Authorisation for proposed airline partnership between Virgin Australia and Air New Zealand

20 February 2023

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1 Executive summary

By acknowledging the likelihood that Australian travellers will take up the offer of VA coded services on Air New Zealand operated trans-Tasman services, all four Interested Party Submissions acknowledge that public benefits will flow from the Proposed Conduct.

Any opposition to authorisation is based on the incorrect assumptions that:

1. absent the Proposed Conduct, Virgin Australia would be likely to operate services on the trans-Tasman as an independent carrier in competition with Air New Zealand; and
2. the Proposed Conduct would disincentivise Virgin Australia from doing so.

These assumptions do not reflect commercial reality and are inconsistent with the firm commercial decisions that have been taken by Virgin Australia in relation to its planned short haul international network, as well as Virgin Australia's assessment of the projected revenue from the Proposed Conduct.

This opposition is premised on an irrelevant and wholly unrealistic counterfactual. The Proposed Conduct does not change Virgin Australia’s incentives regarding entry onto the trans-Tasman utilising its own aircraft and therefore does not have the effect of delaying or disincentivising entry that would otherwise occur.

Further, any concerns about the impact of the Proposed Conduct on overall trans-Tasman capacity are misplaced. The Proposed Conduct can have no impact on capacity. The Applicants will not coordinate capacity and have not sought authorisation to coordinate in relation to capacity, network or schedule. At its heart, the Proposed Conduct is simply a unilateral codeshare on Air New Zealand operated services with a novel pricing model which involves replication of Air New Zealand’s determined pricing and cooperation on corporate and small and medium enterprise (**SME**) contracting. Even if this was not the case, the arguments put forward about the Proposed Conduct resulting in capacity constraints are inconsistent with the commercial modelling of the Applicants and ignore the rational commercial response from Air New Zealand if it begins to “spill” passengers, as well as the likely competitive response from other airlines if passengers positively respond to the arrangements, as anticipated. The reality is that the Tasman is a competitive market with more carriers operating today than pre-COVID in January 2020. While it is self-evident that a market in which Virgin Australia independently operated a full trans-Tasman network would result in higher market capacity than is the case with the Proposed Conduct, that is not the relevant – or even plausible – counterfactual. As such, it is irrelevant to the test for authorisation.

The Proposed Conduct satisfies the test for authorisation and authorisation should be granted for the requested period of five years. It will allow a range of clear, material and tangible public benefits that would not otherwise be possible, without any competitive detriment.

2 All Interested Party Submissions recognise the Proposed Conduct will result in public benefits

As set out in our previous submission to the ACCC, authorisation will:

- provide Virgin Australia’s customers with:
  - access to VA coded trans-Tasman services via Air New Zealand’s deep and broad trans-Tasman network, where Virgin Australia does not itself operate services (i.e. excluding services to/from Queenstown);

– the ability to earn and redeem Velocity Points and accrue status credits on VA coded trans-Tasman services operated by Air New Zealand where Virgin Australia does not itself operate services; and

– the ability to utilise Air New Zealand's seven international lounges in Australia and New Zealand when flying on VA coded flights operated by Air New Zealand, as well as other status benefits if eligible, noting Virgin Australia does not currently operate any international lounges at any international departure port;

- stimulate competition by strengthening Virgin Australia's offer in competition with Qantas, including for higher yield corporate and SME customers, loyalty program offerings and domestic services;
- increase customer choice and convenience for customers travelling on trans-Tasman services; and
- increase the efficiency of Air New Zealand's flight operations.

As indicated in Virgin Australia's response to Question 1 of the ACCC's RFI, it is expected that up to **[RESTRICTION OF PUBLICATION CLAIMED]** Australian travellers will use these services per year.

All four of the Interested Party Submissions acknowledge the availability of public benefits under the Proposed Conduct.

In its submission in support of authorisation, ATIA noted that the Proposed Conduct:[1]

- would likely allow travellers greater convenience and choice on trans-Tasman services, creating a more viable alternative choice to the dominant carrier;
- will provide more options where the customer values the Tasman through-itinerary involving a domestic Australian leg being provided by a single marketing carrier including, through the different flight times of Virgin Australia's domestic services to those available on a Qantas domestic operated itinerary; and
- may enhance Virgin Australia's ability to compete with Qantas - the dominant domestic carrier by enhancing the appeal of Virgin Australia's domestic offerings through increased connectivity.

