

AIR NEW ZEALAND LIMITED

AND

QANTAS AIRWAYS LIMITED

**CROSS-SUBMISSION IN RESPONSE TO
THIRD PARTY SUBMISSIONS
REGARDING THE COMMERCE
COMMISSION'S DRAFT
DETERMINATION**

18 JULY 2003

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OVERVIEW

Introduction

1. On 20 June 2003, Air New Zealand Limited (**Air New Zealand**) and Qantas Airways Limited (**Qantas**) (together the **Applicants**) filed their joint submission in response to the Commerce Commission's (the **Commission**) Draft Determination dated 10 April 2003 (**Joint Submission**).
2. In addition to the Joint Submission, the Commission received submissions from twenty third parties. The majority of the issues raised by third party submitters have been addressed by the Applicants in the Joint Submission. Accordingly, where issues raised by third parties have been addressed in the Joint Submission, this cross-submission simply refers the Commission to the relevant sections of the Joint Submission.
3. Third parties have provided very little in the way of supporting evidence for the statements and assertions made in their submissions. The Applicants believe the Commission must prefer the Applicants' submissions, which are backed by substantial and detailed evidence, to the submissions of third parties that are largely unsupported by any objectively verifiable evidence.

Virgin Blue

4. Virgin Blue's submission on the Draft Determination is similar to its previous submissions to the Commission. As a result, while Virgin Blue's submission does raise various issues, the Applicants believe that these issues have been fully addressed in the Joint Submission. What the Commission can take from Virgin Blue's statements and actions is that:
 - Virgin Blue has been actively preparing to commence operations on Tasman and domestic New Zealand routes; and
 - Virgin Blue will commence on Tasman and domestic New Zealand routes regardless of the Alliance.

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5. Despite its obvious commercial self-interest, Virgin Blue confirms the Applicants' evidence regarding the affect of VBA entry on fares, even at low market shares.¹ In addition, Virgin Blue notes that:
- in the first three years of its operation, Virgin Blue achieved a 32.1% share of domestic Australian passengers on the routes on which it directly competed; and
 - Virgin Blue continues to grow.
6. Virgin Blue confirms that in its view, it can achieve similar levels of growth in domestic New Zealand and the Tasman if it is able to secure the conditions it desires. However, the Applicants note that Virgin Blue has stated publicly that a divestiture of Freedom by Air New Zealand is not a prerequisite:
- “Virgin now believes that the Qantas decision to use Jet Connect on trans-Tasman flights has changed the market dynamics, and says other ways need to be found of dealing with issues of predation and capacity dumping.
- “We always said that Freedom Air was only interesting if there was no Freedom Air II,” Mr Huttner said. “Jet Connect has become Freedom Air II and it can just as easily be used against Air New Zealand as it can against us.
- “With that in mind, we are focusing the majority of our attention on comparable airport facilities at peak times.
- “Clearly, after this occurred in Australia it allowed Virgin to become the full force for competition that we can also become in New Zealand”.²
7. Even if Virgin Blue's growth is not as rapid as it was in Australia, the Commission has evidence from both the Applicants and Virgin Blue that Virgin Blue:
- has the desire to enter the Tasman and domestic New Zealand markets;
 - has the fleet, brand and capital available to enter the Tasman and domestic New Zealand markets;

¹ See for example, paragraphs 5.3, 5.6, 5.7 and 5.8 of Virgin Blue's submission.

² Virgin says airport access key issue in Qantas-Air NZ tie-up *The Australian* 18 June 2003.

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- has the ability to grow rapidly on entry;
- even at a low level of entry will impose a significant constraint on the Applicants;
- has approached Air New Zealand and New Zealand airports regarding access to facilities; and
- has successfully applied for IASC approval to provide unlimited capacity on Tasman routes. In granting approval, the IASC – whose Chairman is Ross Jones a former ACCC Commissioner – stated that:

“The airline therefore possesses experience and a range of physical, financial and skilled personnel resources which provide a substantial and credible basis for the development of its international venture.”³

