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Qantas/Emirates Alliance Reauthorisation

Ministry of Transport Analysis

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Executive summary

1. In October 2017, Qantas Airways and Emirates applied for reauthorisation by the Minister of Transport of their Restated Master Coordination Agreement, pursuant to section 88 of the Civil Aviation Act.
2. The Ministry of Transport recommends that the Minister of Transport authorise the Restated Agreement for a period of five years. We consider that the alliance provides real benefits to New Zealand, in the form of improved connectivity for consumers travelling to and from New Zealand.
3. The Ministry's main concerns relate to the trans-Tasman market for air services, where we note that Emirates intends to cease operating services between Auckland and Australia, beginning 25 March 2018. However, through our analysis, we consider it likely that Emirates would have withdrawn these routes, regardless of whether they were working under an alliance with Qantas.
4. The one remaining trans-Tasman service provided by Emirates is Christchurch-Sydney, which overlaps the same service provided by Qantas. We believe that the alliance does result in a reduction in competition on this route, which runs the risk of negative outcomes for consumers in the form of higher airfares, and less choice.
5. In considering the benefits and detriments, we believe that on balance, the alliance delivers benefits (both real and potential) to New Zealand, over and above the potential detriments.
6. We also conclude that the Restated Master Coordination Agreement meets the statutory conditions allowing it to be authorised under section 88 of the Civil Aviation Act.

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Introduction

7. This report provides a detailed summary of the Ministry of Transport's analysis of the application from Qantas and Emirates (the Applicants) for reauthorisation of their airline alliance, under their Restated Master Coordination Agreement (the Restated Agreement).
8. The effect of authorisation would be that the arrangements in the Restated Agreement are exempt from the provisions of the Commerce Act 1986 that prohibit arrangements substantially lessening competition.
9. The Applicants are currently working under an agreement which was authorised by the Minister of Transport in 2013. That authorisation expires on 31 March 2018
10. The Minister of Transport is responsible for authorising or declining an application made under the Civil Aviation Act 1990. The Ministry of Transport provides advice to the Minister on whether authorisation would be consistent with the criteria set out in the Act.

Background on airline agreements

Airline alliances

11. International aviation is governed by a network of thousands of bilateral air services agreements. These agreements often restrict the destinations airlines are able to serve and the capacity (number of seats of flights) they are able to provide. Many of these agreements also require airlines to be majority owned by nationals of their home state. This makes it difficult for airlines to merge or establish joint ventures in the same way that most other businesses can.
12. No single airline can operate every possible route in the world. But with alliance arrangements, airlines can expand their reach by effectively combining their networks.
13. In order to overcome the restrictions imposed in bilateral air services agreements, and the inability to serve all routes with their own aircraft, airlines have developed several means of working with one another to expand their global reach. Cooperation between airlines generally takes a number of forms.
 - “Interline” arrangement: in which one airline buys tickets for travel on another airline at a pre-determined price. This is the mechanism through which (for example) Qantas is able to sell its passengers a ticket from Melbourne to Invercargill, even though it does not operate a service to Invercargill.
 - Code-share arrangement: an agreement through which an airline is effectively given the ability to sell seats on flights operated by another airline as if it were operating that flight with its own aircraft. Code-share agreements are relatively common and, without additional cooperation rarely raise competition issues.
 - Revenue-sharing alliance: an extensive commercial agreement in which two or more airlines agree to cooperate on all aspects of pricing, scheduling and service delivery in a particular market. These arrangements are generally subject to a much higher level of regulatory scrutiny as they have the potential to reduce competition. The agreement which the Applicants are currently working under, and the Restated Agreement, have a degree of cooperation similar to those of a revenue sharing alliance.

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- Global airline alliance: many airlines are members of one of three global alliance groups - Star, Oneworld and Skyteam. Members of global alliances work together to provide services to consumers, by cooperating in areas such as marketing, scheduling, ticketing, and frequent flier schemes. The level of cooperation differs between members, however it is common for members of the same groups to enter into interline and code-share agreements with one another. Qantas is a member of the Oneworld Alliance. Emirates is unusual for a large airline in that it does not belong to a global alliance.
14. Alliances can result in benefits to consumers, for example, better access to connecting flights, more choices of routes, and the ability to earn and redeem frequent flyer points across the networks of all participating airlines. Alliances also have the potential to reduce costs for airlines, which in competitive markets results in lower airfares for consumers.
 15. However, alliances can carry significant risk as they typically result in a reduction in competition, which can lead to higher fares or reduced services.

The New Zealand context

16. In principle, we have taken the view that alliances are a necessary tool for airlines (particularly those with small and remote home markets, such as Air New Zealand) to overcome restrictions imposed on them by bilateral air services agreements. However, each alliance agreement carries different risks and needs to be carefully scrutinised to ensure that it delivers benefits that counteract any negative impacts that may result from a reduction in competition.
17. A number of airline alliances have been authorised in New Zealand under the Act. One significant alliance is between Singapore Airlines and Air New Zealand, which allows for varying levels of cooperation on flights from New Zealand connecting through Singapore and beyond. Another is the alliance between Air New Zealand and Virgin Australia, which allows for full cooperation on routes across the Tasman, including those connecting with domestic services in Australia and New Zealand.

The Applicants

Qantas

Qantas was incorporated in 1920 and is Australia's largest domestic and international airline. Qantas operates over 4,500 flights per week in Australia and over 570 international flights a week. Qantas also operates airline related businesses including airport support services, catering, freight operations, loyalty programmes and engineering.

18. The international destinations which Qantas currently serves (ex Australia) are set out in the table below¹.

¹ Although present on the table, Qantas flights to Dubai will cease from 24 March 2018.

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Table 1: Qantas International Destinations (Ex Australia)

Region	Destinations
New Zealand/Pacific	Auckland, Christchurch, Wellington, Queenstown, Noumea, Port Moresby
Asia	Beijing, Bangkok, Hong Kong, Jakarta, Manila, Shanghai, Singapore, Tokyo Haneda, Tokyo Narita, Denpasar, Osaka
Europe	London
Middle East	Dubai ^B
Americas	Dallas/Fort Worth, New York, Los Angeles, Honolulu, Santiago, Vancouver, San Francisco
Africa	Johannesburg

19. The Qantas Group (including subsidiary Jetstar) operates a total passenger fleet of over 280 aircraft, comprising Boeing B787s, 747s, 737s and 717s, Airbus A380s, A330s and A320s, Bombardier Dash 8s and Bombardier Q400s. In October 2017, Qantas was due to take delivery of the first of eight new Boeing 787 'Dreamliner' aircraft.
20. Qantas subsidiary Jetstar operates low-cost services in domestic Australia and New Zealand and to international destinations as set out in the Table below.

Table 2: Jetstar International Destinations (Ex Australia)

Region	Destinations
New Zealand/Pacific	Auckland, Christchurch, Queenstown, Wellington, Nadi
South East Asia	Bangkok, Ho Chi Minh, Phuket, Bali (Denpasar), Singapore
North East Asia	Osaka, Tokyo-Narita
Americas	Honolulu

21. The Jetstar Group, founded in 2004, operates the following:
 - domestic Australian and New Zealand services (operated by Jetstar Airways)
 - international services from Australia to destinations in Asia, the Pacific and New Zealand (operated by Jetstar Airways) and
 - services within and between various countries in Asia under the Jetstar business model, operated by the following joint ventures:
 - Jetstar Asia Airways Pte Limited (Jetstar Asia), in which the Qantas Group has a 49 percent interest, which is incorporated in Singapore and operates flights from Singapore to various destinations in Asia
 - Jetstar Pacific Airlines Joint Stock Aviation Company (Jetstar Pacific) of which the Qantas Group has a 30 percent shareholding. Jetstar Pacific is incorporated in Vietnam and operates flights within Vietnam and internationally; and

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- Jetstar Japan Co Ltd (Jetstar Japan) in which the Qantas Group has a 33.32 percent shareholding. Jetstar Japan is incorporated in Japan and operates flights within Japan and internationally.
22. The alliance covers coordination between Qantas, Emirates, Jetstar and Jetstar Asia [REDACTED].
23. The Australian Competition and Consumer Commission (ACCC) authorised coordination between the Qantas Group and the various Jetstar-branded joint ventures in March 2013. The Qantas Group is currently seeking reauthorisation of those arrangements. The Jetstar Group operates over 4,000 weekly flights to 75 destinations in 17 countries or territories.

Emirates

24. Emirates is a Dubai-based corporation established by Decree No 2 of 1985 (as amended) and is wholly owned by the Investment Corporation of Dubai, which is ultimately wholly owned by the government of Dubai. Emirates is the world's largest international carrier by revenue passenger kilometres (RPKs). It operates more than 1,000 flights per week across six continents from Dubai.
25. Emirates is not a member of any global marketing alliance. Emirates has also entered into a cooperation agreement with flyDubai, a low cost carrier based in Dubai. This cooperation was authorised by the ACCC on 25 July 2012 for ten years.
26. The destinations to which Emirates currently operates are set out in the table below.

Table 3: Emirates Destinations

Region	Destinations
New Zealand/Pacific	Auckland, Christchurch, Perth, Brisbane, Adelaide, Melbourne, Sydney
Asia	Bangkok, Phuket, Kuala Lumpur, Singapore, Jakarta, Ho Chi Minh City, Manila, Hong Kong, Guangzhou, Shanghai, Beijing, Seoul, Osaka, Tokyo, Dhaka, Kolkata, Hyderabad, Chennai, Colombo, Malé, Thiruvananthapuram, Kochi, Bengaluru, Mumbai, Ahmedabad, Delhi, Lahore, Islamabad, Karachi, Peshawar, Phnom Penh, Hanoi, Yangon, Zhengzhou, Yinchuan, Cebu, Clark, Bali, Multan, Mashhad, Taipei, Kabul, Sialkot
Europe	Glasgow, Dublin, Birmingham, London, Manchester, Newcastle, Lisbon, Madrid, Barcelona, Paris, Lyon, Nice, Zürich, Geneva, Milan, Venice, Munich, Vienna, Prague, Warsaw, Frankfurt, Düsseldorf, Amsterdam, Hamburg, Copenhagen, St. Petersburg, Moscow, Rome, Malta, Athens, Istanbul, Larnaca, Zagreb, Bologna, Budapest, Brussels, Oslo, Stockholm
Americas	Seattle, Los Angeles, San Francisco, Dallas, Houston, Toronto, New York, Washington DC, Buenos Aires, Rio de Janeiro, São Paulo, Newark, Fort Lauderdale, Orlando, Chicago, Boston
Africa	Cairo, Khartoum, Addis Ababa, Entebbe, Nairobi, Dar Es Salaam, Lusaka, Harare, Johannesburg, Durban, Seychelles, Mauritius, Cape Town, Luanda, Lagos, Accra, Abidjan, Dakar, Casablanca, Tunis, Conakry
Middle East	Muscat, Jeddah, Madinah, Beirut, Amman, Riyadh, Dammam, Kuwait City, Basra, Bahrain, Doha, Erbil, Baghdad, Tehran

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Outline of the proposal

Intended scope of the alliance

27. Under the Restated Agreement, the Applicants will continue to coordinate and cooperate across their global networks, including in relation to:
- planning, scheduling, operating and capacity;
 - sales, marketing, advertising, promotion, distribution strategies, reservation priority and pricing (including fares, rebates, incentives and discounts) for passengers, freight customers and agents;
 - connectivity and integration of certain routes;
 - code-share and interline arrangements;
 - control of inventories and yield management functions;
 - frequent flyer programs;
 - all passenger-related aspects to provide a consistent level of service to customers including ground services and lounge access;
 - harmonising service and product standards in order to provide a seamless product to passengers;
 - harmonising IT systems;
 - joint airport facilities;
 - joint offices for sales activities;
 - potentially other aspects of operations including ground handling², joint procurement and flight operations;
 - where appropriate and mutually agreed, making joint submissions to authorities on operational matters; and
 - services and activities that are required to facilitate any of the matters referred to above.
28. Under the original agreement, a 'benefit transfer model' applied. This model provided a basis for the Applicants to share incremental profits (or losses) resulting from the alliance, on specified 'main trunk routes'.