Sydney Airport noted in its submission that the current lack of a Tasman offering or gap in Virgin Australia's network impacts its ability to effectively compete for domestic services and corporate/SME customers to the detriment of consumers.[2] The Proposed Conduct efficiently and effectively allows Virgin Australia to offer passengers trans-Tasman services beyond Queenstown, in circumstances where no other commercially viable alliance is available and **[RESTRICTION OF PUBLICATION CLAIMED]**.

Queensland Airports noted in its support for the application that allowing this unilateral codeshare will increase the distribution potential of existing Air New Zealand capacity from Gold Coast Airport to New Zealand, which will create demand conditions that could support additional capacity with resulting public benefit.[3]

In its submission NZ Airports acknowledges that the Proposed Conduct will result in benefits for Virgin Australia customers including business and loyalty customers who wish to fly across the Tasman. These benefits include access to VA coded trans-Tasman services on Air New Zealand, the ability to earn and redeem Velocity frequent flyer points and accrue status credits on VA coded Air New

[1] ATIA Submission dated 22 December 2023, page 3. ATIA also recognises that the features of the Proposed Conduct serve to negate the risk of competitive detriment, as expanded on further at Section 4.1.

[2] Sydney Airport Submission dated 20 December 2023, page 1.

[3] Queensland Airports Limited Submission dated 14 December 2023, page 1.

Zealand flights and the ability to use Air New Zealand's seven international lounges.[4] NZ Airports also acknowledges that it could drive increased passenger numbers (including high yield passengers such as corporates and SME customers) onto Air New Zealand's trans-Tasman and domestic services.[5] The Applicants note that such an effect would increase the efficiency of Air New Zealand's flight operations and stimulate competition in various markets including for higher yield corporate and SME customers, trans-Tasman and domestic services.[6] This would in turn improve the conditions for increased capacity and competition on trans-Tasman services.[7]

For further information on the benefits to Australian travellers, see section 7 of the Applicant's submission in support of the Authorisation Application.

3 Material public benefits result from the authorisation

The Proposed Conduct provides customers with access to VA coded services that would not otherwise exist. Virgin Australia does not currently have a trans-Tasman offer beyond services to and from Queenstown. The Proposed Conduct enables Virgin Australia to quickly and efficiently fill this network gap through coded services.

These services and the flow-on benefits including Virgin Australia's ability to compete more effectively and provide a real choice and stronger alternative to Qantas in various markets are only being made available because of the proposed pricing model. **[RESTRICTION OF PUBLICATION CLAIMED]**

It will provide immediate benefits to Australian travellers, including Velocity members, that would otherwise not be available and increase the efficiency and sustainability of Air New Zealand's services. There are more than 11.9 million members of the Velocity Frequent Flyer Program. On average, this equates to one member in every Australian household.[8]

4 The Proposed Conduct does not result in any detriment

4.1 The Proposed Conduct does not remove any competition, services or benefits that would be available without the Proposed Conduct

The Applicants do not currently compete on any trans-Tasman routes outside of services to/from Queenstown which are specifically excluded from the Proposed Conduct.

[RESTRICTION OF PUBLICATION CLAIMED], the Proposed Conduct does not change Virgin Australia's incentives regarding entry onto the trans-Tasman utilising its own aircraft and therefore does not have the effect of delaying or disincentivising entry that would otherwise occur. In fact, the Proposed Conduct specifically contemplates and allows for adjustments to the scope of the Proposed Conduct if that possibility eventuated. Were Virgin Australia to operate further trans-Tasman services, under the arrangements for which authorisation is sought overlapping routes would be carved out from the Proposed Conduct.

As set out in response to Q1 of the RFI, the **[RESTRICTION OF PUBLICATION CLAIMED]**

As noted by ATIA, which does not suggest the Proposed Conduct will result in any public detriment, the exclusion of overlapping trans-Tasman routes from the Proposed Conduct removes the greatest

[4] NZ Airports Association Submission dated 5 January 2024, page 2.

[5] NZ Airports Association Submission dated 5 January 2024, page 2.

[6] NZ Airports Association Submission dated 5 January 2024, page 4.

[7] NZ Airports Association Submission dated 5 January 2024, page 4.

[8] https://newsroom.virginaustralia.com/release/velocity-frequent-flyer-soars-11-million-members#:~:text=Velocity%20Frequent%20Flyer%2C%20the%20loyalty,member%20in%20every%20Australian%20household.

potential for public detriment.[9] ATIA also notes further features of the Proposed Conduct that reduce the risk of public detriment including that:[10]

- public fares for the resupply of trans-Tasman itineraries involving these codeshare services point of sale Australia will be determined by Air New Zealand;
- Virgin Australia may place its code on point-to-point trans-Tasman airfares only; and
- commercial information will not be shared with travel agents, including information about commission rates and distribution strategies.

