



# Australian Travel Industry Association (ATIA)

Bilateral Air Services Agreements  
Submission to the Select Committee

September 2023

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# 1. Summary and Recommendations

ATIA supports the continued policy of negotiating bilateral air service agreements that provide 'capacity ahead of demand', as current capacity constraints on routes with strong demand have resulted in higher prices for Australian consumers. The most effective option to increase capacity and allow it to adapt to demand variation over time, is the negotiation of adequate capacity limits that offer significant margin for growth.

A clear framework for the process of air service agreement application/negotiation and an unambiguous written decision outlining the weighting of factors considered is required to ensure that investments can be made to efficiently deliver benefits to the Australian economy and community.

## Recommendation 1:

The factors pertaining to a consideration of the national interest should be clearly defined. National interest should not be a reason in its own right.

The decision and rationale cannot be withheld from the public and the approving authority must justify the reasons why they agree or disagree with the expert advice.

Aviation industry policy should not be made in a vacuum but take into account the broader impacts on our travel and tourism industries, international trade, the broader economy, and of course, Australian communities. The ACCC is the agency best placed to make this assessment, with its advice fed into any air service agreement negotiation process.

## Recommendation 2:

The ACCC must review and publicly release its assessment of the consumer benefit of each bilateral application.

It is the only government agency which can assess competition settings and ultimate consumer impacts.

Travel distribution is the forgotten partner of the aviation sector. But as the number one seller of air tickets to Australians, we are uniquely placed to contribute to the discourse on matters, such as the negotiation of air service agreements, with a consumer-focused lens.

Any negotiations for the establishment or alteration of air service agreements should be preceded by, or include, broad, inclusive and transparent consultations amongst Government at all levels, and affected industry sectors – including travel.

## Recommendation 3:

The travel and tourism industry, airports and airlines and other export sensitive industries as relevant, must be provided equal opportunity to review each bilateral request and make recommendations.

With unrestricted, 'open skies' air services agreements with only nine other markets, Australia is well off the pace of leading aviation markets. In comparison, the North American aviation market – where the US has 100 open-skies agreements and Canada has 23 – has been one of the quickest to recover, with the total market in the region now exceeding pre-pandemic capacity levels.

## Recommendation 4:

Australia should seek to increase the number of open skies arrangements with likeminded Indo-Pacific countries to increase competition to lower prices for Australians and international travellers who wish to visit Australia.

Australians turned to travel industry professionals to help them navigate the multiple challenges of managing COVID impacted travel, credits and refunds. Consumer frustrations due to difficulties accessing credit and refunds have often been borne by travel agents even though the policies are controlled by the airlines. Without a strong consumer protection framework that is fit-for-purpose in the aviation industry - like that present in the EU for statutory compensation in certain instances of delay or cancellation - Australian consumer outcomes will remain sub-optimal.

#### **Recommendation 5:**

Globally, consumer rights have been strengthened following the performance of airlines regarding cancellations and credits during COVID.

Reform is needed to simplify refund rights where a flight is cancelled, and passengers are not accommodated on the same day.

Due to the consolidation of major airlines and limited domestic competition, airlines have taken the opportunity to seek to reduce competition for the distribution of airfares. This is done by only making available selected fares through proprietary IT systems - preventing any competition from travel agents on the efficient distribution of these highly sought-after tickets. While airlines may be able to increase their margin by distributing more fares through their own direct channels there is a net loss in competition for distribution across the market – with consumers losing out.

#### **Recommendation 6:**

A review of domestic aviation market and contracts between airlines and agents.

This review will seek to identify any unfair trading practices which are not prohibited by existing provisions of Australia’s consumer laws, but which can nevertheless distort competition.

In recent times, there has been an increase in the number of carriers seeking to direct commercial relationships beyond the established airline alliances and seek exemptions to competition law. These have diminished the competitive vigour of the international air transportation market by entrenching market power of the dominant airlines to the detriment of consumers and other stakeholders – for example, see the recent ACCC authorisation of Qantas-Emirates coordination that covers routes between Australia and the UK/Europe, New Zealand, Asia, the Middle East and North Africa.

#### **Recommendation 7:**

ATIA maintains that authorisations of airline coordination agreements should be conditioned upon robust analysis of the benefits and detriments of the agreements.

There is an urgent need to review airport slots to ensure the growth of Australia’s travel and tourism sector is not being limited by outdated regulations. In the domestic market, a concerning trend is now occurring where cancellation rates are 73% higher than pre-COVID. Landing and take-off slots in the peak morning periods at Sydney airport are severely constrained, even while cancellations are occurring on up to 8.7% of all scheduled flights in some key routes – suggesting late cancellation to hoard slots and prevent entry of competitors on high-margin routes.

#### **Recommendation 8:**

ATIA supports a competitive market for airport slots that allows entry for increased capacity to put downward pressure on the prices of air tickets. Consideration should be given to increasing threshold for domestic slot use to 90% within 2 years and 95% within 5 years.

The decision by the previous government to implement quarterly reporting allowed consumers and industry stakeholders to receive timely and relevant information about capacity, prices and consumer complaints. This is critical to promote an open, free and competitive market – and ensure poor behaviour such as slot hoarding and sales of tickets on cancelled flights are identified and addressed.

#### **Recommendation 9:**

ATIA maintains that quarterly reporting by the ACCC is of critical importance to tracking the overall health of the domestic aviation sector. Reporting should be immediately re-established and should also include slot usage rate for airlines at all airports operating slot management systems.

## 2. The Australian Travel Sector supporting Australians through the pandemic and recovery

### Background

ATIA is the trusted source for advice and best practice in the travel sector. Our mission is to highlight the integrity of our members through effective approaches in advocacy, industry recognition and awards, and ultimately boosting the confidence of the travelling public.

ATIA administers the *Australian Travel Accreditation Scheme* (ATAS), which is the largest and most representative accreditation scheme for travel businesses in Australia. All ATIA members are ATAS accredited and recognised for their highest operational standards including yearly assessment of finances, minimum levels of training and procedures for dealing with consumer grievances. About 85% of consumers are more likely to book with an ATAS-accredited travel agency or tour operator.

Our membership base includes the full spectrum of travel intermediary businesses across Australia including retail and corporate travel agents, tour operators, wholesalers and consolidators. Our members range in size from the largest listed organisations such as Flight Centre, Helloworld, Corporate Travel Management and Webjet, through to small independently owned and operated travel businesses.

A large proportion of travel agent members are small to medium businesses, many of whom operate under networks such as Flight Centre Independent, My Travel Group, itravel, Express Travel Group, Travellers Choice and CT Partners. ATIA's membership also includes consolidators, tour operators and wholesalers such as Scenic, APT and The Travel Corporation who are reliant on competitive air prices to maximize ground expenditure.

ATIA has a total of 1,750 ATAS-accredited member locations throughout Australia.

### Building and retaining consumer confidence and trust

Consumer and corporate reliance on travel professionals increased significantly during the COVID-pandemic and the subsequent reopening. Australians turned to our members to help them navigate the multiple challenges of managing COVID-pandemic impacted travel, credits and refunds. Our members provided this support throughout the COVID-pandemic for negligible financial return and in many cases, at a significant financial cost. The value of a travel professional has been starkly reinforced and consumer confidence and trust in our members has endured post-pandemic.

### ATAS accreditation

ATIA is committed to continually elevating travel industry standards in Australia by driving increased and continued participation by travel intermediaries (those who buy and sell travel) in the ATAS. This is Australia's only accreditation Scheme, for travel agents, wholesalers and consolidators and was developed with full oversight by the Consumer Affairs Forum and CHOICE.

The ATAS *Complaint Appeal Committee* (ACAC) is an independent review body specifically established under ATAS to review and determine customer complaints and allegations of non-compliance with the ATAS Charter and Code. ACAC reviews complaints elevated to it by the Compliance Manager and can issue binding decisions, including sanctions against a Participant. Between January 1 and 31 December 2022, ATAS received 954 complaints, with the most common issues being refunds for COVID-pandemic affected bookings and converting unused credits issued during the COVID-pandemic to refunds.