² Aircraft ground handling defines the servicing of an aircraft while it is on the ground and (usually) parked at a terminal gate of an airport

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29. [REDACTED]
[REDACTED]
[REDACTED] The Restated Agreement states that this model is designed to align the incentives of the Applicants, so that each Applicant has an incentive to encourage passengers to select either party as the operating carrier, over competing airlines.

Scope of authorisation

30. The Act allows for the authorisation of provisions which relate to the fixing of tariffs (fares), the application of tariffs, or the fixing of capacity, or any combination thereof. Therefore, the Applicants have not sought authorisation for the sections of the Restated Arrangement which relate to ground handling, engineering and joint procurement.
31. More information regarding how the Restated Agreement relates to these provisions can be found in Annex 2 of this report.
32. The Restated Agreement covers bodies corporate related to the Applicants, including Qantas subsidiaries Jetstar Airways and Jetstar Asia Airways. [REDACTED]
[REDACTED]
[REDACTED]

Relationship with other jurisdictions

Approval of original agreement

33. As part of putting in place the original agreement, the Applicants undertook a process of “giving regulatory comfort” to authorities in the European Union and United Kingdom. The Applicants also received authorisation from the Singapore Competition Commission on 28 March 2013.
34. Given the Restated Agreement covers a number of routes to, from and through Australia, we are primarily concerned with the authorisation regime in Australia.
35. In Australia, collaborative arrangements in international air services are considered by the Australian Competition and Consumer Commission (the ACCC).
36. On 27 March 2013, the ACCC issued a determination giving approval to the arrangements for five years. Following discussions between New Zealand Ministry of Transport officials and Qantas, the Applicants agreed to apply for reauthorisation in New Zealand at the same time as in Australia.

Capacity conditions

37. The ACCC’s authorisation in 2013 was subject to a condition that the Applicants commit to maintaining a minimum level of capacity (seats) on a bundle of the four overlapping routes across the Tasman. These were:
- Sydney-Auckland
 - Melbourne-Auckland
 - Brisbane-Auckland
 - Sydney-Christchurch

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38. These minimum levels were based on capacity offered by the Applicants in the year prior to authorisation of the original agreement.
39. Capacity conditions were not included in the New Zealand authorisation of the original agreement. Our advice was not to include these conditions because:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- Imposing the same conditions as part of any New Zealand approval as the ACCC has put in place would have no practical effect (as the airlines would have to meet them in any case) but would increase compliance costs.
- Imposing different and potentially conflicting conditions could have unpredictable consequences.

The ACCC is intending to reauthorise the alliance

40. The ACCC released its draft determination on the reauthorisation of the alliance on 16 February 2018. In its draft determination, the ACCC proposes to reauthorise the Applicants' proposed conduct, for a further period of five years.
41. The ACCC considered that Emirates would be unlikely to re-enter the Auckland to Brisbane, Melbourne and Sydney routes, whether or not the alliance is authorised. Therefore, it is not proposing to re-apply capacity conditions on these routes.
42. The ACCC is however concerned about the Sydney-Christchurch route, which from 25 March 2018 will be the only overlapping route the Applicants will operate on the Tasman. The ACCC notes that on this route, the alliance reduces the number of independently operating competitors from three to two (Emirates/Qantas and Air New Zealand/Virgin Australia).
43. The Qantas/Emirates alliance has a 68 percent share of seats flown on this route. Given its dominant market position, the ACCC considers there is potential for the Applicants to limit capacity and increase airfares on the route.
44. Despite its concerns, the ACCC is not proposing to re-apply capacity conditions on the Sydney-Christchurch route. It suggests that imposing such a condition on only one route may risk unintended consequences. It notes:
 - a capacity condition set too high risks having excess capacity on the route, which may crowd out other potential competitors and raise barriers to entry
 - capacity conditions on one route may result in an inefficient allocation of capacity. This could artificially restrict growth on other routes, and limit the Applicants' flexibility to best match capacity with demand, and overinflate growth on the route where capacity is required to be maintained.

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45. In its draft determination, the ACCC proposes requiring the Applicants to report for each six-month scheduling season on the number of seats flown, route specific costs, revenues and average fares on the Auckland-Australia and Sydney-Christchurch routes. This information will be used to assess whether the Applicants are reducing capacity in order to raise fares on the Sydney-Christchurch route. If the ACCC believes this is happening, it can choose to impose capacity conditions.

Commercial rationale for the alliance

46. In their application, the Applicants set out the commercial rationale for renewing the original agreement. This is summarised below. In general, the Applicants claim that leveraging off their respective network strengths has allowed both airlines to grow their networks in a sustainable way, with associated public benefits.

Emirates

47. As with the original agreement, the Restated Agreement helps Emirates access a larger number of New Zealand passengers, in order to support its international services. The Restated Agreement allows Emirates to market a larger number of travel options to New Zealand and overseas travellers, by accessing the domestic and trans-Tasman networks of Qantas and Jetstar. This extends the Emirates network and helps feed its international services through its Dubai hub.
48. The Applicants also state that the alliance has helped Emirates sell more flights to high-yielding Australian and New Zealand business travellers, through the Qantas Frequent Flyer Programme.

Qantas

49. As an “end of line” carrier, Qantas argues that it is disadvantaged relative to airlines based at mid-point hubs such as Singapore, Hong Kong, the Middle East or China. Airlines operating from these hubs have the benefit of aggregating passengers from a number of sources through their hubs, resulting in advantages in density and economies of scale.
50. In its original application of 2012, Qantas International stated it was difficult to compete with these mid-point carriers. Qantas noted that its international business had been in “terminal decline” for a number of years, losing AUD\$450 million in 2012. Since 2012, Qantas has made a number of changes to its international business, resulting in underlying before-tax earnings of AUD\$512 million in 2016, and AUD\$327 million in 2017.
51. The Applicants state that cooperation with Emirates has helped Qantas compete more successfully with mid-point carriers, by leveraging off the Emirates international network, through its mid-point hub in Dubai.

Consultation

52. The Ministry consulted on the proposed authorisation of the Restated Agreement on 18 October 2017. Submissions were received from Auckland International Airport Limited, Tourism Industry Aotearoa (TIA) and The NZ Airports Association.

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Tourism Industry Aotearoa

53. TIA support the application and think the Applicants have provided a solid rationale for why the application for reauthorisation should be approved. TIA also believe that the original agreement has created “real and substantial benefits to New Zealand”.

NZ Airports Association

54. The Airports Association has urged that the application should be subject to a rigorous analysis of whether authorisation is in the public interest or not. It also suggested that any authorisation be subject to a period of no longer than 5 years, with a possibility of renewal if the Applicants clearly demonstrate the coordination is in the public interest.
55. The Association was particularly concerned about the effect the alliance has on competition on the Tasman, where it notes that the short trans-Tasman sectors can be relatively expensive when compared with other routes. It pointed to the effective duopoly between the two dominant alliances (Qantas/Emirates and Air New Zealand/Virgin) as a possible cause of this.
56. The Association also pointed to the capacity conditions imposed by the ACCC when the original agreement was authorised in 2013. It suggested that consideration be given to imposing similar conditions on this authorisation, to ensure airline groups on the Tasman retain an incentive to grow capacity over time, in order to keep pace with market growth.

Auckland International Airport Limited

57. The Airport submitted a short letter to the Ministry regarding the proposed reauthorisation of the alliance. It acknowledged the economic pressures that airlines operate under and that it is generally supportive of measures that alleviate these pressures. However, the Airport reinforced the need to consider the application carefully, to ensure it does not adversely affect competition, especially on the Tasman.
58. The Airport concluded by pointing to the capacity conditions imposed by the ACCC which seek to safeguard capacity on the Tasman. Like the Airports Association, it suggested that this may be a sensible approach to protect consumer interests.

Applicants' Response

Lack of competition on the Tasman

59. The Applicants claim that the concerns raised by the NZ Airports Association regarding the lack of competition on the Tasman, driving higher fares, are unsubstantiated. The Applicants point to the fact that travellers on the Tasman tend to be highly price-sensitive, with a high concentration of lower-yielding ‘sale’ economy fares. In their application, the Applicants state that this price sensitivity means carriers on the Tasman lack the ability to raise prices without a corresponding drop in load factors.
60. The Applicants maintain that competition on the Tasman continues to be strong, and barriers to entry are low.

Capacity conditions on the Tasman

61. The Applicants state that capacity conditions on the Tasman are unnecessary, and that a renewal of the current capacity requirements by the ACCC could undermine the sustainability of their services.

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62. The Applicants state that Emirates is committed to offering services on the Tasman, and will continue to operate its A380 aircraft into Christchurch. The Applicants note the Tasman is the largest corporate and leisure market for Qantas, and is of high strategic importance for the airline. Qantas also note that its significant investment in providing New Zealand domestic services through Jetstar is an additional incentive to ensure the Tasman is serviced sustainably over the long term.

Framework for our analysis

63. Our analysis relating to the proposed authorisation of the Restated Agreement includes both an analysis of whether the Restated Agreement meets the strict statutory criteria in the Civil Aviation Act, as well as a public interest assessment.

Statutory analysis

64. The applicants have applied for authorisation in accordance with section 88 of the Act. The Act provides for an exemption for cooperative arrangements between international airlines, from certain prohibitions in the Commerce Act 1986.
65. Section 88 of the Act sets out a number of statutory pre-conditions that need to be met by all provisions of the arrangements for which authorisation is being sought.
66. We have analysed the provisions of the alliance agreements against the statutory criteria set out in the Act and found that the agreements do not breach any of the Act's criteria. A more detailed analysis is set out in the Annex 1 and 2.

