

**SUBMISSION ON APPLICATION TO THE MINISTER OF TRANSPORT
PURSUANT TO PART 9 OF THE CIVIL AVIATION ACT 1990 FOR
AUTHORISATION OF THE AIR NEW ZEALAND AND UNITED AIRLINES, INC
SIDE AGREEMENT**

5 August 2016

Introduction

- 1 Christchurch International Airport Limited (*CIAL*) welcomes the opportunity to submit to the Ministry of Transport (*MOT*) on the application by Air New Zealand Limited (*Air NZ*) and United Airlines, Inc (*United*) (together, the *Airlines*) for authorisation under section 88 of the Civil Aviation Act 1990 (*CAA*) of a side agreement (*Side Agreement*) to the Alliance Expansion Agreement (*AEA*) previously entered into by the Airlines.
- 2 *CIAL*'s submission is based on our review of the Airline's application for authorisation to the *MOT*, the Airlines 2002 application for authorisation of the *AEA* and the *AEA*. The Side Agreement itself has not been published with the application. Copies of the 2002 application and the *AEA* have previously been received by *CIAL* under the Official Information Act. Despite the passage of time key aspects of that 2002 application and the *AEA* have been redacted and remain confidential. Our submission should be read in that context.

Key points

- 3 *CIAL* supports means to increase air services (and thus actual increases in tourism numbers) to and from New Zealand particularly those that lead to a greater regional distribution of economic and social benefits and recognises that international airline alliances can in the appropriate circumstances contribute positively to achieving this objective. That is not always automatically the case though and each proposed application for authorisation must be considered on its own facts and in its specific context.
- 4 *CIAL* recommends, the *MOT* undertake a rigorous analysis of whether the authorisation of the Side Agreement is in the wider New Zealand public interest, having regard to:
 - (a) actual evidence as to whether the public benefits claimed by the Airlines will actually be delivered; and
 - (b) whether the extension of an otherwise anti-competitive alliance is necessary to deliver the claimed benefits.

Framework for MOT analysis

- 5 Unless the Side Agreement triggers certain prohibitions set out in sections 88(3) or (4) of the *CAA*, approval of the Side Agreement is at the discretion of the Minister, to be exercised in the public interest. The public interest involves weighing up the balance between the benefits from the Side Agreement, which must be supported by real evidence, and any potential detriments.

Consideration of public benefits and public detriment of AEA

- 6 Due to the shortcomings of Part 9 of the *CAA* Air NZ have highlighted the 2002 decision cannot be reversed or made subject to conditions. The Airlines place much reliance upon this to support not only the authorisation of the present application

but also to dissuade the MOT from considering, as a relevant factor, the Airlines current co-ordination on the remaining services under the AEA.

- 7 This is in essence asking the MOT to overlook whether any public detriment exists as a consequence of the underlying arrangement the Airlines seek to extend. This is both illogical and contrary to sound regulatory practice. CIAL encourages the MOT to carry out a rigorous assessment of the Airlines' coordination under existing AEA and demonstrate it has satisfied itself the benefits claimed in the 2002 application for authorisation have in fact been evidenced and outweigh any public detriment before extending those arrangements further.

Questionable public benefits

- 8 CIAL accepts the potential fare reductions referred to in paragraph 3 of the application may be a public benefit however aside from those potential reductions the application produces very little, if any, evidence to demonstrate real benefits will in fact accrue to the New Zealand public generally rather than the Airlines. It is for example unlikely the remaining benefits set out at paragraph 3 are of any material significance from a public benefit perspective.
- 9 The Airlines have not sufficiently addressed in their application whether the claimed benefits are unable to be achieved by the New Zealand public generally without the authorisation of an extension to an otherwise anti-competitive alliance.

Unlikely the Side Agreement will Promote Competition

- 10 CIAL welcomes the acknowledgement by Air NZ that alliances have the ability to distort the attributes of a competitive airline market, make it difficult for single airlines to compete with immunised alliances and create an uneven playing field.
- 11 It is, for example, unlikely an alliance operating with the benefit of an anti-competitive authorisation will be incentivised to deliver pro-competitive benefits. The application produces no evidence as to either the likelihood of this occurring or what steps the Airlines have, or will, put in place to ensure this occurs.
- 12 Air NZ controls most of the international long haul capacity through AKL (both independently and by way of its various alliances). Through its domestic network Air NZ is uniquely positioned to control the ability of other long haul carriers to compete with it at any port within New Zealand. While Air NZ maintains it is at an operational disadvantage Air NZ has not demonstrated it suffers any significant competitive disadvantage requiring of regulatory intervention in the public interest.
- 13 In the absence of any demonstrated pro-competitive benefits the MOT should be slow to grant a further authorisation which may deter other carriers or encourage the proliferation of alliances.

Need to determine accumulated foreclosure effect of alliances and undermining of "open skies"

- 14 A relevant factor to be taken into consideration by the MOT is the cumulative effect of alliance applications and existing alliance arrangements. CIAL has on a number of previous occasions submitted the proliferation of these types of alliances raises real questions as to the likely effectiveness of the Government's "open skies" policies.

- 15 The cumulative effect of these alliances is to lock up the market and deter new entrants offering direct services to New Zealand and in particular to other parts of New Zealand
- 16 We recommend the MOT take this opportunity to critically evaluate and determine the combined effect the Side Agreement and the AEA may have on the ability of other carriers to fly international air services to New Zealand, including to points of entry other than Auckland.

Term of reauthorisation

- 17 In the absence of an ability to impose conditions or review, the authorisation of the AEA without time restrictions is a cause of some disquiet even making allowance for its somewhat historic nature. CIAL suggests good regulatory practice requires authorisations are made for the shortest finite period necessary to give effect to the benefits.
- 18 The present application is expressly premised on the Airlines' assessment of the current competitive environment including an acknowledgement of the dynamic nature of routes to and from LAX. This acknowledges that market conditions are not constant over time and will be subject to change. Any assessment by the MOT must be forward looking in nature and take the likelihood of further such change into account.
- 19 We recommend if the MOT is of a mind to grant the application for authorisation it does so for the shortest period it determines necessary to enable the claimed public benefits to occur and only for so long as the MOT can be satisfied those public benefits will outweigh public detriments, including foreclosing on competition.
- 20 If there are any questions about this submission, please contact Michael Singleton, General Manager Corporate Affairs.