Public Version

Application to the Minister of Transport pursuant to

Part 9 of the Civil Aviation Act 1990

QANTAS

American Airlines

Restated Joint Business Agreement and associated agreements

22 July 2020

EXECUTIVE SUMMARY

Qantas Airways Limited (**Qantas**) and American Airlines Inc (**American**) and their related bodies corporate[1] (together, the **Applicants**) seek authorisation from the Minister of Transport under section 88 of the *Civil Aviation Act 1990* (**CAA**) to continue to coordinate their operations between and within Australia/New Zealand and the United States (**US**), Canada and Mexico (**Trans-Pacific Routes**) pursuant to the Restated Joint Business Agreement (**Restated JBA**) and associated agreements[2] for a further five years (the **Proposed Conduct**).

The airline industry is currently in crisis. Airlines must make critical decisions about how best to restore networks and travel in the coming months and years. A long term vision is required to support investment and planning. For the Applicants, there is no doubt that the Proposed Conduct represents the most effective way to reinstate and sustain Trans-Pacific capacity and offer a strong, competitive alternative to the dominant Air New Zealand/United Airlines alliance, which – with the benefit of indefinite approval in both New Zealand[3] and the US[4] – has steadily attracted around 70% combined share of all New Zealand-US traffic.[5]

Qantas and American need long term re-authorisation of the Proposed Conduct to rebuild and provide a competitive and comprehensive customer proposition on the Trans-Pacific Routes. Given the expectation that the Trans-Pacific Routes will once again see high volumes of passengers connecting beyond the gateway hubs, the ability to offer streamlined connectivity and sell competitively to 'behind and beyond' destinations through the Proposed Conduct will remain crucial.

The overall customer value flowing from a Trans-Pacific joint business has been recognised by multiple regulators over time. The original Joint Business Agreement entered into by the Applicants on 6 May 2011 (**Original JBA**) was authorised by all relevant regulators – the Minister of Transport on 26 September 2011, the Australian Competition and Consumer Commission (**ACCC**) on 29 September 2011[6] and the US Department of Transportation (**USDOT**) on 9 November 2011.[7] The Original JBA provided the platform for the Applicants' ongoing Trans-Pacific growth and was revised to become the Restated JBA in June 2015, reflecting the commencement of American's long-haul services to Australia in December 2015.

The Restated JBA was swiftly authorised for five years by both the Minister for Transport on 8 November 2015[8] and the ACCC on 25 February 2016.[9] However, uncertainty and delays surrounding the US regulatory process prevented full implementation of the Restated JBA in all relevant

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[1] See Annexure A which is a list of Qantas' related bodies corporate covered by this Application. American's related bodies corporate covered by this Application are: Envoy Aviation Group Inc. (Envoy), PSA Airlines, Inc. (PSA) and Piedmont Airlines, Inc. (Piedmont). American Airlines is the entity that is engaged in Trans-Pacific services whereas Envoy, PSA and Piedmont are wholly owned carriers which provide scheduled air transportation under the brand name "American Eagle."

[2] See Confidential Annexure B.

[3] See: https://www.transport.govt.nz/air/internationalairservices/internationalaircarriagecompetition/airnz-united-airlines-application/

[4] See USDOT Order 2001-4-2, Docket DOT-OST-1999-6680 issued in respect of the Application by United Airlines and Air New Zealand under 49 USC 41308-41309 for Approval of Antitrust Immunity for Alliance Agreements, dated 3 April 2001. .

[5] See Tables 8 and 9 below based on MIDT data measured to year end 2019.

[6] See ACCC Determination in respect of applications for authorisation lodged by Qantas Airways Limited and American Airlines Inc in respect of a joint business agreement between the applicants, Authorisations A91265 and A91266, dated 29 September 2011 Available: https://www.accc.gov.au/system/files/public-registers/documents/D11%2B2315190.pdf

[7] See US Department of Transportation Docket DOT-OFT-2011-0111, Joint Application of American Airlines Inc and Qantas Airways Limited under 49 USC 41309 for approval of Joint Business Agreement, Final Order dated 9 November 2011. US DOT approval was (among other things) subject to annual reporting by the Applicants in respect of the public benefits being generated by the Original JBA.

[8] See Ministry of Transport briefing to the Minister re Authorisation of the Qantas/American Airlines Alliance (received 6 November 2015) and authorised by the Minister on 8 November 2015. Available: https://www.transport.govt.nz/air/internationalairservices/internationalaircarriagecompetition/qantas-american-joint-agreement/

[9] See ACCC Determination: Application for Revocation of A91265 and A91266 and the Substitution of authorisation A91502 and A91503 lodged by Qantas Airways and American Airlines in respect of their restated joint business agreement and associated agreements, 25 February 2016. Authorisation numbers A91502 and A91503. Available: https://www.accc.gov.au/system/files/public-registers/documents/D16%2B22969.pdf Prior to its final determination, the ACCC had granted interim authorisation on 9 July 2015. See: https://www.accc.gov.au/system/files/public-registers/documents/D15%2B99780.pdf

jurisdictions, resulting in a significant wind-back of prevailing customer benefits and a hold on forward planning and integration. When final approval was ultimately granted by the USDOT in July 2019, the Applicants moved immediately to start delivering the complete and broad suite of customer benefits. The USDOT granted approval until 2026 – timing that was intended to facilitate closer long term alignment with future regulatory approvals in New Zealand and Australia.[10]

Full implementation of the alliance had then progressed less than seven months when it was further interrupted by the outbreak of the Novel coronavirus (**COVID-19**), first reported in Wuhan, China, on 31 December 2019 and declared a pandemic by the World Health Organization[11] (**COVID-19 Pandemic**). As the Minister is aware, the flight, entry and quarantine restrictions imposed by Governments globally has had, and continues to have, an unprecedented and severely detrimental impact on all carriers' services. In June 2020, the International Air Transport Association (**IATA**) considered that *'Financially, 2020 will go down as the worst year in the history of aviation. On average, every day of this year will add US$230 million to industry losses…'*[12]

As at the date of this application, Qantas has been forced to suspend its Trans-Pacific operations (including its only recently commenced Brisbane-San Francisco services) until at least the end of October 2020, as well as delay the launch of its new Brisbane-Chicago services until at least 2021. Qantas Group services on the Tasman have similarly been suspended until at least mid-August 2020, while some Jetstar services within domestic New Zealand have been reinstated on a limited basis. American's global network has also been significantly impacted, with its Auckland-Los Angeles service currently suspended until late 2021 and its Sydney-Los Angeles service currently suspended until at least mid-2021.[13]

Despite these unexpected delays and severe interruptions to implementation of the Restated JBA, the joint business itself has delivered and, with long term re-authorisation from the Minister of Transport, will provide the opportunity to continue to deliver significant benefits to the Applicants and New Zealand consumers. The success of the Original JBA facilitated the subsequent expansion of American's long-haul services to Australasia, including the launch of Auckland-Los Angeles services in June 2016, giving New Zealand consumers real choice in competition with the dominant Air New Zealand/United alliance. Unfortunately, uncertainty over US regulatory approval created a delay in implementing joint business support for the Auckland-Los Angeles service, but once approval was finalised in mid 2019, the carriers quickly moved to deepen co-operation and deliver even greater benefits.

Significantly, in October 2019, American announced the introduction of two new services from New Zealand: Christchurch-Los Angeles and Auckland-Dallas Fort/Worth, offering connections between gateways not served by any other carrier. In particular, the Christchurch-Los Angeles service would be the first non-stop route from New Zealand's south island to the US, whilst the Auckland-Dallas/Fort Worth service would provide New Zealanders with direct access to American's hub and onward connections for the first time. Originally intended to launch in October 2020, these services have been delayed as a result of the COVID-19 Pandemic until the Winter 2021 season at the earliest. The support of the joint business was critical to the announcement of these services and the prospect of operational launch later next year now depends even more on continued business support from Qantas.

As well as materially boosting direct New Zealand-US capacity, the joint business has expanded capacity between Australia and North America, providing New Zealand consumers with more one-stop transit options to more destinations. Most recently, Qantas introduced new Brisbane–San

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[10] See USDOT Order 2019-07-07, Docket DOT-OFT-2018-0030, Application of American Airlines Inc and Qantas Airways Limited under 49 USC 41308 and 41309 for approval of and antitrust immunity for Alliance Agreements, dated 19 July 2019. US DOT approval was (among other things) subject to annual reporting by the Applicants in respect of the public benefits being generated by the Restated JBA.

[11] World Health Organization, 11 March 2020. See: https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen

[12] See https://www.iata.org/en/pressroom/pr/2020-06-09-01/

[13] See further American announcement dated 1 July 2020. Available: http://news.aa.com/news/news-details/2020/American-Airlines-Resets-International-Network-for-Remainder-of-2020-Through-Summer-2021-OPS-DIS-07/

Francisco services (which commenced in February 2020, just prior to the COVID-19 Pandemic) and was due to commence new Brisbane-Chicago services (originally scheduled to launch in April 2020 but now postponed as a result of the COVID-19 Pandemic). These new services supplemented earlier capacity expansion which had similarly been enabled by the joint business since 2011, including the American operated Sydney-Los Angeles service and Qantas operated services to Dallas Fort/Worth and San Francisco.

In addition to capacity expansion, the Applicants have delivered:

- increased connectivity and enhanced schedule choice through an expanded codeshare relationship, again giving New Zealand consumers more travel options;

- an enhanced frequent flyer proposition, of particular benefit to the growing number of New Zealand resident members of both Applicants' frequent flyer programs;

- improved customer services including expanded reciprocal lounge access, enhanced check-in processes, better baggage handling and increased booking convenience;

- a variety of fare products, price points and lower fares made possible through coordinated inventory management; and

- the stimulation of tourism and trade to and within New Zealand, through joint sales and marketing, with a particular focus on campaigns in the US showcasing New Zealand.

Going forward, and particularly given the unprecedented impacts of the COVID-19 Pandemic, a five year term of re-authorisation of the Proposed Conduct will be material to ensuring that both Applicants can reinstate Trans-Pacific capacity as quickly and as sustainably as possible, while also providing the certainty to justify further investment and expansion of customer benefits in the longer term – all of which is critically important to re-connect tourism and trade markets in New Zealand, Australia and North America.

As was the case in 2015, and as is now more evident than ever, neither Applicant can effectively and efficiently serve the long haul Trans-Pacific Routes alone. As a result of the COVID-19 Pandemic, American has reviewed and reconfigured its international network in anticipation of ongoing low demand,[14] a review that has reiterated the need to leverage connectivity through joint business partners' hubs in order to achieve sustainable operations. The success of American's Auckland-Los Angeles service is a case in point. That service depends on utilising Qantas' sales and distribution channels and domestic networks in Australia and New Zealand. With re-authorisation for a five year term, the Applicants will work together to use each other's inventory and access to codeshare selling to stimulate demand through joint sales and marketing activities. Qantas' support will be critical to any effort to restore this important direct link between New Zealand and the US and to provide genuine choice to travellers as a counter-balance to the dominance of the Air New Zealand/United alliance. Likewise, the successful reinstatement of Qantas' Trans-Pacific services remain dependent on accessing the breadth, depth and efficiency of the American network and sales and distribution channels in the US, Canada and Mexico.

For the reasons detailed in this application, the Minister should therefore exercise his discretion to authorise the Proposed Conduct for a further five year term. The Proposed Conduct is capable of authorisation under section 88 of the CAA and does not breach any of the specific provisions in section 88(4)(a)-(f) of the CAA. In summary, the Proposed Conduct:

- involves an extension of an existing arrangement between two complementary networks with limited overlap on intensely competitive routes;

[14] See further American announcement dated 1 July 2020. Available: http://news.aa.com/news/news-details/2020/American-Airlines-Resets-International-Network-for-Remainder-of-2020-Through-Summer-2021-OPS-DIS-07/

- builds on the alliance's proven history of delivering benefits to New Zealand consumers and businesses which the Applicants hope will continue and expand in the longer term, including by facilitating capacity expansion that would otherwise not occur; and

- will provide much needed pro-competitive balance to the dominant home carrier Air New Zealand's alliance with United, at a time when consumers and the tourism industry need not only certainty and re-connection but also, importantly, competition and choice.

By contrast, without re-authorisation for a five year period – and, therefore, without preferential, long term and certain access to the Qantas Group network – it is highly likely that American's existing Auckland-Los Angeles and Sydney-Los Angeles services would be in jeopardy and the likelihood of American launching the new Christchurch-Los Angeles and Auckland-Dallas/Fort Worth services becomes remote. This will effectively leave the Air New Zealand/United alliance unconstrained in respect of direct New Zealand-US services, leaving consumers and businesses with reduced choice, fewer frequent flyer benefits, more limited schedule and network connectivity, a reduced range of fare types and likely higher fares.

For completeness, the Applicants intend to similarly seek re-authorisation from the ACCC to continue the alliance for a further period of five years from March 2021 until March 2026. If granted, this will bring the Australian regulatory timetable more closely into line with the USDOT's approval, which already extends until July 2026. A more coordinated regulatory timeline will provide the Applicants with the certainty to justify investment in the joint business across all jurisdictions, which will be the most efficient way to maximise customer benefits. Such investment decisions currently need to be justified with a long term view, given the reality that it will take some time to guide recovery and growth in a changed market. Shorter term or conditional approvals will not facilitate public benefits and will instead inject regulatory uncertainty and significant competitive disadvantage for the Applicants, which would be particularly acute in circumstances where the dominant Air New Zealand/United alliance has indefinite approval in New Zealand and the US.

THE APPLICANTS

This application covers coordination between Qantas, Jetstar Airways Pty Ltd (**Jetstar**), Jetstar Asia Airways Pte Limited, which is incorporated in Singapore and of which the Qantas Group has a 49 per cent interest (**Jetstar Asia**) and American.

Qantas

Qantas was incorporated in Queensland, Australia in 1920. It is Australia's largest domestic and international airline. Prior to the COVID-19 Pandemic, Qantas operated more than 4,500 flights per week in Australia and over 730 flights internationally. Qantas also operates airline related businesses including airport support services, freight operations, loyalty programs and engineering.

The international destinations to which Qantas operates are set out in Table 1 below and in the route map included as Annexure C to this submission. All of these services have been impacted by the COVID-19 Pandemic and operations are being monitored regularly.[15]

Table 1: Qantas International Destinations (Ex Australia), Pre- COVID-19 Pandemic

Region	Destinations
Pacific	Auckland, Christchurch, Wellington, Queenstown, Noumea, Port Moresby, Nadi
Asia	Bangkok, Hong Kong, Jakarta, Manila, Shanghai, Singapore, Tokyo Haneda,

[15] Please see Qantas Group announcement on 10 March 2020. Available: See https://www.qantasnewsroom.com.au/media-releases/qantas-group-update-on-coronavirus-response/. See also: https://www.qantasnewsroom.com.au/media-releases/qantas-group-update-on-coronavirus-response-2/ and https://www.qantasnewsroom.com.au/media-releases/qantas-group-outlines-customer-and-employee-impact-of-coronavirus-related-network-cuts/

Region	Destinations
	Tokyo Narita, Sapporo, Osaka, Bali-Denpasar
Europe	London
Americas	Dallas/Fort Worth, New York, Los Angeles, San Francisco, Honolulu, Chicago,[16] Santiago, Vancouver
Africa	Johannesburg

As at March 2020 (pre COVID-19 Pandemic), the Qantas Group had a total passenger fleet of over 270 aircraft, comprising Boeing 787s, 747s, 737s and 717s, Airbus A380s, A330s, A321s and A320s, Bombardier Dash 8s and Bombardier Q400s and Fokker 100s.

The Qantas Group is currently a party to alliances with each of:

- Emirates (re-authorised until 2023 by the Minister of Transport on 26 March 2018[17] and conditionally re-authorised until 2023 by the ACCC on 23 March 2018[18]); and
- China Eastern (conditionally authorised by the ACCC in 2015).[19]

Jetstar and Jetstar Asia

Jetstar is a vital part of the Qantas Group's domestic and international operations. It operates low-cost, value based services in domestic Australia and to the following international destinations, as shown in Table 2 below. Again, all of these services have been impacted by the COVID-19 Pandemic and operations are being monitored regularly.[20]

Table 2: Jetstar International Destinations, Pre- COVID-19 Pandemic

Region	Destinations
Pacific	Auckland, Christchurch, Queenstown, Wellington, Nadi, Rarotonga
South East Asia	Bangkok, Phuket, Bali-Denpasar, Ho Chi Minh City, Singapore
North East Asia	Osaka, Seoul-Incheon, Tokyo-Narita
Americas	Honolulu

[16] Services between Brisbane and Chicago were intended to commence in April 2020 but have been postponed as a result of the COVID-19 Pandemic.
[17] See: https://www.transport.govt.nz/air/internationalairservices/internationalaircarriagecompetition/qantasemiratescoordinationagreement/ and letter to Qantas dated 26 March 2018 confirming approval granted by the Minister of Transport until 31 March 2023.
[18] Commission Determination in relation to Applications for Revocation and Substitution lodged by Qantas Airways Limited and Emirates in respect of a Restated Master Coordination Agreement to coordinate air passenger and cargo transport operations and other related services Authorisation Number AA1000400, 28 March 2018. Available: https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/qantas-airways-limited-emirates
[19] Commission Determination in relation to Application for Authorisation lodged by Qantas Airways Limited and China Eastern Airlines in respect of a Joint Coordination Agreement, Authorisation Numbers: A91470 and A91471, 21 August 2015. Available: https://www.accc.gov.au/system/files/public-registers/documents/D15%2B125691.pdf
[20] Please see Qantas Group announcement on 10 March 2020. Available: See https://www.qantasnewsroom.com.au/media-releases/qantas-group-update-on-coronavirus-response/ See also: https://www.qantasnewsroom.com.au/media-releases/qantas-group-update-on-coronavirus-response-2/

A route map of the international services provided by the Jetstar Group prior to the COVID-19 Pandemic is set out in Annexure D. More information about the Qantas Group is available at www.qantas.com.

American Airlines

American Airlines Group Inc. (AAG), a Delaware corporation, is a holding company and its principal, wholly-owned subsidiaries are American Airlines, Inc. (American), Envoy Aviation Group Inc. (Envoy), PSA Airlines, Inc. (PSA) and Piedmont Airlines, Inc. (Piedmont). AAG was formed in 1982 under the name AMR Corporation (AMR) as the parent company of American, which was founded in 1934. Together with its wholly-owned regional airline subsidiaries and third-party regional carriers operating as American Eagle, prior to the COVID-19 Pandemic American operated an average of 6,800 flights per day to more than 365 destinations in 61 countries through our hubs and gateways in Charlotte, Chicago, Dallas/Fort Worth, London Heathrow, Los Angeles, Miami, New York, Philadelphia, Phoenix and Washington, D.C. In 2019, approximately 215 million passengers boarded American flights.[21]

American is a founding member of the **one**world® alliance, whose members (including Qantas) serve 1,100 destinations in 180 countries and territories. American has established a transatlantic joint business with British Airways, Iberia and Finnair and a joint business with Japan Airlines, each of which has been granted antitrust immunity by relevant regulators.

Route maps showing American destinations pre COVID-19 Pandemic are included in Annexure E. More information about American is available at www.aa.com

THE PROPOSED CONDUCT

Restated JBA

Qantas and American first entered into the Original JBA on 6 May 2011. The Original JBA supported the successful launch and subsequent expansion of Qantas' Sydney-Dallas/Fort Worth services and provided the platform for subsequent growth by both Applicants. Operating directly into Dallas/Fort Worth and enhancing Qantas' long term partnership with American has given Qantas a stronger and more balanced network footprint in the Americas, delivering choice and convenience for its customers. Dallas/Fort Worth is one of the major hub airports in the US, one of the largest and fastest-growing metropolitan area in the US and an important centre of business and tourism. Dallas/Fort Worth is also American's largest hub. From here, American and its regional partner, American Eagle, operate to hundreds of destinations worldwide and across the US, Canada and Mexico (including Boston, Orlando, Houston, Las Vegas, Miami, Nashville, Calgary, Toronto and Vancouver).