### 3. Impacts on competition in the Australian aviation sector and the cost-of-living pressures on families and business

#### Bilateral air services agreements

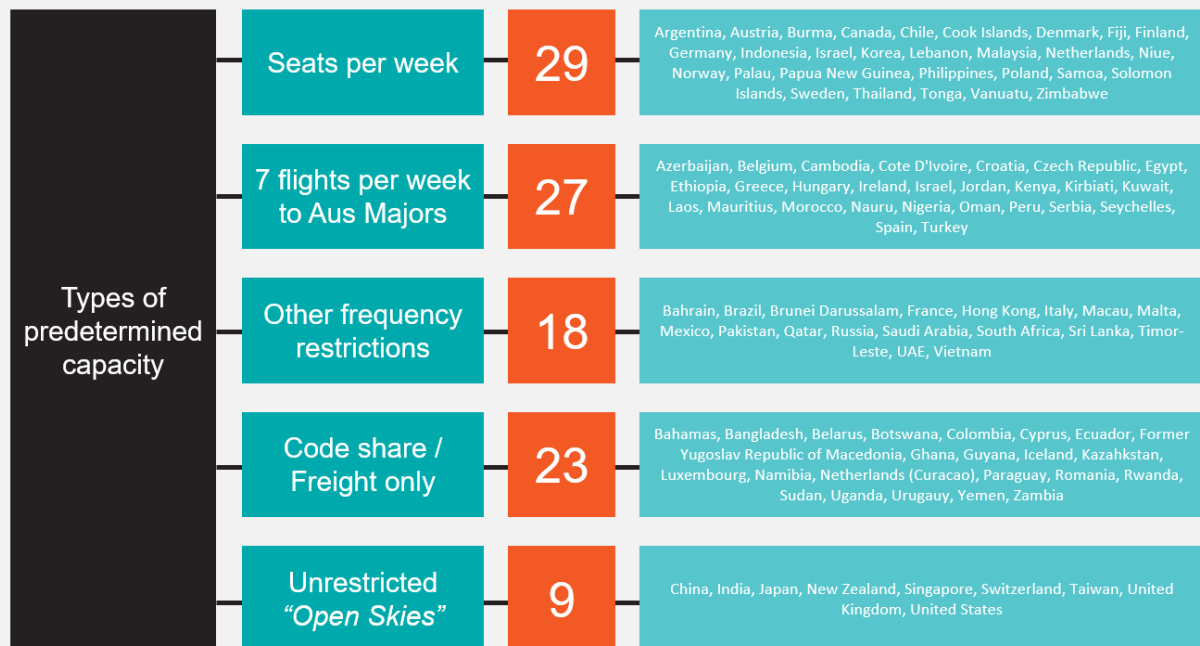
There are currently 109 Australian bilateral air services agreements or associated arrangements governing traffic rights, capacity, designation, ownership and control, tariffs and competition law.

These agreements form part of the overall 3,000 interlocking bilateral air services agreements across the world providing the framework in which international air travel is conducted.

Of the 106 agreements/arrangements where information is publicly available, 9 – China, India, Japan (exc. Haneda airport), New Zealand, Singapore, Switzerland, Taiwan, the USA and the UK - have ‘open-skies’ style, unlimited agreements. In contrast, 23 arrangements allow for code share or freight only operations.

The remaining 74 have some form of capacity limit applied, on either a seats per week or flights per week basis. See **Figure 1**, below.

Figure 1: Predetermined capacity in Australia bilateral air services agreements

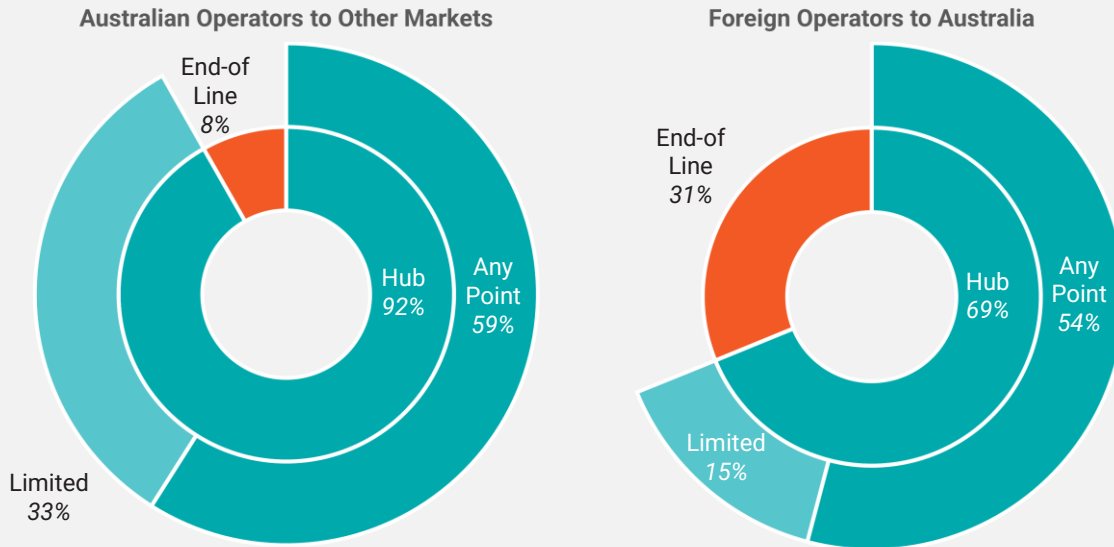


Source: Register of available capacity for Australian international airlines<sup>1,2</sup>

<sup>1</sup> Department of Infrastructure, Transport, Regional Development, Communication and the Arts, *Register of available capacity for Australian international airlines*, 1 February 2022, accessed 17 September 2023, available at [https://www.infrastructure.gov.au/sites/default/files/documents/register\\_available\\_capacity\\_080923\\_0.pdf](https://www.infrastructure.gov.au/sites/default/files/documents/register_available_capacity_080923_0.pdf).

<sup>2</sup> Department of Infrastructure, Transport, Regional Development, Communication, and the Arts, *Growth Potential for Foreign Airlines*, 26 April 2023, accessed 17 September 2023, available at <https://www.infrastructure.gov.au/department/media/publications/growth-potential-foreign-airlines>.

Figure 2: Bilateral air services agreements, Hub or End-of-line



Source: Register of available capacity for Australian international airlines<sup>3</sup>

Figure 2, above, shows that the vast majority of air service agreements negotiated by Australia permit hub operations which allow travellers to book air services that transit through the foreign market to a final destination.

Unsurprisingly given the geographical distance between major Australian airports and other destination markets, a greater proportion of air service agreements limit foreign airline to end-of-line services to Australia. However, nearly 70% of agreements analysed do permit hub operations at Australian airports to other onward destinations.

The recent decision to decline Qatar Airways additional air rights has been based on national interest, yet the national interest has not been described. In this Section we detail the shortcoming of the existing system and the need to place consumers at the heart of the decision making, not just airlines.

### Unutilised capacity

In the recently released *Aviation Green Paper*, the Government acknowledges a continued commitment to the policy to negotiate bilateral agreements that provide ‘capacity ahead of demand.’ This is even more important as the

aviation and travel industry recover from the impacts of pandemic travel restrictions.

Over the past decade there has been significant improvement in bilateral capacity, enabling greater travel opportunities to Australians and facilitating international visitors to our shores. However, since the COVID-pandemic the bilateral system has not enabled the recovery of supply of air capacity to ensure supply is ahead of demand.

*“The policy of successive governments has been to negotiate bilateral agreements that provide ‘capacity ahead of demand’ and balance our national interests. In a number of cases, Australia has secured an ‘open-skies’ style agreement with major aviation markets, which removes restrictions on flights.”*

– p. 16, *Aviation Green Paper*<sup>4</sup>

Data submitted in *Growth Potential for Foreign Airlines* by the then Department of Infrastructure and Regional Development to the 2015 Productivity Commission *Research paper*

<sup>3</sup> Ibid.

