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Outzen Gregory

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Sent: Wednesday, 18 December 2002 2:18 PM
To: 'greg.outzen@accc.gov.au'
Cc: Nicotra Aldo 6108 AN; 'Michael Gray'
Subject: Air New Zealand and Qantas: SAA

Greg,

We refer to our letter of 17 December 2002 and your conversation with Michele Laidlaw earlier this morning.

As discussed, please find attached a redacted version of the confidential Strategic Alliance Agreement for inclusion on the public register, with the introduction, sections 1 to 7 (inclusive) and section 10 unmasked.

Regards,

Aldo Nicotra/Michele Laidlaw

<<112090438_Confidential Strategic Alliance Agreement.pdf>>

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Strategic Alliance Agreement

AIR NEW ZEALAND LIMITED

AND

QANTAS AIRWAYS LIMITED

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AGREEMENT dated 25 November 2002

PARTIES

AIR NEW ZEALAND LIMITED (AK 104799) a company incorporated in New Zealand and having its registered office at Quay Tower, 29 Customs Street West, Auckland, New Zealand ("**Air NZ**"); and

QANTAS AIRWAYS LIMITED (ABN 16 009 661 901) a company incorporated in Australia and having its registered office at 203 Coward Street, Mascot, New South Wales, 2020, Australia ("**Qantas**").

INTRODUCTION

- A. Qantas operates Australian domestic, New Zealand domestic and international air services.
- B. Air NZ operates New Zealand domestic and international air services.
- C. Qantas and Air NZ wish to work together in an Alliance to ensure a commercially viable, independent, Australasian owned aviation industry, with both Qantas and Air NZ remaining autonomous, while increasing their international competitiveness.
- D. Under this Alliance, it is proposed that Qantas and Air NZ work together in good faith and with full co-operation and transparency to successfully grow both airlines.
- E. The Alliance will maintain the ability for Air NZ and Qantas to provide competitive and commercially viable airline services for Australia and New Zealand in support of the transport and commercial infrastructures and trade and tourism interests of each country, and the Australasian region, while allowing each party to remain autonomous.
- F. On the date of this Agreement, Qantas and Air NZ have entered into a Subscription Agreement pursuant to which Qantas has agreed to subscribe for, and Air NZ has agreed to issue to Qantas, such number of shares in Air NZ as will, after their issue, result in Qantas holding a cornerstone shareholding of up to 22.5 percent of the total voting shares in Air NZ.
- G. On the date of this Agreement, Qantas and Air NZ have entered into certain Related Documents governing other aspects of the relationship between the parties, including co-ordination of the implementation of the Alliance and the ability of each party to be represented on the Board of Directors of the other party.
- H. The parties wish to enter into this Agreement (subject to obtaining all necessary government and regulatory approvals) which will, together with any Related Documents, govern all aspects of the Alliance.

1. INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires:

"**ACCC**" means the Australian Competition and Consumer Commission;

“Agreement” means this agreement (and includes the Schedules and Attachments to this Agreement) as amended from time to time;

“Airline Affiliate” means:

- (a) Subsidiaries of the parties (excluding, in the case of Air NZ, Freedom); and
- (b) franchisees or other affiliated airlines of a party which are effectively controlled by that party;

“Air NZ Group” means Air NZ and any Subsidiary of Air NZ;

“Air NZ Network” means the airline network as described in Part 1 of Schedule 1;

“Air NZ Shareholder Approval” means all approvals of Air NZ shareholders (excluding, for the avoidance of doubt, the Kiwi Shareholder) required by Relevant Laws that the parties (acting reasonably) agree are necessary or desirable to implement and consummate all aspects of this Agreement, the Related Documents and Transactions;

“Alliance” means the strategic relationship established between Qantas and Air NZ by this Agreement as described in clause 2;

“Ancillary Competition Laws” means those competition laws existing in the jurisdiction of the Ancillary Competition Regulators;

“Ancillary Competition Regulators” means the US Department of Transportation, European Commission, Fiji Commerce Commission, Japanese Competition Commission, and such other regulators as may be agreed between the parties from time to time;

“Australian Domestic Sector” means any airline Sector operated by Qantas that departs from and arrives in Australia and **“Australian Domestic Sectors”** shall be construed accordingly;

“Business Day” means any day other than a Saturday, Sunday, a public holiday in Auckland, New Zealand or a day on which banks are not open for business in Auckland, New Zealand;

“Board Representative” has the meaning set out in the Reciprocal Board Representation Deed;