Repetition within submissions

8. The Applicants note that, besides Virgin Blue's submission, there is considerable repetition between third party submissions and reliance by some third party submissions on other third party submissions. Further, some submitters have, in effect, made more than one submission.
9. For example, Infratil, the Mayor of Wellington, Major Accommodation Providers, Gullivers Pacific Group (**Gullivers Pacific**), Talley Fisheries and Wellington International Airport Limited (**WIAL**) are all parties to one submission (the **Infratil Submission**) in circumstances where:
 - Infratil and the Wellington City Council are the only shareholders of WIAL (66% and 34% respectively) and the Mayor of Wellington is a director of WIAL;
 - WIAL makes a submission in its own right; and
 - Gullivers Pacific makes a submission in its own right.
10. Further, the Applicants note:

³ [2003] IASC 109, paragraph 5.4.

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- Gullivers Pacific's submission quotes extensively and directly from the Travel Agents Association of New Zealand's (TAANZ) submission;
 - Bon Voyage quotes extensively and directly from TAANZ's submission;
 - Holiday Shoppe and United Travel are the retail arms of Gullivers Pacific and are members of TAANZ; and
 - Robin Halliday, a member of the Save Air NZ working group, made an individual submission in addition to Save Air NZ's submission.
11. The filing of a number of submissions by effectively the same party (in particular by parties to the Infratil Submission) creates the illusion of a greater degree of opposition to the Alliance than is in fact the case. This extends to repetition in submissions of assertions already made in earlier submissions. The repetition of a point by the same people does not give that point any greater degree of validity. The Commission should not be deceived by this strategy, but should instead be concerned to address the continuing lack of any substantive evidence to support the repeated assertions of those parties.
12. Therefore, for the purposes of this cross-submission, third party submitters are regarded as effectively falling within three groups: the parties to the Infratil Submission, participants in the travel distribution market who rely on TAANZ's submission, and other third party submitters. Each group is addressed below.

Conditions

13. While some third party submitters have raised the issue of conditions being imposed on the Applicants in exchange for the Commission granting authorisation, the Applicants do not propose to comment further on conditions. While, the Applicants acknowledge the issue of conditions, it has been addressed in detail in Chapter 14 of the Joint Submission.

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INFRATIL AND WIAL

Introduction

14. As noted above, Infratil (66% shareholder of WIAL), the Mayor of Wellington (where Wellington City Council is a 34% shareholder of WIAL and the Mayor of Wellington is on WIAL's Board of Directors), Major Accommodation Providers, Gullivers Pacific, Talley Fisheries and WIAL are parties to the Infratil Submission. In addition to being parties to the Infratil Submission, WIAL and Gullivers Pacific make individual submissions to the Commission that raise broadly similar issues.
15. With the exception of Gullivers Pacific's comments on travel distribution (which are the comments of TAANZ and which are discussed below) the Applicants respond to the following issues raised by these submitters:
 - (i) legal and procedural issues;
 - (ii) the role of the New Zealand Government;
 - (iii) the Commission's competition analysis; and
 - (iv) the assessment of benefits and detriments.

Interests of the submitters

16. WIAL operates a business that is a natural monopoly whose price fixing abilities are reinforced by legislation. It is the sole provider of airport facilities in the Wellington region. WIAL's and its shareholders' aviation knowledge and expertise relate solely to the management of airports. In light of this expertise, the only aspect of the Draft Determination that Infratil and WIAL are qualified to comment on is access to facilities at Wellington Airport. In its submission, WIAL confirms that there is no facilities constraint that would amount to a barrier to entry at Wellington Airport.
17. The parties to the Infratil Submission have no expertise in managing an international airline. Gullivers Pacific's expertise is limited to the sale and marketing of passenger tickets.
18. WIAL is a profit maximising natural monopoly, not an impartial third party concerned only with New Zealand's best interests. As a profit maximising natural monopoly, WIAL and

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its majority shareholder Infratil have every commercial incentive to maintain the status quo of a separate Air New Zealand and Qantas with less collective countervailing power.

