



Australian Government

Department of Infrastructure and Transport

File Reference: 10/7423

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission

Dear Dr Chadwick

Virgin Australia & Air New Zealand applications for authorisation A91362 & A91363

Thank you for your letter of 18 March 2013. The Department of Infrastructure and Transport (the Department) welcomes the opportunity to provide a submission to the ACCC on the proposed re-authorisation of the cooperation between Virgin Australia Airlines and Air New Zealand Limited on the trans-Tasman.

The Department recognises that it is a matter for the ACCC to determine the relative merits of arguments presented by the applicants on the public benefits and the effect on competition of the proposed alliance. However, to assist the ACCC in coming to a determination, this submission will provide contextual information on the relevant aviation market, the air service arrangements which underpin it and the Australian Government's aviation policy.

Regulatory framework and Australian Government policy

The regulatory framework governing international air services is complex. While most sectors of international trade operate on the assumption that markets are open unless governments intervene to restrict access, international aviation cannot occur unless governments act to open the market. This action occurs in the form of at least two governments negotiating and signing an air services agreement, specifying that international air travel can occur between their respective territories. Air services are contrary to most other internationally traded products, as without the cooperation of at least two governments, the product cannot be traded and the market would not exist.

As you would be aware, the Department is responsible for negotiating air services agreements with foreign governments. These bilateral agreements typically set out the number of flights that airlines of the two countries can operate, cities they can serve in the other country and rights to operate via or beyond to third countries. The agreements typically also include provisions related to such matters as airline ownership and control, competition law, safety and security.

The International Air Services Commission is responsible for allocating the available capacity negotiated under air services agreements to the Australian airlines that apply to operate internationally.

The Australian Government released the National Aviation Policy White Paper (the White Paper) on 16 December 2009. In the White Paper, the Government outlined its commitment to pursuing the liberalisation of international aviation to benefit consumers, broader Australian industry and provide Australia's airlines with the opportunity to compete effectively with their global rivals. The White Paper also stresses the importance of ensuring a strong Australian-based aviation industry.

Air services arrangements between Australia and New Zealand

The Australia/New Zealand air services market is one of the most open in the world. The *Agreement between the Government of Australia and the Government of New Zealand relating to Air Services*, done at Auckland on 8 August 2002, [2003] ATS 18 (the Agreement) has no restrictions on capacity, frequency or routes that airlines of either country can operate to, within or beyond the two countries.

The Agreement provides for eligible airlines to be authorised as Single Aviation Market (SAM) airlines. A SAM airline is required by Article 2 (4) to be at least 50 per cent owned and effectively controlled by either Australian or New Zealand nationals or both; at least two-thirds of the board are required to be Australian or New Zealand nationals, including the Chairperson; and its head office and operational base must be in either Australia or New Zealand.

Australian and New Zealand airlines can also continue to be designated under the Agreement using the incorporation and principal place of business criteria. This is consistent with both Australia's usual approach toward designation criteria when negotiating air services arrangements, and broader global moves towards greater liberalisation of airline ownership restrictions.

In conjunction with SAM arrangements the mutual recognition of safety and operational regulatory approvals streamlines airlines' flying within the SAM.

Section 2 of the Annex to the Agreement provides for ninth-freedom rights to airlines that are authorised as SAM airlines, and allows them to operate both international services between, and domestic services within either country with full traffic rights.

Article 2 (3) specifies that there is no limit on the number of SAM airlines of either country that can operate services linking any city pair combinations within and directly between the two countries. Airlines are able to operate passenger and/or freight services as they decide.

The Agreement is relevant only to New Zealand and Australian carriers. It does not provide access to the Australia-New Zealand market for any third party airline that operates to either Australia or New Zealand. This would depend on the air services arrangements between each of Australia and NZ and the relevant third party.

Article 12 of the Agreement sets out the commercial opportunities available to airlines under the agreement, including the scope for code-sharing. Airlines offering services

by way of code-sharing must adhere to any rules, regulations or procedures established by the relevant authorities regarding disclosure of code-shared services. The SAM agreement envisages co-operation between airlines, subject to competition concerns.

The alliance between Virgin Australia and Air New Zealand is therefore consistent with the opportunities granted to airlines under Article 12, subject to compliance with the respective competition laws applying in each country. In Australia's context this means the competition framework administered by the ACCC.

