advise on whether it would permit a fuel storage and hydrant operator at the airport and, if so, the value of the land it would occupy.

The staffing requirements and annual staffing costs are based on discussions between the Applicant's members. The Sydney JUHI may be in a position to provide information on its FTE staffing levels.



The costs of the pipeline required from the Caltex Pipeline and then to the Jet Fuel Hydrant Network are based on the capital cost estimates contained in the SJFIWG Report.

## **10.6 Identify environmental, planning or other regulations that significantly affect construction of another facility(ies)**

### **(a) Describe the regulation**

The SJFIWG Report contains a description of the key State and Australian Government approval processes and legislation which may apply to future investments in jet fuel supply infrastructure to, or at, Sydney Airport (Appendix F of the SJFIWG Report). A list of the relevant legislation and regulations is provided below.

#### NSW Government

- *Environmental Planning and Assessment Act 1979*
- *Pipelines Act 1967*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *Occupational Health and Safety Regulation 2001 – Schedule 3*

#### Australian Government

- *Airports Act 1996*
- *Environment Protection and Biodiversity Conservation Act 1999*
- *Sydney Airport Master Plan 2009*
- *Airports (Environment Protection) Regulations 1997*

### **(b) How does the regulation affect construction of another facility(ies)?**

The development of another JUHI Facility, either on- or off-airport, would be a very long term project involving extensive public consultation and processes for development approval and, no doubt, contentious political and local community processes. This is especially so given the hazardous nature of jet fuel and possible social and environmental impacts.

## **10.7 Identify whether the service provider has natural, economic or technical advantages from being the first established facility(ies)**

### **(a) What are these advantages and how significant are they?**

The advantages are very significant and include:

- existing tenure at Sydney Airport
- existing interconnection to the Airport

- existing interconnection to the two current supply lines:
    - the Caltex Pipeline, and
    - the Shell Pipeline<sup>7</sup>
  - the *Sydney Airport Master Plan* does not provide for an additional or competing Jet Fuel Storage Facility. There are no plans for the possibility of a competing facility at Sydney Airport. By the very nature of the existing practice and planning at the airport, the Sydney JUHI is a monopoly provider of fuel storage and hydrant pipeline network services at the airport. Even if technically feasible for a second network, the rules and planning of the Airport have effectively rendered the Sydney JUHI a monopoly.
- (b) **How do these advantages benefit the owner of the existing facility(ies) over new entrants? For example, the incumbent may benefit from access to the only feasible location, strong brand loyalty, benefits from owning and establishing network, or costs to customers of switching between suppliers?**

The existing jet fuel supply infrastructure arrangements strongly benefit the Sydney JUHI over new entrants.

In the first instance, it is not considered practically feasible to duplicate the Jet Fuel Hydrant Pipeline Network. This means that any new entrant is going to be limited to the provision of storage facilities and is still going to be required to obtain access to a significant component of the facilities provided by the Sydney JUHI.

Without declaration, the Sydney JUHI can simply refuse the new entrant access to its Jet Fuel Hydrant Pipeline Network. This makes any notion of competing storage facilities untenable.

SACL has little incentive to allow competing storage facilities on airport land and has made no allowance to do so in its current *Master Plan*.

It is notable that, in the SJFIWG Report, none of the jet fuel infrastructure augmentation options canvassed included competing jet fuel storage facilities. Information on the jet fuel storage capacity needs of Sydney Airport is known to all parties through the publicly available SJFIWG Report. However, the Applicant understands that no oil company or third party has investigated the possibility of building competing jet fuel storage facilities.

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<sup>7</sup> The Sydney JUHI is served by two pipelines. The Caltex Pipeline transports jet fuel from Caltex's Kurnell Refinery and the common use offsite storage facility owned by Vopak at Port Botany to the Sydney JUHI. The Shell Pipeline transports jet fuel from Shell's Clyde Refinery. These pipelines are described in more detail in the Applicant's separate but related application for declaration of the Caltex Pipeline.

- (c) **Could these advantages be overcome by a new entrant or are they permanent? What would a new entrant need to do to overcome any incumbency advantages?**

For all practical purposes, these advantages are permanent. SACL has stated in its current *Master Plan* (at page 80) that:

The current JUHI storage facility can remain in its current location in the medium to longer term, until the development of T1 requires its relocation. In the interim, the existing JUHI site will be retained and developed to meet forecast demands. Sydney Airport and JUHI are working together to determine the most effective solution for the provision and storage of fuel.

Should, at some point in the future, a decision be made to locate the storage facilities off-airport, then this would open the opportunity for open access arrangements to be established together with 'competition for the market' through a competitive bidding process. However, by the time this is reached in late 2020, the opportunity for new suppliers of jet fuel to compete in the growing demand for jet fuel that will be met through imports would have been lost.

The least cost provision of the hydrant pipeline network is permanent and is unlikely to change in the future, regardless of the placement or expansion of the storage facility.

- (d) **How would access overcome these advantages?**

New suppliers of jet fuel could seek access to the existing facility which enjoys the advantages of a natural monopoly.

## **10.8 Outline any economies of joint production between the Service and other services provided by the facility(ies)**

- (a) **What other services have economies of joint production with the service subject to the application?**

The JUHI Facility provides no other services. Interconnected services having economies of joint production include:

- The Caltex and Shell Pipelines, being direct supply from refineries, import berths and storage facilities; and
- The on-airport into-plane services.

The services of Sydney Airport are also directly connected to and adjacent to the JUHI Facility.

- (b) **Why cannot the provision of these services be separated?**

The provision of these services cannot be separated because they are necessarily interconnected to provide the jet fuel supply infrastructure for Sydney Airport.

- (c) **What would be the cost of separating these services?**

N/A - see (b) above.

It is not feasible to separate the JUHI Facility from the other services.

**11. Criterion (a) – Access (or increased access) would promote a material increase in competition in at least one market other than the market for the service**

**Market Definition**

**11.1 Describe the demand and supply chain upstream and downstream from, or otherwise linked to, the service for which access is sought**

**What products or services are or could be provided at the various upstream and downstream points in the demand and supply chain?**

**Supply and Demand**

The supply and demand chain is summarised in Figures 1 and 2 and may be described briefly as follows:

