

## **Determination**

### **Menzies Aviation (New Zealand) Limited and Skystar Airport Services NZ Pty Limited [2013] NZCC 17**

**The Commission:** Dr Mark Berry  
Sue Begg  
Dr Stephen Gale

**Summary of application:** Menzies Aviation (New Zealand) Limited seeks clearance to acquire 100% of the shares in Skystar Airport Services NZ Pty Limited.

**Determination:** Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission gives clearance for Menzies Aviation (New Zealand) Limited to acquire 100% of the shares in Skystar Airport Services NZ Pty Limited.

**Date of determination:** 15 October 2013

# CONTENTS

<b>THE PROPOSAL .....</b>	<b>1</b>
<b>OUR FRAMEWORK.....</b>	<b>1</b>
<i>The substantial lessening of competition test .....</i>	<i>1</i>
<i>When a lessening of competition is substantial.....</i>	<i>1</i>
<i>When a substantial lessening of competition is likely .....</i>	<i>2</i>
<i>The clearance test.....</i>	<i>2</i>
<b>PARTIES .....</b>	<b>2</b>
MENZIES .....	2
SKYSTAR.....	3
OTHER GROUND HANDLING SERVICE PROVIDERS.....	3
<i>SkyCare Airlines Services Limited (SkyCare Airline Services) .....</i>	<i>3</i>
<i>Air New Zealand Limited (Air NZ).....</i>	<i>3</i>
<i>Planebiz Limited (Planebiz).....</i>	<i>3</i>
AIRLINE CUSTOMERS OF GROUND HANDLING SERVICE PROVIDERS .....	4
<i>Jetstar Airways Pty Limited (Jetstar).....</i>	<i>4</i>
<i>Virgin Australia Airlines Pty Limited (Virgin Australia) .....</i>	<i>4</i>
BACKGROUND .....	4
RELEVANT CONTRACTS .....	5
<i>Menzies.....</i>	<i>5</i>
<i>Skystar .....</i>	<i>6</i>
<b>MARKET DEFINITION.....</b>	<b>6</b>
OUR APPROACH TO MARKET DEFINITION .....	6
THE APPLICANT’S VIEW OF THE RELEVANT MARKETS .....	6
OUR VIEW OF THE RELEVANT MARKETS.....	7
<i>What is the relevant product/service market? .....</i>	<i>7</i>
<i>What is the geographic scope of the market?.....</i>	<i>7</i>
<i>What is the time dimension of the market? .....</i>	<i>8</i>
<b>WITH AND WITHOUT SCENARIOS.....</b>	<b>8</b>
WITH THE ACQUISITION .....	8
WITHOUT THE ACQUISITION .....	8
<b>COMPETITION ANALYSIS.....</b>	<b>9</b>
EXISTING COMPETITION.....	9
<i>Virgin Australia .....</i>	<i>11</i>
<i>Jetstar .....</i>	<i>11</i>
<i>Our views on the likely competition from Air NZ .....</i>	<i>11</i>
<i>Conclusion on the likely competition from Air NZ.....</i>	<i>12</i>
POTENTIAL COMPETITION .....	12
<i>Entry conditions .....</i>	<i>12</i>
<i>Previous history of entry .....</i>	<i>13</i>
<i>Likely future entrants.....</i>	<i>13</i>
<i>Conclusion on potential competition .....</i>	<i>15</i>
COUNTERVAILING POWER .....	15
<i>Sponsorship of entry by airlines.....</i>	<i>15</i>
<i>Disciplining the merged firm.....</i>	<i>16</i>
<i>Self-supply.....</i>	<i>16</i>
<i>Conclusion on countervailing power.....</i>	<i>16</i>
<b>OVERALL CONCLUSION .....</b>	<b>16</b>
<b>DETERMINATION ON NOTICE OF CLEARANCE.....</b>	<b>17</b>

Confidential material in this report has been removed. Its location in the document is denoted by [ ].

