TE MANATŪ WAKA
MINISTRY OF TRANSPORT

Air New Zealand and Virgin Australia Codeshare Agreement Authorisation 2024

Ministry of Transport Analysis

July 2024

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Executive Summary

1 On 17 November 2023, the Applicants applied for authorisation of an arrangement consisting of a Commercial Framework Agreement, codeshare arrangement, and related agreements pursuant to section 88 of the Civil Aviation Act 1990.

2 The Ministry of Transport recommends that the Minister of Transport authorise the arrangement for a period of five years.

3 Airline cooperation agreements are a common feature of international aviation. While cooperation agreements, such as codeshares, can result in benefits to consumers, they may also result in a reduction in competition, which can lead to higher fares or reduced services.

4 The applicants aim to establish a unilateral codeshare arrangement under which Virgin Australia would market within Australia under its own brand services on routes from Australia to New Zealand destinations operated by Air New Zealand. The arrangement would exclude routes (presently only to and from Queenstown) operated by Virgin Australia using its own aircraft. This agreement entails Virgin Australia marketing and selling trans-Tasman flights operated by Air New Zealand under its VA code.

5 Under the arrangement, Air New Zealand would have exclusive authority to set the public fares for these itineraries sold in Australia.

6 The arrangement would enable Virgin Australia to expand its access to additional destinations within New Zealand, including Auckland, Christchurch, and Wellington without committing its own aircraft.

7 A key consideration is that the arrangement's distinctive feature of applying to sales solely in Australia may raise concerns regarding its benefits for New Zealand travellers, who may not reap advantages from these flights.

Introduction

8 This report provides a detailed analysis of the Ministry of Transport's analysis of the application from Air New Zealand and Virgin Australia (the Applicants) for authorisation of a Commercial Framework Agreement, a Codeshare Agreement, and related implementation agreements.

9 The effect of authorisation would be that the arrangements would be exempt from certain provisions of the Commerce Act 1986 prohibiting cartel arrangements or arrangements which substantially lessen competition.

10 The arrangement is unilateral and only applies to tickets sold in Australia by Virgin Australia for travel to New Zealand. Air New Zealand will not be putting its code on Virgin Australia services.

11 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 codeshare agreements

12 Codesharing is a commercial arrangement through which an airline is given the ability to sell seats on flights operated by another airline as if it were operating that flight with its own aircraft. Codeshare agreements are relatively common and, without additional cooperation, rarely raise competition issues.

13 Codeshare arrangements can result in benefits to consumers through, for example, better access to connecting flights, more choice of routes and the ability to earn and redeem frequent flyer points.

14 However, codesharing can reduce incentives for airlines to operate with their own aircraft.

The New Zealand context

15 In principle, we have taken the view that codesharing arrangements are a necessary tool for airlines to overcome restrictions imposed on them by bilateral air services agreements and to compete on a global scale. However, each codeshare arrangement must be carefully examined to ensure it delivers benefits that counteract any negative impact.

16 Several codeshare arrangements have been authorised in New Zealand under the Act.

The Applicants

Air New Zealand

17 Air New Zealand operates a fleet of approximately 105 aircraft, with 13 on order, flying to 20 airports in New Zealand and 30 destinations internationally.

Virgin Australia

18 Virgin Australia is an Australian budget airline carrier with approximately 88 aircraft flying, with [redacted] on order, and with a passenger network covering 39 domestic and international destinations. 9(2)(b)(ii)

19 Due to the impact of COVID 19, the airline went into administration in April 2020 and was purchased and delisted on 17 November 2020 by Bain Capital.

20 During the administration process, Virgin Australia sold off its widebody aircraft, including Boeing 777s and Airbus A330s.

21 Travel between Australia and New Zealand resumed without quarantine restrictions on 13 April 2022.

22 Virgin Australia resumed operating services to Queenstown only on 2 November 2022.

Outline of the proposal

23 The proposal is for a unilateral codeshare arrangement. Under this codeshare arrangement the Applicants coordinate their operations on the Tasman.

Key features of the codeshare arrangement with Virgin Australia

24 Under the proposed arrangements, Virgin Australia would promote and sell trans-Tasman flights operated by Air New Zealand under its VA code. Key features include:

- a The fares for the services, including discounts, will be set by Air New Zealand.
- b Virgin Australia's Frequent Flyer members will gain access to Air New Zealand's lounges and can earn and redeem points on Air New Zealand trans-Tasman services.

25 The codeshare will not apply on routes where Virgin Australia operates its own trans-Tasman services (currently only routes to Queenstown) or any future points it serves in New Zealand.

26 It is a unilateral codeshare (Air New Zealand will not be putting its code on Virgin Australia services) and only applies to tickets sold in Australia for travel from Australia.

Scope of authorisation

27 Air New Zealand and Virgin Australia seek authorisation for five years to make and give effect to a Commercial Framework Agreement, Codeshare Agreement, and various related agreements.

28 Provisions of the Commercial Framework Agreement, the Codeshare Agreement, the Corporate / SME Dealing Agreement and the Special Prorate Agreement relate to the fixing or application of tariffs and the fixing of capacity, and require authorisation.

Consideration in other jurisdictions

29 In Australia, collaborative arrangements in international air services are considered by the Australian Competition and Consumer Commission (the ACCC). Given the codeshare arrangement involves trans-Tasman routes, decisions made by the ACCC are relevant to our assessment of the Application.

30 On 1 May 2024, the ACCC issued a draft determination and interim authorisation recommending authorising the proposed conduct for a period of five years.

31 On 6 June 2024, the ACCC issued a final determination granting authorisation for a period of 5 years, until 30 June 2029.

32 Commissioners have taken the view that while the proposed conduct would result in minimal benefits to Australia, the potential detriments are smaller, and there is no reason to decline the application.

