Ministry of **Transport**
TE MANATŪ WAKA

COMMERCIAL IN CONFIDENCE

2 April 2013

QANTAS – EMIRATES MASTER COORDINATION AGREEMENT: APPLICATION FOR AUTHORISATION

Introduction

1. Qantas Airways Limited (Qantas) and Emirates have sought authorisation under Part 9 of the Civil Aviation Act 1990 (the Act) of a "Master Coordination Agreement" (the Agreement) that they propose entering into.
2. The effect of authorisation is that the arrangements are exempt from the provisions of the Commerce Act that relate to arrangements substantially lessening competition.

The proposal

3. Under the Agreement, Qantas and Emirates propose forming an alliance involving price and capacity coordination on a global, network-wide basis.

Scope

4. The applicants intend [redacted] "trunk routes". These trunk routes may vary from time to time. Authorisation is sought for [redacted] across the global networks of the applicants. Initially the trunk routes will be:
   - Qantas Trunk Routes: Australia to any destination via Dubai (for example, Sydney-Dubai-London Heathrow), and Australia to Dubai (including via any intermediary point); and
   - Emirates Trunk Routes: Dubai to any point in Australia (including via any intermediary point) and Dubai to any destination via Australia (including trans-Tasman routes).
5. The parties will enter into free-sale code-share arrangements where legally possible i.e. where permitted by the relevant bilateral arrangements and where otherwise permissible). In other cases they will enter into interline arrangements.
6. The Coordination Agreement provides for the applicants to coordinate broadly across their passenger and cargo transport operations, including in relation to:
   - planning, scheduling, operating and capacity
   - sales, marketing, advertising, promotion, distribution strategies
   - reservation priority and pricing (including fares, rebates, incentives and discounts) for passengers, freight customers and agents
   - connectivity and integration of certain routes
   - code-share and interline arrangements
   - control of inventories and yield management functions
   - frequent flyer programs
   - all passenger-related aspects to provide a superior, consistent level of service to customers, including ground services and lounge access

- harmonising service and product standards in order to provide a seamless product to passengers
- harmonising IT systems
- joint airport facilities
- potentially joint offices for sales activities
- potentially other aspects of operations including ground handling
- catering, joint procurement and flight operations
- where appropriate and mutually agreed, making joint submissions to authorities on operational matters
- services and activities that are required to facilitate any of the matters referred to above

7. As between the parties it is proposed that the agreement has an initial period of 10 years.
8. Authorisation is sought for cooperation involving all majority-owned subsidiaries (that is, including Jetstar but excluding Jetstar Asia and other members of the Jetstar group in which Qantas has a less than fifty percent share).

Governance structure

[redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]

[redacted]

- [redacted]

[redacted]

[redacted]

Jurisdictional Issues

13. The application for authorisation of the Agreement has been made pursuant to Part 9 of the Act. Part 9 sets out an alternative regime to the Commerce Act 1986 for international air carriage competition.

14. Specifically, sections 88(2) – (5) of the Civil Aviation Act provide that:

(2) *The Minister may from time to time specifically authorise all or any provisions of a contract, arrangement, or understanding made between 2 or more persons in respect of international carriage by air and related to such carriage so far as the provisions relate, whether directly or indirectly, to the fixing of tariffs, the application of tariffs, or the fixing of capacity, or any combination thereof.*

(3) In considering whether to grant authorisation under subsection (2) of this section, the Minister shall ensure that the granting of such authorisation will not prejudice compliance with any relevant international convention, agreement, or arrangement to which the Government of New Zealand is a party.

(4) Subject to subsection (5) of this section, authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that-

(a) Provides that any party to it may directly or indirectly enforce it through any form of action by way of fines or market pressures against any person, whether or not that person is a party to the contract, arrangement, or understanding; or

(b) Has the purpose or effect of breaching the terms of a commission regime issued under section 89 of this Act; or

(c) Unjustifiably discriminates between consumers of international air services in the access they have to competitive tariffs; or

(d) So far as it relates to tariffs, has the effect of excluding any supplier of international carriage by air from participating in the market to which it relates; or

(e) *Has the purpose or effect of preventing any party from seeking approval, in terms of section 90 of this Act, for the purpose of selling international carriage by air at any other tariff so approved; or*

(f) *Prevents any party from withdrawing without penalty on reasonable notice from the contract, arrangement, or understanding.*

(5) *Notwithstanding the provisions of subsection (4) of this section, the Minister may authorise any provision of any contract, arrangement, or understanding under this section if the Minister believes that to decline authorisation would have an undesirable effect on international comity between New Zealand and any other State.*

15. We have concluded that the Agreement does not breach any of the prohibitions set out in s88 (4) of the Act and is thus capable of authorisation. Our detailed analysis of this is included as Annex 1.

Tariffs and Capacity

16. The Act does not provide that agreements may be authorised in their entirety, but rather that any or all provisions of an agreement may be authorised so far as the provisions relate, whether directly or indirectly, to the fixing of tariffs, the application of tariffs, or the fixing of capacity, or any combination thereof.

17. In the course of consultation we undertook with targeted stakeholders on the proposal, one submitter put forward the view that the proposed arrangements include provisions which do not relate to the fixing of tariffs and/or capacity.

18. Section 88, in using the terms 'related' and 'directly or indirectly' is broad. The language was changed from the Bill as introduced which stated "so far as the provisions provide for the fixing of tariffs or capacity or both".

19. In considering whether each of the provisions of the Agreements fall within the scope of the Act we have adopted a number of broad principles:

- A schedule (that is, a statement of what aircraft type will be operated on what route, with what frequency and at what time) relates directly to the fixing of capacity (in fact a schedule could be said to be the fixing of capacity).
- A code-share arrangement whereby parties sell seats on each other's services also relates to the fixing of capacity. Matters necessary for the smooth operation of a code-share agreement thus indirectly relate to the fixing of capacity.
- 'Tariffs' means not just the fare paid but encompasses the conditions and benefits that go with that tariff – including on-board service, baggage allowances, access to lounges, and frequent flyer schemes.
- 'Boilerplate' contractual provisions as part of an agreement that relates to the fixing or application of tariffs or the fixing of capacity, indirectly relate to the subject matter of the agreement.
- Revenue sharing arrangements relate (directly or indirectly) to a combination of the fixing of tariffs and the fixing of capacity. Revenue sharing arrangements are also one of the mechanisms through which the applicants will incentivise themselves with regard to 'metal neutrality[1]'.

[1] 'Metal neutrality' means a state of events in which each Party will be incentivised to treat all flights operated by the other Party as if they were flights on their own network.

20. We have concluded that all of the operationally material provisions of the Agreement except for 10.1 (a), (b) (e) and (f) relate directly or indirectly to the fixing or application of tariffs or the fixing of capacity. The applicants have withdrawn their request for authorisation so far as it applies to those sections which relate to ground handling, catering, engineering services and procurement.

