

Commercial: In Confidence

# **Air New Zealand / Singapore Airlines Alliance Reauthorisation**

## **Ministry of Transport Analysis**

**September 2018**

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### Executive summary

1. Air New Zealand and Singapore Airlines have applied for reauthorisation of their Strategic Alliance Agreement, pursuant to section 88 of the Civil Aviation Act. The effect of authorisation under this section is that the arrangements under the Alliance are exempt from the provisions of the Commerce Act 1986 that prohibit arrangements substantially lessening competition.
2. The Ministry of Transport recommends that the Minister of Transport authorise the Strategic Alliance Agreement.
3. We consider the Alliance has provided, and will provide, benefits to New Zealand. It provides greater international airline capacity (number of seats and flights) into New Zealand and improved connectivity for passengers travelling between New Zealand and key markets in Europe, India and Southeast Asia.
4. There are risks that alliances can reduce competition in some markets. However, we consider that in this case these risks are outweighed by the public benefits described above.
5. We also conclude that the Strategic Alliance Agreement meets the statutory conditions allowing it to be authorised under section 88 of the Civil Aviation Act.

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## Introduction

6. This report provides a detailed summary of the Ministry of Transport's analysis of the application from Air New Zealand and Singapore Airlines (the Applicants) for reauthorisation of their airline alliance, through their Strategic Alliance Agreement (the Alliance).
7. The effect of authorisation would be that the arrangements in the Alliance are exempt from the provisions of the Commerce Act 1986 that prohibit arrangements substantially lessening competition.
8. The Applicants are currently cooperating pursuant to an authorisation by the Minister of Transport in 2014. That authorisation expires on 6 January 2019.
9. 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 alliances

10. 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 or 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.
11. 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.
12. 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: where 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 via Christchurch, even though it does not operate a service from Christchurch 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 share revenue in one or more markets and to cooperate on all aspects of pricing, scheduling and service delivery. These arrangements are generally subject to a much higher level of regulatory scrutiny as they have the potential to reduce competition. The Air New Zealand/Singapore Airlines Alliance is a revenue sharing alliance.

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- Global airline alliance: many airlines are members of one of the 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 flyer schemes. The level of cooperation differs between members. However, it is common for members of the same group to enter into interline and code-share agreements with one another.
13. 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.
  14. However, if alliances reduce or eliminate competition in a market, this can lead to higher airfares or reduced services.
  15. 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 and to compete on a global scale. However, each alliance agreement should be carefully scrutinised to ensure it delivers benefits that counteract any negative impacts that may result from a reduction in competition.
  16. A number of airline alliances have been authorised in New Zealand under the Civil Aviation Act. Other than this Alliance, a few of the most significant include:
    - The Qantas/Emirates Alliance, which allows the airlines to cooperate over their respective networks
    - The Air New Zealand/Cathay Pacific Alliance which allows the airlines to cooperate over the New Zealand – Hong Kong route (including New Zealand domestic feeder routes)
    - The Air New Zealand/United Airlines Alliance, which allows the airlines to cooperate over their respective networks.

### The Applicants

17. Air New Zealand operates a fleet of approximately 105 aircraft flying to 20 airports in New Zealand, and 30 destinations internationally.
18. Singapore Airlines is the national flag carrier of Singapore. The Singapore Airlines Group comprises approximately 185 aircraft, with a passenger network covering 136 destinations in 38 countries.
19. The Singapore Airlines group includes its wholly owned subsidiaries SilkAir and ScootTigerAir.
20. Both Air New Zealand and Singapore Airlines are members of the Star Alliance group.

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## The Alliance

### Background

21. In August 2014 the Minister of Transport authorised the Alliance under section 88 of the Civil Aviation Act. Authorisation was subject to the Applicants seeking reauthorisation four years after the date of commencement. This falls due on 6 January 2019.
22. Under the Alliance, the Applicants coordinate their operations between Singapore and New Zealand, and on certain services beyond these points. The Alliance allows for varying levels of coordination and revenue sharing on these routes. More detail regarding the nature of cooperation is provided in paragraph 26 to 30 below.
23. Under the Alliance Air New Zealand resumed operating its own aircraft to Singapore, after it had ceased offering the service in 2006 due to financial losses sustained on the route. Prior to the Alliance, it did not have a strong presence in the Southeast Asian region.

#### *Amendments made to the Alliance post-authorisation*

24. In September 2016, Singapore Airlines began a new service on a route between Wellington and Singapore via Canberra (now replaced with a Melbourne stop). The Applicants subsequently agreed an addendum to the Alliance, incorporating the Wellington – Singapore service into the Alliance.



### Scope of the Alliance

26. The Alliance provides for varying levels of cooperation between the Applicants on passenger services on:
  - **Alliance Sectors** operating directly between Singapore and New Zealand (currently Auckland – Singapore, Wellington – Singapore and Christchurch – Singapore). Cooperation on direct services between Singapore and New Zealand includes revenue sharing, network planning, code-sharing, coordinating operational requirements, capacity and pricing coordination.
  - **Alliance Routes** which comprise a direct service between Singapore and New Zealand as part of a connecting journey. Cooperation on these services differs depending on the jurisdiction to which the route originates/concludes. On Alliance Routes to priority markets<sup>1</sup>, the Applicants code-share and coordinate pricing, sales and marketing. The extent to which the Applicants cooperate in these jurisdictions is limited to what may be allowed by the regulatory authorities in those countries (for example, although Indonesia is a priority market covered by

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<sup>1</sup> These are markets that are primary drivers of traffic and include New Zealand, Singapore, the United Kingdom, Germany, India, Indonesia, Malaysia, Thailand, Viet Nam, Philippines and South Africa (Priority 1); France, Italy, the Netherlands and Switzerland (Priority 2); Denmark and Spain (Priority 3).

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the Alliance, the Applicants have not been able to implement code-sharing in this jurisdiction as it has not been allowed for by the Indonesian authorities).

27. The Alliance allows for varying levels of cooperation between Air New Zealand and Singapore Airlines' wholly owned subsidiary SilkAir. SilkAir operates short to medium haul regional services from Singapore.
28. The Alliance also allows the Applicants to align their frequent flyer programmes and premium customer handling, including lounge access.
29. The Alliance sets out the principles and objectives that will underlie the establishment and maintenance of cooperation between the Applicants. It also details the markets which are covered and the level of cooperation attached to those markets.
30. A number of implementing agreements support the Alliance. These include:
  - **Code-Share Agreement** to expand the Applicants' existing code-share arrangements. The Code-Share Agreement covers both Alliance Routes, as well as other countries which either party operates to.
  - **Special Prorate Agreement** which sets out the proportional rates, or "prorates" the Applicants will charge each other for seats on the flights they operate, on such routes as the Applicants may agree
  - **Premium Customer Handling and Lounge Agreement** to enhance the Applicants' existing arrangements pursuant to Star Alliance minimum requirements to provide reciprocal premium handling, including lounge access to the extent practical.
  - **Frequent Flyer Programme (FFP) Agreement** to enhance the parties' existing frequent flyer programme agreement to the extent practical, including extending FFP arrangements to the SilkAir network.
  - **Slot Transfer Agreement** to set out the arrangements by which the parties shall exchange the relevant slots in order to facilitate operations on Alliance Sectors by Air New Zealand.
31. Of the implementing agreements mentioned above, the Applicants have only requested authorisation of the code-share agreement.

### Relationship to the Competition Commission of Singapore

32. The Alliance is centred upon the New Zealand and Singapore markets. As such, the Alliance was also considered by the Competition Commission of Singapore (CCS). On 17 April 2014, the CCS announced its decision to authorise the proposed alliance, finding that while the Alliance could raise competition concerns, these would be offset by net economic benefits to Singapore.
33. The CCS did not impose any time limit on its authorisation. However, it has reserved the right to review its decision in the event that there is a 'material change of circumstance'. The Applicants have informed the CCS that they are seeking reauthorisation in New Zealand, but did not receive any material response to this notification.

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### Commercial rationale for the alliance

34. The Applicants state that the commercial rationale for the Alliance has not materially changed since it was first authorised, that being to increase the number of passengers travelling on the Applicants' combined services. The Applicants state that this has been achieved, noting that capacity on all alliance services in 2017 was 26% higher than pre Alliance levels.
35. By coordinating their operations, the Applicants note that they are better able to compete with other airline alliances (such as Qantas/Emirates) and large mid-point hub carriers in the Middle East and Asia.

### Air New Zealand

36. As an "end of line" carrier, Air New Zealand faces challenges in growing and sustaining its international network. While larger mid-point carriers (including Singapore Airlines) are able to act as global transit points, aggregating passengers from many origins, Air New Zealand is more reliant on point-to-point traffic. Furthermore, while Air New Zealand has a strong presence and brand within New Zealand, it lacks marketing and distribution strength in many of the points it serves.
37. Partnering with Singapore Airlines allows Air New Zealand to leverage off Singapore Airlines' large international network, to access locations which it could not otherwise serve. For instance, the Alliance allows an Air New Zealand customer to buy a ticket from Auckland to the Sri Lankan capital of Colombo, code-sharing on Singapore Airlines between Colombo and Singapore, while providing a range of either Air New Zealand or Singapore Airlines connecting flights to Singapore.
38. Air New Zealand states that the Alliance provides it with the opportunity for efficient, sustainable growth of its Pacific Rim network through the operation of services between New Zealand and Singapore. In particular, Air New Zealand points to markets in Southeast Asia and India and notes that many of these markets are fragmented, with small streams of traffic originating from sub-markets within and around these countries. Air New Zealand states that the Alliance has allowed Air New Zealand to grow its presence in these markets, by accessing them via Singapore.

### Singapore Airlines

39. The Alliance allows Singapore Airlines to access Air New Zealand's domestic network to provide better reach into New Zealand towns and cities and increase feed into its broader network. The Alliance also allows Singapore Airlines to access points beyond New Zealand, such as code-sharing on services to/from the Pacific.

### Consultation

40. The Ministry consulted on the proposed reauthorisation of the Alliance on 12 February 2018. Submissions were received from Tourism New Zealand, the Tourism Industry Association (TIA), Auckland International Airport and Christchurch International Airport. A short summary of these submissions is provided below.

### Tourism New Zealand

41. Tourism New Zealand submitted a letter in support of the proposed reauthorisation of the Alliance. It noted that the Alliance has strengthened air connectivity between Singapore and New Zealand, and has deepened New Zealand's connection to Southeast Asia.

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42. Tourism New Zealand mentioned that over the period of the Alliance, New Zealand has seen considerable growth from markets across Southeast Asia and India. It considers these priority markets, as key holiday periods across these markets align with the New Zealand low and shoulder seasons.
43. Tourism New Zealand considers that reauthorisation of the Alliance will continue to deliver stability of services in markets where otherwise carriers would have to respond to demand fluctuations. This stability allows Tourism New Zealand to make investment decisions in alignment with this long term partnership, to deliver long term tourism growth for New Zealand.