“Code of Conduct” means the Code of Conduct set out in Schedule 4;

“Codesharing” means where one airline assigns its airline designator code to a flight operated by another airline and **“Codeshare”** shall be interpreted accordingly;

“Companies Act” means the Companies Act 1993 (New Zealand);

“Conditions” means the conditions precedent to this Agreement, set out in clause 8.1 and **“Condition”** means any one of them;

“Co-ordination Agreement” means the agreement, intended to be entered into by the parties on the date of this Agreement, under which the parties will agree certain matters relating to the satisfaction of the Conditions;

“Crown” means Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance;

“Effective Date” means the date on which all of the Conditions are satisfied or waived, as the case may be;

“Equity Security” has the meaning given to that term in Air NZ's constitution;

“FATA” means the Foreign Acquisitions and Takeovers Act 1975 of Australia;

“Freedom” means Freedom Air Limited;

“Freight” means air freight, including mail and courier traffic;

“Global Airline Alliance” means a global airline marketing alliance such as oneworld or the Star Alliance;

“Governance Principles” means the JAO Governance Principles and Non-JAO Governance Principles set out, respectively, in Parts 1 and 2 of Schedule 2;

“JAO Governance Principles” means the principles and processes applicable to the management and operation of the JAO Networks, as set out in Part 1 of Schedule 2;

“JAO Networks” means both the Air NZ Network and the Qantas NZ Network, as described in Schedule 1;

“Joint Airline Operations” or **“JAO”** means the agreements reached by the parties as set out in this Agreement to co-operate and co-ordinate their respective operations in relation to the JAO Networks;

“Kiwi Shareholder” has the meaning given to that term in Air NZ's constitution;

“Management Fee and Adjustment Payment Calculation” means the payment calculation set out in Schedule 3;

“NZ” means New Zealand;

“NZCC” means the New Zealand Commerce Commission;

“Non-JAO Governance Principles” means the principles and processes in accordance with which Air NZ and Qantas will co-operate in relation to the Non-JAO Networks (including Freedom), as set out in Part 2 of Schedule 2;

“Non-JAO Networks” means the networks and businesses (flying and non-flying) of Air NZ (including Freedom) and Qantas which do not form part of the JAO Networks but are otherwise agreed by the parties to form part of the Alliance, as set out in this Agreement;

“oneworld” means the airline alliance between (at the date of this Agreement) Aer Lingus, American Airlines, British Airways, Cathay Pacific, Finnair, Iberia, LanChile and Qantas;

“Other Sector” means a Sector that does not arrive in or depart from New Zealand or Australia;

“Qantas Group” means Qantas and any Subsidiary of Qantas;

“Qantas Holidays” means the business operated under the name “Qantas Holidays” by Qantas Holidays Limited, a wholly-owned Subsidiary of Qantas;

“Qantas International Sectors” means any international Sectors flown by Qantas that depart from any country other than New Zealand and arrive in any country other than New Zealand;

“Qantas NZ Network” means the airline network as described in Part 2 of Schedule 1;

“Qantas Non-JAO Sectors” means the Qantas International Sectors and the Australian Domestic Sector;

“Qantas Secondees” means the Qantas employees that may be seconded to Air NZ from time to time, as referred to in the JAO Governance Principles;

“Qantas Top-up Right” means Qantas’ right to acquire additional shares in Air NZ in order to maintain its percentage shareholding in the company as contained in the Top-up Deed;

“Reciprocal Board Representation Deed” means the deed under which the parties will agree to provide each other with certain rights in relation to the nomination of representatives to their respective boards, entered into by Air NZ and Qantas on the date of this Agreement;

“Related Body Corporate” has the meaning set out in section 5(7) of the Securities Amendment Act 1988 (New Zealand);

“Related Documents” means:

- (a) this Agreement;
- (b) the Co-ordination Agreement;
- (c) the Top-up Deed;
- (d) the Subscription Agreement;
- (e) the Reciprocal Board Representation Deed;
- (f) the Sell-down and Voting Restriction Deed; and
- (g) the Transition Deed,

and any other written and executed document which the parties agree in writing are Related Documents;

“Relevant Air NZ Alliance Agreements” means the following agreements:

- (a) Star Alliance Agreement;
- (b) United Airlines Agreements; and
- (c) Singapore Airlines Alliance Agreement dated 7 August 2001 and all agreements entered into pursuant to that agreement;

