

SUBMISSIONS OF ORIGIN PACIFIC AIRWAYS LIMITED (“ORIGIN PACIFIC”) TO THE COMMERCE COMMISSION DRAFT DETERMINATIONS ON THE QANTAS/AIR NEW ZEALAND ALLIANCE APPLICATION (“THE APPLICATION”)

SUPPORT FOR DRAFT DETERMINATIONS

1 Origin Pacific supports the Draft Determinations. It believes (1) that the proposed Qantas/Air New Zealand alliance (“the Alliance”) would result in a substantial lessening of competition and (2) that the detriments are in no way outweighed by the benefits claimed. In its view the Application should be declined.

2 None of the conditions or undertakings so far offered or suggested by the Applicants alters this position.

EXTENSION OF TIME

3 The Application was filed in December 2002. However it is clear that it took many months before this to prepare. The PWC Report commissioned by the Applicants for example refers to a letter of engagement dated 29 July 2002. It is concerning that the Applicants are now allowed the substantial additional time granted by the Commission. Origin Pacific wishes to point out again to the Commission the vast inequality of resources between it and the Applicants.

SUBMISSIONS

4 These submissions are necessarily limited and refer to the initial submissions lodged by Origin Pacific (“the Submissions”). They cannot deal with the further submissions expected to be filed by the Applicants or other interested parties. Origin Pacific will require to make further cross submissions in accordance with the Commission’s extended timetable.

ORIGIN PACIFIC RELATIONSHIP WITH QANTAS

5 At the time the Submissions were filed the future extent of Origin Pacific’s relationship with Qantas was not clear. Since then Origin Pacific’s code share agreement has been renewed. However this is for a limited period only and on more restrictive terms and Qantas’ future interests seem now to be directed towards the Alliance. The Application does not protect Origin Pacific’s position and if the Alliance is approved, Origin Pacific could not reasonably expect that its Qantas relationship will continue unchanged.

6 The affect of a negative change may cause Origin Pacific to significantly reduce its network.

THE ALLIANCE

7 Origin Pacific cannot see how it or any other similar airline can compete on any sustainable basis with the huge market power of the Alliance and their two brands. At present it has the benefit of its relationship with Qantas including feed and other relationship advantages. Under the Alliance it may lose its relationship with Qantas and will have to compete with both Qantas and Air New Zealand together.

8 The combined Qantas/Air New Zealand Alliance will have an enormous market power and a size and dominance which will in itself be a major obstacle to competition. The increased potential it will also have to leverage its position to the detriment of consumers and any competing airline is of unparalleled scope.

PROVINCIAL MARKET

9 Origin Pacific supports the Draft Determinations conclusion on the provincial market that the Alliance would have or would be likely to have the effect of substantially lessening competition (para 461). It similarly answers the Commission Question 27.

10 As the only major competitor to Air New Zealand in the regions Origin Pacific wishes to make further brief comment on this market.

11 The Application failed to deal adequately with the anti competitive effects in the regions. To quote from Origin Pacific's Submissions – para 47 “---- the attention given in the Application and NECG report to the prejudicial impacts of the Application on Origin Pacific is perfunctory, and the attention given to the impact on regional economies and communities is nil.”

12 In their Responses to Third Party Submissions the Applicants effectively dismissed Origin Pacific's concerns at the potential loss of its Qantas relationship saying in para 8.1(a) that even in a worst case scenario it would “merely result” in retrenchment by Origin Pacific to its former scale of operations.

13 In its Submissions Origin Pacific dealt at some length on the provincial or regional market and the importance of continuing and sustainable competition in regional air services. This is important for many reasons including the preservation and promotion of regional development policies.

14 It is hard to avoid the assumption that in this market the Applicants are only paying lip service to competition. Air New Zealand is the dominant player in the market. Both the

Application and its Responses to Third Party Submissions indicate it has failed to grasp the importance of continuing regional competition or the need to properly address this.

15 That Air New Zealand is substantially owned by the New Zealand Government which is a strong promoter of regional economies and regional development compounds this position.

16 Origin Pacific cannot see that any perceived benefit of the Alliance can justify the anti competitive detriment that it will cause to the regional market.

17 Origin Pacific repeats the statements in its Submissions relating to the provincial or regional market. It totally rejects the argument that its ability to continue in this market negates the anti competitive nature of the Application.

18 In answer to the Commission's Question 26 it states that under the Alliance it expects it will have to retrench in this market.

19 Its tourist market position is similar.

MAIN TRUNK MARKET

20 Origin Pacific supports the Draft Determinations conclusion on the main trunk market that the Alliance would have or would be likely to have the effect of substantially lessening competition (para 440). It similarly answers the Commission Question 23.

21 Origin Pacific cannot see that any perceived benefit of the Alliance can justify this anti competitive detriment.

22 It repeats the statements in its Submissions relating to the main trunk market. It totally rejects the argument in the Application that its presence and ability to expand on the main trunk routes can minimise the anti competitive detriment of the Application.

23 In answer to the Commission's Question 21 it states that under the Alliance it expects it will have to retrench in this market.

PUBLIC BENEFITS AND DETRIMENTS

24 Origin Pacific supports the Draft Determinations conclusion that the public benefits likely to result from the Alliance will not outweigh the detriments (para 837). In particular Origin Pacific can not see how any perceived benefit can outweigh the huge anti competitive detriment of the Application.

UNDERTAKINGS AND CONDITIONS

25 As earlier indicated none of the undertakings or conditions so far offered or suggested by the Applicants alters Origin Pacific's view of the Application. In particular none of those undertakings or conditions even purports to address the provincial/regional implications.

COMMISSION QUESTIONS

26 Origin Pacific has commented on the Commission Questions 21 23 26 and 27 above. Comments on several other Commission Questions are already contained in its Submissions. Origin Pacific wishes to further consider various of the Commission's Questions once it has been able to review further submissions of the Applicants and others.

CONFIRMATION OF INITIAL SUBMISSIONS

27 Origin Pacific repeats and confirms its Submissions lodged to the Application.