



# Determination

Application for authorisation AA1000653 lodged by  
Virgin Australia and Air New Zealand  
in respect of  
Proposed code sharing arrangements on the trans-Tasman  
Authorisation number: AA1000653

6 June 2024

Commissioners: Keogh  
Lowe  
Carver

## Summary

The ACCC has decided to grant authorisation to Virgin Australia and Air New Zealand for the following conduct:

- a) A unilateral codeshare arrangement involving Virgin Australia placing its code (i.e. VA) on a free sale basis on Air New Zealand operated trans-Tasman services, on routes where Virgin Australia does not operate. The codeshare rights are provided on the condition that Air New Zealand specifies the public fares at which Virgin Australia may market and resupply those itineraries.
- b) Related arrangements regarding fare rules and conditions, extension of Virgin Australia's loyalty program to include these codeshare services, Virgin Australia customer access to Air New Zealand international lounges, and reciprocal staff travel.
- c) The joint identification and targeting of corporate and SME customers with discounts and other offers for trans-Tasman itineraries involving only VA coded Air New Zealand operated trans-Tasman services (e.g. SYD-AKL), and trans-Tasman itineraries that include connecting Australian domestic services operated by Virgin Australia as well as VA coded Air New Zealand operated trans-Tasman services (e.g. CBR-SYD-AKL). This may include:
  - Joint pricing and discounting of private fares, based on factors such as travel spend and volume.
  - Discussing and determining additional discounts or offers in order to win or retain additional or particular customers.
  - Jointly allocating or determining a pipeline of target customers and tailoring discounts and offers to win the business of those target customers.

The ACCC has decided to grant authorisation for 5 years, until 30 June 2029.

The ACCC considers that the code-share arrangements are likely to result in public benefits from enhanced products and services in the form of:

- a) Increased choice and convenience for Australian point of sale trans-Tasman travellers, including corporate and SME customers.
- b) Better loyalty program benefits for Virgin Australia customers.
- c) International lounge access for eligible Virgin Australia customers.

Based on current information, the ACCC is not satisfied that the proposed conduct is likely to result in public benefits by increasing the efficiency of Air New Zealand's trans-Tasman operations. While the ACCC accepts that the proposed conduct has the potential to result in increased passenger numbers and higher capacity utilisation on Air New Zealand operated trans-Tasman services to destinations other than Queenstown, many of these additional passengers otherwise would have flown with Qantas. An improvement in Air New Zealand's capacity utilisation may be at the expense of Qantas'.

The ACCC is also not satisfied that the proposed conduct is likely to result in material public benefits by promoting competition – either by facilitating Virgin Australia's entry on new trans-Tasman routes or triggering a material competitive

response from rivals, such as Qantas, in either the trans-Tasman air passenger services market or the Australian domestic market.

The ACCC considers that the code-share arrangements are likely to result in minimal if any public detriment.

The ACCC notes interested party concerns that the proposed conduct may reduce Virgin Australia's incentive to enter new trans-Tasman routes. The ACCC has carefully considered confidential information provided by the Applicants comparing the revenue and margins Virgin Australia expects to earn under the proposed conduct to the revenue and margins it earns across its current network operations.

The ACCC is satisfied that the proposed conduct would not be likely to materially reduce Virgin Australia's incentive to enter new trans-Tasman routes to compete with Air New Zealand during the period for which authorisation was sought.

## 1. The application for authorisation

- 1.1. On 17 November 2023, Virgin Australia Airlines Pty Ltd on behalf of itself and its related bodies corporate, and Virgin Australia International Airlines Pty Ltd and its related bodies corporate (together, **Virgin Australia**), and Air New Zealand Limited (**Air New Zealand**) (the **Applicants**) lodged application for authorisation AA1000653 with the Australian Competition and Consumer Commission (the **ACCC**). On 15 April 2024 the Applicants provided clarification as to the proposed conduct for which authorisation was sought. The Applicants sought authorisation in respect of unilateral trans-Tasman code sharing and other arrangements,<sup>1</sup> described in paragraph 1.16-1.199 below, for a period of 5 years.
- 1.2. This application for authorisation was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). If granted, an authorisation provides the relevant parties with protection from legal action under the specified provisions in Part IV of the Act in respect of the specified conduct. The ACCC has a discretion to grant authorisation, but must not do so unless it is satisfied in all the circumstances that the conduct would or is likely to result in benefit to the public that would outweigh any likely detriment to the public (ss 90(7) and 90(8) of the Act).
- 1.3. The Applicants also requested interim authorisation to enable them to engage in the proposed conduct while the ACCC is considering the substantive application.
- 1.4. On 1 May 2024, the ACCC published a draft determination proposing to grant authorisation to the Applicants in respect of the unilateral trans-Tasman code sharing and other arrangements, described in paragraph 1.166-1.199 below, for a period of 5 years.
- 1.5. On 1 May 2024, the ACCC also granted interim authorisation to the Applicants under subsection 91(2) of the Act, to allow the Applicants to commence engaging in the proposed conduct, except that the interim authorisation excluded the direct or indirect marketing, provision of offers and sale of fares to customers (including corporates and SMEs). That interim authorisation remains in place until it is revoked or the date the ACCC's final determination comes into effect or when the application for authorisation is withdrawn.

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<sup>1</sup> See Applicants clarification of Proposed Conduct dated 15 April 2024 [here](#).

## The Applicants

### Virgin Australia

- 1.6. Virgin Australia is an Australia-based domestic and international airline. Virgin Australia also operates loyalty programs and an airline subsidiary Virgin Australia Regional Airlines.
- 1.7. Prior to the outbreak of the COVID-19 pandemic, Virgin Australia operated domestic, short-haul and long-haul international flight services. Virgin Australia also sold international flight services as a marketing carrier under codeshare agreements with numerous international partner airlines. These agreements were entered into as part of authorised joint ventures (which permitted joint pricing), or on an arms-length basis where Virgin Australia independently set the prices for all itineraries.
- 1.8. Following the onset of the COVID-19 pandemic Virgin Australia was placed into voluntary administration on 21 April 2020. It subsequently divested its widebody aircraft including Boeing 777s and Airbus A330s. On 17 November 2020, Virgin Australia was purchased and de-listed by Bain Capital, a private equity firm based in the United States.
- 1.9. Virgin Australia currently operates domestic and short-haul international flight services, using a fleet of narrow-body aircraft.<sup>2</sup> The six international destinations to which Virgin Australia currently operates are: Queenstown, New Zealand; Tokyo (Haneda), Japan; Nadi, Fiji; Denpasar (Bali), Indonesia; Port Vila, Vanuatu; and Faleolo, Samoa.
- 1.10. Virgin Australia currently has non-reciprocal codeshare arrangements with several partner airlines that operate long-haul international air passenger services to/from Australia.<sup>3</sup> These arrangements allow Virgin Australia to place its code on long haul international services operated by the partner airline. Partner airlines specify the fares at which Virgin Australia may market and resupply these services to consumers in Australia.

### Air New Zealand

- 1.11. Air New Zealand 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.
- 1.12. The New Zealand Government owns approximately 52% of Air New Zealand, with the remainder owned by private investors. Air New Zealand is listed on the New Zealand and Australian stock exchanges and is a member of Star Alliance.
- 1.13. The international destinations to which Air New Zealand currently operates are set out in Figure 1 below.

**Figure 1: Air New Zealand International Destinations (ex New Zealand)**

Region	Destinations
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<sup>2</sup> [Virgin Australia's fleet](#) comprises of the following aircraft models: Boeing 737-800, Boeing 737-700, Boeing 737-8, Boeing 737-700 Economy Range, Airbus A320 and Fokker 100. Virgin Australia has an order for a total of 14 Boeing 737 MAX-8 aircraft which are expected to arrive throughout 2024.

<sup>3</sup> On 8 September 2022, the ACCC authorised Virgin Australia to make and give effect to codeshare agreements with carriers operating long-haul international air passenger services to/from Australia (Partner Carriers). Virgin Australia's Partner Carriers currently include Qatar Airways, United Airlines, Singapore Airlines, Hawaiian Airlines, All Nippon Airline and Air Canada.

Australia	Adelaide, Brisbane, Cairns, Gold Coast, Hobart, Melbourne, Perth, Sunshine Coast, Sydney
Asia	Denpasar (Bali), Hong Kong, Seoul, Singapore, Shanghai, Taipei, Tokyo Narita
Pacific	Alofi, Apia, Nadi, Noumea, Nuku'alofa, Rarotonga Island, Tahiti
Americas	Chicago, Honolulu, Houston, Los Angeles, New York City, San Francisco, Vancouver

1.14. Air New Zealand is currently a party to the following airline alliances:

- a) An alliance with United Airlines.
- b) An alliance with Cathay Pacific.<sup>4</sup>
- c) Star Alliance involving 26 international airlines.<sup>5</sup>

1.15. Air New Zealand also has codeshare and interline arrangements with several other international airlines. It also has a traditional arms-length codeshare agreement<sup>6</sup> with Qantas whereby Air New Zealand can place its code on certain Australian domestic services operated by Qantas and Qantas can place its code on certain New Zealand domestic services operated by Air New Zealand.<sup>7</sup>

## The Proposed Conduct

1.16. The Applicants sought authorisation to engage in the conduct set out in paragraphs 1.17 below, which is provided for in a Commercial Framework Agreement and various related, inter-conditional agreements. The Applicants state that all elements of the conduct are conditional on the proposed codeshare arrangements.

