

27 February 2020

Australian Competition and Consumer Commission
David Jones
General Manager
Adjudication Branch
GPO Box 3131
Canberra ACT 2601

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Dear Sir/Madam

Qantas – China Eastern: Application For Variation of Conditions of Authorisation A91470 and A91474

We refer to the Commission's conditional authorisations A91470 and A91474 of the Joint Coordination Agreement between Qantas Airways Limited (**Qantas**) and China Eastern Airlines Corporation Limited (**China Eastern**) (together, **Applicants**) dated 21 August 2015 (**Authorisation**). Appendix B of the Authorisation requires the Applicants to maintain minimum levels of capacity and to increase capacity on routes between Australia and Shanghai over the term of the Authorisation (**Conditions of Authorisation**).

Due to the outbreak of the Novel coronavirus (COVID-19) which was first reported in Wuhan, China on 31 December 2019 (**COVID-19 Outbreak**) and the subsequent flight and entry restrictions imposed by various Governments in respect of travel to and from China, the Applicants are unable to comply with the following two clauses of the Conditions of Authorisation:

- clause 1(a), which requires that:

For each Scheduling Season which commences during the Term, the Applicants must make available not less than 100 per cent of the applicable Sydney – Shanghai City Pair Scheduling Season Base Year Seat Capacity.

- clause 1(c), which requires that:

For each Scheduling Season which commences during the Term, the Applicants must make available not less than 100 per cent of the applicable Australia – Shanghai Scheduling Season Base Year Seat Capacity. To avoid doubt, this obligation requires the Applicants to make the specified capacity available in aggregate across all Routes between Australia and Shanghai.

Accordingly, pursuant to clause 5(1) of the Conditions of Authorisation, the Applicants seek a variation on the basis of the COVID-19 Outbreak being a significant external event that has led to the widespread cancellation of services to China, including from Australia. Further detail is set out below.



‘Exceptional Circumstances’

We consider that the circumstances and actions associated with the COVID-19 Outbreak constitute ‘Exceptional Circumstances’ under clause 5(1) of the Conditional Authorisation.¹ Exceptional Circumstances are defined to include:

- (a) *force majeure events, including natural disasters, national emergency, insurrection, riot, war, pandemic; or*
- (b) *events or factors outside of the control of the Applicants:*
 - (i) *such that the Applicants cannot, or on reasonable grounds anticipate that they cannot, practically comply with the Conditions; or*
 - (ii) *which have or are reasonably anticipated to have a material adverse impact on the demand for travel on the Applicants’ services or the Applicants’ service operating costs, or affecting operations on the Relevant Routes.*

At the date of this application, although not declared a ‘pandemic’, the COVID-19 Outbreak has been declared by the World Health Organisation to be a Public Health Emergency of International Concern.² The situation is evolving rapidly and the COVID-19 Outbreak clearly constitutes ‘events or factors outside of the control of the Applicants’.

On 1 February 2020, the Australian Government issued the following statement:³

‘The National Security Committee of Cabinet met again today to consider new and urgent information regarding the novel coronavirus situation. Based on updated health advice from the Commonwealth’s Chief Medical Officer and the Australian Health Protection Principal Committee and the increased risk posed by the spread of novel coronavirus, we have decided to introduce strict new travel restrictions and new travel advice. Effective immediately, foreign nationals (excluding permanent residents) who are in mainland China from today forward, will not be allowed to enter Australia for 14 days from the time they have left or transited through mainland China..... We will also raise the travel advice to Australians for all of mainland China to Level Four – “Do not travel.”’

As announced by Qantas on 1 February 2020,⁴ the entry restrictions imposed by the Australian Government as well as jurisdictions such as Singapore⁵ and the United States⁶ impacts the movement of crew who work across the Qantas International network. These entry restrictions pose significant logistical challenges for rostering crew to operate mainland China services, leading to the need to temporarily suspend these flights. The suspension of Qantas flights took effect from 9 February 2020 and will apply, at this stage, until at least 25 May 2020.⁷ Qantas continues to work closely with the Australian Government on this issue. The date for Qantas flights to resume is being regularly reviewed based on the circumstances.

China Eastern announced the cancellation of certain flights between Australia and China as a result of the COVID-19 Outbreak. This included the cancellation of Sydney-Shanghai services (MU735/6 from 10 February until 28 March and MU561/2 from 10 February until 28 March on 4 days of the week) and Melbourne-Shanghai services (MU2061/2 from 5 February until 16 February, MU739/40 from 10

¹ The Applicants consider that the Coronavirus Outbreak also constitutes a ‘Material Change in Market Conditions’ for the purposes of clause 5(1) of the Conditions of Authorisation but for ease seek variation on the basis of one ground only (Exceptional Circumstances).