The Proposed Conduct does not delay or disincentivise entry. If anything, the Proposed Conduct improves the conditions for future entry (see section 5.2 below).

[RESTRICTION OF PUBLICATION CLAIMED] the other commercial agreements and benefits are conditional on, and flow from, the existence of the codeshare arrangement with the proposed pricing model. Nor is **[RESTRICTION OF PUBLICATION CLAIMED]**.

No other commercially viable partner is available to Virgin Australia that could provide the same degree of public benefits from the start of the partnership.

4.2 The Proposed Conduct does not provide an increased incentive or ability to raise airfares and / or reduce service quality on trans-Tasman services

The Applicants are not proposing to jointly determine public pricing, network or schedules. The Proposed Conduct simply involves a unilateral codeshare on non-overlapping NZ operated trans-Tasman services **[RESTRICTION OF PUBLICATION CLAIMED]** and where Virgin Australia replicates Air New Zealand's public pricing. Only limited elements of the Proposed Conduct even require authorisation at all, primarily the non-traditional pricing model which was **[RESTRICTION OF PUBLICATION CLAIMED]**.

The Proposed Conduct does not negatively impact the competitive dynamics that already exist on the Tasman. If anything, it will stimulate competition and trigger a competitive response. Submissions that lament the loss of Virgin Australia's operated capacity and suggest that the Tasman was more competitive with Virgin Australia operating services on its own metal are therefore not relevant to the assessment of this authorisation, as this is not the relevant counterfactual.

Contrary to the submissions of NZ Airports,[11] the Tasman is a highly competitive, open market with low regulatory barriers to entry and a range of providers (including full-service carriers, low-cost carriers and fifth freedom carriers) already operating or able to operate services. Because Air New Zealand and Virgin Australia are not competitors in this broader market, the Proposed Conduct cannot as a matter of fact remove pricing competition or lead to an increase in airfares or reduction in service quality.[12] However, in the event of any attempt to anti-competitively raise fares or reduce service

[9] ATIA Submission dated 22 December 2023, page 3.

[10] ATIA Submission dated 22 December 2023, page 3.

[11] See NZ Airports Association Submission dated 5 January 2024, page 3.

[12] In the ACCC's Determination in respect of Virgin Australia's proposed codeshare pricing arrangements with participating international airlines dated 8 September 2022, the ACCC considered that the extent of any public detriment from removal of potential (intra-brand) price competition between Virgin Australia and each Partner Carrier would likely be limited by the small number of traditional arms-length codeshare arrangements that would be displaced and inter-brand competition from other operating carriers including Qantas on the relevant routes. The ACCC accepted that absent the proposed conduct, Virgin Australia would be likely to enter into few, if any arms-length codeshare arrangements with long-haul international operating carriers until it is in a position to negotiate a reciprocal codeshare arrangement involving its own operated international services so that the arrangements could be commercially sustainable for Virgin Australia. In this application, the lack of detriment under the Proposed Conduct is more stark. The codeshare is one-way VA code on Air New Zealand services only. There is no code sharing by Air New Zealand on a shorter domestic leg operated by Virgin Australia. Further, without the different pricing model **[RESTRICTION OF PUBLICATION CLAIMED]**. In relation to inter-brand competition, Qantas/Jetstar is more than capable of stepping in to remove any supposed public detriment and is, in fact, likely to stimulate competition in the public benefit by competitively responding to the Proposed Conduct. As noted in the supporting submission to the Application dated 17

quality, other carriers are well placed to increase frequency or to enter and provide new services thwarting such attempts.

[RESTRICTION OF PUBLICATION CLAIMED]

The Qantas Group (including Qantas and Jetstar), is still the largest provider of Tasman and domestic Australian services, carrying the majority of corporate travellers across the Tasman and accounting for more than 40% of trans-Tasman ticket sales and capacity, having increased its market share following the COVID pandemic. For the period January 2024 to October 2024, the Qantas Group has increased its trans-Tasman capacity relative to the equivalent period of 2019 by 13% and increased their market share (+10% pts vs 2019), Qantas has also introduced a new service to New York via Auckland. To support this service, Qantas has added extra capacity on the Tasman through an incremental SYD-AKL flight.

