

9 May 2006

Barry Bouton
Chief Executive Officer
Invercargill Airport Limited
Private Bag 90104
INVERCARGILL

Dear Barry Bouton

On behalf of Hon Annette King, Minister of Transport, I acknowledge your letter of 27 April 2006 to Hon Pete Hodgson, the then Acting Minister of Transport, concerning the announcement of a code-share agreement between Air New Zealand and Qantas.

You may expect a personal reply from the Minister in due course.

Yours sincerely

Anya Zohrab
Private Secretary

INVERCARGILL AIRPORT LTD



GENERAL MANAGER
Ph 0-3-214 0769 Fax 0-3-214 0768
Mobile 025-357 499 email jwalsh@invercargillairport.co.nz

OPERATIONS MANAGER
Ph 0-3-214 0571 Fax 0-3-218 6939
Mobile 025-331 780 Email eforstyth@invercargillairport.co.nz

Private Bag 90104, Invercargill, New Zealand www.invercargillairport.co.nz

When calling please ask for:

Our reference:

27 April 2006

The Hon. Pete Hodgson
Minister of Transport
Parliament Buildings
Wellington



Dear Minister

Invercargill Airport Limited note the 12 April announcement of a code-share agreement between Air New Zealand and QANTAS and the parties intent to seek approval of the arrangement by the Minister of Transport and the ACCC respectively.

Invercargill Airport supports the proposed code-share agreement and, in doing so, would like to make the following observations:

1. Air New Zealand and QANTAS have made their intentions public and offered full disclosure of the mechanics of the agreement. Air New Zealand has commenced consultation with Invercargill Airport Limited. This should alleviate the concerns of "a lack of consultation and transparency" expressed by some airport companies. It also allows you to take whatever expert advice you deem necessary to evaluate the merits of the proposal.
2. Invercargill Airport believes that some, but not all, New Zealand airport companies will be opposed to the code-share agreement. This is because existing market conditions lead to non-optimal aircraft loadings with a consequent over-supply of flights. This results in airports achieving aircraft landing revenue far in excess of that which would be attainable under a code-share agreement.

We believe that this position is untenable and short sighted. It is obvious that New Zealanders, and all airport companies, are best served by the existence of a strong national carrier operating in a competitive market with maximum operating efficiencies. The current pricing level, given existing operating inefficiencies, is unsustainable into the future and will ultimately lead to massive market rationalisation and consolidation – at higher pricing levels that are driven by shareholders expected return on capital or by market inefficient cost structures, rather than the proposed shared operating costs solution. It is our belief that that the only way that affordable trans-Tasman airfares will be sustainable into the future, with consequent benefits to all New Zealand

consumers and airport operators, is through a reduction in the cost structure of the major airlines – whilst maintaining a vigorous competitive environment. We believe that the code-share proposal offers this scenario.

3. Invercargill Airport Limited would like to emphasise that it is a company jointly owned by The Invercargill City Council and Government and that it is desirous to serve the best interests of both its shareholders. The regional economic development aspirations of both these parties are best served by maximising the flow of Australian tourists into the airport, as the gateway to the Southland region. However, the size of the market leads to the conclusion that only a single trans-Tasman carrier will ever operate out of Invercargill. The benefits of a single carrier operating under two flags out of Invercargill, means that both airlines will contribute to marketing and operate in a competitive environment that would be unattainable under a single flag scenario. This will obviously lead to maximising tourist or passenger numbers under conditions of competition that would otherwise not be there. This maximises the regional development benefits that are so important to our shareholders.

