
JUMPJET AIRLINES LIMITED[®]

CROSS SUBMISSION

DRAFT DETERMINATION QANTAS and AIR NEW ZEALAND MERGER

AUTHORISATION APPLICATION

SECTION 58 - COMMERCE ACT 1986

18 July 2003

CONFIDENTIAL SECTIONS

PUBLIC VERSION

Copy Australian Competition & Consumer Commission

CONTENTS – CROSS SUBMISSION	Page
1. Overview	2
a) <i>Applicants: Qantas and Air New Zealand</i>	2
b) <i>Virgin Blue</i>	3
2. Applicants Draft Determination Response	
a) <i>Chapter 1 Overview</i>	4
b) <i>Chapter 3 VBA Entry</i>	5
c) <i>Chapter 4 Fifth Freedom Competition</i>	7
d) <i>Chapter 5 Counterfactual</i>	8
e) <i>Chapter 6 Confidential Counterfactual</i>	8
f) <i>Chapter 11 Tourism Benefits</i>	9
g) <i>Chapter 12 Freight Benefits</i>	10
h) <i>Chapter 14 Conditions offered to the Commission</i>	11
3. Virgin Blue Draft Determination Response	
a) <i>Section 2. Summary</i>	13
b) <i>Section 3. Key Findings of the Draft Determinations</i>	13
c) <i>Section 4. Scale of Virgin Blue with Proposed Undertakings and Conditions</i>	14
d) <i>Section 5. Effectiveness of Virgin Blue as Competition Constraint</i>	14
e) <i>Section 6. Undertakings</i>	15
f) <i>Annex Three</i>	15
4. Conclusion	15

1. Overview

In the closing overview comment Jumpjet® states that the composition of our submissions in this matter has been designed around practical analogy, the identification of industry strategies, legal based argument and implications, political effects of policy and the portrayal of predatory commercialism existing in the industry.

Serious involvement in the issues is prominent as a result of our development of Jumpjet Airlines Limited® with a distinct objective of gaining access to the market and in a non-predatory sense. The business model has been developed with the input of consultants from a significant number of non-industry and industry disciplines. We believe such a model is appropriate for the niche market sought and may contribute to the overall good of business development in general.

Our expectation is that the Jumpjet® contributions have added value to the New Zealand Commerce Commission and the Australian Competition and Consumer Commissions deliberations. That is, concerning the authorisation application by Qantas and Air New Zealand for Qantas to increase its equity shareholding to integrated (*Merger*) status under **Section 58 of the Commerce Act**.

a) Applicants: Qantas and Air New Zealand

The Applicants cross submission is extensive, descriptive and provides economic argument in relation to the equity-merging authorisation sought. Such a presentation is obviously drafted by experts in the aviation industry, economic and marketing fields.

However, when the reality of the alliance “**market lockup strategies**” that were initially developing in the region are projected, the future state of the market becomes obvious. The collective market share of the alliance carriers coupled with the dual expenditure, promotion and marketing efforts of a combined Qantas and Air New Zealand confirm the market dominance objective of the two carriers. Once achieved the alliance carriers would be in a position to “**take advantage of market power**” in a trading sense backed by the Commission’s legal Authorisation.

The conditions offered to the Commission as a “**deal**” for Authorisation approval, considering the merger application, were placed to neutralise the legal impact of the Commerce Act. That is, when being applied in defence by affected carriers under the act in the future. Meaning that an entrant carrier making an application to the Commission with a claim concerning predatory commercialism being levelled against it by Qantas and Air New Zealand (Or Virgin), would be less likely to be successful.

The assumption used by the Applicants being, that past court appeals indicate competitive “**barriers**” are a major reason confirming the application of “**substantial power in the market.**” The “**deal**” conditions offered by the Applicants were designed to be without such “**barriers**” and therefore exempt from legal challenge possibilities.

The future Qantas applied “**war of attrition**” argument raised by Air New Zealand that would be the result of a denied merger application lacks credibility. Particularly, when considered against the multi-million dollar investment Qantas currently has as a minor shareholder in Air New Zealand.

However, Jumpjet® appreciates the apprehension exhibited by the Applicants throughout their submission in relation to the Virgin machine entering the market in a typical sense. Namely, without regard for market size, business development, market integrity or current Commission deliberations.