### Tourism Industry Association (TIA)

44. Like Tourism New Zealand, TIA also provided a letter in support of the Alliance. It notes that Asia is an important regional market for New Zealand, and is expected to grow in importance. TIA noted that Singapore has become an important visitor market for New Zealand, and expressed concern regarding Air New Zealand's claim that it would pull out of the route if the authorisation were declined.
45. TIA asserted that the Ministry of Transport should test the Applicant's statements that, without the Alliance, routes will be withdrawn, leading to reduced connectivity. It also noted the importance of fair competition between airlines and pointed to the Applicants' claims that the Alliance allows Air New Zealand to compete effectively with other airlines in the market.
46. TIA mentioned that consideration should be given to what the Alliance will bring to New Zealand more widely. It believes that the South Island is being under-served by international air services compared with Auckland. TIA believes that the Alliance supports the Christchurch-Singapore route and brings increased traffic flows to and through Christchurch.

### Auckland International Airport

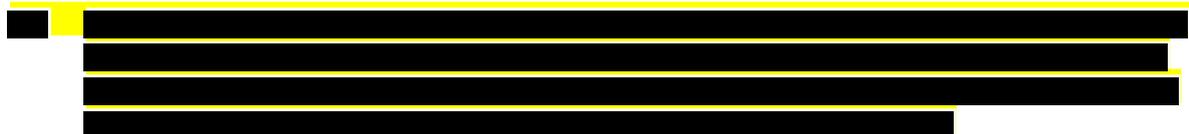
47. In its submission, Auckland Airport noted that it supports market structure arrangements that are consistent with fair and balanced competition, and which provide clear benefits for travellers.
48. Based on its own analysis, Auckland Airport has not seen any behaviour under the Alliance that would cause it concern. The Airport notes that in part, this is because sufficient competitive restraint exists on surrounding routes such that consumers travelling to/from Auckland have adequate alternative airline options when travelling to/from the connecting markets beyond the Singapore hub.

### Christchurch International Airport

49. Christchurch Airport notes that it is broadly supportive of airline alliances which, following a rigorous evaluation by the Ministry of Transport and key industry stakeholders, can demonstrate the public benefits outweigh any public detriment.

#### *Asymmetric capacity*

50. Christchurch Airport has concerns that the Alliance is not delivering symmetrical benefits to New Zealand air connectivity. It notes that annual capacity on the Auckland-Singapore route has increased 30% from 368,232 in 2014 to 480,264 in 2017. Meanwhile, capacity on the Christchurch-Singapore route has remained relatively flat at 209,063 annual seats in 2014 to 216,800 annual seats in 2017.

- 
52. It appreciates that the Alliance may deliver some of the public benefits outlined in the Applicants' proposal, but for the Alliance to be in the public interest the following would need to occur:
- conditions would need to be imposed by the Minister, or assumed voluntarily by the Airlines, to ensure the public benefits claimed are delivered; and
  - the Applicants will need to demonstrate any public benefits claimed in their application are not outweighed by the public detriment which results from the cumulative impacts of existing alliances the Airlines are a party to and which have been previously authorised by the Minister; and
  - the Applicants would need to provide assurances equivalent to those provided with the 2014 Authorisation that the Alliance would support the Christchurch - Singapore route by incentivising Air New Zealand to encourage its passengers to use the service, and provide Singapore Airlines with increased traffic flows to and through the Christchurch route.
53. Christchurch Airport's concerns regarding asymmetric capacity are addressed in paragraphs 117 to 127 of this report.

*Term of authorisation*

54. The Applicants have sought authorisation of the Alliance of a period of seven years. Christchurch Airport has expressed concern at this, noting that alliances should be authorised for the shortest period necessary to provide for public benefits and strongly recommending that if authorised, this alliance should be limited to a period of four years.
55. Christchurch Airport's concerns regarding the duration of the authorisation are addressed in paragraphs 173 to 175 of this report.

## Framework for our analysis

56. Our analysis relating to the proposed reauthorisation of the Alliance includes both an analysis of whether it meets the strict statutory criteria in the Civil Aviation Act, and a public interest assessment.

## Statutory analysis

57. 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.
58. 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.
59. We have analysed the provisions of the Alliance and supporting Code-Share Agreement against the statutory criteria set out in the Act and found that they do not breach any of the Act's criteria. A more detailed analysis is set out in Annex 1 and Annex 2 of this report.

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### Public Interest Analysis

60. [REDACTED]  
[REDACTED]  
[REDACTED] The public interest is also a relevant factor. In making the decision, the Minister may weigh any detriment to consumer welfare against any special considerations relating to the benefits of international air carriage in the relevant markets.
61. 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.

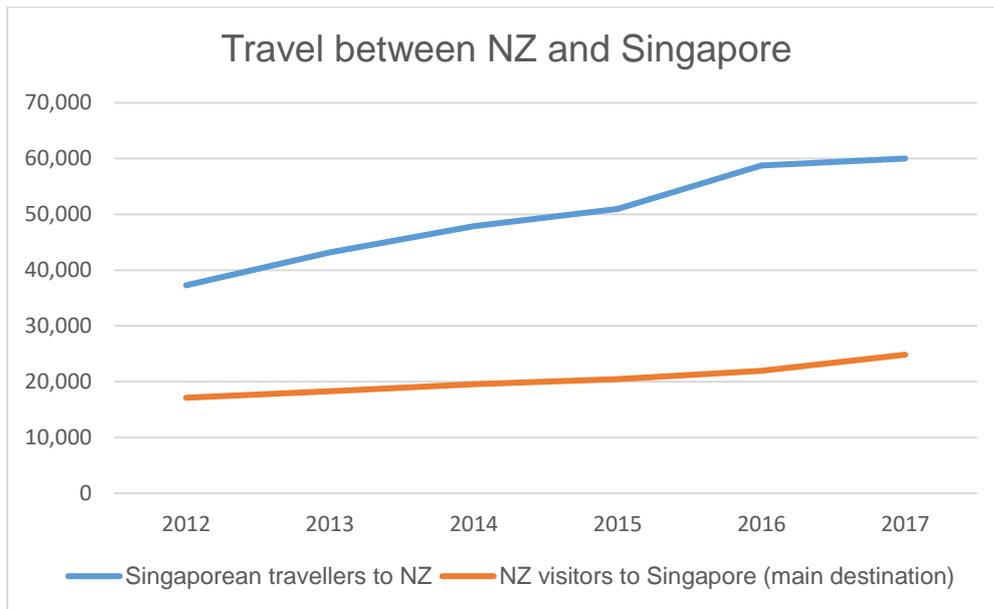
### Impact on markets

62. As part of our analysis, the Ministry has reviewed how the Alliance likely affects, and will affect, competition in the market for international air services to and from New Zealand. We have defined the relevant markets as being those regions and countries which are covered by pricing coordination under the Alliance.

### New Zealand – Singapore

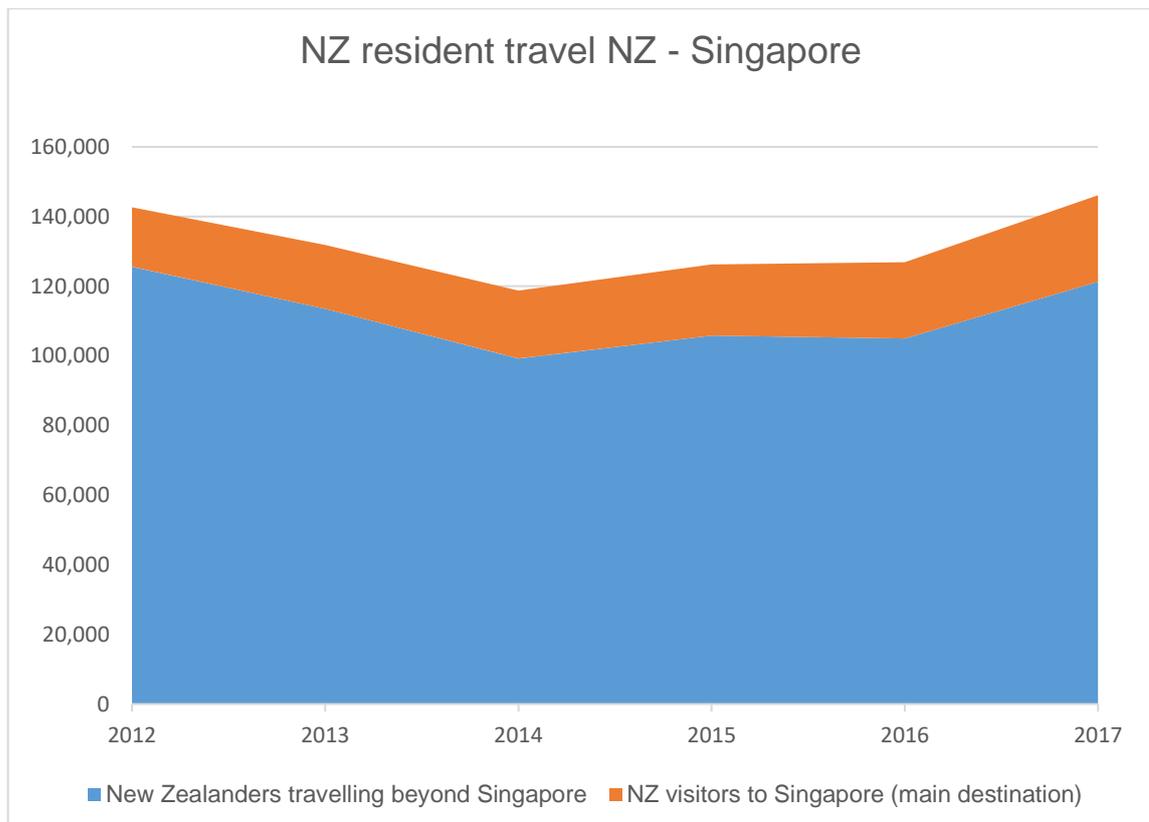
63. Although it is increasing, point to point demand for travel between Singapore and New Zealand is relatively low. An estimated 60,000 Singaporeans travelled to New Zealand in 2017 while 25,000 New Zealanders travelled to Singapore as their main destination in the same period. This perhaps reflects the relatively small population bases in both countries.

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Source: Statistics New Zealand International Travel and Migration data

64. Rather than point-to-point traffic, most of the total traffic by residents of the two countries is made up of New Zealanders using Singapore as a transit point for travel to destinations in Southeast Asia, India and Europe. As shown in the chart below, point-to-point travel makes up approximately 15% of New Zealand traffic to Singapore.