The ease of entry, larger aircraft and different pricing dynamics of fifth freedom carriers will also continue to pose a constraint on any attempt to anti-competitively raise fares or reduce service quality. As at January 2024, there were **more** carriers operating on the trans-Tasman compared to pre-COVID in January 2020. Based on scheduled capacity for the period January 2024 to October 2024, fifth freedom carriers have maintained seat capacity and market share relative to the equivalent period of 2019.

On 24 August 2023, Batik Air Malaysia commenced a service between Auckland and Perth, operating 6 times per week.[13]

On 6 November 2023 China Eastern commenced services between Hangzhou, Sydney and Auckland, operating 4 times per week.[14]

The NZ Airports submission uses the exit of Air Asia X to suggest that fifth freedom carriers do not provide sustained competition on the Tasman, rather this requires an Australian or New Zealand operator and the only carrier that could provide this is Virgin Australia.[15] First, in the context of assessing this authorisation, NZ Airports seems to ignore the Qantas Group as the largest provider of Tasman services. Second, given the ease of entry and different pricing dynamics, regardless of the entry and exit of individual carriers or the size of their share, there has been competitive constraint from fifth freedom carriers on the Tasman for at least the last 15 years. The ease of entry and exit as recently exhibited by Qatar Airways and Air Asia X also demonstrates the flexibility of fifth freedom carriers to respond to market conditions, including any attempted anti-competitive increase in fares. Third, as noted elsewhere, the Proposed Conduct does not prevent, delay or disincentivise Virgin Australia from operating trans-Tasman services.

While airfares are currently higher on the Tasman compared to pre-COVID, this is not a consequence or indicator of limited competition.[16] Following COVID, airlines worldwide have struggled to grow back capacity due to resource and supply chain constraints, including access to aircraft, pilots, and ground and in-air staff. On the trans-Tasman, the recovery period after borders opened back up was marked by a unique combination of pent up high demand as Australians and New Zealanders had not been able to travel freely for over two years. This demand included extraordinary levels of pent-up VFR (Visiting Friends & Relatives) demand. This demand set against the capacity constraints resulted in a spike in airfares and is not indicative of long-term market pricing trends or a lack of competition.

November 2023, Qantas/Jetstar, is the largest provider of Tasman and domestic Australian services. It has the POS AUS advantage over other carriers and a significant marketing presence in New Zealand, including with domestic New Zealand services operated by Jetstar. It carries the majority of corporate travellers across the Tasman and accounts for more than 40% of trans-Tasman ticket sales and capacity, having increased its market share following the COVID-19 pandemic.

See ACCC Determination dated 8 September 2022 at 4.27 and 4.6.

[13] WA Government, "New Batik Air Malaysia connecting Auckland to Western Australia" (25 August 2023) (link).

[14] https://www.stuff.co.nz/travel/news/133242704/new-airline-on-the-transtasman-market-and-its-probably-not-one-youd-expect; https://www.internationalairportreview.com/news/190397/china-eastern-airlines-fuelling-recovery-with-two-new-routes-to-sydney/

[15] NZ Airports Association Submission dated 5 January 2024, page 3.

[16] As suggested in NZ Airports Association Submission dated 5 January 2024, page 3.

Overall costs are also significantly higher than pre-COVID. For example, jet fuel is **[RESTRICTION OF PUBLICATION CLAIMED]** higher, while a number of other input costs including employee costs and airport fees and charges have also increased for airlines. Inflation alone, as measure by the Reserve Bank of Australia, is up 15.8% since the start of the pandemic.[17]

Given the increase in costs, comparison of airfares should be based on real, not nominal airfares. During CY23, airlines have ramped up their operations and demand has normalised, leading to falling airfares, with further declines expected based on additional capacity coming into the market. **[RESTRICTION OF PUBLICATION CLAIMED]**

5 Opposition to the authorisation is based on an unrealistic counterfactual and unfounded assumptions about market capacity

While all four submissions acknowledge the public benefits of the Proposed Conduct, the only perceived public detriment relies on incorrect assumptions about the counterfactual and the likely impact of the Proposed Conduct on overall capacity. Interested parties' strong preference for a return to a pre-COVID, pre-administration world in which Virgin Australia independently operates trans-Tasman services does not make it the correct counterfactual for competition analysis. The short period in which Virgin Australia independently operated trans-Tasman services, following the dissolution of its broad Alliance with Air New Zealand, was characterised by substantial financial losses. Virgin Australia will not again pursue strategies that are commercially unsustainable in this way.

