

**SUBMISSION TO THE
MINISTER OF TRANSPORT ON
THE APPLICATION FOR REAUTHORISATION OF
THE AIR NEW ZEALAND AND VIRGIN AUSTRALIA GROUP AUSTRALASIAN AIRLINE
ALLIANCE**

3 MAY 2013

1. BACKGROUND

- 1.1 This submission is provided by Auckland International Airport Limited (“**Auckland Airport**”) in relation to the application (“**Application**”) by Air New Zealand Limited (“**Air New Zealand**”) and the Virgin Australia Group (“**Virgin Australia**”) (together “**the Applicants**”) to the Minister of Transport (“**Minister**”), pursuant to s.88 of the Civil Aviation Act 1990 (“**CAA**”), for reauthorisation of the Australasian Airline Alliance (“**Alliance**”) approved by the Minister on December 2010 on an unconditional basis for a period of five years from 31 December 2013. The Alliance comprised the Australasian Airline Alliance Agreement, the Code Share Agreement and related agreements.
- 1.2 In our submissions to both the Minister and the Australian Competition and Consumer Commission (“**ACCC**”), in relation to the Applicants’ original request for authorisation of the Alliance, we expressed our concerns regarding the potential for the Alliance to impact adversely, by having a real anti-competitive effect on a wide array of Trans-Tasman routes, and the need for there to be concrete and reliable evidence that the claimed benefits of the Alliance would actually materialise, and end up in the hands of consumers in New Zealand.
- 1.3 The Applicants proposed certain capacity commitments to the ACCC and the Minister, given the statutory framework for the authorisation process in New Zealand, reflected these in the Capacity Implementation Agreement whereby the Applicants committed to maintaining a base level of capacity on the Trans-Tasman as a whole and grow seasonally on certain routes (to/from Wellington, Queenstown-Sydney and Brisbane-Dunedin) in line with the greater of the most recent economic growth or growth in Trans-Tasman passenger demand for the three year term of the authorisation.
- 1.4 Auckland Airport’s concerns regarding the potential anti-competitive detriment effects of the proposed Alliance were significantly allayed by the capacity commitments offered by the Applicants, and subsequently taken up by both the ACCC and the Minister. Provision was made to accommodate flexibility should this be required due to exceptional circumstances and three variations have since been requested (and granted) as a consequence of the effects of the Christchurch earthquake and Chilean volcanic ash cloud.

2. SUMMARY

- 2.1 The Application needs to be considered taking account of the Trans-Tasman market as it exists in 2013. The Applicants continue to have a majority share of Trans-Tasman seats, providing 50.8% of seats for the year ended March 2013. The combined effect of a reauthorisation of the Alliance and the proposed coordination between Qantas and

Emirates, if approved by the Minister, would be significant. The number of competitive airline groupings would be reduced from three to two. There would be a duopoly in 21 of the 23 Trans-Tasman markets, with the two players controlling 100% of total seat capacity. In the remaining two markets the two groupings would create an effective duopoly.

- 2.2 The significance of this outcome must not be underestimated. The potential detriment of reduced competition is a very real concern.
- 2.3 Auckland Airport appreciates the considerable economic pressures that airlines operate under today and is generally supportive of initiatives aimed at alleviating these provided it can be ensured that there is no detrimental impact on the continued promotion of competition in international air services that is so vital to New Zealand's economic prosperity. Auckland Airport is not unsupportive of a continuation of the Alliance; however, we remain convinced that any continuation of the aligning of interests that the reauthorisation would effect must be for an appropriate period and be subject to conditions regarding capacity that are appropriate in today's environment and a continuing process of regulatory scrutiny to measure whether the public benefits are eventuating and the conditions being met.
- 2.4 The conditions applied to the authorisation of the Alliance in 2010 were designed to ensure that the Applicants could not exploit their market dominance in key markets, as well as the overall Trans-Tasman markets. The efficacy of these has been proven. The Trans-Tasman market in 2013 is a changed and changing one but, in the view of Auckland Airport, capacity conditions are still required to prevent the possibility of anti-competitive capacity reduction, particularly where the Applicants have the "weight" to have significant impact through their capacity decisions.
- 2.5 Auckland Airport urges the Minister to scrutinise and robustly test the assertions from the Applicants that *"it is clear that the Alliance has resulted in compelling public benefits and that there have been strong competitive responses to the Alliance and new entry and expansion including on the routes subject to the Conditions"*. This approach is urged because, critically, these are being advanced by the Applicants as the reason why the capacity *"Conditions are not necessary to satisfy the public benefit test as the public benefits derived from the Alliance are sufficient in and of themselves to outweigh any risk of an anti-competitive detriment on the Tasman"*¹. Therefore, in the Applicants' submission the Alliance should be reauthorised for a five year period from 31 December 2013 without any capacity conditions
- 2.6 In Auckland Airport's submission a balance can be struck between the need to ensure a competitive and level playing field and the need to allow flexibility by carriers to respond to new opportunities and market dynamics. In the case of the Applicants this balance should be focussed on requiring an on-going commitment by the Applicants to a 'base level' of capacity across the Trans-Tasman market, with a modest level of committed capacity growth (of 2-3% per year). The Applicants should be allowed the flexibility to allocate this capacity among individual Trans-Tasman routes, to enable the investigation of new routes and to respond to market dynamics. Where exceptional events require variation to these proposed conditions, the Applicants would continue to be able to seek Ministerial approval.
- 2.7 To provide context to our submission we asked Pacific Aviation Consulting ("**PAC**") to carry out some targeted analysis, which is incorporated at the appropriate points. That