“Relevant Competition Laws” means the Commerce Act 1986 (New Zealand), the Trade Practices Act 1974 (Australia) and any relevant regulations promulgated under those statutes;

“Relevant Competition Regulators” means the NZCC and the ACCC, unless otherwise agreed by the parties;

“Relevant Interest” shall have the meaning given to it in the Securities Amendment Act 1988 of New Zealand;

“Relevant Laws” means all statutes, rules and regulations applicable to Air NZ including, without limitation, the Companies Act, the listing rules of the Australian Stock Exchange Limited and the New Zealand Stock Exchange and the Takeovers Code;

“SAAG” means the Strategic Alliance Advisory Group constituted in accordance with clause 4.3;

“Sector” means a non-stop (excluding technical stops where no passengers or freight are picked up or dropped off) flight leg between two points;

“Sell-down and Voting Restriction Deed” means the sell-down and voting restriction deed between Air NZ and Qantas dated the date of this Agreement;

“Star Alliance” means the airline alliance between (at the date of this Agreement) Air Canada, Air New Zealand, All Nippon Airways, Austrian Airlines, British Midland, Lauda Air, Lufthansa, Mexicana, SAS, Singapore Airlines, Thai Airways, Tyrolean Airways, United Airlines and Varig;

“Star Alliance Agreement” means the agreement dated 30 March 2001 between the Star Alliance members and Air NZ and includes any agreement to substantially the same effect which amends or replaces it;

“Subscription Agreement” means the subscription agreement, under which Qantas has agreed to subscribe for and Air NZ has agreed to issue up to 22.5 percent of the total voting shares of Air NZ entered into by Qantas and Air NZ on the date of this Agreement;

“Subsidiary” means subsidiary as defined in the Companies Act;

“Takeovers Code” means the Takeovers Code in the Schedule to the Takeovers Code Approval Order 2000;

“Top-up Deed” means the deed, entered into by the parties on the date of this Agreement, under which Qantas has the ability to maintain its percentage shareholding in Air NZ;

“Transactions” means the transactions contemplated by this Agreement and the Related Documents;

“Transition Deed” means the deed, entered into by the parties on the date of this Agreement, under which the parties will agree certain matters relating to the parties becoming members of the same Global Airline Alliance;

“Trans-Tasman Sectors” means any Sectors which:

- (a) depart from Australia and arrive in New Zealand; or
- (b) depart from New Zealand and arrive in Australia;

“United Airlines Agreements” means the United Airlines Alliance Agreement dated 27 November 1996, the Codeshare and Regulatory Co-operation Agreement dated 27 November 1996 and the United Airlines Expansion Agreement dated 1 December 1999, together with any agreements entered into pursuant to those agreements;

“USA” means United States of America; and

“Voting Security” has the meaning given to that term in the Securities Amendment Act 1988 (New Zealand) and **“Voting Securities”** has a corresponding meaning.

1.2 In this Agreement, unless the context otherwise requires:

- (a) words in the singular include the plural and words in the plural include the singular;
- (b) headings and bold type are inserted for convenience only and do not affect the interpretation of this Agreement;
- (c) references to this Agreement include any schedules to it and references to clauses and schedules are to clauses of and schedules to this Agreement;
- (d) a reference to any legislation includes a reference to that legislation as amended;
- (e) a reference to the Strategic Alliance Agreement in any other agreement between the parties entered into on or after the date of this Agreement shall be deemed to be a reference to this Agreement;
- (f) references to the words “include” or “including” are to be construed without limitation to the generality of the preceding words;
- (g) a reference to “co-ordinate” or “co-operate” in respect of any product or service shall mean co-ordination or co-operation taking into account differences in products or services and shall not, unless specifically stated to the contrary, require alignment of product or service offerings;
- (h) a reference to “co-operate” means to co-operate in good faith and on the basis of full disclosure and information exchange (subject to any relevant legal constraint);
- (i) a reference to “dollars”, \$ or NZ\$ means New Zealand dollars; and
- (j) a person is an “associated person” of another person if:
 - (i) they are acting jointly or in concert; or
 - (ii) either party acts, or is accustomed to act, in accordance with the wishes of the other person; or
 - (iii) they are Related Bodies Corporate; or
 - (iv) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or
 - (v) they are both, directly or indirectly, under the control of the same person.

2. ESTABLISHMENT OF THE ALLIANCE

On the terms set out in this Agreement, the parties agree to form a strategic alliance in order to:

- (a) together implement the Joint Airline Operations; and
- (b) co-operate in relation to the Non-JAO Networks as described in the Non-JAO Governance Principles.

