



8 May 2024

**OBJECTION SUBMISSION - AA1000653 - PUBLIC DOCUMENT**

*Ref: Leg./Sub. AA1000653*

To ACCC Commissioners:  
Keogh & Lowe

### **1. OPENING:**

**Extract from a recent Executive Statement tabled with the New Zealand Minister of Transport; Hon Simeon Brown and the Director of NZ CAA in relation to a procedural certification issue:**

*"Jumpjet Airlines as a Limited Company on the New Zealand Register applied for an Air Operator Certificate (AOC) in October 2018 after many years of preparation for the privilege. The complex development path was earlier thwarted by the then Virgin Blue airline that had entered the Australian market and competed against Ansett Airlines which was trading in financial and corporate difficulties. Predatory fare pricing assisted in the ultimate bankruptcy of Ansett Australia.*

*In due course the Virgin Blue airline made a strategy to penetrate the Trans Tasman Market in 2003. Jumpjet Airlines and other parties fought a number of cases against the Virgin carrier in the New Zealand Commerce Commission. Ultimately we lost the **"right of opportunity"** to a foreign carrier that used creative legal strategies and monetary power.*

*We estimate that these events and the substantial capacity that Virgin injected into the market setback the Jumpjet development by some 10 years. At one point the Jumpjet Board was reduced by 50% and the company planned to cease operations and development. However, due to industry technology advancements it was determined to continue developing the modelling in finance, commercial, marketing, operations and the engineering divisions of company structuring.*

*This has enabled Jumpjet to offer innovation in the above areas that we claim will benefit not only the Jumpjet Companies and the public, but the airline and travel industries in general.*

*A pleading point is that if democratic economics is to survive and create wealth it must favour development within the economic zones and borders of its country. Jumpjet stands ready to take the risks necessary to enter its industry market.*

*This document is prepared on the basis of qualifying Jumpjet's actions from a company perspective..."*

Jumpjet is not seeking favours it is seeking fairness. The Jumpjet Airlines Limited Company is a fundamental venture development entity being raised within the rules. Historically, the system has deterred, obstructed, abused and inhibited its advancement. This ACCC Draft Determination is a popular authorisation that is not part of the solution it is part of the problem – Managing Director.



## 2. THE APPLICANTS – CODE SHARE MERGER:

### Virgin Australia

No Comment other than the fact that Virgin Australia is not an Australian carrier it is an American Airline company operating within our national economic markets and economic zone.

### Air New Zealand

No Comment

## 3. THE PROPOSED CONDUCT - CODE SHARE MERGER:

### The definition of a Cartel is:

*"A Cartel is a group of independent market participants who collude with each other as well as agreeing not to compete with each other in order to improve their profits and dominate the market."*

The proposed conduct of the applicants is in the Cartel planning stage and the baseline is being set-up for this market development.

The whole basis of the existence of the market surveillance bodies, put in place by historic federal and NZ governments, on both sides of the Tasman is to have the investigatory and consultative power to recognise the strategic establishment of Cartels.

We put it that this is a text book example of the beginning of such an establishment.

### Anti-competitive behaviour:

### The definition of Anti-Competitive Practises is described as:

*"Anticompetitive behaviour refers to actions taken by a business or organization to limit, restrict or eliminate competition in a market, usually in order to gain an unfair advantage or dominate the market. These practices are often considered illegal or unethical and can harm consumers, other businesses and the broader economy."*

*Anti-competitive behaviour is used by business and governments to lessen competition within the markets so that monopolies and dominant firms can generate supernormal profits and deter competitors from the market. Therefore, it is heavily regulated and punishable by law in cases where it substantially affects the market."*

Obviously, there are future liabilities at stake when Cartels are put in place by relentless alliances or allowed to establish over time and it is now accepted that Jumpjet Airlines Limited is a known business that will be substantially impacted and deterred if this market behaviour is permitted to establish itself as described above.

Particularly, at the company's investment ready stage. We put it that the proposed conduct is also designed to **deter** Jumpjet Airlines from market entrance and complete investment structuring.

Please be aware that the decision not to fully capitalise Jumpjet for market entry, at this time, is held by both by the Directors of capital providers and business consultants, plus Jumpjet Directors and it is related to expenditure accrual, efficiency, risk, accounting and procedural issues that must be part of founding costs and liabilities. Once structural contractual obligations are concluded the Company is "locked" in. It is interesting that this determination is not in a position to respect these commercial facts.



