


OC241032

1 November 2023

Tēnā koe 

I refer to your email dated 1 September 2024, requesting the following under the Official Information Act 1982 (the Act):

“...any decision-making papers or correspondence related to this Virgin Australia-Air New Zealand code share agreement.”

Further to our response of 30 September 2024 and emails of 1 October 2024, you clarified that:

“correspondence should include any emails or other forms of communication related to the consideration of and decision-making for Virgin-Air New Zealand codeshare proposal.”

We have excluded from the scope of your request any emails or correspondence that are solely administrative in nature (for example, where acknowledging receipt, or setting up meetings, etc) or incidental to the decision-making.

We have identified 40 documents that fall within the scope of your request and are detailed in the document schedule attached as Annex 1. The schedule outlines how the documents you requested have been treated under the Act, however in summary:

- one is released in full
- 22 are released with some information withheld
- 13 are withheld in full
- four are refused, as they will soon be publicly released.

Certain information is withheld under the following sections of the Act:

- | | |
|-------------|--|
| 9(2)(a) | to protect the privacy of natural persons |
| 9(2)(b)(ii) | to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information |

- 9(2)(ba)(i) to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied
- 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
- 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty

In addition to those listed in Annex 1, we have identified a further 13 documents that fall within the scope of the request that relate to communications between solicitor and client. These are being withheld in full under the following section of the Act:

- 9(2)(h) to maintain legal professional privilege

Four documents are being refused under the following section of the Act:

- 18(d) the information requested is or will soon be publicly available

Proactively released documents will be available on the Ministry of Transport website at the following link: <https://www.transport.govt.nz/area-of-interest/air-transport/airline-code-share-and-alliance-agreements>. We will let you know once they are available.

You have the right to seek an investigation and review of this response by the Ombudsman, in accordance with section 28(3) of the Act. The relevant details can be found on the Ombudsman's website www.ombudsman.parliament.nz

The Ministry publishes our Official Information Act responses and the information contained in our reply to you may be published on the Ministry website. Before publishing we will remove any personal or identifiable information.

Nāku noa, nā



Tom Forster
Manager Aviation

Annex 1 Information release

Doc #	Date	Title of Document	Proposed decision on request
001	17/11/2023	Emails on 17 November 2023	Some information withheld 9(2)(a)
001-A1		Attachment to 001 Public Version NZ VA Application 17 Nov 2023	Refused under 18(d) Previously released as part of submission process
001-A2		Attachment to 001 CONFIDENTIAL VERSION NZ VA Application 17 Nov 2023	Withhold in full 9(2)(b)(ii)
001-A3		Attachment to 001 CONFIDENTIAL Commercial Framework Agreement	Withhold in full 9(2)(b)(ii)
001-A4		Attachment to 001 VA CONFIDENTIAL Annexure 1 – MOT submission	Withhold in full 9(2)(b)(ii)
002	21/02/2024	Series of email from 10 January 2023 to 21 February 2024 Includes 4 attachments to 002 as below	Some information withheld 9(2)(a)
002-A1		Attachment to 002 3440-1387-0123_1_ACCC RFI Q4 Air NZ Loads_Jan22 to Dec23	Withhold in full 9(2)(b)(ii)
002-A2		Attachment to 002 above 3455-9322-9355_1_Confidential - Virgin Australia and Air New Zealand responses to ACCC information request	Withhold in full 9(2)(b)(ii)
002-A3		Attachment to 002 above ACCC RFI Q2 documents – confidential	Withhold in full 9(2)(b)(ii)
002-A4		Attachment to 002 above CONFIDENTIAL – Applicants’ submission in response to interested party submissions	Withhold in full 9(2)(b)(ii)
003	01/03/2024	Series of email from 17 November 2023 to 1 March 2024 Attached documents: four listed in 002 above reattached, plus four below:	Some information withheld 9(2)(a) 9(2)(b)(ii) 9(2)(ba)(i)
003-A1		Attachment to 003 above Public Version – Response to Third Party submissions – Air New Zealand and Virgin Australia	Release in full

Doc #	Date	Title of Document	Proposed decision on request
003-A2		Attachment to 003 above CONFIDENTIAL – MOT -Response to Third Party Submissions – Air New Zealand and Virgin Australia	Withhold in full 9(2)(b)(ii)
003-A3		Attachment to 003 above CONFIDENTIAL – Response to MOT RFIs – Air New Zealand and Virgin Australia	Withhold in full 9(2)(b)(ii)
003-A4		Attachment to 003 above MOT RFI 4 AirNZ_Tasman LF	Withhold in full 9(2)(b)(ii)
004	06/03/2024	Series of emails from 17 November 2023 to 6 March 2024 (note some overlap with 003)	Some information withheld 9(2)(a) 9(2)(b)(ii) 9(2)(ba)(i)
005	15/03/2024	Series of internal MOT emails on 15 March 2024	Some information withheld 9(2)(a)
006	25/03/2024	Email from Bell Gully on 25 March 2024	Some information withheld 9(2)(a)
007	03/05/2024	Emails to/from Richard Meade (Cognitus) from 9 April to 3 May 2024	Some information withheld 9(2)(a)
007-A		Attachment to 007 above CONFIDENTIAL - Draft for Review - Air NZ and VA Codeshare Authorisation - Initial Advice	Withhold in full 9(2)(g)(i)
008	03/05/2024	Additional email to Richard Meade (Cognitus) to 3 May 2024 (note some overlap with 007) Attached 7 confidential documents from those listed in 001, 002, 003 above, plus 008-A1 below:	Some information withheld 9(2)(a)
008-A		Attachments to 008 above CONFIDENTIAL – VA presentation to MOT 12 April 2024	Withhold in full 9(2)(b)(ii)
009	08/05/2024	Email from Richard Meade (Cognitus) on 8 May 2024	Some information withheld 9(2)(a)

Doc #	Date	Title of Document	Proposed decision on request
010-1	09/05/2024	Internal MOT emails following 009 to 9 May 2024	Some information withheld 9(2)(a)
010-2	10/05/2024	Email to/from Richard Meade (Cognitus) from 8 May to 10 May 2024	Some information withheld 9(2)(a)
010-2-A		Attachment to 010-2 Cognitus Review of Draft Initial Advice on VA-NZ Codeshare Application 2024_05_07	Some information withheld 9(2)(a) 9(2)(b)(ii)
011	23/05/2024	Emails to/from Richard Meade (Cognitus) to 23 May 2024 with draft final analysis	Some information withheld 9(2)(a)
011-A1		Attachment to 011 above NZ-VA codeshare – Draft Report 20240523 for RM	Withhold in full 9(2)(g)(i)
011-A2		OC240164 Air New Zealand and Virgin Australia Codeshare Authorisation – Initial Advice – Briefing – Redacted for RM	Refuse under 18(d) Soon to be proactively released
012	30/05/2024	Emails to/from Richard Meade (Cognitus) to 30 May 2024 (some overlap with earlier emails)	Some information withheld 9(2)(a) 9(2)(b)(ii)
013	30/05/2024	Emails to/from Kate Rose, Minister's Office	Some information withheld 9(2)(a)
013-A	30/05/2024	Attachment to 013 OC240164 Air New Zealand and Virgin Australia Codeshare Authorisation - Initial Advice	Refuse under 18(d) Soon to be proactively released
014	31/07/2024	Emails to/from Sydney Van Nortwick, Minister's Office	Some information withheld 9(2)(a)
014-A		Attachment to 014 above OC240623 Air New Zealand and Virgin Australia codeshare agreement authorisation – Final Advice – Briefing – Policy (single file)	Refused under 18(d) Soon to be proactively released
015	19/08/2024	Internal MOT email re Officials Meeting	Some information withheld 9(2)(a)

Doc #	Date	Title of Document	Proposed decision on request
015-A		Attachment to 015 above Associate Minister Meeting Agenda 20 August	Some information withheld Out of scope
016	19/08/2024	Internal MOT email re bullet points for officials meeting 19 August 2024	Some information withheld 9(2)(a) 9(2)(f)(iv)
016-A		Attachment to 016 above Air NZ virgin bullet points for meeting with Minister 20 August 2024	Some information withheld 9(2)(a) 9(2)(b)(ii) 9(2)(f)(iv)
017	22/08/2024	Email to/from Bell Gully	Some information withheld 9(2)(a)
017-A		Attachment to 017 above NZ-VA codeshare outcome letter	Some information withheld 9(2)(a)

From: [Sonya Van De Geer](#)
To: [Garrick Wood](#)
Subject: FW: Confidential: NZ/VA - Application for authorisation [BG-BELGULLY.FID1507849]
Date: Friday, 17 November 2023 1:43:59 pm
Attachments: [CONFIDENTIAL VERSION NZ VA Application - 17 Nov 2023.pdf](#)
[PUBLIC VERSION NZ VA Application - 17 Nov 2023.pdf](#)
[CONFIDENTIAL - Commercial Framework Agreement.pdf](#)
[VA CONFIDENTIAL Annexure 1 - MOT submission.pdf](#)
[image001.png](#)

Fyi

Lets talk about this next week

Sonya van de Geer

s 9(2)(a)

| E: s.vandeger@transport.govt.nz | transport.govt.nz



TE MANATŪ WAKA
MINISTRY OF TRANSPORT

Hāpaitia ana ngā tāngata o Aotearoa kia eke
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From: Torrin Crowther <torrin.crowther@bellgully.com>
Sent: Friday, November 17, 2023 1:01 PM
To: Tom Forster <t.forster@transport.govt.nz>; Sonya Van De Geer <s.vandeger@transport.govt.nz>
Cc: Emma.Harris@bellgully.com
Subject: Confidential: NZ/VA - Application for authorisation [BG-BELGULLY.FID1507849]

CONFIDENTIAL

Dear Tom and Sonya,

We refer to the earlier communication regarding a one way codeshare on the Tasman (excluding Queenstown) between Air New Zealand and Virgin Australia.

On behalf of Air New Zealand and Virgin Australia, please find attached the application for authorisation to make and give effect to a Commercial Framework Agreement, Codeshare Agreement, and various related agreements as described in further detail in the application attached. More particularly, please find attached:

- a confidential and a public version of the application (as marked). Note that the confidential version contains some information confidential to Air New Zealand vis a vis the public and Virgin Australia (and vice versa);
- a confidential version of the Confidential Framework Agreement; and
- Confidential Annexure 1 regarding Virgin Australia's counterfactual. For the avoidance of doubt, Confidential Annexure 1 cannot be shared with Air New Zealand (or the public more generally).

We would be grateful if you could please confirm receipt of this email and its four attachments.

Kind regards

Torrin

Torrin Crowther Partner

BELL GULLY

DDI +64 9 916 8621 MOB +64 21 867 746

Vero Centre, 48 Shortland Street, Auckland, New Zealand

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From: Emma.Harris@bellgully.com
To: [Sonya Van De Geer](#); [Garrick Wood](#)
Cc: [Tom Forster](#); [Torrin Crowther](#)
Subject: RE: Confidential: NZ/VA - Request for Information from applicants [BG-BELGULLY.FID1507849]
Date: Wednesday, 21 February 2024 5:45:48 pm
Attachments: [image001.png](#)
[3455-9322-9355_1_Confidential - Virgin Australia and Air New Zealand responses to ACCC information request.pdf](#)
[3440-1387-0123_1_ACCC RFI Q4 Air NZ Loads Jan22 to Dec23.xlsx](#)
[ACCC RFI Q2 documents - confidential.zip](#)
[CONFIDENTIAL - Applicants' submission in response to interested party submissions.pdf](#)

Confidential – Attachments contain commercially sensitive information

Dear Sonya, Garrick,

As requested, we attach a confidential version of the Applicant's response to the ACCC's request for information of 19 January (including the zip file "ACCC RFI Q2 documents – confidential" and the excel file "ACCC RFI Q4 Air NZ Loads...") (together, the **ACCC RFI Response**). The ACCC RFI response is confidential in its entirety noting that it contains information which is confidential as between the parties.

In addition, we also attach a confidential version of the Applicant's response to the third party submissions made to the ACCC in relation to the Proposed Conduct. The confidential information contained in this response is as marked.

I would be grateful if you could please confirm receipt. Please let us know if you have any questions.

Best wishes

Emma

Emma Harris Senior Associate

BELL GULLY

DDI +64 9 9168779 MOB +64 21 227 4969
 Vero Centre, 48 Shortland Street, Auckland, New Zealand

From: Sonya Van De Geer <s.vandegeer@transport.govt.nz>
Sent: Tuesday, 30 January 2024 3:10 pm
To: Crowther, Torrin TXC <torrin.crowther@bellgully.com>
Cc: Harris, Emma EKH <Emma.Harris@bellgully.com>; Garrick Wood <G.Wood@transport.govt.nz>
Subject: Confidential: NZ/VA - Request for Information from applicants

CAUTION: This email is from outside of the firm.

Dear Torrin

I refer to your emailed application of 17 November 2023 on behalf of Air New Zealand Limited and Virgin Australia Pty Ltd for authorisation of a Commercial Framework Agreement, Codeshare Agreement, and various related agreements.