For example, in ATIA's submission it notes that "while the application sets out the counterfactual as the status quo, we have conducted an analysis of the competitive dynamics pre-COVID when Australian travellers received the benefit of VA operated capacity."[18] Separately, it notes that aiming to restore capacity to pre-COVID levels will in turn help restore airfares to the benefit of Australian residents flying between Australia and New Zealand.[19] This goal is not relevant to the only test under consideration – does the Proposed Conduct result in net public benefits? In making this assessment, the ACCC must have regard to the most likely counterfactual.

5.1 The Proposed Conduct does not impact Virgin Australia's incentive to enter other trans-Tasman routes

If Virgin Australia assessed that sustainable trans-Tasman services were operationally and commercially viable, it could operate those services. The Proposed Conduct specifically contemplates Virgin Australia's ability to enter other trans-Tasman routes without an **[RESTRICTION OF PUBLICATION CLAIMED]** and clarifies that any overlapping routes would be carved out from the Proposed Conduct (whether that overlap is by operation (i.e., Virgin Australia adding capacity on its own metal) or through the marketing of services in competition with Air New Zealand where Virgin Australia has pricing control).

5.2 The Proposed Conduct does not act to delay or disincentivise Virgin Australia's entry onto other trans-Tasman routes. In fact, it potentially creates better conditions for future entry

Interested party opposition to the partnership flows from the assumption that in the counterfactual Virgin Australia would necessarily commence independent operations on the trans-Tasman routes it operated pre-COVID at pre-COVID capacity levels.[20] This assumption is unfounded, does not reflect

[17] This figure represents inflation over the period from 2020 to 2023. Reserve Bank of Australia, "Inflation Calculator", https://www.rba.gov.au/calculator/annualDecimal.html.

[18] ATIA Submission dated 22 December 2023, page 1.

[19] ATIA Submission dated 22 December 2023, page 1.

[20] See Sydney Airport Submission dated 20 December 2023, page 1; Queensland Airports Limited Submission dated 14 December 2023, page 1; NZ Airports Association Submission dated 5 January 2024, page 4; ATIA Submission dated 22 December 2023, page 5.

commercial reality and ignores the underlying challenges Virgin Australia has historically faced in sustainably attracting leisure and corporate travellers on the trans-Tasman. The Qantas Group has the strongest position in the domestic Australian market and a significant marketing presence in New Zealand, including with domestic New Zealand services operated by Jetstar, while Air New Zealand is the national flag carrier in New Zealand, where more than half of trans-Tasman traffic originates. Virgin Australia's ability to successfully and independently operate trans-Tasman services has been hampered by its lack of a New Zealand based point of sale advantage, and its inability to match Qantas' strength and network reach. While fifth freedom carriers lack these domestic network advantages, they operate sustainable services as a result of their very different pricing strategy which is centred around recovery of marginal cost only, while drawing passenger feed from their international networks, including through their membership of global airline alliances (as applicable) or global loyalty base.

Since COVID, Virgin Australia has restructured its business and emerged from voluntary administration with a streamlined fleet and renewed short-haul international strategy with greater focus on standalone commercial viability and sustainability in the trade-off for aircraft and resources.[21]

Virgin Australia's decision to commence other trans-Tasman services is not as simple as looking at whether the impacts of COVID have dissipated and, if so, applying pre-COVID capacity. Operational and commercial assessments must be made on the viability of services and optimal deployment of resources to achieve a network that is sustainable and operationally resilient. The reality is that very few of Virgin Australia's previously operated trans-Tasman services were viable pre-COVID.

[RESTRICTION OF PUBLICATION CLAIMED]

Historically, very few non-Queenstown trans-Tasman routes have been profitable for Virgin Australia. It has long struggled to effectively compete against the breadth and depth (network scope and frequency) of the Qantas offer on a stand-alone basis, leaving it unable to viably compete for both the leisure and higher yielding corporate travellers to enable commercially sustainable operations. **[RESTRICTION OF PUBLICATION CLAIMED]**. To address these challenges and better compete with Qantas, Virgin Australia originally partnered with Air New Zealand in 2010 until 2018 when the metal-neutral Alliance was terminated.

[RESTRICTION OF PUBLICATION CLAIMED]

The Proposed Conduct does not alter this assessment.

The Tasman is very important to Virgin Australia's network offering and ability to compete with Qantas more broadly **[RESTRICTION OF PUBLICATION CLAIMED].**

[RESTRICTION OF PUBLICATION CLAIMED]

The Proposed Conduct allows VA coded services and flow-on benefits that would not otherwise exist. It does not delay or disincentivise entry, **[RESTRICTION OF PUBLICATION CLAIMED]**

Under the Proposed Conduct, Virgin Australia has no ability to set prices, schedules or capacity or control the operated service provided. **[RESTRICTION OF PUBLICATION CLAIMED]** In contrast, despite the small earnings associated with the Proposed Conduct, it provides Virgin Australia with a much lower risk opportunity to extend the services it provides to its passengers, without risking unviable operations.

