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Ms Janet Whiteside  
Chief Advisor  
Commerce Commission  
PO Box 2351  
Wellington

Dear Ms Whiteside

### **Air New Zealand – Qantas Strategic Alliance Draft Determination: Cross-Submission on Air New Zealand Submission**

#### **Introduction**

1. This is Wellington International Airport Limited's ("WIAL") cross-submission in response to Air New Zealand's submission on the Commission's Draft Determinations relating to the proposed acquisition of shares in Air New Zealand by Qantas and Air New Zealand's and Qantas's proposed strategic alliance.
2. In WIAL's view, Air New Zealand's submission does not add substantive new arguments that would justify the Commission overturning its Draft Determinations. WIAL continues to consider that the Commission's Draft Determinations, indicating that the Commission is likely to decline the applications, is appropriate.

#### **Appropriate test under the Commerce Act**

3. Air New Zealand's submission focuses to a large extent on the Commission's counterfactual analysis and its quantification of the net benefits arising from the proposed strategic alliance.
4. WIAL respectfully reminds the Commission that the Commerce Act requires the Commission **to be satisfied** that the arrangement and the acquisition, as the case may be, will each satisfy the tests in sections 61 and 67 of the Commerce Act. Regardless of any shortcomings in the Commission's modelling, to grant an authorisation the Commission must be satisfied that the benefits claimed by the applicants will outweigh the detriments arising from the alliance and the acquisition. WIAL's view is that Air New Zealand's submission does not provide the Commission with sufficient evidence to be satisfied that this test has been met.

#### **Reliance upon conditions**

5. The Applicants have offered a number of conditions to the Commission. Under the Commerce Act, the Commission can impose conditions on authorisations in respect of restrictive trade practices only. The Commission has no power to set conditions on the authorisation of business acquisitions. In respect of business acquisitions, the Commission only has the power to accept undertakings to dispose of assets or shares.

6. This means, to the extent that the Commission decides to adopt any of the conditions proposed by the applicants, it can only do so in respect of the restrictive trade practice application. The Commission must therefore ensure, in appraising the benefits and detriments of the share acquisition, that it ignores the proposed conditions. This underlines the importance of the Commission considering the benefits and detriments of the share acquisition and the strategic alliance separately. If the Commission were to consider the two applications together, there is a risk that it will incorrectly take the conditions into account in its consideration of the share acquisition.
7. WIAL's June submission contained comments on each of the conditions, as offered to the ACCC as undertakings. An additional point that WIAL's wishes to make is that the Tasman pricing condition would be next to impossible to administer given the range of prices on any particular flight. Also, the condition allows prices to increase in accordance with "*airline cost base increases*". This is a complicated issue, requiring ongoing and detailed monitoring and is not appropriate as a condition.

#### **VBA entry**

8. Air New Zealand's submission draws support from Virgin Blue's recent application to the Australian International Air Services Commission for the right to operate "unlimited" services to New Zealand. Despite making this application, Virgin Blue's possible entry to the Tasman and New Zealand remains uncertain. Virgin Blue has not confirmed a start date and has said publicly that entry is less likely under the proposed strategic alliance.
9. Air New Zealand claims that there are no significant barriers to entry for a VBA. In response, WIAL repeats its views on barriers to entry made in its 20 June submission and its earlier submission of 14 February 2003. In particular, WIAL considers that the incumbent's likely response to VBA entry, creates significant entry barriers.

#### **Fifth-freedom competition**

10. In addition to VBA entry, Air New Zealand claims that the alliance will face significant competition from fifth-freedom carriers across the Tasman. It points to the recent announcement by Emirates that it will commence Auckland-Sydney operations in support of this claim.
11. WIAL's 20 June submission stated, with the exception of routes out of Auckland, that the applicants have, in reality, 100% of the trans-Tasman market. This will continue.
12. WIAL also notes that Air New Zealand's submission points to the level of competition it faces on the Auckland-Sydney and Auckland-Brisbane routes to justify its argument that fifth-freedom carriers provide a major constraining force in the Tasman market. However, the constraining effect of fifth-freedom competition must be appraised across the entire Tasman market.

**Productive and dynamic efficiency**

13. In Air New Zealand's submission, NECG argues that the alliance will face strong incentives to improve productive and dynamic efficiency. In WIAL's view Air New Zealand and Qantas would face much stronger incentives to improve productive and dynamic efficiency in a competitive market.

**Commerce Commission Conference**

14. WIAL may wish to appear at the conference scheduled for 18-22 August. WIAL asks the Commission to keep it informed of arrangements for the conference, and will confirm with the Commission at a later date whether or not it will attend.

Yours sincerely



**John Sheridan**  
Chief Executive