Ministry of Transport Report

Analysis of Air New Zealand/Virgin Australia application for reauthorisation of the Trans-Tasman Alliance

September 2013

Purpose

This report summarises our analysis of the application by Air New Zealand and Virgin Australia (together 'the Applicants'), pursuant to the Civil Aviation Act 1990, for reauthorisation of their Australasian Airline Alliance (the Alliance).

Structure of Report

This report is structured as follows:

1. Executive Summary

1. Air New Zealand and Virgin Australia have submitted an application under the Civil Aviation Act 1990 for reauthorisation of their existing trans-Tasman Alliance. Under the Alliance, the two airlines have fully cooperated and coordinated on all aspects of their international services between New Zealand and Australia.

2. The Alliance was previously authorised in 2010 by then Minister of Transport, Hon Steven Joyce, for a period of three years. Without reauthorisation, the Alliance will cease to have effect on 1 January 2014 and the two airlines will resume competing with each other across their trans-Tasman networks.

3. The Applicants initially applied for reauthorisation for a period of at least 5 years without any capacity conditions. The Applicants also sought reauthorisation from the Australian Competition and Consumer Commission (the Australian Commission). Reauthorisation is required in both Australia and New Zealand in order for the Alliance to remain in effect.

4. The Alliance falls within the scope of Part 9 of the Civil Aviation Act 1990 (the Act), and the agreements do not fall foul of any of the prohibitions set out in sections 88(3) or 88(4) of the Act. The Alliance is therefore capable of being authorised if you consider it to be in the public interest.

5. Under the Alliance, total trans-Tasman passenger volumes have continued to increase despite a difficult operating environment which included sustained low economic growth, and significant external shocks, most notably the 2010/11 Christchurch earthquakes. The Alliance has added capacity to the market above what was required under the conditions of authorisation in 2010, and at a greater rate than its competitors. The Alliance has also maintained a greater level of capacity to/from Christchurch than its competitors following the earthquakes.

6. The Alliance has delivered material public benefits through a better schedule spread and greater availability of connecting flight options. Modest benefits have been achieved through reciprocal frequent flyer programmes and joint lounge access. The Alliance has also invested in a number of joint initiatives aimed at stimulating tourism in the trans-Tasman market, although the impact of these initiatives is difficult to measure.

7. However, the Alliance has not delivered on all of the benefits claimed in the 2010 application. In particular, the Applicants have not introduced the new routes that were referred to in 2010, and the new seasonal routes that have been introduced are counterbalanced by the fact that the Alliance withdrew services on two regional year-round routes. There is also no evidence to suggest that the Alliance has prompted a strong reaction from its competitors.

8. Fares are difficult to accurately measure due to the complexities of airline revenue streams and fare structures, but in our view there is no evidence to suggest that prices have decreased beyond what would be expected in the absence of the Alliance. **[Confidential]**.

9. In assessing the counterfactual, we acknowledge that breaking up the Alliance would incur significant transactional costs for the Applicants, as a result of the airlines having to restructure their internal systems and processes. It is likely that the Applicants would reduce capacity on some poor performing routes and review their scheduling, which would likely result in an increase in wingtip flying. **[Confidential]**

10. We consider that reauthorisation of the Alliance is likely to continue to provide the best overall outcomes for consumers. However, in our view the Applicants have not been able to sufficiently demonstrate the extent to which the benefits of the Alliance would have been achieved without the capacity conditions that were agreed to in 2010.

11. At our request, on 16 September 2013, the Applicants submitted a side letter to the Agreement confirming that they will cease to give effect to the Alliance beyond 31 October 2018 unless it is reauthorised prior to that date. This would coincide with the expiry of the agreements in Australia. The Applicants have also committed to provide us with detailed operational data every six months. This will enable us to monitor the impact of competition in the trans-Tasman market on an ongoing basis.

12. We do not recommend seeking any capacity conditions as part of reauthorisation in New Zealand. The fact that the Australian Commission has imposed capacity conditions on a number of routes and intends to closely monitor compliance with the terms and conditions of authorisation gives us confidence that the benefits of the Alliance will continue to be delivered without any adverse impact on consumers.

13. On this basis, we recommend that you authorise the proposed Agreements.

2. Outline of Proposal

14. In 2010, Air New Zealand and Virgin Australia[1] (then “Pacific Blue”) submitted an application under the Civil Aviation Act 1990 for authorisation of an Australasian Airline Alliance Agreement (the Alliance Agreement) and a Code Share[2] Agreement (together ‘the Agreements’). Under the Agreements, the Applicants proposed to fully cooperate and coordinate on all aspects of their international services on trans-Tasman Sectors.

15. On 21 December 2010, the Agreements were authorised by then Minister of Transport, Hon Steven Joyce, for a period of three years. Authorisation was subject to the Applicants complying with an Alliance Capacity Implementation Agreement, in which the Applicants committed to increase capacity on the Tasman overall and on a number of specific routes in line with a capacity growth factor taking account of Gross Domestic Product growth in Australia and New Zealand.

16. On 8 March 2013, the Applicants submitted a new application, pursuant to the Civil Aviation Act, seeking reauthorisation of revised Alliance and Code Share

[1] The Virgin Australia Group including Virgin Australia Airlines (NZ) Ltd; Virgin Australia Airlines (SE Asia) Pty Ltd; and Virgin Australia Airlines Pty Ltd.

[2] An agreement that the parties will sell seats on each others flights and on how schedules and fares are going to be set.

Agreements. Without reauthorisation, the Agreements would expire on 1 January 2014 and the Alliance would cease to have effect.

17. The Applicants initially proposed that the Alliance be renewed for a period of at least five years from 31 December 2013. However, as detailed in paragraphs 191 to 195 of this report, the Applicants are now seeking approval of the Agreements until 31 October 2018. The Applicants are seeking authorisation without the continuation of the capacity commitments contained in the Alliance Capacity Implementation Agreement beyond 31 December 2013 or the implementation of any other capacity commitments.

The Agreements

18. The Alliance is made up of two linked agreements, the Australasian Airline Alliance Agreement (the Alliance agreement) and a Code Share Agreement (together 'the Agreements'). Copies of the Agreements are included as Annexes to this report.

19. The Agreements are largely unchanged from the associated 2010 versions, with the exception of a small number of amendments to the Code Share Agreement to reflect Virgin Australia's wet lease arrangements[3] with other airlines.

20. Key features of the Agreements are summarised briefly below. Particular aspects of the Agreements are discussed in more detail throughout this report.

Routes covered

21. The Alliance covers cooperation across:

- **Trans-Tasman Sectors** which are any sectors between a point in Australia and a point in New Zealand, including when the ultimate destination of the service is another point in Australia, New Zealand or another country

- **Network Alliance Routes** which comprise the trans-Tasman Sectors plus any domestic Australian or New Zealand sectors connecting to a trans-Tasman Sector as part of an international itinerary.

Areas of cooperation

22. Under the Alliance, the Applicants will:

- fully cooperate and coordinate on all aspects of their international services on the trans-Tasman Sectors

- code share on the Network Alliance Routes (on a free sale[4] basis)

- work together to align their Customer Facing Products and Systems[5] on the trans-Tasman Sectors to:

[3] A leasing arrangement whereby one airline provides an aircraft, complete crew, maintenance, and insurance to an airline, or other type of business acting as a broker of air travel, which pays by hours operated.
[4] There is free availability of seating for both airlines and the marketing airline is set no sales limits. Revenue accrues to the operating airline, which pays a commission to the marketing airline.

  - achieve 'metal neutrality'[6]
  - provide passengers with a harmonised and integrated product with consistent service and seamless check-in, transfers, baggage and other services.

- cooperate in relation to frequent flyer programs and lounge access on the Network Alliance Routes
- cooperate in achieving cost savings, cost sharing and other efficiencies
- work together to optimise their operations on the trans-Tasman Sectors by developing a network that matches aircraft type to route and focuses each Operating Carrier on its market strengths and primary operating hubs
- cooperate to develop new Tasman products that customer's value.

3. Context – Airline Alliances Globally

23. Despite being the most obviously global of all industries, the global international airline industry does not operate as a free market. International aviation is highly regulated by thousands of bilateral air services agreements negotiated between governments, which set out the parameters under which scheduled international services can be provided.

24. Among other things, these agreements effectively require airlines to be 'substantially owned and effectively controlled' by nationals of their home State. As a consequence, airlines are not able to operate freely across borders and cross-border mergers are rare. Airlines from smaller markets (such as New Zealand) are restricted by a lack of access to global equity markets, and are hampered in their ability to achieve economies of scale.

25. Bilateral air services agreements also generally prohibit the airlines of one country operating domestic services in another country (cabotage). This has not been the case for Australian and New Zealand airlines operating within the two markets since the formation of a single aviation market[7] in 1996. However, certain restrictions still apply when Australian and New Zealand airlines seek to operate to third countries.

26. In response to the restrictions imposed by these bilateral agreements and with rising concern from competition authorities in the United States, Europe and Australia about the cartel-like nature of tariff setting and interlining[8] through the International Air Transport Association (IATA), in the late 1990s many of the major network (legacy)

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[5] Including, but not limited to, conditions of carriage, fare names, fare inclusions, fare rules (e.g. cancellations and refunds), non airfare charges (e.g. card payment fees), check-in processes, baggage handling processes, on board announcements, on board products, on board food and beverage, in-flight entertainment, high value customer benefits, and any other products and systems deemed to be such by the Alliance Revenue Team from time to time.

[6] 'Metal neutrality' is a state in which each Party will be incentivised to treat all flights operated by the other Party as if they were flights on their own network.

[7] Airlines that meet the single aviation market criteria can operate trans-Tasman and domestic services in either State without restrictions.

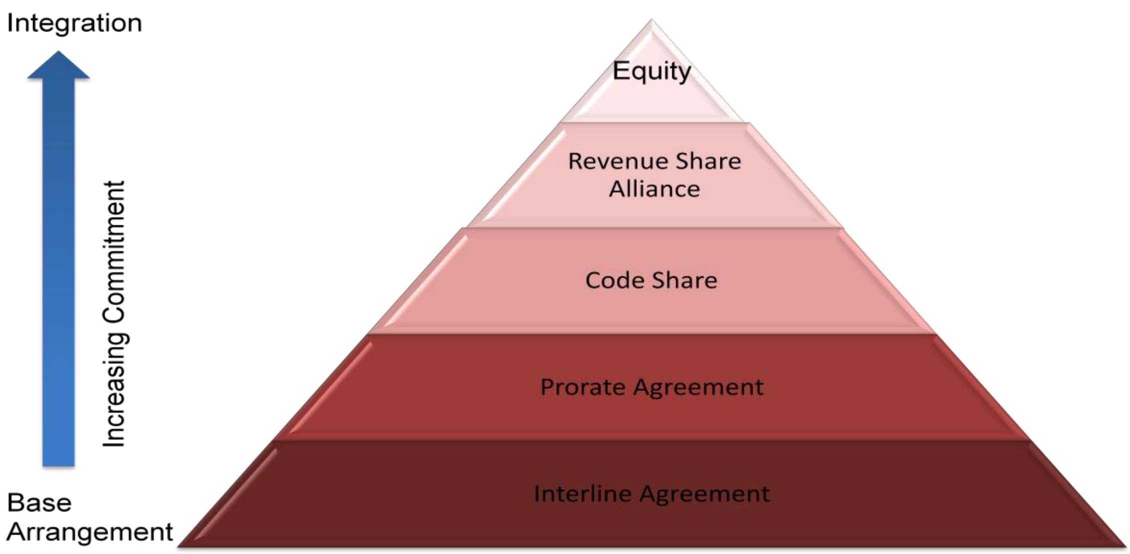
[8] An arrangement where the operating carrier bills the marketing carrier for carriage of passengers, unlike a code share arrangement where revenue accrues to the operating airline.

airlines started entering into three global alliances: Star (29.3% of the global market); oneworld (23.2%); and Skyteam (24.6%). These alliances have been expanding in both breadth and depth. In particular, the three global alliances have been seeking to add new partner airlines in the geographical regions where they are under-represented.