The joint business and its associated governance structure has enabled the delivery of significant public benefits since 2011, which were subsequently expanded upon through the Restated JBA signed on 9 June 2015. The Restated JBA was:

- authorised by the Minister for Transport on 8 November 2015[22] until 8 November 2020;
- authorised by the ACCC on 25 February 2016[23] until 18 March 2021; and
- granted final approval by the USDOT on 19 July 2019[24] until 19 July 2026.

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[21] See further: https://americanairlines.gcs-web.com/node/38016/html

[22] See: https://www.transport.govt.nz/air/internationalairservices/internationalaircarriagecompetition/qantas-american-joint-agreement/

[23] See ACCC Determination: Application for Revocation of A91265 and A91266 and the Substitution of authorisation A91502 and A91503 lodged by Qantas Airways and American Airlines in respect of their restated joint business agreement and associated agreements, 25 February 2016. Authorisation numbers A91502 and A91503. Available: https://www.accc.gov.au/system/files/public-registers/documents/D16%2B22969.pdf

[24] See USDOT Order 2019-07-07, Docket DOT-OFT-2018-0030, Application of American Airlines Inc and Qantas Airways Limited under 49 USC 41308 and 41309 for approval of and antitrust immunity for Alliance Agreements, dated 19 July 2019.

As noted earlier, while the initial application for anti-trust immunity in the US was lodged with the USDOT in June 2015, the approval process took much longer than anticipated. Having promptly received approvals in 2015 from both the Minister of Transport and the ACCC, and in anticipation of similar swiftness from the USDOT (given that the Applicants were already engaged in a joint business that had been previously approved by the USDOT), American commenced its long haul Trans-Pacific services to Sydney and Auckland in 2015 and 2016 respectively. However, in November 2016, the USDOT tentatively rejected the application in a Show Cause Order. As a result, the Applicants withdrew their initial application in December 2016 and in February 2018 re-filed an amended application, including some variations to the Restated JBA.[25]

The failure to obtain USDOT approval concomitant with approvals from the Minister of Transport and the ACCC prevented full implementation of the revised joint business, with resulting consumer detriments becoming immediately apparent (including contraction of capacity and reduction in frequent flyer benefits, as detailed below). Ultimately, the USDOT granted final approval in July 2019 and the Applicants then moved immediately towards full implementation of the alliance in all relevant jurisdictions. However, the long US regulatory process coupled with the COVID-19 Pandemic, has meant that the fully integrated joint business has only been operating, in practice, for less than seven months.

Notwithstanding the uncertainty now created by the COVID-19 Pandemic, the Applicants wish to maximise their ability to deliver significant benefits to New Zealand in future. Long term re-authorisation from the Minister of Transport is critical to that effort. The commercial incentives under the Restated JBA provide the platform for the necessary commercial support and future operational growth. The Applicants have aligned economic incentives as a result of the 'metal-neutral' selling of the joint services – in other words, each carrier is indifferent as to which joint service a customer chooses. This incentivises the Applicants to allow each other access to the full inventory of available seats and to allow such access whether the customer is seeking to book a long haul Trans-Pacific journey on either or both carriers. These selling processes provide customers with the widest available choice of flights for their journey, using both carrier's brands, services and products.

Because the Restated JBA involves the pooling of revenues, both carriers are invested in the success of American's New Zealand-US flying. That is to say that the American operated Auckland-Los Angeles flight is akin to being Qantas' own, which creates the incentive for Qantas to support the flight and deliver crucial Australasia POS sales support that is so vital for the sustainability of flights that reach half way around the world.

The benefits of this kind of integration have been recognised by regulators. For example, the ACCC has observed that:

> *'In alliances where the parties' incentives are fully aligned – to a point where each carrier is not concerned with making sure that a passenger flies on their airline (i.e. metal neutrality) – they tend to be very focused on synchronising their operations and activities and sharing the financial rewards and risks so as to make their products and services as appealing as possible to passengers.'*[26]

Similarly, in 2019 the USDOT found that:

> *'The record shows that the carriers' ability to stimulate traffic and fill the additional capacity requires a properly structured joint venture, with adequate technological investment, to allow*

US DOT approval was (among other things) subject to annual reporting by the Applicants in respect of the public benefits being generated by the Restated JBA. More information is available: https://www.regulations.gov/docket?D=DOT-OST-2018-0030

[25] The amendments were primarily to adjust the financial settlement terms and to remove an exclusivity provision so Qantas and American could enter into codeshare and frequent flyer relationships with other carriers. See Confidential Annexure B.

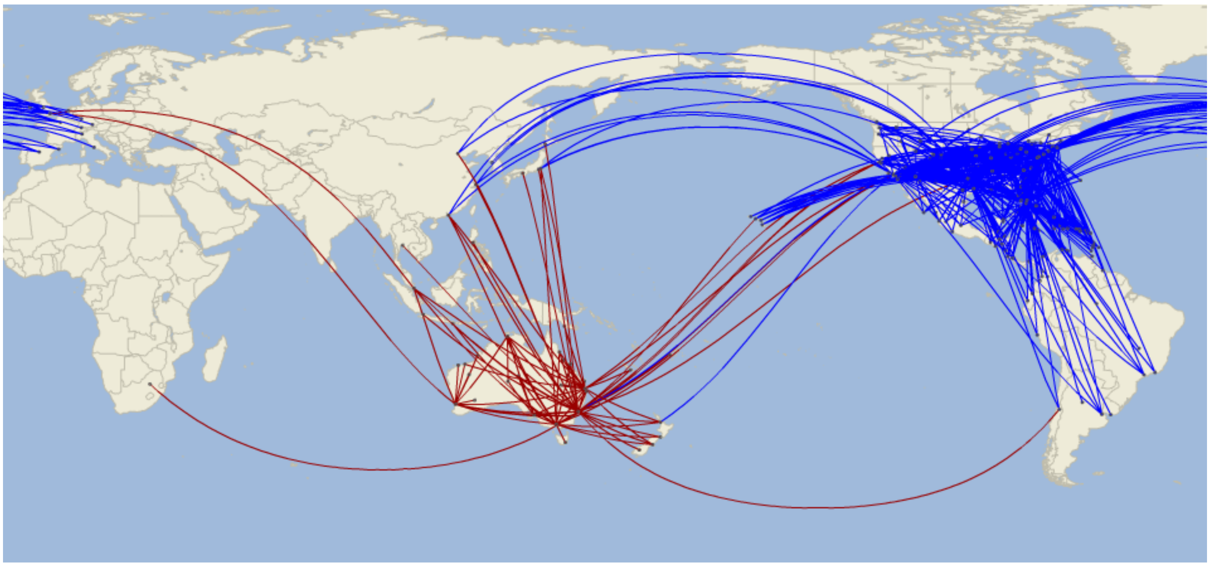
[26] See para 98 of ACCC Determination: Application for Revocation of A91265 and A91266 and the Substitution of authorisation A91502 and A91503 lodged by Qantas Airways and American Airlines in respect of their restated joint business agreement and associated agreements, 25 February 2016. Authorisation numbers A91502 and A91503. Available: https://www.accc.gov.au/system/files/public-registers/documents/D16%2B22969.pdf

American and Qantas to make availability decisions and participate in the portions of the revenue they allocate to customers on their respective flights connecting at gateway cities. The nature of this market – in which ultra-long-haul gateway-to-gateway flights potentially connect passengers to comparatively short domestic flights within the U.S. or Australia – makes the need for this investment particularly acute. Standard industry distance-based "prorate" settlement agreements would provide that the short-haul carrier receives a relatively small percentage of the fare in itineraries between the U.S. and Australasia involving interline connectivity, thereby rendering the short-haul carrier less likely to make inventory available to passengers traveling on these itineraries. Absent this vital connecting traffic, viability of the ultra-long-haul gateway-to-gateway traffic would be threatened. This pricing dynamic also affects the ability of the ultra-long-haul carrier to stimulate traffic in behind/beyond gateway markets where cooperation with a local carrier is necessary. Through its detailed filings with the Department, American has demonstrated that it will align its economic incentives with Qantas to increase flow traffic from domestic U.S. points to the Qantas gateways and grow this market.'[27]

Going forward, long term re-authorisation of the Restated JBA will enable the Applicants to seamlessly continue their commercial coordination as services are reinstated, including in respect of marketing and sales, pricing, scheduling, distribution strategies and agency arrangements, yield and inventory management, frequent flyer programs, lounges, joint procurement, product and service standards and freight.[28]

The commercial rationale for the Proposed Conduct therefore remains clear. It allows the Applicants to continue to bring together two complementary networks, with only a single operating overlap (Sydney-Los Angeles) as depicted in Figure 1 below.

<u>Figure 1: Global Complementarity of Qantas and American (Pre COVID-19 Pandemic) Networks</u>



American-operated network (February 2020)

Qantas-operated network (February 2020)

Source: DiioMi

The Applicants need the joint business in order to most effectively and efficiently serve the Trans-Pacific Routes, which – once reinstated – are expected to continue to feature high volumes of

[27] Page 12 USDOT Order to Show Cause 2019-05-23 dated 3 June 2019, Docket DOT-OFT-2018-0030, Application of American Airlines Inc and Qantas Airways Limited under 49 USC 41308 and 41309 for approval of and antitrust immunity for Alliance Agreements.

[28] See Confidential Annexure B. The exact scope of the Proposed Conduct will evolve over its term and may be altered from time to time.

passengers connecting beyond the gateway hubs, particularly ex Australia, as well as some passengers opting for mixed-metal itineraries (flying one way with a particular carrier and return with another). As noted earlier, the reinstatement and sustainability of both Applicants' services post the COVID-19 Pandemic will rely more than ever on preferential network access, expansive codeshare selling opportunities, sales and distribution support, streamlined schedule connectivity and coordinated inventory management to help re-stimulate demand and compete effectively – all of which are only possible through re-authorisation of the Proposed Conduct.

Counterfactual

Absent the Proposed Conduct, the Applicants would most likely revert to a limited, arms-length codeshare relationship and therefore lack the incentive to share broad access to each other's network and inventory or to work together to sustain and grow the Trans-Pacific routes in the longer term. This is because codeshare partners who do not pool revenue will always have an incentive to fill seats on flights that they operate themselves, where they will receive the full fare instead of just the portion of a fare received from a codeshare. This limits codeshare partners' willingness to share capacity and fails to capture integrative efficiencies that are possible with metal neutrality. In turn, this means that passengers have fewer and less optimal choices.

This is evident in practice. The unexpected delay in fully implementing the Restated JBA as a result of the US regulatory process led to a deterioration in consumer choice as the Applicants temporarily reverted to an arms-length codeshare relationship. For example, Qantas removed its code from American's Sydney-Los Angeles flights, American removed its code from Qantas' Sydney-Dallas/Fort Worth and Sydney-Los Angeles flights and both carriers revised their frequent flyer programs to provide separate mileage accrual (American no longer provided equal credit for miles on Qantas flights).[29]

The Applicants were also forced to reduce service offerings. American downsized its Auckland-Los Angeles operation to become a seasonal service and down-gauged its Sydney-Los Angeles service to a smaller aircraft, whilst Qantas reduced its daily Sydney-Dallas/Fort Worth service to six frequencies per week. By 2018, it was estimated that without codesharing support to connect its passengers onto American's flights beyond Dallas/Fort Worth, Qantas' A380 service from Sydney would become unsustainable and that the loss of that flight alone would destroy up to $133 million annually in consumer benefit.[30] The Applicants found themselves largely in a holding pattern in terms of capacity adjustments while waiting for USDOT approval – the long term sustainability of any Trans-Pacific flying would have been in doubt without the joint business, but given the difficulties associated with cancelling and potentially re-starting services the Applicants 'kept the light on' in the hope USDOT approval could be secured.

What became starkly clear from this experience was that, without the Proposed Conduct, the Applicants would have limited ability to work together to reinstate and grow services on the Trans-Pacific Routes and no incentive to provide each other with access to inventory on their respective domestic networks to maximise connectivity and customer choice. The public benefits which have been, and will be, achieved under the Restated JBA would be significantly eroded, if not eliminated entirely, in the counterfactual scenario. Such an outcome would be highly detrimental to New Zealand consumers, who benefit significantly from the Applicant's cooperation and enjoy a competitive alternative to the Air New Zealand/United alliance.

Specifically, as discussed further below, without long term, certain, preferential access to the Qantas Group network and support, it is highly likely that American's existing Auckland-Los Angeles services would be in jeopardy and the likelihood of American launching the new Christchurch-Los Angeles and

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[29] Stephen Johnson & Ashleigh Davis, *Qantas dumps frequent flyer points deal with American Airlines for Sydney to Los Angeles route – meaning customers will lose rewards*, Jan. 28, 2017, http://www.dailymail.co.uk/news/article-4166158/Qantas-dumps-frequent-flyer-deal-American-Airlines.html.; *Partner Airlines: Qantas*, https://www.aa.com/i18n/travel-info/partner-airlines/qantas.jsp.

[30] See Compass Lexecon report in Appendix 4 of Applicants' application to the USDOT, February 2018. This estimate assumes that the capacity is not reallocated to another route and that passengers are not able to travel with other carriers, but in either case the loss to consumers would be significant.

Auckland-Dallas/Fort Worth services would become remote. In those circumstances, it is highly likely that the direct New Zealand-US routes would ultimately be operated only by the Air New Zealand/United alliance, seriously depleting customer choice and likely resulting in higher fares.

In practice, a short term re-authorisation would also not be in the best interests of New Zealand consumers. The reality is that the Applicants' New Zealand-US services are unlikely to be reinstated until late 2021, which would be at least another 15 months after this application has been lodged. At best, the Applicants would then have only a few months of implemented joint business activity before needing to return to seek further regulatory approval. This uncertainty and lack of forward certainty is not conducive to the long term investment decisions that need to be made in coming months. Moreover, a short term approval would place the Applicants at a significant competitive disadvantage relative to the Air New Zealand/United alliance which enjoys indefinite approval from both the Minister and the USDOT.

TRANS-PACIFIC MARKET

Overview

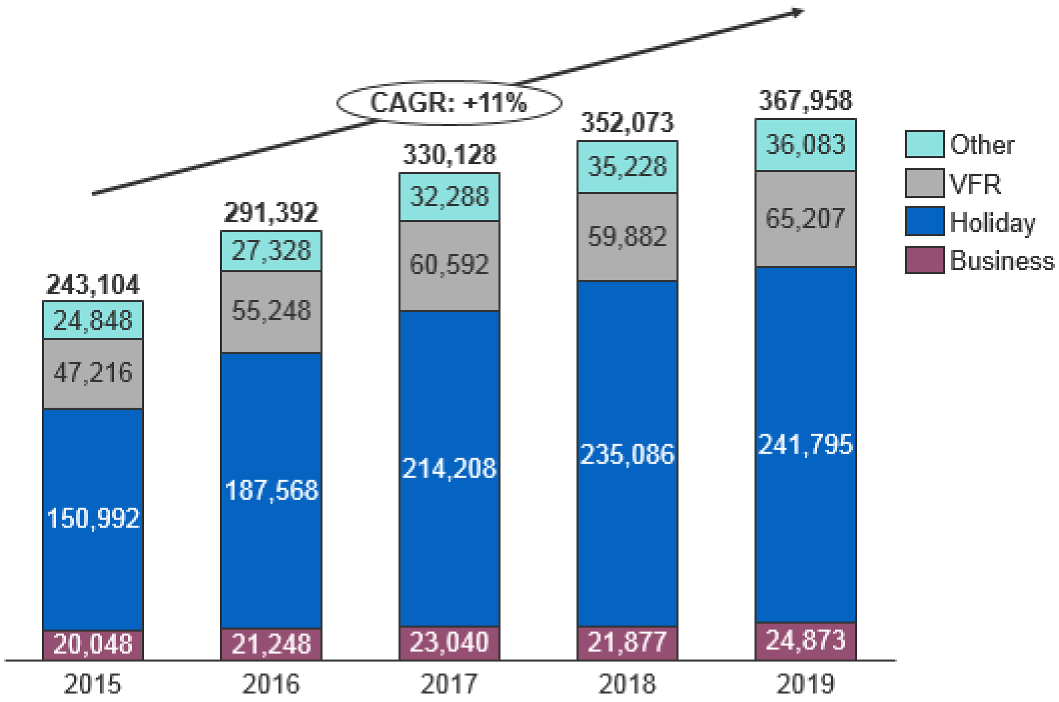
Air services between Australasia and North America are a critical element of the maintenance of strong economic ties between the relevant countries. The New Zealand Ministry of Foreign Affairs and Trade views New Zealand's relationship with the US as one of the most important, diverse and cooperative that New Zealand maintains.[31] The vital strategic partnership between the two countries was confirmed in a recent call by the New Zealand Minister of Foreign Affairs Winston Peters and US Secretary of State Mike Pompeo and National Security Advisor Robert O'Brien when discussing their respective domestic responses to the COVID-19 Pandemic and other matters.[32]

Air passenger services are also important for re-building tourism links between New Zealand and North America as demand recovers after the COVID-19 Pandemic. The significance of the US to New Zealand's tourism industry has been noted by Tourism New Zealand: *'The United States is New Zealand's third-largest international tourism market in terms of visitor arrivals, and it is a market where there are real opportunities for growth in the long-term.'*[33] Further, the US has been identified by Tourism New Zealand as part of its response plans to help alleviate the impacts of COVID-19 and drive medium-term visitor growth.[34] The Australian Government has similarly acknowledged the importance of its relationship with the US by stating that *'The US is critically important for Australia's tourism industry.*[35] Visitors from the US were the third largest source of international visitors to Australia in 2019,[36] reflecting the need to restore aviation ties as quickly and sustainably as possible.

Prior to the COVID-19 Pandemic, there had been an increase in passenger numbers on the Trans-Pacific Routes since 2015, as set out in Figure 2 below.

