

## Application for authorisation by Virgin Australia and Air New Zealand

### Parties to the proposed conduct

1 Provide details of the applicants for authorisation, including:

1.1 name, address (registered office), telephone number and ACN

**Virgin Australia Airlines Pty Ltd (ABN 36 090 670 965)**

Level 11, 275 Grey Street  
South Brisbane QLD 4101  
Ph: +61 7 3295 3000  
PO Box 1034, Spring Hill QLD 4004

**Virgin Australia International Airlines Pty Ltd (ABN 63 125 580 823)**

Level 11, 275 Grey Street  
South Brisbane QLD 4101  
Ph: +61 7 3295 3000  
PO Box 1034, Spring Hill QLD 4004

(and their related bodies corporate together, **Virgin Australia**)

**Air New Zealand Limited**, a company incorporated under the laws of New Zealand  
(company number 104799 and ABN 70 000 312 685)

185 Fanshawe Street, Auckland, 1010  
New Zealand  
Postal: Private Bag 92007 Auckland 1142, New Zealand  
Phone: (64 9) 336 2400

(Air NZ)

1.2 contact person's name, position, telephone number and email address

<b>Virgin Australia</b>	Louise Klamka Partner [REDACTED] [REDACTED] [REDACTED]	Rebecca Dollisson Special Counsel [REDACTED] [REDACTED] [REDACTED]
<b>Air NZ</b>	Torrin Crowther Partner Bell Gully [REDACTED] [REDACTED] [REDACTED]	Emma Harris Senior Associate Bell Gully [REDACTED] [REDACTED]

**1.3 a description of business activities**

Virgin Australia is an Australian airline founded in 2000. Virgin Australia's main hub is in Brisbane, and it operates a network of domestic and international services. These services are operated by Virgin Australia Airlines Pty Ltd and Virgin Australia International Airlines Pty Ltd, and their related bodies corporate.

Air NZ is New Zealand's national flag carrier. It operates a global network that provides air passenger services and cargo transport services to, from, and within New Zealand. The New Zealand Government owns approximately 52% of Air NZ, with the remainder owned by private investors. Air NZ is listed on the New Zealand and Australian stock exchanges.

**1.4 email address for service of documents in Australia**

[REDACTED]

**2 If applicable, provide details of the other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought**

Not applicable.

**The proposed conduct**

**3 Provide details of the proposed conduct, including:**

**3.1 a description of the proposed conduct and any documents that detail the terms of the proposed conduct**

The Applicants seek authorisation to make and give effect to a Commercial Framework Agreement and various related, inter-conditional agreements (**Implementing Agreements**) under which:

- Virgin Australia will be able to place its code on a free sale basis on Air NZ operated trans-Tasman services (on routes that Virgin Australia does not operate). Virgin Australia will market and resupply trans-Tasman itineraries involving VA\*NZ services from a point of sale Australia to New Zealand (including one way services from Australia and return services from Australia). This includes trans-Tasman itineraries comprising standalone VA\*NZ services (eg, SYD-AKL) and trans-Tasman itineraries comprising VA\*NZ services with a connecting VA coded Australian domestic segment (eg, CBR-SYD-ALK);
- These codeshare rights are provided on the condition that Air NZ specifies the public fares at which Virgin Australia may market and resupply these services;
- Virgin Australia and Air NZ can jointly discuss and agree upon fare rules and conditions associated with the trans-Tasman itineraries involving VA\*NZ services;

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- Virgin Australia and Air NZ can jointly identify, target, approach and price offers and discounts to corporate and SME customers for trans-Tasman itineraries involving VA\*NZ services;
- Eligible Velocity Frequent Flyer members can access Air NZ's international lounges when travelling on VA\*NZ services;
- Velocity Frequent Flyer members can earn Velocity Points and Status Credits when travelling on VA\*NZ trans-Tasman services;
- Velocity Frequent Flyer members can redeem their Velocity Points for travel on VA\*NZ trans-Tasman services;
- Virgin Australia and Air NZ will continue to provide reciprocal network-wide staff leisure, business and duty travel arrangements; and
- Virgin Australia and Air NZ can cooperate and engage in activities required to facilitate any of the matters referred to above.

The Implementing Agreements are conditional on the codeshare agreement between Air NZ and Virgin Australia **[RESTRICTION OF PUBLICATION CLAIMED]**

The Proposed Conduct excludes Queenstown services where Virgin Australia operates its own trans-Tasman services and would cease to apply in relation to a trans-Tasman route if Virgin Australia commences:

- operating its own services in competition with Air NZ on that route; or
- marketing VA coded services in competition with Air NZ where Virgin Australia has pricing control on that route.

For further information, please see section 2 of the Submission.

### **3.2 the relevant provisions of the *Competition and Consumer Act 2010 (Cth)* (the Act) which might apply to the proposed conduct:**

The below provisions of the Act may apply to the Proposed Conduct:

- resale price maintenance (s 48) (and acts constituting engaging in resale price maintenance (s 96)); and
- cartel conduct (Division 1 of Part IV).

### **3.3 the rationale for the proposed conduct**

Please see section 4 of the Submission.

### **3.4 the term of authorisation sought and reasons for seeking this period. By default, the ACCC will assume you are seeking authorisation for five years. If a different period is being sought, please specify and explain why**

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The Applicants seek authorisation for a period of 5 years.

In addition, the Applicants seek interim authorisation by mid-February 2024 to allow sufficient lead time for the June 2024 launch date to be met.

For further information, please see section 3 of the Submission.

- 4 Provide documents submitted to the applicant's board or prepared by or for the applicant's senior management for purposes of assessing or making a decision in relation to the proposed conduct and any minutes or record of the decision made.**

The Applicants have provided relevant documents to the Commission as part of this application.

- 5 Provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted.**

**Airlines providing domestic and trans-Tasman passenger services:** As suppliers of services directly competing with the Applicants, this class of persons may be impacted by the introduction of VA coded trans-Tasman services between Australia and New Zealand and the enhanced network and loyalty offering able to be provided by Virgin Australia.

**Domestic and trans-Tasman travellers:** As acquirers of the services to be provided by virtue of the Proposed Conduct, this class of persons may be impacted through increased choice, competition and convenience.

**Airline loyalty program partners or potential partners:** This class of persons may be impacted by the more competitive loyalty offering available under the Proposed Conduct.

## **Market information and concentration**

- 6 Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).**

Virgin Australia provides domestic and international passenger transport services and operates services to 32 domestic Australian destinations and 6 short haul international destinations (including Bali, Fiji, Queenstown, Samoa, Tokyo and Vanuatu). Virgin Australia provides VA coded services to 115 international destinations through its codeshare partnerships with Singapore Airlines, United Airlines, ANA – All Nippon Airways, Air Canada and Qatar Airways. Air New Zealand operates domestic New Zealand services and flights to New Zealand, the Pacific, Asia and North America.

Virgin Australia currently has an interline agreement with Air NZ and operates trans-Tasman services between SYD/MEL/BNE and Queenstown. It does not operate or codeshare on any other trans-Tasman flights and does not operate New Zealand domestic services.

Air NZ flies trans-Tasman services to nine destinations in Australia on the following routes:

- Auckland to: Sydney, Melbourne, Brisbane, Perth, the Gold Coast, Cairns, the Sunshine Coast (seasonally), Adelaide and Hobart;
- Wellington to: Brisbane, Melbourne and Sydney;



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- Christchurch to: Brisbane, Melbourne, Sydney, and the Gold Coast; and
- Queenstown to: Melbourne and Sydney.

Air NZ has a traditional arms-length codeshare agreement with Qantas for NZ code to be placed on certain Australian domestic routes.

The Proposed Conduct only relates to itineraries involving non-overlapping trans-Tasman services (e.g., trans-Tasman routes that Air NZ services, excluding Queenstown). The Proposed Conduct would cease to apply in relation to a trans-Tasman route if Virgin Australia commences operating its own services in competition with Air NZ on that route or not operating but marketing VA coded services in competition with Air NZ where Virgin Australia has pricing control on that route.

### **7 Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.**

The relevant industry is the Australian aviation industry, about which the ACCC has extensive knowledge and experience. For further information, please see section 6 of the Submission.

### **8 In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.**

Overlapping trans-Tasman routes are excluded from the Proposed Conduct (whether that be overlapping by operation or marketing of services). Virgin Australia does not currently offer trans-Tasman services outside of services to/from Queenstown. Queenstown services are excluded from the Proposed Conduct.

The Applicants have, however provided trans-Tasman share data as part of the description of the competitive landscape. Please see section 6 of the Submission.

### **9 In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously.**

Please see sections 5 and 6 of the Submission.

## **Public benefit**

### **10 Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.**

Please see section 7 of the Submission.

## **Public detriment (including likely competitive effects)**

### **11 Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.**

The Proposed Conduct does not result in any competitive detriment. Please see section 8 of the Submission.

## **Contact details of relevant market participants**

- 12 Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers, trade or industry associations and regulators.**

The ACCC is familiar with the participants in the relevant markets.

## **Additional information**

- 13 Provide any other information or documents you consider relevant to the ACCC's assessment of the application.**

Please see the Submission.

## Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).



Signature of authorised person

Partner, Gilbert + Tobin

Office held

Louise Klamka

(Print) Name of authorised person

This 17<sup>th</sup> day of November 2023

*Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.*

## Declaration by Applicant(s)

Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant.

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

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Signature of authorised person

**Chief Transformation & Alliances Officer | Air New Zealand**

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Office held

**Michael Williams**

(Print) Name of authorised person

This 17<sup>th</sup> day of November 2023.

*Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.*



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

Submission to ACCC in support of application for authorisation

17 November 2023

<b>Contents</b>		<b>Page</b>
	Executive summary	1
1	The Applicants	1
	1.1 Application by Virgin Australia and Air New Zealand	1
	1.2 Virgin Australia	1
	1.3 Air New Zealand	2
2	The Proposed Conduct	3
	2.1 Proposed Conduct	3
	2.2 Scope of the Proposed Conduct	3
3	Request for authorisation	4
	3.1 Request for authorisation	4
	3.2 Request for interim authorisation	4
4	Commercial rationale	5
5	Counterfactual	6
	5.1 The relevant counterfactual is the status quo	6
	5.2 [RESTRICTION OF PUBLICATION CLAIMED]	6
	5.3 [RESTRICTION OF PUBLICATION CLAIMED]	6
	5.4 No other commercially viable partner could achieve the same public benefits	6
6	Relevant markets for assessment of Proposed Conduct	6
	6.1 The Tasman	6
	6.2 Significance of trans-Tasman travel	6
	6.3 Competitors providing trans-Tasman air passenger services	8
	6.4 Low barriers to entry and competitive landscape	11
	6.5 Corporate travel	14
7	Material public benefits	16
	7.1 Authorisation allows Virgin Australia to quickly and efficiently fill a gap in its network offering	16
	7.2 Authorisation would promote competition across various markets	16

**PUBLIC REGISTER VERSION Restriction of publication claimed in part**

7.3	Authorisation enables increased customer choice and convenience	18
7.4	Authorisation would allow Velocity members to enjoy an improved offer	18
8	No competitive detriment	19
9	Conclusion	20

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## Executive summary

### Application for 5 year authorisation with interim authorisation by mid-February

Virgin Australia and Air New Zealand (together, the **Applicants**) seek authorisation for 5 years to make and give effect to a Commercial Framework Agreement, Codeshare Agreement, and various related agreements (the **Proposed Conduct**).

New Zealand is one of Australia's largest international markets and a key business and leisure destination. However, Virgin Australia currently only operates limited trans-Tasman services – to/from one New Zealand destination – Queenstown. The Proposed Conduct will enable Virgin Australia to efficiently fill this gap in its current network by offering VA coded trans-Tasman services between Australia and New Zealand.

The Proposed Conduct will enhance Virgin Australia's ability to more effectively compete in various markets. It will provide immediate benefits to Australian travellers, including the 11 million+ Velocity members who will be able to access VA coded, Air New Zealand (**Air NZ**) operated trans-Tasman services across Air NZ's broad and deep trans-Tasman network, while earning and redeeming frequent flyer points on VA coded flights. Where eligible, passengers will access Air NZ's seven international lounges across Australia and New Zealand.

As there is no competitive detriment associated with the Proposed Conduct, and the Proposed Conduct will deliver clear public benefits, there is no regulatory risk to a five-year authorisation period.

From June 2024, Virgin Australia intends to commence marketing trans-Tasman itineraries involving Air NZ operated trans-Tasman services with a VA\* code (**VA\*NZ trans-Tasman services**). Air NZ will specify the price at which these itineraries can be marketed and resold by Virgin Australia. The Applicants will also cooperate to jointly provide offers to corporate and Small and Medium Enterprise (**SME**) customers.

To enable this to occur, the Applicants request that the ACCC grant interim authorisation for the Proposed Conduct by mid-February to allow the necessary planning, discussions and coordination, as well as forward selling of services.

### The Proposed Conduct

Virgin Australia proposes to enter into a unilateral codeshare agreement whereby it will market and resell under VA code trans-Tasman services operated by Air NZ (excluding Queenstown services). To ensure that the Applicants' commercial incentives are aligned, public fares for the resupply of trans-Tasman itineraries involving these codeshare services point of sale Australia will be determined by Air NZ. In the absence of this codeshare pricing model, Air NZ, (which receives no offsetting benefit by way of a reciprocal codeshare), would have no incentive to allow Virgin Australia to market its services, as it would be concerned that it may be undercut and lose revenue despite its exposure to the risk and cost of operating the services. It is only through the proposed pricing model that Air NZ is willing to offer Virgin Australia access to special prorates that will enable it to offer codeshare services at fares competitive with the rest of the market. Without it, Air NZ would not make the codeshare available to Virgin Australia at all.



As part of the Proposed Conduct, and on condition that the Codeshare Agreement is in effect:

- Velocity members will be able to earn and redeem Velocity Frequent Flyer Points and accrue status credits on VA\*NZ trans-Tasman services;
- Eligible passengers will be able to access Air NZ's seven international lounges across Australia and New Zealand located at Sydney, Melbourne, Brisbane, Perth, Auckland, Christchurch and Wellington when travelling on VA\* NZ trans-Tasman services;
- The Applicants will cooperate in relation to jointly providing offers to corporate and SME customers, including by jointly identifying target customers, considering how best to approach, attract and retain customers, and making discounts on trans-Tasman itineraries involving VA\*NZ trans-Tasman services available to Virgin Australia's corporate and SME customers; and
- The Applicants will continue to provide reciprocal network-wide staff leisure, business and duty travel arrangements.

The Proposed Conduct covers direct services between Australia and New Zealand and indirect services between Australia and New Zealand involving a domestic Australian segment. Flights to or from Queenstown are excluded from the scope of the Proposed Conduct as Virgin Australia operates competing Queenstown services on its own aircraft. To the extent that Virgin Australia commences operations on, or has pricing control over, any other overlapping trans-Tasman routes in the future, these would also be excluded from the Proposed Conduct.

**Pro-competitive  
commercial  
Rationale**

Australia records more bidirectional international passenger traffic with New Zealand than any other country.

Virgin Australia does not currently have a trans-Tasman offer beyond services to and from Queenstown, which is a unique New Zealand destination in terms of demand and traffic mix, as outlined further below. **[RESTRICTION OF PUBLICATION CLAIMED]** This leaves Virgin Australia with a gap in its network offering which has implications not only for the sale of individual trans-Tasman services but also for Virgin Australia's domestic loyalty proposition and its ability to compete for domestic services and for higher yield corporate and SME customers.

The Proposed Conduct enables Virgin Australia to quickly and efficiently fill this network gap and offer value-added benefits to Velocity customers:

- on routes where it does not operate **[RESTRICTION OF PUBLICATION CLAIMED]**; and
- with a depth that can better compete with other providers, especially where frequency and schedule flexibility is of importance.

For Air NZ, the Proposed Conduct:

- facilitates access to additional distribution channels for its trans-Tasman services, including to Australian customers where Air NZ does not have as strong a marketing and sales presence; and
- drives increased passenger numbers (including higher yield passengers such as corporates and SME customers) onto its trans-Tasman and

domestic services, improving the efficiency and sustainability of its flight operations.

**The Proposed Conduct provides enhanced services and competition compared with the counterfactual**

The most likely counterfactual is the status quo with:

- Virgin Australia unable to:
  - **[RESTRICTION OF PUBLICATION CLAIMED]**
  - **[RESTRICTION OF PUBLICATION CLAIMED]**; or
  - provide relevant international lounge access,

impacting its ability to compete for Australian domestic travellers through access to trans-Tasman traffic feed, achieved through the enhanced scope of the loyalty program and its improved ability to attract the higher yielding corporate and SME customers to increase the sustainability of its operations; and

- Air NZ unable to access Virgin Australia's distribution channels and Australian marketing presence and strength to drive passenger numbers onto its trans-Tasman and domestic New Zealand services and attract a greater share of the higher yield corporate and SME customers onto its services.

**[RESTRICTION OF PUBLICATION CLAIMED]**

Nor does the Proposed Conduct act to delay or disincentivise Virgin Australia's entry onto additional trans-Tasman routes. The Proposed Conduct enables Virgin Australia to offer its customers additional services, **[RESTRICTION OF PUBLICATION CLAIMED]**

With any other partner, Virgin Australia could not efficiently get access to the same breadth or depth of trans-Tasman services to effectively compete with Qantas.

**Material public benefits**

Authorisation will give rise to material public benefits, without any detriment. It will:

- provide Virgin Australia's customers with:
  - access to VA coded trans-Tasman services via Air NZ's deep and broad trans-Tasman offering (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 NZ where Virgin Australia does not itself operate services; and
  - the ability to utilise Air NZ's seven international lounges in Australia and New Zealand when flying on VA coded flights operated by Air NZ, 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 in various markets, 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 and sustainability of Air NZ's flight operations.

**Pro-competitive  
Effects – No  
Competitive  
Detriment**

The Proposed Conduct is pro-competitive in line with its commercial rationale of:

- providing Virgin Australia's customers VA coded services to one of Australia's largest international markets;
- efficiently and effectively allowing Virgin Australia to offer a trans-Tasman network with the scope and frequency necessary to bring viable competition for trans-Tasman services and domestic Australian services, including by increasing its share of higher yield corporate and SME customers; and
- using Virgin Australia's distribution channels and Australian marketing presence and strength to drive incremental passenger numbers onto Air NZ's trans-Tasman and domestic services and attract a greater share of the higher yield corporate and SME customers onto its services.

The Proposed Conduct does not result in any competitive detriment because:

- It does not remove any competition, services or benefits that would be available without the Proposed Conduct:
  - Virgin Australia does not currently offer trans-Tasman services outside of services to/from Queenstown **[RESTRICTION OF PUBLICATION CLAIMED]**
  - **[RESTRICTION OF PUBLICATION CLAIMED]** the other commercial agreements and benefits are conditional on, and flow from, the existence of codeshare arrangement with the proposed pricing model; and
  - 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.
- Overlapping trans-Tasman routes are excluded from the Proposed Conduct. The Proposed Conduct does not apply to Queenstown services and would cease to apply in relation to a trans-Tasman route if Virgin Australia commences operating or marketing and pricing services in competition with Air NZ on that route.
- 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, such as:
  - Qantas/Jetstar, 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-19 pandemic;

- Emirates, which operates an A380 super jumbo between Sydney and Christchurch and has an alliance on the trans-Tasman with Qantas;
  - LATAM, which operates between Sydney and Auckland;
  - Air Asia X, which operates between Sydney and Auckland;
  - Batik Air, which operates between Perth and Auckland; and
  - China Airlines, which operates between Brisbane and Auckland; and
  - China Eastern, which operates between Sydney and Auckland.
- The Proposed Conduct does not provide an increased incentive or ability to raise airfares and / or reduce service quality on trans-Tasman services. In the event of any attempts to do so, other carriers are well placed to increase frequency or to enter and provide new services thwarting such attempts.



