PART 11: The Commerce Act 1986

SECTION 47 CERTAIN ACQUISITIONS PROHIBITED

22. Section 47 of the Act states: - {A person being a company or incorporated body}

    "(1) A person must not acquire assets of a business or shares if the acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market."

    (2) For the purposes of this section, a reference to a person includes 2 or more persons that are interconnected or associated.

    (3) For the purposes of this section, a person is associated with another person if that person is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other."

23. We put it to the Commission that Public evidence and that submitted within this document clearly demonstrates the proposed integrated merger between Qantas and Air New Zealand will have the effect of <u>substantially lessening competition in the market.</u> Therefore, the merger does not meet the legal requirements of Para 22, Clause (1); and;

24. Such lessening of competition will be accomplished through substantial Marketing Alliances that will continue to exist. The merger meets the legal requirements of Para 22, Clause (2), and;

25. Such lessening of competition will also be accomplished through substantial Equity Alliances that will exist both in a current and projected sense. The merger meets the legal requirements of Para 22, Clause (3).

SECTION 36 TAKING ADVANTAGE OF MARKET POWER

26. Section 36 of the Act states: - {A person being a company or incorporated body}

    (2) *"A person that has a substantial degree of power in a market must not take advantage of that power for the purpose of -*

    (a) restricting the entry of a person into that market or any other market; or

    (b) preventing or deterring a person from engaging in competitive conduct in that or any other market; or

    (c) eliminating a person from that or any other market.

27. We put it to the Commission that Public evidence and that submitted within this document clearly demonstrates the proposed integrated merger between Qantas and Air New Zealand will have the effect of <u>taking advantage of market power</u>. Such

advantage being accomplished through substantial Equity and Marketing Alliances that will exist both in a current and projected sense. Such advantage will restrict, prevent, deter or eliminate any independent new entrant from entering the market.

28. Section 36A Taking advantage of market power in Trans-Tasman markets; of the Act states: - {A person being a company or incorporated body}

(2) A person must not, for any of the purposes specified in Subsection (3), take advantage of the person's substantial degree of power (if any)-

a) in a market; or

b) in a market in Australia; or

c) in a market in New Zealand and Australia

(3) The (Subsection 3) purposes are as follows:

a) restricting the entry of a person into a market that is not a market exclusively for services:

b) preventing or deterring a person from engaging in competitive conduct in a market that is not a market exclusively for services.

c) eliminating a person from a market, that is not a market exclusively for services.

27. We put it to the Commission that Public evidence and that submitted within this document clearly demonstrates the proposed integrated merger between Qantas and Air New Zealand will have the effect of taking advantage of market power in Trans-Tasman markets. Such advantage being accomplished through substantial Equity and Marketing Alliances that will exist both in a current and projected sense. Such advantage will restrict, prevent, deter or eliminate any independent new entrant from entering the market.

MERGER BETWEEN QANTAS AND AIR NEW ZEALAND-CONSUMER EFFECTS

28. In a pragmatic sense and in the short term, the merger would control the southern Australasian full service market including the Trans Tasman, lockup the regional discount market including the Trans Tasman, enable Price Control to be effectively introduced by all alliance players and create market dominance in a predatory sense preventing fair competition emerging. In short - Higher Airfares and Captive Choice.

29. Proposed consumer gains in tourism as a result of the merger ought to be considered in the light of current industry promotional success. Official incoming visitor figures are currently increasing at the rate of 12% per year. Recent figures indicate an increase in visitors of 200,000 per year. Holidaymakers account for 53%

of incoming visitors and most travel by air. Therefore, on average air tourist visitor arrivals into New Zealand are increasing by around 105,000 per year.[1]

THE RISK OF A GRAND MONOPOLY ALLIANCE

30. We put it to the Commission that should the analogies and evidence provided be insufficient to convince Commissioners of current and developing strategies that promote the creation of an Australasian "antipodean" alliance, the high risk of such an alliance {in terms of substantial damage to competition} surely identifies such a formation as prohibitive. Should such market dominance be achieved the reduction in competition may be irreversible for many years.

