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Mr Tim Grimwade
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
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Dear Sir

Application for Authorisation lodged by Qantas and Air New Zealand

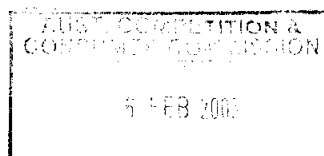
Melbourne Airport is pleased to have the opportunity to comment on this matter.

Even since before the events of September 2001 it has been clear that long-term stability and viability of the global aviation industry would necessarily involve consolidation of airline operators either by way of alliances, acquisition or exit by some carriers from the industry. In our region, the performance of a number of carriers, and in particular Air New Zealand, has shown how vulnerable some operations are.

It is clear that the arrangements proposed will deliver a future for Air New Zealand characterised by greater certainty than is currently the case. Similarly, the arrangements proposed present a significant commercial opportunity for Qantas. That said, however, we do not believe that the successful completion of this agreement is essential for the long-term viability of Qantas.

The analysis presented by NECG shows that the bulk of the benefits from the agreement will flow to the shareholders of Qantas and Air New Zealand. Whilst we understand the general economic principles that suggest these benefits ultimately filter through to the public more generally, relatively little benefit flows directly to consumers and indeed, consolidation of capacity could in some sense be seen as a reduction of supply which is *a priori* not in the interests of consumers.

The agreement essentially has the effect of removing restrictions in the market for airline capital. There are numerous examples where deregulation in one market whilst continuing to regulate a closely related one can lead to perverse if not disastrous outcomes in another to the demonstrable disbenefit of consumers – the Californian electricity market is an extreme example of this.



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Increasing market share should not be of great concern if one is satisfied that the relevant markets are contestable. Indeed, the appropriate policy to increasing market share is to increase contestability by removing barriers to entry. A vastly inferior response is to seek to regulate conduct in the market and in particular to impose price controls and capacity commitments to certain routes. Melbourne Airport is opposed to the introduction of price controls on airlines to the same extent that it is opposed to price controls on its own business. Route design must similarly be a decision driven by commercial considerations, not regulation.

The policy of successive Australian governments since the early 1990s has been to remove barriers to entry and encourage competition both in domestic and international markets. This process has ensured that access to airport facilities for international services are in the hands of independent third parties such as ourselves who have no lawful incentive to deny access to new entrant international carriers, a fact we believe has been borne out in the conduct of major airports since privatisation.

It is our view that competition and consumer interests will continue to be improved by further reform and in particular, further liberalisation of Australia's international air services policy. Whilst we believe this is necessary even in the absence of the matter currently being considered by the Commission, we believe it is an essential part of ensuring that the increased concentration that will inevitably arise if the Commission authorises the agreement does not lead to a situation of market power that could be used in a way detrimental to consumers interests.

Whilst we accept further liberalisation may not be in the direct interest of shareholders of the airlines concerned, it is in consumers interests who on the basis of the information put forward by the airlines are getting very little from the agreement as currently structured.

There is a vast range of ways in which this could be achieved. Each depends upon the intricacies of existing agreements which it needs to be kept in mind are agreements between sovereign states, not airlines, and are therefore potentially subject to a wider range of considerations than just aviation issues. However, the basic feature must be to facilitate entry on both the trans Tasman and trans Pacific routes. One option would be to grant all international carriers with rights to and from Australia with rights to carry passengers between Australia and New Zealand and where possible and appropriate beyond.

We understand that it is not possible, nor desirable, for the Commission to force a change to Government policy. It is however possible for the Commission to request the Government to review its air services policy prior to the Commission authorising the agreement if the Commission felt that reform of that policy would lead to a market structure in which Qantas and Air New Zealand were less able to abuse market power.

Other carriers, be they international, or Australian or New Zealand based carriers (such as Virgin Blue) need to be assured that if they do enter the market, they will not be subject to anti-competitive conduct on the part of Qantas and Air New Zealand. We believe that there are good grounds to believe that it is very difficult under the current interpretation of section 46 of the *Trade Practices Act 1974* to secure convictions into what has generally become known as capacity dumping. This view is widely held and may actually act as a disincentive to entry. We therefore believe that the Commission should require specific binding undertakings that would prevent such conduct prior to granting authorisation thus dealing with any perceived inadequacies in the more general statute law.

In summary therefore, we do not believe authorisation would be contrary to the public interest providing there is further liberalisation to the current air services policy and undertakings are given that would satisfy potential entrants that they would be protected from capacity dumping.

If you wish to discuss these issues further, please feel free to contact Warren Mundy or myself.

Yours sincerely

A handwritten signature in black ink, reading "Chris Barlow". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

Chris Barlow
CHIEF EXECUTIVE OFFICER