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30 June 2006

John Macilree
Principal Adviser
Ministry of Transport
PO Box 3175
Wellington

Dear Mr Macilree

AIR NEW ZEALAND / QANTAS

- 1 I refer to your letter of 30 June 2006 regarding the public release of my letters to the Ministry about the proposed code share arrangements between Air New Zealand and Qantas.
- 2 I can confirm that there is no material in those letters that warrant withholding under the Official Information Act.
- 3 I commend the decision to put any representations which the Ministry receives on that important matter on its website.
- 4 I would ask however that you confirm that publication on the website will extend to everything that is provided to the Ministry by the applicants – including the application and all subsequent information. I also ask you to confirm that publication on the website will extend to any correspondence between the Ministry (or the Minister of Transport) and the applicants in relation to their application.

- 5 Further, to the extent that the views of other Ministers or other government bodies may be sought, or expert reports commissioned, in relation to the application, that information, too will be published on the website.
- 6 I recognise of course that there may be grounds under the Official Information Act for withholding some of the information relevant to the application that is received by the Ministry. In such cases, however, I would ask that the document in question be appropriately described and the grounds for any deletions stated. In that way, interested persons will be able to complain to the Ombudsman about the deletion, if necessary.
- 7 Finally, can I suggest that the Ministry give serious thought to setting up a process whereby commercially sensitive or otherwise confidential information can be released on a "confidential to counsel and experts" basis. To elaborate, the Commerce Commission has a long standing practice of allowing experts retained by interested parties to test the accuracy of information and/or assertions being made by an applicant in information that is otherwise confidential and restricted from circulation. All individuals to whom such information is to be released are required to sign confidentiality orders and there can be other safeguards. But, the practical effect is to enable all assertions made by an applicant to be properly tested.

Yours faithfully

Grant David
Partner