3. OBJECTIVES OF THIS AGREEMENT

3.1 Development of the Alliance

Each of Air NZ and Qantas acknowledges that its best long term interests lie in the future development of the Alliance which will:

- (a) maintain the ability of the parties to grow and provide competitive and commercially viable airline services for Australia and New Zealand in support of the transport and commercial infrastructures and trade and tourism interests of each country and the Australasian region;
- (b) allow each party to remain autonomous and under ownership structures consistent with the aviation policies of their respective governments; and
- (c) provide consumers with significantly improved benefits and services.

3.2 Objectives

Air NZ and Qantas agree that their objectives in entering into this Agreement are:

- (a) to work together in good faith and with full co-operation and transparency to successfully grow both airlines;
- (b) to manage the JAO Networks for the benefit of the parties;
- (c) to ensure that the parties operate under the JAO in such a manner as will:
 - (i) provide safe, efficient airline services to customers of each of the parties;
 - (ii) enhance consumer service and choice by better co-ordinating schedules, departure times, routes and Sectors flown and fare and tariff availability;
 - (iii) deliver cost savings through improved asset utilisation including achieving efficiency improvements in the use of aircraft and other resources; and
 - (iv) increase Australian and New Zealand inbound and outbound passenger traffic, tourism and Freight flows;
- (d) to improve the cost effectiveness and efficiency of the services provided by the parties in accordance with the JAO and all functions supporting the JAO Networks;
- (e) to pursue opportunities where the parties can develop new services and products which, on a basis which is equitable for both parties, will enhance the effectiveness of the services provided by the parties in accordance with the JAO;
- (f) to pursue opportunities where they can integrate specific activities and functions, and co-ordinate, integrate or amalgamate areas where benefits can be derived from economies of scale and the combination of activities and functions;
- (g) to encourage and facilitate the movement of passengers and Freight on the services provided by the parties in accordance with the JAO and between those services and other Non-JAO Network services provided by the parties elsewhere; and
- (h) to promote co-ordinated, seamless customer service levels on the services provided by the parties in respect of the JAO Networks including in relation to:

- (i) the handling of passengers and their baggage at all stages from the booking of tickets, checking in at the airport and transfer from one flight to another until disembarkation and retrieval of baggage; and
- (ii) subject to clause 7.3, the handling of Freight.

3.3 Guiding Principles

Air NZ and Qantas agree that in implementing the provisions of this Agreement and in relation to the Alliance they will:

- (a) at all times act (and shall procure that their respective employees involved in the Alliance shall act) in good faith towards each other and in a manner that is consistent with the provisions of the Code of Conduct;
- (b) subject to the provisions of clause 4.4 (Management Fee and Adjustment Payment Calculation), share in any benefits and bear any associated costs which might accrue in a fair and equitable manner; and
- (c) have regard to the long term interests and future development of Air NZ and Qantas from time to time and the profitable development of a global network involving Air NZ and Qantas.

4. JOINT AIRLINE OPERATIONS

4.1 Scope

Air NZ and Qantas agree that the JAO will be entered into in relation to the Air NZ Network and the Qantas NZ Network and that, in respect of these networks, they will co-operate in accordance with the JAO Governance Principles.

4.2 Management of the JAO Networks

- (a) Air NZ shall be responsible for managing the commercial (as opposed to the flight operation) aspects of the JAO Networks, as more fully described in the JAO Governance Principles. Each party shall remain responsible for the day-to-day flight operations of their respective networks.
- (b) Air NZ will not commence its management role under clause 4.2(a) until:
 - (i) the parties have implemented reciprocal Codeshares on all domestic NZ Sectors and Trans-Tasman Sectors of each airline; and
 - (ii) in Qantas' reasonable opinion, appropriate reservation and revenue management information technology systems and processes are in place to permit Air NZ to manage the commercial aspects of the JAO Networks.
- (c) In the period prior to Air NZ commencing its management role pursuant to clause 4.2(a), Air NZ will act as co-ordinator of the commercial aspects of the JAO Networks, with SAAG undertaking the role described in the JAO Governance Principles in respect of that co-ordination.
- (d) If the requirements of clause 4.2(b)(i) have been satisfied but the requirements of clause 4.2(b)(ii) have not, the parties will meet to determine the ways in which Air NZ's move from its co-ordination role under clause 4.2(c) to its full management role under clause 4.2(a) can be expedited.