33 The benefits identified by the ACCC are:

- Increased choice and convenience for Australian point of sale trans-Tasman travellers, including corporate and SME customers

- Better loyalty programme benefits for Virgin Australia customers
- International lounge access for eligible Virgin Australia customers

34 These are all benefits that accrue to Australian based travellers. Given the nature of the codeshare these benefits are not available to New Zealand customers. Therefore, we have not given weight to them, nor are required to under the Act, in reaching our conclusions.

Commercial rationale for the codeshare agreement

35 The Applicants state that the commercial rationale for the codeshare arrangement is to allow Australians to travel to New Zealand, and to earn and redeem loyalty points on that travel. This is because New Zealand is one of Australia's largest international travel destinations for leisure and business purposes.

Air New Zealand's view

36 The airline claims that:

- This codeshare arrangement will increase passenger numbers flying on the code shared flights via Air New Zealand. These passengers include Australian Small and Medium size Enterprise (SME) and corporate customers who will likely pay higher fares on trans-Tasman and domestic services.
- It is a potential opportunity to provide additional trans-Tasman services to Australian customers where Air New Zealand does not have a sale presence.
- The increased utilisation of its trans-Tasman capacity will improve the sustainability of its flight operations.

Virgin Australia's view

37 The airline claims that operating only to Queenstown leaves a gap in its network not only for the sales of trans-Tasman services but also for the Velocity Frequent Flyer programme members. Not having this arrangement impacts negatively on the airline's ability to compete with other Australian carriers (such as Qantas).

Consultation

38 The Ministry invited submissions from interested parties on the application. Submissions were received from Auckland, Christchurch, and Queenstown Airports, NZ Airports Association and customers and former employees of Virgin Australia.

Auckland Airport

39 Auckland Airport stated that the arrangement would only benefit a small group of Australia-based Virgin customers.

40 It would entrench the current position where Virgin (which the airport considers to be the most likely entrant) would have little incentive to resume services on the Tasman. Currently there is less competition, lower capacity and higher fares than pre-COVID.

41 It would also displace existing Air New Zealand passengers with higher-yielding VA passengers.

Christchurch Airport

42 Christchurch Airport emphasised the importance of a competitive trans-Tasman market to New Zealand's economy and tourism industry.

43 Christchurch Airport considers that the effect of the proposed codeshare will be to reduce the commercial motivation for Virgin Australia to fly its own services on trans-Tasman routes, protecting existing market dynamics. In Christchurch Airport's view this would allow the incumbents to maintain high airfares and offer less capacity and choice.

44 On the other hand, the benefits are minor and accrue predominantly to Virgin Australia frequent-flyer customers.

Queenstown Airport

45 Queenstown Airport noted the exclusion of Queenstown from the proposed codeshare arrangement and supported its authorisation on that basis.

New Zealand Airport Association

46 NZ Airports considers that the benefits of the codeshare to a small number of Australian travellers are outweighed by the reduction of competition in the now duopoly trans-Tasman market. NZ Airports outlines the negative impact it considers the previous alliance between Air New Zealand and Virgin had on capacity. NZ Airports consider that this arrangement creates a strong disincentive for Virgin to resume trans-Tasman services.

47 The submission cites recent Australian research showing the benefits to consumers where there are two rather than one, or three rather than two airlines in a market.

Customers and former employees of Virgin Australia

48 A Virgin Australia customer opposed the arrangement, arguing that Virgin should not be allowed to profit from a codeshare with Air New Zealand, in light of how difficult Virgin Australia had made it for passengers to use flight credits for bookings they had made prior to the airline being placed in administration.

49 Former employees of Virgin Australia opposed the codeshare, expressing resentment with Virgin Australia for its handling of job losses during COVID-19 and following administration.

50 A former Virgin Australia pilot argued that while the arrangement presented certain benefits, it posed a risk to the competitive landscape of the trans-Tasman aviation market. Benefits for competition, employment and the regions would come from Virgin Australia serving more trans-Tasman routes in its own right.

Framework for our analysis

51 Our analysis relating to the authorisation of the proposed codeshare agreement includes both an analysis of whether it meets the strict statutory criteria in the Civil Aviation Act, and a public interest assessment.

Statutory analysis

52 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.

53 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.

54 We have analysed the provisions of the Commercial Framework Agreement (CFA) and related Implementation Agreements against the statutory criteria set out in the Act. We have reviewed and find that they do not breach any of the Act's criteria. Our detailed analysis against the Act's criteria is set out below and is legally privileged.

55 Annex 1 of this report contains analysis of how arrangements relate to tariffs and capacity.

Compliance with any relevant international convention, agreement, or arrangement (section 88(3))

56 s 9(2)(h) [redacted]

Provides for direct or indirect enforcement through fines or market pressures against any person (section 88(4)(a))

57 s 9(2)(h) [redacted]

58 s 9(2)(h) [redacted]

59 s 9(2)(h) [redacted]

60 s 9(2)(h) [redacted]

61 s 9(2)(h) [redacted]

Has the purpose or effect of breaching the terms of a commission regime under section 89 (section 88(4)(b))

62 s 9(2)(h) [redacted]

63 s 9(2)(h) [redacted]

Unjustifiably discriminates between consumers of international air services in the access they have to competitive tariffs (section 88(4)(c))

64 s 9(2)(h) [redacted]

65 s 9(2)(h) [redacted]

Regarding tariffs, has the effect of excluding any supplier of international carriage by air from participating in the related market (section 88(4)(d))

66 s 9(2)(h) [redacted]

67 s 9(2)(h) [redacted]

Has the purpose or effect of preventing any party from seeking approval of a tariff under section 90 (section 88(4)(e))

68 s 9(2)(h) [redacted]

69 s 9(2)(h) [redacted]

70 s 9(2)(h) [redacted]

Prevents any party from withdrawing without penalty on reasonable notice from the contract, arrangement or understanding (section 88(4)(f))

71 s 9(2)(h) [redacted]

72 s 9(2)(h) [redacted].