Public interest analysis

[REDACTED]

68. Therefore, we have undertaken a comprehensive analysis of the proposed alliance to determine whether, on balance, authorisation is in the public interest in New Zealand. This consists of:
- an analysis of how the alliance affects competition in relevant air services markets
 - a consideration of the benefits claimed by the applicants
 - a consideration of the likely detriments that authorisation would entail for New Zealand as a whole
 - a consideration of the counterfactual scenario (i.e. what is likely to occur if authorisation is declined)
 - an overall conclusion drawing together the factors described above.

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Impact on markets

69. In general, alliances between airlines with complementary networks are more efficient and less restrictive of competition than those involving airlines with more overlapping networks. Airlines that offer different route pairs are able to combine their networks to provide greater reach and choice for customers. On the other hand, alliances between airlines that previously competed on the same routes or origin/destination pairs offer little benefit for consumers. They can also restrain competition by effectively removing an existing competitor from these markets.
70. For the most part, the Ministry considers the networks between Qantas and Emirates to be complementary. As an end of line carrier, Qantas has a strong market presence in both Australia and New Zealand. Aside from its large domestic network in Australia, it offers trans-Tasman services to four destinations in New Zealand, and through its subsidiary Jetstar, offers domestic services from nine New Zealand airports.
71. Emirates on the other hand has significant presence in international markets, where it operates a large network from its hub in Dubai.
72. Although the Applicants' networks are largely complementary, they do involve some direct and indirect overlaps (destinations to which both Applicants operate from New Zealand). The Ministry has assessed each of these direct and indirect overlaps to determine the extent to which the alliance may be hampering competition. This analysis, including a more general discussion regarding competition in each of the regions where overlaps exist, is provided below.

New Zealand to Europe

73. There are two overlaps present on routes between New Zealand and Europe. These are Auckland-London and Christchurch-London.

Auckland-London

74. On the Auckland-London route, Emirates offers one-stop flights via its hub in Dubai. From 25 March 2018, it will no longer offer two-stop options from Auckland, via Brisbane, Melbourne and Sydney. However, from June 2018 it does plan to offer two-stop Auckland-Bali-Dubai-London services.
75. Qantas, meanwhile, operates a number of two-stop alternatives between Auckland and London, which are indirect overlaps with the Emirates flights referred to above. These are detailed below:
 - Auckland-Sydney-Singapore-London
 - Auckland-Melbourne-Singapore-London
 - Auckland-Melbourne/Sydney-Perth-London (starting 25 March 2018)

Christchurch-London

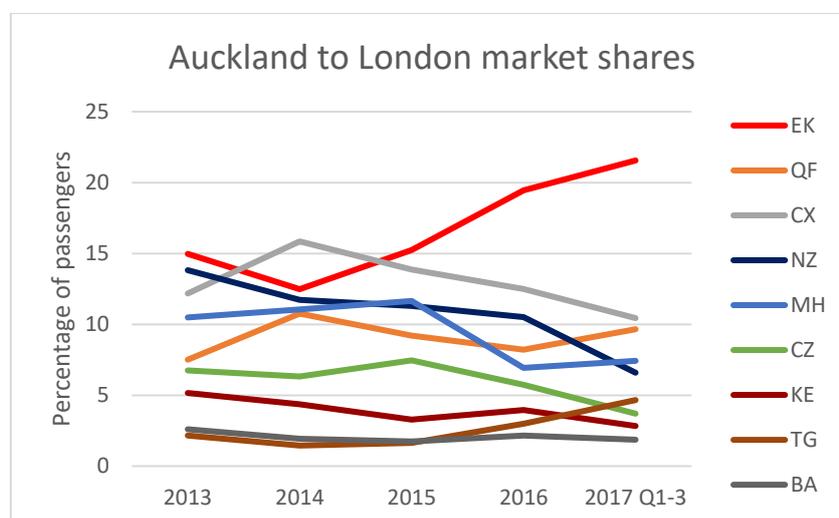
76. Qantas and Emirates both offer two-stop flights connecting Christchurch and London. Emirates offers flights from Christchurch via Sydney and Dubai to London. Qantas meanwhile offers indirectly overlapping services between Christchurch and London via the below routes:

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- Christchurch-Sydney-Singapore-London
- Christchurch-Melbourne-Singapore-London
- Christchurch-Melbourne/Sydney-Perth-London (starting 25 March 2018)

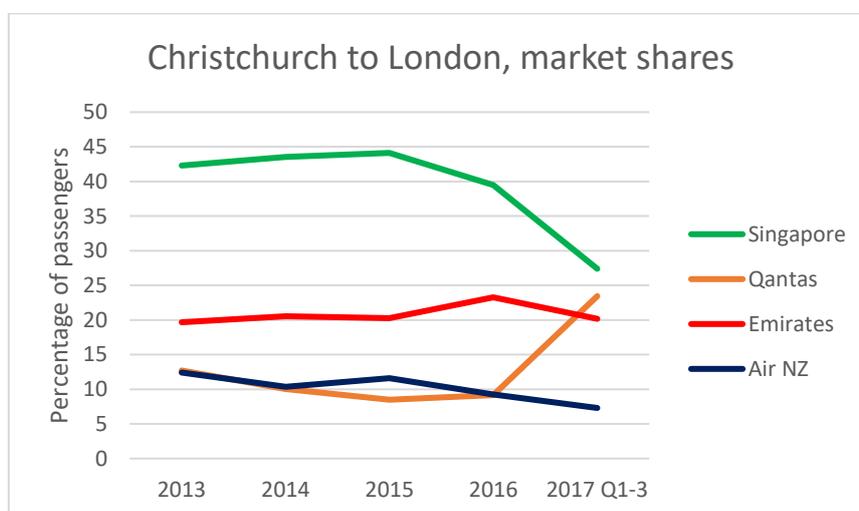
Competition analysis

77. Passengers travelling between Europe and New Zealand have a number of options available in terms of routes and airlines. Several airlines offer one-stop services from Auckland to London through hubs in the Middle East, North America, Northern Asia and Southeast Asia. A number of two-stop alternatives are also available for consumers on flights connecting through Australia, from five airports in New Zealand.
78. Despite the indirect overlaps in services on the New Zealand-London routes, the Ministry is of the view that there is sufficient market presence from other competitors to prevent any anti-competitive effects from the alliance.



Source: Sabre Global Demand Data

note: British Airways does not operate its own aircraft to/from New Zealand, however it possible to buy tickets on British Airways, code-sharing on the first leg out (or last in) to New Zealand



Source: Sabre Global Demand Data

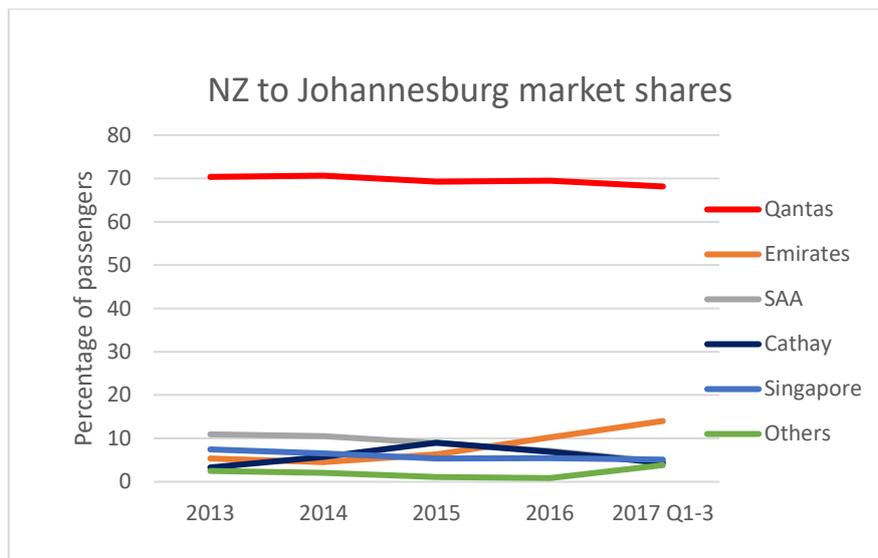
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New Zealand to sub-Saharan Africa

79. Most passengers travelling between New Zealand and sub-Saharan Africa are departing from, or travelling to, South Africa (75% of the estimated 50,000 passengers in 2017). Other countries in the region have only small passenger flows to and from New Zealand.
80. Emirates operates to several countries in this market, via its hub in Dubai. The only point which Qantas operates to in Africa is Johannesburg, South Africa.

New Zealand-Johannesburg

81. There are two indirect overlaps present in the market for air services between New Zealand and sub-Saharan Africa. These are on the Auckland-Johannesburg and Christchurch-Johannesburg routes.
82. As per the chart below, Qantas holds a dominant market position on these routes. This probably reflects the more direct and convenient route it provides for passengers travelling between Johannesburg and New Zealand, compared with other airlines. Total flight distance along its Auckland-Sydney-Johannesburg route is 13,200 km, while the Emirates Auckland-Dubai-Johannesburg route is much longer at 20,600 km.



Source: Sabre Global Demand Data

83. Although the alliance effectively removes one competitor from these routes, there are a few alternative competitors which offer services of a similar distance to Emirates (such as Qatar Airways, Cathay Pacific and Singapore Airlines). In addition to the own-operated routes, there are code-share options available. For instance, Air New Zealand code-shares on flights operated by South African Airways between Perth and Johannesburg, connecting with its own Auckland-Perth flights.

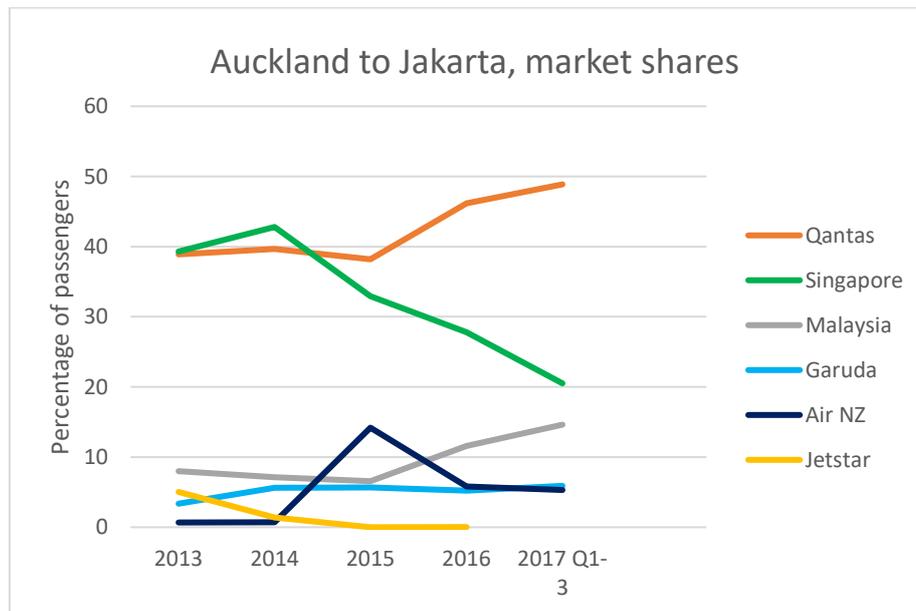
Competition assessment

84. We do not believe that the alliance has, or will, affect competition in any significant way in this market. Given the longer flight distance via Dubai, Emirates is unlikely to be a strong competitor on routes between New Zealand and South Africa. Qantas, meanwhile, is unlikely to operate services in African states other than South Africa, given the small size of the market.