27. Typically, members of these global alliances will cooperate to extend the networks of their individual member airlines by offering interlining, frequent flier points and reciprocal lounge access. In this way they particularly seek to retain the loyalty of their high-yield business customers. The airlines are also more likely to code share on a bilateral basis with fellow global alliance members, buying seats on one another's operations, particularly to airports that it would not be commercially viable for an airline to extend its operating network to, or on routes it is prohibited from operating under the bilateral air services arrangements. For example, foreign airlines may not carry domestic passengers between airports in the United States so operating domestic sectors in such circumstances would not be commercially viable and a US-partner airline is vital to fully accessing that market. Code sharing does not, however, automatically mean that the airlines concerned have ceased to compete with one another.

28. A spectrum of alliance cooperation is developing. Cooperation may go beyond direct coordination of prices and scheduling (capacity planning) by the airlines to extend to a very high level of cooperation, where routes overlap, revenue is shared and the nature of the alliance is described as being 'metal neutral'. This comes as close to being a merger without the joint ownership that would entail. The cooperation sought by the Applicants in this case is at the higher end of the spectrum, as shown in the figure below:

Figure 1 – Various levels of cooperation and integration between airlines



29. There are a number of examples of alliances being approved by competition authorities, including several alliances (integrated joint ventures) between members

of the three global alliances on trans-Atlantic routes[9]. A more recent trend has been the emergence of alliances between members of different global alliances. In 2012, you authorised an alliance between Air New Zealand and Cathay Pacific (a member of the oneworld alliance) on the Auckland-Hong Kong route, and in 2013 you authorised an application between Qantas (oneworld) and Emirates (an independent airline).

30. Airline alliances can be an effective tool for airlines to expand their network reach without investing significant capital, or to share risk and improve efficiency on challenging routes. In considering alliance applications, it is important to recognise the difficult environment in which international airlines operate[10]. However, these considerations must be balanced against the fact that alliance agreements are, by definition, anti-competitive, with significant potential to adversely impact on consumers.

4. Assessment of the Alliance

4.1 Framework

31. The application for reauthorisation of the Alliance Agreements has been made pursuant to Part 9 of the Civil Aviation Act. Part 9 provides an alternative regime to the Commerce Act 1986 for authorisation of contracts, arrangements or understandings relating to international carriage by air.

32. Section 88 of the Civil Aviation Act sets out a number of statutory pre-conditions, which need to be met by all provisions for which authorisation is being sought. **[Confidential]** In making your decision, you may weigh any detriment to consumer welfare against any special considerations relating to international air carriage in the relevant markets.

33. The Civil Aviation Act does not set out any particular framework for assessing whether authorisation is appropriate in the public interest. Our analysis in this regard is broadly consistent with our approach to previous applications. However, unlike previous applications, the current application proposes a continuation of the status quo, and authorisation would not substantially alter the existing competitive dynamics of the market. We have a sound base of evidence to draw upon, and as a result we have far greater certainty around what the reauthorisation of the Alliance will deliver to consumers.

34. Our approach to this application consists of:

- an assessment of the proposal against the specific statutory criteria in sections 88 (2) – (5) of the Civil Aviation Act

[9] Trans-Atlantic alliances which have been approved include alliances between Air Canada, Lufthansa and United Airlines; between American Airlines, British Airways, and Iberia; and between Air France-KLM, Alitalia, and Delta Air Lines.
[10] The International Air Transport Association has forecast an average profit margin of 1.6% among international airlines for 2013.

- consideration of where this proposal sits alongside other code share and alliance agreements in the New Zealand market
- consideration of the extent to which the Alliance has delivered its stated benefits
- consideration of any further benefits that could be achieved as a result of reauthorisation
- consideration of the nature and scale of any detriments which have occurred as a result of the Alliance, or may occur as a result of reauthorisation
- consideration of the counterfactual (the likely scenario in the absence of reauthorisation)
- an overall conclusion drawing together the factors above.

Relationship with the Australian Competition and Consumer Commission

35. All of the Alliance routes either originate or terminate in Australia. As such, approval is also required from the Australian Competition and Consumer Commission (the Australian Commission).

36. Your decision is independent of any decision made by the Australian Commission, and authorisation is required on both sides of the Tasman in order for the Alliance to remain in effect beyond 31 December 2013. However, the Australian Commission has broader powers, including the explicit ability to impose conditions. Conditions imposed on the Applicants by the Australian Commission may be of relevance to you in making your decision.

Alliance Capacity Implementation Agreement

37. As part of authorisation of the previous application the Applicants were required to comply with a Capacity Implementation Agreement, which sets out the minimum capacity that they were required to operate on the trans-Tasman overall and on certain routes. In Australia, this agreement was imposed as a condition on authorisation by the Australian Commission. In New Zealand, the Applicants included the Capacity Implementation Agreement as part of the Agreements for which authorisation was sought, as the Civil Aviation Act does not provide you with the power to impose conditions.

38. The fact that the Applicants have complied with the conditions set out in the Capacity Implementation Agreement does not oblige you to reauthorise the Alliance. The overriding consideration in your decision to reauthorise the Alliance should be whether the Alliance continues to be in the public interest, given current market conditions.

Qantas/Emirates Alliance

39. In May 2013, you authorised a separate alliance between Qantas and Emirates which

involved a similar level of coordination on their trans-Tasman routes. At the time of authorisation, the Qantas Group (consisting of the Qantas and Jetstar brands) was the second largest independent operator on the Tasman, while Emirates was the third largest independent operator.

40. The Qantas/Emirates application was considered independently of the current application. Your authorisation of that application does not restrict your ability to decline the current application should you consider that reauthorisation would not be in the public interest. However, the Qantas/Emirates alliance will fundamentally alter the competitive dynamics of the trans-Tasman market, and the implications of this are relevant considerations in our analysis.

4.1.1 Statutory Analysis

41. In considering the initial Alliance agreement in 2010, we conducted a comprehensive analysis of the Alliance and Code Share agreements against the provisions in section 88 of the Civil Aviation Act, and concluded that the agreements were capable of authorisation. As mentioned earlier in this report, the provisions of the Agreements in the current application for reauthorisation are largely unchanged from the agreements authorised in 2010.

42. We have therefore concluded that the Agreements are capable of authorisation. Our detailed analysis of this is set out in Annex III.

Tariffs and Capacity

43. The Civil Aviation Act does not provide that agreements may be authorised in their entirety, but rather that any or all provisions of an agreement may be authorised so far as the provisions relate, directly or indirectly, to the fixing of tariffs, the application of tariffs, or the fixing of capacity, or any combination thereof.

44. Section 88 of the Civil Aviation Act, in using the terms ‘related’ and ‘directly or indirectly’ is broad. The language was changed from the Bill as introduced which stated “so far as the provisions provide for the fixing of tariffs or capacity or both”.

45. In considering whether each of the provisions of the Agreements fall within the scope of the Civil Aviation Act we have adopted a number of broad principles:

    45.1. A schedule (that is, a statement of what aircraft type will be operated on what route, with what frequency and at what time) relates directly to the fixing of capacity (in fact a schedule could be said to be the fixing of capacity).

    45.2. A code share arrangement whereby parties sell seats on each other’s services also relates to the fixing of capacity. Matters necessary for the smooth operation of a code share agreement thus indirectly relate to the fixing of capacity.

    45.3. ‘Tariffs’ means not just the fare paid but encompasses the conditions and benefits that go with that tariff – including on board service, baggage allowances, access to lounges, and frequent flyer schemes.

45.4. 'Boilerplate' contractual provisions as part of an agreement that relates to the fixing or application of tariffs or the fixing of capacity, indirectly relate to the subject matter of the agreement.

45.5. Revenue sharing arrangements relate (directly or indirectly) to a combination of the fixing of tariffs and the fixing of capacity. Revenue sharing arrangements are also one of the mechanisms through which the Applicants will incentivise themselves with regard to 'metal neutrality'[11].

46. We have concluded that all of the operationally material provisions of the Agreement relate directly or indirectly to the fixing or application of tariffs or the fixing of capacity, with the exception of clause 10.4 which relates to Joint Purchasing. The Applicants have since advised that they are not seeking specific authorisation of clause 10.4. A section-by-section analysis of the Agreements in terms of how they relate to the fixing or application of tariffs and the fixing of capacity is included in Annex III to this report.

4.1.2 Market Definition

47. The Alliance covers cooperation across trans-Tasman routes, and any domestic Australian or New Zealand sectors connecting to a trans-Tasman sector as part of an international itinerary.

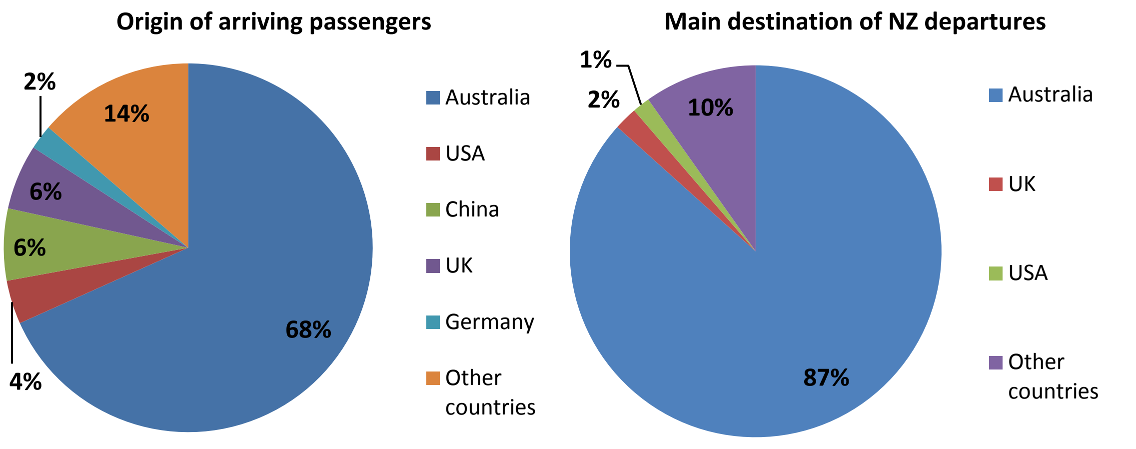
48. An important consideration in our analysis is the level at which the effect of the arrangements should be analysed. In considering the previous application in 2010, we focussed much of our analysis on the trans-Tasman market as a whole, but also considered the likely impact of the Alliance on a route-by-route basis. We maintain that the different characteristics of trans-Tasman routes, in terms of the level of competition provided, the prospects for market entry, and the relative proportions of different types of passengers, render it necessary to consider the impact of the Alliance from a route-by-route perspective, as well as an overall network perspective.

49. It remains the case that a considerable proportion of passengers on trans-Tasman services are travelling to or from third countries. As shown in the figures below, 68% of New Zealanders travelling on trans-Tasman services are travelling to Australia as their main destination, and 87% of arrivals into New Zealand are Australian residents. However, in the year ended 2012, 104,000 Chinese residents and 94,000 United Kingdom residents arrived in New Zealand on trans-Tasman services.