We have some initial information requests to assist us in our analysis

- We request a copy of all information supplied to the ACCC in response to its [request of 19](#)

[January 2024](#)

- We request that VA also sets out
 - Its current fleet numbers and composition
 - Its current aircraft orders by type and date
 - Any other plans to acquire aircraft through purchase, lease or similar
 - VA's understanding of what the lead-time for delivery would be for orders made now for aircraft suitable for operation on trans-Tasman routes
- Could Air New Zealand set out how it expects capacity it can offer on trans-Tasman services to be impacted by maintenance schedules for A320 aircraft engines over time, and when this will no longer be a factor

Regards

Sonya van de Geer

Kaitohutohu Mātāmua – Whakaritenga Ohaoha | Principal Adviser – Economic Regulation

Te Manatū Waka Ministry of Transport

M: [s 9\(2\)\(a\)](#) | E: s.vandeger@transport.govt.nz | transport.govt.nz



TE MANATŪ WAKA
MINISTRY OF TRANSPORT

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From: [Tom Forster](#)
To: [Garrick Wood](#); [Shereen Faraj](#); [Sonya Van De Geer](#)
Subject: RE: Confidential: NZ/VA - Application for authorisation - Response to 3P Submissions and MOT RFIs [BG-BELLGULLY.FID1507849]
Date: Friday, 1 March 2024 1:06:59 pm
Attachments: [image001.png](#)

Hi All

I spoke to BT about this today and noted that this was one that could potentially be a No. I told her that we may need to have our analysis peer reviewed which she agreed. We spoke about who could possibly do it, and she is going to explore whether we can get someone from the Commission to do that. She knows both the CE and the currently acting CE. If that doesn't work we can get other people to do it. I think this is one whether it is a yes or a no, we need to have peer reviewed as whatever the decision, there will be unhappy punters out there.

Cheers
Tom

From: Garrick Wood <G.Wood@transport.govt.nz>
Sent: Friday, March 1, 2024 12:46 PM
To: Shereen Faraj <S.Faraj@transport.govt.nz>, Sonya Van De Geer <s.vandeger@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>
Subject: FW: Confidential: NZ/VA - Application for authorisation - Response to 3P Submissions and MOT RFIs [BG-BELLGULLY.FID1507849]

FYI – I have saved these to our folder (and their earlier response to the ACCC.)

I'm slowly coming around to thinking we may authorise. The response is the first where Air NZ has stated that they ^{s 9(2)(b)(ii)} [REDACTED] because of the code-share agreement. ^{s 9(2)(b)(ii)} [REDACTED]

Would be good to discuss next week at our catch-up.

Ngā mihi

Garrick Wood (he / him / Mr)
M: ^{s 9(2)(a)} [REDACTED] | E: g.wood@transport.govt.nz | transport.govt.nz

From: Emma.Harris@bellgully.com <Emma.Harris@bellgully.com>
Sent: Thursday, February 29, 2024 5:00 PM
To: Garrick Wood <G.Wood@transport.govt.nz>; Torrin Crowther <torrin.crowther@bellgully.com>
Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Tom Forster

<t.forster@transport.govt.nz>; Shereen Faraj <S.Faraj@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation - Response to 3P Submissions and MOT RFIs [BG-BELGULLY.FID1507849]

Confidential – attachments contain business secrets

Dear Garrick, all,

We attach Air New Zealand and Virgin Australia's response to the third party submissions received by the Ministry of Transport in connection with their application for authorisation. A public version of this response is separately attached (as marked) with the confidential information redacted.

In addition, we also attach a confidential version of the Parties' responses to the Ministry's information requests of 30 January and 16 February 2024 (including the excel file "*MOT RFI 4 AirNZ_Tasman LF.xlsx*" which relates to Q4 of the attached (Q1 of your email below) and is confidential to Air New Zealand). Please note that the:

- responses to Questions 2,5 and 6 are confidential to Virgin Australia and have not been shared with Air New Zealand; and
- responses to Questions 3 and 4 are confidential to Air New Zealand and have not been shared with Virgin Australia.

We would be grateful if you could please confirm receipt.

Please let us know if you have any questions.

Kind regards

Emma / Torrin

Emma Harris Senior Associate

BELL GULLY

DDI +64 9 9168779 **MOB** +64 21 227 4969
Vero Centre, 48 Shortland Street, Auckland, New Zealand

From: Harris, Emma EKH

Sent: Friday, 16 February 2024 3:02 pm

To: 'Garrick Wood' <G.Wood@transport.govt.nz>; Crowther, Torrin TXC <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>; Shereen Faraj <S.Faraj@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELGULLY.FID1507849]

Thanks Garrick, I confirm receipt. We will liaise with the parties on these requests and revert.

Emma Harris Senior Associate

BELL GULLY

DDI +64 9 9168779 **MOB** +64 21 227 4969
Vero Centre, 48 Shortland Street, Auckland, New Zealand

From: Garrick Wood <G.Wood@transport.govt.nz>

Sent: Friday, 16 February 2024 2:46 pm

To: Harris, Emma EKH <Emma.Harris@bellgully.com>; Crowther, Torrin TXC

<torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>; Shereen Faraj <S.Faraj@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

CAUTION: This email is from outside of the firm.

Kia ora Emma

In addition to the earlier questions, we would also like to know from the parties:

1. What is Air New Zealand's load factors for each route, month-by-month for the period 2019-2023.
2. How many Velocity Frequent Flyer Members have New Zealand passports?
3. How many Velocity Frequent Flyer Members accrue points through business travel (corporate or SME); and what percentage of these members in turn spend the accrued points on personal travel?

Could we please have responses to all question and any response to third-party submissions by Thursday 29 February 2024.

Please do not hesitate to contact us if you have any questions.

Ngā mihi

Garrick Wood (he / him / Mr)

M: [s 9\(2\)\(a\)](tel:0912345678) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Emma.Harris@bellgully.com <Emma.Harris@bellgully.com>

Sent: Thursday, February 8, 2024 7:09 PM

To: Garrick Wood <G.Wood@transport.govt.nz>; Torrin Crowther <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Many thanks Garrick, I confirm receipt. We will share these with the parties.

Noted also regarding any further MOT questions arising from the submissions.

Best wishes

Emma

Emma Harris Senior Associate

BELL GULLY

DDI +64 9 9168779 **MOB** +64 21 227 4969
Vero Centre, 48 Shortland Street, Auckland, New Zealand

From: Garrick Wood <G.Wood@transport.govt.nz>
Sent: Thursday, 8 February 2024 10:35 am
To: Harris, Emma EKH <Emma.Harris@bellgully.com>; Crowther, Torrin TXC <torrin.crowther@bellgully.com>
Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>
Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

CAUTION: This email is from outside of the firm.

Kia ora Emma, Torrin

Attached are the final two submissions from Auckland Airport and NZ Airports.

If we have any further question arising from the submissions, we will send them to you by Friday 16 February 2024. These will be in addition to questions Sonya emailed on 30 January 2024.

Ngā mihi

Garrick Wood (he / him / Mr)

M: § 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Garrick Wood
Sent: Friday, February 2, 2024 4:36 PM
To: Emma.Harris@bellgully.com; Torrin Crowther <torrin.crowther@bellgully.com>
Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>
Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Hi Emma

Apologies for the delay, I have attached the 5 submissions that we have received to date. These are not up on our website yet, but conscious to get them to you.

The submissions we are expecting next week are from NZ Airports and Auckland Airport.

Have a great weekend.

Ngā mihi

Garrick Wood (he / him / Mr)

M: § 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Emma.Harris@bellgully.com <Emma.Harris@bellgully.com>
Sent: Thursday, February 1, 2024 11:59 AM
To: Garrick Wood <G.Wood@transport.govt.nz>; Torrin Crowther

<torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Hi Garrick,

Thanks for the update. Are you able to advise who those two submitters are in the meantime?

For our planning purposes, when should we expect the three submissions that you have received so far?

Best wishes

Emma

Emma Harris Senior Associate

BELL GULLY

DDI +64 9 9168779 MOB +64 21 227 4969
Vero Centre, 48 Shortland Street, Auckland, New Zealand

From: Garrick Wood <G.Wood@transport.govt.nz>

Sent: Thursday, 1 February 2024 11:42 am

To: Harris, Emma EKH <Emma.Harris@bellgully.com>; Crowther, Torrin TXC <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

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Hi Emma... Two submitters have requested an extension to mid-next week, which we have granted.

We will let you know once they have been received and up on the website.

Ngā mihi

Garrick Wood (he / him / Mr)

M: ^{s 9(2)(a)} [REDACTED] | E: g.wood@transport.govt.nz | transport.govt.nz

From: Garrick Wood

Sent: Thursday, January 25, 2024 5:43 PM

To: Emma.Harris@bellgully.com; Torrin Crowther <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Hi Emma

Apologies for the delay. We have received 3 submissions to date. I will arrange for these to be available on our website shortly.

We note that NZ Airports made a submission to the ACCC. We expect they would also make a submission to us.

Ngā mihi

Garrick Wood (he / him / Mr)

M: s 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Emma.Harris@bellgully.com <Emma.Harris@bellgully.com>

Sent: Tuesday, January 16, 2024 5:42 PM

To: Garrick Wood <G.Wood@transport.govt.nz>; Torrin Crowther <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Thanks Garrick. That is a helpful steer in the meantime. I am conscious that the deadline is not until 1 Feb but have you received any submissions already?

Best wishes
Emma

Emma Harris Senior Associate

BELL GULLY

DDI +64 9 9168779 MOB +64 21 227 4969
Vero Centre, 48 Shortland Street, Auckland, New Zealand

From: Garrick Wood <G.Wood@transport.govt.nz>

Sent: Tuesday, 16 January 2024 12:45 pm

To: Harris, Emma EKH <Emma.Harris@bellgully.com>; Crowther, Torrin TXC <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

CAUTION: This email is from outside of the firm.

Kia ora Emma, Torrin

Happy new year to you both.

We do not have a detailed timeline yet – partly due to focussing on NZ/SQ and availability of staff over the Dec/Jan period.

Sonya I discussed at the end of last year and we are proceeding on the basis of having aiming to have a decision by late April / early May 2024.

Sonya is back next week. We will get more detail to you by the time submissions have closed.

Ngā mihi

Garrick Wood (he / him / Mr)

M: s 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Emma.Harris@bellgully.com <Emma.Harris@bellgully.com>

Sent: Monday, January 15, 2024 3:53 PM

To: Garrick Wood <G.Wood@transport.govt.nz>; Torrin Crowther <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Hi Garrick,

Happy new year – hope you had a lovely break.

Further to the emails below, we understand the team were looking at developing an indicative timeline for the MOT's consideration of the VANZ application. We were wondering if you are in a position to share this with us?

Best wishes

Emma

Emma Harris Senior Associate

BELL GULLY

DDI +64 9 9168779 MOB +64 21 227 4969
Vero Centre, 48 Shortland Street, Auckland, New Zealand

From: Harris, Emma EKH

Sent: Tuesday, 21 November 2023 4:35 pm

To: 'Garrick Wood' <G.Wood@transport.govt.nz>; Crowther, Torrin TXC <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Many thanks Garrick, we appreciate the update. We will let the Parties know.

Best wishes

Emma

Emma Harris Senior Associate

BELL GULLY

DDI +64 9 9168779 MOB +64 21 227 4969
Vero Centre, 48 Shortland Street, Auckland, New Zealand

From: Garrick Wood <G.Wood@transport.govt.nz>
Sent: Tuesday, 21 November 2023 4:10 pm
To: Crowther, Torrin TXC <torrin.crowther@bellgully.com>
Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Tom Forster
<[s.9\(2\)\(a\)@transport.govt.nz](mailto:s.9(2)(a)@transport.govt.nz)>; Harris, Emma EKH <Emma.Harris@bellgully.com>
Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

CAUTION: This email is from outside of the firm.

Kia ora Torrin

Thank you for submitting the application. I have a quick courtesy update for you.

We have published the public version of the Air New Zealand and Virgin Australia application for authorisation on the [Airline code-share and alliance agreements](#) section of the Ministry website.

We are inviting submissions from interest parties, due by 5 pm Tuesday 1 February 2024.

Our team is prioritising completing the NZ-SQ reauthorisation. However, we will look to develop an indicative timeline for the VA-NZ application over the coming weeks. We will keep you updated.

Please contact Sonya or me if you have any questions.

Nga mihi

Garrick Wood (he / him / Mr)

Kaitohutohu Matua – Rererangi a Moana | Senior Adviser – Aviation and Maritime
Te Manatū Waka Ministry of Transport

M: <[s.9\(2\)\(a\)@transport.govt.nz](mailto:s.9(2)(a)@transport.govt.nz)> | E: g.wood@transport.govt.nz | transport.govt.nz



TE MANATŪ WAKA
MINISTRY OF TRANSPORT

Hāpaitia ana ngā tāngata o Aotearoa kia eke
Enabling New Zealanders to flourish

From: Torrin Crowther <torrin.crowther@bellgully.com>
Sent: Friday, November 17, 2023 1:01 PM
To: Tom Forster <t.forster@transport.govt.nz>; Sonya Van De Geer
<s.vandeger@transport.govt.nz>
Cc: Emma.Harris@bellgully.com

Subject: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

CONFIDENTIAL

Dear Tom and Sonya,

We refer to the earlier communication regarding a one way codeshare on the Tasman (excluding Queenstown) between Air New Zealand and Virgin Australia.