#### 4. PUBLIC BENEFIT:

Putting the stepping stone to a future Cartel or Merger relationship aside, what possible public benefit could there be that does not already exist in terms of competition or **potential** competition within the Tasman market as it exists today; or as provided by the market already?

There are some 26 paragraphs under the **Proposed Conduct** headings that are published within the draft determination document that portray the proposed conduct which the applicants are planning for the public benefit or consumer gain. None of these descriptions put the consumer in a better position from a pricing or customer services consideration that does not already exist.

We put it that the proposed conduct of the Applicants is the foundation plan to enable the achievement of greater **market power** and thus does not have any connection with competition in the market.

**Code Sharing** does not constitute the generation of more competition in the market, it results in locking up the market to prevent or obstruct better pricing from emerging within the market to the benefit of the consumer; as it is effectively a **trading merger**.

**The Draft Determination does not satisfy the Public Benefit Test.**

#### 5. INTERIM AUTHORISATION:

The Public Benefit test is not satisfied and the authorisation is based on favouring concepts that do not relate to the promotion of more development in the aviation industry. Put simply, the authorisation protects the status quo and its circular wheel.

*"There is a vital need for change and education in the topic of understanding how economic development actually happens in the real world – or does not happen." - Author*

Fundamental development has been replaced by the attraction of the public share market giving way to a type of fascist economics that obstructs national economic company development.

*(The Author is an Australian citizen who came to New Zealand to develop an aviation business in the 1990's because such development was not possible in Australia. Company development in most industries started to recede in 2011 and this has continued to dilute the Australian economy since that time. Actions within this determination do not constitute support for economic development.)*

#### 6. FIFTH FREEDOM CARRIERS

Fifth Freedom carriers have been increasing their market share over the last decade riding on the belief, by the consumer, that they are beneficiaries to these services. The realities are much different in that these players are foreign owned multi-billion dollar corporations that operate on a global scale.

With due respect, national ideals do not reach the boardroom and these foreign corporations will gladly accept as much of the aviation market as can be gained. The more market they acquire the greater the adverse effect on the national and regional economy and its performance.

In 2019 Jumpjet Business Consultants undertook extensive research into Emirates market share at that time and it was determined as **4.68%** in its own right with Fifth-Freedom totals being **9.46%**.



We put it that the market share of Fifth-Freedom carriers has increased as published in the Draft Determination at **13%** and growing unabated yearly. It needs to be noted that there is three new Fifth-Freedom airlines now in the market. The entrants are Batik Air, Air Asia X and China Eastern; thus reducing our national market share – **management of our markets simply does not exist.**

## **7. INCREASED CHOICE AND CONVENIENCE FOR AUSTRALIAN POINT OF SALE TRANS TASMAN TRAVELLERS:**

Jumpjet has been tabling submissions to governments and authorities for a substantial time and has not previously seen such inaccuracy that exists in paragraphs **4.19 to 4.36.**

These paragraphs fail to accept that technology advancement does not revolve around the Applicants. All airlines and service providers, including government service providers, have access to and are making continued software application development and renewal in the area of IT and Digital Technology. The statements that a Code Share type merger is required to develop new software is beyond responsible intimidation.

The ACCC should not be a **marketing** service provider acting for the foreign carrier, Virgin Australia. These paragraphs reflect marketing anti-competitive tolerance favouring the applicants.

Air New Zealand already has a sound marketing approach proven by successful trading in the Tasman market. So the partiality of the Draft Determination is acting on behalf of and in favour of Virgin Australia – **not the market.** This proposed conduct of Virgin is in fact trading in a market it is not entitled to trade in thus; deterring the commercial advancement of Jumpjet Airlines Limited.

[Should the ACCC be acting for the encouragement of a code share trading merger that increases market power for the Applicants or should the Commission be acting against such conduct?](#)

There is no evidence that increased choice or convenience will eventuate for passengers under this proposed arrangement and conduct.

**We put it that the reverse is likely to eventuate as market dominance progresses.**

## **8. INCREASED EFFICIENCY OF AIR NEW ZEALAND'S TRANS TASMAN OPERATIONS**

Paragraphs **4.37 & 4.38** – The Trans Tasman market has a growth rate per year of up to **5%** in a natural sense and there is no evidence to suggest or confirm a Code Share proposal will generate more passengers above the nominal growth rate.