Effect of declining authorisation on international comity (section 88(5))

73 s 9(2)(h) [redacted]

74 s 9(2)(h) [redacted]

75 s 9(2)(h) [redacted]

76 s 9(2)(h) [redacted]

77 s 9(2)(h) [redacted]

78 s 9(2)(h) [redacted]

s 9(2)(h) [redacted]

79 s 9(2)(h) [redacted]

Public interest analysis

80 s 9(2)(h) [redacted]

81 Therefore, we have undertaken a comprehensive analysis of the proposed codeshare to determine whether, on balance, authorisation is in the public interest in New Zealand. This consists of:

- an analysis of how the codeshare agreement 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.

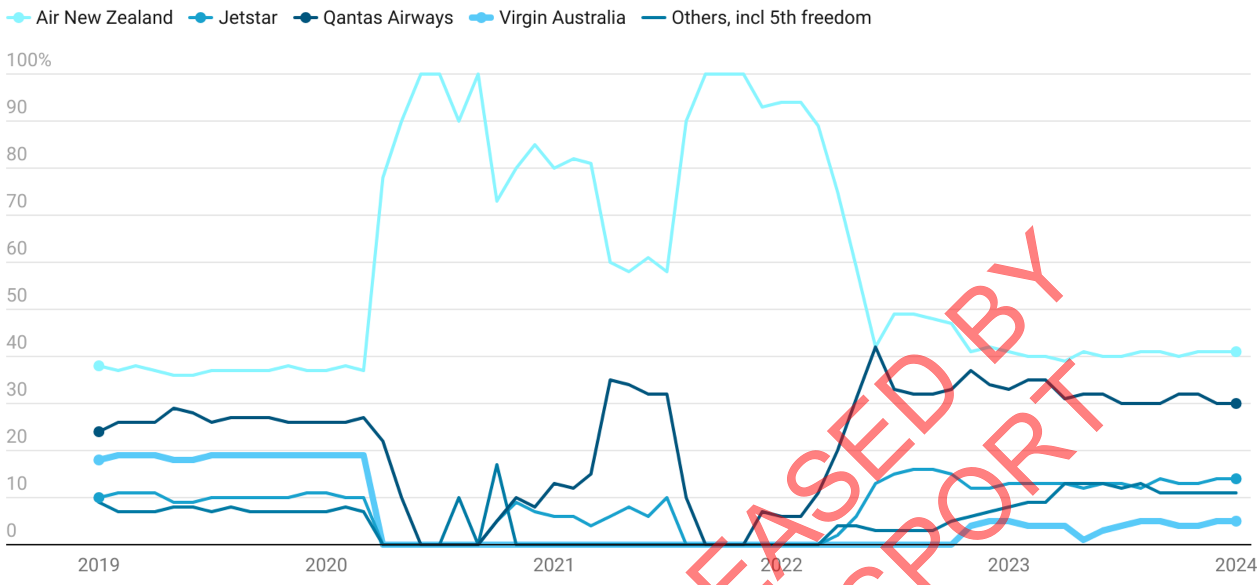
Impact on markets

82 As part of our analysis, the Ministry has reviewed the competitive landscape of the trans-Tasman market. This review involved examining the market share and the capacity provided by other international carriers and assessing how this landscape has evolved in the aftermath of the COVID-19 pandemic.

Market share analysis

83 Historically, we have not had concerns about competition in the trans-Tasman market due to the number of airlines operating to New Zealand. However, post-COVID, there have been some airlines that have not returned to the New Zealand market, reducing the number of competitors operating on trans-Tasman routes. This has resulted in the post-COVID trans-Tasman market showing duopolistic characteristics.

IMPACT ON MARKETS



Source: BITRE • Created with Datawrapper

Figure 1 Trans-Tasman airline capacity market share by percentage

Source: BITRE, international airline activity, maximum seats by airline, Jan 2014–Jan 2024

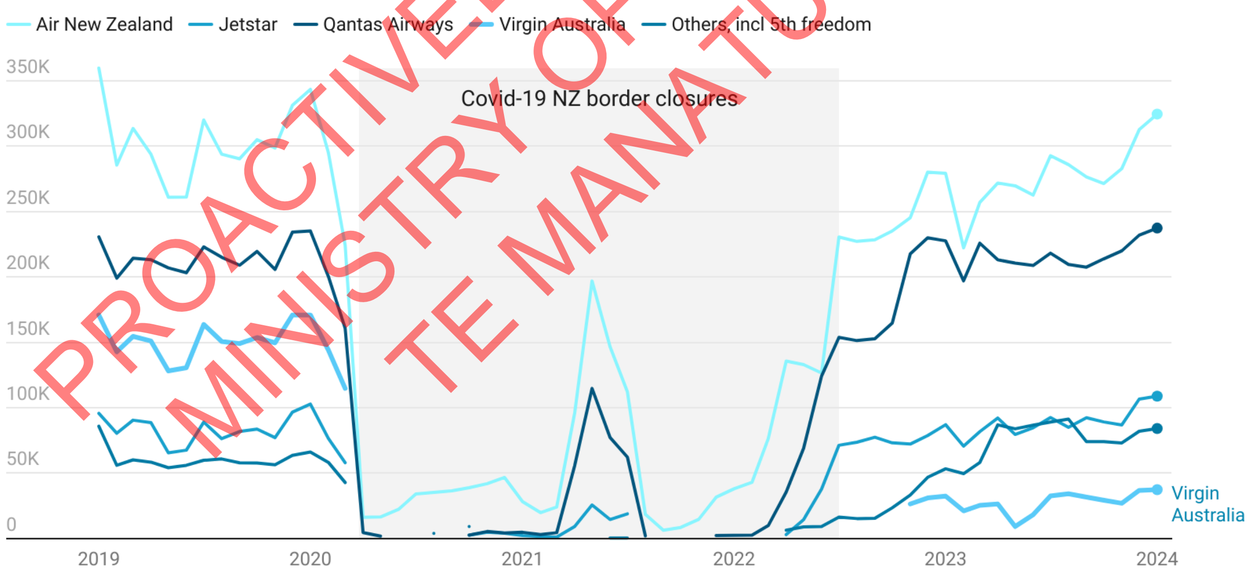


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Figure 2 Trans-Tasman market share by maximum seats