50. Other third country markets with significant proportions of passengers travelling via Australia include South Africa, India, and Papua New Guinea – all markets to the West of New Zealand with no direct (non-stop) air services to New Zealand.

[11] 'Metal neutrality' is a state in which each Party will be incentivised to treat all flights operated by the other Party as if they were flights on their own network.

Figure 2 – Origin/main destination of passengers travelling on trans-Tasman services, year ended October 2012



51. The impact that the Alliance will have on third country markets is a relevant consideration in our analysis. However, the impacts on these passengers are difficult to measure as the trans-Tasman leg is generally a relatively small part (and cost component) of the overall journey, and in most cases, there is adequate competition provided through other indirect routes which do not involve a trans-Tasman leg (for example, if the Applicants attempted to raise prices on an Auckland-Sydney fare, a passenger travelling onwards to South Africa would have the option of travelling via Singapore). For these reasons, the focus of our analysis is on passengers travelling directly between Australia and New Zealand as these passengers are most affected by the Alliance.

4.2 Market Concentration

52. The trans-Tasman market has a reputation for being one of the most competitive aviation markets in the world. The level of competition is facilitated by liberal air services arrangements between Australia and New Zealand, which have been in place since 1996. These arrangements allow unrestricted access to all Australian and New Zealand airlines, and airlines jointly owned by nationals of both countries. A number of other countries have also secured the necessary traffic rights from the Australian and New Zealand governments to allow their airlines to operate trans-Tasman services (using fifth freedom traffic rights[12]).

53. The level of competition provided in the trans-Tasman market has clearly contributed to the strong growth which has been observed since the mid 1990s. Since 1996, the trans-Tasman market has grown in all but two years (1997 and 2006). The average growth in passenger numbers throughout this period has been 6.5%.

54. As shown in the figure below, the trans-Tasman has continued to grow in the three years since the Alliance was approved, albeit at a slower rate than the long term average.

[12] A fifth freedom traffic right allows an airline to drop off and pick up passengers in third countries as a part of services originating from or destined for the airline's home State.

Figure 3 - Total trans-Tasman passenger movements, 1996-2012

[Confidential]

55. It should be noted that the long term average growth rate in the trans-Tasman market is strongly influenced by dramatic increases which were observed in 2000 (12.3% growth) and 2004 (19.1%). The large increase in 2004 can be attributed to Pacific Blue (now Virgin Australia) entering the market, and a significant increase in capacity by Emirates, while the increase in 2000 may have been influenced by new airline business models in response to the emergence of low cost carriers. The slower rate of growth over the past three years is perhaps not surprising given challenging economic conditions and the impact of the Christchurch earthquakes.

56. In the two full operational years since the Alliance was authorised, the Applicants have grown their combined passenger numbers by **[Confidential]**, or an average of **[Confidential]** per year. This rate of growth **[Confidential]** the average overall growth rate of 2.1% across all carriers. As shown in Figure 4, passenger growth in the trans-Tasman market was driven by the Alliance and 'other airlines' (primarily China Airlines, which operates on the Auckland-Sydney and Auckland-Brisbane routes).

Figure 4 - Increase/decrease in the number of passengers carried in a 12 month period by airline since the Alliance was authorised

[Confidential]

57. This is reflected in the market share data in Figure 5 below, **[Confidential]**

Figure 5 - Trans-Tasman market shares before and after the Alliance

[Confidential]

58. The increase in passenger traffic carried by the Alliance has been achieved despite a smaller increase in capacity. It is therefore apparent that as a result of the Alliance, the Applicants have been able to better utilise their aircraft. This was one of the stated objectives of the Alliance, and it is confirmed by the data provided by the Applicants, **[Confidential]**.

59. Better utilisation of aircraft has the potential to lead to lower fares, as many of the costs associated with operating an aircraft are fixed. When aircraft are operating at higher load factors[13], the cost per passenger is reduced. However, excessively high load factors can also be a concern from a regulatory perspective, particularly in uncompetitive markets, as it may indicate that the level of service provided is not sufficient to meet passenger demand. There is no set level at which load factors become 'excessive', as this may vary between different markets depending on the yields that airlines are able to achieve.

4.3 Fares

[13] The proportion of seats filled on a flight.

60. A significant consideration in our analysis is the impact that the Alliance has had on fares. In their 2010 application, the Applicants claimed that the Alliance would result in lower fares, particularly on connecting sectors. The risk of the Alliance increasing fares was somewhat mitigated by the Alliance Capacity Implementation Agreement, which set minimum capacity levels. In our analysis of the 2010 application we accepted that capacity (supply) largely determines price, as airlines have strong incentives to sell as many seats as possible.

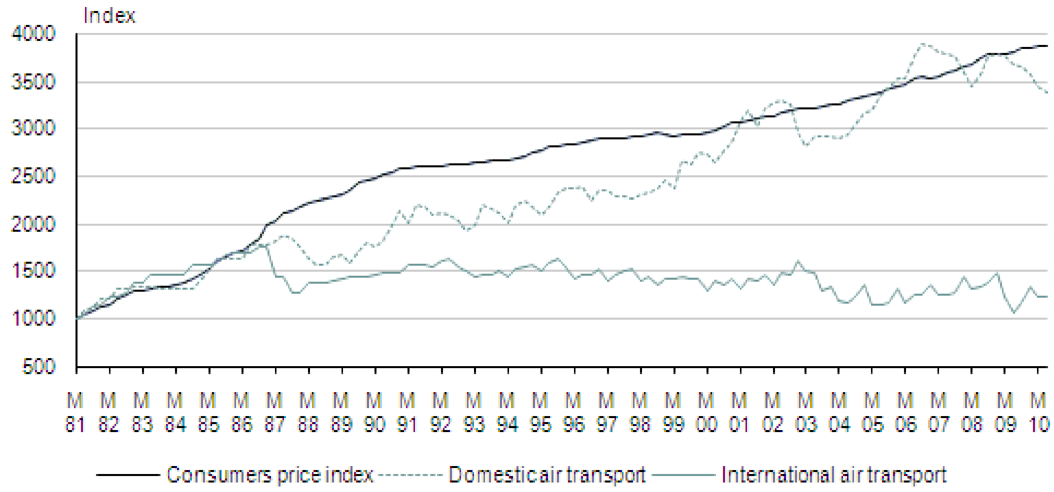
61. Accurately measuring the impact the Alliance has had on fares is difficult due to the wide range of fare categories and different revenue streams. This is complicated further by the fact that the Applicants have changed their product offering in the period since the Alliance was authorised. For example, until November 2011, all Air New Zealand passengers were provided with an on-board meal, free entertainment, and checked in baggage. Following the introduction of Air New Zealand's 'seats to suit' product, passengers can chose the level of service they are prepared to pay for. In year 1 of the Alliance, **[Confidential]** of passengers purchased a 'seat only' fare, while a further **[Confidential]** of passengers purchased a 'seat plus bag' fare.

62. In order to more accurately measure the impact of the Alliance, we asked the Applicants to provide us with total passenger revenue data, as this is consistent between the pre-Alliance year and year 1 of the Alliance. We accepted the Applicants' argument that this should only include core Alliance revenue (excluding airline-specific revenue streams such as the sale of on board food and beverage).

63. We also requested data on revenue derived from credit card surcharges. Although this does not form part of the ticket price and is arguably an optional fee, it was paid by New Zealand based Air New Zealand passengers as a component of the ticket price in 2010 and it has since been shifted into a separate surcharge.

64. Based on the information provided by the Applicants, overall revenue per-passenger on trans-Tasman routes has reduced by **[Confidential]** per passenger (from **[Confidential]** in the pre-Alliance year to **[Confidential]** in year 1 of the Alliance). However this should be assessed against the long-term trend for international air transport. In other industries, it may be sensible to assess changes in revenue against the Consumers Price Index, but as shown in Figure 7 below, in air transport the 'baseline' is effectively no change in fares.

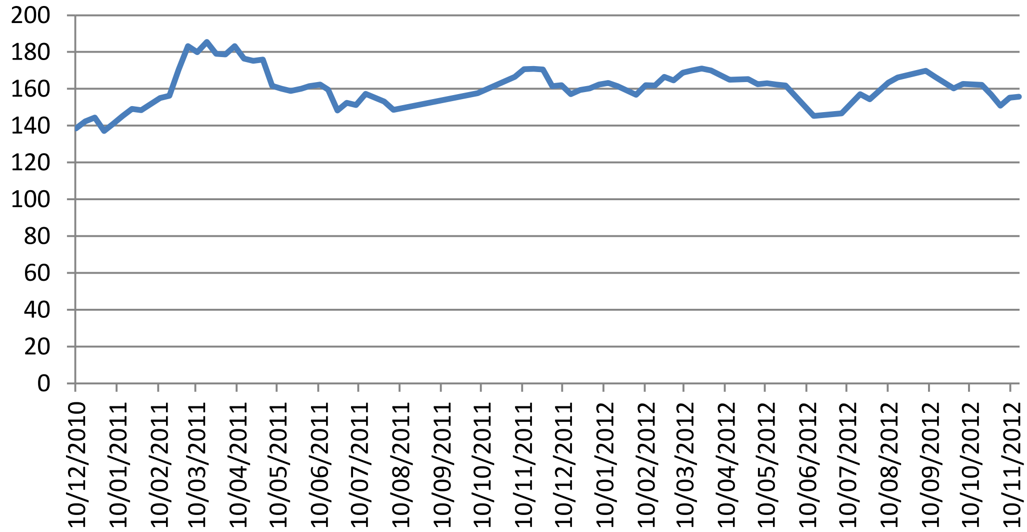
Figure 6 - Domestic and International air transport & the consumer price index



Source: Statistics New Zealand

65. The price of jet fuel, which can account for as much as 40% of operating costs, has remained unusually constant throughout the Alliance period, as increases in jet fuel spot prices have been counterbalanced by a strong New Zealand dollar.

Figure 7 - Jet fuel prices during the Alliance period ($NZ)



66. Table 1 shows the change in revenue collected per passenger from the pre-Alliance year to year 1, and the competitive dynamics on each trans-Tasman route. We note that we do not have access to the Applicants' detailed financial statements, and given the complexity of airline fare structures and revenue streams, we cannot be certain that all relevant metrics have been included.

Table 1 - Changes in revenue per passenger[14] on Alliance routes

[Confidential]

67. **[Confidential]**

68. The Alliance reduced its revenue per passenger on a majority of routes, **[Confidential]**

69. Overall, we consider that fares during the Alliance period are lower than what would have been expected in a competitive market in a period of constant fuel prices. However, this is likely to be strongly influenced by the lower unit costs achieved as a result of removing certain products and services from the base fare (as described in paragraph 61), rather than a consequence of the Alliance itself. Nevertheless, there is little evidence to suggest that the Applicants have taken advantage of their market position.

4.4 Impact on Specific Routes

Auckland routes

70. Routes to/from Auckland account for 64% of the overall trans-Tasman market. The three largest Auckland routes alone (between Auckland and Sydney, Brisbane, and Melbourne) account for 55% of the overall market. The Alliance serves eight Australian destinations from Auckland, including four destinations (Cairns, Perth[15],

[14] Includes revenue from any credit card surcharges introduced in the period since the Alliance was authorised. The Applicants did not provide this data on a route-by-route basis, so it has been applied evenly across Alliance routes. **[Confidential]**.

