

22 December 2023

Australian Competition and Consumer Commission  
23 Marus Clarke Street  
Canberra ACT 2601

Via email: [exemptions@accc.gov.au](mailto:exemptions@accc.gov.au)

Dear ACCC

**RE: Virgin Australia and Air New Zealand application for authorisation AA100653**

The Australian Travel Industry Association (ATIA) welcomes the opportunity to provide a submission to the Australian Competition and Consumer Commission (ACCC) in relation to the application by Virgin Australia and Air New Zealand for authorisation to make and give effect to a Commercial Framework Agreement, Codeshare Agreement, and various related agreements (the Proposed Conduct) (authorisation AA100653).

As the peak body for a broad array of Australian travel professionals, ATIA strives to promote and advocate for competition across the entire travel sector. Healthy competition is critical for the effective operation of markets so that businesses have the incentive to operate efficiently, price competitively and offer products valued by consumers. This in turn delivers benefits to the Australian community and economy through lower prices, innovation and improved product offerings.

ATIA does not oppose the interim authorisation that is sought to allow the necessary planning, discussions and coordination, as well as forward selling of services prior to the ACCC's final determination in relation to the substantive application for authorisation. ATIA understands that it is following this interim authorisation that further details will be discussed as to how Virgin Australia and Air New Zealand intend to cooperate in terms of jointly providing offers to corporate and Small and Medium Enterprises (SME).

In relation to the substantive application for authorisation, in principle ATIA does not oppose the authorisation, subject to further clarification regarding the nature of the cooperation regarding corporate and SME customers. This will enable analysis on what impact that may have on competition with the travel distribution system. While we believe there is a level of public benefit in relation to the Proposed Conduct, we respectfully request to reserve the right to comment following additional clarification about the cooperation in relation to corporate and SME customers in the event the interim authorisation is granted. ATIA's analysis is set out in **Attachment A** to this submission.

A key priority for the Trans-Tasman route is to encourage capacity and competition on the route to improve. While the application sets out the counterfactual as the status quo, we have conducted an analysis of the competitive dynamics prior to COVID-19, when travelling Australians received the benefit of Virgin Australia operating in its own capacity on Auckland, Wellington and Christchurch routes. This is outlined in **Attachment B**.

ATIA accepts that Virgin Australia is not currently in a position to return to pre-COVID-19 capacity levels. However ATIA submits that it is appropriate for a condition to be imposed to monitor the Applicants' price and capacity on Trans-Tasman routes. This would allow the ACCC to monitor the competitive dynamics on these routes and ensure public detriment does not emerge. By aiming to restore capacity to pre-COVID-19 levels this will in turn help to restore airfares on the Trans-Tasman to pre-COVID levels, to the benefit of Australian residents flying between Australia and New Zealand.



Yours sincerely

**Dean Long**  
**Chief Executive Officer**

## Attachment A – ATIA analysis

ATIA has focused our analysis on areas of competition relating to areas of competition impacting international air passenger services, the Australian domestic air transport services market, as well as competition as between airlines and travel agencies in relation to the sale of air tickets to consumers.<sup>1</sup>

ATIA's position is based on the following considerations:

### Supply of international air passenger transport services between Australia and New Zealand

ATIA notes the potential for public detriment is greatest in situations where the Proposed Conduct replaces rivalry between the Applicants with cooperation, and that this potential is greatest on routes on which the Applicants operate overlapping services. ATIA notes that Virgin Australia currently only offers Trans-Tasman services to/from Queenstown, and that it does not seek for the authorisation to apply to this route. Further, the application makes clear that overlapping Trans-Tasman routes are excluded from the Proposed Conduct, meaning the authorisation 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.

While ATIA notes that there are currently 1 million less seats annual on the Trans-Tasman market as a result of Virgin Australia not recommencing its pre-COVID Trans-Tasman routes, we recognise that Virgin Australia may not be in a position to recommence these routes quickly and that as such, there remains a level of public benefit in the Proposed Conduct.

