

Treasury Report: Air New Zealand – Process (Roles of Ministers)

Date:	25 November 2002	Treasury Priority:	High
Security Level:	COMMERCIAL SENSITIVE	Report No:	T2002/1585

Action Sought

	Action Sought	Deadline
Minister of Finance	Note	ASAP
Associate Minister of Finance (Hon Trevor Mallard)	Note	ASAP
Associate Minister of Finance (Hon Paul Swain)	Note	ASAP

Contact for Telephone Discussion (if required)

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Executive Summary

This report is to provide guidance as to how Ministers should fulfil their various roles in dealing with any proposal that may come from Air New Zealand on a strategic alliance with Qantas.

Recommended Action

It is recommended you **note** the contents of this report.

Ivan Kwok
Treasury Solicitor

Hon Dr Michael Cullen
Minister of Finance

Treasury Report: **Air New Zealand – Process (Roles of Ministers)**

Purpose of Report

1. This report is to provide guidance as to how Ministers should fulfil their various roles in dealing with any proposal that may come from Air New Zealand on a strategic alliance with Qantas.

Background

2. To date steps have been taken to separate your ownership role from any involvement in regulatory issues. The Associate Minister of Finance and Minister of Transport deal with regulatory issues and ownership advice and regulatory advice is provided by different branches of Treasury.
3. The rationale for the separation of roles is to:
 - a. reflect the Crown's contractual obligations as shareholder, the need to keep confidential commercial information provided by Air New Zealand for ownership purposes from being used for regulatory purposes; and
 - b. preclude any perception that ownership considerations have influenced regulatory decisions or that Government has in some way influenced the proposal developed by the airlines.

Process Moving Forward

4. Given the collective responsibility of Ministers for Cabinet decisions, at the point that Cabinet decisions are being taken, the separation can no longer be maintained.
5. At the point the application for regulatory approval is made issues around the confidentiality of commercial information will largely disappear as Air New Zealand can be required to provide whatever information may be required to enable decisions on the regulatory issues.
6. During the process of dealing with regulatory approvals the Crown might inadvertently start to shape the proposal. To the extent it does so it raises the risk of the Crown becoming a related party in relation to the proposal and being precluded from exercising its votes as a shareholder on the proposal. This risk can be managed by ensuring that the Crown does not get drawn into negotiating the proposal and simply gives or does not give regulatory approval.

7. The remaining reason for separation of roles is the need to deal with the perception that ownership considerations have influenced regulatory decisions. It is inevitable that the work streams for ownership issues and regulatory issues will come together for the drafting of a Cabinet paper. For a number of reasons, including ensuring the consistency of interpretation of common information on both workstreams and in order to meet the tight timing, there will need to be interaction between officials across each workstream. It will be important to ensure that such interaction does not result in one workstream improperly influencing the advice that is given from that other workstream. The officials process will need to deliver a draft Cabinet paper to Ministers so that there is adequate time for reflection and discussion amongst Ministers of the advice from both workstreams. Cabinet decision should explicitly deal separately with ownership issues and regulatory issues so that the Government can form a clear view on the factors which have shaped its decision. Ultimately that will be a defence against any allegations that ownership consideration have influenced the regulatory decisions.
8. In these circumstances the need for the separation of roles becomes less important. It would be sensible to have the Associate Minister of Finance and Minister of Transport continue with their regulatory roles but we do not see any reason why all Ministers should not participate in Ministerial discussions prior to the Cabinet decision being taken. The risk of allegations of regulatory Ministers being improperly influenced by ownership considerations or you as ownership Minister being improperly influenced by regulatory considerations should be low given the separate development of advice in relationship to ownership and regulatory issues. In these discussions you will still need to be careful to ensure that you do not disclose confidential information you have received in your ownership role. You will be advised by officials as to the nature and scope of the information received for regulatory purposes so that this risk can be managed.
9. A further issue has been raised as to the implications arising from the fact that you will have more information on Air New Zealand than other shareholders. This will be so even after any proposal is made public but it is also so even if there is no proposal. The fact that you hold additional information legally obtained under a confidentiality agreement is not the issue. The issue is the behaviour of persons who have such information. It would clearly be a breach of the insider trading laws if holders of the information were for example to trade in Air New Zealand shares, or tip to other persons that they should trade in Air New Zealand shares.
10. This note has been drafted in consultation with the Solicitor-General. We are preparing separate material on this issue for use in public communication of how the Government is managing the process.