On behalf of Air New Zealand and Virgin Australia, please find attached the application for authorisation to make and give effect to a Commercial Framework Agreement, Codeshare Agreement, and various related agreements as described in further detail in the application attached. More particularly, please find attached:

- a confidential and a public version of the application (as marked). Note that the confidential version contains some information confidential to Air New Zealand vis a vis the public and Virgin Australia (and vice versa);
- a confidential version of the Confidential Framework Agreement; and
- Confidential Annexure 1 regarding Virgin Australia's counterfactual. For the avoidance of doubt, Confidential Annexure 1 cannot be shared with Air New Zealand (or the public more generally).

We would be grateful if you could please confirm receipt of this email and its four attachments.

Kind regards

Torrin

Torrin Crowther Partner

BELL GULLY

DDI +64 9 916 8621 MOB +64 21 867 746
Vero Centre, 48 Shortland Street, Auckland, New Zealand

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Please refer to www.bellgully.com for more information or to view our standard terms of engagement.

Response to third party submissions in relation to the application for authorisation of the codeshare agreement between Air New Zealand and Virgin Australia

1. Introduction and summary

- 1.1 Air New Zealand Limited (“**Air New Zealand**”) and Virgin Australia Airlines Pty Ltd (“**Virgin Australia**”) (together, the “**parties**” or the “**Applicants**”) provide the following response to the third party submissions received by the Ministry of Transport (“**Third Party Submissions**”) in relation to their application for authorisation to make and give effect to a Commercial Framework Agreement, Codeshare Agreement, and various related agreements (the **Proposed Conduct**).¹
- 1.2 The Applicants note the significant overlap between the Third Party Submissions and those submissions made to the ACCC which the Applicants have separately responded to², and the parties have provided a copy of their response to the MOT in response to a request by the Ministry to do so. Accordingly, while this submission should be read in context of that ACCC submission, we do not repeat all of the points made in that document in this response.
- 1.3 This response addresses the key themes from the Third Party submissions insofar as they concern the Proposed Conduct and the test for authorisation specifically.³ In summary:
- (a) the opposition to the Proposed Conduct is premised on incorrect and flawed assumptions regarding the counterfactual. The Proposed Conduct does not change Virgin Australia’s incentives regarding entry onto the trans-Tasman utilising its own aircraft and therefore does not have the effect of delaying or disincentivising entry that would otherwise occur; and
 - (b) any concerns about the impact of the Proposed Conduct on competitive dynamics, capacity and fares on trans-Tasman routes are misplaced.
- 1.4 In the Applicants’ submission, none of the points raised in Third Party Submissions undermine the fact the Proposed Conduct ultimately satisfies the test for authorisation.
- 1.5 The Proposed Conduct will deliver benefits to New Zealand. Furthermore, the Proposed Conduct does not result in any competitive detriment because it does not remove any competition, services or benefits that would be available without the Proposed Conduct. As set out in the Application, none of the reasons set out in section 88(3) or 88(4) of the Civil Aviation Act apply in respect of the Proposed Conduct and section 88(5) provides a distinct reason for the Minister to exercise their discretion in favour of granting authorisation.
- 1.6 The Applicants claim confidentiality for this submission. A Public Version will be provided separately, and information redacted in the Public Version in this Confidential Version is enclosed in square brackets and highlighted **green** (being information which is confidential to Air New Zealand), **blue** (being information which is confidential to Virgin Australia) or **pink** (being information which is confidential to the Applicants), (the “**Confidential Information**”).⁴

¹ Defined terms in this response have the same meaning as in the Application, unless otherwise specified.

² See Virgin Australia and Air New Zealand “*Response to request for information and interested party submissions*”, 20 February 2024 (“**Response to the ACCC**”). A copy of which was provided to the Ministry on 21 February 2024.

³ For completeness, this response addresses the key themes from the Third Party submissions insofar as they concern the Proposed Conduct specifically. The mere fact this submission does not engage on a particular point or complaint does not mean the parties believe the point or complaint is necessarily valid.

⁴ The Applicants request that they be notified of any request made under the Official Information Act for release of the Confidential Information, and that the Minister of Transport (the “**Minister**”) seeks their views as to whether the Confidential Information remains confidential and commercially sensitive at the time responses to such requests are being considered.

2. The scope of the Proposed Conduct

- 2.1 Some Third Party Submissions are drafted as if the arrangement involves a comprehensive alliance between parties operating their own aircraft on overlapping routes. We discuss the absence of overlapping routes and the absence of any disincentive for Virgin Australia to enter elsewhere in this response, but in terms of the underlying conduct itself, it is worth reiterating that the Applicants are not proposing to jointly determine public pricing, network or schedules. The Proposed Conduct simply involves a unilateral codeshare on non-overlapping Air New Zealand operated trans-Tasman services [CONFIDENTIAL TO VA] and where Virgin Australia replicates Air New Zealand's public pricing. Only limited elements of the Proposed Conduct even require authorisation at all, primarily the non-traditional pricing model which was [CONFIDENTIAL TO THE PARTIES].
- 2.2 The Applicants do not currently compete on any trans-Tasman routes outside of services to/from Queenstown which are specifically excluded from the Proposed Conduct. Accordingly, the Proposed Conduct does not remove any competition, services or benefits that would be available without it.

3. Third parties acknowledge the availability of benefits under the Proposed Conduct

- 3.1 The Proposed Conduct will deliver benefits to New Zealand. As set out in the Application, the Proposed Conduct:⁵
- (a) will see enhanced marketing of New Zealand as a tourism destination to Virgin Australia customers, including its almost 12 million Velocity members. This enhanced marketing is expected to result in incremental traffic with corresponding benefits for the New Zealand tourism sector more generally; and
 - (b) is expected to result in incremental passengers on Air New Zealand services which improves the operational efficiency and commercial viability of Air New Zealand's flight operations but which is also a more general benefit to New Zealand given that half of Air New Zealand's shareholders are New Zealanders (via the Crown interest or a direct shareholding).
- 3.2 The Third Party Submissions appreciate the importance of Australian visitors for the New Zealand tourism industry⁶ and acknowledge the availability of benefits under the Proposed Conduct, albeit a number take the position that any benefits to New Zealand are limited.⁷ This is disputed by the Applicants. As set out in the Application, the Proposed Conduct will deliver meaningful benefits to New Zealand relative to the relevant counterfactual without any competitive detriment.

This request for confidentiality is not intended to constrain the Minister and the Ministry of Transport from disclosing information to other Government departments for the purpose of seeking relevant expert advice. However, the Applicants request that the Minister ensure any such departments maintain the same full confidentiality as requested above.

⁵ For further information on the benefits resulting from the Proposed Conduct, see Section 7 of the Application.

⁶ For example, Auckland Airport explains "New Zealand tourism also relies heavily on Australian visitors. According to Tourism New Zealand, between July 2022 and June 2023, Australians accounted for 49% of all international arrivals. This equated to 1.2 million Australians, nearly 20% of which were on holiday. Australian visitors spent around \$1.6 billion in New Zealand in the year to June 2023, and balanced their visits between summer and winter, helping address the issue of seasonality in New Zealand's tourism industry", paragraph 8.

⁷ For example, CIAL says "[t]he benefits of the arrangement are minor and accrue predominantly to Virgin Australia Velocity members" and "there are no obvious benefits in the proposed arrangement for Air New Zealand". Auckland Airport "acknowledges this proposed agreement would provide limited benefits to a group of VA customers, particularly loyalty members and frequent flyers". NZ Airports similarly says that "benefits of the codeshare are limited".

4. Air New Zealand's rationale for the Proposed Conduct

4.1 As set out in the Application, for Air New Zealand, the Proposed Conduct:⁸

- (a) drives incremental passenger numbers onto its trans-Tasman services, including behind and beyond connections on Air New Zealand's domestic services, improving the efficiency and commercial viability of its flight operations; and
- (b) facilitates access to additional distribution channels for its trans-Tasman services, including to Australian customers where Air New Zealand does not have as strong a marketing and sales presence.

4.2 This rationale is consistent with Air New Zealand's wider partnership strategy. Air New Zealand enters into airline partnerships for three core reasons:

- (a) to enhance connectivity to destinations beyond Air New Zealand's own network via another airline's network; and/or
- (b) to drive incremental passenger traffic onto its own network by utilising the sales and distribution strength of its partners in their home markets where Air New Zealand's presence is comparatively weaker; and/or
- (c) to enhance the customer experience through bilaterally negotiated benefits (e.g. loyalty benefits, priority check in, baggage allowances, lounge access and boarding).

4.3 The Proposed Conduct is therefore very much aligned to Air New Zealand's overall approach to partnering. CIAL's suggestion that Air New Zealand's motivation for the Proposed Conduct is instead founded on deterring the (re)entry of Virgin Australia onto the trans-Tasman⁹ is therefore manifestly incorrect and dismisses one of the core reasons that airlines enter into codeshare partnerships. The codeshare agreement provides Air New Zealand with an additional distribution channel in Australia to drive incremental feed onto its Tasman network. Contrary to CIAL's assertion in its submission, this has very obvious benefits to Air New Zealand as incremental passenger traffic will improve operational efficiency and commercial performance.

5. Opposition to the Proposed Conduct is premised on an unrealistic counterfactual¹⁰

5.1 The essence of the opposition to the Proposed Conduct is premised on certain incorrect assumptions about the relevant counterfactual against which the Ministry is to make its assessment.¹¹

5.2 More specifically, the opposition assumes that in the counterfactual Virgin Australia would commence independent operations on the trans-Tasman routes it operated pre-COVID and at pre-COVID capacity levels, and that the Proposed Conduct would disincentivise Virgin Australia from doing so. These assumptions are unfounded, do not reflect commercial reality and ignore the underlying challenges Virgin Australia has historically faced in competing on trans-Tasman routes.¹²

⁸ See para. 4.4 of the Application.

⁹ Submission by CIAL, paragraph 18.

¹⁰ Also see Section 4 of the ACCC Response.

¹¹ For example, Auckland Airport submits that the Proposed Conduct "would limit the potential for growth in capacity and competition on the trans-Tasman routes by removing an incentive for VA to return to flying trans-Tasman (excluding Queenstown) as they did pre-Covid." Submission by Auckland International Airport, para. 3. Christchurch International Airport Limited submits "CIAL "[t]he effect of the proposed arrangement will be to reduce the commercial motivation for Virgin Australia to fly its own services on trans-Tasman routes. The arrangement is therefore likely to protect the existing market dynamics." Submission by CIAL, paragraph 4.

¹² As set out in the ACCC Response, Virgin Australia's ability to successfully and independently operate trans-Tasman services has been hampered by its lack of a New Zealand based point of sale advantage and its inability to match Qantas' strength and network reach. While fifth freedom carriers lack these domestic network advantages, they operate sustainable services as a result of their very different pricing strategy which is centred around recovery of marginal cost only, while drawing passenger feed from their international networks, including through their membership of global airline alliances (as applicable) or a global loyalty base.

- 5.3 A scenario in which Virgin Australia independently operates trans-Tasman services is not the correct counterfactual on which to analyse the Proposed Conduct. As set out in the Application, the relevant counterfactual is the status quo.¹³
- 5.4 Ultimately, the short period in which Virgin Australia independently operated trans-Tasman services, following the dissolution of its broad alliance with Air New Zealand, was characterised by substantial financial losses. Virgin Australia will not again pursue strategies that are commercially unsustainable in this way. Since COVID, Virgin Australia has restructured its business and emerged from voluntary administration with a streamlined fleet and renewed domestic and short-haul international strategy with greater focus on standalone commercial viability and sustainability in the trade-off for aircraft and resources.
- 5.5 As explained to the Ministry, [CONFIDENTIAL TO VA].¹⁴ If, [CONFIDENTIAL TO VA], Virgin Australia determined that sustainable trans-Tasman services were operationally and commercially viable, it could operate those services notwithstanding the Proposed Conduct. Virgin Australia's decision to commence other trans-Tasman services is not as simple as looking at whether the impacts of COVID have dissipated and, if so, applying pre-COVID capacity. Operational and commercial assessments must be made on the viability of services and optimal deployment of resources that is sustainable and operationally resilient. The reality is that very few of Virgin Australia's previously operated trans-Tasman services were viable pre-COVID.
- 5.6 [CONFIDENTIAL TO VA] the Proposed Conduct does not change Virgin Australia's incentives regarding entry onto the trans-Tasman utilising its own aircraft and therefore does not have the effect of delaying or disincentivising entry that would otherwise occur.
- 5.7 In fact, rather than delaying or disincentivising entry, the Proposed Conduct improves the conditions for re-entry by allowing Virgin Australia presence as a marketing option (building brand awareness and loyalty proposition) and allowing access to greater opportunities for the higher yielding corporate and SME traffic to support future entry, should Virgin Australia's assessment of the market opportunities change.
6. **Concerns about the impact of the Proposed Conduct are misplaced**
- 6.1 Auckland Airport suggests that one of the key reasons why the application should not be approved is that the "*Tasman market is less competitive now than it was pre-Covid*".¹⁵ This sentiment is echoed in other Third Party Submissions.
- 6.2 The Proposed Conduct does not negatively impact the competitive dynamics that already exist on the Tasman, or which exist in the counterfactual. As set out above at Section 2, it does not remove any competition, services or benefits that would be available without the Proposed Conduct (noting that overlapping trans-Tasman routes are expressly excluded from the Proposed Conduct). If anything, the Proposed Conduct will stimulate competition and trigger a competitive response – and in fact this has been the case as explained in further detail in the ACCC Response.¹⁶ Submissions that lament the loss of Virgin Australia's operating capacity and suggest that the Tasman was more competitive with Virgin Australia operating services on its own metal are therefore not relevant to the Ministry's assessment, as this is not the relevant counterfactual.¹⁷
- 6.3 As at January 2024, there were **more** carriers operating on the trans-Tasman compared to pre-COVID in January 2020. Based on scheduled capacity for the period January 2024 to October 2024, fifth freedom carriers have maintained seat capacity and market share relative to the equivalent period of 2019. On 24 August 2023, Batik Air Malaysia commenced a service between

¹³ For further detail, see Section 5 of the Application.

