

**Application to the Minister of Transport pursuant to Part 9 of the Civil
Aviation Act 1990 for authorisation of the proposed partnership
between Air New Zealand and Virgin Australia**

Confidential Information

Air New Zealand Limited (“**Air New Zealand**”) and Virgin Australia Airlines Pty Ltd (“**Virgin Australia**”) (together, the “parties” or the “**Applicants**”) claim confidentiality for this Application pursuant to section 9(2)(b) of the Official Information Act 1982.

A Public Version will be provided separately, and information redacted in the Public Version in this Confidential Version is enclosed in square brackets and highlighted pink (being information which is confidential to the Applicants), or green (being information which is confidential to Air New Zealand) or blue (being information confidential to Virgin Australia), (the “**Confidential Information**”).

The Confidential Information is commercially sensitive and valuable information which is confidential to the Applicants (vis-à-vis the public and also in some respects vis-à-vis each other), and disclosure would be likely to unreasonably prejudice the commercial position of one, or both of the Applicants.

The Applicants request that they be notified of any request made under the Official Information Act for release of the Confidential Information, and that the Minister of Transport (the “**Minister**”) seeks their views as to whether the Confidential Information remains confidential and commercially sensitive at the time responses to such requests are being considered.

This request for confidentiality is not intended to constrain the Minister and the Ministry of Transport (the “**Ministry**”) from disclosing information to other Government departments for the purpose of seeking relevant expert advice. However, the Applicants request that the Minister ensure any such departments maintain the same full confidentiality as requested above.

1. Executive Summary

- 1.1 Air New Zealand and Virgin Australia (together, the **Applicants**) seek authorisation for five years to make and give effect to a Commercial Framework Agreement, Codeshare Agreement, and various related agreements (the **Proposed Conduct**).
- 1.2 As part of the Proposed Conduct, Virgin Australia proposes to enter into a unilateral codeshare agreement whereby it will market and resell under VA code trans-Tasman services operated by Air New Zealand (excluding Queenstown services) under VA code. To ensure that the Applicants' commercial incentives are aligned, public fares for the resupply of trans-Tasman itineraries involving these codeshare services point of sale Australia will be determined by Air New Zealand. In the absence of this codeshare pricing model, Air New Zealand (which receives no offsetting benefit by way of a reciprocal codeshare) would have no incentive to allow Virgin Australia to market its services, as it would be concerned that it may be undercut and lose revenue despite its exposure to the risk and cost of operating the services. It is only through the proposed pricing model that Air New Zealand is willing to offer Virgin Australia access to special prorate that will enable it to offer codeshare services at fares competitive with the rest of the market. Without it, Air New Zealand would not make the codeshare available to Virgin Australia at all.
- 1.3 As part of the Proposed Conduct, and on condition that the Codeshare Agreement is in effect:
- (a) Velocity members will be able to earn and redeem Velocity Frequent Flyer Points and accrue status credits on VA*NZ trans-Tasman services;
 - (b) Eligible passengers will be able to access Air New Zealand's seven international lounges across Australia and New Zealand located at Sydney, Melbourne, Brisbane, Perth, Auckland, Christchurch and Wellington when travelling on VA* NZ trans-Tasman services;
 - (c) The Applicants will cooperate in relation to jointly providing offers to corporate and Small and Medium Enterprise (**SME**) customers, including by jointly identifying target customers, considering how best to approach attract and retain customers, and making discounts on trans-Tasman itineraries involving VA*NZ trans-Tasman services available to Virgin Australia's corporate and SME customers; and
 - (d) The Applicants will continue to provide reciprocal network-wide staff leisure, business and duty travel arrangements.
- 1.4 The Proposed Conduct covers direct services between Australia and New Zealand and indirect services between Australia and New Zealand involving a domestic Australian segment. Flights to or from Queenstown are excluded from the scope of the Proposed Conduct as Virgin Australia operates competing Queenstown services on its own aircraft. To the extent that Virgin Australia commences operations on, or has pricing control over, any other overlapping trans-Tasman routes in the future, these would also be excluded from the Proposed Conduct.
- 1.5 The Proposed Conduct will deliver benefits to New Zealand. The Proposed Conduct will see enhanced marketing of New Zealand as a tourism destination to Virgin Australia customers. This enhanced marketing is expected to result in incremental traffic with corresponding benefits for the New Zealand tourism sector more generally. In addition to this, the Proposed Conduct is expected to result in incremental passengers on Air New Zealand services which has not only the benefit of improving the efficiency and sustainability of Air New Zealand's flight operations but which is a more general benefit to New Zealand given that half of Air New Zealand's shareholders are New Zealanders (via the Crown interest or a direct shareholding).
- 1.6 The Proposed Conduct does not result in any competitive detriment because it does not remove any competition, services or benefits that would be available without the Proposed Conduct.
- 1.7 None of the reasons set out in sections 88(3) or 88(4) of the Act apply in respect of the Proposed Conduct; and declining authorisation would likely have an undesirable effect on international comity between New Zealand and Australia and accordingly, section 88(5) provides a distinct reason for the Minister to exercise his discretion in favour of authorising the Proposed Conduct.

1.8 Accordingly, as the Proposed Conduct will allow a range of clear and tangible benefits without any competitive detriment, the Applicants consider that the Proposed Conduct meets the test for authorisation. The Applicants consider that the Proposed Conduct should be authorised for a period of five years.

1.9 The Applicants are also seeking authorisation from the ACCC for five years with a request that the ACCC grant interim authorisation for the Proposed Conduct by mid-February 2024.

2. The Applicants

2.1 This application is made by Air New Zealand Limited (“**Air New Zealand**”), and Virgin Australia Airlines Pty Ltd and Virgin Australia International Airlines Pty Ltd and their related bodies corporate (together, “**Virgin Australia**”).