<sup>4</sup> Department of Infrastructure, Transport, Regional Development, Communication and the Arts, *Aviation Green Paper*, 7 September 2023, accessed 17 September 2023, available at <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-green-paper>.



on Australia's international tourism,<sup>5</sup> shows that at the time, 4 of Australia's top 15 markets (**Malaysia, Hong Kong, China and Qatar**) were at capacity, with zero growth capacity at Australia's major gateway airports (*Australian majors*). **Fiji**, at the time, had only 2% growth potential (ratio of available capacity to capacity in use), with 123 seats available each week under capacity limits. **Philippines** also had only 13% growth potential, with 683 seats available per week under capacity limits.

At the time one-third of the markets listed had 'open-skies' style, unlimited agreements (**NZ, Singapore, USA, Japan** and the **UK**).

A similar document for the Northern Winter 2017-18<sup>6</sup> and 2019-20<sup>7</sup> seasons show:

- 'Open-skies' style, unlimited agreements for **China** and then **India**;
- Incremental increases in seat capacity to/from **Fiji** to Australian majors that is rapidly filled to near or close to capacity;
- Incremental increases in seat capacity to/from **Philippines** to Australian

majors keeping pace with passenger growth to build and retain reasonable growth potential (>20%);

- Additional increase in seat capacity to/from **Malaysia** to Australian majors to retain reasonable growth potential (>20%);
- Additional services capacity for the **UAE** and **Sri Lanka** preceding any pressure on earlier capacity limits.

In the latest documentation from the *Department of Infrastructure, Transport, Regional Development, Communication, and the Arts* for the Northern Summer 2023 season, three markets reach the capacity limits of the relevant air services agreement: **Fiji** (Australian Majors), **Japan** (Haneda) and **Qatar**.

Only one other, **Hong Kong** (Australian Major) had unutilised capacity of less than 10%. Others retained unutilised capacity of between 20% (Philippines) to 360% (Brunei). **Figure 3** below, illustrates available capacity in selected Australia bilateral air services agreements.

Figure 3: Available capacity in selected Australia bilateral air services agreements



Source: [Growth Potential for Foreign Airlines<sup>8</sup>](#)

<sup>5</sup> Department of Infrastructure and Regional Development, *Growth Potential for Foreign Airlines*, 2015, accessed 17 September 2023, available at

<https://www.pc.gov.au/research/completed/international-tourism/comments/submissions/submission-counter/sub022-international-tourism-attachment.pdf>.

<sup>6</sup> Department of Infrastructure, Regional Development and Cities, *Growth Potential for Foreign Airlines*, 6 February 2019, accessed 17 September 2023, available at

[http://web.archive.org/web/20190317153417/https://infrastructure.gov.au/aviation/international/files/Growth\\_Potential\\_Foreign\\_Airlines-Northern\\_Winter\\_2017-18.pdf](http://web.archive.org/web/20190317153417/https://infrastructure.gov.au/aviation/international/files/Growth_Potential_Foreign_Airlines-Northern_Winter_2017-18.pdf).

[e.gov.au/aviation/international/files/Growth\\_Potential\\_Foreign\\_Airlines-Northern\\_Winter\\_2017-18.pdf](#).

<sup>7</sup> Department of Infrastructure, Transport, Cities and Regional Development, *Growth Potential for Foreign Airlines*, 27 May 2022, accessed 17 September 2023, available at

[http://web.archive.org/web/20200325215425/https://www.infrastructure.gov.au/aviation/international/files/Growth\\_Potential\\_Foreign\\_Airlines-Northern\\_Winter\\_2019.pdf](http://web.archive.org/web/20200325215425/https://www.infrastructure.gov.au/aviation/international/files/Growth_Potential_Foreign_Airlines-Northern_Winter_2019.pdf).

<sup>8</sup> Department of Infrastructure, Transport, Regional Development, Communication, and the Arts, *Growth Potential for Foreign Airlines*, 26 April 2023.



Over the past decade, there are several examples of effective implementation of the ‘capacity ahead of demand’ policy – notably ‘open skies’ agreements for secondary hubs such as Malaysia and the Philippines.

However, as the COVID-pandemic recovery continues, a number of markets have remained near or at capacity over that period – Hong Kong, Fiji, Japan (Haneda) and Qatar.

On the United Arab Emirates bilateral which is a major hub for travellers transiting to Europe, we expect there to be continued significant capacity in the bilateral with lower numbers of services, as Emirates and Etihad have expanded their interline agreement and Etihad has publicly stated they are shifting their strategy to remove ultra long-haul routes such as Australia<sup>9</sup>.

ATIA believes it is essential to increase the bilateral opportunities outside of the major hubs of Singapore and UAE to create the opportunity of growth in supply. Qatar, Malaysia, Hong Kong represent opportunities to place lower prices on airfares and achieve the economic flow-on benefits across the economy, including the travel sector, but extending to many others.

## Passenger traffic recovery

The sluggish recovery of aviation capacity is significantly impacting ATAS travel businesses, our clients and the broader economy.

During the COVID-pandemic, Australia’s travel agents, tour operators and other travel businesses had revenue falls of over 90% during extended border closures and experienced a loss of more than a third of its skilled workforce, while the broader tourism industry lost around \$4 billion per month.

While ATAS travel businesses have now returned to a profitable position, the lack of airline competition and capacity, and the resulting higher airfares is slowing a return to pre-COVID trading numbers of travellers, both inbound and outbound. As of the end of August 2023, over 10 million tickets have been issued by Australian travel agents worth nearly

\$14 billion. ATIA models that this represents nearly 70% of international tickets by Australians travelling overseas.

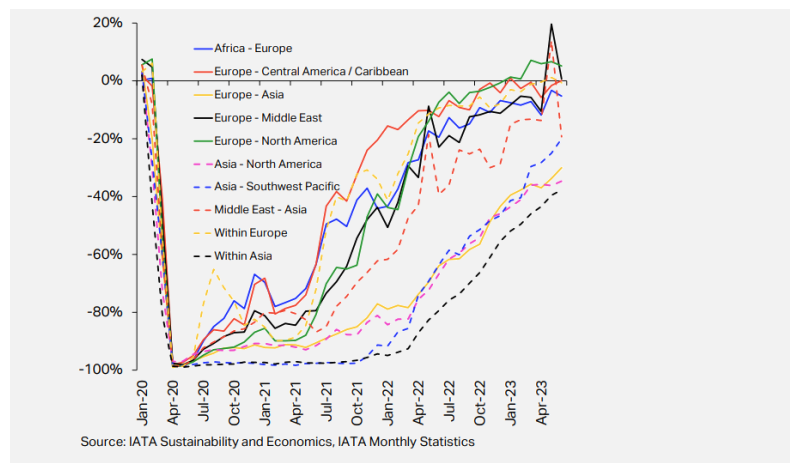
The *International Air Transport Association* reports a continuing trend of strong growth across passenger air travel.<sup>10</sup> They state that during the first half (H1) of 2023, all regions achieved strong passenger traffic growth and made significant progress towards restoring pre-pandemic traffic levels.

This recovery is not, however, uniform across international and domestic travel, with domestic passenger traffic 5.1% above 2019 levels, but international remaining 11.8% down. Likewise, available seats in international are 13.2% below 2019 levels.

The Asia Pacific region has experienced the sharpest growth but still lags behind other regions in narrowing the gap from pre-pandemic levels.

Both trends are a result of a later and staged recovery in the China market, the largest in the region.