Perhaps, the greatest perturbation for local industry is the “**Designated Airline**” status where appropriate company structuring can qualify almost any carrier to “**cherry pick**” international routes between Australia and New Zealand en-route to anywhere. In the hands of the oblivious, issuing power could destroy the viability of the industry. In addition, a number of approved “fifth freedom” carriers can now or could operate across the Tasman without the normal business performance requirement of profit motivation. Obviously, such an advantage **unbalances** fair competition in the market.

b) Virgin Blue

Traditionally, Virgin Blue would be correct in its interpretation of itself as the only “**viable**” competitor in the Australasian region. As entry into the market in the past was achieved basically by the application of predatory commercialism. Either, by the entrant carrier or in retaliation by the incumbent airlines. As has been clearly indicated by public evidence in presented submissions, Virgin Blue entered the market in Australia using these traditional strategies.

Currently, Virgin Blue is the holder of “**duopoly**” status in the Australian domestic market having taken the industry back to the two airline policy era that ruled Australia for in excess of five decades. The recent promulgation of **profit** gained in duopoly status confirms such a position.

*Jumpjet® believes that it is a new era and now possible under New Zealand commercial law to enter the market in a basic sense and trade a product in a “**fair**” competitive environment. The possibilities that Jumpjet® or future local carriers could enter the market in Australia, New Zealand or the Tasman in a non-predatory sense ought to be considered desirable from an industry perspective. Rather than the recent outcomes produced by predatory commercialism in the market.*

In terms of “**growth**” achievements in Australia by the Virgin entrance, the facts challenge the media hype used by the company. In reality, Ansett Australia held some 35% of the domestic market. Virgin Blue now holds considerably less than the original figure after filling the vacuum left by its “**defeated**” predecessor’s (*Ansett*) collapse into bankruptcy.

In addition and currently, the Virgin airline is not qualified to trade in a SAM or Designated Airline market and its consistent public “**operating regardless**” declaration does not respect existing regulation nor those bodies that administer it.

Considering the New Zealand Commerce Act, Virgin Blue now falls under the legal classification in the market of having “**substantial power in a market.**” With any attempted repeat of its publicly recorded trading history in Australia the company will no doubt eventually be called upon to respect commercial law.

2. Applicants Draft Determination Response

a) CHAPTER 1 OVERVIEW

By applicable Paragraph Number: -

- 1.9 Currently, Virgin Blue does not qualify for entrance on the Tasman as a SAM or Designated Airline carrier as per reasons given by Draft Response submission. It is not a fait accompli that Virgin Blue will gain entrance in the short term. Highly media published demands and plans have been strategically designed to force New Zealand Regulators to succumb. (*Jumpjet® has made an application under Section 36A of the Commerce Act*)
- 1.14 The Virgin Blue business model and style of entry will threaten the viability of the Trans Tasman and Domestic New Zealand market. Their plan requires a critical mass of 30% to 35% to effectively control the discount market and meet the high load factors required for profitability. It is highly likely that trading habits will be a repeat of its Australian entrance.
- 1.15 To 1.22 - As per 1.9
- 1.23 Many Value Based Airline (VBA) entries into domestic and regional markets have exercised integrity in the market by competing for and developing growth. Virgin's success in Australia was due to the failure of Ansett. In three years, the company has not yet achieved the market share of 35% that was contained in the vacuum left after the Ansett collapse.
- 1.26 Though many of the fifth freedom carriers that operate across the Tasman are alliance members the future could render the market un-viable should decisions be made at political level by the oblivious. **Most operate the routes using standard alliance pricing structures**. Some are in a position to operate the routes as non-profit carriers thereby unbalancing the fair competition methodology. **Recommendation:** Establish regulatory frameworks to enable more local operators to gain entrance into the market.
- 1.27 To 1.29 As above
- 1.30 To 1.32 It is highly unlikely that Qantas would attempt to destroy Air New Zealand in view of the fact that some \$NZD 90.0 Million dollars has been invested in the company by Qantas.
- 1.49 To 1.54 As indicated by submission the tourist market has a healthy growth rate and the Jumpjet Venture plans to increase both ways tourist flow between New Zealand and Australia by approximately **[Confidential:]** 53% of total passenger uplift. A joint approach to the extent planned by the Applicants would be the exercise of "**market dominance**" under commercial law.

