1 July 2015

Hubert Yu/Luke Griffin
Adjudication Branch
Australian Competition and Consumer Commission

By email: adjudication@accc.gov.au

Dear Hubert/Luke

A91502 & A91503 – Qantas & American Airlines: application for interim authorisation

Thank you for the opportunity to comment on the application for interim authorisation of the alliance between Qantas Airways Limited and American Airlines.

Air NZ considers that it is not appropriate to grant interim authorisation for the activities proposed by the applicants. The proposed activities either do not require authorisation or are not appropriate without a full and considered analysis by the ACCC.

A considerable amount of information has been redacted from the parties' application. This includes all details regarding the proposed conduct, the counterfactual in the absence of the proposed conduct, and substantial extracts from the submissions in support of interim authorisation. In the absence of this information, it is very difficult to provide a fully informed view on the application for interim authorisation. We request that the ACCC require the parties to provide a public version of this information to third parties for consultation before reaching its decision on interim authorisation.

Based on the limited information that has been provided to date, we set out below some initial reasons why interim authorisation should be declined in this instance.

- **Interim authorisation is neither necessary nor required urgently.** There is no compelling reason why the agreement has to commence in December, given existing arrangements. The parties already have authorisation to coordinate on designated routes under the Original JBA, which is valid until June 2016. If either party wishes to commence a Sydney – San Francisco service, it can do so alone or with the support of the other through codeshare, block space, wet lease or other arrangements until authorisation of any deeper cooperation is obtained.

  As the ACCC notes in its own guidance, a relevant factor in granting interim authorisation is whether an application could have been lodged sufficiently early to have made the request for interim authorisation unnecessary. While any delay to full cooperation between the parties may result in a less than optimal launch of these services from the parties' perspective, this delay has only been caused by the parties themselves not allowing sufficient time for the authorisation process.

- **The parties have not provided compelling evidence that the proposed conduct will not cause competitive harm:** The parties state that the proposed conduct will not cause competitive harm compared to the counterfactual. Given that there is little detail in the public submission on either the proposed conduct or the counterfactual, it is difficult to provide an informed response to this submission. However, from what we understand, the conduct proposed includes deeper cooperation between the parties on routes such as Sydney - Dallas Fort Worth, which is not currently operated by any competing airline. In our view, this deeper cooperation requires further consideration by the

Air New Zealand Limited, 185 Fanshawe Street, Private Bag 92007, Auckland 1142, New Zealand
tel +64 9 336 2670 fax +64 9 336 2667 email jennifer.carlyon@airnz.co.nz

ACCC before authorisation is granted. Given the changes to the operating environment since the 2011 authorisation, and the successful reorganisation of American Airlines since that time, the ACCC should carefully consider whether American Airlines would enter any of the joint venture routes in the absence of the alliance. Finally, the ACCC should analyse the impact of the alliance on a route-by-route basis, which the parties have failed to do in their submission.

- **No interim authorisation in other jurisdictions:** There is no mechanism by which the parties can apply for interim authorisation of the arrangements in the US or New Zealand (we note that there has been no public notification of an authorisation application to the New Zealand Ministry of Transport). In the absence of interim authorisation in either of these jurisdictions, we cannot see how the proposed "close and immediate collaboration" between the parties could avoid breaching competition laws in these two jurisdictions. Even if cooperation is limited to sales and marketing in Australia, it is likely that any sharing of information required to implement this cooperation would raise competition issues in both the US and New Zealand. The public version of the application provides no information on how the parties expect to resolve this issue.

We would be happy to discuss any of the above issues with the ACCC. We are also considering a response in respect of the substantive arrangements, and would be grateful if the additional information regarding the parties' application, as requested above, could be provided to fully inform our response.

Yours sincerely

Stephen Jones
Chief Strategy Networks & Alliances

Air New Zealand Limited, 185 Fanshawe Street, Private Bag 92007, Auckland 1142, New Zealand
tel +64 9 336 2670 fax +64 9 336 2667 email jennifer.carlyon@airnz.co.nz