Paragraph **4.41** - Jumpjet agrees with Para 4.41. Currently Air New Zealand is a practised, profitable and established airline company that is successful as an entity. Reducing profit forecasts are related to circumstances beyond the carrier's control. This paragraph surely is a significant confirmation as to the structure of the proposed conduct. The applicant's proposal is nothing more than initial conduct to gain more control over the Trans Tasman trading market resulting in the gain of increased market power. **Such conduct is enabling a foreign carrier to trade in a prohibited market.**

Paragraphs **4.47 & 4.56** – Virgin Australia is not an Australian Airline and under various Air Service Agreements and regulations it is not permitted to **trade** on the Trans Tasman and we put it that part of this application is to **deter** the entrance of Jumpjet Airlines into the Trans-Tasman Market.



In our opinion, at this point, paragraphs 4.47 & 4.56 are sufficient for Jumpjet to advise that we will be tabling this evidence before the New Zealand Commerce Commission in the context of part of a response to a final determination approving the Code Share trade Merger. That is, in the event that such a decision deliberately favours the Virgin Australia foreign company. It will be in the form of a tabled legal objection seeking a stay. Other challenges will need to be considered. It is premature to submit legal argument.

Paragraph **4.58** – We put it that, in terms of **ownership**, our aviation economies has been dissolving over many years and it is estimated that **70%** of the airline industry it is now in foreign hands.

There is a mistaken perception that Australians are somehow connected social beneficiaries by receiving lower fares given by generous overseas foreign owned multi-billion dollar corporation airlines. **Nothing could be further from the truth!**

Divesting a country's economy to the rest of the world is why we are in the chaotic economic circumstances of today with every government in Australia sinking into eye watering indebtedness. Most are unable to meet their financial commitments without continuing huge borrowing programs.

The stark reality is that portrayed in the Jumpjet opening statement either we change direction or we will continue on an economic downward path. Much could be said, including a forecast when and how the next financial crisis will unfold on a national and global scale. A substantial housing market de-valuation will occur once mass immigration and debt borrowing is unavoidably subdued.

However, this is not the forum for such comment but to state that bodies like the ACCC are going to need to change attitudes to commerce to favour national economic development from within our economic zones. That is, if we are to survive as viable and functional developed nations. Is the phrase – Look above the keyboard?

Jumpjet recommends that the Commission considers the Australia/New Zealand **Air Services Agreement** that was/is put in place to foster the development of national aviation businesses.

Virgin Australia does not qualify to enter the Trans Tasman single aviation market in any **trading** form and in so far as we know no manipulation of the Air Services Agreement or other associated regulation is planned, or in progress, by the current New Zealand government to block, deter, obstruct or otherwise frustrate the legitimate commercial progression of the Jumpjet Airlines Limited Company to timely finalise structuring for market entry.

## **9. CLOSING:**

The Jumpjet response is subdued as the invitation to make submission did not arrive until a few days prior to closing. On current research and consideration the bullets below close this submission.

**The Jumpjet Summary of objection states and identifies that the proposed market trading conduct of the Applicants is:-**

- Essentially a trading merger; and is
- The foundation arrangement for a cartel alliance structure; plus is



- Distinctly anti-competitive; and also
- Will result in collusion and misuse of market power; and
- Does not satisfy the public benefit test; and
- Does not address market dissolution of the available market currently being driven by Fifth-Freedom airlines; also
- Does not provide additional choice or convenience for Trans-Tasman travellers above that which already exists or potentially exists; and
- Does not provide any additional operational efficiency above that already existing by the applicants who possess high standards of operation, including profitable marketing application in the industry

**Concluding evidence is:-**

- That Virgin Australia is a foreign airline and is not qualified to enter the single aviation market in any trading form; and
- Such that a final determination in favour of the applicants would purposely attempt to deter Jumpjet Airlines Limited

**END**

Yours faithfully,

A handwritten signature in blue ink that reads "Nicholas Kile".

Signer ID: YQGJ8RDM12...

Nicholas Kile  
Managing Director

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P O Box 30031  
Lower Hut  
New Zealand 5040

Ph: +644 586 0900  
M: 021 061 2454  
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