



Advancing the interests of our members and the profession

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

By e-mail: [carl.toohey@acc.gov.au](mailto:carl.toohey@acc.gov.au)

Attention: Mr Carl Toohey

**Re: Authorisation of the Qantas Airways and Air New Zealand Tasman  
Networks Agreement (A91001, A91002 & A91003)**

Thank you for your letter of 19 April 2006 inviting comment from the Australian and International Pilot's Association (AIPA) on the Application for Authorisation of the Qantas Airways and Air New Zealand Tasman Networks Agreement (TNA).

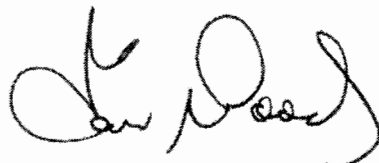
As the professional Association and federally registered organisation representing pilots and flight engineers employed by Qantas Airways Limited in airline operations within Australia and around the world, AIPA considers its members to be key stakeholders in the full range of commercial and operational regulation of Australian air transport markets.

AIPA believes that the issue of whether the net public benefit arising from the conduct of the proposed TNA outweighs any detriment does indeed merit close scrutiny and review by the ACCC. In assisting the Commission in making this determination AIPA wishes to provide the perspective of the core group of Australian domestic and international air transport category pilots.

The Association notes that alternative conclusions to those of the Applicants can be reasonably drawn with respect to many of the contentions supporting applications for authorisation A91001, A91002 and A91003. In this regard, it is the view of AIPA that these Applications appear to be predicated upon an overestimation of the benefits to consumers arising from the conduct of the TNA and an undervaluing of the likely benefits flowing to the Applicants. Additionally, the differences between local Single Aviation Market (SAM) operators and Fifth Freedom carriers (FFC) which are not

In conclusion, AIPA opposes the authorisation application as it currently stands until such time as the clear benefits flowing to the applicants are balanced by significant consumer benefits far in advance of those proposed in this application.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Ian Woods', written in a cursive style.

**Captain Ian Woods**  
**AIPA President**

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Encl. 1) Submission

## **Submission**

- 1.1 AIPA understands that the TNA involves close coordination of the activities of any flight operated by the Qantas or Air New Zealand Group's aircraft on their respective trans-Tasman networks. The motivation of the TNA is economic efficiency, seeking cost benefits that are primarily achieved through the reduction of surplus capacity, improved scheduling, optimisation of revenue management, and close coordination of product offerings and pricing. These are extremely significant acts of collusion between oligopolistic entities that together represent the overwhelmingly dominant force within this particular market<sup>1</sup>. In order to offset the anti-competitive potential of this conduct and ensure that the public retains a net benefit, the TNA will provide consumers with a more even spread of service times and choices, better identification of market demand, and a greater opportunity to earn and redeem frequent flyer points.
- 1.2 The cost reductions and efficiencies available to the Applicants are undoubtedly extremely significant and valuable, especially in their ability to offset increases in input costs outside their control (such as fuel prices). However, whether the pricing advantage and market power flowing from the TNA is sufficiently attenuated by the benefits available to consumers, especially considering that these benefits might be of medium value to the "marginal" consumer predominate within this market, is an open question to be determined by the Tribunal's investigations.
- 1.3 The TNA includes a revenue allocation (or revenue pooling) model based on an ASK benchmark and each airline's subsequent share of the capacity actually deployed under the TNA. According to transport economists such as Doganis<sup>2</sup> there is a strong incentive for duopolistic carriers to enter such agreements in order to share out a market. Doganis contends that the effect of revenue pooling agreements is to reduce the freedom of action of airlines and to blunt competitive tendencies. Such an agreement may also create an imperative that pushes capacity toward lower cost operations, which in the context of the TNA would likely be New Zealand registered aircraft or the applicants LCCs (Jetstar & Freedom), which are included within the terms of the TNA. Such an imperative would likely be at the expense of the higher cost full service carrier such as Qantas and Australian based employees.

## **2. ACCC requested issue discussion**

- 2.1 *In what ways, if any, has the trans-Tasman market changed since the Tribunal made its determination on 12 October 2004 with respect to the applications submitted by Qantas and Air New Zealand in December 2002?*

The Association notes that there have been significant changes to regulatory structures influencing commercial activities within the trans-Tasman aviation

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market since the Tribunal made its determination with respect to the 2002 request for authorisation by Qantas and Air New Zealand. Most importantly these changes include the passage through the Upper House of parliament on 11 May 2006 of the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005. This legislation amends the Australian *Civil Aviation Act 1988* and associated legislation in New Zealand in order to facilitate a statutory framework for the mutual recognition of Air Operator's Certificates (AOCs) in relation to large air transport category aircraft (greater than 30 seats or 15,000 kgs). It is expected that the Bill will be similarly approved by the Lower House in the near future and subsequently assented to by the Governor General and become law shortly thereafter.

Mutual recognition legislation will authorise Australian and New Zealand AOC holders to conduct domestic operations within either of these jurisdictions under the authority of their home AOC, the regulatory regime of the issuing State, and the oversight of the respective national aviation safety regulator (providing the "critical mass" of operations remains in the country of AOC issuance). Mutual recognition of aviation related certification will only apply to domestic operations conducted within Australia or New Zealand and will therefore not directly interact with the TNA. However, this Association believes that significant changes to dynamics of the trans-Tasman market are likely to occur as a result of Mutual Recognition.