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New Zealand to Southeast Asia

85. A number of indirect overlaps exist in the Applicants' networks with respect to New Zealand-Southeast Asia. Both Applicants (including Jetstar Airways) operate services to Phuket, Bangkok, Ho Chi Minh City, Singapore, Jakarta and Bali. In most cases on these routes, the Applicants provide one-stop services: Qantas through stops in Australia, and Emirates through stops in Dubai.
86. Emirates does not hold a significant market share on any of these routes. This is perhaps explained by the small number of direct flight options it offers, and longer distance travelling through its Dubai hub, when compared with competing airlines. Qantas meanwhile tends to have a large market share on routes such as Jakarta (see below) where it is not competing with direct services from New Zealand.



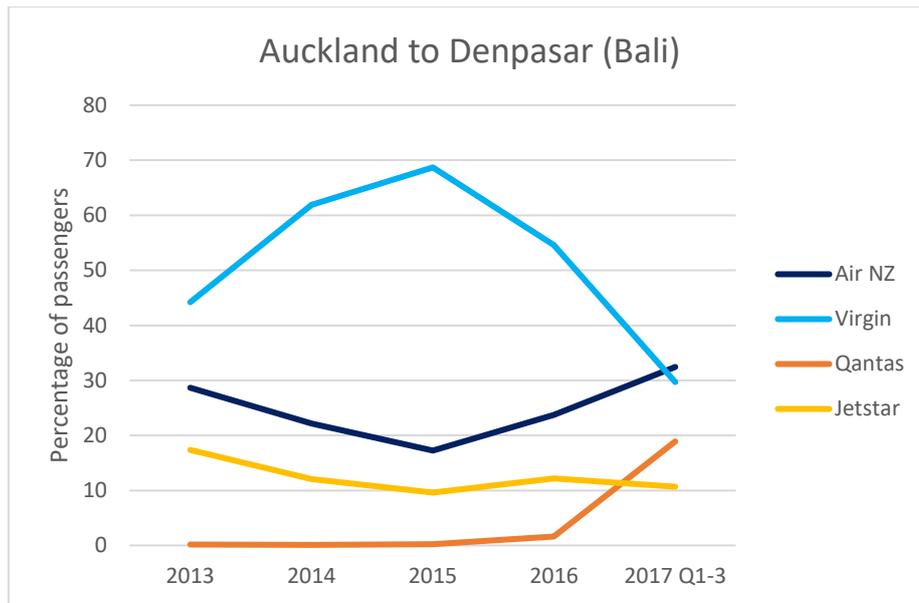
Source: Sabre Global Demand Data

note: Garuda does not operate its own aircraft to/from New Zealand, however it is possible to buy tickets on Garuda, code-sharing on the first leg out (or last leg in) to New Zealand.

Auckland – Bali services

87. Emirates has recently announced its intention to operate daily Auckland-Bali-Dubai services, from June 2018. Qantas currently operates Auckland-Bali, with a one-stop connection in Sydney.
88. The entry by Emirates will likely mean greater capacity between Auckland and Bali. It will also provide competition for Air New Zealand's direct Auckland-Bali flight service which it operates on a seasonal basis.
89. From June we expect the Applicants to have a strong market position on this route. However, we consider that competition from Air New Zealand, and the potential for entry of other airlines (such as Garuda Indonesia) will be sufficient to restrain any significant anti-competitive behaviour on the route.

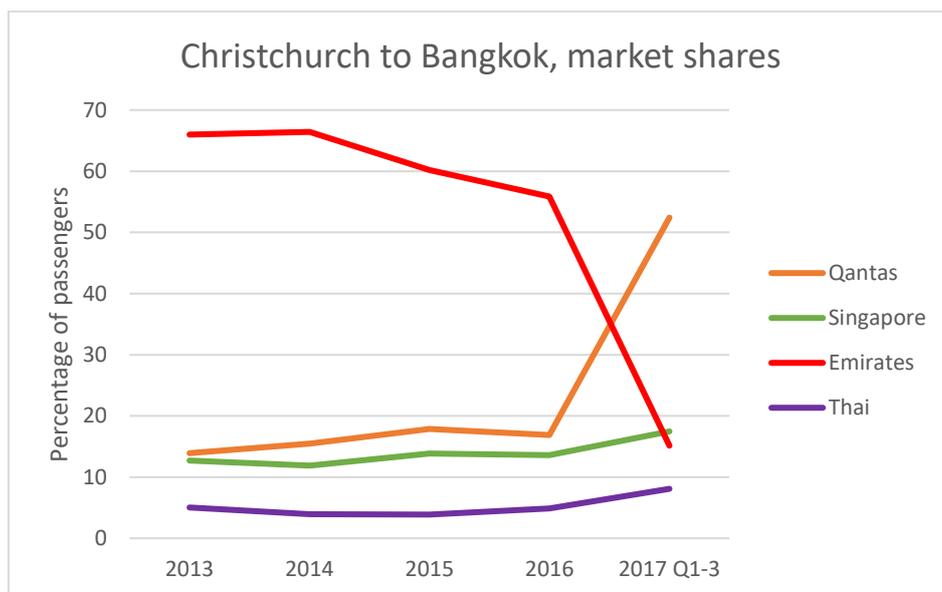
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Source: Sabre Global Demand Data

Christchurch-Bangkok services

90. The one route on which the Applicants have had a significant market share is Christchurch-Sydney-Bangkok. However, we note that Christchurch passengers do have the option of travelling through Auckland, where Thai Airways provides daily non-stop services between Auckland and Bangkok. We suggest that this option provides some competitive restraint on the dominant market position the Applicants hold on this route. We also note that since the introduction of its A380 services between Auckland and Dubai in 2016, Emirates stopped officially offering this leg. Although the flight is still technically possible on Emirates, it is no longer as attractive in terms of timing for consumers.



Source: Sabre Global Demand Data

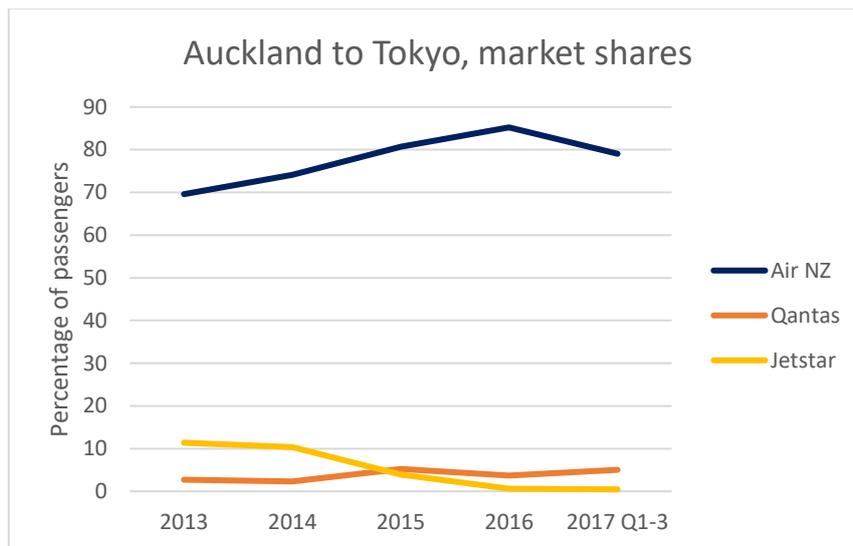
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Market assessment

91. The market for air services between New Zealand and Southeast Asia tends to be well served. Aside from the Applicants, several carriers operate in this market including Singapore Airlines, Air New Zealand, Philippine Airlines, Thai Airways and Malaysian Airlines.
92. There are some routes (such as Auckland-Bali) where the Applicants are likely to have a large market share. However, given current competition, we do not believe the alliance will have any significant effect on the New Zealand-Southeast Asia market.

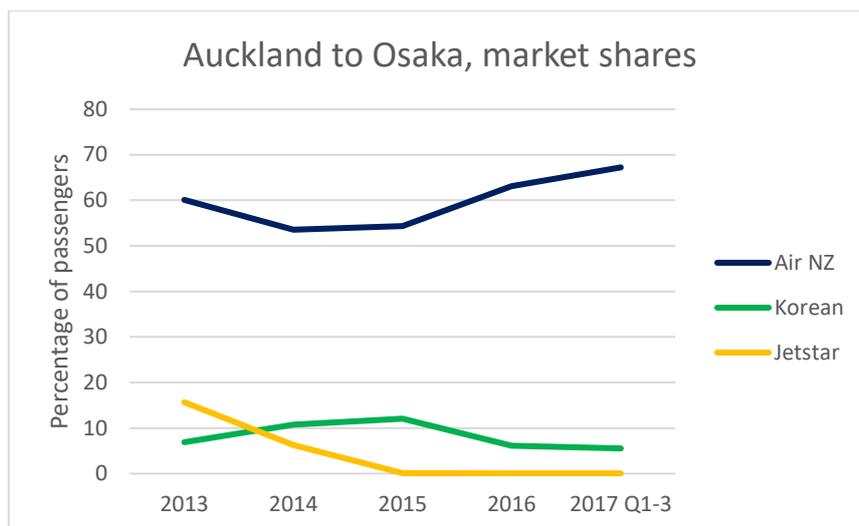
New Zealand to Japan

93. There are two indirect overlaps on services between New Zealand and Japan. These are Auckland-Tokyo and Auckland-Osaka. Qantas offer these flights through one-stop connections in Australia. Meanwhile, flights on Emirates are (theoretically) possible through its Dubai hub but involve a significant 'dog leg', making this option unattractive to consumers.
94. Neither applicant has a strong market presence on these routes. This is likely due to the more convenient non-stop options offered by Air New Zealand. Therefore, the alliance is unlikely to affect competition in this market.



Source: Sabre Global Demand Data

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Source: Sabre Global Demand Data

Note: Qantas commenced three-weekly services to Osaka beginning December 2017, which are not captured in the timeframe relating to the above chart.

New Zealand to China

95. The market between New Zealand and China has grown substantially over recent years. Since the alliance was first authorised in 2013, four new Chinese airlines have entered the New Zealand market (Tianjin Airlines, China Eastern, Hainan Airlines and Sichuan Airlines).

Overlaps

96. The Applicants' networks indirectly overlap on a few routes between New Zealand and China, including Hong Kong, Shanghai and Beijing.
97. In all cases Qantas operate these services through one-stop connections in Australia. Emirates provides these services through its hub in Dubai.