19. Infratil's website states that WIAL has a target rate of return on capital of 10% p.a.⁴ Given that WIAL and Infratil claim that a natural monopoly operating in a largely risk free environment needs a 10% p.a. return on capital, it is disingenuous for WIAL to submit that Air New Zealand would be an attractive investment despite participating in a high risk industry earning significantly below a 10% p.a. return on capital. WIAL submits:

“...there is no reason for the Commission to suppose that the capital markets would not be willing to fund airline expansion plans that are supported by a robust business case”.⁵
20. The Applicants have provided substantial evidence that an international airline competing in an industry with a particularly high risk profile cannot sustain itself with a return on capital well below that claimed by WIAL and Infratil as necessary for a natural monopoly.
21. This is all the more the case as WIAL, in its submissions to the Commission's inquiry into Airfield Activities at Auckland, Wellington and Christchurch International Airports, argued repeatedly that WIAL's return on capital needed to be assessed on an economic basis (including through revaluation of its asset base).⁶ Given these submissions, WIAL must recognise that if Air New Zealand incurs continuing economic losses, as it has to date and will in the Counterfactual (however specified), then Air New Zealand cannot remain viable let alone attract the required investment from capital markets.

Legal and procedural issues

Interconditional nature of the Applications

22. The Infratil Submission argued that:

“The approach taken by the Commission seems to have allowed convenience to supersede the statutory requirements of the Commerce Act. By taking such an approach, the

⁴ http://www.infratil.com/wellington_international_airport_faqs.htm

⁵ WIAL Submission paragraph 4.21.

⁶ See for example, paragraph 2.82 of WIAL's Submission in relation to the Commerce Commission's critical issues paper, 27 April 2001.

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Commission is, in our submission, making an error of law giving rise to appeal rights in the High Court for any party able to assert such rights".⁷

23. The Commission is not required by the Commerce Act to analyse the benefits and detriments of each application separately. Indeed such an approach would inevitably lead to a misleading and commercially unrealistic result.

New Zealand Government's role in the Commission's process

24. The Infratil Submission argued that because the New Zealand Government has not issued and does not intend to issue a section 26 notice:

"...the Commission must ignore any "informal" statements of Government policy issued via the media or otherwise".⁸

25. The Infratil Submission has overstated the importance of a Section 26 notice. In citing the Government's position in the Pohokura case, the Infratil Submission has conveniently overlooked that in the Pohokura investigation the Government is not the majority shareholder of one of the Applicants. In addition, the Infratil Submission ignores the formal statutory "Kiwi shareholder" approval process that the Government was required to undertake to ensure that the Alliance was in the best interests of New Zealand.⁹

26. In the present case, the Government is a direct shareholder of Air New Zealand. Accordingly, the Government's intentions in its role as shareholder of Air New Zealand are critical in assessing the Counterfactual from a commercial and pragmatic perspective. The Commission must have regard to the intentions of the majority shareholder, particularly when the Commission has placed importance upon Government funding in its conclusions regarding Air New Zealand's vulnerability in the Counterfactual. The fact that there is a formal procedure in the Commerce Act for the Government to comment on an investigation is not relevant. What is how the Government views the issue. In this respect, the Government has stated that:

"The second perspective from which the government had to judge the proposal was as Kiwi Shareholder and guardian of the national interest. The considerations we used to guide this judgement were:

⁷ Infratil Submission paragraph 11.

⁸ Infratil *et al* Submission, 20 June 2003, paragraph 51.

⁹ Joint Media Statement, Minister of Finance, Associate Minister of Finance, Minister of Transport *Govt approves Air NZ Qantas proposal proceeding to Commerce Commission*, 18 December 2002.

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- maintenance of effective control of Air New Zealand by New Zealand nationals;
- continuation of Air New Zealand's ability to exercise New Zealand's existing and future air rights;
- preservation of the unique New Zealand identity of Air New Zealand;
- provision of effective channels for international tourism and travel;
- provision of a durable domestic air services network; and
- preservation of New Zealand based employment.

On balance, we considered the proposal cleared these hurdles".¹⁰

Competition analysis

27. In general, parties to the Infratil Submission agree with the Commission's competition analysis. However, the parties raise additional issues, which the Applicants respond to below.