[15] The Alliance will operate a seasonal Christchurch-Perth service beginning in December 2013.

Adelaide, and Maroochydore) which are not served from any other New Zealand airport.

71. Traditionally, the Auckland market has attracted the greatest competition, and there is a long history of fifth freedom carriers operating on the three largest routes. Currently, Chile-based LAN competes on the Auckland-Sydney route, and China Airlines competes on the Auckland-Sydney and Auckland-Brisbane routes. While these airlines can offer competitive pricing by selling trans-Tasman flights at a marginal cost, their competitiveness is limited by the fact that they generally operate no more than one flight per day, and have little flexibility in their scheduling (as flights must be timed to align with long-haul connections).

72. Auckland Airport noted in its submission that fifth freedom competition has reduced since the Alliance was authorised, with Aerolineas Argentinas and Royal Brunei pulling out of the New Zealand market and Emirates entering into an alliance with Qantas. The competitive dynamics of the market are considered further in section 4.6 of this report.

73. The Alliance currently faces competition on five of the eight Auckland routes (to Sydney, Brisbane, Melbourne, Coolangatta, and Cairns). **[Confidential]**. Further analysis of market shares is provided in Annex I to this report.

74. As shown in Figure 8, the Alliance has added capacity on all of the Auckland routes with the exception of Auckland-Cairns (which still had an increase in overall capacity due to Jetstar commencing services on the route shortly after the Alliance was authorised).

75. On the Auckland-Brisbane route, the Applicants were required to increase capacity by **[Confidential]** over the first two years of the Alliance as a result of the Alliance Capacity Implementation Agreement. However the Applicants **[Confidential]**, increasing capacity by **[Confidential]**, while maintaining capacity to Coolangatta and introducing a new seasonal service[16] to Maroochydore (both of which can be considered substitutes for Brisbane).

[16] A service sold only during certain periods of the year.

Figure 8 - Alliance capacity and passenger numbers on Auckland routes

[Confidential]

76. **[Confidential]**

77. The fact that Qantas and Emirates indicated the possibility of operating on these routes in their application suggests that there is scope for further capacity growth on both routes[17]. However, fares and load factors on these routes are reasonable, and there is no evidence that the Applicants have taken advantage of their market position.

78. As mentioned previously, we requested data on total passenger revenue collected on each route in each operational year of the Alliance. When considered alongside load factors (i.e. the percentage of seats sold on each flight), total passenger revenue data can provide a reasonable indication of the competitiveness of each route. In competitive markets, we would expect to see tradeoffs between load factors and fares. Unless demand is particularly strong, higher fares will generally lead to lower load factors; while lower fares will tend to result in higher load factors. A route with high fares and high load factors is likely to be uncompetitive, with insufficient supply to meet demand. Load factors and fares (measured by total revenue) on the Auckland routes are shown in Table 2:

[17] Since the application was submitted, Qantas has announced that it will operate a seasonal service between Auckland and Perth in December 2013 and January 2014. Jetstar has announced that it will operate three services per week on the Auckland-Adeliade route from December 2013.

Table 2 – Load factors and fares on Auckland routes

[Confidential]

79. On Auckland-Coolangatta, **[Confidential]**. On Auckland-Perth, a monopoly route for the Alliance, **[Confidential]**.These two routes are the exceptions, however, with **[Confidential]** fares seen on five of the remaining Auckland routes and the Maroochydore route only being introduced after the Alliance was authorised.

80. **[Confidential]**.

Wellington routes

81. Wellington sectors account for 12% of the trans-Tasman market. However, there is much less competition on Wellington routes compared to Auckland, with Qantas acting as the sole competitor to the Alliance on the Wellington-Sydney and Wellington-Melbourne routes. Wellington-Brisbane is operated solely by the Alliance.

82. There are no fifth freedom carriers operating flights into Wellington and future entry is unlikely in the short to medium term due to the technical constraints of the runway. The current runway is too short for commercially viable services to be offered in many widebody[18] aircraft.

83. Capacity conditions were implemented on all three Wellington routes as part of the initial authorisation and the Applicants have complied with these over the period of the Alliance. In their original application the Applicants also indicated that they expected to increase capacity on both Wellington-Sydney and Wellington-Melbourne routes. Changes in Alliance capacity on Wellington routes are shown in Figure 9:

[18] A large aircraft with two passenger aisles.

Figure 9 - Alliance capacity and passenger numbers on Wellington routes

[Confidential]

84. In their submission, the Key Wellington Stakeholders[19] noted that the competitive market conditions on Wellington routes have not changed significantly since the Alliance was authorised, other than by the formation of the Alliance. The Wellington-Brisbane route is now a monopoly route for the Alliance, and despite capacity conditions, analysis by the Key Wellington Stakeholders shows that 10% of Wellington passengers travelling to Brisbane travel via other ports. In their view, this suggests that either passengers are not inclined to travel on the sole operator of this sector (Virgin Australia), or prices are still too high to meet the existing level of demand.

85. This is not supported by the data provided by the Applicants (provided in Table 3 below). **[Confidential]**.

86. **[Confidential]**.

Table 3 – Load factors and fares on Wellington routes

[Confidential]

[19] Greater Wellington Regional Council, Grow Wellington, Positively Wellington Tourism, Wellington City Council, Wellington Employers' Chamber of Commerce, Wellington International Airport Limited.

Christchurch routes

87. Christchurch routes account for 19% of the trans-Tasman market; a figure that is likely to grow as the region recovers from the damage caused by the 2010/11 earthquakes.

88. As a result of the earthquakes, you agreed to a reduction in the overall trans-Tasman capacity requirement under the Alliance Capacity Implementation Agreement, to allow the Applicants to adjust their services to Christchurch in response to reduced demand.

89. Drawing conclusions from the actions of the Alliance partners on these routes is complicated by the market distortions caused by the earthquakes. Nevertheless, the Alliance has not reduced capacity on Christchurch routes to the extent its competitors have. On the Christchurch-Brisbane route, Jetstar pulled out of the market altogether, returning that route to a monopoly.

90. The figure below shows that the Alliance has reduced capacity on all Christchurch routes, **[Confidential]**.

Figure 10 - Alliance capacity and passenger numbers on Christchurch routes

[Confidential]

91. While the effects of the Christchurch earthquakes account for the reduction in capacity on those services, there is a question as to whether those reductions have exceeded what is necessary to sustain the economic viability of those services. We believe this is unlikely. In our view these capacity reductions were necessary due to the Canterbury earthquakes and the fall in demand for passenger services to/from Christchurch. In order to stimulate demand, the Alliance **[Confidential]** on its Christchurch services and **[Confidential]** (see Table 4). **[Confidential]**.

Table 4 – Load factors and fares on Christchurch routes

[Confidential]

92. In its initial submission, Christchurch Airport highlighted the high load factors seen on Christchurch routes and argued that Virgin's fare increases do not reflect an equivalent improvement in service standards. However, Christchurch Airport has subsequently withdrawn its opposition and no longer opposes reauthorisation of the Alliance, based on subsequent material supplied by Air New Zealand.

93. The Applicants have expressed their confidence in the Christchurch market and have announced a new seasonal Christchurch-Perth service in anticipation of higher demand.

Queenstown routes

94. Queenstown is an extremely fast growing market, with an influx of activity during the peak ski season. International passenger numbers at Queenstown Airport have more than tripled over the past five years, to more than 200,000 passengers, with almost 40,000 passengers per month during the peak winter season.

95. Nevertheless, routes to/from Queenstown only comprise a small percentage (3%) of the trans-Tasman market and **[Confidential]** of Alliance passengers. **[Confidential]** of Jetstar's passengers travel on services to/from Queenstown.

96. Jetstar has competed vigorously in this region, especially on the Queenstown-Melbourne route where it has **[Confidential]**.

Figure 11 - Alliance capacity and passenger numbers on Queenstown routes

[Confidential]

97. While the Alliance has continued to add capacity into Queenstown, fares on Queenstown routes remain approximately **[Confidential]**. This suggests that there is scope for considerably more capacity into Queenstown.

98. As the Qantas Group continues to add capacity to the market it is likely that the Alliance will **[Confidential]**.

Table 5– Load factors and fares on Queenstown routes

[Confidential]

Regional routes

99. The Applicants have claimed that they are committed to continually reviewing opportunities to provide services to regional airports in Australia and New Zealand. **[Confidential]**

100. The economics of operating international services to regional airports can be challenging and historically these services have struggled, particularly where a larger airport can be reached relatively easily by road (as is the case with Hamilton and to a

lesser extent, Palmerston North). It is difficult to judge the impact of the Alliance on services to regional airports.

101. In 2010, we concluded that the Alliance would "provide greater opportunities for new routes, as the two parties can in effect 'pool' their passengers travelling on currently unserved origin/destination pairs" [20]. Given the withdrawal of services to Hamilton, and the absence of any new routes to regional Australian destinations such as Canberra and Newcastle, we now question whether this conclusion holds true. It is possible that the Alliance may in fact reduce the incentives for the Applicants to operate to regional airports. For example, prior to the Alliance, the only way that Air New Zealand would have been able to offer a competitive service to Canberra based passengers would have been to operate services with its own aircraft. Under the Alliance, Air New Zealand is able to access this market by selling tickets on Virgin Australia's domestic services.

102. The Alliance has a monopoly on regional routes from Dunedin-Brisbane and Rotorua-Sydney, and has pulled out of Hamilton-Sydney and Hamilton-Brisbane despite having a monopoly on those routes. These routes are only likely to ever sustain one carrier as demand remains low due to relatively small catchment areas, seasonal fluctuations, and the proximity of larger airports (in the case of Hamilton, Auckland airport is less than a 90 minute drive away, and this will reduce further as road links between the two cities continue to improve).

103. The Alliance increased capacity on the Dunedin-Brisbane route as required by the capacity conditions **[Confidential]**. The capacity conditions may have introduced inefficiencies on this service, causing the Alliance to incur higher costs from operating more services when the demand for those services was seasonal in nature. Dunedin Airport disagrees with this view, arguing that conditions protect vulnerable markets from exposure to collusive capacity reductions and fare increases.

104. On the Rotorua-Sydney route capacity was raised by **[Confidential]**. There is no real prospect of competition on this route irrespective of the Alliance. Rotorua Airport suggested in its submission that the existence of fifth freedom carriers into Auckland limits the ability of the Alliance to raise fares.

105. **[Confidential]**

[20] See 2010 Ministry of Transport report titled "Analysis of Air New Zealand/Virgin Blue application for authorisation of a trans-Tasman alliance", paragraph 166.

Figure 12 - Alliance capacity and passenger numbers on regional routes

[Confidential]

106. The poor performance of these regional routes **[Confidential]**. This suggests that passengers are choosing to either fly indirect to their destination or not fly at all.

Table 6– Load factors and fares on regional routes

[Confidential]

107. **[Confidential]** That decision will be tied to how demand for these services fluctuates over time and if the Alliance or one of its competitors sees value in operating those routes.

108. Air New Zealand still retains the incentives to strengthen its domestic network to enable ease and convenience of travel within New Zealand. This will have positive flow-on effects on indirect trans-Tasman services for regional customers (86% of Rotorua, 89% of Hamilton and 65% of Dunedin residents travel indirect across the Tasman).

4.5 Other Impacts

109. The Applicants state that the Alliance has delivered on the core rationale for the Alliance, and resulted in substantial public benefits including enhanced products and services, higher capacities and frequencies, lower average fares, promotion of competition and stimulation of tourism.