- (a) **Air New Zealand:** Air New Zealand is New Zealand’s national flag carrier, and offers air services in New Zealand and internationally. The Air New Zealand Group operates a global network that provides air passenger services and cargo transport services to, from, and within New Zealand. Pre-pandemic, Air New Zealand flew more than 17 million passengers every year, with 3,400 flights per week.¹ As at 28 February 2023, Air New Zealand operated 105 aircraft (with another 12 on order).²

The New Zealand government owns approximately 52% of Air New Zealand, with the remainder owned by private investors. Air New Zealand is listed on the New Zealand and Australian stock exchanges.

Air New Zealand flies trans-Tasman services to nine destinations in Australia on the following routes:

- (i) Auckland to Sydney, Melbourne, Brisbane, Perth, the Gold Coast, Cairns, the Sunshine Coast (seasonally), Adelaide and Hobart;
 - (ii) Wellington to Brisbane, Melbourne and Sydney;
 - (iii) Christchurch to Brisbane, Melbourne, Sydney and the Gold Coast; and
 - (iv) Queenstown to Melbourne and Sydney.
- (b) **Virgin Australia:** Virgin Australia commenced operations in Australia in August 2000 as Virgin Blue and currently operates a network of domestic services and limited short-haul international services. Virgin Australia is headquartered in Brisbane.

In April 2020, Virgin Australia was placed into administration following significant impacts to its business related to the COVID-19 pandemic. On 17 November 2020, it was purchased and de-listed by Bain Capital. As part of the administration process, Virgin Australia divested its widebody aircraft including Boeing 777s and Airbus A330s.³ As at 10 November 2023, Virgin Australia offers air passenger services to 38 locations across Australia, Asia and the Pacific on a fleet of more than 97 narrowbody aircraft.

Quarantine free travel from Australia to New Zealand resumed on 13 April 2022.

On 2 November 2022, Virgin Australia resumed flights to Queenstown, New Zealand (ZQN).⁴ As at November 2023, Virgin Australia operates daily return services to Queenstown from Sydney and Brisbane and four return services per week between

¹ Air New Zealand “*Company Profile*” accessed on 27 September 2023 via <https://www.airnewzealand.co.nz/corporate-profile>

² Air New Zealand “*Operating fleet*” accessed on 27 September 2023 via <https://www.airnewzealand.co.nz/fleet>

³ Deloitte., “Virgin Australia Holdings Limited and subsidiaries: insolvency case information” ([link](#)); Virgin Australia ASX release: “Virgin Australia Holdings Limited – VAH (Administrators Appointed): Outcome of second meeting of creditors” (4 September 2020) ([link](#)).

⁴ Virgin Newsroom, “Kia Ora! Virgin Australia returns to Queenstown” (2 November 2022) ([link](#)).

Queenstown and Melbourne.⁵ Virgin Australia does not operate any other trans-Tasman services.

3. The Proposed Conduct

3.1 To make and give effect to a Commercial Framework Agreement and various related, inter-conditional agreements (**Implementing Agreements**) under which:

- (a) Virgin Australia will be able to place its code on a free sale basis on Air NZ operated trans-Tasman services (on routes that Virgin Australia does not operate). Virgin Australia will market and resupply trans-Tasman itineraries involving VA*NZ services from a point of sale Australia to New Zealand (including one way services from Australia and return services from Australia)⁶. This includes trans-Tasman itineraries comprising standalone VA*NZ services (e.g., SYD-AKL) and trans-Tasman itineraries comprising VA*NZ services with a connecting VA coded Australian domestic segment (e.g., CBR-SYD-AKL);
- (b) These codeshare rights are provided on the condition that Air NZ specifies the public fares at which Virgin Australia may market and resupply these services;
- (c) Virgin Australia and Air New Zealand can jointly discuss and agree upon fare rules and conditions associated with the Trans-Tasman itineraries involving VA*NZ services;
- (d) Virgin Australia and Air New Zealand can jointly identify, target, approach and price offers and discounts to corporate and SME customers for trans-Tasman itineraries involving VA*NZ services;
- (e) Eligible Velocity Frequent Flyer members can access Air New Zealand's international lounges when travelling on VA*NZ services and accrue status credits;
- (f) Velocity Frequent Flyer members can earn Velocity Points when travelling on VA*NZ trans-Tasman services;
- (g) Velocity Frequent Flyer members can redeem their Velocity Points for travel on VA*NZ trans-Tasman services;
- (h) Virgin Australia and Air New Zealand will continue to provide reciprocal network-wide staff leisure arrangements;⁷ and
- (i) Virgin Australia and Air New Zealand can cooperate and engage in activities required to facilitate any of the matters referred to above.

3.2 The Implementing Agreements are conditional on the codeshare agreement between Air New Zealand and Virgin Australia [REDACTED].

3.3 The Proposed Conduct will not apply on routes where Virgin Australia operates its own trans-Tasman services i.e.,

- (a) Melbourne (MEL) – Queenstown (ZQN);
- (b) Sydney (SYD) – Queenstown (ZQN); or
- (c) Brisbane (BNE) – Queenstown (ZQN).

3.4 The Proposed Conduct would cease to apply in relation to a trans-Tasman route if Virgin Australia commences:

⁵ Number of frequencies varies depending on the time of year.

⁶ We note that initially this will only apply to itineraries sold point of sale Australia and point of origin Australia.

⁷ Reciprocal staff duty travel (MIBA) arrangements to be agreed between the parties.

- (a) operating its own services in competition with Air New Zealand on that route; or
- (b) marketing VA coded services in competition with Air New Zealand where Virgin Australia has pricing control on that route.

3.5 The Applicants seek authorisation for a period of five years on the basis that:

- (a) The Proposed Conduct will not result in any competitive detriment; and
- (b) The Proposed Conduct will result in significant public benefits which outweigh any potential detriment.