**Figure 4: IATA International revenue passenger-kilometres (RPKs), YoY% change versus 2019 – Top 10 route areas in 2019**



Source: IATA, *Air Passenger Market Analysis*<sup>11</sup>

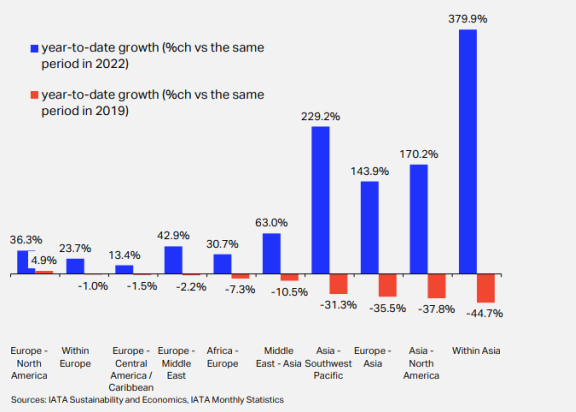
Figures 4 and 5, extracted from the IATA report, show the recovery of Asia <-> Europe and Asia <-> North America routes is lagging all other route areas but for intra-Asia regional travel, and remain 31% and 38% below 2019 passenger numbers, respectively.

<sup>9</sup> Etihad makes bold changes <https://www.etihad.com/en-au/news/etihad-makes-bold-changes-to-organisational-structure-to-address-impact-of-covid-19-pandemic>.

<sup>10</sup> IATA, *Air Passenger Market Analysis*, June 2023, accessed 17 September 2023, available at <https://www.iata.org/en/iata-repository/publications/economic-reports/air-passenger-market-analysis-june-2023/>.

<sup>11</sup> Ibid.

Figure 5: IATA International revenue passenger-kilometres (RPKs), YTD June 2023 (% ch) – Top 10 route areas, ranked by 2019 traffic level



Source: IATA, *Air Passenger Market Analysis*<sup>12</sup>

In its 12<sup>th</sup> and final *Airline competition in Australia* report, the ACCC describe the Australian international air travel recovery, with May 2023 international arrivals and departures recovered to 81% and 79% respectively, compared to the same month pre-pandemic.<sup>13</sup> Likewise, the ACCC notes a Sydney Airport report that international passenger traffic recovered to 80.6% of pre-pandemic levels in April 2023.<sup>14</sup>

The latest *Bureau of Infrastructure and Transport Research Economics* for March 2023 show pre-pandemic capacity out of Sydney has been met or exceeded in half of the top 10 destinations.

While flights to London are now the same as pre-pandemic levels, changes in aircraft flying this route mean that seats are 5.4% down.

It should also be noted that the Doha figures represent flights at the full capacity limit from Australia’s major gateway airports. The halving

of flights is a result of the discontinuation of the Qatar Airlines Canberra-Doha service which we understand to be airport operational issues due to changes in ground handling services.

Most Middle East and APAC destinations provide capacity for both end-of-line travel and as intermediate hubs through to further destinations in the regions and to Europe.

Table 1: Outbound flights and seats from Sydney, March 2023 compared to March 2019

Sydney to:	Seats	Flights
1 Singapore	99.6%	98.1%
2 Auckland	84.5%	82.1%
3 Los Angeles	89.2%	90.7%
4 Denpasar	119.5%	131.1%
5 Seoul	121.2%	177.4%
6 Kuala Lumpur	109.8%	123.9%
7 Hong Kong	46.0%	45.5%
8 Dubai	56.4%	50.0%
9 Manila	123.1%	100.0%
10 Tokyo	104.7%	112.2%
...		
13 London	94.6%	100.0%
16 Doha*	59.1%*	50.0%*
17 Abu Dhabi	44.3%	50%

Source: BITRE \*see text for additional context

All these datapoints suggest that while the regional figures are exacerbated by a slower recovery in the China market, the recovery of capacity to and from Australia remains well below global markets.

Figure 6, on the following page, illustrates the strong recovery in Australian outbound capacity in regional short haul, while long haul destinations remain under pre-pandemic levels.

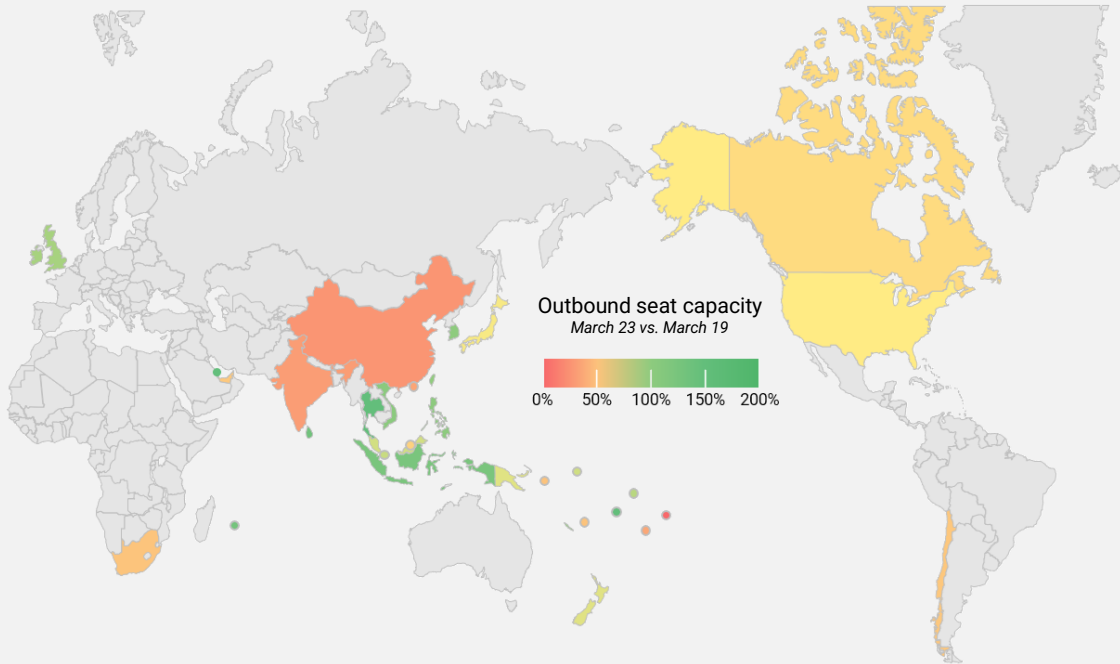
<sup>12</sup> Ibid.

<sup>13</sup> ACCC, *Airline competition in Australia - June 2023 report*, 5 June 2023, accessed 17 September 2023, available at [https://www.accc.gov.au/about-us/publications/serial-](https://www.accc.gov.au/about-us/publications/serial-publications/airline-competition-monitoring-reports/airline-competition-in-australia-june-2023-report)

[publications/airline-competition-monitoring-reports/airline-competition-in-australia-june-2023-report](https://www.accc.gov.au/about-us/publications/serial-publications/airline-competition-monitoring-reports/airline-competition-in-australia-june-2023-report).

<sup>14</sup> Ibid.

Figure 6: Outbound seat capacity heatmap, March 2023 vs. March 2019



Source: [Growth Potential for Foreign Airlines](#)

## Pricing impact

*“While the industry has increased international capacity over the past few months, capacity remains below pre-pandemic levels due in part to delays in aircraft and spare parts shortages. Qantas has also reported that demand for international travel remains strong, leading to a mismatch between demand and supply. This imbalance is putting upward pressure on international airfares.”*

– p. 11, ACCC, *Airline competition in Australia: Final Report (our emphasis)*

There can be no doubt capacity constraints on routes with strong demand have resulted in higher prices for Australian consumers.