**Figure 1 Supply and Demand chain**

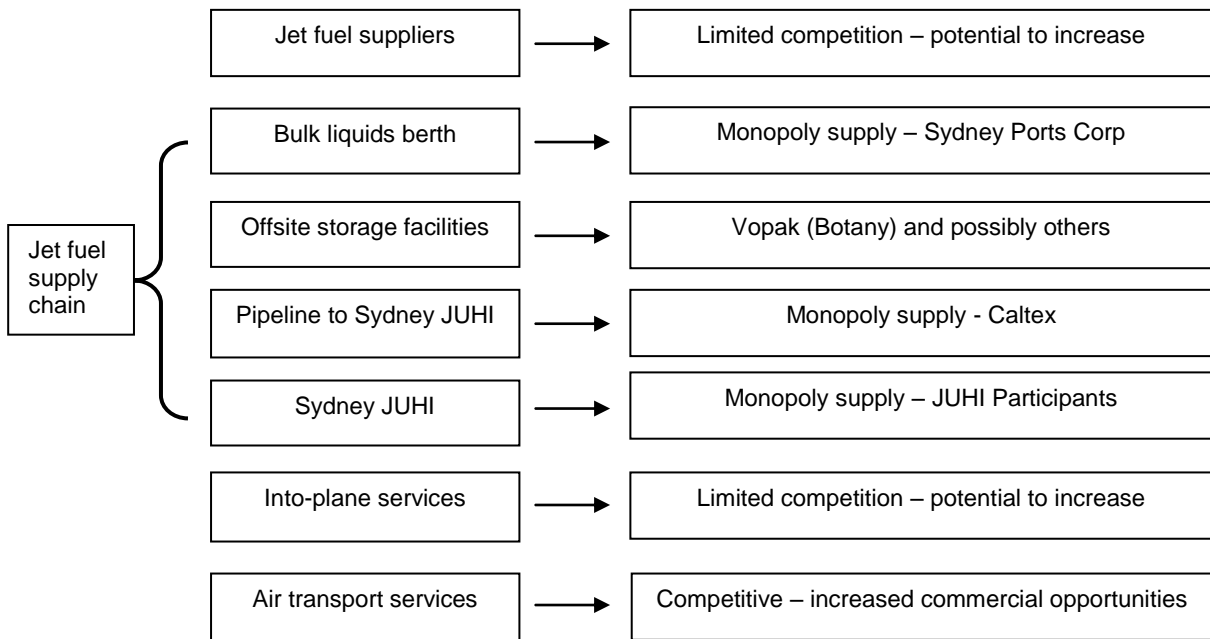
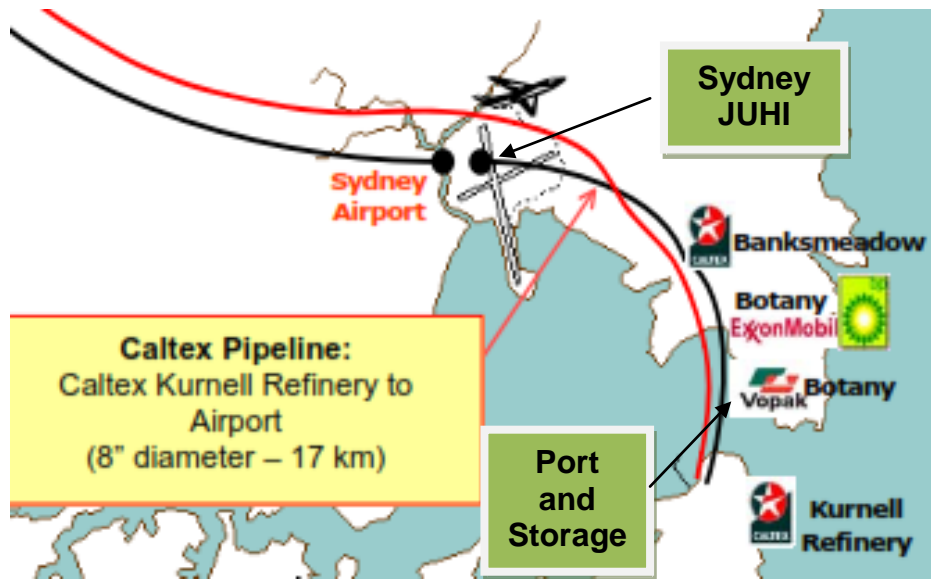


Figure 2 **Map of jet fuel supply infrastructure for imported fuel**



Source: Sydney Jet Fuel Infrastructure Working Group Report (2010)

#### Jet fuel suppliers

The demand-supply chain starts with suppliers of jet fuel. They include domestic producers (currently Shell and Caltex) and imported fuel suppliers. The importers of jet fuel include the Oil Company JUHI Participants and the provider to Qantas for its self supply arrangements.

#### Common-user bulk liquids berth

All imported jet fuel is first received by a liquids berth or import terminal. A common-user bulk liquids berth is available at Port Botany on the northern side of Botany Bay, approximately 9 km from Sydney Airport. The berth is owned and managed by Sydney Ports Corporation.

Shell can also import jet fuel through its Gore Bay Terminal. The Applicant understands that, currently, the terminal is primarily used to import crude oil, which is then processed at its Clyde Refinery. However, Shell recently announced its decision to convert its Clyde Refinery into a fuel import terminal.<sup>8</sup>

#### Off-site storage facilities

Imported jet fuel is initially stored off-airport before being transferred to the Sydney JUHI. Vopak owns and operates a petroleum product storage facility in Port Botany on land leased from Sydney Ports Corporation. Currently 91 ML of the total 350 ML storage capacity is used for jet fuel. ExxonMobil and BP jointly own a terminal that is also connected to the bulk liquids berth at Port Botany, but from some time subsequent to the exit of ExxonMobil from the market, this has not been used for the supply

<sup>8</sup> See Shell Australia (12 April 2011) *Proposal on future of Clyde Refinery*, Press Release

of jet fuel. The Applicant understands that BP and Shell have secured storage capacity at the Vopak facility.

#### Pipeline to Sydney JUHI

Imported jet fuel and Caltex's domestic production are transferred to the Sydney JUHI via a pipeline owned and controlled by Caltex (Caltex Pipeline). The Caltex Pipeline, therefore, transfers fuel from two interconnection points: the Caltex refinery, Vopak's Port Botany storage facilities (and until recently, the Port Botany BP/ExxonMobil terminal).

#### Sydney JUHI

The Sydney JUHI comprises the Jet Fuel Storage Facility and Jet Fuel Hydrant Pipeline Network Facility.

#### Into-plane services

Into-plane services involve delivering the jet fuel into the wing of the aircraft via the Sydney JUHI's hydrant system or a refuelling truck.

#### Air transport services

The final service provided to users is air passenger and freight services through Sydney Airport. The Applicant's members presently provide over 90% of the international flights to and from Sydney.

### **11.2 From the analysis in question 11.1, identify the market(s) in which competition is likely to be promoted as a result of access to the service. These are termed dependent markets.**

#### **Upstream**

- The market for the supply of jet fuel at Sydney Airport, whether from imports or local production, but mostly imports.

#### **Downstream**

- 'Into-plane' services at Sydney Airport.
- International and domestic markets for the carriage of passengers and freight into and out of Sydney Airport.

### **11.3 Define the product, geographical and functional dimensions of each of the dependent markets**

#### **Upstream: Supply of jet fuel at Sydney Airport**

- (a) **What are the products or services that compete in the dependent market(s)? If there are products or services that are potentially substitutable for those identified in the dependent market, explain why they are not considered to be part of that market?**

The product provided is jet fuel. There are no other products that are potentially substitutable.

- (b) **Are there suppliers of other products or services that could change their production to supply products or services into the dependent market? If so, who are these suppliers, what are they currently producing and how would they need to change their activities? How quickly might they make such changes and at what cost?**

No. Caltex and Shell have refineries in Sydney. All other jet fuel is imported.

- (c) **Is there potential for suppliers or customers to move between products or services purchased in or from different regions? If so, what would suppliers and customers need to do to move between regions, how quickly can this occur and how does it affect competition?**

Domestic production: Caltex and Shell would have ability to maintain, expand, reduce or end domestic supplies of jet fuel at Sydney Airport. Shell has announced its decision to cease its refinery operations at the present Clyde refinery site.

Importers: Importers have the ability to ship jet fuel to Australia and ports in overseas countries. More importers could establish contracts with airlines to provide jet fuel at Sydney Airport. Airlines typically enter into one to three year contracts with fuel suppliers.

Airline and other jet aircraft operator customers: The airlines require jet fuel to undertake air passenger and freight services through Sydney Airport. There are no alternative products available.

- (d) **Are any factors changing demand and supply over time, for example new technology, changing market conditions or market growth? If so, what are these changes? How quickly are they occurring? How are they affecting competition in the dependent market(s)?**

Yes. The supply of jet fuel at Sydney Airport is forecast to almost double, from a current demand of about 2.9 GL per year to over 5.6 GL per year by 2029. Since 2009, the total demand for jet fuel at Sydney Airport has begun to consistently exceed local refinery production, so the majority of the projected growth in the demand for jet fuel will be met from imports.

Currently, the growth in demand for jet fuel at Sydney Airport is having little additional effect on the level of competition between the existing jet fuel suppliers. This is because of the ability of the existing oil companies to exclude new competing suppliers.

- (e) **Describe the assets used to produce the products or services in the dependent market(s).**

- Oil refineries
- Bulk liquid transport vessels

- (f) **Could the assets used in the dependent market also be used to produce products or services at the next layer in the production or distribution chain? Is it possible to separate these assets from assets at other levels in the production or distribution chain? (The answer to this question should focus on the separability of assets**

**in the dependent market and assets used to produce the service to which access is sought).**

No. The assets cannot be used to transport jet fuel from Port Botany to Sydney Airport.

**Downstream: Into-plane services at Sydney Airport**

- (a) **What are the products or services that compete in the dependent market(s)? If there are products or services that are potentially substitutable for those identified in the dependent market, explain why they are not considered to be part of that market?**

The service is the delivery of jet fuel from either a refuelling truck or hydrant into aircraft. There are no other products or services that are potentially substitutable.