4. **Commercial Rationale**

- 4.1 New Zealand is one of Australia's largest international travel markets and a key business and leisure destination. For this reason, it is also important in the context of the broader Australasian aviation market as customers value the ability to travel there, earn and redeem loyalty points on that travel, and often require this option as part of corporate travel needs.
- 4.2 Virgin Australia does not currently have a trans-Tasman offer beyond services to and from Queenstown, which is a unique New Zealand destination in terms of demand and traffic mix, as outlined further below.⁸ This leaves Virgin Australia with a gap in its network offering which has implications not only for the sale of individual trans-Tasman services but also for Virgin Australia's domestic loyalty proposition and its ability to effectively compete for domestic services and for higher-yield corporate and SME customers.
- 4.3 SME and high frequency travellers provide important revenue for airlines and increase the sustainability of providing air passenger services. No matter how good Virgin Australia's domestic offering is, it faces limitations in attracting Australian corporate and SME clients and high frequency travellers if it cannot offer a competitive network which includes the trans-Tasman, and other features attractive to such passengers, such as frequency, the ability to earn and redeem Velocity Points and lounge access. Where the schedule and associated benefits are not available on routes a high frequency traveller considers important, they may choose to avoid utilising that airline altogether even where more competitive fares are offered. This dampens the ability of Virgin Australia to effectively compete for domestic and international services.
- 4.4 For Air New Zealand, the Proposed Conduct:
- (a) drives increased passenger numbers (including higher yield passengers such as corporates and SME customers) onto its trans-Tasman services and likely also onto its domestic services, improving the efficiency and sustainability of its flight operations; and
 - (b) facilitates access to additional distribution channels for its trans-Tasman services, including to Australian customers where Air New Zealand does not have as strong a marketing and sales presence.
- 4.5 The Proposed Conduct enables Virgin Australia to quickly and efficiently fill its trans-Tasman network gap and offer value-added benefits to Velocity customers:
- (a) on routes where it does not operate [REDACTED]; and
 - (b) with a depth that can better compete with other providers, especially where frequency and schedule flexibility is of importance.

⁸ See Confidential Annex 1 for further information.

5. Counterfactual

5.1 The relevant counterfactual is the status quo. At a high level:

- (a) The Proposed Conduct allows VA coded services and flow-on benefits which would otherwise not exist. [REDACTED]. Nor does it act to delay or disincentivise Virgin Australia's entry.
- (b) [REDACTED].
- (c) Air New Zealand operates a breadth and depth of trans-Tasman services that could be marketed on VA code in competition with Qantas and other trans-Tasman carriers.
- (d) Virgin Australia could not efficiently get access to the same breadth or depth trans-Tasman services to effectively compete with Qantas with any other partner, which means the enhanced network access and accompanying valued added benefits are only available through the Proposed Conduct.

5.2 Further detail on Virgin Australia's counterfactual is provided in Confidential Annex 1 to this application.

6. Competition considerations: the absence of any competitive overlap

6.1 The competitive dynamics of the Tasman market are characterised by many operators, and the availability of new entry and expansion due to the Open Skies agreement and fifth freedom rights available for international carriers. The large proportion of leisure travellers on the Tasman intensifies Tasman fare competition, providing a strong incentive for operators to compete for higher yielding business travellers. The result is that the Tasman is also characterised by strong fare competition for both corporate and leisure travellers.

6.2 The Proposed Conduct does not result in any competitive detriment because:

- (a) It does not remove any competition, services or benefits that would be available without the Proposed Conduct:
 - (i) Virgin Australia does not currently offer trans-Tasman services outside of services to/from Queenstown, which is a unique New Zealand destination in terms of demand and traffic mix.⁹ The Proposed Conduct does not change Virgin Australia's incentives regarding entry onto the trans-Tasman utilising its own aircraft and therefore does not have the effect of delaying or disincentivising entry that would otherwise occur. Consistent with its approach to assessing its network and the deployment of resources, Virgin Australia will continue to assess the commercial viability of trans-Tasman services with or without the Proposed Conduct. If circumstances change and it chooses to enter any other specific overlapping trans-Tasman routes these will be carved out from the Proposed Conduct.
 - (ii) [REDACTED] and the other commercial agreements and benefits are conditional on, and flow from, the existence of the non-traditional codeshare arrangement; and
- (b) No other commercially viable partner could provide the same degree of public benefits from the start of the partnership. This includes the depth and breadth of trans-Tasman services that Air New Zealand can provide VA coded access to, coupled with lounge access to seven international lounges in Sydney, Melbourne, Brisbane, Perth, Auckland, Wellington and Christchurch for trans-Tasman flights.
- (c) Overlapping trans-Tasman routes are excluded from the Proposed Conduct. The Proposed Conduct does not apply to Queenstown services and would cease to apply in relation to a

⁹ See Confidential Annex 1 for further information.

trans-Tasman route if Virgin Australia commences operating or marketing and pricing services in competition with Air New Zealand on that route.

- (d) The Tasman is a highly competitive, open market with low regulatory barriers to entry and a range of providers (including full-service carriers, low-cost carriers and fifth freedom carriers) already operating or able to operate services, such as Qantas/Jetstar, Emirates, LATAM and China Airlines. The Proposed Conduct does not provide an increased incentive or ability to raise airfares and / or reduce service quality on trans-Tasman services. In the event of any attempts to do so, other carriers are well placed to increase frequency or to enter and provide new services thwarting such attempts.