Source: BITRE, international airline activity, maximum seats by airline, Jan 2014–Jan 2024

Table 1 Trans-Tasman average market share

Period[1]		Air New Zealand	Emirates	Jetstar	Qantas	Virgin Australia	Other Airlines
Pre-COVID	2019Q1 – 2020Q1	37%	4%	10%	26%	19%	4%
COVID	2020Q2 – 2022Q2	82%	4%	3%	13%	0%	1%
Post-COVID	2022Q3 – 2023Q4	41%	3%	13%	32%	3%	7%

Source: BITRE, international airline activity, maximum seats by airline, Jan 2014–Jan 2024

84 Pre-COVID, Air New Zealand had 37% of the trans-Tasman market (see Table 1), Qantas and Jetstar combined 36%, Virgin Australia 19% and other operating airlines 4 percent.

85 During COVID, Australia and New Zealand established a travel bubble between them, which was operational throughout the second and third quarters of 2021. Emirates, Virgin Australia and other airlines suspended their trans-Tasman operations during this period, only recently resuming services. New Zealand borders were opened and full travel restrictions were lifted on 31 July 2022. Throughout this period, Air New Zealand held a dominant market share of 82% followed by Qantas at 13% and Jetstar at 3%. It is not practicable to draw any meaningful conclusions about market share during the pandemic given the various border closures and health restrictions.

86 During the post-COVID period, Air New Zealand's market share fell back to 41% as other carriers returned to the market, with Qantas and Jetstar at 45% and Virgin Australia at 3% in the last quarter of 2023.

87 While several fifth freedom carriers operate on trans-Tasman routes, they make up approximately 5-10 percent of the market and mainly connect long-haul passengers rather than direct point-to-point passengers.

Trends and overall market share

88 Trans-Tasman capacity is increasing but it remains well below pre-COVID levels. Statistics from the Bureau of Infrastructure and Transport Research Economics (BITRE) (see Figure 2) show capacity for January 2024 being over 112,000 fewer seats compared to January 2020. Total capacity for 2023 was approximately 1.5 million fewer seats than for 2019.

89 Airlines are increasing capacity, including:

- In March 2024, Qantas announced that from October 2024, it will add up to 260,000 additional seats across three of its trans-Tasman routes over 12 months, compared to its current schedule.
- ~~[COMMERCIAL IN-CONFIDENCE]~~ From April 2025, Jetstar plans to introduce daily services to Hamilton from the Gold Coast and Sydney. This could be a sign that low-cost carriers are seeing an opportunity to focus on regional airports.

[1] New Zealand's borders closed from 19 March 2020 until all travel restrictions were lifted from 31 July 2022. For simplicity of calculating averages, we have defined the pre-COVID period as 2019Q1 to 2020Q1 (1 January 2019 to 31 March 2020); COVID as 2020Q2 to 2022Q2 (1 Apil 2020 to 30 June 2022); and post-COVID as 2022Q3 to 2023Q4 (1 July 2022 to 31 December 2023)

90 We consider that Qantas and Jetstar will continue to add capacity where they see a commercial case for doing so. While airlines are moving to fill the gap in capacity, it is primarily shared between Air New Zealand and the Qantas Group.

91 We see some general trends in the market:

- Air New Zealand's proportion of the market capacity has remained almost the same as it was before the pandemic. Air New Zealand continues to maintain a dominant market position across the three periods of pre-COVID, during COVID, and post-COVID.
- Qantas and Jetstar have recovered post-COVID making a slight increase in market share compared to their pre-COVID levels.
- Virgin Australia has not recovered post- pandemic due to its restricted operation to Queenstown only.
- If Qantas does add the extra seats as announced in March, it is probable that Qanta's market share will increase to 34% leaving Air New Zealand with slightly less dominance in the market with 39%.

Fifth freedom carriers

92 'Fifth freedom' rights are the rights for an airline to carry passengers between two other countries as part of a service starting in its home country. Several carriers[2] are currently operating trans-Tasman fifth freedom services.

93 Fifth freedom carriers generally operate on one route only (and other than Emirates they only serve Auckland) and with a frequency of once a day or less. Fifth freedom carriers will enter and exit the market based on a range of commercial considerations. Overall, we conclude that these carriers are unlikely to provide significant capacity or competitive pressure.

Airfare analysis

94 We have not completed detailed airfare analysis due to the application being for a new codeshare arrangement absent of historical data.

95 Data from Stats NZ shows international airfares are coming down overall, but they remain volatile and higher than pre-COVID. The selected price index for international air transport for April 2024 is 20 percent lower than April 2023 but 55 percent higher compared to April 2020 (see Figure 3).

96 Among various factors that affect pricing, airfares are generally falling. We do not expect the codeshare would significantly impact on airfares given Air New Zealand will be setting prices based on demand. Furthermore, the main reason the codeshare would unlikely affect airfares generally, is due to the small impact from overall passenger movements.