1.61 The conditions offered to the Commission as a “deal” for Authorisation approval (*considering the merger application*) were placed to “neutralise” the legal impact of the Commerce Act being applied in defence successfully in the future. That is, in terms of an entrant carrier making an application to the Commission with a claim concerning predatory commercialism being applied against it by the combined market power of the two carriers.

1.62 To 1.64 The offers made to the Commission, to approve the Authorisation of the merger concerning, facilities, aircraft, the restraining of Freedom Air and self determined capacity restrictions by the Applicants, are unnecessary in a properly regulated market. In such as market facilities are procurable, aircraft acquisition is possible and restraint in predatory activity is governed by commercial law.

b) CHAPTER 3 VBA ENTRY

3.3 To 3.8 These paragraphs merely confirm the “**Market Lock-Up**” strategies formulated by the Applicants to remove competition as a solution to the real industry issue of **Predatory Commercialism**. The most effective and proven method of constraining predatory commercialism lies in **Capacity Control**. Similarly to that currently imposed on the industry by international bilaterals exercised by government authorities.

3.24 Virgin Blue’s recent code share marketing alliance with REX (*Regional Express*) in regional Australia disputes the claim that towns of 50,000 can be serviced by B737 type aircraft. In point of fact, there are many reasons why this claim can be challenged. A significant reason in many cases is operational considerations.

3.25 Jumpjet® disputes the classification of short haul routes being less than 5.5 hours. The generally held view is that a short haul flight is less than 3 hours. The flight time between Melbourne and Perth is four (4) hours. (*Reference: QF 485*) **Would you call this sector a short haul flight?**

3.38 The difference between the jetBlue entry into the USA market and historic events unfolding in Australia and New Zealand is two fold: -

- There are 65 million people living in North Eastern USA.
- The jetBlue entry was not predatory in that the company factually grew the market by a significant percentage without causing major business collapse or threatening the viability of the industry.

3.42 To 3.47 With due respects to the judiciary and the New Zealand Court of Appeal, this case bears no similarity to past cases. This case was the formation of a “**Monopoly of Alliances**” with the capability to manipulate and control the market. Including prices. In our view, it would be difficult to find a high court judge who would classify the Applicants fulfilled strategic plans as anything less than – highly anti-competitive. Or “**substantially lessening competition in the market.**”

3.5 To 3.55 Historic record confirms that local airline entrants have been denied financial and investment support for over a decade. At the time Virgin anticipated an entrance into Australia there were **three local airlines** in various stages of development. Rather than support a local company (*Possibly because of the fear that a local company would be driven into collapse by predatory commercialism*) the Queensland government decided to “grant” \$AUD 10.0 million dollars (\$NZD 11.0 million) to a billionaire. Thus, the Virgin Group equity contribution was provided by the government. The joint owner, billionaire Chairman Branson’s profit share this year is some **\$NZD 60.0 million**. **Access to capital remains a significant barrier for authenticated local companies.**

3.75 In addition to above comment in Para 3.38. The Applicants are locked into the definition of normal competitive behaviour being that of “**predatory commercialism.**” This form of commerce belongs to a bygone era. The maturity of New Zealand commercial law is the very reason why the monopolistic planning of the Applicants is able to be reviewed and prevented.

3.84 To 3.107 In addition to above comment in Para 3.38. Plus: -

- In the USA VBA/DA airlines have genuinely grown the market in the last decade without predatory commercialism. Virgin Blue has not grown the market in Australia. Its market share has not yet reached that held by Ansett.
- Any capacity increase by the Applicants as a result of the Jumpjet® entry will be considered predatory and an appropriate application will be lodged with the Commissions. (***See the Conclusion - Page 14 - for comment in relation to the unlimited capacity award given to Virgin Blue by the Australian IASC***)
- Any “**pricing manipulation techniques**” introduced by the Applicants as a result of the Jumpjet® entry will be considered predatory and an appropriate application will be lodged with the Commission under the Fair Trading Act.