6.3 We expand on this below.

Competitors providing trans-Tasman air passenger services

- 6.4 Qantas, Jetstar and Air New Zealand are the three major, long-standing, carriers that offer the largest networks of services between Australia and New Zealand. Unlike Virgin Australia, the Qantas Group and Air New Zealand have well-established domestic New Zealand operations, which further support their Tasman services.
- 6.5 As discussed below, given connections between Australia and New Zealand for onward international travel and the liberal aviation policies of each country in respect of the trans-Tasman, trans-Tasman routes can be served by international operators using fifth freedom rights at marginal cost. As a result, fifth freedom carriers are an established feature of the Tasman market, with regular entry from international airlines. The current main fifth freedom carriers that operate on the trans-Tasman route include Emirates which has an authorised alliance with Qantas including on the Tasman, LATAM, Air AsiaX, China Airlines and Batik Air Malaysia.

Qantas

- 6.6 Qantas is Australia's largest domestic and international airline boasting a \$2.47 billion underlying profit before tax in its 2023 Annual Report.¹⁰ The Qantas Group has over 60% of the domestic market share in Australia and estimates that it earned around 90% of domestic industry profits between FY15-FY19. Prior to the COVID-19 pandemic, the Qantas Group operated over 4,500 flights domestically and over 730 flights internationally each week.¹¹ Qantas has 15.2 million Qantas frequent flyer members as at June 2023 and a significant "on ground" earn element as part of its frequent flyer offering, including major brands such as Woolworths, BP and Optus. The Qantas frequent flyer program is also linked to dozens of branded credit cards that are available to consumers, further strengthening the program in the Australian market.
- 6.7 Qantas has a large fleet with significant flexibility to respond to changes in market conditions. As at 30 June 2023, the Qantas Group fleet totalled 336 aircraft¹² more than three times Virgin Australia's aircraft in operation.
- 6.8 Qantas offers an extensive trans-Tasman network and continues to increase its frequency and services. The Qantas group also operates domestic New Zealand services. In July 2023, Qantas added more than 60 additional flights interstate and on the trans-Tasman in response to a high demand for trans-Tasman services. While Qantas has an extensive trans-Tasman network as an operating carrier, the strength and reach of its network is further enhanced by its partnerships in the region, including its arm's length codeshare with Air New Zealand on certain domestic New Zealand routes and its authorised alliance with Emirates which extends to the trans-Tasman. Qantas also has strong links with Australian-based travel agents which provides it with a substantial advantage over Air New Zealand in relation to Australian Point of Sale customers.

¹⁰ Qantas Annual Report 2023, available at <https://investor.qantas.com/FormBuilder/Resource/module/doLLG5ufYkCyEPjF1tpgyw/file/annual-reports/2023-Annual-Report.pdf>

¹¹ ACCC, Qantas and Emirates authorisation, Final Determination, 17 August 2023, available at <https://www.accc.gov.au/system/files/public-registers/documents/Final%20Determination%20-%202017.08.23%20-%20PR%20-%20AA1000625%20Qantas%20Emirates.pdf>.

¹² Qantas Annual Report 2023, at p16.

6.9 Qantas currently operates services between:

- (a) Sydney/Melbourne/Brisbane and Auckland;
- (b) Sydney/Melbourne and Wellington;
- (c) Sydney/Melbourne/Brisbane and Queenstown; and
- (d) Sydney/Melbourne/Brisbane and Christchurch.

6.10 Qantas also recently launched flights between Brisbane and Wellington in October 2023, utilising a smaller Embraer E190 aircraft that offers a cost advantage over larger jets. The new service positions Qantas as the leading international carrier from Wellington, with 28 weekly services, compared to Air New Zealand's 19 weekly services.

6.11 In July 2023, the Qantas Group announced the procurement of its first Airbus A220 expected to arrive in Australia before the end of 2023. A total of seven A220s are expected to be in service by the end of 2024, building up to a total of 29 aircraft by 2027, refreshing its existing narrow body fleet. The A220 has the ability to fly between any city in Australia and further, with a range of over 6,000 kms. Comparatively, the Sydney to Christchurch route is a total of 2,164 kms. Therefore, the commencement of service with this aircraft- paves the way for new domestic and short-haul international routes. It is anticipated that Qantas may deploy these narrow-body fleet to increase capacity on trans-Tasman services.

Jetstar

6.12 Jetstar is the low-cost carrier arm of the Qantas Group.

6.13 Jetstar operates an extensive international and trans-Tasman network and has become one of the busiest carriers between Australia and New Zealand. Jetstar's international services were launched in 2005 with its first flight between Sydney and Christchurch, now offering 10 routes across the Tasman. It also operates domestic New Zealand services.

6.14 As at July 2023, the capacity of Jetstar's trans-Tasman operations was already 10% above pre-pandemic levels. This growth was seen after Jetstar started operating four weekly return flights between Auckland and Brisbane from March 2023, boosting the number of Jetstar routes linking Australia and New Zealand to 10, and added flights during periods of higher demand from July to October. In the next 12 months, Jetstar alone expects to fly up to one million passengers between Australia and New Zealand, which is higher than pre-covid passenger numbers.

6.15 Jetstar currently operates direct services between:

- (a) Sydney/Melbourne/Brisbane/Gold Coast and Auckland;
- (b) Melbourne/Gold Coast and Christchurch;
- (c) Gold Coast and Wellington; and
- (d) Sydney/Melbourne/Gold Coast and Queenstown.

Fifth freedom carriers

6.16 Whilst Qantas, Jetstar and Air New Zealand are the key carriers on the trans-Tasman, international operators also service the route:

- (a) on 24 August 2023, Batik Air Malaysia commenced a service between Auckland and Perth, operating 6 times per week;
- (b) on 26 March 2023, Emirates recommenced services between Sydney and Christchurch;
- (c) in March 2022, Latam recommenced services between Sydney, Auckland and Santiago;

- (d) in October 2022, China Airlines restarted services between Auckland, Brisbane and Taipei, operating 5 times per week;
- (e) in November 2022, AirAsia X recommenced services between Kuala Lumpur, Sydney and Auckland. AirAsia X has increased their market share compared to their pre-pandemic level; and
- (f) on 6 November 2023, China Eastern commenced services between Hangzhou, Sydney and Auckland, operating 4 times per week.