- (b) **Are there suppliers of other products or services that could change their production to supply products or services into the dependent market? If so, who are these suppliers, what are they currently producing and how would they need to change their activities? How quickly might they make such changes and at what cost?**

Into-plane services are specialist licensed services usually provided by the jet fuel supplier.

- (c) **Is there potential for suppliers or customers to move between products or services purchased in or from different regions? If so, what would suppliers and customers need to do to move between regions, how quickly can this occur and how does it affect competition?**

N/A.

- (d) **Are any factors changing demand and supply over time, for example new technology, changing market conditions or market growth? If so, what are these changes? How quickly are they occurring? How are they affecting competition in the dependent market(s)?**

Yes. The growth in the demand for jet fuel offers opportunities for new jet fuel suppliers to offer 'end-to-end' services to airlines, which would include into-plane services. Airlines typically enter into one to three year contracts with fuel suppliers.

- (e) **Describe the assets used to produce the products or services in the dependent market(s).**

Into-plane service providers operate vehicles (generally light trucks) known as hydrant dispensers. This is specialised equipment to ensure the safe and efficient transfer of fuel to aircraft. Into-plane services are provided by highly trained personnel.

- (f) **Could the assets used in the dependent market also be used to produce products or services at the next layer in the production or distribution chain? Is it possible to separate these assets from assets at other levels in the production or distribution chain? (The answer to this question should focus on the separability of assets**



**in the dependent market and assets used to produce the service to which access is sought).**

No. The assets are specialist assets for providing into-plane services.

**Downstream: Air passenger and freight services through Sydney Airport**

The Applicant represents the interests of international airlines. However, the proposed declaration would also be equally available to the jet fuel supply of aircraft operating between domestic airports in Australia.

Passenger and freight markets to and from Sydney Airport have been considered in detail by the Council and the ACCC in the *Application by Virgin Blue for Declaration of Airside Services at Sydney Airport* and *Acquisition by Qantas Airways Limited of Ordinary Shares in Air New Zealand and Cooperative Arrangements Between Qantas, Air New Zealand and Air Pacific Limited*, respectively.

The potential downstream markets, therefore, include:

- International passenger, further defined by passenger type (leisure and business) and region (e.g. trans Tasman, Asia, Europe, North America and Pacific Islands),
- International freight, including dedicated freight aircraft, further defined by regions,
- Domestic passenger and freight. The Council previously determined that domestic freight services did not represent a separate market to domestic passenger services.

The Applicant considers that, for the purposes of this declaration, it is not necessary to undertake a detailed analysis of the potential improvement in competitive conditions in each of the markets defined above.

This approach is consistent with the ACCC's consideration of the Applicant's application for Authorisation. The ACCC recognised that the benefits provided by collective negotiation by the Applicant would be passed onto final users. The ACCC did not consider it necessary to precisely define the relevant markets for air transport (ACCC Authorisation A91200, p. 17).

Instead, Criterion (a) can be satisfied by simply considering the combined International and Domestic Passenger and Freight Services to and from Sydney Airport. The Applicant does not contend that these separate markets represent one 'bundled' market in any functional sense. Rather, this downstream market represents one of three dependent markets in which competitive conditions will be improved through declaration.

- (a) **What are the products or services that compete in the dependent market(s)? If there are products or services that are potentially substitutable for those identified in the dependent market, explain why they are not considered to be part of that market?**

Air passenger and freight services conducted by competing international and domestic airlines carrying passengers and freight into and out of Sydney Airport.

There are no substitutable services for international passenger and freight services. Transport by sea is not considered a substitutable service for consumers of international air passenger and freight services.

As described in the Council's consideration of *Application by Virgin Blue for Declaration of Airside Services at Sydney Airport*, taking all domestic routes and all passenger types and classes as a whole, the Council considers there to be insufficient inter-modal substitution for the market to be characterised as anything other than an air transport services market.

- (b) **Are there suppliers of other products or services that could change their production to supply products or services into the dependent market? If so, who are these suppliers, what are they currently producing and how would they need to change their activities? How quickly might they make such changes and at what cost?**

No. As described earlier, the relevant markets are air transport passenger and freight markets. There are no other products or services that substitute for the services provided in the dependent market.

- (c) **Is there potential for suppliers or customers to move between products or services purchased in or from different regions? If so, what would suppliers and customers need to do to move between regions, how quickly can this occur and how does it affect competition?**

Suppliers: International, interstate and regional providers of air transport passenger and freight services are driven by the demands of customers. Airlines will, therefore, enter, expand, reduce or exit markets based on the financial viability of the services offered.

Customers: Customers will change their demand patterns based on their individual preferences and business needs.

- (d) **Are any factors changing demand and supply over time, for example new technology, changing market conditions or market growth? If so, what are these changes? How quickly are they occurring? How are they affecting competition in the dependent market(s)?**

Demand and supply vary over time in the markets, but over the long term demand has increased and, correspondingly, so has capacity made available by airlines. The number of passengers served by Sydney Airport is expected to more than double by 2029, from about 35 million to 80 million.

New services into the dependent market may emerge as a result of worldwide economic developments. For example, new destinations may emerge as a result of differential regional economic circumstances.

Over the long term, new aircraft technology has greatly reduced the real costs of delivery of international and domestic passenger or freight air services. It is expected this trend will continue.

Occasionally events such as the following can have short term or long term effects on the market:

- terrorist attacks
- wars
- fuel price surges

- financial crises
  - flu pandemics (e.g. SARS) and global health problems.
- (e) **Describe the assets used to produce the products or services in the dependent market(s).**
- Airports
  - Jet aircraft.
- (f) **Could the assets used in the dependent market also be used to produce products or services at the next layer in the production or distribution chain? Is it possible to separate these assets from assets at other levels in the production or distribution chain? (The answer to this question should focus on the separability of assets in the dependent market and assets used to produce the service to which access is sought).**

No. The assets are unique in terms of providing air passenger and freight services.

#### **FOR EACH DEPENDENT MARKET:**

##### **Market competition**

#### **11.4 Describe the businesses that supply or could supply products or services in the dependent market?**

- (a) **How many businesses are there?**

##### **Upstream: Supply of jet fuel at Sydney Airport**

*Existing:* currently there are four suppliers: Caltex, Shell, BP and the supplier which is currently servicing the Qantas self supply arrangement. (ExxonMobil exited the market in 2010).

*Potential:* Potential new jet fuel providers are listed under 8.1(e) above. ExxonMobil could also re-enter the market.

##### **Downstream: Into-plane services at Sydney Airport**

*Existing:* currently there are three suppliers: Caltex, Shell and BP.

*Potential:* Potential new jet fuel providers are listed under 8.1(e) above. ExxonMobil could also re-enter the market.

**Downstream: International and Domestic Passenger and Freight Services**

*Existing:* There are currently many domestic and international airlines that provide passenger and freight services to and from Sydney Airport. The current listing (as available from SACL's website) is:

Domestic: Aeropelican, Brindabella Airlines, Qantas, Jetstar and QantasLink, Regional Express, Virgin Australia and Tiger Airways.

International passenger: Adagold Aviation, Aerolineas Argentinas, Air Austral, Air Calin, Air Canada, Air China, Air France, Air Mauritius, Air New Zealand, Air Niugini, Air Pacific, Air Tahiti Nui, Air Vanuatu, Asiana Airlines, British Airways, Cathay Pacific, China Airlines, China Eastern Airlines, China Southern Airlines, Delta Airlines, Emirates, Etihad Airways, Garuda Indonesia, Hainan Airlines, Hawaiian Airlines, Iberia Airlines, Japan Airlines, Jetstar International, Kenya Airways, KLM Royal Dutch Airlines, Korean Air, Lan Airlines, Malaysia Airlines, Norfolk Air, Pacific Blue, Philippine Airlines, Polynesian Blue, Qantas Airways, Scandinavian Airlines, Singapore Airlines, South African Airways, Strategic Airlines, Thai Airways, United Airlines, V Australia, Vietnam Airlines, Virgin Atlantic.

International freight: Atlas Air, Cathay Pacific Cargo, Federal Express, Korean Air Cargo, Malaysian Airlines Cargo, Polar Air, Qantas Freight, Singapore Airlines Cargo, Tasman Cargo Airlines, Toll Priority, United Parcel Service Company.