Impact of recent events

28. The Infratil Submission argues:

"Our review of these events... suggests that Air New Zealand is in the process of demonstrating that, contrary to the theme running through the Applications, "size is not everything" in the markets in which it operates".¹¹

29. Even setting to one side the fact that the parties to the Infratil Submission lack either: the technical airline industry expertise; or direct knowledge, to be able to comment in any relevant way on the performance of Air New Zealand, the Infratil Submission's analysis of these events is simplistic, incorrect and misleading. The analysis fails to take into account:

- the different business strategies and methods of competition that FSAs and VBAs adopt worldwide; and

¹⁰ Joint Media Statement, Minister of Finance, Associate Minister of Finance, Minister of Transport *Govt approves Air NZ Qantas proposal proceeding to Commerce Commission*, 18 December 2002.

¹¹ Infratil *et al* Submission 20 June 2003, paragraph 18.

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- other structural changes occurring in the aviation industry, which the Applicants highlighted in Chapter 2 of the Joint Submission.
30. The Infratil Submission asks the Commission to prefer the views outlined in the Infratil Submission on the dynamics of the global industry and their impact on FSAs - which are not supported by any evidence or experience in managing an international airline - over the substantiated and supported views of the Applicants and the many supporting expert views disclosed in Chapter 2 of the Joint Submission.
31. In respect of the Infratil Submission's specific claims, the Applicants note that:
- The claim that Air New Zealand is in a stronger position now than when the applications were originally filed ignores the extensive evidence provided by Air New Zealand to the Commission demonstrating the reasons why, for example, NZ Express' success does not provide an adequate foundation for concluding that Air New Zealand is recovering and sustainable long-term.
 - While the withdrawal of United Airlines from Auckland – Los Angeles provides an opportunity for Air New Zealand, barriers to entry and expansion in this market are low meaning that Applicants are significantly constrained by the threat of entry into this market.¹²
 - In response to the submission that the competitive effects of Emirates Airline's entry on the Tasman will be limited, the Applicants refer the Commission to Chapter 4 of the Joint Submission, which demonstrates that the Applicants face intense competition on the Tasman from existing Fifth-freedom carriers. The entry of Emirates - on a substantial scale - and Royal Brunei will increase this constraint.

Tourism benefits

32. The Infratil Submission's statement that the Alliance would be likely to have a negative impact on New Zealand tourism is incorrect and unsupported. All of the points raised in the Infratil Submission have been comprehensively addressed in the Chapter 11 of the Joint Submission. Accordingly, the Applicants stand by NECG's revised calculation that the Alliance will result in tourism benefits to New Zealand of between NZ\$66m and NZ\$133m in Year 3.

¹² United States Department of Transportation Order 2001-3-4 by reference to Order to Show Cause, page 12.

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Virgin Blue entry

33. The Applicants strongly disagree with WIAL's submission that the presence of a VBA entrant does not guarantee effective competition. WIAL's unfounded submission is contrary to international experience, which, as set out in Chapter 3 of the Joint Submission, demonstrates that: a VBA entrant will impose a significant competitive constraint on the Applicants even with a small initial market share, and that VBA entrants continue to grow subsequent to entry and initial expansion.

Barriers to entry

34. Based on its direct knowledge, WIAL submitted that access to facilities at Wellington Airport does not amount to a barrier to entry to the domestic New Zealand or Tasman markets. As noted above, this is the only aspect of the Draft Determination on which WIAL has any relevant expertise.
35. WIAL has made submissions on a number of conditions of entry on which it has no direct relevant experience or knowledge, namely: capital requirements; sunk costs; incumbent response; scale and scope of entry; and loyalty schemes. The Applicants disagree with WIAL's submission that these conditions amount to barriers to entry. A VBA entrant – in particular, Virgin Blue – would not face any barriers to entry. The recent substantial entry by Emirates is ample evidence that there are no barriers to entry. The fact that Emirates did not elect to fly to Wellington is not evidence of a barrier to market entry. The Applicants refer the Commission to paragraphs 3.42 to 3.114 of Chapter 3 and section 1.2.2 of Chapter 7 of the Joint Submission.
36. In response to Commission question 18, WIAL submitted that there is room for at least two substantial airlines where those airlines make an appropriate commitment to the market segments they are targeting. The Applicants disagree with WIAL's submission to the extent it relates to two FSAs - it is pure conjecture. The Applicants - who have direct experience and knowledge of operating airlines in New Zealand and the Tasman - have produced comprehensive evidence regarding:
- (i) the effects of deregulation;
 - (ii) the creation of the Single Aviation Market; and
 - (iii) the history of entry and exit in the domestic New Zealand market.