2 Air Asia X, Emirates, LATAM, Chine Airlines, China Eastern Airlines, and Batik Air Malaysia

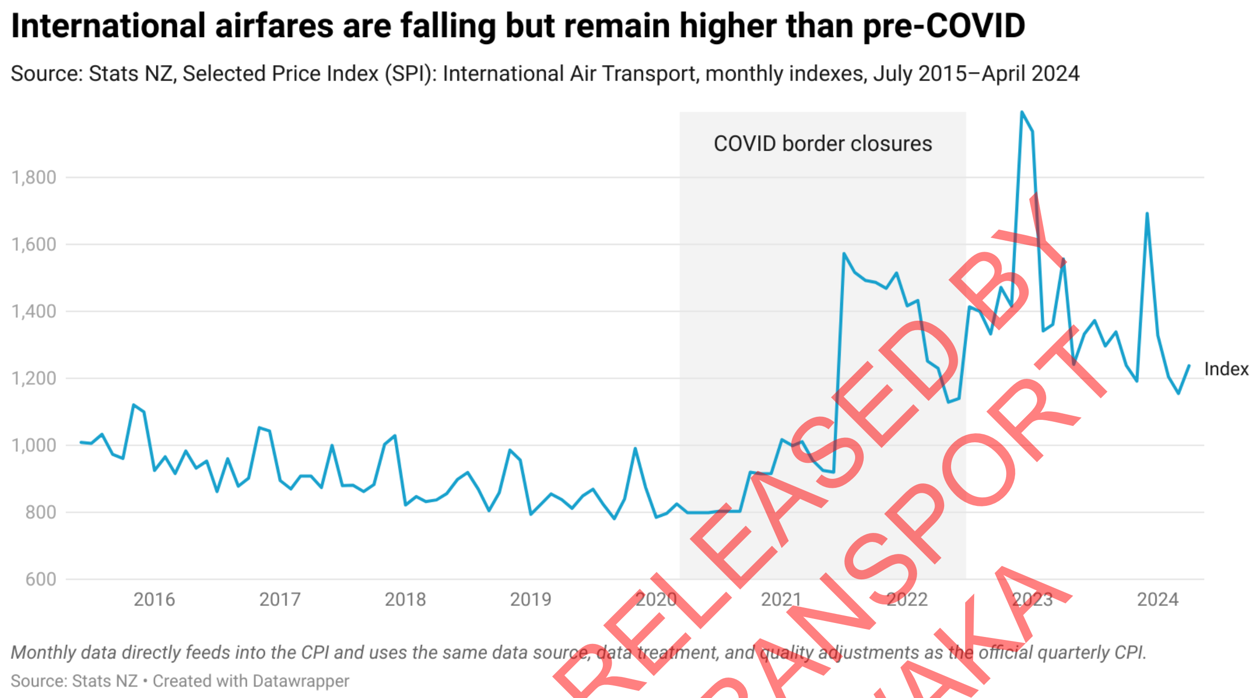

Figure 3 Selected price index, international air transport

Source: Stats NZ, selected price indexes, July 2015–April 2024

Public benefits

97 Public benefits refer to the benefits that are received by direct users of the codeshare and other consumers who benefit indirectly as a result of the codeshare. Our analysis has considered the following public benefits to be incurred to New Zealanders or those in New Zealand.

Increase in tourism through better marketing

98 The Applicants claim that the codeshare will deliver incremental tourism to New Zealand and incremental passengers on Air New Zealand services.

99 The Applicants also state that the codeshare would see enhanced marketing of New Zealand as a destination to Virgin Australia customers (and Australian customers more generally). This enhanced marketing is expected to result in incremental traffic to New Zealand, with corresponding benefits in the form of additional tourism spend.

100 For other cooperation agreements we have agreed that improved access to a home country's marketing networks provides a benefit. However in this case we have place limited weight on it.

101 Australia is culturally a similar market to New Zealand and Air New Zealand already has a strong stand-alone presence. It is the second biggest overseas airline in Australia (the

second biggest foreign airline) and Australia is far and away its biggest international market. Pre-COVID it consistently topped most trusted brand surveys in Australia.

102 We consider that the additional benefit Air New Zealand would get from a marketing partner in Australia is limited.

Incremental passengers on Air New Zealand's services

103 The Applicants further claim that, in addition to generating incremental traffic to New Zealand, Velocity members, and those corporate travellers who are part of the VABF programme who may otherwise travel with Qantas will, as a whole, be more likely to travel via Virgin Australia code on Air New Zealand trans-Tasman services.

104 The Applicants say that this incremental traffic will have the benefit of improving the efficiency and sustainability of Air New Zealand's flight operations.

105 Air New Zealand has estimated this benefit to be an additional s percent on current load factors, which equates to up to s passengers per flight for an A321neo aircraft. Virgin Australia independently submitted that it estimates the additional load factor could be up to s percent. Some of these passengers might be higher value customers adding more to Air New Zealand revenue than an average customer. 9(2)(b)(ii)

106 To the extent there are additional passengers through the codeshare, this could negatively impact Air New Zealand passengers on pricing or other customer benefits, but this may happen anyway through Air New Zealand's customer growth through their own marketing efforts.

s 9(2)(b)(ii)

Figure 4 Air New Zealand load factors on trans-Tasman routes

Source: Air New Zealand

107 Currently, Air New Zealand load factors for the Tasman hover between s 9(2)(b)(ii) percent. While any additional passengers and revenue supports a service, at this load factor the services are not at risk, either by displacing existing Air New Zealand customers, or requiring additional aircraft or services.

108 s 9(2)(b)(ii) [redacted]

109 From a system viewpoint we also note that many of these passengers will be transferring from Qantas and so would have a negative reciprocal effect on it. We place limited weight on benefits that are a transfer of passengers from one airline to another. The counter is a reduction in the efficiency of services offered by the Qantas group. It is difficult to know the extent to which any increase in the number of Australian corporate and SME customers who choose to fly to New Zealand due to the arrangement is from those who are not already locked into a relationship with Qantas.