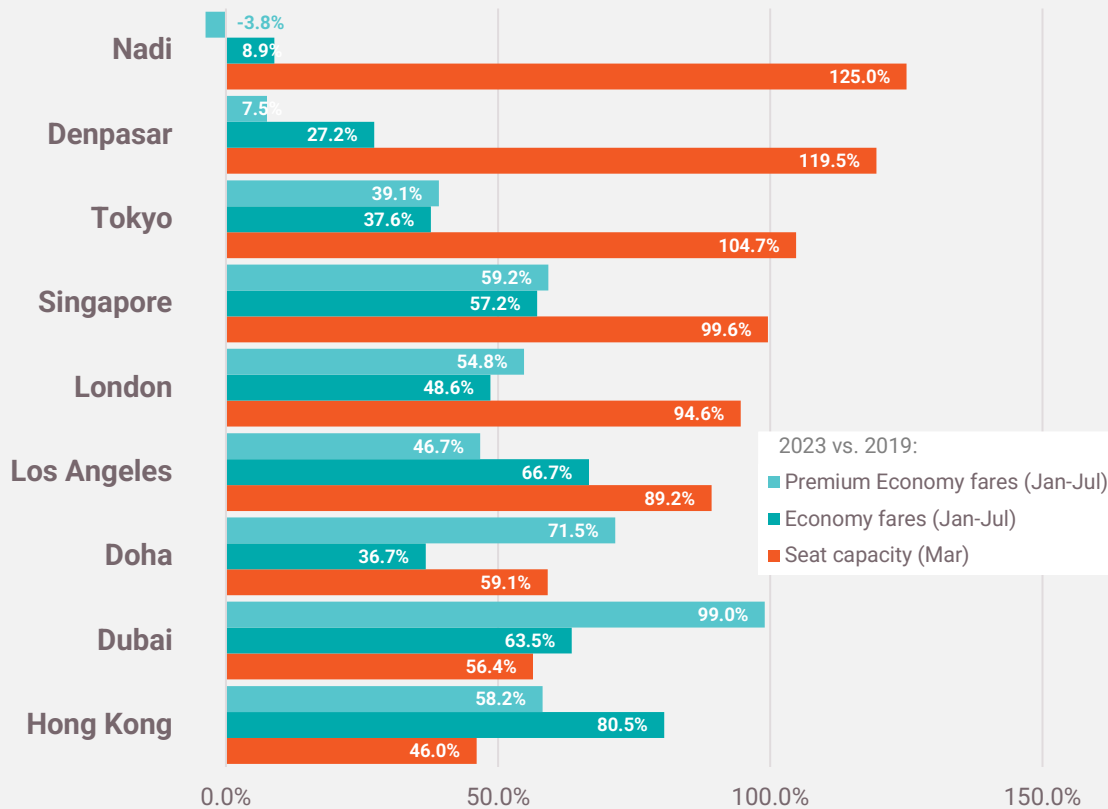
Data from industry ticketing systems<sup>15</sup> show price increases on international fares from Sydney airport in 2023 up to 99% higher than the same period before the pandemic.

Significant price increases have not been confined to a specific class of travel, although the growing popularity of premium economy seating has seen even greater price rises for this category. Some of the highest price increases across classes include:

- Sydney to Hong Kong - Economy –\$853 one-way **(+81% increase)**
- Sydney to Los Angeles - Economy –\$1254 one-way **(+67% increase)**
- Sydney to Dubai - Economy –\$853 one-way **(+64% increase)**
- Sydney to Dubai – Premium Economy – \$2224 one-way **(+99% increase)**
- Sydney to Doha - Premium Economy – \$959 one-way **(+72% increase)**
- Sydney to Singapore - Premium Economy – \$1057 one-way **(+59% increase)**
- Sydney to Doha – Business/First –\$3165 one-way **(+68% increase)**
- Sydney to Hong Kong - Business/First – \$3692 one-way **(+56% increase)**

<sup>15</sup> Data ATIA ticketing system analysis. 2023 data is based on Jan-Jul, while 2019 data is full-year.

Figure 7: Seat Capacity and Fares, selected routes ex-Sydney, 2023 vs. 2019



Source: Market Intelligence Global Demand Data (GDD) and [Growth Potential for Foreign Airlines<sup>16</sup>](#)

While not linear, Figure 7, above, illustrates the strong link between capacity and higher fares. Competition on the Fiji and Bali routes has resulted in capacity growth, and constrained pricing increases – with economy fares falling on the Sydney to Nadi route.

In comparison, capacity constrained routes to the Middle East and Hong Kong have seen the highest fare increases – particularly in premium cabins.

### Cost-of-living pressures on families and business

It is clear that strong demand and capacity limits have allowed airlines to achieve higher margins. The ACCC final report notes that, *“[t]he Qantas Group said that yields are expected to remain materially above pre-pandemic levels through to the next financial year, particularly for international services. Based on revenue intakes over April–May, yields from domestic travel are 118% of pre-*

*pandemic levels, and 125% for international travel.”*

As a result, Qantas and most major airlines have reported record profits while ordinary Australians face significant cost-of-living pressures.

Living on an island nation, Australians must cross the ocean by air or sea to realise their international travel intentions – whether for holidays, visiting friends and family, education or business. After the period of COVID restrictions, Australians are eager to travel, and many have been willing to pay the higher prices. However, many others cannot.

In practical terms past decisions have had real impacts which include:

- Additional cost to Australians looking to holiday abroad after the challenges of COVID lockdowns and travel restrictions;
- Australian families missing out on important family reunions and events, such as births, marriages and funerals;

<sup>16</sup> Department of Infrastructure, Transport, Regional Development, Communication, and the Arts, *Growth Potential for Foreign Airlines*, 26 April 2023.

- Limiting choices for Australian SME businesses to resume face-to-face meetings and development opportunities;
- Increased freight cost for perishable and other goods that require air transport – this is limiting opportunities for Australian SMEs to build export markets and to be competitive in the global marketplace.

In economic terms there is a deadweight loss that is the economic benefit foregone by these Australians who are priced out of the market.

Globally and in Australia, aviation has also been granted significant reprieve from competition law over the last 10-15 years. It is unclear if the *Department of Infrastructure, Transport, Regional Development, Communication, and the Arts* includes these exemptions when it assesses the national interest tests. While the Department is ably suited to assess the impacts on the direct stakeholders (airlines and airports), we believe it has limited ability to assess impact on overall competition levels<sup>17</sup> and ultimate consumer benefits.

## Improving competition to ease pricing pressure

ATIA acknowledges that the current market settings of supply/demand is not the only factor in higher airfare prices. Shortages of parts and fuel prices have increased since the COVID-pandemic, but overall airlines have reduced their costs by outsourcing staffing, improvements in reliability of aircraft, limiting supply of product to corporate and leisure agencies, and have been granted exemptions from standard competition laws to allow competitors to set prices and schedules.

Nevertheless, the current bilateral policy settings are having the impact of limiting new capacity. This is creating a function of suboptimal competitive tension in the aviation industry which has been widely acknowledged as a key reason for the high airfares currently endured by Australian families and businesses.

*"[Economy fares]...should keep on dropping as more international capacity comes online"-*

- Alan Joyce AC, then Qantas CEO

In markets where bilaterals have reached capacity, a number of suboptimal solutions have been proposed.

For example, where service frequency limits exist, it has been suggested that airlines can replace current aircraft with larger alternatives – notably Airbus A380s. The viability of this approach is not certain and will depend on various factors, including:

- Aircraft and crew availability;
- Environmental and cost impacts of operating older, less-efficient aircraft; and
- Ability of the aircraft to be utilised for cargo and passenger services

Another proposed solution is the use of non-major gateway airports, outside of Sydney, Melbourne, Brisbane and Perth. Many air services agreements will limit flights to major airports, but permit unlimited flights to and from others.

While this approach is being used by Fiji Airlines, with direct flights from Canberra to Nadi avoiding the perpetually at-capacity seat limit from Australian major airports, it is not viable for all scenarios. It will depend on various factors, predominately the levels of demand at non-major airport cities where only 12% of Australians live and appeal for international travellers is lower.

While growing capacity at non-major airports should be encouraged, it should not be at the cost of capacity to meet demand where it is needed - at major airports.

Finally, the most effective option to increase capacity to meet current demand, and allow it to adapt to demand variation over time, is the negotiation of adequate capacity limits that offer significant margin for growth.