1.17. Specifically, the Applicants sought authorisation for the following conduct:<sup>8</sup>

- (a) Virgin Australia will place its code on a free sale<sup>9</sup> basis on Air New Zealand operated trans-Tasman services on routes where Virgin Australia does not operate (the **VA\*NZ trans-Tasman Services**). Virgin Australia will market and resupply these VA\*NZ trans-Tasman Services only for itineraries sold in Australia and originating in Australia (including one-way services from Australia and return services from Australia).
- (b) These codeshare rights are provided on the condition that Air New Zealand specifies the public fares at which Virgin Australia may market and resupply itineraries involving VA\*NZ trans-Tasman Services. This includes trans-Tasman itineraries involving only VA coded Air New Zealand operated services (e.g., SYD-AKL) and trans-Tasman itineraries that include connecting Australian domestic

<sup>4</sup> The alliance between Air New Zealand and Cathay Pacific only applies to flights between New Zealand and Hong Kong.

<sup>5</sup> See Star Alliance: <https://www.staralliance.com/en/home>

<sup>6</sup> A traditional arms-length codeshare agreement typically allows the marketing carrier and the operating carrier to independently determine fares for services operated by the operating carrier.

<sup>7</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).

<sup>8</sup> See Applicant's letter dated 15 April 2024, Applicant's clarification of Proposed Conduct, on the ACCC's [public register](#).

<sup>9</sup> A free sale codeshare agreement typically allows the marketing carrier to sell an unlimited number of seats on the operating carriers services providing that there is inventory available on the flight.

services operated by Virgin Australia and a VA coded Air-New Zealand operated trans-Tasman service (e.g., CBR-SYD-AKL) (**VA\*NZ trans-Tasman Itineraries**).

- (c) Virgin Australia and Air New Zealand can jointly discuss and agree upon fare rules and conditions associated with VA\*NZ trans-Tasman Itineraries.
- (d) Virgin Australia and Air New Zealand may jointly identify corporate and small and medium enterprise (**SME**) customers to provide discounts in respect of services that can be provided by Virgin Australia, for VA\*NZ trans-Tasman Itineraries. This may include:
  - Joint pricing and discounting of private fares, based on factors such as travel spend and volume.
  - Discussing and determining additional discounts or offers in order to win or retain additional or particular customers.
  - Jointly allocating or determining a pipeline of target customers and tailoring discounts and offers to win the business of those target customers.

However, this will not include:

- Discussion of commercial terms relating to Virgin Australia or Air New Zealand Agency Agreements or Travel Management Company partners.
  - Joint pricing and discounting of private fares on routes on which Virgin Australia and Air New Zealand both operate, including the routes between Sydney/Melbourne/Brisbane-Queenstown.
  - Joint pricing and discounting of private fares on Virgin Australia or Air New Zealand operated routes other than the relevant VA\*NZ trans-Tasman Itineraries.
- (e) Eligible Velocity Frequent Flyer members can access Air New Zealand's international lounges when travelling on VA\*NZ trans-Tasman Services.
  - (f) Velocity Frequent Flyer members can earn Velocity Points and accrue status credits when travelling on VA\*NZ trans-Tasman Services.
  - (g) Velocity Frequent Flyer members can redeem their Velocity Points for travel on VA\*NZ trans-Tasman Services.
  - (h) Virgin Australia and Air New Zealand can extend existing arrangements that provide each other with reciprocal network-wide standby travel for staff leisure in the economy cabin, and reciprocal duty travel in the economy cabin. This may also include the extension of staff leisure and duty travel entitlements to the business cabin.
  - (i) Virgin Australia and Air New Zealand can share information to the extent necessary to facilitate any of the matters referred to above.

(the **Proposed Conduct**).

1.18. The Proposed Conduct does not involve Air New Zealand placing its code on any services operated by Virgin Australia, including domestic services in Australia.

1.19. The Proposed Conduct does not apply on routes where Virgin Australia operates its own trans-Tasman services. This currently covers Melbourne – Queenstown; Sydney – Queenstown; and Brisbane – Queenstown. The Proposed Conduct will cease to apply in relation to a trans-Tasman route if Virgin Australia commences:

- (a) Operating its own services in competition with Air New Zealand on that route.

- (b) Marketing VA coded services in competition with Air New Zealand where Virgin Australia has pricing control on that route.

## Rationale for the Proposed Conduct

- 1.20. The Applicants submit that 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.<sup>10</sup>
- 1.21. The Applicants submit that Virgin Australia does not currently have a trans-Tasman offer beyond services to and from Queenstown, which leaves Virgin Australia with a gap in its network offering and 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 effectively compete for domestic services and higher yield corporate and SME customers.
- 1.22. The Applicants submit that SME and high frequency travellers provide important revenue for airlines and increase the sustainability of providing air passenger services. The Applicants submit that despite Virgin Australia's domestic offering, 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. The Applicants submit that 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.<sup>11</sup>
- 1.23. The Applicants consider that the Proposed Conduct enables Virgin Australia to fill this network gap and offer value-added benefits to Velocity customers, on routes where it does not operate, and with a depth that can better compete with Qantas especially where frequency and schedule flexibility is of importance quickly and efficiently.
- 1.24. The Applicants submit that for Air New Zealand the Proposed Conduct will facilitate Air New Zealand getting access to additional distribution channels for its trans-Tasman services including to Australian customers where Air New Zealand does not have as strong a marketing and sales presence.
- 1.25. Further the Applicants consider that for Air New Zealand the Proposed Conduct will drive increased passenger numbers (including higher yield passengers such as corporates and SME customers) onto Air New Zealand's trans-Tasman services and likely also onto its (New Zealand) domestic services, improving the efficiency and sustainability of its flight operations.

## 2. Background

### Previous authorisations

- 2.1. On 3 September 2013 the ACCC granted authorisation with conditions to Virgin Australia and Air New Zealand to maintain and to continue to give effect to the Australasian Airline Alliance Agreement (**Alliance Agreement**), an associated Code

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<sup>10</sup> See Applicants submission dated 17 November 2023 on the ACCC's [public register](#), [Section 4].

<sup>11</sup> See Applicants submission dated 17 November 2023 on the ACCC's [public register](#), [Section 4].

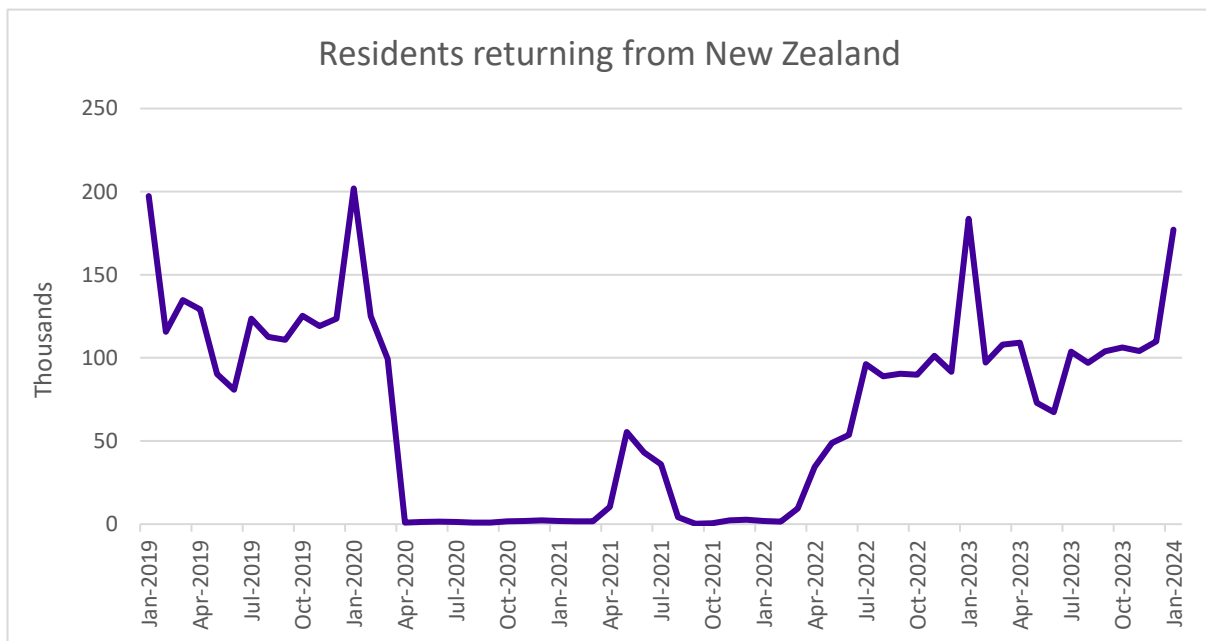
Share Agreement and related agreements which are contemplated by the Alliance Agreement (together the **Alliance**), until 31 October 2018. The Alliance Agreement provided for full metal neutrality, meaning Virgin Australia and Air New Zealand were indifferent as to whether they sold tickets for a flight operated using its own aircraft or a flight operated using its partner’s aircraft. The authorisation commenced on 1 January 2014.

- 2.2. Air New Zealand ended the Alliance with Virgin Australia in October 2018 (with the end of the relationship announced in April 2018).