*Potential:* Other airlines may enter the Sydney passenger and freight markets given the improved commercial conditions through declaration. Airlines that already operate to Sydney Airport may also find it profitable to expand capacity on existing routes or commence operations on new routes.

(b) **Are the businesses large or small?**

**Upstream: Supply of jet fuel at Sydney Airport**

Each supplier is one part of a large multi-national enterprise.

**Downstream: Into-plane services at Sydney Airport**

Each supplier is owned and controlled by one or more of the incumbent jet fuel suppliers (and ExxonMobil).

**Downstream: International and Domestic Passenger and Freight Services**

International: From large international airlines conducting multiple daily services to various destinations in Australia to other international (overseas based) airlines (whether large or small) which may conduct limited services, whether passenger and/or freight services.

Domestic: From large network-based airlines to smaller regional airlines.

- (c) **If there are only a few actual or potential suppliers, name them.**

**Upstream: Supply of jet fuel at Sydney Airport**

See 11.4 (a) and 8.1(e) as to other jet fuel suppliers.

**Downstream: Into-plane services at Sydney Airport**

See 11.4 (a). The Applicant understands that the existing service providers cannot prevent other willing operators from delivering the service. The Applicant further understands that a new service provider merely requires a licence granted by SACL.

**Downstream: International and Domestic Passenger and Freight Services**

See 11.4 (a).

**11.5 Describe the customers that purchase or could purchase products or services in the dependent market?**

- (a) **How many customers are there?**

**Upstream: Supply of jet fuel at Sydney Airport**

International and domestic airlines and other jet aircraft operators; see 11.4(a).

**Downstream: Into-plane services at Sydney Airport**

International and domestic airlines and other jet aircraft operators; see 11.4(a).

**Downstream: International and Domestic Passenger and Freight Services**

- (i) Persons desiring international or domestic air travel services.
- (ii) Persons desiring international or domestic freight services.

- (b) **Are they industrial or domestic (consumers or other end users)?**

**Upstream: Supply of jet fuel at Sydney Airport**

Industrial (airlines).

**Downstream: Into-plane services at Sydney Airport**

Industrial (airlines).

**Downstream: International and Domestic Passenger and Freight Services**

Both.

- (c) **If there are only a few actual or potential customers, name them?**

**Upstream: Supply of jet fuel at Sydney Airport**

See 11.4(a).

**Downstream: Into-plane services at Sydney Airport**

See 11.4(a).

**Downstream: International and Domestic Passenger and Freight Services**

N/A.

- 11.6 What is the size of the dependent market in volume and dollar terms?**

**Upstream: Supply of jet fuel at Sydney Airport**

Volume: Currently about 2.9 GL per year. The price of jet fuel varies due to world supply and demand conditions and exchange rates. At a price of \$1.00 per litre, the estimated cost is currently about \$3 billion per year.

**Downstream: Into-plane services at Sydney Airport**

Volume: Currently about 2.9 GL per year. The Applicant does not have information on the prices charged by the existing oil companies to provide into-plane services.

**Downstream: International and Domestic Passenger and Freight Services**

In 2009-10, the reported numbers of international and domestic passengers were over 11 million and 23 million, respectively. The reported weight of freight carried to and from Sydney Airport in 2010 was over 232,000 tonnes.

Sydney Airport has estimated that the direct value of this trade is currently about \$8 billion per year, or some 6% of NSW's gross state product.

- 11.7 What are the current barriers to competition or entry in the dependent market?**

**Upstream: Supply of jet fuel at Sydney Airport**

The current barriers to entry in the jet fuel market are access to the Caltex Pipeline (the subject of a separate Application) and access to the Sydney JUHI at the Airport itself. Apart from access to the jet fuel supply infrastructure chain, there are currently few barriers to entry into the market for supply of jet fuel at Sydney Airport.

There are multiple, large multinational providers of jet fuel that currently operate at many leading airports throughout the world. These suppliers have the experience and technical and financial capacity to become long-term providers of jet fuel at Sydney Airport. While entering the market would involve a degree of start up costs, these costs do not represent long-term barriers to entry.

**Downstream: Into-plane services at Sydney Airport**

The main barriers to entry are obtaining the specialised hydrant dispensers and appropriately trained personnel to refuel aircraft.

The Applicant understands that the existing service providers cannot prevent other willing and certified operators from delivering the service. The Applicant also understands that a new service provider would require a licence granted by SACL.

**Downstream: International and Domestic Passenger and Freight Services**

*International:* The main barrier to entry is regulatory. Before an airline can operate international services to another country, the government must first negotiate a treaty level agreement with the destination country's government. These treaties are known as bilateral air services agreements (ASA's).

Australia currently has ASA's with 68 countries. Airlines operating international air services do so within capacity entitlements contained in ASA's. The Australian Government is engaged in a program of bilateral air services negotiations to continue to expand access and to allow foreign carriers to increase their access to Australia.

The normal operational requirements for international airlines (e.g. aircraft, approvals, etc) to increase capacity into Australia are not considered meaningful barriers to entry given the existing operations of international airlines to Australia.

*Domestic:* The barriers to entry into Australia's domestic markets are also low. Australia permits foreign persons (including airlines) to own up to 100% of the equity in an Australian domestic airline (subject to Foreign Investment Review Board approval, if required). As a result, any foreign airline interested in competing in the Australian domestic market is able to do so via an Australian-based subsidiary operating under the safety oversight of the Civil Aviation Safety Authority.

The normal operational requirements for domestic airlines (e.g. aircraft, approvals, etc) to increase capacity into Australia are not considered meaningful barriers to entry given the existing operations of domestic and international airlines to Australia.

## 11.8 Describe the current level of competition in the dependent market

### (a) Is the dependent market competitive?

#### **Upstream: Supply of jet fuel at Sydney Airport**

The Applicant considers that the current level of competition between the incumbent suppliers is low. Based on the stated utilisation of the Shell and Caltex pipelines in the SJFIWG Report (p. 24), the implied market shares between the existing oil companies are estimated at:

- Shell: 28%<sup>9</sup>
- Caltex: 55%<sup>10</sup>
- Others, including Qantas self supply: 17%<sup>11</sup>.

Assuming an equal market share between BP and Qantas self supply (about 9% each), the calculated Herfindahl-Hirschman Index (HHI) is 0.40 (or 4,000). A value of 0.40 or 4,000 is well above the generally accepted level for a 'concentrated' industry. For example, the ACCC has stated that an industry would be considered concentrated for the purposes of mergers assessment if the HHI was greater than 2,000.<sup>12</sup> The Applicant is unaware of there being any other suppliers of jet fuel apart from the incumbent suppliers at Sydney Airport for many years. This means that the HHI for past years is also likely to have been well in excess of 2,000.

Given the high HHI value combined with the substantial barriers, the Applicant submits that it must be concluded that the incumbent suppliers of jet fuel at Sydney Airport have considerable market power.

#### **Downstream: Into-plane services at Sydney Airport**

The Applicant considers that the current level of competition between the incumbent suppliers is low, consistent with the upstream supply of jet fuel. Given the control the incumbent suppliers have over key elements of the jet fuel supply infrastructure chain, the potential level of competition is suppressed and limited to those suppliers.

#### **Downstream: International and Domestic Passenger and Freight Services**

International and domestic passenger and freight markets are highly competitive. The level of competition in each market depends on a combination of factors, including the commercial viability of routes or networks for individual airlines and the capacity entitlements described earlier.

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<sup>9</sup> Based on a transfer capacity of 3.9 ML per day, being utilised at 56%.

<sup>10</sup> Based on a transfer capacity of 5 ML per day, used 305 days per year.

<sup>11</sup> Based on a transfer capacity of 7.9 ML per day, used 60 days per year.

<sup>12</sup> See ACCC (July 2008) Report of Inquiry into the competitiveness of retail prices for standard groceries, p. 49.



- (b) **Are there other sellers and buyers competing in the dependent market that are not reliant on the service subject to the application.**

No.

- (c) **Is there the potential for other suppliers or buyers to enter the dependent market that are not reliant on the service subject to the application?**

No.