110. The Applicants assert that, in addition to lower fares and additional capacity (which have been considered in the previous section), the following benefits have been generated by the Alliance, and will be expanded upon if reauthorisation is granted:

- the introduction of new routes
- better schedule spread
- greater access to frequent flyer schemes and lounge facilities

- stimulation of tourism.

New routes

111. In their 2010 application, the Applicants committed to investigating the possibility of operating a number of new routes, **[Confidential]**.

112. These routes have not eventuated. As mentioned previously in this report, we question whether there are strong incentives for routes to/from regional centres in particular. The Applicants have introduced two new seasonal services between Auckland and Maroochydore (Sunshine Coast) and between Christchurch and Perth (from December 2013), but they have also withdrawn from two routes entirely (Hamilton-Sydney and Hamilton-Brisbane).

113. While it is a logical argument to suggest that the Alliance would lead to new routes as result of having strong marketing and distribution channels on both sides of the Tasman, this has not played out in practice.

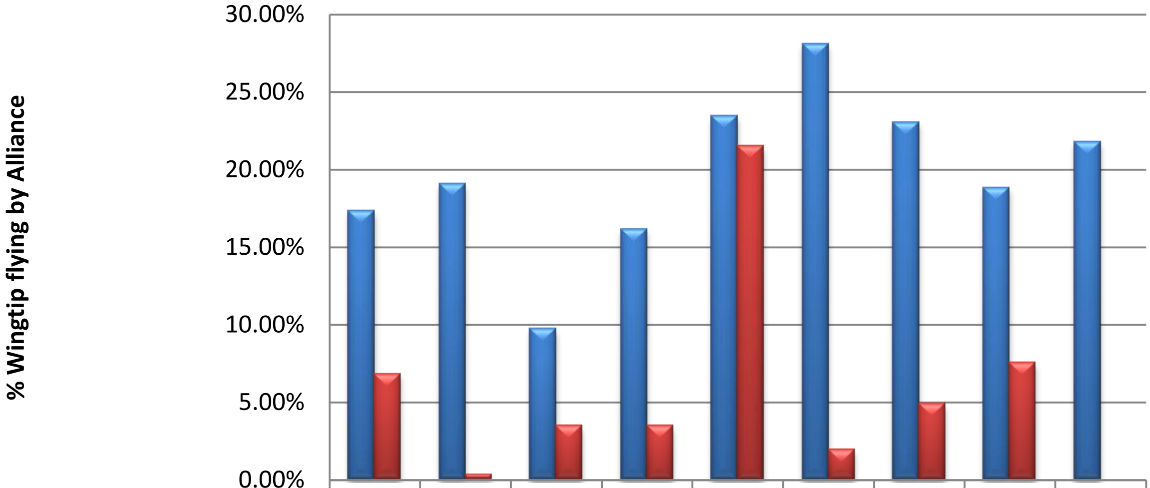
114. Establishing new routes can be risky, particularly as much of the traffic on any new route is likely to be diverted from other services. In competitive markets, new routes are a way for airlines to differentiate themselves from their competitors, and the emergence of new routes is therefore a signal that the market has remained relatively competitive.

Better schedule spread

115. The Alliance has allowed both airlines to collaborate on their schedules to offer a better spread of services (see Figure 13 below). This has meant both a better daily as well as weekly spread of services offered on trans-Tasman Sectors, with reduced wingtip flying[21].

[21] When there are 2 flights, on the same sector, both departing in the same morning or afternoon or less than 3 hours apart. When there are more than 2 flights per day on a given sector, wingtip flying is defined as any flights that depart within 1 hour of each other.

Figure 13 – Percentage of wingtip flights in Pre-Alliance and Year 1



	AKL-BNE	AKL-OOL	AKL-MEL	AKL-SYD	BNE-CHC	BNE-WLG	CHC-MEL	CHC-SYD	SYD-WLG
Pre-Alliance wingtip flying	17.36%	19.04%	9.74%	16.17%	23.44%	28.11%	23.04%	18.82%	21.81%
Year 1 wingtip flying	6.84%	0.34%	3.47%	3.48%	21.53%	1.93%	4.91%	7.56%	0.00%

116. Significant gains are noticed across the Tasman with the exception of Brisbane-Christchurch.

117. As a result of these changes, trans-Tasman passengers have a wider selection of services to travel on and have greater flexibility in planning their travel.

118. The Alliance will continue to face incentives to offer a better spread of services where demand is high as it would enable them to acquire a larger share of the market as opposed to offering services departing at the same time. We consider this to be a relatively significant benefit of the Alliance, particularly on routes where Air New Zealand and Virgin Australia were previously the only airlines operating.

Reciprocal frequent flyer programmes

119. Since 26 July 2011, the Applicants have offered customers the opportunity to earn and redeem frequent flyer points across the entire Air New Zealand and Virgin Australia networks.

120. Members of Airpoints (Air New Zealand) and Velocity (Virgin Australia), depending on the membership tier and fare purchased, also receive reciprocal benefits including lounge access, priority check-in, priority baggage handling, additional checked baggage, priority seating and priority boarding on both Alliance and non-Alliance flights.

121. The ability to earn and redeem frequent flyer points more extensively is certainly beneficial to customers. However, it is limited to those who have purchased the scheme and are regular travellers.

122. Prior to the implementation of the Alliance, achieving frequent flyer loyalty in Australian based passengers was a significant challenge to Air New Zealand. At the time of authorisation, Qantas had **[Confidential]** Australian based frequent flyer members, compared to **[Confidential]** for Air New Zealand. As a result of the Alliance, Air New Zealand is now a more attractive option for the more than **[Confidential]** members of Virgin Australia's Velocity programme. This clearly has strategic value for Air New Zealand's brand in Australia.

Reciprocal lounge access

123. The Alliance has allowed loyalty program customers of each airline access to the other Party's international and domestic lounges.

124. As with frequent flyer benefits, lounge access is limited to business class passengers, passengers paying loyalty premiums, and frequent fliers.

125. Since the Alliance was implemented, a total of **[Confidential]** Virgin Australia loyalty members have accessed Air New Zealand's domestic and international lounges, and **[Confidential]** Air New Zealand loyalty members have accessed Virgin Australia's Australian domestic lounges.

126. In the absence of an alliance, airlines can still negotiate reciprocal lounge access on a case-by-case basis. For example, Air New Zealand's lounge in Sydney is used by 6 other airlines including Thai Airways, Korean Air and United Airlines.

127. We accept that reciprocal lounge access is a benefit for some trans-Tasman travellers. However, in our view it is a modest benefit with minimal 'national interest' implications which could still be offered in the absence of the Alliance.

Stimulation of tourism

128. Tourism is an important contributor to the New Zealand economy, and Australia is our biggest tourism market. In the year ended November 2012, Australian residents constituted 45% of all short term visitor arrivals and 42% of all holiday arrivals.

129. The Alliance has offered better connections beyond gateway points[22] in New Zealand and Australia. Both Applicants have been able to leverage off each other's established domestic network offerings.

130. The Alliance has achieved stronger growth on outbound travel to Australian destinations from New Zealand. This could be a result of the wider offering of destinations in Australia, the high numbers of Australian visitors already arriving in New Zealand, the distortions to the market as a result of the Christchurch earthquakes, or a combination of those factors.

131. The Applicants have provided evidence of numerous attempts to jointly promote New Zealand as a destination to Australian residents and will continue to face incentives to do so. It would not constitute good business sense to neglect the larger consumer base of the trans-Tasman market.

132. In the absence of the Alliance, the incentives to stimulate tourism would still exist. However, the Alliance gives the Applicants a stronger platform on which to market their services to potential visitors.

133. The recent announcement from the Prime Minister, of an additional $158 million investment for the tourism industry over the next four years, will help to accelerate the work undertaken by the Alliance to stimulate tourism. The two Memoranda of Understanding (MoU) agreed by Air New Zealand with Tourism Australia (worth $6m over 3 years) and Tourism New Zealand (worth $20m over one year) are further evidence of efforts on the part of the Alliance to stimulate tourism on trans-Tasman Sectors and key markets beyond the Tasman.

[22] In this context, airports with scheduled international services between Australia and New Zealand.

134. Tourism may also be stimulated through reciprocal frequent flyer programmes. Velocity members accumulating airports on other Virgin Australia services (such as domestic services in Australia, or long haul services) now have the option of spending their loyalty points on a far greater range of destinations in New Zealand. This is a clear benefit to the New Zealand economy if the passenger would not have otherwise travelled to New Zealand. It is difficult to measure the impact that this has had on tourism, but we accept that it is a potential benefit of the Alliance.

135. Tourism stakeholders have mixed views on the Alliance. Christchurch and Canterbury Tourism analysis shows that capacity on Christchurch routes is lower now than in 2004. It is of the view that Australian tourism to the Canterbury region is showing signs of recovery but is not being met by the capacity on offer by the carriers serving routes to/from Christchurch.

136. The Tourism Industry Association supports the reauthorisation of the Alliance on the basis that minimum capacity conditions are maintained across the total trans-Tasman network, noting that it will create a duopoly with the Alliances of Air New Zealand/Virgin Australia and Qantas/Emirates commanding more than 95% of trans-Tasman services.

4.6 Competitive Dynamics

137. While the Alliance has not removed either the Virgin Australia or the Air New Zealand brands or market presence, it has led to a reduction in the number of independent decisions being made regarding pricing and scheduling on trans-Tasman routes.

138. An assessment of the overall impact of reauthorising the Alliance should include an assessment of the likely competitive environment for trans-Tasman aviation should reauthorisation be granted. This is considered below.

Threat of market entry

139. Prior to the authorisation of the Alliance in 2010, competition on trans-Tasman routes was intense with seven independent operators. This ranked the trans-Tasman market as one of the most competitive aviation markets in the world.

140. As a result of this Alliance, the separate Alliance between the Qantas Group and Emirates, and the exit of two fifth freedom carriers (Royal Brunei Airlines and Aerolineas Argentinas), there are now just four independent operators that service the Tasman.

141. As noted by the Applicants in their application, fifth freedom carriers are an established feature of the trans-Tasman market, with a number of fifth freedom carriers having offered trans-Tasman services at different points in time.

142. Fifth freedom carriers may choose to enter the Tasman market for a number of reasons. Some carriers operate trans-Tasman services opportunistically, to utilise aircraft during periods in which they would otherwise be sitting on the tarmac in Australia. Other carriers may choose to operate trans-Tasman services because there is insufficient demand for a direct service to New Zealand, or because the flight would otherwise fly directly over New Zealand (as with LAN's service from Santiago, which travels to Sydney via Auckland). In many cases, these airlines are able to sell tickets at marginal cost, as the New Zealand leg of the flight does not need to be economically viable in its own right.

143. The presence of fifth freedom carriers is a consequence of the liberal aviation policies of the Australian and New Zealand governments. In New Zealand's case, our air

transport policy provides flexibility, on a case-by-case basis, for any airlines to operate on the Tasman if the service is considered to be in New Zealand's best overall interests, in advance of securing the necessary rights through an Air Services Agreement. Australia has exchanged fifth freedom rights with a number of carriers, including with the States of most airlines currently serving the New Zealand market. As the global trend toward liberalisation continues, there will be more opportunities for foreign airlines to enter the market.

144. The threat of entry from fifth freedom carriers is constant on the trans-Tasman market. But competition from these carriers is limited by the fact that they generally only operate on one or two routes (typically routes between Auckland and Sydney, Brisbane, and Melbourne, where demand is highest). Fifth freedom carriers also tend to use-wide body aircraft which are unable to offer commercial services to airports other than Auckland or Christchurch due to runway restrictions. The impact that these carriers have on other routes is therefore likely to be minimal.