¹ Application page 7

analysis raises important questions and tests some of the assertions made by the Applicants about the impact of the Alliance to date and what the future state of competition will be should the reauthorisation be approved to proceed. We hope that this submission will assist with the Minister's deliberations and would be happy to discuss it further.

3. OVERALL MARKET COMPOSITION

Applicants' Overview

- 3.1 The Applicants have characterised the Tasman market as one that is more challenging (with regard to the nature of travellers, average fares, overall capacity, passenger volumes and airline brands) today than it was when the Alliance was authorised.
- 3.2 They describe the Tasman as a *"well served, highly competitive market, with seven carriers providing a range of product offerings"*². The Applicants also indicate that fifth freedom carriers (**"FFCs"**) are very significant in this highly competitive market highlighting that their competitive presence and threat of entry *"is characteristic of the Tasman market and from the Pre-Alliance Year to the end of Year 1, the proportion of FFC flying increased from around 16% of Tasman capacity to 18%"*³. In addition they claim that *"Asian and Middle-Eastern based carriers have shown an increasing interest in establishing services to Australia, New Zealand and also across the Tasman to address the demand for Trans-Tasman air services"*⁴;

Duopoly/Effective Duopoly – Alliance's Share

- 3.3 In 2010, there were two other airlines (or airline groupings) with significant capacity share of the Trans-Tasman market. Qantas-Jetstar held 31.4% of Trans-Tasman capacity, while Emirates provided 12.6% of Trans-Tasman capacity. Fifth Freedom Carriers provided the remaining 3.5% of Trans-Tasman capacity.
- 3.4 The Alliance reduced the effective number of competitors from four to three airline groupings.
- 3.5 It is significant that the proposed coordination between Qantas, Jetstar and Emirates will, if approved, reduce the number of competitive airline groupings to two providing 95% of the total seat capacity in the Trans-Tasman markets in 2013. In 21 of the 23 Trans-Tasman markets, the two groupings will control 100% of total seat capacity, rendering those markets duopolies, and the remaining two markets (Auckland-Sydney and Auckland-Brisbane) effective duopolies, with the two groupings controlling 87% and 92% of seat capacity in those markets respectively.
- 3.6 For the year ended March 2013, the Applicants continue to have a majority of Trans-Tasman seats, providing 50.8% of seats. The Qantas-Jetstar-Emirates grouping provided 45.1% of seats in the Tasman market. Fifth Freedom Carriers provided the remaining 4.1% of seat capacity.

² Application page 13, paragraph 2.6

³ Application page 13, paragraph 2.9

⁴ Application page 12, paragraph 2.4

3.7 Based on current schedules, in 2013 the Alliance will represent 51% of all Trans-Tasman capacity. In 11 of 23 markets⁵, the Alliance will control 100% of capacity. In 16 of 23 markets⁶, the Alliance will control a majority of seat capacity.

Table 1 below illustrates this.