## The proposal

1. On 21 August 2013 Menzies Aviation (New Zealand) Limited (Menzies) applied for clearance to acquire 100% of the shares in Skystar Airport Services NZ Pty Limited (Skystar). By agreement with Menzies, a decision on the application is required by 17 October 2013.
2. The proposed acquisition forms part of Menzies Aviation Holdings Pty Limited's acquisition of Skystar Airport Services Pty Limited in Australia.

## Our framework

3. Our approach to analysing the competition effects of the proposed acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.<sup>1</sup>

### *The substantial lessening of competition test*

4. As required by the Commerce Act 1986 (the Act), we assess whether the proposed merger is likely to result in a substantial lessening of competition.
5. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).<sup>2</sup>
6. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the 'competitive price'),<sup>3</sup> or reduce non-price factors such as quality or service below competitive levels.
7. Determining the scope of the relevant market or markets can be an important tool in determining whether a substantial lessening of competition is likely.
8. We define markets in the way that we consider best isolates the key competition issues that arise from the merger. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial common sense.<sup>4</sup>

### *When a lessening of competition is substantial*

9. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.<sup>5</sup>

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<sup>1</sup> Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2013.

<sup>2</sup> *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

<sup>3</sup> Or below competitive levels in a merger between buyers.

<sup>4</sup> Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

<sup>5</sup> *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].

Some courts have used the word ‘material’ to describe a lessening of competition that is substantial.<sup>6</sup>

10. Consequently, there is no bright line that separates a lessening of competition that is substantial from one that is not. What is substantial is a matter of judgement and depends on the facts of each case. Ultimately, we assess whether competition will be substantially lessened by asking whether consumers in the relevant market(s) are likely to be adversely affected in a material way.

*When a substantial lessening of competition is likely*

11. A substantial lessening of competition is ‘likely’ if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility, but does not mean that the effect needs to be more likely than not to occur.<sup>7</sup>

*The clearance test*

12. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.<sup>8</sup> If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.<sup>9</sup>

## **Parties**

### **Menzies**

13. Menzies is part of the Menzies Aviation Group, which provides ground handling, cargo handling, and cargo forwarding services in 30 countries. In New Zealand, Menzies provides ground handling services (either itself or through a sub-contracted third party supplier) at Auckland, Wellington, Christchurch, Dunedin and Queenstown airports.<sup>10</sup>
14. Of relevance to this application Menzies provides ground handling services through a sub-contract with Planebiz Limited to Virgin Australia, Singapore Airlines and Emirates at Christchurch Airport, and to Virgin Australia at Dunedin and Queenstown Airports. Menzies provides ground handling services itself for narrow- and wide-bodied aircraft at Auckland Airport and narrow-bodied aircraft at Wellington Airport.

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<sup>6</sup> Ibid at [129].

<sup>7</sup> Ibid at [111].

<sup>8</sup> Section 66(1) of the Commerce Act 1986.

<sup>9</sup> In *Commerce Commission v Woolworths Limited (CA)*, above n 2 at [98], the Court held that “the existence of a ‘doubt’ corresponds to a failure to exclude a real chance of a substantial lessening of competition”. However, the Court also indicated at [97] that we should make factual assessments using the balance of probabilities.

<sup>10</sup> Menzies is ultimately owned by Menzies Aviation Plc and John Menzies Plc (both registered in the United Kingdom).

## Skystar

15. Skystar provides ground handling services at eight airports in Australia and New Zealand.
16. Skystar's New Zealand activities are confined to providing ground handling services at Christchurch and Dunedin Airports for Jetstar's narrow-bodied aircraft.

## Other ground handling service providers

### *SkyCare Airlines Services Limited (SkyCare Airline Services)*

17. SkyCare Airline Services provides ground handling services for Jetstar at Auckland, Wellington and Queenstown airports. SkyCare Airline Services also provides, through a related company, ground handling services for corporate and charter aircraft at airports throughout New Zealand.<sup>11</sup>
18. In July 2013, Aero-Care Pty Limited (Aero-Care) acquired a 25% shareholding in SkyCare Airline Services. Aero-Care is an Australian-based company that provides ground handling services at 17 Australian airports.