### Connectivity, convenience and supply of domestic air passenger transport services

Authorisation of the Proposed Conduct would likely allow customers to have greater convenience and choice on Trans-Tasman services, creating a more viable alternative choice to the dominant carrier for Trans-Tasman services. As noted in the Application, the different timings of Virgin Australia's domestic services would also offer different flight times to those available on a Qantas domestic operated itinerary, providing more options where the customer values the Tasman through-itinerary involving a domestic Australian leg being provided by a single marketing carrier. Given the dominant carrier's dominant market share in the domestic market, the Proposed Conduct may lead to benefits in terms of enhancing the appeal of Virgin's domestic offers through increased connectivity, and thus enhancing their ability to compete.

### Additional measures

ATIA notes there are a number of features of the Proposed Conduct that reduce the risk of public detriment. These include:

- The 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 may place its code on point to point airfares only.
- Individual commercials cannot be shared, including information about commission rates and distribution strategies.

In relation to the latter point, this is important given the High Court's finding that airlines and travel agencies are in competition with one another in relation to the sale of air tickets to consumers.<sup>2</sup> ATIA is supportive of the model proposed in this application given it does not impact this element of competition.

### Corporate and SME customers

The application seeks authorisation to cooperate to jointly provide offers to corporate and SME customers. Specifically, 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 to

<sup>1</sup> See Australian Competition and Consumer Commission v Flight Centre Travel [\[2016\] HCA 49](#), 14 December 2016.

<sup>2</sup> See Australian Competition and Consumer Commission v Flight Centre Travel [\[2016\] HCA 49](#), 14 December 2016.

corporate customers directly and to SMEs through its Virgin Australia Business Flyer (VABF) Program.

We understand commercial discussions on the corporate and SME customer models, website development, and marketing activities cannot take place until the interim authorisation is granted. This means ATIA is unable to assess how this proposed arrangement would impact competition between these airlines and travel agencies in relation to the sale of air tickets. This has been recognised by the ACCC as an important element of competition.

As stated above, ATIA broadly does not oppose of the interim authorisation that is sought to allow the necessary planning, discussions and coordination to the ACCC's final determination in relation to the substantive application for authorisation. While we are broadly supportive of the substantive application in principle, we reserve the right to comment following further clarification regarding the nature of the cooperation regarding corporate and SME customers, which we understand will be forthcoming after the interim authorisation is granted.

## Attachment B

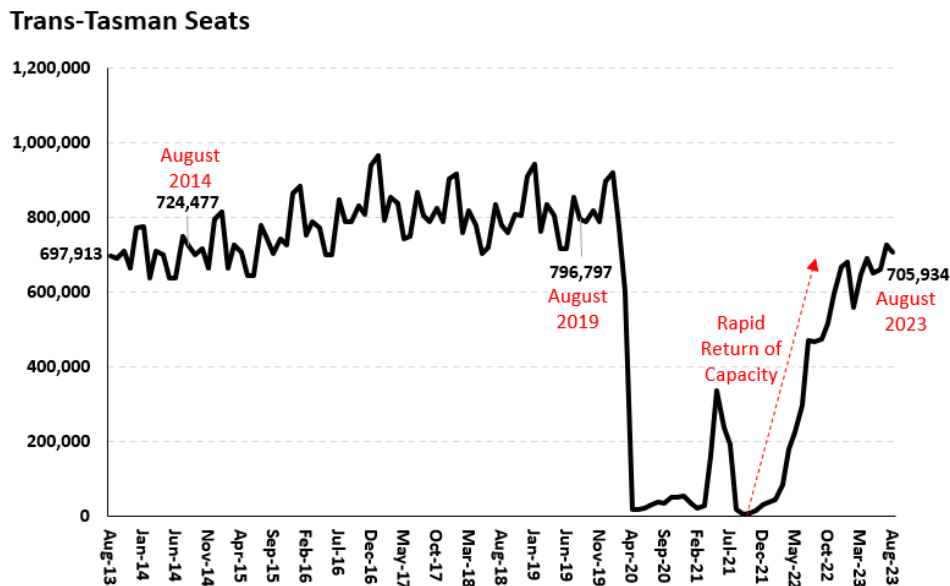
### Trans-Tasman Capacity Pre and Post COVID