## 1 The Applicants

### 1.1 Application by Virgin Australia and Air New Zealand

This application is made by:

- (a) Virgin Australia Airlines Pty Ltd ABN 36 090 670 965, on behalf of itself and its related bodies corporate, and Virgin Australia International Airlines Pty Ltd ABN 63 125 580 823 and its related bodies corporate (together, **Virgin Australia**); and
- (b) Air New Zealand Limited (company number 104799 and ABN 70 000 312 685) (**Air NZ**).

### 1.2 Virgin Australia

Virgin Australia commenced operations in Australia in August 2000 as Virgin Blue and currently operates a network of domestic services and limited short-haul international services. Virgin Australia is headquartered in Brisbane.

Since 2000, Virgin Australia has evolved, setting its sights on becoming Australia's most loved airline, regarded for its great value, award-winning customer service, and supported by its loyalty program, Velocity Frequent Flyer.

In 2004, Pacific Blue (which was then part of the Virgin Blue Group) launched trans-Tasman and domestic New Zealand services. However, Pacific Blue was constrained in its ability to compete for higher yield corporate passengers and simply could not sustainably compete with the frequency, schedule and capacity offering of other airlines. Pacific Blue's trans-Tasman services were loss-making.

In order to better support these trans-Tasman services, provide feeder traffic for domestic Australian services and improve the network and service offering for customers, Virgin Blue sought out an alliance partner. In 2010, Virgin Blue and Air NZ were granted ACCC authorisation of an integrated alliance allowing metal neutral codeshare and full price, operation and schedule optimisation with frequent flyer and lounge benefits allowing each party to capitalise on the strengths of the other to overcome the challenges each faced competing on the Tasman (the Alliance).

In October 2018 the Alliance was terminated, following Air NZ's announcement in April 2018 that it intended to terminate the Alliance and would commence a codeshare agreement with Qantas with NZ\*QF on certain domestic Australian services and QF\*NZ on certain domestic New Zealand services.<sup>1</sup> The domestic codeshare arrangement between Air NZ and Qantas continues. It does not extend to trans-Tasman services.

In March 2020, Virgin Australia suspended scheduled trans-Tasman services due to COVID-19 and following an extended period of poor performance of these services.

In April 2020, Virgin Australia was placed into administration following significant impacts to its business related to the COVID-19 pandemic. On 17 November 2020, it was purchased and de-listed by Bain Capital, a private equity firm based in the United States. As part of the administration process, Virgin Australia divested its widebody aircraft

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<sup>1</sup> Under the Air New Zealand codeshare agreement with Qantas, Air New Zealand is able to add its "NZ" code onto Qantas operated services in domestic Australia but only where those services are connecting with an Air New Zealand operated trans-Tasman service. Similarly, Qantas is able to add its "QF" code onto Air New Zealand operated services in domestic New Zealand but only where those services are connecting with a Qantas operated trans-Tasman service (or selected Jetstar Tasman services where the passenger is travelling on a Qantas ticket).

including Boeing 777s and Airbus A330s.<sup>2</sup> As at 10 November 2023, Virgin Australia offers air passenger services to 38 locations across Australia, Asia and the Pacific on a fleet of more than 97 narrowbody aircraft.

Quarantine free travel from Australia to New Zealand resumed on 13 April 2022.

On 2 November 2022, Virgin Australia resumed flights to Queenstown (ZQN).<sup>3</sup> As at November 2023, Virgin Australia operates daily return services to Queenstown from Sydney and Brisbane and four return services per week between Queenstown and Melbourne.<sup>4</sup> Virgin Australia does not operate any other trans-Tasman services.

### **1.3 Air New Zealand**

Air NZ is New Zealand's national flag carrier. It commenced operations in 1940 on trans-Tasman routes under the name of Tasman Empire Airways Limited, and currently operates a global network of passenger and cargo services. Prior to COVID-19, Air NZ flew more than 17 million passengers every year, with 3,400 flights per week. Air NZ continues to recover post COVID-19 and in the 2023 financial year, Air NZ flew nearly 16 million passengers, up approximately 104% from the year prior. As at March 2023, Air NZ operated 105 aircraft (with another 12 on order).<sup>5</sup>

The New Zealand Government owns approximately 52% of Air NZ, with the remainder owned by private investors. Air NZ is listed on the New Zealand and Australian stock exchanges and is a member of Star Alliance.

Air NZ operates a loyalty program for customers known as Airpoints. Members earn by travelling on Air NZ and spending at retail partners. Flights also earn member Status Points, for VIP benefits in the air and on the ground. Airpoints has driven strong membership growth with approximately 3.5 million members participating in the program.

Air NZ operates flights within New Zealand and to destinations in the Pacific, Asia and North America. Air NZ has a strong Pacific Rim strategy, with direct flights to all of New Zealand's major Pacific Rim partners. Its revenue-sharing airline alliances expand coverage further with alliance partners across key international markets, including the United States, Singapore, Hong Kong and China. This gives Air NZ's customers simple, seamless travel across the globe.

Air NZ flies trans-Tasman services to nine destinations in Australia on the following routes:

- Auckland to: Sydney, Melbourne, Brisbane, Perth, the Gold Coast, Cairns, the Sunshine Coast (seasonally), Adelaide and Hobart;
- Wellington to: Brisbane, Melbourne and Sydney;
- Christchurch to: Brisbane, Melbourne, Sydney, and the Gold Coast; and
- Queenstown to: Melbourne and Sydney.

As noted, Air NZ has a traditional arms-length codeshare agreement with Qantas for NZ code to be placed on certain Australian domestic routes and QF code to be placed on

<sup>2</sup> Deloitte, "Virgin Australia Holdings Limited and subsidiaries: insolvency case information" ([link](#)); Virgin Australia, "Virgin Australia Holdings Limited – VAH (Administrators Appointed): Outcome of second meeting of creditors" (ASX release, 4 September 2020) ([link](#)).

<sup>3</sup> Virgin Australia Newsroom, "Kia Ora! Virgin Australia returns to Queenstown" (2 November 2022) ([link](#)).

<sup>4</sup> Number of frequencies varies depending on time of year.

<sup>5</sup> Air New Zealand Group Fleet Disposition as at 31 March 2023.

certain New Zealand domestic routes. This codeshare does not apply to the trans-Tasman.

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## 2 The Proposed Conduct

### 2.1 Proposed Conduct

To make and give effect to a Commercial Framework Agreement and various related, inter-conditional agreements (**Implementing Agreements**) under which:

- Virgin Australia will be able to place its code on a free sale basis on Air NZ operated trans-Tasman services (on routes that Virgin Australia does not operate). Virgin Australia will market and resupply trans-Tasman itineraries involving VA\*NZ services from a point of sale Australia to New Zealand (including one way services from Australia and return services from Australia)<sup>6</sup>. This includes trans-Tasman itineraries comprising standalone VA\*NZ services (e.g., SYD-AKL) and trans-Tasman itineraries comprising VA\*NZ services with a connecting VA coded Australian domestic segment (e.g., CBR-SYD-ALK);
- These codeshare rights are provided on the condition that Air NZ specifies the public fares at which Virgin Australia may market and resupply these services;
- Virgin Australia and Air NZ can jointly discuss and agree upon fare rules and conditions associated with the trans-Tasman itineraries involving VA\*NZ services;
- Virgin Australia and Air NZ can jointly identify, target, approach and price offers and discounts to corporate and SME customers for trans-Tasman itineraries involving VA\*NZ services;
- Eligible Velocity Frequent Flyer members can access Air NZ's international lounges when travelling on VA\*NZ services and accrue status credits;
- Velocity Frequent Flyer members can earn Velocity Points when travelling on VA\*NZ trans-Tasman services;
- Velocity Frequent Flyer members can redeem their Velocity Points for travel on VA\*NZ trans-Tasman services;
- Virgin Australia and Air NZ will continue to provide reciprocal network-wide staff leisure, business and duty travel arrangements; and
- Virgin Australia and Air NZ can cooperate and engage in activities required to facilitate any of the matters referred to above.

The Implementing Agreements are conditional on the codeshare agreement between Air NZ and Virgin Australia **[RESTRICTION OF PUBLICATION CLAIMED]**

### 2.2 Scope of the Proposed Conduct

The Proposed Conduct will not apply on routes where Virgin Australia operates its own trans-Tasman services i.e.:

- Melbourne (MEL) – Queenstown (ZQN);

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<sup>6</sup> We note that initially this will only apply to itineraries sold point of sale Australia and point of origin Australia.



- Sydney (SYD) – Queenstown (ZQN); or
- Brisbane (BNE) – Queenstown (ZQN).

The Proposed Conduct would cease to apply in relation to a trans-Tasman route if Virgin Australia commences:

- operating its own services in competition with Air NZ on that route; or
- marketing VA coded services in competition with Air NZ where Virgin Australia has pricing control on that route.

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## **3 Request for authorisation**

### **3.1 Request for authorisation**

The Applicants seek authorisation for 5 years on the basis that:

- the Proposed Conduct will not result in any competitive detriment; and
- the Proposed Conduct will result in significant public benefits which outweigh any potential detriment.