¹⁴ For further information see Section 5.2 of the Response to the ACCC on third party submissions. In particular, this response expands on [CONFIDENTIAL TO VA].

¹⁵ Submission by Auckland International Airport, paragraph 6.

¹⁶ Also see Section 5.3 of the Response to the ACCC.

¹⁷ As expanded on above at Section 5 above

Auckland and Perth, operating six times per week.¹⁸ On 6 November 2023, China Eastern commenced services between Hangzhou, Sydney and Auckland, operating four times per week.¹⁹

- 6.4 NZ Airports explains that the New Zealand tourism industry has been impacted by significantly higher than pre-COVID trans-Tasman airfares.²⁰ While airfares are currently higher on the Tasman compared to pre-COVID, this is not a consequence or indicator of limited competition. Following COVID, airlines worldwide have struggled to grow back capacity due to resource and supply chain constraints, including access to aircraft, pilots, ground handling, airport front of house, and cabin crew. On the trans-Tasman, the recovery period after borders opened back up was marked by a unique combination of high pent up demand as Australians and New Zealanders had not been able to travel freely for over two years. This demand included extraordinary levels of pent-up VFR (Visiting Friends & Relatives) demand. This demand set against the capacity constraints naturally contributed to a temporary increase in airfares and is not indicative of long-term market pricing trends or a lack of competition. The NZ Airports submission also wholly ignores the impact of a much higher cost base on overall fare levels since the pre-COVID period. Compared to July – December 2019, operating costs have increased by [CONFIDENTIAL TO AIR NEW ZEALAND] in the same period of 2023 and increases in fares are also necessary to sustain services in a high-cost environment.
- 6.5 Further, both NZ Airports²¹ and Auckland Airport²² submit that increased VA codeshare passengers (including high yield corporate and SME customers) travelling on Air New Zealand trans-Tasman and domestic services would simply displace existing Air New Zealand customers and put upwards pressure on airfares. This submission does not hold for a number of reasons – it ignores the commercial rationale for codeshare (see Section 4 above), is predicated on a misconception of the impact of the Proposed Conduct on Tasman load factors and is indicative of a lack of understanding of how bookings are managed by airlines.
- 6.6 Concerns regarding capacity constraints on the Tasman are misplaced. There is sufficient capacity available on Air New Zealand's Tasman services to accommodate the incremental traffic from the Proposed conduct without "displacing" existing passengers. Even in the short-term where Air New Zealand is facing some fleet constraints due to PW1100 issues, Tasman load factors are forecast to be [CONFIDENTIAL TO AIR NEW ZEALAND].²³
- 6.7 Finally, the assertion that under the Proposed Conduct SME and Corporate travellers would displace lower yielding VFR passengers demonstrates a misunderstanding how airlines manage passenger bookings.
- 6.8 [CONFIDENTIAL TO AIR NEW ZEALAND].
- 6.9 [CONFIDENTIAL TO AIR NEW ZEALAND].

Figure 1: Air New Zealand's Leisure/Corporate traffic – November 2023²⁴

[CONFIDENTIAL TO AIR NEW ZEALAND]

7. Capacity commitments are not necessary

- 7.1 Both NZ Airports and Auckland Airport note that the Applicants have not made any commitment to increase seat capacity.²⁵ While commitments may be warranted where an alliance is not otherwise likely to deliver net public benefits, that is not the case here. The Proposed Conduct does not include any capacity coordination between the parties – it is primarily a unilateral codeshare arrangement with a novel pricing model. There can be no basis for any capacity commitments. Capacity conditions are not 'costless' – they constrain the carriers' ability to react

¹⁸ WA Government, "New Batik Air Malaysia connecting Auckland to Western Australia" (25 August 2023).

¹⁹ <https://www.internationalairportreview.com/news/190397/china-eastern-airlines-fuelling-recovery-with-two-new-routes-to-sydney/>

²⁰ NZ Airports, paragraph 4.

²¹ Submission by NZ Airports, paragraph 6 and paragraph 13.

²² Submission by Auckland International Airport, paragraph 6.

²³ [CONFIDENTIAL TO AIR NEW ZEALAND]

²⁴ [CONFIDENTIAL TO AIR NEW ZEALAND]

²⁵ Submission by Auckland Airport, paragraph 14 and submission by NZ Airports, paragraph 13.

dynamically to market conditions which is why they should be preserved for specific instances where there is a real risk an alliance will not otherwise delivery net benefits

7.2 [CONFIDENTIAL TO AIR NEW ZEALAND].

RELEASED UNDER THE
OFFICIAL INFORMATION ACT 1982

From: [Torrin Crowther](#)
To: [Garrick Wood](#); Emma.Harris@bellgully.com
Cc: [Sonya Van De Geer](#); [Tom Forster](#); [Shereen Faraj](#)
Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]
Date: Wednesday, 6 March 2024 3:39:01 pm
Attachments: [image001.png](#)

Confidential

Hi Garrick

Thank you for your email below. Apologies for the delay in responding – we’ve faced some availability constraints.

For the following reasons the Parties do not believe the Proposed Conduct has the purpose or effect of preventing Virgin Australia from seeking approval under section 90 of the CAA, and hence does not raise an issue in terms of s88(4) of the CAA.

s 9(2)(b)(ii), s 9(2)(ba)(i)

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]

[Redacted]

Happy to discuss further as needed.

Kind regards
Torrin

Torrin Crowther Partner
BELL GULLY
DDI +64 9 916 8621 MOB +64 21 867 746
Vero Centre, 48 Shortland Street, Auckland, New Zealand

From: Garrick Wood <G.Wood@transport.govt.nz>

Sent: Wednesday, 28 February 2024 5:11 pm
To: Harris, Emma EKH <Emma.Harris@bellgully.com>; Crowther, Torrin TXC <torrin.crowther@bellgully.com>
Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>; Shereen Faraj <S.Faraj@transport.govt.nz>
Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

CAUTION: This email is from outside of the firm.

Kia ora Emma, Torrin

We would appreciate clarification on one more aspect of the application.

Applicants have argued at para 8.4(e) of the application that “the Proposed Conduct does not have the purpose or effect of preventing any party from seeking approval in terms of section 90 of the Act, for the purpose of selling international carriage by air at any other tariff so approved..” . This is the provision set out in s88(4)(e) of the Civil Aviation Act 1990.

s 9(2)(b)(ii)

Can you further explain or clarify how this does not have the purpose or effect of preventing any party from seeking approval from the Minister to set a tariff?

s 9(2)(b)(ii)

Many thanks.

Ngā mihi

Garrick Wood (he / him / Mr)

M: s 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Garrick Wood

Sent: Friday, February 16, 2024 2:46 PM

To: Emma.Harris@bellgully.com; Torrin Crowther <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>; Shereen Faraj <S.Faraj@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Kia ora Emma

In addition to the earlier questions, we would also like to know from the parties:

1. What is Air New Zealand's load factors for each route, month-by-month for the period 2019-2023.
2. How many Velocity Frequent Flyer Members have New Zealand passports?
3. How many Velocity Frequent Flyer Members accrue points through business travel (corporate or SME); and what percentage of these members in turn spend the accrued points on personal travel?

Could we please have responses to all question and any response to third-party submissions by Thursday 29 February 2024.

Please do not hesitate to contact us if you have any questions.

Ngā mihi

Garrick Wood (he / him / Mr)

M: s 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Emma.Harris@bellgully.com <Emma.Harris@bellgully.com>

Sent: Thursday, February 8, 2024 7:09 PM

To: Garrick Wood <G.Wood@transport.govt.nz>; Torrin Crowther <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Many thanks Garrick, I confirm receipt. We will share these with the parties.

Noted also regarding any further MOT questions arising from the submissions.

Best wishes

Emma

Emma Harris Senior Associate

BELL GULLY

DDI +64 9 9168779 MOB +64 21 227 4969
Vero Centre, 48 Shortland Street, Auckland, New Zealand

From: Garrick Wood <G.Wood@transport.govt.nz>

Sent: Thursday, 8 February 2024 10:35 am

To: Harris, Emma EKH <Emma.Harris@bellgully.com>; Crowther, Torrin TXC <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

CAUTION: This email is from outside of the firm.

Kia ora Emma, Torrin

Attached are the final two submissions from Auckland Airport and NZ Airports.

If we have any further question arising from the submissions, we will send them to you by Friday 16 February 2024. These will be in addition to questions Sonya emailed on 30 January 2024.

Ngā mihi

Garrick Wood (he / him / Mr)

M: s 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Garrick Wood

Sent: Friday, February 2, 2024 4:36 PM

To: Emma.Harris@bellgully.com; Torrin Crowther <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Hi Emma

Apologies for the delay. I have attached the 5 submissions that we have received to date. These are not up on our website yet, but conscious to get them to you.

The submissions we are expecting next week are from NZ Airports and Auckland Airport.

Have a great weekend.

Ngā mihi

Garrick Wood (he / him / Mr)

M: s 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Emma.Harris@bellgully.com <Emma.Harris@bellgully.com>

Sent: Thursday, February 1, 2024 11:59 AM

To: Garrick Wood <G.Wood@transport.govt.nz>; Torrin Crowther <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Hi Garrick,

Thanks for the update. Are you able to advise who those two submitters are in the meantime?

For our planning purposes, when should we expect the three submissions that you have received so far?

Best wishes

Emma

Emma Harris Senior Associate

BELL GULLY

DDI +64 9 9168779 MOB +64 21 227 4969
Vero Centre, 48 Shortland Street, Auckland, New Zealand

From: Garrick Wood <G.Wood@transport.govt.nz>
Sent: Thursday, 1 February 2024 11:42 am
To: Harris, Emma EKH <Emma.Harris@bellgully.com>; Crowther, Torrin TXC <torrin.crowther@bellgully.com>
Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>
Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

CAUTION: This email is from outside of the firm.

Hi Emma... Two submitters have requested an extension to mid-next week, which we have granted.

We will let you know once they have been received and up on the website.

Ngā mihi

Garrick Wood (he / him / Mr)

M: s 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Garrick Wood
Sent: Thursday, January 25, 2024 5:43 PM
To: Emma.Harris@bellgully.com; Torrin Crowther <torrin.crowther@bellgully.com>
Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>
Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Hi Emma

Apologies for the delay. We have received 3 submissions to date. I will arrange for these to be available on our website shortly.

We note that NZ Airports made a submission to the ACCC. We expect they would also make a submission to us.

Ngā mihi

Garrick Wood (he / him / Mr)

M: s 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Emma.Harris@bellgully.com <Emma.Harris@bellgully.com>
Sent: Tuesday, January 16, 2024 5:42 PM
To: Garrick Wood <G.Wood@transport.govt.nz>; Torrin Crowther <torrin.crowther@bellgully.com>
Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>
Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Thanks Garrick. That is a helpful steer in the meantime. I am conscious that the deadline is not until 1 Feb but have you received any submissions already?

Best wishes
Emma

Emma Harris Senior Associate

BELL GULLY

DDI +64 9 9168779 MOB +64 21 227 4969
Vero Centre, 48 Shortland Street, Auckland, New Zealand

From: Garrick Wood <G.Wood@transport.govt.nz>
Sent: Tuesday, 16 January 2024 12:45 pm
To: Harris, Emma EKH <Emma.Harris@bellgully.com>; Crowther, Torrin TXC <torrin.crowther@bellgully.com>
Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>
Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

CAUTION: This email is from outside of the firm.

Kia ora Emma, Torrin

Happy new year to you both.

We do not have a detailed timeline yet – partly due to focussing on NZ/SQ and availability of staff over the Dec/Jan period.

Sonya I discussed at the end of last year and we are proceeding on the basis of having aiming to have a decision by late April / early May 2024.

Sonya is back next week. We will get more detail to you by the time submissions have closed.

Ngā mihi

Garrick Wood (he / him / Mr)

M: [s 9\(2\)\(a\)](tel:s 9(2)(a)) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Emma.Harris@bellgully.com <Emma.Harris@bellgully.com>

Sent: Monday, January 15, 2024 3:53 PM

To: Garrick Wood <G.Wood@transport.govt.nz>; Torrin Crowther <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Hi Garrick,

Happy new year – hope you had a lovely break.

Further to the emails below, we understand the team were looking at developing an indicative timeline for the MOT's consideration of the VA/NZ application. We were wondering if you are in a position to share this with us?