[31] New Zealand Embassy Washington, United States of America: http://www.nzembassy.com/usa-washington/relationship-between-new-zealand-and-the-usa/new-zealand-and-the-usa
[32] Foreign Minister Winston Peters' call with US Secretary of State Mike Pompeo and US National Security Adviser Robert O'Brien - Readout, 16 April 2020, https://www.mfat.govt.nz/en/media-and-resources/news/foreign-minister-winston-peters-call-with-us-secretary-of-state-mike-pompeo-and-us-national-security-adviser-robert-obrien-readout-16-april-2020/
[33] Tourism New Zealand: http://www.tourismnewzealand.com/markets-and-stats/north-america/united-states/
[34] See: https://www.tourismnewzealand.com/news/tourism-new-zealand-supports-economic-recovery-from-covid-19/
[35] Hon Minister for Trade, Tourism and Investment Simon Birmingham media release – 'Australia welcomes surge in American tourists' (9 October 2019) – https://www.trademinister.gov.au/minister/simon-birmingham/media-release/australia-welcomes-surge-american-tourists
[36] See: https://www.tourism.australia.com/en/markets-and-stats/market-regions/americas/united-states-of-america.html

Figure 2: US Visitor Arrivals to New Zealand – Year on Year To December 2019

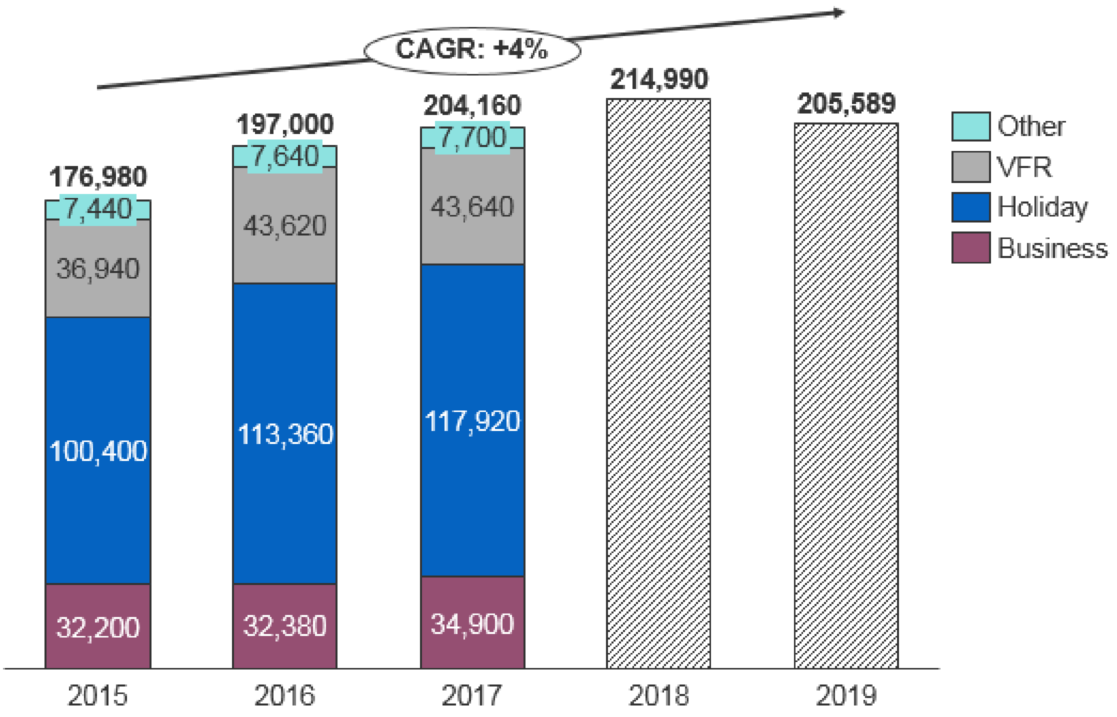


Source: Statistics New Zealand (Infoshare)

The growth in US visitor arrivals (up to December 2019) represents an 11 per cent average annual increase since 2015, with demand supported and stimulated, in no small part, by the capacity introduced by the Applicants, particularly American's Auckland-Los Angeles service.

Similar growth trends were evident in respect to the numbers of New Zealand residents departing for short term stays in the US, as set out in Figure 3 below, with a 4 per cent average annual increase since 2015.

Figure 3: New Zealand Resident Departures to the US – Year on Year To December 2019



Source: Statistics New Zealand (Infoshare). Note that the resident departures dataset was discontinued after 2017. The Applicants do not have access to reliable data to provide a breakdown of travel purpose for 2018 and 2019.

Travel between Australasia and North America generally involves non-stop flight segments of over 10,000 kilometres, about 12 hours travelling time and specialised, capital intensive long-haul aircraft. As noted above, high volumes of connecting passengers travelling on the Trans-Pacific Routes make streamlined connectivity and the ability to sell competitively to 'behind and beyond' destinations crucial. The need for Australasian carriers to have a strong network and sales relationship with a US based carrier is reflected by the fact that each of Qantas, Virgin Australia and Air New Zealand have engaged in long term joint business relationships with American, Delta and United respectively. For example, in commenting on the Delta/Virgin Australia alliance in 2015, Air New Zealand noted:

> *'…as a general proposition, Air NZ supports alliances between air carriers, which are becoming increasingly important in the development of our international network and in the accessibility of long haul destinations. Air New Zealand agrees with the main thread of the applicants' submission; that access to a local network in each of Australian (sic) and the US is extremely important to the sustainability of trans-Pacific services.'*[37]

Regulators have also acknowledged the need for Trans-Pacific operators to have competitive access to destinations beyond the major gateways. For example, in authorising the Restated JBA in 2016, the ACCC observed:

> *'The ACCC considers that, in the future without the Proposed Conduct, Qantas would be unable to offer services to non-gateway destinations in the US. This would make its offering less attractive to customers that wish to travel to/from these destinations, resulting in lower passenger numbers on trans-Pacific services. In turn, this is likely to result in some*

[37] Air New Zealand submission to ACCC in respect of Virgin Australia and Delta application for authorisation, dated 16 February 2015. Available: https://www.accc.gov.au/system/files/public-registers/documents/D15%2B19714.pdf

rationalisation of Qantas' current trans-Pacific service offering and/or delay the introduction of new frequencies and services.'[38]

'The ACCC also notes that each of the other airlines offering direct trans-Pacific services benefits from their partnership with an airline based on the opposite side of the Pacific. That is, Virgin with Delta and United with Air New Zealand.'[39]

As outlined below, the Trans-Pacific Routes are highly competitive. The Air New Zealand/United alliance dominates share of traffic between New Zealand and the US, with over 70% of travellers in the calendar year 2019.[40] The Applicants do not overlap on any services to or from New Zealand – in fact, the only overlapping route which the Applicants both operate is Sydney-Los Angeles, which – prior to the COVID-19 Pandemic – was also served on a non-stop basis by United, Delta and Virgin Australia.

Air New Zealand also dominates share between New Zealand and each of Canada and Mexico.[41] Neither Applicant operates services between New Zealand and Canada or Mexico. American does not operate services between Australia to either Canada or Mexico, whilst Qantas has operated limited seasonal services between Sydney and Vancouver. Detailed discussion about Canada and Mexico is therefore not the focus of this submission. However, it is important for the Applicants to include Canada and Mexico within the scope of this application given the need for the joint business to be able to offer connectivity to and from those countries via American's US gateways. Joint sales and distribution support, plus coordinated revenue management, makes travel to and from Australasia to these destinations seamless and accessible when it is part of the joint business framework. For completeness, further information about passenger travel between New Zealand and each of Canada and Mexico is provided in Annexure F.

Overview of Trans-Pacific Operations

Prior to the COVID-19 Pandemic, there were five direct city-pairs offered between New Zealand cities and the mainland US/Canada:

- Auckland-Los Angeles;
- Auckland-San Francisco;
- Auckland-Chicago;
- Auckland-Houston; and
- Auckland-Vancouver.

In October 2019, Air New Zealand announced new services between Auckland and New York (Newark) (originally due to launch in October 2020[42] but now delayed by the COVID-19 Pandemic until late 2021).[43]

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[38] See pg 1 ACCC Determination: Application for Revocation of A91265 and A91266 and the Substitution of authorisation A91502 and A91503 lodged by Qantas Airways and American Airlines in respect of their restated joint business agreement and associated agreements, 25 February 2016. Authorisation numbers A91502 and A91503. Available: https://www.accc.gov.au/system/files/public-registers/documents/D16%2B22969.pdf

[39] See para 89 ACCC Determination: Application for Revocation of A91265 and A91266 and the Substitution of authorisation A91502 and A91503 lodged by Qantas Airways and American Airlines in respect of their restated joint business agreement and associated agreements, 25 February 2016. Authorisation numbers A91502 and A91503. Available: https://www.accc.gov.au/system/files/public-registers/documents/D16%2B22969.pdf

[40] See Tables 8 and 9 below

[41] See further Annexure F.

[42] See: https://www.airnewzealand.com/press-release-2019-start-spreading-news-airnz-reveals-auckland-new-york-flight-details

[43] See: https://www.airnewzealand.com.au/travel-alerts (accessed 25 May 2020)

In addition, there are a number of indirect one-stop routes from New Zealand to mainland US/Canada via Australia and other hubs in the Pacific and South America. These services include:

- Auckland-Sydney/Melbourne/Brisbane-Los Angeles, San Francisco, Dallas, Houston, Vancouver;
- Auckland-Nadi-Los Angeles/San Francisco;
- Auckland-Papeete-Los Angeles;
- Auckland-Honolulu-US/Canada;
- Auckland-Buenos Aires-US/Canada;
- Auckland-Santiago-US/Canada;
- Auckland-Hong Kong-US/Canada;
- Auckland-Shanghai-US/Canada; and
- Auckland-Vancouver-US

As shown in the market share data in Tables 8 and 9 below, Air New Zealand alone – and together with its alliance partner United – dominates share of traffic between New Zealand and the US.

Qantas Group Services

The Qantas Group does not operate any passenger services directly between New Zealand and the US. Prior to the COVID-19 Pandemic, the Qantas Group operated 58 return services per week between Australia and the US, being:[44]

- 26 weekly return services to Los Angeles (7 non-stop services from Sydney, 9 non-stop services from Melbourne and 10 non-stop services from Brisbane);
- daily return services from Los Angeles to New York (JFK);
- 14 weekly return services to San Francisco (7 non-stop services from Sydney, 4 non-stop services from Melbourne and 3 non-stop services from Brisbane); [45]
- 6 weekly return services from Sydney to Dallas/Fort Worth;
- 9 weekly return services between Sydney and Honolulu (5 operated by Qantas, 4 operated by Jetstar); and
- 3 weekly return services between Melbourne and Honolulu (operated by Jetstar).

Since January 2015, Qantas has also operated three weekly return seasonal services (December-January) between Sydney and Vancouver.[46]

In the month of February 2020, prior to the COVID-19 Pandemic,[47] the Qantas Group operated 178 return services per week between New Zealand and Australia, being 97 weekly return services to

[44] Reflects the Qantas Group schedule for February 2020.
[45] As noted earlier, the new Brisbane-San Francisco services only operated 18 flights prior to being suspended as a result of the COVID-19 Pandemic.
[46] In addition to the December-January services, Qantas also operated these services seasonally in June-July 2015, June-August 2016, June-July 2017 and June-July 2018.

Auckland, 30 weekly return services to Christchurch, 27 weekly return services to Queenstown and 24 weekly return services to Wellington. Jetstar operates domestic services within New Zealand, to key ports including Auckland, Christchurch, Wellington, Queenstown and Dunedin.

In addition to freight carried in belly space in passenger operations on the Trans-Pacific Routes, Qantas operated the following dedicated freighter services (as at February 2020):

- Chicago-Los Angeles-Honolulu-Auckland-Sydney on a weekly basis;
- Chicago-Dallas-Los Angeles-Honolulu-Sydney on a weekly basis;
- Sydney-Bangkok-Shanghai-Anchorage-New York on a weekly basis;
- Sydney-Chongqing-Shanghai-Anchorage-Chicago on a twice weekly basis;
- Sydney-Shanghai-Anchorage-New York on a weekly basis;
- New York-Chicago-Honolulu-Sydney on a weekly basis; and
- New York-Chicago-Honolulu-Melbourne-Sydney on a weekly basis.

Qantas' freighter services that link New Zealand to the US operate in one direction only (i.e., from the US to Australia via New Zealand). Certain freighter services have continued to operate to/from New Zealand during the COVID-19 Pandemic, being the Chicago-Los Angeles-Honolulu-Auckland-Sydney service and the Sydney-Auckland-Christchurch-Sydney service (up to 5 times per week).

American Services

As at February 2020, American's Trans-Pacific operations comprised daily services from Los Angeles to each of Auckland and Sydney. As noted above, American's proposed new Christchurch-Los Angeles and Auckland-Dallas/Fort Worth services were announced in October 2019 and were originally intended to commence in October 2020, but have been delayed as a result of the COVID-19 Pandemic. Without long term authorisation of the Proposed Conduct, the likelihood of American launching the new Christchurch-Los Angeles and Auckland-Dallas/Fort Worth services would become remote.

American provides belly space freight (but not dedicated freighter services) on the Trans-Pacific Routes. Qantas and American have an interline agreement in respect of the carriage of freight on the Trans-Pacific Routes. Qantas primarily uses American services ex Dallas/Fort Worth to connect with Qantas and Jetstar services ex Honolulu. American does not currently interline with Qantas on freighter services, but this is something being explored going forward if re-authorisation is granted.

COVID-19 Pandemic

As the Minister is aware, the COVID-19 Pandemic and associated flight, entry and quarantine restrictions imposed by various Governments, has had an unprecedented impact on all carriers' services globally, including on the Trans-Pacific Routes. On 19 March 2020, New Zealand's borders were closed to all travellers, except for returning New Zealanders.[48] On the same day, the New Zealand Government issued 'do not travel' advice, which is the highest level of advice and the first time New Zealanders have been advised against travelling anywhere overseas.[49]

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[47] The Qantas Group's Tasman services are currently suspended as a result of the COVID-19 Pandemic until at least mid August 2020.
[48] See: https://www.beehive.govt.nz/release/stronger-border-measures-protect-nzers-covid-19
[49] See: https://www.beehive.govt.nz/release/new-zealanders-advised-not-travel-overseas

Similarly, on 18 March 2020, the Australian Government issued 'do not travel' advice to all Australians, regardless of their destination.[50] On 24 March 2020, the Australian Prime Minister imposed a ban on all Australians travelling overseas.[51] Likewise, on 31 March 2020, the US Government issued global 'do not travel' advice to its citizens[52] and wide-ranging travel restrictions continue to apply.

The cancellation of flights and severe downturn in demand had an immediate and detrimental impact on both Qantas and American. Like other parts of the Applicants' domestic and international networks, demand for Trans-Pacific travel has been significantly impacted in respect of both leisure and corporate travellers and this is expected to continue for a long period of time. Business events, conferences and major sporting events have been cancelled or postponed in various countries and the impact of the COVID-19 Pandemic on the New Zealand, Australian and US economies, particularly the tourism industries, continues to be documented on a daily basis. IATA reported that two thirds of global passenger fleets were grounded in March 2020 – with sharp falls in demand and load factors and a significant deterioration in airline profitability.[53] IATA has also released its financial outlook for the global air transport industry showing that airlines are expected to lose US$84.3 billion this year and has stated that: *'Financially, 2020 will go down as the worst year in the history of aviation. On average, every day of this year will add US$230 million to industry losses…'*[54]

As noted earlier, American has suspended its Auckland-Los Angeles service until late 2021 and its Sydney-Los Angeles service until at least mid-2021. Similarly, Qantas has been forced to suspend its operations to the US/Canada until at least the end of October 2020 and on the Tasman until at least mid-August 2020.

In this context, re-authorisation of the Proposed Conduct for a further five year term is critical to both Applicants. As American recently made clear in its re-sizing of its international network,[55] it has few options other than to focus on international flying to hubs supported with connectivity offered by a joint business partner. The case for needing Qantas to support American's flying to Australasia is therefore stronger than ever, particularly given the devastating reduction in demand for travel out of the western US to the Pacific.

PUBLIC BENEFITS

Overview

The Applicants therefore urge the Minister to exercise his discretion to re-authorise the Proposed Conduct for five years because it will result in continuing, significant public benefits to New Zealand and will not cause any adverse impact to consumers.

Long term re-authorisation of the Proposed Conduct will enable the more sustainable reinstatement of American's existing Auckland-Los Angeles service and support the case for the potential launch of two new direct services between New Zealand and the US: Auckland-Dallas/Fort Worth and Christchurch-Los Angeles in the longer term. In addition, the Applicants will have the certainty to not only support each other's capacity reinstatement, but to also continue to invest in offering:

- an expanded codeshare relationship, giving New Zealand consumers more travel options;
- an enhanced frequent flyer proposition, of particular benefit to the growing number of New Zealand resident members of both Applicants' frequent flyer programs;

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[50] See: https://www.smartraveller.gov.au/crisis/covid-19-and-travel
[51] See: https://www.pm.gov.au/media/update-coronavirus-measures-24-March-2020
[52] See: https://travel.state.gov/content/travel/en/traveladvisories/ea/travel-advisory-alert-global-level-4-health-advisory-issue.html
[53] See further: https://www.iata.org/en/iata-repository/publications/economic-reports/airlines-financial-monitor---april-2020/
[54] See https://www.iata.org/en/pressroom/pr/2020-06-09-01/
[55] See further American announcement dated 1 July 2020. Available: http://news.aa.com/news/news-details/2020/American-Airlines-Resets-International-Network-for-Remainder-of-2020-Through-Summer-2021-OPS-DIS-07/

- improved customer services including expanded reciprocal lounge access, enhanced check-in processes, better baggage handling and increased booking convenience;

- a variety of fare products, price points and lower fares made possible through coordinated inventory management; and

- the stimulation of tourism and trade to and within New Zealand, through joint sales and marketing, with a particular focus on campaigns in the US showcasing New Zealand and Australia.

These significant public benefits can be achieved without any adverse impact on consumers in circumstances where the Proposed Conduct:

- involves an extension of an existing arrangement between two complementary networks with limited overlap; and

- will provide much needed pro-competitive balance to the dominant home carrier Air New Zealand's alliance with United, at a time when consumers and the tourism industry need not only certainty and re-connection but also, importantly, competition and choice.

The public benefits of the Proposed Conduct are detailed further below.

Capacity Growth

The joint business has facilitated an expansion of the Applicant's services and frequencies on the Trans-Pacific Routes, including new direct services between New Zealand and the US. As noted earlier, due to the uncertainty and unexpected delays associated with the US regulatory approval process, the Applicants found themselves largely in a holding pattern in terms of capacity adjustments while waiting for USDOT approval. However, as soon as that approval was received in July 2019, the Applicants moved immediately to start full implementation of the joint business.

The Original JBA had already provided the platform for growth. The sustainability and progressive expansion of capacity of the Applicants' Trans-Pacific flying over time is shown in Table 3 below.

<u>Table 3: Summary of Network and Frequency Changes on Trans-Pacific Routes</u>[56]

Route	2011	2015	February 2020
AKL-LAX	Nil	Nil	AA B787 – 7 per week
SYD-LAX	QF A380 – 7 per week QF B747 – 7 per week	QF A380 – 7 per week QF B747 – 7 per week	QF A380 – 7 per week AA B787 – 7 per week
MEL-LAX	QF A380 – 6 per week QF B747 – 1 per week	QF A380 – 7 per week QF B747 – 3 per week	QF A380 – 7 per week QF B787 – 2 per week
BNE-LAX	QF B747 – 6 per week	QF B747 – 7 per week	QF B787 – 10 per week
LAX-JFK	QF B747 – 7 per week	QF B747 – 7 per week	QF B787 – 7 per week
SYD-DFW	QF B747 – 4 per week	QF A380 – 6 per week	QF A380 – 6 per week
SYD-SFO[57]	Nil	Nil	QF B787 – 7 per week

[56] Note that Qantas' Melbourne-Auckland-Los Angeles services (operating 7 per week in 2011) ceased in May 2012.

Route	2011	2015	February 2020
MEL-SFO	Nil	Nil	QF 787 – 4 per week
SYD-YVR	Nil	QF 747 – 2 to 3 per week (seasonal)	QF 747 – 3 per week (seasonal every year Dec-Jan[58] plus mid year seasonal operations 2015-2018)
BNE-SFO	Nil	Nil	QF 787 – 3 per week. As noted earlier, the new Brisbane-San Francisco service commenced in February 2020 just prior to the COVID-19 Pandemic. Only 18 flights were operated before the service was suspended.

Critically, as soon as the USDOT approval was finalised in July 2019, the Applicants worked quickly together to facilitate the launch and announcement of further new services. Tables 4 and 5 below show the projected increases in American and Qantas capacity operated on Trans-Pacific Routes respectively – as projected prior to the COVID-19 Pandemic. The joint growth plan has now been severely disrupted. Whether and how fast the plan can be restored will depend on demand recovery and long term re-authorisation of the Proposed Conduct in all relevant jurisdictions.