<sup>17</sup> Productivity Commission research Paper – Australia's international tourism industry: trends, drivers and barriers to

growth. Department of Infrastructure and Regional Development submission



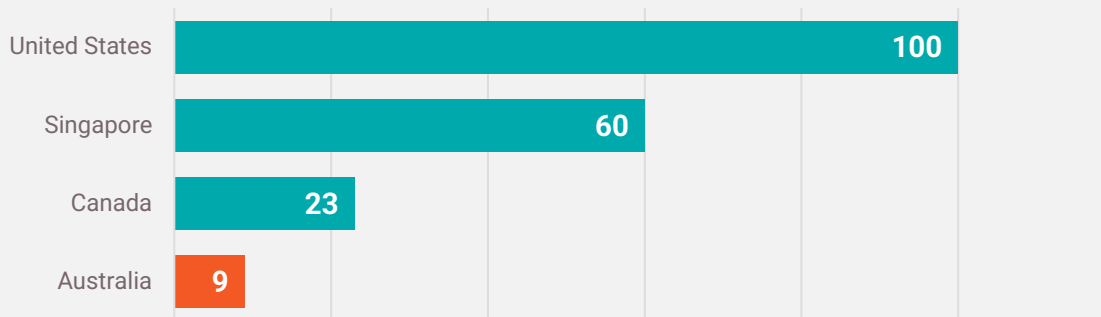
## 4. Impact experienced in other countries

With unrestricted, 'open skies' air services agreements with only nine other markets, Australia is well off the pace of leading aviation markets.

This compares to the 100 open-skies agreements negotiated by the US,<sup>18</sup> Singapore with more than 60<sup>19</sup> and Canada with 23.<sup>20</sup> See [Figure 8](#), below.

The US, Singapore, as well as New Zealand, are also parties to an eight-nation multilateral open-skies agreement (the Multilateral Agreement on the Liberalization of International Air Transportation). Australia is not a party to this agreement but does have bilateral agreements with the US and Singapore and operates Single Aviation Market (SAM) arrangements with New Zealand.

Figure 8: Unrestricted, 'open skies' air services agreements, Australia, US, Canada and Singapore



Source: [Growth Potential for Foreign Airlines](#)<sup>21</sup>

*Open Skies agreements have vastly expanded international passenger and cargo flights to and from the United States, promoting increased travel and trade, enhancing productivity, and spurring high-quality job opportunities and economic growth. Open Skies agreements do this by eliminating government interference in the commercial decisions of air carriers about routes, capacity, and pricing, freeing carriers to provide more affordable, convenient, and efficient air service for consumers.*

- Bureau of Economic and Business Affairs, US Department of State<sup>22</sup>

The 2016 Key Policy Fact sheet for *Open Skies Partnerships: Expanding the Benefits of Freer Commercial Aviation*<sup>23</sup> notes benefits including:

- The Brookings Institution estimates that Open Skies agreements add approximately \$4 billion in annual economic gains to consumers.
- U.S. Airlines for Open Skies estimates that full liberalization through Open Skies agreements would lead to a 16% increase in air traffic and support 9 million jobs in aviation and related industries.
- A private study found that new direct service between a U.S. city and a point in the European Union generates up to \$720 million annually in new economic activity

<sup>18</sup> Department of Infrastructure, Transport, Regional Development, Communication, and the Arts, *Growth Potential for Foreign Airlines*, 26 April 2023.

<sup>19</sup> US Department of State, Bureau of Economic and Business Affairs, *Open Skies Partners*, 14 November 2016, accessed 17 September 2023, available at <https://2009-2017.state.gov/e/eb/rls/othr/ata/114805.htm>.

<sup>20</sup> Civil Aviation Authority of Singapore, *Adopting A Progressive Approach*, accessed 17 September 2023, available at <https://www.caas.gov.sg/who-we-are/areas-of-responsibility/growing-singapore-as-a-global-air-hub/air-services-policy>.

<sup>21</sup> Transport Canada, *The Blue Sky Policy: Made in Canada, for Canada*, 2 December 2022, accessed 17 September 2023, available at <https://tc.canada.ca/en/corporate-services/policies/blue-sky-policy-made-canada-canada>.

<sup>22</sup> US Department of State, Bureau of Economic and Business Affairs, *Open Skies Agreements*, accessed 17 September 2023, available at <https://2009-2017.state.gov/e/eb/tra/ata/>

<sup>23</sup> US Department of State, Bureau of Economic and Business Affairs, *Open Skies Partnerships: Expanding the Benefits of Freer Commercial Aviation*, 16 September 2016, accessed 17 September 2023, available at <https://2009-2017.state.gov/r/pa/pl/262022.htm>.

for the U.S. city and its local region, depending on the size of the markets.

- Portland International Airport estimates that its direct international flights to Tokyo, Amsterdam, and Frankfurt generate over \$240 million in airport and visitor revenue.
- The Greater Orlando Aviation Authority estimates that aviation liberalization with Brazil helped increase the number of visitors from Brazil to Orlando from 74,000 in 2004 to 768,000 in 2013, and that Emirates' service from Dubai will add \$100 million in new economic activity in Central Florida and create 1,500 jobs.

The North American aviation market has been one of the quickest to recover, with the total market in the region now exceeding pre-pandemic capacity levels. This has been buoyed by a strong domestic market, but also reflects international revenue passenger-kilometres (RPKs) in June 2023 2% higher than the same period of 2019. See [Figure 9](#).

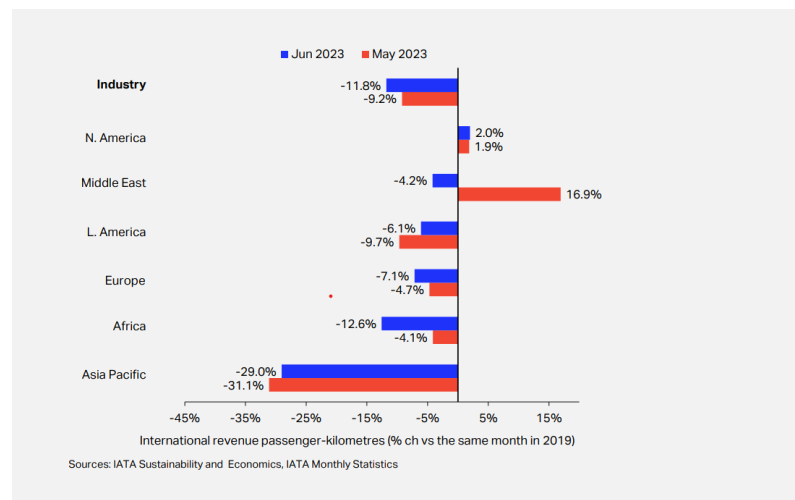
North America, with the broadest 'open skies' policy, has been the only region to have recovered to this magnitude. As discussed in the previous chapter, the Asia Pacific region has been significantly impacted by a slower recovery in the China market.

The 100 open-skies agreements negotiated by the US cover markets across the globe, and

include Australia, New Zealand, EU markets, Qatar and the UAE.

Australia does not have an open skies agreement with Canada, with the agreement list having a strong Caribbean, Central and South American focus – but also including Ireland, New Zealand, South Korea and the UK.

**Figure 9: IATA International RPK growth by airline region of registration, YoY% change versus 2019**



**Source: IATA, Air Passenger Market Analysis<sup>24</sup>**

<sup>24</sup> IATA, *Air Passenger Market Analysis*, June 2023, accessed 17 September 2023.



