



31 July 2024

OC240623

Hon Matt Doocey

Action required by:

Associate Minister of Transport

Friday, 9 August 2024

## AIR NEW ZEALAND AND VIRGIN AUSTRALIA CODESHARE AGREEMENT AUTHORISATION – FINAL ADVICE

### Purpose

Air New Zealand and Virgin Australia have applied for authorisation of a codeshare agreement. We have provided you a report on our analysis. This briefing outlines the key points of our analysis on the proposal and recommends that you authorise the arrangements. It follows our initial advice provided to you on 20 May 2024 (OC240164 refers) and subsequent discussion with officials.

### Key points

- Air New Zealand and Virgin Australia (the Applicants) are seeking authorisation to implement a unilateral Codeshare Agreement, and other related agreements (the arrangements).
- Under the arrangements, Virgin Australia could put its code on Air New Zealand operated trans-Tasman services, applying to tickets sold in Australia to New Zealand destinations. Air New Zealand will set the fares that Virgin Australia will charge its passengers. The arrangement excludes the Queenstown route which is currently operated by Virgin Australia using its own aircraft.
- This briefing accompanies a report containing our detailed analysis regarding the proposed authorisation (see Annex).
- We recommend that you authorise the arrangements for a period of five years. This allows us to reassess the codeshare at an appropriate time. The period is also consistent with other recent airline cooperative agreement authorisations.
- Our analysis finds that on balance, the codeshare agreement delivers small benefits to New Zealand, over and above any potential detriments. A key consideration is that Virgin Australia's re-entry into non-Queenstown routes is very unlikely over the next two to three years with or without the codeshare.

*Authorisation is under Section 88 of the Civil Aviation Act 1990*

- The Civil Aviation Act 1990 (the Act) only allows that provisions of agreements may be authorised so far as they relate "whether directly or indirectly, to the fixing of tariffs, the application of tariffs, or the fixing of capacity, or any combination thereof".

- We have reviewed the provisions of the Commercial Framework Agreement (CFA), the Codeshare Agreement, the Corporate/SME<sup>1</sup> Dealing Agreement and the Special Prorate Agreement provided by the Applicants and conclude they fall within the scope of section 88 of the Act.
- We also conclude that the arrangement meets the statutory conditions allowing it to be authorised under section 88 of the Civil Aviation Act 1990. Section 88(2) of the Act only gives the Minister power to authorise provisions of arrangements.
- The remaining implementing agreements under the CFA, provided by the applicants, do not require authorisation as the nature of these agreements fall outside the scope of section 88 of the Act.

#### *Risks*

- While we are not certain of conditions beyond three years, we do not consider that lack of certainty should prevent you from authorising the arrangement for five years. You can only authorise for a period shorter than five years if the Applicants amended their application.
- There is a small risk that if market conditions on the Tasman improve for Virgin Australia, the codeshare could disincentive Virgin Australia re-entering non-Queenstown routes for the remaining period of the authorisation. However, the codeshare could enable Virgin Australia to better gauge demand to inform whether re-entry is viable. s 9(2)(b)(ii) [REDACTED]  
[REDACTED] The operating challenges it would face in the post-pandemic recovery are just as great.
- Since our initial advice, the Australian Competition and Consumer Commission has issued a final determination authorising the codeshare for five years.
- Our analysis shows there is not sufficient reason to decline authorisation. This conclusion is reinforced by the findings of the ACCC. While the decision is finely balanced, our recommendation is to authorise for a period of five years as requested by the applicants.
- Some stakeholders, such as the airports, may be disappointed by a decision to authorise the codeshare agreement. Your decision can be judicially reviewed.

s 9(2)(g)(i) [REDACTED]

.<sup>2</sup>

#### *Next steps following your decision*

- We will inform the applicants of your decision regarding authorisation.
- We intend to publish a copy of this briefing and our detailed analysis, along with the initial advice (OC240164 refers) on our website. We will withhold any sensitive information in accordance with the Official Information Act 1982.

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<sup>1</sup> Small to medium enterprise

<sup>2</sup> s 9(2)(g)(i) [REDACTED]

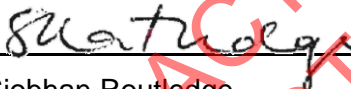
- This is consistent with our approach to previous alliance applications, provides transparency to interested parties on the decision-making process and the factors that were taken into account in making your decision.
- Previously, for some authorisations, we have organised a media release. We will discuss with your office about a media release relating to this authorisation.

**Recommendations**

We recommend you:

- 1 **authorise** pursuant to section 88(2) of the Civil Aviation Act 1990:
  - the provisions of the Commercial Framework Agreement between Air New Zealand and Virgin Australia dated 17 November 2023, and
  - the provisions of related implementing agreements: Code Share Agreement dated 17 November 2023; Corporate/SME Dealing Agreement dated 24 June 2024; and Special Prorate Agreement dated 8 December 2023

for a period of five years. Yes / No
- 2 **agree** that we publish a copy of the report containing our detailed analysis, along with our initial advice, on our website (with appropriate redactions in accordance with the Official Information Act 1982). Yes / No
- 3 **indicate** whether you would like us to arrange a media release regarding your decision. Yes / No

  
 Siobhan Routledge  
**Acting Deputy Chief Executive, Policy**  
 31 July 2024

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 Hon Matt Doocey  
**Associate Minister of Transport**  
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- Minister's office to complete:**     Approved                                     Declined
- Seen by Minister                                     Not seen by Minister                                     Overtaken by events

**Comments**

**Contacts**

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