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Attention: Grant David

28 July 2006

Dear Mr David

### **Air New Zealand / Qantas Application**

Thank you for your letters of 19 and 30 June 2006 regarding the above application under Part 9 Civil Aviation Act. I address the points you have made in turn.

#### **Scope of TNA**

I agree with you that Part 9 Civil Aviation Act permits approvals of certain types of agreements. To the extent that the TNA contains provisions that are not related "directly or indirectly, to the fixing of tariffs, the application of tariffs, or the fixing of capacity, or any combination thereof" the Minister cannot approve these provisions under the Act.

#### **Relevant Matters**

The Ministry considers it more useful not to determine a finite list of relevant matters now. We would prefer to take an open approach at this stage.

Plainly the matters specified in the Act will be relevant. But the Act also requires a wider consideration by the Minister of issues arising from the TNA that affect competition in the relevant international air carriage market/s.

The Minister's decision must be made in the public interest and without reference to the Government's ownership interest in Air New Zealand.

The views of other government agencies which I expect to receive by the end of July will be posted on the Ministry's website.

At this stage the Ministry is open to receiving all views on the TNA and will determine relevance during the process of advising the Minister. If, in the course of considering your client's views, the Minister does not consider any matter raised to be relevant to the Act, the final determination will show that.

#### **Draft report to Minister**

Dr Dunlop, said in his letter of 15 June that at this stage the draft report will be circulated only to the applicants but that there may be a situation in which other parties have to see the draft report (or aspects of it) in order to attend to any matters of procedural fairness. That remains my view. The process will be fair in that it enables third parties to make their views known to the Ministry and the Minister for consideration in the final analysis and draft recommendations.

In this context you appear to criticise the process because of a "Ministerial audience" having been granted to the applicants before the application was made. The deciding Minister the Hon Pete Hodgson has not met Air New Zealand over the application. However, if you are making an allegation that the process is flawed for bias, please advise me immediately, with material that supports any such allegation.

#### **Use of website**

The Ministry intends to use the website to post as much material as it considers practical (and, as already noted, subject to the OIA). However some of those decisions will be made on a case-by-case basis, depending on the information. I certainly anticipate that we will post:

- Third party views, including those of government departments;
- Correspondence with the applicants and their responses (subject to these being determined on a case by case basis and subject to the OIA).

It is also possible that the Ministry will post any expert advice it obtains in the process. Where material is posted with OIA-related deletions that will be evident on the document itself.

You have asked that the application and related material be placed on the Ministry's website. As you are aware, the currently disclosed application has had details of the applicants' commercial operation withheld under the OIA. You have laid a complaint with the Office of the Ombudsman in relation to the Ministry's decision to withhold those same aspects of the application from you. Until the Ombudsman has completed the investigation of that matter, I do not intend to post an unedited copy of the application. This may be revisited following the Ombudsman's recommendation. I am arranging for an edited copy to be placed on the Ministry's website.

#### **Commerce Commission**

You have invited me to confer with the Commerce Commission over whether the TNA is already in breach of the Commerce Act. I have advised the Commission that we have received the application and are working through it.

I do not intend to refer the application to the Commission for its consideration but note that you are free to refer any concerns to the Commission.

Yours sincerely,



**John Bradbury**  
**Deputy Secretary for Transport**