145. Qantas is the most significant competitor to the Alliance in the trans-Tasman market. The Qantas/Emirates alliance has the ability to enter any trans-Tasman route, and will provide a strong counterbalance to the Applicants. The trans-Tasman market is a significant source of revenue to Qantas, and it is unlikely to withdraw services or reduce capacity in the long term.

146. It is unlikely that Qantas/Emirates would consider operating trans-Tasman services on routes to regional New Zealand, such as Dunedin and Rotorua. However, this is not particularly alarming as these routes are unlikely to sustain competition in the long term regardless of whether or not the Alliance is reauthorised.

147. A full assessment of the current and potential competitors in the trans-Tasman market is provided in Annex II.

Impact on other markets

148. As part of our analysis we considered whether reauthorisation of the Alliance would have an adverse impact on other markets. In particular we asked the Applicants to provide their views on whether the Alliance would have any impact on the incentives for:

a) Virgin Australia to re-enter the New Zealand domestic market

b) Virgin Australia to establish long-haul services from New Zealand to other markets

c) Air New Zealand to establish long-haul routes from New Zealand to markets where Virgin Australia currently operates (from Australia).

149. **[Confidential]**

150. **[Confidential]**

4.7 Counterfactual

151. Another consideration when looking at the competitive impacts of the Alliance is the counterfactual – the decisions that the Applicants would make and the impact of those decisions, if reauthorisation of the Alliance was denied.

152. In their application, the Applicants stated that they would immediately take steps to unwind the Alliance if reauthorisation were not granted. Particular actions were that each Applicant would:

- remove its code from the other's services and terminate or renegotiate the interline pricing for access to its domestic network
- review its network with a view to adjusting capacity where necessary
- retime services to maximise load factors on its own services
- take steps to secure access to slots that were surrendered during the term of the Alliance
- terminate their former Alliance partner's access to its lounges
- renegotiate access to reciprocal frequent flyer benefits with their former Alliance partner.

153. In a subsequent submission to us on its counterfactual, Air New Zealand highlighted that of particular relevance to travellers, it would:

- **[Confidential]**
- **[Confidential]**
- **[Confidential]**
- **[Confidential]**
- **[Confidential]**
- **[Confidential]**.

154. **[Confidential]**.

155. Without the Alliance, Air New Zealand estimates the reduced online connectivity **[Confidential]**.

156. **[Confidential]**:

- **[Confidential]**
- **[Confidential]**
- **[Confidential]**.

157. Without the Alliance, Virgin Australia **[Confidential]** believes that this will have negative effects for consumers who are likely to face higher fares from Qantas/Emirates.

158. **[Confidential]**

159. **[Confidential]**

160. **[Confidential]**

Ministry of Transport counterfactual

161. Breaking up the Alliance would incur significant transactional costs for the Applicants. In addition, each Applicant would experience substantial losses in the domestic market of their counterpart as they would no longer have access to their respective brand presence and market strengths.

162. We accept that the Applicants would seek to reduce their costs, most likely through reducing capacity on poor performing routes. However, the Tasman is a significant source of revenue for both Applicants, and we do not believe that either applicant, particularly Air New Zealand, would implement widespread capacity reductions that substantially lessen its market shares.

163. We also accept that the improved schedule spread observed over the term of the Alliance would disappear as the incentives to reduce wingtip flying will no longer exist.

164. The Qantas/Emirates alliance provides another important factor for consideration of the counterfactual. Declining reauthorisation of the Alliance will leave the Applicants, **[Confidential]**, in a weak position from which to compete with the joint offering of Emirates' networks beyond Australia, and the Qantas Group's strength on the trans-Tasman network as shown in the figure below.

Figure 14 – Passengers carried by Air NZ/Virgin and Qantas/Emirates in Year 1

[Confidential]

4.8 Submissions

165. Third party submissions received in response to the application are summarised in table 7:

Table 7 – Summary of stakeholder views

Organisation	Position
Auckland International Airport Limited	Supports reauthorisation with capacity conditions and for an appropriate period
Christchurch and Canterbury Tourism	Opposed to the removal of minimum capacity requirements
Christchurch International Airport Limited	Initially supported reauthorisation for 3 years with capacity conditions through Christchurch; now no longer opposes extension of the Alliance without capacity commitments, based on material supplied by Air New Zealand
Dunedin International Airport Limited	Opposes unconditional reauthorisation; any reauthorisation should remain subject to appropriate conditions
Key Wellington Stakeholders*	Supports reauthorisation of the Alliance subject to appropriate conditions relating to capacity maintenance and growth in the trans-Tasman and for a further three-year period
NZ Airports	Opposes unconditional reauthorisation; any reauthorisation should remain subject to appropriate conditions
Rotorua Regional Airport Limited	Supports reauthorisation with the removal of sector specific capacity conditions
Tourism Industry Association New Zealand	Supports reauthorisation with minimum capacity conditions across the total trans-Tasman network
* Greater Wellington Regional Council, Grow Wellington, Positively Wellington Tourism, Wellington City Council, Wellington Employers' Chamber of Commerce, Wellington International Airport	

Response from the Applicants

166. The Applicants note that the submissions from airport and non-airport stakeholders overwhelmingly support reauthorisation, despite differences of opinion in relation to the terms of reauthorisation and the need for capacity conditions.

167. The Applicants also note that Christchurch Airport has withdrawn its opposition and supports reauthorisation of the Alliance for a period of 5 years, with no capacity commitments, based on material supplied by Air New Zealand.

168. In their response, the Applicants dispute the finding in the Key Wellington Stakeholders submission that airfares have increased on the Wellington-Brisbane route. Audited data provided by the Applicants shows a decrease in average fares on all Wellington routes, with the exception of Wellington-Sydney[23].

169. They also state that the suggestion by NZ Airports that the data provided by the Applicants does not take into account ancillary revenue, is incorrect. Alliance average fares are derived from Alliance revenue which includes the full fare paid by the passenger. This means where meal, luggage allowance and in-flight entertainment are incorporated into the fare purchased or are purchased separately prior to check-in, this would be included as part of the ticket revenue. The Ministry has also requested, and received, additional data from the Applicants on credit card fees to incorporate in its analysis of fare movements.

170. The Applicants note that the Christchurch and Canterbury Tourism and Key Wellington Stakeholders submissions suggest capacity on trans-Tasman routes to/from Christchurch and Wellington is not meeting consumer demand. The

[23] This conflicts with revenue data provided to the Ministry, by the Applicants, which shows that average fares on Wellington-Sydney decreased.

experience of the Alliance in selling tickets for flights on Wellington and Christchurch routes has been that consumer demand is not increasing to the extent suggested in those submissions.

171. In their response, the Applicants note that capacity should always be related to consumer demand. Route-specific capacity conditions and a capacity growth factor produce inflexible and inefficient allocation of resources as they inhibit the Alliance from directing capacity to those routes where demand is highest, imposing costs on both airlines and passengers. In addition, the Applicants note the impact capacity conditions have in imposing incentives on airports that are not driven by natural market forces.

172. The Applicants also disagree strongly with the Key Wellington Stakeholder submission that the benefits delivered by the Alliance are not a direct result of the Alliance but follow from the capacity conditions and the market conditions. It is their view that the Alliance has directly led to an enhancement of both airlines' products in a manner not otherwise available to each airline individually or in the short timeframe that the Alliance has been implemented.

4.9 Conditions

173. As mentioned elsewhere in this report, the previous application was authorised subject to the Applicants maintaining compliance with an Alliance Capacity Implementation Agreement, which set minimum levels of capacity on the specific routes of concern and on the trans-Tasman as a whole. The Applicants have sought reauthorisation without the continuation of the Alliance Capacity Implementation Agreement or any other conditions.

174. The Applicants argue that the conditions are not necessary to satisfy the public benefit test for reauthorisation as the benefits derived from the Alliance are "sufficient in and of themselves to outweigh any risk of anti-competitive detriment on the Tasman". The Applicants further argue that conditions "have the potential to create significant distortions and inefficiencies in the provision of trans-Tasman air passenger services which may not only result in compliance costs for the Applicants but in fact be to the detriment of consumers".

175. In our view, the overall trans-Tasman capacity commitment has achieved its intended objective as it has ensured that the Alliance continues to add capacity to the market at a rate similar to what would have been expected in a more competitive market. Virgin Australia noted in its confidential counterfactual that **[Confidential]**.

176. We are less convinced about the impact of the route-specific capacity conditions, and we agree with the Applicants that in some circumstances these conditions have the potential to create market distortions. There is significant risk from a regulatory perspective of requiring capacity to be added on routes where it exceeds passenger demand, which in turn may prevent capacity from being added on routes where demand is strong. **[Confidential]**. In a competitive market, this capacity would have likely been applied elsewhere (for example, on Queenstown routes which are likely to support additional capacity).

177. We are also concerned that route-specific conditions may also deter the Applicants from adding capacity to substitute airports (for example, a capacity condition on the Wellington-Brisbane route may reduce the likelihood of a Wellington-Coolangatta service being established).

178. More generally, our view on conditions has changed somewhat since the Alliance was authorised in 2010. This is primarily due to the fact that the Civil Aviation Act does not explicitly provide for conditions, **[Confidential]**.

179. **[Confidential]**

4.9.1 Conditions imposed in Australia

180. In Australia, the Alliance is considered under different legislation, and its authorising body (the Australian Commission) does have the ability to impose conditions. While we may not agree with the conditions imposed in Australia, they do effectively alter the nature of the agreement for which authorisation is being sought.

181. On 3 September 2013, the Australian Commission issued its final determination, authorising the Alliance for a period of four years and ten months (from 31 December 2013) subject to the following conditions:

- the Applicants must maintain at least an aggregate base level of capacity on the Christchurch-Brisbane, Christchurch-Melbourne, Dunedin-Brisbane, Wellington-Brisbane, Queenstown-Brisbane and Auckland-Gold Coast routes (combined). The Australian Commission will review the Applicants' capacity additions in light of actual demand growth over the next two years and may impose a growth factor at that time, if appropriate

- the Applicants must provide specific data to the Australian Commission at the end of each scheduling season to assist the Australian Commission in assessing the impacts on competition in the future. The Australian Commission will take this information into account when considering any application for reauthorisation from the Alliance parties.

5. Conclusions and recommendations

182. A summary of the stated benefits of the Alliance along with the delivery of these benefits is presented in Table 8:

Table 8 – Stated benefits of the Alliance with the Ministry's determination of their delivery

Claimed benefits	Delivery	Comment
Increased capacity	Strong evidence	The applicants have grown their overall trans-Tasman capacity at an average of **[Confidential]** percent per year, **[Confidential]** the overall growth rate across all carriers of 2.1 percent. The Applicants also maintained a higher level of capacity to/from Christchurch than their competitors in the wake of the 2010/11 earthquakes.
Lower fares	No evidence	Average overall fares (measured as revenue per passenger) have fallen by **[Confidential]** across the overall network. However, in our view this is likely to be strongly influenced by lower input costs which were achieved as a result of new fare structures. There is little evidence to suggest that the fare reductions were achieved as a result of the Alliance itself. **[Confidential]**.
New routes	Some evidence	Two new seasonal services have been introduced. However, the Alliance has also withdrawn from two regional (year round) services, resulting in no change to the overall number of routes operated by the Alliance. The potential new routes referred to in the 2010 application have not eventuated.
Better schedule spread	Strong evidence	The number of 'wingtip' flights has significantly reduced, providing customers with a greater spread of schedules to choose from.
Frequent flyer benefits	Strong evidence	Reciprocal frequent flyer schemes have delivered modest benefits to some trans-Tasman passengers.
Joint lounge access	Strong evidence	Modest benefits to some trans-Tasman passengers. Could be offered in the absence of the Alliance.
Stimulation of tourism	Some evidence	While it is difficult to measure the impact, the applicants have engaged in a number of joint marketing campaigns in an effort to stimulate tourism.

