

Australian Competition & Consumer Commission

Our Ref: C2002/1774
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20 December 2002

Mr Aldo Nicotra
Blake Dawson Waldron
Locked Bag N6
PO Grosvenor Place
Sydney NSW 2000

Mr Michael Gray
Freehills
GPO Box 4227
Sydney NSW 2001

Dear Mr Nicotra and Mr Gray

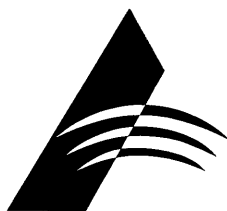
**Trade Practices Act 1974
Applications for authorisation A30220-2
lodged by Qantas and Air New Zealand**

Please find attached a copy of the letter sent yesterday to interested parties inviting comment on the above applications.

Yours sincerely

Greg Outzen
Director
Adjudication Branch





Australian Competition & Consumer Commission

Our Ref: C2002/1774
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19 December 2002

Mr Paul Golland
Activair
PO Box 82
MASCOT 1460

Dear Mr Golland

Trade Practices Act 1974
Applications for authorisation lodged by
Qantas Airways Limited and Air New Zealand

On 9 December 2002 the Australian Competition and Consumer Commission (the Commission) received applications for authorisation (A30220, A30221 and A30222) from Qantas Airways Limited (Qantas) and Air New Zealand Limited (Air NZ). The applications have been made pursuant to subsections 88(1) and 88(9) of the *Trade Practices Act 1974* (the Act) for conduct which may constitute an exclusionary provision within the meaning of the Act, conduct which may substantially lessen competition and for the acquisition of shares.

The applications specifically seek authorisation for:

1. the acquisition by Qantas of ordinary shares comprising up to a 22.5 per cent voting equity interest in Air NZ (the Equity Proposal); and
2. collaborative arrangements between the parties (the Strategic Alliance Proposal).

By way of background, the Commission is the Commonwealth agency responsible for administering the Act. A key objective of the Act is to prevent anticompetitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The Act, however, recognises that the public interest may not always be met by the operation of competitive markets. Authorisation is a process whereby the Commission, in response to an application, has the power to grant immunity from court action for arrangements or



conduct which might otherwise be in breach of the Act. In order to grant authorisation the Commission must be satisfied the public benefit arising from the arrangements or conduct outweighs any anticompetitive detriment.

A guide is enclosed which outlines the authorisation process under the Act.

Qantas/Air NZ Strategic Alliance Proposal and Equity Proposal

As a potentially interested party you are invited to make a written submission to the Commission regarding the likely public benefits and effects on competition of the arrangements for which authorisation is sought.

An Executive Summary of the Qantas/Air NZ supporting submission is enclosed as well as sections of the Strategic Alliance Agreement which describe the proposed arrangement between the airlines. The full application and supporting submission can be viewed by following the "Adjudication" and "Authorisations" links on the Commission's website at <http://www.accc.gov.au>. If you do not have internet access, please contact Amanda Dadd on 02 6243 1391 to arrange for a copy of the submission to be forwarded to you.

Public benefits

In their supporting submission, the applicants suggest that the primary sources of public benefits likely to flow from the proposed conduct are:

Cost efficiencies arising from economies of scale and more cost efficient aircraft usage and maintenance.

Scheduling efficiencies including improved flight frequency, enhanced connectivity and additional direct services as a result of changes to the scheduling of flights on routes currently served by Qantas and Air NZ.

Increased tourism to Australia from the opening up of opportunities for cooperative advertising, primarily in retail sales promotion of home markets.

Improved freight operations with cooperation between the parties creating opportunities for expanded freight services.

Increased international competitiveness of Qantas and Air NZ through maintaining their ability to compete in the increasingly competitive and volatile global aviation market.

Preservation of a commercially viable full service Australian airline and a network linking Australia to its trading partners and sources of inbound tourism.

The national interest which will be served by the alliance whose objectives are consistent with Australian Government policy.