Table 4: Year Over Year American Available Seat Kilometres (ASKs) on Key Trans-Pacific Routes (Projected Pre COVID-19 Pandemic)

ASKs	2016	2017	2018	2019	2020	2021
AKLLAX	805,487,985	1,545,306,012	866,803,671	915,046,074	915,046,074	915,046,074
LAXSYD	2,651,695,724	2,664,190,537	2,498,010,729	2,501,360,351	2,501,360,351	2,501,360,351
CHCLAX	0	0	0	0	43,833,240	230,323,752
AKLDFW	0	0	0	0	320,783,460	2,491,190,700

Table 5: Year Over Year Qantas ASKs on Key Trans-Pacific Routes (Projected Pre COVID-19 Pandemic)

ASKs	2016	2017	2018	2019	2020	2021
SYDLAX	4,615,530,816	4,163,819,520	4,269,320,762	4,358,013,168	4,616,886,918	4,794,719,580
MELLAX	5,289,921,580	4,709,835,318	5,548,399,716	5,043,168,674	4,801,777,500	4,496,810,250
BNELAX	3,054,527,592	2,942,164,132	2,912,340,300	2,801,059,924	2,290,354,512	1,985,699,280
SYDDFW	4,062,524,754	4,143,055,054	4,069,860,102	3,715,973,840	4,075,936,128	4,366,228,489

[57] Qantas ceased operating 4 weekly Sydney-San Francisco services in May 2011, using the aircraft to operate the 4 weekly Sydney-Dallas/Fort Worth-Brisbane service and facilitating the connections from Dallas/Fort Worth made possible the Original JBA.

[58] No Sydney-Vancouver services were operated in February 2020.

ASKs	2016	2017	2018	2019	2020	2021
SYDSFO	2,628,166,388	2,658,277,258	2,705,853,290	2,753,183,636	2,063,004,384	2,057,367,760
MELSFO	0	0	375,379,470	1,224,959,085	1,246,959,166	1,246,959,166
BNESFO	0	0	0	0	756,471,210	836,946,870
BNEORD	0	0	0	0	1,000,796,554	1,413,287,026

Excludes Hawaii, LAX-JFK tag service and seasonal SYD-YVR services

The significant announcement in October 2019 of two new American services from New Zealand – Christchurch-Los Angeles and Auckland-Dallas Fort/Worth – was made possible by the joint business. The new services were intended to offer New Zealand consumers further direct access to the US and onward connections using American's domestic network, offering a competitive alternative to the Air New Zealand/United proposition. In particular, Christchurch-Los Angeles would become the first direct service between the south island of New Zealand and the US whilst the Auckland-Dallas/Fort Worth service would provide New Zealanders with access to American's hub port and connectivity beyond. With the launch of both services originally intended for October 2020 but now postponed as a result of the COVID-19 Pandemic, it is clear that without long term re-authorisation of the Proposed Conduct the likelihood of American establishing these important new links between New Zealand the US becomes remote.

These new services were designed to supplement American's existing daily Auckland-Los Angeles service. Operated with a B787-800 aircraft, the Auckland-Los Angeles service has provided New Zealand consumers direct access to the US and onward connections using American's domestic network. In 2015, when considering the Restated JBA, it was recognised by the Minister of Transport that American's presence on the Auckland-Los Angeles route would inject competition. Pre 2015, New Zealand-US services were *'typically regarded as uncompetitive'*[59] and United's entry on Auckland-San Francisco was *'unlikely to have a significant impact on Air New Zealand's ability to take advantage of its monopoly position'*[60] (given the alliance between the two carriers).

As discussed below and demonstrated in Tables 6-9 below, the injection of competition through American's commencement on the Auckland-Los Angeles route was real and, moving forward, should be a determining factor in assessing this application. Despite adjustments during the protracted USDOT approval process outlined above, the Auckland-Los Angeles service has proved popular with consumers in both New Zealand and the US, including by providing new schedule choices and itinerary options and opportunities for earning and redeeming frequent flyer benefits, as described further below.

In 2019, the USDOT acknowledged that:

> *'American's entry [to the Auckland-Los Angeles route] in 2016 re-established Oneworld's presence on the route and has significantly promoted competition, with a quantifiable reduction in market concentration given the historical position of United and Air New Zealand…'*[61]

[59] Para 18 of See Ministry of Transport briefing to the Minister re Authorisation of the Qantas/American Airlines Alliance (received 6 November 2015) and authorised by the Minister on 8 November 2015. Available:: https://www.transport.govt.nz/air/internationalairservices/internationalaircarriagecompetition/qantas-american-joint-agreement/
[60] Para 20 of See Ministry of Transport briefing to the Minister re Authorisation of the Qantas/American Airlines Alliance (received 6 November 2015) and authorised by the Minister on 8 November 2015. Available:: https://www.transport.govt.nz/air/internationalairservices/internationalaircarriagecompetition/qantas-american-joint-agreement/
[61] Page 8 USDOT Order to Show Cause 2019-05-23 dated 3 June 2019, Docket DOT-OFT-2018-0030, Application of American Airlines Inc and Qantas Airways Limited under 49 USC 41308 and 41309 for approval of and antitrust immunity for Alliance Agreements.

'In the U.S.–New Zealand market, American's entry injects new competition into a market that was, until 2016, served nonstop exclusively by the United/Air New Zealand alliance for more than a decade. This fresh competition is making the market more competitive. Given Qantas's sales presence, the proposed alliance would likely continue to grow its participation in the U.S.–New Zealand market.'[62]

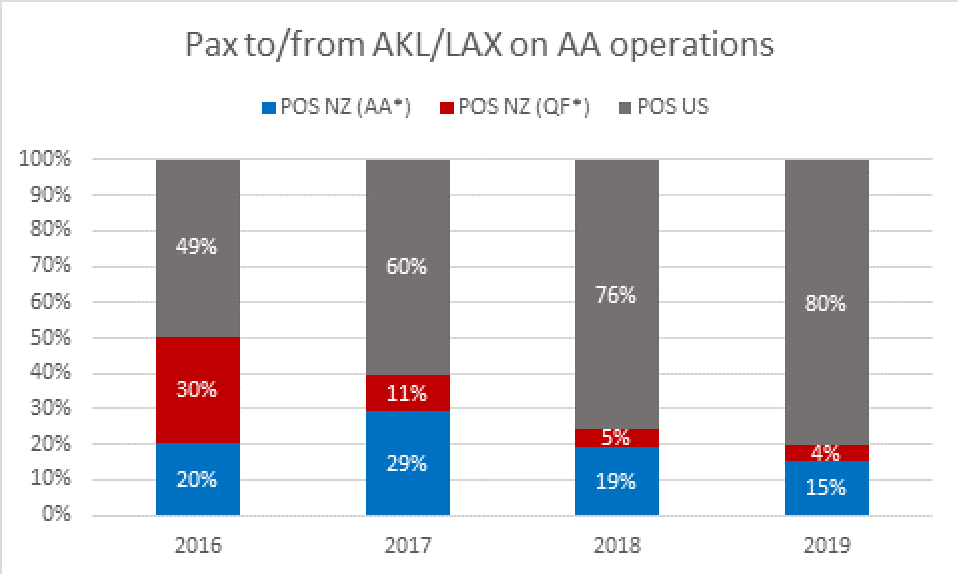
The joint business' efforts following final USDOT approval, pre-COVID 19 Pandemic, are consistent with these findings. In addition to materially boosting direct New Zealand-US capacity, the Applicants have expanded capacity between Australia and the US and Canada by 16 per cent in the four years to December 2019.[63] Most recently, Qantas introduced new Brisbane–San Francisco services (which commenced in February 2020, just prior to the COVID-19 Pandemic) and was due to commence new Brisbane-Chicago services (originally scheduled to launch in April 2020 but now postponed as a result of the COVID-19 Pandemic). These new services, made possible once USDOT approval was received in 2019, supplemented other capacity expansion which had been enabled by the 2011 joint business, including the American operated Sydney-Los Angeles service and Qantas operated services to San Francisco from both Sydney and Melbourne.

Without the commercial incentives created by the Restated JBA, and the long term certainty of a five year re-authorisation, capacity reinstatement will not occur as quickly or effectively. Put simply, without Qantas' support, American's Auckland-Los Angeles service becomes economically unsustainable, as recognised by the Minister for Transport in 2015.[64] Demand for American's flight to Auckland drops significantly during winter in the Southern Hemisphere, explaining the previous shift to seasonal service, but the close cooperation of an Australasian partner is critical to support the service in the New Zealand Point of Sale (**POS**), even in high season.

By way of illustration, Qantas' historical support for the Auckland-Los Angeles service is shown in Figure 4 below. In 2016, there was a good balance in respect of POS sales for the service, with 50% of the service supported through POS New Zealand. Of that 50% support, Qantas contributed 30% of sales. When this commercial support was paused as a result of the USDOT's Show Cause Order, American became more reliant on POS US sales to support the service – with levels reaching up to 80% in 2019.

[62] Page 9 USDOT Order to Show Cause 2019-05-23 dated 3 June 2019, Docket DOT-OFT-2018-0030, Application of American Airlines Inc and Qantas Airways Limited under 49 USC 41308 and 41309 for approval of and antitrust immunity for Alliance Agreements.
[63] Source: BITRE. Includes services to Hawaii.
[64] New Zealand Ministry of Transport, Report to the Minister of Transport ¶ 34 (Nov. 6, 2015). *See also* AA-QF-00069 ("AA's forecast is similar to QF's performance" on LAX-AKL, which was cancelled in May 2012 "due to weak performance".).

Figure 4: POS Distribution of Auckland-Los Angeles Service, 2016-2019



Qantas' sales support is critical to achieving a more sustainable and diversified balance to regional selling of the service, which in turn reduces risk. Qantas has a strong sales presence in New Zealand, given that it offers many New Zealand passengers and businesses valuable and frequent Trans-Tasman services, as well as the benefit of Jetstar's domestic New Zealand network.

As noted earlier, the Applicants' experience as a result of the protracted USDOT approval process demonstrated the fact that, without appropriate commercial incentives in place, the Applicants will not open up their respective network for sale by the other. During the period without revenue sharing, each carrier relied on its own ability to source connecting passengers to make the Trans-Pacific services commercially viable. Without partner support, the underlying operations were put at significant risk and American downgraded its Auckland-Los Angeles flight from year-round to a seasonal service.[65]

This practical experience highlights the need for joint business support of the service so that customer benefits can continue to be offered, particularly in the context of recovery after the COVID-19 Pandemic. The absence of a local sales partner would leave American scrambling to attract passengers. Indeed, the ability of American to even begin to contemplate more than seasonal operation on Auckland-Los Angeles would be dependent on strong point of sale support at both ends of the route.

Expanded Connectivity and Schedule Choice

The Restated JBA has facilitated a significant increase in codeshare destinations. The Applicants have expanded their codeshare relationship to encompass a total of 166 destinations, with 4 destinations in New Zealand, 11 destinations in Australia and 151 destinations in the US. For instance, based on the joint codeshare network (as it existed pre-COVID 19 Pandemic), Qantas and American passengers connecting at either end of an Auckland-Los Angeles flight enjoy convenient transit access to a total of 50 codeshare destinations, including American operated services to 45 destinations beyond Los Angeles available on Qantas code and Qantas/Jetstar operated services to 5 destinations beyond Auckland (including Christchurch, Queenstown and Wellington) available on American code.[66] This compares to the situation in 2015, when there was no direct Auckland-Los Angeles service.

[65] *American says Auckland-Los Angeles will operate between October and March*, Aug. 21, 2017 http://australianaviation.com.au/2017/08/american-says-auckland-los-angeles-will-operate-between-october-to-march/.
[66] Source: Diio, December 2019.

The Auckland-Los Angeles service opened up some schedule choice and alternative journey options for connecting passengers, with the Applicants' services to/from Australia (including Qantas' Trans Tasman services and new Brisbane-San Francisco and Brisbane-Chicago services) providing further itinerary optionality. Some examples of current and future passengers are set out below.

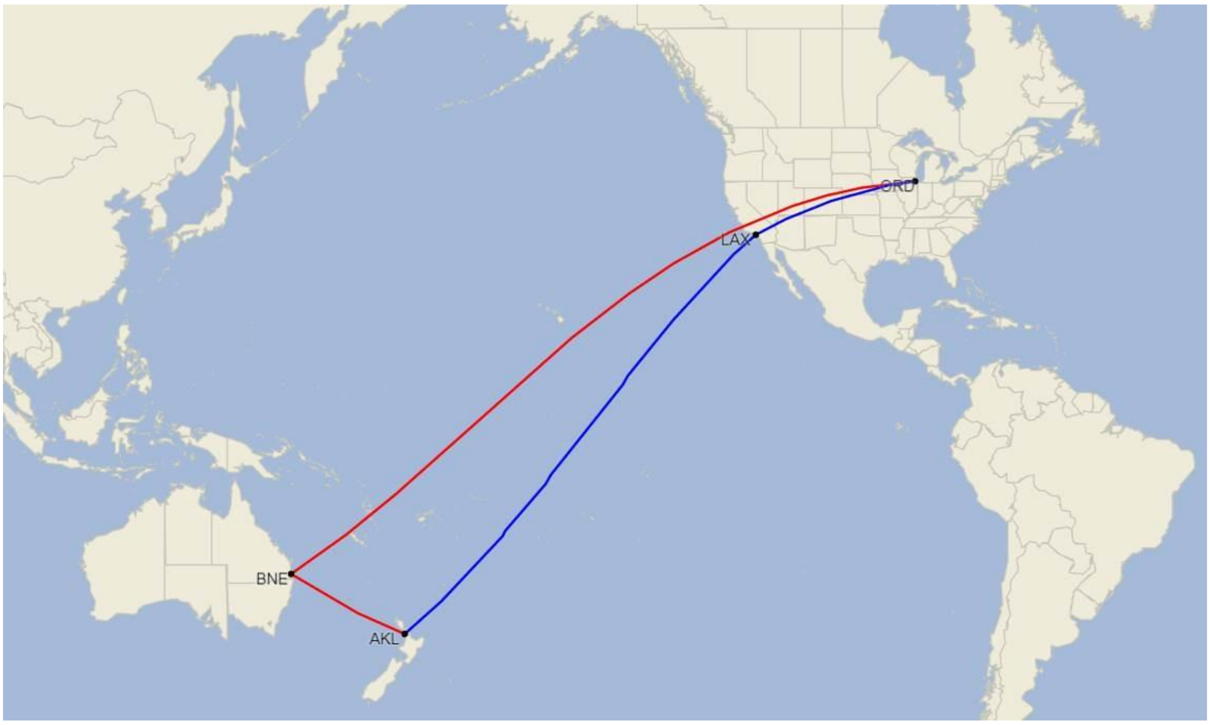
For example, a passenger travelling from Auckland to San Francisco could fly via Los Angeles with American, or via Sydney, Melbourne or Brisbane with Qantas. Depending on their preferred departure time, they could fly from Auckland in the afternoon (3.20pm) on the American service via Los Angeles or in the evening (7.15pm) on Qantas via Melbourne[67] - see Figure 5 below.

Figure 5: Sample Itinerary Choice: Auckland to San Francisco.

A passenger travelling from Chicago to Auckland could fly via Los Angeles with American departing Chicago in the evening (6.37pm) or via Brisbane with Qantas (once those services launch) departing later (9.50pm) – see Figure 6 below.

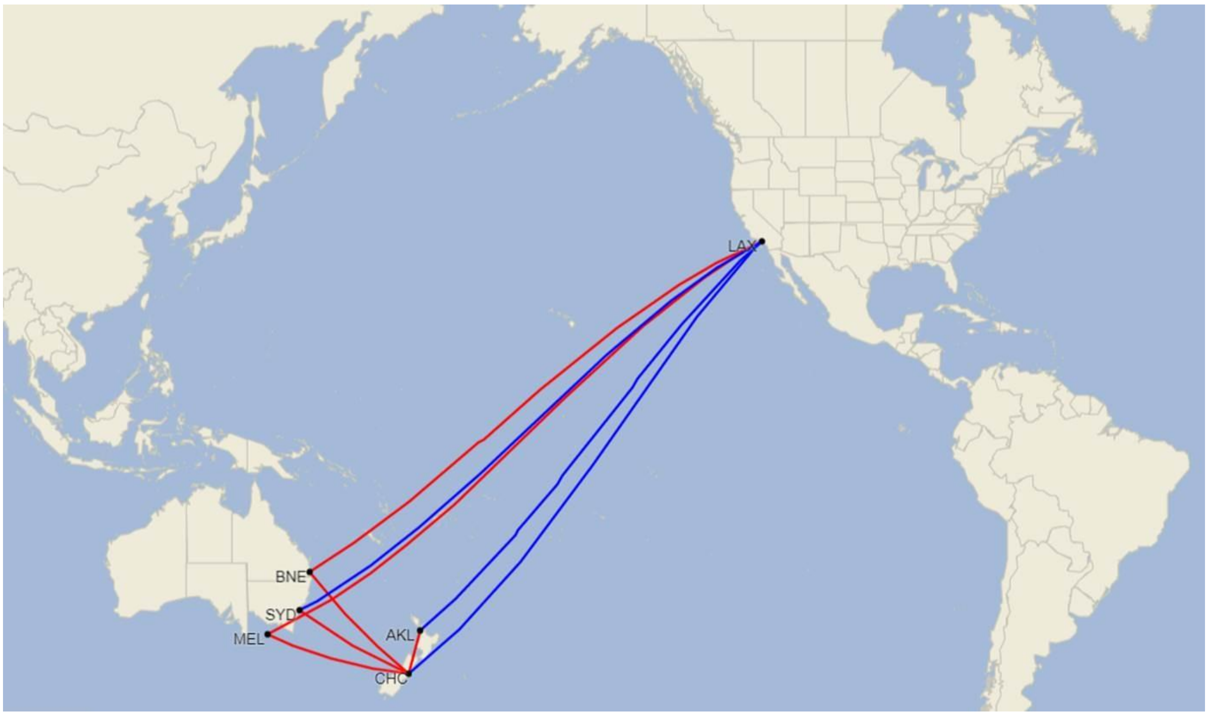
[67] Based on schedules as applicable in February 2020.

Figure 6: Sample Itinerary Choice: Chicago to Auckland



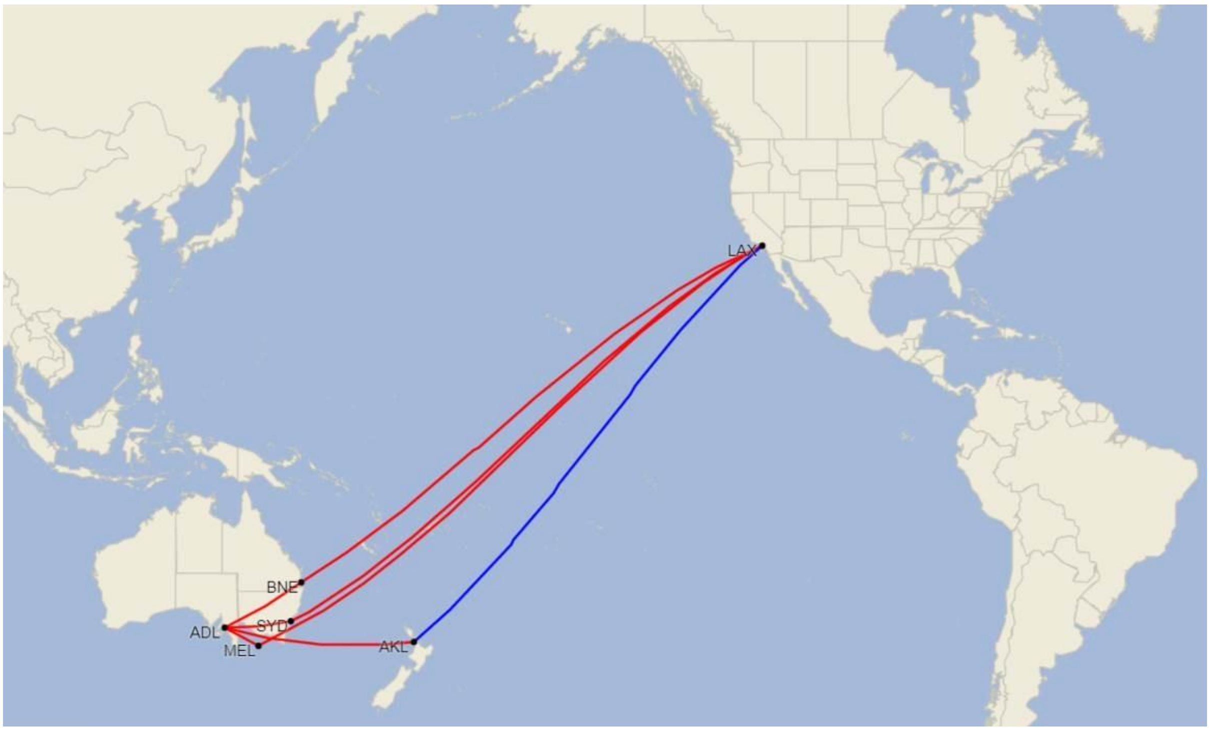
A passenger travelling from New Zealand's south island to Los Angeles could fly direct from Christchurch with American (once those services launch), via Auckland with American, via Sydney with either American or Qantas or via Melbourne/Sydney/Brisbane with Qantas.