3.107 To 3.114 The Jumpjet® entry will be competing for growth and potential growth on the Tasman and will not threaten the viability of the Applicants. The “**condition**” of increasing the capacity expansion of Freedom Air over the next three years is exactly coincidental to the Jumpjet® business model. This is considered predatory in view of the fact that the Jumpjet® airline development has been public knowledge for over five years. We claim that the Applicants have public knowledge of the current status of the airline. That is, to be involved in capital structuring at this time which will ultimately result in revenue operations.

3.120 To 3.140 These paragraphs merely confirm the “**Market Lock-Up**” strategies formulated by the Applicants to remove competition as a solution to the real industry issue of Predatory Commercialism. The most effective and proven method of constraining predatory commercialism lies in **Capacity Control**. Similarly to that currently imposed on the industry by international bilaterals exercised by government authorities.

Virgin Blue does not legally qualify for entry into SAM or Designated Airline markets under the current Air Service Agreement between Australia and New Zealand. Any relaxation in these conditions would threaten the integrity of such an agreement and deny Jumpjet® and other airlines the opportunity of entree. In our view, a waiver would surely be both politically inappropriate and not in the best interests of the national airline of New Zealand. ie. Under the circumstances of the merger application and clear available alternatives.

Also, considering that Virgin Blue maintains “**substantial power in the market,**” due to its position as the duopoly carrier in the Australian market. Jumpjet® has submitted a **Section 36A Application to the Commission** in July against the Virgin Blue application to the IASC for “**unlimited**” Trans Tasman capacity. Submitted on the basis that such an entrance will restrict, prevent, deter or eliminate Jumpjet Airlines Limited® or any other airline from gaining access to the market.

c) CHAPTER 4 FIFTH FREEDOM COMPETITION

There is an underlying tendency for a “**push**” toward global open skies concerning Australasian politics without a patriotic understanding of the differences between the markets in Europe, Asia and the USA. The Trans Tasman market is a low-density market, whereas those above mentioned are high-density markets contained within areas of substantial population bases.

Perhaps, the greatest perturbation for local industry is the “**Designated Airline**” status where appropriate company structuring can qualify almost any carrier to “**cherry pick**” international routes between Australia and New Zealand en-route to anywhere. Or departing from anywhere. In the hands of the oblivious, issuing power could destroy the viability of the industry.

In addition, a number of approved overseas “**fifth freedom**” carriers can now, or could in the future, operate across the Tasman without the normal business performance requirement of profit motivation. **Performance** is criteria imposed on Australian and New Zealand carriers but not imposed on overseas carriers? **Obviously, such an advantage unbalances fair competition in the market against local carriers and favours overseas carriers.**

Evidence submitted by the Applicants identifies that significant capacity is provided by fifth freedom carriers on the major earning routes of Sydney and Brisbane. Factually, this competition has not constrained the Applicants who have simply aligned with the majority of these carriers maintaining general fare structures static.

However, the extraordinary adverse affect has been the **passing** of the most **lucrative** section of the market to wealthy overseas carriers who contribute virtually nothing to **regional economic development** in either New Zealand or Australia.

Jumpjet® shares the concerns of the Applicants with the future possibilities of excessive capacity being awarded to wealthy overseas fifth freedom carriers. ie. Should such Authorisations reach a level that threatens the viability of a national carrier – please pause a little and consider an Ansett repeat and its consequences.

An evaluation of the failure of Qantas under excessive commercialism has alarming consequences. For example, Qantas employs 35,000 and considering the Ansett collapse experience of a 2.5 to 1 multiplier, the total job loss would be approximately 90,000.

The consideration of a dual failure of Qantas and Air New Zealand raises the total job loss to some 110,000. Or by population comparison - equal to the city of Hobart, in Tasmania, or Porirua, Upper Hutt and sections of the Kapiti Coast in the Wellington Region. *{Figures are approximate}*

Based on the Ansett collapse experience, a **merged** failure could produce in excess of **7.0 million creditors** by comparison and the possible bankruptcy of 13 airlines. Plus an unknown number of commercial failures.

d) CHAPTER 5 THE COUNTERFACTUAL

A war of attrition between Qantas and Air New Zealand is unlikely to occur as a result of denial of the proposed merger mainly due to the equity investment (4.99%) that Qantas has in Air New Zealand. Representing some **\$NZD 90.0 million**.