Market assessment

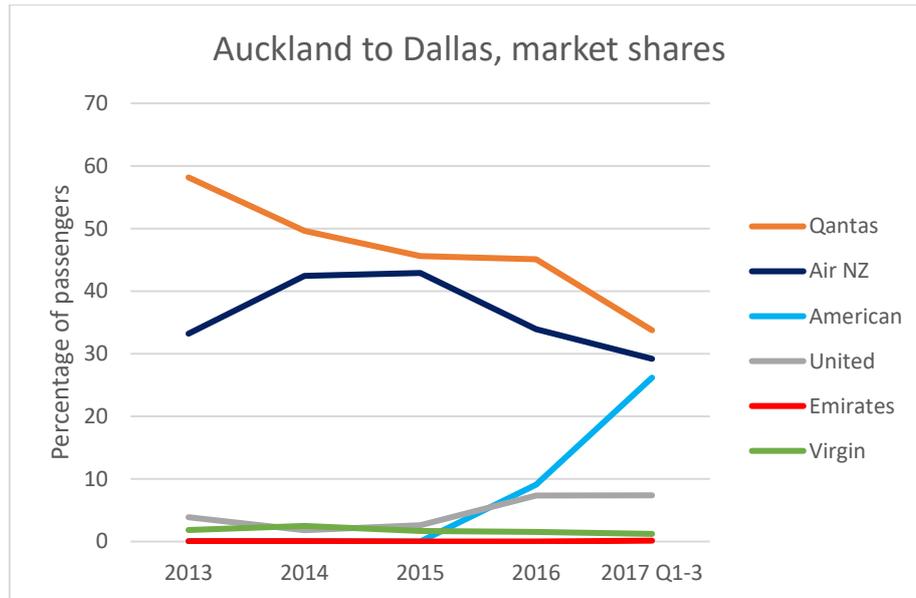
98. The Applicants are not large players in this market, with neither holding more than 5% market share on the overlapping routes. This reflects the direct services available to consumers between Auckland and China. Therefore, the alliance is unlikely to affect competition in this market.

New Zealand to the Americas

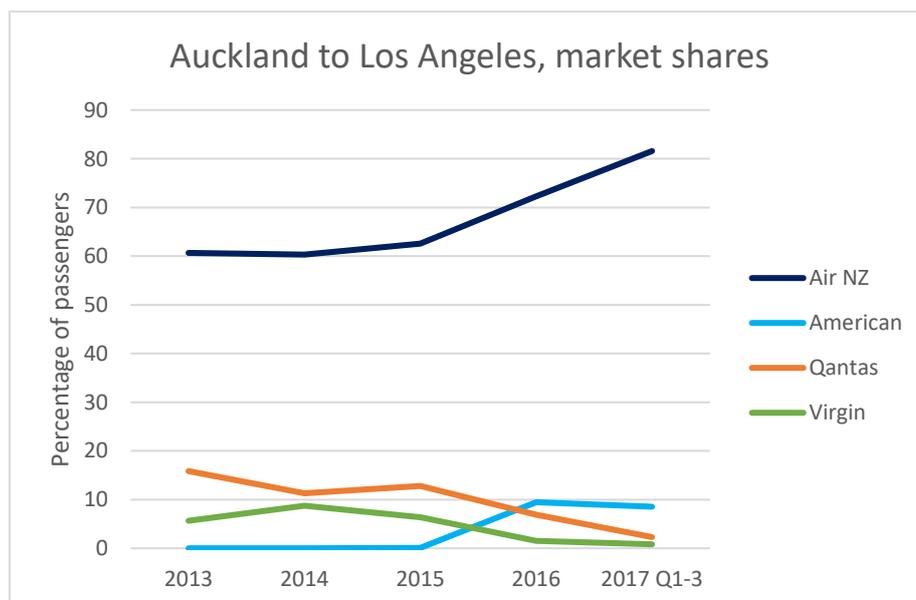
99. There are four indirect overlaps on services between New Zealand and the Americas. These are services between Auckland and Dallas, New York, San Francisco and Los Angeles. Emirates offers these flights flying through its hub in Dubai, while Qantas offers these flights via services connecting in Australia.
100. These routes are dominated by Air New Zealand, which operates direct flights from Auckland to San Francisco, Los Angeles and Houston. It also serves Dallas and New York (among other destinations) through flights connecting with its code-share partner, United Airlines.

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101. Emirates does not have a strong market presence on these routes. Traveling between New Zealand and the United States, through Dubai, is a much greater distance than flying direct on Air New Zealand, or on Qantas through Australia (especially in relation to destinations on the West Coast of the United States). This makes Emirates a less attractive choice for consumers on these routes.
102. Given this, we consider it unlikely that Emirates will have any significant market presence on these overlapping routes in the foreseeable future, or in the New Zealand to Americas markets in general. Therefore, we do not believe that cooperation between Qantas and Emirates will have any material effect on competition in this market.

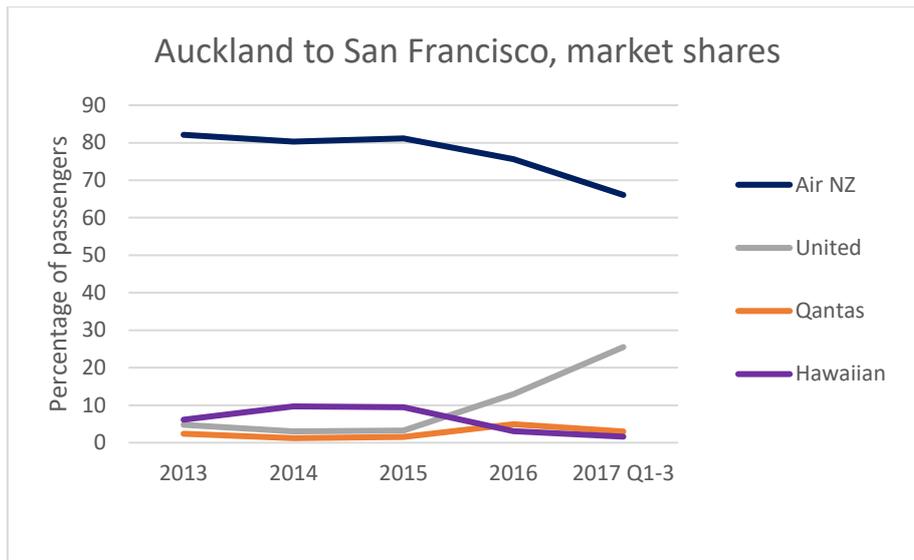


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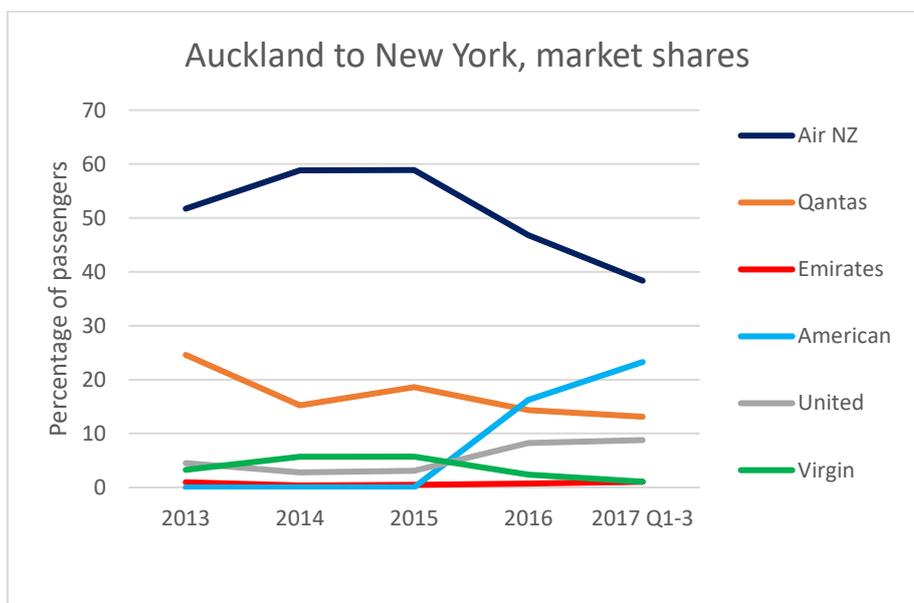


Source: Sabre Global Demand Data

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Source: Sabre Global Demand Data



Source: Sabre Global Demand Data

Trans-Tasman market

103. The trans-Tasman is an important market for air services to and from New Zealand. In the year ending October 2017, there were 1.47 million Australian arrivals into New Zealand, accounting for 40 percent of all visitor arrivals. In the same period, New Zealand passengers travelled to Australia 1.22 million times, accounting for 43 percent of all New Zealand resident international departures.

Competition on the Tasman

104. The trans-Tasman air transport market is dominated by the two alliances, Emirates/Qantas and Air New Zealand/Virgin Australia. Together these two competitors represent over 90 percent of the trans-Tasman market.

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105. The remaining passenger market is made up of fifth freedom carriers³, which link Australia and New Zealand through their wider international services (Chilean airline LATAM, for instance, operates Santiago-Auckland-Sydney).

Emirates withdrawal from trans-Tasman services

106. The capacity supplied by Emirates on trans-Tasman routes is decreasing. In July 2017 it ceased operating its daily service between Auckland and Sydney. It also plans to drop its daily Auckland-Brisbane and Auckland-Melbourne services in March 2018.
107. From 25 March 2018, the only flights which will be operated by Emirates across the Tasman will be its daily Christchurch-Sydney service.
108. In order to backfill these services, Qantas has advised that it plans to add 10,500 seats per week collectively from Sydney, Brisbane and Melbourne into Auckland. However, this will only partially replace the capacity provided by Emirates, which we estimate previously operated 20,500 seats per week, across the three routes.
109. This 10,000 seat per week shortfall represents roughly 10% of the estimated 105,000 seats per week that are provided across all airlines operating across the three routes. Although there is a shortfall, the Applicants note that Emirates' average seat factor (percentage of seats filled) on the Tasman for the 2016/17 financial year [REDACTED]. The average seat factor on Qantas and Jetstar aircraft was [REDACTED].
110. Assuming this reduction in capacity is not replaced by competitors, Emirates' withdrawal from these routes may result in fewer seats being available on flights across the Tasman. Reduced capacity could raise airfares on these routes.

How does the alliance affect Emirates' decision regarding its trans-Tasman services?