You may wish to comment on any of the above claimed public benefits or any other benefits identified by Qantas and Air NZ as arising from the proposed conduct. Fuller detail on the claimed benefits is available in the supporting submission provided by the applicants.

Anti-competitive effects and public detriment

The Commission would also welcome comments on the likely competitive effects of the proposed conduct. In particular, you may wish to comment on the following issues.

Market definition: In assessing detriment, the Commission will examine whether the proposed conduct will, or is likely to, result in a lessening of competition in relevant markets. The applicants have suggested that the relevant markets are the passenger air services market, the freight market, and the travel distribution services market. In the case of the former two markets, the relevant geographic areas are claimed to be within each of and between Australia and New Zealand, and between Australia and North America.

Barriers to entry: Barriers to entry are those factors that may discourage a party from establishing itself as a competitor in the market. You may wish to comment on:

- (i) the ease (or difficulty) with which a new entrant or established airline could establish itself as a competitor to Qantas and Air NZ in the relevant market(s) under the proposed alliance, compared to the position that would exist if it did not go ahead.
- (ii) the likelihood of other airlines entering or leaving the relevant markets if the proposed alliance was to proceed.

Current levels of competition: To what extent are Qantas and Air NZ currently both vigorous and effective competitors in markets covered by the authorisation application?

Price and quality: You may wish to comment on the possible impact of the proposed alliance on the price and/or quality of products and/or services that Qantas and Air NZ provide.

Australian domestic market: To what extent is the proposed alliance likely to impact on competition in the Australian domestic market, including the ability of airlines to enter the market, given that domestic on-carriage traffic from Qantas and Air NZ international flights could be expected to go to Qantas domestic services?

Availability of substitutes: You may wish to comment on the degree to which products and/or services provided by Qantas and Air NZ are substitutable with other products and services in the relevant market(s). To what extent are there alternative transport services available, for example, sea freight, if the applicants increased prices under the proposed arrangements?

Market power: You may wish to comment on the degree of market power and the potential impact of the power that would flow to Qantas and Air New Zealand under the proposed alliance as suppliers (for example, to the travel distribution market) or as procurers of goods and services (for example, of parts and supplies, engineering, ground handling, maintenance, etc.).

Other matters

The submission provided by the applicants in support of their applications for authorisation includes a report prepared by the Network Economics Consulting Group Pty Ltd (NECG). The *NECG Report* attempts to provide a qualitative assessment of the competitive impact and public benefits arising from the Strategic Alliance and Equity Proposals. The report is available on the Commission's website. The Commission would welcome comments on the NECG modelling and outcomes as well as premises, assumptions and data used in the assessment.

The Commission would also welcome comments on any other relevant aspect or the likely outcome(s) should the proposed arrangements be granted authorisation.

Submissions

The Commission asks for submissions to be in writing so that they can be made publicly available. Submissions are placed on a public register and may also be placed on the Commission's website. The Commission may, where appropriate, supplement written submissions with discussions with relevant parties on a mutually convenient basis.

Should you lodge a submission with the Commission you may request that information included in the submission be treated as confidential and not placed on the public register or the Commission's website. In such circumstances you must justify why the Commission should treat such information as confidential, otherwise it would be expected to be made public. The Commission may take confidential information into account during its assessment of an authorisation application. Guidelines for seeking confidentiality are attached for your information.

If you wish to lodge a submission, please address it to:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Submissions can also be lodged by email to adjudication@acc.gov.au, or by facsimile on 02 6243 1211.

If you intend to provide a submission in relation to the Qantas/Air NZ Equity and Strategic Alliance Proposals, please do so by cob Wednesday 5 February 2003.

Should you have any queries or if you wish to discuss any aspect of this matter further please contact Greg Outzen on 02 6243 1227 or Amanda Dadd on 02 6243 1391.

Yours sincerely

Tim Grimwade
General Manager
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation applications. Applicants and interested parties can request that a submission, or a part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or processes;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words “**Restriction of Publication Claimed**” should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words “**Restriction of Publication of Part Claimed**” should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the *Trade Practices Act 1974*.