21. A section-by-section analysis of the Agreements in terms of how they relate to the fixing or application of tariffs and the fixing of capacity is included as Annex 2 to this report.

Discretion

22. [redacted]

23. [redacted]

Relationship with process in other Jurisdictions

24. Due to the broad geographical scope of the proposed Agreements, approval is required from several international jurisdictions. The applicants have undertaken a process of "giving regulatory comfort" to authorities in the European Union and the United Kingdom and received authorisation from the Singapore Competition Commission on 28 March 2013.

Australian Competition and Consumer Commission

25. The regulatory decision which impacts most on New Zealand and our processes is that in Australia. In Australia collaborative arrangements in international air services are considered by the Australian Competition and Consumer Commission (the Australian Commission). The Australian Commission's process was:

- It issued a draft determination on 20 December 2012 proposing to authorise the arrangements. On 17 January 2013 it issued an interim authorisation for routes other than those that cross the Tasman (which permitted the parties to start putting in place scheduling and pricing mechanisms)
- On 1 February 2013 it held a pre-determination conference at the request of the Transport Workers Union and independent Senator Nick Xenophon
- On 1 March 2013 it issued a revised set of conditions for consultation
- On 27 March 2013 it issued a final determination giving conditional approval to the arrangements for five years.

Conditions

26. The approval from the Australian Commission is subject to conditions requiring the applicants to maintain at least their pre-alliance aggregated capacity on the four trans-Tasman routes of concern, subject to confirmation of the base-line level and to a review in September 2015 to consider whether a positive growth rate should be applied to the base capacity.

27. We propose that you do not apply capacity conditions to any approval in New Zealand because:

- [redacted]

- Imposing the same conditions as part of any New Zealand approval as the Australian Commission has put in place would have no practical effect (as the airlines would have to meet them in any case) but would increase compliance costs.

- Imposing different and potentially conflicting conditions could have unpredictable consequences.

Submissions

28. We invited submissions via the Ministry website and through an email to targeted stakeholders.

29. We received submissions from:

- Auckland Airport
- Wellington Airport
- Christchurch Airport
- New Zealand Airports Association
- Air New Zealand
- Tourism New Zealand
- Tourism Industry Association

30. A general theme of the submissions was a view that the alliance would be beneficial if the applicants delivered on their commitments, but that this was not guaranteed and the arrangements came with some risk that they could be detrimental. There was a common view that 10 years was too long a period for authorisation and that capacity conditions

[2] As an example, Christchurch Airport had suggested that a condition be imposed requiring Qantas to maintain a 'red tail' service to Sydney. We consider that such a condition – which is in effect specifying what aircraft the Qantas group should put on a particular service is an inappropriate level of detail for a regulatory condition.

using the present time as a base going forward for that long would be problematic. Submitters noted that the arrangements would in effect create a duopoly on the Tasman (and an increase in market concentration).

31. Several submitters noted that additional routes, such as from Adelaide or Perth could be beneficial, although Christchurch Airport was concerned that this could be at the expense of South Island routes. It was noted that scheduling changes through the alliance could also be beneficial (for example, they could eliminate an overnight stop required on Kuala Lumpur – Melbourne – New Zealand journeys) and Wellington travelers would have improved connections to/from Emirates flights.

32. Submitters noted the contribution that Qantas and Emirates had made to the provision of air services in New Zealand and to New Zealand tourism. The Tourism Industry Association noted that an arrangement that is good for Qantas would be good for Australia and New Zealand, while Tourism New Zealand saw it as generally positive given the circumstances of Qantas' current operations.

33. Air New Zealand noted that some provisions of the Agreement are open ended in their effect. Air New Zealand also considered that the agreement would weaken the incentives on Emirates to carry traffic from Middle East or Europe to New Zealand.

Framework for Consideration of the Public Interest

34. The Civil Aviation Act does not set out any particular framework for assessing whether authorisation is appropriate in the public interest. Our analysis is broadly consistent with our approach to previous applications, and consists of:

    a. an assessment of the proposal against the specific criteria in sections 88 (2) – (5) of the Civil Aviation Act 1990

    b. consideration of where this proposal sits alongside other code-share and alliance agreements in the New Zealand market

    c. consideration of the benefits claimed by the applicants

    d. consideration of the nature and scale of any benefits to consumers or New Zealand as a whole, such as improved connectivity or an enhanced product/service offering

    e. consideration of the nature, scale and likelihood of any possible detriments to consumers, such as reduced services or increased fares

    f. An overall conclusion drawing together the factors above.

Background to airline alliances and cooperative arrangements

35. International aviation is a highly regulated industry, governed by thousands of bilateral (and in some cases, multilateral) air services agreements, which set out (among other things) the nature of the air services that are permitted between any two countries, as well as the ownership criteria for airlines of those countries. A consequence of these restrictions is that consolidation through trans-border mergers is relatively rare in the aviation industry compared to other global industries.

36. In response to these restrictions and with rising concern from competition authorities in the United States, Europe and Australia about the cartel-like nature of tariff setting and interlining[3] through the International Air Transport Association, in the late 1990s many of the major network airlines started entering into three global airline alliances: Star; oneworld; and SkyTeam. Members of these global alliances cooperate to extend the networks of their individual member airlines by offering interlining, frequent flier points and reciprocal lounge access. The airlines also have a tendency to codeshare on a bilateral basis with fellow global alliance members, buying seats on one another's operations.

37. Competition between the three alliances has been a key consideration in a number of regulatory decisions both in New Zealand and internationally. The most significant international examples are three separate Transatlantic alliances which have been approved by United States and European regulators. On these routes, the Star Alliance members have entered into bilateral code-share arrangements with each other, and compete against similar 'blocs' of airlines from oneworld and SkyTeam. In the domestic context, Air New Zealand has bilateral code-share arrangements with many of its Star Alliance partners.

38. The level of cooperation between and among members of the three global alliances varies greatly. As noted by the European Commission and the United States Department of Transportation, "the trend towards joining a global alliance may not necessarily represent consolidation or reduced competition in the aviation industry"[4].

39. A separate trend has been the development of integrated airline alliances. These arrangements involve a greater level of cooperation than through the three global alliances. Cooperation may include joint setting of prices and capacity, revenue sharing, and alignment of products and services. In many ways, these arrangements resemble mergers – except that there is no joint ownership, and coordination is generally confined to specified routes.

40. Collectively, the three global alliances cover most geographical areas and account for more than three-quarters of global air traffic. Until recently, the notable gaps in coverage by the global alliances have been low-cost carriers, and the 'big three' Gulf carriers (Emirates, Etihad, and Qatar Airways), which have preferred to operate independently. However, this is beginning to change, with Air Berlin (a low-cost carrier) joining oneworld in 2012, and Qatar Airways joining in 2013. Etihad (like Emirates an airline based in the United Arab Emirates) has entered into arrangements with KLM-Air France (a member of the SkyTeam alliance).