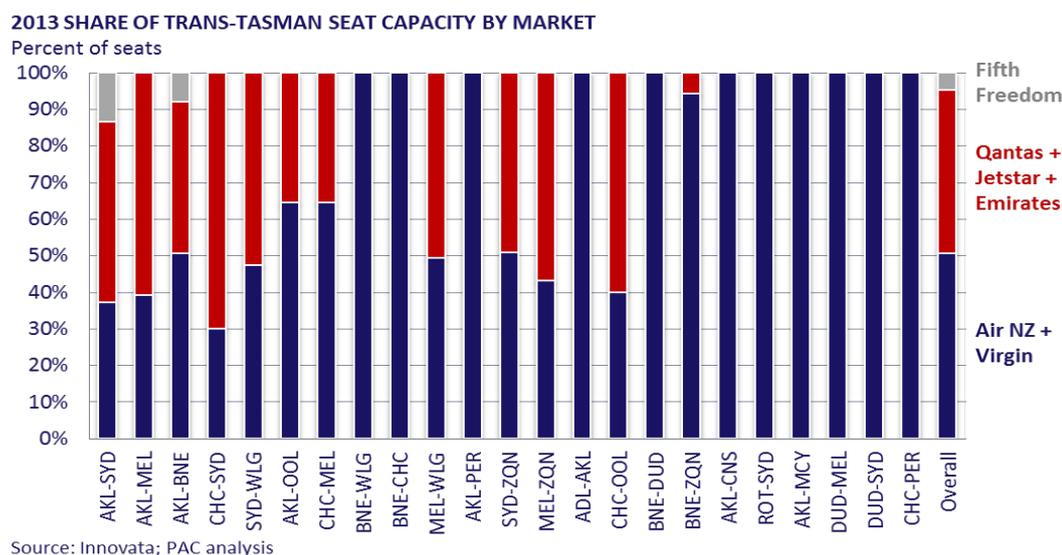


Table 1

3.8 If the Qantas/Emirates application for authorisation of their proposed Master Coordination Agreement is approved by the Minister, with similar conditions as those imposed by the ACCC, the Alliance will face a significantly more concentrated and less competitive market than it has faced in the preceding 3 years.

Competitive constraint from other airlines – the impact of “Fifth Freedom Carriers”

3.9 The analysis carried out by PAC indicates that the competitive pressure exerted by FFCs – or carriers from outside of New Zealand and Australia exercising Trans-Tasman capacity rights – has declined and diluted over the period during which the Alliance has been in place. Not only has the number of carriers exercising so-called “Fifth Freedom” capacity rights across the Tasman declined from the four in the Pre-Alliance Year (Emirates, LAN, Aerolineas Argentinas and Royal Brunei Airlines) to three (Emirates, LAN and China Airlines):

- a) given the recent application by Qantas and Emirates to coordinate their Trans-Tasman services, Emirates can no longer be considered an effective FFC competitor. As a result, it is expected that “Fifth Freedom” competition will be limited to two markets - Auckland-Sydney and Auckland-Brisbane – and will represent just 13% and 8% of seat capacity in each market respectively. Excluding Emirates’ capacity for the above reason reduces fifth-freedom Tasman

⁵ Wellington-Brisbane, Christchurch-Brisbane, Auckland-Perth, Auckland-Adelaide, Dunedin-Brisbane, Auckland-Cairns, Rotorua-Sydney, Auckland-Sunshine Coast, Dunedin-Melbourne, Dunedin-Sydney and Christchurch-Perth

⁶ All the above markets, plus Auckland-Brisbane, Auckland-Gold Coast, Christchurch-Melbourne, Queenstown-Sydney and Queenstown-Brisbane.

capacity share to just 5% of total 2013 Trans-Tasman capacity, down from 16% when the Alliance received approval in December 2010; and

- b) the incentives for other carriers to establish Trans-Tasman services needs to be more closely considered. China Airlines' entry to the Trans-Tasman market is in part the consequence of significant "ground time" in Australian ports. Prior to the commencement of Auckland services, their aircraft used on the Taipei-Australia flights parked at Brisbane and Sydney airports for a significant portion of the day to allow maximum connectivity at its Taipei hub. The launch of Trans-Tasman services was therefore an opportunistic use of idle aircraft time. We understand that a similar matter lay behind Emirates' commencement of Tasman services. The applicability of these experiences to other "Asian and Middle-Eastern based carriers" as claimed by the Applicants is likely in our view to be limited by the number of Asian and Middle-Eastern based carriers with similar "ground time" opportunities.

4. KEY CLAIMS MADE BY APPLICANTS

- 4.1 The Applicants claim that, so far, the Alliance has generated a number of key outcomes and that capacity conditions are no longer necessary. Auckland Airport supports appropriate measures that will result in reduced costs and improvement in airline services for the travelling public, but we consider it appropriate for the Minister to carefully review the various assertions made by the Applicants. In this submission we focus on the Applicants' claims that the Alliance has generated a significant increase in the Alliance's capacity, stimulated tourism, and delivered substantial public benefits without any anti-competitive detriment on the Tasman or any individual route. We also consider the assertion that no capacity undertakings are needed.

Increase in Alliance's capacity

- 4.2 The Applicants indicate the Alliance has generated an increase in the Alliance's capacity of 5.1% in "Year 0" and 5.0% in "Year 1" and that this has taken place within an increase in the overall Trans-Tasman capacity of 5.6% (and increase of 4.0% in the total number of passengers travelling on the Tasman across all carriers) from the "Pre-Alliance Year" to "Year 1";

Stimulation of Tourism

- 4.3 The Applicants advise that the Alliance has resulted in increased passenger traffic on Alliance services and increased online connections which have resulted in a "*stimulation of tourism through the Alliance's improved product offering, the creation of a second comprehensive Australasian network in competition with the Qantas-Jetstar Group, synergies from joint promotion of Alliance services and Alliance destinations and improved distribution channels*"⁷.