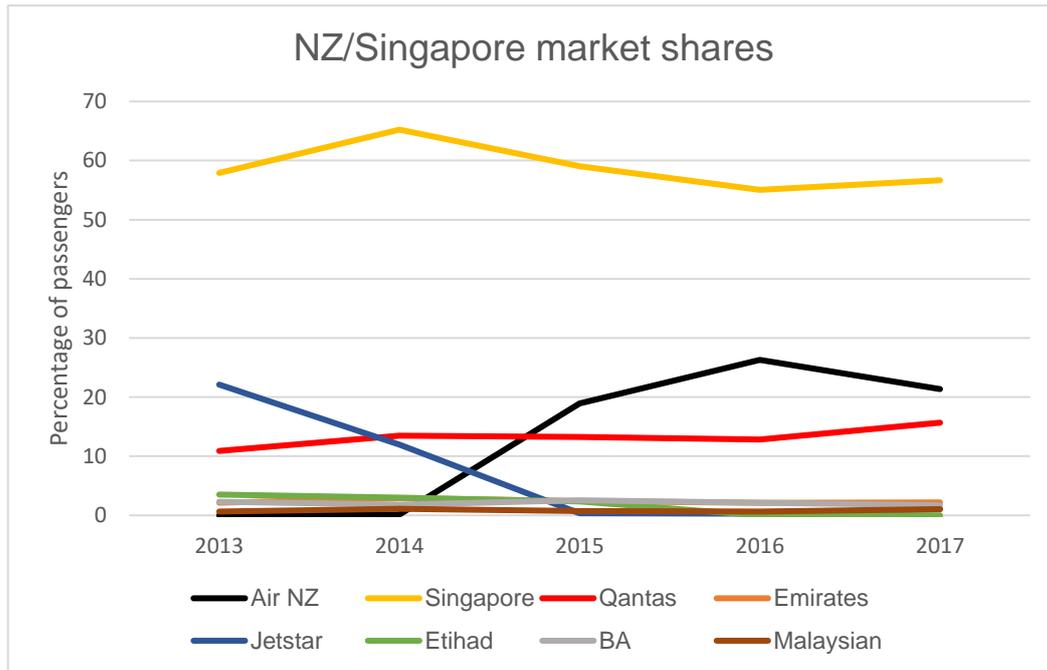


Source: Statistics New Zealand International Travel and Migration data

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*The Applicants hold a dominant position in this market*

65. Air New Zealand and Singapore Airlines are the only airlines operating direct services between New Zealand and Singapore. Singapore Airlines operates daily to both Auckland and Christchurch (including additional supplementary services in summer peaks) as well as four flights a week to Wellington via Melbourne. Air New Zealand operates daily between Auckland and Singapore.
66. As detailed in the chart below, the absence of competition in direct services between New Zealand and Singapore allows the Applicants to enjoy a dominant market position.



Source: Sabre Global Demand Data

Note: British Airways and Etihad do not operate to New Zealand, however they do operate services from Australia, which passengers may be connecting on through to Singapore.

67. The Applicants have a higher market share on this route now, than in the year prior to the Alliance. In the 2014 calendar year, Singapore Airlines had a 65% market share, while in 2017, Air New Zealand and Singapore Airlines combined held 78% of the market.
68. This higher market share is likely the result of the Applicants increasing capacity between New Zealand and Singapore, which the Applicants note has increased by 26%<sup>2</sup> as compared with pre-alliance levels.
69. Jetstar's withdrawal from the Auckland – Singapore route in July 2014 may also have contributed to the Applicants' higher market share. Jetstar began daily flights on this route in 2011. Soon after, this reduced to three flights a week and eventual cancellation of the service in July 2014. Jetstar cited low demand as its reason for cancelling the service.

<sup>2</sup> As compared with capacity prior to the introduction of the A380 by Singapore Airlines in October 2014, which the Applicants note was introduced in response to the Alliance.

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*Is a lack of competition causing detrimental consumer outcomes?*

70. The Ministry has little evidence that lack of competition in direct services in this market has had an adverse effect on consumer welfare. We note that fares between New Zealand and Singapore average at around \$1,300 - \$1,400 for a return economy fare, travelling out of either Wellington, Auckland or Christchurch to Singapore. According to the Applicants' data (see chart below), fares have decreased steadily from pre Alliance levels; although it is clear from the chart that airfares increased in 2017.

Figure 7: Average fares for New Zealand - Singapore



71. These fares are not too dissimilar to what Air New Zealand charges for flights of similar distances on routes which have slightly more competition. For example, Air New Zealand charges around \$1,500 for flights between Honolulu and Auckland, where it competes with Hawaiian Airways. Similar fares can be found to Bali, where Air New Zealand now competes with Emirates. It should however be noted that sale fares to these popular holiday destinations can be significantly lower than fares charged to Singapore, where the Applicants do not tend to offer sale prices.
72. The presence of airlines offering one-stop alternatives may also help to constrain fares on the route. Qantas currently holds a small but growing portion of this market, providing options through stops in Perth, Melbourne, Sydney and Brisbane.
73. We also note that it is not in the Applicants' interest to reduce capacity on the route, in order to artificially raise fares. As noted above, the main source of traffic on this route is passengers travelling on connecting flights through Singapore. Singapore Airlines (and to a certain extent Air New Zealand) relies on this route to feed its international traffic beyond Singapore, and therefore would be reluctant to reduce capacity into and out of New Zealand.

*Declining authorisation may not improve competition in the market*

74. It is unlikely that declining authorisation would improve competition in this market. As noted above, point-to-point traffic between New Zealand and Singapore is low and in the short term is unlikely to support the entry of a competing airline. Both Air New Zealand and Jetstar have competed with Singapore Airlines on this route in the past. Both airlines exited the route due to low demand for their services.

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75. Unlike other airlines, Singapore Airlines has the advantage of being able to generate traffic feeding into Singapore, through its extensive international network. It therefore does not need to rely on the small amount of point-to-point traffic to the same extent as other airlines.
76. In its submission, Air New Zealand stated it would withdraw from operating to Singapore absent the Alliance. It noted that before the Alliance, it had struggled to maintain services on the route which suffered a [REDACTED] loss in 2006, the year in which it withdrew from the route.
77. Air New Zealand would also lose its peak period landing slots which were transferred from Singapore Airlines to Air New Zealand as part of the Alliance. It also claims that Singapore Airlines would have little incentive to provide code-sharing to a competing airline such as Air New Zealand, and Air New Zealand would not be able to compete with the network presence that Singapore Airlines has on its connecting flights out of Singapore.
78. There is a risk that the Alliance is preventing the entry of other competitors on this route, as other airlines may find it difficult to compete with the Applicants' combined network, sales and marketing advantage. However, for the same reasons noted above, any airline is likely to find it difficult to compete with Singapore Airlines on the route, so it is not clear that competition with Singapore Airlines would lead to better outcomes for consumers.

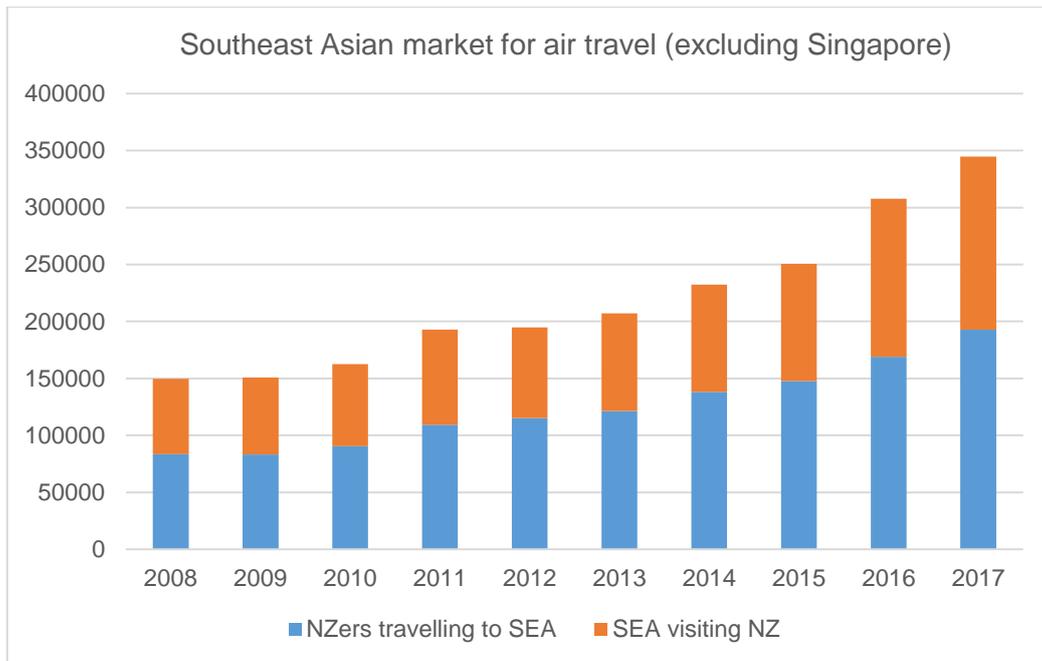
### New Zealand – Southeast Asia (excluding Singapore)

79. The Alliance covers a number of countries in Southeast Asia. Indonesia<sup>3</sup>, Thailand, Malaysia, Vietnam and the Philippines are all specified as “covered jurisdictions” whereby the Applicants' cooperation extends to pricing coordination, code-sharing and joint sales and marketing.
80. As shown in the graph below, Southeast Asia is a key large market for New Zealand which has seen significant growth.

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<sup>3</sup> Code-sharing is not in place in the Indonesian market, as the Indonesian authorities have not authorised it.

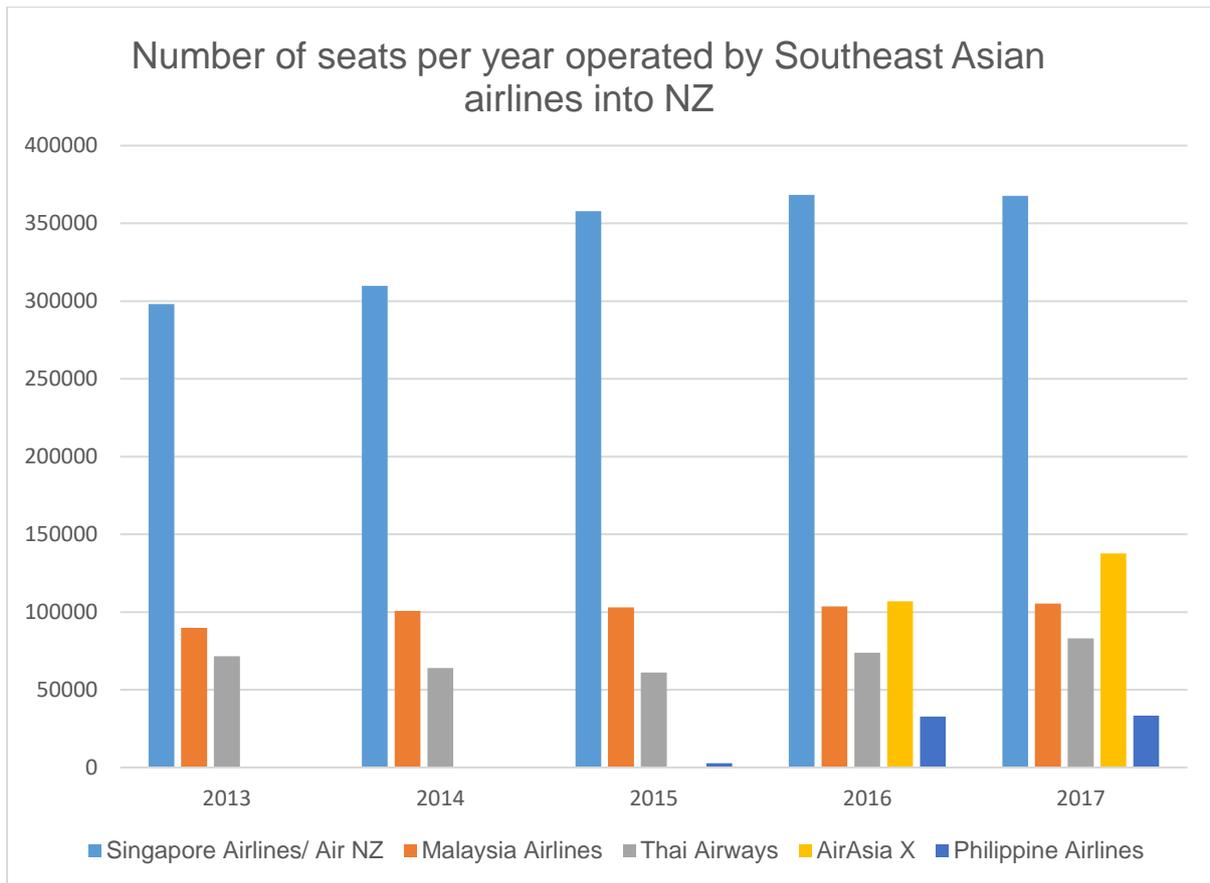
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*Source: Statistics New Zealand International Travel and Migration data*