### **Increasing competition**

#### **11.9 How will access (or increased access) increase competition in the dependent market?**

- (a) **Explain how access (or increased access) to the service for which declaration is sought would affect competition in the dependent markets.**

##### **Upstream: Supply of jet fuel at Sydney Airport**

Increased access to the Sydney JUHI would enhance the ability for new suppliers of jet fuel to enter the market. In the first instance, declaration would override the ability of the Sydney JUHI to simply refuse access to jet fuel suppliers who meet necessary fuel quality and other reasonable requirements.

Increased access to the Sydney JUHI would significantly alter the current competitive dynamics between the existing and potential suppliers. Additional competition, or the increased threat of it, would increase the cost competitiveness and reliability of jet fuel supplies.

##### **Downstream: Into-plane services at Sydney Airport**

Increased access to the service would enhance the ability for new, large suppliers of jet fuel to provide 'end-to-end' services to airlines, which would include into-plane services. This would significantly alter the current competitive dynamics between the existing and potential suppliers.

##### **Downstream: International and Domestic Passenger and Freight Services**

International and domestic passenger and freight markets are likely to be characterised by differing degrees of commercial viability. Some routes may be reasonably profitable, while others are far more marginal. Outcomes depend on demand and supply conditions, including the price elasticity of demand for air transport services and the level of competition between airlines for particular customers.

Since 2000, the exiting of a number of European carriers, such as Lufthansa, KLM, Alitalia, Olympic Airways and Austrian Airlines, from routes between Sydney and European destinations demonstrates the difficulty of maintaining airline schedules in the market for international air services to and from Sydney. Other airlines, such as British Airways and Japan Airlines, have reduced schedule frequencies while not yet exiting the market.

A more cost effective and reliable supply of jet fuel at Sydney Airport will translate into lower overall costs and improved commercial opportunities for airlines. This would improve the commercial viability of marginal routes and, potentially, make currently unviable routes commercially viable.

- (b) **Explain how the effect(s) explained in 11.9(a) amount to a material increase in competition in the dependent markets?**

**Upstream: Supply of jet fuel at Sydney Airport**

The enhanced ability for new suppliers to enter the market for the supply of jet fuel at Sydney Airport represents a material and, likely, substantial increase in the competition for the provision of jet fuel. Potential new suppliers have advised the Applicant of their interest in providing jet fuel at Sydney Airport (see 10.2(c)). New entrants will increase both the number of suppliers and also reduce the dominant market shares of Caltex and Shell. This in turn will substantially reduce the level of industry concentration, promoting far greater levels of competition between jet fuel suppliers.

Table 2 below shows the number of jet fuel suppliers at a number of international airports (including Sydney), together with the jet fuel volumes in 2010. Many international airports have five or more jet fuel suppliers and the volume of fuel supplied does not appear to exert any 'cap' on the number of suppliers at individual airports. For example, both Taipei and Osaka airports currently have less annual volumes than Sydney Airport with six competing jet fuel suppliers. The number of jet fuel suppliers at airports with greater annual volumes than Sydney Airport range from 5 to 10.

The overseas airports provide additional supporting evidence of the potential to increase the number of jet fuel suppliers at Sydney Airport. Combined with the interest expressed to the Applicant by potential new jet fuel suppliers, strong evidence exists to support the Applicant's stated objective that substantially increased levels of competition can be achieved if all potential jet fuel suppliers can obtain access to the essential elements of the supply chain on reasonable terms and conditions.

**Table 2 Jet fuel suppliers and jet fuel volumes**

<b>Airport</b>	<b>Number of suppliers</b>	<b>2010 Fuel volume (millions of US gallons)</b>
London	9	1,839
Hong Kong	9	1,708
Los Angeles	10	1466
Frankfurt	5	1,453
Dubai	5	1423
Paris	5	1374
New York	6	1305

Tokyo	9	1269
Singapore	6	1251
Seoul	7	1158
Bangkok	6	1139
Amsterdam	6	1004
Sydney*	4	720
Taipei	6	622
Kuala Lumpur	3	608
Osaka	6	309

\*Qantas also undertakes a limited amount of self supply. Also see previous comments on ExxonMobil.

Source: IATA.

### **Downstream: Into-plane services at Sydney Airport**

The enhanced ability for new suppliers to enter the market for supply of jet fuel at Sydney Airport will also promote a material increase in competition in the market for the provision of into-plane services. Potential new suppliers of jet fuel could seek to provide 'end-to-end' services to airlines, which would include into-plane services.

### **Downstream: International and Domestic Passenger and Freight Services**

With more cost-competitive and reliable supplies of jet fuel, the overall commercial viability of air passenger and freight services will be increased.

The Council previously found in its Draft Decision on the *Application by Virgin Blue for Declaration of Airside Services at Sydney Airport* that SACL had the incentive and ability to exercise its market power and this would lead to a lessening of competition in the market for domestic air services. This outcome is analogous to the situation with the Sydney JUHI.

- (c) **How would the size of the dependent market be affected by access (or increased access)? Estimate the size of the dependent market if access (or increased access) was available.**

The Applicant is unable to assess how the size of the dependent markets would be increased. Forecast passenger and jet fuel demands are implicitly based on status quo arrangements (see 10.2(c)).

However, it could be expected that the size of the dependent markets will be larger under declaration. More price competitive and reliable supply of jet fuel will increase the commercial opportunities for domestic and international airlines. This in turn will increase the demand for jet fuel and into-plane services (as derived demands).

- (d) **Would access (or increased access) affect some types of customers or suppliers more than others?**

**Upstream: Supply of jet fuel at Sydney Airport**

Increased access could be expected to have a large and likely equal effect on all the existing suppliers of jet fuel, given the increased potential for entry by new suppliers.

See 11.9(b).

**Downstream: Into-plane services at Sydney Airport**

Increased access could be expected to have a large and likely equal effect on the suppliers of into-plane services, given the increased potential for entry by new suppliers.

See 11.9(b).

**Downstream: International and Domestic Passenger and Freight Services**

The impact on the capacity decisions of individual airlines will depend on the existing supply and demand conditions of particular markets or routes. It would be expected that the greatest impact will be on those markets which are commercially marginal.

- (e) **What affect would access (or increased access) have on barriers to competition or entry in the dependent market?**

**Upstream: Supply of jet fuel at Sydney Airport**

Access would significantly lower the barriers to entry. The largely vertically integrated JUHI Participants have the incentive to use their monopoly position to suppress competition in the market for the supply of jet fuel at Sydney Airport.

**Downstream: Into-plane services at Sydney Airport**

Access would significantly lower the barriers to entry. The largely vertically integrated JUHI Participants have the incentive to use their monopoly position to suppress competition in the supply of jet fuel and, hence, into-plane services at Sydney Airport through their control over the number of providers of jet fuel.

**Downstream: International and Domestic Passenger and Freight Services**

By obtaining a more cost-effective and reliable supply of jet fuel, the commercial opportunities available to domestic and international airlines will be increased. Access is not expected to impact on any barriers to entry to this dependent market.

- (f) **How would access (or increased access) affect innovation and the operation of niche suppliers in the dependent market(s)?**

**Upstream: Supply of jet fuel at Sydney Airport**

The Applicant expects that new suppliers of jet fuel will increase innovation. There are multiple, large suppliers of jet fuel to many leading overseas airports. The new suppliers may be able to provide contract and supply innovations not currently offered by the existing oil companies.

**Downstream: Into-plane services at Sydney Airport**

The Applicant expects that new suppliers of jet fuel will increase innovation in providing 'end-to-end' jet fuel supply solutions.

**Downstream: International and Domestic Passenger and Freight Services**

Improvements in commercial conditions for the provision and pricing of jet fuel will encourage smaller airlines and improve the commercial viability of marginal routes.

**11.10 Is there any evidence that the access provider is exercising its market power?**

- (a) **Has access been denied?**

The Applicant's members do not seek access for themselves, as it is the fuel supply companies that obtain access from the Sydney JUHI. Access is restricted, however, in that the Sydney JUHI can reject applications for access and that an equity stake in the JUHI JV is required in order to get access to the Sydney JUHI – in other words, network ownership is required as a pre-condition to the supply of jet fuel to airlines at Sydney Airport. This equity stake is a large fixed cost (with potentially a high sunk component). This is restrictive by its very nature and does not constitute access on a basis dependent on the cost of provision, which would eventuate in a competitive market. Moreover, the requirement of equity to use the Sydney JUHI is evidence of market power - if there was a competitive market, a requirement of equity would not be sustainable. Rather, the contract would allow for the service to be utilised at charge of (or near to) the cost of provision (a throughput arrangement) and an equity contract would only arise if it were somehow mutually beneficial.