Substantial public benefits without anti-competitive detriment

- 4.4 The Applicants contend that they have delivered substantial public benefits without any anti-competitive detriment on the Tasman or any individual route, that "*The Alliance has not and will not (following reauthorisation) result in any adverse impact on consumers on the Trans Tasman air passenger market or on any individual route*" and

⁷ Application page 6

that “*the Applicants have not reduced or withheld capacity on any individual Trans Tasman route*”⁸.

Capacity Conditions Not required

- 4.5 Importantly, the Applicants assert that the existing capacity conditions, which were set in place to ensure that the Ministry had increased confidence that the benefits put forward would be realised, will not be necessary in the future if the reauthorisation is granted. The Applicants claim that already “*it is clear that the Alliance has resulted in compelling public benefits and that there have been strong competitive responses to the Alliance and new entry and expansion, including on the individual routes subject to the Conditions*”⁹.
- 4.6 The Applicants are concerned that the conditions “*have the potential to create significant distortions and inefficiencies in the provision of Trans Tasman air passenger services which may not only result in compliance costs for the Applicants but in fact be detrimental to consumers*”¹⁰. They consider that the conditions:
- a) reduce their ability to respond flexibly to adjust supply;
 - b) have significant consequential costs; and
 - c) further that there may be other likely distortive effects as a consequence of rigid capacity commitments for example the influence their existence may have on the pricing decisions of competitors and airports. The Applicants state that the conditions “*create an environment where suppliers including airports can raise prices, knowing that the relevant airlines are unable to adjust capacity*”¹¹.

5. TEST CLAIMS

“Correct” Base Year – Impact on Capacity Claims

- 5.1 It is important for the Minister, at the outset, to consider whether the Applicants have selected the appropriate “base year” for the purposes of the Application and to be aware of the impact that the choice made may have had on the data put forward to support the claims made regarding the impact of the Alliance’s operation in key areas.
- 5.2 The Applicants have stated that:

*“Authorisation of the Alliance by the Ministry of Transport (MOT) came into effect on 1 January 2011 and authorisation of the Alliance by the Australian Competition and Consumer Commission (ACCC) came into effect on 7 January 2011”*¹²

- 5.3 In our view this means the appropriate ‘base year’ (that is, the year prior to commencement of the Alliance), should be construed as 1 January 2010-31 December 2010 (or, at the limit, 7 January 2010-6 January 2011). By contrast, the Applicants have selected a “Year 0” (the first year of the Alliance’s effects) as commencing on 1 November 2010 (i.e. before the Alliance came into effect) on the basis that they want to

⁸ Application page 33, paragraph 4.3

⁹ Application page 36, paragraph 5.6

¹⁰ Application page 37, paragraphs 5.12 and 5.13

¹¹ Application page 39, paragraph 5.23

¹² Application page 3, Footnote

compare a full season (in this case, the “Northern Winter”) season. While there is some merit in this claim from an industry-wide perspective, it is not useful to determine the effects of the Alliance. The Alliance was not applicable for at least the first two months of the Applicants’ “Year 0” i.e. 17% of the Applicants’ “Year 0”. Indeed the Minister’s approval of the Alliance was not issued until 21 December 2010, well in to the “Year 0” chosen by the Applicants.

5.4 Table 2 outlines the contrast between our view of the base and subsequent years and that submitted by the Applicants.

Month	Regulatory Event	Applicants’ View	PAC/AKL View
November 2009		“Pre-Alliance Year” starts	
January 2010			“Pre-Alliance Year” starts
October 2010		“Pre-Alliance Year” ends	
November 2010		“Year 0” starts	
December 2010	MoT Approval		“Pre-Alliance Year” ends
January 2011	Alliance starts		“Year 0” starts
October 2011		“Year 0” ends	
November 2011		“Year 1” starts	
December 2011	Full year of Alliance		“Year 0” ends
January 2012			“Year 1” starts
October 2012		“Year 1” ends	
November 2012			
December 2012	2 nd full year of Alliance		“Year 1” ends

Table 2

5.5 When one applies the “Base Year” and “Year 1” (as January- December 2010 and January – December 2012 respectively) our analysis indicates that the increases in the Applicants’ capacity (0.3% in the Base Year/Year 0 and 0.7% in Year 1) - and consequently the extent of public benefits stemming from them - are significantly lower.¹³

Table 3 below illustrates this.

