



**No restriction of  
Publication claimed**

**Submission by Emirates in relation to Virgin Australia and Air New Zealand  
Applications for authorisation A91362 & A91363**

**1. Introduction and Purpose of Submission**

Emirates appreciates the opportunity to respond to the Commission's letter of 18 March 2013 inviting Emirates to comment in relation to the applications for re-authorisation lodged by Virgin Australia Airlines (**Virgin Australia**) and Air New Zealand Limited (**ANZ**) on 8 March 2013, in relation to their Australasian Airline Alliance Agreement and associated agreements (**Alliance**).

To assist the Commission in its consideration of this matter, Emirates has set out its comments on the applications relating to the Alliance below. Emirates has sought in this Submission to provide constructive comments based on Emirates' experience in the Commission's Authorisation Determination in applications for authorisation A91332-A91333 (**EK/QF Authorisations**). Emirates believes that it is important for there to be consistency of regulatory analysis and approach based on the underlying competitive dynamics that exist on the Trans Tasman.

**2. Executive Summary**

Emirates supports Australia's increasingly liberal aviation policy settings which have boosted competition and market access and will continue to do so, including on the Trans Tasman. Emirates is also a strong supporter of New Zealand and the open skies aviation policy of New Zealand which Emirates believes assists it in being able to provide people in New Zealand (and Australia) with Emirates' premium service and global connectivity.

Emirates also strongly believes in competing on a level playing field. As such, while Emirates shares some of the concerns voiced by Virgin Australia on the potential distortions and costs associated with capacity conditions, because of our belief in competing on a level playing field, Emirates would not oppose an authorisation granted by the Commission to Virgin Australia and Air New Zealand, if it was subject to the same regulatory conditions imposed on Emirates and Qantas.

**3. Context of the Trans Tasman Capacity Conditions**

**3.1 Position of Virgin Australia and Air New Zealand Alliance on the Trans Tasman**

As Virgin Australia acknowledges in its Submission to the Commission, Emirates is a long haul fifth freedom carrier on the Trans Tasman. In contrast, for Virgin Australia the Trans Tasman is more akin to a domestic route and importantly for ANZ, the Trans Tasman is not an "international route", with its significance to ANZ demonstrated in that it has its own category. Notwithstanding either of Virgin Australia or ANZ's internal classification of the

Trans Tasman route, it is necessary to examine the competitive landscape on that route and that any regulatory requirements should not artificially distort the competitive dynamics on the Trans Tasman among competitors.

As noted above, the Trans Tasman is very important for ANZ. The ANZ Interim Shareholder Review 2013, states on page 4 as follows:

*"Our alliance with Virgin Australia is proving very successful giving us a combined market leading position in the Trans-Tasman Routes. Our ownership interest of 19.99 percent in Virgin Australia reinforces that relationship."*

Similarly, the ANZ Annual Shareholder Review 2012 states at page 5 as follows:

*"Tasman and Pacific Islands – structurally better and growing"*

*"The Tasman is a highly competitive market, and one in which we have had our challenges in the past. I am proud to say that Air New Zealand, together with our alliance partner Virgin Australia now has the largest presence on the Tasman, and we have strengthened our market share position."*

In the Virgin Australia Submission, Figure 3 on page 13 shows variation and growth by different airlines, not market share which the above statements focus upon. The Alliance however, has overall the highest share in the Trans-Tasman, as set out in the following Table. It is submitted that any assessment of the competitive impact of the Alliance should start from that basis and context.

**Table 19: Airline share (%) of total origin/destination passengers, Australia-New Zealand, year to June<sup>1</sup>**

Airline	2008	2009	2010	2011	2012
Air New Zealand	38.8	40.2	37.2	41.1	41.1
Virgin Australia	9.8	15.5	17.3	15.4	15.7
<b>Air New Zealand-Virgin Australia</b>	<b>48.6</b>	<b>55.7</b>	<b>54.5</b>	<b>56.5</b>	<b>56.8</b>
Qantas	23.0	22.3	20.5	20.1	20.3
Jetstar Airways	7.7	7.8	11.5	10.5	10.6
Emirates	11.2	10.8	10.0	9.8	9.0
<b>Qantas Group-Emirates</b>	<b>41.9</b>	<b>40.9</b>	<b>42</b>	<b>40.4</b>	<b>39.9</b>
LAN-Chile	0.9	0.8	0.8	0.6	0.7
Aerolineas Argentinas <sup>*</sup>	0.7	0.5	0.5	0.5	0.4
Other	8.0	2.1	2.1	1.9	2.2
<b>Total (%)</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Passengers ('000)</b>	<b>4,123.1</b>	<b>4,144.4</b>	<b>4,387.1</b>	<b>4,508.0</b>	<b>4,622.6</b>

