

ACCC continues to investigate Qantas's stake in Alliance Airlines amidst upheaval of COVID-19 pandemic

Sources: www.accc.gov.au

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Abstract:

In response to queries by various stakeholders, the Australian Competition and Consumer Commission (ACCC) has confirmed its continuing investigation of Qantas Airways' (Qantas) acquisition of a 19.9 per cent stake in Alliance Aviation (Alliance), amidst the industry upheaval caused by Covid-19.

On 1 February 2019, Qantas announced it had acquired the stake in Alliance, an important and close competitor of Qantas in regional markets (Queensland, Northern Territory and Western Australia) and for fly-in fly-out services for mining customers. Alliance, through a codeshare arrangement with Virgin, is also Qantas's only competitor to the regional centres on Bundaberg and Gladstone.

The ACCC is conducting enforcement investigations rather than a standard merger review, because Qantas chose not to seek ACCC informal merger clearance prior to the acquisition.

The ACCC has not set a timeline for its investigation. However, it has indicated it will pursue enforcement action if there is evidence that Qantas' acquisition has had or is likely to have the effect of substantially lessening competition in breach of section 50 of the Australian Competition and Consumer Act (CCA). A breach this provision may lead a Court to the making of divestiture orders or the potential to declare the transaction to be void. It may also bring about pecuniary penalties for Qantas up to the greater of:

- \$10 million
- three times the benefit obtained from the conduct, or
- if the benefit cannot be determined, 10 per cent of Qantas's Australian revenue for the preceding 12 months.

Despite the ongoing investigation, Qantas has stated publicly that it intends to seek regulatory approval to build on its current shareholding. The ACCC has moved to temper Qantas's ambitions, stating that any increase in shareholdings will very likely raise significant competition concerns.

The ACCC's media release is available [here](#). The Statement of Issues released by the ACCC on 1 August 2019, is available [here](#).

For practical guidance on these issues, see [The prohibition in section 50](#) and [Informal Merger Clearance](#).