The deregulated nature of the SAM means there are no economic regulatory barriers for new market entrants from either Australia or New Zealand. There are similarly no barriers for existing market participants to add or change services; airlines can make air services decisions based solely on commercial considerations. The SAM has also provided New Zealand airlines with the ability to operate services in the Australian domestic market, subject to safety considerations.

In addition to the access afforded to New Zealand carriers, the airlines of over 50 economies currently have rights to commence direct Australia-New Zealand services under bilateral air services arrangements between Australia and the respective economies; albeit with the restriction that the flight must either originate or terminate in its home country. Their entitlements under agreements with New Zealand may impact on their respective ability to exercise these rights.

Details of third party access to the Australia-New Zealand market have been provided in a confidential document at [Attachment A](#).

These separate air services agreements with third parties have, over the years, seen multiple entrants into the Australia-New Zealand market. Currently three third party airlines operate passenger services in the market: Emirates, LATAM Airlines Group S.A. trading as LAN Airlines and China Airlines operate passenger services; Singapore Airlines and Federal Express operate cargo services.

In negotiating air services capacity with foreign governments, the Australian Government considers the four gateway destinations (Sydney, Melbourne (including Avalon Airport), Brisbane and Perth) separately from the other Australian destinations. The gateway destinations are considered the more commercially attractive and are treated accordingly. Unrestricted capacity to the other Australian destinations is generally offered on a reciprocal basis under the Regional Package.

Status of the trans-Tasman market

The Department has included data on passengers, capacity and market share on the trans-Tasman market at [Attachment B](#). The data is summarised below.

Passengers and Capacity:

New Zealand is Australia's largest international market. In 2012, there were 5.7 million passengers travelling between Australia and New Zealand, representing 19.4 per cent of total international passengers in that year.

Since 2009, aggregate passenger numbers have grown by 8.3 per cent. The primary drivers of this growth have been Virgin Australia (13.4 per cent), Jetstar (12.7 per cent) and Air New Zealand (12.3 per cent). Emirates (4.5 per cent) had only limited growth during this period whilst passenger numbers on Qantas decreased by 3.7 per cent.

The moderate annual passenger growth indicates that the trans-Tasman market is reasonably mature and not considered a growth aviation market by international standards. Future growth in this market is likely to be tied to economic growth.

Over the same period, aggregate capacity (measured in seats) on trans-Tasman routes has grown by 6.5 per cent.

Market share:

Market shares based on Uplift/Discharge passengers carried on single flight number services have remained relatively steady since 2009 following a significant shift in market share between airlines from 2008 to 2009.

Five airlines continue to account for almost all air travel between Australia and New Zealand. Air New Zealand and Qantas are the dominant long-standing operators in the trans-Tasman market, while Virgin Australia and Jetstar continue to grow as significant participants (in fact, Virgin Australia has a share that is almost as large as Qantas).

Emirates has maintained market share consistently at 10 per cent since 2009. Other airlines combined for about a 2-3 per cent share over the period.

The market share for the Virgin Australia-Air New Zealand alliance has also been relatively stable. Their main competitor, the Qantas Group (Qantas and Jetstar) have held between 30 and 32 per cent market share.

Should the New Zealand Ministry of Transport approve the Qantas-Emirates partnership, the market share of this alliance across the trans-Tasman would be around 40 per cent.

Proposed alliance

On balance, the Department considers that continued cooperation between Virgin Australia and Air New Zealand on the trans-Tasman is positive and consistent with aviation policy settings.

The Department considers that the Qantas-Emirates alliance acts as a strong competitive counterweight to the Virgin Australia-Air New Zealand alliance on trans-Tasman routes, including the routes Virgin Australia and Air New Zealand both currently serve in their own right.

There is also significant competitive constraint offered by airlines not currently operating the route. Because of the significant access to the trans-Tasman market available to third country carriers, airlines already serving Australia and/or New Zealand (e.g. Malaysia Airlines, Air Asia X, China Southern Airlines) have the capability to deploy their own aircraft if a commercial opportunity emerged.

The range of third country carriers who have operated trans-Tasman services in recent years highlights the ability of third country carriers to respond to circumstances on the route. The Department notes that between 2010 and 2012, passengers carried on uplift/discharge single flight number services by third country carriers increased by 7.6 per cent compared to 3.5 per cent for all carriers. The third country carrier market share rose from 11.7 % in 2010 to 12.1% in 2012.