<sup>\*</sup> Ceased operating on this route on 1 July 2012

Source: ACCC EK/QF Authorisation, Final Determination – Page 100

<sup>1</sup> Information provided by the Bureau of Infrastructure, Transport and Regional Economics (BITRE) based on passenger card data collected and compiled by the Department of Immigration and Citizenship (DIAC)

### 3.2 Consistency of Regulatory Approach

Emirates has made public submissions on the Trans Tasman capacity conditions imposed on Emirates and Qantas by the Commission in relation to the EK/QF Authorisation and its views in relation to such capacity conditions remain consistent with those principles. Emirates also notes the distortion, inefficiency and regulatory cost issues associated with the Trans Tasman capacity conditions in the public consultation draft to which Virgin Australia refers in its Submission dated 12 March 2013 in relation to the EK/QF Authorisation. However, to the extent that the Commission has nonetheless sought to impose those capacity conditions on Emirates and Qantas, Emirates believes that for the following reasons, it is appropriate that they should similarly be imposed on the Alliance:

(a) ***Similar competition dynamics***

The Alliance has the leading market position on the Trans Tasman and in terms of market dynamics, if the Commission when considering the Emirates and Qantas alliance was not comfortable that Virgin Australia and ANZ could competitively constrain the Qantas and Emirates partnership, it is not clear, in the absence of similar capacity conditions, that Qantas or Emirates (as a fifth freedom carrier), would constrain the larger Alliance;

(b) ***Similar conditions avoid the creation of market distortions***

The Commission has imposed regulatory conditions on Emirates and Qantas in relation to capacity and growth in the EK/QF Authorisation to seek to safeguard the Commission's perceptions in relation to the impact of the partnership on capacity and capacity growth and therefore competition dynamics. For similar competition reasons, it is submitted it would create regulatory distortions if the Alliance was not subject to the same regulatory conditions; and

(c) ***Similar concepts of flexibility to promote innovation***

Emirates equally believes that the Alliance should be subject to the same flexibility that the Commission has sought to provide Qantas and Emirates in terms of new routes or other dynamic factors, but also the conditions should have the same audit and compliance processes to safeguard the competitive process as part of any conditions imposed by the Commission.

## 4. Public Benefits and the Trans Tasman Conditions

In the Supporting Submission lodged by Virgin Australia with the Commission (paragraphs 5.25 to 5.28), Virgin Australia argues that the Alliance has demonstrated sufficient benefits such that it is no longer necessary for the Commission to impose Trans Tasman capacity conditions as part of its authorisation because it has "clearly demonstrated that it has resulted in net public benefits" (paragraph 5.26). In particular it appears this argument is based on the proposition that the "combined Alliance average fares have decreased".

It is however, not clear from the Virgin Australia Submission that the fare reductions have resulted from the Alliance, rather than because of the competitive dynamics on the Trans Tasman. Indeed, the Submission at various points refers to the strong competition from Emirates (see page 2 of the executive summary to the Supporting Submission) as well as Qantas and Jetstar. Furthermore, in the Commission's analysis of the current authorisation of the Alliance, the Commission's analysis of pricing by Virgin Australia and ANZ noted decreases in fares were significantly influenced by the competitive pricing of other airlines.

Accordingly, Emirates is of the view that the Virgin Australia authorisation applications have not demonstrated that the primary benefits claimed are arising from the Alliance (rather than arising in fact from competition dynamics on the Trans Tasman), such as to warrant the removal of the conditions in any future authorisation of the Alliance by the Commission.

## **5. Competitive Detriments**

In Section 4 of the Virgin Australia Submission, it is argued that there are no material anticompetitive detriments associated with the Alliance, including at paragraph 4.3 a claim that the Alliance has led to a reduction in the combined average fares of the Applicants and the Applicants have not reduced or increased capacity in any anticompetitive way on the Trans Tasman or any individual Trans Tasman route. Leaving aside Virgin Australia's statement as to reductions in capacity, which capacity cannot be reduced without the Commission's approval in any event, the claim in relation to fares needs to be considered in light of the competition from Emirates as well as Qantas as stated at paragraph 3.68 of the Virgin Australia Submission. Again it is not clear that the claimed lack of anticompetitive detriment is associated with the Alliance as argued, or in fact the claimed lack of anticompetitive detriment arises from the existing capacity conditions imposed by the Commission.

In these circumstances, it would appear that there remains potential anticompetitive impact from the withdrawal of the Commission's capacity conditions and the impact of commercial incentives to reduce capacity under the Alliance. Accordingly, Emirates remains of the view that conditions should continue to be imposed by the Commission on the Alliance.

12 April 2013