

14 June 2006

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Attention : Grant David

Dear Mr David,

Air New Zealand / Qantas Application

Thank you for your letter of 1 June 2006 seeking clarification of my letter of 26 May 2006.

I will expand on that answer but by way of explanation, my earlier response was intended to provide you with guidance as to the way in which parties who express an interest in this matter would be able to make comment for the Minister's consideration and the timeframe for doing so.

Process

You have requested all information that the Ministry has on the process to be followed.

The Air New Zealand/Qantas application (the TNA) was received on 13 April 2006. As you will now be aware, the Minister of Transport Hon Annette King has transferred her responsibilities in relation to the TNA to Hon Pete Hodgson.

The following process will apply:

1. Parties who express an interest in the matter are able to make written comment on the detail of the TNA or the application of Part 9 of the Civil Aviation Act 1990 (the Act) to the TNA as they wish, until the end of July 2006. The Ministry will take such views into account insofar as they are relevant.

2. Separate from the receipt of such views, the Ministry may need to seek further information from the applicants.
3. The Ministry expects to be in a position to finalise advice to the Minister about mid-September 2006. At this stage we do not intend to publish a draft report for interested parties who have provided written comment (other than the applicants) to comment on. However, depending on the content of such interested parties' views and on other matters that may arise in the course of consideration of the application, we may reconsider this aspect.
4. We expect that the Minister may seek particular advice from outside the Ministry, if required.

The Ministry has received requests under the Official Information Act 1982 (the OIA) for the views provided by interested parties. I consider that it would be useful if these views were posted on our website, subject to any withholding under the OIA. I would welcome your comments on this proposal.

When your client provides its views on the application I invite you to state your views on whether any portions should be withheld, so that the Ministry may take these into account in deciding what to release under the OIA.

Your request includes legal advice sought and received. The Ministry's request for legal advice and the legal advice received are withheld under section 9(2)(h) of the OIA. I do not consider there to be any considerations that render it desirable, in the public interest, to make that information available.

Criteria

You have also sought all information on how the criteria which the Minister will use to consider the application are to be weighed and applied.

The Minister's decision will be guided by Part 9 of the Act, the scope and purpose of that Part and of the Act, and the general law relating to administrative decision making. The authorisation is sought under section 88.

As you will be aware, that section empowers the Minister to authorise all or any provisions of an agreement (etc) in respect of international carriage by air and related to such carriage so far as the provisions relate, directly or indirectly, to the fixing of tariffs, the application of tariffs, or the fixing of capacity, or a combination. The Ministry is currently reviewing the TNA to ensure that any authorisation is limited to those provisions that meet section 88 requirements.

Part 9, headed "International air carriage competition", involves competition issues in respect of the international air travel market. Accordingly, competition matters relevant to the legislation will be considered.

Pending further analysis and deliberation on all views and other advice received, the Minister of Transport and Ministry officials have and will keep an open mind as to the application of and weight to be applied to the criteria.

That being the case, the information you seek concerning the weighting and application of criteria does not exist (apart from legal advice). I am therefore declining that request under section 18(e) and (in relation to the legal advice) section 9(2)(h) of the OIA.

Information or advice provided

Your letter also included a request for details of any information or advice already given by the Ministry to either of the applicants in regard to whether it is considering all features of the TNA and whether it proposes to consider the competition effects of the TNA.

To date we have not given any information or advice to Air New Zealand since receiving the application. I am therefore declining that request under section 18(e) of the OIA.

OIA review

You have the right under section 28 of the OIA to seek a review by the Ombudsman of the refusals contained in this letter.

Consultation

The final part of your letter refers to the importance of seeking third party views as a means of providing information. I agree that interested party participation is important. Interested parties now have until the end of July 2006 for this purpose.

The last part of your letter is in the nature of a submission. Do you wish us to take it into account as part of the deliberation or will you include it in your client's forthcoming letter?

Yours sincerely

Robin Dunlop

Secretary for Transport