Also, airline physique for over 60 years has promoted a harmonious trading relationship between duopoly carriers in Australia. Historically, only modest competition occurs between such carriers, even outside of equity ownership involvement.

Jumpjet® shares similar fears to the Applicants of predatory commercialism that Virgin is historically capable of levelling on the industry. **We urge the Commissions to heed the implications of a major collapse like the Ansett bankruptcy in Australia and its effect on government, the aviation industry, the consumer and business in general.**

In conclusion, the Applicants are virtually indicating the analogy that the merger would insulate them from predatory commercialism. However, the Factual or the Counterfactual could not **guarantee** endurance in the face of a predatory group of companies and subsidiaries with extensive ability to “ship” capital used specifically to fracture a competitor. **Industry restraint lies in regulation and constraint is effected by the existence of fair competition in the market.**

e) CHAPTER 6 CONFIDENTIAL COUNTERFACTUAL

Jumpjet Airlines Limited® was conceived to provide fair competition in the Trans Tasman market. The Business Plan presented to the Commission identifies the conservative nature of the venture. Predatory commercialism was and is not contemplated against the national carrier. Many of the aspects described by the Applicants in this Chapter are not challenged by Jumpjet®.

In the Jumpjet® case the effects of the September 11th terrorist attack on the US, the Bali bombing, the Iraq war and the SARS virus have also affected the financial structuring of the airline. This has caused a lack of appeal toward the aviation industry in general from investors, funders, banks, funds and financial service organisations. **[Confidential:**

]

The Commission is urged to consider the following in its deliberations relating to this Chapter: -

- Research the market behaviour of carriers in the Australian industry over the last three years and identify predatory commerce in motion
- Consider the competitive effect of predatory commercialism should **overcapacity** and the use of **unsustainable pricing structures** be introduced into the Trans Tasman and New Zealand markets
- The outcome of the Virgin Group's alliance history within the Belgium aviation industry
- As described in the Jumpjet® business plan the airline will be competing for growth at worst and at best will moderately grow the market. **In each case incumbent domestic and regional airlines will benefit from increased tourist traffic.**
- Schedule: **[Confidential:**

]

f) CHAPTER 11 TOURISM BENEFITS

Proposed consumer or public benefit gains in tourism, as a result of the merger ought to be considered in the light of current industry promotional success. Official incoming visitor figures are currently increasing at the rate of 12% per year. Recent figures indicate an increase in visitors of 200,000 per year. Holidaymakers account for 53% of incoming visitors and most travel by air. Therefore, on average, air tourist visitor arrivals into New Zealand are increasing by around 105,000 per year in the Counterfactual.

The immensity of joint marketing planning and expenditure considering the success of the merger proposal would ensure future domination within Australia and New Zealand and Trans Tasman markets. The alliances would take advantage of market power in the marketing, sales, distribution and tourist promotion areas.

The Jumpjet® model, being specifically aligned to the Trans Tasman market has a planned passenger uplift of **[Confidential:]** in the first year of operation. Assuming that 53% are tourist passengers, the company will carry **[Confidential:]** tourists of which the majority will be new growth uplifts from Australia and New Zealand. This increase in tourism will be generated regardless of the Factual or Counterfactual arguments of the Applicants.

The intensity of the Applicants focus on tourist promotion within the submission to the Commissions suggests a strong competitive pressure against the Jumpjet® entrance to the market, which impacts on a Section 36A claim against the Applicants. ie. Should the merger have been given Authorisation.

This extensive chapter ought to be an excellent tool for Air New Zealand management as it has successfully identified weaknesses in current marketing policy and exposed inadequacies in company marketing, sales, promotion and distribution of its product. In the absence of the merger such analogies would make a superb starting point for future improvements.

In the Counterfactual, Qantas has a significant incentive to continue current tourism promotion activities within domestic New Zealand. The Applicants submission has identified the effective trunk route and regional alliance network capability and the amount of investment Qantas has in its New Zealand operation. Tourist development to New Zealand from long haul overseas destinations does not lose its importance to the carrier when considered in the counterfactual.