As mutual recognition has yet to be enacted into legislation and regulation the exact nature and extent of these changes are uncertain. However, it is the view of AIPA that the reported cost efficiencies achievable under the New Zealand regulatory regime may well create an imperative for New Zealand registered high capacity air transport category aircraft to significantly increase operations within the Australian domestic aviation market. Under such a scenario, increased numbers of these aircraft would therefore be expected to operate revenue services within the trans-Tasman market when positioning for Australian domestic flying. Should such an outcome occur the close operational coordination facilitated by the TNA would clearly enable the exploitation of these cost benefits, thereby indirectly creating an imperative to shift capacity toward lower cost New Zealand registered aircraft. This would reduce the employment opportunities for Australians.

The Association further notes that to date there have been no true Single Aviation Market (SAM) airlines operating within this market and that therefore many of the assumptions—and subsequent benefits to consumers—underpinning the operation of the SAM have yet to be fully tested. Should the mutual recognition legislation in fact lead to greater integration of operations and further rationalisation within the SAM then the dynamic interaction of these regulatory regimes may have unforeseen consequences for trans-Tasman consumers, operators and aviation professionals. This might be particularly so in terms of providing competitive advantage to local SAM operators.

*2.2 More generally, what is AIPA's view on the current state of competition in this market, and specifically, on particular trans-Tasman routes?*

It is well accepted that competition under the current arrangements for the trans-Tasman market is extremely robust. The latest Bureau of Transport and Communications Economics (BTCE) research on trans-Tasman market travel demand elasticities reviewed by this Association, however, indicates the presence of an extremely price sensitive market segment<sup>3</sup>. This is confirmed by the TNA Applicants in their supporting documentation, which consistently highlights the predominately "marginal" consumer base of this market. The presence of such market characteristics implies a heightened level of susceptibility to commercial regulatory change and, as described above, recasts the definition of what is valued by the consumer, and therefore, the context within which the determination of net public benefit must be made.

*2.3 What is AIPA's view on the barriers to entry and expansion in this market?*

Barriers to entry within the trans-Tasman market have been significantly reduced for Australian or New Zealand carriers since the liberalised market principles were defined within the SAM Memorandum of Understanding in 1992. Despite this however, the absence of true SAM airlines operating within the market, indicates that barriers to entry, or at least expansion, may in fact exist or remain in some form.

In highlighting the absence of barriers to entry or expansion within the trans-Tasman market the TNA application does not appear to fully distinguish between SAM carriers, who will likely benefit from the additional privileges of mutual recognition of aviation related certification, and foreign fifth freedom carriers (FFC) granted "beyond rights" under traditional bilateral treaties. While these carriers may well be free to expand in the manner suggested by the TNA Application, it must be noted that their ability to do so may not be identical to that of local SAM operators as is implied.

FFCs could certainly expand services or increase capacity in the passenger or cargo sectors as described by the TNA application. However, the combined market power flowing to the Applicants networks as a result of SAM and/or mutual recognition advantages might well provide greater benefit than either indicated within the TNA application or forecast as a consequence of the untested dynamic interaction of these commercial and regulatory regimes. This may mean that the relative ability of foreign FFCs to constrain the competitive advantage of the TNA, and thereby offset consumer detriment, might not be as effective as indicated.

*2.4 What is AIPA's view on the likely impact of the TNA on average air fares on trans-Tasman routes?*

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<sup>3</sup> Bureau of Transport and Regional Economics (BTRE) Transport Elasticities Database

AIPA is not in a position to determine a direct quantification of the interrelationship between the TNA and trans-Tasman market tariff movements. The Association does however highlight to the ACCC issues which may impact the determination of pricing under the influence of the TNA. We note that the TNA application contains no direct pricing benefits for the marginal consumers discussed above other than a vague [undefined] reference to the agreement's ability to assist in the sustainability of current discount fares. The "substantial" benefits to consumers are confined to product enhancement, schedule optimisation and expansion, and greater opportunities to earn/redeem frequent flyer points. This is in contrast to the significant structural benefits of market collusion available to the Applicants.

*2.5 To what extent does AIPA consider the public benefits submitted by the Applicants will flow from the proposed arrangements?*

Significant benefits will undoubtedly flow from the TNA agreement. However, these benefits may well be in ratios different to that indicated by the TNA application.

For example the goal of capacity reduction will no doubt be achievable. However, an enforceable undertaking that ensures the rededication of this capacity back into the trans-Tasman market in order to provide additional schedule choice benefits to consumers, is not included within the TNA. Such capacity could, therefore, just as easily be redirected to more lucrative markets or market opportunities as to be reallocated for the convenience of "marginal" trans-Tasman consumers. Additionally, the market power flowing from such high level coordination of the dominant carriers might easily overwhelm the public benefit of an extra service choice (should it transpire), better connectivity or enhanced Frequent Flyer opportunities, should the respective consumer/Applicant benefits be in even modestly different proportions than those suggested by the TNA application.