Further to that, the Applicant understands that the Sydney JUHI has full discretion to refuse access to any potential jet fuel supply competitor. The Applicant does not have information on whether the Sydney JUHI has formally denied access to potential suppliers of jet fuel given its discretion over allowing access, including imposing unreasonable terms and conditions. However, the Applicant understands that such a denial of access is available to the Sydney JUHI.

The Applicant also notes that the Sydney JUHI's discretion to deny access may well be sufficient to dissuade potential competitors from seeking to enter the market for jet fuel at Sydney Airport or entering into negotiations with the Sydney JUHI. That is, the barrier to entry is sufficient such that it is not necessary for the Sydney JUHI to formally

deny access to potential new jet fuel suppliers. As the outcome is already known to potential entrants, they do not waste their time and resources in seeking to negotiate access.

(b) **Is the service provider charging prices that exceed the competitive level for the service?**

The Applicant does not have specific information on the charges levied by the Sydney JUHI or the rates of return it earns on its assets. The charges imposed by the Sydney JUHI for the use of its network are unknown to the Applicant. However, economic theory can provide insight into the incentives of the JUHI and its Participants. The Sydney JUHI is owned by the four Oil Company JUHI Participants (along with Qantas which undertakes some limited self-supply). The Oil Company JUHI Participants are rivals in the provision of jet fuel to the airlines (the final users). Taking into account the nature of competition when jet fuel is sold to the final users, these same firms can set charges for storage and using the network that, once the final mark-up has been accounted for, maximises (or nearly maximises) profits. This opportunity arises because the Sydney JUHI, an essential link in the delivery chain for jet fuel, is a monopolist; and the Oil Company JUHI Participants as owners of this monopoly link are also the same companies selling jet fuel. As a consequence, it is in the interests of the Oil Company JUHI Participants to limit access to its facilities in order to soften price competition in the jet fuel market.

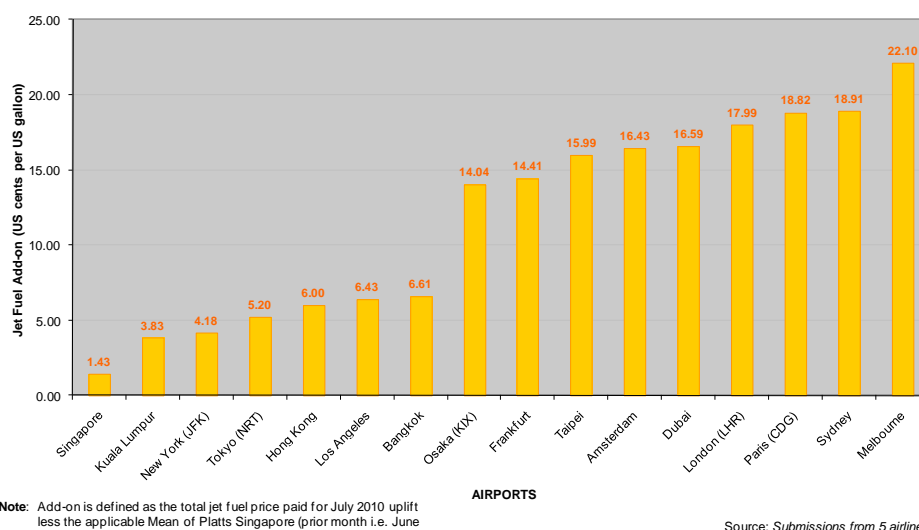
Prices to non-JUHI members for access to the JUHI network exceed competitive prices, because access is not possible at any price for non-equity owners. As noted in 11.10(a), competitive market prices will closely reflect costs of provision. Preventing access to non-owners means that prices do not reflect costs of provision for non-equity owners.

While the specific details regarding the JUHI service charges are unknown, the Applicant notes that IATA has previously raised concerns over the pricing of jet fuel in Australia. In its submission to National Aviation Policy Green Paper: *Flight Path to the Future* (2008), IATA argued that:

In Australia, aviation fuel supply has been plagued by concerns over supply reliability and price efficiency... Fuel differential (the component of the fuel price paid by airlines over and above the international market price) has risen steadily over the last six years. In comparison, the fuel differential that airlines pay at Australian airports is significantly higher than at the main airports around the Asia Pacific region such as Singapore, Kuala Lumpur, Jakarta, Bangkok and Hong Kong. (pp. 4-5).

Figure 3 shows the fuel differential for July 2010 at Sydney Airport, Melbourne Airport and a number of overseas airports. Sydney and Melbourne airports are characterised by the highest fuel differentials in the world. This differential relates to the entire jet fuel supply infrastructure chain.

**Figure 3 Jet fuel differentials, US cents per US gallon, July 2010**



Source: IATA.

The Applicant does not have sufficient information on which to benchmark these fuel differentials based on variables such as the amount of infrastructure used (length of pipes, storage capacity, etc), ownership arrangements and fuel volumes. However, given the limited access arrangements that apply, it is not unreasonable to expect that the Sydney JUHI takes advantage of its monopoly supply and limited access arrangements in setting the fees paid by the Participants.

Even if this was not the case, then the Oil Company JUHI Participants can earn monopoly rents through higher prices for the provision of jet fuel to airlines given the lack of effective competition. That is, the impact of the market power may manifest itself in the returns earned by the Sydney JUHI and/or the returns on the supply of jet fuel to the incumbent oil company suppliers.

- (c) **For a vertically integrated service provider, is it engaging in behaviour to leverage its monopoly power into the dependent market? How is the access provider using its vertical integration in ways that disadvantage potential competitors? How is the access provider benefiting from these actions and how is it affecting competitors?**

The Oil Company JUHI Participants are vertically integrated in the dependent markets for the provision of jet fuel and into-plane services. As noted in 11.10(b), the Applicant understands that the Sydney JUHI has full discretion to deny access and this discretion is likely to be sufficient to dissuade potential competing providers of jet fuel.

The Applicant considers that the current outcomes for the provision and pricing of jet fuel at Sydney Airport are consistent with the existing oil companies leveraging their monopoly power into dependent markets to reduce competition and increase prices.

The difficulties for new entrants in negotiating access are also well summarised in the SJFIWG Report, which states that:

[potential new entrants] are faced with a complex array of commercial arrangements between suppliers and users of jet fuel, together with the need for commercial considerations over access to the jet fuel infrastructure that supplies Sydney Airport (including the JUHI storage system), pipelines servicing the airport and the airport hydrant system), with the incumbent suppliers, and their competitors. It is likely that a new entrant will require a sizeable portion of the Sydney Airport jet fuel volume to justify its new investment. Negotiating such a deal in the existing commercial environment would be a challenging task. (SJFIWG Report).

The lack of effective competition means that the existing suppliers benefit from being able to supply the entirety of Sydney Airport's growing jet fuel requirements without the need to consider the strategic response of potential suppliers. The benefits, therefore, include assured volumes of supply and an ability to charge prices for jet fuel, including oil company overheads, above what they would charge under more competitive conditions.

The lack of effective competition also comes at the expense of reliability in supply. As noted by IATA, aviation fuel supply in Australia has been plagued by concerns over supply reliability. As described in the SJFIWG Report, in response to the disruptions in the supply of jet fuel at Sydney Airport in 2003, a National Operating Committee was established by the then four major fuel suppliers to monitor and advise on potential jet fuel supply issues and manage supply disruptions.

This means that rather than allowing a more competitive market, with a greater number of participants and more diversity of supply, addressing reliability issues, it has become an administrative arrangement between the existing oil company suppliers. This further entrenches their incumbent position, while the additional costs of the arrangements are ultimately passed onto airlines and passengers.

- (d) **Explain the evidence to support any claims that the access provider is exploiting its market power and the source of that evidence.**

IATA supplied the above information, as requested by the Applicant from IATA.

#### **11.11 Do the access provider's customers or suppliers have countervailing market power?**

- (a) **How reliant are the customers on the service provided by the access provider? Do the customers have access to alternatives to the access provider's service?**

The airlines are totally reliant on the Sydney JUHI for the provision of jet fuel at Sydney Airport. There are no alternatives to the access provider's service.