### Air passenger transport operations on the trans-Tasman

- 2.3. New Zealand is an important travel destination for Australians, in calendar year 2023, New Zealand was the second most visited destination country for Australians travelling overseas (after Indonesia), accounting for 1.26 million trips.<sup>12</sup> Australian Bureau of Statistics data indicates that the number of Australian residents returning from New Zealand in December 2023 was around 86% of December 2019 levels (see figure 2 below).<sup>13</sup>

**Figure 2: Short-term (less than one year) residents returning from New Zealand**



- 2.4. The Applicants submit that although predominant reasons for travel include leisure, including visiting friends and relatives (VRF) and holiday makers, New Zealand is also a key market for business travel. Australian Bureau of Statistics overseas arrivals and departures data indicates 8% (5.6% business and 2.4% conference) of trans-Tasman travel is conducted for business purposes.<sup>14</sup>

<sup>12</sup> See Australian Bureau of Statistics overseas arrivals and departures data [here](#) (December 2023).

<sup>13</sup> See Australian Bureau of Statistics overseas arrivals and departures data [here](#) (December 2023).

<sup>14</sup> See application for authorisation submission, dated 17 November 2023 here.



## Virgin Australia

- 2.5. Immediately prior to the COVID-19 pandemic, Virgin Australia operated trans-Tasman services between:
- Brisbane and Auckland, Christchurch, Dunedin, Queenstown and Wellington.
  - Gold Coast and Auckland.
  - Melbourne and Auckland, Christchurch and Queenstown.
  - Newcastle and Auckland.
  - Sydney and Auckland, Christchurch, Dunedin, Queenstown and Wellington.
- 2.6. In February 2020 Virgin Australia operated 99 weekly flights each way on these trans-Tasman routes using narrow-bodied aircraft (Boeing 737-700s and 737-800s). These services ceased from March 2020.
- 2.7. In November 2022, Virgin Australia re-commenced Australia – Queenstown services using narrow-body aircraft.
- 2.8. Virgin Australia currently operates:<sup>15</sup>
- 7 services per week (each way) between Sydney and Queenstown.
  - 7 services per week (each way) between Brisbane and Queenstown.
  - 4 services per week (each way) between Melbourne and Queenstown.<sup>16</sup>
- 2.9. Virgin Australia accounted for 3.87% of total seats flown between Australia and New Zealand in the 12 months to January 2024, inclusive.<sup>17</sup>

## Air New Zealand

- 2.10. Immediately prior to the COVID-19 pandemic, Air New Zealand operated trans-Tasman services between:
- Sydney and Auckland, Christchurch, Queenstown and Wellington.
  - Melbourne and Auckland, Christchurch, Queenstown and Wellington.
  - Brisbane and Auckland, Christchurch, Queenstown and Wellington.
  - Gold Coast and Auckland and Christchurch.
  - Adelaide and Auckland.
  - Perth and Auckland.
- 2.11. In February 2020 Air New Zealand operated 156 weekly flights each way on these trans-Tasman routes. By February 2024 it was operating 166 weekly flights each way across the Tasman.

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<sup>15</sup> Virgin Australia is utilising the Boeing 737 aircraft for these services.

<sup>16</sup> Virgin Australia submit that the number of frequencies varies depending on time of year.

<sup>17</sup> Bureau of Infrastructure and Transport Research Economics, [International scheduled passenger flights and seats by airline, route and city pairs, January 2024](#).

- 2.12. Air New Zealand currently operates trans-Tasman services between the following city pairs (with the number of weekly flights set out in brackets):<sup>18</sup>
- Sydney and Auckland (28), Christchurch (7), Queenstown (7) and Wellington (6).
  - Melbourne and Auckland (19-24), Christchurch (6), Queenstown (7) and Wellington (5).
  - Brisbane and Auckland (17-18), Christchurch (5-6) and Wellington (7).
  - Gold Coast and Auckland (9) and Christchurch (1-3).
  - Adelaide and Auckland (4).
  - Cairns and Auckland (3).
  - Hobart and Auckland (0).
  - Sunshine Coast and Auckland (3).
  - Perth and Auckland (7).
- 2.13. Air New Zealand currently operates on 5 trans-Tasman routes where Qantas and / or Jetstar do not operate. Batik Air (Fifth Freedom carrier) operates on 1 of these routes, leaving 4 routes where Air New Zealand is the sole operator.<sup>19</sup>
- 2.14. Air New Zealand accounted for 39% of total seats flown between Australia and New Zealand in the 12 months to January 2024, inclusive.<sup>20</sup>

## **Qantas**

- 2.15. As at May 2024, Qantas operates up to 180 flights per week on the trans-Tasman between the following city pairs:<sup>21</sup>
- Sydney/Melbourne/Brisbane and Auckland.
  - Sydney/Melbourne/Brisbane and Christchurch.
  - Sydney/Melbourne/Brisbane and Wellington.
  - Sydney/Melbourne/Brisbane and Queenstown.
- 2.16. The only trans-Tasman route that Qantas currently operates on that Air New Zealand does not is the Brisbane-Queenstown route.
- 2.17. On 23 March 2024, Qantas announced that from late October 2024, Qantas will add up to 260,000 additional seats across three of its trans-Tasman routes over 12 months utilising its Boeing 737 aircraft, compared to its current schedule:<sup>22</sup>
- Brisbane-Christchurch: flights to increase from daily to between 10 to 12 per week from late October, adding up to 1,700 seats on the route each week.

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<sup>18</sup> Air New Zealand utilise a mix of Airbus A320, Airbus A321, Boeing B787 aircraft for these services. Cairns-Auckland and Sunshine Coast-Auckland services are seasonal.

<sup>19</sup> Including services between Perth/Adelaide/Hobart/Cairns/Sunshine Coast and Auckland.

<sup>20</sup> Bureau of Infrastructure and Transport Research Economics, [International scheduled passenger flights and seats by airline, route and city pairs, January 2024](#).

<sup>21</sup> Qantas utilise a mix of Boeing 737, Airbus A330 and Embraer E190 aircraft for these services.

<sup>22</sup> See Qantas media release dated 26 March 2024 [here](#).

- Melbourne-Christchurch: flights to increase from daily to 12 per week over the December/January peak and continue between 10 to 12 per week through 2025, adding up to 1,700 seats on the route each week.
- Melbourne-Wellington: flights to increase from daily to 10 per week between September 2024 and April 2025, adding up to 1,000 seats on the route each week.

2.18. Qantas accounted for 31% of total seats flown between Australia and New Zealand in the 12 months to January 2024, inclusive.<sup>23</sup>

### **Jetstar**

2.19. As at May 2024, Jetstar operates more than 50 weekly trans-Tasman services between the following city pairs:<sup>24</sup>

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

2.20. Jetstar accounted for 13% of total seats flown between Australia and New Zealand in the 12 months to January 2024, inclusive.<sup>25</sup> This means the Qantas Group (including Qantas and Jetstar) accounted for 44% of total seats flown on the trans-Tasman.

### **Fifth freedom carriers**

2.21. As at May 2024, Fifth Freedom carriers<sup>26</sup> operating trans-Tasman services include:

- Emirates – 7 weekly services (each way) between Sydney and Christchurch using Airbus A380 aircraft.
- LATAM – 7 weekly services (each way) between Sydney and Auckland using Boeing 787-9 aircraft.
- China Airlines – 7 weekly services (each way) between Brisbane and Auckland using Airbus A350-900.
- Batik Air – 6 weekly services (each way) between Perth and Auckland using Boeing 737-8 aircraft.
- AirAsia X – 3 weekly services (each way) between the Gold Coast and Auckland using Airbus A330-300 aircraft.
- China Eastern – 4 weekly services between Sydney and Auckland using Airbus A330-200 aircraft; 2 direct services from Hangzhou to Auckland with a return via Sydney, while the other 2 services will visit Sydney first before travelling to Auckland and then back to Hangzhou.

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<sup>23</sup> Bureau of Infrastructure and Transport Research Economics, [International scheduled passenger flights and seats by airline, route and city pairs, January 2024](#).

<sup>24</sup> See Jetstar's international services to New Zealand utilise a Airbus A320 for all trans-Tasman services other than Sydney-Auckland where it utilises Airbus A321neo aircraft.

<sup>25</sup> Bureau of Infrastructure and Transport Research Economics, [International scheduled passenger flights and seats by airline, route and city pairs, January 2024](#).

<sup>26</sup> A fifth freedom carrier is a carrier that operates services between two foreign countries on flights which commence or end in the carrier's home country.