Reference:

1. *Travel Industry Directory & Information Guide 2002*

MERGER MARKETING ALLIANCES-CONSUMER EFFECTS

31. The authentic effects of the proposed merger between Qantas and Air New Zealand would be reduced choice, higher airfares and price fixing over a range of products offered by an alliance of carriers each marketing in a specialised sense. The advertised claims for such mergers in terms of consumer {Public} benefits would be increasing seamless travel opportunities and linked frequent flyer schemes. Such as those proclaimed by the global alliances of Star and One World.

SECTION 66 & 67 COMMISSION MAY GRANT AUTHORISATION FOR BUSINESS ACQUISITIONS

32. Section 67 (3) of the Act states: {A person being a company or incorporated body}

"Commission may grant authorisation for business acquisitions -

a) If it is satisfied that the acquisition will not {have, or would be likely to have the effect of substantially lessening competition in a market}, by notice in writing to the person by or on whose behalf the notice was given, give a clearance for the acquisition; or

b) If it is satisfied that the acquisition will result, or will be likely to result, in such a benefit to the public that it should be permitted, by notice in writing to the person by or on whose behalf the notice was given, grant the authorisation for the acquisition.

33. We put it to the Commission that Public evidence and that submitted within this document clearly demonstrates the proposed integrated merger between Qantas and Air New Zealand will have the effect of substantially lessening competition in the market. Therefore, the merger does not meet the legal requirements of Para 32, Clause (a); and;

34. Public evidence and that submitted within this document also clearly demonstrates the proposed integrated merger between Qantas and Air New Zealand will have insufficient benefit to the public and will take advantage of market power in trans-Tasman markets. Such advantage being accomplished through substantial Equity and Marketing Alliances that will exist both in a current and projected sense. Such advantage will restrict, prevent, deter or eliminate any independent new entrant from entering the market. Therefore, the merger does not meet the legal requirements of Para 32, Clause (b).

PART 111: The Single Aviation Marketing Agreement

36. In September 1996 Australia and New Zealand entered into a Single Aviation Market Agreement through a Memorandum of Understanding. This new regulatory approach served to open up the skies within Australia, New Zealand and between the two countries. Thus permitting suitably qualified airlines to freely trade in any aviation situation.

37. To preserve opportunities for local incorporated companies the Basic Requirements of the Single Aviation Market Regulations are: -

    a) Effective control of a company must remain in the hands of Australian or New Zealand nationals. Headquarters may only be in either country.

    b) The majority of Shareholders must be Australian or New Zealand citizens.

    c) The Chairman must be an Australian or New Zealand national.

WAIVERS

33. Any waivers granted against these requirements removes opportunities for local Australian or New Zealand companies to commence trading as new entrant operators. The advantages to the public {and incumbent airlines} to permit and encourage local companies are related to the relatively respectful financial resources and the subsequent modest fair competition that these companies could provide. That is, in comparison to a multi-billion dollar overseas entrant that is ideally capable of levelling predatory commercialism in the Australasian industry. Page 3 Predatory Commercialism

34. Jumpjet Airlines Limited resolutely objects to the possibility of favouritism being politically offered to any subsidiary or company of an overseas corporate group that strategically seeks to bypass the Single Aviation Market (SAM) requirements.

GLOBAL POSITIONING

35. A more relaxed regulatory environment has eventuated in Australia and New Zealand for the purposes of encouraging more competition from international operators. However, strategic planning by overseas long haul airlines or airline groups with global ambitions may exhibit more interest in global positioning their own companies or subsidiaries than the provision of long term services in the region. In the past very little assistance has been provided to local companies to enter the market or expand services - Either from government bodies or corporate and other funding networks.

36. We urge the Commission to research the Belgium airline industry and merger activities that have eventuated in that country over the last three years. Including the effects of various alliances on that industry.

DUOPOLY MARKETS

37. The proposed merger between Qantas and Air New Zealand uses a justification that the current {duopoly} markets are threatened by low fare carriers commonly known as Discount {DA} or Value Based Airlines {VBA} based on new international trends. However, research indicates that many of these carriers have been in existence for over a decade without dismantling traditional Full Service Airlines. {FSA} In general, they currently service only 10% of the market. Predatory business models belong to specific strategies generally used by multi-billion dollar corporate groupings. For example, Historically, Virgin Blue as the new Australian entrant and now duopoly partner Page 3 Predatory Commercialism and Qantas as the incumbent airline.