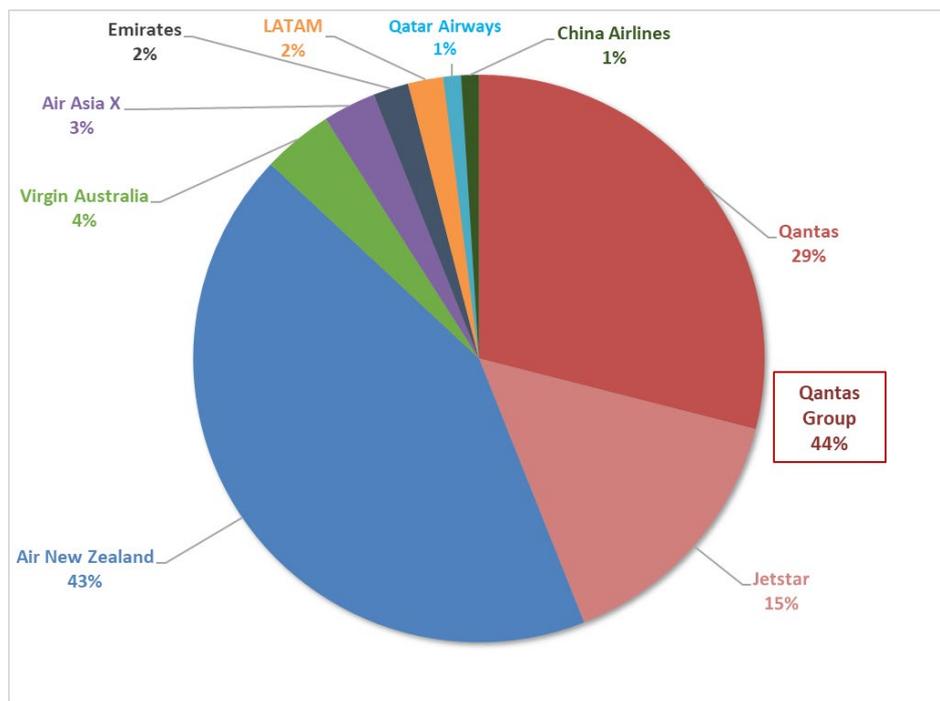
6.17 These carriers generally operate larger aircraft suited to long-haul flights (as these kinds of aircraft are usually used to operate from their hubs to Australia). For example, Emirates’ services are operated on an Airbus A380, which is the largest of all passenger aircraft types and only operated by a handful of carriers globally. Given the large number of seats on these aircraft, these operators have a strong incentive to offer competitive airfares to increase load factors.

Low barriers to entry and competitive landscape

Qantas Group is the largest provider in the competitive trans-Tasman market

6.18 Currently, the Qantas Group has the largest market share for trans-Tasman services by tickets sold and capacity. This can be seen in Figure 1 to Figure 3 below, which show market shares based on tickets sold and seat capacity. Air New Zealand has the next largest share.

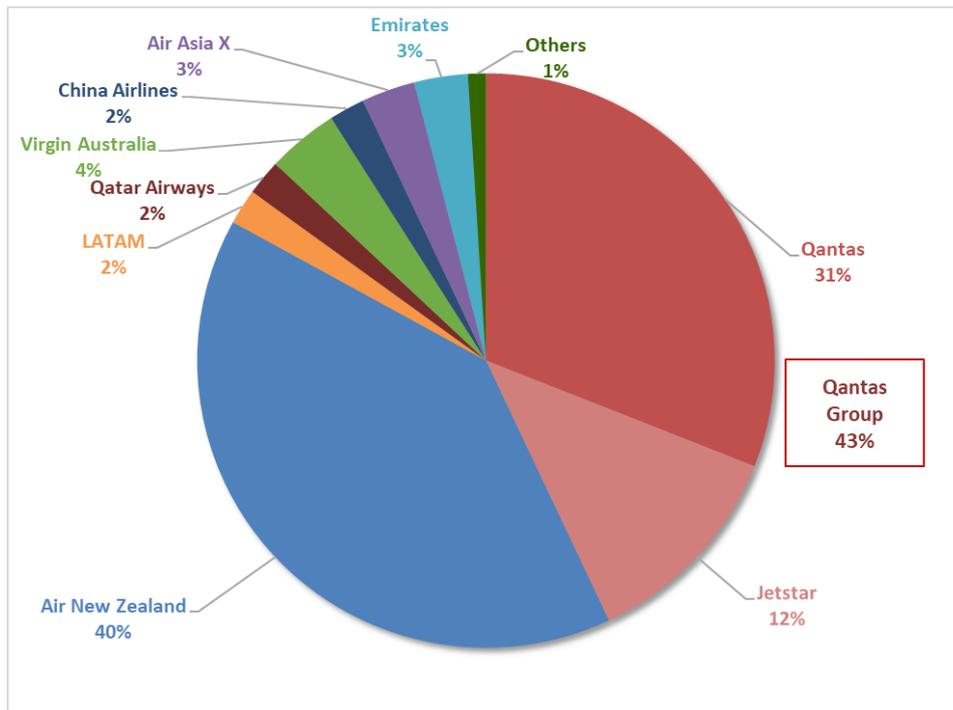
Figure 1: Passenger share on the Trans-Tasman - January to June 2023



Source: IATA DDS Estimate

Notes: The data is based on estimates of tickets sold from any point of sale. Market shares are rounded to the nearest 1%.