Rather than delaying or disincentivising entry, the Proposed Conduct improves the conditions for entry by allowing Virgin Australia presence as a marketing option (building its brand awareness and loyalty proposition) and allowing access to greater opportunities for the higher yielding corporate and SME traffic to support future entry, should Virgin Australia's assessment of the market opportunities change.

[21] In this context, ATIA "*accepts that Virgin Australia is not currently in a position to return to pre-COVID-19 capacity levels*." ATIA Submission dated 22 December 2023, page 1.

5.3 NZ Airports assumes the Proposed Conduct will have no impact on market capacity

[RESTRICTION OF PUBLICATION CLAIMED]. However, there is no basis for the assumption that under the Proposed Conduct Tasman capacity is somehow fixed.

NZ Airports submits that increased VA codeshare passengers (including high yield corporate and SME customers) travelling on Air New Zealand trans-Tasman and domestic services would simply displace existing Air New Zealand customers and put upward pressure on airfares.[22] This argument does not hold. Increased passengers on Air New Zealand trans-Tasman and domestic services will increase the efficiency of their services, improving the conditions for Air New Zealand to add capacity. Increased passengers on Air New Zealand's services (shifted from Qantas or incremental trans-Tasman demand through Virgin Australia's network and Australian distribution strength under the Proposed Conduct) also provide the conditions for a competitive response from other operators on the Tasman. As noted above in section 4.2, Qantas, in particular, is well-positioned to provide that response with both its full service and low cost carrier options available to consumers. The Proposed Conduct relates only to Australian-originating passengers. Realistically, many of the Australian passengers who choose to fly on a Virgin Australia coded service will be switching from Qantas to do so. In that case, market demand versus supply is completely unaffected (i.e., it simply means another carrier has an empty seat). But it does mean that Australian travellers will have a stronger alternative to Qantas, and Qantas will no doubt respond in turn.

[RESTRICTION OF PUBLICATION CLAIMED]

NZ Airports' assertion that the history of airline joint ventures has been to limit competition and reduce capacity and, therefore, the Proposed Conduct will reduce available seat numbers on the trans-Tasman is incorrect.[23] Previous alliances have been authorised and re-authorised by the ACCC because they met the net public benefits test. NZ Airports' assertion ignores the fact that alliances do not operate in a vacuum and there are numerous contributing factors to the level of capacity carriers will place on routes including passenger demand and overall available capacity to meet that demand. Capacity without passengers is not competitive, it is unsustainable.

The attempted argument is also odd because the Proposed Conduct is so different in nature to previous alliances. It does not involve any overlapping services, does not involve joint networking or scheduling and at its heart is simply a unilateral codeshare on Air New Zealand operated services with a novel pricing model which involves replication of Air New Zealand's determined pricing and cooperation on corporate and SME contracting. There is no ability for the Applicants to coordinate on capacity under the Proposed Conduct, and they are not seeking authorisation to do so.

Airports NZ inappropriately uses historical VA and NZ capacity on Wellington routes – covering the periods pre-Alliance, during the Alliance with capacity conditions, during the Alliance with no capacity conditions and post-Alliance – to try and make the point that joint ventures reduce competition and capacity.[24] Their argument takes this data out of context and then misleadingly applies it to the Proposed Conduct which does not include cooperation on capacity levels. Wellington routes represent 10.1% of trans-Tasman seats. While Airports NZ's argument is not relevant to the ACCC's assessment of the authorisation test here, it is important to understand the context for these historical capacity decisions.

Authorisation of the Alliance between Virgin Australia and Air New Zealand was granted for three years to 31 December 2013 and came into effect on 7 January 2011. Authorisation was subject to conditions requiring the airlines to maintain a base level of capacity, subject to a growth factor, on certain routes (including Wellington – Sydney; Wellington – Melbourne; Wellington – Brisbane; Dunedin – Brisbane; Auckland – Brisbane; Queenstown – Sydney) and on the trans-Tasman as a whole.

[22] NZ Airports Association Submission dated 5 January 2024, page 2.

[23] NZ Airports Association Submission dated 5 January 2024, page 5-6.

[24] NZ Airports Association Submission dated 5 January 2024, page 5-6.