### *Air New Zealand Limited (Air NZ)*

19. Air NZ offers passenger services domestically and internationally. It also provides various other related services, including ground handling and engineering services.
20. Air NZ provides ground handling services in New Zealand for its own aircraft at all New Zealand airports from which Air NZ operates. However, Air NZ sub-contracts all, or part, of its ground handling operations to third party suppliers at the smaller airports (eg, Air NZ sub-contracts to Dunedin Airport Services Limited for ramp services at Dunedin Airport).
21. In addition to providing ground handling services for its own aircraft, Air NZ provides those services for a number of other customer airlines which serve Auckland, Wellington, Christchurch and/or Queenstown airports (eg, Qantas, Thai Airways, Fiji Airways<sup>12</sup> and China Southern Airlines).

### *Planebiz Limited (Planebiz)*

22. Planebiz provides ground handling services at Christchurch, Dunedin and Queenstown airports, primarily through a sub-contract with Menzies. It provides the labour and equipment and carries out the handling work on behalf of Menzies. Planebiz also performs ground handling services at Christchurch Airport for other parties, including the Department of Corrections and SkyCare Airline Services.
23. Planebiz's sub-contract arrangement with Menzies' is non-exclusive, meaning it can provide sub-contracting services for another ground handling company, or in its own name, provide such services to an airline. Planebiz also advised us that [

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<sup>11</sup> This is provided by SkyCare International Limited.

<sup>12</sup> Previously Air Pacific.

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24. Other ground handling service providers of relevance to this application are:
- 24.1 Toll dnata Airport Services Pty Limited (Toll dnata), a 50/50 joint venture between Toll Holdings Limited and The Emirates Group, which provides ground handling for Emirates, and a number of other airlines, at seven airports in Australia; and
- 24.2 Oceania Aviation Services Pty Limited (Oceania), which provides ground handling services, primarily for narrow-bodied aircraft of various airlines at airports in the northern New South Wales and south east Queensland regions of Australia.

#### **Airline customers of ground handling service providers**

25. Of relevance to this application are the activities of Jetstar and Virgin Australia.

##### *Jetstar Airways Pty Limited (Jetstar)*

26. Jetstar, a wholly owned subsidiary of Qantas Airways Limited, is a low-cost carrier based in Australia. It provides air passenger services, both domestically within Australia and New Zealand, and internationally to a number of destinations (including between Auckland and Singapore).
27. As noted above, Jetstar contracts with:
- 27.1 SkyCare Airline Services to provide Jetstar's ground handling services at Auckland, Wellington and Queenstown airports; and
- 27.2 Skystar to provide Jetstar's ground handling services at Christchurch and Dunedin airports.

##### *Virgin Australia Airlines Pty Limited (Virgin Australia)*

28. Virgin Australia, in which Air NZ currently holds a 22.99% shareholding,<sup>13</sup> provides air passenger services both domestically within Australia and internationally, including between Australia and New Zealand. Currently, Virgin Australia contracts with Menzies to provide Virgin Australia's ground handling services in New Zealand.

#### **Background**

29. Ground handling incorporates a range of services comprising ramp, passenger and baggage handling services. Typically, these services include:
- 29.1 aircraft cleaning;
- 29.2 aircraft loading and unloading;

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<sup>13</sup> Air NZ intends to increase its existing shareholding in Virgin Australia to 25.99%.

- 29.3 aircraft push-back and towing;
  - 29.4 baggage handling;
  - 29.5 passenger check-in; and
  - 29.6 ticketing.
30. Ground handling services at New Zealand airports are generally provided under contracts entered into between the airline customers and ground handling providers. The exception is Air NZ, which provides ground handling services for its own aircraft.
  31. An airline generally initiates a request for proposal (RFP) process by inviting bids from interested parties when commencing services. At the end of the term of an existing contract, an airline may then decide to renew the contract, or it can issue another RFP.
  32. Ground handlers generally provide ground handling services themselves at major airports, but often sub-contract all or part of these services to another supplier in smaller airports. For example, and as noted above, Air NZ sub-contracts its ramp services to Dunedin Airport Services Limited at Dunedin Airport.
  33. Some airlines may contract on multiple airports worldwide, others on a national basis rather than for individual airports (eg, Virgin Australia), and some airlines have chosen to split their requirements between more than one supplier (eg, Jetstar).