Figure 1 below presents the monthly time-series movements in the number of available seats flown on Trans-Tasman services as reported by the Bureau of Infrastructure, Transport and Regional Economics (BITRE). The last monthly data point that is available in this series is that for August 2023 at the time of writing. The August 2023 data point indicates that current levels of capacity on the route remain 11.4% below pre-COVID levels. Indeed, current capacity on the route remains below 2014 levels and is only slightly above levels witnessed on the route a decade earlier.

Over the 6 months to June 2023, capacity on the Trans-Tasman route remained 18.5% below pre-COVID levels (6 months to June 2019), while the 6 months to December 2022 levels of capacity on the route remain 35.4% below pre-COVID levels (6 months to December 2019).

The evidence suggests that the rapid rate of return of capacity to the Trans-Tasman market between September 2021 and the end of 2022 has been replaced by a more hesitant and subdued return to pre-COVID levels.

*Figure 1: Trans-Tasman Market Monthly Seats – August 2013 to August 2023*



Source: Bureau of Infrastructure, Transport and Regional Economics: Seat Utilisation Factors by Airline Database

### Virgin Australia Capacity Share

Virgin Australia held a material market share in the Trans-Tasman market prior to COVID, rising to an absolute peak of a 19.3% of the market by June 2010, before falling to around the 15% mark for an extended period of time, after which the carrier returned to a 19% share just prior to COVID.<sup>3</sup>

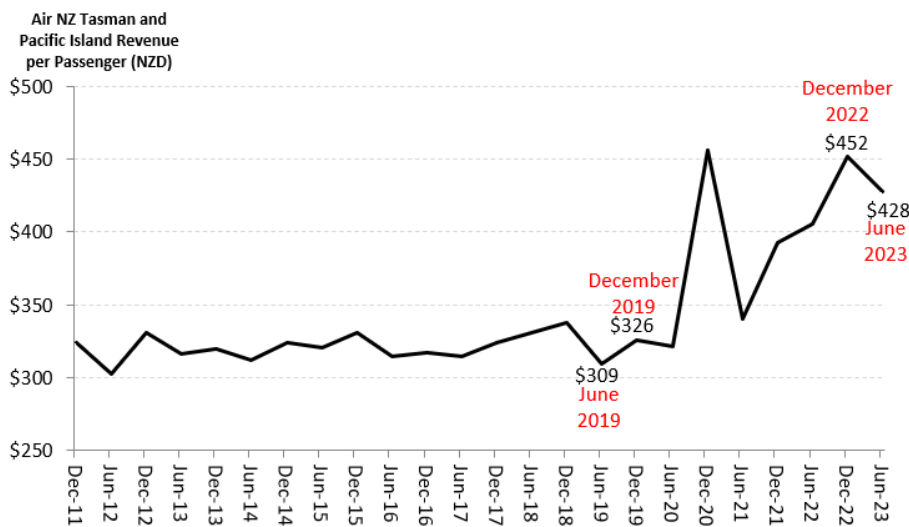
Currently, the Queenstown services that the airline operates generates a share of just 4.8% of seats in the Trans-Tasman market. For the airline to return to a pre-COVID share of 19% based on current market seats carried across the Tasman, the airline must operate an additional 1 million seats per year. Adding an additional 1 million seats to the Trans-Tasman market is likely to return the seats carried on the route to pre-COVID levels of capacity and contribute to bringing airfares on the route closer to those witnessed prior to COVID-19.