38. There is no denial of the fact that DA's and VBA's are most cost effective. However, the FSA has a high quality product to offer a different culture of consumer. Major problems developed for the world's FSA's following the terrorist events of September 11th 2000 and a severe recessive cycle in the industry. Consultants declare that such a cycle was well overdue.

39. The DA's and VBA's were less affected by the aftermath of these events because they generally operate from secondary airfields and not primary airfields. The consumer has identified that there is less disruption to passenger processing from these airports in comparison to terminal services from primary airports. {In Australia all national and international scheduled operations occur from primary airfields. In New Zealand the majority of national and international scheduled operations occur from primary airfields}

40. As is typical in many industries as time progresses new ideas create ventures that are capable of trading successfully and marketing what appears to be the same product. For example, McDonalds and Berger King are both successful companies marketing, essentially, the same product .

41. The Jumpjet business model was initially developed as a Value Based concept and seeks the privilege to trade in the market as a variant without predatory commercialism being levelled against it from incumbent airlines including established duopoly operators. *{Jumpjet: Incorporated - January 1999}*

MERGER: DISCOUNT PRODUCTS

42. Should the proposed merger between Qantas and Air New Zealand be successful the monopoly of alliances that is currently founding will offer a complete range of products from FSA products to DA/VBA products. The declaration in relation to the merger is that the public benefit will be served by the scope of services provided.

43. The substantial lessening of competition in the market is deemed {by merger participants} to be balanced by the overall economic benefit to the national interest.

44. We put it to the Commission that the merger is omnivorous in itself and departs from sound democratic economic principles.

REGULATORY: ROUTE OR CAPACITY CONTROL

45. In view of recent industry events there is growing public concern that the regulatory environment may have developed too liberally within and between Australia and New Zealand. The original reasoning behind more regulatory relaxation was to foster increased international competition in the light of an industry that has lacked fair competition for many years.

46. Public statements indicate that Virgin Blue is planning a typical traditional entrance into Trans Tasman operations as indicated recently by the company quote[1]: -

> *"Virgin Blue plans to fly to New Zealand next year and have a fleet of eight planes operating international flights by the end of 2004."*

47. The Trans Tasman operations of Qantas and Air New Zealand currently uplift some 40,600 passengers or 1850 passengers per aircraft per week. {Figures used are one-way and approximate} Qantas uses 10 aircraft and Air New Zealand 12. The proposed capacity increase by Virgin would be in excess of 40%.

{Logic Question: ***What industry could absorb a 40% plus increase in competitiveness within a short period of time?}***

48. It is interpreted that the Commission is not in a position to make recommendations in relation to the industry . The Jumpjet intention is to provide relevant information in the interest of developing a full picture of the issues involved.

49. The answer to insatiable commercialism may well be for government to introduce or reintroduce controls into the domestic and Trans Tasman markets to provide partial regulation. Such as capacity or route controls in a similar manner to international bilaterals.

Reference:

1. Section 58 Application document submitted by Qantas & Air New Zealand - December 9, 2002

PART 1V: Local Airline Companies and Access to the Market

50. Over the last decade predatory commercialism has become a traditional activity in the Australian market when a new entrant carrier has challenged an existing duopoly. Other factors contributing to lack of success of entrant carriers include lack of support from either commercial and aviation regulations or financial and investment institutions or both. In 2003, mergers and alliances aside, the current duopoly now consists of a joint subsidiary of an overseas group and Qantas. The skies are less competitive than they were decades ago. {Market Share: Qantas 80%; Virgin Group/Patrick Corporation 20%} Competition in the market continues to remain distinctly low.