## 5. Impact on the Australian economy, including on Australian travellers, and the tourism and hospitality sectors

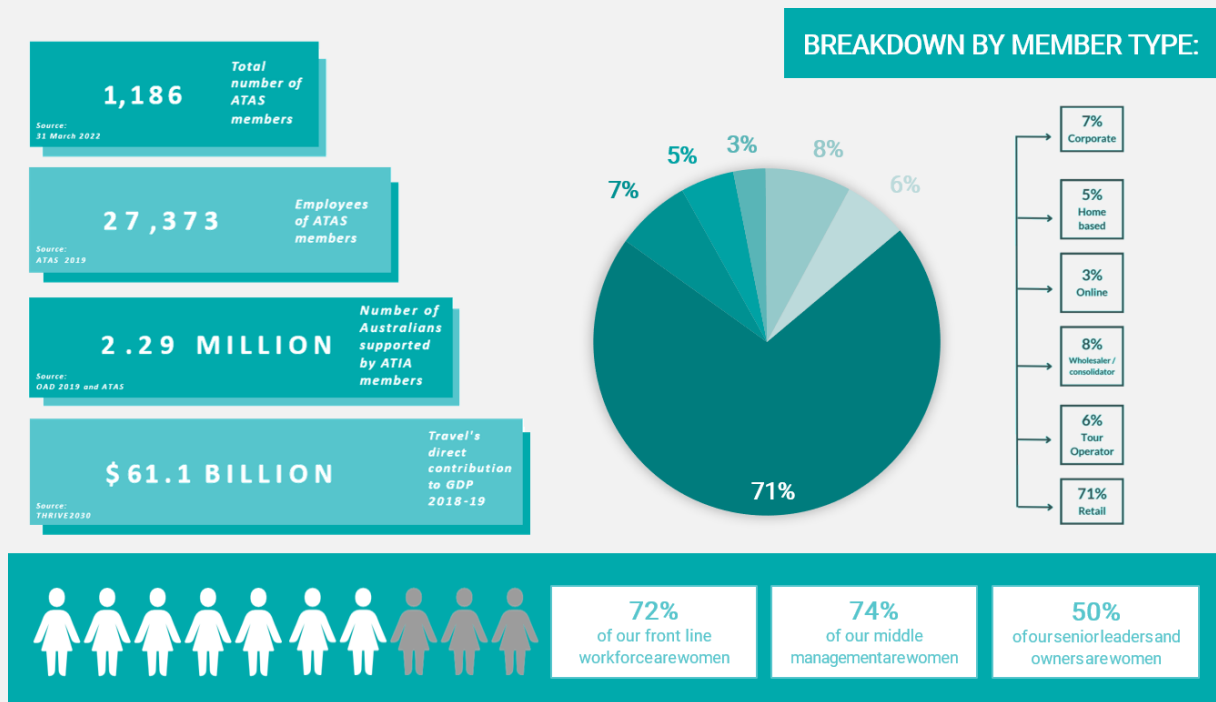
### The Australian travel landscape

Despite ongoing complexities and operational challenges, major airline carriers have been able to recover much faster in the post-pandemic operating environment than others across the tourism industry. While only a select few travel businesses have been able to break-even, the airline industry is experiencing immense profitability with Qantas.<sup>25</sup>

Underpinning this profitability has been the substantial price increases that carriers have been able to charge for overseas travel as demand for flights outstrips capacity in Australia.

Travel agents have acted as a market balance for consumers at the point of sale, playing an important role as consumer advocates to find best value for money.

Figure 10: The Travel Industry’s contribution to the Australian economy



### Opportunities for industry growth

The nearly 30,000 employees of ATIA members have supported \$12.2 billion in sales YTD across a portfolio of 142 airlines,<sup>26</sup> and we are seeing continuing demand for international travel that is outpacing supply. Increasing capacity will not only help cost-of-living pressures on families and business, but it will also allow greater opportunities for Australians to travel internationally and for international

travellers to visit Australia – bolstering our entire visitor economy.

ACCI estimate that the cost of the Qatar Airways decision alone may be between \$500 and \$788 million in foregone revenue for the tourism industry. Others have estimated a cost up to \$1 billion in lost income when also considering business travel and freight in addition to tourism.

On current sales trends, a doubling of Qatar Airways weekly flights could increase ATIA

<sup>25</sup> [Airline competition in Australia](#) - June 23. ACCC

<sup>26</sup> Agency billing settlement program data YTD August 2023.

member revenue by up to \$400 million annually on air ticket sales alone while putting downward pressures on airfares to Europe. Additional components of these travel itineraries, such as accommodation, tours and activities, could push total revenue growth for the travel industry to well over \$0.5 billion.

## Distribution impacts of lack of competition

In recent years, there has been a significant change in the commercial relationships between airlines and their preferred distribution partners. As air travel evolved, so has the methods of selling air tickets. The most significant change was the introduction of the *Computerised Reservations Systems* or the EDIFACT protocol, which as of 1984, was deemed by the US Department of Transportation as an essential facility. This resulted in guaranteed access to full supply of product for an airlines agent.

Due to the consolidation of major airlines and limited domestic competition (Qantas Group domestic market share; 61.7%) airlines have taken the opportunity to seek to reduce competition for the distribution of airfares. This is done by only making available selected fares through proprietary IT systems which do not contain the same functionality of the EDIFACT protocol.

The new system, which is in various stages of development, is called New Distribution Capability (NDC). It is a technology communication standard developed by the International Air Transport Association (IATA) that fundamentally changes how airlines provide fare and ancillary content to travel agencies, travel management companies (TMCs) and other ticket distributors. These changes are enabling airlines to become the sole price makers and therefore increase the margins on their cheapest products with no pressure from the market, creating the following;

- Parallel airfare markets to the internationally recognised Global Distribution System (GDS) and forcing travel agents to access these proprietary systems to maintain access to the lowest fares. These systems impose reduced 'at-source commissions' for travel agents; and
- Not providing access to all airline availability to travel businesses and reserving sales of the cheapest cohort of

airfares to its direct channel with consumers. This prevents any competition from travel agents on the efficient distribution of these highly sought-after tickets. It also prevents the ability of consumers to easily mix and match airlines, a common practice used in the domestic market, enabling consumers to find the best/cheapest flights through their preferred channel.

Indeed, due to the lack of competition, it is clear that airline commitment to the local distribution model is under significant pressure. While the industry is supportive of the new standard, its deficiencies are impacting choices for Australian consumers and businesses.

This is because the travel and aviation industries as a whole were (and remain) largely supportive but unprepared to fully adopt NDC. While internationally, NDC can be somewhat mitigated, domestically, the concentration of market power has caused disruption to the air ticket distribution ecosystem. It has resulted in serious consumer harm in the form of higher airfares and further reduced competition, in terms of both airline travel itself as well as air ticket distribution.

While airlines may be able to increase their margin by distributing more fares through their own direct channels, the above behaviours demonstrate a net loss in competition for distribution across the market. These practices make it even harder for consumers to assess varying price points and trust what is available on fare aggregator websites without navigating to each airline's direct sales channel.

## Impacts on consumer service

When consumers are forced to go directly to airlines websites to access fares, they are also missing out on the valuable offerings that travel agents provide in:

- Professional advice to tailor travel to suit specific requests and find packages and products that suit the consumer's needs;
- Advice on critical travelling requirements such as visas, other travel documentation, medical/vaccines and travel insurance;
- Support for the consumer when problems are experienced while travelling; and

- Time-saving and convenience of a consolidated itinerary with airlines tickets, ground transfers, accommodation, tours and activities.

Australians turned to travel industry professionals to help them navigate the multiple challenges of managing COVID impacted travel, credits and refunds. The travel industry has provided this support through many months of closed domestic borders and an international travel ban, often without remuneration.

Consumer frustrations due to difficulties accessing credit and refunds have often been borne by travel agents, even though the policies are controlled by the airlines.

Credits commonly have strict terms and conditions attached (e.g. they can only be used for tickets of an equal or higher value) and

have associated fees that erode their value. There are instances where the airline will waive the fee (generally where they are at fault, or a force majeure event) but the process of applying the waiver is convoluted and places risk on the agent. Minor coding errors can result in financial penalties being issued to the agents.

Nevertheless, travel agents have been proactive in supporting consumers understanding their refund and rebooking rights and have created bespoke tools so that consumers can see the value of credits held and facilitate their use.

Credits are held not only by individuals but also by business, including many SMEs. Agents can report credits at the company level allowing these businesses to make decisions on where they may want credits to be availed by other employees.

## 6. The rights of airlines or other bodies to appeal decision

### The travel industry as the interface between consumers and suppliers

Travel distribution is the forgotten partner of the aviation sector. But as the number one seller of air tickets to Australians, we are uniquely placed to contribute to the discourse on matters, such as the negotiation of air service agreements, with a consumer-focused lens.

