

British Airways -- Qatar Airways 2020 codeshare authorisation

Reason for this briefing	To provide you with advice concerning the application by British Airways and Qatar Airways for you to authorise their cooperation on passenger services to New Zealand.
Action required	If you agree with our advice, agree to authorise the proposed cooperation under the Civil Aviation Act 1990.
Deadline	15 May 2020
Reason for deadline	The airlines have asked for a decision as soon as possible, as it affects their business planning.

Contact for telephone discussion (if required)

Name	Position	Telephone	First contact
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MINISTER'S COMMENTS:

Date:		Briefing number:	OC200153
Attention:	Hon Phil Twyford	Security level:	

Minister of Transport's office actions

- Noted*
 Seen
 Approved
- Needs change*
 Referred to
- Withdrawn*
 Not seen by Minister
 Overtaken by events

Purpose of report

1. British Airways and Qatar Airways have applied for authorisation to coordinate their air passenger services on 26 routes between Auckland and the UK/Europe, which incorporate the London-Doha trunk route.
2. The proposed arrangements may include coordination of schedules, revenue planning and pricing, sales and marketing activities, and service parameters and standards. Authorisation is sought for a term of 5 years.
3. This briefing seeks your agreement to authorise the proposed coordination under the Civil Aviation Act 1990. The effect of authorisation is to exempt the arrangements from the provisions in the Commerce Act 1986 that prohibit practices substantially lessening competition.
4. Our detailed analysis, along with the application, are attached to this report.
5. Our analysis and this report will also be posted on the Ministry of Transport website when a decision is made.

We recommend that the proposed coordination is authorised

6. The Minister of Transport is responsible, under the Civil Aviation Act 1990, for authorising or declining to authorise arrangements between airlines that relate to fixing tariffs or capacity. The Ministry of Transport provides advice to you on whether authorisation would be consistent with the criteria set out in the Act and whether it is in New Zealand's interest.
7. We consider that the proposed coordination meets the statutory conditions allowing it to be authorised under section 88 of the Civil Aviation Act, is not likely to reduce competition on the affected routes and may produce benefits to customers.

Comment

8. On 19 November 2019, British Airways and Qatar Airways jointly applied for authorisation to coordinate their air passenger services on 26 routes between Auckland and the UK and Europe, which incorporate the London-Doha trunk route. British Airways had no direct flights to or from New Zealand, while before the COVID-19 crisis, Qatar Airways offered daily flights from Auckland to Doha.
9. Since the application was received, the COVID-19 crisis has shut down the international passenger airline and tourism industries. Recovery from this unprecedented shock is expected to be slow and will not be a return to a previous state. The analysis behind our recommendation draws on a historical market that may not predict future competitive dynamics. Nonetheless, our conclusion that authorisation of the proposed arrangements will have little effect on actual competition, and hence our recommendation that it be approved, are not affected by recent events.
10. Despite uncertainty about the future of international aviation, the representatives of British Airways and Qatar Airways have indicated that they still wish to pursue approval of the proposed arrangements.

Analysis

11. Section 88 of the Civil Aviation Act provides that the Minister may authorise arrangements covering airline tariffs or capacity if they do not violate specified criteria, which mostly

concern effective market competition. Since authorisation exempts the arrangements from some provisions of the Commerce Act, we only recommend that such arrangements be authorised if they are in the public interest.

12. The proposed cooperation between British Airways and Qatar Airways is governed by an international Joint Business Agreement between the parties that has been in place since 2016. This Agreement provides the applicants with access to routes connecting to the London-Doha route that they do not serve with their own aircraft. It has been implemented in stages, starting with the London-Doha trunk routes and routes into Asia and Africa, and now with the proposed arrangements for Europe, New Zealand and Australia.
13. Our analysis has confirmed that the Joint Business Agreement meets the conditions of section 88 of the Act, allowing it to be authorised. We have also considered the relevant markets to establish whether the proposed arrangements are likely to enhance or reduce the benefits of competition.
14. The busiest routes affected by the proposal are London to Auckland and Manchester to Auckland. There is also considerable travel between Auckland and Western Europe. Before the present crisis, these were all quite competitive markets served by six or seven different airlines. Historically, Emirates has been the most successful of these, having between 15 and 50 percent of the market. Since 2017, Qatar Airways has also had good market share, of 15 to 30 percent. British Airways has only had access to these routes through codeshare partners, and has a negligible presence of 1 to 2 percent.
15. Because British Airways has been a minor competitor, while Qatar Airways has been effective but not dominant, their cooperation is not likely to have a negative effect on competition.
16. There is also little reason to think that authorisation of these arrangements will further reduce the applicants' incentive to compete with each other. There is already considerable cooperation between the two airlines on the basis of their existing international agreement. Furthermore, Qatar Airways owns a quarter of IAG, which is the parent company of British Airways.
17. The proposed cooperation is intended to expand the customer base of each airline and to create operational efficiencies. The applicants claim that these efficiencies will enable them to offer more attractive products, on price and benefits such as shared loyalty schemes, that will encourage competition in the market to the advantage of customers.
18. We conclude that the proposed arrangements are unlikely to reduce competition on the affected routes, may enhance competition, have the potential to bring more attractive products to the market, and could expose these routes to a larger market.
19. The COVID-19 crisis, and its damage to the aviation and tourism industries, raise further considerations. The routes we have identified as competitive may not remain so; some airlines may withdraw. Indeed, it is possible that routes will be dropped altogether. New Zealand's access to international services may become a bigger concern than having effective competition on particular routes.
20. During the crisis, Qatar Airways continued flying to New Zealand when all other airlines suspended passenger flights, and even increased its services during the period of repatriation flights. Doha also remained open as a hub while other ports closed.
21. British Airways previously flew to New Zealand only through codeshares, including Qatar Airways. It may have fewer codeshare partners in future.

Australia

22. The applicants have also applied for authorisation of the same cooperative arrangements, for the same 5-year term, in Australia. This affects nine routes between Australia and the United Kingdom via Doha. New Zealand's authorisation decisions need not align with Australia's. However, Australia applies similar criteria, and many similar market considerations are relevant to both markets, so similar findings could be expected.
23. On 26 March 2020, the Australian Competition and Consumer Commission released a Draft Determination and Interim Authorisation, pending consultation, proposing to grant authorisation to the proposed arrangements. The Commission arrived at a substantially similar conclusion to us: "it is unlikely that the competitive dynamics in any market will be materially impacted"; "the Proposed Conduct is likely to result in public benefits, which would outweigh any likely public detriments"; and "there is unlikely to be any harm to any interested parties".

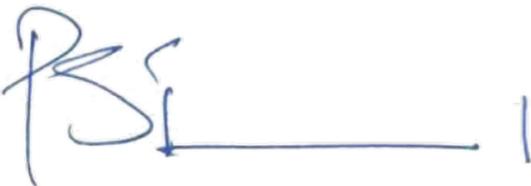
Recommendations

24. The recommendations are that you **authorise** pursuant to section 88(2) of the Civil Aviation Act 1990:
- (a) the provisions of the Joint Business Agreement between British Airways and Qatar Airways dated 15 May 2018, as they apply to coordination by those airlines of air passenger services between Auckland and the United Kingdom or Europe, incorporating the London-Doha trunk route, until 31 May 2025. Yes/No



Tom Forster
Manager, Economic Regulation

MINISTER'S SIGNATURE:



DATE: 10.5.2020