81. In general, the New Zealand – Southeast Asia market tends to be well served. In addition to Singapore Airlines, New Zealand is served by a number of Southeast Asian airlines including Malaysia Airlines, Thai Airways and Philippine Airways.
82. When the Alliance was first authorised a key concern was that the strength of the Singapore Airlines/Air New Zealand alliance might force other participants (such as Thai Airways and Malaysia Airlines) out of the market. This has not been the case. The graph below shows the number of seats operated by Southeast Asian Airlines into New Zealand. Although the capacity provided by the Applicants has grown, the number of seats operated by other competitors has not fallen.
83. Since the Alliance commenced, we have also seen the introduction of new services by Philippine Airways and Malaysian low cost carrier AirAsia X. Philippine Airways began operating four times a week between Auckland and Manila via Cairns in 2015. In December 2017 these services were replaced by a three-a-week direct service between Auckland and Manila using its larger Airbus A340 aircraft. AirAsia X began offering daily services between Auckland and Kuala Lumpur via the Gold Coast in 2016.

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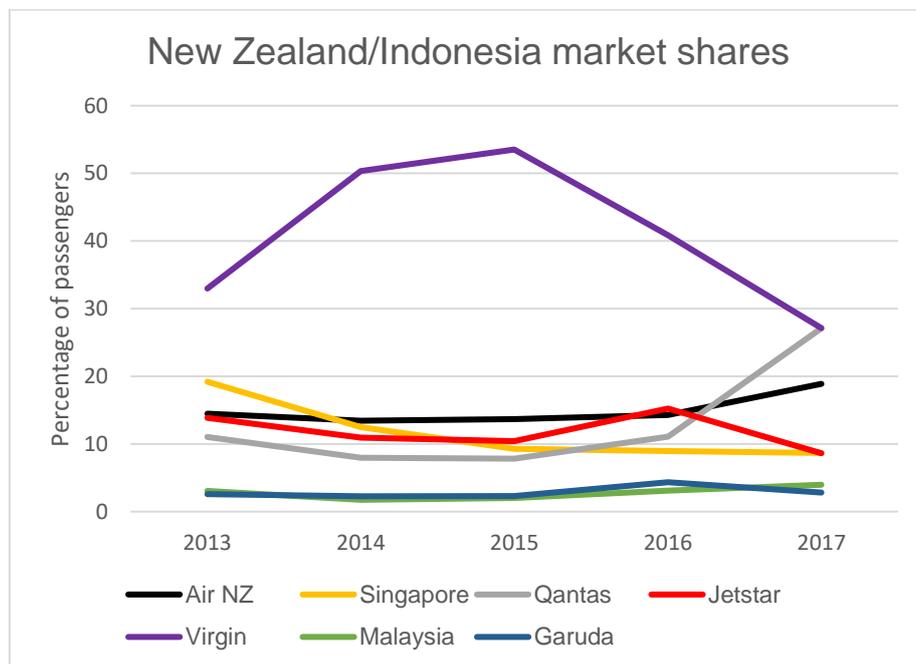
Source: Sabre Global Demand Data

84. As per the following charts, the Applicants do not hold a large market share in most of the Southeast Asian countries that are covered jurisdictions under the Alliance. In many cases the Applicants are competing with airlines that offer direct services, or with airlines offering one-stop connections through countries such as Australia and Malaysia.

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*Note: this confidential data is provided from the Statistics New Zealand database. A coding error has meant the Sabre database did not show correct figures for NZ - Malaysia market.*



*Source: Sabre Global Demand Data*

*Note: these figures do not reflect the Emirates service to Bali which started in June 2018*

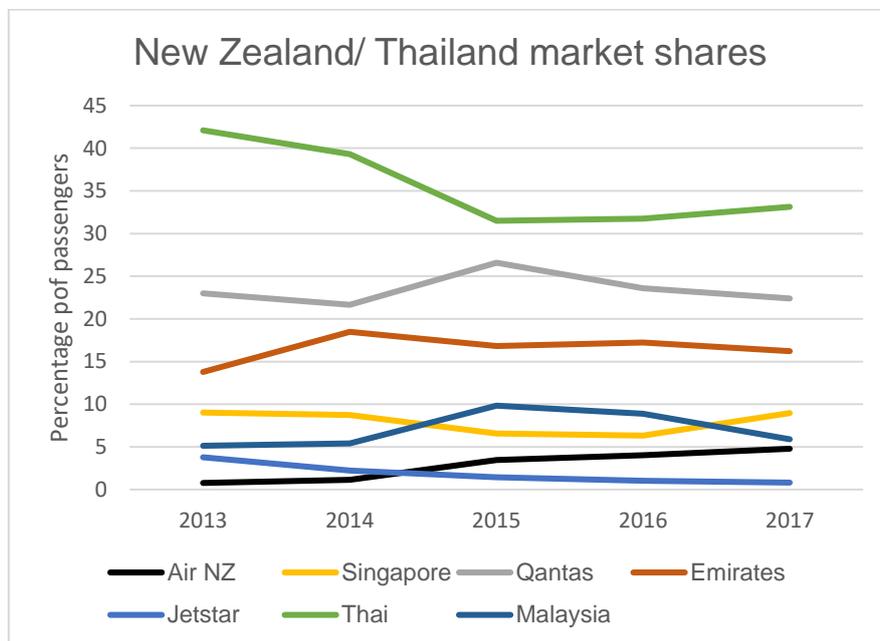
*Garuda do not operate flights to New Zealand, however passengers may be travelling on this airline between Australia and Indonesia, via connecting services.*

85. The airlines have not been able to implement code-sharing to Indonesia. The Indonesian authorities will not accept that Singapore can be an intermediate point for

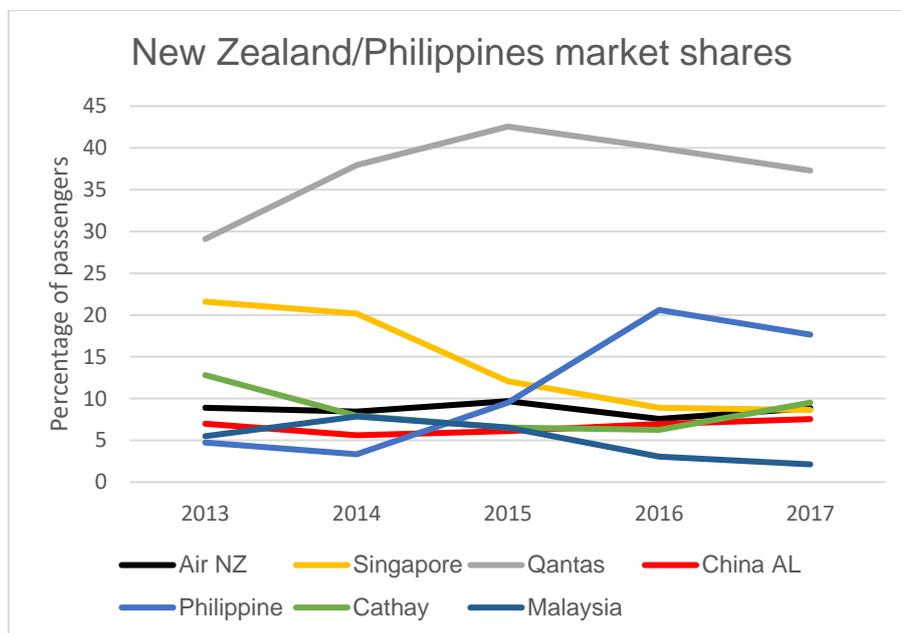
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services to cities in Indonesia to the south of Singapore. [REDACTED]

86. While in terms of broader people to people and business connectivity a direct service from Jakarta would be highly desirable, airlines have not been able to establish a commercially viable basis for this.



Source: Sabre Global Demand Data



Source: Sabre Global Demand Data

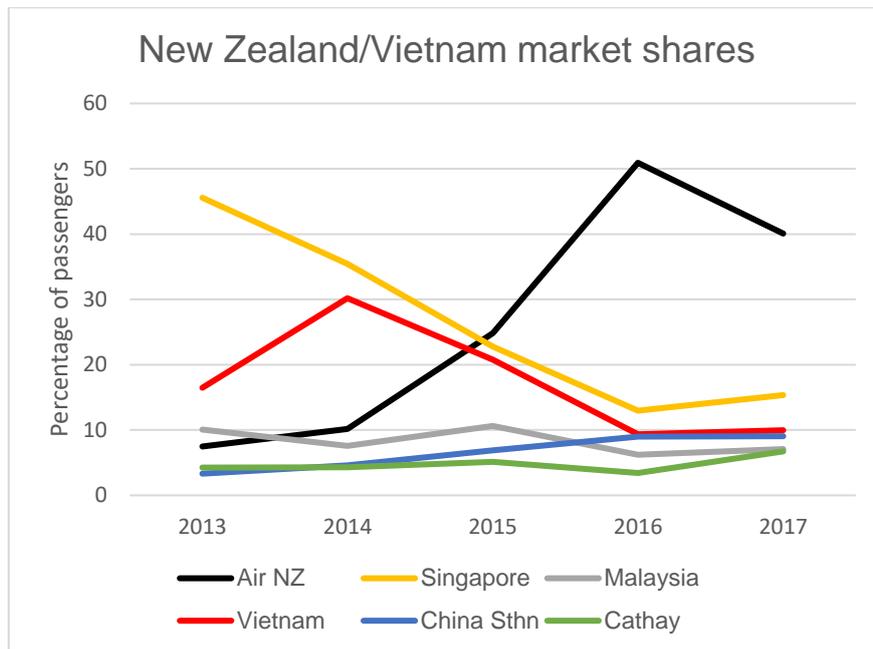
### New Zealand - Vietnam

87. Apart from Singapore, the only other covered jurisdiction in Southeast Asia in which the Applicants hold a majority share is New Zealand – Vietnam. Air New Zealand began offering seasonal services flying direct between Auckland and Ho Chi Minh City in June 2016. However, it has recently announced that it will not operate these

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services in the 2019-20 season, as its Boeing 787 fleet continues to be stretched by issues associated with the aircraft's Rolls-Royce Trent 1000 engines. We also understand that the route has been performing below expectations.

88. The Applicant's large market share on this route is likely because Air New Zealand has been the only airline offering direct services. We note that during the off-peak season, when Air New Zealand do not offer direct flights, the Applicants market share drops to 46%.
89. We consider it unlikely that the Alliance is having a detrimental effect on competition. Consumers have the option of year-round one-stop services via Australia, Singapore, Malaysia, Hong Kong and China on services from a number of competing airlines. Even if Air New Zealand decided to reinstate its direct services, there is likely enough competition from one-stop services to ensure a competitive market.