### **Relevant contracts**

#### *Menzies*

34. As noted above, Menzies currently provides ground handling services for Emirates and Singapore Airlines at Christchurch Airport, and Virgin Australia at Christchurch and Dunedin Airports, via its sub-contract with Planebiz. In summary, Menzies':
  - 34.1 [ ] national contract<sup>14</sup> with Virgin Australia will expire on [ ];
  - 34.2 [ ] contract with Emirates at Auckland and Christchurch Airports will expire on [ ]; and
  - 34.3 contracts with Singapore Airlines at Christchurch and Auckland Airports [ ].
35. Under Menzies' contract with Virgin Australia, [ ].

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<sup>14</sup> Menzies also provides ground handling services for Virgin Australia at Auckland, Wellington and Queenstown airports.



36. Virgin Australia and Emirates can terminate their respective contracts with Menzies [ ].

### *Skystar*

37. Skystar contracts with Jetstar at Christchurch and Dunedin Airports. In summary, Skystar's:
- 37.1 [ ] contract with Jetstar at Dunedin Airport will expire on [ ]; and
- 37.2 contract with Jetstar at Christchurch airport expired in [ ] We have been advised by Skystar that the parties [ ].
38. Under Jetstar's contracts, [ ].

## **Market Definition**

39. For the purposes of considering this application we consider that the relevant markets are the markets for the provision of ground handling services separately for narrow- and wide-bodied aircraft at each airport in New Zealand.

### **Our approach to market definition**

40. Market definition is a tool that provides a framework to help identify and assess the close competitive constraints the merged firm would likely face. Determining the relevant market requires us to judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.
41. To help us establish whether customers would switch sufficient purchases to alternative products, we use the hypothetical monopolist test as a conceptual tool. This test asks whether a hypothetical sole supplier of a set of products would profitably increase prices for at least one of the merging firms' products by at least a small, but significant, amount.<sup>15</sup> This small, but significant, amount is often referred to as a SSNIP – a small, but significant, non-transitory increase in price.
42. In general, the smallest set of products in which the SSNIP can be profitably sustained is defined as the relevant product market.

### **The applicant's view of the relevant markets**

43. Menzies submitted that the relevant markets affected by this transaction are the markets for the provision of ground handling services (comprising ramp, passenger, and baggage handling services) at Christchurch and Dunedin Airports.

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<sup>15</sup> The test assumes that all other prices are held at current levels.

## **Our view of the relevant markets**

### *What is the relevant product/service market?*

44. For the purpose of assessing this application, the competition issues are best explained by considering two distinct product markets: the provision of ground handling services for wide-bodied aircraft and the provision of ground handling services for narrow-bodied aircraft.
45. Menzies currently provides ground handling services for both types of aircraft, but Skystar's ground handling operations in New Zealand are currently confined to narrow-bodied aircraft. There are some airlines that require ground handling services for only wide-bodied aircraft (eg, Emirates), others that require such services for only narrow-bodied aircraft (eg, Virgin Australia), and the remainder that require a mixture of services (eg, Jetstar at Auckland Airport).
46. Ground handling services for wide-bodied and narrow-bodied planes involve essentially the same activities. However, ground handling for wide-bodied aircraft requires some different and specialised equipment,<sup>16</sup> and additional staff training. Investment in both of these would require some sunk costs.
47. The same competitive options, in terms of potential bidders, are generally available to airlines for both narrow- and wide-bodied aircraft, with the exception of Skystar, which does not currently provide ground handling for wide-bodied aircraft at New Zealand airports.
48. We recognise that if there are any competition concerns from the proposed acquisition they will likely be most significant for ground handling services for narrow-bodied aircraft as that is the type of aircraft where Menzies' and Skystar's ground handling services currently overlap. However, we have also considered ground handling services for wide-bodied aircraft as, absent the acquisition, Skystar may have become a bidder for wide-bodied aircraft.