### **3.2 Request for interim authorisation**

From June 2024 Virgin Australia intends to commence marketing trans-Tasman itineraries involving VA\*NZ trans-Tasman services with Air NZ specified pricing and joint provision of offers to corporate and SME customers.

To enable this to occur, the Applicants request that the ACCC grant interim authorisation by mid-February 2024 to allow the necessary planning, discussions and coordination to take place such that this “go-live” date can be met. Sufficient lead time is necessary to allow commercial discussions on the corporate and SME customer models, technical setup of codeshare and fare filing of trans-Tasman itineraries involving VA\*NZ, website development, testing and marketing activities.

It is commercially important that the codeshare services and joint targeting and provision of offers to corporate and SME customers commence at this time so that Virgin Australia can fill the gap in its network offering as soon as possible. This will allow Virgin Australia to better compete in the relevant markets, take advantage of any remaining pent-up demand for trans-Tasman travel and be in a position to offer services in time for peak travel periods including School Holidays in July and September 2024 & Christmas/New Year 24/25 and corporate and SME contracting for the financial year 24/25, noting most medium and large corporates typically negotiate their travel arrangements around June each year. If Virgin Australia delays the launch and forward selling of these services, it will suffer detriment as it loses the opportunity to make the most of these demand windows to attract customers and in particular higher yield customers.

The Applicants consider interim authorisation is appropriate because:

- interim authorisation will not permanently alter the competitive dynamics of the market or inhibit the market from returning to its pre-interim-authorisation state if final authorisation is later denied;
- there is some urgency to enable the Proposed Conduct to be offered to Australian consumers in the near term given the current market conditions (including post-COVID-19 recovery) and for the reasons explained above and in this submission;

- there is no possible harm to other parties (such as customers and competitors) if a request for interim authorisation is granted;
- the public benefits relied on are such that the ACCC can assess these to a real extent at the time of considering the request for interim authorisation, particularly given the ACCC's substantial knowledge and experience of international airline markets and in particular the Tasman market; and
- the ACCC is very familiar with the relevant markets and the operations of the Applicants, giving it the practical opportunity to consider the effects of the Proposed Conduct within the requested time frame.

Given the lack of competitive overlap between the parties and the nature of the Proposed Conduct, there can be no risk with granting interim authorisation to enable the Applicants to commence planning and forward selling of services.

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## 4 Commercial rationale

New Zealand is one of Australia's largest international travel markets and a key business and leisure destination. For this reason, it is also important in the context of the broader Australasian aviation market as customers value the ability to travel there, earn and redeem loyalty points on that travel, and often require this option as part of corporate travel needs.

Virgin Australia does not currently have a trans-Tasman offer beyond services to and from Queenstown. **[RESTRICTION OF PUBLICATION CLAIMED]** This leaves Virgin Australia with a gap in its network offering which has implications not only for the sale of individual trans-Tasman services but for Virgin Australia's domestic loyalty proposition and its ability to effectively compete for domestic services and higher yield corporate and SME customers.

SME and high frequency travellers provide important revenue for airlines and increase the sustainability of providing air passenger services. No matter how good Virgin Australia's domestic offering is, it faces limitations in attracting Australian corporate and SME clients and high frequency travellers if it cannot offer a competitive network which includes the trans-Tasman, and other features attractive to such passengers, such as frequency, the ability to earn and redeem loyalty points and lounge access. Where the schedule and associated benefits are not available on routes a high frequency traveller considers important, they may choose to avoid utilising that airline altogether even where more competitive fares are offered. This dampens the ability of Virgin Australia to effectively compete for domestic and international services.

The Proposed Conduct enables Virgin Australia to quickly and efficiently fill this network gap and offer value-added benefits to Velocity customers:

- on routes where it does not operate **[RESTRICTION OF PUBLICATION CLAIMED]**; and
- with a depth that can better compete with Qantas especially where frequency and schedule flexibility is of importance.

For Air NZ, the Proposed Conduct:

- facilitates access to additional distribution channels for its trans-Tasman services including to Australian customers where Air NZ does not have as strong a marketing and sales presence; and



- drives increased passenger numbers (including higher yield passengers such as corporates and SME customers) onto its trans-Tasman services and likely also onto its domestic services, improving the efficiency and sustainability of its flight operations.

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## **5 Counterfactual**

### **5.1 The relevant counterfactual is the status quo**

The Proposed Conduct allows VA coded services and flow-on benefits which would otherwise not exist. **[RESTRICTION OF PUBLICATION CLAIMED]** Nor does it act to delay or disincentivise Virgin Australia's entry.

### **5.2 [RESTRICTION OF PUBLICATION CLAIMED]**

### **5.3 [RESTRICTION OF PUBLICATION CLAIMED]**

### **5.4 No other commercially viable partner could achieve the same public benefits**

With any other partner, Virgin Australia could not efficiently get access to the same breadth or depth of already existing trans-Tasman services to effectively compete with Qantas, which means the enhanced network access and accompanying value added benefits are only available to Virgin Australia and its customers through the Proposed Conduct.

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## **6 Relevant markets for assessment of Proposed Conduct**

### **6.1 The Tasman**

Trans-Tasman passenger air services include services between any point in Australia and any point in New Zealand. More than 5 million passengers were uplifted or discharged to / from New Zealand in the twelve months to April 2023.<sup>7</sup> For calendar 2019 (prior to the Covid-19 pandemic), this was 7.27 million.<sup>8</sup> As a result, the Trans-Tasman is a highly competitive market.

The competitive dynamics of the Tasman market are characterised by many operators,<sup>9</sup> and the availability of new entry and expansion due to the Open Skies agreement and fifth freedom rights available for international carriers.

### **6.2 Significance of trans-Tasman travel**

For the month of July 2023, New Zealand was Australia's second largest destination for outbound international travel and biggest source of inbound travel, as illustrated in Figure 1 and Figure 2 below.

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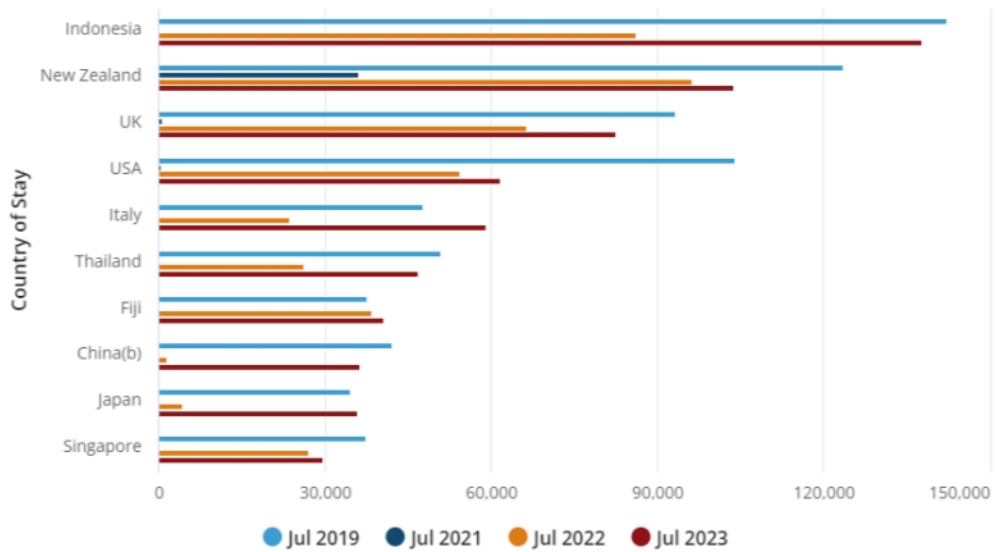
<sup>7</sup> BITRE, "International airline activity, April 2023", Table IV – International Passengers by Uplift / Discharge Country ([link](#)).

<sup>8</sup> BITRE, "Aviation: International airline activity 2019", Table III – International Passengers by Uplift / Discharge Country ([link](#)).

<sup>9</sup> For further detail, see 6.3 below.

**Figure 1 Top 10 countries visited for less than one year by Australian residents, July 2023**

13.2 Short-term resident returns, Australia - top 10 destination countries(a)

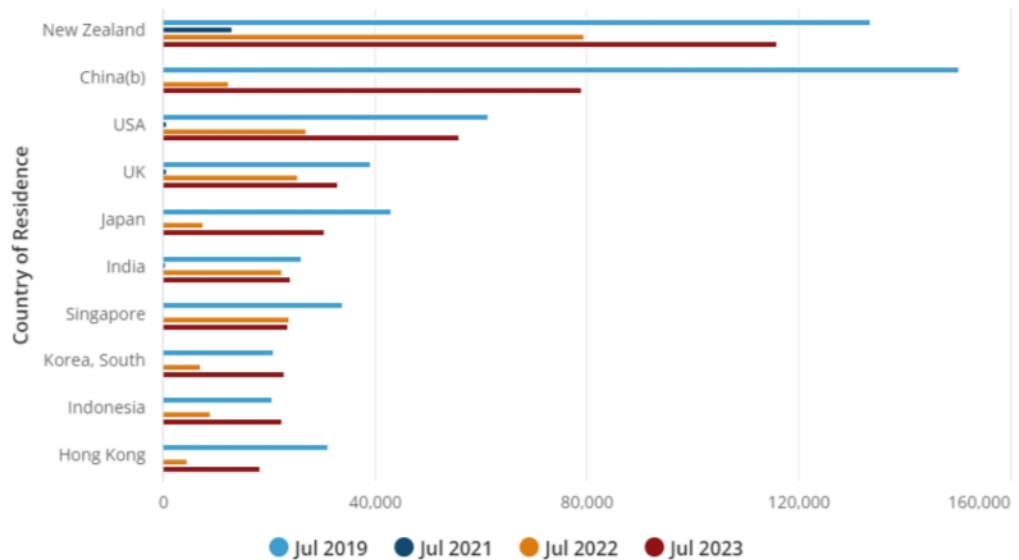


a. Top 10 source countries based on month ending July 2023.  
 b. Excludes SARs and Taiwan.