Applicants’ View					
Airline	Pre-Alliance Year	Year 0	% Var to Pre-Alliance Year	Year 1	% Var to Pre-Alliance Year
Virgin Australia	1,301,040	1,220,316	-6.2%	1,244,088	-4.4%
Air New Zealand	2,605,631	2,885,221	10.7%	2,857,495	9.7%
Alliance	3,906,671	4,105,537	5.1%	4,101,583	5.0%

PAC/AKL View					
Airline	Pre-Alliance Year	Year 0	% Var to Pre-Alliance Year	Year 1	% Var to Pre-Alliance Year
Virgin Australia	1,294,304	1,241,088	-4.1%	1,242,384	-4.0%
Air New Zealand	2,805,913	2,870,500	2.3%	2,884,610	2.8%
Alliance	4,100,217	4,111,588	0.3%	4,126,994	0.7%

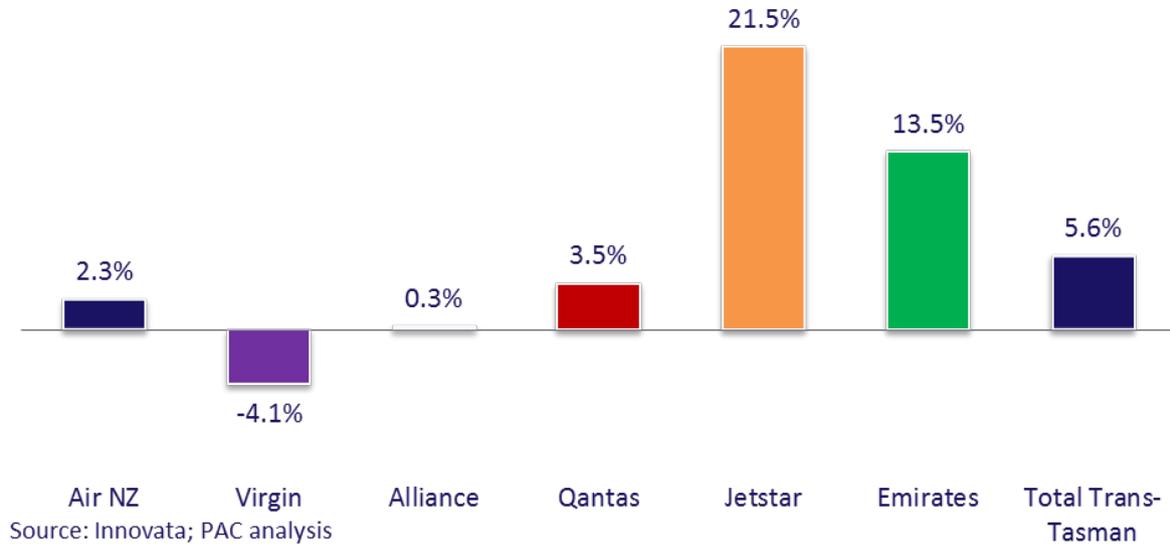
Table 3

Moreover, the Applicants’ capacity increase over the Pre-Alliance Year is lower than key competitors – Qantas, Jetstar and Emirates in both Year 0 and Year 1. In Year 0, the Alliance’s increase of 0.3% over the Pre-Alliance Year was below the increases by the key competitors, and below the total Trans-Tasman capacity increase.

¹³ PAC notes that Air New Zealand has reconfigured its A320 fleet and, that the implementation/changeover period has prevented PAC from providing an exact calculation of Air New Zealand’s A320 capacity over this period.