Figure 7: Sample Itinerary Choice: South Island New Zealand to Los Angeles



A passenger travelling from Adelaide to Los Angeles could fly via Auckland on American, or via another east coast Australian port – see Figure 8 below.

Figure 8: Sample Itinerary Choice: Adelaide to Los Angeles



All this optionality means more choice and seat availability, which leads to increased opportunities to find lower fares and the offer of 'open jaw' itineraries.

In all cases, the passenger has increased choice relative to what would exist without the Proposed Conduct. In addition, the passenger gets the benefit of further onward connectivity in the US with American beyond the gateway cities and can earn or redeem frequent flyer points/miles regardless of the code they have booked on. In this way, the Applicants can offer competitive alternatives to the Air New Zealand/United proposition, which includes direct Auckland-San Francisco services (operated by United since July 2015) and direct Auckland-Chicago services (operated by Air New Zealand since November 2018).

The inter-connection between Trans-Pacific and Tasman travel shows the importance of the alliance's overall proposition to and from Australasia. For example, in 2019 alone over 92,000 passengers travelled on American and Qantas between New Zealand and the US and, of those passengers, 18% chose to use mixed metal itineraries, meaning that they travelled some part of the journey with each of the carriers. This kind of optionality and ease of itinerary building is made possible by the Proposed Conduct, including through the coordinated provision of flexible fare types (described further below).

With long term re-authorisation, this comprehensive joint network will continue and enable New Zealand consumers to enjoy further schedule choice and connectivity. By contrast, without the Restated JBA, codeshare opportunities, connections and itinerary choices will diminish.

Enhanced Frequent Flyer Benefits

The joint business has provided generous benefits for members of both Applicants' frequent flyer programs. The Applicants offer what are effectively full reciprocal, earn-and-burn programs on all domestic and international flights. This is of direct benefit to the **[REDACTED – CONFIDENTIAL]** Qantas Frequent Flyers resident in New Zealand and to the **[REDACTED – CONFIDENTIAL]** American Advantage members resident in New Zealand, a number which has also grown significantly since 2015 **[REDACRED – CONFIDENTIAL].** The growth in number of AAdvantage Members resident in New Zealand largely reflects the value placed on American's Auckland-Los Angeles service – for example, year on year growth in numbers of AAdvantage Members in New Zealand was 26.1% in 2016, 33.5% in 2017, 47.3% in 2018 and 36.7% in 2019 respectively. This growth has occurred notwithstanding the Auckland-Los Angeles flight being reduced to seasonal during the period while USDOT approval was pending.

Since 2015, the Applicants have extended privileges for each other's frequent flyers when travelling on the other airline (including the ability to earn points and status credits on all commercial tickets and points bonuses for tiered frequent flyers). For example, for travel from 1 October 2019, Qantas Frequent Flyer improved the earn proposition on American marketed flights (including Auckland-Los Angeles) as follows:

- for travel between Australia, New Zealand and the mainland US/Canada, Qantas Points and Status Credits earn increased, aligning with what is earned on Qantas marketed flights;

- for travel within the mainland US/Canada, Status Credits earn increased, again aligning with what is earned on Qantas marketed flights; and

- across all routes, Silver member Status Bonus earn on American marketed flights increased bonus points from 25% to 50% to align with what is earned on Qantas marketed flights.

These benefits, which only came into effect after the USDOT granted final approval to the Restated JBA, provide valuable earn entitlements. By way of illustration, prior to these changes, a Qantas Frequent Flyer member booking economy travel on American's Auckland-Los Angeles service would have earned 3,750 base points and 40 Status Credits. From 1 October 2019, the earn would be 6,000 base points and 55 Status Credits – the same as if the flight was marketed by Qantas.

American's introduction of the Auckland-Los Angeles service in June 2016 enabled Qantas Frequent Flyer members in New Zealand to earn (or redeem) additional points because they can fly with American and still earn (or redeem) points, rather than switching to an alternative carrier and foregoing the ability to earn (or redeem) points for the onward journey. When the American service to Los Angeles was introduced, there was a high degree of interest and take-up among Qantas' Frequent Flyer members resident in New Zealand. For example, in the second half of 2016 alone, 4,832 Qantas Frequent Flyer members from New Zealand travelled on the service, with similar numbers (4,614) doing the same in 2017 before the service was reduced during the USDOT regulatory process. Once the full suite of frequent flyer benefits could be reinstated after USDOT approval was given, there was a marked uptake in the number of accruals of miles by AAdvantage members travelling on Qantas operated services – for example, relative to 2018, there were year-on-year increases in accruals of 31% (September 2019), 57% (October 2019), 101% (November 2019) and 90% (December 2019).

Going forward, the Applicants aim to deliver further benefits as the market recovers from the COVID-19 Pandemic. For example, the Applicants intend to create a more customised and personalised experience for their loyal customers, by offering enhanced recognition such as through cross-carrier upgrades (for example, an AA Advantage member would be able to redeem miles for a cabin upgrade on Qantas flights) and 'meet and greet' services for top frequent flyers. When American resumes the service post the COVID-19 Pandemic, it will again be critical that Qantas can continue to incentivise its membership base to support sustainability of the service through targeted marketing and offers.

The harmonisation and improvement of frequent flyer benefits across American and Qantas flights would not occur without the Restated JBA. For example, during the uncertain period pending USDOT approval, the frequent flyer benefits being offered by each Applicant to the other's frequent flyer base were eroded. American and Qantas significantly reduced (from three fare classes to just one fare class) the number of fare classes that offered full mileage accrual (i.e., one mile for every mile flown) across American and Qantas operated flights and mileage accrual was reduced across the board. These reductions had real effects on redemption: American passenger frequent flyer redemption on Qantas' long haul flights declined by 40% in the year to February 2018.

Improved Product and Services

The Restated JBA incentivises the Applicants to share best practices and jointly invest in designing and delivering an optimal customer experience. Revenue-pooling ensures the carriers jointly aim to provide customers the best in-flight and on-ground experience across both brands. Qantas and

American have worked closely together to deliver multiple initiatives to significantly improve the customer experience. Examples include:

- American increased its meal sizes in the economy cabin and worked with Qantas' suppliers in Sydney to improve meal quality;
- American and Qantas cabin crew jointly participated in epicurean events to support a service culture and improve customer service more broadly;
- Qantas explored relocating its gates at JFK Airport in New York to co-locate with the American gate at terminal eight to facilitate a faster and more seamless connecting experience for customers; and
- American worked with Qantas to improve its business class cabin proposition by introducing complimentary pyjamas and seat mattresses on Trans-Pacific flights, aspects which have subsequently been introduced across other parts of American's network.

Most recently, the teams have worked together to facilitate other customer improvements including Qantas launching inflight on-board welcomes to American frequent flyers travelling on Qantas operated Trans-Pacific services (the intention being that this initiative would be reciprocated by American, although this was not able to be implemented prior to the COVID-19 Pandemic).

American has also worked with Qantas to improve how passengers travelling on both carriers are re-booked when flights are cancelled. The necessary processes and systems would, however, only be made available to Qantas passengers as part of the Proposed Conduct. For more than a decade, for example, American has relied on a tool it developed called 'Auto-Reaccom' to identify all re-booking options for passengers from cancelled flights and automatically assign those passengers new seats based on an algorithm designed to minimize passenger disruption. American does not, however, make Auto-Reaccom available to any non-joint business partners. Discussions between Qantas and American in relation to implementing this system have been delayed by the COVID-19 Pandemic. Similarly, in September 2017, American also introduced a new customer-facing tool called 'Dynamic Re-accommodation' that allows passengers to directly re-book themselves in the event of delays and cancellations and intends to work with Qantas in respect of implementing this within the joint business framework.

American has also made substantial investments to improve the customer purchase experience by establishing direct connections called 'deep links' between American's website and the websites of its various joint business partners. If the Proposed Conduct is re-authorised over the longer term, American will extend this type of connectivity to Qantas, significantly improving the customer purchasing experience across two project phases. The first phase of the project will:

- allow AA.com to recognise Qantas codeshare customers who are eligible for advance (pre-reserved) seat selection after they deep link to AA.com;
- provide Qantas customers with the ability to choose or change seats from the "view reservation" page;
- allow AA.com to identify the tier status of the incoming customer and provide seat offers consistent with their tier status;
- provide a "return to qantas.com" button that will allow Qantas' customers to return to the "manage my booking" page on qantas.com;
- display the seat number selected on both AA.com and qantas.com;
- allow customers on qantas.com to deep link to AA.com from the "view reservations" and check-in pages; and
- provide the ability to support local language, allowing joint business customers to complete the seat selection process in English, Spanish, Portuguese, French or Japanese.

The second phase of the project will offer the option to deep link from AA.com to qantas.com, mirroring the above functionality.

These deep links materially enhance the customer experience by making it far easier for passengers to interact with American and Qantas through a single portal. However, such integration is costly to implement. As a result, American has only invested in developing these types of deep links with its existing joint business partners.. Detailed planning to implement these deep links with Qantas was progressing in February 2020, prior to the COVID-19 Pandemic.

Re-authorising the Proposed Conduct will also facilitate the Applicants' ongoing investments in baggage handling integration and other service improvements that are not feasible outside a revenue-pooling joint business. While American and Qantas have already worked together on baggage handling processes in key gateways such as Los Angeles, long term re-authorisation of the Restated JBA would justify a further investment in time and money in due course to materially improve baggage handling between Qantas and American. By way of further example, the joint business has facilitated, and will continue to facilitate, increased investment in each Applicant's lounge infrastructure, resulting in significant benefits to passengers. In the US, American has launched new shared Admirals Club and Flagship Lounges in Los Angeles, New York (JFK), Dallas Fort/Worth and Chicago – with such investment bolstered and incentivised by the traffic that American receives from Qantas and its other joint business partners – for example, in 2019, over 4,500 Qantas passengers enjoyed the Admirals Club in Los Angeles. Qantas has taken similar steps to expand and improve its lounges as a result of the alliance with American.

In the months just prior to the COVID-19 Pandemic, the Applicants had identified a number of other opportunities for improving customer service, including ways to recognise each carrier's high value customers and for each carrier's call centre to provide 'warm transfers' between representatives (whereby, for instance, an American passenger calling the Qantas call centre would be immediately re-directed without re-dialling and re-queuing with a relevant American representative, and vice versa). The Applicants had also been gearing up to launch operational taskforces, roadshows and training sessions across various ports, including presentations to front line teams who deal with both carriers' customers, all designed to identify other joint service improvement opportunities. While all of these projects have necessarily been postponed due to the COVID-19 Pandemic, long term re-authorisation of the Proposed Conduct will make an investment case to progress these initiatives more likely in due course.

Without the Proposed Conduct continuing over the long term, there will be neither the incentive nor the revenue support to maintain such collaboration or support new investment. When implementation of the Restated JBA was put on hold pending USDOT final approval, investment in such joint initiatives and customer experience working groups stopped, as this level of carrier cooperation and alignment only occurs under a long term joint business structure, not a under a codeshare agreement. Such best-practice customer service and disruption management will only occur as part of the Proposed Conduct, where each carrier has the financial interest to treat all customers as its own and when their related operational teams are able to work closely with each other to deliver a higher level of service.

Coordinated Inventory Management, Increased Inventory Access and Lower, More Flexible Fares

The ability to coordinate inventory has meant that the Applicants have been able to support each other's sales and marketing activities, by ensuring that sufficient seats are available to be offered as part of a sale to multiple destinations. This is not possible under normal codeshare arrangements. As outlined earlier, the Restated JBA achieves metal-neutral selling of the Applicant's joint services, meaning that the Applicants have been able to align their economic incentives and organise their sales functions to enable them to be indifferent as to which joint service the customer chooses. This provides the incentive for the Applicants to allow each other access to the full inventory of available seats and to enable such access regardless of whether the customer is seeking to book a long haul Trans-Pacific journey using either or both carriers.

The Applicants have streamlined many pricing rules, including aligning day-of-week applications, season restrictions and advance purchase and minimum stay requirements. This alignment has created a consistent product across both carriers, making it easier for customers to understand and consume. Additionally, prior to the joint business, both American and Qantas fare products had different change fees and refund policies. These policies are now streamlined; in general, the carrier with the more restrictive policy adopted the policy of the carrier with the least restrictive policy, providing additional benefit to joint business passengers. If the Proposed Conduct is re-authorised, the Applicants will explore the integration of group booking systems to permit Qantas passenger groups to use American operated services from the US to New Zealand, further unlocking demand and itineraries. In addition, in order to facilitate the greater availability of discounted fares, the Applicants have agreed to discuss in good faith adopting a dealing strategy (by customer segment or distribution channel) that will be applicable to the joint services.

As part of the joint business, Qantas has already opened up its published fares rules to permit Qantas fares to be sold on American operated services between New Zealand and the US. This has provided greater flexibility for travellers moving between the US and New Zealand/Australia as well as between New Zealand and the US direct. The Applicants have also delivered fare products for consumers travelling between New Zealand/Australia and the US. For example, the Applicants continue to offer the 'Qantas Explorer' fare product, which has enabled more 'beyond gateway' multi-sector itineraries under which fares are based on mileage and tiered accordingly.

In New Zealand, the Applicants have launched creative fare products that offer attractive and flexible price points to price sensitive passengers, giving passengers the option to use both carriers' services on the same itinerary. Specifically, the joint business has filed fares with lower price points to connect in Sydney compared to flying nonstop from New Zealand to points in the US. For example, with this product, a passenger can find a lower fare if they are willing to stop in Sydney on their way to Los Angeles compared to taking the nonstop Auckland-Los Angeles flight. Additionally, a passenger can use Qantas services from New Zealand to Sydney and then connect to either American or Qantas services to the US. This product has been popular for passengers who value price over convenience.

More generally, the Proposed Conduct will continue to contribute to the provision of lower fares. The competitive nature of the Trans-Pacific routes, and the critical presence of the Applicants as constraints on other operators, is demonstrated through lower price trends in recent years. For example, as shown in Tables 6 and 7 below, average fares for US-New Zealand – and specifically Auckland-Los Angeles travel – have fallen (with the exception of United's fares for POS US in Table 6).

Table 6: Average Ticket Value for US-New Zealand Services 2018-2019

Marketing Carrier and Point of Sale	2018	2019	YoY
American	**$896**	**$844**	**-6%**
NZ POS	$533	$500	-6%
US POS	$975	$903	-7%
Qantas	**$780**	**$733**	**-6%**
NZ POS	$675	$568	-16%
US POS	$832	$811	-3%
Air New Zealand	**$837**	**$805**	**-4%**
NZ POS	$812	$798	-2%
US POS	$879	$815	-7%
United	**$796**	**$847**	**6%**

Marketing Carrier and Point of Sale	2018	2019	YoY
NZ POS	$656	$622	-5%
US POS	$822	$899	9%

Source: DDS; non directional travel measured at year end

Table 7: Average Ticket Value for Auckland-Los Angeles Services 2018-2019

Marketing Carrier and Point of Sale	2018	2019	YoY
American	**$819**	**$739**	**-10%**
NZ POS	$432	$407	-6%
US POS	$932	$810	-13%
Qantas	**$715**	**$689**	**-4%**
NZ POS	$650	$535	-18%
US POS	$755	$761	1%
Air New Zealand	**$960**	**$934**	**-3%**
NZ POS	$928	$922	-1%
US POS	$999	$945	-5%
United	**$883**	**$819**	**-7%**
NZ POS	$593	$508	-14%
US POS	$1,012	$999	-1%

Source: DDS; non-directional travel measured at year-end

By contrast, without re-authorisation of the Proposed Conduct, the Applicants would not have ability or incentive to support each other's inventory and revenue management functions. Without appropriate commercial incentives in place, the Applicants would not open up their respective network for sale by the other, leading to a reduced range of price points and higher fares being offered to the other carrier as an arms-length codeshare partner. In turn, consumers will have less choice, find fewer fares available and likely pay higher fares.

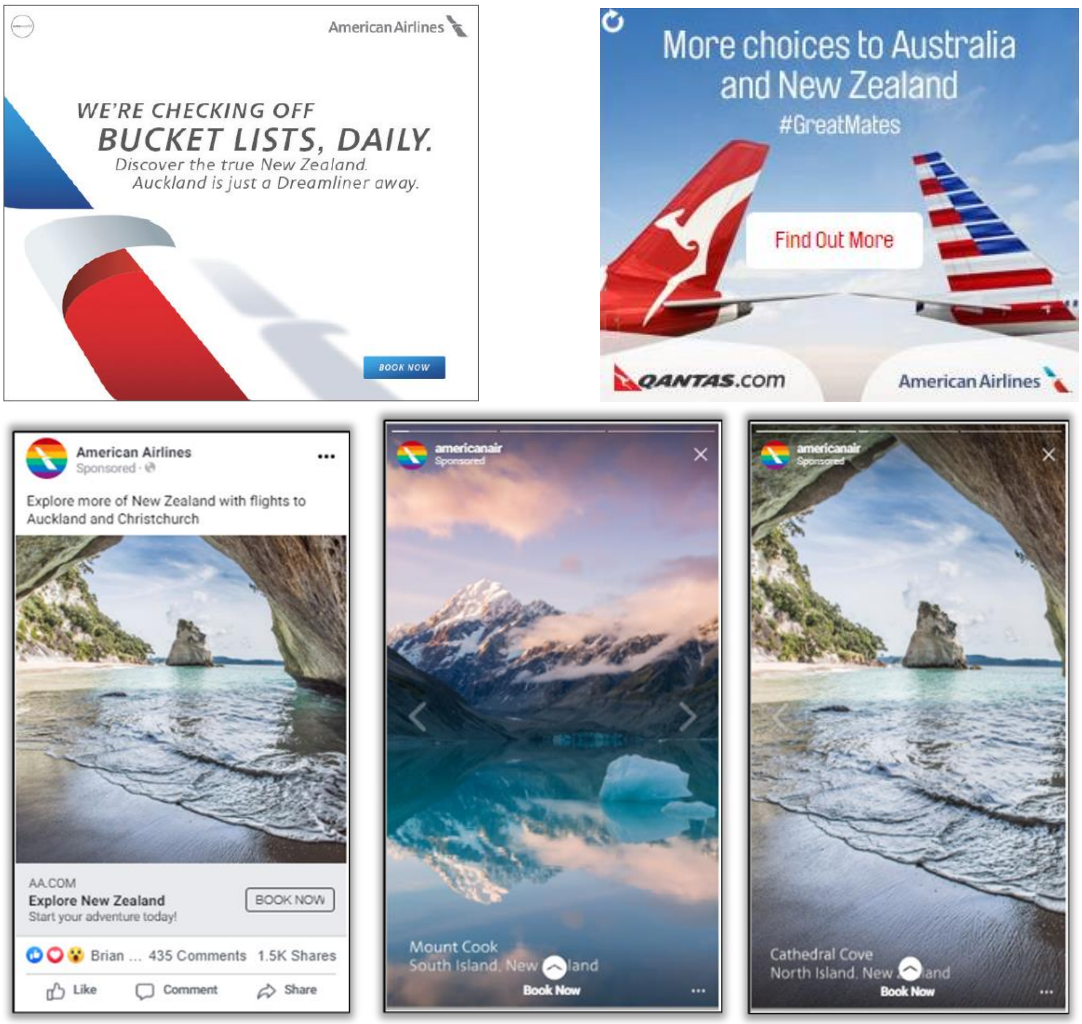
Tourism Recovery and Promotion of International Trade and Business

Since 2015, the Restated JBA has enabled the Applicants to successfully stimulate inbound tourism to the Australasian region through coordinated joint marketing campaigns. Co-branded marketing initiatives have led to better utilisation of the respective home market sales and distribution networks of each carrier.