41. In the New Zealand context, two significant alliance arrangements outside of the global alliances have been approved since 2010. These are the integrated alliance between Air New Zealand and Virgin Australia (formerly Pacific Blue and not a member of a global alliance) on trans-Tasman routes, and the North Asia Alliance Agreement between Air New Zealand and Cathay Pacific, which involved coordination on the Auckland-Hong Kong route. The later was notable in that it included airlines from different global alliances.

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[3] 'Interlining' is a voluntary commercial agreement between individual airlines to handle passengers travelling on itineraries that require multiple airlines.

[4] "Transatlantic airline alliances: competitive issues and regulatory approaches" report by the European Commission and United States Department of Transportation, 2010.

42. The current proposal is further evidence of the changing role of global alliances. As a consequence of the proposed alliance with Emirates (not part of one of the global alliances), Qantas will be dissolving its bilateral relationships with some of its oneworld partners – including its long-standing relationships with British Airways and Cathay Pacific.

Commercial Rationale

43. In their application the parties set out their respective commercial rationales for entering into the Agreement. These are summarised below.

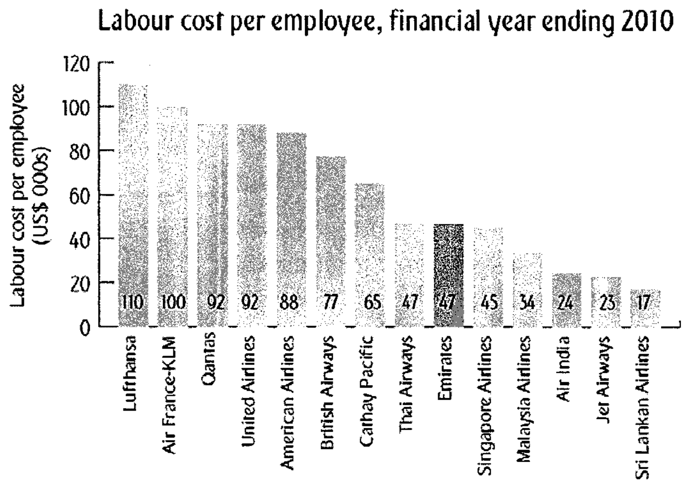
Emirates

44. In the New Zealand market the arrangements would enable Emirates to market a larger number of New Zealand destinations to international travellers and would in effect increase its frequencies across the Tasman. In particular Emirates would be able to market services to and from Wellington – where it is constrained from operating at the moment due to the runway length. This means that Emirates would be able to improve its offering to high-yielding corporate and government travellers in New Zealand and deliver high levels of service in terms of network reach and connectivity, frequent flyer rewards and seamless premium end-to-end customer services.

Qantas

45. Qantas is struggling to compete in the Australasia–Europe market. Qantas has a geographical disadvantage, as its European services are largely dependent on demand between Australasia and Europe, while carriers based in Asia and the Middle East are able to aggregate passengers travelling from a range of sources onto their European services. As a result, Qantas operates to only two points in Europe (London and Frankfurt). In contrast, Singapore Airlines operates to 12 points in Europe; Cathay Pacific operates to five points in Europe; and Emirates operates to over 30 points in Europe. As well as the geographic disadvantage, Qantas has cost disadvantages compared to many other international carriers which benefit from favourable tax regimes, lower labour costs and government funded infrastructure.

46. The graph below which was included in the airlines' application sets out the labour cost per employee for a selection of airlines.



Source: Oxford Economics, airline annual reports

47. Air New Zealand faces similar difficulties as an end-point carrier and these were factors in our recommendation that the Air New Zealand – Cathay Pacific Alliance be authorised.

48. Recently Qantas has dropped to three services a day to Europe (one to Frankfurt and two to London) down from five daily in at the start of 2012. Qantas is planning to withdraw from Frankfurt regardless of whether the alliance is approved.

49. Qantas has developed its current two-carrier model with the introduction of Jetstar in 2004. Qantas has introduced A380 aircraft and invested in new international lounges and in-flight entertainment systems. In August 2011, Qantas announced a further package of cost saving measures including withdrawing from loss-making routes, transforming Qantas Engineering operations and reducing capital investment.

50. Key changes included:
    - replacing Sydney-Buenos Aires services with Sydney-Santiago services in March 2012
    - replacing Qantas operated London-Bangkok and London-Hong Kong services with British Airways operated services in March 2012
    - withdrawing Singapore-Mumbai and Auckland-Los Angeles services in May 2012
    - replacing Boeing 747 aircraft with smaller Airbus A330 aircraft on Sydney-Bangkok services in June 2012
    - replacing Airbus A330 aircraft with smaller B737-800 aircraft on Sydney-Auckland services in May 2012
    - retiring two Boeing B747s in addition to the four that retired in April 2012.

51. Qantas has since taken further steps to reduce capital expenditure by A$400 million in 2012-13 in addition to the A$500 million reduction announced in February 2012 to be achieved through changes to the Qantas Group's fleet plan including deferring delivery of two Airbus A380s previously intended for delivery in early 2012. In August 2012 it announced a restructured fleet plan and the cancellation of orders for 35 Boeing B787-9 aircraft.

52. Qantas considers that the scale of losses from Qantas International ($450 million in fiscal year 2012 compared with $216 million 2011) cannot continue. International routes, including several trans-Tasman sectors, and services to London and Frankfurt, have had negative Earnings Before Interest and Tax for several years.

53. Qantas considers that an integrated alliance with a strong mid-point carrier is an essential further step in the process of securing the viability of the business. While they are both members of oneworld, Qantas was not able to secure a deep or wide-ranging bilateral agreement with Cathay Pacific.

54. Without appropriate commercial arrangements, Qantas considers that it will have no choice but to continue to contract and operate only to airports where it is competitive and can make an appropriate return on capacity. This will not include Europe.

Market definition

Passenger travel

55. The applicants submit that it is not necessary to define the relevant market or markets with precision because the fundamental level of competitive activity, or the competitive process, remains unchanged regardless of market boundaries.

56. However Qantas and Emirates are both active participants in the market for travel outside of their respective home markets of Australia and the United Arab Emirates. In our view it is useful to look at regional markets separately.

57. The analysis below therefore looks at the following passenger markets
    - New Zealand – Australia
    - New Zealand – Oceania (other than Australia)
    - New Zealand – United Kingdom and Ireland
    - New Zealand – Rest of Europe
    - New Zealand – North Africa and the Middle East
    - New Zealand – sub Saharan African
    - New Zealand – South and Central Asia
    - New Zealand – North East Asia
    - New Zealand – South East Asia
    - New Zealand – the Americas

58. We have not distinguished between business and leisure passengers, but do note that time-sensitive or price-sensitive passengers will view the trade-offs between various services differently.