AUSTRALIA: PRIOR TO 2000

51. A few years prior to 2000 two new local entrant airlines were modestly developing to make entrance into national domestic airline operations in Australia: -

Spirit Airlines[1] *- The company was incorporated in Melbourne, Victoria in 1998 and publicly declared intentions to launch services to domestic tourist destinations from Melbourne in June 2000 using Boeing 737-400 aircraft.*

City Jet [2] *- (Australian Airline Holdings Limited) was soliciting serious capital from the USA to introduce 8 purchased Boeing 737-300/400 aircraft, nationwide, into mainland Australia in 1999.*

It is pertinent to reflect on the chain of events that have taken place in the absence of local start-ups gaining sufficient support to launch or continue their moderate but potent operations.

52. In August 1998 Impulse Airlines [3] won the Tamworth-Sydney licence and in mid 2000 was the first new national carrier to launch into interstate operations with Boeing 717-200 aircraft. Launching months before the Queensland Government granted $NZD 11 Million to the Virgin Group to launch from Brisbane with the subsidiary Virgin Blue. After a short time Virgin commenced operating in competition and over the same route structure as Impulse.

53. By May 2001 uncontrollable debts and recapitalisation resistance from its investors forced Impulse to finally enter into a commercial agreement with Qantas as part of its Link regional airline system. The company now trades successfully, but, as a Qantas subsidiary.

Reference:

1. *Flight International Airline Directory 2000*
2. *Australian Aviation Magazine - August 1998*
3. *Flight International Airline Directory 2002*

NEW ZEALAND: ORIGIN PACIFIC

54. Commenced operations in April 1997 as a New Zealand domestic regional independent airline with three (3) turbo-prop aircraft. The company has developed steadily since that time and in 2003 operates eighteen (18) turbo-prop aircraft in alliance with Qantas. The company competes with Air New Zealand's three subsidiary regionals. That is, Air Nelson, Eagle and Mount Cook. The competition has been consistent. However, predatory trading complaints have not been evident over the last six years.

INDEPENDENT CARRIERS: 2003

55. In relation to Trans Tasman regional international operations and national domestic operations there are only two carriers that are independent from an Equity perspective. The first is Garuda Indonesia that is 100% owned by the Indonesian Government. The airline company does have a Marketing Alliance with Malaysia Airlines. The second, Royal Tongan is also independent and operates some Trans Tasman services from Auckland. But it is in alliance with Air New Zealand and Air Pacific from a marketing perspective.

56. In the regions, or intrastate operations in Victoria and New South Wales, one regional carrier maintains independence and that company is Rex {Regional Express}. The company consists of a number of ex-Ansett Airlines subsidiary airlines and has been recently established, following the collapse of Ansett, by private investors with assistance provided by the NSW and Australian Federal Governments.

PART V: Jumpjet Airlines Limited

EXECUTIVE SUMMARY

57. The objective of the venture is to establish a new value based regional international tourist orientated airline based at Wellington. Introducing a quality, low fare value, style of Trans Tasman passenger service.

58. Jumpjet Airlines Limited® intends {Suitable funding dependant} to operate between Wellington and major Australian East Coast destinations with regular scheduled services. Providing a range of fixed airfares. Based on the model developed in the Business Plan, the airline is expected to gain significant revenue in the first year of operation and fully employ 55 - 60.

59. Whilst the proposed service supports the development of tourism it also provides the business traveller with economical air travel and priority passenger handling. Cabin service is based on the needs of medium range flights.

60. The airline is expected to develop a small overall share of the Trans Tasman market. The new airline will be based at Wellington airport, from where, international passenger movements are expected to rise. Making expanding use of the new terminal facilities. Innovative computer technology supports the concept.

61. The nucleus of a plan for dedicated freight operations is commenced by the initial development of a network parcel freight carriage program - using available hold capacity.

THE TRANS TASMAN MARKET

62. The Australasian market is expansive with the number of airlines operating reducing due to the mergers, alliances and acquisitions that have occurred within the last few years. Jumpjet seeks the privilege to develop the low yield and tourist niche market with a value based concept (VBA). Growth planning is conservative and precise in a market that has moderate growth potential.

TOURIST FOCUS : NICHE MARKET DEVELOPMENT

63. The company has changed little from the original focus that was to specialise on the Trans Tasman as a hybrid carrier cultivating the tourist niche market. The development has modest growth expectations and the mission is to provide an operation with value, service and integrity.