The New Zealand process

The exemption

4. The aviation exemption in the Civil Aviation Act (**the Act**) allows the Minister of Transport to authorise contracts, arrangements, and understandings relating to international carriage by air. This has the effect of making the authorisation of the contract, arrangement, or understanding a specific authorisation for the purposes of the Commerce Act 1986.
5. The exemption is set out in Part 9 of the Act, and in particular sections 88(2) and 90, which provide as follows:
 - 88(2) *The Minister may from time to time specifically authorise all or any of the provisions of a contract, arrangement, or understanding between 2 or more persons in respect of international carriage by air and related to such carriage so far as the provisions relate, whether directly or indirectly, to the fixing of tariffs, the application of tariffs, or the fixing of capacity, or any combination thereof.*
 - 90(1) *The Minister may from time to time specifically authorise any tariff in respect of international carriage by air where the relevant places of departure and destination are within the territories of 2 countries, one of which is New Zealand, whether or not there is to be a break in the carriage or the transshipment.*
6. Section 91(2) provides that these authorisations amount to an exception from the Commerce Act:
 - 91(2) *Every authorisation by the Minister under section 88 or section 90 of this Act and every issue or amendment of a commission regime under section 89 of this Act is hereby declared to be a specific authorisation by an enactment for the purposes of section 43 of the Commerce Act 1986.*

7. This links to the carve out in section 43 of the Commerce Act for arrangements that are authorised by other legislation:
 - 43(1) Nothing in this Part applies in respect of any act, matter, or thing that is, or is of a kind, specifically authorised by an enactment or Order in Council made under any Act.*
8. Invercargill Airport Limited supports any use by the Minister of the provisions afforded to him under the above specified legislation, after due industry consultation and after taking into account any needed expert advice, to ratify any code-share agreement without reference to the Commerce Commission.
9. The fundamental premise of the Commerce Act, and competition policy more generally, is that promotion of competition increases the welfare of New Zealanders. Accordingly, the broadest application of the Act is desirable, and exemptions should be limited.

Invercargill Airport submits that whilst the code-share proposal has a minimal effect on competition, the greater benefit to New Zealanders is that operating inefficiencies will be minimised – resulting in maximum long term consumer benefit. The need or justification to submit airline code share arrangements for assessment by a competition regulator does not exist. However, an open-book consultative process is desirable. Invercargill Airport recognises that the aviation industry frequently requires authorisation of unique arrangements, hence the need for the regime contained in the Civil Aviation Act.

International agreements can mean that capacity may be limited on many routes and that tariffs and/or capacity must be brokered between competing airlines. Invercargill Airport submits that the existing New Zealand legislation provides an evaluation approach that has worked to total satisfaction in many previous instances and should be applied in the instance of the Air New Zealand / QANTAS proposal.

10. The Australian regime provides for authorisation within the airline licensing process.

Like New Zealand, airlines who wish to engage in international services must hold a licence, which is issued by the International Air Services Commission (IASC). Existing Australian airlines will already hold such a licence, so a new arrangement between airlines (such as a code share arrangement) will require an application for variation to the licence, a process which is governed by the International Air Services Commission Act 1992 (IASC Act) and a government Policy Statement.

Under section 24(2), the IASC must not make a decision varying the licence unless it is satisfied that it would be of benefit to the public. This requires the IASC to take into account the object of the IASC Act (which includes the aim of enhancing the welfare of Australians by promoting economic efficiency).

The existing New Zealand legislation allows the Minister to make a similar evaluation, based on maximum public benefit and without reference to the Commerce Commission. We encourage the Minister to do so.

11. In 2005, representatives of Air New Zealand publicly stated their intention to pursue market collaboration with Qantas, and set about a round of discussions to promote this idea. Air New Zealand has pointed to Part 9 of the Civil Aviation Act as a way to achieve market collaboration. It cannot be claimed that a process of consultation has not commenced.
12. A decision by the Minister of Transport to approve a code-share application between Qantas and Air New Zealand would amount to an endorsement of trans-Tasman mutual cooperation, with the resultant consequence of consumer and corporate benefit. It would have a positive long-term impact on consumers and businesses in cities and regions where competitive airlines operate. It would also have a very significant positive impact on cities and regions serviced by a single trans-Tasman carrier, as these regions would now obtain the benefits of competition that otherwise would be unattainable.
13. Invercargill Airport is happy to discuss with you or your officials any of the matters raised in this letter.

Yours sincerely



Barry Bouton
Chief Executive Officer
Invercargill Airport Limited

