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TO Greg Outzen
 AT ACCC
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 DATE 16 January 2003

FROM Jonathan Callaghan
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 OUR REF LXW:JPC:221537
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Dear Greg

TRADE PRACTICES ACT 1974 APPLICATIONS FOR AUTHORISATION A30220-2 LODGED BY QANTAS AND AIR NEW ZEALAND

Please see attached.

Yours sincerely
GILBERT + TOBIN

Jonathan Callaghan/Luke Woodward



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16 January 2003

Greg Outzon
Australian Competition and Consumer Commission
470 Northbourne Avenue
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By Facsimile: (02) 6342 1199

Dear Mr Outzon

QANTAS - AIR NZ AUTHORISATION

As you are aware we act for Virgin Blue.

Our client notes that the applications of Qantas and Air New Zealand (**Applicants**) for authorisation of the Qantas/Air New Zealand Alliance and the acquisition by Qantas of an equity interest in Air New Zealand dated 9 December 2002 (**Applications**) rely heavily on the what is described as a "counterfactual" – namely, the likely structure, in the opinion of Qantas and Air New Zealand, of the relevant markets in circumstances where the Alliance were not to proceed.

It is the difference in outcome under the "counterfactual" and "factual" scenarios from which the benefits and the detriments of the proposed Alliance are measured. Accordingly, the reliability of these hypothetical scenarios is critical in quantifying the benefits and detriments alleged to arise by the Applicants and ultimately fundamental to the case for authorisation. However, while details of the factual scenario have been provided by the Applicants few, if any, details of the counterfactual scenario have been provided. Instead these have been included in confidential Appendices D and F of the Report on the Competitive Effects and Public Benefits Arising from the Proposed Alliance between Qantas and Air New Zealand prepared by NECG and dated 8 December 2002 (**NECG Report**).

Virgin Blue considers that the Commission is unlikely to be able to adequately assess the validity of the counterfactual scenario unless it can be properly tested. To properly test the scenario it should be made available to Virgin Blue and other industry participants so that they can analyse it and make submissions in relation to it.

Accordingly, Virgin Blue requests that the Commission not grant confidentiality to Annexures D and F and revoke any prior decision to grant confidentiality. If Qantas and Air New Zealand are not prepared to proceed with their submission on the basis of a publicly disclosed counterfactual scenario, the Commission would of course be required to proceed to consider the matter in the absence of any such submission and information.

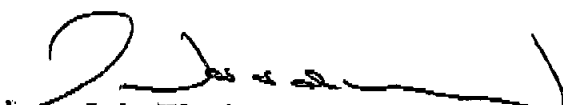
Virgin Blue also submits that the case for granting confidentiality to the counterfactual scenario appears to be weak and, in any event, insufficient to outweigh the public interest in the disclosure of, and the need for the Commission to properly test, that scenario. In this context, Virgin Blue notes that that:

- the parties have in the supporting submissions and in public disclosed their claimed alternative commercial strategies underpinning the counterfactual scenario and hence granting confidentiality does not protect those strategies;
- Qantas/Air New Zealand clearly do not consider the disclosure of their factual scenario schedules to be commercially sensitive; and
- in any event the counterfactual scenario appears to be a highly speculative presentation of what Qantas and Air New Zealand might do in the future.

Accordingly, in the interests of a rigorous assessment of the Applications, Virgin Blue requests that the Commission includes Appendices D and F of the NECG Report on the public register.

If you have any questions please call either myself (02 9263 4014) or Jonathan Callaghan (02 9263 4058).

Yours sincerely
GILBERT + TOBIN



Luke Woodward/Jonathan Callaghan