ADDITIONAL CONSUMER CHOICE

64. The Trans Tasman market consists of aligned carriers that are interconnected in terms of equity and marketing balance. A return has occurred to an inelastic establishment of duopoly airlines both in New Zealand and Australia that network through wholly owned subsidiaries and marketing alliances.

65. Jumpjet seeks the privilege to commence fair-trading in the market and provide consumers with complimentary choice. The strategic capacity of the airline being that of an independent and accountable competitive carrier. The company has its own unique brand and trading methodology. The commercial structuring is fresh, new, vibrant and accommodates the natural concerns of consumers.

PART VI: Conclusion

The proposed merger between Qantas and Air New Zealand and the arguments presented raise valid issues in relation to omnivorous commercialism. There may well be a case for revaluation of the regulatory environment that governs commercial behaviour in the marketplace. Bilateral regulation applies to international airlines seeking to operate within Australia and New Zealand and commercial law applies to locally incorporated or subsidiary carriers.

Route or capacity controls are options that could be used to regulate the type of commercialism that is portrayed in this submission. As are regulatory cease and desist orders and severe pecuniary penalties, that exist here in New Zealand, serious options that could be used in the future.

For whatever controversy held in relation to the collapse of Ansett Australia such economic chaos is, to say the least, undemocratic. Commissions must surely take a more active role in industry trading affairs particularly considering the reported current strategic developments of major industry players.

The merger applied for under Section 58 does not meet the legal requirements of the Act as such an eventuality would no doubt substantially lessen competition in the market - Politically, economically and in respect of consumers. Also, insufficient public benefit could be demonstrated that replaces the democratic principle of fair competition in the market.

It is understood that the Commission is not in a position to make recommendations in relation to policy that may effect changes to commercial law. Jumpjet has placed this submission in a manner to inform as well as make deliberations on the topic herein.

Thank you for your consideration in this matter.