- (b) **Does countervailing power vary between customers or customer groups? If so, how does it vary and what groups are affected.**

The critical issue for countervailing power to exist, is to separate the provision of jet fuel from the delivery service of the network. As noted in 11.10(b), the Oil Company JUHI Participants also provide the jet fuel at Sydney Airport. It is possible that the airlines could have some countervailing power when negotiating contracts for jet fuel, provided that



network access was available on a competitive basis. Currently, the countervailing power is limited because there are, for all practical matters, no alternative suppliers an airline can opt to go to (they must all source jet fuel from an oil company JUHI Participant) and the access charges for the Sydney JUHI that airlines face could be used as a credible device to sustain higher prices for jet fuel. The relative bargaining strength of airlines could be further enhanced by the entry into the jet fuel market by additional new providers.

Consequently, given the current limited access for alternative jet fuel suppliers, the consumers of jet fuel do not have countervailing power.

**11.12 Are there any other facilities that provide similar or competing services to the service for which access is sought?**

- (a) **Describe any facility(ies) not described in question 10.1.**

N/A.

- (b) **Describe the service the other facility(ies) provides and the extent to which it differs from the service to which access is sought.**

N/A.

- (c) **Does this facility(ies) (or could it) provide services in the dependent market?**

N/A.

- (d) **Has the access seeker sought to use this facility(ies) instead of the one to which access is sought? If so, what was the outcome of those discussions? If not, why not?**

N/A.

- (e) **How would the cost of using the other facility compare with the cost of using the facility under the application?**

N/A.

- (f) **Does the other facility(ies) constrain the access provider's ability to exploit its market power?**

N/A.

**11.13 Are there any government policies or commercial imperatives that limit the service provider's ability to use market power?**

- (a) **Identify any such policies or incentives.**

(i) Nil.

- (b) **How do they affect the service provider's ability to use its market power and what scope, if any, remains for it to continue to use its market power?**

(i) N/A.

**11.14 Are there any other factors that might limit the access provider's ability and incentives to exercise market power?**

- (a) **If so, what are these factors and what are their affects?**

The Applicant is unaware of any constraints on the market power of the Sydney JUHI.

**11.15 Establish that there are no other barriers to competition in the dependent markets that would prevent access from having a material impact on competition**

- (a) **Are there significant barriers to competition that would remain even if access was introduced?**

**Upstream: Supply of jet fuel at Sydney Airport**

The Applicant is also seeking declaration of the Caltex Pipeline, which transports jet fuel to the Sydney JUHI. Increased access to the Caltex Pipeline is also considered necessary to enhance the competitive conditions in the supply of jet fuel at Sydney Airport.

**Downstream: Into-plane services at Sydney Airport**

No. See para 11.7 above.

**Downstream: International and Domestic Passenger and Freight Services**

No. See para 11.7 above.

- (b) **Are existing customers locked into long term contracts?**

The Applicant understands that airlines generally enter into contracts with existing fuel suppliers for periods of one to three years; these contracts would not constitute a significant barrier to entry by potential new providers.

**11.16 Show that the effects of access (or increased access) would be large enough to have a material impact on the dependent market.**

- (a) **How important is the service to which access is sought in meeting customer demands in the dependent market?**

**Upstream: Supply of jet fuel at Sydney Airport**

The Sydney JUHI is an essential element of the jet fuel infrastructure supply chain to Sydney Airport. Jet fuel suppliers must have access to the Sydney JUHI, in order to supply the Applicant's member airlines.

**Downstream: Into-plane services at Sydney Airport**

The Sydney JUHI is an essential element of the jet fuel infrastructure supply chain to Sydney Airport. Into-plane jet fuel suppliers must have access to the Sydney JUHI, in order to supply the Applicant's member airlines.

**Downstream: International and Domestic Passenger and Freight Services**

It is critical. Jet aircraft cannot operate without jet fuel. Also see 4.6.

- (b) **How large a part of the total cost of supplying the dependent market is the cost of the service to which access is sought?**

As noted, the cost of service is unclear. Access is, however, a crucial element in any attempt to produce competitive prices for jet fuel. See 11.10(b). IATA states that jet fuel costs represent about one third of total airline costs.<sup>13</sup> The total cost of providing jet fuel at Sydney Airport (jet fuel and the infrastructure supply chain) is likely to exceed \$3 billion per year. This value will grow through time with the forecast increases in the demand for jet fuel.

- (c) **How large an affect is access likely to have on the costs of the declared service, taking into account the constraints discussed previously?**

Declaration should lead to more balanced terms and conditions of access, including the prices charged by the Sydney JUHI. Even if the Sydney JUHI was charging competitive prices to its Participants, the Oil Company JUHI Participants can earn monopoly rents through higher prices for the provision of jet fuel to airlines given the lack of effective competition. That is, the impact of declaration could lead to lower prices charged by the Sydney JUHI and/or the final price of jet fuel at Sydney Airport.

- (d) **How large an effect is access likely to have on the quality of the declared services? Are the quality characteristics important in the dependent market? If so, why are they important?**

The Applicant does not believe declaration would lead to any diminution in quality. In particular, the infrastructure must meet certain minimum technical standards. The infrastructure must be maintained to those standards regardless of level of usage.

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<sup>13</sup> See <http://www.iata.org/ps/consulting/Pages/fuel-consulting.aspx>

## 12. Criterion (c) — National significance

**12.1 Describe how the facility(ies) is important to the nation, answering any of the following questions that are relevant to its national significance?**

**12.2 What is the size of the facility(ies)? What did it cost? What area or distance does it cover or serve?**

- (a) Size: the Sydney JUHI currently occupies about 2.5ha at Sydney Airport.
- (b) Cost: The Applicant does not have information on the cost of building and maintaining the Sydney JUHI.
- (c) Area served: Domestic and international jet aircraft operating to Sydney Airport provide passenger and freight services to all major airports in Australia and many overseas airports.

**12.3 What is the volume or value of goods or services going through the facility(ies)?**

The Sydney JUHI currently provides storage for and distributes some 2.9 GL of jet fuel per year. At a price of about \$1.00 per litre, the value of the jet fuel is estimated to be about \$3 billion per year.

**12.4 How does the facility(ies) contribute to trade between the States and Territories? What is the volume or value of that trade?**

Sydney Airport is the largest airport in Australia in terms of domestic passengers (see Table 3 below).

**Table 3 Domestic passengers (including domestic on carriage), Sydney, Melbourne, Brisbane and Perth Airports, millions, 2009-10**

	Sydney	Melbourne	Brisbane	Perth
<b>Passengers</b>	23.5	20.6	14.9	7.5

Source: ACCC Airport Prices Monitoring Report, 2009-10.

Sydney Airport, therefore, contributes greatly to the commerce between States and Territories. The direct value of all trade (domestic and international) is currently estimated at about \$8 billion per year, or some 6% of NSW's gross State product (see Sydney Airport Master Plan).

The Applicant notes that the Council was satisfied that Sydney Airport satisfied criterion (c) in assessing the *Application by Virgin Blue for Declaration of Airside Services at Sydney Airport*.

The Sydney JUHI represents essential infrastructure in enabling the passenger and freight movements through Sydney Airport to occur. In this respect, the national significance of the Sydney JUHI is no different to the runways and terminals operated by SACL.

## 12.5 How does the facility(ies) contribute to trade between Australia and places outside Australia. What is the volume or value of that trade?

Sydney Airport is the largest airport in Australia in terms of international passengers (see Table 4 below).

**Table 4 International passengers, passengers, Sydney, Melbourne, Brisbane and Perth Airports, millions, 2009-10**

	Sydney	Melbourne	Brisbane	Perth
<b>Passengers</b>	11.4	5.7	4.3	3.0

Source: ACCC Airport Prices Monitoring Report, 2009-10.

Sydney Airport, therefore, also contributes greatly to the trade between Australia and places outside of Australia.

## 12.6 How important is the facility(ies) in providing services in other significant markets?

The Sydney JUHI is an essential component in providing international and domestic passenger and freight services to and from Sydney Airport.