111. With respect to the authorisation, a key question to consider is whether Emirates would reverse its decision to withdraw from these routes, if the Restated Agreement is not authorised. If it did reverse its decision, this would increase capacity, and in effect, introduce another competitor in the market.
112. It is likely the alliance with Qantas has had some bearing on Emirates' decision to withdraw these services. Under the alliance, it can rely on Qantas' services across the Tasman to feed its international services to and from Australia, rather than operating them itself.
113. However, there are also some compelling reasons to suggest that Emirates may choose not to re-enter these services, regardless of whether the Restated Agreement is authorised. The Applicants have supplied information which [REDACTED]
114. Based on the information supplied by the Applicants, and our own analysis, we believe that it would have exited these routes, regardless of whether it was working in alliance with Qantas. A more detailed analysis of this is provided in our analysis of the counterfactual scenario in paragraphs 166 to 180 below.

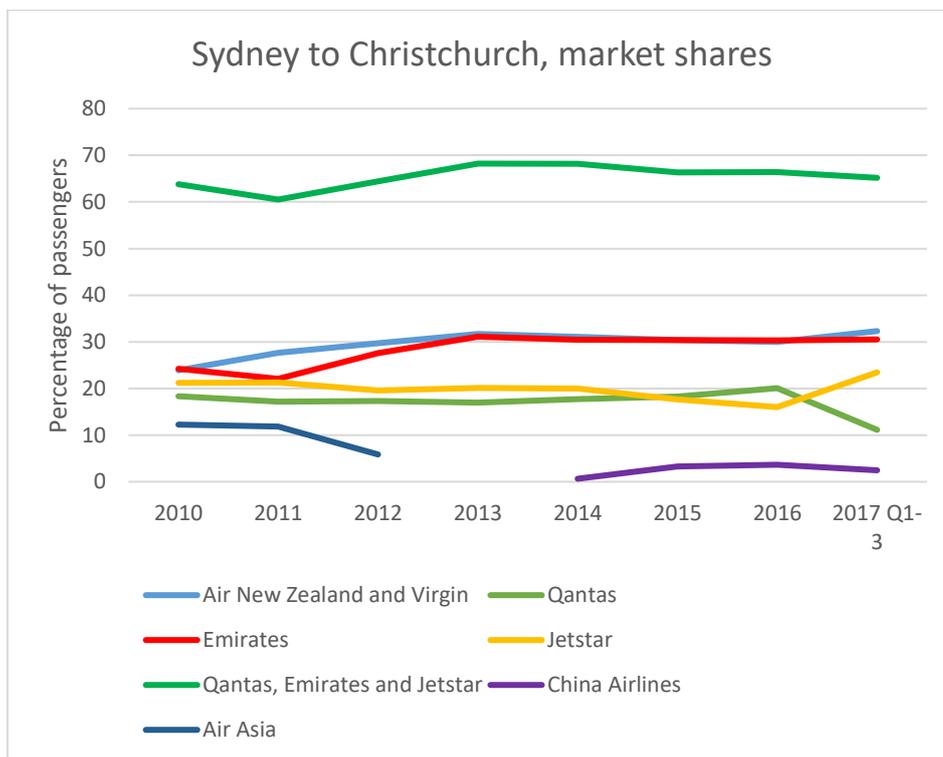
³ A fifth freedom flight is a flight between two countries that are not the carrier's home country, but is a continuation of a flight to or from the carrier's home country.

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115. Based on this, our concerns regarding reduced capacity on the Auckland-Sydney, Melbourne and Brisbane routes would not be alleviated by declining to authorise the Restated Agreement. Therefore our primary concern turns to the Christchurch–Sydney route, which will be the one remaining overlapping trans-Tasman route.

Christchurch to Sydney

116. Emirates operates daily services between Christchurch and Sydney using its Airbus A380 aircraft, which connect to its Sydney to Dubai services. Qantas also provides daily services using its 174 seat Boeing B737 aircraft, while its subsidiary Jetstar operates five times per week using its 180-seat Airbus A320 aircraft.
117. As noted in the graph below, the alliance partners carry the majority of passengers on the Christchurch-Sydney route. Their main competitor on this route is the alliance between Air New Zealand and Virgin Australia, which holds a much smaller share of total passenger traffic.
118. The Ministry is concerned that the alliance effectively reduces the main independently operated services on this route from three to two, especially considering the high proportion of traffic the alliance carries on the route when compared with other competitors.



Source: Sabre Global Demand Data

Coordinated effects

119. Given the effective duopoly on the Christchurch-Sydney route, there is arguably a risk that the two alliances coordinate on prices and scheduling decisions across their respective networks, raising airfares above competitive levels.
120. Given the lack of competitors, it could be easier for the two alliances to coordinate their capacity decisions on this routes in order to raise airfares.

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121. On the other hand, the alliances will be concerned about entry by potential competitors and they will be wary of restricting capacity on this route as that could reduce demand for their services beyond Sydney, for which Christchurch/Sydney is a feeder route.

Unilateral effects

122. Given the high proportion of traffic on this route carried by the alliance airlines, the Ministry has concerns regarding unilateral effects. Should Qantas/Emirates/Jetstar unilaterally decide to withdraw capacity on this route in order to raise prices, the Air New Zealand/Virgin alliance might not respond by increasing its own capacity, for two reasons. First, the Air New Zealand/Virgin alliance has a much smaller share of the market and might be unable to increase capacity sufficiently. And secondly, the Air New Zealand/Virgin alliance airlines will benefit from higher airfares if there is a shortage of capacity, so it could be in their interest to maintain their existing capacity on the route, or to increase it by less than the amount withdrawn by the Qantas/Emirates/Jetstar alliance.
123. Fifth-freedom airlines have operated on this route, such as China Airlines. Reduced capacity and increased demand on the route may provoke a competitive response from these airlines, which could at least partly frustrate a unilateral attempt to raise airfares.

Capacity conditions on the Tasman

124. As noted in paragraph 37 above, the ACCC previously applied conditions on the overlapping trans-Tasman routes, which required the Applicants to maintain minimum levels of capacity. In its recent draft determination, the ACCC proposes not to apply the capacity conditions under this authorisation, noting that the only remaining overlapping route is Christchurch-Sydney.
125. The ACCC suggests that imposing such a condition on only one route may risk unintended consequences. It notes:
- a capacity condition set too high risks having excess capacity on the route, which may crowd out other potential competitors and raise barriers to entry
 - capacity conditions on one route may result in an inefficient allocation of capacity. This could artificially restrict growth on other routes, and limit the Applicants' flexibility to best match capacity with demand, and overinflate growth on the route where capacity is required to be maintained.
126. However, the ACCC does have concerns on this route and proposes requiring the Applicants to report for each six-month scheduling season on the number of seats flown, route specific costs, revenues and average fares on the Auckland-Australia and Sydney-Christchurch routes. This information will be used to assess whether the Applicants are reducing capacity in order to raise fares on the Sydney-Christchurch route. If the ACCC believe this is happening, it can choose to impose capacity conditions.
127. We suggest this is a useful step in restraining any potential competitive behaviour on this route.

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The market for freight

128. Airfreight plays an important role in transporting New Zealand's exports and imports. For the year ended June 2017, airfreight accounted for total trade of \$19.8 billion⁴. This represents 19 percent of total New Zealand exports and imports.
129. The majority of airfreight is carried through Auckland Airport (92 percent of imports and 77 percent of exports). Christchurch is the next largest, carrying 7 percent of imports and 23 percent of exports). All other airports carry only a small portion of New Zealand's airfreight.
130. Most freight carried on aircraft to and from New Zealand is carried in the belly-hold of passenger aircraft. However there are a few of airlines that operate dedicated international freighter services in New Zealand, including Singapore Airlines Cargo, Tasman Cargo Airlines and Federal Express. Qantas also operates a dedicated freighter service.

Trans-Tasman air freight market

131. The trans-Tasman market for air freight is an important market for New Zealand. An estimated 55-60 percent of airfreight to and from New Zealand travels through Australia. Like the passenger market, the market for freight is dominated by a few key players.
132. In the year ended 2017, Emirates carried 15 percent of all freight between Australia and New Zealand. Qantas carried 14 percent, while Jetstar carried 0.2 percent. Air New Zealand was the largest carrier of freight, with a share of 50 percent.
133. Emirates carries a higher ratio of freight to passengers than other airlines on trans-Tasman routes. This is because it operates wide-body aircraft on its Tasman services, which carry more freight per passenger than the narrow body aircraft more commonly used on Tasman services.
134. When Emirates discontinues its Auckland-Australia services on 25 March 2018, the Ministry expects there will be a decrease in the available freight capacity on the Tasman. However, as mentioned in the analysis of the Tasman market above, we believe Emirates will withdraw these services regardless of whether the Restated Agreement is authorised or not.

Competition analysis

135. As most freight is carried in the belly-hold of passenger aircraft, our analysis regarding the market for freight mirrors that of the market for passenger services described above.
136. Large and non-standard freight often requires the use of dedicated freighter aircraft. We note that consumers do not have a great deal of choice regarding scheduled dedicated freight operators in New Zealand. However, these aircraft do face competition from non-scheduled operators, which are occasionally chartered to carry freight such as aircraft engines and equipment for touring musicians into New Zealand.

⁴ Exports are measured by Statistics NZ as free on board (FOB) prices, while imports are measured as prices including costs, insurance and freight (CIF).

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Public benefits

137. The Applicants claim a number of benefits which arise from the alliance. The main benefits claimed are outlined below, and our analysis of the extent to which they have been realised.

Expanded Qantas network, improved connectivity and greater customer choice

138. The original application in 2013 noted that one of the key benefits expected from the proposed alliance was that it would provide “unprecedented global coverage and flexibility on itineraries between New Zealand/Australia and numerous destinations in Europe and the MENA (Middle East and North Africa) region for consumers who wish to fly Qantas.”

139. In the application for reauthorisation, the Applicants have pointed to the fact that the alliance has allowed passengers access to more than 2,000 origin/destination pairs over their combined networks. They also note the Agreement has helped facilitate the direct Dubai-Auckland service, launched in 2016.

140. The Applicants note that the alliance allows the Applicants to coordinate their schedules, to minimise wingtip flying⁵ and offer consumers more choices with respect to departure times out of ports in both directions.

141. The Ministry agrees that the alliance has supported better options for travellers, which we suggest is the main public benefit of the alliance. It provides New Zealand consumers with greater choice and connectivity when travelling internationally to and from New Zealand. Better connectivity with the rest of the world also drives growth in tourism and trade.

142. Absent the alliance, the Applicants would have little ability or incentive to coordinate their schedules to allow customers more options in terms of routes and timings across their respective networks.

Reciprocal frequent flyer benefits

143. The Applicants state that the alliance allows Qantas and Emirates customers the opportunity to earn and redeem frequent flyer points across the combined Emirates and Qantas network.

144. Data provided by the Applicants in their recent application shows that Qantas frequent flyer members earned points on over 115,000 passenger segments operated by Emirates in the 2016/17 financial year. Meanwhile, Emirates frequent flyer members earned points on nearly 18,000 passenger segments in the same time period. The Applicants note that there are approximately 605,000 members of the Qantas frequent flyer programme, and [REDACTED] members of the Emirates programme, who are resident or based in New Zealand.