Much emphasis is placed on “**effectiveness**” in this chapter. In reality the most effective market structure for achievement of goals, from a company structure point of view, – **is a monopoly**. Mathematically such a market structure achieves 100% effectiveness when viewed from inside the dominant company.

g) CHAPTER 12 FREIGHT BENEFITS

Jumpjet® has remained non-committal in relation to airfreight comment. The reason has been the challenge of the funding issue for the passenger airline and the future distance in terms of dedicated freighter introduction in Wellington. It is now considered appropriate to alert the Commission to our original plan indicated in the Executive Summary and enlarge on its content.

[Confidential: Quote:

]

The initial research regarding freight loaded and unloaded from the airports of Auckland, Wellington and Christchurch revealed a significant disparity in terms of the Wellington share of the business opportunity. Shares out of 100% Loaded out of Auckland were 79.0%, Christchurch 17.4% and Wellington 3.6%. Shares out 100% Unloaded at Auckland were 85.3%, Christchurch 9.5% and Wellington 5.2%. (*Reference: Jumpjet Business Plan - Appendix 13 & 14*)

It is conspicuously obvious that concentrated past and present efforts have been undertaken, by the Applicants, to hub airfreight through Auckland at the expense of both the customer and the Wellington Region. Since these analogies were undertaken wide-body belly freight has ceased to be available due to the cessation of B767 services through Wellington. Therefore, the disparity differences would have considerably worsened.

[Confidential Section]

[End of Section]

h) CHAPTER 14 CONDITIONS OFFERED TO COMMISSION BY APPLICANTS

Encouragement offered by the Applicants for a new entrant is quite a change from a few years ago when the Applicants were strategically prepared to remove any competitor from the market using whatever means at their disposal. It is nevertheless welcomed in spirit.

The maturity of commercial law has now developed to a stage where an entrant carrier can gain protection to trade in the market in a non-predatory sense. For a small carrier, not seeking a traditional predatory entry by the removal of an existing carrier, **Part A** offers are unnecessary.

In the Virgin Group case the “**deal**” would have been to gain 30% to 35% of the market, handed to them by the Applicants, following merger alliance and the acceptance of the quasi “**Marketing Alliance Agreement**” contained within this Chapter. Thus, Virgin Blue would control the discount market in agreement with the Applicants. Such a copious entrance would need the consideration of **Part A** offers.

In the Jumpjet® case as an entrant carrier: -

- Departure and Arrival slots are available at all departure and arrival airports
- Gates are likewise available for the intended operation
- Airport counters and equipment are available under the CUTE system (*Common User Terminal Equipment*)
- Line maintenance services can be provided by a combination of outsourcing (*Non Applicant*) and company provision

- Ground handling services can be provided by a combination of outsourcing (*Non Applicant*) and company provision
- Aircraft acquisition is possible through independent industry channels (*Jumpjet® evaluated one aircraft offered to the industry by one of the Applicants subsidiary companies and considering average industry prices, the asking price was excessively high*)
- Freedom Air: is monitored by the Commerce Commission and has been prosecuted twice for breaches of the Fair Trading Act. Offers that restrict Freedom Air from engaging in predatory activity are unnecessary in today's regulatory climate. (*Providing the Commission is in a position to act on a case by case basis?*) Jumpjet® marketing strategies include a surveillance and action policy in the case of Freedom Air.
- Capacity introduced by the Applicants is subject to legal scrutiny in today's regulatory climate. Self-monitoring is unnecessary. (*Providing the Commission is in a position to act on a case by case basis?*) Jumpjet® marketing strategies include a surveillance and action policy in the case of the Applicants, or any other airlines use of predatory capacity.

PART B

This Chapter clearly identifies the original motive of the Applicants and that was to pass a market slice to the new entrant that they have assumed would negotiate for an acceptable slice of the market. The **Part B** offer merely declines to mention the name of the new entrant. That is, either sought after or part of the machination.