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37. This evidence demonstrates that two competing FSAs cannot survive in the domestic New Zealand market. However, the Applicants have also provided extensive evidence demonstrating that there is room for a VBA and a FSA to compete. The difference in conclusions for a FSA and a VBA is driven primarily from the low cost base VBAs enjoy and their resulting ability to offer low fares that stimulate demand.
38. Gullivers Pacific in its individual submission argues that (the lack of) access to a CRS/GDS amounts to a barrier to entry in the main trunk market.¹³ In response, the Applicants note that Gullivers Pacific's view does not seem to be universally held amongst travel agents. For example, TAANZ does not make a comment on access to GDS or CRS in its submission and Bon Voyage notes:

“No airline of any scale could operate without a CRS (computer reservations system), but many airlines overseas and Origin Pacific in New Zealand have operated without connection to a GDS. It should be noted that Virgin Blue now offers travel agents connection through the Sabre GDS – this move was made in 2002 to assist it in securing large corporate accounts in Australia via travel agents. We do not believe access to a GDS is a barrier to entry”.¹⁴

Public benefits and public detriments

39. WIAL submitted that:
- (i) scheduling changes would have a negative impact (i.e. through loss of competition) on the Wellington region without any corresponding benefits elsewhere;
 - (ii) the Alliance may result in tourism detriments rather than benefits;
 - (iii) no benefit could arise from engineering and maintenance because it is not credible that Qantas will act as the Applicants claim in the Counterfactual; and
 - (iv) extra freight capacity resulting from the Alliance should be counted as a benefit.

¹³ Gullivers Pacific Submission, paragraph 8.14.1.

¹⁴ Bon Voyage Submission, page 5.

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40. WIAL has misunderstood the model used to estimate scheduling benefits. The anti-competitive detriments flowing from reduced competition between the Applicants in the Factual are considered in the NECG model. However, it is important to realise that public benefits can and do arise to mitigate, and in this case more than off-set, anti-competitive detriments. Although, as previously acknowledged by the Applicants, the Alliance will reduce competition between the Applicants, it would be artificial to discount scheduling benefits on the basis that there are detriments. If such an approach were to be adopted, then logically, the Commission would never be able to grant an authorisation.
41. As stated above, the submission that there are likely to be net tourism detriments is incorrect.
42. Finally, the Applicants do not agree that no benefit could arise from engineering and maintenance. As set out in Chapter 13 of the Joint Submission, Qantas' behaviour in the Counterfactual and the Factual is both economically and commercially rational. Further, the Applicants do not agree with WIAL when it:

“...questions the relevance of this claimed benefit, given that the Commission has provisionally determined that it will not consider the relevant market given the lack of market aggregation”.¹⁵

43. WIAL's statement does not reflect the legal position in New Zealand. In *Telecom Corporation of New Zealand Limited v Commerce Commission*¹⁶, the High Court adopted the approach taken by the Australian Federal Court in *Re Queensland Co-op Milling Assn Ltd and Re Defiance Holdings Ltd*¹⁷:

“...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress”.¹⁸

¹⁵ Wellington Internal Airport Limited Submission 20 June 2003, paragraph 4.33.

¹⁶ (1991) 4 TCLR 473.

¹⁷ (1976) 25 FLR 169; 8 ALR 481; ATPR 40-012.

¹⁸ At page 530.

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44. It is irrelevant that no aggregation arises in the engineering and maintenance market. The correct test is to compare the situation in the Counterfactual versus the Factual and determine whether the increase in engineering and maintenance work is valuable to the community.
45. In its individual submission, Gullivers Pacific refers to and quotes from a report by NZIER. However, Gullivers Pacific has never provided an NZIER Report. NZIER does not appear to have produced any definitive modelling of its own. In these circumstances, the Commission should not have regard to this evidence.