Other benefits

110 We have also identified and considered other minor benefits from the codeshare including:

- **Enabling Virgin Australia to better gauge whether sufficient profitable demand** has emerged to inform any decision making on whether a re-entry onto trans-Tasman routes would be viable. We think that long term, the codeshare will give the Applicants better information on future services and whether Virgin Australia has the ability to re-enter the trans-Tasman market using its own metal. However, this is only one factor. While growing the corporate/SME sector will assist, the airline will be reliant on a substantial number of passengers visiting friends and relatives or for tourism on non-Queenstown routes.
- **Positive network externalities** such as by each of the Applicants being able to offer their customers a wider range of route options and/or departure times. Given that Virgin Australia is making use of existing Air New Zealand services any benefit is limited to a subset of its existing customer base (i.e. Australians connecting onto trans-Tasman services.) This differs from what might be possible under an alliance or joint venture.
- **Better vertical pricing coordination,** in particular, the elimination of double marginalisation (EDM) which can otherwise arise when independent entities with market power each add profit margins to pricing along vertical supply chains (which serves to reduce both combined profits and consumer welfare). However, a study specifically looking at the benefits of Air New Zealand alliances concluded that cooperation short of a joint venture between Air New Zealand and its alliance partners would not result in the elimination of double marginalisation. While double marginalisation may not be eliminated, it could conceivably be reduced due to Air New Zealand setting the price for Virgin Australia seats.

Public detriments

111 Public detriments refer to the costs of the codeshare arrangement to consumers. We have assessed what the likely downsides or costs are if the arrangement is authorised.

Disincentive for Virgin Australia to expand in the New Zealand market

112 If the arrangement was to prevent Virgin Australia from re-entering the market, this would have a cost to New Zealand that would likely outweigh the small benefits likely to accrue; and we would be unable to recommend authorisation of the codeshare.

113 We also consider that even the threat of entry can have a beneficial impact on market behaviour. Despite what Virgin Australia has told us, New Zealand airports consider that the codeshare does reduce the incentive for Virgin Australia to re-grow its New Zealand presence. If Air New Zealand and Qantas share this view, then authorisation could encourage duopoly behaviour to the detriment of New Zealand.

114 However, we are not able to reach a firm conclusion on if or when Virgin Australia would consider entering the market in the absence of the codeshare. We consider it unlikely Virgin Australia would consider entering given the capacity expansion of other airlines and other current market factors.

Increase in price for other travellers

115 Some submitters noted that Virgin Australia frequent flyers buying seats on Air New Zealand flights could lead to an increase in airfares, or push New Zealanders looking to travel to Australia into higher fare brackets.

116 We do not agree that we should give weight to a detriment of this nature. However, we have not considered that as a detriment. Airline pricing behaviour will reflect the willingness to pay of the marginal passenger – whether that is through direct payment, or spending of frequent flyer points.

117 We acknowledge that there may be an increased demand for capacity on Air New Zealand seats, and, in principle, a small risk of New Zealand flyers either missing out on seats, facing busier Koru lounges, having to pay for more expensive ones, or potentially facing a higher fare option in their preferred price tiers.

118 However, given the small incremental numbers that are expected due to the arrangement, and with current load factors, any overall effect should be small, and spread out across fare brackets (which may further dampen the effect within each bracket).

Counterfactual

119 We compared the public benefits and public detriments to be generated with and without the authorisation of the arrangement. We analysed how the relevant markets might react if authorisation is not granted.

120 As part of the application, Virgin Australia provided their own summary and analysis of what likely scenario would occur if the codeshare agreement was not authorised.

Virgin Australia

121 s 9(2)(b)(ii) [redacted]

122 Virgin Australia has also stated that it:

- s 9(2)(b)(ii) [redacted]
- s 9(2)(b)(ii) [redacted]
- s 9(2)(b)(ii) [redacted]

123 Virgin Australia argues that with, or without, the arrangement, its incentives for re-entering the trans-Tasman market using its own aircraft on non-Queenstown routes do not change.

124 s 9(2)(b)(ii) [redacted]

125 But equally operating conditions have not improved such as to suggest that re-entry is a realistic possibility in the short term. s 9(2)(b)(ii) [redacted]

- s 9(2)(b)(ii) [redacted]
- s 9(2)(b)(ii) [redacted]
- s 9(2)(b)(ii) [redacted]

126 s 9(2)(b)(ii) [redacted]

127 s 9(2)(b)(ii) [redacted]

- s 9(2)(b)(ii) [redacted]
- s 9(2)(b)(ii) [redacted]

Ministry of Transport assessment

128 Economic conditions in both countries are not conducive to increased demand for air travel. Australia is facing subdued economic growth in the short term and New Zealand is experiencing a slowdown of growth due to high inflation and reduced spending.

129 The Applicants have applied for authorisation of the codeshare for a term of at least five years. This is consistent with similar airline co-operation agreement authorisations. The applicants argue that five years will provide certainty to customers, especially corporate and SME clients.

130 We considered authorising for three years as the uncertainty over a Virgin Australian re-entry with its own aircraft increases with time. The Act does not easily provide for setting conditions, such as length of authorisation. To do so would require the applicants to amend their application.

131 On balance, we do not consider that the uncertainty in years 4 and 5 to be such that a shorter authorisation period would resolve it. We also see benefits in aligning the reauthorisation timetable in New Zealand and Australia.