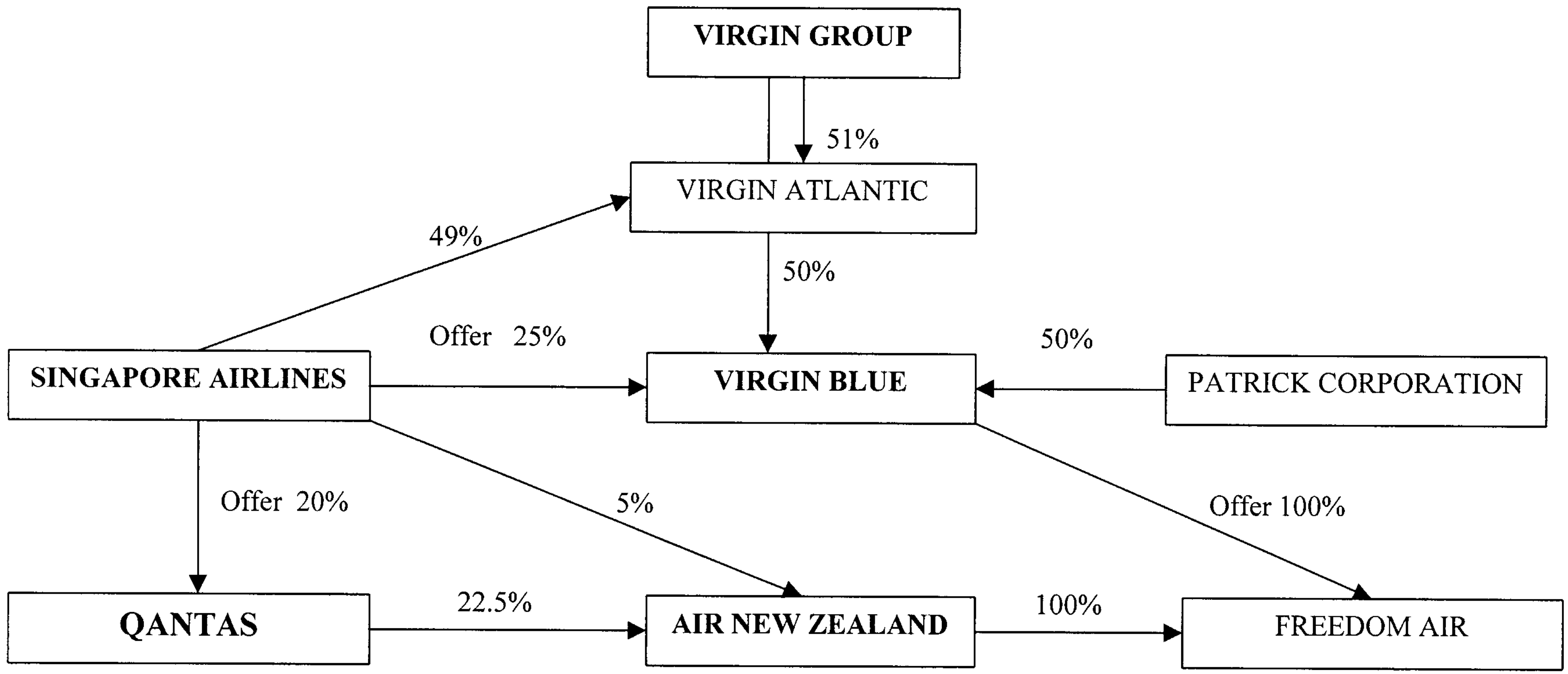
ATTACHMENTS

i. Market Lockup Flow Chart
ii. Marketing Alliance Flow Chart
iii. Table 1 - International Alliances - Trans Tasman
iv. Table 2 - Marketing Alliances - Trans Tasman

Copy: Australian Competition and Consumer Commission

MARKET LOCKUP

MONOPOLY ALLIANCE STRATEGIES - AUSTRALIA AND NEW ZEALAND



CURRENT CORPORATE MARKETING ALLIANCES

18. Thirteen (13) International Trans Tasman Airlines comprising of parent companies or subsidiaries are currently operating with some 36 Marketing Alliances with regional carriers.[1]

19. We put it to the Commission that the Marketing Alliances as described in Table 2 - Marketing Alliances - Trans Tasman, constitutes *"a person that includes 2 or more persons that are interconnected or associated"* under Section 47 {Certain Acquisitions Prohibited} of the Commerce Act 1986. Subsequently the integrated proposed merger of Qantas and Air New Zealand substantially increases such associations - Both currently and in a projected manner.

20. The proposed merger between Qantas and Air New Zealand will amalgamate the existing groupings of Marketing Alliances into a singular grouping. Comprising of 15 applicable Jet Operators and one (1) Turboprop Operator {Origin Pacific - Aligned to Qantas}[2]