TRANS-TASMAN SEAT CAPACITY, YEAR 0 VS PRE-ALLIANCE YEAR

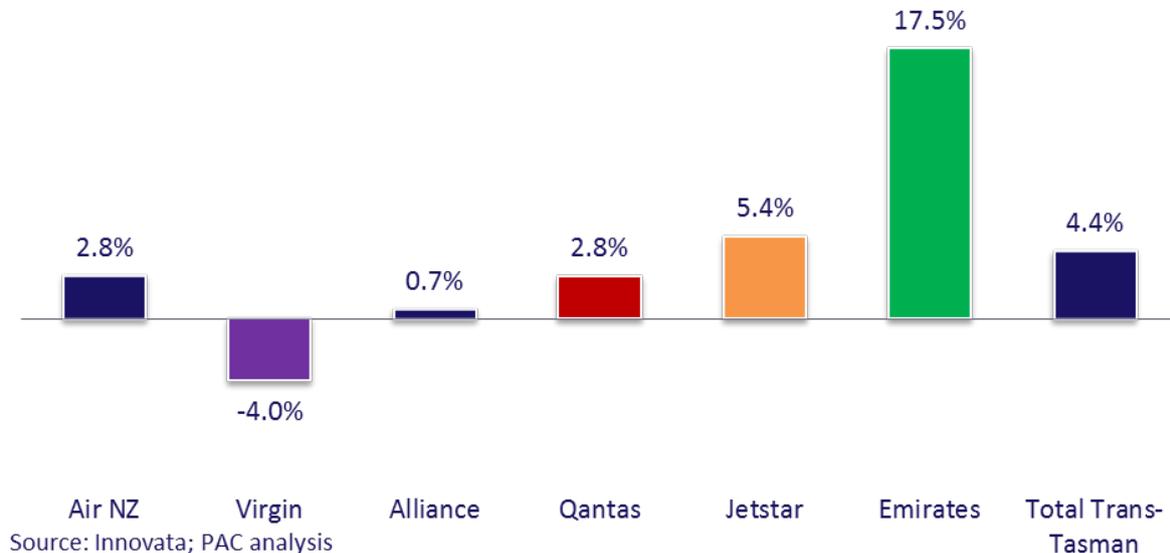
Percent change in capacity



In Year 1, the Alliance's 0.7% capacity increase over the Pre-Alliance Year is below the capacity increases by the key competitors' capacity increases over the same period.

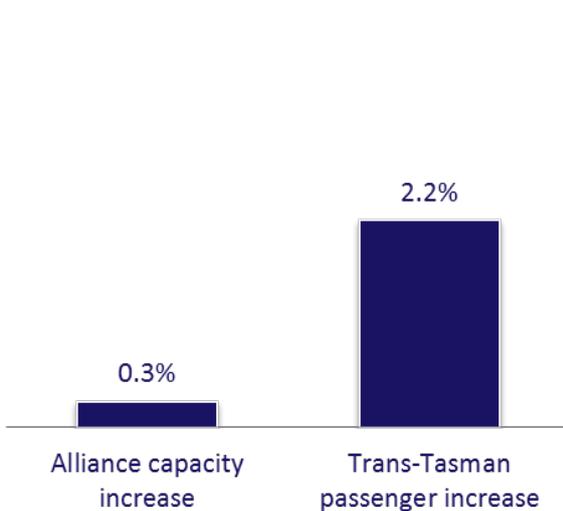
TRANS-TASMAN SEAT CAPACITY, YEAR 1 VS PRE-ALLIANCE YEAR

Percent change in capacity

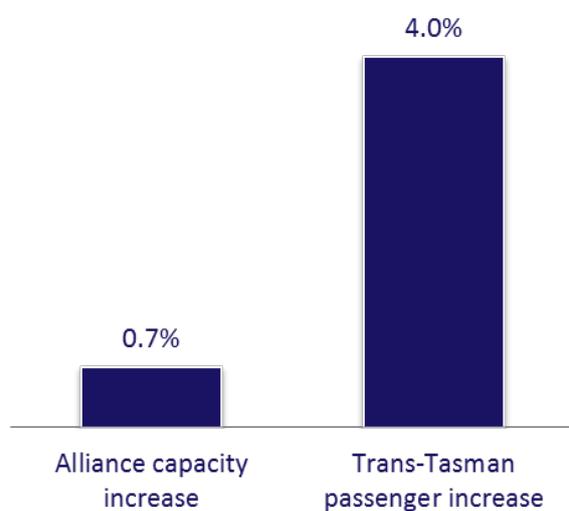


Over the same time periods, Trans-Tasman passenger volumes grew by 2.2% in Year 0 compared to the Pre-Alliance Year, and 4.0% in Year 1 compared to the Pre-Alliance Year – more than four times the capacity growth provided by the Alliance.