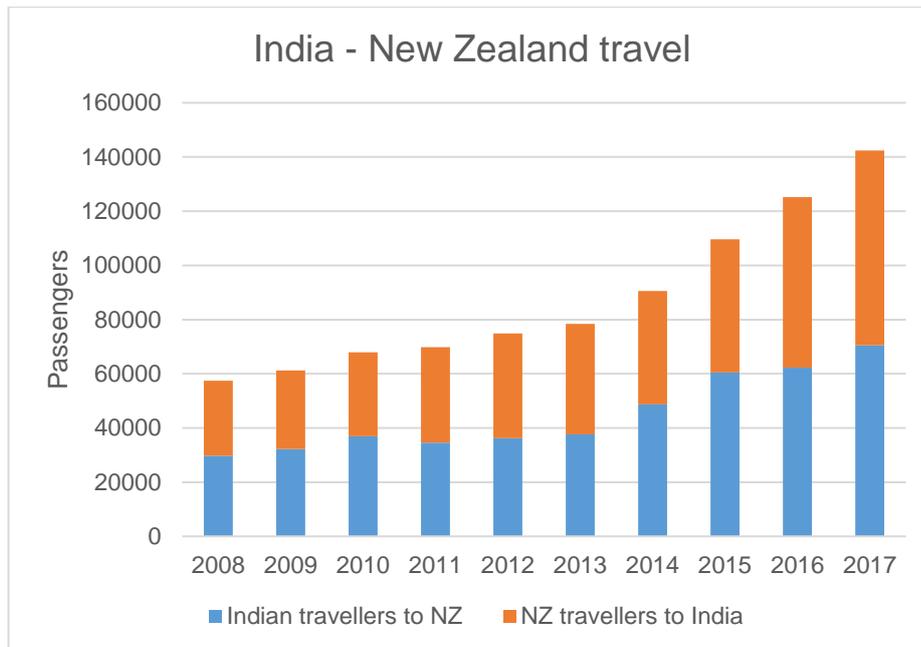
Source: Sabre Global Demand Data

*Note: Vietnam Airlines do not operate flights to New Zealand, however passengers may be travelling on this airline between Australia and Vietnam, via connecting services.*

### New Zealand – India

90. As indicated in the chart below, travel between India and New Zealand is a large and growing market. India is one of the world's fastest growing economies and has a growing middle class. In the past few years, Tourism New Zealand has focused efforts on marketing New Zealand tourism in India. It views India as an important market as Indian tourists are more likely to travel to New Zealand during the autumn and spring off-peak seasons, helping spread visits across the year.
91. As well as inbound tourism, demand for travel between India and New Zealand is supported by the large Indian community in New Zealand. In 2017 73% of New Zealand visitors to India were travelling for the main purpose of visiting friends, family and relatives.

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Source: Statistics New Zealand International Travel and Migration data

92. The Alliance has allowed Air New Zealand to place its code on flights operated by Singapore Airlines and SilkAir between India and Singapore to 6 cities in India<sup>4</sup>, allowing it greater access to the Indian market. Singapore Airlines and SilkAir have a large presence in the Indian market, operating to 11 destinations in the subcontinent.

### Direct services

93. Although it is a large market, there are currently no direct flights between New Zealand and India, with passengers instead travelling through hubs such as Singapore, Kuala Lumpur and Bangkok.
94. When analysing the Alliance in 2014, we noted that by code-sharing to India on Singapore Airlines, there is a risk Air New Zealand would lose any incentive it would have had to operate direct services between New Zealand and India.
95. Air New Zealand have previously cited distance as one of the main reasons which make the route impractical, given its current fleet of aircraft. Below is a comparison of some of the longest non-stop routes Air New Zealand operates, compared with the distance to some of India's main cities.

<sup>4</sup> Code-share services to New Delhi are not permitted under the Air Services Agreement because the Indian government wished to protect Air India's Australian services from competition.

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Indian City	Distance from Auckland (Km)
New Delhi	12,495
Mumbai (Bombay)	12,303
Hyderabad	11,701
Bangalore (Bengaluru)	11,508
<b>Currently served by Air NZ</b>	
Chicago*	13,170
Houston	11,933
Vancouver	11,335

\*Auckland-Chicago flights to commence 30 November 2018

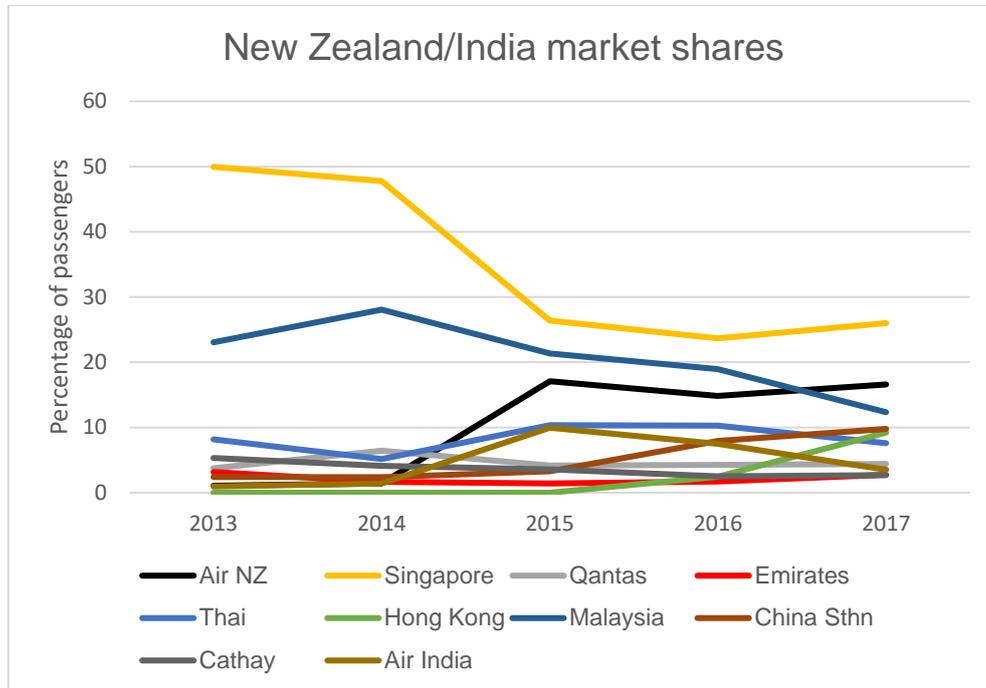
96. The distances to these Indian cities are similar to what Air New Zealand already operates to North America, and therefore are likely to be technically possible using Air New Zealand's current fleet. However, India is a different market from North America, and we accept that differences in factors such as yields, and the fact that passengers on this route may be more willing to accept longer indirect journeys for lower fares, may make direct services to India uneconomic.
97. Even in closer and larger markets such as Australia, direct services from India have struggled to compete with one-stop flights via Southeast Asian hubs. Air India is currently the only airline operating direct services between India and Australia. Air India carries approximately 10% of passengers travelling between the two countries, while Singapore Airlines, Malaysia Airlines and Thai Airways collectively carry roughly 55%.
98. Part of the advantage of these mid-point carriers is their ability to serve several destinations in India. India is a large country, with a huge population spread over many large cities. If Air New Zealand were to offer direct services, it could practically serve only one or two of these cities.
99. On the other hand, Singapore Airlines can viably serve several destinations in India, making it a more attractive option for travellers. Together, Singapore Airlines and SilkAir operate 105 flights a week to India, across 11 destinations.
100. If Air New Zealand were to serve India outside of the Alliance with Singapore Airlines, it would need a strong code-share partner with links to the Indian domestic network. The most obvious candidate is Air India, which is also a Star Alliance member. Air New Zealand already has a code-share agreement with Air India, but this has not been implemented. [REDACTED]

### *Market shares*

101. The Applicants hold a large share of the market for air services between New Zealand and India (approximately 40% in 2017). This is lower than the pre-Alliance market share of about 50%. Since 2014, North Asian carriers such as Hong Kong Airlines and China Southern have made inroads into this market.

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102. Regardless of whether it is acting in alliance with Air New Zealand, Singapore Airlines is likely to continue to hold a large market share of the New Zealand – India market, given its ability to serve a number of destinations in India through its hub. There is adequate competition in the market, given the one-stop alternatives on offer from Malaysia Airlines, Thai Airways, Hong Kong Airlines and China Southern.



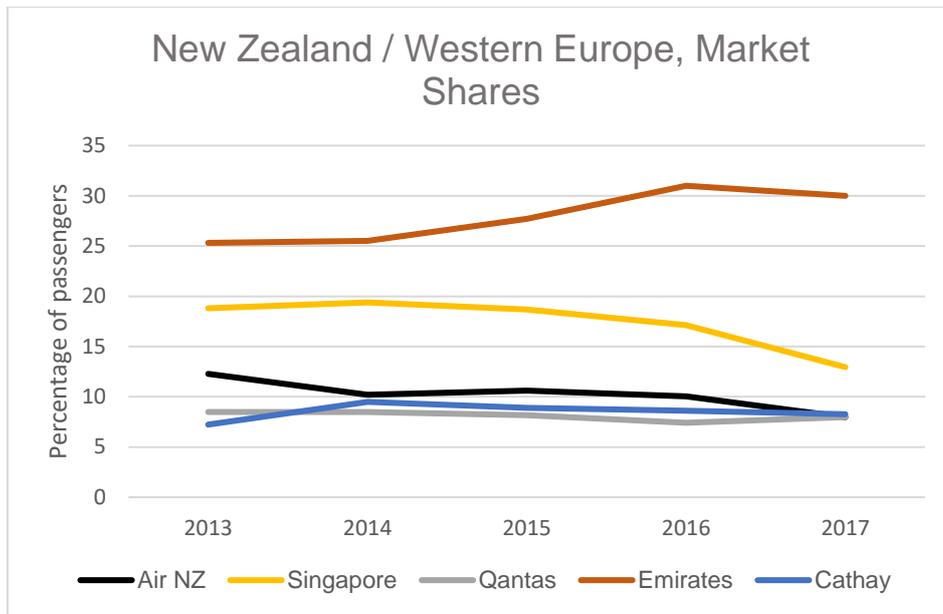
*Source: Sabre Global Demand Data*

*Note: Air India do not operate flights to New Zealand, however passengers may be travelling on this airline between Australia and India, via connecting services.*

### New Zealand – Europe

103. New Zealand – Europe is a large market. In 2017 611,341 Europeans travelled to New Zealand. In the same period, 247,840 New Zealanders travelled to Europe. The market is generally well served, with a number of airlines offering one-stop services to Europe through hubs in the Middle East, Southeast Asia, North America and Northern Asia.
104. A number of European countries are classified as covered jurisdictions under the Alliance, including the United Kingdom, France, Italy, the Netherlands, Switzerland, Spain and Denmark.
105. On most of the routes between New Zealand and Europe, the Alliance partners face strong competition from the Emirates/Qantas alliance. Other smaller competitors include Malaysia Airlines, Cathay Pacific, and more recently Qatar Airways.