ATIA acknowledges the need to foster aviation industry growth in an environment that is safe, competitive and productive. Aviation industry policy should not be made in a vacuum but take into account the broader impacts on our travel and tourism industries, international trade, the broader economy, and of course, Australian communities.

ATIA believes that any negotiations for the establishment or alteration of air service agreements should be preceded by, or include, broad, inclusive and transparent consultations amongst Government at all levels, and affected industry sectors – including travel.

Past practice of the Department in preparing for bilateral air services talks is described in the *Department of Infrastructure and Regional Development's* submission to the *Productivity Commission research paper – Australia's*

*international tourism industry: trends, drivers and barriers to growth:*

*In preparation for bilateral air services talks, Infrastructure undertakes extensive consultation with our major airlines, airports, tourism groups and other Government Agencies including the Department of Foreign Affairs and Trade (DFAT), and the Australian Trade Commission (Austrade). Advice from these consultations is taken into account in developing a proposed negotiating mandate that reflects Australia's national interest and the Government's policy settings.*

*- Department of Infrastructure and Regional Development<sup>27</sup>*

A clear framework for the process and timelines of air service agreement application and negotiation is required to ensure that appropriate investments can be made to efficiently deliver benefits to the Australian economy and community, regardless of the decision on any single agreement.

This consultation process should be incorporated into a public timeline that concludes with a published outcome providing the key factors considered by the responsible Minister.

<sup>27</sup> Department of Infrastructure and Regional Development, submission to the *Productivity Commission research paper – Australia's international tourism industry: trends, drivers and barriers to growth*, 4 December 2014, accessed 17 September 2023,

available at <https://www.pc.gov.au/research/completed/international-tourism/comments/submissions/submission-counter/sub022-international-tourism.pdf>.

## 7. Other related matters

### Carrier coordination agreements

As the peak body for a broad array of Australian travel professionals, ATIA strives to promote and advocate for competition across the entire travel sector. Healthy competition is critical for the effective operation of markets so that businesses have the incentive to operate efficiently, price competitively and offer products valued by consumers. This in turn delivers benefits to the Australian community and economy through lower prices, innovation and improved product offerings.

There are currently 57 airlines that fly aircraft to Australia, which is 11% lower than prior to COVID. An additional 85 airlines sell to Australians by operating service agreements with their partners to provide services from hub destinations such as Singapore, Hong Kong, and Thailand. Once a passenger reaches that hub their own aircraft will connect each traveller to their final destination.

ATIA recognises that this type of carrier coordination can improve convenient connections for passengers, lowering barriers for both inbound and outbound travel. As an industry that specialises in coordinating multi-leg itineraries and products across suppliers, ATIA can also attest to the benefits consumers enjoy from an integrated experience.

However, in recent times, there has been an increase in the number of carriers seeking to direct commercial relationships beyond the established airline alliances (Oneworld, Star Alliance, Sky Team).

Exacerbating an already unhealthy competitive landscape, a similar process was playing out in the international air market. Airlines were allowed to consolidate operations into global alliances and have been provided with

exemption to competition law. The largest three such alliances – Star Alliance, SkyTeam and Oneworld – collectively include 59 participating airlines operating in 195 countries.<sup>28</sup> These partnerships have allowed airlines to expand their routes by sharing resources to ostensibly provide a more seamless travel experience for international passengers who benefit from access to multiple destinations and more convenient connections.

The impact of these developments in conjunction with exemptions to competition law can hardly be overstated, especially where airlines operate aircraft to the same destinations.

Interestingly, as was the case with NDC, global alliances were largely promoted by IATA and others as pro-consumer but have greatly diminished the competitive vigour of the international air transportation market.

ATIA has recently made submissions to the ACCC on a number of authorisations seeking clarification on the overall public benefit.

In these decisions, some airlines have stated that they would withdraw from certain routes or activities, however, ATIA considers this is highly unlikely given the propensity for Australians to travel internationally.

ATIA assessment and that of our global partners<sup>29</sup> found that these processes entrench market power of the dominant airlines to the detriment of consumers and other stakeholders is also happening in an increasingly uncompetitive international market.

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<sup>28</sup> Altexsoft, *Airline Alliances Explained: Benefits, Major Players, and Other Types of Partnership*, 28 March 2023, accessed 17 September 2023, available at <https://www.altexsoft.com/blog/airline-alliances-explained/>.

<sup>29</sup> American Society of Travel Advisors, *Complaint of The American Society of Travel Advisors, Inc. Against American Airlines*, 31 July 2023, accessed 17 September 2023, available at <https://www.asta.org/docs/default-source/testimony-filings/2023/asta-complaint-to-dot-july-2023.pdf>

## Airport slots

There is an urgent need to review airport slots to ensure the growth of Australia's travel and tourism sector is not being limited by outdated regulations. Currently, slot regulations are managed according to Worldwide Airport Slot guidelines and the Sydney Airport Demand Management Scheme, in the case of Sydney Airport. While most airports are not constrained on slot movements, Australia's gateway, Sydney Airport is significantly constrained in its ability to operate.

During the COVID-pandemic, airlines received relief from their obligations to use their allocated slots to take off and land at airports. Most of the requirements on airlines to use their allocated slots were reinstated by the Minister for Infrastructure, the Hon Catherine King MP in August 2022 as a result of the recovery in domestic and international flying.

The Ministerial Direction contains a protection mechanism to ensure that allocated slots that airlines opt to forgo or lose under usage requirements will remain available for international services in the future. ATIA supports this important protection.

Domestically, a concerning trend is now occurring where cancellation rates are 73% higher than pre-COVID. Under the Worldwide Airport Slot Guidelines airlines must maintain an average of 80% use of a slot to maintain access to it. Cancellation rates on international flights are rare given current load factors, however, there is a continued elevation of cancellations for domestic flights arriving or departing Sydney:

- Sydney-Melbourne route at 8.7%;
- Canberra-Sydney route at 8.7%;
- Melbourne-Sydney route at 8.5%;
- Sydney-Canberra route at 8.3%;
- Adelaide-Sydney route at 6.7%; and
- Brisbane-Sydney route at 6.0%;

ATIA notes that the cancellation rate prior between 2009 and 2019 was 2.3%.<sup>30</sup>

These cancellation rates significantly increase the cost of travel consumers and Travel Management Companies (TMC) that must manage these cancellations. For business clients there is a significant productivity loss, while for the TMC, there is a real cost of reissuing tickets and management of forward travel which the consumer ultimately pays.

With the long-term average of 2.3%, consideration should be given to increasing threshold for slot use to 90% within 2 years and 95% within 5 years. This would provide a significant incentive for airlines to operate scheduled flights or provide a new opportunity for new entrants to compete.

## ACCC quarterly reporting

The decision by the previous government to implement quarterly reporting provides independent data on the performance of the aviation sector and its critical role in the economy. This reporting allows oversight into the overall health and recovery of the domestic aviation sector to support Australia's overall economic growth. This quarterly report allows consumers and industry stakeholders to receive timely and relevant information about capacity, prices and consumer complaints.

As noted in the March 2023 Report, when prices peaked in December 2022, average revenue decreased by 13% in January 2023. This figure was still 13% higher (29% higher in nominal terms) than in January 2019.<sup>31</sup> It is critical that these reports are re-established to be published to provide independent data on the operation of the domestic travel sector. Importantly, the ACCC has also noted that complaints regarding airline performance are still tracking above 2019 levels. This reinforces the critical importance of independent reporting.

<sup>30</sup>, BITRE, *Airline On Time Performance Statistics –Monthly*, July 2023, accessed 17 September 2023, available at [https://www.bitre.gov.au/statistics/aviation/otp\\_month](https://www.bitre.gov.au/statistics/aviation/otp_month).

<sup>31</sup> ACCC, *Airline competition in Australia - March 2023 report*, March 2023, accessed 17 September 2023, available at

<https://www.accc.gov.au/about-us/publications/serial-publications/airline-competition-monitoring-reports/airline-competition-in-australia-march-2023-report>.