183. Under the Alliance, total trans-Tasman passenger volumes continued to increase despite the difficult operating environment which included sustained low economic growth, and significant external shocks, most notably the 2010/11 Christchurch earthquakes. The Alliance has added capacity over and above the capacity conditions imposed in 2010, **[Confidential]**. The Alliance also maintained a greater level of capacity than its competitors in the Christchurch market following the earthquakes.

184. The Alliance has delivered significant public benefits through a better schedule spread and greater availability of connecting flight options. Modest benefits have been achieved through reciprocal frequent flyer programmes and joint lounge access. The Alliance has also invested in a number of joint marketing initiatives aimed at stimulating tourism across the trans-Tasman.

185. However, the Alliance has not delivered on all of the benefits claimed in its 2010 application. In particular, the Applicants have not introduced the new routes that were referred to in 2010, and the new seasonal routes that have been introduced are counterbalanced by the fact that the Alliance withdrew services on two regional year-round routes. There is also no evidence to suggest that the Alliance promoted a strong competitive reaction from its competitors.

186. Fares are difficult to accurately measure due to the complexities of airline revenue streams and fare structures, but in our view there is no evidence to suggest that prices have decreased beyond what would be expected in the absence of the Alliance. **[Confidential]**.

187. In assessing the counterfactual, we acknowledge that breaking up the Alliance would incur significant transactional costs as a result of the two airlines having to restructure internal systems and processes. It is likely that the Applicants would reduce capacity on some poor performing routes and review their scheduling, which would likely result in an increase in wingtip flying in order to optimise their respective schedules. **[Confidential]**.

188. Overall, we believe that reauthorisation of the Alliance is likely to continue to provide the best overall outcomes for consumers. However, in our view the Applicants have not been able to sufficiently demonstrate the extent to which the benefits of the Alliance would have been achieved without the capacity conditions that were agreed to in 2010. The Applicants have not convinced us that unconditional, open-ended authorisation will deliver significant public benefits.

189. The fact that the Australian Commission has imposed capacity conditions and intends to closely monitor compliance with the terms and conditions of authorisation gives us confidence that the benefits of the Alliance will continue to be delivered without any adverse impact on consumers.

190. Any conditions imposed in New Zealand would only compound the conditions imposed in Australia, and would increase compliance costs. For the reasons described in paragraph 179, we do not believe that conditions are necessary or appropriate, given the limitations of the current legislation.

191. We believe that the Alliance should be authorised for a term longer than 3 years to allow the Applicants to explore and implement further operational synergies over a longer period of time. There is less risk of anti-competitive behaviour or adverse impacts on consumers when compared to the initial application in 2010.

192. **[Confidential]**

193. **[Confidential]**

194. **[Confidential]**

195. The Applicants submitted a side letter to the Agreement which confirmed that they will cease to give effect to the Alliance beyond 31 October 2018 unless it is reauthorised prior to that date and will provide us with detailed operational data every six months over the term of the Alliance.

Recommendation

Our recommendation is that you **authorise** the Australasian Airline Alliance Agreement and the related Code Share Agreement, without New Zealand specific capacity conditions. As stated in the side letter to the Agreements, the arrangements will expire on 31 October 2018 unless they are reauthorised in New Zealand.

Annex I: Market share data

Auckland routes

<table>
<tr><th>Route</th><th>Air NZ/Virgin</th><th>Qantas</th><th>Jetstar</th><th>Emirates</th><th>LAN</th><th>China Airlines</th><th>Change in Alliance market share since authorisation</th><th>Change in revenue per passenger</th></tr>
<tr><td>Auckland-Sydney</td><td colspan="8" rowspan="5">[Confidential]</td></tr>
<tr><td>Auckland-Brisbane</td></tr>
<tr><td>Auckland-Melbourne</td></tr>
<tr><td>Auckland-Coolangatta</td></tr>
<tr><td>Auckland-Cairns</td></tr>
<tr><td>Auckland-Perth</td><td>100.0%</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>N/A</td><td rowspan="3">[Confidential]</td></tr>
<tr><td>Auckland-Adelaide</td><td>100.0%</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>N/A</td></tr>
<tr><td>Auckland-Maroochydore</td><td>100.0%</td><td>-</td><td>-</td><td>-</td><td>-</td><td>-</td><td>N/A</td></tr>
</table>

Wellington routes

<table>
<tr><th>Route</th><th>Air NZ/Virgin</th><th>Qantas</th><th>Change in Alliance market share since authorisation</th><th>Change in revenue per passenger</th></tr>
<tr><td>Wellington-Brisbane</td><td>100.0%</td><td>-</td><td>N/A</td><td>[Confidential]</td></tr>
<tr><td>Wellington-Sydney</td><td colspan="4" rowspan="2">[Confidential]</td></tr>
<tr><td>Wellington-Melbourne</td></tr>
</table>

Christchurch routes

[Confidential]

Queenstown routes

[Confidential]

Annex II: Analysis of current and potential competitors in the trans-Tasman market

Carrier	Current Position	Future prospects	Additional Comment
Qantas Group	• The Qantas Group is the strongest competitor to Air New Zealand • Its two-carrier business model enables them to compete in both the low-cost and premium passenger markets, utilising different brands based on the different characteristics of each route • Jetstar is a price leader among airlines and its presence on a route can have a significant impact on fares	• The Qantas Group is likely to maintain a strong ability to respond to any attempt to reduce capacity or raise prices • Jetstar could easily deploy additional services on leisure or VFR[1] driven routes if the Alliance sought to take advantage of its market position	• It's competitiveness is tempered by the fact that Jetstar and Qantas rarely compete on the same route (5 of 24 sectors)
Emirates Airlines	• Emirates is the third largest presence on the trans-Tasman market • It operates 4 services a day (3 to Auckland, 1 to Christchurch) in large, wide body aircraft. Emirates is able to sell tickets at marginal cost and to compete in the cargo market	• Emirates is likely to remain a competitive threat on the routes it operates on, limiting the ability of the Alliance to increase fares on those routes • There will be minimal impact on other routes where the threat of entry by Emirates is low	• The competition provided by the Qantas Group and Emirates is likely to increase substantially as a result of the Qantas/Emirates alliance, which allows them to coordinate schedules, capacity, and prices on the Tasman • The conditions imposed on the Qantas/Emirates alliance by the Australian Commission ensure that capacity will be maintained on the four routes on which Emirates operates
LAN/China Airlines	• LAN, based in Santiago, Chile, and China Airlines, based in Taipei, both operate trans-Tasman services using fifth freedom traffic rights • Both airlines' reasons for entering the market stem from the opportunity to maximise use of their aircraft instead of overflying New Zealand or parking overnight in Australia respectively	• LAN and China Airlines provide significant competition on the routes on which they operate, but limited competition in other markets. The threat of expansion into other markets is limited	

[1] Visiting Friends or Relatives.

Carrier	Current Position	Future prospects	Additional Comment
Qatar Airways	• Qatar Airways is one of the fastest growing airlines in the world • It does not operate on the Tasman currently	• Qatar Airways is likely to seriously consider operating services to New Zealand in the short to medium term • However any Qatar Airways service would more than likely require an intermediate stop in Australia, which we understand is not permitted under the Qatar-Australia air services agreement	
Etihad Airways	• Like Qatar, Etihad is a rapidly growing airline • It currently provides code share services to New Zealand through separate arrangements with Air New Zealand and Virgin Australia	• With code share arrangements already in place the likelihood of Etihad operating to New Zealand using its own aircraft is low	
Aerolineas Argentinas	• Aerolineas previously operated on the Buenos Aires-Auckland-Sydney route, but in 2012 it dropped Auckland as an intermediate point • It currently overflies New Zealand en route to Australia	• We understand that it frequently makes refuelling stops in Auckland en route to Australia • **[Confidential]**	• Any competition by Aerolineas Argentinas would likely be limited to the Auckland-Sydney route
Tiger Airways Australia	• Tiger Airways Australia Currently operates domestic services in Australia • It does not operate trans-Tasman services, but has previously expressed an interest in doing so • On 23 April 2013, the Australian Commission announced that it would not oppose a proposed acquisition by Virgin Australia of 60% of Tiger Airways	• As a Singapore owned, Australian based carrier, Tiger Airways was previously unable to operate trans-Tasman services as it did not meet the necessary conditions to be designated under the Australia-New Zealand Single Aviation Market Agreement • It is unclear whether this has changed as a result of Virgin Australia's acquisition due to their significant foreign shareholdings. This would be dependent on the Australian government designating Tiger Airways under the Single Aviation Market Agreement	• The likelihood of Tiger Airways operating trans-Tasman services is low, regardless of whether the Alliance is reauthorised • **[Confidential]** • **[Confidential]**
Other Airlines	• A number of fifth freedom carriers have previously operated on the Tasman, or have expressed an interest in doing so	• It is possible that one or more of these airlines may choose to enter the trans-Tasman market at some point	• These airlines include Royal Brunei, China Southern, Garuda Indonesia, Air Asia X, Scoot and Philippine Airlines

Annex III: Clause by clause description of how provisions relate to tariffs and capacity

1. Section 88(4) of the Civil Aviation Act provides that the Minister may **authorise all or any provisions** of a contract, arrangement, or understanding made 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.**

2. The tables that follow set out our categorisation of each of the provisions of the Code Share Agreement and the Alliance Agreement. In forming our conclusions we have applied the following broad principles:

- A code share agreement of this nature is an agreement about how schedules are going to be set, an agreement that the parties will sell seats (capacity) on each others flights, and an agreement as to how tariffs are to be set. Therefore the Agreements are agreements about the fixing of capacity and the fixing and application of tariffs.
- Scheduling is the process of deciding how many aircraft, with how many seats, are going to operate how often (and when) – scheduling *is* the fixing of capacity.
- The Ministry of Transport has long interpreted the scope of matters directly or indirectly relating to the fixing or application of tariffs broadly. In a substantial report relating to the authorisation of a 1994 IATA package we set out the view that in terms of the realities of international air carriage a complex connection exists between the price and a wide range of matters or conditions including:
    - How the price is to be determined – not only in terms of the costs of providing the carriage but also fare or rate construction principles; payment and currency conversion methods, commission and pricing sharing, and settlement
    - What the price relates to – who is eligible, the type of journey, classes of services, possible routings, permissible transfers or stopovers en route, baggage allowances etc
    - Arrangement and sale of travel including reservations, payment, documentation requirements and procedures, combinations with other fares, and rates.
- The revenue sharing arrangements are an important part of the overall incentives on the parties to fix capacity in a metal neutral manner and thus relate indirectly to the fixing of capacity. They also relate to pricing sharing and settlement as set out above.
- Matters such as lounge access and standard of in-flight service are associated with different classes of tariffs paid by the traveller – therefore agreements on these matters at least indirectly relate to the fixing or application of tariffs.
- Code sharing (where one airline is given the right to sell seats, i.e. capacity, on another airline's aircraft) relates to the fixing of capacity, and so matters that are essential for code sharing to operate relate indirectly to the fixing of capacity.