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Source: Sabre Global Demand Data

106. The Alliance does remove one competitor from the New Zealand – Europe market. This is most significant on the New Zealand – London route, being the only route on which both airlines currently operate.

### *New Zealand – London*

107. Air New Zealand currently serves London through its services connecting in Los Angeles, while Singapore Airlines provides services through its hub in Singapore.

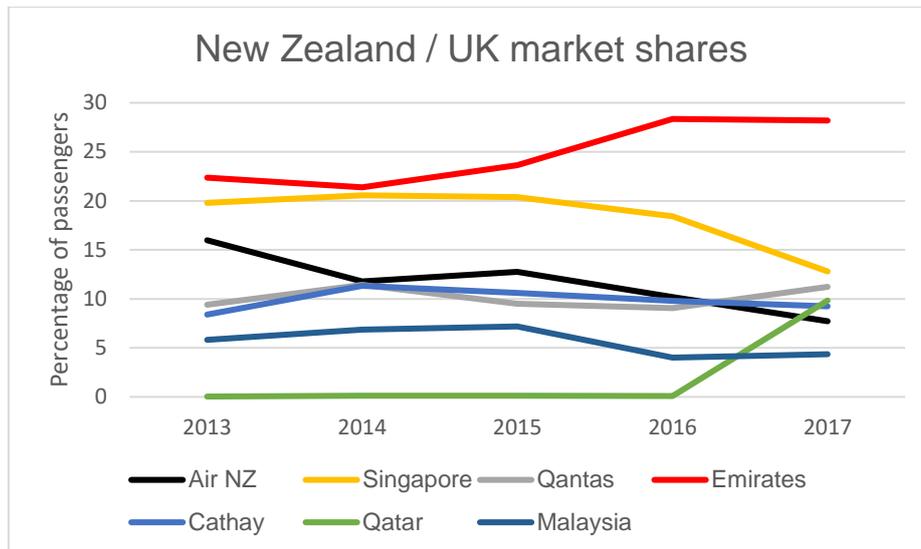
108. The Alliance agreement includes a clause which requires the Applicants to discuss

[REDACTED]

109. The clause is intended to ensure collaboration to maximise the Applicants' joint revenues on flights to London.

110. While this clause does restrict competition on the New Zealand – London route, like much of the rest of Europe, there is sufficient competition in this market from other carriers to prevent the Applicants possessing market power. In addition, we note that Air New Zealand can (and does) ticket passengers travelling to London through routes other than Los Angeles. For example, consumers can purchase an Air New Zealand ticket to London, via Tokyo, with the final leg operated by British Airways.

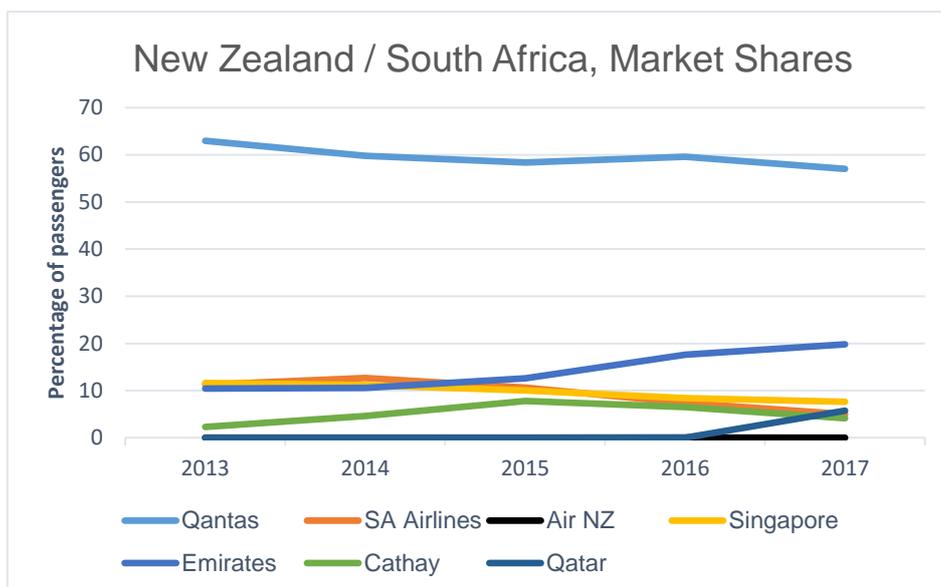
## Commercial: In Confidence



Source: Sabre Global Demand Data

### New Zealand – South Africa

111. The Alliance includes only one country in Africa as a covered jurisdiction, being South Africa. Air New Zealand code-shares on flights operated by South African Airways between Perth and Johannesburg, connecting with its own Auckland – Perth flights. Passengers also have the option of flying on Singapore Airlines, via Singapore, though this is a less attractive option, noting that travel between Johannesburg and Auckland via Singapore is 25% longer than via Perth, and 30% longer than what Qantas can offer through Sydney.
112. The Applicants do not hold a large share of this market, and are unlikely to do so in the future. We consider the Alliance does not raise any competition concerns in this market.



Source: Sabre Global Demand Data

*Note: Although South Africa (SA) Airlines do not operate service to New Zealand, it is represented in this data due its code-share arrangement with Air New Zealand described above*

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### Freight

113. 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 billion<sup>5</sup>. This represents 19 percent of total New Zealand exports and imports.
114. 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.
115. Most freight carried on aircraft to and from New Zealand is carried in the belly-hold of passenger aircraft. However there are a few airlines that operate dedicated international freighter services in New Zealand, including Singapore Airlines, Tasman Cargo Airlines and Federal Express. Qantas also operates a dedicated freighter service.
116. The Alliance does not cover cooperation for the carriage of freight. However, any change in aircraft type or frequency of services brought about as a result of the Alliance would have an indirect impact on freight markets. We do not have any firm evidence that cooperation under the Alliance has restricted services or capacity in any of the markets analysed above.

### Asymmetric capacity

117. When the Alliance was first assessed in 2014, we were unsure how it might affect services to airports other than Auckland. We noted that Air New Zealand has incentives to direct as much traffic as possible through its Auckland hub, leveraging its strong domestic network to pool passengers from various points of origin around New Zealand. Under the Alliance, Singapore Airlines is given access to this domestic network, and therefore may have less incentive to operate flights from airports other than Auckland.
118. In particular, stakeholders [REDACTED], were concerned about the effect the Alliance might have on the Christchurch – Singapore route, noting Christchurch is an important gateway for tourism in the South Island. These concerns prompted the Applicants to agree to maintain at least seven services per week on the Christchurch – Singapore route, except in the case of material adverse change in market conditions or other exceptional circumstances. This text was included as an amendment to the Alliance in August 2014.

### *Capacity changes since authorisation*

119. Much of the increase in capacity from the Alliance partners since authorisation has been on the Auckland – Singapore route. The Applicants note that total capacity on this route has increased by 26%.
120. Wellington Airport has also received extra Alliance capacity since initial authorisation. In 2016, Singapore Airlines began operating Wellington – Canberra<sup>6</sup> – Singapore flights on a four-a-week basis. We note this service has been partly subsidised by the Wellington City Council.

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<sup>5</sup> Exports are measured by Statistics NZ as free on board (FOB) prices, while imports are measured as prices including costs, insurance and freight (CIF).

<sup>6</sup> Now Melbourne

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121. In contrast, there has been little change in Alliance capacity on the Christchurch-Singapore route. Singapore Airlines continues to operate this route on a daily basis, with supplementary services operated during the summer peak. Annual seat capacity on the route has risen only 3.7% from 209,063 in 2014 to 216,800 in 2017. [REDACTED]
122. As noted in paragraph 50, Christchurch Airport is concerned that the Alliance is not delivering symmetrical benefits to New Zealand's air connectivity. We agree it is important that travellers to and from New Zealand have options in terms of airports of arrival and departure. More options reduce the number of passengers that require extra domestic legs to their international itineraries, saving these passengers both time and the cost of extra travel. This issue is also relevant in terms of air freight.
123. However, we do not believe that declining to authorise the Alliance would lead to better dispersal of international airline capacity within New Zealand. [REDACTED]
124. We are concerned that without the mutual support provided by the Alliance, the Applicants will have less incentive to grow international capacity in New Zealand, including at Airports outside of Auckland. Additionally, there is also a risk that the Applicants reduce some of the current capacity, especially on routes which are less commercially viable, such as the Wellington service operated by Singapore Airlines.

### *Capacity conditions*

125. In its submission, Christchurch Airport argued that conditions would need to be imposed by the Minister, and assurances would need to be provided that the Alliance would support the Christchurch – Singapore service, in order to ensure that authorisation is in the public interest.
126. In most cases, we consider these types of conditions as inappropriate, for the following reasons:
- [REDACTED]
  - [REDACTED]
  - Route-specific capacity conditions risk creating market distortions. There is significant risk from a regulatory perspective of requiring capacity to be added on routes where it exceeds passenger demand, which in turn may prevent capacity from being added on routes where demand is strong.

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127. Noting the above risks, we consider that in the case of this Alliance, there are no good reasons for the Minister to impose capacity conditions, over and above what is already provided for in the Alliance (see paragraph 118).

### Public benefits

128. The Applicants claim a number of public benefits have been realised through the Alliance. These benefits are summarised below, along with our analysis of the extent to which these can be considered as public benefits.

### Increased capacity and Air New Zealand presence on the Singapore route

129. The Applicants note the Alliance has resulted in increased capacity on the New Zealand to Singapore route. Since October 2014, capacity has increased 26% on the Auckland – Singapore route. This has occurred through:

- upgrading Singapore Airlines' Boeing 777 service (278 seats) to an A380 (471 seats) in the Northern Winter season
- replacing the Singapore Airlines Boeing 777 service (271 seats) with an Air New Zealand Boeing 787 service (302 seats)
- increasing the frequency of the above service from 5x/7x (peak) per week, to a year-round daily service.

130. In addition to the above, in December 2017 Air New Zealand announced a new Auckland – Singapore service beginning November 2018, using its Boeing 787 aircraft. The new service will operate daily during the November – March peak period, and five times a week during the rest of the year. It will contribute 40% more seats on Auckland – Singapore route, than what is currently provided by the Applicants.

131. As noted in paragraph 120, Alliance capacity has also been added in Wellington, with the introduction of the Wellington – Singapore service [REDACTED].

132. This capacity is beneficial for New Zealand. It increases the availability of services to and from New Zealand, and provides more options for consumers.

133. It is likely the Alliance has had a positive effect on New Zealand's international airline capacity. The cooperative benefits provided by the Alliance have likely allowed the Applicants to grow their services between the countries in an economically sustainable way.

### Greater connectivity

134. It seems clear the Alliance has facilitated greater connectivity by combining the networks of the two airlines. Airline alliances are most beneficial if they are between airlines with complementary rather than overlapping networks. Air New Zealand benefits from obtaining access to the network of Singapore Airlines, and vice versa.

135. The Applicants note the Alliance has provided for 120 code-share combinations made available through the underlying Code-Share Agreement. For Air New Zealand in particular, the Alliance increases its ability to reach all of Southeast Asia and India on a daily basis, through a route network that it would be unlikely to replicate, absent the Alliance.

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136. Connectivity is likely to further improve when Air New Zealand begins operating its new Auckland – Singapore flight in November 2018. With the new service, the Applicants have agreed to re-time existing services to ensure the Alliance will connect into three different banks of connecting services at Singapore. The Applicants note that this coordination will result in shorter northbound and southbound connections across Southeast Asian, Indian and European services.