Freight

59. In the analysis below we have separately considered the market for air freight.

Sale of Travel Services

60. Given the wide variety of sales channels available, we do not consider that it is necessary to investigate the impact of the alliance on the market for retail sale of travel services (which has been a consideration in some previous alliances).

Counterfactual

61. The relevant comparison is not between the status quo and the world with the alliance, but rather the situation in the future with the alliance and the situation in the future without the alliance (the counterfactual).

62. Without the alliance, Qantas would likely stay in a cost-saving mode, drawing back from loss-making services particularly beyond East Asia. Emirates as a global airline with a centrally-located hub would continue to expand wherever it saw opportunities. Emirates operations to New Zealand would continue to be shaped by wider market and geographic considerations, notably its inability to economically operate non-stop between Dubai and New Zealand.

Benefits

63. Qantas and Emirates have claimed that the alliance will deliver benefits as follows:

- A significantly expanded global network, improved connectivity and greater choices for Qantas passengers and freight customers to seamlessly travel from New Zealand to Australian, Europe and the Middle East/North Africa region, as well as for Emirates passengers and freight customers connecting to the Qantas Group's domestic, trans-Tasman and other international services
- Materially and instantly enhancing the benefits for members of both parties frequent flyer programs significantly increasing the earning and redemption opportunities across the combined networks
- Enhanced customer experiences and increased product innovation
- Improved competitive offerings from rival carriers in response
- Cost savings and enhanced economic efficiencies, including from economies of scale and joint purchasing which will contribute to optimising the operating performance of both applicants
- Increased tourism and employment
- Promotion of international trade; and
- Economic benefits of enhanced and expedited Emirates growth. For example improved connectivity between regional points in New Zealand and Emirates' gateway points on either side of the Tasman will increase passenger and cargo flows in both directions. Emirates international network can also facilitate increased feeder traffic to the applicants' combined trans-Tasman network.

Expanded global network

64. The applicants state that the combined network will provide 'unprecedented' global coverage and flexibility on itineraries between New Zealand/Australia and numerous destinations in Europe and the Middle East for customers who wish to fly Qantas.

65. A Emirates network map is included in the airlines' application. It shows the spread of the Emirates network which covers 129 destinations in 72 countries.

66. The alliance between Qantas and Emirates will increase the links between New Zealand and this network, including for points not served by Emirates (such as Wellington and Queenstown).

67. Other benefits of the alliance set out below flow from this.

Benefits for Frequent Flyers and Premium Customers

68. The applicants claim that the alliance will materially and instantly enhance the benefits for members of both parties' frequent flyer programs by significantly increasing the earning and redemption opportunities across the combined networks.

69. Members of Emirates frequent flyer programme (Skywards) will be able to earn points on the Qantas international network and Australian domestic legs of international itineraries, and redeem the points on the entire Qantas network. There are more than [redacted] Qantas Frequent Flyer members in New Zealand who will be able to earn and redeem their points on Emirates network (significantly expanding the number of points to and from which these air points can be used).

70. This compares to the counterfactual where Qantas frequent flyer members will have reduced ability to earn and redeem points on international travel where Qantas withdraws from routes.

71. Customers will be offered a range of services including:
    - Reciprocal lounge access – including for Qantas customers to the Emirates lounge at Dubai
    - Premium class and high-tier frequent flyers will benefit from premium services (priority check-in/boarding, baggage handling, lounge access, chauffeur airport transfers etc)
    - Improved disruption handling (for example, ability to change from Qantas to Emirates aircraft and vice versa).

72. We acknowledge that there will be benefits to some consumers through frequent flyer benefits, enhanced customer services such as lounge access and additional premium services. However we assess these as modest.

Enhanced customer experiences and product innovation

73. The alliance will enable the applicants to offer new services that would otherwise not be offered or offered as quickly. For example, the applicants state that they may also be in a position to offer new direct services between Auckland and Adelaide as a result of the alliance.

74. There is no guarantee about new routes emerging from an alliance but we agree that the alliance (by allowing the airlines to combine their passengers onto a service) makes such services more viable.

75. Given the limited frequencies offered by Emirates, opportunities for reducing wingtip operations which are a feature of some alliances are limited here.

Competitive Response from rivals

76. The applicants expect a strong competitive response from Air New Zealand and Virgin Australia in relation to the trans-Tasman. They expect that there will be intensified competition for passengers on all relevant routes.

77. The Qantas-Emirates alliance if approved could also be expected to spur innovative responses from long-haul airlines based at other mid-point airports such as Singapore, Hong Kong, Bangkok, Abu Dhabi, Doha, Beijing, Guangzhou, Shanghai, Kuala Lumpur,

Jakarta and Seoul as they compete to attract Australasian passengers en route to Europe.

78. As set out elsewhere in this report, we agree that there will be strong competition between Qantas/Emirates on the one hand and Air New Zealand/Virgin Australia on the other hand on the Tasman. Entry by other carriers will depend on a range of factors other than the impact of this proposed alliance.

79. The New Zealand – Europe market which is served by many of the carriers as set out below is a very competitive market served by most of the carriers operating to New Zealand.

Cost savings and economic efficiencies

80. Qantas and Emirates claim that as the coordination envisaged under the Agreement matures, they will be able to achieve higher aircraft utilisation and improve operational efficiencies.

81. With increased feeder opportunities resulting from the alliance, the airlines anticipate increases in passenger volumes and therefore they are both more likely to up-gauge their aircraft.

82. Economies of scale for airlines exist in terms of both aircraft size and sector length. When a larger aircraft is used, the average cost per passenger is reduced since the fixed costs incurred in operating a flight are spread over a larger number of passengers. Additionally larger aircraft can be more efficient than smaller ones.

83. The alliance will also allow the applicants to learn from each other in developing and investing in more sophisticated systems for the delivery of premium end-to-end services to customers.

84. We agree that there will be opportunities for the applicants to make cost savings as a result of the alliance. In terms of assessing the impact of cost savings we note that these savings will accrue to non-New Zealand firms. The benefits of these savings would only be to the extent that these savings are passed on to New Zealand consumers in the form of lower prices or investment in higher quality services. The extent of this is uncertain.

Increased Tourism

85. In May 2012 Qantas concluded a Memorandum of Understanding with Tourism New Zealand that allocates more than $4 million and Emirates has also played an important role in promoting New Zealand. Emirates has invested over $8.75 million in promoting New Zealand and spent a further $11 million promoting the 2011 Rugby World Cup.

86. Tourism New Zealand sees the Agreement as a positive step given the circumstances of Qantas' current operations and the potential options for improved connections or additional routes for New Zealand (while noting that it would bring some changes to the market in terms of mono/dual destination travel or stopover strategies that need to be monitored).

87. The Tourism Industry Association considered that, provided the airlines deliver on their commitments, the proposed alliance will deliver consumer benefits. The Association also noted that the benefits for Qantas from the alliance are important for Australian and New Zealand tourism interests.

88. We have not attempted to quantify this. We accept that some benefits in terms of increased tourism should arise from the greater connectivity that the alliance would bring about.