- Dating back to at least the 1994 IATA resolutions package we have applied the principle that administrative, boilerplate or machinery provisions which govern the manner in which agreements fix tariffs and capacity are implemented, form an integral part of the process of fixing tariffs/capacity.

Restated Version of the Australasian Airline Alliance Agreement 15 June 2012

Preamble	[Confidential]	Structural
Introduction	[Confidential]	Structural
1	[Confidential]	Structural
2.1	[Confidential]	[Confidential] therefore relates indirectly to fixing of tariffs and capacity
2.2	[Confidential]	[Confidential] therefore relates indirectly to fixing of tariffs and capacity
2.3	[Confidential]	Structural
3	[Confidential]	[Confidential]– therefore indirectly relates to fixing of tariffs and capacity [Confidential]
4	[Confidential]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore relates indirectly to tariffs and capacity
5.1	[Confidential]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore relates indirectly to tariffs and capacity
5.2	[Confidential]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore relates indirectly to tariffs and capacity
5.3	[Confidential]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore relates indirectly to tariffs and capacity
5.4	[Confidential]	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity therefore relates indirectly to tariffs and capacity
5.5	[Confidential]	Machinery – necessary for ongoing implementation of Alliance therefore relates indirectly to fixing of tariffs and capacity
6.1	[Confidential]	[Confidential]– therefore indirectly relates to fixing of tariffs and capacity
7(a)	[Confidential]	Relates to fixing of capacity
7(b)	[Confidential]	Relates to fixing of capacity
7(c)	[Confidential]	[Confidential]– relates to fixing of capacity
7(d)	[Confidential]	[Confidential]– relates to fixing of capacity
7(e)	[Confidential]	[Confidential]– relates to fixing of capacity
7(f)	[Confidential]	[Confidential]– relates to fixing of capacity
7(g)	[Confidential]	[Confidential]– relates to fixing of capacity
7(h)	[Confidential]	[Confidential]– relates to fixing of capacity

7.2	**[Confidential]**	Relates to fixing of capacity
7.3(a)	**[Confidential]**	Relates to fixing of capacity
7.3 (b)	**[Confidential]**	Relates to fixing of capacity
8.1	**[Confidential]**	Relates to fixing of capacity
8.2	**[Confidential]**	Relates directly or indirectly to fixing or application of tariffs
8.3	**[Confidential]**	Relates indirectly to fixing of tariffs and capacity. **[Confidential]**
8.4	**[Confidential]**	Relates to fixing of capacity
8.5	**[Confidential]**	Relates to fixing of capacity
8.6	**[Confidential]**	Relates to fixing of capacity
8.7	**[Confidential]**	Relates to fixing of capacity
8.8	**[Confidential]**	Relates to fixing of capacity
8.9	**[Confidential]**	Relates to fixing of capacity
8.10	**[Confidential]**	Machinery - Necessary for a code share therefore indirectly relates to fixing of capacity
9.1	**[Confidential]**	Customers gain frequent flyer points as a consequence of the tariffs they pay – so indirectly relates to fixing of tariffs
9.2	**[Confidential]**	Relates to application of tariffs
9.3	**[Confidential]**	**[Confidential]**– so indirectly relates to fixing of tariffs
10.1	**[Confidential]**	Relates to fixing and application of tariffs
10.2	**[Confidential]**	Machinery – assists in the **[Confidential]**therefore indirectly related to capacity
10.3	**[Confidential]**	Machinery – assists in the **[Confidential]**therefore indirectly related to capacity
10.4	**[Confidential]**	The Applicants are not seeking specific authorisation of this section

10.5	[Confidential]	Machinery – relates indirectly to fixing of tariffs and capacity
10.6	[Confidential]	Machinery – relates indirectly to fixing of tariffs and capacity
10.7	[Confidential]	[Confidential] – relates indirectly to fixing of capacity
10.8	[Confidential]	Relates to fixing of tariffs (paid by staff)
11.1	[Confidential]	Machinery – necessary for the implementation of the [Confidential]- indirectly relates to fixing of tariffs and capacity
11.2	[Confidential]	Machinery – necessary for the implementation of the [Confidential]- indirectly relates to fixing of tariffs and capacity
11.3	[Confidential]	Machinery – necessary for the implementation of the [Confidential]- indirectly relates to fixing of tariffs and capacity
11.4	[Confidential]	Machinery – necessary for the implementation of the [Confidential]- indirectly relates to fixing of tariffs and capacity
11.5	[Confidential]	Machinery – necessary for the implementation of the [Confidential]- indirectly relates to fixing of tariffs and capacity
11.6	[Confidential]	Machinery – necessary for the implementation of the [Confidential]- indirectly relates to fixing of tariffs and capacity
12	[Confidential]	Machinery – in entering into agreements and tariffs and in particular capacity, [Confidential] - indirectly relates to fixing of tariffs and capacity
13	[Confidential]	Machinery – in entering into agreements and tariffs and in particular capacity, [Confidential]- indirectly relates to fixing of tariffs and capacity
14	[Confidential]	Boilerplate
15	[Confidential]	Machinery – [Confidential]
16	[Confidential]	Machinery - helps define scope of the Agreement - [Confidential]relates directly to fixing of tariffs
17	[Confidential]	Machinery - helps define scope of Agreement
18	[Confidential]	Machinery - necessary for the operation of other provisions relating to tariffs and capacity
19	[Confidential]	Boilerplate
20	[Confidential]	Boilerplate
21	[Confidential]	Boilerplate
22	[Confidential]	Boilerplate
23	[Confidential]	Boilerplate
24	[Confidential]	Boilerplate
25	[Confidential]	Boilerplate

26	**[Confidential]**	Boilerplate
27	**[Confidential]**	Boilerplate
28	**[Confidential]**	Boilerplate
29	**[Confidential]**	Boilerplate
30	**[Confidential]**	Boilerplate
31	**[Confidential]**	Boilerplate
32	**[Confidential]**	Boilerplate
33	**[Confidential]**	Boilerplate
Schedule 1	**[Confidential]**	Structural
Schedule 2	**[Confidential]**	Relates to fixing of capacity
Schedule 3	**[Confidential]**	Relates to fixing of capacity and application of tariffs
Schedule 4	**[Confidential]**	Relates to fixing of capacity and application of tariffs
Schedule 5	**[Confidential]**	Partly machinery – sets out provisions necessary for the operation of provisions relating to tariffs and capacity. Some parts directly related to fixing of tariffs and capacity
Schedule 5a	**[Confidential]**	**[Confidential]**– therefore indirectly relates to fixing of tariffs and capacity

Restated Version of the Codeshare Agreement 15 June 2012

Preamble	**[Confidential]**	Structural
Introduction	**[Confidential]**	Structural
1	**[Confidential]**	Structural
2.1(a)	**[Confidential]**	Provides that **[Confidential]**– relates to fixing of capacity
2.1(b)	**[Confidential]**	Relates to fixing of capacity
2.1(c)	**[Confidential]**	Relates to fixing of capacity
2.1(d)	**[Confidential]**	Indirectly relates to fixing of capacity or fixing or application of tariffs
2.2 (a) – (c)	**[Confidential]**	Necessary for a code share therefore indirectly relates to fixing of capacity
3.1	**[Confidential]**	Directly relates to fixing of tariffs
3.2	**[Confidential]**	Relates to fixing and application of tariffs
3.3	**[Confidential]**	Relates to fixing of tariffs
3.4	**[Confidential]**	First point relates directly to fixing of tariffs. Other points **[Confidential]**in (inter alia) the fixing of tariffs and capacity
3.5	**[Confidential]**	At least the references to **[Confidential]**and **[Confidential]**relate to application of tariffs. **[Confidential]** indirectly relates to fixing of capacity
4.1	**[Confidential]**	Indirectly relates to fixing and application of tariffs (any other activity includes for example sale of on board products)
4.2	**[Confidential]**	Indirectly relates to fixing of tariffs

4.3	[Confidential]	Indirectly relates to fixing of tariffs
4.4	[Confidential]	Machinery - necessary for the operation of other provisions relating to tariffs and capacity
4.5	[Confidential]	Machinery - necessary for the operation of other provisions relating to tariffs and capacity
4.6	[Confidential]	Machinery - necessary for the operation of other provisions relating to tariffs and capacity
4.7	[Confidential]	Machinery - necessary for the operation of other provisions relating to tariffs and capacity
5	[Confidential]	Relates to the application of tariffs and fixing of capacity
6	[Confidential]	Necessary for a code share therefore indirectly relates to fixing of capacity
7	[Confidential]	Necessary for a code share therefore indirectly relates to fixing of capacity
8.1	[Confidential]	Necessary for a code share therefore indirectly relates to fixing of capacity. Also indirectly related to fixing or application of tariffs (as different service levels are associated with different tariffs)
8.2	[Confidential]	Necessary for a code share (or at least necessary for consumer protection under a code share) therefore indirectly relates to fixing of capacity
8.3	[Confidential]	Relates to fixing or application of tariffs
8.4	[Confidential]	Machinery - Necessary for a code share therefore indirectly relates to fixing of capacity
8.5	[Confidential]	Machinery - Necessary for a code share therefore indirectly relates to fixing of capacity
8.6	[Confidential]	Machinery - Necessary for a code share therefore indirectly relates to fixing of capacity
9	[Confidential]	Relates to fixing and application of tariffs (what certain classes of passenger pay)
10	[Confidential]	Machinery - Necessary for a code share therefore indirectly relates to fixing of capacity
11	[Confidential]	Relates to fixing or application of tariffs

12	**[Confidential]**	Machinery
13	**[Confidential]**	Machinery - Necessary for a code share therefore indirectly relates to fixing of capacity; provision on conditions of carriage also relates to tariffs
14	**[Confidential]**	Machinery - Necessary for a code share therefore indirectly relates to fixing of capacity
15	**[Confidential]**	Machinery - Necessary for a code share therefore indirectly relates to fixing of capacity
16	**[Confidential]**	Machinery - Necessary for a code share therefore indirectly relates to fixing of capacity
17	**[Confidential]**	Machinery - Necessary for a code share therefore indirectly relates to fixing of capacity
18	**[Confidential]**	Boilerplate
19	**[Confidential]**	Boilerplate
20	**[Confidential]**	Part boilerplate but also necessary for a code share therefore relates to fixing of capacity
21	**[Confidential]**	Part boilerplate but also necessary for a code share therefore relates to fixing of capacity
22	**[Confidential]**	Boilerplate
23	**[Confidential]**	Boilerplate. Additionally a clause about when you don’t have to meet obligations relating to fixing of tariffs and capacity relates indirectly to fixing of tariffs and capacity
24	**[Confidential]**	Machinery – indirectly relates to fixing of capacity and tariffs
25	**[Confidential]**	Machinery – indirectly relates to fixing of capacity and tariffs
26	**[Confidential]**	Boilerplate
27	**[Confidential]**	Boilerplate
28	**[Confidential]**	Boilerplate
29	**[Confidential]**	Boilerplate
30	**[Confidential]**	Boilerplate
31	**[Confidential]**	Boilerplate
32	**[Confidential]**	Boilerplate

33.1	**[Confidential]**	Boilerplate
33.2(a)	**[Confidential]**	Machinery - Necessary for a code share therefore indirectly relates to fixing of capacity
33.2(b)	**[Confidential]**	Boilerplate
33.3	**[Confidential]**	Boilerplate
33.4	**[Confidential]**	Boilerplate
Execution		Boilerplate
Schedule 1	**[Confidential]**	Relates to fixing of capacity