2.22. Fifth Freedom carriers accounted for 13% of total seats flown between Australia and New Zealand in the 12 months to January 2024, inclusive.<sup>27</sup>

### 3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Proposed Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including competitors, industry associations and regulatory bodies.<sup>28</sup>

#### Prior to draft determination

- 3.3. The ACCC received 5 public submissions from interested parties in relation to the application. These submissions are outlined below.
- 3.4. New Zealand Airports (**NZ Airports**) is the industry association for New Zealand airports and does not support authorisation. NZ Airports submits that the Proposed Conduct would remove the viable potential for increased competition on the trans-Tasman market, resulting in less consumer choice and upward pressures on airfares for the five-year period of the codeshare. Further, granting approval would substantially move the trans-Tasman market toward becoming a fully authorised duopoly, removing significant competition on the trans-Tasman routes until one of the alliances (Qantas Group or Virgin Australia/Air New Zealand) decided to break apart. NZ Airports also submits that the benefits are limited and accrue to a small number of Virgin Australia customers, primarily business and loyalty customers, who wish to fly across the Tasman.
- 3.5. Sydney Airport Corporation (**Sydney Airport**) does not support authorisation and is concerned that the Proposed Conduct is likely to have a material effect of disincentivising Virgin Australia from recovering trans-Tasman services using its own aircraft and providing much needed competition. Sydney Airport submits that without the Proposed Conduct, Virgin Australia would have a commercial imperative to resume its trans-Tasman services, to the benefit of consumers and competition. Sydney Airport considers the Proposed Conduct if authorised effectively removes this commercial imperative at a cost to competition and to the detriment of the travelling public because, unlike traditional arms-length code share agreements, the Proposed Conduct will mean that Virgin Australia has no ability or reason to compete with Air New Zealand either on pricing or non-pricing terms. Sydney Airport also submits that if authorisation is approved, there will be some form of code sharing between Air New Zealand and all Australian airlines operating internationally and on the trans-Tasman route.
- 3.6. Queensland Airports (the owner and operator of Gold Coast, Townsville, Mount Isa and Longreach airports) (**QLD Airports**) supports authorisation for a period of up to three years. QLD Airports submits that the Proposed Conduct will increase the distribution potential of existing Air New Zealand capacity from Gold Coast to New Zealand which QLD Airports believes will create demand conditions that could support additional capacity and resultant public good. QLD Airports submits that a 5-year authorisation may reduce the incentives for Virgin Australia to enter the market using

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<sup>27</sup> Bureau of Infrastructure and Transport Research Economics, [International scheduled passenger flights and seats by airline, route and city pairs, January 2024](#).

<sup>28</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

their own metal unless a bilateral codeshare or deeper arrangement was secured between two airlines in place of the current application.

- 3.7. Australian Travel Industry Association (**ATIA**) is the peak body for travel professionals, and does not oppose the authorisation, subject to further clarification regarding the co-operation regarding corporate and SME customers. ATIA reserves the right to comment following this additional information.
- 3.8. In response to ATIA's submission in relation to the scope of corporate and SME cooperation under the Proposed Conduct, the Applicants submitted that:
  - There will be no discussion of commercial terms relating to Virgin Australia or Air New Zealand Agency Agreements or Travel Management Company partners.
  - There will be joint identification, targeting, approaching and pricing of offers and discounts to corporate/SME customers for the supply of VA\*NZ services. Under the Proposed Conduct, Air New Zealand and Virgin Australia can tailor pricing to each individual corporate customer based on factors such as their travel spend or volume. This often results in a more competitive end price to the customer through deeper discounting.
  - It will promote competition by ensuring provision of competitive offers to customers that otherwise may not have been offered by Air New Zealand in isolation.
- 3.9. Further the Applicants submitted that the process of contracting with corporates and SMEs will be a semi-autonomous model, with the additional ability for Virgin Australia and Air New Zealand corporate sales teams to also tailor offers for each customer depending on circumstances.
- 3.10. Canberra Airport submits that the Proposed Conduct would offer Canberrans wishing to travel to New Zealand more options, for a greater share of business and leisure travellers from New Zealand to access the national capital, investing into the economies of Canberra, and south-east NSW, and will improve bilateral relations by offering more options for corporate leaders and industry stakeholders to access Canberra and the decision makers based there.
- 3.11. Canberra Airport is concerned however that an authorisation period of 5 years would limit the incentive for Virgin Australia to enter the trans-Tasman market, opting to rely solely on Air New Zealand aircraft through the codeshare arrangement. It submits that an authorisation for 3 years would provide sufficient time for Virgin Australia to develop a detailed proposal to enter the trans-Tasman market with its own fleet of aircraft.

### Following draft determination

- 3.12. The ACCC received 5 public submissions from interested parties in relation to the draft determination. These submissions are outlined below.
- 3.13. Jumpjet Airlines (a New Zealand company) does not support authorisation and submits that this is for a number of reasons including that the Proposed Conduct is distinctly anti-competitive, does not satisfy the public benefit test, does not provide additional operational efficiency above that which already exists, and does not offer additional choice or convenience for trans-Tasman travellers above that which already exists.
- 3.14. Canberra Airport supports authorisation for the reasons outlined in its initial submission; however, is requesting that the ACCC re-considers limiting the proposed authorisation to 3 years. It submits that a 5-year authorisation might dis-incentivise Virgin Australia from entering the trans-Tasman market in the medium-to-long-term with its own fleet of aircraft. Canberra Airport submits that the claim by Virgin Australia

that its previous operation of trans-Tasman services was economically unviable does not provide justification to exclude re-entering the market in the future.

- 3.15. Councillor William Coats, City of Hobart (in his personal capacity) supports authorisation and submits that the Proposed Conduct will increase airline connections to various and diverse destinations adding to the capacity for Hobart residents to travel and likewise for others to come to Hobart. For Hobart to link and directly fly to alternative destinations will have cost, time benefits and emissions reductions. Further, Mr Coats submits that the Proposed Conduct will increase the desirability for Velocity frequent flyers and Virgin Australia flyers to access the Air New Zealand network on trans-Tasman flights.
- 3.16. Nathan Tyler (consumer) supports authorisation and submits that the Proposed Conduct would render benefits to the consumer in the way of increased choice when deciding on flights and access to loyalty benefits and would have the immediate effect of increasing competition on cross Tasman routes.
- 3.17. Volleyball Tasmania supports authorisation and submits that Tasmania stands to benefit from more services, and that any possibility of easier travel to and from New Zealand represents an opportunity to expand the options for volleyball players, and the ability to co-ordinate with the New Zealand Volleyball community.
- 3.18. City of Hobart supports authorisation, and submits that any increase in choice and convenience, improved loyalty programs and access to international lounges for eligible Virgin Australia customers, would be a positive for Hobart and Tasmania.
- 3.19. Public submissions by the Applicants and interested parties are on the Public Register for this matter.

## 4. ACCC assessment

- 4.1. The Applicants have sought authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act and may constitute resale price maintenance within the meaning of section 48 (and section 96) of the Act. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result.

### Relevant areas of competition

- 4.2. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.3. The Applicants submit that a relevant area of competition is trans-Tasman passenger air services, including services between any point in Australia and any point in New Zealand.
- 4.4. The Applicants also submit that the Proposed Conduct will allow Virgin Australia to compete more effectively in domestic air passenger service markets by providing Virgin Australia with additional feeder traffic on its domestic network.
- 4.5. The ACCC considers that the areas of competition relevant to its assessment are:
  - International air passenger services between Australia and New Zealand, and
  - Australian domestic air passenger services.

## Future with and without the Proposed Conduct

- 4.6. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.
- 4.7. The Applicants submit that in the future without the Proposed Conduct the most likely counterfactual is the status quo. Specifically, the Applicants submit that:
- Virgin Australia would likely continue operating services on existing Sydney/Melbourne/Brisbane – Queenstown routes.
  - Virgin Australia would continue to assess the commercial viability of trans-Tasman services, consistent with its approach to assessing its network and deployment of resources. The Applicants submit that the short period in which Virgin Australia independently operated trans-Tasman services, following the dissolution of its broad Alliance with Air New Zealand, was characterised by substantial financial losses and that Virgin Australia will not again pursue strategies that are commercially unsustainable in this way.
  - 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.
- 4.8. Canberra Airport submits that the claim by Virgin Australia that its previous operation of trans-Tasman services was economically unviable does not provide justification to exclude re-entering the market in the future.
- 4.9. In their respective submissions, NZ Airports, Sydney Airport, Canberra Airport and QLD Airports suggest that in the future without the Proposed Conduct there is a greater likelihood that Virgin Australia would operate on other trans-Tasman routes in addition to the current Queenstown routes (see paragraph 4.64 below).
- 4.10. The Applicants submit that the Proposed Conduct does not change Virgin Australia's incentives regarding entry onto the trans-Tasman utilising its own aircraft.<sup>29</sup>
- 4.11. The ACCC considers that, in the future without the Proposed Conduct it is likely:
- Virgin Australia would continue to operate on the Sydney/Melbourne/Brisbane to Queenstown routes.
  - Virgin Australia would commence services on other trans-Tasman routes if assessed to be commercially viable, having regard to both route profitability and network benefits to Virgin Australia.
  - Virgin Australia's decisions about the timing and scale of any entry on other trans-Tasman routes would take into account:
    - Forecast demand growth on the route and proportion of point-of-sale Australia demand.
    - Virgin Australia's expected profitability on the route and network benefits.

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<sup>29</sup> See Applicants submission in response to Interested Parties dated 20 February 2024 on the ACCC's [public register](#), [page 5].

- Competitors' price and service offerings on the route and their likely response to entry by Virgin Australia.
- The availability of suitable aircraft and the profitability of deploying them on other routes.
- Air New Zealand would likely continue to operate on existing trans-Tasman routes.
- Air New Zealand would take the following into account when considering whether to add capacity on a trans-Tasman route:
  - Forecast demand growth on the route and proportion of point-of-sale New Zealand demand.
  - Impact on Air New Zealand route profitability and network benefits.
  - Competitor's likely response to Air New Zealand's increased capacity.
  - The availability of suitable aircraft and the profitability of deploying them on other routes.
- Air New Zealand would likely continue its traditional codeshare arrangement with Qantas whereby Air New Zealand can place its code on Australian domestic services operated by Qantas where those services connect with an Air New Zealand operated trans-Tasman service, reciprocated by Air New Zealand for New Zealand domestic services operated by Air New Zealand which connects with a Qantas operated trans-Tasman service.