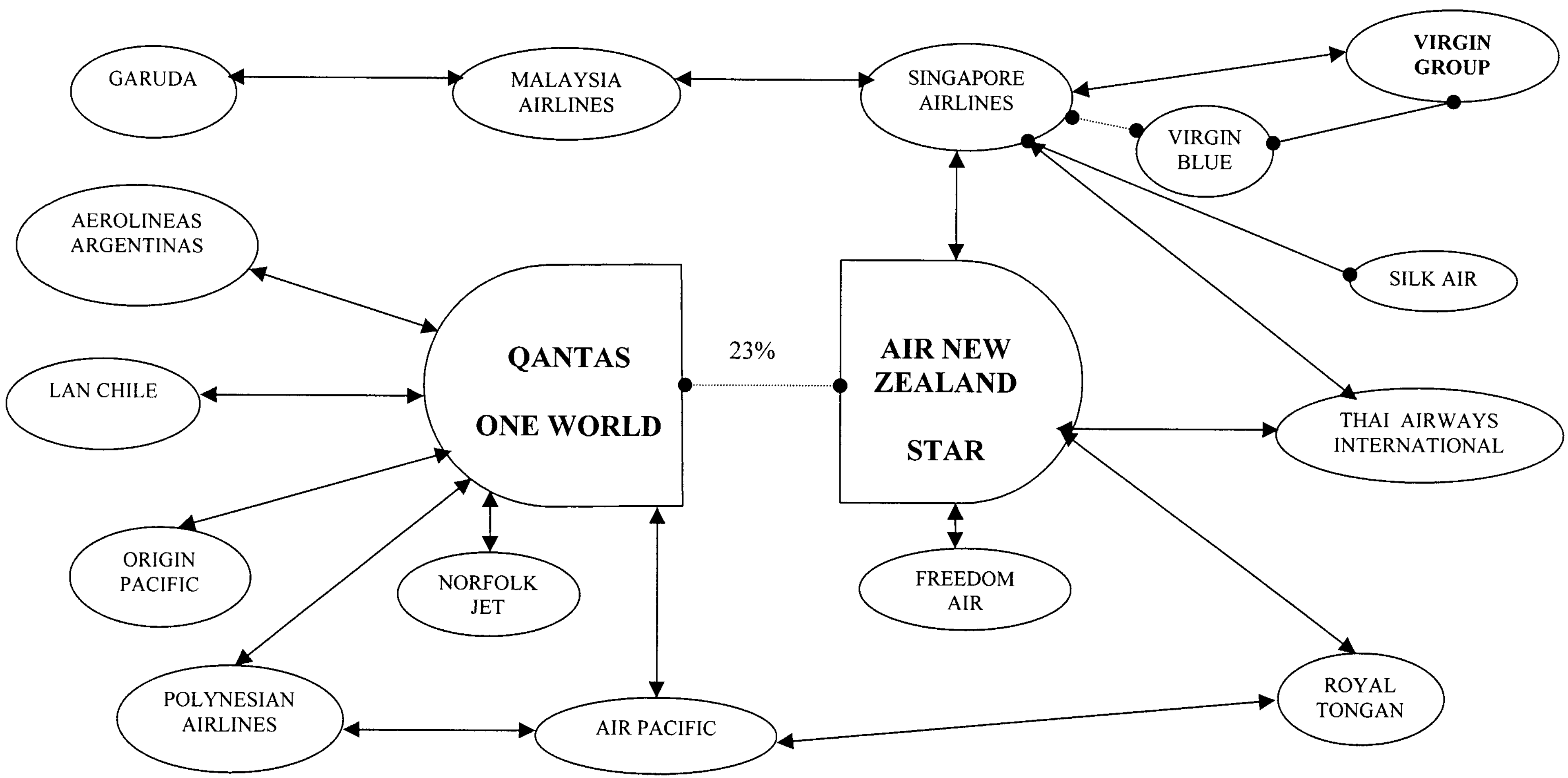
21. It is considered appropriate to list the airlines involved in order that a description of the complexity and blanketing effect is evident as a result of such a merger. Airlines aligned would be: - Air New Zealand, Air Pacific, Aerolineas Argentinas, Freedom Air, Garuda, Lan Chile, Malaysia Airlines, Norfolk Jet, Origin Pacific, Polynesian Airlines, Qantas Airways, Royal Tongan, Singapore Airlines, Silk Air {Currently inactive in the region}, Thai Airways International and Virgin Blue {Virgin Group}.[2] Plus, 8 subsidiary international, domestic or regional airlines operating within or departing from Australia and New Zealand.[3]

Reference:

1. *Table 2 - Marketing Alliances - Trans Tasman*
2. *Attachment ii - Marketing Alliance Flow Chart*
3. *Table 1 - International Alliances - Trans Tasman*