### Greater availability of lower fares

137. The Applicants state the Alliance has led to greater availability of lower fare classes on the Auckland – Singapore sector, as the increased capacity on this route makes more seats available in every fare class, including lower fare classes.
138. The Applicants also state that fares on Alliance services have decreased over the course of the Alliance. The Applicants concede that this is due to many factors, some of which are outside the influence of the Alliance (e.g. fuel prices). However, they point to a study<sup>7</sup> Air New Zealand commissioned in 2015/2016 which analysed the price effects of all of Air New Zealand's existing alliances. The study found that prices for international alliance connecting fares (excluding trans-Tasman) were on average 8.8%<sup>8</sup> lower than traditional interline fares.
139. The report notes that close cooperation by way of revenue sharing between Air New Zealand and its alliance partners allows them to act as though they were a single airline. This reduces “double-marginalisation” effects that are present under a traditional interline arrangement, where two cooperating carriers individually set prices on the portion of the itinerary that they operate with their own aircraft, maximising their own “mark-up” based on demand on that segment.
140. We can not say with any certainty whether the Alliance has provided for lower average cost of fares in the markets which the Applicants operate. There are a number of factors that influence fares which makes it difficult to isolate and quantify the effects of the Alliance. However we accept that the increased capacity provided by the Alliance and reductions in double-marginalisation are likely to contribute in some way to lower fares.

### Premium customer and frequent flyer points benefits

141. As both Applicants are part of the Star Alliance, customers of one airline are able to earn frequent flyer points on the other's service. The Star Alliance also allows reciprocal access to airport lounges. These benefits would be present, whether or not the Alliance is authorised.
142. The Applicants note however that the Alliance has allowed for a more favourable accrual rate, which has allowed customers to earn frequent flyer points at a higher rate than that what is allowed for under the Star Alliance. Air New Zealand notes that its passengers travelling on Singapore Airlines operated services accrued an average of [REDACTED] additional Airpoints Dollars per month, compared with the monthly average prior to commencement of the Alliance.

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<sup>7</sup> *Ex post analysis of Air New Zealand revenue-sharing joint venture agreements*, Brueckner, Lee and Singer.

<sup>8</sup> 11.6% lower where the trip is performed by only one carrier.

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143. The Alliance has also allowed Air New Zealand customers to earn Airpoints Dollars on SilkAir operated flights, which was not possible prior to the Alliance. Since commencement, Air New Zealand passengers have collectively earned [REDACTED] Airpoints on these flights.
144. The Applicants also note that the Alliance has allowed for greater access to lounges at Singapore Airport. Under the Alliance, Air New Zealand customers who have Elite status are eligible for entry to Singapore Airline's SilverKris lounge at Singapore Airport.
145. The Ministry accepts that the Alliance provides additional benefits over and above existing Star Alliance arrangements with respect to frequent flyer programmes and lounge access. However, these benefits are modest and primarily limited to premium and/or frequent customers.

### Stimulation of tourism

146. The Applicants claim that the Alliance has helped stimulate tourism to New Zealand.
147. Upon implementation of the Alliance, Air New Zealand opened a new sales office in Singapore. The office employs six general sales agents (GSAs) who are tasked with selling New Zealand as a destination to South and Southeast Asian travellers. It has also appointed a new GSA agent in Mumbai, [REDACTED] marketing Air New Zealand services in India.
148. The Applicants note they have entered into a number of marketing arrangements with Tourism New Zealand and other trade partners in Singapore and India. The focus of these arrangements is to promote leisure travel and holiday arrivals to New Zealand, through marketing campaigns.
149. Finally, the Applicants assert that the Alliance has benefited tourism to regional New Zealand, by opening up Air New Zealand's domestic network to Singapore Airline's customers. Under the Alliance, the Applicants agreed reduced rates for these domestic services, which the Applicants believe has led to a higher proportion of passengers travelling beyond Auckland, Christchurch and Wellington, to other destinations in New Zealand. The Applicants note this is a direct benefit to regional New Zealand.
150. It is difficult to quantify the effect the Alliance has had on tourism, as there are many factors which affect why tourists choose to travel to New Zealand. However, we agree that the Alliance has likely resulted in increased tourism to New Zealand. In addition to the marketing activity described above, the increased international capacity and connectivity that the Alliance provides makes New Zealand a more attractive place for tourists to visit.

### Public detriments

#### Reduced competition

151. As with any alliance, public detriment can occur where the alliance results in a reduction of competition on a specified route or market. As detailed in the impact on markets section of this report, we do not have any specific concerns regarding this. In most cases, we believe it is unlikely that the Alliance has a material detrimental effect on consumer welfare, as sufficient competition remains from other airlines.

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152. The only route where the Applicants have a clear opportunity to exercise market power is the Singapore – Auckland route. In this case, the Applicants are the only airlines offering direct services and there is little competition from other airlines. However, we note that Air New Zealand only resumed operating this service as a by-product of the Alliance, having previously exited the route in 2006 due to sustained losses. Without the Alliance, we consider it likely that Air New Zealand would exit the route, and Singapore Airlines would continue to be the only airline offering direct services.

### Exclusivity provisions

153. Typically, alliance agreements include exclusivity provisions which prevent the airlines from entering into similar arrangements with other airlines on the same routes. These provisions are designed to protect the integrity of the alliance, and provide assurances that both airlines are committed to the alliance.

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

157. Our concerns regarding the exclusivity provisions remain. [REDACTED]  
[REDACTED]  
[REDACTED] For example, Air New Zealand began offering seasonal services to Ho Chi Minh City in 2016. It also announced services to Manila in November 2015 (however these plans were cancelled after it could not receive the necessary regulatory approvals from the Philippines Government). These examples seem to indicate that the provisions have not prevented Air New Zealand from initiating services outside the Alliance, where sufficient demand exists.

### Counterfactual

158. As part of their application, each of the Applicants provided their own analysis on the likely scenario, should the Alliance not be reauthorised.

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### Air New Zealand

159. As mentioned previously in this report, Air New Zealand has stated that absent the Alliance, it would cease operating all services to Singapore. The airline notes a number of factors which would make the route financially or operationally impossible to operate, absent the alliance.

[Redacted]

[Redacted]

[Redacted]

### Singapore Airlines

163. Singapore Airlines notes that without the sales and marketing support from the Alliance, it would not be able to maintain the same level of operations between Singapore and New Zealand.

[Redacted]

[Redacted]

### Ministry of Transport assessment

*International capacity provided by the Applicants may fall*

166. As noted previously in this report, we accept Air New Zealand's claim that absent the Alliance it would not operate services to Singapore. We suggest that there would be little incentive for Air New Zealand to operate this route, without the connectivity benefits offered by the Alliance. Air New Zealand would also find it hard to compete on the route, given Singapore Airlines is likely to have more attractive take-off and landing slots, and is likely to offer more attractive onwards connections than what Air New Zealand could offer under a traditional code-share agreement either with Singapore Airlines, or another competing airline which operates to Singapore.

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167. Absent the Alliance, we consider it likely that Singapore Airlines would maintain at least the pre-Alliance capacity it was operating into New Zealand. [REDACTED]

168. We consider it likely that none of the additional Singapore capacity planned by the Applicants will eventuate absent the Alliance. Without the benefits provided to it under the Alliance, Singapore Airlines is likely to be in a weaker position in the New Zealand market, making additional capacity growth difficult to achieve on its own.

[REDACTED] the Wellington – Singapore services operated by Singapore Airlines [REDACTED] This is a marginal route, which local government has subsidised in order to secure flights. [REDACTED]

*Air New Zealand may have options to enter into arrangements with other airlines*

170. Without the Alliance, Air New Zealand may choose to negotiate code-share agreements or revenue sharing alliances with other airlines in the region, in order to regain this market presence in Southeast Asia and India. Possible candidates are Thai Airways, Malaysia Airlines and Indonesian carrier Garuda. Commercial arrangements with these airlines may provide benefits, as they could support expanded or new direct services to Thailand, Malaysia and Indonesia.
171. However, we can not take for granted that Air New Zealand would be able to secure partnerships with these airlines, and if it did, whether the agreement would provide the same connectivity and capacity benefits provided by the Alliance. Any form of agreement with another airline would be subject to Air New Zealand securing a favourable commercial arrangement with the other airline, and depending on the nature of cooperation, would require regulatory approval in the home jurisdiction of the partner airline. In the case of non-Star Alliance members (such as Garuda and Malaysia Airlines) any alliance would also be subject to Star Alliance approval.
172. We cannot say with any certainty that arrangements with alternative airlines will not provide benefits greater than what is provided under the Alliance. However, we note Singapore Airlines has advantages in that it has a large international network, is a Star Alliance member, and has similar quality in terms of product offering to Air New Zealand.

### Term of authorisation

173. In their Application, the Applicants requested reauthorisation of the Alliance for a further term of seven years. We had concerns about reauthorising the Alliance for seven years, noting that it is longer than what is usually provided under similar reauthorisations in New Zealand and overseas.
174. After we expressed these concerns, the Applicants agreed that they would amend the Alliance to require reauthorisation by 28 March 2024. This provides for a term of just over five years, and aligns with the end of the International Air Transport Association's Northern Winter Scheduling season.

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175. We believe this term strikes a good balance which allows for the reassessment of the Alliance at an appropriate interval, while also providing the parties with sufficient certainty to make long-term investment decisions.

### Conclusion

176. 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.

177. We also note that the Alliance meets the statutory conditions allowing it to be authorised under section 88 of the Civil Aviation Act.

178. In light of this, we recommend that the Alliance be authorised, for a period ending 28 March 2024.

# Commercial: In Confidence

## Annex 1: Statutory analysis

### Statutory Criteria in section 88 of the Civil Aviation Act

1. This section of the report examines the matters that, under Part 9 of the Civil Aviation Act 1990 (the Act), the Minister of Transport is required to take into account in making a decision as to whether to grant, or to decline to grant, authorisation of provisions in contracts, arrangements, and understandings relating to international carriage by air.

### 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 Alliance Agreement, and supporting Code-Share Agreement (together, the Agreements) cover services under a large number of current and potential future bilateral and multilateral air services agreements.
3. New Zealand and Singapore are both parties to the Multilateral Agreement for the Liberalisation of International Air Transportation (the MALIAT). The MALIAT provides for an open route schedule, open capacity and for third country code-sharing.
4. The Agreements also envisage code-sharing to a number of other countries. The requirement under the Act for Air New Zealand to be licensed to offer code-share services, and the associated provision precluding licences from being granted where this would be contrary to an agreement, will ensure that the granting of authorisation will not prejudice compliance with the relevant international agreements and arrangements.

### 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**
5. The Agreements do not include any provisions that provide for their enforcement through fines. There are provisions that could act as a disincentive for Air New Zealand to pursue opportunities with other carriers, but Air New Zealand is free to pursue other commercial objectives with clarity around the potential consequences of doing so.
- (b) **Has the purpose or effect of breaching the terms of a commission regime issued under section 89 of this Act**
6. Section 89 allows the Minister of Transport to issue, amend or revoke agent commission regimes. There are two commission regimes which remain in place (the Civil Aviation (Passenger Agents' Commission Regime) Notice 1983 and the Civil Aviation (Cargo Agents' Commission Regime) Notice 1983).