Best wishes

Emma

Emma Harris Senior Associate

BELL GULLY

DDI +64 9 9168779 MOB +64 21 227 4969
Vero Centre, 48 Shortland Street, Auckland, New Zealand

From: Harris, Emma EKH

Sent: Tuesday, 21 November 2023 4:35 pm

To: 'Garrick Wood' <G.Wood@transport.govt.nz>; Crowther, Torrin TXC <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

Many thanks Garrick, we appreciate the update. We will let the Parties know.

Best wishes

Emma

Emma Harris Senior Associate

BELL GULLY

DDI +64 9 9168779 MOB +64 21 227 4969
Vero Centre, 48 Shortland Street, Auckland, New Zealand

From: Garrick Wood <G.Wood@transport.govt.nz>

Sent: Tuesday, 21 November 2023 4:10 pm

To: Crowther, Torrin TXC <torrin.crowther@bellgully.com>

Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>; Harris, Emma EKH <Emma.Harris@bellgully.com>

Subject: RE: Confidential: NZ/VA - Application for authorisation [BG-BELLGULLY.FID1507849]

CAUTION: This email is from outside of the firm.

Kia ora Torrin

Thank you for submitting the application. I have a quick courtesy update for you.

We have published the public version of the Air New Zealand and Virgin Australia application for authorisation on the [Airline code-share and alliance agreements](#) section of the Ministry website.

We are inviting submissions from interest parties, due by 5 pm Tuesday 1 February 2024.

Our team is prioritising completing the NZ-SQ reauthorisation. However, we will look to develop an indicative timeline for the VA-NZ application over the coming weeks. We will keep you updated.

Please contact Sonya or me if you have any questions.

Nga mihi

Garrick Wood (he / him / Mr)

Kaitohutuhu Matua – Rererangi a Moana | Senior Adviser – Aviation and Maritime

Te Manatu Waka Ministry of Transport

M: s 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz



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From: Torrin Crowther <torrin.crowther@bellgully.com>

Sent: Friday, November 17, 2023 1:01 PM

To: Tom Forster <t.forster@transport.govt.nz>; Sonya Van De Geer <s.vandeger@transport.govt.nz>

Cc: Emma.Harris@bellgully.com

Subject: Confidential: NZ/VA - Application for authorisation [BG-BELGULLY.FID1507849]

CONFIDENTIAL

Dear Tom and Sonya,

We refer to the earlier communication regarding a one way codeshare on the Tasman (excluding Queenstown) between Air New Zealand and Virgin Australia.

On behalf of Air New Zealand and Virgin Australia, please find attached the application for authorisation to make and give effect to a Commercial Framework Agreement, Codeshare Agreement, and various related agreements as described in further detail in the application attached. More particularly, please find attached:

- a confidential and a public version of the application (as marked). Note that the confidential version contains some information confidential to Air New Zealand vis a vis the public and

Virgin Australia (and vice versa);

- a confidential version of the Confidential Framework Agreement; and
- Confidential Annexure 1 regarding Virgin Australia's counterfactual. For the avoidance of doubt, Confidential Annexure 1 cannot be shared with Air New Zealand (or the public more generally).

We would be grateful if you could please confirm receipt of this email and its four attachments.

Kind regards

Torrin

Torrin Crowther Partner

BELL GULLY

DDI +64 9 916 8621 MOB +64 21 867 746

Vero Centre, 48 Shortland Street, Auckland, New Zealand

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From: [Tom Forster](#)
To: [Garrick Wood](#); [Sonya Van De Geer](#)
Subject: FW: Air NZ/VA Alliance
Date: Friday, 15 March 2024 5:27:20 pm
Attachments: [image001.png](#)
[image002.png](#)

From: Tom Forster
Sent: Friday, March 15, 2024 4:45 PM
To: Bronwyn Turley <B.Turley@transport.govt.nz>
Subject: RE: Air NZ/VA Alliance

We want to have a final report in May. Possibly provide an update briefing to the Minister in mid-late April.

We normally work with Joanne's team on this but they do not have the competition experience that we would be comfortable with in peer reviewing this work.

From: Bronwyn Turley <B.Turley@transport.govt.nz>
Sent: Friday, March 15, 2024 4:37 PM
To: Tom Forster <t.forster@transport.govt.nz>
Subject: RE: Air NZ/VA Alliance

Hi – I've asked Paul O'Connell – was thinking that it could be something for him to take care of as it's in the analytics space. He's wondering what our timeframes are – do you have that info?

Bronwyn Turley

Pou Turuki | Deputy Chief Executive
Regulatory Group

Te Manatū Waka Ministry of Transport

M: [s 9\(2\)\(a\)](#) | E: b.turley@transport.govt.nz | transport.govt.nz

Executive Assistant: Anna Northcott | M: [s 9\(2\)\(a\)](#) | E:

a.northcott@transport.govt.nz



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From: Tom Forster <t.forster@transport.govt.nz>
Sent: Friday, March 15, 2024 2:41 PM
To: Bronwyn Turley <B.Turley@transport.govt.nz>
Subject: Air NZ/VA Alliance

Hi Bronwyn

Just checking whether you have had a chat with your contacts at the Commission about undertaking a peer review of the Air NZ/VA alliance. We agreed that we needed to have this done given whatever decision we make would be under scrutiny given the strong views expressed.

If the ComCom is not an option, we can start thinking of other Economists who have experience

in competition matters that may be able to assist us.

Cheers

Tom

Tom Forster ([he / his / Mr](#))

Manager – Aviation & Maritime

Te Manatū Waka Ministry of Transport

M: [s 9\(2\)\(a\)](#) | E: t.forster@transport.govt.nz | transport.govt.nz



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From: [Torrin Crowther](#)
To: [Garrick Wood](#)
Cc: [Sonya Van De Geer](#); [Tom Forster](#); [Shereen Faraj](#); s 9(2)(a)
Subject: Confidential: NZ/VA - Teams VC Request
Date: Monday, 25 March 2024 3:15:45 pm

Hi all

We've had a request from VA for an opportunity to speak to the MOT team in relation to how they see the Alliance, and their counterfactual.

Would you have, say, 60-90 minutes, at some stage in the near-ish term? We'd envisage a short slot at the outset in terms of the arrangements generally which NZ would also attend, and then a session with VA (that we would attend on an external counsel only basis).

Look forward to hearing from you when you have a moment.

Thanks
Torrin

Torrin Crowther Partner

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s 9(2)(a)

Vero Centre, 48 Shortland Street, Auckland, New Zealand

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From: [Garrick Wood](#)
To: [Richard Meade](#)
Cc: [Sonya Van De Geer](#); [Tom Forster](#)
Subject: RE: 2024_04_08 - AoG Consultancy Services Order - Cognitus - Air Nz Virgin Australia Alliance
Date: Friday, 3 May 2024 4:21:00 pm
Attachments: [image001.png](#)
[CONFIDENTIAL - Draft for Review - Air NZ and VA Codeshare Authorisation - Initial Advice.docx](#)

Kia ora Richard

Please find attached our draft initial advice for you to review.

Can you please have any feedback to us by **COB Thursday 9 May 2024**, although earlier is appreciated if possible.

This should be read alongside the application material we have already provided you – [linked here](#). I will send to you in a separate email the confidential versions of the application, plus counterfactuals and addition information provided.

Our next deliverable for you review will be our full analysis report (approximately 20 pages). We are working to have this completed by 10 May 2024, but will address any feedback or comments from your review of the initial advice before sending.

Please reach out Sonya or me if you need anything or wish to discuss.

Look forward to hearing from you.

Ngā mihi

Garrick Wood (he / him / Mr)
Kaitohutohu Matua – Rererangi a Moana | Senior Adviser – Aviation and Maritime
Te Manatu Waka Ministry of Transport
M: [s 9\(2\)\(a\)](#) | E: g.wood@transport.govt.nz | transport.govt.nz



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From: Tom Forster <t.forster@transport.govt.nz>
Sent: Friday, April 26, 2024 2:41 PM
To: Richard Meade <richard.meade@cognitus.co.nz>
Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Garrick Wood <G.Wood@transport.govt.nz>
Subject: RE: 2024_04_08 - AoG Consultancy Services Order - Cognitus - Air Nz Virgin Australia Alliance

Hi Richard

Thanks for getting in touch. I've just asked the people working on it. They have indicated that

they are still working on getting it across some time next week. I'll update you on either on Monday or Tuesday next week.

I've also copied the two people working on the briefing.

Cheers

Tom

From: Richard Meade <richard.meade@cognitus.co.nz>

Sent: Friday, April 26, 2024 2:26 PM

To: Tom Forster <t.forster@transport.govt.nz>

Subject: Re: 2024_04_08 - AoG Consultancy Services Order - Cognitus - Air Nz Virgin Australia Alliance

Hello Tom, hope all going well. Just checking in re the likely timing of your initial briefing, and when it could be reviewed. Thanks in advance. Best, R.

On Tue, 9 Apr 2024 at 08:45, Tom Forster <t.forster@transport.govt.nz> wrote:

Hi Richard

Please see signed copy of the CSO. Can you please sign and return to me.

Thanks

Tom

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Wellington (Head Office) | Ground Floor, 3 Queens Wharf | PO Box 3175 | Wellington 6011 | NEW ZEALAND | Tel: +64 4 439 9000 |

Auckland | NZ Government Auckland Policy Office | 45 Queen Street | PO Box 106238 | Auckland City | Auckland 1143 | NEW ZEALAND | Tel: +64 4 439 9000 |

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Richard Meade (PhD, Toulouse School of Economics)

Principal Economist | Cognitus Economic Insight | www.cognitus.co.nz

12c Orakau Avenue, Epsom, Auckland 1023, New Zealand

Phone: +64 (0)9 972 4592 | Mobile: +64 (0)27 453 8000 | richard.meade@cognitus.co.nz

Adjunct Associate Professor | Griffith University | [Profile](#)

Adjunct | Centre for Applied Energy Economics and Policy Research | [Profile](#)

Senior Research Fellow | Auckland University of Technology | [Profile](#)

President | Law & Economics Association of New Zealand | www.leanz.org.nz

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From: [Garrick Wood](#)
To: [Richard Meade](#)
Cc: [Sonya Van De Geer](#); [Tom Forster](#)
Subject: RE: 2024_04_08 - AoG Consultancy Services Order - Cognitus - Air Nz Virgin Australia Alliance
Date: Friday, 3 May 2024 7:02:00 pm
Attachments: [image001.png](#)
[VA CONFIDENTIAL Annexure 1 - MOT submission.pdf](#)
[CONFIDENTIAL - Applicants' submission in response to interested party submissions \(ACCC\).pdf](#)
[CONFIDENTIAL - Commercial Framework Agreement.pdf](#)
[CONFIDENTIAL - MOT - Response to Third Party Submissions - Air New Zealand and Virgin Australia.pdf](#)
[CONFIDENTIAL - Response to MOT RFIs - Air New Zealand and Virgin Australia.pdf](#)
[CONFIDENTIAL - VA presentation to MOT 12 April 2024.pdf](#)
[CONFIDENTIAL VERSION NZ VA Application - 17 Nov 2023.pdf](#)

Hi Richard

Attached are the CONFIDENTIAL documents submitted to MOT by applicants.

FYI – the ACCC released its [draft determination](#) on 1 May 2024.

Ngā mihi

Garrick Wood (he / him / Mr)

M: [§ 9\(2\)\(a\)](#) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Richard Meade <richard.meade@cognitus.co.nz>
Sent: Friday, May 3, 2024 5:34 PM
To: Garrick Wood <G.Wood@transport.govt.nz>
Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>
Subject: Re: 2024_04_08 - AoG Consultancy Services Order - Cognitus - Air Nz Virgin Australia Alliance

Thanks Garrick, look forward to the confidential version of the application and counterfactuals as soon as possible thanks ([§ 9\(2\)\(a\)](#)). Best, R.

On Fri, 3 May 2024 at 16:21, Garrick Wood <G.Wood@transport.govt.nz> wrote:

Kia ora Richard

Please find attached our draft initial advice for you to review.

Can you please have any feedback to us by **COB Thursday 9 May 2024**, although earlier is appreciated if possible.

This should be read alongside the application material we have already provided you – [linked here](#). I will send to you in a separate email the confidential versions of the application, plus counterfactuals and addition information provided.

Our next deliverable for you review will be our full analysis report (approximately 20 pages). We are working to have this completed by 10 May 2024, but will address any

feedback or comments from your review of the initial advice before sending.

Please reach out Sonya or me if you need anything or wish to discuss.

Look forward to hearing from you.

Ngā mihi

Garrick Wood (he / him / Mr)

Kaitohutohu Matua – Rererangi a Moana | Senior Adviser – Aviation and Maritime
Te Manatu Waka Ministry of Transport

M: s 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz



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From: Tom Forster <t.forster@transport.govt.nz>

Sent: Friday, April 26, 2024 2:41 PM

To: Richard Meade <richard.meade@cognitus.co.nz>

Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Garrick Wood <G.Wood@transport.govt.nz>

Subject: RE: 2024_04_08 - AoG Consultancy Services Order - Cognitus - Air Nz Virgin Australia Alliance

Hi Richard

Thanks for getting in touch. I've just asked the people working on it. They have indicated that they are still working on getting it across some time next week. I'll update you on either on Monday or Tuesday next week.

I've also copied the two people working on the briefing.