145. The Applicants also note that (depending on membership tier) customers will receive reciprocal benefits including:

⁵ Wingtip flying relates to circumstances where airlines are operating the same routes at almost the same time. It is a sign of airlines competing over the most profitable departure times, but in the context of alliances, better spacing of departure times gives consumers more choices.

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- access to corporate lounges
- aligned additional baggage allowances
- priority check-in, boarding and fast-tracked immigration (where available)

146. The Ministry notes that there are real but modest benefits for consumers in having the option to earn and redeem points across the respective networks, and by aligning membership benefits.

Enabling sustainable operation of the Qantas international network to Europe

147. As noted in paragraphs 46 to 51 above the alliance has helped Qantas to compete with mid-point carriers by leveraging off Emirates' large international network. [REDACTED]

148. We note there are public benefits for New Zealand when Qantas is operating in a financially sustainable manner on its international network. This provides for a more competitive Australasian aviation market, where it can better compete with rivals such as Air New Zealand.

149. The financial performance of Qantas on its international services has improved markedly since the alliance began in 2013. Although it is likely that the alliance has had some role in this, we note a number of factors may have influenced its better performance, such as lower fuel prices, and a reorganisation of its international business under its "transformation programme".

Enabling capacity expansion by Emirates

150. The Applicants note that the alliance has helped to facilitate capacity expansion by Emirates. Emirates point to the launch of its direct Dubai flight in 2016, and increased capacity on its international services between Australia, Singapore, Dubai and Bangkok as examples of this.

151. We agree that greater capacity on international flights to and from Australasia is a benefit to New Zealand. We note that it is likely the alliance has played a role in the Emirates capacity expansion. Cooperation under the alliance allows increased feeder traffic from the Qantas network (especially with respect to its international services to and from Australia). However it is not clear how much the alliance has influenced this capacity growth, and whether (absent the alliance) other competing airlines would have filled this capacity.

Improved customer experience and product innovation

152. The Applicants note that the alliance provides an incentive for them to work together to improve the customer experience. The Applicants point to examples such as the ability to re-book passengers on one another's flights in the event of flight disruptions and cancellations, and the ability to share benefits such as chauffeur drivers for first class passengers.

Competitive response from rivals

153. The Applicants believe the alliance has elicited a competitive response from rivals, in the form of lower fares and improved service and product offerings.

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154. The extent to which the alliance has elicited a competitive response from rivals is unknown, as a number of factors contribute to the lowering of airfares or service improvements in the market for air services. However, we agree that the alliance allows the Applicants to compete more effectively with rival alliances, such as Air New Zealand/Virgin Australia on the Tasman, and Air New Zealand/Singapore Airlines on other international routes.

Increased trade and tourism

155. The Applicants note that the alliance has supported, and will continue to support, trade and tourism in New Zealand.
156. The Applicants state that the alliance has given Emirates better access to New Zealand, particularly the ability to offer more seamless travel to regional cities in New Zealand served by Jetstar. They mention that under the alliance, the Emirates sales force can sell tickets to New Zealand more easily, utilising its extensive international network.
157. Both Applicants note the investment made in promoting New Zealand as a tourist destination [REDACTED].
158. With regard to merchandise trade, the Applicants note that the alliance provides for better connections across their freight networks. This is particularly so in relation to oversized freight or animals such as horses, which require careful coordination by freight carriers. The Applicants note that the alliance allows the Applicants to coordinate their freight operations, so that Qantas freight operations between Auckland and Sydney can connect with Emirates freight operations between Sydney and Dubai. This provides greater opportunity for trade between New Zealand and international destinations such as the Middle East.
159. We agree that the alliance is likely to support trade and tourism in New Zealand. These benefits occur mostly through the greater choice and connectivity offered to consumers by combining the networks of the Applicants.

Public detriments

160. As with any alliance, public detriment can occur where the alliance results in a reduction of competition on a specified route or market. As described in the market impact section of this report, our main concern relates to the trans-Tasman market for air services, and in particular the Christchurch-Sydney route. We believe that the alliance does result in a reduction in competition on this route, which may have negative outcomes for consumers in the form of higher airfares, and less choice.

Counterfactual

161. A key part of our analysis is the counterfactual. This is the likely scenario that would eventuate if the alliance is not reauthorised.

The Applicants believe the counterfactual scenario will be detrimental to consumers

162. The Applicants have provided their own analysis on the likely scenario, should the Restated Agreement not be authorised. Without reauthorisation, they state there would be no commercial agreement between themselves, or at best “arms length” code-share agreements.

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163. Under this scenario, the Applicants would not take into account the effect of their product and service decisions on demand for the other airline's products and services, leading to less convenient connections for passengers, less attractive customer reward programmes and/or lower levels of provision of ground services such as airport lounges and check-in services. Without the ability to coordinate on price, network and capacity decisions, the carriers would not be incentivised to provide connectivity and access to different origin-destination combinations.
164. [REDACTED]
[REDACTED]
[REDACTED] Emirates note that without the ability to codeshare and jointly sell with Qantas, it would have accelerated its withdrawal from the trans-Tasman routes, and would have considered reducing capacity on its flights between Dubai and Australia.
165. Absent the Restated Agreement, the applicants would have little ability or incentive to coordinate their schedules to allow customers more options in terms of routes and timings across their respective networks. Therefore, the Ministry agrees that most of the public benefits noted in the section above would not be realised in the counterfactual scenario where the Restated Agreement is not authorised.

Would Emirates re-enter withdrawn Tasman routes?

166. As noted in the market analysis section above, a key concern was the market for air services on the Tasman. From 25 March 2018, Emirates will have withdrawn from all its Auckland-Australia services, resulting in a reduction in capacity on these routes.
167. With respect to the reauthorisation, a key question the Ministry considered was whether Emirates would reverse its decision to withdraw from these routes, if the Restated Agreement is not authorised. If it did reverse its decision, this would increase capacity, and in effect, introduce another competitor on these routes.
168. However, as outlined below, there are compelling reasons to suggest that Emirates may choose not to re-enter these services, regardless of whether the Restated Agreement is authorised.

Potential reasons for the withdrawal

More one-stop options

169. In the past few years, there have been a number of new routes announced, providing consumers with direct flights to and from places in the Middle East and China. Including:
- daily Auckland-Beijing flights operated by Air China beginning December 2015
 - three-weekly Christchurch-Guangzhou flights operated by China Southern commencing December 2015 (now operated daily in peak seasons)
 - daily Auckland-Dubai flights operated by Emirates commencing March 2016
 - three-weekly Auckland-Chongqing-Tianjin services operated by Tianjin Airlines commencing December 2016

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- three-weekly Auckland–Shenzhen–Xi’an services operated by Hainan Airlines commencing December 2016
- daily Auckland-Doha flights operated by Qatar Airways commencing February 2017.

170. The Applicants claim that because there are now more direct flights out of New Zealand, consumers are choosing to take these services, rather than transiting through Australia on trans-Tasman routes. The Applicants claim that this has shifted ‘demand dynamics’ on the Tasman, and is part of the reason Emirates withdrew its trans-Tasman services.

Emirates aircraft are not suited for trans-Tasman services

171. The Emirates fleet is primarily made up of Airbus A380 and Boeing B777 aircraft. The A380s used by Emirates on the Tasman carry between 489-519 passengers depending on configuration, while the B777 available in the Emirates fleet can carry 266-428.

172. The large A380 aircraft (and to a lesser extent the B777) are not ideally suited to the shorter routes across the Tasman. Given the flight times involved, these routes are better served by lower capacity aircraft, where passenger loads can be spread across multiple aircraft, over greater frequencies. Qantas, for example, operates most of its trans-Tasman flights using Boeing B737 aircraft, which seats 174 passengers.

173. The aircraft operated by Emirates also tend to be configured with first class cabins and a number of business class seats. The A380 it operates on the Auckland to Melbourne sector are configured with 14 first class, 76 business class and 399 economy seats. This compares with the B737s operated by Qantas, which offer no first class seating, 12 business class, and 162 economy seats.

174. Given the short journey times on trans-Tasman flights, passengers are less likely to choose more expensive first and business class seats. It is therefore more economical to operate aircraft with a higher proportion of economy seats.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

We consider it unlikely that Emirates will re-enter the Tasman routes

180. For the reasons mentioned above, we believe it is unlikely that Emirates will re-enter these trans-Tasman routes, regardless of whether the Restated Agreement is authorised or not. Therefore, we have determined that concerns regarding competition on the Tasman are unlikely to be resolved by declining authorisation.

Conclusion

181. In considering the above benefits and detriments, and the counterfactual scenario, we believe that on balance, the alliance delivers benefits (both real and potential) to New Zealand, over and above the potential detriments.
182. We also note that the alliance meets the statutory conditions allowing it to be authorised under section 88 of the Civil Aviation Act.
183. In light of this, we recommend that the Restated Agreement be authorised.
184. We recommend that authorisation should be for a period of five years. This is the period applied for by the Applicants, and allows for a further reassessment of the alliance after an appropriate interval.

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Annex 1: specific criteria in Part 9 of the Civil Aviation Act

1. This section examines whether and how the arrangements comply with Part 9 (principally section 88) of the Civil Aviation Act 1990 (the Act).

Section 88(3):

In considering whether to grant authorisation under subsection (2) of this section, the Minister shall ensure that the granting of such authorisation will not prejudice compliance with any relevant international convention, agreement, or arrangement to which the Government of New Zealand is a party.

2. The Restated Master Coordination Agreement (the Agreement) covers services by airlines currently designated and operating under the “Agreement between the Government of New Zealand and the Government of the United Arab Emirates on Air Services” signed on 1 March 1998 and the associated Memorandum of Understanding dated 11 December 2012 for Emirates and the “Agreement between the Government of New Zealand and the Government of Australia relating to Air Services” signed on 8 August 2002 and the Memorandum of Understanding on Open Skies between Australia and New Zealand dated 20 November 2000 for Qantas.
3. The New Zealand - United Arab Emirates arrangements provide for an open route schedule and open capacity. The Memorandum of Understanding to the Agreement explicitly provides for code-sharing including third-country code-share.
4. The New Zealand - Australia Air Services Agreement, under which Qantas and Jetstar provide services, also provides for open routes and capacity and for code-sharing, including on third-country airlines.
5. Authorisation of the arrangements is thus consistent with the relevant arrangements and would not prejudice compliance with them.

Section 88(4):

Subject to subsection (5) of this section, authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that:

- (a) ***“provides that any party to it may directly or indirectly enforce it through any form of action by way of fines or market pressures against any person, whether or not that person is a party to the contract, arrangement, or understanding”***
6. The Agreement does not contain any provisions that provide for enforcement through fines or market pressures (either directly or indirectly).