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TRAVEL AGENTS ASSOCIATION OF NEW ZEALAND

Introduction

46. TAANZ's submission relates primarily to the impact of the Alliance on the travel distribution services market. TAANZ's submission is relied on by Gullivers Pacific and Bon Voyage Marketing Limited.

47. As stated on its website, TAANZ:

“...is a trade organisation that works for it's members and New Zealand travellers to secure the best arrangements and protection possible”.¹⁹

48. TAANZ is a trade organisation committed to promoting its members' interests. It is in TAANZ's interest to ensure that there are as many travel agents in New Zealand as possible, regardless that this means perpetuating the existence of inefficiencies. In this respect, the Applicants note that TAANZ's submission is directed to maintaining the status quo rather than providing consumers with efficient and valuable travel distribution services.

49. In a departure from its earlier submission, TAANZ now submits that, in addition to the wholesale travel distribution market, there are separate markets for:

- (i) corporate travel distribution services; and
- (ii) retail and leisure travel distribution services.

50. TAANZ argues that the Alliance will result in a substantial lessening of competition in these two markets. Notwithstanding the fact that the Applicants believe that TAANZ's market definitions are incorrect, the Applicants do not believe that there would be any lessening of competition in these market segments for the following reasons.

Corporate travel distribution services

51. TAANZ submitted that the Alliance will adversely impact on Travel Management Companies (TMCs). TAANZ submits that TMCs:

¹⁹ www.taanz.co.nz

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- manage the purchase and implementation of travel services on behalf of customers;
 - manage and process consolidated billings for corporate customers;
 - manage travel tender processes for corporate customers;
 - manage loyalty programs on behalf of corporate customers; and
 - organise and co-ordinate meetings, conferences etc.
52. TAANZ argued that TMCs' viability is driven by their ability to leverage off competition between Air New Zealand and Qantas so as to provide cost savings to their corporate customers. By removing competition between Air New Zealand and Qantas, TMCs' ability to retain some of these cost savings is diminished and, therefore, TMCs' viability will be placed at risk.
53. TAANZ's representation of the role of TMCs is misleading. In fact, Air New Zealand does not negotiate corporate contracts through any TMCs. Therefore, TMCs have no role in achieving cost savings for corporate customers in the way that TAANZ describes. Air New Zealand contracts directly with corporate customers, with TMCs being used as an interface for the subsequent implementation and administration of the relationship. In practice, a corporate customer and Air New Zealand reach agreement as to price. Then, for individual bookings, TMCs book flights and are available to action changes to that booking.
54. The Alliance will have little impact on TMCs. Corporate customers currently use and in the Counterfactual will continue to use TMCs to manage their travel processes as long as the service provided by TMCs is competitive compared to the cost that a corporate customer would incur if it managed its own travel requirements. Likewise in the Factual, a corporate customer would continue to use TMCs to manage their travel processes as long as the service provided by TMCs is cost competitive. Accordingly, in the Factual, there will be a significant amount of corporate business that efficient and effective TMCs can continue to tender to manage.

Retail and leisure travel market

55. TAANZ submits that:

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"If the Alliance is approved many retail travel agencies in New Zealand will be forced out of business. They will not be able to offer choice to the New Zealand consumer on the most significant markets that they sell into, in particular the Trans Tasman, the Pacific and the USA/New Zealand markets. Many retail travel agencies already are marginal businesses, their financial viability having been affected by the actions and competitive (in many cases unfairly competitive) activities of Air New Zealand".²⁰

56. The important issue for the Commission is whether or not the Alliance threatens the survival of efficient travel agents. The existence of travel agents for the sake of having travel agents is not in New Zealand's best interests. Already, a number of travel agents charge consumers a service fee for providing value-added services (e.g., House of Travel's *Searchflight*). There is no reason why the Alliance threatens travel agent's ability to charge such a fee in return for providing an efficient service that consumers value. If consumers value such services, it is difficult to see why travel agents offering value to consumers will not continue to succeed and flourish.