### *What is the geographic scope of the market?*

49. We consider that the relevant geographic scope of the markets is local.
50. Menzies and Skystar provide ground handling services at Christchurch Airport and Dunedin Airport. Any competition issues arising from the proposed acquisition are therefore likely to be experienced at Christchurch and Dunedin Airports.
51. Menzies also provides ground handling services (either itself or through a sub-contracting third party supplier) at Auckland, Wellington and Queenstown airports. There is the potential that Menzies and Skystar would compete for future tenders at airports where they do not currently both operate, absent the merger.
52. The main airports in New Zealand are geographically dispersed, with one airport per city/town, and so a hypothetical increase in price at one airport would be unlikely to

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<sup>16</sup> Such as bigger tractors for pulling the aircraft.

lead to an airline instead flying to another airport, or another city or town. On the demand-side, competition is therefore at the local level.

53. On the supply-side, a ground handling provider at one airport would need to make additional investments (mainly in capital equipment and staff training, some of which are sunk costs) before it could compete at another New Zealand airport. Therefore, a supplier in Auckland that does not currently supply into Christchurch, for example, would be best considered as a potential entrant rather than a near competitor for that particular market.
54. Some airlines have awarded their ground handling contracts on a national basis (eg, Virgin Australia) rather than for individual airports. National contracts may improve airlines' bargaining power, allow for transaction costs savings in tendering, and enable ground handlers to achieve greater efficiencies.
55. However, we consider that the affected markets are best considered at a local level. Airlines can, and do, contract for individual airports when it best suits their needs. For instance, Jetstar contracts with Skystar in Christchurch and Dunedin and with SkyCare Airport Services in Auckland, Wellington and Queenstown. Moreover, it is apparent that ground handling agents can be competitive when only competing at one airport. For example, SkyCare Airport Services won the Jetstar contract as a new entrant operating initially in Auckland only.

*What is the time dimension of the market?*

56. Competition for airlines' ground handling business occurs periodically when airlines tender or negotiate their contracts. This may be when an airline first enters a particular route, or when the previous contract has expired. Menzies submitted that the average contract length for ground handling services is three years.
57. We consider that the competitive effects of the proposed acquisition would occur when the relevant contracts are next likely to fall due for re-tender (ie, [ ] for the Virgin Australia contract, [ ] in respect of the Jetstar's Christchurch contract and [ ] in respect of Jetstar's Dunedin contract).

## **With and without scenarios**

### **With the acquisition**

58. With the acquisition, Menzies would acquire 100% of the shares in Skystar, including its existing ground handling contracts.

### **Without the acquisition**

59. We consider that without the acquisition, Skystar would likely remain as an independent provider of ground handling services in New Zealand or, alternatively, be sold to another party, given that ground handling is not a core business for Skystar. Either way, it would remain as an ongoing competitive alternative absent the acquisition.

## Competition analysis

60. We are satisfied that the proposed acquisition is unlikely to substantially lessening competition in the affected markets. The merged firm would continue to face competition from various suppliers of airport ground handling services in New Zealand and Australia when the relevant contracts are next offered, or re-tendered by airline customers.
61. We have assessed the likely competition for contracts of narrow- and wide-bodied aircraft at Christchurch Airport, and narrow-bodied aircraft at Dunedin Airport, when the relevant contracts are re-tendered. We have focused on these markets as that is where the merger parties' activities currently overlap. Any potential competition concerns would likely be more acute at those locations rather than at other airports (such as Auckland or Wellington), where Skystar might be a potential entrant rather than an existing competitor.<sup>17</sup>

## Existing competition

62. Table 1 below outlines the relevant ground handling contracts.

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<sup>17</sup> As noted above, SkyCare Airport Services and Air NZ currently provide ground handling services at Auckland, Wellington and Queenstown airports. These are the other main airports served by regular, non-Air NZ flights, and thus relevant local markets in terms of contracts for ground handling services. Entry conditions at these airports are similar to those described below for Christchurch and Dunedin.

