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**by email**

12 September 2006

John Bradbury  
Deputy Secretary  
Ministry of Transport  
PO Box 3175  
Wellington

Dear Mr Bradbury

**AIR NZ/QANTAS TNA APPLICATION - INFORMATION RECEIVED**

- 1 We refer to your letter of 7 September 2006 in which you make two general comments in response to our criticism of the way in which the Ministry is handling the application by Qantas and Air NZ for authorisation of the Tasman Networks Agreement (*TNA*).
- 2 The essence of our criticism consistently has been that the Ministry, in formulating its advice to the Minister on that application, is obliged by both law and sound precepts of public administration to adopt a process that not only is transparent, but will enable reasonable opportunity for full expression of views by *all* interested parties.
- 3 With regard to your first point, we thank you for the clarification. You will appreciate, however, our concern that Mr Goddard QC's letter did, on its face (subject to the initial deletion by the Ministry), appear to refer to the same Crown Law Office advice as we have been assiduous in trying (unsuccessfully) to obtain. Our concern, that other counsel seemingly had access to official information which had been denied to us was exacerbated by the fact that Mr Goddard had acted for the Commerce Commission in the

- matter of the unsuccessful appeal by the airlines against the Commission's rejections of their previous proposal.
- 4 Thank you also for belatedly posting your letters of 16 June and 27 July to the applicants on the website. Those letters have direct relevance to your second point. They confirm that the applicants were provided with a far more detailed description of the process intended by the Ministry and given full and lengthy opportunity to comment on that intended process. It is irrefutable that to date the Ministry has accorded them preferential disclosure, and rights of audience and to be heard, in relation to the application.
  - 5 While we are gratified to learn that the Ministry may not yet have "formed its final views on these [procedural] issues", we do ask that our client (and other interested parties) be informed as to that final process before it has in fact run its course. The present uncertainty does leave the impression that the Ministry is cutting its procedural pattern to suit the applicants' cloth.
  - 6 The penultimate paragraph of your letter provides the most recent illustration of this. We asked in our letter of 25 August to meet with the Ministry (and the applicants' lawyers) to address the serious procedural concerns we have. We have received no response to that request. But, we learn that, in the meantime, "the Ministry has recently met with Air New Zealand in order to receive confidential information". The fact that that meeting took place invites two obvious criticisms.
  - 7 First, that Air New Zealand seemingly has ready access to the Ministry's (and Ministers') doors, when other parties who are vitally interested in the same matter do not. Our client would welcome a similar opportunity to meet with you to present its detailed submissions "Joint Business" of 31 July, together with its view of the counterfactual.
  - 8 Second, on the assumption that that confidential information to which you refer relates to the counterfactual being proposed by Air New Zealand (as the last paragraph of your letter suggests), your withholding of that information means that there is no mechanism for testing what is being asserted by the applicant. In that respect, we have already set out for you in our letter of 8 September the law and practice relating to framing the counterfactual. In particular, we referred you to the serious risks in accepting - undisclosed and untested - an applicant's vision of what might happen.

9 We have not sought confidentiality for either that letter or our client's detailed submissions.

Yours faithfully

Grant David  
Partner