As noted earlier, increasing visitor numbers from the US to New Zealand have been supported by the expansion of the Applicants' direct and indirect capacity. In 2018 and 2019, the Applicants carried approximately 113,000 passengers from the US to New Zealand,[68] which is significant when viewed in the context that this was achieved through a seasonal (rather than year round) service which only operated with full joint business support after the USDOT's final decision in July 2019.

The commencement of the Auckland-Los Angeles service opened new inbound markets for the New Zealand tourism industry and, as noted earlier and shown in Tables 6-9, injected much needed competition against the dominant Air New Zealand/United alliance. For example, in November 2015 when American's Auckland-Los Angeles service was announced, the Applicants invested in television, print, radio and online media coverage in New Zealand, producing an estimated reach of over 28 million impressions in New Zealand alone. This was complemented with coverage in Australia and the US about the Auckland-Los Angeles service. During the subsequent months into 2016, American conducted further local campaigns in the US – including events, sponsorships and agent and media familiarisation programs – all of which promoted the sale of the Auckland route. Some examples of creative materials designed to build brand and awareness of New Zealand as a destination are in Figure 9 below.

Figure 9: Sample Point of Sale US Creative Materials
Promoting Alliance Services to New Zealand



68 Source: MIDT.

Again, at the time of the announcement of American's new Christchurch-Los Angeles and Auckland-Dallas/Fort Worth services in October 2019, the Applicants engaged in a widespread media and marketing campaign, with support from tourism bodies and Christchurch Airport, and held trade events in both Christchurch and Auckland. More recently, in November-December 2019, American invested a significant amount in marketing **[REDACTED – CONFIDENTIAL]** across multiple medial channels in POS US to stimulate demand to New Zealand. As well as generating inbound traffic from the US, the Auckland-Los Angeles services has stimulated interest from inbound passengers from Canada and Mexico. For example, from 2018 until the suspension of flights in 2020, American carried over 8,000 passengers from Canada and Mexico to New Zealand.

In addition to driving inbound tourism through marketing campaigns, the Applicants have designed plans to assist and incentivise travel agents to sell and support the alliance's Trans-Pacific services. Qantas has involved American in its staff training and development programs and representatives from both airlines have attended meetings with travel agents to ensure the codeshare and network offerings are appropriately promoted. Qantas has promoted American on the Qantas Industry Sales Site and through the Qantas Industry Centre, including by advising travel agents of updates to American's schedule and product and by providing sales, servicing and operational support. This ensures that joint customers are provided streamlined and informed assistance by travel agents.

Trading relationships between New Zealand and each of the US and Australia have been strengthened as a result of American commencing direct operations to both New Zealand and Australia in the last five years. American has actively promoted secondary cities within New Zealand and Australia, particularly in domestic US, Canada and Mexico, where Qantas has limited reach. This has been key to developing corporate business opportunities, while exporters can now more readily access the Applicants' combined network. Qantas' US-New Zealand-Australia freighter service has benefited New Zealand importers, with onward connections available from Australia to the US and beyond using belly space of Qantas' passenger services providing options to exporters.

In the months just prior to the COVID-19 Pandemic, the Applicants had identified a number of coordinated marketing opportunities to promote travel to New Zealand, including planning for a co-branded campaign to run in the US to build awareness about the joint network and new routes. The Applicants were also involved in planning a full calendar of promotional activities in all relevant markets. Whilst these plans are inevitably on hold due to the COVID-19 Pandemic, it is clear that this kind of joint marketing will be imperative in future.

Going forward, the Proposed Conduct will strengthen the bilateral relationships between New Zealand and both the US and Australia, particularly through supporting sustainable capacity reinstatement. Prior to the COVID-19 Pandemic, the US was New Zealand's fourth largest trading partner and recognised by New Zealand as being of critical importance:[69] *'The commercial significance of the US for New Zealand businesses is huge, as you would expect for our fourth-largest trading partner. Two-way trade is worth more than $18 billion each year, and we want to take action to see that grow.'*[70] In turn, the close economic and trade relationship between Australia and New Zealand is shaped by the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA).

New Zealand and Australian businesses will directly benefit from the long term continuation of the Proposed Conduct. More sustainable capacity reinstatement will provide increased supply chain certainty and greater choice, in particular providing competition relative to the dominant Air New Zealand/United alliance. The Applicants' respective freight teams have identified areas for further collaboration, including joint sales and marketing and the more effective carriage of freight to markets beyond the major gateways in the US, Australia and New Zealand. This could include, for example, Qantas participating in the carriage of freight from New Zealand to the US directly using the belly space on American's Auckland-Los Angeles service.

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[69] Deputy Prime Minister and Foreign Affairs Minister Rt Hon Winston Peters speech – 'US-NZ Council speech (25 October 2019) – https https://www.beehive.govt.nz/speech/us-nz-council-speech

[70] Deputy Prime Minister and Foreign Affairs Minister Rt Hon Winston Peters speech – 'US-NZ Council speech (25 October 2019) – https https://www.beehive.govt.nz/speech/us-nz-council-speech

Without the Proposed Conduct, the Applicants would be less able and not incentivised to work together on marketing campaigns or other initiatives to encourage consumers and travel agents to support the joint services to and from New Zealand or in respect of freight operations and recovery opportunities.

NO ADVERSE IMPACT ON CONSUMERS

The Proposed Conduct is inherently pro-competitive

The Proposed Conduct will not give rise to adverse price or quality impacts on consumers. To the contrary, the Proposed Conduct will promote competition by creating an improved product offering that is likely to stimulate further product innovation and price competition on the Trans-Pacific, increasing the overall level of competition in the market and eliciting a pro-competitive response from rivals, particularly the Air New Zealand/United alliance.

The Applicants are incentivised to expand rather than restrict capacity as a result of the financial settlement arrangements under the Restated JBA. In any event, the Applicants will not have any ability or incentive to artificially restrict capacity or increase prices, not only due to the impacts of the COVID-19 Pandemic on demand, but also because of the constraints imposed by other direct and indirect operators on the Trans-Pacific Routes and the real prospect of lost sales and revenue.

Strong Trans-Pacific Competition

The Trans-Pacific Routes are highly competitive and, as noted by the Minister of Transport in 2015,[71] the Applicants' joint business provides a strong competitive balance to the dominant Air New Zealand/United alliance.

Market share data in respect of air passenger services from New Zealand to the US is included in Tables 8 and 9 below.[72] The data indicates that in relation to the number of passengers on services between New Zealand and the US in calendar year 2019, American had a share of 13% and the Qantas Group (including Jetstar) had a share of 6%, giving a combined alliance total of 13.6%.

This compares to Air New Zealand (50% share) and United (21% share), with a total alliance share of 71%. This combined share has held strong over the years, as shown in Table 8 below.

Table 8: New Zealand-US Passenger Share, 2016-2019

Carrier	2016	2017	2018	2019
Air New Zealand	56%	48%	55%	50%
United Airlines	11%	16%	16%	21%
American	14%	23%	12%	13%
Qantas	9%	5%	7%	6%
Fiji Airways	3%	3%	4%	3%
Other	6%	5%	7%	7%

Source: MIDT, non-directional year end data

[71] Para 24 of Ministry of Transport briefing to the Minister re Authorisation of the Qantas/American Airlines Alliance (received 6 November 2015) and authorised by the Minister on 8 November 2015. Available:: https://www.transport.govt.nz/air/internationalairservices/internationalaircarriagecompetition/qantas-american-joint-agreement/
[72] See share data in respect of NZ-Canada in Annexure F.

Similar trends are evident in respect of share on the Auckland-Los Angeles route, as shown in Table 9. The Air New Zealand/United alliance has a combined share of 57% compared to the Applicants' combined share of only 26% (American 21%, Qantas 5%), reflecting American's shift from year-round to seasonal services.

Table 9: Auckland-Los Angeles Passenger Share, 2016-2019

Carrier	2016	2017	2018	2019
Air New Zealand	53%	47%	55%	53%
American	22%	32%	18%	21%
Fiji Airways	6%	8%	10%	9%
Qantas	8%	4%	6%	5%
United Airlines	4%	3%	3%	4%
Other	7%	6%	8%	8%

Source: MIDT, non-directional year end data

Together, Air New Zealand and United have historically been the dominant operators in respect of New Zealand-US services. Notwithstanding the significant impacts of the COVID-19 Pandemic, the Applicants expect both Air New Zealand and United to reinstate and ultimately grow direct services between New Zealand and the US using their respective strong home carrier advantages.

American is an important competitive force in this context. As Table 8 above shows, American gained share when it commenced the Auckland-Los Angeles service, prior to it being scaled back to a seasonal service as a result of the prolonged USDOT process. It does, however, remain by far the smallest of the three direct operators between New Zealand and the US, and it will be critical that it has Qantas' support to reinstate its Auckland-Los Angeles service.

Put simply, this application must be assessed having regard to the importance of providing competitive balance to the dominant Air New Zealand/United alliance. As was referenced when the Minister of Transport approved the Air New Zealand/United alliance in 2016, enabling strong competition between airline alliances is a relevant factor in assessing Trans-Pacific Routes:[73]

> *'One of the factors which has influenced our approach to individual alliances over the past two decades has been our view that, given the size of the New Zealand market and our relative geographic isolation, consumers and travellers in New Zealand will benefit when there is strong competition between Qantas and its alliance partners on one hand and Air New Zealand and its alliance partners on the other.'*[74]

[73] See paragraph 35 of the Ministry's Briefing to the Minister for Transport in respect of the Air New Zealand and United Airlines alliance amendment application, received 21 October 2016. Available: https://www.transport.govt.nz/air/internationalairservices/internationalaircarriagecompetition/airnz-united-airlines-application/
The USDOT also observed the dynamics of alliance competition on Trans-Pacific Routes, see page 9 USDOT Order to Show Cause 2019-05-23 dated 3 June 2019, Docket DOT-OFT-2018-0030, Application of American Airlines Inc and Qantas Airways Limited under 49 USC 41308 and 41309 for approval of and antitrust immunity for Alliance Agreements.
[74] See paragraph 49 of the Ministry's Briefing to the Minister for Transport in respect of the Air New Zealand and United Airlines alliance amendment application, received 21 October 2016. Available: https://www.transport.govt.nz/air/internationalairservices/internationalaircarriagecompetition/airnz-united-airlines-application/

Further, as noted earlier, the Air New Zealand/United alliance was authorised by the Minister of Transport[75] and the USDOT[76] on an indefinite basis in 2001 and 2002 respectively, with 'carve out' conditions removed in 2016.[77] The Delta/Virgin Australia alliance is also indefinitely approved by the USDOT[78]).[79] To deny the same long term certainty to the Applicants, or only grant a short term re-authorisation, would place them at a significant competitive disadvantage on highly competitive routes.

Further information about various competitors on the Trans Pacific Routes is set out below.

Air New Zealand

As noted above, Air New Zealand is by far the largest competitor with a 50% share of passengers on New Zealand-US routes for calendar year 2019.[80] The Applicants regard Air New Zealand as a significant competitive constraint on Trans-Pacific Routes from both New Zealand and Australia, particularly given its long term joint business with United.

Prior to the COVID-19 Pandemic, Air New Zealand operated the following services:[81]

- Auckland-Los Angeles, on a 14 per week basis using a B777 aircraft;
- Auckland-San Francisco, on a 6 per week basis using a B777 aircraft;
- Auckland-Chicago, on a 3-4 per week basis using a B787 aircraft;
- Auckland-Houston, on a 6 per week basis using a B777 aircraft; and
- Auckland-Honolulu, on a 3 per week basis using a B777 aircraft.

In October 2019, Air New Zealand announced new services between Auckland and New York (Newark) (originally due to launch in October 2020[82] but now delayed by the COVID-19 Pandemic until late 2021).[83] The new service was intended to operate three times per week, year-round, using Boeing 787-9 Dreamliner aircraft and offering customers more Business Premier and Premium Economy seating.[84] The new service was designed to connect to the over 400 daily services operated by United from Newark to domestic US destinations. Air New Zealand also operates between New Zealand and Canada, namely on the Auckland-Vancouver route on a 7 per week basis using a B787 aircraft.

Prior to the COVID-19 Pandemic, Air New Zealand also operated an extensive Trans-Tasman network, comprising 155 weekly flights to a range of gateways in Australia and attracting a large number of passengers who fly across the Tasman from Australia to join services to the US from Auckland. For example, data indicates that approximately 265 passengers per day fly with Air New

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[75] See USDOT Order 2001-4-2, Docket DOT-OST-1999-6680 issued in respect of the Application by United Airlines and Air New Zealand under 49 USC 41308-41309 for Approval of Antitrust Immunity for Alliance Agreements, dated 3 April 2001.
[76] See: https://www.transport.govt.nz/air/internationalairservices/internationalaircarriagecompetition/airnz-united-airlines-application/
[77] See: https://www.transport.govt.nz/air/internationalairservices/internationalaircarriagecompetition/airnz-united-airlines-application/ The Air New Zealand/United alliance does not have specific approval in Australia. However, in 2012 the ACCC approved limited joint corporate dealing activities as part of the Star Alliance (some of which had originally been authorised in 2003). The current authorisation expires on 16 August 2020. See: https://www.accc.gov.au/system/files/public-registers/documents/D12%2B111130.pdf
[78] See USDOT Order 2011-6-9, Docket DOT-OST-2009-1155 issued in respect of the Application by Delta Airlines, Virgin Australia, Virgin Australia International and Pacific Blue under 49 USC 41308-41309 for Approval of Antitrust Immunity for Alliance Agreements, dated 10 June 2011.
[79] The Delta/Virgin Australia alliance was granted time limited approval by the ACCC until September 2020. See: https://www.accc.gov.au/system/files/public-registers/documents/D15%2B121255.pdf
[80] Source: MIDT.
[81] Based on February 2020 schedule.
[82] See: https://www.airnewzealand.com/press-release-2019-start-spreading-news-airnz-reveals-auckland-new-york-flight-details
[83] See: https://www.airnewzealand.com.au/travel-alerts (accessed 25 May 2020)
[84] See further: https://www.airnewzealand.com.au/alliance-partners-united-airlines

Zealand from Australia to connect to Auckland-US services.[85] Key Australian cities where passengers join Auckland-US flights are from Melbourne, Brisbane and Sydney representing 33%, 28% and 19% respectively of the 265 passengers. Los Angeles is the largest destination for these passengers representing 33% of Air New Zealand passengers travelling from Australia to/from the US via Auckland, followed by San Francisco at 15% and Honolulu at 8%.

Air New Zealand's successful joint business with United grew from around 2001 with their codesharing relationship and common membership of the Star Alliance.[86] The alliance encompasses flights from New Zealand to mainland US as well as connecting flights within both countries and offers reciprocal frequent flyer benefits including lounge access and priority airport handling. Together, these carriers offer a compelling Trans-Pacific proposition. Describing the launch of the New Zealand coordination in 2016, United Airlines' vice chairman and chief revenue officer Jim Compton said:

> *"This joint venture will allow us to work more closely with Air New Zealand to optimise our trans-Pacific schedules and offer more convenient flight choices to our customers in both the US and New Zealand….We look forward to continuing to work with Air New Zealand, an industry innovator and leader, to further grow our business in ways that will benefit our mutual customers."*[87]

Similarly, at the time Air New Zealand's chief executive Christopher Luxon said working more closely with United would support New Zealand tourism:

> *"To have a strong home market carrier like United Airlines working with us to grow this market through its extensive sales and distribution channels in the US will provide a significant boost to inbound tourism."*[88]

United Airlines

Before the COVID-19 Pandemic, United operated to 362 domestic and international destinations and carried 138 million passengers. United (along with Air New Zealand and Air Canada) is a member of the Star Alliance. It offers services to Asia, Europe, Latin America, Africa and the Middle East from well-placed hubs on the east coast, west coast and southern and midwestern regions of the US.

The key competitive strength of United's Trans-Pacific offering is the connections it provides customers from Los Angeles and San Francisco to its extensive domestic US network. United has more domestic flights from San Francisco airport than any other international carrier and also has significant connectivity from Los Angeles.

As at December 2019, United operated year round services from Auckland to San Francisco using its flagship 787 Dreamliner and assumed 21% share of all New Zealand-US passengers in the 2019 calendar year, surpassing American at 13%.[89] Its alliance with the home carrier in New Zealand gives it a distinct marketing and connectivity advantage. In addition, United operated 28 return services a week between Australia and the US consisting of daily flights between Sydney and Los Angeles, San Francisco and Houston and 4 services per week between Melbourne and Los Angeles and 3 services per week between Melbourne and San Francisco. United also codeshares on Air New Zealand's flights between Auckland and Sydney, Brisbane, Melbourne, Perth and Adelaide and Air New Zealand's flights to Los Angeles and San Francisco, Chicago, Houston and Honolulu.

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[85] Calendar Year 2019, DDS data.
[86] The Minister approved the Alliance Expansion Agreement in 2002 (which had some 'carve outs' from the cooperation in relation to Auckland-Los Angeles pricing) and a Side Agreement to that arrangement in 2016. See: https://www.transport.govt.nz/air/internationalairservices/internationalaircarriagecompetition/airnz-united-airlines-application/
[87] See further: 'Air NZ and United deepen partnership,' in Australian Aviation, 11 March 2016: https://australianaviation.com.au/2016/03/air-nz-and-united-deepen-partnership/
[88] See further: 'Air NZ and United deepen partnership,' in Australian Aviation, 11 March 2016: https://australianaviation.com.au/2016/03/air-nz-and-united-deepen-partnership/
[89] Source: BITRE.

Delta

Delta provides passenger and cargo operations throughout the US and globally, offering services (pre-COVID 19 Pandemic) to over 300 destinations in over 50 countries, and served more than 200 million customers each year.[90] Delta's global route network gives the airline a presence in every major domestic and international market. Its route network is centred around the hub system operating at airports in Atlanta, Detroit, Minneapolis/St. Paul, New York-JFK, New York La Guardia, Salt Lake City, Seattle, Paris-Charles de Gaulle, Amsterdam and Tokyo-Narita.