<sup>3</sup> Bureau of Infrastructure, Transport and Regional Economics: Seat Utilisation Factors by Airline Database.

### Trans-Tasman Airfares and Yields Pre and Post COVID

Air New Zealand provides information about the yield on its Trans-Tasman and Pacific Island routes in its semi-annual financial reporting. Figures 2 and 3 below present the semi-annual movements in revenue per passenger and yield/RPK respectively in the case of Air New Zealand services on the Tasman and Pacific Island routes over the period December 2011 through to June 2023. The Tasman share of the revenue passenger kilometres of the Tasman and Pacific Island flying segment is likely to be very high, which means the movement in the two sets of prices presented in Figures 2 and 3 will be strongly representative of movements in Air New Zealand Tasman route prices. And since Air New Zealand's share of the Trans-Tasman market is considerable, one would expect that the movement in Air New Zealand's average airfare and yields will also reflect the movements in the wider Trans-Tasman market.

Figure 2: Trans-Tasman and Pacific Island Air New Zealand Semi-Annual Revenue per Passenger

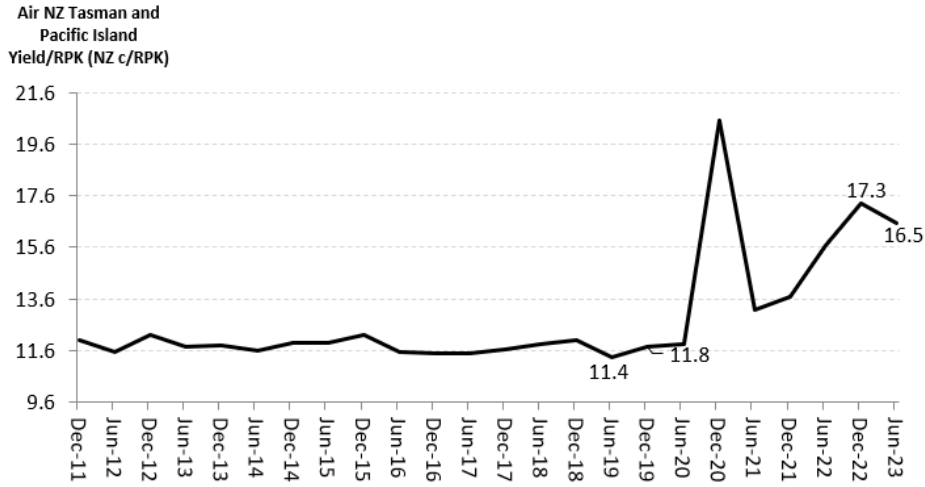


Source: ATIA modelling

Figure 2 indicates that the average one-way airfare charged by Air New Zealand on Tasman and Pacific Island routes over the 6 months to 30 June 2023 was NZ\$428, up from NZ\$309 over the 6 months to 30 June 2019, representing an increase of 38.3%, while the average airfare over the 6 months to December 2022 is NZ\$452, which is up from NZ\$326 over the 6 months to 31 December 2019 representing an increase of 38.6%. This is by a considerable margin the highest average airfare outcomes on the Trans-Tasman route since Air New Zealand began publishing Trans-Tasman airfare figures, which is over a decade ago.

As the average airfare figures presented in Figure 2 are affected by Air New Zealand's average sector length on Trans-Tasman services, we also examine the movements in Air New Zealand's yield per RPK on the route, which is less affected by sector length – refer to Figure 3. Figure 3 indicates that Air New Zealand's yield/RPK on Tasman and Pacific Island routes was 16.5 NZ c/RPK over the 6 months to 30 June 2023 which compares to 11.4 NZ c/RPK over the 6 months to 30 June 2019, representing an increase of 44.7%, while the yield for the 6-months to December 31, 2022 of 17.3 NZ c/RPK compares to the yield over the 6 months to 31 December 2019 of 11.8 NZ c/RPK, which represents an increase of 46.6%. The current Air New Zealand yield on the Trans-Tasman route is therefore significantly higher than pre-COVID levels.