**Table 1: Summary of ground handling arrangements at Christchurch/Dunedin Airports**

<b>Location</b>	<b>Airline served</b>	<b>Ground handling currently performed by</b>	<b>Notes</b>
Christchurch	Air NZ	Air NZ	Self-supply.
	Qantas / Jet Connect	Air NZ	Contract.
	Fiji Airways	Air NZ	Contract.
	Singapore Airlines	Menzies	Menzies holds the head contract and sub-contracts to Planebiz. Contract [ ]
	Emirates	Menzies	Menzies holds the head contract and sub-contracts to Planebiz. Contract due to expire in [ ]
	Virgin Australia	Menzies	Menzies holds the head contract and sub-contracts to Planebiz. Contract due to expire in [ ].
	Jetstar	Skystar	Contract [ ].
Dunedin	Air NZ	Air NZ	Air NZ sub-contracts its ramp services to Dunedin Airport Services Limited and self-supplies the other services.
	Virgin Australia	Menzies	Menzies holds the head contract and sub-contracts to Planebiz. Contract is due to expire in [ ].
	Jetstar	Skystar	Contract due to expire in [ ].

Source: The clearance application and Commission interviews.

63. We have considered Menzies and Skystar as existing competitors for narrow-bodied aircraft at Christchurch and Dunedin Airports, but potential competitors at other airports (eg, Wellington and Auckland), and for wide-bodied aircraft at all other airports. Similarly, Air NZ is an existing competitor at Christchurch Airport and at Dunedin Airport. We do not consider Air NZ's demand for ground handling services as part of the contestable market because Air NZ supplies its own ground handling services for the aircraft that it operates at these airports.
64. The acquisition would result in Menzies acquiring Skystar's ground handling contracts that Skystar has entered into with Jetstar at Christchurch and Dunedin Airports.
65. The crucial issue to consider is the likely competitive situation when the airlines next seek bids for contracts to provide their ground handling, especially at Christchurch and Dunedin. The one remaining existing competitor would be Air NZ; below we consider the competitive constraint it is likely to impose on the merged firm. In particular, we consider Air NZ's likely position in respect of the Virgin Australia and Jetstar contracts when these are next offered for tender.

*Virgin Australia*

66. The applicant, and many of the other parties we have spoken to, consider it is likely that Air NZ will tender for Virgin Australia's ground handling business at New Zealand airports when Virgin Australia's current agreement with Menzies expires in [ ]. This is due to Air NZ's ownership links and trans-Tasman alliance with Virgin Australia. While Air NZ has provided no specific details to us, it stated that [ ]

*Jetstar*

67. Jetstar has told us that Air NZ is [ ]

*Our views on the likely competition from Air NZ*

68. Air NZ is an incumbent provider of ground handling services to many overseas airlines. We assess below the likely competitive constraint Air NZ would impose on the merged firm for the various future contracts offered by other airlines.
69. We consider that while Air NZ may tender for the Virgin Australia contract, it is unlikely to be a serious contender for the Jetstar contracts when these are next tendered. However, we consider that Air NZ is likely to be a competitor for any other contracts that are tendered by airlines for ground handling services at New Zealand airports in future, including for both narrow- and wide-bodied aircraft.
70. Given Air NZ already has the equipment and staff at New Zealand airports, we consider that it could take advantage of the economies of scope and scale. This, combined with the fact that in the past Air NZ has acquired the contracts for

overseas airlines (eg, China Southern Airlines) suggests that it would be relatively straightforward for Air NZ to undertake the ground handling operations of most airlines commencing services in New Zealand.

71. In particular, we consider that Air NZ would likely be able to lodge competitive bids for airlines operating wide-bodied aircraft. This is because Air NZ already has demonstrated its capabilities to provide ground handling services for not only its own aircraft, but the aircraft operated by many other airlines (eg, Qantas).

*Conclusion on the likely competition from Air NZ*

72. In summary, we consider that, with the exception of the Jetstar contracts, Air NZ is likely to provide an effective constraint on the merged entity for contracts offered by airlines operating either narrow-or wide bodied aircraft, at each airport in New Zealand, including Christchurch and Dunedin Airports.

**Potential competition**

73. We consider the merged firm would be constrained by potential competitors at Christchurch and Dunedin Airports. There is a history of entry into these markets; the conditions of entry are not so onerous as to hinder potential entrants; and there are potential entrants in New Zealand and Australia that could readily enter if a contract was offered by any airline.