Sydney Airport is vital in providing an efficient air transport service for Australia's various significant international trade and tourism markets. Given Australia's remote international location as an island continent, international air passenger and freight services are critical to all markets requiring air transport of people and goods.

## 12.7 Are there any other characteristics of the facility(ies) that make it nationally significant?

Yes. Direction 29 under s. 95ZF of the *Competition and Consumer Act* (2010) stipulates that the ACCC is required to monitor the prices, costs and profits relating to the supply of aeronautical services by Sydney, Melbourne, Brisbane, Perth and Adelaide airports.

Direction 29 refers to Part 7 of the Airports Regulations, which defines aeronautical services as those services and facilities at an airport that are necessary for the operation and maintenance of civil aviation at the airport. This includes 'aircraft refuelling (including a system of fixed storage tanks, pipelines and hydrant distribution equipment)'. The Sydney JUHI is, therefore, considered an essential element of Sydney Airport.

However, this monitoring only covers the costs and revenues incurred by the airport operator and not the JUHI owner when its ownership is different from the airport owner, as is the current situation with the Sydney JUHI.

## 13. Criterion (d) — Human health or safety

[N/A]

## 14. Criterion (e) — Application of an effective access regime

### 14.1 Is the service already covered by an access regime? If so:

No.

- (a) **Is the regime established by state, territory or Commonwealth regulation?**

N/A.

- (b) **Are there any other documents that establish the regime? If so, what are they, what mailers do they regulate and what is their legal status?**

N/A.

- (c) **When was the regime established?**

N/A.

- (d) **Have there been any attempts to negotiate access under the regime? If so, when did they occur and what type of service was under negotiation?**

N/A.

- (e) **Have the attempts to negotiate access under the regime been unsuccessful? If so, when did access under the regime apply and what was the service covered? What were the conditions of access?**

N/A.

- (f) **Have the attempts to negotiate access under the regime been unsuccessful? If so, why did they fail?**

N/A.

#### **14.2 What is the scope of the existing access regime?**

- (a) **What services and facilities are covered by the regime?**

N/A.

- (b) **What is the process for negotiating access under the regime?**

N/A.

- (c) **Does the regime provide a right to negotiate? If so, what is the nature of that right?**

N/A.

- (d) **Does the regime have a regulator? If so, what organisation is the regulator and what are its role, scope and powers?**

N/A.

- (e) **Does the regime provide for independent arbitration if agreement is not reached? If so, who is the arbitrator (or how is an arbitrator chosen), what the role, scope and powers of the arbitrator?**

N/A.

- (f) **What guidance, if any, does the regime give the arbitrator in resolving access disputes?**

N/A.

- (g) **Do the regulator and/or the arbitrator have information gathering powers?**

N/A.

- (h) **Is the regime legally enforceable by third party access seekers?**

N/A.

- (i) **Does the regime result in economic outcomes?**

N/A.

## **15. Criteria (f) — Public interest**

### **15.1 Outline issues that should be considered in determining whether access is contrary to the public interest. Where relevant discuss the impact of access on:**

- (a) **the development of alternative access regimes and arrangements**

The Applicant believes that declaration is timely and appropriate in terms of the long term competitive provision of jet fuel at Sydney Airport. Declaration will not undermine the development of alternative access regimes or arrangements.

It is open for the Sydney JUHI to submit an access undertaking with the ACCC. Such an undertaking, if accepted, would revoke declaration.

- (b) **consistency across access regimes or arrangements**

The Applicant is unaware of any access regimes in Australia covering the provision of Jet Fuel Storage Facilities and Jet Fuel Hydrant Pipeline Network Facilities.

- (c) **incentives to invest**

Declaration will not reduce the incentive for timely investment in the Sydney JUHI. Instead, it will provide a mechanism to encourage greater participation in the market for the supply of jet fuel at Sydney Airport. The enhancement in competitive conditions is likely to encourage a greater degree of transparency and consultation by the Sydney JUHI with jet fuel suppliers and airlines. This, in turn, will facilitate timely investment in the necessary infrastructure.

- (d) **any other costs associated with access**

Nil.

- (e) **the achievement of other government policy objectives**

Declaration would only provide a mechanism of last resort for dispute resolution in the event of failure of commercial negotiation. Declaration is

an important mechanism to enhance competitive conditions in dependent markets, especially when the monopoly supplier is vertically integrated

(f) **ecologically sustainable development**

N/A.

(g) **social welfare and equity considerations, including community service obligations**

N/A.

(h) **government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity**

None identified.

(i) **economic and regional development, including employment and investment growth**

Increased access will result in enhanced competitive conditions in a number of dependent markets, resulting in increased employment and investment opportunities at Sydney Airport and in Sydney, NSW and Australia generally, for the reasons stated above.

(j) **the interests of consumers generally or of a class of consumers**

The improvements in commercial opportunities for domestic and international airlines will benefit the travelling public and businesses. Australians will have enhanced opportunities to travel overseas as the benefits of greater competition between fuel suppliers will translate into a greater range of services and/or lower prices for air travel. For businesses where air travel to and from Sydney is a significant component of their costs, the lowering of costs will improve their competitive position.

(k) **the competitiveness of Australian businesses**

As an input cost in terms of export and import, any reduction in costs of these services should result in a saving to Australian businesses which in any way, directly or indirectly, acquire or sell goods or services requiring jet aircraft services.

(l) **the efficient allocation of resources**

Declaration should improve allocative efficiency by enhancing competitive conditions in a number of dependent markets.

## 16. Residual discretion

### 16.1 Identify any considerations the Council should take account of as part of its residual discretion

None identified.



- (a) **Why are these considerations relevant to the Council's recommendation?**

N/A.

- (b) **What are the implications of these considerations for the Council's recommendation?**

N/A.

## **17. Duration of declaration**

### **17.1 Specify the preferred period of declaration**

Fifteen years.

- (a) **Why is this period preferred?**

Based on the information and statements contained in the SJFIWG Report and *Sydney Airport Master Plan*, the Sydney JUHI is likely to remain a monopoly supplier of Jet Fuel Storage Facilities for at least 15 years, and indefinitely for Jet Fuel Hydrant Pipeline Network Facility.

New suppliers of jet fuel will incur a number of start up costs in providing jet fuel at Sydney Airport. Certainty over the terms and conditions of access to the Sydney JUHI for an extended period of time will ensure that these costs can be amortised over a reasonable timeframe.

- (b) **What would be the consequences of a longer or shorter period?**

Greater than 15 years: it might be in SACL's and the Sydney JUHI's interests for the storage facilities to be located off-airport. However, the Jet Fuel Hydrant Pipeline Network will always remain at Sydney Airport.

Less than 15 years: the Sydney JUHI will remain the monopoly supplier of jet fuel storage facilities. A shorter period would reduce the time period and fuel volumes available to new entrants to recoup start up costs.

## **18. Objects and purpose of Part IIIA and the CCA**

### **18.1 Is there anything further you consider the Council should take into account in respect of the application and the objects and purpose of the CCA, particularly Part III A?**

No.

**Schedule A: List of BARA Members**

1. Air Calin (**SB**)
2. Air Canada (**AC**)
3. Air Mauritius (**MK**)
4. Air New Zealand Limited (**NZ**)
5. Air Pacific Limited (**FJ**)
6. Air Tahiti Nui (**TN**)
7. Air Vanuatu (**NF**)
8. Cathay Pacific Airways Ltd (**CX**)
9. China Southern Airlines (**CZ**)
10. Delta Airlines (**DL**)
11. Emirates (**EK**)
12. Etihad Airways (**EY**)
13. Eva Airways Corporation (**BR**)
14. Garuda Indonesian Airways (**GA**)
15. Japan Airlines (**JL**)
16. Korean Air (**KE**)
17. Malaysia Airlines (**MH**)
18. Philippine Airlines (**PR**)
19. Qantas Airways Limited (**QF**)
20. Qatar Airways (**QR**)
21. Royal Brunei (**BI**)
22. Singapore Airlines (**SQ**)
23. South African Airways (**SA**)
24. Strategic Airlines (**VC**)
25. Thai Airways International (**TG**)
26. Turkish Airlines (**TK**)
27. United Airlines (**UA**)
28. Vietnam Airlines (**VN**)

29. Virgin Atlantic Airways (**VS**)
30. Virgin Australia (**DJ**)