



NZX Regulation Decision

Air New Zealand Limited (NS) (“AIR”)

Application for a waiver from NZX Listing Rule 5.2.1

29 November 2019



Waiver from NZX Main Board Listing Rule 5.2.1

Decision

1. Subject to the conditions set out in paragraph 2 below, and on the basis that the information provided by AIR is complete and accurate in all material respects, NZXR grants AIR a waiver from 1 January 2019 from NZX Listing Rule (**Rule**) 5.2.1 to the extent required to allow AIR to renew the 2017 AoG Contract without needing to obtain shareholder approval.
 - a. The waiver in paragraph 1 above is provided on the condition that at the time of any renewal, two Independent Directors must certify (on behalf of the AIR Board) that:
 - i. any decision to renew the 2017 AoG Contract has been considered on arms' length commercial terms;
 - ii. renewal of the 2017 AoG Contract is in the best interests of all AIR shareholders (other than the Crown); and
 - iii. the Crown, as the majority shareholder in AIR, has not influenced the AIR Board's decision to renew the 2017 AoG Contract.
2. The information on which this decision is based is set out in Appendix One to this decision. This waiver will not apply if that information is not or ceases to be full and accurate in all material respects.
3. Capitalised terms that are not defined in the decision have the meanings given to them in the Rules.
4. The Rule to which this decision relates is set out in Appendix Two to this decision.

Reasons

5. In coming to the decision to provide the waiver set out in paragraph 1 above, NZXR has considered that:
 - a. Rule 5.2.1 seeks to regulate transactions where a Related Party to a Material Transaction may gain favourable consideration due to their relationship with the Issuer. NZXR may waive the requirement to obtain approval of a Material Transaction if it is satisfied that the involvement of any Related Party is plainly unlikely to have influenced the promotion of, or the decision to enter into, the transaction. The granting of this waiver will not offend the policy behind Rule 5.2.1;
 - b. AIR has submitted, and NZXR has no reason not to accept, that the Crown (as the Related Party) is plainly unlikely to have any influence over any renewal of the 2017 AoG Contract by AIR as:
 - i. entry into, and the terms of, the 2017 AoG Contract was negotiated on an arm's length commercial basis. This includes the rights of renewal under the 2017 AoG Contract; and



- ii. the Crown, as the Related Party, has no involvement in AIR's participation in the 2017 AoG Contract for air travel services. All of AIR's decisions in relation to the 2017 AoG Contract are made by AIR's Board (all of whom were independent directors who are not associated with the Crown) and AIR's senior management.
- c. the condition at paragraph 1a. provides comfort that any decision to renew the 2017 AoG Contract will be considered on arms' length commercial terms and renewal will be in the best interests of all AIR shareholders, and that the Crown's connection as the majority shareholder in AIR has not influenced the AIR Board's decision to renew the 2017 AoG Contract; and
- d. there is precedent for this decision.



Appendix One

1. Air New Zealand Limited (NS) (**AIR**) is a Listed Issuer with Equity Securities Quoted on the NZX Main Board.
2. In 2009, the New Zealand Government (**the Crown**) established a process for All-of-Government contracts. In 2011 AIR participated in a competitive tender process for the appointment of approved supplies and was appointed as a preferred supplier under an umbrella agreement between AIR and the Crown under which AIR provides air travel services to agencies that are part of the New Zealand state section (the **2011 AoG Contract**).
3. As the 2011 AoG Contract was due to expire on 28 February 2017, on 13 May 2016 the Ministry of Business, Innovation and Employment (**MBIE**) released a Request for Proposals (**RFP**) inviting suitably qualified and experienced suppliers to submit a proposal for the provision of air travel services to the government. The scope of the RFP covered the provision of domestic New Zealand, Trans-Tasman (including the Pacific Islands) and international air travel services. The RFP included a form of supply agreement.
4. The RFP was a competitive tender process conducted on a genuine arms' length commercial basis.
5. AIR submitted a response to the RFP and was subsequently appointed as a non-exclusive supplier pursuant to a formal umbrella agreement negotiated by the AIR Board (which is independent) and senior managers (based on the form of supply agreement included with the RFP) (the **2017 AoG Contract**).
6. The 2017 AoG Contract contains the following terms:
 - a. the parties to the agreement are AIR and the Crown (acting by and through the Chief Executive of MBIE);
 - b. the agreement was conditional upon AIR being granted any necessary waivers or confirmations by NZX Regulation (**NZXR**) and Australian Securities Exchange (**ASX**);
 - c. the term is four years, with the potential for three rights of renewal for two years each; and
 - d. AIR was appointed a non-exclusive supplier of domestic New Zealand, Trans-Tasman and international air travel services.
7. The 2017 AoG Contract also contains commercially sensitive terms including pricing, and expected share of government spend either in total or by route.
8. AIR's entry into the 2017 AoG Contract was a Material Transaction for the purposes of the NZX Listing Rules because the actual gross cost to AIR of the 2017 AoG Contract in any financial year was expected to exceed an amount equal to 1% of the Average Market Capitalisation of AIR (which, at the time, was approximately \$2.397 billion).
9. The Crown is a Related Party of AIR because the Crown is a 51.91% shareholder of AIR exceeding the 10% threshold pursuant to the definition of Related Party in the NZX Listing Rules.
10. On 21 February 2017, NZXR granted AIR a waiver from the previous NZX Listing Rules to the extent required to allow AIR to enter into the 2017 AoG Contract without obtaining shareholder approval for a Related Party transaction (**first Waiver**). Due to NZX publishing

new Rules, AIR has applied for the first Waiver to be redocumented so that AIR can continue to rely on the first Waiver for the purposes of the renewal rights under the 2017 AoG Contract.

11. AIR continues to expect the actual gross cost of the 2017 AoG Contract in any financial year to exceed an amount equal to 1% of its Average Market Capitalisation. At the time of this waiver, AIR's Average Market Capitalisation is approximately \$3.072 billion.



Appendix Two

Rule 5.2 Transactions with Related Parties

5.2.1 An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:

(a) a direct party to the Material Transaction; or

(b) a beneficiary of a guarantee or other transaction which is a Material Transaction,

unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3) or conditional on such approval.

“Material Transaction” means a transaction, or a related series of transactions, whereby an Issuer:

...

(e) provides or obtains any services (including without limitation obtaining underwriting of Securities or services as an Employee) where the gross cost to the Issuer in any financial year is likely to exceed an amount equal to 1% of the Average Market Capitalisation of the Issuer;

...

“Related Party” means a person who, at the time of a Material Transaction, or at any time within the previous six months, was:

...

(b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes.