Promotion of International Trade and Business

89. The alliance will enable New Zealand exporters to more readily access the applicants' combined network and increase international trade opportunities.

90. Over the year 2010/11 Emirates carried over 38,600 tonnes of high value and time sensitive New Zealand exports on its flights.

91. The Gulf Cooperation Council as a whole is New Zealand's seventh largest export destination[5] with exports worth $1.5 billion in the year to June 2012 while the United Arab Emirates is New Zealand's largest trading partner in the region.

92. Exports of goods have grown steadily by an average ten percent per year over the last decade, making the Gulf Cooperation Council market one third more valuable for New Zealand than India. The countries of the Gulf Co-operation Council are an entry point into the region for New Zealand companies and a base from which to penetrate the wider Middle East and beyond to Central Asia and Africa.

93. The six states of the Gulf Cooperation Council represent a substantial market opportunity for New Zealand. Comprising around 50 million people, the Gulf Cooperation Council countries are among the wealthiest in the world (e.g. Qatar with a per capita Gross Domestic Product of over US$84,000). Many of the Gulf Cooperation Council economies are hydrocarbon-based, sitting atop an estimated third of global oil reserves and a fifth of global gas reserves. The resulting foreign exchange reserves have given rise to Sovereign Wealth Funds that are among the world's largest. The Abu Dhabi and Kuwait Investment Authorities are worth over US$600 billion and US$300 billion, respectively. Their global investments provide a spread-risk portfolio and future economic insurance.

94. Improved air links are one of the areas of focus in the New Zealand government's strategy for engagement with the Gulf Cooperation Council members. Air services are vital for carrying freight and for services such as tourism and education that rely directly on the movement of people. In addition they facilitate the face-to-face contact that is important in building trading relationships.

95. Emirates plays a significant role in the relationship between New Zealand and the United Arab Emirates, and as such the alliance will help strengthen the bilateral relationship between New Zealand and the United Arab Emirates.

96. The applicants also consider that the alliance would strengthen and expediate the platform for Emirates progressive capacity growth in New Zealand. Emirates makes a contribution through sponsorships and other promotions as noted above. Emirates states that it spent over US$83 million on procurement of New Zealand goods and services in 2011/12.

97. It has not been possible to quantify this, but an increased presence by Qantas or Emirates could lead to additional purchase of services in New Zealand.

[5] Behind Australia, China, the EU, ASEAN, the US and Japan.

Impact on markets by region

98. This section analyses each regional market to and from New Zealand, current market shares and developments likely with or without the alliance. Although not all regions are covered by full cooperation at this stage, the applicants are seeking authorisation to change the scope of cooperation over time.

99. The graphs below show the market shares on total one-way traffic (the number of New Zealanders travelling to that region and the number of visitors from the specified region coming to New Zealand) for the 2012 calendar year.

trans-Tasman

100. As set out in the graph below, a market comprised of a combined Qantas/Jetstar/Emirates grouping on the one hand and the Air New Zealand/Virgin Group alliance on the other would have in effect a duopoly on the Tasman.

101. While the presence of Emirates as an independent force on the Tasman has been an important part of the competitive dynamic on the route, we consider that risks around this can be mitigated and managed by factors existing in the market and by conditions relating to authorisation of the alliance.

102. The Air New Zealand/Virgin alliance will remain an important competitive force on the Tasman and will constrain the ability of this alliance to increase prices. The Tasman is a core route for Air New Zealand and the Virgin group and they can be expected to react to market behaviour by Qantas and Emirates.

103. Regulatory entry barriers are low at least from the New Zealand side with a large number of airlines having the right to operate on the Tasman. The presence of third-country airlines on the Tasman is characterised by entry and exit in response to factors both on the Tasman itself and in the market between the airline's hub and New Zealand.

104. Thai Airways and Malaysian Airlines for example replaced via Australia services with non-stop services between Auckland, and Bangkok and Kuala Lumpur respectively, while Aerolineas Argentinas made the decision to overfly Auckland on its Buenos Aires – Sydney services. Royal Brunei Airlines pulled out of New Zealand altogether.

105. Competition from third-country passenger airlines on the Tasman would currently come from LAN Airlines (six services per week between Auckland and Sydney), and China Airlines (four services per week between Auckland and Sydney, and three services per week between Auckland and Brisbane). Garuda from Indonesia has indicated that it may re-enter the New Zealand – Indonesia via Australia market.

106. We can expect that with or without this alliance third-country airlines will continue to make decisions on whether to operate on the Tasman based on conditions both in the Australia – New Zealand market and in their home markets and beyond. Any price rises on the Tasman would feed into these decisions.

107. The airlines would be required to seek reauthorisation after five years in both Australia and New Zealand. This will both allow an assessment of the impact of the alliance and incentivise the applicants to ensure that benefits are delivered.

108. As discussed elsewhere in this report, the Australian Commission has imposed capacity conditions on its authorisation. This effectively limits the applicants' ability to increase prices through reducing capacity.

109. Authorising the agreement for five years only – rather than indefinitely or tied to the ten-year initial term the applicants are seeking as between themselves – would provide an opportunity for the benefits claimed by the airlines to be tested, as well as an incentive on them to ensure that the benefits are delivered.

110. Air New Zealand and Virgin Australia applied in mid-March 2013 for re-authorisation of their alliance on Australasian routes. The process now underway in New Zealand and Australia of reviewing whether that alliance should be renewed and whether the conditions should be carried over will provide another opportunity to examine the competitive dynamics in this market.

Australia

[redacted]

Oceania (other than Australia)

111. As the graph below shows, the applicants play only a minor role in the market between New Zealand and Oceania (other than Australia). Emirates does not serve any of these markets directly. The market is dominated by Air New Zealand and to a lesser extent the Virgin Australia group. Individual airlines such as Air Vanuatu and Air Caledonie are important in services between New Zealand and their home market. The alliance will not lead to any concentration of market power in this market.

Rest of Oceania

[redacted]

Europe

112. There are many routes between New Zealand and Europe of roughly equal distance so it is a very competitive market and will remain so with or without this alliance.

113. Along with Emirates as a Gulf-based carrier, South East Asian and North Asian airlines operating to New Zealand are geographically positioned to carry New Zealand – Europe passengers, and they all do so to varying degrees.

114. There is also the prospect of entry or expansion by other third-country (sixth freedom) airlines. [redacted]

115. On the other hand, Air New Zealand has recently withdrawn from operating Hong Kong – London, dropping to one service a day to Europe (its daily operation via Los Angeles continues). Qantas has also reduced its Europe services and will disband its long-standing relationship with British Airways on the "Kangaroo Route" regardless of whether or not the alliance is authorised.

