



7 September 2006

Chapman Tripp
Barristers & Solicitors
PO Box 993
WELLINGTON

Dear Mr David

Tasman Networks Agreement

Thank you for your letter of 25 August 2006 drawing to our attention that we left off the website our letters of 16 June 2006 and 27 July 2006 when we posted the replies to those letters. The letters have now been posted.

I will make two general comments.

First, no legal advice received by the Ministry has been made available to the applicants. As you will see from our letter of 16 June 2006, the applicants were advised that the Ministry had formed a view on advice, about the operation of Part 9 in relation to the authorisation of a process for tariff and capacity setting. Mr Goddard's advice asserted that this view had been formed on Crown Law Office advice. That part of the sentence was deleted in order to maintain legal privilege on a cautionary basis lest his advice be taken as a waiver of privilege. The Ministry does not waive privilege in this, or any of its legal advice on this matter, and has not provided it to the applicants.

Second, in relation to procedure, including circulation of the draft report, we are aware of your views and are keeping the situation of third party procedural issues under active review. You should not assume that the Ministry has formed its final views on these issues.

I take from the general thrust of your correspondence and your client's submission of 4 August 2006 (for example paragraph 573) that you consider that your client is entitled to equal treatment with the applicants. If by that you consider that your client is entitled to the same treatment as the applicants, then I consider that to be inapt for this type of process. Your client is entitled to equitable treatment but not necessarily the same treatment.

In the process of developing advice to the Minister who will ultimately consider the applicants' proposal under Part 9 of the Civil Aviation Act, the Ministry is simply seeking to obtain relevant information from the applicants on issues arising in the application. In order to undertake our inquiries we have to ask the applicants questions and put issues to them including issues that arise from third party submissions. We need expanded information to properly advise the Minister, and also where the questions have adverse inferences for the applicants, we need to put matters to the applicants.

www.transport.govt.nz

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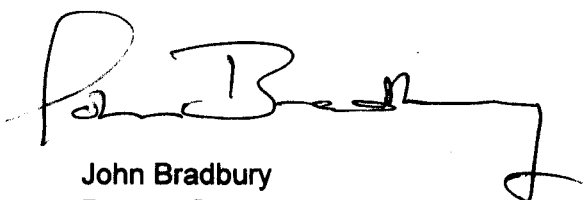
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In the same way the Ministry will seek your client's response if it receives information of particular relevance to your client's position, and indeed may need to ask further questions of your client about its position. The Ministry does not accept your comment that this is preferential treatment for any party. To the contrary the Ministry considers it is conducting a transparent process.

The Ministry has recently met with Air New Zealand in order to receive confidential information. At this stage we do not intend to post that information or the substantive notes of the meeting on the website. We have assessed the information as withholdable under section 9(2)(b)(ii) and 9(2)(ba)(i) of the Official Information Act.

If you have any confidential information (especially in relation the counterfactual) that you wish to make available to us on this basis we would be pleased to meet with your client to receive it and depending on the content of the information it would be treated in the same way.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Bradbury', with a long horizontal line extending to the right and a small vertical stroke at the end.

John Bradbury
Deputy Secretary