4.12. The likely public benefits and public detriments from the Proposed Conduct, compared to this future without the Proposed Conduct, are considered below.

## Public benefits

4.13. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

*... we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*<sup>30</sup>

4.14. The Applicants submit that the Proposed Conduct will result in the following public benefits:

- Providing Virgin Australia customers with:
  - Access to VA coded trans-Tasman services operated by Air New Zealand, excluding services to/from Queenstown.
  - The ability to earn and redeem velocity points and accrue status credits on VA coded trans-Tasman services operated by Air New Zealand where Virgin Australia does not itself operate services.

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<sup>30</sup> Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.



- The ability to utilise Air New Zealand international lounges in Australia and New Zealand when flying on VA coded flights operated by Air New Zealand as well as other status benefits, if eligible.
- Increased customer choice and convenience for customers travelling on trans-Tasman services in the form of:
  - Onward boarding passes across reciprocal networks.
  - Baggage checked to final destination across Virgin Australia and Air New Zealand networks.
  - (For itineraries involving a domestic Australian leg) different flight times to those available on a Qantas operated itinerary.
- Increased efficiency and sustainability of Air New Zealand flight operations.
- Promotion of competition across various markets.

4.15. The ACCC considers that the public benefit claims of the Applicants fall into the following three broad categories:

- Enhanced products and services.
- Increased efficiencies to Air New Zealand's trans-Tasman operations.
- Promotion of competition.

### **Enhanced products and services**

4.16. The ACCC has considered whether the Proposed Conduct is likely to result in public benefits through enhanced products and services in the following categories:

- Increased choice and convenience for Australian point of sale trans-Tasman travellers.
- Better loyalty program benefits for Virgin Australia customers.
- International lounge access for eligible Virgin Australia customers when travelling on trans-Tasman services operated by Air New Zealand.

### ***Increased choice and convenience for Australian point of sale trans-Tasman travellers***

4.17. The Applicants submit that Virgin Australia does not currently have a trans-Tasman offer beyond services to and from Queenstown. The Proposed Conduct enables Virgin Australia to quickly and efficiently fill this network gap through coded services.<sup>31</sup>

4.18. The Applicants submit that 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 New Zealand's trans-Tasman network means that customers have access to VA coded coverage across Air New Zealand's entire non-Queenstown trans-Tasman schedule (including its broad range of destinations and deep frequency offering). The scope of

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<sup>31</sup> See Applicants submission in response to Interested Parties dated 20 February 2024 on the ACCC's [public register](#), [Section 3].

this VA coded offering could not be achieved as quickly and efficiently without the Proposed Conduct.<sup>32</sup>

- 4.19. The Applicants submit that the Proposed Conduct would allow Virgin Australia to offer customers greater convenience and choice on trans-Tasman services. In the future with the Proposed Conduct, Virgin Australia plans to activate InterAirline Through Check-in (IATCI) reciprocally with Air New Zealand. This functionality between both airlines' IT systems allows passengers to receive:<sup>33</sup>
- Onward boarding passes across reciprocal networks.
  - Checked baggage checked to their final destination across VA and New Zealand networks (i.e. onto any other Virgin Australia or Air New Zealand flight).
- 4.20. The Applicants submit that such investment in technology and implementation would unlikely be justified in a future 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.<sup>34</sup>
- 4.21. The Applicants submit that the Proposed Conduct provides more options where the customer values the trans-Tasman through-itinerary involving a domestic Australian leg being provided by a single marketing carrier. Without the Proposed Conduct, the Applicants submit such a service could only be provided by Qantas or Air New Zealand coding on Qantas operated services. As a result, the Applicants submit the Proposed Conduct enhances the choice available to consumers between Australian carriers.<sup>35</sup>
- 4.22. The Applicants submit that Virgin Australia customers travelling on a direct trans-Tasman service would also enjoy greater booking convenience. For example, a booking made through Virgin Australia's app or website could be completed more quickly with pre-populated information where a customer is logged in.<sup>36</sup>
- 4.23. Councillor William Coats, City of Hobart (in his personal capacity) submits that the Proposed Conduct will increase airline connections to various and diverse destinations adding to the capacity for Hobart residents to travel and likewise for others to come to Hobart. It is submitted that for Hobart to link and directly fly to alternative destinations will have cost, time benefits and emissions reductions.
- 4.24. Similarly, the City of Hobart submits that any increase in choice and convenience will be a positive for Hobart and Tasmania, particularly for business and conference delegates.
- 4.25. Nathan Tyler (consumer) submits that the Proposed Conduct renders benefits to the consumer in the way of increased choice when deciding on flights over a given route.

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<sup>32</sup> See Applicants submission dated 17 November 2023 on the ACCC's [public register](#), [Section 7.1].

<sup>33</sup> See Applicants submission dated 17 November 2023 on the ACCC's [public register](#), [Section 7.3].

<sup>34</sup> See Applicants submission dated 17 November 2023 on the ACCC's [public register](#), [Section 7.3].

<sup>35</sup> See Applicants submission dated 17 November 2023 on the ACCC's [public register](#), [Section 7.3].

<sup>36</sup> See Applicants submission dated 17 November 2023 on the ACCC's [public register](#), [Section 7.3].

- 4.26. Jumpjet Airlines submits that there is no evidence that increased choice or convenience will eventuate for passengers under the proposed arrangement and conduct.
- 4.27. The ACCC accepts that the Proposed Conduct would provide customers – including individuals, corporate and SME customers – with access to VA-coded Air New Zealand-operated trans-Tasman services on routes where Virgin Australia does not operate (VA\*NZ Trans-Tasman services). This would give customers the choice of booking such itineraries from Australia with Virgin Australia in addition to Air New Zealand.
- 4.28. Booking VA\*NZ trans-Tasman services through Virgin Australia would mean that any Australian domestic service included in a trans-Tasman itinerary would be operated by Virgin Australia. Alternatively, booking with Air New Zealand would mean that any Australian domestic leg of a trans-Tasman itinerary would be operated by Qantas, under the terms of Air New Zealand's current domestic codeshare arrangement with Qantas.
- 4.29. The ACCC notes Virgin Australia's stated plan to offer onward boarding passes and baggage checked through to final destination under the Proposed Conduct. The ACCC understands that these are also features of the Air New Zealand – Qantas codeshare arrangement, so while providing a comparable, competitive service, are not likely to be a point of differentiation.
- 4.30. The ACCC considers that the ability to book a wider range of trans-Tasman itineraries through Virgin Australia under the Proposed Conduct is likely to result in some public benefit to the extent that there are customers who:
- a) Prefer to book their trans-Tasman travel with Virgin Australia, rather than Air New Zealand or their rival, Qantas Group.
  - b) Have a multi-sector itinerary that includes an Australian domestic leg and find the timing of Virgin Australia's domestic flights more convenient than any Qantas-operated domestic flight that they could access by booking with Air New Zealand.
- 4.31. However, the ACCC considers that the extent of such public benefit would likely be limited given:
- It is likely that many travellers do not have a strong preference to book their trans-Tasman travel with Virgin Australia.
  - A very small proportion of travellers who travel on trans-Tasman itineraries require connecting Australian domestic flights.
  - Qantas' more extensive Australian domestic network for connecting trans-Tasman passengers, which customers can access by booking either directly with Qantas or alternatively with Air New Zealand, which places its code on Qantas operated Australian domestic services.

***Better loyalty program benefits for Virgin Australia customers***

- 4.32. The Applicants submit that Velocity members currently have no ability to earn and redeem loyalty points on trans-Tasman routes other than on services to Queenstown. With the Proposed Conduct, Virgin Australia will be able to offer its members the ability to earn and redeem Velocity points and accrue status credits on VA\*NZ trans-Tasman services.
- 4.33. The Applicants submit that the Proposed Conduct would give Virgin Australia's Velocity members the ability to earn points on VA coded non-Queenstown trans-

Tasman services operated by Air New Zealand, consistent with the earn rate across Virgin Australia's network. The Applicants submit that 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 earned 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.<sup>37</sup>

- 4.34. In addition, Velocity members will have the ability to earn Status Credits and Eligible Sectors<sup>38</sup> on VA coded non-Queenstown trans-Tasman services operated by Air New Zealand, 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 New Zealand or other partners.<sup>39</sup>
- 4.35. The Applicants further submit that the Proposed Conduct would enable Virgin Australia's corporate and SME customers to access VA\*NZ trans-Tasman Services by booking through the Virgin Australia Business Flyer program, providing access to discounted fares and earn points for their business, as well as individual flyers.
- 4.36. Several interested parties commented that the Proposed Conduct is likely to benefit Virgin Australia loyalty program members by increasing opportunities to access loyalty program benefits.
- 4.37. The ACCC considers that the Proposed Conduct is likely to enhance the value of Virgin Australia's frequent flyer programs for individuals and businesses by providing increased opportunities for Velocity members and Virgin Australia Business Flyer Program members to earn and redeem points and status credits on non-Queenstown trans-Tasman services operated by Air New Zealand.
- 4.38. Given the large number of Velocity and Virgin Australia Business Flyer Program members and the value that loyalty program members typically place on the ability to earn and redeem points on international flights, the ACCC considers that the Proposed Conduct is likely to result in some public benefit through better loyalty program benefits for Virgin Australia customers.