Cheers

Tom

From: Richard Meade <richard.meade@cognitus.co.nz>

Sent: Friday, April 26, 2024 2:26 PM

To: Tom Forster <t.forster@transport.govt.nz>

Subject: Re: 2024_04_08 - AoG Consultancy Services Order - Cognitus - Air Nz Virgin Australia Alliance

Hello Tom, hope all going well. Just checking in re the likely timing of your initial briefing, and when it could be reviewed. Thanks in advance. Best, R.

On Tue, 9 Apr 2024 at 08:45, Tom Forster <t.forster@transport.govt.nz> wrote:

Hi Richard

Please see signed copy of the CSO. Can you please sign and return to me.

Thanks

Tom

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Richard Meade (PhD, Toulouse School of Economics)

Principal Economist | Cognitus Economic Insight | www.cognitus.co.nz

12c Orakau Avenue, Epsom, Auckland 1023, New Zealand

Phone: +64 (0)9 972 4592 | Mobile: +64 (0)27 453 8000 | richard.meade@cognitus.co.nz

Adjunct Associate Professor | Griffith University | [Profile](#)

Adjunct | Centre for Applied Energy Economics and Policy Research | [Profile](#)

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--

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12c Orakau Avenue, Epsom, Auckland 1023, New Zealand

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Senior Research Fellow | Auckland University of Technology | [Profile](#)

President | Law & Economics Association of New Zealand | www.leanz.org.nz

From: [Richard Meade](#)
To: [Garrick Wood](#)
Cc: [Sonya Van De Geer](#); [Tom Forster](#)
Subject: Review of draft initial advice re VA/Air NZ codeshare authorisation application
Date: Wednesday, 8 May 2024 10:22:14 am
Attachments: [Ltr GW - Cognitus Review of Draft Initial Advice on VA-NZ Codeshare Application 2024_05_08 Draft.pdf](#)

Kia ora Garrick, please see attached.

I have sent my review letter as an unsigned/undated draft for now in case you or colleagues would like any further clarification.

I will finalise it once I hear from you.

With thanks, and I look forward to hearing from you.

Best,
R

--

Richard Meade (PhD, Toulouse School of Economics)

Principal Economist | Cognitus Economic Insight | www.cognitus.co.nz

12c Orakau Avenue, Epsom, Auckland 1023, New Zealand

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From: [Tom Forster](#)
To: [Garrick Wood](#)
Cc: [Sonya Van De Geer](#)
Subject: RE: Review of draft initial advice re VA/Air NZ codeshare authorisation application
Date: Thursday, 9 May 2024 2:01:16 pm

Hi Garrick

Thanks for the update. I am also leaning towards authorising now. Why would we go for three rather than 5? Do we think a two year period would make a meaningful difference? We would also not align with the Aussies. If we were to go for three, then we would need the Minister to authorise us to go to the parties and ask them to change their application, wouldn't that be the case?

I don't think a two year difference is going to be material.

Cheers

Tom

From: Garrick Wood <G.Wood@transport.govt.nz>
Sent: Thursday, May 9, 2024 1:39 PM
To: Tom Forster <t.forster@transport.govt.nz>
Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>
Subject: RE: Review of draft initial advice re VA/Air NZ codeshare authorisation application

Hi Tom

Richard has provided valuable feedback and raised some points that we (or the applicants) had not considered or. Some aspects of the feedback we disagree with on the basis they apply to an alliance rather than to codeshare agreements.

Sonya and I have been discussing and incorporating feedback into the initial briefing.

We are leaning toward declining authorisation for 5 years but authorising for 3 years.

Sonya and I have appointments between now and 2:30pm We're continuing to work once we are back. Happy to jump online to discuss in detail.

Ngā mihi

Garrick Wood (he / him / Mr)

M: s 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Tom Forster <t.forster@transport.govt.nz>
Sent: Thursday, May 9, 2024 9:36 AM
To: Garrick Wood <G.Wood@transport.govt.nz>
Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>
Subject: RE: Review of draft initial advice re VA/Air NZ codeshare authorisation application

Hi Team

Just checking in – what are your general thoughts re Richard’s views?

Cheers

Tom

From: Garrick Wood <G.Wood@transport.govt.nz>
Sent: Wednesday, May 8, 2024 1:46 PM
To: Richard Meade <richard.meade@cognitus.co.nz>
Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>
Subject: RE: Review of draft initial advice re VA/Air NZ codeshare authorisation application

Kia ora Richard. Acknowledging receipt.

Thanks for the quick turnaround. We will be in touch once we have reviewed.

Ngā mihi

Garrick Wood (he / him / Mr)

M: s 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Richard Meade <richard.meade@cognitus.co.nz>
Sent: Wednesday, May 8, 2024 10:20 AM
To: Garrick Wood <G.Wood@transport.govt.nz>
Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>
Subject: Review of draft initial advice re VA/Air NZ codeshare authorisation application

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I have sent my review letter as an unsigned/undated draft for now in case you or colleagues would like any further clarification.

I will finalise it once I hear from you.

With thanks, and I look forward to hearing from you.

Best,

R

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From: [Richard Meade](#)
To: [Garrick Wood](#)
Cc: [Sonya Van De Geer](#); [Tom Forster](#)
Subject: Re: Review of draft initial advice re VA/Air NZ codeshare authorisation application
Date: Friday, 10 May 2024 12:25:54 pm
Attachments: [Ltr GW - Cognitus Review of Draft Initial Advice on VA-NZ Codeshare Application 2024_05_07.pdf](#)

Kia ora Garck, good speaking just now. Please see attached my initial review letter signed and dated. I look forward to the next document to review towards the end of next week.
Best, R.

On Wed, 8 May 2024 at 10:20, Richard Meade <richard.meade@cognitus.co.nz> wrote:

Kia ora Garrick, please see attached.

I have sent my review letter as an unsigned/undated draft for now in case you or colleagues would like any further clarification.

I will finalise it once I hear from you.

With thanks, and I look forward to hearing from you.

Best,
R

--

Richard Meade (PhD, Toulouse School of Economics)

Principal Economist | Cognitus Economic Insight | www.cognitus.co.nz

12c Orakau Avenue, Epsom, Auckland 1023, New Zealand

Phone: +64 (0)9 972 4592 | Mobile: +64 (0)27 453 8000 | richard.meade@cognitus.co.nz

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7 May 2024

Garrick Wood
Senior Advisor – Aviation and Maritime
Ministry of Transport
WELLINGTON

By email: G.Wood@transport.govt.nz

Dear Garrick

Review of Ministry's Draft Initial Advice regarding Codeshare Authorisation Application by Virgin Australia and Air New Zealand

1. Thank you for asking me to peer review the Ministry of Transport's (the Ministry's) draft initial advice to the Associate Minister of Transport (the Draft Advice), regarding the proposed codeshare arrangement (the Proposed Arrangement) for which authorisation is being sought by Air New Zealand and Virgin Australia (respectively Air NZ and VA; together the Applicants).
2. I understand that the Ministry seeks my view on whether the Draft Advice covers all relevant considerations, and the Ministry has reached a reasonable conclusion. I am please to provide my view in this letter.
3. I structure my response as follows:
 - 3.1. In the next section I briefly outline what I see to be the key issues in the Application;
 - 3.2. I then summarise the key features of the Draft Advice;
 - 3.3. In the following section I provide my view on whether all relevant considerations have been considered; and
 - 3.4. Finally, I offer my view on whether the Ministry's conclusions in the Draft Advice are reasonable.

Key Issues in the Application

4. The application involves a unilateral codeshare arrangement under which VA will be able to access trans-Tasman capacity of Air NZ on routes other than between Australia and Queenstown, with the Proposed Arrangement among other things providing that:
 - 4.1. Authorisation is sought for five years;
 - 4.2. Air NZ would set the pricing for carrying passengers brought to it by VA;
 - 4.3. VA frequent flyers would be able to access Air NZ's international lounges, as well as earning frequent flyer points and status points on Air NZ operated flights;
 - 4.4. High-value corporate and SME customers in Australia would be particularly targeted; and
 - 4.5. VA would carve out from an authorisation any trans-Tasman routes that it decides to enter directly.
5. The Applicants highlight benefits of the Proposed Arrangement such as:
 - 5.1. VA would benefit by being able to fill a gap in its current offerings, especially by being able to offer high-value Australian business and leisure travellers more convenient and loyalty-rewarding options for flying to New Zealand;
 - 5.2. Air NZ would benefit from increased load factors on its non-Queenstown trans-Tasman routes, including through the possibility of increasing its access to trans-Tasman distribution channels, thereby enhancing its efficiency and sustainability;
 - 5.3. New Zealand would benefit from extra tourism and other (e.g. conference) travel from Australia-based flyers; and
 - 5.4. Enhanced (or at least preserved) comity between Australian and New Zealand.
6. Additional possible benefits of the Proposed Arrangements include:
 - 6.1. Better vertical pricing coordination, in particular, the elimination of double marginalisation (EDM) which can otherwise arise when independent entities with market power each add profit margins to pricing along vertical supply chains (which serves to reduce both combined profits and consumer welfare);

- 6.2. Enabling VA to better gauge whether sufficient profitable demand has emerged so as to make its re-entry into trans-Tasman routes viable; and
 - 6.3. Positive network externalities such as by each of the Applicants being able to offer their customers a wider range of route options and/or departure times.
7. Possible costs of the Proposed Arrangement include:
- 7.1. It delaying or deterring re-entry by VA into non-Queenstown trans-Tasman routes;
 - 7.2. Air NZ and VA becoming better able to tacitly collude through information gained from repeated interactions (albeit they currently do not compete head to head except on the Queenstown route, so this might be more of a potential issue for possible future competition between the Applicants);
 - 7.3. New-Zealand-based flyers facing more crowded trans-Tasman flights and international lounges, and reduced ability to secure seats or upgrades;
 - 7.4. Possible upward pressure on Air NZ prices; and
 - 7.5. Negative network externalities through VA pre-dating traffic from Qantas, which might affect Air NZ and New Zealand flyers by impacting on Air NZ's existing bilateral codeshare arrangement with Qantas.

Key Features of the Draft Advice

8. Key features of the Draft Advice include that:
- 8.1. The primary commercial rationale of the Proposed Arrangement is to improve VA's competitive position in Australia, particularly regarding high-value business and leisure flyers whom it cannot currently service on non-Queenstown trans-Tasman routes;
 - 8.2. The proposed pricing arrangements are unusual (in that they do not provide for each Airline to set its own prices);
 - 8.3. Stakeholders have expressed concern that the Proposed Arrangement could reduce competition on trans-Tasman routes (including by reducing VA's incentives to re-enter non-Queenstown trans-Tasman routes);

- 8.4. The Ministry is concerned that post-pandemic competition on trans-Tasman routes is relatively muted, and features duopolistic features (i.e. due to the dominant market shares of Air NZ and Qantas/Jetstar);
- 8.5. The Ministry considers that any incremental tourism benefits from the Proposed Arrangement, or additional passengers on Air NZ's services, are likely to be modest, or are uncertain;
- 8.6. The Ministry is concerned that the Proposed Arrangement might reduce VA's incentives to expand its services to New Zealand, and by reducing the perceived risk of market entry causing other trans-Tasman market participants to act in ways detrimental to consumers; and
- 8.7. The Proposed Arrangement's customer benefits will be to Australia-based flyers, and not New-Zealand based flyers.
9. As such, the Ministry considers that the Proposed Arrangement's benefits to New Zealand are uncertain, while it raises the risk of dampening trans-Tasman competition, and hence has recommended in the Draft Advice that the authorisation be declined.

My View on Whether All Relevant Considerations Have Been Considered

10. In the Draft Advice the Ministry has well-identified a range of relevant issues. In addition I would raise:
- 10.1. The possibility that the benefits of the Proposed Arrangement to Air NZ are more material than the Ministry appears to have gauged:
- 10.1.1. In particular, while Air NZ itself estimates ^{s 9(2)(b)(ii)} improvement in its trans-Tasman load factors from the Proposed Arrangement, if this involves predominantly high-value travellers that would result in a somewhat larger contribution to Air NZ's profitability, and hence its sustainability (if not its efficiency) as it continues to recover from pandemic-related impairments.
- 10.2. Relatedly, while it may be unusual that Air NZ would set prices on VA passengers using its flights, this is potentially beneficial to both carriers and customers through EDM (as discussed above), relative to the status quo in which VA and Air

NZ add successive profit margins on routes that would be covered by the Proposed Arrangement:

10.2.1. Additionally, through more targeted pricing of flights taken up by Australia-based high-value business or leisure flyers, this could enable Air NZ to extract consumer surplus from such flyers, thereby enhancing its profits (including to the New Zealand government as its majority shareholder) without reducing the consumer surplus of New-Zealand based flyers.

10.3. The possible benefits to Air NZ of the Proposed Arrangement making it a stronger competitor to Qantas Group (e.g. by enabling VA to poach Australia-based flyers from Qantas, especially in higher-valued segments), with potential benefits to New Zealand flyers as well, through strengthened competition between the two main trans-Tasman flyers.