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(b) *Has the purpose or effect of breaching the terms of a commission regime issued under section 89 of this Act*

7. Two commission regimes issued by the Minister of Transport are currently in force - the Civil Aviation (Passenger Agents' Commission Regime) Notice 1983 and the Civil Aviation (Cargo Agents' Commission Regime) Notice 1983.
8. Nothing in the Agreement has the purpose or effect of breaching either of these commission regimes. The references to commissions in the Agreement primarily relate to payments between the airlines (the Commission Regimes relate to the relationship between airlines and agents).

(c) *Unjustifiably discriminates between consumers of international air services in the access they have to competitive tariffs*

9. The Agreement does not set tariffs itself, but puts in place a process for setting tariffs. The Agreement does not contain any provisions that unjustifiably discriminate between consumers in access to tariffs.
10. The broader issue of the impact of the Agreements on the tariffs that may be faced by consumers generally or particular classes of consumers if the alliance is authorised, is addressed elsewhere in this report.

(d) *So far as it relates to tariffs, has the effect of excluding any supplier of international carriage by air from participating in the market to which it relates*

[REDACTED]

[REDACTED]

13. Thus, in relation to tariffs, the Agreement does not have the effect of excluding any supplier of international carriage by air from participating in the markets to which the Agreement relates.

(e) *Has the purpose or effect of preventing any party from seeking approval, in terms of section 90 of this Act, for the purpose of selling international carriage by air at any other tariff so approved*

[REDACTED] The Agreement provides for mechanisms under which the parties will cooperate in prices (tariffs). [REDACTED]

[REDACTED]

[REDACTED]

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16. Although filing of tariffs for approval under s.90 is not mandatory and is very infrequent, the provisions of the Agreement do not unduly prevent a party from filing another tariff for approval and setting such tariffs should it choose to.
- (f) ***Prevents any party from withdrawing without penalty on reasonable notice from the contract, arrangement, or understanding***
17. Clause 14.1(a) of the Agreement provides that it has a term of 10 years from the operational date (at which point it can either be renewed or terminated).
18. While this applies between the airlines, they have sought reauthorisation for 5 years.

- [REDACTED]
20. While simple code-share arrangements often provide for relatively short notice periods (sometimes as short as a six-month schedule period), alliance arrangements often envisage and require a greater degree of commitment by the parties (as in this case where the airlines have made network changes in anticipation of concluding the Agreement). Withdrawal by one party could cause considerable disruption to the other party. Therefore, longer notice periods may be appropriate.
 21. We have accepted 5 years as a reasonable period for revenue sharing or similar arrangements.
 22. The Agreement does not contain any provisions that prevent any party from withdrawing without penalty on reasonable notice from the contract, arrangement, or understanding.

Conclusion on section 88(4)

23. There are no provisions in the Agreement that fall within any of the prohibitions in section 88(4) of the Act.

Section 88(5):

Notwithstanding the provisions of subsection (4) of this section, the Minister may authorise any provision of any contract, arrangement, or understanding under this section if the Minister believes that to decline authorisation would have an undesirable effect on international comity between New Zealand and any other State.

24. This provision only becomes relevant if, contrary to the advice set out above, the Minister determines that provisions in the Agreement fall foul of one of the criteria in section 88(4) of the Act.
25. Comity is not defined in the Act and the Act is the only instance of the use of the term in New Zealand legislation.
26. "Comity" is defined in the Shorter Oxford (in the form of "comity of nations") as being "the courteous and friendly understanding by which each nation respects the laws and usages of every other, so far as may be without prejudice to its own rights and interests". In a similar vein Chambers states: "The international courtesy between nations in which recognition is accorded to the laws and customs of each state by others". Legal dictionaries focus more on the aspect of courts taking due notice of foreign laws and judgments. Comity is not part of international law but is regarded as important for public policy reasons.

Commercial: In Confidence

27. Most international code-share arrangements will require approval in two jurisdictions, each with their own legislation or processes. This provision should not be interpreted to mean that New Zealand must always accept and adopt the findings of the other regulator. The two regulators will be applying different legislation. The impacts of a proposed alliance may also be different in the two countries.

28. In the case of Australia, in particular, the Air Services Agreement provides (Article 14(1)) that (emphasis added)

The competition laws of each Party, as amended from time to time, shall apply to the operation of the airlines of both Parties. Where permitted under those laws, a Party or its competition authority may, however, unilaterally exempt commercial agreements between airlines (including block-space, code-share and other joint service agreements) from the application of its domestic competition law. **This does not obligate a Party or its competition authority to provide a reciprocal exemption.**

29. We do not consider that declining to authorise any provisions of the Agreement would have an undesirable effect on international comity between New Zealand and any other State.

Commercial: In Confidence

Annex 2: Analysis of how arrangements relate to tariffs and capacity

Qantas – Emirates Restated Master Coordination Agreement: 11 October 2017		
		Structural
		Structural
1		
		Machinery
		Machinery
2		
		Machinery – necessary for the implementation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
		Relates directly or indirectly to the fixing of tariffs and capacity
		Relates directly or indirectly to the fixing of tariffs and capacity
		Relates directly or indirectly to the fixing of tariffs and capacity
		Relates directly or indirectly to the fixing of tariffs and capacity
		Machinery – necessary for the implementation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
3		
		Machinery – necessary for the implementation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
		Machinery – necessary for the implementation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
		Machinery – necessary for the implementation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity	

Commercial: In Confidence

		Machinery – necessary for the implementation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
4		
		Machinery – necessary for the implementation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
		Machinery – necessary for the implementation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
		Machinery – necessary for the implementation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
		Machinery – necessary for the implementation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
		Machinery – necessary for the implementation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
5		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
6		
		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
7		
		Relates directly or indirectly to the fixing of capacity

Commercial: In Confidence

		Relates directly or indirectly to the fixing of capacity
		Relates directly or indirectly to the fixing of capacity
		Machinery - definitions
		Relates directly or indirectly to the fixing of capacity
		Relates directly or indirectly to the fixing of capacity
		Relates directly or indirectly to the fixing of capacity
		Relates directly or indirectly to the fixing of capacity
		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
8		
		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
9.		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
10		
		(a) [ground handling], (d) [engineering services] and (e) [procurement] extend beyond tariffs and capacity – authorisation not sought for these provisions. Otherwise, indirectly relates to the fixing of tariffs and capacity
		To the extent that it relates to (a), (d) and (e), it does not relate to tariffs or capacity. Otherwise, indirectly relates to the fixing of tariffs and capacity
11		

Commercial: In Confidence

		Machinery - definition
		Boilerplate
		Machinery
		Boilerplate
12		
		Boilerplate
13		Machinery – necessary for the operation of other provisions relating to tariffs (in particular) and capacity
14		
		Machinery – necessary to define the duration of the arrangement generally, and consequently of the cooperation in relation to tariffs and capacity
		Machinery – necessary to define the duration of the arrangement generally, and consequently of the cooperation in relation to tariffs and capacity
		Machinery (partly boilerplate)
		Machinery – defining what constitutes default
		Machinery (partly boilerplate)

Commercial: In Confidence

		Machinery – in entering into agreements on tariffs and in particular capacity, parties need to understand what will happen if these arrangements are wound up – indirectly relates to the fixing of tariffs and capacity
15		
		Machinery
		Boilerplate
		Boilerplate
		Boilerplate
16		
		Boilerplate
17		
		Boilerplate
18		
		Boilerplate

Commercial: In Confidence

		Boilerplate
		Machinery
		Boilerplate
Schedule 1		Machinery – necessary for the implementation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
Schedule 2		
1		Machinery - definitions
2		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
3		Machinery– necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
4		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
5		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
6		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
7		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity. Some sections relate directly to the setting of tariffs and capacity
8		Relates directly and indirectly to the fixing of tariffs and capacity
Attachment 1		Machinery
Schedule 3		Relates directly and indirectly to the fixing of capacity

Commercial: In Confidence

1		Relates directly and indirectly to the fixing of capacity
2		Relates directly and indirectly to the fixing of capacity
3		Relates directly and indirectly to the fixing of capacity
Schedule 4		
1		Machinery - definitions
2		Relates directly and indirectly to the fixing of tariffs and/or capacity
3		Relates directly and indirectly to the fixing of tariffs and/or capacity
4		Relates directly and indirectly to the fixing of tariffs and/or capacity
5		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly to the fixing of tariffs and capacity
Attachment 1		Relates directly to the fixing of tariffs and capacity
Schedule 5		
1		Machinery
2		Machinery
3		Relates directly to the fixing of tariffs
4		Relates indirectly to the fixing of tariffs
5		Relates indirectly to the fixing of tariffs and capacity
6		Relates directly to the fixing of tariffs
7		Relates indirectly to the fixing of tariffs and capacity
8		Relates indirectly to the fixing of tariffs
9		Relates indirectly to the fixing of tariffs

Commercial: In Confidence

10		Machinery
11		Machinery
12		Part machinery, part relates indirectly to the fixing of tariffs
13		Machinery
14		Machinery
15		Machinery
Attachment 1		Machinery
Schedule 6		Relates directly and indirectly to the fixing and application of tariffs
1		Machinery - definitions
2		Machinery – indirectly relates to capacity
3		Machinery – indirectly relates to tariffs
4		Machinery – indirectly relates to tariffs
5		Machinery – necessary for the implementation and operation of arrangements relating indirectly to tariffs and/or capacity; therefore indirectly relates to the fixing of tariffs and capacity
6		Machinery – necessary for the implementation and operation of arrangements relating indirectly to tariffs and/or capacity; therefore indirectly relates to the fixing of tariffs and capacity
7		Machinery – necessary for the implementation and operation of arrangements relating indirectly to tariffs and/or capacity; therefore indirectly relates to the fixing of tariffs and capacity
8		Necessary for the implementation of arrangements relating indirectly to tariffs and/or capacity; therefore indirectly relates to the fixing of tariffs and capacity

Commercial: In Confidence

Attachment 1		Machinery – necessary for the implementation and operation of arrangements relating indirectly to tariffs and/or capacity; therefore indirectly relates to the fixing of tariffs and capacity
Attachment 2		Machinery – necessary for the implementation and operation of arrangements relating indirectly to tariffs and/or capacity; therefore indirectly relates to the fixing of tariffs and capacity
Attachment 3		Machinery – necessary for the implementation and operation of arrangements relating indirectly to tariffs and/or capacity; therefore indirectly relates to the fixing of tariffs and capacity
Schedule 7		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity. Some sections relate directly or indirectly to the application of tariffs
Attachment 1		Necessary for the implementation and operation of arrangements relating indirectly to tariffs and/or capacity; therefore indirectly relates to the fixing of tariffs and capacity
Schedule 8		Machinery – necessary for the implementation and operation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
Schedule 9		Machinery – necessary for the implementation of arrangements relating to tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity

Key

Structural: Document framework. Not related to tariffs and/or capacity

Machinery: Makes *this* agreement work. May be:

- directly related to tariffs and/or capacity
- indirectly related to tariffs and/or capacity
- not related to tariffs and/or capacity

Boilerplate: Standard provisions of a general nature not peculiar to *this* agreement. Not related to tariffs and/or capacity