That name, of course, is **Virgin Blue** and the offer is not to the Commission but to the carrier - **Virgin Blue**. The offer is merely a **Marketing Alliance Agreement** and conclusively confirms the original market lockup strategies in motion by the major industry players. **As described in Jumpjet Airlines Limited : Appendix i & ii – Draft Determination Response.**

The definition of a **Marketing Alliance** is: -

“A degree of contractual cooperation between airlines providing seamless travel and mutual frequent flyer programs. Many alliances use code sharing and other mechanisms to reduce competition over specified routes. Very few, if any, are competitive. The global alliances of Star and One World are complex marketing alliances.”

Whilst frequent flyer programs are not included in the agreement presented by the Applicants in the above chapter, clause coverage describes most aspects that would be required in a typical Marketing Alliance Agreement.

That is, **Capacity Floor, Tasman Cap Price, New Services, Tourism, Freight Monitoring and Independent Third Party Mediation**. The mediation being required in case of a dispute on the

Terms of the Agreement. The contribution of the **Part A** offer, further confirms the alliance strategy presented by the Applicants on offer to – Virgin Blue.

Under such an Agreement the possibilities available to the Applicants and their “Aligned” partners in a market lockup scenario, to “**Ambush**” Jumpjet® or any other independent entrant carrier, would be endless.

3. Virgin Blue Draft Determination Response

SECTION 2 - SUMMARY

By applicable Paragraph Number: -

2.2 Traditionally, Virgin Blue would be correct in its interpretation of itself as the only “**viable**” competitor in the Australasian region. Entry into the market in the past was achieved basically by the application of predatory commercialism, either by the entrant carrier or in retaliation by the incumbent airlines. As has been clearly indicated by public evidence in presented submissions, Virgin Blue entered the market in Australia using these traditional strategies.

Jumpjet® believes that it is a new era and now possible under New Zealand commercial law to enter the market in a basic sense and trade a product in a “**fair**” competitive environment.

2.3 Confirms the original market lockup strategies in that Virgin Blue would become the New Zealand discount carrier and operate in a “**quasi alliance**” situation with the merged Qantas / Air New Zealand company. The prize slice of the market would have been 30% to 35% which is the critical mass that Virgin needs to fully exercise its high profit business model. **Such a market structure would restrict, prevent, deter or eliminate any new entrant from entering the market.**

SECTION 3 - KEY FINDINGS OF THE DRAFT DETERMINATIONS

3.1 Jumpjet® rejects the analogy that Virgin Blue is the only airline in Australasia that can enter the market for the purposes of providing competition in the market. We believe that it is a new era and is now possible under New Zealand commercial law to enter the market in a basic sense and trade a product in a “**fair**” competitive environment.

The Virgin requirements are merely “**dealing**” to gain a significant traditional entry into the market in which critical mass plays a substantial role in gaining a non-competitive foothold in the market. Its “**conditions**” of entry require the provision of substantial terminal and other facilities.

In point of fact the majority of airports now operate under the CUTE system (*Common User Terminal Equipment*) which means that an appropriate market entry can be adequately catered for in terms of passenger and operational processing. Contractors are available for ramp services.

Virgin Blue demands that the behaviour of the Applicants ought to be non-predatory in terms of capacity used and yet its own plans indicate a high-capacity entrance into the market by the airline. **[Confidential:**

]

The implications of the failure of Air New Zealand would be given similar consequence as was given to Ansett Australia in such market warfare.

The demand for the third party sale of Freedom Air simply reinforces the above analogy. **[Confidential:**

]

3.4 (b) Should these demands be treated seriously the Virgin machine would simply repeat its trading behaviour, purposely, inflicted on the Australian domestic market – with unrestrained impact.

SECTION 4 – SCALE OF VIRGIN BLUE AS WITH PROPOSED UNDERTAKINGS AND CONDITIONS

4.2 This paragraph could not have been written by a serious professional.

4.5 Should Virgin gain its estimated objective of 30% to 35% of the New Zealand domestic or Trans Tasman market in a condensed period one of the major carriers, possibly Air New Zealand, would come under a serious state of demise within that market. Such objectives have no relationship to market growth development but are merely an example of the historic trading habits used by the Virgin carrier.

Destructive development aims to remove sufficient market share from a competitor in order to drive the competitor from the market. Predatory trading is the vehicle to achieve this objective in a low density market. Compared to Europe and the USA, Australia and New Zealand are low-density markets.