*Entry conditions*

74. We have identified the conditions for entry as follows.
- 74.1 Any entrant would need to secure a sufficiently attractive contract from an airline. A minimum contract period (usually three years) and a sufficient number of flights<sup>18</sup> would be required to encourage entry. In terms of selecting a ground handler, the airline's decision is usually based on:
- 74.1.1 price;
- 74.1.2 service; and
- 74.1.3 the ability to deliver in accordance with performance and regulatory requirements.
- 74.2 Investment in capital equipment and training. New and used ground handling equipment can be sourced internationally, although a portion of any investment in equipment is likely to be sunk. Staff need to be trained and starting services in a new location incurs establishment costs.
- 74.3 There are efficiencies from being able to spread fixed costs, such as capital expenditure, over a greater number of flights. This is likely to depend on

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<sup>18</sup> The minimum number of flights required for an entrant to incur the required investment can vary depending on flight scheduling (evenly spread out is better), wide-bodied or narrow bodied, synergies and whether an airport is part of a multi-airport contract.

airlines' scheduling and the number of flights at a particular airport. We note that both Skystar and Menzies have successfully operated at Christchurch with one significant contract (Jetstar and Virgin respectively).

75. We are also informed that three to four months is a minimum timeframe for entry, but that six months or longer may be required in some instances to implement entry. The main time constraints relate to the sourcing of equipment internationally, and the hiring and training of sufficient staff.
76. We also note that the average length of ground handling contracts is about three years and typically these contracts contain a notice period of 60 or 90 days. Therefore, if an airline decides to invoke such provisions this is likely to enable the airline to switch to an alternative ground handling provider in a relatively short time period.

#### *Previous history of entry*

77. The entry of Skystar and SkyCare Airport Services, both with contracts from Jetstar, indicates that effective entry into ground handling can occur in a timely fashion. However, entry is still contingent on the airline providing certainty around the tenure of the contract (to make the capital investment worthwhile) and price. Providing the same certainty for existing competitors is also required as they also have to obtain additional equipment and staff for a new contract.
78. It is apparent that *de novo* entrants have been able to successfully and rapidly enter in recent years, as evidenced by:
- 78.1 Skystar, which originally entered into the Christchurch Airport contract with Jetstar in 2005, initially for a three year term, and the Dunedin Airport contract (also with Jetstar) in 2011 for a [ ] term;
- 78.2 SkyCare Airport Services, which started as a fixed-base operator,<sup>19</sup> then expanded into providing ground handling services for Jetstar, initially at Auckland in 2009, Wellington (2009), and Queenstown (2010); and
- 78.3 Planebiz, which began providing ground handling services for Pacific Blue<sup>20</sup> in 2003, and subsequently Singapore Airlines and Emirates, via a sub-contract with Menzies.

#### *Likely future entrants*

79. Below we consider likely future entrants.

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<sup>19</sup> A fixed base operator is an airport ground handler for charter and corporate aircraft.

<sup>20</sup> This was the name under which Virgin Australia operated at this time.



SkyCare Airport Services

- 80. As noted, SkyCare Airport Services started providing ground handling services at Auckland after securing a contract from Jetstar in 2009 and then was successful in obtaining the Jetstar contracts at Wellington and Queenstown airports.
- 81. In July 2013, Aero-Care, which is an Australian-based airport ground handler, acquired a 25% shareholding in SkyCare Airport Services. Aero-Care informed us that the reason for this investment was to [ ]].
- 82. We consider that the resources Aero-Care can provide to SkyCare Airport Services will assist SkyCare Airport Services, which currently relies on one customer only, to compete for airport ground handling contracts when these are offered. Aero-Care’s assistance is also likely [ ]]
- 83. [ ] SkyCare Airport Services considered that entry could be achieved in [ ] It estimated that it would likely cost around [ ] to purchase the necessary equipment and another [ ] for staff costs.
- 84. We consider that particularly with the cornerstone shareholding of Aero-Care, SkyCare Airport Services is likely to be an effective competitor for contracts offered by airlines providing either narrow- or wide-bodied aircraft, including Jetstar's contracts at Christchurch and Dunedin Airports.