Figure 2: Seat capacity shares on the trans-Tasman – 2023

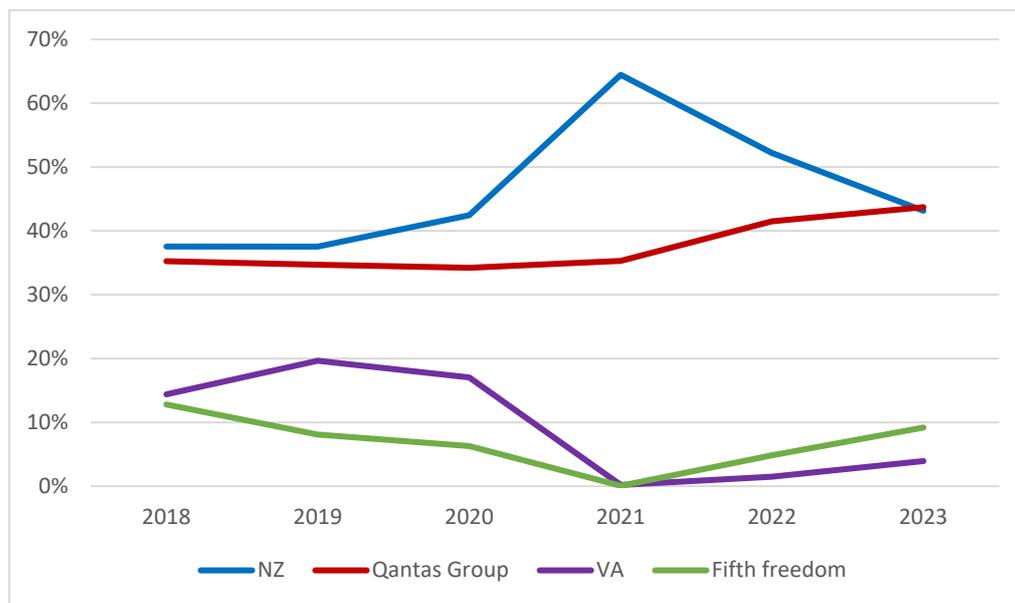


Source: Cirium Diio Mi as at 7 August 2023

Notes: The data is based on seats by operating airline (including published schedules to 31 December 2023).
[REDACTED]

6.19 Historically, the Qantas Group (including Qantas and Jetstar) and Air New Zealand have been the key providers, with Qantas Groups' share increasing post the COVID-19 pandemic. This can be seen in Figure 3 below. We also note that Qantas' alliance with Emirates, which includes Tasman services, was re-authorised by the ACCC on 17 August 2023 and the Associate Minister for Transport (NZ) on 28 March 2023.

Figure 3: Trans-Tasman market shares based on ticket sales - 2017 to Q2 2023



Source: IATA DDS

Notes: The data is based on tickets sold

The Tasman is an open international airline market

- 6.20 The highly competitive nature of trans-Tasman services is underpinned by liberal aviation policies. In particular, the reciprocal 'Open Skies' agreement signed between Australia and New Zealand in 2002 and the operation of the trans-Tasman as a Single Aviation Market create low barriers to entry and expansion for both fifth freedom carriers and domestic Australian and New Zealand airlines.
- 6.21 The 'Open Skies' agreement relevantly allows:
- (a) international airlines to operate unrestricted services across the Tasman and beyond to a third country (also known as fifth freedom rights);
 - (b) Australia and New Zealand owned airlines to operate unrestricted services across the Tasman and domestic services in both countries, subject to safety approvals;
 - (c) airlines to make commercial decisions on the number of services they operate and the destinations they serve without having to obtain government approval for their airfares, subject to Australia's legislative processes; and
 - (d) unlimited capacity entitlements between Australia and New Zealand.
- 6.22 Fifth freedom carriers scheduling and frequency decisions on trans-Tasman routes are driven by broader network considerations. Given the connections between Australia and New Zealand for onward international travel, fifth freedom carriers are able to service the trans-Tasman at marginal cost based on utilisation flying.
- 6.23 As a result, a Trans-Tasman route does not need to be profitable on a stand-alone fully costed basis for a fifth freedom carrier. This further increases the intensity of fare and service competition.
- 6.24 Fifth freedom carriers are an established feature in the Tasman market, with the following airlines currently providing trans-Tasman services: Emirates, Latam, China Airlines, China Eastern AirAsia X and Batik Air Malaysia.

- 6.25 The ease of new entry for fifth freedom carriers is also highlighted by the entry, exit and expansion of various operators over time including, for example, Qatar's entry, and post-Covid commencement of services between Adelaide and Auckland from April 2022 operating until 31 August 2023.
- 6.26 The trans-Tasman operates as a Single Aviation Market, with Australian and New Zealand designated airlines able to set unlimited capacities and frequencies and having no restrictions on the routes they can operate to, within or beyond the two countries. Accordingly, any designated Australian or New Zealand airline (e.g., Air New Zealand, Virgin Australia, Qantas and Jetstar) may enter or expand on trans-Tasman routes. As set out above, Qantas has indicated that it will expand its services on the trans-Tasman, stating that it will use its new Airbus A220 aircraft to enter into "new short-haul international routes" (which will likely include new trans-Tasman services).