#### ***International lounge access for eligible Virgin Australia customers***

- 4.39. The Applicants submit Virgin Australia does not currently operate any international lounges at any international departure port. Air New Zealand 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.<sup>40</sup>
- 4.40. The Applicants also submit that under the terms of the Proposed Conduct, access to Air New Zealand's seven international lounges across Australia and New Zealand would become available to:<sup>41</sup>

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<sup>37</sup> See Applicants submission dated 17 November 2023 on the ACCC's [public register](#), [Section 7.4].

<sup>38</sup> According to Virgin Australia's website, an Eligible Sector is any flight that begins with a VA coded flight number excluding Reward Seats or Economy Lite fares. Earning Status Credits and flying the minimum Eligible Sectors will help Velocity members to maintain or upgrade their Velocity Status.

<sup>39</sup> See Applicants submission dated 17 November 2023 on the ACCC's [public register](#), [Section 7.4].

<sup>40</sup> See Applicants submission dated 17 November 2023 on the ACCC's [public register](#), [Section 7.4].

<sup>41</sup> See Applicants submission dated 17 November 2023 on the ACCC's [public register](#), [Section 7.4].

- Eligible flyers travelling on a business class, VA coded ticket on services operated by Air New Zealand, making Virgin Australia's overall offering more compelling to corporate customers.
- Velocity Gold and Platinum members travelling on a VA coded ticket on services operated by Air New Zealand, making the Velocity program more appealing to consumers.

4.41. The ACCC considers that the Proposed Conduct is likely to allow eligible Virgin Australia customers to access Air New Zealand's 7 international lounges when flying on a VA coded Air New Zealand operated trans-Tasman service. This is likely to be valued by eligible customers who prefer to book their trans-Tasman travel with Virgin Australia (rather Air New Zealand or Qantas) and therefore is likely to result in some limited public benefit compared to the future without the Proposed Conduct.

### **Increased efficiency of Air New Zealand's trans-Tasman operations**

4.42. The Applicants submit that the Proposed Conduct would facilitate access to additional distribution channels for Air New Zealand's trans-Tasman services and drive increased passenger numbers (including high yield passengers such as corporates and SME customers) onto Air New Zealand's trans-Tasman services and likely also onto its (New Zealand) domestic services, improving the efficiency and sustainability of its flight operations.

4.43. NZ Airports submits that increased VA codeshare passengers (including high yield corporate and SME customers) travelling on Air New Zealand trans-Tasman and domestic services would displace existing Air New Zealand customers and put upward pressure on airfares.

4.44. In response to NZ Airports submission, the Applicants submit an increase in passengers on Air New Zealand trans-Tasman and domestic services will increase the efficiency of Air New Zealand's services, improving the conditions for Air New Zealand to add capacity.

4.45. The Applicants further submit the Proposed Conduct relates only to Australian-originating passengers. Realistically, many of the Australian passengers who choose to fly on a Virgin Australia coded service will be switching from Qantas to do so. In that case, market demand versus supply is completely unaffected (i.e., it simply means another carrier has an empty seat). But it does mean that Australian travellers will have a stronger alternative to Qantas, and Qantas will no doubt respond in turn.

4.46. Jumpjet Airlines submits that the Proposed Conduct does not provide any additional operational efficiency above that already existing by the Applicants who possess high standards of operation.

4.47. The ACCC accepts that the Proposed Conduct has the potential to result in increased passenger numbers and higher capacity utilisation (average monthly load factors) on Air New Zealand operated trans-Tasman services to destinations other than Queenstown. However, the ACCC also notes the Applicants' acknowledgement that many of the Australian originating passengers who might choose to fly on a VA coded Air New Zealand trans-Tasman service under the Proposed Conduct would otherwise have flown with Qantas on the trans-Tasman. That is, an improvement in Air New Zealand's capacity utilisation may be at the expense of Qantas'.

4.48. The ACCC is not satisfied that the Proposed Conduct is likely to confer public benefits by improving the efficiency and sustainability of Air New Zealand's trans-Tasman flight operations.

## Promotion of competition

- 4.49. The Applicants submit that 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.
- 4.50. The Applicants submit that the increased passengers on Air New Zealand's services (shifted from Qantas or incremental trans-Tasman demand through Virgin Australia's network and Australian distribution strength under the Proposed Conduct) provide the conditions for a competitive response from other operators on the trans-Tasman. The Applicants submit that Qantas, in particular, is well-positioned to provide that response with both its full service and low-cost carrier options available to consumers.
- 4.51. The Applicants submit that 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 frequent flyer points and enjoy status privileges when travelling. As noted in paragraphs 4.17 –4.22, the Applicants submit the Proposed Conduct will enable Virgin Australia to offer enhanced products and services including tickets on trans-Tasman routes it does not currently offer, together with the ability to earn and redeem frequent flyer points on these services and access to lounge privileges using Air New Zealand's international lounges in Australia and New Zealand. The Applicants submit that passengers will value this choice, and this necessarily improves competition not just on the trans-Tasman, but more broadly. The Applicants submit that, in particular:
- By extending its Virgin Australia Business Flyer Program offering to corporate and SME customers with the Proposed Conduct, Virgin Australia and Air New Zealand will be able to compete more effectively for corporate contracts and SME customers. The Applicants submit 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 Applicants submit that 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. The Applicants submit that 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.
  - By adding non-Queenstown trans-Tasman services into the earning and redemption offering of the Velocity program will make the Velocity and Virgin Australia Business Flyer 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.
  - The ability to buy trans-Tasman services 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 when travelling domestically.

- 4.52. Further, the Applicants submit that the Proposed Conduct improves the conditions for Virgin Australia's entry on trans-Tasman routes by allowing Virgin Australia to build its presence as a marketing option (building its brand awareness and loyalty proposition) and allowing access to greater opportunities for the higher yielding corporate and SME traffic should Virgin Australia's assessment of the trans-Tasman market opportunities change.
- 4.53. Nathan Tyler submits that the authorisation would have the immediate effect of increasing competition on cross-Tasman routes.
- 4.54. The ACCC notes that under the Proposed Conduct there is to be no price competition between Virgin Australia and Air New Zealand when marketing and selling Air New Zealand operated trans-Tasman services. Air New Zealand will specify public fares at which Virgin Australia may market and resupply itineraries involving VA\*NZ trans-Tasman services. The Proposed Conduct therefore does not confer public benefits by facilitating price competition between marketing carrier and operating carrier in the way that a traditional arms-length free sale code share arrangement might.<sup>42</sup>
- 4.55. The ACCC considers that the Proposed Conduct would likely allow Virgin Australia to obtain direct and immediate exposure to evolving demand conditions, and commercial opportunities, on trans-Tasman routes other than the Queenstown routes on which it currently operates. This may enable Virgin Australia to make more informed assessments as to whether it is commercially viable to enter new trans-Tasman routes during the period of authorisation sought. The ACCC considers that this is a potential source of public benefit.
- 4.56. As noted above, the ACCC accepts that the Proposed Conduct is likely to enhance the attractiveness of the Applicant's offering to corporate and SME customers. However, it is not yet known how their enhanced offering might compare to Qantas' current offering to corporate and SME customers, or to Air New Zealand's offer under its code share arrangement with Qantas (which is outside the scope of the Proposed Conduct). It is therefore difficult for the ACCC to assess the extent to which the Proposed Conduct is likely to trigger a pro-competitive corporate and SME offering response from rival airlines, including Qantas.
- 4.57. The ACCC considers it is unlikely that the Proposed Conduct will materially enhance Virgin Australia's ability to compete with Qantas in the Australian domestic market by providing Virgin Australia with additional feeder traffic. The very small proportion of trans-Tasman journeys that include an Australian domestic service mean that any diversion of traffic from Qantas to Virgin Australia under the Proposed Conduct is unlikely to have a material effect on competition in the Australian domestic market.
- 4.58. On balance, the ACCC is not satisfied that the Proposed Conduct is likely to confer material public benefits by promoting competition – either by facilitating Virgin Australia's entry on new trans-Tasman routes or triggering a material competitive response from rivals, such as Qantas, in either the trans-Tasman air passenger services market or the Australian domestic market.

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<sup>42</sup> A traditional arms-length codeshare agreement typically allows the marketing carrier and the operating carrier to independently determine fares for services operated by the operating carrier.

## ACCC conclusion on public benefit

4.59. The ACCC considers that the Proposed Conduct is likely to result in public benefits over the period of authorisation from enhanced products and services in the form of:

- Increased choice and convenience for Australian point of sale trans-Tasman travellers.
- Better loyalty program benefits for Virgin Australia customers.
- International lounge access for eligible Virgin Australia customers.

4.60. The ACCC is not satisfied that the Proposed Conduct is likely to result in public benefits from increased efficiencies to Air New Zealand's trans-Tasman operations.

4.61. The ACCC is not satisfied that the Proposed Conduct is likely to result in material public benefits by promoting competition – either by facilitating Virgin Australia's entry on new trans-Tasman routes or triggering a material competitive response from rivals, such as Qantas, in either the trans-Tasman air passenger services market or the Australian domestic market.

## Public detriments

4.62. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*<sup>43</sup>

4.63. The ACCC has considered the likely public detriments from the Proposed Conduct with respect to the sale or supply of air passenger transport services between Australia and New Zealand.