116. Emirates operates to multiple points in Europe and its passengers can avoid the congested hubs that Australasian carriers are driven to focus on. As an example Emirates operates to multiple points in the United Kingdom/Ireland (Glasgow, Dublin, Birmingham, Manchester, and Newcastle) in addition to both major airports in London, enabling many travellers to avoid a transit through an overcrowded Heathrow.

United Kingdom - Ireland

[redacted]

Rest of Europe

[redacted]

The Americas

117. The airlines do not currently intend to coordinate operations in these regions, with Qantas continuing its code-share arrangements with LAN from Chile and with American Airlines.

118. Emirates has only a small share of the market between New Zealand and the Americas (and many of these are likely to be dual destination travellers visiting Australia and New Zealand on the same journey).

119. Emirates has the rights to operate on the New Zealand – United States route, but it is difficult to make such a service viable without a code-share partner beyond the gateway point (for example, providing domestic feed from other points in the United States).

120. Air New Zealand dominates this market with Qantas having a significantly smaller presence. These figures overstate Qantas current market share as the 2012 calendar year includes just over four months when Qantas was still operating on the Auckland – Los Angeles route (it pulled off this service in early May 2012).

121. We do not consider that there would be an increase in market power in this market as a result of the alliance. Over time, the alliance will make it slightly more likely that Qantas could choose to re-enter or Emirates could choose to enter the New Zealand – North America market.

The Americas

[redacted]

North Africa and the Middle East

122. Not surprisingly, Emirates has a large market share in its home region (around [redacted]) with the remainder of traffic being carried on their final leg to/from New Zealand on Air New Zealand via various indirect routes and by Asian carriers.

123. [redacted]

[redacted]

124. All airlines in the region are growing fast. Qatar Airways has 120 aircraft across its fleet and another 280 aircraft on order including more than 80 787s; the oldest aircraft in the Qatar Airways fleet is five years old. The new Doha airport, due to open in April 2013, will have a passenger handling capacity of 50 million travellers per year and be bigger than Dubai. Airport development is also planned elsewhere in the region.

125. The alliance should be beneficial for consumers travelling to and from this region as it will provide increased connections to Emirates extensive network.

North Africa and the Middle East

[redacted]

North-East Asia

126. There will not be any significant market concentration in services to North-East Asia. Across the region as a whole neither of the applicants has a significant market share. The region is one of the few where New Zealand is well served by 'home country' carriers with China Southern, Korean Airlines and Cathay Pacific all having a strong presence in the relevant markets. Singapore Airlines also provides a strong connecting network to North East Asia.

127. The number of passengers travelling on Pacific Blue and Jetstar (as well as on Qantas and Air New Zealand trans-Tasman services) reflects travel patterns from this region - with many travellers, particularly from China - being dual-destination travellers, coming to New Zealand and Australia on the same trip.

North-East Asia

[redacted]

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Sub-Saharan Africa

128. The applicants are both active in the New Zealand – Africa market. The largest share of passengers is however travelling on Air New Zealand services via Australia (including Perth from where Air New Zealand has a code-share service to Johannesburg with South African Airways).

129. The alliance will not however initially provide for coordination to South Africa and Qantas will keep its current alliance relationship with South African Airways in place.

130. Qantas and Emirates both serve Johannesburg meaning there is destinational (but not routing) overlap. The overall effect of the alliance in Africa will be increased connections to Emirates Africa network (which in addition to Johannesburg covers Addis Ababa, Accra, Cape Town, Dakar, Dar Es Salaam, Durban, Entebbe, Harare, Khartoum, Lagos, Luanda, Lusaka, and Nairobi). [redacted]

131. To date South Africa is the only country in Africa with which New Zealand has an air services agreement. We have been approached by both Zambia and Ethiopia seeking to negotiate air services agreements. In accordance with the August 2012 International Air Transport Policy Statement we are working towards being in a position to conclude arrangements at the International Air Services Negotiations Conference (ICAN) at the end of 2013. Such arrangements would provide opportunities for airlines to serve these routes, probably on a code-share basis. Ethiopian Airlines is a growing African airline and a member of the Star Alliance.

Sub-Saharan Africa

[redacted]

Southern and Central Asia

132. Nearly 80% of passengers in this market are travelling to and from India and the market shares reflect the strong presence in the market of Singapore Airlines (including its subsidiary Silk Air) - more than 80 frequencies a week to 15 points. A range of other Asian carriers are also participants in this market.

133. Qantas has ceased operating own-aircraft services to India so there is not direct consolidation of market power. Instead New Zealand customers may benefit to the extent that connections are improved to Emirates extensive Indian network (Ahmadabad, Bengaluru, Chennai, Cochin, Delhi, Hyderabad, Kolkata, Kozhikode, Mumbai and Thiruvananthapuram) albeit through routes that involve significant backtracking so would not be attractive to time sensitive passengers.

Southern and Central Asia

[redacted]

South East Asia

134. The New Zealand – South East Asia market is characterised by a number of carriers operating, with Singapore Airlines, Malaysia Airlines, and Thai Airways International all operating from their hubs to New Zealand. Singapore Airlines operates to both Auckland and Christchurch while Malaysia Airlines and Thai Airways International have replaced via Australia services operated previously with non-stop services.

135. Air Asia X operated to Christchurch from April 2011 to May 2012. While this particular service did not prove sustainable it does demonstrate the potential for entry. [redacted]

136. New Zealand has open skies agreements with Singapore, Malaysia and Brunei. While not open skies, there is considerable unused capacity under the agreements with Thailand and, following negotiations in November 2012, with Indonesia.

137. South East Asia is a priority region for the air services negotiation programme and talks with Viet Nam, Thailand, the Philippines and Cambodia are under consideration for the second half of 2013.

138. As part of implementing the alliance, Qantas will cease operating through Singapore to Europe. This may lead to an increase in seats available for New Zealanders travelling via Australia to Singapore and beyond in this region (although the Qantas/Jetstar group will need to balance any services offered from New Zealand on these services with the viability of Jetstar Asia Singapore-Auckland service).

139. We do not consider that the alliance will have a negative impact on competition in the market between New Zealand and South East Asia.

South-East Asia

[redacted]

Market Impact – Freight

140. Three dedicated cargo carriers operate New Zealand services – Tasman Cargo Airlines (five times per week between Auckland and Sydney), Singapore Airlines Cargo (five times per week linking Auckland with Singapore, Melbourne and Sydney), and Federal Express (once per week Los Angeles – Honolulu - Auckland – Sydney – Shanghai – Kansai – Narita - Anchorage).

141. Qantas operates freighters on the Tasman and also a service from the United States via Auckland to Melbourne.

142. Emirates and the Qantas group are both major players in the New Zealand international air cargo market and the trans-Tasman market in particular where their operations directly overlap. Australian statistics give a breakdown by weight and carrier of the trans-Tasman air cargo market. This shows the outbound market shares for 2012 to be Air New Zealand/Virgin Australia 40%, Emirates 27% and the Qantas group 17%. The respective inbound market shares are 37%, 15% and 23%. Emirates is a much more significant participant in the trans-Tasman air cargo market than it is in the passenger market. Combining the Emirates and Qantas group air cargo market shares would give the proposed alliance slightly larger trans-Tasman market shares than its main competing alliance.