Wholesale travel distribution services market

57. TAANZ's submission supports the Commission's preliminary conclusion that the Alliance would result in a substantial lessening of competition in the national wholesale distribution market and submits that:

- the Alliance threatens the viability of consolidators; and
- in the Factual, the Applicants will not transact with wholesalers and, therefore, the viability of wholesalers will be threatened.

Consolidators

58. TAANZ submitted that:

"The threat to the consolidator, and therefore in turn to the consumer, under the Alliance is that their ability to provide an extensive choice of multi stop, multi carrier itineraries is compromised".²¹

59. In response, the Applicants note that:

²⁰ TAANZ Submission, page 8.

²¹ TAANZ Submission, page 16.

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- Fifth-freedom carriers - which account for 16% of total Tasman seats (pre Emirates entry) - are particularly large users of consolidators and there is no reason why this would change in the Factual; and
- the level of consolidation carried out by Air New Zealand will be unaffected in the Factual because Air New Zealand consolidates primarily on routes where it does not operate its own aircraft. For example, Air New Zealand uses consolidators in respect of:
 - services to India; and
 - Auckland-London services over Hong Kong (the consolidator offers a Auckland – London ticket by consolidating an Air New Zealand Auckland-Hong Kong ticket with a Virgin Atlantic ticket for the Hong Kong-London sector).

Wholesalers

60. In the Factual, Air New Zealand and Qantas will continue to transact with wholesalers. The Australian experience whereby large numbers of independent wholesalers have exited can be legitimately distinguished from the New Zealand situation.
61. In New Zealand, travel distributors are vertically integrated to a far greater degree than travel distributors in Australia. As a result of this vertical integration, it is not rational in the Factual for the Applicants to restrict a wholesaler's access to tickets because such a policy would increase the risk of the Applicants losing the support of the wholesaler's retail network. For example, restricting House of Travel's wholesale arm's access to tickets risks losing the support of House of Travel's retail network. Similar issues arise in respect of Flight Centre, and Gulliver Pacific's wholesale arm (Gulliver's retail arms are Holiday Shoppe and United Travel).
62. Air New Zealand notes that House of Travel, Gullivers Pacific and Flight Centre account for approximately [] of Air New Zealand's total international business. The only major independent wholesaler in New Zealand is Go International, which has not filed an independent submission.

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OTHER THIRD PARTY SUBMISSIONS

63. In the Applicants' view, the Joint Submission responds to the issues raised by other third party submitters. The issues raised by third party submitters are broadly that:

- (i) the Alliance is unnecessary in light of Air New Zealand's recent financial performance;
- (ii) the Counterfactual is unrealistic;
- (iii) the Alliance will adversely affect Origin Pacific and result in a substantial lessening of competition in the provincial market;
- (iv) Virgin Blue is unlikely to enter the domestic New Zealand market and if it did enter, it would be unlikely to constrain the Applicants;
- (v) there are barriers to entry in the domestic New Zealand Market; and
- (vi) the Alliance will adversely affect tourism.

64. The Applicants note that all the points raised are responded to in detail in the Joint Submission. Accordingly, the Applicants refer the Commission to:

- Chapter 6 (Air New Zealand's confidential submission regarding the Counterfactual) and Chapter 2 (Structural Change Chapter) of the Joint Submission in relation to Air New Zealand's financial viability;
- Chapter 5 (Counterfactual Chapter) and Chapter 6 of the Joint Submission in relation to plausibility of the Counterfactual;
- Chapter 5 (Counterfactual Chapter) of the Joint Submission in relation to impact of the Alliance on Origin Pacific;
- Chapter 3 (VBA Chapter) of the Joint Submission in relation to certainty and impact of Virgin Blue entry; and
- Chapter 3 (VBA Chapter) and Chapter 7 (Market Definition and competitive Effects Chapter) of the Joint Submission in relation to barriers to entry.
- Chapter 11 (Tourism Chapter) of the Joint Submission in relation to tourism benefits resulting from the Alliance.

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65. The Applicants note that none of these third party submitters have demonstrated any special skill or knowledge relative to the statements and assertions that they make. Further, many of the statements and assertions made by third parties are not supported by reference to any objectively verifiable evidence.