Source: ABS, "Overseas Arrivals and Departures, Australia", Graph 13.2 (Reference period August 2023) (link)

**Figure 2 Top 10 source countries of short-term visitor arrivals to Australia, July 2023**

2.2 Short-term visitor arrivals, Australia - top 10 source countries(a)



a. Top 10 source countries based on month ending July 2023.  
 b. Excludes SARs and Taiwan.

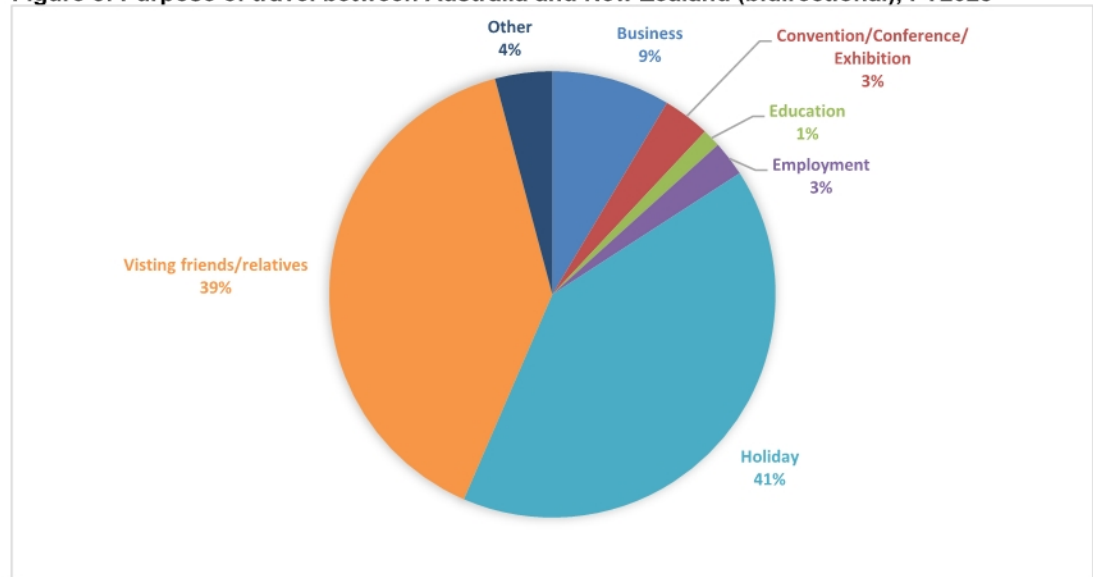
Source: ABS, "Overseas Arrivals and Departures, Australia", Graph 2.2 (Reference period July 2023) (link)

Although predominantly comprising leisure travellers including visiting friends and relatives (**VFR**) and holiday makers, New Zealand is also a key market for business travel which is important to winning corporate and SME customers with a large number of

businesses having operations in both Australia and New Zealand and looking for trans-Tasman travel options.

As shown in Figure 3, 9% of trans-Tasman travel is conducted for a business purpose with another 6% for employment or convention / conference / exhibition reasons adding to 15%.

**Figure 3: Purpose of travel between Australia and New Zealand (bidirectional), FY2023**



Source: Australian Government, "Overseas Arrivals and Departures", pivot table 2022-23 ([link](#))

The importance of trans-Tasman services is also reflected in Virgin Australia's customer survey data. **[RESTRICTION OF PUBLICATION CLAIMED]**

### 6.3 Competitors providing trans-Tasman air passenger services

Qantas, Jetstar and Air NZ are the three major, long-standing, carriers that offer the largest networks of services between Australia and New Zealand. Unlike Virgin Australia, the Qantas Group and Air NZ have well-established domestic New Zealand operations, which further support their Tasman services.

As discussed below, given connections between Australia and New Zealand for onward international travel and the liberal aviation policies of each country in respect of the trans-Tasman, trans-Tasman routes can be served by international operators using fifth freedom rights at marginal cost. As a result, fifth freedom carriers are an established feature of the Tasman market, with regular entry from international airlines. The current main fifth freedom carriers that operate trans-Tasman services include Emirates, which has an authorised alliance with Qantas including on the Tasman, LATAM, Air AsiaX, China Airlines, China Eastern and Batik Air Malaysia.

#### (a) Qantas

Qantas is Australia's largest domestic and international airline boasting a \$2.47 billion underlying profit before tax in its 2023 Annual Report.<sup>10</sup> The Qantas Group has over 60% of the domestic market share and estimates that it earned around 90% of domestic industry profits between FY15-FY19. Prior to the COVID-19 pandemic, the Qantas Group operated over 4,500 flights domestically and over 730 flights internationally each week.<sup>11</sup>

<sup>10</sup> Qantas, "Qantas Annual Report 2023", ([link](#)).

<sup>11</sup> ACCC, Qantas and Emirates authorisation, (Final Determination, 17 August 2023,) ([link](#)).

Qantas has 15.2 million Qantas frequent flyer members as at June 2023 and a significant “on ground” earn element as part of its frequent flyer offering, including major brands such as Woolworths, BP and Optus. The Qantas frequent flyer program is also linked to dozens of branded credit cards that are available to consumers, further strengthening the program in the Australian market.

Qantas has a large fleet with significant flexibility to respond to changes in market conditions. As at 30 June 2023, the Qantas Group fleet totalled 336 aircraft<sup>12</sup> more than three times Virgin Australia’s aircraft in operation.

Qantas offers an extensive trans-Tasman network and continues to increase its frequency and services. The Qantas Group also operates domestic New Zealand services. In July 2023, Qantas added more than 60 additional flights interstate and on the trans-Tasman in response to a high demand for trans-Tasman services.<sup>13</sup> While Qantas has an extensive trans-Tasman network as an operating carrier, the strength and reach of its network is further enhanced by its partnerships in the region, including its arm’s length codeshare with Air NZ on certain domestic New Zealand routes and its authorised alliance with Emirates which extends to the trans-Tasman. Qantas also has strong links with Australian-based travel agents which provides it with a substantial advantage over Air NZ in relation to Australian Point of Sale customers.

Qantas currently operates services between:

- Sydney/Melbourne/Brisbane and Auckland;
- Sydney/Melbourne and Wellington;
- Sydney/Melbourne/Brisbane and Queenstown; and
- Sydney/Melbourne/Brisbane and Christchurch.

Qantas also recently launched flights between Brisbane and Wellington in October 2023, utilising a smaller Embraer E190 aircraft that offers a cost advantage over larger jets.<sup>14</sup> The new service positions Qantas as the leading international carrier from Wellington, with 28 weekly services, compared to Air NZ’s 19 weekly services.<sup>15</sup>

In July 2023, the Qantas Group announced the procurement of its first Airbus A220 expected to arrive in Australia before the end of 2023. A total of seven A220s are expected to be in service by the end of 2024, building up to a total of 29 aircraft by 2027, refreshing its existing narrow body fleet. The A220 has the ability to fly between any city in Australia and further, with a range of over 6,000 kms. Comparatively, the Sydney to Christchurch route is a total of 2,164 kms. Therefore, the commencement of service with this aircraft paves the way for new domestic and short-haul international routes.<sup>16</sup> It is anticipated that Qantas may deploy these narrow-body fleet to increase capacity on trans-Tasman services.<sup>17</sup>

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<sup>12</sup> Qantas, “Qantas Annual Report 2023”, page 16.

<sup>13</sup> Zack Havard (Travel Weekly), “Qantas adds 60 new Trans-Tasman flights to meet ever rising demand for travel”, (7 July 2023) ([link](#)).

<sup>14</sup> This service is operated by Alliance Airlines.

<sup>15</sup> Aaron Bailey (Simple Flying), Aaron “Qantas Pushes Small Planes On Trans-Tasman Routes In A Bid To Out-Compete Air New Zealand” (3 July 2023) ([link](#)).

<sup>16</sup> Qantas, “Production is in full swing for Qantas’ first Airbus A220” (13 July 2023) ([link](#)).

<sup>17</sup> Aaron Bailey “A Look At Jetstar’s Trans-Tasman Operations”, (8 July 2023) ([link](#)).



(b) Jetstar

Jetstar is the low-cost carrier arm of the Qantas Group.

Jetstar operates an extensive international and trans-Tasman network and has become one of the busiest carriers between Australia and New Zealand.<sup>18</sup> Jetstar's international services were launched in 2005 with its first flight between Sydney and Christchurch. It now offers 10 routes across the Tasman. It also operates domestic New Zealand services.

As at July 2023, the capacity of Jetstar's trans-Tasman operations was already 10% above pre-pandemic levels.<sup>19</sup> This growth was seen after Jetstar started operating four weekly return flights between Auckland and Brisbane from March 2023, boosting the number of Jetstar routes linking Australia and New Zealand to 10, and added flights during periods of higher demand from July to October. In the next 12 months, Jetstar alone expects to fly up to one million passengers between Australia and New Zealand, which is higher than pre-COVID-19 passenger numbers.<sup>20</sup>

Jetstar currently operates direct services between:

- Sydney/Melbourne/Brisbane/Gold Coast and Auckland;
- Melbourne/Gold Coast and Christchurch;
- Gold Coast and Wellington; and
- Sydney/Melbourne/Gold Coast and Queenstown.