10.4. The likelihood that if the trans-Tasman market improves, rather than making re-entry by VA into non-Queenstown routes viable s 9(2)(b)(ii) [redacted] the dominant carriers – or fifth freedom carriers who can afford to charge marginal cost (or perhaps even less) on trans-Tasman routes – may simply increase their capacity, starting from a stronger position than VA (i.e. already enjoying greater economies of scale, stronger network effects, access to craft/crews as well as to landing slots, etc):

10.4.1. The fact that Qantas has already signalled an expansion of its trans-Tasman capacity once it has received an order of new aircraft might deter VA's re-entry s 9(2)(b)(ii) [redacted]
[redacted]
[redacted]

10.5. Possible negative impacts on Air NZ flyers – especially those accessing international lounges or interested in less-crowded seating, and more available seats and upgrades – from greater Air NZ carriage of Australia-based frequent flyers (which New Zealand flyers could be disproportionately affected by even a small increase in Air NZ's carriage of high-value Australia-based flyers).

My View on Whether the Ministry's Conclusions in the Draft Advice are Reasonable

11. It is possible that the Ministry's recommendation that authorisation be declined – due to insufficient clear benefits to New Zealand, and possible costs in terms of impeded trans-Tasman competition if and when route profitability improves – is reasonable.
12. However, the grounds for that recommendation would be stronger if it was clearer that the Ministry has accounted for the additional matters raised in the preceding section (even if that involves the Ministry ultimately dismissing them). Alternatively, a different recommendation might be reached if the Ministry concluded that one or more of these additional matters warranted this.
13. An important consideration is the number of carriers the trans-Tasman market is likely to be able to sustain over the five year period that any authorisation would cover (i.e. given the macroeconomic outlook, etc), and whether or not any capacity expansion comes from existing rather than (re-)entrant operators, since this fundamentally affects whether or not re-entry by VA is even viable:
 - 13.1. A clear view from the Ministry that re-entry might be viable over this time-frame would be important to substantiate its concerns about the Proposed Arrangement's possible competitive harms.
14. Thank you again for asking me to peer review the Ministry's Draft Advice. I trust these comments will assist in finalising that advice.

Yours sincerely



Richard Meade (PhD, Toulouse School of Economics)

Principal Economist

From: [Garrick Wood](#)
To: [Richard Meade](#)
Cc: [Sonya Van De Geer](#); [Tom Forster](#)
Subject: RE: Review of draft initial advice re VA/Air NZ codeshare authorisation application
Date: Thursday, 23 May 2024 8:36:00 am
Attachments: [NZ-VA codeshare - Draft Report 20240523 FOR RM.docx](#)
[OC240164 Air New Zealand and Virgin Australia Codeshare Authorisation - Initial Advice - Briefing - Policy Redacted FOR RM.pdf](#)

Kia ora Richard

Attached is our draft final analysis report ready for your review.

A couple of things to note:

1. Your main focus is on para 35 onwards (Commercial rationale section onward). Earlier introductory sections will be tidied up.
2. Our legal team are still completing the legal framework assessment so that is absent from the document.
3. It has not gone through QA, so there may be some spelling/grammar in places.

I have also attached a copy of our initial advice for your information (one paragraph has been redacted)

We have taken on board your earlier feedback which you will see has been reflected. Our final analysis builds heavily on content from the initial advice briefing with additional analysis.

Happy to discuss. Look forward to hearing from you.

Ngā mihi

Garrick Wood ([he / him / Mr](#))

M: [s 9\(2\)\(a\)](#) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Richard Meade <richard.meade@cognitus.co.nz>
Sent: Tuesday, May 21, 2024 6:59 PM
To: Garrick Wood <G.Wood@transport.govt.nz>
Cc: Sonya Van De Geer <s.vandageer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>
Subject: Re: Review of draft initial advice re VA/Air NZ codeshare authorisation application

Kia ora Garrick, hope all going well. Please can you let me know when you expect to have something more for me to review? [s 9\(2\)\(a\)](#) for three weeks, so just checking if you will be wanting me to look at something before or after I am away. With thanks. Best, R.

On Wed, 8 May 2024 at 13:45, Garrick Wood <G.Wood@transport.govt.nz> wrote:

Kia ora Richard. Acknowledging receipt.

Thanks for the quick turnaround. We will be in touch once we have reviewed.

Ngā mihi

Garrick Wood (he / him / Mr)

M: ^{s 9(2)(a)} [REDACTED] | E: g.wood@transport.govt.nz | transport.govt.nz

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Sent: Wednesday, May 8, 2024 10:20 AM

To: Garrick Wood <G.Wood@transport.govt.nz>

Cc: Sonya Van De Geer <s.vandegeer@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

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Kia ora Garrick, please see attached.

I have sent my review letter as an unsigned/undated draft for now in case you or colleagues would like any further clarification.

I will finalise it once I hear from you.

With thanks, and I look forward to hearing from you.

Best,

R

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RELEASED UNDER THE
OFFICIAL INFORMATION ACT 1982

From: [Richard Meade](#)
To: [Garrick Wood](#)
Cc: [Sonya Van De Geer](#); [Tom Forster](#)
Subject: Re: Review of draft initial advice re VA/Air NZ codeshare authorisation application
Date: Thursday, 30 May 2024 11:02:39 am

Kia ora Garrick, hope all going well.

I have had a chance to review the Ministry's draft analysis report, and note that some background materials and proofing/editing are yet to be done (so I haven't focused on the latter, but have assumed that the text provided covers the substantive points in the analysis).

I note that not all of the points in my 7 May letter have been directly responded to, in which case I assume the Ministry is satisfied that its analysis has covered them off as required - in this email I will note any remaining or additional questions or issues to raise.

An example of something that perhaps doesn't need directly addressing was my point about codesharing and similar agreements potentially enhancing the parties' ability to tacitly collude, through repeated interaction. I don't think the issue is likely to arise in this case, however, given non-overlapping routers (where this would be more of a concern, if at all), so the question for the Ministry is to raise and then dismiss this, or simply not to raise it (e.g. at para 13).

Can I suggest you better caption/entitle Figure 1? While I understand what Figure 2 is showing, I am unclear what Figure 1 depicts.

Para 72 - explanation for why codeshare shouldn't affect overall airfare levels significantly would benefit from a clearer rationale. Its impact on specific airfares is addressed later in the report (see especially below re para 91), but presumably the main reason why it shouldn't affect airfares generally is that it will cause only a small impact on overall passenger movements.

Para 84 - is it clear that "many of these passengers will be transferring from Qantas ...". It is probably likely (or even probable), but can it be ruled out that there will (also) be a net expansion of Australian business and SME customers choosing to fly to NZ due to the codeshare (and presumably those not already locked into a relationship with Qantas)?

Para 85, dot 3, last sentence - the study cited may have concluded certain types of arrangement are needed for EDM, but in the present context Air NZ will be setting the price for a VA-coded leg that it also supplies, in addition to any extra connecting legs it sells and supplies itself. ^{s 9(2)(b)(ii)}

So DM might not be eliminated, but should conceivably be reduced? WIf so, this would create a pricing benefit to Australian travellers, but also possible volume-based efficiency and sustainability benefits to Air NZ (however material).

Para 87 - really so definitive: "would outweigh ...", "would be unable to ..."? Alternatively, "would likely ..." in each case?

Para 88 - entry threats can matter, but they have to be credible. As noted at para 65, dot 1, Qantas has already signalled a capacity expansion, which may or may not have been

intended to deter expansion by VA or others (e.g. Air NZ), but which may have that effect all the same ("top dog" strategy). ^{s 9(2)(b)(ii)}

Para 91 - seems dismissive rather than considered. I think there is merit in the claim that, at least in the segments VA is targeting (corporate and SME), there will be increased demand for capacity on Air NZ flights, and hence - in principle - greater risk of NZ flyers in those segments either missing out on seats (and facing busier Koru lounges), having to pay for more expensive ones, or generally facing higher fare options in their preferred price tiers. It is likely most of those extra Australian flyers will be in the flexible fare classes for business, but could go for the inflexible cheaper fares for leisure/loyalty rewards.

In practice, however, we are expecting only small incremental numbers, and ^{s 9(2)(b)(ii)}

^{s 9(2)(b)(ii)} So the overall effect should be small, ^{s 9(2)(b)(ii)}

^{s 9(2)(b)(ii)} A more nuanced explanation for why this shouldn't count as a material detriment would be warranted.

Para 98 - ^{s 9(2)(b)(ii)}

Para 95 - first sentence unclear. In principle, a three year authorisation with a review at year 3 for possible extension 2 more years does allow much of the year 4-5 uncertainty faced as of now to be resolved, in which case the Ministry would be in a position to not extend if circumstances warranted that (assuming the legal option was there for such an arrangement). Isn't it the point that ^{s 9(2)(b)(ii)}

^{s 9(2)(b)(ii)} In which case a 5 year authorisation versus 3 gives away very little?

This is where I wonder if the story about VA possibly re-entering ^{s 9(2)(b)(ii)}

^{s 9(2)(b)(ii)} needs to be more clearly placed in the context of possible capacity expansions on the relevant routes by incumbents (Qantas/Jetstar and Air NZ) to meet any demand growth? ^{s 9(2)(b)(ii)}

^{s 9(2)(b)(ii)} You would need a clear story for this to be the case before accentuating the importance of re-entry/expansion by VA, as opposed to expansion by the majors (and also somehow be able to dismiss the implications of Qantas' apparent "top dog" strategy discussed above).

Conclusions - in general I am comfortable with the Ministry's recommendation to authorise for 5 years, but suggest some of the arguments need either reinforcing, extending, or nuancing, as above. There are likely to be some small benefits, there may also be some small detriments, but the latter are probably less likely than the former, in which case the

overall expected net benefits are probably positive or zero, or at least probably not negative. In which case, no clear grounds to reject, and modest grounds to support?

I hope these comments help, but let me know if you would like to set up a call/zoom to discuss. ^{s 9(2)(a)}

Best
R

On Thu, 23 May 2024 at 13:10, Richard Meade <richard.meade@cognitus.co.nz> wrote:
Very good, will stick with this plan then. Thanks Garrick. Best, R.

On Thu, 23 May 2024 at 12:18, Garrick Wood <G.Wood@transport.govt.nz> wrote:

Thanks Richard – much appreciated.

That works well for us.

It is likely to be the second week of June before we put the final up to the Minister.

Ngā mihi

Garrick Wood ([he/him/Mr](#))

M: ^{s 9(2)(a)} | E: g.wood@transport.govt.nz | transport.govt.nz

From: Richard Meade <richard.meade@cognitus.co.nz>

Sent: Thursday, May 23, 2024 11:33 AM

To: Garrick Wood <G.Wood@transport.govt.nz>

Cc: Sonya Van De Geer <s.vandeger@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>

Subject: Re: Review of draft initial advice re VA/Air NZ codeshare authorisation application

Kia ora Garrick, acknowledging receipt of your email, and thanks for the documents and explanations provided.

It should not take me long to review the documents and respond with any further

comments. However, due to me currently preparing for travel ^{s 9(2)(a)} I anticipate getting my comments to you by Wednesday next week latest (NZT). Please let me know if you require them sooner than then.

Thanks again.

Best

R

On Thu, 23 May 2024 at 08:36, Garrick Wood <G.Wood@transport.govt.nz> wrote:

Kia ora Richard

Attached is our draft final analysis report ready for your review.

A couple of things to note:

1. Your main focus is on para 35 onwards (Commercial rationale section onward). Earlier introductory sections will be tidied up.
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From: [Kate Rose](#)
To: [Garrick Wood](#); [Ministers Office](#)
Cc: [Siobhan Routledge](#); [Tom Forster](#); [Sonya Van De Geer](#); [OCU](#); [Sydney Van Nortwick](#)
Subject: RE: OC240164 Air New Zealand and Virgin Australia Codeshare Authorisation - Initial Advice - Briefing - Policy.pdf
Date: Thursday, 30 May 2024 9:39:16 am
Attachments: [image003.png](#)
[OC240164 Air New Zealand and Virgin Australia Codeshare Authorisation - Initial Advice.pdf](#)

Kia ora Garrick,

Many thanks for sending this one through. Minister Doocey has considered the attached advice and has indicated he wished to discuss this with officials – I think following a conversation he had with [s 9\(2\)\(a\)](#) last week (which I had a chat to Tom about). I have put this on the agenda for 18 June's Officials meeting (the next one).

Ngā mihi



Kate Rose

Transport Private Secretary | Office of Hon Matt Doocey
 Minister for ACC | Minister for Mental Health | Minister for Tourism and Hospitality | Minister for Youth |
 Associate Minister of Health | Associate Minister of Transport

DDI: [s 9\(2\)\(a\)](#) | M: [s 9\(2\)\(a\)](#)
 Email: kate.rose@parliament.govt.nz Website: www.Beehive.govt.nz
 Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

From: Garrick Wood <G.Wood@transport.govt.nz>
Sent: Monday, May 20, 2024 4:43 PM
To: Ministers Office <MinistersOffice@transport.govt.nz>
Cc: Siobhan Routledge <S.Routledge@transport.govt.nz>; Tom Forster <t.forster@transport.govt.nz>; Sonya Van De Geer <s.vandegeer@transport.govt.nz>; OCU <ocu@transport.govt.nz>
Subject: OC240164 Air New Zealand and Virgin Australia Codeshare Authorisation - Initial Advice - Briefing - Policy.pdf

Kia ora Kate

Briefing attached for Minister Doocey re Air New Zealand and Virgin Australia codeshare authorisation.