Delta is a founding member of the SkyTeam global alliance, which includes (amongst others) Air France, Alitalia, KLM, China Southern, Korean Air and Vietnam Airlines. It has operated a successful joint business with Virgin Australia in respect of the Trans-Pacific since 2010. Whilst the joint business does not operate any direct flights from New Zealand to the US/Canada, the two carriers impose a significant constraint on the Applicants through their service offering from Australia. Prior to the COVID-19 Pandemic (as at February 2020), Delta operated a Sydney-Los Angeles daily service using a B777 aircraft while Virgin Australia operated B777 daily Sydney-Los Angeles services, 6 per week Brisbane-Los Angeles services and 5 per week Melbourne-Los Angeles services. The Delta/Virgin Australia alliance encompasses revenue sharing on a metal-neutral basis, and involves commercial coordination including in respect of schedules, capacity, pricing, revenue management, sales and marketing and frequent flyer programs and procurement.[91]

Air Canada

Air Canada is Canada's largest full-service airline and the largest provider of scheduled passenger services in Canada. In 2019, Air Canada carried approximately 52 million customers per year and provided direct passenger and cargo services to over 217 destinations on six continents.[92] Air Canada, like United and Air New Zealand, is also a member of Star Alliance. It has an extensive global network, with hubs in four Canadian cities (Toronto, Montreal, Vancouver and Calgary), providing scheduled passenger service directly to cities in Europe, Asia, Australia, the Caribbean, Mexico and South America.

Prior to the COVID-19 Pandemic, Air Canada operated direct services from New Zealand to Canada, namely Auckland-Vancouver on a 4 per week basis using a B787 aircraft, as well as direct services from Australia to Canada. Air Canada has a share of around 7% of passengers travelling between New Zealand and Canada.[93]

Hawaiian Airlines

Hawaiian Airlines is based in Honolulu and operates from its main hub at Honolulu International Airport. In 2019, it carried approximately 11.8 million passengers. It operates domestic flights between the US mainland and the islands of Hawaii, as well as international routes (including to Sydney) in the Pacific region.[94]

Hawaiian Airlines operates direct services from Auckland to Honolulu, on a 3 per week basis using an A330 aircraft, providing a transit option for New Zealand consumers travelling to the mainland US/Canada. Hawaiian Airlines also operates direct flights from Australia to Hawaii.

Other Indirect Operators

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[90] See further: Delta Airlines Annual Report 2019. Available: https://ir.delta.com/financials/default.aspx
[91] See description at para 5 of ACCC Final Determination in respect of Application for revocation of authorisations A91151, A91152, A91172 & A91173 and the substitution of new authorisations A91475, A91476, A91477 &A91478 lodged by Virgin Australia Airlines Pty Ltd, Delta Air Lines & Ors in respect of an Alliance between the applicants, dated 14 August 2015 Authorisation numbers: A91475, A91476, A91477 & A91478. Available: https://www.accc.gov.au/system/files/public-registers/documents/D15%2B121255.pdf
[92] See further: Air Canada Annual Report 2019. Available: https://www.aircanada.com/content/dam/aircanada/portal/documents/PDF/en/annual-report/2019_ar.pdf
[93] See Table 2, Annexure F.
[94] Hawaiian Airlines, 'About Us' available at: http://www.hawaiianair.com/Aboutus

There are a number of other indirect operators from New Zealand to the US/Canada via hubs in the Pacific, South America and Asia. Prior to the COVID-19 Pandemic,[95] these services included:

- Auckland to Los Angeles/San Francisco via Nadi operated by Fiji Airways on a daily and 2 per week basis respectively using a mix of A330/A350 aircraft;

- Auckland to Los Angeles via Papeete, operated by Air Tahiti Nui on a 3 per week basis using a B787 aircraft;

- Auckland to Los Angeles, Miami and New York via Santiago, operated by LATAM on a 4 per week basis using a B787 aircraft;

- Auckland to Los Angeles, New York, San Francisco and Vancouver via Hong Kong, operated by Cathay Pacific on a 14+ per week basis using a mix of A350/B777 aircraft. Cathay Pacific also operates from Christchurch to Hong Kong 4 times per week, as well as Hong Kong to Boston, Newark Washington DC, Chicago, Seattle and Toronto with less frequency (3 to 10 services per week); and

- Auckland to Los Angeles, New York, Toronto and Vancouver via Shanghai, operated by China Eastern on a 6 per week basis using a mix of A330/B777 aircraft. China Eastern also operates from Shanghai to Chicago and San Francisco 2 times per week.

Freight Services

Relevant freight markets are also highly competitive. Air freight is carried between New Zealand and the US in the belly space of passenger aircraft and on dedicated freighter services. Market share data, dated to June 2020, is set out in Annexure G. It indicates that Qantas has a share of 13% of freight traffic from the US to New Zealand and a share of 0% of freight traffic from New Zealand to the US. American has 1% share of freight traffic from the US to New Zealand and a share of 4% of freight traffic from New Zealand to the US.

Although it does not operate any dedicated freighter services, Air New Zealand is the dominant player. Data indicates that Air New Zealand carries approximately 84% of all freight and mail between New Zealand and the US, all on belly space on passenger flights.[96] United has the second largest share at 7%, Hawaiian third at 6%. American has the lowest contributing share at 4%. All other carriers in market, including Qantas, have 0% share in respect of New Zealand–US freight. In addition to the above-mentioned carriers, competition also occurs through other carriers that have one/multi stop connections between NZ and the US via the Pacific Islands, Asia and the Middle East.

No Barriers To Entry or Expansion

There are no material regulatory, commercial or operational barriers to entry or expansion on the Trans-Pacific Routes. The Multilateral Agreement on the Liberalization of Air Transport (**MALIAT**), to which New Zealand and the US are parties, permits designated carriers of New Zealand and the US to provide unlimited direct services between the two countries. Air New Zealand is able to provide unlimited direct services between New Zealand and the US via Australia by combining rights established under the open aviation arrangements between Australia and New Zealand and the MALIAT. The air services arrangements New Zealand has in place with Canada also provide opportunities for growth.[97]

The New Zealand Government has committed to pursuing an open skies approach[98] and has indicated that its policy objective is to facilitate connectivity through air services:

[95] Source: scheduled network data, February 2020, DiioMi.
[96] Source: United States – Bureau of Transportation Statistics Latest June 2020.
[97] See further*:* https://otc-cta.gc.ca/eng/transport-agreement/new-zealand
[98] See: http://www.transport.govt.nz/air/iatrpolicystatement/) Further detail about the elements of air services arrangements that will be pursued can be found at the referenced link.

> *'The objective of New Zealand's international air transport policy is to help grow the economy and deliver greater prosperity, security and opportunities for New Zealanders. This will be achieved by seeking opportunities for New Zealand-based and foreign airlines to provide their customers with improved connectivity to the rest of the world, and to facilitate increased trade in goods and services (including tourism).''*[99]

From a freight perspective, the barriers to entry and expansion on the Trans-Pacific Routes are also low. The Australia-US Air Transport Agreement provides for unlimited dedicated freighter capacity for both Australian and US carriers, with the ability for Australian airlines to operate cargo services between the territory of the US and a third country without needing to serve a point in Australia and vice versa for US carriers (depending on such services being permitted under the arrangements with third countries). Given that most dedicated freight services operate at non-peak time slots, obtaining landing rights is generally not an issue for new or returning operators.

The Applicants will therefore remain constrained by the prospect of new entrants and the expansion of existing New Zealand, Australian and US carriers providing passenger and/or freight services.

NO LEGAL REASONS FOR THE MINISTER REFUSING TO AUTHORISE THE PROPOSED CONDUCT

The Minster's discretion to re-authorise the Proposed Conduct is provided in section 88(2) of the CAA. The Proposed Conduct meets the test for authorisation and the Applicants strongly urge the Minister to exercise his discretion to grant authorisation for a five year term.

Sections 88(3) and (4) of the CAA provide specific reasons for the Minister to decline to authorise, although they are subject to an override in section 88(5) if the Minister believes that to decline authorisation would have an undesirable effect on international comity. As discussed below:

- none of the reasons set out in sections 88(3) and (4) apply in respect of the Proposed Conduct; and

- declining authorisation would have an undesirable effect on international comity between New Zealand and Australia, New Zealand and the US and Australia and the US respectively. Accordingly, section 88(5) provides a distinct reason for the Minister to exercise his discretion in favour of authorising the Proposed Conduct.

No infringement of section 88(3)

In considering whether to grant authorisation under subsection (2) of this section, the Minister must ensure that granting authorisation will not prejudice compliance with any relevant international convention, agreement or arrangement to which the Government of New Zealand is a party.

The Minister's authorisation of the Proposed Conduct will not prejudice New Zealand's compliance with any relevant international conventions, agreements or arrangements. Conventions and agreements which may be relevant include:

- the Air Services Agreement between New Zealand and Australia dated 8 August 2002 (the **ASA**);

- the Single Aviation Market Arrangements between New Zealand and Australia dated 1 November 1996 (the **SAM**);

- the MALIAT that came into force on 21 December 2001; and

- bilateral agreements between New Zealand and other countries.

[99] See: http://www.transport.govt.nz/air/iatrpolicystatement/)

The ASA expressly contemplates authorisations of the type sought in this application and therefore any authorisation cannot be said to prejudice compliance with that agreement. Specifically, Article 14 provides that:

> *'The competition laws of each Party, as amended from time to time, shall apply to the operation of the airlines of both Applicants. Where permitted under those laws, a Party or its competition authority may, however, unilaterally exempt commercial agreements between airlines (including block-space, code share and other joint service agreements) from the application of its domestic competition law.'*[100]

The SAM arrangements reflect a desire on the part of the Australian and New Zealand Governments to achieve an efficient, integrated Australasian aviation market. As was the case in 2015, over the longer term the Proposed Conduct will continue to generate substantial benefits for consumers and will deliver economic efficiencies to the benefit of the Applicants as well as New Zealand and Australia. This will be mutually beneficial to each country's economy, particularly as the global airline and tourism industries seek to recover from the COVID-19 Pandemic.

Clause 15 (1) of the SAM arrangements provides:

> *All aviation activities (including terminal access) under these arrangements will take place in a manner consistent with competition law as it applies in the relevant jurisdiction.*

Continuation of the Proposed Conduct through authorisations consistent with the CAA regime (and therefore the Commerce Act), the Australian *Competition and Consumer Act 2010* (Cth) and relevant US antitrust provisions will therefore not prejudice compliance with the SAM.

Additionally, nothing in the Proposed Conduct will prejudice compliance with the MALIAT or any bilateral agreements between New Zealand and other countries.

No infringement of section 88(4)

The Proposed Conduct includes no provision that would infringe sections 88(4)(a)-(f). The Restated JBA has not been amended in any way since 2015 which would infringe section 88.

No infringement of section 88(4)(a)

Authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that provides that any party to it may directly or indirectly enforce it through any form of action by way of fines or market pressures against any person, whether or not that person is a party to the contract, arrangement, or understanding. The Proposed Conduct makes no provision for either Applicant to directly or indirectly enforce the Restated JBA or any associated agreement through any form of action by way of fines or market pressures against any person.

No infringement of section 88(4)(b)

Authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that has the purpose or effect of breaching the terms of a commission regime issued under section 89 of this Act. The Applicants understand the only commission regimes issued by the Minister which are currently in force under section 89 of the CAA are the Civil Aviation (Passenger Agents' Commission Regime) Notice 1983 and the Civil Aviation (Cargo Agents' Commission Regime) Notice 1983. The Proposed Conduct does not have the purpose or effect of breaching the terms of either of these commission regimes.

No infringement of section 88(4)(c)

[100] See http://www.austlii.edu.au/au/other/dfat/treaties/2003/18.html

Authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that unjustifiably discriminates between consumers of international air services in the access they have to competitive tariffs. The Proposed Conduct does not contain any provision which discriminates between consumers in the access they have to tariffs. In fact, the Proposed Conduct is likely to enhance the availability of competitive fares on the Trans-Pacific. For reasons set out above, the Restated JBA has improved and will continue to improve options for consumers of international air services including more availability for discounted and flexible fares through reciprocal inventory access.

The Applicants will continue to face competitive pressure from other competitors, in particular the Air New Zealand/United alliance, meaning that they will have no ability (or incentive) to discriminate between consumers in respect of access to competitive tariffs. To the contrary, consumers are more likely to have greater access to competitive tariffs under the Proposed Conduct because:

- the Applicants will continue to set fares having regard to existing and potential competition from other carriers on all routes on which they operate, i.e., they will continue to set competitive fares;
- the Applicants will continue to make those fares widely available – their distribution strategy will be determined having regard to existing and potential competition and the costs and benefits of various distribution channels. Indeed, rather than restricting access, the Proposed Conduct will enhance the availability of fares for travel on the Trans-Pacific as the Applicants will continue to coordinate their marketing and sales activities; and
- a larger inventory of seats in the lower booking classes will be made available under the Proposed Conduct.

No infringement of section 88(4)(d)

Authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding in so far as it relates to tariffs if it has the effect of excluding any supplier of international carriage by air from participating in the market to which it relates. The Proposed Conduct has no impact on the ability of any supplier of international carriage by air from participating in the provision of services on the Trans-Pacific Routes. The continued expansion of carriers on the Trans-Pacific since 2015 indicates that tariffs have not been set in a way so as to exclude any airline from operating on the Trans-Pacific Routes.

Re-authorisation will not have any flow-on impact in terms of the ASA or other regulatory conditions that would impact another airline's access to the Trans-Pacific. Further, given the low barriers to entry and expansion on the Trans-Pacific and the existence of strong international competitors such as Air New Zealand/United, Delta/Virgin Australia, Air Canada and Hawaiian Airlines, the Applicants will have no incentive to set tariffs so as to exclude any person from providing international air services on any of the Trans-Pacific Routes. In addition, at the time of re-filing the application for anti-trust immunity with the USDOT in February 2018, the Applicants amended the Restated JBA to remove exclusivity provisions,[101] so Qantas and American could enter into codeshare and frequent flyer relationships with other carriers.

No infringement of section 88(4)(e)

Authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that has the purpose or effect of preventing any party from seeking approval, in terms of section 90 of this Act, for the purpose of selling international carriage by air at any other tariff so approved.

The ASA removes any requirement that tariffs be filed with the aeronautical authorities of either Australia or New Zealand. The Australia-United States Open Skies Agreement similarly removes any

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[101] See Confidential Annexure B.

requirement that tariffs be filed with the aeronautical authorities of Australia or the US.[102] In any event, the Proposed Conduct does not prevent any party from seeking the Minister's approval of any tariff under section 90 of the CAA.

No infringement of section 88(4)(f)

Authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that prevents any party from withdrawing without penalty on reasonable notice from the contract, arrangement, or understanding. **[REDACTED – CONFIDENTIAL]**

International Comity

If the Minister considers, contrary to the Applicants' view, that the Proposed Conduct does not comply with any of section 88(4)(a)-(f), he can nevertheless authorise the Proposed Conduct under section 88(5) if declining authorisation would have an undesirable effect on international comity between New Zealand and another state.

Declining authorisation would have an undesirable effect on international comity between New Zealand and Australia and between New Zealand and the US. Accordingly, international comity provides a distinct reason for the Minister to exercise his discretion in favour of authorising the Proposed Conduct.

As discussed above, arrangements between carriers are consistent with the SAM and the ASA. The Applicants also intend to apply to the ACCC for re-authorisation of the Proposed Conduct and believe re-authorisation should be granted in that jurisdiction on the basis that it has delivered and will continue to deliver net public benefits for the Australian consumers and the broader Australian economy. The Applicants have already received antitrust immunity from the USDOT until 2026, timing that was specifically intended to facilitate closer long term alignment with future regulatory approvals in New Zealand and Australia.

In those circumstances, declining authorisation for the Proposed Conduct would prevent both Australia and the US from realising these net public benefits from an arrangement that is expressly contemplated in the ASA between New Zealand and Australia and the Australia-United States Open Skies Agreement.

Confidentiality

The Applicants claim confidentiality over Confidential Annexure B to this Application and also the information in this Application enclosed in square brackets (the Confidential Information) pursuant to section 9(2)(b) of the *Official Information Act 1982*. A public version with Confidential Information redacted will be provided separately. The Confidential Information is commercially sensitive and valuable to the Applicants and disclosure would be likely unreasonably to prejudice the commercial position of one, or both, of the Applicants.

The Applicants request they be notified of any request made under the *Official Information Act* for release of the Confidential Information, and that the Minister seeks their views as to whether the Confidential Information remains confidential and commercially sensitive at the time responses to such requests are being considered.

This request for confidentiality is not intended to constrain the Minster and the Ministry of Transport from disclosing information to other Government departments for the purposes of seeking relevant expert advice. However, the Applicants request that the Minister ensure any such Departments maintain the same full confidentiality as requested above.

[102] While fare notification requirements apply in respect of Canada, they are unaffected by the Proposed Conduct.

ANNEXURE A – QANTAS' RELATED BODIES CORPORATE

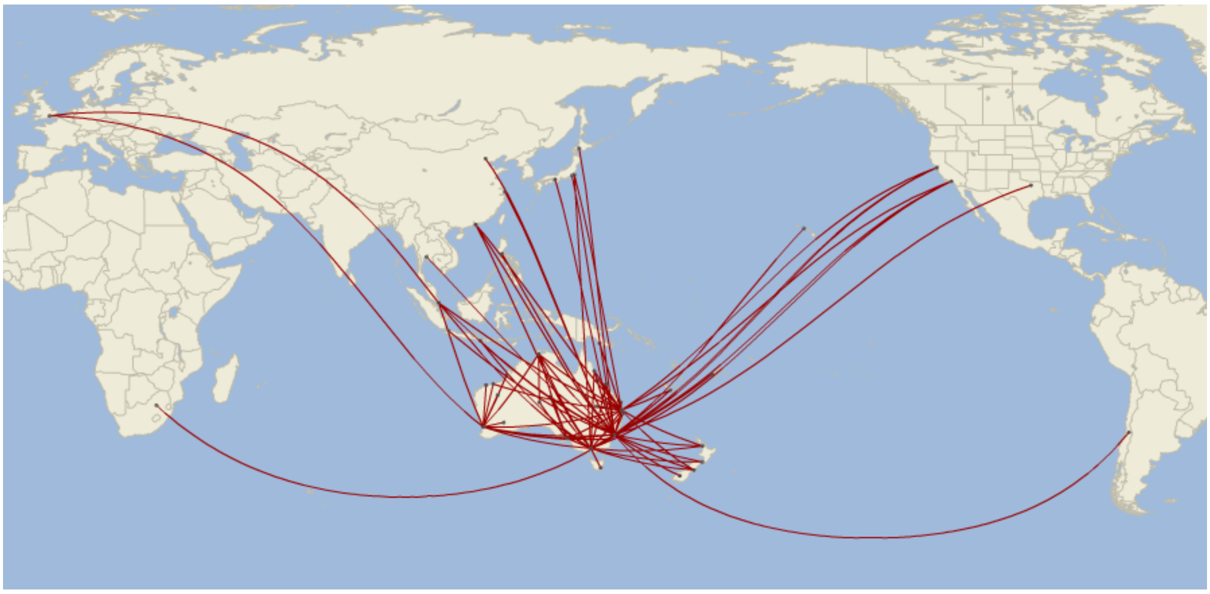
Entity	Country of Incorporation
AAL Aviation Limited	Australia
Airlink Pty Limited	Australia
Australian Air Express Pty Ltd	Australia
Australian Airlines Limited	Australia
Australian Regional Airlines Pty. Ltd.	Australia
Eastern Australia Airlines Pty. Limited	Australia
Express Freighters Australia (Operations) Pty Limited	Australia
Express Freighters Australia Pty Limited	Australia
H Travel Sdn Bhd	Malaysia
Hangda Ticket Agent (Shanghai) Co. Ltd	China
Holiday Tours & Travel (Korea) Limited	Korea
Holiday Tours & Travel (Singapore) Pte. Ltd.	Singapore
Holiday Tours & Travel Limited	Hong Kong
Holiday Tours & Travel Ltd	Taiwan
Holiday Tours & Travel Pte. Ltd.	Singapore
Impulse Airlines Holdings Proprietary Limited	Australia
Jetabout Japan, Inc.	Japan
Jetconnect Limited	New Zealand
Jetstar Airways Limited	New Zealand
Jetstar Airways Pty Limited	Australia
Jetstar Asia Airways Pte Limited	Singapore
Jetstar Asia Holdings Pty Limited	Australia
Jetstar Group Pty Limited	Australia
Jetstar Holidays Co. Ltd.	Japan
Jetstar International Group Australia Pty Limited	Australia
Jetstar International Group Japan Co., Ltd	Japan
Jetstar NZ Regional Limited	New Zealand
Jetstar Regional Services Pte. Ltd.	Singapore
Jetstar Services Pty Limited	Australia
Network Aviation Holdings Pty Ltd	Australia
Network Aviation Pty Ltd	Australia
Network Holding Investments Pty Ltd	Australia
Network Turbine Solutions Pty Ltd	Australia
Osnet Jets Pty Ltd	Australia
PT Pacto Holiday Tours	Indonesia
Q H Tours Ltd	Australia
Qantas Airways Domestic Pty Limited	Australia
Qantas Asia Investment Company (Singapore) Pte. Ltd.	Singapore
Qantas Asia Investment Company Pty Ltd	Australia
Qantas Cabin Crew (UK) Limited	United Kingdom
Qantas Courier Limited	Australia
Qantas Domestic Pty Limited	Australia
Qantas Foundation Trustee Limited	Australia
Qantas Freight Enterprises Limited	Australia
Qantas Frequent Flyer Limited	Australia
Qantas Frequent Flyer Operations Pty Limited	Australia
Qantas Ground Services Pty Limited	Australia
Qantas Group Accommodation Pty Limited	Australia
Qantas Group Flight Training (Australia) Pty Limited	Australia
Qantas Group Flight Training Pty Limited	Australia
Qantas Information Technology Ltd	Australia
Qantas Road Express Pty Limited	Australia
Qantas Superannuation Limited	Australia
Qantas Ventures Pty Ltd	Australia
QF A332 Leasing 1 Pty Limited	Australia
QF A332 Leasing 2 Pty Limited	Australia