(c) Fifth freedom carriers

Whilst Qantas, Jetstar and Air NZ are the key carriers on the trans-Tasman, international operators also service the route:

- on 24 August 2023, Batik Air Malaysia commenced a service between Auckland and Perth, operating 6 times per week;<sup>21</sup>
- on 26 March 2023, Emirates recommenced services between Sydney and Christchurch;<sup>22</sup>
- in March 2022, Latam recommenced services between Sydney, Auckland and Santiago;<sup>23</sup>
- in October 2022, China Airlines restarted services between Auckland, Brisbane and Taipei, operating 5 times per week<sup>24</sup>;
- in November 2022, AirAsia X recommenced services between Kuala Lumpur, Sydney and Auckland.<sup>25</sup> AirAsia X has increased their market share compared to their pre-pandemic level; and

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> WA Government, "New Batik Air Malaysia connecting Auckland to Western Australia " (25 August 2023) ([link](#)).

<sup>22</sup> Emirates, "Emirates adds two more Australia services as demand soars" (23 January 2023) ([link](#)).

<sup>23</sup> Isabella Richards (Australian Aviation), "LATAM resumes flights to Australia, New Zealand" (18 February 2022) ([link](#)).

<sup>24</sup> Cassie Tannenberg (Karryon), "Flight Test: China Airlines CI54 Auckland – Brisbane" (6 February 2023) ([link](#)).

<sup>25</sup> AirAsia, "AirAsia X adds three new key routes to Australia and New Zealand" (18 July 2022) ([link](#)).



- on 6 November 2023, China Eastern commenced services between Hangzhou, Sydney and Auckland, operating 4 times per week.<sup>26</sup>

These carriers generally operate larger aircraft suited to long-haul flights (as these kinds of aircraft are usually used to operate from their hubs to Australia). For example, Emirates' services are operated on an Airbus A380, which is the largest of all passenger aircraft types and only operated by a handful of carriers globally. Given the large number of seats on these aircraft, these operators have a strong incentive to offer competitive airfares to increase load factors.

#### **6.4 Low barriers to entry and competitive landscape**

The competitive dynamics of the Tasman market are characterised by many operators, and the availability of new entry and expansion due to the Open Skies agreement and fifth freedom rights available for international carriers. The large proportion of leisure travellers on the Tasman intensifies Tasman fare competition, providing a strong incentive for operators to compete for higher yielding business travellers. The result is that the Tasman is also characterised by strong fare competition for both corporate and leisure travellers.

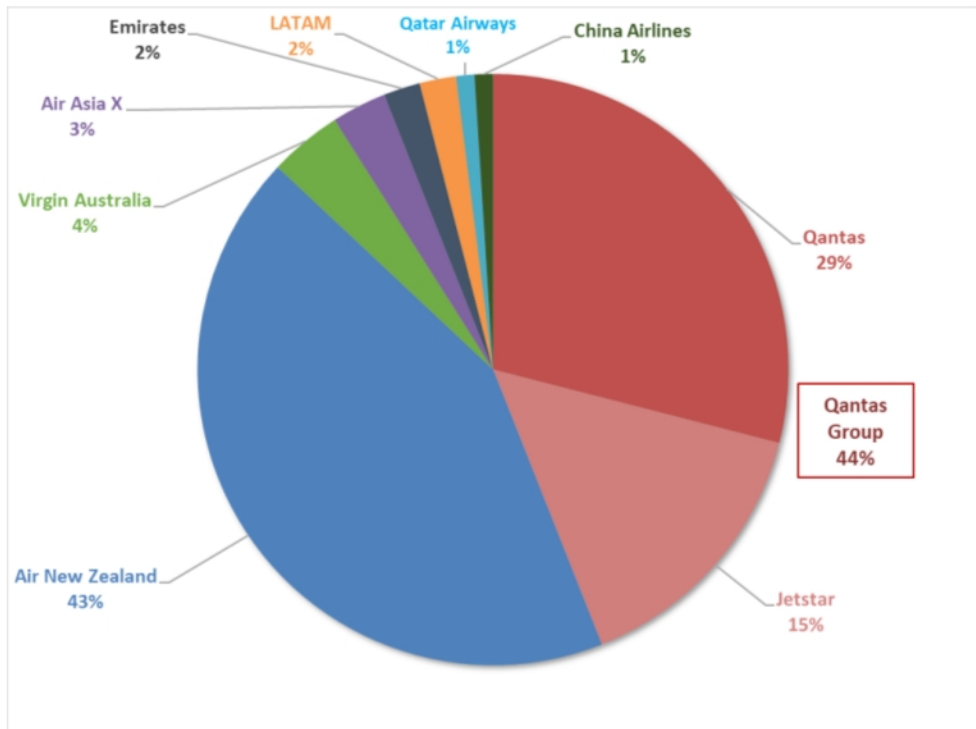
(a) Qantas Group is the largest provider in the competitive trans-Tasman market

Currently, the Qantas Group has the largest market share for trans-Tasman services by tickets sold and capacity. This can be seen in Figure 4 and 5 below. Air NZ has the next largest share.

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<sup>26</sup> Sydney Airport, "China Eastern Airlines fuelling recovery with two new routes" (6 November 2023) ([link](#)).

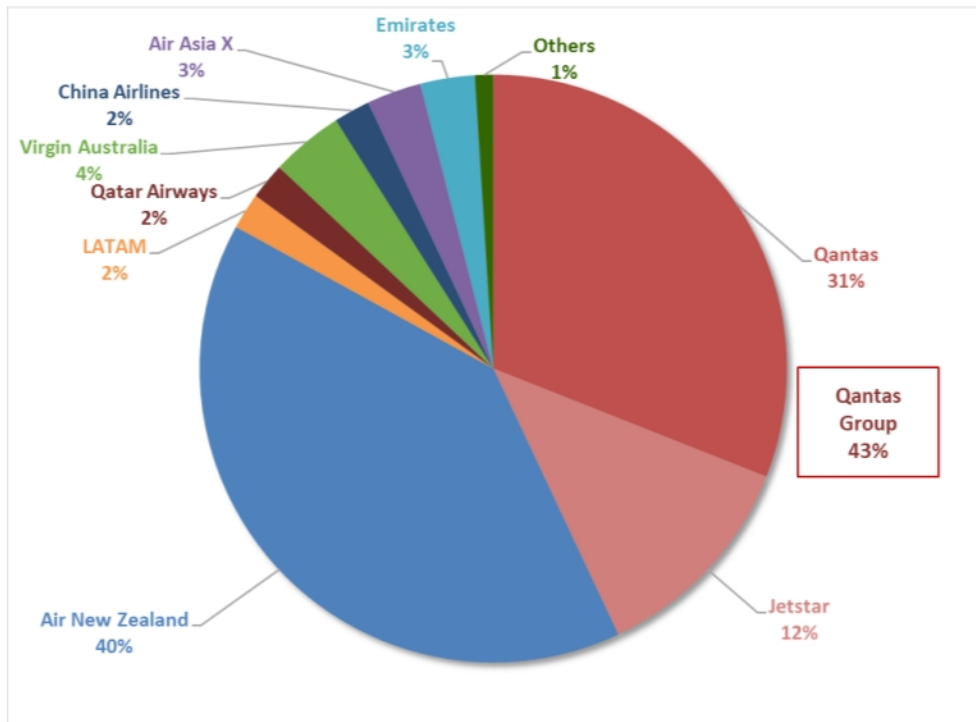
Figure 4: Passenger share on the trans-Tasman - January to June 2023



Source: IATA DDS Estimate

Notes: The data is based on estimates of tickets sold from any point of sale. Market shares are rounded to the nearest 1%.

Figure 5: Seat capacity shares on the trans-Tasman - 2023

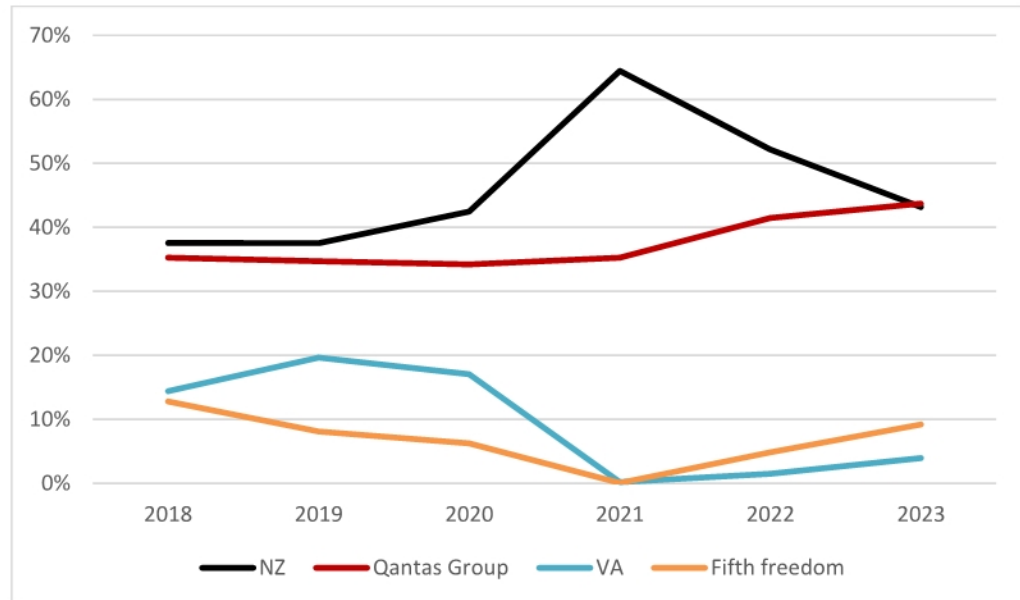


Source: Cirium Diio Mi data extracted on 7 August 2023

Notes: The data is based on seats by operating airline (including published schedules to 31 December 2023) [RESTRICTION OF PUBLICATION CLAIMED]

Historically, the Qantas Group (including Qantas and Jetstar) and Air NZ have been the key providers, with Qantas Groups' share increasing post COVID-19 pandemic. This can be seen in Figure 6 below. We also note that Qantas' alliance with Emirates, which includes Tasman services, was re-authorised by the ACCC on 17 August 2023 and the Associate Minister for Transport (NZ) on 28 March 2023.