Ngā mihi

Garrick Wood ([he / him / Mr](#))

Kaitohutohu Matua – Rererangi a Moana | Senior Adviser – Aviation and Maritime

Te Manatu Waka Ministry of Transport

M: [s 9\(2\)\(a\)](#) | E: g.wood@transport.govt.nz | transport.govt.nz



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From: [Garrick Wood](#)
To: [Sydney Van Nortwick](#)
Subject: RE: ATTN: Sydney: OC240623 Air New Zealand and Virgin Australia codeshare agreement authorisation - Final Advice - Briefing - Policy (single file)
Date: Wednesday, 31 July 2024 1:28:00 pm
Attachments: OC240623 Air New Zealand and Virgin Australia codeshare agreement authorisation - Final Advice - Briefing - Policy (single file).pdf
 image002.png

Hi Sydney

Please use this attached version. There was a missing date in para 78 of the analysis report which I have corrected.

Ngā mihi

Garrick Wood (he / him / Mr)

M: [s 9\(2\)\(a\)](#) | E: g.wood@transport.govt.nz | transport.govt.nz

From: Sydney Van Nortwick <Sydney.VanNortwick@parliament.govt.nz>
Sent: Wednesday, July 31, 2024 10:51 AM
To: Garrick Wood <G.Wood@transport.govt.nz>
Subject: RE: ATTN: Sydney: OC240623 Air New Zealand and Virgin Australia codeshare agreement authorisation - Final Advice - Briefing - Policy (single file)

Thank you Garrick, confirming receipt.

I will get back to you on the question of a media release.

Ngā mihi, Sydney



Sydney Van Nortwick

Transport Private Secretary | Office of Hon Matt Doocey
 Minister for ACC | Minister for Mental Health | Minister for Tourism and Hospitality | Minister for Youth |
 Associate Minister of Health | Associate Minister of Transport

DDI: [s 9\(2\)\(a\)](#) | M: [s 9\(2\)\(a\)](#)
 Email: s.vanNortwick@parliament.govt.nz Website: www.Beehive.govt.nz
 Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand

From: Garrick Wood <G.Wood@transport.govt.nz>
Sent: Wednesday, July 31, 2024 10:36 AM
To: Ministers Office <MinistersOffice@transport.govt.nz>
Cc: Tom Forster <t.forster@transport.govt.nz>; Siobhan Routledge <S.Routledge@transport.govt.nz>
Subject: ATTN: Sydney: OC240623 Air New Zealand and Virgin Australia codeshare agreement authorisation - Final Advice - Briefing - Policy (single file)

Kia ora Sydney

Please find attached briefing for Minister Doocey on Air New Zealand and Virgin Australia codeshare agreement authorisation.

We would appreciate if the briefing could be given priority given the anticipation by Air NZ and Virgin Australia, and media interest, on when a decision will be made.

Please let Peta know if a media release will be required.

Ngā mihi

Garrick Wood (he / him / Mr)

Kaitohutohu Matua – Rererangi | Senior Adviser – Aviation

Te Manatu Waka Ministry of Transport

M: s 9(2)(a) | E: g.wood@transport.govt.nz | transport.govt.nz



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From: [Nicole Rose](#)
To: [SLT&EAs](#)
Cc: [Tom Forster](#); [Garrick Wood](#); [Sydney Van Nortwick](#)
Subject: UPDATED Associate Minister Doocey Officials Meeting Pack
Date: Monday, 19 August 2024 2:41:18 pm
Attachments: [Associate Minister Officials Meeting Pack Added papers Tuesday 20 August.pdf](#)
[image001.png](#)
[Associate Minister Meeting Agenda 20 August.pdf](#)
Importance: High

Good afternoon,

Please note that Air New Zealand and Virgin Australia Codeshare Agreement Authorisation has been added to the Associate Ministers Officials meeting scheduled for **tomorrow, Tuesday 20 August at 8am.**

Please find attached updated agenda and additional papers to support.

Many thanks
Nicole

Nicole Rose

Executive Assistant to Brent Johnston – Chief of Staff

Ministry of Transport Te Manatū Waka

M: [s 9\(2\)\(a\)](#) | E: N.Rose@transport.govt.nz



MINISTRY OF TRANSPORT
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Agenda – Associate Minister Doocey officials' meeting

Day Date	Tuesday 20 August
Time	8am – 8.30am
Venue	Parliament – EW4.1R

Ministry of Transport attendees

Audrey Sonerson, Chief Executive

Ruth Fairhall, Deputy Chief Executive Policy

Tom Forster, Manager, Aviation & Maritime

Garrick Wood, Senior Adviser, Aviation

Part 1	Ministry of Transport	Lead	Paper reference
Out of Scope			
1.1	Aviation <ul style="list-style-type: none"> Air NZ & Virgin Australia Codeshare Agreement Authorisation 	Ruth Fairhall	OC240623

Out of Scope			
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From: [Tom Forster](#)
To: [Siobhan Routledge](#)
Cc: [Ruth Fairhall](#); [Garrick Wood](#)
Subject: RE: Air NZ/ Virgin
Date: Monday, 19 August 2024 6:32:50 pm
Attachments: [Air NZ virain bullet points for meeting with Minister 20 August 2024.docx](#)

Hi Siobhan

Attached as requested.

Cheers

Tom

From: Siobhan Routledge <S.Routledge@transport.govt.nz>
Sent: Monday, August 19, 2024 5:35 PM
To: Tom Forster <t.forster@transport.govt.nz>
Cc: Ruth Fairhall <R.Fairhall@transport.govt.nz>; Garrick Wood <G.Wood@transport.govt.nz>
Subject: Re: Air NZ/ Virgin

Thanks Tom,

It would be good if you could make yourself available for the meeting tomorrow, and I expect to be there too. I'll come into the office first.

Could you please prepare a couple of bullets for the people on this email to:

- outline the background
- deliberations to date incl consultation
- our advice (including that it is finely balanced)
- noting that the alternative options available and any risks.

Thank you, Siobhan

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From: Tom Forster <t.forster@transport.govt.nz>
Sent: Monday, August 19, 2024 5:08:30 PM
To: Siobhan Routledge <S.Routledge@transport.govt.nz>
Cc: Ruth Fairhall <R.Fairhall@transport.govt.nz>; Garrick Wood <G.Wood@transport.govt.nz>
Subject: Air NZ/ Virgin

Hi Siobhan

Not sure whether you are across the request that Air NZ/Virgin be on the agenda for Minister Doocey's meeting tomorrow at 8.30 am. I understand from the office that Minister Doocey would like to discuss ^{s 9(2)(f)(iv)} [REDACTED]

As you know the decision is finely balanced. ^{s 9(2)(f)(iv)} [REDACTED]

Kind regards

Tom

Tom Forster ([he / his / Dr](#))

Manager – Aviation

Ministry of Transport

M: ^{s 9(2)(a)} [REDACTED] | E: t.forster@transport.govt.nz | transport.govt.nz

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Air NZ / Virgin Australia Authorisation Application

Background

- The Applicants have applied for authorisation for a unilateral codeshare arrangement under which Virgin Australia would market within Australia under its own brand services on routes from Australia to New Zealand destinations operated by Air New Zealand. The arrangement would exclude routes (presently only to and from Queenstown) operated by Virgin Australia using its own aircraft.
- The arrangement would enable Virgin Australia to expand its access to additional destinations within New Zealand, including Auckland, Christchurch, and Wellington without committing its own aircraft.
- Airline cooperation agreements are a common feature of international aviation. While cooperation agreements, such as codeshares, can result in benefits to consumers, they may also result in a reduction in competition, which can lead to higher fares or reduced services.
- Airports, with the exception of Queenstown, oppose the authorisation of the agreement.

Analysis

- Virgin only flies to Queenstown on its own aircraft. s 9(2)(b)(ii)
- The commercial rationale for the agreement is that not having a service to NZ reduces its ability to compete effectively in Australia particularly for the higher yield corporate and small business customers.
- The agreement would enable it to offer these customers more convenient and loyalty-rewarding options for flying to New Zealand.

Benefits

- This agreement, unlike most of the ones we deal with, has very small benefits.
- There are small benefits for Air NZ from the arrangement which will benefit New Zealanders.
 - Air NZ would benefit from increased load factors on its non-Queenstown trans-Tasman routes, including through the possibility of increasing its access to trans-Tasman distribution channels, thereby enhancing its efficiency and sustainability.
 - New Zealand would benefit from extra tourism and other (e.g. conference) travel from Australia-based flyers.
 - s 9(2)(b)(ii) from the proposed agreement, if this involves predominantly high-value travellers that would result in a somewhat larger contribution s 9(2)(b)(ii)
 - The codeshare could make Air NZ a stronger competitor to Qantas s 9(2)(b)(ii)
- It would also enable VA to better gauge whether sufficient profitable demand has emerged so as to make its re-entry into trans-Tasman routes viable.

Detriments

- The main cost, which the airports are really concerned about, is that authorising the agreement might delay or deter Virgin from re-entry into the non-Queenstown routes.
- New-Zealand-based flyers may face more crowded trans-Tasman flights and international lounges, and reduced ability to secure seats or upgrade.

Considerations

- The trans-Tasman market is still below pre-covid levels in terms of passenger numbers.
- There are big challenges in the sector. Engine issues across the main engine suppliers have meant that most airlines are struggling and do not have enough engines to have all their aircraft flying.
- s 9(2)(b)(ii) [REDACTED]
- s 9(2)(b)(ii) [REDACTED]
- The sector is also facing staffing issues, and this is unlikely to change in the short -medium term.

Conclusion

- The trans-Tasman market is still recovering and is below 2019 levels. s 9(2)(b)(ii) [REDACTED] we are confident that VA would not enter the NZ market with its own metal in the next 3 years.
- s 9(2)(b)(ii) [REDACTED] Qantas is planning to increase its presence and has announced increased seats.
- The identified public benefits, being increased tourism and incremental passenger growth on Air New Zealand services, are limited and small.
- The outlook for the two years after that is uncertain. We do not consider that the uncertainty in years 4 and 5 to be such that a shorter authorisation period would resolve it.

Shorter Authorisation period

- Given the uncertainty in years 4 and 5, it is possible to authorise for a shorter period.
- There is no ability under the current Act for authorising the application for a short period or with conditions. Therefore, if that option was to be considered, Air New Zealand and Virgin Australia would need to amend the application.
- s 9(2)(f)(iv) [REDACTED]

Risks

- s 9(2)(f)(iv) [REDACTED]
- s 9(2)(f)(iv) [REDACTED]

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From: [Torrin Crowther](#)
To: [Garrick Wood](#)
Cc: [Tom Forster](#)
Subject: RE: Air New Zealand and Virgin Australia code share authorisation decision [BG-BELGULLY.FID1507849]
Date: Thursday, 22 August 2024 8:41:37 pm
Attachments: [image001.png](#)

Thank you Garrick.

Confirming receipt. Fine to let Air NZ know directly but unless you have a direct line into VA just let me know and I can liaise with them.

Thanks
Torrin

From: Garrick Wood <G.Wood@transport.govt.nz>
Sent: Thursday, August 22, 2024 8:35 PM
To: Crowther, Torrin TXC <torrin.crowther@bellgully.com>
Cc: Tom Forster <t.forster@transport.govt.nz>
Subject: Air New Zealand and Virgin Australia code share authorisation decision

CAUTION: This email is from outside of the firm.

Kia ora Torrin

Further to my call today, the Associate Minister of Transport has authorised the Air New Zealand and Virgin Australia codeshare agreement for a period of five years to 22 August 2029.

Please find attached a letter formally confirming the decision.

I will confirm on Friday whether the Minister's office intends to issue a press release. I'm happy to advise the airlines directly once I know.

Please get in touch if you have any questions.

Ngā mihi

Garrick Wood (he / him / Mr)

Senior Adviser – Aviation | Kaitohutohu Matua – Rererangi

Ministry of Transport | Te Manatū Waka

M: [s 9\(2\)\(a\)](#) | E: g.wood@transport.govt.nz | transport.govt.nz

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22 August 2024

Torrin Crowther
Partner
Bell Gully
Vero Centre
48 Shortland Street
Auckland 1010

By email
torrin.crowther@bellgully.com

Dear Torrin

Air New Zealand and Virgin Australia application for authorisation of codeshare agreement

Following your application dated 17 November 2023, the Associate Minister of Transport has authorised pursuant to section 88(2) of the Civil Aviation Act 1990, provisions of:

- the Commercial Framework Agreement between Air New Zealand and Virgin Australia dated 17 November 2023; and
- related implementing agreements: Code Share Agreement dated 17 November 2023, Corporate/SME Dealing Agreement dated 24 June 2024; and Special Prorate Agreement dated 8 December 2023;

for a period of five years until 22 August 2029.

The authorisation is not subject to any other conditions.

We intend to publish a copy of the report containing our detailed analysis, along with our initial advice to the Minister of Transport, on our website (with appropriate redactions in accordance with the Official Information Act 1982).

If you have any questions, please do not hesitate to contact Garrick Wood on [s 9\(2\)\(a\)](#).

Yours sincerely



Tom Forster

Kaiwhakahaere | Manager
Rererangi | Aviation