² World Health Organisation, 30 January 2020. See: [https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov))

³ Joint media release dated 1 February 2020 from the Prime Minister, Minister for Foreign Affairs, Minister for Health and Minister for Home Affairs available in full at: <https://www.foreignminister.gov.au/minister/marise-payne/media-release/updated-travel-advice-protect-australians-novel-coronavirus>

⁴ See: <https://www.qantasnewsroom.com.au/media-releases/qantas-update-on-china-services/>

⁵ See: https://www.ica.gov.sg/enteringanddeparting/entry_requirements (Accessed 10 February 2020)

⁶ See: <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-persons-pose-risk-transmitting-2019-novel-coronavirus/> (Accessed 10 February 2020)

⁷ See: <https://www.qantasnewsroom.com.au/media-releases/qantas-and-jetstar-cut-flights-in-response-to-coronavirus/>

February until 28 March and MU737/8 from 10 February until 28 March for 4 days of the week). Shanghai-Brisbane, Shanghai-Perth, Sydney-Hangzhou-Beijing and Sydney-Wuhan-Xian flights were also cancelled for various time periods.

Variation Sought

For the Northern Winter 2019 Scheduling Season, the flight cancellations outlined above will result in a variance of -3% from the required Sydney-Shanghai City Pair Scheduling Season Base Year Seat Capacity and a variance of -3.34% from the required Australia-Shanghai Scheduling Season Base Year Seat Capacity, as shown in Table 1 below. In other words, in respect of the Sydney-Shanghai City Pair the Applicants will operate 6,108 seats less than the minimum requirements and in respect of the Australia-Shanghai Routes the Applicants will operate 10,558 less seats than the minimum requirements.

Table 1: Variance Between Northern Winter Scheduling Season Base Line Capacity and Operated/Schedule Capacity for Northern Winter 2019 Scheduling Season: Sydney-Shanghai and Australia-Shanghai Routes

Northern Winter Scheduling Season Base Line Capacity (Seats)			Northern Winter 2019 Scheduling Season Operated and Scheduled Capacity (Seats)		Variance in Total
Route					
SYD-PVG	QF	88,934	QF	56,992	-3% SYD-PVG
	MU	103,922	MU	129,756	
	Total	192,856	Total	186,748	
MEL-PVG	QF	0	QF	0	-3.34% AU-PVG Routes
	MU	102,580	MU	126,366	
	Total	102,580		126,366	
CNS-PVG	QF	0	QF	0	
	MU	28,206	MU	0	
	Total	28,206	Total	0	
TOTAL AU-PVG Routes	QF	88,934	QF	56,992	
	MU	234,708	MU	256,092	
	Total	323,642	Total	313,084	

Source: Diio Mi

The figures for the operated and scheduled seats for the Northern Winter 2019 Scheduling Season in Table 1 have been sourced from Diio Mi, which is an industry source using published capacity data collated by the International Air Transport Association (IATA).

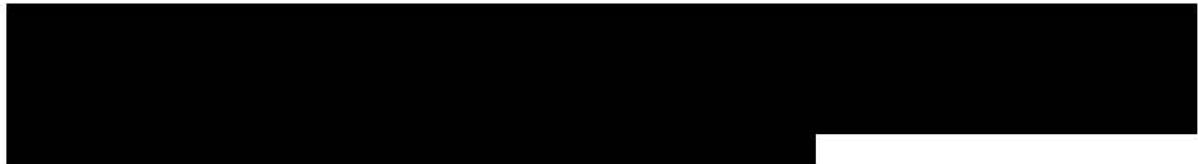
At this stage, it is not possible to provide equivalent total capacity figures sourced from BITRE as BITRE data currently only provides data until November 2019. The figures in Table 1 have, however, been verified against BITRE data available for the November 2019 period and only minor variations in seat totals were found (i.e. there was a difference of only 386 seats between the figures in Table 1 and the available BITRE data in respect of the totals for operated capacity on Australia-Shanghai routes in November 2019 and a difference of only 184 seats in respect of the totals for operated capacity on the Sydney-Shanghai route in November 2019).

For the purposes of this application, the Applicants seek a variation of the Conditions of Authorisation such that, for the purposes of the Northern Winter 2019 Scheduling Season the Scheduling Season Base Year Seat Capacity is adjusted in Schedule A to reflect the figures in red as shown in red in Table 1 above.

Australia-Shanghai CAGR Requirement

At this stage, it is expected that the Applicants will be able to comply with the requirement in clause 1(d) of the Conditions of Authorisation which requires:

On a rolling basis over the Term, the Applicants must increase the applicable Australia – Shanghai Scheduling Season Base Year Seat Capacity by not less than the Australia – Shanghai CAGR.



Please let us know if you have any questions or require further information to assess this application.

Yours sincerely,



Michele Laidlaw
Head of Legal – Competition
Qantas Airways Limited