**Figure 6: Trans-Tasman market shares based on ticket sales – 2017 to Q2 2023**



Source: IATA DDS

Notes: The data is based on tickets sold

(b) The Tasman is an open international airline market

The highly competitive nature of trans-Tasman services is underpinned by liberal aviation policies. In particular, the reciprocal 'Open Skies' agreement signed between Australia and New Zealand in 2002 and the operation of the trans-Tasman as a Single Aviation Market create low barriers to entry and expansion for both fifth freedom carriers and domestic Australian and New Zealand airlines.

The 'Open Skies' agreement relevantly allows:

- international airlines to operate unrestricted services across the Tasman and beyond to a third country (also known as **fifth freedom rights**);
- Australia and New Zealand owned airlines to operate unrestricted services across the Tasman and domestic services in both countries, subject to safety approvals;
- airlines to make commercial decisions on the number of services they operate and the destinations they serve without having to obtain government approval for their airfares, subject to Australia's legislative processes; and
- unlimited capacity entitlements between Australia and New Zealand.

Fifth freedom carriers scheduling and frequency decisions on trans-Tasman routes are driven by broader network considerations. Given the connections between Australia and New Zealand for onward international travel, fifth freedom carriers are able to service the trans-Tasman at marginal cost based on utilisation flying. As a result, a trans-Tasman route does not need to be profitable on a stand-alone fully costed basis for a fifth freedom carrier. This further increases the intensity of fare and service competition.

Fifth freedom carriers are an established feature in the Tasman market, with the following airlines currently providing trans-Tasman services: Emirates; Latam; China Airlines; China Eastern; AirAsia X; and Batik Air Malaysia.

The ease of new entry for fifth freedom carriers is also highlighted by the entry, exit, and expansion of various operators over time including, for example, Qatar's entry and post-COVID-19 recommencement of services between Adelaide and Auckland from April 2022 operating until 31 August 2023.<sup>27</sup>

The trans-Tasman operates as a Single Aviation Market, with Australian and New Zealand designated airlines able to set unlimited capacities and frequencies and having no restrictions on the routes they can operate to, within or beyond the two countries. Accordingly, any designated Australian or New Zealand airline (e.g., Air NZ, Virgin Australia, Qantas and Jetstar) may enter or expand on trans-Tasman routes. As set out above, Qantas has indicated that it will expand its services on the trans-Tasman, stating that it will use its new Airbus A220 aircraft to enter into "new short-haul international routes" (which will likely include new trans-Tasman services).<sup>28</sup>

## **6.5 Corporate travel**

(a) Trans-Tasman services are attractive to corporate clients

The trans-Tasman is a key market for corporate contract customers. Australia's broad bilateral trade and economic relationship with New Zealand has resulted in a large degree of integration between the Australian and New Zealand economies and business communities. Many businesses have operations in both Australia and New Zealand and there is a high degree of dual destination business travel. In particular:

- Auckland was the number one international travel destination for Australian business travellers in 2022 (this was also the case in 2019);<sup>29</sup> and
- As shown in Figure 3, 9% of trans-Tasman travel is conducted for a business purpose with another 6% for employment or convention / conference / exhibition reasons adding to 15%.

Based on Virgin Australia's corporate sales experience, the key drivers of airline choice for Australian corporate clients include:

- network reach and connections;
- frequency and convenient flight times;
- access to lounges;
- the existence of a competitive loyalty program for status and frequent flyer points and the ability to earn and burn across a broad network; and
- price and service.

The ability to service trans-Tasman routes is highly attractive for Australian businesses contracting with air service providers and can be a non-negotiable requirement for some businesses. Companies with high international travel needs often make their decision on a preferred domestic airline based on that airline's ability to meet their holistic travel

<sup>27</sup> These services ceased on 31 August 2023, with Qatar's commencement of non-stop services between Doha and Auckland. Matt Graham (Australian Frequent Flyer), "Qatar Airways to End Adelaide-Auckland Flights" (14 April 2023) ([link](#)).

<sup>28</sup> Qantas, "Production is in full swing for Qantas' first Airbus A220 (13 July 2023) ([link](#)).

<sup>29</sup> Corporate Traveller, "Auckland the number one international business travel destination in 2022" (24 January 2023) ([link](#)).



needs using either their own operations or with airline partners. Any significant gaps in coverage are typically detrimental to that airline's chances of winning the company's business. **[RESTRICTION OF PUBLICATION CLAIMED]**

Even where the business does not frequently use trans-Tasman services or fly on the Tasman at all, the ability to provide trans-Tasman services is still often important to being able to win business from Australian corporate clients. This is for reasons including that corporate clients place value on the option to redeem frequent flyer points earned from business trips on key holiday and VFR destinations, such as New Zealand. The ability for corporates to offer this benefit with coverage of one of Australia's largest international markets is attractive and can be important in the competition for the recruitment and retention of the best employees. The value of being able to redeem points on the trans-Tasman in particular is clear. **[RESTRICTION OF PUBLICATION CLAIMED]** Trans-Tasman coverage is particularly important where other airlines competing for the same corporate contracts, offer a broad network and high frequency of trans-Tasman services.

**[RESTRICTION OF PUBLICATION CLAIMED]**

In 2022, Virgin Australia also established its Virgin Australia Business Flyer (**VABF**) program in competition with Qantas' Qantas Business Rewards program. VABF is free to join for any business with an ABN and targeted at SMEs with an annual domestic airline spend on Virgin Australia of up to \$300,000. By booking through the VABF program, SME customers are able to access discounted fares and earn Velocity Points for their business, as well as individual flyers.

(b) Competitive landscape for trans-Tasman services offered to corporate clients

Qantas has the largest market share and proportion of corporate travellers of airlines operating within Australia or on trans-Tasman flights. The 2023 Qantas Annual Report notes that Qantas Domestic maintained its leading market share positions in both the corporate and SME segments (at ~80% and ~54% respectively).<sup>30</sup> In relation to trans-Tasman flights, Qantas carries the majority of business/conference travellers and is stronger at attracting business traffic in relative terms than any other airline with a significantly higher proportion of business passengers to its overall passenger share. Based on August 2023 NZ arrival statistics, Air NZ only carried around 24% of Australians travelling for business purposes between January and August 2023, and only 23% of Australians travelling for business purposes between Brisbane / Sydney / Melbourne and Auckland / Wellington, which are the routes accounting for around three quarters of Australian business traffic. Based on these statistics, Air NZ estimates that Qantas carries approximately 70% of Australians travelling to NZ for business purposes.

Qantas' position is reinforced by its frequent flyer program and the contracts Qantas has with business organisations for domestic and international travel creating customer stickiness in favour of Qantas services. As at June 2023, Qantas had 15.2 million frequent flyer members and estimates that one in five Australian SMEs are part of Qantas Business Rewards.<sup>31</sup> Further, on the trans-Tasman route in particular, Qantas is one of the only air service providers offering high frequencies in peak timeslots which are highly attractive to corporate clients. The only other airline that comes close is Air NZ.

<sup>30</sup> Qantas, "Qantas Annual Report 2023", page 17 ([link](#)).

<sup>31</sup> Ibid page 19.



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## 7 Material public benefits

### 7.1 Authorisation allows Virgin Australia to quickly and efficiently fill a gap in its network offering

The Proposed Conduct provides customers with access to VA coded services that would otherwise not exist. VA coded access to one of Australia's key international destinations is an important part of Virgin Australia's network offering and is valued by Virgin Australia's customers. The use of a codeshare pricing model that enables these coded services to become available on Air NZ's trans-Tasman network means that customers have access to VA coded coverage across Air NZ's entire non-Queenstown trans-Tasman schedule (including its broad range of destinations and deep frequency offering). The scope of this VA coded offering could not be achieved as quickly and efficiently without the Proposed Conduct.

### 7.2 Authorisation would promote competition across various markets

The Proposed Conduct enables Virgin Australia to enhance its network offer, giving Australian travellers more choice and a stronger alternative airline option. This is particularly the case for travellers who wish to earn and redeem loyalty points on international services as well as domestic services, with an airline of their choice.

The strength of Qantas' loyalty proposition has traditionally been a disincentive to switching away from Qantas – people who fly with Qantas domestically tend to fly with them on international services and value the ability to earn and redeem FFPs and enjoy status privileges when travelling. As part of the Proposed Conduct, Virgin Australia will be able to offer tickets on trans-Tasman routes it does not currently offer, together with the ability to earn and redeem FFPs on these services and access to lounge privileges using Air NZ's international lounges in Australia and New Zealand. Passengers will value this choice. This necessarily improves competition not just on the trans-Tasman, but more broadly, as explained below.

#### (a) Corporate and SME customers

As noted at 6.5 above, corporate customers value the ability to access trans-Tasman passenger services from their contracted airline. For some corporate customers, a trans-Tasman offering may even be a requirement of using that airline. While Virgin Australia currently offers international business travel through its partners United Airlines, Singapore Airlines and Qatar Airways to destinations across North America, the UK, Europe, Asia and the Middle East, it currently does not offer trans-Tasman services as part of its corporate offer (other than its operated Queenstown services). With Auckland being the number one international travel destination for Australian business travellers both before and after the COVID-19 pandemic,<sup>32</sup> this is a notable gap that impacts the ability of Virgin Australia to compete with Qantas for corporate and SME customers.

**[RESTRICTION OF PUBLICATION CLAIMED]**

With authorisation of the Proposed Conduct, Virgin Australia will be able to together with Air NZ jointly identify, target, approach and price offers for trans-Tasman services, including to Auckland, to corporate customers directly and to SMEs through its VABF Program. By booking through the program, SME customers will be able to access discounted fares and earn Velocity Points for their business, as well as individual flyers. Points earned by the business can be transferred to individual Velocity members who can use the points to redeem flights.