Aero-Care

- 85. As discussed above, Aero-Care [ ]]

Oceania

- 86. Oceania told us that [ ]]

Toll dnata

- 87. Toll dnata informed us that [ ]]

Planebiz

88. Planebiz informed us that [ ].

89. In these circumstances, we consider that while Planebiz cannot be discounted as a potential competitor for narrow- and wide-bodied aircraft, its existing sub-contract would likely constrain it in many circumstances from competing for most contracts, either when they are re-tendered or when an airline commences operations. Therefore, we consider that Planebiz would only likely provide a limited constraint on the merged firm.

*Conclusion on potential competition*

90. We consider that there is likely to be sufficient competition provided by potential competitors for narrow- and wide-bodied aircraft, when airlines next seek tenders for their ground handling business. This is because:

90.1 the previous history of entry suggest that conditions of entry are not onerous;

90.2 the termination provisions of the contracts generally allow for airlines to give short notice for ground handlers to relinquish their contracts, and thereby enable them to quickly switch to an alternative provider; and

90.3 the scope for existing providers to expand, and for entrants to commence operations with relative ease, and in a timely manner.

**Countervailing power**

91. Menzies has submitted that it would continue to face a significant degree of countervailing power from its customer airlines due to the strong bargaining power held by these airlines. It also considered that airlines have the ability to assist a new entrant, as evidenced by Skystar's own entry into ground handling in New Zealand, and self-supply if there were sufficient incentives.

92. We have assessed the likely constraint provided by the ability of airline customers to exert substantial influence on the merged firm by considering the airlines' scope to sponsor entry; their potential to discipline the merged firm; and their scope to self-supply.

*Sponsorship of entry by airlines*

93. We have been advised that both Skystar and SkyCare received assistance from Jetstar when they set up their respective ground handling operations in New Zealand. This assistance took various forms, including [ ]

94. We consider that, based on the past experience, airlines may provide similar forms of assistance to that provided to Skystar and SkyCare Airport Services to encourage entry.

*Disciplining the merged firm*

95. Airline customers operating narrow- and wide bodied aircraft in the affected markets are all large purchasers of ground handling services, both domestically and internationally. In particular, Jetstar and Virgin Australia are active in New Zealand, including Christchurch and Dunedin, Australia and elsewhere.
96. Therefore, we consider that there is the potential for those airlines to discipline the merged firm in other markets. In particular, Jetstar is currently a [ ]

*Self-supply*

97. Self-supply is commonly used by several airlines, including by Air NZ at New Zealand airports, and by Qantas, Jetstar and Emirates (via Toll dnata) at Australian airports.
98. Jetstar has told us that it self-supplies at the major Australian airports, including Melbourne and Sydney. However, Jetstar contracts its ground handling services to other providers, such as Skystar and Oceania, at smaller Australian airports. [ ]]. We understand that Jetstar/Qantas (and other airlines, such as Air NZ), have higher labour costs than some of the independent ground handlers. This suggests that Jetstar/Qantas may require greater scale/synergies to be competitive. In this regard, [ ]
99. Similarly, Toll dnata considers that there is [ ]
100. For these reasons, we consider that self-supply represents a lesser constraint and one that is only likely to be used when all other options have been exhausted.

*Conclusion on countervailing power*

101. We consider that airline customers are likely to provide some countervailing power on the merged firm by assisting airport ground handlers to enter contracts and have the potential to discipline them by switching suppliers in other markets, including in Australia. However, we are of the view that self-supply represents a lesser constraint and one that is only likely to be used as a last resort.

**Overall conclusion**

102. We consider that the proposed acquisition is not likely to have the effect of substantially lessening competition in the markets for the provision of ground handling services separately for narrow- and wide-bodied aircraft at each airport in New Zealand.

### **Determination on notice of clearance**

103. Pursuant to s 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to Menzies Aviation (New Zealand) Limited to acquire 100% of the shares in Skystar.

Dated this 15<sup>th</sup> day of October 2013

Dr Mark Berry  
Chairman