YEAR 0 VS PRE-ALLIANCE YEAR CHANGES
Percent change in capacity/passengers



YEAR 1 VS PRE-ALLIANCE YEAR CHANGES
Percent change in capacity/passengers



Source: Australian Govt; Innovata; PAC analysis

Stimulation of tourism – increased passenger traffic on Alliance Services

- 5.3 Auckland Airport is keenly aware of the importance of tourism to New Zealand Inc. and is involved in the development of this key market. We pay close attention to what are the existing and the developing source markets. We concur that Australia is extremely important to our tourism industry. However, given the Applicants are claiming that the public benefits generated by the Alliance include the stimulation of tourism and that those public benefits in turn support their argument that continuing capacity commitments are not required, it is appropriate to take a closer look at the claim.
- 5.4 Our analysis indicates that there is little evidence of stimulation of tourism by the Alliance. According to Australian immigration data, the number of Australian residents (including New Zealand citizens residing in Australia) travelling to New Zealand for holiday purposes has declined by 3.3% in Year 1 compared to the Pre-Alliance Year. The number of New Zealand residents travelling to Australia for holiday purposes has declined by 1.7% in Year 1 compared to the Pre-Alliance Year. The number of Australian residents travelling to New Zealand for holiday purposes on the Alliance carriers has declined by 2.7% in Year 1 compared to the Pre-Alliance Year, while the number of New Zealand residents travelling to Australia for holiday purposes on the Alliance carriers has declined by 0.5%. Overall, the Alliance carriers carried 1.4% fewer Trans-Tasman passengers travelling for holiday purposes in Year 1 than they did in the Pre-Alliance Year.
- 5.5 These trends are confirmed by New Zealand Government statistics, which show that holidaymakers from Australia fell by 1.0% in Year 0 compared to the Pre-Alliance Year, and fell by 5.9% in Year 1 compared to the Pre-Alliance Year.

Substantial public benefits without anti-competitive detriment

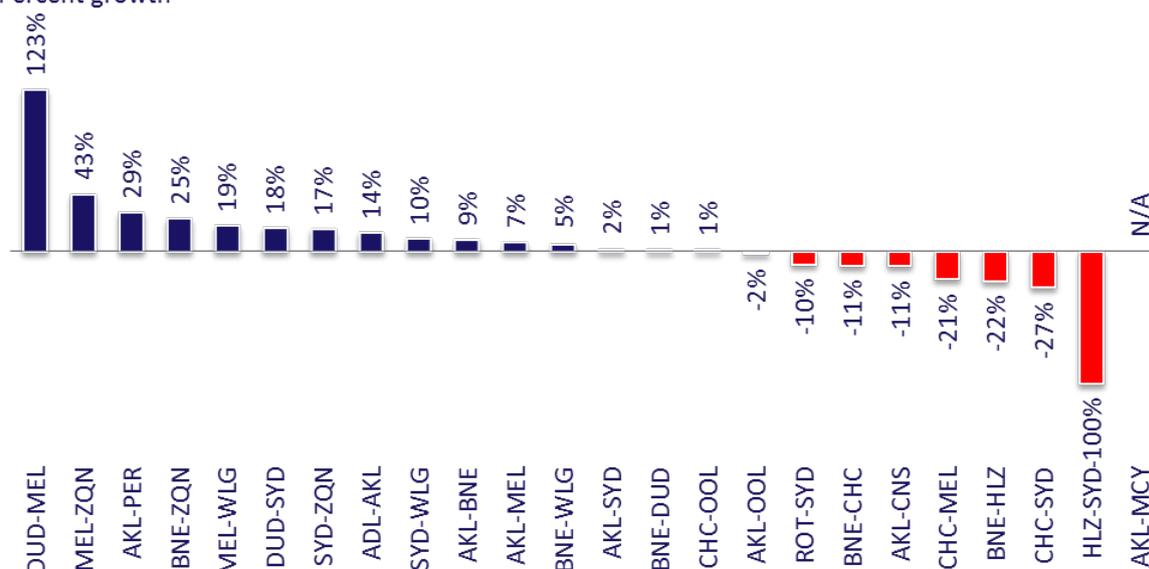
- 5.6 The analysis that has been carried out by PAC indicates that, in one-third (i.e. 8 out of 24) of the Tasman markets¹⁴ in which the Applicants operate, the Applicants have

¹⁴ Markets being Auckland-Gold Coast, Auckland-Cairns, Christchurch-Sydney, Christchurch-Brisbane, Christchurch-Melbourne, Hamilton-Brisbane, Hamilton-Sydney, Rotorua-Sydney

reduced capacity in Year 1 compared to the Pre-Alliance Year. It is not a straightforward task to assess the extent of the adverse impact, if any, on customers of these reductions. But the important point is that it should be noted that the reductions have occurred when one applies the “correct” dates to the analysis. We refer to Table 4 below.

SEAT CAPACITY GROWTH BY THE APPLICANTS, YEAR 1 VS PRE-ALLIANCE YEAR

Percent growth



Source: Innovata; PAC analysis

Impact of “Fifth Freedom Carriers”

5.7 The analysis conducted for Auckland Airport indicates that the competitive pressure exerted by “Fifth-Freedom Carriers” – or carriers from outside of New Zealand and Australia exercising Trans-Tasman capacity rights – has declined over the period during which the Alliance has been in place. More detail regarding this is covered above in the discussion of the overall market composition.

6. CONTINUING NEED FOR CAPACITY CONDITIONS

Current Conditions have proved effective

6.1 The conditions applied to the authorisation of the Alliance in 2010 were designed to ensure that the Applicants could not exploit their market dominance in key markets, as well as the overall Trans-Tasman markets. When the conditions were developed, Air New Zealand and Virgin Australia had a combined 52.5% capacity share of the Trans-Tasman market. It was recognised that in key markets, the Alliance would result in the Applicants holding a majority – or even total – capacity share and, as a result, capacity conditions were imposed in these markets as well as the overall Trans-Tasman market.