4.64. The Applicants submit that Proposed Conduct would not result in any competitive detriment, for the following reasons:<sup>44</sup>

- 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, and 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.
- Consistent with Virgin Australia's approach to assessing its network and the deployment of resources, it will continue to assess the commercial viability of trans-Tasman services, 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.
- 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

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<sup>43</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

<sup>44</sup> See Applicants submission dated 17 November 2023 on the ACCC's [public register](#), [Section 8].



fifth freedom carriers) already operating or able to operate services, such as Qantas/Jetstar, Emirates, LATAM and China Airlines. Because Air New Zealand and Virgin Australia are not competitors in this broader market, the Proposed Conduct cannot as a matter of fact remove pricing competition or lead to an increase in airfares or reduction in service quality.

- 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.

4.65. Interested parties have raised the following concerns:

- NZ Airports submits that the Proposed Conduct would remove the viable potential for increased competition on the trans-Tasman market, resulting in less consumer choice and upward pressures on airfares for the five-year period of the codeshare. NZ Airport also submits that increasing passenger numbers onto Air New Zealand's trans-Tasman and domestic services, without offering increased services and increased capacity in the market, new high yielding customers accessed via the Virgin Australia network would simply displace existing Air New Zealand customers and put upward pressure on airfares, which is not in the broader interests of consumers.
- Sydney Airport submits that the Proposed Conduct is likely to have a material effect of disincentivising Virgin Australia from recovering trans-Tasman services using its own aircraft and providing much needed competition. Sydney Airport submits that without the Proposed Conduct, Virgin Australia would have a commercial imperative to resume its trans-Tasman services, to the benefit of consumers and competition. Sydney Airport also raised the concern that the Proposed Conduct will mean that Virgin Australia has no ability or reason to compete with Air New Zealand either on pricing or non-pricing terms.
- Canberra Airport has lodged 2 submissions raising concerns that a 5-year authorisation might dis-incentivise Virgin Australia from entering the trans-Tasman market in the medium-to-long-term with its own fleet of aircraft.
- QLD Airports submits that a 5-year authorisation may reduce the incentives for Virgin Australia to enter the market using their own metal.
- ATIA submits that it is appropriate for a condition to be imposed by the ACCC to monitor the Applicants' price and capacity on trans-Tasman routes, to ensure that a public detriment does not emerge.

4.66. In response to submissions, the Applicants submit that:<sup>45</sup>

- Since COVID, Virgin Australia has restructured its business and emerged from voluntary administration with a streamlined fleet and renewed short-haul international strategy with greater focus on standalone commercial viability and sustainability in the trade-off for aircraft and resources.
- Virgin Australia's decision to commence other trans-Tasman services is not as simple as looking at whether the impacts of COVID have dissipated and, if so,

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<sup>45</sup> See Applicants submission dated 20 February 2023 on the ACCC's [public register](#).

applying pre-pandemic capacity. Operational and commercial assessments must be made on the viability of services and optimal deployment of resources to achieve a network that is sustainable and operationally resilient.

- Very few of Virgin Australia's previously operated trans-Tasman services were viable pre-pandemic, and very few non-Queenstown trans-Tasman routes have been profitable for Virgin Australia. It has long struggled to effectively compete against the breadth and depth (network scope and frequency) of the Qantas offer on a stand-alone basis, leaving it unable to viably compete for both the leisure and higher yielding corporate travellers to enable commercially sustainable operations.
- Virgin Australia's ability to successfully and independently operate trans-Tasman services has also been hampered by its lack of a New Zealand based point of sale advantage. While fifth freedom carriers lack these domestic network advantages, they operate sustainable services as a result of their very different pricing strategy which is centred around recovery of marginal cost only, while drawing passenger feed from their international networks, including through their membership of global airline alliances (as applicable) or global loyalty base.
- Any concerns about the impact of the Proposed Conduct on overall trans-Tasman capacity are misplaced. The Proposed Conduct will have no impact on coordination of trans-Tasman capacity, and the Applicants have not sought authorisation to coordinate in relation to capacity, network or schedule. At its heart, the Proposed Conduct is simply a unilateral codeshare on Air New Zealand operated services with a novel pricing model which involves replication of Air New Zealand's determined pricing and cooperation on corporate and SME contracting.
- The Qantas Group (Qantas and Jetstar) is still the largest provider of trans-Tasman and domestic Australian services, carrying the majority of corporate travellers across the Tasman and accounting for more than 40% of trans-Tasman ticket sales and capacity, having increased its market share following the COVID pandemic. For the period January 2024 to October 2024, the Qantas Group has increased its trans-Tasman capacity relative to the equivalent period of 2019 by 13% and increased their market share (+10% pts vs 2019). Further, the ease of entry, larger aircraft and different pricing dynamics of fifth freedom carriers will also continue to pose a constraint on any attempt to anti-competitively raise fares or reduce service quality.
- While airfares are currently higher on the trans-Tasman compared to pre-COVID, this is not a consequence or indicator of limited competition:
  - Following COVID, airlines worldwide have struggled to grow back capacity due to resource and supply chain constraints, including access to aircraft, pilots, and ground and in-air staff, and the extraordinary levels of pent-up visiting friends & relatives (VFR) demand on the trans-Tasman after borders opened. This demand set against the capacity constraints resulted in a spike in airfares and is not indicative of long-term market pricing trends or a lack of competition.
  - Overall costs are also significantly higher than pre-COVID, such as jet fuel, while a number of other input costs including employee costs and airport fees and charges have also increased for airlines, further, inflation alone is up 15.8% since the start of the pandemic.

- During 2023, airlines have ramped up their operations and demand has normalised, leading to falling airfares, with further declines expected based on additional capacity coming into the market.
- 4.67. Post draft determination, Jumpjet Airlines submitted that the Proposed Conduct is distinctly anti-competitive and will result in collusion and misuse of market power.
- 4.68. The ACCC considers that the potential for public detriment from cooperative arrangements between airlines (e.g. alliances and codeshares) is greatest on routes on which the Applicants' operations overlap or are likely to overlap in the future without the Proposed Conduct.
- 4.69. The ACCC notes that the Applicants' operations currently overlap on the Sydney-Queenstown and Melbourne-Queenstown routes:<sup>46</sup>
- The Sydney-Queenstown route accounted for 6% of total seats flown between Australia and New Zealand in the 12 months to January 2024, inclusive. Virgin Australia operates 7 services per week (each way) and Air New Zealand operates 5 services per week (each way) on this route. Qantas and Jetstar also operate on this route. Qantas Group operated 51% of seats flown on this route in the 12 months to January 2024, inclusive.
  - The Melbourne-Queenstown route accounted for 4% of total seats flown between Australia and New Zealand in the 12 months to January 2024, inclusive. Virgin Australia currently operates 4 services per week (each way) and Air New Zealand currently operates 3 services per week (each way) on this route. Qantas and Jetstar also operate on this route. Together they operated 51% of seats flown on the route in the 12 months to January 2024, inclusive.
- 4.70. The ACCC considers that in the future without the Proposed Conduct Virgin Australia is likely to enter other trans-Tasman routes if such entry is commercially viable (see paragraph 4.11). The ACCC notes the Applicants submission that the Proposed Conduct is likely to improve the conditions for entry by Virgin Australia on new trans-Tasman routes (see paragraph 4.52).
- 4.71. The ACCC further notes that the Applicants have clarified that they do not seek authorisation to cooperate in any way in relation to the pricing, marketing, selling or operation of their respective services, including to corporate and SME customers, on current or future trans-Tasman overlap routes. The ACCC considers that this significantly limits the potential for the Proposed Conduct to give rise to anti-competitive public detriment.
- 4.72. The ACCC notes interested party concerns that the Proposed Conduct may result in increased demand for Air New Zealand trans-Tasman services (on routes where Virgin Australia does not operate), placing upward pressure on airfares and causing displacement of existing Air New Zealand customers by new higher yielding corporate and SME customers.
- 4.73. The ACCC considers that it is unlikely to be profitable for Air New Zealand to respond to any significant increase in passenger demand for its trans-Tasman services under the Proposed Conduct by raising airfares, rather than adding capacity to meet the additional demand. On routes where it faces competition from other operators, Air New Zealand, would risk diverting customers to rivals including the Qantas Group. On the 4 trans-Tasman routes where Air New Zealand is currently the only operator, it is

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<sup>46</sup> Bureau of Infrastructure and Transport Research Economics, [International scheduled passenger flights and seats by airline, route and city pairs, January 2024](#).

not clear that the Proposed Conduct would materially increase Air New Zealand's ability and incentive to raise airfares compared to the future without the Proposed Conduct.

- 4.74. The ACCC also notes that both Air New Zealand and Qantas have added significant additional capacity on trans-Tasman routes during the 12 months to January 2024 and Qantas has publicly announced their intention to add further capacity in the future when new aircraft become available in response to strong demand growth.
- 4.75. The ACCC notes interested party concerns that the Proposed Conduct may reduce Virgin Australia's incentive to enter new trans-Tasman routes. The ACCC has carefully considered confidential information provided by the Applicants comparing the revenue and margins Virgin Australia expects to earn under the Proposed Conduct from reselling Air New Zealand trans-Tasman services to the revenue and margins it currently earns across its current network operations. The ACCC is satisfied that the Proposed Conduct would not be likely to materially reduce Virgin Australia's incentive to enter new trans-Tasman routes to compete with Air New Zealand during the period for which authorisation is sought.
- 4.76. Finally, the ACCC considers that the Proposed Conduct is not likely to result in public detriments by making the trans-Tasman air passenger services market more vulnerable to coordination. The ACCC notes that the degree of cooperation between Virgin Australia and Air New Zealand under the Proposed Conduct is substantially less than a metal neutral airline alliance. The ACCC considers that the Proposed Conduct does not materially increase the likelihood of airlines operating on the trans-Tasman being able to reach and sustain a coordinated or accommodative outcome such as higher fares, reduced capacity or lower levels of service.