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7. The Agreements do not have any reference to any commission regime issued under section 90 and do not contain any provisions that have the purpose or effect of breaching the terms of the commission regimes issued under the Act.

8. Clause 4.5(c) of the Alliance Agreement does provide that the parties' cooperation:

[REDACTED]

9. As commissions are payable outside of the provisions of the commission regime, this provision does not have the purpose or effect of breaching any commission regime.

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

10. The Agreements do not set tariffs themselves, but put in place a process for setting tariffs. The processes set out in the Agreements do not contain any provisions that unjustifiably discriminate between consumers in terms of this subsection.

11. The broader issue of the impact of the Agreements in different markets, 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**

12. The Agreements include a number of provisions that restrict the types of code-share or alliance agreements that the parties can enter into, outside of the Alliance:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13. However these provisions relate primarily to the setting of capacity, not to tariffs, and do not prevent any other carrier from entering a market in their own right.

14. Under the Agreements, Air New Zealand could be prevented from entering into code-share agreements with third country airlines on, for example, the Singapore-Indonesia route. However, the fact it is code-sharing with Singapore Airlines on the route does not mean it is excluded from participating in the market.

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15. Furthermore the Code-Share Agreement notes that “subject to 7.2 and 7.3 of the Alliance, this is a non-exclusive Agreement and does not prevent either Party from entering into or maintaining existing marketing arrangements or code-share arrangements with any other airline”.
16. Discussions between Air New Zealand and Singapore Airlines on tariffs do not have the effect of excluding any other carrier from participating in the market. Indeed if there was a situation where such discussions resulted in higher fares, this could have the effect of making it easier for other carriers to compete.
17. So far as tariffs are concerned the Agreements do not have the effect of excluding a carrier. Interline fares are still available and special prorate agreements are not prohibited.

**(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**

18. Section 90 of the Act provides for authorisation of single airline tariffs (as opposed to joint airline tariffs). We have not required authorisation of such tariffs since 1994 and so section 90 is very rarely used.
19. Furthermore the Multilateral Agreement which governs air services between New Zealand and Singapore states that:

*Prices for international air transportation operated pursuant to this Agreement shall not be subject to the approval of any Party, nor may they be required to be filed with any party, provided that a Party may require that they be filed for informational purposes for so long as the laws of that Party continue to so require.*

20. The Alliance Agreement also explicitly provides (clause 12.2) that:

[REDACTED]

21. Therefore, although the Alliance Agreement contains a number of provisions setting out the airlines’ intention to price jointly and the way they will go about it (Recital C, clause 4.1(a)(i), 4.5, schedule 4), the Alliance Agreements do not have the purpose or effect of preventing any party from seeking approval in terms of section 90 of the Act, for the purpose of selling international carriage by air at any other tariff so approved.

**(f) Prevents any party from withdrawing without penalty on reasonable notice from the contract, arrangement, or understanding**

22. No penalty is payable when a party withdraws from the Alliance. Further, section 9.4(d) of the Alliance Agreement states that:

[REDACTED]

23. The Alliance Agreement provides for an initial 5-year term (Clause 9.1).

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24. Following the initial period (i.e. from January 2020) either party may terminate the agreement by giving twelve months notice in writing (termination to have effect on the last day of the next IATA season following 12 months notice). The Code Share Agreement also provides for termination with 12 months notice (clause 24.1).
25. All implementing agreements will cease upon the termination of the Agreement.
26. While simple code-share arrangements often provide for relatively short notice periods (sometimes as short as a schedule period), alliance arrangements often envisage and require a greater degree of commitment by the parties. Where the parties rearrange schedules and give up slots and other facilities at airports (as is the case here), withdrawal by one party could cause considerable disruption to the other party. Therefore, longer notice periods may be appropriate.
27. [REDACTED]  
[REDACTED] The Ministry has previously concluded that in some circumstances a period of 5 years is acceptable for more significant alliance or code-share agreements, notably the Air New Zealand/Virgin Australia Australasian Airline Alliance and the Qantas/Emirates Master Coordination Agreement.
28. The Alliance Agreement (section 9.2(c)) and the Code Share Agreement (section 24.2) also provide that the parties can terminate early in certain circumstances including insolvency of one of the parties, change of control of one of the parties, or breach of safety obligations.
29. The Agreements do 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)*

30. There are no provisions in the Alliance Agreement or the Code Share 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.**

31. This provision only becomes relevant if, contrary to the advice set out above, you determine that provisions in the Agreements fall foul of one of the criteria in section 88(4) of the Act.
32. Comity is not defined in the Act and the Act is the only instance of the use of the term in New Zealand legislation.
33. "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 very similar vein is Chambers: "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.

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34. Most international code-share arrangements will require approval in at least two jurisdictions, each with their own legislation or processes. Therefore we consider that this provision should not be interpreted to mean that New Zealand must always accept and adopt the findings of the other regulator.
35. The two regulators will be applying different legislation. The impacts of a proposed alliance may also be different in the two countries. The Competition Commission of Singapore looked at the arrangements from the point of view of the Singapore economy. One of its considerations was enhancing the role of Singapore as a hub. On the other hand, we have looked at whether the arrangements are in the New Zealand public interest. We do not consider that reaching a decision that differs from that of the Competition Commission of Singapore made four years ago would have an undesirable effect on international comity between New Zealand and Singapore.

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

1. The Civil Aviation Act does not provide that any or all agreements may be authorised but only that provisions of agreements may be authorised so far as they relate “whether directly or indirectly, to the fixing of tariffs, the application of tariffs, or the fixing of capacity, or any combination thereof”. The below table describes how each of the provisions of the Alliance Agreement and the Code-Share Agreement relate to the fixing or application of tariffs and fixing of capacity.

<b>Strategic Alliance Agreement (as amended in 2014 (First Restated Agreement) and 2018 (Second Restatement)</b>	
	Structural
	Machinery
	Machinery
	Machinery. Sets out at a high level how the parties will work inter alia in fixing tariffs and capacity; therefore relates indirectly to tariffs and capacity
	Machinery. Sets out at a high level the parties expectations in working inter alia in fixing tariffs and capacity; therefore relates indirectly to tariffs and capacity
	Machinery. Some clauses set out what the parties hope to achieve by, inter alia, fixing tariffs and capacity; therefore indirectly relates to the fixing of tariffs and capacity
	Machinery. Sets out how the parties will work inter alia in fixing tariffs and capacity; therefore relates indirectly to tariffs and capacity (except (b)(iii)-(vi): machinery only)
	Machinery. Necessary for the implementation of arrangements relating to tariffs and capacity; therefore relates indirectly to tariffs and capacity
	Machinery. Relates directly or indirectly to the fixing or application of tariffs
	Relates directly to the fixing of capacity
	Relates directly and indirectly to the fixing of tariffs
	Machinery. Alignment of product is necessary to achieve metal neutrality – relates indirectly to the fixing of capacity
	Machinery. Relates directly to the fixing of tariffs

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	Machinery – assists in the smooth operation of the arrangements relating to capacity; therefore indirectly related to capacity
	Cost savings relates directly or indirectly to the fixing or application of tariffs The parties are not seeking authorisation of the provisions relating to joint purchasing
	Machinery – relates indirectly to the fixing of tariffs and capacity
	Machinery. Relates to fixing of tariffs (paid by staff)
	Machinery
	Partly machinery – sets out mechanisms necessary for the operation of provisions relating to tariffs and capacity
	Partly machinery – sets out mechanisms necessary for the operation of provisions relating to tariffs and capacity
	Machinery – necessary for the implementation of the arrangement
	Machinery (not related to tariffs or capacity)
	Boilerplate
	Machinery (not related to tariffs or capacity)
	Machinery (not related to tariffs and capacity)
	Machinery
	Machinery
	Machinery. Sets out when the parties can, and when the parties can't enter into agreements relating to the fixing of tariffs or capacity with third parties; therefore indirectly relates to the fixing of tariffs and capacity
	Machinery – necessary for the implementation of the revenue allocation process; indirectly relates to the fixing of tariffs and capacity
	Machinery – necessary for the implementation of the revenue allocation process; indirectly relates to the fixing of tariffs and capacity
	Machinery
	Machinery
	Machinery
	Machinery – in entering into agreements and 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

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Machinery – in entering into agreements and 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
Machinery – in entering into agreements and 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
Machinery – in entering into agreements and 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
Boilerplate
Part machinery, part boilerplate
Machinery – helps define scope of Agreement. 12.2 relates directly to tariffs.
Machinery helps define scope of Agreement (not related to tariffs and capacity)
Machinery – necessary for the operation of other provisions relating to tariffs and capacity
Boilerplate
Machinery
Machinery

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	Machinery. Relates to the fixing and application of tariffs
	Machinery. Sets out the provisions necessary for the operation of provisions relating to tariffs and capacity
	Machinery.

**Addendum to the Strategic Alliance Agreement - 2016**

	Structural
	Machinery
	Provisions either relate directly or indirectly to the fixing of tariffs or capacity, or are machinery provisions necessary for the operation of other provisions relating to tariffs and capacity
	Machinery. Relates indirectly to the fixing of tariffs and capacity

**Code Share Agreement**

	Structural
	Machinery
	All provisions either relate directly or indirectly to the fixing of tariffs or capacity, or are machinery provisions necessary for the operation of other provisions relating to tariffs and capacity
	Machinery. Relates indirectly to the fixing of tariffs and capacity
	Machinery. Making clear allocation of costs within each airlines' capacity; indirectly relates to the fixing of capacity
	Relates indirectly to the fixing of capacity
	Relates indirectly to the fixing of capacity
	Relates indirectly to the fixing and application of tariffs
	Machinery. Relates to the fixing of tariffs and capacity

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Machinery
Machinery – assists in the smooth operation of arrangements relating to tariffs or capacity
Relates indirectly to the fixing of capacity
Relates indirectly to the fixing of capacity
Machinery – assists in the smooth operation of arrangements relating to tariffs or capacity
Relates indirectly to the fixing of capacity
Machinery – assists in the smooth operation of arrangements relating to tariffs or capacity
Machinery – assists in the smooth operation of arrangements relating to tariffs or capacity
Machinery – assists in the smooth operation of arrangements relating to tariffs or capacity
Machinery – assists in the smooth operation of arrangements relating to tariffs or capacity
Boilerplate
Machinery – in entering into agreements and 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
Boilerplate
Machinery. Sets out when the parties can, and when the parties can't enter into agreements relating to the fixing of tariffs or capacity with third parties; therefore indirectly relates to the fixing of tariffs and capacity
Boilerplate
Boilerplate
Boilerplate

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	Boilerplate
	Boilerplate
	Machinery – necessary for the operation of other provisions relating to tariffs and capacity
	Structural/boilerplate.
	Relates directly to the fixing of capacity
	Machinery – assists in the smooth operation of arrangements relating to tariffs or capacity
	Relates indirectly to the fixing of capacity
	Machinery – necessary for the implementation of arrangements relating to tariffs and capacity
	Relates indirectly to the fixing of tariffs and capacity
	Machinery – assists in the smooth operation of arrangements relating to tariffs or capacity
	Machinery – assists in the smooth operation of arrangements relating to tariffs or 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.