143. This situation contrasts with the case of the Air New Zealand-Virgin Australia alliance, where Virgin Australia has never been a significant participant in the New Zealand air cargo market, and that approval had an insignificant impact on the distribution of market shares. This is in large part explained by Virgin Australia's use of B737-800 aircraft into which cargo has to be hand loaded and a business model that relies on the fast turnaround of aircraft.

144. The initial entry of Emirates into the New Zealand air cargo market with wide-bodied passenger aircraft from 2003 gave a major boost to trans-Tasman air cargo

competition, significantly reducing cargo rates. This happened at a time when its major competitors, Qantas and Air New Zealand, were switching to make greater use of narrow-bodied passenger aircraft on the Tasman.

145. While most international air cargo to/from New Zealand is carried through Auckland, where there is clearly a competitive international air cargo market, Christchurch also has a significant market share. Of particular current significance is the freighter service now provided by Qantas on a Sydney-Auckland-Christchurch-Sydney routing. The economics of freighter operations in the New Zealand market, given the relatively high volume-to-value ratio, means that air cargo tends to travel in the belly hold of passenger aircraft. There is, however, a demand for freighter services, particularly for outsized cargo such as the jet engines maintained in Christchurch.

146. In the last two years Emirates and Qantas have both settled with the New Zealand Commerce Commission in relation to cargo-price fixing allegations, although it is difficult to establish the impact such behaviour had on the New Zealand market. Qantas paid NZ$6.5million and Emirates paid NZ$1.5million.

Wider Impact on Competition

147. Our view is that a competitive aviation market in Australasia benefits when Air New Zealand and Qantas are both operating in a financially sustainable manner in conjunction with a range of alliance partners to extend their geographic range and deepen the pool of passengers they have access to.

148. For some time we saw competition in Australasia largely as competition between the Air New Zealand in the Star Alliance and Qantas in oneworld but as set out above the alliance situation has become more fluid. This current application and Air New Zealand's recent alliance with Cathay Pacific are examples of this as it relates to relationships with carriers at mid points to important European and North American destinations.

149. The Australian Department of Infrastructure and Transport in its submission to the Australian Competition and Consumer Commission set out its view that the alliance would enhance consumer choice, deepen competition in a number of markets and broaden Qantas' international network at minimal capital cost. The Department considered that this is important for the viability and longer term international growth of Qantas.

150. We agree that the alliance is an important part of Qantas' strategy for ensuring the airline's viability and that this is beneficial to New Zealand as well as Australia.

Conclusion

151. While there will be some consolidation of market power on trans-Tasman routes, we consider that the benefits of the alliance outweigh the detriments.

Specific Criteria in Part 9 of the Civil Aviation Act

1. This section examines whether and how the arrangements comply with Part 9 (principally section 88) of the Civil Aviation Act 1990 (the Act).

Section 88(3):

In considering whether to grant authorisation under subsection (2) of this section, the Minister shall ensure that the granting of such authorisation will not prejudice compliance with any relevant international convention, agreement, or arrangement to which the Government of New Zealand is a party.

2. The Master Cooperation Agreement covers services by airlines currently designated and operating under the "Agreement between the Government of New Zealand and the Government of the United Arab Emirates on Air Services" signed on 1 March 1998 and the accompanying Memorandum of Understanding dated 3 April 1997 for Emirates and the "Agreement between the Government of New Zealand and the Government of Australia relating to Air Services" signed on 8 August 2002 and the Memorandum of Understanding on Open Skies between Australia and New Zealand dated 20 November 2000 for Qantas.

3. The 1997 New Zealand – United Arab Emirates Agreement provides for an open route schedule and no predetermination of capacity. The Memorandum of Understanding to the Agreement explicitly provides for code-sharing including third-country code-share.

4. [redacted]

5. The New Zealand – Australia Air Services Agreement, under which Qantas and Jetstar provide services, also provides for open routes and capacity and for code-sharing, including on third-country airlines.

6. Authorization of the arrangements is thus consistent with the relevant arrangements and would not prejudice compliance with them.

Section 88(4):

Subject to subsection (5) of this section, authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that:

(a) ***"provides that any party to it may directly or indirectly enforce it through any form of action by way of fines or market pressures against any person, whether or not that person is a party to the contract, arrangement, or understanding"***

7. The Agreement does not contain any provisions that provide for enforcement through fines or market pressures (either directly or indirectly).

(b) Has the purpose or effect of breaching the terms of a commission regime issued under section 89 of this Act

8. Two commission regimes issued by the Minister of Transport are currently in force - the Civil Aviation (Passenger Agents' Commission Regime) Notice 1983 and the Civil Aviation (Cargo Agents' Commission Regime) Notice 1983.

9. Nothing in the agreement has the purpose or effect of breaching either of these commission regimes. The references to commissions in the agreement primarily relate to payments between the airlines (the Commission Regimes relate to the relationship between airlines and agents).

(c) Unjustifiably discriminates between consumers of international air services in the access they have to competitive tariffs

10. The Master Co-ordination Agreement does not set tariffs itself, but put in place a process for setting tariffs. The Agreement does not contain any provisions that unjustifiably discriminate between consumers.

11. The broader issue of the impact of the Agreements on the tariffs that may be faced by consumers generally or particular classes of consumers if the alliance is authorised, is addressed elsewhere this report.

(d) So far as it relates to tariffs, has the effect of excluding any supplier of international carriage by air from participating in the market to which it relates

12. The Master Coordination Agreement requires the parties to terminate certain existing code-share arrangements and [redacted]

13. [redacted]

14. Thus, in relation to tariffs, the Agreement does not have the effect of excluding any supplier of international carriage by air from participating in the market to which they relate.

(e) Has the purpose or effect of preventing any party from seeking approval, in terms of section 90 of this Act, for the purpose of selling international carriage by air at any other tariff so approved

15. The agreement provides for mechanisms under which the parties will cooperate in prices (tariffs). [redacted]

16. It does provide however that [redacted]

17. Although filing of tariffs for approval is now not required, the provisions of the agreement do not therefore prevent a party from filing another tariff for approval and selling such tariffs should it choose to.

(f) Prevents any party from withdrawing without penalty on reasonable notice from the contract, arrangement, or understanding

18. [redacted] of the Master Coordination Agreement provides that the initial term of the agreement is 10 years from the operational date (at which point it can either be renewed or terminated).

19. While this will continue to apply between the airlines, they have agreed with us that they will seek reauthorisation in New Zealand at the same time as they are required to seek reauthorisation from the Australian Competition and Consumer Commission (by March 2018).

20. The agreement also provides for termination in the case of a material change of circumstances or certain events of default.

