

16 June 2006

Air New Zealand
C/- Bell Gully Buddle Weir
Solicitors
P O Box 4199
Auckland

Attention: Phil Taylor

Dear Mr Taylor

APPLICATION FOR AUTHORISATION UNDER SECTION 88 OF THE CIVIL AVIATION ACT 1990

1. Introduction

1.1 I refer to the Air New Zealand and Qantas undated application received by the Ministry of Transport on 13 April 2006.

1.2 The Ministry will prepare a written report of advice to the Hon. Pete Hodgson, the Minister with delegated responsibility for this matter, prior to his making a decision on your application. This letter therefore covers issues in relation to giving that advice.

1.3 I have now had the opportunity to consider your application, and write to you with certain preliminary matters for you to address. I am also covering process issues.

2. Preliminary matters

2.1 Section 88 of the Civil Aviation Act empowers the Minister to authorise provisions of any contract or agreement so far as the provisions relate *directly* or *indirectly* to the fixing or the application of tariffs, the fixing of capacity, or any combination of these.

(a) Please identify specifically those provisions of the Tasman Networks Agreement (the TNA) to which you consider section 88 applies and for which you seek authorisation as being –

(i) Directly or indirectly related to the fixing or application of tariffs;

- (ii) Directly or indirectly related to the fixing of capacity.
- (b) Please provide an explanation, especially in relation to those items indirectly related to tariffs or capacity, as to why in your view the provisions fall within section 88.
- (c) For completeness, please identify any provisions of the TNA that you consider are not directly or indirectly related to either tariffs or capacity and for which you therefore do not seek authorisation.

2.2 The Ministry, after receiving advice, has formed the preliminary view that even if the Minister were to authorise provisions relating to tariff and capacity setting, i.e. the process by which those matters are set, it does not follow that the resulting tariffs and capacity are similarly authorised. Those would either require a fresh authorisation or else fall under the Commerce Act 1986. Please provide your comments on this proposition.

3. Process

3.1 You have asked for a meeting, which has been postponed at our request. I expect that we will find it useful to have the meeting in early July. This will be after you have replied to this letter and we have made further progress on our analysis of your application.

3.2 The Ministry has advised parties who have expressed an interest that they have an opportunity to provide their views in writing. Those views will be taken into account, to the extent they are relevant, in forming our report to the Minister if they are received before the end of July.

3.3 By the beginning of August we will have forwarded those interested party views to you, and will allow you two weeks to provide comment. After that we will prepare a draft report which we will provide after approximately a month. After additional comments are received it will take another month to finalise our report.

3.4 We intend to give you, as applicant, the opportunity to comment on any issue that would be adverse to you before concluding a view on that issue. It is also our intention (as noted above) to provide you with a draft report before our final report is provided to the Minister. At this stage we do not intend to publish or provide the draft report for interested parties (other than yourselves) 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.

3.5 You will be aware that there is considerable public interest in this application. We are considering placing the application (with appropriate deletions) and interested party views (with any appropriate deletions) on our web site. Generally we are advising interested parties, and now you (with regard to future information you provide us), to identify material which they and you consider ought to be withheld under the Official Information Act.

3.6 I would be grateful if you could provide me with your comments on the above process.

3.7 It would be helpful if I could receive your comments within the next three weeks.

4 Legal Comments

4.1 The Ministry has been provided with a legal opinion prepared by Professor Taggart for Wellington International Airport Limited. The opinion has also been referred to in the media and is to be found on Wellington International Airport's Website. I invite you to provide comments on that opinion.

Yours sincerely

John Bradbury
Deputy Secretary for Transport