During the three-year authorisation period, the Applicants had to apply to the ACCC and the New Zealand Ministry of Transport (**MOT**) three times for variation to the conditions in response to force majeure events that significantly impacted demand for these services (including the Christchurch earthquakes and aftershocks and the effect of the Chilean volcanic ash cloud). The Applicants were only able to apply for variations in response to such force majeure events. There were several other examples of market distortions caused by the application of the conditions to these services. For instance, during the NS11 season the Applicants experienced a higher level of operational cancellations (e.g. weather, engineering) than expected on the Brisbane-Wellington and Sydney-Wellington routes, resulting in flown capacity lower than stipulated in the conditions. As a consequence, the Applicants were obliged to add last minute capacity on these sectors to meet the conditions when there was no demand for those services.

Specifically in relation to Wellington routes, the capacity conditions resulted in capacity growing ahead of demand and significant excess capacity. For example, in 2013, the Brisbane-Wellington route continued to have excess capacity where the load factor for Year 1 was **[RESTRICTION OF PUBLICATION CLAIMED]**, down **[RESTRICTION OF PUBLICATION CLAIMED]** points from the pre-Alliance Year and **[RESTRICTION OF PUBLICATION CLAIMED]** points below the Alliance Tasman average for Year 1.

The capacity levels deployed by the Applicants at this time is not reflective of a competitive or efficient market and was significantly distorted by the conditions that were applied following pressure from New Zealand-based airports.

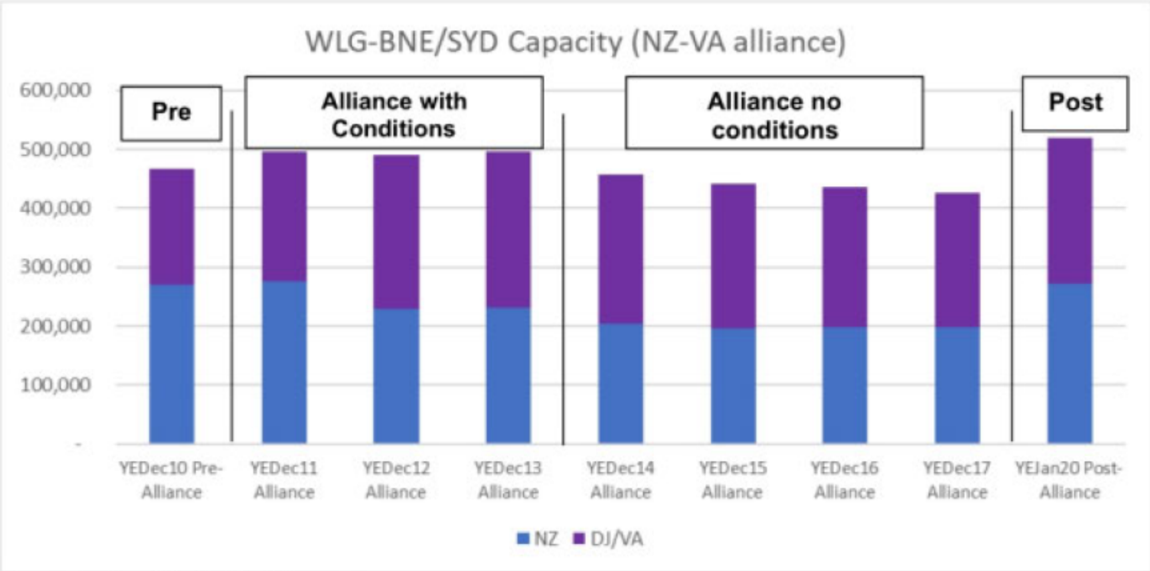
Re-authorisation of the Alliance was sought in 2013 and came into force on 1 January 2014. This authorisation was also subject to conditions. Rather than being route-specific, these included a requirement to maintain an aggregated base level of capacity across Christchurch – Brisbane; Christchurch – Melbourne; Dunedin – Brisbane; Wellington – Brisbane; Queenstown – Brisbane; and Auckland – Gold Coast with extensive reporting obligations to the ACCC/MOT.[25]

The Alliance ended in October 2018.

NZ Airports provides the following graph and is essentially attempting to suggest that from 2013-2017 when VA and NZ were apparently in an Alliance with "no capacity conditions", capacity between Wellington and Sydney/Brisbane declined and was lower than pre-Alliance or post-Alliance capacity levels.[26] Their implication is that alliances without capacity conditions will result in less competition and less capacity and therefore so will the Proposed Conduct.