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<sup>32</sup> See 6.5 above.

By extending its offering to corporate and SME customers in this way, Virgin Australia and Air NZ will be able to compete more effectively for corporate contracts and SME customers. As discussed at 6.5(b) above, Qantas currently captures the vast majority of corporate and SME travellers. With Virgin Australia able to broaden its offering, this would encourage customers to switch to Virgin Australia and in turn likely encourage Qantas to improve its competitive offering to corporate and SME customers in response. Qantas could do this by offering higher discounts or rewards (e.g., bonus points) to corporate or SME customers booking trans-Tasman tickets, or airline tickets more generally.

(b) Frequent flyer programs

As noted at 7.1, authorisation of the Proposed Conduct enables Virgin Australia to offer a more compelling frequent flyer program across a broader network with benefits that members want. With the program becoming more compelling to individual members, businesses will be more interested than they otherwise would be in becoming partners of the Velocity program, whereby a business would offer its customers Velocity Points for purchasing goods or services they supply. In addition, SME and corporate customers with significant trans-Tasman travel requirements will gain a realistic alternative to Qantas Business Rewards through the VABF program.

Adding non-Queenstown trans-Tasman services into the earning and redemption offering of the Velocity program will make the Velocity and VABF programs more competitive with Qantas Frequent Flyer and Qantas Business Rewards. This could increase competition in the offering to both loyalty program members and businesses seeking to join an airline loyalty program as a partner. In particular:

- Qantas could be prompted to improve its loyalty offering by, for example, increasing the availability of reward seats available for redemption on trans-Tasman routes; or
- Qantas may offer more competitive commercial terms to a partner seeking to join or renew its participation in Qantas Frequent Flyer as a result of a more compelling competing Velocity Frequent Flyer.

(c) Domestic air passenger services

The Proposed Conduct enables Virgin Australia to offer itineraries to New Zealand (including one way services from Australia and return services from Australia)<sup>33</sup> involving both a trans-Tasman and connecting domestic Australian segment. With the ability to enjoy a seamless connection on a single ticket, consumers travelling between Australia and New Zealand on itineraries requiring a domestic layover will be more likely than otherwise to choose to purchase a VA ticket if the Proposed Conduct is authorised.<sup>34</sup> With the Qantas Group (including Jetstar) having more than a 60% market share in the market for domestic air passenger services,<sup>35</sup> the ability to buy trans-Tasman through itineraries from Virgin Australia under the Proposed Conduct will provide Virgin Australia with additional feeder traffic onto its domestic network, allowing Virgin Australia to compete more effectively in domestic air passenger service markets.

Further, Virgin Australia expects that the improved proposition for Velocity members will mean that Velocity members will be more likely to consider and book with Virgin Australia

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<sup>33</sup> We note that initially for technical reasons this will only apply to itineraries sold point of sale Australia and point of origin Australia.

<sup>34</sup> For further detail, see 7.3 below.

<sup>35</sup> See e.g. ACCC, "Airline competition in Australia", page 19 (Final Report, June 2023) ([link](#)).

when travelling domestically. Following cessation of Virgin Australia's prior partnership with Air NZ in October 2018 **[RESTRICTION OF PUBLICATION CLAIMED]**

### **7.3 Authorisation enables increased customer choice and convenience**

Authorisation of the Proposed Conduct would allow Virgin Australia to offer customers greater convenience and choice on trans-Tasman services. With authorisation of the Proposed Conduct, Virgin Australia plans to activate InterAirline Through Check-in (**IATCI**) reciprocally with Air NZ. This functionality between both airlines' IT systems allows passengers to receive:

- onward boarding passes across reciprocal networks; and
- checked baggage checked to their final destination across VA and NZ networks (i.e. onto any other Virgin Australia or Air New Zealand flight).

Such investment in technology and implementation would unlikely be justified without the Proposed Conduct under the current incumbent interline agreement.

This means that the Proposed Conduct will create a more viable alternative choice to Qantas for trans-Tasman itineraries involving a layover and an onward segment. In addition to the increased choice as to carrier and offering, the different timings of Virgin Australia's domestic services would also offer different flight times to those available on a Qantas operated itinerary. This provides more options where the customer values the Tasman through-itinerary involving a domestic Australian leg being provided by a single marketing carrier. Without the Proposed Conduct such a service could only be provided by Qantas or Air NZ coding on Qantas operated services. As a result, the Proposed Conduct enhances the choice available to consumers between Australian carriers.

Virgin Australia customers travelling on a direct trans-Tasman service would also enjoy greater booking convenience. For example, a booking through Virgin Australia's app or website could be completed more quickly with pre-populated information where a customer is logged in.

### **7.4 Authorisation would allow Velocity members to enjoy an improved offer**

Virgin Australia's Velocity Frequent Flyer program has more than 11.5 million members. With Virgin Australia only operating trans-Tasman services to Queenstown, Velocity members currently have no ability to earn and burn on other trans-Tasman routes. With more bidirectional international traffic with New Zealand than any other country, this means that there is a notable gap in the offering Virgin Australia provides to Velocity members. **[RESTRICTION OF PUBLICATION CLAIMED]** With authorisation of the Proposed Conduct, Virgin Australia will be able to offer its members the following benefits on non-Queenstown trans-Tasman routes.

- (a) Ability to earn and burn Velocity Points and accrue status credits on trans-Tasman routes

Authorisation of the Proposed Conduct would give Velocity members the ability to earn Points on non-Queenstown trans-Tasman services with VA code operated by Air NZ consistent with the earn rate across Virgin Australia's network. Velocity members with a tier status of Silver or above will also earn bonus points above the standard earn rate. The additional source of Points earn would allow members to enjoy rewards sooner, including the ability to redeem tickets to flights on trans-Tasman services.

The ability to redeem Points for flights on non-Queenstown trans-Tasman flights would be compelling for Velocity members. **[RESTRICTION OF PUBLICATION CLAIMED]**



Figure 7 [RESTRICTION OF PUBLICATION CLAIMED]

[RESTRICTION OF PUBLICATION CLAIMED]

Figure 8 [RESTRICTION OF PUBLICATION CLAIMED]

In addition, Velocity members will have the ability to earn Status Credits and Eligible Sectors on non-Queenstown trans-Tasman services with VA code operated by Air NZ, facilitating sooner than otherwise attainment of premium tiers of membership and the additional benefits that come with this, including bonus Velocity Points across the Virgin Australia network, or when flying on VA coded trans-Tasman services operated by Air NZ or other partners.

(b) Lounge access

Virgin Australia does not currently operate any international lounges at any international departure port. Air NZ has four international lounges in Australia located at Sydney, Melbourne, Brisbane and Perth and three international lounges in New Zealand located at Auckland, Christchurch and Wellington.

Under the terms of the Proposed Conduct, access to Air NZ's seven international lounges across Australia and New Zealand would become available to:

- Eligible flyers travelling on a business class, VA coded ticket on services operated by Air NZ, making Virgin Australia's overall offering more compelling to corporate customers;<sup>36</sup> and
- Velocity Gold and Platinum members travelling on a VA coded ticket on services operated by Air NZ, making the Velocity program more appealing to consumers. As shown at Figure 7 above, having lounge access is the [RESTRICTION OF PUBLICATION CLAIMED] important factor to members in an airline loyalty program.

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## 8 No competitive detriment

The Proposed Conduct does not result in any competitive detriment because:

- It does not remove any competition, services or benefits that would be available without the Proposed Conduct:
  - Virgin Australia does not currently offer trans-Tasman services outside of services to/from Queenstown. [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.<sup>37</sup> Consistent with its approach to assessing its network and the deployment of resources, Virgin Australia will continue to assess the commercial viability of trans-Tasman services, [RESTRICTION OF PUBLICATION CLAIMED] with or without the Proposed Conduct. If circumstances change and it chooses to enter any other specific overlapping trans-Tasman routes, these will be carved out from the Proposed Conduct.

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<sup>36</sup> See 7.2(a) above for further detail.

<sup>37</sup> Although the Proposed Conduct allows additional VA coded services to be provided that customers value, [RESTRICTION OF PUBLICATION CLAIMED]

- **[RESTRICTION OF PUBLICATION CLAIMED]** and the other commercial agreements and benefits are conditional on, and flow from, the existence of the non-traditional codeshare arrangement; and
- No other commercially viable partner could provide the same degree of public benefits from the start of the partnership. This includes the depth and breadth of trans-Tasman services that Air NZ can provide VA coded access to coupled with lounge access to seven international lounges in Sydney, Melbourne, Brisbane, Perth, Auckland, Wellington and Christchurch for trans-Tasman flights.
- Overlapping trans-Tasman routes are excluded from the Proposed Conduct (whether that be overlapping by operation or marketing of services). The Proposed Conduct does not apply to Queenstown services and would cease to apply in relation to a trans-Tasman route if Virgin Australia commences operating its own services in competition with Air NZ on that route or not operating but marketing VA coded services in competition with Air NZ where Virgin Australia has pricing control on that route.
- 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, such as Qantas/Jetstar, Emirates, LATAM and China Airlines. The Proposed Conduct does not provide an increased incentive or ability to raise airfares and / or reduce service quality on trans-Tasman services. In the event of any attempts to do so, other carriers are well placed to increase frequency or enter and provide new services thwarting such attempts. For further detail, see 6.3 to 6.4 above.

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## **9 Conclusion**

The Proposed Conduct will allow a range of clear and tangible benefits, without any competitive detriment.

For the reasons set out in this submission, the Applicants submit that the Proposed Conduct ought to be authorised for a period of 5 years. Given the lack of competitive overlap between the parties and the nature of the Proposed Conduct, there can be no risk with granting the requested interim authorisation to enable the Applicants to commence planning, coordination and forward selling of services.