### **ACCC conclusion on public detriment**

- 4.77. On balance, for reasons set out above, the ACCC is satisfied that the Proposed Conduct is likely to result in minimal, if any, public detriment.

### **Balance of public benefit and detriment**

- 4.78. The ACCC considers that the Proposed Conduct would be likely to result in public benefits from enhanced products and services.
- 4.79. On balance, the ACCC considers that the Proposed Conduct is likely to result in minimal, if any, public detriment.
- 4.80. Therefore, for the reasons outlined in this determination, the ACCC is satisfied that the Proposed Conduct is likely to result in a public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

### **Length of authorisation**

- 4.81. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>47</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 4.82. In this instance, the Applicants seek authorisation for 5 years on the basis that:

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<sup>47</sup> Subsection 91(1)

- the Proposed Conduct will not result in any competitive detriment; and
  - the Proposed Conduct will result in significant public benefits which outweigh any potential detriments.
- 4.83. QLD Airports submits that the Proposed Conduct will increase the distribution potential of existing Air New Zealand capacity from Gold Coast to New Zealand, and is therefore supportive of authorisation for a period of 3 years, after which it would be reasonable to expect Virgin Australia to commence services in its own right. QLD Airports submits that a 5-year authorisation may reduce the incentives for Virgin Australia to enter the market using their own metal.
- 4.84. Canberra Airport has provided 2 submissions outlining that an authorisation period of 5 years would limit the incentive for Virgin Australia to enter the trans-Tasman market, opting to rely solely on Air New Zealand aircraft through the codeshare arrangement. An authorisation for 3 years would provide sufficient time for Virgin Australia to develop a detailed proposal to enter the trans-Tasman market with its own fleet of aircraft.
- 4.85. In response to interested party submissions, the Applicants submit that the consideration of a shorter authorisation term was raised based on the incorrect assumption that Virgin Australia would necessarily re-commence its pre-COVID trans-Tasman services after three years, including because it would have the fleet to do so.
- 4.86. The Applicants submit that very few of Virgin Australia's previously operated trans-Tasman services were viable pre-COVID, and such assumptions about Virgin Australia's future network and operations do not take into account the commercial reality of the underlying challenges Virgin Australia faces in sustainably attracting leisure and corporate travellers on the trans-Tasman.
- 4.87. Further, the Applicants submit that in order to implement the Proposed Conduct, the Applicants need to engage in a process of system design and alignment, IT deployment, and implementation of sales channels and content. In addition to the configuration, preparation and testing steps, a period of intensive activity across a number of areas of the business, including alliances, IT, distribution, sales and Velocity, is required to establish the following elements of the Proposed Conduct:
- VA Tariff – Fare filing services handover and training with Air New Zealand.
  - Sales platform development and configuration.
  - Virgin Australia Business Flyer platform development and configuration.
  - Marketing and PR activity development and planning.
  - Frequent flyer points earn/redemption system configuration.
  - Financial settlement system configuration.
  - Customer-facing team training and process updates (e.g. guest contact centre, customer-facing airport staff).
- 4.88. The Applicants submit that given this significant investment in resources, it would be inefficient to provide authorisation for less than a five-year term.
- 4.89. Canberra Airport notes that Virgin Australia will be required to complete logistical and technical processes to support the Proposed Conduct, but submits that it is difficult to accept that these changes would justify the need for a 5-year authorisation period.
- 4.90. The Applicants also submit that a 5-year authorisation period would increase the incentive for corporate and SME customers to engage with the Applicants, as opposed

to other airlines, and utilise the offers available pursuant to the Proposed Conduct given the greater certainty that a longer authorisation term provides.

- 4.91. The ACCC considers that given the Proposed Conduct is likely to result in a net public benefit (with the risk of public detriment assessed to be low, based on current information), and considering the time and resources required to be invested by the Applicants to implement the Proposed Conduct, the ACCC's view is that a 5-year authorisation period is appropriate. Should there be a material change in circumstances (for instance, a significant change in market conditions) during the authorisation period, the ACCC may consider reviewing any authorisation and potentially revoking it or revoking it and substituting an alternative authorisation.

## 5. Determination

### The application

- 5.1. On 17 November 2023, Virgin Australia Airlines Pty Ltd on behalf of itself and its related bodies corporate, and Virgin Australia International Airlines Pty Ltd and its related bodies corporate (together, **Virgin Australia**), and Air New Zealand Limited (**Air New Zealand**) (the **Applicants**) lodged application for authorisation AA1000653 with the Australian Competition and Consumer Commission (the **ACCC**).
- 5.2. The Applicants sought authorisation to engage in the conduct set out in paragraph 5.71.17 below, which is provided for in a Commercial Framework Agreement and various related, inter-conditional agreements. The Applicants state that all elements of the conduct are conditional on the proposed codeshare arrangements.
- 5.3. Specifically, the Applicants sought authorisation in respect of the Authorised Conduct, as described in paragraphs 5.7 below, for a period of 5 years.

### The authorisation test

- 5.4. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Authorised Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the conduct.
- 5.5. For the reasons outlined in this determination, the ACCC is satisfied, in all the circumstances, that the Authorised Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Authorised Conduct, including any lessening of competition.
- 5.6. Accordingly, the ACCC grants authorisation.

### Conduct which the ACCC authorises

- 5.7. The ACCC has decided to grant authorisation AA1000653 to the Applicants for the following conduct:
  - (a) Virgin Australia will place its code on a free sale basis on Air New Zealand operated trans-Tasman services on routes where Virgin Australia does not operate (the **VA\*NZ trans-Tasman Services**). Virgin Australia will market and resupply these VA\*NZ trans-Tasman Services only for itineraries sold in Australia and originating in Australia (including one-way services from Australia and return services from Australia).
  - (b) These codeshare rights are provided on the condition that Air New Zealand

specifies the public fares at which Virgin Australia may market and resupply itineraries involving VA\*NZ trans-Tasman Services. This includes trans-Tasman itineraries involving only VA coded Air New Zealand operated services (e.g., SYD-AKL) and trans-Tasman itineraries that include connecting Australian domestic services operated by Virgin Australia and a VA coded Air-New Zealand operated trans-Tasman service (e.g., CBR-SYD-AKL) (**VA\*NZ trans-Tasman Itineraries**).

- (c) Virgin Australia and Air New Zealand can jointly discuss and agree upon fare rules and conditions associated with VA\*NZ trans-Tasman Itineraries.
- (d) Virgin Australia and Air New Zealand may jointly identify corporate and SME customers to provide discounts in respect of services that can be provided by Virgin Australia, for VA\*NZ trans-Tasman Itineraries. This may include:
  - Joint pricing and discounting of private fares, based on factors such as travel spend and volume;
  - Discussing and determining additional discounts or offers in order to win or retain additional or particular customers; and
  - Jointly allocating or determining a pipeline of target customers and tailoring discounts and offers to win the business of those target customers.

However, this will not include:

- discussion of commercial terms relating to Virgin Australia or Air New Zealand Agency Agreements or Travel Management Company partners;
  - joint pricing and discounting of private fares on routes on which Virgin Australia and Air New Zealand both operate, including the routes between Sydney/Melbourne/Brisbane-Queenstown; or
  - joint pricing and discounting of private fares on Virgin Australia or Air New Zealand operated routes other than the relevant VA\*NZ trans-Tasman Itineraries.
- (e) Eligible Velocity Frequent Flyer members can access Air New Zealand's international lounges when travelling on VA\*NZ trans-Tasman Services.
  - (f) Velocity Frequent Flyer members can earn Velocity Points and accrue status credits when travelling on VA\*NZ trans-Tasman Services.
  - (g) Velocity Frequent Flyer members can redeem their Velocity Points for travel on VA\*NZ trans-Tasman Services.
  - (h) Virgin Australia and Air New Zealand can extend existing arrangements that provide each other with reciprocal network-wide standby travel for staff leisure in the economy cabin, and reciprocal duty travel in the economy cabin. This may also include the extension of staff leisure and duty travel entitlements to the business cabin.
  - (i) Virgin Australia and Air New Zealand can share information to the extent necessary to facilitate any of the matters referred to above

(the **Authorised Conduct**).

- 5.8. The Authorised Conduct does not involve Air New Zealand placing its code on any services operated by Virgin Australia, including domestic services in Australia.
- 5.9. The Authorised Conduct does not apply on routes where Virgin Australia operates its own trans-Tasman services. This currently covers Melbourne – Queenstown; Sydney – Queenstown; and Brisbane – Queenstown. The Authorised Conduct will cease to

apply in relation to a trans-Tasman route if Virgin Australia commences:

- (a) operating its own services in competition with Air New Zealand on that route; or
- (b) marketing VA coded services in competition with Air New Zealand where Virgin Australia has pricing control on that route.

5.10. The ACCC grants authorisation in relation to Division 1 of Part IV of the Act and section 48 of the Act.

5.11. The ACCC has decided to grant authorisation AA1000653 until 30 June 2029.

## 6. Date authorisation comes into effect

6.1. This determination is made on 6 June 2024. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 28 June 2024.