MARKETING ALLIANCES - TRANS TASMAN

MONOPOLY ALLIANCE STRATEGIES - AUSTRALIA AND NEW ZEALAND



TRANS TASMAN EQUITY ALLIANCES

Current Corporate Equity Structuring - Scheduled Airlines

Table 1: International Alliances - Trans Tasman

STAR ALLIANCE : FORMAL	%	OWNERSHIP: NAME OF AIRLINE
Singapore Government Investors	100%	Singapore Airlines
Singapore Airlines	4% - 6%	Air New Zealand
Singapore Airlines	49%	Virgin Atlantic (Virgin Group)
New Zealand Government	82%	Air New Zealand & Subsidiaries
Singapore Airlines, Brierley Investments & Public	23%	Air New Zealand & Subsidiaries
Thai Government	93%	Thai International
STAR ALLIANCE : INFORMAL (By Equity)	**%**	**OWNERSHIP: NAME OF AIRLINE**
Virgin Atlantic (Virgin Group)	51%	Virgin Blue
Air New Zealand	100%	Freedom Air
ONE WORLD ALLIANCE: FORMAL	**%**	**OWNERSHIP: NAME OF AIRLINE**
Australian Government, Corporate & Public	78%	Qantas & Subsidiaries
Qantas Airways	4% - 6%	Air New Zealand
British Airways	25%	Qantas & Subsidiaries
Chilean Corporate Investors	100%	Lan Chile
ONE WORLD ALLIANCE: INFORMAL	**%**	**OWNERSHIP: NAME OF AIRLINE**
Qantas Airways	46%	Air Pacific

Fiji and other Pacific Island Governments	52%	Air Pacific
Air New Zealand	2%	Air Pacific
DOMESTIC EQUITY ALLIANCES	**%**	**OWNERSHIP: NAME OF AIRLINE**
Qantas (New Zealand)	100%	Qantas New Zealand
Qantas (New Zealand)	4%-6%	Air New Zealand
Air New Zealand	100%	Mount Cook
Air New Zealand	100%	Air Nelson
Air New Zealand	100%	Eagle
Qantas (Australia)	100%	Australian Airlines
Qantas (Australia)	100%	Airlink
Qantas (Australia)	100%	Eastern Australian Airlines
Qantas (Australia)	100%	Southern Australian Airlines
Qantas (Australia)	100%	Sunstate
Virgin Group/Patrick Corporation	100%	Virgin Blue
INDEPENDENT AIRLINES (By Equity)	**%**	**OWNERSHIP: NAME OF AIRLINE**
International Airlines (Trans Tasman)	100%	Garuda Indonesia (Owned by the Indonesian Government)
International Airlines (Trans Tasman)	100%	Royal Tongan (Owned by the Tonga Government)
Domestic (Australia)	#	NONE
Domestic (New Zealand)	#	Origin Pacific
Regional (New Zealand)	#	NONE
Regional (Australia)	100%	Rex (Regional Express) Comprised of companies previously owned by Ansett Australia

(See: Attachment i - Market Lockup Flow Chart) December 2002

(Reference: Flight International World Directories 2000, 01, 02 & Publications)

TRANS TASMAN MARKETING ALLIANCES

Current Corporate Marketing Alliances - Scheduled Airlines

Table 2: Marketing Alliances & Fifth Freedom - Trans Tasman

TRANS TASMAN AIRLINES	FIFTH FREEDOM RIGHTS	MARKETING ALLIANCES
Air New Zealand	N/A	Star Alliance; Royal Tongan
Qantas Airways	N/A	One World; Aerolineas Argentinas; Air Pacific; Origin Pacific; Polynesian Airlines; Norfolk Jet
Singapore Airlines	Yes	Star Alliance; Malaysia Airlines; Virgin Atlantic; Silk Air
Thai Airways	Yes	Star Alliance; Malaysia Airlines
Aerolineas Argentinas	Yes	Qantas Airways; American Airlines
Lan Chile	Yes	One World Alliance
Garuda Indonesia	Yes	Malaysia Airlines; Silk Air
Malaysia Airlines	Yes	Garuda; Singapore Airlines; Silk Air; Thai Airways; Virgin Atlantic
Polynesian Airlines	Yes	Air Pacific; Qantas Airways
Royal Tongan Airlines	Yes	Air New Zealand; Air Pacific
Air Pacific	Yes	Qantas Airways; Polynesian Airlines; Royal Tongan Airlines; American Airlines
Freedom Air	N/A	Air New Zealand
Virgin Atlantic	No	Virgin Blue; Singapore Airlines; Malaysia Airlines;
Virgin Blue	SAM Regulations	(Through Equity) Virgin Group; Singapore Airlines

Reference: Flight International World Airline Directories 2000, 2001 & 2002

(See also: Attachment ii - Marketing Alliances - Trans Tasman)