132 We agree that identified public benefits, being increased tourism and incremental passenger growth on Air New Zealand services, are limited and small. Moreover, better information can be gained through the codeshare by Virgin Australia to better inform its ability to re-enter the routes using its own aircraft. As for detriments, because of the small impact from incremental passenger numbers and load factors, the codeshare is unlikely to impact prices.

133 Beyond this, our key reasoning is that we think that Virgin Australia's re-entry into non-Queenstown routes is very unlikely over the two to three years with or without the codeshare. s 9(2)(b)(ii) [redacted]

- s 9(2)(b)(ii) [redacted]
- s 9(2)(b)(ii) [redacted]
- s 9(2)(b)(ii) [redacted]

134 We have reached this view particularly given the capacity expansion of other airlines combined with other global pressures, such as aircraft delays and engine, impacting market recovery.

135 Our analysis shows there is not sufficient reason to decline authorisation. This conclusion is reinforced by the findings of the ACCC. While a decision is finely balanced, our recommendation is to authorise for a period of five years as requested by the applicants.

Conclusion

136 In considering the above benefits and detriments, and the counterfactual scenario, we believe that on balance, the codeshare agreement delivers small benefits to New Zealand, over and above any potential detriments.

137 We also note that the arrangement meets the statutory conditions allowing it to be authorised under section 88 of the Civil Aviation Act 1990.

138 In light of this, we recommend authorising the Commercial Framework Agreement.

139 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 codeshare agreement after an appropriate interval.

140 Future authorisations will be under the Civil Aviation Act 2023 using different statutory criteria. This authorisation should not be seen as indicative of the result of any future application to be assessed under the new Act.

Annex 1 Analysis of how arrangements relate to tariffs and capacity

The Civil Aviation Act 1990 does not provide that any or all contracts, arrangements and understandings (“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 tables below describes if and how each of the provisions of the Commercial Framework Agreement, the Codeshare Agreement, the Corporate / SME Dealing Agreement and the Special Prorate Agreement relates to the fixing or application of tariffs and the fixing of capacity. Annex 1A provides information for noting regarding documents yet to be finalised by the Applicants.

Key to assessments

Structural: Document framework. Not related to tariffs or capacity

Machinery: Makes the agreement work. May be –

- Directly related to tariffs and/or capacity
- Indirectly related to tariffs and/or capacity
- Not related to tariffs or capacity

Boilerplate: Standard provisions of a general nature not peculiar to the agreement. Not related to tariffs or capacity.

Commercial Framework Agreement

Section #	Section heading	Assessment
s 9(2)(b)(ii) [redacted]	[redacted]	Machinery. s 9(2)(b)(ii) [redacted]. Relates indirectly to tariffs and capacity.
[redacted]	[redacted]	
[redacted]	[redacted]	Machinery. s 9(2)(b)(ii) [redacted] Otherwise, not related to tariffs or capacity.
[redacted]	[redacted]	Structural. Not related to tariffs or capacity.
[redacted]	[redacted]	
[redacted]	[redacted]	Machinery. Relates indirectly to tariffs and capacity.
[redacted]	[redacted]	Machinery. Not related to tariffs or capacity.
[redacted]	[redacted]	Machinery. Relates indirectly to tariffs and capacity.
[redacted]	[redacted]	Machinery. Relates indirectly to tariffs and capacity.
[redacted]	[redacted]	
[redacted]	[redacted]	Machinery. s 9(2)(b)(ii) [redacted] Relates directly to tariffs and/or capacity.
[redacted]	[redacted]	
[redacted]	[redacted]	Machinery. Relates indirectly to tariffs and capacity.
[redacted]	[redacted]	

ANNEX 1 ANALYSIS OF HOW ARRANGEMENTS RELATE TO TARIFFS AND CAPACITY

Section #	Section heading	Assessment
s 9(2)(b)(ii) [redacted]	[redacted]	Machinery. s 9(2)(b)(ii) [redacted] Relates directly to tariffs and/or capacity.
		Machinery. The CGW Group is responsible for implementing and overseeing the operation of the Agreements. Relates directly to tariffs and/or capacity.
		Machinery. Indirectly related to tariffs and/or capacity.
		Machinery. Indirectly related to tariffs and/or capacity.
		Machinery.
		Machinery. Indirectly related to tariffs and/or capacity.
		Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.
		Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.
		Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.
		Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.
		Machinery. Indirectly related to tariffs and/or capacity.
		Machinery. Indirectly related to tariffs and/or capacity.

Section #	Section heading	Assessment
s 9(2)(b)(ii) [redacted]	[redacted]	Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.
[redacted]	[redacted]	
[redacted]	[redacted]	Boilerplate.
[redacted]	[redacted]	Boilerplate.
[redacted]	[redacted]	
[redacted]	[redacted]	Machinery. Necessary for the operation of other provisions relating to tariffs and capacity.
[redacted]	[redacted]	Machinery. Necessary for the operation of other provisions relating to tariffs and capacity.
[redacted]	[redacted]	
[redacted]	[redacted]	Boilerplate.
[redacted]	[redacted]	Boilerplate.
[redacted]	[redacted]	Boilerplate.
[redacted]	[redacted]	Boilerplate.
[redacted]	[redacted]	Boilerplate.
[redacted]	[redacted]	
[redacted]	[redacted]	Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.

ANNEX 1 ANALYSIS OF HOW ARRANGEMENTS RELATE TO TARIFFS AND CAPACITY

Section #	Section heading	Assessment
s 9(2)(b)(ii) [redacted]		Boilerplate.
		Boilerplate.
		Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.
		Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.
		Machinery. s 9(2)(b)(ii) [redacted]. Indirectly related to tariffs and/or capacity.
		Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.
		Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.
		Boilerplate.
		Boilerplate.
		Boilerplate.

Section #	Section heading	Assessment
s 9(2)(b)(ii) [redacted]	[redacted]	Boilerplate.