The Department considers the barriers to entry are sufficiently low that if the market is left to operate naturally and competition was to wane, additional competitors are likely to enter the market, causing the market to reach a natural balance point.

Thank you again for inviting the Department to provide a submission. I can be contacted on 02 6274 7739 should you wish to discuss this matter further or require any additional information.

Yours sincerely



Stephen Borthwick
General Manager
Aviation Industry Policy
Aviation and Airports

12 April 2013

Table 1: Passengers (Uplift/Discharge within same flight number) on Trans-Tasman services

Scheduled Operator	Years ended December					
	2008	2009	2010	2011	2012	
Aerolineas Argentinas	32,226	28,811	37,660	23,254	16,675	
Air New Zealand	2,207,060	2,092,938	2,178,524	2,331,778	2,349,763	
China Airlines				51,577	72,497	
Emirates	552,468	530,036	547,690	551,145	553,652	
Freedom Air International	80,666					
Jetstar	376,705	538,004	584,599	630,615	606,597	
LAN Airlines	53,732	61,161	54,983	48,536	53,244	
Qantas Airways	1,243,511	1,162,188	1,182,167	1,132,276	1,119,755	
Royal Brunei Airlines	28,254	32,644	6,360			
Virgin Australia	558,701	847,719	948,517	883,755	961,037	
TOTAL	5,133,323	5,293,501	5,540,500	5,652,936	5,733,220	3.5%

Table 2: Passenger growth on Trans-Tasman services (year-on-year)

Scheduled Operator	Years ended December				
	2008	2009	2010	2011	2012
Aerolineas Argentinas		-10.6%	30.7%	-38.3%	-28.3%
Air New Zealand		-5.2%	4.1%	7.0%	0.8%
China Airlines					40.6%
Emirates		-4.1%	3.3%	0.6%	0.5%
Freedom Air International		-100.0%			
Jetstar		42.8%	8.7%	7.9%	-3.8%
LAN Airlines		13.8%	-10.1%	-11.7%	9.7%
Qantas Airways		-6.5%	1.7%	-4.2%	-1.1%
Royal Brunei Airlines		15.5%	-80.5%	-100.0%	
Virgin Australia		51.7%	11.9%	-6.8%	8.7%
TOTAL		3.1%	4.7%	2.0%	1.4%

Table 3: Passenger growth on Trans-Tasman services (year-on-year)

Scheduled Operator	2008-2012	2009-2012
Aerolineas Argentinas	-48.3%	-42.1%
Air New Zealand	6.5%	12.3%
China Airlines		
Emirates	0.2%	4.5%
Freedom Air International	-100.0%	
Jetstar	61.0%	12.7%
LAN Airlines	-0.9%	-12.9%
Qantas Airways	-10.0%	-3.7%
Royal Brunei Airlines	-100.0%	-100.0%
Virgin Australia	72.0%	13.4%
TOTAL	11.7%	8.3%

Table 4: Market share of airlines on Trans-Tasman services (Uplift/Discharge passengers carried)

Scheduled Operator	Years ended December				
	2008	2009	2010	2011	2012
Aerolineas Argentinas	0.6%	0.5%	0.7%	0.4%	0.3%
Air New Zealand	43.0%	39.5%	39.3%	41.2%	41.0%
China Airlines	-	-	-	0.9%	1.3%
Emirates	10.8%	10.0%	9.9%	9.7%	9.7%
Freedom Air International	1.6%	-	-	-	-
Jetstar	7.3%	10.2%	10.6%	11.2%	10.6%
LAN Airlines	1.0%	1.2%	1.0%	0.9%	0.9%
Qantas Airways	24.2%	22.0%	21.3%	20.0%	19.5%
Royal Brunei Airlines	0.6%	0.6%	0.1%	-	-
Virgin Australia	10.9%	16.0%	17.1%	15.6%	16.8%
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%

Table 5: Market share of alliances on Trans-Tasman services (Uplift/Discharge passengers carried)

Scheduled Operator	Years ended December					
	2008	2009	2010	2011	2012	
Virgin & Air New Zealand	55.4%	55.6%	56.4%	56.9%	57.7%	
Qantas Group & Emirates	42.3%	42.1%	41.8%	40.9%	39.8%	
Others	2.2%	2.3%	1.8%	2.2%	2.5%	
Market share of third country airlines Including Emirates	13.0%	12.3%	11.7%	11.9%	12.1%	
Market share of third country airlines Excluding Emirates	2.2%	2.3%	1.8%	2.2%	2.5%	
Qantas & Jetstar	31.6%	32.1%	31.9%	31.2%	30.1%	
Third country carriers			646,693	674,512	696,068	7.6%