Corporate travel

Trans-Tasman services are attractive to corporate clients

- 6.27 The trans-Tasman is a key market for corporate contract customers. Australia's broad bilateral trade and economic relationship with New Zealand has resulted in a large degree of integration between the Australian and New Zealand economies and business communities. Many businesses have operations in both Australia and New Zealand and there is a high degree of dual destination business travel. In particular:
- (a) Auckland was the number one international travel destination for Australian business travellers in 2022 (this was also the case in 2019);¹³ and
 - (b) As shown in Figure 3, 9% of trans-Tasman travel is conducted for a business purpose with another 6% for employment or convention / conference / exhibition reasons.
- 6.28 Based on Virgin Australia's corporate sales experience, the key drivers of airline choice for Australian corporate clients include:
- (a) network reach and connections;
 - (b) frequency and convenient flight times;
 - (c) access to lounges;
 - (d) the existence of a competitive loyalty program for status and frequent flyer points and the ability to earn and burn across a broad network; and
 - (e) price and service.
- 6.29 The ability to service trans-Tasman routes is highly attractive for Australian businesses contracting with air service providers and can be a non-negotiable requirement for some businesses. Companies with high international travel needs often make their decision on a preferred domestic airline based on that airline's ability to meet their holistic travel needs using either their own operations or with airline partners. Any significant gaps in coverage are typically detrimental to that airline's chances of winning the company's business.
- 6.30 Even where the business does not frequently use trans-Tasman services or fly on the Tasman at all, the ability to provide trans-Tasman services is still often important to being able to win business from Australian corporate clients. This is for reasons including that corporate clients place value on the option to redeem frequent flyer points earned from business trips on key holiday and VFR destinations, such as New Zealand. The ability for corporates to offer this benefit with coverage of one of Australia's largest international markets is attractive and can be important in the competition for the recruitment and retention of the best employees. The value of

¹³ <https://www.corporatetraveller.com.au/news/auckland-number-one-international-business-travel-destination-2022>

being able to redeem points on the trans-Tasman in particular is clear. [REDACTED] Trans-Tasman coverage is particularly important where other airlines competing for the same corporate contracts, offer a broad network and high frequency of trans-Tasman services.

6.31 [REDACTED]

6.32 In 2022, Virgin Australia also established its Virgin Australia Business Flyer (**VABF**) program in competition with Qantas' Qantas Business Rewards program. VABF is free to join for any business with an ABN and targeted at SMEs with an annual domestic airline spend on Virgin Australia of up to \$300,000. By booking through the VABF program, SME customers are able to access discounted fares and earn Velocity Points for their business, as well as individual flyers.

Competitive landscape for trans-Tasman services offered to corporate clients

6.33 Qantas has the largest market share and proportion of corporate travellers of airlines operating within Australia or on trans-Tasman flights. The 2023 Qantas Annual Report notes that Qantas Domestic maintained its leading market share positions in both the corporate and SME segments (at ~80% and ~54% respectively). In relation to trans-Tasman flights, Qantas carries the majority of business/conference travellers and is stronger at attracting business traffic in relative terms than any other airline with a significantly higher proportion of business passengers to its overall passenger share. Based on August 2023 NZ arrival statistics, Air New Zealand only carried around 24% of Australians travelling for business purposes between January and August 2023, and only 23% of Australians travelling for business purposes between Brisbane / Sydney / Melbourne and Auckland / Wellington, which are the routes accounting for around three quarters of Australian business traffic. Based on these statistics, Air New Zealand estimates that Qantas carries approximately 70% of Australians travelling to NZ for business purposes.

6.34 Qantas' position is reinforced by its frequent flyer program and the contracts Qantas has with business organisations for domestic and international travel creating customer stickiness in favour of Qantas services. As at June 2023, Qantas had 15.2 million frequent flyer members and estimates that one in five Australian SMEs are part of Qantas Business Rewards. Further, on the trans-Tasman route in particular, Qantas is one of the only air service providers offering high frequencies in peak timeslots which are highly attractive to corporate clients. The only other airline that comes close is Air New Zealand.

7. Benefits to New Zealand

7.1 Not only is there an absence of any detriment, the Proposed Conduct will deliver meaningful benefits to New Zealand as described in further detail below.

Incremental tourism

7.2 The Proposed Conduct will see enhanced marketing of New Zealand as a destination to Virgin Australia customers (and Australian customers more generally). This enhanced marketing is expected to result in incremental traffic to New Zealand, with corresponding benefits in the form of additional tourism spend.

7.3 As explained above, Virgin Australia will be able to offer VA-marketed services on trans-Tasman routes that it does not currently offer, and to customers across its network that Air New Zealand would not as easily access. As a result of the Proposed Conduct, these additional destinations – now with VA code – will be marketed more generally as part of Virgin Australia's broader offering, i.e.,

- (a) on Virgin Australia's website (which attracts around [REDACTED]¹⁴);
- (b) to Virgin Australia's 11.5 million Velocity members;

¹⁴ [REDACTED]

- (c) in Virgin Australia above the line promotional material, e.g. campaigns, television, outdoor advertising, etc. To provide some context, Virgin Australia's to annual marketing spend in FY23 was [REDACTED]; and
- (d) via Australian (and other) travel agents with which Virgin Australia has strong relationships. Again, to provide some context [REDACTED]

all of the above will drive incremental travel to New Zealand.

7.4 The Parties expect that the Proposed Conduct will mean that Virgin Australia passengers, and, in particular, Velocity Frequent Flyer members will now be more inclined to travel to New Zealand (as compared to other international destinations to which Virgin Australia flies such as Bali or Fiji). This is because as a result of the Proposed Conduct:

- (a) Velocity Frequent Flyer members can earn Velocity Points when travelling on VA*NZ trans-Tasman services;
- (b) Velocity Frequent Flyer members can redeem their Velocity Points for travel on VA*NZ trans-Tasman services;
- (c) eligible Velocity Frequent Flyer members can access Air New Zealand's international lounges when travelling on VA*NZ services and accrue Status Credits; and
- (d) customers residing in cities outside Air New Zealand's trans-Tasman network, but within the Virgin Australia domestic network, can travel to New Zealand using a single marketing carrier,

all of which makes New Zealand a substantially more attractive destination for those 11.5 million Velocity members.