QF BOC 2008-1 Pty Limited	Australia
QF BOC 2008-2 Pty Limited	Australia
QF Cabin Crew Australia Pty Limited	Australia
QF Dash 8 Leasing No. 4 Pty Limited	Australia
QF Dash 8 Leasing No. 5 Pty Limited	Australia
QF Dash 8 Leasing No. 6 Pty Limited	Australia
QF ECA 2008-1 Pty Limited	Australia
QF ECA 2008-2 Pty Limited	Australia
QF ECA A380 2010 No.1 Pty Limited	Australia
QF ECA A380 2010 No.2 Pty Limited	Australia
QF ECA A380 2010 No.3 Pty Limited	Australia
QF ECA A380 2010 No.4 Pty Limited	Australia
QF ECA A380 2011 No.1 Pty Limited	Australia
QF ECA A380 2011 No.2 Pty Limited	Australia
QF EXIM B787 No.1 Pty Limited	Australia
QF EXIM B787 No.2 Pty Limited	Australia
QH International Co. Limited.	Japan
Regional Airlines Charter Pty Limited	Australia
Southern Cross Insurances Pte Limited	Singapore
Sunstate Airlines (Qld) Pty. Limited	Australia
Taylor Fry Holdings Pty Limited	Australia
Taylor Fry Pty Limited	Australia
The Network Holding Trust	N/A
The Network Trust	N/A
Vii Pty Limited	Australia

CONFIDENTIAL ANNEXURE B – RESTATED JBA AND ASSOCIATED COMMERCIAL AGREEMENTS

[REDACTED – CONFIDENTIAL]

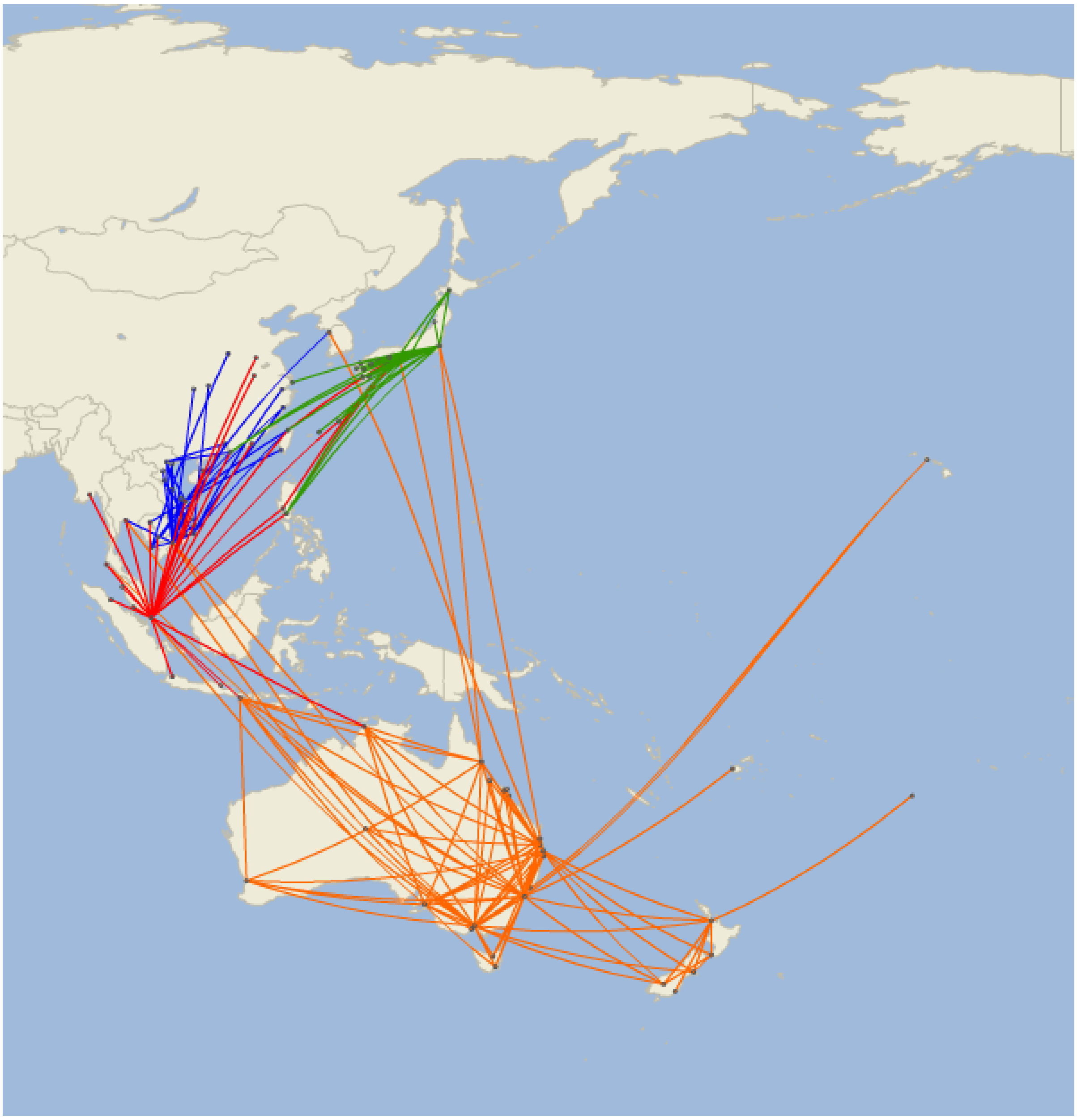
ANNEXURE C – QANTAS ROUTE MAP (PRE COVID-19 PANDEMIC)



Qantas-operated network (February 2020)

Source: DiioMi

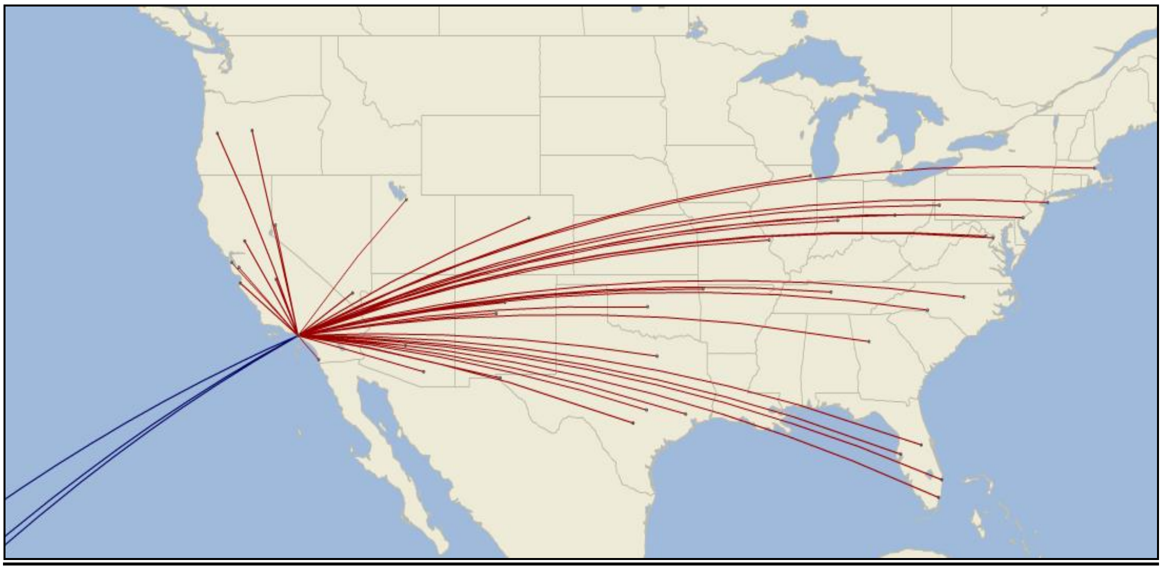
ANNEXURE D – JETSTAR ROUTE MAP (PRE COVID-19 PANDEMIC)



Jetstar-operated network (February 2020)
Jetstar Asia-operated network (February 2020)
Jetstar Pacific-operated network (February 2020)
Jetstar Japan-operated network (February 2020)
Source: DiioMi

ANNEXURE E – AMERICAN ROUTE MAPS

American's Connections from Los Angeles

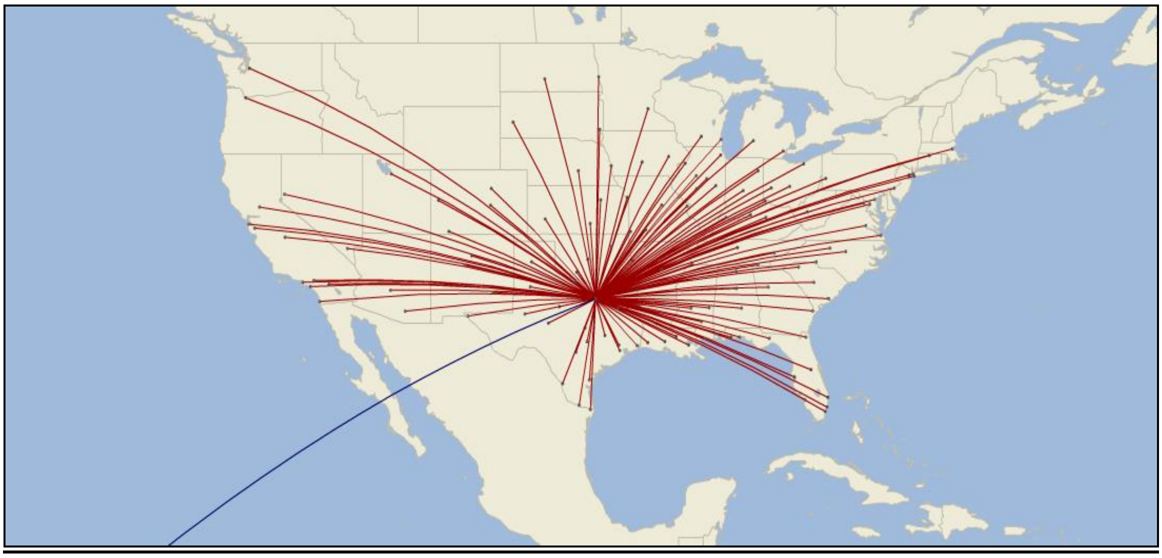


American service

Qantas service

Source: OAG Schedules & Diio

American's Connections from Dallas/Fort Worth

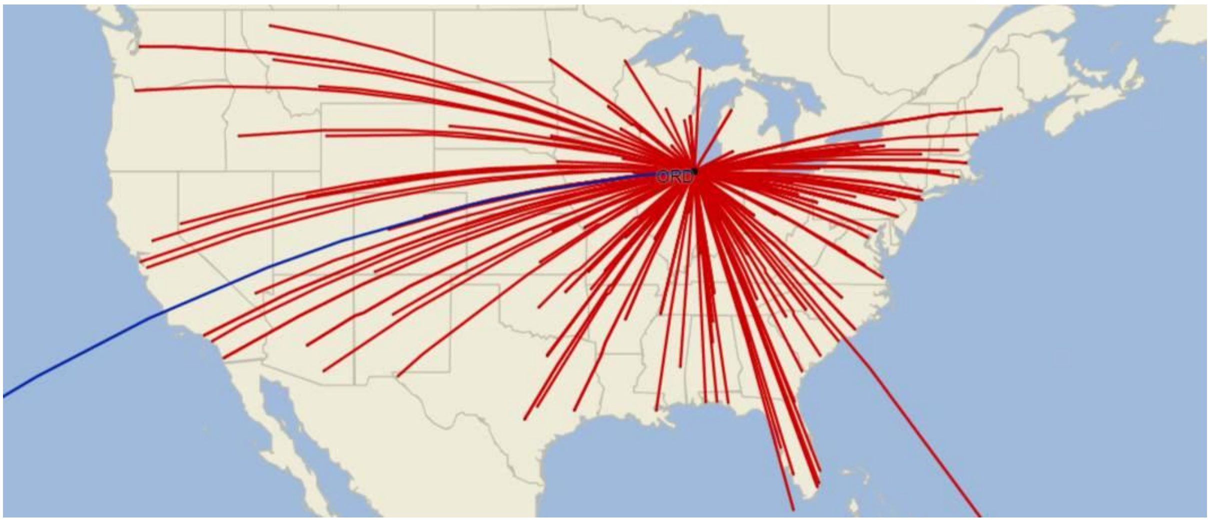


American service

Qantas service

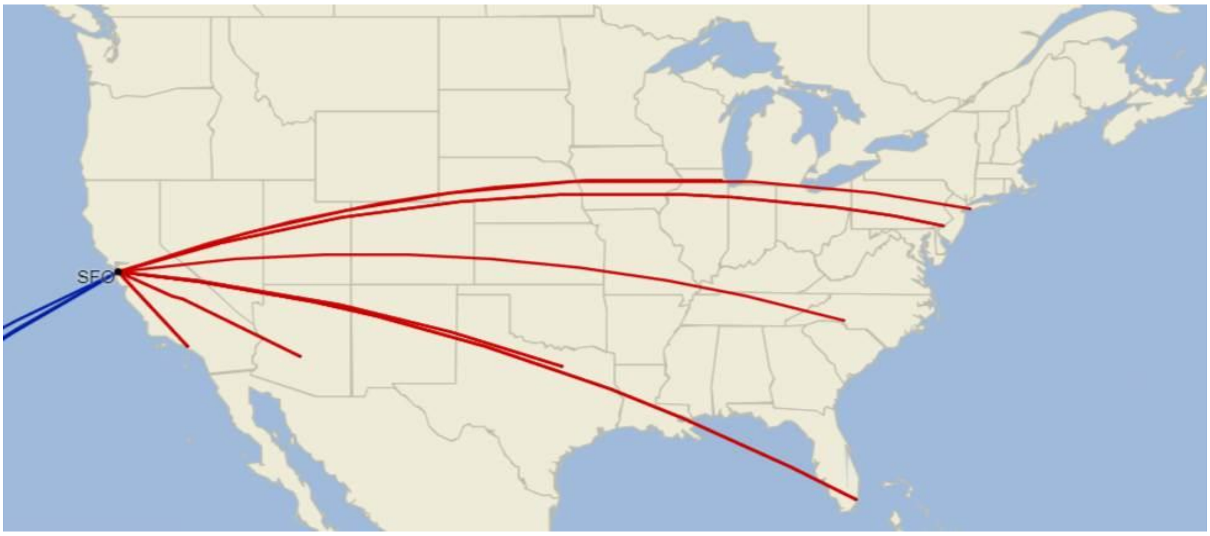
Source: OAG Schedules & Diio

American's Connections from Chicago



Blue line represents Qantas flying

American's Connections from San Francisco



Blue line represents Qantas flying

ANNEXURE F –NEW ZEALAND-CANADA/MEXICO PASSENGER SERVICES MARKET DATA

Table 1: Total New Zealand-Canada Market Growth (NZ-Resident Traveller Arrivals from Canada and Canadian Visitor Arrivals in NZ)

Period	Total Passenger Numbers	Annual Growth
Calendar Year 2015	124,228	7%
Calendar Year 2016	141,788	14%
Calendar Year 2017	159,409	12%
Calendar Year 2018	170,671	7%
Calendar Year 2019	173,726	2%
2015 to 2019: 4-year CAGR		**9%**

Source: Statistics New Zealand (Infoshare)

Table 2: New Zealand-Canada Total Passenger Share by Carrier, for Calendar Year 2018-2019

Carrier	2018	2019
Air New Zealand	76%	75%
United Airlines	6%	7%
American	3%	2%
Qantas	2%	2%
Air Canada	6%	7%
Cathay Pacific	1%	2%

Source: MIDT, non-directional year end data

Table 3: New Zealand-Mexico Passenger Share, 2018-2019

Carrier	2018	2019
Air New Zealand	66%	61%
United Airlines	9%	14%
American	10%	10%
Qantas	7%	6%
LATAM	3%	3%

Source: MIDT, non-directional year end data

ANNEXURE G– FREIGHT MARKET SHARE DATA

Table 1: Total Share of Freight and Mail: US TO NEW ZEALAND 2015-2019

Calendar Year	Qantas	American	Total
2015	16%	0%	16%
2016	15%	4%	19%
2017	16%	7%	22%
2018	12%	2%	14%
2019	13%	1%	14%

Source: United States – Bureau of Transportation Statistics Latest June 2020

Table 2: Total Share of Freight and Mail: NEW ZEALAND TO US, 2015-2019

Year	Qantas	American	Total
2015	0%	0%	0%
2016	0%	4%	4%
2017	0%	10%	10%
2018	0%	3%	3%
2019	0%	4%	4%

Source: United States – Bureau of Transportation Statistics Latest June 2020
Note: Qantas freighter services do not operate from New Zealand to the US.

Table 3: Total Volumes of Freight and Mail: US to NEW ZEALAND, 2015-2019

Year	Qantas (T)	American (T)	Total (T)
2015	8,881	0	8,881
2016	8,706	2,183	10,889
2017	8,493	3,507	12,000
2018	7,997	1,302	9,299
2019	8,724	959	9,683

Source: United States – Bureau of Transportation Statistics Latest June 2020

Table 4: Total Volumes of Freight and Mail: NEW ZEALAND to US, 2015-2019

Year	Qantas (T)	American (T)	Total (T)
2015	17	0	17
2016	0	1,552	1,552
2017	0	3,856	3,856
2018	0	1,690	1,690
2019	0	1,713	1,713

Source: United States – Bureau of Transportation Statistics Latest Dec 2019
Note: Qantas freighter services do not operate from New Zealand to the US.