Table 6: Capacity (seats) on Trans-Tasman services

Scheduled Operator	Years ended December					
	2008	2009	2010	2011	2012	
Aerolineas Argentinas	96,824	96,824	97,318	76,076	38,532	
Air New Zealand	3,042,541	2,733,285	2,671,417	2,859,334	2,865,589	
China Airlines				86,934	118,474	
Emirates	904,512	955,576	1,012,242	1,127,458	1,153,182	
Freedom Air International	106,377					
Jetstar	511,353	676,086	721,938	845,325	767,004	
LAN Airlines	177,265	166,177	151,572	157,446	156,952	
Qantas Airways	1,824,270	1,729,094	1,677,104	1,708,917	1,752,907	
Royal Brunei Airlines	68,877	74,495	17,850			
Virgin Australia	743,400	1,180,080	1,313,100	1,234,188	1,252,528	
Grand Total	7,475,419	7,611,617	7,662,541	8,095,678	8,105,168	5.8%

Table 7: Capacity growth on Trans-Tasman services (year-on-year)

Scheduled Operator	Years ended December				
	2008	2009	2010	2011	2012
Aerolineas Argentinas		0.0%	0.5%	-21.8%	-49.4%
Air New Zealand		-10.2%	-2.3%	7.0%	0.2%
China Airlines					36.3%
Emirates		5.6%	5.9%	11.4%	2.3%
Freedom Air International		-100.0%			
Jetstar		32.2%	6.8%	17.1%	-9.3%
LAN Airlines		-6.3%	-8.8%	3.9%	-0.3%
Qantas Airways		-5.2%	-3.0%	1.9%	2.6%
Royal Brunei Airlines		8.2%	-76.0%	-100.0%	
Virgin Australia		58.7%	11.3%	-6.0%	1.5%
TOTAL		1.8%	0.7%	5.7%	0.1%

Table 8: Capacity growth on Trans-Tasman services (year-on-year)

Scheduled Operator	2008-2012	2009-2012
Aerolineas Argentinas	-60.2%	-60.2%
Air New Zealand	-5.8%	4.8%
China Airlines		
Emirates	27.5%	20.7%
Freedom Air International	-100.0%	
Jetstar	50.0%	13.4%
LAN Airlines	-11.5%	-5.6%
Qantas Airways	-3.9%	1.4%
Royal Brunei Airlines	-100.0%	-100.0%
Virgin Australia	68.5%	6.1%
TOTAL	8.4%	6.5%

Table 9: Market share of airlines on Trans-Tasman services (operated seats)

Scheduled Operator	Years ended December				
	2008	2009	2010	2011	2012
Aerolineas Argentinas	1.3%	1.3%	1.3%	0.9%	0.5%
Air New Zealand	40.7%	35.9%	34.9%	35.3%	35.4%
China Airlines	-	-	-	1.1%	1.5%
Emirates	12.1%	12.6%	13.2%	13.9%	14.2%
Freedom Air International	1.4%	-	-	-	-
Jetstar	6.8%	8.9%	9.4%	10.4%	9.5%
LAN Airlines	2.4%	2.2%	2.0%	1.9%	1.9%
Qantas Airways	24.4%	22.7%	21.9%	21.1%	21.6%
Royal Brunei Airlines	0.9%	1.0%	0.2%	-	-
Virgin Australia	9.9%	15.5%	17.1%	15.2%	15.5%
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%

Table 10: Market share of alliances on Trans-Tasman services (operated seats)

Scheduled Operator	Years ended December					
	2008	2009	2010	2011	2012	
Virgin & Air New Zealand	52.1%	51.4%	52.0%	50.6%	50.8%	
Qantas Group & Emirates	43.3%	44.2%	44.5%	45.5%	45.3%	
Others	4.6%	4.4%	3.5%	4.0%	3.9%	
Market share of third country airlines Including Emirates	16.7%	17.0%	16.7%	17.9%	18.1%	
Market share of third country airlines Excluding Emirates	4.6%	4.4%	3.5%	4.0%	3.9%	
Qantas & Jetstar	31.2%	31.6%	31.3%	31.6%	31.1%	
Third country carriers			1,278,982	1,447,914	1,467,140	14.7%