6.2 Flexibility was included in the form of incorporating an ability for the Applicants to apply for changes to the conditions under exceptional circumstances. This flexibility was duly exercised during the exceptional events related to the ongoing earthquakes in Christchurch and impacts of volcanic ash.

6.3 The capacity provided by the Applicants over the course of the Alliance so far has proven the efficacy of the conditions. On the routes where the Applicants were required to maintain a base level of capacity with growth (all routes to/from Wellington, Auckland-Brisbane, Queenstown-Sydney and Dunedin-Brisbane), the Applicants increased capacity. In the overall Trans-Tasman market, where the Applicants were required to maintain a base level of capacity with growth, the Applicants increased capacity. However, in 8 of the 19 markets where no specific capacity commitment was required, the Applicants reduced capacity.

Number of effective competitors on Trans-Tasman market in 2013

6.4 The competitive environment the Applicants face in 2013 is no more competitive, and arguably likely to be less competitive, than they faced in 2010. In 2010, there were two other airlines (or airline groupings) with significant capacity share of the Trans-Tasman market. Qantas-Jetstar held 31.4% of Trans-Tasman capacity, while Emirates provided 12.6% of Trans-Tasman capacity. Fifth Freedom Carriers provided the remaining 3.5% of Trans-Tasman capacity. The Alliance reduced the effective number of competitors from four to three airline groupings.

6.5 The proposed coordination between Qantas and Emirates, if approved, will reduce the number of competitive airline groupings from three to two. For the year ended March 2013, the Applicants continue to have a majority of Trans-Tasman seats, providing 50.8% of seats. The Qantas-Jetstar-Emirates grouping provided 45.1% of seats in the Tasman market. Fifth Freedom Carriers provided the remaining 4.1% of seat capacity (a small competitive presence).

Appropriate Capacity Conditions should be applied to a reauthorisation

6.6 In the context of the current Trans-Tasman market, and the history of the Alliance to date, it is not justified to remove capacity commitments, with appropriate flexibility in exceptional circumstances, from the Alliance reauthorisation as submitted by the Applicants.

6.7 Furthermore, the likely competitor to the Alliance, namely the proposed Qantas-Jetstar-Emirates coordination arrangement, has conditions imposed on that airline grouping's Trans-Tasman capacity, on a route-specific basis¹⁵. The routes selected for capacity conditions are those routes where, as a consequence of that airline grouping's coordination, Qantas-Jetstar-Emirates will control a majority of seat capacity. It is clear and appropriate that the public interest in approving such arrangements must be balanced against the possibility of anti-competitive behaviour by the agents seeking approval a possibility that is heightened where the agents control a majority of the supply in the market.

6.8 Auckland Airport considers it appropriate that the Applicants continue to face conditions designed to prevent the possibility of anti-competitive capacity reduction, particularly where the Applicants have the "weight" to have significant impact through their capacity decisions.

6.9 The importance of such conditions is heightened where one of the two airline groupings faces capacity conditions (as have been imposed by the ACCC on Qantas-Jetstar-Emirates).

¹⁵ Auckland-Sydney, Auckland-Melbourne, Auckland-Brisbane and Christchurch-Sydney.

- 6.10 The Applicants claim (in relation to their own Conditions) that “the Conditions will influence the capacity deployment and pricing decisions of competitors”¹⁶. Auckland Airport agrees, but this works both ways. If the Applicants are free to determine capacity given knowledge of their competitors’ capacity conditions, it creates an unfair playing field and allows the Applicants to tailor their capacity and fares to suit their interests and there is no guarantee that this will align with those of the public consumers. The value of the capacity conditions on the Applicants in this context lies in ensuring that one competitor cannot unduly influence market supply in the Trans-Tasman market.
- 6.11 Auckland Airport submits that a balance can be struck between the need to ensure a competitive and level playing field and the need to allow flexibility by carriers to respond to new opportunities and market dynamics.
- 6.12 In relation to the Applicants, the dominant airline grouping, this balance should be focussed on requiring an on-going commitment by the Applicants to a ‘base level’ of capacity across the Trans-Tasman market, with a modest level of committed capacity growth (of 2-3% per year). This would allow the Applicants flexibility to allocate this capacity among individual Trans-Tasman routes, to allow for the investigation of new routes and to respond to market dynamics. Where exceptional events require variation to these proposed conditions, the Applicants should continue to have the avenue of seeking ministerial approval of a variation.

¹⁶ Application page 39, paragraph 5.23