7.5 It is reasonable to assume that an enhanced Velocity programme would lead to increased competition from Qantas in the offering to both loyalty program members and businesses seeking to join an airline loyalty program as a partner, with consequent flow-on benefits to New Zealand (being a popular destination for Australian travellers). In particular:

- (a) Qantas could be prompted to improve its loyalty offering by, for example, increasing the availability of reward seats available for redemption on trans-Tasman routes; or
- (b) Qantas may offer more competitive commercial terms to a partner seeking to join or renew its participation in Qantas Frequent Flyer as a result of a more compelling competing Velocity Frequent Flyer.

7.6 Additional traffic to New Zealand (and domestic spend) can be expected from incremental passengers traveling for business purposes. This is because, under the Proposed Conduct, Virgin Australia can identify, target, approach and offer rates and discounts to Corporate and SME customers for trans-Tasman itineraries involving VA*NZ services (the range of rates and offers that VA can offer Corporate and SME customers will be set out in a corporate dealing arrangement between Virgin Australia and Air New Zealand). Given its strong domestic Australia network, Virgin Australia has contracts with [REDACTED] corporate accounts. These customers now have a broad Tasman network on which to fly on VA coded flights to key business ports such as Auckland, Wellington and Christchurch, pursuant to their corporate travel arrangements with Virgin Australia.

7.7 More particularly, Virgin Australia has established its Virgin Australia Business Flyer (**VABF**) program in competition with Qantas' Qantas Business Rewards program. VABF is free to join for any business with an ABN and targeted at SMEs with an annual domestic airline spend on Virgin Australia of up to \$300,000. By booking through the program, SME customers will be able to access discounted fares and earn Velocity Points for their business, as well as individual flyers.

7.8 As is the case with a more competitive loyalty programme, by extending the offering to Australian corporate and SME customers in this way, Virgin Australia will be able to compete more

effectively for corporate contracts and SME customers. As discussed above, Qantas currently captures the vast majority of corporate and SME travellers. With Virgin Australia able to broaden its offering, this would encourage customers to switch to Virgin Australia and in turn likely encourage Qantas to improve its competitive offering to corporate and SME customers in response. Qantas could do this by offering higher discounts or rewards (e.g. bonus points) to corporate or SME customers booking trans-Tasman tickets, or airline tickets more generally. This enhanced competition could be expected to generate yet more business traffic on services to New Zealand.

Incremental passengers on Air New Zealand's services

- 7.9 In addition to generating incremental traffic to New Zealand, Velocity members, and those corporate travellers who are part of the VABF programme, who may otherwise travel with Qantas will, as a whole, be more likely to travel via Virgin Australia code on Air New Zealand trans-Tasman services.
- 7.10 This incremental traffic on Air New Zealand flights has the benefit of improving the efficiency and sustainability of Air New Zealand's flight operations.

8. No legal reasons for the Minister refusing to authorise the Proposed Conduct

8.1 Under Part 9 of the Act, the Minister is required to take into account a number of factors in making a decision as to whether to grant, or to decline to grant, authorisation of provisions in contracts, arrangements, and understandings relating to international carriage by air. In particular, sections 88(3) and (4) of the Act provide specific reasons for the Minister to decline to authorise, although they are subject to an override in section 88(5) if the Minister believes that to decline authorisation would have an undesirable effect on international comity.

8.2 In summary:

- (a) none of the reasons set out in sections 88(3) or 88(4) apply in respect of the Proposed Conduct; and
- (b) declining authorisation would likely have an undesirable effect on international comity between New Zealand and Australia and accordingly, section 88(5) provides a distinct reason for the Minister to exercise his discretion in favour of authorising the Proposed Conduct.

Section 88(3)

8.3 Granting authorisation will not prejudice compliance with any relevant international convention, agreement or arrangement to which the Government of New Zealand is a party.

Section 88(4)

8.4 The Minister cannot decline to re-authorise the Proposed Conduct under section 88(4) as the Proposed Conduct includes no provision that would infringe section 88(4)(a)-(f):

- (a) Market pressures: the Proposed Conduct makes no provision for either Applicant to directly or indirectly enforce the relevant agreements through any form of action by way of fines or market pressures against any person.
- (b) Commission regimes: no provision of the Proposed Conduct has the purpose or the effect of breaching any commission regime.
- (c) Discrimination: the Proposed Conduct does not unjustifiably discriminate between consumers of international air services in the access they have to competitive tariffs.
- (d) Exclusionary effect of tariffs: the Proposed Conduct will not have an exclusionary effect on other airlines from operating any international route.

- (e) Section 90 approvals: the Proposed Conduct does not have the purpose or effect of preventing any party from seeking approval in terms of section 90 of the Act, for the purpose of selling international carriage by air at any other tariff so approved.
- (f) No penalty for withdrawal on reasonable notice: [REDACTED].

Section 88(5)

- 8.5 If the Minister considers, contrary to the Applicants' view, that the Proposed Conduct does not comply with section 88(4)(a)-(f) of the Act, he can nevertheless authorise the Proposed Conduct under section 88(5) if declining to authorisation would have an undesirable effect on international comity between New Zealand and another state.
- 8.6 Declining authorisation would have an undesirable effect on international comity between New Zealand and Australia. Accordingly, international comity provides a distinct reason for the Minister to exercise his discretion in favour of authorising the Proposed Conduct. The Applicants have applied to the ACCC in parallel for authorisation of the Proposed Conduct and believe authorisation should be granted in Australia on the basis that the Proposed Conduct creates net public benefits for Australian consumers. In those circumstances, declining authorisation for the Proposed Conduct would prevent Australia from realising these net public benefits.

9. Conclusion

- 9.1 The Proposed Conduct will result in benefits to New Zealand without any competitive detriment. Therefore, the Applicants consider that the Proposed Conduct meets the test for authorisation. The Applicants consider that the Proposed Conduct should be authorised for a period of five years.