Codeshare Agreement

Section #	Section heading	Assessment
s 9(2)(b)(ii) [redacted]	[redacted]	Machinery. s 9(2)(b)(ii) [redacted]. Relates indirectly to tariffs and capacity.
		Machinery. s 9(2)(b)(ii) [redacted] Otherwise, not related to tariffs or capacity.
		Structural. Not related to tariffs or capacity.
		Machinery. Directly related to capacity.
		Machinery. Directly related to capacity.
		Machinery. Directly related to tariffs.

ANNEX 1 ANALYSIS OF HOW ARRANGEMENTS RELATE TO TARIFFS AND CAPACITY

Section #	Section heading	Assessment
s 9(2)(b)(ii) [redacted]		
		Machinery. Directly related to tariffs.
		Machinery. Directly related to tariffs and/or capacity.
		Machinery. Directly related to tariffs.
		Machinery. Indirectly related to capacity.
		Machinery. Not related to tariffs or capacity.
		Machinery. Not related to tariffs or capacity.
		Machinery. Not related to tariffs or capacity.
		Machinery. s 9(2)(b)(ii) [redacted] indirectly related to tariffs.
		Machinery. Indirectly related to tariffs and/or capacity.

Section #	Section heading	Assessment
s 9(2)(b)(ii) [redacted]		Boilerplate.
		Boilerplate.
		Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.
		Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.
		Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.
		Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.
		Machinery. s 9(2)(b)(ii) [redacted] Indirectly related to tariffs and/or capacity.
		Machinery. Indirectly related to capacity.
		Machinery. Indirectly related to capacity.
		Machinery. Indirectly related to capacity.
		Machinery. Indirectly related to capacity.
		Machinery. Indirectly related to capacity.

ANNEX 1 ANALYSIS OF HOW ARRANGEMENTS RELATE TO TARIFFS AND CAPACITY

Section #	Section heading	Assessment
s 9(2)(b)(ii) [redacted]		Machinery. Indirectly related to capacity.
		Machinery. Indirectly related to capacity.
		Machinery. Indirectly related to capacity.
		Machinery. Indirectly related to capacity.
		Machinery. Indirectly related to capacity.
		Machinery. Not related to tariffs or capacity.
		Machinery. Directly related to capacity.
		Machinery. Not related to tariffs. Indirectly related to capacity.
		Machinery. Indirectly related to capacity.
		Machinery. Not related to tariffs or capacity.
		Machinery. Not related to tariffs or capacity.
		Machinery. Not related to tariffs or capacity.
		Boilerplate.

Section #	Section heading	Assessment
s 9(2)(b)(ii) [redacted]		
		Boilerplate.
		Boilerplate.
		Boilerplate. s 9(2)(b)(ii) [redacted] possibly indirectly related to capacity. s 9(2)(b)(ii) [redacted]
		Boilerplate.
		Boilerplate.
		Machinery. Indirectly related to tariffs and/or capacity.
		Machinery. Indirectly related to tariffs and/or capacity.
		Machinery. Indirectly related to tariffs and/or capacity.

ANNEX 1 ANALYSIS OF HOW ARRANGEMENTS RELATE TO TARIFFS AND CAPACITY

Section #	Section heading	Assessment
s 9(2)(b)(ii) [redacted]		Boilerplate.
		Boilerplate.
		Boilerplate.
		Boilerplate.
		Boilerplate.
		Boilerplate.
		Boilerplate.
		Boilerplate.
		Machinery. Indirectly related to tariffs and/or capacity.
		Boilerplate.

Section #	Section heading	Assessment
s 9(2)(b)(ii) [redacted]		
		Boilerplate.
		Machinery. Indirectly related to capacity.
		Machinery. Indirectly related to capacity.
		Machinery. Indirectly related to capacity.
		Machinery. Indirectly related to tariffs.

Corporate / SME dealing arrangement

Section #	Section heading	Assessment
s 9(2)(b)(ii) [redacted]		
		Structural.
		Machinery. Directly related to tariffs and/or capacity.
		Machinery. Directly related to tariffs and/or capacity.
		Machinery. Indirectly related to tariffs and/or capacity.
		Machinery. Indirectly related to tariffs and/or capacity.
		Machinery. Indirectly related to tariffs and/or capacity.
		Machinery. Directly related to tariffs.
		Structural – s 9(2)(b)(ii) [redacted] Not related to tariffs or capacity.

Special Prorate Agreement

Section #	Section	Assessment
s 9(2)(b)(ii) [redacted]		Structural.
		Machinery. Directly related to tariffs and/or capacity.
		Machinery. Directly related to tariffs and/or capacity.
		Machinery. Directly related to tariffs and/or capacity.
		Machinery. Directly related to tariffs and/or capacity.
		Machinery. Directly related to tariffs and/or capacity.
		Machinery. Directly related to tariffs.
		Machinery. Directly related to tariffs.
		Machinery. Directly related to tariffs.
		Machinery. Directly related to tariffs and/or capacity.
		Machinery. Indirectly related to tariffs and/or capacity.
		Machinery. Indirectly related to tariffs.
		Boiler plate.
		Boiler plate.
		Boiler plate.
		Boiler plate. s 9(2)(b)(ii) [redacted]

Section #	Section	Assessment
s 9(2)(b)(ii) [redacted]		Machinery. Directly related to tariffs.
		Machinery. Directly related to tariffs.
		Machinery. Indirectly related to capacity.

Other implementing agreements

The Applicants have provided the following information regarding documents yet to be finalised that are referred to in the CFA.

Agreement	Summary
s 9(2)(b)(ii) [redacted]	s 9(2)(b)(ii) [redacted]

Air New Zealand and Virgin Australia Codeshare Agreement Authorisation 2024

Ministry of Transport Analysis

transport.govt.nz

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New Zealand Government