Figure 3: Trans-Tasman and Pacific Island Air New Zealand Semi-Annual Yield per RPK



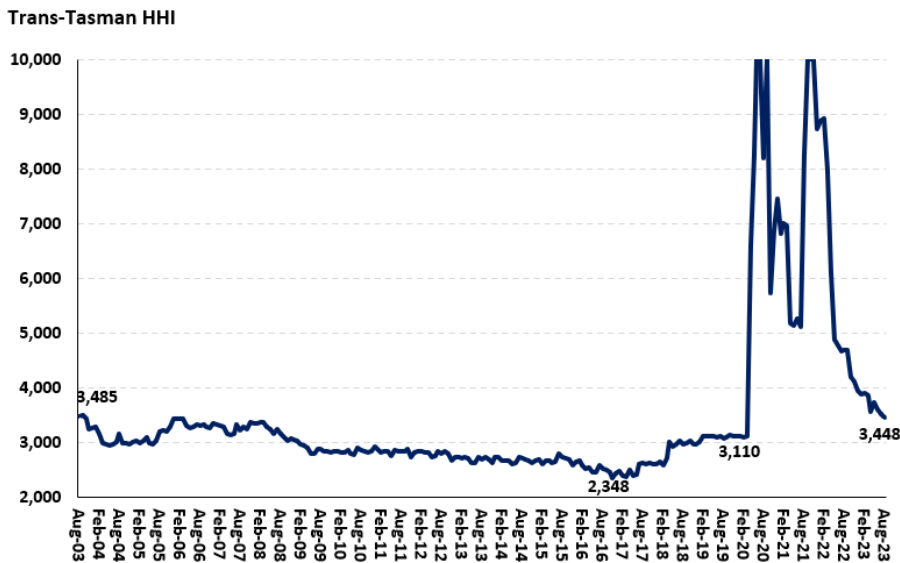
Source: ATIA modelling

**Trans-Tasman Competitive Intensity Pre and Post COVID**

Another force that will help to maintain higher airfares and margins on the Trans-Tasman route is the competitive intensity or concentration on the route. The more concentrated the Trans-Tasman market is in terms of competition, the higher are airfares and margins on the route.

A well-known metric that can be used to determine the concentration of airlines on routes is the Herfindahl-Hirschmann Index (HHI). The HHI measures the sum of the squared capacity shares of airlines on the route. A HHI that is close to 10,000 indicates a monopoly route while a HHI that is close to zero indicates a highly competitive route. For the purpose of computing the HHI on the Trans-Tasman route Jetstar and Qantas are combined to form the Qantas Group which is assumed to be a single entity. The monthly movements in the HHI computed for the Trans-Tasman route between August 2003 and August 2023 is presented in Figure 4 below.

Figure 4: Monthly HHI on the Trans-Tasman Route – August 2003 to August 2023



Source: Bureau of Infrastructure, Transport and Regional Economics: Seat Utilisation Factors by Airline Database

We can see in Figure 8 that the Trans-Tasman HHI was in trend decline for the first 14 years of the timeframe examined, declining from an index value of 3,485 in August 2003 down to 2,348 by November 2016. This implies that the concentration of airlines on the Trans-Tasman route declined over this period, or the route became more competitive. However, from 2017 through to 2019, the

index turns upward and rises to 3,110 in December 2019 just before the impact of COVID-19, indicating a rise in concentration levels and a lowering of competition on the Trans-Tasman. During COVID-19 the index reaches its maximum of 10,000 but has since fallen sharply as more capacity and competition has returned to the market, with the latest reading of the index 3,448 in August 2023. While the current read of the index is significantly lower than levels witnessed during COVID-19, the HHI is still in an elevated position, and higher than it has been in the two decades prior to COVID-19.