[25] Reporting obligations included: capacity flown by cabin class on each trans-Tasman route; passengers flown (identifying separately point to point and connecting passengers where available) by cabin class on each route; RASK and ancillary charges per available seat kilometre for each Applicant and for the Alliance on each route by cabin class; CASK for each Applicant on each route e, both in total and disaggregated by fixed and variable costs; all fare schedules (by route and by class; and all tactical fare offerings including the route to which they apply, the offer start date, the offer end date, the filed travel period for which the fare is offered, and the price or discount offered, reported separately for Australian originated sales and New Zealand originated sales.

[26] See NZ Airports Association Submission dated 5 January 2024, page 5.



Source: Sabre Market Intelligence

This suggestion is not supported by reality. The graph above does not provide the full picture. It does not reflect total Wellington capacity and the inefficient oversupply that occurred on those routes during the initial capacity conditions. It also does not reflect their poor financial performance or other factors which lead to the pre-Alliance, Alliance with capacity conditions, Alliance with "no conditions" and post-Alliance capacity trends. For example, demand for VA and NZ services on BNE-WLG would have been impacted by Qantas's capacity on this route and to some extent, Jetstar's capacity on OOL-WLG given Coolangatta Airport's (Gold Coast) proximity to Brisbane. Demand for VA and NZ services on SYD-WLG would have also been impacted by Qantas's capacity on this route.

The insinuation that joint ventures always reduce competition or that capacity reductions on the Tasman under the VA-NZ Alliance were anti-competitive is also inconsistent with the intense reporting to the ACCC and the MOT required on all trans-Tasman routes during the life of this Alliance, while glossing over the performance of the services themselves. The graph also distorts route dynamics by misleadingly combining WLG-SYD and WLG-BNE routes but excluding other AUS-Wellington routes, noting that Virgin Australia did not operate Melbourne-Wellington post-Alliance.

In 2019, the first year post the cessation of the Alliance, Virgin Australia made the decision to reduce capacity on the Brisbane to Wellington route due to performance concerns, including the impact of the loss of Alliance passenger feed. Virgin Australia made a separate decision to use this capacity to enter on Sydney to Wellington, as it was in the top 5 markets for corporate traffic and without entry, Virgin Australia would have not had any presence on this route following the cessation of the Alliance. As reflected in financial performance data this decision to fill the gap in Virgin Australia's network turned out to be commercially unsustainable.

Route	FY19 EBIT Margin	CY19 Seat Capacity	CY19 LF%
BNEWLG	**[RESTRICTION OF PUBLICATION CLAIMED]**	**[RESTRICTION OF PUBLICATION CLAIMED]**	**[RESTRICTION OF PUBLICATION CLAIMED]**
SYDWLG	**[RESTRICTION OF PUBLICATION CLAIMED]**	**[RESTRICTION OF PUBLICATION CLAIMED]**	**[RESTRICTION OF PUBLICATION CLAIMED]**

6 Further clarification regarding the nature of proposed cooperation in respect of corporate and SME customers in response to ATIA

We note that ATIA has requested additional information in relation to the scope of corporate and SME cooperation under the Proposed Conduct.[27] In response the Applicants note the following:

- there will be no discussion of commercial terms relating to Virgin Australia or Air New Zealand Agency Agreements or Travel Management Company (**TMC**) partners;
- there will be joint identification, targeting, approaching and pricing of offers and discounts to corporate/SME customers for the supply of VA*NZ services. Under the Proposed Conduct, Air New Zealand and Virgin Australia can tailor pricing to each individual corporate customer based on factors such as their travel spend or volume. This often results in a more competitive end price to the customer through deeper discounting; and
- it will promote competition by ensuring provision of competitive offers to customers that otherwise may not have been offered by Air New Zealand in isolation.

The process of contracting with corporates and SMEs will be a semi-autonomous model, with the additional ability for Virgin Australia and Air New Zealand corporate sales teams to also tailor offers for each customer depending on circumstances. For example:

- VA*NZ retail fares will be channel-agnostic meaning that the same content will be available in direct channel and indirect/agency channel;
- for mid-market and large market corporate accounts, the Proposed Conduct will promote TMC partners for distribution in line with existing practice for VA operations and codeshare partners. VA will continue to utilise trade partners and TMC's as the primary method of distribution to this customer; and
- for SME customers, distribution will be direct but also allow TMC and Travel Agency partners to also offer the same discounts to customers via their channel (as is the case today for other airline partners in the VA Business Flyer program).

[27] ATIA Submission dated 22 December 2023, page 4.