

**FURTHER SUBMISSION TO THE
AUSTRALIAN COMPETITION AND CONSUMER COMMISSION ON
THE DRAFT DETERMINATION OF
THE APPLICATIONS FOR AUTHORISATION OF
THE VIRGIN BLUE AND AIR NEW ZEALAND AUSTRALASIAN AIRLINE ALLIANCE
29 OCTOBER 2010**

1. SUMMARY

- 1.1 On 10 September 2010, the Australian Competition and Consumer Commission ("ACCC") released its Draft Determination in this matter ("**Draft Determination**"). On 11 October 2010, the Applicants provided their submission on the Draft Determination ("**Applicants' Submission**"). On 18 October 2010, the ACCC conducted a pre-decision conference. Auckland Airport provides this further submission in order to address certain matters that were raised in the Applicants' Submission, or discussed at the conference.
- 1.2 In summary, as advised during the pre-decision conference, Auckland Airport's concerns regarding the potential anti-competitive detriment of the proposed Alliance have been significantly allayed by the authorisation conditions now offered in the Applicants' Submission.
- 1.3 In the remainder of this further submission, we comment on some discrete aspects of the conditions proposed in Section 8 and Annexure R of the Applicants' Submission. As we have seen only a non-confidential version of that document we have not been able to consider those commitments fully.

2. MINIMUM SEAT CAPACITY CONDITIONS

- 2.1 The commitments given by the Applicants in clause 2 of Annexure R appear to us to provide some degree of comfort that the Alliance will not have a significantly detrimental effect on travellers. The Applicants have committed to:
- (a) maintain capacity at "base year" levels on the Tasman overall and on each of 6 nominated sectors (BNE-AKL, BNE-DUD, BNE-WLG, SYD-WLG, SYD-ZQN and MEL-WLG); and
 - (b) increase capacity generally across that group.
- 2.2 During the pre-decision conference there was discussion around the importance of appropriately identifying the relevant base year given that this is effectively the starting point/benchmark for the commitments regarding maintenance of capacity. As we have not seen a confidential version of the Schedule set out in Annexure R, we are not aware what the figures flowing from the Applicants' proposal for the base year are.
- 2.3 If the relevant "base year" levels have been calculated with reference to capacity levels in a "normal" year (such as the year ended May 2009, adjusted to take account of Air New Zealand's recently announced seat reconfiguration), rather than a year where

capacity levels were adversely affected by the global recession (such as the year ended May 2010) we would consider this to be appropriate. We are concerned that the impact, over the last 12 to 24 months, of the global recession needs to be appropriately recognised before the base year levels are finalised if the Applicants' commitments are to be meaningful.

- 2.4 We welcome Air New Zealand's proposal to take into account its recently announced seat reconfiguration in the calculation of the base year capacity. We assume that the "proposed change" in Virgin Blue's capacity referred to in section 8.3 of the Applicants' Submission will not involve a reduction in base year capacity as the Applicants would presumably have made that clear if it did so.
- 2.5 In relation to overall Trans Tasman capacity, taking into account Air New Zealand's revised A320 configuration (with 171 seats rather than 152 seats per flight), and assuming a "normal" operating period prior to the advent of the global recession in early to mid 2009, Auckland Airport would consider a base year Air New Zealand/Virgin Blue Trans Tasman capacity of between 4.10 million seats (as per the year ending January 2009) and 4.27 million seats (as per the year ending May 2009) to be an appropriate benchmark.
- 2.6 In relation to the Applicants' commitment to maintain capacity on each of the six nominated sectors taking into account Air New Zealand's revised A320 configuration (with 171 seats rather than 152 seats per flight), we suggest that, as with the overall capacity, in order to ensure that the commitments are meaningful, the base year figures for these routes be set with reference to a pre global recession year, such as the year ending January 2009 or the year ending May 2009.
- 2.7 The Applicants have also confirmed (Section 4.4 of the Submission) that they will introduce additional frequencies on six routes (BNE-WLG, SYD-WLG, MEL-WLG, ADL-AKL, PER-AKL and OOL-AKL). We note that the first three of those routes are also nominated sectors, so are subject to the specific commitments referred to above. Although the undertaking to add these further frequencies has not been included in the formal conditions proposed in Annexure R, we assume that the Applicants will follow through on this further commitment.

3. APPROVAL TO VARY COMPLIANCE WITH CONDITIONS

- 3.1 We trust that the ACCC will give careful thought to the detail of the provisions set out in clause 3 of Annexure R. We would not expect the ACCC to contemplate relieving the Applicants from their commitments other than in truly exceptional circumstances. Were those conditions to be too readily relaxed, they would of course offer far less protection to consumers.