4.7 Many Value Based Airline (VBA) entries into domestic and regional markets have exercised integrity in the market by competing for and developing growth. Virgin success in Australia was due to the failure of Ansett. Public evidence indicates that its unsustainable trading methods played a significant role in the demolition of Ansett. The company has not yet achieved the market share of 35% that was contained in the vacuum left after the Ansett collapse. **What growth?**

SECTION 5 – EFFECTIVENESS OF VIRGIN BLUE AS COMPETITION CONSTRAINT

5.3 Explanation as above in 4.7.

SECTION 6 – UNDERTAKINGS

It is obvious that Virgin Blue is merely negotiating terms and conditions to gain a “**suitable**” quasi-marketing alliance with the Applicants using the Commission acting as Arbitrator. The removal of Freedom Air would permit a non-competitive foothold across the Tasman and within New Zealand.

ANNEX THREE

The reality is that the domestic Australian industry has been returned to a Two Airline status. **Elevated Profit** earnings gained by Virgin Blue in **duopoly** status indicates the encroaching lack of genuine competition in the industry.

Reports from Australian consumers and professionals identify that the overall “**competitive value**” of **duopoly airfares** is similar in both Qantas and Virgin Blue. Qantas downsizing is predominantly due to the significant effect of the SARS virus and the War in Iraq has had on its international operation and revenue income.

CONCLUSION

On July 10th Virgin Blue gained approval for “**unlimited capacity**” to, from and within New Zealand from the **Australian International Air Services Commission**. This decision has not taken into consideration the company’s inability to qualify for both the **Single Aviation Market (SAM)** and **Designated Airline (DA)** requirements of the Air Services Agreement between Australia and New Zealand.

Such an approval has the following repercussions. **The decision, if implemented, will:** -

- Prevent, deter, restrict or eliminate any fair competition from entering the market
- Prevent, deter, restrict or eliminate local regional airline business development
- Empower Virgin Blue to take advantage of market power
- Position Virgin Blue to repeat its Australian entrance trading behaviour in the market

Jumpjet Airlines Limited® has submitted a **Section 36A** Application to the Commission to investigate the implications of the “**unlimited**” capacity approval into the Trans Tasman and New Zealand markets. **Such capacity being prematurely awarded to the airline Virgin Blue.**

Obviously, Virgin Blue is using “**attrition**” to gain entrance regardless of the regulatory requirements and current pending issues within the Commissions. The strategies reflect a pre-empting of the confirmation of the Draft Determinations handed down by the Commissions and heralds in the next phase of **strategic activity** by the Virgin Group.

Public evidence identifies that Virgin Blue played no small part in the collapse into bankruptcy of Ansett Australia. The granting of “**unlimited capacity**” opens the door for Virgin to introduce “**overcapacity**” into the Trans Tasman and New Zealand markets as the first step to enable “**unsustainable fares**” to be marketed. Due to the small nature of the market, the industry has the high potential to be rendered “**un-viable**” within a short period of time.

The Jumpjet® development has been undertaken over a number of years enabling a new business model to be finalised that may contribute to the overall good of business in general. Much time and effort has been given to complete the mould by the founder, directors, consultants and interested parties. Too numerous to mention.

We are of the belief that the current **Commerce Act** reached its present stage of maturity to facilitate business start-ups of this nature. Conservative, yet competitive, effectively competing for market growth and marketing a new variant product. Plus, new structuring for the benefit of the consumer, the industry, the airline, its staff and business in general.

The Jumpjet® airline and product can compete effectively in a normal competitive market but will not be able to withstand the type of predatory commercialism that was evident following the Virgin entrance into Australia, as described in our submissions. The Virgin entrance with “**unlimited**” capacity has a high probability to render the industry “**un-viable**” in a short period of time. The result will be **market dominance** in the discount business that will prevent, deter, restrict or eliminate any new entrant carrier from gaining entry. Such an outcome would also serve to protect Virgin’s high profit duopoly status in Australia.

Whilst, Jumpjet® will commence operations with a single aircraft the business remains relatively high level in terms of capital requirement and turnover. (*See Business Plan*)

[Confidential:

]

END