21. While simple code-share arrangements often provide for relatively short notice periods (sometimes as short as a schedule period), alliance arrangements often envisage and require a greater degree of commitment by the parties. Withdrawal by one party could cause considerable disruption to the other party. Therefore, longer notice periods may be appropriate.

22. Qantas for example faces a substantial investment associated with the shift of its hub to Dubai. Start up costs include staff training, marketing launch costs, developing and rolling out IT systems and setting up new joint offices. Qantas estimates these start up costs will be in the range of A$[redacted]. In developing the alliance, Qantas will also be breaking off its long standing commercial relationship with British Airways.

23. The applicants have stated that given this context neither Qantas nor Emirates considers the termination provisions to be unreasonable or unrealistic.

24. [redacted] The Ministry has previously concluded that in some cases a period of five years is acceptable for more significant alliance or code-share agreements, notably:

- Air New Zealand/United Expansion Agreement, which had a period of 4 years (4 years then 12 months notice).
- Air New Zealand/Ansett/Singapore Airlines, which had a period of 5½ years.

25. The applicants consider that their proposed conduct in this case has far more of a global nature than agreements on isolated parts of a route network that can be distinctly managed, adapted or even terminated. Qantas sees this agreement as a critical strategic imperative.

26. The Agreements do not contain any provisions that prevent any party from withdrawing without penalty on reasonable notice from the contract, arrangement, or understanding.

Conclusion on section 88(4)

27. There are no provisions in the Agreement that fall within any of the prohibitions in section 88(4) of the Act.

Section 88(5):

Notwithstanding the provisions of subsection (4) of this section, the Minister may authorise any provision of any contract, arrangement, or understanding under this section if the Minister believes that to decline authorisation would have an undesirable effect on international comity between New Zealand and any other State.

28. This provision only becomes relevant if, contrary to the advice set out above, you determine that provisions in the Agreements fall foul of one of the criteria in section 88(4) of the Act.

29. Comity is not defined in the Act and the Act is the only instance of the use of the term in New Zealand legislation.

30. "Comity" is defined in the Shorter Oxford (in the form of "comity of nations") as being "the courteous and friendly understanding by which each nation respects the laws and usages of every other, so far as may be without prejudice to its own rights and interests". In very similar vein is Chambers: "The international courtesy between nations in which recognition is accorded to the laws and customs of each state by others". Legal dictionaries focus more on the aspect of courts taking due notice of foreign laws and judgments. Comity is not part of international law but is regarded as important for public policy reasons.

31. Most international code-share arrangements will require approval in two jurisdictions, each with their own legislation or processes. This provision should not be interpreted to mean that New Zealand must always accept and adopt the findings of the other regulator. The two regulators will be applying different legislation. The impacts of a proposed alliance may also be different in the two countries.

32. In the case of Australia, in particular, the Air Services Agreement provides (Article 14(1)) that (emphasis added)

    The competition laws of each Party, as amended from time to time, shall apply to the operation of the airlines of both Parties. Where permitted under those laws, a Party or its competition authority may, however, unilaterally exempt commercial agreements between airlines (including block-space, code-share and other joint service agreements) from the application of its domestic competition law. **This does not obligate a Party or its competition authority to provide a reciprocal exemption.**

33. We do not consider that declining to authorize any provisions of the Agreements would have an undesirable effect on international comity between New Zealand and any other State.

Annex 2

Analysis of how arrangements relate to tariffs and capacity

Introduction	[redacted]	Structural
1.1	[redacted]	Machinery
1.2	[redacted]	Machinery
2	[redacted]	Machinery – (and for clause 2.5(b) – indirectly related to capacity)
3	[redacted]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore indirectly to the fixing of tariffs and capacity
4	[redacted]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore indirectly to the fixing of tariffs and capacity
5	[redacted]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore indirectly to the fixing of tariffs and capacity
6	[redacted]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore indirectly to the fixing of tariffs and capacity
7	[redacted]	Relates directly or indirectly to the fixing of capacity
8	[redacted]	Relates directly and indirectly to the application of tariffs and the fixing of capacity
9	[redacted]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore indirectly to the fixing of tariffs and capacity
10	[redacted]	Clauses (c) and (d) indirectly relate to the fixing of capacity. The applicants have withdrawn request for authorisation in regards to sub-clauses (a), (b), (e) and (f)
11	[redacted]	Machinery (partly boilerplate)
12	[redacted]	Machinery (partly boilerplate)
13	[redacted]	Machinery – necessary for the operation of other provisions relating to tariffs particularly and capacity
14	[redacted]	Machinery – in entering into agreements on tariffs and in particular capacity, parties need to understand what will happen if these arrangements are wound up – indirectly relates to the fixing of tariffs and capacity
15	[redacted]	Boilerplate
16	[redacted]	Boilerplate

17	[redacted]	Boilerplate
18	[redacted]	Boilerplate
Schedule 1	[redacted]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore indirectly to the fixing of tariffs and capacity
Schedule 2	[redacted]	
1	[redacted]	Machinery
2	[redacted]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore indirectly to the fixing of tariffs and capacity
3	[redacted]	Machinery
4	[redacted]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore indirectly to the fixing of tariffs and capacity
5	[redacted]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore indirectly to the fixing of tariffs and capacity
6	[redacted]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore indirectly to the fixing of tariffs and capacity. Some sections relate directly to the setting of tariffs and capacity
7	[redacted]	Relates directly and indirectly to the fixing of tariffs and capacity
Attachment 1	[redacted]	Machinery
Schedule 3	[redacted]	Relates directly and indirectly to the fixing of capacity
Schedule 4	[redacted]	Relates directly and indirectly to the application of tariffs and the fixing of capacity
Schedule 5	[redacted]	
1	[redacted]	Structural
2	[redacted]	Machinery
3	[redacted]	Relates directly to the fixing of tariffs

4	[redacted]	Relates indirectly to the fixing of tariffs
5	[redacted]	Relates indirectly to the fixing of tariffs and capacity
6	[redacted]	Relates directly to the fixing of tariffs
7	[redacted]	Relates indirectly to the fixing of tariffs and capacity
8	[redacted]	Relates indirectly to the fixing of tariffs
9	[redacted]	Relates indirectly to the fixing of tariffs
10	[redacted]	Machinery
11	[redacted]	Machinery
12	[redacted]	Part machinery, part relates indirectly to the fixing of tariffs
13	[redacted]	Machinery
14	[redacted]	Machinery
15	[redacted]	Machinery
Attachment 1	[redacted]	Machinery
Schedule 6	[redacted]	Relates directly and indirectly to the fixing and application of tariffs
Schedule 7	[redacted]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore indirectly to the fixing of tariffs and capacity. Some sections relate directly or indirectly to the application of tariffs.
Schedule 8	[redacted]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore indirectly to the fixing of tariffs and capacity.
Schedule 9	[redacted]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore indirectly to the fixing of tariffs and capacity.